

**East Lyme Zoning Commission
March 4th, 2021
Regular Meeting & Public Hearing Minutes**

Meeting Link:

<https://us02web.zoom.us/j/86946364510?pwd=UTRPNZGYVVRpSmNzbjRjSnFHdEVaUT09>

Members Present:

- Norm Peck**
- Terence Donovan, Secretary**
- Bill Dwyer**
- Anne Thurlow**
- Kimberly Kalajainen**
- Denise Markovitz (sat as a Regular Member)**
- George McPherson, Alternate**
- James Liska, Alternate (Joined at 7:35 p.m)**

Also Present:

- Bill Mulholland, Zoning Official**
- Jennifer Lindo, Zoom Moderator**
- Rose Ann Hardy, Ex-Officio**

Absent:

- Matthew Walker, Chairman**

Present for Applications:

- Andrea Daulaire**
- Michael Artis**
- James Covington**
- Attorney Ted Harris**

FILED

March 10, 20 21 AT 8:30 AM/PM
Brady Horvath ATC
 EAST LYME TOWN CLERK

The Regular Meeting of the East Lyme Zoning Commission was held on Thursday, March 4th, 2021, 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.

I. Roll Call and Call to Order

Acting Chairman Donovan called the meeting of the Zoning Commission to order at 7:33 p.m., took roll call, and asked if there were any objections to sitting Ms. Markovitz as a regular member since she sat for the previous session as well; there were no objections. Mr. Donovan noted he is filling in for Mr. Walker who had a family emergency.

II. Public Delegations

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

Ms. Lindo asked the members of the public in attendance if anyone wished to speak and there were no comments..

III. Public Hearings

1. Continuation of 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 3L.1 Lot 32.

Mr. Donovan read the list of new exhibits entitled R-X into the record:

- Exhibit R- Applicants Extension of Time to hold Public Hearing (submitted 2/22/01)
- Exhibit S- Mixed Use Building Site Layout C-200 February 12 2021 (submitted 3/4/21)
- Exhibit T- Victor Benni memo of February 24, 2021(submitted 3/4/21)
- Exhibit U- Mixed Use Building Lighting Plan March 1, 2021 (submitted 3/4/21)
- Exhibit V- Mixed Use Building Plan Set C101 - C601 March 1 2021 (submitted 3/4/21)
- Exhibit W- Mixed Use Building Plan Set C101 - C601 March 4 2021 (submitted 3/4/21)
- Exhibit X- Email Narrative of Changes to Plan since last Public Hearing from Mike Artis (submitted 3/4/21)

Ms. Lindo noted there is also an exhibit Y- An email from Victor Benni dated 3/4/21, which states that the latest plans submitted are all set. Mr. Mulholland said essentially the Town Engineer has signed off on the site plan.

Attorney Harris came forward representing the Applicant and said he wanted to clarify some things that may be helpful:

- They did continue the public hearing twice but the reason was not nefarious nor did they want to hinder the public from attending.
- They wanted to make a better product and bring a product to the Commission which has the full support of Town Staff.
- They had to do significant plan revisions due to the drainage scheme.
- They had a technically advanced drainage system design and when Mr. Benni looked at it, he suggested they use an infiltration system instead.
- This required a complete redesign of the drainage system but was a very good idea as well as a simpler means of handling the drainage.
- Mr. Benni has indicated that all of his concerns have been addressed.
- In regards to the minimum size of the apartments there is a minimum size requirement in the CB Zone which doesn't apply to the CA Zone.
- The provided entrance to the parking area is 24ft wide which is the requirement under the regulation with respect to entrances; this is not the requirement for the parking area itself.

- There is no specific standard for aisle width in the parking area but Mr. Benni has signed off on this particular width of driveway and parking area.
- Alleys within the parking area don't require any variance from the Commission.

Mr. Harris briefly spoke of the changes made to the plans as a result of comments made at the previous meeting:

- The addition of a sidewalk from the street sidewalk to the site itself.
- They clearly striped a walkway along the building as well as a walkway traversing the parking area.
- They've added a sign which Mr. Artis will review.
- They've added speed bumps; Mr. Benni previously required one and they have added two on either side of the building.

Mr. Harris turned the meeting over to Michael Artis from Artis Associates, who thanked the Commission for their comments and recommendations. He explained how these comments were addressed and pointed out the alterations on the site plan. Mr. Artis showed the Commission a rendering of the new "Caution" sign which will be visible upon entering the property.

Mr. Dwyer observed that the parking spots are bigger than required and asked about reducing them so there is more room.

James Covington of Artis Associates responded that the spaces in the back and front are standard size; the parallel parking spaces are larger for parking ease and to allow the driver to maneuver into the parking spot.

Ms. Markovitz asked if there are still 19 parking spaces and Mr. Harris responded in the affirmative.

Mr. Donovan asked what the purpose is for a 6 ft wide crosswalk when it leads to a parking area. He noted he would rather see it wider in the front of the building. Mr. Harris responded that it acts as a calming device, people are more likely to drive slower.

Mr. Donovan called for Public Comment.

Rich Steel said it might be too late for his comments noting he didn't attend the previous meetings. He said it's his understanding that this will be a tear down of the existing building, and that we already lost an original building on Post Road to Dollar General. He said it would be nice to keep the nature of Post Road by reutilizing the existing building.

There were no further public comments.

