Application #PZ #24-7 ZRA [REVISED]
Summary Presentation
9.12.24

Part I — Multifamily Regulations

Significance of Affordable Housing Plan Survey Results

Regarding the multifamily regulations proposed in Part I of the revised application, during the hearing on August 8, someone raised an issue about the margin of error of the housing preferences expressed by residents who responded to the Affordable Housing Survey. The survey results indicated that residents prefer single-family homes on large lots, followed by single-family homes on small lots, followed by townhome developments of between 12 and 36 units. I agree that the survey may not be meaningful due to its small sample size. As an experiment, let's see what happens with a large sample size. Everyone here tonight, please raise your hand if you believe the zoning regulations should allow six-story multi-hundred-unit apartment complexes. Let the record show that, out of the approximately ____ people in attendance this evening, [no one] [only ____ people] believe(s) the zoning regulations should allow such enormous housing developments.

Proposed Regulations Allow Typical Multifamily Developments

Exhibit #19 was added to the record on September 3. It is a 23-year-old treatise that teaches developers and planners how to overcome local objections to multifamily developments that are opposed by town residents. The treatise uses obsolete data, fails to account for massive illegal immigration, and ignores the fact that Connecticut is, for practical purposes, a sanctuary state. Its authors believe that towns have a duty to grow as fast as possible, even when that growth is not consistent with the character of the Town and would likely result in more congestion, more crime, more social and emergency support services, more schools and teachers, and reduce the quality of life for existing residents. Unless you believe in growth for the sake of growth, you should adopt regulations that only allow housing developments that are consistent with the protection of character goals on page 10 and page 55 of the POCD. There is also no duty or statutory requirement for Ledyard to be like New London, Groton, or Norwich.

The review report in Exhibit 20 suggests that the proposed 35' height limit would make existing multifamily projects nonconforming. However, this comment is not applicable because no multifamily developments in Ledyard are higher than 35' as defined in §2.2, which is unchanged. And, even if there were, making an existing 65' six-story building nonconforming would not create a hardship. It is not unusual for changes to the zoning regulations to create protected nonconforming uses.

When you deliberate on this application, please remember that although the proposed regulations prohibit enormous apartment complexes, they do not prohibit reasonably sized multifamily developments. The proposed regulations only prohibit four-, five-, and six-story multifamily buildings, limit their size to 10,000 square feet per floor, and impose a

population density limit of 60 residents per acre. Exhibit 5.2 includes photos of significant multifamily developments that comply with the proposed regulations.

Exhibit 21, which is from Council representing the 353 Unit 5-story multifamily development proposal for the 19-acre Sweet Hill Farm in Gales Ferry Village, and the review report, both allege that reducing the height limit could have the unintended effect of pushing developers to increase lot coverage or building footprints to achieve the necessary density. Although the allegations may or may not be correct, they are not significant because the proposed regulations explicitly allow an unlimited number of buildings on a single parcel. For practical purposes, except on small lots, there is no difference between one six-story 60,000 square foot building at 10,000 feet per story versus two three-story 30,000 square-foot buildings at 10,000 feet per floor, except that the three-story buildings are more likely to have a pitched shingled roof that would be compatible with the protection of character goals on pages 10 and 55 in the POCD than a single six-story building, which would have a flat roof.

The review report also said that while the proposed amendment would limit total height and the number of stories, it would not change how a building is designed. I disagree. I believe that a three-story building would not need elevators, and, as just mentioned, a three-story 35' building would be more in line with traditional New England architecture and the protection of character goals in the POCD. The proposed height limit would significantly improve the scale of multifamily designs.

The review report suggested the Commission should not change the standard of review from a by-right site plan review to requiring a special permit because the specific criteria for reviewing such an application were not included.

This comment also appears to be an error. The criteria in Section 6.2 are unchanged and remain applicable to both by-right applications and applications requiring a special permit. The only difference is that the subjective special permit standards in Section 11.3.4 are applicable only if a special permit is required, which should be mandatory for multifamily developments.

