

MEMORANDUM

TO: Neil Harrington
FROM: Judi Barrett
DATE: August 18, 2016
SUBJECT: Regulatory Issues: Salisbury Beach, Inclusionary Zoning
CC: Lisa Pearson, Salisbury Planning Board

The purpose of this memo is to address two sets of issues that I have been asked to review. First, the Town has been approached by a group of local developers who propose to amend Article XII, the Salisbury Beach Overlay District (SBOD), in order to remove what they consider regulatory barriers to redevelopment. One of the barriers they cite is the requirement to comply with Article XIII, Inclusionary Housing, a bylaw that applies not only in the SBOD but also throughout Salisbury. This forms the basis for the second issue, which is whether Article XIII warrants a comprehensive revision and update.

We have tried to address all of the concerns we have heard, both from Town officials and the local developers whose proposed “Big Block” project has led to the present discussion about the SBOD and zoning for affordable housing. Suffice it to say that we agree with some of the local group’s proposals and have significant concerns about others. At the conclusion of this memo, you will find draft rewrites of Articles XII and Article XIII. I emphasize “drafts”. Please treat them as review-and-comment documents. We are providing them in order to encourage further discussion about both sections in the coming weeks.

I. SALISBURY BEACH OVERLAY DISTRICT

A. Background

The SBOD was established in 2005 in order to catalyze redevelopment in the commercial heart of Salisbury Beach, i.e., on Broadway and adjacent streets and along the Beach Road gateway. The SBOD covers almost twenty-five acres and it consists of three nodes: the Broadway Revitalization Subdistrict, which requires mixed use (commercial and residential) development; the Oceanfront South Revitalization Subdistrict, which promotes mixed use development; and the Beach Center Development Subdistrict, which simply provides for mixed use development. The difference between “promotes” and “provides for” is important. The Oceanfront South Subdistrict promotes mixed use development by requiring tall ceilings on the first floor of buildings – a strategy to discourage ground floor dwelling units - but no such requirement exists in the Beach Center Development Subdistrict, where mixed use development is entirely optional.

The SBOD occupies about 12 percent of the Beach Commercial District (BCD), an unusually permissive zone. Overall, development in the BCD seems to be controlled by two requirements: a maximum height standard typically found in residential areas (thirty-five feet) and large parking space dimensions. Like most incentive overlays, the SBOD does not disturb development privileges that exist in the underlying district. As a result, some uses the Town probably would not want to see in the area covered by the SBOD could still happen there, though the likelihood may be low for economic reasons. This potential for land use conflicts is one of the key reasons that planners today usually recommend improving the base use district(s) instead of relying on overlay districts to achieve desired land use outcomes.

As we understand it, at one time the Thompson Group from Cambridge had plans for a large mixed-use development at Salisbury Beach. However, it never went forward, reportedly due to the “Great Recession.” Since then, there has been virtually no new investment in the SBOD. The proponents of changes to the SBOD today say that zoning requirements, at least in part, have impeded redevelopment. It is unclear how other factors may have contributed to the lack of development there as well. Suffice it to say that today, waterfront development is occurring in many of the Commonwealth’s coastal communities, so the renewed interest in Salisbury comes as no surprise.

The group that wants the Town to amend the SBOD has proposed several changes. Since we have seen a few versions of the group’s proposal, we will list here what we believe to be the current slate of amendments:

- 1) Eliminate the Oceanfront South Revitalization Subdistrict and incorporate that portion of the SBOD into the Beach Center Development Subdistrict;
- 2) Modify the definition of “height” in § 300-64 by removing the last sentence (“The referenced elevation for the lowest horizontal structural support member shall be based on

- the minimum height so stipulated by the State Building Code, even if the actual elevation of the lowest horizontal structural support member is higher.”)
- 3) Revise the definition of “parking space” in § 300-64 by describing where off-street spaces can be located (relative to a project site).
 - 4) Increase the maximum height allowed from 65 feet to 89 feet, increase the limit on stories with habitable space from five to seven, and remove the current limitation governing the floor height of the highest story (maximum of 49 feet).
 - 5) Eliminate the minimum commercial floor space requirement in mixed use developments within the Beach Center Development Subdistrict;
 - 6) Revise the on-site parking space requirement in the Beach Center Development Subdistrict by requiring two parking spaces per two-bedroom dwelling unit but allowing one to be an off-site space. The current requirement reads as follows: “Mixed-use development shall have a reduced minimum off-street parking requirement of one on-site parking space per dwelling unit.”
 - 7) In the Broadway Revitalization District, remove the minimum commercial floor space requirements and substitute in their place the following language: “All ground floor uses fronting on Broadway shall be commercial, [sic] parking shall not be an allowed commercial use nor shall onsite parking be visible from Broadway.”
 - 8) Also in the Broadway Revitalization District, replace the existing off-street parking requirement with the same language proposed for the Beach Center Development District (see 6 above).
 - 9) Revise the upper floor setback requirement (§ 300-67(E)) by making the recessed façade trigger three stories instead of 35 feet.
 - 10) Revise § 300-70, Design Review Committee, by eliminating “committee” throughout and replacing it with “consultant.” The intent is to provide the Planning Board with design review services from a peer review architect instead of a committee.
 - 11) Modify the Inclusionary Housing requirements that apply in the SBOD, either by exempting the district from Article XIII or reducing the affordable housing contribution.

The proponents of these amendments say the present SBOD bylaw would prohibit a large development that is planned for a 3.5-acre site that includes most of the Ocean South Revitalization District and the south side of Broadway from Ocean Front to Railroad Avenue. The proposed project, known as the Big Block, calls for approximately 250 housing units and 13,000 sq. ft. of commercial space, and structured parking for 400 vehicles. Since the approximate dimensions of the project are unavailable, it is difficult to estimate conditions such as lot coverage. Based on renderings the group has shown the Town, the buildings vary

between six and seven floors of usable space. The buildings are very tall for this location, and they extend (with intermittent breaks) the full length of the Oceanfront Subdistrict (600+ feet). It is unclear what sort of precedents they take their cues from in Salisbury or nearby. While the renderings show a stepped-back and articulated façade and some modulation of the roofline, it is difficult to determine how the project will achieve “human scale” at the street level and what the street-level experience will be for pedestrians. Such details need not be decided today, but they should be on the table for discussion.

B. Comments and Recommendations

There are several issues that Salisbury officials need to discuss and resolve as they consider the “Big Block” and the zoning amendments the proponents say they will need in order to build this development. Luring investment to Salisbury Beach is an important goal for the Town and a key piece of Salisbury’s Master Plan, but the Town should be cautious about changing the zoning for an entire area in order to meet the requirements of a single project. Any changes made for the Big Block will apply throughout the SBOD (or throughout the subdistricts, as applicable).

