

Planning Board Minutes
September 7, 2016 – 7:00 P.M.
Town Council Chambers
125 Main Street
East Greenwich, RI

Members Present: Steve Brusini, Chair; Michael Donegan, Vice Chair; Jason Gomez; Brad Turchetta; Nate Ginsburg; Ben Lupovitz

Members Absent: Chris Russo; Dan Tagliatela

Staff present: Lisa Bourbonnais, Planning Director; Aaron Lindo, Planning Assistant; Sydney Kirsch, Legal Counsel; Tom Coyle, Town Manager

Mr. Brusini began the meeting at 7:07 and introduced those present.

1. Continued Discussion and Recommendation to Town Council: The Town is considering amending Chapter 260 of the Town Code, Zoning Ordinance, Article XVII, Affordable Housing. The revision would replace Sections 260-98 through 260-101 in their entirety and would add Sections 260-102 through 260-103.

Mr. Brusini deferred to Mrs. Bourbonnais for a walkthrough of the ordinance. The biggest change from the previous versions was that the findings were taken out of the ordinance and made into a resolution. Another change was with the land use maps in the comp plan to rezone areas for higher density residential use to incentivize affordable unit production. A substantive change made was an allowance of off-site affordable units to meet project requirements.

An explanation of the map changes was given. The changes made were in the North West quadrant of Town. In order to change the maps, abutters would have to be notified. Staff explained the potential affordable housing sites that would be affected by the up-zoning to higher density residential use.

Another change was made in Section 260-99 regarding a density bonus. When applicants apply for a density bonus for doing affordable units as part of a project, they will go to the Zoning Board to get relief from dimensional requirements. The legal standards are now referenced.

Mr. Donegan had a question about paragraph 4 (page 2), regarding the yield plan, "...and shall not assume any waivers, variances that shall be granted" inquiring if the language was gratuitous. After discussion, it was determined that the language would be stricken from the ordinance for clarity of interpretation. Mr. Donegan continued and asked what a 'base developable yield' was. The answer equals the number of units in the yield plan.

In the fifth paragraph, "The Planning Board may adjust the income limit," the question was asked whether or not the Board has the authority to do so. Mrs. Bourbonnais gave an update on what has happened since the language was discussed. In the past, the EG Housing Authority was the monitoring agent for affordable units. As the monitoring agent, the HA had a lot of leeway in setting the income limits (up to 120% of the area median income). The EGHA is no

longer going to act as a monitoring agent which means developers are going to have to go to another entity who may make very different demands. The solution would be to simply reference the State's definition of "affordable."

Mr. Gomez asked if the Town would want to entertain low or ultra-low housing in town. Mrs. Bourbonnais answered that private developers are not going to make any money on low income housing projects. The best scenario is to have a developer who specialized in affordable unit production who can access federal, state or other special financing mechanisms to make the projects work. Those projects will not be inclusionary zoning projects that this ordinance is designed to deal with but rather comprehensive permits with 100% affordable units.

Mr. Lupovitz asked what the Board's viewpoint has been in regards to affordable housing. Mr. Brusini replied that there has been no consensus with the Board. Any time an affordable housing project comes before the Board, there may be neighbors showing up with concerns. The Board's previous position has been that there are no exemptions from the law and the local regulations must be followed, even in light of local opposition. Recently, the Board has explored the option of doing more than the minimum to reach the state mandate.

Mr. Lupovitz stated that if there was a consensus, the issue would progress faster. He continued on to say that the Board has an obligation to represent the general feeling of the residents of the Town of East Greenwich. It seemed to him that the general feeling on this issue is that a vast majority don't want affordable housing projects. Mr. Brusini interjected and stated that the Board is not comprised of elected officials and therefore has no charge to represent the general feeling of the public. The Board's charge, role and obligation is to handle responsible land use planning in accordance with State and local laws and via locally adopted land use codes, ordinances, and regulations.

