

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

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Members Present:

Matthew Walker, Chairman

Norm Peck

Terence Donovan, Secretary

Bill Dwyer

Kimberly Kalajainen

Anne Thurlow

George McPherson, Alternate (Sat as a Regular Member for item 2 and 3)

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

Also Present:

Bill Mulholland, Zoning Official

Jennifer Lindo, Zoom Moderator

Mark Zamarka, Town Attorney

Rose Ann Hardy, Ex-Officio

Richard Gordon, Planning Commission Liaison

Absent:

James Liska, Alternate

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Present for Applications:

Harry Heller, Attorney

Jason Pazzaglia, Applicant

Brandon Handfield, Civil Engineer

James Bubaris, Traffic Engineer

Timothy Hollister, Attorney

Glenn Russo, Applicant

December 10, 20 20 AT 8:30 AM/PM

Brooke Stevens ATC

EAST LYME TOWN CLERK

The Regular Meeting of the East Lyme Zoning Commission was held on Thursday, December 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.

Public Delegations-

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

There was none.

Public Hearings-

There were none.

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.**

Ms. Thurlow recused herself from this item due to her absence from the previous meeting and noted she had read the meeting minutes but was unable to review all of the exhibits; the Commission sat Ms. Markovitz in her stead and she noted for the record that she has been in attendance for all meetings related to this item and reviewed all exhibits.

Mr. Zamarka, Town Attorney, came forward to address the Commission and review the resolutions prepared for this item. Mr. Zamarka noted the application states the proposed text amendment is submitted in conjunction with the 2015 affordable housing application but the 2015 application is not currently pending before this Commission; the Commission ruled on the affordable housing application back in 2015 to which Landmark took an appeal and that case is currently before the Superior Court in Hartford. He said at this point there is nothing the Commission can do at this time that will affect the 2015 affordable housing application but this does raise the question as to whether the text amendment is in fact in connection with an affordable housing application that is currently before this Commission and if it should be decided under 8-30 g.

Mr. Zamarka said they believe the resolutions both in the affirmative and negative will withstand any scrutiny under 8-30 g; both resolutions set out the same whereas clauses as well as findings. He noted the purpose of these resolutions is for discussion and possible action and the

findings are from both the Town Attorney's office and Commission staff, and as with everything the Commission can accept or modify any or all findings or anything else in the resolutions.

Mr. Zamarka stated that the resolutions are essentially the same with the exception of the decision portion and Mr. Donovan read the resolution minus the decision portion into the record. The Commission discussed the decision portion of the resolution and how one denies the application while the other partially approves the application and Mr. Donovan read the decision portions for both the affirmative and negative into the record.

Mr. Peck stated the concern he has in regards to building height which he also brought up at the previous meeting which the Commission discussed and Mr. Walker asked if they should piecemeal the decision motion.

MOTION (1)

Mr. Peck moved to deny the 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 altogether based on all the reasons stated in the resolution:

WHEREAS, pursuant to the current §32 the designation of land as an Affordable Housing District ("AHD") cannot be approved without the Commission also approving an FSP; and

WHEREAS, pursuant to the current §32 at the Preliminary Site Plan ("PSP") stage an applicant is required to provide information as to how water and sewer will be provided to the proposed development, consistent with the Decision; and

WHEREAS pursuant to the current §32 at the PSP stage an applicant is required to provide a statement describing any impact on public health and safety, including emergency services ("Impact Statement"), consistent with the Decision's holding regarding Relevant Evidence; and

WHEREAS, on June 26, 2020 the Applicant filed the proposed text amendment ("Amendment"); and

WHEREAS, the Amendment was the subject of a properly noticed public hearing that opened on October 1, 2020 and closed on October 15, 2020; and

WHEREAS, during the public hearing the Commission heard hours of testimony and 16 exhibits were entered into the record; and

NOW THEREFORE, the Commission makes the following findings regarding the proposed Amendment:

