

# Town of Colchester

Land Use Department  
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**ZONING BOARD OF APPEALS**  
**REGULAR MEETING**  
**Tuesday, December 19, 2023 - 7:00 PM**  
**Town Hall Meeting Room 1**  
**MINUTES**

RECEIVED  
COLCHESTER, CT  
2023 DEC 22 AM 11:39  
CAYLE FURNAN  
TOWN CLERK

**Members Present:** Chairman L. Robinson, Vice Chair P. Reading, J. Radachy, B. Setchinsky, M. Solis  
**Also Present:** ZEO I. Kisluk; Planning Director D. Sorrentino; Land Use Assistant S. Churchill; Appellate J. Doran of Niantic Bay Group, LLC; Atty. S. Rutkowska of Arch Law Group for Niantic Bay Group, LLC; Atty. M. Branse and T. Plotkin of Halloran & Sage for the ZEO; Public

1. **Call to Order** – Chairman Robinson called the meeting to order at 7:00 PM
2. **Legal Notice** – D. Sorrentino read the legal notice as published in the Rivereast News Bulletin on 12/8/23 and 12/15/23.
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 procedure and rules for the Public Hearing. She asked if anyone had any concerns or conflicts with the members seated. Hearing none, she asked for the attorney for Niantic Bay Group to present their case. Atty. Rutkowska stated she wanted to disclose their sides’ prior request for a recusal of the attorney for the ZEO due to a previous interaction regarding a house that was built in the City of Groton. Atty. Branse disagreed there was any need for recusal as Mr. Doran was never his client. Atty. Rutkowska took issue with the statement in Atty. Branse’s Brief (Exhibit 63, 63A) that she had refused to attend the Planning & Zoning Commission show cause hearing, stating that she and her client felt that appearing before the ZBA was more appropriate. She submitted additional Exhibits for the record on behalf of the Appellant (Exhibits 65-70). Atty. Rutkowska then went on to explain their position that the “controlling document”, the P&ZC approval letter dated February 4, 2022 (Exhibit 17) does not specifically condition the Resubdivision application as being approved as an 8-30g project and referenced a legal principal of “4 corners doctrine”. When the mylars were signed by the P&ZC Chairman,

there was no reference to 8-30g there either. She said the issuance of Building Permits and Certificates of Occupancy indicated no requirement for affordable housing units. Members questioned Atty. Rutkowska regarding the numerous P&ZC application documents that do referencing affordable housing, including the Purpose and Description of Activity Letter (Exhibit 20), the Commission's approval motion (Exhibits 14 & 15) and the advertised Legal Notices of Decision (Exhibits 16 & 18). Several Commissioners noted that the approval letter itself references the P&ZC application and the published Legal Notice of Decision which clearly identifies the project as an 8-30g affordable housing development. Commissioners noted that the approval letter (Exhibit 17) states that the application is "approved with conditions" but the items enumerated are identified as "modifications". Commissioners also referenced J. Doran's letter to the First Selectman requesting a waiver of Building Permit fees for his affordable housing project (Exhibit 27) and J. Doran's letter to the Water & Sewer Commission Chairman requesting a waiver of the water and sewer connection fees for his affordable housing development (Exhibit 28).

John Doran, Project Manager for Niantic Bay Group provided his account of the history of the resubdivision application. He stated that nobody is saying that there wasn't an 8-30g presented, that's exactly what he did, he submitted subdivision plans and a draft Affordability Plan (Exhibit 21), as well as other supporting documentation. He stated that he submitted the letters to the First Selectman and Water & Sewer Chairman requesting fee waivers, but no fee waivers were ever granted. J. Doran stated the Affordability Plan was not implemented, it was not signed nor was it filed on the land records. J. Doran stated that he received an approval from the P&ZC on 2/2/22 and understood that he left with an approval for an 8-30g affordable housing development. Following the meeting, he received the decision letter from former ZEO D. Schaub outlining the conditions for approval (Exhibit 17) including signed mylars being filed on the land records, erosion & sediment control and road bonds to be obtained. When the application for building lot #7 was submitted, the buyer requested a 2-car garage. He received an approved permit to construct the house with a larger garage although the subdivision plan showed 1 car garages and all identical house designs. He said when he questioned former Planning Director M. Bordeaux about the changes, he was told to "look at his approval". Mr. Doran said he did not see 8-30g stated on the approval, and took that as inference that it was not an affordable housing development. He said he continued to receive approvals from the town and at no point during the construction of the first 8 houses, were any of the changes a problem. The houses were later redesigned to be larger, have 2 car garages and more bathrooms. Mr. Doran stated that in September he met with D. Sorrentino and days later received the Cease & Desist Order (Exhibit 01) from the ZEO. He stated he is looking for a reasonable compromise, but that the town is unwilling to accept his offer of 3 affordable houses. He stated he spoke with R. Gustafson after he received the Cease & Desist Order who told him he didn't know anything about 8-30g. Commissioners discussed the time and what was expected to be accomplished this evening, they decided to take a 5-minute recess.

