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Via FedEx

October 7, 2015

Margaret LaBranche, Marshal
121 Chesterfield Road
East Lyme, CT 06333

Re: New London Maritime Society, Inc. v. City of New London Zoning Board of Appeals

Dear Marshal LaBranche:

Enclosed please find one (1) original and two (2) copies of the following documents: (a) judicial summons form; (b) citation with recognizance; and (c) complaint (titled “administrative appeal”).

Please serve the two (2) sets of copies upon the Clerk of the City of New London. Please note that service must be made by Friday, October 9, 2015.

After service is made, please return to me the one (1) original set of documents, your return of service, and your invoice.

Please do not hesitate to contact me with any questions. Thank you for your attention to this matter.

Sincerely,



Evan J. Seeman

cc w/encs.: John Casey, Esq.

SUMMONS - CIVIL

JD-CV-1 Rev. 10-15
 C.G.S. §§ 51-346, 51-347, 51-349, 51-350, 52-45a,
 52-48, 52-259, P.B. §§ 3-1 through 3-21, 8-1, 10-13

STATE OF CONNECTICUT
SUPERIOR COURT
 www.jud.ct.gov



See other side for instructions

- "X" if amount, legal interest or property in demand, not including interest and costs is less than \$2,500.
- "X" if amount, legal interest or property in demand, not including interest and costs is \$2,500 or more.
- "X" if claiming other relief in addition to or in lieu of money or damages.

TO: Any proper officer, BY AUTHORITY OF THE STATE OF CONNECTICUT, you are hereby commanded to make due and legal service of this Summons and attached Complaint.

Address of court clerk where writ and other papers shall be filed (Number, street, town and zip code) (C.G.S. §§ 51-346, 51-350)		Telephone number of clerk (with area code)	Return Date (Must be a Tuesday)
New London Superior Court, 70 Huntington Street, New London 06320		(860) 443-5363	November 24, 2015 <small>Month Day Year</small>
<input checked="" type="checkbox"/> Judicial District <input type="checkbox"/> Housing Session	<input type="checkbox"/> G.A. Number:	At (Town in which writ is returnable) (C.G.S. §§ 51-346, 51-349) New London	Case type code (See list on page 2) Major: P Minor: 90

For the Plaintiff(s) please enter the appearance of:

Name and address of attorney, law firm or plaintiff if self-represented (Number, street, town and zip code) Robinson & Cole LLP, 280 Trumbull Street, Hartford, CT 06103		Juris number (to be entered by attorney only) 050604
Telephone number (with area code) (860) 275-8200	Signature of Plaintiff (If self-represented)	

The attorney or law firm appearing for the plaintiff, or the plaintiff if self-represented, agrees to accept papers (service) electronically in this case under Section 10-13 of the Connecticut Practice Book. Yes No

Email address for delivery of papers under Section 10-13 (if agreed to)
eseeman@rc.com

Number of Plaintiffs: **1** Number of Defendants: **1** Form JD-CV-2 attached for additional parties

Parties	Name (Last, First, Middle Initial) and Address of Each party (Number; Street; P.O. Box; Town; State; Zip; Country, if not USA)	
First Plaintiff	Name: New London Maritime Society, Inc. Address: 150 Bank Street, New London, Connecticut 06320	P-01
Additional Plaintiff	Name: Address:	P-02
First Defendant	Name: City of New London Zoning Board of Appeals Address: 181 State Street, New London, Connecticut 06320	D-01
Additional Defendant	Name: Address:	D-02
Additional Defendant	Name: Address:	D-03
Additional Defendant	Name: Address:	D-04

Notice to Each Defendant

1. **YOU ARE BEING SUED.** This paper is a Summons in a lawsuit. The complaint attached to these papers states the claims that each plaintiff is making against you in this lawsuit.
2. To be notified of further proceedings, you or your attorney must file a form called an "Appearance" with the clerk of the above-named Court at the above Court address on or before the second day after the above Return Date. The Return Date is not a hearing date. You do not have to come to court on the Return Date unless you receive a separate notice telling you to come to court.
3. If you or your attorney do not file a written "Appearance" form on time, a judgment may be entered against you by default. The "Appearance" form may be obtained at the Court address above or at www.jud.ct.gov under "Court Forms."
4. If you believe that you have insurance that may cover the claim that is being made against you in this lawsuit, you should immediately contact your insurance representative. Other action you may have to take is described in the Connecticut Practice Book which may be found in a superior court law library or on-line at www.jud.ct.gov under "Court Rules."
5. If you have questions about the Summons and Complaint, you should talk to an attorney quickly. **The Clerk of Court is not allowed to give advice on legal questions.**

