

EAST LYME ZONING COMMISSION  
REGULAR MEETING  
Thursday, September 21, 2006  
MINUTES

FILED IN EAST LYME <sup>a</sup>  
*Sept 20, 2006* AT *8:45* M  
*J. A. Blain*  
EAST LYME TOWN CLERK

The East Lyme Zoning Commission held a Regular Meeting on September 21, 2006 at Town Hall, 108 Pennsylvania Avenue, Niantic, CT

PRESENT: Mark Nickerson, Chairman; Dr. Edward Gada, Rosanna Carabelas, Dr. Pamela Byrnes, Marc Salerno, Norman Peck, Bill Dwyer, Alternate, Joe Barry, Alternate, Bob Bulmer, Alternate

ALSO PRESENT: William Mulholland, Zoning Official

ABSENT: None.

PANEL: Mark Nickerson, Chairman; Dr. Edward Gada, Rosanna Carabelas, Dr. Pamela Byrnes, Marc Salerno, Norman Peck

**Regular Meeting**

**1. Application of Theodore A. Harris for a Special Permit for a fast food restaurant at property identified in the application as 267 Flanders Road, Niantic, Connecticut. The property is further identified as East Lyme Assessor's Map 31.3, Lot 24.**

This application will be continued at a later time.

**2. Request of Howard & Diane Cioci to waive ownership requirements of the access way for back lots at property located at 359 Boston Post Road, East Lyme, Connecticut.**

Ms. Carabelas read the following correspondence into the record:

- Memo to the East Lyme Zoning Commission from William Mulholland dated September 21, 2006. Re: Cioci waiver request - right of way.

**Howard Cioci, resident of 359 Boston Post Road, Niantic, CT**

Mr. Cioci stated that they are requesting this waiver in order to build a house back there and they would enter from their driveway.

Mr. Nickerson inquired if the driveway was already there.

Mr. Cioci stated that it was and was indicated on the site plan.

Ms. Carabelas asked if this would be a common entrance to both driveways.

Mr. Cioci stated that yes, it would be.

Mr. Nickerson asked if it was a residential zone.

Mr. Mulholland stated for the record: It is residential. Mr. Cioci is creating another residential property. Mr. Cioci will have to go back to the planning commission, but they cannot act unless the Zoning Commission grants a waiver. They are looking to combine the driveway into one entrance for less curb cuts, which is typically what we try to do. They are looking for a waiver of the ownership which is allowed in 20.8.

Mr. Mulholland read section 20.8 into the record: Back lots notwithstanding, the minimum frontage requirements for each district back lots are permitted in any zone. Lots created after August 9, 2002 shall have a minimum of 25 feet of frontage on an accepted or approved street and be accessible by a 25 foot wide permanent and unobstructed access way of the same ownership. The ownership requirement may be waived by the Zoning Commission by a two thirds vote of all members upon demonstration by the applicant that the physical features of the property preclude strict compliance with the requirement and that the granting of the waiver will not have significantly adverse impacts upon adjacent property, the environment, or the public health or safety. The following additional requirements shall be met for the creation of back lots. (1 - 5)

Dr. Byrnes asked where this was, in local parlance.

Mr. Cioci described the location as roughly 2 miles from McDonald's, going west.

Mr. Nickerson asked if it was before the orchards.

Mr. Salerno stated that this was the old red house.

Mr. Cioci stated that it was before the orchards and that the old red house was next to him.

Mr. Nickerson inquired who else would be affected.

Mr. Cioci stated that only the Orchard development was nearby.

Dr. Byrnes reminded that the Commission does not deal with proposed Lot 1, that it was not their business.

Mr. Cioci acquiesced, but state that he owned Lot 1 as well.

Mr. Nickerson asked if any one affected as a house here have the neighbors been notified.

Mr. Mulholland stated that would be part of the subdivision responsibility. What the Commission is looking at (here he refers to the handout given out, #4), no back lot will be created on the following streets; Route 1, Route 156, and Route 161 unless access is combined with the driveways serving a lot in which fronts the street. It is part of the Zoning Commission to encourage the combination of these driveways and you cannot create the back lot unless you grant the waiver.

Mr. Nickerson asked if Mr. Mulholland's office would handle these types of things.

