

TOWN OF EAST LYME

ZONING COMMISSION

JUNE 6, 2013

REGULAR MEETING MINUTES

Members Present:

Marc Salerno, Chairman
Matthew Kane
George McPherson
Matthew Walker
Norm Peck
William Dwyer, Alternate (Sat for Regular Meeting)
Peter Lukas, Alternate

FILED IN EAST LYME
CONNECTICUT
June 12, 2013 AT 8:40 AM PM
Marc Salerno
EAST LYME TOWN CLERK

Members Absent:

Terence Donovan
James Liska, Alternate

Also Present:

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

CALL TO ORDER

Chairman Salerno called the meeting to order at 7:34 p.m.

PLEDGE OF ALLEGIANCE

Chairman Salerno led the assembly in the Pledge of Allegiance.

Chairman Salerno requested Peter Lukas sit as a Regular Member for the Meeting. Mr. Lukas stated he was not familiar with the record, and he asked that he not be seated for this meeting.

Mr. Dwyer was sat as a Regular Member for the meeting, and confirmed that he was familiar with the items on the Agenda.

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 discussed together.

Chairman Salerno stated this is a modified affordable housing application. The first one the Zoning Commission denied, they had 65 days to open this modified application and come up with a decision. They heard testimony and at the Special Meeting last week they directed staff to draft a motion to deny the modification.

Mr. Walker read the following Resolution:

**JAG CAPITAL DRIVE, LLC
AMENDED APPLICATION TO RE-ZONE AND FOR APPROVAL OF
AFFORDABLE HOUSING DEVELOPMENT**

WHEREAS, on March 28, 2013, JAG Capital Drive, LLC ("Applicant"), filed with the East Lyme Zoning Commission ("Commission") a modification, which pursuant to Section 8-30g(h) of the General Statutes, is treated as an amendment to its original application for approval of an affordable housing development known as "Rocky Neck Village," to be located on Capital Drive at or near its intersection with Route 156 in East Lyme, which was filed on August 7, 2012 ("Amended Application"); and

WHEREAS, on May 16, 2013, the Commission held a public hearing on the Amended Application, during which it heard testimony and accepted exhibits submitted by the Applicant and individuals for consideration during the hearing process. Pursuant to a request by the Applicant, the record from the public hearing on the original application, which was held on February 7, 2013, was made a part of the record for the hearing on the Amended Application. In making its decision the Commission is considering and taking into account all of the testimony and exhibits submitted at the May 16, 2013 public hearing and the record from the February 7, 2013 public hearing; and

WHEREAS, the Applicant has requested that the Commission review the Amended Application under both traditional affordable housing analysis and the "industrial zone" exemption, pursuant to General Statutes Section 8-30g(g); and

WHEREAS, the Commission's decision must be sufficiently supported by record evidence and the Commission must make a collective statement of its reasons for its decision on the record; and

WHEREAS, for the purposes of this Resolution, the Commission will address the Amended Application in two separate parts:

- 1) As an affordable housing application that would locate affordable housing in an area which is zoned for industrial use and which does not permit residential uses (the "Industrial Zone" Exemption) pursuant to General Statutes Section 8-30g(g)(2); and**
- 2) As an application for approval of an affordable housing development pursuant to General Statutes Section 8-30g(g)(1).**

1. INDUSTRIAL ZONE EXEMPTION

WHEREAS, General Statutes Section 8-30g(g)(2)(A) provides an exemption for affordable housing applications in areas which are zoned for industrial use and which do not permit residential uses; and

WHEREAS, according to the Amended Application, the proposed development would be located entirely in an area that is presently zoned Light Industrial ("LI") according to the East Lyme Zoning Map; and

WHEREAS, Section 11 of the East Lyme Zoning Regulations ("Regulations") describes the LI zone as "suitable for heavy commercial and light manufacturing, oriented essentially to major transportation facilities. The purpose of this district is to provide for industrial and commercial uses in an open setting that will not have objectionable influences on adjacent residential and commercial districts"; and

