

CITY OF NEWTON

IN BOARD OF ALDERMEN

ZONING & PLANNING COMMITTEE REPORT

MONDAY, JUNE 29, 2009

Present: Ald. Yates (Chairman), Ald. Baker, Lappin, Swiston, Ciccone, Linsky

Absent: Ald. Danberg and Harney

Other Aldermen present: Ald. Hess-Mahan, Johnson, and Parker

City staff: Michael Kruse (Director of Planning & Development), Jennifer Molinsky (Principal Planner), Stephen Gartrell (Associate Director of Community Development), Linda Finucane (Chief Committee Clerk)

#303-07 ALDERMEN JOHNSON, ALBRIGHT, HESS-MAHAN, LINSKY, SANGIOLO recommending that Section 30-24(f) *Inclusionary Zoning* of Chapter 30 of the Revised Ordinances of Newton, Massachusetts, 2007, be amended to clarify and revise its provisions by replacing current Section 30-24(f)(4) with new language to further allow cash in lieu of providing on-site Inclusionary Units; by inserting a new Section 30-24(f)(16) providing incentives for exceeding the mandated number of Inclusionary Units; by replacing Section 30-24(f)(8)b with new language to align marketing and resident selection plans with related city, state and federal provisions; to clarify pricing rules for Inclusionary Units by replacing Sections 30-24(f)(1b)(ii) and (iv) with new language and by adding a definition of “Area Median Income” at the end of Section 30-24(f)(1); by adding subsection vi) at the end of Section 30-24(f)(1b) to assure consistency where apt with DHCD regulations; by replacing Section 30-24(f)(3) with new language clarifying applicability of the 15% inclusion rule; and by revising Section 30-24(f)(8) by restoring previously omitted paragraphs f) and g) and revising them, changing responsibility for annual compliance reporting from the Housing Authority to the Director of Planning and Development. **(Public Hearing closed on 6/8/09; 90 days: 9/6/09)**

ACTION: AMENDMENT NOS. 2-8 APPROVED AS AMENDED 6-0
 (B) AMENDMENT NO. 1 APPROVED AS AMENDED 4-0-2
 (Baker, Swiston, Ciccone, Linsky voting in the affirmative; Lappin and Yates abstaining)

NOTE:

Public Hearing June 8, 2009:

Present: Ald. Yates (Chairman), Ald. Baker, Lappin, Swiston, Danberg, Linsky, and Harney; absent: Ald. Ciccone;

Other Aldermen present: Albright, Hess-Mahan, Johnson, and Parker

Planning & Development Board members: Doug Sweet, David Banash, Leslie Burg, and Michael Kruse

Also present: Steve Gartrell (Associate Director of Community Development), Phil Herr (Chairman, Citizen Advisory Planning Committee), Jonathan Hacker (Executive Director, Newton Housing Authority), Harvey Epstein (Member, Newton Housing Authority), Josephine McNeil (CAN-DO)

The public hearing on the item was opened and closed on June 8, 2009. It began very late, following the hearings on petition nos. 142-09 and 108-07(3) re FAR. Alderman Hess-Mahan outlined the proposed amendments and Phil Herr, Chairman of the Citizen Advisory Planning Committee, presented a PowerPoint (attached). The purpose of this item is to encourage affordable housing through the City's zoning instead of the Chapter 40B process and to allow more flexibility in funding affordable housing. Three of the proposed amendments involve substantive changes to the ordinance:

- expand the option for developers to pay a fee in lieu of building actual units and revising the formula for determining the fee;
- provide incentives to developers to exceed the mandated amount of inclusionary housing;
- update marketing and tenant selection practice.

The remaining five changes are primarily intended to streamline and clarify the existing zoning:

- clarify calculation of prices at which inclusionary units are to be sold;
- clarify flexibility in sales prices at which inclusionary units may be sold;
- ensure that units developed under the ordinance count toward the City's Chapter 40B requirement;
- clarify whether rehabilitation of existing units contributes toward inclusionary zoning requirements;
- restore in 30-8(f)(8) two subparagraphs inadvertently omitted in the ordinance.

