



**PLANNING BOARD**

**Report to Town Meeting**

**Article 22. Zoning - Inclusionary Zoning  
(Planning Board)**

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To see if the Town will amend Articles 4, 12, and 15 of the Zoning Bylaw by reorganizing and re-enumerating existing sections, replacing existing sections with new sections, and amending existing sections by deleting ~~lined-out~~ language and adding language in *bold italics*, as follows:

~ SEE WARRANT ~

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**Recommendation**

The Planning Board voted unanimously, 7-0, to recommend that Town Meeting adopt Article 22. This amendment has been two years in development, and represents hundreds of hours of work by the Planning Board, Town staff, expert consultants, and numerous citizens. New inclusionary zoning is a critical component of Amherst's approach to ensuring affordable housing for its residents.

**Background**

The current inclusionary zoning regulations (Article 15 of the Zoning Bylaw) were adopted by the 2005 Annual Town Meeting. In the decade since, those regulations have resulted in only six (6) affordable housing units, all in a single project that as of this writing has yet to be built.

**2013** – In the early summer of 2013, the Planning Board and numerous members of the community began working on revisions to the inclusionary zoning section of the Zoning Bylaw. In late 2013, the Zoning Subcommittee of the Planning Board began working with Ms. Jayne Armington, a housing expert and planner with the Pioneer Valley Planning Commission. Ms. Armington's work strongly indicated that in order for inclusionary zoning to work in Amherst, there needed to be "cost offsets"—additional market rate dwelling units granted to offset the cost of each affordable unit. Otherwise, it would not be financially feasible for developers to provide the affordable housing being required of them.

Ms. Armington's work also indicated that development in Amherst's downtown and other centers involved greater costs and complexities, and inclusionary requirements in those areas needed to be different—less onerous and more flexible—than requirements in more outlying zoning districts. Given the complexity of the issues involved, no amendment was proposed for the consideration of either the 2013 Annual Town Meeting or the Fall 2013 Special Town Meeting.

**2014** – Working with Ms. Armington, the Planning Board developed an inclusionary zoning amendment for the 2014 Annual Town Meeting, but information received close to Town Meeting convinced the Planning Board to request referral, and Town Meeting referred the article back to the Board for further study. A petition article on the warrant of the June 2014 Special Town Meeting sought to amend the inclusionary zoning bylaw and was also referred back for further study.

During summer 2014, the Planning Board hired Massachusetts housing expert Ms. Judi Barrett of RKG Associates, a specialist in inclusionary zoning, to assist the Board in refining the work done to date. The result of that consultancy expanded the issues involved. On October 30, 2014, Ms. Barrett submitted a report detailing her analysis and her recommendations. Her report confirmed the need for different regulations for Amherst's centers, as well as the need for sufficient offsets and dimensional flexibility in those centers. She also indicated that new inclusionary zoning should be accompanied by other, non-zoning affordable housing incentives.

For those reasons, the Planning Board did not submit an amendment for the warrant of the Fall 2014 Special Town Meeting. Another petition article proposing to amend the inclusionary zoning bylaw at that Town Meeting failed to pass.

**2015** - The Planning Board has worked with staff and Ms. Barrett to finalize needed revisions to Amherst's inclusionary zoning regulations. Article 22 is the result.

### **Fundamental Principles**

Two years of working with experts on inclusionary zoning have identified the following principles:

***Inclusionary Zoning Depends On New Development*** - Inclusionary zoning only produces affordable units if new market rate housing development is allowed to occur. Discouraging new market rate development prevents the creation of new affordable units.

***Inclusionary Zoning Cannot "Take" Property Value Without Compensation*** - Inclusionary zoning only produces affordable units if developers can afford to provide them. If a community imposes the cost of providing affordable housing on developers—particularly on residential development that is otherwise allowed by right—then the community must provide a way for developers to recover the cost of those affordable units. Otherwise, the community runs the risk of being successfully sued for engaging in an illegal "taking" of property rights without just compensation.

*To Work, Inclusionary Zoning Must “Offset” the Cost of Affordable Units* - For those reasons, in order to successfully produce new affordable units, inclusionary zoning must provide “cost offsets” in the form of additional market rate units. The additional units make it possible for a developer to afford to include affordable units in their project.

*To be of Any Use, “Offset” Units Have to Fit on the Property* - Dimensional modifications and flexibility are needed to ensure that developers can fit the necessary additional “cost offset” units on the project property.

*Centers Need Different Rules* – New development, infill, and redevelopment are more complicated and expensive in town centers and village centers. As a result, for inclusionary zoning to work in centers, affordability requirements need to be lower, and regulations need to be more flexible.

### **What Article 22 Would Do**

Article 22 is composed of three different sections:

**Section A.** - Proposes to replace the affordability definitions in Article 12.

**Section B.** - Would completely replace the existing inclusionary regulations (Article 15) with new regulations.

**Section C.** – Removes and amends several different affordability ‘density bonus’ provisions for different residential development methods in Article 4, referring them instead to the new Article 15.

