

Minutes of East Lyme Zoning Commission Regular Meeting October 5, 2023

Sate and time: 10/5/2023 7:30 P.M. to 10/5/2023 9:30 P.M.
Present: Anne Thurlow, Chair, Terry Granatek, Secretary, Deb Jett-Harris, Member, Norman Peck, Member, John Manning, Member, David Schmitt, Member, Jay Ginsberg, Alternate, Marc Peterson, Alternate, Denise Markovitz, Alternate, Bill Mulholland, Staff, Jessica Laroco, Recording Secretary
Location: East Lyme Town Hall, 108 Pennsylvania Ave, Niantic Connecticut

1. Call to Order

Chairman Thurlow called the October 5, 2023, Regular Meeting of the East Lyme Zoning Commission to order at 7:30 p.m. and the Pledge of Allegiance was recited.

2. Attendance

Roseann Hardy, Ex-Officio, entered the meeting at 8:30 p.m.

3. Public Delegations

Nancy Kalal 80 Grassy Hill Rd spoke in favor of the Aquifer Protection Program. She would like to see the current wellhead program eliminated in favor of better protection of the aquifers. This would benefit several hundred acres, including the Hathaway Farm parcel, which is a recharge area to the aquifer.

4. Public Hearing

4-1 WITHDRAWN Application Joseph Basileo, of Illiano's Grill, for a Special Permit for Outdoor Dining at 228 Flanders Road, Niantic, Assessor Map 26.1 Lot 26.

Ms. Thurlow noted this application had been withdrawn by the Applicant.

4-2 Application of Waterview Landscaping, LLC, Agent for Roderick Cornish, Owner, for a Special Permit for outdoor dining at property located at 26. W Main St, Niantic. Assessor Map 11.2 Lot 17.

Mr. Mulholland noted that the legal ad had been run.

Mr. Peck recused himself and Mr. Ginsberg was seated in his place.

Mr. Granatek read Mr. Mulholland's memo to the Zoning Commission dated October 4, 2023. (Attachment 1)

RECEIVED FOR RECORD
EAST LYME, CT
2023 OCT 11 AM 8:02
Kathleen Mulholland
TOWN CLERK

Ms. Brenda Barclay, Head of Design for Waterview Landscaping, LLC, gave a presentation. It included the following information: A drawing indicating layout for the proposed patio. It showed fencing, a living wall, bollards, and arborvitae. She included pictures of seating, and the cedar boxes for the living walls. The layout will have post and beam above solely for hanging twinkling lights, this will be an open ceiling, creating the typical seven-foot, six inch arbor. Ms. Barclay spoke of the six-foot arborvitae which will protect neighbors in addition to the five foot fence area around the patio.

Mr. Mulholland asked for the hours of operation, but Ms. Barclay did not know them. It was later indicated by Mr. Schmitt that the establishment's website indicated the restaurant closed at 9 p.m.

Ms. Jett-Harris asked about the fence and Ms. Barclay described it as a black aluminum fence which was intended to resemble wrought iron but would not rust. Mr. Mulholland suggested it looked similar to the fencing currently at Dev's on Main.

There was discussion as to what the fence height requirement is, and Mr. Mulholland stated that it was unique to each project. Ms. Barclay suggested a five foot fence and mentioned that a gate would also be at each end of the patio to keep it an enclosed space.

Ms. Thurlow questioned the capacity of the patio, to which Ms. Barclay responded there would be eight tables of four (32 patrons). The tables would not be fixed so the arrangement could be changed. The space is 17' by 30'.

Mr. Manning questioned the space on one of the drawings and asked for clarification as to its purpose. Ms. Barclay responded that the space is currently used for a smoker. There was indication on the drawing as to what would be new space versus what is current space.

Ms. Barclay described the pavers that the waitstaff would walk on.

It was noted by Ms. Barclay that no alcohol, or anything else, would be stored outside.

Mr. Mulholland pointed out that all the pictured arborvitaes would be installed, and Ms. Barclay agreed that they would be, and very close together, as they grow in a narrow way. They would be three feet, on center, apart. There will be a total of 20 plants, with no space between them. The four at one end of the patio, which would be on either side of a gate, would be in pots, because the owner may consider an application for expansion later on, once he sees how well this outdoor dining does. Ms. Barclay stated this application does not include this extra space at this time.

Ms. Thurlow inquired about the lighting and Ms. Barclay responded that they have no plans because they did not know what the Zoning Commission would want. She stated that once the Commission indicated what they wanted that's what they would do. Mr. Mulholland suggested soft, dim, lighting. The applicant does not want bright harsh lights.

Mr. Granatek asked about property lines and Ms. Barclay pointed them out on the drawing provided.

Mr. Mulholland noted that the EL Zoning Regulations Section 20(Outdoor Dining) required zero lot line and zero lot coverage with the permission of the Commission as well as not requiring additional parking because the Commission wanted to promote outdoor dining. Mr. Mulholland noted that there is a

proliferation of outdoor dining in Niantic. He also indicated that during Covid, this site had outdoor dining, but it was in the front of the building. He pointed out that the outdoor dining application for this site had been renewed annually, however the site in the back was never built. This site is near a sewer pump station.

Ms. Thurlow asked if there would be speakers playing music and Ms. Barclay said no. There would be no outdoor music. Mr. Mulholland indicated that the applicant is not asking for music and as such it would not be granted with this permit. If that were to change in the future, the applicant would have to apply for it.

Ms. Thurlow questioned whether there was adequate parking for 32 more people. Ms. Barclay said there was plenty of parking. Mr. Manning asked how many parking spaces there are currently, but Ms. Barclay could not answer that.

Ms. Jett-Harris was concerned with the fence being sharp and Ms. Barclay suggested using the style with a top rail. Ms. Barclay indicated that the fence would go around the entire patio and the arborvitae would be inside the fence. She indicated she would use a fence with a top rail for safety.

Mr. Mulholland noted that this would be an annual application and as such, if there are issues or concerns at reapplication time, they could be addressed prior to approval.

Mr. Granatek asked if a particular type of arborvitae was being considered and Ms. Barclay indicated she would use Emerald Green. Ms. Jett-Harris asked if that was a native plant and Ms. Barclay responded that it was not. She indicated that this type of arborvitae would not get too large or need to be sheared too often. It is very slow growing. They will go in at six feet tall and will take years for them to reach eight feet. Any other type of arborvitae would require too much maintenance. The point is to make a narrow, tall, evergreen hedge.

Ms. Thurlow asked if anyone from the public wanted to speak in favor of the application There was no comment. One resident came forward with concerns.

