

3 PRIMROSE STREET
NEWTOWN, CT 06470
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TOWN OF NEWTOWN
PLANNING & ZONING COMMISSION

MINUTES

REGULAR MEETING

Thursday, October 7, 2021 at 7:00 p.m.
Council Chambers, Newtown Municipal Center
3 Primrose Street, Newtown, CT 06470

Present: Don Mitchell, Barbara Manville, Corrine Cox, Dennis Bloom, Gregory Rich, David Rosen, Roy Meadows

Absent: Andrew Marone

Staff: Rob Sibley, Deputy Director of Planning, Helen Fahey, Clerk

Mr. Mitchell called the meeting to order at 7:03pm

Public Hearings

Application 21.21 by Sundaram, LLC, for two Text Amendments to §2.03.400 and §4.03.317, of the Zoning Regulations of the Town of Newtown, so as to add a subsection “(e) combination filling station and convenience stores permitted by §4.03.317 with drive-through facilities” and to add a subsection “(g) except as permitted in the Exit 10 Commercial Design District” as demonstrated on documents submitted to the Land Use Agency 8/4/21

Application 21.22 by Sundaram, LLC, for a Special Exception, for a property located at 62-64 Church Hill Road, so as to permit a drive-through window as demonstrated on a set of plans titled, “Sundaram LLC Newtown Mobile Station 62-64 Church Hill Road Newtown, CT 06470” dated 6/21/21, revised 7/22/21 and all supporting documents submitted to the Land Use Agency dated received August 4, 2021.

Attorney Hall pointed out that the last hearing was continued for the public to have an opportunity to view the plans but no one showed. Attorney Hall presented the new plans that had the interior traffic signs and locations. He explained that while the new plans don't show any place for the air hose or vacuums the applicants expect to put them next to the parking spots at the left of the lot near the car wash. He said there is plenty of space to put the portable propane cage to right of building.

Jason Edwards of J. Edwards Associates on 227 Stepney Road, gave an overview of the signs location and language. There is a do not enter sign facing into the site to reinforce a one way direction, left turn only signs will get added to the pumps and there will be no left turn signs for traffic coming out of the bypass lane or drive through. There will be do not enter signs at the exits, stop signs at the bypass lane, and car wash lane as well as a pedestrian crossing sign in that area. On top of the signs there will be extensive pavement painting.

*These minutes are subject to the approval of the Commission.
Copies of applications and documents are on file at the Land Use Agency.*

Attorney Hall explained that the site plans show seven cars stacked at the carwash and eight cars stacked at the drive through to illustrate that everything fits but it realistically won't be all those cars at once.

Ms. Cox asked how the cars are fitting around the left side of the existing building and Attorney Hall said the walkway will be removed, and explained the size of the turn radius.

Mr. Meadows asked how many employees will be on the premise at once. Jaydev Patel of 2 Stone Fence Lane said there are 3 or 4 employees and Dunkin will have 3-4 so 6-8 total. Mr. Meadows asked if there is someone required for maintenance of the carwash. Mr. Patel explained there is one dedicated person who maintains the property day to day. The carwash will get serviced if it is down but there is no specific car wash person as it is self-service.

Mr. Mitchell asked if there is enough turning radius for a car at the top left pump needing to exit and Mr. Patel said currently people make that turn all the time, the radius is not being touched in the plans. Mr. Edwards said the turn is similar to what the drive through lane turn radius is.

Mr. Mitchell questioned moving the air pump to the left parking spot because it could pose an issue with traffic, tractor trailers pulling in could also cause traffic issues. Mr. Patel referenced the traffic videos from the last meeting that show a tractor trailer pulling up to make a delivery that caused no issues to traffic.

Mr. Meadows expressed concerns with people exiting the convenience store headed towards the diesel pumps crossing in front of the drive through. He wondered if a gate could be added like the Stony Hill Dunkin Donuts has so the pedestrians don't walk in front of the drive through. Attorney Hall pointed to the pedestrian crossing sign and stop sign for drive through drivers on the site plan. Mr. Edwards thought adding a gate was a good idea. Mr. Meadows suggested blocking off the corner sidewalk so pedestrians have to walk around which would protect the drivers who can't see pedestrians and vice versa. Attorney Hall said they are open to the changes.

Ms. Manville wondered where the employees would park. Attorney Hall noted there are 11 parking spaces but Ms. Manville said that leaves very few spaces for customers. Mr. Mitchell agreed with Ms. Manville, if there were 8 employees and 1 open space for the air pump that would leave 2 spots for customers. Mr. Patel and Mr. Dimserky, co-owner of Dunkin Donuts on 6 Queen Street said they only have 2 employees at a time. Mr. Dimersky said that a lot of his employees are high school kids with no cars or people who don't drive. He explained that 2-3 people driving at any given time would be excessive. Attorney Hall made it clear that the required amount of spaces meet the regulations. Mr. Mitchell said these are minimums and it is possible for the commission to require more than the regulation minimums if there is expert testimony. Mr. Patel said customers also park car at the pumps and go inside while they are getting gas, so the parking spot deficit could be relieved by the pump stations. Attorney Hall said as he understands it as long as the regulations are met, they are entitled to an approval. He also said there is no more room for parking, there are as many spots as can fit.