The review report also questioned why a public hearing was required when the Commission already has the authority to conduct a public hearing on any application. The answer is that requiring a special permit is the only way the Commission will have the authority to impose conditions of approval and to consider the subjective standards in Section 11.3.4 of the regulations.

The review report included a statement that although many municipalities limit the size of any one building for large-scale projects, if the Commission is interested in this approach, it is recommended that alternate language be pursued to encourage multiple buildings rather than just limiting building size based on the number of stories. I do not understand the statement. The proposed §8.28.B.5 in the application explicitly states that "*Multiple multifamily residences can be on a single parcel."*

The proposed regulations are designed to allow flexibility. They intentionally do not impose a minimum unit size, a numeric cap on the number of units, a numeric cap on the number of units per building, or a numeric cap on the number of buildings.

The review report expressed a concern that there is essentially no connection between a building's size and the allowable density. This is true. It is also intentional because the enabling statute does not permit imposing a minimum floor area for a unit in a multifamily development or imposing a fixed numerical or percentage cap on the number of dwelling units that constitute multifamily housing over four units. As such, there is no choice. The number of units per building cannot be specified. But the number of people per acre, or the number of bedrooms per acre, can be regulated.

The review report mentioned that the proposed 2 parking spaces per unit may violate Public Act 21-29. However, Ledyard affirmatively and wisely opted out of this requirement.

The review report was critical of using the word 'reasonable' as applied to the number of guest parking spaces because the term is undefined and could appear arbitrary to applicants. A special permit allows you to consider subjective issues, such as the reasonableness of guest parking or the reasonableness of proposed recreational facilities, if reasonableness is identified as standard in the regulations.

Remember, under §11.1.B in the zoning regulations, applicants have a right to request the Commission to conduct an informal, non-binding pre-application review of a concept plan to determine what the Commission considers reasonable and adequate for a proposed development.

Section 11.3.4 in the zoning regulations, which are the existing special permit standards, allows you to consider if an application is materially in compliance with the regulations, if transportation services will be adequate, if a use will cause undue traffic congestion, if a proposed use is in harmony with the appropriate development of the area, if the use will be noxious or offensive because of its appearance, if the character of the immediate neighborhood would be preserved in terms of scale, density, and intensity of use, and so forth. These are the types of subjective decisions that you only have if a special permit is required. If a special permit is required as proposed, the Commission has the authority to determine if the amount of guest parking and recreational facilities proposed by an applicant are reasonable.

The proposed regulations only restore the requirement for a special permit. It allows you to consider the subjective standards in Section 11 of the regulations and to impose conditions of approval when necessary to protect health, safety, convenience, property values, and natural resources. The proposed special permit requirement is for you to have the tools to protect our Town from the unintended consequences of large multifamily developments.

Should the Existing Regulations Be Retained to Increase the Amount of Affordable Housing.

A few comments on August 8 indicated a belief that retaining the 65' height limit will encourage the development of more affordable housing.

Developers will always charge market rents unless they are a non-profit entity or the proposed housing is subsidized or rent-controlled. Market rents become affordable only when the housing supply exceeds the housing demand. According to the experts, our area needs at least 7,200 new units. Allowing a few hundred or even a thousand new units will create new housing, but not new affordable housing. For example, according to an article in the August 2, 2023 edition of the New London Day, the rents for the 304-unit Triton Square Apartments will start at $1,650 per month for a studio apartment and go up to $2,800 per month for a two-bedroom unit, which is not affordable housing.

Does Ledyard Have Enough Affordable Housing?

One person said the Town's goal is that 10% of its housing should be affordable, implying that the existing regulations should be retained because Ledyard does not have enough affordable housing.

However, if you count the hundreds of mobile homes, the approximately 600 starter homes in the Highlands, the Lakeside Condominiums, the Christy Hill Condominiums, and the hundreds of starter homes in the Avery Hill Road and Aljen Heights areas, almost 20% of Ledyard's 6,300 housing units are affordable by households who earn 80% of the area median income, which is the definition of affordable housing. The problem is that while Ledyard has a large amount of affordable housing, it is seldom available for new residents. Allowing five and six-story multi-hundred-unit apartment complexes will not provide additional affordable housing.

