

**EAST LYME ZONING COMMISSION
PUBLIC HEARING II
Thursday, SEPTEMBER 3rd, 2009
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 a portion of the property identified in the Application as 41 West Main Street, Niantic, CT on Thursday, September 3, 2009 at the East Lyme Town Hall, 108 Pennsylvania Avenue, Niantic, CT. Chairman Nickerson opened the Public Hearing and called it to order at 8:11 PM.

PRESENT: Mark Nickerson, Chairman, Marc Salerno, Acting Secretary, Ed Gada, Norm Peck, Steve Carpenteri, William Dwyer, Alternate

ALSO PRESENT: William Mulholland, Zoning Official
Attorney Theodore Harris, Representing the Applicant
Randi & Maureen White, Applicants
Rose Ann Hardy, Ex-Officio, Board of Selectmen

ABSENT: Rosanna Carabelas, Secretary, Bob Bulmer, Alternate, Gregory Massad, Alternate

PANEL: Mark Nickerson, Chairman, Marc Salerno, Acting Secretary, Ed Gada, Norm Peck, Steve Carpenteri, William Dwyer, Alternate

Pledge of Allegiance

The Pledge was previously observed.

Public Hearing II

1. Application of Randi A. and Maureen S. White for a Zone Change for a portion of the 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.

Mr. Nickerson noted that the Legal Ad for this application had run in The Day on 8/21/09 and 8/31/09.

He then asked Marc Salerno, Acting Secretary to read the correspondence into the record.

Mr. Salerno read the following correspondence into the record:

- ◆ Letter dated 8/25/09 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.
- ◆ Letter dated 8/10/09 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.
- ◆ E-mail memo dated 8/31/09 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 this request was a zone change for 1500 sq. ft. in the vicinity of a building on the property known as 'The Haunted' along the westerly boundary of the property.

He submitted the following Exhibits for the record:

Exhibit A – Certificates of Mailing, List of Property Owners within 500 feet and map showing properties

Exhibit B – Excerpt of Plan of Conservation & Development (Page 24)

Exhibit C – Copy of Section 20.4 of the Zoning regulations

Exhibit D – New London Day Article – East Lyme – published 7/14/2009

Exhibit E – Excerpt of September 2008 CT Magazine 'Best of CT 2008' cover

Exhibit F – Excerpt from 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 this is for a small area zone change for the purpose of getting 'The Haunted' totally within the zone use that it is being used as. All of the buildings on the site pre-date zoning and this building has been there for over 100 years. He noted that originally strip zoning was a way of accomplishing this request and while they have evidence that the property was used commercially prior to zoning, they do not have 60 plus years of continuous evidence of such use and are not sure that they could find previous owners to fill in the gaps in such information. The purpose here is not to expand or get more area – but to make the zone consistent with the historical use of the property. He noted the POCD concept of deepening the commercial zone and that there would always be a meeting of the commercial and residential areas and that the way in which they handle this interface is by requiring buffers. Here they require a 25' buffer however this property is over 2130' to the nearest residential area – almost 10 times the requirement.

By allowing the maximum use of this, there is a benefit on the tax base for the downtown district as this business is known as a destination within the Town. He noted the articles that he had submitted for the record.

He said that the Whites' also recently expanded the downtown Book Barn and that this takes some of the strain off the original site. They have reduced the capacity in The Haunted from 800 sq. ft. to 400 sq. ft. and they no longer have the second floor open for business, have removed the stairs and have moved the books to the downtown location. Additionally, Mr. Mulholland has a parking plan to be reviewed based upon the outcome of this hearing. In essence they have a commercial 100 year old building with the ambiance of the building being the type of books that are in it. He said that he believes that this meets the practical and POCD needs of the zone change.

Mr. Carpenteri commented that it is a small portion and he can understand wanting to bring all of it into conformity.

Mr. Nickerson said that it is a zone change and while the parking plan sits with Mr. Mulholland, he wants to know that the business fits on the property.

Attorney Harris said that the parking plan shows 20 spaces and that 20 is what is needed.

Mr. Nickerson explained the protocol for public comment and called for those from the public who wished to speak in opposition of the application. He asked that people be brief and not repeat what has already been said.

Bill Brubaker, 35 West Main St. said that he doesn't like what they are asking for and thinks that it is strip zoning and even though it has been that way for 50+ years, he thinks that they should speak to the people who handled that property over time such as his father in law and try to determine its' past use and if it was consistent. He thinks that as it is a draw for the Town that is the reason why it is also a problem to the neighborhood. He showed a picture of the Book Barn parking area – this was entered into the record as

Exhibit G. He added that he thinks that they could tear the building down and do something else there if this is changed.

Peter DeMarco, said that he represents 31 Park Place and asked if, by granting this to the Whites' they would be opening it to others as in spot zoning. He said that he is also concerned about the second story of the Haunted and with it not being used as the stairs have been taken down and he does not want to see them go back up.

Mr. Nickerson said that it is not spot zoning – it is just an expansion of an existing zone and that this is not a unique application as they do zone changes all of the time – as that is what this Commission does.

Ken Janus, 22 Park Place said that he thinks that they were pretty good with this scenario before as long as the property and business is in compliance.

Julie Wilson, 13 Park Place questioned when the White's took over this property – sometime in the mid 1990's and wanted to know if there were other zone changes. She also said that she was told by the building inspector that the second floor of The Haunted was closed for safety reasons and could not be used.

Mr. Nickerson noted that the second floor of The Haunted was closed and the books were moved to another downtown facility – which also is not pertinent to this evenings' application.

Sophia Brubaker, 35 West Main St. said that she operates an art studio next door and is a neighbor to the Book Barn. She said that the place is a mess and she wants them to understand that any commercial building could go in there if they do this. She would not like a McDonald's or Dunkin Donuts next to her. She said that she would also like them to make sure that the business is compliant with all standards.

John Wilson, 13 Park Place presented **Exhibit H** – a color picture of the Book Barn area in winter. He said that he is against this application even though they are only there for a small area. He said that they have porta-potties in the woods and that he told the Health Department about it and they were appalled. He said that this is creeping commercialism and it is creeping near to where he and his family live.

Kerry Janus, 22 Park Place asked that they think about the things that have been said and if they would like to have this near where they live.

Debra McDonald, 21 Park Place said that she loves the Book Barn and is a great customer of theirs. She hopes that they do not level the building and put something else there.

Attorney Harris said that they are talking about 1500 sq. ft. of land area where you have close to an acre of commercial land area. The 1500 sq. ft. would not do anything unless they want to save it as it is. And – sure – someone could come in and tear everything down but 1500 sq. ft. does not do anything in the scheme of things. What they want here is to use a building of character for what it is. He said that Mr. White would address the parking issues and what they do to be good neighbors and to try to control how and where people park.

Randi White, 41 West Main St. said that he has 2 – 3 employees who are out in the parking lot directing people on parking. They send any overflow to the downtown store until there is room for them to come back to the main store. These employees also tell the patrons that they cannot park at the condos or anywhere else and it runs well and as efficiently as possible.

Attorney Harris said that he thinks that this fits the criteria for granting a 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 (1)**

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 9:15 PM.

(Note: A brief break was taken here)

Respectfully submitted,

Karen Zmitruk,
Recording Secretary