Pat Avery, 32 W Main Street, (to the rear of the restaurant) spoke. She had previously spoken regarding an application for outdoor dining at this location. She continues to ask that she not be affected by the lighting. She has experienced overflow parking on her grass to the south and west of the restaurant. The property at 30 W Main Street shares her driveway by way of a right of way by a Zoning Permit as an exit and not as an entrance. The DO Not Enter sign is ignored. There have been a few close calls as a result and this has all occurred without an outdoor dining facility. She stated that the overflow problems will increase as the seating increases. She asked that the parking be addressed. She entered a copy of her statement and photos into the record.
(Attachment 2)

Mr. Granatek stated that in a satellite photo, there appear to be 25 parking spaces. He asked if this project encroached on any of the existing parking spots and Ms. Barclay said no. He asked if the proposed outdoor dining was on the west side of the property and that was confirmed. He asked Ms. Avery for the location of the right of way and was told by Ms. Jett-Harris that the submitted photos showed the location.

Mr. Manning questioned whether the outdoor dining application would conform to the parking space requirements. Mr. Mulholland stated that the existing parking is adequate, and the Regulations do not require the applicant to supply more parking spaces for outdoor dining.

Mr. Schmitt indicated he had been to the restaurant on more than one occasion and could not find parking and therefore went to another establishment.

Mr. Ginsberg had concerns about the parking and asked that the application be tabled to confirm the number of parking spaces and the number of seats in the restaurant. He would not like to approve the application if there would not be enough parking.

DECISION MOTION (1)

Mr. Schmitt moved to close the Public Hearing of the Application of Waterview Landscaping, LLC, Agent for Roderick Cornish, Owner, for a Special Permit for Outdoor Dining at property located at 26 W. Main St, Niantic, Assessor Map 11.2 Lot 17 not to include outdoor music and paying attention to lighting and the fence top rail.

Ms. Jett-Harris seconded.

Motion carried 6-0-0.

Mr. Ginsberg stepped down and Mr. Peck rejoined the Board.

4-3 Application of Jerry Lokken, East Lyme Parks and Recreation Director, for Special permit for installation of one (1) 130' by 70' area to contain four (4) Pickleball Courts at Bride Brook Park, 221 W Main Street, Niantic, Assessor Map 10.0 Lot 1

Mr. Granatek read a memo from Mr. Mulholland to the East Lyme Zoning Commission (Attachment 3)

Mr. Granatek read a memo from the East Lyme Planning Commission to the Zoning Commission (Attachment 4)

TASK The date of the Special Meeting in the above mentioned memo from the Planning Commission was questioned and the Staff will confirm the correct date and enter a corrected memo into the record.

Mr. Jerry Lokken, Director of the East Lyme Parks and Recreation passed out drawings and gave a presentation. Mr. Lokken indicated Mr. Mulholland's memo was very accurate. He also mentioned Bride Brook Park (specifically Peretz Park) currently has about 200 parking spaces and there are times when all or almost all of those spaces are occupied, particularly when youth sports are happening at the Park. The Parks and Recs would be working with groups for scheduling to try and avoid conflicts or overcrowding. He asked that the Commission consider lighting and although lights are not a part of this application, potentially they could be a consideration at a later date. He would be aware of spillage and energy efficiency considered at that time. Mr. Lokken indicated that the placement of the Pickleball Courts would be just about the exact center of the Park and therefore the farthest away from neighbors on all sides, for example the neighbors on the west are about 600 feet away from the proposed Courts. The impacts of noise and lights would be very minimal, if any. The construction of a post tension concrete slab that would be about 70' by 130' and drainage around that would be handled as any other drainage around the Park. The Park would continue to function as it currently does.

(Attachment 5)

Mr. Granatek asked about the fencing and the hours of operation, specifically in keeping people off the courts when there is not adequate parking. He questioned whether gates and locks would be used.

Mr. Lokken indicated there would be an eight (8) foot fence around the outside perimeter of the courts and that fence would have a windscreen on it. He indicated that on the supplied images there was a picture of courts with windscreens. He indicated that the current plan was not to lock the gates but to let the "Pickleball Community" schedule themselves through things like social media. The Parks and Rec would plan their programs, such as clinics and lessons, and the Pickleball players would know when the open times in the Park would be. Mr. Lokken stated that there was no need to lock the gates as there was no desire to fight over parking. Mr. Granatek disagreed and shared that in his experience working at the High School, people do not yield to schedules, and they may have to lock their courts because word of mouth is not enough.

Ms. Jett-Harris questioned the lighting because of the neighbors and even though they are 600 feet away, the light could impact them. Mr. Lokken pointed out there are numerous lights currently in use at the Park and any lights to be installed down the road would be better technology and would be better directed than the existing lighting. Ms. Jett-Harris asked what time the lights would be shut off typically and Mr. Lokken suggested that by 9 p.m. any lights would be off, but it would really depend on the activity scheduled. Most of the activities at the Park are youth based and parents do not want their kids out in the dark and the lights are driven by that.

Ms. Jett-Harris questioned what the concern for vandalism was as Mr. Lokken had expressed he did not intend to lock the gates, she wondered if there would be cameras. Ms. Jett-Harris inquired about the fence and Mr. Lokken reconfirmed the eight foot fence all the way around the perimeter, with a wind screen, and a gate opening. She then asked if there would be rules posted. Mr. Lokken answered affirmatively that things like rules and times would be posted, as they are at Bride Brook Park on the basketball courts (which have a pickleball court painted on them), to minimize any potential conflicts.

Mr. Peck asked if there would be a charge for using the courts. Mr. Lokken responded that they would charge only if a person were to register to take a lesson or participate in a clinic or tournament, but for everyday use there would be no charge, just like there is no charge to use the playground or playscapes, or other activities.

Mr. Granatek read a letter into the record from resident Arlene Sherman dated October 5, 2023 (Attachment 6)

Mr. Lokken responded to this letter by stating the mound referred to is the location of the proposed courts and the mound would be replaced, and it would be a flat area. The mound was an artificially created area when the park was created. Mr. Lokken does not anticipate any disturbance to the mentioned trees as the proposed courts are to the west of the trees.

Mr. Peck stated he was concerned with the Town using taxpayer money to build a facility that competes with businesses that pay taxes to the Town, specifically the Lyme Shores Racquet Club which has current pickleball facilities. He asked if the businesses would be bothered by the free competition or are there enough people for both. Mr. Lokken responded that he does not have knowledge of what the use levels at Lyme Shores (or other private businesses) are. Mr. Lokken also stated that the Parks and Rec has facilities that provide access to people regardless of their ability to pay. He noted that if a person wanted a particular time slot to be guaranteed to them to play pickleball, perhaps Lyme Shores facility could provide that, whereas the Park courts would not be guaranteed to be open to you at a particular time.

Mr. Manning asked if East Lyme Parks and Recreation has public tennis courts. Mr. Lokken responded that they do not. Mr. Manning questioned why pickleball was proposed and not tennis courts. Mr. Lokken stated that the Parks and Recreation Commission was approached with a petition signed by a number of people asking for pickleball courts to be constructed. The Commission formed a committee to determine the alternative, the number of courts, the cost, a location, and generated a report to the Commission and the budget request that the Parks and Recreation submitted through the most recent referendum was approved by the voters. This was a response to the community demand.

