

Town of Colchester, CT

127 Norwich Avenue, Colchester, Connecticut 06415

PLANNING & ZONING COMMISSION

WEDNESDAY, February 2, 2022

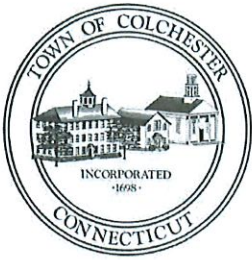
MEETING AT 7:00 P.M.

Virtual Meeting to be held via ZOOM. For a link to the ZOOM meeting please visit the Town of Colchester Public Meetings Calendar at www.colchesterct.gov

AGENDA

1. **Call to Order**
2. **Additions to the Agenda**
3. **Minutes of Previous Meeting**
 - a. January 19, 2022
4. **Public Hearings**
 - a. Niantic Bay Group LLC – 347 Cabin Rd – Resubdivision (2021-015)
5. **Five Minute Session for the Public**
6. **Pending Applications**
7. **New Applications**
 - a. 76/96 Upton Rd LLC – 76 & 96 Upton Rd
Site Plan (2022-001)
8. **Preliminary Reviews**
9. **Old Business**
10. **New Business**
 - a. Niantic Bay Group LLC – 347 Cabin Rd – Resubdivision (2021-015)
11. **Planning Issues and Discussions**
12. **Correspondence**
13. **Adjournment**

RECEIVED
TOWN OF COLCHESTER, CT
2022 FEB - 1 AM 9:38



Town of Colchester, CT

127 Norwich Avenue, Colchester, Connecticut 06415

PLANNING & ZONING COMMISSION

WEDNESDAY, January 19, 2022

7:00 P.M.

Virtual Meeting held via ZOOM.

Members Present: Chairman J. Mathieu, Vice Chair J. Novak, B. Hayn, M. Kehoe, S. Smith, M. Noniewicz

Others Present: Planning Director M. Bordeaux, ZEO D. Schaub

MINUTES

1. Call to Order - Chairman Mathieu called the meeting to order at 7:01 pm
2. Additions to the Agenda - Due to a problem with pre-hearing requirements by the applicant, agenda item #4, the Public Hearing for Niantic Bay Group LLC - 347 Cabin Rd - Resubdivision (2021-015), should be removed from the agenda and postponed until February 2, 2022. Agenda item #8b should be removed from the agenda per applicant request. Agenda to be renumbered accordingly. Motion by M. Noniewicz to approve changes to the agenda. 2nd by J. Novak. *Vote was unanimous, motion carried.*
3. Minutes of Previous Meeting - Motion to approve minutes as written by M. Noniewicz. 2nd by J. Novak. *Vote was unanimous, motion carried.*
4. Five Minute Session for the Public - No comments.
5. Pending Applications
 - a. 75 Lebanon Ave LLC - Regulation Amendment (2021-014) - Commission member B. Hayn is also the applicant and recused himself from this discussion by turning off his camera and muting his microphone. M. Bordeaux spoke of the ability of the commission to modify the language of the proposed amendment. With the permission of the applicant, the commission may make modifications. Chairman Mathieu stated CGS 8-3 allows for modifications. M. Bordeaux shared the map outlining the Future Development District. Members discussed the extension of public utilities to the district and how allowing private well and septic would impact the area. The district has yet to see development and some members feel any developments are better than none. When public utilities are extended to the district, there will be a requirement to connect if the location is within 500'. The property owner would bear the cost of connection. If a permitted, low-intensity business developed a parcel in the area with private utilities then later desired to expand their business, there would be a requirement in the permitting process for a connection to public water and sewer. The change to the regulations would amend Section 6.3 to become Section 6.3 #s 1-8 and Section

RECEIVED
COLCHESTER, CT
2022 JAN 21 PM 12:4
Mylee Fiuman
CIVIL ENGINEER
TOWN CLERK

6.3b would be added. Motion by M. Noniewicz Move to approve Regulation Amendment (2021-014) proposed by 75 Lebanon Ave LLC, to allow low-intensity development in the Future Development District subject to the approval of a Special Permit from the Planning and Zoning Commission. The regulation amendment is consistent with the goal of the Plan of Conservation and Development Section 4.5 to “Facilitate and Support Economic Growth” without compromising the intent of the Future Development District “to provide for commercial and industrial development in locations served by transportation and utility infrastructure.”, amending Regulation 6.3a and 6.3b, development without utilities. The change would be effective February 2, 2022. 2nd by J. Novak. ***Vote was unanimous with the exception of B. Hayn who was recused. Motion carried.*** B. Hayn rejoined the meeting.

