

TOWN OF EAST LYME
ZONING COMMISSION
August 5th, 2021
PUBLIC & REGULAR MEETING MINUTES

Members Present:

- Kimberly Kalajainen
- Norm Peck
- Terence Donovan
- Bill Dwyer
- Anne Thurlow
- Denise Markovitz, Alternate (Sat as a Regular Member)
- James Liska, Alternate

Absent:

- Matthew Walker, Chairman
- George McPherson, Alternate

Also Present:

- Bill Mulholland, Zoning Official
- Rose Ann Hardy, Ex-Officio
- Mark Zamarka, Town Attorney

FILED

Aug 12, 2021 AT 4 AM (PM)
Brookline ATC
 EAST LYME TOWN CLERK

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

Pledge of Allegiance

Mr. Donovan led the Pledge.

Mr. Donovan sat Ms. Markovitz as a Regular Member for the evening.

Public Delegations

There were none.

Executive Session

MOTION (1)

Ms. Kalajainen moved to enter Executive Session for the purpose of discussing the Landmark 2015 Affordable Housing Appeal and Drabik Tower Appeal and invited Mark Zamarka, Town Attorney, Mr. Mulholland, and Ms. Hardy.

Ms. Thurlow seconded the motion.

Motion carried, 6-0-0.

MOTION (2)

Ms. Kalajainen moved to exit Executive Session at 8:14 p.m.

Mr. Peck seconded the motion.

Motion carried, 6-0-0.

Public Hearing

1. Application of Candace Devendittis, Tenant, of Dev's on Main, for a Special Permit for outdoor dining, at 255 Main Street, Niantic, CT. East Lyme Assessor's Map 12.1, Lot 107.

Mr. Donovan read Mr. Mulholland's memorandum dated August 5th, 2021 into the record.

Candace Devendittis, the Applicant, came forward and said some of the following:

- She is the owner of Dev's on Main here in Niantic and the Town has bent over backwards to be friendly with us, work with us, and to support us.
- It's been a long journey, but it's been so refreshing to work with people who want you to succeed.
- They have our outdoor patio, we brought it over from our New London location.
- It was a deck that they had converted temporarily just for the season.
- They did not have the time to get the engineers to do the specs for the concrete and the decorative railings that we want to construct.
- Right now it is an outdoor deck, 18 x 18.
- There are six tables right now with little umbrellas.
- They have the railings they've painted gray to complement the building.
- Phase one is really to get us through the remainder of the Summer.
- They have on standby, architects, as well as vendors who are looking to talk to them about how they're going to complete a concrete pad in that area in the future.
- They want it to be decorative and look nice.
- It's going to be slightly raised where the railroad tracks that you see in front are and those are going by the wayside..
- There was brush in the flower beds that they removed and now it looks like a dark box.
- They would like to keep it green.
- They want to do a couple of little arbors on the ends of each, so they can have some vines, and some blueberry bushes.
- Their goal is to have a couple flowering fruit trees in front, and then also grow basil and herbs for public consumption.
- They want it to serve as a green part of the community so it's just not all concrete.
- They've done the mulching on the side of the building and want to keep that whole area tidy and clean, and to match the building, deck , and so forth.

Mr. Donovan called for questions or comments by the Commission:

- Mr. Dwyer asked if there will be a brick wall sectioning off the outside dining and Ms. Devendittis said it will be a metal fence and railing.
- Mr. Mulholland said they don't have the final details yet but that they're thinking it will be a metal decorative fence.
- He added that there are three or four varieties but all very similar.

- Ms. Kalajainen asked for clarification regarding the size of the outside dining structure noting the application packet says 18 X 16 feet and during her presentation Ms. Devendittis said 18 X 18 feet.
- Mr. Mulholland said the drawing is accurate and the size is 18 X16 feet; it was a typo in his memorandum and she was mistakenly relaying what he had said.
- Ms. Kalajainen said she has one additional comment, she noticed Ms. Devendittis mentioned fruit trees which makes her nervous for a couple of reasons.
- If the fruit falls off the tree it may be a clean up burden on our side walks and could attract bees, but she loves the idea of beautifying the area.
- Ms. Devendittis said they haven't purchased anything yet and they can simply put in some nice trees and will share the selection prior to proceeding with installation.

