

**EAST LYME ZONING COMMISSION
SPECIAL MEETING
Monday, AUGUST 6th, 2007
MINUTES**

FILED IN EAST LYME TOWN
CLERK'S OFFICE
Aug 8 2007 at 3:25 AM
ESTHER B. WILLIAMS
EAST LYME TOWN CLERK

The East Lyme Zoning Commission held a Special Meeting on Monday August 6, 2007 at the Town Hall, 108 Pennsylvania Avenue, Niantic, CT.

PRESENT: Mark Nickerson, Chairman, Rosanna Carabelas, Secretary, Ed Gada, Marc Salerno, Norm Peck, Bob Bulmer, Alternate

ALSO PRESENT: Attorney Theodore Harris, Representing the Applicant Ed Navarro, Managing Partner of GPF Flanders LLC

ABSENT: Pamela Byrnes, William Dwyer, Alternate, Joe Barry, Alternate

PANEL: Mark Nickerson, Chairman, Rosanna Carabelas, Secretary, Ed Gada, Marc Salerno, Norm Peck, Bob Bulmer, Alternate

Chairman Nickerson called this Special Meeting of the East Lyme Zoning Commission to order at 7:00 PM.

Pledge of Allegiance

The Pledge was observed.

Public Delegations

Mr. Nickerson called for public delegations, noting this was time for the public to address the Commission on subject matters not on the Agenda.

There were none.

Special Meeting

- 1. Application of GPF Flanders Plaza LLC for a Special Permit for a fast food restaurant at property identified in the application as 15 and 19 Chesterfield Road, Niantic, CT. Property further identified as lots 55 and 54 on the East Lyme Assessor's Map 31.1. (Decision Only)**

Mr. Nickerson said that they were holding this special meeting for the sole purpose of making a decision on this application. He noted that he had seated Bob Bulmer, Alternate at the table.

Mr. Bulmer said for the record that he is up to speed and qualified to sit this evening as he has attended all of the meetings on this application.

Mr. Nickerson recalled to the Commission that they had asked for an opinion from Town Counsel on the authority of the Commission to consider off-site traffic conditions when making a decision on this application. They have received a letter from him and he said that he would read it into the record:

- ◆ Letter dated 8/8/07 to William Mulholland, ZEO Town of East Lyme -- Re: Zoning Commission's Consideration of Traffic Issues -- summarizing that 'by permitting a restaurant in the commercial zone, the Commission has established a conclusive presumption that such a use, in general, does not adversely affect the off-site traffic within the zone. Site-specific issues, such as internal traffic

circulation within the site and the placement of entrances and exits, may be considered by the Commission.' (Copy of complete letter attached at end of Minutes)

Ms. Carabelas asked for some clarification on whether traffic that was being moved to exit to the road could be considered. She noted the 'no left turn' onto Route 1 that was set by the State Traffic Commission and that traffic in the plaza would then move through the plaza to exit onto Rte. 161.

Mr. Nickerson said that they have talked about the traffic internally backing up and the congestion within the internal system and that it could be a safety concern.

Mr. Bulmer said that he would like to read something that they all received previously on land use law and practices. A case involving the Town of Branford found that an application could not be denied due to offsite traffic issues.

Ms. Carabelas said that she thinks that the increased traffic flow/congestion that would be created in leaving the parking lot due to the State issued 'No Left Turn' should be considered and that she finds it to be of concern.

Mr. Nickerson suggested that if it is a grey area and they find that they cannot make a decision that perhaps they should abstain. In talking about 'lefts' and 'rights' he said that it is more of a grey area and in that type of case, perhaps abstention would be appropriate. Clearly, Chesterfield Road (Rte. 161) is not under their purview with respect to this decision, as outlined by Town Counsel.

Mr. Peck said that he would like to make a motion and then continue discussion.

****MOTION (1)**

Mr. Peck moved to approve the application of GPF Flanders Plaza LLC for a Special Permit for a fast food restaurant at property identified in the application as 15 and 19 Chesterfield Road, Niantic, CT. Property further identified as lots 55 and 54 on the East Lyme Assessor's Map 31.1.

Ms. Carabelas seconded the motion.

