

**Proposed Text Change**

**Note:** Proposed new language is shown highlighted and underlined.  
Proposed deletions are shown ~~bracketed and struck through~~.

**To Amend §39A (Inclusionary Housing Overlay District (IHZ), to read as follows:**

...

**39A-21 Increased Residential Development**

At the sole discretion of the Planning and Zoning Commission: In order to further increase the diversity of housing choices, developments containing more than seventy percent (70%) residential, in the non-residential zone, may be allowed the following special standards provided there is at least one (1) underground space per unit, and the total coverage is reduced to 65%:

- a. 17 units per gross acre throughout the entire site provided the density is equal to or less than that allowed under Sections 39A-5 and 39A10.1;
- b. Patios and play areas may be allowed up to five feet (5') encroachment into side and rear setbacks when adjacent to non-residential zoned properties and adequately screened to the satisfaction of the Planning and Zoning Commission;
- c. Three (3) Stories and thirty five feet (35') throughout the site as measured from existing average grade;
- d. Twenty five percent (25%) Building Coverage throughout the entire site with retaining walls and patios exempt unless modified by g. below;
- e. 30% non-residential Floor Area requirement §39A-10.1.2 may not apply unless modified by g. below;
- f. Limitations of Excavation and Filling of Land in §32-8.2 & §32-8.3 shall not apply to sites incorporating public sidewalks and underground parking; [MAY BE DELETED IF 32-8 IS REVISED]
- g. Maximum Building Size in §24-8.1 shall not apply where the Planning and Zoning Commission, in conjunction with input from the Architectural Review Board, determines that the increase in size is proportional to the lot size, shape, location, orientation, adjacency to other residential properties, and serves to encourage efficient use of underground parking;
- h. Drive aisles may not be less than twenty-two (22') feet in width.

Applicants may elect to pursue a General Development Plan simultaneously with an IHZ Zone Change.

**To Amend §32-8 (Excavation and Filling of Land), to read as follows:**

32-8 Excavation and Filling of Land

Within the Town of Westport, the excavation of land, stockpiling of earth products on a site and/or filling of land with earth products such as, but not limited to: topsoil, loam, sand, gravel, clay, stone minerals or fuel is permitted in any Zoning District subject to **the following:** ~~[Special Permit and Site Plan approval in accordance with §43]~~

**32-8.1 [Activities that require an Excavation & Fill Permit and Exempt] Permitted Excavation and Filling of Land**

32-8.1.1

**The following excavation and fill activities are allowed subject to Zoning Permit approval and shall conform to the standards listed in §32-8.2 and §32-8.3.**

~~[All regrading of properties regardless of the amount of disturbance or quantity of material involved shall require Site Plan and Special Permit approval by the Planning & Zoning Commission for an Excavation & Fill Permit except as noted below.]~~

**32-8.1.2**

~~Exemptions: The following activities shall be exempt from requiring an Excavation & Fill permit but shall conform to the standards listed in §32-8.2 and §32-8.3.~~

- a. Excavations or filling of earth products in connection with the construction or alteration of a principal building or structure, Accessory Dwelling Unit, detached garage, swimming pool, tennis court, sports court, septic fields or driveway. ~~on the same premises no more than 25 feet from said activity provided a zoning permit or health permit has been issued for such construction, alteration or activity and such work is specified in said permit.~~
- b. Excavations or filling of earth products in connection with the construction or alteration of subsurface drainage systems. ~~on the same premises no more than 5 feet from said activity provided a zoning permit or health permit has been issued for such construction, alteration or activity and such work is specified in said permit.~~
- c. Construction, grading or changing of contours in accordance with plans for the same that have been approved by the Planning & Zoning Commission, covering the roads, lots and other improvements in an approved Subdivision, Site Plan or Special Permit application.
- d. Municipal activities involving roadways, bridges, culverts or other infrastructure for the purpose of maintenance, repair, realignment, reconstruction or public safety projects as listed in this subsection that by necessity involve extending excavation or fill onto private property where grading rights have been obtained.
- e. Construction of a retaining wall, ~~used solely for the purpose of constructing a driveway or roadway.~~
- f. Construction of approved shoreline flood and erosion control structures.
- g. The placement or installation of utility lines or services.
- h. **A Zoning Permit is not required for** incidental filling, grading or excavation in connection with maintenance or repairs to a property **and customary landscaping and temporary collecting, stockpiling and reuse of topsoil.**
- ~~i. Customary landscaping and temporary collecting, stockpiling and reuse of topsoil.]~~

