



PLANNING BOARD

Report to Town Meeting

ARTICLES 30 & 31 INCLUSIONARY ZONING

**ARTICLE 30 INCLUSIONARY ZONING
(Petition - O'Connor)**

To see if the town will vote to amend the Amherst Zoning Bylaw by adding to Bylaw section 15.) 'Intent and Purpose' and Section 15.10 as follows, by adding to Article 15 'Inclusionary Zoning' as Sections 15.13 and 15.14 the following, and by renumbering as necessary existing sections (additions in *boldface italic*, deletions in ~~strikethrough~~):

~ SEE ATTACHMENT ~

Recommendation

The Planning Board voted 7-0, with the concurrence of the petitioner, to recommend that Town Meeting dismiss Article 30.

**ARTICLE 31 INCLUSIONARY ZONING
(Planning Board)**

To see if the Town will amend Sections 3.32, 4.1, 10.323, 11.230, and Article 15 of the Zoning Bylaw by deleting the ~~lined-out~~ language and adding the language in *bold italics*, as follows:

~ SEE ATTACHMENT ~

Recommendation

The Planning Board voted 8-0 to recommend that Town Meeting adopt Article 31 in an amended form.

Summary

Article 30 is a petition amendment that proposes to amend the Inclusionary Zoning section of the Zoning Bylaw. Article 31 is an alternative version of Article 30 prepared by the Planning Board and staff to address the same issues in a more technically effective manner—for instance, by locating the various elements proposed under Article 30 in appropriate sections of the Zoning Bylaw.

Both Article 30 and 31 contain three basic policy elements:

- A proposal to require that a minimum percentage of mandatory affordable units provided under inclusionary zoning by low-income units eligible to count on the Town’s Ch. 40B inventory.
- A proposal to require increased ‘visitability’—handicapped access requirements for entrances to new housing that may not itself be accessible, to enable disabled persons the ability to visit their neighbors.
- A proposal to require that recreational facilities be provided in new residential development.

Article 31 also makes some technical corrections and improvement in those sections of the Bylaw where amendments associated with the above policy changes are proposed.

Motions will be made under Articles 30 and 31 to refer amendments dealing with visitability and recreational facilities back to the Planning Board and the Disability Access Advisory Committee and Leisure Services and Supplemental Education Commission, respectively. The petitioner will move to dismiss the remainder of Article 30.

As a result--as of this writing—the only amendments Town Meeting will be asked to adopt will be the inclusionary percentage and the technical changes, both under Article 31. That will be accomplished through the following amended motions, which blend or deliberately leave out aspects of the original motions (A., B., C., D. and E.) in the warrant:

AMENDED MOTIONS:

MOTION I. I move in terms of A., C. and D. of the article, except to omit the last sentence under A.

Motion I makes some technical corrections and improvements in existing language (A.) and will require transmittal of information on land use permit applications to the LSSE Commission (C. and D.).

MOTION II. I move in terms of Section 4.10 and 4.11 of B.

Motion II makes some technical corrections and improvements in existing language referring to residential development methods.

MOTION III. I move to refer Section 4.12 of B. to the Planning Board and Disability Access Advisory Committee.

Motion III asks Town Meeting to refer a proposed requirement for recreational facilities in new residential development back to the Planning Board and LSSE Commission for further study.

MOTION IV. I move in terms of E. of the article, except to change “a minimum of fifty percent (50%) of affordable units” to read “a minimum of forty-nine percent (49%) of affordable units.

Motion IV amends the Bylaw to require a certain percentage of mandatory inclusionary affordable units to be low-income units (80% of median household income or less) eligible for listing on the state Ch. 40B (Comprehensive Permit) inventory for Amherst. The change from 50% to 49% comes at the recommendation of the Housing Partnership/Fair Housing Committee, and would in certain circumstances result in a slightly lower low-income unit count as a percentage of the total number of new affordable units, thus allowing a higher percentage of moderate income (80+%-120% of median household income) ‘work force’ housing. See chart below.

