



YARMOUTH MAINE

To: Chair Holden and Members of the Yarmouth Planning Board
From: Erin Zwirko, Director of Planning & Development
Re: Zoning Amendment – Chapter 701, Article II.DD
Date: February 22, 2024

Introduction and Background

In late 2022, the Yarmouth Affordable Housing Committee (YAHC), acting on the recommendations and interest of the Town Council brought forward a mandatory inclusionary zoning amendment for consideration. The Planning Board held two hearings on the matter on December 14, 2022¹, and March 8, 2023.² The effort was put on hold in March in order for the Department of Planning & Development to address the requirements of LD 2003.

At the January 24, 2024, Planning Board meeting, YAHC with support from the Department of Planning and Development returned with a voluntary, incentive-based ordinance recognizing that conditions have changed:³

- The economics have changed. Now, in addition, to high construction and labor costs, the high interest rates make projects more difficult to pencil out.
- As a result, none of the boards, including YAHC, want to see a new requirement compound this economic environment and stymie any residential development pipeline given the state's housing crisis.
- Finally, the process to adopt amendments for LD 2003 provided some insight into acceptable incentives, and similar language has been built into this revised amendment.

This memo outlines the revisions made to the proposed ordinance since the previous hearing and offers a recommendation for adoption.

Summary of Planning Board Discussion

The Planning Board discussed the following items regarding the proposed incentive program:

1. Members would like to see more clarity that the proposed incentive program is voluntary.
 - a. Staff revised Article II.DD.1.a and b to make clear that the ordinance is voluntary and may apply to certain projects. The phrase “is applicable” was replaced with “may apply.”

¹ Materials from the December 14, 2022 meeting are online:

https://yarmouth.me.us/government/boards_and_committees/planning_board/index.php#outer-437sub-2253

² Materials from the March 8, 2023 meeting are online:

https://yarmouth.me.us/government/boards_and_committees/planning_board/index.php#outer-2186sub-2204

³ Materials from the January 24, 2024 meeting are online:

https://yarmouth.me.us/government/boards_and_committees/planning_board/index.php#outer-3216sub-3277

2. Members discussed the various incentives outlined in Article II.DD.1.d and generally found support amongst the members for the proposed incentives except for the height bonus. Members did not want to include the height bonus for either CD4 or CD4-C.
 - a. Staff removed these two provisions.
3. As noted by public comment on this proposal, biannual (twice a year) review seems too short to be an effective review.
 - a. Staff acknowledged that the text should be every other year and revised it as such (biennial).
4. Public comment noted some awkward phrasing in the proposed amendments to Article II.DD.2.e.i. This section relates to the recently adopted LD 2003 regulations for Affordable Housing Developments and best practices that have emerged.
 - a. Staff acknowledged the awkward phrasing and revised.

Additional Considerations

As a reminder, the Department is also proposing amendments to Article II.DD.2 to adopt best practices relative to LD 2003:

- Clarifying the restrictive covenant provisions for homeownership units in Article II.DD.1.e.v (deletes language that should not have been carried over from the rental provisions);
- Applying the restrictive covenant provisions for rental units to the LD 2003 “Affordable Housing Developments” requirements in Article II.DD.2 (incorporates best practice around LD 2003); and
- Strengthening the language around the density bonus allowed for LD 2003 “Affordable Housing Developments” in Article II.DD.2 (incorporates best practice around LD 2003).

Discussion and Recommendation

As discussed in the staff report issued for the January hearing, YAHC and the Department heard loudly that the community and the Planning Board were concerned about a mandatory ordinance and shifted to the proposed incentive ordinance. To be clear, YAHC still strongly believes that there is a need for a mandatory inclusionary zoning policy. There have been calls for the creation of an inclusionary zoning ordinance since the 1980 Comprehensive Plan; this is not a new concept for Yarmouth. However, the reality of the real estate market suggests that now is not the time to press forward with changes that may dampen any housing production in Yarmouth. The requirement to evaluate the ordinance every other year will ensure that the Town continues the conversation on ordinances that encourage (or require) the inclusion of deed-restricted Affordable housing.