The Commission briefly discussed which doors will be utilized for entering and exiting the restaurant.

Mr. Donovan asked if they're only approving the temporary outside dining setup and Mr. Mulholland responded that they were hoping the Commission would address both. He explained that the design is essentially the same in terms of a concrete pad, size & dimensions, and black rail fencing.

Mr. Donovan said he'd like to see the final design come before them and Ms. Kalajainen observed that we need to have some latitude with our business owners. Mr. Mulholland offered that for some time they've been discussing the importance of flexibility and noted how the Applicant has absolutely gutted the interior and refreshed the exterior.

Mr. Donovan observed that the building looks fantastic and Mr. Mulholland discussed how the color scheme was chosen to blend in with the neighboring buildings.

The Commission and Applicant briefly discussed raising the patio area and the possibility of utilizing a stone facade to make it aesthetically pleasing.

Mr. Peck asked if Ms. Devendittis replied in the affirmative.

Mr. Peck asked about entertainment and closing times, and Ms. Devendittis said some of the following:

- Right now they don't have any entertainment, scheduled to be outside or inside.
- They have a small stereo inside but no amplification outside.
- The music will be for background, so no one will find it offensive.
- Their operations for outdoor will mirror the inside and their kitchen is open until nine o'clock at night during the week.
- When their kitchen is closed, they're closed.
- On the weekends they will be open until 10:00 p.m.
- For their 14 years in New London they always had outside dining but no matter how you look at it, they're a restaurant and not a bar.

Ms. Devendittis briefly detailed her menu and then thanked the Commission for their time.

Mr. Donovan called for Public Comment and there was none.

MOTION (1)

Ms. Kalajainen to close the Public Hearing.

Mr. Dwyer seconded the motion.

Motion carried, 6-0-0.

Regular Meeting

1. **Application of Candace Devendittis, Tenant, of Dev's on Main, for a Special Permit for outdoor dining, at 255 Main Street, Niantic, CT. East Lyme Assessor's Map 12.1, Lot 107.**

MOTION (2)

Ms. Markovitz moved to approve the Application of Candace Devendittis, Tenant, of Dev's on Main, for a Special Permit for outdoor dining, at 255 Main Street, Niantic, CT. East Lyme Assessor's Map 12.1, Lot 107, with a waiver of setback dimensions as required. In Section 22.

Ms. Thurlow seconded the motion.

Motion carried, 6-0-0.

2. **Legislative Updates in relation to Public Act 21-29, the Town Attorney to present information on new legislation regarding Accessory Apartments, Commission Training, Affordable Housing Plans and PA21-1 Recreational Marijuana.**

Attorney Zamarka reported the following:

- A couple of recent bills signed into law that will have an impact on applications coming before this commission.
- PA 21-29 covers a lot of ground, the main point of which is dealing with accessory apartments.
- An accessory apartment is defined as a separate dwelling unit that is located on the same block as the principal dwelling that has cooking facilities, and is compliant or exempt from any applicable building health, fire or safety rules.
- Beginning January 1st, 2022, zoning regulation shall provide that at least one accessory apartment shall be allowed, as of right, on any lot that contains a single family dwelling, unless the Town decides to opt out.
- "As of right", means no public hearing is held; once the application is filed, the new law states that a decision has to be made on it within 65 days from receipt of the application.
- An accessory apartment can be attached or located within an existing principal dwelling, or it can be detached and located on the same lot.
- Currently our regulations do not address these in any way.
- It goes into effect in January of next year and if the Town decides to opt out that process starts with the Zoning Commission.