Mr. Mulholland responded that yes, except for the waiver.

Mr. Nickerson asked what Mr. Mulholland would do in this case.

Mr. Mulholland demurred stating that he does not have the ability to grant the waiver so it was truly the Zoning Commission's decision. He continued that he was not aware of any problems and pointed out that the Ciocis still had to go to the Planning Commission for subdivision approval.

Mr. Nickerson asked if there were any questions from the Commission.

Mr. Salerno inquired if the owner of new lot would get an easement.

Mr. Mulholland replied that, yes, the easement will be granted; that would be something the Planning Commission would look at and make sure it occurred.

Ms. Carabelas asked if the applicant was looking to make this a common driveway, at least the entrance way.

Mr. Nickerson clarified Ms. Carabelas's statement that it is not a buildable lot right now, but doing this, it becomes a buildable lot.

Ms. Carabelas asked for further pictorial clarification that the driveway divided beyond the common entrance to two separate entrances.

**\*\*MOTION (2)**

**Dr. Byrnes motioned to approve the request of Howard & Diane Cioci to waive ownership requirements of the access way for back lots at property located at 359 Boston Post Road, East Lyme, Connecticut.**

**Ms. Carabelas seconded the motion.**

Mr. Nickerson asked if there was any further comment.

**Vote: 6 - 0 - 0. Motion passed.**

Mr. Nickerson asked Dr. Byrnes for her reasons for approval.

Dr. Byrnes stated the application seemed consistent with the intent; it allows development of the back lot and does not create obstructions or traffic problems

Mr. Nickerson asked if this needed a publication and an effective date.

Mr. Mulholland stated he would publish it.

Mr. Mulholland stated he would publish next Thursday (September 28) and it would be effective Friday, September 29<sup>th</sup>.

**3. Request of Vespera Investments, LLC for clarification of condition number four of the Special Permit and Site Plan approval for the Darrow Pond project located at 16 Mostoway Road, East Lyme, Connecticut.**

Dr. Byrnes recused herself from the panel.

Mr. Nickerson invited Mr. Bulmer to sit for the session.

Mr. Harris stated that he sought to clarify Condition 4, which reads 'the access road leading toward Upper Pattagansett Road shall be for emergencies only with a breakaway gate.' He stated that perhaps he did not emphasize it enough previously, but that there is an easement that allows the residents of the Nottingham Hill subdivision access over the roads to Darrow Pond. It was in place long before these both these developments were approved. It was designed because we anticipated that these two properties would need access to these road systems for emergency and other purposes.

"The rub that has occurred is making this a fixed gate with respect to the public and to Darrow Pond. It forecloses the residents of Nottingham Hill from exercising their rights under the easement. I believe could provide system which would be consistent with the Zoning Commission's intent, which is to foreclose both the general public and the residents of Darrow Pond from using this as a throughway to overload Upper Pattagansett.

"That system would be a key card system limited to the residents Nottingham Hill residents only, approximately 25 - 30 lots in total. This could be administered by Darrow Pond Association and would not issue any cards except to those limited home owners. And otherwise the gate would be fixed.

"This would fulfill the obligations to this Commission, making sure there is no through traffic in that situation. The gate would be closed to all people except for these limited 25 or 30 lots.

The question is would the Commission consider this consistent with the condition of this approval. Atty. Harris continued that he read the approval it was oriented towards flow of traffic towards Upper Pattagansett and that still would be maintained.

Mr. Nickerson stated that he asked specifically re: easement during the Public Hearing. We talked about how we did want general flow and this turning into a town wide throughway. Mr. Nickerson asked if anyone would have a problem with the key card.

Mr. Salerno inquired if there would still be a crash gate.

Mr. Harris responded that it would be a modified system such that no one could get around it without the key card. In the event of emergencies, there would be override for the Fire Department, etc.

Mr. Nickerson clarified that this would be a gate that the people of Nottingham could go through.

Mr. Harris postulated that any gate has access maintained for emergency services.

Mr. Salerno asked if a car could drive through it if there was an emergency.

Mr. Harris responded that the emergency services would have a card or code to get through.

Mr. Mulholland asked if there is there a technology that would ensure this gate would close after each use.