Mr. Donovan said some of the following:

- He brought up quite a few of his own concerns regarding this project at the previous meeting.
- The Applicant went before the ZBA on October 5th to ask for a variance for setbacks citing an unusual hardship.
- He said to Mr. Harris that in those minutes you stated that "it makes it difficult to design a building allowing for adequate parking given how narrow it is," and you also explained what the design of the building is.
- He asked if they already had the design for the building prior to going before the ZBA or if they waited to get a variance before creating the design of the building.

Mr. Harris explained they had a full plan when they went before the ZBA so that Board could see what they were proposing and how it would lay out on the site. Mr. Donovan said they knew it was going to be a hardship from the getgo and Mr. Harris clarified that the hardship arose from the pre-existing narrow nature of the lot frontage, which is why the ZBA granted a variance. Mr. Harris said the hardship is due to the configuration of the lot itself.

The Commission further discussed the application and some of the following was said:

- Mr. Donovan asked if Mr. Harris' client considered going in a smaller direction observing it's a large building for that particular lot.
- Mr. Harris said the lot meets the coverage- is actually well under the coverage, and this was always the basic design and fits the use and needs for the building.
- He added that if you narrow the building the residential units become somewhat impractical; this building was well thought out and fits the site.
- Mr. Donovan said at the last meeting there wasn't a final design of the building.
- Mr. Harris said the same exterior that is in the zoning application plans is the same exterior that was presented to the ZBA.
- They added some possible alternative features that they are happy to use if Mr. Mulholland wishes them to do so.
- They're trying to achieve the best possible product to serve the Town and residents while utilizing scarce commercial space in the best way they can.
- Mr. Donovan said that both he and Chairman Walker are concerned about the overflow parking especially if the medical practice that may go in there ever expands. He added that In terms of their variance the Applicant went for setbacks and theoretically they don't meet the setbacks if the proposed locations for the hvac units are going to be on the rear of the building.
- Mr. Harris responded that it is a hypothetical location.
- Mr. Donovan said they're actually only required to have 18 ½ parking spaces and suggested floating the ½ parking space- relocate the handicapped parking to the front two spots and incorporate that as a handicapped access area on the Boston Post Road side of the building. He noted the handicapped area would be right next to the crosswalk and the building.
- Mr. Mulholland said he is an advocate of handicapped parking and thinks more is always better and suspects the Applicant would not have a problem moving the handicapped parking.

- Mr. Harris said they have no problem with this change but is not sure if they can go below the 19 spaces given the regulations.
- He said they are certainly willing to relocate the handicapped parking if they can.
- Mr. Artis said this change would result in them going over the State setback line.
- Mr. Harris said it's possible that they might be able to obtain an encroachment permit for this and they certainly can file an application with the State to do so.
- He said he thinks it should be available for that small of a distance.
- Mr. Mulholland said handicapped parking is in the building code and not the zoning regulations and we will need to look at this as well as the widths.
- Mr. Peck asked how long Mr. Harris thinks it may take to apply for an encroachment permit.
- Mr. Harris said the process is usually fairly quick since it's done locally in the Norwich district.

Mr. Donovan called for Public Comment and Mr. Steel said when he hears 19 parking spaces for a building next to the school entrance he becomes concerned and wonders how much sense this makes for that amount of traffic.

Mr. Donovan said this Application doesn't require a traffic study and they meet the requirements of the zoning regulations. Mr. Mulholland said Boston Post Road is recognized as a State arterial road and therefore able to handle the traffic; this is a considered a small project and although we are always concerned about traffic locally this is the State's jurisdiction which they consistently monitor.

Mr. Dwyer said this will result in sporadic traffic and the comment doesn't apply to this building.

MOTION (1)

Ms. Kalajainen moved to close the Public Hearing at 8:16 p.m.

Mr. Dwyer seconded the motion.

Motion carried, 6-0-0.

2. Application of the East Lyme Zoning Commission for a Text Amendment to the East Lyme Zoning Regulations Section 15.1 Definitions of Substantial Damage and Substantial Improvement, to change the time period from "10-year period" to "2-year period."

Mr. Donovan read the list of exhibits into the record:

Exhibit A- Text Amendment Memo of W Mulholland (dated 1/25/21)

Exhibit B- Public Hearing Notice to Town Clerk and The Day published on February 20 and February 28, 2021 (submitted 3/4/21)

Exhibit C- Referral Response of Diane Ifkovic, State of Connecticut NFIP Coordinator, DEEP (submitted 3/4/21)

Exhibit D- Referral Response of Sam Alexander, AICP SCCOG (submitted 3/4/21)

Exhibit E- Referral Response and Questions of East Lyme Planning Commission (submitted 3/4/21)

Exhibit F- Letter from Boats Inc in support of Text Amendment change (submitted 3/4/21)

Mr. Mulholland summarized how the Commission put together a subcommittee of two, who were tasked with exploring this topic and the Commission asked that a text amendment be drafted based on their findings. He explained how the change pertains to Section 15.1 of our regulations regarding floods and noted some of the following:

- Currently In terms of substantial damage/improvement, if a homeowner, business owner, property owner wants to repair and/or improve their place and they spent over 50% of the market value of the property over the course of 10 years, that triggers the whole building to be put into current codes.
- The 10 year period is in question and the Commission is proposing to reduce this to a 2 year period.
- The 10 year period is restrictive and discourages property owners from repairing and improving their property.
- The intent of the 10 year period is for homeowners to elevate their dwellings which not all homeowners can afford when completing renovations.
- Old Lyme has decreased their regulation to 5 years.
- Waterford has decreased their regulation to 2 years.
- Stonington has decreased their regulation to 1 year.
- It's a change which will allow people to save, preserve their older dwellings/buildings while encouraging rehabilitation and improvement.

