

EAST LYME ZONING COMMISSION

REGULAR MEETING FILED IN EAST LYME TOWN
CLERK'S OFFICE

JUNE 6, 2002
MINUTES

June 17 20 02 at 12:10 AM
PM

Esther B. Willhams

EAST LYME TOWN CLERK

The East Lyme Zoning Commission held a REGULAR MEETING AND PUBLIC HEARING I AND II on Thursday JUNE 6, 2002 at the East Lyme Town Hall, 108 Pennsylvania Ave., Niantic, CT.

Mr. Mark Nickerson, Chairman, opened the Meeting at 7:30 PM.

PRESENT: Mark Nickerson, Athena Cone, Shawn McLaughlin, David Chamberlain, Ed Gada, Alternate Robert Bulmer and Alternate Marc Salerno, Alternate William Dwyer.

Also present: William Mulholland, Zoning Official; Edward O'Connell, Town Attorney; Meg Parulis, Planning Director

Absent: Norman Peck, Ex-Officio Rose Ann Hardy

PLEDGE OF ALLEGIANCE

PUBLIC DELEGATION - None

REGULAR MEETING

Panel: Mr. Nickerson, Mr. McLaughlin, Mr. Chamberlain, Mr. Gada, Mr. Bulmer and Mr. Dwyer.

1. Mr. Nickerson called the Regular Meeting to order at 8:10 PM following Public Hearings I and II.
2. Acceptance of the Minutes of May 16, 2002 meeting.

MOTION (3): Mr. Gada moved to accept the Minutes of May 16, 2002 as amended to indicate that the Meeting took place at the East Lyme Town Hall, 108 Pennsylvania Ave., Niantic, CT.

Mr. Bulmer seconded the motion.

Vote in favor: (4-0-3); In favor: Mr. Nickerson, Mr. McLaughlin, Mr. Gada, Mr. Salerno; Abstained: Mr. Dwyer, Mrs. Cone, Mr. Chamberlain.

3. Application of Joseph E. Smith for a Special Permit to construct and operate a commercial greenhouse at 415 Boston Post Road, East Lyme, CT, property further identified as Assessor Map 24.0, Lot 30.

Mrs. Cone stated that the property has historically been used for farming and a commercial greenhouse is a good use of the land.

MOTION (4): Mr. Chamberlain moved to approve the application of Joseph E. Smith for a Special Permit to construct and operate a commercial greenhouse at 415 Boston Post Road, East Lyme, CT, with the waiver of exception to Section 24.6c-Sidewalks and Section 24.6e3 Landscape granted as requested, property further identified as Assessor Map 24.0, Lot 30.

Mrs. Cone seconded the motion.

Vote in favor: (6-0), Unanimous

4. Application of Cuddy and Feder and Worby, LLP, agent for AT&T Wireless PCS LLC, for a Special Permit to mount six panel antennae to the façade of the building at 15 Liberty Way, Niantic, CT, property further identified on Assessor Map 9.4, Lot 8

Mr. Nickerson stated that this was the first of such cases before the Commission following the passage of the Telecommunications Regulations and he was encouraged that the applicants took steps to comply with the regulations. He noted that the antennae were to be placed in an industrial area and would be unobtrusive.

Mr. Chamberlain stated that this was the best use for an existing building's cupola.

MOTION (5): Mrs. Cone moved to approve the application of Cuddy and Feder and Worby, LLP, agent for AT&T Wireless PCS LLC, for a Special Permit to mount six panel antennae to the façade of the building at 15 Liberty Way, Niantic, CT, property further identified on Assessor Map 9.4, Lot 8. Reasons: In compliance with Standards and Regulation.

Mr. Chamberlain seconded the motion.

Vote in favor: (6-0), Unanimous

Mr. Nickerson instructed Mr. Mulholland to publish notice of the decision.

THE COMMISSION TOOK A 10 MINUTE RECESS

Mr. Nickerson stated that he would like to wait for Town Attorney E. O'Connell to arrive before continuing with Items #5 and #6.

OLD BUSINESS

1. Subcommittees
 - A. Back lots

Mr. Nickerson noted that the Commission members have been mailed an Addendum to the Proposed Amendments to the Zoning Regulations concerning Back Lots. He added that once the Commission has reviewed the Proposal and was comfortable with the proposal, Public Hearing will be scheduled.

Mr. Mulholland briefly outlined the history of discussions regarding inconsistencies with the Planning Regulations and Zoning Regulations concerning Back Lots. A review of both sets of Regulations found that there should be clarification and consistency and that this was an opportunity to address these couple of issues. Mr. Mulholland and Meg Parulis, Planning Director, reviewed the Regulations and drafted this proposal.

