Proposed Text Amendment – Application #25-2 ZRA

Eric Treaster
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Introduction

For the record, my name is Eric Treaster, and I reside at 10 Huntington Way. I am representing myself and have lived in Ledyard since 1976. I served on Ledyard's Zoning Commission from 1987 to 2012 and was its Chairman in 2011 and 2012. I was also the principal author of the 2012 rewrite of the zoning regulations.

The POCD that you approved in 2020 contains a set of goals, which I support, that are intended to guide the development of our community. **I submitted my application because the current zoning regulations for multifamily and mixed-use developments are inconsistent with four of the main goals in the POCD and the Affordable Housing Plan.**

Zoning Regulations Are Inconsistent With the POCD

Specifically, **the current zoning regulations do not adequately protect and maintain Ledyard's rural low-density residential character [POCD, p. 10 & 17], do not sufficiently protect property values [POCD, p. 10], do not adequately protect the quality of life of residents who live near such developments [POCD, p. 16],** and **do not encourage traditional village development in the Gales Ferry and Ledyard Center Development Districts [POCD, p. 38].** Exhibit 4 shows the explicit goals in the POCD that are addressed by my proposed changes to the zoning regulations. **They should be adopted to help protect our town from the risks associated with incompatible multifamily and mixed-use developments**.

No Impact on Affordable Housing

One of the goals of the POCD is to promote the development and maintenance of affordable housing through zoning regulations **[POCD, p. 17]**. Although my proposed amendments may reduce the average size and cost of units in multifamily and mixed-use developments, which I will explain, they are not intended to address the affordable housing goals in the POCD.

History

About a year ago, I discovered the 14-acre, four and five-story, 304-unit Triton Square apartment complex under construction in a quiet residential neighborhood at 55 Seely School Drive, behind the Super 8 Motel on Rt 12 in Groton. I immediately knew that I would not want such a monstrosity in my neighborhood, and I wanted to see if it would be permitted under our current zoning regulations. An artist's rendering of the complex is on the first page of Exhibit 5.

In 1963, when Ledyard adopted its first set of zoning regulations, the height limit for multifamily developments was 30', which would be about 25' under the height definition in our current regulations. In 2012, the height limit was increased to 35', which, under the current height definition, would be about 30'.

I learned that, under our current zoning regulations, **3.5-story multifamily developments are permitted by special permit in our residential districts, and five-story multifamily developments are permitted by special permit in the Ledyard Center Transition District.** I also learned that **five-story mixed-use developments are allowed as of right in the Transition District**, and **six-story multifamily developments** are allowed as of right in our Resort Cluster, Gales Ferry, Ledyard Center, and Multifamily Development districts, **without a public hearing, with no explicit parking requirements, and with no limit on the number of units per acre or number of units per building.** These are enormous increases from the prior regulations that **could quickly destroy the character of our town** and place an **undue burden on our schools and taxpayers**.

Although monstrous four-, five-, and six-story developments **that can house over a thousand people in a single building** may be suitable in cities, **they are not appropriate in quiet rural residential communities** such as Ledyard. Ledyard is a peaceful, 40-square-mile residential community with fewer than 6,000 dwelling units, a 22-person police force, and only eight traffic lights. It is a unique community, and **its residents have repeatedly said** during public meetings that **they support economic development only if it does not impact their quality of life**.

Its **rural residential character deserves to be protected**, which is an explicit goal in the POCD and one of the reasons why I submitted this application. ***I do not want to see the unbridled development and citification of our town.***

The Determination of Consistency With the POCD Requires a Special Permit

My proposed text amendments **add a special permit requirement for multifamily and mixed-use developments in the *Development and Transition Districts*,** which will mean that all multifamily and mixed-used developments will require a special permit.

According to the PowerPoint slides in Exhibit #14-2 provided by Attorney Smith for the land use training on March 22, the special permit process ***permits a generally compatible use*** in a zoning district, but because of the nature of the proposed use, ***special attention*** must be given to ***its location*** and method of operation ***to keep such special uses compatible with as-of-right uses*** *in that district.*

His slides demonstrate that **zoning regulations should consider** the size and topography of a property, as well as existing and proposed contours, to ensure ***compatibility with the surrounding neighborhood***. My proposed regulations for multifamily and mixed-use developments are consistent with his guidance. By adding the special permit requirement, the statutes and the Zoning Regulations **[§11.3.4.G]** will require you to decide if **a proposed multifamily or mixed-use development is consistent with the POCD**, which means if it is consistent with our **rural low-density residential character**, will not **impact property values**, and will **not degrade the quality of life** of its neighbors.

In addition, **if a multifamily development is proposed for the Gales Ferry, Ledyard Center, or the Multifamily Development District**, you will be required to decide if it **is consistent with the village environment** that is intended for these districts under the current zoning regulations **[§6.1.A, §6.1.C, §6.1.D]**.

The Protection of Public Health, Safety, Welfare, Property Values and Natural Resources Requires a Special Permit

More importantly, by requiring a special permit, the Connecticut General Statutes and the zoning regulations **[§11.3.5.D] give you the authority to impose conditions of approval to protect public health, safety, welfare, property values, and natural resources.** Under the current zoning regulations, residents and the town are at risk because, although you can make suggestions, **you do not have the authority to impose conditions of approval for as-of-right uses**.

Ensuring Traffic Safety Requires a Special Permit

Also, by requiring a special permit, the zoning regulations **[§11.3.4.B] give you the authority to consider if a proposed use would cause traffic generation** that would have a deleterious effect on the welfare or the safety of the motoring public. You do not have the authority to consider traffic generation for as-of-right uses.