<u>Total Development Unit Count</u>	<u>Required Affordable Unit Provision</u>	<u>Total Incl. Units</u>	<u>50% Low-Income</u>	<u>49%</u>
1-9 units	None*	None	None	None
10-14 units	Minimum one (1) dwelling unit	1	None	None
15-20 units	Minimum two (2) dwelling units	2	None	None
21 units	Minimum 12% of total unit count	2.52 (3)	1.5 (2)	1.47 (1)
30 units	“	3	1.5 (2)	1.5 (2)
38	“	4.56 (5)	2.5 (3)	2.45 (2)
46	“	5.52 (6)	3	2.95 (3)
55	“	6.6 (7)	3.5 (4)	3.32 (3)
63	“	7.56 (8)	4	3.92 (4)

Discussion

Article 30 echoes an earlier petition to amend Article 15, Inclusionary Zoning, of the Zoning Bylaw, which requires that all residential developments of ten (10) or more units requiring a Special Permit provide a certain number or percentage of affordable housing units. The previous petition article tried to amend Article 15 to require that all (100%) affordable units mandated under Article 15 must be low-income units, affordable by owners or renters earning 80% of median household income or less. This would have made those units countable under the state’s 40B subsidized housing inventory.

Under Article 30, the number of affordable units in any given project required to meet this threshold has been lowered from 100% to 50%. While this still limits the ability of permit-granting bodies to respond to the differences between projects and project locations, Article 30 proposed allowing 50% of the ‘other’ affordable units to be moderate income (workforce) units.

The scope of Article 30 also expanded to also include the following: 1) a requirement to provide recreational facilities or make a payment in lieu of their provision, and 2) the creation of some specific new accessibility and recreation requirements. Each of these proposals raises their own issues.

Recreation Requirements - It is the understanding of the Planning Board that the petitioner will move Article 30 without the proposed new Section 15.13, asking that it be referred to the Planning Board and Leisure Services and Supplemental Education (LSSE) Commission for further study.

Accessibility –The proposed new Section 15.14 (Article 30) and 4.12 (Article 31) seeks to require handicapped-accessible ‘visitability’ for selected new dwelling units. Town Counsel has indicated that the language in neither article is feasible, because it tries to use zoning to regulate aspects of construction reserved for regulation under the Massachusetts Building Code.

Universality - Accessibility and recreation needs are universal needs, and are not restricted to the residents of affordable housing. If valid, these amendments should serve as general requirements for all residential development at appropriate thresholds, and not just in inclusionary projects. Housing projects mandating inclusionary units include only those projects numbering 10 or more units and requiring a Special Permit.

Public Hearing

The Planning Board held a public hearing on Article 30 on April 2, 2008 and a public hearing on Article 31 on April 2 and 16. After hearing from the petitioner and receiving public comment, the Board voted 7-0 to recommend that Town Meeting dismiss Article 30 and 8-0 to recommend that Town Meeting adopt Article 31 in an amended form.

ATTACHMENT

ARTICLE 30 INCLUSIONARY ZONING (Petition)

To see if the town will vote to amend the Amherst Zoning Bylaw by adding to Bylaw Section 15.0 'Intent and Purpose' and Section 15.10 as follows, by adding to Article 15 'Inclusionary Zoning' as Sections 15.13 and 15.14 the following, and by renumbering as necessary exiting sections (additions in ***boldface italic***, deletions in ~~strikethru~~):

Section 15.0 Intent and Purpose

The purpose of this Article is to promote the general public welfare, including but not limited to ensuring an economically integrated and diverse community, by maintaining and increasing the supply of affordable ***and accessible*** housing in the Town of Amherst ***that includes active and passive on-site recreational facilities, or as an alternative to the provision and permanent maintenance of such recreational facilities, the payment into a Town of Amherst Recreational Capital Fund of a \$5,000 per unit development impact fee.***

Section 15.10. All residential development requiring a Special Permit and resulting in additional new dwelling units shall provide affordable housing units, ***50% of which shall be countable for the purposes of the Commonwealth's 40B Subsidized Housing Inventory or its successor,*** at the following minimum rates:

Section 15.13 All housing units except those located on the second floor or above in residential developments requiring a special permit and resulting in five or more new dwelling units shall be front-door accessible – built to standards that allow unimpeded entry by a person in a wheelchair. In developments, required to provide fire or more fully accessible units, the special permit granting authority may require that an equal or larger number of units shall, except for kitchen facilities, be built as ground-floor accessible.

Section 15.14 Every application for a residential development requiring a special permit and resulting in five or more new housing units shall be referred to the LSSE Director and Commission of the Town of Amherst for their recommendations regarding the nature, extent and maintenance requirements of such on-site recreational facilities as would be consistent with national or regional standards, which recommendations shall take into

account existing recreational facilities near the residential development's proposed location within the town. The LSSE Director and Commission shall have 35 days from their receipt of such referral to submit their comments to the special permit granting authority."

