

**EAST LYME ZONING COMMISSION
SPECIAL MEETING
Thursday, AUGUST 16th, 2007
MINUTES**

Aug 24 20 07 at 2:55 AM
PM

Esther B. Williams

EAST LYME TOWN CLERK

The East Lyme Zoning Commission held a Special Meeting on Thursday August 16, 2007 at the Town Hall, 108 Pennsylvania Avenue, Niantic, CT.

PRESENT: Mark Nickerson, Chairman, Norm Peck, Joe Barry, Alternate,
Bob Bulmer, Alternate, William, Dwyer, Alternate

ALSO PRESENT: Attorney Theodore Harris
Chris Knisley, KGI Properties
David Yetton, KGI Properties
John Mancini, BL Companies
Bill Sweeney, TCORS
Phil Terzis, Arrowstreet
David Greene, PR, David Greene Associates, Inc.
Dennis Goderre, BL Companies
Nancy Loader, David Greene Associates, Inc.
Jay Fisher, Konover Properties
Terry Mitchell, Applicant

ABSENT: Rosanna Carabelas, Secretary, Pamela Byrnes, Ed Gada, Marc Salerno

PANEL: Mark Nickerson, Chairman, Norm Peck, Joe Barry, Alternate,
Bob Bulmer, Alternate, William, Dwyer, Alternate

Chairman Nickerson called this Special Meeting of the East Lyme Zoning Commission to order at 6:03 PM.

Pledge of Allegiance

The Pledge was observed.

Special Meeting

1. A workshop for purposes of conducting a pre-application review of potential Gateway District regulator and development alternatives as required by Gateway Development / East Lyme LLC.

- A. Brief introduction by applicant**
- B. Discussion by Commission**
- C. Discussion with Commission and Applicant**

Mr. Nickerson explained the purpose of holding this special meeting noting that they had asked Town Counsel to weigh in on this and were told that this pre-application workshop can be held. He also noted those Commissioners who were present and seated. He asked Attorney Harris to go over how this came about and why they were there.

Attorney Harris said that this is a workshop, pre-application review as allowed by State Statute Public Act 03-184. It is an open discussion where nothing is binding on either party; it allows a discussion and inspection of the issues prior to actually entertaining an application. He said that they acknowledge that what is going on

this evening is non-binding. He suggested that Jay Fisher from Konover give them an introduction and that he introduce the people present this evening.

Jay Fisher, Konover Properties laid out a visual of the Gateway area on the table, introduced the people who would present and be available for any questions, and asked them to keep in mind that most of the components that they are speaking about here are flexible. This is a question and answer workshop and not a public hearing. He explained that the site has been dormant for many years and that the existing zoning under the GPDD is unable to respond to the current needs of the market and the zoning difficulties of the site are exacerbated by the extraordinary site costs that are associated with it. To be able to carry those costs, they really need to be able to assemble all the pieces of the property in the zone to do any lasting development of it. This is one of the last remaining areas of the Town for commercial development. The land is at an exit, fronts on a highway, has great visibility and does not require extensive travel on local roads to get into or out of it. The front 45-50 acres is level/flat, great for retail development while the back area is steeper and has proximity to neighbors and needs a different type of development. They did look at the whole parcel in terms of other development such as warehousing, bio-tech and high-tech uses and jobs and manufacturing/warehouse uses and found that they are not the type of uses/jobs that are growing in this area, nor are they economically feasible for this prime site. The truck traffic that would be generated would also be an issue. Those types of uses are seeking to locate in the Midwestern area of the country. Office parks are also just not happening now. He said that they have touched base with Katherine Steele, the neighborhood outreach contact so that they can hold some neighborhood meetings. From the list of issues and items that they heard at the hearings; they have come up with some items that they want to touch base on – mixed use vs. multi-use; office over retail; retail square footage and how that plays out; prospective tenants; traffic; fiscal impact analysis on Flanders Four Corners & Niantic; Sewer & Water; third party consultants; and on the residential side - school impacts; density; buffers and affordability. He said that he would ask Phil Terzis from Arrowstreet to lead with an explanation of mixed use vs. multi-use and how that works into this program and that they should all feel free to jump in at any time with any questions that they might have and he would try to direct the question to the appropriate consultant to answer.

Phil Terzis from Arrowstreet explained the plan from the last time and the different districts of it and how it is a true mixed use product. He said that what they looked at was the proximity to the highway and the steepness of the back area and difficulty of developing it as retail. They felt that having the housing next to the highway or above the retail would not be desirable but having it in the back next to existing residential made more sense and that the people who chose to live there could then walk to the retail. They have also discussed with KGI and Konover about putting office area above the retail.

Mr. Fisher said that if they have residential over retail that they end up competing for parking spaces and where they have structured parking in a dense urban area such as downtown Hartford they have parking garages.

