

**EAST LYME ZONING COMMISSION
PUBLIC HEARING I
Thursday, MARCH 16TH, 2006**

MINUTES

The East Lyme Zoning Commission held a Public Hearing on the Application of Theodore A. Harris to amend Section 20.20.8 of the East Lyme Zoning Regulations regarding the sale of beer at small grocery/convenience stores on March 16, 2006 at Town Hall, 108 Pennsylvania Avenue, Niantic, CT. Chairman Nickerson opened the Public Hearing and called it to order at 7:30 PM.

PRESENT: Mark Nickerson, Chairman, Rosanna Carabelas, Secretary, Pamela Byrnes, Norm Peck, Marc Salerno, Ed Gada

ALSO PRESENT: Joseph Barry, Alternate
Robert Bulmer, Alternate
Attorney Theodore A. Harris, Applicant
Attorney William McCoy, Applicant
Mr. George Mitchell, Applicant
Mr. Terry Mitchell, Applicant
William Mulholland, Zoning Official

**FILED IN EAST LYME TOWN
CLERK'S OFFICE**

March 20 2006 at 3:10 **AM**
PM

Esther B Williams

EAST LYME TOWN CLERK

ABSENT: William Dwyer, Alternate

PANEL: Mark Nickerson, Chairman, Rosanna Carabelas, Secretary, Pamela Byrnes, Norm Peck, Marc Salerno, Ed Gada

Pledge of Allegiance

The Pledge was observed

Public Delegations

Mr. Nickerson called for anyone from the public who wished to address the Commission on subject matters not on the Agenda.

Public Hearing I

- 1. Application of Attorney Theodore A. Harris to amend section 20.20.8 regarding the sale of beer at small grocery/convenience stores.**

Ms. Carabelas read correspondence items into the record regarding this application.

-- Letter dated 3/15/2006, to the East Lyme Zoning Commission from Wm. Mulholland, Zoning Official -Re: Harris proposed text amendment section 20.20.8 - Attorney Harris proposes to amend zoning code by adding new section 20.20.8 to the general regulations, to allow the sale of beer at small grocery/convenience stores under 20,000 SF to sell beer for consumption off premises provided they are 1000 feet radius from another alcoholic outlet, which sells alcoholic liquor or beverages for consumption off premises.

-- Letter dated 3/10/2006 to Mark Nickerson, Chairman of the East Lyme Zoning Commission from the East Lyme Planning Commission – Re: application to amend 20.20.8, consistent with the plan of conservation and development.

-- Letter dated 3/1/2006, to Rosanna Carabelas, East Lyme Zoning Commission SE CT Council of Governments Regional Planning Commission - Re: proposed amendments would not have any adverse inter-municipal impact.

-- Email dated 3/1/2006 to Wm. Mulholland from the Long Island Sound Programs – Re: finds proposed amendments consistent with the goals and policies of the CT Coastal Management Act (CCMA)

Mr. Nickerson stated that because this is a text amendment, a legal ad was run. He called on Attorney Harris to present the case.

Attorney Theodore Harris of Stevens, Harris & Guernsey, representing JD Market, proposed to change zoning regulations with respect to sale of beer at grocery stores. He stated that the context of this proposal is to change the separation distances required for the sale of different types of alcoholic liquors in different contexts. He provided a background of current liquor regulations, which provide separation distances as they were initially drafted between all types of liquor outlets. I.E., one type of liquor outlet cannot sell liquor within 1500 feet of any other type. Also, there are separation restrictions between the sale of alcoholic liquors and such things as school playgrounds. He stated that an exception was made to differentiate between particular types of usage, i.e. bars vs. package stores. As a result, restaurants were excluded from separation distances, except with respect to churches which requires a 200-foot separation. Large grocery stores have also been excluded from separation distance, except with respect to churches. This current proposal would add the small grocery store/convenience store as an additional exclusion. He proposed a 1000-foot radius between outlets to other retail sales outlets, i.e. package stores or other outlets using a grocery beer permit. Attorney Harris proposed a new Section 20.20.8 to replace the existing 20.20.8 and rename existing 20.20.8 to 20.20.9, in order to maintain the church exception. Atty. Harris stated that this proposal changes the 1500-foot radius to 1000-foot radius and would be separated only from other retail outlets as opposed to other bars, playgrounds, schools, etc. This change follows the same pattern the commission has followed in maintaining some of the other exemptions.

