



PLANNING BOARD

Report to Town Meeting

- Article 35. Zoning – Inclusionary Zoning (Planning Board)**
- Article 36 Zoning – Inclusionary Zoning (Petition)**

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

~ SEE WARRANT ~

Recommendation

The Planning Board recommends that Town Meeting approve Article 35, the Planning Board version of this zoning amendment. If Article 35 does not pass, then the Planning Board recommends approval of Article 36, the petition version. Of the two versions, the Planning Board’s preference is for Article 35. The Planning Board’s vote was 6-0 with three members absent.

Background

These articles are the latest in a long series of articles intended to clarify the applicability of Amherst’s Inclusionary Zoning bylaw. Inclusionary zoning is a land use regulation that requires a portion of new residential development to be affordable for low-income households, which is defined as those earning 80% or less of the area median income (AMI). It is used in various forms and to varying degrees of success in many communities across the country. Amherst’s existing Inclusionary Zoning bylaw was adopted by the 2005 Annual Town Meeting, and since then only a handful of new affordable units have been created as a result of it. Over the last five years several attempts have been made by citizens and the Planning Board to amend it so that it would affect a wider range of uses and developments, though none have yet been approved by Town Meeting.

There has been particular controversy over the trigger for imposing an inclusionary requirement on a development project, as stated in Section 15.10 of the Zoning Bylaw: “All residential developments requiring a Special Permit. . .”. The Planning Board has interpreted this clause to apply to projects that require a Special Permit for the use itself (i.e., to developments that are not "by right"), while others have held that it should apply to any project that receives a Special Permit for any reason, including by-right developments that receive a Special Permit to modify a dimensional regulation or some other secondary aspect of the project. The Planning Board has been reluctant to endorse the latter approach because that may have the result of discouraging development that the Zoning Bylaw and Master Plan otherwise seek to promote, and could even prompt a legal challenge.

Unfortunately, that means, effectively, that Inclusionary Zoning does not apply in the General Business (B-G) zoning district – the core of the town center – because there are no residential uses that require a Special Permit for use in the B-G zone. Since there is widespread agreement that affordable housing should be available throughout town, and that inclusionary zoning is a potentially useful tool for helping achieve that goal, the town has been struggling to figure out how to extend the Inclusionary Zoning bylaw to the town center in a way that minimizes potential negative impacts.

Inclusionary zoning is expensive for a developer, since it both imposes additional costs and reduces potential profits. The Planning Board's most ambitious attempt to expand the scope of inclusionary zoning (in Spring 2015 after almost two years of work and consultation with state-level experts) relied on a system of "cost offsets" of the expense of required affordable units based on automatic increases in allowed density and would have covered all residential uses and developments regardless of whether a Special Permit was involved, but it was rejected by Town Meeting. A companion measure adopted that year that enables the Town to offer tax incentives for affordable units provides some cost offset, but it may not be enough to justify the mandate by itself because the tax incentive is not automatic (it must be granted by the Select Board) and phases out over ten years.

Petition articles at the Fall 2014 and Spring 2016 Town Meetings would have required inclusionary zoning for projects receiving a Special Permit for any reason, without offering any cost offset, but were not supported by the Planning Board because of the risk to development goals and they failed to attain the required supermajority to be enacted. The Fall 2016 Town Meeting included a Planning Board article that proposed a modified version of the prior petitions, making any Special Permit applicable for inclusionary zoning, but only for that part of a building made possible by the Special Permit requested. It too failed, leaving everyone unsatisfied.

Aims of the article

The Planning Board version of these articles is the result of a serious effort between supporters of prior petition articles and the Planning Board to find common ground, to more precisely consider the situations in which a Special Permit would justify an inclusionary mandate, to build in some flexibility designed to increase the chances that Inclusionary Zoning can succeed in Amherst, and to (hopefully) resolve the issue once and for all. It is a compromise. It is not exactly where either side expected to end up when we started this process, but it goes a long way toward bridging the gap.

