

(As Approved at Town Meeting Spring 2021)

#### § 4.08 **AFFORDABLE HOUSING REQUIREMENTS**

##### 1. *Purpose*

The purpose of this section is to promote the public welfare by:

- a. increasing the supply of housing that is available and affordable to low or moderate income households, with an emphasis on family housing; and
- b. preventing the displacement of Brookline residents.

##### 2. *Definitions*

The following definitions shall apply in this § 4.08. Where a term is undefined herein, the definition set forth in the Affordable Housing Guidelines adopted pursuant to this § 4.08, if any, shall control. All other undefined terms in this section shall either be governed by Article II, Definitions of this Zoning Bylaw or shall be interpreted in accord with such normal dictionary meaning or customary usage as is appropriate to the context.

- a. **AFFORDABLE HOUSING GUIDELINES** are written policies and criteria, recommended by the Housing Advisory Board and adopted by the Planning Board, which supplement and serve to aid in the interpretation of this section. They may be revised from time to time without an amendment to the Zoning Bylaw.
- b. **AFFORDABLE HOUSING PLAN** means a document that constitutes the applicant's showing of compliance with the requirements of this section.
- c. **AFFORDABLE UNIT** means a dwelling unit which meets the following conditions:
  - 1) In a project in which affordable dwelling units will be rented, a unit shall be considered an affordable unit if: (a) it is rented to an eligible low or moderate income household; and (b) it is made available at an initial rent that is calculated such that a hypothetical household, with the number of household members equal to the number of bedrooms plus one and with an income set at the applicable income limit, would be paying 30% of gross income on rent and tenant-paid utilities. If the occupant has a tenant-based subsidy, the rent may be the amount allowed under the subsidy, provided that the occupant is not paying more than 30% of gross income on rent and tenant-paid utilities. Rental of all affordable units will follow the process as prescribed in the Affordable Housing Guidelines
  - 2) In a project in which affordable dwelling units will be sold, a unit shall be considered an affordable unit if: (a) it is sold to an eligible low or moderate income household; and (b) it is made available at a sales price that is calculated such that a hypothetical household, with the number of household members equal to the number of bedrooms in a unit plus one and with an income set at 10 percentage points less than the applicable income limit, would be paying 30% of gross income towards a mortgage, mortgage insurance, condominium fee and property taxes for a standard thirty-year mortgage at 95% of the sales price. Sale of all affordable units will follow the process as prescribed in the Affordable Housing Guidelines.
- d. **ELIGIBLE HOUSEHOLD** means a household comprised of a single individual or a family eligible for housing under regulations promulgated by the United States Department of Housing and Urban Development, pursuant to Section 8 of the Housing Act of 1937, as amended by the Housing and Community Development Act of 1974, or any successor federal or state program.

Income limits for Eligible Households may be further defined in this Section and under the Affordable

## Housing Guidelines.

- e. **INCOME, LOW OR MODERATE** means a combined household income which is less than or equal to 100% of the median income for affordable rental units as defined in **Section 2.c.1.** and which is less than or equal to 120% of the median income for affordable owner-occupied units as defined in **Section 2.c.2,** except for those units provided under **paragraph 5 subparagraph a** which shall comply under Chapter 40B of the Massachusetts General Laws, in which case low or moderate income shall mean a combined household income which is less than or equal to 80% of median income or any other limit established under Chapter 40B, its regulations or any amendment thereto.
- f. **INCOME, MEDIAN** means the median income, adjusted for household size, for the Boston Metropolitan Statistical Area published by or calculated from regulations promulgated by the United States Department of Housing and Urban Development, pursuant to Section 8 of the Housing Act of 1937, as amended by the Housing and Community Development Act of 1974, or any successor federal or state program.
- g. **PROJECT** means any residential or other development, including a cluster development, which results in the construction of new dwelling units, including those set forth in **paragraph 3, subparagraph a, b , or c** herein. Where the project is a life care facility development, as set forth in **paragraph 3, subparagraph c.,** the term "dwelling unit" shall be construed to mean "assisted living unit".

