



TOWN OF NEWTOWN
PLANNING & ZONING COMMISSION

MINUTES

REGULAR MEETING

Multipurpose Room, Senior Center
8 Simpson Street, Newtown, CT 06470
March 5, 2020 at 7:30 p.m.

Present: Don Mitchell, James Swift, Dennis Bloom, Corinne Cox, Barbara Manville, Nick Cabral, and Andrew Marone

Absent: David Rosen

Also Present: Rob Sibley, Deputy Director of Planning, Christine O'Neill, Clerk

Mr. Mitchell called the meeting to order at 7:32 p.m.

Continuation Requested

Application 20.03 by James F. Walsh, for a Special Exception, for a property located at 32 Berkshire Road, so as to permit the development of a 14,000 square foot building with retail use and a restaurant, as shown on a set of plans titled "Coach's Corner, 32 Berkshire Road (44/4/2) & 44/4/4, Sandy Hook, Connecticut" dated 2/18/20, and supporting documents submitted to the Land Use Agency 2/19/20 and 2/25/20.

In a communication dated 3/2/20 to the Land Use Agency, the applicant for Application 20.03 requested a continuation of the public hearing to the next regular meeting of the Planning and Zoning Commission, 3/19/20.

Public Hearing

(Continued) Application 19.31 by 13 Hawleyville Road, LLC, for a Special Exception, for a property located at 13 Hawleyville Road, so as to permit the development of a proposed convenience store and gas station with associated parking and utilities, as shown on a set of plans titled "13 Hawleyville Road LLC, 13 Hawleyville Road (Route 25), Newtown, Connecticut" dated 9/3/19 revised for new application 11/15/19, revised 1/10/20, and supporting documents submitted to the Land Use Agency 11/25/19, 12/12/19, 1/10/20, and 1/16/20.

Atty. David Bennett introduced himself as representing 13 Hawleyville Road, LLC. He began by clarifying the use of the term "cross-examination" at the last meeting for this application. The point he was trying to get across was that due process allows someone to inquire, through the chairman, as to the basis of a statement that is being made – whether it is an opinion, or a statement being made by an expert with credentials. He stated that he had no intention of denying anyone the right to speak. Atty. Bennett handed out a court case "Janice P. Booth et. al., v. Newtown Planning and Zoning Commission," dated October 30, 2001, which establishes that anyone has the right to cross-examine. He distributed two other court cases that also establish this point. The attorney clarified that he only wished to provide context for the testimony.

Dainius Virbickas of Artel Engineering submitted a new set of plans showing a modification - a sidewalk along Hawleyville Road frontage - and a comparison image of what was originally proposed

versus the currently proposed version. He demonstrated the new sidewalk on a slideshow and commented that all maps (grading, sediment erosion control plan) reflect this change.

Mr. Virbickas next displayed a drawing with the originally-proposed features in red, and the currently-proposed features underlying in black. Atty. Bennett asked how much the reduction in size was. Mr. Virbickas estimated, in rough numbers, a one-third size reduction. The reduction in the size of the convenience store is 1200-1300 square feet.

Atty. Bennett asked if there were any questions from the Commission or the public. Mr. Mitchell explained that generally public comment happens after the applicant has finished their presentation.

Hal Kurfels introduced himself as a certified expert resource in commercial real estate who has served on multiple municipal commissions/boards. Mr. Swift asked if Mr. Kurfels had a financial interest in this project; Mr. Kurfels replied that yes, the applicant is his client. In a slideshow, he underscored the portion of the Zoning Regulations (6.04.100) in the Hawleyville Center Design District (HCDD) guidelines that call for the promotion of activities which “accommodate services that are compatible with the district’s proximity to Exit 9 of Interstate 84.”

Ms. Cox asked if he was aware that the exits before and after Exit 9 already have multiple gas stations. Mr. Kurfels acknowledged this and said it was typical; Ms. Cox did not agree.

Mr. Kurfels reminded the Commission of the HCDD regulation about gas stations needing to be 2,000 feet apart from each other – a condition met by the proposed site for this project. He pointed out that this proposal would put the gas station only 77 feet from I-84’s east-bound Exit 9, while the other gas station would be 1,103 feet from the exit.

