

**EAST LYME ZONING COMMISSION
PUBLIC HEARING II
Monday, FEBRUARY 14th, 2005
MINUTES**

FILED IN EAST LYME
Feb 22, 2005 AT 3:45 P
Z. A. Blain, etc.
EAST LYME TOWN CLERK

The East Lyme Zoning Commission held the Application of Donald Sherman Public Hearing for Special Permit to allow an "Auto Sales Agency" at 218 & 222 Flanders Road, on February 14, 2005 at Town Hall, 108 Pennsylvania Avenue, Niantic, CT. Chairman Nickerson opened the Public Hearing after the previously scheduled Public Hearing and called it to order at 8:50 PM.

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

ALSO PRESENT: Attorney Theodore Harris, representing the Applicant
Donald Gerwick, LS, representing the Applicant
William Dwyer, Alternate
William Mulholland, Zoning Official
Rose Ann Hardy, Ex-Officio, Board of Selectmen

ABSENT: Pamela Byrnes, William Henderson, Alternate

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

Public Hearing II

1. Application of Donald Sherman for a Special Permit to allow an "Auto Sales Agency" at 218 & 222 Flanders Road, Niantic, Lots 23 & 24 on East Lyme Assessor's Map 26.1.

Mr. Nickerson noted for the record that Mr. Peck had rejoined the table and that Mr. Dwyer, Alternate had returned to the audience.

Mr. Nickerson said that they had some correspondence regarding this Application to read into the record.

Ms. Carabelas, Secretary read the following correspondence into the record:

- ◆ Letter dated 11/12/04 to the EL Zoning Commission from Donald Gerwick, PE, LS - Re: Special Permit Application Plaza Ford Dealership Site 218 & 222 Flanders Road – noting that the proposed application would construct an 11,550-sq. ft. building on the southern parcel and that the site will be served by municipal water and sewer with storm water renovation, recharge and discharge (consistent with zoning regulations) taking place on the northern parcel.
- ◆ Letter dated 2/14/05 to the EL Zoning Commission from Wm. Mulholland, Zoning Official – Re: Special Permit – Application of Plaza Ford/Auto Sales Agency 218-222 Flanders Road, Niantic, CT - stating that the applicant has applied under Section 8.2.6 for the use. Town Staff met with the applicant and his engineer and discussed concerns, which have been addressed. The Conservation Commission has also approved the project.
- ◆ Letter dated 1/12/05 to Mark Nickerson, Chairman EL Zoning Commission from Greg Ellis, Secretary Planning Commission – Re: Aquifer Protection Referral – Application of Donald Sherman for a Special Permit 218 & 222 Flanders Road – finding the application CONSISTENT with the Plan of Conservation and Development upon successful demonstration by the applicant to the Zoning Commission through plans and reports submitted in compliance with Sections 13.5 & 13.6 of the Zoning Regulations.
- ◆ Letter dated 2/7/05 to Wm. Mulholland, EL Zoning Officer from Theodore Harris – Re: Application of Plaza Ford – describing the type and manner of storage of hazardous materials which are anticipated to be

stored on the site of the new Plaza Ford (original manufacturer's containers, recycling companies and above ground tanks).

Mr. Nickerson noted for the record that the Legal Ad ran on 1/21/05 and 2/1/05 and that the sign has been posted on the site.

Mr. Nickerson called for the applicant to make their presentation.

Attorney Theodore Harris representing the applicant, submitted a picture of the sign posted on the site.

Mr. Nickerson entered this into the record as **Exhibit 1**.

Attorney Harris said that they also went before the Conservation Commission and permits were granted for the activities on the site within the upland review area and drainage facilities and he submitted the notice of decision to the Commission.

Mr. Nickerson entered this into the record as **Exhibit 2**.

