

**TOWN OF EAST LYME
ZONING COMMISSION
DECEMBER 6, 2012
REGULAR MEETING MINUTES**

Members Present:

**Mark Salerno, Chairman
Matthew Walker
Terence Donovan
George McPherson
Matthew Kane
Norm Peck
William Dwyer, Alternate
James Liska, Alternate**

FILED IN EAST LYME
Dec 12, 2012 AT 8:25AM


EAST LYME TOWN CLERK

Members Absent:

John Hogan, Alternate

Also Present:

**Town Attorney Ed O'Connell
Town Attorney Mark Zamarka
Rose Ann Hardy, Ex-Officio
Bill Mulholland, Zoning Officer**

1. PROPOSED TEXT AMENDMENTS TO SECTION 32 OF THE EAST LYME ZONING REGULATIONS, REGARDING AFFORDABLE HOUSING DEVELOPMENTS, PURSUANT TO AN APPLICATION FILED BY LANDMARK DEVELOPMENT GROUP, LLC, ON REMAND FROM THE SUPERIOR COURT.

Attorney Mark Zamarka presented two possible text amendments that could be used as an attachment to the Resolution as Schedule A. One version was the one that was published for the Public Hearing, which included 32.4.11 regarding the tidal wetlands, and does not include the markups that were suggested by Attorney Hollister for Landmark at the Public Hearing.

Attorney Zamarka reviewed both possible text amendments with the Commission.

There was discussion regarding Section 32.4.11, and if the tidal wetlands would be addressed by the CAM Act. Attorney Zamarka stated they have until December 22nd to render a decision. He recommended they make a decision tonight.

Chairman Salerno asked if the Judge discussed section 32.4.11 in his decision.

Attorney Zamarka stated he did not.

There was discussion of the tidal wetlands section and the CAM act. There would still be a CAM review needed for tidal wetlands.

Attorney O'Connell stated Judge Prescott stated the tidal wetland policies take precedent over affordable housing. They can keep that Section in and put it into the proposed markups done by Attorney Hollister.

Motion (1) Mr. McPherson moved to approve the following:

WHEREAS, on June 2, 2005, Landmark Development Group, LLC and Jarvis of Cheshire ("Applicant") filed with the East Lyme Zoning Commission ("Commission") an "Affordable Housing Application" ("Application") entitled "Riverview Heights (A Residential Community)" consisting of a set of plans for 840 total units of which 252 would be affordable housing units, a drawing of the proposed units, an affordability plan and proposed amendments to Section 32 of the East Lyme Zoning Regulations ("Regulations"), regarding Landmark Development's proposed residential development adjacent to Caulkins Road; and

WHEREAS, the Application included proposed text amendments to Section 32 of the Regulations ("Affordable Housing District"); and

WHEREAS, the Commission approved the Application in part and denied the Application in part, including the proposed text amendments to Section 32 of the Regulations; and

WHEREAS, the Applicant appealed the decision of the Commission to the Superior Court; and

WHEREAS, trial to the court on the Applicant's appeal began in October, 2010, and concluded in January, 2011; and

WHEREAS, on October 31, 2011, the Honorable Stephen F. Frazzini issued a Memorandum of Decision ("Decision") that remanded the Application to the Commission and ordered the Commission to "[a]dopt amendments to the town's zoning regulations consistent with this opinion and incorporating Landmark's proposed amendments, with the exception of requiring, before a final approval of an affordable housing application, that an affordable housing applicant provide, in the conceptual, preliminary or final site plan, adequate information ... that would allow the Commission to adequately evaluate the proposed development to ensure its harmony with the relevant environmental, developmental, health and safety considerations and other considerations which it may consider. The commission shall use its own expertise and judgment to assess precisely which requirements are necessary to enable it to make such assessments and, consistent with this opinion, at what stage various types of information should be provided;" and

WHEREAS, on June 1, 2012, the Applicant submitted to the Commission a letter requesting that the Commission adopt further modifications to the Applicant's proposed text amendments to Section 32 of the Regulations as submitted with the 2005 Application; and

WHEREAS, the Commission and the Applicant agreed that, because the case was on remand to the Commission pursuant to the Decision, the June 1, 2012 letter was not a new application and was not subject to the land use timelines set forth in General Statutes §8-7d; and

