

MEMORANDUM

To: Raj Dhanda
From: Charles N. Le Ray
Date: August 2, 2021
Re: 57 JFK Street, Cambridge a/k/a 80–90 Winthrop Street

SUMMARY AND CONCLUSIONS

The use of the proposed three-story vertical expansion of the existing building at 57 JFK Street (the “Property”) to provide a total of forty-two residential (the “Project”) would be allowed by right. However, the Project would require special permits from the Planning Board for:

- Exemption from front, side, and rear yard setback requirements;
- Increased building height of 80 feet; and
- Exclusion from parking and loading requirements.

The Project will be subject to Cambridge’s Inclusionary Housing requirements because it will create more than ten new dwelling units. Twenty percent of the total Dwelling Unit Net Floor Area will need to be devoted to Affordable Dwelling Units. In exchange, the project will benefit from a thirty percent increase in the allowed Gross Floor Area, so long as the additional GFA is used for residential uses. If the total Dwelling Unit Net Floor Area is not kept below 30,000 square feet of gross floor area, then the Project will need to include at least one three-family dwelling unit. The calculations required to determine whether this requirement will apply require dimensional information not provided in the Plans (defined below)

The Project will need to provide private open space area(s) for the residential units. The requirement of 10% of the lot area will be reduced in proportion to the percentage of the Project devoted to residential use, to approximately 4.5%. It appears that the rear courtyard at the third floor could be used to provide most, if not all, of the required open space area, but this will require a reconfiguration of that floor to allow residents to access the area.

The Project will need to comply with Cambridge’s Green Building standards, because it will add more than 25,000 square feet of gross floor area. Whether it will need to comply with the Green Roof standards is unclear.

For reasons discussed below, I do not think the 96 Winthrop Street property should be included in the Project.

BACKGROUND AND ASSUMPTIONS

The Plans (defined below) indicate that the Project site has a land area of 17,466 square feet. The Cambridge Assessors database indicates that 80–90 Winthrop Street has a land area of 14,506 square feet, and that the adjacent property at 96 Winthrop Street has a land area of 2,959 square feet, for a total lot

area of 17,465 square feet. For the dimensional calculations set out below, I have assumed that the Project site will not include 96 Winthrop. *i.e.*, that the Project's lot area will be 14,506 square feet.¹

For the dimensional calculations set out below, I have assumed basement, first floor, and second floor gross floor areas of 12,310, 12812, and 11989 square feet, respectively, based on the Quinn Plans (defined below).

I have not reviewed the provisions of the Cambridge Zoning Ordinance that will govern building or tenant signs.

EXAMINATION AND RELIANCE

In preparing this memorandum, I have examined and relied upon the following:

- Presentation deck titled "57 JFK Street – Cambridge, MA, Design Update", prepared for Academy Hill Realty by Nelson Worldwide, dated 12 July 2021 (the "Plans");
- Zoning Ordinance of the City of Cambridge, as amended through Ordinance 2021-8 (Cannabis Delivery), adopted June 28, 2021, accessed from the City's website on July 27, 2021 (the "Zoning Ordinance" or "CZO");
- Map of Zoning Districts, City of Cambridge, as adopted February 13, 1961, as amended through Ordinance 2020-16 of December 21, 2020, prepared by the Community Development Department on January 26, 2021, accessed from the City's website on July 27, 2021 (the "Zoning Map");
- Map of Harvard Square Overlay District, prepared by Brendan Monroe on February 8, 2021, accessed from the City's website on July 27, 2021 (the "Harvard Square Overlay Map"); and
- Special Permit Application drawings by Peter Quinn Architects LLC, dated January 11, 2019 (the "Quinn Plans").

ANALYSIS

The Zoning Map indicates that the Property is in a Business B general business ("BB") zoning district, as are all the surrounding properties except for the Open Space area (Winthrop Square) immediately north of the Property. The Harvard Square Overlay Map indicates that the Property is in the Harvard Square Overlay District.