A voluntary ordinance may only be as effective as the incentives. YAHC and the Department have put forward the incentives that can be offered through a zoning ordinance and acknowledge that other decision makers in town can make decisions around financial incentives. YAHC and the Department request that the Planning Board reconsider the removal of the height bonus for the CD4-C District (Route One). At the previous meeting, there was a discussion on the contextual differences between the CD4 District (Main Street) and the CD4-C District (Route One). YAHC and the Department agree that the height bonus may be inappropriate for Main Street but note that the additional height can be accommodated on Route One.

Last fall, the Comprehensive Plan Steering Committee held an engagement session on housing. One of the activities at this event included identifying where greater density could be accommodated in Yarmouth. Although the groups disagreed on some areas in town, Route One was universally identified as a place where greater density can be accommodated. Although the event did not focus on height, increased density may be best accommodated vertically especially where the lot size and shape may not accommodate a longer building or due to other constraints on the site.

Further, it was discussed that the height bonus may be a disincentive as the greater height may dictate the need for an elevator. Per a discussion with the Code Enforcement Officer, it is accurate that a multifamily

structure requires an elevator for structures that are more than three stories per ADA requirements. As with any incentive program, a developer is not required to adopt any of the incentives. If the cost of an elevator cannot be accommodated within any specific budget, that developer would not use the incentive. As previously pointed out, there are limited incentives that can be offered in the character districts, and additional height opens new opportunities.

Planning Board Action

It appears that YAHC and the Department addressed all of the comments made by the Planning Board at the previous meeting. Following any public comment, the Planning Board may want to consider recommending approval of the zoning amendment to the Town Council with the following motion:

On the basis of the application, plans, reports and other information submitted, and the findings and recommendations contained in Planning Board Report dated February 22, 2024, for an amendment to Chapter 701, Article II.DD to adopt an incentive-based affordable housing program and other related amendments, the Planning Board finds that the amendment **[is/is not]** in conformance with the Yarmouth Comprehensive Plan, and therefore **[recommends/does not recommend]** that the Town Council adopt the proposed zoning text amendment.

Such motion moved by _____, seconded by _____,
and voted ____ in favor, ____ opposed, _____.
(note members voting in opposition, abstained, recused, or absent, if any).

Attachment:

1. Revised Amendment to Chapter 701, Article II.DD, dated December 18, 2023, revised January 30, 2024

Proposed Voluntary Incentive Program and Related Amendments

Amend Chapter 701, Zoning, Article II.DD., by adding the following section:

DD. AFFORDABLE HOUSING PROGRAMS

It is within the public interest to promote an adequate supply of housing that is affordable to a range of households at different income levels. This section outlines the Town of Yarmouth affordable housing programs.

1. ~~Reserved~~-Affordable Housing Incentives

- a. Purpose: The purpose of this section is to incentivize developments to voluntarily provide a portion of affordable units and by doing so support the creation of a more economically diverse and inclusive Yarmouth.
- b. Applicability:
 - i. This ordinance may apply to any development project that creates net new dwelling units for rent or sale through new construction, substantial rehabilitation of existing structures, adaptive reuse or conversion of nonresidential use to residential use, or any combination of these elements.
 - ii. This ordinance may also apply to projects using public financing requiring affordability restrictions, as defined by tax increment financing, U.S. Department of Housing and Urban Development funds such as HOME or CDBG, other federal, state, or local housing program, or the Low-Income Housing Tax Credit program.
 - iii. Any development project that designates at least 10 percent of the units in the project that meet the definition of affordable housing unit for rent or sale to an eligible household are eligible for a density bonus and other incentives. Where the number of affordable units results in a fraction of less than 0.5, the number of onsite affordable units is rounded down to the nearest whole number.
- c. Standards:
 - i. In cases where projects are completed in phases, affordable units shall be provided in proportion to the development of market rate units per phase unless otherwise permitted through by the Planning Authority.
 - ii. Affordable units must be integrated with the rest of the development, must use a common entrance if in a structure containing multiple units, and must provide no indications from common areas that these units are affordable units.
 - iii. Affordable units shall be dispersed throughout the development and shall be comparable in size, number of bedrooms, materials, interior finishes, amenities and parking to dwelling units in the neighborhood and in the development in which they are located. Exteriors of affordable units shall be consistent with and indistinguishable from the exteriors of other units in the project.
 - iv. Affordable housing units, whether for sale or for rent, shall not be used for short-term rentals.