Mr. Meadows asked if the Dunkin Donuts will also sell food that can be ordered both inside and at the drive through. Mr. Dimersky affirmed.

Mr. Mitchell asked Attorney Hall to show where in the regulations it is listed what can be sold at convenience stores and Attorney Hall referenced §4.03.317 subsection (C) from the regulations.

Mr. Rich asked if the handicapped spot is ADA compliant and Mr. Edwards said yes.

Mr. Mitchell invited public comment.

Heidi Winslow of 62 Jo Al Court spoke about what a great town Newtown is to live in. She expressed how important it is to protect what Newtown looks like to those coming to visit and to protect small businesses. This includes having no strip malls, no box stores and no drive through windows. Ms. Winslow said that generally fast food restaurants use drive through windows and these restaurants cause issues with stacking and traffic congestion on top of taking away from local eateries. Ms. Winslow said while the applicants say they are within regulations, the matter of the fact is that they are here to change the regulations. The applicants are not in compliance or they wouldn't be asking for a text amendment. Ms. Winslow told the commissioners that if they accept the text amendment to change the regulations for what they consider to be safe and for the benefit of Newtown.

Attorney Hall said the Exit 10 Special District was created to allow Starbucks or restaurants that have sit down dining to have a drive through window. The proposed change in the regulations will allow a convenience store/filling station to have a drive through window only in the Exit 10 Overlay Zone. Attorney Hall said in regulation changes the commissioners have unlimited discretion in making changes. Attorney Hall said that the Mobile Gas Station would be the only place eligible for a drive through so he doesn't think this would open the gates to other drive through windows. Ms. Cox pointed out that Patty's Pantry has a grandfathered in drive through and Attorney Hall agreed.

Mr. Mitchell spoke about all the various items that a convenience store could sell and said a combination convenience store/filling station sells even more items than the ones listed in the regulations like automotive care. Mr. Mitchell said the proposal is for a Dunkin Donuts but the text amendment says convenient stores can have a drive through window so that definition is a lot broader.

Mr. Bloom moved to close the public hearing. Mr. Meadows seconded. All were in favor and the public hearing for Application 21.21 was closed at 8:03pm.

Mr. Mitchell read the following into the record:

BE IT RESOLVED that Application 21.21 by Sundaram, LLC, for two Text Amendments to §2.03.400 and §4.03.317, of the Zoning Regulations of the Town of Newtown, so as to add a subsection "(e) combination filling station and convenience stores permitted by §4.03.317 with drive-through facilities" and to add a subsection "(g) except as permitted in the Exit 10 Commercial Design District" as demonstrated on documents submitted to the Land Use Agency 8/4/21. IS HEREBY FOUND CONSISTENT WITH THE PLAN OF CONSERVATION AND DEVELOPMENT AND THE COMPREHENSIVE PLAN, AND SHALL BE APPROVED. BE IT FURTHER RESOLVED that the approval shall become effective October 30, 2021.

Discussion and Action

Mr. Rosen said his biggest concern was the internal traffic and he thinks the applicants did a good job at fixing that

Mr. Mitchell spoke about how the traffic study was based of a code for a stand-alone coffee shop not a convenience store/filling station. Mr. Mitchell said another use would require an assessment of the total use. He also acknowledged that Exit 10 provided for a drive through but doesn't think that was based on a full consideration of whether they're good in situations beyond restaurants. Mr. Mitchell mentioned an application for a drive through off Exit 11 that was recently denied for not meeting regulations. He said the addition of the Dunkin Donuts would be a stand-alone operation acting as another entire business within the filling station and convenience store and the regulations allow one use per lot. A gas station / convenient store is a vehicle centric operation that lends itself to density observations. Mr. Mitchell said the text amendment shows no limitation on what can be sold through the drive through window. The text amendment is with the convenience store and not a coffee shop window.

Ms. Manville asked if the Exit 10 overlay goes across 84 or ends at the intersection and Mr. Mitchell said it starts at the highway and goes to about the train tracks. Mr. Meadows asked if there were maps that show where the Exit 10 overlay goes and Mr. Sibley affirmed.