¹ Including 96 Winthrop Street would make the Project subject to the Zoning Ordinances requirement that:

In the case of multiple buildings on a lot, the minimum distance between such buildings shall not be less than the sum of the heights of the buildings divided by six, or ten feet, whichever is greater. In determining compliance with this section, portions of buildings exempted by Section 5.23 shall not be counted in computing building height.

§ 5.13. The Plans appear to show the two buildings closer than this minimum distance.

Use regulations

Multifamily dwellings are allowed by right in the Business B districts. § 4.30, Table of Use Regulations.

The categories of retail business and consumer service establishments² allowed by right in the Business B districts appear to encompass all the contemplated uses of the basement, ground floor, and second floor, and include:

- Convenience store;³
- Merchandise store;⁴
- Grocery Store;⁵
- Craft Retail and production shop;⁶
- Personal services establishment;⁷
- Restaurant;⁸
- Bar;⁹
- Food Stand or Kiosk;¹⁰

² Ordinance 2021-3, adopted June 7, 2021, substantially revised the Zoning Ordinance's provisions governing retail and consumer service establishments, significantly increasing the granularity by which these uses are defined and regulated. The new definitions of various types of Retail or Consumer Services Establishments are noted below.

³ Defined as "A type of Retail or Consumer Service Establishment whose principal use is the retail sale of convenience goods directly to consumers, such as drug stores, food stores, tobacco, newspaper and magazine stores, variety stores, and liquor stores, not exceeding 5,000 square feet in total sales area (excluding storage)." § 2.

⁴ Defined as "A type of Retail or Consumer Service Establishment, not otherwise defined as a Convenience Store, Grocery Store, Cannabis Retail Store, or other use defined in this Zoning Ordinance, whose principal use is the retail sale of consumer goods on the premises and where no manufacturing, production or assembly of products occurs on the premises." § 2.

⁵ Defined as "A type of Retail or Consumer Service Establishment whose principal use is the sale of fresh or packaged food products to consumers for use off the premises, which may additionally provide general household supplies." § 2.

⁶ Defined as "A type of Retail or Consumer Services Establishment whose principal use is the sale of consumer goods that are manufactured, produced or assembled for sale on the premises for use by consumers off the premises (although such goods may additionally be distributed at wholesale), provided that all manufacturing, production, assembly, packaging, display, and sales activities are conducted within a building and do not occupy more than 10,000 square feet of Gross Floor Area (manufacturing or assembly uses exceeding such size or excluding retail sales shall be classified as Light Industry)." § 2.

⁷ Defined as "A type of Retail or Consumer Service Establishment whose principal use is to provide non-professional services directly to the consumer, including but not limited to hair, skin and nail care, tailoring, repair of shoes and other household items, electronics repair, bicycle repair, self-service or drop-off laundry (including off-site dry cleaning), printing, copying, and photographic services, mailing and shipping services, or similar services, but not including the servicing of automobiles or other activities involving the use of hazardous materials on the premises." § 2.

⁸ Defined as "A type of Retail or Consumer Establishment whose principal use is to serve prepared food and beverages (including alcoholic beverages served with meals, if properly licensed) to be consumed on the premises using non-disposable dishware, glassware, and utensils, and providing table seating for patrons." § 2.

⁹ Defined as "A type of Retail or Consumer Establishment whose principal use is to serve alcoholic beverages, but which is not licensed to prepare or serve food." § 2.

- Food hall;¹¹
- Commercial recreation establishment;¹²
- Fitness center;¹³
- Fast order or Quick service food establishment;¹⁴ and
- Retail bakery.¹⁵

§ 4.35, Table of Use Regulations. The categories of retail business and consumer service establishments allowed by special permit from the Board of Zoning Appeal in the Business B districts include:

- Retail or consumer service establishment for which a separate category is not listed;
- Craft beverage establishment;¹⁶ and
- Cannabis retail store, subject to the provisions of § 11.800.¹⁷

Id. All the categories of office use recognized by the Zoning Ordinance are allowed by right in the Business B districts:

¹⁰ Defined as “A type of Retail or Consumer Establishment located within a Food Hall or another indoor or outdoor gathering space open to the public serving prepared foods and/or beverages to be consumed immediately on or off the premises, for which the area devoted to food preparation and service is no greater than 1,250 square feet and for which any seating (if provided) is open to the general public or shared among multiple establishments.” § 2.

