

**EAST LYME ZONING COMMISSION
REGULAR MEETING
Thursday, OCTOBER 2nd, 2008
MINUTES**

The East Lyme Zoning Commission held a Regular Meeting on Thursday, October 2, 2008 at the East Lyme Town Hall, 108 Pennsylvania Ave., Niantic, CT.

PRESENT: Mark Nickerson, Chairman, Rosanna Carabelas, Secretary, Ed Gada, Steve Carpenteri, Norm Peck, Marc Salerno

ALSO PRESENT: Attorney Edward O'Connell, Town Counsel
Attorney Andrew Cellemme, Town Counsel
William Dwyer, Alternate
William Mulholland, Zoning Official
Rose Ann Hardy, Ex-Officio, Board of Selectmen

FILED IN EAST LYME TOWN
CLERK'S OFFICE

OCT 7 20 08 at 10 AM PM

Esther B. Williams

EAST LYME TOWN CLERK

ABSENT: Bob Bulmer, Alternate, Greg Massad, Alternate

1. Call to Order

Chairman Nickerson called this Regular Meeting of the Zoning Commission to order at 7:35 PM.

Pledge of Allegiance

The Pledge was observed.

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 no delegations.

Regular Meeting

1. **Application of Theodore A. Harris, agent for Village Crossing of Niantic LLC for approval of an Affordable Housing development, site plan and coastal area management site plan review to construct one hundred residential units (100) on property identified in the Application as Assessor's Map 11.1, Lot 19; and –**
2. **Application of Theodore A. Harris, agent for Village Crossing of Niantic LLC to re-zone from its existing zoning designation (RU-40 Residential) to Affordable Housing for property identified in the Application as Assessor's Map 11.1, Lot 19.**

Mr. Peck recused himself and was seated in the audience for this discussion and Mr. Nickerson seated Mr. Dwyer, Alternate at the table.

Mr. Nickerson polled the Commissioners on their familiarity with the record – all members stated that they were familiar with the record and felt competent to discuss and vote on the application.

Attorney O'Connell said that Attorney Cellemme had prepared three different draft motions and that he would explain them to them.

Attorney Cellemme passed out copies of the three draft motions that he had prepared for them based upon the comments that they had made in the past two meetings on this application. The three were an approval; a denial and an approval with modifications (which they would fill in should they decide this way). He

explained that the approval would be approving the application as submitted; if they chose the denial, CGS 8-30g states that an Affordable Housing application on appeal placed the burden upon them to justify their decision and to sustain it and show that the decision outweighs the need for Affordable Housing. He noted that it would also be true for the decision of approval with modifications if that were challenged. In each of the motions he said that he addressed the three basic items – The request for a zone change; The request for approval of a "Preliminary Site Plan"; and The request for approval of a coastal site plan.

The denial and approval with modifications are more lengthy as the major concerns that they had expressed have been listed – vehicular traffic and pedestrian safety, other traffic safety issues, the lack of sidewalks, the 18 residences on Park Place and the intersection with Rte. 156. The denial cites that there are no reasonable modifications that could be made. The approval is a more concise form and the approval with modifications leaves them the area to add the modifications that they feel are reasonable. He said that he would be happy to answer any questions that they might have.

Mr. Salerno asked if they could mix and match the three items.

Attorney Cellemme said that in theory yes however; given the way that these have been drafted based on those major items, some of the findings would have to be changed.

Mr. Nickerson asked if they should make two or three motions.

Attorney Cellemme suggested that they make one motion covering all of the items.

Mr. Nickerson said that the Zoning Commission has embraced Affordable Housing and has approved several that are now up and running and that the Town has recently received a grant to study where appropriate areas might be for Affordable Housing in the Town. He said that he finds the denial clear as there is a density issue here and this is an old established neighborhood of 18 homes. The area is approximately 16 acres and 90 more families would be very dense and would dump more traffic to the Park Place cul-de-sac which is a narrow street and create more traffic issues. There also are no sidewalks and the grade of the hill in the development with the winter driving and only one way out would create more problems.

Mr. Salerno concurred with Mr. Nickerson and cited the steepness of the grade and the road again. He said that he also wanted to address the Water & Sewer Commission letter that they received which was a denial of water and that while they did get a letter from the applicant saying that they could come up with water; they did not provide any tests or studies to prove it and he does not think that they have sufficient evidence that they would have water and it is something that they need to address.

