

**LANDMARK INVESTMENT GROUP, LLC
TEXT AMENDMENT APPLICATION
December 3, 2020**

**PARTIAL APPROVAL OF APPLICATION FOR
TEXT AMENDMENT TO §32 OF THE EAST LYME ZONING REGULATIONS**

WHEREAS, on June 26, 2020, Landmark Investment Group, LLC, and Jarvis of Cheshire, LLC (“Applicant”) filed with the East Lyme Zoning Commission (“Commission”) an “Application for Text Amendment Revision to Section 32 the East Lyme Zoning Regulations (“Regulations”) to Replace ‘Preliminary Site Plan/Final Site Plan’ with ‘Master Plan’ as used in Gateway Development” (“Application”); and

WHEREAS, on October 31, 2011 Superior Court Judge Stephen Frazzini issued a Memorandum of Decision and Remand Order (“Decision”) in the matter of *Landmark, LLC v. East Lyme Zoning Commission*, HHB CV 06-4016813S, Superior Court of Connecticut, Judicial District of New Britain; and

WHEREAS, Judge Frazzini instructed the Commission to adopt amendments to §32 consistent with the Decision and incorporating the Applicant’s proposed amendments; and

WHEREAS, the Decision held that the Commission may require that an affordable housing applicant provide adequate information that would allow the Commission to adequately evaluate the proposed development to ensure its harmony with the relevant environmental, health and safety considerations and other considerations which it may consider (“Relevant Evidence”); and

WHEREAS, the Decision further held that the Commission shall use its own expertise and judgment as to what constitutes the Relevant Evidence, and at what stage in the affordable housing development process the Relevant Evidence would be required; and

WHEREAS, on June 1, 2012 the Applicant submitted an application to amend §32 consistent with its prior proposed amendments and the Decision; and

WHEREAS, following negotiations and an appeal to the Superior Court, the current version of §32 was agreed upon by the Applicant and the Commission; and

WHEREAS, pursuant to the current §32 an affordable housing application can be initiated by the filing of either a Conceptual Site Plan (“CSP”), a Preliminary Site Plan (“PSP”) or a Final Site Plan (“FSP”); and

WHEREAS, pursuant to the current §32 the designation of land as an Affordable Housing District (“AHD”) cannot be approved without the Commission also approving an FSP; and

WHEREAS, pursuant to the current §32 at the Preliminary Site Plan (“PSP”) stage an applicant is required to provide information as to how water and sewer will be provided to the proposed development, consistent with the Decision; and

WHEREAS pursuant to the current §32 at the PSP stage an applicant is required to provide a statement describing any impact on public health and safety, including emergency services (“Impact Statement”), consistent with the Decision’s holding regarding Relevant Evidence; and

WHEREAS, on June 26, 2020 the Applicant filed the proposed text amendment (“Amendment”); and

WHEREAS, the Amendment was the subject of a properly noticed public hearing that opened on October 1, 2020 and closed on October 15, 2020; and

WHEREAS, during the public hearing the Commission heard hours of testimony and 16 exhibits were entered into the record; and

NOW THEREFORE, the Commission makes the following findings regarding the proposed Amendment:

1. The Amendment adds three classes of building elevations to §32.4.2;
2. The Amendment delineates setbacks and buffer areas from existing open space in §32.4.5 through §32.4.7;
3. The Amendment notes that an affordable housing application can be initiated by filing either a Conceptual Site Plan, an Affordable Housing Master Development Plan (“MDP”) or a Site Plan (“SP”);
4. The Amendment deletes the existing classification of Preliminary Site Plan in favor of “Master Development Plan”, as that concept is used in §11A of the Regulations regarding the Gateway Planned Development District;
5. The Amendment deletes the existing requirement that an application for rezoning as an affordable housing district cannot be approved without an approved Final Site Plan;
6. The Amendment limits the types of coastal zone resources required at the MDP (currently PSP) stage;
7. The Amendment limits the type of storm water management plan information required at the MDP (currently PSP) stage;
8. The Amendment totally eliminates the requirement that an applicant provide an Impact Statement at any stage in the application process;

