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**EAST LYME ZONING COMMISSION
PUBLIC HEARING I
Thursday, OCTOBER 18th, 2007
MINUTES**

The East Lyme Zoning Commission held a Public Hearing on the Application of Black Sheep LLC for a Special Permit for "Restaurant Outdoor Dining" at 247 Main Street, Niantic, CT on Thursday, October 18, 2007 at Town Hall, 108 Pennsylvania Avenue, Niantic, CT. Chairman Nickerson opened the Public Hearing and called it to order at 7:33 PM.

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

ALSO PRESENT: Leo Roche, Applicant
Joe Barry, Alternate
William Dwyer, Alternate
William Mulholland, Zoning Official

ABSENT: Pamela Byrnes

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

Pledge of Allegiance
The Pledge was observed.

Public Hearing I

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 any discussion on this application and sat in the audience.

Mr. Barry, Alternate said that he would also recuse himself from discussion on this application and remain seated in the audience.

Mr. Nickerson seated William Dwyer, Alternate at the table in Mr. Peck's place.

Mr. Nickerson asked Ms. Carabelas, Secretary to read the correspondence into the record.

Ms. Carabelas read the following correspondence into the record:

- ◆ Letter dated 10/18/07 to EL Zoning Commission from William Mulholland, Zoning Official - Re: Special Permit Outdoor Dining 247 Main Street, Niantic - noting that the outdoor dining would be an auxiliary use to a restaurant that was approved administratively last year and that special permit use is regulated under Section 20.27, Items 1-14 of the Zoning Regulations which were attached.

Mr. Nickerson noted that the legal ad had run on 10/5/07 and 10/15/07.

Mr. Nickerson then called upon the applicant for his presentation.

Leo Roche, 247 Main Street the Applicant said that he would jump directly to Section 20.27 and the items outlined and explain that he has complied with all of them and would be happy to answer any questions that they might have. (List and specifics attached at end of Minutes)

Mr. Nickerson asked about Item No. 9 and if the setbacks to zero would be up to the sidewalk.

Mr. Roche said no, they will be six (6) feet back from the sidewalks.

Mr. Bulmer asked how much room from the curb would there be for people to walk.

Mr. Roche said that there would be six feet which would be plenty of room for people to walk.

Ms. Carabelas asked if she was correct in that there would be six (6) tables on the patio.

Mr. Roche said yes, that was correct.

Ms. Carabelas asked how many people would be able to be seated at each table.

Mr. Roche said that there would be four (4) seats at each table as he does not want to make the area a 'sardine can'.

Ms. Carabelas asked if the gates would open.

Mr. Roche said yes.

Mr. Bulmer asked Mr. Mulholland how late they allow the pizza parlor to stay open.

Mr. Mulholland said that he was not sure and that he would have to check the file and get back to them.

Mr. Bulmer asked about Burke's Tavern's outside dining.

Mr. Mulholland said that they do have outside dining but it predates these regulations and that they stay open until 1AM.

Mr. Roche said that his thoughts were that they would be serving outside until 10PM and that it would take another hour or so to clean up.

Mr. Gada asked Mr. Roche if the kitchen closes at a certain time.

Mr. Roche said yes, usually at 10 PM however, they can stay open later.

Mr. Mulholland suggested that since they are looking to revitalize downtown and there will be condos there soon that there would be a need to balance these mixed uses.

Mr. Nickerson asked if it would be difficult to say that after a certain hour that there would be only eating outside and no drinking.

Mr. Roche said that during the week that they would probably serve to 10 PM and to 11 PM on the weekends.

Mr. Nickerson asked if it would be a hardship if they said that they would have to serve food on the patio in order to be drinking out there.

Mr. Dwyer said that with the police station across the street that he thought that they probably would not have to worry about anything.

Ms. Carabelas said that she is concerned with serving drinks after 10 PM on the patio as they have a movie theater nearby and during the summer it is not just adults who would want to be out and about the area.