6. New Applications - none

7. Preliminary Reviews

- a. 31 Parum Rd - Development Alternatives in SU District - Attorney Tim Bleasdale with Waller Smith & Palmer spoke on behalf of the Epstein Agency and Morris Epstein, property owner. Owner since 1977 of this 2.5 acre undeveloped parcel with 445' of road frontage, the Epstein Agency is entertaining potential developers and looking for alternatives to the current allowable types of development in the suburban use district. In a letter to the commission, Attorney Bleasdale outlined options for the property owner to apply for in order to develop the parcel. Interested parties have expressed desire to put a restaurant with a drive-thru there, which is currently not allowed in either the SU or town center zones. Members discussed each option in addition to additional possibilities.

8. Old Business - none

9. New Business -

- a. Niantic Bay Group LLC - 347 Cabin Rd - Resubdivision (2021-015) - removed from agenda

10. Planning Issues and Discussions - Chairman Mathieu asked staff to look into materials for the commission to review in order to familiarize themselves with details of CSG 8-30g.

11. Correspondence - none

12. Adjournment - B. Hayn motioned to adjourn, 2nd by M. Kehoegreen. ***Motion carried, meeting adjourned at 8:47 pm.***

Respectfully submitted by,

Stacey Kilgus, Clerk

**TOWN OF COLCHESTER
LEGAL NOTICE**

The Planning and Zoning Commission will hold a virtual public hearing on February 2, 2022 at 7:00 P.M. to hear and consider the following petitions:

NIANTIC BAY GROUP LLC – 347 Cabin Rd - Resubdivision (2021-015) Proposed 24-lot resubdivision on approximately 6.61 acres at 347 Cabin Road (MBL 03-00-001-005) pursuant to CGS 8-30g, Suburban Use District.

At this hearing interested persons may be heard and written communications received. A copy of this petition is in the Planning Department, Town Hall, 127 Norwich Avenue, and may be inspected during regular business hours (8:30 a.m. – 4:30 p.m., Monday through Friday).

Planning and Zoning Commission
Joseph Mathieu, Chair

RECEIVED
COLCHESTER, CT
2022 JAN 21 AM 10:01
Myke Sumner
COYLE FURMAN
JOHN OLENIK

**TOWN OF COLCHESTER
PLANNING AND ZONING DEPARTMENT**

TO: Planning and Zoning Commission

FROM: Matthew R. Bordeaux, Planning Director
Daphne Schaub, Asst. Planner/ZEO

DATE: January 31, 2022

RE: Niantic Bay Group, LLC – 347 Cabin Rd – Resubdivision (2021-015)

Plans and supporting documents were provided to the Commission in the January 19, 2021 Agenda Packet. This memo is intended to inform the Commission what review and corresponding plan revisions have occurred since the previous meeting.

Revised Plans

In response to staff comments (attached), the applicant has submitted revised plans. The revised plans include minor modifications as follows:

1. Roof leader infiltration systems have been proposed to replace the previously proposed rain gardens. Roof leader infiltration systems will mitigate the increase in roof runoff by discharging clean roof runoff into units installed beneath the surface of the yard, leaving more useable area in the yard and reducing the required maintenance and monitoring associated with the rain gardens.
2. The revised plans indicate that all driveway aprons will be paved. Driveways may or may not be paved, but the aprons are required to be paved.
3. The Zoning Table Sheet (Sheet 4 of 20, attached) has been revised to include the bulk requirements for development in the Suburban Use District. A new column titled “Minimum Proposed Lot” was added that provides the minimum value represented across all the proposed lots.
4. Rather than the provision of footing drain discharge locations on each lot, the applicant has proposed a drainage easement on the southern side of the proposed road so that discharge from footing drains can be directed into the stormwater system proposed to be located in/under the road.
5. The location of proposed trees has been modified so that none are located in driveways or parking areas.

