

**TOWN OF EAST LYME
ZONING COMMISSION
November 19th, 2020
PUBLIC HEARING & REGULAR MEETING MINUTES**

Join Zoom Meeting

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Members Present:

Matthew Walker, Chairman

Norm Peck

Terence Donovan, Secretary

Bill Dwyer

Kimberly Kalajainen

George McPherson, Alternate (Sat as a Regular Member for item 1 only)

Denise Markovitz, Alternate (Sat as Regular Member)

Also Present:

Bill Mulholland, Zoning Official

Jennifer Lindo, Zoom Moderator

Mark Zamarka, Town Attorney

Rose Ann Hardy, Ex-Officio

FILED

Absent:

Anne Thurlow

James Liska, Alternate

NOV 25, 2020 AT 4:00 AM/PM
Brooke Horner A/C
EAST LYME TOWN CLERK

Present for Applications:

Harry Heller, Attorney

Jason Pazzaglia, Applicant

Brandon Handfield, Civil Engineer

James Bubaris, Traffic Engineer

Andrea Gomes, Attorney (from Shipman & Goodwin; substituting for Attorney Hollister)

Glenn Russo, Applicant

The Regular Meeting of the East Lyme Zoning Commission was held on Thursday, November 19th, 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. Mr. Walker thanked Mr. Donovan for his handling of the last two meetings as acting Chair.

Public Delegations-

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

There was none.

Public Hearings-

- 1. Petition of Pazz & Construction LLC, to rezone 20.24 acres from RU-80/RU-40, its existing zoning designation, to Affordable Housing District and for approval of a Preliminary Site Plan which proposes an eighty (80) unit multi-family affordable residential housing development designated as "Brookside Apartments" for property identified on the westerly side of North Bride Brook Road in East Lyme, East Lyme Assessor's Map 09.0, Lot37-2, pursuant to Connecticut General Statutes 98-309.**

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

Mr. Walker noted for the exhibits for the record which are available on the Town

(www.eltownhall.com) website at the following link:

<https://eltownhall.com/government/boards-commissions/zoning-commission/zoning-commission-2020-materials/zoning-commission-2020-materials-november-19/> and Mr. Donovan read the last minute

exhibit additions into the record:

- Exhibit L, a staff review of Inland Wetlands Agent & Planning Director
- Exhibit M, Applicant's response to staff comments dated November 18th, 2020.
- Exhibit N, Applicant's revised site plan dated November 17th, 2020.
- Exhibit O, Operations & Maintenance Plan dated November 19th, 2020.
- Exhibit P, A Third Party Review by REMA dated November 19th, 2020.

Mr. Walker advised the audience that this is a continuation of a public hearing which was kept open to allow additional staff comments. Mr. Walker turned the floor over to Attorney Heller who is representing the Applicant, Pazz & Construction.

Attorney Harry Heller of 736 Route 32 in Uncasville noted Brandon Hanfield, the Project Engineer from Yantic River Consultants, Jim Bubaris, the Traffic Engineer and Jason Pazzaglia,

the principal of the Applicant are in attendance as well and available to answer any questions. Mr. Heller said a subsequent meeting with Town staff was held after the November 5th, 2020 Zoning meeting to address staff comments and questions which are represented in exhibits M-O. Mr. Heller briefly discussed the storm water management plan for the project as well as the three phases of development (Exhibit N-Sheet 1 of 8 of the revised site plan). The three phases are:

1. Development of the storm water management infrastructure for the entire project and both the principal and emergency access drive will be constructed; modifications to the emergency drive have been made based on staff comments. 26 units- buildings A, B & C will be constructed in the northeastern portion of the project during Phase I.
2. Development of 34 units will be constructed proceeding westerly upgradient of the site during Phase II.
3. Development of the final 20 units will be constructed in the westerly portion of the site.

Mr. Heller noted that all the infrastructure necessary to support Phase II and Phase III will be constructed during Phase I; at the request of Town staff the stockpile and staging areas will be delineated for each phase. Mr. Heller further discussed the newly added exhibits and their responses to Town staff comments and questions.

