

**TOWN OF EAST HAVEN
PLANNING AND ZONING COMMISSION
MINUTES OF THE SPECIAL MEETING
HELD ON WEDNESDAY, NOVEMBER 30, 2022 AT 7:00 PM
IN PERSON AT EAST HAVEN HIGH SCHOOL, 35 WHEELBARROW LANE,
ROOM S106 AND VIA ZOOM VIDEOCONFERENCE AND CONFERENCE CALL**

Vice Chair, Marlene Asid, called the special meeting to order at 7:05 p.m.

I. Roll Call and Pledge of Allegiance

The Pledge of Allegiance was recited.

Ms. Asid stated that Chair William DeMayo was not present because he had moved. They had to bid him farewell. Ms. Asid indicated she would be acting in his stead until further notice. Present also, are Mr. Bob Cubellotti, Mr. John Tarducci, Mr. Lou Fusco. They welcomed back Mr. Al Shaul who was kind enough to rejoin the Commission to keep the momentum going. Ms. Asid thanked him for joining the Commission. She further stated that Mr. Joe Budrow, the Zoning Enforcement Officer, was present. Online is the Commission's counsel, Attorney Jennifer Coppola. Also, in the room are Town Attorney, Mike Luzzi, and the Clerk, Ms. Otunba-Payne.

Sotonye Otunba-Payne, Clerk, called the roll for the Commission as follows:

Ms. Marlene Asid - Present
Mr. John Tarducci - Present
Mr. Bob Cubellotti - Present
Mr. Lou Fusco - Present
Mr. Al Shaul - Present

There was a quorum.

II. Review and Action on Prior Meeting Minutes

1. Minutes of July 27, 2022 Special Meeting
2. Minutes of August 29, 2022 Special Meeting
3. Minutes of October 12, 2022 Regular Meeting

Mr. Asid indicated that the Commission members were still not in receipt of these minutes. So, they will put this off until another meeting.

III. Public Hearings

1. Pursuant to Connecticut General Statutes Section 8-20(f), a Public Hearing for possible action on, including an opt-out from, the provisions of

Connecticut General Statutes 8-2o(a) through 8-2o(d) pertaining to accessory apartments or accessory dwelling unit regulations.

Ms. Asid thought Items Nos.1 and 2 listed on the agenda should be read into the record together as they go hand in hand.

Mr. Budrow said that Nos. 1 and 2 should be heard separately for the public hearings. He will be referring to the memo given to the Commission by Ciulla & Donofrio. Mr. Budrow further indicated that Attorney Coppola would put up a PowerPoint presentation on the screen and while he is presenting, Attorney Coppola would keep up with him. They are going to be going from screen to screen. He would then conclude his presentation on ADUs after which would then follow receipt of public comments. The Commission will then decide whether to close the public hearing.

Mr. Budrow stated that there had been discussions regarding ADUs since 2021. There was an excellent discussion on July 27, 2022 where the only topic was accessory dwelling units. Attorney Coppola gave the Commission a binder with examples of how various towns regulate ADUs. They came out of these discussions with a lot of thoughts and ideas that led to the drafting of a regulation that is just about ready to be presented to the Commission and the public.

The legal notice was filed with the Town Clerk on November 10th of 2022 and printed in the local Courier on November 17th, 2022 and November 24th, 2022. So, it was legally noticed in the paper.

This topic is also on the Town Council's agenda for December 6, 2022 to discuss the very same thing we are discussing tonight, the potential opt-out. A two-thirds vote is required. There are five members. So, this means four members of the Commission have to vote in favor if there is a motion to opt-out of these regulations.

We are going to hear about potential reasons for opting out. The State says these good reasons to opt-out have to be on the record.

Mr. Budrow indicated that he read in the late summer in the paper that approximately 90 percent of all the towns in Connecticut did not have ADU regulations.

He went to the memo at this time. Generally, Section 8-2o(a) requires that zoning regulations adopted per the Zoning Enabling Act require towns that zone under the Act to adopt new or amend their existing regulations to allow an accessory dwelling unit as of right on the same lot as a single-family home by January 1, 2023, unless they opt-out via 8-2o(f).

In particular 8-2o(a)(1) requires that zoning regulations designate locations or zoning districts within the town in which accessory apartments are allowed. This is very standard. They did have discussions. If there are residential districts, you are going to allow ADUs in residential districts. However, locally, you can say not over here or not over there.

