

**EAST LYME ZONING COMMISSION
REGULAR MEETING
Thursday, OCTOBER 20th, 2005
MINUTES**

FILED IN EAST LYME
Oct 31, 2005 AT *8:40* M^a
L. A. Blais
EAST LYME TOWN CLERK

PRESENT: Mark Nickerson, Chairman, Rosana Carabelas, Secretary,
Norm Peck, Ed Gada, William Dwyer, Alternate, Shawn
McLaughlin

ALSO PRESENT: William Mulholland, Zoning Official

ABSENT: Pamela Byrnes, William Henderson, Marc Salerno (Left at
7:50 PM)

PANEL: Mark Nickerson, Chairman, Rosana Carabelas,
Secretary, Ed Gada, William Dwyer, Alternate, Shawn
McLaughlin, Norman Peck

1. Call to Order

Chairman Nickerson called the Regular Meeting of the Zoning Commission to order immediately following the three previously scheduled Public Hearings.

2. Approval of Minutes – Public Hearing I, II & III and Regular Meeting Minutes of September 1, 2005, Public Hearing I, II, & III and Regular Meeting Minutes of September 15, 2005 and Public Hearing I, II, III, IV, & V and Regular Meeting Minutes of October 6, 2005.

Mr. Nickerson called for a Motion for the September 1, 2005 Meeting Minutes.

**** Motion (4)**

Mr. Peck motioned to approve the Regular Meeting Minutes and Public Hearings I, II, III meeting minutes from September 1, 2005.

The Motion was seconded by Mr. Dwyer.

Motion Passed. 5-0-1

Mr. Nickerson asked that the Meeting Minutes from September 15, 2005 and October 6, 2005 be tabled until the next meeting.

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. Peck removed himself from the panel for the discussion about the application for Sea Spray Condominiums because he had not been present for both meetings. There will only be five on the panel for this discussion.

Mr. Nickerson asked for the staff to craft motions for the Zoning Commission to vote on for the Sea Spray Condominiums Application.

Mr. Mulholland said that he will have the Motion crafted for the November 3, 2005 meeting of the Zoning Commission.

Mr. Nickerson asked to open the floor for discussion, but does not feel that they should vote on the application at this time.

Mr. Dwyer asked if the changes requested by the Water and Sewer Commission were complied with.

Mr. Mulholland said that the applicant will have to deal separately with the Water and Sewer Commission. Those changes will be reviewed by the Water and Sewer Commission if the Zoning Commission approves the application.

Mrs. Carabelas thinks that this is a really good looking application and that this is what this town needs and is leaning very much in favor of the application. Her biggest concern is the traffic but she feels that will be addressed by the state traffic commission. She doesn't think that losing the acreage in the back of the industrial park will have a negative impact on the development of the industrial park because of the remaining space that will still be available for development.

Mr. Dwyer asked how the attorneys feel about losing the industrial area to affordable housing.

Mr. Mulholland said that the letter from the town attorney that was read into the record at the beginning of the meeting said that the only time that the zone change from an industrial zone to a residential zone would be an issue would be during the appeals process. During the appeals process the onus will fall back to the applicant to prove that an affordable housing development should be reason for this zone change.

Mr. Nickerson said that the summary of the letter from the town attorney was not to worry about that right now. Just judge the application on its own merit and that if they choose to deny it, they can worry about the details of that at that time. If they deny it, the difference will be that when they choose to defend their decision, the onus will fall to the applicant.

Mr. Gada asked if that's why the town attorney was hesitant when asked to come up with a constructive motion when asked to do so by the staff.

Mr. Mulholland said that they have to be aware that the staff and the attorney are directed by the commission. They draft the motions in accordance to the direction that the commission is going.

Mrs. Carabelas said that she's not clear as to why they can't vote on it tonight.

Mr. Nickerson said that he would not want to vote on it tonight. He feels that there is still a lot of material he wants to go over and that a lot that he needs to review. He has concerns about adopting certain changes in order to approve this application and then being bound by those changes on future applications.

Mrs. Carabelas asked why they did not receive this information earlier.

Mr. Mulholland said that some of the material was just handed in by the applicant tonight.

