

APPEAL TO THE ZONING BOARD OF APPEALS

October 23, 2019

The undersigned here appeals to the Zoning Board of Appeals of the Town of East Lyme from the decision of the zoning enforcement officer.

1. Decision of zoning enforcement officer appealed from is dated October 7, 2019.
2. The property involved in the action or decision is 109 – 111 Main Street East Lyme.
3. The zone of the property is CM Commercial District.
4. The owner of the property is Niantic River Marina, Inc.
5. Others receiving the cease and desist order are Marker Seven Marina LLC, Niantic Bay Shellfish Farm, LLC and Niantic River Transmission Co.

REASONS FOR APPEAL

A MARINA IS NOT LIMITED TO PLEASURE BOATS

The Zoning Enforcement Officer (ZEO) has taken the position that only pleasure boats can be berthed at the subject property. He opines that when the regulations state a “marina” as a use by right, the marina is limited to pleasure boats only. Commercial boats are not permitted.

The ZEO has limited the subject marina to only pleasure boats because, in part, in 2011 the Zoning Commission approved a Coastal Area Management (CAM) site plan for an expansion of the marina. The ZEO references and relies on the 2011 approval even though he has opined that said CAM site plan has now expired and no longer valid.

In addition to the 2011 site plan the ZEO has also relied on a definition of a marina in the Merriam-Webster dictionary. The ZEO has taken a much too narrow interpretation of the word “marina.” His interpretation limits all marinas to “pleasure boats” only. Even the definition of a marina he uses includes not only the docking of pleasure boats but it also “offers supplies, repairs **and other facilities.**”

Other definitions from other sources on the internet offer the following:

Marina: A waterside facility that has docks, moorings, supplies, and other facilities for small boats.

Marina: a boat basin offering dockage and services for small craft.

Noticeably absent is the word pleasure boat. If the Planning Commission wanted such a narrow definition of a marina, limited only to pleasure boats, it should have said so.

COMMERCIAL SHELL FISHING BOATS

ARE ALLOWED BY RIGHT

Regardless of the definition selected, the ZEO's interpretation, as limiting the property to only pleasure boats, failed to consider the permitted uses in the CM Commercial District. Regulation 10.1.9 specifically **allows by right** "Berthing facilities for vessels engaged in **commercial....shell fishing....**" Said interpretation also failed to consider the historic use of the property for commercial activity over the past 40 years either by right or as a PENC use. (See statements attached as Exhibit A). Lastly the ZEO reliance that the only use for the property is a marina is based on a CAM application for a marina in 2011 that The ZEO has opined has expired and is no longer valid.

Since a permitted right in the CM Commercial District includes the berthing of vessels engaged in commercial shell fishing those shell fishing boats are allowed to be moored to the property and are a permitted use by right under the regulations.

HISTORICAL USE OF THE PROPERTY INCLUDED COMMERCIAL BOATING

The site plan of 2011 has been acknowledged by the ZEO to have expired. Thus the property uses would revert back to the uses of 2011. There was always a commercial aspect to the marina either by right under the zoning regulations or as a PENC use. (Exhibit A).

NO PROCESSING PLANT EXIST ON THE PROPERTY

A shell fish processing plant does not exist on the property. A processing plant would be a process by which a raw agricultural commodity undergoes a specific processing resulting in a change of character or has been added as an ingredient. Examples of processing include, but not limited to, cooking, curing, smoking, and restructuring (shucking and filleting). No such activity takes place on the property. All that takes place on the property is a commercial vessel engaged in the farming and harvest of shellfish. Such vessels are allowed, by right, to berth at the property and ship their raw agricultural product off the premises. (Just like any boat that has caught and then removes the whole un-filleted fish off the premises.)

Nothing is done to the product in the uplands and therefore the product is not processed in any manner, way shape or form. The product, shellfish, leaves the property in the same form as it entered the property.

FEDERAL AND STATE LAW PREEMPT LOCAL ZONING FOR FARMING AND HARVEST OF SHELL FISH

Beyond the Coastal Jurisdiction Line, which is beyond the jurisdiction of the Town of East Lyme, the owner has a permit to ship shell fish under CT Shellstock Shipper # 225. The FDA regulates the farming and harvesting of shellfish and therefore, the Federal law has pre-empted any State law to the contrary. Regulation 10.1.11 allows related accessory uses customarily incidental to 10.1.9, the berthing of a commercial vessel engaged in shell fishing. Under this section the storage of gear in the uplands on the property or any equipment necessary to grow, farm or harvest, crops is permitted.