Mr. Peck said with this we're addressing a hardship and one of the charges of this Commission is to protect property values; when we have a regulation which discourages people from spending money to maintain their property, we aren't helping to protect property values. He believes this change will help and Mr. McPherson concurred.

The Commission briefly discussed the two year time period.

Mr. Donovan asked for Public Comments and Paul Grady said some of the following:

- He's a commodore of the East Lyme Yacht Club.
- They're a family orientated organization which promotes sailing and seamanship.
- The Club was founded in 1940 and the current Clubhouse was built in 1948.
- They have an active youth sailing program which is open to all members of the community.
- They usually have 100 children a year who participate in their programs.
- Their Clubhouse is functional but pretty basic.
- The current 10 year time period is a challenge for a small club who aims to keep their membership affordable.
- They spent the last year assessing how the current 10 year FEMA lookback period means to them.

- They looked at their building and identified the deferred maintenance items needed despite volunteered labor.
- They determined they need to spend over \$100,000 purely on what would be considered maintenance items.
- They looked at the cost of tearing down the Clubhouse and replacing it with one of the same size and functionality.
- There was a large expense associated with that and they were worried they would lose their membership base if they raised dues to the extent needed to support the new building.
- Their plan is to prioritize and slowly work off their deferred maintenance list and will take 5 or 6 years.
- If the lookback period was changed, they anticipate that these same repairs would take 2 or 3 years.
- They are in support of changing the time period from 10 years to 2 years.

Mr. Donovan read the letter from Boats Inc owner Scott Leahy, dated March 4th, 2021 into the record (attached.)

Mr. Donovan read the letter from Diane Ifkovic of DEEP, dated March 4th, 2021 into the record (attached.)

Mr. Donovan read the letter from Sam Alexander, AICP SCCOG, dated March 4th, 2021 into the record (attached.)

Mr. Donovan read the Planning Commission letter dated March 4th, 2021 into the record (attached.)

Mr. Dwyer asked if Mr. Mulholland is going to answer the Planning Commission letter and Mr. Mulholland said he spent an hour with Planning staff explaining the Commission's position and addressed all of the questions asked in their letter.

MOTION (2)

Mr. Dwyer moved to close the Public Hearing at 8:45 p.m.

Mr. Peck seconded the motion.

Motion carried, 6-0-0.

IV. Regular Meeting

- 1. Continuation of 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 3L.1 Lot 32.**

Ms. Kalajainen noted for the record she wasn't in attendance for the last meeting but has familiarized herself with the record and feels comfortable voting.

Mr. Donovan said he doesn't understand why they're trying to put such a big building on a nonconforming lot. He said he has concerns with the parking as he attested to during the Public Hearing and he spoke of the potential to lose parking due to snow pileup.

Mr. Peck said he respects Mr. Donovan's opinion, is not excited about the side area and walking along cars, but that this project is legal, up to code, and follows all of our rules.

Ms. Thurlow said she is not as concerned about the parking and detailed how she works in an office building across the street from this site; 45 agents working in the building and it's next door to an apartment building and the parking area probably has the same number of spots as the one in the application. She noted that the parking lot is always practically empty because no one is there at the same time, and she has never seen an instance when there has been no parking available.

Ms. Thurlow said she thinks it will be unusual to see everyone at this building at the same time and Mr. Dwyer agreed.

MOTION (3)

Mr. Peck moved to approve the 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 3L.1 Lot 32 with the added condition of moving the handicapped parking space to the front of the building if an encroachment permit can be obtained from the State.

Mr. Dwyer seconded the motion.

Mr. Mulholland said language regarding exceptions must be included in the motion.

Mr. Donovan said the motion must include *"exceptions as provided for in Section 24.7, 24.6E-3 buffer strip; substitute a fence for the 6' buffer along the northerly & easterly property lines."*

MOTION (4)

Mr. Peck amended his motion and moved to approve the 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 3L.1 Lot 32 with exceptions as provided for in Section 24.7, 24.6E-3 buffer strip; substitute a fence for the 6' buffer along the northerly & easterly property lines, and with the added condition of moving the handicapped parking space to the front of the building if an encroachment permit can be obtained from the State.

Mr. Dwyer amended his second.

Motion carried, 6-0-0.

Mr. Mulholland said this item will be published next Thursday and become effective Friday March 12th, 2021.

2. **Application of the East Lyme Zoning Commission for a Text Amendment to the East Lyme Zoning Regulations Section 15.1 Definitions of Substantial Damage and Substantial Improvement, to change the time period from "10-year period" to "2-year period."**

MOTION (5)

Mr. Dwyer moved to approve the Application of the East Lyme Zoning Commission for a Text Amendment to the East Lyme Zoning Regulations Section 15.1 Definitions of Substantial Damage and Substantial Improvement, to change the time period from "10-year period" to "2-year period."

Ms. Thurlow seconded the motion.

Motion carried, 6-0-0.

Mr. Mulholland said this item will be published next Thursday and become effective Friday March 12th, 2021.

Mr. Peck said the Subcommittee will continue to review this section of the regulations to address any housekeeping that may be needed.

