



PLANNING BOARD

Report to Town Meeting

Article 18. Zoning – Inclusionary Zoning (Planning Board)

To see if the Town will amend Article 15, Inclusionary Zoning, 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 one member absent, to recommend that Town Meeting adopt Article 18.

Background & Purpose

Article 18 is the most recent of several articles relating to Inclusionary Zoning which have been brought to Town Meeting by the Planning Board and others. Inclusionary Zoning is a regulatory approach to creating affordable housing which requires developers, in certain circumstances, to provide affordable units as a percentage of their proposed units.

Amherst first adopted its own Inclusionary Zoning policy at the 2005 Annual Town Meeting. That policy, now Article 15 of the Zoning Bylaw, requires affordable housing of “*all residential development requiring a Special Permit and resulting in additional new dwelling units*”. This applies to developments of 10 or more units, and the requirement is 12% of the units (rounded to the nearest whole number) be affordable. Over the years since adoption, the Town (Planning Board, Zoning Board of Appeals, planning staff, and town counsel) has consistently interpreted this section of the Bylaw to apply to Special Permits for use only.

There are two types of Special Permit in Amherst - those for use, and those for dimensional modifications. A Special Permit for use is one which allows a development to happen at all. For example, Presidential Apartments in North Amherst is an apartment complex which exists in a zone where apartment complexes are no longer allowed. Presidential Apartments is therefore considered to be a “legal non-conforming use”. A Special Permit is required for any change to the development.

The entire development requires a Special Permit. When Presidential proposed a 54-unit expansion in 2013, the Zoning Board of Appeals required that 6 of those be affordable.

A dimensional Special Permit in Amherst is one that allows a development to be larger or closer to lot lines than otherwise would be allowed. There have been several instances in which developments that do not require Special Permits for use have requested Special Permits for dimensional modification. Such a Special Permit, unlike a use Special Permit, relates only to a portion of the development. For example, it could allow a building to grow in volume by as little as 100 cubic feet, or as much as 100,000 cubic feet.

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In Fall of 2014 and Spring of 2016, petition articles were brought which would require the same percentage of affordable units in these three scenarios: a development that requires a use Special Permit (to exist at all), a development that does not require a use Special Permit but requests a minor dimensional Special Permit; and a development that does not require a use Special Permit but requests a major dimensional Special Permit. The Planning Board recommended against these articles, which were not adopted. The Planning Board agrees that a dimensional Special Permit could be significant enough to trigger an affordable requirement, but no proposal to this point has provided a mechanism for determining a requirement that is proportional to the dimensional Special Permit requested.

Article 18 would address this issue by expanding the requirement to include dimensional modification Special Permits and referencing a formula in Planning Board Rules & Regulations.

Mechanics

Article 18 would expand the affordability requirement to apply to *“All residential development requiring a Special Permit for any aspect of a proposed use or development, including, but not limited to, dimensional modifications”*.

The table of required unit quantities would be revised to reflect that the calculation is based on the number of units attributable to Special Permit. For a use Special Permit, that number would be 100% of the units proposed. So a new development proposing 54 apartment units that requires a use Special Permit would provide 6 units. For a development that does not require a use Special Permit but requests a dimensional Special Permit, a formula contained in Planning Board Rules & Regulations will detail the calculation. The Planning Board seeks to finalize and adopt this formula prior to Town Meeting.

Why put this formula in Planning Board Rules & Regulations? The Rules & Regulations can be updated by the Planning Board with a majority vote after a public hearing. In the past, a combination of the complicated nature of IZ proposals and the (very welcome) involvement of staff, consultants, public, and Board members has meant last minute changes to many proposals. By placing the critical piece of the proposal - expanding the requirement to dimensional Special Permits - in the Zoning Bylaw, that piece can be enshrined and any changes to the formula would be within the scope of that increase. In other words, current and future Planning Boards will have the ability to modify the increase somewhat, but it is definitively an increase in the requirement.

Article 18 would also make the following minor changes:

- Remove a reference to two levels of affordability (as of 2016 Annual Town Meeting, all affordable housing must now be at 80% of Area Median Income)
- Clarify that affordable units must also be comparable to market rate units in terms of size and bedroom count
- Clarify that affordable units may be rental units and that affordable units should be affordable in perpetuity or to the extent allowed by law

Benefits

Article 18 would expand the affordability requirement in Amherst and could lead to additional affordable housing. Placing a piece of the requirements in Planning Board Rules & Regulations allows some flexibility to adjust that increase in response to community input, market conditions, and other factors.

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Risks

The number of units yielded by this increase alone will not address the pressing need for affordable housing in Amherst. Inclusionary Zoning in Amherst and around the country has yielded mixed results, and the amount of resources spent drafting and enforcing regulations is large in relation to the number of units produced. The flexibility granted to the Planning Board to modify the calculation also introduces an element of uncertainty.

Process

The Planning Board has been working on the Inclusionary Zoning issue since summer of 2013, and this specific article since spring of 2016. Numerous Zoning Subcommittee meetings have been held at which the issue was discussed. A public hearing was held on Wednesday, October 5th, 2016. The Planning Board voted 7-0-0 with one member absent to recommend that Town Meeting adopt this article.