BERCHEM MOSES PC

MEMORANDUM

To: Lynn Brooks-Avni
From: Peter V. Gelderman, Office of the Town Attorney
Date: February 22, 2022
Re: Connecticut General Statutes Section 8-30g

Questions have arisen about the scope and meaning of an "8-30g" affordable housing application. This memo will attempt to explain this statute and why the Planning and Zoning Commission (commission) has a very limited ability to deny such an application.

Section 8-30g of the Connecticut General Statutes was adopted in 1988 as Public Act 88-230. There have been several amendments since 1988, but the substance of the Act has not changed. The Act is sometimes referred to as the "Affordable Housing Land Use Appeals Act" because it establishes certain appeals standards when an application is denied that are unique to affordable housing applications and not applicable to other applications that come before the commission, like special permit application, site plan applications, and text or map amendment applications.

The Act applies to every municipality in Connecticut in which less than 10% of all dwelling units in the municipality are affordable.[1] If an affordable housing application is denied by the commission, the **commission must prove** by sufficient evidence in the record before the commission that (1) (A) the decision is necessary to protect substantial public interests in health, safety or other matters which the commission may legally consider; (B) such public interests clearly outweigh the need for affordable housing; and (C) such public interests cannot be protected by reasonable changes to the affordable housing development, or (2) (A) the application which was the subject of the decision from which such appeal was taken would locate affordable housing in an area which is zoned for industrial use and which does not permit residential uses; and (B) the development is not assisted housing. If the commission does not satisfy its burden of proof under

[1] Affordable means (1) assisted housing, (2) currently financed by Connecticut Housing Finance Authority mortgages, (3) subject to binding recorded deeds containing covenants or restrictions which require that such dwelling units be sold or rented at, or below, prices which will preserve the units as housing for which persons and families pay thirty per cent or less of income, where such income is less than or equal to eighty per cent of the median income, (4) mobile manufactured homes located in mobile manufactured home parks or legally approved accessory apartments, which homes or apartments are subject to binding recorded deeds containing covenants or restrictions which require that such dwelling units be sold or rented at, or below, prices which will preserve the units as housing for which, for a period of not less than ten years, persons and families pay thirty per cent or less of income, where such income is less than or equal to eighty per cent of the median income, or (5) mobile manufactured homes located in resident-owned mobile manufactured home parks.

this subsection, the court shall wholly or partly revise, modify, remand, or reverse the decision from which the appeal was taken in a manner consistent with the evidence in the record before it.

This means in simple terms that the legal burden on any Planning and Zoning Commission that denies an 8-30g application is substantial, thus accounting for the fact that historically Planning and Zoning Commissions lose most of these appeals. The State of Connecticut policy as articulated in this statute is to encourage development of affordable housing.

It also means that the 8-30g application is **not** required to comply with existing zoning. It cannot be a reason to deny an affordable housing application that it does not comply with the lot development standards in the zone (including height, coverage, setbacks, etc.), the density requirements in the zone, the character of the zoning district, parking requirements or use limitations. The only valid basis upon which a commission may deny an affordable housing application is by determining, based upon sufficient evidence in the record, that a denial is necessary to protect an identified and substantial public interest such denial outweighs the need for affordable housing and the application could not be amended to protect the public interest. Only towns that equal or exceed the ten percent (10%) affordable dwelling unit threshold or that have a moratorium in place are exempt from the burden of proving that the above balancing test supports a denial.

There have been numerous affordable housing cases decided by the Appellate Court and the Supreme Court over the thirty plus years since the Act was passed. In the vast majority of those cases, affordable housing denials were reversed or remanded back to the commission with an order to approve. Those cases have established some parameters for determining what defines a "substantial public interest is health safety or other matters." For example, traffic volume is NOT a substantial public interest, but traffic safety may be where there is a quantifiable basis for such a finding. Protection of wetlands and watercourses has been held to be a substantial public interest. In some cases, protection of an historical structure or site may be properly weighed against the need for affordable housing. Fire safety often may be considered. However, regardless of the public interest, the burden is on the commission to balance the actual (not hypothetical) harm to the identified public interest against the need for affordable housing. In municipalities not otherwise exempt, the need for affordable housing is presumed.

It is important to note that 8-30g is a State of Connecticut **mandated** procedure. Non-exempt towns have **no** ability to avoid the burden shifting requirements of the statute. The statute effectively renders zoning regulations applicable to a particular property void if that property is the subject of an affordable housing application.

An affordable housing application is subject to a public hearing and all sides and the public have a right to be heard. Public comment is expected and encouraged. Commissioners CANNOT comment on any application already filed (this applies to all applications, not only 8-30g). Written comments should always be directed to the Planner at Town Hall, and no communications should be directed to individual commissioners. If a Commissioner receives a communication from a

member of the public or other interested person, that communication should immediately be forwarded to the Planning and Zoning staff for inclusion in the record.

Our office is available for questions from staff or town officials.