



WESTPORT CONNECTICUT

PLANNING & ZONING
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Hearings: June 2, 2016
June 16, 2016
July 7, 2016
Decision: September 1, 2016

September 6, 2016

1175 PRE Associates, LLC
c/o Investment Capital Partners, LTD
P.O. Box 1307
Greens Farms, CT 06838

RE: **Application #16-009**
Text Amendment #714
New Section 19B - R-RHOW
– Residential-Rental Housing Opportunity/Workforce Zone District
Pursuant to §8-30g of the Connecticut General Statutes

This is to certify that at a meeting of the Westport Planning and Zoning Commission held on September 1, 2016, it was moved by Alan Hodge and seconded by Al Gratrix to adopt the following resolution.

RESOLUTION #16-009

WHEREAS, THE PLANNING AND ZONING COMMISSION met on July 21, 2016 and on July 28, 2016, and made the following findings:

FINDINGS:

I. Background

A. Process for Application Review

This application has been submitted pursuant to Connecticut General Statute (CGS) 8-30g and Section 42 of the Zoning Regulations.

B. Affordable Housing in Westport

Market rate and below-market-rate housing alternatives must be provided in a community to maintain a diversity of residents of all income levels. The housing inventory in the Town of Westport includes market rate housing, below-market-rate housing, and affordable housing as defined by the Connecticut General Statutes.

Affordable Housing

Affordable Housing is defined in §8-30g of the Connecticut General Statutes as:

- a) Assisted housing- a housing development that receives financial assistance under any government program; or
- b) Set-aside development- development where not less than 30% of the dwelling units are conveyed by deed containing covenants or restrictions which require that, for at least 40 years after the initial occupation of the development, such dwelling units will be sold or rented at, or below, prices which are 30% or less of a persons or families annual income, where such income is less than or equal to 80% of the state median income or area median income, whichever is less.

The 2007 Plan of Conservation and Development recommends creating more affordable housing opportunities. Chapter 6, (*Create a Range of Housing Opportunities and Choices*), includes the following goals:

- “Seek ways to expand the variety of housing choices and options of Westport in order to help meet the needs of existing and future residents while maintaining the character and integrity of the town.” Pg. 6-1
- “As Westport work towards providing more housing choices, it will do so in ways that are appropriate for the community and that protect the public health and safety. In addition, Westport will consider ways of integrating affordable, workforce and market rate housing in future projects in partnerships with public and private organizations.” Pg. 6-3
- “Require that all housing construction in Westport either provide affordable housing units or pay into an affordable housing trust fund.” Pg. 6-4
- “Consider requiring that any multi-family development provide affordable housing units.” Pg. 6-4
- “The Town should adopt an inclusionary zoning regulation requiring some percentage of units in a multi-family development to be deed restricted to affordable levels.” Pg. 6-4
- “Strategies giving priority to residents and Town employees should be established to ensure affordable housing serves the needs of Westport.” Pg 6-4

The 1997 and 1987 Town Plan of Development also encouraged enacting zoning regulations to create below-market-rate housing. Since adoption of these plans Westport has made significant strides to implement these recommendations as follows.

C. Local Initiatives

In the 1990’s, Westport took the following significant steps to provide a variety of housing types including below-market-rate dwelling units:

1. Adopted zoning regulations to authorize apartments that existed prior to 1959.
2. Adopted a zoning regulation that allows an increase in floor area for accessory apartments for individuals over the age of 62.
3. Amended §16, the Mobile Home Park regulations to allow for mobile home replacement units thereby creating a mechanism to avoid losing the existing below-market-rate housing stock if the existing mobile home units were not replaced when needed.
4. Adopted §32-15, a zoning regulation that allows for Managed Residential Communities with a density bonus based on the number of affordable units provided.