WHEREAS, Section 11 of the Regulations does not allow residential uses in the LI zone as either a permitted use or as a special permit use; and

WHEREAS, the Commission heard testimony from other property and business owners in the LI zone regarding the industrial nature and uses of the area, including, but not limited to, manufacturing processes, heavy truck travel and chemical manufacturing, storage and transportation; and

WHEREAS, the Commission finds that the LI zoning district is an area which is zoned for industrial use; and

WHEREAS, the Commission finds that residential uses are not permitted in the LI zoning district; and

WHEREAS, the Amended Application does not indicate that it is seeking approval for assisted housing as defined in Section 8-30g(a) of the General Statutes; and

BE IT THEREFORE RESOLVED, that the East Lyme Zoning Commission hereby DENIES the Amended Application of JAG Capital Drive, LLC for approval of an affordable housing development to be located on Capital Drive at or near its intersection with Route 156 in East Lyme, for the reason that the development is located entirely in an area which is zoned for industrial use and which does not permit residential uses, and that the Application does not seek approval for assisted housing as defined in Section 8-30g(a) of the General Statutes.

2. APPLICATION FOR APPROVAL OF AFFORDABLE HOUSING DEVELOPMENT

WHEREAS, General Statutes Section 8-30g(g)(1) provides that, on appeal, it is the Commission's burden to prove, based on evidence from the record that its decision and the reasons cited for its decision, are supported by sufficient evidence in the record, and that its decision is necessary to protect substantial interests in public health, safety or other matters which the Commission can legally consider, that such public interests clearly outweigh the need for affordable housing, and that such public interests cannot be protected by reasonable changes to the affordable housing application; and

WHEREAS, the Commission finds that Amended Application is inconsistent with the 2009 East Lyme Plan of Conservation and Development; and

WHEREAS, the Commission finds that the Amended Application is inconsistent with the 2007 Regional Plan of Conservation and Development; and

WHEREAS, the Amended Application locates the entirety of the proposed development within the LI zone, an area which is zoned for and used for industrial purposes; and

WHEREAS, said industrial uses include, but are not limited to, manufacturing, chemical manufacturing, heavy truck travel, and the transportation and storage of toxic chemicals and substances; and

WHEREAS, the Commission finds that within the last year there was an industrial accident in this LI zone, which resulted in the production of chlorine gas and necessitated the evacuation of the entire zone, and which required responses by hazardous materials teams, the Connecticut Department of Energy and Environmental Protection and the Environmental Protection Agency; and

WHEREAS, the Commission finds that there is a quantifiable probability that specific harm will result to the public interests in health and safety if the Amended Application is granted; and

WHEREAS, the Commission finds that its decision is necessary to protect the public interest in health and safety, that such public interest cannot be protected by reasonable changes to the Amended Application, and that the risk of such harm to public interests outweighs the need for affordable housing;

BE IT THEREFORE RESOLVED, that the East Lyme Zoning Commission hereby DENIES the Amended Application of JAG Capital Drive, LLC, for approval of an affordable housing development to be located on Capital Drive at or near its intersection with Route 156 in East Lyme, for the reason that there is a quantifiable probability that specific harm will result to the public interests in health and safety if the Amended Application is granted, and that denial of the Amended Application is necessary to protect the public interest in health and safety, that such public interest cannot be protected by reasonable changes to the Amended Application, and that the risk of such harm to public interests outweighs the need for affordable housing.

Attorney Zamarka stated the title of the Motion should be the following:

"JAG Capital Drive, LLC Amended Application for Approval of Affordable Housing Development"

Chairman Salerno stated they came to a consensus at the last meeting. He asked that each member reiterate their opinions.