Accessory apartment is defined. It's a separate dwelling unit that (a) is located on the same lot as a principal dwelling unit of greater square footage. The importance is that this unit is accessory, smaller than the principal unit. And (b) has cooking facilities; and (c) complies with or is otherwise exempt from any applicable building code, fire code, and health and safety regulations. As of right, this is pretty much the simplest permit to get to approve something, able to be approved in accordance with the terms of a zoning regulation or regulations and without requiring a public hearing to be held or requiring a variance, special permit or special exception to be granted or some other discretionary zoning action. So, here, as of right, it's been chiseled down to an administrative zoning permit. Mr. Budrow further indicated that he has been on record in the past indicating that he supports this kind of approval in some circumstances.

Mr. Budrow stated that they would go through a list of what the state statutes standards include. In addition to the aforementioned designation and allowance, the statutes provide that the ADU zoning regulations shall not require that an ADU be affordable as defined by other statutes. A town shall allow an ADU to be either attached or detached. "Attached" means contained within a principal unit or as an addition off the principal unit.

Three, regulations shall set a maximum net floor area for ADUs that is the lesser of either at least 30 percent of the principal dwellings' net floor area or maximum of 1,000 square feet, but regulations may allow larger net floor area for ADUs.

Sometimes there are characteristics that may allow larger ADUs. Every town I've worked in has a minimum and a maximum size.

Four, regulations shall require setbacks, lot size, and building frontage less than or equal to that which is required for the principal dwelling unit. State regulations will require regulations that require a lot coverage greater than or equal to that which is required for principal dwelling units.

Six, such regulations shall provide for height, landscaping, architectural design standards that do not exceed normal standards applied to single-family dwellings.

And then, seven, regulations shall establish an as of right permit application and review process for ADUs. This process must require the zoning or planning and zoning commission to decide within 65 days after an

application unless an applicant approves an extension or extensions of up to 65 days ... So, this is reading where the state would allow a commission to require an application before it but without a hearing and to decide within 65 days or less.

Moreover, as prohibited by § 8-2o(a)(6), the ADU regulation(s) passed by a municipality cannot require: A passageway between the ADU and the principal dwelling; two, an exterior door for an ADU, except as required by the applicable building or fire codes; three, more than one parking space for the ADU or fees in lieu of parking; four, a familial, marital, or employment relationship between the principal dwelling unit's occupants and the ADU's occupants; five, a minimum age for the occupants of the accessory dwelling unit; six, separate billing of utilities otherwise connected to, or used by, the principal dwelling unit; or, seven, periodic ADU permit renewal. So, many towns do regulate one through seven.

Other provisions of the statute provide that: one, the requirements of the statute do not supersede applicable building code requirements; two, the statute does not supersede other requirements where a well or private sewage system is being used, provided approval for any such accessory apartment must not be unreasonably withheld ...; three, municipalities are not prevented from prohibiting or limiting the use of ADUs for short-term rentals or vacation stays ...; four, municipalities cannot condition ADU approval on the correction of a nonconforming use, structure or lot ...; five, municipalities cannot require the installation of fire sprinklers in an ADU unless they are also required in the principal dwelling or water by the fire code ...; and, lastly, municipalities, special districts, and sewer or water authorities are prevented from (1) considering an ADU to be a new residential use for the purposes of calculating connection fees or capacity charges for utilities, including water and sewer ..., unless the ADU was constructed with a new single-family dwelling on the same lot or (2) requiring the installation of a new or separate utility connection directly to the ADU or imposing a related connection fee or capacity charge ...

Critically, if a municipality does not opt-out of the ADU limitations, Section 8-2o(e) states, quote, "A municipality may not use or impose additional standards beyond those set forth in subsections (a) to (d) inclusive of this section."

If this Commission decides to opt-out, it must state reasons for its decision. Of course, the Commission may object to one or more of the limitations, requirements, and/or prohibitions contained in ... 8-2o(a) through (d), and can articulate reason for the same. In a more general sense, the Commission may consider opting out for the following reasons: One, the Commission has directed staff and counsel to draft a text amendment to permit the use of accessory apartments/accessory dwelling units; two, there are many dense

residential neighborhoods in East Haven and adoption of an accessory apartment regulation in compliance with Connecticut General Statutes 8-2(o)(a) through (d) would negatively impact the integrity of these existing neighborhoods in town, single-family residential and otherwise; three, it is highly unlikely that adoption of an accessory apartment regulation in compliance with statutes 8-2o(a) through (d) would assist the town in reaching and maintaining the 10 percent affordable housing threshold contained in statute 8-30g and/or provide an increase in affordable housing units given the statutory limitation that no affordability requirement can be imposed on accessory apartments, and that accessory apartments must be deed restricted as affordable for at least ten (10) years to count towards the threshold; and, four, the statute imposes limitations on the ability of the Planning and Zoning Commission and the Town to take action or implement controls to address zoning and building enforcement issues.

