

East Lyme Zoning Commission

August 4, 2005

Public Hearing 2

Aug 12 20 05 at 11:30 (AM)
PM
Esther B. Williams
EAST LYME TOWN CLERK

Present: Mark Nickerson, Chairman, Shawn McLaughlin, Pamela Byrnes, Ed Gada, Norman Peck, and William Henderson, Alternate.

Also Present: Marc Salerno, Alternate
William Mulholland, Zoning Official
William Dwyer, Alternate
Rosanne Hardy, Ex-Officio

Absent: Rosanna Carabelas

Panel: Mark Nickerson, Chairman, Shawn McLaughlin, Pamela Byrnes, Ed Gada, Marc Salerno, Alternate, and William Henderson, Alternate.

Mr. Nickerson noted for the record Mr. Salerno will be seated on the panel for this hearing.

Mr. Nickerson called Public Hearing 2 to order immediately after Public Hearing 1.

Application of Theodore A. Harris to amend the East Lyme Zoning Regulations to permit Auto Body Shops in CA Commercial Zoning Districts.

Mr. Nickerson asked Mr. Henderson to read the following correspondence into the record:

- A letter from Attorney Theodore Harris to William Mulholland, Zoning Official dated June 14, 2005. The letter was attached to the proposed change to the zoning regulations with respect to auto body shops. He asked for the application's placement on the Commission's agenda.
- A letter from William Mulholland, Zoning Official to the East Lyme Zoning Commission dated August 4, 2005 regarding the proposed zoning regulation text amendment - CA zone. The letter noted that Attorney Harris' application is to add a new special permit use "Auto Body Shop". He noted in the letter that the current zoning regulations are silent on Auto Body Shop as a use and in many communities one can find Auto Body Shops in commercial or industrial zones. He also noted the proposal is strictly for CA Zones and for East Lyme that is found along West Main Street, Flanders Road and Boston Post Road. He asked the Commission to carefully consider the amendment and whether the use is appropriate in CA zones.
- A letter from Greg Ellis, Secretary of the Town of East Lyme Planning Commission to East Lyme Zoning Commission dated July 26, 2005 regarding Referral CA District Sections 2.2.2, 8.2.12 and 25.5. The letter stated that the Planning Commission found through of a vote of 3-1-1 that the Application in the CA District is consistent with the Plan of Conservation and Development goals found in Section 6. The Commission further suggested that the statement that no such business shall be located within 3000 feet of another auto body shop be changed to within 1000 feet.
- A letter from Gene Lohrs, Chairman of the Southeastern Connecticut Council of Governments Regional Planning Commission to East Lyme Zoning Commission dated July 22, 2005. The letter stated that after their review of the information submitted, it was determined that the proposed text amendments would not have any adverse inter-municipal impact.

- A letter faxed on July 19, 2005 from Marcy Balint, Senior Coastal Planner, CT DEP, Office of Long Island Sound Programs to Rosanna Carabelas, Secretary, East Lyme Zoning Commission regarding amendment to allow Auto Body Shops in the CA Commercial Zoning District. Mr. Nickerson noted for the record an attachment of the Body Repair and Painting Fact Sheet legal requirements and environmental controls was attached to the letter. The letter stated that OLISP reviewed the proposed amendments and finds them generally consistent with the goals and policies of the CCMA, conditioned upon the adherence to the CT DEP's fact sheet legal requirements and environmental controls.

Mr. Nickerson noted for the record that the legal ad was run properly on July 22, 2005 and August 1, 2005.

Mr. Nickerson asked for a presentation from the applicant.