Mr. Peck stated the Plan of Development recommends accommodating industrial growth, both neighboring businesses expressed the need to expand in the future, this will prohibit that and will possibly cause them to move out of Town. The industrial demand in town is increasing. He studied the parcel several years ago, and found it could be divided into 7 or 8 individual lots. Liberty Way co-exists according to the applicant. Liberty Way is a different park, it is more of a business park. Colton Road and Capital Drive is very industrial. These are real industrial uses here. Three uses were mentioned by the applicant alluding to residential uses, convalescent homes which are a place to get well. Hotel was

another use mentioned, which accommodates transients. They also mentioned schools where dorms are a permitted use, dorms are an incidental use. The industrial park owners mentioned kids already ride their bikes in their parking lots. There will be access to Capitol Drive from this project, and that would get children on the roads. He thinks the case for public safety outweighs the need for affordable housing at this location.

Mr. Dwyer stated he can't envision putting a residential area into this industrial park. He has a concern for safety and traffic. It is like moving by an airport and then complaining about the noise.

Mr. Walker stated there is a significant question of public safety. This is a real LI park, with real industrial uses going on. There was an accident within the past year. If this was approved and the residential units were present at the time of that accident, the residents would have had to be evacuated. The business owner testimony was very compelling. LI doesn't allow residential uses. We do need more affordable housing and while the modifications to the application were impressive, the overriding issues are not enough to mitigate the problems that were cited.

Mr. McPherson stated he appreciates the quality of the project, but it is in the wrong location. He would like to see a more suitable location for this project. Health and Safety is more important.

Mr. Kane stated he echoes everyone's statements, and the owner's testimony was an eye opener. He agrees with Mr. Dwyer's comment about the airport. This could damage the business owners too much and there is a risk to health and safety.

Mr. Salerno stated the project is very attractive. Unfortunately he will vote against it. He drove down to the parcel, it is very unique. The time is here to increase LI land in town and not decrease it. Doing this would take some of the last lots of LI on the map. Businesses should be able to operate in these zones without fear of neighbors complaining. It would be a disservice to the Town if they reduce the LI in town. The owners would like to expand and they have the right to expand and this could limit their growth. They did approve a residential use in an LI and they have had complaints from people and that is more like a commercial park. The safety issues are just an example of what could happen.

Motion (1) Mr. McPherson moved to approve the Denial for JAG Capital Drive, LLC Amended Application for Approval of an Affordable Housing Development as read into the record with the language in the title amended to now be entitled "JAG Capital Drive, LLC Amended Application for Approval of Affordable Housing Development".

Seconded by Mr. Kane.

Motion Passed 6-0.

Mr. Mulholland stated this will be published next Thursday June 13th and will be effective June 14th.

Chairman Salerno asked if they require separate motions for Items 1 and 2.

Attorney Zamarka stated they were denying Item 1 and 2 in the same resolution.

3. APPLICATION OF KEITH NELSON FOR DOCKO, INC., AGENT FOR LISA REARDON, OWNER FOR A COASTAL AREA MANAGEMENT REVIEW TO INSTALL EROSION PROTECTION AT THE TOE OF THE ERODING COASTAL BLUFF, AT PROPERTY IDENTIFIED IN THE APPLICATION AS 95 QUARRY DOCK ROAD, NIAN TIC, CONNECTICUT.

Mr. Walker read a memo from Mr. Mulholland.

Keith Neilson of Docko, Inc., stated the property suffered erosion damage due to Storm Sandy and other storms. He included photos for the Commission. He stated it was hard to recognize because the Mountain Laurel obscures the bank. There was 3 or 4 feet of bank washed away at the bottom. The erosion is continuing and will continue. Surface runoff comes down and further destabilizes the bank. The most important coastal resource on site is the river, tidal wetlands are on site, and there is a patch of flora at the base of the bank. They will use small equipment at the high edge of the bank, which will be a small excavator. There will be geo textile fabric spread to distribute loads of stones. Spencer Beers will be doing the work. The Coastal lines will be staked, all work will be done within the Town jurisdiction, not in DEEP's jurisdiction. The stairway will be removed.