Mr. Kurfels went over the tax revenue generated from the proposed gas station versus the proposed diner. Atty. Bennett clarified that this slide was in response to Ms. Cox’s question last time as to what economic benefit this project would have to the Town.

Mr. Swift stated he was concerned that the Commission was receiving a wealth of new information at this meeting, and asked if any of the slides/handouts had been previously submitted as part of the public record. Atty. Bennett reminded the Commission that they could review all the information before they voted. [After a public hearing is closed, the Commission has 65 days to render a decision.]

Mr. Swift felt the claim that the property is bifurcated from the rest of the zone by the highway seems to be asking the Commission to ignore the Design District. Mr. Kurfels said he is not at all asking that of the Commission, he was simply stating the way it is. He said that commuters will just get off for the gas station and get right back on the highway. Ms. Cox and Ms. Manville disagreed. Mr. Mitchell added that some people who get off the Exit will get back on the highway to continue traveling, while others will travel through Hawleyville to their job or home.

The Commission took a recess from 8:00 - 8:06 in order to set up audio equipment, since there were a number of members from the public who were commenting that they could not hear.

Ms. Manville called attention to the slide in which Mr. Kurfels highlighted “accommodate services that are compatible with the district’s proximity to Exit 9 of Interstate 84.” Ms. Manville attested that what he had failed to mention the part directly preceding it: “promote business activities within the

district that will *serve the surrounding neighborhoods and, to a lesser degree [...]* I-84.” Atty. Bennett

Michael Galante of Hardesty & Hanover (formerly Frederick P. Clark Associates) introduced himself as the principal traffic engineer for the project. He explained that the applicant has modified that gas station to result in roughly the same level of traffic as the diner that the Commission approved in 2015. This development would not rise to the level of mitigation in the eyes of the State, which meant that a traffic light for the area would not be sanctioned. Mr. Galante submitted a letter to the record in which he addresses Mr. Mitchell’s concerns from last meeting about which land use code was applied to determine the algorithm for the traffic calculations.

Mr. Galante said that he was confident in the numbers that the State asks traffic engineers to use in their studies because he did his own actual counts at a gas station in Danbury near Tamarack/Backus Avenue, and his results were very similar. This gives him faith that the numbers from the Department of Transportation (DOT) are accurate. Mr. Swift asked if there were other gas stations in proximity to the Danbury gas station he was studying, and Mr. Galante said no, there were restaurants though.

Ms. Cox asked where exactly Mr. Galante conducted his traffic counts for the currently proposed station. Mr. Galante replied from the interchange at I-84 to all the ramps and intersections, Covered Bridge Road, the gas station driveway, and the traffic signal where Route 25 meets Route 6. Ms. Cox said she had conducted an informal traffic count, and Mr. Galante said he would be happy to review it later. Mr. Galante also addressed a previous comment from Mr. Swift that the traffic counts should be done by estimating traffic for the gas station, then for the convenience store, and combining the two numbers – Mr. Galante explained that is simply not the way it is done, since the two operations function as one.

Atty. Bennett asked if Mr. Mitchell felt his question from last time about methodology was answered; Mr. Mitchell said he heard the answer, but still had the question.

Ms. Cox said her informal traffic study consisted of the number of cars traveling southbound on Route 25 at the railroad crossing. She read her results: 2/4 388 vehicles total with 136 entering I-84 to Danbury, 186 entered I-84 towards Waterbury; 2/5 446 vehicles total with 91 towards Danbury, 178 towards Waterbury; 2/6 295 vehicles total with 85 towards Danbury, 87 towards Waterbury. She commented that not all cars made it to the proposed location of the gas station. Mr. Galante replied that the gas station was not yet built. Ms. Cox said she just wanted to point out what current traffic patterns were.

