

**EAST LYME ZONING COMMISSION
REGULAR MEETING
Thursday, NOVEMBER 3RD, 2005
MINUTES**

FILED IN EAST LYME
Nov 14, 2005 AT 8:00 M
L. Blair
EAST LYME TOWN CLERK

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 Salerno

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

1. Call to Order

Chairman Nickerson called the Regular Meeting of the Zoning Commission to order at 8:57 PM.

2. Approval of Minutes for September 15, 2005 Public Hearing I, II, III, and Regular Meeting, minutes of October 6, 2005 Public Hearing I, II, III, IV, V and Regular Meeting, minutes for meeting of October 20, 2005 Public Hearing I, II, III, and Regular Meeting.

Mr. Nickerson asked that the Meeting Minutes be tabled until the next meeting and that to commission review the minutes to make any corrections and have those corrections turned in to staff by 12PM Monday.

3. Application of Theodore A. Harris, agent for Real Estate Service, for approval of a Zone Change and site plan for an Affordable Housing Development to be known as Sea Spray Condominiums. The properties are further identified in the Application as 15 Freedom Way (Lot 28, East Lyme Assessor's Map 9.0) and 22 Liberty Way (Lot 28-1, East Lyme Assessor's Map 9.0).

Mr. Mulholland noted that he received a letter from a Paula Jewaski on November 2, 2005. She had requested that the letter be read into the record, but he is unable to do that since the hearing has already closed.

Mr. Peck excused himself from the Panel and Mr. Dwyer, Alternate, sat in his place to deliberate.

Mrs. Byrnes noted for the record that she has thoroughly read the meeting minutes for this application and feels confident sitting on the panel for this discussion.

Mr. Nickerson cautioned the panel that since this is an affordable housing application and reminded them that they as the commission can make suggestive modifications to the application. If that is the case, he suggests that the Town Attorney should review the modifications before the commission passes or denies something due to the sensitivity of affordable housing applications.

Ms. Nickerson said that he has looked over this application and has driven up to the site and re-read a lot of the testimony. He feels that the need for affordable housing trumps putting this development in a light

industrial zone. However, he also feels that noting trumps safety or the flow of a community and how it will look 40 years from now. His concern is the 8 dwellings at the bottom of the hill. They are separate from the rest of the development in every way. They have a separate entrance that is nearly a football field length away from the rest of the community. The garbage is at the top of the hill. The units at the top of the hill are in an almost gated community. The developer is putting up signs and pillars that will tell people that they are leaving the industrial park and they are going into a residential area. The buildings at the bottom of the hill don't have that same distinctive separation. They are almost right up against the businesses in the industrial park. He has reviewed this with the Town Attorney and with Mr. Mulholland. He would like to see those 8 units back on top of the hill. He is aware that the developer needs that number of units in order to make the project work. He would like to write a motion that would approve the application with a modification that would put those 8 units back on the top of the hill. He has spoken with Mr. Mulholland and he feels that those units could be put back on the top of the hill. Mr. Nickerson expressed that he is willing to give on the buffers at the top of the hill as long as it is still within the 10' regulations. Mr. Nickerson said that he does not want to take away the green space at the top of the hill and feels that they could still maintain the same number of units by going a little more into the buffers and putting an extra unit or 2 at the end of some of the structures that are already planned. He feels that there is a major safety factor at the bottom of the hill for children. Even though the numbers suggested in the presentation indicate that there will most likely be a minimal number of children in the development, part of what they are hoping to do with the workforce/affordable units is to bring in young families who may very well have young children. For these 8 units at the bottom of the hill, there will be no place for children to go play other than into the industrial park. He feels there is a safety factor down below that the commission should not see through.

Mr. Nickerson suggested that they draft a motion to have the Town Attorney review.

Ms. Carabelas said that if there were a way to bring those 8 units to the top of the hill; wouldn't the developer have done that?

Mr. Mulholland said that there were originally more units at the top of the hill, but staff recommended moving some of them and eliminating others to allow for more green space and create a better quality of life. He also said that the commission is within its right to modify the site plan.

