

POTENTIAL HOUSING INITIATIVES FOR NEWBURY, NH

Requirements of the NH Workforce Housing Law

Before addressing which housing initiatives may be worth pursuing in Newbury it seems important to present a summary of the New Hampshire Workforce Housing law. This statute requires each community to provide a reasonable and realistic opportunity to develop workforce housing, while providing “maximum feasible flexibility” to meet the general legal obligation in a manner that is most appropriate to its circumstances. What will constitute a “reasonable and realistic opportunity” is determined by a few specific requirements:

- (1) the municipality’s land use ordinances and regulations cannot facially (openly) discriminate against housing for families in certain income ranges;
- (2) the collective impact of those ordinances and regulations must allow for the economic viability of a project to develop workforce housing;
- (3) workforce housing of some type must be allowed on a majority of the residentially-zoned land in the community; and
- (4) multi-family housing with at least five units per structure must be allowed somewhere in this area.

“Workforce housing” and “affordability” both have been used widely, but they now have specific statutory definitions. A home is considered “affordable” to a household if not more than 30 percent of the household’s income is spent on housing costs. “Workforce housing” is ownership housing that is affordable to a family of four earning up to 100 percent of the median income for the area, or rental housing that is affordable to a family of three earning up to 60 percent of the median income for the area. This definition of workforce housing is generally considered to include a broader range of incomes than traditional notions of affordable or “low-income” housing.

While municipalities cannot be expected to control many of the other costs associated with housing construction, they can control things such as lot sizes and densities, building setback and road frontage requirements, and road design standards, among others. For some communities, compliance with the workforce housing statute may be as simple as some technical adjustments to these standards. For other municipalities, however, compliance could also involve a more proactive approach that provides incentives for workforce housing development balanced against measures to preserve the landscape we all cherish. Innovative provisions such as dense village centers, conservation subdivision design, inclusionary zoning, and form-based codes can accomplish these dual goals.

The steps that are necessary for any municipality to meet the requirements of the statute should not threaten the appearance or composition of the community, including rural landscapes, if the community engages in a thoughtful planning process. Municipalities that do not provide opportunities for the development of workforce housing must demonstrate that they already have their regional “fair share” of affordable housing. Municipalities that determine they have satisfied the “fair share” requirement should carefully document that finding, as it is an assertion that would need to be defended if a developer took legal action against the community under the workforce housing statute.

Regulatory Initiatives

The initiatives described below would require legislative action by the residents of Newbury to take effect. If adopted, they would provide specific provisions that address different aspects of Newbury’s housing supply. It is not anticipated that they are all a good fit for Newbury, or that all of these approaches should be adopted now or in the future. They serve as a menu of choices to be considered and discussed further by residents and property owners as they decide how to best tackle the housing issue over time. These regulatory initiatives include:

- Adaptive Reuse
- Inclusionary Zoning
- Form Based Code
- Missing Middle Housing
- Higher Density Housing
- Cottage Housing
- Cluster Housing
- Planned Unit Development
- Limited Development- A Partnership of Conservation and Development
- Short-term Rental Regulations
- Sheltered or Extra Care Housing

Adaptive Reuse

This includes the reuse of abandoned, underutilized, or functionally obsolete properties for housing. A number of municipalities have modified their zoning regulations to encourage new

uses, including affordable housing, for vacant or underutilized buildings. Overlay districts, allowing residential uses on upper floors in commercial districts, and live/work space are all examples of strategies communities use to bring new life to old buildings. However, adaptive reuse sometimes brings a unique set of challenges. In these instances, contaminants must be removed and the sites remediated. The reuse of historic properties can be used to enhance the special sense of place that distinguishes one New Hampshire community from another, and is fundamental to preserving the character of the State. Some advantages to this approach include enabling the community to accommodate growth in established locations instead of on undeveloped land, while preserving or restoring the architectural fabric of the community.

