**Affordable Housing Production Incentives**

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Housing costs have received national attention in recent months. While the Consumer Price Index measure of inflation has abated in recent months, up just 2.6% in the year ending October 2024, the price of shelter is up 4.9% in the same period—on the heels of a 26.4% increase over the past five years according to the Bureau of Labor Statistics. Connecticut workers, including municipal workers such as firefighters, teachers, and police officers, need housing they can afford.

 Against this backdrop, Connecticut’s efforts to address housing costs precede the five-year increase in the cost of shelter. The Regional Fair Housing Compact1 and its statutory companion, the Connecticut Housing Partnership Program2 represent incentive approaches to foster affordable housing development:

· The Regional Fair Housing Compact encourages development of regional goals for need-based affordable housing consistent with environmental, economic, and infrastructure conditions using guidance and technical assistance provided by the state Office of Policy and Management (OPM) and

· The Connecticut Housing Partnership Program provides incentives to increase the supply of affordable housing by giving program participants guidance and technical assistance3 while identifying resources in partnership with the state Department of Housing.

 Additionally, Connecticut General Statutes (CGS 8-30g) makes the Affordable Housing Land Use Appeals (AHLUA) procedure available to affordable housing developers that have exhausted their administrative and permitting options with municipal land use authorities. CGS 8-30g has been criticized over the years for being both too powerful and too ineffectual. While CGS 8-30g has undergone a dozen changes in its 34-year history, the AHLUA procedure remains intact. This article offers a brief examination of:

1. The framework within which housing developers navigate to affordable housing production,

2. Progress toward planning for affordable housing production, and

3. Examples of affordable housing projects in Connecticut:

a. one that availed itself of the AHLUA,

b. another that received municipal approval,

c. a prospective development in a mixed-density neighborhood of apartments, single-and two- to six-family houses, and

d. a second project that went through the AHLUA process to reach a compromise with a suburban Fairfield County town.

 As provisions of Public Act

89-311 became CGS 8-30g on the first day of July 1990, the Regional Fair Housing Compact and the Connecticut Housing Partnership Program incentives were joined by the AHLUA procedure whose provisions shifted the burden of proving the permit denial’s merit from the plaintiff developer to the defendant municipality; thus granting the right of an affordable housing developer to appeal an adverse land use commission decision to the Superior Court, limiting the municipality to presenting one of two defenses for its permit denial:

1. Health and safety or other matters of public interest that:

· outweigh the need for affordable housing and

· cannot be protected by reasonable revision to the proposed development, or

2. The proposed development is:

· in an industrial zone that does not permit residential land uses and

· not assisted housing.4

 AHLUA provision is the General Assembly’s (CGA) response to concerns raised by affordable housing advocates and developers over the frequency of land use permit application denials. To put the depth of advocates and developers’ apprehension in context, it is useful to understand the complexity of a set-aside development,5 an application for which must include an affordability plan with:

· Designation of the affordability plan administrator;

· A fair housing marketing plan;

· A sample calculation of the maximum sales or rental cost of the proposed affordable units;

· Affordable units’ construction sequence and location within the development:

· Draft affordable units’ governing documents.

Set-aside conditions stand in addition to general housing production requirements:

· Land acquisition, permits, financing, and willing occupants;

· Public policies and programs affecting funding availability;

· Carrying and transportation costs that complicate financing and construction timing;

· Public investment, subsidies, and the availability of skilled construction labor; and

· Public opinion and builder confidence.

 Considering the benefits of living in mixed-income areas6 and the hazard of overcrowding among low- and moderate-income households in certain cities and towns, legislators adopted language for CGS 8-30g to avoid concentrating affordable housing units in municipalities where they are over-represented and exempted municipalities whose countable affordable housing stock exceeds 10% of their total housing units. The 10% threshold above which a municipality is exempt from 8-30g’s AHLUA documented-as-affordable housing including:

· deed restricted for occupants earning no more than 80% of Area Median Income (AMI);5

· government-assisted;7

· located within a CGS 8-13m incentive housing zone;

· located in a resident-owned mobile manufactured home park; and

· single-family housing financed by government-supported mortgages.8

 A Certificate of Affordable Housing Completion provided by the state housing department that is awarded to a municipality meeting the foregoing criteria exempts it from the AHLUA.

 Connecticut’s Zoning Enabling Act (CGS 8-2) gives control to each of Connecticut’s 169 cities and towns over population density, building dimensions, traffic management, emergency access, trash disposal, parking, stormwater, drinking water, flood control, coastal management, lighting, air quality, billboards and signs, and open space, as well as climate change resilience, sustainability, and energy efficiency. This delegation, as an administrative structure for housing development regulation, is unique among major government functions in Connecticut. Energy and environmental protection, health care, public utilities, transportation, education, the judiciary, taxation, and public health are administered at the state level.

 Connecticut’s cities and towns are making progress toward welcoming more affordable housing. CGS 8-30j (PA 21-29) includes a requirement for each municipality to produce its own affordable housing plans. To encourage more cities and towns to formulate, submit, and put into action those plans under PA 21-29 the CGA appointed an Affordable Housing Plans Working Group to discuss ways in which cities and towns can increase their affordable housing production.

 PA 21-29 provisions that encourage affordable housing development include:

· Allowing accessory dwelling units (ADU) as-of-right (no special permit required) on lots with single-family homes while allowing an opt-out for municipalities that set their own ADU rules;

· Requiring housing needs assessments with clear targets, strategies, and funding priorities;

· Encouraging rehabilitation and preservation of existing homes;

· Allowing land use commission to deny permits based only on specific physical or architectural characteristics; and

· Preventing the enactment of zoning regulations that:

 · Discriminate based on income, income level, or immutable characteristics;

 · Cap the number of multi-family housing units.