Mr. Manning questioned again the need for pickleball courts but not tennis courts. Mr. Lokken responded that there are any number of facilities that are not offered by the Parks and Recreations, such as a biking facility or a skating facility, and it's a matter of resources. He stated that the group of people petitioning for the courts were successful in convincing the powers that be that this was a wise use of money.

Ms. Jett-Harris wondered if there would be a time limit on individual usage and again brought up a need for rules and scheduling. Mr. Lokken responded that he did not have the rules yet but that there would be rules posted at the courts. It would develop over time and would be changed and adapted as needed over time.

Mr. Granatek voiced concern over building something that seems popular now but may not be over time. He wondered over dual use courts. He indicated that at the High School the tennis courts are closed during certain times and there may be an outcry over pickleball courts being constructed when the tennis courts are closed frequently. He suggested building dual use courts or courts that could be repurposed over time if pickleball fell out of popularity.

Ms. Jett-Harris stated in her neighborhood, they painted pickleball courts onto existing basketball courts and bought a removable net so it could be used for both basketball and pickleball. Mr. Lokken responded that at Peretz Park, currently the basketball courts are painted dually and that frequently causes conflict between basketball players and pickleball players. These proposed courts offer the best of both worlds.

Ms. Thurlow questioned how much it would cost to build a dual use court. Mr. Lokken did not have an answer to the question, but he did suggest that it would be a bigger expense than was allocated because of the referendum. He did suggest that perhaps, with some amount of work, two tennis courts could replace the four pickleball courts.

Jennifer Gartsu of 24 Damon Heights Road spoke in favor of the project. She stated that she worked with the Town organizing pickleball players and has a difficult time finding times to play and has often traveled outside of town to play. She suggested that in her experience it's not needed for the courts to be locked. Lighting is very important. She noted that she has seen dangerous situations where basketball players have fallen into the nets and they could have gotten hurt, but they do their best to share the spaces. She indicated the popularity of the sport is growing and there are several college teams now, such as at UCONN. Ms. Gartsu noted the difficulty of removing and putting nets up. She noted that it is a sport for people of all different ages. She supports the application.

Nancy Kalal of 80 Grassy Hill Road wonders at the consequences of having more courts and more opportunity for vandalism. She asked if the Town would have to hire someone to police the area and the organization. She wonders if it will affect the taxes.

Ms. Thurlow asked Mr. Lokken to address who would hold the keys to the gate. Mr. Lokken noted that the Parks and Recreation Department currently has numerous locations with gates and keys all over town and adding one pickleball courts is not an increase in the budget or staffing.

Ms. Jett-Harris questioned how much nets cost and how often they would have to be replaced. Mr. Lokken responded that he guessed the lifetime of a net to be a few years and cost a two (2) hundred dollars.

DECISION MOTION (2)

Mr. Schmitt moved to close the Public Hearing of the Application of Jerry, Lokken East Lyme Parks and Recreation Director, for Special Permit for installation of one (1) 130' by 70' area to contain four (4) Pickleball Courts at Bride Brook Park, 221 W Main Street, Niantic, Assessor Map 10.0 Lot 1.

Mr. Manning seconded.

Motion carried 6-0-0.

5. Regular Meeting

5-1 Approval of Meeting Minutes of September 7, 2023

(Attachment 7)

DECISION MOTION (3)

Ms. Jett-Harris moved to approve the Meeting Minutes of September 7, 2023, as presented.

Mr. Schmitt seconded the motion.

Mr. Granatek abstained.

Motion carried 5-0-1.

5-2 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.

Ms. Thurlow noted this application had been withdrawn by the applicant.

5-3 Application of Waterview Landscaping, LLC, Agent for Roderick Cornish, Owner, for a Special Permit for Outdoor Dining at property located at 26 W. Main St, Niantic, Assessor Map 11.2 Lot 17

Mr. Peck recused himself and Mr. Ginsberg took his place.

Mr. Manning stated that it was his understanding that the Applicant is in compliance with Zoning with regard to the number of parking spaces already there. Mr. Mulholland pointed out that Section 20.25 of the EL Zoning Regulations, Subsection I states "The area devoted to outdoor dining shall not be included in the calculation for parking pursuant to Section 22, nor included in the calculation for lot coverage pursuant to Section 9.3.4. The

Zoning Board/Zoning Official shall consider the availability of shared and public parking when deciding on an application". Mr. Mulholland noted additional parking spaces were not required under this regulation.

Ms. Jett-Harris reiterated her desire for the fence to have a top bar for safety.

Mr. Granatek noted his concerns about lighting and noise and suggested keeping an eye on the activity over the next year. Mr. Mulholland noted that the Applicant is not asking for amplified music nor anything more than "small twinkle lights". If the Applicant wants to apply for more at a later date, they will do that. Mr. Mulholland noted also that the Applicant would come in with actual construction documents and he would be looking at lighting and if he felt it necessary, he would direct the Applicant back to the Commission.

Mr. Schmitt questioned whether the correct number of parking spaces were present currently. Mr. Mulholland stated that wasn't being factored in because this is an existing business and has been in operation for years. It was approved with the guidelines of 1 parking space per 50 square feet of floor, minus bathrooms and hallways. He noted that all restaurants in Niantic are looking at the parking issue. He also stated that the Board needed to decide if this topic was relevant to this discussion. Ms. Jett-Harris noted that parking is always relevant to the discussion, however, it conforms to the Regulations. Mr. Mulholland stated he did not know the number of parking spaces currently there, because it did not pertain to this application. Mr. Manning again stated that it was already determined that this application did not require additional parking because of the language of the EL Zoning Regulations.

Ms. Thurlow noted that she had compassion for any neighbors but that the application met the requirements of the Regulations. She noted her disappointment that the owner was not present.

Mr. Ginsberg agreed that the application could not be denied because of the parking because the space already conforms with the Regulations.

DECISION MOTION (4)

Ms. Jett-Harris moved to approve the Application of Waterview Landscaping, LLC, Agent for Roderick Cornish, Owner, for a Special Permit for Outdoor Dining at property located at 26 W. Main St, Niantic, Assessor Map 11.2 Lot 17 with the conditions of the discussion regarding lighting, trees, fencing.

Mr. Manning seconded the motion.

Motion carried, 6-0-0.

TASK The Staff will publish October 12, 2023, effective October 13, 2023.

Mr. Ginsberg stepped down and Mr. Peck resumed his place.

5-4 Application of Jerry Lokken, East Lyme Parks and Recreation Director, for Special Permit for installation of one (1) 130' by 70' area to contain four (4) Pickleball Courts at Bride Brook Park, 221 W Main Street, Niantic, Assessor Map 10. Lot 1.

Ms. Thurlow noted the sport is a growing phenomenon and does not believe it will end any time soon. She noted that she believed it would be popular in the community and a good idea to have a free and accessible court for everyone.

Ms. Jett-Harris stated that she thought it was good for the community to have access to additional courts. She did mention the incorrect date on the memo from the Planning Commission, and the Staff will have that corrected as noted in the task set above.