The Protection of Property Values Requires a Special Permit

Likewise, the zoning regulations **[§11.3.4.D]** require a special permit for you **to consider whether a proposed use would harm property values.** You do not have the authority to consider the impact of as-of-right uses on property values.

The Preservation of Scale, Density, Intensity of Use, and Design of the Surrounding Community Requires a Special Permit

If a proposed multifamily or mixed-use development requires a special permit, the current zoning regulations **[§11.3.4.E]** give you the authority to determine ***if the character of the surrounding neighborhood would be preserved in terms of its scale, density, intensity of use, and design.*** *This provision is* consistent with Attorney Smith's guidance, as shown in Exhibit 14-2.

However, you would not be able to deny a multifamily or mix-use application due to its scale, density, intensity of use, or design because HB 5002 **(Line 192)** provides that the Zoning regulations *shall not* be applied to deny a land use application based on a ***district's character***. However, **by requiring a special permit, you would be able to impose conditions of approval that would preserve the character of the neighborhood.**

Ensuring Reasonable Parking Requires a Special Permit

The current zoning regulations for multifamily and mixed-use developments [Appendix B-5, §8.28.E, §9.0, §9.4, §9.4.A, §9.4.D, §9.4.2, & §9.4.2.A] do not require an explicit number of parking spaces, but instead, requires that you determine the number of parking spaces based on evidence in the record. They **[§9.4.2.A]** provide that you may require modifications to an application that fails to provide sufficient, credible information to enable you to reasonably determine the number of parking spaces that are likely to be needed. They also give you the authority to require the applicant to designate an overflow parking area if a parking plan results in an insufficient number of parking spaces.

The failure of the current regulations to specify the number of parking spaces is not an issue if multifamily and mixed-use developments require a special permit because you would have the authority to impose a reasonable number of on-site parking spaces as a condition of approval.

However, because multifamily and mixed-use developments are **currently allowed as of right**, **you do not have the authority to impose conditions of approval or to deny multifamily or mixed-use applications for failure to provide parking.**

The third and fourth slides in Exhibit 5 **show examples of multifamily and mixed-use developments with inadequate parking that you would have to approve** if t**hey were proposed under our current zoning regulations. You would have the authority to impose parking requirements on such developments only if they required a special permit.**

The proposed regulations require a special permit for all multifamily and mixed-use developments.

Four, Five, and Six-Story Structures Should Be Prohibited Because They Are Inconsistent With The Purpose of Our Development Districts

Under our zoning regulations, **the purpose of the Gales Ferry Development District [§6.1.D] is to encourage a blend of *low-intensity* commercial, civic, and residential land uses.** The keyword is "*low-intensity*." Four-, five-, and six-story multi-hundred-unit apartment complexes, as well as four-, five-, and six-story multi-hundred-unit mixed-use developments, ***are not "low intensity" developments***.

For consistency with the "***low-intensity***" purpose of the Gales Ferry Development District, apartment complexes and mixed-use developments in the Gales Ferry Development District are allowed under the proposed regulations, but are limited to 35' in height, and no building can have a footprint larger than 5,000'. There is no limit on the number of units in a building, and there is no limit on the number of buildings on a parcel.

The **purpose of the Ledyard Center Development District [§6.1.A] is to encourage a mixture of *appropriately scaled residential uses*** and *harmonious streetscapes, walkways, and plantings*. The key phrase is "***appropriately scaled***."

Four-, five-, and six-story multi-hundred-unit multifamily and mixed-use developments **[Pages 6-2, 6-4, and 6-6]** ***are not "appropriately scaled" for Ledyard Center***. Large apartment complexes and mixed-use developments in the Ledyard Center Development District are allowed under the proposed regulations, but are limited to 35' in height, and no building can have a footprint larger than 5,000'. There is no limit on the number of units in a building, and there is no limit on the number of buildings on a parcel.

The **purpose of the Multifamily Development District [§6.1.C]** is to **encourage attractive multifamily developments** in a pedestrian-friendly **village environment**. The key phrase is "***village environment.***" Although the words "attractive," "pedestrian-friendly," and "village environment" are subjective, they are essential.

Multi-hundred-unit four-, five-, and six-story multifamily developments, even if they are attractive, ***are inconsistent with the concept of a "village center***," as shown on page 62 in the POCD. **They may be consistent with the growth of a city but not with retaining a village environment.** Under the proposed regulations, apartment complexes in the Multifamily Development District are allowed, but are limited to 35' in height, and no building can have a footprint larger than 5,000'. There is no limit on the number of units in a building, and there is no limit on the number of buildings on a parcel.

The **purpose of the Resort Commercial Cluster District [§6.1.E] is to encourage the development of commercial recreational and tourism-oriented uses** while maintaining the surrounding area's character. Multi-hundred-unit 65' four, five, and six-story high-density multifamily housing may have the appearance of a motel or a hotel, which would be consistent with tourism or recreation. However, a multifamily or mixed-use development ***is not the same as a motel or a hotel.*** Apartment complexes and mixed-use developments in the Resort Commercial Cluster District are allowed under the proposed regulations, but are limited to 35' in height. No building can have a footprint larger than 5,000', there is no limit on the number of units in a building, and there is no limit on the number of buildings on a parcel.

Four- and Five-Story Structures are Not Appropriate in the Ledyard Center Transition District (LCTD)

The **purpose [§6.1.B]** of the **Ledyard Center Transition District is to encourage *a concentration of mixed uses* consisting of a single building or a development containing more than one type of use** that **is planned** as a ***unified and complementary use***, with **shared pedestrian access** and **shared parking**.