Attorney Harris said that this application is one in which Plaza Ford seeks to relocate from one area of Route 161 to another. This is in keeping with the rehabilitation of some of the commercial areas along Flanders Road. The property to which it seeks to move is located in a CA zone and an automobile sales agency is allowed under special permit in this zone. The drainage design had to and does conform to the aquifer protection regulations. He noted that there would be no underground storage of any materials. There is however, a floor drain that is allowed by the DEP for car washing. This will go through an oil/water separator and into the sewer system, which is allowed by the DEP. He explained that there are two lots on this property, the same party owns both and the auto dealership would be developed on the southern parcel. The bulk of the drainage is on the northern parcel and is designed to handle the both parcels. The upper lot has a common driveway, which minimizes the curb cuts that the Commission seeks to do, that enter from and exit to Flanders Road. There is no intended use for the upper lot at this time, it will be grassed and left in a nice state. There are also two waivers that they are looking for at this time. One is with respect to the buffers in the rear of the property. They will be replanting some of the wetlands however, it would not be evergreens as the Conservation Commission would probably not allow those to be planted there anyway. The second is the buffer between the two lots along the driveway, as it would seem premature to plant evergreens there now as anything that will be done on the northern parcel would have to come back before this Commission anyway.

Attorney Harris then introduced Donald Gerwick to explain the details of the site plan and the building design. Donald Gerwick, 163 Boston Post Road, Waterford, CT said that he is a State of Connecticut Licensed Surveyor and has prepared the plans before them tonight. He submitted a set of plans that were revised through 2/14/05.

Mr. Nickerson entered these into the record as **Exhibit 3**.

Mr. Gerwick said that he would provide a brief overview of the project. He explained that they are about 160' from the Pattagansett itself and have a proposed stormwater system located on the northern portion as it has the longest travel distance through upland and wetland areas before it gets to the Pattagansett itself. The building is just under 12,000-sq. ft. and will have parking in the front, rear and side. The common drive will service both parcels. They are proposing a concrete sidewalk along the length of both parcels at this time and tree plantings along the entire frontage. Evergreens will be planted along the southern and northern boundaries. There is a sophisticated stormwater system that is consistent with the Town's regulations for the aquifer zone. There are no drain connections to the stormwater system. The building has been rimmed with catch basins with sumps that then discharge to a Vortech 5000 system that acts as a grease/oil/sediment separator. It then goes to a sedimentation basin that will be planted with wetland plantings and a bio-filter before it finally runs through a wetland area and gets to the Pattagansett. They have hydraulically turned back the clock and this is what is known as a 'belt & suspenders' approach to this type of system.

Mr. Mulholland said that in discussions today, he understood that they would not be storing any vehicles on the northern lot and that it would be grassed over. He asked if they could eliminate the driveway.

Attorney Harris said that they would not be parking cars on the northern lot and that it would be grassed over. He said that they need to use the drive as a truck turnaround and that this would be a permanent easement should the other lot be developed in the future.

Mr. Mulholland asked if the trucks could deliver on the site itself.

Attorney Harris said yes however, the object is to try to make it easier and to turnaround inside the property. The drive portion will be paved and the rest of the northern parcel will be grassed until there is a use for it. Mr. Gerwick said that this is just to make it easier to turn around with cars in the lot.

Mr. Mulholland asked Mr. Gerwick if they also took the lighting off of that lot and if the lighting is of low level intensity.

Mr. Gerwick said that they took the lighting off of the northern parcel of the property. They have lighting that is similar to what can be seen at Wendy's. The height of the poles is 12' and they have low level lighting across the front and also soffit lighting that goes into the interior rather than out.

Ms. Carabelas asked if the customers coming into the dealership would be using the same area as the trucks. Mr. Gerwick said yes and added that the radius was increased per DOT standards. Also, the dealership only gets deliveries one to two times per month so this would not create a problem. He also explained that they have some storage area to the rear and parking along the front plus customer parking and handicap parking.

Ms. Carabelas asked where the main entrance was.

Mr. Gerwick explained where this was on the plans. He said that there is also an entrance on the north side under the canopy.

Mr. Nickerson asked how many spaces there were in the lot.

Mr. Gerwick said that there are 68 plus the 21 storage spaces in the rear. The 21 to the rear are only for storage of new vehicles, which goes along with the request found in the Conservation letter.

Mr. Salerno asked how many of the 68 parking spaces would be available for customers.

Mr. Gerwick said that by the regulations 35 have to be available.

Attorney Harris noted that they would not have a body shop so they would not need spaces for those customers.

Mr. Gerwick explained that the owners said that the body shop at the current facility is a leased one and that it would not be moving to the new location with them.

