



## STAFF REPORT

Application: PZC-19-010 (Zone Change)  
PZC-19-011 (Special Permit)  
Application Type: Zone Change – R-2 to C  
Special Permit – Assembly Hall in C Zone  
Location: 49 Oakum Dock Road  
Map 02/ Block 9A/ Lot 4  
Date: December 4, 2019

This staff report is offered as a follow-up to previous information provided. Please see the Staff Reports dated September 4, 2019 and October 2, 2019 for a more in-depth analysis of several points of the application. This report is separated into two distinct portions, one referring only to the Zone Change request, the other to the Special Permit Application.

### **Zone Change (PZC-19-010):**

*Use of the Property:* As has been discussed, 49 Oakum Dock is currently within the R-2 Single Family Residential zone. As we know, this property was in the Industrial Zone from 1958 to 1990. The property currently contains a legal non-conforming passive marina. It can be argued that the owner of the property abandoned their right to a more industrialized marina/boat yard upon signing of the Water Supply Easement Agreement which includes several restrictions on the uses of the property, including, but not limited to boat storage, repair, painting, and fuel storage.

The Commission should consider the historic nature of the property when making its decision. The property of 49 Oakum Dock has been used as a marina since at least 1955. Property to the north at 27 Oakum Dock was a manufacturing facility until it was converted to a single family residence in 1975. Oakum Dock Road was used as a travel path to the river for the purpose of shipping oakum (tanned fiber for sealing gaps) among other things. The area has been primarily residential since the mid-to-late 1970's when most of the homes were constructed.

Case law suggests that the current legal non-conforming passive marina can be intensified, but not expanded. The East Hampton Zoning Regulations do not define “marina” nor is it a permitted use in any zone currently. For a definition, we turn to Merriam-Webster where marina is defined as “*a dock or basin providing secure moorings for pleasure boats and often offering supply, repair, and other facilities.*” The word “marina” comes from Latin, and the direct translation is “of the sea.” It is the opinion of staff that although a change to Commercial would make the marina use more conforming because of its commercial nature, it would still be non-conforming.

One could argue that through intensification the boat basin could be reconfigured to house more boats or a small supply shop could offer boaters necessary items for their trip; however, it could not be expanded to neighboring properties or to offer more activities other than those directly related to boating. Under the current zoning, any use not related to a boating activity on this property, other than residential, would be strictly prohibited.

*Spot Zoning:* There has been considerable discussion about spot zoning, its definition, and whether approving a zone change at 49 Oakum Dock Road would be considered spot zoning. Spot Zoning is

defined by U.S. Legal as “a provision in a general plan which benefits a single parcel of land by creating a zone for use just for that parcel and different from the surrounding properties in the area.”

In Connecticut, case law suggests that there are two elements in determining whether a zoning map amendment is considered spot zoning: (1) A change of zone affecting only a small area of land, and (2) A change which is out of harmony with the comprehensive plan for the good of the community as a whole. In *Levinsky v. Zoning Commission of the City of Bridgeport* (1956) it was established that two elements must be satisfied to constitute spot zoning “First the zone change must concern a small area of land, Second, the change must be out of harmony with the comprehensive plan for zoning adopted to serve the needs of the community as a whole”. This was held in *Konisberg v. Board of Alderman of the City of New Haven* (2007).

The two part test for a zone change consists of (1) whether the Zone Change is in accordance with the comprehensive plan, and (2) it is reasonably related to the normal police power purposes in Section 8-2 of the Connecticut General Statutes. Where a proposal is inconsistent with the comprehensive plan, it generally cannot be upheld.

The decision to change a zone is a legislative function of the Commission. Case law suggests the law governing legislative decisions by local zoning authorities is well settled in this state and a decision will generally be upheld in a Court review if consistencies with the Plan of Conservation and Development are cited in the Commission’s decision. If consistent with the POCD, the decision generally cannot be shown to be arbitrary or an abuse of the Commission’s discretion in this instance.

*Decision:* Once the Commission is ready to act, it must do the following: (1) State the reasons on the record for the decision that is made, whether approved or denied; (2) Include a statement about consistency with the Plan of Conservation and Development; and (3) Include any reasons relating to general welfare of East Hampton and consistencies with surrounding land uses.

### **Special Permit (PZC-19-011):**

If the Zone Change is approved, the Commission can then turn its attention to the Special Permit and Site Plan. The Special Permit can be approved with as many conditions as the Commission sees fit. The Site Plan can only be approved if it is compliant with the requirements of the Zoning Regulations.

As required in Section 9.2 governing Special Permits, the applicant must demonstrate the following before the Commission can approve the application:

- The proposed use or development can be demonstrated to have a distinct benefit to the Town.
- The proposed use or development shall have no negative impacts on neighboring properties.
- The proposed use or development represents an appropriate use particularly suited to the property in question.
- The proposed use or development represents the least impact reasonable to the environment upon the site and those areas likely to be affected by such use, during or after construction and/or development.
- The proposed use or development is consistent with the Plan of Development as adopted by the Commission.

- The proposed use or development significantly and specifically advances the purposes, as applicable, of the Regulations, as described in Section 1.2.

#### Staff Comments on Site Plan Requirements:

- The site and plans have been evaluated by the Design Review Board and approved as approved.
- Parking shown is compliant with the requirements of the regulations
- Buffering shown is compliant, but must be on property owned by the applicant, not in the Town Right of Way.
- Lighting shown is compliant with the regulations.
- Primary access will be through the St. Clements main gate on Route 66 as described in a permanent easement to be filed on the Land Records.
- There is no current approval or pending approval from the Chatham Health District. This is due to a review at the Connecticut Department of Public Health not yet being complete. Staff recommends that if the Zone Change is approved, the Commission wait until the January meeting to make a decision to allow for the DPH and CHD reviews to be complete. The lot line change must be filed and the residential septic system at 33 Oakum Dock Road must be moved before the DPH will complete its review.
- Enforcement could be a challenge as staff is limited and most events will likely take place on the weekends.

#### Concerns to consider when making the decision on approval:

- Can the DEEP Noise Standards be met property-wide? The building is planned to be well sound proofed, but the Commission should consider patrons talking outside, car doors closing, car engines being started, and vehicles being driven up the hill off the site, among other noises.

#### Conditions to consider:

- The Hours of Operation should be reviewed and set to be appropriate for both the proposed use and the neighboring properties.
- The terms “Seasonal”, “Daytime Hours”, and “Evening Hours” of Operation should be specifically defined by the Commission.
- Restrict the use of the exterior to wedding ceremonies only with all reception, cocktail hours, etc. using the interior of the structure;
- Hours of events being held outdoors (Staff recommend no later than 7 or 8pm)
- Maximum guest capacity;
- No amplification of any kind on the exterior portion of the property;
- Gate at the Oakum Dock entrance must be locked at all times with a keypad or other such device with access granted to all emergency personnel must be provided;
- The Commission may want to consider additional sound buffering requirements along the north and east sides of the property;
- Landscape buffers along Oakum Dock Road must be installed on the Oakum Dock property and not rely on space in the road right-of-way.

When making a decision, the Commission must include in its motion the reason for the decision, including consistency with the Plan of Conservation and Development and can include any comments on current or past uses of the property and surrounding land uses.