

Minutes of the East Lyme Zoning Commission June 6, 2024, Regular Meeting

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Date and Time: 6/6/2024 730 PM to 10:30 PM

Present: Members: Anne Thurlow, Chairman, Nancy Kala, Secretary, Norman Peck, Michale Foley, Denise Markovitz, Deb Jett-Harris. Alternate: Cathy Yuhas. Ex-Officio: Roseanne Hardy. Staff: William Mulholland. Recording Secretary: Jessica Laroco. Town Attorney Michael Carey.

Absent: Alternates: Jim Liska, Sarah Susco.

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

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**1. Call to Order and Pledge**

Ms. Thurlow called the Regular Meeting of the East Lyme Zoning Commission to order at 7:30PM and led the Pledge of Allegiance.

**2. Attendance**

Ms. Thurlow called the roll, noted Alternates Jim Lisak and Sarah Susco were not in attendance.

**3. Public Delegations**

Ms. Thurlow asked for comments to be limited to 2 minutes.

-Lisa McGowan, 33 Spinnaker Dr, thanked Staff, the Town Attorney, and Members for fulfilling the FOIA request she had submitted and then gave a narrative of the reasons behind her request. She noted that she had been in contact with The Day reporter, Eizabeth Regan, and then read select items from the FOIA request, claiming some Board Members had purposely acted deceptively. She was asked, after 2 minutes, to step down, at which time she asked for someone else to continue reading her prepared statement. Ms. McGowan asked Mr. Mulholland if someone could finish the statement.

-Mr. Mulholland responded that the Board was convened to do the Town's Land Use Business and Public Delegations is typically used for the purpose of bringing Land Use matters that are not on the agenda but that may be of concern, to the Board, and not for political statements.

-Jill Carini, 10 Corey Ln, continued reading Ms. McGowan's prepared list of selected items of the FOIA request, until she was reminded that 2 minutes had passed.

-Nick Menapace, 38 Hope St, no unit number given, asked for cooperation and respect from the Board.

-Cindy Collins, 35 Laurel St, continued reading Ms. McGowan's prepared list of select items of the FOIA request.

-Ms. Thurlow noted that it was interesting that not all the provided communications had been read and that Zoning should not be used to make political statements as the Board was supposed to be a nonpartisan committee. Public Delegations are intended for serious Zoning Business.

-Ms. Markovitz thought that there had been partisan division on the Board, and it had been aimed at Members and Alternates.

- Ms. Jett-Harris stated that the FOIA request was subject to be FOIA'd and there had been several communications that were left out of the list Ms. McGowan read, including communications between Members who planned to not attend meetings to avoid having a quorum.

**4. Public Hearing**

RECEIVED FOR RECORD  
EAST LYME, CT  
JUN 12 P 12:28  
William Mulholland  
TOWN CLERK

**4-a Continuation of application of Eric S. Parker, Esq, for proposed Text Amendment to Section 20.26 of the East Lyme Zoning Regulations.**

- Ms. Thurlow noted that previous Staff Memos had been read into the record and were provided to the Members again and that the amended Proposed Text Amendment had been provided and was listed as Exhibit J, and the Members had those in their packets.
- Ms. Kalal read a memo from SECCOG into the record Exhibit I.
- Attorney Parker noted that the change to the text was thanks to Joe Wren, engineer, and included clearer language on how a measurement would be taken to avoid confusion.
- Ms. Thurlow asked for public comment for, against or neutral.
- There was no comment.