Signed (Sign and "X" proper box) 	<input checked="" type="checkbox"/> Commissioner of the Superior Court <input type="checkbox"/> Assistant Clerk	Name of Person Signing at Left Evan J. Seeman	Date signed 10/07/2015
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If this Summons is signed by a Clerk: a. The signing has been done so that the Plaintiff(s) will not be denied access to the courts. b. It is the responsibility of the Plaintiff(s) to see that service is made in the manner provided by law. c. The Clerk is not permitted to give any legal advice in connection with any lawsuit. d. The Clerk signing this Summons at the request of the Plaintiff(s) is not responsible in any way for any errors or omissions in the Summons, any allegations contained in the Complaint, or the service of the Summons or Complaint.	<i>For Court Use Only</i>
	File Date

I certify I have read and understand the above:	Signed (Self-Represented Plaintiff)	Date	Docket Number
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RETURN DATE: NOVEMBER 24, 2015 : SUPERIOR COURT
NEW LONDON MARITIME SOCIETY, INC. : JUDICIAL DISTRICT OF NEW LONDON
V. : AT NEW LONDON
CITY OF NEW LONDON ZONING BOARD : OCTOBER 7, 2015
OF APPEALS :

CITATION WITH RECOGNIZANCE

BY AUTHORITY OF THE STATE OF CONNECTICUT, you are hereby commanded to summon the CITY OF NEW LONDON ZONING BOARD OF APPEALS to appear before the Superior Court for the Judicial District of New London, 70 Huntington Street, New London, Connecticut, 06320, on November 24, 2015, said appearance to be made by the City of New London Zoning Board of Appeals or its attorneys by entering a written statement of appearance on or before the second day following the return date, then and there to answer unto the attached appeal of NEW LONDON MARITIME SOCIETY, INC. by (a) leaving **two** copies with or at the office of the Town Clerk of the City of New London at 181 State Street, New London, Connecticut 06320, with direction to keep one copy for herself and forward the second copy to the City of New London Zoning Board of Appeals within the time allowed by law and at least twelve (12) days before the return day, in the manner provided by law for the service of process.

Plaintiff, as principal, and Howard K. Shafer, 51 Brenway Drive, West Hartford, Connecticut 06117, as surety, are hereby recognized in the sum of Five Hundred Dollars (\$500.00) payable to Defendant, to prosecute this appeal to the full force and effect and comply with all orders of the Court.

HEREOF FAIL NOT, but of this writ with your doings thereon make due service and return.

Dated at Hartford, Connecticut, this 7th day of October, 2015.



Evan J. Seeman
Commissioner of the Superior Court

Please enter the appearance of
Robinson & Cole LLP

Counsel for
New London Maritime Society, Inc.



John P. Casey
Evan J. Seeman
280 Trumbull Street
Hartford, CT 06103
Juris Number 050604
Tel. No.: (860) 275-8200
Email: jcasey@rc.com; eseeman@rc.com

RETURN DATE: NOVEMBER 24, 2015 : SUPERIOR COURT
NEW LONDON MARITIME SOCIETY, INC. : JUDICIAL DISTRICT OF NEW LONDON
V. : AT NEW LONDON
CITY OF NEW LONDON ZONING BOARD : OCTOBER 7, 2015
OF APPEALS :

ADMINISTRATIVE APPEAL

TO THE SUPERIOR COURT FOR THE JUDICIAL DISTRICT OF NEW LONDON AT NEW LONDON ON THE 7th DAY OF OCTOBER, COMES NEW LONDON MARITIME SOCIETY, INC., APPEALING PURSUANT TO SECTIONS 8-8 AND 8-10 OF THE CONNECTICUT GENERAL STATUTES FROM THE DECISION OF THE CITY OF NEW LONDON ZONING BOARD OF APPEALS.

