



JACKLYN R. MORRIS
TOWN CLERK

Office of the Town Clerk

TOWN HALL • 19 WASHINGTON STREET • SHERBORN MA 01770
508-651-7853 • FAX 508-651-0407 • jmorris@sherbornma.org

SHERBORN ANNUAL TOWN MEETING, AUGUST 15, 2020

ARTICLE 21. Amend ZBL Section 4.9 – Inclusionary Zoning PROVISIONS

To see if the Town will vote to amend the Zoning By-laws by adding Section 4.9 Affordable Housing:

4.9 AFFORDABLE HOUSING

A. Purpose and Intent. Affordable housing produced through this Section should comply with the requirements set forth in Mass. General Law (G.L.) Chapter 40B Sections 20-23 and related regulations, guidelines issued by Massachusetts Department of Housing and Community Development (DHCD), and other affordable housing programs developed by the Commonwealth of Massachusetts and/or the Town of Sherborn. DHCD each year provides formulations to define “Eligible Households”, “Affordable Housing”, “Subsidized Housing Inventory (SHI)” and similar terms used throughout this bylaw.

The purpose of this Affordable Housing Bylaw is to create housing opportunities in Sherborn for people of varying ages and income levels; to increase the supply of affordable housing for Eligible Households with low and moderate incomes; to promote a mix and geographic distribution of affordable housing throughout the town; to provide housing options for people who work in Sherborn; and to create housing units eligible for listing in the Subsidized Housing Inventory.

B. Applicability.

1. This Section shall apply to the following uses:
 - a. Any development of 2 or more residential dwelling units.
 - b. Any Subdivision development approved under Section 4.5 of these Zoning Bylaws.
 - c. Planned Unit Development (PUD) approved pursuant to a PUD special permit under Section 4.6 of these Zoning Bylaws.
 - d. Multidwelling EA Projects approved pursuant to Preliminary Development Plan approved at Town Meeting in conjunction with a rezoning of land to EA, and a special permit under Section 5.6 of these Zoning Bylaws.
2. This Section shall not apply to the construction of single-family dwellings on individual lots if said lots were in existence prior to the effective date of this Section.

C. Mandatory Provision of Affordable Housing Units.

1. In any development subject to this Section, the percentage of Affordable Housing Units required will be as specified in the following table, Affordable Housing Units Required by Project Size:

Affordable Housing Units Required by Project Size	
Project Size (Units)	Percent Affordable Units
2-5	Payment in lieu*
6-and over	15%

*For projects consisting of less than 6 Dwelling Units, see Paragraph D. 3.c below.

2. The Table above may generate a fractional Affordable Housing Unit. A fractional Affordable Housing Unit of 0.5 or higher shall be rounded up to the next whole number. Fractional housing units of less than 0.5 shall require a cash payment to the Sherborn Affordable Housing Trust as specified in Paragraph D.3. The Applicant may choose to have the fractional housing unit of less than 0.5 rounded up to the next whole number, rather than converted to a cash payment.

3. Any Affordable Housing Unit shall have a Deed Rider to regulate the future resale of the property.

D. Methods of Providing Affordable Housing Units. The Planning Board in consultation with the Sherborn Affordable Housing Board of Trustees, if in existence, may authorize one or more of the following methods for providing Affordable Housing Units, alone or in combination.

1. On-Site Units. Construction of Affordable Housing Units within the development shall be permitted by right. The following conditions shall apply:

- a. On-site Affordable Housing Units shall be in accordance with the requirements of the Local Initiative Program (LIP), a state housing initiative administered by the DHCD to encourage communities to produce affordable housing for low- and moderate-income households.
- b. On-site Affordable Housing Units shall be as conveniently located to the development's common amenities as the market rate units.

2. Off-Site Units. Creation of Affordable Housing Units on a lot or parcel that is not included in the subject development may be approved by the Planning Board. The following conditions shall apply:

- a. An off-Site Affordable Housing Unit may be constructed by the Applicant or be an existing Dwelling Unit that is rehabilitated or re-purposed by the Applicant.
- b. Off-Site Affordable Housing Units need not be located in the same zoning district as the development. The required number of off-site Affordable Housing Units may be created at one or multiple locations, and may consist of a combination of newly-constructed and existing Dwelling Units, either rehabilitated or re-purposed.
- c. The location or locations of the Off-Site Affordable Housing Units shall be subject to approval by the Planning Board. Off-Site Affordable Housing Units may be constructed as (if new) or converted to (if existing) a duplex or multi-family building offering 2 or more dwelling units. If in an area of single-family homes, the final result must be that the premises (including primary building, accessory structures, driveway, etc.) have the appearance of a single-family home as determined by the Planning Board. Exterior renovations/improvements shall reflect the character of the surrounding neighborhood.