However, a four- or five-story apartment complex ***is not a mixed-use development, and multifamily developments should not have shared parking*** or **shared pedestrian** access.

For structures with a pitched roof, building height is measured from the ground to the halfway point between the eaves and the ridge **[§2.2]**. The current zoning regulations **[pages 6-2, 6-4, & 6-6]** allow 50' 5-story **multifamily developments by special permit** and 50' 5-story **mixed-use developments, as-of-right**, in the Ledyard Center Transition District.

Due to the definition of 'height' in the zoning regulations, depending on the roof pitch, **the ridge height can be higher than the library, Town Hall, the Village Market, fire station, and the Ledyard Center School.** Apartment complexes and mixed-use developments in the Transition District are allowed under the proposed regulations, but are limited to 35' in height. No building can have a footprint larger than 5,000'. There is no limit on the number of units in a building, and there is no limit on the number of buildings on a parcel.

3.5-Story 45' High Structures are Not Appropriate in Residential Districts (R20, R40, R60)

The **purpose of our residential districts is to provide low-, medium-, and higher-density residential developments that are compatible in design, mass, and scale [§5.1].**

The current zoning regulations allow 45' 3.5-story multifamily developments, with no limit on the number of units, by special permit in our residential districts **[§5.2 footnote].** Such large structures ***should not be allowed because they would be incompatible with preserving the design, mass, and scale of adjacent single-family housing developments***, which are limited to only 35'. Apartment complexes in residential districts are allowed under the proposed regulations, but are limited to 35' in height, and no building can have a footprint larger than 5,000'. There is no limit on the number of units in a building, and there is no limit on the number of buildings on a parcel.

Sewer Treatment Plants Are Not An Accessory Use - (Clarification only)

Although unlikely, a packaged sewer treatment plant, as defined in the application, could be proposed as an as-of-right accessory use to facilitate large-scale, high-density, multifamily, and mixed-use developments in outlying areas without a public sewer system.

The zoning regulations [§2.2] define an accessory use as a use, building, structure, and/or portion thereof ***customarily incidental*** **and** ***subordinate to the principal use*** of the land or building and ***located on the same lot*** as the principal use. Accessory uses include sheds, pools, gazebos, freestanding garages, fences, mailboxes, flagpoles, tennis and pickleball courts, accessory dwelling units, and paved, non-permeable driveways. They are permitted as as-of-right accessory uses because they are ***customarily incidental*** and ***customarily subordinate*** to a listed principal use. The keyword is ***"customarily."*** **I could not find any examples in Connecticut of a packaged sewer treatment plant on the same parcel as a multifamily or mixed-use development**.

As such, **a sewer treatment plant is not *customarily incidental* or *customarily subordinate* to multifamily and mixed-use developments.**

Because they are ***not customarily incidental and customarily subordinate to multifamily or mixed-use developments*****,** under the current zoning regulations, **a packaged sewer treatment plant cannot be an accessory use [§5.3 & §6.4]**.

My proposed regulations **clarify that Sewer treatment plants are currently permitted only if they are a public utility**, have a special permit, operate as a business, and provide their services to the general public. The regulations **must be changed if your intent is to treat a proposed packaged sewer treatment plant the same as you treat an ISDS**.

Avoid The Risk of Fifth Amendment Inverse Condemnation Taking Claims

Another reason to adopt the proposed regulations is to **avoid the risk of Fifth Amendment Inverse Condemnation Taking claims.** Such claims can arise when a regulatory action deprives a property of a substantial amount of its value.

The Fifth Amendment to the U.S. Constitution states that private property cannot be taken for public use without just compensation. This clause ensures that if the government seizes property, it must provide fair payment to the owner.

U.S. Supreme Court cases have determined that when land is regulated to the point of substantially reducing its value, the assertion of public interest – such as the need for housing – can be challenged. **As a result, the standard for litigating these claims now favors property owners, meaning local governments may have to defend against them in federal court.**

One of **the primary purposes of regulating land use is to protect property values**.

However, the value of homes near the Triton Square Apartment complex was substantially reduced when Groton **amended its zoning regulations to permit such developments in that neighborhood**. The reduction in their property values is attributable not only to the increased traffic from the more than 600 residents that will reside in the new five-story apartment complex next door, but also **to their loss of privacy**. **Residents on the upper floors of the west side of the Triton Square complex can look directly down into the rear yards and windows of the adjacent homes on Senkow Avenue.** For most people, having dozens of strangers who can look into homes and yards from high above makes their property uninhabitable. It would also substantially reduce the value of their homes.

The Triton Square **neighbors would not have purchased their homes** had they known **that Groton would amend its zoning regulations to allow for the construction of a multi-hundred-unit, four and five-story apartment complex next door.**

There is no doubt that the Triton Square Apartments have substantially adversely affected the values of the adjacent single-family properties, which puts Groton at risk of defending against a Fifth Amendment Takings claim by their owners.

The **current Ledyard zoning regulations are likely to result in a substantial decrease in the value of any home adjacent to a new five- or six-story multifamily or mixed-use development that resembles the examples in Exhibit 5**.

The proposed regulations will reduce the risk of having to defend against a Fifth Amendment claim.

[Pass out proposed regulations with red line numbers]

Except for the **red identification number** assigned to each change, the handout is identical to the changes proposed in the application.

