



MIDDLETOWN
Rhode Island

PLANNING DEPARTMENT

TOWN OF MIDDLETOWN

350 East Main Road, Middletown, RI 02842
(401) 849-4027 | MiddletownRI.com

To: Paul A. Croce, Chairman
Planning Board members

From: Ron Wolanski, Town Planner

Date: July 5, 2023

Re: Inclusionary Zoning for Affordable Housing – Revisions due to new state law

During its June 14, 2023 meeting the Planning Board voted to forward draft zoning ordinance amendments to implement inclusionary zoning to the Town Council for consideration. Subsequently, the RI General Assembly voted to pass a bill (SB1051-A) to amend the enabling legislation regarding inclusionary zoning (RIGL 45-24-46.1). The adopted amendments result in the need to revise the ordinance drafted by the Planning Board. The attached revised inclusionary zoning draft attempts to address the changes to state law. The Board should consult with the Town Solicitor regarding any additional necessary revisions, and once satisfied, consider forwarding the revised draft to the Town Council for consideration.

The two most significant changes are the requirement that at least 25% of total units in an inclusionary development must be affordable; and the developer is entitled to two additional market-rate units for each affordable unit provided. The draft amendments initially proposed by the Planning Board required 20% affordable units and allowed for a density bonus of 150% of the underlying zoning density.

The changes to the state law will have a significant impact on the potential density of inclusionary developments. For example, for a parcel where 10 lots are allowed by the underlying zoning, a developer could be allowed 20 lots - 200% of the underlying zoning. This is due to the combined impact of the language requiring that 25% of the total units in the development be affordable, and the bonus of two market-rate units per affordable unit. Each time this bonus is applied, increasing the total number of units in the development, a calculation must be done to ensure that the development also continues to meet the requirement of 25% affordable units. If an additional affordable unit must be added to maintain 25%, this results in the need to award the developer two additional market-rate units. With the addition of these market-rate units, the calculation must again be done to ensure that the development will still meet the 25% affordable unit requirement. If not, an additional affordable unit is added, and two market-rate units awarded. This cycle continues until the addition of units no longer triggers the need for additional affordable units to maintain the required 25%. For a property zoned for 10 lots/units, this results in 20 total lots/units, with 5 of those being affordable. For a parcel zoned to allow 15 lots/units, these calculations result in 31 total lots/units, with 8 of those being affordable. And for a parcel where underlying zoning would allow 20 lots/units, the calculations result in 44 total lots/units, 11 of those being designated affordable. As can be seen in these scenarios, the density would more than double for developments where inclusionary zoning is applied.

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Another coming change to state law impacts the definitions of a minor subdivision and minor land development project. Currently a minor subdivision or land development project is a development of 5 or fewer lots or housing units. The new definition increases that to 9 or fewer lots for a minor subdivision. Minor land development projects will include a multi-family development of 9 or fewer units, or a mixed-use development that includes 6 or fewer residential units. This impacts our inclusionary zoning ordinance since the threshold we use to require inclusionary units is a major subdivision or land development project. If this language is retained in the ordinance, the number of developments subject to inclusionary zoning would be reduced. Alternatively, the draft ordinances could be further revised to keep the threshold for inclusionary at 6 total lots/units, even though that would be a minor subdivision or land development project.

If adopted, the attached revised draft amendments would result in the following (once the new state definitions for minor subdivision and minor land development project, and changes to the inclusionary zoning statute go into effect on January 1st):

- Require that all major subdivisions (10 lots or more), major land development projects (10 residential units or more), and mixed-use developments with 7 or more residential units, must have a minimum of 25% of residential units dedicated for affordable housing.
- The inclusionary units must be affordable to low-income households earning less than 80% of area median income (AMI) for rental, and 120% AMI for ownership units.
- All inclusionary units must be constructed as part of the proposed development. No off-site construction or other alternative means for meeting the inclusionary requirement will be permitted.
- As required by the state law, compensation for the requirement to constructed inclusionary affordable units is provided in the form of a density bonus. As required by the new law, a development subject to inclusionary zoning would be awarded two additional market-rate units for every affordable unit provided. In the event that a developer chooses to not take advantage of the density bonus, waiver of certain fees such as development impact fees and plan review fees may be offered as compensation, at the Planning Board's discretion.

