



Planning Department

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MEMORANDUM

To: Planning Board

Date: December 9, 2005

Reissued: May 18, 2006

Reissued: June 23, 2006

From: Roland Bartl, AICP, Town Planner *R.B.*

Subject: Affordable Housing Bylaw – First Draft

Attached is how far I have come to date with drafting a zoning article that if adopted would, hopefully, be more effective in producing affordable housing under local zoning. I have tried to capture the general sentiment of the last meeting, in which I sensed a desire to create a regulation that is simple, predictable, flexible, and competitive with 40B. That, of course, makes it much like a 40B by giving the Planning Board sweeping authority to work with project applicants.

This draft is not nearly ready. It needs additional sections added as noted, but I think this is a good point for your feedback so that I am not going in a direction that the Planning Board will not support.

I still have to go through the developer's comments and meeting notes to see if there is anything else useful to capture. Also, the 40B policy should be ready soon for release. This article should be fairly consistent with the 40B policy statement. Further adjustments may be appropriate after the 40B policy document has taken its final form after Planning Board and Selectmen endorsements.

May 18, 2006

When this came before the Planning Board in December '05, it was decided to defer until after the publication of the 40B policy and to then target the 2007 Annual Town Meeting for a possible bylaw change. It is now time to begin this effort. The Board discussed the need for public outreach and education, and for some heavy lifting by Board members.

I would ask at this time for your input, reaction, and guidance on the documents drafted so far before I proceed with further refinements. This is still the same draft as it was in Dec. '05. The Board should also discuss a strategy and time line for public outreach.

Attached are:

- The 1st draft of a bylaw change as developed so far.
- The 40B Policy Statement as published.
- The 9/05 memo and various comments received in connection with a developer input meeting in 11/05. Together with the 40B policy they gave the direction for the 1st draft.
- Comments from Nancy Tavernier on the 1st draft.

June 23, 2006

The draft article has been modified and rearranged a little. Please go to Summary Discussion behind the draft article for a highlight on the various concepts of the proposed amendment.

I:\planning\town meetings\next town meeting items\affordable housing overlay\affordable 1st draft resubmitted 06-27-06.doc

ARTICLE Z1 AMEND ZONING BYLAW AND MAP

(Two-thirds vote)

CREATION OF AFFORDABLE HOUSING OPPORTUNITIES

To see if the Town will vote to amend the zoning map and zoning bylaw as set forth in this article:

I. Removal of existing Affordable Housing Overlay District:

- A. Zoning Map: Delete Map Number 4 of The Zoning Map thereby removing the AFFORDABLE HOUSING OVERLAY DISTRICT designation, including designations for Sub-Districts A and B, from all lots and parcels.
- B. Zoning Bylaw: In section **2.1 – Classification of Districts**, delete the words “AFFORDABLE HOUSING OVERLAY DISTRICT” under the OVERLAY DISTRICT category.
- C. Zoning Bylaw: In section **2.2 – Zoning Map**, delete the 4th bullet, which begins with “Affordable Housing Overlay District Map of the Town of Acton”.
- D. Zoning Bylaw: In section **3.3 – Residential USES**, paragraph c), delete the words “an AFFORDABLE housing development UNDER SECTION 4.4 OF THIS Bylaw;”.
- E. Zoning Bylaw: In section **4.2 – Open Space Development**, subsection 4.2.3.1.a), delete the fourth sentence, which begins with “AFFORDABLE DWELLING UNITS generated on the TRACT OF LAND under provision of section 4.4.3”.
- F. Zoning Bylaw: In section **4.2 – Open Space Development**, subsection 4.2.3.1.b), delete the second sentence, which begins with “AFFORDABLE DWELLING UNITS generated on the TRACT OF LAND under provision of section 4.4.3”.
- G. Zoning Bylaw: In section **4.3 – GROUNDWATER Protection District**, Table 4.3.7.2, Note (**), delete the section reference numbers “4.4,”.
- H. Zoning Bylaw: Delete section **4.4 – AFFORDABLE Housing Incentives and Overlay District** in its entirety, including all its subsections.
- I. Zoning Bylaw: In section **6.2 – Parking Standards - General Provisions**, delete the words “a MAJOR AFFORDABLE Housing Development (Section 4.4) and”.
- J. Zoning Bylaw: In section **9.6 – Planned Conservation Residential Community – Standards for PCRCs**, subsection 9.6.2.1.a), delete the fourth sentence, which begins with “AFFORDABLE DWELLING UNITS generated on the TRACT OF LAND under provision of section 4.4.3”.
- K. Zoning Bylaw: In section **9.6 – Planned Conservation Residential Community – Standards for PCRCs**, subsection 9.6.2.1.b), delete the second sentence, which begins with “AFFORDABLE DWELLING UNITS generated on the TRACT OF LAND under provision of section 4.4.3”.
- L. Zoning Bylaw: In section **9.6 – Planned Conservation Residential Community – Standards for PCRCs**, delete subsection 9.6.2.3.e) in its entirety.