9. The Amendment eliminates the requirement that an applicant provide information regarding the provision of water and sewer services.
10. The Applicant has represented that an MDP as set forth in the Amendment is the functional equivalent of an existing PSP.
11. As set forth in §11A of the Regulations, the MDP is a concept intended for the development of multiple parcels in a mixed-use development featuring both residential and commercial elements. An MDP is not applicable to an affordable housing development that does not have a commercial component.
12. Pursuant to the Decision, the Commission has the discretion to require from an applicant information to allow the Commission to evaluate the relevant environmental, health and safety considerations of a proposed development and at what stage such information may be required.
13. Eliminating the requirement that an applicant provide an Impact Statement is contrary to the Decision, which provides that the Commission has the discretion to decide what evidence it would require to properly assess health, safety and environmental impacts of a proposed development, and at what stage such evidence would be required.
14. The Applicant represented that the types of information contained in the Impact Statement are also required for Site Plan approval pursuant to §24 of the Regulations.
15. The types of information contained in the Impact Statement are not contained in or required by §24 of the Regulations regarding site plans.
16. The Amendment as written does not allow the Commission to require information that would allow it to evaluate the health, safety or environmental concerns regarding a proposed affordable housing development at any stage in the application process, which is contrary to the Decision.
17. The Amendment as written provides for the approval of an application to rezone an area to an Affordable Housing District without allowing the Commission to first evaluate evidence regarding the health, safety or environmental concerns regarding a proposed affordable housing development, which is contrary to the Decision.
18. Information regarding the provision of water and sewer service is required to be provided with a Site Plan application pursuant to §24 of the Regulations.
19. In making its decision the Commission has considered all evidence in the record.
20. When considering a text amendment to its Regulations the Commission acts in a legislative capacity and is invested with broad discretion.
21. The Commission has very broad discretion when refusing to add or delete provisions from its own valid regulation.

BE IT FURTHER RESOLVED, that based on the foregoing findings and the evidence in the record, the Commission hereby APPROVES ONLY the following the text amendments to §32 of the East Lyme Zoning Regulations:

1. The proposed amendments to §32.4.2 are APPROVED.
2. The proposed amendments to §32.4.5, §32.4.6 and §32.4.7 are APPROVED.
3. All other proposed amendments are DENIED.

The text of §32 of the Regulations shall henceforth read as follows (amendments in bold type:

SECTION 32

AFFORDABLE HOUSING DISTRICT

32.1 GENERAL DESCRIPTION AND PURPOSE: A district designed to provide for, encourage and accommodate affordable housing, as defined by the Connecticut General Statutes Section 8-39a and Section 8-30g, *et seq.*

32.2 DESIGNATION OF AFFORDABLE HOUSING DISTRICT: An Affordable Housing District (AHD) may be proposed for and located on parcels of land, or combinations of adjacent parcels of land, containing at least ten (10) acres.

32.3 PERMITTED USES: The following uses of buildings and/or land and no others shall be permitted subject to site plan approval in accordance with Section 24:

32.3.1 An affordable housing development, as defined in Connecticut General Statutes Section 8-30g. The development may consist of single-family or multi-family dwellings arranged on single or multiple lots within the District.

32.3.2 Accessory uses customarily incidental to the above permitted uses.

32.4 DIMENSIONAL AND BULK REGULATIONS

32.4.1 LOT SIZE: Lots for single-family dwellings shall contain no less than ten thousand (10,000 square feet). Lots for multi-family dwellings shall contain no less than ten (10) acres.