Resource - New Hampshire Division of Historic Resources:

This document includes resources and a series of examples from New Hampshire. While many of these are from larger communities with larger structure the principles of this approach are somewhat scalable:

<https://www.nh.gov/osi//planning/resources/conferences/spring-2016/documents/adaptive-reuse-michaud.pdf>

Inclusionary Zoning

In New Hampshire, inclusionary ordinances are incentive-based. Some other states allow municipalities to adopt inclusionary zoning that does not provide an incentive, or direct benefit to the developer. State law in New Hampshire does not allow communities to require the inclusion of affordable housing in a proposed development without providing the developer with an offsetting benefit. Density is often the incentive of choice. If a community decides to adopt an inclusionary or incentive zoning ordinance, some of the decisions they need to make are:

- What should the percentage of affordable units be?
- Must the affordable units be comparable in size and amenities to the market rate units?
- Will the community accept payments-in-lieu of affordable units to be used elsewhere in the community for creating housing?
- Will phasing be allowed?

Example - Inclusionary Housing in Amherst:

The Town of Amherst understands the importance of encouraging suitable opportunities for the development of new affordable housing units in the community. Their “Innovative Land Use Control for Affordable Housing” regulations provide flexibility in the design of the development, and provide density bonuses. Allowing a greater density on the site makes the provision of affordable units possible. Under this provision the developer does not need to comply with the standard dimensional requirements. This creates an opportunity for the planning board to work

with the developer to create a density that will support the creation of affordable units, or to make use of a nonconforming lot.

A range of unit types have now been created by developers under this ordinance. Some of the units mix affordable units with market rate units. Amherst has been very pleased with the diversity of housing units that have been encouraged by this incentive-based ordinance. Realizing that prices are relative to size, the Amherst Ordinance limits the heated square footage of “Affordable Housing” to 1300 square feet. This has the effect of allowing the housing developed under this zoning provision to meet the income targeting requirements of the New Hampshire Workforce Housing Law (RSA 674:58 et seq.).

Form Based Code

A form-based code is a land development regulation that fosters predictable results and a high-quality development pattern by using physical form (rather than separation of uses) as the organizing principle for the zoning code. A form-based code is a regulation, not a mere guideline, adopted into local zoning. This code is calibrated to the existing pattern of development and takes into consideration the how the community wishes to guide growth over time while providing a powerful alternative to conventional zoning regulation in villages and downtowns.

Form-based codes address the relationship between building and the public realm, and the form and mass of buildings in relation to one another. The regulations and standards in form-based codes are presented in both words and clearly drawn diagrams and other visuals. They provide a way to ensure development density while preserving or enhancing the character of a place. Often such codes promote the use of multi-story buildings in keeping with the existing building stock, promote walkability and mixed-use development, and address a range of housing solutions. This type of regulatory tool could be used in combination with efforts to develop mixed use developments and missing middle housing.

Resource - Form Based Code Fact Sheet:

This resource document created by the NH Cooperative Extension further defines this regulatory tool and features an example from the Village of Lancaster, NH:

https://extension.unh.edu/resources/files/Resource004821_Rep6854.pdf

Missing Middle Housing

This approach to housing represents a range of multi-unit or clustered housing types that are compatible in scale with single-family homes, but provide greater density to help meet the growing demand for a variety of housing unit types. These units provide diverse housing

options along a spectrum of affordability, including duplexes, fourplexes, and bungalow courts, to support walkable communities, locally-serving retail, and transportation options. Missing Middle Housing provides a solution to the mismatch between the available U.S. housing stock and shifting demographics combined with the growing demand for walkability.

Missing Middle units can be permitted or encouraged through Newbury's existing zoning ordinance in areas that are predominately single-family units, or through the creation of a new form-based regulation within the village area. In either case the regulatory language and standards must be reviewed to ensure that this density of housing is allowed in a manner that is consistent with the existing neighborhoods and community character.

