

Town of East Hampton
Planning and Zoning Commission
Regular Meeting
November 6, 2019 – 7:00 P.M.
East Hampton Town Hall Meeting Room

MINUTES

1. Call to Order and Seating of Alternates:

Chairman Kuhr called the meeting to order at 7:00 p.m.

Present: Chairman Kuhr, Vice-Chairman Zatorski, Regular Members Meg Wright, James Sennett, Rowland Rux, Roy Gauthier, Angelus Tammaro, Alternate Members Mike Kowalczyk, Timothy Puglielli and Ted Hintz Jr. and Zoning Official Jeremy DeCarli.

2. Approval of Minutes:

A. October 2, 2019 Regular Meeting – Vice-Chairman Zatorski made a motion to approve the October 2, 2019 minutes as written. The motion was seconded by Mr. Rux. **Vote: 7-Yes; 0- No**

B. October 19, 2019 Oakum Dock Site Walk Minutes– Vice-Chairman Zatorski made a motion to approve the October 19, 2019 Oakum Dock Site Walk minutes as written. The motion was seconded by Mr. Gauthier. **Vote: 7-Yes; 0-No.**

3. Communications, Liaison Reports, and Public Comments:

Communications:

There were 3 items in the packets: a letter from the Town Manager welcoming Mr. Hintz, Jr. as an Alternate for the Planning & Zoning Commission, a request from the applicant to postpone Application PZC-19-016 (26 Barton Hill) to the December 4th meeting and an updated member list (Chairman Kuhr mentioned under Agenda Item# 6A for everyone to review the member list and submit any changes or corrections to Town Staff).

Liaison Reports:

Mr. Gauthier stated that the EHHS Building Committee will have one more meeting to finalize any and sign off on invoices, there is an excess of \$500,000 beyond savings from the original budget and issues having to do with items under warrantee have been resolved.

Mr. Kowalczyk was unable to attend the RiverCOG meeting.

Mr. Sennett was unable to attend the October 21st ZBA meeting but provided a report from the minutes: There were 2 applications and both were continued to the next meeting on November 18th: Application ZBA-19-011, Keith LaBar, Jr. for Delia Sienna, 16 Hawthorne Rd., for a variance to reduce the side setback from 15' to 8' and reduce the front setback from 25' to 8' to construct a 12' x 15' carport over existing driveway Map 10A/Block 81/Lot 6A and Application ZBA-19-012, Randall and Diane Rushin, 43 Smith Street, for a variance to reduce the side setback from 25' to 8' to construct a 26' x 24' 2 car garage with a 9' x 20' addition and a lot coverage increase from 10% to 14% Map 06A/Block 57/Lot 8A-2.

Vice-Chairman Zatorski stated that items will be discussed under certain Agenda Items.

Mr. Rux did not attend the EDC meeting.

Ms. Wright did not have a report and neither did Mr. Tammaro or Mr. Puglielli.

Chairman Kuhr asked for public comments at this time for anything except Agenda #5A, 5B, 5C, 5D or 5E. Deborah Day of 49 Champion Hill asked if there would be an opportunity to speak when the Public Hearing agenda item numbers are presented.

4. Read Legal Notice for November 6, 2019: Staff read the legal notice for November 6, 2019 meeting.

5. Public Hearings for November 6, 2019:

Chairman Kuhr stated that both applications (#5a and #5B) will be heard at the same time. Mr. Rux stated that if any action is taken then they will be acted upon separately.

