

TOWN OF EAST LYME  
ZONING COMMISSION  
September 3rd, 2020  
REGULAR MEETING MINUTES

Join Zoom Meeting

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FILED

Sept 9, 2020 AT 8:00 AM/PM

*Brooke Henson ATC*

EAST LYME TOWN CLERK

Members Present:

Matthew Walker, Chairman

Norm Peck

Terence Donovan

Bill Dwyer

Anne Thurlow

George McPherson, Alternate (Joined zoom at 7:48 p.m. and sat as a Regular Member for item #3 only)

Denise Markovitz, Alternate (sat as Regular Member)

Also Present:

Bill Mulholland, Zoning Official

Jennifer Lindo, Zoom Moderator

Present for Applications:

Carol York

Jason Pazzaglia

Keith Neilson

**Absent:**

James Liska  
Kimberly Kalajainen  
Rose Ann Hardy, Ex-Officio

**The Regular Meeting of the East Lyme Zoning Commission was held on Thursday, September 3rd, 2020, at 7:30 p.m., via Zoom; this teleconference was recorded in its entirety and in accordance with the requirements of executive order 7B, issued by Governor Lamont, which allows for public meetings to be held over teleconference.**

Chairman Walker called the Zoning Commission meeting to order at 7:31 p.m and sat Ms. Markovitz as a Regular Member for the evening.

**Public Delegations-**

Time set aside for the public to address the Commission on subject matters not on the Agenda.

There were none.

**Public Hearings-**

There was none.

**Regular Meeting-**

**Request of Carol York, Owner, for a Waiver of Section 20.8 of the East Lyme Zoning Regulations Ownership Requirement for access to a proposed subdivision lot at 92 Old Black Point Road.**

Mr. Donovan read Mr. Mulholland's memorandum dated September 3rd, 2020 into the record (attached.)

Mr. Mulholland said this is essentially a housekeeping item and rather routine, and noted she still needs to go before the Planning Commission.

Ms. York said she meets all the other requirements, she has an existing 50 foot right-of-way on record which serves the back parcel, and is prepared to do an additional 25 foot right-of way for the front parcel.

Mr. Dwyer asked for clarification as to where the right-of-ways are located. Mr. Mulholland said the 25 foot right-of-way would be dedicated to Parcel B and that the existing 50 foot right-of-way is not actually part of this conversation.

Mr. Donovan observed that the 25 foot right-of-way if approved, would probably serve as the driveway for the back lot and that he sees no issue with this request.

**MOTION (1)**

**Mr. Donovan moved to approve the request of Carol York, Owner, for a Waiver of Section 20.8 of the East Lyme Zoning Regulations Ownership Requirement for access to a proposed subdivision lot at 92 Old Black Point Road.**

**Ms. Thurlow seconded the motion.**

**Motion carried, 6-0-0.**

Mr. McPherson joined the zoom meeting at 7:48 p.m.

**Application of Keith B. Neilson, P.E., Docko, Inc., Agent for Mr. Vincent Dowling, for a Coastal Area Management Review for New Platform, Stairs and Landing at 295 Old Black Point Road, Niantic, Connecticut.**

Mr. Donovan read Mr. Mulholland's memorandum dated September 3rd, 2020 into the record (attached) as well as a letter from Marcy Balint of DEEP dated August 31st, 2020 (attached.)

Mr. Neilson briefly discussed the application and shared some of the following:

- Mr. Dowling desires the installation of a lower deck to enhance his enjoyment of his view and proximity to Long Island Sound.
- The deck will be placed in the southeast corner in order to keep in track with FEMA design standards.
- The design is in accordance with zoning setbacks.
- Even though this isn't a residential structure we still kept the bottom structure elements of the deck a foot above base flood elevation.
- We've had a couple of coastal storms this year and he had an opportunity to walk on the deck when 5 foot waves were breaking into the base of the dock and the pier is held in place by five steel piles and didn't even shutter when the waves were hitting it.
- 2 piles will be holding up a considerably smaller structure which will also be back further from the wave break zone.
- The deck will only be visible to the neighbors immediately east and west of the site.
- There are no adverse coastal impacts and this is not a significant change.

Mr. Neilson summarized the completed application packet and materials that will be utilized for the project.

Mr. Donovan asked if this is in addition to the existing dock the applicant already has and Mr. Neilson confirmed that the existing dock will be staying.

Ms. Markovitz inquired how this structure might hold up during a 500 year storm and Mr. Neilson responded that it depends entirely on the track of the storm and noted the steel piles will be able to withstand any of the conditions experienced with Hurricane Gloria, Irene or Sandy.