32.4.2 **HEIGHT: The maximum from first floor finish elevation to the roof soffit shall be:**

A. Single Family Detached Dwellings: thirty-five (35) feet

B. Townhouse or Garden Style Dwellings: forty (40) feet

C. Multi-family Dwellings serviced by an elevator: fifty (50) feet.

32.4.3 MULTI-FAMILY UNIT DENSITY: The maximum number of multi-family dwelling units permitted on any lot shall be as follows:

1 bedroom: 5,445 square feet / unit (8 units / acre)

2 bedrooms: 7,260 square feet / unit (6 units / acre)

3 or more bedrooms: 8,712 square feet / unit (5 units / acre)

On lots to which public sewer and water facilities are not available, the maximum density of multi-family dwelling units shall be one unit per ten thousand (10,000) square feet of land.

32.4.4 **FRONTAGE:** Each lot and/or land area shall have not less than fifty (50) feet frontage.

32.4.5 **SETBACKS:** No new building or structure shall be placed less than one hundred fifty (150) feet from the street line or less than one hundred (100) feet from the boundary of any other lot or parcel outside of the AHD, unless such lot or parcel is (1) already zoned for multi-family residential uses, or (2) designated as open space, in which case the Commission may require setbacks of not less than twenty-five (25) feet from the adjacent boundary line.

32.4.6 **BUFFERS:** A suitable landscaped buffer strip not less than one hundred (100) feet wide shall be provided along the boundary of any other lot or parcel outside of the AHD, unless such lot or parcel is (1) already zoned for multi-family residential uses, or (2) designated as open space, in which case the Commission may require setbacks of not less than twenty-five (25) feet from the adjacent boundary line.

32.4.7 **BUFFER AREA:** There shall be provided a landscaped side or rear yard buffer area of at least one hundred (100) feet in width adjacent to the boundary of any other lot or parcel outside of the AHD, unless such lot or parcel is (1) already zoned for multi-family residential uses, or (2) designated as open space, in which case the Commission may require setbacks of not less than twenty-five (25) feet from the adjacent boundary line. All buffer areas shall be planted or preserved in a natural state in a mixture of evergreen and deciduous trees and shrubs and shall be maintained in proper order so as to protect adjacent properties and present a reasonably opaque, natural barrier to a height of ten (10) feet.

32.4.8 **GROUPING:** The minimum distance between any two (2) structures shall be twenty-four (24) feet, unless the Commission finds that the design of the proposed development would be benefited by closer spacing.

32.4.9 **YARDS**

Front Yard: 25 feet

Side Yard: 25 feet

Rear Yard: 50 feet

32.4.10 **LOT COVERAGE:** The total lot coverage of all buildings and structures on any lot shall not be greater than thirty (30) percent of the lot area.

32.4.11 **TIDAL WETLANDS:** A 150' non-disturbed buffer shall be required from tidal wetlands and watercourses.

32.5 **OFF-STREET PARKING:** Off-street parking and loading spaces shall be provided in accordance with the provisions of Section 22 of these regulations. Spaces within garages shall count towards the required minimum number of spaces.

32.6 **OPEN SPACE:** For any affordable housing development, an area equal to ten (10) percent of the total lot area shall be set aside as open space. Buffer strips required pursuant to Section 32.4.6 shall be included in the computation of open space.

32.7 AFFORDABLE HOUSING RESTRICTIONS

Prior to the issuance of any building permit for a development approved pursuant to this Article, there shall be recorded in the East Lyme land records a document entitled "Affordable Housing Development Restrictions," executed by the owner of the AHD; dated, witnessed, and acknowledged in the manner required for deeds; containing a real estate description of the AHD and containing substantially the following language in accordance with General Statutes Section 8-30g *et seq.*:

Not less than thirty (30) percent of the dwelling units of a development in the AHD will be conveyed by deeds containing covenants or restrictions ("deed restrictions") which shall require that such dwelling units shall be sold or rented at or below prices which will preserve the units as housing for which persons pay thirty (30) percent or less of their annual income, where such income is less than or equal to eighty (80) percent of the median income. Such restrictions shall remain in force for at least forty (40) years after the initial occupation of the proposed development.

Within the AHD herein described, not less than fifteen (15) 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 (60) percent of the median income. The remainder of the dwelling units conveyed subject to the deed restrictions shall be sold or rented to persons and families whose income is less than or equal to eighty (80) percent of the median income.