- A. PZC-19-010: Roncalli Institute, Inc., 49 Oakum Dock,** for a Zone Change from R-2 to Commercial. Map 02/Block 9A/Lot 2. Chairman Kuhr provided the following recap of activity: in September they had a meeting with the Roncalli Institute representatives, in October the applicant asked for an extension and on October 19th there was a site walk at 49 Oakum Dock with minutes taken and approved. Mr. DeCarli provided a time frame for the application per State Statutes. Peter Calan of 17 Bay Road presented. He stated that the issue of sound was addressed with the hiring of a sound engineer. He explained that the design of the new building will mitigate the sound and added that the team for this development is an entirely new team with new ideas. The development was presented in 2011 and worked on until 2014 by an unqualified team per Mr. Calan. Mr. Calan asked the Commission to not consider the history of the previous team and development activities when making a decision. George Fellner of Fellner & Associates at 382 Town Street in East Haddam presented. He provided a brief history of his professional career and then explained that a sound engineer was hired to address the noise concerns that the public had voiced. Based on the results of the sound study, changes were made to the building plans for the proposed building such as: auto door closers, vestibules and buffers. The building plans include 8" metal studs in the walls between the steel columns with R-34 insulation, 8" insulation of R-57, 2 layers of drywall, vibration isolators, 36 STC rated windows, sound absorption panels in the walls and ceilings and there will be no music outside. Bennett Brooks of Brooks Acoustics, 30 LaFayette Square in Vernon introduced himself, gave a brief history of his professional career and provided a summary of the results of the sound study he performed. He explained that he used acoustical engineering to run calculations on what the sound would be at the property line and at some of the nearby homes based on a typical wedding event. He began by saying that 95 decibels is the loudest (concert level) and that they took that level inside using existing assemblies (the roof, walls and windows) and calculated all sound transmission for each of the assemblies and the distance to the areas (property line and houses) and found that the decibel numbers are in the 20's and 30's which are low. There has been discussion about what would happen if any of the doors were open and he explained that there is no outdoor music, the building to the west provides a large barrier, they can add a sound proof curtain, there will be automatic door closers and there is terrain and vegetation that act as buffers. The background levels were measured on Cobalt Road and Oakum Dock Road and the decibels were in the 40's and 50's. Mr. Tammaro inquired about a letter that the RiverCOG submitted regarding their concerns about noise travelling across the river. The applicant stated that there is a 400' to 500' distance therefore it is not an issue.

Mr. Fellner reviewed the geothermal records going back to 2013 when the CT well drilling permit was issued. He explained that what exists now are 3 vertical closed loop systems, each one is 680' deep, they were installed in 2013 and designed to serve the old building. They want to use those wells because they have a 50 year life span but will have to add a few more because the proposed building has more square footage. The existing wells are beyond the 200' public water supply sanitary easement which complies with the regulations and the well pipe is a 1 1/2" polyethylene pipe with a 6" borehole filled with grout to protect it. Attorney Harris re-iterated what was presented at the last meeting and stated that their position regarding the zone change request is to correct an error regarding the zoning. She stated that the zone was changed from Commercial to residential in 1990 with no discussion or vote throughout the zone change process and no public hearing. The zone has been Commercial since 1955 and has operated as Commercial since then. Chairman Kuhr stated for the record that the Town may have conflicting records regarding the zone change and the process that Attorney Harris presented. Mr. DeCarli explained that the property was approved as a Commercial Zone in 1955, it was included on the map as an Industrial Zone when the map was created in 1958 and then it was changed to Residential when the September 1990 update took place. Attorney Harris re-iterated that the property has always been used as Commercial and that the current zone change request will have no impact on the neighborhood and that it complies with the

Plan of Conservation and Development (she referred to Sec. 9.2 and 9.3). In regards to the Special Permit, she stated that the concerns were addressed and that an assembly hall has existed for 3 years (legal or not legal) therefore there will be no negative impact on the character of the area and that they want to improve what exists and to do it correctly. She stated that this is not a popularity contest and asked the Commission to consider what they are presenting now and not what was done in the past and to approve the Zone Change and Special Permit because it will be a distinct benefit to the Town. Vice-Chairman Zatorski stated for the record that the Commission has never made a decision based on popularity and asked for consideration of possible future uses if the zone is changed to Commercial and the ownership changes (ex: possible future business operating 6 days a week and access to the property). Chairman Kuhr asked for public comments regarding PZC-19-010 and PZC-19-011 but asked to keep the applications separate so he began by hearing comments pertaining to PZC-19-010 for a Zone change request from R-2 to Commercial. Attorney Grady of 10 Oakum Dock Road spoke against the application (the letter he wrote will be filed with the minutes), Noel Dash of 51 North Main St. supported the zone change, Susan Grady of 10 Oakum Dock Road spoke against the zone change (her letter will be submitted with the minutes), a representative from the Middlesex Land Trust opposed the zone change, Tom Obligado of 38 Oakum Dock Road was concerned about the noise, Chris Martel of 26 Oakum Dock Road opposed the zone change but asked to find a resolution and Pam Hatfield of 37 Fern Lane opposed the zone change as well. There were no further comments regarding PZC-19-010 for a Zone Change request. Mr. Calan stated that he invited the neighbors to the site walk and has offered open communication for any issues they may have. He added that what they have proposed is the best use of the property. Attorney Grady of 10 Oakum Dock commented that "highest and best use is not the standard that the Planning & Zoning Commission should judge the application." Chairman Kuhr asked for public comments regarding PZC-19-011 for a Special Permit. There were no comments. Attorney Grady asked the Commission if the zone change is granted, will there be time to keep PZC-19-011 open to hear public comments. Vice-Chairman Zatorski explained that by State Statute, they have to close the public hearings this evening unless an extension request is submitted by the applicant. Mr. Calan gave approval to close the public hearings. Chairman Kuhr asked him if he would like to confer with Counsel before giving approval. Mr. Calan declined and gave his verbal approval to close the public hearing for PZC-19-010 both applications. Vice-Chairman Zatorski made a motion to close the public hearing for PZC-19-010 : Roncalli Institute, Inc., 49 Oakum Dock, for a Zone Change from R-2 to Commercial. Map 02/Block 9A/Lot 2. The motion was seconded by Mr. Sennett. **Vote: 7-Yes; 0-No.** Vice-Chairman Zatorski made a motion to continue the application of PZC-19-010: Roncalli Institute, Inc., 49 Oakum Dock, for a Zone Change from R-2 to Commercial. Map 02/Block 9A/Lot 2 to the next regularly scheduled meeting on December 4, 2019. The motion was seconded by Mr. Rux. **Vote: 7-Yes; 0-No.**