1. Plaintiff New London Maritime Society, Inc. (“NLMS”) is a 501(c)(3) tax-exempt organization whose mission is to preserve the maritime history of the people, port, and City of New London for the public. NLMS’ principal place of business is 150 Bank Street, New London, Connecticut 06320.

2. NLMS owns waterfront property (“Lighthouse Property”) on Pequot Avenue in New London, identified as Map H26/Block 14/Lot 15 on the City of New London assessor’s map and located in the City of New London’s R-1 Zone pursuant to the City’s official zoning map.

3. The Lighthouse Property contains an historic lighthouse, the New London Harbor Lighthouse (“Lighthouse”), which was constructed in 1801 and replaced a lighthouse on the same location that was first established in 1760.

4. NLMS acquired the Lighthouse Property from the United States of America, acting by and through the Administrator of General Services, by way of a Quit Claim Deed dated October 6, 2009 and recorded in Volume 1853 at Page 197 of the New London Land Records (“Lighthouse Deed”).

5. The conveyance of the Lighthouse Property to NLMS was conducted in strict accordance with the National Historic Lighthouse Preservation Act of 2000, 16 U.S.C. § 470w-7 (“NHLPA”),¹ and the NHLPA restrictive requirements were all properly contained in the Lighthouse Deed as restrictive covenants.

6. The NHLPA and the Lighthouse Deed’s restrictive covenants require that NLMS, *inter alia*, “make the [Lighthouse] available for education, park, recreation, cultural or historic preservation purposes for the general public at reasonable times and under reasonable conditions.” NLMS must fulfill this and other requirements contained within the Lighthouse Deed to avoid triggering the reversionary provision therein which would cause ownership of the Lighthouse Property to revert back to the United States.

7. The Lighthouse has been and continues to be used as a navigational aid for mariners transiting the Thames River in New London since at least 1801.

8. The Lighthouse Property has been used to provide the general public with free tours of the Lighthouse for more than 100 years.

¹ In 2014, Public Law 113-287, § 3, 128 Stat. 3215 (Dec. 19, 2014) replaced 16 U.S.C. § 470w-7 with 54 U.S.C. § 305101-305106. Changes therein are cosmetic. Because of that and because the Lighthouse Property was conveyed under 16 U.S.C. § 470w-7, NLMS will use these section numbers in this complaint.

9. The use of the Lighthouse Property in these ways – as a federal aid to navigation and providing free tours to the general public – antedate the City of New London’s 1928 enactment of zoning regulations.

10. Since acquiring the Lighthouse Property, NLMS has continued to use the property in the same manner in which it has always been used (federal navigational aid and to offer free tours to the public).

11. On or about June 15, 2015, City of New London Zoning & Wetlands Enforcement Officer Michelle Johnson Scovish (“ZEO”) issued a cease and desist order to NLMS enjoining NLMS from providing tours to the general public (“Order”).

12. The ZEO states in the Order: “Based on my review of the City of New London’s Zoning Regulations, it would appear that the current ‘use’ of the lighthouse has increased and is no longer a passive operation of a lighthouse where a lighthouse keeper may have allowed visitors from time to time to tour the lighthouse, the current use is more in line with a museum type use which is advertised to the general public, formal tours provided to the public and a fee collected for said tour.”

13. The Order additionally states that NLMS must obtain a special permit for a “museum” use to continue to provide tours of the Lighthouse to the general public, and that NLMS must obtain a variance of the applicable zoning regulation regarding lot size for such a use.

14. The Order does not enjoin NLMS from continuing to use the Lighthouse Property as a navigational aid for mariners.

15. On or about June 19, 2015, NLMS timely appealed the Order to the Defendant, City of New London Zoning Board of Appeals (“ZBA”).

16. Defendant ZBA is the duly authorized municipal entity with jurisdiction to consider appeals of decisions of the ZEO, pursuant to Chapter 124 of the Connecticut General Statutes and the City of New London’s zoning regulations.

17. On September 24, 2015, the ZBA held a public hearing to consider NLMS’ appeal.

18. The public hearing lasted approximately five and a half hours.

19. During the course of the public hearing, the ZBA received more than ninety (90) items into the record for it to consider when rendering its decision.

20. One item that the ZBA received was a memorandum prepared by NLMS, through counsel, detailing the history of the Lighthouse Property – namely providing free tours to the public for more than 100 years – and that use of the property in this way is a valid nonconforming use that predates zoning. NLMS offered additional testimonial and documentary evidence to this effect.

