

TOWN OF EAST LYME  
ZONING COMMISSION  
October 14th, 2021  
PUBLIC & REGULAR MEETING MINUTES

Members Present:

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

Absent:

- Matthew Walker, Chairman
- George McPherson, Alternate
- James Liska, Alternate

FILED

Oct 21, 20 21 AT 8:02 AM/PM

Brooke Horner HTC  
EAST LYME TOWN CLERK

Also Present:

- Bill Mulholland, Zoning Official
- Rose Ann Hardy, Ex-Officio
- Mark Zamarka, Town Attorney
- Gary Goeschel, Town Planner
- Michelle Royce Williams, Planning Commission & POCD Subcommittee Member
- Nichole Davison, Planning Commission Member

Acting Chairman Donovan called the Zoning Commission meeting to order at 7:30 p.m.

Pledge of Allegiance

Mr. Donovan led the Pledge.

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

POCD implementation Presentation - Presentation of East Lyme Plan of Conservation and Development as Adopted November 9th, 2020

Michelle Royce Williams of the Planning Commission and POCD Subcommittee, and Gary Goeschel, Town Planner, were in attendance to give a short presentation of the updated 2020 Plan of Conservation and Development.

Ms. Williams said some of the following:

- The POCD is the town's planning document, which needs to be updated at least once every 10 years, both as good practice and also because it needs to be filed with the state to keep us eligible for various discretionary funding from the State of Connecticut.

- The previous update was in 2009 and in 2019 the Planning Commission formed a subcommittee to begin the update process.
- They started with researching what had transpired since 2009 and began reaching out to all of the town boards, town departments and relevant stakeholders to invite them to sit on a steering committee and or provide feedback.
- They were very lucky to have Mr. Peck volunteer to sit on the steering committee and they thank him for his continued service on that.
- They wanted the update to be a very collaborative process to invite as many residents and town officials as possible to contribute.
- They wanted to make sure that they facilitated the continued execution of the POCD so that the collaborative work that went into updating it over two years wasn't for not and continued to be a good map and guide for the town.
- They launched a community survey for town residents and over 500 people responded to their online survey.
- In early 2020, they held a public forum where they heard two hours of feedback from residents telling them what they liked about town, what they'd like to improve, and what they feel needs to change.
- They worked for the next 10 months as a group, with members of the steering committee, other boards and commissions and staff, to update the document.
- It was presented to the Board of Selectmen in August 2020, was unanimously adopted by the Planning Commission in November of 2020, and accepted by the State in December.
- The steering committee has remained intact and meets every other month to touch base on the status of the various recommendations in the plan.
- They are here to help support in whatever way they can, moving the ideas forward.

Mr. Goeschel provided the Commission with a matrix they created which breaks down the POCD by chapter and recommendation; you will look at the appropriate board or commission responsible for implementation of each particular recommendation. He added that the Commission should feel free to contact him or Ms. Williams with any questions they might have.

The Board briefly discussed the POCD with Ms. Williams as it relates to the Zoning Commission.

### **Public Hearing**

1. **Public Act 21-29 Regarding proposed amendments to General Statutes 8-2 to allow accessory dwelling units as of right on each lot that contains a single-family dwelling, said amendments to become effective January 1, 2022.**

Mr. Mulholland noted the legal ad for this item has been run.

Mark Zamarka, Town Attorney, came forward to detail accessory units and shared some of the following:

- The Act allows accessory dwelling units or ad use as of right on the same lot as a single family dwelling.
- A town can opt out of this requirement, but must do so by January of 2023.
- If not, after that any. any existing regulations that do not comport with the Act will be considered invalid.
- Essentially the choice A town has is to either adopt zoning regulations consistent with the act or decide to opt out.
- If a town does not opt out, and does decide to allow this use in the town, the town can still regulate or prohibit their use as short term or vacation rentals.
- If the town decides to allow accessory dwelling units, the regulations must allow three types of these units: it can be detached, detached or contained within the principal dwelling.
- It has to provide for a maximum floor area of not less than 30% of the principal dwelling floor area or 1000 square feet whichever is less.
- Any setbacks and lot size coverage for detached units have to be less than or equal to that required for the principal dwelling.
- They can't enforce stricter lot coverages and setbacks than the ones required for the principal dwelling.
- Any landscaping or architectural designs have to be the same as those apply to the principal dwelling.
- The approval process is a little bit different than most zoning permits because it's allowed as of right.
- The approval process cannot require a public hearing or special permit decisions must be made within 65 days from the date that the application is received.
- An applicant can grant an extension of no more than 65 days.
- A town cannot require a passageway between the unit and the principal dwelling or an exterior door except as required by the fire code.
- A town cannot require more than one parking space for the unit, cannot require a familial, marital or employment relationship between occupants of the unit and the principal dwelling.
- A town cannot require a minimum age for occupants of the dwelling, and cannot require the correction of the nonconformity be a condition of approval.
- A town has until January 1st of 2023 to opt out.
- Opting out is a two step process that begins with this Commission.
- If the Commission decides it wants to opt out, it has to hold a public hearing on the proposed opt out, subject to the usual guidelines, and it has to do so affirmatively by a two thirds vote.
- The reasons for the decision must be stated on the record.
- The decision must be published within 15 days as per usual guidelines and if that happens it has to go before the Board of Selectmen, the town's legislative body, and they also have to confirm it by a two thirds vote.
- East Lyme currently does not allow accessory dwelling units as they're defined in the act.