1. Building Height

Recommendation: Amend § 300-67(A), Dimensional Regulations, as follows:

A. Maximum height allowed: 65 feet and five stories of habitable space, except that the Planning Board may grant a special permit to increase the maximum allowable height to 89 feet and seven stories of habitable space upon finding that:

- 1) The incremental shadow impact, if any, of the proposed structure will not have an adverse impact on existing structures or landscaping, or cast any incremental shadow on Salisbury Beach prior to 5 pm;
- 2) In addition to the upper floor setback required under Subsection E below, the proposed building provides for an upper floor setback in the front façade of an additional five feet commencing no higher than the ceiling height of the fourth story;
- 3) The proposed upper floor setbacks, building width and height ratio, building spacing, and roof treatments are sufficient to mitigate the impact of the increase in height on surrounding properties, the street, and views of the water, and from the vantage point of pedestrians;
- 4) The proposed increase in height occurs in one or more prominent locations, such as a street intersection or the corner of a building on the interior of a site, thereby providing distinction and contributing to a variety of heights in the district;
- 5) The proposed building addresses all applicable components of the Design Guidelines in § 300-71; and

- 6) The proposed increase in height is necessary to achieve the purposes of the Salisbury Beach Overlay District.

Unoccupied architectural appurtenances to which there is no permanent access (cupolas, spires, chimneys, flagpoles, etc.) and comprising not more than 25% of the building footprint in plan view shall be exempt from maximum height limits.¹

Discussion: We researched the coastal zoning bylaws and ordinances of Massachusetts towns and small cities. We did not find any maximum building height regulation as high as Salisbury’s existing 65’ limit – not on an as-of-right basis. A building that stands as high as seven stories and 89’ will be a very tall building for Salisbury. It has the potential to function as a wall between the water and landward neighborhoods. A seven-story height limit is an urban core standard, not a standard typically found in urban centers, which is really what the “vision” of the SBOD is, considering all aspects of the Design Guidelines in § 300-71. It is even difficult to find a 65’ height limit (let alone 89’) in overlay districts approved under G.L. c.40R.

Height can be elegant; it can “announce” and reinforce gateway locations, and when designed with humans in mind, it can be impressive rather than imposing. A building as tall as the Big Block could be a successful addition to Salisbury Beach or bring unwanted and irrevocable change to Salisbury’s ocean gateway.

In our opinion, the Planning Board must have the ability to grant or deny a special permit for buildings as tall as that shown in the “Big Block” images. It may seem that the Board has enough authority under § 300-69 to regulate the project because approval of a site plan in the SBOD requires adherence to the Design Guidelines in § 300-71. However, if the Town decides to increase the maximum building height to seven stories and 89’, the result – however far-fetched it may seem today – would be that buildings as tall as the Big Block would have as-of-right privileges anywhere in the SBOD and the only controls available to the Board would be through design elements such as gables and roof forms. The Board cannot deny a site plan for an as-of-right use that meets the district’s dimensional requirements.

The Board needs the ability to work with developers to obtain varied building heights and, if necessary, to impose height limits in order to protect the health and safety of nearby residents and business property owners. Modestly recessed façade treatments and varied roof forms alone may not be enough in all cases to mitigate the impact of height on surrounding properties or on the street where the pedestrian experiences the built environment. We have discussed this informally with several developers we know who work in complex or difficult-to-develop locations. The problem with an across-the-board, by-right height limit of seven stories and 89’ is that it probably will not work well in all locations in the SBOD.

¹ Delete the last sentence of this section, as requested by the proponents of amending Article XII.

Special permits are a valid use of regulatory authority when an outcome is generally appropriate for an area but not necessarily for every parcel in an area. It is true that developers almost always prefer the predictability of as-of-right requirements. Developers also want flexibility, yet often, the only way to provide meaningful flexibility in the development process is by special permit. The prospect of constructing a seven-story building with a residential density of 71 units per acre should be enough incentive for an experienced developer to take the perceived risks associated with a special permit.

Recommendation: Amend § 300-67(E) as follows:

E. Upper floor setbacks. A building with a height in excess of 35 feet shall have an upper floor minimum setback in the front facade of at least five feet commencing no higher than 35 feet or the ceiling height of the second story, whichever is lower, with the exception of access elements (stairways or elevator shafts) and unoccupied architecture features not to exceed 25% of the front facade area, in aggregate.

Discussion: Requiring a recessed façade to commence at 35 feet may not respond well to the design elements of a given building. We understand why the present regulation is written as it is; the maximum height in the Beach Commercial District is 35 feet, without any reference to stories. While the present regulation makes sense, it may not be the most appropriate standard for all types of redevelopment projects. Considering an alternative to the 35' threshold is a good idea.

In many mixed-use zoning bylaws and ordinances, requirements for an upper-story setback begin above the *first* floor, but that is because the first floor is usually taller than the upper floors and recessing above the street level helps to achieve human scale. Since so many of the buildings in this part of Salisbury are low-rise structures, linking the upper-floor setback to the lower of 35 feet or the ceiling height of the second story (not the third, as the local group has suggested) should provide architects with some flexibility in the design choices they make.

Recommendation: Do not modify § 300-64, Definition of Height.

Discussion. We do not recommend deleting the last sentence, which reads: “The referenced elevation for the lowest horizontal structural support member shall be based on the minimum height so stipulated by the State Building Code, even if the actual elevation of the lowest horizontal structural support member is higher.” There must be a uniform standard for determining compliance with the maximum building height regulation in § 300-67. Otherwise, the Building Inspector will have difficulty interpreting and administering this section of the Zoning Bylaw. Without a clear standard for the starting point at which height will be measured, the Town will likely invite disputes about whether a proposed building actually conforms to the 65' (or 89') maximum height limit.

2. Commercial Space Requirements in the Broadway Subdistrict

Recommendation: Amend § 300-67(C)(2), Broadway Revitalization Subdistrict, as follows:

Delete paragraphs (b) and (c), and insert the following new paragraphs:

- b) The ground floor of the façade facing Broadway shall be occupied by commercial uses only (other than parking).
- c) No off-street parking shall be visible from Broadway or any public sidewalk or pedestrian pathway.

Discussion: We share the Planning Board’s concerns about removing the minimum percentage of commercial floor area requirement in this Subdistrict. (Planning Board Notes, August 10, 2016.) However, we also understand the proponents’ concerns about the total amount of commercial space that can be supported in this location. Since all development in the Broadway Revitalization Subdistrict *requires* mixed uses, it is critical to avoid imposing a minimum commercial space ratio that is unmarketable (and thereby effectively prevents reinvestment). We think the proponents are right, except that for off-street parking, a mixed-use development should only qualify for a parking reduction if the commercial component provides something more than a fraction of the total floor space. (See “Off-Street Parking” below.)