**32-8.1.2**

**Alternately, a Special Permit request may be made to the Planning & Zoning Commission in accordance with §43 seeking the Commission's approval of the applicant's proposed excavation and**

fill activities subject to the following:

- a. Notwithstanding the standards in §32-8.2 and §32-8.3, the following standards shall apply:
  - i. No portion of the lot shall be filled or excavated to a height or depth greater than twenty (20) feet above or below the existing natural grade.
  - ii. The maximum amount of excavation or fill permitted on any lot shall not exceed an amount greater than that required to raise or lower said parcel twenty (20) feet above or below the existing natural grades over an area equal to 50% of the allowable Total Coverage (Residential Zones) or Building Coverage (Non-Residential Zones) in the respective zone. Split zoned properties shall calculate the maximum and proposed quantities based on the combined total of the underlying zones.
  - iii. Manmade earth slopes shall not exceed forty (40%) within 25 feet of any lot line and shall not exceed fifty (50%) over the remainder of the property.
- b. Submission of a site plan showing all proposed excavation and fill activities.
- c. Submission of a sediment and erosion control plan.
- d. Submission of an excavation and fill report, prepared by a licensed Professional Engineer, which shall include an excavation and fill narrative, indicate the quantity of all excavation and fill proposed, the maximum cut and fill heights, the maximum slopes proposed, a description of the proposed stabilization measures, existing and proposed watershed maps, and a detailed description of impacts to abutting properties with any necessary mitigation to eliminate adverse impacts.
- e. No objection from the Town Engineer of the site plan, sediment and erosion control plan, and excavation and fill report.

### 32-8.2 Excessive Fill Regulation

The purpose of this Section is to limit the total amount of excavation or fill allowed on any lot, to restrict the development of those parcels of land where an excessive amount of excavation or fill would be necessary to make the land developable and to prevent adverse drainage impacts on surrounding properties resulting there from:

#### 32-8.2.1 Excessive Excavation or Fill

- a. In any Residential Zoning District, the maximum amount of excavation or fill permitted on any lot of 10,000 square feet or more in area shall not exceed an amount greater than that required to raise or lower said parcel ten (10) feet above or below the existing natural grades over an area equal to 50% of the allowable Total Coverage in the respective zone.
- b. In any Non Residential Zoning District, the maximum amount of excavation or fill material permitted on any lot of 10,000 square feet or more in area shall not exceed an amount greater than that required to raise or lower said parcel ten (10) feet above or below the existing natural grades over an area equal to 50% of the allowable Building Coverage in the respective zone.
- c. For lots with fewer than 10,000 square feet in a Residential or Non Residential Zone, the maximum amount of excavation or fill shall not exceed 500 cubic yards and shall not exceed ten (10) feet above or below the existing natural grade in any location.

#### 32-8.2.2 Formula

The following formula shall be used to compute the maximum allowable excavation or fill amount: Lot Area (square feet) X 50% of Total Coverage percentage in Residential Zoning District or 50% of Building Coverage percentage in Non Residential Zoning District X ten (10) feet divided by 27 cubic feet/1 cubic yard = maximum allowable excavation or fill in cubic yards.

#### 32-8.2.3 Maximum Fill or Excavation Quantity

- a. No portion of any lot shall be filled or excavated to a height or depth greater than ten (10) feet above or below the existing natural grade.
- b. On any lot the total allowable quantity of fill permitted under §32-8.2, above, shall exclude any fill that is required by the [WWHD] Aspetuck Health District [under §32-8.2.4 below.]
- c. Excavation or fill within the footprint of the principal building, an Accessory Dwelling Unit (ADU) or swimming pool is exempt from this calculation.

