



CITY OF CAMBRIDGE
COMMUNITY DEVELOPMENT DEPARTMENT

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To: Planning Board
From: CDD Staff
Date: September 9, 2011
Re: Andrews, et al. Zoning Petition – Inclusionary Housing

Background

The Inclusionary Housing Section of the Zoning Ordinance (11.200) was adopted following a study prepared in 1998 by Stockard & Engler & Brigham, LLC. The purpose of the study was to determine how the city could maintain its existing proportion of affordable housing. The conclusion states:

For each 10 new units of newly built market rate housing, an additional 1.5 units of affordable housing are needed to maintain the existing affordable housing proportion and assist in meeting the City's economic development diversity goal.

Regulations

Under Section 11.200 of the Zoning Ordinance, Inclusionary Housing regulations require new housing construction or conversion of at least 10,000 gross square feet or 10 dwelling units (referred to as "inclusionary projects") to provide 15% of the units and floor area, up to what is normally allowed by zoning, as affordable to low and moderate income households.

In addition to the affordable housing requirement, the Inclusionary Housing regulation provides a "bonus" (described in Section 11.203.2(b)) that allows the floor area to be increased by 30% and the number of units to be increased such that two extra units can be built for each affordable unit provided (one to accommodate the affordable unit, plus one additional market-rate unit). The "bonus" is a critical element of the regulation because it provides compensation to the private developer for the mandatory provision of affordable units as a public benefit.

Calculations

It is helpful to think of inclusionary projects as having two parts – a "base" and a "bonus." The total number of units in a project is "base + bonus." Because the requirement for affordable units is calculated as a percentage of the "base," not the total, the percentage of affordable units compared to the total size of the project is usually lower than 15%. Stated simply, the resulting percentage is $15\% \div 130\%$, which is about 11.5%.

Because the number of required affordable units is typically a fraction, the number is rounded down if the fractional part is less than 0.5 and rounded up if it is 0.5 or greater. Due to this rounding, the actual percentage of affordable units in a project varies (between about 10% and 13%). In addition, the percentage of affordable units may be greater if the developer chooses to provide more affordable units than required.

Hypothetical Project – Current Zoning

	Gross Floor Area	Dwelling Units	Notes
Allowed Under Zoning	100,000	85	<i>purely hypothetical zoning district limits</i>
Proposed Project: Base	100,000	83	<i>can choose to build fewer than maximum</i>
Proposed Project: Affordable = 15% of Base	15,000	12.45 → 12	<i>round down fractions less than 0.5</i>
Proposed Project: Bonus = 2 × Affordable	30,000	24	<i>12 units affordable, 12 market-rate</i>
Proposed Project: Total = Base + Bonus	100,000 + 30,000 130,000	83 + 24 107	<i>about 11.2% of total units are affordable</i>

An exception to the normal calculation rule is when a project receives a variance or special permit that increases the allowed number of dwelling units above what is normally allowed in the district. In those cases, the bonus cannot be used to further increase the amount of floor area or dwelling units allowed, but the project must still provide 15% of the total approved units as affordable.

Hypothetical (Not-As-Of-Right) Project – Current Zoning

	Gross Floor Area	Dwelling Units	Notes
Allowed Under Zoning	100,000	85	<i>same hypothetical zoning as above</i>
Proposed Project: By Variance	150,000	128	<i>circumstances specific to the lot justify an increase in units</i>
Proposed Project: Affordable = 15% of Total	22,500	19.2 → 19	<i>round down fractions less than 0.5</i>
Proposed Project: Total (no bonus)	150,000	128	<i>no bonus because the allowed number of units is exceeded</i>

Application of Current Zoning

The above calculations have been applied consistently for over 12 years to projects subject to the Inclusionary Housing requirements. In general, the current requirements have provided residential developers with a clear expectation of the mandatory affordable contribution and the development incentives that compensate for that requirement.

To date, 39 projects have received building permits subject to these requirements, resulting in 395 affordable units (out of 3,211 total). The Community Development Department estimates that about 1,000 residents have been housed through this program, and the affordable units translate to an

approximate \$150 million benefit to the City with no direct monetary cost to create the units (aside from the costs associated with program administration).

Proposed Zoning Changes

The Andrews, et al. Petition proposes a number of significant changes to Section 11.200. The stated purpose of the petition is to “preclude misinterpretations” of the existing zoning language by restating the requirements in a way that does not change the intent or true content of the current language.

The changes are listed in the petition and several of the significant changes are noted below. In addition, for convenience, a full copy of the applicable zoning language is attached at the end of this memo with the proposed changes in redlined format.

