

**EAST LYME ZONING COMMISSION  
REGULAR MEETING  
Thursday, OCTOBER 18th, 2007  
MINUTES**

The East Lyme Zoning Commission held a Regular Meeting on October 18, 2007 at Town Hall, 108 Pennsylvania Avenue, Niantic, CT.

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

**ALSO PRESENT:** Joe Barry, Alternate  
William Dwyer, Alternate  
William Mulholland, Zoning Official

**ABSENT:** Pamela Byrnes

FILED IN EAST LYME TOWN  
CLERK'S OFFICE

Oct 22 20 07 at 3 45 AM  
PM

*Esther B. Williams*

EAST LYME TOWN CLERK

The Pledge was observed.

**1. Call to Order**

Chairman Nickerson called this Regular Meeting of the Zoning Commission to order at 9:10 PM after the previously scheduled Public Hearing.

**Public Delegations**

Mr. Nickerson called for anyone from the public who wished to address the Commission on subject matters not on the Agenda.

There were none.

**Regular Meeting**

**1. Application of Black Sheep LLC for a special permit for "Restaurant Outdoor Dining" at 247 Main Street, Niantic, CT**

Mr. Peck recused himself from discussion on this application and was seated in the audience.

Mr. Nickerson seated William Dwyer, Alternate at the table for this application.

Mr. Nickerson called for discussion on this application.

Mr. Mulholland suggested that they be specific in setting times for outdoor seating, music and when the tables will be cleared by.

The Commission members discussed and agreed upon times and noted that they were looking to have a vibrant downtown but to also integrate well within the mixed use area. It was also noted that this special permit renews each year and that it has to be re-applied for in order for it to be renewed.

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

Ms Carabelas moved to approve the application of Black Sheep LLC for a special permit for "Restaurant Outdoor Dining" at 247 Main Street, Niantic, CT with the following conditions:

- ◇ The outside live acoustic music will not have an amp on the guitar, only the microphone and will be cut off at 8 PM.
- ◇ The soft, background, outside dinner music from the speakers will be shut off at 10 PM.

- ◇ **10 PM will be the time of the last outdoor seating and there will not be anybody on the patio after 11:30 PM.**
  - ◇ **The setback requirements will be waived to zero as per the site plan.**
  - ◇ **A sign will be posted that there is 'No Sitting on the Wall' outside in the patio area.**
- Mr. Dwyer seconded the motion.**

Mr. Nickerson said that they are comfortable with the square footage of the patio area as it is computed based on interior area. He then called for a vote on the motion.

**Vote: 6 – 0 – 0. Motion passed.**

Mr. Mulholland said that this would publish on October 25, 2007 and become effective on October 26, 2007. Note: Mr. Peck was re-seated at the table and Mr. Dwyer returned to the audience.

**2. Request of Gerwick-Mereen LLC for a waiver of Section 24.6-C "Sidewalks" for a property identified in the application as 279 Boston Post Road, East Lyme, CT**

Mr. Nickerson said that this has been rescheduled to the November 15, 2007 meeting of the Commission.

**3. Application of Landmark Investment Group, LLC ("Landmark") for approval of a text amendment to Section 32 of the East Lyme Zoning Regulations adding a Section entitled "Affordable Housing District" (AHD);**

**4. Application of Landmark to rezone land of Jarvis of Cheshire, LLC and Landmark Development Group LLC from its existing zoning designation to an Affordable Housing District. The application is in connection with a proposed Affordable Housing Development to be known as "River View Heights VI (A Residential Community)". The property to be rezoned is located immediately southeast of River Road, Hill Road and Calkins Road, west of the Niantic River and Quarry Dock Road, and east of King Arthur Drive and is further identified in the application.**

**5. Application of Landmark for approval of a Preliminary Site Plan for the construction of between 1548 and 1720 units under the newly proposed Section 32 of the zoning regulations.**

**6. Application of Landmark for approval of a coastal management Site Plan.**

Mr. Mulholland said that they would have to make a decision on these applications at the first November meeting of the Commission and suggested that they give staff some direction on the type of draft motions that they would like to see. He said that Attorney Foley has suggested that they all read the September 3, 2004 decision that Judge Quinn rendered. He passed out a copy of this 23 page decision for everyone to review.

