

**22 Reasons to Deny
Application PZC #24-8 SUP
For the Excavation of Decatur Mountain**

Eric Treaster
5 December 2024

22 Reasons to Deny Application PZC #24-8 SUP For The Excavation of Decatur Mountain

Introduction

1. **“Quarrying” Is Not an Allowed Land Use.**
2. **The Excavation Of Decatur Mountain Is Not In Accordance With The Requirements And Standards For A Special Permit.**
3. **The Excavation Of Decatur Mountain Is Not In Harmony With The Neighborhood.**
4. **Shot Rock Cannot Be Excavated Because It Is Not A Natural Earth Product.**
5. **The “Severing Of Bedrock” Is Not Allowed As An Accessory Use.**
6. **The “Severing Of Bedrock” Is Not Allowed As A Manufacturing Use.**
7. **The Use Is Inconsistent With The Purpose Of An Industrial District.**
8. **The Rerouting of School Traffic Will Be Deleterious.**
9. **The Reduced Speed Limit Will Be Deleterious.**
10. **The Application is Missing Required Parking Information.**
11. **The Proposed Payments in Lieu of Taxes May Be Improper.**
12. **The Required Notification of Property Owners Was Incomplete.**
13. **Vibrations Beyond Site Boundaries Are Not Permitted.**
14. **Blasting Noise Will Be Offensive.**
15. **Additional Dust Is Not Permitted.**
16. **The Volume, Intermittence, Frequency, and Shrillness Of The Noise Emitted From The Excavation Was Not Shown To Be Reasonable And Non-Offensive.**
17. **The 12' High Concrete Block Wall Sound Barrier Is In The Rear Setback.**
18. **The Bank Slope Is Too Steep.**
19. **The Applicant Will Not Stockpile All The Topsoil and Subsoil (Overburden) For Site Restoration**
20. **The Application Is Inconsistent With The Future Development Envisioned For Ledyard In The Zoning Regulations & the Ledyard Development Goals Identified In The POCD.**
21. **The Zoning Compliance Manual Does Not Show Zoning Compliance.**
22. **The Zoning Compliance Manual Will, If Approved, Take Precedence Over the Zoning Regulations.**

22 Reasons to Deny Application PZC #24-8 SUP For The Excavation of Decatur Mountain

Eric Treaster
5 December 2024

Introduction

Good evening. My name is Eric Treaster, and I reside at 10 Huntington Way. I was a member of the Zoning Commission for 25 years, from 1987 until the end of October 2012, when it was combined with the Planning Commission. I was its Chairman for its final two years and author of the October 2012 zoning regulations. I am currently a member of the Zoning Board of Appeals and the Board of Assessment Appeals. I authored Ledyard's Zoning Citation Ordinance and am the Town's Hearing Officer for blight and zoning citations. Attorney Heller and I have known each other for almost 40 years, and he is one of Connecticut's best land use attorneys. I have great respect for him.

When this hearing was opened, Attorney Heller told you that you must approve an application for a special permit if it complies with the zoning regulations. I agree. However, he forgot to say that you must deny an application if it does not comply with the regulations, including the criteria and standards for a special permit.

In the next few minutes, I will identify 22 reasons to deny the application based on noncompliance with the zoning regulations, the standards, and criteria for a special permit, and the POCD. Any one of the 22 reasons is sufficient to deny the application.

1. "Quarrying" Is Not an Allowed Land Use.

"Quarrying" is a land use that consists of the *act or process of extracting marketable stones* or other valuable materials from a quarry. A "Quarry" is a place, typically a large pit, *from which marketable rocks or other materials of value* are being extracted or have been extracted. Excavation, as defined in the zoning regulations, is limited to the removal of earth, sand, gravel, clay, rock, or other natural earth products, which are surficial materials. Bedrock, such as granite, is not a surficial material. In simple terms, *excavation* is the removal of soil and earth, and *quarrying* is the *severing* and *processing* of bedrock.

The application, on page 1 of its Project Narrative *[Exhibit #1-4]*, proposes the excavation of Decatur Mountain, which is a land use allowed by special permit if the requirements in §8.16 of the zoning regulations are satisfied. However, paragraphs 10 and 11 at the top of page 8 of the Project Narrative show that the application includes the *severing and processing of bedrock*, which is *quarrying*.

The Applicant's intent to *quarry* Decatur Mountain is corroborated on page 628 in the revised Zoning Compliance Manual, which states **[quote]**, "*Roadway emissions calculations were designed to include travel between the quarrying location and processing equipment.*" **[unquote]** Quarrying is corroborated again at the top of page 629, which states **[quote]**, "*Drilling and blasting emissions were modeled together as two area sources located at the base elevation on the northwest edge of the planned quarry site to describe likely operational scenarios during initial quarrying operations.*" **[unquote]** *Quarrying* is also corroborated as the intended principal use of the property in Exhibit #110, which is from the May 31, 2024 edition of the Hartford Courant.

The exhibit shows that Gales Ferry Intermodal contends it can conduct its proposed *quarrying* without health hazards or excessive noise for neighbors.

A copy of the Table of Contents of the original 1963 Zoning Regulations is attached to the transcript of my presentation that I will enter into the record. Section 8, in its table of contents, shows that, at the time, quarrying was an expressly permitted land use. However, on August 18, 1975, the zoning commission conducted a public hearing to consider several amendments to its zoning regulations, and on September 17, 1975, during a special meeting, it voted to approve those changes including the deletion of quarrying as an expressly permitted land use. The amended regulations went into effect on October 1, 1975, and its omission of quarrying as an expressly permitted land use is retained in the current regulations.

