Kim DelNigro

From: Paul Gaboury
Sent: Monday, November 21, 2005 11:46 AM
To: Planning Board; Roland Bartl
Subject: Affordable Housing Meeting Comments

I have prepared a document on the subject of the use of the Town Bylaw vs. a 40B process. I look forward to participating in the discussions tomorrow night. My apologies for the lateness in this reply to Roland's invitation.

Best Regards,

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Planning Board
Town of Acton
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November 21, 2005

CC: Roland Bartl

My apologies for the lateness in this reply to Roland's email. Thank you for the opportunity to comment on your review of Acton's affordable housing overlay zoning rules.

When we meet tomorrow, it would be helpful if we had a statement of the goals the Town wishes to achieve from this – other than providing an alternative to the 40B process. Lacking this we can examine the structural issues as they relate to the builder of affordable housing.

Affordable Housing District designation

The Town has designated specific areas in Town that are zoned for affordable housing. Builders use this map to target acquisitions for affordable housing projects. Builders should have a reasonable expectation that being in a Town designated zone is advantageous.

We recommend the BOS review all affordable housing overlay zones and make decisions as to which areas they would support projects – in principle. They should remove those areas they cannot support. The economies of 40B generally result in a minimum of eight units per project. The BOS can consider this in its review. There's no point in designating a plot as in the affordable overlay when they feel eight or more units are unacceptable. The BOS will have to stand up to the abutters saying the location is acceptable and advise them to participate in the discussions with the builder and the ZBA.

Abutter resistance is expected. Modifications to project plans are also anticipated. But the "suitability" of affordable housing in these areas should be thoroughly supported. Once this initial step is complete, the Town should publish the map in various news outlets and at the Town Meeting. Since members of the Planning Board & BOS change regularly, we would suggest an annual review and approval of the districts by both groups.

Project commitment to proceed

The State 40B process has one very distinct advantage over Acton's (and probably most other towns) affordable housing permitting process. Once approved by the state, which is all but assured with MassHousing, the Town must begin a process leading to a permit. The builder will eventually get a comprehensive permit to construct the development. It may take years, but, in the end if the builder persists, it will happen (subject to various laws like wetlands etc.). The process includes time delimited reviews by Town Departments and boards and negotiations with all interested parties.

So the first hurdle for the Town in its bylaw is to grant an applicant a legal commitment to initiate the permitting process that commits the Town to see the process through to approval like a

40B. The "process" thereafter can be modified to meet the Town's goals to the extent that the disincentives would preclude a builder from pursuing this course.

I would suggest the documentation required by MassHousing be used as a standard to initiate the process. (See below for additional abutter interaction)

Appeal

No builder wants to appeal a 40B proposal to the state as it can take years, but this option does offer some final alternative to negotiations that fail to achieve an acceptable conclusion between the builder, the Town and other interested parties. The Town may want to include the same appeals process to the same State board under the same conditions the State rules.

With these two actions (approval to seek a comprehensive permit and ability to appeal a decision or deadlocked process) we have a leveled playing field between the Town and State for project initiation and final resolution.

The Application

Applications to the ZBA for a comprehensive permit for a 40B project and for the Town's affordable housing rules are nearly identical. They should be made identical.

Final Authority

Currently MassHousing requires the notification, but not the approval, of the Board of Selectmen (BOS). This is an important distinction between MassHousing and DHCD's Local Initiative Petition. DHCD will not accept a comp permit without a vote by the BOS to approve the project. The BOS is sensitive to abutter objections and can block approval simply by not signing the final application. Builders can work aggressively to achieve all of the goals of the DHCD local initiative petition intentions and still be prevented from obtaining a permit – even if the project is in a designated affordable housing district.

The Zoning Board of Appeals should be the final arbiter and decision maker. The BOS and other interested parties should make their feelings known so that the Board can attempt to bring the parties closer through negotiations.

Communication Provisions

It is highly unlikely any project will avoid abutter resistance. It begins with panic, emotion and then attempts to stop it and eventually negations and compromise. This may take months or years. Obviously, builders prefer months. The best policy for a builder is to confront resistance is early – even in the design phase – before plans are finalized.

This is an area where the Town's approach could differ from 40B rules – which make no mention of any efforts to work with the abutters. A requirement of the bylaw could be documentation of builder efforts in meeting with and resolving – to the extent possible – the myriad issues involved.

The builder should advise the abutters initially that all disputes will ultimately be resolved by the ZBA. Representatives of the Town could observe, but not participate in these meeting. It's the builder's responsibility to manage and conduct the meetings. A most important aspect of this abutter process is the Town's firmness on the suitability of the property if the property is located in a designated affordable zone as described above.

Perhaps the minimum number of meetings could be specified. In its submission, the builder should submit a document detailing all of the areas of dispute other than one opposing the project altogether, key abutter contacts/representatives, prospects for legal conflict etc.

Acton's Bylaw Provisions

Overall the bylaw is very complex and should be greatly simplified or, better, scrapped in favor of existing building zoning and specification rules – as in a 40B project. The builder should submit their plans followed, as usual, by reviews and comments by the Planning Board and other Town departments and interested parties to the ZBA who will decide the matter.

A major goal of the Bylaw is to maximize the ratio of affordable to total units. It is doubtful that a ratio in excess of the States 25% ratio is economic. Of course, the larger the project the more likely this could be exceeded. Offering builders an opportunity to earn over the State's 20% limit might be a good incentive where the builder feels it could earn more. This, of course, invites various Town entities to request additional dollar concessions.

State programs do not allow communities to assess builders with costs or contributions not required by the project. Builders always pay these to avoid a protracted appeal. This is an area the Town could provide a strong incentive by putting a stop to these assessments or contributions or at least making them predictable – as in the sidewalk fund – by spelling out what it will require. Builders could be encouraged to contribute to non specified items, but the builders' decision should be final based the risk/reward analysis they would do including the politics surrounding the issue.

The Bylaw should limit the powers of the ZBA to force assessments or contributions not specified in the Town Bylaw.

Density bonuses might be used in certain situations. While the State programs do have some guidelines as to allowable density, they are moving targets. Nevertheless, this may be an area the Town can use this as an incentive over a 40B project using State guidelines as a base.

Dimensional requirements are a major stumbling block to the use of the Town process. Our Fort Pond Brook Place development puts eight Townhouse units on a ¾ acre parcel. Thus far we have a positive response to the design and construction of the development – including the AHDC. If we had to submit to the Town bylaw, the project would have been rejected because it is too small a parcel and does not meet any of the dimensional requirements.

The bylaw requires larger parcels of land at a lower density to achieve approval. Density goals in village areas cannot be achieved under these provisions. Potential land plots suitable for

affordable housing become very limited. The sewer line in particular offers the possibility for high density. There are only a couple of areas along the sewer line where designated (affordable overlay) plots exceed 2 acres or can meet the dimensional requirements.

Conclusion

The 40B process gives builders a predictable process that inevitably results in the project being completed in some form. To compete with this, the Town has to have a similar process where the conclusion is the sane. It can offer some incentives to achieve its goals – most attractive is a shorter more structured process with a deadline for the ZBA determination.

The Town can ease resistance with a firm commitment to the suitability of designated affordable zones in return for required abutter interaction before the plans are submitted. It could offer a mediating person to facilitate builder/abutter interaction. The meetings must be limited to some number – say four. It can offer an expedited review and approval process (in excess of 40B) in exchange for some list of incentives – as in higher affordable/market ratios. The current bylaw simply can't compete with a 40B in nearly any way.

I look forward to tomorrows meeting. Again, my apologies for the lateness of this reply,

Regards,

Paul Gaboury