Mr. Nickerson said that he knows that he was not in favor of adding anymore residential land or taking away from any commercially zoned land to become residential as only 3% of the land in the whole Town is zoned for commercial development. They cannot afford to lose any of it.

Mr. Fisher said that they are trying to help that with this type of development.

Mr. Mulholland asked about the office space over the retail and if so, if they had any idea of how much there would be.

Mr. Fisher said that is yet to be explored and that it would mostly be over the main corridor rather than over the big box area. He said that in raising the issue of the residential component that Dennis Goderre of BL Companies has the slope analysis.

Dennis Goderre, BL Companies said that the front area is flat and does not have many contour lines. Once you cross the Pattagansett River and start up the hill there are a lot of contour lines and some 25% slopes and it is difficult to put small office or retail buildings in that area and it would require a lot of blasting. It makes more sense to do the apartments in that area. What makes development sense for that area is what they are proposing. He said that they would love to have 200 acres of flat/level land but that is not the case.

Attorney Harris said that in the original POCD recommendations prior to the GPDD that they spoke of developing only the East side of the Pattagansett.

Mr. Mulholland asked how many acres they were talking about with respect to the residential aspect.
Mr. Terzis said about 150 acres.

Mr. Mulholland asked how many residential units they were proposing.
Mr. Fisher said that they had originally proposed 400 units in the concept plan but the next is somewhat less.

Mr. Mulholland noted that they have 150 acres with RU-40 zoning that would lend itself to around 135 single family homes.

Mr. Fisher said that they have listened to them and have looked at the product mix and types and have gone from single family homes and apartments to town homes and apartments. They are at around 225 apartments and 50 town homes. He said that there are several reasons for that. The apartments generate almost no children - about .18 children per five apartments per the Rutgers Study. It becomes more commercial in nature and the number of units is what makes sense in an apartment complex. He said that Konover currently owns 3500-4000 apartments.

Mr. Mulholland asked if they would be market rate.
Mr. Fisher said yes and that market rate goes by the area and some areas are higher and some lower.

Mr. Mulholland asked if they would rent for \$1000 per month.
Mr. Fisher said that a 1000 sq. ft. two bedroom apartment typically rents in the neighborhood of \$1200-\$1600 per month.

Mr. Nickerson asked if they have proposed anything for the RU-40 zone area yet.
Mr. Fisher said no, and added that part of this is a study of economics as the land is too expensive and the infrastructure too expensive to leave it.

Mr. Sweeney noted that there is a good 100 foot buffer from the other residential neighborhood.

Mr. Nickerson said that concepts do not tend to work in this Town and that a more concrete visual would probably be better.

Mr. Fisher said that Mr. Terzis could go over the changes for them.
Mr. Terzis said that they kept the village common concept and added over 20 acres of open space to the plan in lieu of where the single family homes previously were proposed in the conceptual.

Mr. Bulmer asked if the open space would stay open.
Mr. Fisher said not necessarily and that they had originally brought a conceptual with the single family housing. He said that if they were going to add in the future that it would probably be in the lower area. What has been left open abuts the Town open space and is far away from any other housing.

Mr. Mulholland said that they would have to come back before the Commission anyway.

Mr. Sweeney said that the important thing is that they have received the message regarding the housing and that all of the amenities that they first proposed with respect to the soccer field and community area, are still there and that it shows a commitment to that aspect of the project.

Mr. Mulholland asked if he was correct to say that the commercial has not essentially changed.
Mr. Fisher said that was correct as what they heard was largely an architectural issue and that is something that can be addressed. He said that he would like to finish up with the residential side and then move to the commercial side.

Mr. Knisley said that the original conceptual was 400 housing units with about 125 single family homes and in considering the children aspect; that has essentially been taken off the plan and reduced to apartments and town homes.

Mr. Mulholland asked about the tax revenue to the Town.

Mr. Fisher said that they feel that it will generate will over \$2M in additional revenue to the Town.

Mr. Peck said that he thinks that with a few exceptions that the Town has done a fairly good job of hiding the condo projects in the woods – he asked how high these town homes would be.

Mr. Fisher said that it would be three to four stories.

Mr. Peck asked what their thinking is of how it will look from the highway and what the hide-ability factor is.

Mr. Fisher said that the area along the highway is heavily treed and that he does not feel that there is a need to clear that area and the closest unit is 400 feet through the woods. He said that there is an area where is does get a bit thin and asked what they would want there.

Mr. Mulholland said that white pines would work but that is something that they could talk about.

Mr. Nickerson said that the trees also quiet down the noise.

Mr. Fisher said that they heard the issue of affordability and affordable housing – both pro and con – he asked what their thoughts were.

Mr. Nickerson said that it could probably go both ways and that it may or may not be something that they involve themselves with and that if it is on the table then fine, they can certainly discuss it at that time.

Mr. Sweeney said that he feels that it is important to say that they have heard mixed signals on it.

