

EAST LYME PLANNING COMMISSION

Regular Meeting, July 9, 2019. 7:00 PM

East Lyme Town Hall, Upper Meeting Room
108 Pennsylvania Avenue, East Lyme, Connecticut

CHAIRMAN: Kirk Scott

PLANNING DIRECTOR: Gary Goeschel II

SECRETARY: Lawrence Fitzgerald

RECORDING SECRETARY: Sue Spang

CALL TO ORDER 7:00

VIII. ROLL CALL + PLEDGE OF ALLEGIANCE

Present: Kirk Scott, Thomas Fitting, Michelle Williams, Peter Lynch, Lawrence Fitzgerald, Don Phimister, Kathryn Johnson, Alt., Jason Deeble, Alt.

Absent:

FILED

VIII. CALL FOR ADDITIONS TO THE AGENDA-none

VIII. CALL FOR PUBLIC DELEGATIONS

No public delegations

July 15 2019 AT 9:20 AM/PM
Camryn
EAST LYME TOWN CLERK

VIII. REPORTS

A. Communications

- CT Planning and Zoning Quarterly news report

B. Zoning Representative

- Revised schedule will be handed out next meeting

C. Ex-Officio

- Selectman Salerno informed the members that a special BOS meeting is scheduled for Wednesday to vote on funding for roads, capital projects and other items. The Harbor Management Plan will be discussed and possibly voted on.

D. Planning Director: Gary A. Goeschel II

No report

E. Sub-Committees

- **Walkability**-no report
- **Plan of Conservation and Development (POCD) Steering Committee**-a couple of residents showed up for the last meeting and the process is going well.
- **East Lyme Subdivision Regulations**-copies were provided to the members.
- **Chairman: Kirk Scott**-no report

VIII. APPROVAL OF MINUTES

May 7, 2019 Regular Meeting Minutes

MSC (Williams/Lynch) to approve the May 7, 2019 Regular Meeting minutes as presented.

Vote: Approved Unanimously.

June 4, 2019 Regular Meeting Minutes

MSC (Lynch/Williams) to approve the June 4, 2019 Regular Meeting minutes as presented.

Vote: Approved Unanimously.

VIII. PUBLIC HEARINGS

A. Application of J. Robert Pfanner, LS, Agent for Elizabeth Perry, Owner; Application for a 5-lot Subdivision of approximately 12.16+ acres of land Zoned RU-40 located west of West Lane between 32 Brightwater and 30 West Lane, East Lyme, Assessor's map #2.2 Lot # 11

G. Goeschel read into the record the following titles of the exhibits:

- "LL" Fred Guenther Surveyor Comments from Black Point Beach Club Association website which was read into the record
- "MM" Dedication of joint driveway and swale maintenance agreement
- "NN" Construction sequence
- "OO" Restrictive Covenants Dedication of Joint Driveway Easement and Swale Maintenance Agreement
- "PP", revised site plans dated July 9, 2019
- "QQ" Barbara Johnson Letter which was read into the record by G. Goeschel

Attorney Ted Harris, 351 Main St., representing the applicant addressed some of the concessions made by the applicant and any changes or additions to the plan. T. Harris submitted the proposed conservation easement which is exhibit "RR".

- The easement was revised as requested by BPBCA
- A 50' setback from the road on lots 1-4
- Construction sequence was submitted on the plan
- Repair of the existing stone wall will be done and is on the new plan
- A single driveway as opposed to two driveways are now proposed
- The distance between the near side of the access and West Lane will be a total of 25', changed from 18'.

J. Robert Pfanner, professional engineer and licensed surveyor, showed the members a one page map with the new changes. The new driveway is 18' from the road but will be changed to 25' and is 14' wide. There will be two dogwood trees planted per lot along West Lane, between the driveway and the road.