### 3. *Applicability*

In all zoning districts, the provisions of this **§ 4.08** shall apply to the following uses:

- a. any project that, upon completion will have four or more dwelling units, and in which at least one new unit will be created, whether by new construction or by the alteration, expansion, reconstruction or change of pre-existing residential or non-residential space. In the case of a renovation of and/or an addition to an existing building, any pre-existing units remaining within the pre-existing building shall not be counted when applying the 15 percent affordable unit set aside or cash payment option in **Paragraph 5** below. A unit shall qualify as within the pre-existing building if no more than five percent of the unit's floor area falls outside the habitable area of the pre-existing building; and
- b. any subdivision of land for development of four or more dwelling units; and
- c. any life care facility development that includes four or more assisted living units and accompanying services.

### 4. *Special Permit Required*

The development of any project set forth in **§ 4.08, paragraph 3.,** above, shall require the grant of a special permit from the Board of Appeals.

### 5. *Required Affordable Units*

As a condition for granting any special permit hereunder, applicants shall contribute to the Town's stock of affordable units in accordance with the following requirements:

- a. For projects that include four or more dwelling units in accordance with **paragraph 3.,** above, the applicant shall be required to set aside 15% of the units as affordable units, except as the provisions of **subparagraph d.,** below, shall apply. In the event that the required number of onsite affordable units is less than 0.5, the cash payment provision of **subparagraph d.** below shall apply as provided in the Affordable Housing Guidelines. Unless at the time of filing for a building permit for a project the number of housing units in Brookline that are qualified as low or moderate income under the Comprehensive Permit Law (Massachusetts General Laws Chapter 40B, Sections 20-23, and Massachusetts regulations thereunder) exceeds the number needed to meet the standard of requirements or regulations that are "consistent with local needs" in Section 20 of said

Comprehensive Permit Law, not less than two-thirds of the required affordable units provided under this subparagraph shall be qualified as low or moderate income units under said Comprehensive Permit Law.

- b. The required affordable units shall contain 15% of the bedrooms in the project as a whole.
- c. In determining the total number of affordable units or bedrooms required in **subparagraphs a.** and **b.** above, a fractional unit of 0.5 or more shall be regarded as a whole unit or bedroom.
- d. For projects that include four to 19 dwelling units, in accordance with **paragraph 3.**, above, the applicant may choose to make a cash payment to the Housing Trust as provided in the Affordable Housing Guidelines.
- e. For projects that include onsite affordable units, or affordable units on an offsite location as contemplated by Section 7(a), the applicant may provide the required affordable units for eligible households whose incomes exceed 50% of the median income for rental units and 80% of the median income for owner-occupied units, subject to the applicant making a supplemental payment to the Housing Trust, as provided in the Affordable Housing Guidelines.

## 6. *Standards*

Projects containing affordable units shall meet the following standards:

- a. Projects shall not be segmented or phased to avoid compliance with these provisions.
- b. Affordable units shall be dispersed throughout the project and shall be indistinguishable from market rate units in external appearance. The affordable units shall have the same mechanical systems as market units, except that affordable units with up to two bedrooms may have only one bathroom, affordable units with three bedrooms shall have at least 1.5 bathrooms, and affordable units with four bedrooms shall have at least two bathrooms. Affordable units shall have the same finishes and appliances as the market rate units except where the Director of Planning and Community Development specifically approves, in advance, a request for different finishes and/or appliances.
- c. The affordable units shall contain square footage which is no less than (1) the average size of market rate units containing the same number of bedrooms, or (2) the following, whichever is the smaller:

0            500  
bedrooms: square  
              feet

1            700  
bedroom: square  
              feet

2            900  
bedrooms: square  
              feet

3            1100  
bedrooms: square  
              feet

4            1300  
bedrooms: square  
              feet

For purposes of this subparagraph only, square footage shall be calculated within the interior surfaces of the perimeter walls of the unit.

