

TOWN COUNCIL/TOWN PLAN AND ZONING COMMISSION  
BUILDING-ZONE REGULATIONS WORKING GROUP  
MINUTES OF FEBRUARY 7, 2022 SPECIAL MEETING

*The meeting commenced at 5:30 PM through Zoom Video Conferencing.*

**Present:** Subcommittee Members: Thomas P. Gullotta, Kurt P. Cavanaugh, Raymond Hassett and Laura Cahill  
Staff: Rebecca Augur, AICP, Director of Planning and Land Use Services and Jonathan E. Mullen, AICP, Planner  
Others: Mark Branse

**1. Outdoor Dining**

Ms. Augur stated that the purpose of the meeting was to follow up on outdoor dining regulations and discuss Accessory Dwelling Units. She stated that TPZ preliminarily reviewed the draft Outdoor Dining Regulations at their February 1, 2022 meeting and that the public hearing would be on February 15, 2022. Ms. Augur stated that the TPZ raised concerns about parking and wanted to explore setting caps on outdoor seating regardless of location. The TPZ also asked for legal opinion on whether town can put a limit on seating regardless of location also asked about setting a max number of indoor seats that could be used when outdoor seating is used to avoid need for more parking. Ms. Augur indicated that the Town Attorney has not yet provided an opinion but she hoped to have one prior to the public hearing.

Ms. Augur stated that town staff had made revisions to the draft language for outdoor dining as requested by the group which included prohibiting outdoor seating in handicapped accessible parking spaces, hours of operation, and the 20% limit on seats in parking spaces before additional parking is required. She then presented three examples of temporary outdoor dining permits issued under the Governors Executive Order that used parking spaces for seating to demonstrate how different sized establishments used parking spaces for outdoor seating and how the 20% requirement would apply. The three establishments were Flynn's Grill, The Spicy Green Bean and Cotton Hollow Kitchen. The breakdown was as follows:

- Flynn's Grill occupied 3 parking spaces with 10 seats as part of their temporary outdoor dining approval. Their total permitted number of indoor seats is 36, twenty percent of which would equal 7 seats.
- The Spicy Green Bean occupied 11 parking spaces with 30 seats as part of their temporary outdoor dining approval. Their total permitted number of indoor seats is 66, twenty percent of which would equal 13 seats.
- Cotton Hollow Kitchen occupied 15 parking spaces with 40 seats as part of their temporary outdoor dining approval. Their total permitted number of indoor seats is 130, twenty percent of which would equal 27 seats.

Ms. Augur pointed out that the owner of Cotton Hollow Kitchen subsequently received a special permit for a permanent patio located to the south of the building that had 40 total seats. The owner stated at the public hearing that the wait staff and kitchen could not accommodate more than 40 seats.

Ms. Augur then presented the draft regulations with recommended changes made by the group at the January 31, 2022 meeting:

- Prohibit outdoor seating in handicapped accessible spaces,

- Use 20% of the permitted floor area to determine number outdoor seats permitted in parking spaces.
- Permitted outdoor dining hours of 6am to 11pm with no new diners seated after 10pm and all outdoor dining activities to conclude by 11 pm.

She stated that the town is waiting to hear from the town attorney if the TPZ can apply the 20% rule to all outdoor seating. Councilman Cavanagh stated that he was in favor of using 20% to determine outdoor seats. Commissioner Hassett agreed with Councilman Cavanaugh and stated that the TPZ was struggling with the fact that allowing seating in parking areas would reduce the number of on-site parking spaces and could create problems. He felt that there should be restrictions on parking and suggested that if there is an increase in outside seating then there should be a proportional decrease in inside seating. He also expressed concern that there was no defined limit to the number of outdoor seats that could be placed outside of parking areas. Commissioner Cahill stated that she felt 20% was a reasonable amount but to make sure that is legal for the TPZ to require. Ms. Augur stated that the location language is verbatim from state statute. She felt that there are enough provisions in state language to ensure that walkways are unobstructed, emergency vehicles have access and that there is ADA compliance. She then pointed out that licensee needs to have sign off from property owner and that landlords will be policing this as well. Ms. Augur stated that the at their February 15, 2022 meeting, the TPZ will review and make recommendations to the Town Council with goal to have effective date of March 28, 2022.