WHEREAS, the Commission, with input and assistance from the Applicant, drafted a proposed text amendment to Section 32 of the Regulations that incorporated the Applicant's proposed text amendment and complied with the Decision; and

WHEREAS, on October 18, 2012, the Commission held a public hearing on the proposed text amendment and listened to testimony during the hearing. Exhibits were submitted by the Applicant, the Commission, and individuals for consideration during the hearing process. In making its decision the Commission is considering and taking into account all of the testimony and exhibits submitted at the hearing; and

WHEREAS, at the public hearing, a representative of the Save the River/Save the Hills, Inc. and The Friends of the Oswegatchie Hills, the Intervenors in the Superior Court action ("Intervenors"), submitted into the record a memo requesting that the Commission include in the proposed text amendment additional language regarding open space; and

WHEREAS, the Commission determined that the additional open space language proposed by the Intervenors did not comply with statutory public hearing notice requirements, and the Commission would not include the additional open space language in the proposed text amendment.

BE IT THEREFORE RESOLVED, that the East Lyme Zoning Commission hereby ADOPTS Schedule A, which is attached hereto and made a part hereof, as a text amendment to Section 32 of the East Lyme Zoning Regulations ("Affordable Housing District").

SCHEDULE A

Section 32 of the Zoning Regulations of the Town of East Lyme shall be amended to read as follows:

SECTION 32: - AFFORDABLE HOUSING DISTRICT

- 32.1 GENERAL DESCRIPTION AND PURPOSE:** A district designed to provide for, encourage and accommodate affordable housing, as defined by the Connecticut General Statutes Section 8-39a and Section 8-30g, *et seq.*
- 32.2 DESIGNATION OF AFFORDABLE HOUSING DISTRICT:** An Affordable Housing District (AHD) may be proposed for and located on parcels of land, or combinations of adjacent parcels of land, containing at least ten (10) acres.
- 32.3 PERMITTED USES:** The following uses of buildings and/or land and no others shall be permitted subject to site plan approval in accordance with Section 24:
- 32.3.1** An affordable housing development, as defined in Connecticut General Statutes Section 8-30g. The development may consist of single-family or multi-family dwellings arranged on single or multiple lots within the District.
 - 32.3.2** Accessory uses customarily incidental to the above permitted uses.
- 32.4 DIMENSIONAL AND BULK REGULATIONS**
- 32.4.1** **LOT SIZE:** Lots for single-family dwellings shall contain no less than ten thousand (10,000 square feet). Lots for multi-family dwellings shall contain no less than ten (10) acres.
 - 32.4.2** **HEIGHT:** The maximum height of single-family detached dwellings shall be thirty (30) feet.
 - 32.4.3** **MULTI-FAMILY UNIT DENSITY:** The maximum number of multi-family dwelling units permitted on any lot shall be as follows:

1 bedroom: 5,445 square feet / unit (8 units / acre)

2 bedrooms: 7,260 square feet / unit (6 units / acre)

3 or more bedrooms: 8,712 square feet / unit (5 units / acre)

On lots to which public sewer and water facilities are not available, the maximum density of multi-family dwelling units shall be one unit per ten thousand (10,000) square feet of land.

32.4.4 FRONTAGE: Each lot and/or land area shall have not less than fifty (50) feet frontage.

32.4.5 SETBACKS: No new building or structure shall be placed less than one hundred fifty (150) feet from the street line or less than one hundred (100) feet from the boundary of any other lot or parcel outside of the AHD, unless such lot or parcel is already zoned for multi-family residential uses.

32.4.6 BUFFERS: A suitable landscaped buffer strip not less than one hundred (100) feet wide shall be provided along the boundary of any other lot or parcel outside of the AHD, unless such lot or parcel is already zoned for multi-family residential uses, in which case the Commission may provide for a buffer strip of not less than twenty-five (25) feet from the adjacent boundary line.