[§3.6.D] The zoning regulations state that **[quote]** *“any use of land, buildings, or structures not expressly permitted by these Regulations as a principal use in a particular Zoning District, or allowable as an accessory use to such a principal use, is prohibited in that District.”* **[unquote]**

As such, the **1st reason** to deny this application is that it proposes to sever and process bedrock, which is quarrying, even though quarrying has not been a permitted land use since October 1, 1975.

2. The Excavation Of Decatur Mountain Is Not In Accordance With The Requirements And Standards For A Special Permit.

The proposed large-scale excavation of Decatur Mountain is also inconsistent with the definition of a *special permit use* as defined *[§2.2]* in the zoning regulations. The definition of a special permit use is that, to be approved, it must be **[quote]** *“A use of property that would not be appropriate generally or without restriction throughout the zoning district, but that **may be allowed** by the Commission upon issuance of a Special Permit in accordance with applicable statutory and regulatory procedures **and upon determination** that all requirements and standards set forth in these Zoning Regulations would be met **and** that such specific use would be in harmony with the neighborhood and the Town as a whole.”* **[unquote]**

The definition means that a special permit can be granted only if *you first determine the requirements and standards in the zoning regulations for the proposed excavation of Decatur Mountain are met*, and if they are met, you make an additional determination that the excavation will be *“in harmony with the neighborhood.”*

The **2nd reason** the application must be denied is that the Applicant failed to show that the proposed excavation, severing of bedrock, and quarrying are consistent with the generic standards for a special permit.

3. The Excavation Of Decatur Mountain Is Not In Harmony With The Neighborhood.

The **3rd reason** to deny the application is that the Applicant did not show that the proposed excavation, severing of bedrock, and quarrying would *be in harmony* with nearby *residential neighborhoods*, as specified in the zoning regulations.

4. Shot Rock Cannot Be Excavated Because It Is Not A Natural Earth Product.

§10 on page 8 of the revised Project Narrative shows that the Applicant intends to use explosives to sever bedrock to create "shot rock" under the special permit for his proposed excavation of Decatur Mountain.

Exhibit 89, a US Geological Survey report, shows that topsoil, sand, gravel, clay, and stones are surficial materials, consistent with the excavation use defined in [§2.2] the zoning regulations. Exhibit 89 also shows that bedrock is not a surficial material, which is important because, under the excavation definition in the zoning regulations, only *earth, sand, gravel, clay, rock, or other natural earth products* can be excavated and removed under an excavation permit.

Shot rock is not a *natural earth product* but is produced from bedrock. As such, the **4th reason** the application must be denied is that the proposed severing of bedrock, a non-surficial material, into shot rock, is inconsistent with the excavation use as defined in the zoning regulations.

5. The "Severing Of Bedrock" Is Not Allowed As An Accessory Use.

The **5th reason** to deny this application is that the proposed "*severing of bedrock*" is not only not permitted as a principal land use, but is also not *incidental* or *subordinate* to an expressly permitted principal use. This means the proposed "*severing of bedrock*" is not allowed as an *accessory use* as defined in [§2.2] the zoning regulations.

6. The "Severing Of Bedrock" Is Not Allowed As A Manufacturing Use.

The **6th reason** to deny this application is that in addition to not being permitted under the zoning regulations as a principal or an accessory use, the "*severing of bedrock*" is also not allowed as a *manufacturing* use. This is because, as defined in [§2.2] the zoning regulations, a manufacturing use must be **[quote]** "*The making or fabrication of raw material by hand, art, machinery, or combination thereof, into finished parts or products." **[unquote]** The key phrase in the definition is the *making or fabrication of finished parts*. The *making of finished products* does not include the "*severing of bedrock*" to make *unfinished* products, such as the *shot rock* that is blasted out of bedrock.*

7. The Use Is Inconsistent With The Purpose Of An Industrial District.

The **7th reason** the application must be denied is that its proposed use is inconsistent with the *purpose of industrial districts* as described in [§6.3.A] the zoning regulations. Under the regulations, an industrial district's purpose is **[quote]** "*to encourage the adoption, continuation, and expansion of manufacturing, research, and industrial uses in a way that protects our natural assets.*" **[unquote]** The key phrase is "*the protection of our natural assets.*"

As proposed in the application, removing four or more million cubic yards of bedrock would conflict with [§6.3.A] the zoning regulations because it would negatively affect Decatur Mountain, which is a *natural asset* that should be protected.

8. The Rerouting of School Traffic Will Be Deleterious.

[§11.3.4.B] The zoning regulations include a special permit requirement that **[quote]** “... *the use would not cause traffic congestion or undue traffic generation that would have a deleterious effect on the welfare or the safety of the motoring public.*” **[unquote]** The key phrase is “*the deleterious effect on the welfare of the motoring public.*”

The **8th reason** the application must be denied is in the second paragraph on page 8 of the Applicant's traffic analysis, which is page 79 in the revised Zoning Compliance Manual. This is where the report states, **[quote]** “*We recommend that all school traffic should exit to Route 214 and use the traffic signal at the intersection of Route 12 and Route 214 to access Route 12. This would likely reduce delays and improve safety at the site.*” **[unquote]**

The Applicant's recommendation means that for safety and to reduce expected delays caused by the trucks entering and leaving the property, school traffic must be rerouted, which will increase travel time. Any increase in travel time constitutes a deleterious effect on the welfare of the motoring public in violation of *[§11.3.4.B]* the zoning regulations.