Mr. Peck asked Mr. Gerwick to explain the buffer waiver.

Mr. Gerwick said that the side line waiver between the two parcels is being requested until they know what will be located in the northern parcel. Once that is determined he is certain that there will be some sort of buffer. The rear buffer falls within the wetland area and they will be adding appropriate plantings to that area rather than the evergreens.

Ms. Carabelas said that she was concerned about the northern parcel and who owns it and has control over it and the turnaround.

Attorney Harris said that the both parcels are owned by the same person and that the turnaround will be a permanent easement.

Mr. Gerwick added that it would be the same for the stormwater system as well - as the northern parcel has the system for the southern parcel.

Attorney Harris said that the auto sales agency is an existing use and that they are just moving it down the street. He added that their regulations encourage contiguous uses of drives and parking areas. He said that he thinks that the use is good for the area and certainly an improvement of the area.

Mr. Salerno asked about plantings in front where the sidewalk is.

Mr. Gerwick said that there would be 21 dogwoods along the street.

Mr. Peck asked if it is over 1500' of the nearest repair facility.

Attorney Harris said that it is not within 1500' of another new car dealer. The comparison is of like businesses to like businesses and not that of a repairer to a new car dealer.

Mr. Nickerson said that he would now open this for comments from the public and called for anyone who wished to speak in favor of the application -

Richard Robertson, 12 Center Road, Niantic said that he remembers this area as a boat yard and that he can't think of anything that would not be an improvement over that. He said that Plaza Ford has been a good neighbor and that he thinks that this will enhance the area.

Mr. Nickerson called for anyone else wishing to speak in favor of this application –
Hearing no one –

Mr. Nickerson called for anyone who wished to speak in opposition to this application –

Karen Kari, 6 Boston Post Road, East Lyme said that this is not just a move of an existing business. He has called it a car dealership and an auto sales agency and they have to get the same license from Dearborn and they haven't applied for a repairer's license. Also, Planning and Conservation both deferred this to Zoning. Ms. Dufresne said that she doesn't think that anything leaking would make it to the river and passed it off to Zoning. There is also the issue of the aquifer protection zone and both Planning and Conservation have sent this back to Zoning to decide. This dealership will most certainly be a repairer so the 1500' rule applies.

Frank Cochran, 51 Elm Street, New Haven, CT said that he is an attorney who was hired to represent Karen Kari and Cliff Kramm. There are two legal issues here – one, whether a new car dealership is allowed in this area. What is being applied for is an auto sales agency and this has a repair facility, which is more than just sales and makes the 1500' rule applicable. There is a repair shop within 1500' of this facility and this is a repair shop also and therefore should be disallowed. Second, what is particularly relevant here and what has not been talked about is with reference to the State aquifer regulations and they speak differently than yours do. He submitted a copy of the State Aquifer Regulations.

Mr. Nickerson entered this into the record as **Exhibit 4**.

Mr. Cochran continued that the State has promulgated these regulations and that the Town has to designate the aquifer protection zones to them and that this has not been done. They then have to adopt the State regulations, which they have not done. The State prohibits new regulated activities in the aquifer protection zones. If this were registered prior to this time then it would essentially be grandfathered but they have not done so and a new business is not to be allowed under the State regulations and they think that is what is going on here. Whereas this was a boat dealer in the past and offices, they have no reason to believe that this suits the regulations as those are past uses. They also question if it is allowed in the neighborhood and if it fits. They feel that the neighborhood is in the aquifer protection zone. He said that Mr. Kramm also asked him to submit to them copies of the sections of their zoning regulations, as it appears that the definition of auto sales agency is lacking and that it excludes repair facilities.

Mr. Nickerson entered this into the record as **Exhibit 5**.

Mr. Mulholland said that the State has been dragging its feet for at least 13 years with its' aquifer regulations and that we have a set of regulations in place within our regulations. We are also in the process of updating them. He asked Attorney Cochran what he thought the time frame was.

Attorney Cochran said that he does not know. He added that he thinks that it is not appropriate to approve something that would not qualify under the State regulations.

Mr. Mulholland said that the State regulations do not supercede the local regulations at this time.

Mr. McLaughlin asked if the State would have to permit the drainage plan.

Attorney Cochran said that he was not sure.

