

**EAST LYME ZONING COMMISSION
REGULAR MEETING
Thursday, SEPTEMBER 20th, 2007
MINUTES**

The East Lyme Zoning Commission held a Regular Meeting on September 20, 2007 at Town Hall, 108 Pennsylvania Avenue, Niantic, CT.

PRESENT: Mark Nickerson, Chairman, Marc Salerno, Norm Peck, Joe Barry, Alternate, Robert Bulmer, Alternate, William Dwyer, Alternate

ALSO PRESENT: Attorney George Kanabis, representing George Mitchell
George Mitchell, Applicant
Attorney Theodore Harris, representing Walnut Hill CC
William Mulholland, Zoning Official

FILED IN EAST LYME TOWN
CLERK'S OFFICE

Sept 24 20 07 at 3:50 (AM/PM)

Esther B. Williams

EAST LYME TOWN CLERK

ABSENT: Rosanna Carabelas, Secretary, Pamela Byrnes, Ed Gada,

PANEL: Mark Nickerson, Chairman, Marc Salerno, Norm Peck, Joe Barry, Alternate, Robert Bulmer, Alternate, William Dwyer, Alternate

The Pledge was observed.

1. Call to Order

Chairman Nickerson called this Regular Meeting of the Zoning Commission to order at 8:05 PM after the previously scheduled Public Hearings. He noted that he had seated Alternates, Joe Barry, Robert Bulmer and William Dwyer at the table this evening.

Public Delegations

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

Mark Butterfield, 6 Upper Walnut Hill Road said that there were a few items that came up at the Planning Meeting earlier in the week and that he thought that he would share some of them with them. For the northern end of Town, because they have land that is suitable for development, they probably saw signs that they put up saying 'No waivers/No favors'. The north end of Town does not have a private beach association to protect them as the beach communities do. He explained that some of the people in the northern end of Town hired a lawyer to protect them. While he did not participate in this, it was expensive and he does not feel that they should have had to do that – but they did it because they did not feel that they were being heard. He asked that they keep this in mind.

Regular Meeting

1. Application of Lynn and Nick Marocola, for NYC Entertainment, LLC, for a Special Permit to operate a deli, coffee shop or cafeteria (restaurant) at 17 Liberty Way, Niantic, CT and –
2. Application of Lynn & Nick Marocola, for NYC Entertainment, LLC, for a Special Permit to operate an indoor recreation facility for children's entertainment at 17 Liberty Way, Niantic, CT

Mr. Peck recused himself from discussion on these applications and was seated in the audience.

Mr. Nickerson called for discussion.

Mr. Salerno read the definition of fast food noting that cafeteria is in Section 20 and that it allows delis, coffee shops and cafeterias in this area and that the area can be used in the parking calculations.
Mr. Mulholland said that is correct.

Mr. Nickerson said, so you would use the deli for the special use and the fast food for the parking calculation.
Mr. Mulholland said yes.

Mr. Nickerson said that he had one other issue, that of there not being a central sign.
Mr. Mulholland said that there is not one as they don't allow it.
Mr. Nickerson suggested that might be something that they would want to think about.
Mr. Mulholland said that there are two 'jetties' there and also that when new businesses come into Town that he has a discussion regarding signage with them.

Mr. Nickerson asked if there was more discussion or if they were ready to make a motion.

****MOTION (1)**

Mr. Salerno moved to approve the Application of Lynn & Nick Marocola, for NYC Entertainment, LLC, for a Special Permit to operate a deli, coffee shop or cafeteria (restaurant) at 17 Liberty Way, Niantic and to approve the Application of Lynn & Nick Marocola for NYC Entertainment, LLC, for a Special Permit to operate an indoor recreation facility for children's entertainment at 17 Liberty Way, Niantic, CT.

Mr. Bulmer seconded the motion.

VOTE: 5 - 0 - 0. Motion passed.

Mr. Nickerson said that this decision notice would publish on 9/27/07 and become effective on 9/28/07.
Mr. Peck returned to the table and was seated.

3. 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. Mulholland said that this would be taken up at the next meeting of the Commission.