Once the Board has considered and made any further revisions to the draft ordinance amendments, and is satisfied with the final draft, the Board should consider forwarding it to the Town Council for consideration. The Town Council will then hold the required public hearing before the amendments are finally considered for adoption. In support of its recommendation to the Town Council on a zoning ordinance amendment the Planning Board must make the following findings in accordance with the requirements of Section 45-24-52 of the Rhode Island General Laws:

- (1) The proposed amendment is generally consistent with the Middletown Comprehensive Community Plan, including the goals and policies statement, the implementation program, and all other applicable elements of the comprehensive plan; and
- (2) This recommendation is made in recognition and consideration of each of the applicable purposes of zoning, as presented in § 45-24-30 RIGL

Thank you for your consideration. Please contact me with any questions.

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Section ~~X16A~~00 – General

A. Purpose and Authority

This article provides for the establishment of housing opportunities for low- and moderate-income individuals and families in order to meet Middletown’s established need for affordable, accessible, safe, and sanitary housing for all citizens, as documented in Middletown’s Comprehensive Community Plan.

Intended to promote a balance of housing choices for all income levels and groups; to assure the health, safety and welfare of all citizens and their rights to affordable, accessible, safe, and sanitary housing; and to provide opportunities for the establishment of low and moderate income housing, this article is in accordance with RIGL 45-24-30 “General purposes of zoning ordinances,” RIGL 45-24-46.1 “Inclusionary Zoning” and 45-53 “Low and Moderate Income Housing” such that development of affordable housing:

- 1) Is integrated into neighborhoods rather than isolated into separate communities or complexes;
- 2) Is designed in a manner consistent with Middletown’s historical development patterns and natural systems and, which has no significant negative impacts on the health and safety of current or future residents of the community or the environment;
- 3) Promotes mixed income occupancy in new subdivisions and land development projects throughout the Town;
- 4) Promotes affordable housing production in accordance with the goals and policies of the Middletown Comprehensive Community Plan’s Housing Element;
- 5) Encourages the development and availability of housing that qualifies as low- and moderate- income housing as mandated by RIGL 45-53 the Low- and Moderate-Income Housing Act, and the Rhode Island Comprehensive Housing Production and Rehabilitation Act of 2004, as amended;

- 6) Allows landowners and/or developers a reasonable return on investment in all zones zoning districts permitting residential development where the applicant proposes a development that would be classified as a major subdivision or a major residential land development project under as defined in the Middletown Zoning Ordinance or the Middletown Rules and Regulations Regarding the Subdivision and Land Development of Land Regulations, and RI General Laws section 45-23-32.

B. Applicability

All major subdivisions, or major land development projects that include a multi-family residential component, as defined by the ~~Town of~~ Middletown's Zoning Ordinance or the Middletown Rules and Regulations Regarding the Subdivision and Development of Land and RI General Laws section 45-23-32, except for those proposed in the R-40 and R-60 zoning districts, shall provide for the development of inclusionary units through construction or rehabilitation of on-site affordable housing units as proscribed in this article in accordance with RIGL 45-24-46.1.

Phasing of development projects may not be used to avoid compliance with this article. When a minor subdivision or land development project creating fewer than six (6) dwelling units is approved on a portion of a site, leaving another portion of the same site undeveloped, the portion left undeveloped must comply with the inclusionary requirements of this articles if it is subdivided or developed for residential use or mixed use within fifteen (15) years of Final Approval of the earlier development. The number of inclusionary units required in the later development shall be calculated as if the earlier development were part of it. This provision does not apply when an entire site receives Master Plan approval and is developed in phases and the required number of inclusionary units for the entire development is calculated and accounted for on the Master Plan.

C. Conditions of Approval

Any Final Approval of a residential development project subject to this article shall contain conditions sufficient to ensure compliance with the provisions of this article. Such conditions shall:

- 1) detail the number of low- and moderate- income units required;
- 2) specify the schedule of construction of low- and moderate- income units;
- 3) set forth the applicant's manner of compliance with this article and;
- 4) require the execution of an agreement imposing appropriate resale controls and/or rental restrictions on the low- and moderate- income units, as further detailed in this article.

