

**TOWN OF BROOKLINE  
ADVISORY COMMITTEE  
Planning and Regulation Subcommittee**

**Report on Warrant Article 23 – Inclusionary Zoning  
Revised 4/28/21**

The Planning and Regulation Subcommittee of the Advisory Committee held a public hearing on Wednesday, March 24, 2021, virtually on the Zoom platform to review Warrant Article 23. In attendance were Subcommittee members Steven Kanés (Chair), David Pollak, Carlos Ridruero, Lee Selwyn, and Neil Wishinsky. Petitioner Roger Blood was also present. Select Board member John VanScoyoc was also in attendance. No other members of the public were present. An additional Public Meeting of the Subcommittee was held via Zoom on Monday, April 26. In attendance were Subcommittee members Steven Kanés (Chair), David Pollak, Carlos Ridruero, Lee Selwyn, and Neil Wishinsky, and Petitioner Roger Blood.

**Summary**

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WA 23 proposes several modifications to the Town’s Zoning By-Law Section 4.08 dealing with Inclusionary Zoning as it pertains to certain requirements for the numbers and types of affordable housing units that must be provided in projects that are subject to the Town’s Inclusionary Zoning by-law. The revisions apply to projects consisting of 20 or more dwelling units.

Petitioner Roger Blood, who serves as Chair of the Brookline Housing Advisory Board (“HAB”), explained that existing affordable housing percentage requirements would “essentially expire” once the Town meets the 10% M.G.L. Chapter 40B “Subsidized Housing Inventory” (“SHI”) threshold, which we are about to do. WA 23 would establish such Inclusionary Zoning requirements on a permanent basis. In his Article Explanation, the Petitioner states that the revisions would “authorize the targeting of required affordable units, both rental and owner-occupied, to low- and moderate-income households whose incomes fall within different affordability ranges, and to do so in such a manner that the compliance costs to the developer are generally equivalent irrespective of which income range of affordability is targeted.”

As described below, WA 23 would make certain changes relative to existing requirements but in so doing would retain many existing Inclusionary Zoning provisions:

- Introduce different – and higher – income eligibility limits for owned vs. rental units
- Reduce the income eligibility limit from 80%/100% to 50% of AMI for rental units, while providing an opportunity for developers to pay a one-time up-front fee to the Town’s Affordable Housing Trust Fund for the right to retain the 80% AMI threshold.
- Reduce the income eligibility limit for “affordable” owner-occupied units from 80%/100% of AMI, while providing an opportunity for developers to pay a one-time up-front fee to the Town’s Affordable Housing Trust Fund for the right to increase the AMI income threshold to 100% AMI or 120% AMI.

Several members of the Subcommittee expressed concerns as to the complexity of the proposed revisions as well as uncertainties regarding its impact. It was suggested that the Petitioner attempt to simplify his presentation when meeting with the full Advisory Committee on this warrant article. Subject to these concerns, the Subcommittee, by a vote of 5-0-0, recommends FAVORABLE ACTION on WA 23 as submitted, so long as the full Advisory Committee is satisfied that the uncertainties expressed here have been adequately explained and resolved

Proposed by-law changes

All multi-family development projects – including expansions of existing multi-family housing – are subject to the Town’s Inclusionary Zoning By-Law. The Petitioner’s Explanation of WA 23 (at page 25) states that the revisions being proposed would have the result that “[a]ll future projects subject to Inclusionary Zoning would be able to serve a wider range of household incomes, with affordable rental units being targeted more to lower income households and affordable ownership units targeted more to moderate income households ...”

The Petitioner explained that Section 4.08 Paragraph 5 “REQUIRED AFFORDABLE UNITS,” 2nd part of Subparagraph (a) that refers to Chapter 40B, followed by a reference to 2/3 and 1/3 of affordable units having to meet 80%AMI and 100%AMI respectively. This 2/3-1/3 prescriptive targeting of income limits, as applied to the 15% required affordable units is what will expire when the Town has satisfied the 10% SHI threshold. What is expiring when that threshold is achieved is the 2/3-1/3 income targeting provision; the earmarking of 15% of total units as “affordable” does not expire. If this 50B income-targeting provision is not replaced, then a developer could provide all of the required 15% affordable units at the very highest point in the total range of incomes authorized by the Bylaw—which is 100%AMI for rental and 120%AMI for owner affordable units. The Petitioner believes that such an outcome would fail to fulfill both the original and current intent of the Inclusionary Zoning Bylaw and be overly permissive to developers.