4. Application of David Coonrod for a waiver of Section 20.8 road frontage for rear lots for property identified in the Application as 40 Smith Street (actually Ave.), Niantic, CT

Mr. Nickerson said that this application is for Smith Avenue and not Smith Street. He asked Mr. Coonrod to present this to them.

David Coonrod, LS representing 40 Smith Avenue said that this one parcel has been owned since 1914 and that they have one free split for the property under Section 20.8 - Back lots. Creation of the back lot will meet the requirements of subsections 1-3 of this section and subsections 4 and 5 do not apply to this lot. The new back lot will be in harmony with the adjacent back lot on Smith Avenue. They are requesting a waiver of the general regulations, Section 20, for the minimum frontage requirement of 25 feet (Section 20.7). He said that they can also do this without a waiver however to do so would create an odd looking lot. This is an R-10 zone and granting the waiver will have no adverse impact upon the adjacent properties. The lot is serviced by public water and sewer.

Mr. Mulholland said that it becomes an easement rather than owned by the back lot and that this is allowed in the regulations.

Mr. Nickerson asked if the neighbors have to be informed of this.

Mr. Mulholland said no and explained that this can be done without a waiver by deeding the ROW. This is the neater way of doing it.

Mr. Dwyer asked about the Smith Street that is actually Smith Avenue and if it had to be advertised.

Mr. Mulholland explained that this is something that is allowable under the regulations and that there is no need for a public hearing. Also, the application and letter from Mr. Coonrod have the correct information.

Mr. Nickerson called for a motion.

****MOTION (2)**

Mr. Salerno moved to approve the application of David Coonrod for a waiver of Section 20.8 Road Frontage for rear lots for property identified in the application as 40 Smith Avenue, Niantic, CT.

Mr. Barry seconded the motion.

VOTE: 6 – 0 – 0. Motion passed.

5. Request of Mr. Mitchell, on 308 Main Street, Niantic, CT

Mr. Nickerson said that they would have to decide if this should go to a public hearing.

George Mitchell, property owner said that the property address is 308 as set by the Assessor who assigns the property numbers but not the building numbers. He said that this building is officially 304-308 Main Street.

George Kanabis, Attorney representing Mr. Mitchell/Mitchell Trust said that he filed an inquiry relating to 308 Main Street. He offered a synopsis of the events as he understood them to be: 7/28/07 – an application was submitted with a site plan; 10/20/05 – the public hearing was opened, some testimony given and continued and 11/30/05 – the public hearing was completed and closed. He said that a sketch was provided including the elevator tower and explained that the tower was of masonry and brick and that it was the only submission that was made and that there were no other plans at that time. At the next hearing date of 11/17/05 – and some time prior, a revised sketch was presented and the hearing was closed and no other evidence could be heard. He said that the only evidence before them was of the masonry and brick. A special permit was approved and issued on 8/30/06 showing the tower of masonry and brick.

He continued that Mr. Mitchell thought that it would be reviewed for building compliance however it was not. There was no intent of Mr. Mitchell to not follow the plans. As for what was approved by special permit, he said that he is not certain and that he is present to ask that the Commission consider a modification of the elevator tower if it is in violation. He said that his other question is if they have the power to issue a modification without holding a Public Hearing. He said that in the letter from the Town Attorney dated December 2006 that he thinks that they fall within the scope of that purview and that there is no need for a public hearing. If the issue of the wood siding on the tower had not come up – he asked if that would be justification for them to deny the special permit and said that he does not think that they could have. He noted the Barberino case that Attorney O'Connell cited in his letter and suggested that no Public Hearing is required and that they can allow the masonry to stay as it is. He said that he also thinks that the other issues can be decided between the applicant and the Zoning Official.

Mr. Nickerson said that he has had numerous discussions with the Town Attorney on this issue and that they really should not go back into a case of 'he-said, she-said'. A decision was made and if they do not want to stick with it, then this should go back into Public Hearing. The drawings were voluntarily submitted by the architect to staff after the public hearing was closed – they could have kept the public hearing open but they moved it along for the applicant's sake.