Mr. Salerno said that some of his concerns are the internal traffic flow of the McDonald's and of having to drive around twice. He said that he would like to see a direct entrance to the site from Rte. 161 as it would allow for a more direct internal traffic pattern.

Mr. Nickerson said that with every car that wants to go to McDonald's that there are also the smaller delivery trucks that deliver chips, etc. (and who are not regulated for a specific time of delivery by McDonald's) that go in and out and have to back up and who can potentially cause many traffic problems. Also, when assuming that the plaza will get more use which means more internal traffic; plus the traffic that will be diverted through the plaza because they will not be able to make a left turn out onto Rte. 1; he said that he thinks that this plaza could really work some day and that the plan that has been submitted, while much improved, is still not the best that it can be or something that he could approve as it stands.

Mr. Bulmer said that Mr. Nickerson and Ms. Carabelas have come to the same conclusion as he has and that the 'no left turn' forces people to then drive through the plaza and go out onto Chesterfield Road. He said that there is also the bank across the street and the school and all of the buses and cars and all of the traffic congestion there. He said that the point that he is making is that it is not a great traffic plan for the site. He said that he also wished that Mr. Mulholland were there this evening as the letter they received says that with the traffic that goes out to the State road that the State pre-emptes the municipal authority and he would like more information on that. He said that he does feel that they have done the best that they can do with what they have and that he feels a bit better knowing that the State would also have to review this from their end.

Mr. Gada said that he goes along with what has been said by his fellow Commissioners and added as a reminder, that the McDonald's building has been turned around 90° many times as they have requested and that this latest 'turn' has come up as being the best of all.

Mr. Nickerson said that he is concerned with the internal traffic issues of the McDonald's and the plaza and that he is aware that they do allow a fast food restaurant to be in this area. He said that he thinks that this can all be done better.

Mr. Peck said that he does not think that the State of Connecticut would approve the first and second curb cuts onto Rte. 161 that were recommended by Mr. Salerno and that as far as going around the McDonald's building a couple of times is concerned – if they had direct access from Rte. 161, they would also have much faster travel going around the building. Having to go around the building as proposed slows down the traffic. He said that a number of professionals came up with these designs and that he likes to depend upon those professionals when making this type of decision. The Civil Engineer said that they tried everything that they could possibly do and 'wore out their tools' in designing this and he said that he has to believe that to be so. Regarding the truck deliveries, he said that he has not heard anything from Tri-Town on this.

Ms. Carabelas asked if Tri-Town pays rent to the same people as McDonald's does.

Mr. Peck said that regardless, they have the right to voice their opinion and they did come to the public hearings and they have the right and opportunity to speak.

Ms. Carabelas asked Mr. Peck if this is denied without prejudice if he thinks that they would come back with a better plan.

Mr. Peck said that he thinks that they would have come with that plan already and that they have done that here.

Mr. Salerno noted the issues of the slope of the new site and the retaining wall and the location of the building and how that could not be modified much due to the site. Also, with the State not allowing another curb cut, there were few alternatives. He said that they had requested changes on some of the building design and the drive-thru. The building not working in that location however is not their problem.

Mr. Nickerson said that he wanted to respond to Mr. Peck's well-thought out comments. The traffic engineer for this project was the same as the one that designed the Starbucks and who came with a pre-conceived notion of stacking up the traffic. To say that he 'wore out his tools' on this would be saying that they had to be as creative as possible here. He said that he really thinks that it is a square peg in a round hole and that the traffic pattern has to be done better. This is tough work and they are trying to cram a lot of stuff and activity into this area and it has to work and he said that he does not think that it works now. He said that he is very uncomfortable with the McDonald's traffic and the trucks.

Mr. Gada commented that from what he and Mr. Salerno had said that he thought that they were past turning this building another 90°.

Mr. Peck said that regarding the truck delivery that anyone who has spent time in the city knows that the truck drivers are 'magicians' and that this is not difficult to navigate.

Mr. Nickerson said that it is 'our local drivers' who do not pay attention and that we are not city drivers.

Ms. Carabelas said that her concern is that they are still bringing more traffic to one exit.