Mrs. Byrnes asked if there is room at the top of the hill to do what Mr. Nickerson asked without destroying the available green space.

Mr. Mulholland said that he believes that there would be available space to do this, but would need to go over the details with the Town Engineer. He said that they would lose some of the green space in moving the units, but if that the question is if they can do it in a way that would be livable.

Ms. Carabelas said that she does not see a problem with the 8 units being at the bottom of the hill. She really likes this project because the affordable housing units are mixed in with the market rate units. She urged that the commission strongly considers approving this application as it is. She feels that asking the developer to re-engineer the site plan is an unfair expense to the developer who is trying to provide affordable housing.

Mr. Mulholland explained that it would not be a hardship on the developer to go back and re-arrange the site plan because these days, things like that are all done on computer and can modify it as they go once the preliminary information is in the computer.

Mr. Nickerson said that he wants to keep the open space in the middle of the development but put a unit or 2 at the end of some of the existing buildings. He does not believe that this is something that would hold up this project.

Ms. Carabelas said that she feels it unfortunate that they can't hear from the developer on this issue because the hearing has been closed.

Mr. Mulholland said that this level of plan is a result of the staff request to increase the open space.

**** Motion (2)**

Mrs. Carabelas motioned to approve the application of Theodore A. Harris, agent for Real Estate Service for approval of a zone change and site plan for an affordable housing development to be known as Sea Spray Condominiums. The affected properties are identified in the application as 15 Freedom Way, (Lot 28 East Lyme Assessor's Map 9.0) and 22 Liberty Way (Lot 28-1, East Lyme Assessor's Map 9.0) as presented. The site plan, as modified, now proposes a total of 110 units on approximately 10 acres of land of which 77 units would be market-rate condominium units and 33 units would be affordable condominium units. The affected properties are identified in the application as 15 Freedom Way, (Lot 28, East Lyme Assessor's Map 9.0) and 22 Liberty Way (Lot 28-1, East Lyme Assessor's Map 9.0). The Applicant's parcels are currently zoned as a Light Industrial district bordered on the west by the Rocky Neck Connector from Interstate 95 to Route 156, on the north and east by the state owned property and on the south by a Light Industrial District; and

WHEREAS, the Commission has determined that an approval of the Application would result, in fact, in a change in the zone of the designated area such that the Application is the functional equivalent of a request for a change in zone and should be treated accordingly. The Commission, having determined that the application consists of a request for a change in zone, has made the requisite referrals to the Planning Commission pursuant to General Statutes 8-3a and the Southeastern Connecticut Council of Governments pursuant to General Statutes 8-3b; and

WHEREAS, the Commission held multiple public hearings on the Application and listened to numerous hours of testimony during those hearings. In making its decision, the Commission is considering and taking into account the Application, the testimony and exhibits submitted at the hearings on the Application.

WHEREAS, for the purpose of this application, the Commission will address this motion in two separate parts:

- A. The request for a zone change to an Affordable Housing District; and**
- B. The request for approval of a site plan for an Affordable Housing Development.**

A. THE ZONE CHANGE REQUEST

WHEREAS, the Commission finds that the application for the zone change advances the substantial interest in public health and safety for reasons which are supported by sufficient evidence in the record; and

WHEREAS, the Commission finds that there is substantial public interest in the construction of affordable housing and a need for more affordable housing in the Town of East Lyme; and

WHEREAS, the application for the zone change is consistent with the Plan of Conservation and Development, providing economically diverse housing; and

WHEREAS, the proposed site is substantially free of development constraints such as wetlands, bedrock soils, steep slopes and primary aquifers; and

WHEREAS, the proposed site plan is within the boundaries of the prescribed area served by, and readily connected to, public water and sewer which the Commission deems necessary for the public health and safety in the construction of dense, multifamily residential development and such service is available; and

WHEREAS, the proposed site is located closely to major thoroughfares and would provide a minimal traffic hazard for ingress and egress to the development and would not adversely affect the traffic patterns of existing Town roads; and

Modification: The Commission expresses the following concerns and strongly encourages the developer to look at a way to incorporate the 8 units at the bottom of the development into the upper

part development without significantly compromising the design and open space available. If so modified, the new site plan would require staff approval.