Attorney Kanabis said that he spoke with Attorney O'Connell and that he stated that he was not demanding that there be a public hearing and that they were to decide if this was material or non-material in terms of the issues.

Mr. Mulholland said that he received a voice mail from Town Attorney stating basically the same thing that Attorney Kanabis has just said. If they felt that this was a substantial issue then they could go back to public hearing or if not, then they could make the modifications themselves.

Attorney Kanabis thanked Mr. Mulholland for referencing that information. He said that once a public hearing is closed that they cannot re-open it or take other evidence and that is the law.

Mr. Peck said that he recalled that there was a lot of discussion on the silo, roof, and other items and that after the public hearing closed staff brought in the final drawings.

Attorney Kanabis agreed and said that while it was everyone's intention to go the route of the discussion that he could not agree that it was correct to put the drawing in after the public hearing was closed.

Mr. Peck said that the sketch came later but all of the technical changes were worked out at the public hearing.

Mr. Mulholland said that all of this discussion is immaterial anyways as the appeal period has passed.

Mr. Peck said that he had requested to see the final sketches – both rear and front but has not seen all of them.

Mr. Mulholland said that the rear is missing from the files – he showed the Commission the front sketch of what was approved.

Attorney Kanabis said that he does not think that they are arguing over the 'facts' situation – and that they are asking if the Commission will allow the modifications without going to public hearing.

Mr. Peck said that there were several things discussed, windows, panes, dormers, etc.

Attorney Kanabis said that he thinks that he and Mr. Mulholland agreed that they can work on that.

Mr. Bulmer noted that the picture that was provided by the Mitchell's shows that it is not just the elevator tower windows that have been omitted and that he sees the omissions as more than just a slight modification.

Attorney Kanabis said that they would be willing to agree to what has been set forth and to work with Mr. Mulholland on this.

Mr. Mulholland cautioned Attorney Kanabis to be careful with that as he works under the direction of the Commission.

Mr. Nickerson said that the brick is turning chalky –

Mr. Mitchell said that is because it has never been sealed. He added that it seems like they are 'cherry picking' here on little things. He recalled that previously Mr. Gada had said that he wants to see harmony and the other buildings in that area are made of brick and he feels that they have accommodated that very well with the brick of their building.

Mr. Salerno asked if he would put all the fake windows in.

Attorney Kanabis said that they would be willing to do as Mr. Bulmer has set forth with Mr. Mulholland guiding them.

Mr. Bulmer said it was Mr. Peck who recalled the modifications that were agreed upon previously.

Mr. Peck said that the decision tonight has to be if the modifications are slight and can be handled by them or if they instead require another public hearing. He noted that dormers, the siding, divided lights and windows were discussed during the public hearing in front of the public. If the applicant wanted to apply for what the building looks like now, they would have to go to public hearing. He said that in his opinion, if they make it look like the plan with the windows, dormers and divided lights that it might work –

Mr. Nickerson said that when the public hearing was closed that they had asked the architect to soften up the red brick. He said that they did not vote on what was built (showed picture) but –

Attorney Kanabis said that he does not think that is all that important now and that they would like it to stay and to comply with what Mr. Peck has said.

Mr. Barry said that the question is if it is a substantial change and while he does not really see that, he does see that it needs to be softened and that they would have to do the windows and the dormers.

Mr. Dwyer said that he agreed upon doing the windows, dormers and the back windows.

Mr. Nickerson said that their order tonight is to determine if it is a substantial change –

Mr. Salerno asked about the windows and if they are real or fake and what they would look like.

Mr. Mitchell said that they would be fake and would look similar to the fake ones on the CVS building. They would have two over two panes.

Mr. Bulmer and Mr. Nickerson said that they are showing eight (8) panes in the drawing.

Mr. Mulholland cautioned that they would need to be crystal on the details.

Mr. Peck said that according to the picture, the front, side and back have divided light panes.

Mr. Nickerson said that they would need to add three (3) windows on each side of eight (8) panes each; three (3) windows added to the stairwells; two (2) dormers to balance and four (4) windows on the lighthouse.

