



CITY OF CAMBRIDGE
COMMUNITY DEVELOPMENT DEPARTMENT

BRIAN MURPHY
Assistant City Manager for
Community Development

SUSAN GLAZER
Deputy Director for
Community Development

To: Planning Board
From: CDD Staff
Date: **October 26, 2011**
Re: **Andrews, et al. Zoning Petition (Inclusionary Housing)**

Update

Staff have assembled the following information in response to the Planning Board's requests from the September 13, 2011 public hearing on the Andrews, et al. Zoning Petition.

- Background on the development of the Inclusionary Housing ordinance, 1997-1998
- Examples of how Inclusionary Housing requirements have been applied to past Planning Board projects
- Suggested language changes to clarify how the requirements are applied

Staff will be available to answer any questions.

Background on Inclusionary Housing Ordinance

Peter Werwath & Associates Report (1997)

In June 1997, the Community Development Department received a report by Peter Werwath & Associates entitled “Recommendations Concerning a New Inclusionary Zoning Ordinance.” The purpose of the report was to make recommendations on the structure of a new inclusionary zoning ordinance that would be broader in scope and more effective than the inclusionary provisions that were in force at the time. Some key recommendations of the report included the following:

- Any new ordinance should be mandatory and apply citywide.
- Mandatory provisions should apply to all new residential developments with 10 or more units.
- The resulting affordable units should be targeted to low- and moderate-income residents – with the average unit being affordable to a household with an income equal to 65% of the area median.
- The required percentage of affordable units should be determined after a rationale study is completed. (That “rationale study” was later completed in the “Cambridge Inclusionary Housing Study” by Stockard & Engler & Brigham, LLC, in February, 1998.)
- Developers who comply with affordability provisions should be eligible for a density bonus, which should be granted by right. The bonus should be approximately twice the percentage requirement for affordable units, e.g. a 20% bonus if 10% of the units are to be affordable.

The report goes on to explain the rationale for a density bonus: “The economic impact of inclusionary provisions is a complex issue. But, simply put, the purpose of most such provisions is to produce housing units at below-market prices. If the affordable housing units produced are of good quality, in most cases this requires developers to offer the affordable units at a discount to their market value. Obviously, this discount will reduce, or could even eliminate, profits unless there is some offsetting benefit to developers. Thus, density bonuses and sometimes other incentives are provided to offset those negative financial impacts.” (p.15)

The report concludes (p.16) that two “bonus units” would approximately offset the economic impact of requiring one affordable unit. The author estimated that the subsidy required to create an affordable unit would be about \$80,000 (in 1997), representing the gap between the cost to create a unit and what a low-income household could afford. The study further estimated that the added property value from a bonus market-rate unit would be about \$50,000 (in 1997) on average. In cases where the affordable unit subsidy is higher or lower, it is likely that the value of each bonus unit would also be correspondingly higher or lower. Therefore, the benefit of two bonus units would more than offset the subsidy of providing one affordable unit.

Stockard & Engler & Brigham Study (1998)

In February 1998, the Community Development Department submitted a report by Stockard & Engler & Brigham, LLC, entitled “Cambridge Inclusionary Housing Study.” This study examined the need for affordable housing, with the assumption that “developers of newly constructed market rate housing should provide affordable housing proportionate to the need created by their market rate housing

developments for such housing” (p.2). The study concluded, “For each 10 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 diversity goal” (p.11).

Inclusionary Housing Ordinance (1998)

The Inclusionary Housing requirements were adopted by the City Council in February 1998 (as an amendment to Section 11.200, which set forth the requirements for Incentive Zoning contributions to the Affordable Housing Trust). The zoning language has not changed since adoption, with the exception of some minor clarifying changes to the parking requirements made in 1999. Under the adopted zoning language, the Inclusionary Housing requirement applies to all projects of at least 10 units or at least 10,000 square feet of Gross Floor Area, and applies universally across the city (except where specifically stated otherwise in the Ordinance). The affordable requirement is 15% of the number of units up to what is allowed by zoning, and a “bonus” of two additional units for each required affordable unit is provided as compensation.