Mr. Walker asked Mr. Neilson to elaborate more on the concerns expressed in Marcy Balint's letter and Mr. Neilson detailed how their design can be considered an "over design" for this structure and how he communicated this to Ms. Balint today in a letter. Mr. Neilson emphasized the tremendous strength of the structure and noted the FEMA Representative said she has no concerns with this project.

#### **MOTION (2)**

**Mr. Donovan moved to approve the Application of Keith B. Neilson, P.E., Docko, Inc., Agent for Mr. Vincent Dowling, for a Coastal Area Management Review for New Platform, Stairs and Landing at 295 Old Black Point Road, 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.**

**Mr. Dwyer seconded the motion.**

**Motion carried, 6-0-0.**

**Request of Theodore A. Harris, Esq., Agent for 283 BPR, LLC for a Site Plan Modification for mixed use commercial space with apartments at 283 Boston Post Road, Pattagansett Drive, and 281 Boston Post Road (Parking), East Lyme, Connecticut.**

Mr. Peck recused himself from this item and the Commission sat Mr. McPherson.

Mr. Donovan read Mr. Mulholland's memorandum dated September 3rd, 2020 into the record (attached.)

Mr. Pazzaglia elaborated on what Mr. Harris said in the application materials and said the neighbor had a preference not to look at a retaining wall and this gave them more flexibility in regards to their tree plantings, and he noted the neighbor is happy with the results.

Mr. McPherson said the neighbor never wanted the wall and Mr. Pazzaglia responded that it was a design done by Mr. Pfanner and the neighbor preferred to look at trees as opposed to a wall, which he himself would agree with; this modification is strictly in regards to the retaining wall and its removal.

Mr. Pazzaglia noted they've been working in conjunction with the neighbor and he has been fantastic to deal with.

Mr. McPherson thanked Mr. Pazzaglia for working with the neighbor and Mr. Walker concurred.

Mr. Mulholland said this item can also be considered a housekeeping item and has no issues with this modification.

**MOTION (3)**

**Ms. Markovitz moved to approve the request of Theodore A. Harris, Esq., Agent for 283 BPR, LLC for a Site Plan Modification for mixed use commercial space with apartments at 283 Boston Post Road, Pattagansett Drive, and 281 Boston Post Road (Parking), East Lyme, Connecticut.**

**Mr. Donovan seconded the motion.**

**Motion carried, 6-0-0.**

Mr. Peck rejoined the Commission and Mr. McPherson returned to the audience.

**4. Approval of Minutes of August 13, 2020**

**MOTION (4)**

**Ms. Thurlow moved to approve the Meeting Minutes of August 13th, 2020 as presented.**

**Mr. Dwyer seconded the motion.**

**Motion carried, 6-0-0.**

**Old Business-**

There was none.

**New Business-**

**1. Any business on the floor, if any by the majority vote of the Commission.**

Mr. Peck detailed a conversation he had with Senator Formica regarding the likelihood of recreational marijuana becoming legal next year. The Commission briefly discussed being proactive in regards to determining permitted areas for this use such as in the light industrial district.

Mr. McPherson asked Mr. Mulholland to review where the light industrial areas are in Town and Ms. Markovitz observed that if it becomes legal it will essentially be the same as a package store and questioned limiting the permitted locales. Mr. Peck cited the large traffic associated with the medical marijuana dispensary and stressed the importance of being ready to go ahead of time as opposed to waiting.

Mr. Donovan asked about carriage houses noting the increasing need for in-law accommodations in lieu of assisted living for an aging population and suggested forming a subcommittee to address this issue. He asked Mr. Mulholland if he has any ideas and he responded that this is a very complex issue but he will do some research to bring back for review. Mr. Donovan said the scenario he is talking about is a separate detached structure

which our current regulations don't permit. Mr. McPherson asked what happens to the accommodations when the elderly parent passes on.

**2 Zoning Official**

Mr. Mulholland said he has nothing to report this evening.

**3 Comments from Ex-Officio**

Ms. Hardy was not in attendance.

**4 Comments from Zoning board liaison to the Planning Commission**

Mr. Walker said Ms. Kalajainen was scheduled to attend the September 1st, 2020 Planning Commission meeting and we will have to hear her report at the next meeting since she is not in attendance this evening.

**5 Comments from Chairman**

Mr. Walker said he has nothing to report.

