Implementation of PA 21-29 Subcommittee

MINUTES

December 7, 2022

3:00 p.m. Main Level Meeting Room

ZONING COMMISSIONERS PRESENT: Mrs. Andersen, Mrs. Hill, Mr. White HOUSING COMMISSIONERS PRESENT: Mrs. Gorra, Mr. Woodroofe ALSO PRESENT: Atty. Zizka (3:45 – 5:00,) Mr. Charles (3:30 – 4:30)

The meeting was called to order at 3:00 p.m. Mrs. Hill chaired in Mr. Solley’s absence. Throughout the meeting the issue of and need for affordable housing in Town was brought up for discussion. Mrs. Hill agreed this was an important matter that the Zoning Commission would work on in the future, but said the subcommittee’s charge was to draft multifamily housing regulations to implement PA 21-29.

Prior to Atty. Zizka’s arrival, it was noted he had previously responded by email to the 12/2/22 questions from the subcommittee. His responses raised additional issues and questions and they were discussed. These included: Whether to require that 10% of the proposed Multifamily Housing units be affordable per 8-30g: Atty. Zizka had written that while this requirement would be legal, it might discourage developers from proposing small scale MFH projects. It was noted the permitting of MFH units per PA 21-29 would not add to the Town’s affordable (8-30g) housing stock and that was the reason for the 10% affordability requirement. Mrs. Andersen noted that PA 21-29 actually works against the 10% affordability goal of 8-30g if none of the MFH units are designated affordable. It was agreed to discuss with Atty. Zizka later in the meeting the most appropriate method to ensure the inclusion of designated affordable units in MFH projects. Whether to prohibit Home Occupations in MFH developments: It was the consensus to revise the draft regulations to delete Home Occupations from the list of uses prohibited as Atty. Zizka thought the Commission could adequately control them under the special permit process. Maximum number of units permitted in an MFH development: It was the consensus to set the maximum of 20 for projects accessed by a Town road and 30 for those accessed by state highways. If this works well, in the future the Commission could discuss increasing the maximum number of units permitted. It had been previously agreed that no MFH developments would be permitted on dirt roads and this will be added to the draft regulations. Deed restrictions in perpetuity: Mr. White reported on such a requirement in Ridgefield. It was thought deed restrictions in perpetuity for affordable units under 8-30g could be considered once the MFH regulations were adopted. Potential use of Old Town Garage property for MFH: Mrs. Andersen thought, and the subcommittee agreed, that except for the flood zone on this property, this Depot site would be very suitable for MFH. Mrs. Hill thought she recalled a former Town Sanitarian had said that septic systems could be installed in flood plain soils, but that a major problem could possibly be section 12.1.2 of the Zoning Regulations, which prohibits septic systems within 200 feet of the Shepaug River. Soil based zoning multiplier for MFH developments: This had been previously set at 3 for the R-1 District and 4 for the commercial districts. However, noting the recommendations in both the Housing Plan and Plan of Conservation and Development for MFH in the village centers and the relatively smaller sized lots in the commercial districts, Mrs. Hill worried that a multiplier of 4 would not result in many units being approved in the commercial districts. For example, a 2 acre lot of Class A soils would yield only 4 dwelling units and lots with poorer soils would yield even less. Several subcommittee members suggested a multiplier of 6 for the commercial districts. Mr. White offered to consult an architect regarding the economics and density that would be needed for a profitable MFD project. Mrs. Hill noted the Health Department would also have control regarding how many units the property could support.

Atty. Zizka arrived at 3:45 p.m. and discussed the following matters with the subcommittee

Mr. Woodroofe asked if when the final draft regulations were complete, if the Commission could present them to the court without litigation for a declaratory ruling. Atty. Zizka explained why this could not be done and why he thought it would be of little benefit to the Commission.

Mrs. Hill asked Atty. Zizka for any specific concerns or suggestions he had about the draft regulations. Atty. Zizka said the overall scheme worked well, suggested the MFH section could be reorganized and included in section 14, and warned that none of the proposed standards could be character based. He added that the way the draft described the criteria the Commission was looking for was probably specific enough.

Mrs. Hill asked if it could be considered a weakness of the draft that there were no circumstances under which MFH would be permitted by right. Atty. Zizka stated the PA 21-29 legislation looks for regulations that allow at least some MFH by right and so it would be more difficult to defend regulations that don’t permit any by right. He thought the preamble in the draft was good in that while it defined MFH as the objective of the proposed regulation, it also described the townwide qualities that Washington would work to preserve. It was noted that in addition to looking favorably on MFH permitted by right, the greater the area where MFH was permitted, the more favorably the courts would regard it. Mr. Woodroofe referred to recommendations in the Housing Plan and suggested MFH could be permitted by right in the areas around the village centers. Atty. Zizka said that would make sense because those were more highly developed areas that were more likely to be served by public transportation. When it was pointed out that the subcommittee had previously considered MFH by right under limited circumstances in the commercial districts, but had decided against it, Atty. Zizka noted that as of right does not mean there are no restrictions. He said the Commission could draft objective criteria to be used by the enforcement officer in the application review process. When it was noted the main reason as of right MFH had not been proposed was the opinion that public hearings should be held for all MFH applications, Atty. Zizka stated the court would not favor that stance. After some discussion it was the consensus to work on drafting objective criteria that could be used to control small MFH developments permitted by right under limited circumstances in the commercial districts.

Mrs. Hill pointed to proposed section 13.1.5.G that would require at least 10% of the proposed MFH units be designated affordable per 8-30g and asked if offering incentives might be a better way to handle this. Atty. Zizka said CGS 8-2g actually encourages such incentives and suggested incentives for affordable units could be offered on a sliding scale based on the size of the MFH project. He was asked to draft incentive language that would then be considered and compared with the current section 13.1.5.G.

Atty. Zizka’s response to question #17, which asked about the possibility of using the special permit process to allow reductions in setbacks and increases in coverage for MFH developments, especially in the business districts, was discussed. Atty. Zizka explained the court favors uniform requirements within a district so the more that variations by special permit were avoided, the better. He suggested instead that minimum standards be set and said that during the site plan review, the Commission could require more should the specific circumstances on the property require it. He noted the special permit standards in section 13.1.C already give the Commission the discretion to do this.

The use of the site plan review process was briefly discussed. Atty. Zizka noted the standards included in the MFH regulations would ensure these developments would have a minimum impact on neighbors. It was noted the standards would apply whether the MFH project was permitted by right, by site plan review, or by special permit.

The next subcommittee meeting was scheduled for 3:00 – 5:00 on the second Wednesday in January. Mrs. Hill will update the draft regulations based on today’s discussion and will circulate it prior to the meeting. The meeting was adjourned at 5:00 p.m.

FILED SUBJECT TO APPROVAL

Respectfully submitted,

Janet M. Hill

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