



CITY OF SOMERVILLE, MASSACHUSETTS
MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT
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PLANNING DIVISION STAFF

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ALEX MELLO, *PLANNER*
DAWN PEREIRA, *ADMINISTRATIVE ASSISTANT*

Case #: ZBA 2017-48
Date: August 14, 2017
Recommendation: Conditional Approval

PLANNING STAFF REPORT

Site: 131 Orchard Street

Applicant / Owners Name: Mouhab Rizkallah, Manager of LaCourt Enterprises
Applicant / Owner Address: 30 College Avenue, Somerville, MA 02144
Owner Name: LaCourt Enterprises
Owner Address: 30 College Avenue, Somerville, MA 02144
Alderman: Lance Davis

Legal Notice: Owner, LaCourt Enterprises, and Applicant, Mouhab Rizkallah, Manager of LaCourt Enterprises, seeks a Special Permit under §4.4.1 of the Somerville Zoning Ordinance (SZO) to alter a nonconforming structure by decreasing the requirement for lot area per dwelling unit and increasing the floor area ratio (FAR), a Special Permit under §9.13 for parking relief, and a Special Permit with Site Plan Review under §7.3 to add an additional four units in the basement of the existing 24 unit apartment building. RB Zone. Ward 6.



Dates of Public Hearing: Zoning Board of Appeals – opened on Aug. 2, 2017 continued to Aug. 16, 2017

I. PROJECT DESCRIPTION

1. Subject Property: The locus contains one parcel of 9,818 square feet. It contains a four story brick masonry 24 unit apartment building of 16,016 square feet of net floor area located south of Davis Square. The basement is currently used as storage and mechanical space. There was a residential unit in the basement that was created by a previous owner without obtaining the necessary permits. Since the current owner / applicant took ownership of the property that illegal unit has been vacated and is not considered as one of the 24 units. The locus does not include any off-street parking spaces. The site includes 12 one-

bedroom and 12 two-bedroom units that range in size from 465-583 sf and 573-626 sf respectively.

2. Proposal: The proposal is to legalize the existing vacant unit in the basement and add three-additional units; for a total of four new units (two one-bedroom units and two two-bedroom units). As a result, the building would have 28 units; 14 one bedroom units and 14 two bedroom units. A two bedroom unit in the basement and a one bedroom unit on either the second or third floor will be designated as affordable housing units made available to income eligible households. Overall, a total of 2,298 square feet of net floor area will be added. Additionally, the proposal includes the addition of 28 bicycle parking spaces and an elevator that will service all levels of the building.

3. Green Building Practices: The application does not list any green building practices.

4. Comments:

OSPCD – Housing Division: The Applicant and the OSPCD – Housing division have been working together to find a unit distribution that met the requirements of Article 13 (Affordable Housing) of the SZO and state Department of Housing and Community Development (DHCD) guidelines on minimum design standards. Based on the collaborations with the OSPCD – Housing division, the Applicant has revised his proposal to include a two bedroom unit in the basement and a one bedroom unit on either the second or third floor will be designated as affordable housing units. A memo has been provided by the OSPCD – Housing division (attached to this report) that provides more clarification on the matter.

The OSPCD – Housing division has two questions:

- It appears there are twenty seven (27) storage bins for 28 units. If that is correct, how will they be assigned to tenants?
- Do basement units (and/or other units) have AC or fans?

Ward Alderman: Alderman Davis has been informed of this proposal and has yet to comment as of the publication of this report.

II. FINDINGS FOR SPECIAL PERMIT with SITE PLAN REVIEW (SZO §7.3) and SPECIAL PERMIT (SZO §4.4.1 and §7.4.2):

In order to grant a special permit with site plan review, the SPGA must make certain findings and determinations as outlined in §5.2.5 of the SZO. This section of the report goes through §5.2.5 in detail.

1. Information Supplied:

The Staff finds that the information provided by the Applicant conforms to the requirements of §5.2.3 of the SZO and allows for a comprehensive analysis of the project.

2. Compliance with Standards: *The Applicant must comply “with such criteria or standards as may be set forth in this Ordinance which refer to the granting of the requested special permit with site plan review.”*

Article 4: Nonconforming Uses and Structures.