3. **Approval of Minutes**

- a. February 18th, 2021

MOTION (6)

Ms. Thurlow moved to approve the meeting minutes of February 18th, 2021 as presented.

Mr. Dwyer seconded the motion.

Motion carried, 5-0-1.

Ms. Kalajainen abstained from the vote due to his absence from the February 18th, 2021 meeting.

V. Old Business

There was none.

VI. New Business

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

Mr. Donovan asked about their previous request for drafting a text amendment in regards to requiring an applicant to alter the date on the public hearing sign when they continue a hearing, and Mr. Mulholland said he is working on this.

Mr. Donovan said the wave of the future is development and his question is what's the difference between a mixed use dwelling unit and a mixed use development. He said they

have no definition for a mixed use dwelling unit in their regulations and suggested forming a subcommittee to address issues such as this and concentrate on the North end of Town like they previously concentrated on the downtown district.

Mr. Mulholland said there is a definition for mixed use development in our definitions section and said this is certainly something we can look at.

Mr. Donovan, Mr. McPherson, and Ms. Markovitz said they would all be interested in being part of a subcommittee for a regulations review.

2. Zoning Official

Mr. Mulholland said they continue to be busy and the Mexican Restaurant on Hope Street is hoping to open in 4 weeks and continues to get inquiries for the downtown. He said special permit outside dining application renewals are forthcoming.

3. Comments from Ex-Officio

Ms. Hardy said the Board of Selectmen approved the budget and have forwarded it to the Board of Finance for discussion. She said they made a few reductions but did their best to keep things inline. Ms. Hardy noted next week is Restaurant Week and encouraged everyone to frequent these establishments especially given these difficult times.

4. Comments from Zoning board liaison to Planning Commission

- a. Kalajainen - March 9th, 2021
- b. Peck- April 13th, 2021

Mr. Donovan said Ms. Kalajainen is scheduled for the March 9th, 2021 meeting and Mr. Peck is scheduled for the April 13th, 2021 meeting.

5. Comments from Chairman

Mr. Donovan said he was also going to mention Restaurant Week and reiterated Ms. Hardys' sentiments. He said he also wanted to pass along his thoughts and prayers to Mr. Walker and his family. Mr. Donovan asked that everyone be kind and be safe.

Adjournment

MOTION (7)

Mr. Dwyer moved to adjourn the March 4th, 2021 Zoning Commission meeting at 9:15 p.m.

Ms. Thurlow seconded the motion.

Motion carried, 6-0-0.

Respectfully Submitted, Brooke Stevens, Recording Secretary

Exhibit A

Town of

P.O. Drawer 519
Zoning Department



East Lyme

108 Pennsylvania Ave
Niantic, Connecticut 06357
(860) 691-4114
Fax (860) 691-0351

DATE: January 25, 2021
TO: East Lyme Zoning Commission
FROM: William Mulholland *WM*
RE: Section 15 Flood Hazard Areas

The Zoning Commission is proposing to amend Section 15 of the East Lyme Zoning Regulations to reduce the "look back" time period regarding substantial improvements and substantial damage. Historically the Town of East Lyme chose a "10 year look back" period during its last major update of these regulations. However, the ten (10) year period has proven to be over-restrictive and not practicable to property owners in flood zones.

The present rule limits improvements to 50% of the Market Value of the subject structure over ten years. Given today's costs of improvements, we are finding that property owners are not maintaining their structures due to the 50% limit. This results in the deterioration of many of these properties and the loss of the homes traditional character. As a result, the Commission has chosen to propose this amendment to the regulations. Further, it is my understanding that the communities of Stonington, Noank and Waterford have also either reduced their look back period or are in the process of doing so.

The specific proposal is as follows: the current language for substantial damage and substantial improvements is found in Section 15.1 Definitions of the Zoning Regulations. The current language is:

SUBSTANTIAL DAMAGE means damage of any origin sustained by a structure, whereby the cost of restoring the structure to its pre-damaged condition would equal or exceed 50 percent of the market value of the structure before the damage occurred.

"Substantial damage" also means flood-related damages sustained by a structure on two separate occasions during a 10-year period for which the cost of repairs at the time of each such flood event, on the average, equals or exceeds 25 percent of the market value of the structure before the damage occurred.

SUBSTANTIAL IMPROVEMENT means any repair, reconstruction, or improvement of a structure, taking place over a ten-year period, the cumulative cost of which equals or exceeds 50 percent of the market value of the structure either:

1. Before the start of construction of the improvement or repair, or

2. If the structure has been damaged and is being restored to its condition before the damage occurred. This term includes structures which have incurred "substantial damage", regardless of the actual repair work performed. For the purposes of this definition "substantial improvement" is considered to occur when the first alteration of any wall, ceiling, floor or other structural part of the building commences, whether or not that alteration affects the external dimensions of the structure.

The term does not, however, include either:

1. Any project for improvement of a structure to correct existing violations of state or local health, sanitary, or safety code specifications which have been identified by the local code enforcement official and which are the minimum necessary to assure safe living conditions, or
2. Any alteration of a "historic structure" provided that the alteration will not preclude the structure's continued designation as a "Historic Structure".

It is proposed to modify both definitions by deleting the number ten (10) in "10-year period" and replace it with the number two (2).

