



## STAFF REPORT

To: Planning & Zoning Commission  
Date: 11/4/2020  
Re: PZC-20-022, East Hampton Rotary Club, 45 Daly Road

The East Hampton Rotary Club is requesting a Special Permit to designate the property at 45 Daly Road as a Park, Playground or Public Recreation Area in accordance with Section 4.4.D.1.d of the regulations, "Uses providing essential community services," as allowed with a Special Permit in the R-4 Rural Residential Zone.

In determining the applicability of the application in the governing section of the regulation, the defined terms must be considered. Article 2 of the regulations includes definitions and with regards to this application, the following definitions can be applied:

**RECREATION, ACTIVE** – Leisure time activities, usually of a more formal nature and performed with others. Often requiring equipment and taking place at prescribed places, sites or fields.

**RECREATION FACILITY** – A place designed and equipped for the conduct of sports, leisure-time activities and other customary and usual recreational activities.

**RECREATION, PASSIVE** - Any leisure-time activity not considered active.

Parks and playgrounds are not defined in the regulation. Where there is a term not defined within Article 2, the regulation states the following:

*In the interpretation and enforcement of these Regulations, words not defined in this Article shall be interpreted by the Commission after consulting one or more of the following:*

1. *The State Building Code, as amended.*
2. *The Connecticut General Statutes, as amended.*
3. *The Illustrated Book of Development Definitions (Rutgers University, Center for Urban Policy Research (Piscataway, NJ), as amended.*
4. *Black's Law Dictionary.*
5. *A comprehensive widely recognized and accepted dictionary.*

The following are definitions from other sources:

Found in *The Law Dictionary*

**Park:** Public grounds kept for purposes of adornment and popular resort for recreation, exercise and pleasure.

Found in Webster's Dictionary:

**Park:**

1. a. an enclosed piece of ground stocked with game and held by royal prescription or grant  
b. a tract of land that often includes lawns, woodland, and pasture attached to a country house and is used as a game preserve and for recreation
2. a: a piece of ground in or near a city or town kept for ornament and recreation  
b: an area maintained in its natural state as a public property

3. a: a space occupied by military vehicles, materials, or animals  
b: PARKING LOT
4. an enclosed arena or stadium used especially for ball games
5. an area designed for a specified type of use (such as industrial, commercial, or residential use)

**Playground:**

1. A piece of land used for and usually equipped with facilities for recreation especially by children;
2. an area known or suited for activity of a specified sort.

As presented, the application does not appear to meet the spirit of the regulation when the defined terms are considered. A park, playground, or recreation area would seem to be a public use, not intended only for members and their invitees only. Furthermore, a park, playground, or public recreation area not open to the public does not appear to meet the intention of the regulation by providing an essential community service.

The Commission should be aware that the property is subject to a Declaration of Restrictions, filed on the Land Records by the previous owner. The declaration limits the use of the property and creates a conservation easement over the property in accordance with federal and State Statutes. Below are excerpts from Chapter 47 of the CT General Statutes authorizing conservation easements:

*Sec. 47-42a Definitions:*

*(a) "Conservation restriction" means a limitation, whether or not stated in the form of a restriction, easement, covenant or condition, in any deed, will or other instrument executed by or on behalf of the owner of the land described therein, including, but not limited to, the state or any political subdivision of the state, or in any order of taking such land whose purpose is to retain land or water areas predominantly in their natural, scenic or open condition or in agricultural, farming, forest or open space use.*

*Sec. 47-42d. Permit applications filed with state or local land use agency, local building official or director of health. Appeals by party or state agency holding restriction. Civil penalty. (a) For purposes of this section, "state or local land use agency" includes, but is not limited to, a municipal planning commission, municipal zoning commission, combined municipal planning and zoning commission, a municipal zoning board of appeals, municipal inland wetlands and watercourses agency, a municipal historic district commission and any state agency that issues permits for the construction or improvement of real property.*

*(b) No person shall file a permit application with a state or local land use agency or a local building official or director of health, other than for interior work in an existing building or for exterior work on an existing building that does not expand or alter the footprint of such existing building, relating to property that is subject to a conservation restriction or a preservation restriction unless the applicant provides proof that the applicant has provided written notice of such application, by certified mail, return receipt requested, to the party holding such restriction, including, but not limited to, any state agency that holds such restriction, not later than sixty days prior to the filing of the permit application. In lieu of such notice, the applicant may submit a letter from the holder of such restriction or from the holder's authorized agent, verifying that the application is in compliance with the terms of the restriction. If the applicant has provided written notice pursuant to this subsection, the holder of the restriction may provide proof to the state or local land use agency or local building official or*

*director of health that granting of the permit application will violate the terms of the restriction and such agency, official or director shall not grant the permit. Nothing in this section shall be construed to prohibit the filing of a permit application or to require such written notice when the activity that is the subject of such permit application will occur on a portion of property that is not restricted under the terms of such conservation or preservation restriction.*

Although it is not the purview of the Commission to ensure that the property owner is fulfilling their legal obligations according to the Declaration, it would not be prudent for the Commission to authorize a Special Permit use that is in conflict with such a Declaration. That said, the proposed use of the property, and associated Zoning Regulation would seemingly be consistent with the goals of the Declaration. However, without additional detail and a site plan indicating parking location and other attributes of the proposed use, it is difficult to ensure compliance. In addition, Staff is working to determine whether the requirement of notification to the Grantor has been met.

If it is the intent of the Rotary Club to hold meetings among their members on the property, there is nothing in the regulation to prohibit that activity so long as these meetings are not open to the Public. As the East Hampton Rotary Club is the owner of the property, it stands to reason that the members of the club could, in fact, meet at the property at any time. However, as the Rotary Club is currently seeking a Special Permit to operate a park, Staff strongly encourages the Commission to require a more definitive Site Plan which includes locations for any proposed improvements such as parking, walking trails, playground equipment, and the like.

Furthermore, the Commission needs to consider whether this location is appropriate for a park within the Town and the Commission should consider quality of life factors for the neighbors and whether the proposal provides an adequate benefit to the Town overall. According to Section 9.2, the Applicant must demonstrate the following:

1. The proposed use or development can be demonstrated to have a distinct benefit to the Town.
2. The proposed use or development shall have no negative impacts, such as the concerns referenced in Section 9.2.A, on neighboring properties.
3. The proposed use or development represents an appropriate use particularly suited to the property in question.
4. 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.
5. The proposed use or development is consistent with the Plan of Development as adopted by the Commission.
6. The proposed use or development significantly and specifically advances the purposes, as applicable, of these Regulations, as described in Section 1.2.

Finally, the State and local POCD should be considered. The 2013 Connecticut State POCD lists the area in which 45 Daly Road lies as a priority conservation Area. It is shown on the East Hampton Future Land Use map as desirable for conservation purposes or very low density residential development. With regards to the need for additional park space, the POCD suggests that there is a need for additional playing fields within the Town of East Hampton for use by various sports leagues but that such a need should be fulfilled on properties adjoining existing facilities if at all possible.

In summary, the Commission must go through the exercise of determining whether the proposal is consistent with the POCD, allowed by the regulation in its current form, in harmony with neighboring uses and the transportation network, and determine if there is a community need being fulfilled.