- d. Fill height shall not exceed a ratio of 0.20 relative to the distance from the property line. ~~Excavation or fill of~~ Fill of driveways in front and side setbacks shall be exempt from this requirement.

#### ~~32-8.2.4 Limitation of Fill for Septic Systems~~

~~In instances where fill material is expressly required by Westport-Weston Health District for a septic system, both primary and reserve areas, the total area to be filled for septic purposes shall not be raised more than 4.0 feet above the existing natural grades at the time of application for either a Zoning Permit, Site Plan, Special Permit or Subdivision Application; except that the total amount of fill shall not exceed 1,185 cubic yards, based on an area of 100 feet X 80 feet = 8,000 square feet X 4 feet = 32,000 divided by 27 = 1,185 cubic yards.~~

#### ~~32-8.2.5 Maximum Fill Height for Septic Systems~~

~~When fill is required for a septic system, no portion of any lot shall be filled to a height greater than four (4) feet above the existing natural grade. The amount of fill permitted for a septic system shall be allowed exclusive of any fill allowed under §32-8.2, above.~~

#### 32-8.2.4(6) Total Maximum Excavation or Fill

The combined total maximum allowable quantity of excavation and fill on any lot shall not exceed the sum of the maximum quantities of excavation and fill allowed under §32-8.2 ~~and 32-8.2.5 above.~~ This shall be based upon the total excavation and fill, not the net change.

#### 32-8.2.5(7) Natural Existing Grades

The natural existing grades shall be either the contour of elevations based upon an up to date topography survey verified in the field with even numbered two (2) foot contour as a minimum, as may be amended from time to time, or the contour elevations and/or spot elevations as shown on an existing conditions survey map prepared by a Registered Land Surveyor. Said contours or spot elevations shall be based on North American Vertical Datum (NAVD) of 1988 datum.

Grades established using an Excavation and Fill application or Zoning Permit shall not be used to establish a new existing average grade for the purpose of measuring building height until five (5) years have passed from the date of approval.

#### 32-8.3 Standards

The proposed excavation or filling project, if approved, shall conform to the following standards:

##### 32-8.3.1

The premises shall be excavated and graded in conformity with the proposed contour plans as approved.

##### 32-8.3.2

All manmade earth slopes shall not exceed five (5) horizontal to one (1) vertical (20%) [unless approved by the Town Engineer]. Slopes of greater than 20% but no more than 35% may be permitted for sand dunes created as part of beach nourishment or replenishment projects, if recommended by CT DEEP Land and Water Resources Division due to site characteristics. (775, 03/30/2020)

There shall not be any grading or slope changes within five (5) feet of any lot line except for:

- a. The installation of driveways on all lots.
- b. New streets and driveways in approved subdivisions.
- c. The installation of public sidewalks as required under §34-11.2.4 and §35-2.2.4 or as required by the Connecticut DOT.

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#### 32-8.6 Additional Exemptions

Refer to Sections: §6-6.2.6, §19b-8.3, §19c-15, §25-14.7, §32-12.12.5, & §39A-15.4, §39A-21.

## Explanatory Statement

### **Proposed Text Change to Amend §32-8 (Excavation and Filling of Land) & §39A (Inclusionary Housing Overlay District IHZ)**

#### **Purpose/Benefits**

To help enhance opportunities for additional residential developments along U.S. route 1 and address the unintended consequences of §32-8 Excavation and Filling of Land and, we are proposing to amend:

- §39A by adding new standards for increased residential development opportunities.
- §32-8 to provide the necessary flexibility for developments that are pursuing Special Permit and Site Plan review by the Planning and Zoning Commission as well as simplify the approval process for activities that wouldn't ordinarily require a Special Permit approval

The changes also serve to address several goals and strategies highlighted in the Westport Plan of Conservation and Development, including:

#### 1.4.3 Promote Good Design, A Community Design, p. 30

- Maintain an architectural review process to help preserve and enhance the character of Westport and maintain the overall "sense of place."