Mrs. Bourbonnais reminded the full Board that substantial public input regarding affordable housing was solicited when the Comprehensive Plan was being written and adopted. Those who came to the public meetings to express their opinions about affordable housing were overwhelmingly in favor of affordable housing unit production. As a result, the Comp plan has a number of realistic strategies to get to the state mandated 10% affordable housing stock goal.

If the Town does not strive to meet the state obligation of 10% affordable housing goal, the state can override the Planning Board and force approval of a project that the Town may not necessarily want. As long as there is a plan being implemented that can plausibly get to the goal, the state will not overrule the town. The current question is how aggressively should the Board attack the issue in trying to reach the 10% goal. Mr. Donegan commented that the Board can't be seen as aggressive until the goal is met.

Background was provided for newer members of the board regarding off-site exactions and how they could be used to further the goal and the problems associated with building off site. Moving affordable units away from a rural setting and into more publicly accessible infrastructure is beneficial. The caveat to building off-site affordable units is making sure there are no specific areas that are *just* low income. The overall goal is to incorporate inclusionary zoning and create true mixed-income areas.

Mr. Lupovitz inquired about the direction of the Board in regards to the most efficient way to reach the goal. Mrs. Bourbonnais commented that the goal is clear in the Comp Plan which states that the Town will get to the State mandate within 20 years. Mr. Gomez added that the ordinance should be adopted first and foremost, as it meets the requirement from the State and is stipulated in the Comp Plan.

Mr. Lupovitz asked if there has been a precedent where the State has stepped in and permitted a project that a town did not want for failure to follow their Comp Plan. Mrs. Bourbonnais replied that it has happened in other towns (Narragansett, Cumberland and others.) What happens when a town is not implementing their Comp Plan is that a Comprehensive Permit can be issued which can be a large affordable housing development generally concentrated on a small amount of land to generate as many units as the land can possibly support.

For example, a developer comes to the town with a Comprehensive Permit project that the town does not want for a variety of reasons. When the town denies the project, the developer can appeal directly to the State Housing Appeals Board (SHAB) instead of the town's Zoning Board of Appeals and then to Kent County Superior Court. The SHAB will see that the Comp Plan is not being implemented, overrule the Planning Board and approve the project to meet the goals set out in the Comprehensive Plan. If the draft affordable housing ordinance gets adopted, the odds of a successful State over-ride of an EG Planning Board decision are greatly reduced.

In regards to off-site exactions, the preferred and best way to increase the affordable housing stock is to deed-restrict existing units rather than the new construction of affordable units. It would be ideal if the Board could give a developer guidance or discretion on the houses that need renovating and deed restricting but it is not in the power of the Board to tell a developer what to buy. The purpose of this ordinance is primarily to net the affordable units.

Mr. Donegan raised a discussion about the language preferring on-site affordable units in 260-102.2, "...will be allowed by the Planning Board in priority order." He suggested changing the word 'will' to 'may' on the basis that a developer can argue that one of the priority conditions are met. The word 'may' gives the Board more discretion in where the developer puts the affordable unit. After the discussion it was agreed that 'may' would replace 'will.'

On the subject of Concurrent Development, Mrs. Bourbonnais gave background of the new language. Mr. Brusini followed with the anecdote of building "Brusini's Luxury Estates," where he is putting 10 units in the hypothetical development, 2 of which are going to be affordable. As the developer, he wants to make all of his money first by building all 8 of the market rate units before building the 2 affordable units. The development takes longer than expected to complete and the economy changes unfavorably. The market rate units get built but the 2 affordable units do not. To counter this, the Board has taken the opposite route of telling the developer to build the affordable units first before building any of the market rate units. In this scenario, the developer might argue that the upfront cost of infrastructure of a road with utilities and drainage needs to be recouped or the development will not happen at all. To try and find middle ground, the Board could determine when the affordable units go in on a project by project basis, depending on site specific financial metrics.

Mr. Brusini posed two questions for discussion: 1. Should the 1st unit be affordable, the last unit be affordable, or should it be determined on a case by case basis? 2. Should the order of units be determined by Certificate of Occupancy (C/O) or by building permits?