This was provided by Attorney Jennifer Coppola regarding the item on the table for Public Hearing No. 1.

Ms. Asid asked if the Commission had any questions. They had discussed this at great length. Mr. Fusco replied, no.

Ms. Asid asked the public for comments. She further implored anyone speaking to provide his/her name and address. She called on people that were for opting out and asked for their input about what they would like to see. If the comments become repetitive, the discussions would end.

Mr. Budrow indicated that earlier in the day they received some materials from Kim Glassman. He did briefly scan them and included them in the package. Most of the topics touched on in these documents could be discussed during the crafting of regulations.

Ms. Kimberly Glassman, 55 Sharon Drive, stated that she was honored to represent the First District on the Town Council. She is very passionate about this issue personally. She had spoken about housing access and housing affordability when she went door to door in 2019 and again in 2021. She spoke about her personal experience and how her now-husband and she fell in love and decided to move in together, and how finding an affordable home in East Haven was very difficult for them as young professionals starting out. They were able to find a condo being rented out by someone who resided in Rhode Island at the time. He was a great landlord for them. They lived there for two years. Given their income then and what the rent on the condo was, it would not be deemed an affordable housing unit in East Haven.

They are now homeowners in East Haven in the area where her husband grew up. They take great pride in that.

She believes ADUs are an important mechanism for creating more housing stock and more affordable housing stock in our community. She was not speaking for or against the opt-out tonight. She was asking that you as commissioners are doing the hard work of drafting new regulations on ADUs. She knew this would be time consuming. She knew the Commission had spent countless hours reading documents regarding ADUs in other communities across the State of Connecticut, if not the country. She provided via e-mail to the Commission some information and reports from organizations here in Connecticut and across the nation. She hoped that the Commission would take that into consideration when drafting new regulations. What she would like to see is that the Commission does not include an owner occupancy requirement because ADUs are singled out. There is no owner occupancy required on other types of rental communities. Her landlord lived in Rhode Island. He did not live in her condo.

She hopes more opportunities are created for folks who are on fixed incomes, who are young professionals starting out for them to find good, reliable housing in this community. She would be happy to answer any questions the Commission has.

Ms. Glassman thanked the Commission for the opportunity to address it this evening.

Ms. Asid asked whether these documents should be marked as exhibits. Mr. Budrow indicated that it was in the record. He would introduce it as a flyer. Ms. Glassman indicated that there was a flyer and an e-mail. Mr. Budrow indicated that the flyer is titled, "What are Accessory Apartments?" At the bottom of the flyer it indicates that it was distributed by Desegregate Connecticut. Find out more at desegregatect.org/edu. In addition, there is a three-page e-mail from Ms. Glassman to Attorney Luzzi which also included links for people to follow. It's in the record. The public can view it at any time.

Ms. Budrow asked if anyone on Zoom would like to speak.

Ms. Lorena Venegas asked if the Commission had included in the public record the statements from State Representatives Zullo and Cicarella. Mr. Budrow replied by saying that his office had not received anything from these two state representatives. Mr. Venegas indicated that they had sent letters on September 30th of 2021 to Mayor Joseph Carfora. There was also press on it.

Attorney Coppola replied by saying that the letter was distributed to the Commission at the time that it was received. Ms. Venegas replied by saying she appreciated the information.

Ms. Venegas indicated that decisions are being made and residents will use their home to generate extra income. There are safety concerns that should be addressed.

Ms. Asid asked Ms. Venegas if she was saying that the town should develop its own regulations? Ms. Venegas replied by saying, yes, because she has always believed in local zoning. Ms. Asid thanked Ms. Venegas. Ms. Venegas further added that East Haven is the last shoreline town in which a regular blue-collar family can try to afford a home near a beach. Nowhere else in Connecticut can a regular family try to live near a town beach.

Ms. Budrow asked if anyone on Zoom would like to speak in favor of opting out. There was no response. Attorney Coppola indicated that Ms. Cindy Sparago had raised her hand.

Ms. Cindy Sparago indicated that she would like the town to opt-out because the Commission would do a better job of drafting something that is appropriate for East Haven.

Ms. Asid asked if anyone wanted to speak in favor of opting out. Hearing no response, she asked if anyone against opting out would like to speak. There was no response.

