



PLANNING BOARD

Report to Town Meeting

Article 24. Zoning – Inclusionary Zoning (Planning Board)

To see if the Town will amend Articles 4, 12, and 15 of the Zoning Bylaw by deleting the ~~lined-out~~ language and adding the language in *bold italics*, as follows:

~ SEE WARRANT ~

Recommendation

The Planning Board voted 7-0-0, with two members absent, to recommend that Town Meeting adopt Article 24.

Background

Article 24 proposes to significantly improve, re-organize, and better coordinate the way in which Amherst requires affordable dwelling units and provides cost offsets or density bonuses for affordable housing. The amendments in Article 24 implement the recommendations of the *Amherst Master Plan, Housing Production Plan* and *Housing Market Study*, and are supported by the Housing and Sheltering Committee and the Planning Board. In developing these amendments, the Planning Board has worked closely with the Housing and Sheltering Committee (the two bodies share a member), and with Ms. Jayne Armington, a housing expert who works for the Pioneer Valley Planning Commission.

For the past few years, Amherst has been working hard to resolve its multifaceted housing crisis:

- In November 2012, the Fall Special Town Meeting approved several significant Planning Board-sponsored zoning amendments addressing multi-unit housing uses which could serve as rentals.
- In November 2012, the Town Manager appointed a Safe and Healthy Neighborhoods Working Group to develop new regulations governing rental properties in Amherst.
- In March 2013, the Housing and Sheltering Committee approved Amherst's *Housing Production Plan*, a plan focusing on affordable housing needs.
- In May 2013, the Annual Town Meeting adopted a new Residential Rental Property By-Law requiring registration and permits for all rental units.

- In November 2013, the Fall Special Town Meeting adopted zoning amendments allowing for affordable duplexes and clarifying dimensions for residential or mixed-use buildings in Amherst's Centers.
- That same month, the final draft *Housing Market Study* examining the community's market rate housing characteristics was received.
- Enforcement of the Residential Rental Property Bylaw began in January 2014. Applications for registration and permits under the bylaw represent more than 60% of the known rental properties in Amherst as of this writing, and more come in every day.

Improving Amherst's inclusionary affordable housing requirements is the next step.

What is Inclusionary Zoning?

Inclusionary zoning is a method by which communities require the provision of affordable dwelling units as part of the process of new residential development. If the zoning regulations work the way they are supposed to, new residential development helps the community meet its ongoing and ever-changing need for affordable housing.

The challenge in making inclusionary zoning work is in finding a way to balance the cost of required affordable units with a developer's ability to pay for them—unless this is done successfully, affordability requirements simply discourage the development of needed new housing. This balance is struck by allowing an increase in market rate units whose lower cost (the more units are built, the less each individual unit costs) and higher sales revenue can absorb the cost of building new affordable units, which must be sold at low prices in order to be affordable.

What Does Amherst's Current Inclusionary Zoning Do?

In May 2005, Town Meeting adopted a new inclusionary section of the Bylaw (Article 15). Article 15 is largely unchanged today and currently requires the provision of 10-12% affordable units by residential uses (apartments, town houses, and other group residential uses) or residential development methods (Planned Unit Residential Developments (PURDs) and Open Space Community Developments (OSCDs)) that require a Special Permit and contain 10 or more dwelling units. Very few such uses or developments have been proposed or built as a result of these regulations.

Amherst Zoning Bylaw also currently offers a range of density bonuses for different residential development methods such as cluster developments, PURDs, and OSCDs which provide 10% or more affordable units. These provisions were developed and adopted by Town Meeting at different times. There are significant differences and variations among them—some of them include bonuses of 20% above standard density, others 25% or 35%—and the approaches and results are not consistent from one development method to another. This introduces confusion, which impedes developers' ability to use them.

What Article 24 Would Do

Article 24 proposes to change many aspects of inclusionary zoning, but there are four principal changes. Article 24 would: 1) significantly expand the range of residential uses and developments required to provide affordable units, 2) increase the rate of affordable provision for most residential uses or developments of ten or more units, 3) create a simpler but flexible new way to deal with density bonuses to offset the additional cost of affordable units, and 4) better organize Amherst's inclusionary regulations.

Expand the Requirement - The inclusionary requirement would be expanded to apply to all residential uses and residential development methods that produce 10 or more dwelling units, whether those uses require a Special Permit or are by right.

