

Minutes of the East Lyme Zoning Commission April 4, 2024, Regular Meeting

Date and Time: 4/4/2024 7:35PM to 9:30PM

Present: Members: Anne Thurlow, Chairman, Nancy Kalal, Secretary, Norman Peck, Michael Foley. Alternates: Jim Liska, Cathy Yuhas, Sarah Susco. Ex-Officio: Roseanne Hardy. Staff: William Mulholland. Recording Secretary: Jessica Laroco.

Absent: Members: Gary Pivo, Denise Markovitz.

Location: East Lyme Town Hall Upper Conf. Room, 108 Pennsylvania Avenue

1. Call to Order and Pledge

Ms. Thurlow called the Regular Meeting of the East Lyme Zoning Commission to order at 7:35PM and led the Pledge of Allegiance.

2. Attendance

Ms. Thurlow called the roll; noted members Gary Pivo and Denise Markovitz were absent. Alternates Jim Liska and Cathy Yuhas were seated.

3. Public Delegations

Lisa McGowan, 33 Spinnaker Dr, again stated that Ms. Thurlow had lost the election and stated that she had appointed herself to the Board.

Ms. Thurlow noted the correct number and responded that she did not appoint herself.

4. Public Hearing

4-a Continuation of Application by Kristen Clarke, P.E., “for Conceptual Site Plan approval per Conn. Gen. Stat. 8- 30g (affordable housing)” of a 25-unit age-restricted single- and multi-family affordable residential housing development to be located on the northerly side of Boston Post Rd on a parcel identified as 91 Boston Post Road, Assessor Map 31.0 Lot 2.

Ms. Thurlow asked to discuss and approve the minutes from the 3/29/2024 Site Walk to be able to enter them into the record. She noted that the members present were herself, Ms. Kalal, Mr. Peck, Ms. Yuhas and Staff; Mr. Mulholland.

Attorney Geraghty requested that a correction to the minutes be made as Mr. Jeffrey Torrance and Mr. Nicholas Torrance were incorrectly listed as representatives of the Applicant. They were accompanying Mr. Art Carlson of the EL Land Trust who was present. Also present were Deb Moshier-Dunn and Amy Stoddard.

MOTION 1-DECISION

Mr. Foley moved to approve the minutes of the 3/29/2024 Site Walk at 91 Boston Post Road with the above-listed amendments.

Ms. Kalal seconded the motion.

Mr. Liska abstained.

Motion passed 5-0-1.

RECEIVED FOR RECORD
EAST LYME, CT
2024 APR - 8 A 9:28
Cathy Yuhas
OWN CLERK

Exhibit GGG, provided by Applicant Kristen Clarke, PE, Intersection Site Distance Analysis was noted, and each member had been provided with a copy for review.

Attorney Geraghty, for the Applicant, introduced Attorney Anthony Novak representing the EL Land Trust, to describe the situation surrounding the ownership and title to the subject property.

Attorney Novak stated the following:

- The EL Land Trust never owned the subject property.
- The original owner, Mr. Tytla, owed a \$340,000 mortgage on the property at the time of his death. Had the EL Land Trust accepted the property; they would have been responsible for that mortgage.
- The State of CT Superior Court deemed the property value at \$280,000.
- The EL Land Trust declined to accept it and one of the mortgage holders foreclosed on the property.
- The state of CT DEEP was unable to issue a grant because of the house on the property.
- The cost to demolish the house was \$150,000.
- The EL Land Trust is concerned with Latimer Brook and its substantial importance to the area's water and wildlife.
- Should the EL Zoning Commission approve the eventual proposed project, the current owner would give 8+ acres surrounding Latimer Brook to the EL Land Trust to protect the brook and to protect the outcropping surrounding that, at no cost to the EL Land Trust.

Mr. Liska asked how someone would access the protected area and how confusion would be avoided years down the road when people were accessing the property near Latimer Brook for trails.

Attorney Novak was unsure, however, Attorney Geraghty pointed out that on the map an easement is indicated and perhaps an access area, parking area, could be provided for. Additionally, it would not be many people anticipated as the trails do not cover very much, but the preservation of the area surrounding the brook is an important piece.

Attorney Geraghty then indicated that after reviewing the minutes and statements made by Commissioner Pivo in which he stated that he had done independent research on the subject and wished to introduce his own findings to the Commission, he had written a letter to Mr. Mulholland and Attorney Carey, Exhibit III, asking that Commissioner Pivo be recused from any deliberations regarding this Application. He believed that Mr. Pivo had overstepped his bounds and was violating the Applicant's rights, and it could lead to the predetermining the outcome of the Application.

