

Memorandum

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WESTPORT P. & Z. C.

To: Whom it may concern
From: Katherine Daniel, AICP, Deputy P&Z Director
Date: March 27, 2018
Re: Considerations for Off-site Deed Restricted Affordable Housing

Westport Zoning Regulations allow off-site deed restricted affordable housing in the General Business District/Residential (GBD/R) §24B and Inclusionary Housing Zone (IHZ) for Assisted Living, Full Care Living, and Independent Living Facilities (ALFCIL) as detailed in §39A-18.4.1, §24A General Business District/Saugatuck (GBD/S), and §18 Residence C District (Res C). The Planning and Zoning Commission has never implemented these provisions and therefore, have requested that the staff assist them in developing a set of considerations that may be part of determining what is suitable off-site deed restricted affordable housing.

This memo outlines ideas discussed with Planning and Zoning Department staff, Town Attorney Peter Gelderman, and Richard Redniss, of Redniss & Mead, regarding considerations relevant to the selection of off-site deed restricted affordable housing, such units intended to fulfill requirements for required deed restricted affordable housing located on property other than that of the project for which it is required. The meeting came as a request of pending application #18-007, which includes a request for off-site affordable housing as part of an Assisted Living, Full Care Living, and Independent Living Facilities in the IHZ Zone. Mr. Redniss has had decades of experience implementing affordable housing in Westport, Wilton, Darien, Norwalk, and Stamford. A copy of Mr. Redniss's notes are attached.

The following is an annotated list of 17 points of consideration. This reflects the meeting and discussions with Mr. Redniss as well as research and discussion with staff and Westport's Town Attorney.

1. **Evaluation:** (Stats if on-site vs off-site¹): As a general comment, each application needs to rise or fall on its unique individual merit. The points below are the types of issues the staff and Planning and Zoning Commission can consider when evaluating if an off-site solution is appropriate. How people choose to weigh each one is in some cases subjective. For example, home ownership might be an important consideration for some PZC members. However, more moratorium points are awarded for rental housing.

Weighing the importance of competing considerations is the job of the Planning and Zoning Commission members.

2. **Floor Area** (Square footage¹): The following zoning regulations address the square footage of units designated as deed restricted affordable housing units:
 - Inclusionary Housing Zone: §39A-18;
 - Affordable and Middle-Income Housing on Town-owned Property: §32-17.4c;

¹ Indicates the corresponding item title in Mr. Redniss's list

- Residence C Zone: §18-17.2;
- Inclusionary Two-family and Multi-Family Dwellings; §32-12.15.1

The Inclusionary Housing Zone and the Inclusionary Two-family and Multi-family regulations require that 20% of the floor area and 20% of the dwelling units be deed restricted as affordable.

Comparing the size of on-site market rate units to the size of proposed off-site deed restricted affordable units can be an important consideration. If the off-site deed restricted unit is larger than the on-site market rate unit is, it may make a finding the off-site alternative satisfactory easier. If the off-site deed restricted unit is smaller, there should be other compensating factors to counter balance the deficit.

The Commission may consider the size of proposed off-site affordable housing units compared to the size of the market rate units in conjunction with other factors.

3. **The number of people served:** The number of units or the number of bedrooms proposed for deed restriction is another important consideration. The Commission may wish to consider the number of bedrooms in the market rate units as compared with the number of bedrooms in the proposed off-site deed restricted affordable units. Alternatively, the Commission may wish to target certain family sizes by defining the number of bedrooms in the deed restricted affordable units. The State of Connecticut assumes 1.5 people per bedroom for calculation of housing affordability.

The Commission may consider the number of bedrooms in the proposed off-site affordable housing units compared to the number of bedrooms in the market rate units.

4. **Fee in Lieu (Fee \$/Budget¹):** Westport's Residence C Zone §18-17.2, a zoning district that has never "landed" anywhere, contains provisions for the payment of a fee in lieu of deed restricted affordable housing. It should be noted that the Commission has never used this regulation; however, Mr. Redniss has experience with the topic and offers it as a consideration when considering off-site affordable housing. The development of off-site affordable housing requires expenditures on the part of the applicant (for purchase of property, renovations, administrative costs). The point made here is that these funds may result in more affordable housing if paid into a fund of a recognized nonprofit that has been established for the provision and maintenance of affordable housing. In Mr. Redniss' experience, when a system is in place for use of these funds, particularly in partnership with experienced nonprofit affordable housing providers, the "fee in lieu" alternative works well.