Exhibit C

From: [Ifkovic, Diane](#)
To: [Bill Mulholland](#); [Jennifer Lindo](#)
Cc: [Balint, Marcy](#)
Subject: Proposed Text Amendment, Section 15.1 Flood Prone Area Definitions (Substantial Damage & Substantial Improvement)
Date: Tuesday, February 23, 2021 9:22:52 AM
Attachments: [image.png](#)
[Coastal Hazard Areas FS.pdf](#)



February 23, 2021

East Lyme Zoning Commission
c/o William Mulholland, Zoning Official and Matthew Walker, Chairman
P.O. Drawer 519
Niantic, Connecticut 06357

Subject: Proposed Text Amendment, East Lyme Zoning Regulations, Section 15.1, Flood Hazard Area Definitions (Substantial Damage and Substantial Improvement)

Dear Commissioners:

Thank you for notifying the Land and Water Resources Division (LWRD) of the proposed text amendment to Section 15.1 of East Lyme's Zoning Regulations in your letter dated January 25, 2021 and received on February 11, 2021. Acting as the Commissioner's staff, our office has reviewed the revised text for consistency with the policies and standards of the Connecticut Coastal Management Act (CCMA Connecticut General Statutes (CGS) sections 22a-90 through 22a-112, inclusive) and offers the following comments.

The proposed text amendment seeks to alter the definitions of "Substantial Damage" and "Substantial Improvement", specifically changing the current ten (10) year timeframe to a two (2) year timeframe in both definitions. In order for the community to participate in the National Flood Insurance Program (NFIP), East Lyme must adopt the minimum regulatory language as required by the Federal Emergency Management Agency (FEMA) as outlined in 44 CFR 59.1 and 60.3.

For the "Substantial Improvement" definition, no timeframe is specified in 44 CFR 59.1, however, FEMA defaults to a required minimum one (1) year timeframe to calculate the cost of improvements to a structure. When the cost of improvements are tallied over a longer timeframe, it drives the mitigation (elevation) of older homes not built to current floodplain construction standards. By decreasing the timeframe, the community is allowing the expansion of structures that are already flood prone, bringing increased risk to life and property, and that is not recommended. The CCMA Coastal Flood Hazard policies underscores this by requiring local decisions that "minimize threats to life and property" as well (see CHA Fact Sheet attached for more information).

In January 2021, the Governor's Council on Climate Change (GC3) issued its final Phase 1 near-term action report entitled *"Taking Action on Climate Change and Building a More Resilient Connecticut for All"* (<https://portal.ct.gov/DEEP/Climate-Change/GC3/Governors-Council-on-Climate-Change>). This plan provides recommendations for improving the state's resilience to the effects of climate change, while aligning with municipal and regional adaptation efforts. East Lyme's lowering of regulatory standards in flood prone areas do not align with the goals of the state's resilience efforts.

Changing the ten (10) year timeframe for the definition of "Substantial Damage" has a different effect. The standard definition in 44CFR59.1 does not include any timeframe. The additional cumulative substantial damage clause was added to the end of the standard definition following Tropical Storm Irene (2011) and Superstorm Sandy (2012) to allow properties damaged by multiple flood events in a ten (10) year period to be able to qualify for the Increased Cost of Compliance (ICC)

benefit through a NFIP flood insurance policy. ICC provides up to \$30,000 to assist with elevating, demolishing or relocating a structure that has been substantially damaged. Normally, substantial damage has to occur in one flood event. By adding this cumulative clause to the definition, it allows multiple damage events to be tallied together to reach the substantial damage threshold more quickly. DEEP advises not altering the current definition in order that property owners may access this financial assistance in the future, however, this is optional language that the community may remove. See page 2-7 to 2-10 of the FEMA publication Increased Cost of Compliance Coverage for more details: <https://www.fema.gov/pdf/plan/floodplain/fema301.pdf>

These comments are made in response to the review requirement contained in C.G.S. Section 22a-104(e) which requires that any zoning regulations or changes thereto affecting the area within the coastal boundary, shall be consistent with the policies of C.G.S. Section 22a-92 and the criteria of subsection (b) of Section 22a-102 of the CCMA. Further, this section requires that notification be sent to the Commissioner of Energy and Environmental Protection at least 35 days prior to the commencement of the public hearing. Once notified, our Office is responsible for reviewing the proposal's consistency with the policies of Section 22a-92 and the criteria of Section 22a-102(b) of the CCMA.

Should you have any questions regarding this letter or any other coastal management matter, please feel free to contact me via email:
Diane.lfkovic@ct.gov.

Sincerely,

Diane Ifkovic

Diane S. Ifkovic
State NFIP Coordinator
State of Connecticut
Department of Energy & Environmental Protection
79 Elm Street
Land & Water Resources Division, 3rd floor

Hartford, CT 06106

Phone: (860) 424-3537

Email: diane.ifkovic@ct.gov



Connecticut Coastal Management Program Fact Sheet for *COASTAL HAZARD AREAS*

What are Coastal Hazard Areas?

Coastal hazard areas are statutorily defined as those land areas inundated during coastal storm events or subject to erosion induced by such events, including flood hazard areas as defined and determined by the National Flood Insurance Act and all erosion hazard areas as determined by the Commissioner [Connecticut General Statutes (CGS) Section 22a-93(7)(H)]. In general, coastal flood hazard areas include all areas designated as within A-zones and V-zones by the Federal Emergency Management Agency (FEMA). A-zones are subject to still-water flooding during so called "100-year" flood events. During 100-year flood events, V-zones are subject to direct action by waves three feet or more in height.

Why are they valuable?