 · Charge unreasonable or different fees for multifamily affordable housing or impose onerous consulting fees on property owners.

 · Require housing units to be a minimum square footage, except for public health reasons like those enshrined in building and housing codes.

 Affordable housing developments that range from 24 to 140+ units can be found in some of the state’s affluent communities as the following examples show:

 A land use permit application granted by the Town of West Hartford will result in the opening by spring 2025 of Camelot West Hartford (Image 1) at 900-904 Farmington Avenue, rising in the spirit of the incentive provisions of CGS 8-30g with its mixture of one-and two-bedroom apartments that total 44 units. The former West Hartford Inn, a 52-room hotel, is under renovation to become 20 apartments while the former Peruvian restaurant at 904 Farmington Avenue was demolished to be replaced by 24 units of new-construction apartments. Of the two-bedroom units, two will be market-rate rentals, 12 will be rented to 80% AMI-earning households ($63,120 annual income), and 10 will be for 30% AMI-earners ($23,670). Two of the one-bedroom units will be available at market rates, 11 for 80% AMI-earning households two for 50% AMI ($39,450 annual income), and five for 30% AMI households.

 What started as an 80-unit development proposal from Vessel RE Holdings emerged as a 48-unit building with a CGS 8-30g, 30% affordable unit set-aside development that ended in a superior-court approved settlement (Image 2). The three-story project to be built will replace a single-family house in a north-central Connecticut suburb. At least half of those set-aside units are for households earning 60% AMI ($47,880 annual income). The remaining affordable units are set aside for 80% AMI-earners. Per CGS 8-30g, the set-aside duration is 40 years.

 Vessel Technologies is interested in the purchase of a rehabilitation and skilled nursing facility in a Hartford suburb that closed in July 2023 (Image 3) on which it would construct about 140 units of mixed-income housing as rendered in Image 4. The site and location appear well-suited to a mid-size housing development as shown. Two similarly sized apartment buildings are about 200 feet from the property; an assisted- and independent-living center of fewer than 100 units is next door to the site; the site’s other adjacent neighbor is a 50+ unit apartment building occupied by condominiums. While the site and proposal have the earmarks of a non-controversial application, we have no way of knowing whether the application will meet with swift approval or end up in an 8-30g quagmire that’s likely to result in a court-sanctioned settlement.

 A 24-unit affordable housing proposal composed of six two-bedroom, 16 one-bedroom, and two studio units, will replace the single-family home (shown in Image 5) near the corner of Stillson Road and Black Rock Turnpike with the unanimous consent of a Fairfield County town’s Plan and Zoning Commission in mid-November. Eight of the units will be affordable—four for residents earning 60% AMI and four for households earning 80% AMI in accordance with CGS 8-30g. The property (Image 6) is set to include 31 parking spaces. While some neighbors expressed relief that the project contained fewer units than expected, the developers filed for 8-30g status following three land use commission denials over the summer.

 For many years following 8-30g’s adoption, Connecticut, Massachusetts, and California were the only states with affordable housing statutes. As of August 2023, 48 states, the District of Columbia, and 41 of the US’s largest cities have programs that include rental assistance, capital funding, and tax abatement for renters. Montana has established a housing task force to address its housing supply shortage, Massachusetts introduced the Affordable Homes Act that includes funding for first-time home buyers, Maine and Vermont made it easier to allow accessory dwelling units (ADU); that is, residential units built on the same lot as the principal residence. Additionally, Connecticut’s state bonding commission recently made $40 million available to fund once again the Time to Own (TTO) program of down-payment assistance for first-time homebuyers. As land use planners, preservationists, developers, land use and housing lawyers, legislators planning commissioners, students, and advocates combine their time, talents, and dedication, affordable housing—including missing middle housing (Image 7) will be welcome in ever more cities and towns throughout Connecticut. n

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1 CGS Section 8-386 (2023). - Regional fair housing compact pilot program.

2 CGS Section 8-387- Housing Infrastructure Fund. State financial assistance . . . in pilot program planning regions.

3 Guidance includes

· Development of sample methods for calculations of sale, resale, and rental provisions that define housing as affordable

· Sample Deed Restrictions and

Technical Assistance includes the housing department’s

· Obligation to collect and report on the affordable housing inventory and

· Determine which cities and towns in which more than 10% of their housing is classified as affordable per CGS 8-30g.

4 Housing that is regulated by the state Department of Public Health (DPH) often through Assisted living services agencies (ALSAs) providing assisted living services to managed residential community (MRC) residents, state-funded congregate housing facilities, and HUD-subsidized apartments.

5 A set-aside development is a project that includes a prescribed proportion of housing that is deemed affordable based on statutory language and affordability calculations: e.g., a housing development where :

· Not less than 30% of the total units in the development are deed restricted for forty years.

· No less than 15% of total units in the development serve persons or families at or below 60% of AMI\*

· The remaining “affordable units” in the development serve households at or below 80% of AMI

\*Area Median Income as measured by the US Department of Housing and Urban Development.

6 Studies conducted by the Urban Institute, the MacArthur foundation, and other institutions concluded that:

· After moving into mixed-income neighborhoods, public housing residents’ social networks widened to include those with more education, income, and racial diversity.

· Public housing residents in mixed-income neighborhoods were happier with their neighborhood than their peers in traditional public housing and did not feel socially isolated; and

· The expanded social networks were associated with reduced smoking and depression.

7 A housing unit constructed or substantially rehabilitated with state or federal money for low- or moderate-income households

8 E g underwritten by USDA (US Department of Agriculture) or CHFA (CT Housing Finance Authority)

9 An Act Concerning the zoning enabling act, accessory apartments, training for certain land use officials, municipal affordable housing plans and a commission on Connecticut’s development and future.