

EAST LYME ZONING COMMISSION

Special Meeting, July 20, 2023. 7:30 PM

East Lyme Town Hall, main room

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Members Present: Chairman Anne Thurlow, Norm Peck, Dave Schmitt, Debbie Jett-Harris, Terry Granatek, Denise Markovitz, Alt., Jay Ginsberg, Alt., Marc Peterson Alt.

William Mulholland
TOWN CLERK

Members Absent: John Manning,

Also Present: William Mulholland, Zoning Official, Sue Spang, Recording Secretary, BOS liaison, Rose Ann Hardy

Call to Order: Chairman Thurlow called the meeting to order at 7:30

Denise Markovitz was seated.

I. PLEDGE OF ALLEGIANCE-recited

II. PUBLIC DELEGATION:

Jan Grosskoph, 31 Lincoln Rd., is concerned about farmland, water quality and different types of housing.

Tom Kalal, 80 Grassy Hill Rd., thanked the Commission for upholding the regulations and the POCD.

III. PUBLIC HEARINGS-none

IV. REGULAR MEETING

1. Approval of Minutes of July 6, 2023

MOTION: (Granatek/Jett-Harris) to approve the July 6, 2023, minutes as presented.

Vote: APPROVED. In favor-Thurlow, Schmitt, Peck, Jett-Harris, Granatek. Opposed-none. Abstaining-Markovitz

2. Application of Kristen Clarke P.E., for conceptual Site Plan review, for an affordable housing multi-family residential development pursuant to CGS §8-30g at property located on Holmes Rd, East Lyme, CT, Assessor's Map 55.0 Lot 30

A. Thurlow said the Commission has had plenty of time to review the application and to decide.

MOTION: (Jett-Harris/Markovitz) Based on evidence in the record and after careful consideration, two public hearings, many hours of review, I am making the motion to deny Kristen Clarke's application for a conceptual site plan review for an affordable housing multi-family residential development pursuant to CGS §8-30g at property located on Holmes Rd, East Lyme, CT, Assessor's Map 55.0 Lot 30 for the following reasons that are listed in the denial resolution prepared by town attorney Clarke.

APPLICATION PER CGS SECTION 8-30g AND ZONING REGULATIONS SECTION 32 BY KRISTEN CLARKE SUBMITTED ON OR ABOUT FEBRUARY 28, 2023 FOR PROPERTY ON THE SOUTH SIDE OF HOLMES ROAD SHOWN AS LOT 30 ON

ASSESSOR'S MAP 55

A. FINDINGS

1. Under cover of a letter from her attorney dated February 28, 2023, Kristen Clarke ("Applicant") filed an application ("Application") pursuant to Connecticut General Statutes § 8-30g for property on the southerly side of Holmes Road (with no street address) and shown as Lot 30 on Assessors Map 55 ("Property"). The Property is approximately 12.67 acres in area and is approximately 460' from the East Lyme/Montville boundary.

2. The Application calls for the creation of 19 single-family lots and four six unit townhouses. Each residential unit will have two bedrooms. At least 30% of the homes will be designated as affordable (the "Project").

3. The attorney's cover letter states that the Application was for a "conceptual site plan." Subsequent correspondence from Clarke's attorney stated that the Application was for a "preliminary site plan." The Commission finds that the Application, no matter how denominated, seeks approval of a Preliminary/Conceptual Site Plan pursuant to §32.9.1 of the Regulations ("PSP" and "CSP" or "PSP/CSP").

4. Throughout the Zoning Commission's proceedings on the Application, which have included a public hearing that took parts of two meetings, the Applicant's representatives have represented that the Application does not seek to create an Affordable Housing District on the Property, or to make any other zone boundary or regulation change, or to obtain final or construction approval of a site plan.

5. Instead, the Applicant's representatives have represented that she merely wishes to ascertain the Commission's general views of her proposal for the Property, so that she can better determine whether to proceed with a complete, detailed application.

6. Thus, the Applicant's representatives have acknowledged in writing and orally that the Application lacks much information required by both § 8-30g and by the East Lyme Zoning Regulations, including § 32 of the Regulations, in support of any affordable housing application.

7. In addition to the Application and supporting documents submitted by or for the Applicant, the Commission has received the following reports/memoranda:

- A memorandum from the EL Town Planner, dated May 16, 2023, concerning, among other things, the consistency of the Project with the EL Plan of Conservation and Development, and the lack of essential information on traffic and stormwater management.

- A memorandum from the EL Director of Public Works, Acting Town Engineer, dated April 24, 2023. This memorandum addresses concerns about the Application's lack of full and complete information about traffic, sight line design and distances, stormwater management, and the lack of information necessary to perform a traditional in-depth site plan review.
- A letter from the Director, Department of Land Use and Development, Town of Montville, Ct., dated May 10, 2023, that addresses concerns about the impact of the Project on substandard roads in Montville that would carry traffic from the site, and the use of and impact on Montville Fire/Ambulance services by the residents of the Project.

