



Town of Hamden

Planning and Zoning Department

To: Hamden Planning and Zoning Commission

From: Matthew Davis, Assistant Town Planner

Re: Special Permit/Site Plan Application #21-1347
455 Sherman Avenue Rear (M Zone)
Proposed 31 Unit Affordable Housing Development (CGS 8-30g)
John Ranciato

Date: February 4, 2022

Overview

Application is made under CGS 8-30g. In a conventional application, the applicant has the burden to document compliance with applicable regulations, design standards and procedures. As most Commissioners know, 8-30g “flips” the burden of proof to the Commission to demonstrate that a denial or any conditions of approval impacting the affordability of the affordable units, outweigh the need for affordable housing in the Community. Valid conditions (i.e. those upheld by the courts) typically relate to health and safety.

If the PZC would like additional details on 8-30g, staff can provide a copy of the statute and Attorney Lee can update members as to any relevant case law, answer questions, etc.

Planning Staff at this time is not prepared to offer a recommendation and only wishes to open the hearing to initiate the public and Commission review process. That said, we will offer the following initial comments for your consideration:

1. Parcel History

Staff has reviewed the more recent files, but needs additional time to access and review older files, mostly relating to the lots creation and odd configuration (i.e. “frontage” conditions). Our initial review of air photos revealed that substantial changes (grading, paving with millings, stock piles of materials, storage of construction equipment/vehicles, demolition of at least one structure, etc.) occurred sometime after 2007 (when the property was owned by a prior owner). This work may have occurred pursuant to a site plan/special permit approved by the PZC in 2010 (cabinet fabrication), but staff has not yet been able to locate a Zoning Permit for that work. The initial nine year duration of that approval expired in 2019 and although an additional five years was available by statute (i.e. maximum duration to 2024), no request for extension was ever requested. Therefore, the 2010 approval has lapsed. As a practical matter, the current owner, who purchased the site in July 2020, apparently has no interest in pursuing completion of the 2010 approval and has instead submitted this 8-30g application.

As such, the site is in an incomplete condition and there is no longer a valid PZC approval in place under which work could continue. It would seem therefore, that no active use or work should be ongoing until appropriate land use permits are issued for some type of permitted use.

2. Policy Matters

The use of 8-30g always presents a number of interesting policy matters which need to be considered in evaluating an application. The PZC should be aware that myself and the former Town Planner (Dr. Kops) met with the current owner and Attorney Pelligrino for a preliminary consult in November of 2020, shortly after the applicant took title to the parcel. At that meeting we discussed various development options and ideas, including the notion of an 8-30g application. That idea was in large part, driven by the Town's lack of affordable housing, at least as that term is defined in 8-30g. I believe it was also discussed as a possible way to avoid potential enforcement actions through creation of a (conceptually) viable development path. However, since the initial consult, a number of relevant events have occurred which, taken together, alter staff's initial conceptual support for the 8-30g option. These include the following:

- The State has imposed a mandate on all CT towns to develop "affordable housing plans" and that process is well underway with the COG taking the lead. I believe initial data compiled by the COG has been disseminated to the PZC and also that shortly, staff will be meeting with the PZC and perhaps others to move that project forward. It would therefore seem premature for the town to endorse this or any affordable housing project, until it has complied with the State mandate regarding an affordable housing plan. Staff is not at all saying that such a plan would not support use of this site for affordable housing, but it seems illogical to do so in advance of having the opportunity to fully comply with the State's mandate.
- Since the November 2020 consult, the PZC has eliminated many of the "T Zone" design limitations which previously made appropriate M zone development virtually impossible. Those changes became effective on 2/1/22. Staff wants to thank Attorney Pelligrino for his assistance in bringing those code amendments to fruition. We would also note that the prior owner received a variance approval from one of the T zone standards, as well as the ability (also by variance) to expand a nonconforming use at this site. The relevance of these, if any, to the current application needs to be determined, but at the very least, the T zone design standards are now thankfully moot.
- Also, since the initial consult, the Legislature approved enabling legislation to allow for the sale, consumption, manufacture and distribution of cannabis. The Acting Town Planner has been assigned by the Mayor to staff the Cannabis Task Force and while no decisions have been made, it appears that a consensus with respect to the manufacturing and warehousing components is developing, such that those uses could be added to the table of permitted M zone uses, the same as for any other manufacturing or warehousing use. This change may present development opportunities that did not exist at the time of the initial consult, but at the very least, it is a change in relevant circumstances.
- To the extent housing is impacted by the needs of QU, the University announced on 2/3/22 their intention to develop several hundred units of additional student housing on site. That initiative has been a shared aspiration of both the University and the Town for many years and if it is accomplished, will have major benefits. It is fair to say that it will possibly "free up" off campus housing for use by others, and by adding to supply, will likely have at least some impact on the affordability of existing proximal housing stock. This should be a factor included in the affordable housing plan.