ARTICLE 31 INCLUSIONARY ZONING (PB – As per amended Motions)

To see if the Town will amend Sections 3.32, 4.1, 10.323, 11.230, and Article 15 of the Zoning Bylaw by deleting the ~~lined-out~~ language and adding the language in ***bold italics***, as follows:

MOTION I: I move in terms of A., C. and D. of the article, except to omit the last sentence under A.

A. Amend Section 3.32 as follows:

SECTION 3.32 RESIDENTIAL USES

See Article 4 for *Cluster Development*, Planned Unit Residential Development and ~~Cluster Development~~ *Open Space Community Development*.

C. Amend Section 10.323, as follows:

10.323 Upon receipt of an application for a Special Permit, the Special Permit Granting Authority shall transmit copies of the application and plans to appropriate Town boards and officials which may include: the Building Commissioner, Planning Director, Town Engineer, Fire Chief, Conservation Director, Board of Health, Historical Commission, Public Transportation Committee, ***Leisure Services Commission***, and others as necessary. These boards and officials shall have thirty-five (35) days to report to the Special Permit Granting Authority their findings and recommendations. Failure to report in the allotted time shall constitute approval by that board or official of the application submitted.

D. Amend Section 11.230, as follows:

11.230 The Planning Board shall transmit copies of the application and site plan to appropriate Town Boards, and departments which may include: the Town Engineer, Fire Chief, Conservation Department, Building Commissioner, Board of Health, Historical Commission, Public Transportation Committee, ***Leisure Services Commission***, and others as necessary. These Boards and departments shall have thirty-five (35) days to report to the Planning Board their findings and

recommendations. Failure to report in the allotted time shall constitute approval by that Board

MOTION II: II. I move in terms of Section 4.10 and 4.11 of B.

B. Amend Section 4.1, as follows:

SECTION 4.1 GENERAL DEVELOPMENT STANDARDS

The four Development Methods listed in Section 4.0, Overview, shall be undertaken in accordance with the following General Standards:

- 4.10 All Developments in the Town shall conform to the Design Standards and Required Improvements set forth in the Rules and Regulations Governing the Subdivision of Land, and the Street and Site Work Construction Standards of the Town, *and all other applicable Town roadway and utility policies and regulations*, as amended.
- 4.11 *Where building lots are required or proposed*, The lot frontage of lots shall be on existing or proposed minor or secondary streets, *whether public or private statutory ways*, as *such streets are* defined by the Amherst Planning Board's Rules and Regulations Governing the Subdivision of Land ~~except as provided for in Section 4.4214 and Section 4.534.~~

MOTION III: I move to refer Section 4.12 of B. to the Planning Board and Disability Access Advisory Committee.

- 4.12 *All new ground floor dwelling units shall have at least one primary entrance that is fully handicapped accessible under the provisions of Massachusetts Architectural Access Board regulations (521 CMR), as amended.*

MOTION IV: I move in terms of E. of the article, except to change “a minimum of fifty percent (50%) of affordable units” to read “a minimum of forty-nine percent (49%) of affordable units.

E. Amend the following subsections of Article 15, as follows:

15.0 Intent and Purpose

The purpose of this Article is to promote the general public welfare, including but not limited to ensuring an economically integrated and diverse community, by

maintaining and increasing the supply of affordable *and accessible* housing in the Town of Amherst

15.10 All residential development requiring a Special Permit and resulting in additional new dwelling units shall provide affordable housing at the following minimum rates:

<u>Total Development Unit Count</u>	<u>Required Affordable Unit Provision</u>
1-9 units	None*
10-14 units	Minimum one (1) dwelling unit
15-20 units	Minimum two (2) dwelling units
21 units	Minimum 12% of total unit count

* While provision of affordable units is not required for developments containing 1-9 units under this section, the Bylaw encourages affordability and provides for incentives. See Sections 4.33 and 4.55.

Where two or more units are required to be provided under this section, a minimum of forty-nine percent (49%) of affordable units shall be eligible and countable for the purpose of the Commonwealth's 40B Subsidized Housing Inventory (SHI) or its successor. ~~For developments of 21 or more total units, e~~ Calculation of the number of *total* affordable units *or the number of SHI-eligible units* shall, if the required percent of the total results in a fraction, be rounded up to the next whole number where the fractional portion is equal to 0.5 or greater, and shall be rounded down to the next whole number where the fractional portion is less than 0.5.

15.11 Affordable and *accessible* dwelling units provided under Section 15.10 shall be counted as meeting the requirements for ~~affordability~~ density bonuses under the provisions of Section 4.55, ~~0.0 (Open Space Community Developments)~~ *Density Bonuses, of this Bylaw.*