**Motion by P. Reading to take a 5-minute break. 2<sup>nd</sup> by B. Setchinsky. Vote was unanimous, motion carried. Recording stopped at 9:00 PM. Meeting and recording resumed at approximately 9:08 PM.**

Atty. Branse submitted additional exhibits on behalf of the ZEO (Exhibits 71 & 72). D. Sorrentino requested a moment to give a response to some things that were stated by Mr. Doran, including that R. Gustafson had not been employed by the Town of Colchester for 8 months or more by the time the Order was issued and that Mr. Doran himself provided a

construction cost of \$225,000 for all of his Building Permit applications submitted to the Town.

Chairman Robinson then turned the hearing over to the public for their comments or questions.

Steve Gates, 88 Cabin Rd believes Mr. Doran knew he had to build 8 affordable houses and he did not and should be held accountable.

Robert Turney, 159 Cabin Rd stated the subdivision was originally only 8 lots and believes Mr. Doran had no intention of making any of the houses affordable.

Thomas Kaiser, 236 Krug Rd, Preston CT is a subcontractor for the Jordan Lane project and is experiencing a financial hardship because Mr. Doran has not paid him due to the Cease & Desist order. He is hopeful for a quick resolution to alleviate his situation.

Bruce Hayn, 289 Lebanon Ave is a member of the P&ZC. He stated the application was for 24 identical lots and houses. A member of the Board asked if 8-30g was a condition for approval and Mr. Hayn stated it was the sole reason for the approval.

Stephanie Smith, 12 Broadway is also a P&ZC member. She voted to approve the application of Niantic Bay Group because of the affordability component. If it was not an 8-30g project, it would not have been approved because it did not comply with zoning regulations. She encouraged board members to view the 2/2/22 P&ZC meeting recording (Exhibit 14).

Motion by P. Reading to continue the public hearing to the next regularly scheduled meeting on January 16, 2024. 2<sup>nd</sup> by J. Radachy. Vote was unanimous, motion carried.

4. **Minutes of Previous Meetings** – Motion by M. Solis to approve the minutes of July 18, 2023. 2<sup>nd</sup> by P. Reading. Vote was unanimous, motion carried. Motion by M. Solis to approve the minutes of September 19, 2023. 2<sup>nd</sup> by P. Reading. Vote was unanimous, motion carried. Motion by M. Solis to approve the minutes of November 21, 2023. 2<sup>nd</sup> by P. Reading. Vote was unanimous, motion carried.

5. **Old Business**

- A. Continuing Education Requirements Update – (discussed after #6) Chairman Robinson stated that everyone should complete their education by the end of the year.

6. **New Business**

- A. Election of 2024 Officers – Motion by J. Radachy to open floor for nominations of officers for 2024. 2<sup>nd</sup> by P. Reading. Vote was unanimous, motion carried. Motion by P. Reading to nominate L. Robinson as Chairman. 2<sup>nd</sup> by J. Radachy. Motion by M. Solis to close nominations. 2<sup>nd</sup> by P. Reading. Vote was unanimous, nominations for Chair closed. Motion by J. Radachy to nominate P. Reading to Vice Chair. 2<sup>nd</sup> by M. Solis. Vote was unanimous, motion carried. P. Reading motioned to nominate J. Radachy as Vice Chair. 2<sup>nd</sup> by M. Solis. Vote was unanimous, motion carried. Nomination declined by J. Radachy.

7. **Correspondence** – None

8. **Adjournment** – Motion by P. Reading to adjourn. 2<sup>nd</sup> by J. Radachy. Vote was unanimous, meeting adjourned at 9:51 PM.

Respectfully submitted by: S. Churchill, Land Use Assistant