

May 12, 1997 AT 9:00 PM

Lesley Ablain, etc.

East Lyme Town Clerk

TOWN OF EAST LYME

P.O. DRAWER 519

NIANTIC, CONNECTICUT 06357

ZONING COMMISSION

AMENDED MINUTES
EAST LYME ZONING COMMISSION
PUBLIC HEARING
THURSDAY, APRIL 3, 1997
EAST LYME TOWN HALL

CALLED TO ORDER

Wayne Fraser called the Public Hearing of the East Lyme Zoning Commission to order at 7:30 p.m. on April 3, 1997 at the East Lyme Town Hall in Niantic, Connecticut.

ATTENDANCE

Four regular members were in attendance: Wayne Fraser, Athena Cone, Norman Peck, Chris Mullaney and one alternate member was in attendance: Kent Presley.

PUBLIC HEARING #1

The Application of Paul and Donna Formica for a Special Permit to establish a Fast Food Restaurant (ice cream shop) at 10 Chesterfield Road, East Lyme, Connecticut, property further identified as East Lyme Tax Assessor Map 31.1.

Wayne Fraser asked if the hearing was properly publicized and if the Commission had copies of the publication to which Athena Cone indicated that it was and she had copies of the add.

Athena Cone read into record correspondence from Theodore A. Harris of Stevens, Harris, Guernsey & Connelly, P.C. dated March 20, 1997 and a memo dated April 3, 1997 from Bill Mulholland to the East Lyme Zoning Commission regarding the Application of Paul and Donna Formica.

Attorney Theodore Harris, 351 West Main Street, Niantic, Connecticut indicated that he was representing the applicant. He also noted that approximately one month ago he had come before the Commission and received approval for a similar Special Permit on an Application for Paul and Donna Formica. He introduced Exhibit A - Site Plan Chesterfield Road, East Lyme, CT dated February 28, 1997, Rev. 3/19/97 4/2/97.

Attorney Harris noted that the difference between this Application and the one presented previously was the building

was slightly larger and that it was located towards the rear of the property. He stated that after Mr. Formica reviewed the plan with a representative of the Planning Department a suggestion was made that the building should be located closer to the front of the property and that Mr. Formica had agreed that that was a better idea, hence the revision in the site plan. Attorney Harris stated that since those changes were significant he felt it was better to come back before the Commission.

Attorney Harris stated that the storage area was larger on the last application and that there was 13 parking spaces and now there are 12. He also noted that the picnic area had been larger on the previous application and that a walkway had been added. He also noted that the building had been turned 90°. Attorney Harris indicated that the Application was before the Commission as a "fast-food restaurant" and that it would be operated as an "ice-cream shop", however "fast-food restaurant" would include some other activities such as hot dogs, hamburgers and the like. He stated that even though there was no present intent to do that that there is the possibility that that would be added to the product as demand is seen over the course of the initial opening years.

Attorney Harris introduced Exhibit B "Caulkens Designs Associates Cathy's Cones Chesterfield Road dated 2/26/97 Rev. 3/20/97". Attorney Harris noted that the interior of the building had reduced the storage area significantly and that the garage door access to the property had been eliminated.

Attorney Harris discussed an issue raised at the last hearing by Mr. Lagrotteria, which he indicated that they had agreed to do. Attorney Harris noted that for obvious reasons Mr. Lagrotteria had requested a fence along the northerly boundary of the property and that it had been added to this site plan. Attorney Harris stated that one of Mr. Lagrotteria's concerns was the possibility of odors emanating from the building should food be served. Attorney Harris pointed out a note on the plan which stated that if any exhaust fans were added to the building that the orientation of the exhaust would be upwards as opposed to outwards.

Attorney Harris stated that a walkway had been added to the existing sidewalk from the building for better access.

Bill Mulholland mentioned the trees that had been an issues raised by Mr. Lagrotteria at the last hearing. Attorney Harris stated that the trees were off the site itself and they are not cutting those trees down.

Athena Cone asked how far away from Mr. Lagrotteria's office was the previous proposed building. Attorney Harris stated that it was about 125 feet and that the new building was closer.

Wayne Fraser asked the Commission if they had any questions.

Kent Presley asked about the access to the site. Attorney Harris pointed out the driveway.

Athena Cone asked about a canopy. Bill Mulholland stated that there was no drive-thru to the site.

