

12/13/16 TOWN COUNCIL APPROVED
CHANGES TO WATERTOWN'S INCLUSIONARY ZONING REQUIREMENTS

SECTION 5.07 AFFORDABLE HOUSING REQUIREMENTS

(a) Intent and Purpose

The purposes of this Section are to encourage the expansion and improvement of the Town of Watertown's housing stock; to provide for housing choices for households of all incomes, ages, and sizes; to prevent the displacement of low- and -moderate-income residents; to produce affordable housing units in order to meet existing and anticipated employment needs within the Town; to provide opportunities for conventional residential and mixed-use development to contribute to increasing the supply of affordable housing; and to establish standards and guidelines in order to implement the foregoing.

(b) Definitions

1. AFFORDABLE HOUSING PROGRAM

Collectively, §5.07 and other provisions of the Watertown Zoning Ordinance that pertain to the development and preservation of affordable housing in the Town of Watertown.

2. AFFORDABLE HOUSING RESTRICTION

A deed restriction, contract, mortgage agreement, or other legal instrument, acceptable in form and substance to the Town of Watertown, that effectively restricts occupancy of an affordable housing unit to qualified purchaser or qualified renter, and which provides for administration, monitoring and enforcement of the restriction during the term of affordability. An affordable housing restriction shall run with the land in perpetuity or for the maximum period of time allowed by law, and be enforceable under the provisions of Chapter 184, Sections 26 or 31-32 of the General Laws.

3. AFFORDABLE HOUSING FUND

A fund account established by the Town for the purpose of creating or preserving affordable housing in the Town of Watertown.

4. AFFORDABLE HOUSING UNIT

A dwelling unit that is affordable to and occupied by a low- or -moderate-income household and meets the requirements of the Massachusetts Department of Housing and Community Development (DHCD), Local Initiative Program, for inclusion on the Chapter 40B Subsidized Housing Inventory.

5. AREA MEDIAN INCOME

The median family income for the metropolitan area that includes the Town of Watertown, as defined in the annual schedule of low- and -moderate-income limits published by the U.S. Department of Housing and Urban Development (HUD), adjusted for household size.

6. COVERED DEVELOPMENT

Any development required to provide affordable housing in accordance with §5.07.

7. ELIGIBLE HOUSEHOLD

A low- or -moderate-income household that purchases or rents an affordable housing unit **and occupies it as their domicile and principal residence.** ~~as its sole residence.~~

8. INCLUSION UNIT

An affordable housing unit built on the same site as the market-rate units in a covered development under §5.07.

9. LOCAL INITIATIVE PROGRAM

A program administered by DHCD pursuant to 760 CMR 56.00 to develop and implement local

housing initiatives that produce low- and -moderate-income housing, with or without a Comprehensive Permit as defined in Chapter 40B, Section 20 through Section 23 of the General Laws.

10. LOW- OR MODERATE-INCOME HOUSEHOLD

A household with income at or below 80% of area median income, adjusted for household size, for the metropolitan area that includes the Town of Watertown, as determined annually by HUD.

11. MARKET-RATE DWELLING UNIT

All dwelling units in a development subject to this §5.07 that are not affordable housing units as defined herein.

12. MAXIMUM AFFORDABLE PURCHASE PRICE OR RENT

A purchase price or monthly rent that complies with **the requirements and Table shown in §5.07(d)(4) and that complies with** the regulations and guidelines of the DHCD Local Initiative Program and the Watertown Planning Board, except that developments subject to § 5.07(j)(3) shall comply with the maximum purchase price or rent requirements of that section. For homeownership units, the maximum affordable purchase price shall account for the monthly cost of a mortgage payment, property taxes, insurance, and condominium fees where applicable; ~~and F~~ for rental units, the maximum affordable rent shall account for the monthly cost of rent and utilities. The household income used to compute the maximum affordable purchase price or rent shall be adjusted for household size, considering the household size for which a proposed affordable unit would be suitable under guidelines of the Local Initiative Program or any successor affordable housing program established by the State.

13. SMALL-SCALE INCLUSION DEVELOPMENT

A covered development that provides 6 or more up to 10 dwelling units.

14. SUBSIDIZED HOUSING INVENTORY

The Department of Housing and Community Development Chapter 40B Subsidized Housing Inventory as provided in 760 CMR 31.04.