- d. Floor plans for affordable units which differ from those of market rate units shall not be approved without the recommendation of the Director of Planning and Community Development.
- e. Sales prices, resale prices, initial rents, and rent increases for the affordable units shall be established in accordance with this section, as further clarified in the Affordable Housing Guidelines and shall be permanently restricted, to the extent legally permissible, to ensure long-term affordability.
- f. The Town may establish a system of priorities for selecting buyers or renters, in accordance with the Affordable Housing Guidelines.
- g. The Town may require that lessees of affordable rental units meet income recertification requirements upon renewal of lease terms, in accordance with the Affordable Housing Guidelines.
- h. The Town may require, for itself or its designee, an option to purchase or lease affordable units for amounts consistent with **paragraph 2, subparagraph c.** above. The option shall apply to the initial and any subsequent sale or lease of affordable units.
- i. Affordability restrictions shall be embodied in applicable deed covenants, restrictive covenant agreements, other contractual agreements, land trust arrangements, and/or other mechanisms designed to ensure compliance with this section.
- j. Covenants and other documents necessary to ensure compliance with this section shall be executed and, if applicable, recorded prior to and as a condition of the issuance of any building permit or certificate of occupancy, as the Board of Appeals shall deem appropriate.

#### 7. *Alternative Requirements for Affordable Units*

Subject to a finding by the Board of Appeals that the result will be advantageous to the Town in creating or preserving affordable units and not result in the undue concentration of affordable units, the requirements of this section may be satisfied through one or more of the following methods, listed in the order of preference:

- a. Off-Site Location — Affordable units may be located on an alternative site or sites in Brookline suitable for housing use, preferably in the same neighborhood as the on-site development. While off-site affordable units may be located in an existing structure, the potential for displacement of existing tenants shall be considered by the Zoning Board of Appeals.
- b. Conveyance of Land and/or Buildings — The applicant may donate to the Town or its designee land and/or buildings suitable for housing use, preferably in the same neighborhood as the on-site development. Such land and/or buildings shall have a fair market value comparable to the difference between the value of the affordable units required under this **§ 4.08** if provided on-site and the fair market value of such units free of the conditions set forth in **paragraph 2, subparagraph c.**
- c. Cash Payment — The applicant may make a cash payment to the Town's Housing Trust with a value comparable to the difference between the value of the affordable units required under this **§ 4.08** if provided on-site, and the fair market value of such units free of the conditions set forth in **paragraph 2, subparagraph c.**

The applicant's Affordable Housing Plan shall show that the applicant shall provide a greater affordable housing benefit to the Town than would have been provided on site. Affordable units provided through the alternative methods above shall comply in all respects other than on-site location with the requirements of this section.

#### 8. *Procedures*

All projects shall comply with the following procedures as applicable:

- a. Pre-Application Meeting — The applicant shall convene a pre-application meeting with the Director of Planning and Community Development to discuss the project proposal and affordable housing requirements.
  - b. Submittal of Affordable Housing Plan — The applicant shall fill out and submit an Affordable Housing Plan form to the Planning and Community Development Department prior to making an application for a building permit. This form requires the following information:
    - i) On-Site Unit Projects — Applicants electing to develop on-site affordable units shall provide a schedule of all project units by location, square footage, unit types, number and types of rooms, and location of affordable units.
    - ii) Cash Contribution Projects Under Paragraph 5, Subparagraph d. — Applicants electing to make a cash contribution in lieu of providing affordable units shall provide a statement of the number of project units and the corresponding formula required by the Affordable Housing Guidelines.
  - 3) Alternative Requirements — Applicants proposing to **employ paragraph 7, Alternative Requirements for Affordable Units**, above shall provide a proposal specifying the land, buildings, off-site affordable units, and/or cash contribution; and a schedule and proposed security for providing these.
  - c. Building Permit Application — The applicant shall submit a formal application for a building permit, including the Affordable Housing Plan form.
  - d. Board of Appeals Application — The applicant shall make a formal application for a special permit to the Town Clerk.
  - e. Housing Advisory Board Review — Except for applications proposing cash contributions under **paragraph 5, subparagraph d.**, the Housing Advisory Board shall, in the next regularly scheduled meeting after necessary public notice, review the Affordable Housing Plan and prepare a recommendation to the Planning Board.
  - f. Planning Board Review — The Planning Board shall, in the next regularly scheduled meeting after necessary public notice, hear and make a recommendation on the special permit application. The recommendation of the Housing Advisory Board (or Director of Planning and Community Development with respect to cash contributions under **paragraph 5, subparagraph d.** shall be considered by the Planning Board. The Planning Board shall explain any deviation from Housing Advisory Board recommendations in writing in its report to the Zoning Board of Appeals.
  - g. Zoning Board of Appeals Meeting — The Zoning Board of Appeals shall meet to hear the special permit application. The Board of Appeals decision may require modifications, conditions, and safeguards, including documentation regarding affordability and funding commitments reasonably related hereto. The Zoning Board of Appeals shall explain any deviation from Housing Advisory Board recommendations in writing in its decision.
9. *Conditions*
- a. The Zoning Board of Appeals shall require that a Revised Affordable Housing Plan, which shall include any conditions in the grant of a special permit from the Zoning Board of Appeals, shall be submitted to the Director of Planning and Community Development for final approval prior to the issuance of a building permit. For projects providing affordable units, the Affordable Housing Plan shall include a reference to specific floor plans of the affordable units that shall be attached to the plan. For projects providing cash or other contributions under **paragraph 5, subparagraph d. or paragraph 7.**, the revised Affordable Housing Plan shall set forth a detailed description, if applicable, and schedule for contributions, including any documentation required to secure such, in accordance with the Affordable Housing Guidelines. The Revised Affordable Housing Plan shall be

legally binding as part of a special permit which shall refer to it in any decision.

- b. Where set forth as a condition in the approved Revised Affordable Housing Plan, no building permit shall be issued until the applicant submits to the Director of the Department of Planning and Community Development a proper bond, letter of credit, or other financial instrument designed to secure performance of the requirements of this section.
- c. No building permit shall be issued until the applicant submits proof that the special permit decision of the Zoning Board of Appeals has been recorded and that the Director of Planning and Community Development has issued a final approval letter for the Revised Affordable Housing Plan.
- d. The Zoning Board of Appeals may impose conditions in which the Building Commissioner may limit, restrict, or withhold the issuance of a certificate of occupancy for any market rate unit(s) in a development until:
  - 1) all of the affordable units have obtained a certificate of occupancy; or
  - 2) any land, buildings and/or off-site units required to be donated to the Town or its designee have been conveyed.
- e. Prior to issuance of any certificate of occupancy for the a project including affordable units, the applicant shall submit to the Director of Planning and Community Development for approval a plan for marketing and selection of occupants; initial rents or sales prices for the units designated as affordable; and, prior to their being recorded, condominium, cooperative or other homeowner association documents, as appropriate. For projects including affordable units for rent, this plan shall be recorded as a part of the affordable housing restriction set forth in **paragraph 6., subparagraphs i. and j.** herein. All plans shall be consistent with the Affordable Housing Guidelines.

#### 10. *Affordable Housing Guidelines*

The Planning Board, in consultation with the Housing Advisory Board and after public notice and hearing, shall adopt Affordable Housing Guidelines.

#### 11. *Contributions of Cash, Land and/or Buildings*

Cash contributions and donations of land and/or buildings made to the Town or its Housing Trust in accordance with this **§ 4.08** shall be used only for purposes of providing affordable housing for low or moderate income households as defined by this section.