



PLANNING AND ZONING COMMISSION

SUBDIVISION/ SPECIAL PERMITS APPLICATIONS

Property address AVENUE B Zone RU 40 Map 40.4 Lot 4  
 Applicant William T. Koch, Jr. Phone 860-434-3060 Email WMTKOCHJR@aol.com  
 Mailing Address 151 BRUSH HILL RD., LYME, CT 06371  
 Owner KOCH NE, LLC Phone 860-434-3060 Email WMTKOCHJR@aol.com  
 Mailing Address 44 LYME STREET, OLD LYME, CT 06372

Subdivision Approval  Re-subdivision Approval

Special Permit under Chapter 315, Article	Brief description
_____	_____
_____	_____

Municipal [improvement, attach brief description,,

Regulation revision: Zoning subdivision, chapter and article 315-233

Coastal Site Plan Review

Is property within:

Inland wetlands/URA       Eight-mile Overlay       Conservation District

\_\_\_\_\_

500 ft. Of adjoining municipality

Deed restrictions: (easement notice required? Y\_ N\_) include volume and page

Application is hereby made by (sign) [Signature] date 7/24/23  
(Regular zoning permit and other building permits required if approved)

Received by Planning and Zoning Commission on this \_\_\_\_\_ day of \_\_\_\_\_, 20\_\_\_\_  
(next regular meeting)

Application fee \_\_\_\_\_ cash \_\_\_\_\_ check \_\_\_\_\_ check # \_\_\_\_\_

Approval date \_\_\_\_\_ Denial date \_\_\_\_\_ Site Plan rev. date \_\_\_\_\_

ATTACHMENT TO ZONING REGULATION REVISION

The change requested is for Section 315-23.3. Existing nonconforming lots.

The regulation currently reads:

“...no dwelling or other building containing human habitation shall be constructed on any [existing nonconforming] lot less than 15.000 square feet in

Imposed change:

“...no dwelling or other building containing human habitation shall be constructed on any [existing nonconforming] lot less than \_\_\_\_\_ square feet in

FACTUAL BACKGROUND

The deed(s) to the applicants' property going back to 1926 indicate without any doubt that it was always a building lot in the Town of Lyme:

"This conveyance is subject to the following restrictions; viz: No building shall be erected on any of the said lots except a single detached dwelling house on each lot for the use of not more than two families and costing not less than \$4,500, same to be without flat roofs, also private garages, boat houses, and other buildings appurtenant to private residences. " See Exhibit "A" attached.

The Lyme Zoning Regulations, passed long after 1926, have confiscated the property in that the applicant has no reasonable alternative use of the property.

### LEGAL BACKGROUND

"Case law holds that a nonconforming use is a vested right which is entitled to constitutional protection.

The concept of nonconforming uses protects the right of the user to continue the same use of the land as it existed before the adoption of the zoning regulations, and a nonconformity exists, it is a vested right which adheres to the land itself, and the right is not forfeited by a purchaser who acquires it with knowledge of the regulations which are inconsistent with the existing use.

The statute protects preexisting nonconforming lots and buildings from restrictions and prohibitions in the zoning regulations and 'where a nonconformity exists, it is a vested right which adheres to the land itself. And the right is not forfeited by a purchaser who takes with knowledge of the regulations which are inconsistent with the existing use R. Fuller, 9B Connecticut Practice Series, 4th Edition 2015 as Supplemented August/ 2021 p. 223-224. See Exhibit "B" attached. Confiscation of private property occurs where "there are no alternative uses" for a

vacant nonconforming property in a residential zone other than 'the construction of a single family home." Verillo v. Zoning Board of Appeals of the Town of Branford. 155 Conn. App. 657, 700 (2015), citing Archgg)bault v.

Wadlow, 25 Conn. App. 375, 383 (1991)(emphasis added). See also, Sydoriak v. Zoning Bd. of Appeals of Town of Prospect, 90 Conn. App. 649, 660-661 (2005)(involving a lot created prior to zoning):

"it was the subsequent enactment of the zoning regulations in 1959, and not any act by the plaintiff or his predecessor in interest, that Tendered the lot nonconforming to those regulations. Those circumstances were beyond plaintiffs control;(citations omitted) and are the type of circumstances that variances were designed to ameliorate.(citations omitted) Because the Board improperly concluded that the plaintiffs hardship was self-created, its action denying the variance on this ground was illegal.