Mr. Mitchell asked how much traffic would come from the highway. Mr. Galante explained that 70% of total traffic expected to come to the gas station would originate from I-84 - 35% from westbound, 35% from eastbound. The rest would come from both directions of Route 25. Mr. Mitchell thought it might be significant that the gas station’s connection to Covered Bridge Road is entrance-only, and has no outlet. Mr. Galante replied that Covered Bridge Road and its conditions are accounted for the study.

Mr. Mitchell said that he ran analyses with different land use codes for the traffic study, and that the land use code used by Mr. Galante resulted in the lowest traffic totals by far. Mr. Mitchell wondered if this traffic study was in effect “working backwards” to reach the same number as the previously-approved diner. Mr. Galante assured him that the report was entirely based upon facts and algorithms created by traffic engineers, and that the comparison to the diner was simply provided for the convenience of the Commission.

Atty. Bennett asked if this traffic study is the same study that would be given to the DOT approval. Mr. Galante answered in the affirmative. Atty. Bennett asked what it would take for the DOT to require a traffic light in the area. Mr. Galante replied a significantly higher volume of traffic out of the gas station – and Mr. Mitchell believed that an accident could also trigger the need for a traffic light.

Mr. Mitchell asked if Mr. Virbickas could pull up his slide with the site plan. He wondered if the cars exiting from both the pumps and convenience store would queue in such a way that could conflict with those cars trying to enter, which might lead to queuing on Route 25. Mr. Galante stated that they had not provided any internal directional traffic control for the site, but could if Mr. Mitchell felt it would address the problem. Mr. Galante said gas station traffic flow generally regulates itself but they could add directional indicators.

Atty. Bennett asked if Mr. Galante felt, in his expert opinion, that Route 25 has the capacity based on volume to handle the traffic from the proposed development. Mr. Galante replied yes.

Atty. Bennett introduced Jay Jamal to speak about why this gas station would become a “Fuel and Recharge Center” in the future. Mr. Jamal said he has grown up working in his family-run gas station business with over 30 locations across the Northeast. Smart Foods is a concept he and his family started a few years ago. Mr. Jamal holds certifications in multiple food service franchises. Atty. Bennett explained that Mr. Jamal’s family would be the tenant occupying the facility the developer is proposing.

Mr. Mitchell asked if there would be multiple tenants on the site. Atty. Bennett, Mr. Jamal, and Mr. Jamal’s partner Cal Ahmad said that the same entity would be operating both the gas station and the convenience store with food service. Mr. Jamal went over the healthy eating choices that Smart Foods provides, which will be made in-house.

Mr. Jamal mentioned that a study that shows from 2010-2018, 70% of people who entered a gas station got gasoline, but in the past two years the number dropped to 40%. This is because of the shift to electric vehicles. Mr. Ahmad added that the 5-10 year plan is to become a recharge center at various locations. Ms. Manville asked if there are charging stations in the currently proposed plan. Mr. Ahmad began to say there is one potentially, but Atty. Bennett said no not right now¹. Mr. Ahmad said charging a car could take 20-30 minutes to charge a car from 0-80% and up to an hour to reach 100%. Mr. Jamal said that in order to accommodate those individuals waiting, the convenience store would have clean restroom facilities, work stations similar to a Starbucks atmosphere, and an area for families to take their pets.

Atty. Bennett asked how many locations Mr. Jamal and his family operate. Mr. Jamal answered 30. Mr. Bloom asked if any locations already have charging stations. Mr. Jamal said there are a few in Massachusetts and the next site that will get a charging station is Danbury.

Ms. Manville said these ideas for the future seem nice, but none of it is in the currently proposed plan². Mr. Ahmad explained that if they employed a business model based on charging stations at this point, they would go out of business. Atty. Bennett explained that this is a glimpse into the future of the project.

¹ Clerk Note: I apologize if I misunderstood this conversation, as it did appear that Atty. Bennett indicated there are no charging stations currently proposed for the site. However, the site plan does demonstrate one electric charging station. Cf. audio recording 1:06:13 – 1:06:25.

² See above note.

Mr. Mitchell asked how many people entering the site would not use the gas pumps, just the convenience store. Mr. Jamal said it would be half and half.

