Implementation of PA 21-29 Subcommittee

MINUTES

October 19, 2022

4:00 p.m. Main Level Meeting Room

ZONING COMMISSIONERS PRESENT: Mrs. Hill, Mr. Solley, Ms. Smith HOUSING COMMISSIONERS PRESENT: Mrs. Gorra, Mr. Woodroofe ON ZOOM: Atty. Zizka, Mr. Barnet, Mr. Hileman

 Mr. Solley called the meeting to order at 4:12 p.m. The following documents were circulated; Litchfield Zoning Regulations, dated 7/19/21, pages 16-19 with attached zoning district map and Mrs. Hill’s discussion draft, “Organization of Comments to Date re: Implementation of PA 21-29,” dated 10/17/22. The draft mainly followed the outline of Atty. Zizka’s 2005 draft regulation to which ideas raised by the subcommittee in previous meetings and standards from the Roxbury Affordable Housing regs had been added.

 Atty. Zizka asked what the status of the “opt out provisions” was. The Zoning Commission had passed a motion to opt out of the accessory apartment and parking provisions of PA 21-29 as allowed per statute and had referred this to the Board of Selectmen for its approval, but it was not known whether that Board had acted as required. Atty. Zizka reminded the subcommittee that the opt out process must be completed by the end of the year or Washington would be bound by all of the provisions in PA 21-29. Mr. Solley will check with the Board of Selectmen.

 Mr. Solley read each section of the draft discussion document followed by discussion and questions.

Location of Multifamily Housing: Mr. Solley did not support the creation of Multifamily Housing zones, but thought this type of development should be permitted throughout Town with the following exceptions: The Green, New Preston Business, and Lake Waramaug Residential districts. This idea had been discussed at previous meetings and there was general agreement. Mr. Solley thought the Woodville Business District should also be considered as an exception due to its small size.

Type of Permit/Review Required for Multifamily Housing: The draft document specified special permits for all Multifamily Housing (MFH) applications so that the public would have the opportunity to comment at a public hearing. It was noted the special permit review is by the Commission, whereas, an enforcement officer would have to be trusted to properly oversee the application review if this use was by right. Atty. Zizka pointed out that the easier the application process for MFH, the more favorable it is looked upon by the court. He explained that a third application process, site plan analysis, could be considered. This would be a review by the Commission without a public hearing. He suggested that size, density, district, etc. of a MFH development could determine whether the particular development should be permitted by right, by site plan review, or by special permit. Mr. Solley thought Washington residents would want to express their opinions about all MFH applications and asked what the harm would be if all MFH applications required a special permit. Atty. Zizka responded that the state thought the special permit process had been used in the past to deny MFH applications, and therefore, one purpose of PA 21-29 was to allow for MFH approvals that were not discretionary. He gave one example of how this could be accomplished with the use of an overlay district. Mrs. Hill asked if it would be enough to allow MFH by right in only the business districts, considering how small of an area that would encompass. Atty. Zizka said the court would probably want a larger area addressed. He said developers would probably apply for MFH in the R-1 District so if no provisions for that use were made for that district, the court might not be satisfied. In short, the greater the area where MFH is permitted and the easier the application process, the easier it would be to defend.

Purpose and Findings: These sections will be reviewed at a later date.

 Standards and Procedures for all MFH applications were discussed.

Preliminary Discussion: Mrs. Hill explained why she thought this was a good idea, and Atty. Zizka agreed.

Survey: It was agreed this important requirement should be included.

Health Department, Inland Wetlands Commission, and Fire Marshal Approvals: Although these application requirements are listed on the application form, it was the consensus they should also be listed in the Regulations.

Building Locations: Mr. Solley suggested that instead of requiring buildings to be separated by a minimum distance of the height of the tallest building, the standard minimum separation distance be 50 ft. It was the consenus this would facilitate enforcement. Mr. Solley also recommended a setback from town and state roads of 100 feet. Mrs. Hill asked if the Commission had the authority to require MFH buildings be oriented to take advantage of solar energy. Atty. Zizka said it could theoretically, but because doing so could have unintended adverse impacts, advised it would be better to require the developer to discuss solar orientation and how he has addressed it with the Commission.

Parking: It was noted that in addition to garages, Quarry Ridge has parking spaces in front of its units. The subcommittee will continue to consider parking requirements.

Utilities: It was agreed underground utilities should be required.

Affordable Units per 8-30g Criteria: It was agreed that a minimum 10% of the MFH units should be required to be affordable. These units would be governed by the local zoning regulations. It was noted, however, that if a developer proposed at least 30% affordable units, CGS 8-30g would apply, and the only way the Zoning Commission could require local standards be met would be to prove they were needed to ensure public health and safety.