In the 2000’s the Westport Zoning Regulations were amended to provide additional

diversity in housing types and below-market-rate dwelling units including:

1. Adopted §19, Residential Affordable Housing Zone (R-AHZ), a “floating” zone applicable to public or privately owned residentially zoned property, that requires a portion of the total number of dwelling units to be affordable housing as defined by State Statutes, and subsequently approved a Map Amendment to rezone property located at Wilton Road and Edge Hill Lane from Res AA to R-AHZ.
2. Adopted §20, Municipal Housing Zone (MHZ), a floating zone applicable to Town-owned property and land owned by the Westport Housing Authority, that requires 100% of all dwelling units to be affordable as defined by State Statutes, and subsequently approved a Map Amendment to rezone property at Hales Court from Res AA to MHZ.
3. Adopted §32-17, a zoning regulation that allows for conversion of existing buildings and/or construction of new buildings on Town-owned land for at least 50% affordable housing and 50% middle-income housing.
4. Amended §19, Residential Affordable Housing Zone (R-AHZ), to modify specific provisions to encourage and promote affordable housing by making the R-AHZ regulations less risky and more workable for potential developers.
5. Adopted §24A, General Business District Saugatuck (GBD/S), a floating zone applicable to public or privately owned non-residentially zoned property that requires a portion of the total number of dwelling units to be affordable housing as defined by State Statutes. The Planning and Zoning Commission subsequently approved a Map Amendment to rezone property at 553, 570, 580 Riverside Avenue and 9 Ketchum Street from GBD to GBD/S and approved a Special Permit/Coastal Site Plan application to develop these properties for multi-family development including affordable housing. A second Map Amendment was also approved by the Planning and Zoning Commission to rezone property at 12, 16, 20 Ketchum Street and 518 Riverside Avenue from GBD to GBD/S. A Special Permit/Coastal Site Plan application to develop these properties for multi-family development including affordable housing is currently pending.
6. Adopted §32-1, a zoning regulation that allows for conversion of existing, or construction of new dwelling units applicable to public or privately owned, residentially zoned property, for Supportive Housing use requiring all units shall be affordable, and subsequently approved a development for 6 dwelling units at 10 West End Ave.
7. Modified §4-5 to exempt multi-family affordable housing from the cap of 10%. Also exempt any future affordable units from being included in the cap of 10%.
8. Modified §18 to allow the redevelopment and/or adaptive reuse of existing non-residential buildings on Riverside Avenue into larger sized dwelling units on lots over two-acres in size in non-residentially zone lots or residentially zoned lots that are currently have a permitted non-residential use with a

minimum of 200-feet of frontage on Riverside Avenue and served by public water and public sewer and to identify it is in the public interest to preserve the existing historic scale, massing and character of the affected area. This amendment requires that a minimum of fifteen percent (15%) of the total number of market rate dwelling units shall be designated as workforce or affordable housing.

9. Adopted §19A- Residential Affordable Housing Zone/Workforce (R-AHZ/W) to allow two-family and multi-family dwelling units including market rate dwelling units, affordable housing and workforce housing, subject to Special Permit/Site Plan approval on properties that are a minimum of 1-acre in size and no more than 4-acres in size; have a minimum width of 100 feet; have a lot shape that can contain a rectangle of 100 feet by 150 feet; are contiguous to or directly (on a perpendicular) across the street from a non-residential zone, with the exception of the Design Development District; have a minimum thirty (30) feet of frontage on an Arterial street; and have public water and sewer available.
10. Adopted §11-2.4.12B to allow Affordable Accessory Apartments no larger than 800 SF and no larger than 25% of the floor area of the house if a deed restriction is placed on the land records stating the apartment will be rented as “affordable” for at least 10 years.
11. In March 2007, the Planning and Zoning Commission again formally committed to find ways to address the existing shortage in affordable housing units in Town. An Affordable Housing subcommittee of the Planning and Zoning Commission was formed with the goal of continuing to develop regulations to promote affordable housing in Westport.
12. Adopted §39A, Inclusionary Housing Overlay District (IHZ), was authored by the Planning and Zoning Commission and became effective on 12/3/10 pursuant to Amendment #619. An Overlay Zone is defined as a zoning district that encompasses one or more underlying zones and that imposes additional requirements above that required by the underlying zone(s). The IHZ regulations allow “mixed-use” development of residential and non-residential uses with a requirement that 20% of the residential units shall be owned or rented as affordable units in accordance with C.G.S. §8-30g. There are forty-six (46) properties currently eligible for rezoning to IHZ, see list prepared by Michelle Perillie revised 12/21/15, available in the file.

