

**PUBLIC HEARING I Thursday, MAY 7th, 2009
EAST LYME ZONING COMMISSION
MINUTES**

The East Lyme Zoning Commission held a Public Hearing on the Application of Randi A. and Maureen S. White for a Zone Change for property identified in the Application as 41 West Main Street, Niantic, CT on Thursday, May 7, 2009 at the East Lyme Town Hall, 108 Pennsylvania Avenue, Niantic, CT. Chairman Nickerson opened the continued Public Hearing and called it to order at 7:33 PM.

PRESENT: Mark Nickerson, Chairman, Rosanna Carabelas, Secretary, Ed Gada, Marc Salerno, Steve Carpenteri, William Dwyer, Alternate

ALSO PRESENT: Norm Peck
Randi & Maureen White, Applicants
Attorney Theodore Harris, representing the applicants
William Mulholland, Zoning Official

ABSENT: Bob Bulmer, Alternate, Gregory Massad, Alternate

PRESENT: Mark Nickerson, Chairman, Rosanna Carabelas, Secretary, Ed Gada, Marc Salerno, Steve Carpenteri, William Dwyer, Alternate

Pledge of Allegiance

The Pledge was observed.

Public Hearing I

1. Application of Randi A. and Maureen S. White for a Zone Change for property identified in the Application as 41 West Main Street, Niantic, CT. East Lyme Assessor's Map 11.1, Lot 27.

Chairman Nickerson noted that Mr. Peck had recused himself from this Hearing and had removed himself from the table and was now seated in the audience and that he had seated William Dwyer, Alternate at the table.

Ms. Carabelas stated that she is up to date with the record of this application and has reviewed the information.

Mr. Nickerson noted that the Legal Ad for this application had run in The Day on 3/20/09 and 3/30/09. He also noted that no letter was received from SECCOG on this application.

He then asked Rosanna Carabelas, Secretary to read the correspondence into the record.

Ms. Carabelas read the following correspondence into the record:

- ◆ Letter dated 5/7/09 to EL Zoning Commission from William Mulholland, Zoning Official – Re: Application from Randi & Maureen White – Zone Change, 41 West Main Street – noting that the Zoning Commission acts in a legislative capacity in deciding such matters and stating that a zone change should be upheld if it passes a two-part test: It is in accordance with the comprehensive plan and it is reasonably related to the normal police power purposes in Section 8-2 of the CGS.
- ◆ Letter dated 3/31/09 to Mark Nickerson, Chairman ELZC from Gary Goeschel, Planning Director – Re: Referral of Application of Randi & Maureen White for Zone Change at 41 West Main St. – finding the application CONSISTENT with the POCD and recommending that all building in which the zone boundary passes through be considered for inclusion in the CA zone.
- ◆ Letter dated 2/24/09 to Mark Nickerson, Chairman ELZC from EL Water & Sewer Commission – Re: Zoning Referral of Application of Randi & Maureen White for Zone Change at 41 West Main St. – finding that the proposed change does not adversely impact water or sewer capacity.
- ◆ E-mail memo dated 2/26/09 to Bill Mulholland from Marcia Balint, OLISP – Re; Zone change referral for 41 West Main St. – finding the proposed amendment consistent with the goals and policies of the CT Coastal

Management Act.

Mr. Nickerson called for the applicant or their representative to present this application. Attorney Theodore Harris, place of business 351 Main St., said that the purpose of the request was to deepen the already existing CA zone on the lot which is divided to include a building called The Haunted.

He submitted the following Exhibits for the record:

Exhibit A – Certificates of Mailing

Exhibit B – Proposed Improvement Location Map – CA Zone dated 12/23/09

Exhibit C – Copy of Section 20.4 of the Zoning regulations

Exhibit D – Copy of Page 24 of the POCD Recommendations citing ‘consolidation and deepening of existing zones’

Exhibit E – Copy of September 2008 CT Magazine ‘Best of CT 2008’ cover

Exhibit F – Copy of CT Magazine September 2008 article (and picture) on Best Used Books citing the Book Barn at 41 West Main St.