The “Area Median Income” (“AMI”) is set and revised from time to time by the US Department of Housing and Urban Development (“HUD”). AMIs for 2020 applicable to Brookline vary by household size and income level, and are as follows:

<b>2020 Income Limits</b>					
Effective: April 1 2020	<b>1 PERSON</b>	<b>2 PERSON</b>	<b>3 PERSON</b>	<b>4 PERSON</b>	<b>5 PERSON</b>
30% AMI <i>Very Low Income</i>	\$ 26,850	\$ 30,700	\$ 34,550	\$ 38,350	\$ 41,450
50% AMI <i>Low Income</i>	\$ 44,800	\$ 51,200	\$ 57,600	\$ 63,950	\$ 69,100
<b>65% AMI</b>	<b>\$ 58,240</b>	<b>\$ 66,560</b>	<b>\$ 74,880</b>	<b>\$ 83,135</b>	<b>\$ 89,830</b>
80% AMI <i>Moderate Income</i>	\$ 67,400	\$ 77,000	\$ 86,650	\$ 96,250	\$ 103,950
<b>100% AMI</b>	<b>\$ 89,600</b>	<b>\$ 102,400</b>	<b>\$ 115,200</b>	<b>\$ 127,900</b>	<b>\$ 138,200</b>
<b>110% AMI</b>	<b>\$ 98,560</b>	<b>\$ 112,640</b>	<b>\$ 126,720</b>	<b>\$ 140,690</b>	<b>\$ 152,020</b>
<b>120% AMI</b>	<b>\$ 107,520</b>	<b>\$ 122,880</b>	<b>\$ 138,240</b>	<b>\$ 153,480</b>	<b>\$ 165,840</b>
<b>Median Family Income</b>	<b>\$119,000</b>				
Boston-Cambridge-Quincy, MA-NH HUD Metro FMR Area					

Eligibility is calculated with respect to the AMI for the household size. 15% of the total number of units in a new or upgraded development must be designated as “affordable.” 2/3 of such “affordable” units must be provided (rented or sold) to households with gross incomes at or below 80% of the AMI; the remaining 1/3 must be provided to households with gross incomes at or below 100% of the AMI. The rent (including tenant-paid utilities) (or equivalent for purchased units) that will be available to the developer is 30% of the applicable AMI at the applicable percentage, as provided in the HUD table. For example, the 80% AMI for a family of four is \$96,250. The “target rent” is 30% of this amount, or \$28,975 (\$2,406 per month). To be eligible to rent one of these “affordable” units, a family of 4 must have a total gross annual income no greater than \$96,250. If the “target rent” exceeds 30% of the household’s gross income, the tenant must come up with the difference either via a Section 8 rent subsidy voucher (whose availability is apparently quite limited) or be willing to pay in cash the amount of rent in excess of 30% of the family’s gross income.

The proposed by-law would reduce the eligibility threshold from 80%/100% AMI to 50% AMI. For a family of 4, the income eligibility threshold would thus be \$63,950. The target rent (plus utilities) would thus be 30% of that amount, or \$19,185 (\$1,599 per month).

The proposed by-law would set the eligibility level for all owner-occupied purchased units at 80% AMI, replacing the existing 2/3 at 80% AMI, 1/3 at 100% AMI. For purchased units, the total annual cost, including mortgage payments, condo fees, property taxes, insurance and owner-paid utilities, could not exceed 30% of the applicable 80% AMI level, and the purchase price of the unit would have to be set on that basis. The allowed purchase price is calculated by reverse-engineering from these recurring payments to obtain the purchase price that would have that result.