- The Zoning Commission has to hold a public hearing the same way you would for any land use application, and you have to affirmatively decide to opt out by a two thirds vote, state your reasons on the record on why you're deciding to opt out, and publish notice of your decision.
- Opting out is a two step process; If the Zoning Commission decides to opt out, then the Board of Selectmen as the Town's legislative body has to approve again by a two thirds vote.

Mr. Donovan asked if they could permit this only in certain zones and Mr. Zamarka replied that at least one such apartment shall be allowed as of right on each lot that contains a single family dwelling.

Mr. Peck said we could choose to opt out, but then we could bring it up next year for serious consideration and determine if there are some areas or zones we could allow this.

Ms. Kalajainen said she's hoping for a public hearing, and that we will entertain this because there are many families are facing issues that this would benefit; we have a lot of people caring for elderly parents, we have a lot of parents caring for kids with disabilities. She said there are many reasons for us to consider this as a benefit to the community.

Mr. Donovan said he knows of a young family who wanted to move their parents in with them, and this option really would have helped them. Mr. Mulholland said he sees this need conveyed to him in his office on a regular basis.

Mr. Dwyer said years from now, when those parents are gone or deceased, the apartment will still be there, and it becomes a rental apartment, and you have no zoning anymore.

Ms. Hardy said she recollects that this Board discussed this issue at least four years ago, and it might be helpful to review the minutes and see what the feeling was as a starting point.

Mr. Peck said he doesn't like the prospect of the State of Connecticut, coming down here and telling us what to do. He said each town has their own issues, their own demographics, and he's all for talking about it, but geared towards our town, and not carte blanche.

Mr. Zamarka said effective January 1st of 2023, every member of a planning, zoning, or the ZBA has to complete at least four hours of training on a bi annual basis, which has to include at least one hour on affordable and fair housing policies, include process and procedure how to conduct an effective public hearing, interpreting site plans, impact of zoning on environment agriculture and historical resources. He added that OPM, (Office of Policy and Management), has already started setting out guidelines for the training.

Mr. Zamarka said the next item he needs to mention is the affordable housing plan; the Town already has an affordable housing plan, which was done as part of a revision of the POCD in 2009. He said that beginning June 1st of 2022, the Town will be required to update it every five years.

Mr. Zamarka said the final legislative item he wishes to discuss is responsible and equitable regulation of adult use cannabis, and shared the following:

- There are several definitions that apply to the Zoning Commission in regards to cannabis.
- First is a cannabis establishment; there are 10 different types of cannabis establishments, including a producer, a dispensary facility cultivator, and micro cultivator.
- The difference between those is how much growth space is in the particular establishment, a retailer, a hybrid retailer, delivery service or transport.
- A town through its zoning can prohibit the establishment of any cannabis establishment within the town, or it can establish reasonable regulations regarding our signage and proximity of a cannabis establishment.
- A town cannot allow more than one retailer and one micro cultivator, for every 25,000 residents.
- We're still under 20,000 so until June 30 of 2024 one would be permitted, and after that date, the Department of Consumer Protection may change those figures and percentages.
- It's an allowed use, but it is allowed as a special permit use which would garner some controls.
- There's no opt out provision, the Zoning Commission either decides to prohibit it by an amendment to its regulations, or there's a provision where 10% of the electors of the town can file a petition with the clerk, asking that the matter be put on the ballot for the next regular election.
- This is very new and we haven't gotten any guidance from the Office of Legislative Research yet but he's sure that's forthcoming.
- All of this is just an overview.
- He's sure we'll potentially be getting applications for accessory apartments, and the Commission will want to schedule this for a public hearing.

Mr. Mulholland said we already have an application for a hybrid marijuana facility on Colton Road in the LI District.

Mr. Peck discussed why this item should be fast tracked and Mr. Mulholland detailed the upcoming heavy zoning schedule.

The Board discussed adding an additional meeting to accommodate a public hearing.

MOTION (3)

Ms. Kalajainen moved that the Zoning Commission schedule a Public Hearing at the earliest available date, or by special public hearing if necessary, for the purpose of discussing opting out of the accessory apartment portion of Pa 21-29.