New Height & Story Limits

Changes #1 through #4 delete the current 3.5 story and 45' height limits, impose a height limit of 35', and limit the maximum height to 3 stories for multifamily housing in Residential Districts, **which are the same standards that are imposed on single-family and duplex structures** in residential neighborhoods. **[CGS §8-2-(d)]**

Changes #5 and #6 reduce the height of multifamily housing and mixed-use developments from 50' and 65' to 35' in the Transition and Development Districts,

The 35' limit will result in one and two-story multifamily housing with traditional New England pitched roofs and three-story multifamily housing with reduced-pitch roofs. Although possible, **it is unlikely the 35' limit will result in multifamily housing with flat roofs**. Exhibit 7 shows examples of multifamily housing that is consistent with the 35' height limit and the POCD.

New Special Permit Requirements

Change #7 replaces the site plan review requirement with a special permit requirement for multifamily housing in our Development Districts. It also retains the special permit requirement for multifamily housing in the Ledyard Center Transition District.

Change #8 replaces the site plan review requirement with a special permit requirement for mixed-use developments in the Ledyard Center Transition District, the Coastal Marine District, the Neighborhood Commercial Districts, and the four Development Districts,

Clarification Only – A Sewer Treatment Plant Is Not An Accessory Use

Change #9 adds a definition of an ISDS, which is an "individual sewer disposal system."
Change #10 adds a definition of a "sewer treatment plant."
Change #11 adds a definition of a private sewer treatment plant.
Change #12 adds a definition of a public sewer treatment plant.

These changes are necessary to clarify that, under the current zoning regulations, a sewer treatment plant is not equivalent to and cannot be treated the same as an individual sewer disposal system.

Change #13-1 clarifies that sewer treatment plants are prohibited from being on the same parcel as a principal use because they **[§2.2]** are ***not customarily incidental and customarily subordinate*** to any of the principal uses that are listed in the regulations **[§5.3 & §6.4].**

Multiple Multifamily Structures Permitted On A Single Parcel

Change #13-2 retains the regulations that permit multiple multifamily structures on the same parcel. It also retains the 5-acre minimum lot size requirement for multifamily developments in residential districts.

Changes Related to Population Density

Change #14 deletes the density regulations **[§8.28.B]** for multifamily housing, which are based on the health and building codes. The health and building codes do not specify an explicit minimum size for a dwelling unit, which means they do not help determine the maximum density of multifamily housing or the maximum number of units per acre. All developments must comply with building, fire, and public health codes**. I deleted the density regulations because they are not necessary.**

Change #15-1 proposes limiting the footprint size of multifamily housing to 5,000', which will result in several small-scale multifamily buildings on a parcel instead of a single or a limited number of large-scale structures for the same number of apartment units. **This change is necessary to help ensure the zoning regulations are consistent with the protection of the rural residential character goals outlined in the POCD'.**

The Proposed Regulations Will Not Reduce The Capacity Of Ledyard To Accommodate Multifamily Developments – But May Reduce The Average Size & Cost Per Unit

Exhibit 3, the letter from the Southeastern Connecticut Council of Governments, alleges *that the proposed amendments to the zoning regulations* ***will reduce the future overall capacity of Ledyard properties to accommodate additional multifamily development***. However, **it does not say why or how**.

As of January 2, 2024, the current zoning regulations, presumably due to an error, do not require an explicit number of parking spaces for multifamily and mixed-use developments. **This means that the health code and building code determine the theoretical limit on the capacity of Ledyard properties to accommodate additional multifamily developments.**

My application **prohibits multistory parking garages and requires one parking space per bedroom**, which, when considered together, limits the number of possible parking spaces on a parcel. **The limit on the number of parking spaces limits the number of bedrooms, and the limit on the number of bedrooms limits the number of units in a multifamily development.**

The theoretical maximum on an optimally shaped parcel with optimum topography in a district that allows building to the sidewalk, assuming standard 9' x 18' parking spaces, **is about 144 parking spaces, or 144 bedrooms, per acre.** If the units have one bedroom and are each 530 square feet, they can be accommodated on that acre on the second and third floors in eight three-story multifamily buildings, each with a 4,800' footprint, with covered parking on the first floor.

As such, **the proposed reduced height limits and footprint limits do not reduce the theoretical number of units in a multifamily or mixed-use development**; however, they may ***reduce their average size and cost*** because the units would be located in multiple smaller less expensive three-story buildings instead of more expensive four, five, or six-story buildings.

Multiple Small-Scale Three-Story Buildings Are Preferable To A Single Large-Scale Six-Story Building.

Multiple small-scale one-, two-, and three-story buildings are preferable to a single large-scale building because they **reduce the distances between dwelling units and parking spaces**, which is a quality-of-life and possibly a safety issue.

The 35-foot height limit **eliminates the need for elevators**, elevator maintenance, annual elevator inspections, and elevator licensing, as well as emergency backup power.

The 35' height limit **reduces the need for another ladder truck** for our fire departments.

Three-story buildings **will be less likely to be hit by lightning**.

Three-story buildings **require less time to evacuate** in the event of an emergency.

The **exteriors and roofs of three-story buildings will be easier, less expensive, and safer to maintain** than those of four-, five-, and six-story buildings.

However, the most important reason is that small-scale three-story buildings are consistent with the POCD, and four-, five-, and six-story buildings, such as the Triton Square Apartments, are not.

Retention of Regulations That Allow Multiple Multifamily and Mixed-Use Developments on a Single Parcel

Change #15-2 allows multiple multifamily housing structures on a single lot, which is unchanged from the current regulations.

Prohibition of Studio & Efficiency Units

Change #15-3 Prohibits studio and efficiency apartments.