Ms. Carabelas said that she agrees with both of her fellow Commissioners and added the issue that she has with the bus safety and of the bus going in and out of the area along with the kids standing on the corner. She added that she thinks that people who have had problems with water in their basement would have even worse problems with it.

Mr. Gada said that they have found in review that there is no potential for egress from the other side to make a connection due to the topography of the land. He said that he also agrees with the water situation.

Mr. Dwyer said that the one point of egress is his concern and getting emergency vehicles in there and stacking them in the event of a fire and this is too high of density for the area.

Mr. Carpenteri said that his concern is the safety issue and that he also agrees with the concerns expressed by his fellow Commissioners.

Mr. Salerno asked if they could add a section to the denial on the issue of the lack of water.

Mr. Mulholland produced the exhibit – the letter from the Water & Sewer Commission expressing that there was a problem with the peak demand summertime months.

Attorney O'Connell said that they could add a section on the water and that he had jotted down something while they were reviewing the letter – he read:

WHEREAS, the Commission has determined that a sufficient supply of water from the municipal water system would be available to the project for a portion of the calendar year, but is not currently available to the project on a year-round basis, there being a shortage of water during the summertime peak demand period,

and the applicant has not presented a plan to demonstrate that an adequate supply of year-round water is currently available.

The Commissioners agreed that should be included in the motion of denial.

****MOTION (1)**

Mr. Salerno moved that: WHEREAS on February 12, 2008, Theodore A. Harris, agent for Village Crossing of Niantic, LLC, ("Applicant") filed an "Affordable Housing Application" entitled "Village Crossing of Niantic" with the East Lyme Zoning Commission ("Commission") consisting of a set of plans for 90 total units for sale or rent of which 30% would be affordable housing units on approximately 15.73 acres, and an affordability plan; and

WHEREAS, the Applicant has requested (1) approval of a Preliminary Site Plan for the construction of 90 housing units, 30% of which would be affordable housing units on the property identified in the application as Assessor's Map 11.1, Lot 19 ("property"); and (2) approval of a coastal site plan; and

WHEREAS, the Commission, having determined that the application is the functional equivalent of a request for a change in zone, has made the requisite referral to the Planning Commission pursuant to General Statutes 8-3a; and

WHEREAS, the Commission has determined that the application proposes activity within the coastal boundary as defined in General Statutes 22a-94 and the Town's Plan of Conservation and Development and the Applicant has submitted a coastal site plan in accordance with General Statutes 22a-109, the Commission has referred the application to the Department of Environmental Protection (DEP), Office of Long Island Sound Protection (OLISP). Pursuant to General Statutes 22a-106, the Commission must additionally review the application for potential adverse impacts on coastal resources and future water dependent activities; and

WHEREAS, the Commission held four (4) public hearings on the application, preliminary site plan and coastal site plan and listened to numerous hours of testimony during those hearings. Approximately fifty (50) exhibits were submitted by the Applicant and various agencies and individuals for consideration during the hearing process. In making its decision, the Commission is considering and taking into account the testimony and exhibits submitted at the hearings on the application.

WHEREAS, for the purposes of this affordable housing application, the Commission will address this motion in three separate parts:

- A. The request for a zone change;**
- B. The request for approval of a "Preliminary Site Plan";**
- C. The request for approval of a coastal site plan.**

A. THE PROPOSED ZONE CHANGE TO THE APPLICANT'S PROPERTY

WHEREAS, the Applicant is applying for a zone change for the entirety of the property that is the subject of this application, and it is evident by the development plan submitted that high-density development is contemplated throughout the property and such approval of a zone change for the property would allow for the dense development of the entire property far in excess of what is currently allowed in an RU-40 zone; and

WHEREAS, the Commission has determined Park Place is a 24 foot wide town highway. Park Place currently services 18 existing single family residences and provides only one means of ingress and egress for the existing residences, which is to and from Connecticut Route 156 (West Main Street). Park Place currently has vehicular and pedestrian traffic problems due to its width, limited ingress and egress to and from West Main Street and lack of sidewalks. The intersection of Park Place and West Main Street currently presents dangerous sightlines. West Main Street currently has pedestrian safety problems due to the lack of sidewalks and the narrow width of the shoulder. (See e.g. exhibits 26-30, 36-43, 49, 50 and related testimony)

WHEREAS, the Commission has determined that the sole ingress and egress to the proposed development will be a private road that will connect with Park Place. The proposed development does not include a secondary emergency access. The proposed development will increase the number of residences accessed by Park Place from 18 to 108+/- . The proposed development will increase the vehicular and pedestrian traffic on Park Place to unsafe and dangerous levels and result in dangerous and unsafe conditions at the intersection of Park Place and West Main Street.