### FACTUAL BASIS FOR REVISION

- 1.) The 15,000 square foot requirement is arbitrarily restrictive in that it is not soils based.
- 2.) The 15,000 square foot requirement is arbitrarily restrictive in that it is not based on septic suitability.
- 3.) The 15,000 square foot requirement is arbitrarily restrictive in that it is not based on well suitability.

4.) The 15,000 square foot requirement is arbitrarily restrictive in that it is not based on the character of the neighborhood. There are many existing homes on 10,000 square foot nonconforming lots, and even less than 10,000 square feet.

5.) In Lyme, Avenues and D in the 1926 plan that created lots in both Lyme and Old Lyme, are in a RU 40 zone with the additional 15,000 square foot Regulation at issue.

In Old Lyme, Avenues E, F and G from the same 1926 plan are in an RU 10 zone [10,000 square foot]. Property owners of 10,000 square lots in Old Lyme created in the same 1926 Plan as the Lyme lot owned by the applicant on Ave. B, can build a single family home without a variance. Property owners of existing nonconforming 10,000 square foot lots in Lyme have no reasonable use of their lot.

6.) In Public Act 21-29 effective October 1, 2021, a "Cottage cluster" means a grouping of at least four detached units, or live work units, per acre that are located around a common Open area." See Exhibit "C" attached.

Under the new Public Act. (our (4) units	amounts to
per	
square	per detached
	home.

ARBITRARY DECISIONS BY THE LYME ZBA

Perhaps there are more, but the applicant is aware that the Lyme ZBA has granted at least two (2) variances of the 15,000 square foot regulation for 10,000 square foot lots, and The Lyme ZBA has denied at least two (2) variances for 10,000 square foot lots. There does not appear to be any legal distinction between the cases. They all involve buildable lots created before zoning that became existing

nonconforming lots by the passage of 15,000 square foot zoning regulation years later.

When the variances were granted by the ZBA— a single family home was built on a 10,000 square foot lot. When the variances were denied by the ZBA — the denials left the properties with no reasonable alternative use.

On December 22, 1989, the Lyme ZBA granted a variance from the 15,000 square foot regulation for 113 Shore Drive which had approximately 1 square feet. This property is in RU 80 zone.

The decision says: You satisfied a majority of the Board that a hardship existed as respects this particular lot in that it was created in its present size and shape prior to the enactment of the Lyme Zoning Regulations."

David Tiffany voted in favor of the variance.

On September 20, 1994, the Lyme ZBA granted a variance from the 15,000 square foot regulation for 27 Oak Street which had 10,019 square feet. This lot is almost directly across the street from the applicants' lot and was created in the same plan from 1926 as the applicants' lot.

The Board found that the lot in question has been owned separately from any adjoining lot since prior to July 9, 1954 and was, therefore, a prior existing nonconforming lot.

On April 18, 2013, the Lyme ZBA voted 3-2 to grant a variance from the 15,000 square foot regulation for 91 Shore Drive which had 10,000 square feet. It was an existing nonconforming lot created in the 1920's. David Lahm, Ross Byrne

and Jeanne Rutigliano voted to grant the variance based upon the fact that the lot was a grandfathered prior existing nonconforming lot. The lot was directly on Rogers Lake.

Two members of the ZBA voted to deny the variance. Therefore, the variance was denied. Under state law a 4-1 vote was needed to pass.

A review of the minutes indicates that the 2 dissenters' basis for denial was contrary to the law, as set forth above, regarding prior existing nonconforming lots. The applicant in that case did not appeal to the Superior Court and thus the legality of the dissenters' view was never ruled upon.

On April 17, 2021, the Lyme ZBA voted unanimously to deny a variance for the applicant's 10,193 square foot lot, despite the fact that it is an existing nonconforming lot. Only Mr. Lahm can explain his legal basis, if any, for voting to grant the variances in 2013 for 91 Shore Drive [which has Rogers Lake frontage] and deny them in 2021 for the applicant's lot on Avenue B.

The should change the regulation to avoid constitutionally arbitrary decisions by the ZBA and the cost to the taxpayers to defend arbitrary decisions by the ZBA construing the Planning and Zoning Commission's regulation.

The Town spent \$11,929.00 in legal fees alone defending the most recent decision by the ZBA involving this regulation. The case was withdrawn, to pursue this avenue of approach, and no decision was rendered by the Superior Court. If the regulation is not changed, there will be significant additional legal fees incurred by the Town of Lyme defending the 15,000 square feet requirement where it is used by

the ZBA to constitutionally deprive the owner of building a single family home that fits in with the neighborhood — thus depriving the owner of any reasonable alternative use of the pre-existing nonconforming lot.