Mr. Mulholland said that they needed a general permit from the DEP.

Mr. Nickerson asked the status on their regulations.

Mr. Mulholland said that since 1973 they have had aquifer regulations. The State has been reviewing their regulations for 13 years now and he said that he thinks that we have until 2007 to review and update our own.

Mr. Nickerson asked if we were acting under those State regulations now.

Mr. Mulholland said no, as he believes that they do not apply yet.

Mr. Nickerson called for anyone else who wished to speak regarding this application –

Sam Stein, 3 Hawthorne Lane, Niantic said that he wanted to speak neutrally. He said that he seems to recall that a lot of time was spent on the Stop & Shop issue regarding drainage and the aquifer protection area and

he is trying to understand this application as it was all passed on to Zoning. He said that he thought that it was for Conservation to decide.

Mr. Mulholland said that it is the jurisdiction of Conservation and that they have approved it.

Mr. Stein said that he wants to see what they had to say and wants to know why the DEP was not involved. He said that the three lines that were read earlier by someone else does not seem to cover this issue with the aquifer so close.

Mr. Nickerson and Mr. Mulholland said that Conservation did their job and addressed everything and that it was not just three lines but rather a two-page letter that came down regarding this application.

Mr. Stein said that he wanted Mr. Nickerson to read the letter into the record and to them.

Mr. Nickerson said that this is Zoning and not Conservation and that Mr. Stein could read the letter for himself, as it is a part of the public record. Conservation has supplied a permit regarding this application.

Bob Jones, 5 Applewood Common said that he is not opposed to the dealership but asked what it is being called.

Mr. Mulholland said that it is an auto sales agency.

Mr. Jones said that under that is included repair, new and used and DeBartolo is a dealer – used and a repairer. He said that he thinks that this encompasses the 1500' issue. He also said that he had a concern with the upper lot and what would happen if it were subdivided.

Mr. Mulholland said that was answered earlier as he had asked the same things. The property exists as two separate lots. If something is to be done with the northern parcel in the future, it will be addressed at that time, as it would have to come before this Commission.

Mr. Jones asked about the turnaround.

Mr. Nickerson said that the easement goes with the land and the turnaround.

Mr. Jones asked about the drainage and if it was large enough to accommodate the both lots. He said that he was not against this as he thinks that it will be an asset to the Town - he just wants to make sure that it can fit where it is going.

Attorney Harris said that he thinks that there is confusion between the allowed uses and the separation of the uses. An auto sales agency covers a lot of uses and certainly new car dealership fits in there. Next, the nearness to each other – the regulations do not base this on the licenses but rather on the type of business and the regulations say that they can have those types within 1500' of each other. The one is a new car dealer who services what he sells with a primary business of new car sales and the other is neither as it is just a repair facility.

Attorney Harris said that with respect to the State regulations and the aquifer protection zones – there first has to be Class A mapping at the State level and this is not complete yet. The DEP estimates that this will not be completed for another two years so they are not bound by these regulations and they are not in effect yet. Also, the current Plaza Ford is within our aquifer protection zone so with this move they are even better off in relation to the distance from the aquifer. He said that he has looked at the DEP website and that they advise the Towns not to start changing their aquifer regulations until everything is done and put into effect. The Class A mapping is not done and will most likely have to go through changes before it is completed. He also noted that the drainage system is designed to accommodate both sites. While this is a new application, it is relevant that the same business is going to be on the same road. There will also be a permanent easement for that turnaround as has been stated previously.

Mr. Mulholland asked Mr. Gerwick to go over the drainage and his meeting with the Town Engineer.

Mr. Gerwick said that there has been a lot of hearsay bandied around about Conservation. He said that he was present at the Conservation meeting and that their concerns were specific with respect to the aquifer protection regulations of Zoning. They eliminated the used car parking and looked over everything very carefully. There are no regulations that require that they are 200' away from the Pattagansett River however, this discharge is at least 280' from there. Also, Mr. Giannattasio sent these plans out to a third party for engineering review to make sure that all of the concerns have been met. He added that he has been heavily

involved with this and that this is one of the most sophisticated drainage systems out there. This system is like night and day when comparing what the existing site has. This system is designed to meet and exceed in both quantity and quality the stormwater best management practices and has been designed to handle both parcels. He also noted that the lots have separate numbers. He added that he has known the DeBartolos' since he was 14 years old and that the two businesses are like night and day.