Section ~~X16A~~01 – Definitions

Affordable Housing: Affordable housing - residential housing that has a sales price or rental amount that is within the means of a household that is moderate income or less. In the case of dwelling units for sale, housing that is affordable means housing in which principal, interest, taxes, which may be adjusted by state and local programs for property tax relief, and insurance constitute no more than thirty percent (30%) of the gross household income for a household with less than one hundred and twenty percent (120%) of area median income, adjusted for family size. In the case of dwelling units for rent, housing that is affordable means housing for which the rent, heat, and utilities other than

telephone constitute no more than thirty percent (30%) of the gross annual household income for a household with eighty percent (80%) or less of area median income, adjusted for family size. Affordable housing may include all types of year-round housing, including, but not limited to, manufactured housing, housing originally constructed for workers and their families, accessory dwelling units, and assisted living housing, where the sales or rental amount of such housing, adjusted for any federal, state, or municipal government subsidy, is less than or equal to thirty percent (30%) of the gross household income of the low and/or moderate income occupants of the housing (RIGL 42-128-8.1(d)-1).

Household: For the purposes of this article only, a household includes all of the people who occupy a housing unit. A household includes related family members and any unrelated people, such as lodgers, foster children, wards or employees who share the housing unit. A person living alone in a housing unit, or a group of unrelated people sharing a housing unit such as partners or roomers, is also counted as a household.

Inclusionary Unit: A unit created under the provisions of this article and which meets all applicable criteria to be considered a low- or moderate- income housing unit.

Low- and moderate- income housing unit: Consistent with RIGL SECTION 45-53-3 as amended, ~~any housing unit whether built or operated by any public agency or any nonprofit organization or by any limited equity housing cooperative or any private developer, that is subsidized by a federal, state, or municipal government to assist the construction or rehabilitation of housing affordable to low or moderate income households, as defined in the applicable federal or state statute, or local ordinance and that will remain affordable through a land lease and/or deed restriction for ninety-nine (99) years or such other period that is either agreed to by the applicant and town or prescribed by the federal, state, or municipal government subsidy program but that is not less than thirty (30) years from initial occupancy.~~

~~shall be synonymous with “affordable housing” as defined in § 42-128-8.1, and further means any housing whether built or operated by any public agency or any nonprofit organization or by any limited equity housing cooperative or any private developer, that is subsidized by a federal, state, or municipal government subsidy under any program to assist the construction or rehabilitation of affordable housing and that will remain affordable through a land lease and/or deed restriction for ninety-nine (99) years or such other period that is either agreed to by the applicant and town or prescribed by the federal, state, or municipal government subsidy program but that is not less than thirty (30) years from initial occupancy.~~

Low- and moderate-income household: Consistent with RIGL SECTION 42-128-8.1, as amended, a single person, family, or unrelated persons living together whose adjusted gross income is less than 80% for low income households or between 80% - 120% for moderate income households of Newport County’s area median family income (AMI), adjusted for household size in accordance with the US Department of Housing and Urban Development’s guidelines.

Market-rate unit: A unit that does not meet the definition of inclusionary, affordable, and/or is not a low- and moderate- income unit.

Municipal government subsidy: Assistance that is made available through a city or town program sufficient to make housing affordable, as affordable housing is defined in RIGL 42-128-8.1(d)(1); such assistance may include, but is not limited to, direct financial support, abatement of taxes, waiver of fees and charges, and approval of density bonuses and/or internal subsidies, and any combination of forms of assistance.

On-Site Inclusionary Unit: A Low- and Moderate-income housing unit constructed or rehabilitated coincident with market-rate units.

Section ~~X16A02~~ – Units Required

Any major residential ~~or mixed-use~~ subdivision or land development project, except for those proposed in the R-40 and R-60 zoning districts, shall be required to provide a minimum of ~~25~~20% of all units in the development as inclusionary affordable housing units that are deed restricted to households making 80% or less of the Area Median Income (AMI) for rental units or 120% AMI for homeownership units. When calculating the required number of affordable units, round up to the next whole number.

The Planning Board may adjust these income limits in response to unique opportunities associated with an individual project if an adjustment is deemed to be consistent with the Comprehensive Plan. Financial hardship on the part of the applicant shall not be considered as just cause for adjusting the target income limits. Additional studies may be requested by the Planning Board to justify a change in the income limits.

Inclusionary units may be created through application of required restrictions to existing units, or through new construction or rehabilitation of housing units.

Section ~~X16A03~~ Density Bonus & Subsidy

The Town offers a density bonus in the form of additional housing units over and above the original yield established in the subdivision regulations and requirements or the zoning ordinance. This bonus serves as a municipal subsidy toward the provision of deed restricted affordable housing in accordance with RIGL 45-24-46.1.