Exhibit G – Copy of a February 21, 2009 article in the Republican-American newspaper from Litchfield County entitled: “The gigantic world of Niantic books” citing the ‘destination’ aspect of the Book Barn in words and pictures.

Attorney Harris continued that they are seeking to extend by 34’, the CA zone on the property owned by the Whites’ with the reason being to encompass a 100 year old building known as ‘The Haunted’ by the Book Barn. This would make the zoning consistent with the use of the building. He cited **Exhibit B** which shows the current location of the building known as The Haunted and which indicates the area of expansion that is being requested. He said that the reason is not to expand the business but rather to make it clear that the building is consistent with its purpose. He noted that the Planning Commission found this request to be consistent with the POCD and cited Exhibit D – a copy of the POCD recommendations to consolidate and deepen the existing zones for more efficient use of commercial properties. He said that this is beneficial to the Town as the business has been here for over 20 years and that it has not only a local, but a regional draw as evidenced by **Exhibits E and F** – the first in which CT Magazine cites the Book Barn as the best used bookstore in CT and the second an article from the Litchfield County Republican-American citing the Book Barn as a destination. This encourages people to come here to the Book Barn and to also stay and enjoy other places within the Town. This is a destination and it does exactly what the POCD seeks to have done. The commercial base is essential to the tax base and he said that he believes that this is consistent with the POCD, with the commercial zone and with the business of the Town.

Mr. Nickerson asked if the grey area on Exhibit B was the zone change area.

Attorney Harris said that was correct and added that the goal/purpose was not to get larger but to use what they have more efficiently.

Mr. Nickerson asked Mr. Mulholland what else could go there besides making the area compliant.

Mr. Mulholland said that the zone change allows them to encompass one building and that anything other would have to come before them and would also have to suit the parking and other requirements.

Mr. Nickerson asked what if another owner knocked down the buildings and wanted to put a Bickford’s in there.

Mr. Mulholland said that it would be a long and arduous process if something new were to want to come there and that it would involve many phases of review, traffic studies and other requirements.

Mr. Nickerson asked Mr. Mulholland about the buffer.

Mr. Mulholland said that they have to have a 25’ buffer between the CA and the residential and that the zoning code addresses this.

Mr. Gada asked about the parking spaces.

Mr. Mulholland said that it would depend upon the activity proposed for that area.

Mr. Carpenteri said that they are already using this as commercial and that they are just seeking to be compliant.

Attorney Harris said that was correct.

Mr. Carpenteri asked Attorney Harris if the 30’ would allow expansion.

Attorney Harris said no.

Mr. Nickerson asked Mr. Mulholland if they are grandfathered in without the zone change as they have been there for so long and the building is so old.

Mr. Mulholland said that is currently under discussion.

Mr. Nickerson explained the protocol for public comment and called for those from the public who wished to speak in favor of the application.

George Mitchell, 48 Attawan Road said that he thinks it is a great business, a destination and an asset to the Town and that the Commission would be remiss in not giving this their utmost consideration.

Hearing no further comments in favor, Mr. Nickerson called for those from the public who wished to speak against this application.

Julie Wilson, 13 Park Place read and also submitted her letter for the record. This was entered as **Exhibit H**. She stated that they had purchased their home in 2001 and had researched the abutting property lines and realized that there was a suitable buffer between their home and the two commercial properties located at 35 and 41 West Main St. She asked that they not allow expansion of the CA zone as it would mean further parking issues and open a door for more retail space down the road should they decide to sell their property. This could open them to a Dunkin Donuts or McDonald's which they do not want to live behind. Also, by granting this request, they would also have to grant the request of 35 West Main St. – all of which would also have an impact on property values. She asked that they think of scenarios 'down the road'. (Copy of letter attached to minutes)

Ken Janus, 22 Park Place asked Mr. Mulholland if the property is compliant with all issues.

Mr. Mulholland said that there are some items under discussion.

Mr. Janus asked that those items be kept in mind.