Resources:

This website provides a variety of resources including examples of various types of units from across the country: <http://missingmiddlehousing.com/>

Higher Density Housing

This example relates to allowing higher density development to increase unit affordability by increasing the number of units per fixed land cost. The advantages to this include allowing a greater number of units to be constructed which reduces the cost per unit for the developer, and makes the creation of affordable units possible. This typically provides a win-win for the developer and the community. The cautions related to this include the reality that on-site septic requirements may not permit this technique in all areas, but shared/community septic systems allow for much higher densities than individual systems. There is also the possibility that property values in Newbury will prevent this from being applied effectively to create new units that are more affordable to a broader spectrum of residents.

Increasing the variety of housing options and reducing production costs by allowing higher density housing is one of the most fundamental ways to increase affordability, and communities have ample opportunity to do so within their regulatory powers. Higher housing densities can be achieved as a matter of right, or by special permit and/or incentives.

Techniques for this include:

- Allowing a mix of residential and commercial uses in new developments by permitting new residential and mixed-use developments with alternative site patterns (e.g. flexible development or clustering) and/or a variety of housing types (detached single-family, townhouse, duplex, garden apartment, etc.).
- Provide density bonuses, or other incentives.
- Allow alternative housing forms (duplex, triplex, etc.) in all residential areas.
- Establish multi-family zones.

Cottage Housing

Cottage housing is generally defined as a grouping of small, single family dwelling units clustered around a common area. These cottage units may also have other shared amenities and infrastructure. The shared common area and shared infrastructure will allow densities that are somewhat higher than typical in single-family neighborhoods while minimizing impacts on adjacent residential areas. As a result, cottage housing can offer its owners a quality living experience that is less expensive than traditional single-family housing. Cottage housing also provides a degree of privacy and some of the benefits of single-family housing, combined with the lower cost and maintenance of attached housing. The clustered arrangement can also contribute to a strong sense of community within the cottage development itself.

Resource:

Here is a recent news article on a cottage housing development being proposed in Dover, NH:
<https://www.fosters.com/story/news/2020/10/05/cottage-homes-planned-in-dover-with-young-workers-in-mind/114227176/>

Cluster Housing

Cluster housing refers to a development in which homes are situated in groupings relatively close together, while larger areas of open space within the development are set aside as conservation land. Often this is accomplished through small individual lots, with the remainder of the land becoming common ground. While these tend to be composed of residential uses only this strategy can be used to accommodate commercial uses or a mix of both. Newbury currently has a Cluster Development provision in the Zoning, but it does not provide an adequate incentive for incorporating affordable or workforce housing units.

Example:

The Town of Exeter has adopted an ordinance that provides a density bonus for the inclusion of affordable housing in a development. A major subdivision on Watson Road incorporates affordable housing and open space to create a mixed income neighborhood. With a total of 90 units on 112 acres, Watson Woods includes an additional 153 acres of permanently protected open space that links to other protected parcels in the area and preserves an existing trail network. Twenty affordable housing units are included in multi-family structures along with some market rate multi-family units, duplex units, and single-family residences. The development uses a community well and relies on a mix of individual and community/shared septic fields.

Planned Unit Development

Planned unit development (PUD) ordinances allow developers flexibility to depart from existing zoning requirements in exchange for fulfilling an established set of planning criteria identified by the municipality. PUDs are also called planned residential developments (PRDs). The benefits of a PUD can include more efficient site design and lower infrastructure and maintenance costs. Ordinances can also be written to require or incentivize public benefits such as affordable housing or open space in exchange for regulatory flexibility and assumed cost savings. Tools like density bonuses and parking reductions can help underwrite the cost of incorporating low- and moderate-income units into a project, either through established incentive programs or implemented on a case-by-case basis through development agreements.