The Planning and Zoning Commission, in Res. #10-034, cited four (4) reasons for adopting the IHZ regulations:

- 1) “The Planning and Zoning Commission finds the amendment is consistent with Westport Zoning Regulations.
- 2) The Planning and Zoning Commission finds the amendment is consistent with the 2007 Plan of Conservation and Development.
- 3) The amendment will provide opportunities to create affordable housing units, as defined in CGS §8-30g, in Westport where there is an existing shortage.

- 4) The amendment will provide opportunities to increase the diversity in housing types.

Following the Planning and Zoning Commission's adoption of Text Amendment #619 the amendment was appealed to the Representative Town Meeting (RTM). The RTM voted to sustain the Commission's action in December 2010. Following the RTM vote the Text Amendments were appealed to Superior Court by a Westport resident. On October 13, 2011, the Court found in favor of the Commission and did not overturn the amendment. No further appeals were taken.

Zoning Analysis

TEXT AMENDMENT

The proposed application proposes new text in Section 19B of the zoning regulations that are intended to be applicable only with Site Plan Application #16-011 and Map Amendment #715, Application #16-010 for an affordable housing development pursuant to Connecticut General Statute 8-30g. The intended property associated with the text amendment is located at 1177 Post Road East which is in the General Business District where development is guided by the applicable regulations.

The proposed new zoning district R-RHOW regulations contemplate the following standards:

19B-1, Intent and Purpose:

The regulation states the intent is to:

- (a) Increase the availability of affordable and attainable rental workforce dwellings in Westport where existing and adequate public facilities and services are present.
- (b) Encourage the construction of rental workforce dwellings that is within the economic means of moderate and low income households, and is in a mixed-income development.
- (c) Promote housing choice and economic diversity, including rental housing for low and moderate income households, within the Town of Westport.
- (d) Efficiently utilize existing infrastructure and promote neighborhood planning by providing, where infrastructure support is available, a diversity of housing, densities, sizes and prices.

19B-2, Permitted Uses:

The text allows for multi-family residential dwellings and retail, professional and medical offices. The non-residential uses cannot be greater than 6,000 SF in total and must be within a building that also houses residential units.

19B-3, Site Requirements:

The requirements proposed for a site to be rezoned to R-RHOW were revised at the request of the Commission to be more restrictive so as to exclude other properties from consideration under the regulation. The site requirements are as follows:

- (a) Has minimum lot size of 1.5 acres;

- (b) has a minimum of 400 feet of frontage on the north side of the Post Road;
- (c) is within 400 feet of the intersection at Morningside Drive and Boston Post Road;
- (d) is within 650 feet of the intersection of Turkey Hill Road and the Boston Post Road;
- (e) has access to existing public water and sewer; and
- (f) Does not exceed 4 stories of livable floor area, not including below grade living area.

19B-4, Bulk, Area, Dimensional, and Open Space Requirement:

- (a) Minimum lot area 1.5 acres
- (b) Minimum lot width 400 feet
- (c) Minimum front setback 30 feet
- (d) Minimum side setback 15 feet
- (e) Minimum rear setback 30 feet
- (f) Maximum building height 60 feet or 4 stories
- (g) Maximum impervious coverage 80% of gross lot area

19B-5, Other Standards:

19B-5.1 Private Roads:

Private roads must be designed and constructed in accordance with standards of the Town of Westport for municipal roads.

19B-5.2 Parking (Residential):

The table below outlines the existing and proposed requirements for residential parking.