## **2. Accessory Dwelling Units**

Ms. Augur stated that at the January 31, 2022 Affordable Housing Steering committee meeting several members of the public made statements that the Town should make the approval process for Accessory Dwelling Units (ADUs) easier. She also pointed out that the Draft Affordable Housing Plan, and several other planning documents call for a more streamlined approval process. Ms. Augur then gave a brief history of ADUs in Glastonbury stating that “parental units” were established in 1980s as special permit. The regulations were amended in 1991, 2008, and 2019; however ADUs have always required a special permit. Ms. Augur then stated that the assessor’s data shows that there are 145 existing units with In-Law Apartments/ADUs. Of those units only 65 have permits and only 9 permits were granted between 1984 and 1991 for an average of 2.6 permits per year since the 1980s.

Ms. Augur then shared anecdotal information regarding ADUs in the towns of Stonington and Ridgefield. Neither community saw a change in number of permits sought when they made ADUs as of right as opposed to special permit. Ms. Augur then showed the group a chart that compared the new State law and the existing Glastonbury regulations. The chart revealed that Glastonbury’s regulations had many similarities to the State law. Ms. Augur noted that there five key differences. The first difference is the permitting process: state law requires allowing ADUs by right while Glastonbury regulations require a special permit. The second difference was that the new law allows for detached ADUs while Glastonbury regulations prohibit them. The third difference was the new law allows for a maximum size for an ADU of 1,000 square feet or 30% of the total floor area of the principal unit whichever is less, while Glastonbury permits up to 800 square feet. The fourth difference was the state law had no occupancy requirements whereas Glastonbury limits ADU occupancy to 3 three people no more than of which can be 2 adults. The final difference was that the state law prohibits requiring yearly affidavits or periodic renewals, whereas Glastonbury requires affidavits of owner occupancy every 2 years and at time of sales.

Councilman Gullotta asked if the town had to comply with the new state law or could it opt out? Ms. Augur stated that as discussed in previous meetings, the town could opt out and revise the existing regulations. Attorney Mark Branse asked if ADUs would be permitted in basements. Mr. Mullen stated that they would, as they are now under Glastonbury regulations. Commissioner Cahill asked if the new state law would overrule condominium association rules. Ms. Augur and Mr. Branse stated that state law could not override deed restrictions. Ms. Augur presented several methods by which ADUs could be approved including making all types administrative site plan review, categorizing some types of ADUs to be special permit, or keeping all types special permit. She asked the group which method of approval they preferred or whether they were happy with the current regulations. Councilman Gullotta asked the difference between a special permit and site plan. Ms. Augur stated that special permits require a public hearing, and they give the TPZ more discretion. A site plan approval is based on whether or not a plan meets certain standards. Attorney Branse added that with a site plan there is an irrefutable assumption that the use is permitted anywhere in a zone whereas the TPZ has the discretion to determine whether or not a particular special permit use is appropriate in a particular location in a zone. Attorney Branse stated that site plan approval was not a bad idea for ADUs as they should be appropriate in residential zones. Councilman Kavanaugh stated that he liked the fact that special permit approval requires a public hearing. Attorney Branse stated that the TPZ could hold public hearing on a site plan if they choose. He also cautioned that site plan applications are automatically approved after 65 days and extensions. Councilman Gullotta stated that he favored a special permit approval because it gives neighbors every opportunity to have input on an ADU application and that the TPZ would not be restricted to the site plan timeline. Councilman Gullotta also stated that he would feel comfortable allowing detached ADUs if they were permitted with a special permit.

Ms. Augur reiterated to the group that there are recommendations to make the ADU approval process easier in the draft Affordable Housing Plan that will be going for public hearing at TPZ and Council soon. Councilman Gullotta stated that he was trying to strike a balance between making permitting easier for the applicant and acknowledging that individuals who moved into a neighborhood with certain expectations would be upset if they did not have a say in a change to the neighborhood like allowing an ADU. Councilman Gullotta further stated that he was in favor of allowing someone to apply for a detached ADU, but that person will have to do so with the neighbors knowing about it. He stated that he was not comfortable cutting out the neighbors' opinion. Commissioner Hasset agreed with Councilman Gullotta that neighbors should be able have their voice heard. However, he was not in favor of detached ADUs. He took offense to the fact that someone could essentially put in a completely new home in a space that was neither designed nor intended for such use. Councilman Gullotta stated that the special permit process will have restrictions and the land will limit detached structures. He felt the group should not prohibit detached ADUs but should put the burden on applicant for approval. Ms. Augur suggested that the town could prohibit detached ADUs if we opt out allow them in only in larger lot zones. Councilman Cavanaugh stated that he felt the new state law would allow multi-family housing in single-family zones. He agreed with Commissioner Hasset that he was not in favor of detached ADUs. Councilman Cavanaugh stated that he did not like zoning "creep" from the state and that the town should opt out of the new law. He asked Ms. Augur to explain the Affordable Housing Steering Committee's stance on making ADU permitting process easier. Ms. Augur explained that the special permit process is cumbersome with no certain outcome because TPZ has sole discretion. Commissioner Cahill stated that the town should keep the ADU approval process as a special permit process. She stated that the special permit process offers some protections to the people who buy into neighborhoods with certain expectations as to how the neighborhood is going to be and that they should have say if the neighborhood is going to change. She felt that