(c) Applicability

(1) §5.07 applies to any development, whether new construction, conversion, adaptive reuse or expansion of an existing structure, involving the creation of more than five dwelling units or more than five (5) lots for residential use. Assisted living, outside of the Assisted Living Overlay Zone, Section 5.11, shall be considered institutional and shall be exempt from §5.07.

Developments may not be segmented to avoid compliance with this Section. "Segmentation" shall mean any development, whether new construction, adaptive reuse or redevelopment, or any division of land that would cumulatively result in an increase by five or more residential lots or dwelling units above the number existing on a parcel of land or contiguous parcels in common ownership twenty-four months prior to the application. Where such segmentation occurs, it shall be subject to this Section as a covered development. A subdivision or division of land shall mean any subdivision as defined in the Subdivision Control Law, G.L. c.41, Sections 81K-81GG, or any division of land under G.L. c.41, §81P, into lots for residential use.

(2) This Section does not apply to the rehabilitation of any building or structure, all of or substantially all of which is destroyed or damaged by fire or other casualty or a natural disaster; provided, however, no rehabilitation nor repair shall increase the density, bulk or size of any such building or structure which previously existed prior to the damage or destruction thereof except in conformance with this Section.

(d) Basic Requirements

(1) Projects having more than five (5) units: No Special Permit for a development requiring a special permit and no Building Permit for a use permitted as of right, shall be issued for a development subject to this Section unless the Petitioner provides **the percentage of at least twelve and one-half percent (12.5%)** the total dwelling units in the development as affordable housing as described herein, **within §5.07(d)(4)** and otherwise consistent with this Section.

(2) Nothing in this Section shall preclude a developer from providing **additional ~~more~~ affordable units, or greater affordability, or both**, than the minimum requirements. In no instance shall any permit or special permit approval create less than one affordable housing unit, and for purposes of this Section, any calculation of required affordable housing units that results in the fractional or decimal equivalent of one-half or above shall be increased to the next highest whole number.

(3) Affordable units shall be made available to eligible low- or -moderate-income households at purchase prices or rents that comply with the Massachusetts Department of Housing and Community Development Local Initiative Program regulations, 760 CMR 56.00, or any successor program as may be determined by the Special Permit Granting Authority (SPGA) **upon recommendation of ~~in consultation with~~ the Watertown Housing Partnership (WHP) and as indicated in §5.07(d)(4)**

(4) The Rent and Ownership Price Requirements are as follows:

| Total Project Size | Affordable Units | Rental Price | Ownership Price |
|--------------------|------------------|---|-----------------|
| 1 to 5 units | 0 | NA | NA |
| 6 to 19 units | 12.5% | 80% AMI | 80% of AMI |
| 20 and over units | 15.0% | No less than 5% of the total units at 65% AMI | 80% AMI |
| | | 10% of total units at 80% AMI | 80% AMI |

(e) Methods of Providing Affordable Units

(1) A covered development with more than five (5) and up to ten (10) units, shall have the option of providing an affordable unit on site or making a cash payment **in lieu of**. A covered development with more than ten (10) units shall provide the affordable units on site. However, approval for cash payment in lieu of on-site affordable units may be granted by the SPGA in certain **extraordinary ~~exceptional~~** circumstances. The SPGA must find that the developer has clearly demonstrated that providing such unit(s) on-site would create significant hardship and that a cash payment in lieu of on-site unit(s) is in the best interest of the Town's **affordable housing needs**.

Any request for alternative means of compliance shall be reviewed by the WHP, which shall then make its recommendation to the SPGA.

(2) The SPGA **may ~~shall~~** authorize that an alternative method of compliance be used, in accordance with the following:

~~(A) —~~ Cash Payment: The SPGA may grant a special permit to provide affordable housing through a cash payment to the Watertown Affordable Housing Fund, in lieu of providing one or more of the affordable units required under this Section; ~~provided, however, that a fee in lieu of affordable units may be authorized only for a covered developments with more than five (5) and up to ten (10) rental, for sale or homeownership units.~~ The cash payment shall be equal to **the most current Total Development Cost as articulated in the MA Department of Housing & Community Development's Qualified Allocation Plan for Low Income Housing Tax Credit, for the areas described as Within Metro Boston/Suburban Area, as**

~~adjusted for the type of project and number of units. The cash payments the difference between the fair market value for a typical market rate housing unit and the price of the affordable housing unit consistent with DHCD LIP Guidelines and~~ shall **also** be in accordance with a schedule of affordable housing payments as outlined in §5.07(h)(6) and guidelines adopted and amended from time to time by the SPGA, following a public hearing, in consultation with the WHP and the Watertown Department of Community Development and Planning (DCDP).