Tim Furey, 43 Belleview Ave. Bristol, Attorney for the BPBCA, stated that he has been working closely with T. Harris and J. Robert Pfanner on the compromises with the BPBCA. He informed the members that a covenant requiring the lot owners to maintain the swale has been drafted. As part of the plan approval, no structure will be closer than 50' from the property line. There will be one driveway accessing the properties, the edge of pavement will be no closer than 25' from the property line. The applicant agreed to plant two trees per lot. On the side of the property near the entrance, an agreement in favor of Black Point Beach Association stipulates that in the future, only one home can access or utilize that as a right of way. In the rear of the property there is a conservation easement to be maintained by the property owners. He stated that the BPBCA is happy with the compromises worked out as long as the survey information and data submitted is factually correct. Attorney Furey thanked T. Harris and J. Pfanner for their cooperation.

Cynthia Trocki, 22 Blue Heron Rd. stated there are two different beach communities. She pointed out that the Black Point Beach Association charges a large initiation fee to belong to their association as well as a recommendation from three people.

Trocki, stated the applicant took the stonewall out and she would like to have the applicant to put

back the stonewall the way it was and to match the walls in the surrounding area. She does not want them to use the big boulders from their property. She wants the buffer as defined by the regulations to be respected. There is a right of way with an easement that goes to the applicant's property. She believes the property has been split 3 times. The applicants are taking her electric pole and using it for their property.

Trocki stated there should be no sewer service to the applicant. She stated that Old Black Point, where the proposed development is located, declined sewers and there was a letter in the town file confirming the request not to have sewers but the letter is missing from the file. She stated there is an exclusive agreement with the town for BPBCA, that the sewers are for their exclusive use and the service agreement is with BPBCA and not BPBA, she submitted the agreement for the record (Exhibit SS).

West Lane is a narrow road 13.7' wide, she submitted a document from 1947, that stated the town should not accept new roads less than 50' wide (Exhibit TT). She stated the 1' buffer is for the BPBCA to stay separated and she believes the applicant is taking advantage. Trocki pointed out the discrepancy between the warranty deed (Exhibit UU) and the quick claim deed mentioned in the survey done by Fred Guenther for the BPBCA. Trocki submitted her poster board display, (Exhibit, VV).

Gene Massey, 10 Brightwater Road, has lived there for 68 years. He stated that when he was young he asked his father what the 1' buffer strip was for and his father told him it was to separate OBP from BPBCA. He has consulted a surveyor who told him there are serious issues with the strip and access and he has hired the surveyor. Massey asked the commission to keep the Public Hearing open until the survey is completed.

Carol Ward, 23 Blue Heron, stated BPBCA is a municipality with a charter. She stated the charter states that she has the right to have harmony in her life. Since the applicant has taken down the trees and stonewall she has not had harmony. She is concerned that the drainage issue has gotten worse after the work done on the applicant's property. She stated she has been harmed and continues to be harmed due to the events on the property across from her house. Ward is concerned the proposed swale will be a mosquito entrapment which would be a health hazard for children. She referenced a deed which shows no break in the land and questioned if the town has taken the land away, then maybe they are not a municipality.

Robert Trocki, 22 Blue Heron Rd. stated he was misquoted in the minutes of May 7, 2019. He stated that in the minutes he was quoted as referring to the 1' strip as a buffer, he clarified it is land the BPBCA owns, it is not a buffer. He also stated he did not say the access should be from "Black Point, not Old Black Point" but just the opposite.

He does not believe the reason given (pristine land) for not using the existing access is a valid reason. He stated there is a right of way that runs along Miss Harris's (?) (possibly meant Miss Perry) land and that should be used as access. Trocki stated that at the May 7, 2019 meeting he asked about the width that is needed to access this property relating to the conservation design development, he has received a number of answers by Mr. Goeschel. Trocki stated 23.2 d, of the subdivision regulations state the buffer should be 150'. He also believes the plan is not meeting the regulations for the no build plant buffer requirement along a public thoroughfare which should be 200'. The proposed single driveway is now a private street and it is not meeting the private street requirement. The private road where it intersects with a public road must intersect at 90° and continue for 100'.

Trocki reminded the commission that they needed to enforce their regulations.

Trocki read a portion of the archeologic portion of the regulations as they pertain to stonewalls. He stated the stonewall must remain intact and the applicant is proposing an opening in the wall for access.