Mr. Nickerson said that he would like staff to do some draft motions.

Mr. Gada agreed and said that they should see draft motions both for and against the applications.

Mr. Nickerson asked if they had any other comments that they wanted to discuss so that they could be a part of the potential motions.

Ms. Carabelas said that she had reviewed their Section 32 – Affordable Housing regulations and had also reviewed carefully the ones that were being proposed by the applicant and that there is a big difference.

Mr. Bulmer said that he thought the same thing and that he was going to go over the differences in detail for the record.

Mr. Nickerson noted to Ms. Carabelas and Mr. Bulmer that it would mean nothing as anyone can come and present their own Affordable Housing regulations and the Judge would still say that you have an Affordable Housing application before you and what are you going to do about it. They can come with their own Affordable Housing regulations.

Mr. Mulholland again suggested that they review the 2004 decision as Attorney Foley has also suggested.

Mr. Nickerson said that in making a decision that they should focus on the information that they have received testimony on.

Mr. Gada said that he thinks that there is something that could be a potential problem with passing the application. He said that Mr. Gerwick has brought certain things to them regarding the potable water testing and how certain sites can be selected that can favor or disfavor what the applicants want to do. He asked if they should seek a legal opinion on that as it could be taken in favor of both sides as it appears now.

Mr. Mulholland said that they have heard testimony from the applicants' witnesses and from the interveners' witnesses and that they have to weigh it based upon the experts' testimony that they have heard.

Mr. Salerno said that he agrees with Mr. Gada that they have evidence that was part of a complete study and that there was something like 23 test pits that were dug and the applicant presented some seven (7) that tended to agree with the NL County Soil Survey rather than all of the test pits which would not have agreed with it. He said that while both the applicant and intervener did present the information on all of the test pits that only a certain number were used in the discussion by the applicant.

Mr. Mulholland said that the onus is on the Commission to weigh all of the information that they have received.

Mr. Nickerson noted that he was disappointed at how the information gets presented and the time frames as some of the more comprehensive information was presented in the eleventh hour. He said that they should read the Judge Quinn 2004 decision and decide if they should hold a special meeting for the purpose of rendering a decision on these applications or if they feel that they can address it during the course of their next regular meeting.

Mr. Peck noted that he has an old piece of law that he has been using throughout all of these applications regarding Affordable Housing. It is a copy of Chapter 51 of Judge Fuller's book. He said that he thought that everyone should have a copy of it as it is extremely useful and narrows the Affordable Housing Issue down to four (4) items that need to be considered.

Mr. Mulholland said that he would have the pages copied and sent out to all of the Commissioners to have and to review.

#### **7. Approval of Minutes – Regular Meeting Minutes of October 4, 2007.**

Mr. Nickerson called for discussion on, or corrections to the Regular Meeting Minutes of October 4, 2007.

#### **\*\*MOTION (2)**

**Ms. Carabelas moved to approve the Regular Meeting Minutes of October 4, 2007 of the Commission as presented.**

**Mr. Peck seconded the motion.**

**Vote: 5 – 0 – 1. Motion passed.**

**Abstained: Mr. Bulmer**

#### **Old Business**

##### **1. Stormwater**

There was nothing new to report.

##### **2. Subcommittee – Niantic Village – CB Zones (Mark Nickerson, Marc Salerno & Norm Peck)**

Mr. Nickerson said that they would get back to working on this.

##### **3. By-Laws Subcommittee (Mark Nickerson & Pamela Byrnes)**

Mr. Nickerson said that he would like them to have these for the next meeting of the Commission to act on.

##### **4. Subcommittee – Adult Uses (Rosanna Carabelas)**

Ms. Carabelas said that she has information that she will copy and present to them.

Mr. Mulholland said that he was talking with Attorney Foley and that he said that he did his thesis on adult uses and that he would be willing to give them a presentation on it.

## **5. Subcommittee – Government Buildings (Mark Salerno, Rosanna Carabelas)**

Mr. Mulholland noted that they had received a draft report in their packets

Mr. Salerno said that he thinks that what was presented is something that they can work with and suggested that they send it to a Public Hearing and asked how long that would take.