Currently, the inclusionary zoning allows developers of six or fewer housing units to pay a cash fee to the City in lieu of building and setting aside some of their units as inclusionary units. Larger developments do not have this option, the units must be provided on-site, integrated with market-rate units. The proposed amendment would remove the six-unit limit and allow developments of any size to contribute cash-in-lieu of units on site, although for developments over six units, *the Board of Aldermen would have to approve the fee option as part of a special permit petition. The Board would also have to make specific findings relative to "an unusual net benefit to achieving the City's housing objective.* For all units over the first two in a development, the amendment proposes a fee equal to 12% of the sales price at closing of each market rate unit verified by the Planning Director or if rental housing 12% of the estimated assessed value of each unit as determined by the City Assessor.

Currently there is no specific fund for the cash-in-lieu of payments. The amendment proposes establishing a "Receipts Reserved for Appropriation Fund." Currently, the Comptroller is responsible for an annual review and report to the Board of Aldermen, the amendments proposed giving this responsibility to the Housing Authority and Planning & Development Department. (Comptroller David Wilkinson is pleased with this proposal.) The Planning Department believes that generally it is best to integrate units on-site, but that the City's housing objectives may sometimes be better served if a developer could provide funds for the City to purchase units off site. Also, affordable housing may not be appropriate in certain locations in relation to public transportation, schools, and stores.

Currently, there is no incentive for developers to exceed minimum inclusionary unit requirements. A density bonus, expedited reviews or other incentive might encourage developers who are interested in providing affordable housing to build additional inclusionary units. The petition proposes that a density bonus be granted equal to one unit for each additional inclusionary unit up to a limit where lot area per dwelling unit is decreased by up to twenty-five percent as set forth in Section 30-15 table 1, Lot area per unit column, provided that in acting on the special permit the Board of Aldermen determines that the level of impact of the development on services and appearance is not unprecedented in the neighborhood. Developments in which the percentage of inclusionary units to be provided exceeds 30% of the development total could be given expedited application and review procedures, with concurrent review by City agencies.

Existing Resident preferences do not meet the Massachusetts Department of Housing and Community Development Guidelines. The preferences have been updated to ensure marketing and tenant selection practices are consistent and comply with civil rights laws.

The proposed amendments include correcting an inconsistency re the affordability window. Current provisions set the sales price of an inclusionary unit at a price affordable to a household earning 70% of area median income (AMI) for households, limiting monthly housing payments to 30% of a household's monthly income; however, a separate provision of the inclusionary zoning ordinance requires that two-thirds of inclusionary units must be provided to households earning not more than 80% AMI, while the remaining third can be offered to those earning more, up to 120% AMI. The ordinance allows sale of one-third of inclusionary units to households earning up to 120% AMI, but prices for those families must be set for those earning 70% AMI. The amendment would remove the inconsistency. It would state that the sales price must be affordable to a household having an income 10 percentage points lower than the maximum eligible income for the unit. For the two-thirds of units that must be available to those earning a maximum of 80% AMI, the proposed amendment would set the sales price at 70%. For the remaining one-third, that may earn up to 120% AMI, the sales price would be set for those earning up to 110% of the AMI.

The proposed amendments clarify that that while two-thirds of inclusionary units must be available to those earning 80% AMI or less, the remainder can be made available to any household earning up to and including 120% AMI. It would also clarify that all units could be priced for families earning 80% AMI.

The petition proposes new language to ensure that inclusionary units that are made available to those at or below 80% AMI are counted toward the City's goal of achieving 10% affordable housing as calculated by the Massachusetts Department of Housing and Community Development.

The current ordinance states that 15% of units shall be inclusionary units, reserved for sale or rental to eligible households, but that if there are any existing units on the property subject to determination by the Newton Historical Commission, i.e., 50 years or older, these shall be omitted from the calculation of inclusionary units. The petition proposed to clarify that only new units, not rehabilitated units, which add to the City's housing stock are to be included in the calculation of inclusionary units. It removes reference to the Newton Historical Commission, so that any existing unit, no matter how old is to be not counted for purposes of calculating the 15% inclusionary zoning requirement.