¹¹ Defined as “A type of Retail or Consumer Establishment containing two or more Food Stands or Kiosks, in which seating, if provided, is located in a common area, and which may contain shared facilities devoted to food preparation and service which occupy a combined area no larger than 1,250 square feet times the number of individual Food Stands or Kiosks utilizing such facilities.” § 2.

¹² Defined as “A type of Retail or Consumer Establishment whose principal use is to provide entertainment or recreation services to the general public, wholly in an enclosed building, and for which user fees are charged and which is operated for profit, such as but not limited to a bowling alley, skating or skateboard rink, pool hall, billiard parlor, establishment containing more than three pinball machines or similar automatic amusement devices, or game room.” § 2.

¹³ Defined as “A type of Retail or Consumer Establishment whose principal use is to provide space and/or equipment for physical exercise by individuals or groups, which may or may not include instructor-led fitness classes, in exchange for a use or membership fee.” § 2.

¹⁴ Defined as “A type of Retail or Consumer Establishment whose principal use is the service of food or beverages available upon a short waiting time and packaged and presented in such a manner that it can be readily eaten on or off premises, but does not meet the definition of a Food Stand or Kiosk.” § 2. Fast Order Food Establishments that are not Formula Businesses are allowed by right in the Harvard Square Overlay District and are not subject to the provisions of § 11.30 that otherwise govern such uses.” § 20.54.10.

¹⁵ Defined as “A type of Retail or Consumer Establishment whose principal use is the sale of breads, pastries, cakes, pies and similar baked goods for consumption by the final consumer at home whether or not final baking occurs on premises.” § 2.

¹⁶ Defined as “A type of Retail or Consumer Establishment whose principal use is to serve non-alcoholic or alcoholic (if properly licensed) beverages that are produced and consumed on the premises (although such beverages may additionally be packaged and distributed at wholesale), provided that all production and packaging activities are conducted principally within a building and such activities do not occupy more than 10,000 square feet of Gross Floor Area (activities exceeding such size or including on-premises service shall be classified as Light Industry).” § 2.

¹⁷ The Planning Board is the special permit granting authority for cannabis retail stores.

- Office of a physician, dentist or other medical practitioner not located in a clinic listed under subsection 4.33(d);
- Office of an accountant, attorney, or other non-medical professional person (includes properly licensed massage therapists);
- Real estate, insurance, or other agency office;
- General office use;
- Bank, trust company, or similar financial institution; and
- Technical office for research and development, laboratory & research facility subject to the restrictions in Section 4.21m.

§ 4.34, Table of Use Regulations.

Dimensional regulations

Dwellings in a Business B district are subject to the same dimensional requirements and other restrictions as dwellings in the Residence C-3 district. § 5.28.1(c). Many, but not all, of these requirements are overridden by provisions of the Harvard Square Overlay District regulations. The Harvard Square Overlay District regulations provide that:

The additional flexibility granted to development within the Harvard Square Historic Overlay District is intended to facilitate the protection and enhancement of the historic resources and character of Harvard Square while not unreasonably limiting the opportunities for appropriate contemporary changes to the built environment in the Harvard Square area.