Ms. Carabelas asked if the minimum required square footage of the building of 20,000 SF will change. Atty. Harris confirmed that the 20,000 SF requirement should be eliminated to bring in the smaller versions.

Mr. Mulholland asked if, to Atty. Harris's knowledge, does the state have any separation distance under their review for that type of permit. Atty. Harris responded no.

Mr. Salerno stated that a convenience store that has a grocery store permit can have 1000 foot buffer. He asked if only a convenience store can have 1000-foot buffer, but a regular grocery store cannot. Atty. Harris replied that currently only the large grocery store has no separation distance.

Mr. Salerno asked if this proposal is implemented then a large regular grocery store will still have a 1500-foot buffer. Atty. Harris replied that currently a large grocery store is not subject to a 1500-foot buffer based on the current regulations to any separation distance.

Mr. Salerno asked if the convenience store/grocery store in the current regulations can or cannot sell liquor. Atty. Harris stated that if the convenience store/grocery store is not within 1500 feet of anything else, and has the appropriate quantity of groceries, they can sell liquor, regardless of the 20,000 SF, because this is not a use category, but rather a distance restriction category. This allows the small grocery store to have a beer license as long as they are not next to another retail liquor outlet.

Ms. Carabelas asked if there is any regulation to the size of what the convenience store SF has to be. Atty. Harris replied no.

Ms. Carabelas stated that a small grocery store could have a very small place and say that 75% is groceries, which is 75% of a very small area, and they could sell beer. She asked what qualifies a convenience store. Attorney Harris replied for purposes of liquor permitting, it would be defined by the grocery store standards, which is not based on size, but ratio of grocery sales to other type sales. Only beer can be sold with this permit. It has to be a grocery store first, before it can sell beer.

Ms. Carabelas asked if this is all state regulated. Atty. Harris stated yes. The proposal specifically references the state statutes.

Dr. Gada asked if beer means ale and not wine. Atty. Harris stated yes that the only permit other than a full package store is strictly beer, as defined by the state.

Mr. Nickerson asked if there were other commission comments.
Hearing no one.

Mr. Nickerson asked Atty. Harris if, in his opinion, this would be a moot point, or did he foresee businesses in town that will qualify.

Atty. Harris stated that there would be one or two or three at the most who will qualify.

Mr. Nickerson stated that the typical convenience store isn't going to qualify. He asked that once the beer permit kicks in, where does the beer sales fall in. He also asked at what point does it become a beer store that's selling bread on the side.

Atty. Harris stated that Mr. Nickerson should probably ask someone who has a little more expertise than he has, but that it's based on actual gross sales, not shelf space.

Mr. Nickerson asked if Atty. Harris had anything further to say.
Atty. Harris replied no.

Mr. Nickerson asked Mr. Raia, from the State Liquor Control Commission, that if the small grocery store does qualify for a beer permit and there is a lot of beer on his shelves, then when the receipts are checked the next year, where does the beer fall in.

Mr. Raia responded that in order for a grocery store to get a liquor permit they have to show at least a minimum of 50% of the sale of groceries. Then they add dairy products and bread products, etc. The State Liquor Control Commission inspects the stores every year to make sure that they meet the minimum grocery requirement. They check the expiration dates on the groceries as well. He stated that they do sting operations as well.

Mr. Nickerson asked Mr. Raia if this is a moot point or will there be stores applying for this permit.
Mr. Raia stated that there will probably be three or four grocery stores who will apply. He stated that he has asked Atty. Harris to remove the words "convenience store" from the proposal.

Mr. Nickerson asked Mr. Raia if the state's inspections included gas stations with attached convenience stores.

Mr. Raia stated that they inspect gas stations with attached convenience stores. These must have a separate entrance and separate cash register with separate grocery receipts. They still must sell 50% groceries.