Staff Review

The plans were reviewed to the satisfaction of Town staff and applicable boards/commissions when the 6-lot resubdivision was reviewed and approved earlier in 2021. The Water & Sewer Commission, similar to the Conservation Commission, requested to review the plans again in light of the change in the number of lots and intensity of development. The Water & Sewer

Commission was satisfied that the proposed plans were designed appropriately, and that the existing public utility infrastructure is capable of accommodating the proposed improvements.

A letter dated January 19, 2022 from Attorney Edward M. Cassella to Daphne Schaub, Asst. Planner/ZEO includes the applicant's responses to staff comments. As you can see, the majority of technical comments have been addressed.

Draft Motions

Sidewalks:

Move to approve the request to waive the requirement for sidewalks on Jordan Lane, Niantic Bay Group LLC, 347 Cabin Rd (MBL 03-00-001-005), Resubdivision (2021-015) as the Commission finds there is no plan for the development of pedestrian access system in this area, there is no existing network of pedestrian infrastructure to connect to or expand upon, and there is no school within a mile of this location.

Move to approve application of Niantic Bay Group, LLC, 347 Cabin Road (MBL 03-00-001-005), Resubdivision (2021-015) for the proposed construction of 24 single-family homes on 24 lots on approximately 6.61 acres in the Suburban Use District with the following condition:

1. Relocate the new hydrant at the end of Jordan Lane in accordance with the Fire Marshal's direction.

This application is consistent with the provisions of Connecticut General Statutes Section 8-30g, "Connecticut Affordable Land Use Appeals Procedure," and no substantial public interests in health or safety clearly outweigh the need for affordable housing.

MRB

R:\Boards and Commissions\PZC\2022\02-2022\02-02\Follow Up Packet\Revised Plans Memo.docx

Attach.



Cloutier & Cassella, LLC

ATTORNEYS AT LAW

Thomas A. Cloutier (1946-2011)
Edward M. Cassella*
Thomas McLaughlin
D. Jeanne Messick ^
*Also admitted in Massachusetts
^ Of Counsel

ecassella@saybrooklaw.com
tmclaughlin@saybrooklaw.com
jeanne@saybrooklaw.com

January 19, 2022

Town of Colchester
Attention: Daphne C. Schaub
Assistant Planner / CZEO
127 Norwich Avenue
Colchester, CT 06415

Re: 347 Cabin Road, Colchester, CT

Dear Ms. Schaub:

Please be advised that this firm represents Niantic Bay Group, LLC with the proposed 24 Unit Re-subdivision at 347 Cabin Road under Connecticut General Statutes 8-30g.

For efficiency, we have completed one response letter for the comments we received from yourself, Salvatore Tassone, P.E., Town Engineer, Matthew R. Bordeaux, Town Planner and Jay Gliotti, Wetlands Enforcement Officer.

Comments from Daphne Schaub, Assistant Planner/CZEO:

1. Please add the APA Boundary Line to the Location Map.

Response: On the revised plans, the APA Boundary Line is added.

2. Please indicate that all aprons will be paved.

Response: The plans has been updated to indicate all aprons will be paved.

- 3./4. Bulk requirements table should be amended to show required zoning conditions required.

Response: The bulk requirements table has been amended.

5. Elevation on the plan in the northeast corner between lots 8 & 9.

Response: The plan has been modified to address this comment.

29 ELM STREET • OLD SAYBROOK, CT 06475 • 860-388-3456 • 860-388-6374 (FAX)

WWW.SAYBROOKLAW.COM

Comments from Salvatore Tassone, P.E. – Town Engineer:

1. Title of the plans should be revised to Resubdivision.

Response: The plans have been modified.

2. Plans to be revised to show foot drains and discharge.

Response: The plans have been modified to provide that, in the event it is necessary, a drainage easement on the southern side of the proposed road can direct the water from the footing drains into the stormwater system.

3. Provide rain garden details.

Response: The proposed rain gardens have been replaced by underground infiltration systems on each lot.

4. If sidewalks are required, show proposed sidewalks and grading.

Response: No sidewalks are proposed due to the fact that there are no sidewalks on Cabin Road.

Comments from Matthew R. Bordeaux, Planning Director:

1. Amend cover sheet to reflect a Resubdivision.

Response: The cover sheet has been amended to include Resubdivision.