§ 20.52. Those regulations also provide that:

Building Setbacks. Maintenance of the Harvard Square Overlay District's positive diversity of building form and scale and its variety of open spaces, yards and courtyards is encouraged throughout the District. It is therefore desirable to permit design flexibility to allow any physical change in the District to reflect the character of the area within which it is located. To this end any building in the Harvard Square Overlay District shall be exempt from the yard requirements as specified in Section 5.30, (except where such yard abuts a lot, but not a public way, outside the Overlay District) if the following conditions are met:

1. The building existed as of December 15, 1985 or a building permit had been issued by that date, or
2. For any new building in any Business, Office or Residence C-3 base-zoning district, for which a building permit is issued after December 15, 1985, the Planning Board issues a Special Permit exempting the building from yard requirements provided:
 - a. The design of the new structure shall be in conformance with the objectives and criteria contained in Harvard Square Development Guidelines.

- b. No National Register or contributing building is demolished or so altered as to terminate or preclude its designation as a National Register or contributing building; and
 - c. No National Register or contributing building previously existed on the site in the preceding five (5) years and which has been so altered as to terminate or preclude its designation or demolished prior to the application.
3. For any new building in a Business B district seeking a Special Permit a rear yard setback of twenty (20) feet shall be provided with upper floor ten (10) foot setbacks beginning at forty-five (45) feet above grade. The resulting yard shall create a landscaped open space.

Maximum Ratio of Floor Area to Lot Area (FAR) in the Harvard Square Historic Overlay District. Notwithstanding the FAR limits set forth in Article 5.000 or elsewhere in this Ordinance, the maximum FAR applicable in the Harvard Square Historic Overlay District shall be as follows: Business B district: 4.0 for all Non-Residential Uses and 4.0 for all Residential Uses (4.31 a-h; Office 3 district: 3.0 for all uses; Office 2 district: 2.0 for all uses; Residence C-3 district: 3.0 for all uses; Residence C-2B district: 1.75 for all uses; Residence C-1 district: 0.75 for all uses; Business A district: 1.0 for all uses except dwellings, 1.75 for dwellings.

§§ 20.54.5 & 20.54.6.

Thus, if the Planning Board grants the Project a special permit waiving yard requirements and increasing building height, it appears that only the minimum lot area per dwelling unit, minimum ratio of private open space to lot area, and minimum lot width dimensional requirements will apply to the Project.

The table below compares the applicable dimensional requirements with those of the Project:

	Requirement	Proposed
Maximum FAR (all uses)	4.0 5.2 with residential	4.65 ¹⁸
Minimum lot size	5,000 sq. ft.	14,506 sq. ft.
Minimum lot width	50 ft. *	> 50 ft.
Minimum front yard	$(H + L) / 5^{19}$ (none w/special permit)	
Minimum side yard	$(H + L) / 6$ (none w/special permit)	

¹⁸ Calculated without deductions for any ground floor retail spaces of not more than 1,500 square feet each and without assuming the Planning Board will grant another special permit exempting basement gross floor area from calculations, and without backing out the bonus FAR for dwelling units that will result from the inclusion of required Affordable Dwelling Units.

¹⁹ Measured from centerline of the street, with a minimum of 5 ft. from the street line. § 5.31 n.b.

	Requirement	Proposed
Minimum rear yard	Greater of 20 ft. or (H + L) / 6 ²⁰ (none w/special permit)	
Maximum building height	60 ft. 80 ft by PB special permit	80 ft.
Minimum lot area per dwelling unit	300 sq. ft. *	~345 sq. ft. ²¹
Minimum ratio of private open space to lot area	10% * See below	???

§§ 5.31, Table of Dimensional Requirements – Residential Districts; 5.33, Table of Dimensional Regulations–Business Districts; 20.5.

* Requirement of Residence C-3 district not obviated by a provision of the Harvard Square Overlay District regulations.