II. Creation of Affordable Housing Opportunities

- A. Insert a new Zoning Bylaw section 9C as follows:

SECTION 9C

AFFORDABLE HOUSING OPPORTUNITY PROJECTS

9C.1 Purpose – (still needs drafting)

- Establish housing need/affordability gap with bullet summary of “To Live in Acton” report.
- Acknowledge existence of 40B.
- State objective to provide a competitive local zoning alternative to 40B to reach the 10% aff. housing threshold in a way consistent with the Master Plan and the Acton Zoning Bylaw.

9C.2 Definitions – Will defines: (still needs drafting)

- Affordable Housing (consistent with 40B criteria, perpetual DHCD or HUD sale, resale and rental restrictions)
- Low and moderate income household (consistent with 40B eligibility criteria)
- Affordable Housing Opportunity Project (having at least 25% affordable units, except where otherwise stated)

9C.3 Regulatory Controls – The Affordable Housing Opportunity Projects developed under this section 9C shall be subject to the following review, oversight, and special permit functions of the Planning Board. To facilitate the creation of affordable housing the Planning Board, in exercising its authority hereunder, may waive specific requirements of this Bylaw, except for requirements set forth in this section 9C. However, it shall exercise this authority with careful restraint and deliberate inquiry on each such waiver ensuring that it grants only the minimum necessary number of waivers to the minimum necessary extent for the Affordable Housing Opportunity Project before them to be realized in a manner that is consistent with the Master Plan and shows sensitivity in design to the neighborhood context in which it is proposed. No other variance or special permit from or under this Bylaw shall be required.

9C.3.1 If Acton’s affordable housing stock is 10 percent or less of the total housing stock as certified by the Massachusetts Department of Housing and Community Development (DHCD) Affordable Housing Opportunity Projects shall be subject to a Site Plan Special Permit.

9C.3.1.1 The Planning Board shall act as the Site Plan Special Permit Granting Authority under the provisions for Site Plan Special Permits set forth in section 10.4 of this Bylaw and the Acton Site Plan Rules and Regulations with all the powers and duties otherwise assigned to the Board of Selectmen under said section 10.4.

9C.3.1.2 The Planning Board may waive specific requirements of section 10.4 with the same scrutiny, restraint, and inquiry as required for waivers from other sections of this Bylaw.

9C.3.1.3 The time frames for a public hearing and decision shall be shortened to those required for non-residential subdivision plans under the Acton Subdivision Rules and Regulations and M.G.L. Ch.41, s. 81K-81GG. Such time frames may be extended by mutual agreement between the Board and the project proponent.

9C.3.1.4 In cases where the proposed Affordable Housing Opportunity Project is also a subdivision as defined in the Acton Subdivision Rules and Regulations and M.G.L. Ch.41, s. 81K-81GG the processes and documentation for this Site Plan Special Permit and the subdivision shall be combined into one.

