

Town of

Background Material for  
ARTICLE 5, INCLUSIONARY ZONING (PETITION)



AMHERST *Massachusetts*

PLANNING BOARD

Report to Town Meeting

ARTICLE 22 INCLUSIONARY ZONING

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To see if the Town will vote to add a new Article 15, Inclusionary Zoning, and amend Article 12, Definitions, of the Zoning Bylaw as follows:

***SEE ATTACHMENT***

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**Recommendation**

The Planning Board voted unanimously (8-0) to recommend that Town Meeting adopt Article 22.

**Summary**

Article 22 adds a new section (Article 15) to the Zoning Bylaw requiring the inclusion of affordable housing units in larger residential developments (10 or more units) regulated under Special Permits: apartments, townhouses, Open Space Community Developments (OSCDs), and Planned Unit Residential Developments (PURDs). This would not apply to smaller developments (1-9) units or to by-right development methods like standard subdivisions, cluster developments, or any non-profit residential developments. Affordable housing incentives and subsidized housing are dealt with separately under the Zoning Bylaw. The Planning Board is also considering other zoning amendments for the fall to address affordability in smaller (1-9 unit) housing developments, as well as incentives to provide more affordable units in larger developments than "inclusion" regulations would require.

**Background**

The need for additional affordable housing in Amherst is documented in the Town of Amherst Affordable Housing Plan: 2003 Update, which also discusses several strategies for providing additional affordable housing units through the permit process. At the request of the Amherst Housing Partnership/Fair Housing Committee, the Planning Board has been working with for more than a year on improvement to Amherst's zoning regulations to encourage the provision of affordable housing in new development. These efforts are in implementation of the Amherst Housing Policy, adopted by the Select Board on October 21, 2002:

*Whereas, the Town of Amherst values its diverse cultural community, and acknowledges that to sustain it now and into the future requires preserving the existing stock of housing and promoting future development of a broad range of safe, accessible, affordable housing for our community:*

*To this end, Amherst shall:*

- *Actively support initiatives designed to preserve, develop and/or replenish its affordable housing inventory;*
- *Actively promote access to housing for all persons, regardless of race, color, creed, national origin, sexual orientation, physical capabilities, marital or social-economic status;*
- *Commit resources to educating the public on all housing conditions, current housing laws and regulations, and enforce housing laws and protections within the community.*

The Planning Board is considering further affordable housing zoning amendments for the 2005 Fall Special Town Meeting.

All of the Planning Board zoning articles before the 2005 Annual Town Meeting involve residential development. Several encourage affordable housing. But Article 22 represents the most significant change—requiring the inclusion of affordable housing in selected new residential developments.

Inclusionary zoning is self-defining. It requires developers or property owners who are building more than a given threshold of new dwelling units to “include” affordable housing in specified amounts. Many Massachusetts communities have inclusionary zoning. Amherst has offered zoning incentives (density bonuses) for the inclusion of affordable housing in selected kinds of new residential development since the late 1980s, but has not previously required the inclusion of such housing.

### **What Article 22 Does**

Article 22 seeks to establish a foundation—a baseline amount of affordable housing that must be provided as part of private housing developments, as follows:

***Provides A Local Preference*** – Article 22 states that, where possible, preference for ownership or lease of affordable units should be given to people who live or work in Amherst.

***Applies Only to Special Permit Developments*** – Article 22 requires affordable dwelling units for all residential developments requiring a Special Permit.

***Why Only Special Permit Developments?*** - Requiring private developers to pay for and provide public benefits when they develop has to be done carefully, to avoid exposing the regulations to successful legal challenge. Property owners are protected against unreasonable public “takings” of their property (or any interest in their property) by provisions of the Massachusetts Constitution and the Fifth Amendment to the U.S. Constitution, which reads, in part: “nor shall private property be taken for public use, without just compensation.” For that reason, Article 22 mandates the inclusion of affordable housing only for residential developments in Amherst that require a Special Permit.

In all zoning districts, there are residential development methods developers and property owners can pursue by right. So, if a developer or property owner *chooses* to pursue a residential development method that requires a Special Permit, then the Town is on sound legal ground to require that a reasonable amount of affordable housing be included as part of that development.

***Requires Inclusion for Larger Developments*** – Article 22 requires the provision of affordable dwelling units in the following amounts:

- 1-9 units - Exempt—developments in this size range are usually not able to economically support the creation of an affordable unit.
- 10-14 units - A minimum of one (1) unit would have to be affordable.
- 15-20 units - A minimum of two (2) units would have to be affordable.
- 21+ units - A minimum of 12% of the units would have to be affordable
  - 21 total = 3 affordable units
  - 30 total = 4 affordable units
  - 38 total = 5 affordable units
  - 46 total = 6 affordable units, etc.

In practice, this means that only Special Permit housing development projects of 10 units or more permitted will be required to include affordable units under Article 22. These include apartments, town houses, Open Space Community Developments (OSCDs), and Planned Unit Residential Developments (PURDs). The Planning Board has also been examining the possibility of requiring standard subdivision to obtain Special Permits, and a related amendment may appear before Town Meeting in the fall. If that amendment proceeds, then standard subdivisions might also be required to provide affordable units under Article 22.

***Why Exempt Any Development? Why Not Ask For More?*** – Again, Article 22 is only a first step to establish a baseline of required affordability, and it focuses on what the private housing market can reasonably do. In order to be legally defensible and to work in practice, a zoning requirement to include affordable dwelling units has to be reasonable and avoid being punitive.

If too many affordable units are required, projects will become vulnerable to legal challenge and could become economically infeasible for developers, who would then avoid using the development methods that require inclusion. Or, in a highly desirable housing market like Amherst's, developers might simply raise the price of the remaining market-rate dwelling units to cover the cost of the included affordable units. Amherst already suffers from excessively high housing costs. It makes no sense to create inclusionary zoning provisions that have the effect of making housing costs higher.