- B. PZC-19-011: Roncalli Institute, Inc., 49 Oakum Dock,** for a Special Permit to construct an Assembly Hall in the Commercial Zone (Sec. 5.2.C) Map 02/Block 9A/Lot 2.A. The presentation for this application was heard under Agenda Item# 5A. Vice-Chairman Zatorski made a motion to close the public hearing for PZC-19-011: Roncalli Institute, Inc., 49 Oakum Dock, for a Special Permit to construct an Assembly Hall in the Commercial Zone (Sec 5.2.C) Map 02/Block 9A/Lot 2A. The motion was seconded by Mr. Sennett. **Vote: 7-Yes; 0-No.** Vice-Chairman Zatorski made a motion to continue the application of PZC-19-011: Roncalli Institute, Inc., 49 Oakum Dock, for a Special Permit to construct an Assembly Hall in the Commercial Zone (Sec. 5.2.C) Map 02/Block 9A/Lot 2A to the next regularly scheduled meeting on December 4, 2019. The motion was seconded by Mr. Rux. **Vote: 7-Yes; 0-No.**

Chairman Kuhr requested a 5 minute break at this time (9:16 p.m.) The meeting resumed at 9:21 p.m. Mr. Tammaro left the meeting during the break so Chairman Kuhr seated Mr. Puglielli. Mr. Rux recused himself from Agenda Items 5C and 5D so Chairman Kuhr seated Mr. Kowalczyk. Chairman Kuhr stated at this time that Agenda item 5C and 5D will be presented separately.

- C. PZC-19-018: American Equities, LLC., 35 West Point Road,** for a Zone Change

from R-1 to Commercial. Map 5A/Block 84/Lot 1. Attorney Furey of 43 Bellevue Avenue in Bristol, CT presented on behalf of the applicant. He explained that the property is approximately 22,705 sq. ft. located on West Point Road across from American Distilling. To the north is a single family home owned by Mary Milton, to the east is a parking field for the Chatham Apartments. The property is not in the lake watershed area and it drains towards Route 66 as noted in the staff report. There were 2 letters of support for both 5C and 5D that he read into the record (letters will be filed with the minutes): a letter from Mary Milton of 31 West Point Rd. dated 11/5/2019 and a letter from Mark Evans, the Principal of Palmer Apartments, LLC. He went on to summarize a letter from the owner of American Equities, LLC. (Mr. Jackowicz) and his son which provided a brief history of the company, the proposed scope of work and addressed the recent demolition of a house (the letter will be filed with the minutes). He explained that the State DOT will be reconstructing the culvert on Rte. 66 in front of American Distilling which will result in the removal of 16 of their current 38 parking spaces. The proposed parking lot will have 22 much needed additional parking spaces (Regulations require 120 spaces) making the need for additional parking spaces imperative when the DOT starts their project. The applicant purchased the property and the property adjacent to it with the intent to protect the business. The proposed parking area will protect the business during the DOT construction phase and to accentuate the business when the construction is complete. The property is adjacent to a similar zone, it is across the street from an Industrial zone and is on the fringes of existing Commercial areas which makes it compliant with the POCD (which notes the historical significance of this company on page 11 of the POCD). Michael Boule (employee of American Distilling) read a letter of support written by Dan Davis of 6 Charles Mary Drive (another employee of American Distilling). Mr. Boule (39 Daniel St.) went on to read into the record a letter he wrote supporting both applications. Mr. DeCarli stated that Zone Change would be an extension of the existing Commercial Zone therefore it would not be considered spot zoning. At this time, Chairman Kuhr asked for any public comments related to PC-19-018 for a Zone Change. Allison Tokarz of 14 Staeth Road spoke about the small lake community that this property exists in and was opposed to the zone change. Sandy Doran, President of the Chatham Historical Society felt that they should have reached out to Island Traders rather than removing a 277 year old house. Deborah Day of 49 Champion Hill Road felt that the home that was demolished could have been saved by the Chatham Historical Society. Chairman Kuhr asked Mr. DeCarli about the demolition application process. Mr. DeCarli stated that he is not a Building Official but that he is aware of the demolition application being submitted approximately 10 days before it was approved and that the applicant met all the State Building Code requirements he added that the Application before the Commission is about the Zone Change regardless of the status of the house. Allison Tokarz of 14 Staeth Road commented about the home being demolished but not the garage which is not allowed in the R-1 Zone (to have an accessory structure without a primary). Mr. DeCarli informed the Commission that the demolition permit is good for 180 days so they have 180 days to take down the garage, if it is not removed within that time they can request an extension and if they don't then they will be in a violation status which will be acted upon. He added that if the zone is changed to Commercial then the garage can stay per the Regulations. There were no further public comments. Vice-Chairman Zatorski made a motion to close the public hearing for PZC-19-018: American Equities, LLC., 35 West Point Road, for a Zone Change from R-2 to Commercial. Map 02/Block 9A/Lot 2. The motion was seconded by Mr. Puglielli. **Vote: 7-Yes; 0-No.**

