

# Town of

P.O. Drawer 519

Department of Planning &  
Inland Wetlands Commission

*Gary A. Goeschel II, Director of Planning /  
Inland Wetlands Agent*



# East Lyme

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## MEMORANDUM

**To: East Lyme Planning Commission**

**From: Gary A. Goeschel II, Director of Planning/ Inland Wetlands Agent**

**Date: January 8, 2024**

**Re: Application of Petrit Marku for a 4-Lot Resubdivision of approximately 4.27-acres of land Zoned RU-40/20 and request for a Waiver from Section 6-17-1 of the East Lyme Subdivision Regulations on property located at 220 Pennsylvania Avenue, East Lyme, Assessor's Map#16, Lot#7.3, Niantic, CT. (Submitted 11/13/23, Date of Receipt 12/12/23).**

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Upon review of the above referenced application and the proposed 8-sheet plan set entitled "Re-Subdivision Plan, Property of Petrit Marku, for Property Located at 220 Pennsylvania Avenue, Town of East Lyme, Country of New London, CT, dated September 25, 2023, revised through January 3, 2023 [2024]" prepared by James Bernardo, L.S. of James Bernado Land Surveying, I offer the following:

### **FINDINGS:**

**Whereas:** The Commission received the above referenced application at its November 13, 2023, meeting.

**Whereas:** The Commission commenced a Public Hearing on December 12, 2023. The Public Hearing for said application was continued to and closed at the Commission's meeting of January 9, 2024, and closed at its January 9, 2024 meeting.

**Whereas:** The Commission has reviewed the application and received testimony from the applicant, his professionals, their representatives, and the public. In addition, Town staff also provided the Commission with comments concerning this application's compliance with local requirements and regulations.

**Whereas:** The parcel of land constituting the property subject to this application is zoned RU-40/20 Rural Residential and the properties abutting the site to the west are zoned R-10 Residence District, to the east and south the abutting properties are zoned RU-40/20 Rural Residential and to the north across Pennsylvania Avenue is zoned SU Special Use and occupied by a 64-Unit 55+ elderly housing development.

**Whereas:** Pursuant to Section 4-13 Waivers of the East Lyme Subdivision Regulations, prior to the granting of any waiver, the Commission must find the following conditions exist:

**(1) The waiver must be requested in writing:**

As indicated by Exhibit “D”, the request for a waiver from Section 6-17-1 of the East Lyme Subdivision Regulations pertaining to Underground Utilities was submitted in writing at the time of application.

**(2) The property for which the waiver is sought is affected by conditions, which affect the property and are not generally applicable to other land in the area;**

As demonstrated by Exhibit “D” the written request for a Waiver, an overhead utility and pole line easement currently exists along the easterly property line of the subject property in favor of Connecticut Light and Power Company and the Southern New England Telephone Company. The existing overhead utilities extend approximately 475-feet south, through the property to an existing utility pole before running underground approximately 160-feet to the existing house. As such, the waiver requests maintaining the existing overhead utilities and poles in place and installing any new utilities to the proposed homes underground.

**(3) Physical features of the property or its location cause exceptional difficulty or unusual hardship in meeting the requirements of these Regulations;**

As demonstrated by Exhibit “AA”, plans entitled “Re-Subdivision Plan, Property of Petrit Marku, for Property Located at 220 Pennsylvania Avenue, Town of East Lyme, Country of New London, CT, dated September 25, 2023 revised through January 3, 2023[2024]” prepared by James Bernardo, LS of James Bernardo Land Surveying, the size and location of the existing parcel does not create an exceptional difficulty or hardship but, rather the existing infrastructure lends itself to minimizing disturbance by maintaining the existing utilities overhead.

**(4) The granting of a waiver will not have a significantly adverse effect upon adjacent property, the environment, or the public health and safety;**

As demonstrated by Exhibit “EE”, Memorandum from Bill Sheer, P.E., L.S., Deputy Director of Public Works dated January 8, 2024, the Engineering Department has no further exceptions beyond reconstructing the portion of existing sidewalk that goes through the proposed driveways. Therefore, as the Drainage Report meets the overall intent of Section 6-8 of the East Lyme Subdivision Regulations, and the proposed site development will not adversely affect the water quality of downstream water features or exacerbate any downstream flooding, the granting of the requested waiver should not have any significantly adverse effects upon adjacent property, the environment, or public health and safety.

**(5) The granting of the waiver will not be in conflict with the Plan of Conservation and Development;**

As this is a four (4) lot resubdivision which minimizes land disturbance, and mitigates any potential adverse effect upon adjacent property, the environment, or the public health and safety, the proposed resubdivision as demonstrated by the record before the Commission, is consistent with the East Lyme 2020 Plan of Conservation and Development as it follows the pattern of development characteristic of an existing residential development in an RU-40 Zoning District, reduces land disturbance, and mitigates any adverse impacts from stormwater runoff.