Attorney Geraghty introduced the following into the record:

- Exhibit JJJ, The State of CT Affordable Housing Appeals Listing, noting East Lyme is not listed as having met the minimum amount affordable housing requirements.
- Exhibit KKK, letter (with attachments) from Attorney Paul Geraghty to Ms. Thurlow, Chairman, regarding the legality of holding a public hearing for this application.
- Exhibit LLL, East Lyme Zoning Regulations Section 28, Amendments to regulations and Zoning District Map.
- Exhibit MMM, East Lyme Zoning Regulations Section 32, Affordable Housing District (Mr. Mulholland noted that the application came in under 8-30g, not the EL Zoning Regulations and Attorney Geraghty agreed).

- Attorney Geraghty also noted his opinion that Mr. Pivo had been imposing his own definition of a conceptual site plan, and that his client had provided more than enough information to make a conceptual application.

Attorney Roger Reynolds, attorney for Save the Sound, read his letter, Exhibit HHH, into the record.

Attorney Reynolds explained that a conceptual site plan is a document submitted so that a zoning commission can consider whether a zone change should occur, it is not a proceeding and there is no formal decision required. It should be to provide feedback, and if a final application meets all permit applications and standards it would be approved.

Mr. Foley stated that Attorney Reynolds seemed to be implying that the Board take no action, however, taking no action would grant an approval by virtue of the expiration of the statutory time limit for deciding.

In response, Attorney Reynolds noted that an approval would be meaningless as the Applicant would still need to file a final site plan for approval and a denial would be meaningless because the Applicant would still be able to file a final site plan for approval. He noted that that point should be acknowledged. He was concerned that an approval may provide the Applicant with an incorrect assumption that a final approval was somehow inferred or granted.

Attorney Carey reminded the Board of his concern that there is no such thing as a conceptual site plan and if the Board does not act, the Applicant would seek a deemed approval in court, however incorrect that is. He reminded the Board that should the deny, there should be very clear reasons for denial, using the 8-30g guidelines and if they approve the application, then very clear conditions should be indicated. He urged the Board to act whichever way they deemed appropriate.

Mr. Foley noted the only way to retain any control is to approve with conditions.

Mr. Peck asked Attorney Carey to repeat what is required in a motion.

Attorney Carey suggested the Board include language indicating that they were unsure what the Applicant was applying for as there are no guidelines for what is required to be submitted with a conceptual site plan.

Ms. Thurlow asked for Public Comments not already stated to be kept to three (3) minutes.

Petie Reed, 4 High St, is concerned about the previously mentioned sod farm and that it could ruin the Latimer Brook.

Mr. Liska the following of Attorney Geraghty:

- Was it his intention to seek deemed approval.
- Was the intention to have conversation and seek guidance on the proposed site. He noted that it had been decided that the sod farm was out, and that if it were to come back it would need its own approval.
- Did the Applicant intend to give acreage to the EL Land Trust.
- Where is the agreement or disagreement.

Attorney Geraghty responded:

- No, it was not the intention to seek deemed approval.

- Yes, it was the intention to have conversation and get guidance.
- Yes, a sod farm was out and if it came back, it would need its own approval.
- Yes, the Applicant intends to give acreage to the EL Land Trust.
- He doesn't think they're in disagreement but that he has tried to present answers and modifications based on commission and public concerns.

Mr. Foley asked if the Applicant having provided the traffic study and additional analysis was a conflict.

Attorney Geraghty and Mr. May responded that her qualifications enable her to provide such.

Mr. Liska asked if a traffic study would be part of the final application.

Attorney Geraghty responded that it would be and, additionally, because it is on a state highway the State DOT would have to give approval as well.

Ms. Kalal asked what the drinking water source was.

Attorney Geraghty responded that there is a nearby water connection or possibly the onsite wells but would not know without additional testing, particularly because of the associated cost to use public water and the LLHD determination of individual wells or community wells.

Ms. Kalal requested that that be determined prior to construction.

Attorney Geraghty responded that that was a premature request as it is not required at this stage, but during the final site plan application.

The Commission took a 5-minute break, leaving the Public Hearing Open, for staff to retrieve a document pertaining to the hearing.

At the resumption of the hearing, it was discussed that Mr. Pivo had sent an email to the Commission members, and other interested parties, and whether it should be included in the record.