- The definition section of your zoning regulations does allow in-law accommodations, which are single efficiency dwelling units that are located within the principal building, and are subject to special permit control found in Section 25 of the regulations.
- Because this is an as of right approval and there can be no special permit or public hearings attached to an application for an accessory unit.
- It bypasses the usual process that the Zoning Commission would have for both the adoption of a regulation and the approval of a zoning permit application.
- Accessory units cannot be counted as part of the town's affordable housing stock.

Ms. Kalajainen asked Mr. Zamarka confirmed that in-law apartments under the current regulations cannot have a kitchen and he affirmed that is correct.

Ms. Kalajainen asked about regulating short term rentals and Mr. Zamarka explained if they decide to allow them, they have the ability to regulate or prohibit them for use as short term or vacation rentals.

Mr. Zamarka added that the opt out can be had at any time up until January of 2023.

Ms. Markovitz asked if you build this separate structure for your parents what happens after that use is no longer needed and Mr. Zamarka said that's a good question that's not addressed in the act. He said this is a bit of a difference between these and the temporary healthcare structures which were required to be taken down after the use was no longer necessary.

Mr. Donovan asked if they could create guidelines for this use if they opt in and Mr. Zamarka confirmed that they can.

Mr. Dwyer noted they can opt out and make their own regulations whenever they want and Mr. Zamarka said they can but they cannot be more restrictive than what is contained in the act.

Mr. Donovan asked what direction other towns are headed in and Mr. Zamarka said he only knows of Enfield opting out.

Mr. Peck asked if they can restrict this use to a specific zone and Mr. Zamarka said they can.

Mr. Dwyer said with this law anyone can come here- anyone, who he'll call Joe Blow; he can tell Joe Blow he will put a rental house next to his and that he can come here all summer. He said they would not be controlling the zone anymore.

Mr. Donovan said he understands that they have to follow the local zoning regulations.

Mr. Zamarka said just to be clear, if the Commission decides to allow accessory dwelling units, they can regulate their use for short term or vacation rentals.

Mr. Donovan said he knows beach associations are different entities but he's aware Black Point has decided to opt in but require the use of affidavits as a means of preventing air b&b's and things of that nature.

Mr. Donovan called for Public Comment.

1. Nicholas Menapace of 38 Hope Street unit 97 said some of the following:
  - He understands Mr. Dwyer's concerns but support accessory dwelling units.
  - Accessory dwelling units can be helpful for people.
  - He understands the fear that people will be able to rent these out but they're a stone's throw away from million dollar summer homes that people are using.
  - The biggest thing that jumps out to him is the POCD talk about climate and the effects that that's going to have on our community.
  - We have this massive sprawl of summer homes that people don't use, and stay in for as little as two months of the year.
  - He doesn't understand the reluctance of allowing a small apartment to be built even if someone rents it out when already so much of the community is only here for the summer.
  - He would like to see people helped and he knows this isn't technically affordable housing but he knows how hard it is right now to find a home he can afford.
  - He sees how many places in town are hiring, and they're offering less than \$15 an hour, and someone making that can't afford to buy their own home here.
  - This may not be the best solution but he would like to see it put to use in a way that can help people.
  - It's easy to have these units blend in architecturally with the rest of the town.
  
2. Spencer Clapp of 11 Chadwick Place said some of the following:
  - He would like to see the Zoning Commission to not opt out and to accept and create appropriate regulations for this use.
  - This is something personal for him.
  - He has a younger brother recovering from a second back surgery, who's a teacher in Chile.
  - He doesn't have the financial wherewithal to purchase a home here.
  - His intention is to provide an apartment for his brother if this becomes a permitted use.
  - He actually thinks this is what the intent of the legislation is.
  - He wants to know how the Commission can enforce short term rentals and what the approach would be.