Trocki stated the applicant does not have access to West Lane and they are skirting the rules.

John Salerno, 60 East Shore Drive, stated the driveway is proposed for just north of the pole and it doesn't line up with Bond St. If you have to add another driveway to access Miss Perry's house in the future, then the entrance would have to be on the other side of the pole. He suggested the pole be moved.

T. Harris, Attorney for the applicant addressed some of the comments. He stated it is a CCD subdivision and the rules are somewhat flexible. The buffer is 40' according to the regulations. He stated the property cannot be accessed from Old Black Point Rd. and he did not believe the Wetlands Commission would grant access and would require the applicant to look for a feasible and prudent alternative, which is on West Lane.

You have to interpret regulations in relation to being able to access your property.

The single driveway does not comply with either the private driveway or the private road but the regulations allow the commission to reduce the road if it also reduces the impact, especially as to the impervious surface.

Harris stated he would not consent to keeping the public hearing open for yet another survey of the property. There has been plenty of time to conduct an additional survey if wanted by a resident.

There is a sewer shed map in the Town of East Lyme which dictates which properties are serviced by the town sewer system, these proposed houses are in the plan to be serviced. He referenced a letter from Brad Kargl, E.L. utility engineer, stating both water and sewer are available for the proposed homes.

R. Pfanner addressed the difference in the two deeds as just a matter of a couple of feet. He informed the members that the utility pole will be moved but he is not sure where at this point and an additional service pole will be installed.

The drive way is almost at a 90° angle, it will go in 25' and swing around to access the proposed lots on the property. J. Pfanner stated the swales are designed for a 100-year storm.

Cynthia Trocki, 22 Blue Heron Rd. stated that the pole is on her property and the applicant cannot use it for electricity. She wanted to know if the applicant can pipe the property so the water runoff stays on their property like in the olden days.

Gene Massey, 10 Brightwater Road acknowledged he has come late concerning the survey he is proposing to pay for. He also stated that the issue of people using the amenities of BPBCA without being members is not right because they do not pay for them.

Robert Trocki, 22 Blue Heron Rd. stated there are two types of buffers that apply. The buffer that runs along West Lane should be 100' and the one on the south side should be 40'. He stated that with these buffers widths, they do not have enough room for access. He reiterated that the stonewall needs to stay intact. If they want to put houses there the applicant should explore other options. The applicant should explore other access points.

G. Goeschel read sections of the zoning regulations for buffers and it was his opinion the property along West Lane was non agrarian, non scenic, and non historic. It was his recommendation that the stonewalls should be preserved where possible. The landowner has the right to access their property. The right of way for the town is usually 25' from the center line which would put the stonewall in the right of way.

Cynthia Trocki, 22 Blue Heron Rd. stated that people who have come into their association were required to have a 60' frontage and open to the road. The applicant needs to follow the rules and the stonewall needs to be replaced immediately to stop the runoff. There are other options for access.

Tim Burke, 32 Brightwater Rd. stated there are underground streams and reminded the

commission that he had previously asked the town to come out and look at the property but no one ever came out. He stated that by digging foundations for the homes, the applicant would be diverting water. Burke stated the commission should wait for the new survey before closing the public hearing.

J. Pfanner stated there was a wetlands survey submitted and the town engineer went over the calculations and signed off on the drainage plan.

G. Goeschel stated the town does not have authority over underground water except for aquifers.

Carol Ward, 23 Blue Heron Rd. stated the applicant hired a company to take down the stone wall and that Miss Perry divided her own property and converted a barn to a guest house which is illegal.

Robert Trocki, 22 Blue Heron Rd., stated the stonewall should be preserved.

T. Harris stated that a part of the stonewall will be taken down for access, any rocks on the property will be used to rebuild and repair the existing stonewall per the regulations.

Robert Trocki, 22 Blue Heron Rd., reiterated the stonewalls shall remain intact.

John Salarno, 60 East Shore Drive, stated that there should just be one driveway, and is glad the pole is being moved. He does not think it would hurt to grant another month for a new survey.