Finally, inclusionary zoning regulations cannot assume that public housing funding supports will always be available to help underwrite the cost of building affordable units that are required under regulations. A workable inclusionary zoning bylaw must be based on what the private housing market can support.

*Why a 10 Unit Threshold?* – Article 22 sets ten (10) units as the threshold for requiring affordable units, for several reasons. First, the majority of Massachusetts communities with inclusionary zoning regulations use a threshold of ten (10) total dwelling units before the first affordable unit is required. Some do so because it reflects their intention to create or maintain 10 percent of their community's housing as affordable, and thereby protect themselves from having Comprehensive Permit housing projects forced on them. A few communities set their threshold at 8 units, and some set the threshold higher—at 11, 12 or even 20 units.

Some rural communities allow no multi-family development, and their inclusionary thresholds are based on acreage, or on the number of proposed single family building lots. Some urban communities have no vacant land to speak of, and base their thresholds on new square footage (Cambridge, for instance, sets its threshold at 30,000 sq. ft. of developed area). A threshold of ten (10) units seems to match Amherst's housing market and its blend of rural and urban characteristics.

This inclusionary threshold reflects the real world. The number of housing units in a development has to reach a certain threshold before the return that a developer gets from selling the lots or houses can cover the costs they incur from purchasing land, preparing sites (grading, etc.) installing utilities, paving roads/driveways/parking areas, and so forth. If a community wants to successfully require private developers to include affordable housing, it has to take the developer's development costs into account.

*Interaction With Density Bonuses* – Article 22 presumes that Amherst wants affordable housing to be a normal, regular feature of all new residential development regulated through Special Permits. Currently, Amherst's Zoning Bylaw only offers density bonuses for the provision of affordable housing under one of its Special Permit residential development method—Open Space Community Developments (OSCDs). No density bonuses are currently offered for apartment or townhouse developments that include affordable units.

Cluster subdivision developments are not affected by Article 22, because clusters are permitted by right through Site Plan Review approval, not under a Special Permit. Any cluster development containing a minimum of ten percent (10%) of its units as affordable is eligible to use a different density calculation (see warrant Article 20), and all affordable units provided count toward that ten percent. Article 22 would not change this.

Open Space Community Developments (OSCDs) require a Special Permit and currently allow a density bonus of up to 20% increased density (unit count) when affordable units are included. To ensure that the inclusionary requirement is not a disincentive, the affordable units required to be included under Article 22 will count toward a density bonus in an OSCD.

### **Public Hearing**

The Planning Board held a public hearing for Article 22 on Wednesday, April 6, 2005. After discussion, the Planning Board voted unanimously (8-0) to recommend that Town Meeting adopt Article 22.

~ ATTACHMENT ~

**ARTICLE 22            INCLUSIONARY ZONING**

To see if the Town will vote to add a new Article 15, Inclusionary Zoning, and amend Article 12, Definitions, of the Zoning Bylaw as follows:

**A.     Add the following new Article 15, Inclusionary Zoning:**

**ARTICLE 15            INCLUSIONARY ZONING**

**15.0   INTENT & PURPOSE**

**15.1   REGULATIONS**

**SECTION 15.0        INTENT & 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 housing in the Town of Amherst. This purpose includes:

- 15.00 Ensuring that new residential development generates affordable housing as defined in Section 12.00.
- 15.01 Ensuring that affordable housing created under this section remains affordable over the long term, with the majority of such housing remaining affordable in perpetuity, except as may be otherwise required under state or federal programs.
- 15.02 Maintaining a full mix of housing types and unrestricted geographic distribution of affordable housing opportunities throughout Amherst.
- 15.03 To the extent allowed by law, ensuring that preference for new affordable housing is given to eligible persons who live or work in Amherst.

**SECTION 15.1        REGULATIONS**

To ensure the purposes of this section, the following regulations shall apply to residential development in Amherst:

15.10 All residential development requiring a Special Permit and resulting in additional new dwelling units shall provide affordable housing units 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.

For developments of 21 or more total units, calculation of the number of affordable 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 dwelling units are a normal and expected component of residential development in Amherst under a Special Permit. For this reason, affordable dwelling units provided under Section 15.10 shall not be counted as meeting the requirements for affordability density bonuses under the provisions of Section 4.550.0 (Open Space Community Developments) or any other applicable section. Eligibility for density bonuses under this Bylaw shall require the provision of additional affordable dwelling units above and beyond those required under Section 15.10.
- 15.12 The applicant shall establish such housing restrictions, conditions, and/or limitations as are necessary to ensure that the affordable housing units provided under this section will be permanently available for purchase by eligible low-and moderate-income buyers, and available for a minimum of twenty years in the case of rental housing.
- 15.13 Housing constructed by a public agency or non-profit corporation using a federal, state, or local housing assistance program may adhere to the requirements set forth by the funding agency provided that the purpose of these regulations are met.
- 15.14 In any residential development, affordable housing units provided shall be dispersed throughout the development, and shall be comparable to market rate units in terms of the quality of their design, materials, and general appearance of their architecture and landscape.

**B. Amend Article 12, Definitions, by adding the following new language under Section 12.00, and renumbering the remaining sections accordingly:**

- 12.00 *Affordable Units: Affordable housing units shall be those which may be rented or purchased by those who meet the guidelines for maximum annual income for a low-income or moderate-income family or household. The income limit for "low income" shall be 80% of the median income for Amherst, and the income limit for "moderate income" shall be 120% of median income for Amherst. Median income for Amherst will be as calculated by the U.S. Department of Housing and Urban Development, or any successor agency, and shall be adjusted for family size.*