8. The Commission is required to make findings under the state's affordable housing statute, Connecticut General Statutes § 8-30g, as well as § 32 of the Zoning Regulations.

9. The Commission finds that the Application does not comply with the requirement of § 32.9.1 of the EL Zoning Regulations that an Application contain information sufficient to allow the Commission to evaluate a development plan under the standard of §8-30g, and that it fails to include the information expressly required by the following sections of § 32.9.1:

- F. Sewage disposal and water supply locations and system, ownership, operation, and maintenance.
- G. Preliminary storm water management plan;
- I. Traffic impact statement or report.
- J. Preliminary design plans for all proposed buildings and structures.
- L. An Affordability Plan containing all of the documents and information required by General Statutes Section 8-30g.

- N. Soil types from the New London County Soil Survey.

10. The Commission finds that the Application does not contain information describing any impact on public health and safety, as required by § 32.9.1.0 of the Regulations.

11. The Commission finds that while the Application does include two documents that discuss traffic issues, neither provides adequate information upon which the Commission can find that the significant public interest in traffic safety, including the adequacy of the affected roads to carry current or projected traffic loads, can be determined. One traffic document is undated and unsigned and expressly stated to be "preliminary," and the other is a memorandum dated April 30, 2023 by the Applicant herself to the EL Zoning Official and the Montville Planning Director. However, there is nothing in the Record stating that the Applicant, although a

professional engineer, is a certified traffic engineer. Moreover:

- The reports do not opine on the capacity of the existing road system to handle current or anticipated traffic loads, and therefore do not address the concerns expressed by the Montville Planning Director in her letter dated May 10, 2023 about the capacity of the roads in Montville, one of which is substandard, to handle the traffic the project will generate.
- The two reports appear to contradict one another as to anticipated trip generation, and neither report appears to be based on actual traffic counts on or observation of the roads.
- Neither report appears to opine as to the adequacy of sight distances at the proposed access points to the project or, if they do, they do not include sufficient information to determine the basis on which they were calculated (see memorandum dated April 24, 2023 by Acting EL Town Engineer to the Zoning Official).

12. The Commission finds the Application does not contain sufficient information to determine that the Project may be provided with adequate and Code-compliant fire and other emergency services (see, e.g., May 10, 2023 letter from Montville Planning Director).

13. The Commission finds the Application fails to contain sufficient information to allow a proper evaluation of stormwater impacts and any proposed mitigation methods or to perform a standard, in-depth site plan review (see, e.g., Acting Town Engineer's April 24, 2023 Memorandum).

14. The Commission finds the Application is inconsistent with elements of the Town's Plan of Conservation and Development identified and discussed by the EL Town Planner in his memorandum dated May 16, 2023.

15. The Commission finds the Application does not contain sufficient information to determine that the Project may be provided with adequate and Code-compliant potable water and sanitary sewage treatment and/or disposal.

16. The Commission finds the Application does not contain sufficient information to determine whether there are regulated areas on or near the Property subject to the Town's Inland Wetlands and Watercourses regulations, as required by §32.9.1 (c) of the Zoning Regulations.

17. The Commission finds that the "Affordability Plan" submitted with the Application, dated February 28, 2023, does not include materials and information required by CGS § 8-30g (b) (1), including draft zoning regulations, conditions of approvals, deeds, restrictive covenants

or lease provisions that will govern the affordable dwelling units.

18. The Commission finds that the Applicant has not provided the information necessary to assess the environmental impacts of the PSP/CSP, including from stormwater.

19. The Commission finds and recognizes that there is a need for affordable housing in the Town of East Lyme, and that less than 10% of available housing stock in the Town meets the statutory definition of affordable housing.

20. However, the Commission also finds and declares that the Application effects other substantial public interests in health, safety and other matters which the Commission may legally consider and which clearly outweigh the need for affordable housing, including:

- The means by which potable water and sanitary sewage treatment will be provided;
- the adequacy of the existing public road system to meet current and anticipated traffic demands;
- the treatment and conveyance of storm water and the avoidance of pollution, and the protection of the environment and environmental resources;
- whether there are wetlands and watercourses or other wetlands regulated areas on or in proximity the Property, and if so where they are located and how they might be impacted;
- fire safety, and the provision of fire and other emergency services to the site;
- consistency with the EL POCD.

21. The Commission finds, based on the evidence in the Record, that it is necessary that it DENY the Application in order to protect the substantial public interests in health, safety and the other matters addressed in paragraphs 9-20 above, that such interests clearly outweigh the need for affordable housing, and that the substantial public interests in these matters cannot be adequately protected by reasonable changes to and conditions on the affordable housing project described by the Application.