9. The Reduced Speed Limit Will Be Deleterious.

The **9th reason** the application must be denied is in the third paragraph on page 8 of the traffic analysis. This is where the report states, **[quote]** “*We recommend that the Town of Ledyard petition the Office of the State Traffic Administration to reduce the posted speed limit to 35 miles per hour.*” **[unquote]**

The Applicant's recommendation means that, for safety, the speed limit should be reduced, which will increase travel time, and any increase in travel time constitutes a deleterious effect on the welfare of the motoring public in violation *[§11.3.4.B]* of the zoning regulations.

10. The Application is Missing Required Parking Information.

The zoning regulations do not specify parking requirements for a proposed large-scale excavation use. Instead, *[§9.4.2.A]* the zoning regulations include, **[quote]** “*If no minimum number of parking spaces has been established in these regulations for a particular use, the minimum number shall be determined by the Commission based on such evidence as may be provided or available in the record. An applicant for any such use must submit sufficient information to the Commission to allow it to estimate the number of motor vehicles of all occupants and visitors that may be reasonably expected at any one time.*” **[unquote]**

Although the revised site plan shows about 75 parking spaces, those spaces appear to be for the property's current use rather than for the proposed excavation use.

As such, the **10th reason** the application should be denied is that the Applicant did not submit the information required by the zoning regulations *[§9.4.2.A]* that is necessary for you to determine the number of parking spaces that will be needed

11. The Proposed Payments in Lieu of Taxes May Be Improper.

I am concerned about the Applicant's proposal to pay the Town a 25-cent per cubic yard tipping fee in lieu of taxes, as shown at the top of page 10 in the Project Narrative. Page 10 is also in Exhibit #116.

Footnote #1 at the bottom of page 10 states **[quote]** *"A payment of a PILOT [which stands for payment in lieu of taxes] in Connecticut is a vehicle commonly used to compensate municipalities for the burden of accommodating uses that are otherwise exempt from taxes."* **[unquote]** The footnote also states **[quote]** *"The practice is regulated by Regulations of Connecticut State Agencies §12-20b-1 and §12-20b-2."* **[unquote]** The footnote also states that PILOT is an appropriate vehicle for this application.

However, the Applicant is a *'for-profit'* entity, and its property is not *'tax-exempt,'* which raises a question of whether its proposed payments in lieu of taxes are proper.

After reading §12-20b-1 and §12-20b-2 in the Regulations of Connecticut State Agencies, it is clear that they apply only to **[quote]** *"Penalties and the Waiver of Penalties for Failure to Comply With Certain State Reporting Requirements."* **[unquote]** §12-20b-1 and §12-20b-2 have nothing to do with the appropriateness of payments in lieu of taxes from a for-profit entity that pays taxes on its property and is applying for a special permit.

In my opinion, and I am not an attorney, it may be improper for the Applicant to offer to pay the Town 25 cents per cubic yard, or \$1,000,000 for 4,000,000 cubic yards of excavated stones if you approve this application. The zoning regulations do not require such payments, a town ordinance does not require them, and the property is not tax-exempt. I recommend that you request a legal opinion from the Town's land use attorney on whether the proposed payments in lieu of taxes are proper. The **11th reason** to deny this application will be if the Town's land use attorney determines the proposed payments are inappropriate or improper.

12. The Required Notification of Property Owners Was Incomplete.

The **12th reason** the application should be denied is due to its noncompliance with the requirement in **[§11.6.7]** the Zoning Regulations that require the notification of all property owners within 100 feet of the subject property at least 15 days before the first scheduled hearing.

Exhibit #1-5 lists the abutting property owners who were notified of this public hearing. However, based on Sheet 1 of the revised site plan, the listing does not include the owner of the land that abuts the site's western boundary line. This land is for the railroad track bed and is probably owned by the *"Genesee & Wyoming Railroad."* However, I could not find any evidence in the record showing that its owner was notified of this hearing as required by the zoning regulations.

13. Vibrations Beyond Site Boundaries Are Not Permitted.

The **13th reason** to deny the application concerns vibrations extending beyond the site's boundaries. [§9.2.C.4] The zoning regulations state, [quote] *“With the exception of vibrations necessarily involved in the construction or demolition of buildings or other structures, no vibrations shall be transmitted beyond the boundaries of the lot on which it originates.”* [unquote] This application does not involve constructing or demolishing buildings or other structures, which means [§9.2.C.4] that the proposed use is not permitted to create any vibrations beyond the property boundaries.

Although the Applicant's expert claimed that the vibrations would likely not damage any property, he did not claim that the vibrations would not be felt outside the property boundaries, would not create a nuisance, or would not impact the quality of life of nearby residents.

The issue is not hypothetical. For example, Exhibit #80 is a complaint from Vivian Zoe to the Ledyard Fire Marshal that shows how vibrations from the Baldwin Hill quarry, almost a mile from her home, impacted the quality of her life. Her complaint said, [quote] *“Only moments ago, blasting on Baldwin Hill Road severely affected me and my home. I am frankly fed up with this and would like it to stop.”* [unquote]

Under [§9.2.C.4] the zoning regulations, the burden is on the Applicant to show that no vibrations from the proposed blasting will be transmitted beyond the property's boundaries. The Applicant failed to show that there would be no vibrations beyond the property boundaries, which means the application must be denied.