As some of you may know, I was a professional landlord for over fifty years and have owned multifamily buildings that consisted exclusively of studio apartments. Efficiency and studio units, which, under the health, fire, and building codes, can be less than 125', tend to have operating characteristics that are more similar to those of a weekly motel than to a home. Motels are not permitted in our residential districts or the Multifamily Development District. Surprisingly, the just-approved HB 5002 agrees. **It does not allow more than 20 percent of the units in the Affordable Housing Plan to be studio or one-bedroom units [Line 418, §8-30j-(e)-(4)-(D)].**

Multifamily developments consisting exclusively of ***efficiency and studio apartments are inconsistent with the protection of character and quality of life goals in the POCD and should not be allowed.***

Prohibition on Below-Ground Units

Change #15-4 Prohibits units that are below-ground or partially below-ground. This requirement ***reduces the risks*** and costs ***associated with radon gas, humidity, mold, and flooding***, which are more prevalent in below-ground apartments than in above-ground apartments.

Recreational Facilities

Change #15-5 Requires a reasonable amount of recreational facilities as a standard for multifamily developments. It is a typical standard for a use that requires a special permit. I added the requirement because it will help to protect the quality of life and health of residents, which are goals in the POCD.

Water and Sewer

Change #16, titled Water and Sewer, is retained. However, all developments must comply with the Connecticut Public Health Code for water and sewer. As a result, **§8.28.C provides no net value and is unnecessary.** I recommend that you delete §8.28.C during your deliberations.

Buffers and Landscaping

Change #17 is the section on buffers. It is retained in its entirety from the current regulations.

Off-Street Parking

Change #18 deletes the current regulations for off-street parking. I deleted the parking regulations because §9.4, which is the parking section in zoning regulations, ***does not impose explicit parking requirements for multifamily or mixed-use developments.***

Change #19 **imposes 15 explicit parking requirements**, some of which may be controversial and should be discussed during your deliberations. The proposed text amendments require parking areas to be screened from public roadways, to have reasonable lighting and landscaping, to consist of hard-surface materials, and to have a reasonable number of parking spaces reserved for guests. These subjective requirements are for the protection of public health and safety. They are not unusual for uses that require a special permit.

Even though the proposed regulations require one parking space per bedroom, the just approved House Bill #5002 **[Line 203, §3-(a)]** provides that *you can no longer reject an application for a multifamily development solely on the basis that it fails to conform to off-street parking regulations unless you find that the lack of such parking will have a specific adverse impact on public health and safety.* In my opinion, ***a lack of adequate on-site parking will have an adverse impact on public safety when off-site parking is unavailable***. It will be interesting to see how this new law works in the real world.

Assigned Parking

Change #19-1 requires **parking spaces for multifamily developments to be assigned** to individual units at a minimum rate of one space per bedroom. This requirement will have multiple benefits.

Having a reserved parking space is similar to having a reserved seat on an airplane or a reserved mooring for a boat. The High School requires teachers and students who drive to school to have reserved assigned parking, which solves many of the problems that would otherwise arise from a first-come, first-serve parking system.

Reserved assigned parking will eliminate the need for residents who arrive home late at night to circle a large parking lot searching for a vacant space, which may not otherwise exist.

Reserved assigned parking, especially if covered, would be an amenity that would encourage residents to be less likely to move when their leases expire, which would be good for the property owner, his residents, and the town.

Assigned parking spaces would enable the property owner to generate additional revenue by charging a higher rent for units with extra parking. The higher rent would ultimately result in higher tax revenues for the town, which can be influenced by the net income produced by a rental

property.

If allowed by the owner, assigned parking would allow a resident who does not have a car to rent his parking space to a neighbor who needs more than one parking space.

Having the right to a specific reserved parking space would be a perk that differentiates new multifamily developments in Ledyard from those in other towns.

Assigned reserved parking would make it more difficult for people to reside in units without the landlord's knowledge.

Requiring assigned reserved parking is not unusual, but it is also not common. It should be discussed during your deliberations.

Parking Must Be Within a Reasonable Distance of the Dwelling Units

Change #19-2 proposes that the parking spaces must be within a reasonable distance of multifamily housing. This regulation is necessary to prevent situations where residents may have to hike hundreds of feet to reach their apartments, especially during snow and ice storms or when carrying grocery bags to their homes. The proposed parking standard has merit in terms of tenant safety. Although somewhat unusual, it is a proper standard for uses that require a special permit.

Prohibition on Multistory Parking

Change #19-3 prohibits the construction of multistory parking structures. It will help prevent large-scale multifamily developments on small lots, which is necessary for consistency with the protection of the rural residential character goals in the POCD.

Deletion of Height Limit in Residential Districts

Change #20 deletes the current height limit for multifamily developments in residential districts. The new height limit is 35'.

Refuse Management & Screening

Change #21 imposes requirements for the location and screening of dumpsters. It also requires that individual refuse containers, if any, be stored or screened so that they are out of view on non-pickup days. This requirement can serve as a standard for multifamily and mixed-use special permits, helping to ensure consistency with the POCD's quality of life, property protection, and safety goals.

Suggested Correction

As you know, you are permitted to make minor changes to a proposed text amendment if the subject falls within the scope of the application and was discussed during the hearing.

Section 2.2, on page 2-1 of the zoning regulations, contains the definition of a multifamily residence.

A multifamily residence is defined as a ***"... structure, or group of structures, on one (1) lot, each containing three (3) or more dwelling units, with each dwelling unit having either a separate or joint entrance. May include apartments, condominiums, townhouses, and cooperatives."***

The definition in §2.2 is clear, which is why I did not propose a change. However, **§8.28**, which are the supplemental regulations for Multifamily Residences, **conflicts with the definition of Multifamily Residences in §2.2**.

§8.28.A states in part that [quote] ***"Apartment/Condominium complexes may consist of single or multiple buildings … ."*** [unquote].