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- 9C.3.1.5 In cases where the proposed Affordable Housing Opportunity Project requires other special permits under this Bylaw, the processes and documentation for the Site Plan Special Permit and any other special permit shall be combined into one under the authority of the Planning Board.
- 9C.3.1.6 The purpose of this review process is not to decide whether a Site Plan Special Permit for a proposed Affordable Housing Opportunity Project should be granted or not. Rather, the purpose is to review the project's layout; building design, affordable housing contribution; deed restrictions; project phasing; impact mitigation; neighborhood integration; natural resource protection, and especially groundwater protection measures; and all other matters relevant and important to ensure a functional and well-designed project that permanently contributes to Acton's affordable housing stock. The Planning Board may attach appropriate conditions to a Site Plan Special Permit in order to achieve these objectives. Denials of this Site Plan Special Permit shall be limited only to cases where the Planning Board finds that these objectives have not been met or cannot be met after the applicant has been given adequate opportunity to amend the project plan and proposal to address the issues of concern to the Planning Board.
- 9C.3.2 If Acton's affordable housing stock is in excess of 10 percent of the total housing stock as certified by the Massachusetts Department of Housing and Community Development (DHCD) the Approval of Affordable Housing Opportunity Projects shall be subject to a discretionary special permit from the Planning Board, which said Planning Board may grant or deny under the standards for special permits set forth in section 10.5 of this Bylaw. In addition to the required findings for a special permit under section 10.5 the Planning Board shall find in the affirmative at least three of the following tests:
- 9C.3.2.1 Without approval of further Affordable Housing Opportunity Projects Acton's affordable housing stock is likely to fall to 10% or below within the following three calendar years, including the year in which the application has been filed, assuming a continuation of the market rate unit growth during the preceding three completed calendar years.
- 9C.3.2.2 The Affordable Housing Opportunity Project is particularly well conceived in terms of building design and site layout.
- 9C.3.2.3 The project, despite its higher than average density, is designed with a high degree of sensitivity to the neighborhood context in which it is proposed.
- 9C.3.2.4 In addition to providing affordable housing, the project has the potential of becoming an asset to the neighborhood and the Town because it brings exceptional improvements, amenities, or other advantages from which residents of the neighborhood and the Town in general will derive a benefit.
- 9C.3.3 When the Planning Board approves an Affordable Housing Opportunity Project under sections 9C.3.1 or 9C.3.2 above, it shall ensure:
- 9C.3.3.1 The mitigation of vehicular traffic impacts where necessary. Any required improvements to STREETS and roadways shall be measured in reasonable proportion to the size and impacts of the project, generally not in excess of \$2000 for each bedroom in the market-rate DWELLING UNITS.

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- 9C.3.3.2 Pedestrian amenities, and safe pedestrian and, where possible, bicycling connectivity from the project site to Acton's Village and Kelley's Corner Districts, other business areas, schools, libraries, conservation land access points, parks, playgrounds, ball fields, and other community facilities. Generally, this shall include a sidewalk along the FRONTAGE of the project site plus 50 feet of sidewalk for each bedroom in the market-rate DWELLING UNITS.
 - 9C.3.3.3 Outdoor play and recreation opportunities for children in projects with more than 40 DWELLING UNITS.
 - 9C.3.3.4 Building and site design that is appropriate and sensitive in the context of the area or neighborhood in which the project is proposed.
 - 9C.3.3.5 Adequate protections for natural resources, especially groundwater resources. In general, the standards of section 4.3 shall apply, but the Planning Board may grant waivers from its specific requirements provided that the performance standards and goals of section 4.3 are met through alternative means.
 - 9C.3.3.6 The preservation of significant or outstanding historic buildings and other cultural resources on site, or moved to a nearby location deemed appropriate by the Planning Board after consultation with the Historical Commission. The separate and independent authorities of the Historical Commission and the Historic District Commission under Town Bylaws Chapter N and P respectively, remain in full effect.
 - 9C.3.3.7 Permanent and perpetual price and rental restrictions to ensure that the affordable units qualify as affordable units under M.G.L. Ch. 40B, and will remain so upon resale and re-rental.
- 9C.4 Affordable Housing Opportunity Projects in the Village and Kelley's Corner Districts** – In the EAV, EAV-2, NAV, SAV, WAV and KC Districts Affordable Housing Opportunity Projects shall be subject to the following specific requirements and limitations:
- 9C.4.1 The applicable requirements for maximum front yard setbacks in section 5 of this Bylaw shall apply.
 - 9C.4.2 The applicable minimum height requirements in section 5 of this Bylaw shall apply.
 - 9C.4.3 The height for BUILDINGS shall not exceed 36 feet in a Village District and 45 feet in the Kelley's Corner District.
 - 9C.4.4 In general, parking lots or driveways shall not be located between the principal BUILDING or BUILDINGS and a STREET, but the Planning Board may seek variations from this rule in cases where a LOT has STREET FRONTAGE on opposite sides or FRONTAGE on more than two sides, or where the topography on the LOT makes it impossible to comply with this rule.
 - 9C.4.5 Affordable Housing Opportunity Projects shall consist of multi-family, multi-story buildings, with the ground floor of BUILDING fronts that face a STREET designed and reserved for occupancy, by Retail Stores; Restaurants; Lodges or Clubs; Services; Commercial Entertainment; real estate agencies; insurance agencies; travel agencies; law offices; medical and dental offices; walk-in clinics; small equipment repair services; tailors; or photography studios or similar USES or businesses.