DECISION MOTION(5)

Ms. Jett-Harris moved to approve the Application of Jerry Lokken, East Lyme Parks and Recreation Director, for Special Permit for installation of one (1) 130' by 70' area to contain four (4) Pickleball Courts at Bride Brook Park, 221 W Main Street, Niantic, Assessor Map 10. Lot 1.

Mr. Schmitt seconded the motion.

Motion carried, 6-0-0.

TASK The Staff will publish October 12, 2023, effective October 13, 2023.

5-5 Application of Andrew Pajak, Owner, for Site Plan Review for deck expansion with stairs limited to 43 Regatta Drive (Spinnaker), Niantic, Assessor Map 10.4 Lot 10-1 Unit 42.

Ms. Thurlow noted that Attorney Tim Bleasdale was present for discussion.

Mr. Granatek read memo from Attorney Bleasdale into the record.
(Attachment 8)

Mr. Bleasdale explained the memo by stating that the Connecticut Supreme Court requires a Special Permit in order to modify a site plan. that was already attached to a Special Permit. It was intended for significant changes to Site Plans, not necessarily for a small deck expansion. Attorney Bleasdale explained that the intention of this application is to prove the Applicant is only changing the Special Permit in an insignificant way and to be sure that it complies with the setbacks and other typical requirements. Attorney Bleasdale pointed out that this is the type of thing that is typically a staff housekeeping item, it is only required to come before the Commission because of the Special Permit it is attached to.

Mr. Mulholland noted that the application does meet all of the requirements of the Zoning Code except that it is attached to a Special Permit. Mr. Mulholland noted no issues from a staff point of view.

Attorney Bleasdale stated that he did recently become aware that there were other properties in the Spinnaker development which the process was not followed and people put on decks or patios without a permit and Mr. Mulholland was not always aware of these issues but now that the problem has come to light it will be something that is more closely monitored.

Mr. Pajak, owner, spoke to the Commission by explaining the 12' by 6' extension to an existing 12' by 12' foot deck and the addition of stairs. He noted the pictures in each Member's packet and that the deck is not visible to neighbors. He indicated that this would be an improvement to the safety of the deck because of the new materials. Currently the 20 year old deck is made of wood, the replacement and expansion would use Timbertech and this would alleviate any need for the HOA to have to do maintenance to the deck for the next 20 years. Mr. Pajak indicated he is the current Vice President of the HOA at Spinnaker as well as being Chairman of the Maintenance Committee, as such he is very concerned with the maintenance of the capital infrastructure within Spinnaker. He views the expansion as a benefit because it takes it off the ledger for the HOA in terms of having to maintain it. He noted it satisfies all setback requirements.

Ms. Jett-Harris noted that she appreciated his application rather than his circumventing the process.

Mr. Granatek asked if the footings would be changed and Mr. Pajak noted there would be another column because of the platform on the stairs, and that the Building Department had approved the construction piece of the application.

Mr. Granatek asked if the issue was the expansion size or the new stairs or both topics. Mr. Mulholland indicated both and also that the Building Department would be inspecting as it progressed, as in any project.

Mr. Schmitt asked if there were other members of the community having an opinion of the expansion and stairs. Mr. Pajak indicated that he heard all positivity. He also indicated that the HOA itself had approved the application.

Mr. Mulholland noted that the Zoning Department requires any HOA approval prior to approving something like this. Mr. Pajak stated that there is an Alteration Request Process within Spinnaker and this is the first time that the EL Zoning Department approval has been an issue and as such, they (Spinnaker) is changing their approval process to be sure it includes EL Zoning Department approval language to deal with this in the future.

DECISION MOTION (6)

Mr. Granatek moved to approve the Application of Andrew Pajak, Owner, for Site Plan Review for deck expansion with stairs limited to 43 Regatta Drive (Spinnaker), Niantic, Assessor Map 10.4 Lot 10-1 Unit 42. Mr. Granatek noted the following four (4) recommendations:

1. the present application satisfies the requirements of the site plan regulations;
2. that it proposes no substantive change to the nature or intensity of the use;
3. that the proposed amendment is consistent with the special permit criteria; and,
4. that the proposed amendment will improve the safety of 43 Regatta Dr. by adding an additional means of egress from the unit.

Ms. Jett-Harris seconded the motion.

Motion carried, 6-0-0.

5-6 Section 34 Architectural Design Regulations

Mr. Mulholland explained that this is essentially extending the architectural design requirements for Niantic Village, north of Gorton Pond, to all the commercial area in that vicinity of Flanders Four Corners. It is the same set of regulations with some adjustments to reflect this change. He is asking to schedule for a Public Hearing, perhaps in December depending on timing, should the Commission wish to proceed. The staff would need the time to run legal ads and to send referrals to agencies for review.

Mr. Manning asked if the intention was to make the Flanders area conform to the Niantic Village area.

Mr. Mulholland explained that there is a distinct different feel from the industrial type buildings in Flanders to the village feel of downtown Niantic.

Currently there are three (3) levels with regard to design:

1 the Zoning Official can sign off on minor things, 2. there is some middle ground, 3. and anything brand new, the criteria was written that it could be applied in other places.

There is a desire to expand the architectural design town wide.

This is an attempt to step up an incoming developer's game. He respectfully stated that currently developers are only looking at cost. There are materials available now that appear to be upgraded materials, but they are not necessarily as expensive to use. It's up to the Commission to express to the developers to step up their game. It's not intended to be a tool to say no.

Ms. Thurlow stated it has language written to be used as a safeguard against a building that may not be desirable.

Mr. Mulholland agreed and added that it is giving the Commission tools to help the process and encourage the applicant to do better rather than impose a demand. It's not meant to stop development but rather to enhance it and make it better. He reminded the Board that they would be able to vet this further at a Public Hearing.

DECISION MOTION (7)

Ms. Jett-Harris moved to have Mr. Mulholland schedule a Public Hearing for review of Section 34 Architectural Design Regulations.

Mr. Schmitt seconded the motion.

Motion carried, 6-0-0.

5-7 Section 24 Text Amendments (Landscaping/Plantings/Invasive/Nonnative)

Mr. Mulholland noted his memo discussed landscaping, maintenance replacement of plants, nonnative species, outdoor lighting, and while there are reams of material about lighting, a heavy hand wasn't wanted, but instead to have the authority to know what would be required for a large development and to be able to refer to the code for guidance. There would be an illumination plan required as part of the site plan submission, to evaluate if the light would spill over. This would also give guidance to the smaller establishments. Mr. Mulholland asked that it be added to the same Public Hearing as the previously discussed design review.

Ms. Thurlow pointed out specifically nonnative, invasive and noninvasive plant species. In the proposed Sections:
24.6 E 1.1 Non-native invasive and invasive plant species listed on the Connecticut Invasive Plant List shall not be used in the landscaping plan for any new development or redevelopment of property under these regulations.
24.6 E 1.1.2 Native plants shall be used in all landscape plans. (A native plant is defined as one that lives or grows naturally in a particular region without direct or indirect human intervention and is indigenous to the northeast).
24.6 E 1.1.3 Landscape plans shall facilitate greenways and planting to support local fauna, including pollinators.