**Adjournment**

**MOTION (5)**

**Ms. Thurlow moved to adjourn the Zoning Commission Meeting at 8:47 p.m.**

**Mr. Dwyer seconded the motion.**

**Motion passed 6-0-0.**

Respectfully Submitted,

Brooke Stevens  
Recording Secretary

# Town of

P.O. Drawer 519  
Zoning Department



# East Lyme

108 Pennsylvania Ave  
Niantic, Connecticut 06357

(860) 691-4114  
Fax (860) 691-0351

DATE: September 3, 2020  
TO: Matthew Walker, Chairman, East Lyme Zoning Commission  
FROM: William Mulholland *WM*  
RE: Proposed Waiver of Ownership of Right-of-Way  
92 Old Black Point Rd

The applicant, Carol York, is requesting that the Commission grant a waiver of the ownership of the right-of-way for a rear lot on the property identified in the application as 92 Old Black Point Road.

The applicant is proposing a one lot subdivision to create a backlot to the rear of 92 Old Black Point Road. A twenty-five (25') foot wide access way is required for a back lot.

Section 20.8 of the Zoning Regulations provides criteria for such lots. It states that:

**BACK LOTS** – Notwithstanding the minimum frontage requirements for each district back lots are permitted in any zone. Lots created after August 9, 2002 shall have a minimum of 25' frontage on an accepted or approved street and be accessible by a 25' wide permanent, unobstructed access-way of the same ownership. The ownership requirement may be waived by the Zoning Commission by a two-thirds vote of all members upon demonstration by the applicant that the physical features of the property preclude strict compliance with the requirement and that the granting of the waiver will not have a significantly adverse impact upon adjacent property, the environment, or the public health and safety. The following additional requirements shall be met for the creation of back lots:

- A. The minimum lot width at the building line shall be equal to the frontage requirement specified for the district.
- B. The area of the access-way shall not be included in the minimum required area of the lot.
- C. The maximum length of the access way measured from the street line to the front building line of the back lot shall not exceed 1000 feet.
- D. No back lots shall be created on the following streets (Rte. 1, Rte. 156, & Rte. 161) unless access is combined with a driveway serving a lot which fronts on the street.

- E. Lots created using a cluster/open space design which have less than the required average frontage shall not be considered back lots as long as the average frontage requirement for the entire subdivision is met.

The granting of the waiver would allow the use of a "right-of-way" which eliminates the creation of another property line. The elimination of the line resolves potential setback issues from an existing home and allows the proposed subdivision to move forward.

**MOTION TO APPROVE:** Move to Approve the Request of Carol York, Owner, for a Waiver of Section 20.8 of the East Lyme Zoning Regulations Ownership Requirement for access to a proposed subdivision lot at 92 Old Black Point Road.

**MOTION TO DENY:** Move to Deny the Request of Carol York, Owner, for a Waiver of Section 20.8 of the East Lyme Zoning Regulations Ownership Requirement for access to a proposed subdivision lot at 92 Old Black Point Road.



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DATE: September 3, 2020  
TO: East Lyme Zoning Commission  
FROM: William Mulholland *WM*  
RE: Coastal Site Plan Application – 295 Old Black Point Rd

Coastal Site Plan reviews are mandated under the Coastal Management Act as found in Chapter 444 of the Connecticut General Statutes. This regulatory program is designed to protect the states coastal resources from unsuitable development on lands within the coastal boundary. Local shoreline communities must review specific types of development for compliance with the act.

In this application, Keith B. Neilson, P.E., Docko Inc., Agent for Mr. Vincent Dowling, proposes to construct a steel pile and concrete pedestal platform with rails and low voltage deck lighting, construct 4' wide platform access stairs with rails and an associated 8' wide x 12' stair landing with rails on a stone revetment at the southern tip of Black Point, adjacent to Long Island Sound and landward of the High Tide and CT Coastal Jurisdiction lines. Mr. Neilson is here this evening and will give a presentation.

1. **Move to APPROVE:** Application of Keith B. Neilson, P.E., Docko, Inc., Agent for Mr. Vincent Dowling, for a Coastal Area Management Review for New Platform, Stairs and Landing at 295 Old Black Point Road, Niantic, Connecticut.

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.
2. **Move to DENY:** Application of Keith B. Neilson, P.E., Docko, Inc., Agent for Mr. Vincent Dowling, for a Coastal Area Management Review for New Platform, Stairs and Landing at 295 Old Black Point Road, Niantic, Connecticut.