The Commission may consider how effective a fee paid in lieu of affordable housing may be before accepting it.

5. **Moratorium Points:** Mr. Redniss's point #1 and point #5 relate to, that of "moratorium points", the value to be attributed to the affordable units. CGS 8-30g provides that when the total of a community's points reach a certain level, a hiatus of four years can be put in place, a moratorium, against the obligation of a town to accept applications based on CGS 8-30g.

All other factors being equal, this state statute awards more points for rental units versus owner-occupied units and more points for lower income levels versus higher ones.

Ultimately, the number of points a particular unit will be awarded is determined by the Connecticut Department of Housing based on deeds and other documentation submitted

when petitioning for a moratorium. Discussion with Michael Santoro of the Department can help to clarify how many points a particular type of housing could be awarded.

The Commission may consider how important more moratorium points are among the considerations to be weighed.

6. **Affordability levels:** In general, if an on-site requirement is for one level of affordability and the off-site is for a lower level, one could consider the off-site a better alternative.

CGS 8-30g determines affordability based on the State Median Income (SMI). The statute determines eligibility of a family by limiting the amount of money assumed to be available for housing costs including basic utilities to 30% of the family income. Furthermore, the family may occupy a dwelling unit with an occupancy load of 1.5 people/bedroom.

For example, a family of three could rent a two-bedroom apartment. A family of three making 80% of SMI (income of \$65,952/year) may rent a two-bedroom apartment and will pay no more than \$19,786/yr or \$1,649/mo for housing. A family of three making 60% of SMI will pay \$1,237/mo for a two-bedroom apartment and a family of three making 40% of SMI will pay \$824/mo for a two-bedroom apartment.

There are other methods of determining affordability. CGS §8-13m-x, Incentive Housing Zones, ties affordability to the Standard Metropolitan Statistical Area (SMSA) also called the Area Median Income, this level of housing affordability is sometimes termed "workforce housing". The Area Median Income for the Stamford-Norwalk SMSA is \$142,800 per year for a family of four. In Westport's regulations define "Workforce Housing" as 110% of the Area Median Income.

The GBD/R zone and ALFCIL facilities in the IHZ zone both require calculation of affordability based on the State Median Income.

The Commission may consider the importance of providing a range of levels of affordability throughout Westport.

7. **Location:** Under CGS §8-30g when the deed restricted units are in the same building as the market rate units, they may not be separated in a particular area. They are to be dispersed throughout the development. When off-site deed restricted units are being considered, they are by definition separate from the market rate units.

The location of off-site deed restricted units may be important for other reasons. Location near transit, commercial centers, amenities, and other considerations can be a beneficial feature for families with lower incomes. Locating near a school, playground, or having a yard can be important, particularly to families with children.

The Commission may consider the neighborhood context of deed restricted housing as it may impact the beneficiaries of it.

8. **Amenities:** In Westport's Inclusionary Housing Zone, §39A-18.2, the quality of the amenities in on-site deed restricted units is addressed. With respect to off-site deed restricted units, amenities available are likely to be different from the market rate units. The Commission may wish to have the applicant detail the amenities available with any proposed off-site deed restricted unit. Additional cost to access amenities on-site may also be a consideration.

It may be important for the Commission may consider the different amenities available to the market rate units as compared with the deed restricted units.

9. **Finishes/Quality:** In Westport's Inclusionary Housing Zone, §39A-18.2, the finishes and quality of construction in on-site deed restricted units is addressed. Similar to item #8 Amenities, these are likely to be different from the market rate units. The market rate units will clearly be new.

It may be important for the Commission to understand what degree of renovation and finishes will occur in off-site units to prepare them for occupancy.

10. **Affordability Plan administration:** What entity will administer the Affordability Plan? A range of entities currently administer Affordability Plans in place in Westport. The Westport Housing Authority is the largest administrator of deed restricted housing in Westport. Homes With Hope, a charitable 501c3 organization, administers some deed restricted units as well. Some plans are administered by private businesses or by attorneys engaged to perform this function. Annual reporting of income and housing costs are required by the plans and are reported to the Planning and Zoning Department before January 31 each year.

The Commission may request information from the applicant about the entity or individual who will administer the affordability plan.