- He thinks it would be a bureaucratic nightmare trying to determine if somebody is here for one month, two months, or has a year lease.
- Most people if they had an approved unit would probably do whatever they wanted regardless of restrictions.
- If the Commission chooses to adopt their own regulations he suggests putting a percent a parameter on the square footage, limiting them to one bedroom, and limiting it to one bathroom.
- This would make it more likely to have an individual or couple use the unit.
- In our culture right now there is a need for housing for the elderly and assisted living facilities are extremely expensive.
- This would be a perfect way to be able to take care of a family member.
- It's a financially feasible way of taking money and putting it into accessory dwelling units as opposed to looking at the cost of long term care at an assisted living facility.
- This would also benefit young people.
- We know that with what's been going on with COVID as well as the economy, that there's a certain percentage of young people who are drowning in student loan debt, and they are not able to afford to actually save enough money for a down payment on the house.
- They're actually referred to as the rebound children. They're in their 20s and they're coming back and they're living with their parents because they can't afford to live on their own.
- He would like the Commission to not opt out completely, but rather to carefully control this as much as possible.
- Because they can't count on people being honest about it, they might want to look at actually creating specific concrete parameters, so that this doesn't get out of control in terms of who's going to be in these units in the future.

Rose Ann Hardy, Ex-Officio, said as we're all hearing this we should remember that we have one person who is the Zoning Official and this is a lot of regulation and a lot of overhead. She said whatever the Commission decides, they're going to have to think pretty seriously about the need for some assistance. Ms. Hardy added that she knows that his office is already overloaded with permits and requests, and thinks this is way too much for a one person show.

3. Debbie Jett-Harris of 19 Center Street said some of the following:

- She can agree with what was just said and noted that due to blight issues and the like people in Town are already suffering and it is hard for one person to enforce.
- Her question is what happens if the neighborhood has a homeowner's association and if the homeowners association would be able to weigh in on whether or not they wanted to have this.

Ms. Jett-Harris briefly discussed how she lives in Pine Grove where the homes are small, and close together. She said she wonders how opting in might affect Pine Grove. Mr. Donovan explained that local zoning laws would still need to be adhered to.

4. Nichole Davison of 12 Dean Road said some of the following:
  - The majority of people that live in a town are not criminals.
  - They do not wish to break the law or the rules.
  - They're basing what they're saying on a couple of people that may or may not.
  - She asked if they can first agree that most people abide by the rules.
  
5. Christine Stahl of 41 Oswegatchie said some of the following:
  - She thinks everyone needs to think long and hard about this kind of fear of the other that seems to be coming forward in conversations here.
  - When she and her husband first graduated college the first place they lived in was an attached accessory unit in Massachusetts.
  - They had a shared entrance with another family and were college graduates who didn't have a lot of money and that family allowed them to live in their house.
  - She thinks the idea of "Joe Blow" is offensive and implies that people who need to use an accessory dwelling are less than.
  - As she looks around she can't help but notice that the age collectively, including herself, is a little on the old side.
  - If we want young professionals, not necessarily related, to come to this town, get involved in town governance, and help with things like the environment, we need to be welcoming.
  - Climate change isn't going to affect many of us but it will affect our grandchildren.
  - She asks that they stop fearing the other and assuming the worst.
  - When she says "Joe Blow" is offensive she's speaking to Mr. Dwyer.
  - She was "Joe Blow" when she graduated from college and now she's a productive member of this community and owns a home.
  - They need to think a little differently and be a little more open minded.
  
6. Stephen Larcen of 47 Oswegatchie Hills Road said some of the following:
  - He doesn't often come to this meeting and the last time he was here they were considering whether to grant a variance for 38 Hope Street.
  - There was a lot of concern about the density, the neighbors, and there was a lot of pushback.
  - In retrospect, he thinks it was one of the best things the Town did, and he came to speak in favor of that.
  - It's not just the \$15 an hour person, but school teachers, nurses, and many other people that cannot afford a house in this town.
  - He urges them to adopt these regulations.
  - You have until 2023 to opt out so you actually have a trial period.

- You actually could find out how this works and whether “Joe Blow” does or does not come to town.
- Personally, he thinks we need more diversity in this town.
- He thinks we have to help our young people.
- We have to be more visionary and less reactive.
- Although not perfect, he thinks this is a visionary piece of legislation.
- The chairman has asked a couple of times whether this prohibits the use of your zoning regulations and why reading it does not relate to property setbacks and environmental issues and sanitary issues, and so forth.
- So there are rules in this thing.
- This is not a rules free situation and it prevents discrimination from people that could potentially benefit from such accessory housing.

The Commission briefly discussed how zoning regulations would still need to be followed and Mr. Zamarka reminded the Commission that any zoning regulations adopted pursuant to the accessory dwelling units shall require setbacks, lot size and building frontage less than or equal to that which is required for the principal level.

The Commission discussed Mr. Clapp’s comments regarding the maximum floor area and Mr. Zamarka reiterated that the maximum floor area is the lesser of 30% of the floor area and the principal dwelling or 1000 square feet, whichever is less.