1. The number of affordable units provided would be calculated out of the total number of units in the project (after the bonus is applied, instead of before). The stated rationale for this change is that it would make the calculation of the affordable requirement more transparent. However, it does not account for the fact that the bonus is applied as *compensation* for the affordable units that have been required on a one-to-one basis. It also might result in a “circular” calculation in which the bonus cannot be calculated without first determining the affordable requirement, but the affordable requirement cannot be calculated without first determining the bonus.
2. The proposed language states that a project that has not utilized the maximum number of dwelling units allowed as-of-right would not be entitled to the Inclusionary Housing bonus. This language raises a concern, because a critical part of the Inclusionary Housing requirement is that all projects are fairly compensated for the mandatory affordable housing contribution. Under current zoning, the affordable requirement and bonus are applied consistently whether the “base” project is at or below the maximum allowed dwelling unit density.
3. The affordable requirement would be reduced from 15% to 10% and the bonus reduced from 30% to 20%. Although the petition notes (as explained on Page 1) that current Inclusionary Housing calculations typically result in less than 15% of the *total* units being affordable, this change would still effect a significant reduction in the number of affordable units that would be developed in an Inclusionary Housing project.
4. The petition proposes rounding up all fractional parts of a unit when calculating the required number of affordable units. While this would seemingly increase the number of affordable units required (and potentially increase the bonus as well), it would also have the likely effect of incentivizing developers to reduce the number of units in a project until the calculations come out even, without resulting in small fractional parts, further reducing the number of affordable units created.

Additionally, the proposed zoning includes several wording changes that are intended as clarifications, but may have unanticipated impacts when applied.

Conclusion

Further study will be required to determine the potential impacts of the proposed zoning, both in terms of how the new regulations would be applied to new residential projects, and in terms of whether the proposed regulations would fairly compensate private residential developers for the mandatory appropriation of affordable housing units. In addition, further study might be helpful in order to identify ways in which the current zoning language could be improved – without changing the regulations themselves – to provide a clearer explanation of how the requirements are applied.

Appendix: Andrews, et al. Rezoning Petition (with Inline Edits)

The ~~strike outs~~ are deletions and the underlined are additions or creations.

11.203.2 Requirements for Inclusionary Housing .

(a) Any Inclusionary Project shall provide ~~45%~~ 10% percent of the total number of dwelling units ~~up to the maximum allowed as of right~~ as Affordable Units. Section 11.203.2(b)(ii) calculations shall not apply to any Inclusionary Project until the Inclusionary Project has utilized the number of dwelling units up to the maximum allowed as of right with as of right being calculated without the application of 11.203.2(b)(ii). Where the application of that formula results in a fractional dwelling unit, ~~a fraction of one half of a dwelling unit or more~~ that fraction of a dwelling unit shall be considered as one Affordable Unit. Each Affordable Unit shall meet the standards established in Section 11.204.

(b) To facilitate the objectives of this Section 11.200, modifications to the dimensional requirements in ~~any zoning district, as~~ those zoning districts set forth in Section 5.30, shall be permitted as of right for an Inclusionary Project, as set forth below:

(i) The FAR normally permitted in the applicable zoning district for residential uses shall be increased by ~~thirty (30)~~ twenty (20) percent for Affordable Units as set forth in Section 11.203.2 (a) above, and at least fifty percent of the additional FAR ~~should~~ shall be allocated for the Affordable Units. In a Mixed Use Development, the increased FAR permitted in this paragraph (i) may be applied to the entire lot; however, any gross floor area arising from such increased FAR shall be occupied only by residential uses, exclusive of any hotel or motel use.

(ii) The minimum lot area per dwelling unit normally required in the applicable zoning district shall be reduced by that amount necessary to permit up to two additional units on the lot for each one Affordable Unit required in Section 11.203.2 (a) above. The additional units on a lot permitted by this paragraph (ii) shall not be considered in determining the threshold by which a special permit is required in Section 4.26 - Multifamily Special Permit Applicability and Section 11.10 - Townhouse Development of the Zoning Ordinance. The intent is that at least one of the two additional units allowed be an Affordable Unit.

(c) For any Inclusionary Project that includes a total number of dwelling units that exceeds the maximum allowed as of right, before applying 11.203.2(b)(ii), the number of affordable units shall be no less than ~~45%~~ 10% percent of the total number of dwelling units in the project; ~~however, the number of additional units permitted under Section 11.203.2 (b) (ii) above shall not be further increased.~~ and Section 11.203.2(b) shall not apply.