detached ADUs could cause issues with water and sewer. She stated the example towns (Stonington and Ridgefield) did not get many new applications. Commissioner Cahill stated that she was uncomfortable with 1,000 square foot size. Councilman Gullotta stated that he could imagine new builders possibly constructing ADUs in new homes. Attorney Branse suggested that the group specify whether the approval would be a special permit or a special exception as the former is approved by TPZ and the latter by ZBA. Councilman Cavanaugh stated that he was not in favor of detached ADUs and asked staff to provide a map of the large lot zones. Ms. Augur summarized that the group was not comfortable with allowing detached ADUs at all. Councilman Cavanaugh, and Commissioners Cahill and Hassett stated they were not comfortable allowing them. Councilman Gullotta stated that he was open to allowing them in certain circumstances through special permit and if the town could choose area of town where they be permitted.

Ms. Augur asked the group about maximum permitted size of ADUs. She indicated that state law allows up to 1,000 square feet or 30% of the principal unit whichever is less, whereas Glastonbury caps ADU size at 800 square feet. She stated that staff has been working with the Assessor to obtain median and average house sizes by zones. Commissioner Hassett suggested that 30% could be more restrictive in smaller zones. Ms. Augur agreed that would be the case for smaller houses. Commissioner Hassett stated that he was in favor of a 1,000 square foot maximum and would like the 30% removed. Attorney Branse stated that approval was through special permit the TPZ would have the discretion to limit the size of an ADU if appropriate. The group agreed to keep 1,000 square feet and remove 30%.

Ms. Augur stated that the current occupancy limits are difficult to enforce and that staff is recommending removing the limits. Attorney Branse stated he agreed with Ms. Augur that occupancy limits are difficult to enforce. He further stated that Health Code dictates how many people can occupy a room. Councilman Gullotta expressed concern about overcrowding. He asked if it was possible for TPZ to include language in a special permit limiting number of people to occupy an ADU. Ms. Augur stated that would be difficult to enforce. Councilman Gullotta stated that the neighbors would complain to the town and that will help with enforcement. Attorney Branse suggested adding language to say that an ADU will only be occupied by one family. He admitted that it would be difficult to enforce such language however. Commissioner Hassett expressed concern that it was always going to be an enforcement issue and recommended leaving the language as is. He also expressed concern that grandparents could take in grandchildren, which could put stress on the school system. Councilman Cavanaugh agreed with Commissioner Hassett. Commissioner Cahill stated that she didn't think it was fair to restrict a 1,000 square foot ADU to 3 occupants when there are no occupancy restrictions on a 1,000 square foot single-family house. She recommended removing the occupancy limit or possibly limiting to a maximum of 6 people to be consistent with the definition of a family. Attorney Branse recommended an amnesty program for unpermitted ADUs provided that the owner deed restrict the unit as affordable.

Ms. Augur recommended that the town require owner occupancy but remove the affidavit requirement as the regulations ensure owner occupancy. Commissioner Cahill agreed that the affidavit requirement should be removed. Commissioner Hassett questioned removing the affidavit requirement. Ms. Augur stated that the regulations ensure owner occupancy and the new state law prohibits zoning regulations from requiring affidavits. Councilman Gullotta asked how the town would ensure owner occupancy. Attorney Branse stated that special permits are filed on the land records and property owners are obligated to know what is permitted on their property.

Ms. Augur recommended to the group that they check in with full TPZ and Town Council because

opting out of the state ADU regulations requires a 2/3 vote of each body and it would be a good idea to keep them in the loop. Commissioner Cahill requested that staff prepare draft language for an amnesty program.

Ms. Augur stated that the group's next meeting is February 28, 2022.

Meeting adjourned at 6:45 pm

Respectfully submitted,

Jonathan E. Mullen, AICP  
Planner