The structure is currently nonconforming with respect to the following dimensional requirements: lot area per dwelling unit, floor area ratio (FAR), rear, left, and right yard setbacks, and the number of parking spaces.

The proposal will impact the nonconforming dimensions of lot area per dwelling unit, FAR, and the number of parking spaces. The current dimension of lot area per dwelling unit is 409 sf per dwelling unit. The proposal to add four units decreases it to 350.6sf per dwelling unit where the requirement in the RB district is 1,500sf. The current dimension of FAR is 1.63 and the proposal to add 2,298 square feet of net floor area increases the FAR to 1.87 where the requirement in the RB district is 1.0. This alteration to a nonconforming structure requires the Applicant to obtain special permits under §4.4.1 of the Somerville Zoning Ordinance (SZO).

Section 4.4.1 states that “[l]awfully existing nonconforming structures other than one- and two-family dwellings may be enlarged, extended, renovated or altered only by special permit authorized by the SPGA in accordance with the procedures of Article 5. The SPGA must find that such extension, enlargement, renovation or alteration is not substantially more detrimental to the neighborhood than the existing nonconforming building. In making the finding that the enlargement, extension, renovation or alteration will not be substantially more detrimental, the SPGA may consider, without limitation, impacts upon the following: traffic volumes, traffic congestion, adequacy of municipal water supply and sewer capacity, noise, odor, scale, on-street parking, shading, visual effects and neighborhood character.”

In considering a special permit under §4.4 of the SZO, Staff finds that the alterations/use proposed would not be substantially more detrimental to the neighborhood than the existing structure/use. The proposal will include two inclusionary housing units, which is at a ratio that is consistent with the size and bedroom count of other units within the building. Other nonconforming aspects of the site such as the setback requirements will not be altered as the proposal will only involve finishing space in the basement.

Article 7: Permitted Uses.

Section 7.3 states “In Residence B districts, the maximum number of dwelling units per lot shall be three (3) units. In Residence A and Residence B districts, where developments include a minimum of twelve and a half percent (12.5%) affordable housing units on-site, but in no case less than one (1) affordable unit, as defined by Section 2.2.4, the above standards may be waived by the SPGA through application for special permit with site plan review. In all cases, the minimum lot size, the minimum lot area per dwelling unit and other dimensional and parking requirements of Article 8 and Article 9 shall be met. No incentives for provision of additional affordable housing units as set forth under Article 13, § 13.5, shall be available for those applications requiring a special permit with site plan review under this section.”

The minimum lot size is met, and part of the proposal is seeking approval to modify the requirements of Article 8 (dimensional requirements), and Article 9 (off-street parking). The existing 24 units are considered as preexisting nonconforming units as it relates to the required number of inclusionary housing units since they’ve been in existence prior to 2000 when Somerville adopted its Inclusionary Housing Ordinance. The applicant is providing four additional units and is designating two of those units as affordable.

Article 9: Off-Street Parking and Loading.

SZO §9.13 allows for sites with nonconforming parking to apply for a Special Permit to modify parking requirements if the total number of spaces is six or fewer. The locus is currently nonconforming with respect to the number of required off-street parking spaces as 36 spaces are required and none are provided. The applicant is proposing to install u-type bicycle racks to accommodate 28 bicycles and is going to provide winter bicycle storage in the basement for the same amount of bicycles. In considering a special permit under §9.13 of the SZO “the SPGA may grant such a special permit only when consistent with the purposes set forth in Section 9.1, and upon reaching the findings and determinations set forth in Section 5.1.4”. Staff finds that granting the requested Special Permit is consistent with the purposes of SZO §9.1 and will not cause detriment to increased traffic volumes, traffic congestion of queuing of

vehicles, changes in the type of traffic, change in traffic patterns and access to the site, reduction in on-street parking, or unsafe conflicts of motor vehicles and pedestrian traffic.

3. Purpose of District: *The Applicant has to ensure that the project "is consistent with the intent of the specific zoning district as specified in Article 6".*

The proposal is consistent with the purpose of the RB district, which is, "to establish and preserve medium density neighborhoods of one-, two- and three-family homes, free from other uses except those which are both compatible with and convenient to the residents of such districts." The existing and proposed use is compatible with and convenient to the residents of the district.

