

**EAST LYME ZONING COMMISSION
PUBLIC HEARING
NOVEMBER 1, 2001**

FILED IN EAST LYME TOWN
CLERK'S OFFICE
11/13/01 at 12:30 AM/PM
L. A. Blain, etc.
EAST LYME TOWN CLERK

MINUTES

The East Lyme Zoning Commission held Public Hearings and Regular Meeting on Thursday, November 1, 2001 at the Town Hall, 108 Pennsylvania Ave., Niantic, CT. Mr. Bulmer called the meeting to order at 7:45 PM.

PRESENT: Chairman Robert Bulmer, Shawn McLaughlin, Norman Peck, Ed Gada, Alternate William Dwyer, and Alternate Donna Orefice

Absent: Athena Cone, David Chamberlain, and Alternate Mark Nickerson.

Also present: William Mulholland, Zoning Officer; Rose Ann Hardy, ex-officio.

PUBLIC HEARING I

Panel: Chairman Robert Bulmer, Shawn McLaughlin, Norman Peck, Ed Gada, Alternate William Dwyer, and Alternate Donna Orefice

Application of Theodore A. Harris to amend the East Lyme Zoning Regulations by adding new Section 21.1.8 (Non-conformities)

The following were read into the record:

1. Letter from Theodore A. Harris to Zoning Official William Mulholland dated August 28, 2001.
2. Legal Ad published in The Day October 19 and October 30, 2001.
3. Letter from the East Lyme Planning Commission Chairperson Kathy Jones to Robert Bulmer, Zoning Commission Chairman.
4. Southeastern Connecticut Council of Governments to the East Lyme Zoning Commission.
5. Letter from Zoning Official William Mulholland to the Zoning Commission dated November 1, 2001.

Mr. Bulmer invited the applicant to address the Commission regarding the proposed amendment.

Ron Stevens, on behalf of Theodore Harris, addressed the Commission. Mr. Stevens stated that non-conformity occurs when zoning is enacted, when zoning regulations are amended or changed, or zoning areas are reclassified. As a result there are uses which exist within the zone that are not now permitted. Mr. Stevens added that the intent should be to move from non-conformity to conformity with the current regulations. In reality, property owners who have a non-conforming use are reluctant to change the use because it's unique within its area. The property owner does not want to lose the availability of renting or using the property for its original purpose.

Mr. Stevens noted that the non-conforming use would be changed to one being less non-conforming or having less of an impact. He added that this proposal would benefit not only the Town, but also the individual property owner.

Mr. Stevens noted that many communities have regulations such as the proposed Section 21.1.8 and presented one from Stonington, CT. He added that where regulations do not exist, generally the Zoning Enforcement Officer makes the determination.

Mr. Stevens addressed the Planning Commissions comments regarding the language being too broad to adequately protect adjacent property owners. He stated that the change of use would have less of an impact, i.e. be less non-conforming and of similar use. He added that the language in his opinion is significant enough to allow property controls within the proposed regulation. With regard to due process, Mr. Stevens indicated that the Zoning Enforcement Officer's decision could be appealed to the Zoning Board of Appeals.

Mr. Mulholland stated that in practice, as ZEO he has been changing uses for non-conforming property through administrative procedures. Having a zoning regulation provides the opportunity to formally appeal the decision by citing the specific Section to appeal to the Zoning Board of Appeals.

Mr. Bulmer invited those wishing to speak in favor of the proposal to address the Commission.

Dan Price, 205 Upper Pattagansett Rd., East Lyme addressed the issues raised by the Planning Commission and stated that he supported the amendment for a number of reasons. Mr. Price noted that moving from one non-conforming use to another does not absolve the property owner from zoning regulations with regard to set-back, etc., and thus, the adjacent property owners still have the same protection with any other use. Mr. Price noted that this proposed regulation formalizes the ability to appeal to the ZBA with a specific section of the regulations. He also stated that to change the non-conforming use to a conforming use within the regulations, i.e., amend the zoning regulations, would effect not a specific non-conforming use property, but the entire zoning district. He stated that if the use were appropriate for the zone it would not be non-conforming in the first place.

Ken Tourcotte, local resident for 25 years, stated his support for the amendment. He stated that with this proposed amendment, some properties with non-conforming uses could be kept viable and impact positively on the Town's economy.

