



## TOWN OF LEDYARD

### Department of Land Use and Planning

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#### MEMORANDUM FOR THE RECORD

August 11, 2022 PZC Meeting

**Property Address:** 79 Vinegar Hill, Ledyard, CT  
**Application:** #PZ22-08SUB – Open Space Subdivision  
**Applicant:** Mr. G 1., LLC  
**Property Owner:** Mr. G 1., LLC  
**Agent, if any:** Attorney Harry Heller  
**Lot Size:** 170 acres – 102.25 of which was deeded to the town on 11/26/2019  
**Zoning District:** R60  
**Public Water/Sewer:** On-site Wells/On-site septic.  
**Wetlands/Watercourses:** Yes. IWWC approval 8/2/2022.  
**Flood Hazard Zone:** No.  
**CAM Zone:** No.  
**Public Water Supply Watershed:** No.  
**Proposed Public Improvements:** No.  
**Legal:** #PZ22-08SUB Submitted to Land Use Office on 6/7/22. Received by PZC on 6/9/2022.

#### Planner's Comments

The application is for a 24-Lot Open Space Subdivision essentially identical to the Open Space subdivision Eagle's Landing" proposed and approved in 2018. The 2018 plan was dissolved in part with only the open space parcel and land dedicated for future road widening preserved as they had already been deeded to the Town.

There was a change made to the location of the drainage basin, and as such, the application was reviewed by the IWWC Commission, and the changes were approved on August 2, 2022.

The application has been reviewed by the Town Engineer and comments have been received.

Attorney Heller has submitted a great deal of material concerning the issue of the open space technically not being a part of this new subdivision application. I agree with his position.

With respect to my concerns about the stacked interior lots, I do not agree with his position for the following reasons that I would like to clarify so that we can avoid this issue in the future.

The argument is that there are no such thing as "Interior Lots" in an Open Space subdivision, therefore the provisions pertaining to Interior Lots in the Zoning Regulations do not apply.

Beginning with the definition...

OPEN SPACE SUBDIVISION: A subdivision or re-subdivision of land in the Town of Ledyard into individual single-family residential building lots with respect to which not less than sixty (60%) percent of the total area of the land subdivided shall be permanently dedicated as active or passive open space, and with respect **to which setbacks and density shall be based upon the applicable provisions of the Ledyard Subdivision and Zoning Regulations for open space subdivisions, and not upon the bulk requirements in the underlying residential Zoning District, and which otherwise comply with all municipal requirements of the Town of Ledyard.**

The bulk requirements in Section 5.2 (Open Space Subdivisions) do not require a minimum frontage – so you could have lots with no frontage at all. I agree with this. So lots with no frontage are permissible, but these lots are “Interior Lots” BY DEFINITION and the regulations apply.

INTERIOR LOTS: *A lot that has no direct frontage on a public or private street*, but which obtains access to such streets by way of a private driveway or access agreement across land owned by another party *or a lot which accesses a street but does not have the required minimum frontage of the Zoning District.* The front lot line of an interior lot shall be considered that lot line where the driveway or access point enters the property.

(Highlighted part added after 2012)

There was a second definition in the old regulations that has since been removed”

LOT, INTERIOR: A lot that has access to a public right-of way by means of a narrow strip of land, which is less than the required frontage.

The **Number** of Lots and **density** is “resource-based” as Attorney Heller suggests, yes – but based on (1) *the ability of the parcel being subdivided to achieve a minimum dedication of sixty (60%) percent of the parcel as permanently dedicated open space and thereafter complying with the minimum requirements of the Connecticut Public Health Code, And (2) A minimum lot area shall be based on the ability of the proposed lot to support a single-family residence; and, if applicable, on-site well and septic system in compliance with the Connecticut Public Health Code rather than upon any minimum geometric requirement.*

So we have established that the bulk requirements for the THINGS listed in the bulk table in Section 5.2 of the subdivision regulations (Open Space Subdivision section) governs over the same bulk requirements for lots in the underlying zone per the full bulk table in Chapter 3.