Although a market study is beyond our scope of work, we have discussed the commercial floor space question in our office. Not surprisingly, the most likely tenants in the Broadway district will be food service and convenience retail. Assuming that an average household spends \$20,000 per year for retail goods, that no more than \$5,000 is captured by local merchants, and that the average retail establishment has \$250 in sales volume per sq. ft. of floor space, the local household supports about \$20 per sq. ft. for local retail sales. If all of these figures held and all 250 units in the Big Block were occupied by year-round owners or renters, the supportable retail floor space would be 5,000 sq. ft. Even if we assume that the new households will spend as much as half of their total annual retail spending in this location, the supportable floor space is still just 10,000 sq. ft. The problem is, there is no guarantee that all 250 units will actually be occupied year-round. With a mix of year-round and seasonal occupancy, the supportable floor space drops significantly. The retail expert in our office suggests a working assumption that four seasonal households bring the local retail spending power of one year-round household. Of course, none of these figures accounts for Salisbury Beach day visitors, who may spend an average of \$30-\$40 per day in local establishments.

If the assessor’s database we obtained from MassGIS is reasonably accurate, the “Big Block” project involves assembling thirteen parcels with a combined total of 97,000 sq. ft. (rounded) of commercial space, including arcades, two bars, food services, and some small retail establishments. The single- and two-story buildings are old and generally low-value properties controlled (as far as we know) by five or six owners. It is unclear to us what the long-term

plans are for the existing businesses, and perhaps those long-term plans are not germane to the decision the Planning Board needs to make. Nevertheless, the proposed “Big Block” development appears to trigger a substantial reduction in the amount of commercial space currently found in this location.

The goal should be qualitative more than quantitative. Higher-value uses that meet some needs of year-round residents as well as visitors will do more for this location than a large amount of commercial space that exceeds what the market will bear. Allowing a reduction makes sense, especially given the large amount of vacation/seasonal retail just twenty minutes away at Hampton Beach. Simply requiring all of the ground floor space on Broadway to be occupied by commercial uses would help to protect the street for retail and restaurants, thereby ensuring that Broadway remains an activity center for pedestrians.

3. Beach Center Development and Oceanfront South Revitalization Subdistricts

Recommendation: Consolidate these subdistricts into a single Salisbury Beach Revitalization Subdistrict.

Discussion. The purpose of this recommendation is mainly to simplify the SBOD and make its provisions more understandable and responsive to market conditions. If the primary reason for establishing separate subdistricts was to “incentivize” commercial uses in Oceanfront South’s ground floor space by requiring a minimum ceiling height of 13’, there is still significant concern about the district’s ability to support so much commercial development. Rather than impose commercial space ratios that could effectively discourage reinvestment, the Town should simply provide for mixed use development in the consolidated subdistrict and allow reduced parking in accordance with an amended § 300-67(B). (See “Off-Street Parking,” next section.)

If the Planning Board feels strongly about preserving separate subdistricts and continuing to encourage ground floor commercial space in Oceanfront South, there should be an option for developers to obtain a waiver from the minimum ceiling height requirement, either by applying for a special permit (which will need standards to guide the Board’s decision) or perhaps by providing some other form of public benefit, e.g., a higher per-unit payment to the Public Benefits Fund. Another option might be to allow the maximum height increase to 89’ in this subdistrict only if the building provides the desired first-floor ceiling height of 13’. At the risk of complicating this discussion, the minimum ceiling height of 13’ is low for ground floor retail uses.



4. Off-Street Parking

Recommendation: Amend § 300-67(B), Dimensional Regulations/Off-Street Parking Requirements, by deleting the existing language in its entirety and replacing it with the following:

B. Off-street parking requirements: Minimum of one space per studio or one-bedroom unit and two-spaces for units with two or more bedrooms, and for every four required residential parking spaces, there shall be 0.25 visitor parking spaces, except that in a mixed-use development with at least 20% of the gross floor area for commercial use (other than parking) on the ground floor level, the requirement shall be a minimum of one space per dwelling unit and one space per 300 square feet of commercial floor area. At least one of the required parking spaces for each dwelling unit shall be an on-site space. For purposes of this Article XII, an on-site space shall be located on the premises of the development, and an off-site space shall mean a parking space located on another lot within 1000 feet of the development and within the SBOD.

Discussion: This amendment clarifies where off-site parking spaces may be located and also streamlines Article XII by eliminating some needless paragraphs. While reviewing the local group's proposed changes to Article XII, we researched urban center parking standards in several Massachusetts cities and towns. The group's proposal to allow off-site spaces up to 1000' from the property is much higher than any of the communities we looked at, but as long as every dwelling has at least one on-site space, the 1,000' separation should not be a problem.

Reducing off-street parking requirements for dwelling units in a mixed-use development should relate to the amount of floor space devoted to commercial uses. The whole point in reducing off-street parking in mixed-use developments is that to some extent, the commercial and residential uses generate parking demand at different times of day. As long as the overall supply is adequate to meet the needs of both classes of use in a 24-hour cycle, a reduction makes sense. If the Town relaxes the standards for mixed-use development so much that the amount of commercial space makes little more than a *de minimis* contribution to the project, there will not really be an offsetting demand. Instead, the project could end up with a parking shortage. Since Salisbury Beach is not located in a transit-oriented area, parking reduction policies need to be carefully thought out. One could argue that parking is really a market risk problem for the developer to solve. However, there is no comprehensive redevelopment strategy for Salisbury Beach and as a result, one development's parking problem could end up becoming the Town's to solve.

We further recommend that for mixed-use developments, there should be a basic parking standard for commercial uses. The lack of commercial parking requirements is a conspicuous omission in the SBOD. As long as Article XII is being updated, this omission should be

addressed. We note that Salisbury has already established commercial parking requirements in other districts, so there is ample precedent for bringing the SBOD in line with these policies.²

Recommendation: Amend § 300-67(C) by deleting the parking requirements listed in each Subdistrict: (C)(1)(d), (C)(3)(d), and (C)(3)(d).

Discussion: The proposed revisions to subsection B above obviate the need for Subdistrict parking regulations.

5. Design Review Committee

Recommendation: Delete § 300-70. Design Review Committee, and replace it with “§ 300-70. Reserved.”

We understand from the Town that there has been little or no volunteer interest in serving on the Design Review Committee. Rather than keep this provision in the bylaw, it makes sense to remove it. The Planning Board can assume responsibility for design review and, if necessary, it may hire a peer review architect to assist with this task. However, we note that while Planning Boards often hire consultants to assist with site plan review, it is not clear that doing so comports with state law.³

6. Design Guidelines

Salisbury adopted very prescriptive design guidelines for Salisbury Beach and decided to place them in the Zoning Bylaw. We imagine most people will not want to remove them from zoning at this point. However, it is important to note that almost everything in § 300-71 could be moved to Planning Board regulations – a move that would give the Board far more flexibility to amend and update the guidelines in the future. The Zoning Bylaw needs to provide authority for the Planning Board to adopt design guidelines, and it should establish the scope of the guidelines (the topics to be covered in the guidelines) so the Planning Board’s authority is clear and property owners and applicants will know what to expect. Anticipating that a major change like this will probably require more discussion than the Town has time for at this point, we suggest leaving § 300-71 largely “as is,” with a few changes as described below.

² In the future, the Town should conduct a comprehensive update of its off-street parking and loading requirements.

