

ZONING COMMISSION
October 28th, 2021
Special Meeting Minutes

Members Present:

Matthew Walker, Chairman
Norm Peck
Terence Donovan
Kimberly Kalajainen
Bill Dwyer
Anne Thurlow
Denise Markovitz, Alternate
James Liska, Alternate (arrived at 7:23 p.m.)

FILED

Nov 4, 20 21 AT 8 AM/PM
Brooke Strem ATC
EAST LYME TOWN CLERK

Absent:

George McPherson, Alternate

Also Present:

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

Chairman Walker called the Special Meeting Zoning Commission meeting to order at 7:08 p.m.

Pledge of Allegiance

Mr. Walker led the Pledge.

Executive Session

MOTION (1)

Mr. Donovan moved to enter Executive Session at 7:09 p.m. for the purpose of discussing the Landmark Affordable Housing Appeal, and invited Attorney Zamarka, Mr. Mulholland, and Ms. Hardy to join them.
Ms. Thurlow seconded the motion.
Motion carried, 6-0-0.

MOTION (2)

Ms. Thurlow moved to exit Executive Session at 7:21 p.m. with no action taken.
Mr. Donovan seconded the motion.
Motion carried, 6-0-0.

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. Walker noted for the record that he reviewed the meeting minutes and materials of October 21st, 2021 in their entirety.

Mark Zamarka, Town Attorney, came forward to provide further details regarding accessory units and said some of the following:

- One of the overriding questions the Zoning Commission had was that if they decided to opt out, could it then adopt its own regulations that were stricter than what were contained in Public Act 21-29.
- The opt out is a two step process.
- If this Commission decides to opt out, it still has to go before the Board of Selectmen and be approved by the same two thirds vote.
- His initial twas that you could not go and stricter than the law and after further research he has confirmed, that is the case.
- There is a statute that allows a Zoning Commission to make or impose higher standards than those in a statute.
- However, if you do that it is still subject to something that is called preemption; Preemption very briefly states that the state legislatures will, cannot be overridden by a local zoning regulation.
- That happens in two instances first, if the state legislature intended to do what's called occupying the field, meaning they're going to regulate everything and there's really nothing for the locality to do, or if the local regulation conflicts irreconcilably with the state statute, then the state statute will take precedence.
- They believe that section six of 21-29 shows a legislative intent to occupy the field.
- It basically says that if the municipality does not opt out or adopt regulations that comply with the act, then any non compliant regulations are considered null and void.
- It also says that a municipality may not use or impose additional standards beyond those set forth in the act.
- Essentially it's a take it or leave it situation.

Mr. Peck said that if that is the case, they can't come up with a regulation that says it's allowed only in certain zones and Mr. Zamarka replied that if it goes beyond what is in the act, that's correct; and right now 21-29 allows accessory dwelling units on any lot that has a single family dwelling. He added that as the Zoning Commission they have the statutory right to adopt regulations but those will be subjected to challenge in a court and based on their research it would be against their recommendation to do so.

The Commission further discussed this section of the statute.

Mr. Donovan said there's nothing prohibiting them from coming up with regulations that comply with this legislation and Mr. Zamarka confirmed that is correct.

Mr. Zamarka said the only action that is needed right now is for them to decide whether or not to opt out; if they don't opt out, then as of January 1st of next year this regulation takes effect, and they essentially have a year to come up with regulations that comply with this, otherwise, as of January 1, 2023, any regulations that are on the books that don't comply, are considered null and void.

Mr. Peck asked about having something in a regulation that requires that the building be in harmony with the rest of the neighborhood and Mr. Zamarka explained that they can't apply architectural or design standards that are any different than what would be applied to the principal dwelling.

The Commission briefly discussed whether trailers would be permissible and Mr. Zamarka said those are classified as vehicles so he doesn't believe that they would be.

Mr. Donovan asked if Mr. Mulholland contacted the Southeastern Council of Governments to ask how this might impact the town and he replied that he didn't since no referral is required, so this isn't something they would typically do when that is the case.

Ms. Thurlow asked if they're able to apply rules such as not having a business and the owner of the dwelling has to live in one of them, and Mr. Zamarka replied that the Act does not allow a town to require there to be any type of relationship between who lives in the principal dwelling and who lives in the accessory.

Ms. Thurlow said she thinks this Act allows too much.

Mr. Peck said he asked a question at the previous meeting as it relates to one of their charges, the preservation of property values. He asked if they can have this use be subject to a public hearing by special permit and Mr. Zamarka said they cannot.

Mr. Walker said some of the following:

- There's a lot more questions than answers here and that's the problem.
- We have a housing crisis in this state and perhaps nationally due to wages not keeping pace with inflation, and that's sort of the genesis of all this.
- it begs for solutions but this is not the solution.
- From his point of view this isn't even part of the right solution.
- The rhetorical question for him is how this Commission can agree to a loosening of restrictions, which is essentially what this does, when they already have difficulty as it is now with enforcement.
- He sees so many problems with this and thinks it would adversely affect property values in this town.
- Whether politically correct or not, single family home neighborhoods are sort of sacrosanct in this town, and is why people move to this town.
- He said if we dismiss that they're not not paying attention to what the residents feel about this town or to the reasons that they moved here to begin with.

