

**TOWN OF EAST LYME
ZONING COMMISSION
October 15th, 2020
PUBLIC HEARING & REGULAR MEETING MINUTES**

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Members Present:

Norm Peck

Terence Donovan, Secretary (Acting Chairman for the evening)

Bill Dwyer

Anne Thurlow

Kimberly Kalajainen

George McPherson, Alternate

Denise Markovitz, Alternate (Sat as Regular Member for the evening)

Also Present:

Bill Mulholland, Zoning Official

Jennifer Lindo, Zoom Moderator

Mark Zamarka, Town Attorney

FILED

October 20, 20 20 AT 8:15 AM/PM

Breanna Alonzo ATC

EAST LYME TOWN CLERK

Present for Applications:

Timothy Hollister, Attorney

Glenn Russo, Applicant/Owner

Ted Harris, Attorney representing Guy's Service Station, Applicant/Owner

Absent:

Matthew Walker, Chairman

Rose Ann Hardy, Ex-Officio

James Liska, Alternate

The Regular Meeting of the East Lyme Zoning Commission was held on Thursday, October 15th, 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.

Acting Chairman Donovan called the Zoning Commission meeting to order at 7:31 p.m.

Public Delegations-

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

There were none.

Public Hearings-

- 1. Application of Landmark Development Group, LLC and Jarvis of Cheshire, LLC c/o Timothy Hollister, Shipman & Goodwin, LLP for a text amendment revision of Section 32 to replace Preliminary Site Plan/Final Site Plan with “Master Plan” procedure as used in Gateway Development.**

Mr. Donovan noted the public hearing was left open at the end of the previous zoning meeting and turned the floor over to Attorney Hollister, representing the Applicant, for his final response to the previous heard public comments. Mr. Hollister said he would prefer to make his final comments after any further public comments and Mr. Zamarka assured the Applicant that he will have the final say after any public comment.

Mr. Hollister said there are five themes he would like to outline which are overarching responses to some of the previously heard public comments; these themes include the following:

1. The application is for a text amendment change only and is applicable Town wide, and not site specific; there is no master plan, preliminary site plan or final site plan.
2. The text change doesn't exempt or shortcut any aspect of any land use permit application including engineering details and description and evaluation of impacts; the intent of the text change is to create a logistical sequence as to when the applicant provides the detailed information and when the staff and public evaluate it.
3. Landmark has voluntarily suspended the court case that is pending in Hartford which grew out of the 2015 application; they're trying to address the confusion observed during that application without any further involvement of the court.
4. Landmark is only asking to be treated in the same way as Gateway and Darrow Pond, and the same way as Section 11 & 12A of the existing Regulations.
5. “*Master plan*” is a defined term in the development world and in the Illustrated Book of Development Definitions published in 2007 reads that a master plan “is a comprehensive long range plan intended to guide the growth and development of a community, that typically involves inventory and analytic sections leading to the community's future economic development, housing, recreation, open space, transportation, community facilities and land use.”

Glenn Russo, the Applicant, said that concludes their presentation and the balance of their time will be spent responding to the letters and referrals that were entered into the record. Mr. Russo did an in depth review of Section 32 and all the proposed changes (attached.) He noted some of the following:

- They added clarifications and measuring elements for height to the regulation.
- Setbacks were left intact but will be waived if the area is designated as open space; you don't need to buffer yourself from open space with open space.
- The same applies to buffers and buffering.
- 150' was spelled out to- one hundred and fifty.
- The term ("AHMDP") Affordable Housing Master Plan was added to the General Provisions Section and FSP (Final Site Plan) was replaced with Site Plan.
- Greater details regarding Section 24 were also added to this Section.
- Many more specifications were added to item GPreliminary storm water management plan.
- They took the items from the preliminary storm water management plan deemed sufficient for the Darrow Pond Application and listed them here.
- They added more clarity to the coastal zone resource information and limited it to one specific map- the Department of Energy and Environmental Protections' Coastal Resources Map dated 1979 as revised.
- They used the term "master plan" which more adequately represents the two step process.
- The changes are minor in nature, eliminate duplications and provide greater clarity.

Mr. Russo said they would like to get a complete regrouping of public comments so they may rebut them all.

Mr. Dwyer asked at what height elevators are required and Mr. Russo replied they're proposing that multi-family dwellings would be serviced by an elevator at 50 feet.

Ms. Kalajainen said the proposal seems incredibly prescriptive. She said in her professional experience when dealing in terms of guidelines or bylaws, the more general they are the better, since it allows commissions to have flexibility and be responsive to changes in the business environment or local community; when we're very specific it introduces rigidity and constraints.

Ms. Kalajainen said she has concluded that he's clearly not happy as a business person with the Zoning process we have in Town and asked if they can step outside of all the details for a moment and explain what barriers they're encountering that are driving them to this level of specificity.