³ The Town should consult with Town Counsel about the permissibility of hiring outside consultants for site plan review, which is not expressly provided for under G.L. c. 44, § 53G. The law reads, in part: “... any city or town that provides by rules promulgated under section 9 or 12 of chapter 40A [special permits and Board of Appeals], section 21 of chapter 40B [comprehensive permits], section 81Q of chapter 41 [subdivision control] or section 31 of chapter 111 [Wetlands Protection Act], or by rules promulgated by a conservation commission established by a city or town under section 8C of chapter 40 when implementing the authority conferred under said section 8C of said chapter 40, section 40 of chapter 131, or under any local wetlands ordinance or by-law, for the imposition of reasonable fees for the employment of outside consultants may deposit such fees in a special account...” Site plan review is not a special permit and has no identity in the Zoning Act. It is a creature of home rule. Under the proposed changes in this memo, the Planning Board would conduct design review as part of the site plan review process rather than rely on a non-existent Design Review Committee.

Recommendation: Modify § 300-71, Design Guidelines, as follows:

Change the first paragraph to read (changes are marked): “As part of the required site plan review process or, where applicable, special permit process, applicants seeking to utilize the Salisbury Beach Overlay District shall submit to the ~~Design Review Committee, as part of the site plan review application to the~~ Planning Board, text narrative, plans, elevations, and/or section drawings in accordance with the following guidelines:

Change Paragraph A, as follows:

A. ~~The design of~~ Buildings, structures and site layout shall reflect traditional neighborhood design, with pedestrian friendly street design and that is inviting and pleasant for walking, bicycling, and other non-vehicular means of getting around, and safe and convenient for individuals with disabilities; discernible edges, a mix of densities and land uses, and high-quality public realm. ~~follow "new urbanism" principles and be reflective of~~ Buildings may reflect both traditional and modern interpretations of vernacular coastal New England architecture for the purposes of promoting appropriate waterfront scale and character, including building materials, massing, density, scale, and roof lines.

Change Paragraph S, as follows:

S. Ground floor noncommercial habitable spaces provided at the base of buildings in the Oceanfront South Revitalization Subdistrict ~~shall~~ should be initially designed so as to be capable of conversion at a later date to commercial use. The Planning Board encourages design features necessary for such conversion include, but are not limited to, proper ceiling height, construction assemblies meeting building codes for mixed uses, and accommodation for provision of future handicapped access.

Add a new Paragraph T, as follows:

T. Buildings and sites shall incorporate sustainable building practices, both in choice of construction materials and technology for ongoing operations, as evidenced by participation in the Massachusetts Residential New Construction Program and achieving ENERGY STAR certification or meet equivalent energy efficiency and energy conservation standards.

Discussion: The suggested changes to Paragraph A respond to a request from the Planning Board to clarify what is meant by the term “new urbanism principles.” The change to Paragraph S is intended to preserve the Town’s preference to accommodate commercial space in the ground floor of Oceanfront South buildings. Finally, the new Paragraph T is an effort to update the SBOD to incorporate sustainability in the Design Guidelines. This topic may not have been in the forefront of everyone’s thinking in 2004-2005, but it is clearly a key issue today.

7. Public Improvements

We have no particular recommendations at this time, but it is very important for the Town to ensure that it has the tools it needs to administer this section of Article XII. Specifically, it is not clear to us that the Salisbury Beach Overlay District Public Improvements Fund (PIF) legally exists or that the Town has ever developed the Public Realm Infrastructure Investment Plan, the purpose of which is to guide PIF expenditures and/or developer-performed improvements.

II. INCLUSIONARY HOUSING REQUIREMENTS

A. Background

“Big Block” proponents have told the Town that having to comply with Article XIII, Inclusionary Housing, will most likely make the project infeasible. They have requested some form of relief, whether it be an outright exemption from the affordable housing requirement or reduced obligations for affordable housing, especially since developments in the SBOD have to provide a Public Improvements Fund payment of \$3,000 per unit.⁴ However, the Affordable Housing Trust relies on payments that developers make to the Town in order to comply with Article XIII, i.e., fees in lieu of units. The Affordable Housing Trust uses the fees-in-lieu revenue to create and preserve affordable units in Salisbury, so they are concerned about losing Trust Fund revenue. There has also been some discussion about why it would be difficult to comply with Article XIII given the additional development privileges available in the SBOD.

This is not the first time that RKG has reviewed and made comments on Article XIII. While we respect the Affordable Housing Trust’s need for funding and we acknowledge that Chapter 40B developments have not helped many of Salisbury’s low-income residents, Article XIII has a number of issues. For example:

1. The definitions are outdated. “Affordable Housing Unit” contains references to state regulations that were rescinded as part of the comprehensive overhaul of the Chapter 40B regulations in 2008. “Deed Restriction” does not reflect the significant changes that have been made in the Department of Housing and Community Development’s (DHCD) universal deed rider, and “Salisbury Resident” conflicts with DHCD’s Chapter 40B Guidelines. If one of the Town’s goals is to create units that are eligible for the Chapter 40B Subsidized Housing Inventory (SHI), the bylaw needs to comply with DHCD policies.
2. The applicability threshold (three or more units) is one of the lowest we have seen anywhere in Massachusetts or elsewhere in the U.S. Since the Zoning Act is silent about

⁴ We do not know if this fund was ever established and if so, under what authority in the General Laws. The Town may need special legislation to segregate developer payments from the general fund, to define the purposes of the Public Improvements Fund, and to define eligible uses of the Public Improvements Fund. We recommend that this matter be referred to Town Counsel.

- inclusionary zoning and there is no case law that provides good guidance, technically the Town's three-unit trigger is no more or less "legal" than any other threshold. However, Salisbury's very low threshold may increase the Town's risk of litigation. Presumably Salisbury adopted a low trigger in order to maximize the possibility of creating affordable units that will count on the Chapter 40B SHI. While market-rate housing production effectively increases the number of low-or moderate-income units a town needs in order to meet the 10 percent statutory minimum, it is debatable whether a three-unit subdivision causes the need for affordable housing.
3. The tenant selection process in § 300-77 does not comply with current state policies.
 4. The provision for off-site units in § 300-78 needs to be updated and clarified, and it needs to make a specific reference to Planning Board guidelines for off-site units. The Board should have housing quality guidelines for off-site units in order to avoid problems that have occurred in other communities.
 5. Housing Contribution Payments, § 300-80, should be revised to provide flexibility for the Planning Board to negotiate a payment standard with developers in the event that the prescribed payment methodology creates a hardship or when a project provides other public benefits, e.g., the Public Improvements Fund in the SBOD.
 6. § 300-81, Regulations, is unusual and should be revisited. Typically, the power to adopt administrative regulations lies with the approval authority: the Planning Board or possibly the Board of Appeals. It makes sense for the Planning Board to consider input from the Housing Partnership and/or Housing Trust, but the approval authority's hands should not be tied by regulations "recommended by" [odd construction] another board or committee.

