

Town of East Lyme, Connecticut
Affordable Housing Study & Plan

Review and Analysis:
Recommended Modifications to the Zoning Regulations



July 8, 2022

Prepared by:
Donald J. Poland, PhD, AICP
Managing Director, Urban Planning & Strategy
Goman + York Property Advisors, LLC
1137 Main Street
East Hartford, CT 06108
dpoland@gomanyork.com
www.gomanyork.com



Section I. Introduction

As part of the research and analysis for the East Lyme Affordable Housing Plan, Goman+York conducted a comprehensive review of the Zoning Regulations to identify provisions and requirements that may be impediments to housing and affordable housing. This review was conducted from the perspective of a land use planner who regularly represents both municipal agencies and private developers regarding land use planning and land use approvals for housing developments, including affordable housing. Having worked on both sides of housing and land use process, we have a unique understanding and perspective to how regulatory provisions can encourage or discourage housing development. Key to understanding the impediments that land use regulations may create is the recognition that housing development is a form of real estate investment and housing investments flow to location of demand, reasonable returns, and least resistance. Therefore, the most common regulatory impediments to housing, especially affordable housing, are provisions that result in excessive costs or high risk. Provisions that create excessive costs undermine financial feasibility and returns on investment, while provisions that create higher risk undermines predictability and investor confidence.

Provisions that inflate costs are typically requirements that appear innocuous but result in higher land or construction costs. Provisions that create higher risk are typically procedural requirements that also appear innocuous but result in greater subjectivity in the approval process that undermines both predictability and confidence. This is critical to understand since all investments trade in the currency of predictability and confidence. If there is little or no predictability in the investment, then investor confidence is diminished. Without confidence, investment does not occur. This is especially true with the high-risk nature of speculative real estate development. The greater the costs, the less the returns. The greater risk, the less the confidence to invest.

Recognizing the dynamics of cost and risk are also critically important to understanding the role of government regulations and how such regulations impact financial feasibility, predictability, and confidence. However, we must be cautious not to misinterpret or simplify the regulatory impacts on cost and risk or the role of government regulations on investment. As government, it is not our role to judge costs (or returns) or the risks of the private investors and developers—government simply needs to understand the dynamics of cost and risk. Government’s regulatory role is to protect public health, safety, and welfare; to conserve the value of property; to foster an environment of equitable access; and regarding affordable housing, to provide a social-safety net for those populations in need or at risk. Most important, from a regulatory perspective, government does not need to provide a subsidy for housing. From a regulatory perspective, government simply needs to remove impediments that obstruct the market from fulfilling both demand and need for housing. Therefore, regulatory improvements are a proactive, low cost, and low risk intervention that government can take to improve opportunity and access to housing and affordable housing.



DONALD J. POLAND, PHD, AICP

MANAGING DIRECTOR, URBAN PLANNING

dpoland@gomanyork.com – 860.655.6897 – www.gomanyork.com

Section II. The Dynamics of Zoning and Housing Investment

It is important for the Planning and Zoning Commission and the community to understand the role zoning regulations can play to encouraging investment, specifically housing investment. *All codes and regulations impact market supply and demand and create regulatory impediments to development (investment)*. In addition, the land use application and permitting process adds time and money to the process of real estate development—increasing both costs and risks. Therefore, zoning and the permitting process can and do affect the flow of investment into a community.

The primary reason for zoning regulations is to protect the public health, safety, and general welfare, and conserving the value of property. In addition, zoning regulations function as tools that can aid a community in implementing the comprehensive plan (i.e., Plan of Conservation and Development), including the need for housing. Therefore, zoning regulations must strike a balance between market demands, private sector investment interests, property owner rights, and the needs, wants, and vision of the community.

Many, if not most commissions and communities have experienced applications and developments that either did not turn out as expected or were misrepresented by a less than honest developer. While such experiences are the exception, not the norm, they have a meaningful impact on land use commissions and the community, often creating a sense of distrust. More important, these negative experiences typically result in commissions feeling a lack of control over the outcomes of the land use approval and development process. This loss of control (real or perceived) often results in the creation of more restrictive regulatory provisions and more cumbersome application requirements based in the hope that such provisions will protect the community from getting ‘burned again’ in the future—an attempt to regulate for the worst-case scenario.

This is critically important to understanding the role of regulations and walking the fine line between community interests, restrictive regulations, and creating positive change through real estate investment. The goal, the balancing act, is to craft regulations that are intentional in their aim to protect community interests and conserve property value, while cultivating an environments and culture of investment and continuous improvement.