Design Guidelines: In response to a question about the Commission’s jurisdiction over architectural design, Atty. Zizka stated that relatively objective standards were required rather than general references to character. Given the first standard listed was to preserve historic structures, he advised that “historic structure” should be defined. Atty. Zizka thought references to architecture and building materials that were typical and harmonious with the neighborhood were good ones, but that references to property values should be deleted. He also recommended that the extent of the area to be included in the “neighborhood” be defined. It was thought that perhaps limiting building materials to those harmonious with the neighborhood might prohibit the use of new building materials and techniques like those described in a recent Housing Commission seminar on energy efficient MFH. Atty. Zizka suggested that kind of development could be permitted with larger setback and buffer requirements to reduce the impact of its appearance. Mr. Woodroofe supported larger setback requirements in these cases, adding that new materials can look traditional from a distance and that trim or other details can be added to make the buildings more harmonious with the neighborhood. The maximum number of units to be permitted per building was only briefly discussed. While 4 seemed reasonable, Mr. Solley noted it could depend on how a project would be sewered. Atty. Zizka objected to the last provision in this section, noting that if the existing topography, natural features, etc. had to be “retained,” it could then be argued that no development was allowed. Mrs. Hill suggested changing “retained” to “used” and Atty. Zizka thought this was an improvement.

Site Design and Landscaping: Atty. Zizka thought the language in this section was good and was necessary so developers could not skimp on landscaping. Mrs. Gorra thought the Conservation Commission would support the provisions in this section.

Lighting: Mrs. Hill explained that although Section 12.15 regulates only outdoor lighting in residential districts, the proposed language specified 12.15 would apply for the lighting of MFH in all districts.

Maintenance: It was noted that most MFH communities would have their own rules.

Financial Security: Atty. Zizka noted the Commission could not require a bond for a private road. Only public improvements and the erosion and sedimentation control measures may be bonded.

Access and Traffic: Mrs. Hill noted she had neglected to include these topics in her draft. She asked 1) whether specific access requirements should be listed in the MFH regs or left to the Board of Selectmen or DOT and 2) whether Mr. Solley still thought a traffic study should be required for every MFH proposal. Mr. Solley thought access requirements should be left to the Board of Selectmen and DOT and that neighbors would want traffic studies. Mrs. Hill questioned the need for these studies for MFD applications when only one building with 4 units was proposed whether in a residential or business district or for small developments accessed by state highways. Mr. Solley agreed the need for traffic studies would be discussed in the future. Atty. Zizka noted that the current special permit standards require the applicant to demonstrate the Town’s existing street network is adequate to serve the proposed development. He suggested the requirement for a traffic study could be based on whether the MFH was permitted by right, by site plan review, or by special permit.

 Additional specific standards for MFD applications located in business districts vs the R-1 District were considered. Mrs. Hill explained, for example, that given the generally smaller lot sizes in the business districts, the Commission may want to allow smaller setbacks or greater lot coverage in these districts. Possible uses such Shop and Storage Use by Builders and Contractors, some Home Occupations, Bed and Breakfasts, etc. to be prohibited in MFH developments were considered, although Mr. Solley pointed out that homeowners’ associations and the like would have their own rules. It was agreed that specific standards for business districts vs the residential district were needed and would be worked on.

 The discussion document also included a list of questions. Most of those that had not been already raised were reviewed. (The following numbers do not necessarily correspond to the numbers in the document.) 1. Atty. Zizka said it would be possible to insert MFH regs in Section 13.12. Mr. Solley suggested a separate section for MFH might be needed. 2. Regarding where MFH should be permitted: Mr. Solley suggested that MFH not be permitted in the Woodville Business District. Mr. Woodroofe and Mrs. Gorra stated they support permitting MFH throughout the entire Town with only a few locations excepted. Mr. Solley agreed, noting that problems would arise if specific boundary lines were set. Over lay zones and how they could be used was discussed and Mr. Solley reviewed the MFH over lay zone that was established in 1984 and later deleted. When Atty. Zizka noted that developers can’t be required to make improvements to Town roads, Mrs. Hill asked if MFH could be prohibited on dirt roads. Atty. Zizka said this could be done. 3. The question of whether and under what circumstances MFH projects should be permitted by right vs by special permit was brought up again. Whereas, Mr. Solley thought the public would want the right to comment on all applications, Mrs. Hill thought the possibility of by right applications should be considered for small projects in the business districts where the existing density and traffic is already greater than in other areas of Town. It was agreed to discuss this further in the future. 4. Mrs. Hill noted that in 2005 the Commission had supported the idea that the 10% affordable units required could be located off site on a property selected by the developer and Board of Selectmen. She asked if there was any reason this idea should be considered now. No one expressed any interest in pursuing this concept. 5. The question about how much authority the Commission has over design and aesthetics was again raised. Atty. Zizka said that if the regs require architectural styles that are consistent with the surrounding community, most judges would not have a problem. It was noted again neighborhood should be defined.

 Mrs. Hill said she would update the discussion document per today’s discussion and would circulate it before the next meeting. The next meeting was tentatively scheduled for Wednesday, Nov. 2 at 3:00 or 4:00 p.m. depending on Atty. Zizka’a availability.

 The meeting was adjourned at approx. 6:00 p.m.

FILED SUBJECT TO APPROVAL

Respectfully submitted,

Janet M. Hill