- He worries about traffic, on street parking, the policing of on street parking on our streets by putting this in every zone.
- He worries about public safety, the drain on septic systems, and the loss of privacy.
- If you did have a detached unit on somebody's front yard, from a privacy standpoint, there could be sightlines of people looking at each other's windows, and could potentially change the way this town looks.
- Perhaps he's thinking about the worst case scenario, but they need to, as elected officials, think in terms of the greater good and not in terms of what might be beneficial to a particular individual or certain individuals who have a situation where they might need this.
- They need to consider the total community.
- He doesn't think this is anything that is going to enhance the town or that it's in our best interest.
- He thinks it's an offshoot of affordable housing and although they need to continue to do more to fill the void, he doesn't think this is the answer.

Ms. Thurlow said that since we can't put any restrictions on this, she would vote to opt out.

Mr. Walker said he's in favor of opting out and Mr. Donovan replied this is a waste and feels like the matter has already been decided. Mr. Walker cited last week's meeting and the application they had before them for a text amendment on recreational marijuana establishments. He said he had to look at that with an open mind, embrace it to a certain degree, and felt it was the right thing to do for the town when he wasn't in favor of recreational marijuana being legalized in the first place.

Mr. Walker said they all have to come to terms with their own judgments as commissioners and as residents, but these are his feelings and he has a right to vote on that perspective.

Mr. Dwyer said he agrees with Mr. Walker's remarks.

Ms. Kalajainen said some of the following:

- We have public hearings for a reason and that's to hear from the constituents and residents of this town to understand what their needs and concerns are.
- If you were at the hearing or read the minutes that were available, you know there were a lot of residents articulating their need or their desire for this type of use.
- Any regulations in compliance with 21-29 will also be in compliance with our zoning regulations.
- We have protective measures such as setbacks for a reason.
- Her concern is that without the vision of what families are dealing with today, and what families are going to continue to need as we move further into this century, their needs will not be met.
- We have residents in our community that are struggling, and she doesn't know that opting out does anything to help solve that problem.

- Our economy, workforce, and family units are changing and thinks for them to act in fear and just opt out is not a responsible thing for this Commission to do.

Mr. Peck offered the following:

- The affordable housing thing that's been going on for the last 20 years in the State of Connecticut has been pretty much of a failure.
- The state formula to qualify for affordable housing puts a person into a position that they do not qualify for a loan to buy the unit and it doesn't work.
- All over town you see affordable housing projects full of elderly people that are retired, they cashed in and they have no income so they qualify for these units.
- The State of Connecticut doesn't know how to solve that problem.
- They came up with an easy solution of a mandate.
- He thinks this is an absolute, clear cutting way of doing business.
- He was very interested in coming up with a subcommittee and creating custom fit regulations that solve or help to solve the problem and we could have done that, but since they have no control, there's no point. useful.
- He thinks they might be able to still form a subcommittee and come up with, for example, allowing a two family in another zone.
- He doesn't think this Act is a good thing.
- Every town should be able to custom fit their regulations.
- He thinks the state should reconsider and allow them to do this on their own without this mandate.
- He's against this because of the answers he received tonight.

Mr. Donovan said he's not a big fan of opting out.

The Commission further discussed the Act.

MOTION (3)

Mr. Peck moved that the East Lyme Zoning Commission affirmably opt out of Provision PA 21-29, regarding allowance of accessory apartments or accessory dwelling units (adu), pursuant to Section 6F of Public Act 21-29 for the following reasons:

- 1. It is contradictory to our responsibility, as in the state statutes, that we are charged with preserving property values.**
- 2. It gives us no very little if any control over this type of development.**
- 3. It's too general and inappropriate for this town.**

Ms. Thurlow seconded the motion.

Ms. Kalajainen commented that she doesn't know that we have any evidence that this act degrades property values, and she believes that we do have controls within our zoning regulations. She doesn't think "too general and inappropriate" are concrete reasons to opt out.

Mr. Donovan noted that Mr. Zamarka is the attorney for Black Point Beach Association who chose to opt in, and asked about their decision to require the use of a sworn affidavit as a

means of greater control. Mr. Zamarka said he was not involved in that, and that was the decision of the Black Point Beach Zoning Commission and their Zoning Enforcement Official.

Mr. Walker said the loosening of restrictions runs contrary to zoning and Mr. Dwyer said it would destroy the rural feel of the town. Mr. Donovan said he disagrees with this line of thought.

Vote:

Motion carried, 4-2-0.

Nay: Mr. Donovan and Ms. Kalajainen

Mr. Peck said he would like to still propose a subcommittee to do something to address this issue. Mr. Walker and Ms. Thurlow agreed with this idea.

MOTION (4)

Ms. Thurlow moved to adjourn the October 28th, 2021 Special Zoning Meeting at 8:04 p.m.

Mr. Dwyer seconded the motion.

Motion carried, 6-0-0.

Respectfully Submitted,
Brooke Stevens, Recording Secretary