	Existing Regulation	R-RHOW
Studio	1.75 parking spaces	1.5 parking spaces
1-Bedroom	1.75 parking spaces	1.5 parking spaces
2-Bedroom	2.25 parking spaces	2.25 parking spaces

The existing zoning regulations require an additional 0.25 parking spaces per studio and 1-Bedroom unit.

19B-5.3 Parking (Commercial):

The regulation proposed non-residential parking be provided per §34.

19B-5.4 Density:

The regulation proposes the maximum density be 50 units per acre. This density far exceeds the density permitted in the existing regulations. The IHZ permits a maximum

28 units per acre.

19B-6, Site Plan Documents to be Submitted:

The regulation requires the documents provided in §44-1 be submitted except and otherwise provided in the regulation.

19B-7, Traffic Study

The regulations require a traffic study be submitted at the request of the Commission;

19B-8, Application Requirements:

The proposed regulation exempts applications submitted pursuant to this section from the following regulations:

- §4-5, Maximum Allowable Multi-Family Dwellings;
- §32-8, Excavation and Filling of Land;
- §32-12, Inclusionary Two-family and Multi-Family Dwellings;
- §32-18, Historic Residential Structures;
- §35, Landscaping, Screening and Buffer Areas;
- §37, Sediment and Erosion Control Regulations;
- §44-1.4.5, Special Permit and/or Site Plan Documents, Standards and Objectives (Signs and Lighting);
- §44-2, Special Permit and/or Site Plan Documents, Standards and Objectives (Other Reports and Documents);
- §44-2.6, Special Permit and/or Site Plan Documents, Standards and Objectives (Sewerage Reports)
- §44-2.7, Special Permit and/or Site Plan Documents, Standards and Objectives (Archaeological Report)
- §44-5, Special Permit and/or Site Plan Documents, Standards and Objectives (Landscaping and Screening); and
- §44-5.5. Special Permit and/or Site Plan Documents, Standards and Objectives (Lighting and Noise)

19B-9, Definitions:

The regulations define the terms “Rental Housing Opportunity Development” (RHOD) and “Rental Workforce Dwelling”.

19B-10, Requirements for Workforce Homes:

The regulations require the construction quality of the Rental Workforce Dwellings be comparable to market rate units within the development and that they be dispersed throughout the development and built on a pro rata basis as construction proceeds. The regulation requires that an Affordability Plan be submitted.

19B-11 Sunset Provisions

At the Commission’s request, the applicant has added this section to address concerns about the future applicability of the R-RHOW Zone regulations on other properties. The Commission wants to ensure that these regulations are only applicable to this property and development. The regulation accomplishes that goal as will set a date where no future application can be submitted. If the text amendment is approved, the Commission must set that date as part of the resolution.

NOW THEREFORE, BE IT RESOLVED that 1177 Post Road East Associates, LLC, Application #16-009 by Christopher Smith, of Shipman Goodwin, LLP, for Application #16-009, Text Amendment 714, to incorporate Section 19B - R-RHOW – Residential-Rental Housing Opportunity/Workforce Zone District into the Zoning Regulations and pursuant to CGS 8-30g be **GRANTED**.

Reasons:

1. The importance of providing 8-30g affordable housing in Westport is a primary goal of this Commission; and
2. No evidence of a significant public interest that clearly outweighs the need for affordable housing in Westport has been presented.

EFFECTIVE DATE: October 9, 2016

VOTE:

AYES	(3)	Hodge, Gratrix, Lessing,
NAYS	(2)	Liebowitz, Whittle
ABSTENTIONS	(1)	Walsh

Very truly yours,


 Cathy Walsh
 Chair, Planning & Zoning Commission

- cc: James Marpe, First Selectman
 Ira Bloom, Town Attorney
 Christopher Smith, Shipman Goodwin, LLP
 Alicia Mozian, Conservation Director
 Tax Assessor
 Andy Kingsbury, Fire Chief
 Edward Zygmant, Fire Marshal
 Foti Koskinas, Police Chief
 Peter Ratkiewich, Town Engineer
 Bruce Lindsay, Tree Warden
 Mr. Sharat Kalluri, CDM Smith, 111 Foundation Plaza, Suite 1600, East Hartford, Ct 06108

Text Amendment #714

Submitted: 4/4/2016

Received: 4/7/2016

Public Hearings:

6/2/2016

6/16/2016

7/7/2016

Adopted: 9/1/2016

Effective date: 10/9/16

Deleted language is ~~[struck out and in brackets]~~; New language is underlined.