The bulk requirements were the following in 2012 (Current in red);

#### E. Bulk Requirements

- (1) Minimum parcel area prior to subdivision: 40 acres
- (2) Minimum side yard distance: 10 feet (within each lot) (removed within each lot)
- (3) Minimum both side yards (combined): 25 feet (within each lot) (removed within each lot)
- (4) Minimum lot rear yard distance: 30 feet (within each lot) (removed within each lot)
- (5) Minimum front yard setback: 55 feet from centerline of road or 30 feet from the front lot line, whichever is greater. (Removed 55 feet from centerline of road)
- (6) Maximum building height: 35 feet (This requirement not listed in the current section)
- (7) Minimum lot area: Not Applicable (Now Minimum Lot Size is 12,000sf)

Nothing so far about getting out of requirements having to do with interior lots or access strips or shared driveways or monumentation or water and septic or drainage or anything included in Section 4 of the Subdivision Regulations or Section 3.5 (Zoning Conflicts). In other words, aside from the relief provided in the bulk requirements for lot size, frontage, setbacks and some scatters exemptions for Conservation Subdivisions and Open Space Subdivisions, ALL other municipal requirements of the Town of Ledyard apply (such as things like stormwater management, SE&SC provisions, driveway width, surface and grade and any other non-dimensional provision included in the Zoning Regulations and Subdivision regulations.

The Quakertown Subdivision was an Open Space Subdivision as well and the issue about Interior Lots arose and was ultimately settled in court with the court concluding after considering the regulations as a whole that the interior lot provisions of the regulations do not apply to open space subdivisions (despite the existence of the definition of Open Space Subdivision and Interior lots at the time and the explanation about the specific type of flexibility to be provided for Conservation and OS subdivisions).

When Eagle's Landing Subdivision was first approved in 2018, the Zoning Regulations had been revised (from what they were when Quakertown was approved) SPECIFICALLY Section 14.6 Interior Lots which now gives specific relief to Interior lots **IN** OPEN SPACE SUBDIVISIONS! Emphasis on the word IN. This presumably acknowledges that there are in fact such things as Interior Lots in Open Space Subdivisions and by adding an exemption in this section, it further ties Interior Lots in Open Space Subdivisions to the Interior Lot requirements.

The exemptions were for lot size, setbacks, frontage, and the ability to allow more lots to share driveways, but not for the stacking! That is the type of flexibility that was contemplated with the Conservation and Open Space Subdivisions. That is what is clearly spelled out in the purpose and supported by the bulk requirements.

**See highlighted below.**

14.6 Interior Lots An interior lot is one which does not meet frontage requirement at the road.

A. Residential Districts.

(1) Interior Lots may be permitted in Residential Districts R-40 and R-60, subject to the requirements set forth in the "Area and Bulk Requirements", with the following conditions and/or exceptions:

(a) The frontage requirement for the access way/driveway strip shall be a minimum of twenty (20) feet wide and accessible to a town or state road.

**(b) The access way/driveway strip shall be owned as part of the interior lot.**

(c) The driveway strip shall allow construction of a driveway that can comply with 14.8.

(d) The driveway strip shall be a minimum of twenty (20) feet throughout.

(e) The driveway access area shall be free of all structures.

(f) Wherever possible, a common driveway compliant with 14.8.B shall be used to serve the interior lot. The applicant should provide sufficient justification for using separate.

**(g) The minimum lot area for an interior lot will be a minimum of one and one half (1.5) times the minimum lot area for the zone in which it is located.**

(h) The area of the driveway strip shall not be included as part of the minimum lot area requirement.

(i) The minimum building setback line for interior lots shall be fifty (50) feet from the front lot line, excluding the driveway strip.

(j) An interior lot shall never be "stacked" behind another interior lot.