Mr. Mulholland asked Mr. Roche if he would be on the premises as the permanent manager – in the event that someone is loud and they need to address that.

Mr. Roche said that he or another manager would be on the premises.

Mr. Bulmer said that he was concerned with the music going on later than 10 PM.

Mr. Roche said that they would not have music out on the patio after 10 PM. He added that when he applied for the liquor permit that he applied for acoustic music and not Rolling Stones or rock and roll band music.

Mr. Bulmer asked if they could agree on the music stopping at a certain hour and then asked what time the movie theaters typically get out.

Mr. Nickerson and Mr. Salemo said that the movie theaters typically let out around 11 PM or 12 midnight.

Mr. Dwyer reminded them that they are discussing Main Street and that they want people to come there.

Mr. Nickerson suggested 8 PM for the latest time for any live outdoor acoustic music. He also noted that it is appropriate to have speakers out there for ambient outdoor music.

Mr. Mulholland noted that it depends upon how the outside speakers are used.

Ms. Carabelas said that this is a Special Permit and that Mr. Roche has to come back in a year and if it does not work, they are not stuck with whatever they decide now. She asked that they keep that in mind.

Mr. Salerno asked if this would only be used during the summer months or if there would be outside heaters. Mr. Roche said that this is New England and no matter what type of heaters you have – they will not work when it is really cold. It is meant for the good weather.

Mr. Nickerson called for comments from the public and asked that those who are in favor of the application speak first –

Paul Kramm, 9 Columbus Avenue said that he lives close by and that he hears the speakers from the Frosty Treat business all the time and knows that it is commercial property and that is what is there. He said that he bought next to that and the Church and that the Church bells go off at different hours also – but they were there before him and that property is allowed that use. He said that they are trying to get people to come into the Town and to revitalize and asked that they go with this and welcome the opportunity for this business.

Mr. Bulmer asked Mr. Kramm how late the Church bells go off.

Mr. Kramm said that they sometimes go off at 9 PM or 10 PM and that the Frosty Treat speakers are on until 10 PM or 10:30 PM – however, they are grandfathered in the area and people who live there know that.

Robert Carter, 7 Pennsylvania Avenue said that he and Arthur live right in the middle of Town and that they view it as a mixed use area as they have the Yummy Yummy place right next door to them. He said that while Burke's is grandfathered, the noise from it can be heard by them as it travels and it is very obnoxious and loud – however, they understand that it is necessary to bring business into the community and to move it forward. He suggested that they have seasonal hours for summer and for winter and thinks that it is wonderful to have this business come in. Acoustic music is nice however they would be surprised at how the area quiets down, even downtown by 11 PM. He said that Constantine's seems to be pretty quiet but they do have outside speakers for people to hear music while they are parking their cars and sometimes the staff turns it up, perhaps not realizing that it is also heard outside. He said that they are in favor of this concept and noted that Family Pizza has something posted about no outside dining after a certain time and perhaps these people could do that also.

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

George Kanabis said that he represents the Mitchell Trust who owns the property that surrounds this property on three sides. He said that the proposed patio is immediately adjacent to the road and he thinks that the Commission is correct to look at issues with the patio seating and serving. He said that he thinks that Section 24 pertains to this application and to the safety of people walking and the traffic and feels that they should have a traffic study done here and that the applicant has not met the safety and traffic regulations as outlined in Section 24. He said that the patio cannot be more than 600 sq. ft. and they feel that it is more, and it has to be away from the public area. He said that he does not think that the 2' high wall serves the public properly and that it allows the area to exceed the 600 sq. ft. as people will sit on the wall and eat / drink and that will allow for extra seating. He noted a place in Mystic where people sit on the wall and drink and eat and said that people here would have exposure to the people on the sidewalk and that is not a proper separation and there should be a fence or plantings of 6' in height to shield this. He said that they should require an expert on crowd control to present this to them as they could explain it better. He then noted item 8 and said that this location does not meet the parking requirement and this is a double exemption and the application should be denied unless he obtains a variance or they get an opinion from the Town Attorney. He cited the previous ZBA issue and said that it is not fair as the Mitchell's own the parking and have tenants who pay rent and he won't be able to control this parking and the applicant has no parking and they should address this issue. He said that they are asking them to consider this as the applicant is already in violation. He said that they also cannot put a deck out there without the permission of the adjacent property owner who is Mr. Mitchell and they do not have his permission. He summed that he thinks that they have to consider all of this prior to granting this application as crowd control and noise control will be very important. He cited the Buckley House in New London where the outside dining area was so popular that it had to be enlarged and this created other issues.

