

Town of Lancaster Inclusionary Zoning Article

Article ____ To see if the Town will vote to add “Inclusion of Affordable Housing” to the Lancaster Zoning Bylaws as Section 220-8.8 of Article III, by inserting the following sections: A. Purpose and intent, B. Applicability, C. Inclusionary housing special permit, D. Provision of affordable housing. E. Preservation of affordability, F. Timing of construction for affordable units, G. Siting of affordable units, H. Minimum design and construction standards, I. Minimum lot size, J. Payment-in-lieu-of-units, K. Combining construction with payment-in-lieu-of-units, L. Local preference, M. Marketing plan for affordable units, N. Related fees, O. Conflict with other bylaws, P. Severability

§ 220-8.8 – Inclusion of Affordable Housing

A. Purpose and intent. The purpose and intent of this zoning bylaw is to promote the inclusion of affordable housing as part of the development of housing overall in the Town of Lancaster. This is also known as Inclusionary Zoning. More specifically:

- (1) The purpose of these provisions is to encourage development of new or renovated housing that is affordable to eligible low- and moderate-income households in perpetuity. At a minimum, affordable housing produced through this regulation shall be in compliance with the requirements set forth in MGL c. 40B, §§ 20 through 23 (as the same may be amended from time to time), and other affordable housing programs developed by state, county and local governments.
- (2) It is intended that the Affordable Housing Units (AHU's) that result from the application of this bylaw be considered as Local Action Units (LAU's), in compliance with the requirements for the same as specified by the Department of Housing and Community Development (DHCD) or successor state agency or regulations.
- (3) The LAU's created by this bylaw are intended to add to the town's Subsidized Housing Inventory (SHI) and contribute to local efforts to meet the state's requirement for affordable housing levels. Accordingly, these units must meet DHCD's Local Incentive Program (LIP) criteria to be suitable for inclusion and counted in the Town's SHI.
- (4) The application of the affordable housing provisions is intended to consider other important zoning objectives, such as those given in section 220-1 A. of the Town of Lancaster's bylaws. Specifically, conservation of natural resources, preservation of open space, protection of town character, and the most appropriate use of land shall be considered along with the application of these rules.

B. Applicability. In all zoning districts, including overlay districts, the Inclusionary Zoning provisions of this section shall apply to the following uses:

- (1) Division of land. This bylaw shall apply to the division of contiguous land held in single or common ownership into six (6) or more residential lots.
- (2) Multiple dwelling units. This bylaw shall apply to the construction of six (6) or more dwelling units, whether on one or more contiguous parcels, alteration, expansion, reconstruction, or change of existing residential or non-residential space.
- (3) Flexible development. This bylaw shall apply to any Flexible Development that includes six (6) or more assisted living units.
- (4) Assisted living. This bylaw shall apply to any life care facility development that includes six (6) or more assisted living units and accompanying services.
- (5) The provisions of Subsection B(2) above shall apply to the construction of six (6) or more dwelling units on individual lots if said six or more lots are held in single or common ownership.
- (6) To prevent the intentional segmentation of projects designed to avoid the requirements of this bylaw, parcels held in single or common ownership and which are subsequently divided into six (6) or more lots shall also be subject to this bylaw.

Commented [JGM1]: "Assisted living" and "life care facility" are undefined in the zoning bylaws. Furthermore, Section 220-9 makes a distinction between "Living facilities for seniors" and "Long-term health care facility." Is this section intended to regulate one, both, or neither?

I recommend using a term currently found in Section 220-9, or insert a reference to Section 220-9.A or 220-9.B here.

- (7) To address the possible segmentation of projects over time, any construction that results in a net increase of six (6) or more dwelling units measured over a 10-year period shall be subject to this bylaw.
- (8) If the Special Permit Granting Authority (SPGA) determines that an applicant has established surrogate or subsidiary entities to avoid the requirements of this §B, then an Inclusionary Housing Special Permit shall be denied.

Commented [JGM2]: When is the 10-year period measured from? E.g., Issuance of building permit of first dwelling unit, issuance of certificate of occupancy, commencement of construction, date of initial application to SGPA?

