

**EAST LYME ZONING COMMISSION  
PUBLIC HEARING II  
Thursday, JULY 8th, 2004  
MINUTES**

The East Lyme Zoning Commission held the Application of Theodore A. Harris for a change of zone from RU-40 Residential to CA Commercial for portions of properties identified as 53, 55-57 West Main Street, Niantic, CT Public Hearing on July 8, 2004 at Town Hall, 108 Pennsylvania Avenue, Niantic, CT. Chairman Nickerson opened the Public Hearing and called it to order at 9:01PM immediately following the previously scheduled Public Hearing.

FILED IN EAST LYME  
7/14, 2004 AT 10:00 A M  
Kath B. Will  
EAST LYME TOWN CLERK

**PRESENT:** Mark Nickerson, Chairman, Norm Peck, Shawn McLaughlin, Pamela Byrnes, Marc Salerno, Alternate, William Henderson, Alternate

**ALSO PRESENT:** Attorney Theodore Harris, Applicant  
William Mulholland, Zoning Official  
Rose Ann Hardy, Ex-Officio, Board of Selectmen

**ABSENT:** Ed Gada, Secretary, Rosanna Carabelas, William Dwyer, Alternate

**PANEL:** Mark Nickerson, Chairman, Norm Peck, Shawn McLaughlin, Pamela Byrnes, Marc Salerno, Alternate, William Henderson, Alternate

**Public Hearing II**

**1. Application of Theodore A. Harris for a change of zone from RU-40 Residential to CA Commercial for portions of properties identified in the application as 53, 55-57 West Main Street, Niantic, CT. Property is further identified as Lots 9, 6 & 7 on East Lyme tax Assessors Map 11.1.**

Mr. Nickerson read the following correspondence into the record:

- ◆ Letter dated 5/1/04 to Wm. Mulholland, Zoning Official from Attorney Theodore Harris – Re: Proposed zone change 55-57 West Main Street, Niantic, CT – noting that this letter serves as a revision to the above captioned zone change request to allow the Commercial zone to follow the property lines.
- ◆ Letter dated 4/28/04 to Wm. Mulholland, Zoning Official from Attorney Theodore Harris – Re: 55-57 West Main Street, Assessor's Map 11.1; Lots 6 & 7 – requesting the zone change and asking that it be placed on the next Commission Agenda for scheduling.
- ◆ Letter dated 7/8/04 to East Lyme Zoning Commission from William Mulholland, Zoning Official – Re: Proposed Zone Change 53, 55-57 West Main Street, Niantic, CT – noting that the RU-40 area comprises approximately 1/3 of each of the lots.
- ◆ Letter dated 6/8/04 to Ed Gada, Secretary EL Zoning Commission from Wayne Fraser, Chairman EL Water & Sewer Commission – Re: Referral/Zone Change Application – noting that at its' meeting of 5/26/04 that both properties; Map 11.1, Lots 6 & 7 are served by Water & Sewer installed in West Main Street and that both properties are assessed for sewer.
- ◆ Letter dated 6/22/04 to Mark Nickerson, Chairman EL Zoning Commission from Gene Lohrs, Chairman Reference Committee SECCOG – Re: Proposed Zone Change RU-40 to CA for land located on West Main Street - finding that the property is beyond the 500' limit of a Municipal boundary and the Committee has no jurisdiction to conduct a review of this proposed zone change.
- ◆ Letter dated 7/8/04 to Chairman Nickerson, East Lyme Zoning Commission from Francine Schwartz, Chairman Planning Commission – Re: Application of Theodore Harris for a change of Zone from RU-40 to CA for portions of properties located at 55-57 West Main Street – finding this INCONSISTENT with the Plan of Conservation and Development specific recommendations. (Attached at end of Minutes)

Mr. Mulholland stated that the Legal Ad ran in the New London Day on 6/26/04 and 7/5/04. Attorney Harris noted that the Certificates of Mailing were submitted. Mr. Mulholland concurred and said that they are in the master file for this application.

Mr. Nickerson called upon the applicant to give his presentation. Attorney Theodore Harris, place of business, 351 Main Street, Niantic said that there are three contiguous parcels, two of the parcels presently have a depth of 400' and one of 200'. Each of these lots is approximately 600' deep. The goal is to make the zone line coordinate with the property lines. They originally were requesting that only two of the parcels be changed but after meetings with Staff it was decided that it made more sense to have all of them conform. The overall purpose is for an elderly CA project to be built there as it has public Water & Sewer. These would be smaller multi-family style units in a lower price range than what is currently being constructed in Town. This is only a possible use for this property and the feeling is that it would be ideal as it is close to businesses and areas of the Village. However, the basis for their decision is if it is consistent with the Plan of Development. When he looked at it prior to submitting this application he found that it follows the recommendation to 'deepen the existing zone' and to 'control commercial strip development by eliminating strip zoning where possible'. He was very surprised to get the letter from Planning this afternoon stating that they found it to be inconsistent.