#### 2.9.4 Improve Business Areas Along Route 1 p.76

- Require all new or redeveloped sites along the Post Road to install sidewalks and provide landscaping in ways to enhance the Post Road.
- Seek ways to modify the Zoning Regulations to encourage appropriate improvements and/or redevelopment along the Post Road, p. 78
- Consider the potential for some properties on the Post Road to accommodate mixed-use buildings and/or mixed-use developments (containing housing) in order to increase the variety of housing choices in locations with access to shopping and public transportation.

#### 3.10.1 Overview ("Westport's wide variety of housing types from modest homes and historic structures to grand manor homes is one of its strongest features."), p. 79.

#### 4.10.2 Maintain Residential Character, p. 80

- Protecting residential neighborhoods from encroachment by inappropriate uses, and
- Managing residential development and redevelopment and other activities on residential properties to ensure they are appropriate for the site and/or given the impacts on neighbors.

#### 5.10.4. Monitor Changing Housing Needs, p.85

- Seek ways to address changing housing needs while maintaining the character and integrity of Westport.

#### 6.17.2 Implantation Tools and Strategies

- Update regulations to implement POCD recommendation.
  - i. Enforce current regulations.

- ii. Undertake comprehensive review/revision of the Zoning Regulations.

## **Summary of Proposed Text Changes**

### **§32-8 (Excavation and Filling of Land)**

§32-8 & §32-8.1.1 – To allow minor projects to be approved through the Zoning Permit process rather than a Planning and Zoning Commission hearing, which will create a more streamlined process and ease on residents looking to make necessary improvements to their homes.

§32-8.1.2 - To allow a property owner the option to seek a Site Plan and Special Permit approval for developments that exceed the standards in §32-8.2 and §32-8.3 which will create design flexibility for developments to exceed these limitations where the PZC makes a finding that the site design is enhanced and does not create adverse impacts. This will help to avoid what have become customary variance applications for site improvements such as landscaping, sidewalks, underground parking, etc.

§32-8.6 – To reference other applicable sections of the regulations.

Currently Westport has 6 different references to provide relief from §32-8:

#### **§6-6.2.6 (Non-Conforming Automobile Dealership)**

Notwithstanding §32-8, grading within five (5') of a front property line may be allowed for removal, installation, and/or relocation of curb cuts, driveways, landscaping, sidewalks and parking subject to the approval of the Planning and Zoning Commission, and subject to the review of the Town Engineer. (755, 11/25/2018)

#### **§19b-8.3(Residential-Rental Housing Opportunity / Workforce Zone (R-RHOW)**

An application for site plan submitted pursuant to this [§19B](#) is not subject to [§32-8](#), [§32-12](#) and [§32-18](#).

#### **§19c-15 (Saugatuck Village District)**

Earth materials excavation, stockpiling of earth products, or filling of land with earth products, shall comply with §32-8 of these Regulations, provided that a separate Special Permit shall not be required; and as long as the excavation, stockpiling, processing, or filling otherwise complies with the Standards of §32-8.3, site plan approval shall constitute approval of the excavation, stockpiling, processing, or filling necessary to carry out the approved site plan, even if the depth, slope, man-made earth slopes, grading within five (5) feet of a lot line or quantity exceed the limits stated in §32-8.2.1 through §32-8.2.3; §32-8.2.6; or §32-8.3.2. (760, 07/24/2021)

#### **§25-14.7 Highway Service District (HSD) - 950**

§32-8 of these regulations shall not apply where the PZC, based on review and recommendation from the Town Engineer, makes a finding that the site design is enhanced while not creating any adverse impacts to abutting properties. Such enhancement may include landscaping, buffers, sidewalks, emergency access or other improved design features. ([787](#), 06/09/2021)