Mr. Heller asked Mr. Bubaris, the Traffic Engineer, to address the question regarding the intersection of North Bridebrook and Route 156 which was brought up at the November 5th, 2020 meeting. Mr. Bubaris shared the following:

- There were no available traffic counts for that intersection.
- He therefore can't give a quantitative analysis of what the impact will be but his experience tells him that the amount of traffic generated by this development that will reach this intersection is 50% of the total which translates into 19 trips during the peak 2 hours in the morning, and 23 trips during the peak two hours in the afternoon.
- A trip is defined as a one way vehicular movement traveling to or from the site.
- 19 to 23 trips during these 4 hours- which will be the four highest hours of the day, basically results in the addition of one vehicle every three minutes; this is a very low addition to the traffic already there and he doesn't believe it will even be noticeable.
- The minimal amount of traffic added by this development will not change the current level of service.
- He reviewed the traffic crash history for the last 6 years and the entirety of North Bridebrook Road only experienced 8 traffic crashes in the last 5 years from Route 156 to Route 1, and none of them were in the vicinity of the site drive and all but one were one car accidents.
- There was only one accident in the intersection itself and involved a westbound vehicle on Route 156 and a southbound vehicle coming out of North Bridebrook Road and resulted in no injuries or deaths.
- This is a pretty good traffic crash history and traffic engineers consider it to be excellent.
- They don't believe any adverse impacts will be caused by this development and no measures to mitigate additional traffic will be needed.

Mr. Heller said this concludes their presentation.

Mr. Walker asked Mr. Bubaris to expand upon why it's such a safe intersection and Mr. Bubaris said the combination of low traffic and configuration layout and that he wished more intersections were like that.

Mr. Mulholland asked about the phasing of the drainage and road system. Mr. Heller clarified that the roads will be constructed and paved in Phase I but the emergency access road will only be a binder course.

Mr. Dwyer observed that the road is twisty and no real place to speed which is why there are no accidents.

Mr. Mulholland said staff is satisfied with the Applicant's responses to their comments and questions.

Mr. Walker called for Public Comment-

1. Don Danila of 24 Pattagansett Drive noted his membership with the East Lyme Conservation of Natural Resources as well as the Niantic River Watershed Committee and Fisheries Advisory Council for the Connecticut Department of Energy and Environmental Protection. He discussed the spawn entering the Bride Brook and Broad Lake which often exceed 3,000 fish. He urged the Developer, Engineering Consultants, and Town Officials to ensure that storm water or groundwater that might enter the brook be handled and treated so that any discharge has no impact on water quality; this will ensure that the important fish population remains viable in the future.
2. Glenn Russo asked if this application was for a site plan and not a preliminary site plan and Mr. Heller responded it's an application for a final site plan approval and that because it's an 8-30g application the applicant is not complying with the requirements of the underlying zoning district; inherent within that site plan application is a zone change to affordable housing.

Mr. Russo asked if the staff comments were read into the record at the previous meeting and Mr. Mulholland explained that it's not standard practice to read staff comments at all of our hearings and are generally handled administratively at staff level; more is currently being included given the pandemic, zoom and the Governor's executive orders. He further added that the minutia is handled by staff and the applicant's engineers and that he will typically include a memorandum informing the Commission how they met and are satisfied with the technical aspects of a site plan. Mr. Donovan said the staff comments were presented as exhibits which people are able to view on the Town website.

3. Barbara Johnston of 35 Seacrest Avenue said she's concerned about the traffic study and that it doesn't sound as if they've viewed the Giants Neck streetlights at all. She said

they only did the study during the day and she's not aware of what dates during which it was done; there is a real problem there with access from Giants Neck and other problems which the Traffic Engineer said he could not find. Ms. Johnston said a serious traffic study of that area should be taken especially during Summer hours.

Mr. Walker thanked Ms. Johnston for her comments.

Mr. Heller said there was in fact a through traffic study performed by Mr. Bubaris which is in the record and was actually done when they anticipated accommodating for 250 units. He added an update to the report when done in October of this year which is part of the record as well. Mr. Bubaris noted the original traffic study was done December 22, 2018. Ms. Lindo shared it's listed as exhibit B on the website.

4. Barbara Johnston of 35 Seacrest Avenue asked if there is a way to coordinate this area (if it gets approved) with Giants Neck since there is a lot of traffic there.