- 1. The Amendment adds three classes of building elevations to §32.4.2;**
- 2. The Amendment delineates setbacks and buffer areas from existing open space in §32.4.5 through §32.4.7;**
- 3. The Amendment notes that an affordable housing application can be initiated by filing either a Conceptual Site Plan, an Affordable Housing Master Development Plan (“MDP”) or a Site Plan (“SP”);**
- 4. The Amendment deletes the existing classification of Preliminary Site Plan in favor of “Master Development Plan”, as that concept is used in §11A of the Regulations regarding the Gateway Planned Development District;**
- 5. The Amendment deletes the existing requirement that an application for rezoning as an affordable housing district cannot be approved without an approved Final Site Plan;**
- 6. The Amendment limits the types of coastal zone resources required at the MDP (currently PSP) stage;**
- 7. The Amendment limits the type of storm water management plan information required at the MDP (currently PSP) stage;**
- 8. The Amendment totally eliminates the requirement that an applicant provide an Impact Statement at any stage in the application process;**
- 9. The Amendment eliminates the requirement that an applicant provide information regarding the provision of water and sewer services.**
- 10. The Applicant has represented that an MDP as set forth in the Amendment is the functional equivalent of an existing PSP.**
- 11. As set forth in §11A of the Regulations, the MDP is a concept intended for the development of multiple parcels in a mixed-use development featuring both residential and commercial elements. An MDP is not applicable to an affordable housing development that does not have a commercial component.**
- 12. Pursuant to the Decision, the Commission has the discretion to require from an applicant information to allow the Commission to evaluate the**

relevant environmental, health and safety considerations of a proposed development and at what stage such information may be required.

13. Eliminating the requirement that an applicant provide an Impact Statement is contrary to the Decision, which provides that the Commission has the discretion to decide what evidence it would require to properly assess health, safety and environmental impacts of a proposed development, and at what stage such evidence would be required.

14. The Applicant represented that the types of information contained in the Impact Statement are also required for Site Plan approval pursuant to §24 of the Regulations.

15. The types of information contained in the Impact Statement are not contained in or required by §24 of the Regulations regarding site plans.

16. The Amendment as written does not allow the Commission to require information that would allow it to evaluate the health, safety or environmental concerns regarding a proposed affordable housing development at any stage in the application process, which is contrary to the Decision.

17. The Amendment as written provides for the approval of an application to rezone an area to an Affordable Housing District without allowing the Commission to first evaluate evidence regarding the health, safety or environmental concerns regarding a proposed affordable housing development, which is contrary to the Decision.

18. Information regarding the provision of water and sewer service is required to be provided with a Site Plan application pursuant to §24 of the Regulations.

19. In making its decision the Commission has considered all evidence in the record.

20. When considering a text amendment to its Regulations the Commission acts in a legislative capacity and is invested with broad discretion.

21. The Commission has very broad discretion when refusing to add or delete provisions from its own valid regulation.

BE IT THEREFORE RESOLVED, that based on the foregoing and the evidence in the record, the Commission hereby DENIES the Application for a text amendment to §32 of the East Lyme Zoning Regulations.

**Mr. Donovan seconded the motion.
Motion carried, 6-0-0.**

Mr. Mulholland noted the decision will be published Thursday December 10th, 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 sat Mr. McPherson in his stead. Mr. McPherson noted he was present and seated at every meeting related to this item and is familiar with all submitted exhibits.

Mr. Zamarka reviewed the prepared resolutions noting they're for an approval and a conditional approval and said he did not see any evidence in opposition to the application but that these resolutions are set out for discussion purposes.

Mr. Dwyer observed that affordable housing overrules any zoning in the area and asked if was necessary to rule on a zone change when they already have the authority to proceed and Mr. Zamarka responded that they have traditionally treated affordable housing applications as a two-part application- an application for site plan approval and an application for a zone change since it's a defacto zone change and for purposes of clarity.

Mr. Donovan read the approval resolution into the record and the Commission discussed the differences between the approval and approval with conditions.

Mr. Walker said he is feeling strongly about the approval of this application and that although the location is not ideal nor consistent with the POCd, he thinks it's a well crafted application which meets the findings of 8-30 g and will help with the deficiency of affordable housing in Town.

Mr. Donovan noted there is some public transit by the Rocky Neck connection and also sees no issue with this application. He also wondered if someone will need to be hired in the future to ensure designated affordable housing retains that designation.