As stated in the prior communication to the Planning Board, 39 projects had received building permits subject to the Inclusionary Housing requirements, which have resulted in 395 affordable units (out of 3,211 total). Since that time, an additional two projects with 56 affordable units (out of 487) have been approved.

Legal Framework

The authority to grant density bonuses conditioned upon the provision of affordable housing is derived from Massachusetts General Laws Chapter 40A. However, the courts have consistently held that the requirement must be constitutionally permissible.

The United States Supreme Court has recognized that private property can be regulated, but if the regulation goes too far, it may be considered an unconstitutional “taking.” In general, compensation is required for permanent physical invasion of property even when the public purpose is compelling and the burden on the property is minimal. The courts’ “takings” cases suggest that there needs to be a nexus between legitimate state interests and the particular regulation purporting to place a restriction or burden on the property right. The courts have determined that there must be a “rough proportionality” between the burden imposed on the landowner and the impact of the proposed development.

After undertaking the two studies referenced above, the City carefully fashioned the Inclusionary Housing Ordinance to achieve this balance. Any amendment to the Inclusionary Ordinance that might shift this balance must ensure that the possible burden the City will place on the developer by requiring the construction of affordable units must be roughly proportional to the negative impact that the construction of new market rate housing has on the City’s goal of preserving the economic diversity of its citizenry.

Examples of Past Inclusionary Housing Calculations

Project: 21 Brookline St

- Zoning District: Residence C-2A (87.6%); Residence C-1 (22.4%)
- Lot Area: 18,256 SF (14,167 SF in C-2A; 4,089 SF in C-1)

Zoning Analysis of Lot	Dwelling Units	Gross Floor Area (SF)
Allowed Under Zoning District Limitations	49	38,484
Maximum Inclusionary Bonus	7 (49 × 15% = affordable) 14 (2 for each affordable)	11,545 (38,484 × 30%)
Maximum Total Allowed	63 (49 + 14)	50,029 (38,484 + 11,545)

Special Permit		
#202, Granted 11/23/2004	49	40,754

Inclusionary Requirements		
Approved Units	49	
Base Units	37 (49 ÷ 1.3)	
Affordable Requirement	6 (37 × 15% = 5.55)	See note ¹
Bonus Units	12 (2 for each affordable)	
Total Units	49 (37 + 12)	

Project: 10-12 Corporal McTernan Street (Blessed Sacrament - Church and School Portions Only)

- Zoning District: Residence C
- Lot Area: 44,143 SF

Zoning Analysis of Lot	Dwelling Units	Gross Floor Area (SF)
Allowed Under Zoning District Limitations	24	26,486
Maximum Inclusionary Bonus	4 (24 × 15% = affordable) 8 (2 for each affordable)	7,946 (26,486 × 30%)
Maximum Total Allowed	32 (24 + 8)	34,432 (26,486 + 7,946)

Special Permit		
#211, Granted 1/3/2006	43	87,822

Inclusionary Requirements		
Approved Units	43	
Base Units	N/A (project is above allowed)	
Affordable Requirement	6 (43 × 15% = 6.45)	See note ¹
Bonus Units	N/A (project is above allowed)	
Total Units	43	

Project: 223 Concord Turnpike (“FACES”)

- Zoning District: Special District 4A
- Lot Area: 173,909 SF

Zoning Analysis of Lot	Dwelling Units	Gross Floor Area (SF)
Allowed Under Normal Zoning District Requirements	290	260,864
Maximum Inclusionary Bonus	44 (290 × 15% = affordable) 88 (2 for each affordable)	78,259 (260,864 × 30%)
Maximum Total Allowed	378 (290 + 88)	339,123 (260,864 + 78,259)

Special Permit

#254, Granted 3/1/2011	227	254,000
------------------------	------------	----------------

Inclusionary Requirements

Approved Units	227	
Base Units	175 (227 ÷ 1.3)	
Affordable Requirement	26 (175 × 15% = 26.25)	See note ¹
Bonus Units	52 (26 × 2)	
Total Units	227 (175 + 52)	