The ZEO has failed to consider that Cini Park is also in the CM Zone and that the town allows for the sale of shellfish by the lessees of Cini Park. If the sale of shellfish in a CM Zone is permitted there is no reason why the shipping of shellfish from the zone in a bag or box or cooler is not equally permitted. The shellfish come onto the property and leave the property in its natural state.

**THE ZEO'S POSITION IS CONTRARY TO STATE LAW AND THE
TOWN'S PLAN OF CONSERVATION AND DEVELOPMENT**

Lastly, the position of the ZEO flies in the face and is in direct conflict with Connecticut General Statutes 22a -92 and 22a-93 and Plan of Conservation and Development for the town of East Lyme.

As identified in Sec. 22a-92 of the CGS, a primary goal of coastal management is to design and locate recreational facilities [such as a marina] which “...do not interfere with the needs of the commercial fishing industry.” Or, in other words, as found in 22a-93, commercial fishing and the CT shellfish industry are of *national interest* above all other water-dependent uses.

As noted in Section 5.4 the Plan of Conservation and Development, not only is the expansion of new water-dependent commercial uses in the Lower Niantic River encouraged but the Plan calls for the support of aquaculture programs within East Lyme. The current use of the property is for an aquaculture program.

6. Name and addresses of the appellants are as follows;
 - a. Marker Seven Marina, LLC., 111 Main Street, Niantic, CT 06357
 - b. Niantic Bay Shellfish Farm, LLC., 59 Woodlawn Road New London, CT, 06320

THE APPELLANTS,

by 

Thomas J. Londregan, duly
authorized

Exhibit A:

To whom it may concern,


I, Bob Perry, hereby attest to the presence of commercial vessels at the property of 111-109 since at least the 1990. I began commercial fishing in Niantic and the surrounding waters in 1990. I have held my own commercial fishing licenses and endorsements since 1990; since early 2010, my hailing port has been Marker 7 Marina. Marker 7 Marina is also my port of landing.

Bob Perry
Robert Perry

10/19/19
Date

To whom it may concern,

I, Scott Grant, hereby attest to the presence of commercial vessels at the property of 111-109 since at least the early 1990's. I began commercial fishing in Niantic and the surrounding waters in the early 1990's. I have held my own commercial fishing licenses and endorsements since circa 1991. Since early 2018, my hailing port has been Marker 7 Marina. Marker 7 Marina is also my port of landing.



Scott Grant

10-18-19
Date

To whom it may concern,

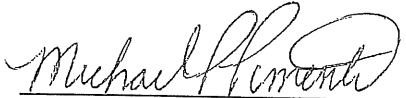
I, Mike Stepski, hereby attest to the presence of commercial vessels at the property of 111-109 since 2018. I have been commercial fishing in Niantic and the surrounding waters for many years. I have kept one of my vessels, which is critical to my commercial business's success, at Marker 7 Marina since 2018.

Michael Stepski
Mike Stepski

10-19-19
Date

To Whom it may concern,


I, Mike Pimentel, hereby attest to the presence of commercial vessels at the property of 111-109 since at least 1979. I was first employed in 1979 and worked for a pile driving business based from this property. I am still involved in this business.


Mike Pimentel

10/17/2019
Date

To Whom it may concern,

I, John Herde, hereby attest to the presence of commercial vessels at the property of 111-109 since at least 1991. 1991 was the first year I kept a boat at the subject property. From 2013 until the end of 2018 I ran Marker Seven Marina and Tackle Shop. Not only was there a commercial fishing presence on the dock before and after I ran Marker Seven, but there was always a commercial presence via J.C. Marine or P & L Marine at the very least.

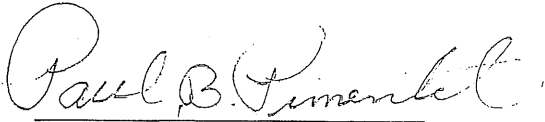


John Herde

10/18/19
Date

To Whom it may concern,

I, Paul Pimentel, hereby attest to the presence of commercial vessels at the property of 111-109 since at least 1976. I not only have kept my pile driving business at this location since 1975, but also, for a time, kept my Lobster boat at this location. Over the last 55 years, I have had many different commercial vessels and many different businesses. The one constant is that all the vessels were always birthed at the subject property in question.



Paul Pimentel

10/14/14

Date