Section III. Zoning Regulation Review – Findings and Recommendations

Keeping the above introduction and discussion of the dynamics between regulations and investment in mind, this section presents our findings related to the regulatory provisions in East Lyme’s Zoning Regulations that we identify as being potential impediments to housing and affordable housing—impediments to investment. The following are two important points that provide context to our findings and recommendations. First, regarding specific impediments discussed below, the remarks are not intended to be criticisms of East Lyme’s Zoning Regulations, Commission, or Staff. The fact is, much of what is discussed below are common in the zoning regulations across many, if not most, communities in Connecticut. Simply stated, East Lyme and its regulations are not unique.



Second, East Lyme’s zoning regulations are comparatively much better than most zoning regulations that we review. In fact, we were pleasantly surprised by the elegance of East Lyme’s Zoning Regulations and limited provisions what we view as impediments. Simply put, East Lyme’s Zoning Regulations overall are not a substantial impediment to investment or housing. However, the Regulations can benefit from review, recommendations, and modifications.

Our findings below are mostly aimed at nuanced aspects of provisions and impediments that often result from a limited understanding of the dynamics and complexities of real estate development and the effects of regulatory provisions on the cost and risk of development. Therefore, the following are provisions that we view as rising to a level of being potential impediments to investment. In addition, the recommendations are changes that we believe would improve the Regulations and better encourage and allow housing and affordable housing—housing investment.

1. **Purpose:**

- **Finding:** The Purpose section of the regulations does not include the statutory language regarding providing for multi-family and low- and moderate-income housing or the recent statutory language on “affirmatively forwarding fair housing.”
- **Recommendation:** Add such language to the Purpose section.

2. **Plan:**

- **Finding:** The Plan section of the regulations references the character of districts. If this language remains, due to recent changes in statutory language, the regulations must describe the character of each district.
- **Recommendation:** Add language to describe the character of each district.

3. **Section 1. Definitions:**

- **Finding:** Affordable housing is not defined.
- **Recommendation:** Define affordable housing in accordance with 8-30g.

4. **Accessory Apartments:**

- **Finding:** Accessory apartments are simple, low-cost, and low-risk approach to providing greater diversity in housing, more rental units, and more affordable housing options without negatively impacting the character of neighborhoods or community. This is especially true in communities such as East Lyme that have both low-density large lots and higher density village settings.



- **Recommendation:** Consider allowing Accessory Dwellings and provide an Accessory Dwelling provision to guide their utilization.
- 5. **Missing Middle Housing:** The provisions allowing two-family dwellings is very good and positive.
 - **Finding:** Unfortunately, the provisions requiring increased lot size for two-family dwellings does create an impediment.
 - **Recommendation:** Consider remove the increase lot size provisions.
- 6. **Mixed Use Dwellings:** The provisions allowing mixed-use dwelling in commercial zones are very good and positive.
 - **Finding:** Unfortunately, the provisions requiring increased lot size for such units, and the increased lot size per bedroom create impediments.
 - **Recommendation:** Consider removing the increase lot size and per bedroom increase lot size provisions.
- 7. **Mixed Use Dwellings (GPDD):** The provision allowing mixed-use dwelling GPDD is very good and positive.
 - **Finding:** Unfortunately, the provision requiring such units above offices or businesses and prohibiting stand-alone residential units are impediments.
 - **Recommendation:** Consider removing such provisions. We have found that most mixed-use developments combine commercial and residential on the same site as stand-alone or as townhomes utilizing the ground floor. It is very uncommon to find residential over retail.
- 8. **Parking Requirements – Multi-Family:**
 - **Finding:** The multi-family parking requirements are excessive by today's standards and create an impediment.
 - **Recommendation:** Consider changing the required parking for multi-family units to simply 1.5 or 1.75 spaces per unit, regardless of unit bedroom mix and eliminate the required visitor parking.
- 9. **Minimum Residential Unit Size Provisions:** The various provisions for Minimum Residential Standards are highly restrictive, conflict with market trends, artificially inflate housing cost (undermining financial feasibility), and imposes idealized middleclass values of space upon all households.
 - **Finding:** While such minimum floor area requirements have been common in zoning, they are no longer legal in Connecticut (see Public Act 21-29).
 - **Recommendation:** Consider removing all such provisions. We also recommend removing the provision that requires all multi-family, multi-story dwellings to be equipped with elevators. This can be a substantial financial impediment.
- 10. **Conservation Design Development:** We have seen a number of high-end residential developments utilizing duplex and tri-plex units in recent years.



- **Finding:** So long as the number of bedrooms does not exceed 16, multiple units can exist on single septic system and not be considered a community system. Therefore, duplex dwellings provide an opportunity to add density to conservation or cluster developments.
- **Recommendation:** Consider a provision that would allow 30% or 40% of the units in a Conservation Design Development to be duplex units.