9C.4.6 The FLOOR AREA RATIO shall not exceed 0.80 in a Village District and 1.00 in the Kelley's Corner District, plus the required business floor area.

9C.5 Affordable Housing Opportunity Projects within a half mile from the Village and Kelley's Corner Districts – Affordable Housing Opportunity Projects located on parcels of land, any portion of which is located within ½ mile of a boundary of the Village or Kelley's Corner Districts, shall be subject to the following specific requirements and limitations:

9C.5.1 The height of BUILDINGS shall not exceed 36 feet.

9C.5.2 The FLOOR AREA RATIO shall not exceed 0.80.

9C.5.3 In the R-2, R-4, R-8/4, R-8, R-10/8, and R-10 Districts, DWELLING UNITS shall be arranged in single-family, two-family, or townhouse style homes unless located immediately abutting a Village or Kelley's Corner District boundary.

9C.5.4 There shall be no commercial component except in Residential District locations immediately abutting a Village or Kelley's Corner District boundary and in Business District locations. Such commercial component shall comply with the provisions for commercial space in Affordable Housing Opportunity Projects in the Village and Kelley's Corner Districts.

9C.6 Affordable Housing Opportunity Projects in Residential Districts more than a half mile from the Village and Kelley's Corner Districts – Affordable Housing Opportunity Projects located in Residential Districts on parcels of land entirely beyond ½ mile from a boundary of the Village or Kelley's Corner Districts, shall be subject to the following specific requirements and limitations:

9C.6.1 Up to 30 bedrooms and a FLOOR AREA RATIO of up to 0.25 on a LOT or TRACT OF LAND created and recorded before January 1, 2007, which is otherwise a buildable LOT under the standard provisions of this Bylaw.

9C.6.2 Up to 30 bedrooms on a LOT created and recorded on or after January 1, 2007, which is otherwise a buildable LOT under the standard provisions of this Bylaw, provided that not more than one Affordable Housing Opportunity Project shall be created on the TRACT OF LAND, of which the LOT was previously a part.

9C.6.3 In the R-2, R-4, R-8/4, R-8, R-10/8, and R-10 Districts, DWELLING UNITS shall be arranged in single-family, two-family, or townhouse style.

9C.6.4 In other new residential developments created as a standard subdivision or as an Open Space Development or Planned Residential Community, a developer may obtain three additional market-rate bonus DWELLING UNITS for each additional AFFORDABLE DWELLING UNIT, up to a maximum of 1.25 times the number of total DWELLING UNIT that would otherwise be allowed in the development. Two-family DWELLING UNITS shall be allowed. The requirement that 25% of all dwelling units in an Affordable Housing Opportunity Project shall be affordable shall not apply in these specific cases.

9C.7 Standards provisions for affordable housing production and phasing, affordability levels, local preference, sale and rental, protection of tenants and owners who do no longer qualify, etc., etc (still needs drafting)

9C.8 Provision for money donation in lieu of providing on-site affordable units and where formulas for providing affordable housing result in unit fractions. (needs drafting)

B. Insert the following additional sections to further encourage affordable housing opportunities in Acton:

9C.9 Reuse of vacant or underutilized commercial BUILDINGS – Affordable Housing Opportunity Projects may be created by conversion to residential USE of existing vacant or underutilized commercial BUILDINGS in the Office, Business, and Industrial Districts, subject to the following requirements:

9C.9.1 The proponent must be able to document a BUILDING vacancy rate of at least 60% during the three preceding years despite aggressive marketing efforts to fill the vacancies with commercial tenants.

9C.9.2 A Massachusetts registered Architect shall certify that the BUILDING is suitable for rehabilitation and conversion to residential USE. Demolition or new construction shall not qualify.

9C.10 Affordable DWELLINGS UNITS on unbuildable parcels of land in Residential Districts – An Affordable Housing Opportunity Project may be created on a parcel of land that is not otherwise a buildable LOT under the standard provisions of this Bylaw and M.G.L. Ch. 40A, subject to the following provisions, requirements, and limitations:

9C.10.1 The parcel shall be non-complying to current zoning requirements as result of zoning changes enacted after the creation and recording of the parcel.