Carol Ward, 23 Blue Heron Rd., would like to see the name of the BPBCA changed to the Black Point Beach Community with the boundaries on the town maps and she would like to see Black Point maintained as it is.

The applicant was asked if he would like an extension of the public hearing and he stated he was not going to request an extension of the public hearing.

MSC (Lynch/Phimister) to close the public hearing. Vote: Approved Unanimously.

The commission took a break from 8:47 to 8:57

B. Application of J. Robert Pfanner, L.S., Agent for Catherine Parente, Owner; Application for a 1-lot re-subdivision of approximately 11.39 acres of land zoned RU-40/20, located at 38 Roxbury Road, East Lyme Assessor's Map 16.1, Lot 30

G. Goeschel stated that there were no new documents submitted since the May meeting.

R. Pfanner submitted a letter from Ledge Light Health District stating the plan is suitable for subdivision.

The applicant is asking for 3 waivers:

1. The 40' buffer
2. Defer open space until future plans are developed
3. The 25' right of way along Roxbury Rd.

R. Pfanner explained that the town is in favor of the property owner maintaining ownership of the stonewall which is in the towns 25' right of way. He stated that if the town took ownership then the stonewall would have to be maintained and repaired by the town at the towns expense.

After the proposed plan is developed the rest of the property will be sold to a developer. At that point, depending on the layout of the development, the new owner will come in with the open space placement. The total land including the proposed one house lot is 12.31 acres, which would require 30% or approximately 3.69 acres of open space.

The waiver for the 40-foot buffer is being asked for because there is less density proposed for the application compared to the development of 25 homes across the street which does not yet have their vegetative buffer installed. R. Pfanner submitted photos of the development across the street.

Pfanner informed the members the existing house is on a lot of 40,000 sq.ft. and the barn will be removed and the well will be abandoned.

Pfanner submitted for the record:

- Letter from Robert McCracken, 17 Whiting Farms and Diane Stevens 25 Whiting Farms, dated May 25, 2019 (Exhibit N)
- Letter from Brian Jones, State Archeologist (Exhibit O)
- Memorandum from G. Goeschel, Town Planner to EL Planning Commission (Exhibit P)
- Letter from Daniel Homes, Ledge Light District (Exhibit Q)
- Subdivision Plans of Catherine Parente, revised 5/23/2019 (Exhibit R)
- E & S Plans, Whiting Farm, Gerwick-Mereen (Exhibit S)
- Photos of Whiting Farms Dev. By Pfanner & Assoc. (Exhibit T)
- Aerial Photo with proposed site plan overlay (Exhibit U)
- Letter from Thomas Grayeck, Whiting Farms President (Exhibit V)
- Photos from Diane Stevens, Whiting Farms (Exhibit W)

G. Goeschel stated that the commission may want to have as a condition of approval that the proposed application should be accessed from Roxbury Rd.

Public Comment

Phil Russell, 4 Bramble Bush Drive, thought the proposal was smart to just have one house because if they submitted plans for more than one house and the development was accessed from Cyprus there would be an uproar. He stated that many people on Stonewood Drive, would not be happy if there was a throughway put in from Roxbury Rd into their neighborhood. He stated that quality of life is important and should not be overlooked.

Nicole Padilla, 19 Stonewood Drive, wanted to know if there is only one house proposed why do you need waivers.

Thomas Grayeck, President of Whiting Farms Commons Association, 45 Whiting Farms Ln. read a letter from the association objecting to the waiver of the buffer on two counts, first no reason why drive way and utilities cannot be moved to the east and they believe it is inappropriate to grant a waiver for something that has not been built.

Jonathan Riotte, 10 Cypress Way, is concerned about the buffer and the waiver of the open space and the possibility of the connection to Cypress Way.

Carol Russell, 4 Bramble Bush Drive, stated that their neighborhood on Stonewood is a modest middle class area with lots of kids. She is worried Cyprus Way could morph into a thru way from Roxbury Rd. which would be a huge change for them. She believes waivers are premature.

