

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

**DENIAL 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 THEREFORE RESOLVED**, that based on the foregoing and the evidence in the record, the Commission hereby DENIES the Application for a text amendment to §32 of the East Lyme Zoning Regulations.