

EAST LYME ZONING COMMISSION
PUBLIC HEARING II and III
Thursday, JUNE 17th, 2004
MINUTES

June 22 2004 at 3:15 AM
Esther B Williams PM

The East Lyme Zoning Commission held the Application of Theodore A. Harris for a change of zone from SU (Special Use) to SU-E (Special Use-Elderly) and the Application of Theodore A. Harris for a Special Permit to construct 80 units of elderly housing on property identified as 16 Mostowy Road Public Hearing on June 17, 2004 at Town Hall, 108 Pennsylvania Avenue, Niantic, CT. Chairman Nickerson opened the Public Hearing and called it to order at 8:11 PM immediately following the previously scheduled public hearing.

PRESENT: *Mark Nickerson, Chairman, Ed Gada, Secretary,
Norm Peck, Pamela Byrnes, Rosanna Carabelas,
Shawn McLaughlin*

ALSO PRESENT: *Attorney Theodore Harris, Representing the Applicant
Jeff Torrance, Niantic Real Estate, LLC, Applicant
Karl Frey, Principal Vespera Investments
Michael Dunning, Architect/Urban Planner w/Shook Kelley
David Sullivan, Sr. Traffic Engineer w/Barkan & Mess Assoc.
William Mulholland, Zoning Official
William Dwyer, Alternate
William Henderson, Alternate
Marc Salerno, Alternate
Rose Ann Hardy, Ex-Officio, Board of Selectmen*

ABSENT: No one.

PANEL: *Mark Nickerson, Chairman, Ed Gada, Secretary,
Norm Peck, Pamela Byrnes, Rosanna Carabelas,
Shawn McLaughlin*

Public Hearing II and III

1. **Application of Theodore A. Harris for a change of zone from SU (Special Use) to SU-E (Special Use-Elderly) for the property identified in the application as 16 Mostowy Road, East Lyme, CT. Property is further identified as Lot 5 on East Lyme Tax Assessor's Map 40.0. and –**
2. **Application of Theodore A. Harris for a Special Permit to construct 80 units of elderly housing on a portion of the property identified in the application as 16 Mostowy Road, East Lyme, CT. Property is further identified as Lot 5 on East Lyme Tax Assessor's Map 40.0.**

Mr. Mulholland explained that they had opened both public hearings simultaneously, as there is information that will be given that pertains to both. However, while the Zone Change and Special Permit are two separate applications, discussion typically centers on this as one entity with the understanding that there will be two separate motions and votes.

Mr. Nickerson asked Mr. Gada, Secretary to read the following correspondence into the record:

- ♦ Letter dated 6/17/04 to The EL Zoning Commission from Wm. Mulholland, Zoning Official – Re: Zone Change SU to SU-E and Special Permit, 16 Mostowy Road, EL, CT. Assessor's Map 40.0, Lot 5 – noting that SU Zones currently permit, by special permit a great variety of uses while the SU-E zone permits only one use, that of age restricted housing. The special permit application for SU-E is requesting construction of 80 units of elderly housing. The Towns' Land Use Team reviewed the site plan where it was determined that the plan substantially complies with the applicable regulations. However, due to time constraints the

- on-site drainage is still under review by the Town Engineer and it is requested that any approval be subject to The Zoning Official and the Town Engineer endorsement prior to any issuance of zoning permits.
- ◆ Letter dated 3/25/04 to Wm. Mulholland, Zoning Official from Attorney Theodore Harris – Re: Mostowy Road requesting the zone change from SU to SU-E and a special permit for Elderly Housing as allowed in the SU-E district to be put on the Commissions' Agenda.
 - ◆ Letter dated 5/14/04 to Wm. Mulholland, Zoning Official from Fred Thumm, Director of Public Works Re: Zoning Referral – Mostowy Road noting that the referral was considered at the 4/27/04 meeting of the Water & Sewer Commission and attaching a copy of the motion from that meeting stating that the parcel is outside of the sewer shed so sewers are not available. Water is available from Mostowy Road but would require a booster pump station. Non-potable water should be used for outside irrigation.
 - ◆ Letter dated 5/19/04 to Ed Gada, Secretary EL Zoning Commission from Gene Lohrs, Chairman Reference Committee SECCOG – Re: Mostowy Road property noting that the zone change was beyond the 500' limit of a municipal boundary and therefore the Committee has no jurisdiction.
 - ◆ Letter dated 6/4/04 to Mark Nickerson, Chairman EL Zoning Commission from Francine Schwartz, Chairman, Planning Commission - Re: 8-2a Referral – Proposed Zone Change Application from SU (Special Use) to SU-E (Special Use-Elderly) for property located on 16 Mostowy Road, Assessor's Map 40.0, Lot 5 - finding the application CONSISTENT with the Plan of Conservation and Development with conditions.

Mr. Nickerson read the following correspondence into the record:

- ◆ Letter dated 6/17/04 to Wm. Mulholland, Zoning Official from Mike Giannattasio, Town Engineer – Re: Darrow Pond Active Adult Community – noting that no review of the on-site proposed improvements has been done and no comments can be offered however the off-site improvements to the road have been reviewed and are satisfactory.

Mr. Mulholland stated that the Legal Ad ran in the New London Day on 6/4/04 and 6/14/04.