Conflict With The Housing Diversity Requirement?

Exhibit 21 also suggested that the proposed regulations may be in conflict with the diversity requirement in the enabling statute.

The proposed regulations intentionally do not promote or discourage housing for low-income households, affordable housing, or any particular type of housing. Their only aim, consistent with the enabling statute, is to help ensure that multifamily housing is consistent with the protection of character goals specified on page 10 and page 55 in the POCD.

Parking Area Design Requirements

During the hearing, someone noticed that the proposed regulations do not impose parking size or landscaping requirements. Exhibit #15-2 corrects these two omissions.

Regarding the Population Density Limit

In 2012, when Gales Ferry Village and Ledyard Center were design districts, the multifamily regulations imposed strict architectural design requirements that limited multifamily developments to two stories and 12 bedrooms per acre. Twelve bedrooms per acre are equivalent to a population density of 24 people per acre.

The four- and five-story Triton Square Apartments in Groton have 304 units on 14 acres. If it has 500 bedrooms, at two people per bedroom, it could provide housing for as many as 1000 people with a population density of about 71 residents per acre.

The proposed application suggests a population density limit of 60 residents per acre, which is reasonable.

In the real world, the limit on the number of stories, building size, parking spaces, setbacks, minimum acreage, and lot coverage requirements will be more limiting than a population density limit.

However, a population density limit is necessary to help ensure that overly dense multifamily developments are not built on tiny lots. For example, the minimum lot size for a multifamily development in the Gales Ferry Development District is only 10,000 square feet. Without a population density constraint, a three-story multifamily development of ten small two-bedroom apartments per floor might be possible on a 10,000-square-foot lot. At two people per bedroom, this would be up to 120 people residing on only a quarter acre, which would be unreasonable. The proposed limit of 60 people per acre, or 15 people on a quarter-acre, is a reasonable population density limit.

Under the enabling statute, height and population density limits are the only remaining available metrics that can be regulated that have a correlation with the character of multifamily developments. Although the proposed population density of 60 people per acre will help, it will only partially achieve the protection of character goals in the POCD. To fully achieve the protection of character goals, in addition to the 35-foot height limit, the population density limit would have to be reduced to 24 people per acre as specified in the 2012 zoning regulations. During your deliberations, you can reduce or increase the population density limit to determine the level of consistency of multifamily developments with the protection of character goals in the POCD.

Recommendation to Visit Triton Square & The Beam Apartments

Please visit the Triton Square Apartments at 89 Walker Hill Road in Groton and the Beam Apartments on Howard Street in New London. Walk around the developments, look up, and get a feeling of what multi-hundred-unit four- and five-story apartment complexes can look like under the existing regulations. Remember, the existing regulations allow such developments by right, without the ability for you to consider traffic, adverse effects on property values, adverse impact on historic features in the area, or if such developments are consistent with the future development of our Town as described in the POCD.

Decide if you should have the right to impose conditions of approval on such massive developments when it is necessary to protect health, safety, convenience, property values, or natural resources. If yes, you should approve the proposed multifamily regulations in Part I of the revised application, the suggested improvements in Exhibit #15-2, and the applicable recommendations in the staff review report for Part I of the revised application.

Part II — Excavation Regulations

Deletion of Farm & Road Waiver Provisions

Regarding the excavation regulations proposed in Part II of the revised application, someone asked if the current waiver provisions for farms and roads should be retained.

I deleted the two exemptions because they are unnecessary. Farming is a land use allowed by right in all districts, and there is no reason farming should be exempt from the zoning regulations. Under the proposed regulations, a zoning permit includes the excavation necessary to develop or improve lawful land uses, including farming and agriculture.

The same rationale applies to proposed roads. A road would be an accessory use to support a property's principal or accessory use. Under the proposed regulations, a zoning permit for a property's principal or accessory use would include the excavation necessary for developing roads on that property.