The proposed by-law contains a provision that would allow a developer to increase the

eligibility limits for affordable units within the 15% on-site affordable requirement (for projects with 20 or more total units) to up to 100% of AMI for rental units and up to 120% of AMI for purchased units by making a one-time cash payment to the Town's Affordable Housing Trust Fund. The Petitioner has indicated, however, that HAB is not proposing to ask the Planning Board to approve the 100% of AMI level for rental units at this time, so that the maximum eligibility level for rental units would be at 80% AMI, and the fee to be paid to the Affordable Housing Trust Fund would be calculated based upon the 80% AMI income threshold level.

The amount of such payment would be calculated (in the case of rental units) as the present value of the additional rent that would be available to the developer from the affordable units over the life of the project based upon the difference between the target rent at 50% AMI and the target rent at 80% or 100% AMI, whichever the developer elects. For units to be offered for sale, the payment would be based upon the additional purchase price level that could be achieved by increasing the eligibility level from 80% of AMI to 100% or 120% of AMI. (Projects with less than 20 units were addressed in the November 2020 STM. For such projects, the developer can eliminate the entire on-site affordable unit requirement by paying the applicable fee to the Affordable Housing Trust Fund.) All such one-time payments made to the Affordable Housing Trust Fund would be available to support affordable housing in the Town.

The Warrant Article does not specify the precise formula by which the one-time fee would be calculated. However, in his discussion with the Subcommittee, the Petitioner indicated that it would be approximately 4% of the total value of the project as determined by the Town Assessor to go from the 50% AMI to the 80% AMI level for rental units. For owner-occupied units, the fee would be 6% of the total value of the project to go from 80% AMI to 100% AMI, or 8% of the total value of the project to go to 120% AMI.

As an example, suppose that a developer is proposing to construct a 100-unit rental building at a total cost of \$50-million, which we will assume for purposes of this example would be its assessed value. 15 of these units would need to be designated for rent to qualifying 50% AMI low- or moderate-income households. By making a \$2-million one-time cash payment to the Town, the developer would be permitted to set the AMI threshold for these 15 units at 80% AMI. The intent here is that the present value of the additional rents derived from the 80% AMI level would approximately equal the one-time payment, thus making the developer economically indifferent as to which AMI level to elect.

### Discussion

By reducing the AMI threshold to 50%, the proposed article would make more lower income households eligible for affordable housing in new development projects in Brookline. At the same time, it offers developers the option of retaining the higher 80% AMI threshold for rental units or up to 120% AMI threshold for owner-occupied units by making an up-front cash payment to the Affordable Housing Trust Fund, thereby making additional financial resources available to support other affordable housing efforts in the Town. Under the existing by-law, 1/3 of affordable rental units could be designated for qualifying 100% AMI households; as proposed, this would no longer be available until such time as the Planning Board increases the eligibility level to the 100% AMI that would be authorized by this article.

One member of the Subcommittee expressed the concern that these revisions would increase the developers' costs overall, and could thus result in higher rents or condo purchase prices for so-called "market rate" units. This, in turn, could make housing in Brookline less affordable for those who do not qualify for subsidized affordable housing. No economic analysis or empirical evidence was provided to the Subcommittee as to the effects or any unanticipated consequences that might result from these proposed AMI eligibility reductions upon rents and prices for non-subsidized units. It would seem, however, that tenants or owners of "market rate" units may be the primary source of the subsidies for the "affordable units" in their developments, at least on an ongoing basis in order to cover operating expenses, and possibly in the up-front purchase price of owner-occupied units as well.

As an example, condo fees for new developments are generally based upon the initial value of the unit which, in turn, bears some general relationship to the size of each unit. "Affordable" condo units are deed-restricted and cannot be offered for resale at market rates, and hence will permanently have a lower value than a similarly sized "market rate" unit. All else equal, the owner of an affordable condo will thus pay a lower condo fee than the owner of a market rate unit of the same size. Since condo fees support costs that are common to the entire building (e.g., heat, water, common area maintenance and insurance, and various other common costs), it will fall upon owners of market rate units to make up the shortfall resulting from the lower fees being paid by owners of affordable units. Although rents are not as explicitly linked to costs as are condo fees, to the extent that the subsidized "target rents" are lower than market rate rents for similar units in the same building, the market rate tenants will be made to bear a disproportionate share of the total costs of operating the building. Rent escalations linked to overall operating cost increases will thus fall disproportionately upon market rate tenants.