Attorney Geraghty objected to its being put into the record. As it indicated information that was not part of the record, specifically regarding the legal standard for affordable housing. He indicated that should it be put into the record and the application is denied it would be legal grounds for an appeal.

The Commissioners were polled to indicate whether they had read the document.

Mr. Peck, Mr. Foley, Ms. Kalal, Ms. Thurlow, Mr. Liska did not read the document.

Ms. Yuhas could not confirm or deny having read the document as she was unsure which document was being discussed.

Attorney Geraghty asked Ms. Yuhas to confirm that she would base any decision she made solely on what was in the record.

Ms. Yuhas confirmed.

Attorney Carey noted that because of Mr. Pivo's absence, he would not be included in the decision, but that he did not necessarily agree Mr. Pivo had done anything wrong.

MOTION 2-DECISION

Mr. Foley moved to close the public hearing of Application by Kristen Clarke, P.E., "for Conceptual Site Plan approval per Conn. Gen. Stat. 8- 30g (affordable housing)" of a 25-unit age-restricted single- and multi-family affordable residential housing development to be located on the northerly side of Boston Post Rd on a parcel identified as 91 Boston Post Road, Assessor Map 31.0 Lot 2.

Ms. Kalal seconded the motion.

Motion passed 6-0-0.

Ms. Thurlow noted that the outdoor dining renewal applications were next.

Ms. Kalal asked if there had been any complaints regarding the outdoor dining.

Mr. Mulholland noted that there had been no complaints, and that outdoor dining is an asset to the community and traditionally they had all been renewed as one (1) motion.

- 4-b Application of Eugen Emini for Black Point Pizza, for a renewal of Special Permit for Outdoor Dining at 44 Black Point Road, Niantic.**
- 4-c Application of Eduardo Martone, for a renewal of Special Permit for Outdoor Dining at 11 East Pattagansett Road, Niantic.**
- 4-d Application of East Lyme Café, LLC dba Smokey O'Gradys, for a renewal of Special Permit for Outdoor Dining at 306 Flanders Road, Niantic.**
- 4-e Application of Andy Sklavouris, for Five Churches by the Bay, for a renewal of Special Permit for Outdoor Dining at 215 Main Street, Niantic.**
- 4-f Application of EH, LLC d/b/a Family Pizza for a renewal of Special Permit for Outdoor Dining at 233 Main Street, Niantic.**
- 4-g Application of Leo Roche, for Strive LLC, for a renewal of Special Permit for Outdoor Dining at 247-2 Main Street, Niantic.**
- 4-h Application of Chris Herbert, for La Llarona, for a renewal of Special Permit for Outdoor Dining at 267-283 Main Street, (aka 13 Hope Street), Niantic.**
- 4-i Application of Nejla Oksuz, for Niantic Pizza, for a renewal of Special Permit for Outdoor Dining at 53 West Main Street, Niantic.**
- 4-j Application of Steve Carpenteri, for Niantic Bay Inn, Inc, (aka Lyme Tavern), for a renewal of Special Permit for Outdoor Dining at 229 W Main Street, Niantic.**
- 4-k Application of Candace Devendittis, for Dev's on Main, for a renewal of Special Permit for Outdoor Dining at 255 Main St, Niantic.**
- 4-l Application of Martin Zavala, for Zavala's, for a renewal of Special Permit for Outdoor Dining at 135 Boston Post Rd, Niantic.**
- 4-m Application of Anna Lathrop, for Gourmet Galley, for renewal of Special Permit for Outdoor Dining at 185 Main Street, Niantic.**
- 4-n Application of Second Helping, LLC, for 374 Main, for renewal of Outdoor Dining at 374 Main Street, Niantic.**

Ms. Thurlow asked for comments from the public.

There were none.

MOTION 3-DECISION

Mr. Foley moved to close the public hearing.

Ms. Yuhas seconded the motion.

Motion passed 6-0-0.

4-o Application of Eric S Parker, Esq. for proposed Text Amendment to Section 20.26 of the East Lyme Zoning Regulations.

Ms. Thurlow noted that the Applicant has asked to be continued to May 2, 2024.

5. Regular Meeting

5-a Approval of Minutes of 3/28/2024.

MOTION 4-DECISION

Mr. Liska moved to approve the minutes of the Special Meeting of 3/28/2024 as presented.

Ms. Kalal seconded the motion.

Motion passed 6-0-0.