Mr. Peck asked if it had any 'teeth' to it.

Mr. Mulholland recapped the information noting that it would be by Special Permit regarding government buildings and that it is under the sole jurisdiction of the Zoning Commission. In response to how long it would take to get this to a Public Hearing, he said that he would need approximately 40 days.

Mr. Peck asked what happens if, for instance, they want to do a Public Safety building – does the Town come before the Zoning Commission first and what if the Town votes in favor of the project first and then the Zoning Commission does not grant a permit for the site or for some reason.

Mr. Mulholland explained that they would have to come before the Zoning Commission and that typically applicants get their information together first and go before Zoning first, before presenting something to the public that just may not pass muster later. This is within the jurisdiction of Zoning.

Mr. Peck said that he thinks that they may be taking the vote away from the townspeople. He said that he would like a legal opinion on this before they proceed.

Mr. Nickerson recalled that there was a Public Safety building that never got to go before the townspeople for their input because the Finance Board shot it down and would not allow it.

Mr. Salerno noted that the public could come before them at public hearing and at public hearing on the proposed project.

Mr. Mulholland said that he could get an opinion from the Town Attorney. He added that the Town by its' legislative body can also exempt itself.

Ms. Carabelas said that this does not deny the building of something; it is just insuring that it is built to the standards that others are already held to.

Mr. Salerno said that it is really like a company that comes through the process and has to obtain approvals. Mr. Peck said that perhaps the answer is that it should come by them first.

Mr. Mulholland said that they do not have a choice of which comes first and that he would get an opinion from the Town Attorney.

Ms. Carabelas cited a case in Vernon where a fire department wanted to put a cinder block building to house a fire apparatus between two newer homes and the P & Z Commission denied it as not being appropriate for the area.

Mr. Salerno said that he could see how that would not be appropriate and should not be allowed.

### **New Business**

#### **1. Any other business on the floor, if any, by the majority vote of the Commission.**

There was none.

#### **2. Zoning Official**

Mr. Mulholland reported that the Starbucks building has gone up and that the sidewalks are going in. They will also be seeing some more Affordable Housing applications coming along. McDonald's will be back on the November 1, 2007 meeting agenda and he has not heard anything as of yet from the Gateway project. He said that he has also been working with Mr. Frey on the facades for 38 Hope Street and that this is good ground work for the Darrow Pond project design book.

Mr. Peck asked about the Planning moratorium and where that stood.

Mr. Mulholland said that his understanding was that it was continued to the next meeting of that Commission as they had trouble getting a quorum.

Mr. Bulmer asked about the Darrow Pond project.

Mr. Mulholland said that he has not heard other than the design book that he just mentioned which would follow from the 38 Hope Street project that is being worked on now.

Ms. Carabelas asked about an architectural review board and if they should consider having one.

Mr. Mulholland said that his experience with other Towns has shown that such a board is only as good as the participants on it and that it varies considerably.

Ms. Carabelas said that she would suggest that it be kept to reviewing the commercial properties only.

### **3. Comments from Ex-Officio**

Ms. Hardy was not present and there was no report.

### **4. Comments from Zoning Commission liaison to Planning Commission**

No one was present to comment.

### **5. Comments from Chairman**

Mr. Nickerson reminded everyone that they might need a Special Meeting, or to start the next Regular Meeting early, to render the Landmark decision and said that he would poll everyone and also speak with the Town Attorney and would get back to everyone accordingly on what they would do.

### **6. Adjournment**

#### **\*\*MOTION (3)**

Mr. Salemo moved to adjourn this Regular Meeting of the East Lyme Zoning Commission at 10:20 PM.

Mr. Bulmer seconded the motion.

Vote: 6 – 0 – 0. Motion passed.