Mr. Mulholland noted that the sign was posted on the property. He also said that the adjacent property owners were notified and they have the certificates of mailing in the file.

Mr. Nickerson called for the applicant or their representative to present this application.

Attorney Theodore Harris, place of business 351 Main Street, Niantic said that they were here for two things this evening. The first is for a change of zone for approximately 190 acres of the JC Penney property. The current zone is SU that carries with it a large variety of uses, and their proposal is to change it to SU-E, which carries one use, that of an active adult residential community. This, in his view is very restrictive. In addition, he is looking for a Special Permit for the property so that 80 units of elderly housing can be constructed on approximately 50 acres of the property.

Attorney Harris then submitted the following **Exhibits** for the record:

Exhibit A – Photo of the sign posted on the premises

Attorney Harris said that the certificates of mailing were submitted for the property owners within 500' of the property.

Exhibit B – Proposed condo documents.

Attorney Harris explained that in conjunction with the special permit application the proposed condo documents have to be submitted. He noted that Article 10 on Use Restrictions is fairly standard and that these mirror those found in the Zoning Regulations.

Exhibit C – Traffic Study Report by Barkan & Mess Associates of Branford, CT based upon the proposed project use.

Attorney Harris gave the following overview of the project - Water is available to the property via a booster pump station. There is also the potential availability of wells and the intent is to work with Water & Sewer exploring wells and trying to tie into the Town system. There are some existing wells on-site and the irrigation will be done by on-site well water. They will submit to the DEP for the on-site community septic, which is a six-month to one-year process. The site is the former JC Penney site that was the subject of a golf course permit in the late 1980's to early 1990's. The area is heavily wooded except for a small area where some clearing was begun long ago. The phase that is proposed involves, and will take advantage of most of the Darrow Pond area. Another part of this application proposes improvements to Mostowy Road, as it is a narrow road. Within the community there will be private roads designed to Town standards except for the width. The Association will maintain them so they will not be the responsibility of the Town. The design team has worked

in conjunction with the standards as set forth in the regulations. He then introduced Karl Frey who will develop this site along with Niantic Real Estate.

Karl Frey, 528 Carter Street, New Canaan, CT said that he is a principal with Vespera Investments. He resides in New Canaan with his wife and children. He said that he has been in Real Estate Development for 22 years and is looking forward to the prospect of developing this site with Niantic Real Estate. He has specific experience developing the 55 and over communities and is delighted by this opportunity. He is most recently involved with a 290-home 55 and over project in Upper Narragansett Bay, Rhode Island where, after less than a year of construction, one-third of the homes have been sold. He continued that there is a demand for this type of housing and that East Lyme is well located to receive it. By the year 2020 over 30% of the entire country will be 55 and older. He had a market study done by Robert Charles Lasser & Co. based in Bethesda, MD who are a pre-eminent market research firm in this country. The study results were very satisfactory to him and his capital sources. According to the study, the price point for the homes would be in the \$350,000-\$450,000 range and will be filled in a year.

He then introduced Michael Dunning, Architect and Urban Planner to present the vision of this community.

Michael Dunning, AIA, Urban Planner with Shook Kelley, Charlotte, NC said that he resides at 8569 Lower Rocky River Road in Concord, NC. He will present the architecture and landscape plan for this community. The homes would be of two basic types of 1800-2200 sq. ft. before adding the garages. These would be small-lot single family homes and cluster single family homes with six to seven units in each cluster. They would have from one to three bedrooms, storage space and garages. The major materials that would be used on the exterior would be natural wood shingles, fiber cement siding and trim, brick and stone veneers and architectural shingles and possibly some slate for the roofs. For landscaping, they wished to minimize the grading and work with the topography on site as much as possible and to allow for views of Darrow Pond. Some of the land has been cleared. The planting scheme is Eastern white pine, Mountain Laurel and Fir for year round color, buffer and shade. These are also low-maintenance hearty types. They will have stone borders in the meadows that will be made from the stone on-site. They will also have some retaining walls, a gazebo, trail system and boat dock for non-mechanized vessels. The intent is to nestle these homes within the bucolic setting of Darrow Pond with a minimum of environmental impact. He explained that the main entry would be very prominent and has a roundabout that would take people to the south to the 80 units and to the north to Darrow Pond and future development. The roundabout is a good device for consistent traffic movement. There would also be a symbolic (non-functioning) gatehouse to give one a 'sense of arrival'. He then showed the various housing plans as they relate to the drive on various site plan boards. He explained that the walking trail meanders into the green space between the homes themselves and that each home has a view to wilderness and some to the pond.

Mr. Nickerson asked if each cluster would have a gazebo.

Mr. Dunning said no, as some do not have the room to do that.

Mr. Nickerson asked about the fiber cement product.

Mr. Dunning explained that it is fiber and cement and that it has a 50-year product warranty and 25-year paint warranty and is good for this type of area near the water. They use it a lot in North Carolina and have success with it.

Mr. Dunning showed the architecture of the village enclaves and explained that they look at this as a village and the enclaves would be labeled as part of the village. He also showed the prototype of the street lamps that would be used and said that they would be 12'-18' high with internal balance to alleviate the night sky effect and for anti-glare and directing the light down.