BE IT THEREFORE RESOLVED, that the Zoning Commission hereby APPROVES the Applications for a change in zone to an affordable Housing District from Light Industrial District.

B. THE SITE PLAN APPLICATION

WHEREAS, the Commission finds that the site plan has been prepared in accordance with the purpose and intent of these Regulations which is to provide for safe and efficient vehicular and pedestrian circulation, prevent the erosion of soil and the excessive run-off of drainage water, protect natural resources , enhance the appearance of the Town and maintain property values through preservation of existing vegetation and planting of new landscaping material, protect adjacent properties from excessive noise, glare, heat, dust, litter and loss of privacy, and protect public health, safety and general welfare; and

WHEREAS, the proposed site plan conforms with regulations inherent to the above referenced, presently approved zone change to which the parcel is subject; and

BE IT THEREFORE RESOLVED, that the Zoning Commission hereby APPROVES the Affordable Housing site plan.

BE IT THEREFORE RESOLVED, that the Affordable Housing Application is APPROVED.

**The Motion was seconded by Mrs. Byrnes.
Motion Passed. 5-1-0**

Reason for Opposition

Mr. Nickerson explained that the reason for his opposition was because he felt that the modification should have been a part of the approval, not a suggestion.

- 4. Niantic Main Street to amend the East Lyme Zoning Regulations to permit outdoor dining/patios and to modify Section 25.5 by eliminating the restriction permitting apartments (Mixed Use) only over retail and office uses in CB Zones.**

Mrs. Byrnes noted for the record that she has read all of the meeting minutes and feels confident to participate in the panel.

Mr. Nickerson noted that there was concern at the Public Hearing about there being non-conforming changes in the regulations, but he noted that any time you make a change to a regulation, there will always be nonconforming issues. He would like to address some of these concerns.

Mr. Mulholland said that there was discussion from the public hearing that the public had concern about nonconforming, canopies, side curtains and parking. Going right to the outdoor dining, there has been a modification to # 5 which now requires full course meals to be served on the outdoor patio if there is to be alcohol served.

Mr. Peck expressed that he feels that the public filed this application so full of holes that if they were to try to correct it, that it would be illegal for them to adopt it.

**** Motion (3)**

Mr. Peck motioned to deny the Application of Niantic Main Street to amend the Zoning Change to permit outdoor dining/patios and to modify Section 25.5 by eliminating the restriction permitting apartments (Mixed use) only over retail and office uses in CB Zones. He strongly recommends that the applicant come back to the commission with a similar motion that addresses the concerns presented by the Zoning Commission and public.

The Motion was seconded by Ms. Carabelas.

Discussion

Mr. Nickerson said that he's not sure that the arguments that were proposed were substantiated.

Mr. Peck feels that the topic of alcohol, music and outdoor dining are very sensitive items that he feels should be re-examined.

Mr. Mulholland said that #12 of the application said that music may be permitted with a special permit in accordance with Section 25. This would require a special permit for those activities.

Mr. Peck thinks that this application could be better written.

Mr. Nickerson said that they could appoint a sub-committee to bring this back before the Zoning Commission.

Mr. Peck said that there were members of the public at the last hearing who had expressed an interest and who might be willing to sit on a sub-committee with a couple members of the Zoning Commission to work through these issues.

Mrs. Byrnes said that she would want to keep the ball rolling on this and asked if there's a way to do that and continue it.

Mr. Nickerson said that he thinks that if they start putting this into a sub-committee it will not be back before them for a couple months.

Mrs. Byrnes asked Mr. Peck what his concerns are.

Mr. Peck said that he thinks that the regulations should be more flexible and that they are too tight in a lot of places. He feels that this should give the commission some flexibility to waive/adjust things.

