

# Proposed Amendments to Chapter 195 - Affordable Housing

## Chapter 195

### INCLUSIONARY HOUSING

#### § 195-1. Purpose and intent.

The purpose of this chapter is to provide a mechanism to encourage the development of attainable housing to meet the needs of the Town of Conway, to foster economic and social stability within the larger community by providing opportunities for home ownership and non-transient rental units and provide for the sustainability of affordable units in the future through the use of restrictive covenants and other legal mechanisms and to further the intent of the Town of Conway to meet the requirements described under New Hampshire RSA 674.

#### § 195-2. Authority.

This chapter is adopted under the authority of New Hampshire RSA 674:21 and RSA 674:16, II, relative to innovative land use controls. This chapter is intended as an "inclusionary zoning" provision as defined therein which states in part that inclusionary zoning shall "provide a voluntary incentive or benefit to a property owner in order to induce the property owner to produce housing units which are affordable to persons or families of low- and moderate-income.

#### § 195-3. Applicability.

This chapter shall apply to the following Districts:

- A. Residential/Agricultural District,
- B. Conway Village Residential District;
- C. North Conway Village Residential District;
- D. Center Conway Village Commercial District;
- E. Conway Village Commercial District;
- F. North Conway Village Commercial District; and
- G. Highway Commercial District.

#### § 195-4. Inclusionary Housing Development.

- A. In order to encourage the development of non-transient affordable housing and enhance housing choices in all Zoning Districts, the Zoning Board may grant a Special Exception for an Inclusionary Housing Development, provided that:
  - a. Notwithstanding the minimum lot size and frontage standards set forth in the underlying zoning districts defined within Chapter 190, Zoning, density requirements and frontage standards for units within an Inclusionary Housing Development shall be as follows:
    - i. Within all Residential Districts, lots serviced by municipal water and sewerage systems are permitted up to 8 dwelling units per acre;

- ii. Within all Commercial Districts, lots serviced by municipal water and sewerage systems are permitted 18 dwelling units per acre;
- b. Unless specified within this chapter, Inclusionary Housing Developments shall comply with Chapter 110, Site Plan, Chapter 130, Subdivision, and Chapter 110, Zoning.
- c. In Commercial Districts, building height may be increased by 12 feet above the requirements of the underlying district. Any increase in height shall not impact significant viewsheds or create undesirable visual impacts. The Planning Board may require buildings exceeding 35 feet to be stepped-back to reducing massing, impose increased setbacks to align structure scaling with adjacent development, or require other limitations to protect from visual impacts. Design drawings including perspectives from the street and demonstrating the impact to viewsheds should be presented.
- d. All residential units within an Inclusionary Housing Development shall have a minimum occupiable floor area of 450 square feet.
- e. Inclusionary Housing Developments shall contain a minimum of 20% affordable units rented to an eligible renter and / or 15% units sold to an eligible buyer per the applicable definition included in this chapter. All units must be restricted for non-transient residential use.
- f. Units must be restricted for the required non-transient use and affordable occupancy for a period of 30 years from the date of Certificate of Occupancy issuance. The applicable restriction shall be recorded in the Registry of Deeds as evidence of the same.
- g. Integrated Land Development. Inclusionary Housing Development may pursue an Integrated Land Use Permit as defined in RSA 489 with prior authorization of the Town Engineer;

#### B. Cluster Housing.

In order to encourage the development of non-transient residences and enhance housing choices in all Zoning Districts, the Planning Board may grant a conditional use permit for compact cluster housing developments, provided that:

- a. The predevelopment parcel shall have minimum lot size of 3 contiguous acres;

- b. All units shall be serviced by municipal water and sewerage systems and require a minimum of 5,000 square feet of developable area per unit. Density calculations may include reserved open space;
- c. Cluster Housing Development are permitted as Planned Residential Development or traditional subdivisions. Newly created parcels require a minimum frontage of 50 feet, side and rear setbacks of 10 feet, and front setbacks of 15 feet. The predevelopment parcel must comply with frontage requirements within the underlying District unless the proposal contains a right-of-way and road constructed to Town standards as defined in Chapter 130, Subdivision;
  - i. Structure separation may be determined by Fire Code when a Cluster Housing Development is proposed as a Planned Residential Development. Structure separations must be approved by the Fire Chief.
- d. A minimum of 30% of contiguous developable land within the predevelopment parcel shall be dedicated for open space. Accommodations must be made for accessible and usable open space to residents or the general public and may include trails, park areas, or community pavilions. Land dedicated to open space shall be reserved through a recorded easement solely for conservation or public recreation;
- e. All dwelling units shall be in single-family detached structures or duplexes;
- f. All dwelling units shall have a floor area of not less than 400 square feet nor greater than 1,200 square feet;
- g. All dwelling units shall be used for non-transient occupancy, and, short-term transient occupancy of any dwelling unit is prohibited. Legal restrictive covenants as part of the property deed indicating non-transient occupancy restrictions shall be reviewed and approved by the Planning Board as part of the project review. Any units that the owner elects to rent will be leased with terms of no less than 180 days;
- h. Scale and style of all structures within a Cluster Housing Development shall generally relate in scale and design features to the surrounding neighborhoods, showing respect for the local context;
- i. Parking may be provided within a shared parking area. A minimum of one parking space is required per dwelling unit;