B. Comments and Recommendations

Due to the number of changes we think Salisbury needs to consider in Article XIII, we have addressed them in a draft revision of the inclusionary housing bylaw rather than listing all of the changes individually in this memo. (See Attachment 2, Inclusionary Housing Revisions.)

ATTACHMENT A

Article XII. Salisbury Beach Overlay District (Draft Revisions)

§ 300-61. Purpose.

The Salisbury Beach Overlay District is intended to spur redevelopment of under-utilized beachfront commercial property, to establish design guidelines for new development, to unlock the potential of creative development and architecture, to enhance the value of land and buildings, to provide a foundation for long-term private reinvestment and create incentives for new mixed-use development while preserving the character of this historically lively oceanfront district at Salisbury Beach.

§ 300-62. Boundaries; subdistricts.

The boundary of the Salisbury Beach Overlay District is shown on the Salisbury Beach Overlay District Map, which map is hereby incorporated in and made part of this section. Editor's Note: The Salisbury Beach Overlay District Map is on file at the office of the Building Inspector.

A. The Salisbury Beach Overlay District is comprised of the following three overlay subdistricts, which are delineated on the Salisbury Beach Overlay District Map:

- 1) Beach Center Development Subdistrict. This overlay subdistrict is generally comprised of certain parcels along Oceanfront North, Ocean Avenue, Railroad Avenue, Driftway, Central Avenue, Shea Street, North End Boulevard and Cable Avenue.
- 2) Broadway Revitalization Subdistrict. This overlay subdistrict is generally comprised of certain parcels along Broadway.
- 3) Oceanfront South Revitalization Subdistrict. This overlay subdistrict is generally comprised of certain parcels along Oceanfront South.

B. Overlay district map and lot listing. The Salisbury Beach Overlay District, the Beach Center Development Subdistrict, the Broadway Revitalization Subdistrict and the Oceanfront South Revitalization Subdistrict are delineated on the Salisbury Beach Overlay District Map and the lot listing attached as Exhibit I.

§ 300-63. Existing zoning.

A. The Salisbury Beach Overlay District shall be overlaid over the existing Beach Commercial District within the boundaries shown on the Town of Salisbury Zoning Map. The owners of property in the Salisbury Beach Overlay District shall continue to possess all current zoning rights and be subject to the requirements applicable in the Beach Commercial District. In the event an owner desires to construct a building greater than 35 feet in height, as defined in § 300-5 of the Zoning Bylaw, or to use his property for mixed-

use development, as defined in § 300-64 herein, the rules and regulations of the Salisbury Beach Overlay District shall apply and by filing an application for site plan review or a special permit for a development subject to such rules and regulations, the owner shall be deemed to accept and agree to them. It is intended that the Zoning Board of Appeals shall not grant height variances for development of habitable space over a height of 35 feet in the Beach Commercial District that would exempt the development from the Salisbury Beach Overlay District. Where the Salisbury Beach Overlay District provisions are silent on a zoning rule or regulation, the requirements of the underlying Beach Commercial District zoning shall apply.

- B. Underlying zoning. The underlying zoning for the Beach Commercial District shall remain an integral part of the Salisbury Zoning Bylaw and shall be neither modified, repealed nor amended by this article.

§ 300-64. Definitions.

Definitions of the underlying Beach Commercial District shall apply to all developments subject to the Salisbury Beach Overlay District Bylaw, except for the following:

HABITABLE SPACE

An area of any structure that is legally accessible and intended for human occupancy for residential or commercial uses. Mechanical rooms, parking areas, storage areas and other passive accommodations shall not constitute habitable space.

HEIGHT

The vertical distance from the top of the lowest horizontal structural support member (excluding grade beams, cross-bracing and other foundation elements) as required under the State Building Code for construction in the flood hazard zone in which the property is located to the average height of the main roof structure. The referenced elevation for the lowest horizontal structural support member shall be based on the minimum height required under the State Building Code even if the actual elevation of the lowest horizontal structural support member is higher.

MIXED-USE DEVELOPMENT

Development that contains a combination of residential use and one or more permitted principal commercial uses which are retail and/or professional in nature (a combination of commercial parking facilities and residential uses shall not constitute a mixed use).

PARKING SPACE

An on-site, or off-site, space having an area of not less than 162 square feet, with minimum dimensions of nine feet wide by 18 feet long measured from center to center.



§ 300-65. Permitted uses.

Uses permitted in the Salisbury Beach Overlay District shall include all uses permitted in the underlying Beach Commercial District, except those specified in § 300-66 herein. Mixed-use development shall be a permitted use. Fish and shellfish, wholesale and retail sale, may be permitted by a special permit granted by the Zoning Board of Appeals.

§ 300-66. Prohibited uses.

In addition to those uses prohibited in the underlying Beach Commercial District, the following additional uses shall be prohibited in the Salisbury Beach Overlay District:⁵

- A. Drive-through retail establishment. Any commercial use which utilizes a vehicular drive-up window.
- B. Casino. Any facility or establishment where any gambling or gaming occurs, with the exception of arcade-type establishments which tender coupons or tokens for on-site redemption for noncash prizes or novelties. Gambling and gaming include, without limitation, any other game of chance or skill, or both, played with cards, with dice or with any mechanical, electromechanical or electronic device or machine for currency, check, credit, or any other thing of value, including, without limitation, roulette, 21, blackjack, craps, poker, slot machines, and any other electronic gaming devices and any other games classified as Class II or Class III gaming under the Indian Gaming Regulatory Act, U.S.C. § 2701 et seq., but excluding the game of bingo conducted pursuant to MGL c. 271, any lottery game conducted by the State Lottery Commission in accordance with MGL c. 10, § 24, and games played with cards in private homes or residences in which no person makes money for operating the game, except as a player.
- C. Automobile repair, sales, and service.
- D. Car wash.
- E. Chemical warehouse.
- F. Motorcycle repair, sales and service.

§ 300-67. Dimensional regulations.

Dimensional regulations of the underlying Beach Commercial District shall apply in the Salisbury Beach Overlay District, except for the following:

⁵ We maintain that many other uses allowed in the Beach Commercial District should not be allowed in the SBOD.

- A. Maximum height allowed: 65 feet and five stories of habitable space, except that the Planning Board may grant a special permit to increase the maximum allowable height to 89 feet and seven stories of habitable space upon finding that:
- 1) The incremental shadow impact, if any, of the proposed structure will not have an adverse impact on existing structures or landscaping, or cast any incremental shadow on Salisbury Beach prior to 5 pm;
 - 2) In addition to the upper floor setback required under Subsection E below, the proposed building provides for an upper floor setback in the front façade of an additional five feet commencing no higher than the ceiling height of the fourth story;
 - 3) The proposed upper floor setbacks, building width and height ratio, building spacing, and roof treatments are sufficient to mitigate the impact of the increase in height on surrounding properties, the street, and views of the water, and from the vantage point of pedestrians;
 - 4) The proposed increase in height occurs in one or more prominent locations, such as a street intersection or the corner of a building on the interior of a site, thereby providing distinction and contributing to a variety of heights in the district;
 - 5) The proposed building addresses all applicable components of the Design Guidelines in § 300-71; and
 - 6) The proposed increase in height is necessary to achieve the purposes of the Salisbury Beach Overlay District.