Single-family dwellings, duplexes, and mobile homes are "***buildings***," which means they are subject to ***Section 8.28.A***.

§8.28.A explicitly allows three or more buildings on ***a single lo***t to be classified as a ***multifamily residence***.

It means that the **dozens of tiny pre-existing waterfront rental cottages** on the 9-acre lot at 4 Long Pond Road ***is a conforming multifamily housing development***.

It means that additional single-family cottages, duplexes, and mobile homes can be added to the property as an expansion of a conforming multifamily use.

It means that mobile home parks with **three or more mobile homes in non-residential districts are conforming multifamily housing developments**, and additional mobile homes can be added as an expansion of the conforming uses.

It means that **existing mobile home parks** with three or more mobile homes on lots that are five acres or larger in residential districts ***are conforming multifamily housing developments***, and additional mobile homes can be added as an expansion of the conforming use.

It means that **any five-acre lot in a residential district can be developed into a mobile home park** if it contains three or more mobile homes **if the application is for a multifamily housing development.**

It means that the **Transition District and the Development Districts,** where lots can be as small as a quarter acre, can be developed as **multifamily housing developments** if they have three or more buildings, which can include a mixture of single-family homes, duplexes, and mobile homes.

If this is your intent, then do nothing.

However, if it is not your intent, then during your deliberations, **§8.28.A** should be amended to state: [quote] ***"In Residential Districts, Multifamily Residences, as defined in §2.2, shall not be permitted on lots of less than five (5) acres"*** [unquote]

It is a simple correction, and I urge that it be given serious consideration.

This concludes my formal presentation, and I will be happy to answer any questions you may have.

I would like to make a brief statement after the public comments have been heard and I have addressed any questions.

After Public Comments and Commissioner Questions

Summary

In conclusion, my proposed text amendments consist of several corrections and improvements to the zoning regulations, but only four are essential to achieve conformance with the goals of the POCD.

1. The first and by far the most important ***is to require a special permit for multifamily and mixed-use developments*** to give you the authority to impose conditions of approval when necessary to *protect public health, safety, welfare, property values, and natural resources*.

2. The second is to ***reduce the multifamily and mixed-use height limits to 35'***, the same as for single-family homes and duplexes. This change is necessary to ensure the regulations are consistent with the POCD goal of *protecting the rural residential character of Ledyard.* The height reduction is required to prevent multifamily and mixed-use developments from overshadowing adjacent buildings, especially single-family homes.

3. The third is to ***impose reasonable parking requirements*** to ensure residents have *adequate and safe parking*. This change is necessary because the current regulations do not impose explicit parking requirements for multifamily or mixed-use housing developments.

4. The fourth is to ***impose a footprint size limit of 5000'***, which you can adjust depending on whether you prefer more small-scale or fewer large-scale buildings on a parcel. For comparison, according to Google, the footprint of the main building in the Trident Square Apartment complex is about 41,000 square feet. This change is also necessary for *protecting the rural residential character of Ledyard.*

   Please note that my proposed regulations do not reduce the potential number of residential units in Ledyard; however, they will result in multifamily developments that are consistent with the goals in the POCD.

It is also essential that you resolve the conflict in §8.28.A regarding the definition of multifamily housing, as I suggested during the hearing.

It is Not an All Or Nothing Decision

My application includes approximately 21 proposed individual amendments for your consideration. It is not a take-it-or-leave-it application, and you can make adjustments to the application as long as they were discussed during the hearing and do not alter its original intent. For example, you can modify the proposed height limit or footprint size limit, and you can also

make adjustments to the proposed parking regulations. You can also make changes that are not in the application if they were discussed during the hearing.

Remember, during your deliberations, you must state on the record if proposed text amendments to the zoning regulations are consistent with the goals in the POCD. I promise that they are.

Regarding Exhibit #13 – Avena Recommendation to Deny
&
Exhibit #16 – Rebuttal to Recommendation to Deny

Although I would rather not, I have no choice but to discuss Exhibits 13 and 16. Exhibit 13, submitted by Attorney Avena, **advises you to deny my application**. Ms. Burdick requested his legal opinion. On Tuesday, I asked for a copy of her request for his opinion, which was promised to be provided to me. However, as of noon today, I have not received it. I am hoping Ms. Burdick will enter it into the record before the hearing is closed.

Exhibit 16 is my rebuttal, which is in the handout that I will provide.

Based on his legal opinion, Attorney Avena believes that any discussion by you of my application might be perceived by the applicant of the pending Gales Ferry multifamily development as an attempt to prevent its approval. However, **if you establish an effective date for the new regulations that is on or after September 1, the pending Gales Ferry Multifamily application cannot be subject to the current regulations**.

Attorney Avena knows this, so what is the real reason Attorney Avena advised you to deny my application without considering its merits?

Existing Regulations Were Deemed Consistent with POCD
- No Need to Consider New Regulations

The first paragraph of his opinion letter includes a statement that my application focuses only on proposed changes to sections of the multifamily regulations previously adopted by the Commission ***in consistency*** with the 2020 POCD.

The legal opinion suggests that since you approved the 181-page set of zoning regulations in late 2023 and stated they were consistent with the POCD, they must still be consistent with the POCD. If they are still consistent with the POCD, there is no need to consider my proposed changes.

Attorney Avena is aware that a special permit is required to consider the protection of property values, which is a goal in the POCD, and presumably is aware that the current regulations allow monstrous multifamily developments without a special permit. <u>The current regulations do not adequately protect property values, which is inconsistent with the POCD</u>.