~~Each development subject to the requirements of this article may contain up to 150% of the maximum number of dwelling units that would be allowed based on the minimum land area and density requirements in the zoning district, but subject to all other dimensional requirements of Sections 603 and 604 of this chapter.~~

Each development subject to the requirement to provide inclusionary units, subject to applicable setback, lot width, or frontage requirements or the granting of relief from the same, shall be allowed the addition of two (2) market rate units for each affordable unit provided, and the minimum lot area per dwelling unit normally required in the applicable zoning district shall be reduced by that amount necessary to accommodate the development.

If a developer chooses to not take advantage of the density bonus, and the development will include only the number of units otherwise permitted by zoning or fewer, including the required inclusionary units, the municipal subsidy may consist of waiving of subdivision

and development plan review fees and/or development impact fees for all dwelling units in the development, subject to the discretion of the Planning Board.

Section ~~X16A04~~ - On-Site Inclusionary Units

Affordable housing units provided pursuant to this article shall be allocated to low-income households in a manner consistent with the Comprehensive Plan’s priorities. All on-site affordable housing units shall:

- 1) be consistent with market rate units in terms of external design, construction and building materials;
- 2) consist of a mix of unit sizes and number of bedrooms proportionate to that of the development as a whole, or meet a need specifically identified in the Comprehensive Plan;
- 3) be situated within the development so as not to be in less desirable locations than market-rate units in the development and;
- 4) shall be no less accessible to amenities, such as open space, community space, and parking, than the market-rate units.

Section ~~X0616A05~~ - Timing of Construction

Low- and moderate- income housing units shall be constructed prior to or contemporaneously with the development of market-rate units according to the following schedule:

% Market-rate units constructed	Required provision of low- and moderate-income units (or equivalent)
Up to 30%	None required
Up to 50%	At least 30%
Up to 75%	At least 50%
Up to 90%	100%
A unit is considered constructed upon the issuance of a certificate of occupancy by the Middletown Building Official.	

Section ~~X0716A06~~ – Affordability Guarantee

In order to ensure low- and moderate- income units produced under this article remain available to low- and moderate-income households for the full term of the deed restriction associated with the unit, the applicant must submit plans for marketing, managing, and monitoring of the low- and moderate- income units. Such plans shall be submitted with the initial land development application in addition to all required items in the Middletown Rules and Regulations Regarding the Subdivision and Development of Land. Any legal restrictions required by this article shall be recorded in the land evidence records.

A. Legal Restrictions

Low- and moderate- income units shall be rented or sold subject to deed covenants, contractual agreements, and/or other mechanisms restricting the use and occupancy, rent levels and/or sales prices of such units to assure their affordability. All restrictive instruments shall be subject to review and approval by the Town Solicitor. Such legal restrictions shall, to the extent legally possible, guarantee the permanent availability of the inclusionary units to eligible households.

In no circumstance, shall such restrictions run for a time period of less than ninety-nine (99) years. All affordable units required under this article shall be eligible for the Town's official inventory of affordable housing as maintained by Rhode Island Housing.

Long-term affordability shall be assured through a land lease and/or deed restriction recorded in the Town land evidence records before the sale or lease of the inclusionary unit. The lease or deed restriction shall include information regarding:

- 1) The basis for calculation of the maximum allowable sales or rental price for the housing unit both initially and for future buyers or renters.
- 2) Restrictions concerning who may occupy the unit, and for what period.
- 3) A marketing plan that meets local preferences and state and federal fair housing requirements.
- 4) Provisions for monitoring and assurance of compliance over time.
- 5) Provisions under which the Town, a non-profit organization designated by the Town, or Rhode Island Housing may exercise a right of first refusal to purchase an inclusionary unit being offered for sale.

B. Marketing, Management, and Monitoring

The developer or owner shall contract with a monitoring agency approved by Rhode Island Housing and the Planning Board for the following purposes:

- 1) To determine pricing for initial sale, resale, lease, transfer or sublease of the low- and moderate- income dwelling units.
- 2) To qualify purchasers or renters for initial occupancy based on household size and income.
- 3) To assist in the development of a marketing and resident selection plan that meets state and federal fair housing requirements, to be approved by the Planning Board.