- Finally, Hamden citizens elected a new administration last November and while affordable housing is clearly a very important objective for the administration, expansion of Hamden's commercial and industrial tax base is vitally essential to the Town's ability to manage its fiscal challenges. The use of M zone lands for affordable housing would seem to undermine the Town's ability to accomplish important financial objectives. This is another argument in favor of allowing the Town to develop its affordable housing plan before endorsing projects that **may** undermine the ability to accomplish affordable housing plan objectives in an orderly, comprehensive and rational manner (i.e. which properly consider the topic within the context of all related land use, economic development, infrastructure, mobility, environmental and other goals, policies and objectives).

Staff only raises these points to provide context for the PZC, not to make pre-emptive recommendations. We need to hear from the community and from the members before arriving at conclusions. However, these points should at least be part of the decision framework.

2019 POCD

The community spent roughly a year and over \$75,000 in 2019 developing the State mandated update to our POCD. The POCD update was determined to be consistent with both the regional POCD (policies and future land use map) and the State POCD (growth management policies and locational guide map), consistency findings that are (essentially) required by State mandate. The State also mandates what subject matter a town POCD must address. The State also proscribes how a POCD must be and/or can be used in terms of managing orderly development matters (capital facility extensions, project design and entitlement, CGS 8-24 reviews, etc.). Clearly, the State considers a POCD to be a critical part of any community's comprehensive planning program.

For obvious reasons, the 2019 POCD program included a more focused evaluation of economic strengths, weaknesses, opportunities and threats. Camoin Associates produced a companion document to the POCD, including the identification of market sectors presenting opportunities to grow and diversify our local tax base. It is important however to point out that like any plan, the Camoin report was based on data available at the time. For instance, the POCD and the Camoin analysis were developed well prior to the legalization of cannabis and well before the two years of economic problems created by Covid. It is reasonable to conclude that had these Plans been developed now, the market analysis and recommendations may have been very different and those differences might have had some bearing on the PZC's review of the present application.

The site is clearly suitable for many of the uses permitted in the M zones, notwithstanding the obvious need to evaluate and resolve various technical matters. The POCD points out that our current inventory of suitably located, developable "M" zone land is extremely limited, thus each commitment of M zone land to alternative uses which create costs for public services above the taxes accrued, results in a two-fold negative fiscal impact. That is, first the opportunity cost associated with the failure to leverage limited M zone land and second, the actual nominal costs of services needed, net of taxes received.

The Town has suitably located land that is potentially available to grow our stock of affordable housing, and the POCD in general recommends that higher density mixed use development occur in certain specific nodal areas of the community. Basically this is a way of leveraging and "respecting" existing community structure and public investments in capital facilities, while gradually evolving land uses in an orderly manner. Related to this is the fact that Hamden's zoning is fairly accommodating to affordable housing development, and in fact, includes an "inclusionary zoning" mandate for affordable units in projects over five units, allowances for ADUs as of right, and other like provisions.

It is interesting to note that to the extent tax burden is a factor in the ability to create affordable housing, it follows that projects which convert “M” zone lands to alternate uses which demand more services than they can support (fiscally), only further exacerbate at least one of the “inputs” contributing to housing costs. Developers paying 50 mils will certainly need to pass on that cost to affordable housing tenants in one way or another. This often takes the form of eliminating project components (for instance, conventional amenities) that are universally offered in market rate developments.

Site Environs

The site is of course proximal to QU, to the recreational canal trail, shopping, transit, services etc. In addition, the site has been more or less “prepped” such that the development pad has been cleared and graded. Staff is of the opinion that the site is suitably located for both moderate density multifamily uses, as well as many of the “M” zone uses, especially those not creating significant trip generation, or requiring substantial improvements for wastewater treatment or discharge capacity.