Mr. Nickerson asked for the record if that was the type of light that they should expect to see on site.

Mr. Dunning said yes.

Mr. Nickerson asked if this was also the site plan that they should expect.

Mr. Dunning said yes, the intent is that this is a concept plan that Mr. Pfanner was given.

Attorney Harris added that Mr. Pfanner has turned it into a fully engineered working site plan.

Mr. Mulholland concurred that staff has been working on this and reviewing it as the working site plan.

Ms. Carabelas asked Mr. Frey about the prices of \$350,000-\$450,000 for each home and if there was a survey done so that he knows that he can get that amount. Also, when talking about the elderly, these seem to be high prices for them to pay.

Mr. Frey said yes, a market study had been done and that he had mentioned absorption and pricing and that the study had shown that they go hand in hand. They have demographers and social scientists that put this study together and in the \$400,000 range the homes would sell quickly however, if they were \$500,000, they would not sell as quickly. The study also showed that the people who buy them are drawn from the different market areas (besides locally) such as New York and Boston among others.

Ms. Carabelas said that for residents who live here in East Lyme to go to an adult community like this, that she has heard from the people in Town that they cannot afford any of these homes.

Mr. Mulholland and Mr. Nickerson said that is a social issue as opposed to what we are charged with looking at here.

Mr. Frey said that it is a difficult issue and added that he could not afford to live where he does now if he had to buy his home there today.

Ms. Carabelas asked if there were fees associated with this type of housing.

Mr. Frey said yes as it is in the nature of condo structure.

Ms. Byrnes said that this is a social issue as is the fact that we are struggling with balancing affordable housing in this Town.

Mr. Nickerson said that is not for us to debate here, as we are land use.

Ms. Byrnes said that she was happy to get it on the record.

Mr. Frey said that he was happy to have it in the record.

Attorney Harris introduced Robert Pfanner, Engineer for the project.

J. Robert Pfanner, Engineer said that he has had his business here and lived in this Town for 28 years. He got the conceptual plan from the architect and worked up this site plan from it. He explained that Mostowy Road is a narrow road that goes from 23' to 16' to 14' wide and then drops off so they have made it a 22' wide road that still keeps the country effect. They have also added a snow shelf that they do not have now. There is ledge there for 6-10' and they will reconstruct a stone wall staying on their side of the road so as not to disturb the drop-offs and the wetland areas. There is one driveway up to the left and off a nasty bend and they will design the road around this driveway to keep it at least as good as it is now. There is currently drainage on Mostowy Road and they will be upgrading it and no more run-off will go down it than currently goes there. In summary, Mostowy Road will be improved from the edge of their property down to Chesterfield Road to a minimum of 22' wide with a snow shelf. The project area itself will be lavishly landscaped and because it is not a subdivision, they do not have to curb everything so consequently there is not a lot of point discharge. The drainage ways serve the function of picking up the foundation drains and putting it through level spreaders to run over the rest of the site.

Mr. Mulholland asked if this was the preferable method to enhance water quality by use of level spreaders to run through the grass.

Mr. Pfanner replied absolutely and added that the landscape keeps the run-off to a minimum and they put it back into the ground. He continued his explanation of the plan saying that they have planned one gazebo along the trail system. The trail system runs along the road and side streets to the next section and also to the pond. It is currently a 4' wide bituminous carpet that requires minimum maintenance. It has been worked in with the landscaping and some areas have walls on both sides to blend better. It is a beautiful trail system that opens up at the pond. All of the drainage runs on this property except for what currently runs on Mostowy Road.

Ms. Byrnes said that it said future recreation on the plan and asked if that was Darrow Pond and what this future recreation would be.

Mr. Pfanner said yes, it is Darrow Pond but future recreation has not really been thought of yet, it could be a clubhouse but it is not for this current phase.

Mr. Nickerson said that it is not on this plan and that they should not be considering that with this application.

Mr. Pfanner said that was correct. For now, they are only proposing that non-motorized rowboats or canoes be utilized on the pond.

Mr. Mulholland said that they are still in consultation with the Town Engineer on this site for on-site improvements and drainage.

Mr. Pfanner said correct and added that he does not foresee any problems with any alterations that he may be asked to make when he meets with the Town Engineer on the site. He noted that no curbs make for far less impacts.

Mr. Mulholland asked if the drainage was similar to that of the Spinnaker project.

Mr. Pfanner said yes and noted that it is also similar to the golf course.

Mr. Peck asked Mr. Pfanner to explain the open space and future development and if this was contiguous open space.

Mr. Pfanner said that they are required to have 4 acres of contiguous open space and excluding the pond, that they have currently provided 15 acres of open space.

Mr. Peck asked about the contiguous development.

Mr. Pfanner said that they are still working on that. They just gave 25 acres of open space including Aunt Ruth's Turnpike to the Town for public access. While it depends on how everything works out, they intend to have more open space and hope to have it be contiguous.

Mr. Mulholland said to Mr. Peck that Section 1.4.3 provides a definition of open space which states: ' Open Space Usable – Space on a lot or parcel that is: (A) Unoccupied by principal or accessory buildings above the finished grade; (B) Unobstructed to the sky; (C) Not devoted to service driveways, service areas, off-street parking at finished grade or loading areas; (D) Devoted to landscaping, active or passive recreation and other like uses; (E) Made available in the same proportion to all occupants of the building or buildings on the lot or parcel.'