Unoccupied architectural appurtenances to which there is no permanent access (cupolas, spires, chimneys, flagpoles, etc.) and comprising not more than 25% of the building footprint in plan view shall be exempt from maximum height limits.

- B. Off-street parking requirements. Minimum of one space per studio or one-bedroom unit and two-spaces for units with two or more bedrooms, and for every four required residential parking spaces, there shall be 0.25 visitor parking spaces, except that in a mixed-use development with at least 20% of the gross floor area for commercial use (other than parking) on the ground floor level, the requirement shall be a minimum of one space per dwelling unit and one space per 300 square feet of commercial floor area. At least one of the required parking spaces for each dwelling unit shall be an on-site space. For purposes of this Article XII, an on-site space shall be located on the premises of the development, and an off-site space shall mean a parking space located on another lot within 1000 feet of the development and within the SBOD.
- C. Mixed-use development. To encourage mixed-use development at Salisbury Beach, the following requirements shall apply:

- 1) Beach Center Development Subdistrict: mixed-use development is optional in this subdistrict.
 - 2) Broadway Revitalization Subdistrict:
 - a) Mixed-use development shall be required in this subdistrict.
 - b) The ground floor of the façade facing Broadway shall be occupied by commercial uses only (other than parking).
 - c) No off-street parking shall be visible from Broadway or any public sidewalk or pedestrian pathway.
 - 3) Oceanfront South Revitalization Subdistrict:
 - a) Mixed-use development is optional and encouraged in this subdistrict.
 - b) At least 15% gross floor area of habitable space on the ground floor level shall be elevated to the minimum elevation required under the State Building Code and shall include a ceiling height of not less than 13 feet measured floor to floor. The Planning Board may grant a special permit to waive this requirement if it determines that such waiver will not derogate from the purposes and intent of the Salisbury Beach Overlay District.
- D. Hotel and motel uses. Hotel or motel developments shall provide a minimum of one parking space per room, all of or part of which may be off site anywhere in the Beach Commercial District.
- E. Upper floor setbacks. A building with a height in excess of 35 feet shall have an upper floor minimum setback in the front facade of at least five feet commencing no higher than 35 feet or the ceiling height of the second story, whichever is lower, with the exception of access elements (stairways or elevator shafts) and unoccupied architecture features not to exceed 25% of the front facade area, in aggregate.

§ 300-68. Public Improvements Fund.⁶

For any development utilizing the Salisbury Beach Overlay District, the applicant shall make payments to the Town as set forth in Subsections A and B below to the Salisbury Beach Overlay District Public Improvements Fund. This fund, administered by the Town Manager, shall be used for qualified public capital improvements to any area open to the general public within the Salisbury Beach Overlay District, including, but not limited to, utility upgrades, sidewalks, streets, period lighting, landscapes, hardscapes, boardwalks, benches or canopies. The fund shall be a special revolving account separate from the Town's general fund. Water

⁶ We have made no changes to this section, but see our comments on page 11.

and sewer improvements shall not be considered qualified improvements for the purpose of this section as those facilities are addressed under a different fund.

A. Town-administered improvements.

(1) A one-time payment equal to \$3,000 per permitted dwelling unit shall be paid to the Town of Salisbury Beach Overlay District Public Improvements Fund. Payment shall be made with respect to each unit prior to issuance of an occupancy permit for the unit, provided that payment may be made at the time of conveyance of each unit to an end user or upon occupancy by any tenant if appropriate security arrangements to guarantee such payment have been made as part of the site plan review process for the development. Such payments shall not exempt developers from providing any on-site or pedestrian- or vehicle-related improvements that are required as part of the site plan review process.

(2) To guide and prioritize public infrastructure improvements a Public Realm Infrastructure Investment Plan identifying and estimating the costs of the desired improvements shall be prepared and maintained by the Town Manager. Such plan and changes in it shall be subject to consultation with the Planning Board.

B. Developer-administered improvements. As an alternative to, or in partial satisfaction of, the required contributions to the Town of Salisbury Beach Overlay District Public Improvements Fund, with the written approval of the Town Manager, a developer, or group of developers, may perform public improvements included in the Public Realm Infrastructure Investment Plan, the cost of which will be credited against the infrastructure contribution per dwelling unit specified above. Creditable public improvements shall be agreed upon as part of the site plan review process and shall consist of capital improvements to any property which is open to the general public, but shall not include replacement of existing sidewalks and/or curbing along the frontage of a proposed development which shall be the responsibility of the developer. The developer shall be credited an amount equal to 115% of the direct cost of all qualified public improvements performed in advance of unit conveyances or occupancy and for which reasonable proof of actual cost is provided to the Town Planner. Any dispute as to the final amount credited to the developer for approved public improvements shall be decided by the Town Manager whose decision shall be final and binding. The developer shall be required to post a one-hundred-percent performance and payment bond satisfactory to the Planning Board, with advice from the Town Planner, prior to undertaking any of the improvements contemplated herein.

§ 300-69. Site plan review.

A. All projects developed within the Salisbury Beach Overlay District shall be subject to the site plan review by the Planning Board in accordance with Article XVIII of the Zoning Bylaw. Prior to the Planning Board approving any application for a development plan under this bylaw, the Board shall find that:



- 1) The plan meets the applicable planning standards established in Article XVIII of the Zoning Bylaw and the Design Guidelines established in § 300-71.
 - 2) The proposed development plan is consistent with the Public Realm Infrastructure Investment Plan for the Beach Commercial District.
 - 3) Proposed elevations and drainage improvements are consistent with federal, state and local storm damage prevention and stormwater control guidelines or regulations.
 - 4) Required contributions will be made to the Salisbury Beach Overlay District Public Improvements Fund and to the Town's Utility Access Fee Funds.
- B. The Planning Board's approval and any conditions of the approval of any application for site plan review of a development under this bylaw shall be submitted in writing to the Building Inspector, the applicant and the Town Clerk. No occupancy permit shall be issued for any building or structure or portion thereof until all conditions of the Planning Board's site plan approval have been met and until a certificate of completion, in a form approved by the Planning Board, is completed and signed by the Board's inspector.

§ 300-70. Reserved.

§ 300-71. Design guidelines.

As part of the required site plan review process or, where applicable, special permit process, applicants seeking to utilize the Salisbury Beach Overlay District shall submit text, narrative, plans, elevations, and/or section drawings to the Planning Board in accordance with the following guidelines:

- A. Buildings, structures and site layout shall reflect traditional neighborhood design, with pedestrian friendly street design and that is inviting and pleasant for walking, bicycling, and other non-vehicular means of getting around, and safe and convenient for individuals with disabilities; discernible edges, a mix of densities and land uses, and high-quality public realm. Buildings may reflect both traditional and modern interpretations of vernacular coastal New England architecture for the purposes of promoting appropriate waterfront scale and character, including building materials, massing, density, scale, and roof lines.
- B. Large expanses of blank walls shall not be allowed. Facades shall have frequent architectural articulation. Major such articulations shall be spaced no farther apart than 25% of the building length at street level (but in no case farther apart than 70 feet). Street levels lined with extensive windows and frequent well-designed entrances to street level uses are encouraged, permitting continuous public views and access in and out of buildings in order to create a lively street atmosphere. Window designs in a vertical orientation are encouraged.