By-Right Uses & 300+ Cubic Yards of Excavation

Someone asked, “How will the ZEO approve a by-right use that will involve the excavation of more than 300 cubic yards?”

Very few by-right uses require the excavation of more than 300 cubic yards. However, if this happens, the regulations should allow the zoning permit for any principle or accessory by-right use to include the excavation necessary to develop that use, even if it exceeds 300 cubic yards. The third item in Exhibit #15-2 corrects this error.

The review report cautioned that the proposed change would qualify most land-disturbing activities as "excavation." Presumably, this comment was based on the proposed new definition of excavation. However, although different, the existing definition of excavation also qualifies most land-disturbing activities as "excavation." Most developments will remain the same. I do not understand the rationale for the caution warning.

One of the interesting comments in the review report is the suggestion that the proposed definition should not exclude an activity currently listed within the regulations as an allowable land use. The proposed definition of excavation excludes only one existing land use, which is the exclusion of excavation as a standalone principal land use. The proposed definition and the proposed regulations allow excavation to develop any permitted principal or accessory use.

The proposed regulations also do not conflict with the "Natural Expansion Doctrine," as alleged in the review report. The Natural Expansion Doctrine allows protected preexisting nonconforming uses to expand within the property's original boundaries. The Taylor v Wallingford Zoning Board of Appeals case referenced in the report is not on point because it confirmed that a preexisting nonconforming sand and gravel business can continue even if its voluntarily obtained permit is intentionally not renewed.

The other referenced case, Kovacs v. New Milford Zoning Board of Appeals, is also not on point. It involved a commission denying a special permit to enlarge a preexisting nonconforming use beyond its original property boundary, which the court sustained. The proposed regulations will not affect protected preexisting nonconforming quarries and excavation uses.

The review report noted that, as proposed, there is a high degree of subjectivity regarding determining if excavation materials are valuable and marketable. This would be a valid concern for principal uses allowed by right. However, suppose the amount is less than 300 yards. In that case, there is no subjective assessment of whether the excavated materials are valuable and marketable. If more than 300 yards are removed for a principal or accessory use, the use would likely require a special permit, and that special permit would give you the discretion to determine if the proposed excavation is principally a mining and quarrying use, which is not allowed, or is primarily for the development of a permitted use. There could be an issue for a by-right use that involves the excavation of more than 300 cubic yards. These will be rare, but they are possible. The third suggestion in Exhibit #15-2 corrects this error.

The report suggested that the Commission should not review a proposed activity based upon an undefined and subjective potential reduction in a parcel's desirability, usefulness, or value. This provision in the application is based on §8.16.3 and .4 in the existing regulations, which requires that the site will have future usefulness when the operation is complete and that the site will not be characterized by indications of completed digging operations that would have a deteriorating influence on nearby property values. I believe the existing requirement is proper for uses requiring a special permit and should be retained in the proposed regulations.

The review report states that providing a window of time to begin and complete an approved activity is unlawful. I agree. CGS §8-3-(i) provides that any site plan approved after October 1, 1984, shall be completed within five years after approval. The proposed general requirements #5 and #6 should be deleted to conform with the statute. I apologize for this error.

The review report states that general requirement #8, prohibiting excavation within 50 feet of any wetlands, should only be imposed when it is necessary to alleviate concerns associated with flood risks. This requirement is also unchanged from the existing regulations. I have no objection to the Commission amending or deleting general requirement #8.

The review report regarding general requirement #15 suggests that the Commission or the ZEO should not decide on an application based upon conjecture or assumption. I believe the

provision is lawful because it is a may provision and not a shall provision. Developments that require more than 300 cubic yards of excavation will almost always require a special permit, which permits subjective determinations if the standards for those determinations are in the regulations. The provision is necessary to help prevent unnecessary excavation, and I urge that the proposed general requirement #15 be retained.

The review report suggested increasing the 300 cubic yard limit for excavations that do not require a special permit and triggering the requirement for a more comprehensive site plan. As previously noted, the review report appears to have overlooked the third suggestion in Exhibit #15-2, which suggests deleting the proposed Section 8.16.C.1 and its 300 cubic yard limit.