Mr. Nickerson said that he was familiar with the Buckley House and that he believed that they have as many seating places inside as outside now as it was enlarged and said that is not the case here and that they have to make sure that they stay on the same page.

Mr. Kanabis presented pictures of the parking on Main Street during the summer noting that they could see that all of the spaces were in use. He again said that they already have a waiver on parking and that this is a double waiver.

Mr. Mulholland cautioned that is a ZBA issue and that he has a copy of the ZBA appeal where the original decision was upheld by the courts and that that is not the issue before them tonight.
Mr. Kanabis said that they are increasing the parking.

Ms. Carabelas said that she knows that with herself and others that if there is no parking available that they will drive by.

Mr. Kanabis said that at the Buckley House in New London that people fought over the parking spaces. Mr. Nickerson asked that they stick to this issue and entered the eight (8) photos of the parking on Main Street into the record as **Exhibit A**.

Mr. Kanabis said that the patio will bring in extra people and that they have to consider the Mitchell's and that they have not given consideration to the parking and traffic control.

George Mitchell, 48 Attawan Road said that he has questions regarding the wall height and width.
Mr. Mulholland said that the width is 2' and the height is 30".

Mr. Mitchell said that he thinks that the wall is part of the dining area and that there is actually 731' of patio area and not the 600' as testified. He thinks that they should consider that the entire structure is 25% more than represented and that people will sit on the wall and eat, etc.

Mr. Nickerson called for anyone from the audience who wished to speak neutrally on this application –

Vera Solomon, 45 Mayfield Terrace asked about the barrier that would be between the patio and the sidewalk and if it would be a wall or a fence.

Mr. Mulholland explained that it would be a stone wall and not a fence and that there is also an area between the wall and the sidewalk.

Ms. Solomon said that she would suggest to Mr. Roche that regarding use of the wall top that if he is allowed to do so, that he put a sign up that states: 'Do not sit here'. That would help with that problem.

Mr. Nickerson thanked Ms. Solomon and said that the Commission could ask the applicant to do that.

Mr. Roche said that the wall is 3' tall (36") and that the liquor commission requires that it be that tall.

Mr. Nickerson entered **Exhibit B** into the record – a gate rendering showing that it is 3' tall.

Mr. Mulholland noted that he has also spoken with Mr. Roche and that there might be decorative flower pots placed on the top of the wall which would further discourage sitting there.

Mr. Roche said that the patio area is 600' and is measured on the inside of the wall.

Ms. Carabelas said that the purpose of the outside patio is not specifically to drink but rather to eat and have a drink with a meal.

Mr. Nickerson said that the reason for outdoor dining a lot of the time is due to smoking and that the smokers would have to go to the sidewalk.

Mr. Roche said that was correct and added that he runs a business in Mystic and that the people go outside and that they have a sand bucket there for the smokers and that it is cleaned out each night. They have been open in Mystic for five years and have done this.

Mr. Nickerson asked Mr. Mulholland about the deck issue and adjacent property.

Mr. Mulholland noted that they are not building a building here and that they have the authority to waive this as outlined in item nine (9).

Mr. Nickerson asked if a deck and a patio are two different entities.

Mr. Mulholland said yes, the patio is part of the ground and the deck is raised – he noted item two (2) which states that it would be adjacent to the restaurant.