**Whereas:** The proposed Subdivision is found to meet the requirements of the East Lyme Subdivision Regulations and the East Lyme Plan of Conservation and Development (POCD) as demonstrated by the following:

**Section 3-4 Plan of Development:** As the proposed Subdivision is located within an existing RU-40 Zoning District which is adjacent to existing residential lots zoned R-10 Residence District, to the east and south the abutting properties are zoned RU-40/20 Rural Residential and to the north across Pennsylvania Avenue is zone SU Special Use. The proposed subdivision follows the pattern of development characteristic of an existing residential development in an RU-40 Zoning District. As such, the proposed subdivision conforms to the comprehensive Plan of Development for the Town of East Lyme (POCD) as adopted by the East Lyme Planning Commission.

**Section 4-2-11 Easements and Deeds:** Requires copies of all easements and deeds necessary to carry the subdivision plan into effect, conforming to the requirements of these Regulations, including instruments proposed to be executed or delivered after approval of the application shall be submitted. As indicated by Exhibit “CC” email correspondence from James Bernardo L.S. to Gary Goeschel, Director of Planning, dated January 4, 2024, all deeds and easement documents will be provided upon approval the subdivision and prior to the recording of the subdivision on the land record.

**Section 4-13 Waivers:** As demonstrated by Exhibit “D”, the request for a waiver from Section 6-17-1 of the East Lyme Subdivision Regulations pertaining to Underground Utilities was submitted in writing at the time of application. In addition, as indicated in the Findings above, meets the conditions of Section 4-13 for the granting of said waiver.

**Section 5-4 Sanitation Report:** Exhibit “V”, correspondence from Joseph Blanchard, RS of the Ledge Light Health District, dated December 18, 2023, indicates Lots 1, 3, and 4 are suitable in their current conditions and Lot 2 is recommended suitable if and when PT#8 data is included on the plan. As demonstrated by Exhibit “AA”, revised plans entitled “Re-Subdivision Plan, Property of Petrit Marku, for Property Located at 220 Pennsylvania Avenue, Town of East Lyme, Country of New London, CT, dated September 25, 2023 revised through January 3, 2023[2024]” prepared by James Bernardo, LS of James Bernado Land Surveying, includes said data on the plan.

**Section 5-5 Water Supply Report:** As indicated in Exhibit “V”, correspondence from Joeseph Blanchard, RS, of the Ledge Light Health District, dated December 18, 2023, each lot is suitable to support a well and code complying septic system. However, the lots will be served by municipal water as evidenced by Exhibit “EE”, Memorandum from Bill Scheer, Deputy Director of Public Works dated January 8, 2024.

**Section 5-2-2(E) and 6-8 Stormwater Management Plan:** As indicated by Exhibit “EE”, Memorandum from Bill Scheer, Deputy Director of Public Works dated January 8, 2024, the Engineering Department has no further exceptions beyond reconstructing the portion of existing sidewalk that goes through the proposed driveways. Therefore, as the Drainage Report meets Section 6-8 of the East Lyme Subdivision Regulations. As such, the proposed site development will not adversely affect the water quality of downstream water features or exacerbate any downstream flooding.

**Section 5-2-2(G) Erosion and Sedimentation Control Plan:** As demonstrated by Exhibit “AA”, plans entitled “Re-Subdivision Plan, Property of Petrit Marku, for Property Located at 220 Pennsylvania Avenue, Town of East Lyme, Country of New London, CT, dated September

25, 2023 revised through January 3, 2023[2024]” prepared by James Bernardo, LS of James Bernado Land Surveying, were prepared in accordance with the 2002 CT E&S Guidelines. Review of the proposed Erosion and Sedimentation Control Plan revealed the appropriate notes, details, and provisions regarding erosion control measures adequate to control accelerated erosion and sedimentation and reduce the danger from storm water runoff on the proposed site have been incorporated into the proposed plan. Therefore, the Planning Commission may hereby CERTIFY that the Soil Erosion and Sediment Control Plan complies with the requirements and objectives of this Subdivision Regulation.

Section 5-6 Pesticide Report: As evidenced by Exhibit “B”, the Pesticide Report prepared by Phyllis Shiller, Laboratory Director of Pheonix Environmental Laboratories dated November 3, 2023, there is no evidence of pesticide use that exists.

