

**EAST LYME ZONING COMMISSION
REGULAR MEETING
Thursday, JUNE 4th, 2009
MINUTES**

The East Lyme Zoning Commission held a Regular Meeting on Thursday, June 4, 2009 at the East Lyme Town Hall, 108 Pennsylvania Ave., Niantic, CT.

PRESENT: Mark Nickerson, Chairman, Rosanna Carabelas, Secretary,
Marc Salerno, Ed Gada, Norm Peck, Steve Carpenteri

ALSO PRESENT: Bob Bulmer, Alternate
Rose Ann Hardy, Ex-Officio
William Mulholland, Zoning Official

ABSENT: William Dwyer, Alternate, Gregory Massad, Alternate

Call to Order

Chairman Nickerson called this Regular Meeting of the Zoning Commission to order at 7:55 PM after the previously scheduled Public Hearings.

Pledge of Allegiance

The Pledge was previously observed.

Public Delegations

Mr. Nickerson called for anyone from the public who wished to address the Commission on subject matters not on the Agenda.

There were no delegations.

Regular Meeting

1. Application of Randi A. & 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.

(Note: Mr. Peck recused himself and Mr. Bulmer, Alternate was seated for this application and the next one.)

Mr. Nickerson called for discussion on this application.

Mr. Carpenteri asked if they are concerned with the parking if they approve this and clear up the zone change.

Mr. Nickerson said that this is a zone change and there is a building outside of the commercial zone and they are trying to make their business, which has grown at that site, all conforming. And - depending upon whom you were at the podium, you had a problem with parking or you did not and/or you were trying to get to the letter of the law.

Mr. Mulholland noted to the Chairman that the minutes of the Public Hearing are in their packets and if they thumb through them, (dated 5/7/09) they might find them helpful.

(Note: Ms. Hardy joined the meeting.)

Mr. Bulmer said that he found a few things that require further information and cited Page 3 where Mr. Mulholland was asked if they were grandfathered in without a zone change as the building is so old.

Mr. Mulholland replied that is currently under discussion.

Mr. Bulmer asked if there was further information on that now and if it is grandfathered.

Mr. Mulholland said that the Public Hearing is closed but as staff he could briefly comment on this. He said that he is in discussion with representatives of the owners as to some zoning compliance and other issues and that the issue here is a separate issue – it is a zone change and they are not here for a site plan – this is for a zone change only that they are to make a decision on. Site plans are administrative issues handled in his office by Statute and there are some things that they are looking at and the zone change may affect some things depending on which way it goes.

Mr. Bulmer said that evidently it is not pertinent to the zone change.

Mr. Nickerson said that one of the most powerful decisions that they as a zoning commission have is the zone change and this is one that is cut and dry. It's not like a special permit where if they meet the guidelines, they have to get it; they have some discretion anytime it's a zone change it is up to the zoning commission to make the decision and like every application you take it seriously. Having said that, he said that this is a good business, a great business, a destination and an asset to the Town and they are glad it's here – but it has to fit into the boundaries from which it grew. He said that they recently had an Affordable Housing application that has been denied in that neighborhood because of traffic and safety issues and cars parked all over the place and stuff and he feels that they have to be consistent. They have to consider that as there is a parking issue up there and while he understands there is a site plan that is being looked at and parking is being worked out and they are not sure if it is going to be paved or striped. He said that he has been up there a couple of times on weekends just to check it out and while it hasn't been out of control, he has also been up there in recent years when there have been some tough days – to put it conservatively. It would be inconsistent of them to give this zone change without knowing exactly what is going to happen and he thinks that by giving the zone change and that extra 30' that they still do not know here all the cars are going to go. He said that he would love to see this come back to them as a zone change with a site plan and asked Mr. Mulholland if it was possible.

Mr. Mulholland said not necessarily because the site plan jurisdiction falls under the auspices of his office and certainly as a commission they are entitled to see what he sees, and he said that he can give them a report which would not be part of their public hearing but he could come at the end of the night where he has a staff report and he could discuss some things and provide them with information at that time.

Mr. Nickerson said that they could have a public hearing where there is a zone change and they could present a site plan that has already been agreed to with the office downstairs and say that this is what they are going to do with it.

Mr. Mulholland said that he thinks if they are looking at a zone change to a property that they can look at existing conditions and are entitled to because it might affect their viewpoint.