32.4.7 BUFFER AREA: There shall be provided a landscaped side or rear yard buffer area of at least one hundred (100) feet in width adjacent to the boundary of any other lot or parcel outside of the AHD, unless such lot or parcel is already zoned for multi-family residential uses, in which case the Commission may provide for a buffer strip of not less than twenty-five (25) feet from the adjacent boundary line. All buffer areas shall be planted or preserved in a natural state in a mixture of evergreen and deciduous trees and shrubs and shall be maintained in proper order so as to protect adjacent properties and present a reasonably opaque, natural barrier to a height of ten (10) feet.

32.4.8 GROUPING: The minimum distance between any two (2) structures shall be twenty-four (24) feet, unless the Commission finds that the design of the proposed development would be benefited by closer spacing.

32.4.9 YARDS

Front Yard: 25 feet

Side Yard: 25 feet

Rear Yard: 50 feet

32.4.10 LOT COVERAGE: The total lot coverage of all buildings and structures on any lot shall not be greater than thirty (30) percent of the lot area.

32.4.11 TIDAL WETLANDS: A 150' non-disturbed buffer shall be required from tidal wetlands and watercourses.

32.5 OFF-STREET PARKING: Off-street parking and loading spaces shall be provided in accordance with the provisions of Section 22 of these regulations. Spaces within garages shall count towards the required minimum number of spaces.

32.6 OPEN SPACE: For any affordable housing development, an area equal to ten (10) percent of the total lot area shall be set aside as open space. Buffer strips required pursuant to Section 32.4.6 shall be included in the computation of open space.

32.7 AFFORDABLE HOUSING RESTRICTIONS

Prior to the issuance of any building permit for a development approved pursuant to this Article, there shall be recorded in the East Lyme land records a document entitled "Affordable Housing Development Restrictions," executed by the owner of the AHD; dated, witnessed, and acknowledged in the manner required for deeds; containing a real estate description of the AHD and containing substantially the following language in accordance with General Statutes Section 8-30g *et seq.*:

Not less than thirty (30) percent of the dwelling units of a development in the AHD will be conveyed by deeds containing covenants or restrictions ("deed restrictions") which shall require that such dwelling units shall be sold or rented at or below prices which will preserve the units as housing for which persons pay thirty (30) percent or less of their annual income, where such income is less than or equal to eighty (80) percent of the median income. Such restrictions shall remain in force for at least forty (40) years after the initial occupation of the proposed development.

Within the AHD herein described, not less than fifteen (15) percent of all dwelling units in the development shall be sold or rented to persons and families whose income is less than or equal to sixty (60) percent of the median income. The remainder of the dwelling units

conveyed subject to the deed restrictions shall be sold or rented to persons and families whose income is less than or equal to eighty (80) percent of the median income.

"Median income" means, after adjustments for family size, the lesser of the state median income or the area median income for the area in which East Lyme is located, as determined by the United States Department of Housing and Urban Development.

32.7.1 The owner of the land and buildings within the AHD may, during such forty (40) year period, change the designation of which units within the AHD shall be maintained as affordable, provided that the minimum thirty (30) percent set aside shall be maintained, and the AHD as a whole shall continue to comply with the provisions of these restrictions.

32.7.2 These restrictions may be enforced by the applicant or by the East Lyme Zoning Enforcement Officer or the East Lyme Housing Authority, or any other suitable town agency selected by its Board of Selectmen.

32.8. PHASED APPROVAL: The applicant may request an approval of the development plan to be completed in stages. The minimum amount of land to be included within any single stage of development shall be five (5) acres. Each stage shall be capable of independent existence without the completion of succeeding stages. Buffer requirements shall not apply to the common line between stages of development. Each phase must contain the required percentage of affordable units.

32.9 GENERAL PROVISIONS

An application for designation as an AHD may be initiated in three ways: (i) a conceptual site plan in accordance with General Statutes Section 8-30g; or (ii) an application for approval of a Preliminary Site Plan ("PSP"); or (iii) an application for approval of a Final Site Plan ("FSP"). The Commission shall have the discretion to hold a public hearing on an application for approval of a PSP and/or on an application for approval of a FSP. An application for designation as an AHD cannot be approved without an approved FSP.

32.9.1 PRELIMINARY SITE PLAN: The purpose of a PSP is to require the submission to the Zoning Commission of information sufficient to allow it to evaluate a development plan for under the standard of §8-30g, and to allow an applicant to defer, until approval is granted, completion of details and specifications that will define what is to be built but are not essential to §8-30g analysis.