Mr. Mulholland also pointed out Section 24.6 F" Maintenance and Replacement" and wanting to enhance this section due to previous issues with developers.

Mr. Granatek questioned the native/nonnative section with regard to this evening's previously approved Outdoor Dining application of 26 W Main Street Niantic. That application specifically stated using nonnative arborvitae. While that is true, these proposed Text Amendments are not adopted yet and as such cannot be used to approve or deny a current application.

Mr. Mulholland noted that the proposed Text Amendment would have the built-in ability for the Commission to be flexible with regard to the big box store parking lot requirements versus the mom and pop type store parking lot requirements.

Mr. Granatek and Mr. Manning indicated the need for language clarification.

DECISION MOTION (8)

Ms. Jett-Harris moved to have Mr. Mulholland schedule a Public Hearing for review of Text Amendments to Section 24.

Mr. Granatek seconded the motion.

Motion carried, 6-0-0.

TASK Staff to send out referrals to required departments for review.

6. Old Business

Ms. Jett-Harris questioned if there was anything to report regarding the Stop and Shop situation.

Mr. Mulholland stated that their attorney would be present at another time regarding another matter but would also be addressing this issue at that time.

7. New Business

7-1 New Business to be scheduled.

There was none.

7-2 Zoning Official Comment

There was none.

7-3 Ex-Officio

Ms. Hardy had 2 items to report on.

1. The Charter Revision Commission has drawn up and the recommended changes to the Charter will be available online and will be done by referendum vote.
2. The land purchases coming up for vote on the Hathaway Farms property as well as two (2) other properties.

Mr. Manning asked about the Airbnb update.

Ms. Thurlow responded that an Ad HOC Committee had been formed and there had been two (2) meetings and a hearing.

Ms. Jett-Harris stated there was a planned Public Hearing later this month and that the first Public Hearing was not very well attended, perhaps due to confusion over the meeting location.

Ms. Thurlow noted that it was mostly Airbnb owners in attendance as the meeting had been posted on the Airbnb website.

7-4 Comments from the Zoning Board Liaison to the Planning Commission

Mr. Peterson reported the changes to the Subdivision/Resubdivision Regulations, specifically sections 6, 8, and 11 to make changes to the Environmental Response Team (which we do not have) and add an Environmental Impact Assessment. The discussion was that all land would have to do an environmental impact study, regardless of quality. There would be a hearing on December 1, 2023. Additionally, there was approval to purchase three (3) parcels of land.

Ms. Thurlow cannot attend as liaison at the October 10, 2023, Planning Meeting. Mr. Peck will go in her stead.

7-5 Comments from the Chairman

There was none.

8 Adjournment

DECISION MOTION (9)

Ms. Jett-Harris moved to adjourn the October 5, 2023, Regular Meeting of the East Lyme Zoning Commission at 9:30 p.m.

Mr. Granatek seconded the motion.

Motion carried, 6-0-0.

Respectfully Submitted,
Jessica Laroco
Recording Secretary

Town of



East Lyme

108 Pennsylvania Ave
Niantic, Connecticut 06357

Zoning Department

(860) 691-4114

Fax (860) 691-0351

MEMO TO: East Lyme Zoning Commission

FROM: William Mulholland, Zoning Official *WML*

RE: Special Permit Application: Outdoor Dining
26 W Main Street, Niantic

DATE: October 4, 2023

As the Commission may recall 26W Main St is the location of "Charlie's Place Restaurant". The business is under new ownership and they would like to make some changes. Over the last several years the operator has applied for, and received, an annual Special Permit to build and operate an outdoor patio on the premises. The facility was to be located in the rear of the building; however, it was never built.

The new owner of the restaurant is applying for a new Special Permit to construct and operate a patio in a different location. Should the request be approved, the old permit would be abandoned. A copy of the new location plan is in your packets.

The new patio will consist of a 17' x 30' area directly to the west of the building and will be constructed as an outdoor dining space. The ground surface will be covered with a grey-tone concrete paver. It will be a mortarless installation which will allow surface water to drain. The space will be screened by evergreen arborvitaes, which will separate the space from neighboring properties and act as a natural green fence. Additional plantings will be incorporated into the area to soften the space. A black aluminum fence will also be used to separate the fence from the parking lot and provide security. The lighting of the area should be addressed during the hearing to ensure a low intensity of illumination.

Because alcohol will be served, a Special Permit is required under Section 20.25 of the Zoning Regulations, items A-L. I note that a waiver of Item J is required for setbacks. The Board will want to review closing times, outdoor speakers, and entertainment.

In conclusion, the Board should carefully evaluate the application for compliance with the Regulations.

Move to approve: Application of Waterview Landscaping, LLC, for a Special Permit for outdoor dining at property located at 26. W Main St, Niantic. Assessor's Map 11.2 Lot 17.

Move to deny: Application of Waterview Landscaping, LLC, for a Special Permit for outdoor dining at property located at 26. W Main St, Niantic. Assessor's Map 11.2 Lot 17.

Conditions – waiver setbacks?

- Attachment 2

Received

OCT 5 2023

Town of East Lyme
Land Use



2.









Oct 2020



My name is Pat Avery and live at 32 W Main Street to the rear of the restaurant.

We own property directly in back of the restaurant and also in back of and to the west of 30 W Main Street where the applicant, the owner of water view, owns an office building and parking lot.

This is my third appearance in regard^s to this application for outside dining.

The first time I expressed support of the application but asked that the lighting not affect us. I reiterate that request.

Since then we have experienced, among many other things, overflow restaurant parking at 30 West Main, spilling onto our grass on the south and west sides of the parking lot, + on occasion at the Book Barn.

30 West Main Street shares our driveway by way of a right of way. It is, by a zoning permit, an exit and not an entry. The "Do Not Enter" sign is ignored. There have been a couple of close calls with us as a result.

All this has occurred without an outside dining facility. If it is built, the overflow parking will increase as the seating increases.

I am afraid that this will be a more frequent problem and ask that this be addressed.

Town of

Zoning Department



East Lyme

108 Pennsylvania Ave
Niantic, Connecticut 06357

(860) 691-4114

Fax (860) 691-0351

MEMO TO: East Lyme Zoning Commission
FROM: William Mulholland, Zoning Official
RE: Special Permit Application: Pickleball Courts
221 W Main Street
DATE: October 4, 2023

The Applicant, East Lyme Parks and Recreation, is applying for a Special Permit to develop new pickleball courts at Peretz Park at Bride Brook Park off Rte. 156. The courts will be constructed next to the existing basketball courts which are essentially in the middle of the park. This location should mitigate any issues with perceived noise issues. Four (4) courts will be built and will be a short walk from the existing parking lot.

At this time, there is not any additional parking plan as the present configuration should suffice. Lighting is exiting, however, this subject should be clarified during the hearing by the applicant.

