

TOWN OF EAST LYME
ZONING COMMISSION
SEPTEMBER 21, 2017
REGULAR MEETING MINUTES

FILED

Members Present:

Matthew Walker, Chairman
Norm Peck
George McPherson
Peter Lukas, Alternate (Sat for Meeting)
James Liska, Alternate (Sat for Meeting)
David McIlhenney, Alternate (Sat for Meeting)

SEP 25 20 17 AT 3:10 AM (PM)
J. Liska, ATC
EAST LYME TOWN CLERK

Members Absent:

John Manning
William Dwyer
Terence Donovan

Also Present:

Bill Mulholland, Zoning Officer
Rita Franco-Palazzo, Planning Representative
Rose Ann Hardy, Ex-Officio

CALL TO ORDER

Chairman Walker called the meeting to order at 7:34 p.m.

PLEDGE OF ALLEGIANCE

Chairman Walker led the assembly in the Pledge of Allegiance.

PUBLIC DELEGATIONS

There were no public delegations.

PUBLIC HEARINGS

There were no public hearings.

1) Public Act No. 17-155 Temporary Health Structure.

Attorney O'Connell came forward to explain Public Act 17-155 and provided copies for the membership to review (attached.) He explained the Act creates a new accessory use and is effective/applies to Zoning on October 1, 2017 unless the opt out option is chosen.

Mr. Walker asked about the background of the Act and Attorney O'Connell explained the impetus is an increase in the elderly population as well as the demand for more options for assisted living. These temporary health structures also known as "granny pods" house a mentally or physically impaired person and are not larger than five hundred gross square feet.

The Act states that a temporary health care shall be allowed as an accessory use in any single-family detached dwellings that is owned by a caregiver or mentally or physically impaired person and used as his or her residence. A permit will be required and the structure must be removed not later than one hundred twenty days after the impaired person no longer occupies the structure.

Attorney O'Connell further explained that a municipality, by vote of its legislative body- in our case, the Board of Selectmen may vote to opt out of the Act and the Zoning Commission will be making a recommendation for the Board of Selectmen to consider much like the Planning Commission does for the Zoning Commission for an 8-24 Referral.

Attorney O'Connell noted many communities are considering opting out of the Act so they don't end up with a one size fits all regulation and instead choosing to tailor their own regulations to deal with this topic.

Mr. Mulholland said he is concerned that every single-family dwelling in Town will be able to do this. From his perspective we already have this provision in our regulations but that doesn't mean there isn't room to do more.

Mr. Walker said we have an obligation to preserve our quality of life and value of our homes but in terms of an aging population we need to think outside the box a bit.

Mr. McPherson said he thinks we should opt out and adopt our own regulations.

Ms. Hardy shared that she's done quite a bit of reading on this and that it's very popular down south. These structures are not age specific so in the case of a young impaired person, the structure could be there for forty years. She added that the wheels of a trailer could be taken off and replaced with cinder blocks and fit the definition of a temporary health structure.

Mr. Mulholland said he thinks the core is solid but the language is hastily written and has room for abuse. He said we've allowed garage conversions and additions in attempt to address some of these concerns; these structures go from trailers to prefabs and are all over the map and we don't do architectural review in residential.

Mr. Walker said he thinks this should go to the Public and Ms. Hardy encouraged the Commission to act rapidly.

Mr. McIlhenney noted there might be a risk of not having the best quality building since this would typically be done to save money.

Motion (1)

Mr. Liska moved to hold a Public Hearing on October 5th, 2017 to discuss opting out of Public Act No. 17-155- Temporary Health Structure.

Mr. McPherson seconded the motion.

Mr. Peck said he's on the fence about this; he would like the Commission to emphasize that they want to hear from the Public on this.

Motion passed 6-0.

- 2) Application of Conway, Londregan, Sheehan & Monaco, P.C., applicant for John Drabik, Owner, for a Special Permit for the installation of a radio antenna on an Existing 40' tower, antenna to reach 120' in height, no change to existing tower/ Location at property identified in the application as 18 Drabik Road, East Lyme Assessor's Map 36.1, Lot 10.

This application has been withdrawn.

- 3) Application of Keith Neilson, P.E., for Docko, Inc., for Mr. and Mrs. Brice Craven, Owners, for a Coastal Area Management Review for shoreline improvements at 46 East Shore Drive, Niantic, Connecticut.