Mr. Bulmer said that while this is all 'right' – wasn't it the State that was causing this internal traffic to move to one exit by mandating the 'no left turn' to Rte. 1. He continued that he uses this shopping center all of the time and that he hopes that if they knock this down that these people come back with another application soon. He then noted that they had received a copy of the new view of the McDonald's building with the window in the back that they had requested previously and said that he still would like to see a pitched roof on this building and that if they come back with another application that they have a peaked roof perhaps with a widow's walk. He then read from Section 25.4.1 of the Zoning Regulations on Special Permits noting that what is being requested should be in harmony with the surrounding buildings and area and further that under Architectural Review that it states that the building shall be in keeping and style of those in the area in which it sits. He said that he does not think that it is asking too much to have a peaked roof on the new McDonald's building.

Mr. Peck said that he has an answer for that – the landlord had to do a lot of sweet talking to get them to move off of that corner. Perhaps they do not like that either – but he thinks that at the end of the day with the CVS there, the Plaza renovation and the McDonald's, the whole corner when considered together will look 100% better than it does now and the McDonald's will blend with the whole picture. He said that they have to look at the big picture of what will be when it is all done and not as it stands now.

Mr. Nickerson called for a vote on the motion on the floor unless anyone had something new to add to this discussion.

VOTE: 2 – 4 – 0. Motion failed.

For: Mr. Gada, Mr. Peck

Against: Mr. Bulmer, Ms. Carabelas, Mr. Nickerson, Mr. Salerno

Mr. Nickerson said that because the motion to approve failed that the application was denied.

Ms. Carabelas and the Commissioners asked that it be noted and understood that the denial of the application is without prejudice and for reasons of: the no left hand turn creating internal traffic problems and directing more traffic to one exit; the dock and truck loading design within the McDonald's lot; the internal traffic flow design for the McDonald's and the McDonald's building not being in harmony with the other buildings in that area of the Town.

Adjournment

Mr. Nickerson called for a motion to adjourn this Special Meeting.

****MOTION (2)**

Mr. Bulmer moved to adjourn this Special Meeting of the East Lyme Zoning Commission at 8:00 PM.

Mr. Salemo seconded the motion.

VOTE: 6- 0- 0. Motion passed.

Respectfully submitted,

Karen Zmitruk,
Recording Secretary

WALLER, SMITH & PALMER, P.C.
COUNSELORS AT LAW

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OF COUNSEL:
WILLIAM W. MINER
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August 6, 2007

VIA FACSIMILE 691-0351 AND U.S. MAIL

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



RE: ZONING COMMISSION'S CONSIDERATION OF TRAFFIC ISSUES

Dear Mr. Mulholland:

You have inquired regarding the Zoning Commission's authority to weigh off-site traffic conditions when determining whether to approve or deny a site plan application. As we understand it, the proposed use (a McDonald's restaurant) will be on land located entirely within the commercial zoning district, and such a use is permitted in that district.

When reviewing a site plan application, the Commission does not act in its legislative, judicial or quasi-judicial capacity. Rather, it acts in its administrative capacity and may not reject an application that complies with the relevant regulations. The designation of a particular use of property as a permitted use establishes a conclusive presumption that such use does not adversely affect the zoning district and precludes further inquiry into its effect on traffic.

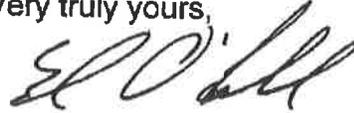
Because the Commission previously has determined that the proposed use is permitted in the commercial zone, it may not consider off-site traffic congestion as a ground to deny the application. The Commission may, however, consider existing traffic problems for the limited purpose of reviewing the internal traffic circulation on the site and determining whether the location of the proposed entrances and exits would mitigate the impact of traffic to and from the site and the adjacent road.

Attachment 8/6/07 Zoning Special Meeting

To summarize, by permitting a restaurant in the commercial zone, the Commission has established a conclusive presumption that such a use, in general, does not adversely affect the off-site traffic within the zone. Site-specific issues, such as internal traffic circulation within the site and the placement of entrances and exits, may be considered by the Commission.

Please let us know if you need anything further and we would be pleased to respond.

Very truly yours,

A handwritten signature in black ink, appearing to read "E. O'Connell". The signature is fluid and cursive, with a large initial "E" and "O".

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

EBO:cmc