Mr. Pfanner repeated that under the current code that they were required to give 4 acres of open space and that they gave 15 acres.

Attorney Harris explained that the SU-E regulations require 2,000-sq. ft. of open space per unit which equates to just under 4 acres and that they have given 15 acres which is almost four times as much as required.

Mr. Peck asked if the pond was going to be made available to the general public.

Mr. Pfanner said no.

Ms. Byrnes asked if it was open to the public now.

Mr. Nickerson and Mr. Pfanner said no, it is all private property.

Ms. Byrnes said that it was commendable that they have set aside area for public use up top.

Attorney Harris explained that the Zoning context of open space is different from the Planning context and that they might be confusing this. In the Zoning context it is difficult to have public open space as the open space is for the people who will be living there and to open this to the public in a private community there is the issue of liability.

Ms. Carabelas asked where the drinking water is coming from and if they are tapping into the public supply.

Mr. Pfanner said that they are above the service area and need a booster pump to build up the necessary pressure to get the water up there. They will use on-site wells for irrigation and are looking into wells for drinking water also, as they would get far more water than they would need and they could possibly feed the extra water into the Town system. However, this is something that will have to be worked out with Water & sewer.

Mr. Mulholland reminded the Commission that a letter was read into the record on this with the motion from Water & Sewer indicating that water is available to this site.

Ms. Byrnes asked where the big septic system area would be as it appears to her to be over a small pond.

Mr. Pfanner pointed it out on the plan and stated that it is below the pond.

Mr. Mulholland asked Mr. Pfanner to discuss the septic design or approval path.

Mr. Pfanner explained that if over 5,000 gallons/day are used that the system would require a DEP permit. Once the Zoning permits are in place, they will make out a permit to the DEP and it takes about a year to a year and a half to go through this process with the DEP as it is very extensive with a lot of testing and re-testing. It is an involved process.

Mr. Nickerson stated that this appeared to be similar to the golf course project that they have already been through.

Mr. Pfanner said yes, in fact, exactly the same as the golf course project.

Attorney Harris introduced David Sullivan to present the traffic study.

David Sullivan, Senior Transportation Engineer with Barkan & Mess Associates, 300 East Main Street, Branford, CT said that Alan Mess, the President of the Company had authored the report but is out of Town and could not present it this evening. He would go over the highlights of it. The scope was to review the existing conditions and estimate traffic through a series of analysis to see if there would be changes. They would also review impacts. In the first study they looked at accident statistics and found no unusual patterns or

frequencies of accidents. Most of them are on Chesterfield Road, which is a State Highway and the State monitors these. The State has not itemized this area as one of concern. Over the last decade the traffic on Chesterfield Road has grown a little less than 1% per year. About 5000-6000 cars per day pass in that area. They did their traffic study counts during August of last year so that they were testing during the peak summertime travel conditions. They also looked at the access way and site lines and found that with some clearing of their property that they could see some 300' at the driveway location to the right and more than that to the left. He noted that based upon a 25 MPH speed limit on Mostowy Road, the State recommends 280' of site line and they will have more than that.

Mr. Nickerson asked if the applicant would be able to clear that.

Mr. Sullivan said yes as it is their property and this is the driveway that comes from and exits to Mostowy Road. He added that the site lines on Chesterfield Road are easily over 500' in either direction. In doing the trips per day analysis, they estimate that this would equate to an additional 40 trips during peak hours; trips meaning in and out combined. They found that this traffic would not result in any change in operating conditions or create safety issues in the levels of service. From an operational standpoint they do not see that any recommendations are needed except for the better road on Mostowy Road that has already been addressed. The 22' wide road with the snow shelf shoulder is a tremendous improvement.

Ms. Byrnes asked if this was based on it being an adult community.

Mr. Sullivan replied yes, absolutely.

Mr. Mulholland asked Mr. Sullivan if this were a typical subdivision rather than an adult community, would there be a difference and if so, what would that difference be.

Mr. Sullivan said that if they assumed the same density of the 80 units there would be two to three times the amount of traffic than this adult community.

Ms. Byrnes asked what the rules were concerning who can live in SU-E housing.

Mr. Mulholland said that this was found in Section 25.5 of the regulations and that Attorney Harris has stated that the condo documents for this project follow our use restrictions exactly.

Ms. Byrnes said that the question remains of who else could live in that house.

Mr. Mulholland said that based upon the regulations his view is no one. They can have guests for short periods of time but they cannot have minor children.

Ms. Byrnes asked if the parents were 55 or over if they still could not have minor children.

Mr. Mulholland said that is correct.

Ms. Byrnes asked of Mr. Sullivan if the traffic patterns as tested were based upon valid assumptions for this type of adult community.

Mr. Sullivan replied yes.

Attorney Harris said that they now have an overview of all aspects of the project. They also need to talk about the waivers that are being requested. He passed out a sheet on this (Attached at end of Minutes). He also presented Exhibit D – Three sheets showing a demonstration of the actual buffer area on the East Side of the property between this and the adjacent property.