4. Site and Area Compatibility: *The Applicant has to ensure that the project "(i)s designed in a manner that is compatible with the existing natural features of the site and is compatible with the characteristics of the surrounding area, and that the scale, massing and detailing of the buildings are compatible with those prevalent in the surrounding area".*

Surrounding Neighborhood: The locus is located on the corner of Day Street and Orchard Street. The surrounding neighborhood is comprised of a mix of single and multi-family residential structures, some of which are condos and others apartments. Some of these residences are converted historic dwelling houses and others are multi-unit, low-rise apartment buildings.

Impacts of Proposal (Design and Compatibility): All of the changes under review to the property will take place on the interior which will not negatively impact the appearance of the site or surrounding area.

Special Permit with Site Plan Review applications must meet the design guidelines under SZO §5.1.5/5.2.4. The design guidelines for residential districts are as follows:

1. *Buildings should be generally of the same size and proportions as those existing in the neighborhood. This shall apply in cases of multi-family development as well as one-, two-, and three-family units. For example, if relatively small two- and three-family structures are common in a neighborhood where multi-family development is proposed, the multi-family development should be physically broken into components that, from a design perspective, are housed in buildings of similar width, depth, and height as those typically found in the neighborhood.*

The size of the existing building is large compared to most neighboring properties; however, there are similarly sized apartment buildings in the neighborhood. The massing or footprint of the existing structure will not change as a result of the proposal.

2. *Use of traditional and natural materials is strongly encouraged (e.g. wood clapboard, wood shingles, brick).*

The existing structure is brick masonry and will remain as such.

3. *Additions to existing structures should be consistent with the architecture of the existing structure in terms of window dimensions, roof lines etc.*

N/A

4. *Although additions should not clash with or be incompatible to the existing structure, it is acceptable and even desirable for the new construction to be distinguishable from the existing building, perhaps by maintenance of design elements of the original building that would otherwise be lost (e.g. false rakes, fasciae, and the like).*

N/A

5. *Where practical, new or infill building construction should share the same orientation to the street as is common in the neighborhood. When not contrary to any other zoning law, front and side yards should be of similar dimensions as those typical in the area.*

N/A

6. *Driveways should be kept to minimal width (perhaps a maximum of twelve feet), and be designed so that no vehicle parked on the drive may straddle the public sidewalk in any way. Low barriers or plantings may be required to separate the parking area from the pedestrian space.*

N/A

7. *Transformers, heating and cooling systems, antennas, and the like, should be located so they are not visible from the street or should be screened.*

There are no transformers, heating and cooling systems, antennas, or the like on the grounds. However, the trash storage area will be screened with non-arborvitae evergreen columnar shrubs.

8. *Sites and buildings should comply with any guidelines set forth in Article 6 of this Ordinance for the specific base or overlay zoning district(s) the site is located within.*

N/A

5. **Functional Design:** *The project must meet “accepted standards and criteria for the functional design of facilities, structures, and site construction.”*

The site meets accepted standards and criteria for the functional design as the building currently exists and the grounds are and access into the building are being enhanced.

6. **Impact on Public Systems:** *The project will “not create adverse impacts on the public services and facilities serving the development, such as the sanitary sewer system, the storm drainage system, the public water supply, the recreational system, the street system for vehicular traffic, and the sidewalks and footpaths for pedestrian traffic.”*

N/A

7. **Environmental Impacts:** *“The proposed use, structure or activity will not constitute an adverse impact on the surrounding area resulting from: 1) excessive noise, level of illumination, glare, dust, smoke, or vibration which are higher than levels now experienced from uses permitted in the surrounding area; 2) emission of noxious or hazardous materials or substances; 3) pollution of water ways or ground water; or 4) transmission of signals that interfere with radio or television reception.”*

N/A

8. **Consistency with Purposes:** *“Is consistent with: 1) the purposes of this Ordinance, particularly those set forth in Article 1 and Article 5; and 2) the purposes, provisions, and specific objectives applicable to the requested special permit with site plan review which may be set forth elsewhere in this Ordinance, such as, but not limited to, those at the beginning of the various sections.”*

The proposal is consistent with the general purposes of the Ordinance as set forth under §1.2, which includes, but is not limited to promote the health, safety, and welfare of the inhabitants of the City of Somerville; to provide for and maintain the uniquely integrated structure of uses in the City; to protect

health; to secure safety from fire, panic and other dangers; to provide adequate light and air; to conserve the value of land and buildings; to preserve the historical and architectural resources of the City; to adequately protect the natural environment; to encourage the most appropriate use of land throughout the City; to protect and promote a housing stock that can accommodate the diverse household sizes and life stages of Somerville residents at all income levels, paying particular attention to providing housing affordable to individuals and families with low and moderate incomes; and to preserve and increase the amenities of the municipality.

