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To: City of Danbury Planning Commission
City of Danbury Zoning Commission

From: Sharon B. Calitro, AICP, Planning Director

Date: September 9, 2021

Re: Petition by 3 Lake Avenue Extension, LLC
Amend Sections 2.B., 5.B., and 5.B.5.g. of the Zoning Regulations

The Zoning Commission has received a petition from 3 Lake Avenue Extension, LLC for several amendments to the Zoning Regulations. The proposed amendments include the definition of a new use, “Transitional shelter for the homeless” in Section 2.B. and the addition of said use to the CA-80 Zoning District as a special exception with additional use regulations (Sections 5.B. and 5.B.5.g.). The petition also includes amendments to the definitions of “Dwelling units” and “Shelter for the homeless” in Section 2.B. 3 Lake Avenue Extension LLC is the current owner of Tax Assessor Lot G15005 located at 3 Lake Avenue Extension in the CA-80 Zoning District.

The reasons why the petitioner argues that this petition should be granted are contained in a letter from the petitioner’s attorney Timothy Hollister dated August 16, 2021.

Per the letter, use of the former hotel at 3 Lake Avenue Extension as an emergency shelter has been “carried out under several of Governor Lamont’s pandemic orders. The Governor’s pandemic orders governing homeless shelters and emergency housing was recently extended to September 30, 2021.”

The CA-80 Zone is an arterial commercial Zoning District that allows a variety of uses, including the former hotel. The purpose and intent of the district, as stated in the Regulations, is to “provide for general and heavy commercial uses in appropriate locations along major roadways of the City.” There is only one area of the City zoned CA-80, and it generally encompasses lots that border Route 6/Lake Avenue Extension from Exit 4 to the New York State border, with some additional lots located along Old Ridgebury Road. The zone allows 47 permitted uses, 21 special exception uses, and 5 special permit uses. Lots within this Zoning District contain a myriad of uses.

Comments on the Application

1. Amendment to definition of “Dwelling unit.” The petition includes an amendment to this definition to add the new use to the list of uses not considered to be a dwelling unit. This is consistent with the existing exemptions which includes clubs, congregate housing, dormitories, fraternal organizations, fraternity or sorority houses, hotels or motels, nursing homes, rooming houses or boarding houses, shelters for the homeless, or similar uses. The amendment is appropriate as similar uses are also excluded.
2. Amendment to definition of “Shelter for the homeless.” The petition includes an amendment to this definition that adds language to differentiate a dormitory or congregate style shelter facility from the new use which requires a combination of supportive units and emergency shelter rooms as well as other services. This amendment is appropriate. The Zoning Regulations contain other examples of definitions that are slightly differentiated, e.g., physical medical facility inpatient and physical medical facility outpatient.
3. Amendment to define a new use “Transitional shelter for the homeless.” The petition proposes to add this new use to the Zoning Regulations in Section 2.B. The definition requires the facility to (1) be comprised of both supportive units and emergency shelter rooms; (2) be controlled and operated by either a non-profit housing organization under contract with the State Department of Housing (“DOH”) or the City of Danbury; (3) be restricted as to the components within the units or rooms; (4) contain space wherein supportive services are provided to occupants; and (5) contain supportive units and emergency shelter rooms that qualify as affordable housing within the meaning of CGS Section 8-30g with specific income levels and occupancy restrictions noted.

Requiring a combination of units and rooms provides opportunity for occupants to transition from emergency shelter rooms to more independency in supportive units, but with the same ability to access supportive services. Requiring the facility to be under control or operated by DOH or the City helps ensure the facility is sanctioned by public agencies. Restricting what can be in the rooms ensures that neither the rooms nor the units become dwelling units, as cooking facilities requiring venting would be prohibited in the rooms. Mandating that supportive services be provided in the facility provides individuals experiencing homelessness with skills and support to enable the transition to more permanent housing, self-sufficiency, and independence. Income and occupancy restrictions ensure that the supportive units and emergency shelter rooms in the facility will add to the City’s inventory of affordable housing units (as defined in the statute) for the purposes of the Affordable Housing Appeals List and any related moratorium application. The addition of affordable units, whether deed restricted or governmentally assisted, is a significant benefit to the City.

The detailed definition is appropriate and necessary for this use to ensure consistency in the Regulations.