Bill Brubaker, 35 West Main St. said that he and his wife are neighbors to the Book Barn; they also have a business and their similar application will come up next. He said that he wants to make the statement that he does not agree with either application; he does not agree with spot zoning and that he does not think that they should think of the 'draw', the tax base or anything else like that when considering this application. Instead, they should consider the 'police powers' and the peace and safety of the neighborhood. He said that there is a problem there and while he does realize that they have a successful business, they have outgrown their area and there is congestion parking wise and expansion of the zone would make it worse. Expanding it also leaves a strip near the building that could also be developed. He said that he went to the people who reside at the condos at 31 West Main St. and spoke to all of the people who live there and most of them signed a petition against it. He submitted this for the record; entered as **Exhibit I**. He said that he strongly opposes both zone changes. He also submitted a picture showing the Book Barn business. This was entered as **Exhibit J**. He said that the business looks like a flea market; has car ports and is unsightly and does not fit in with the Town. He does not think that it is nice for the neighbors and that it brings the property values down. He said that they also have a business and that his wife opened an art studio in their barn.

John Wilson, 13 Park Place submitted an aerial map of the property from Google Earth 2006 which was entered as **Exhibit K** and a picture of the parking which was entered as **Exhibit L**. He said that he is against the zone change as expanding the commercial zone brings it that much closer to his back yard.

Bob MacDonald, 21 Park Place asked if the whole strip has to be approved for the CA change. He said that he would not mind them making the building area compliant by itself with the area that it needs, if that is possible to do rather than the entire strip.

Virginia Lewis, 31 West Main St. said that she has lived here for 35 years and that the condos have only one way in and one way out and that she thinks that the people coming to the Book Barn make the traffic worse.

Mr. Nickerson asked Attorney Harris if there were any thoughts of expanding the business.

Attorney Harris said no and added that there is actually less area in use as the upper floor of the building is no longer in use. He added that there is sufficient parking there for the business and that if they should choose to that they could allow just enough area to fit the building in. He said that even after the 30' that they are requesting that there is another 75'+ before they get to the residential area and they are only required to

have 25' between the zones. The goal is not to expand, but to put the building in the CA zone.

Ms. Carabelas asked if there is sufficient parking.

Attorney Harris said yes. He added that while the business has grown over the years that there is enough parking and that they are in the process of re-laying it out for better usage.

Mr. Salerno asked Mr. Mulholland if this could be something that the ZBA could address.

Mr. Mulholland and Attorney Harris concurred that it would not be for the ZBA as the use is in a CA zone and the ZBA cannot grant CA use.

Mr. Carpenteri asked Attorney Harris if he is working with Mr. Mulholland on the parking and if there is enough to accommodate the zone change.

Attorney Harris said yes and that the change would figure in with the parking spaces.

Mr. Nickerson said that he would like to leave this application open at this time until the next application has been heard as the two of them are similar, as they have heard.

Attorney Harris said that he wanted them to know that Mr. White does keep people in the parking lot at all hours policing the parking of cars.

Mr. Nickerson said that he would like a motion to continue and that Attorney Harris could wrap up after the next application is heard.

****MOTION (1)**

Mr. Salerno moved to continue this Public Hearing until later this evening.

Ms. Carabelas seconded the motion.

Vote: 6 – 0 – 0. Motion passed.

Mr. Nickerson continued this public hearing at 8:35 PM; until later this evening.

****MOTION (2)**

Mr. Salerno moved to re-open this continued public hearing at 8:57 PM.

Ms. Carabelas seconded the motion.

Vote: 6 – 0 – 0. Motion passed.

Mr. Nickerson asked that Attorney Harris give his closing comments.

Attorney Harris cautioned them to stick to the matter of the zone change and not other issues that have been brought up. He said that if they look at this that they will see that the ambience of the buildings is what brings the public to the place. He also asked that they review the map as they will see that the distance between the residential and CA zones is far larger and far exceeds the required 25' buffer by 3 times if not 4 times the requirement. He said that he urges them to grant this zone change.

Mr. Nickerson asked if the Commission had any further comments –

Hearing none –

Mr. Nickerson called for a motion to close this public hearing.

****MOTION (3)**

Mr. Salerno moved that this Public Hearing be closed.

Mr. Carpenteri seconded the motion.

Vote: 6 – 0 – 0. Motion passed.

Mr. Nickerson closed this Public Hearing at 8:59 PM.

Respectfully submitted,

Karen Zmitruk,
Recording Secretary