This Is An Opportunity For The Town of Lyme.

Many, many great families, have raised their families and children on 10,000 square foot lots [and less] in Lyme. Not anymore, according to the Lyme Zoning Board of Appeals.

As housing opportunities become more important in Connecticut, the Town of Lyme seems to be going backwards.

"For much of the past year, businesses across the state — from manufacturers in the northwest to military contractors in the southeast — have been raising alarms about Connecticut's housing shortage.

Employers say they've had trouble recruiting staff because skilled tradespeople can no longer afford to live in much of the state. Many companies have attributed the state's estimated 100,000 unfilled job openings to the lack of housing.

"The lack of housing growth is the main issue behind the workforce crisis, said Chris DiPentima, president of the Connecticut Business and Industry

Association." The Norwich Bulletin June 6, 2023. See Exhibit attached.

A change of this zoning regulation will be a documented step forward by the Town of Lyme in the area of providing much needed decent and affordable housing.



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EXHIBIT "A"

VOL. 60

AND FURTHERMORE, I the said grantor do by these presents bind myself and my heirs, and assigns forever to WARRANT AND DEFEND the above granted and bargained premises to them the said grantees, and to the survivor of them and to such survivor's heirs and assigns, against all claims and demands whatsoever, except as hereinbefore mentioned.

IN WITNESS WHEREOF, I have hereunto set my hand and seal this 29th day of May in the year of our Lord nineteen hundred and fifty-nine.

Signed, Sealed and Delivered  
in presence of  
John E. Larson  
Shirley Lebert

{I.R.S. \$1.10}

Kenneth DePau Plimpton  
(L.S.)

STATE OF CONNECTICUT  
COUNTY OF MIDDLESEX

SS.

Deep River

May 29, A.D. 1959

Personally Appeared Kenneth dePau Plimpton Signer and Sealer of the foregoing Instrument, and acknowledged the same to be his free act and deed before me.

John E. Larson

Commissioner of the Superior Court

Received August 11, 1960 at 12:40 P.M. and recorded by me.

Attest: *M. F. Brantley*

Town Clerk

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NONCONFORMING

a special exception allows a permitted use Suw to conditions in the regulations.

Where a setback variance was previously granted the property for a permitted use, the use can bc changed to another E\*rmitted without obtaining another variance.

Nonconforming have the effect of avoiding takings of prop. erty nod preventing legal and political problems Of retroactive applicaticm of zoning ordinances. However, they also can in. consistent With the comprehensive plan in many cases, prevent uniformity with gur-rcmnding uses, affect the value of neighboring und secure a advantage through bar the zoning regulations create against new, similar uses.

### 52:2 Conditions for continuation Of nonconforming

The right to continue nonconforming uses is protected by statute. General Statutes provides in part that zoning •regulations shall not, prohibit the continunnee of any nonconforming use, building or structure existing nt the time Of the adoption of such regulations.' Nonconforming uses are protected by the statute even though there is no exemption or provision for them in the zoning Cage law holds a nonconforming use is a vested right which is entitled to constitutional protection.J The concept of nonconforming uses protects the right of the agor to eontiaue the use of the as it existed before the date of the adoption of the zoning regulations. and where a nonconformity exists, it is a vested right which adheres to ehe land itself, and the right iB not forfeited by a purchaser who

(1975% Bd. of 218 265, 279. 5R8A.2d (1991L  
or v. 506, SOS, a62 A,2d 1338, 1840

Lurie v, Planning of 160

304. 790, 804. 49 A,L.aad 476 (1971); v Greenwich, 14 i Conn. 6a2, 636. 109 A.2d 258, 258

Auto LLC v. Bd. of Appeals. City 24 L Rpm sax 1999 WL (CAD. CU 1999).

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acquires it with knowledge of the regulations which are inconsistent with the existing use.<sup>a</sup>

The statute protects preexisting nonconforming lots and buildings from restrictions and prohibitions in the zoning regulations and "Where nonconformity exists, it is a vested right which adheres to the land itself. And the right is not forfeited by a purchaser who takes with knowledge of the which with the existing use. . . . A vested right, unless abandoned, to continue the nonconforming use is in the land. The right to a nonconforming use is a property right and . . . any provision of a statute or ordinance which takes away that right in an unreasonable manner, or in a manner not grounded on the public welfare, is invalid. A lawfully established nonconforming use is a vested right and is entitled to constitutional protection.