Prohibition of Blasting and Rock Crushing Within 2,000 Feet

Someone expressed a concern that the proposed regulation prohibiting the use of explosives or rock-crushing machinery within 2,000 feet of a residence is arbitrary, implying that it is an unreasonable constraint.

Exhibit 18 is an email from Vivian Zoe, who lives at 46 Pinelock Drive in Gales Ferry. Vivian sent her email to James Mann, our fire marshal. It includes the following statement: *"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."*

The purpose of entering Vivian's email into the record is to show that blasting can impact residents who live more than 1700 yards from an operational quarry, which is about eight-tenths of a mile. The zoning regulations should prevent any use that affects a resident's quality of life or reduces their property values.

And remember, the proposed regulations also do not prohibit excavation within 2000 feet of a residence. They only prohibit the use of explosives and rock-crushing machinery within 2000 feet of a residence. The proposed regulation explicitly allows the use of expansive controlled demolition agents and other alternative, less intrusive technologies when explosives or rock-crushing machinery are not allowed or are unsuitable.

Prohibition of Excavation That Exceeds 5 dB Above the Ambient Noise Level

The review report expressed a concern regarding the requirement that the required plan of operation must include a description of how the excavation will not create impulse or continuous sounds at the property line that exceed 5 dB above the ambient noise level. Sound is measured in decibels on a logarithmic scale. A 5 dB addition on a logarithmic scale is significant. 38 dB is the ambient sound level in a quiet bedroom with a fan operating at low speed. The outside ambient noise at night, with no wind and no traffic but with chirping frogs, is 48 decibels, which exceeds the 45 dB level considered excessive under the DEEP regulations for nighttime noise levels. My laser printer generates 59 dB, which exceeds the 55 dB daytime limit. Our vacuum cleaner is 74 dB. A smoke detector is 85 dB. A jet engine at 1000 feet is about 100 dB. A top-hammer rock drilling tool used for excavation will create about 127 dB.

One purpose of requiring a plan of operation is to ensure that the noise from the proposed development's excavation does not impact nearby residents' quality of life. The 5 dB increment is necessary to allow excavation in areas with high ambient background noise, such as on windy days or near a busy highway. In addition, §22a-69-3.6 in the DEEP noise regulations provides that in cases where the background noise levels caused by sources that are not subject to the DEEP regulations exceed the standards in its regulations, a source shall be considered to cause excessive noise if the noise emitted by such source exceeds the background noise level by 5 dba. The daytime limit at the property boundary in residential districts is 55 dB. The 5 dba increment is reasonable and consistent with the DEEP regulations.

Also, please remember that the 5 dB limit does not prohibit excavation, but it may require the excavation to use a less intrusive technology.

Compliance with the POCD

Exhibit 22 from Attorney Heller implies that the proposed Part II excavation regulations conflict with the POCD. I disagree. The proposed regulations are to better protect the quality of life, health, and property values of residents living near excavation sites. The protection of the quality of life, health, and property values are major goals in the POCD.

Exhibit 22 also alleges that the 5000 cubic yard maximum excavation amount is too small. As I stated when the hearing was open, 5000 cubic yards is the amount of excavation required to construct a full size Olympic swimming pool, which is a big project by Ledyard standards. However, I have no objection if you wish to increase the limit.

Part III — Affordable Housing Regulations

Are Affordable Housing Regulations Necessary?

Regarding the Affordable Housing regulations proposed in Part III of the revised application, the review report suggested that the reference to 8-30g should be removed and noted that the regulations did not define the term. The reference to 8-30g should be retained because the proposed regulations are applicable only to 8-30g affordable housing applications. Although it would do no harm to add a definition, it is not necessary. If you decide to add a definition, it should mirror the statute.