Ms. Manville said coming into this her concern was added traffic but according to traffic study it doesn't change the impact of the traffic coming out onto Route 6. She said she is impressed with the internal flow of the traffic. Ms. Manville also said if all of the lanes were full it will be tight but workable. Mr. Meadows agreed based on the traffic report but brought up Mr. Mitchell's point of the stand-alone coffee shop code used to conduct the study. Mr. Bloom also agreed with Ms. Manville. Mr. Boom said his main concern was with the radius going around the back of the building but with the wall getting pushed back 8ft he thinks it will work as long as tractor trailers are not allowed around the building.

Mr. Meadows asked if the commissioners could make the text amendment narrower to prevent anything being sold at a convenience store/ gas station to be sold out the window. Mr. Sibley said the commission can modify the language anyway they want.

Ms. Cox asked Mr. Mitchell about his view of 2 businesses being run on the lot. Mr. Mitchell said a Dunkin Donuts would be an additional business and there has to be some findings on traffic that are based on evidence. He said in his opinion he hasn't heard enough to let him say that the traffic here is not going to be a problem.

Mr. Meadows asked why subsection (e) had to be part of the text amendment and questioned if it could be removed. It was explained that it allows a gas station / convenience store to have a drive through window because the current regulations only allow restaurants to have a drive through window. Mr. Mitchell explained this Dunkin Donuts will not qualify as a restaurant because there will be no eating on site like Starbucks across the street, adding onsite eating would be prohibited because it would qualify as two uses. Mr. Mitchell asked if anyone could propose an amendment to the language. He also said denying the application will give the applicant time to draft something that's more narrow and bring it back.

Ms. Manville looked to confirm that the applicant's business plan is to keep their existing convenience store / gas station and only sell Dunkin Donuts products through the window. Mr. Rosen said yes, but the way the text amendment is written it doesn't suggest that. Mr. Mitchell said at some point if Dunkin Donuts were to leave they could still use that drive thru. Mr. Rosen suggested the text amendment be limited to no alcoholic drinks and prepared food and Mr. Rich asked how that could be enforced. Mr. Mitchell said the text amendment is far broader than it needs to be and it can be written in a more limited way. Mr. Meadows agreed. Mr. Mitchell said he doesn't want to draft a regulation on the fly and for one business's specific use.

The Commission voted as follows:

Don Mitchell - NAY
Roy Meadows - NAY
Barbara Manville - NAY
Corinne Cox - NAY
Dennis Bloom – NAY

The motion to disapprove Application 21.21 carried unanimously

Mr. Sibley asked if the commission would consider an extension associated with the special exception application. Mr. Mitchell said they could also withdraw the special exception with an agreement that everything will be the same when they come back. Attorney Hall agreed with Mr. Sibley to hold action on the special exception and work on narrowing the text amendment. Mr. Sibley asked Attorney Hall to draft a 30 day extension request and Attorney Hall agreed.

Minutes

Mr. Mitchell presented a document that he had created with amendments to the August 19, 2021 minutes. The amendments from the document are listed below:

1. Page 2: Replace "Mr. Meadows so moved" with "Mr. Bloom so moved"
2. Page 3, Paragraph 4: Add "Mr. Mitchell began a discussion of the first proposed modification, reiterating his previously stated view that the proposed change was not needed because the regulations specifically prohibit outdoor storage of non-passenger vehicles. Notes to the various maps, he said, appear to allow such storage so modifying the condition as requested may be allowing storage that the regulations prohibit - which is something only the zoning board of appeals can do by way of a variance."
3. Page 3, Paragraph 5: Add "There was discussion concerning enforceability of such a condition, during which Mr. Benson said that enforcement was entirely the responsibility of the Land Use Department. Mr. Mitchell disagreed and said that the answer to difficulties in enforcement was not to move the goal post, or to eliminate the restriction that had to be enforced."

4. Page 3 Paragraph 6: Add “Mr. Mitchell began reading the second proposed modification, at which point it was suggested that the commission need not go through each of the proposed modifications because they had been discussed in executive session, to which a majority of the commissioners agreed. Commissioners Bloom, Cox and Manville then called for an 'up or down' vote on the entire resolution. Mr. Mitchell then called for the vote.”
5. Page 3: Remove “Paul Hilario, et al. v. Planning & Zoning Commission of the Town of Newtown”

Mr. Bloom made a motion to approve the minutes from the meeting of August 19, 2021 as amended. Ms. Cox seconded. All were in favor and the minutes from the meeting of August 19, 2021 were approved as amended.

Mr. Mitchell moved to approve the minutes from the meeting of September 16, 2021. Mr. Bloom seconded. All were in favor and the minutes from the meeting of September 16, 2021 were approved.

Adjournment

Mr. Rosen moved to adjourn, Ms. Manville seconded. All members were in favor and the meeting was adjourned at 8:57 p.m.

*Respectfully submitted,
Helen Fahey, Clerk*