Mr. Mulholland said it's a State road controlled by the DOT and is in control of whether or not they want that intersection modified. He added that a permit from the DOT is not required at this time and Mr. Bubaris said agreed that it's not something under the purview of this application.

Mr. McPherson asked if the neighbors were notified about this application and Mr. Heller said the certificate of mailings were suspended as a result of the Governor's executive orders. Ms. Lindo and Mr. Mulholland confirmed they've received no inquiries regarding this application.

Mr. Mulholland said advertisements were run in accordance with State Statutes. Mr. Heller said there was a public hearing with the Inland Wetlands Agency pre-covid when this application was a different formulation and only two members of the public were present. Mr. Dwyer observed that the New London Day ran an article about the whole project.

MOTION (1)

Mr. McPherson moved to close the Public Hearing.

Mr. Dwyer seconded the motion.

Motion carried, 6-0-0.

Mr. Dwyer said he thought Mr. Heller's presentation was excellent.

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

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. Zamarka, Town Attorney, came forward to make some brief remarks prior to any deliberations and noted some of the following:

- This current text amendment application stems from an affordable housing application originally filed by Landmark in 2005.
- That was the third application and the previous two were denied and upheld by the Superior Court when appealed.
- The 2005 application sought to put 840 units on Landmark’s property in the Oswegatchie Hills and the Zoning Commission approved part of that application and denied part of that application as well.
- Landmark also appealed the 2005 application and the Court issued a 104 page decision addressing all perimeters of the application.
- For purposes of the current application the case was remanded to the Zoning Commission with instructions to adopt an amendment to Section 32 (the affordable housing regulation) consistent with the Judge’s decision and incorporating the proposed text amendment that Landmark originally applied for.
- The Judge also gave the Commission the authority to require an applicant to provide either the conceptual site plan, preliminary site plan, or final site plan and adequate information to allow the Commission to evaluate the development and ensure its harmony with the relevant environmental health and safety considerations.
- The Commission can use their judgement to determine what is required and at what stage.
- In 2012 Landmark submitted an application for a text amendment consistent with that instruction and in 2013 after much back and forth, the Applicant and Commission agreed on the version of Section 32 that is currently in place.
- Section 32 says that an affordable housing designation can’t be approved without approval of a final site plan and states the 15 items of criteria required with a preliminary site plan under Section 24, which include information regarding sewage disposal and water supply and a statement of the impact of the development on health and safety and emergency services; this is consistent with the Judge’s decision about providing adequate information in regards to environmental health and safety.
- In 2015 Landmark applied for approval of a preliminary site plan and a zone change and contrary to some remarks made, this application wasn’t denied; the preliminary site plan was approved with conditions and the zone change was approved for the area limited to the portion of the property within the East Lyme Sewer Service District.
- In terms of the preliminary site plan the conditions were that Landmark provide at or before the final site plan stage, a wetlands permit, a coastal site plan review, how water & sewer would be provided, information regarding road width & emergency access, and the relevant information that would allow the Commission to evaluate environmental and coastal impacts.

- Landmark appealed this decision and that case is still pending in the Hartford Superior Court and was put on hold by agreement of the two parties pending the results of this current text amendment application.
- Mr. Russo and Mr. Hollister says the Commission misstated or misapplied the regulation in reaching their 2015 decision but his office completely disagrees about this characterisation; the preliminary site plan was approved and has not yet been overturned by the Court.
- It's their position that this version of Section 32 was properly applied.
- In regards to the current text amendment and Mr. Russo and Attorney Hollister's remarks that it deals with the totality of Section 32, his office has a few issues-
 1. Section 32.9 eliminates language that a zone change to an affordable housing district cannot be approved without an approved final site plan; this clause prevents land from being saddled with an affordable housing designation if the final site plan is not approved and they believe it's proper to have this clause in there. The proposal instead substitutes a master development plan and Judge Frazzini's decision did not address anything about a master development plan.
 2. The Applicant says the proposed text amendment is based on the SUE (Special Use Elderly) regulations but there is nothing in the SUE regarding an MDP; that is found in Section 11a for the Gateway Planned Development District; the purpose of an MDP is to facilitate the comprehensive development of multiple parcels and mixed use development.
 3. The proposed text amendment also eliminates the requirement for a statement regarding the relevant environmental health and safety considerations; Judge Frazzini's decision tied the zone change to the receipt and review of this relevant information. This information is also not required under Section 24 for a site plan application.
- The Zoning Commission is acting in a legislative capacity and not an administrative capacity when deciding about a zone change. The Commission needs to reasonably exercise their discretion and whatever decision they make needs to be reasonably supported by the record.