It accepts the premise that a Special Permit to modify a dimension should trigger the Inclusionary Zoning bylaw, but it explicitly restricts the dimensional Special Permit trigger to a few specific dimensional regulations – those affecting the overall size of the building – and excludes others that do not necessarily enable a larger building. The Zoning Bylaw's Table 3, the dimensional table, describes a maximum size that buildings are allowed to be by right. This amendment would implicitly establish that a Special Permit to increase that size (whether or not it results in increased units) is a significant enough concession on the part of the town to justify a requirement to provide affordable housing. On the other hand, Special Permits that modify dimensions for reasons of design or placement of the building on a lot, such as those that affect setbacks; or are completely ancillary to the building itself, such as for signage; would not be subject to Inclusionary Zoning.

To counterbalance the expansion of the IZ bylaw, the article also introduces a couple of alternative means of complying with the affordable mandate, by allowing payment of a fee in lieu of providing actual units, or by allowing affordable units to be provided off site from the development receiving

the Special Permit (both under certain conditions). These provisions will allow developers some flexibility in how they meet the mandate, decreasing the chance that the mandate will scuttle a project and result in neither affordable units nor market rate units. Small projects in particular often find it difficult to accommodate an affordability mandate; allowing that mandate to be met in a variety of ways is in the town's interest as well as the developer's.

Mechanics

Article 15 of the Zoning Bylaw (the chapter on Inclusionary Zoning) would be amended in three main ways by this article:

Expands practical applicability of Inclusionary Zoning bylaw.

The amendment would make the provision of affordable housing mandatory for all developments of ten or more units requiring a Special Permit “for the use itself or for modification of . . . certain dimensions” (Section 15.10), a noteworthy expansion of the Planning Board's current interpretation which is limited to Special Permits for use only. The dimensional modifications affected are those that result in: building or lot coverage greater than that allowed by Table 3, extra height, or an extra floor – modifications that would specifically enable a larger building than is contemplated by the dimensional table.

Other dimensions could be modified without triggering the Inclusionary Zoning bylaw, most notably setbacks, but these do not necessarily mean that the building would be larger. The Planning Board considers the flexibility that footnote *a* (the mechanism by which some dimensional regulations may be modified) provides to be an important tool in helping a project adapt to the constraints of irregular lots or nearby structures or landscape features.

This amendment does not change the option that a developer always has to avoid the Inclusionary Zoning mandate by constructing a building that conforms to the dimensional table.

Provides alternative means of complying with bylaw.

The proposed new Section 15.15 allows some or all of the requirements of Article 15 to be met by provision of affordable units off-site, or by payment in lieu of units. Off-site units would be required to be located near the principal project, and be comparable to the market rate units. The fee per unit under the payment-in-lieu provision is proposed at three times Median Family Income for Amherst - currently this would equal approximately \$198,000. This is an increase over fees proposed under the Planning Board's 2015 Inclusionary Zoning proposal. The intent is for the fee to be high enough to encourage the provision of actual units, while also providing some flexibility. Payments would be made to the Amherst Municipal Affordable Housing Trust, whose mission is the creation and preservation of affordable housing in the Town.

Both options under Section 15.15 are limited in that 50% of units required must be provided on-site, with the exception of developments requiring less than 4 affordable units (developments having fewer than 30 total units). Smaller developments like these tend to have more difficulty acquiring financing for an affordable housing component, and to be developed by entities with less expertise in affordable housing. For this reason, the Planning Board supports increased flexibility for developments of this smaller scale.

Updates and clarifies existing language.

Past attempts at amending the Inclusionary Zoning bylaw have identified several areas with unclear language or provisions that don't capture the town's current understanding about best practices for inclusionary zoning. This article would correct those weaknesses in the following sections:

- Section 15.10: Inclusionary zoning would apply to the “net increase in dwelling units” rather than to “additional new dwelling units” or to “total unit count”. It has always been the town's intention that the bylaw would apply only to new units beyond what might already exist on the project site. It would not be reasonable to retroactively require existing market-rate units to be made affordable when a project is later expanded, for example, as the current language implies.
- Section 15.10: An implied reference to moderate-income affordable units (i.e., units that are price-restricted but not countable under the state's Subsidized Housing Inventory) would be deleted, since a previous zoning bylaw amendment requires all affordable units to be countable.
- Section 15.12: The language would be revised to require all units, whether rental or ownership, to be permanently affordable where possible.
- Section 15.14: A sentence would be added to require affordable units to be comparable to market-rate units in size and bedroom count as well as design, materials, and appearance, closing an apparent loophole in the existing language. However, although the default expectation is that affordable units will be the same as market-rate units in these regards, the Planning Board believes it is prudent to provide some flexibility on that point to accommodate off-site units that might not be a perfect size or bedroom-count fit, or as may otherwise be recommended by the Municipal Affordable Housing Trust or another agency.