5-b Approval of Minutes of 3/29/2024 Site Walk

Approved, as amended, previously in the meeting.

5-c Continuation of Application by Kristen Clarke, P.E., “for Conceptual Site Plan approval per Conn. Gen. Stat. 8- 30g (affordable housing)” of a 25-unit age-restricted single- and multi-family affordable residential housing development to be located on the northerly side of Boston Post Rd on a parcel identified as 91 Boston Post Road, Assessor Map 31.0 Lot 2.

Attorney Carey asked if all Commissioners had been present for all public hearing dates.

All Commissioners indicated they had been.

Mr. Foley spoke of the sample motions, for and against, prepared by Attorney Carey, which had been given to the Commissioners for consideration. He noted that in approving with conditions, he felt that the Commission could maintain some control over what would later be required for a final site plan approval. He worried that failing to take any action would prove to imply an approval at a later date.

Mr. Liska agreed and indicated that it appeared the Applicant came in looking for guidance and instead the Commission began looking into much more in depth concerns than they were presenting at that point. He wondered if there were any conditions presented which were not included in the sample motions.

Mr. Peck noted that the conditions were standard conditions. He described the proposed project as problematic due to the proposed septic tanks being uphill and the leaching fields being downhill. He noted his concern with the proximity to Latimer Brook. He indicated his unease with the traffic entering and exiting the project. He described his visit to the property during the Site Walk, citing the inconvenience of people making a right turn only while exiting and people being tempted to turn left,

thereby causing a safety issue. Even though the posted speed limit is only 35MPH, traffic us moving much faster.

Mr. Liska wondered if, at a later application, the Town would hire their own traffic analyzer.

Mr. Foley noted that the State of CT would do a traffic analysis

Mr. Liska asked what the conditions were for entering and exiting at the 3/28/24 Site Walk.

Ms. Yuhas noted it was extremely hard to exit as the traffic was moving very quickly.

Ms. Thurlow cited that she had previously tried to turn into the property and other traffic was unforgiving and moving very quickly.

Mr. Foley called it a uniquely bad spot, noting that turning left in to the property, the road is not wide enough for traffic to go around.

Ms. Yuhas noted that the local people know the condition of the area in the summer months with summer traffic.

Mr. Liska asked Mr. Mulholland if he had previously seen traffic studies done using the posted speed limit or the actual speeds.

Mr. Mulholland indicated that the state DOT would have to issue a permit and that the conversation about it was irrelevant to the conceptual application before them.

Ms. Thurlow asked Mr. Mulholland if there was a way to put conditions on the project going forward.

Mr. Mulholland answered that they could put conditions on an approval of a final site plan, should it come in.

There was discussion over sidewalks and Latimer Brook and traffic.

MOTION 5-DECISION

Mr. Peck was unsure what the following motion means legally and if a conceptual site pan approval is necessary, however, Mr. Peck moved to deny the approval as follows:

WHEREAS, Kristen Clarke, P.E., of Bow, New Hampshire (“Applicant”), filed an application for “Conceptual site plan approval for an age restricted rental housing community per Conn. Gen. Statute § 8-30g,” for an 11.34 acre parcel located at 91 Boston Post Road (Map 31.0 Lot 2), the project to consist of 25 total units of age-restricted and affordable housing in 2 apartment buildings, 6 duplexes and 1 individual structure (“Application”) and;

WHEREAS, the Commission received referral reports from Alex Klose, Town Engineer; Gary Goeschel, Inland Wetland Agent/Planning Director; and Ben North, Chief Operating Officer; and Erik Quinn, Deputy Fire Marshal and

WHEREAS, the Commission has held a public hearing on the Application, running over four evenings, during which it received verbal and documentary information from the Applicant's representatives and from Town of East Lyme staff, as well as from members of the public. In making its decision, the Commission is considering and taking into account the testimony and exhibits submitted at the hearings; and

WHEREAS, for the purpose of the Application, the Commission will address this motion as follows:

A. THE REQUEST FOR APPROVAL OF A "CONCEPTUAL SITE PLAN" APPLICATION FOR 91 BOSTON POST

ROAD SUBMITTED UNDER CONN. GEN. STAT. § 8-30g

WHEREAS, 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 its available housing stock meets the statutory definition of affordable housing; and

WHEREAS, the Commission finds that the Application does not comply with the requirements of §8-30g; because:

1 -A It is felt that the access and egress plan present a dangerous situation. The speed limit on this section of Route 1 is seriously ignored. The temptation to egress using a left turn is high, as the inconvenience of egressing right and finding a way back is great.