Attorney Theodore Harris, 351 Main Street, Niantic submitted to the panel a copy of the proposed regulations. Mr. Nickerson noted that the proposed regulation handed out to the panel by Attorney Harris was already part of the record. This is a proposed regulation to allow Auto Body Shop special permit use. Although there are other auto body shops, they were special permitted under other categories such as used car dealer. This would allow the specific use and therefore develop controls. The proposal includes a definition and controls. The proposed definition was "Auto body shop means a business primarily devoted to cosmetic and related mechanical repair or reconstruction of vehicles, including painting, replacement/repair of vehicle body parts and structural components, together with ancillary mechanical activities. Said activity may include the sale of vehicles, provided that is clearly ancillary to the primary activity." Attorney Harris explained the wording "ancillary mechanical activities" was added so in some cases a vehicle could be sold that the shop has restored. The other section added was the controls which are over and above the general controls and are as follows: 1) No such business shall be located within 3000 feet of another auto body shop.; 2) All damaged vehicles, and auto body parts shall be screened from view and/or maintained indoors.; 3) No outdoor painting or body work shall be allowed. All painting shall be done in strict compliance with DEP/EPA requirements.; 4) Because such business has the potential for interference with neighbors, the Commission may impose additional buffer and screening requirements, including but not limited to requiring fencing, plantings and the maintenance or architectural features and entrances, to minimize impact.; 5) The Commission may deny any such application if it finds that the business will create undue impact and/or is not appropriate within the proposed location. Attorney Harris followed up on the OLISP letter's comment regarding adding existing State law. The State's regulations will change from time to time and our regulations will have to be changed every time they change their law. Attorney Harris felt the #3 control added in the proposed regulation about complying with DEP/EPA requirements will cover these requirements. Attorney Harris said #5 of the proposed regulation will allow the Commission to control where these auto body shops will be placed in the CA zone. Attorney Harris also added that this proposed regulation will promote for a necessary service in the town for the public and other businesses in town such as car dealers.

Mr. McLaughlin asked why the Auto Body Shop proposed will be placed in the CA zone and not in the light industrial?

Attorney Harris answered by saying it will allow the business to be open to commercial traffic.

Mr. Mulholland reminded the Commission that this proposal is to include auto body shops in CA zones only.

Mr. Nickerson said auto body shops has never been defined in the current regulations.

Mr. Henderson commented on it's placement near fresh water such as Latimer Brook and the possible risk.

Attorney Harris said that there are very strict DEP standards for this type of shop. All work will be performed inside and will require filtration systems.

Mr. Mulholland said if this application goes forward, he recommends adding a control about not storing parts and damaged vehicles on site.

Attorney Harris said one of the proposed controls states that all damage cars and parts have to be screened.

Mr. Nickerson suggested adding a control that only registered motor vehicles will be stored, they will be stored away from the street and neighbors and a maximum number of cars being able to be stored.

Mr. Mulholland reminded the Commission that through the special permit process the Commission would be able to approve where parts and cars are stored.

Ms. Byrnes stated she did not see a control regarding noise pollution in the proposed regulation.

Attorney Harris stated that all work would be done inside which will reduce the sound.

Mr. Nickerson said that if the garage doors were open the noise would be released and suggested adding that garage doors have to be closed.

Mr. Nickerson called for anyone from the public to speak for the application—
Hearing no one—

Mr. Nickerson called for anyone from the public to speak against the application—

Virgil Horton, 2 Amberly Lane, Niantic distributed a folder to the Commission. Mr. Nickerson marked for the record the folder distributed by Mr. Horton as **Exhibit A**. Mr. Horton stated that 80% of the CA zone is located in the Aquifer area referring to a map in his exhibit. He stated that the Zoning Commission has primary responsibility for enforcement of the Aquifer Protection Act. Mr. Horton pointed out that the State of Connecticut does not have an official definition of an auto body shop in their regulations. The Auto Body Association of Connecticut and National Auto Body Council defines this type of work as Collision Repair. He added that utilizing a term not commonly in use is fraud with potential problems and would effect the very fabric of our zoning guidelines. With back up by exhibits, he went on to say the Collision repair industry has changed in the past years and can no longer be considered cosmetic. Referring to other exhibits included, an auto body shop is characterized as a business that uses substances such as ignitable and toxic paints, antifreeze, transmission fluid, etc. The business also utilizes metal cutting machinery, welding machines, etc. The East Lyme Zoning Regulation Section 20 under prohibited uses states that no building or structure shall be erected or used for any of the following uses: any use or trade that is noxious or offensive for reasons of gas, odor, dust, vibration, noise, etc. Mr. Horton also reviewed other exhibits he included which defined businesses allowed in the CA zones and a quote from Mr. Mulholland saying if the type of business is not stated it is not allowed. Mr. Horton said Collision repair is not stated because it violates other regulations. He also referred to his exhibit of the 2004 CT DEP Aquifer regulations which includes commercial services using hazardous materials. The Town of East Lyme submitted their level B mapping of their Aquifer and a diversion certificate, which they should back up. He asked how could the Town submit a diversion certificate without approving the Aquifer map. Mr. Horton also added that if the Commission approves this regulated activity, when the Aquifer Act is approved this business will be grandfathered. He then referred to the State of Connecticut DEP interim municipality guidelines for protecting the Aquifer zone while the Aquifer Act is in the process of being approved which encourages towns to take reasonable actions to improve their protection. Mr. Horton opinion is that it means not adopting amendments that would conflict with this Act. He also included in his exhibit the East Lyme Plan of Conservation and Development, Section 4 which defines CA districts that land zones for uses that provides goods and services which historically has served for community interaction and commodity. Mr. Horton also said 281 acres of the Town's approximate 500 acres of CA zone lie in the Flanders Road CA zone which is mostly in the Aquifer zone. He stated the DEP guidelines have to be followed and why doesn't the Commission just ratify them. Mr. Horton asked the Commission to deny this application especially when the public has taking the time to provide the Commission with all this information.