Benefits

The changes proposed in these articles could potentially result in the creation of more affordable housing in downtown Amherst. This type of housing is a priority as the Town seeks to maintain a broad mix of housing suited to the broadest possible spectrum of the community. Expanding the requirements for provision of affordable housing in new developments is one tool among many that the Town and its partners in affordable housing can use to further this goal. Zoning changes over the past two decades have made downtown development more feasible, and the proposed amendments could help to leverage growth downtown to produce housing suited to a range of income levels. The changes could work well in tandem with the affordable housing property tax incentive that Amherst adopted in 2015.

The article would clarify some sections of the existing bylaw that are ambiguous, clunky, or lacking context. The Planning Board version of the article would also bring needed flexibility along with the expanded requirements, especially for small developments.

Risks

Any mandate or regulation affecting development in mixed-use centers, whether it is about affordability or anything else, risks making the undertaking of a new project more costly, more time-consuming, and more difficult, and may discourage the effort altogether. If a project does not

happen at all because of this bylaw, not only would there be no affordable units, but the town would miss out on needed market rate units as well. That would be particularly unfortunate since in most cases those units would come in a mixed-use center district where the town would prefer that most residential growth happen. A missed opportunity for new units has follow-on consequences for affordable housing, too: New housing supply reduces pressure on existing housing at levels of affordability reaching beyond the low-income target of Inclusionary Zoning into the moderate income range. Additionally, CPA property tax surcharge revenue from new market rate units supports affordable housing projects. The Inclusionary Zoning bylaw is not intended to have the effect of depressing development, and the Planning Board believes these amendments will not have that effect – but only time will tell.

The proposed fee-in-lieu amount could be too high, making it not really a viable alternative – or too low, depriving the town of some of the resources it should reasonably expect to receive to support affordable housing in exchange for certain Special Permits. If either turns out to be the case, this amount can be adjusted by a future legislative act.

Process and Public Hearing

The proponent for the petition article approached the Planning Board last fall to reopen the long-running conversation about revising the Inclusionary Zoning bylaw, and worked with the Zoning Subcommittee over a number of weeks to develop an article that addressed the concerns of those who have been disappointed that recent town center development has not included any low-income affordable units as well as those who worry that an affordability mandate could thwart desired residential and commercial growth in that area. The deadline for submission of petition articles arrived before work on a joint article was complete, so the petition article includes only the first part of the approach that was decided upon: a focused expansion of the Special Permit trigger, which the proponent wanted to be sure was put before Town Meeting. Work on the second part, an option for alternative compliance with the mandate, continued after the petition deadline and the result is included in the Planning Board's version of the article along with the amendments contained in the petition version.

A public hearing on both articles was held on April 11, 2018. Several of those who brought forward the petition article, including the lead proponent, indicated that they would support the Planning Board's version, recognizing that it provides valuable flexibility toward making Inclusionary Zoning workable and successful (the petition version would be dismissed if the Planning Board version is approved by Town Meeting). Both Planning Board and petitioners appreciated the spirit of collaboration that resulted in these articles.

Members of the public speaking in favor of the articles emphasized the importance of affordable housing being available throughout town, especially in the town center, where transportation expenses should be lower. Some asserted that inclusionary zoning could or should be mandatory without resort to a Special Permit, and described the articles as a generous compromise with development interests.

A representative of the Business Improvement District expressed doubt about whether the amendments would generate much if any new affordable housing, either because the inclusionary mandate will discourage projects from being built or because projects will avoid the mandate by conforming to the dimensional table.

The Planning Board acknowledged these perspectives and noted that the Town’s experience with several new projects in the town center over the last few years and the existence of the Municipal Affordable Housing Trust has changed the environment in which Inclusionary Zoning should be considered and how it will function. The Board believes the proposed changes represent a balanced approach to this issue.

Of the two articles, both of which it recommended unanimously at the conclusion of the public hearing, the Planning Board’s strong preference is for the adoption of Article 35, the Planning Board version of the amendment.