Mr. Peck seconded the motion.

Motion carried, 6-0-0.

3. Approval of Minutes of July 1st, 2021.

Mr. Donovan and Ms.Thurlow had the following corrections:

1. Page 2 reads- "...early on in the public hearing process, and those people kind of fell by the wayside as we got **as we** continued and continued again"; the second "**as we**" should be removed.
2. Page 3 reads "Mr. Donovan noted the **side** remains erected for quite some time after the meeting"; "**side**" should be "**sign.**"

MOTION (4)

Ms. Thurlow moved to approve the Meeting Minutes of July 1st, 2021 as amended.

Mr. Peck seconded the motion.

Motion carried, 4-0-2.

Ms. Kalajainen and Ms.Markovitz abstained from the vote due to their absence from the July 1st, 2021 meeting.

Old Business-

There was none.

New Business-

1. Election Signage (Commission)
2. Application of Paul Geraghty, Esq., for Duval Partners, LLC, owner,for azone Change from SU/SU-E to RU-80, for property located at Holmes Road and Grassy Hill Road, identified in the application as East Lyme Assessor's Map 57.0 Lot 30, Map 55.0 Lot 3-L, and Map 52.0 Lot 3.

Mr. Donovan asked Mr. Mulholland to schedule this item.

3. Application of Harvest Christian Fellowship of Niantic, Inc., for a Special Permit for a church/religious institution on the subject property. Said parcel is located at N Bride Brook Rd, East Lyme Assessor's Map 24.0, Lot 76.

Mr. Donovan asked Mr. Mulholland to schedule this item.

4. Application of Theodore A Harris, Esq., for Christopher Manwaring, for a Text Amendment to the East Lyme Zoning Regulations to add to Section 8.2 Landscaping Service Company as a Special Permit in a CA Zone.

Mr. Donovan asked Mr. Mulholland to schedule this item.

5. Application of Theodore A Harris, Esq., for Laurie Zrenda, for a Text Amendment to the East Lyme Zoning Regulations to add to Section 11.2 Marijuana Dispensary as

a Special permit in an LI Zone, and add restrictions to Section 25.5 Table of Minimum Controls for Marijuana Dispensary.

Mr. Donovan asked Mr. Mulholland to schedule this item.

6. Application of Noble Energy Real Estate Holdings LLC, for a Special permit for a gasoline service station with associated fast food restaurants and drive-thru facilities at property located at 51 Boston Post Road, East Lyme Assessor's Map 36.0, Lot 61.

Mr. Donovan asked Mr. Mulholland to schedule this item.

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

Mr. Peck asked if anyone would mind if they moved the election signage discussion to 3 or 4 months from now given the heavy Zoning Commission schedule. He pointed out that it's too late to make changes this year since we're so close to the election. The Commission agreed to postpone this item until later next year.

8. Zoning Official

Mr. Mulholland had nothing to report.

9. Comments from Ex-Officio

Ms. Hardy detailed the Town Meeting last night and how appropriations were approved to replace the new Public Safety Building roof and for an engineering study for the East Lyme High School roof. She also discussed American Rescue Fund monies and how determinations for usage still need to be made since some of the items they initially considered have been deemed ineligible.

10. Comments from Zoning Board Liaison to Planning Commission

- a. Dwyer-July 13th, 2021
- b. Donovan -August 10th, 2021,
- c. Kalajainen - September 14th, 2021

Mr. Dwyer said it was a quiet meeting and they discussed the text amendment that we made regarding public hearing signage, uses for the American Rescue Fund monies, and Mr Salerno's semi-retirement; he's not seeking reelection.

11. Comments from Chairman

Mr. Donovan had nothing to report.

Adjournment

MOTION (5)

Ms. Kalajainen moved to adjourn the Zoning Commission Meeting at 9:38 p.m.

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

Respectfully Submitted,

Brooke Stevens,
Recording Secretary