14. Blasting Noise Will Be Offensive.

[§11.3.4.C in] The zoning regulations include, [quote] *“To the extent the Commission finds such criteria applicable, the applicant shall have the burden to prove that the proposed uses and structures would be in harmony with the appropriate and orderly development of the Zoning District in which they are proposed to be situated and that the uses would not be noxious, offensive, or detrimental to the area by reason of odors, fumes, dust, noise, vibrations, appearance, or other similar reasons.”* [unquote]

Assuming you find the criteria applicable, the **14th reason** the application must be denied is that although the Applicant may have shown that the expected noise from blasting is not “excessive” because it complies with state and federal regulations, *he did not satisfy his burden to prove* that the noise from his proposed blasting will not be *offensive* as required under the zoning regulations. In addition, [§22a-69-1.5] the Connecticut DEEP regulations state that [quote] *“Nothing in any portion of these Regulations shall in any manner be construed as authorizing or legalizing the creation or maintenance of a nuisance, and compliance of a source with these Regulations is not a bar to a claim of nuisance by any person.”* [unquote] The fact that the noise may not be excessive under state regulations, as alleged by the Applicant, does not mean it will not be *offensive* as required by the zoning regulations, especially if it continues over several years, which means the application must be denied.

15. Additional Dust Is Not Permitted.

[§8.16.D.2] The zoning regulations include **[quote]** *“The purpose of these regulations is to ensure [that the] work will not be a source of dust, pollution, and/or siltation.”* **[unquote]**

The **15th reason** to deny the application is that although the Applicant may have shown that the dust emitted by the operation of the heavy equipment and the blasting and rock crushing over six to ten years may comply with federal and state limits, he did not show that the proposed use will not be a source of any dust, which is the specific requirement in the zoning regulations that must be satisfied.

The Applicant's blasting expert showed you a video of an explosive blast, presumably representative of what is expected to occur on the property several times per week for six to ten years. The blasting in the video emitted a large plum of dust into the atmosphere, which would violate *[§8.16.D.2]* the zoning regulations.

Similarly, page 660 in the revised Zoning Compliance Manual establishes perimeter dust action levels, which shows that the proposed quarrying may emit dust.

In addition, the Applicant's Air Emissions Modeling Results report, beginning on page 626 of the revised Zoning Compliance Manual, did not show that the proposed dust suppression techniques would reduce the emitted dust to zero. The use, as proposed, will undoubtedly emit dust into the atmosphere in violation of the zoning regulations, which means you must deny the application.

16. The Volume, Intermittence, Frequency, and Shrillness Of The Noise Emitted From The Excavation Was Not Shown To Be Reasonable And Non-Offensive.

The **16th reason** to deny this application is that it does not show that the volume, intermittence, frequency, and shrillness of the noise emitted by the proposed excavation machinery, the blasting, and the rock crushing will be reasonable and non-offensive to the area as required *[in §9.2.C.3]* in the zoning regulations for a special permit.

[§9.2.C.3] The zoning regulations state, **[quote]** *“With the exception of time signals and emergency signals and noise necessarily involved in the construction or demolition of buildings or other structures, no noise which is unreasonable in volume, intermittence, frequency or shrillness shall be transmitted beyond the boundaries of the lot on which it originates.”* **[unquote]**

This application does not involve the construction or demolition of buildings or other structures, which means that under the zoning regulations, no noise is permitted to be emitted at any time that is unreasonable in volume, intermittency, frequency, or shrillness beyond the boundaries of the lot on which it originates.

The application did not show that the noise emitted from the Smart ROC T45 Top hammer surface drill rig, rock crushers, the other machinery, and the blasting will not be offensive or detrimental to the area, which is also required *[§11.3.4.C]* in the zoning regulations.

For example, even though the state's 61 dB noise limit at a residential class A emitter boundary and its 70 dB noise limit at an industrial class C emitter boundary are deemed not excessive under state regulations, the application must still be denied because the levels would be

unreasonable and constitute a violation of the zoning regulations if they continued for several hours per day, as proposed.

The application must also be denied because it failed to show that the 110 dB noise emitted from the CAT 988 Wheel Loaders *[page 715 of the Zoning Compliance Manual]* and the 112 dB noise emitted from the CAT 980 Wheel Loaders *[page 731 of the Zoning Compliance Manual]*, plus the noise emitted by the wheel loaders dropping crushed stone into the CAT 740 EJ Articulated Trucks, *[page 751 of the Zoning Compliance Manual]* *will be attenuated to less than 71db* at the western boundary of the property, which is only 80' from those noise emitters *[Sheet 17 of the revised Exhibit 91-3 Plan Set]*. The noise will be so loud and dangerous that the CAT 740 EJ datasheet in the revised Zoning Compliance Manual recommends that its operator wear hearing protection if its windows are open.

Similarly, the application must be denied because it failed to show that the 126 dB noise emitted by the SmartROC T45 Top hammer surface drill rig *[page 797 of the Zoning Compliance Manual]* will be sufficiently attenuated to comply with the state's 70 dB limit at the western boundary of the lot at 1721 Rt. 12, which is only about 100' from the nearest graded rock step *[Sheet 15 and Sheet 16 of the Revised Plan Set]*. Even though the Applicant owns the lot at 1721 Rt 12, its ownership and occupancy status have no significance regarding compliance with the state's noise limits.

17. The 12' High Concrete Block Wall Sound Barrier Is In The Rear Setback.

The **17th reason** the application must be denied is that the proposed 12' tall concrete block sound barrier shown on Sheet 17 of the Revised Site Plan is less than 25' from the western boundary of the property, which is a violation of the *[\$6.3.1]* setback requirements in the Zoning Regulations. Unless the Zoning Board of Appeals grants a variance, the minimum rear setback for a structure in industrial districts is 25'.

18. The Bank Slope Is Too Steep.

The **18th reason** to deny the application is that the bottom of Sheet 9 in the revised site plan shows seven near-vertical quarry faces that do not comply with the 1' vertical rise in 3' of horizontal distance requirement for the maximum slope created by excavation, as required in *[\$8.16.N-(4)]* the Zoning Regulations.