- j. No greater than 35% of the units within a Cluster Housing Development shall be manufactured or mobile homes. Site intended for manufactured or mobile homes must be indicated on the plans and dispersed throughout the development;
- k. Integrated Land Development. Cluster Housing Developments may pursue an Integrated Land Use Permit as defined in RSA 489 with prior authorization of the Town Engineer;
- l. The conditional use permit shall not be combined with any other conditional use permit or special exception, including but not limited to the special exceptions for accessory dwelling units;
- m. All units within a Cluster Housing Development must be restricted for the required non-transient use for a period of 30 years from the date of Final Planning Board approval. The applicable restriction shall be recorded in the Registry of Deeds as evidence of the same.

### C. Planned Residential Development

Planned Residential Development (PRD) standards are required when multiple principle residential structures exist on a single parcel of land. A PRD may be clustered or grouped on site with dimensions, frontages, and setbacks reduced from conventional lot sizes. When multiple residential primary structures are located on a parcel, each structure that contains dwelling unit(s) requires a unit-subdivision with the exception of Accessory Dwelling Units, or Multi-Family and Mixed-Use Developments when all structures, units, and land are within the same ownership.

Planned Residential Developments are considered unit-subdivisions. All applicable Chapter 110, Site Plan and Chapter 130, Subdivision shall apply. In addition, unit-subdivision applications must include:

- a. Internal Dimensional Requirements. Structures shall be at least twenty-five (25) feet apart and shall be a minimum of fifteen (15) feet from property lines.
- b. A private non-profit corporation, association or other non-profit legal entity established by the developer to manage and support the activities of the PRD. The entity shall own all private roadways, common land, and be responsible for maintenance and payment of taxes on same.

Any required covenants or cooperative agreements or similar forms shall be reviewed by Town Counsel to ensure legal form and enforceability prior to recording at the Carroll County Registry of Deeds and final Planning Board approval. The cost of this review shall be paid by the applicant.

Open Space, Common Land, common facilities and other features within a PRD shall be protected by covenants running with the land. Such covenants shall be enforceable by the associated legal entity and/or the Town of Conway.

- c. Prior to approval of a PRD application, the property owner must demonstrate compliance with RSA 356-B, Condominium Act and RSA 356-C, Protection of Tenants in Conversion of Rental Units.
  - a. If the establishment of a condominium association is required by State Statute, all required documents must be reviewed and approved by the Town prior to recording.
  - b. Subsequent to recording any required condominium association documents at the Carroll County Registry of Deeds, copies of all recorded documents must be submitted to the Town within 90 days.
  - c. As approved units within a PRD are constructed, as-built plans are required. The Planning Board may approve a phased development and required as-builts at the completion of each phase.
- d. As per Chapter 110-20, Driveways and Vehicular Access; the Planned Residential Development shall have no more than one driveway onto each road on which it fronts, except that a pair of one-way driveways (a single entrance and single exit) which are adequately designed, signed and marked as being one-way may be substituted for a single two-way driveway. The Fire Chief may require a second means of egress based on unit counts and life-safety considerations.
- e. Driveways constructed to a length in excess of 200 feet must meet standards set by Chapter 130-X, Road Standards. When all units are restricted for non-transient occupancy, a maximum driveway length of 800 feet may be permitted at the discretion of the Town Engineer and Fire Chief. Driveways shall be constructed to a standard which supports emergency vehicles and provides year-round access.

Driveway width for two-way traffic shall be a minimum of 18 feet and a maximum of 24 feet. One-way traffic shall require a minimum of 14 feet and a maximum of 20 feet.

Driveways greater than 200 feet in length shall have construction details defined as part of a subdivision application. Maintenance schedules and responsibilities of the driveway must be defined in the recorded condominium documents.

#### D. Inclusionary Housing Plan Requirements:

- a. All affordable and non-transient units shall be dispersed throughout the project by being fully integrated with the market-rate units such that they are distributed throughout the development and not clustered in one area of the development.
- b. All affordable and non-transient units shall be constructed concurrently with the market-rate units. Progress rates for construction of affordable units shall be the same as that of the market-rate units.
- c. Affordable and non-transient units shall be constructed with complementary exterior design and materials that are comparable with those used in constructing the market-rate units. Similar landscaping shall be applied to both affordable units and the market-rate units. Affordable units as well as market units may be pre-site built units as defined in RSA 674:31-a.
- d. Interior materials and amenities in the affordable units may be different from those used in the market-rate units, provided that the number of bedrooms shall be proportional between affordable units and market-rate units.
- e. When units are calculated to a fractional number, any fraction of less than 1/2 shall be rounded down to the next whole number; any fraction of 1/2 or greater shall be rounded up to the next whole number and treated as a whole inclusionary unit. For example, a three-unit development would be calculated as  $3 \times 25\% = 0.75$ , which would be rounded up to one affordable unit.