(f) Location and Comparability of Affordable Units

(1) Affordable units shall be proportionately distributed throughout the building(s) in a covered development.

(2) Affordable units shall be indistinguishable from market-rate units in exterior building materials and finishes; overall construction quality; and energy efficiency, including mechanical equipment and plumbing, insulation, windows, and heating and cooling systems, as determined by the Building Inspector

(3) Affordable units may differ from market-rate units in type of appliances, finishes; however, the affordable units shall be comparable to the base market-rate units in such instances.

(4) Affordable units shall have the same floor area as the median market-rate units of the same number of bedrooms within a margin of 20%; provided that units are not less than the minimum square foot required by DHCD.

(5) The bedroom mix in the affordable units shall be proportionate to the market-rate units, unless the SPGA authorizes a different mix by special permit upon the recommendation of the WHP.

~~(6)(5)~~ The SPGA may adopt regulations or guidelines to further define comparability of the foregoing requirements.

~~(7)(6)~~ The WHP shall provide the Petitioner and SPGA as provided in §5.07(i) ~~(j)~~ with its recommendations with reference to the Petitioner's proposal in meeting the requirements for affordable housing.

(g) Affirmative Marketing and Local Preference Policy

Affordable units shall be made available for purchase or rent to eligible low- or -moderate-income households under an affirmative marketing plan that complies with federal and state fair housing laws, and fair housing and local preference guidelines established by the Watertown Housing Partnership. No Building Permit for a covered development shall be issued unless the DCDP has determined that the Petitioner's affirmative marketing plan complies with this requirement. The affirmative marketing costs for the affordable housing units shall be the responsibility of the Petitioner.

(h) Preservation of Affordability

(1) Affordable units provided under this Section shall be subject to an Affordable Housing Restriction that contains limitations on use, occupancy, resale and rents, and provides for periodic monitoring to verify compliance with and enforce said restriction. Affordability restrictions shall be contained in applicable affordable housing restrictions, regulatory agreements, deed covenants, contractual agreements, land trust arrangements and/or other mechanisms to ensure compliance with the affordability requirements of this §5.07 (collectively, "Affordable Housing Restriction").

(2) The Affordable Housing Restriction shall run with the land and be in force in perpetuity or for the maximum period allowed by law, and be enforceable under the provisions of Chapter 184, Section 26 or Sections 31-32 of the General Laws.

(3) The Affordable Housing Restriction shall provide that initial sales and rental of affordable

housing units and their subsequent re-sales and re-rentals shall comply with federal, state and local fair housing laws, regulations and policies.

(4) The Affordable Housing Restriction shall provide that in the event that any affordable rental unit is converted to a condominium unit, the condominium unit shall be restricted in perpetuity in the manner provided for by §5.07(h)(1) above to ensure that it remains affordable to households in the same income range as prior to the condominium conversion.

(5) For a covered development that provides Inclusion Units:

(A) No building permit shall be issued until an Affordable Housing Restriction has been executed by the Petitioner and the SPGA and the Petitioner provides evidence acceptable to the Director of DCDP that the agreement has been recorded at the Middlesex County Registry of Deeds.

(B) For a rental, for sale or homeownership unit, the DCDP shall not authorize or sign off on a Certificate of Occupancy until the Petitioner submits documentation acceptable to the Director of DCDP that an affordable housing deed rider has been signed by affordable unit homebuyer and recorded at the Middlesex County Registry of Deeds.

(6) For a covered development that provides affordable housing through a cash payment in lieu of affordable units:

(A) For a covered development having 10 units or less that provides affordable housing through a cash payment in lieu of affordable units; the following reduced percentage (%) of the difference between fair-market value and affordable housing unit as described in § 5.07(e)(-2). A. shall apply: 10 units – 100%; 9 units- 90%; 8 units – 80%; 7 units – 70% and 6 units – 60%.

(B) The DCDP shall not sign off on ~~C~~ertificate(s) of ~~O~~ccupancy ~~for Unit 6~~ until the Petitioner pays ~~100%~~ 50% of the required ~~cash in lieu payment fee.; or payment in full if it is a 6-unit covered development. Before a certificate of occupancy can be issued for Units 7-10, the Petitioner must pay the remaining 50% or payment in full for covered developments having 7, 8, and 9 units and provide evidence to the Director of DCDP that the cash payment has been paid in full to the Affordable Housing Fund. For projects above 10 units, the remaining fee must be paid prior to the issuance of the certificates of occupancy for unit 11 and above.~~

(7) All legal documentation in connection with the affordable housing units shall be in the standard form provided by the Town of Watertown, as approved by legal counsel to the Town. If the Petitioner proposes to use documentation other than that provided by the Town, any and all costs associated with review by legal counsel to the Town shall be paid by the Petitioner.