§19B: RESIDENTIAL-RENTAL HOUSING OPPORTUNITY/WORKFORCE ZONE DISTRICT (R-RHOW)

19B-1. Intent and Purposes:

The purpose of the Residential-Rental Housing Opportunity/Workforce Zone (“R-RHOW”) is to:

- (a) Increase the availability of affordable and attainable rental workforce dwellings in Westport where existing and adequate public facilities and services are present.
- (b) Encourage the construction of rental workforce dwellings that is within the economic means of moderate and low income households, and is in a mixed-income development.
- (c) Promote housing choice and economic diversity, including rental housing for low and moderate income households, within the Town of Westport.
- (d) Efficiently utilize existing infrastructure and promote neighborhood planning by providing, where infrastructure support is available, a diversity of housing, densities, sizes, and prices.

Workforce housing which fully satisfies the intent, requirements and purposes of Section 8-30g of the Connecticut General Statutes, must be part of any housing proposal submitted for approval within this Zone District.

19B-2. Permitted Uses:

The following uses shall be permitted subject to site plan approval by the Commission in accordance with the standards set forth herein:

- (a) Multi-family residential dwellings, related accessory buildings, amenities, structures and uses.

- (b) Commercial, including retail, and professional and medical office, with related amenities. Commercial uses shall not exceed 6,000 square feet in total. Any commercial use shall be located in a building housing residential dwellings.

19B-3. Site Requirements:

No parcel of land shall be rezoned to R-RHOW unless it satisfies the following:

- (a) has a minimum lot size of 1.5 acres;
- (b) has a minimum of 400 feet of frontage on the north side of the Boston Post Road;
- (c) is within 400 feet of the intersection of Morningside Drive and the Boston Post Road;
- (d) is within 650 feet of the intersection of Turkey Hill Road and the Boston Post Road;
- (e) has access to existing public water and public sewer; and
- (f) does not exceed three stories of livable floor area, not including below grade living area.

19B-4. Bulk, area, dimensional, and open space requirements:

The following requirements shall be deemed to be the minimum or maximum requirements in every instance of an application:

- (a) Minimum lot area 1.5 acres
- (b) Minimum lot width 400 feet
- (c) Minimum front setback 30 feet
- (d) Minimum side setback 15 feet
- (e) Minimum rear setback 30 feet
- (f) Maximum building height 60 feet or 4 stories
- (g) Maximum impervious coverage: 80% of gross lot area

19B-5. Other standards:

19B-5.1 Private roads:

When private roads are proposed, they shall be designed and constructed in accordance with the standards of the Town of Westport for municipal roads.

19B-5.2 Parking (Residential):

Notwithstanding the requirements of §34, parking shall be designed to provide safe circulation, at least % of provided parking shall be covered, and the following minimum parking shall be provided:

a.	studio dwelling	1.5 parking spaces
b.	one bedroom dwelling	1.5 parking spaces
c.	two bedroom dwelling	2.25 parking spaces

19B-5.3 Parking (Commercial):

Notwithstanding the requirements of §34, adequate parking shall be provided.

19B-5.4 Density:

The maximum number of multi-family dwellings shall not exceed 50 per acre.

19B-6 Site Plan Documents Required to be Submitted

Those documents provided by §44-1 of these Regulations are required to be submitted with an application filed pursuant to this §19B, except as otherwise provided in this §19B.

