



ATTORNEYS

Scott Gustin, AICP, CFM
Division Manager
Permitting & Inspections
645 Pine Street, Ste. A
PO Box 849
Burlington, VT 05402-0849

April 6, 2022

**Re: Request for a Unified Certificate of Occupancy
77 Pine Street, People's United Bank Redevelopment Project
ZP #: 20-0453CA**

Dear Scott,

I hope all is well.

The Project at 77 Pine Street is nearing final completion and the owner, Nedde/Bank LLC, is proceeding to obtain a Unified Certificate of Occupancy. However, an issue has arisen for which we seek a determination. Condition 4 of the Zoning Permit provides:

4. As a covered project (Per Article 9 of the Comprehensive Development Ordinance), a base of fifteen percent of all the dwelling units in the project, graduated as specified in Table 9.1.8-1 shall be designated as inclusionary units. The applicant shall provide a Certificate of Inclusionary Housing Compliance issued by the Housing Trust Fund Manager prior to issuance of a Certificate of Occupancy for this project.

The Project has 49 residential units requiring seven (7) inclusionary units. The owner proposes to utilize its by-right payment-in-lieu option provided in Section 9.1.13 of the Burlington Comprehensive Development Ordinance ("CDO"), and to provide the remaining 5 units on-site.

Section 9.1.13 of the CDO provides that "(t)he payment in lieu option may be utilized by right" under two scenarios. The project is located in a census block that meets Section 9.1.13(1):

Covered projects ... may utilize the payment in lieu option subject to the following standards:

- i. The payment in lieu fee shall be \$35,000 per dwelling unit for projects containing 5-16 dwelling units.*
- ii. The payment in lieu fee shall be \$70,000 per dwelling unit for projects containing 17-49 dwelling units*
- iii. The payment in lieu fee shall be \$85,000 per dwelling unit for projects containing 50 or more dwelling units.*

A marginal fee approach shall be used in payment of the in lieu fees. (Example: A 17-unit project would pay a total of \$140,000 (\$35,000 for each of the first two inclusionary units and \$70,000 for the third inclusionary unit).

When the owner requested the required Certificate of Inclusionary Housing Compliance from the Housing Trust Fund Manager, CEDO confirmed the number of required inclusionary units and that the project is located in a census block that meets 9.1.13(1). However, a disagreement has arisen regarding the correct interpretation of Section 9.1.13 of the CDO to establish the amount of the required payment in lieu.

The owner believes that based upon the last sentence of Section 9.1.13 of the CDO, the payment should be based upon a marginal fee approach using the stated example “\$35,000 for each of the first two inclusionary units” for which payment in lieu is made (emphasis added), resulting in the owner’s obligation to pay \$35,000 for each of the two units that will not be inclusionary, for a total of \$70,000 as a payment in lieu.

We understand the Housing Trust Fund Manager has taken the position that \$70,000 is due for each of the two units that will not be inclusionary for a total of \$140,000 as a payment in lieu, based upon a Zoning Administrative Interpretation made by the Director of Permitting and Inspections dated March 4, 2021.

In order to obtain a Unified Certificate of Occupancy for the Project, we request a determination that compliance with Condition 4 of the Zoning Permit and the inclusionary housing certification be deemed fulfilled if the owner pays a total of \$70,000 to the Housing Trust Fund as a payment in lieu of providing two inclusionary units. If you are not willing to make such a determination, we ask that you deem the inclusionary housing certification fulfilled if the owner pays \$70,000 to the Housing Trust Fund and at the same time places an additional \$70,000 in escrow with our firm until a resolution of the dispute as to the interpretation of Section 9.1.13 of the CDO is resolved.

Please let me know if you need any further information or have questions or comments.

Stay well.

Sincerely,

/s/ Liam L. Murphy

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