Mr. Mitchell said the mullions are already on the windows in the front and that he would like to do the same to the other windows – two over two (2 over 2).

Mr. Peck said that the sketch has the big windows in the main section as two over two (2 over 2) and the side windows have eight (8) panes. The new windows would have the eight (8) panes. He said that he would like to see the rear – waterside rendering as he recalled that there were a lot of windows in the back and they should have a lot of panes.

Mr. Mitchell said that he can put mullions in the windows in the back and noted that the windows in the back are about 50% of what they wanted to do. He said that he would agree to put the mullions on the windows but not on the sliders as they would be beat up and broken and fall out with the use that the sliders will get.

Mr. Peck noted that he had pointed out at the public hearing the importance of looking at this building from the water and – he said that he saw it today for the first time from the water and said that it seems to look better from the water than from the street. He said that he would agree with the mullions in the back windows but not in the slider.

Mr. Salerno said that this is getting complicated and asked if they are setting a precedent here and if others would then ask for the same considerations.

Mr. Mulholland said that they always have the ability to modify but that they have to make a determination here of if this is a substantial change or not and if they should go to public hearing or not.

Mr. Bulmer concurred with Mr. Peck regarding the mullions in the rear windows but not in the sliding door. He said that he also concurs with Mr. Salerno and shares his concern. He added that the applicant has not been able to occupy this building and that they cannot until this is settled. He suggested that they compromise with the suggestions that have been made.

Mr. Nickerson said that he sees no compromise at all – the Zoning Commission makes a decision based on fact and you build a building on fact. Is it expensive to change a tower? – yes – but they should have come back before doing what they did. He said that he does agree that it is time to move on and that he wants a real sharp looking front with windows and dormers put on. He added that he does think that it is a substantial change.

Mr. Peck said that he thinks that they need to make a clear motion and that Mr. Mulholland would then enact and follow through and enforce it with the applicant. They need to be precise.

****MOTION (3)**

Mr. Peck moved to approve the request of Mr. Mitchell/Mitchell Trust Re: 308 Main Street Niantic to allow the tower to remain as built; to require as per previous approval the addition of windows on the front of the building; two (2) windows on each side of the stairwell towers as per the sketch with eight (8) panes; two (2) dormers as per the sketch and on the water side or back of the building: add divided light windows to match the sizes of the front as best can be done; leave the sliders without divided lights; divided light mullions on windows in alcove entry way as per the sketch dated 11/15/05, revised through 9/20/07. (Copy of sketch available for viewing in Zoning Office)

Mr. Bulmer seconded the motion.

Mr. Mulholland asked if these items would need to be done before occupancy.

Attorney Kanabis said that they have a document from Joe Smith (Building Official) and the State of CT relative to the elevator operating. What they are asking for here is cosmetic and does not interfere with anything as long as they diligently work on it.

Mr. Nickerson read the document into the record for the Commission.

Mr. Mulholland said that he thinks that it is important due to the history of this application and that no Certificate of Occupancy should be issued without a certification of zoning compliance.

Mr. Salerno said that he wants it to be complete as that is standard procedure.

Attorney Kanabis said that they usually issue a temporary CO, especially when these changes are cosmetic.

Mr. Mulholland said that he defers to what the Commission decides.

Attorney Kanabis said that he does not think that these changes affect anything and that they will work on them quickly as they cannot use the building and have a lot invested in this.

Mr. Nickerson said that he thinks that it is clear that they want it to be completed before a certificate of occupancy is granted.

Mr. Salerno said that he would make a motion to that effect.

****MOTION (4)**

Mr. Salerno moved that the conditions as outlined in MOTION (3) are to be satisfied before a Certificate of Occupancy is issued.

Mr. Bulmer seconded the motion.

VOTE: 6 – 0 – 0. Motion passed.

Mr. Nickerson then called for a vote on MOTION (3) –

VOTE: 6 – 0 – 0. Motion passed.

Mr. Peck said that he is seriously concerned about answering the public and that he needs to know why this tower has to be done in brick.