19B-7. Traffic Study:

Upon request of the Commission, a traffic study shall be prepared and submitted to the Commission with regard to the existing and proposed traffic conditions and circumstances. An application for site plan submitted pursuant to this §19B, not be subject to §44-2.5.

19B-8. Application Requirements:

19B-8.1 Petition to re-zone, if required, as provided by these Zoning Regulations.

19B-8.2 Application for site plan, with only those documents provided by §44-1 of these Zoning Regulations being required as part of the application, except as otherwise provided in this §19B.

19B-8.3 An application for site plan submitted pursuant to this §19B is not subject to §§32-8, 32-12 and 32-18.

19B-8.4 An application for site plan submitted pursuant to this §19B is not subject to §44-2, although the Commission may refer the application for comment to any of the agencies referenced in §44-2.1.

- 19B-8.5 An application for site plan approval submitted pursuant to this §19B is not subject to §44-2.6. However, any RHOD shall obtain necessary approvals from the Water Pollution Control Authority prior to obtaining any related certificate of occupancy.
- 19B-8.6 An application for site plan approval submitted pursuant to §19B is not subject to §44-2.7.
- 19B-8.7 An application for site plan approval submitted pursuant to §19B is not subject to §§35, 37, 44-1.4.5, 44-3, 44-5.4 and 44-5.5. However, appropriate landscaping and lighting, and appropriate sediment and erosion control measures, shall be provided.
- 19B-8.8 An application for site plan approval submitted pursuant to §19B shall provide for no net increase in peak stormwater flows or volume from existing conditions at the subject property.
- 19B-8.9 An application for site plan approval submitted pursuant to §19B shall not be subject to the multi-family housing restrictions of §4-5, or any other regulatory restriction on, or prohibition of, multi-family housing.

19B-9. Definitions:

- (a) A "Rental Housing Opportunity Development" ("RHOD") is a housing development in which not less than twenty-five percent (25%) of the dwelling units will be held or conveyed by deeds containing covenants or restrictions which shall require, for a period of at least forty (40) years, that such dwelling units be rented at, or below, prices which will preserve the dwelling units as housing for which persons and families pay thirty percent or less of their annual income, where such income is less than or equal to eighty percent of the median income, as provided by Section 8-30g of the Connecticut General Statutes, as amended.
- (b) "Rental Workforce Dwelling" means a dwelling unit within a Rental Housing Opportunity Development that is subject to long-term price restrictions that comply with Section 8-30g of the Connecticut General Statutes, as amended.

19B-10. Requirements For Workforce Homes:

19B-10.1 The following requirements shall apply to Rental Workforce Dwellings:

- (a) Rental Workforce Dwellings shall be of a construction quality that is comparable to market-rate units within the development.
- (b) Rental Workforce Dwellings shall be dispersed throughout the development and built on a pro rata basis as construction proceeds.

- (c) In conjunction with an application for approval of a site plan for an RHOD development, the applicant shall submit an "Affordability Plan," as required by Section 8-30g of the Connecticut General Statutes, which shall describe how the regulations regarding affordability will be administered. The Plan shall include provisions for administration of and compliance with this section; notice procedures to the general public of the availability of affordable units; identification of the method for designating affordable units; procedures for verification and periodic confirmation of unit occupancy income; and compliance with affordability requirements.
- (d) A violation of the regulations contained in this section shall not result in a forfeiture or reversion of title, but the Planning and Zoning Commission of the Town of Westport or its designated agent shall otherwise retain all enforcement powers granted by the Connecticut General Statutes, including Section 8-12.

19B-11 Sunset Provision:

No application(s) may be submitted to the Commission pursuant to the provisions of this Section 19B of the Regulations after November 8, 2016. However, any application submitted to the Commission pursuant to the provisions of this Section 19B prior to November 8, 2016, which is subsequently approved by the Commission, shall be subject to the provisions of this Section 19B after November 8, 2016. Any request to modify, extend or revise such approval, even after November 8, 2016, shall be subject to the provisions of this Section 19B of the Regulations.