Therefore, a PSP submitted with an application to rezone an eligible parcel or parcels of land as an AHD shall contain the following:

- 32.9.1.a An A-2 property line survey.**
 - 32.9.1.b Topographical contours at ten (10) foot intervals.**
 - 32.9.1.c Location of wetlands, watercourses, and slopes in excess of twenty-five (25) percent.**
 - 32.9.1.d General layout of all proposed buildings and structures.**
 - 32.9.1.e Areas proposed for open space and/or recreational purposes.**
 - 32.9.1.f Sewage disposal and water supply locations and system, ownership, operation, and maintenance.**
 - 32.9.1.g Preliminary storm water management plan;**
 - 32.9.1.h Coastal zone resources information.**
 - 32.9.1.i Traffic impact statement or report.**
 - 32.9.1.j Preliminary design plans for all proposed buildings and structures.**
 - 32.9.1.k A table showing the number of units and number of bedrooms for each unit.**
 - 32.9.1.l An Affordability Plan containing all of the documents and information required by General Statutes Section 8-30g.**
 - 32.9.1.m A list of all coordinate permits and approvals needed by the applicant before beginning construction**
 - 32.9.1.n. Soil types from the New London County Soil Survey.**
 - 32.9.1.o. A statement describing any impact on public health and safety, including emergency services.**
- 32.9.2 FINAL SITE PLAN: An application for FSP approval shall contain all of the information required for a PSP, as well as any additional information that may be required for site plan applications under**

Section 24 of these Regulations. An application for FSP approval shall also demonstrate that (a) public water and sewer can serve the entire development, or (b) community septic and water can serve the entire development, or (c) a combination of public and onsite or community water and waste disposal can serve the entire development.

- 32.9.3 DECISIONS ON SITE PLAN APPLICATIONS: If the applicant submits an application for approval of a PSP in connection with an application for designation of an AHD, the Commission shall either approve, approve with modifications, or deny said PSP at the time it acts on the proposed AHD designation. If the PSP is approved, or approved with modifications, the applicant shall file an application for approval of an FSP, which application shall include all information required under Section 24 of these Regulations for a site plan application. If the FSP conforms to the PSP as approved, and includes all information required by section 24 of these Regulations, the Commission shall approve the FSP. If the applicant submits an application for approval of an FSP in connection with an application for designation of an AHD without having first obtained PSP approval, the Commission shall either approve, approve with modifications, or deny said FSP at the time it acts on the proposed AHD designation.**

Seconded by Mr. Walker.

Motion Passed 6-0.

Mr. Mulholland stated this will be published on December 13, 2012 and be effective December 14, 2012.

- 2. APPLICATION OF TO DESIGN, LLC FOR SERON INCORPORATED FOR A SPECIAL PERMIT TO OPERATE A FAST FOOD RESTAURANT WITH A DRIVE THRU FACILITY AT PROPERTY IDENTIFIED IN THE APPLICATION AS 168 W. MAIN STREET, NIAN TIC. EAST LYME ASSESSOR'S MAP 10.4, LOT 24.**

Motion (2) Mr. Kane moved to approve the application of To Design, LLC for Seron Incorporated for a Special Permit to operate a fast food restaurant with a drive thru facility at property identified in the application as 168 W. Main Street, Niantic. East Lyme Assessor's Map 10.4, Lot 24.

Seconded by Mr. McPherson.

Motion Passed 6-0.

3. **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 NINE (69) RESIDENTIAL UNITS ON PROPERTY IDENTIFIED IN THE APPLICATION AS WEST MAIN STREET/CAPITAL DRIVE, ASSESSOR'S MAP 09.0, LOT 19.**

This item was continued.

4. **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.**

This item was continued.

5. **EAST LYME ZONING COMMISSION PROPOSAL TO AMEND THE EAST LYME ZONING REGULATIONS BY DELETING SECTION 13 AQUIFER AND PRIMARY RECHARGE DISTRICT AND SECONDARY RECHARGE DISTRICT, AND SECTION 30, AQUIFER PROTECTION DISTRICTS FROM THE EAST LYME ZONING REGULATIONS, AND TO AMEND THE ZONING MAP BY REMOVING THE AQUIFER PROTECTION ZONES. JURIDICION AND RESPONSIBILITY WILL BE TRANSFERRED TO THE TOWN'S AQUIFER PROTECTION AGENCY.**

Mr. Mulholland suggested keeping this for now, and doing more research.