Coastal hazard areas encompass most other important coastal resources, can serve as flood storage areas, and provide numerous open space and recreational opportunities. They are, by their nature, hazardous areas for structural development, especially residential-type uses.

What are the statutory policies that apply?

To manage coastal hazard areas so as to ensure that development proceeds in such a manner that hazards to life and property are minimized and to promote nonstructural solutions to flood and erosion problems except in those instances where structural alternatives prove unavoidable and necessary to protect infrastructural facilities, water-dependent uses, commercial and residential structures and substantial appurtenances attached or integral thereto constructed as of January 1, 1995, or a cemetery or burial grounds [CGS Section 22a-92(b)(2)(F)].

To maintain the natural relationship between eroding and depositional coastal landforms; to minimize the adverse impacts of erosion and sedimentation on coastal land uses through the promotion of nonstructural mitigation measures. Structural solutions are permissible when necessary and unavoidable for the protection of infrastructural facilities, water-dependent uses, commercial and residential structures and substantial appurtenances attached or integral thereto constructed as of January 1, 1995, or a cemetery or burial grounds, **and** where there is no feasible, less environmentally damaging alternative **and** where all reasonable mitigation measures and techniques have been provided to minimize adverse environmental impacts [CGS Section 22a-92(b)(2)(J)].

To maintain, enhance, or, where feasible, restore natural patterns of water circulation and fresh and saltwater exchange in the placement or replacement of culverts, tide gates or other drainage or flood control structures [CGS Section 22a-92(c)(2)(B)].

“Feasible, less environmentally damaging alternative” includes, but is not limited to, relocation of an inhabited structure to a landward location; elevation of an inhabited structure; restoration or creation of a dune or vegetated slope, or living shoreline techniques utilizing a variety of structural and organic materials, such as tidal wetland plants, submerged aquatic vegetation, coir fiber logs, sand fill and stone to provide shoreline protection and maintain or restore coastal resources and habitat. [CGS Section 22a-92(e)].

“Reasonable mitigation measures and techniques” includes, but is not limited to, provisions for upland migration of on-site tidal wetlands, replenishment of the littoral system and the public beach with suitable sediment at a frequency and rate equivalent to the sediment removed from the site as a result of the proposed structural solution, or on-site or off-site removal of existing shoreline flood and erosion control structures from public or private shoreline property to the same or greater extent as the area of shoreline impacted by the proposed structural solution. [CGS Section 22a-92(e)].

In addition, the Connecticut Coastal Management Act defines as an adverse impact:

Increasing the hazard of coastal flooding through significant alteration of shoreline configurations or bathymetry, particularly within high velocity flood zones [CGS Section 22a-3(15)(B)].

During the coastal site plan review process, a determination must be made that adverse impacts have been avoided and unavoidable adverse impacts have been minimized in order to lawfully approve the application.

In the case of any application for a shoreline flood and erosion control structure that is denied on the basis of a finding that there may be feasible, less environmentally damaging alternatives to such structure or that reasonable mitigation measures and techniques have not been provided, the municipal commission must propose on the record, in writing, the types of feasible alternatives or mitigation measures and techniques that the applicant may investigate. However, this does not shift the burden from the applicant to prove that he/she is entitled to approval of the proposed shoreline flood and erosion control structure or to present alternatives to such structure [CGS Section 22a-92(f)].

See the *Coastal Site Plan Review* and *Adverse Impacts* fact sheets for further information.

What can a municipality do to minimize impacts to these sensitive coastal resources?

- Update municipal Plan of Conservation and Development, Municipal Coastal Program, if applicable, and zoning regulations and subdivision regulations to better manage development in coastal hazard areas by incorporating language that reflects the following guidance.

- Employ non-structural flood and erosion control techniques such as erosion setbacks and buffers, location of vulnerable uses out of hazard areas, vegetative stabilization, and construction of dunes as the primary means of controlling flood and erosion hazards except in instances where such non-structural techniques would be inadequate to protect infrastructural facilities (such as sewer and water lines), water-dependent uses, commercial and residential structures and substantial appurtenances attached or integral thereto constructed as of January 1, 1995, or a cemetery or burial grounds, and where there is no feasible, less environmentally damaging alternative and where all reasonable mitigation measures and techniques have been provided to minimize adverse environmental impacts
- Utilize structural flood and erosion control techniques such as groins, seawalls, and revetments only when: (1) the structures are being placed to provide protection to infrastructural facilities, water dependent uses, commercial and residential structures and substantial appurtenances attached or integral thereto constructed as of January 1, 1995, or a cemetery or burial grounds; (2) non-structural techniques have been explored and are found to be infeasible; (3) there is no other less environmentally damaging alternative; and (4) all reasonable mitigation measures and techniques are employed to minimize adverse environmental impacts.
- To assist in identifying feasible alternatives or mitigation measures and techniques for shoreline flood and erosion control structures, update the municipal Plan of Conservation and Development and/or Municipal Coastal Program to identify: (1) areas where vulnerable inhabited structures can be relocated to a landward location; (2) areas where dunes, vegetated slopes, and/or living shoreline techniques can be created or located to provide shoreline protection **and** maintain or restore coastal resources and habitat; (3) areas that can allow for upland migration of on-site tidal wetlands; (4) areas where replenishment of the littoral system and the public beach can provide for reasonable mitigation measures or techniques to offset new shoreline flood and erosion control structures; and (5) public and private shoreline properties where existing shoreline flood and erosion control structures can be removed and replaced in order to provide a reasonable mitigation measure or technique for new shoreline flood and erosion control structures.
- Update the municipal Plan of Conservation and Development and/or Municipal Coastal Program to (1) take into consideration risks associated with increased coastal erosion, depending on site topography, caused by a rise in sea level as anticipated in sea level change scenarios published by the National Oceanic and Atmospheric Administration in Technical Report OAR CPO-1; (2) identify the impacts of such increased erosion on infrastructure and natural resources; and (3) make recommendations for the siting of future infrastructure and property development to minimize the use of areas prone to such erosion [CGS Section 16a-27(h)].