Karen Kari, 6 Boston Post Road, East Lyme wanted to reaffirm that the DEP has come forth and stated that these type of businesses are very dangerous and that is already recognized in the regulations that the Town doesn't want the noxious fumes, noise etc. The Commission needs to take a hard look especially when an applicant is coming forth to start a business before a known Act is approved that will deny it.

Rear Admiral Arnold Danielson, Ret., 4 Carlisle Lane, Niantic said East Lyme is a great place to live and he would like to keep it that way. He stated that Mr. Horton has presented some pertinent information and the Commission should listen to it. With the noise and possible pollution of the waters, he felt the Commission should look out for the children of this community.

Mr. Nickerson called for anyone from the public to speak neutral to the application—
Hearing no one—

Mr. Nickerson called for any further comment.

Attorney Theodore Harris said each town has their own definition for an auto body shop but the specific service to be provided was included in the definition proposed. Part of the CA zone and some of the industrial zone is in the Aquifer area but the Aquifer Act is not adopted and this type of business is currently allowed. These types of businesses are already existing in this town. The Town of East Lyme is the 1st town in this State to adopt Aquifer regulations and this Commission has been sensitive to this issue. The State has issued standards so that this service can be done safely. Attorney Harris feels this service is allowable, necessary and can be done safely in the CA zones. If the business is so dangerous, why are they allowing and maintaining existing businesses of this type. Attorney Harris feels this an appropriate regulation for this Town.

After questioned by Mr. Salerno, Attorney Harris said ancillary mechanical activities were included in the definition only to offer, on a very small-scale, the sales of restored vehicles.

Mr. Mulholland asked if the applicant would be opposed to a limitation on the sale of vehicles.

Attorney Harris had no opposition to limiting the sale of vehicles because the core of the business is to perform auto body work.

Mr. Nickerson stated the placement on the parcel where cars will be for sale needs to be looked at.

Ms. Byrnes asked if this type of business would be allowed if the proposed Aquifer Protection Rules are active.

Attorney Harris said this type of business will not be allowed after the Aquifer Act is enacted but is currently allowed and the current businesses will be allowed to continue even after those rules are enacted.

Mr. Henderson thanked Mr. Horton for bringing forth the information regarding this application and his concern for the community. He asked Attorney Harris if there are standards under the DMV licensing and if he would be opposed to adding to the proposed controls a reference to Aquifer standards.

Attorney Harris answered by stating there are standards in the licensing process but they are separate than zoning standards and that Aquifer issues should be handled in the section of the regulations designated specifically to those standards.

Mr. Nickerson asked Attorney Harris if he would be opposed to adding in parenthesis the term Collision Repair.

Attorney Harris said one term should be adopted and Collision Repair is a State term.

After questions regarding the upcoming Aquifer Protection Act, Attorney Harris stated this activity is currently allowed and the proposed standards are being changed just as recent as a month ago. He added that requirements for this type of business have doubled over the past year and are required to keep minimal supplies with specific containment.

Mr. Nickerson called for a motion to close the public hearing.

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

Marc Salerno made a motion to close Public Hearing 2 at 9:10 p.m.

William Henderson seconded the motion.

Vote: 6-0-0. Motion passed.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Robin G.L. Koenigs". The signature is written in dark ink and is positioned above the printed name of the signatory.

Robin G.L. Koenigs, Recording Secretary