He passed out copies of two pages from the Plan of Development to the Commission. (Attached at end of Minutes) The Plan of Development encourages multi-family development particularly in proximity to the downtown area. In short he disagrees with the letter from Planning and finds that what he is proposing is following the recommendations outlined there. It appears that the Planning Commission is confused geographically or did not look at the area in particular as they are taking a pre-existing area and deepening it as is recommended in the POCD. He showed on a map the existing area and what is next to it – a commercial center with a tile store, computer and antique stores. It is right behind and surrounds the Thames Imports area. No residential uses would be impacted by this use and there is a required buffer that would have to be maintained. Also, the POCD encourages this kind of use in proximity to the downtown area. If this were located beyond the Huntley Court area, he would have a different opinion however, that is not the case and he finds that their goal is consistent with the POCD. He disagrees with the letter from the Planning Commission and finds that this is consistent. If the intent is that they are looking into changing and making some sort of transitional zone in the future, that does not mean that what they are asking for here is not consistent now.

Mr. Nickerson asked for the record if he makes a presentation to the Planning Commission. Attorney Harris said no we don't. Their position is that we do not make a presentation before them. Mr. Nickerson said that is unfortunate as this is the second time that they are wrong. They are saying that this is in the wrong area when they have the lot numbers and the area.

Mr. Nickerson called for anyone from the public who wished to speak in favor of this application -- Hearing no one --

Mr. Nickerson called for anyone from the public who wished to speak against this application --

Maureen White, 41 West Main Street, Niantic said that she fails to see how an ugly elderly housing project will maintain a commercial atmosphere or business flavor.

Mr. Nickerson said that it becomes a commercial enterprise when it is multi-family and that is why they are seeing it.

Ms. White said that she owns the Book Barn and they would be impacted by this as would Park Place which is a residential area and the kids who live there and want to ride their bikes. She is concerned about the curb cuts. This would affect her and she would hate to see this become a Wal-Mart or Wendy's after this area was changed or some other big box.

Mr. Nickerson asked for clarification of the area on the map. He noted that the area in pink on the map is the only area that is under consideration and that the front of all of that area is commercial now and the owners are paying taxes on it.

Mr. Henderson said that he wanted to ask a question of Ms. White. He asked about the traffic and if it backs up especially with the proximity to the school and traffic from both residential and commercial.

Maureen White, 41 West Main Street, Niantic said that traffic is a concern, especially during the summer and holidays. Sometimes the weekend traffic is detoured there and it does back up.

Mr. Henderson asked if there is a walking path there.

Ms. White said no.

Mr. Nickerson asked if there were sidewalks in Park Place.  
Ms. White said no.

Randy White, 41 West Main Street, Niantic asked if they have to prove a hardship for this type of zoning change.

Mr. Nickerson said no.

Mr. White said that once it starts, what is there to stop it. He is in a spot where 200' is commercial and what is to stop him from extending his property to 1000' as he would really be able to make money on it.

Mr. Nickerson said that he would have to come before this Commission and each application is decided separately. Each approval is separate.

Mr. Mulholland explained that the Commission is operating in a legislative capacity and that each request has to be handled and scrutinized separately. Anyone could come to this Commission and pay the fee and be heard and the Commission has to decide each request separately and decide the merits of the case. The Commission is obligated to hear the application.

Mr. White said that if this is granted then he does not have to build multi-family elderly housing, he can build anything allowed in that zone.

Mr. Nickerson said correct.

Mr. White suggested that there is another street, possibly 'Heathcliff' or something that perhaps the Planning Commission was thinking of and got confused with Huntley.

Joe Kwasniewski, 67 Walnut Hill Road, East Lyme said that he is not against progress but that he wants it slowed down. He said that this application of Mr. Harris and this property that they have said that they pay taxes on it, why don't they donate it to the Town so that they don't have to pay taxes on it? Maybe the Town can do something with it.

Dan Coffey, 71 Great Neck Road, Waterford, CT said that he is speaking for his father Owen Coffey of 8 Park Place and 51 West Main Street, Niantic. He said that if there is some sort of large development complex that it would affect his land. He asked if this application is hinged to a specific project.

Mr. Nickerson said no and added that a little over 50% of the property at present is commercially zoned.

Mr. Coffey said that only one side would about his father's property at present and this is why he wanted to know this.

Mr. Peck asked Mr. Mulholland for the buffer regulations between CA and Residential zones.

Mr. Mulholland said that Section 24.6E requires 25'. He added that if and when they looked at a specific application for the property that they could also require other things.

Mr. Peck said that it is 25' and the setbacks for CA are 20' from the street line and 25' from all other. The setback would extend the buffer, as you would not have trees growing along the side of the house.