**DECISION MOTION 1**

**Mr. Foley moved to close the Public Hearing**

**Ms. Jett-Harris seconded the motion.**

**Motion passed 6-0-0.**

**4-b Application by Kristen Clarke, P.E., for an amended, modified, Conceptual Site Plan approval per Conn. Gen. Stat. 8-30g (affordable housing) of the original application for a 25-unit age restricted single-and multifamily 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 noted that this amendment was allowed by statute and that all items previously considered as part of the record still stood as part of this record. She also noted that this amendment included 24 units instead of the original 25 units as indicated in Exhibit WWW.
  - Attorney Carey noted that this is a continued application under Conn. Gen. Stat. 8-30g(h) is a modification and should be acted on with the standards of the Conn. Gen. Stat. 8-30(g) and the Commission should not feel compelled to approve simply because the Applicant may have modified the original application based on the Commission comments for denial.
  - Ms. Kalal read a memo from D. Garside, Chief Building Official, Exhibit TTT, into the record.
  - Ms. Jett-Harris read a memo from W. Bundy, Fire Marshal, Exhibit UUU, into the record.
  - Ms. Markovitz read a memo from A. Klose, Town Engineer, into the record, Exhibit VVV.
  - Ms. Jett-Harris read an email from P. Geraghty into the record Exhibit WWW.
  - Ms. Kalal read a memo from G. Goeschel, Inland/Wetlands Agent, into the record, Exhibit XXX Ms. Thurlow noted that the attached letter from Mr. Goeschel was already in the record as Exhibit Q.
  - Mr. Foley read a memo from B. North, Chief Operating Officer (Water/Sewer) into the record, Exhibit YYY.
  - Timothy May, of May Engineering LLC, Oakdale CT, on behalf of the Applicant noted that the memo from B. North referenced the original application with 6 duplexes and 2 apartment buildings and this amended application only includes 3 apartment buildings.
  - Attorney Geraghty submitted a revised drainage plan with a revision date of 6/4/2024 Exhibit ZZZ.
  - Atty Geraghty agreed with Attorney Carey's previous statement. He requested that the Exhibit List be corrected to show a continuous list from the previous application into this amended application. It was agreed and Ms. Laroco and Mr. Mulholland briefly read a corrected list. Exhibit List amended
- \*Note that the revised application begins with Exhibit ZZZ.
- Atty Geraghty requested that Mr. Foley recuse himself based off of previous comments made on the record and to The Day reporter, copy submitted, Exhibit AAAA.
  - Mr. Foley agreed to step down without argument.

-Ms. Thurlow sat Alternate Cathy Yuhas.

-Attorney Carey noted that just because Mr. Foley agreed to step down, does not indicate any admission of wrongdoing or predisposition but that he was simply stepping down because the Applicant asked.

-Mr. Foley agreed with Atty Carey.

-Atty Geraghty then asked that Mr. Peck recuse himself because of his previous connection as the Listing Agent for the property on Holmes Road, which is still in appeal and which is currently owned by the Applicant, Kristen Clarke, as a partner in Duvall Partners. The EL Zoning Commission had previously approved the Holmes Rd property for a 55+ Affordable Housing Development. Atty Geraghty stated that Mr. Peck could have a conflict because he represents other developers of affordable housing projects, such as Pazz and Construction, which is a direct competitor.

-Mr. Mulholland asked what year the sale of that property was and Atty Geraghty responded that it was 15-20 years ago.

-Atty Geraghty submitted a copy of the original decades old listing, Exhibit BBBB

-Mr. Peck responded that the listing was years ago, long before the current Applicant became involved in the property. He also noted that in the last decades, he had recused himself many times from projects he thought might provide a conflict, and that the reason he had not accepted a position as Chairman was, in part, due to the number of recusals he had volunteered for. Mr. Peck stated that his refusals are based on his integrity and whether he would feel pressure to vote in a certain way. He felt no such pressure in this instance and stated no conflict and a nonbiased judgement.

-Atty Geraghty submitted a revised Drainage Report Exhibit CCCC

-Mr. May, engineer for the Applicant, made the following points:

\*Size has been reduced, thereby reducing impacted surface down to 1.3 acres \*Amount of open space, now on eastern side \*Approach right and left turn to come in and exit \* maintain same path as existing driveway \*grading has been reduced \*8-10 foot retaining walls \*3 bottom apartments will have a walkout type access \*52 parking spaces can be reduced to 48 if necessary \*onsite septic \*raingarden size for roof load \*detention pond removed \*standards meet 2023 CT Stormwater Management guidelines including water quality volume \*600 linear feet of trench drain, closed system \*oversized for the property conditions \*full design package not submitted tonight as it is not a full site plan \*town supplied potable water \*no discussion with Ledge Light Health District at this time

-Ms. Jett-Harris asked for clarification on description of how the system works, and how far the closed system trench is from the brook

-Mr. May explained how the calculations are done how the drainage system would work and noted a 40-foot distance

-Atty Geraghty reminded the Commission of the conceptual status, the Applicant knows they will need to apply with the State, LLHD, IWA etc. before the Commission could act on a final approval

-Ms. Kalal asked for clarification on the 1.3inch rainfall

-Mr. May explained the way the 2, 5, 10-year storm events are captured, and explained the hydrograph

-Ms. Jett-Harris how far away is the septic from the little pond on the property

-Mr. May answered several hundred feet, but that if the systems are built properly, there would be no effect of the little pond, but that that would be up to IWA to consider

-Mr. Mulholland asked if a more conservative approach should be presented given the sensitive nature of the proximity to Latimer Brook regarding the Stormwater Management

-Mr. May responded that a more restrictive approach has been presented

-Ms. Kalal asked for the layout of the site and if the design had changed

-Mr. May responded 8 buildings at 4 stories high, where previously they were proposed to be 2.5 stories high.