Mr. Mulholland stated that in this proposal, the Planning Commission has the ability to waive specified Zoning Regulations. Previously, the Zoning Commission has authorized the Planning Commission to grant waivers under the Cluster Regulations.

Mr. Mulholland read the Proposal and invited comment and question from the Commission.

Mr. Dwyer stated that he served on the Backlot Subcommittee, which was initiated about 9 years ago and never disbanded. He stated that in his opinion, he would not approve the Proposed Amendment as presented, particularly the areas concerning waivers. He stated that, firstly, Zoning Regulations are not to be arbitrary or waived. They must be specific. He stated that the Zoning Board of Appeals serves as an avenue to follow if anyone wants a waiver, but Zoning Regulations should not be waived. Secondly, he stated that some of this proposed amendment should be included in the Planning Regulations – Subdivision Section.

Mr. Mulholland stated that the frontage of the back lot is the rear of the front lot, plus 25-foot frontage on the street. Presently the Zoning Regulations (General Regulations, Section 20) require a 25-ft. access way, which is essentially a right-of-way (ROW), but it does not have to be owned by the back lot owner. This Amendment proposes that the backlot owner own the access way property, i.e., 25-ft. There can be 2 backlots with 50-foot (2 x 25-ft) adjacent to each, however, property owners can share a common driveway. With 2 25-ft. access strips, each owned by one of the two back lot owners, then each property stands on it own and it a choice whether to share a common driveway and reduce curb cuts.

Mr. Dwyer noted that this then results in 50-ft frontage. Mr. Mulholland stated that in RU40 District, 150-ft. frontage is required for a lot fronting on the road.

Mrs. Cone inquired if existing lots would be “grandfathered”. Mr. Mulholland pointed out in the Proposed Amendment Section 1.3(5) indicating a “created prior to” date which would grandfather in lots existing prior to that date.

Mr. Bulmer requested a definition for “building line”. Mr. Mulholland read the definition of “building line” from the Zoning Regulations, Definitions 1.10. Discussion regarding irregular shaped back lots and building line not parallel to the street ensued. Mr. Mulholland stated that in a rear lot, from the rear property line of the front lot one would measure back 50-ft. to the building line. He agreed that this line may not be parallel to the street and in some cases subjective judgements have to be made in the case of irregular lot shapes.

Discussion ensued regarding Section 1.3(3) concerning the length of the access way. Mr. Dwyer noted that the 1000-ft. maximum was not an arbitrary number, but existed in the Planning Regulations. Mrs. Parulis stated that in RU80 the Commission may wish to limit length of access way if it thought that was appropriate, rather than applicable to all Districts.

Section 1.3(5) – Mr. Dwyer noted that the access route must lead to an “accepted street”. He inquired what is the status of Ancient Highway, and Quarry Dock Rd. in this regard. Mr. Mulholland stated that the list of “accepted streets” is kept by and with the Director of Public Utilities.

Section 1.54 Street: Mr. Bulmer stated that the definitions of “Arterial Street” and “Collector Street” were ambiguous and suggested a map identifying each type of street. Following discussion, the Commission requested that Mrs. Parulis prepare a list of “Arterial Streets” and “Collector Streets” as well as a map.

Section 20.27 Waivers Following vigorous discussion and debate, it was the consensus of the Commission that Mr. O’Connell provide the Commission with the legality of the Planning Commission’s right to waive Zoning Regulations. Mr. Bulmer read the following: “A little recognized provision of CT General Statues, Sec. 8-26, allows Zoning Regulations to include provisions under which a Planning Commission, in deciding upon a subdivision application, may waive certain requirements of the Zoning Regulations. Such waivers must be approved by a $\frac{3}{4}$ (three-quarter) vote of all members of the Planning Commission.”

Mr. Dwyer recommended that “lots” in the second line be replaced with “back lots”.

Mr. Mulholland suggested that he meet with Mr. O’Connell and with Mrs. Parulis and make revisions to the Proposal as requested by the Commission.

2. Application of Landmark Development Group, LLC for a zone change from a RU200 Greenway Conservation District (GCD) to a new “Affordable Housing District”.

And

3. Application of Landmark Development Group, LLC, to amend the East Lyme Zoning regulations by creating a new Section 32 entitled “Affordable Housing”.

Panel: Mr. Nickerson, Mr. Gada, Mr. McLaughlin, Mr. Bulmer, Mr. Chamberlain and Mr. Salerno.

Atty. O’Connell distributed to each member of the Commission a memorandum dealing with items for consideration, Commissions responsibilities, etc. and reviewed it briefly.

