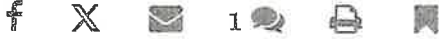


## East Lyme zoning officials reject senior housing concept



April 05, 2024 4:59 pm • Last Updated: April 05, 2024 6:35 pm

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East Lyme — The Zoning Commission this week rejected a proposal for a 55+ housing development amid legal questions about what a conceptual site plan is and whether a vote was even necessary.

The proposal for 91 Boston Post Road includes 25 units spread out across six duplexes, two apartment buildings and one existing house on 11.4 acres. It was submitted as a conceptual site plan that attorney Paul Geraghty, representing applicant Kristen Clarke, has repeatedly described as a way for the developer to gauge the commission's appetite for the project.

"A conceptual site plan doesn't mean we can put a shovel in the ground," he said. He said his client would apply for final site plan approval later. That's when details about water and septic systems, erosion controls and traffic impacts would be laid out.

Questions about the site's ownership history and the motivation of the developers have been raised during an extended public hearing that has played out over four meetings.

The commission in its denial cited environmental concerns related to the potential for storm water and septic runoff in the brook, as well as traffic concerns on busy Route 1.

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

The state's affordable housing statute requires commissions to prove the risk to public health or safety trumps the need for affordable housing.

It remains unclear what the commission's denial accomplishes. That's because the application was not submitted as a traditional site plan, but through a provision in the state affordable housing statute allowing commissions to require a conceptual plan from developers seeking a zone change.

Attorney Roger Reynolds, senior legal director for the Save the Sound environmental organization, urged the commission not to act on the application.

"It doesn't mean anything to approve or disapprove, because there's no such thing as a conceptual site plan proceeding outside of a zoning change context," he said.

Geraghty maintained through the public hearing that case law affirms zone changes are not required for affordable housing applications.

Commission attorney Michael Carey advised the commission to vote on the application one way or the other. He expressed concern that the proposal would be approved automatically per state statute if the commission didn't take action. He suggested a developer at that point could potentially claim the automatic approval entitles them to go through with the project as presented instead of coming back with a final site plan.

...ey get this approved or they get it denied and win on appeal, I would think there's a possibility that the developer could claim that the automatic approval entitles them to go through with the project as presented instead of coming back with a final site plan.



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another application. The denial can also be appealed to the state Superior Court, where a judge could uphold the commission's decision, reject it, or send it back to the commission with instructions for the developer to submit a final site plan.

Member Michael Foley wondered what the commission's vote meant, if anything.

"They have to come back with a full plan anyways," he said. "If we turn them down, they don't even have to bother going to court if they don't want to. They can just come back with their primary application anytime they want. I don't mean to sound glib about this, but it almost doesn't matter what we do."

Foley advocated initially to approve the application with specific conditions that would address the commission's environmental and traffic concerns. He said the conditions would allow the commission to "maintain some level of control going forward."

But he voted in the end for the denial resolution raised by member Norm Peck III. After the meeting, **Foley said he decided to vote with his conscience rather than his business sense.**

**"It's a terrible project and I'm glad the board chose to deny it," he said.** "I'm not sure how effective it's going to be in the long run, but at least we're on record."

Geraghty after the decision said he would likely file a case in state Superior Court within the 15-day appeal period "as a placeholder" to give his client time to consider the options.

He guessed an appeal would result in the case being sent back to the commission for the submission of a final site plan like in the Oswegatchie Hills case.

"The concern obviously is that we spend all that money and (the commission) still won't like it," he said of the proposal. "There were comments I heard tonight that suggested they just don't think the site is appropriate, regardless."

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**John Russell** April 7, 2024 at 10:58

Report

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