Limited Development - A Partnership of Conservation and Development

Similar to cluster housing, this approach includes preserving open space by allowing development on a small portion of the site. Limited development is a strategy for preserving open land by developing only a small portion of a larger site. The structures are clustered in one area at a higher density than may normally be allowed by right in that zone, and the remaining acreage is permanently protected. As a conservation strategy, limited development is typically used to subsidize the preservation of open space. In the context of affordable housing, the goal is to minimize the cost of the housing by shifting or splitting the land cost with a conservation organization. A third-party facilitator is sometimes involved in securing the property targeted for preservation and holds it for disposition to another entity (often the local Conservation Commission or land trust). This is typically a time-consuming process, allowing the community time to evaluate the possibility of limited residential development, with or without additional conservation easements or site controls.

Affordable housing advocates are often conservationists and vice versa, and increasingly the two are forging alliances to achieve the goals of both interest groups. The advantages to this include a reduction in the cost of housing by shifting or splitting the land costs with a conservation organization. Limited development promotes the creation of housing units and the preservation of open space. Easements for wells within conservation areas could also help reduce lot sizes. Some potential issues to be aware of include consideration that septic systems will need to be incorporated into the developed portion of the site in most cases. Long term controls should be placed on the open space portion of the property to ensure their continued protection, and the long-term cost of conservation stewardship should be accounted for as a development cost. Identification of a willing and qualified stewardship entity is also important.

Resources:

Conservation Based Affordable Housing: A resource from the Conservation Fund that provides additional information on this approach can be found at:

<https://www.conservationfund.org/images/resources/Conservation-Based-Affordable-Housing-Study-all-9-06-lo-res.pdf>

Using Limited Development to Conserve Land and Natural Resources: This White Paper from Jeffrey Milder provides additional context for considering this approach:

<http://www.tetoncountywy.gov/DocumentCenter/View/3319/Milder-JC-Using-Limited-developmentto-conserve-land-and-natural-resources-essay-PDF>

Short Term Rental Regulations

Currently in the State of New Hampshire municipalities have not been granted the power to ban, permit, or regulate short term rentals as communities in other states do currently. This alternative has been identified because of the dramatic increase in rentals through websites such as AirBnB. The City of Portsmouth met legal challenge when it created a ban on short term rentals. Currently the NH legislature has been considering the power to permit short term rentals. As New Hampshire awaits resolution of this issue there are many examples from other states/towns where a mechanism is in place that are worthy of review. Examples include:

- Portland, OR defines accessory short term rentals and has instituted a permitting process worth reviewing: <https://www.portlandoregon.gov/bds/article/518658>
- In the State of Colorado short term rental requirements have been adopted in many communities.
- Stowe, VT has created a frequently asked question sheet explaining the provisions that short term rentals must comply with currently:
http://www.townofstowevt.org/vertical/Sites/%7B97FA91EA-60A3-4AC6-8466-F386C5AE9012%7D/uploads/FAQ_Short-Term_Rentals.pdf

Sheltered or Extra Care Housing

Popularized in the United Kingdom, sheltered housing is often a group of self-contained housing units with either one or two bedrooms, which can be purchased or rented. Also referred to as Extra Care Housing, in many cases these facilities are established to accommodate retiring individuals. However, they can be designed to serve other populations wishing to live in a smaller home that is easier to manage. In many sheltered housing developments there is a manager or staff, and there may be an emergency alarm system providing 24-hour help as necessary. In some cases, staff visit every resident regularly, and create support plans based on individual needs to enable residents to live independently in their own, self-contained, homes. Support needs are reviewed at least annually and can be

more frequent at the resident's request, or if their circumstances change. If such a facility is desirable in Newbury it could be identified as an allowable use.

Non-Regulatory Initiatives

In Phase 2 of this housing assessment the Committee should also review and discuss a variety of approaches that will require varying levels of community support, but may not require legislative action. Some of the non-regulatory initiatives to consider include:

- Local Housing Commissions
- Housing Trusts
- Community Land Trusts
- Seasonal Housing
- Homesharing
- Co-Housing
- Village Scale Housing Initiatives
- Donated Land
- Purchase of Units for Resale with Restrictions