Mr. Jamal said this will be a family-run business with a “mom & pop” mentality. There is an additional benefit of having two competing gas stations near each other because it will drive the prices down. Mr. Jamal said this enterprise projects to employ 25-28 associates. If an issue arises on the site, Mr. Jamal pledges to hire local professionals to address the problems, and added that the business will donate to local causes.

Atty. Bennett asked if Mr. Jamal would be building any gas stations without convenience stores. Mr. Jamal replied no. Atty. Bennett commented that business model wouldn't work.

The Commission commended Mr. Jamal and Mr. Ahmad on their presentation.

Ms. Manville asked how familiar the two gentlemen were with the Newtown/Sandy Hook area. Mr. Jamal said that he has been working here for 8-9 years. Ms. Manville asked if they were familiar with the area specifically around the site, in Hawleyville. Mr. Ahmad said they know it fairly well, and Mr. Jamal said he goes through Hawleyville nearly every day.

Atty. Bennett asked how long the lease will be. Mr. Jamal said the lease is for 99 years. Mr. Ahmad said this is not a small or temporary investment. Mr. Mitchell asked if all the site work and the building is Mr. Jamal's family's investment, and he replied yes. Mr. Mitchell noted that a lot was at stake.

Mr. Mitchell invited public comment.

Vern Gaudet of 1 Hillcrest Drive, Newtown has lived in his house for 35 years. He stated that the comparison to the gas station on Tamarack Avenue in Danbury is not a good indicator of how this gas station would impact Covered Bridge Road. Mr. Gaudet further explained that businesses in the HCDD should be helping the neighborhood, but all he saw tonight was about helping commuters. He said in his layman opinion, this proposal was bogus.

Michael Giudice of 4 Whippoorwill Hill Road, Newtown asked if the gas station being proposed is smaller and therefore will generate less traffic than the application was that denied last year. Atty. Bennett said yes. Mr. Giudice asked how a tractor trailer or a vehicle on I-84 would know about the size of the gas station when they choose to get off Exit 9. Mr. Ahmad said that the truck drivers have apps that point out truck stops, and this will not be labeled as such. Mr. Giudice also asked if the traffic data generated for the previously-approved diner has been updated from several years ago; that is, why is there a comparison to the diner if that information is four years old, and traffic conditions have changed since then. Mr. Galante explained that all the data for the diner has been updated with current information. Mr. Giudice said then he supposed that the understanding of the traffic situation will be based off counts collected on a few days in May.

Pat Napolitano of 13 Whippoorwill Hill Road, Newtown asked Atty. Bennett asked if he has physically reviewed the traffic himself during commuter hours. Atty. Bennett replied that he has not. Mr. Napolitano said that the NEMCO gas station is on commercial property, on the same footprint as a previous gas station. He continued that the comparison to the NEMCO is not a valid one. He pointed out a number of differences between the two, including the amount of the traffic that passes by and the