The application is submitted, as required, under Section 20.1.2(F) Town Buildings and Uses. This section requires a Special Permit as provided for in Section 25 "Special Permits". While the park had been previously approved, additional uses are required to be permitted.

While the courts are a minor addition to the overall operation of the park, the present popularity of the 'game' should generate substantial interest.

I also note that the Planning Commission has found the use consistent with the plan of development and has approved of the project.

Move to approve: Application of Jerry Lokken, East Lyme Parks and Recreation Director, for Special Permit for installation of one (1) 130' by 70' area to contain four (4) Pickleball Courts at Bride Brook Park, 221 W Main Street, Niantic. Assessor Map 10.0 Lot 1.

Move to deny: Application of Jerry Lokken, East Lyme Parks and Recreation Director, for Special Permit for installation of one (1) 130' by 70' area to contain four (4) Pickleball Courts at Bride Brook Park, 221 W Main Street, Niantic. Assessor Map 10.0 Lot 1.

Conditions

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

September 22, 2023

Jerry Lokken, Director
Park & Recreation Department
Town of East Lyme
41 Society Road
Niantic, CT 06375

RE: Town of East Lyme CGS 8-24 Referral; Department of Parks & Recreation; Proposed Pickle Ball Courts at Bride Brook Park.

Dear Mr. Lokken,

The East Lyme Planning Commission at a Special meeting held on Tuesday, September 19, 2023, at the East Lyme Town Hall, 108 Pennsylvania Avenue, Niantic, Connecticut, exercising the authority of the Planning Commission pursuant to Section 8-24 of the General Statutes and having reviewed the proposal for the New Pickle Ball Courts at Peretz Park at Bridebrook, found the above referenced proposal **CONSISTENT** with East Lyme's 2020 Plan of Conservation and Development (POCD) and voted to **APPROVE** the aforesaid proposal and forward a favorable recommendation to the Board of Selectman.

If you have any further questions please do not hesitate to contact the Director of Planning at (860) 691-4105 or visit the East Lyme Planning Department.

Sincerely,

Michelle Royce-Williams, Chair
Planning Commission

cc: Kevin Seery, First Selectman
William Mulholland, Zoning Official
David Garside, Chief Building Official
File

Pickleball Courts



Examp



Pickleball Courts



Attachment 6

To: Zoning Commission
Town of East Lyme

From: Arlene Sherman

Date: 10/5/23

Received

OCT 5 2023

Town of East Lyme
Land Use

Re: Pickleball Courts at Samuel M Peretz Park

I am a daily park user at the Samuel M Peretz Park. The beauty of this park is that it serves people with a wide range of ages and abilities. It has beautiful natural plantings and space that allows everyone to enjoy being in nature and at the same time, for those who can, use it for various ball sports.

I am writing to ask the following be considered when reviewing the proposed construction of the four pickleball courts at the park.

1. The location proposed is a hill area that naturally divides one of the baseball fields and the basketball courts. The present 'hill' provides a natural sound barrier, spectator area and a natural division between the recreation activities. As I am sure everyone realizes this is a heavily used park by instate, out of state and all ages of participants from multiple schools for baseball/softball, lacrosse and soccer. The particular hill area taken away will also take away the beneficial noise barrier and spectator areas. Is it possible that there is another area in the park that could accommodate pickleball courts where there is minimal damage to the surrounding areas used by other sports and park users?
2. The park is well used for the various sports and especially soccer, lacrosse and baseball/softball. Parking is nonexistent when these activities occur and the games can go on for several hours as participants and their families/friends remain to picnic and socialize. The cars and traffic sometimes include players, family and spectators for those certain sports. At times it is not possible for the participants of the passive activities such as walking or running to find parking. I am concerned for adding additional parking spaces needed for the pickleball games. During the summer there

are at times 15- 20 cars for this sport considering the number of pickleball players and the needed spare players.

3. Along the eastern side of the proposed construction area are three presently healthy, I believe, Linden trees. They are in great shape and provide significant shade during the hot months and beauty year round. Presently the emerald borer beetle has attacked and damaged all of the Ash trees in the park and there are several of them. This beetle can be mitigated and probably the damaged Ash trees can be saved if acted upon. An active tree planting program would be a great benefit to the park since it is so heavily used by all ages and multiple spectator activities. The Linden trees I am referring to have a root span as large as the canopy seen above ground. I am hoping that this will be considered during construction and the root system is not touched by equipment as the survival of the trees depends on their present root system remaining intact and untouched by construction. We cannot afford to lose any trees at this park.
4. I am hoping the Commission will take into consideration how many 'cement, tarmac, and impervious surfaces' have been installed. For example the lacrosse cement structure installed on the west side of the park is significant in stature and generally goes unused. I rarely see anyone using it and presently the base of the structure is peeling. I hope the Commission keeps in mind the benefit to everyone the preservation of the natural beauty trees, grass fields and flowers provide everyone and does not crowd the park with too many impervious surfaces for activities that have limited use or end up getting no use.

I appreciate the Zoning Commission reading this letter and their consideration.

Sincerely,

Arlene Sherman
Samuel M Peretz Park Participant

**Minutes of East Lyme Zoning Commission September 7, 2023,
Regular Meeting - 09/07/23**

Date and time: 09/07/23 07:31 pm to: 09/07/23 07:51 pm
Present: Jessica Laroco
Location: East Lyme Town Hall, 108 Pennsylvania Avenue, Niantic, Connecticut

Topics

1. Call to Order

Chairman Anne Thurlow called the September 7, 2023, Regular Meeting of the East Lyme Zoning Commission to order at 7:31 p.m.

The Pledge of Allegiance was recited by all.

RECEIVED FOR RECORD
EAST LYME, CT
2023 SEP 11 A 11:36
Carmel Mulholland
TOWN CLERK

2. Attendance

Ms. Thurlow noted that the Secretary, Terry Granatek, would not be present. Present were Anne Thurlow, Chair, Norman Peck, Member, John Manning, Member, David Schmitt, Member, Jay Ginsberg, Alternate, Denise Markovitz, Alternate, Marc Peterson, Alternate, William Mulholland, Staff, Roseanne Hardy, Ex-Officio, and Jessica Laroco, Recording Secretary.

Ms. Thurlow seated Mr. Peterson as Alternate.

3. Public Delegations

Nancy Kalal, of 80 Grassy Hill Rd, East Lyme said she heard the Zoning Commission was looking at upgrading the Zoning Regulations and had the following Comments: She wanted to mention the Aquifer Protection System. She pointed out the original protection system, prior to Costco and Gateway Community opening, there was a primary and secondary Aquifer Protection Zones and that the opening of the Soapy Noble gas station, and a car wash, and a minimart will be within 300 feet of an aquifer. We buy water from New London, but we have to give some back and that our water is not pristine and if you read the bottom of the Water Report, which is sent to every household, all of the electrolytes are at max. If that continues and the wells are contaminated New London will not want our water back. She questioned what would happen to Niantic without water. It would behoove our town agencies to upgrade our water regulations. She mentioned the ribbon driveway and backlot subdivision regulations and believes those should go back to original also, where RU-80 has 200 square feet of road frontage and RU-40 has 1% etc. Only 10% of the lots in a subdivision can then become flag lots for rear lots and the purpose of that would be to preserve land for water regeneration to end up in the aquifer that Niantic needs. The Four Mile River Watershed starts at the top of Grassy Hill Rd, one can see it if ones goes down between Avenue A and the state forest and the Stefanski property. A large amount of water comes from the north end of town, and we need to protect it.