Mr. Harris stated there is usually a trip on the other side.

Mr. Peck inquired if the maintenance of the gate would be the responsibility of the Darrow Pond organization.

Mr. Harris responded that was correct. They were the organization that would have the ability to handle it. They would need identification showing residence.

Mr. Salerno clarified that Darrow Pond residents would not be able to go through. Only Nottingham Hill could.

Mr. Harris wrapped up by stating this does what the Commission asked by virtue of this condition.

**\*\*MOTION (3)**

**Mr. Peck motioned to revise the special permit to clarify condition number four of the Special Permit to allow residents of the Nottingham Hill subdivision to have access by way of a key card through a gate, which shall be maintained by the Darrow Pond Association.**

**Mr. Bulmer seconds.**

Mr. Bulmer comments key card could be a more sophisticated technology.

Mr. Harris stated he was using it as parlance only

Mr. Nickerson stated that any similar technology would be fine, as long as it serves its purpose, for example an RFID.

**Vote 6 - 0 - 0. Motion passed.**

Dr. Byrnes is reseated on the panel.

**4. Request of Theodore A. Harris for a one-year extension of the permits for the Walnut Hill Country Club projects at property located at 38 Holmes Road, East Lyme, Connecticut.**

Mr. Harris asked to describe where we are: Walnut Hill was approved in several stages beginning of November of 2002. There are 3 permits outstanding with respect to this development. The original permit for a golf course, a subsequent permit for elderly housing, and a subsequent permit issued last spring for 40 units of accessory golf course housing. At the time the last permit was issued, construction had been initiated with respect to the permits and did fulfill the conditions of the regulations. Subsequent to the approval last spring of the 40 housing units, continued on through the fall.

“Concurrent with this process, the DEP requires 3 permits: a waste water permit, a diversion permit for irrigation and a potable water permit. This has been an extraordinarily long process with DEP. With the volume of testing needed to satisfy the regulators, this has simply dragged on.

“We anticipate that we will have final permitting of DEP permits within 2 - 3 months at the outside. Each one of those permits is in its final stage. However, until we get those permits it will be difficult to continue on with the process of clearing because, without the permits, financing is difficult.

“We are asking extension one year from now so there will be no ambiguity as to what is done and not done. This will be so that we can get these permits, go forward and renew our construction in earnest. We anticipate this being the last request because this extension would match the termination of other permits re: this site. It is a reasonable request in light of the extraordinary effort that has gone on and complexities of the DEP permitting.

Mr. Nickerson opens by asking for questions.

Mr. Mulholland stated that Mr. Harris would be prepared to discuss the expiration of special permits.

Mr. Harris stated that the language is the same in the SU and SUV. It states that if any work does not commence ...within twelve months. This Commission made that finding with the respect to the earlier permits at the time of our last permitting. Subsequent to our last permitting there were another 6 months of work, at the least, that went on before the winter set in and the work slowed down. That last permit was also activated by doing the work on the site within the 12 months. We are now requesting, as the regulation allows, an extension of time within which to continue this work so that we made pause and get our final permitting from DEP and then start up again in earnest.

"It is a very complicated process with 3 separate permits and the other complication is that the town is actually the applicant. Even though all of the work is being done by the Walnut Group everything still has to go through the town."

Mr. Nickerson stated that Mr. Harris mentioned 3 separate permits.

Mr. Harris listed the original permit for the golf course, the elderly housing and the accessory housing, all of which are really all one development.

Mr. Nickerson clarified that the applicant was asking for 3 separate extensions.

Mr. Harris responded yes.

Mr. Nickerson states there is a narrative in the Zoning Commission 'book'. [Reading] The Zoning Commission may grant an extension of time in which to commence work. As used in this subparagraph the word work will be construed to mean, at a minimum, the substantial moving of earth or the construction or partial construction of permanent buildings or permanent structures. I think this suggests that we grant the extension and will not do it again because we already did it once. I would like to see, a year from now, not just trees coming down, but buildings going up. I understand that this is a very detailed application. The ones up near the street can be built without the golf course.

Mr. Harris stated that is correct, but it is his opinion that the golf course will sell the units.

Dr. Byrnes asked if it had to be a year.

