

Town of

P.O. Drawer 519

**Department of Planning &
Inland Wetlands**

*Gary A. Goeschel II, Director of Planning /
Inland Wetlands Agent*



East Lyme

**108 Pennsylvania Ave
Niantic, Connecticut 06357**

Phone: (860) 691-4114

Fax: (860) 860-691-0351

MEMORANDUM

To: East Lyme Planning Commission

From: Gary A. Goeschel II, Director of Planning

Date: August 5, 2022

RE: **Application of Kristen T. Clarke, P.E., of 20 Risingwood Drive, Bow NH and Niantic Real Estate, LLC, Owner; Application for a 2-lot re-subdivision of approximately 5.13± acres of land zoned RU-40, located at 9 Upper Kensington Drive, East Lyme, Assessor's Map 40.0, Lot 17.**

Upon review of the above referenced application, supporting documentation, and proposed subdivision plans (6 Sheet Drawing Set) entitled "Nottingham Hills Subdivision, Lot Line Revision of Existing Lot 27 & 2 Lot Re-subdivision of Lot 27, Prepared for Kristen Clarke, P.E., dated October 27, 2021, revised through 6/26/2022" by Donald L. Gesick Jr. L.S., of Gesick & Associates, P.C., 19 Cedar Island Ave., Clinton, Connecticut, I offer the following:

FINDINGS

Whereas: The Commission commenced a Public Hearing on June 14, 2022. The Public Hearing for said application was continued to the Commission's July 12, 2022 and again continued under consent of an extension to the Commission's August 9, 2022 meeting and closed.

Whereas: The Commission has reviewed the application and received testimony from the applicant, their professionals, representatives, and the public. In addition, Town staff also provided the Commission with comment concerning this application's compliance with local requirements and regulations.

Whereas: As evidenced by Exhibit "A", "V", and "EE", the property being proposed to be re-subdivided does not involve land regulated as an inland wetland or watercourse under the Provisions of chapter 440 of the Connecticut General Statutes as there is no activity occurring in an inland wetland or a watercourse.

Whereas: The proposed Subdivision is found to meet the requirements of the East Lyme Subdivision Regulations and the East Lyme Plan of Conservation and Development (POCD) as demonstrated by the following:

Section 3-4 Plan of Development: The parcel of land constituting the property subject to this application is zoned RU - 40 Rural Residential and the properties abutting the site to the north and south are zoned RU-40. The property to the east (Darrow Pond) is 300-acres zoned SU-E Special Use Elderly Housing which, 200 +/- acres have been preserved as Town owned open space. The properties to the west on the opposite side Upper Kensington Drive are zoned RU-40 Rural Residential and are occupied by single family homes. Therefore, as the proposed Subdivision is located within a RU-40 zoning district adjacent to existing residential lots zoned RU-40. The proposed subdivision continues following the pattern of development characteristic of the existing residential development. As such, the proposed subdivision conforms to the comprehensive Plan of Development for the Town of East Lyme (POCD) as adopted by the East Lyme Planning Commission.

Section 5-4 Sanitation Report: As indicated in Exhibit "W" review comments from Wendy Brown-Arnold, RS, REHS, dated July 11, 2022, indicates proposed Lots 27, 27-1, and 27-2 are suitable to be served by on-site septic and well.

Section 5-5 Water Supply Report: As indicated in Exhibit "W" review comments from Wendy Brown-Arnold, RS, REHS, dated July 11, 2022, indicates proposed Lots 27, 27-1, and 27-2 are suitable to be served by on-site septic and well.

Section 5-2-2(E) and 6-8 Stormwater Management Plan: The applicant has requested a waiver of the Stormwater Management Requirements pursuant to Section 6-8-7 of the East Lyme Subdivision Regulations. As indicated in Exhibit "Z", E-mail correspondence from Alex Close, P.E., Town Engineer, dated July 11, 2022, to Gary Goeschel, Director of Planning, indicates he found the drainage analysis acceptable. As such, the proposed site development will not adversely affect the water quality of the receiving aquifer, wetlands, nor watercourse nor exacerbate downstream flooding.

