

Department of Permitting & Inspections

Zoning Division
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TO: Development Review Board
FROM: Scott Gustin
DATE: June 21, 2022
RE: ZAP-22-1; 77 Pine Street

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Note: These are staff comments only; decisions on projects are made by the Development Review Board, which may approve, deny, table or modify any project. THE APPLICANT OR REPRESENTATIVE MUST ATTEND THE MEETING.

Zone: FD6 Ward: 3C

Owner/Appellant: Nedde Bank, LLC / Liam Murphy, Esq.

Request: Appeal of adverse determination regarding compliance with inclusionary zoning requirements of condition 4, ZP #20-0453CA, for payment in lieu for inclusionary housing units.

Overview:

The appellant is seeking to reverse an adverse administrative determination issued relative to partial payment in lieu for inclusionary housing requirements. 77 Pine Street was approved as a mixed use renovation of the People’s United Bank building containing 49 residential units, a bank, and a café. Given the number of residential units, the project is required to provide inclusionary housing units. In this case, the applicant is looking to provide 5 of the 7 required inclusionary housing units onsite and to provide a payment in lieu for the remaining 2 inclusionary units. The crux of the matter is the applicable fee due for these 2 units per the standards of Sec. 9.1.13 (b), *Payment In Lieu Option*, of the Comprehensive Development Ordinance.

Recommendation: **Uphold adverse determination** based on the following findings:

I. Findings:

The appellant is looking to address the inclusionary housing requirements associated with the redevelopment of 77 Pine Street. As noted above, the inclusionary housing requirement is 7 units. The appellant is seeking to provide 5 of those inclusionary units onsite within the building and to provide a payment in lieu for the last 2 inclusionary units. The city concurs that addressing the inclusionary housing requirement with a mix of onsite and payment in lieu is acceptable.

Following an initial discussion about the matter between city staff and the developer some months ago, the appellants filed a request seeking an official determination as to their proposed method of compliance with the inclusionary zoning requirements for 77 Pine Street. The determination request was filed April 6, 2022.

Sec. 9.1.13, *Off-Site and Payment In Lieu Options*, (b) *Payment In Lieu Option* of the CDO reads, in part:

(1) Covered projects located in a census block where more than fifty-one percent (51%) of the residents are below eighty percent (80%) AMI as determined by HUD's Low- and Moderate-Income Summary Data 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}.)

77 Pine Street is located within an area eligible for this payment in lieu option. Note the marginal fee requirement. The 49-unit project requires 7 inclusionary units. It is a middle tier (subsection ii) project. The appellants propose a payment in lieu fee of \$35,000 for each of the inclusionary housing units not constructed within the building. In doing so, they argue that their payment in lieu addresses the first 2 of the required 7 inclusionary units and should, therefore, be subject to a per-unit fee of \$35,000.

An adverse determination was issued April 20, 2022:

This determination is in regard to the above-referenced property, specifically your request that the City of Burlington concur with your proposal to comply with condition 4 of zoning permit 20-0453CA for redevelopment of the 77 Pine Street property.

The redevelopment project includes 49 residential units and, therefore, requires 7 inclusionary housing units per the CDO standards of Article 9. Of the 7 required inclusionary housing units, 5 will be provided onsite as dwelling units within the development. The remaining 2 will be addressed via the payment in lieu option per Sec. 9.1.13 (b) of the CDO. The City concurs that a combination of on-site inclusionary units and payment in lieu option is acceptable for meeting the requirements of Article 9.

The payment in lieu option includes three tiers:

- Projects with 5-16 dwelling units pay in lieu \$35,000 per dwelling unit
- Projects with 17-49 dwelling units pay in lieu \$70,000 per dwelling unit
- Projects with 50 or more dwelling units pay \$85,000 per dwelling unit

A marginal fee approach shall be used in payment of the in lieu fees. For 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).

The 49-unit redevelopment of 77 Pine Street is in the middle tier. Payment in lieu for the 2 inclusionary units not provided onsite is \$70,000 per dwelling unit. Your proposal to pay the first tier payment in lieu fee of \$35,000 per dwelling unit is inconsistent with this standard and with Zoning Administrative Interpretation 21-02. If just 1 inclusionary unit were to be provided onsite and the rest addressed with payment in lieu, the payment in lieu fee would be \$35,000 for the first unit and \$70,000 for the remaining five units. In your case, 5 inclusionary units will be provided onsite with just 2 addressed via payment in lieu.

The City reviewed the following documents/evidence to form its determination:

- Zoning permit 20-0453CA and all related documentation
- The City's 2008 Comprehensive Development Ordinance as amended
- Zoning Administrative Interpretation 21-02
- Determination request of Liam L. Murphy, Esq dated April 6, 2022

Partial use of payment in lieu to satisfy the inclusionary housing requirements of Article 9 is acceptable. Your proposal to pay \$35,000 in lieu for 2 of 7 required inclusionary housing units is not acceptable.

An appeal of this determination was filed May 2, 2022 within the 15-day appeal period. No additional documentation has been provided with the appeal. The appellants are relying on the argument put forth in their determination request.

The payment in lieu tiers in Sec. 9.1.13 (b) are intended to provide costs proportionate to a project's size and ability to meet its inclusionary requirements. Smaller projects have lesser costs, while larger projects have increased costs. This intent is reflected in Zoning Administrative Interpretation 21-02. Fundamentally, larger projects pay a higher payment in lieu fee. To allow middle and top tier projects to provide payment in lieu fees at the lowest rate as proposed by the appellants would be inconsistent with this intent.

II. Recommended Motion:

Uphold the adverse determination.