

TOWN OF EAST LYME

ZONING COMMISSION

MAY 16, 2013

PUBLIC HEARING MINUTES

Members Present:

Marc Salerno, Chairman
Terence Donovan
Matthew Kane
Matthew Walker
Norm Peck
George McPherson
Peter Lukas, Alternate (Did Not Sit)
William Dwyer, Alternate (Did Not Sit)

FILED IN EAST LYME
CONNECTICUT
MAY 21, 2013 AT 8:55 AM PM
Valen Mulholland, ATL
EAST LYME TOWN CLERK

Members Absent:

James Liska, Alternate

Also Present:

Bill Mulholland, Zoning Officer
Holly Cheeseman, Ex-Officio
Attorney Mark Zamarka

CALL TO ORDER

Chairman Salerno called the Public Hearing to order at 7:31 p.m.

PLEDGE OF ALLEGIANCE

Chairman Salerno led the assembly in the Pledge of Allegiance.

PUBLIC DELEGATIONS

There were no public delegations.

1. MODIFIED APPLICATION OF THEODORE A. HARRIS, AGENT FOR JAG CAPITAL DRIVE, LLC FOR APPROVAL OF AFFORDABLE HOUSING DEVELOPMENT, AND A CONCEPTUAL SITE PLAN TO CONSTRUCT SIXTY (60) RESIDENTIAL UNITS ON PROPERTY IDENTIFIED IN THE APPLICATION AS WEST MAIN STREET/CAPITAL DRIVE, ASSESSOR'S MAP 09.0, LOT 19.
2. MODIFIED APPLICATION OF THEODORE A. HARRIS, AGENT FOR JAG CAPITAL DRIVE, LLC TO REZONE FROM ITS EXISTING ZONING DESIGNATION (LIGHT INDUSTRIAL) TO AFFORDABLE HOUSING DISTRICT FOR PROPERTY IDENTIFIED IN THE APPLICATION AS WEST MAIN STREET/CAPITAL DRIVE, ASSESSOR'S MAP 09.0, LOT 19.

Item 1 and Item 2 were opened simultaneously due to cross testimony for both items.

Mr. Walker read a letter from the Planning Secretary, Frank Balantic.

Mr. Walker read a letter from SCCOG Regional Planning Commission, James D. Rabbitt.

Mr. Walker read a letter from the East Lyme Water and Sewer Commission, Paul M. Formica.

Mr. Salerno stated this is a modified application of Affordable Housing, the Commission has 65 days from receipt of the application to make a decision.

Attorney Ted Harris, 351 Main Street presented the modified application. It is an application to modify the Affordable Housing Development. Section 8-30g allows them to return with a modified proposal. He asked that the record from the prior hearing be incorporated into this one.

Exhibit A - Entire Record from Previous Hearing

The purpose of this modified application is to find solutions raised by the public and the Commission to allow them to approve this application. The application has been brought under Section 8-30g, they brought a full and complete site plan, and not a conceptual site plan as the agenda stated. Under Section 8-30g they may approve an application notwithstanding that it doesn't comply with the Zoning Regulations of that zone. It allows site specific approval. They heard from the neighbors on possible implications. They have increased the buffer, they have moved buildings and made sure they are at least 50 feet back from the property line with one exception. They are not trying to modify Section 32. This application may override local zoning due to it being an affordable housing request. The approval is site specific.

Attorney Harris presented the following:

- Exhibit B Certificate of Mailing**
- Exhibit C Public Hearing and Regular Meeting Minutes regarding approval of 38 Hope Street**
- Exhibit D Public Hearing and Regular Meeting Minutes regarding approval of Seaspray**
- Exhibit E Letter from Project Engineer**
- Exhibit F Modified Site Layout Plan**

Attorney Harris stated the number of units have changed. They originally requested 69, now the application is for 60 units, they have decreased 9 units in the area along the interface with Capitol Drive. The revised plan removed the building closest to Capitol Drive. There is now open space in that area. They also removed two units off of another building. All buildings that interface with the LI zone have a 50 foot buffer, except for the corner of one unit.

