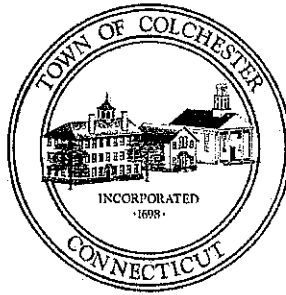


Town of Colchester

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**ZONING BOARD OF APPEALS
REGULAR MEETING
Tuesday, February 20, 2024 - 7:00 PM
Town Hall Meeting Room**

MINUTES

Members Present: Chairman L. Robinson, Vice Chair P. Reading, B. Setchinsky, M. Solis and J. Radachy
Also Present: ZEO I. Kisluk; Planning Director D. Sorrentino; Land Use Assistant S. Churchill; Attorney Rutkowska for appellant; BOS Liaison A. Shilosky; Public

1. **Call to Order** – Chairman Robinson called the meeting to order at 7:01 PM
2. **Legal Notice**
3. **Applications/Public Hearings**

A. **ZBA 2023-004 - Appeal of Notice of Zoning Violation and Order to Cease and Desist** dated September 28, 2023 and issued to Niantic Bay Group, LLC of 1967 N. Rose Hue Path, Hernando, FL 34442 for failure to provide required affordable housing within the Jordan Lane Affordable Housing Development (P&ZC Application 2021-015) that was permitted pursuant to Section 8-30g of the CT General Statutes a/k/a the Affordable Housing Land Use Appeals Act. Niantic Bay Group, LLC has submitted a "claim of error, requirement or appeal of decision made by Zoning Enforcement Officer" related to said Notice of Zoning Violation and Order to Cease and Desist. Property Locations: 34 Jordan Lane (ID#03-00/001-514); 24 Jordan Lane (ID#3-00/001-517); 22 Jordan Lane (ID#3-00/001-518); 20 Jordan Lane (ID#3-00/001-519); 16 Jordan Lane (ID#3-00/001-520); 12 Jordan Lane (ID#3-00/001-521); and 10 Jordan Lane (ID#3-00/001-522). Zoning District: Suburban Use (SU) – Chairman Robinson went over the process for the discussion phase of the application. Members agreed that there are two questions that the Board needs to answer to make a decision on the application: (A) was affordable housing a requirement for the approval of the application to the Planning & Zoning Commission to build this development; and (B) should the ZBA uphold the ZEO's Cease & Desist Order? Yes, no or modify. Members discussed the original application approval by the P&ZC. The motion to approve indicated this was an 8-30g application, as did many documents submitted with the application, including the Affordability Plan. The letter sent to the applicant was a notice of the decision and a summary of the modifications to the approval and was not the entire approval itself. 8-30g was clearly the basis for approval of the application, as otherwise, it did not conform to zoning regulations and would not have been approved. Members did not feel that any actions taken by the Town after the approval could constitute a waiver of the 8-30g requirement, including the issuance of building permits and certificates of occupancy. Information regarding construction values in comparison to sales price was not the responsibility of Town staff to analyze. The expectation that the Town would

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have intervened in the building process while there were still enough unsold houses to meet the affordability requirement is not reasonable. Testimony received indicated that the reporting requirement was not met, and that is what triggered the Town's review. The Administrator is responsible for reporting and the Town is not the Administrator. Members noted that there is a level of trust in this arrangement between the Town and the applicant, which trust was broken by the applicant not adhering to the agreement that was made. On the second question of upholding the Cease and Desist Order, members further discussed timing of when the discovery was made that the subdivision was not in compliance with the affordability requirements and when the Order was issued. Because the applicant had discretion as to which houses were to be sold as affordable, there would not have been cause for an Order until non-compliance was evident. Members agreed that if the ZBA believes that the Cease and Desist Order is proper, then it would not be appropriate for them to negotiate a settlement to sell fewer houses as affordable. Although members are sympathetic to the impacts and financial consequences of this situation, they feel it is due to poor project management on the part of Niantic Bay Group. Chairman Robinson stated that during the public hearing testimony, there were significant statements of misdeeds done by current and former Town staff that is not supported by the public record evidence. The Appellant's testimony regarding other recent housing developments are unfounded as well, as none of them are 8-30g applications and all conform to the zoning requirements, whereas because of the relief gained by 8-30g, this development does not.

Motion by J. Radachy to deny application for appeal ZBA 2023-004 and uphold the enforcement action on grounds that there was an 8-30g requirement for the subdivision in question and the enforcement actions are appropriate in view of present circumstances. 2nd by B. Setchinsky. Vote was unanimous, motion carried.

The Chairman stated a notice will be sent to the applicant regarding the denial and will be published in the newspaper on Friday 2/23/24.

4. **Minutes of Previous Meetings** – Motion by P. Reading to approve the minutes of 12/19/23. 2nd by J. Radachy. Vote was unanimous, motion carried. Motion by P. Reading to approve the minutes of 1/16/24 amended to reflect that J. Radachy was the only board member attending via Zoom, the rest were in person, along with the motions for said meeting. 2nd by J. Radachy. Vote was unanimous, motion carried.
5. **Old Business**
 - A. Confirmation of compliance with commissioner training requirements of CGS Sec. 8-4c. – Memo was sent to BOS to acknowledge compliance which was received during the consent agenda at their 2/15/24 meeting.
6. **New Business** – Members welcomed the new BOS liaison to the ZBA, Art Shilosky
7. **Correspondence** – None
8. **Adjournment** – Motion by M. Solis to adjourn. 2nd by B. Setchinsky. Vote was unanimous, meeting adjourned at 7:58 pm.

Respectfully submitted by: S. Churchill, Land Use Assistant