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**Jennifer Lindo**

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**From:** Balint, Marcy <Marcy.Balint@ct.gov>  
**Sent:** Monday, August 31, 2020 12:41 PM  
**To:** Bill Mulholland  
**Cc:** Jennifer Lindo; Docko Office  
**Subject:** CT DEEP LWRD Comments on Coastal Site Plan Review for 295 Black Point Road, East Lyme.



To: East Lyme Planning and Zoning Commission  
From: Marcy L. Balint, Sr. Environmental Analyst  
Subject: Referral on 295 Black Point Road, East Lyme  
Date: August 31, 2020

Dear Commission Members,

Thank you for referring the above noted coastal site plan received electronically on August 31, as requested. Our office has reviewed the proposal for consistency with the goals and policies of the Connecticut Coastal Management Act (CCMA) and offers the following comments, focused on proper NFIP FEMA construction for the proposed decks.

The two part proposed deck system is not attached to any structure, independently supported, and landward of the Coastal Jurisdiction Line. . The Lower deck is 10ftx20ft within the VE14 zone, then connects via stairs leading up to an 8ftx12ft deck outside of VE flood zone. Because they are attached, the entire deck system to be considered within in the VE zone as loads will transfer to the upper deck.

Please see the FEMA Technical Bulletin 5, page 18 has a section on decks:  
[https://www.fema.gov/media-library-data/158501465139851e87b018df989c582615db14752736f/FEMA\\_TB5\\_508\\_rev03132020.pdf](https://www.fema.gov/media-library-data/158501465139851e87b018df989c582615db14752736f/FEMA_TB5_508_rev03132020.pdf)

The largest coastal management concern centers on the deck system's capacity to remain in place during a storm event for this location and ability to survive any erosion or scour. The lower deck notes an elevation of 17.5 ft, upper deck 22.2 ft. We assume this to be the top of the deck and not the lowest horizontal structural member and

should be confirmed, with confirmation also that the lowest support of decks would be above BFE. We recommend engineering certification for this design, which we assume Docko Inc. can provide or has already provided, specifically, that both these decks and the stairs will remain in place during the 100 year storm event for this particular location. The lighting proposed on the decks should be floodproofed/designed for a wet location. Also, since the deck is far away from the main structure, Docko should confirm the assumption that there is no possibility for deflection or transfer of loads to the main house.

We hope these comments prove useful to the Commission in their review of this Coastal Site Plan, which are provided in accordance with Section 22a-105 thru 109 of the CCMA, and do not necessarily reflect other zoning considerations which may apply.

Sincerely,

Marcy L. Balint,  
Land and Water Resources Division  
Connecticut Department of Energy and Environmental Protection  
79 Elm Street, Hartford, CT 06106-5127  
[Marcy.Balint@ct.gov](mailto:Marcy.Balint@ct.gov)  
860 424-3623



[www.ct.gov/deep](http://www.ct.gov/deep)

***Conserving, improving and protecting our natural resources and environment;  
Ensuring a clean, affordable, reliable, and sustainable energy supply.***

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DATE: September 3, 2020  
TO: East Lyme Zoning Commission  
FROM: William Mulholland *WM*  
RE: 283 Boston Post Rd – Site Plan Modification

The Applicant, Theodore A. Harris, Esq, is requesting a site plan modification to the previously approved plan for a mixed-use development for the above location.

The Zoning Commission approved the construction of two mixed use buildings along with the site plan on July 13, 2017. During the public hearing, there was extensive discussion regarding the placement and construction of a retaining wall along the northerly property line.

The parking lot for the development is behind the buildings on the northerly line. A single-family home abuts the property line. The developer originally proposed an elevated parking lot with a retaining wall along this property line. During construction, the retaining wall was eliminated, and the parking area graded to the existing elevation of the property line.

Because this condition does not match the approved plan a site plan modification is necessary to permit the elimination of the wall and the new grading.

It is my understanding the adjoining property owner requested the changes in the site plan that were agreeable to the Applicant.

**Motion to Approve:** Request of Theodore A. Harris, Esq., Agent for 283 BPR, LLC for a Site Plan Modification for mixed use commercial space with apartments at 283 Boston Post Road, Pattagansett Drive, and 281 Boston Post Road (Parking), East Lyme, Connecticut.

**Motion to Deny:** Request of Theodore A. Harris, Esq., Agent for 283 BPR, LLC for a Site Plan Modification for mixed use commercial space with apartments at 283 Boston Post Road, Pattagansett Drive, and 281 Boston Post Road (Parking), East Lyme, Connecticut