As defined in the dictionary, a bank is a slope, a rise, an incline, or a gradient. Under the zoning regulations, the (1) foot vertical rise in three (3) feet of horizontal distance requirement cannot be ignored based on the bank's composition, characteristics, strength, purpose, or any other reason. The proposed quarry faces are also prohibited because quarrying is not permitted under zoning regulations.

19. The Applicant Does Not Intend To Stockpile All The Topsoil and Subsoil (Overburden) For Site Restoration

[\$8.16.N.7] The zoning regulations require that **[quote]** "All topsoil and subsoil shall be stripped from the operation area and stockpiled for use in site restoration." **[unquote]** It means that not some, or not most, but all the topsoil and subsoil overburden must be stockpiled for site restoration.

However, page 55 of the revised Zoning Compliance Manual states, **[quote]** “Overburden soils will be partially reused within the disturbed area with excess materials temporarily stockpiled and ultimately exported for sale.” **[unquote]**. Page 56 of the Zoning Compliance Manual states **[quote]**, “Excess overburden will be exported from the site via dump trucks and railcars.” **[unquote]** As such, the **19th reason** the application must be denied is that the Applicant does not intend to stockpile all the topsoil and subsoil for site restoration as required by the zoning regulations.

20. The Application Is Inconsistent With The Future Development Envisioned For Ledyard In The Zoning Regulations & the Ledyard Development Goals Identified In The POCD.

[§11.3.4.G in] The zoning regulations state, **[quote]** “To the extent the Commission finds such criteria applicable, the applicant shall have **the burden to prove** that all proposed uses and structures would be consistent with future development as identified and envisioned in these Regulations and the Ledyard Plan of Conservation and Development.” **[unquote]**

The **20th reason** the application must be denied is that it *failed to prove* that its proposed excavation of Mount Decatur *is consistent with the future development of Ledyard* as identified and envisioned in the zoning regulations. The application should also be denied because its excavation, as proposed, will not provide much in the way of employment opportunities, will not improve town services, and will not improve the overall quality of life enjoyed by town residents, which are identified on page 37 in the POCD as the economic development goals for Ledyard.

21. The Zoning Compliance Manual Does Not Show Zoning Compliance.

The **21st reason** you should deny this application is that its revised 948-page Zoning Compliance Manual does not comply with the zoning regulations. Instead, the Zoning Compliance Manual consists of generic staff qualifications, resumes, reports, a listing of jobs that are expected to be created, economic development, how explosives will be transported, photographs, the specifications of the proposed quarrying equipment, past successful projects, and various technical dissertations and procedures and analysis regarding dust, noise, explosives, and vibrations that are generic for any large-scale quarrying operation. However, quarrying is not allowed in Ledyard.

For example, *§8.16.D.2 in* the zoning regulations states that one of its goals is to ensure that work will not be a source of dust, but nowhere in the Zoning Compliance Manual does it state that the proposed work will not be a source of dust.

Similarly, *§9.2.C.4 in* the zoning regulations requires that no vibrations will be transmitted beyond the site boundaries, but nowhere in the Zoning Compliance Manual does it show that vibrations will not be transmitted beyond the site boundaries.

§9.2.C.3 in the zoning regulations requires that no noise that is unreasonable in intermittence, frequency, or shrillness will be transmitted beyond the boundaries of the lot, but nowhere in the Zoning Compliance Manual is the sound intermittence, frequency, or shrillness that is transmitted beyond the boundaries of the lot shown to be reasonable.

§11.3.4.C in the zoning regulations requires that the proposed excavation use, which includes blasting and rock crushing, will not be offensive to the area because of noise and vibrations.

However, the Zoning Compliance Manual is silent regarding whether the proposed excavation blasting and rock-crushing noise and vibrations will be offensive.

In addition, [[§8.16.A & §8.16.H](#)] the zoning regulations require a “*Plan of Operations*” approved by the Commission. Although the Applicant included much of the necessary information for a Plan of Operation in various sections of his revised Zoning Compliance Manual, he did not provide a document, a chapter, an outline, a paragraph, or an exhibit titled “*The Plan of Operations*” for you to review and approve, which is a violation of the zoning regulations.

22. The Zoning Compliance Manual Will, If Approved, Take Precedence Over the Zoning Regulations.

The **22nd reason** to deny this application is due to a single sentence buried in the third paragraph on page 5 of the Project Narrative. It is the most important sentence in the application. It is where the application states that **[quote]** “*This Narrative [which is the 19-page Project Narrative], the approved Plan [which is the revised 17-sheet site plan], and the Zoning Compliance Manual [which refers to the revised 948-page Zoning Compliance Manual] shall be incorporated into the special permit and site plan approval granted by the Town of Ledyard Planning and Zoning Commission for the excavation activities to be conducted on the Property ... “* **[unquote]**.

This sentence looks innocuous, but it is binding. If you approve this application, you will be approving everything in its 19-page Project Narrative, everything in its revised 948-page Zoning Compliance Manual, and everything in its revised 17-sheet set of drawings.

You would be approving the *severing and quarrying of bedrock* into shot rock and the *processing of the shot rock into gravel*, even though the *severing of bedrock* and *quarrying* have not been permitted land uses in Ledyard for over 44 years.

You would effectively be endorsing the Applicant's *blasting noise*, even if it disturbs the neighborhood.

You would effectively be endorsing the dust and vibration levels shown in the expert's reports, even though they do not comply with the more demanding requirements in [[§11 and §8.16](#)] the zoning regulations.

You would effectively be endorsing any increase in how often the air filters on the HVAC systems in the elementary and middle schools will have to be replaced due to the dust emitted from the quarry.