The Commission further discussed the legislation and the possibility of forming a subcommittee to create their own regulations regarding this item.

Ms. Hardy recommended keeping the Public Hearing open and possibly incorporating some news coverage so that more people have the opportunity to come out and share their thoughts on this item. She said it’s a big decision that will affect the entire Town. She said admittedly, anybody could have come tonight to speak but sometimes people just aren’t as aware as they should be.

Ms. Kalajainen said she would like Ms. Hardy to state whether her comments reflect her role as an elected official, or if she’s making these comments as an individual. Ms. Hardy replied that the Board of Selectmen hasn’t had this item before them so her comments are not reflective of the Board of Selectmen. She said she is speaking as an individual and as an Ex-Officio who has attended zoning meetings for 30 years.

7. Camille Alberti of 7 Darrows Court said some of the following:

- She is speaking as a private citizen.
- She appreciates what Ms. Hardy had to say in their role as the Zoning Commission they’ve obviously spent a great deal of time considering the matter before them and have followed the correct process.

- They heard from a number of people who came out to speak and stated they would not like to see the Commission opt out.
- Just because you may not agree with that overwhelming response, doesn't mean that's reason enough to stay this meaning and continue it on for another hearing.

8. Beth Hogan of 10 Wildwood said some of the following:

- If they decide to opt in they decide the regulations to allow this as the Board.
- In terms of setbacks, square footage, septic and so forth, that's their domain and they have the power.
- No one is telling them to throw that out and not create regulations.
- They're asking you to give people the chance for a housing choice.

#### **MOTION (1)**

**Ms. Kalajainen moved to close the Public Hearing.**

**Ms. Markovitz seconded the motion.**

**Motion carried, 5-1-0.**

**Nay: Mr. Dwyer**

#### **Regular Meeting**

- 1. Public Act 21-29 Regarding proposed amendments to General Statutes 8-2 to allow accessory dwelling units as of right on each lot that contains a single-family dwelling, said amendments to become effective January 1, 2022.**

Mr. Dwyer said he thinks they should take some time to consider this.

Mr. Donovan detailed how they could choose to create a zone for this use. He asked if they should not opt out now but create a subcommittee to set regulations. Mr. Donovan said it could potentially have its own section in their zoning regulations like Gateway does.

Mr. Dwyer said they're fighting Hartford who will come up with something else, and he doesn't trust Hartford. Mr. Donovan said he doesn't disagree but it's our capital.

Mr. Dwyer said they should turn this down and make their own regulations and Ms. Markovitz said she doesn't think they should opt out since they have until 2023 to do so. She said she has no issues with them coming up with their own regulations.

Ms. Thurlow said she thinks there are things they haven't thought about yet and supports having a subcommittee.

Mr. Peck said he is absolutely in favor of having a regulation that allows this under their control. He said he's on the fence as to whether they should opt out or not and is concerned if they'll have enough time to create good regulations. He noted they would have to form a subcommittee and create regulations for January 1st all while having an election after which, half of this Board might not be around.

Mr. Mulholland said he could have 50 applications for this on January 1st, 2022 and discussed how it would be a push to get it done procedurally by that date.

Ms. Kalajainen asked Mr. Peck what is in the statute that he feels would cause problems for our town. She said she's not understanding, hasn't heard any specific concerns, and feels like they're acting in fear; there needs to be specific concerns with the statute.

Mr. Peck said it's a sort of cookie cutter regulation that's supposed to fit into every town and obviously doesn't. He said he's also concerned about the type of building this adu will be, he would like to see those details nailed down, and determine what zones they should be allowed in.

The Commission discussed how any regulations created cannot be more strict than the ones for the primary dwelling and Mr. Peck said he doesn't understand why the use can't be privy to a public hearing if this law is in effect. Mr. Zamarka said he sees that the Commission wants this specific question answered, he will do additional research and report back.

Mr. Mulholland said if they choose to continue this item the next meeting is October 21st, 2021 but they have a very full agenda that night. He said they could add this item to the November 4th, 2021 agenda which isn't as full.

Ms. Kalajainen requested that each Commission Member come to the meeting with specific concerns so they can flush out the details, qualify the information, and determine whether they can formulate a regulation change at that meeting. She said she thinks it would be problematic for the town if they don't act before the Board turns over and Ms. Markovitz concurred.

The Board agreed to continue this item until the November 4th, 2021 meeting and decided it would be prudent to meet at 7:00 p.m. for their October 28th, 2021 meeting given the heavy agenda.

### Adjournment

#### **MOTION (2)**

**Ms. Kalajainen moved to adjourn the Zoning Commission Meeting at 8:59 p.m.**

**Ms. Markovitz seconded the motion.**

**Motion carried, 5-0-0.**

Respectfully Submitted,

Brooke Stevens,  
Recording Secretary