(i) Submission Requirements and Procedures

Projects requiring the provision of affordable units under this Section must submit a proposal as to the method of meeting the affordable housing requirements with the application for zoning relief and a copy to the WHP. The WHP shall, in writing, provide the ~~SPGA Petitioner~~ with their recommendations no later than forty (40) days from submission. The SPGA may adopt additional submission requirements and procedures not inconsistent with this Section, following a public hearing and consultation with the WHP.

(j) Special Regulations for Inclusion Units

(1) Use Regulations: Developments with Inclusion Units shall comply with §5.01, Table of Use Regulations; provided, however, that a covered development with not more than ten (10) multi-family units shall be a permitted use when at least 12.5% of the units are Inclusion Units as defined hereunder, in which case the development shall qualify for review as a Small-Scale Inclusion Development.

(2) Small-Scale Inclusion Development Submission Requirements and Procedures: No Building Permit for a Small-Scale Inclusion Development shall be issued until the SPGA has approved a site plan in accordance with §9.03 and the provisions of this Section. The SPGA may adopt regulations for submission requirements and procedures not inconsistent with this Section, following a public hearing.

(3) Cost Offsets and Affordability Requirements: Inclusion Units **provided in excess of what is required in §5.07(d)(4)** shall be exempt from the minimum lot area per dwelling unit and/or maximum floor area ratio, as set forth in §5.04, provided that the Inclusion Units comply with the following affordability requirements:

~~(A) Rental Units: For the affordable units, the maximum affordable rent shall be affordable to a household with income at or below 65% area median income (AMI), adjusted for household size.; provided, however, that the SPGA may grant a special permit for a development in which the affordable unit rents are, on average, affordable for a household with income at 65% AMI. For example, in a development with two Inclusion Units, the maximum rent for each unit may be that which is affordable to a household with income at 65% AMI, or one unit may be affordable to a household with income at 50% AMI and the second unit may be affordable to a household with income at 70% AMI. However, no affordable unit in a rental development shall be priced for affordability to a household with income exceeding 80% AMI.~~

~~(B) Homeownership Units: For the affordable units, the maximum purchase price shall be affordable to a household with income at 70% AMI, adjusted for household size.~~

(k) Local Initiative Program Requirements. The Petitioner shall be responsible for preparing and complying with any documentation that may be required by DHCD to qualify affordable units for listing on the Chapter 40B Subsidized Housing Inventory. **The Petitioner shall also be responsible for providing annual compliance monitoring and certification to the Town, or to cover the costs of the Town for provision of such compliance monitoring.**

(l) Severability

If any portion of this Section is declared to be invalid, the remainder shall continue to be in full force and effect.

SUGGESTED CHANGES TO OTHER SECTIONS OF ZONING REQUIREMENTS THAT REFER TO INCLUSIONARY ZONING

SECTION 5.08 REVITALIZATION OVERLAY SPECIAL PERMIT (R0)

(d) Dimensional Criteria: The uses noted in subsection (c) above shall be subject to the following criteria:

- (8) Bonus Density: A project developed by a Revitalization Overlay special permit **which complies with the requirements of Section 5.07, except that the allowance for a cash contribution in lieu of units shall not apply**, ~~which provides that ten percent (10%) of its residential units be made affordable to low and moderate income persons as defined by Executive Office of Communities and Development (EOCD), subject to the criteria set forth in Section 5.07(d)~~, may increase its Floor Area Ratio to a maximum of 2.0.

SECTION 9.07 SPECIAL PERMIT CRITERIA FOR I-3 DISTRICT

(a) Commercial Uses: Applicants for a special permit for mixed-use development in the I-3 district shall be permitted to use up to twenty percent (20%) of the total gross floor area for general retail or service purposes, provided, however, that no drive-in facility of any kind is permitted. The commercial space shall be limited to the first floor but may be located in one or more buildings located on the Lot.

~~(b) Inclusionary Zoning Requirements: Applicants for a special permit for residential use shall provide ten percent (10%) of the total number of dwelling units subject to a special permit for affordable housing purposes as provided in §5.07(c).~~