



CITY OF CONCORD
New Hampshire's Main Street™
Community Development Department

Heather Shank
City Planner

TO: The Honorable Mayor and City Council
FROM: Beth Fenstermacher, Assistant City Planner
DATE: January 22, 2019
SUBJECT: Council Referral requesting amendment to the CODE OF ORDINANCES, Title IV, Zoning Code, Article 28-4-5 Development of Attached and Multifamily Dwellings

Recommendation

Accept this report to deny the request to amend the Zoning Code, Article 28-4-5 Development of Attached and Multifamily Dwellings.

Background

Ron Richter of RNL Properties, LLC, submitted a request to City Council on November 27, 2018. At the December 14, 2018 meeting, City Council referred the request to Community Development and the Planning Board for review and comment.

The Applicant requested to amend the Zoning Ordinance by removing Section 28-4-5(1) *Additional Requirements for Multifamily for the Elderly*, paragraph (2) *Facilities and Services Required for Certain Dwellings*. This Section requires:

where the development of multifamily units for the elderly is proposed for occupancy under the statutory provisions in which at least one occupant of each unit must be of fifty-five (55) years of age or older, the development of such units shall include significant facilities and services designed specifically to meet the physical or social needs of older persons. Such facilities and services shall include but are not limited to recreational facilities, congregate dining facilities, an accessible physical environment, transportation services, homemaker services, maintenance services, preventive health care programs, counseling services, and social programs.

The State of New Hampshire includes similar language under RSA 354-A:15 Housing for Older Persons under the State's Fair Housing rules when determining whether housing qualifies for persons 55 years or older.

Prior to 1995, the Federal guidelines under Title VIII of the Civil Rights Act of 1968 (Fair Housing Act) contained similar language. However, in 1995, the Housing for Older Persons Act (HOPA) amended the Fair Housing Act eliminating the language requiring “significant facilities and services designed specifically to meet the physical or social needs of older persons.” The State has chosen to not remove the corresponding language from RSA 354-A:15.

Discussion

Although the Federal language was amended, the language remains in the State statute. Additionally, where the State regulates a certain subject matter, at its discretion, the State may expressly authorize municipalities to enact stricter standards than provided in a particular statute. It is highly unlikely, however, that the State would authorize municipalities to enact less stringent standards. This authority would have to be expressly written into the statute. That language is not included in this section.

In order to ensure that the Zoning Ordinance aligns with State law, Planning staff recommended to the Planning Board that the language remain as written in Section 28-4-5(1)(2). At their January 16, 2019 meeting, the Planning Board concurred and voted unanimously to recommend City Council deny the request.