Section 5-2-2(G) Erosion and Sedimentation Control Plan: As evidenced by Exhibit "A", the applicant has requested a waiver of the Erosion & Sedimentation Control Plan requirements pursuant to Section 5-2-2 (G) of the East Lyme Subdivision Regulations.

Section 5-6 Pesticide Report: As evidenced by Exhibit "A" which includes the Application and Design Report, the existing lot has already been reviewed during the Nottingham Hills Phase 3 Subdivision approval. As such, there are no known regular applications of pesticides on the subject site.

Section 5-8 Archeological Survey: As evidenced by Exhibit "A" which includes the Application and Design Report, the existing lot has already been reviewed during the Nottingham Hills Phase 3 Subdivision approval. As such, there are no known significant archaeological resources on the subject site.

Section 6-2 Lot Design Specifications: The proposed subdivision complies with all applicable Zoning Regulations for the purposes of the subdivision of land as evidenced by Exhibit "F" correspondence from William Mulholland, Zoning Official, dated May 9, 2022.

Section 6-2-5 (B) Lot Access: As evidenced by Exhibit "EE", the proposed shared paved driveway has a slope of 15% which was previously approved in Nottingham Hills Phase 3 Subdivision approval. However, pursuant to Section 6-2-5 (B) of the East Lyme Subdivision Regulations shared driveways may not exceed 10% or more on the shared portion of driveway. As such, the proposed driveway must either be redesigned to achieve a 10% slope on the shared portion of the driveway or constructed to the design standards of a private road.

Section 6-7 Open Spaces: As demonstrated by Exhibit "A" which includes the Application and Design Report, indicates no additional Open Space is required for this Phase of the Subdivision based on the findings of fact by the Planning Commission on or about January 11, 2021, Exhibit 3 of this application, a total of 79.34 acres of Open Space had been provided to date. In addition, a copy of correspondence from Paul Geraghty, Esq. to Gary Goeschel, Director of Planning, dated January 6, 2021, Exhibit 4 of this application, provided further detail regarding Open Space in the Nottingham Hills Subdivision. As such, dedication of open space has already been provided.

Section 6-9 Requirements Regarding Flooding: As indicated in Exhibit "Z", E-mail correspondence from Alex Close, P.E., Town Engineer, dated July 11, 2022, to Gary Goeschel, Director of Planning, indicates he found the drainage analysis acceptable. As such, the proposed site development will not adversely affect the water quality of the receiving aquifer, wetlands, nor watercourse nor exacerbate downstream flooding. As such, the proposed design meets the intent of the East Lyme Subdivision Regulations stormwater requirements.

WHEREAS: As demonstrated by Exhibit “A”, the request to waive the 40-foot Perimeter Buffer required by Section 23.5.B 1 of the East Lyme Zoning Regulations, the Stormwater Management Requirements required by Section 6-8, the Natural and Cultural Resources and Site Analysis Plan required by Section 5-2-2 (B) and the Resources Impact and Conservation Plan required by Section 5-2-2 (C) ii of the East Lyme Subdivision Regulations, appears to meet the criteria in Section 4-12 for a waiver as follows:

(1) The waiver must be requested in writing:

The applicant submitted said request in writing with their application submission, see Exhibit “A” and the letter from Paul Geraghty, Esq. to Gary Goeschel, Director of Planning dated April 26, 2022.

(2) The property for which the waiver is sought is affected by conditions, which affect the property and are not generally applicable to other land in the area;

The abutting properties are owned by the applicant and/or preserved under a conservations easement and obviate the need for such a buffer from a 2-lot residential re-subdivision of land.

(3) Physical features of the property or its location cause exceptional difficulty or unusual hardship in meeting the requirements of these Regulations;

The existing conditions and circumstances such as already having provided a Natural and Cultural Resources and Site Analysis Plan as required by Section 5-2-2 (B) and the Resources Impact and Conservation Plan as required by Section 5-2-2 (C) ii having already been submitted with the Nottingham Hills Phase 3 Subdivision approval may warrant a waiver of these requirements.