Attorney Harris presented the following:

- Exhibit G Revised Site Plan dated March 25, 2013**

They have also increased the landscaping to provide extra screening. The Beauty Supply Company was concerned with the building being so close to their business, at the previous public hearing. They sell beauty supply products and stated they could be dangerous to people living nearby. They sell a wide

variety of beauty products and according to their website it looks like a retail store similar to a beauty salon or a CVS.

Attorney Harris presented the following:

Exhibit H Pictures of Website of Salon Associates

It seems their operation is consistent with residential uses, regardless they have improved the proximity to them with the modified plan.

On the easterly side is Birk Manufacturing, they run an efficient operation, they are certified in many things. They must comply with a variety of regulations. Mr. Birk mentioned at the previous public hearing that they had an accident, but they can't say the applicant can't use his land because of the accident that Birk had. His building will be 360 feet from any unit. They can co-exist without any issues. There will be no traffic through the industrial park to this development, the only entrance will be a crash gate, in case of emergency. Residential units can co-exist in close proximity with LI uses.

Attorney Harris presented the following:

Exhibit I Schematic Aerial of 38 Hope Street

38 Hope Street co-exists with Niantic Lumber, some of the buildings are within 8 feet of the property line. There are trailer trucks, railroad cars where lumber comes in. People understood that operation was there. That is much closer than what they are proposing here. They do not want to affect Mr. Birk's business. They feel they can have a residential development that won't impact him.

Attorney Harris presented the following:

Exhibit J Aerial View of Proposed Development

Exhibit K Aerial View of Proposed Development

Camp Niantic trailers are within a 400 foot range of Birk Manufacturing. On Four Mile River Road there are residences. There are many houses that have been there a long time.

Mr. Mulholland asked what the trailer park is zoned, and the houses on Four Mile River Road.

Mr. Harris stated the trailer park is zoned SU, and the Four Mile River Road houses are in Old Lyme.

James Chambers of Pequot Development Association presented the following:

Exhibit L Proposed Screening Trees for Rocky Neck Village

Mr. Chambers stated there are three different species of trees they will use. They will be different species of evergreens. They will be deer resistant, will grow approximately 1 foot a year, within three to five years they should completely screen the project from the industrial park. They also will have a 6 foot privacy fence, which will prevent headlights from shining into the residences at night. This new modified plan will also allow more walking trails and open space for residents.

Attorney Hollister presented the following:

- Exhibit M** Letter regarding the approval of Bride Brook in 1990 of 1989
- Exhibit N** Aerial Photo of Seaspray and Bride Brook and the applicant property

Attorney Hollister stated in the Wisniewski case it was stated that the Zoning Commission cannot deny just because an application doesn't meeting the underlying zoning regulations. The March 7, 2013 denial of the original application was based on one reason, that it was in the LI Zone. The Zoning Commission is obligated to list all reasons should they deny an application. If the applicant has to appeal, they will ask the Court to approve the site plan. They would not come back to have the site plan approved. If this is denied, all reasons must be stated.

Attorney Harris stated all industrial land is not equal, most was designated in the 70's, and the world has changed since then. This is a unique parcel of land. A good portion of it is wetlands. This is a better use of the parcel because of the unique characteristics. They did have an industrial use proposed for that site, they marketed it for five years with very little interest.

Mr. Mulholland asked what zone 38 Hope Street was.

Attorney Harris stated it was LI, and that was changed to Affordable Housing Zone, and it abuts CB.

Mr. Walker read a letter from James Chambers.

Mr. Walker read a letter from Ken Turcotte.

Mr. Walker read a letter from Victor Benni, Town Engineer.

Attorney Harris stated they have no issue with adding all of the engineering details Mr. Benni discussed in his letter to the plan.

James Chambers read a letter from Dan Barber, a real estate professional employed by Northeast Property Group.

Mr. Chambers presented the following:

- Exhibit O** Letter from Dan Barber

Randall Conradi, stated he is a market and sales agent. He has looked closely at the changes that were done to the application. There are 10 homes for rent in East Lyme, only three that would qualify for affordable housing. There is an abundance of commercial land in East Lyme, and surrounding towns. They are required to make decisions for the common good of the town. Only 3.5 children per class would be added because of this development, the tax increase will offset the costs. It is important the Commission think of the overall benefit to the Town and approve this application.