Respectfully submitted,

Karen Zmitruk,  
Recording Secretary

# Town of

P.O. Drawer 519  
Zoning Department



# East Lyme

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October 17, 2007

TO: East Lyme Zoning Commission  
FROM: Mark Salerno & Rosanna Carabelas  
RE: Subcommittee Report/Government Buildings

As you may recall the commission recently discussed the issue of how municipal buildings and uses are regulated by our zoning ordinance. After some debate, the board concluded that we should form a subcommittee to review the pertinent regulations to ensure they are concurrent. Mrs. Carabelas and I were assigned as the subcommittee. We reviewed the current zoning regulations, which are attached for your convenience and found that "municipal uses" are regulated under our general regulations found in Section 20 of the code. Specifically, section 20.1 and 20.1.1, which states the following:

20.1 USES PERMITTED IN ANY DISTRICT - The following uses are permitted in any Zoning District subject to these regulations:

20.1.1 Streets, public schools, fire departments, libraries, Public and Subdivision Open Space, parks and playgrounds and other Town buildings and uses.

Based on the current regulations we concluded that our zoning ordinance essentially allows these uses as outright permitted uses with little regulatory control. It is our view that municipal uses and buildings should be subject to the requirements of a special permit.

The Special Permit process requires an application to meet the regulations found in section 25 "Special Permits". This section also requires submittal of a site plan, which conforms to section 24 "Site Plan Review Requirements". As the commission is aware, when acting upon a special permit the board acts in an administrative capacity. Robert A. Fuller, author of "Land Use Law and Practice", notes that when acting upon a special permit the commission's "function is to determine whether (1) The applicants proposed use of the property is expressly permitted under the commission's regulations; (2) whether the standards in the relevant zoning commission's regulations are satisfied; and whether conditions necessary to protect the public health, safety, convenience and property values, as provided by section 8-2 of the general statutes, can be established". As a result of our finding we recommend that the zoning commission modify Section 20 by adopting the following:

Delete: From section 20.1.1 "public schools, fire departments, libraries and other Town Buildings and uses"

Attachment

Zoning Req. mts.

10/18/07

Old Business Item 5.

Section 20.1.1 would then state: streets, public and subdivision open space parks and playgrounds.

Add: New section (F) to section 20.1.2 (F) "Town Buildings and Uses"

Note: Public schools, fire departments, and libraries are considered as Town Buildings and uses.

Section 20.1.2 currently states: The following uses are permitted in any Zoning District when granted as a Special Permit by the Zoning Commission subject to appropriate controls as set forth in Section 25.5 of these regulations.

- (A) Churches and religious institutions, and human Cemeteries (with or without religious affiliations).
- (B) Railroad and public utilities.
- (C) Private, non-profit club or lodge
- (D) Private, non-profit schools
- (E) Telephone exchange stations and electric transformer substations are permitted uses in any district subject to the following:
  - (i) The minimum lot area shall be as required by the applicable district or 20,000 square feet, whichever is less.
  - (ii) No building shall be located within 50 feet of any property line.
  - (iii) The station or substation shall be suitably screened by a fence and/or landscaping.

→ Add letter (F) "Town Buildings and uses"

This change would require a special permit approval from the zoning commission for all Town buildings and uses. Special permits are required to meet the standards found in section 25 (Special Permits) and section 24 Site Plan Review Requirements.

This change is intended to be in keeping with the purpose of the zoning regulations as stated herein.

\* **PURPOSE:**

These Regulations are adopted for the purposes set forth in the General Statutes of the State of Connecticut, namely to promote the health, safety and general welfare of the Town of East Lyme, by:

- ❖ Preventing the overcrowding of land and avoiding undue concentration of population;

- ❖ Preventing or lessening congestion of the public highways;
- ❖ Providing for the preservation of desirable open space, tree cover, historic sites, recreation areas, scenic vistas, stream valleys, wetlands and related water sources, and other environmentally important lands, soiled and geologic phenomena;
- ❖ Encouraging energy efficient development;
- ❖ Providing adequate open spaces for light and air;
- ❖ Securing safety from fire, panic, flood and other dangers;
- ❖ Facilitating adequate provisions for transportation, water, sewage disposal, schools, parks and other conveniences;
- ❖ Stabilizing and conserving the value of land, homes and other buildings;
- ❖ Encouraging the most appropriate use of land throughout the town; and
- ❖ Providing proper provision for soil erosion and sediment control.