Mr. Russo said he actually like the two step process afforded in 11A and 12A and Section 32 was actually modeled after 12A but that the Town essentially said we don't want to give you the two step process which is why they went to court: court ruled that he should be afforded the same two step process which is how they and the Town came up with Section 32- a two step

process for affordable housing. Mr. Russo noted that when they came in for an application both the Commission and opposition kept insisting they provide a level of detail on their preliminary site plan that would only be required per the regulations, on the final site plan. He said their proposal is an attempt to distinguish between a preliminary and final site plan and more appropriately use the terminology master site plan instead of preliminary site plan. Mr. Russo said there was no start and stop measuring point which is why they added it to the regulation.

Mr. Hollister said in 2015 they made an application which outlayed the macro elements of what they were proposing- a 36 acre multi-family residential development area and an 87 acre open space area with a preliminary storm water management plan and access road; the detailed engineering provided on a final site plan not required at this point was not provided which is how they ended up in court. He said they're trying to get back to where they thought they were in 2015 and if they can agree on the macro elements they can determine the greater engineering details at that point.

Ms. Kalajainen discussed the Applicant's added narrative and said their starting words are "limited to" and said she's curious why they would add these words since they're constraining. She said she knows they're trying to define it but at the same time they're constraining it.

Mr. Hollister explained that using "limited to" is their attempt to define what goes into the master plan- which should not include details only necessary for the final site plan since they're not ready or at that stage at this point in the process. He said it's important to note they're not evading requirements like their opponents say but deferring them; those requirements will still need to be met in order to complete the project.

Mr. Donovan called for public comment:

1. Roger Reynolds of Save the Sound said he's confused since the Applicant was told this was a rebuttal and they instead finished their presentation without permission to do so and asked if they're finished with their rebuttal and if the public may now reply, or if they just disregarded the instructions of the Commission.

Mr. Hollister said they will finish with their rebuttal but were told they could have the last word. Mr. Reynolds asked if they finished their rebuttal or case-in-chief so he can determine how to respond. Mr. Hollister said this is not a courtroom and that they finished their presentation at the request of the Commission.

Mr. Donovan asked that Mr. Reynolds direct his comments to the Commission.

Mr. Reynolds asked if he's responding to his rebuttal or case-in-chief. Mr. Donovan said he will be responding to what was said this evening and afterwards the Applicant will have a chance to respond in turn. Mr. Reynolds said if more rebuttal is done he asks for the opportunity to respond to that.

Mr. Zamarka explained they stated at the beginning that we were going to allow members of the public to address any issues raised by the Applicant tonight whether it be during their case-in-chief or rebuttal; as noted the Applicant will have the last say in the matter and it's their intention to close the public hearing this evening if at all possible.

Mr. Reynolds said he will respond when the rebuttal is done and Mr. Zamarka assured Mr. Hollister and Mr. Russo that as the Applicant, they will have the last word.

Mr. Russo said they would merely like a complete set of questions the opposition would like answered and they will respond. He said they don't want to go back and forth over and over. He asked if they have any further issues with this application.

Mr. Mulholland, Mr. Zamarka and Mr. Donovan directed Mr. Hollister to proceed with any rebuttal they may have to the remarks made at the previous meeting.

Mr. Russo reviewed the Planning Commission referral letter dated September 15th, 2020 which deemed that the application is inconsistent with the East Lyme 2009 Plan of Conservation and Development. He had the following comments regarding the referral letter:

- Their text amendment is not legally required to be consistent with the POCD.
- An affordable Housing application is only required to be consistent with 8-30G.
- Planning said it doesn't encourage affordable housing in the IHZ or within the downtown village and their response is that their application doesn't include changing this portion of the regulation.
- The Town cannot restrict affordable housing to the IHZ or downtown village areas.
- Every application must include a plan for public health and safety and Planning's claim that the proposed language eliminates the need for a statement regarding these items is incorrect; nothing in their application proposes to eliminate this requirement.
- Under 8-30G, it's also the Commission's burden to show that the development plan will result in substantial adverse impacts on public health and safety.
- They're adding additional details and not reducing engineering standards regarding storm water management; this aspect was taken directly from the Darrow Pond Application which the Commission found acceptable.
- Planning stated the amendment proposes increases in building heights yet the current regulation has no height limitations whatsoever.
- Their claim that "it may create negative environmental impacts" is nothing but conjecture and has no bearing on making a decision.
- They cited that the proposal is the same as a preliminary site plan and essentially the same; Landmark is using different terminology- a "master plan" in hopes that the Commission will not confuse the two.

Mr. Russo directed the Commission to the memorandum from Gary Goeschel, Town Planner and Inland Wetlands Enforcement Officer, dated September 1st, 2020 to the Planning Commission; Mr. Goeschel's states that "*the proposed amendment does not appear to*

adversely impact the environment nor protect it as both multi-family and elderly housing are permitted uses within the town.”