C. Inclusionary housing special permit. Pursuant to MGL c. 40A, § 9, the development of any project set forth in subsection B above shall require the grant of a Inclusionary Housing Special Permit (IHSP) from the Planning Board or the Zoning Board of Appeals as applicable, the Special Permit Granting Authority (SPGA). The Special Permit shall be granted if the proposal meets the requirements of this bylaw.

Commented [JGM3]: I recommend providing for a SPGA in cases where the zoning bylaw is silent. You may wish to consider the following:

D. Provision of affordable housing. As a condition for approval of a special permit, the applicant shall contribute to the local inventory of affordable housing by providing at least the number of AHU's specified below, which must be eligible for inclusion in the Town's SHI.

C. Inclusionary housing special permit. The development of any project set forth in subsection B above shall require the grant of a Inclusionary Housing Special Permit (IHSP). The special permit granting authority for such permit shall be the special permit granting authority for the use proposed, if applicable, and otherwise shall be the [Zoning Board or Appeals OR Planning Board]. The Special Permit shall be granted if the proposal meets the requirements of this bylaw.

- (1) For developments of six (6) to nine (9) ownership or rental units, at least one (1) unit of the total proposed dwelling units shall be affordable.
- (2) For development of ten (10) to nineteen (19) ownership or rental units, at least two (2) units of the total proposed dwelling units shall be affordable.
- (3) For development of twenty (20) to twenty-nine (29) ownership or rental units, at least three (3) units of the total proposed dwelling units shall be affordable
- (4) For development of thirty (30) to forty-four (44) ownership or rental units, at least twelve and a half percent (12.5%) of the total proposed dwelling units shall be affordable.
- (5) For development of forty-five (45) or more ownership or rental units, at least fifteen (15%) of the total proposed dwelling units shall be affordable.
- (6) The following schedule is provided for allocating affordable units given a particular range of total lots in a subdivision or total units in a multi-family development.

Total Units	Minimum Affordable Units
6 to 9	1
10 to 19	2
20 to 29	3
30 to 44	12.5%
45 and greater	15%

(7) For the calculation of AHU's per §§ D(1) through D(6), fractions of one-half (½, 0.5) dwelling unit or more shall be rounded up to the nearest whole number, while lesser fractions shall be rounded down a fractional unit. For example, a proposed development of:

- 50 housing units (15% minimum) would require 7.5 affordable units, rounded up to 8 units (16%)
- 35 housing units (12.5% minimum) would require 4.375 affordable units, rounded down to 4 total affordable units (11.4%)

E. Preservation of affordability.

- (1) All ownership developments with affordable units shall provide deed restrictions on the appropriate units to ensure that they shall remain AHU's in perpetuity and be counted toward the Lancaster Subsidized Housing Inventory. The deed restriction shall be consistent with riders approved by DHCD, and shall grant the Town the right of first refusal to purchase any ownership units in the event that a qualified purchaser cannot be obtained. In addition, no certificate of occupancy permit shall be granted for any home-ownership development containing affordable home-ownership units prior to the recording of the deed restriction at the Registry of Deeds.
- (2) All multi-family rental developments with affordable units shall provide a regulatory agreement on the appropriate units to ensure that they remain AHU's in perpetuity. The regulatory agreement shall be consistent with regulatory agreements approved by DHCD, and shall grant the Town the right of first refusal to lease any rental unit in the event that a qualified tenant cannot be obtained. In addition, no certificate of occupancy permit shall be granted for any multi-family rental development containing affordable rental units prior to the recording of the regulatory agreement at the Registry of Deeds.
- ~~(3) The deed restriction or regulatory agreement, as applicable, shall grant the Town of Lancaster's right of first refusal, for a period of not less than 90 days to purchase the property or assignment thereof, in the event that despite diligent efforts to sell the property, a subsequent qualified purchaser or tenant cannot be located.~~
- (4) In the event that any rental unit is converted to a condominium ownership unit, the condominium unit shall be restricted in perpetuity as per §§ E(1) and E(2) above to ensure that it remains affordable to income-eligible households as prior to the condominium conversion.
- (5) The Lancaster Affordable Housing Trust or its agent shall monitor, oversee, and administer the details for all re-sale or re-lease of any affordable units in the Town.