Mr. Nickerson stated the Commission is allowed to grant an extension a period of time, the applicant is asking for a year.

Mr. Harris stated that the logic to request was that it dovetailed everything at the same time. We are coming into winter and do not anticipate doing much. These permits are probably not going to be available until after the first of the year. We do not anticipate being able to get earnestly working until springtime.

Mr. Nickerson inquired if anyone had any questions. He stated that his request of whoever makes motion is that it is very specific and that it would be a year and the last extension.

Dr. Byrnes stated she did not feel comfortable with a year. This seems to be going on never ending.

Mr. Nickerson stated he believed that the permits had technically expired.

Mr. Peck inquired what the hurry was. Was there some reason the Commission was in some hurry to have this developed. The Commission originally approved the project; is there something different today that we should be worried about.

Ms. Carabelas stated she would be uncomfortable saying the applicant could never come back for another extension. Ultimately they would have to come back to the Commission and could always be denied.

**\*\*MOTION (4)**

**Ms. Carabelas motioned to approve a one-year extension from today of the permits for the Walnut Hill Country Club projects at property located at 38 Holmes Road, East Lyme, Connecticut.**

**Mr. Peck seconded.**

**Vote 6 - 0 - 0. Motion passed.**

**5. Application of Donald & Margaret Mager for a Coastal Area Management Site Plan Review to demolish and reconstruct a new single family dwelling on property identified as 78 East Shore Drive, Niantic, Connecticut. East Lyme Assessor's Map 5.19, Lot 38.**

Ms. Carabelas read the following correspondence into the record:

- Memo to the East Lyme Zoning Commission from Mr. Mulholland dated September 21, 2006. Re: CAM Application - new family dwelling.

**David Coonrad, surveyor for the Magers.**

Mr. Coonrad stated that the structure lies in the Black Point zoning regulation area. We have received a commitment from them for the construction of the new house in that location. That part is already taken care of. Re: the retaining wall in the back (provided 3 color photos, labeled **Exhibit A**). The plan has been revised; it shows a silt barrier in front of stone patio. We are not going to touch the stone area at all, but will protect it, keep it nice. We put the silt fence in between 'there' The house is going to come down and be reconstructed in the same location, but raise the foundations up (about a foot) to FEMA guidelines.

Dr. Gada asked if it would have the same footprint.

Mr. Coonrad stated there would be a slight change in the front; more has been added by the road.

Mr. Nickerson asked if the home moved any closer.

Mr. Coonrad stated that the addition is only on the front portion, near the road. The back side, near the water, stays the same. The grading around the house stays the same. We are just going up.

Dr. Gada clarified that the back stays same.

Mr. Coonrad stated that a bigger garage will be added to the front.

Ms. Carabelas asked if raising the foundation raised the house.



Mr. Coonrad stated that it would close to the same height. They were restricted by Black Point zoning regulations re: height. That has been taken care of with them already. There would be no impact at all on coastal resources; everything is to protect any runoff into the coastal resources. We have two barriers now and a 2 foot wall runs parallel to all the houses. It is pretty well protected all the way around.

Mr. Nickerson asked if Mr. Mulholland had any concerns re: CAM.

Mr. Mulholland stated that he had no concerns. It is a relatively flat lot and he has the two foot retaining wall around it so it is raised and in addition they are going to add a silt fence. You see there is a stairway down to the beach and there is a stone patio to the rear of the property which is of some significant size. It is my view there will not be any adverse impact, but that is something the Commission will need to find.

Mr. Nickerson asked how old the retaining wall was.

Mr. Coonrad stated that he could not say, but that it has been there a while.

Dr. Gada noted that it looked like it has been pointed.

Mr. Coonrad stated that it wasn't mentioned on one survey from 1970 so it had to be between 1970 and 1975. It hits all three walls there.

**\*\*MOTION (5)**

**Dr. Byrnes moved to approve the application of Donald & Margaret Mager for a Coastal Area Management Site Plan Review to demolish and reconstruct a new single family dwelling on property identified as 78 East Shore Drive, Niantic, Connecticut. East Lyme Assessor's Map 5.19, Lot 38.**

**Mr. Salerno seconded.**

Dr. Byrnes stated that the application was found to be consistent with all of the applicable coastal policies and includes all reasonable measures to mitigate adverse impacts.