**(k) Open Space and Conservation Exemptions:**

i. New interior lots in Open Space Subdivisions shall be exempt from 14.6.A(1)(g)

ii. New interior lots in Conservation and Open Space subdivisions can be exempted from 14.6.A(1)(b) provided a permanent easement is provided through which a common driveway as defined in 14.8.B is located. The easement shall be excluded from any minimum lot size or setback calculations.

Additionally, SR 4.3.5 talks about Interior Lots and states that there shall be no stacking of interior lots, but does give an exemption for lots utilizing the provision for 5 lots sharing a driveway in Section 4.8.9 which is actually in the Conservation Subdivision section NOT the Open Space section. This was an oversight I am sure, but none-the-less, the exemption does not exist in writing for OS subs. Even if we admit that this section should apply to Open Space Subdivisions, it still only allows ONE interior lot to be stacked behind another...not TWO as shown on the proposed subdivision for lots 24, 26 and 28.

By Attorney Heller's and the court's logic, no exemptions would ever need to be specifically provided for Interior lots in open space subdivisions, because there is no such thing. I believe the Commission specifically changed the regulations after Quakertown approval and court case to address this very issue – yet did not abide by this change in 2018 when they approved Eagle's Landing because they were presented with the same argument being provided again today that there is no such thing as an interior lot in an Open Space Subdivision per the court decision. That is my best guess as to what happened in 2018.

Attorney Heller believes that nothing has changed in the regulations (since the court case for Quakertown) which would lead to a basis for ignoring the court's conclusion that there are no interior lots, as contemplated by the Ledyard land use regulations, in an open space subdivision. There are just lots, and with minimum parameters, they are performance based. He stated that that was the trade-off discussed at length with the then planning commission for the 60% open space dedication when the regulations were first adopted.

I respectfully disagree. The regulations did change, and I believe they changed to specifically clarify that there are interior lots in OS Subdivisions. That change would have impacted that court decision for sure.

I believe the Commission erred in approving Eagle's Landing in 2018, especially since they had specifically put in the language in 14.6 which ties Interior lots to Open Space Subdivisions. Why else would they have specifically put in that language after the court decision was rendered? What was the point if not to clarify that Interior Lots in OS Subdivisions exist and they are entitled to certain exemptions – NOT all exemptions. They were trying to correct what happened in Quakertown.

I agree, there have been no changes to the relevant regulations since Eagle's Landing was approved in 2018, and that is what makes it hard to deny this application now as the applicant

certainly assumed that it would be approved again. All I am saying is that the argument that Interior Lots do not exist and therefore there is no limit to the number of landlocked parcels that can be stacked is simply not valid. I want to clarify this issue moving forward, and hope that the new regulations will accomplish this instead of having to resettle this in court so that the same argument used to justify the Quakertown Meadows Subdivision is not used again in the future.

I believe the Commission's intent with all developments was, and still is, to not allow lots to be stacked at all in a conventional subdivision and if part of open space or conservation subdivision only one can be stacked behind another if the lots are utilizing a shared driveway.

**Current Application:**

**The following items must be corrected:**

1. All driveways serving individual homes must be 12 feet wide and otherwise comply with Section 14.8 (as amended) of the current Zoning Regulations. All shared portions must be 15 ft wide and contained within a 25ft access strip/easement area and comply with all other requirements found in Section 14.8B. **Individual driveways are shown as only 10ft wide on the plans submitted. Please revise plans to reflect the 12ft requirement so there is no confusion in the future as to what was approved.**
2. Shared Driveways greater than 600ft must be constructed in a manner as to accommodate fire trucks and apparatus (i.e. H2O Loading and a turnout).
3. Please correct the Zoning Compliance Table to reflect the current regulations. The table provided is based on the 2012 Regulations.
4. Please reference the most recent IWWC application and approval in the notes.
5. All comments provided by Town Engineer must be addressed prior to the filing of the mylar.
6. All legal documents must be filed for any easements and/or rights of way prior to the sale of any of the lots affected.
7. Bond estimates for the drainage/stormwater management systems must be reviewed and approved prior to the issuance of any zoning permits for individual lot development.