proximity to multiple entrance/exit points. Mr. Napolitano asked about the size of the convenience store. Mr. Ahmad explained that the convenience store is large in order to accommodate those people in the future who will be charging their cars and staying for more than just a few minutes. Mr. Napolitano asked if that will increase traffic, but Mr. Ahmad said he could not comment on that. Mr. Napolitano also pointed out that a person going to a restaurant would spend much more time before leaving than someone pumping gas. Mr. Napolitano asked Mr. Galante how much time he has spent physically on Route 25 studying the traffic patterns. Mr. Galante replied years. Mr. Napolitano asked if he lived in the area. Mr. Galante replied that he does not, but has worked here for a long time. Mr. Napolitano attested that he has observed traffic flow in the area, and found that many cars passed the site of the proposed gas station, but very few passed the NEMCO site. Mr. Napolitano asked if Mr. Galante felt it made sense to have a traffic study for this project but not for the NEMCO site. Mr. Mitchell explained that the Zoning Regulations have specifications about when a traffic study is required, and when it is not, it is up to the discretion of the Commission. Mr. Napolitano asked if the numbers for the traffic report came just from State data. Mr. Galante replied no, there was also a physical count done on Route 25. Mr. Napolitano asked how many days were spent conducting counts. Mr. Galante said they did the count in one day, which is what was required. Mr. Napolitano mentioned that the Covered Bridge Apartments, which are still in the process of being built, will increase the already problematic traffic on Route 25. Mr. Napolitano asked how long and wide the craters will be to install the gas and diesel tanks. Mr. Virbickas said 15 feet deep and 32 feet long. Mr. Napolitano asked if additional pumps could be added to the site plan at a later date. Mr. Virbickas said at a later date, sure. Mr. Mitchell pointed out that the applicant would need approval from the Commission for such expansion. Mr. Napolitano asked if there would be blasting. Mr. Virbickas said if they encounter rocks, they may need to blast, but they would have proper preparations and oversight. Mr. Napolitano was particularly concerned about the wells and if the digging and potential blasting would impact well water quality. Mr. Virbickas stated that it was unlikely. As Mr. Napolitano continued to ask questions about the wells, Mr. Mitchell said that much of these concerns are regulated by law and are not necessarily relevant in this hearing. Mr. Napolitano asked what safety precautions have been designed to evacuate the 500-600 residents from the fire. Mr. Ahmad began to explain that it has never happened in his ten years in the industry, but Mr. Mitchell asked if the answer was “none.” Mr. Ahmad confirmed none. Mr. Virbickas explained that there are emergency shutoff valves, a fire suppression system with flame-retardant powder, and spill kits at all gas stations. Emergency response plans for every gas station, including this one, are on file with the local fire station. Mr. Mitchell reminded Mr. Napolitano that the Fire Marshal signed off on this project in his staff review.

Janet McKeown of 10 Hillcrest Drive, Newtown has lived at her house for 27 years and frequently comes in and out of Covered Bridge Road. People queuing to leave the gas station will block the view of those trying to turn the other direction. Even with existing traffic conditions, she is nervous of being rear-ended by people who do not pay attention to turn-signals from those using the bypass lane. Ms. McKeown also asked about the configuration of the exit/entrances, which the Commission clarified. She referred to an issue with a gas station having access into a residential area. Ms. McKeown asked if this would be a 24-hour gas station. Mr. Ahmad replied whatever the regulations allow. Ms. McKeown replied that she wasn't sure how this gas station would employ 25+ people when she knows of a different gas station with more pumps where she's never seen more than four employees. Mr. Ahmad and Mr. Jamal replied that what she's referring to a different style of gas station, and that they would have both part-time and full-time employees. Ms. McKeown further added that, like Mr. Napolitano, she is concerned that the gas station will expand in the future, especially because this developer has a history of coming back and asking for more as he did with the Covered Bridge Apartments.

Bill Hikock of 14 Whippoorwill Hill Rd, Newtown said that the traffic is extreme in the area. Mr. Hikock asked if tax revenue could come into play in decisions. Mr. Bloom said it could not. Mr. Hikock agreed with Mr. Giudice that the comparison with the diner should be dropped because it was so long ago.

Terry Salesky of 32 Old Hawleyville Road, Newtown says she can easily I-84 from her house and every day she observes traffic jams. She predicted that the gas station would be out of business in three years. In the last few years the traffic on I-84 has become so bad that she will not use it.

Bob Salesky of 32 Old Hawleyville Road, Newtown asked if there would be a sign saying “no semis.” Mr. Ahmad and Mr. Jamal have not yet decided if they will serve diesel. Mr. Salesky began asking about electric cars, but Mr. Mitchell requested that he stay on topic to what is before the Commission. Mr. Salesky asked if they would put in E85. Mr. Jamal said no. Mr. Salesky asked if this project was to serve the residents of Newtown or to make money. Mr. Mitchell said it was not the time for such arguments.

Mr. Giudice shared that he has spent time with the traffic study, which uses both primary and secondary sources; however, he asserted that the conclusions drawn from that data are not beyond reproach. He clarified that he is not “knocking” the traffic study, but believes the data is sometimes outdated or not representative of long-term conditions. Even algorithms that are the industry standard may not be accurate for Hawleyville. He also pointed out that conclusions drawn in the study may confuse correlation with causation. He asked the Commission to deny the application.