Vice-Chairman Zatorski made a motion to approve PZC-19-018:

American Equities, LLC., 35 West Point Road, for a Zone Change from R-1 to Commercial. Map 5A/Block 84/Lot 1 for the following reasons: it is consistent with our POCD, it is contiguous with 2 other Commercial parcels, is adjacent to an Industrial use and is currently being proposed for use as a parking lot. Mr. Sennett seconded the motion. **Vote: 7-Yes; 0-No.**

- D. PZC-19-019: American Equities, LLC., 35 West Point Road, for a Site Plan Review** for additional parking. Map 5A/Block 84/Lot 1. Attorney Furey presented on behalf of the applicant. He asked that the letters of support that were heard under agenda item #5D) be added to this application. Pat Benjamin, P.E. of 360 Main St in Durham reviewed the site plan: the property is 0.5 acres, they will be entering the proposed parking lot directly across from their existing access

which is a 24' wide access, the aisles will be 24' wide with 9' x 18' spaces. There will be three 17' tall lights with a full cut off LED light (same as the ones in the lower parking lot). The water from the lot drains down to the corner of the parking lot into a catch basin then goes into an underground infiltration and detention area. It is sized for a 50 year storm and when it is full, it will overflow into a pipe under the exiting parking lot to the existing drainage system and will discharge on the south side of Rte. 66. The landscaping was doubled on the east side so there will be (16) 5' to 6' tall arborvitaes on a 2' high bed. The north side will have (12) 5' to 6' tall arborvitaes on a 2' high bed with more along the northern line which is in addition to what exists now (cedar trees and fencing). Attorney Furey re-iterated the intention to remove the existing garage. As far as coverage, they are at 55% with the garage that will be removed and with a portion of West Point Road. The plan is to accommodate handicap parking spaces outside the existing building because handicap spaces should be as close to the building as possible per ADA and the CT Building Code. If the property were to change ownership, it would have to be re-evaluated for the new use. There will be three temporary handicap spaces during construction. Chairman Kuhr asked for public comments at this time. There were no public comments. Vice-Chairman Zatorski made a motion to close the public hearing for PZC-19-019: American Equities, LLC., 35 West Point Road, for a Site Plan Review for additional parking Map 5A/Block 84/Lot 1. The motion was seconded by Mr. Gauthier. **Vote: 7-Yes; 0-No.** Vice-Chairman Zatorski made a motion to approve PZC-19-019: American Equities, LLC., 35 West Point Road, for a Site Plan Review for additional parking Map 5A/Block 84/Lot 1 for the following reasons: it is compliant with the Regulations, is contiguous with additional Commercial Zones to the south and is consistent with the POCD and with the following conditions: Town Staff be notified prior to the start of construction, Town Staff monitor and construction is in accordance with the site plan that was received on 10/15/2019 (Project #1058-01 sheet #1). Mr. Sennett seconded the motion. **Vote: 7-Yes; 0-No.**

At this time (10:16 p.m.), Mr. Rux returned to the meeting and Mr. Kowalczyk was unseated.