### **Section A. - Definitions**

Section A. of Article 22 amends the definitions of “Affordable Housing” and adds a definition for “Affordable Housing Restriction.” “Affordable housing” would be identified as housing subject to an affordable housing restriction. Two levels of affordability would be specified. “Low income” would be defined as a dwelling unit affordable to households with 80% or less of area median income (AMI) for Amherst. That’s the current definition, and it would not change.

“Moderate income” would be defined as a dwelling unit affordable to a household with more than 80% and up to 95% of area median income (AMI). This represents a change—a reduction from the current standard of 120% of area median income (AMI).

There are two reasons for this change. First, the U.S. Department of Housing and Development (HUD) does not publish a figure for 120% of AMI, and there is no acceptable standard method for calculating that income level. However, HUD does publish a figure for 95% of area median income. Secondly, Amherst’s area median income levels (derived from the Springfield

Metropolitan Statistical Area figures) are fairly high compared to other communities in the Springfield MSA, and it is a community priority to meaningfully support affordable housing—95% of AMI is more affordable than 120%.

It should be understood, however, that 80% of AMI in Amherst does not include very low income households or households eligible for Section 8 vouchers. Unlike other methods of creating affordable housing, inclusionary zoning must operate within what the real estate market will bear.

Meeting the needs of very low income households will require the Town to take other measures in addition to (and in concert with) inclusionary zoning. These would include: 1) pursuing the non-zoning financial incentives proposed for the approval of this Town Meeting, 2) encouraging direct financial participation in the development process by the Amherst Affordable Housing Trust, as funded through Community Preservation Act funding, and 3) significantly increasing and improving the management and monitoring of affordable housing efforts over time, including new affordable dwelling units created through inclusionary zoning.

The new definition for “affordable housing restriction” cites the appropriate methods, regulations and state statutes necessary to protect the affordability of housing in Amherst over time.

### **Section B. - Replacement of Article 15**

Section B. proposes to remove the current Article 15 of the Zoning Bylaw and replace it with entirely new regulations. The new regulations change many aspects of the existing regulations and adds a number of new features. These include three basic changes:

***Applies to More Kinds of Residential Development*** - The inclusionary requirement would be expanded to apply to all residential uses and most residential development methods that produce 10 or more dwelling units, whether those uses require a Special Permit or are by-right. This closes a gap identified by the Planning Board and citizens. The current inclusionary requirements do not apply to by-right residential developments in Amherst’s centers. Article 22 would apply inclusionary zoning to most by-right residential uses and to all residential development methods except for conventional subdivisions.

***Centralizes and Simplifies Affordable Incentives*** – The Zoning Bylaw currently contains several different density bonus options for individual residential development methods, options that were created at different times. These would be removed and replaced with the unified system of “cost offset” bonuses applying to residential uses and development methods alike under Article 15.

***Consolidates Incentives*** - 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 consolidated under Article 15, Inclusionary Zoning.

*What's New?* - The proposed new regulations would include the following specific features:

*Nexus Statement, Purposes & Intent*

- Because the new inclusionary zoning would apply to some by-right residential uses and development methods, an explanation of how the need to require affordable housing is related to development impacts and community needs—called a "nexus statement"—is a legal necessity justifying the imposition of these requirements.
- The community purposes and intent of the inclusionary regulations are spelled out.

*Applicability*

- Any residential use or development creating 10 or more new dwelling units must provide affordable units, which must be built at the same time as any market rate units.
- The kinds of residential development (new construction, reconstruction) that produce “new dwelling units” counting toward the affordability threshold (10+ units) are identified.
- Several kinds of residential development would be exempt from inclusionary requirements:
  - Ch. 40B Comprehensive Permit projects
  - Conventional Standard subdivisions
  - Academic residential uses in the R-F District only
  - Institutional uses containing residential units (living care communities, etc.)
  - Public housing projects.
- The permit granting body issuing the principal permit for the project is named the “approving board.”
- Affordable housing units must be administered by an approved housing agency or the Town.

*Affordability Requirements*

- Ten percent (10%) of total project units must be affordable, with “total project units” consisting of total market rate and affordable units before any incentive market rate offset units are added.
- Affordable units can be rental units, ownership units, or a mix.
- Affordable units in mixed-use centers (B-G, B-VC, B-N, B-L abutting B-G) can be either Low Income (80% AMI or less), or Moderate Income (more than 80% up to 95% AMI), or both. Affordable units in all other districts must be Low Income (80% AMI or less) units.
- Except under special circumstances, affordable units shall be provided on the property of the principal development.
- Affordable units shall be dispersed within a project, and shall be of comparable design quality, size, and bedroom count as market rate units.