Mr. Russo discussed the Energy & Environmental Protection email dated September 29th, 2020 and noted some of the following:

- Potential adverse impacts are nothing more than conjecture; the proposed regulations have the same density as the current regulations.
- They mention intense development on a rocky site adjacent to the Niantic River and although the site is not any more sensitive or rocky than any other property in the state, Landmark’s application is for a text amendment and is not site specific.
- The letter says it’s confusing and hard to understand at face value the three ways to initiate designation of affordable housing but Landmark’s application doesn’t include changing this portion of the regulation.
- Ms. Balint at her own admission, doesn’t understand the process and is seeking details only required upon final site plan approval.
- All the information under Section 24 is required before an applicant can get a site plan or pull a building permit and Landmark’s application is not seeking to change this.

Mr. Russo further discussed Section 24 and noted the only deviation is not buffering yourself against open space. He also reviewed the information that would have to be supplied for a coastal area management review if the site fell in a CAM area and meets the criteria. Mr. Russo also noted that nothing in their proposed regulations exempts them from going before the Inland Wetlands Agency and he reviewed those regulations in detail.

Mr. Russo said the two step process and timing is identical to Section 11A and the amendment is applicable town wide; they’re using an industry standard term.

Mr. Russo further rebutted the Energy & Environmental Protection email written by Marcy Balint.

Mr. Russo reviewed the correspondence written by Save the Sound dated September 30th, 2020 and noted some of the following:

- The letter is fraught with errors and misleading statements; Save the Sound argues that Landmark can never request a change since they formally stipulated to the existing AHD Regulations, which is completely inaccurate.
- All of Attorney Reynolds’ arguments are based on site specific issues; totally inappropriate for a city-wide text amendment change.
- Landmark is changing the name of the preliminary site plan and not the definition.
- The only thing they’ve taken from Gateway is a universally recognized term- “*master development plan.*”
- Zoning regulations are not site specific.
- Mr. Reynolds refers to case #1, #2 and #3, all of which were site specific.
- The changes Landmark are asking for are reasonable and would have to be granted unless they’re shown not to meet the requirements of 8-30G.

- They have every right to ask for a change to the regulations.
- Mr. Reynolds says they seek to remove the requirement for coastal zone information and preliminary storm water management plan; once again, section 14 of the coastal zone information is unchanged and they're still required to file coastal zone information at the site plan stage.
- They're not trying to change section 14 in terms of what is and isn't exempt and Mr. Reynolds is speaking about an application that is not before the Commission.
- We're using the same terminology as Gateway but obviously have a different set of criteria since this involves affordable housing.

Mr. Russo noted the Southeastern Connecticut Council of Governments email dated September 8th, 2020 stated the following:

"Based on a review of the material submitted, SCCOG staff determined that the proposed amendments are not likely to result in an adverse inter-municipal impact."

Mr. Russo briefly discussed Section 25 explaining that an application for a special permit must be accompanied by a site plan prepared in accordance with Section 24; this two step process points to the exact same section of the regulations as it relates to timing and level of detail as they're pointed to. He observed that if it's good enough for special permit elderly than it's good enough for affordable housing. He further cited 11.A.9.6 Implementation, and noted that implementation of the MDP is also subject to site plan approval by the commission pursuant to Section 24 of the regulations as well.

The Commission took a five minute comfort break at 9:50 p.m.

The Commission convened at 9:55 p.m.

Mr. Peck requested that the Public Hearing momentarily be tabled to prevent an applicant from having to wait further for the regular meeting and have their item be heard now. Mr. Donovan said it's appropriate to finish the public hearing prior to opening the regular meeting.

Mr. Donovan called again for public comment:

1. Roger Reynolds of Save the Sound said there are a number of things the applicant said which they believe are inaccurate and said some of the following:
 - The applicant claims it's inappropriate to refer to a specific application when requesting a text amendment change yet that's actually what the applicant did; In pages 2-5 of their application they go through the whole history of their previous application.
 - Save the Sound only responded because they included it.
 - Throughout their application they mention Gateway as what they're trying to emulate yet they obviously changed that based on our comments and are now trying to backtrack since the Gateway plans don't give them what they want.