Attorney Harris explained that sidewalks along Mostowy Road would not only not make sense as there is no room for them, but would be a hazard and would essentially go nowhere. There are no sidewalks in the area now and the SU-E community will have an extensive trail system. The requirement for an evergreen buffer would require that dense vegetation that already blocks the view would have to be removed to plant evergreens that may not make it if the native vegetation overgrows them. He explained that there is a 40' difference between this property and the property immediately below it, which is the Girl Scout Camp. The closest house over the ridge that cannot be seen is 250' and the next closest is 600' away. There are no structures on the Girl Scout Camp in that area and the site is isolated from other residential structures by topography, vegetation and distance. The last waiver is that of Section 12A.2.3 along the easterly boundary where the requirement is 100' from the property and the phase line. They have shown the 50' required buffer and are requesting a setback reduction waiver of 50'. Their regulations in Section 12A.3.6 allows the Commission to phase this project as long as the phase can stand alone which it can.

Mr. Nickerson said that they could also assume that the next phase would be adding another 50' anyway. Attorney Harris replied yes.

Ms. Byrnes asked if this land could be separated.

Attorney Harris said yes. He added that there would be no advantage to that as this is all an SU-E zone and the buffer was intended to be between adjoining properties and this is all the same property. This does not seem to serve any detriment to the area and the regulations allow them to waive this. In bordering the Girl

Scout property there is 58' and it seems that a reduction of the setback in the narrow area would not hurt anything as they have maintained the 50' buffer. The closest unit would be 58'.

Mr. Peck asked what the distance of the steep slope was.

Mr. Pfanner said that it runs for a distance of about 300'.

Attorney Harris said that it is a fairly dramatic change in elevation of about 35'.

Mr. Peck asked if there would be any houses in that 300' area.

Mr. Pfanner said that the area that can be developed is developed and that you have to consider the regulations with the 15% slope limitation on the driveways.

Mr. Nickerson asked if the applicants property ends where the green stops on the map and the ledge is in someone else's property.

Attorney Harris said yes, the closest is 58' and there is only one unit at that distance.

Ms. Byrnes asked how many units are in the required setback area.

Attorney Harris said that 58' is the closest and that is one unit. It was determined that unit nos. 75 thru 78 and 63 were within the 100' from the Girl Scout Camp property.

Mr. Peck asked what the reason was that the phase line was so tight.

Attorney Harris reminded them that they are way below on density, and according to the design criteria, they are way above on spacing and open space. Considering everything, they pushed the envelope and it is this side of the property that best lends itself to the better development with the least amount of disturbance. The SU-E regulations state that they need 10 acres and they have 50 acres. They need 50' of frontage and they have 450'. They should have no more than 10% lot coverage and they only have 6% lot coverage. For height requirements it states no more than 30' in height and they are no more than 28' in height. They are providing almost four times the required amount of open space. They have marked the plans for no on-street parking and have 20'-24' wide roads. The regulations state no more than 40% impervious surface area and they are at 10% and they have an extensive walking trail system. They meet and exceed all of the standards of the regulations and feel that they are requesting reasonable waivers in light of the nature of the use. Also with the zone change, they meet the requirements of that use. The property is currently zoned SU and this carries with it a variety of uses with a significant number of them being commercial. They are requesting the change to just the one use of SU-E and while elderly housing is denser by regulation what they are proposing is much less dense than allowed and they have designed it to fit in with the site.

Attorney Harris said in closing, they meet all the design criteria, it is a beautiful site with a lot of natural amenities and it will attract people to this Town and be an asset to the Town. The site is isolated and is on a plateau and becomes its own little village. He urged them to approve the zone change and special permit.

Exhibit E – Architect renderings of Small Lot Singles and Cluster Singles Housing Styles and potential floor plans, six pages.

(Note: Mr. Nickerson called for a five-minute break here.)

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 in opposition to this application -
Hearing no one –

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

Bob Gadbois, 358 Boston Post Road, East Lyme said that he was surprised that the developer did not say that there was no burden to the Town as we are going to have to add more fire and police protection. He said that he went to the budget hearings of the Finance Board and the Fire Marshall got up and said that they are making more and more visits to these type of housing developments. He also spoke with the Board of Finance Chair afterwards and he said that he had spoken with the Fire Marshall also and that they may have to go to paid ambulance service because of the burden on the Town and that is a burden to the taxpayers. Also, a woman asked how old you have to be to live there, well, one person could be 55 with a 24-year-old partner and then they have a child and they all live there.

Leo Mostowy, 42 Mostowy Road, East Lyme said that he lives on Mostowy Road. They call it the JC Penney property but before that it was the Mostowy property that was sold to the Penney Co. and he said that they sold it to them. He said that he will be 75 years old this Sunday and he has lived here all of his life. He has reserved a choice lot on the lake for himself however he is not a NIMBY (Not In My Back Yard) who does not

want others to enjoy what he has enjoyed all of his life. He would like others to be able to enjoy this and feels that with the SU-E everyone gets to enjoy it and this will complement the area very well. Someone mentioned public use of open space and he said that the public has use of the area along the road now and they have made a pig sty of the area near the dam and it's a shame how the public treats a nice piece of property. (An unidentified woman from the audience echoed this same sentiment) This area deserves to be developed right for others to enjoy it. The SU-E is a very limited use and this will help with our taxes and not overload the schools. He said that he is all for it. He lastly said that the little pond that was mentioned was something that his dad put in and they had an ice house there. In the winter they would cut the ice and fill the house with it. He also said that at one time long ago that you could get from Mostowy Road to Whistletown Road. He is in favor of this type of community going in there.

