

BPDA Approves Fair Housing Zoning Amendment

December 18, 2020

The Boston Planning and Development Agency (“BPDA”) has approved an amendment to the Boston Zoning Code that would require developers of large residential projects to create inclusive housing opportunities. Developed in consultation with the City Council and endorsed unanimously by the Council prior to the BPDA’s vote, the zoning amendment will be considered by the Boston Zoning Commission in January, and is expected to be signed by Mayor Walsh.

Once enacted, the zoning amendment will require proponents of residential projects and mixed-use projects with residential components that are subject to Large Project Review under Article 80B of the Boston Zoning Code, as well as those seeking Planned Development Area (“PDA”) approval under Article 80C of the Code, to include a new Affirmatively Furthering Fair Housing Component (“AFFH Component”) in the BPDA’s development impact review process.

Affirmatively Furthering Fair Housing Component

The AFFH Component uses an Assessment Tool, developed by the BPDA, which will provide a displacement risk analysis and historical exclusion analysis, as well as fair housing marketing requirements. Projects will be required to propose AFFH Intervention Options commensurate with the use, size, and scope of the proposed project, aimed at overcoming segregation, fostering inclusive communities and affirmatively furthering the City’s fair housing goals.

Mitigation Options

Covered projects must implement at least one mitigation measure from a list of “Article 80 Process Options”, and one from a list of “Marketing Options”. Projects seeking PDA approval, and projects in areas of high displacement risk or high historical risk, must incorporate one additional mitigation measure, all as described further below.

Article 80 Process Options include, among others:

- Adding more affordable units than the City’s Inclusionary Development Policy (“IDP”) requires;
- Deepening the affordability of the required IDP units;
- Providing a higher number of accessible units than required;
- Providing a higher proportion of 2+ bedroom IDP units or matching or exceeding the percentage of family-sized units in the surrounding neighborhood;
- Providing all IDP units on-site;
- Increasing density in order to increase units available to protected classes; or

- Any other option(s) that meets the AFFH goals.

Marketing Options include, among others:

- Provide a preference for an agreed percentage of IDP units to rental voucher-holders for the first year or some other period;
- Provide a preference for an agreed percentage of IDP units to families that are rent-burdened, have experienced a no-fault eviction, or have experienced eviction but now have an ability to pay;
- In the case of home-ownership units, provide a preference to first-time homebuyers;
- Allow last month's rent and security deposit to be paid in installments for an agreed-upon percentage of units or by renters up to a certain income level; or
- Any other option(s) that meets the AFFH goals.

Increased Mitigation Expectation for Projects in At-Risk Areas, PDAs

As part of the Article 80 review process, projects subject to the AFFH Component will also need to conduct a displacement risk analysis and a historical risk analysis of their projects. Projects located in areas of high displacement risk or high historical risk, as well as PDAs, will be required to adopt additional mitigation measures.

PDAs must either incorporate a second "Article 80 Process Option" or else must incorporate a "Supplemental Process Option", among which are:

- Establish a local housing stabilization fund;
- Deed tenants the right of first refusal to purchase property upon conversion;
- Enter into a subsequent owner transfer fee agreement;
- Establish or contribute to a neighborhood housing acquisition opportunity program; among others;
- Provide mixed-use and local small business long-term flexible lease options; or
- Any other option(s) that meet the stated goal(s).

Any project in an area of high displacement risk may be subject to a diversity preservation preference by the Department of Neighborhood Development, and is otherwise required to incorporate either a second Article 80 Process Option or a Supplemental Process Option.

Lastly, any project in an area of high historical exclusion must incorporate a second Article 80 Process Option, incorporate a Supplemental Process Option, or provide for all IDP units to be built on-site.

Review and Recommendation of New Fair Housing Committee

The zoning amendment creates a new Boston Interagency Fair Housing Development Committee ("BIFDC") comprised of representatives from the Boston Housing Authority, the Office of Fair Housing and Equity, the Department of Neighborhood Development, the Mayor's Commission for Persons with Disabilities, and the BPDA. The BIFDC will review the AFFH Component and make a recommendation to the BPDA Board whether the proposed project affirmatively furthers fair

housing. Once the project is approved by the BPDA Board, the developer's commitments will be included either in the project's Cooperation Agreement or its Affordable Housing Agreement(s) with the BPDA.

Transition Rule

The new AFFH zoning amendment will apply to projects subject to Large Project Review or PDA review that submit a Letter of Intent later than 60 days after the amendment is adopted by the Boston Zoning Commission.