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Proposed Voluntary Incentive Program and Related Amendments

- d. Development Incentives for eligible projects: To facilitate the objectives of this section, the following expedited review process and modifications to the dimensional and parking requirements may be permitted.
- i. The Planning Authority shall perform its review of an eligible project in as expedited a manner as is practical, without impairing the scope of thoroughness of its review. The expedited review shall consist of a pre-application meeting with Town of Yarmouth staff and Yarmouth Water District staff, and two Planning Board public hearings consisting of a preliminary review and a final review. Additional meetings with the Planning Board may only be scheduled upon mutual agreement by the Planning Board and the applicant. No applicant shall have public hearings until the application is deemed complete by the Director of Planning & Development or their designee.
 - ii. In zoning districts or character districts that establish a minimum lot size or a minimum lot area per unit, for each affordable unit offered, two additional units may be included in the development project regardless of minimum lot size or minimum lot area per unit.
 - iii. Two off-street parking spaces are allowed for every three dwelling units in the development. Where the maximum off-street parking spaces results in a fraction, the total number of parking spaces may be rounded up or down to the nearest whole number.
- e. Administration and Enforcement:
- i. Prior to issuing a Certificate of Occupancy for the development project, the owner of the development project must execute a restrictive covenant that is enforceable by a party acceptable to the Town and record the restrictive covenant in the Cumberland County Registry of Deeds to ensure affordability for at least 30 years after completion of construction.
 - ii. The restrictive covenant shall outline sales prices, resale prices, initial rents and rent increases, and income verification processes, for affordable units to ensure affordability for the entire affordability term to the extent legally possible. The restrictive covenant shall also outline marketing and tenant selection for the affordable units consistent with state and federal fair housing laws. The restrictive covenant shall also identify a monitoring agent for the affordable units.
 - iii. The restrictive covenant shall require that occupancy of all of the affordable rental units in the development, or an equivalent number of affordable dwelling units in the project when specific locations for the affordable units are not specified, will remain limited to households at or below 80% of the local area median income at the time of initial occupancy through the term of the restrictive covenant.
 - iv. The restrictive covenant shall require that occupancy of all of the affordable homeownership units in the development will remain limited to households at or below 120% of the local area median income at the time of initial occupancy through the term of the restrictive covenant.
 - v. Affordable housing units for sale, if converted to affordable housing units for rent, or vice versa, shall become subject to the income limits and other requirements of such units.

Deleted: <#>In the CD-4 and CD4-C Character Districts, for any mixed-use development or multifamily development project, the Planning Board may approve a structure height of 4 stories and 45 feet as long as the additional height in excess of 3 stories and 35 feet is stepped back 7.5 feet along building elevations with frontage.¶
In the Commercial Zoning District, for any mixed-use development project, the Planning Board may allow an increase in the residential floor area to 75% and a structure height of four stories and 45 feet as long as the additional height in excess of 3 stories and 35 feet is stepped back 7.5 feet along building elevations with frontage.¶

Proposed Voluntary Incentive Program and Related Amendments

- vi. The Department of Planning & Development shall provide a report to the Planning Board and Town Council evaluating the efficacy of this ordinance and any recommended updates to the ordinance on a ~~biennial~~ basis from the effective date of this ordinance.

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Amend Chapter 701, Zoning, Article II.DD.2.b.iii, as follows:

iii. The restrictive covenant shall require that occupancy of all of the affordable rental units in the development, or an equivalent number of affordable dwelling units in the project when specific locations for the affordable units are not specified, will remain limited to households at or below 80% of the local area median income at the time of initial occupancy through the term of the restrictive covenant.

Amend Chapter 701, Zoning, Article II.DD.2.e.i, as follows:

i. A ~~dwelling unit~~ density bonus of 2.5 times the base density that is otherwise allowed in that location ~~the underlying district is allowed. This density bonus applies~~ before any other allowable density bonuses or other means that could increase the density of lots not used for affordable housing. Where the density bonus results in a fraction, the number of units is rounded up to the nearest whole number. In areas where there are no base density requirements, there is no density bonus.

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