Private open space

Private open space is required for every lot used for residential purposes except for those in the Cambridge Center MXD District. § 5.22.1. An area designated as private open space must have both a width and a length of at least fifteen (15) feet, except for balconies, and may not have a slope greater than ten (10) percent. Apart from balcony areas, private open space must be accessible to all occupants of a building. At least half of the required private open space must be provided at ground level or within ten (10) feet of the level of the lowest floor used for residential purposes. Areas at other levels, such as balconies, decks, and roofs, of garages and buildings, which are accessible to all occupants of buildings, which are not used as walkways or corridors, and which have both a width and a length of at least six (6) feet and a minimum area of seventy-two (72) square feet, may be calculated as private open space, not to exceed twenty-five (25) percent of the total private open space. *Id.*

Where nonresidential and residential uses are mixed in a building, the required minimum private open space for residential use is calculated in relation to the portion of the lot which the residential floor area is to the total floor area in the building. § 5.22.2. Assuming 30,355 square feet of residential gross floor area and a total building gross floor area of 67,446 square feet, the Project would require private open space of at least 4.5% of the lot area, *i.e.*, 625.6 square feet (using a 14,504 square foot lot area).²²

Height provisions

If a special permit is granted to increase the maximum building height above 60 feet, those portions of the building above sixty (60) feet must be (i) set back from the street line at least ten (10) feet and (ii) set back from one or more forty-five (45) degree sky exposure planes, unless otherwise permitted by the Planning

²⁰ § 5.31 n.c.

²¹ Calculated without backing out adjustment associated with the FAR bonus for creating required Affordable Dwelling Units, *i.e.*, this understates the extent to which the requirement will be satisfied.

²² Calculated as 10% * (30,355 / 67,466) = 4.5%.

Board. A forty-five (45) degree sky exposure plane is an imaginary inclined plane beginning fifty-five (55) feet above any street line in the districts and rising over one or more lots at a forty-five (45) degree angle. § 20.54.2. Before granting any exception to the upper story setback requirements, the Planning Board must find that the exceptions will successfully reduce the overall negative effect of multiple floor setbacks and enhance both the proposed building silhouette and townscape of the block. Exceptions may include architectural elements such as pergolas, and occupiable corner pavilions, occupiable pavilion directly above the main building entry, and special features that animate the public domain experience. All exceptions must be limited in scope and work cohesively. All approved facade setbacks must provide accessible, useable balconies for tenants. *Id.*

Additional FAR possible

The Planning Board may by special permit increase the FAR for any lot in the Business B district portion of the Harvard Square Overlay District for any residential use in Section 4.31 (a-h)²³ or any commercial use in Section 4.34 (Office uses) or 4.35 (Retail or Consumer Service Establishments), if the board finds that the use and design comply with the goals and design guidelines set forth in the Harvard Square Conservation District and provide additional public benefits commensurate with the additional development, such as:

1. Ground floors that are devoted to retail and similar uses that activate the square and serve the needs of the surrounding community and visitors;
2. Commitments to recruit and retain small, local, and independent businesses, in part through maintaining 50 percent of first floor public frontage as commercial rental space of approximately 1,500 sq. ft.in size;
3. Creation of mixed-income housing;
4. Commitments to sustainable design that minimize greenhouse gas emissions and increases vegetation, and;
5. Investments into creating or improving public space.

§ 20.54.7.

It appears that such a special permit will not be required, because as an Inclusionary Housing project, the project will benefit form an automatic thirty percent increase in the maximum FAR. § 11.203.5(a). This will increase the Property's maximum FAR to 5.2. Based on the Plans, including the basement and without any exclusion for ground floor retail spaces of 1,500s square feet or less, the Project will result in an FAR of approximately 4.65.

Exclusions from FAR calculations

Ground floor retail spaces of 1,500 square feet or less are excluded from floor area ratio calculations.

§ 20.54.8.

Basement or cellar spaces in buildings other than single- or two-family dwellings may be excluded from gross floor area calculations by Planning Board special permit. Article 2 (definition of Gross Floor Area).

²³ Multifamily dwellings are § 4.31(g), *i.e.*, can benefit from such a special permit.