With no further speakers in favor, Mr. Bulmer invited those in opposition to speak. There being none, he invited general comments from the public. With no further speakers, Mr. Bulmer closed the Public Hearing at 8:27 PM.

PUBLIC HEARING II

Panel: Chairman Robert Bulmer, Shawn McLaughlin, Norman Peck, Ed Gada, Alternate William Dwyer, and Alternate Donna Orefice

Application of Jeffrey A. McNamara, agent for Webster Scott, for a change of zone from Special Use-Elderly to RU 40 Residential for the northerly 44.56 acres of land identified as a portion of Lot 76 on East Lyme Assessor Map 24.0 and further identified as 33 Dean Road, East Lyme, CT

The following were read into the record:

1. Letter from Jeffrey McNamara to Zoning Official William Mulholland dated August 29, 2001.
2. Legal ad published in The Day, October 20 and 29, 2001
3. Letter from the East Lyme Planning Commission Chairperson Kathy Jones to Robert Bulmer, Zoning Commission Chairman.
4. Letter from the Long Island Sound
5. Letter from the Southeastern Connecticut Council of Governments to the Zoning Commission.

Mr. Mulholland stated that he had not provided the Commission with a memo, however, he thought Mr. McNamara's cover letter provided sufficient information.

Mr. Bulmer invited the applicant to address the Commission regarding the application.

Mr. McNamara, representing Webster Scott, provided the Commission with a brief historical background. In August 1999, the Zoning Commission granted Mr. Scott's application for a zone change from RU40 to SU-Elderly. The Commission also granted a Special Permit for Mr. Scott to construct 38 units of Elderly Housing on this tract of land. After receiving those approvals, Mr. Scott went to the Board of Selectmen, which enacted an ordinance to allow a water main extension from Woodrow Dr. to the subject property. In September 2000, the Water and Sewer Commission approved Mr. Scott's application for a Community Septic System (CSS). The Dept. of Environmental Protection (DEP) denied the CSS permit, however.

Currently, Mr. Scott is requesting that the property be returned to RU40. Mr. McNamara stated that all surrounding areas of the Dean Rd. property are RU40 and have been since the inception of Zoning Regulations. CT General Statutes 8-3 controls zone change. Mr. McNamara from the Statute concerning the "controlling test the Commission must apply in determining whether to change zone". He added that he would not anticipate that there would be any negative impact on the community as a whole if the property is put back to RU40. Additionally, the property falls within the definition of an RU40 zone in the zoning regulations.

Mr. McNamara stated that 38 units of Elderly Housing were planned for the property. As an RU40, the density would not be greater, in fact, it would be less dense (16 units) if Mr. Scott decided to develop a residential subdivision on the same property. Mr. McNamara also stated that this zone change would fall within the Comprehensive Plan of Development and is in harmony with the neighborhood.

Mr. Mulholland stated that if in the future, Mr. Scott makes application for development of the property, most likely there will be required another Public Hearing before the Planning Commission.

Mr. Bulmer invited those wishing to speak in favor of the proposal to address the Commission. Mr. Bulmer invited those in opposition to speak. There being none, he invited general comments from the public.

Joe Kwasniewski, 67 Walnut Hill Rd., East Lyme, CT questioned how many homes could be built on the property. Mr. Scott responded that about 16 dwellings could be built if the property is subdivided.

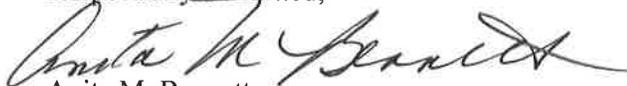
Peter Gadbois, 76 Smith Street speaking on behalf of his parents William and June who received notification through the mail of the public hearing. Mr. Gadbois raised several questions:

1. What is RU40? (Each lot 40,000sf – approximately one acre.)
2. Why Mr. Scott is reverting to RU40?
3. Is the property going to be divided?
4. Is there municipal water and sewer available?
5. How will the RU40 effect established residence?

Mr. Mulholland stated that many of the questions pertain specifically to the development of the property and perhaps the best place to have them answered is at the Zoning Office or when and if a Public Hearing is held by the Planning Commission on an application to subdivide.

With no further speakers, Mr. Bulmer closed the Public Hearing at 8:54 PM.

Respectfully submitted,



Anita M. Bennett
Recording Secretary
12 November 2001