21. Members of the ZBA responded that – regardless of whether NLMS can establish a legal nonconforming use – they were opposed to NLMS’ appeal because NLMS had not yet submitted a special permit application for a museum use or an application to vary the lot size requirement for said use.

22. NLMS also argued that the NHLPA preempts the City of New London’s zoning regulations, meaning that the ZEO’s Order was not valid and of no force or effect, but the ZBA refused to consider this issue and did not seek a legal opinion from its counsel, who attended the public hearing.

23. Members of the public spoke in favor of and in opposition to NLMS' appeal. One person who opposed NLMS' appeal is the wife of one of the members of the ZBA. NLMS only learned of this spousal relationship after the ZBA had closed the public hearing, deliberated, and voted to deny the appeal.

24. The ZBA member whose wife provided public comment to oppose the appeal had himself expressed irritation at even having to consider the appeal, stating that "if [NLMS] had made believe the lighthouse is a museum and had sought a zoning variance on that basis we would not have been put through all this."

25. Thereafter, and more than five and a half hours after opening the public hearing, the ZBA stated that it would be moving to close the public hearing. In response, counsel for NLMS requested that the public hearing remain open and be continued to allow NLMS the opportunity to review and respond to the evidence that had been submitted into the record that night, especially because NLMS had not yet had the chance to review many of these items. The ZBA denied this request and closed the public hearing.

26. Despite receiving more than ninety (90) items into the record, the ZBA deliberated for less than ten (10) minutes before one member moved to deny the appeal, without ZBA members even reviewing many of the items that had been submitted into the record that evening.

27. The ZBA voted to deny NLMS' appeal (5-0) ("Decision").

28. Legal notice of the Decision was published in *The Day* on September 26, 2015.

29. As the applicant-owner of the Lighthouse Property, NLMS is both statutorily and classically aggrieved by the Decision for purposes of taking this appeal because it has a specific, personal, and

legal interest in the Decision, and its interest is specially and injuriously affected by the Decision. NLMS is classically aggrieved by the Decision because there is the risk that the Lighthouse Property will revert back to the United States of America under the Lighthouse Deed if NLMS is unable to make the Lighthouse Property open to the general public.

30. The Decision is illegal, arbitrary, capricious and constitutes an abuse of discretion for a variety of reasons, including but not limited to, the following:

- a. The use of the Lighthouse Property to provide free tours to the general public is a legal nonconforming use that predates the City of New London's enactment of zoning regulations;
- b. The Lighthouse Property is not subject to local zoning regulations because the City of New London's zoning regulations conflict with the NHLPA and are therefore preempted by it;
- c. The ZBA misapplied the City of New London's zoning regulations and General Statutes governing appeals of ZEO decisions to the ZBA;
- d. The ZBA was illegally constituted with at least one member who had a personal interest in the appeal, in violation of Connecticut General Statute § 8-11;
- e. The ZBA was illegally constituted with several members who illegally predetermined the result of NLMS' appeal, since they refused to consider NLMS' substantive arguments on appeal without NLMS first submitting an application for a special permit or variance;

- f. The Board rendered its decision without considering most of the evidence submitted at the public hearing;
- g. The actions of the ZBA in (1) refusing to continue the public hearing to allow NLMS to review and respond to the items submitted into the record during the course of the hearing; (2) failing to review the record items submitted at the hearing; and (3) failing to seek legal opinion from its counsel violate rules of fundamental fairness; and
- h. The Decision is not reasonably supported in law or fact.

WHEREFORE, Plaintiff New London Maritime Society, Inc. prays that the Court:

1. Sustain its appeal;
2. Based upon the law and the administrative record, reverse the Decision of the ZBA, declare the ZEO's Order to be null and void, and declare that NLMS' use of the Lighthouse Property to provide free tours to the general public is a legal nonconforming use;
3. In the alternative, remand this matter to a properly composed ZBA to consider NLMS' substantive arguments on appeal;
4. Award costs as provided by § 8-8(k) of the Connecticut General Statutes; and
5. Grant such other relief as in law or equity may apply.

PLAINTIFF
NEW LONDON MARITIME SOCIETY, INC.

By 

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