B. DECISION

For the reasons stated in the Findings, the commission DENIES the PSP/CSP, and offers the following suggestions for any subsequent affordable PSP/CSP/Final Site Plan application for the Property:*

1. The Applicant shall, prior to (or contemporaneous with) applying for a Preliminary, Conceptual and/or Final Site Plan pursuant to §32 of the EL Zoning Regulations and/or for any form of “Affordable Housing Application” for the Property, submit all information required for a Preliminary, Conceptual or Final Site Plan required by the Zoning Regulations, including §§ 32.7, 32.9, 32.9.1 and 32.9.2 .2, and shall also, through the submission of reports from licensed/certified experts in their respective fields, whether or not such reports are expressly required by the Zoning Regulations:

a. demonstrate that adequate potable water and sewers and/or on-site septic treatment approved by all relevant governmental authorities will be provided to fully serve the Project. The Applicant shall also describe the location, ownership, operation and maintenance of said systems;

b. demonstrate that the access to public highways to and from the Project shall be safe and compliant with all legal requirements, including for sight line distances, and that access to all Units at the site by fire, police and other emergency vehicles shall be adequate and compliant with all Code requirements;

c. demonstrate that all existing and proposed roads (including in Montville) that will bear the traffic from the Project are of adequate capacity and are in adequate condition to do so, and if they are not, describe in detail the changes required to make them adequate and the projected costs thereof and obtain any approvals required from Montville or state authorities;

d. apply for and receive an Inland Wetlands Permit or a certification that none is necessary from the East Lyme Inland Wetlands Agency, and accurately depict the location of all such regulated resources on or in proximity to the Property;

e. provide the Commission with the information necessary for the Commission to assess the environmental impacts of the Project of zone, including but not limited to:

- a state of the art stormwater management plan which shall, at a minimum, include a stormwater management system designed to treat, detain and infiltrate the 100-year storm on-site. The plan should be accompanied

by a Drainage or Stormwater Management Report. In addition, the plan should include an Operations and Maintenance Plan identifying the maintenance schedule and individual(s) responsible for the maintenance of the stormwater system;

- results of all site testing for the design of a stormwater management system;
- sources of pollutants the proposed development will generate, such as sand, salt and/or other chemicals used in winter and other maintenance operations on driveways, sidewalks and parking areas; nutrients from fertilizers used on grass and landscaped areas; metals from vehicle brake pads, hydrocarbons from inadvertent gasoline spills and vehicular oil drips on impervious surfaces; and atmospheric deposition on impervious surfaces; and the effect any of these will have on environmental resources on site.

f. provide an Erosion and Sedimentation Control Plan consistent with the 2002 Connecticut Guidelines for Erosion and Sediment Control, including the contact information of the individual(s) responsible for implementation and maintenance of erosion and sedimentation controls during construction and an estimated timeline.

* To the extent it is claimed that this Application seeks a designation of the Property as an Affordable Housing District (“AHD”), it is DENIED, for the reasons stated above, and because per EL Zoning Regulations § 32.9, an application for designation as an AHD cannot be approved without an approved Final Site Plan.

AMENDED MOTION (Jett-Harris/Markovitz) to amend the main motion (as stated by T. Granatek in his remarks to the main motion): this is the wrong location for this type of development, given the spirit of the affordable housing it should have access to public transportation and access to town water and town sewer, adequate roads, proximity to fire departments and most of these issues related to health and safety are environmental concerns. We are anticipating a large impact on a pristine area in town that is largely undisturbed by development and again there is not enough in the application to study the environmental impact and what it may do the watershed and the water supply, environment and all the other safety related issues.

Vote: APPROVED unanimously

Vote: (Main Motion) APPROVED unanimously

V. OLD BUSINESS-none

VI. NEW BUSINESS

- 1. Application of Joseph Basileo, of Illiano's Grill, for a special Permit for Outdoor Dining at 228 Flanders Road, Niantic, Assessor Map 26.1 Lot 26.**

B. Mulholland will schedule a public hearing.

- 2. Any Business on the floor, if any, by the majority vote of the Commission- none**

- 3. Zoning Official-**

- 4. Comments from Ex-Officio:**

R. Hardy thanked the members for their due diligence. The BOS is reviewing the Hathaway property pros and cons. The Charter Revision Committee is considering education mailer on the questions.

- 5. Comments from Zoning Commission liaison to Planning Commission:**

D. Schmitt reported that there was a long discussion of a subdivision application on Homes Rd. and Walnut Hill Rd. The application was approved with conditions. Enforcement of the conditions was discussed.

- 6. Comments from the Chairman: none**

VII. ADJOURNMENT

MOTION: (Schmitt/Jett-Harris) to adjourn at 8:16. Vote: APPROVED unanimously

Respectfully Submitted
Sue Spang,
Recording Secretary