Mr. Peck said that he does not get the sense that it is going to be a major factor either way here but rather that they always throw it out as it is a consideration of the Town and it needs to be explored.

Mr. Nickerson suggested that having apartments does provide workforce housing in Town.

Mr. Sweeney said that it does provide some diversity in housing and that the Rutgers University study (School of Real Estate) on children in housing shows .8 children for apartments and .16 for town homes as a statewide average.

Mr. Mulholland asked about the retail and the schedule of what to build first and if the market changes would they leave the big box retail and stop production.

Mr. Knisley said they would anticipate doing the large format stores first as they need them to generate the foot traffic necessary to make the rest of it viable. He said that they do not, traditionally in a development such as this, make a tremendous amount of money on the large format stores. They need to bring in the rest of the retail. He noted that this is why this is something that they really cannot deviate off of.

Mr. Mulholland asked should this go forward if they would start the residential component simultaneously with the retail.

Mr. Fisher said that now is really not the time to be doing the residential and that there is a necessary lag as they would have to do the infrastructure to cross the river. He asked Mr. Knisley to address the issue of why the large format retail is necessary.

Mr. Knisley said that the 140,000 sq. ft. retail allows them to have discussions with a number of people. It should work for them as Wal-Mart stores are from 180,000 to 220,000 sq. ft. so they would not go here.

Mr. Bulmer asked what the 140,000 sq. ft. would cover.

Mr. Knisley said that it would cover the home centers, Targets and wholesale clubs and that they need to be able to talk with retailers who fall into that size arena so that they have the flexibility in the retail universe to work things out.

Mr. Nickerson asked why they can't know what stores would be coming when they knew that Stop & Shop would be coming to the site that it occupies now.

Mr. Mulholland said that they did not know originally that Stop & Shop would be going there – the application actually said a 'retail center' was being proposed for that area.

Mr. Knisley said that the answer to the question is that usually there is a landlord involved who is trying to get the area.

Mr. Fisher added that no retailer will sign a lease unless there is something to sign a lease on and there is nothing right now.

Mr. Mulholland said that typically the plans do not spell out the store but say 'retail' etc.

Mr. Fisher said that the anchor is really the nonnegotiable piece as without it they do not have a project.

Mr. Mulholland asked about the junior stores and the size.

Attorney Harris said that they ranged from 25,000 – 90,000 sq. ft. but there were limits of not more than two above 50,000 sq. ft.

Mr. Mulholland asked what would be represented by 50,000 sq. ft.

Mr. Knisley said that it is near impossible to get into discussion with who the junior stores could be at this time. He cited the types of stores that would fall in that size arena as the shops at Farmington Valley and Evergreen Walk. He noted that the same shops tend to pop up at these types of projects. They include shops such as Crate & Barrel, Banana Republic, Borders Books, Barnes & Noble, Pottery Barn and the list goes on and on. He said that they would anticipate that it would be similar here.

Mr. Mancini noted that there are also some fantastic furniture stores that are coming into the retail areas.

Mr. Peck said that the list that was read is one where you see some of the same stores everywhere and he is concerned in that he would like this to be something where you would not find the stores everywhere else. He noted LL Bean as an example.

Mr. Knisley and Mr. Mancini said that was a point well taken and that they had run down the general list and that they also deal with the retailers who are different and unique. They said that it is just too early to even consider who might be interested.

Mr. Fisher said that they want it to be as upscale as they can make it and that is the direction that they are looking to go in.

Mr. Sweeney added that there are also restaurants that will be there and that has to be considered.

Mr. Mancini noted that the mix is what makes the success and that some of the 'retail users' like to go together because they feed off of each other.

Mr. Mulholland asked if there was any idea of having a hotel.

Mr. Fisher said that there are four (4) hotels right across the highway and that they operate at a 60% occupancy rate which is less than needed. Their occupancy is casino driven. So, the answer is yes, they have looked at it but with the four hotels already existing not doing that well, that option is not on the table.

Mr. Nickerson asked about the 'future municipal site' which did not come up at the last meeting although the possibility of it was there.

Mr. Fisher said that would be the location of the current exit area. In discussion with CONN DOT they would be putting in a new ramp and that would leave the existing exit ramp area (a funnel shaped area) so they would like to swap the new area for the old which would make it a great location for a municipal building so it could be put out there as something the Town might be interested in.

Mr. Bulmer asked for the location to be pointed out on a map and what the size of the piece of land was.

Mr. Mancini explained the location and said that it would probably be about an acre and a half. It is approximately 500' long by 145' wide (rectangle shape).

Mr. Dwyer asked what the time frame on this project was if all goes well.

Mr. Fisher said that they have tonight's meeting, meetings with the neighborhood and business groups, the master plan application process which includes first the text amendment and then the site plan application after that permits involving the STC and Army Corps of Engineers and all of that usually takes up to a year after local approvals before anything can start.