Mr. Nickerson suggested annual permits.

Mrs. Byrnes said that the 10PM cut off for the outdoor dining is too early.

Mr. Nickerson called for a vote on the motion on the table.

Motion Passed. 6-0-0

Mrs. Byrnes said that if they are going to appoint a sub-committee she would like to see this application back in front of the commission quickly. She feels this is a good thing and it would be a good draw for downtown Niantic.

- 5. Affordable Housing Application of Landmark Development Group, LLC for (a) amendment of Section 32 of the East Lyme Zoning Regulations ("Affordable Housing District") and (b) rezoning the property identified in the Application as land of Jarvis of Cheshire, LLC and Sargent's Head Realty Corporation, identified on East Lyme Tax Assessor's Map 27, Lot 14; Map 31, Lot 4; Map 31.2, Lots 3 & 8; Map 32.1, Lots 2 & 36; Map 32, Lot 1, from its existing Zoning Designation to an Affordable Housing District Designation.**

Mr. Mulholland said they will be ready for discussion on November 17th and that they have been in discussion with the Town Council about this application. As the commission is aware they have had 2 previous applications by this applicant, all of sensitive issues so it is very important that the commission write some notes and be prepared for the discussion on November 17th so that the commission can bring that to conclusion.

Mr. Nickerson asked if a decision needs to be made that night.

Mr. Mulholland said that he believes that the cut off date is a few days after that and he will double check on that. He also said that council will be there in case they need to draft a motion that night. In addition, Mr. Mulholland believes that there will be time for a back up date if the commission needs it.

Mr. McLaughlin asked when the year ends.

Mr. Nickerson said that the year ends December 1, 2005

6. 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 said that he needs more time to think about this application.

Mrs. Byrnes said that she wishes they could have a design like what was proposed for the Sea Spray development.

Mr. Nickerson said that he would like to take some time to look over this application and walk around the site.

Mr. McLaughlin said that he has done just that and feels that it will not be as overwhelming as it seems.

Mr. Nickerson called for a motion to continue the application.

****Motion (4)**

Mrs. Byrnes motioned to continue 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 Street, Niantic, CT. The property is further identified in the application as East Lyme Assessor's Map 12.1, Lot 120. The Motion was seconded by Mr. McLaughlin.

Discussion

Mr. Peck feels that the new design is an improvement from the original design. He likes the Main Street side of the building. He's not in love with the water side but feels that it is acceptable.

Mr. Nickerson said that he's borderline.

Mrs. Byrnes said that she's hoping for better then acceptable for a downtown that they are trying to pull up.

Mr. Nickerson and Mrs. Byrnes agree that it is better then the original design.

Mrs. Carabelas thinks that it is better and that she understands what they are trying to do on the water side of the building and doesn't think it will be that bad. The only thing that she feels doesn't fit are the stairwells. She likes everything else.

Mr. Gada said that he would like to see something done with the stairwells as well, but you can only do something with what you have to work with.

Mr. Peck asked Mr. Mulholland if they have exhausted the efforts as far as architecture with the applicant.

Mr. Mulholland said that he doesn't think so. These buildings are always a scale of economics as well as a thing of beauty. The applicant expressed that they don't feel it's possible to enclose the stairwells.

Mr. Peck said that they are trying to promote people living downtown.

Mr. Mulholland said that they have variety in the downtown area to take into consideration when deciding what is acceptable.

Mr. Nickerson called for a vote to the motion on the table.

Motion Passed. 6-0-0

Old Business

1. Stormwater

Mr. Nickerson said that they have a sub-committee assigned.

Mr. Peck recommended that the commission review the study done in the Waterford Glenbrook Green community where ½ of the development was done in a traditional 60's, 70's, 80's classic curbing drainage and the other half of the community was done in old fashioned, non-curbed sheet drainage and the old/new way has proven over 10 years to be much better and has been monitored by the DEP. He suggested that the committee and planning board adopt these ideas. He gave the commission a copy of the study.