Section 5-8 Archeological Survey: As evidence by Exhibit “E”, Phase 1a/b Archeological Reconnaissance Survey prepared by Sarah Holmes, PhD, dated October 2023, the Survey APE did not merit additional testing due to the nature of the site integrity, the paucity of artifacts identified, and the lack of evidence for underground features. As such, the proposed development will not have an adverse effect on archeological resources on this particular tract based on artifact densities and past land use. As such, the project did not meet the criteria for National Register eligibility. Therefore, as demonstrated by Exhibit “Z”, letter from Sarah P. Sportman, PhD, State Archeologist regarding the Addendum, Lot 4 to the Phase 1a/b Archeological Reconnaissance Survey prepared by Sarah Holmes, PhD. in December 2023 indicates the OSA concurs with Dr. Holmes and no additional archaeological work is merited and the project may proceed as planned.

Section 6-2 Lot Design Specifications: Exhibit “S”, correspondence from William Mulholland, Zoning Official, dated December 13, 2023, indicates that the plans entitled “Re-Subdivision Plan, Property of Petrit Marku, for Property Located at 220 Pennsylvania Avenue, Town of East Lyme, Country of New London, CT, dated September 25, 2023 revised through December 3, 2023[2024]” prepared by James Bernardo, LS of James Bernado Land Surveying, comply with zoning as proposed and the Planning Commission approves the reduction of the deep 200-foot buffer along Pennsylvania Avenue to 100-feet.

Section 6-7 Open Spaces: Pursuant to Section 7-2-1 of the East Lyme Subdivision Regulations for "Conventional Subdivisions, (less than 4 lots or less than 10 acres) dedication of open space shall be in an amount not less than ten (10) percent of the gross land area of the subdivision, unless waived in accordance with Section 4-13 of these regulations. For Conservation Design Development Subdivisions, designation of open space shall be in accord with the standards set forth in Section 23.6 of the Zoning Regulations. Pursuant to Section 23.6 (B). The minimum area of open space for a Conservation Design development shall be as follows:

	Public/Community Sewer	Individual Septic
RU-40	55%	30%
RU-80	75%	50%
RU-120	75%	50%

As demonstrated by Exhibit “AA”, the plans entitled “Re-Subdivision Plan, Property of Petrit Marku, for Property Located at 220 Pennsylvania Avenue, Town of East Lyme, Country of New London, CT, dated September 25, 2023 revised through January 3, 2023[2024]” prepared

by James Bernardo, L.S. of James Bernardo Land Surveying, Open Space in the amount of 2.22-acres, 97,083.1-square feet, or 52% of the 4.27-acres is being proposed along the perimeter (side, rear, and front property lines) of the 4-proposed lots which, will be maintained as a conservation easement in favor of a homeowner's association. In addition, the applicant has provided a 100-foot-deep no cut/no build buffer along the property's frontage as the existing Route 161 right-of-way is another 100-feet to the edge of pavement.

Section 6-9 Requirements Regarding Flooding: As indicated in Exhibit "FF", Memorandum from Bill Scheer, Deputy Director of Public Works dated January 8, 2024, the Engineering Department has no further exceptions beyond the reconstructing the portion of existing sidewalk that goes through the proposed driveways. Therefore, the proposed plans meet the intent of Section 6-8 of the East Lyme Subdivision Regulations, and the proposed site development will not adversely affect the water quality of downstream water features or exacerbate any downstream flooding.

**Whereas:** Exhibit "BB", e-mail correspondence from Mark Zamarka, Esq., Town Attorney to Gary Goeschel, Director of Planning, dated December 26, 2023, indicates the Planning Commission has the discretion to decide that a section of road need not be constructed if it meets one (1) of four (4) criteria listed in Section 6-10-11 and further states Section 6-10-15 gives the Commission even broader discretions to reduce any of the requirements found in Section 6-10 of the East Lyme Subdivision Regulations.

**Whereas:** As evidenced by Exhibit "AA", "Re-Subdivision Plan, Property of Petrit Marku, for Property Located at 220 Pennsylvania Avenue, Town of East Lyme, Country of New London, CT, dated September 25, 2023 revised through January 3, 2023[2024]", 52% of the parcel is being preserved as Open Space. As such, the proposed plans meet the additional 5% Open Space required by Section 6-10-11 (B). Further, the proposed development also meets all four (4) criteria of Section 6-10-11.

**Whereas:** Section 6-10-15 of the Subdivision Regulations gives the Commission broader discretion to reduce any of the requirements found in Section 6-10 if doing so will protect wetlands, groundwater, or the aquifer protection, wetlands and other environmental, natural, cultural, agricultural, or historic protection purposes.

**Whereas:** The use of the existing driveway and sidewalk infrastructure creates significantly less environmental impact to the site and obviates the need for a 40-foot-wide vegetated buffer along westerly property line to screen the proposed development from the adjacent properties.