Mr. Mulholland asked about the turning lane going towards New London towards the bridge.

Mr. Mancini said that there was an I-95 corridor study done and they went to that study and found a lot of input from the Town on that study. What they found out was that the State did not have the money to build or re-build the local interchange although it was a high priority on their list. They met with the State and what

they see before them, while a concept, is a result of speaking with the DOT regarding this area and the issues and the fact that they have assembled all of the land components necessary to make the exit change. So, the concept idea is that they would be building the first phase of a drastic improvement – namely the exit ramp and then the State, when they have the money, would expand I-95 to three lanes on each side. The concept improvement that they are showing had to be able to stand alone until the State has the money to do the lane improvement. He further explained that they would have to get approvals from the State and in order for the State to change the exit ramp; they would have to secure the land from various individuals. This concept has already done that for the State and needless to say, this infrastructure change is not going to be cheap to do and this infrastructure change is the driver of what absolutely needs to be done in order for the Gateway Development to be done at all.

Mr. Fisher added that this would also improve the traffic flow on Flanders Road. Also, they are looking at a cost driver on this of seven figures of infrastructure work prior to anything else.

Mr. Barry said that Wendy's across the street was basically forced out due to the access and having to cross lanes to get to them.

Mr. Mancini said that they will have essentially eliminated all of the curb cuts under their control. What happens today is that you have lanes but no turning lanes for people to be able to get to the places that they want to, so they cut in and out of the lanes. This concept has closed a lot of the curb cuts and controls the traffic by a light and a turning lane.

Mr. Barry said that he has not heard how they are going to improve the traffic, such as Golden Spur trying to get into 395.

Mr. Fisher said that they would be improving access and traffic flow at the same time.

Mr. Mancini said that they would also be providing an access road so that they can get right off where they want to be. They would be creating their own infrastructure to the Gateway.

Mr. Mulholland said that as a community that they have always tried to lessen the curb cuts.

Mr. Peck said that there was an idea that was thrown out periodically about having a road from Boston Post Road avoiding the four corners.

Mr. Fisher said that they had already looked at that possibility.

Mr. Mancini said that there is a complication with going on a section of one way road first. It does not go directly to Route 1. Church Lane is there and they don't want to generate traffic through there.

Mr. Fisher said that they do not own the piece and have left it so that those who do have the possibility of connecting in.

Mr. Nickerson asked that they address other points that they want to get to and then he would have the Commission discuss issues that they want discussed.

Mr. Fisher said that there are a number of smaller points that they could touch on. Architecture would seem to be more appropriate at a second meeting. Regarding fiscal impact, they had a conservative number previously and by reducing the residential aspect that number will change.

Mr. Peck said that his concern was an across the board impact study on Flanders and downtown Niantic as there has been a tremendous amount of investment in Flanders Road recently and they don't want to hurt anyone.

Mr. Fisher said that they are talking about high end retail and the impact would be no greater than other businesses except perhaps for some increase in security.

Mr. Peck said that the public should know what the increase could be.

Mr. Nickerson said that if you went to other shopping centers in other malls and shopping areas, you would encounter the same things.

Mr. Peck said that the question is if they would partially fund or fund an independent study on the impacts that the Town could then possibly have done.

Mr. Fisher said that with respect to the impact on Niantic, those things tend to be anecdotal in evidence; hearsay. He said that they would assemble the information from the ICSC for the next meeting and go from there. Impacts to Flanders and Niantic – they plan on having meetings with those people. He said that the information would be exceptionally difficult to quantify in terms of the differences as the argument could be made both ways as those who respond to competition do well and those who do not, just don't respond well.

Mr. Peck said that for their own piece of mind and in the best interest of the Town that a study on the impact should be done.

Mr. Fisher said that they would do one and that they had thought about having a planner take a look at it. Mr. Sweeney said that their thought was – how to get the person who never shops here to come here to shop. He cautioned that the actual impact is going to be tough to quantify as people come for a reason and those reasons tend to lean towards the 'unique and different'. He said that it tends to be a study of apples and oranges however they will undertake it.

Mr. Peck said that this is happening all over the country and that he has to believe that there is information out there that they can tap into.

Mr. Fisher suggested that he will make some recommendations to Mr. Mulholland on some people who might be conversant on the planning and impact analysis side of things.

Mr. Nickerson said that they had talked about a gazebo and Town green area and an area for entertainment that the public could go to. He said that he did not like that concept back then but is now concerned with finding public space. Flanders does not have a Town green area and Niantic's is limited. He said that he was just throwing that out there for their consideration. He also said that they would want any signage to be tasteful and thanked them for doing a great job listening.

Mr. Bulmer aside if the site plan would show the build out.

Mr. Fisher said that they are at the Master Plan text amendment level now and what they are seeing now is the level of the text amendment. At the Master Plan level, they would see this back with a bit more detail.