- d. The Applicant shall provide a demonstration of site control, documenting that the Applicant or a related entity holds title, ground lease, option, or contract for purchase.
- e. The Applicant shall demonstrate that the land is developable and suitable for the number of Affordable Housing Units required in conformance with this Zoning Bylaw and any other relevant state and local regulations governing the property.
- f. The Applicant shall provide a demonstration of the necessary financing to complete the off-site development or rehabilitation.
- g. The Applicant shall provide an architect's conceptual site plan with unit designs and architectural elevations, and a demonstration that the site plan can meet the Site Plan Review standards set forth in Section 5.3 of this Zoning Bylaw.
- h. The Planning Board may require that the Applicant submit appraisals of the off-site property in question, as well as other data relevant to the determination of equivalent value.
- i. Off-Site Affordable Housing Units shall not be approved by the Planning Board unless it can be documented that the units will be approved by DHCD to be added to the Town's Subsidized Housing Inventory (SHI).
- j. The DHCD LIP (Local Initiative Program) Design and Construction Standards as may be amended shall apply.

3. Payment in lieu of Affordable Housing Units

- a. Such payments shall be made to the Sherborn Affordable Housing Trust if in existence.
- b. For projects with 6 or more units, the payment shall be according to the following formula:

$$N \times (M-A) = \text{Required in lieu payment to the Affordable Housing Trust}$$

Where

N = the number of required affordable housing units based on section C.

M = the median sales price for market rate housing units during the 24 months prior to the submission date of the project application. The value of M is determined by the Sherborn Board of Assessors.

A = the DHCD determined selling price of an affordable unit for the housing type in the proposed development.

Example A: Project size is 10 housing units. Based on 15% affordable units, 1.5 affordable housing units are required, and must be rounded up to 2. Where $M = \$850,000$ and $A = \$250,000$, then $2 \times (\$600,000) = \$1,200,000$ payment in lieu of affordable housing. The applicant may decide to build 2 affordable units instead of making a payment or build 1 affordable unit and make a payment of \$600,000.

Example B: If Project size is 40 housing units. Based on 15% affordable units, 6 affordable housing units are required. Where $M = \$850,000$ and $A = \$250,000$, then $6 \times (\$600,000) = \$3,600,000$ payment in lieu of affordable housing. The applicant may decide to build 5 affordable units and make a payment of \$600,000 or any other proportional combination.

- c. For projects with fewer than 6 units, the payment shall be according to the following formula: $TU/6 \times (M-A) = \text{Required in lieu payment to Affordable Housing Trust}$

Where

TU = Total Units proposed.

M & A are the same as above.

Example C: Project size (TU) is 4 housing units. $TU/6 = 0.66667$. Where $M = \$850,000$ and $A = \$250,000$, then $TU/6 \times (\$600,000) = \$400,000$ payment in lieu of affordable housing. The applicant may decide to build 1 affordable unit instead of making a payment. Projects that voluntarily provide an Affordable Housing Unit shall be exempt from such payment.

d. Payments in lieu of Affordable Housing units shall not be accepted as part of a rental development, either mixed use or multifamily development.

e. The timing of payments in lieu shall be made according to the table "Schedule for Completion of Affordable Housing Units" set forth in Paragraph H1 herein.

E. Location and Comparability of Affordable Housing Units

1. The permit application for the proposed development shall include a plan showing the proposed locations of the Affordable Housing Units.
2. Newly constructed on and off-site Affordable Housing Units shall:
 - a. Comply at a minimum with the DHCD LIP Design and Construction Guidance as it may be amended, including the requirement that Affordable Housing Units, except for size, shall be indistinguishable from market-rate units as viewed from the exterior.
 - b. Be equivalent to the market-rate units in terms of design, quality of construction and workmanship, mechanical, plumbing, heating and cooling systems, roofing, insulation, windows and energy efficiency;
 - c. Include a garage(s) and/or parking space if the market-rate units include a garage(s) and/or parking space;
 - d. Contain good quality and highly durable interior finishes, flooring, lighting and plumbing fixtures, and appliances that are consistent with contemporary standards for new housing and installed with equivalent workmanship to the market rate units.
 - e. Provide product and system warranties equivalent to those supplied for market rate units.
3. Off-site rehabilitated units for affordable housing shall comply at a minimum with the following criteria:
 - a. Exterior renovations/improvements shall reflect the character of the surrounding neighborhood.
 - b. The DHCD's LIP Design and Construction Standards as may be amended shall apply.
4. Newly constructed Affordable Housing Units shall contain at least the minimum amount of interior living space, excluding basement space, as specified in the DHCD LIP Design and Construction Guidance.
5. In the case of existing off-site dwelling units purchased and resold or rented as Affordable Housing Units with an appropriate deed restriction, the Planning Board may make reasonable exceptions for the size and number of bedrooms.
6. The owners and tenants of market-rate and on-site Affordable Housing Units shall have the same rights and privileges to use any common amenities within the development.

7. The Building Commissioner may inspect the premises to ensure that the developer has complied with these requirements and if necessary, require reasonable changes to achieve compliance.

