



Regional Housing Services Office

Serving Acton, Bedford, Concord, Lexington, Lincoln, Maynard, Natick, Sudbury, Wayland, and Weston

Office Address: 37 Knox Trail, Acton, MA 01720
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February 6, 2024

To: Zoning Board of Appeals

CC: Elizabeth Hughes

From: Liz Rust, RHSO

RE: 292-294 Baker Ave.-NOVO Riverside Commons Comp. Permit Comments from RHSO

I offer the following comments as 40B ‘best practices’ for large rental projects, not commenting on the NOVO project specifics, which the Town and its committees and boards are very adequately addressing.

1. The decision should specifically detail the total number of total units by unit size, the affordable by unit size, and the market by unit size. This summary is useful for on-going monitoring to ensure the property maintains the unit mix.
2. The decision should specifically note that the affordable units are affordable in perpetuity.
3. 40B requires that the affordable units must be proportionately distributed throughout a Project, in terms of both location and unit size/type. This means that the affordable units are listed by address/unit# on the plan and in the decision. This includes ensuring that the affordable units have proportional decks/patios and type of parking and any other exterior amenity. Some specific configurations to review – higher proportion of affordable units adjacent to a busy road or further from common area amenities. MassHousing will be reviewing – an ultimately approving this – and it reinforces with the municipality taking an active interest.
4. Parking is often an issue for the affordable units, where they are more likely to be in uncovered parking, further away. Parking should also be proportional is assigned - if half of the development has 1-car garages and half has 2-car garages, half of the affordable units should have 2-car garages. We have seen conditions whereby the Applicant shall provide (1) parking space to each unit for no charge. The applicant may charge a rental fee for additional spaces, provided that the affordable units shall be offered a second space at no charge or at a reduced charge of no more than 60% of the lowest fee charged for a second space to any market rate unit renter.
5. If the municipality desires local preference, 70% rounded down at initial leasing or 35 units, the decision should specify this. The Town will be required to prepare a justification to submit to MassHousing prior to Final Approval.
6. If the municipality desires local preference for the affordable units, only 70% of the units (rounded down) at initial leasing or 35 units can be reserved for the approved local preference categories (work for the town, work in the town, attend school in the town). The Comprehensive permit should specify the request for a local preference. The Town will be required to prepare a justification for this local preference requirement and submit it to MassHousing prior to their issuance of Final Approval.
7. Timing is important:
 - a. If a project is phased, the ZBA should condition that affordable units are built at proportionally the same rate as the market units. This might not apply to this project.
 - b. The Regulatory Agreement should be recorded before the first occupancy permit.



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- c. The ZBA/town should review and approve the AFHMP prior to the start of marketing.
8. For large rental projects, consider the impact to Town social work staff, including funding the local 'community chest' sort of vehicle (Hugh Cargill), if there is an opportunity for this kind of mitigation. Note that approximately 20% of the units will be rented to extremely low income persons with Section 8 vouchers (based on actual developments in the RHSO service area).
9. MassHousing will be the Monitoring Agent, unless the project switches to LIP – which sometimes happens for financing reasons. The ZBA might include conditions for the municipality receive copies of monitoring reports.
10. The decision could contain a 'springing' restriction. Below is some sample language – to ensure that the affordability is assured is the Regulatory Agreement with the Subsidizing Agency terminates. This might be considered a 'belt and suspenders' sort of condition, as there is case law that protects the affordable units under 40B, but it is useful to have this detailed. Here is some sample language provided by MHP:

If and when the Regulatory Agreement with the Subsidizing Agency is terminated, expires or is otherwise no longer in effect and is not replaced with another regulatory agreement with another Subsidizing Agency, the Applicant shall enter into a Permanent Restriction/Regulatory Agreement With the Town, in a form and substance reasonably acceptable to the Board and its counsel (the "Town Regulatory Agreement"), which shall be recorded with the Middlesex South Registry of Deeds against the Property and signed by all necessary parties, including all mortgagees and lien holders of record. The Town Regulatory Agreement: (i) shall require that the Project shall remain 25% affordable so long as the Project does not conform to local zoning; (ii) shall require that at least twenty five percent of the dwellings in the Project shall be affordable to low and moderate income households as that term is defined in MGL Chapter 40B, Sections 20-23; and (iii) shall restrict the number of allowed units to not more than xxx units, with not more than a maximum of xxx bedrooms as described in this Comprehensive Permit. The Town Regulatory Agreement shall constitute a restrictive covenant and shall be recorded against the Property and shall be enforceable by the Town and shall require that the Affordable units shall remain affordable units in perpetuity, meaning, specifically, for so long as the Project does not conform to the Town Zoning Bylaws.