Ms. Thurlow thanked Ms. Kalal for her comments.

4. Public Hearing

Note Ms. Thurlow read Public Hearing Agenda Item 1: Application of Joseph Basileo, Of Illiano's Grill, for a Special Permit for Outdoor Dining at 228 Flanders Road, Niantic, Assessor's Map 26.1 Lot 26.

Note Mr. Mulholland confirmed he had a Legal Ad and a prepared memo, however, the Applicant was not present. He confirmed that the Applicant was notified.

Ms. Thurlow stated that the Applicant needed to be present.

Mr. Mulholland suggested the Commission continue the application and the staff would attempt to contact the applicant.

Note Ms. Thurlow asked for a Motion.

Decision MOTION 1.

Ms. Jett-Harris moved to Continue the Application of Joseph Basileo, Of Illiano's Grill, for a Special Permit for Outdoor Dining at 228 Flanders Road, Niantic, Assessor's Map 26.1 Lot 26.

Mr. Schmitt seconded.

Motion carried 6-0-0.

5. Regular Meeting

Note Ms. Thurlow asked if everyone had a copy of the minutes from the July 20, 2023, Special Meeting, all confirmed.

Note Ms. Thurlow stated that Mr. Ginsberg had previously emailed her with a correction.

On the last page of the July 20, 2023 Special Meeting Minutes, Under the heading New Business, item number 4 "Comments from Ex-Officio:" The sentence incorrectly reads: "The Charter Revision Committee is considering education mailer on the questions." The sentence should read: "The Board of Selectmen is considering education mailer on the questions."

Decision MOTION 2.

Mr. Schmitt moved to accept the Minutes as amended.

Ms. Jett-Harris seconded.

Mr. Peterson abstained.

Motion carried 5-1-0.

Note Ms. Thurlow noted to skip the Regular Meeting of Item 2 for the Special Permit Application.

6. Old Business

Note Ms. Thurlow noted there is no Old Business.

7. New Business

Note Ms. Thurlow read Item 1. Application of William R Sweeney, Esq., Agent for Jasmina and Franc Paradise, LLC for Proposed Text Amendment to Section 12.1.1A and 20.20.9 of the East Lyme Zoning Regulations.

Note Ms. Thurlow read Item 2. Application of Jerry Lokken, East Lyme Parks and Recreation Director, for Special Permit for installation of one (1) 130' by 70' area to contain four (4) Pickleball Courts at Bride Brook Park, 221 W Main Street, Niantic, Assessor Map Lot 1.

Note Ms. Thurlow read Item 3. Application of Robert Lorenzo, Owner, for a Coastal Area Management site plan review for a single-family home construction, for property located at 12 E Shore Drive, BPBC, Niantic, Assessor Map 05.11 Lot 66.

Note Ms. Thurlow read Item 4. Application of Paul Geraghty, Esq., Agent for English Harbor Capital Partners, LLC, Owner, for a zone change at property located at 237 Upper Pattagansett Road, East Lyme, Assessor Map 39.0 Lot 10-2.

Note Ms. Thurlow read Item 5. Application of Waterview Landscaping, LLC, for a Special Permit for Outdoor Dining at property located at 26 W Main Street, Niantic, Assessor Map 11.2 Lot 17.

Note Item 6 Ms. Thurlow asked if anyone on the Commission had anything they would like to bring up or discuss. There was nothing brought forward.

Note Item 7 Mr. Mulholland stated that he will get Items 1-5 of the New Business Items scheduled for Public Hearings. He stated that the Zoning Department has been busy and anticipates a busy fall, as evidenced by the many New Business Items. Mr. Mulholland stated that the Soapy Noble Car Wash will be open sometime between the end of the month or the second week of October. Mr. Mulholland stated that the Exit 75 Travel Center is done and online. He also related that construction for the Bride Brook affordable housing continues. The senior housing development at 138 Boston Post Road with 18 units, from a few years ago, is back online and has a new developer who is going to build it out.

Note Ms. Jett-Harris stated that she had two (2) things to bring up. Number 1 Ms. Jett-Harris asked when was the last time they discussed Aquifer Protection..

Note Mr. Mulholland stated that it had been a while. He is trying to get a spot to get it scheduled in. He has been discussing it with Staff and has a couple of renewals, a couple of businesses, that need to come up and they will come before the Commission.

Note Ms. Jett-Harris also stated that a while ago Mr. Peck had brought up the situation over at Stop and Shop with the trees. She questioned whether there was an update on that.

Note Mr. Mulholland stated that their attorney wrote a lengthy letter, which was forwarded to Mr. Peck, and he was willing to come in and discuss it if necessary. It is their position that they have the right to maintain their landscaping and with that stated there is a handout later in the evening tonight where there are adjustments to the site plan and hopefully what you will find is an attractive amendment to the maintenance and trimming of landscaping. He added that he wanted to jeep it at staff level.

Note Ms. Jett-Harris asked if there was something sent to Commissioner Peck in regard to this.

Note Mr. Mulholland confirmed Attorney Bill Sweeney from TCOR is representing them (Stop & Shop)

Note Mr. Peck stated he is still waiting for the meeting.

Info Mr. Mulholland stated he will contact Attorney Sweeney and invite him to the next meeting to present his case.

Info Ms. Jett-Harris requested that the information that was sent to Mr. Peck be sent to all Commission Members.

Task Mr. Mulholland agreed to send it.

Note Ms. Hardy spoke of the Short-Term Rental Subcommittee and there was a new appointment made.

Note Ms. Thurlow stated that next STR meeting is scheduled for September 12, 2023.

Info Ms. Hardy stated the BOS heard an update and briefly did some review of the proposed Planning Commission Revisions for Regulations, a large document at 148 pages.

Info Ms. Hardy wanted to note of particular concern to this Commission is the Environmental Review Subcommittee. As proposed, particularly for any nonconforming properties, which would have an environmental impact, would require a review by the Conservation of Natural Resources Commission and Ms. Hardy stated that she had asked that they also include the Aquifer Protection Agency.

Info Item 9. Mr. Peck attended the last Planning Commission Meeting as Liaison.

Info Mr. Peck stated that there were no applications submitted for the August 8, 2023, meeting and that the Commission spoke about the following proposed changes:

- Property taxes must be current to gain approval.
- Environmental review by the Board was discussed.
- There didn't appear to be any changes regarding setbacks or frontages.
- Fines in relation to violations.