Mr. Salerno noted the stone wall and area and how that patio area is figured.

Mr. Mulholland said that they are typically built to the property line and that the area is figured based on the interior as public floor area is in a restaurant.

Mr. Nickerson asked if they had any other questions to ask the applicant.

Ms. Carabelas asked if they wanted a sign saying that there could be no sitting, eating or drinking on the wall and if Mr. Roche would have a problem with that.

Mr. Roche said that he would not have a problem posting a sign to that effect.

Mr. Mulholland asked Mr. Roche if he would consider putting a sign on the wall of the building that faces the Mitchell's that there is no public parking.

Mr. Roche said that he was going to do that anyway.

Robert Carter, 7 Pennsylvania Avenue said that he thought that they could put a decorative wrought iron railing along the top of the wall.

George Mitchell, 48 Attawan Road said that he wanted to comment on what the Chairman had said earlier regarding Burke's Tavern as they meet all of the Zoning requirements.

Mr. Nickerson said that Burke's Tavern has an outdoor establishment however they are not addressing that now.

Mr. Nickerson asked if the Commission had any other comments or questions –
Hearing none –

Mr. Nickerson called for a motion to close this Public Hearing.

****MOTION (1)**

Mr. Salerno moved that this Public Hearing be closed.

Ms. Carabelas seconded the motion.

Vote: 6 – 0 – 0. Motion passed.

Mr. Nickerson closed this Public Hearing at 9:00 PM and a brief break was taken prior to the Regular Meeting commencement.

Respectfully submitted,

Karen Zmitruk,
Recording Secretary

Restaurant Outdoor Dining in CB Zones

Outdoor dining shall be subject to a Special Permit.

A standard or fast food restaurant, may, as an accessory use, provide outdoor dining subject to the following standard:

1. Applicant shall submit a site plan to the Zoning Official for administrative review. *To BM*
2. The area subject to such dining may not exceed six hundred square feet (600sqft.). It shall be located on a deck, patio, or a grass area immediately adjacent to the restaurant.
3. Outdoor dining shall be used in conjunction with, and shall be under the same management and exclusive control of the restaurant located on the same property. *Leo Roche Mgr.*
4. Outdoor dining shall be designed as an integral element of the restaurant and the outdoor dining area shall be architecturally separated from public spaces by a wall, fence, or plantings of significant size where alcoholic beverages are permitted. *patio will match face of bldg.*
5. The restaurant operator shall provide adequate facilities for refuse disposal. *shown on plan*
6. The Zoning Commission may designate closing times for dining, entertainment and sound systems. *upto 1 AM + 7+sat 2 AM*
7. Any outdoor lighting shall be of low intensity. *will be low intensity*
8. The area devoted to outdoor dining shall not be included in the calculation for parking pursuant to Section 22, nor included in the calculation for lot coverage pursuant to Section 9.3.4. The Zoning Board shall consider the availability of shared and public parking when deciding on an application.
9. Notwithstanding Section 9.3.4 the Zoning Commission may waive the setback requirements for outdoor dining areas. *waive to zero*
10. Outdoor entertainment, public address systems and speakers may be permitted by the Commission. *low - elevator music*
11. Advertising or promotional signage shall not be permitted in outdoor dining areas. *plain black umbrellas*
12. Outdoor dining areas shall not be enclosed or covered either by permanent or temporary structures or buildings.
13. The special permit shall be valid for one year from the date of approval and may be renewed subject to an approval of a special permit.
14. Restaurants with outdoor dining that pre-date this Section 20.27 shall not be subject to these regulations. Restaurants which fall under this category shall be required to conform to the special permit requirements when proposing an expansion of outdoor dining facilities.

A natural stone wall around patio w/ blue coping

Outdoor music - Acoustic music - Res w/ liquor license - Loud is not allowed

le'frons de walk
will not be heard across st

NO advertising

no enclosures

renewals each year

Similar to Family Pizzeria

Attachment - Zoning P1110/18/07