- Where applicable, require that all new development in erosion-prone areas, particularly in any erosion hazard areas designated by the Commissioner of the Department of Energy and Environmental Protection, be set back from the water to create a safety buffer strip consisting of natural vegetative cover. The width of this buffer should be based on the predicted erosion rate in conjunction with the anticipated “useful life” of the proposed structure.
- Apply the National Flood Insurance Program flood plain management requirements [24 Code of Federal Regulations (CFR) 60.3] to: 1) all activities in designated A-zones and floodways; and 2) to all new construction or substantial improvements in designated coastal high hazard zones (V-zones).
- Prevent development of high-density residential-type uses (e.g., condominium complexes, elderly housing, hospitals, assisted living facilities, hotels/motels, etc.) in V-zones. Allow such uses in A-zones only if access to the site is not flood-prone and the applicant can demonstrate the project has been designed so that risks to life and property are not increased.
- Site all facilities that have the potential to cause pollution or hazardous conditions as a result of flooding or erosion, such as energy or oil and chemical handling facilities, outside of coastal hazard areas (A- and V-zones). If a facility, because of its water-dependent nature, cannot be located outside of a coastal flood hazard area, incorporate flood-proofing measures in the design of the facility to protect against flooding including extreme conditions (generally a 500-year frequency flood event or greater).
- Site all new or substantially improved buildings, dwellings and non-water-dependent structures out of the designated coastal high hazard area (V-Zone).
- Elevate sufficiently above the base flood level the lowest floor of a new or substantially improved water-dependent building and habitable structure which cannot functionally be sited outside the V-Zone to minimize the impacts of wave action generated by 100 year frequency storm events.
- Maintain or restore natural vegetation in coastal high hazard areas (V-Zones) to serve as buffers against storm, wind, and wave energy.
- Maintain or restore natural landforms within or adjacent to coastal hazards areas that serve as buffers to flood and erosion such as beaches, dunes and wetlands.
- Avoid any use or activity which would significantly increase floodwater elevations, or otherwise increase flood or erosion hazards.
- Maintain or restore natural patterns of littoral transport and avoid uses and activities which interrupt or alter natural sediment transport from eroding source areas to depositional receiving areas.

- Apply all coastal policies and use guidelines for other coastal resources where they occur within coastal hazard areas (see individual coastal resource fact sheets).

Does the DEEP regulate activities in coastal flood hazard areas?

Maybe, depending on the location and specifics of the proposed activity. The DEEP has direct regulatory jurisdiction over activities occurring in tidal wetlands and/or waterward of the coastal jurisdiction line. If any construction activities or structure(s), in part or in hole, or any incidental work proposed in conjunction with the construction of structure(s) is proposed at or waterward of the coastal jurisdiction line, authorization from the DEEP's Land and Water Resources Division (LWRD) would be required prior to construction in accordance with the Tidal Wetlands Act (CGS Sections 22a-28 through 22a-35) and/or the statutes governing the placement of structures, dredging, or filling in tidal, coastal or navigable waters (CGS Sections 22a-359 through 22a-363g, inclusive).

While each municipality implements its own flood management regulations, LWRD provides training and technical and planning assistance to municipalities using guidelines developed under the National Flood Insurance Program. However, each municipality maintains its regulatory jurisdiction over its flood management regulations.

What's the difference between DEEP and municipal regulatory areas?

As mentioned above, the DEEP has direct regulatory jurisdiction over activities occurring in tidal wetlands and/or waterward of the coastal jurisdiction line. The Town regulates upland activities waterward to the mean high water mark. In general, the mean high water mark is lower than (waterward of) the coastal jurisdiction line. Therefore, on gently sloping shorelines, there will be an area of overlapping jurisdictions (because the coastal jurisdiction line will be landward of mean high water). Along steep shorefronts, for instance along a seawall, the coastal jurisdiction line and mean high water mark will be more closely aligned or even coincide as the same line. The area of overlapping jurisdictions will be minimal in that case. Regardless of whether the DEEP and/or the municipality have jurisdiction, the same statutory policies and standards apply in both jurisdictions (see the State and Municipal Regulatory Jurisdictions fact sheet).

1. This fact sheet is one of 13 that detail coastal resources. Fact sheets are available for the following coastal resources: beaches and dunes, bluffs and escarpments, coastal hazard areas, coastal waters, developed shorefront, estuarine embayments, intertidal flats, islands, rocky shorefronts, shellfish beds, shorelands, submerged aquatic vegetation, and tidal wetlands.

Exhibit D

SOUTHEASTERN CONNECTICUT COUNCIL OF GOVERNMENTS

5 Connecticut Avenue, Norwich, Connecticut 06360
(860) 889-2324/Fax: (860) 889-1222/Email: office@seccog.org

(Via electronic mail)

March 1, 2021

Mr. Matthew Walker
Chairman
Town of East Lyme Zoning Commission
PO Box 519
Niantic, CT 06357-0519

Dear Mr. Walker:

I am writing in response to an application to amend the zoning regulations of the Town of East Lyme. The application was referred to this agency in correspondence dated January 25th, pursuant to Section 8-3b of the Connecticut General Statutes.