You would effectively be endorsing the adoption of the recommended reduced speed limit on Rt. 12 and the recommended traffic rerouting for the elementary and middle schools, even though the changes will have a deleterious effect that violates the zoning regulations.

You would effectively be endorsing the reduced quality of life for nearby residents and the impact on their health and safety caused by the excavation's noise, vibration, dust, and additional heavy truck traffic.

You would effectively be endorsing any reduction in nearby residential property values.

And you would be approving the construction of the 12' high concrete block sound barrier in the rear setback, even though its location violates the setback requirements in the zoning regulations.

Summary

As you know, when wearing your administrative hat, you are limited to deciding if the application complies with or does not comply with the zoning regulations and the standards for the special permit. The purpose of requiring a special permit, as described *[in §11.3.4]* in the zoning regulations, is to assure that *a use will not be noxious, offensive, or detrimental to an area because of odors, fumes, dust, noise, vibrations, appearance, or similar reasons.*

You are not permitted to approve a non-compliant application because it will add to the tax rolls, the Applicant will make payments to the Town in lieu of taxes, an Applicant will donate land to a non-profit entity, the development will reduce the cost of gravel for local builders, or to avoid the expense and risk of litigation. The Applicant failed to show that his proposed excavation will not be offensive or detrimental to the surrounding area because of dust, noise, vibrations, or appearance, as required by the regulations, which means the application must be denied.

I will submit the transcript of my presentation for the record. Items in red refer to specific requirements and standards in the zoning regulations. The entries in blue are the titles of the 22 reasons the application must be denied.

I will be happy to answer any questions.

Thank you for your attention and work in helping our Town.

Town of Ledyard, Conn.

**ZONING
REGULATIONS**



Adopted Effective October 11, 1963
With Amendments

PRICE \$1.00

ZONING REGULATIONS

<u>SECTION</u>	<u>INDEX</u> <u>SUBJECT</u>	<u>PAGE</u>
1	Authority, Purpose and Adoption	1
2	Zoning Districts	1
3	Residential Districts	1
3.1	Medium Density (R-20)	2
3.2	Low Density (R-40)	2
3.3	Public utility buildings and temporary saw mills	3
4	Commercial Districts	3
4.1	Special Business (C-1)	3
4.2	General Commercial (C-2)	4-5
4.3	Site Layout Requirements	5-6
5	Industrial Districts	5-6
5.1	Industrial 1 (I-1)	6-7
5.2	Industrial 2 (I-2)	7
5.5	Site Layout Requirements	7-8
6	Height, Area, Width, Coverage, Yard and Parking Requirements	8
6.1	Schedule	9
6.1.1	Minimum Floor Area	10
6.2	Setback Requirements	10
6.3	Signs	10-11
6.4	Parking	11
7	General	11
7.1	Accessory Buildings	12
7.5	Trailers and Mobilehomes	13
7.6	Building on Existing Lots	14
8	Soil, Gravel, Stone Removal and Quarrying	14-16
9	Non-Conforming Uses	16
10	Special Exceptions	17
10.1	Uses listed	17
10.1.1	Efficiency Apartments	17-18
10.2...	et seq: Application and Requirements for Approval	19-20
11	Administration and Enforcement	20
11.1	Interpretation	21
11.2	Enforcement	21
11.3	Permits	21
11.4	Stop Work Order	21-22
11.5	Penalties	22
11.6	Certificate of Occupancy	23
11.7	Fees	23-24
12	Zoning Board of Appeals	24-28
13	Definitions	28
14	Conflicting Ordinances; Amendments; Validity	28

ZONING COMMISSION MINUTES

AUGUST 18, 1975

143

A Public Hearing was held on August 18, 1975 in the Ledyard High School Cafeteria at 7:30 PM. The purpose was to review and hear comments on the proposed zoning regulations and proposed zoning map.

The public Hearing is recorded on tape #02-75.

1. Present were Chairman Andy R. Depta, Vice-Chairman Philip J. Hawkesworth, Secretary Joel M. Fuller, Commissioners Paul J. Andino and William H. Potuchek; Alternates Wayne M. Chiapperini and Robert McGrattan. Absent was Alternate Ernest V. Plantz. Also present was Town Attorney Thomas B. Wilson and Zoning Enforcement Officer James C. Eddy.

2. The Secretary read the notice of the Public Hearing.

Mr. Depta outlined the rules for the Hearing and read correspondence as follows:

A letter from SCRPA dated August 8, 1975.

A letter from the Ledyard Planning Commission dated August 5, 1975.

The comments were as follows:

Section 1

In Favor - None

Opposition - Mr. Silverberg - Section 1.4 - the language does not allow lots approved prior to the new regulations.

Section 2

In Favor - None

In Opposition - Mr. Silverberg - Section 2.1 - Feels there is no demand for R-60 and R-80 and feels it will stop growth.

Mr. Bellows - Ledyard Development Committee - Feels that the lot sizes in Commercial Zones should not be increased.

Mr. J. Martin - Questioned the changes in the C-1, C-2 and C-3 zones.

Mr. Deyo - Spoke in opposition to R-60 and R-80
Mr. Bruckner - Opposes R-60 and feels regulations will force small business out of town.

Mr. I. Norman - Opposes the R-60 and R-80 zones.

Mr. E. Creasman - Opposes the R-60 and R-80 zones.

Mr. H. Morgan - Opposes the R-60 and R-80 zones.

Mrs. C. Clark - Feels that R-60 and R-80 should be larger. Feels some areas of town should be zoned 4 and 5 acres.