F. Timing of construction for affordable units.

- (1) The construction of affordable units shall be commensurate with the construction of market rate units per the schedule in §§ D(1) through D(7) above. Should projects be built in phases, each phase shall contain the same proportion of affordable units to market rate units as the overall development.
- (2) The building permit for the last-market rate unit shall not be issued until all affordable units have been constructed, unless an alternate construction schedule has been approved by the SPGA.

G. Siting of affordable units. The affordable units created under this bylaw shall be proportionally distributed throughout the proposed project, in terms of location, size, and type.

- (1) Affordable units shall be provided within the development that requires the affordable units.

Commented [JGM4]: The DHCD's form of deed rider grants the Town a right of first refusal to purchase affordable units. In my opinion, I do not think this needs to be called for separately. You may want to consider the following instead:

(1) All ownership developments shall be subject to a permanent affordable housing restriction and/or regulatory agreement, ensuring that the AHUs shall remain affordable in perpetuity, and each affordable units shall be conveyed subject to a deed rider acceptable to and approved by the Town and DHCD and granting the Town such rights as may be required, which may be a right of first refusal, to ensure that said AHU's remain affordable in perpetuity and be counted toward the Lancaster Subsidized Housing Inventory. In addition, no certificate of occupancy permit shall be granted for any home-ownership development containing affordable home-ownership units prior to the recording of the affordable housing restriction and/or regulatory agreement at the Registry of Deeds, as the SPGA shall deem appropriate.

Commented [JGM5]: Please see above comment. You may wish to consider the following:

(1) All multi-family rental developments with affordable housing units shall be subject to a regulatory agreement, ensuring that the AHUs shall remain affordable in perpetuity. Said regulatory agreement shall be approved by the Town and DHCD. In addition, no certificate of occupancy permit shall be granted for any multi-family rental developments containing affordable home-ownership units prior to the recording of the regulatory agreement at the Registry of Deeds, as the SPGA shall deem appropriate.

- (2) Their siting shall be integrated within the development along with the locations of the other dwellings, rather than segregated or concentrated in one area.
- (3) The AHU's shall not be situated in less desirable locations than market-rate units and shall, on average, be no less accessible to public amenities such as transportation, recreation or open spaces, and shopping or other businesses.
- (4) The location of each and every AHU shall be identified on the site plans and approved by the Planning Board. In the case of multi-family dwellings, the locations of affordable units shall be identified on the building floor plans for each and every structure of this type and approved by the SPGA.

H. Minimum design and construction standards. The exterior appearance of the affordable units shall be compatible with and essentially indistinguishable from the other units in the development. The AHU's shall be designed with similar features and built with comparable quality materials with respect to the market-rate dwellings built.

I. Minimum lot size. The average lot size for affordable home units shall be comparable to those of their market-rate counterparts within the development.

J. Payment-in-lieu-of-units. As an alternative to the requirements of Subsection D and to the extent allowed by law, an applicant may provide a payment to the Lancaster Affordable Housing Trust ("LAHT") to be used for the production of affordable housing in lieu of constructing ownership units within the proposed development.

- (1) Payment-in-lieu-of-units ("PILU"). The applicant for development subject to this bylaw may choose a payment in lieu of the construction or provision of affordable ownership units to the LAHT at the sole discretion of the SPGA. The fees shall be paid in increments prior to the issuance of a building permit for each and every unit, or otherwise at the sole discretion of the SPGA.
- (2) Calculation of PILU. The fee of an affordable ownership unit shall be equal to eighty (80%) of the average listing price of comparable market-rate units of the same bedroom count within the proposed development. The SPGA shall make the final determination of the acceptable price for the affordable units.
- (3) PILU's are not applicable to affordable rental units.
- (4) Incremental payments of total PILU. The incremental payments shall be equal to: the PILU as calculated for a single ownership unit $\$ J(2) \times \text{total number of affordable ownership units subject to PILU} / \text{total number of ownership units in the subject development}$.
- (5) Timing of payment before issuance of building permits. Payment shall be received by LAHT prior to issuance of building permit for each unit to be constructed.
- (6) Revised calculation before issuance of building permits. The PILU calculation shall be confirmed with current market rates for the proposed development within sixty (60) days prior to issuance of building permit.
- (7) Creation of affordable units. PILU's made to LAHT in accordance with this section shall be used only for purposes of providing affordable housing for low- or moderate-income households.