- C. Screening of ground floor parking from pedestrian view with appropriate doors, building elements and/or landscaping features is required for parking areas along public ways.
- D. All projects shall be designed to minimize the size and number of curb cuts. Full-width curb cuts will not be allowed. In keeping with the theme of screening parking from the public view, efficient traffic patterns are encouraged to support ingress and egress from lots. Curb cuts may not exceed an aggregate of 24 feet for every 100 feet of frontage. Lots with less than 100 feet of frontage may have one curb cut, 14 feet in length.
- E. Underground utilities for new and redeveloped buildings are required unless physically restricted or blocked by existing underground obstructions.
- F. A straightforward use of natural, traditional or sustainable building materials is encouraged. Brick, stone, high-quality metals, cast concrete, wood, and cement fiberboard will achieve the greatest level of compatibility with the surrounding area and will best stand the test of time in terms of both changing community tastes and withstanding the historically vibrant commercial climate of the Salisbury oceanfront. Exterior material substitutions, in particular products and applications that are of higher quality than those described in these guidelines, are encouraged.
- G. Building facades shall include architecturally distinct styles promoting diverse design, particularly with rooftop appurtenances such as cupolas, turrets, spires, widow walks, etc.
- H. A diversity of roof heights, gable orientations, and volumes in new buildings is required.
- I. Traditional arrangement of facade components into base, middle, and top composition may be used to achieve compatibility and continuity within the surrounding architectural context. Additionally, projecting bays, recessed balconies, and roof shape variation shall be utilized to provide interest, individuality, and appropriate scale to new development.
- J. Sidewalk amenities such as street furniture, lighting and awnings that encourage year-round pedestrian use and sidewalk-cafe-style seating to enhance the public realm are encouraged.
- K. Rear vehicular access to ground floor parking is preferred to minimize curb cuts on principal streets. Use of streets other than Broadway and Oceanfront South for vehicle access is preferred. Use of shared access points is encouraged to minimize the number of curb cuts.
- L. Placing buildings oriented parallel with the front setback line is required to keep a consistent "street wall," with primary entries oriented towards the street.
- M. Building setbacks may be varied and are encouraged to recognize the siting and scale of adjacent development.

- N. At the intersection of the building line with crossover streets, there may be variation to the building edges to allow for corner elements and circulation functions. The building edges may be articulated and organized in such a way to achieve an architecturally rich and contextually varied composition. Variation in the building edge beyond the minimum setback is encouraged.
- O. The facade proportions used in new development shall incorporate compatible architectural details, storefront design, window openings, and roof shapes to balance the proportions of facades into pleasant and cohesive compositions.
- P. Building elevations are required to incorporate architecturally appropriate techniques to articulate the massing of the proposed building, such as projecting bay windows, different material for the ground floor base, cornice lines, and/or material changes, etc.
- Q. To the extent feasible, provisions shall be made to accommodate the construction and use of an elevated pedestrian walkway (boardwalk) along the oceanfront within the Salisbury Beach Overlay District boundaries stipulated in Exhibit I and to accommodate the future extension of the walkway along the oceanfront to the north and south of the overlay district.
- R. To the maximum extent reasonably possible, the ground floor levels in the Broadway Revitalization Subdistrict and the Oceanfront South Revitalization Subdistrict shall be elevated to the minimum elevation stipulated by the State Building Code, and such elevations shall permit continuous sidewalks and/or boardwalks to be constructed along the building frontages that will permit easy access for pedestrians to building entrances and easy access to and from the boardwalks, the street and the beach.
- S. Ground floor noncommercial habitable spaces provided at the base of buildings in the Oceanfront South Revitalization Subdistrict shall should be initially designed so as to be capable of conversion at a later date to commercial use. The Planning Board encourages design features necessary for such conversion include, but are not limited to, proper ceiling height, construction assemblies meeting building codes for mixed uses, and accommodation for provision of future handicapped access.
- T. Buildings and sites shall incorporate sustainable building practices, both in choice of construction materials and technology for ongoing operations, as evidenced by participation in the Massachusetts Residential New Construction Program and achieving ENERGY STAR certification or meet equivalent energy efficiency and energy conservation standards.



ATTACHMENT B

Article XIII. Inclusionary Housing (Draft Revisions)

§ 300-73. Purpose.

The purposes of this bylaw are:

- A. To increase the supply of housing in the Town of Salisbury that is permanently available to and affordable by low- and moderate-income households;
- B. To encourage greater diversity of housing accommodations to meet the needs of Salisbury residents, including certain local employees; and
- C. To develop and maintain a satisfactory proportion of the Town's housing stock as affordable housing units.

§ 300-74. Definitions.

AFFORDABLE HOUSING TRUST FUND (“FUND”)

An account established and operated by the Town for the exclusive purpose of creating or preserving affordable housing units in the Town of Salisbury.

AFFORDABLE HOUSING

A dwelling unit that is affordable to and occupied by a low or moderate income household and meets the requirements for inclusion on the Massachusetts Department of Housing and Community Development (DHCD) Chapter 40B Subsidized Housing Inventory. Affordable units shall remain as affordable units in perpetuity. These units shall have the same construction methods, physical characteristics as, and be intermingled with other units in the subdivision or development.

AFFORDABLE HOUSING RESTRICTION

A contract, mortgage agreement, deed restriction or other legal instrument, acceptable in form and substance to the Town, that effectively restricts occupancy of an affordable housing unit to a qualified purchaser or renter, and which provides for administration, monitoring, and enforcement of the restriction during the term of affordability. An affordable housing restriction shall run with the land in perpetuity or for the maximum period allowed by law, and be entered into and enforceable under the provisions of G.L. c. 184, §§ 31-33 or other equivalent state law.

LOW OR MODERATE INCOME

Household income that does not exceed 80 percent of the area median family income as determined by the United States Department of Housing and Urban Development (HUD), then in effect.

QUALIFIED AFFORDABLE HOUSING PURCHASER OR TENANT



A Low- or Moderate-Income Household that purchases or rents and occupies an Affordable Housing Unit as its principal residence.

§ 300-75. Applicability.