Atty. Bennett asked Mr. Galante asked if in the execution of the study he took any shortcuts or did anything not by the book. Mr. Galante said no. Atty. Bennett asked how many traffic studies Mr. Galante has performed in the past. Mr. Galante said thousands. Finally, Atty. Bennett asked if Mr. Galante has ever been precluded from testifying before this Commission as an expert. Mr. Galante replied no.

Atty. Bennett stated that there is a difference between testimony and evidence. He referenced the court cases he distributed to the Commissioners and pointed out the following: unless the Commission receives information that undermines expert testimony, they must accept the statements of the expert.

In his closing argument, Atty. Bennett said that justice is fairness. The applicant did not make the regulation about gas stations in Hawleyville needing to be 2000 feet apart. Furthermore, the NEMCO gas station was approved with the finding that a traffic study wasn’t necessary. When the Commission looks at the evidence that has been presented, they don’t need to find “beyond a reasonable doubt” that this application should be approved - just that it is more appropriate than inappropriate. He asked for justice and fairness from the Commission, particularly by treating this application in the same manner that the NEMCO application was.

Mr. Mitchell asked about the indication of a sign on the site plan, and wanted to be clear if a sign was actually being proposed since it had not come up. Mr. Virbickas said the image on the site plan is just a “placeholder,” and Atty. Bennett acknowledged that they will need to come back with a sign application.

Mr. Giudice asked if arguments could be introduced only by the applicant, and not the public. Mr. Mitchell said the parties can make an argument, but witnesses cannot. It is the applicant’s burden to convince the Commission.

Mr. Mitchell made a motion to close the public hearing. Ms. Manville seconded. All were in favor and the public hearing was closed at 9:55 p.m.

Referrals

Referral from the Board of Selectmen for approval of appropriation under C.G.S. § 8-24, for the following projects: (1) Ventilation and HVAC Renovations to Hawley School, (2) Emergency Radio System Upgrades, (3) Design, Planning, Engineering, Reconstruction, and Construction of Town Roads, (4) Fairfield Hills Sewer Infrastructure.

Mr. Sibley explained the referrals from the Board of Selectmen regarding bonding for the above projects was before the Commission for approval. Mr. Mitchell said that from a Land Use perspective, he did not see anything that would be in violation of the regulations. He also mentioned that these appropriations need to go through a rigorous series of approvals and will eventually make it to the referendum.

Mr. Sibley said that the Commission could simply vote to approve the memorandum from the Board of Selectmen dated 2/20/20 regarding approval of appropriation under C.G.S. § 8-24, for the following projects: (1) Ventilation and HVAC Renovations to Hawley School, (2) Emergency Radio System Upgrades, (3) Design, Planning, Engineering, Reconstruction, and Construction of Town Roads, and (4) Fairfield Hills Sewer Infrastructure.

Mr. Mitchell so moved. Ms. Cox seconded. All were in favor and the motion to approve the § 8-24 referrals carried unanimously.

Referral from the Town of Monroe, RAA-2020-02, File #1009E

Mr. Sibley explained that Monroe wants to add a new district that would have a mixed business and residential use. He commented that he did not see any impact on Newtown. Mr. Mitchell agreed, noting that Newtown is doing the same thing.

Minutes

Mr. Bloom made a motion to approve the minutes from the meeting of February 6, 2020. Mr. Mitchell seconded. All were in favor and the minutes from the meeting of February 6, 2020 were approved.

Adjournment

Ms. Manville asked why the Commission isn't voting tonight. Mr. Mitchell said that a lot of new information was presented, and waiting until the next meeting to vote would give the Commission and public time to review the information. Ms. Manville and Ms. Cox both said that they were ready to vote tonight. Mr. Mitchell and Mr. Swift felt that it would be prudent to take time to think the matter over.

Mr. Bloom made a motion to adjourn. Mr. Swift seconded. All members were in favor and the meeting was adjourned at 10:05p.m.

*Respectfully submitted,
Christine O'Neill, Clerk*