Ms. Byrnes asked if all they were considering here was the re-zoning of RU-40 to CA.

Mr. Mulholland said correct.

Mr. Henderson asked what happens if the property is sold and if all of the CA uses would be in play.

Mr. Mulholland said that they are in play and that they would have to present an application for what they want to do.

Joe Kwasniewski, 67 Walnut Hill Road, East Lyme said that the application says lots, he would like to know what size these lots are.

Attorney Harris said that Lot 6 is 2.23 acres, Lot 7 is 1.58 acres and Lot 9 is 1.63 acres.

Mr. Nickerson asked if there were any other comments and if Attorney Harris would like to comment.

Attorney Harris said that the with respect to the concerns over traffic that this is a State Highway and would require DOT approval on curb cuts and site lines. Second, this is a request to extend an existing zone on this property. There is already commercial use of that property and most likely will be in the future. Also, the regulations allow an extension into the residential area by 30'. They are trying to keep this consistent and deepen the existing zone.

Mr. Nickerson asked for an explanation of how this could happen that people would have property with two different zones.

Attorney Harris said that it is strip zoning and that years ago they picked an area across the fronts and parallel to the streets and zoned the fronts commercial. There are isolated pockets of this all over the Town. It exists in downtown Niantic also.

Mr. Nickerson noted that they have had many applicants come and request this type of thing, which is why he asked.

Mr. Nickerson asked if there were any other comments – hearing none he called for a motion to close the public hearing.

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

**Mr. Salerno moved that this Public Hearing be closed.**

**Ms. Byrnes seconded the motion.**

**Vote: 6 – 0 – 0. Motion passed.**

Mr. Nickerson closed this Public Hearing at 9:58 PM.

Respectfully submitted,

Karen Zmitruk,  
Recording Secretary

# Town of

P.O. Drawer 519  
Planning Commission



# East Lyme

108 Pennsylvania Ave  
Niantic, Connecticut 06357  
(860) 691-4114  
Fax (860) 739-6930

July 8, 2004  
Hand-delivered

East Lyme Zoning Commission  
Town Hall  
Niantic, CT

Dear Chairman Nickerson:

At a regular meeting on June 15, 2004, the East Lyme Planning Commission found the application of Theodore Harris for a change of zone from RU-40 to CA for portions of properties located at 55-57 West Main Street (Assessor's Map 11.1, Lots 6, 7 & 9) INCONSISTENT with the following Plan of Conservation and Development specific recommendations:

- *Limit future commercial development to the existing commercial centers of Niantic and Flanders.*
- *Control commercial strip development by eliminating strip zoning where possible.*
- *Adopt changes in commercial zoning to restrain strip development – The strip commercial zoning of West Main Street between Huntley Court and Roxbury Road should be eliminated. Commercial development in this strip is limited and could continue to operate as nonconforming uses. This strip and the interior land areas behind it are recommended for mixed, medium-density, single-family residential and multi-family housing by special permit when sewers are available.*
- *Establish a new zoning district to serve as a transition between residential and commercial/industrial zones. This new zone could take the form of an office/multifamily residential zone that would include appropriate uses. The commercial strips proposed for rezoning as stated above should be studied for rezoning to this new district.*

It is recommended that a new zone be created in the areas recommended in the POCD, including the parcels that are the subject of this zone change request. It is understood that a subcommittee of the Zoning Commission is currently working with Land Use staff to develop a proposal for a Neighborhood Business Zone that would be appropriate in the subject area. The new zone could accommodate the intended use and eliminate undesirable uses that would be allowed in the CA District.

Cordially,

*Francine Schwartz*  
Francine Schwartz, Chairman

CC: W. Mulholland  
T. Harris

*This is at least 1/4 mile away from the lots in question*

*RHII Attachment - RHII Zoning Comm. 7/8/04*  
*Read later*

From Plan of Conservation + Dev.  
Submitted for record  
by Atty. Harris 7/8/04  
RH II

- The type of commercial development taking place in the central areas is likely to be a combination of local/market-oriented, small businesses and businesses which cater to tourists and customers from Interstate 95. However, a trend toward more clustered shops or mini-centers (e.g., Midway Mall) is probable to make the most efficient use of increasingly scarce and costly prime sites.
- When the State of Connecticut rebuilds the Exit 74 southbound interchange, full access will be gained to the undeveloped and inaccessible commercially zoned land along Interstate 95. A community or regional shopping center would be a probable development.
- Outside the most intensely developed areas, strip commercial development will continue to expand along Route 161, West Main Street and Route 1.
- Further motel development and construction of fast food restaurants is probable in the Exit 74 interchange area.