Mr. Sweeney said that when they actually get to the last stage of the site plan then it would have to conform to the Master Plan that they would be applying under.

Mr. Fisher said that they would like to have the time to get the studies done and to meet with the neighborhood groups prior to another workshop. He suggested early October for another workshop to tidy up the things that were brought up this evening.

Mr. Mulholland suggested that they contact him and that he will check the schedule to see when they can schedule in the next special meeting workshop.

Mr. Fisher thanked them for their time.

(Note: A brief break was taken here)

2. Discussion 308 Main Street, Niantic.

Mr. Nickerson said that they have a discussion of 308 Main Street, Niantic and that they have a building that was approved by the Commission and was built and Mr. Mitchell wants to talk with them about some things that have come up.

Terry Mitchell, 17 Mitchell Drive, said that he is a partner in Mitchell Trust LLC and that he would give them an update on the progress of their property at 304 Main Street (one is 308 and one is 304), Niantic. He said that they applied for a special permit to construct a multi-story building in July of 2005 and received a favorable reply in November of 2005. They are close to completion and they believe that they have constructed one of the most attractive buildings on Main Street. In the building process they have addressed concerns that were brought up. He said that he had presented them with before and after pictures of the areas behind Grampy's and the Auto Parts store as they had concerns with the junk yard mess behind them. He said that the pictures show the end result of the area cleaned up. They have also resolved the parking space issue – they were required to provide 36 and they have provided 37 and they are marked on the plans. They have also provided a new fire hydrant for the Police Station, their buildings and Grampy's for

added protection. He said that they have also done extensive landscaping and beautification of the area and provided an easement to the Town and constructed a walkway to the Hole in the Wall beach and the Boardwalk. With the new building itself they were able to include nearly all of the items as advised by the Commission (added porch and lighted cupola) but had to change some minor details for technical reasons – they were not able to construct a wooden elevator tower and had to eliminate some of the stairway windows due to the geometry of the rearranged stairwell. Overall they have a very attractive building and request approval so that there will not be a delay in obtaining the certificate of occupancy.

Mr. Nickerson said that he knew that they had been in communication with the Trust on the issues of the wooden tower and the stairs under the cupola and that it was their architect who put these items on the plans that were approved. They had Town Counsel look into this matter and he has ruled that they cannot alter the decision that was made from public hearing without going back to a public hearing. He said that he knows that specifically he and Mr. Mulholland were very clear with George Mitchell about putting the wood on the tower and that was in December of 2006 and it could have been done in January of 2007 and they could have come here long before now. Here they are ready to rent and just now addressing these issues.

Mr. Mitchell said that they were granted a building permit based on their revised plan that was approved by the Town Hall and they stuck to it. As far as the wood on the tower, they had a lot of problems with fire code and the stairwell caused them a lot of problems so they used blocks with rounded corners and did the best that they could as quick as they could under the conditions that they had.

Mr. Nickerson said that he had made it very clear to George Mitchell that it had to be built per the plans that they approved.

Mr. Mitchell said that was what they did.

Mr. Nickerson said that the windows were eliminated down the side and it was on the plans done by the architect that they approved.

Mr. Mitchell said that they built it based upon the building permit and the revised plans. He asked what they are going to do.

Mr. Nickerson said that he thought that the Town Attorney made it clear that they could go back to public hearing for the changes.

Mr. Mulholland asked if it was possible for them to hang vertical cedar siding and do the windows.

Mr. Peck asked if they have a picture of the back of the building so that they could see what was built.

Mr. Mitchell said that it was built as approved except for the windows because they were told to turn things around.

Mr. Nickerson said that they did not tell anyone to turn anything around as they are not architects.

Mr. Mitchell said that one of the ladies said that they wanted them turned around and tucked underneath. He added that if they want artificial windows there that they could put them there but that they cannot make it work with wood and that is why they went with the fancy blocks.

Mr. Mulholland asked if they put the fake windows in and side the tower and were willing to do that, if the Commission would approve that.

Mr. Nickerson said that was what was supposed to be done.

Mr. Peck said that the divided light windows were supposed to be done all the way around and they were told that it was going to be done and they aren't there. He recalled that the architect was present at the hearing, heard the changes and came back with the revisions, they approved it and that was it.

Mr. Mulholland said that they have the minutes from all of the meetings in their packets to review and he believes that they have the tapes if they need to go through them.

Mr. Nickerson read from the minutes noting that it was said that wood would be used to soften the look.

Mr. Peck said that he personally does not have trouble with the brick but that he wants the windows on the side and the divided lights and also wants to see all four sides of the building that were approved.

Mr. Mulholland said that the renderings that the architect drew and presented were approved and that Mr. Mitchell should have them.

Mr. Mitchell said that they had problems with the fire code with the wood and it is a very, very complicated and very, very expensive situation so if they could make some type of trade-in, it would solve a lot of problems and make life a lot easier and less complicated.