WHEREAS, the Commission has determined that a sufficient supply of water from the municipal water system would be available to the project for a portion of the calendar year, but is not currently available to the project on a year-round basis, there being a shortage of water during the summertime peak demand period, and the applicant has not presented a plan to demonstrate that an adequate supply of year-round water is currently available.

WHEREAS, the Commission has determined that re-zoning the property for the proposed density would result in dangerous pedestrian and vehicular traffic conditions on Park Place, at the intersection of Park Place and West Main Street and on West Main Street. Re-zoning the property for the density proposed would have adverse consequences to the public health and safety of the residents of Park Place, the future residents of the affordable housing development and the users of the town and state roads. (See e.g. exhibits 26-30, 36-43, 49, 50 and related testimony)

WHEREAS, the Commission has determined that Planning Commission found that the re-zoning of the property for the density proposed would be inconsistent with the Plan of Conservation and Development.

WHEREAS, the Commission recognizes the need for and benefit of an increased amount of affordable housing in the Town, and has weighed and balanced that need against the public's interest in the health and safety and other above-described public interests; and

BE IT THEREFORE RESOLVED, the Commission hereby DENIES the application of Village Crossing of Niantic, LLC to re-zone the Applicant's property to an Affordable Housing District.

BE IT FURTHER RESOLVED, the Commission finds that no reasonable changes can be made to the proposed zone change that would adequately protect the above enumerated public interests.

B. THE REQUEST FOR APPROVAL OF A "PRELIMINARY SITE PLAN"

WHEREAS, the Commission has resolved to deny the application for a zone change, see Sections A above; and

WHEREAS, the Applicant's request for approval of a Preliminary Site Plan cannot be adequately addressed by reference to the Town's current Regulations as no such category of site plan approval exists within the regulations; and

WHEREAS, the Commission recognizes that an affordable housing application need not be in strict compliance with existing zoning regulations (see *Wisniewski v. Berlin Planning Commission*, 37 Conn. App. 303 (1995)); and

WHEREAS, the Commission concludes that all of the reasons enumerated in Section A, above, that were found that weighed against the approval of the zone change application apply equally to the evaluation of the applicant's Preliminary Site Plan including but not limited to safe pedestrian and vehicular access and inconsistency with the Plan of Conservation and Development; and

WHEREAS, the Commission recognizes the need for and benefit of an increased amount of affordable housing in the Town, and has weighed and balanced that need against the public's interest in the health and safety and other above-described public interests; and

BE IT THEREFORE RESOLVED, that the Commission hereby DENIES the application of Village Crossing of Niantic, LLC for an affordable housing development Preliminary Site Plan, and

BE IT FURTHER RESOLVED, the Commission finds that no reasonable changes can be made to the application that would adequately protect the above enumerated public interests.

C. THE REQUEST FOR APPROVAL OF A COASTAL SITE PLAN

WHEREAS, the Commission finds, pursuant to General Statutes 22a-106, that the proposed development at the site, which is fully or partially within coastal boundary, will have potentially adverse impacts on coastal resources and future water dependent activities. The Commission finds the proposed coastal site plan review application inconsistent with the policies and standards of the Connecticut Coastal Management Act, the Town's Plan of Development, the Municipal Coast Program and the Harbor Management Plan based on severe onsite development constraints and the potential adverse impact on coastal resources and water quality. Additionally, the Commission finds that the proposed development would not adequately provide for future water-dependent uses and access for the public to future water dependent uses.

BE IT THEREFORE RESOLVED, for the reasons stated above, that the Commission hereby DENIES the coastal site plan application of Village Crossing of Niantic, LLC and finds that no reasonable changes can be made.

Ms. Carabelas seconded the motion.

Mr. Nickerson explained that a vote in favor of the motion would be a vote to deny the application; he then called for a vote on the motion.

Vote: 6 – 0 – 0. Motion passed. Application denied.

Mr. Nickerson said that the decision would publish next week Thursday on October 9, 2008.

Mr. Dwyer returned to the audience and Mr. Peck was seated at the table.