Commented [JGM6]: Is it the intent that every application for an IHSP will also undergo Planning Board site plan review pursuant to Section 220-34 Site Plan Review? If so, this needs to be explicitly inserted into this bylaw.

Per Section 220-32.A, site plan review is applicable only to "[a]pplications for building permits or certificates of use and occupancy involving creation of, addition to, or substantial alteration of a parking area, if either it serves a nonresidential principal use or if it serves only a residential use and has 10 or more parking spaces, or if there is a change in use on a site, shall be subject to site plan review."

You may wish to include a site plan review requirement in Section C above.

Commented [JGM7]: I recommend changing this to: "The SPGA shall make the final determination of the PILU."

As this sentence reads now, it appears that the SPGA would be setting the sale price of the AHUs.

Using these payments, affordable housing may be provided through a variety of means, including but not limited to the provision of favorable financing terms, subsidized prices for purchase of sites, additional affordable units within existing or proposed developments, and other initiatives allowed under the Municipal Affordable Housing Trust Fund Law (MGL c.44. § 55C).

- (8) If the LAHT has been dissolved or is otherwise no longer in existence as of the time the application has been stamped received by the Town Clerk, then PILU's are to be paid to the Town and held in escrow for affordable housing production. Funds in escrow shall be transferred commensurate to the LAHT upon its re-establishment.

K. Combining construction with payment-in-lieu-of units. A combination of construction of dwelling units and payment of fee-in-lieu of-units may be combined by the applicant to meet a single project's requirement if granted approval by the SPGA.

L. Local preference. To the maximum extent permitted by law, including the regulations of DHCD, any IHSP granted hereunder shall include a condition that a preference for Lancaster residents, Town of Lancaster employees, employees of schools and businesses located within Lancaster, and families of students attending schools within Lancaster shall be included as part of the lottery and marketing plan for the affordable units.

M. Marketing plan for affordable units. Applicants creating affordable units under this bylaw are required to select qualified homebuyers or renters via lottery under an Affirmative Fair Housing Marketing Plan prepared and submitted by the applicant and approved by DHCD and the SPGA. This Plan shall include a description of the lottery or other process to be used for selecting buyers. The plan shall be in conformance with federal and state fair housing laws in effect on the date of the special permit or other permit application with the Town of Lancaster. No building permit for a development subject to the Lancaster Inclusionary Zoning Bylaw shall be issued unless the SPGA has determined that the applicant's affirmative marketing plan complies with this requirement. The affirmative marketing costs for the affordable housing units shall be the responsibility of the applicant.

N. Related fees. The SPGA is authorized to retain professional consultants to advise the SPGA on any and all aspects of the application, the project's compliance with this bylaw, and to determine whether AHUs authorized by an IHSP will be included in the Town's SHI. The SPGA may require the applicant to pay reasonable costs to be incurred by the SPGA for the employment of outside consultants pursuant to SPGA regulations, as authorized by G.L. c. 44, § 53G. The applicant shall be responsible for all consultant fees, including engineering, architectural, legal, housing consultant and planning fees, incurred by the SPGA in connection with the application, review of relevant plans and documents, and ensuring that the affordable units are included in the Town's SHI.

O. Conflict with other bylaws. The provisions of this bylaw shall be considered supplemental of existing zoning bylaws. To the extent that a conflict exists between this bylaw and others, the more restrictive bylaw, or provisions therein, shall apply.

P. Severability. If any provision of this bylaw is held invalid by a court of competent jurisdiction, the remainder of the bylaw shall not be affected thereby. The invalidity of any section or sections or parts of any section or sections of this bylaw shall not affect the validity of the remainder of the Lancaster Inclusionary Zoning bylaw.

Commented [JGM8]: Please be advised that, should this provision be adopted, both the ZBA and PB should adopt regulations for the use of applicant funds for outside consultants, per G.L. c. 44, s. 53G.