Mr. Mitchell said that he originally showed Mr. Mulholland a sketch and that he was asked if it could be wood. He said to Mr. Mulholland that they could make it out of expensive cinder block and put a wood octagon around it – however, in practice they found that they could not as they would have to have sprinklers that would have had to be heated in between the cinder blocks and the wood and they could not do that. So, when they revised the plans and showed them to the Building Official, it was approved.

Mr. Mulholland said that he has on file, the submitted sketch showing the wood.

6. Request of Theodore A. Harris, Attorney for Walnut Hill Country Club for a one year extension of Special Permit/Site Plan for golf course, active adult community, and accessory housing on the golf course.

Mr. Nickerson called upon Attorney Harris to present this.

Attorney Theodore Harris, representing Walnut Hill Country Club recalled that he was present slightly less than a year ago with a similar request. In that time, the first phase of the water permit has been issued; the water diversion permit has been issued and the septic permit is ready to be issued once the Town signs it. He said that they are just about right there and that section 12A3.5 of the regulations allows for the extension for another year. He said that they would shortly have the full permits as there has been a lot of time and effort put into this.

Mr. Salerno said that they need to show that substantial work has been done.

Attorney Harris said that there would be no purpose to the extension if the work was already done – the purpose is to get to that phase.

Mr. Dwyer asked what if they find that the wells do not work. Attorney Harris said that they have been drilled and tested etc. through the entire State of CT process. Also, the Town is the back up to the community septic which is why it requires written agreements and to be bonded. The Town was part and parcel with this. The water has had well tests, quantity tests and quality tests done and has passed.

Mr. Salerno asked what they are waiting on – Attorney Harris said the final phase and they are ready to issue the permit. The community septic is waiting on the Town to sign. He also noted as an example that it has been two years for Darrow Pond so this time frame for this is typical.

Mr. Salerno asked when they would start construction. Attorney Harris said that it would be in the spring as once they have the permits, they can get the financing.

Mr. Nickerson said that this plan has gone through changes from what was first conceptualized and that he hopes that the financing is out there and asked Attorney Harris to convey his sentiments to the applicant. Attorney Harris said that he would convey that to Mr. Katz and noted that the site plan would also be extended.

****MOTION (5)**

Mr. Peck moved to approve the request of Theodore A. Harris for Walnut Hill Country Club for a one year extension of Special Permit/Site Plan for golf course, active adult community, and accessory housing on the golf course.

Mr. Dwyer seconded the motion.

VOTE: 6 – 0 – 0. Motion passed.

7. **Approval of Minutes – Public Hearing I, Public Hearing II and Regular Meeting Minutes of June 7, 2007 and; Public Hearing I, Public Hearing II and Regular Meeting Minutes of June 21, 2007 and; Special Meeting Minutes, Public Hearings I-IV, Public Hearing V and Regular Meeting Minutes of July 12, 2007 and; Public Hearings I-IV and Regular Meeting Minutes of August 2, 2007 and; Special Meeting Minutes of August 6, 2007 and; Special Meeting Minutes of August 16, 2007 and; Public Hearings I-IV and Regular Meeting of September 6, 2007 and; Public Hearings I-IV and Special Meeting of September 13, 2007.**

These were tabled to the next meeting.

Old Business

1. Stormwater

There was nothing new to report.

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

This is being worked on and is moving along.

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

There is a draft of these changes with the Town Attorney for his review and they have not heard anything on them yet.

4. Subcommittee – Adult Uses (Rosanna Carabelas)

Ms. Carabelas is getting together with Mr. Mulholland on this.

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

Mr. Mulholland noted that they have a preliminary report to review for discussion at the next meeting.

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 said that the Starbucks is moving along and that the Charter Oak Credit Union has opened on Main Street.

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 did not have any further comments.

6. Adjournment

****MOTION (6)**

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

Mr. Bulmer seconded the motion.

Vote: 6 – 0 – 0. Motion passed.

Respectfully submitted,

Karen Zmitruk,
Recording Secretary