Mr. Walker called for Commission comments.

Mr. Peck asked if they approve the master plan if that is binding and Mr. Zamarka clarified that a final site plan is still required. Ms. Markovitz asked why the section about public health and safety has been eliminated. Mr. Zamarka said the Applicant stated that all this information is required for final site plan approval anyway yet there is nothing in Section 24 in regards to a statement about impacts on environmental health and safety.

Mr. Peck said in regards to a master plan this is rezoning and Mr. Zamarka said it should be remembered that affordable housing doesn't have to meet the underlying zoning; traditionally we have treated an application for a site plan separately from an application for a zone change and this proposed text amendment doesn't specifically call for a zone change but it does eliminate the requirement for a final site plan in order to have an affordable housing zone.

Mr. Peck said the change in 32. 4. 2- in regards to building height we now have a 30 foot high limit and they're proposing a different method of measurement which will allow them higher buildings. Mr. Mulholland read the definition of height from the current code into the record.

Mr. Donovan asked how this decision would affect the previous decision from 2015 which is still in the courts and Mr. Zamarka said generally these items don't apply retroactively and it would be up to the applicant how they want to address this, whether they would reapply under this amendment and so forth.

Mr. Walker said any text amendment should be for the best interest of the Town and its citizens; we have broad discretion in terms of text amendments but one thing he's uncomfortable with is the feeling that we're not able to fully assess the environmental impact. He said we also need to consider how the amendment impacts what the Commission does.

Mr. Walker asked if Mr. Zamarka and Town Staff would craft resolutions both in the affirmative and negative for the next zoning meeting.

Mr. Peck asked Mr. Mulholland for his thoughts and he responded that like Mr. Zamarka stated they're acting in a legislative capacity and have broad discretion; they need to evaluate the application package and language in it and consider if this is in the best interest of the Town and whether they're losing any ability to review by agreeing to this proposal.

The Commission agreed to continue this item until December 3rd, 2020.

- 2. Petition of Pazz & Construction LLC, to rezone 20.24 acres from RU-80/RU-40, its existing zoning designation, to Affordable Housing District and for approval of a Preliminary Site Plan which proposes an eighty (80) unit multi-family affordable residential housing development designated as "Brookside Apartments" for property identified on the westerly side of North Bride Brook Road in East Lyme, East Lyme Assessor's Map 09.0, Lot37-2, pursuant to Connecticut General Statutes 98-309.**

Mr. Peck recused himself from this item and Mr. Peck rejoined the Commission.

Mr. Zamarka said an affordable housing application is processed in the same way as any other site plan application and can be approved, approved with conditions, or denied; if the application

is denied they can amend it or reapply which must be done within 15 days. Mr. Zamarka added that when the Commission makes their decision they must state their reasons on the record as an official collective statement; they can't deny an affordable housing application unless there is some quantifiable probability of harm from a defect or problem with the application and if reasonable modifications cannot be made to address the problem. He further explained that in the case of a land use appeal it's the burden of the Commission to prove they did everything right.

Mr. Walker called for Commission comments.

Mr. Donovan said there has been quite a bit of concern with the traffic there and observed that it really is only an issue during the Summer months and that you encounter that same problem downtown as well; in regards to exit 72 and West Main Street that's a State road and their issue.

Mr. Dwyer agreed with Mr. Donovan that it's a State problem.

Mr. Walker said when you review the record it's hard to ascertain any quantifiable probability of harm. He noted it's a rural area and Mr. Bubaris's traffic study gave him confidence that there will not be a significant increase in traffic. Mr. Walker said the only issue he sees which is more of a curiosity and not in their purview, is how it will work not having mass transit there and whether the developer has considered reaching out to Southeastern area transit.