Mr. Nickerson said that affordable housing is important. They need to diversify the town and make it more affordable. The buildings look outstanding. They look like they belong in East Lyme. The site is near the highway, has water and sewer. The site and design meet several of their major check points. His concerns are over the six or seven units at the bottom of the hill that don't belong. They have a cluster of buildings and then these other units that just don't belong. It's one thing when you're at the end of the cul-de-sac. He is concerned about taking away precious industrial real estate in the town. He feels that it may take fifty years to get built on but when it does eventually get built on, it will be done as they want it done. The reason that he asked tonight if these units will be condos is because now, they're going to have a group of tax paying property owners who are going to have a say in what their neighborhood is going to look like. He's concerned that they will never get the other four or five industrial lots developed because the next time that they try to put an industrial business in the industrial park they will have several property owners at the Zoning Commission Hearing opposed to its development. He thinks it's a great location if the access point wasn't through the industrial park if the access point was not through the industrial park. He knows that is not possible though.

Mrs. Carabelas asked why the access point is an issue.

Mr. Nickerson said that the next use for the park could be something like a trucking terminal or another use that would not be appropriate for a residential area with children playing in the street. He feels that having children playing in a business park would not be appropriate.

Mrs. Carabelas raised the issue that from what they've been told there would not be very many children up there. The calculation that they were given was .16 children per unit.

Mr. Nickerson said that they have no way to know how many children will really end up being up there. Where are we going to put the next business park?

Mrs. Carabelas asked where the next affordable housing development. Developers don't want to put affordable housing in a residential area when they can build multi-million dollar homes.

Mr. Nickerson said that he agrees that they do need the affordable housing, but that he does not feel that it belongs in the industrial park.

Mr. Dwyer said that there is property throughout the town that can be used. He said that they can't worry about every individual contractor and that if they put the affordable housing development in there, it will cost them the industrial area.

Mrs. Carabelas said that they are using a small area and that there's still room to develop businesses and bring in jobs.

Mr. Nickerson said that they don't know who the next tenant in the business park will be, but that it could be someone who will bring in a lot of jobs and tax revenue for the town.

Mr. McLaughlin feels that there have been opportunities for the last fifteen years for businesses to come in and that now they have the opportunity to bring in affordable housing. He feels that the town needs the affordable housing.

Mr. Gada said that he agrees with a lot of things that both Mr. Nickerson and Mrs. Carabelas have said and he is waiting for more information from the town attorney.

Mr. Nickerson said that none of them are ready to make a decision of this tonight. He hasn't made his decision. They are just airing out the issues. He said that those are town roads in the industrial park. He asked Mr. Mulholland to have the town attorney draft two motions as well has to have a draft done for some suggestions of the affordable housing ranks as being presented to them. He said that they will have to make sure that it reads as they want it to because the next affordable housing application that they look at will have something to base their application on.

Mrs. Carabelas said that she hopes that they don't let what is coming before them next week to influence how they vote on this application.

Mr. Nickerson agreed that both applications stand alone.

Mr. Dwyer said that the difference between the industrial building and this housing development tax base is not an issue because all they would need is ten children in the development and it would throw out their entire tax base.

Mr. Nickerson asked to move on to the next item on the agenda.

Mr. Peck rejoined the panel.

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.

Mr. Nickerson said that the application has been closed.

Mr. Mulholland said that he will discuss the status of the application with Barbara Richardson Crouch and will advise as to the status of the application.

5. 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 noted that this application has been continued.

6. Application of Joseph E. Arborio for a Coastal Area Management Site Plan Review to repair an existing sea wall and wooden stairs at property located at 243 Giants Neck Road, Niantic, CT. The property is further identified in the application as East Lyme Assessor's Map 4.10 Lot 3.

Mr. Nickerson asked Mrs. Carabelas to read the following into the record:

- Memo to East Lyme Zoning Commission from William Mulholland, Zoning Official, dated October 20, 2005. RE: CAM Application – Seawall Repair – 243 Giants Neck Road. Mr. Arborio is applying for a coastal area site plan review to repair a seawall and replace stairs at 243 Giants Neck Road. While the proposed repair activity is considered minor in nature, statutes require the commission to perform a review. As the commission is aware, the board must find that there are not any adverse impacts from the proposed activity on coastal resources. Should the commission approve the application, an additional permit is required to be obtained from the Connecticut Department of Environmental Protection office of Long Island Sound Programs.
- Memo from Marci Valent, Senior Coastal Planner, CCMA sent Monday October 17 to Bill Mulholland, Zoning Official by e-mail and CC's to E. Napolitano at East Lyme Town Hall. The subject is "Comments on 243 Giants Neck Road". The CAMS application was forwarded to her pursuant to CGS Section 22A-109-D of the Connecticut Coastal Management Act (CCMA). The applicant proposes to repair an existing sea wall and stairs for safety reasons. The project appears to require a permit authorization from her office. The local ISP has advised the applicant to seek this authorization through their permitting section and has forwarded application materials for his use. The office of Long Island Sound Programs is waiving their right to review the application for consistency with the goals and policies of the CCMA pursuant to 22A-109D, at this time. They will review the application in its entirety during the permit review process. They have attached a mandatory referral fax sheet for the commission's information.