2. Trees are shown in the location of driveways.

Response: The plans have been modified to show trees in locations that do not include driveways or parking areas.

3. The Planner raises two concerns. First, whether all the improvements, underground utilities, driveway, rain garden, trees, can fit in the proposed front yard. Second, what will be left of the properties once all proposed improvements are installed?

Response: As specified above, the plans have been amended to eliminate the rain gardens in favor of underground stormwater detention systems, thereby increasing the usable yard. With respect to the comment about families with children and outdoor space, we have the following comments. A large piece of open space that was originally part of this parcel has already been dedicated to the Town of Colchester. Although these parcels may not meet the late twentieth century 2-acre zoning concept, they are consistent with lot sizes in many suburban neighborhoods in Connecticut and across the country. The proposed affordable housing development is also consistent with the Town's Plan of Conservation and Development – Section 4.7, which discusses “diversifying Colchester’s

housing”, including creating housing that is more different in scope and scale and affordable.

We anticipate selling these homes to a wide variety of homeowners – first time home buyers, young families, single parents, empty nesters, and retirees. The market will dictate which type of person is interested in which type of lot. The goal of this application is to provide beautiful “new construction” housing options on small efficient lots that does not generally exist in Colchester.

4. Questions regarding whether future owners can add sheds, decks, patios, fences, etc. and grading on the lot with a request to eliminate 4 of the lots.

Response: The applicant will not agree to eliminate any of the proposed lots. Elimination of lots will make the project not economically viable for the developer who is establishing an affordable housing development under Connecticut General Statutes s. 8-30g. The proposed improvements range from 7% coverage to 16% coverage per lot and there will be sufficient room to have a shed, patio and other accessory structures installed, if appropriate. Each of the buildings will be designed with a full basement, hatchway and a 14'x24' garage which has storage space available at the end and on both sides of the vehicle parked in the garage.

Comments from Jay Gigliotti, Wetlands Enforcement Officer:

The commission discussed the potential to utilize underground infiltration systems instead of rain gardens.

Response: The applicant has agreed to make this change and has revised the plans to show underground infiltration systems.

Thank you for your attention to this matter.

Very truly yours,



Edward M. Cassella

EMC/spp

N:\WINWORD\Case Files\Nlantic Bay Group, LLC - Colchester Development\Letters\Letter to Daphne Schaub.doc

Enclosed is notice of the public hearing for our proposed 24-lot affordable housing subdivision on Jordan Lane, Colchester, which we are proposing under CT General Statutes s. 8-30g. Far too often people associate affordable homes with low income and Section 8 housing which is incorrect and not what is proposed for this site. Affordable housing is designed to provide an opportunity to community members whose incomes keep them beyond the reach of home ownership. It includes town employees, teachers, police, fire, and a host of other underpaying professions. The starting salary for a policeman in Colchester is approximately \$60,000.00, a fireman \$50,000.00 and a school teacher \$45,000.00.

How does it work:

Because we are proposing the development under 8-30g, an affordability plan is required. Under the affordability plan, Colchester employees and residents are given the highest priority possible to be able to purchase the homes. The guidelines require we set aside 30% percent (or 8) of the 24 homes as affordable. The Connecticut guidelines for affordable pricing in Colchester provide that the maximum sales price for a three-bedroom housing unit is \$415,377.00. There are income guidelines for a buyer to qualify for purchase. The maximum income for a family of 4.5 people is \$106,704.00. That buyer could be many local families, including local policemen/firefighters, teachers, public works employees, and the waitresses at your favorite restaurant in town.

Our homes:

Through careful design and material selections, our 1600 sq. ft., 3-bedroom, 2- full bath home has a base price of \$349,900.00. Our homes have quality materials throughout, including HVAC/AC, American Standard plumbing fixtures, shaker style cabinetry, granite counter tops, GE appliances and much more.

Our building lots:

In designing our homesites we took into consideration the surrounding SU zone neighborhood of 140+- homes to the north with smaller building lots like ours. Our original design contained 32 building lots, however, we eliminated lots, by increasing the frontage, creating larger side and rear yards, while maintaining consideration of the Town of Colchester's goal to provide affordable housing.

We welcome you to review the complete guidelines for CT General Statues s. 8-30g for further information.