Mr. Nickerson said that he is under the impression that they cannot make trades on this.

Mr. Mulholland said that he would suggest that Mr. Nickerson speak with the Town Attorney on that.

Mr. Bulmer noted that in the 11/17/05 minutes that it states the changes that were shown on the renderings regarding the windows and wooden tower.

Mr. Mitchell said that he could not speak at that meeting.

Mr. Mulholland said that was correct however, those were the renderings that were submitted to be presented and they were presented.

Mr. Nickerson said that is what they have gone with and they would have to do another public hearing for the changes.

Mr. Mulholland said that he would check to see when they could put a special meeting together for a public hearing on this matter. He also noted that with the building permit the plan that was submitted shows the wooden siding on the tower. It is a copy of the modified building plan that went to the building official.

Adjournment

Mr. Nickerson said that this was as far as they could go this evening and called for a motion to adjourn this Special Meeting.

****MOTION (1)**

Mr. Bulmer moved to adjourn this Special Meeting of the East Lyme Zoning Commission at 9:00 PM.

Mr. Barry seconded the motion.

VOTE: 5 – 0 - 0. Motion passed.

Respectfully submitted,

Karen Zmitruk,
Recording Secretary

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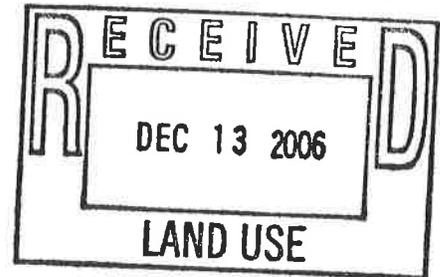
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**ALSO ADMITTED IN N.Y.

December 11, 2006

Mr. William Mulholland
Zoning Enforcement Officer
Town of East Lyme
P.O. Box 519
Niantic, CT 06357

Re: 308 Main Street

Dear Mr. Mulholland:



This is in response to your memorandum of November 9, 2006 requesting advice regarding the enforcement of conditions of a special permit and a possible modification of that permit. As you have described the situation, a special permit, site plan and coastal area management were granted by the Zoning Commission for the applicant to construct a twelve-unit, multi-story building at 308 Main Street. You are concerned that the applicant is not following the plans that were presented to the Commission and subsequently approved by it. You have asked what procedure should be employed to enforce the terms of the permit, and what procedure the applicant should follow if he decides to seek an approval of an amendment to his site plan or special permit.

To put this matter in context, the application for special permit and site plan was the subject of a public hearing over the course of several nights in the Fall of 2005. The minutes of the October 20, 2005 public hearing reveal that the Commission had certain architectural design concerns, which it is authorized to consider under § 25.4.1 of the regulations. On November 17, 2005, the applicant subsequently returned to the Commission at a later meeting with revised plans and drawings that addressed the Commission's concerns. The minutes of that meeting state that "the building design was approved as presented in the final rendering." You have observed that the applicant is not following the design as depicted in the final rendering.

Attachment Zoning Spec. mtg. 8/16/07

I. Enforcement

Towns are authorized to issue special permits by General Statutes § 8-2 which provides that zoning commissions can adopt regulations that allow a particular use subject to specific standards set forth in the zoning regulations. The East Lyme Zoning Commission has adopted such standards in its zoning regulations for special permits (Section 25). As such, the conditions specified in the approval of a special permit application made pursuant to the zoning regulations on special permits can be enforced like any other zoning regulations.

The authority to enforce zoning regulations is found in General Statutes § 8-12. This statute authorizes zoning officials to issue cease and desist orders, and, if the violation continues, the levying of fines. Section 8-12 further authorizes town officials to invoke the jurisdiction of the Superior Court for additional enforcement measures.

II. Modification

Generally speaking, after the Commission approves an application, any modification to the application requires a new application, particularly if the decision was published and recorded. However, if the modification is more in the nature of a clarification of the conditions imposed in the approval, a new application may not be necessary. Similarly, correction of clerical errors does not require a new application.

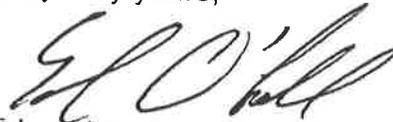
Here the application was for both site plan and special permit approval. As you know, section 25.3 of the zoning regulations requires that any application for a special permit must be accompanied by a site plan. This is a common requirement in Connecticut towns and, as a result, the courts have provided some guidance on the relationship between the special permits and site plans.