3. Approval of Minutes – September 18, 2008 - Public Hearing I Minutes and Regular Meeting Minutes

Mr. Nickerson called for discussion on, or corrections to the Commission's Public Hearing I, and Regular Meeting Minutes of September 18, 2008.

Ms. Carabelas asked that 'fro' on Page 3 in the third paragraph up from the bottom of the Regular Meeting Minutes be changed to read 'for'.

****MOTION (2)**

Mr. Salerno moved to approve the September 18, 2008 Public Hearing I Minutes of the Commission as presented and the September 18, 2008 Regular Meeting Minutes of the Commission as amended.

Mr. Carpenteri seconded the motion.

Vote: 6 – 0 – 0. Motion passed.

Old Business

1. Stormwater

Mr. Mulholland said that as soon as Planning is done with this that it would move over to Zoning where they will format it for their regulations.

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

Mr. Mulholland reported that they have started drafting some things here on mixed use and multi-family and that he will start asking them for direction on the mixed use issue.

3. Subcommittee – Adult Uses (Rosanna Carabelas)

Ms. Carabelas reported that she has been consulting with Attorney O'Connell on this and that he indicated that the ordinance part would be very expensive and would be something that the Board of Selectmen would deal with and that they should deal with their Zoning part. He also said that they could discuss where it could be allowed or just leave it as it is. She said that she would like to have their comments for the next meeting of the Commission if possible.

Mr. Nickerson noted that he thought that they should have some time over the next couple of meetings to attend to their subcommittee work.

4. Subcommittee – Transitional Zones (Marc Salerno & Norm Peck)

There was no report.

5. Subcommittee - Scenic Roads – (Marc Salerno, Mark Nickerson & Norm Peck)

Mr. Salerno reported that they had met with the Town Attorney prior to this meeting and that they have completed their task and he feels that they have put forward a good ordinance for the Planning Commission to review and to then pass along to the Board of Selectmen. He requested of Mr. Nickerson, chairman that the subcommittee be dissolved as they have now completed their business.

Mr. Nickerson asked that it be noted in the record to dissolve this subcommittee.

New Business

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

There was none.

2. Zoning Official

Mr. Mulholland reported that McDonald's has begun moving the earth for their new building and that the CVS would follow; 38 Hope Street will be requesting some CO's soon and it is expected that they will go slowly through the winter months and the Gateway project will also be moving along slowly. He additionally noted that the Wendy's property has been mowed and attended to.

Mr. Nickerson noted that they have discussed doing some housekeeping with their regulations and asked that Mr. Mulholland compile a list for them to review and that he also put together something on the Niantic downtown district.

3. Comments from Ex-Officio

Ms. Hardy reported that they had received a \$50,000 grant to study potential Affordable Housing zones within the Town and that once they had done so, that they were not held to anything as the grant was for a study. She also reported that the EL Historic District subcommittee was ready to submit a plan to the State on the boundaries of the Thomas Lee and old schoolhouse and that when it was approved by the State, that these areas would be designated as historic districts and potentially eligible for grants. She lastly reported that at a recent Board of Ed meeting that there was discussion on the school bus routes as a cost saving measure and that there were complaints from the Sea Spray development and they wanted to have the bus go up to the top of the hill to pick up their kids. They also complained about the recreation area. She said that she presents this to them for their consideration on what happens with various projects.

Mr. Mulholland said that there is a large grassed area for their recreation within the complex and noted that they are in an industrial park. He said that they have complained about the vacant land next to them with equipment on it and that while the owner did not have to move it, he was kind enough to agree to do so when asked.

Ms. Hardy said that they should charge an impact fee for the kids as there are some 39 or 40.

Mr. Salerno noted that the figure was not excessive like some of the figures that they have heard and that it was exactly what was predicted – one-half student per unit.

4. Comments from Zoning Commission liaison to Planning Commission

There was no report.

5. Comments from Chairman

Mr. Nickerson suggested that they could catch up on some of their housekeeping items and also perhaps hear a presentation on some of the items that they have in subcommittee.

6. Adjournment

Mr. Nickerson called for a motion to adjourn.

****MOTION (3)**

Mr. Carpenteri moved to adjourn this Regular Meeting of the East Lyme Zoning Commission at 8:45 PM.

Mr. Salerno seconded the motion.

Vote: 6 – 0 – 0. Motion passed.

Respectfully submitted,

Karen Zmitruk,
Recording Secretary