Mr. Tarducci proposed a motion to close the portion of the public hearing pertaining to the opt-out on accessory dwelling units in the Town of East Haven. Said motion was seconded by Mr. Fusco. The motion passed unanimously (5-0).

2. Pursuant to Connecticut General Statutes Section 8-2p, a Public Hearing for possible action on, including an opt-out from, the provisions of Connecticut General Statutes Section 8-2(d)(9) pertaining to dwelling unit parking limitations.

Mr. Budrow indicated that the Commission would now discuss Section 8-2(d)(9). Every use in a municipality should have parking calculations regarding on-premise parking. Currently, in East Haven single-family dwelling and two-family dwellings are required to have two and a half parking spaces on the property. That calculation is the same for any other building or buildings with more than two dwelling units. For example, a 50-unit apartment building would require 100 plus parking spaces. He is an English guy and not a math guy. And then rooms to rent in a dwelling, one needs one parking space per. So, here, the state statute is going to focus on a town not requiring more parking than they feel is excessive.

Back to the memo, Dwelling Unit Parking Limitations, Section 8-2(d)(9) provides zoning regulations, quote, ... shall not (9) Require more than one parking space for each studio or one-bedroom dwelling unit or more than two parking spaces for each dwelling unit with two or more bedrooms, unless the municipality opts out in accordance with the provisions of Section 8-2p ... The opt-out procedure in said section is the same as described above. Mr. Budrow added that the record does include the statutes that had been referred to throughout the evening.

If the Commission decides to opt-out, it must state reasons for its decision. The Commission may consider opting out for the following reasons, and they are reasons that have been discussed previously: One, the parking limitations/requirements contained in Connecticut General Statutes 8-2(d)(9) conflict with existing regulations. Mr. Budrow further commented that he had told the Commission what the existing regulations are now; two, the parking limitations/requirements contained in C.G.S. 8-2(d)(9) conflict with expert opinion; three, the parking limitations contained in said statute have the potential to significantly impact neighborhoods, single-family residential and otherwise, in a negative way; four, insufficient on-premise parking for residential lots/uses will result in increased, possibly excessive on-street parking which is likely to impact pedestrian safety, particularly in areas without sidewalks; and/or, five, insufficient on-premises parking for residential lots/uses will result in increased, possibly excessive on-street parking which is likely to negatively affect provisions of emergency services and access.

Ms. Asid asked for discussion. Mr. Fusco indicated that this had been discussed for months.

Ms. Asid asked for public comment for opting out of accessory units parking. Hearing no response, she asked if anyone wanted to speak in opposition to opting out. Hearing no response, she called for a motion to close the public hearing.

Mr. Tarducci moved to close the portion of public hearing on No. 2 pertaining to Connecticut General Statutes regarding parking limitations. Said motion was seconded by Mr. Cubellotti. The motion passed unanimously (5-0).

3. **Application No. 22-18** - On behalf of the East Haven Planning and Zoning Commission, a Petition for a Text Amendment to the East Haven Zoning Regulations to adopt a new zoning district. "Adult Use Cannabis Retail District," at Section 11.9 of the Regulations for retail and hybrid retail cannabis establishments.

Mr. Budrow indicated staff was to discuss the addition of this application to the agenda. Time did run out when the holidays came. Suddenly, the application was on the agenda as a text amendment immediately as a public hearing.

He told Attorney Coppola that text amendments have always been in his experience given to the Commission in an application form with the text. It is discussed and then scheduled for a public hearing because the town has to refer such text amendments to various bodies. So, here it would be South Central Regional Council of Governments. They need at least 35 days to schedule their meeting and discuss this in order to respond to it. This also has to be referred to neighboring towns.

He was very uncomfortable with the public hearing tonight, one, because they did not have the text; and, two, no one had the referrals. As a result, he would like to withdraw it as the town staff. It was withdrawn. They will have it as a proposal for January 4th, 2023.

There was discussion about having a special remote/Zoom meeting for the sole purpose of extending the moratorium. The fully remote meeting was scheduled for the 19th of December at 7:00 p.m. to move the moratorium to April 1st, 2023.

Mr. Tarducci motioned to hold a special meeting on December 19th, 2022 at 7:00 p.m. at which time it will be a public hearing to discuss the extension of the moratorium. Said motion was seconded by Mr. Shaul. The motion passed unanimously (5-0).

IV. Deliberation Session

1. Discussion and possible action on, including per Connecticut General Statutes Section 8-2o(f), a Public Hearing for possible action on, including an opt-out from, the provisions of Connecticut General Statutes 8-2o(a) through 8-2o(d) pertaining to accessory apartments or accessory dwelling unit regulations.