It is also my understanding that if you adopt regulations that conflict with the POCD, even if you stated on the record when they were adopted that they were consistent with the POCD, and later you approve an application based on regulations that are not consistent with the POCD, the inconsistency of the regulations with the POCD can be grounds to void the regulations and reverse your decision. Consistency with the POCD is essential.

It Makes No Difference – Even If Intent is Shown

Attorney Avena is also wrong if he believes that a discussion of my application means you intend to prevent the pending Gales Ferry development. This is because the current zoning regulations allow the Gales Ferry multifamily development as of right, and you have no discretion on as-of-right applications. If an as-of-right application complies with the current regulations, you must approve it. ***Discussing the merits of a proposed regulation change has nothing to do with whether you approve or deny a by-right land use application that is received while the current regulations are in effect.***

Correction Of The Parking Problem

My proposed regulations do more than just correct POCD inconsistencies in the zoning regulations. They also correct the parking problem. The current regulations mistakenly allow as-of-right multifamily developments that could house thousands of people in a single building - with no parking. Surprisingly, attorney Avena must believe this is consistent with the POCD. I would not be surprised if our current multifamily regulations originated in Boston or New York, where massive mixed-use developments without parking are common due to the prevalence of public transportation.

Case Law Rebuttal

The case law Attorney Avena referenced in his Opinion Letter is called "Marmah v. Greenwich." The specific issue in that case was whether legislative power, which is a Commission's ability to amend regulations, was exercised to promote the general welfare or if it was invoked to prevent someone from building a post office.

That is not the situation with my application. As you heard during my presentation, I proposed, on the record, that the effective date for my new regulations **must be on or after September 1**, which is months after the pending Gales Ferry Application is expected to be received by the

Commission.

The effective date you establish for the new regulations will demonstrate that the Gales Ferry Multifamily Development will be subject only to the current zoning. As such, Marmah V. Greenwich is not on point and should be disregarded.

Reason(s) for Decision

It is true that a reason is not required to be in a motion to deny a proposed regulation amendment, but there has to be a lawful reason in the record. There is also a more significant legal concept known as the principle of fundamental fairness. I urge caution. Denying my application simply because you do not want to evaluate its merits is not a lawful reason. ***It would also be a violation of your oath when you became a member of the Commission.***

I suggest that you ask Ms. Burdick for a copy of her letter requesting the legal opinion and to ask Attorney Avena if *anyone ever asked him to write a legal opinion advising you to deny my application?"* If the information is not forthcoming, then I urge you to disregard Attorney Avena's legal opinion.

Essentially, I am requesting that you treat my application in the same fair and uniform manner as you do all other applications. Please apply the same standards, document the reasons in the record, and establish an effective date far enough in the future that pending applications cannot be affected. It is a request for fairness.

HB 5002 & Request for Staff Report While Hearing is Open

I anticipate that Ms. Burdick will provide guidance in her staff report based on the state's recent adoption of HB 5002, which updates the land use enabling statutes. Ms. Burdick and I have a different interpretation of its parking provisions, and I respectfully request her staff report be entered into the record before the hearing is closed to confirm it does not contain new information.

Possible Public Hearing Extension Request

Due to the scope and complexity of this application, I will grant a request to keep the public hearing open for as much time as you need to review the record, ask questions, and make an informed decision.

Lastly, I would like to thank everyone who attended this hearing in support of my application. It is appreciated.

Thank you.

[Proposed] "Multifamily" Regulations

[From Page 3 of Application]

Prepared by: Eric Treaster

(For June 12 2025 Opening of Public Hearing)

To Reduce Maximum Multifamily Height to 35' in R20, R40, & R60 Districts

Change #

1. Page 5-1 – DELETE: ~~*"Maximum Building Height of Principal Structure (ft)***"*~~ **[the bottom line in Table 5.2.]**

2. REPLACE WITH: *"Maximum Building Height of Principal Structure (ft)"*

3. Page 5-2 – DELETE: ~~*"***Maximum Building Height for permitted Non-residential Principal Uses and/or Multifamily Residences in the R20, R40, or R60 Districts is 45ft/3.5 Stories"*~~ **[the top of page 5-2.]**

4. REPLACE WITH: *"***Maximum Building Height for permitted Non-residential Principal Uses and/or Multifamily Residences in the R20, R40 or R60 Districts is 35' and not to exceed 3 Stories."*

To Reduce Maximum Multifamily Height to 35' in LCDD, LCTD, MFDD, GFDD, & RCCD Districts

5. Page 6-2 – REPLACE: Each **"50"** and ***"50*"*** with "**35**". **[on the last line in Table 6.2.1 on page 6-2 under the LCDD, LCTD, MFDD, GFDD, and RCCD columns]**

6. Page 6-2 – DELETE: ~~*"*Maximum height may be increased to sixty-five (65) feet for multifamily and/or mixed-use buildings with full sprinkler systems; located in areas with functioning fire hydrants; and where all sides of the structure are accessible by a ladder fire engine."*~~ **[below Table 6.2.1]**

To Add A Special Permit Requirement For Multifamily Developments & Residential Mixed Use Developments In LCDD, LCTD, MFDD, GFDD, & RCCD Districts

7. Page 6-4 – REPLACE: Each "***SPL***" entry on the "*Residence Multifamily (apts, condos) §8.13"* line **[in Table 6.4]** with "***SUP***"

8. Page 6-6 – REPLACE: Each ***"SPL"*** entry on the *"Mixed Use Residential/Commercial §8.22"* line **[in Table 6.4]** with **"SUP"**

To Avoid Public Health and Safety Risks Associated With Privately Owned Sewer Treatment Plants For Commercial, Multifamily and Mixed Use Developments

9. Page 2-9 – ADD: (§2.2) INDIVIDUAL SEWER DISPOSAL SYSTEM: An Individual Sewage Disposal System (ISDS) is a privately owned and maintained sewage disposal system, commonly referred to as a septic system or on-site wastewater system, consisting of a two-compartment septic tank and disposal field. The septic tank separates and stores solid material, and the disposal field allows wastewater to percolate into the ground.