Charles Corrado, 27 Whiting Farms Lane, stated he has four trees approximately 4' high in front of his yard that have taken years to grow, if the buffer waiver is granted and the trees were allowed to be cleared it will take a long time to grow back. He wanted to know if an archeologic study had been done.

Luis Rodriguez, 3 Cypress Way, questioned why some residents and not others received notices of the application. He stated that he would like to keep the neighborhood the way it is now and how it was when his wife grew up there.

Diane Stevens, 25 Whiting Farms Way submitted photos of the trees along Whiting Farms Way, she stated if the waiver for the buffer is granted the trees on the applicant's property will be

cleared. She informed the members that the reason the buffer had not been planted on the Whiting Farms development is because it is not completed, the road is not done and all the lots are not sold. When it is completed the plantings will be installed.

Beatrice Landry, 53 Stoneywood Drive, stated that they have a wonderful, safe neighborhood and she does not want it to change.

Frank Bencivengo, 5 Cypress Way stated his neighborhood is quintessential Americana. If waivers are granted, then his property will not be the same. He asked the members to be proactive and consider what is coming down the road.

Steve McCue, 8 Cypress Way, stated the planning commission needs to take into consideration more than bureaucratic rules.

John Currier, 4 Cypress Way, asked the commission to keep things the way they are now.

Pfanner, applicant, stated that the archeologic reports recommend a second phase before work is done. He states he has been very open and truthful as to the plans for the whole property.

Jonathan Riotte, 10 Cyprus Way, stated that all he is asking for is the buffer and open space not to be waived.

MSC (Lynch/Fitting) to close the Public Hearing. Vote: Approved Unanimously.

VII SUBDIVISIONS / RE-SUBDIVISIONS - (PENDING)

- A. Application of J. Robert Pfanner, LS, Agent for Elizabeth Perry, Owner; Application for a 5-lot Subdivision of approximately 12.16+ acres of land Zoned RU-40 located west of West Lane between 32 Brightwater and 30 West Lane, East Lyme, Assessor's map #2.2 Lot # 11 (Date of Receipt: 3/5/19)**

Tabled until Next meeting

- B. Application of J. Robert Pfanner, L.S., Agent for Catherine Parente, Owner; Application for a 1-lot re-subdivision of approximately 11.39 acres of land zoned RU-40/20, located at 38 Roxbury Road, East Lyme Assessor's Map 16.1, Lot 30**

Tabled until next meeting

VIII. ZONING REFERRALS [Connecticut General Statute (CGS) 8-3a]

- A. East Lyme Zoning Commission proposal to amend the East Lyme Zoning Regulations Section 9 and Section 25.5 Mixed Use in CB Commercial Districts.**

G. Goeschel stated that the zoning commission is trying to preserve the small town character of the downtown and to prevent the building mass of some retail establishments. Currently 20,000 sq. ft. is the regulation and the proposal is to reduce it to 5000 sq. ft. The proposal will also affect the dwelling units above the retail stores.

MSC (Williams/Fitzgerald) it is determined that the proposed regulation change is not consistent with the POCD as it limits the ability of utilizing the commercial districts. Vote: Approved Unanimously.

- B. Application of Theodore A. Harris, Esq., Agent for Pazz Construction, Applicant, for Margaret Prokop, Co-Conservator/Owner, for zone change from existing RU-40 to CA of a portion of the property at 285 Boston Post Road, Est Lyme, Tax Assessor's Map # 30.1 Lot # 59.**

The proposed referral has come before the commission in recent months and it is the consensus of the members that nothing has changed from the original proposal.

MSC (Lynch/Phimister) We find the proposed application is inconsistent with the 2009 POCD as amended, as we previously rendered a decision on the same application several months ago and for those specific reasons as noted in that determination, this too is inconsistent. Vote: Approved Unanimously.

IX. MUNICIPAL REFERRALS [Connecticut General Statutes (CGS) 8-24] None

X. OLD BUSINESS – No old business

XI. NEW BUSINESS-No new business

XII. ADJOURNMENT MOTION: (Fitzgerald/Williams) to adjourn at 10:17 Vote: Approved Unanimously.

Respectfully Submitted,

Sue Spang,
Recording Secretary