Mr. Shaul said he has to agree with the reasons in the memo. Where he resides in East Haven, there are situations with parking. There are lots of cars parked on the street just because mom and dad have a car. It clogs the roadway too much. The Commission tends to have a better grasp on what the areas are like. The Commission should be making the decision.

Mr. Fusco stated that opting out does not mean they do not want ADUs. It's just that what we want is something that is tailored for East Haven. If we do not opt out, we will get something that does not fit our community. We should have a better feel for what our community needs.

Ms. Asid added that the opting out is so the Town can come up with its own regulations that are in the best interests of the Town. If for any reason any of the plans are not working or need tweaking, the Town then has the ability to tweak. If the Town of East Haven continues with the state statutes, the Town will have to abide by the state changes when they occur.

Mr. Budrow indicated that the Commission should focus on the four reasons given.

Ms. Asid asked how to proceed.

Attorney Luzzi said the reasons should be read into the record.

Ms. Asid made a motion to opt-out of C.G.S. Section 8-2o(a) through Section 8-2o(d) pertaining to accessory apartments or accessory dwelling units regulations for the following reasons: One, the Commission has directed staff and counsel to draft a text amendment to permit the use of accessory apartments/accessory dwelling units; two, there are many dense residential neighborhoods in East Haven and adoption of an accessory apartment regulation(s) in compliance with Connecticut General Statutes § 8-2o(a) through (d) would negatively impact the integrity of these existing neighborhoods in town, single-family residential and otherwise; three, it is highly unlikely that adoption of an accessory apartment regulation(s) in compliance with § 8-2o(a) through (d) would assist the Town in reaching and maintaining the 10 percent affordable housing threshold contained in C.G.S. § 8-30g and/or provide an increase in affordable housing units given the statutory limitation that no affordability requirement can be imposed on accessory apartments and that accessory apartments must be deed restricted as affordable for at least ten (10) years to count towards the threshold; and/or four, the statute imposes limitations on the ability of the Planning and Zoning Commission and the Town to take action/implement controls to address zoning and building enforcement issues. Said motion was seconded by Mr. Fusco. The motion passed unanimously (5-0).

2. Discussion and possible action on, including per Connecticut General Statutes Section 8-2p, a Public Hearing for possible action on, including an opt-out from, the provisions of Connecticut General Statutes Section 8-2(d)(9) pertaining to dwelling unit parking limitations.

Mr. Fusco made a motion that the Planning and Zoning Commission opt-out of Connecticut General Statutes § 8-2(d)(9) pertaining to dwelling unit parking limitations for the following reasons: One, the parking limitations/requirements contained in Connecticut General

Statutes § 8-2(d)(9) conflict with the existing regulations; two, the parking limitations/requirements contained in C.G.S. § 8-2(d)(9) conflict with expert opinion; three, the parking limitations contained in C.G.S. § 8-2(d)(9) have the potential to significantly impact neighborhoods, single-family residential and otherwise in a negative way; four, insufficient on-premise parking for residential lots/uses will result in increased, possibly excessive on-street parking which is likely to impact pedestrian safety, particularly in areas without sidewalks; and/or five, insufficient on-premise parking for residential lots/uses will result in increased, possibly excessive on-street parking which is likely to negatively affect provisions of emergency services and access. Said motion was seconded by Mr. Shaul. The motion passed unanimously (5-0).

3. Discussion and possible decision on Application No. 22-18 - on behalf of the East Haven Planning and Zoning Commission, a Petition for a Text Amendment to the East Haven Zoning Regulations to adopt a new zoning district. "Adult Use Cannabis Retail District," at Section 11.9 of the Regulations for retail and hybrid retail cannabis establishments.

Ms. Asid indicated that this had previously been addressed.

V. Other Business

1. Discussion of potential text amendment to adopt a new zoning regulation to permit the use of accessory apartments/accessory dwelling units.

Mr. Budrow said that based on the Commission's meeting in July, regulations have almost come to a completion with regards to a draft for the Commission to see in January, 2023, if not before, about accessory dwelling units. They are almost ready to present.

Attorney Coppola indicated that this was information regarding occupancy requirements. That was something the Commission had directed staff to include in the regulations. This will be shared in January, 2023.

VI. Adjournment

Mr. Fusco motioned to adjourn. Said motion was seconded by Mr. Tarducci. The motion passed unanimously. The meeting adjourned at 8:04 p.m.

The next special meeting is on December 19, 2022. The next regular meeting is January 4, 2023.

Respectfully submitted,

Sotonye Otunba-Payne