. . . . A zoning is concerned with the use of specific existing buildings and primarily their \_\_ such rights vested and may be passed to others in no way contradicts the recognized goal of eliminating nonconformities as quickly as possible, since the utility must be earned out within the limits of permissible governmental action. Nonconforming are not favored they detract from comprehensive plan.

The statutory protection given nonconforming uses under General Statutes 8-2 prohibits municipalities from nonconforming uses to be terminated within a set period of time. Connecticut does not follow the emcalled "rule of reasonableness" applied in other states allowing amortization of nonconforming Connecticut AVOIDS litigation and possible inverse There are no Connecticut decisions which decide a zoning ordinance provision that prohibits or restricts reconstruction of a

'Wixidbury Donuts, LLC v, Appeals or o'  
748 A.2d 810 (2011) •raylw v. zoning Bd. of of 65 App. 687, 694.  
783 A.2d 526 (2001); verno  
Bd Of Appeals of Branford, 155 Conn- ADD. 657, 111 AX  
478.494 v, Bd. of of of 176 479, 483. 48', 408 Aid 243, 246 v. Webb. 115 581.  
585. 162 A. 690, 592 (1982); v. v. of of-rm 155 684.  
J, F. Leughlin Agency, v. afWest Aartfma,  
305. 311, 348 A\_2d 675. d7S (1974), v. Emd Zoning Com'n Of Nwth  
6 ADD. 240, 604 A.2d 554, 556 Ciomet%i v, Plming Zoning  
of TM of Ridgefield, 24 App. 5. g, g, 584 A.2d 1210, 1202 lg L, 377,  
1997 WL CE 1997) (municipality out faeilifyl



Public Act No. 21-29

AN ACT CONCERNING THE ZONING ENABLWG ACT.  
ACCESSORY APARTMENTS, TRAINING FOR CERTAIN LAND VSE  
OFFICIALS, MUNICIPAL AFFORDABLE HOUSING PLANS AND A  
COMMISSION ON CONNECTICUT'S DEVELOPMENTAND FUTURE.

Be it enacted by the and of Repr&ntatives in General Assembly convened:

Section I. Section S-1a Of the general statutes is repealed and the following is  
sulstutited in lieu thereof (%tive Oct'&r 1.2021):

(a) "Municipality' as used in this chapter shall include a district  
establishing a zoning commission under \*Ction 7-326. Wherever the  
words "town' and •selectrnen• in this chapter, they shall be deemed to  
include •district" and "officers Of such district", respectively.

(b) As used in this chaptgt and 6 of this act:

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apartment  
that is subject to binding recorded deeds which contain covenants or

EXHIBIT "C"

Substitute House Bill No. 6107

restrictions that require such accessory apartment be sold or rented at, or below, prices that will preserve the unit as housing for which, for a period of not less than ten years, persons and families pay thirty per cent or less of income, where such income is less than or equal to eighty per cent of the median income;

(3) "As of right" means able to be approved in accordance with the terms of a zoning regulation or regulations and without requiring that a public hearing be held, a variance, special permit or special exception be granted or some other discretionary zoning action be taken, other than a determination that a site plan is in conformance with applicable zoning regulations;

(4) "Cottage cluster" means a grouping of at least four detached housing units, or live work units, per acre that are located around a common open area;

(5) "Middle housing" means duplexes, triplexes, quadplexes, cottage clusters and townhouses;

(6) "Mixed-use development" means a development containing both residential and nonresidential uses in any single building; and

(7) "Townhouse" means a residential building constructed in a grouping of three or more attached units, each of which shares at least one common wall with an adjacent unit and has exterior walls on at least two sides.

Sec. 2. Section 8-1c of the general statutes is repealed and the following is substituted in lieu thereof (*Effective October 1, 2021*):

(a) Any municipality may, by ordinance, establish a schedule of reasonable fees for the processing of applications by a municipal zoning commission, planning commission, combined planning and zoning commission, zoning board of appeals or inland wetlands commission.

EXHIBIT "C-1"





Leaps & bounds: 5 NFL <sup>teams</sup> team <sup>forward</sup> that took big steps forward  
SPORTS, 1B

# The Bulletin

6, 2023 | NORWICHBULLETIN.COM

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