MOTION (2)

Mr. Donovan moved to approve the 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. Dwyer seconded the motion.

MOTION (3)

Mr. Donovan amended his motion and moved to approve the 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 based on the resolution read into the record:

WHEREAS on July 10, 2020, Pazz & Construction, LLC ("Applicant") filed an "Application for Site Plan Approval of an eighty (80) unit multi-family set-aside affordable housing development submitted pursuant to the provisions of Section 8-30g of the Connecticut General Statutes at property identified in the application as N. Bride Brook Road, East Lyme Assessor's May 9, Lot 37-2 ("Application") and;

WHEREAS, the Application was not submitted pursuant to §32 of the East Lyme Zoning Regulations but rather pursuant to Wisniewski v. Berlin Planning Comm., 37 Conn.App. 303 (1995); and

WHEREAS, the Commission is required to make appropriate findings under the Affordable Housing Statute C.G.S. §8-30g; and

WHEREAS, the Commission received referral reports from Victor Benni, Town Engineer, and Gary Goeschel, Inland Wetland Agent/Planning Director; and

WHEREAS, the Applicant has applied for and received from the East Lyme Water and Sewer Commission an allocation for 35,400 gallons per day of sewer treatment capacity; and

WHEREAS, the Commission held two (2) public hearings on the application during which it listened to numerous hours of testimony. Approximately seventeen (17) exhibits were submitted by the Applicant and various agencies and individuals for

consideration during the hearing process. In making its decision, the Commission is considering and taking into account all of the testimony and exhibits submitted at the hearings on the Application; and

WHEREAS, the Commission, having determined that the Application includes a request for a change in zone, has made the requisite referrals to the Planning Commission pursuant to General Statutes § 8-3a and the Southeastern Connecticut Council of Governments pursuant to General Statutes §8-3b; and

WHEREAS, for the purposes of this affordable housing application, the Commission will address this motion in two separate parts-

- 1. The request for a zone change;*
- 2. The request for approval of an affordable housing development*

A. THE PROPOSED ZONE CHANGE TO THE APPLICANT'S PROPERTY

WHEREAS, the Commission finds and recognizes that there is a need for affordable housing in the Town of East Lyme, and that less than 10% of its available housing stock meets the statutory definition of affordable housing; and

WHEREAS, the Applicant is applying for a zone change for 20.24 acres of its property that is the subject of this application. The development plan submitted proposes 80 residential units to be located on 8.13 acres of the 20.24 acres that are the subject of the zone change and that the remaining 12.11 acres will remain undeveloped at this time; and

WHEREAS, the Application notes that the development will be located entirely within the East Lyme Sewer Service District ("SSD"); and

WHEREAS, the Commission has determined, based on sufficient evidence in the record, that the change of zone to AHD is in the public interest and does not pose a harm to the public interest in health, safety or other matters that the Commission may consider.

BE IT THEREFORE RESOLVED, the Commission hereby APPROVES the application of Pazz & Construction, LLC to re-zone the Applicant's property to an Affordable Housing District.

B. THE REQUEST FOR APPROVAL OF A FINAL SITE PLAN

WHEREAS, the Commission finds and recognizes that there is a need for affordable housing in the Town of East Lyme, and that less than 10% of its available housing stock meets the statutory definition of affordable housing; and

WHEREAS, the Applicant is applying for approval of an Affordable Housing Site Plan pursuant to Wisniowski v. Berlin Planning Comm., 37 Conn.App. 303 (1995); and

WHEREAS, the Commission is required to make appropriate findings under the Affordable Housing Statute C.G.S. §8-30g; and

WHEREAS, the Commission finds that the Application complies with the requirements of §8-30g; and

WHEREAS, the Commission has determined, based on sufficient evidence in the record, that the Application does not pose a harm to the public interest in health, safety or other matters that the Commission may consider and is in the public interest; and

BE IT THEREFORE RESOLVED, the Commission hereby APPROVES the application of Pazz & Construction, LLC for approval of an Affordable Housing Site Plan.

Mr. Dwyer amended his second.

Motion carried, 6-0-0.

Mr. Heller noted he handles these applications in many towns and wants to acknowledge how pleasant it has been to work with Town staff and how productive and cooperative their meetings were.

