

Apr 24, 1995 AT 1:30 <sup>AM</sup>  
~~PM~~

## EAST LYME ZONING COMMISSION

MEETING OF APRIL 20, 1995

*Desley A. Blais*  
East Lyme Town Clerk

## MINUTES

PRESENT: Chairman Wayne Fraser, Athena Cone, Paul Formica.  
Alternates Chris Mullaney and Shawn McGlaughlin were requested to sit.

ALSO PRESENT: Zoning Enforcement Officer Bill Mulholland and Ex-Officio Donn Jourdan.

Chairman Fraser started the meeting at 7:30 p.m., noting that there were two public hearings to be held this evening, prior to the commencement of the regular meeting of the Commission.

PUBLIC DELEGATIONS

There were none.

PUBLIC HEARING 1. APPLICATION OF SPICER PLUS, INC. FOR A SPECIAL PERMIT TO MODIFY AN EXISTING NON-CONFORMING GASOLINE SERVICE STATION LOCATED AT 326 MAIN STREET, NIANTIC, CT.

Chairman Fraser noted that this public hearing had been properly advertised in The Day newspaper on April 17, 1995. He requested that the applicant offer their presentation, then the Commissioners would have a chance to ask questions and then a time period for those in the audience to speak in favor of this application, followed by those wishing to speak in opposition.

Attorney Ray Baribeault of Suisman, Shapiro, Wool Brennan and Gray stated that he represented Spicer Plus, Inc. and that the property in question was formerly identified as the Texaco Station on Main Street. He added that the only change that his client was requesting was the addition of a convenience store and that the only real opposition to this application was by an existing competitor.

Richard Gaudio of 7 Hillcrest Rd, Stonington, CT the operations manager for Spicer Plus noted that they wished to change the existing use from a repair/gas station to a gas/diesel/convenience store and to modernize the building and erect a 24 x 30 foot canopy over the pump islands.

Larry Chessler, Director of Spicer Plus noted that the pump island configuration had been changed to accommodate the zoning requirements for the canopy.

Mr. Mulholland noted that the site plan adheres to the zoning regulations and that they will perform buffer landscaping.

Mr. Formica read a letter to Fire Marshal Pete Lamb dated August 4, 1988 into the record, identified as Exhibit 1.

Mr. Formica identified Exhibit 2 as the inspection performed by Fire Marshal Pete Lamb performed in May, 1988, certifying that the tanks were installed correctly. He identified Exhibit 3 and read into the record a letter dated October 19, 1994 to Spicer Plus from Thomas Dion of Fedco Omega.

Mr. Mullaney inquired and received confirmation from Mr. Gaudio that scientific tests had been performed on soil at the site.

Chairman Fraser noted that correspondence dated March 13, 1995 ascertained that the tanks meet state certification and that the tests performed prove that the tanks are tight.

Mr. Mulholland stated that when the applicant came in to apply for a building permit for the proposed canopy and alterations to the building, he would suggest that an extra set of plans be offered illustrating all the changes to be made for the perusal of the Commission. He added that the property is not located in an aquifer, and that the only changes planned for the building were interior ones.

Mr. Mullaney inquired if there would be a problem with CT DOT regarding the site line.

Mr. Muholland responded that no plantings could be performed in the DOT right-of-way and that the site line would not be an issue.

Mr. Formica read the letter dated April 20, 1995 to the Zoning Commission from Zoning Official William Mulholland into the record.

Chairman Fraser noted that there was no one else in the audience who wished to speak in favor of this application. He then proceeded to ask for any comments against this application.

Attorney John Bashaw of Brenner, Saltzman, Wallman & Goldman of New Haven, CT noted that he was representing Aldin Associates, owners of another gas station in Town (identified as Ocean Mart). He submitted a lengthy report in opposition to this application stating that the use of the site had been abandoned since it had been out of service for 41/2 years and was within 1500 feet of an existing stations. He added that contrary to Mr. Mulholland's statement, the "intent" was extremely germane and central to this application.

Atty Baribeault (for Spicer Plus) noted that he had not seen the packet that Attorney Bashaw just reviewed for the Commission. He pointed out Town Attorney Marrison's letter of October 11, 1994 which notes that the key issue is whether Texaco ever intended to abandon the use of the property as a gas station and the answer was no, and Town Attorney's letter affirms this position. He refuted statements made by Attorney Bashaw regarding impermissible expansion noting that pre-existing nonconforming gas stations

can be modernized and this was an issue of modernization. He referred to State Statute 21.1.7F and added that there was no "installing" of tanks since they were already in the ground and if subsection F did apply, he had already submitted sufficient information. He affirmed that CT DEP did have a file on this site.