Mr. Nickerson said that is his issue – that in his opinion the existing conditions are unacceptable and while they don't need to have a paved lot or a cookie cutter business, this is a home grown business and the quirkiness of it is what makes it successful but it needs to fit within its boundaries and parameters and he is not sure that it does now and also not sure that granting the zone change and all that is possible because of the zone change as presented, is going to necessarily improve the situation. He said that he has not been convinced of it.

Ms. Carabelas said that during the public hearing there was mention of reducing the size from what was requested and asked if that was correct.

Mr. Nickerson said yes – there was talk of an amended zone change.

Ms. Carabelas asked if that is where they are now.

Mr. Salerno said no, although the applicant said that they would not be opposed to it.

Ms. Carabelas asked how much of a big deal that would be.

Mr. Nickerson said it is not a big deal and it is probably as far as he could bend by just carving out that haunted house that is already being used – but it doesn't solve the parking issue or the existing conditions of the site plan and they are asking for a zone change and this is where the zoning commission power kicks in. He said that he is not on a power trip but this is where their responsibilities kick in to make sure that there is enough room for the cars to park that want to go to that business that has expanded over the years.

Ms. Carabelas asked Mr. Nickerson if he thinks that there is going to be an increase in parking if they just carve out that little part that is already being used.

Mr. Nickerson said no, not expanded – it won't necessarily expand –

Ms. Carabelas said okay – and then asked how they could use the parking as an issue.

Mr. Salerno said it is because they are talking about expanding the amount of commercial property which can inherently increase the intensity that can be used – so – even though it is being used right now, it is not being used in accordance with the regulations.

Ms. Carabelas then said that they are saying that the parking does not fit –

Mr. Mulholland said that they are debating that right now in his office as to how many spaces they need or don't need and how many they have or do not have and they are working on some adjustments and there may be some changes forthcoming depending upon what occurs with this commission because that may allow them to do some other things and modify what they are presenting to him – or not.

Ms. Carabelas said so whether or not this is approved, or say that they small carved out section for that building is approved – would you still be able to say okay but wait a minute – you would have to carve out some more parking spaces to fit in with that commercial extra area –

Mr. Mulholland said that you always need parking for square footage of retail and if you have that – you have to provide parking.

Mr. Carabelas said that you would have that option to make sure.

Mr. Mulholland said that is part of their discussion and the effort going on and they are not sure if they have it yet.

Mr. Nickerson said that they are not even meeting the requirement now of the retail parking.

Ms. Carabelas said that they do not know that yet as the decision has not been made yet.

Mr. Mulholland said to Ms. Carabelas, that is an accurate statement; but it is under discussion and they have debated it heavily. He said to be candid that they have made several attempts at his level to reconfigure the existing parking and to max out the number of spaces. He said that he wanted to be careful that they are not adding new testimony and this is more of a staff clarification as he does not want to tarnish the public hearing record.

Mr. Nickerson said that he understood.

Mr. Bulmer said as a point of clarification that they are looking at a zone change – period! – and therefore, the question of parking is superfluous as someone else could come and bulldoze the area.

Mr. Nickerson said that there was a line that they wanted to increase the zone 30' but also modify it to put the building in compliance – which would not give them a lot of options.

Mr. Salerno said that Mr. Bulmer's comment that this is a zone change is correct. He said that this is a great business and he supports it but that does not matter here. They are talking about extending the commercial into residential. The business has been open for 20 years and has always been residential and has been used incorrectly without permits and he thinks that by them approving this that they have to be consistent and this opens them up to anybody and so anyone can come in and say that they want their garage to be part of it, so change my zone and it could be a hodge-podge, a wavy line and turn ugly. He said that he will vote against this and that he does not think it is of a benefit to the Town to do this – maybe to the owner – but not to the Town.

Ms. Carabelas said that in thinking out loud that anyone else that comes before them would have to meet parking and guidelines and that she is not sure that is would set a precedent and that she does not see where this would be an issue just to carve out that little section. She would vote for doing that.

Mr. Nickerson said that if something is being used illegally, and he does not know when it happened and does not think that someone downstairs approved it – he asked - as devil's advocate – if they start amending their zoning regulations around people who do this.

Ms. Carabelas said that they could issue a Cease & Desist Order and that these people did not get one and they are here now trying to make it work.

Mr. Nickerson said that maybe a Cease & Desist should have been issued – but it is one thing to make a great business work and they are also trying to make sure that the residents are protected and the property values and what they moved into is ‘buyer beware’. In fact, buyer beware – that house that they are using was never in a commercial zone and should never have been used –

Mr. Salerno said that it comes down to having something being used that is inconsistent so they will change the zoning line to make somebody’s business consistent. He said that he has a problem with that and they probably did not know where the line is and if they allow this then someone else comes in say, five years with the same issue and that is the precedent and that is what he is concerned with.