To grant such a special permit, the Planning Board must find that uses occupying the exempted GFA will support the character of the neighborhood or district in which the applicable lot is located. *Id.*

Frontage restrictions on banks

Banks, trust companies, or similar financial institutions as identified in Section 4.34e are prohibited from occupying more than twenty-five (25) feet of the ground-floor level frontage of a building facing a street, measured horizontally parallel to that street. These uses also are prohibited from occupying more than thirty percent (30%) of a building's total horizontal ground-floor building frontage aggregated over one or more streets. The Planning Board may grant a special permit to allow a minor increase in the permitted frontage upon finding that such increase would create a result that is more compatible with the unique conditions of a particular building or site and that the criteria set forth in Section 20.53.2 (Development Consultation and Review) are met. § 20.54.9.

Parking requirements

Uses in a new structure or a new addition to a structure may be exempted from parking and loading requirements by special permit from the Planning Board if:

- a. The subject lot is sufficiently small in size as to contribute to a development pattern of diverse, small scale, new structures and the retention of existing structures (for lots exceeding 10,000 square feet a specific finding shall be made that this objective has been met).
- b. The Planning Board shall specifically find that an exemption from parking and loading requirements will result in a building design that is more appropriate to its location and the fabric of its neighborhood and that it is in conformance with the objectives and criteria contained in Harvard Square Development Guidelines.
- c. No National Register or contributing building is demolished or so altered as to terminate or preclude its designation as a National Register or contributing building; and
- d. No National Register or contributing building has been demolished or altered so as to terminate or preclude its designation within the five (5) years preceding the application.

§ 20.54.4.

Green Building requirements

The Project will be a Green Building Project. Any new construction, or any substantial rehabilitation of an existing building for an existing or new use, that totals 25,000 square feet of Gross Floor Area or more and that (1) requires the issuance of a special permit by the Planning Board under any provision of this Zoning Ordinance (including but not limited to special permits required in Article 13.000 - Planned Unit Development Districts, Section 19.20 - Project Review Special Permit, and Section 5.28.2 - Conversion of Non-Residential Structures to Residential Use) or (2) is subject to the provisions of Section 19.50 - Building and Site Plan Requirements, is considered a Green Building Project subject to the requirements of Sections 22.20 through 22.25. Article 2 (definition of Green Building Project).

Any Green Building Project must be designed to meet the standards of one of the authorized Green Building Rating Systems (LEED, Passive House Green Building Rating Program, or Enterprise Green Communities Green Building Rating Program). If the LEED system is used, the project must be designed to achieve a minimum certification of “Gold”, unless it will contain less than 50,000 square feet of Gross Floor Area, in which case the design standard is LEED “Silver”. § 22.24.1. The Property owner must engage a Green Commissioning Authority to verify and document that all building systems and assemblies are planned, designed, installed, tested, operated, and maintained to meet the applicable Green Building Project requirements. § 22.24.2. A Green Building Professional must demonstrate compliance with the applicable rating system’s requirements using an Energy Simulation Tool, with the results provided to the Community Development Department at the initial stage of project review. § 22.23.3(b). Extensive documentation of compliance with Green Building requirements must be provided before applying for any special permit from the Planning Board or for any development review procedure under Article 19. *See* § 22.25.1. Updated and additional documentation must be provided before applying for a building permit. *See* § 22.25.2. Updated and final documentation must be provided before applying for a certificate of occupancy. *See* § 22.25.3.

It is not clear whether the Zoning Ordinance’s Green Roof requirements will apply to the Project. Section 22.35.1 provides that:

Applicability. This Section 22.35, *et seq.* shall apply to any new building or structure of twenty-five thousand (25,000) gross square feet or more, except it shall not apply to affordable housing buildings that either are developed under the Affordable Housing Overlay (AHO) as defined in Section 11.207 or have a majority of their units permanently reserved for households at or below 100% of AMI.

A strict reading of this section would not apply it to the vertical expansion of an *existing* building. However, the preamble to the Green Roof requirements states that, “The purpose of this Section is to remove potential impediments to the development of green roof systems on new *and existing* buildings...” (emphasis added). Given Cambridge’s drive to turn back climate change, etc., I would not be surprised if the Community Development Department and/or Planning Board took the position that the Green Roof requirements should apply to the Project given that the vertical expansion will create an entirely new roof for the building.