11. **Town interest – Right of first refusal:** What will become of the deed restricted units after the restriction period passes? What happens if the property is offered for sale? Deed restrictions in place in Westport range from 10 years to 40 years with CGS 8-30g requiring a 40-year period.

The Commission may wish to request that the Affordability Plan include a "right of first refusal" to allow the Town of Westport to have the right to consider purchase of the property should it be offered for sale in order to continue the deed restriction and provision of affordable housing beyond the limits of the Affordability Plan. This provision can be found in Residence C District §18-17.1, Supportive Housing §32-1.3, Residential-Affordable Housing Zone §19-19.

12. **Preferences vs. Fair Housing:** The US Fair Housing Act requires a process for advertising, evaluating and selecting qualifying individuals for deed restricted units to guard against discriminatory practices. Some of Westport's Zoning Regulations allow a priority system to the extent permitted by law to establish preferences for particular groups of people, elderly Westport residents, for example. This text can be found in Residential-Affordable Housing Zone/Workforce §19A-16.

The Commission should seek legal counsel should it seek to establish preferential groups to benefit from deed restricted housing.

13. **Cap vs. Exemptions:** The Westport Zoning Regulations §4-5 contain a limitation, a cap, on the number of multi-family dwelling units permitted in the town that is 10% of all single-family dwellings, however, several newer regulations that permit residential uses have built in exemptions to this cap. PZC members have expressed interest in having existing non-affordable housing becoming affordable.

The Commission may wish to examine how relevant the cap is given the number of exemptions now built into the regulations.

14. **Bonuses:** If the developer is taking advantage of a bonus, what is the Town getting in return. In the case of the Managed Residential Community regulation found in §32-15, deed restricted units are not required, but for every two deed restricted units proposed, one additional market rate unit will be allowed up to a maximum of 5% of the total units

otherwise allowed by the regulations.

This consideration may also apply when the bonus is something other than additional units. In the case of the GBD/R district a bonus of 22' of additional height is permitted, "provided the applicant demonstrates to the satisfaction of the Commission, present or future public benefits..." (§24B-5 Height)

The Commission may consider a public benefit to be the provision of more deed restricted housing units than is otherwise required.

15. **Miscellaneous:** §32-18.10 Historic Residential Structures allows relief to some zoning standards in exchange for preservation of historic residential structures. In the event an existing off-site historical house were to be preserved while being deed restricted, the Commission might consider using this regulation to the extent possible to permit such a use of an historic home.

The Commission may consider preservation of an historic residential structure to be an additional benefit.

16. **Housing Development Fund (Other-HDF type¹):** HDF is nonprofit organization to finance the development of affordable housing. HDF provides lending and homeownership counseling services to the entire state of Connecticut. Over the years, Mr. Redniss has worked with HDF on leveraging funds to get qualified affordable buyers into home ownership at a two for one ratio. It needs to be determined if that is possible in Westport.

The Commission's Affordable Housing Subcommittee may wish to explore how HDF might work with the Commission to support the development of affordable housing.

BMR EQUIVALENCY

POTENTIAL POINTS TBD

1. STATE of on site vs off

2. Square footage - IAZ 39A-18 20% FA# DU

18-17.2 Budget
32-12.15.11 20%

3. # of units/people served/Bedrooms
0.5 Round up @ 80% SMI 75%? see 32-17.4c Unit sizes

142,300 X 2.25
320,175/4

4. Fee \$/Budget - ResC-18-172 Ex B 225% X 4
should adjust for family size

Mchs Santos

5. Maximize points - C/C 833g - ~~lot~~ place

6. affordability levels SMI, SMSA, workforce

7. location - separation distance (?)

8. amenities 39A-18.2

9. Finishes/Quality 39A-18.2

10. A Plan Administration - RAHZ 19-19
WHA, HWH, 501C-3g

11. Town Interest - Right of first refusal ResC 18-17.1
Supportive 32-1.3 RAHZ 19A9

12. Preferences vs Fair Housing - RAHZ 19A-16
W/employees, elderly, residents

13. CAP vs EXEMPTIONS - Max place (?)

14. Bonus - MRC 32-15 ZBMR = 1+DU (5% Max) @ 30%

15. Misc: 32-18.10 Historic, RA exemptions, Coverage etc

16. other - HDF type