Mr. Lagrotteria, an abutting neighbor to the site, stated that at the last hearing he had given the permit his blessing because of where the building was located. He said that he questioned the mentality of the Planning officer who said that the building should be moved. He said that he agreed with the concept of the ice-cream shop but his concern is previously the building was in one spot and now it is in a different location and with respect to his building they are now only fifty feet apart. Mr. Lagrotteria said that his concern now is with the odor. He stated that he is in favor of the concept but he has some disagreements as to what or how it could be handled.

Mr. Fraser asked Bill Mulholland to advise the Commission as to what they could do as to the odor from a building. Mr. Mulholland said that there was a section in the Regulations specifically 20.2.1 which is in the General Regulations Section which talks about odor and Mr. Mulholland read the Regulation into record. Mr. Mulholland stated that that Regulation was a sort of "catch-all" and the problem would be who makes the decision on what's offensive without having some kind of written criteria. He stated that the Town does not have a noise ordinance and certainly doesn't have an odor ordinance. Mr. Mulholland indicated that that sort of stuff is typically handled by DEP at this particular point. Mr. Mulholland said that it is in issue and that it does deserve attention but during his discussions with the health office it was indicated to him that DEP is the proper authority for this matter.

Wayne Fraser asked Mr. Lagrotteria to go over his concern again. Mr. Lagrotteria said that his concern is the odor, from the cooking, the food. He indicated that right now he gets odors from another building on the North side of his building. He stated that he is probably 160 feet away from that site and that he gets odor from it. He said that at time he could not even open the windows. Mr. Lagrotteria stated that Mr. Harris and himself have discussed this issue and tried to come up with a solution. He said that he had also spoken with Mr. Formica. Mr. Lagrotteria said that his wife and his concerns are the odors and that any exhaust fans that would come up through the roof should be placed on the peak or on the South side of the building. He stated that he was requesting the Commission to look at how the odor can be eliminated to make sure (we) are not getting that odor. Mr. Lagrotteria said that the Board is here to help people out

with their business and that he thinks that it is also the Board's responsibility to look out for my behalf as a property owner. He said that he's asking that the odors be taken care of either through Mr. Mulholland's recommendations are whoever and that is his main concern.

Chris Mullaney asked Mr. Lagrotteria what odor he is concerned about. Mr. Lagrotteria indicated the cooking odors. Chris Mullaney said that it would be hard for the Commission to be subjective because there was no way to measure the odor.

Mr. Lagrotteria said that he would like to recommend that prior to any cooking being done on the premises an air filter and scrubber system would be designed and installed so that no odors would be allowed to escape from the building into the atmosphere. He stated that he was requesting that wording be added as part of the Special Permit.

Chris Mullaney stated that he thought that that was good wording except for the wording "no odors". Wayne Fraser said that you would have to go farther than that and then we would have to be able to measure it.

Attorney Harris said that the problem they were getting into is that they were being asked to design an exhaust system and that he didn't even know if the technology was available to do what Mr. Lagrotteria was asking. Attorney Harris stated that certainly they would not violate any DEP Regulations with respect to anything that involves the project. He said that this project should not be treated any differently than any other restaurant application. He noted that he understands Mr. Lagrotteria's concerns and they had agreed that nothing would come out of the side of the building and that everything would be going upwards, but beyond that to say that we have to design something we are putting the owner into a position where he doesn't know what he would have to do and I don't think the Commission can do that.

Mr. Fraser stated that he thought that they were going past what the Commission could do at that point because he could see being concerned with odors and if we had some way of saying that an odor passed a certain ... like we do with light levels certain like noise decibels or light levels... that is offensive at that point and can be measured. Mr. Fraser stated that he is at a loss right now as to what the Commission can do. He stated that this really isn't up to us. The building has the proper setbacks and everything is in place. He noted that he agrees with Mr. Lagrotteria's concerns but that he can not go passed his boundary in zoning unless somebody can show me the way to do it.

Chris Mullaney talked about an odor problem with a restaurant where a filter was put in and the odor was taken care of. Mr. Fraser stated that that was a corrective action taken after

there was a problem. He said that the Commission was being asked to take corrective action before they knew if there was a problem.

Mr. Lagrotteria said that the Commission was being asked to approve a Special Permit and in order to approve a Special Permit he thought they he had the right to add in objections against the permit and to also allow what we have to say and put in our objections. Mr. Fraser said that he does not disagree with that but that his problem is that it fits within our regulations and we do not design the structure and where the plumbing is.