Bob Gadbois, 358 Boston Post Road, East Lyme said that he had another comment. They are building all of these ugly housing projects and he would like to know who could afford to live in them. None of the Towns' residents can afford them. It concerns him because he thinks that they should be building for the residents of the Town. He can't even afford the doorknob.

Walter Scott, 70 Mostowy Road, East Lyme said that he thinks that this is a good concept for this piece of property and is all for it.

Mr. Nickerson asked if the Commission had any other questions.

Mr. Peck said that he thinks that this is a great project and that his only concern is with the setback and the house that is 58' away. He said that while they have a regulation that allows them to waive this, he needs to be convinced that they should do that and that it will not bother someone.

Mr. Nickerson said that he would like to know more about that also.

Mr. Peck noted that he is leaning towards it being okay to waive.

Mr. Mulholland recalled to them that they amended their regulations so that they would be able to make that kind of judgment call in this type of situation.

Attorney Harris explained that if this was a standard residential subdivision that the setback would be 30' and if it were a cluster subdivision the setback would be 15'. With this you cannot see the units from the top of the ridge and they have maintained the full 50' buffer in that area. He suggested that they could add more vegetation in that area if it makes sense to them as a condition to provide more of a shield. Also, in that area there is no house for about 600'.

Ms. Carabelas said to Mr. Peck that all the neighbors were notified of this project and if they were concerned they could have come or sent a letter for tonight.

Mr. Pfanner explained the area saying that there is an elevation of over 100' and you are looking up through woods that have achieved the buffer function already. A 30% slope and ridge also line the property. Any houses are 650' away near the road.

Mr. Nickerson said that he thinks that it is a case of having all of that land and why here?

Mr. Pfanner said that they pushed it to the spot that best fits the project and avoids disturbing the wetlands. The topography above is what pushed it to this area. The topography above is not flat.

Mr. McLaughlin asked if they could offset the property line by 100' and move it up.

Mr. Nickerson reminded Mr. McLaughlin that it was just stated that the topography does not allow that.

Attorney Harris said that would be simple if the land was flat but its' not.

Mr. Pfanner said that they also considered the buffer and the intention of it and if this is doing what it is supposed to do and the answer is yes. This was not arbitrarily decided and they feel that the goal of the setback has been maintained.

Ms. Carabelas said that she had a question about the clusters of eight however Mr. Mulholland explained it to her and she sees that there is at least 60' between the units.

Attorney Harris said yes and added that he thinks that it is actually 62'.

Mr. Nickerson thanked them for a nice presentation and all of the detail.

Attorney Harris said that he knows that the standards on occupancy are arguable and that they do not intend to have any full time children there. He offered that if they want it in the condo documents that they would have no trouble making that condition that no one under 18 could live there.

Ms. Carabelas said that she would like to clarify something that they heard about the ambulances and the cost to the Town and how it would rise from these houses. She said that she assumes that with the cost of these homes that the revenue from them in terms of taxes paid to the Town would far outweigh the cost of these services.

Attorney Harris said yes, certainly and added that it also is not a direct cost per unit. Also, they are not impacting the school budget.

Mr. Frey said that the study figured that these units would generate approximately \$600,000 in new taxes paid to the Town.

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

****MOTION (1)**

Ms Byrnes moved that both of these Public Hearings be closed.

Ms. Carabelas seconded the motion.

Vote: 6 – 0 – 0. Motion passed.

Mr. Nickerson closed these two Public Hearings at 10:38 PM.

Respectfully submitted,

Karen Zmitruk,
Recording Secretary

REQUESTED WAIVERS

- > 1. § 24.6C - Sidewalks along Mostowy Road, pursuant to § 24.7
- 2. § 24.6E(3) - Evergreens in buffer, pursuant to § 24.7

A. Along easterly boundary:

Existing vegetation sufficient
Change in elevation - blocks view

would have to
cut other
vegetation down
to put this up

B. Along phase line - not necessary

- > 3. Setback reduction for structures

12A.2.3
100' setback from prop. lines

A. Along easterly boundary:

Unit 74-80 cluster 58'
Unit 83 90'

50' buffer shown ←
required

however sec. 24 -
has evergreens
but does not
make much sense
in context of natural

B. Along phase line:

50' set back

12A.3.6
allows comm.
to phase this
project +
approach
in phases the
as long as the
phase comm.
stand alone
+ the please use
becomes the prop. line
⑧ need the waiver
⑧ need evergreen
⑧ to apply to
the line also

* Zoning Commission

Attachment PH 11+111 6/17/04

**EAST LYME ZONING COMMISSION
PUBLIC HEARING II
Thursday, JUNE 3rd, 2004
MINUTES**

The East Lyme Zoning Commission held the Application of Theodore Harris to amend Section 21 of the Zoning Regulations Public Hearing on June 3, 2004 at Town Hall, 108 Pennsylvania Avenue, Niantic, CT. Chairman Nickerson opened the Public Hearing and called it to order at 8:06 PM immediately following the previously scheduled Public Hearing.