Ms. Carabelas asked Mr. Raia what the effect that these small grocery stores that sell beer have on the package stores.

Mr. Raia stated that people will probably buy their beer at the gas station while they stop for gas before going to the package store. It will have a small impact on package stores, but not much, because there will not be many of these stores applying for a permit.

Mr. Nickerson asked Mr. Raia if a Brooks or a CVS would qualify for a liquor permit.

Mr. Raia said no. There is a drugstore permit for selling alcohol, but there are not many of these. He stated that CT is a tough state for liquor.

Mr. Nickerson asked the public if anyone would like to speak in favor of the application.

George McMahon, 13 Indianola Rd, Black Point, stated that it would be convenient for his area and that it would be supportive of the small/family owned businesses which are being driven out by the large businesses. He stated he would support this proposal.

Mr. Nickerson asked the public if anyone would like to speak against the application.

Bob Godbois, 358 Boston Post Road, stated that he is against the application. He feels that there are enough package stores. He is concerned about the kids getting involved in car accidents and drinking.

Clara Johnston, 35C Crest Ave, asked why the 1500 feet is being reduced to 1000 feet. She feels that the 1500 feet should stay.

Mr. Nickerson responded that the 1000 feet is just part of the amendment.

She stated that if the town is at the maximum number of package stores, then there is no reason to expand this.

Ms. Johnston asked what changes the number of allowable package stores from 7 to 8 or 9.

Mr. Nickerson stated that the number of package stores is based on population. He stated that applies to packages stores selling beer, wine and liquor. There is no limitation of the number of convenience stores that have to qualify.

Ms. Johnston asked which population figure is used, the summer or the year-round.

Mr. Nickerson responded that the tax payer population is probably used.

Deborah Douglas, 22 Crossley Court, is in favor of the amendment. She owns JD Market on Black Point Road. She is the person who wants the amendment. She sells 75% groceries, very small lottery, and very small gas.

Mr. Nickerson asked Ms. Douglas if there is a hardship for her with the existing 1500 feet.

Atty. Harris asked to respond. He stated that currently there's a large separation distance from all activities for all permits. It excludes virtually any additional liquor permits in any area close to the downtown area. 1000 feet is a reasonable distance.

Ms. Douglas stated that she provides unique foods and it would be a shame to close the store because she cannot get through the winters. She is hoping to bring grocery and deli customers in by selling beer.

Mr. Nickerson asked if there were any other questions or if anyone else would like to speak against the amendment.

Alan Wilensky, 329 Flanders Road, owner of a liquor store, states that in 20.20.2 any store selling alcoholic liquor is situated on a lot within a 1500 foot radius for the purpose of on or off sale. His concern is the way that grocery stores are treated differently than package stores. He provided examples of differences. He feels that liquor is a controlled product and should have more, not less, restrictions.

Mr. Nickerson asked the public if there was any further comment on the application to the negative.
Hearing no one.

Mr. Nickerson asked the public if there was any neutral comment.
Hearing no one.

Mr. Nickerson asked the public if there was any positive comment.
Hearing no one.

Atty. Harris stated that the reason that beer permits are not subject to exclusions is because they are specifically eliminated in Section 20.20.7. He stated that each liquor sales operator is subject to State standards.

The question was asked if someone doesn't fit into one of these regulations, can the ZBA waive that.
Mr. Nickerson stated that anyone can apply to the ZBA for a variance to the regulations.

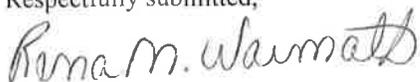
Mr. Nickerson asked if there was any other comment.

David Murphy, 490 Boston Post Road, is not for or against the amendment. He is concerned that the first few months might run well and then there are 10 months of problems and the State Liquor Commission pulls their permit.

Mr. Nickerson asked if there was any other comment.

Mr. Nickerson closed this Public Hearing. (No motion given. No time noted.)

Respectfully submitted,



Rena M. Warmath
Recording Secretary (Pro-Tem)