Section 3

In Favor - None

In Opposition - Mr. Petrone - Section 3.2.3 - Feels there should be unlimited use but not public nuisance and the egg farm expansion should be controlled.

Section 3 (Cont.)

Mr. Cummings - representing land owner on Rt. 214. Opposed change in land use from Industrial to R-80.

Mr. Dutton on Section 3.2.7 - Suggests expanding into R-60 and R-80.

Mr. D. Holdridge - 3.2.7 - Cluster development should be extended into R-60 and R-80.

Mr. Creasman - Asked on Section 3.2.7.b what if a home owners association did not want open space.

Section 4

In Favor - Section 4.4.13 in favor but should also be in residential zone.

In Opposition - Mr. Evans. Presented petition; and section 4.2.7 and 4.3.4 should be deleted.

Mr. Creasman - Section 4.3.6 does not allow repair shops except auto repair.

Mr. Silverberg - Section 4.4.1 - Feels time is too great. Section 4.4.2 - second and fourth paragraphs - no standard on road entrances. Section 4.4.3 - no safety standards.

Mr. Bellows - Section 4.2.2 should allow department stores.

Mrs. L. Lawrence - Section 4.3.4 - should have guidelines.

Mr. J. Martin - Feels the commercial areas in town should be expanded.

Section 5

In Favor - None

In Opposition - Mr. Creasman - Section 5.4.10 - The loading berths might not need to be full sized.

Mr. Silverburg - Feels time for Commission to act is too great and standards on entrances should be defined.

Section 6

In Favor - None

In Opposition - Mr. Bellows - Feels that the height reduction and sign size reduction are wrong.

Mr. Silverberg - Does not like section on signs. Feels section on parking spaces is over-defined.

A question was raised about allowing garage sale signs.

Mr. Mathews - Section 6.1 - Feels fall space should not be a zoning problem.

Mr. C. Ladden - Section 6.3.5.c. - feels corporation flags should be limited.

Mr. E. Creasman - Feels church signs are too small and religious symbols (the cross) should be allowed.

Mr. Douchette - Feels the height of buildings in I zones should be greater.

Mr. P. Holdridge - Feels parking spaces should be for retail floor space only.

Mr. Terry - Feels signs for business should be allowed at roadside.

Section 6 (Cont.)

Mr. E. Callahan - Section 6.3.5.c should be allowed.

Mr. B. Dunbar - Feels height of I zone building is wrong.

Mr. J. Williams - Feels height of building and pressure of water in fire systems should be defined.

Section 7

In Favor - None

In Opposition - Mr. Silverberg opposes Section 7.2 and 7.9.1.c should be deleted.

Mr. Evans feels Beer Fests should be done away with or have permits from the Zoning Commission.

Mrs. L. Teft - Section 7.10.c - Feels Land Trust conveyances from developers should be allowed.

Mr. A. Clark - Opposed Section 7.2 as not large enough.

Mrs. M. Moss asked why Section 7.5.4 was included.
Mr. H. Morgan opposed the yearly fee for trailer sites.

Section 8

In Favor - A question was asked about farm ponds.

In Opposition - None

- DELETION OF QUARRYING

Section 9

In Favor - None

In Opposition - Mr. Silverberg - Feels Section 9.2 should be with Zoning Board of Appeals.

Mr. Wood asked what the criteria of Section 9.3 is.

Section 10

In Favor - None

In Opposition - Mr. Morgan asked why the one and one-half mile seperation was not in Section 10.1.a.

Section 11

In Favor - None

In Opposition - None

Section 12

In Favor - None

In Opposition - None

Section 13

In Favor - Mr. Morgan - Leave Farm definition as is.

In Opposition - Mr. J. Williams - Nothing in regulations about Dental Hospitals.

Mr. Silverberg - Asked for definition between Farming and Commercial.

Mr. Herring - Feels Fast Food Service should be further defined.

Mr. Williams - Asked about Farms and Farming.

Section 14

In Favor - None

In Opposition - Mr. Morgan - Section 14.6 - \$10.00 fee too high.

Section 15

In Favor - None

In Opposition - Mrs. L. Lawrence - Section 15.3.2 dates are wrong.

General Comments:

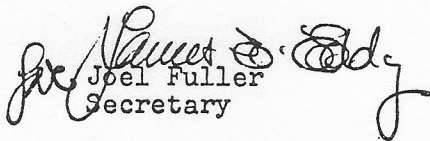
1. Mr. R. Corkay and Mr. H. Reed of Dow Chemical Corporation opposed changes in Dow land from I to R. Opposed building height at 30 feet. Opposed the fall space requirement. Opposed the closed building requirement of 5.2.1.
2. Mr. I. Norman presented a petition in opposition of R60 and R-80 zones.
3. Mr. J. Bellows presented petition against C and I zone changes.
4. Mrs. L. Teft spoke for R-60 and R-80.
5. Mr. Anhalt, representing the New London Board of Relators, spoke against the regulations.
6. Mrs. L. Lawrence suggested the question on the proposed regulations be placed on a referendum.
7. Mr. Silverberg feels proposed regulations are prohibitive.
8. Mr. Wagner objected to the C and I zones in general.

Correspondence was noted by Mr. Depta as follows:

1. Letter from Conservation Commission.
2. Letter from New London Soil and Water.
3. Letter from Connecticut Water Authority.
4. Letter from Dow Chemical Corporation.
5. Letter from Mr. Dray.
6. Letter from Ledyard Development Committee.
7. Letter from Mr. W. Evans.
8. Letter from Lantern Hill Valley Association.
9. Letter from Mr. Crandell.
10. Letter from Holdridge Farm Nursery.
11. Letter from the Ledyard Jaycee's.