Mr. Nickerson asked if anyone had comments.

**Vote: 6 - 0 - 0. Motion passed.**

**6. Approval of the Minutes for Meetings of August 3, 2006, August 17, 2006 and September 7, 2006.**

Ms. Carabelas stated it was not her place to correct minutes she wasn't present for (August 13 & 17, 2006). She stated she did these over the phone with Emillee Napolitano.

Dr. Byrnes asked if the mailed ones were the amended ones.

Ms. Carabelas stated yes. The one that was gone over with Ms. Napolitano was the September 07, 2006 minutes. Ms. Carabelas highlighted changes that should be approved by all.

A remark from Mr. Peck "stated he recalled a suggestion from the public hearing that the large trucks used at the north end of Moskowsky Road, because it had been widened." No page numbers to reference.

Mr. Nickerson stated the Commission could vote or postpone.

Mr. Bulmer stated that the corrections needed to be made.

Ms. Carabelas stated that the only corrections she feels she could make would be for September 7, 2006, those she made over the phone with Ms. Napolitano.

Mr. Nickerson reminded the Commission that the question re: who sat on the panel remained for August 3, 2006, Public Hearing I.

Mr. Peck stated his notes indicated that the June 1, 2006 Public Hearing I minutes have not been approved. The issue was adjournment v. closed.

Mr. Nickerson stated that they have not been redistributed as yet. They should be placed back on the agenda.

Mr. Mulholland stated that he has no staff, but will do what he can.

Mr. Nickerson asked why it was not voted on last time.

Mr. Nickerson asked Ms. Carabelas to get clarification who was on the panel and redistribute the minutes for June 1, 2006, Public Hearing I.

Mr. Nickerson stated there were a variety of questions whether Mr. Dwyer was here on August 3, 2006. Mr. Barry pointed out that you were listed as being here for the whole 6 public hearings. There was an opinion that you were not for some of them. It does come into play when we have to pull some one out.

Mr. Dwyer asked what Mr. Nickerson was saying. He asserted he was here for the August 3<sup>rd</sup> meeting. He did not say he sat on a panel.

Mr. Nickerson asked if he was present for the start of the gavel to the closing.

Mr. Dwyer stated that was immaterial.

Mr. Nickerson stated that it has proven not to be so and the minutes have to be accurate. I suppose they are as is unless someone proves otherwise.

Ms. Carabelas asked what we were saying; because not here for the whole time...

Mr. Nickerson stated that Mr. Dwyer was listed as being present, not on the panel, but present at all of the hearings on August 3, 2006 (6 Public Hearings).

Mr. Peck interjected that the June 1, 2006 Public Hearing only consists of two sentences.

Mr. Nickerson asked that the Commission stay on point.  
The discussion is for August 3, 2006, 6 different Public Hearings and a Regular Meeting.  
Mr. Dwyer is no longer listed anywhere, present or otherwise.

Dr. Gada stated that Mr. Dwyer was present, but not on the panel for August 3, 2006.

Dr. Byrnes asked if the Commission could add it and approve the minutes as amended.

Mr. Salerno noted that the other changes had not been made to the minutes.

Mr. Nickerson pointed out that the changes had not been made to the minutes, but were noted in the records of the September 7 meeting. As such they could be cast as changed last time and refer back to the record and tape for verification.

Dr. Byrnes asked if they could be voted on in a clump.

Mr. Nickerson stated that the first four public hearing minutes could be voted on.

**\*\*MOTION (6)**

**Dr. Byrnes moved to approve the minutes from Public Hearings 1, 2, 3 & 4 from Thursday, August 3, 2006 with the changes that were cited at the previous meeting.  
Dr. Gada seconded.**

Mr. Salerno stated that the Commission wanted to add Mr. Dwyer to the present list.

Mr. Nickerson stated that Mr. Balmer made the changes for the record last time.

Mr. Bulmer clarified that he thought the version he had looked okay.

Mr. Dwyer raised the spectre of adjournment v. closed on Public Hearing 2 should be changed to 'continued'.