-Atty Geraghty noted that the location of the buildings had changed and were moved so that there would be 3 floors visible in the front and the 4<sup>th</sup> floor would walk out in the rear.

-Ms. Jett-Harris wondered of the rain gardens would use native plants

-Mr. May noted state approved rain garden design criteria which are always native, using different variations

-Ms. Kalal asked if a new road would need to go in

-Mr. May responded the 18 foot wide driveway would become 22-foot-wide road

-Atty Geraghty noted a single owner of the property with the apartments being rented

-Mr. May whether private or town owned, the road must be designed to HS22-44 standards

-Ms. Jett-Harris wondered if there was a study done about endangered animals

-Mr. Mulholland asked 3 bldgs, 8 units, 2 bedroom per unit so project only reduced by 1 unit.

-Ms. Jett-Harris asked if the farmhouse would remain and Atty Geraghty responded it would go, along with the sheds on the property

-Mr. Peck asked where the septic systems would be and Mr. May pointed them out on the map provided And Mr. Peck noted that he was bothered by a septic system located on a hill overlooking a brook

-Mr. May explained a benching system, septic tank, leaching field and if designed right should last 50-100 years

-Mr. Mulholland asked who would be approving authority for septic design

-Mr. May and Atty Geraghty noted that Ledge Light Health District would

-Atty Geraghty made the following points:

- \*Road will go over existing driveway
- \*not changing grade of road significantly but will be wider
- \*septic 300 feet from wetlands
- \*site pushed back to occupy where existing house already is
- \*about 1,000 sq ft per unit
- \*minimal amount of grading needed
- \*plan is responsive to erosions and sediment issues previously raised
- \*municipal water is available

-Atty Geraghty thought perhaps the previous sight line distance report was not in the record Exhibit FFFF (it is in the record, as Exhibit GGG)

-Atty Geraghty noted Exhibit II, Minutes of 8/4/2022 ZC Regular Meeting regarding the application of 138 Boston Post Rd, the Commission found that because it was located on a state highway, no traffic report was required and entered Exhibit DDDD, an email response from D. McBride of Regional Director of DOT regarding a sight line mapping of the property and Exhibit FFFF, site line mapping.

-Ms. Thurlow asked if the site line mapping was based on the speed limit or the speed people go

-Atty Geraghty responded that the speed limit is the requirement

-Mr. May entered Exhibit EEEE, map of property driveway entrance, dated 1/28/1983

-Mr. Mulholland asked if the intention was to make the site age restricted to 55+

-Atty Geraghty responded: yes

-Atty Geraghty compared this site to a previous project on 138 Boston Post Rd and noted a longer sight line at this project (91 Boston Post Rd)

-Ms. Markovitz asked if blasting would be required and Atty Geraghty responded: no

-Atty Geraghty suggested keeping the Public Hearing open so that the Members can review the record and ask questions whereas they would not be able to get answers next time.

-Ms. Thurlow noted the need to vote at the next meeting

-Atty Geraghty stated that Commissioner has expertise in a particular area, they need to explain that on the record before the Public Hearing is closed. He also entered Exhibit GGGG, the current condo sale listing of 138 Boston Post Rd (It was approved as apartments and owners are trying to change to ownership)

-Atty Geraghty introduced George Logan, Principal Environmental Scientist and Ecologist at Ecological Services, LLC, in Manchester CT, his resume is Exhibit HHHH and his conceptual sit plan review is Exhibit IIII

-Mr. Logan made the following points:

\*He gave his resume \*he does a global view of environmental features & opinion impacts \*significant watershed size \*17.2 sq miles drainage area \*9.37% developed area in the watershed district \*1.99% impervious surface area \*eastern portion has steep slopes with bedrock \*much of the site is forested expect for existing house and surroundings & 1.2 acre meadow \*little shallow pond on site was manmade around the 1950's \*gave likely history of the property based on 1960's photos \*there are many animal species including wood turtles, smooth green snakes, ribbon snakes, long-eared bats, etc. \*increase in the number of storms, and he liked the conceptual stormwater plan presented and would look forward to developing the plan on more detail, should the project progress \*photos of water quality sampling station for his place of employment \*water quality of Latimer Brook is good \*he spoke of tailoring the stormwater systems to the site, as suggested by the Applicant proposal \*drainage area is tremendous dilution potential