E. Future Transactions and Ordinance Enforcement.

- a. Inclusionary units offered for sale or rent and approved pursuant to this chapter shall require a restrictive covenant enforceable by or on behalf of the Town of Conway in a form approved by the Town of Conway and shall be recorded with the Carroll County Registry of Deeds prior to the sale or rental of any affordable or non-transient units. The limitations on the sale of affordable units as described in this chapter and the restrictive covenant shall not apply to a foreclosure by an institutional lender or a deed-in-lieu of foreclosure resulting from a mortgage with an institutional lender and upon foreclosure by an institutional lender or a deed-in-lieu of foreclosure resulting from a mortgage with an institutional lender, the income qualifications and resale limitations set forth herein shall terminate with respect to the impacted unit. Affordable units for rent shall limit annual rent increases to the percentage increase in the area median income.

- b. This chapter shall be enforced by the Town of Conway or its designee in accordance with terms and conditions hereof and the regulations of the Town of Conway. To ensure that only eligible households purchase affordable units, at least 30 days prior to the purchase of an affordable unit the following information shall be provided to the Administrator for review and approval: i) a copy of the fully executed purchase and sale agreement; ii) a certification from a certified public accountant in a form reasonably acceptable to the Town of Conway and signed under the pains and penalties of perjury confirming the annual income of the prospective purchaser; iii) a certification from a certified public accountant in a form reasonably acceptable to the Town of Conway and signed under the pains and penalties of perjury confirming any capital improvements of seller that increase the purchase price;
  
- c. a certification from the eligible buyer that it will be occupying the affordable unit as its primary residence and it has no other interest in any other real estate; v) a copy of the most recently published report by the New Hampshire Housing Finance Authority evidencing the estimated maximum affordable purchase price for housing units in Carroll County; and vi) the most recently published by the United States Department of Housing and Urban Development report evidencing the area median income for a family of four in Carroll County. The Administrator shall review the purchase and sales agreement, the certifications and the reports to determine compliance with this chapter. No sale of an affordable unit shall be permitted unless and until the Administrator has provided written approval that the sale of the affordable unit complies with this chapter and the restrictive covenant. Any sale of an affordable unit that fails to comply with this chapter and the restrictive covenant shall be deemed null and void.
  
- d. To ensure that only eligible households rent affordable units, at least 15 days prior to the rental of an affordable unit the following information shall be provided to the Administrator for review and approval: i) a fully executed copy of the lease; ii) a certification from a certified public accountant in a form reasonably acceptable to the Town of Conway and signed under the pains and penalties of perjury confirming the annual income of the prospective tenant; iii) a copy of the most recently published report by the New Hampshire Housing Finance Authority evidencing the maximum affordable monthly rent for rental units in Carroll County; iv) a certification from the eligible renter that it will be occupying the affordable unit as its primary residence and it has no other interest in any other real estate; and v) the most recently published by the United States Department of Housing and Urban Development report evidencing the area median income for a family of three in Carroll County. The Administrator shall review the lease, the certification and the reports to determine compliance with this chapter. No rental of an affordable unit shall be permitted unless and until the Administrator has



provided written approval that the rental of the affordable unit complies with this chapter and the restrictive covenant. Any rental of an affordable unit that fails to comply with this chapter and the restrictive covenant shall be deemed null and void.

F. Definitions.

For purposes of this chapter the following terms shall be defined as follows:

- A. ADMINISTRATOR — A designated officer with the Town of Conway or, at the Town's discretion, its agent, which agent may be New Hampshire Housing , a local housing nonprofit, or such other third-party administrator as determined by the Town of Conway.
- B. ELIGIBLE BUYER — Is a household whose income does not exceed 110% of the area median income for a family of four in Carroll County as most recently published by the United States Department of Housing and Urban Development. The eligible buyer shall occupy the affordable unit as their primary residence and shall not own any other residential real estate.
- C. ELIGIBLE RENTER — Is a household whose income does not exceed 80% of the area median income for their household size in Carroll County as most recently published by the United States Department of Housing and Urban Development. The eligible renter shall occupy the affordable unit as its primary residence and shall not own any other residential real estate.
- D. AFFORDABLE UNIT FOR PURCHASE – The purchase price of an affordable unit shall be no greater than the estimated maximum affordable purchase price as most recently published by New Hampshire Housing for a household making 110% area median income as published by HUD.
- E. AFFORDABLE RENTAL UNIT The monthly rent including utilities of an affordable rental unit shall be no greater than estimated maximum affordable monthly rent for Carroll County as most recently published by the New Hampshire Housing for 80% AMI.