

October 10, 2019

Jane Cable, Chairman
Zoning Commission

The Planning Commission discussed the proposed new text to Section 4.3 Tidal Waters Protection, and voted unanimously to determine that the proposed Text Amendment to Section 4.3 is NOT consistent with the Town's Plan of Conservation and Development. The members of the Planning Commission feel that the proposed text is redundant and that the existing Zoning Regulations, including the existing Tidal Waters Protection, Coastal Boundary, Flood Hazard Regulations and Conservation Zone Review – Gateway provide substantial regulation of the Town's coastal areas. Further, we feel the new text is over reaching, in some parts unenforceable, arbitrary and contrary to what is considered established legal zoning practices. Our objections and reasons for finding this amendment inconsistent with the Plan of Conservation and Development, include but are not limited to the following:

1. In the 2017 update to the Plan of Conservation and Development, the Commission included the following: "Where applicable, the Town and the implementation of zoning regulations and review of Coastal Management Act, Connecticut General Statutes Section 22a-90 et seq., should balance the private property ownership rights of individuals who live in coastal areas with resource protection, and improvement where possible, for features such as areas with fragile tidal marshes, flood plains, beaches, dunes and other areas that are protected. The Town's shoreline/beach communities and neighborhoods are a major economic driver of the Town of Old Lyme. Those communities are the most at risk of the threats of sea level rise.

As the sea levels rise, property owners should be allowed to take reasonable measures as specified above to protect their properties through the adaption measures specified above, including elevating their homes and/or construction of living shorelines and living shorelines incorporating stone.” This amendment completely tips the scale toward coastal resources protection (or over protection) and minimizes any consideration of private property rights.

2. This proposal appears to change numerous properties from conforming to non-conforming. This has the effect of diminishing property rights or possibly eliminating the right to use completely. Many municipalities apply a 50-foot setback from the Tidal Wetlands, which is the norm and should not be extended without justification.
3. Property values would also be diminished by changing many properties to non-conforming. This change is being proposed with no compensation. Also, it provides an argument for owners to appeal property assessments due to reduced value. This will have a negative impact on the Town’s Grand List total. Our waterfront and water proximity lots are a key to the Town’s Grand List and should not be unreasonably restricted in use or value.
4. Prohibiting application for a variance is certain to be challenged legally. This is a major overreach of authority by the Zoning Commission and an affront to the process where a property owner can seek relief based upon hardship or exceptional difficulty. This appears to be an overreach of authority and lack of concern for property owner rights.
5. Proposed Section 4.3.3 gives the Zoning Commission subjective judgement that is arbitrary and without ascertainable standards.
 1. The regulation asks the Zoning Commission to consider “potential increased and advanced flooding conditions.” This standard requires the Zoning Commission to try to predict future flooding patterns, which will be a very difficult standard to meet.

2. The regulations also require that the Zoning Commission to consider "consistency with neighborhood characteristics." This is wide open for Zoning Commission interpretation and personal likes and dislikes. There is no real consistency or specific criteria in the shoreline properties to use as a baseline; they vary considerably in size, style, height, color, construction, siding and roof types, etc. We believe this is another example of disregard for property owner rights. There is no relief for the property owner in this process.
6. The proposal would also severely limit or exclude any changes and/or improvements at all the commercial marine businesses. This is contrary to economic development and overly restrictive of an already highly regulated industry. Again, looking toward the Town development, marine businesses are crucial to boating and tourism – two major aspects of our Town economy.

Further, the Planning Commission commented on the letter from Karen A. Michaels, Environmental Analyst III at DEEP in support of the amendment. We have learned that Ms. Michaels did not copy, review or discuss this letter to either Brian Golembiewski at DEEP who typically reviews such letters before their submission, nor Brian Thompson, Director of LIS Programs at DEEP. In fact, neither of them was aware of the letter until a month after it had been sent to the Zoning Commission and released to the press (CT Examiner). This is highly irregular and against procedure at DEEP. When contacted to ask if this letter represented an official position of the DEEP. Mr. Bryan Thompson did not take a position. Harold Thompson, Chairman of the Old Lyme Planning Commission contacted Bryan Thompson to ask if the letter represented the position of the DEEP. Bryan Thompson stated that he had read the letter within hour of receiving the phone call from Harold Thompson and he stated that he would not comment on the letter until he had an opportunity to review the letter in more detail. To date we have heard nothing more.

The letter from Ms. Michaels, DEEP, to the Old Lyme Zoning Commission on August 5, 2019, did address a number of concerns that the Planning Commission believes should also be addressed for this proposed revision.

The proposed amendment, as written, appears to have been drafted with a narrow focus. The proposed revision failed to review possible consequences of this revision beyond the original intent of revising Section 4.3 of the Old Lyme Zoning Commission Regulations.

The Planning Commission feels this proposed amendment is not consistent with the Town Plan of Conservation and Development and existing Section 4.3 provides adequate protection provided in existing State and local regulations.

Respectfully submitted,

Harold Thompson

Planning Commission Chair, on behalf of the full Commission

**PLEASE HAVE THIS COMMUNICATION READ AT THE OCTOBER 15TH PUBLIC HEARING
AND BE PART OF THE WRITTEN RECORD.**