In Barberino Realty et al v. Planning & Zoning Commission, 222 Conn. 607, 612 (1992), the court examined a situation where a builder who already had been granted a site plan and special permit returned to the zoning commission seeking to revise his site plan. The commission rejected the revised application because it did not conform to the special permit regulations. The builder complained that the commission could not apply the special permit regulations to his site plan because he had already received a special permit, and he did not seek to revise it. The Supreme Court sided with the commission and in so doing elaborated on the nature of special permits vis-à-vis site plans. "The details of the proposal are laid out in the site plan, which is a physical plan showing the layout and the design of the site of a proposed use." Id. The zoning regulations render the site plan inseparable from, and part and parcel of, the related special permit application. As such, any review of a special permit application is necessarily dependent on a thorough review of the proposed site plan.

As a result of this analysis, the Barberino court concluded that any application to revise a site plan must also be evaluated in light of the conditions set out in the special permit. To conclude otherwise would render a zoning commission helpless if a developer first obtained a special permit on the basis of a site plan that was particularly well-suited to the neighborhood, but then decided to substitute for that site plan one that eradicated the very features that motivated the commission to grant the special permit.

Here the Zoning Commission's approval of the special permit was based on specifics set forth in the site plan submitted by the applicant. As in Barberino, these documents are intertwined and inseparable. If any material change made to the site plan or the conditions of the special permit, it is our advice that this will necessitate a new application to be filed and reviewed by the Commission.

Very truly yours,

A handwritten signature in black ink, appearing to read "E. B. O'Connell". The signature is fluid and cursive, with the first letters of the first and last names being capitalized and prominent.

Edward B. O'Connell, of
Waller, Smith & Palmer, P.C.

EBO:cmc

EAST LYME ZONING COMMISSION
PUBLIC HEARING I
Thursday, NOVEMBER 3RD, 2005
MINUTES

FILED IN EAST LYME
NOV 14, 2005 AT 5:00
A. R. Blair, Clerk
EAST LYME TOWN CLERK

The East Lyme Zoning Commission held the Application of George P. Mitchell for a Special Permit to construct a multi-family/multi-story dwelling and Coastal Area Management Site Plan Review at property identified in the application as 308 Main St, Niantic, CT. The property is further identified in the application as East Lyme Assessor's Map 12.1, Lot 120 for public hearing on November 3, 2005 at Town Hall, 108 Pennsylvania Avenue, Niantic, CT. Chairman Nickerson opened the continued Public Hearing and called it to order at 7:30 PM. *(Continuation)*

PRESENT: Mark Nickerson, Chairman, Pamela Byrnes, Secretary,
Norm Peck, Ed Gada, Shawn McLaughlin, Norman Peck
Rosanna Carabelas, William Dwyer, Alternate

ALSO PRESENT: William Mulholland, Zoning Official
Rose Ann Hardy, Ex-Officio - Board of Selectmen
(Arrived at 8:35 PM)
William Henderson, Alternate
William Dwyer, Alternate

ABSENT: Marc Sallerno

PANEL: Mark Nickerson, Chairman, Pamela Byrnes, Secretary,
Ed Gada, Shawn McLaughlin, Rosanna Carabelas, Norman
Peck

Call to Order

Mr., Nickerson, Chairman, called the November 3, 2005 meeting of the East Lyme Zoning Commission to order at 7:30 PM.

Pledge of Allegiance

The Pledge was observed.

Public Delegations

Mr. Nickerson advised the public that they set aside time in the beginning of each meeting to discuss any issues of public concern that might not be listed on the Agenda for this meeting.

Hearing none, he moved to the Public Hearing.

Public Hearing I

1. Application of George P. Mitchell for a Special Permit to construct a multi-family/multi-story dwelling and Coastal Area Management Site Plan Review at property identified in the application as 308 Main St, Niantic, CT. The property is further identified in the application as East Lyme Assessor's Map 12.1, Lot 120. *(Continuation)*

Mr. Nickerson asked for more presentation from the applicant.

George Mitchell, 48 Attawan Rd, Niantic, CT said that at the last meeting he was asked to re-think the design of the building he is asking to construct. Since then, he has worked with Mr. Mulholland and staff on a new design theme. Mr. Upjon, the project Architect, has worked a new plan and made a model to best show the design to the commission.

Mr. Mitchell turned the floor over to Mr. Upjon, project Architect for details of the new design.

Mr. Nickerson said that the building is virtually the same as the rendering that were originally presented and that the applicant has made it clear that the back of the building is going to be almost all windows in order to take advantage of the water views.

Ms. Byrnes asked if the siding on the back of the building will be the same cedar siding as the stair silos.

Mr. Upjon said that it will be the same vertical siding and that it will have a brown/gray tone to it at this point.

Mr. Peck asked what his opinion of a mansard roof is with dormers going across the top floor of a building.

Mr. Upjon said that he has never seen a look like that that "works". In addition, that top floor is the best view and that want to use it as a selling point to get people into the building.

Mr. Nickerson asked Mr. Mitchell to go over the waivers that are being requested.