"8-30g Application - A set-aside development" in which not less than thirty percent of the dwelling units will be conveyed by deeds containing covenants or restrictions which shall require that, for at least forty years after the initial occupation of the proposed development, such dwelling units shall be sold or rented at, or below, prices which will preserve the units as housing for which persons and families pay thirty percent or less of their annual income, where such income is less than or equal to eighty percent of the median income. In a set-aside development, of the dwelling units conveyed by deeds containing covenants or restrictions, a number of dwelling units equal to not less than fifteen percent of all dwelling units in the development shall be sold or rented to persons and families whose income is less than or equal to sixty percent of the median income and the remainder of the dwelling units conveyed by deeds containing covenants or restrictions shall be sold or rented to persons and families whose income is less than or equal to eighty percent of the median income." [Not entered during hearing]

The review report suggested that the proposed Part III affordable housing regulations are unnecessary because affordable housing applications are not subject to zoning regulations. This is not entirely true.

An 8–30g affordable housing application only reverses the burden if an applicant appeals your decision to deny his application, or you impose conditions of approval that significantly impact the viability of a proposed development or the affordability of the units in the development.

It is true, for practical purposes, that affordable housing applications are exempt from the district assignment, and the height, setback, parking, lot size, building size, population density, lot coverage, screening, sidewalk, landscaping, and other requirements in the zoning regulations if compliance with those requirements significantly impacts the cost of a proposed development.

However, the Commission has the authority and duty to impose approval conditions to improve an affordable housing application, provided the conditions do not substantially impact the viability of an affordable housing development or the degree of its affordability.

Requiring a public hearing will result in more people reviewing affordable housing applications and may result in better developments. The proposed regulations are consistent with the statutes, do no harm, and remind the applicant that you have the authority to impose no-cost and low-cost conditions of approval. I believe any land use application that intentionally does not comply with the regulations should always require a public hearing.

IN SUMMARY…

In summary, exhibit #15–2 lists four suggestions from the public that you should adopt during your deliberations. The first and second are the design and landscaping requirements for multifamily parking lots.

The third is to allow a zoning permit for a by-right use, including excavating more than 300 cubic yards when necessary to develop that use.

The fourth is to require, after excavation, that the area be reseeded with a grass species native to the area.

I disagree with the review report's recommendation that the application be denied because the proposed regulations do not further the POCD's goals.

Part I of the application, the multifamily regulations, are based entirely on the policy goal on page 10 and page 55 of the POCD, which states that the quality of life and the character of the Town of Ledyard must be protected. The existing multifamily regulations do not protect the quality of life and the character of the Town. Pages 10 and 55 of the POCD are included in Exhibit #5.2.

In addition, the POCD is silent regarding excavation as a standalone principal use. The proposed excavation regulations will better protect the health, safety, and property values of residents who live near an excavation site than the existing regulations. Clearly, the POCD supports the protection of health, safety, and property values.

The proposed section for affordable housing applications is consistent with the statute and only requires that the applicant use accurate numbers in his affordability plan, which has not been the case for several recent 8-30g applications. The proposed regulations are consistent with the affordable housing constraints on page 341 of the March 11, 2023, edition of the Connecticut Land Use Training Manual. The most significant change is that affordable housing applications require a public hearing, which is not an unreasonable requirement for applications that intentionally do not comply with the regulations. The public hearing requirement may, in some instances, result in better applications.

As Liz or your chairman will remind you, you must consider the POCD when amending zoning regulations and clearly state the reasons for your decisions.

Part I should be approved if you believe five- and six-story multi-hundred-unit multifamily complexes are inconsistent with the POCD's "protection of character" goals or if you think massive multi-family developments should require a special permit and be subject to conditions of approval.

Part II should be approved if, consistent with the POCD, you want to expressly prohibit mining and quarrying and to better protect residents from the health, safety, and property value risks caused by large excavation projects.

Part III should be approved because it can improve affordable housing developments.

Last, thank you for your effort regarding this application. It isn't easy, and your decisions, especially on the Part I multifamily and the Part II excavation regulations, will determine our Town's development and character in perpetuity. It is a big responsibility, and I appreciate your hard work for our Town.