Mr. Mulholland said this will be published Thursday December 10th, 2020 and become effective Friday December 11th, 2020.

Mr. Walker thanked Mr. Zamarka for all his efforts.

3. Approval of Minutes of November 19th, 2020

Ms. Thurlow clarified that she did sit in on the Planning meeting when the minutes say she was not in attendance and Ms. Kalajainen explained that Ms. Thurlow not being in attendance pertains to her not being at the Zoning meeting to give her report.

MOTION (4)

Ms. Kalajainen moved to approve the meeting minutes of November 19th, 2020 as presented.

Mr. Dwyer seconded the motion.

Motion carried, 6-0-0.

Mr. Peck had to vacate the meeting, Mr. McPherson returned to the audience, Ms. Thurlow rejoined the Commission and Ms. Markovitz remained seated.

4. Election of Officers

Ms. Hardy as Ex-Officio ran the Commission elections for 2021 and called for nominations for Zoning Chair.

MOTION (5)

Mr. Donovan moved to nominate Mr. Walker as Zoning Chair.

Ms. Markovitz seconded the motion.

Mr. Donovan noted the wonderful job Mr. Walker has done as Chair.

Ms. Hardy called for further nominations and there were none.

Motion carried, 6-0-0.

Ms. Hardy called for nominations for Zoning Secretary.

MOTION (6)

Mr. Dwyer moved to nominate Mr. Donovan as Zoning Secretary.

Ms. Thurlow seconded the motion.

Ms. Hardy called for further nominations and there were none.

Mr. Dwyer said Mr. Donovan has proved in the last few weeks especially that he can do the job. Mr. Walker added that Mr. Donovan has been an excellent Secretary and supports each other which is much appreciated.

Ms. Hardy closed the nominations and called for the vote.

Motion carried, 5-0-0.

Mr. Donovan abstained from the vote.

Ms. Hardy thanked Mr. Walker and Mr. Donovan for serving the Town and swore them in.

Old Business-

There was none.

New Business-

- 1. Application of Theodore A. Harris, Esq., Agent for 159 Boston Post Road, LLC, Owner, for a special permit for Mixed Use (CA) pursuant to Section 8.2.2. and Section 25 at property located at 159 Boston Post Road, East Lyme Assessor's Map 31.1 Lot 32.**

Mr. Mulholland said he will schedule this item.

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

Mr. Dwyer asked about fines and towing vehicles in regards to the grocery pickup spots at Stop & Shop. He noted that only handicapped spots can be designated according to the Zoning bylaws yet Stop and Shop has signs saying patrons will be fined and towed for parking in the grocery pickup spots if not utilizing that service. Mr. Mulholland said it's private property but he will look into this matter.

3. Zoning Official

Mr. Mulholland said they continue to be busy. He thanked Mr. Zamarka and the Commission for all of their work on these applications and thanked Ms. Lindo for continuing to run the zoom meetings noting it's a huge help.

4. Comments from Ex-Officio

Ms. Hardy said the Vision Committee have completed their work for the Emergency Services Building and has now been taken over by the Town Building Committee and almost all the bids are in and have been certified. She said they hope to have at least partial occupancy by the 1st of July 2021.

5. Comments from Zoning board liaison to the Planning Commission

Ms. Thurlow said the POCD revision was turned into the State. Mr. Walker said he was unable to attend the December 1st, 2020 meeting and Ms. Lindo reported that the public hearing for the Old Black Point application was closed and they will be having a meeting on December 10th, 2020 to make a decision. She added that the Upper Kensington public hearing is still open and they're waiting on information from the health department and this item will also be discussed during the December 10th, 2020 meeting.

6. Comments from Chairman

Mr. Walker thanked everyone for their efforts and emphasized how helpful it is to have Ms. Lindo moderate the meetings.

Mr. Donovan noted for the record that Richard Gordon from the Planning Commission is also in attendance this evening.

Adjournment

MOTION (7)

Mr. Walker moved to adjourn the Zoning Commission Meeting at 8:48 p.m.

Mr. Donovan seconded the motion.

Motion passed 6-0-0.

Respectfully Submitted,

Brooke Stevens
Recording Secretary