- E. PZC-19-017: South Road Marlborough, LLC., 98 Middletown Ave.,** for a zone change from Industrial to R-4. Map 12/Block 48C/Lot 4. Attorney Tim Lee of 388 Orange Street in New Haven presented on behalf of the applicant. The property is approximately 50,000 sq. ft. that previously housed a non-conforming single family home. The applicant received a demolition permit and removed the existing house. The applicant is proposing the construction of a duplex but needs to change the zone to R-4 so it would be consistent with the surrounding neighborhood and permitted per the Regulations. The property across the street is residential and adjacent to the property are Industrial zoned properties but have residential homes and although the rationale for maintaining the property as Industrial zone (as explained in the POCD), it is not applicable. Mr. DeCarli explained what uses would be allowed in an Industrial zone per the Zoning Regulations. Chairman Kuhr stated that the properties on both sides of this property are zoned Industrial. Mr. Gauthier asked if the property can stay as a non-conforming residential building which it cannot because of the proposed use (a duplex). Mr. DeCarli explained that because the non-conforming house that existed and was not abandoned, the applicant can build a single family but that he is proposing a duplex instead so the zone will have to be changed for it to be acceptable. Vice-Chairman Zatorski stated that the current use does not meet the R-4 zone and asked how can the Commission change a zone from any other zone to a non-conforming zone. Mr. DeCarli stated that because it is an existing non-conforming lot, the Commission can change it to any zone they deem acceptable. Attorney Lee stated that the lot size is smaller than the required size for R-4 per the Regulations but that the property is serviced by sewer. Mr. Kowalczyk stated that he felt that the fact that there is sewer and natural gas at the proposed property, it is more suited for Industrial Zone. Vice-Chairman Zatorski summarized a letter of opposition received October 2, 2019 from Robert Baer and a letter of opposition from Cody & Meagan Kroeber received October 2, 2019. Both letters will be filed with the minutes. At this time, Chairman Kuhr asked for public comments. Robert Baer, Jr. of 108 Middletown Avenue spoke against the application. Robert Baer, Sr. of 108 Middletown Avenue provided a brief history of the area and uses. Ryan McGrath of 66 White Sands Road in Moodus opposed the application. There were no further comments. Attorney Lee addressed

some of the concerns and stated that he felt that the zone change to residential would benefit the other residential properties. Vice-Chairman Zatorski made a motion to close the public hearing for PZC-19-017: South Road Marlborough, LLC., 98 Middletown Ave., for a zone change from Industrial to R-4 Map 12/Block 48C/Lot 4. The motion was seconded by Mr. Sennett. **Vote: 7-Yes; 0-No.** Vice-Chairman Zatorski made a motion to deny the application PZC-19-017: South Road Marlborough, LLC., 98 Middletown Ave., for a zone change from Industrial to R-4 Map 12/Block 48C/Lot 4 for the following reasons: it is not consistent with the POCD, it is surrounded by the east, west and north by industrially zoned lots. Mr. Rux added to the motion: “and it keeps the consistency of the nature of the zone.” The motion with the amendment was seconded by Mr. Sennett. **Vote: 7-Yes; 0-No.**

6. New Business:

- A. Adoption of 2020 Meeting Dates:** Vice-Chairman Zatorski made a motion to adopt the 2020 Planning and Zoning Commission meeting dates as presented beginning January 8, 2020 and ending January 6, 2021. The motion was seconded by Mr. Rux.
Vote: 7-Yes; 0-No.

7. Old Business:

- A. Updates to Sec. 3.1 Lake Pocotopaug Protection Zone** – Chairman Kuhr inquired about the date for the next workshop. Mr. DeCarli said he sent out a link to Doodle Poll for all the Commission members to submit dates they will be available and once the data is received, a workshop will be scheduled. He added that he would like to schedule before the next meeting. Vice-Chairman Zatorski suggested moving Agenda #7A Updates to Sec. 3.1 Lake Pocotopaug Protection Zone to the next regularly scheduled meeting on December 4, 2019.

8. Planner’s Report – There was no report.

9. Set Public Hearing(s) for December 4, 2019 – No public hearings were scheduled.

10. Adjournment – Vice-Chairman Zatorski moved to adjourn at 10:54 p.m., seconded by Ms. Wright. The vote was unanimous in favor.

Respectfully submitted,

Christine Castonguay
Recording Secretary