Mr. Walker asked Mr. Mulholland and Mr. Zamarka to draft resolutions in the affirmative and negative for this application as well.

The Commission agreed to continue this item until the December 3rd, 2020 meeting.

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

3. Approval of Minutes of November 5th, 2020

MOTION (1)

Mr. Donovan moved to approve the meeting minutes of November 5th, 2020 as presented.

Ms. Kalajainen seconded the motion.

Motion carried, 5-0-1.

Mr. Walker abstained from the vote due to his absence from the November 5th, 2020 meeting.

Old Business-

There was none.

New Business-

1. 2021 Meeting Schedule (attached.)

MOTION (2)

Mr. Donovan moved to approve the 2021 Zoning Commission schedule as presented.

Ms. Kalajainen seconded the motion.

Motion carried, 6-0-0.

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

Mr. Peck said he brought up the cutting of trees between Stop & Shop Supermarket and the highway at the last meeting and asked Mr. Mulholland for an update. Mr. Mulholland stated he sent him a cease and desist order and he received a call back from the owner of the development and he said he thought trimming was acceptable; Mr. Mulholland responded that there is a difference between cutting and trimming. He suggested they have Attorney Zamarka draft a letter and proceed to court if necessary although courts currently are closed. Mr. Mulholland said he will speak with Mr. Zamarka in the morning.

Mr. Donovan asked if the banner advertisement at Gateway is considered a sign and Mr. Mulholland said their attorney has made several pitches that it's a legal sign under the Gateway Development signage. Mr. Mulholland has asked them for further information and their discussion is ongoing. Mr. Donovan asked why other business can't have signs on their buildings and Mr. Mulholland said they can, as long as they meet the signage requirements.

3. Zoning Official

Mr. Mulholland said they are extremely busy and noted there is interest for a couple of businesses including restaurants downtown and a new Mexican restaurant is currently under renovation. He shared that the Morton House has gutted the kitchen space and wants to add more rental rooms which would require going before the Zoning Board of Appeals.

4. Comments from Ex-Officio

Ms. Hardy said the cutting of trees by Stop & Shop is a direct violation, not the first time, and not an accident. She detailed how they were supposed to place plantings on the other side of the building as well which they never did. She said it's about time they follow our standards.

Ms. Hardy discussed the affordable housing and shared how a document was created 3 or 4 years which stated criteria for affordable housing and suggested that the Commission might want to review it and added that she knows we had some sort of agreement with the State and it was done through the Board of Selectmen.

Ms. Hardy said the plans for the Emergency Services and Police building are moving along and should be presented shortly.

Mr. Peck commented that the affordable housing document was done by a Zoning Commission Subcommittee run by Marc Salerno; we were supposed to receive \$2,000 a unit if development occurred but the program ran out of money.

5. Comments from Zoning board liaison to the Planning Commission

Ms. Thurlow was not in attendance and Ms. Lindo said they approved the POCD at the November 10th, 2020 meeting.

5 Comments from Chairman

Mr. Walker thanked everyone for their efforts.

Adjournment

MOTION (3)

Mr. Donovan moved to adjourn the Zoning Commission Meeting at 9:29 p.m.

Mr. Peck seconded the motion.

Motion passed 6-0-0.

Respectfully Submitted,

Brooke Stevens
Recording Secretary

**Town of East Lyme
Zoning Commission
Regular Meeting Schedule
2021 Proposed**

Regular Meetings are held at the East Lyme Town Hall, Meeting Room #1
On the following listed Thursdays beginning at 7:30 PM
Special Meetings may be called at other times.

Members are requested to advise the Zoning Office @ 691-4114 if they are unable to attend a meeting.

2021 Calendar

**January 7, 2021
January 21, 2021**

**February 4, 2021
February 18, 2021**

**March 4, 2021
March 18, 2021**

**April 8, 2021 (Due to Good Friday Holiday April 2)
April 22, 2021**

**May 6, 2021
May 20, 2021**

**June 3, 2021
June 17, 2021**

July 1, 2021

August 5, 2021

**September 2, 2021
September 16, 2021**

**October 7, 2021
October 21, 2021**

**November 4, 2021
November 18, 2021**

December 2, 2021