Section IV. Understanding Permitted and Conditional Uses

The aim this section is to provide context and understanding to the purpose and differences between as-of-right and conditional uses (special permits). Conditional uses create subjectivity in the land use approval process that often undermines predictability. Therefore, East Lyme, as we recommend to all communities, should seek to reduce the overreliance on conditional uses and limit the number of conditional uses. The fact is conditional uses (special permits) should be reserved for those exceptional uses that create real concern for negative impacts to neighboring properties and the community. Most housing does not create such elevated risks or concerns. Allowing more housing development as-of-right—not by special permit—would reduce investor and developer risk, result in lower costs, and create greater investment and affordability. The following explains the differences between as-of-right and conditional uses.

As-of-Right Uses (Site Plan): Uses that are allowed as-of-right (approved by staff zoning permit or approved by commission site plan) and by law do not require a public hearing because the requirements and measures for compliance are clearly stated in the regulatory provisions of the regulations. Such uses and approvals are not subjective, the proposed application either complies with the regulations or does not comply.

As-of-right uses are (and should be) the uses a community most wants to encourage—investment flows to the path of demand, certainty, and least resistance. Permitted uses (by zoning permit or site plan) are as-of-right uses, which indicates that if the use (and application) complies with the requirements of regulations (i.e. bulk, area, site design, etc.), then the use must be approved. Therefore, as-of-right uses (site plan applications) should not include subjective provisions, conditional criterion, or public hearings that subject the application beyond what is required in the regulations.

Conditional Uses (special permits and special exceptions): Uses that are allowed via a conditional permitting process (by commission) and by law require a public hearing because of the conditional and subjective nature of the requirements and approvals. Section 8-2 of the Connecticut General Statutes (CGS) states that the zoning commission:

“may provide that certain classes or kinds of buildings, structures or uses of land are permitted only after obtaining a special permit...subject to standards set forth in the regulations and to conditions necessary to protect the public health, safety, convenience and property values.”



DONALD J. POLAND, PHD, AICP

MANAGING DIRECTOR, URBAN PLANNING

dpoland@gomanyork.com – 860.655.6897 – www.gomanyork.com

The law governing conditional uses (special permits) recognizes that while a use may be desired and acceptable in a certain zoning district, the use (based on unique characteristics and qualities of the use) may not be suitable in *all locations* within said zoning district. Therefore, the Commission may establish specific standards (and conditions) in the regulations that must be demonstrated (by the applicant) and complied with before the conditional use (special permit) is approved. It is these conditions and standards—the conditional and subjective nature of the application—that necessitate the need for a public hearing.

When considering any application for special permit, the Zoning Commission: “must determine that;

- (1) the proposed use of the property is expressly permitted under the zoning regulations,
- (2) the standards in the regulations are satisfied, and
- (3) any conditions necessary to protect public health, safety, convenience and property values as provided by Section 8-2 of the CGS can be established”

If all three requirements are satisfied, the Commission must approve the application.

Section V. The Land Use Permitting Process

When performing this kind of review of land use regulations, we are typically critical of cumbersome and burdensome application and permitting processes. In this regard, aspects of the East Lyme’s permitting processes could be viewed as such. However, as discussed above, East Lyme’s regulations do an excellent job at firmly asserting community values, establishing high expectations for design and development, and providing provisions aimed at protecting the community. However, we believe it critical that East Lyme work to ensure its land use approval process maintains fairness and predictability. Simply put, we believe that all communities should strive to provide a land use approval process that is simple, swift, and certain.

Therefore, we wish to conclude this review with a framework to help East Lyme understand, maintain, and manage an effective land use approval process. To accomplish this, we leave you with a reference and summary that provides perspective as to how to accomplish this. Understanding what applicants—residents, developers, and investors—want and expect from the land use approval process can be helpful in creating the regulations, application procedures, and administering the permitting. The article, “The Development Review Process: A Means to a Noble and Greater End” published in *Zoning Practice* by the American Planning Association, identifies an insightful list and explanation of what applicants want and expect from the permitting process.



What Applicants Want

1. Predictability

- Clear expectations, no surprises
- Clear process and decision points

2. Fair Treatment

- Rules are the same for everyone
- No “good” or “bad” developers—offer trust and be trustworthy

3. Accurate and Accessible Information

- Easy to find and understand
- Clear application requirements and standards

4. Timely Process

- Establish early tentative dates for hearings
- Guaranteed review turn-around times
- Published commission and council meeting dates

5. Reasonable and Fair Costs

- Application fees
- Development commitments
- Impact fees

6. Competent Staff

- Staff team should have a balance of “hard” technical skills and “soft” people skills

7. Elegant Regulations

- That fit
- That are easy to navigate
- That are rational
- The most desired outcomes are easy to meet

This summary offers a framework that East Lyme should consider and follow. It is what land use agencies should strive to achieve through their administration of the land use approval process. In addition, it offers insights into other aspects of the process such as fees, treatment, and regulations. We provide this as tool for East Lyme to consider and use in the future when creating regulations, policies, and procedures.