



Commonwealth of Massachusetts
DEPARTMENT OF HOUSING &
COMMUNITY DEVELOPMENT

Deval L. Patrick, Governor ♦ Timothy P. Murray, Lt. Governor ♦ Tina Brooks, Undersecretary

February 10, 2011

John E. Williams
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651 Orchard Street, Suite 200
New Bedford, MA 02744

RE: The Village at Lincoln Park - 40R Project

Dear Mr. Williams:

Thank you for your efforts to move forward with the redevelopment of the former Lincoln Amusement Park in Dartmouth. I am writing to formally confirm the Department's position with regard to your revised development proposal for the Village at Lincoln Park, as articulated in your October 4th letter to DHCD and discussed at a 12/14/10 meeting with DHCD staff.

It is my understanding that your revised proposal calls for replacing attached, mixed-income townhouse condominiums in a 40R sub-district appropriately zoned for multifamily, with 57 market-rate single-family house lots. Under the proposal, the required affordable units would be shifted to multifamily buildings in the remaining sub-districts, where these transferred affordable units would be an additional requirement in excess of the base percentage of affordable units otherwise applicable to those portions of your proposed Project.

The revised plan has raised several questions pertaining to the District's allowed uses, waiver provision and affordability requirements. Questions have also been raised about the implications that any development deemed inconsistent with these 40R requirements could have in relation the overall compliance of the District and thereby any payments to otherwise eligible subsequent Projects therein.

Single-Family Use

As previously communicated to you by my staff, the Department does not agree that the local Smart Growth Zoning (SGZ) bylaw allows for single-family in Subzone A or that a corresponding waiver by the local Plan Approval Authority (PAA) is an appropriate or intended use of the bylaw's waiver provision. If the Town wishes to pursue an eligible single-family component in Subzone A under the Town's SGZ bylaw, it should amend the bylaw (subject to DHCD approval) to allow for this use in the subzone. The Town can then issue a new Plan Approval that incorporates the desired single-family component and complies with the bylaw's revised allowable uses for Subzone A.

Affordability Requirements

The revised plan raised the initial question of whether the required affordability could be consolidated in certain portions of a Project. Both the 40R zoning guidelines and the Town's SGZ bylaw require that affordability be *dispersed throughout the development*. If the proposed multifamily and single-family components are permitted as one Project, the affordability needs to be dispersed proportionately across both components. Similarly, if the proposed single-family and multifamily components are permitted as separate Projects, the affordability must be dispersed throughout each individual Project proper.

While confirmation of this dispersal requirement would seem to imply that Projects must also in fact contain affordable units, subsequent speculation about alternative permitting scenarios led to follow-up questions involving the treatment of a Project where the affordability was not contained in the Project itself. Section 6 of Chapter 40R and corresponding sections of the 40R regulations as well as the Town's SGZ bylaw require that all Projects* provide a minimum of 20% affordability. If the Town were to separately permit an exclusively market-rate single-family Project under the SGZ which did not contain the required 20% affordability within the physical Project, the Project would obviously not comply with the SGZ bylaw, regulations or statute.

Effect of Non-Compliance on Otherwise Eligible Projects

DHCD was further asked to clarify the impact that a Project that was determined to be inconsistent with the SGZ bylaw would have on otherwise eligible Projects elsewhere in the District. Sub-section 7(a)(3) of the statute (corresponding regulation: sub-section 59.07(2)(b)) requires that DHCD make annual determinations as to whether each 40R district "is being developed in a manner that reasonably complies with the minimum requirements set forth... for housing density and affordability."

If a 40R Project does not comply with these requirements at the time of the Town's 40R Annual Update, DHCD would be unable to certify that the district as whole was being developed "in a manner that reasonably complies with the minimum requirements." Subject to due process, DHCD would then be obligated to issue a Letter of Noncompliance for the District. By regulation, until the basis for the non-compliance is cured and the Letter of Noncompliance is no longer in effect, no Density Bonus Payments can be issued for any units in the District. In the case of the Village at Lincoln Park, until the cause of the non-compliance is cured, the Town would not be eligible for Density Bonus Payments for units associated with an otherwise eligible Project elsewhere in the District.

In conclusion, if the Town of Dartmouth sees no alternative but to allow the exclusively market-rate single-family zone as proposed, it can do so but not under the 40R zoning. The Town can amend the *underlying* zoning at Town Meeting so as to allow for this use and then permit the market-rate single-family house lots through the *underlying* zoning, not the 40R zoning. These units would not be eligible for any Density Bonus Payments. However, the Town would not necessarily jeopardize its Incentive Payment provided other development opportunities remained in the District, and the Town could therefore still comply with the so-called "clawback" provision contained in sections 14 and 59.07(1)(f) of the statute and regulations, respectively.

We strongly encourage the development team and the Town to take the necessary steps to permit a viable Project or Projects, consistent with either the existing or an appropriately amended SGZ bylaw. In the

event that one or more of the Commonwealth's affordable housing finance programs might help to make the development project more viable at this time, we would be happy to assist you in identifying any appropriate resources.

Sincerely,



Sandra Hawes
Associate Director

cc: Mark Bobrowski
Blatman, Bobrowski and Mead, LLC

* provided the 40R zoning contains provisions ensuring that the district as a whole will achieve at least 20% affordability, 760 CMR 59.04(1)(e) allows 40R zoning to exempt Projects of 12 or fewer units from the 20% affordability requirement. The Town of Dartmouth did not opt to include this provision in the zoning for the Village at Lincoln Park 40R District, so the affordability requirements apply to all Projects.