9. Housing Impact: The proposal includes providing a two-bedroom inclusionary unit located in the basement, and a one-bedroom inclusionary unit located on the second or third floor, thereby dispersing units throughout the building in a way that makes them comparable in location, quality and character including unit mix and size. Housing staff, during the Affordable Housing Implementation Plan (AHIP) process, is going to pursue that the 2 bedroom unit will be a 50% area median income (AMI) unit and the 1 bedroom will be an 80% AMI apartment. Please refer to the attached memorandum from the OSPCD – Housing division for more details.

10. SomerVision Plan: *Complies with the applicable goals, policies and actions of the SomerVision plan, including the following, as appropriate: Preserve and enhance the character of Somerville’s neighborhoods, transform key opportunity areas, and preserve and expand an integrated, balanced mix of safe, affordable and environmentally sound rental and homeownership units for households of all sizes and types from diverse social and economic groups.*

<u>SomerVision Summary</u>	<u>Existing</u>	<u>Proposed</u>
<u>Dwelling Units:</u>	24	28
<u>Affordable Units:</u>	0	2

11. Impact on Affordable Housing: *In conjunction with its decision to grant or deny a special permit for a structure of four or more units of housing, the SPGA shall make a finding and determination as to how implementation of the project would increase, decrease, or leave unchanged the number of units of rental and home ownership housing that are affordable to households with low or moderate incomes, as defined by HUD, for different sized households and units.*

See paragraph II.9 above (Housing Impact) and the attached memorandum from OSPCD – Housing.

III. RECOMMENDATION

SPECIAL PERMIT with SITE PLAN REVIEW (SZO §7.3) and SPECIAL PERMIT (SZO §4.4.1 and §7.4.2):

Based on the materials submitted by the Applicant, the above findings and subject to the following conditions, the Planning Staff recommends **CONDITIONAL APPROVAL** of the requested **SPECIAL PERMIT and SPECIAL PERMIT with SITE PLAN REVIEW**.

The recommendation is based upon a technical analysis by Planning Staff of the application material based upon the required findings of the Somerville Zoning Ordinance, and is based only upon information submitted prior to the public hearing. This report may be revised or updated with new recommendations, findings and/or conditions based upon additional information provided to the Planning Staff during the public hearing process.

#	Condition	Timeframe for Compliance	Verified (initial)	Notes										
1	Approval is for the addition of four dwelling units in the basement of the existing structure. This approval is based upon the following application materials and the plans submitted by the Applicant:	CO / BP	ISD/PIng.											
	<table border="1"> <thead> <tr> <th>Date (Stamp Date)</th> <th>Submission</th> </tr> </thead> <tbody> <tr> <td>May 8, 2017</td> <td>Initial application submitted to the City Clerk's Office</td> </tr> <tr> <td>(July 20, 2017)</td> <td>Plans submitted to OSPCD (EX01, EX06, EX07, EX08, and EX09)</td> </tr> <tr> <td>(August 10, 2017)</td> <td>Plans submitted to OSPCD (A-000)</td> </tr> <tr> <td>October 26, 2016 (August 10, 2017)</td> <td>Landscaping plan</td> </tr> </tbody> </table>				Date (Stamp Date)	Submission	May 8, 2017	Initial application submitted to the City Clerk's Office	(July 20, 2017)	Plans submitted to OSPCD (EX01, EX06, EX07, EX08, and EX09)	(August 10, 2017)	Plans submitted to OSPCD (A-000)	October 26, 2016 (August 10, 2017)	Landscaping plan
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Any changes to the approved site plan or elevations/use that are not <i>de minimis</i> must receive SPGA approval.														
Affordable Housing/Linkage														
2	Affordable Housing Implementation Plan (AHIP) should be approved by the OSPCD Housing Division and executed prior to issuance of Building Permit. Affordable units shall be provided on-site.	BP	Housing											
3	Written certification of the creation of affordable housing units, any fractional payment required, or alternative methods of compliance, must be obtained from the OSPCD Housing Division before the issuance of a Certificate of Occupancy (C.O.). No C.O. shall be issued until the OSPCD Housing Division has confirmed that the Affordable Housing Restriction has been approved and recorded and the developer has provided the promised affordable units on-site.	CO	Housing											
4	No Certificate of Occupancy shall be issued until the OSPCD Housing Division has confirmed that: (for Condominium Projects) the Condominium Documents have been approved and the Developer has agreed to a form of Deed Rider for the Affordable Unit(s), or (for Rental Projects) the Developer has agreed to and executed a Memorandum of Understanding for Monitoring of the Affordable Unit(s).	CO	Housing											
5	Additional requirements for projects converting to condominiums or removing rental units from the market: If a rental unit is going to be removed as a result of this project, it must comply with City of Somerville Code of Ordinances Chapter 7, Article IV, Condominium Conversion and Removal of Rental Units prior to issuance of Building Permit. No Building Permit shall be issued until the OSPCD Housing Division has confirmed compliance.	BP	Housing											
Construction Impacts														