"Median income" means, after adjustments for family size, the lesser of the state median income or the area median income for the area in which East Lyme is located, as determined by the United States Department of Housing and Urban Development.

32.7.1 The owner of the land and buildings within the AHD may, during such forty (40) year period, change the designation of which units within the AHD shall be maintained as affordable, provided that the minimum thirty (30) percent set aside shall be maintained, and the AHD as a whole shall continue to comply with the provisions of these restrictions.

32.7.2 These restrictions may be enforced by the applicant or by the East Lyme Zoning Official or the East Lyme Housing Authority, or any other suitable town agency selected by its Board of Selectmen.

32.8. PHASED APPROVAL: The applicant may request an approval of the development plan to be completed in stages. The minimum amount of land to be included within any single stage of development shall be five (5) acres. Each stage shall be capable of independent existence without the completion of succeeding stages. Buffer requirements shall not apply to the common line between stages of development. Each phase must contain the required percentage of affordable units.

32.9 GENERAL PROVISIONS

An application for designation as an AHD may be initiated in three ways: (i) a conceptual site plan in accordance with General Statutes Section 8-30g; or (ii) an application for approval of a Preliminary Site Plan ("PSP"); or (iii) an application for approval of a Final Site Plan ("FSP"). The Commission shall have the discretion to hold a public hearing on

an application for approval of a PSP and/or on an application for approval of a FSP. An application for designation as an AHD cannot be approved without an approved FSP.

32.9.1 PRELIMINARY SITE PLAN: The purpose of a PSP is to require the submission to the Zoning Commission of information sufficient to allow it to evaluate a development plan for under the standard of §8-30g, and to allow an applicant to defer, until approval is granted, completion of details and specifications that will define what is to be built but are not essential to §8-30g analysis. Therefore, a PSP submitted with an application to rezone an eligible parcel or parcels of land as an AHD shall contain the following:

- A. An A-2 property line survey.
- B. Topographical contours at ten (10) foot intervals.
- C. Location of wetlands, watercourses, and slopes in excess of twenty-five (25) percent.
- D. General layout of all proposed buildings and structures.
- E. Areas proposed for open space and/or recreational purposes.
- F. Sewage disposal and water supply locations and system, ownership, operation, and maintenance.
- G. Preliminary storm water management plan;
- H. Coastal zone resources information.
- I. Traffic impact statement or report.
- J. Preliminary design plans for all proposed buildings and structures.
- K. A table showing the number of units and number of bedrooms for each unit.
- L. An Affordability Plan containing all of the documents and information required by General Statutes Section 8-30g.
- M. A list of all coordinate permits and approvals needed by the applicant before beginning construction
- N. Soil types from the New London County Soil Survey.
- O. A statement describing any impact on public health and safety, including emergency services.

32.9.2 FINAL SITE PLAN: An application for FSP approval shall contain all of the information required for a PSP, as well as any additional information that may be required for site plan applications under Section 24 of these Regulations. An application for FSP approval shall also demonstrate that (a) public water and sewer can serve the entire development, or (b) community septic and water can serve the entire development, or (c) a combination of public and onsite or community water and waste disposal can serve the entire development.

32.9.3 DECISIONS ON SITE PLAN APPLICATIONS: If the applicant submits an application for approval of a PSP in connection with an application for designation of an AHD, the Commission shall either approve, approve with modifications, or deny said PSP at the time it acts on the proposed AHD designation. If the PSP is approved, or approved with modifications, the applicant shall file an application for approval of an FSP, which application shall include all information required under Section 24 of these Regulations for a site plan application. If the FSP conforms to the PSP as approved, and includes all information required by section 24 of these Regulations, the Commission shall approve the FSP. If the applicant submits an application for approval of an FSP in connection with an application for designation of an AHD without having first obtained PSP approval, the Commission shall either approve, approve with modifications, or deny said FSP at the time it acts on the proposed AHD designation.