-Ms. Jett-Harris asked about the endangered owls on the State of CT website and whether they were present at the site

-Mr. Logan noted that there are many species on the site and quite possibly those owls are present, and that in June he would do a more in-depth wildlife inventory and can watch out for specific species and take protection for it. He would be proposing restoration and enhancement of the property so it would be better. He noted that the maps provided from the CT DEEP regarding species habitats often noted that certain species 'may' be found in certain areas, and he would use those as a guide to the area

-Ms. Thurlow asked for Public Comment

-Donald Danila, 24 Pattagansett Dr, listed his qualifications as in previous meetings and commented on the following: \*he wished to see a design and maintenance report as this is a private property and not town owned or maintained \*stormwater is an important issue \*Latimer Brook is the main tributary to the Niantic River \*referenced Exhibit YYY, Staff Comments of Water/Sewer Dept, regarding the developers wish to possibly connect to sewers, he believed that would be important \*nitrate and nitrogen species are important, specifically eelgrass \*study done by townsperson regarding nitrogen \*nitrogen increases farther downriver \*

-Ms. Hardy asked if the units would be rented or owned

-Atty Geraghty stated they would be rentals and their pricing would be based on the 8-30g guidelines 30% to be affordable based on the average income in the Town of East Lyme. Exhibit I, Affordability Plan and Exhibit PP, pro forma calculations)

## **DECISION MOTION 2**

**Ms. Jett-Harris moved to continue the Public Hearing to June 20, 2024.**

**Ms. Markovitz seconded the motion.**

**Motion passed 6-0-0.**

The Commission took a 5 Minute break.

-When the meeting resumed, Ms. Thurlow reseated Mr. Foley.

**4-c Application of Janeth Velin, for Rossa Negra, for a renewal of a Special Permit for Outdoor Dining at 214 Flanders Rd, Niantic.**

### **DECISION MOTION 3**

**Ms. Markovitz moved to close the Public Hearing**  
**Ms. Jett-Harris seconded the motion.**  
**Motion passed 6-0-0.**

### **5. Regular Meeting**

**5-a Approval of Minutes of May 2, 2024, Regular Meeting.**

### **DECISION MOTION 4**

**Ms. Markovitz moved to accept the Minute of the 5/2/2024, Regular Meeting, as presented.**  
**Ms. Jett-Harris seconded the motion.**  
**Motion passed 6-0-0.**

### **5-b Continuation of application of Eric S. Parker, Esq, for proposed Text Amendment to Section 20.26 of the East Lyme Zoning Regulations.**

-Ms. Thurlow noted the change in amended regulation was indicated in blue text.

-Ms. Markovitz noted that she thought moving a fast-food drive through off a state road is safer

-Ms. Kalal does not like the idea of adding too many drive throughs on the state road

-Ms. Jett-Harris noted the large amount of back up and traffic and congestion on the state road

-Mr. Peck reminded the Commission that this is just a Text Amendment and not an approval of any particular site, he had been worried about it but could not think of any other sites than what the applicant had in mind that it would be feasible and occur. He noted that if it did end up on King Arthur Rd, because there is not a lot of traffic there now, he did not see a problem. He agreed with the restrictions added

-Ms. Thurlow noted that on a no construction day the traffic is tremendous, and she worries about the on ramp (to I-95) right there.

-Mr. Peck reminded the Commission that a Special Permit to construct would be required and the Commission could deny one if they thought it necessary

-Mr. Foley thought that it would be natural to have commercial enterprises in a commercial zone, and he was inclined to approve as it was exactly what was asked to be presented

-Ms. Jett-Harris stated that people would have to go up King Arthur Dr to go to Starbucks, and this new sit, and the apartments, and the condos, and the hotel, and there is only one way in or out

-Ms. Thurlow asked about the area up the hill

-Mr. Mulholland noted 100 units at Deerfield Village, and about 30-40 units, Motel 6, and roughly 26 empty acres, and Starbucks, and if something were to be developed below Motel 6 there would likely have to be another entrance created up King Arthur Dr to allow additional stacking of anticipated traffic

-Mr. Peck noted that it was not fair to judge this proposed Text Amendment based on King Arthur Dr's site when the Applicant has no defense, no plan for the site presented and he cannot address the concerns for the site. The Text Amendment proposal should be based on general commercial zones wherever fast food is allowed.