The proposed zoning text amendments seek to modify the definitions of "Substantial Improvement" and "Substantial Damage", to reduce the "look-back period" of the same from ten (10) years to two (2) years. Based on a review of the material submitted, I do not believe the proposed regulation amendments will result in a negative inter-municipal impact.

If you have any questions, please contact me at 860-889-2324.

Sincerely,



Samuel Alexander, AICP
Planner III
salexander@seccog.org

Member Municipalities:

Bozrah * Colchester * East Lyme * Franklin * Griswold * Borough of Jewett City * City of Groton * Town of Groton * Lebanon * Ledyard * Lisbon * Montville * New London * North Stonington * Norwich * Preston * Salem * Sprague * Stonington * Stonington Borough * Waterford * Windham

If language assistance is needed, please contact SCCOG at 860-889-2324, office@seccog.org.

Si necesita asistencia lingüística, por favor comuníquese a 860-889-2324, office@seccog.org.

如果您需要语言帮助, 请致电860-889-2324或发送电子邮件至 office@seccog.org.

Town of



East Lyme

108 Pennsylvania Ave
Niantic, Connecticut 06357

Phone: (860) 691-4114

Fax: (860) 860-691-0351

P.O. Drawer 519

Department of Planning &
Inland Wetlands

*Gary A. Goeschel II, Director of Planning /
Inland Wetlands Agent*

March 2, 2021

Matt Walker, Chairman
East Lyme Zoning Commission
Town of East Lyme
P.O. Box 519
108 Pennsylvania Avenue
Niantic, Connecticut 06357

RE: Application of the East Lyme Zoning Commission for a Text Amendment to the East Lyme Zoning Regulations Section 15.1 Definitions of Substantial Damage and Substantial Improvement, to change the time period from "10-year period" to "2-year period".

Chairman Walker:

The East Lyme Planning Commission at its meeting of February 9, 2021, began review of the above referenced referral for consistency with the 2020 Plan of Conservation and Development. The Planning Commission had several questions regarding the proposal that were unanswerable based on the materials forwarded as follows:

1. How many homes and/or structures are affected by the regulation;
2. Why a 2-year period versus some other time-frame;
3. Will the change effect the Town's rating within the CRS program; and
4. How does the change improve coastal resilience and sustainability and account for climate change and sea level rise?

As the Zoning Commission's public hearing on this matter is scheduled to open on March 4, 2021 and the Planning Commission's next regular meeting is scheduled for March 9, 2021, in addition to the application being a Zoning Commission initiated application, I am respectfully requesting the Zoning Commission consider continuing the public hearing on this matter to their next regularly scheduled April 1, 2021 meeting in order to allow the Planning Commission and additional time to review the proposal, answer the above questions, and forward a determination to the Zoning Commission prior to their rendering a decision.

If you have any further questions regarding this letter or the POCD, please do not hesitate to contact the Director of Planning, Gary A. Goeschel II, at (860) 691-4105.

Sincerely,

A handwritten signature in cursive script that reads "Michelle Royce-Williams" followed by a stylized flourish.

Michelle Royce-Williams, Secretary
East Lyme Planning Commission

cc: William Mulholland, Zoning Official
Gary A. Goeschel II, Director of Planning
file

Exhibit F



March 4, 2021

East Lyme Zoning Commission,

My name is Scott Leahy and I am the owner of Boats Incorporated, a marine dealership and marina located in Niantic since 1959.

The reason for my letter is to express my support for changing the FEMA lookback period from 10 years to two years. The current lookback period has made it very challenging for us to maintain and upgrade our facility to the standards encouraged by the boat manufacturers we represent. As you know, should we make investments in our facility that exceed the 50% FEMA cap on a 10-year lookback basis, we would be required to bring our facility into full compliance with FEMA flood regulations which would include raising the structure above the base flood elevation. As a marine dependent use, it would be impossible for us to operate a marine sales and repair business in such an elevated building.

We recently embarked on a renovation at Boats Incorporated. Our decision to invest in our facility was borne out of necessity, our desire to upgrade our image as well as invest in beautifying the Town of Niantic. FEMA's 50% rule and the 10-year lookback period have clearly hampered our scope of plans. These impediments discourage investments by business owners and homeowners to properly maintain and even improve the integrity and safety of their structures.

I believe a change to a two-year lookback period would also encourage businesses and homeowners to make necessary investments in their structures through the appropriate town building approval processes compared to those who have made such investments without the necessary permits because they no longer have capacity under the FEMA 50% cap. A change would be a catalyst for residents and business owners to pursue immediate investments they had previously held off on resulting in additional revenue to the Town in the form of permit fees and property taxes.

In addition, a change to a two-year lookback period would make East Lyme's provision comparable to Waterford's two-year provision and closer to Stonington's one-year provision. This change would level the playing field and would no longer put our properties at a disadvantage when homeowners or business owners are making a decision as to which town they will move to or invest in.

I believe this change is essential to encourage East Lyme residents and business owners to invest in their properties and the community and continue to make this Town such a great place to live and work.

Sincerely,

Scott Leahy



P H O N E

860 739 6251

F A X

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