In terms of multi-family, staff has discussed the potential benefits of creating additional density in proximity to recreational assets like the canal trail, as a way to leverage the trail and evolve its role/function. This would obviously need to occur only in locations that are suitable for more dense mixed use development, such as the nodal areas identified in the 2019 POCD.

Sewer Service (GNHWPCA)

As noted in prior development applications, the ability to serve the site with public sewers requires costly extensions, which seem to undermine the ability to produce affordable dwelling units. In addition, the nature of the project (lack of amenities, etc.) seems to suggest that the market units will have limited if any ability to compete with higher end options in the area, thus limiting their ability to internally subsidize the affordable units. Staff feels that affordable housing projects should not only provide comparable units (affordable units indistinguishable to market rate units), but that residents should not be required to forgo the types of amenities typically offered in market rate projects. Put another way, affordability should not mean lower standards in living conditions.

Furthermore, staff was contacted by a representative of an abutter who desires to have the sewer sized to accommodate some undetermined capacity for the abutter’s property. While staff completely understands and appreciates the benefits of looking at this “holistically,” we do not feel it is appropriate or even legal for the PZC to in any material way, violate the mandates imposed on it by 8-30g to accomplish this worthwhile objective. It would also require discussion and resolution of matters outside the scope of the present application. We understand that the abutter’s representative has been or will be in contact with the applicant and in the event this topic is part of the hearing record, staff wanted to provide the PZC with some guidance in advance.

Access Conditions

As noted, the site drive is fairly steep and in fact the grade will require a review and guidance from the Town Engineer. The grade is primarily a “seasonal” concern and even then, mostly with regard to large commercial vehicles, public safety apparatus, etc. Staff will note that we have not received any concerns from public safety officials in terms of site access. The buildings will be required to have residential sprinklers.

Easement/Property Rights

The site access and property configurations at the frontage are unique and present some atypical concerns. Staff has discussed these in general terms with the applicant and they need to be further evaluated to make certain that the applicant has all of the unqualified rights necessary to develop the site access drive as proposed. Specifically, the terms of the easement from QU benefitting the subject tract do not seem to explicitly allow for the improvement of the site access drive within the easement area, but only speak to the installation of **utilities** under, in, through and above the easement. This issue is obviously essential for any type of development of the subject site, as the site does not have any other access to a public street beyond the current paved drive and (presumably) what can be done in this easement area.

Another odd but likely less concerning matter is the fact that the “stub” of town land providing access to the public street from the property is yet unimproved as a public street. This “stub” shows up on surveys in office files, but is not shown on the town GIS. It appears to contain what appears to be a private driveway for the subject property shared to a point with the owner to the rear (north). This should be further evaluated and at least clarified as to “private” versus Town rights, roles and responsibilities.

Wetlands Jurisdiction (URA)

While likely a minor matter, staff needs to confirm that there are no regulated areas within 200 feet of any proposed development and if so, the PZC cannot take action until necessary permits are granted. There are what appear to be watercourses along the sides of and parallel to the canal trail, depicted on the towns GIS mapping. Staff will consult with the Town’s wetland agent and report his finding to the PZC. Even if these are in fact regulated watercourses (vernal, intermittent or otherwise), we do not feel at this time that the project scope would have any material impacts, however this is not a matter within the PZC’s jurisdiction.

Storm Water

A technical matter still under review but an important one in any project, both in terms of qualitative and basic management. The Town at present does not have a Town Engineer, so review may take some additional time and we will work with that office to try and identify any concerns, resolve them as able, etc.

Initial Planning Department Comments and Initial Recommendation

Planning staff’s detailed technical review of the plans is on-going, however it is important to understand that as an 8-30g project, while attempts are made to comply fully with applicable zoning requirements, these are in affect “trumped” by the legislative mandates imposed on the PZC by 8-30g.

Staff recommends the hearing be kept open and continued to at least the first meeting in March. This should hopefully allow sufficient time for remaining reviews to be completed, community and PZC comments to be addressed by the applicant and any other matters completed. The PZC by Statutes has 65 days from the close of the hearing to act on an application and depending on the nature of the issues resulting from the public application review process, staff may request time following the close of the hearing to draft a complete recommendation. This is of course to be determined.

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