Project: North Point Buildings “S” and “T”

- Zoning District: NP/PUD-6
- Lot Area: approx. 51,500 SF (blocks S and T only)

Zoning Analysis of Lot	Dwelling Units	Gross Floor Area (SF)
Allowed Under Normal Zoning District Requirements	<i>Not limited under PUD</i>	<i>Limited across entire development parcel</i>
Maximum Inclusionary Bonus	<i>N/A</i>	<i>N/A</i>
Maximum Total Allowed	<i>N/A</i>	<i>N/A</i>

Special Permit

#179, Granted 11/23/2004	<i>Not limited</i>	356,000 (S and T only)
--------------------------	--------------------	-------------------------------

Inclusionary Requirements

Approved Units	329	
Base Units	253 (329 ÷ 1.3)	
Affordable Requirement	38 (253 × 15% = 37.95)	See note ¹
Bonus Units	76 (38 × 2)	
Total Units	329 (253 + 76)	

¹ When a project is reviewed for Inclusionary Housing compliance, affordable units are assigned in a manner consistent with Section 11.204(b): “To ensure livability, Affordable Units in an Inclusionary Project shall be generally comparable in size and materials to the other units in the overall project and consistent with local needs for affordable housing as approved by the [Affordable Housing] Trust.”

Suggested Clarifying Language Changes

The following suggestions are for the Board’s consideration only. It is the view of CDD staff that the existing language in the Ordinance has resulted in a uniform application of the Inclusionary Housing requirements that is consistent with the intent of the Ordinance. These possible amendments, which are not intended to make any change to the Inclusionary Housing requirements, may help to make the following clarifications:

- Clarification of the usage of the term “as-of-right.”
- Clarification that the inclusionary housing requirements are applied consistently in all zoning districts.
- Clarification that projects exceeding the number of units allowed in the zoning district (through a variance, for example, or a 5.28.2 special permit for conversion of a non-residential structure to residential use) are not entitled to additional “bonus” floor area or units.

The underlined are additions or creations. The ~~strikeouts~~ are deletions.

11.203.2 Requirements for Inclusionary Housing

(a) Any Inclusionary Project shall provide at least 15% percent of the total number of its dwelling units, up to the maximum allowed as of right under zoning district limitations, as Affordable Units. For the purpose of this Subsection 11.203.2, the zoning district limitations shall mean the allowed Gross Floor Area or number of dwelling units permitted to be built on a lot under the applicable base or overlay zoning district regulations, including Special District or Planned Unit Development District regulations, whether allowed by right or by special permit. Where the application of that formula results in a fractional dwelling unit, a fraction of one half of a dwelling unit or more 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 set forth in Section 5.30,~~ zoning district limitations shall be permitted ~~as of right~~ for an Inclusionary Project, as set forth below:

(i) ~~The FAR normally permitted in the applicable zoning district~~ Gross Floor Area permitted under zoning district limitations for residential uses shall be increased by thirty (30) percent ~~for Affordable Units as set forth in Section 11.203.2 (a) above~~, and at least fifty percent of the additional FAR ~~should be allocated for the~~ Gross Floor Area shall be occupied by Affordable Units. In a Mixed Use Development, the increased FAR Gross Floor Area permitted in this paragraph (i) may be applied to the entire lot; however, ~~any gross floor area arising from such increased FAR~~ Gross Floor Area 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~~ number of dwelling units permitted under zoning district limitations shall be ~~reduced~~ increased 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 or any other similar threshold provision in the Zoning Ordinance.

(c) For any Inclusionary Project that includes a total number of dwelling units that exceeds the maximum ~~allowed as of right~~ that would be permitted under zoning district limitations after the application of the modifications set forth above in Section 11.203.2(b)(ii), the number of affordable units shall be no less than 15% 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 the remaining provisions of Section 11.203.2(b) shall not apply. Such projects shall include, but may not be limited to, projects that have increased their allowed number of dwelling units by receiving a special permit to convert a non-residential structure to residential use or by receiving a variance.