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

FILED IN EAST LYME TOWN
CLERK'S OFFICE

ALSO PRESENT: William Mulholland, Zoning Official
 William Dwyer, Alternate
 William Henderson, Alternate

June 7 2004 at 3:35 AM

Esther B Williams

ABSENT: Shawn McLaughlin

EAST LYME TOWN CLERK

PANEL: Mark Nickerson, Chairman, Ed Gada, Secretary,
 Norm Peck, Pamela Byrnes, Rosanna Carabelas,
 Marc Salerno, Alternate

Public Hearing II

1. **Application of Theodore A. Harris to amend Section 21 of the Zoning Regulations by adding new Section 21.1.9 "Reconstruction of Existing Structures". This amendment would allow the demolition and reconstruction of existing non-conforming buildings in their existing location.**

Mr. Nickerson noted that Mr. Peck was seated and that Mr. Dwyer had rejoined the audience for this Public Hearing.

Mr. Nickerson asked Mr. Gada, Secretary to read the following correspondence into the record:

- ◆ Letter dated 3/23/04 to Mr. Mulholland from Attorney Theodore A. Harris – Re: Proposed Change of Zone Regulation – noting that this regulation would allow reconstruction of preexisting buildings with aspects of non-conformity to be brought up to current code and provide protection to the Town through surveys.
- ◆ Letter dated 6/3/04 to EL Zoning Commission from Wm. Mulholland, Zoning Official – Re: Proposed Amendment – Section 21.1.9 “Reconstruction of Existing Structures” – noting that this is essentially a housekeeping issue as this amendment would allow a non-conforming dwelling to be removed and rebuilt in its place without having to brace or cable 25% of the existing non-conforming dwelling.
- ◆ Letter dated 5/27/04 from Francine Schwartz, Chairman, Planning Commission to Mr. Mark Nickerson, Chairman, EL Zoning Commission – Re: 8-3a Referral – Proposed Amendment to Section 21 of the Zoning Regulations to allow reconstruction of pre-existing, non-conforming structures within existing footprints – finding it CONSISTENT with the Plan of Conservation and recommending that language be added to ensure that non-conformities are not increased when second stories are added so as not to cause an adverse impact to adjacent landowners.
- ◆ Letter dated 5/19/04 to Ed Gada, Secretary, Zoning Commission from Gene Lohrs, Chairman SECCOG Reference Committee – Re: Section 21 Non-conforming uses, buildings and lots and reconstruction and Section 21.1.5 – finding no adverse inter-municipal impact.

Mr. Nickerson stated that the Legal Ad ran in the New London Day on 5/21/04 and 5/31/04.

Mr. Mulholland noted that there is no CAM correspondence as they contacted him by phone and said that they have no comment on this.

Mr. Nickerson called for the applicant to present his proposal.

Attorney Theodore A. Harris, place of business 351 Main Street, Niantic passed out copies of the proposed change to all Commission members so that everyone had the same information in front of them. (Attached at end of Minutes) He said that he wished to make it clear that this applies only to residential uses. He explained that the homes that were built in the 20's, 30's and 40's that are mostly located in the beach areas have various degrees of non-conformity usually concerning side yards that are allowed as they pre-dated zoning. Many of these homes are being updated and either added to or seeking reconstruction. Currently Section 21.3 says that you have to leave 25% of this non-conforming structure in place while trying to 're-construct' it. This not only does not allow a structure to be built to present codes and creates unsafe conditions but also causes people to spend a lot more time and money in trying to follow this 25% rule. Mr. Mulholland also has to constantly go out to inspect to make sure that they are meeting the 25% rule. These suggested changes are an attempt to get them to the same end but in a much better, straightforward way and allow for better building practices to be utilized. An A-2 survey would have to be submitted to the Town before and after reconstruction to prove compliance and show no zoning violations. Section B – Section 21.1.5 is just a clean up section.

Mr. Mulholland noted that he and Mr. Hunt had drafted the original non-conforming section and have felt that it did not satisfy their original intent. He clarified for the record the second story additions: If they have a one-story house with a 6' side yard rather than the 12' current zoning required side yard – with a request for a second story they used to require that the second story be stepped back to allow for a 12' side yard – now they have allowed that the second story could go up as long as they are providing 15' from another structure side wall. The whole purpose is to try to protect the neighbors, as they do not want someone on their property line. He noted that he has seen walls hanging on cables trying to maintain the 25% rule and that he has had to issue many cease and desist orders.

Ms. Carabelas asked if, when they are building up a new story if that takes into consideration views. Mr. Mulholland said no, and added that we are not empowered to do this under Section 8-2.

Mr. Salerno asked if they take the whole dwelling down why they could not go under the current zoning standards and if it was because these lots are small.

Mr. Mulholland and Attorney Harris said yes, most are small and narrow and non-conforming and were developed prior to Zoning and when Zoning came into effect they were non-conforming. They just placed a dwelling where they wanted it at that time.

Attorney Harris noted that this is where the rule of three came from – if you had a built up neighborhood, you could adjust your front yard based upon the position of the three closest to you.