F. Affordable Purchase and Rental Prices.

1. The initial affordable purchase price shall comply with the DHCD LIP Guidelines in effect when the Regulatory Agreement is filed with DHCD. The Regulatory Agreement is a comprehensive agreement among the Town, developer and DHCD, which defines the responsibility for monitoring and enforcing the affordable unit in perpetuity. It determines the calculations used to determine an affordable purchase price that is be consistent with the terms, rates, fees, down payments, and other requirements of first-time homebuyer mortgage products available from lending institutions licensed by the Commonwealth of Massachusetts in accordance with the requirements of DHCD.
2. In a rental project, the initial affordable rent shall comply with applicable DHCD requirements and LIP Guidelines.

G. Applicant Responsibilities.

1. Marketing Plan for Affordable Housing Units. The Applicant shall select Qualified Purchasers and Renters via lottery under an Affirmative Fair Housing Marketing Plan prepared and submitted by the Applicant and approved by the Planning Board in consultation with the Sherborn Affordable Housing Trust. The marketing plan shall comply with LIP Guidelines in effect on the date of filing the Regulatory Agreement with DHCD.
2. Regulatory Agreement. For both ownership and rental projects, the Applicant shall prepare the Regulatory Agreement in consultation with and for approval by the Town of Sherborn and DHCD. Said Regulatory Agreement will be executed by DHCD, the Town of Sherborn, and the Applicant. The Applicant shall record the Regulatory Agreement with the Middlesex County Registry of Deeds or Registry District of the Land Court.
3. Deed Restriction. The Applicant shall prepare a Deed Rider for each Affordable Housing Unit that is consistent with that used in the LIP and the Regulatory Agreement to be recorded with the Middlesex County Registry of Deeds or Registry District of the Land Court.

H. Timing of Construction of Affordable Housing Units.

1. On-site Affordable Housing Units shall be constructed in accordance with table below. Proportionality shall be determined by the number of building permits issued for affordable and market-rate units. In accordance with the table, Affordable Housing Units shall not be the last units to be built in any development that is subject to this Section.

Schedule for Completion of Affordable Housing Units	
Percent Market-Rate Units	Percent Affordable Units
Up to 30%	None required
30% plus 1 unit	At least 10%
Up to 50%	At least 30%
Up to 75%	At least 50%
75% plus 1 unit	At least 70%
Up to 90%	100%

2. Construction or rehabilitation of Off-Site Affordable Housing Units shall follow the same schedule as for on-site units in the Schedule for Completion of Affordable Housing Units table.

3. In the case of payments in lieu of Affordable Housing Units, the following methods of payment may be used at the option of the Applicant:

- a. The total amount due shall be paid upon the release of any lots or, in the case of a development other than a subdivision, upon the issuance of the first building permit; or,
- b. The total amount due shall be divided by the total number of market rate units in the development. The resulting quotient shall be payable at, or prior to, the closing of each market rate unit; or,
- c. A combination of the above methods if approved by the Planning Board.

I. Preservation of Affordability.

1. Homeownership and rental Affordable Housing Units provided under this Section shall be subject to the requirements of guidelines issued by DHCD and a DHCD approved Deed Rider that complies with LIP requirements as they may be amended for inclusion in the Chapter 40B Subsidized Housing Inventory and is enforceable under G.L. Chapter 184, Section 26 or G.L. Chapter 184, Sections 31-32. Affordable Housing Units required by and provided under the provisions of this Section shall remain affordable to the designated income group in perpetuity, or for as long as legally permissible.

2. No building permit for any unit in a development subject to this Section shall be issued until the Town has approved the Regulatory Agreement and the Applicant has submitted it to DHCD. Further, the building permit representing fifty-one percent of the development shall not be issued until the Regulatory Agreement has been approved by DHCD and recorded with the Middlesex County Registry of Deeds or Registry District of the Land Court.

3. For homeownership units, issuance of the certificate of occupancy for any Affordable Housing Unit is contingent on a DHCD-approved Deed Rider signed by the qualified purchaser and recorded with the Middlesex County Registry of Deeds or Registry District of the Land Court.

4. Subsequent resale of an Affordable Housing Unit shall be made to a qualified affordable housing purchaser in accordance with the deed restriction.

5. The purchaser of an Affordable Housing Unit shall execute a Deed Rider in a form provided by the DHCD, granting, among other things, the Town of Sherborn the right of first refusal to purchase the property in the event that a subsequent qualified purchaser cannot be found.

Or take any other action relative thereto. (*Select Board for the Planning Board*)

MOTION: Steven Tsai moved, duly seconded by Stephen Leahy, favorable action, and that the Town vote to amend the Zoning By-laws by adding Section 4.9, Affordable Housing, as printed in the warrant for the purpose of increasing the supply of affordable housing in Sherborn.

As duly qualified Clerk of the Town of Sherborn, I hereby **CERTIFY** that, at the regular session of the Annual Town Meeting of the Town of Sherborn, held at the Sherborn DPW Garage, 7 Butler Street, on Saturday, August 15, 2020, duly called, and held pursuant to the Warrant therefor issued by the Select Board on July 9, 2020, and duly served in accordance with the Town's By-laws, at which meeting a quorum was present and voting throughout, the foregoing **VOTE was Called by the Moderator as PASSED BY 2/3RDS.**

Jacklyn R. Morris
Sherborn Town Clerk