1-B Because of the limited buildable area of the parcel, the positions of the septic systems, leaching fields, and residential units themselves are all forced into being placed on the steep slope without alternative.

The risk of stormwater runoff and septic runoff without public sewer is significant. The risk is too great as the Latimer Brook-Niantic River tributary is on the bottom of the hill.

2 The substantial public interests that we are trying to protect are the Nantci River tributary and motorists accessing and leaving the property.

From evidence in the record addressing these issues, we feel that the risks involved with developing this land do, in fact, outweigh the need for affordable housing in East Lyme and that there appears to be no alterations that would correct the issues.

WHEREAS, the Commission has determined, based on sufficient evidence in the record, that the Application does pose a harm to the public interest in health, safety, or other matters that the Commission may consider and is in the public interest

BE IT THEREFORE RESOLVED, the Commission hereby DENIES the Application for the reasons stated above.

Ms. Yuhas seconded the motion.

Ms. Thurlow asked for more discussion, there was none.

Mr. Liska opposed the motion.

Motion for denial passed 5-1-0.

5d-5p (Outdoor Dining Renewals)

- 5-d Application of Eugen Emini for Black Point Pizza, for a renewal of Special Permit for Outdoor Dining at 44 Black Point Road, Niantic.**
- 5-e Application of Eduardo Martone, for a renewal of Special Permit for Outdoor Dining at 11 East Pattagansett Road, Niantic.**
- 5-f Application of East Lyme Café, LLC dba Smokey O'Gradys, for a renewal of Special Permit for Outdoor Dining at 306 Flanders Road, Niantic.**
- 5-g Application of Andy Sklavouris, for Five Churches by the Bay, for a renewal of Special Permit for Outdoor Dining at 215 Main Street, Niantic.**
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- 5-o Application of Anna Lathrop, for Gourmet Galley, for renewal of Special Permit for Outdoor Dining at 185 Main Street, Niantic.**
- 5-p Application of Second Helping, LLC, for 374 Main, for renewal of Outdoor Dining at 374 Main Street, Niantic.**

MOTION 6-DECISION

Mr. Foley moved to approve the Outdoor Dining Renewal Applications as previously read.
Ms. Kalal seconded the motion.
Motion passed 6-0-0.

5-q Application of Eric S Parker, Esq for proposed Text Amendment to Section 20.26 of the East Lyme Zoning Regulations

Application continued.

5-r Application of Heather Gardner, buyer, for a Coastal Area Management (CAM) Review for property located at 7 North Dr OGBA, for Site Plan for Zoning Compliance and General Development.

Withdrawn at this time.

5-s Application of Thomas Gardner, buyer, for a Coastal Area Management (CAM) Review for property located at 11-13 North Dr OGBA, for Site Plan for Zoning Compliance and General Development.

Withdrawn at this time.

6. Old Business

6-a Subcommittee Outdoor Lighting

Mr. Peck and Mr. Mulholland are still working on this.

6-b Subcommittee Text Amendment CA Zone (Mixed Use)

Mr. Peck and Mr. Mulholland are still working on this.

6-c Affordable Housing Update

Attorney Bleasdale called the office for additional information, so he is still working on it

7. New Business

7-a Any business on the floor, if any, by majority vote of the Commission

There was none.

7-b Zoning Official

Mr. Mulholland reminded the Commission that the Aril 18, 2024 meeting would be an important and informational meeting.

7-c Ex-Officio

Ms. Hardy reported that the BOS heard a feasibility presentation for the community center regarding roof replacement. There were three cost estimates ranging from \$7 million to \$16 million. There will be information forthcoming. There is a survey available to the public on the Town Library website.

7-d Comments from Zoning Board Liaison to Planning Commission

Ms. Kalal will attend the April 9, 2024, meeting.

7-d Chairman Comments

Ms. Thurlow noted that she has comments but will wait until the full Board is present to make them.

Mr. Liska asked if food trucks were permitted at the Rustic Café.

Mr. Mulholland noted that they were not allowed.

8. Adjourn

MOTION 7-DECISION

Ms. Kalal moved to adjourn the Regular Meeting of the East Lyme Zoning Commission at 9:30PM.

Mr. Foley seconded the motion.

Motion passed 6-0-0.

Respectfully submitted,

Jessica Laroco

Recording Secretary