Mr. Conradi presented the following:

- Exhibit P** Statements and supporting documents of Mr. Conradi.

Norman Birk, 20 Smith Avenue presented the following:

Exhibit Q Photos of Accident at 14 Capitol Drive

Mr. Birk stated accidents happen, they have permits, and their systems are in good order. The property is industrial property. He provides 95 jobs, his business is growing 20% a year. He will have to leave if he can't expand. There is very little industrial property in town. He would rather not see this go through.

Susan Spellman, of 72 Old Farm Road, Groton stated she just expanded her business, International Cosmetics. They will distribute throughout the United States. They are nothing like CVS, their products are for use by licensed professionals only. The display in their showroom is required by their vendors. They have classes that are held by licensed professionals. They will have additional trailer truck traffic, and the danger of the chemicals they store will not change. She has been visited by the FBI, and been provided with private sector advisories. She is concerned that children will be living in the neighborhood. She had a complaint from a neighbor on Four Mile River Road about her security lights shining in her window. There is a potential for further dissatisfaction. They had to add on to accommodate warehouse space. If there is no room to expand they may need to relocate.

Susan Spellman presented the following:

Exhibit R Letters of Opposition from Coastal Real Estate, Salon Associates, and International Cosmetic Associates

Mr. Peck asked if they had looked into dividing this into smaller one acre lots.

Mr. Chambers stated they tried to market it for an industrial use for five years and there was no interest. The economy was good, but there was no interest. There is no frontage on the industrial park. There was no thought of subdividing into one acre lots. There is a narrow strip that is developable.

Attorney Harris stated because of the wetlands they are dealing with an upland review area and wetlands permitting for every part of that site.

Mr. Mulholland asked about the previous industrial building approved on that site.

Mr. Chambers stated attached to Mr. Barber's letter was a copy of the advertisement for the industrial building and the site plan. The market rejected that, there was no demand.

Mr. McPherson asked about the zone change.

Attorney Harris stated they have applied for the affordable housing development pursuant to 8-30g, the Town has treated it as a zone change. He indicated he did not request the zone change.

Chairman Salerno asked if they have the option to deny the zone change, but approve the affordable housing.

Attorney Harris stated yes. This Commission has the power to approve notwithstanding the underlying zone.

Mr. Peck asked if there have been any complaints from Seaspray regarding the industrial park.

Mr. Mulholland stated yes, there was a complaint about the zumba class being too loud. The uses in that industrial park are more commercial than industrial. There have been minor complaints.

Chairman Salerno asked about the one unit that was within the 50 foot buffer.

Attorney Harris stated the unit could be shifted to be out of the 50 foot buffer.

Mr. Chambers stated they can stagger that unit down and it can be out of the buffer.

Attorney Hollister stated if there is no health and safety basis for turning down the application they must approve it.

Chairman Salerno asked what would happen in 40 years if the units become market rate, and they are non-conforming.

Attorney Hollister stated after 40 years the price restrictions go away.

Mr. Mulholland stated could they have a LI use in one of the units if they are not making the zone change.

Attorney Hollister stated theoretically yes, but they would have to come back to this Commission for approval. The buildings will be built for residential use only.

Mr. Chambers stated these will be rental units, condominiums are not in the plans.

Mr. Mulholland asked about the Affordability Plan being modified.

Attorney Hollister stated they will modify that.

Attorney Harris stated they can condition the approval for residential use only. They cannot restrict the use of this property because Mr. Birk may have another accident. They can't burden the property because of what potentially may happen on the neighbor's property. They are also putting up fencing, so they are hoping to keep people out of the industrial park. This is a use that makes sense for this property.

Motion (1) Mr. McPherson moved to close both Public Hearings.

Seconded by Mr. Peck.

Motion Passed 6-0.

Chairman Salerno noted they have until June 8th to make a decision.

Respectfully Submitted,

A handwritten signature in black ink that reads "Karen Miller Galbo". The signature is written in a cursive style with a large initial 'K' and 'G'.

Karen Miller Galbo
Recording Secretary