Mr. McPherson read Mr. Mulholland's letter dated August 3, 2017 into the record.

Mr. McPherson read the email from Marcy L. Balint of DEEP dated July 31, 2017 into the record.

Mr. Neilson came forward to describe the project. He noted how during Hurricane Sandy the waves were 5ft above the seawall. They decided to go through the Town process since the DEEP permit process would take a year. Mr. Neilson submitted new photos to illustrate how even inconsequential weather we received here from Storm Jose has led to high water levels.

Mr. Neilson explained that the existing seawall is not structurally sound and they are trying to be considerate of appearance while stopping the waves. Their proposal is to:

- Repair the stone seawall by removing facing and replacing it with new 8 inch thick reinforced concrete.
- Install a new concrete seawall cap on top of the seawall.
- Repair existing seawall brace as needed.
- Construct new buried seawall braces and back support.
- Landscape walls at north and south property lines with concrete reinforcement.

Mr. Neilson explained the seawall is a shoreline flood and erosion control structure which was built in 1925, is essential to the protection of the 1939 house and surrounded by residential properties.

The Commission discussed the application.

Mr. Neilson noted this work is being done because of what we saw during Hurricane Sandy which was only a 25 year storm. He said he feels the DEEP letter shows inconsistency to their own practices and insensitivity to waterfront property owners trying to protect their property.

Mr. Neilson said the wall is not to stop the water flow like the DEEP letter says; they are trying to stop the waves. The residence is at risk and that's the crux of their argument.

Mr. Walker said he thinks there is sufficient evidence in the record to approve this application.

Motion (2)

Mr. McPherson moved to approve the application of Keith Neilson, P.E., for Docko, Inc., for Mr. and Mrs. Brice Craven, Owners, for a Coastal Area Management Review for shoreline improvements at 46 East Shore Drive, Niantic, Connecticut for the following reasons:

- 1. Application is consistent with all-applicable goals and conditions of the CAM Act.**
- 2. Applicant has taken all reasonable measures to mitigate any adverse impacts of the proposed activity on both coastal resources and future water dependent uses.**
- 3. The repair as presented is necessary and unavoidable to protect the residential structure as well as the infrastructure behind it.**

Mr. McIlhenney seconded the motion.

Motion passed 6-0.

- 4) Application of Keith Neilson, P.E., for Docko, Inc., for Mr. Jonathan Korn and Ms. Grace Lo, owners, for a Coastal Area Management Review for shoreline protection improvements at 38 East Shore Drive, Niantic, Connecticut.**

Mr. McPherson read Mr. Mulholland's letter dated August 3, 2017 into the record.

Mr. McPherson read the email from Marcy L. Balint of DEEP dated July 31, 2017 into the record.

Mr. Neilson came forward to describe the project and submitted new photos as an exhibit; the photos show the property the letter discussed as well as the unsafe ladder they wish to replace with concrete steps. Mr. Nielson added the ladder is difficult to maintain. Their proposal is to:

- Repair the seawall by installing new 12 inch thick reinforced concrete.
- Install a new cap on top of the existing seawall.
- Construct new back support.
- Landscape walls at north and south property lines concrete footings.
- Construct concrete steps to top of footing with landing and rails.

Mr. Neilson explained the seawall is a shoreline flood and erosion control structure which was built in 1951, is essential to the protection of the 1939 house as is raising the top elevation since waves from Hurricane Sandy broke over the wall.

Mr. Walker and Mr. Nielson discussed how the applicant was prevented from doing a stone jetty by the Black Point Beach Association who owns the land in between; the Association prefers that sand remain for the beachgoers.

Mr. Neilson said the letter from DEEP understates what is at stake and the history of the property. He added that it's unfair to prevent owners from protecting their property.

Mr. Walker noted there is no beach between the Applicant's property and the water so the findings by DEEP are not factual. He said there are also cracks in this seawall, it's not stable and has been modified over time.