Increase the Rate – The percentage of affordable units required would also increase from 10-12% to 15% of all units in a project. The only exceptions would be the downtown General Business (B-G) District and developments consisting entirely of single family houses for which the affordability requirement would remain at 10%.

Simplify Density Bonuses – The Zoning Bylaw currently contains several different and inconsistent existing density bonus options for individual residential development methods which were created at different times. These would be removed and replaced with a unified system of “cost offset” bonuses applying to residential uses and development methods alike. Cost offset bonuses more directly reflect a developer's actual cost of building affordable units—they “offset” that cost by allowing the provision of additional market rate units whose value makes up the difference.

Consolidation - All of the affordability requirements and density bonus provisions scattered throughout the Zoning Bylaw would be removed from their current locations in the Bylaw and would be consolidated under Article 15, Inclusionary Zoning.

Where to Find The Details

- **Section 12.24:** Redefines “Affordable” - The definition of affordable housing in the Zoning Bylaw is proposed to be revised to include only affordable units which meet the requirements of “low income” housing (80% of median household income) under the Massachusetts Subsidized Housing Inventory (SHI). This ties Amherst's Inclusionary Zoning bylaw directly to the state's Chapter 40B threshold for the provision of affordable housing. In 2014, the official area median household income figure is \$65,700.
- **Section 15.101:** Applies to More Uses - As noted, the inclusionary requirements are expanded to apply to all residential uses and development methods containing 10 or more units, regardless of the permit required.

- **Section 15.1010:** Increasing the Percentage of Affordable Units - The affordability requirement for residential uses or developments containing ten or more units in residential districts and select business districts (B-VC, B-N, B-L and COM) is increased to 15%. Residential developments (standard subdivisions, some clusters) which consist only of one family detached dwellings would be required to provide 10% affordable units. Residential uses in the B-G District would be required to provide 10% affordable units.
- **Section 15.102:** Options for Providing Affordable Units - The preferred method for fulfilling the inclusionary zoning requirement is to have actual affordable units built on-site as part of any residential use or development. Because that is not always possible, however, Article 24 allows a range of options to ensure that every qualifying project contributes to affordability in Amherst. These options require the permission of the permit granting body and include:
 - 1) Direct provision of affordable units on-site;
 - 2) Direct provision of affordable units off-site, with review and approval of location(s);
 - 3) Payment of fees-in-lieu of providing affordable units (see Section 15.1041 for how these fees would be calculated);
 - 4) Donation of land suitable for the development of affordable housing (the value of which is equivalent to the affordable units required), and;
 - 5) Some approved combination of the above.

Preference for on-site provision of actual affordable units would be accomplished by making cost offsets (additional market rate units) available only to those projects which provide on-site affordable units.

- **Section 15.11:** Graduated Cost Offsets - A simpler system of graduated cost offsets replaces all existing density bonuses in the Bylaw
 - **Section 15.110.** Preference for on-site provisions of actual affordable units would be accomplished by making costs offsets available only to those projects that provide on-site affordable units.
 - **Section 15.111.** In zoning districts where the total number of units per parcel size is limited, two (2) additional market rate units would be permitted for every one (1) affordable unit provided, up to a project total of fifty (50) units. Above that total, one (1) additional market rate unit would be available as a cost offset, acknowledging that the more units there are, the lower the cost of construction for each unit.
 - **Section 15.112.** Amherst's mixed-use zoning districts—B-G, B-VC, and B-N—are places where the community has said it wants new housing to go. However, the dimensional regulations in these districts currently allow residential or mixed-use buildings to come close to 'maxing out' a property, within the current limits. To provide room for the additional extra market rate units necessary to offset the cost of affordable units and make those affordable units possible, the dimensional regulations in these districts would be adjusted to allow for a higher percentage of a lot to be covered by buildings or buildings and pavement when affordable units are provided.

Here's what Section 15.112 proposes:

	<u>Building Coverage</u>	<u>Lot Coverage</u>
B-G	70% → 85% (+15%)	95% (not changing)
B-VC	35% → 50% (+15%)	70% → 75% (+5%)
B-N	35% → 50% (+15%)	65% → 70% (+5%)

No other dimensions (floors, height, etc.) are proposed to change in these districts.