9C.10.2 Any proof that the parcel was held in separate ownership from adjacent land for any length of time or any specific time period shall not be required.

9C.10.3 The parcel shall have at least 20 feet of FRONTAGE and 5,000 square feet of area.

9C.10.4 The parcel may be used to create a single-or two-family dwelling.

9C.10.5 The maximum NET FLOOR AREA shall not exceed the smallest of 2,000 square feet per DWELLING UNIT or a FLOOR AREA RATIO of 0.40.

9C.10.6 All DWELLING UNITS on such parcel shall be affordable.

9C. other.1 Update accessory apt. eligibility date (needs drafting)

9C. other.2 Echo units/accessory apts. in new construction if affordable? (needs drafting)

, or take any other action relative thereto.

SUMMARY DISCUSSION

At a previous meeting in late 2005, or so, the Board's direction to me was to pursue new or improved methods for generating affordable housing on a basis of incentives rather than to follow the inclusionary zoning route. There were many significant legal and practical concerns with the inclusionary zoning method. Therefore inclusionary zoning is not being considered here at all.

The above is a first outline draft of possible zoning changes for affordable housing. A couple of meetings ago the Board asked for a break down in “bite sized” chunks to ease or facilitate discussion. The following attempts to segregate the various concepts and ideas for discussion purposes. Part I would simply remove the existing Affordable Housing Overlay District (section 4.2) and all references and connections to it in other sections of the zoning bylaw.

Part II.A would be the most significant element of this initiative. Major concepts of Part II. A are:

1. Similarities to 40B approach:

- a. Significantly increased densities to help “finance” affordable units.
- b. 25% percent minimum affordable unit share per project. Waivers of otherwise applicable zoning regulations, particularly density limits, but “with careful restraint and deliberate inquiry”. New standards are introduced, but with the exception of higher density caps, they are very flexible and give the Board broad powers to help shape a successful project.
- c. 10% affordable housing in Town as a benchmark. (State 40B rules use additional benchmarks and criteria for temporary relief which could also be included here.)

2. Different processes depending on where the Town stands v. 10% benchmark. This acknowledges that Chapter 40B is a formidable competitor that does not have to be responsive to any local rules if the Town’s affordable housing stock is, or has fallen below 10%.

- a. If below 10% -
 - Site plan review only, which does not give power of denial on grounds of the proposed use.
 - Accelerated review and hearing schedule that cuts of +/-2 months of special permit process and brings it closer in line with the time frame for 40B projects (still 20 days shorter).
 - All other zoning special permits waived or folded into site plan review.
- b. If above 10% -
 - Discretionary use special permit that can be denied on grounds of the proposed use, but provides a vehicle to let desirable project go ahead.
 - Standard special permit time frame.
 - Standard special permit findings must be in the affirmative, plus three out of four additional findings must be in the affirmative: danger of Town falling below 10%, exceptional design, neighborhood sensitivity, additional desirable amenities.

3. High density projects in or near village districts and Kelley’s Corner:

- a. 0.80 maximum FAR in village district (standard limits vary from 0.20 to 0.40).
- b. 1.00 maximum FAR in Kelley’s Corner (standard is 0.20; or 0.40 with KC design requirements)
- c. 0.80 FAR within ½ mile of village and KC district (recognizing that available developable land in villages is limited; and consistent with walkability guideposts)

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- d. 0.25 FAR and 30-bedroom maximum for projects everywhere else in residential districts (“small project”).

4. Project density measured in FAR and bedroom count, not unit count.

- 5. Mixed-use residential/commercial projects required in village centers;** and allowed on lots immediately adjacent to village centers (the mixed use concept needs a bit more definition for ratios of commercial v. residential floor space, percentage of affordability by unit count and/or floor space, etc.)

As additional measures to encourage affordable housing we might consider one or more of the items in II.B. The

6. Reuse for affordable housing of vacant or underutilized commercial buildings.

7. Use of otherwise unbuildable parcels for affordable housing.

8. Update accessory apartment eligibility date

9. New affordable accessory apartments/echo units

Direct inquiries to: Roland Bartl, AICP, Town Planner – (978) 264-9636
Selectman assigned:

Board of Selectmen: Recommendation Deferred	[SAMPLE TEXT ONLY –
Finance Committee: Not Recommended	NOT ACTUAL
Planning Board: Recommended	RECOMMENDATIONS]