Motion (3)

Mr. McPherson moved to approve the application of Keith Neilson, P.E., for Docko, Inc., for Mr. Jonathan Korn and Ms. Grace Lo, owners, for a Coastal Management Review for Shoreline protection improvements at 38 East Shore Drive, Niantic, Connecticut for the following reasons:

1. Application is consistent with all-applicable goals and conditions of the CAM Act.
2. Applicant has taken all reasonable measures to mitigate any adverse impacts of the proposed activity on both coastal resources and future water dependent uses.
3. The repair as presented is necessary and unavoidable to protect the residential structure as well as the soil and vegetation.

Mr. McIlhenney seconded the motion.

Motion passed 6-0.

5) Application of Gary Larson, Attawan Beach Association, for a Coastal Area Management Review for placement of boulders along the edge of Attawan Avenue Between Dart and Bronson Streets, to help protect the road from future storms.

This item has been continued until the next regularly scheduled meeting.

6) Approval of Minutes of August 3, 2017.

Motion (4)

Mr. McPherson moved to approve the Zoning Commission Meeting Minutes of August 3, 2017 as submitted.

Mr. McIlhenney seconded the motion.

Motion passed 6-0.

7) Approval of Minutes of September 14th, 2017.

This item was tabled until the next regularly scheduled meeting since not all the members who sat that evening were present.

Old Business

1. Subcommittee- Mixed Use in CB Zone

This item is being worked on but there is no report.

2. Subcommittee- Maximum Allowed Signage

This item is being worked on but there is no report.

New Business

1. Application of J. Robert Pfanner, P.E., L.S., for Sirlene and Richard Billera, Owner, for a Coastal Area Management Review for the construction of a new single family dwelling at 22 Shore Road, Niantic, Connecticut.

This item has been scheduled for October 5th, 2017.

2. Application of Fitzleva, LLC (Crest Ford) for a Special Permit for the sale and

display of Vehicles on 226 Flanders Road, East Lyme, Connecticut, East Lyme Assessor's Map 26.1, Lot 25.

This item has been scheduled for October 19th, 2017.

- 3. Application of Theodore A. Harris, Esq., for Gateway Development/East Lyme LLC for a Proposed text amendment to the East Lyme Zoning Regulation Section 11.A Gateway Development District.**

This item has been scheduled for November 2nd, 2017.

- 4. Any Business on the Floor, If Any by the Vote of the Commission**

There was none.

- 5. Zoning Official**

Mr. Mulholland said he has been very busy but has nothing to report.

- 6. Comments from Ex-Officio**

Ms. Hardy left at 8:45 p.m.

- 7. Comments from Zoning Board Liaison to the Planning Commission**

Mr. Walker was unable to attend the meeting. Mr. Donovan is scheduled for the October 3rd, 2017 meeting.

- 8. Comments from Chairman**

There were none.

ADJOURNMENT

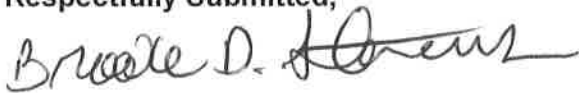
Motion (5)

Mr. McPherson moved to adjourn the meeting at 9:33 p.m.

Mr. Lukas seconded the motion.

Motion passed 6-0.

Respectfully Submitted,



**Brooke Stevens
Recording Secretary**



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Public Act No. 17-155

AN ACT CONCERNING TEMPORARY HEALTH CARE STRUCTURES.

Be it enacted by the Senate and House of Representatives in General Assembly convened:

Section 1. (NEW) (Effective October 1, 2017) (a) For the purposes of this section:

(1) "Caregiver" means a relative, legal guardian or health care agent who is responsible for the unpaid care of a mentally or physically impaired person.

(2) "Mentally or physically impaired person" means a person who requires assistance, as certified in writing by a physician licensed in this state, with two or more activities of daily living, including, but not limited to, bathing, dressing, grooming, eating, meal preparation, shopping, housekeeping, transfers, bowel and bladder care, laundry, communication, self-administration of medication and ambulation.

(3) "Temporary health care structure" means a transportable residential structure that provides an environment in which a caregiver may provide care for a mentally or physically impaired person and that (A) is primarily assembled at a location other than the site of installation, (B) has one occupant who is the mentally or physically impaired person, (C) is not larger than five hundred gross

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square feet, (D) is not placed on or attached to a permanent foundation, and (E) complies with the applicable provisions of the State Building Code, Fire Safety Code and Public Health Code.