6	The applicant shall post the name and phone number of the general contractor at the site entrance where it is visible to people passing by.	During Construction	Plng.	
7	The Applicant shall at his expense replace any existing equipment (including, but not limited to street sign poles, signs, traffic signal poles, traffic signal equipment, wheel chair ramps, granite curbing, etc) and the entire sidewalk immediately abutting the subject property if damaged as a result of construction activity. All new sidewalks and driveways must be constructed to DPW standard.	CO	DPW	
8	All construction materials and equipment must be stored onsite. If occupancy of the street layout is required, such occupancy must be in conformance with the requirements of the Manual on Uniform Traffic Control Devices and the prior approval of the Traffic and Parking Department must be obtained.	During Construction	T&P	
Site				
9	Landscaping should be installed and maintained in compliance with the American Nurserymen's Association Standards;	Perpetual	Plng. / ISD	
10	Applicant will screen the trash storage area with non-arborvitae evergreen columnar shrubs. The species of such shall be reviewed and approved by Planning Staff.	CO	Plng.	
11	Applicant will supply 28 bicycle parking spaces, which can be satisfied with U-type bicycle racks. The Applicant will also provide indoor storage for the 28 bicycles during winter months.	CO	Plng.	
Miscellaneous				
12	Gas and electric meters shall not be on the front of the structure. Gas and electric meters may be located on the side of the structure but shall be screened from the street by a hardy, staff approved evergreen planting. Utilities shall not be located adjacent to windows and shall not impact any parking, landscaping, or egress. The provisions of this condition may be waived by staff if the applicant submits a letter from the utility, signed by a utility representative, on utility letterhead, indicating that there is no feasible alternative to placing meters in violation of this condition.	CO	ISD	
13	Electrical conduits on the exterior facades of buildings shall be painted to match the wall material to which they are attached. Conduits are not allowed on the front of any structure.	CO	Plng.	
14	Garbage and recycling locations shall be clearly indicated on site plans. Storage areas shall be inside of the structure or shall be fully screened from view from both the public way and abutters by an appropriate material reviewed and approved by staff. The location shall not impact any parking, landscaping, or egress.	BP	Plng.	
15	Granting of the applied for use or alteration does not include the provision for short term rental uses, such as AirBnB, VRBO, or the like. Separate approvals are needed for the aforementioned uses.	Ongoing	ISD / Plng.	

16	The Applicant, its successors and/or assigns, shall be responsible for maintenance of both the building and all on-site amenities, including landscaping, fencing, lighting, parking areas and storm water systems, ensuring they are clean, well kept and in good and safe working order.	Cont.	ISD	
17	For developments with 7 or more residential units or commercial development, the Owner/Applicant is required to hire a private company to remove trash and recycling on a regular basis.	Cont.	ISD / Plng.	
Public Safety				
18	The Applicant or Owner shall meet the Fire Prevention Bureau's requirements.	CO	FP	
19	To the extent possible, all exterior lighting must be confined to the subject property, cast light downward and must not intrude, interfere or spill onto neighboring properties.	CO	Plng.	
Final Sign-Off				
20	The Applicant shall contact Planning Staff at least five working days in advance of a request for a final inspection by Inspectional Services to ensure the proposal was constructed in accordance with the plans and information submitted and the conditions attached to this approval.	Final sign off	Plng.	