### Recommendations:

- Limit future commercial development to the existing commercial centers of Niantic and Flanders.
- \* - Accommodate future growth by consolidation and deepening of existing zones and encouraging the use of a common service road along Route 161. ←
- \* - Control commercial strip development by eliminating strip zoning where possible. ←
- Consider a historic preservation area in Flanders Village to be located at the intersection of Church Lane and Route 1.
- Preserve the Niantic River marine commercial areas by reserving these areas exclusively for marine-dependent uses.
- Provide incentive for the preservation of agricultural land to provide local crop supplies for associated businesses and tourism support.

#### 1. Channel future commercial growth toward the Route 161/I-95 Interchange Area.

The preponderance of commercial development in the future should take place around the Exit 74 interchange adjacent to Interstate-95 in conjunction with new development or redevelopment in the Flanders Commercial District. As documented, a substantial amount of land is available in the Route 161 corridor for commercial growth. Removal of multifamily housing development as a permitted use would remove pressure for development of commercially zoned land for non-commercial uses. Additionally, the area is attractive for further commercial development because of its location with respect to major transportation corridors and accessibility to the central and northern areas of Town where most future residential development will take place.

There are several potential impacts involved in the intensification of commercial use in the Route 161 interchange area. One definite impact will be the increase in traffic congestion on Route 161. However, it is considered preferable to accept high traffic volumes here and to make the necessary roadway improvements within a limited area than to aggravate problems and trigger more extensive and costly improvements by permitting further strip development elsewhere. Strip development with multiple access points to separate properties should be discouraged and zoning regulations should encourage larger minimum lot size to maximize use of interior lots and shared driveways. Non-retail uses that are not dependent on road front visibility, should be encouraged to locate in the rear portion of developments. Retail uses should be encouraged to locate near the front of the parcel with parking located to the rear and side of the building. The front of the building should be landscaped and a landscaped berm provided next to the sidewalk to buffer the building from traffic headlights and glare.

Ec Plan of Conservation + Dev. P24+26

Attachment PH II Zoning Comm. 7/8/04

3. Adopt changes in commercial zoning to restrain strip development.

The strip commercial zoning of West Main Street between Huntley Court and Roxbury Road should be eliminated. Commercial development in this strip is limited and could continue to operate as nonconforming uses. This strip and the interior land areas behind it are recommended for mixed, medium-density, single-family residential and multifamily housing by special permit when sewers are available.

Second, the strip commercial zoning currently in effect along Boston Post Road should be eliminated west of Upper Pattagansett Road or, as a minimum change, west of Mill Road.

4. Establish a new zoning district to serve as a transition between residential and commercial/industrial zones.

This new zone could take the form of an office/multifamily residential zone that would include appropriate uses. The intent would be that lighting, disruption to residential architectural character and traffic generation be minimized. Such a zone would act to protect single-family residential areas from retail and other commercial infringement. The commercial strips proposed for rezoning as stated above should be studied for rezoning to this new district. Other areas to be considered that are currently zoned commercial arterial (CA) are Black Point Road, State Road, Boston Post Road, west of Mill Road and Pennsylvania Avenue.

5. Adopt controls over the number and location of curb cuts for access to commercial development.

The abundance of vehicular access points to commercial properties in the downtown Niantic and Flanders Road/Boston Post Road areas has been documented to be a major contributor to traffic congestion. Additionally, the uncontrolled turning movements associated with these access points are a safety concern. Although little short of roadway improvements can be done to eliminate these conditions for existing development, controls over the number and location of curb cuts in new commercial development would limit further traffic problems in the future. The Zoning Commission should consider the adoption of the following requirements as part of site plan review for all new commercial development, additions or enlargements of existing commercial uses, changes in use from residential to commercial use and changes from one commercial use to one which requires more off-street parking under the Zoning Regulations:

- limit curb cuts to one combined entry/exit drive per parcel, or one entry-only and one exit-only drive per parcel, except where the applicant can show, based on traffic studies, that such a limit would result in unacceptably long queues,
- expressly permit joint access drives for adjoining parcels,
- for corner lots, limit curb cuts to one entry-only access from the main thoroughfare; require exit to be located on the side street.

Finally, rationalization and consolidation of access points to Route 161 may be possible in conjunction with future improvements to this roadway (see Transportation Section).

6. Refine Commercial Business District controls to preserve and enhance Niantic Village.

Certain refinements to the zoning provisions for downtown Niantic (CB) are recommended in addition to a commercial site plan review. The zoning board should consider the adoption of architectural guidelines, which would be consistent with the original "New England Village" architectural styles (i.e., pitched roof, etc.). Where requirements are not appropriate, financial and/or site plan incentives are recommended to encourage architecturally compatible design.

Changes in the uses permitted in CB zones are advisable to prevent construction of commercial uses that are not in character with the generally small-scale retail nature of the village. Uses

→ is 1/4 mile west of this side  
So now we have CA that should remain - which is us - + were deepening it - as recommended