The Hearing was adjourned at 11:25 PM.

ATTEST:


Joel Fuller
Secretary

ZONING COMMISSION MINUTES
SEPTEMBER 17, 1975

RECEIVED FOR RECORD AT LEDYARD, CONN.
ON 11-7-75 AT 1:45 P.M.
Attest: Hazel J. Genuakay, Town Clerk

A Special Meeting of the Ledyard Zoning Commission was held in the Town Council Room of the Ledyard Town Hall on September 17, 1975 at 7:30 PM.

→ The purpose of the meeting was to vote on and either enact or reject the proposed new Zoning Regulation and Map for the Town of Ledyard as reviewed at a Public Hearing on August 18, 1975 and amended thereafter.

The meeting is recorded on tape #02-75 which also contains the Public Hearing of August 18, 1975.

Present at the meeting were Commissioners Andy Depta, Philip Hawkesworth, Joel Fuller, Paul Andino and William Potuchek, Aleternates Ernest Plantz, Robert McGratten and Wayne Chiapperini; J. Eddy, Zoning Enforcement Officer and Mr. Wilson, Town Attorney.

→ Mr. Depta read the following resolution:
Resolved, that the zoning regulation of the town of Ledyard adopted effective October 11, 1963, as previously amended on May 15, 1968; October 6, 1970; and August 3, 1971 are hereby further amended to read as follows and to become effective October 1, 1975:

Dated at Ledyard, Connecticut, this 17th day of September 1975.

The resolution was seconded by Mr. Potuchek.

Mr. Depta read the following purpose statement:
The purpose of this amendment to the Zoning Regulation for the Town of Ledyard is to up-date terminology to reflect the Mayor-Council form of government, to change and delete items which are no longer the responsibility of the Zoning Commission or Zoning Enforcement Official, to allow the Commission to assume more responsibility on approval of permitted uses and non-conforming uses, to provide for increased site layout requirements and to provide the Commission with an improved tool to plan and control the development and growth within the Town of Ledyard.

→ Mr. Wilson stated that the resolution should be made clearer. Mr. Depta amended the resolution to state that it was for the proposed regulations of the Public Hearing. Mr. Depta made a brief statement supporting the proposed regulations. Mr. McGratten made a statement supporting the proposed regulations.

A vote was taken of the Commissioners as follows: A. Depta - Yes; P. Andino - Yes, W. Potuchek - Yes, J. Fuller - No, P. Hawkesworth - Yes.

→ The proposed regulations passed by a 4 to 1 vote.

INCLUDES CHANGES TO SECTION 8
DELETION OF "QUARRYING"

The next item to be acted upon was the proposed Zoning Map as shown at the Public Hearing of August 18, 1975 with additional changes made thereafter by the Zoning Commission. Mr. Depta moved that the proposed map be accepted and read the following resolution:

Resolved, that the Zoning Map of the Town of Ledyard adopted effective October 11, 1963, as previously amended, is hereby further amended to appear as follows and to become effective October 1, 1975:

Dated at Ledyard, Connecticut, this 17th day of September 1975.

The motion was seconded by Mr. Andino.

Mr. Depta read the following purpose statement:

The purpose of this amendment to the Zoning Map for the Town of Ledyard is to provide the Commission and community with a tool to plan and control the growth within the Town of Ledyard. This map was developed from the Town Plan of Development, the Sewer Study for Ledyard, the Plan of Conservation for Ledyard and the Regional Plan of Development. It will allow the community to grow in a positive manner, with the least impact upon the future water supplies, watersheds, natural areas, steep slopes, inland-wetlands, lakes and streams. It will allow Ledyard to plan its growth so that future municipal services can be provided economically and logically.

Mr. Hawkesworth made a motion to amend the proposed map as follows:

To extend R-40 from Spicer Hill Area to meet with the Coachman's Pike Development, with Church Hill Road still being the boundary line. And to extend R-40 from Iron Street to the Lee Brook Area with Gallup Hill Road and Shewville Road being the boundaries.

The motion was seconded by J. Fuller.

Mr. Potuchek disqualified himself from the amendment motion only as he lives in the area in question. Mr. McGratten was placed in Mr. Potuchek's place. Mr. Hawkesworth stated that there are proposed subdivisions before the Planning Commission now and unless the map was changed they would become non-conforming. Mr. Andino stated that the R-40 Zones have been extended and the R-80 reduced since the Public Hearing.

Mr. Depta noted that one R-40 area has sewers and the map as proposed will also make other R-40 areas non-conforming.

A vote was taken on the motion as follows:

P. Andino - No, A. Depta - No, P. Hawkesworth - Yes,

R. McGratten - No, J. Fuller - No.

The motion was defeated 4 to 1.

Mr. Potuchek resumed his seat for the vote on the proposed map.

Mr. Chiapperini read a statement. See Enclosure No. 1.

Mr. Potuchek read a statement in favor of the map. See **159**
Enclosure No. 2.

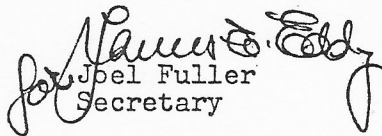
Mr. McGratten read a statement supporting the map. See
Enclosure No. 3.

Mr. Depta made a statement supporting the map. See
Enclosure No. 4.

A vote on the proposed map was taken as follows:
P. Andino - Yes, A. Depta - Yes, P. Hawkesworth - No,
W. Potuchek - Yes, J. Fuller - Yes.
The map was passed by a 4 to 1 vote.

The meeting was adjourned at 8:19 PM.

ATTEST:


J. Fuller
Secretary