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MAYOR'S OFFICE OF STRATEGIC PLANNING & COMMUNITY DEVELOPMENT

JOSEPH A. CURTATONE
MAYOR

MICHAEL F. GLAVIN
EXECUTIVE DIRECTOR

TO: Alex Mello, Planner, OSPCD Planning and Zoning

FROM: Mike Feloney, OSPCD Housing Director

RE: ZBA Case 2017-48, 131 Orchard Street - comments

DATE: August 11, 2017

CC: Kelly Donato, Assistant Housing Director/Housing Counsel; Ithzel Polanco, Inclusionary Housing Specialist; George Proakis, Planning and Zoning Director, Mouhab Rizkallah, Applicant

Thank you for the opportunity to provide comments on the above referenced application, in regard to the applicant's offer to provide two affordable units to be governed by Section 13.3.4 of Somerville's Zoning Ordinance. Below please find information from a review of materials in association with a request to legalize an existing (vacant) basement unit and add three (3) additional units in the basement of the property. One of the additional units to be added also had been proposed as affordable housing.

As you noted in correspondence to the applicant, Housing Division staff typically requests design information in order to complete a review of affordable units for consistency with ordinance Section 13.3.4 that calls for on-site units to be, "intermixed with the market rate units, dispersed throughout the building(s) on the development site, and ... comparable to market-rate units in every respect including location, quality and character, room size, and external appearance." Specific design information typically requested to complete an initial proposal review includes project plans and a summary of units detailing the square footage per unit and building amenities. A summary of issues noted in our review follows.

The location of the property in Davis Square is highly attractive, both as an area in which few inclusionary units presently are located, and also due to its proximity to public transportation. However, the proposed location of both affordable units in the basement and size of the units were of real concern. Staff concluded that locating two affordable units in the basement, especially ones proximate to high-traffic areas including building storage and laundry facilities, and also close to the mechanical room, would not meet criteria excerpted above regarding comparability to market-rate units in location, quality, character, and room size.

Regarding unit size, the units initially proposed are smaller than what is recommended under state Department of Housing and Community Development guidelines on minimum design standards. DHCD recommends that 1- and 2-bedroom units be at least minimum of 660 and 900 square feet, respectively. The proposed basement units do not meet these minimum measurements.

In an effort to reconcile the benefits of adding inclusionary units in the Davis Square area with the issues identified above, staff developed an alternative proposal that would meet ordinance criteria. Two key aspects of the alternative approach have been broached with the applicant (and Planning staff) via email and include:

1. Providing one (1) two-bedroom inclusionary unit located in the basement, and a one-bedroom unit located on the second or third floor, thereby dispersing units throughout the building in a way that makes them comparable in location, quality and character including unit mix and size.
2. Housing staff recommended that as part of the lottery process that would be conducted to determine occupancy of affordable units, a preference category be created in response to the property's status as an occupied property where tenants unable to pay rents increased upon unit renovation may be at risk of displacement. While details of such a preference process are to be determined, the basic intent is to help minimize, if not prevent, potential displacement by creating a preference for income eligible households already residing at 131 Orchard Street.

Housing staff noted via email to the applicant and zoning staffing that the preceding points, while critical, were not an exhaustive list of issues identified during initial review. In the event that conditions above remain acceptable to the applicant, and that the project will proceed through the standard inclusionary process including preparation and execution of an Affordable Housing Implementation Plan (AHIP), we anticipate being able to conclude that the affordable units identified will meet Ordinance Section 13.3.4 requirements. Another critical point that should also be confirmed as acceptable is that the 2 bedroom unit will be a 50% area median income (AMI) unit and the 1 bedroom will be an 80% AMI apartment.

For illustrative purposes, two questions staff identified for clarification prior to AHIP execution are:

- It appears there are twenty seven (27) storage bins for 28 units. If that is correct, how will they be assigned to tenants?
- Do basement units (and/or other units) have AC or fans?

Provided that Housing staff continue to receive responsive information to questions like the ones above, and receive finish schedule and other information typically required as part of the AHIP process, we would be eager to see inclusionary units added to the City's affordable housing stock through this effort.