Finally, the petition restores at the end of 30-8(f)(8) two subparagraphs re conveying at the discretion of the application to the Newton Housing Authority for sale or rental and in the case of rental housing an agreement to submit an annual compliance report to the Director of Planning & Development. These were inadvertently omitted from the ordinance due to a scrivener's error.

Mr. Epstein from the Housing Authority disturbed the attached list of properties developed in whole or in part with inclusionary funds.

Speaking in support of the amendments were:

Josephine McNeil of CAN-DO, the Housing Partnership, U-Chan, and HAPI, who spoke in favor of the proposed amendments, particularly the cash-in-lieu of units component. She pointed out the unintended social consequences that sometime occur when placing people of disparate means together. She also noted that often condominium fees and even utility costs for "luxury" units may be well beyond the means of some households.

Deb Crossley, 26 Circuit Avenue, also a member of U-Chan, HAPI, and the Housing Partnership spoke in favor of the amendments.

A letter from Ed Daily, a former member of the Planning & Development Board and member of the group who worked on the last revisions to the inclusionary zoning ordinance, was distributed. Mr. Dailey supports the proposed amendments, with the exception of the cash-in-lieu of units portion, which he suggests undermines the "underlying principle of the inclusionary zoning ordinance which is to encourage and require on-site development of affordable units. Where that is not practical because of the relatively small size of a housing development or where the developer can partner with a non-profit developer, the inclusionary zoning ordinance already provides significant flexibility."

That concluded the public hearing on June 8.

Working Session June 29, 2009

Principal Planner Jennifer Molinsky reviewed the proposed amendments. Section 1, Cash payment, was the most controversial because it proposes to reinstitute the cash-for-on-site units provision repealed by the Board in the late 1990's because it had led to unseemly "horse-trading," resulting in what some felt was a concentration of affordable units in certain parts of the City. The affordable units were generated by luxury developments in different parts of the city and bizarre standards for granting of special permits for such offsite units. Ed Dailey had chaired the Task Force that had drafted the repeal and he objected strongly to the restoration of that system. This discussion led to a conclusion by the Committee that the Planning Department was better suited to administer the funds for housing generated by this system just as it administers CDBG, HOME, and CPA funds for housing and the item was amended from the current fifty-fifty split between the Newton Housing Authority and the Planning Department. {Unfortunately, the Law Department subsequently determined that this was a significant change to the public hearing advertisement and that if the Committee wished to pursue that amendment, it would need a separate public hearing.) Section 1 of the revision therefore will be put on second call, and the Committee polled to retain the original text, i.e., the fifty-fifty split.

Alderman Yates objected that the previous system had led to an undue concentration of affordable units in just a few sites like the development on the corner of Oak and Needham Streets. Housing Partnership Chair Phil Herr agreed to an amendment to 30-24(f)(4)(c) was amended to address this concern relative to an undue concentration of units. Aldermen Yates and Baker both objected to the word "unprecedented" in 30-24(f), Incentives. Alderman Yates was concerned that this language would open the door to duplicate a bad "precedential" development that was too dense, too high, or otherwise undesirable for replication. Alderman Baker suggested and Mr. Herr accepted that the standards for this type of special permit should be the usual ones. After deliberation, the Committee voted to approve section 1 of the item as amended. Alderman Yates abstained to make sure that all his concerns had been properly addressed. Mr. Dailey submitted another letter reiterating his opposition to cash-in-lieu of units. Mr. Herr submitted three memoranda in favor of the proposed amendments. These documents were distributed twice to the Board and are not attached to this report.

Amendments 2-8 were approved as proposed.

All other items were held without discussion and the meeting was adjourned at approximately 11:15 PM.

Respectfully submitted,

Brian E. Yates, Chairman