Mr. Lagrotteria said that his understanding is that in a Special Permit the Commission has the right to ask that certain things be done.

Bill Mulholland said that the Commission can put conditions on a Special Permit, however they need to be reasonable and relevant to our Regulations.

Mr. Fraser said that with past experience the wording would have to be to minimize because they are not dealing with a hazardous product here, such as gas fumes.

Athena Cone asked if the intent was to go right into hot dogs and hamburgers. Attorney Harris said that that was not the intent but that since this is a Special Permit for a fast food restaurant he had to come before the Commission saying that that is a possibility and I can't tell you that it won't happen.

Attorney Harris stated that the problem was that the Commission had to keep a standard. He said that the Commission was going to put themselves in a position where they had to define something that they can't. Chris Mullaney asked what the DEP standard were. Mr. Mulholland said that he was not familiar with the DEP standards. He said that if something in the approval about all reasonable measures that would still need subjective judgment, and that someone who is dissatisfied would come into his office and want me to take action, at that point what action do I take based on a subjective judgment.

Attorney Harris noted the Special Permit section of the Regulations, Section 25.4.2. which are the standards for granting a Special Permit. He stated that with respect to that regulation all the Commission had to do was make sure the Special Permit was not more objectionable than other permitted uses. He stated that in this zone restaurants are a permitted use. Attorney Harris said that his Special Permit is no different than whats existing in the area and what is allowed in accordance with your regulations and if there is an issue

on odor I believe that issue should be faced with respect to the general regulations that you already have.

Mr. Fraser said that typically they would say something like all measures be taken to minimize and that throws it back into Bill's lap. Mr. Fraser said that Bill has no way of going out and saying what it is.

Wayne Fraser stated that he didn't really know how to help Mr. Lagrotteria on this. Mr. Lagrotteria stated that he knew the Commission had to be objectionable but they also had to be objectionable as far as the adjoining property owners.

Mr. Fraser said the he was afraid if the Commission started taking an unknown and put extra cost on this we are starting a precedent, because whatever we do here we have to do all over town. Mr. Lagrotteria said that as Chairman it wasn't his job to sit there and look at cost. Mr. Fraser said that it wasn't the Commission's job to design the building. Mr. Lagrotteria said that he was only look for one thing and that is for the Board to protect his rights.

Attorney Harris stated that they had tried to do the only objectionable thing possible and that is by putting any exhaust vertical through the roof rather than out the sides. He stated that the purpose of that was for number one it will already be traveling in an upward direction so that it will continue upward and will be grabbed by the wind and not effect maybe the neighboring property. Attorney Harris stated that they could not agree to have the exhaust at the front side of the building because physically you can't get it there because that is where the public area is.

Bill Mulholland said that when they go through the building permit process they are going to be in with the Health Department, in Mr. Caukrin's office and I am wondering if this issue is more in the realm of his office as something he would address typically. Mr. Fraser said that we do not approve where it goes through the roof.

Attorney Harris stated that right now there is now intention of putting this in at all, but it is a possibility down the road and that is why I presented it to the Commission. Attorney Harris stated that if it does occur it can not be put in the front area of the building because that is where the public area will be.

Mr. Lagrotteria said that Attorney Harris was before for the Board with a plan for a Special Permit but now you don't even have a plan. Attorney Harris said that the building code issues as to where things are located are really not part of this.

Gary Lakowsky said that first of there is not intent at the present time to cook hot dogs and hamburgers. He stated that the next step if they decide to cook those items they would have to come before the Sanitarian to place where the cooking facilities are to be placed. Mr. Lakowsky said that at that point you should write a letter to the Sanitarian and the Building Inspector regarding this piece of property and your views and concerns. Mr. Lakowsky stated that way you could have it put on file along with the plan so that they if they do intend to put that in you are on file and you will be contacted.

Chris Mullaney stated that they had to have something to measure objectionable odor by, such as measuring water.

The Commission discussed what exactly a Special Permit is and why it had to be requested for this project.

Mr. Fraser said that the Commission couldn't approve where things were to be located in the building they were only approving the location, the access, the height and parking spaces, everything that is in our Regulations. He indicated to Mr. Lagrotteria that he understood his frustrations but that he didn't know how to do it.

Mr. Lagrotteria said that all he was asking was that somehow they take care of any cooking odors coming from the building; that any vent coming out through the roof be either through the peak or through the front of the building; and about the Sugar Maples; and that no dumpsters be allowed along the northern boundary.