Ms. Cone inquired of the date of this file.

Attorney Baribeault noted that the date was 1992.

Attorney Bashaw (Aldin) stated that he was not aware of a legal opinion regarding intent. He added that the affidavit was the sole document utilized to ascertain intent.

There was a consensus of the Board that there were no remaining questions regarding the abandonment issue.

Chairman Fraser closed the public hearing at 8:45 p.m. He suggested a five minute break before commencing the second public hearing.

PUBLIC HEARING 2: APPLICATION OF NIAN TIC BAY YACHT CLUB FOR A SPECIAL PERMIT TO OPERATE AS A YACHT CLUB

Chairman Fraser called this public hearing to order at 8:52 p.m. He noted that this public hearing had been published in The Day on April 17, 1995.

Michael Walker of P.O. 188, 165 State Street, New London, CT reviewed the deeds for the three parcels that were combined to make up the Niantic Bay Yacht Club. He noted that the bath houses were not equipped to accommodate the handicapped and they were suggesting provisions to accomplish this. He stated that these provisions required a Special Permit since this was a nonconforming use.

Mr. Fraser noted that Alternate Mullaney was not sitting for this public hearing.

Engineer Edmund Sitti noted that the plan reflects the existing condition of the site and also illustrates some of the modifications proposed per the Zoning Regulations. He added that they were requesting the following waivers:

- 1) 24.2A Paving
- 2) 24.2C Sidewalks
- 3) 24.2 E2 Front landscaping
- 4) 24.2E3 Landscaping buffer
- 5) 24.2E4 Parking area landscaping

Mr. Walker noted that the Club was trying to avoid creating a commercial looking site in a residential area.

Mr. Formica read the letter from the Zoning Official to the Zoning Commission dated April 20, 1995.

Chairman Fraser ascertained that there was no one else present wishing to speak in favor of in opposition to this application.

The public hearing was closed at 9:28 p.m.

1. Chairman Fraser called the Regular Meeting of the Zoning Commission to order at 9:35 p.m.
2. The Commission noted that they had not received the minutes of the March 16, 1995 meeting and requested that Mr. Mulholland secure them for the next scheduled meeting.
3. Application of Spicer Plus, Inc. for a Special Permit to modify an existing nonconforming gasoline service station located at 326 Main Street, Niantic, CT.

Mr. Mulholland noted for the record that the site plan, canopy and remodeling plans for the building all meet the Town's Zoning Regulations.

Mr. Formica inquired if the timing of the installation of the tanks and the question raised regarding abandoning the tanks for more than 90 days would present a problem.

Mr. Mulholland noted that we issue a local zoning permit, but they would have to meet other tests with CT DEP, etc.

Chairman Fraser noted that there was a consensus of the Board and they were satisfied with Town Counsel's ruling and the intent was not to abandon the use.

MOTION (1)

Mr. Mullaney moved to approve the application of Spicer Plus, Inc., for a Special Permit to modify an existing non-conforming gasoline station at 326 Main Street, Niantic, CT with additional approval to include the construction of a canopy over the gasoline pump islands and satisfying Zoning Regulation 21.1.7 F5 which requires an alarm system to be installed at the time of construction and to perform the improvements of the site plan prepared for Spicer Plus Inc. dated 3/20/95 prepared by Centro Plex Engineering, P.O. Box 15, Colchester, CT, Sheet SP1.

Seconded by Ms. Cone.

Aye: Mr. Fraser, Mr. Mullaney, Ms. Cone, Mr. McGlaughlin, Mr. Formica.  
Motion passed unanimously.

Chairman Fraser noted that approving this application brings this property into compliance with the East Lyme Zoning Regulations on nonconforming gas stations and is effective upon publication.

4. Application of Niantic Bay Yacht Club for a Special Permit to operate as a yacht club. Alternate Mullaney did not participate in this section of the meeting.