-Mr. Foley stated that the exit and entrance being moved off a state highway seems to lessen the traffic impact and he thinks this is a good idea especially with how busy it has gotten and if people have a problem getting in and out of a place, they simply won't go to it anymore

-Ms. Kalal wondered if the attorney (Applicant) was trying to amend the EL Zoning Regulations to fit his desired site

-Mr. Peck stated that yes, but it may work for this site and no other site

-Mr. Peck gave the history of the Starbucks drive thru noting that it was turned down by the Zoning Department and the applicant went before the ZBA three times and eventually obtained a variance, which was illegal in his opinion, as it did not prove a legal hardship on the land. The applicant went before the Zoning Commission, and it was approved.

#### **DECISION MOTION 5**

**Ms. Markovitz, Mr. Foley, and Mr. Peck voted in favor of passing the proposed Text Amendment to Section 20.26 of the East Lyme Zoning Regulations.**

**Ms. Jett-Harris, Ms. Kalal, and Ms. Thurlow voted against the passing of the proposed Text Amendment to Section 20.26 of the East Lyme Zoning Regulations.**

**Motion did not pass 3-3-0.**

**5-c Application by Kristen Clarke, P.E., for an amended, modified, Conceptual Site Plan approval per Conn. Gen. Stat. 8-30g (affordable housing) of the original application for a 25-unit age restricted single-and multifamily 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.**

-Public Hearing Continued-no discussion

**5-d Application of Janeth Velin, for Rossa Negra, for a renewal of a Special Permit for Outdoor Dining at 214 Flanders Rd, Niantic.**

#### **DECISION MOTION 6**

**Ms. Jett-Harris moved to approve the Application of Janeth Velin, for Rossa Negra, for a renewal of a Special Permit for Outdoor Dining at 214 Flanders Rd, Niantic.**

**Ms. Markovitz seconded the motion.**

**Motion passed 6-0-0.**

#### **6. Old Business**

##### **6-a Subcommittee - Outdoor Lighting**

-Mr. Mulholland is still working on it

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

-Mr. Mulholland is still working on it

##### **6-c Affordable Housing Update**

-Staff has turned all documents over to Attorney Bleasdale that he had requested

-Mr. Mulholland noted he has been in trial and hopefully it will come to a close soon

#### **7. New Business**

##### **7-a Application of Bruce & Linda Dworak for Coastal Area Management (CAM) Review for property located at 13 Point Rd GNB, Niantic, Assessor Map 04.14 Lot 2.**

-Mr. Mulholland to schedule the meeting and notify the Applicant.

##### **7-b Any business on the floor, if any, by majority vote of the Commission.**

-Ms. Jett-Harris asked about a previous topic regarding the trees at Stop & Shop

- Mr. Mulholland responded that he had been on the phone with the CT DOT concerning this, as well as with Town Engineer Alex Klose, because the DOT wants to take the trees down as part of their urban renewal but that they had come to an agreement to keep the trees and the sidewalks and replace them if they fail, which is the front landscaping. The rear trees do not seem to have been touched any further.
- Mr. Mulholland also noted that he was able to come to an agreement with the CT DOT regarding a crosswalk at Industrial Park Rd
- Ms. Jett-Harris asked about the Outdoor Dining Patios with illegal structures or fixtures
- Mr. Mulholland is working with staff to draft letters to go out
- Ms. Thurlow asked about the 138 Boston Post Rd development, specifically as it was approved for apartments and now the units seem to be advertised as condos.
- Mr. Mulholland had left a message for Attorney Zamarka looking for guidance and had not heard back as yet, noting that it had been approved via Zoning Commission as rentals and asking whether the applicant needs to come back before the Commission for a change

**7-c Zoning Official**

There was no comment.

**7-d Comments from the Ex- Officio**

There was no comment.

**7-e Zoning Board Liaison to the Planning Commission**

- Mr. Liska was not present to comment on the meeting, but plans to at the next meeting.
- Ms. Markovitz agreed that she would attend the 6/11/2024 meeting.

**7-f Correspondence**

There was no correspondence

**7-g Comments from the Chairman**

- Ms. Thurlow asked about Aquifer protection
- Mr. Mulholland stated that he has information to be emailed and invited the Commissioners to contact him with any questions.

**8. Adjournment**

**DECISION MOTION 7**

**Ms. Markovitz moved to adjourn the Regular Meeting of the East Lyme Zoning Commission at 10:30PM**

**Ms. Jett-Harris seconded the motion.**

**Motion passed 6-0-0.**

**Respectfully submitted,  
Jessica Laroco  
Recording Secretary**