Mr. Mulholland asked if Mr. Neilson will be overseeing the work to ensure the plan is followed.

Mr. Neilson stated he and the owner have not discussed that.

Mr. Reardon shook his head in the affirmative, and Mr. Neilson stated he would be overseeing the work.

Chairman Salerno asked if they would be taking any materials out.

Mr. Neilson stated some will be removed to achieve a uniform effect. Where it is eroded they will be filling in with as much immovable stone as necessary. The root structure is not adequate for binding with Mountain Laurel, and they will be planting Juniper.

Mr. Mulholland asked if Junipers were salt tolerant.

Mr. Neilson stated they are.

Mr. Walker asked if there was an original seawall.

Mr. Neilson stated there was no seawall, just a coastal bluff, and a small narrow beach.

Chairman Salerno thanked Mr. Neilson for always having very thorough reports.

Motion (2) Mr. McPherson moved to approve the application of Keith B. Neilson, P.E., for Docko, Inc., for a Coastal Area Management Review for shoreline protection improvements at property identified as 95 Quarry Dock Road, Niantic.

REASONS:

- 1) Application is consistent with all applicable goals and conditions of the CAM Act.
- 2) Applicant has taken all reasonable measures to mitigate any adverse impacts of the proposed activity on both coastal resources and future water dependent uses.

Seconded by Mr. Dwyer.

Motion Passed 6-0.

4. APPROVAL OF MINUTES OF MAY 30, 2013

Motion (3) Mr. McPherson moved to approve the Minutes of May 30, 2013.

Seconded by Mr. Walker.

Motion Passed 5-0-1 (Mr. Dwyer Abstained)

OLD BUSINESS

1. SIGN SUBCOMMITTEE

There was nothing to report.

2. OUTDOOR DINING BARS SUBCOMMITTEE

There was nothing to report.

NEW BUSINESS

1. APPLICATION OF THE COMMON LOON RESTAURANT, FOR A SPECIAL PERMIT FOR OUTDOOR DINING AT PROPERTY IDENTIFIED IN THE APPLICATION AS 135 BOSTON POST ROAD, EAST LYME, CONNECTICUT.

Chairman Salerno asked Mr. Mulholland to schedule this for a Public Hearing.

2. APPLICATION OF JUSTIN KROL, FOR A SPECIAL PERMIT TO OPERATE A FAST FOOD RESTAURANT AT PROPERTY IDENTIFIED IN THE APPLICATION AS 323 FLANDERS ROAD, EAST LYME, CONNECTICUT

Chairman Salerno asked Mr. Mulholland to schedule this for a Public Hearing.

3. ANY BUSINES ON THE FLOOR, IF ANY BY THE MAJORITY VOTE OF THE COMMISSION

There was no business on the floor.

4. ZONING OFFICIAL

Mr. Mulholland stated they have been busy. He has been working on Gateway, the project across from the Midway Mall, there is a lot of action on 156, Henny Penny should be getting started, and Mr. Smith's project on Main Street with the 26 units may be moving forward, and Mr. Norton's project also.

5. COMMENTS FROM EX-OFFICIO

Ms. Cheeseman stated the Board of Selectmen met last night and did some end of the fiscal year housekeeping. There will be a Special Town Meeting on various appropriations. The Amtrak bridge opening will be rescheduled from tomorrow.

Chairman Salerno asked if Mr. Mulholland could get the literature from the study done by UCONN on the parking lot erosion at Cini Park.

6. COMMENTS FROM ZONING BOARD LIAISON TO PLANNING COMMISSION

Mr. Donovan was not present.

7. COMMENTS FROM CHAIRMAN

Mr. Salerno had no comments.

8. ADJOURNMENT

Motion (4) Mr. Dwyer moved to adjourn the meeting at 8:30 p.m.

Seconded by Mr. McPherson.

Motion Passed 6-0.

Respectfully Submitted,



Karen Miller Galbo
Recording Secretary