**Whereas:** Demonstrated by Exhibit "AA", the plans entitled "Re-Subdivision Plan, Property of Petrit Marku, for Property Located at 220 Pennsylvania Avenue, Town of East Lyme, Country of New London, CT, dated September 25, 2023 revised through January 3, 2023[2024]" prepared by James Bernardo, L.S. of James Bernardo Land Surveying, there are no inland wetlands on or within 300-feet of the subject site. As such, there are no proposed regulated activities occurring in the 300-foot upland review area, inland wetlands, or watercourses. Therefore, an Inland Wetlands Permit is not required.

**Whereas:** Pursuant to Section 4-4-5 of the Subdivision Regulations the Commission shall give approval to the application if it finds that the application, plans, and documents conform to the requirement of these Regulations. Such approval shall be conditioned upon presentation of suitable easement and deeds as applicable, as specified in Section 4-2-10 of the Regulations, and shall be conditioned upon completion of all required subdivision improvements. In granting

approval, the Commission may attach conditions that it deems necessary to modify the subdivision map, plans, or documents, and to preserve the purpose and intent of these Regulations.

Based on the above Findings, I offer the following language for a resolution:

### **WAIVER REQUEST**

Based on the above findings in the Memorandum from Gary A. Goeschel II, Director of Planning, dated January 8, 2024, and the record before the Commission, FINDS this application to be in conformance with the Subdivision Regulations of the Town of East Lyme and the 2020 Plan of Conservation and Development and hereby GRANTS the applicant's request for a Waiver from Sections 6-17-1 of the East Lyme Subdivision Regulations.

### **RESOLUTION FOR SUBDIVISION APPLICATION**

NOW THEREFORE, based on the Findings in the Memorandum from Gary A. Goeschel II, Director of Planning to the East Lyme Planning Commission dated January 8, 2024, and the record before the Commission, FINDS this application to be in conformance with the Subdivision Regulations of the Town of East Lyme and the 2020 Plan of Conservation and Development and hereby MOVES TO APPROVE the application known as the Application of Petrit Marku for a 4-Lot Resubdivision of approximately 4.27-acres of land Zoned RU-40/20 and request for a Waiver from Section 6-17-1 of the East Lyme Subdivision Regulations on property located at 220 Pennsylvania Avenue, East Lyme, Assessor's Map#16, Lot#7.3, Niantic, CT and the plans entitled "Re-Subdivision Plan, Property of Petrit Marku, for Property Located at 220 Pennsylvania Avenue, Town of East Lyme, Country of New London, CT, dated September 25, 2023 revised through January 3, 2023[2024]" prepared by James Bernardo, L.S. of James Bernardo Land Surveying which, is further subject to the following administrative requirements and required modifications to the site plan and/or other materials submitted in support of this application:

1. The proposed plans shall be revised to reflect the correct year of the latest revision date of January 3, 2024, not 2023, and a copy shall be submitted to the Planning Department.
2. An Erosion & Sedimentation Control Bond for each lot in an amount satisfactory to the Town Engineer and Planning Director and in a form acceptable to the Town of East Lyme Planning Commission shall be posted with the Town prior to the start of any site work including but not limited to clearing, grubbing, filling, and grading.
3. A Performance Bond for the proposed plantings along the existing driveway in an amount satisfactory to the Director of Planning and in a form acceptable to the Town of East Lyme Planning Commission shall be posted with the Town prior to the start of any site work including but not limited to clearing, grubbing, filling, and grading. The performance bond may be released after two (2) full growing seasons (April 1 – May 31 and September 1 – October 31) provided the plantings achieve an 80% survival rate.
4. Copies of all deeds and easements including instruments proposed to be executed or delivered after approval of the application shall be submitted as specified in Section 4-2-10 of the Regulations and provided to the Planning Director for review and approval prior to the filing of the subdivision on the land record.
5. The applicable items above shall be accomplished prior to the filling of the subdivision on the land records, or other documentation of planning approval and no further site work shall commence until all applicable conditions are satisfied.

This approval is specific to the subdivision plan submitted as the application known as the Application of Petrit Marku for a 4-Lot Resubdivision of approximately 4.27-acres of land Zoned RU-40/20 and request for a Waiver from Section 6-17-1 of the East Lyme Subdivision Regulations on property located at 220 Pennsylvania Avenue, East Lyme, Assessor's Map#16, Lot#7.3, Niantic, CT and the resubdivision plans entitled "Re-Subdivision Plan, Property of Petrit Marku, for Property Located at 220 Pennsylvania Avenue, Town of East Lyme, Country of New London, CT, dated September 25, 2023, revised through January 3, 2023 [2024]" prepared by James Bernardo, L.S. of James Bernado Land Surveying.

Any changes in the subdivision plan shall require prior approval from the Commission and/or the Director of Planning. Any change in the development plan layout other than those identified herein shall constitute a new application.