Mr. Salerno added the sentence to the end of page 2, Public Hearing 3, the line "Mr. Salerno asked Mr. Gerwick if used cars that could have a problem or leaks were parked there, what would he prefer? Mr. Gerwick responded if that were the case he would prefer it going into the storm scepter system."

**Vote: 5 - 0 - 1. Motion passed.  
Ms. Carabelas abstained.**

Mr. Nickerson stated that Mr. Bulmer and Mr. Barry could be seated to approve Public Hearing 5 minutes.

Mr. Peck & Ms. Carabelas are not sitting.  
They are replaced by Mr. Balmer & Mr. Barry.  
The panel is Gada, Nickerson, Salerno, Byrnes, Barry, Bulmer, Public Hearing 5.

**\*\*MOTION (7)**

**Mr. Salerno moved to approve the minutes from Public Hearing 5 from Thursday, August 3, 2006.**

**Mr. Bulmer seconded.**

Mr. Barry commented that the Public Hearing should be closed, but it was noted that it was continued it should be stated closed not adjourned.

Mr. Nickerson stated that all the minutes that are closed have to be closed.

Mr. Nickerson asked if Dr. Byrnes would like to amend her motion.

**\*\* Amended Motion 6**

**Dr. Byrnes amended the motion with the change of the public hearing adjourned to public hearing closed.**

**Mr. Balmer seconded**

**Vote 6 - 0 - 0. Motion passed.**

Mr. Nickerson noted the Commission was voting on the motion to approve the minutes, Public Hearing 5, August 3, 2006.

**Vote: 6 - 0 - 0. Motion passed.**

For the vote Mr. Bulmer & Mr. Peck are sitting.  
Ms. Carabelas & Mr. Barry are not.

**\*\*MOTION (8)**

**Dr. Byrnes moved to accept the minutes of Public Hearing 6 and the minutes for the Regular Meeting for August 3, 2006 to include a change from "the Public Hearing was adjourned to the Public Hearing was closed".**

**Mr. Salerno seconded.**

**Vote: 6 - 0 - 0. Motion passed.**

Mr. Salerno stated that the phrase adjourned, changed to closed, should be applied to Public Hearings 1 - 6.

Mr. Peck read the Public Hearing I minutes from June 1, 2006 to the Commission.

Mr. Nickerson asked who sat on the panel, stating he only needed 4 votes.

Dr. Byrnes stated that there was some confusion in the minutes: Mr. Salerno was listed twice and Dr. Gada not at all.

**\*\*MOTION (9)**

**Mr. Peck moved to approve the minutes from Public Hearing I, June 1, 2006 as amended with Dr. Gada on the panel.**

**Second Ms. Carabelas**

**Vote 6 - 0 - 0. Motion passed.**

Mr. Nickerson asked if the Commission could push the minutes for August 17, 2006.

Dr. Byrnes requested that she be listed on the panel.

Mr. Bulmer noted that his name was misspelled.

Mr. Nickerson stated that a conversation had to be had with the town attorney re: the legality of the minutes without a good back up tape.

Old Business

Mr. Nickerson stated he had nothing to report on storm water, aquifer protection, subcommittee or by-laws.

New Business

1. Mr. Nickerson stated there was a request to create a subcommittee to review the town's drive-thru regulations in fast food, banks and pharmacies.

Mr. Nickerson brought the issue to the floor.

Mr. Nickerson asked for a vote to accept this by majority.

**Vote: 4 Majority.**

Mr. Nickerson stated that Mr. Bulmer has requested to be on the subcommittee.

Dr. Gada volunteered to be on the subcommittee.

Mr. Salerno stated that the other subcommittee needs to be listed: the Industrial Zone, with Mr. Peck & Mr. Salerno.

Mr. Mulholland stated that the CVS will open on Sunday. COs were presented on September 21, 2006.

Ms. Carabelas stated she liked the parking lot layout.

Mr. Mulholland added he received a phone call from Mr. Russo stating that he will be refocusing on East Lyme. Mr. Mulholland stated that he would anticipate fall applications.

**Dr. Byrnes moved to adjourn**

**Ms. Carabelas seconded.**

**Vote: 6 - 0 - 0.**

**Meeting adjourned at 11:09 P.M.**