MOTION (2)

Mr. Formica moved to approve the application of the Niantic Bay Yacht Club for a Special Permit to operate as a yacht club with the following exceptions to the criteria found in Section 24 site plan review:

- 1) 24.2A Paving
- 2) 24.2C Sidewalks
- 3) 24.2E2 Front landscaping
- 4) 24.2E3 Landscaping buffer
- 5) 24.2E4 Parking area landscaping.

Seconded by Ms. Cone.

Aye: Mr. Fraser, Ms. Cone, Mr. Formica, Mr. McGlaughlin.

Motion passed unanimously.

Chairman Fraser noted that this action by the Zoning Commission would bring the Niantic Bay Yacht Club which was a nonconforming, pre-existing use into compliance with the Town's Zoning Regulations and added that it would be effective upon publication.

5. Application of Elizabeth Patten, 2 Bond Street, Niantic, CT for a Coastal Site Plan review for reconstruction of an existing seawall.

Mr. Mulholland noted that CT State Statute 22A-109 requires this Commission to approve and forward it to CT DEP. He added that this Commission is not reviewing the building of the dock.

Ms. Patten noted that she had lost a great deal of sand along the beach over the years and that the stone pier had collapsed on the east side and she wanted to reconstruct the seawall.

Engineer Keith Neilson from Ducko stated that he had prepared the application documents regarding the Commission's regulations and pertinent CT State Statute 22a-109. He added that the purpose of the project was to restore the damaged section of the seawall and to restore boating access. To accomplish this end, 1-2 tons of stones would be placed in front of the existing wall with a filter fabric with trap rock under the stones. He noted that no adverse impacts were connected with this project and it was consistent with CT DEP regulations.

MOTION (3)

Mr. Formica moved to approve the application of Elizabeth Patten, 2 Bond Street, Niantic, CT for a coastal site plan review for construction of a revetment against the existing concrete seawall. The Board finds that the project is consistent with all applicable coastal policies and includes all reasonable measures to mitigate adverse impacts.

Seconded by Mr. Mullaney.

Aye: Mr. Fraser, Mr. Formica, Mr. Mullaney, Ms. Cone, Mr. McGlaughlin.  
Motion passed unanimously.

6. Request of Jeri Steele, 144 Boston Post Road, East Lyme, CT for exceptions to the following Site Plan requirements Section 24.2 A., B., C., and E.

Ms. Steele noted that the proposed use of the existing barn/garage located on the SW side of the property is to convert the building to a Hair Replacement Center. She noted that the Center would consist of a consultation room, reception area, procedure room, office, and 1 bathroom on the first floor. The second floor will hold 1 dispensary room and the rest will be attic space. She added that their hopes were to keep "in character" with the property's unique features and was requesting waivers of Section 24.2 A., B., C., and E.

Mr. Mulholland noted that if the Commission chose to approve this application, the application would be consistent with the regulations. He added that the Board must grant the waivers within the motion.

MOTION (4)

Mr. Formica moved to approve the request of Jeri Steele, 144 Boston Post Rd, East Lyme, CT for exceptions to the following Site Plan requirements Section 24.2A., B., C., and E.

Seconded by Mr. Mullaney.

Aye: Mr. Fraser, Mr. Mullaney, Mr. Formica, Ms. Cone, Mr. McGlaughlin.  
Motion passed unanimously.

Chairman Fraser noted that this result would be effective upon publication.

Chairman Fraser noted that they were making headway on their review of the Zoning Department and office. He added that the next meeting would be on May 1, 1995 at 3:00 p.m., and invited anyone who wished to attend.

Mr. Mulholland noted that an application had been submitted late from Bob Jacobi to open an Antique Shop at 13 Plants Dam Road. He added that this would be scheduled for the next available meeting.

Ex-Officio Donn Jourdan noted that the Commission's approval for Ms. Patten's seawall was proper and would be helpful for others who faced this same problem.

Chairman Fraser noted that they were still working on the site plan review and he would like to get it completed. He requested that anyone wanting to work on it could contact Mr. Mulholland.

MOTION (5)

Mr. Mullaney moved to adjourn the East Lyme Zoning Commission meeting of April 20, 1995 at 10:38 p.m.

Seconded by Mr. Formica.

Aye: Mr. Fraser, Mr. Mullaney, Mr. Formica, Ms. Cone, Mr. McGlaughlin.  
Motion passed unanimously.

Respectfully submitted,

A handwritten signature in cursive script, appearing to read "Darlene C. Stevens".

Darlene C. Stevens, Acting Recording Secretary