Attorney Harris said that there would be no dumpsters.

Bill Mulholland said that he would like to point out for the Commission that this is a Special Permit; that it is a listed permitted use by Special Permit. He stated that the Commission had conditions in their regulations and that if an Applicant meets their Regulations then they must approve the Application or have a very good reason do turn it down. Mr. Mulholland said that this is not a special exception that it is a Special Permit. He said that he thought that as far as Jim's concerns it seemed that everyone was somewhat sympathetic and that Mr. Lakowsky have a very relevant point in that when this does happen Mr. Lagrotteria does have an opportunity to go to the Health and Building Department. Mr. Mulholland said that in his opinion if he had to go to court the Judge would throw him out. He said that one person might like one smell and another might not and we are going to have a problem, it would be a waste of money going to court.

Athena Cone asked if there was any way to approve and write a letter of recommendation to the Health Commission or Building Department or anything like that. Mr. Fraser said that they

had to stay within our realm. Athena Cone asked if they could write a letter stating that it was a concern at the time, that the Commission was not for or against anything. Mr. Fraser said no because that would be in the public records, in the minutes.

Mr. Mulholland said that the minutes would show that the Commission is concerned about that issue.

Chris Mullaney stated that they could put something in the approval stating that all reasonable efforts shall be made including venting and cleaning methods available at the time of installation to minimize odor being released from the building. Attorney Harris said that the problem he had with that is that he doesn't know what all reasonable means. He stated that he thought the Commission was treading on water.

Attorney Harris said yes this is a Special Permit but that doesn't mean that we are asking to do something the Regulations do not allow, a Special Permit is allowed by the Regulations and requires a Public Hearing. He said that the other issued that the Commission may not be dealing with is the issue of the odor exhaust is no different for this than it would be for a standard restaurant which is an allowed use with out a Special Permit in this zone.

Attorney Harris said that they had tried to react to Mr. Lagrotteria's concerns but that he didn't think they could do more than they already had. He said that if and when is client decided to add the food items he would have to go before the Building Department and the Sanitarian and that is the place where these issues can be raised.

Kent Presley said that he thought that this was the time, during the granting of a Special Permit to voice these concerns. Mr. Presley said that he thought that it is probably the most effective time. He said that he thought that it was a shame that something couldn't be put it in showing that concern, because it seems like a legitimate concern and now is the time to address it somehow.

Chris Mullaney said they could be a caveat in the approval to say that it shall meet the specific standards that we have in the Zoning Regulations about objectionable odors.

Attorney Harris said that he had no objection to that.

Mr. Fraser stated that they would be referencing their own Regulations. He stated that the intention of Number 6 is that if an exhaust was put in it would be vertical and it was not put it so the correct wording would be "all cooking exhaust fans shall exit vertically through the roof". He asked if referring to the Regulations would accomplish anything?

Mr. Mulholland said that they could state in the permit that the Application would conform with Section 20.2.1 and they would be on the record.

Chris Mullaney read the wording of the proposed caveat to be added to the approval--"The specific requirements of the Town Zoning Regulations Section 20.2.1 will be addressed in any use of this site."

Mr. Lagrotteria read into the record his concerns that are if any exhaust fans will be installed through the peak of the roof; that no dumpsters will be put along the North boundary line; the two Sugar Maples will not be damaged during construction; and there will be no exterior wall fans or vents; and prior to any cooking being done on the premises an air filter and scrubber system will be designed and installed so that there is no cooking odors allowed to escape from the building into the atmosphere.

Joe Kusunski stated that he was under the impression that the Application was not in violation of any of the Zoning Regulations and that he was in favor of the Application.

Bob Simpson spoke against the Special Permit process and he stated that he thought the credibility of the Special Permit is not very credible.

Attorney Harris said that he would just like to remind the Commission that he thought they had come before them with an Application that meets your Regulations and we have gotten diverted on an issue. Attorney Harris stated that he would like to also remind them that he and his client had been upfront with the Commission so that these issued could be taken care of. He said that he thought they met the Regulations.

Mr. Lagrotteria said that he would like to mention that it was also the right of the Commission and the duty of the Commission to protect the property owners as well as the adjoining property owner.

Leo Alencia, 329 Flanders Road, stated that he had no objection to this Application at all.

Wayne Fraser closed the Public Hearing at 8:30 p.m.



Heather S. Paul, Recording Secretary