Mr. Mitchell explained that there are two buffers that are required by regulations, but the Zoning Commission can waive these buffers. In both cases, the adjoining property owners have requested that they not put in the required buffers in order to promote the free flow of traffic between properties for the Auto Part store and Bakery in front of the building. In the other case, Rings End Lumber has requested that they not put a fence up because the workers on the train get out of the train to stop traffic and allow the train to cross. If a fence were there, it would stop that because the workers wouldn't be able to get off the train. They have a buffer on the East side of the property between the site and the Police Station as well as a buffer to the South side of the property between the site and the ocean. They are asking that the North and West side buffers be waived.

Mr. Mulholland explained that the options for buffers according to Section 24.6E3 are either a 6 foot landscaped divide, or a fence between adjoining properties. He also said that he feels that Mr. Mitchell has a good point about the buffer along the side where the railroad tracks are. He feels that is a unique situation.

Mr. Mitchell explained that they also own the property on the other side of the railroad tracks.

Mr. Mulholland explained that one of the things they are also looking to do in the long term, is to build a sidewalk to connect the beach area with the village and that the parking area there would then also be able to be used as an accessory municipal parking lot when not in use for the beach.

Mr. Mitchell said that the plan that they show in the lobby shows that walkway that crosses this property and that it will be a shortcut from Hole in the Wall to Main St.

Mr. Nickerson asked if there are any other questions from the commission. Hearing none, he moved to public comment.

Mr. Nickerson asked if anyone would like to speak in favor of the application.
Hearing none-

Mr. Nickerson asked if anyone would like to speak in opposition of the application.
Hearing none-

Mr. Nickerson asked if anyone had any neutral comments in regard to the application.
Hearing none-

Ms Byrnes noted for the record that even though she was not here for the previous meeting on this application, she has read thoroughly over the meeting minutes and feels confident to sit on the panel for this topic.

Mr. Nickerson called for a motion to close the public hearing if there are no other questions.

Mr. Nickerson asked if the footprint of the building is the same.

Mr. Mulholland asked Mr. Upjon to go over the dimensions of the building.

November 17, 05 minutes

Mr. Peck inquired if the application was approved with restrictions and there were more eliminations than approvals, would it be an illegal act that would require another notice of a hearing.

Mr. Nickerson inquired if there were any comments or questions about the zone change.

Mr. Mulholland inquired if the Commission would like to view a site map of the property.

Mr. Nickerson called for a two-minute recess.

Mr. Nickerson called the meeting back to order and inquired if anyone had comments or questions about the last section of the application. Mr. Nickerson stated that the rest of the discussion regarding this application would be tabled until the December 1, 2005 Zoning Commission meeting.

4. Application of George P. Mitchell for a Special Permit to construct a multi-family/multi-story dwelling and Coastal Area Management Site Plan Review at property identified in the Application as 308 Main Street, Niantic, CT. The property is further identified in the Application as East Lyme Assessor's Map 12.1, Lot 120.

Mr. Nickerson asked that Ms. Carabelas return to the panel. Mr. Dwyer remained seated during this discussion. Mr. Salerno returned to the audience.

Mr. Mulholland showed the Commission renderings from the beginning of the proposed project to a new and improved set of renderings. Mr. Mulholland noted that there were improvements made by the applicant. Mr. Mulholland noted that the stairwells were now incorporated into the roofline and windows would be added to the tower. A copula would be added to the top of the elevator tower and the shape of the building would not be as boxy as shown in previous renderings. The brick has also been eliminated and will be constructed with the wooden material used on the stairwell towers to soften the look.

Ms. Byrnes noted that there was an improvement in the design.

Mr. Nickerson stated that the new renderings showed vast improvement in the design and that he could picture this building existing in downtown Niantic. He noted that he did not like the site due to dumpsters located behind the existing business in the front of the proposed area.

Mr. Mulholland stated that Mr. Mitchell did not own the front property. He also said that he has been in contact with the owner and has discussed resolving the issue of the appearance behind the building.

****MOTION (1)**

Ms. Carabelas moved to approve the application of George P. Mitchell for a Special Permit to construct a multi-family/multi-story dwelling and a Coastal Area Management Site Plan Review at property identified in the application as 308 Main Street, Niantic, CT. The property is further identified in the application as East Lyme Assessor's Map 12.1, Lot 120 and to grant an exception/waiver of the requirement to provide a buffer along the northern and western property lines. The building design was approved as presented in the final rendering.

Mr. Dwyer seconded the motion.

Vote: 6-0-0 Unanimous
Motion Passed.

5. Application of Peter J. Springsteel for a Coastal Area Management Site Plan Review to construct an addition and renovate a single family dwelling at property identified in the application as 1 Point Road, Niantic, Connecticut. The property is further identified in the application as East Lyme Assessor's Map 04.14, Lot 6.

Ms. Carabelas read into the record a memo from Mr. Mulholland to the East Lyme Zoning Commission dated November 17, 2005 regarding the subject application. (See attached memo.)