Mr. Nickerson asked Mr. Gerwick if Conservation approved the drainage system.

Mr. Gerwick said yes – they required some revisions, which were done, and then the permit was issued.

Mr. Salerno asked who maintains these systems.

Mr. Gerwick replied that the owner maintains them according to a maintenance schedule and that this is also part of the Conservation permit.

Mr. Nickerson asked if there were any other questions –
Hearing none –

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

****MOTION (1)**

Mr. Gada moved to close this Public Hearing.

Mr. Salerno seconded the motion.

Vote: 6 – 0 – 0. Motion passed.

Mr. Nickerson closed this Public Hearing at 10:25 PM.

Respectfully submitted,

Karen Zmitruk,
Recording Secretary

INTEROFFICE MEMORANDUM

TO: BILL MULHOLLAND, ZONING OFFICIAL AND ZONING COMMISSION
FROM: LINDA DUFRESNE, ENVIRONMENTAL PLANNER
SUBJECT: PLAZA FORD
DATE: 02/15/05
CC:

At the January 18, 2005 meeting of the Conservation Commission, the Commission approved the application of Donald Sherman for Plaza Ford at 218 and 222 Flanders Rd. Please note that item 13 is a recommendation to the Zoning Commission.

Ford Plaza

After considering all relevant factors, the applicant has successfully demonstrated that:

1. There will be no adverse environmental impact on the wetlands or watercourse
2. Impacts are mitigated by the use of proper erosion controls, the fill coming onto the site will be adequately protected from erosion by the timing of the construction of the retaining wall, the temporary sediment basin will catch sediment runoff

The approved plan is entitled : Plaza Ford Center 218 & 222 Flanders Rd Revised through January 14, 2005 Gerwick-Mereen LLC Engr.

The regulated activities are:

- Construction of retaining wall and 15,000 cubic yards of fill
- Construction of biofilter at discharge outlet
- Construction of dry basin leading to wet basin
- Paved parking lot

Conditions:

1. Notify Conservation Agent at least 2 days prior to construction to inspect erosion controls
2. Notify Conservation Agent upon completion to sign off on permit
3. Changes to the plan will require additional approval, a new plan will be submitted prior to construction
4. Additional work beyond the permitted activities will require approval from the Commission or its agent
5. Limits of clearing shall be staked by licensed surveyor prior to any construction activities, and checked by the Conservation Officer
6. A planting bond in the amount of \$25,000 is due prior to any construction activities and is for the plantings and survival rate of the plantings for the basins. The bond will be held for two years after completion of the wet basin and biofilter for stabilization and monitoring.
7. Plantings for the wet basin and biofilter are on sheet 5 of 8, by Soil and Environmental Services.
8. Plantings in the wet basin and biofilter will be maintained at an 80% survival rate for 2 years, and monitored by a soil or wetland scientist. The soil scientist shall submit a report to the

Conservation Commission each year for two years, the report shall include pictures of the biofilter and wet basin.

9. Any phragmites stands or purple loosestrife, or any other invasive species, that invade the wet basin or surrounding wetlands shall be immediately treated by herbicide or pulled by hand. (Stated on sheet 5 of 8, Soil and Environmental Services)
10. The name and number of the onsite E&S agent is to be submitted prior to construction. Contact shall be made by the designated agent to the Conservation agent after each storm event of ½ inches or greater, to state that E&S controls have been checked.
11. A \$150 silt fence inspection fee is required before clearing / construction activities (two activities at \$75 per activity).
12. Conservation easement tags will be installed by the applicant at the direction of the Conservation Enforcement Officer
13. The Conservation Commission shall notify the Zoning Commission that the conservation easement and the drainage easement will need to be filed on the property deeds, and recommends that no Certificate of Occupancy be issued until that time. The Commission would like the Zoning Commission to note that there are two alternatives for the discharge of wastewater and that at the time of this meeting, the applicant had not decided which of the two means will be used.
14. Annual hand clipping of bittersweet shall be performed in the wetland and buffer
15. Debris/ garbage shall be removed from the upland and wetlands