Mr. Nickerson asked if they have a knockdown with an expanded footprint if they make them conform.

Mr. Mulholland said no, the whole purpose here is to allow them to rebuild because they have a right to move in a direction where they have the space. He noted again here that this solely covers residential.

Ms. Byrnes said that she is on the ZBA at Crescent Beach and that they see a lot of problems with the small lots there and trying to improve homes.

Attorney Harris said that all that they are doing here is re-applying the current regulations to allow for better construction with A-2 surveys done before and after and included in the building file.

Mr. Peck asked what effect this would have on the input of the neighbors and if it would reduce the variance process.

Mr. Mulholland said that there are a lot of issues with waterfront properties. They have had people wrestling with the 25% rule rather than the variance process. Under the variance process, the neighbors have to be notified. When people elect to add a second story, there is no provision or regulation in the Statute to notify a neighbor.

Mr. Peck asked if this would be any worse for a neighbor if this were passed. He noted that he sees a lot of these issues in the beach areas and did not want to reduce their opportunity to speak.

Mr. Mulholland said that the neighbors can and do come in and that he and his staff explain the issues to them. He added that their decision or approval could be appealed to the ZBA. They are not trying to make it worse for a neighbor as they still have the 15' setback on the second story.

Ms. Byrnes asked if going up wasn't an increase in the violation of the air space.

Attorney Harris said that the 15' is an added protection.

Mr. Gada asked Attorney Harris if it would make more sense or be more or less restrictive to reword it to read: 'reconstruction of residential non-conforming structures'.

Attorney Harris said that it would not make any difference because they can rebuild.

Mr. Nickerson called for anyone from the public who wished to speak in favor of this application –

Chris Barrett, 301 Old Black Point Road, Niantic said that this is going to happen as it has been happening for years. He cited someone in his neighborhood who bought a remodel and did not like it and who then tore everything down but the chimney and called it a remodel and rebuilt it. If this simplifies the process and makes it easier for people to do what they are doing anyway then he thinks that they ought to do it. The truth is that the grand list will grow from this as people improve the value of their dwellings.

Guy Rocamora, 86 Foxhill Drive, Rocky Hill, CT said that he is the owner of 6 Elizabeth Street in the Saunders Point section of Niantic. He said that he supports this as under the current regulations that require that 25% must remain, he has been forced to retain poor construction in his house that consists of a cracked block foundation, inefficient first floor deck, an old furnace and old ductwork and plumbing pipes. This is not right. He is a contractor and he is being forced into not being able to build his house the right way. He asked that they please adopt this recommendation. He also read and submitted a letter signed by his neighbors saying that they support his improvement of 6 Elizabeth. This letter was dated June 1, 2004 and was entered into the record as **Exhibit A**.

Mr. Nickerson asked what the current status of his remodeling was.

Mr. Rocamora replied that he is under a cease and desist order.

Mr. Nickerson called for anyone from the public who wished to speak against this application –
Hearing no one –

Mr. Nickerson called for anyone from the public who wished to speak neutrally on this application –
Hearing no one –

Mr. Nickerson asked if the Commission had any other comments.

Ms. Byrnes commented that when discussing value that she agrees with Mr. Barrett's concept on value but that she also agrees with Mr. Peck and his comments on view – where it often happens that one persons' 'improvement' is at the detriment of someone else's view and 'value'. They have to find that delicate balance. Mr. Mulholland stated that the issue on views is one that exists all up and down the coast and not just here in the beach areas.

Mr. Nickerson asked if anyone had 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 8:48 PM.

Respectfully submitted,

Karen Zmitruk,
Recording Secretary

NEWEST

6/3

PROPOSED CHANGE OF ZONING REGULATIONS

A. Add new Section 21.1.9 "RECONSTRUCTION OF EXISTING RESIDENTIAL STRUCTURES"

Notwithstanding the provisions of Section 21.1.3 of the East Lyme Zoning Regulations, a residential building and its attendant foundation may be removed and/or demolished in conjunction with an approved reconstruction of the building subject to the following conditions and procedures:

1. Prior to any demolition or removal, an Application for a Building Permit for the reconstruction of the building shall be filed and approved by the required officials of the Town of East Lyme, including but not limited to the zoning and the building official.

2. The Applicant shall submit to the zoning official, a class A-2 survey showing the location of the existing structures and their proximity to any boundary lines, with a zoning compliance box showing all non-conforming setbacks and the proposed construction, which plan shall show no increase in any preexisting non-conformities except as may be allowable pursuant to Section 21 of the East Lyme Zoning Regulations.

3. Prior to the issuance of a Certificate of Occupancy, the Applicant shall submit to the Zoning Enforcement Officer an A-2 Survey, showing the actual location of the reconstructed building which survey shall show it to be in conformity with Subsection 2 above.

B. Modify Section 21.1.5 as follows: *This is a clean-up section -*

AS TO (2) UNDER "NONE OF THE FOREGOING ADDITIONS EXTENSION OR CONVERSIONS SHALL":

Eliminate the words "and horizontal" in subsection (2), leaving this subsection (2) to read as follows:

"(2) Exceed the vertical projection limits as specified elsewhere in these regulations"

Applies ONLY to Residential Structures

Attachment - Zoning Commission PH II, 6/3/04