#### **§32-12.12.5 (Inclusionary Two-family and Multi-Family Dwellings) – Rogers Septic**

All standards listed in §32-8.2.3 shall be adhered to with the exception that a fill height ratio of up to 0.50 relative to the distance from the property line shall be permitted in the side and rear yard setbacks and within five-feet (5') of the property line to allow grading to create a landscape feature designed to provide screening to adjacent properties for Multi-Family dwelling use on a lot located within a split zone district involving the GBD and Residence A zone districts, and a proposal is to eliminate and/or abandon a nonconforming septic tank manufacturing company with associated contractor's yard use. ([772](#), 08/06/2019)

#### **§39a-15.4 Inclusionary Housing Overlay District (IHZ) – 1141 PRE**

Subject to the review and approval of the Town Engineer, excavation and filling of land shall comply with §32-8 of the Regulations, except that, for sites containing ALFCIL Facilities, grade changes over ten (10) feet, grading within five (5) feet of a property line, and slopes greater than twenty (20) percent may be allowed where the PZC makes a finding that the site design is enhanced while not creating any adverse impacts to abutting properties. Such enhancement may include landscaping, [buffers](#), sidewalks, emergency access, public safety, [flood](#) plain management or other improved design features.

The following summarizes the proposed changes and their potential application on the accompanying Zone Map Change, Special Permit, and Site Plan application for 455 Post Road East.

### **§39A (Inclusionary Housing Overlay District IHZ)**

**§39A-21 (Increased Residential Development)** To encourage opportunities for increased residential developments, at the sole discretion of the PZC, when total site coverage is reduced and underground parking is provided, consistent with existing bonuses in the IHZ (§39A-8.3).

**§39A-21.a.** to increase housing opportunities we are proposing to exempt the required 30% non-residential requirements.

**§39A-21.b.** to allow 17 units per gross acre throughout the site rather than having restricted density standards for each of the residential and non-residential portions of the property. Based on the demonstration site, 455 Post Road E, the existing regulations allow 30 units but restrict the number of units in each zone and force a less attractive design and makes underground parking more difficult. The proposed text would allow the same 30 units throughout the site and helps foster thoughtful design and underground parking.

**§39A-21.c.** to allow for residential patios to encroach up to 5' into the side or rear setbacks when adjacent to non-residential zoned properties. This helps to create additional outdoor spaces for residential developments where it does not impact adjacent residential neighbors.

**§39A-21.d.- §39A-21.e.** consistent with the existing IHZ zone, we are proposing a height of 3 stories and 35' and a building coverage of 25% throughout the site rather than different standards per zone. This helps to streamline the regulations and creates consistent design standards. We are also proposing to exempt retaining walls and patios from building coverage since they are site features due to topography and underground parking. These changes create the necessary flexibility for sloping sites where height and building coverage limitations do not foster better design.

**§39A-21.f.- §39A-21.g.** to increase housing opportunities we are proposing to exempt the required 30% non-residential requirements (39A-10.1.2).

We are also proposing to exempt the limitations of Excavation and Fill (§32-8.2 & §32-8.3) to allow flexibility of design to blend proposed grades without impacting adjacent neighbors or roadways, improve site lines, and to provide sidewalks on our Post Road frontage where variances would otherwise be required. This Section may be removed if the 32-8 text is approved.

**§39A-21.h** to allow driveways to be no less than 22' in width in order to provide necessary flexibility of design for residential developments. The proposed change is also consistent with §6-6.1.2.e. and Diagram 5 in §34.

To allow a General Development Plan application for residential developments when seeking an IHZ Zone Change.

## **Demonstration Site**

The demonstration site is 455 Post Road East (Parcel 1: D09/160/000 & Parcel 2: D09/161/000), consisting of a combined 1.77 acres of land fronting Post Road East and East Main Street. The site is currently improved with a 1-story building, detached building, shed, associated surface parking, and most recently occupied by the Connecticut Humane Society. The combined property is split-zoned located in the GBD and Residence A Zoning District.

With the implementation of the proposed Text Amendment the applicant will have the opportunity to redevelop the site into a residential building which would include up to 30 residential units, onsite affordable units, underground parking, and associated landscaping. The proposed development will enhance this stretch of the Post Road and provide much needed market rate and affordable homes, public sidewalks, and enhanced landscaping.