Some portion of the subsidy may also fall on Brookline taxpayers generally. For example, because of the deed-restrictions on resale, the assessed value of the affordable owner-occupied units will almost certainly be less than the assessed value of similar properties without such deed restrictions. The residential exemption is currently about \$302,000, so units that are subject to these deed restrictions may end up paying little or no property taxes. Note also that even though the owner-occupant of any newly-built unit does not pay any tax on the first \$302,000 of assessed value, the aggregate tax levy for the Town as a whole will still increase as a result of that additional value without any offset for the residential exemptions. As a result, the proportion of the total value of any new building subject to Inclusionary Zoning that is subject to the residential exemption will likely be in excess of the Town-wide average, effectively shifting a disproportionately larger portion of the increased aggregate levy to the remainder of Brookline taxpayers. Further reductions in "target rents" that would result from adoption of the 50% AMI affordable housing threshold will exacerbate this effect.

The Petitioner has suggested that the aggregate number of new "affordable units" that would be subject to this revised by-law is a miniscule fraction of the total number of housing units in the Town. He thus believes that these effects will be imperceptibly small. However, by elevating the cost of all new multi-family development projects, the increased costs could lead to higher prices overall. Market prices tend to be more reflective of forward-looking costs than of historic costs. Thus, the higher costs for new developments that WA23 would impose has the potential to push up housing prices generally throughout the Town, and thus make living in Brookline less affordable for families that do not qualify for "affordable" housing units.

Concern was also expressed regarding the manner in which the up-front fee would be calculated. The Petitioner explained that the fee calculation was based upon a mathematical model developed by the HAB's consultant, but the details as to the model's operation remain opaque. The consultant's recommendation would be presented to the Planning Board for approval, but it is not clear that the Planning Board would be presented with any additional details as to the working of the model than has been provided to Town Meeting. Inasmuch as the stated objective of the fee is to create a level of financial indifference for the developer as between accepting a lower AMI threshold vs. paying the up-front fee, the precision of the model in performing this fee calculation is critically important. Even a small deviation from the indifference point in one direction or the other could potentially skew the developer's choice, resulting in an outcome that is not consistent with the stated objective of offering this trade-off.

The Petitioner provided several illustrative examples of the model's output, which are attached here. The first sheet is for rental projects; the second is for owner-occupied projects. The details of the calculations themselves have not been provided. The model provides estimates of project value based upon differing discount rates (used for present value calculations) and different AMI income thresholds applicable for the 15% affordable units. For example, the value of a 100-unit rental project at a 4.0% interest ("cap") rate with affordable units priced at the 50% AMI target rents is shown as \$63,200,000. The same project, but assuming 80% AMI target rents, is calculated at \$65,400,000. The difference between these two numbers – the 50% AMI vs. the 80% AMI, is \$2,200,000, which is 3.41% of the value at the 50% AMI level. The model rounds this to 4% of the project's value, although the purpose of such rounding vs. applying the calculated cost differential has not been explained. Moreover, we have no information as to the precise manner by these values have been calculated, or why the fee needs to be rounded to a full percentage point rather than a more precise number. Additionally, Petitioner explained that the calculations at various AMI levels adjusts only the rents (or purchase prices) of the affordable units themselves, and gives no effect to the impact that inclusion of such affordable units at different AMI levels might have upon the rents or prices of market rate units in the same development. One member of the Subcommittee expressed the view that the consideration of the proposed by-law requires far more transparency with respect to the manner in which the fee is calculated than has been provided thus far.

### Recommendation

Several members of the Subcommittee expressed concerns as to the complexity of the proposed revisions as well as uncertainties regarding its impact. It was suggested that the Petitioner attempt to simplify his presentation when meeting with the full Advisory Committee on this warrant article, and at least one member of the Subcommittee indicated that his favorable vote might well change as a result of that subsequent presentation and discussion.

Subject to these concerns and in the hope of further clarifications, the Subcommittee, by a vote of 5-0-0, recommends FAVORABLE ACTION on WA 23 as submitted so long as the full Advisory Committee is satisfied that the uncertainties expressed here have been adequately explained and resolved.