- A. The requirements of this Article XIII shall apply to any multifamily or mixed-use development or any residential development requiring a special permit from the Planning Board or a finding or a variance from the Zoning Board of Appeals that results in a net increase of six or more dwelling units, whether by new construction or by the alteration, expansion, reconstruction, or change of existing residential or non-residential space, whether on one or more contiguous parcels.
- B. Construction of a residential development shall not be segmented to avoid compliance with this section. Segmentation shall mean one or more divisions of land that cumulatively result in a net increase of six or more lots or dwelling units above the number existing 36 months earlier on any parcel or set of contiguous parcels held in common ownership on or after the effective date of this Article XIII.
- C. Motel or hotel units shall not be considered as housing units under this bylaw. If requested by the Planning Board or the Zoning Board of Appeals, based on advice from the Assessor, the Building Inspector shall determine in writing the number of preexisting, legal housing units on a development site.

§ 300-76. Development requirements.

In any development subject to this Article XIII, at least 10 percent of the dwelling units shall be affordable housing. Fractions shall be rounded up to the next whole number.

§ 300-77. General provisions.

- A. Consultation with Housing Partnership Committee. Applicants are encouraged to consult with the Salisbury Housing Partnership early in the development process concerning the Town's affordable housing needs and the optimum manner in which the Town's needs and the developer's affordable housing requirements can be met by the proposed development consistently with any affordable housing planned production plan then in effect in the Town. The Housing Partnership Committee may consult with and give advice to the Planning Board and the Zoning Board of Appeals during the development process and, as a part of the process, may submit written reports to the board reviewing any proposed development subject to the bylaw.
- B. Comparability. Unless otherwise approved by the Planning Board or the Zoning Board of Appeals, as applicable, all on-site affordable housing units shall be dispersed throughout the site and shall be indistinguishable from market-rate units except in interior finish, fixtures and appliances. For both on-site and off-site units that are a part of any development proposal, the number of bedrooms in affordable housing units shall be comparable to the bedroom mix in market-rate units in the development.

- C. Selection process. The selection of qualified purchasers or qualified renters shall be carried out under an affirmative fair housing marketing plan submitted by the applicant and approved by the Planning Board, following consultation with the Salisbury Housing Partnership. The marketing plan shall comply with the Department of Housing and Community Development (DHCD) Local Initiative Program (LIP) guidelines in effect on the date of the special permit or other permit application.

§ 300-78. Methods of providing affordable units.

- A. On-site units. Construction of affordable units on the locus of the development shall be permitted as of right.
- B. The Planning Board may grant a special permit for one or more of the following methods, alone or in combination. In no event shall the total number or value of off-site units, land area, or cash payments provided be less than the equivalent number or value of affordable housing units that could be built on-site under § 300-76.
1. "Off-site units," or comparable affordable units on another site in Salisbury. Off-site units need not be located in the same district as the development. The approved location of the off-site affordable housing units shall be identified in the special permit decision. Preservation of existing dwelling units for affordable housing may be accomplished by purchasing deed restrictions and providing funds for capital improvements to create housing with equal or greater value as new-construction units.
 2. Donation of developable land in Salisbury to the Salisbury Affordable Housing Trust or another entity as determined by Planning Board, provided the receiving organization agrees in writing to accept the land and the applicant demonstrates that the land is developable for an equivalent number of affordable units in conformance with this Article XIII. Donated land need not be located in the same district as the development, and shall be subject to a deed restriction limiting its use to affordable or mixed-income housing.
 3. A housing contribution payment to the Salisbury Affordable Housing Trust. The payment shall be determined in accordance with § 300-79.

§ 300-79 Housing contribution payments in lieu of on-site units.

- A. Approval. Subject to approval by the Planning Board or, where applicable, the Zoning Board of Appeals, the inclusionary housing requirement may be met by making a housing contribution payment in accordance with this § 300-79.
- B. Amount. The housing contribution payment for each market-rate housing unit in the development shall be equal to \$10,000 for all housing units with a sales price of \$300,000 or less and shall be equal to 3.5% of the selling price of all market-rate housing units with a sales price higher than \$300,000, provided that the housing contribution payment for any

- market-rate housing unit shall not exceed a maximum of \$21,000. The maximum per unit housing contribution payment amount shall be adjusted annually by the Planning Board as set forth herein.
- C. Adjustment. The Planning Board shall adjust the maximum housing contribution payment annually, effective March 1st of each year. The annual adjustment shall be equal to the percentage change in the median sale price of single-family homes in the Town of Salisbury during the previous calendar year, as reported by the Warren Group (or another independent reporting agency selected by the Planning Board if the Warren Group no longer reports such information), and rounded to the nearest tenth of a percent. For example, if the median sales price of single-family homes was \$275,000 for the previous calendar year and was \$250,000 for the calendar year before that, the Planning Board would adjust the maximum housing contribution payment by +10%. The adjusted maximum payment amount shall apply to all housing contribution payments made on or after March 1st of any year until the last day of February of the next year.
- D. Method of Payment. The following methods of payment may be used at the option of the applicant:
- 1) The total amount due shall be paid upon the release of any lots or, in the case of a development other than a subdivision, upon the issuance of the first building permit; or,
 - 2) The total amount due shall be divided by the total number of market rate units in the development. The resulting quotient shall be payable at, or prior to, the closing of each market rate unit. or,
 - 3) A combination of the above methods if approved by the Planning Board or, where applicable, the Zoning Board of Appeals.
- E. As an alternative to subsections B through D above, the applicant's housing contribution payment may be satisfied under an affordable housing tax incentive agreement approved by the Board of Selectmen.⁷

§ 300-80. Planning Board Regulations.

The Planning Board shall adopt rules and regulations to administer this Article XIII, following consultation with the Salisbury Housing Partnership Committee. Such rules and regulations shall not be inconsistent with the Department of Housing and Community Development's (DHCD) regulations and guidelines under G.L. c. 40B.

§ 300-81. Building permit and occupancy conditions; severability.

- A. Building permit conditions. All agreements with the Town of Salisbury and other documents necessary to ensure compliance with this Article XIII shall be executed and

⁷ As we discussed, this option will require special legislation.

delivered to the Department of Planning and Development prior to and as a condition of the issuance of any approval required to commence construction. The Building Inspector shall not issue a building permit with respect to any project or development subject to this article unless and until the Department of Planning and Development has verified in writing to the Building Inspector that all conditions of this Article XIII, including any conditions that may be established by the Planning Board or Zoning Board of Appeals in any decision or approval, have been met.

- B. Occupancy conditions. No certificate of occupancy shall be issued for any market-rate units in a development subject to this article until all deed restrictions, agreements with the Town of Salisbury and/or other documents necessary to ensure compliance by the applicant (and any purchasers of the affordable housing units) with the requirements of this bylaw have been executed and recorded and any required housing contribution payments with respect to the unit have been made. Occupancy permits for any market-rate housing units shall be issued at an equal ratio to the occupancy permits for required affordable housing units for the entire project.
- C. Timing of construction: Where feasible, affordable housing units shall be provided coincident with the development of market-rate units, but in no event shall the development of affordable on-site or off-site housing units be delayed beyond the following schedule:

Market-Rate Unit %	Affordable Housing Unit %
Up to 30%	None required
30% to 50%	At least 10%
Over 50% to 75%	At least 40%
Over 75% to 90%	At least 70%
Over 90%	100%

Fractions of units shall not be counted.