Mr. O’Connell pointed out the application was filed in November 2001, supplemented by a letter and material submitted by Atty. Zizka on April 5, 2002. The applicant has not requested permits of any kind to construct any building or structure. This application is the creation of an “Affordable Housing District” and “Affordable Housing Regulations” for that District. The applicant has made no representation nor submitted proof that it would actually build an Affordable Housing development if the Commission creates the Affordable Housing District and the regulations.

Mr. O’Connell recommended that the Zoning Commission consider the applicant’s request as an Affordable Housing application for these purposes. It does pertain to defined parcels of land described in Schedule A. The proposed Regulations are specific to real estate described in Schedule A. The applicant has submitted a conceptual site plan and they have invoked the Affordable Housing Statute (8-30g). Thus, even though there is no proposed housing development as defined by the Statute, it appears prudent to treat the application as though it were an Affordable Housing application and reserve the issue of whether or not it qualifies as that for a decision by the Courts.

Mr. O’Connell stated that if the Commission considers that the application and supporting evidence justifies the creation of a new Affordable Housing District at the requested location, and the adoption of Regulations, they can change the regulations and change the zone in the manner that is usual. If the Commission however considers that the application should be denied, the Affordable Housing Statutes contain unique provisions that the Commission must observe.

1. Establish, based on evidence in the record, that the decision is necessary to protect substantial public interests in health, safety or other matters which the Commission may legally consider;
2. That those public interests clearly outweigh the need for Affordable Housing;
3. That those public interests cannot be protected by reasonable changes to the Affordable Housing development.

In rendering its decision, the Commission is obligated to identify the specific public interests that it seeks to protect by that decision. It is required to state its reasons on the record.

Mr. O'Connell stated that the CT Legislature has adopted some changes to the Affordable Housing Statutes, which will become effective, he believes, October 1st. He indicated that the Commission may support the concept of Affordable Housing and work on the Regulations to bring them into conformity with the State Statute.

Mr. Bulmer submitted his thoughts and "game plan" to members of the Commission. He noted that some of his points were included in Mr. O'Connell's memorandum and comments and the Commission may elect to expand on them during the course of deliberation. He recommended that the Zoning Officer provide two documents to include the reasons for the decision and noting supporting documentation and exhibits; one in favor of the application and one opposed to the application.

Mr. Nickerson stated that he has heard the evidence submitted at the Public Hearings and raised the issue of formulating an opinion based on just that information. Mr. O'Connell pointed out that deliberation includes consideration of the opinions and comments of other members of the Commission as well as a review of the evidence. Mr. Nickerson added that he did not want it misconstrued that he went into the Public Hearing with a preconceived opinion.

Mr. Bulmer pointed out that the members of the Commission must consider all the evidence and although he was at the Public Hearings and heard the evidence, some of the documents he has not been able to read and review. Additionally, he has yet to hear from the other members of the Commission on the evidence.

Mr. Nickerson stated that the staff, in his opinion, is better able to prepare a single document, rather than two, noting the issues and evidence, including Exhibits, and organizing them in such a manner to expedite the Commission's deliberations given the time constraints.

Mr. Mulholland stated that a vast amount of the evidence has been reviewed by staff to date and it has been the Zoning Office custom to draft motions in the affirmative and negative for the Commission and recommends this procedure in this case as well.

Mr. O'Connell recommended that, following deliberation, the Staff should be instructed to submit draft motions that include the detailed reasons that the Commission considers to be important and supported by the record..

Mr. Salerno inquired if Mr. O'Connell was aware of any cases similar to the Landmark Development Group application for Affordable Housing. Mr. O'Connell stated that

there was one similar in Glastonbury, CT, however, each application is considered on its own.

The Commission will tentatively schedule a Special Meeting for June 26, 2002 for the purpose of deliberation on the Landmark Development Group, LLC Affordable Housing application.

MOTION (6): Mr. Bulmer moved that the Zoning Commission go into Executive Session at 10:00 PM.

Mr. Gada seconded the motion.

Vote in favor: (6-0), Unanimous

Atty. O'Connell stated for the record that the Executive Session will not deal in any way with the Affordable Housing application on June 6, 2002 agenda.

THE COMMISSION WENT INTO EXECUTIVE SESSION.

MOTION (7): Mrs. Cone moved to come out of Executive Session at 10:39 PM.

Mr. Chamberlain seconded the motion.

Vote in favor: (6-0), Unanimous

MOTION (8): Mrs. Cone moved adjourn the meeting at 10:40 PM

Mr. Chamberlain seconded the motion.

Vote in favor: (6-0), Unanimous

Respectfully submitted,



Anita M. Bennett
Recording Secretary
10 June 2002