Mr. Nickerson suggested that someone bring a copy of this study to the planning commission next time they meet so that they can all be on the same page.

Mr. Mulholland said the he will share this information with the Planning Commission and he will include this in the initial packet of information that they are putting together for this.

2. Aquifer Protection

Mr. Nickerson met with the Board of Selectmen.

Ms. Carabelas said that the Board of Selectman voted and made the Zoning Commission the official Aquifer Protection Agency in the town.

Mr. Nickerson said that this means that they will start adopting Aquifer protection into the Zoning Regulations. He also said that there will be mandatory regulations that will go into effect in 2008.

3. Subcommittee – Niantic Village – CB Zones (Mark Nickerson & Marc Salerno)

New Business

1. Application of Pete 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.

This was not heard.

2. Any other business on the floor, if any, by the majority vote of the Commission.

There was none.

3. Zoning Official

Mr. Mulholland suggested that the commission hold a special meeting on December 15, 2005 to address the proposed amendment by Mr. McNamara who applied to amend Section 32, Affordable Housing Regulations.

4. Comments from Ex-Officio

Rose Ann Hardy, Ex-Officio, said that the Board has discussed the Public Safety building proposal again. The study that they hired a separate analyst to do, has been returned and the High School came out with the highest rating. However, the board is aware that this does not take into account the sociology or culture of the town. They are going to have a workshop session and will have the Public Safety Board come in and hope to move forward with a site.

The Darrel Quam special taxing district is still under consideration. They have their economic advisor of the town doing some research. They are trying to find an independent person to do an economic analysis for them. She feels this would be good for the town, but they have not decided on that individual yet.

The Board of Selectman passed 4 ordinances last night:

- The first for tax relief of the elderly which has 2 components:
 - o Income based: would allow for credits for the appraised value of the property.
 - o Deferred plan and "charge" their taxes and the taxes would be paid at the sale of the property with interest or as a part of the individuals' estate.
- Veterans who automatically receive a \$2,000 tax exemption from the State of Connecticut, the town can also provide additional relief. After going to public hearing they decided on an additional income qualified \$5,000 exemption and this is off the assessed property value, not off the bottom line of the tax bill. There are about 99 people who would qualify for this.
- They passed an exemption for handicap people who have a vehicle that has been modified for primarily handicap uses. This will affect 13 individuals.
- They passed an ordinance that made the Zoning Commission the official Aquifer protection agency for the Town of East Lyme.

They are looking at a proposal from CL&P that will allow the town to own their own utilities.

Mrs. Byrnes said that she was very interested in the DEP moving to a clean energy building in San Diego. She said that there's a building out in San Diego got almost all of their building paid for by making it a "Green" building.

Ms. Hardy said that they are looking into the possibility of making the new Public Safety building a "Green" building.

Mr. Nickerson asked if they put the Public Safety building on High School grounds, would they be taking away a field in the back?

Ms. Hardy said that the initial drawing showed that they would need to take a corner of one of the fields and a portion of another. Perhaps, if that were the site, someone with a little more creativity could position it differently.

Mr. Nickerson said that from what they hear now from parents, they don't have enough fields to practice and taking away some of the existing fields would be moving backwards.

Ms. Hardy said that the Roxbury Rd and Society Rd's both have very high potential.

5. Comments from Zoning Board liaison to Planning Commission

6. Comments from Chairman

Mr. Nickerson asked that commission look over all the notes carefully from beginning to end to refresh their memories. He reminded the commission that people have a tendency to remember what they last heard so it's important that they re-read everything to have a full picture of what they need to go over.

7. Adjournment

Mr. Nickerson called for a motion to adjourn at 9:45 PM

**** Motion (5)**

Mrs. Byrnes motioned to adjourn the November 3, 2005 meeting of the East Lyme Zoning Commission.

The Motion was seconded by Mr. Gada.

Motion Passed. 6-0-0

Respectfully submitted,

Beth Williams,
Recording Secretary (Pro-Tem)