10. Page 2-16 – ADD: (§2.2) SEWER TREATMENT PLANT: A type of wastewater treatment facility intended to remove contaminants from sewage to produce an effluent that is suitable to discharge to the surrounding environment and prevent water pollution employing one or more of the following technologies: (a) activated sludge system; (b) aerobic treatment system; (c) enhanced biological phosphorus removal; (d) expanded granular sludge bed digestion; (e) filtration; (f) membrane bioreactor; (g) moving bed biofilm reactor; (h) rotating biological contactor; (i) trickling filter, or (j) ultraviolet disinfection.

11. Page 2-16 – ADD: (§2.2) SEWER TREATMENT PLANT, PRIVATE: A sewer treatment plant intended to remove contaminates from sewage generated by a commercial, multifamily, or mixed-use on the same parcel.

12. Page 2-16 – ADD: (§2.2) SEWER TREATMENT PLANT, PUBLIC: A sewer treatment plant owned and operated by a municipality or public utility intended to remove contaminates from sewage generated by commercial, multifamily, or mixed uses on other parcels.

13-1. Page 3-3 – ADD: (§3.8.F) Private sewer treatment plants (see definition) are not permitted.

To Assure Consistency With The "*Protection Of Character Goals*" in the "*POCD*" and the "*2013-2028 Ledyard Affordable Housing Plan*"

13-2. Page 8-25 – RETAIN: 8.28 RESIDENCE, MULTIFAMILY (APARTMENTS, CONDOMINIUMS, TOWNHOUSES)

A. Apartment/Condominium complexes may consist of single or multiple buildings, and if located within the R20, R40, or R60 districts, shall not be permitted on lots of less than five (5) acres

14. Page 8-25 – DELETE: ~~*B. Density: The density for an Apartment/Condominium complex shall be limited only by applicable building, fire and public health codes and applicable bulk/dimensional requirements of the particular zone.*~~

15. REPLACE WITH:

B. Density: The following constraints are to help assure consistency of these regulations with the protection of character goals in the "*Ledyard Affordable Housing Plan 2023-2028*" and the *"2020 Plan of Conservation and Development*:"

15-1 1. The footprint of a multifamily structure shall not exceed 5,000 square feet.

15-2 2. Multiple multifamily structures are allowed on a single lot.

15-3 3. Apartments with no bedrooms (studio apartments) are not permitted.

15-4 4. Partially below-ground and below-ground level apartment units are not permitted.

15-5 5. Residents shall be provided with reasonable indoor, outdoor, or a combination of indoor and outdoor recreational facilities.

16. Page 8-25 – RETAIN *C. Water and Sewer: A community water system, or public water, shall be provided in accordance with the CT Public Health Code.*

17. Page 8-25 – RETAIN *D. Buffers:*

1. A suitable landscaped buffer strip not less than ten (10) feet wide shall be provided along the parcel's side and rear boundary lines.

2. All buffer areas shall be planted with a combination of grass, shrubs, flowers, shade trees, evergreen, and other vegetative materials skillfully designed to provide a visual landscaped buffer and shall be maintained in proper order to protect adjacent properties and present a reasonably opaque, natural barrier to a height of ten (10) feet. The Commission will consider existing topography and foliage when determining whether the buffer strips contain no parking areas or buildings. The Commission may allow other structures within the buffer area, such as wells, site utilities, and drainage facilities.

3. Buffer strips shall contain no parking areas or buildings. The Commission may allow other structures within the buffer area, such as wells, site utilities, and drainage facilities.

18. Page 8-25 – DELETE*:* *E.* ~~*Off-street Parking: Off-street parking shall be provided as required by §9.4.*~~

19. REPLACE WITH: E. Off-street Parking:

1. Tandem parking spaces shall count as a single parking space.
2. A minimum of one parking space is required per bedroom.
3. The parking requirements shall be increased by 15% if no on-street parking exists.
4. A reasonable number of off-street parking spaces shall be reserved for guest parking.
5. Parking areas must be screened from public roadways.
6. Parking areas must be located between, behind, and/or in closed garages on the first floor of multifamily developments.

19-1

7. Parking spaces must be reserved and assigned to individual apartment units @ one space per bedroom. Unassigned parking spaces may be used for guest, handicapped, and overflow parking.

19-2

8. Parking spaces must be within a reasonable distance of the multifamily structure(s).

19-3

9. Multi-story parking structures (parking garages) are not permitted.
10. Parking must be on the same parcel as the multifamily structure(s).
11. Parking areas must have reasonable lighting.
12. Parking areas must have reasonable landscaping.
13. Parking areas must be designed for reasonable on-site snow banking.
14. Parking spaces shall consist of a hard surface.
15. Parking spaces shall be striped.

To Help Achieve Consistency With the "Protection of Character" Goals in the POCD

20. Page 8-25 – DELETE: ~~*F.*~~ ~~*Maximum Building Height for a Multifamily Residence in an R20, R40 or R60 Districts is forty-five feet / 3.5 Stories*~~

21. Page 8-25 – ADD: F. Refuse Management:

1. The design shall ensure that individual refuse containers, if any, are stored or screened so they are out of view on non-pickup days.

2. Dumpsters, if any, shall be screened and located near the apartment units.