# Supplemental Fee – Rental Examples/Derivation

SCENARIO TESTS - CASHOUT DERIVATION			Total Units Counts			
Total Units			20	50	100	200
Affordable Units	15% of Total		3	8	15	30
RENTAL EXAMPLES			Project FMV's w/Affordable Units			
Baseline	50% AMI	@ 4.50% Cap Rate	\$11,200,000	\$27,700,000	\$56,200,000	\$112,400,000
		@ 4.25% Cap Rate	\$11,900,000	\$29,400,000	\$59,500,000	\$119,000,000
		@ 4.00% Cap Rate	\$12,600,000	\$31,200,000	\$63,200,000	\$126,400,000
Alternative	80% AMI	@ 4.50% Cap Rate	\$11,600,000	\$28,800,000	\$58,600,000	\$116,200,000
		@ 4.25% Cap Rate	\$12,300,000	\$30,400,000	\$61,500,000	\$123,500,000
		@ 4.00% Cap Rate	\$13,100,000	\$32,400,000	\$65,400,000	\$130,700,000
		Average Differential/Cashout	\$433,333	\$1,100,000	\$2,200,000	\$4,200,000
	% of Baseline Value	4%	4%	4%	4%	
			<b>Conclude to a Cashout of 4.0%</b>			
Alternative	100% AMI	@ 4.50% Cap Rate	\$11,900,000	\$29,400,000	\$59,400,000	\$118,800,000
		@ 4.25% Cap Rate	\$12,600,000	\$31,200,000	\$62,900,000	\$125,700,000
		@ 4.00% Cap Rate	\$13,400,000	\$33,100,000	\$66,800,000	\$133,600,000
		Average Differential/Cashout	\$733,333	\$1,800,000	\$3,400,000	\$6,766,667
	% of Baseline Value	6%	6%	6%	6%	
			<b>Conclude to a Cashout of 6.0%</b>			

Note: Affordable Rents provided by the Brookline Housing Authority for 2019

# Supplemental Fee – Ownership Examples/Derivation

SCENARIO TESTS - CASHOUT DERIVATION			Total Units Counts			
Total Units			20	50	100	200
Affordable Units	15% of Total		3	8	15	30
OWNERSHIP EXAMPLES			Project FMV's w/Affordable Units			
Baseline	80% AMI	900 SF @ \$1,000-\$1200 PSF	\$15,984,300	\$39,960,750	\$79,921,500	\$159,843,000
		700 SF @ \$1,000-\$1200 PSF	\$13,179,300	\$32,948,250	\$65,896,500	\$131,793,000
		500 SF @ \$1,000-\$1200 PSF	\$10,034,300	\$25,085,750	\$50,171,500	\$100,343,000
Alternative	100% AMI	900 SF @ \$1,000-\$1200 PSF	\$16,993,200	\$42,483,000	\$84,966,000	\$169,932,000
		700 SF @ \$1,000-\$1200 PSF	\$14,018,200	\$35,045,500	\$70,091,000	\$140,182,000
		500 SF @ \$1,000-\$1200 PSF	\$10,703,200	\$26,758,000	\$53,516,000	\$107,032,000
		Average Differential/Cashout	\$838,900	\$2,097,250	\$4,194,500	\$8,389,000
		% of Baseline Value	6%	6%	6%	6%
			<b>Conclude to a Cashout of 6.0%</b>			
Alternative	120% AMI	900 SF @ \$1,000-\$1200 PSF	\$17,248,200	\$43,120,500	\$86,241,000	\$172,482,000
		700 SF @ \$1,000-\$1200 PSF	\$14,273,200	\$35,683,000	\$71,366,000	\$142,732,000
		500 SF @ \$1,000-\$1200 PSF	\$10,958,200	\$27,395,500	\$54,791,000	\$109,582,000
		Average Differential/Cashout	\$1,093,900	\$2,734,750	\$5,469,500	\$10,939,000
		% of Baseline Value	8%	8%	8%	8%
			<b>Conclude to a Cashout of 8.0%</b>			

Note: Analysis/Examples based on Affordable Sale Prices provided by the Brookline Housing Authority for 2019