John Doran

John Doran

Niantic Bay Group, LLC

CONNECTICUT FEDERATION OF PLANNING AND ZONING AGENCIES QUARTERLY NEWSLETTER

Winter 2022

Volume XXVI, Issue 1

COURT RULES VARIANCE CAN NOT BE CHALLENGED AS PART OF SPECIAL EXCEPTION APPROVAL

When a special permit application was approved to locate a liquor store on the applicant's property, an owner of another liquor store appealed the decision to court. The basis for the appeal was that the planning and zoning commission's decision would allow a liquor store in violation of a zoning regulation that imposed a separation distance between such stores. The commission approved the application based in part on the fact that the applicant had applied for a variance from this regulation and the variance had been approved by the zoning board of appeals.

In its appeal of the special exception approval, the plaintiff argued that the variance was void and was thus an improper basis upon which to approve the special exception application. The court found this argument to be a collateral attack upon the variance approval and thus dismissed the appeal. In reaching this decision, the court found that any argument about the validity of the variance approval should have been made by appealing that board's decision. This the plaintiff did not do. Since the appeal period had passed for appealing the variance approval, the plaintiff could not collaterally attack this decision by challenging it now. Once the appeal

period passed, the zoning board of appeal's decision to approve the variance became final and could not be disturbed at this later date. *See Boyajian v. Zoning Commission, 206 Conn. App. 118 (2021).*

CERTIFICATE OF LOCATION FOUND TO BE LIKE A SPECIAL PERMIT

A Superior Court ruled that in deciding an appeal of a decision by a planning and zoning commission to approve a certificate of location for a liquor store, it would consider it under the same standard of review as for an appeal of a special permit approval. Basically, the role of the commission is to determine whether the application satisfies the standards contained in the zoning regulations. *Brookside Package LLC v. Planning & Zoning Commission, 70 Conn. L. Rptr. 402 (2020)*

SAVE THE DATE – THE CONFERENCE IS BACK!

The Federation will hold its Annual Conference on March 24, 2022 at the Aqua Turf Country Club in Plantsville CT. The event starts at 5:00 p.m. The program for the Conference will include a presentation on How to Comply with the 2021 Legislation that Applies to Planning and Zoning as well as the 2022 Legislative Agenda. Flyers announcing the event will be sent to all members later this month.

Written and Edited by
Attorney Steven E. Byrne
790 Farmington Ave., Farmington CT 06032
Tel. (860) 677-7355
Fax. (860) 677-5262
attysbyrne@gmail.com
cfpza@live.com

CONNECTICUT FEDERATION OF PLANNING AND ZONING AGENCIES QUARTERLY NEWSLETTER

Winter 2022

Volume XXVI, Issue 1

RESCHEDULED COURT HEARING WITHOUT PROPER NOTICE RESULTS IN DUE PROCESS VIOLATION

A long-standing settlement agreement which governed the use of a sand and gravel mine was the subject of a motion to modify. The motion to modify was filed by both parties to the appeal in order to allow for more for the sand and gravel mine to be open for more hours during the evening. Shortly after the motion to modify was filed, a hearing date was set by the court and published on the state judicial website. The parties to the motion subsequently filed a request with the court asking that the hearing be moved up one week. The court granted this motion and duly held the hearing one week prior to the advertised hearing date wherein it approved the motion to modify.

On the scheduled date for the hearing, a neighbor of the sand and gravel mine appeared and filed a motion to intervene pursuant to Connecticut General Statutes Sec. 22a-19. This state statute allows anyone to intervene in a judicial proceeding solely on the issue of protecting the public trust in the air, water or other natural resources of the State from being unreasonably polluted. Since the court had approved the motion to modify one week prior, it dismissed the intervenor's motion to intervene as being untimely.

An appeal of this decision found its way to the state supreme court which held that the lower court was wrong to deny the motion to intervene. By agreeing to advance the hearing date on the motion to modify the settlement agreement one week prior to the published hearing date, the court had deprived the intervenor of a fair and accurate notice which deprived him of due process. *Griswold v. Camputarò*, 331 Conn. 701 (2019).

COMPLIANCE WITH FEMA AND REDUCTION OF NONCONFORMITY ALLOW FOR VARIANCE

The owner of a parcel of property bordering Long Island Sound applied for a building height variance. The variance was needed in order for the owner to qualify for a State grant program which provided financial assistance to homeowners complying with FEMA regulations. In this case, the building height variance was needed so that the dwelling on the parcel could be raised and comply with the new FEMA flood zone requirements.