Mr. Nickerson asked Mr. Arborio for whatever detail he can provide

Mr. Arborio explained that they want to repair the existing sea wall. Part of the sea wall is granite and the other part is concrete blocks. The concrete blocks are deteriorating and they are concerned that eventually the wall will collapse. He wants to put a concrete facing into the wall itself and anchor the new wall into the existing blocks. There is also a wooden stairway that goes from the concrete stairs up to a cantilevered platform. They want to replace the wooden stairs with concrete stairs. Their concern is that cantilever at the top of the stairs. When that was put in the used a heavy steel angle that goes into the concrete block and there's no way to check the integrity of that angle. The stairs have been drifting away from the wall so they know that the angle is bending. He has seven grandchildren, a number of which are teenagers and he worries about it collapsing. All of the work would be done from the land side. There would be no equipment in the water or on the sand. He is in the process of making an application to DEP. All of the work will be done within the property boundary. They had hoped to get it done this fall, but that is doubtful with the process.

Mr. Gada asked if they are under the train tussle.

Mr. Arborio said that that are beyond it. He suspects that the granite wall was put in after the 1938 hurricane.

Mr. Nickerson asked if Mr. Mulholland was good with the application.

Mr. Mulholland said yes.

Mr. Nickerson asked for a motion.

**** Motion (5)**

Ms. Carabelas motioned to approve the application of Joseph E. Arborio for a Coastal Area Management Site Plan Review to repair an existing sea wall and wooden stairs at property located at 243 Giants Neck Road, Niantic, CT. The property is further identified as East Lyme Assessor's Map 4.10, Lot 3. REASONS: Applicant has demonstrated that he has taken all reasonable measures to protect coastal resources and that the proposed activity will not have any adverse impacts. The Motion was seconded by Mr. Gada. Motion Passed. 6-0-0

Mr. Arborio said that as a citizen he appreciates the work that the Zoning Commission does and that it has been a great enlightenment to come here and watch the process they go through.

7. 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. Nickerson said he would like to spend an evening going over this application. He also asked that the commission really do their homework and learn everything that there is to know about affordable housing.

Mr. Gada asked when the clock ends for them to make their decision.

Mr. Mulholland said that they have 65 days from the date that the hearing was closed which was October 6, 2005 to make their decision.

Mr. Nickerson said that with affordable housing is charged with the burden of making any reasonable changes to the application and said that he wants to meet on this after the election, but before the new board comes in.

Mr. Mulholland suggested a special session before the December 17, 2005 meeting.

Mr. Nickerson agreed that they should do a special meeting and devote the entire meeting to this application.

Mr. Mulholland reminded the commission that the most important thing for an affordable housing application is that reasons for the approval/denial because it can be litigated from either side so they want to ensure that they have a very clear and precise record on the motion.

Old Business

1. Stormwater

There were no comments.

2. Aquifer Protection

Report from the Aquifer Protection sub-committee:

Mr. Nickerson made a presentation on behalf of the Zoning Commission to the Board of Selectmen. It's a land use issue. There are a lot of new maps and new regulations coming out in 2008 or 2009. The presentation last night was to inform the Board of Selectman that the Zoning Commission would be the obvious choice to continue as the Aquifer Protection Local Agency. They will have a decision on an ordinance that they are working on within the next couple of meetings.

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

This is being worked on as time permits.

Mr. Nickerson called for a recess.

New Business

1. Application of Jeffery A. McNamara for a text amendment to the East Lyme Zoning Regulations Section 32, Affordable Housing District.

Issue was not heard.

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

Issue was not heard.

3. Zoning Official

Issue was not heard.

4. Comments from Ex-Officio

Issue was not heard.

5. Comments from Zoning Board liaison to Planning Commission

Issue was not heard.

6. Comments from Chairman

Issue was not heard.

7. Adjournment

**** Motion (6)**

Ms. Gada motioned to adjourn the October 20, 2005 meeting of the East Lyme Zoning Commission. The Motion was seconded by Ms. Carabelas.

Motion Passed. 6-0-0

Respectfully submitted,

Beth Williams,
Recording Secretary (Pro-Tem)