- **Section 15.113.** Limits on Attached Buildings – Attached buildings are already allowed available in an affordable development, but there are no specific limits for different zoning districts, just a maximum of eight units per attached building, which is not appropriate in lower density areas. This amendment would reduce that number in the R-O and R-LD districts.
- **Section 4.321:** New Minimum Land Areas for Clusters – Article 24 reduces the land area requirements for cluster developments that include affordable units. The current minimum land area for a cluster development is five acres, but there are very few remaining undeveloped properties that size. Because clustering is a significantly more environmentally responsible form of residential development, it is important to ensure that in every zoning district clustering is a viable alternative to standard subdivisions, which eat up all of the land area of a given property with roads and building lots.
- **Part C:** Old Density Bonuses Removed - In Article 4 of the Bylaw, a series of specific affordability and density bonus provisions are removed for different residential development methods, and are replaced with references to the new inclusionary regulations under Article 15.

Public Hearing

The Planning Board held a public hearing on Article 24 on March 19. The Zoning Subcommittee presented the proposal and a recommendation that the full Planning Board recommend that Town Meeting approve Article 24.

During the public hearing, some citizens expressed concern about the function of “cost offsets”, asserting that they should serve as incentives to go beyond the basic inclusionary requirements. The Board pointed out that without a way of making up for the cost of affordable units, inclusionary requirements could be an active disincentive to new development.

Further, unless there was a reasonable offset, the courts could find that the imposition of affordable requirements to ‘by right’ uses was a taking of property value without compensation. The Board wanted new inclusionary requirements to be legally workable, and did not want them to dampen and discourage reasonable development in the few places everyone in the community agreed it should go. The Zoning Subcommittee of the Board had spent a lot of time with a consultant examining the financial feasibility of affordability as practiced in other communities.

Citizens also expressed concern that the proposed requirements for affordable housing were lower in the B-G District than in residential zoning districts, stating that the Town should avoid allowing one area to become gentrified without affordable units. Members of the Board responded that while they shared many of the same concerns, the community needs to simultaneously pursue and balance multiple priorities in our mixed-use Town Center, including affordable housing, market rate housing, new retail and office space, public facilities, and many others. Downtown development must contribute to housing affordability in Amherst, but that requirement must not discourage new growth and development in those areas where the community most wants it to occur. There had in fact been a request to exempt the B-G District from inclusionary requirements, but the Planning Board had elected to include it. The regulations might eventually need revision, but the Board felt its approach was workable.

Citizens questioned why the proposed revised definition of affordability exempted off-campus student dormitories (under the amendment to the definition of “affordable”, only residential uses—including student housing—that would increase the countable housing stock of the town would be required to provide affordable housing). Board members noted that dormitories were only allowed on the four remaining properties in the R-F District, and that the state only counts year-round dwelling units as part of the community’s total housing stock. Student dormitories that consist of group quarters are not counted as part of total housing stock for the purposes of MGL Chapter 40B (Comprehensive Permitting). There was also concern expressed that private residential development that is ‘exempt’ in this way might become something different in the future without having contributed to affordability. The Board noted that when a residential use changed, it becomes subject to the requirements of the Zoning Bylaw for the new use.

In response to questions about changes to the requirements for “attached buildings” (buildings containing 3 or more units) allowed in affordable developments, it was pointed out that the existing provision provided no guidance as to how many units could be allowed in such a building in different zoning districts. The proposed new language under Article __ establishes limits on the number of units allowed in attached buildings in different zoning districts, where no limit (beyond eight units) exists now.

Similar questions were raised about the threshold for allowing cluster developments being changed from five acres everywhere to specific smaller thresholds in different districts. Because clusters involve smaller lots, shorter roads, and less land disturbance, and resulted in the set-aside of undeveloped common land, clustering is considered a more environmentally responsible alternative to standard subdivisions in which every square inch of a property is in someone’s building lot. If clustering was not available, standard subdivisions were the only option left. If the community wanted cluster development instead of standard subdivisions, then lowering the area requirements for affordable cluster developments would make that alternative possible.

Representatives of the Amherst Business Improvement District indicated that they did not support an earlier proposed cost offset in the B-G District which would have allowed adding a sixth story as an option for providing room for affordable units. The BID felt this was too tall for downtown

Amherst. However, if a decision was made to go in that direction, then the maximum height for buildings there needed to be adjusted to 72 feet to allow enough room for six real floors. Board members indicated that that sixth floor option was no longer being pursued—an increase in building coverage was being proposed instead.

The Chair said he was very impressed by the work that had been done on the article. He thought it reflected serious due diligence and struck the right balance between competing community interests.

After further discussion, the Planning Board voted 7-0-0, with 2 members absent, to recommend that Town Meeting adopt Article 24.