Note Discussion on who would attend the next Planning Meetings due to Commission member changes. It was noted by an audience member, that the next Planning Commission Meeting scheduled for September 12, 2023, had been moved to September 19, 2023

Note The next Planning Commission Meeting on September 19, 2023, will be attended by Mr. Peterson as liaison.

Note Item 10. Ms. Thurlow stated that we did not receive any correspondence this month.

Note Item 11. Ms. Thurlow stated she had 3 things to bring up.

Info First, Ms. Thurlow stated that the Board had asked Mr. Mulholland to have the Architectural Design Review Regulations for the Flanders end of town since they already have the for Niantic Village. She asked the Commission to review them for the next meeting (Mr. Mulholland passed out packets to the Board Members.)

Info Second, Ms. Thurlow stated there is another Text Amendment to be discussed at the next meeting. This is in regard to the presentation a few weeks ago of Mrs. Meekhoff on maximizing the use of native plants instead of invasive plants. The idea is to integrate this into the Commercial Landscaping Regulations. Additionally, there is a section on the outdoor lighting regulations. (Mr. Mulholland passed out packets to the Board Members.)

Note Third, Ms. Thurlow stated that previously Ms. Jett-Harris had asked if it were possible to put a moratorium on affordable housing and whether we were qualified to do that. Ms. Thurlow stated that she spoke to Attorney Bleasdale who is going to do a review of the question. More information will be forthcoming.

8. Adjourned

Decision: MOTION 3.

Ms. Jett-Harris moved to adjourn.

Mr. Schmitt seconded.

Motion carried 6-0-0

Meeting adjourned at 7:51 p.m.

Note: Respectfully Submitted,

Jessica Laroco

Recording Secretary



**WALLER
SMITH &
PALMER^{PC}**
Attorneys at Law

EDWARD B. O'CONNELL
TRACY M. COLLINS*
PHILIP M. JOHNSTONE*
CHARLES C. ANDERSON
KERIN M. WOODS+
ELLEN C. BROWN*
MARK S. ZAMARKA
CATHERINE A. MARRION
TIMOTHY D. BLEASDALE

October 4, 2023

Ann Thurlow, Chair
Zoning Commission
Town of East Lyme
P.O. Box 519
Niantic, CT 06357

OF COUNSEL
ROBERT W. MARRION
ROBERT P. ANDERSON, JR.
FREDERICK B. GAIAGAN

+ ALSO ADMITTED IN RI
*ALSO ADMITTED IN MA

Re: Application of Andrew Pajak, Owner, for Site Plan Review for deck expansion with stairs limited to 43 Regatta Dr. (Spinnaker), Niantic. Assessor Map 10.4 Lot 10-1 Unit 42.

Dear Ms. Thurlow:

The Commission has received a site plan application from Andrew Pajak for a limited amendment of the approved site plan for the Spinnaker elderly housing development. Due to the status of Spinnaker as a specially permitted use, this application triggers a type of application review by the Commission that is uncommon and may be unfamiliar to Commission members. This letter is intended to resolve any questions the Commission may have about the procedure for this application.

The Application

The application before the Commission is to amend the approved site plan for the Spinnaker elderly housing development, limited to the expansion of an existing deck at 43 Regatta Dr. The existing deck was approved by the Commission 20 years ago when the Commission approved the Spinnaker development. The proposal also includes adding a staircase to the expanded deck. The addition of a staircase to the deck can be considered a safety improvement because it adds an additional means of egress to 43 Regatta Dr. The existing deck has no staircase.

Procedure

Typically, a minor amendment of a site plan as proposed here could be approved administratively by the Zoning Official, William Mulholland. However, the nature of the Spinnaker development triggers a different type of review and requires the application to come before the Commission for determination. The feature of Spinnaker that triggers this higher-level review is that the Spinnaker elderly housing development is a specially permitted use and the current site plan for Spinnaker was approved as a part of the approval process of the special permit. As explained herein, the Connecticut Supreme

Court has held that in these situations the application to amend the site plan must meet additional requirements that can only be satisfied by the Commission.

In Barberino Realty v. Planning and Zoning Commission of Farmington, 222 Conn. 607 (1992), the Connecticut Supreme Court explained that a site plan and special permit application submitted together become inextricably intertwined:

"When considering an application for a special permit, the Commission is called upon to make a decision as to whether a particular application for elderly housing would be compatible with the particular zoning district, under the circumstances then existing. That determination can only be made after a thorough examination of the specific site plan submitted. . . . [The] zoning regulations render site plans inseparable from and part and parcel of [the related] special permit application. As such, review of a special permit application is necessarily dependent on a thorough review of the proposed site plan because, in fact, the grant of the special permit is usually contingent upon approval of the site plan. Consequently, any application to revise such a site plan must be evaluated in light of the conditions set out in the special permit regulations." *Id.*, 614.

Pursuant to the Barberino decision, the Commission has a two-part analysis before it on the present application.

First, the Commission must apply the customary standard for site plan review. This standard requires the Commission to approve the site plan if it complies with the site plan requirements in the Zoning Regulations. On the present application, this analysis will be abbreviated because this is a modification of an approved site plan. This means that the site plan requirements were satisfied when the Commission initially approved the site plan 20 years ago, and the question before the Commission is whether any aspect of the minor amendment proposed in this application violates the requirements of the site plan regulations. Here, with the expansion of a previously approved structure, the Commission should look to aspects of the site plan requirements such as whether the expanded structure complies with set back requirements (it does), etc.

Second, the Commission must consider the special permit criteria set forth in Section 25 of the Zoning Regulations and make a finding that the proposed amendment is consistent with the special permit criteria (or state the Commission's specific findings as to how the proposed amendment does not comply with the special permit criteria).¹

¹ The Commission is likely aware that special permits require a public hearing. The Barberino decision creates an unusual process whereby the special permit criteria are added into the Commission's consideration, but the application to amend the site plan is not itself subjected to a public hearing. The process is essentially a site plan review augmented by the special permit criteria.

A copy of Section 25 of the Regulations is attached for the Commission's ease of reference.

If the Commission is inclined to grant the application, it is the recommendation of the Town Attorney's Office that the Commission find that:

- 1. the present application satisfies the requirements of the site plan regulations;**
- 2. that it proposes no substantive change to the nature or intensity of the use;**
- 3. that the proposed amendment is consistent with the special permit criteria; and,**
- 4. that the proposed amendment will improve the safety of 43 Regatta Dr. by adding an additional means of egress from the unit.**

If the Commission is inclined to deny the application, it is the recommendation of the Town Attorney's Office that the Commission make express and specific findings as to how the application violates the site plan requirements and/or special permit criteria with specific reference or citation to the applicable regulation.

If you have any other questions we will be pleased to respond.

Very truly yours,



Timothy D. Bleasdale, of
Waller, Smith & Palmer, P.C.

Encl.

Copy of Sec. 25 of the East Lyme Zoning Regulations