If the Green Roof requirements apply then at least eighty percent (80%) of the roof area, measured in plan view, would need to be devoted to Green Roof Area or Biosolar Green Roof Area. §§ 22.35.2(a) & (b). In calculating the 80% requirement, certain portions of the roof are excluded:

1. areas having a slope greater than 2 in 12 or twenty-five percent (25%);
2. areas designed and managed for use by building occupants or the general public (which may be counted as gross floor area);
3. vehicular parking decks;
4. chimneys, water towers, air conditioning equipment, elevator bulkheads, skylights, ventilators and other necessary features appurtenant to buildings which are usually carried above roofs and are not used for human occupancy, in addition to conduit, visual and acoustical screening, access routes for maintenance and service, and other areas that must be clear of obstructions to comply with applicable building and safety codes.

§ 22.35.2(a).

Green roof areas above the third floor that are accessible to building occupants are included in gross floor area calculations, unless exempted by Planning Board special permit. § 22.33.2.

Project review

The Harvard Square Overlay District is an area of special planning concern. Development proposals listed in Subsections 19.42 and 19.43, Development Consultation Procedures, are subject to the Development Consultation Procedure specified in Article 19.40 except that any Large Project Review (new buildings of 2,000 square feet or more) will be conducted by the Harvard Square Advisory Committee using procedures specified in Subsection 20.54.1. § 20.53.1.

In reviewing applications for variances, special permits, or development consultation reviews, the permit or special permit granting authority or the Harvard Square Advisory Committee will be guided by the objectives and criteria contained in the publication Harvard Square Development Guidelines [Document compiled from the Guidelines for Development and Historic Preservation as contained in the Final Report of the Harvard Square Neighborhood Conservation District Study Committee, dated November 29, 2000 and the Harvard Square Development Guidelines, 1986], in addition to the requirements of Sections 10.30 (Variances) and 10.40 (Special Permits) and Section 20.50. These guidelines are also intended to assist in shaping any contemplated physical change within the Harvard Square Overlay District. § 20.53.2.

Inclusionary Housing requirements

Because it will create more than ten dwelling units, the Project will be an Inclusionary Project. *See* Article 2 (definitions). Twenty percent (20%) of the total Dwelling Unit Net Floor Area²⁴ will need to be devoted to Affordable Dwelling Units.²⁵ § 11.203.2(b). The Affordable Dwelling Units will be subject to the following standards:

- (a) Affordable Dwelling Units must be provided on-site.
- (b) Affordable Dwelling Units must be similar in size, layout, construction materials, fixtures, amenities, and interior and exterior finishes to comparable non-Affordable Dwelling Units in the project.
- (c) Affordable Dwelling Units must have similar access to common areas, facilities, and services as that enjoyed by comparable non-Affordable Dwelling Units in the project including but not limited to outdoor spaces, amenity spaces, storage, parking, bicycle parking facilities, and resident services.

²⁴ Defined as “Floor area contained within dwelling units or single rooms in a lodging house excluding common areas, such as lobbies, hallways, elevator cores, amenity spaces, common storage areas or parking facilities, exterior walls, walls dividing dwelling units from each other, or walls dividing dwelling units from common areas, or unenclosed spaces such as open-air porches, balconies, or decks.” Article 2 (definitions).

²⁵ Defined as “A dwelling unit for which occupancy is restricted to an Eligible Household and whose rent or initial sale price is established by (a) in the case of an Affordable Dwelling Unit in an Inclusionary Housing project provided pursuant to Section 11.203.2, the provisions set forth in Sections 11.203.3 and 11.203.4, or (b) standards set forth in another city, state, or federal housing program for Eligible Households.” Article 2 (definitions).