(4) The granting of a waiver will not have a significantly adverse effect upon adjacent property, the environment, or the public health and safety;

Again as a Natural and Cultural Resources and Site Analysis Plan as required by Section 5-2-2 (B) and the Resources Impact and Conservation Plan as required by Section 5-2-2 (C) ii having already been submitted with the Nottingham Hills Phase 3 Subdivision approval, the granting of the requested waivers would not have a significantly adverse effect upon adjacent property, the environment, or the public health and safety.

(5) The granting of the waiver will not be in conflict with the Plan of Conservation and Development;

As this is a CDD Subdivision, which encourages minimizing land disturbance and mitigating any potential adverse effect upon adjacent property, the environment, or the public health and safety, the proposed re-subdivision as demonstrated by the record before the Commission, is consistent with the Plan of Conservation and Development as it will reduce land disturbance and mitigates any adverse impact from stormwater runoff.

WHEREAS: Demonstrated by Exhibit “A”, the request to waive the requirements of Section 5-2-2 (G) of the East Lyme Subdivision Regulations to file an Erosion & Sedimentation Control Plan and obtain certification was provided in writing. However, pursuant to Section 4-12 of the East Lyme Subdivision Regulations “only as specifically authorized within the regulations” may the Commission waive certain requirements. As Section 5-2-2 (G) of the East Lyme Subdivision Regulations does not specifically provide any authorization to the Commission to waive any of the requirements of Section 5-2-2 (G). As such, the Commission may not waive these requirements.

WHEREAS: Pursuant to Section 4-4-5 of the Subdivision Regulations, the Commission after the public hearing, if any, shall give approval to the application if it finds that the application, plans and documents conform to the requirement of these Regulations. Such approval shall be conditioned upon presentation of suitable easement and deeds as applicable, as specified in Section 10 of the Regulations, and shall be conditioned upon completion of all required subdivision improvements. In granting approval, the Commission may attach such conditions that it deems necessary to modify the subdivision map, plans, or documents, and to preserve the purpose and intent of these Regulations. As such, I offer the following language for such a resolution:

RESOLUTION FOR APPROVAL OF THE PROPOSED SUBDIVISION:

WAIVER REQUEST

The East Lyme Planning Commission based on the record before it with respect to this application, finds this application to be in conformance with the Subdivision Regulations of the Town of East Lyme as based on the above Findings pursuant to Section 4-12 of the East Lyme Subdivision Regulations “only as specifically authorized within the regulations” may the Commission waive certain requirements. As Section 5-2-2 (G) of the East Lyme Subdivision Regulations does not specifically provide any authorization to the Commission to waive any of the requirements of Section 5-2-2 (G). As such, the Commission may not waive these requirements.

As such, I Move to GRANT the applicant’s request for a Waiver from Sections 23.5 B. 1 of the East Lyme Zoning Regulations to eliminate the requirement of a 40-foot vegetative perimeter buffer and from Section 6-8 Stormwater Management Requirements pursuant to Section 6-8-7 of the Subdivision Regulations and from Section 5-2-2 (B) which requires the submission of a Natural and Cultural Resources and Site Analysis Plan and Section 5-2-2(C) ii which requires the submission of a Preliminary resources Impact Analysis Plan and DENY the applicant’s request for a Waiver from Section 5-2-2 (G).

SUBDIVISION APPLICATION

NOW THEREFORE, I hereby Move to APPROVE the application known as the Application of Kristen T. Clarke, P.E., of 20 Risingwood Drive, Bow NH and Niantic Real Estate, LLC, Owner; Application for a 2-lot re-subdivision of approximately 5.13± acres of land zoned RU-40, located at 9 Upper Kensington Drive, East Lyme, Assessor’s Map 40.0, Lot 17 and the proposed subdivision plans (6 Sheet Drawing Set) entitled “Nottingham Hills Subdivision, Lot Line Revision of Existing Lot 27 & 2 Lot Re-subdivision of Lot 27, Prepared for Kristen Clarke, P.E., dated October 27, 2021, revised through 6/26/2022” by Donald L. Gesick Jr. L.S., of Gesick & Associates, P.C., 19 Cedar Island Ave., Clinton, Connecticut which, is further subject to the following administrative requirements and required modifications to the site plan and/or other materials submitted in support of this application:

1. Pursuant to Section 5-2-2(G), An Erosion & Sedimentation Control Plan prepared in accordance Sections 22a-325 through 22a-329 of the Connecticut General Statutes which provides proper provisions to adequately control accelerated erosion and sedimentation and reduce the danger from stormwater runoff on the proposed site shall be submitted and certified by the Commission prior to the filing of mylars on the land record.
2. An Erosion & Sedimentation Control bond in an amount of \$2000.00 dollars per lot shall be posted with the Town in a form acceptable to the Town of East Lyme Planning Commission prior to the start of any site work including but not limited to exploratory test pits, clearing, grubbing, filling, and grading.
3. A revised site plan signed, stamped, and sealed by a Professional Engineer and Land Surveyor at a scale of 1” = 40’ demonstrating the shared portion of the proposed paved driveway is no more than 10% slope or demonstrating the entire length of driveway can be constructed to meet the construction standards for a private driveway be submitted to the Commission prior to the filing of the mylars on the land record.

4. The applicable items above shall be accomplished prior to the filling of the subdivision on the land records, or other documentation of planning approval and no site work shall commence until all applicable conditions are satisfied.

This approval is specific to the subdivision plan submitted as the application known as the Application of Kristen T. Clarke, P.E., of 20 Risingwood Drive, Bow NH and Niantic Real Estate, LLC, Owner; Application for a 2-lot re-subdivision of approximately 5.13± acres of land zoned RU-40, located at 9 Upper Kensington Drive, East Lyme, Assessor's Map 40.0, Lot 17 and the proposed subdivision plans (6 Sheet Drawing Set) entitled "Nottingham Hills Subdivision, Lot Line Revision of Existing Lot 27 & 2 Lot Re-subdivision of Lot 27, Prepared for Kristen Clarke, P.E., dated October 27, 2021, revised through 6/26/2022" by Donald L. Gesick Jr. L.S., of Gesick & Associates, P.C., 19 Cedar Island Ave., Clinton, Connecticut.

Any changes in the subdivision plan shall require prior approval from the Commission and/or the Director of Planning. Any change in the development plan layout other than those identified herein shall constitute a new application. The owner/applicant shall be bound by the provisions of this Application and Approval.

RESOLUTION FOR DENIAL OF THE PROPOSED SUBDIVISION:

WAIVER REQUEST

The East Lyme Planning Commission based on the record before it with respect to this application, finds this application to be INCOMPLETE with the Subdivision Regulations of the Town of East Lyme based on the above Finding that pursuant to Section 4-12 of the East Lyme Subdivision Regulations "only as specifically authorized within the regulations" may the Commission waive certain requirements and Section 5-2-2 (G) of the East Lyme Subdivision Regulations does not specifically provide any authorization to the Commission to waive any of the requirements of Section 5-2-2 (G). As such, I hereby Move to DENY the applicant's request for a Waiver from Section 5-2-2 (G).

SUBDIVISION APPLICATION

NOW THEREFORE, I hereby Move to DENY WITHOUT PREJUDICE the application known as the Application of Kristen T. Clarke, P.E., of 20 Risingwood Drive, Bow NH and Niantic Real Estate, LLC, Owner; Application for a 2-lot re-subdivision of approximately 5.13± acres of land zoned RU-40, located at 9 Upper Kensington Drive, East Lyme, Assessor's Map 40.0, Lot 17 and the proposed subdivision plans (6 Sheet Drawing Set) entitled "Nottingham Hills Subdivision, Lot Line Revision of Existing Lot 27 & 2 Lot Re-subdivision of Lot 27, Prepared for Kristen Clarke, P.E., dated October 27, 2021, revised through 6/26/2022" by Donald L. Gesick Jr. L.S., of Gesick & Associates, P.C., 19 Cedar Island Ave., Clinton, Connecticut for the following reason(s):

1. The request for a waiver from Section 5-2-2(G) is denied and a Soil Erosion and Sediment Control Plan was not submitted pursuant to Section 5-2-2 (G) of the East Lyme Subdivision Regulations which, Section 5-2-2(G) i.d 1 Issuance or Denial of Certification states: "Denial of certification by the Commission of a Soil Erosion and Sediment Control Plan shall be sufficient reason for denial of the overall subdivision application;"