Chairman Salerno agreed that they need more research and he would like to make the maps more consistent.

Motion (3) Mr. McPherson moved to withdraw this application.

Chairman Salerno would like this to move quickly

Seconded by Mr. Donovan.

Motion Passed 6-0.

6. ELECTION OF OFFICERS:

a. CHAIRMAN

Mrs. Hardy asked for nominations for Chairman.

Mr. Walker nominated Mr. Salerno for Chairman of the Zoning Commission.

Seconded by Mr. McPherson.

Mr. Walker stated Mr. Salerno has done an exemplary job, and he manages the meetings well, and is looking forward to another year.

Nomination Passed 6-0.

b. SECRETARY

Mr. McPherson nominated Mr. Walker for Secretary of the Zoning Commission.

Seconded by Mr. Kane.

Nomination Passed 6-0.

7. APPROVAL OF MINUTES OF NOVEMBER 15, 2012

Motion(4) Mr. McPherson moved to approve the Public Hearing and Regular Meeting Minutes of November 15, 2012.

Seconded by Mr. Walker.

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

OLD BUSINESS

1. PARKING SUBCOMMITTEE

This subcommittee did not meet.

2. SIGN SUBCOMMITTEE

This subcommittee did not meet.

3. OUTDOOR DINING BARS SUBCOMMITTEE

This subcommittee did not meet, they will try to meet in January.

4. POULTRY SUBCOMMITTEE

This subcommittee met today. It was a very productive meeting. They have looked at other towns. At this point in East Lyme a Special Permit is needed. They will be meeting again soon.

NEW BUSINESS

- 1. APPLICATION OF KEITH NEILSEN, PE, FOR DOCKO, LLC FOR OLD BLACK POINT BEACH ASSOCIATION FOR A COASTAL AREA MANAGEMENT REVIEW FOR COASTAL EROSION PERMIT FOR PROPERTIES LOCATION AT 265 THROUGH 275 OLD BLACK POINT ROAD.**

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

- 2. APPLICATION OF CROTUR, LLC FOR A SPECIAL PERMIT TO OPERATE A WHOLESALE/RETAIL STORE AT PROPERTY IDENTIFIED IN THE APPLICATION AS 206 BOSTON POST ROAD, EAST LYME.**

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

- 3. ANY BUSINESS ON THE FLOOR, IF ANY, BY THE MAJORITY VOTE OF THE COMMISSION.**

Brad Kargl, the Town's Water Engineer was present to give the Commission members some background information on the Level A Mapping.

Mr. Kargl discussed the Level A mapping, which was mandated by the DEP, and which the Town spent around \$200,000 on. They were developed in 2008, and were approved by the DEP in 2009. They are used to protect the wells.

4. ZONING OFFICIAL

The Zoning office has been busy, they are working on a project where the Yankee Clipper is, and a mixed use downtown. There is a new operator at the Japanese restaurant, and there is going to be a Cost Cutter next to Tri-Town. They are having a Gateway meeting next week.

5. COMMENTS FROM EX-OFFICIO

Mrs. Hardy discussed the Green Skies Solar Park, the Flanders School parking lot is a work in progress. They hope to have some of the Boardwalk open by the Summer.

Mr. Peck asked about the Town Garage.

6. COMMENTS FROM ZONING BOARD LIAISON TO PLANNING COMMISSION

Chairman Salerno went to the November 20th meeting. They discussed the POCD.

Mr. Mulholland will get the new planning schedule out to members.

7. COMMENTS FROM CHAIRMAN

Chairman Salerno thanked the members for their vote of confidence in re-electing him as Chairman.

8. ADJOURNMENT

Motion (5) Mr. McPherson moved to adjourn the meeting at 9:15 p.m.

Seconded by Mr. Donovan.

Motion Passed 6-0.

Respectfully Submitted,



**Karen Miller Galbo
Recording Secretary**