- (d) Affordable Dwelling Units must be dispersed throughout the project rather than concentrated on particular floors, within sections of a building, or within particular buildings in a project with multiple buildings.
- (e) Except as specified below for Family-Sized Dwelling Units²⁶, the proportionate amounts of Affordable Dwelling Units defined by size and number of bedrooms within the total amount of Affordable Dwelling Units must be similar to the proportionate amounts of non-Affordable Dwelling Units defined by size and number of bedrooms within the total amount of non-Affordable Dwelling Units in the project.
- (f) The ratio of Family-Sized Affordable Dwelling Units to all Affordable Dwelling Units must be greater than or equal to the ratio of non-Affordable Family-Sized Dwelling Units to all non-Affordable Dwelling Units in the project, notwithstanding that in some cases this may result in a smaller proportion of Affordable Dwelling Units that are not Family-Sized Dwelling Units in the project and a smaller proportion of total Affordable Dwelling Units in the project in order to meet the required percentage of Dwelling Unit Net Floor Area devoted to Affordable Dwelling Units in the project.
- (g) Townhouse or multifamily residential projects of at least thirty thousand (30,000) square feet of Dwelling Unit Net Floor Area must provide Family-Sized Affordable Dwelling Units at a ratio of at least one dwelling unit per every six thousand (6,000) square feet of required Affordable Dwelling Unit Net Floor Area in the project, rounded to the nearest whole unit with fractions of 0.5 unit or more rounded up and fractions of less than 0.5 unit rounded down, or the ratio derived from paragraph (f) above, whichever is greater.
- (h) The ratio of rental to owner-occupied Affordable Dwelling Units must mirror the ratio of rental to owner-occupied non-Affordable Dwelling Units in the project except that no Affordable Dwelling Units shall be rental Affordable Dwelling Units where a majority of all dwelling units in the project are initially offered for sale.
- (i) In cases where the owner and the Community Development Department agree that the above standards, as applied, result in a total Dwelling Unit Net Floor Area of all Affordable Dwelling Units that is less than the Affordable Dwelling Unit Net Floor Area required to be provided pursuant to the Inclusionary Housing Requirement, the remainder of the Inclusionary Housing Requirement shall be met through a monetary contribution to the Affordable Housing Trust equal to the amount of subsidy necessary to create an equivalent amount of Affordable Dwelling Unit Net Floor Area in a project assisted by the Affordable Housing Trust.

§ 11.203.3.

²⁶ Defined as “A dwelling unit that contains three or more bedrooms and not less than one thousand one hundred (1,100) square feet of Dwelling Unit Net Floor Area.” Article 2 (definitions).

The Affordable Dwelling requirement is now calculated as a percentage of total Dwelling Unit Net Floor Area, rather than the previous method of calculation as a percentage of the number of dwelling units. Thus, it is no longer possible for the calculation to result in a fractional unit. If the calculated twenty percent of the total Dwelling Unit Net Floor Area doesn't allocate completely into the proposed dwelling unit sizes, the developer would have a choice: round up to make another unit affordable or pay for the partial unit that will not be provided under § 11.203.3(i).

Inclusionary Housing projects benefit from by right relaxations of certain dimensional requirements:

The following relaxations of the dimensional requirements in any zoning district, including base or overlay zoning districts, shall be permitted as-of-right for an Inclusionary Housing Project:

- (a) The Gross Floor Area permitted by the applicable zoning may be increased by thirty percent (30%), as long as such additional Gross Floor Area is used for residential uses not including hotel or motel use.
- (b) The number of dwelling units permitted by the applicable zoning through rules for minimum lot area per dwelling unit or other applicable rules may be increased by thirty percent (30%).
- (c) The additional Gross Floor Area or dwelling units permitted herein shall be counted toward the determination of any applicable threshold triggering the requirement of a special permit, including but not limited to Section 19.20 Project Review Special Permit, Section 4.26 Multifamily Special Permit, and Section 11.10 Townhouse Development Special Permit.

§ 11.203.5.