4. Amendment to add the new use to the CA-80 Zone as a special exception use. This new use is proposed to be added as a special exception use. This will permit the Planning Commission to consider the use at a specific location which meets the additional use regulations as well as the additional requirements in Section 10.C.4. Remaining uses are renumbered consecutively, which is appropriate. The commissions may note that a shelter for the homeless use is currently only allowed as a special exception use in the CBD and RH-3 Zoning Districts.
5. Amendment to add specific use regulations for the new use in the CA-80 Zone. The petition includes 13 additional use regulations that include, among other restrictions, a requirement that the

site be located on an arterial street abutting a ramp of Interstate 84; a limit on the number of supportive units and emergency shelter rooms with a commensurate limit on the number of supportive units; occupancy limits for homeless individuals within the rooms and/or facility; identification of information and other plans that would be required for permits; a requirement for future certification; and, requirements for filing of occupancy restrictions to ensure the supportive units and emergency shelter rooms meet the definition of affordable housing within the meaning of CGS Section 8-30g.

Said additional use regulations, specifically the requirements regarding abutting an interstate ramp and on an arterial road, appear to limit the number of lots within the CA-80 Zone which could be occupied by a transitional shelter for the homeless to three (3). One site would be at 3 Lake Avenue Extension where there exists an 86-room former hotel (Tax Assessor Lot G15005). The second site would be on Old Ridgebury Road, on the lot currently occupied by Crown Plaza (Tax Assessor Lot C15008). Note however, that Crown Plaza is an existing hotel with more than 200 rooms, well in excess of the maximum number of rooms allowed under the new use restrictions. The third lot is Phase 3 within the PND owned by One Reserve LLC (Tax Assessor Lot C15021). CA-80 Zone uses would be allowed on this lot, see Section 4.H.2.b.(3)(b)(iv), although establishing this new use in Phase 3 would require an amendment to the Reserve Master Plan as well as additional findings. The commissions should also note that the State owns land adjacent to the Exit 2 ramps; however, municipal approval would not be required for the State's establishment of this use on its land. Staff defers legal commentary to the Office of the Corporation Counsel as to the petitioner's position on whether this constitutes spot zoning, the Fuller treatise on spot zoning, and analysis of associated case law.

Plan of Conservation and Development (“POCD”)

The Land Development Plan Map of the POCD designates some lots in the CA-80 Zone as limited commercial and some lots as general commercial. Limited commercial includes “retail sales and services with limited traffic generation (specifically excluding, among others, big box retail, fast food restaurants, convenience stores and drive-in facilities), offices, schools, and churches.” General commercial includes “a wide range of retail sales and services, offices, medical facilities, entertainment, community facilities, wholesale distribution, assisting living and nursing homes.” The uses are not intended to be inclusive of every use to be considered for each designation, but rather indicative of major land uses that may be supplemented by other complementary uses. It should be noted that while a homeless shelter is not specifically listed in the POCD under these commercial designations, nor is it listed in the POCD under the designations for the central business district or mixed residential/limited commercial designations where shelters are currently allowed in the Zoning Regulations by special exception (CBD and RH-3 Zoning Districts). Therefore, the commissions could reasonably conclude that shelters are similar to uses noted, as well as uses already allowed, as permitted or special exception, within the CA-80 Zone.

The Housing section of the POCD (page 35) provides that the City should undertake actions to expand the supply of affordable housing. The definition of a transitional shelter for the homeless requires that the supportive units and emergency shelter rooms meet the definition of affordable housing within the meaning of CGS Section 8-30g. Therefore, creating a new use with a defined affordability requirement is consistent with this recommendation.

The Housing section (page 36) also recommends supportive actions that will help meet the housing needs of special needs groups, including the homeless. Establishing a use that requires both supportive units and emergency shelter rooms as well as supportive services is an action that meets the needs of this special needs group. This model is also endorsed by the State. Therefore, the commissions may reasonably conclude that creation of the use is consistent with this section of the POCD.

Conclusion

Creation of a new use and its designation in a specific zone is not uncommon. In fact, Danbury has done so many times, since the Zoning Regulations are permissive. To control the proliferation of a use and ensure that the use, as defined, is properly located and clearly regulated, additional use regulations are often added as is the case under the present petition. Minor amendments to other use definitions are included for clarity.

The specificity of the definition of a transitional shelter for the homeless and the additional use regulations in the CA-80 Zone addresses potential misinterpretation as to what the use is and must contain, and clarifies requirements for approval. As indicated above, there are public benefits to the petition as presented. The petition represents a combined and collaborative effort by the State and the petitioner to create a use under a new non-congregate model that safely addresses the housing and support of persons experiencing homelessness brought to the forefront as a result of the global pandemic. The commissions may wish to consider the addition of language to the proposed definition to restrict use of a structure as a transitional shelter for the homeless to one principal use. This will help ensure that multiple uses are not allowed on the same property or within the same building.

Therefore, as presented, the commissions may reasonably conclude amending the Zoning Regulations in this restrictive fashion upholds the integrity of the Zoning Regulations.

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