Mr. Lupovitz asked if the Board can offer any incentive for building the affordable unit first. Mr. Brusini replied that there cannot be a quid pro quo for a developer. If said developer is seeking relief on some part of the development and volunteered to build the affordable units first on his own volition, the developer's decision to do so might influence the Board's decision to grant the relief. Mr. Donegan elaborated stating that the Board cannot require a developer to build the units first but they can ask if the developer is willing to build the unit(s) first.

Mr. Turchetta opined that the affordable unit should be built when the development is 50% complete. Mr. Ginsburg stated that building the units proportionally would make more sense than just when the development is 50% complete.

After a lengthy discussion, it was determined that building permits would be added to the references of the concurrent development section (260-102.4), the language of "...at the same proportionate rate..." would be changed to "in the same proportion as," and the last sentence of the section would be changed to "In no case **shall the C/O of the final** market rate unit..." An additional sentence would be added to give to an example by way of illustration for clarity.

Mr. Brusini stepped away and wrote up the changes for the ordinance. On page 2, section 4 "...shall not assume that any waivers...will be granted" was taken out. In section 5, the second sentence was changed to "...with incomes consistent with the State's definitions of area median income provided by state law." The following sentence would be taken out. In section 260-99, paragraph E-6 is being deleted. In section 260-102, the last sentence of section 1 is being changed to "the Planning Board may allow..." Section 4 of 260-102 is being deleted with a new section being added called Concurrent Development that reads:

"Any required affordable units whether on-site or off-site or in a single phase development of a multiphase development, shall be developed concurrently with the market rate units in the subject subdivision or land development project. Building permits (B/P's) and Certificates of Occupancy (C/O's) for market rate units and for newly constructed or rehabilitated affordable units shall be issued in the same proportion as the number of market rate units to the number of affordable rate units in the approved subdivision plan or other land development project approval. Where only one affordable unit is required to be provided, the Planning Board shall impose a condition of final plan approval that stipulates the timing of the availability of the affordable unit. In no case shall the C/O for the final market rate unit in a development be granted before rehabilitation/construction of all affordable units is complete, and the C/O's of all affordable units have been granted. Solely for the purposes of illustration, the following example is provided: if the approved subdivision plan or other land development project approval calls for ten (10) units of which two are

required to be affordable, then the proportion of the number of market rate units to the number of affordable units is 4 to 1. No more than 4 B/P's for market rate units shall be issued until 1 B/P for an affordable unit has been issued, and no more than 4 C/O's of market rate units shall be issued until 1 C/O of an affordable unit has been issued.”

Mr. Donegan made a motion to approve the ordinance, seconded by Mr. Gomez. The motion passed unanimously.

2. Advance Planning: The Board is asked to prioritize upcoming Ordinance writing and revision projects and will be apprised of relevant events.

Mrs. Bourbonnais stated that there has been a lot of ordinance work recently but not necessarily related to the Comp Plan. She gave some background on recent accomplishments. There has been land rezoned for affordable housing and there have been regulation-oriented ordinances passed such as the brewpub and self-storage ordinance, medical marijuana zoning ordinance, flood zoning, and rewriting of liquor license ordinance.

Moving forward, the Board was asked to prioritize future Comp Plan goal-related work. The consensus from the Board was that it should ultimately be at the discretion of the Planning Department to set the priorities of the Comp Plan goals. The goals prioritized were LUR 5, 7, 9, 10 in the Plan.

3. Minutes: Approval of the June 15 and July 20, 2016 meeting minutes.

The minutes from 6/15/16 and 7/20/16 were continued until the next meeting.

4. Planning Board Member Comments: For items not on the agenda and not relating to specific applications.

It was announced that Board elections will be held at the next meeting. A motion to adjourn was made by Mr. Gomez, seconded by Mr. Donegan. Meeting adjourned at 9:30 PM.

Minutes respectfully submitted by Aaron Lindo, Planning Assistant.

For further information, please refer to the recording available in the Planning Department.