*Cost Offsets & Incentives*

- In the R-G District, the standard Additional Lot Area/Family requirement of 2,500 sq. ft. per unit will apply to the total unit count for affordable projects before the addition of market rate cost offset units. The current footnote m. requirement of 4,000 sq. ft. per unit will not apply.
- Projects that include affordable units are permitted to include additional market rate cost offset units at a rate of 1.5 new market rate units per affordable unit, to allow a project to be financially feasible.
- The “approving board” may allow town house or apartment buildings to include more units than the current maximums, going from 10 to 12 units for town house buildings, and from 24 to 30 units in apartment buildings, to allow room for the additional market rate cost offset units.
- Several dimensional requirements are modified for affordable projects, to make room for the market rate cost offset units that make affordable projects financially feasible:
  - No Additional Lot Area/Family is required for additional market rate offset units
  - Maximum height may be increased by 10 feet
  - Maximum floors may be increased by one floor, except in the B-G and B-N Districts.
- The applicant must provide deed restrictions or other means of maintaining affordability in perpetuity, or as provided by law.

*Modifications & Waivers*

- All required affordable units must be provided by the developer (i.e., no alternative to the actual provision of units is provided), but when a minimum of 50% of affordable units are provided on-site, applicants can apply to the approving board for a Special Permit to make the following modifications:
  - In the downtown B-G, B-VC, B-N, and those B-L districts abutting the B-G District only, affordable units may be provided off-site, in the same zoning district or within 500 feet of the project property.
  - Dimensional modifications under footnote a. may be allowed, but only for those dimensions (front setback, side and rear yards) not already altered by Section 15.4.
  - Any combination of the above.
- All such Special Permit modifications must: 1) serve the stated community purposes as well or better than the development without modifications; 2) not nullify or substantially impair those community purposes, and; 3) be justified on the basis that, without the modification, the project will suffer “substantial hardship, financial or otherwise, sufficient to render the project impossible without relief.”

*Regulations*

- Approving boards are authorized to create “standards, criteria, and application requirements” in their Rules and Regulations governing affordable applications and proposals for off-site affordable units.

**Section C. - Article 4 Amendments**

Article 4 of the Zoning Bylaw regulates residential development methods, including conventional subdivisions, cluster developments, Planned Unit Developments (PURDs), and Open Space Community Developments (OSCDs)). In the sections regulating the latter three of these development methods, 'density bonus' provisions that have been added over the years to encourage affordable housing. These provisions are inconsistent and would produce differing results.

Article 22 proposes to remove all of the differing density bonuses offered in Article 4 of the Zoning Bylaw, which regulates conventional subdivisions, cluster developments, Planned Unit Developments (PURDs), and Open Space Community Developments (OSCDs), and instead refer to the regulations and incentives in the new Zoning Bylaw Article 15. In the sections of Article 4 regulating the latter three of these development methods, 'density bonus' provisions have been added over the years to encourage affordable housing, but these provisions are inconsistent and would produce differing results. Article 22 would put all of the Zoning Bylaw's affordability incentives in one central location and make them consistent across all different types of residential development.

**Public Hearing**

The Planning Board held a public hearing on Article 22 on February 4, on February 18, and on March 4, 2015. The Zoning Subcommittee presented its recommendations at each hearing and explained proposed revisions made between meetings.

During the three evenings of public hearings, many citizens spoke or submitted written testimony. Several aspects of the proposed amendments were questioned and challenged, and in some cases were amended as a result.

On March 4, 2015, following further discussion, the Planning Board voted unanimously, 7-0, to recommend that Town Meeting adopt Article 22.

This amendment has been developed carefully and with full community input. It represents a critical component of Amherst's approach to ensuring affordable housing for its residents. Article 22 does not solve all of Amherst's housing problems. As with all zoning, it is focused on the specific task it is designed to address—the creation of new affordable housing as part of new market rate development.

Amherst has other tools for addressing affordability and other housing challenges. These include the non-zoning tax incentives proposed under Article 21, and more active promotion of affordable housing, including providing technical support for affordable housing projects, grants or funding available through the Town, and the work of the newly-created Amherst Affordable Housing Trust. All of these tools will need to be used in the coming years.

Inclusionary zoning contributes by requiring new market rate development to provide new affordable housing units. It is an essential tool for achieving the community goal (Key Direction) for housing identified in the Amherst Master Plan:

- **Provide housing that meets the needs of all residents while minimizing impacts on the environment.** Amherst values its economic and cultural diversity. Sustaining this diversity now and into the future will require addressing the needs of large segments of the population, including both renters and homeowners, that are financially strained by rising housing costs. It is critically important to encourage a broad mix of housing types with a full range of initiatives designed to preserve, develop, and/or replenish the community's low and moderate income affordable housing inventory. Housing strategies must also ensure that the mix of housing in the Town meets the varying physical needs of all residents and is affordable to the broadest spectrum of a growing community while minimizing the impact of housing development on the environment.

Article 22 addresses shortcomings in Amherst's current inclusionary regulations, which do not apply to by-right residential development and have not created much affordable housing. Article 22 is a carefully-crafted attempt to correct those issues and to enable inclusionary zoning to contribute to affordable housing in Amherst in meaningful ways.

The Planning Board urges Town Meeting to adopt this article.