- In terms of preliminary or final site plan- “or” means “either or” and if it was as the Applicant says the court ruling would have said it can only be supplied at the final site plan.
 - The AHD being approved before the preliminary or final site plan violates the Judge’s ruling; this is the crux of what they want- the AHD classification without providing environmental details.
 - They agreed that the original regulations were fair and not discriminatory and followed Judge Frazzini’s decision.
2. Michael Dunn of 9 King Arthur Drive said if you’re going to ignore anything they say which is site specific then you should ignore 5 ½ pages of their 6 page application letter. He added that the text is supposed to be used throughout the Town but if you look at the particular project they’re talking about, you can see how the rubber hits the road; you don’t want to cherry pick some text for site specific benefit for one applicant. He said if he misheard it then he apologizes, but when Mr. Russo was talking about DEEP’s letter he inserted a comment
- “why would they be opposed? We know why they would be opposed- because it’s affordable housing.”*

Mr. Dunn said if he heard that correctly, he thinks it’s offensive to imply that the State is opposed to affordable housing. He also takes offense if the implication is that he or any groups he’s affiliated with are opposed to affordable housing as well.

Mr. Hollister noted they covered the background information in their application letter because there are people on the Commission and of the general public who don’t have the almost 20 year history of this matter and you need the background to understand the current proposal. He asked rhetorically why Save the Sound, Mr. Reynolds and Mr. Dunn are opposed to a master plan final site plan sequence; it’s common, logical and a fair procedure.

Mr. Hollister added that the intervenors don’t want this because they don’t want a fair process- they want to stop the development process; when Mr. Reynolds said that Landmark wants a final AHD approval before they provide environmental information he completely ignored everything he and Mr. Russo has been saying throughout the entire public hearing and is absolutely wrong.

Mr. Russo said they are providing more information than 12A requires and noted 12A does not require any preliminary storm water plan whatsoever while their proposal does; such items were taken verbatim from the application Darrow Pond submitted which the Town accepted as sufficiently detailed. He said they reference a site plan merely to explain why they’re back before the Board; the Town previously refused to follow the two step process because they were confused by some of the terms of the regulations. Mr. Russo added that Marcy Balint admits she is still confused by these terms. He said “or” enables the applicant the option of providing the information in either sequence.

Mr. Russo thanked the Commission for allowing them to take the time to review the enormous amount of information needed to be submitted prior to a permit being granted.

MOTION (1)

Ms. Thurlow moved to close the Public Hearing at 10:20 p.m.

Mr. Peck seconded the motion.

Motion carried, 6-0-0.

Regular Meeting-

- 1. Application of Landmark Development Group, LLC and Jarvis of Cheshire, LLC c/o Timothy Hollister, Shipman & Goodwin, LLP for a text amendment revision of Section 32 to replace Preliminary Site Plan/Final Site Plan with "Master Plan" procedure as used in Gateway Development.**

Mr. Donovan noted they have 65 days to make a decision. He said he would like to continue this until the November 5th, 2020 meeting so they have sufficient time to review the record.

- 2. Request of Theodore A. Harris, Esq., for Guy's Service Station for a modification of a portion of the landscaping site plan for property at 87 W Main Street, Niantic.**

Mr. Harris detailed this request was made due to unknown site conditions which were not discovered until construction was underway; significant ledge was discovered and he said he will be showing the Commission photographs which illustrate this. He said the Commission has the power to modify these landscaping provisions and cited various landscaping items under Section 24. Mr. Harris said this property is surrounded by property owned by the Gada Family so they have no objection to eliminating the buffer.

Ms. Lindo showed the Commission and audience the site plan and Mr. Harris detailed the proposed modifications; the steep ledge combined with natural vegetation prevents landscaping in two areas and the use of evergreens on the east side will be substituted with the architectural fence already in place given the distance to the building and difficulty of planting in that area.

Ms. Lindo showed the Commission photographs of the site.

Ms. Thurlow said she thinks the recommendations of the landscaper and Mr Dwyer observed that the fence is more practical than any planting.

Mr. Harris thanked the Commission.

MOTION (2)

Ms. Kalajainen moved to approve the request of Theodore A. Harris, Esq., for Guy's Service Station for a modification of a portion of the landscaping site plan for property at 87 W Main Street, Niantic as presented.

Mr. Dwyer seconded the motion.
Motion carried, 6-0-0.

3. Approval of Minutes of October 1st, 2020

MOTION (3)

Ms. Kalajainen moved to approve the meeting minutes of October 1st, 2020 as presented.
Ms. Markovitz 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.

There was none.

2 Zoning Official

Mr. Mulholland had to vacate the Town Hall since it closed.

3 Comments from Ex-Officio

Ms. Hardy was not in attendance.

4 Comments from Zoning board liaison to the Planning Commission

Mr. Peck attended the October 6th, 2020 Planning Commission meeting and noted it chiefly concerned the update of the POCD. Ms. Thurlow is scheduled for November 10th, 2020.

5 Comments from Chairman

Mr. Donovan said he has nothing to report.

Adjournment

MOTION (4)

Ms. Kalajainen moved to adjourn the Zoning Commission Meeting at 10:35 p.m.
Ms. Markovitz seconded the motion.
Motion passed 6-0-0.

Respectfully Submitted,

Brooke Stevens
Recording Secretary