

Memo

To: City of Albany Planning Board
From: Bradley Glass, Director of Planning
Re: 1415 Washington Avenue, Compliance with 375-401(4)(b)
Date: September 28, 2021

This memorandum is intended to convey general information and sentiments regarding the application of USDO section 375-401(4)(b) with respect to the application under consideration at 1415 Washington Avenue.

375-401(4)(b) states:

Affordable housing requirements. After December 1, 2017, each new residential or mixed-use development or redevelopment containing 50 or more new dwelling units shall sell or rent at least 5% of its new dwelling units at sales or prices affordable to persons earning no more than 100% of the area median household income for the City of Albany, as determined by affordability methods used by the United States Department of Housing and Urban Development.

The application for 1415 Washington Avenue indicates that “the new building will have 240+/- dwelling units being a mixture of 1, 2 & 4 bedroom units. The total number of beds would be 560 +/- beds.”

Relevant to these considerations are the definitions of dormitory,¹ dwelling unit,² and family.³ A dormitory is devoted exclusively to living facilities for duly registered students in accredited schools, colleges, universities, medical or technical institutions, with some accommodations for management employees and the spouses of students. The definition references “living units” because the living configurations within a dormitory do not adhere to the traditional requirements constituting a “dwelling unit,” which among other considerations is subject to occupancy by a “family.” At least some of the units within most modern dormitories, including this one, provide units that de-facto exceed the unrelated occupancy allowances under the “family” definition, including the presumption of more than three

¹ DORMITORY — A publicly or privately owned and operated building devoted exclusively to living facilities and associated programming, in which each person residing in each living unit shall be a duly registered student in any accredited school, college, or university, the spouse of such student, or a management employee, or an employee or trainee of a medical or technical institution. The facilities may contain sleeping rooms for use of one or more persons, provided that there is at least 150 square feet of floor space for the first occupant and at least 100 additional square feet of floor space for every additional occupant, the floor space to be calculated on the basis of total habitable room area. Accessory uses may include food preparation facilities, exercise facilities, and meeting rooms.

² DWELLING UNIT — One or more rooms, including a kitchen or kitchenette, and sanitary facilities in a dwelling structure, designed as a unit for occupancy by not more than one family for living and sleeping purposes.

³ FAMILY — (1) Shall mean: (a) One, two or three persons occupying a dwelling unit (related or unrelated); or (b) Four or more persons occupying a dwelling unit and living together as a traditional family or the functional equivalent of a traditional family. (c) Four or more persons occupying a dwelling unit whose right to live together is protected by the Federal Fair Housing Act, as amended and interpreted by the courts. (2) It shall be presumptive evidence that four or more unrelated persons living in a single dwelling unit do not constitute the functional equivalent of a traditional “family.”

unrelated persons occupying a unit that do not constitute the functional equivalent of a “family,” pursuant to the USDO definition. Based upon the terminology employed in the dormitory definition (“living unit”) and my involvement in the drafting and development of the USDO, it is my belief that the the USDO was intentionally authored to exclude units within dormitories from the traditional categorization of dwelling units.

That said, it would also be reasonable to conclude that the intent to characterize dormitories differently for the purposes of unit characterisation was not intended to result in an exclusion from the affordable housing requirements set forth within the USDO for large development projects (greater than 50 units). However, implementation in this instances would likely be fraught with complications and not achieve the core intent of creating affordable housing units available to the general populace. Such units would, by definition, be relegated principally to students, many or all of whom may meet the income qualifications for the affordable units. The practical consideration associated with residency amongst a student population may also discourage prospective occupants of the affordable units.

The applicant has therefore proposed compliance with the affordable housing requirement through an alternate means, namely by providing gap financing to allow for the construction of homes for sale by a local developer of affordable homes. I encourage the Planning Board to strongly consider such an arrangement in light of the circumstances at hand. The Planning Staff would also welcome the Board’s feedback about how such arrangements and considerations should be handled moving forward.