Mr. Nickerson said that is correct and well said.

Mr. Gada asked if they would be joining the White’s with the Brubaker’s in a decision.

Mr. Nickerson said no, they are separate applications and would be treated separately and that he would prefer that they make the decisions separately.

****MOTION (1)**

Mr. Salerno moved to DENY the Application of Randi A. & 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.

Mr. Bulmer seconded the motion.

Mr. Carpenteri said that he would have been more comfortable if they had gone to Mr. Mulholland and worked out a parking plan then sat down with it here when they asked for a zone change.

Mr. Gada asked if that isn’t going on as they speak -

Mr. Carpenteri said right – but he thinks that they should have had it with the zone change.

Mr. Nickerson said that he agrees that it should be that way and that this does not shut the door or close the business and they might see another application here.

Vote: 6 – 0 – 0. Motion to deny passed.

Mr. Nickerson noted that this decision would publish on June 11, 2009.

2. Application of Joseph W. & Sophia Brubaker for a Zone Change for property identified in the Application as 25 West Main Street, Niantic, CT. East Lyme Assessor’s Map 11.1, Lot 28.

Mr. Nickerson called for discussion.

****MOTION (2)**

Mr. Salerno moved to DENY the Application of Joseph W. & Sophia Brubaker for a Zone Change for property identified in the Application as 25 West Main Street, Niantic, CT. East Lyme Assessor’s Map 11.1, Lot 28.

Mr. Carpenteri seconded the motion.

Mr. Salerno said that the same comments as before apply here.

Vote: 6 – 0 – 0. Motion to deny passed.

Mr. Nickerson noted that this decision would publish on June 11, 2009.

(Note: Mr. Peck returned to the table and Mr. Bulmer, Alternate to the audience)

3. The East Lyme Zoning Commission proposal to amend Sections of the East Lyme Zoning Regulations to regulate Adult Uses.

Mr. Nickerson noted that they had continued this Public Hearing.

4. The East Lyme Zoning Commission proposal to amend Section 20.27 – Restaurant Outdoor Dining in CB Zones, to add language.

(Note: Mr. Carpenteri recused himself and Mr. Bulmer, Alternate was seated for this application.)

Mr. Nickerson called for discussion.

Mr. Salerno said that he thinks that this is good for the businesses and the Town.

****MOTION (3)**

Mr. Salerno moved to approve the East Lyme Zoning Commission proposal to amend Section 20.27 Restaurant Outdoor Dining in CB Zones, #13 to add the following language:

13.1 Renewals

- a. **The special permit for patios which serve alcoholic liquor/beverages under this section shall be valid for one year from the date of approval and may be renewed for a period not to exceed one (1) year subject to an approval of a special permit.**
- b. **Special permits for patios which do not serve liquor, shall be valid for three (3) years from the date of approval and may be renewed subject to an approval of a special permit.**

Ms. Carabelas seconded the motion.

Vote: 6 – 0 – 0. Motion passed.

Mr. Nickerson noted that this would publish on June 11, 2009 and become effective on June 12, 2009.

(Note: Mr. Carpenteri was re-seated and Mr. Bulmer, Alternate returned to the audience.)

5. Approval of Minutes – Public Hearings I through V and Regular Meeting Minutes – May 7, 2009

Mr. Nickerson called for discussion on, or corrections to the Commission's Public Hearing Meeting Minutes of May 7, 2009.

****MOTION (4)**

Mr. Salerno moved to approve the May 7, 2009 Public Hearing I and Public Hearing II Minutes of the Commission as presented.

Ms. Carabelas seconded the motion.

Vote: 5 – 0 – 1. Motion passed.

Abstained: Mr. Peck

****MOTION (5)**

Mr. Peck moved to approve the May 7, 2009 Public Hearing III and Public Hearing IV Minutes of the Commission as presented.

Ms. Carabelas seconded the motion.

Vote: 6 – 0 – 0. Motion passed.

****MOTION (6)**

Ms. Carabelas moved to approve the May 7, 2009 Public Hearing V Minutes of the Commission as presented.

Mr. Salerno seconded the motion.

Vote: 5 – 0 – 1. Motion passed.

Abstained: Mr. Peck

Mr. Nickerson called for discussion on, or corrections to the Commission's Regular Meeting Minutes of May 7, 2009.