(b) A temporary health care structure shall be allowed as an accessory use in any single-family residential zoning district on a lot zoned for single-family detached dwellings that is owned by a caregiver or mentally or physically impaired person and used as his or her residence. Such structures shall comply with all setback requirements, coverage limits and maximum floor area ratio limitations that apply to accessory structures in such zoning district as of October 1, 2017.

(c) No person shall install a temporary health care structure without first obtaining a permit from the municipality in which the structure will be installed, for which the municipality may charge a fee not to exceed two hundred fifty dollars and an annual permit renewal fee not to exceed one hundred dollars. The municipality shall not be required to hold a public hearing on the permit application and shall either approve or deny the permit not later than fifteen business days after the permit application is submitted to the municipality by the applicant. The municipality shall not deny the permit if the applicant provides proof of compliance with this section. The applicant shall send notice of the permit application, by certified or registered mail, to each person appearing of record as an owner of property which abuts the property upon which the temporary health care structure is proposed to be installed. The notice shall be sent not later than three business days after the permit application is submitted to the municipality by the applicant.

(d) The municipality may require a temporary health care structure installed pursuant to this section to be accessible to emergency vehicles and be connected to private water or septic systems or to water, sewer and electric utilities that serve the primary residence.

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(e) Not more than one temporary health care structure shall be installed on a lot zoned for a single-family detached dwelling.

(f) No signage advertising or otherwise promoting the existence of the temporary health care structure shall be permitted either on the exterior of the structure or elsewhere on the lot.

(g) Following issuance of such permit, the municipality may require that the applicant provide written evidence of compliance with this section as long as the temporary health care structure remains on the property. Evidence of compliance may be obtained through an inspection by the municipality of the temporary health care structure at reasonable times convenient to the caregiver.

(h) Any temporary health care structure installed pursuant to this section shall be removed not later than one hundred twenty days after the mentally or physically impaired person no longer occupies the structure or no longer qualifies as a mentally or physically impaired person. Upon issuance of the permit authorizing such structure, the municipality may require the applicant to post a bond in an amount not exceeding fifty thousand dollars to ensure compliance with this subsection.

(i) The municipality may revoke a permit issued pursuant to subsection (c) of this section if the permit holder violates any provision of this section.

(j) A municipality, by vote of its legislative body ⁷⁽¹⁰⁰⁵⁾ or, in a municipality where the legislative body is a town meeting, by vote of the board of selectmen, may opt out of the provisions of this section and the provision of subsection (a) of section 8-2 of the general statutes, as amended by this act, regarding authorization for the installation of temporary health care structures, provided the zoning commission or combined planning and zoning commission of the

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municipality: (1) First holds a public hearing in accordance with the provisions of section 8-7d of the general statutes on such proposed opt-out, (2) affirmatively decides to opt out of the provisions of said sections within the period of time permitted under section 8-7d of the general statutes, (3) states upon its records the reasons for such decision, and (4) publishes notice of such decision in a newspaper having a substantial circulation in the municipality not later than fifteen days after such decision has been rendered.

Sec. 2. Subsection (a) of section 8-2 of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2017*):

(a) The zoning commission of each city, town or borough is authorized to regulate, within the limits of such municipality, the height, number of stories and size of buildings and other structures; the percentage of the area of the lot that may be occupied; the size of yards, courts and other open spaces; the density of population and the location and use of buildings, structures and land for trade, industry, residence or other purposes, including water-dependent uses, as defined in section 22a-93, and the height, size and location of advertising signs and billboards. Such bulk regulations may allow for cluster development, as defined in section 8-18. Such zoning commission may divide the municipality into districts of such number, shape and area as may be best suited to carry out the purposes of this chapter; and, within such districts, it may regulate the erection, construction, reconstruction, alteration or use of buildings or structures and the use of land. All such regulations shall be uniform for each class or kind of buildings, structures or use of land throughout each district, but the regulations in one district may differ from those in another district, and may provide that certain classes or kinds of buildings, structures or uses of land are permitted only after obtaining a special permit or special exception from a zoning commission,