The application was granted by the zoning board of appeals over the objections of an abutting neighbor. An appeal to court followed.

The court found that a traditional hardship did not exist but recognized that compliance with mandatory FEMA flood regulations can be the basis for a variance. The court did not decide the

Written and Edited by
Attorney Steven E. Byrne
790 Farmington Ave., Farmington CT 06032
Tel. (860) 677-7355
Fax. (860) 677-5262
attysbyrne@gmail.com
cfpza@live.com

CONNECTICUT FEDERATION OF PLANNING AND ZONING AGENCIES QUARTERLY NEWSLETTER

Winter 2022

Volume XXVI, Issue 1

appeal on this basis as compliance in this case was voluntary as an existing home does not need to comply with the new flood regulation requirements.

Instead, the court upheld the Board's decision because the record demonstrated that the overall nonconforming nature of the property would be reduced. The property owner's application, while creating a nonconformity as to building height, would eliminate a lot coverage nonconformity as well as reduce several others. *Fedus v. Zoning Board of Appeals*, 66 Conn. L. Rptr. 183 (2018).

SHORT-TERM RENTALS NOT PERMITTED AS A USE OF A SINGLE- FAMILY DWELLING

The Massachusetts Supreme Court addressed an issue that has the attention of many Connecticut land use agencies. The issue is whether short term rentals of single-family dwellings would be permitted as an additional or accessory use of the property. The court found short-terms rentals do not as they conflict with the intended purpose of a single-family zoned district which is to have an area free of commercial, transient uses and instead provide stability and permanence which furthers a sense of community.

The court also found that the short-term rental of a single-family home is not the same as a lodging house or tourist home as both of these envision

that the owner of the property is present to supervise his lodgers whereas with a short-term rental, the owner is absent.

It should be noted that a short-term rental is defined as renting a dwelling for fewer than 30 days. *Styller v. Zoning Board of Appeals*, 487 Mass. 588 (2021).

ANNOUNCEMENTS

Lifetime Achievement Award and Length of Service Award

Nomination forms will be sent out later this month for these awards which will be presented to recipients at the Federation's annual conference. You should begin your process of finding worthy nominees now.

Workshops

At the price of \$180.00 per session for each agency attending, our workshops are an affordable way for your board to 'stay legal'. Each workshop attendee will receive a booklet which sets forth the 'basics' as well as a booklet on good governance which covers conflict of interest as well as how to run a meeting and a public hearing.

ABOUT THE EDITOR

Steven Byrne is an attorney with an office in Farmington, Connecticut. A principal in the law firm of Byrne & Byrne LLC, he maintains a strong focus in the area of land use law and is available for consultation and representation in all land use matters both at the administrative and court levels.

Written and Edited by

Attorney Steven E. Byrne

790 Farmington Ave., Farmington CT 06032

Tel. (860) 677-7355

Fax. (860) 677-5262

attysbyrne@gmail.com

cfpza@live.com

BOOK ORDER FORM

Name of Agency: _____

Person Making Order: _____

Address: _____

Purchase Order No.: _____

“PLANNING AND ZONING IN CONNECTICUT”
at \$ 35.00 each for members Copies _____ \$ _____
at \$ 40.00 each for nonmembers

“CONNECTICUT ZONING BOARD OF APPEALS”
at \$ 30.00 each for members Copies _____ \$ _____
at \$ 35.00 each for nonmembers

“WORKSHOP BOOKLETS” at \$14.00 each for members & \$18.00 each for nonmembers

Planning & Zoning Commissions	Copies _____	\$ _____
Zoning Board of Appeals	Copies _____	\$ _____
Inland Wetlands & Watercourses	Copies _____	\$ _____
Historic District Commissions	Copies _____	\$ _____

TOTAL DUE: _____

*Please make check payable to:
Connecticut Federation of Planning & Zoning Agencies*

**CONNECTICUT FEDERATION OF
PLANNING & ZONING AGENCIES**
2B Farmington Commons
790 Farmington Avenue
Farmington CT 06032



Colchester Planning & Zoning Commission
127 Norwich Ave.
Colchester, CT 06415