Mr. Peck asked that on Page 2 in the fourth paragraph down where he is speaking that the first line be changed to read: *Mr. Peck, recalled to the Commission the history of this property and regulation stating that it originally was 20 acres that was required and that with HUD, it was this Commission (years ago) that allowed it to be reduced to 10 acres.*

****MOTION (7)**

Mr. Salerno moved to approve the May 7, 2009 Regular Meeting Minutes of the Commission as amended.

Ms. Carabelas seconded the motion.

Vote: 6 – 0 – 0. Motion passed.

Old Business

1. Stormwater

Mr. Mulholland said that he has been speaking with Engineering on this and that they will revise their regulations and make reference to the DEP manual as that is the most efficient way to do this.

2. Subcommittee – Niantic Village – CB Zones (Mark Nickerson, Marc Salerno & Gregory Massad)

Mr. Nickerson said that Mr. Mulholland has begun facilitating some information on this.

Mr. Mulholland said that he has been gathering information on this and has sent it to the subcommittee members for their review. He noted that the trend in the industry is back towards villages and cities and mixed uses. The small village shopping downtown with living space is the concept along with public gathering spaces and aesthetics.

Ms. Carabelas commented how nicely our downtown is coming along especially with all of the outdoor dining areas. She noted that she had been to mystic with some friends and that they do not have the outdoor dining that we have here.

3. Subcommittee – Conservation Development by Design (Marc Salerno, Norm Peck & Rosanna Carabelas)

Mr. Peck said that he did not have anything further to report as there has been no meeting since the last meeting here.

New Business

1. Application of Theodore A. Harris, Esq. Agent for GDS Capital Holdings, LLC for a text amendment for Mixed Use Development, Sections 9.2.3, 25.5, and 1.1.

Mr. Nickerson asked Mr. Mulholland to schedule this for Public Hearing.

2. Application of AHEPA 250 INC. to amend Section 25.5 of the Zoning Regulations. Section 25.5 Table of Minimum Controls for Specific Special Permit uses. AHEPA 250 INC proposes to modify the density requirement for Section 202 Housing for the Elderly Multi Family.

Mr. Nickerson asked Mr. Mulholland to schedule this for Public Hearing.

3. Any business on the floor, if any, by the majority vote of the Commission.

There was none.

4. Zoning Official

Mr. Mulholland reported that they would be paving the CVS area and reconfiguring the entrance in conjunction with the DOT to make it easier to enter. He also noted that he has had calls from new businesses looking to land in East Lyme so people are out looking and there is activity.

5. Comments from Ex-Officio

Ms. Hardy said that the Board of Selectmen has passed the Scenic Roads Ordinance with a few modifications. The Right to Farm Ordinance is off the table for now for changes and potentially for a separate committee as right now it is part of the Natural Resources Commission. She also reported that the Charter Revision Commission submitted their report and that it is being returned to them for modification and other issues such as the automatic referendum and the ability of the citizens to make motions from the floor as that was eliminated. She explained that citizens normally could make a motion from the floor to reduce the budget (not to increase it) and that had been eliminated. She said that their primary concern was the automatic referendum and noted that 11% of the people voted in this last referendum and that the cost is roughly \$8000 and she thinks that the people have not considered that. There was thought given to perhaps placing a trigger on it where if the mill rate did not change, they would require a petition to get it to a referendum. The mill rate remained the same at 19.186. She lastly said that no new items were added for the Charter Revision Commission to review.

6. Comments from Zoning Commission liaison to Planning Commission

There was no report.

7. Comments from Chairman

Mr. Nickerson reported that he had asked Mr. Mulholland to check on some signs as they were getting out of hand once again.

Mr. Peck asked Mr. Nickerson about the alternate issue and said that he was concerned as he does not want to see them having trouble with a quorum.

Mr. Nickerson said that he has had discussions on it and that he is working on it and feels that they have done an excellent job with their attendance so that they have not had any problems.

Mr. Gada asked Mr. Peck how many times they have not had a quorum.

Mr. Peck said once but he thought that it should not happen at all.

Mr. Mulholland noted that it was once in 20 years.

8. Adjournment

Mr. Nickerson called for a motion to adjourn.

****MOTION (8)**

Mr. Gada moved to adjourn this Regular Meeting of the East Lyme Zoning Commission at 9:05 PM.

Mr. Salerno seconded the motion.

Vote: 6 – 0 – 0. Motion passed.

Respectfully submitted,

Karen Zmitruk,
Recording Secretary