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planning commission, combined planning and zoning commission or zoning board of appeals, whichever commission or board the regulations may, notwithstanding any special act to the contrary, designate, subject to standards set forth in the regulations and to conditions necessary to protect the public health, safety, convenience and property values. Such regulations shall be made in accordance with a comprehensive plan and in adopting such regulations the commission shall consider the plan of conservation and development prepared under section 8-23. Such regulations shall be designed to lessen congestion in the streets; to secure safety from fire, panic, flood and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population and to facilitate the adequate provision for transportation, water, sewerage, schools, parks and other public requirements. Such regulations shall be made with reasonable consideration as to the character of the district and its peculiar suitability for particular uses and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such municipality. Such regulations may, to the extent consistent with soil types, terrain, infrastructure capacity and the plan of conservation and development for the community, provide for cluster development, as defined in section 8-18, in residential zones. Such regulations shall also encourage the development of housing opportunities, including opportunities for multifamily dwellings, consistent with soil types, terrain and infrastructure capacity, for all residents of the municipality and the planning region in which the municipality is located, as designated by the Secretary of the Office of Policy and Management under section 16a-4a. Such regulations shall also promote housing choice and economic diversity in housing, including housing for both low and moderate income households, and shall encourage the development of housing which will meet the housing needs identified in the state's consolidated plan for housing and community development prepared pursuant to section 8-37t and

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in the housing component and the other components of the state plan of conservation and development prepared pursuant to section 16a-26. Zoning regulations shall be made with reasonable consideration for their impact on agriculture, as defined in subsection (q) of section 1-1. Zoning regulations may be made with reasonable consideration for the protection of historic factors and shall be made with reasonable consideration for the protection of existing and potential public surface and ground drinking water supplies. On and after July 1, 1985, the regulations shall provide that proper provision be made for soil erosion and sediment control pursuant to section 22a-329. Such regulations may also encourage energy-efficient patterns of development, the use of solar and other renewable forms of energy, and energy conservation. The regulations may also provide for incentives for developers who use passive solar energy techniques, as defined in subsection (b) of section 8-25, in planning a residential subdivision development. The incentives may include, but not be limited to, cluster development, higher density development and performance standards for roads, sidewalks and underground facilities in the subdivision. Such regulations may provide for a municipal system for the creation of development rights and the permanent transfer of such development rights, which may include a system for the variance of density limits in connection with any such transfer. Such regulations may also provide for notice requirements in addition to those required by this chapter. Such regulations may provide for conditions on operations to collect spring water or well water, as defined in section 21a-150, including the time, place and manner of such operations. No such regulations shall prohibit the operation of any family child care home or group child care home in a residential zone. No such regulations shall prohibit the use of receptacles for the storage of items designated for recycling in accordance with section 22a-241b or require that such receptacles comply with provisions for bulk or lot area, or similar provisions, except provisions for side yards, rear yards and front yards. No such regulations shall unreasonably

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restrict access to or the size of such receptacles for businesses, given the nature of the business and the volume of items designated for recycling in accordance with section 22a-241b, that such business produces in its normal course of business, provided nothing in this section shall be construed to prohibit such regulations from requiring the screening or buffering of such receptacles for aesthetic reasons. Such regulations shall not impose conditions and requirements on manufactured homes having as their narrowest dimension twenty-two feet or more and built in accordance with federal manufactured home construction and safety standards or on lots containing such manufactured homes which are substantially different from conditions and requirements imposed on single-family dwellings and lots containing single-family dwellings. Such regulations shall not impose conditions and requirements on developments to be occupied by manufactured homes having as their narrowest dimension twenty-two feet or more and built in accordance with federal manufactured home construction and safety standards which are substantially different from conditions and requirements imposed on multifamily dwellings, lots containing multifamily dwellings, cluster developments or planned unit developments. Such regulations shall not prohibit the continuance of any nonconforming use, building or structure existing at the time of the adoption of such regulations. Such regulations shall not provide for the termination of any nonconforming use solely as a result of nonuse for a specified period of time without regard to the intent of the property owner to maintain that use. Unless such town opts out, in accordance with the provisions of subsection (j) of section 1 of this act, such regulations shall not prohibit the installation of temporary health care structures for use by mentally or physically impaired persons in accordance with the provisions of section 1 of this act if such structures comply with the provisions of said section. Any city, town or borough which adopts the provisions of this chapter may, by vote of its legislative body, exempt municipal property from the regulations prescribed by the zoning commission of such city, town or

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borough; but unless it is so voted municipal property shall be subject to such regulations.

Approved July 6, 2017