



**TOWN OF NEWTOWN**  
PLANNING & ZONING COMMISSION

MINUTES  
REGULAR MEETING  
Thursday, June 4, 2020 at 7:30 P.M.

Zoom Virtual Meeting Participation Information  
Call-In Number: +1 646 558 8656  
Meeting ID: 837 1681 9398 #  
Website: <https://us02web.zoom.us/j/83716819398>

**Present:** Don Mitchell, James Swift, Dennis Bloom, Corinne Cox, Barbara Manville, David Rosen, and Andrew Marone

**Absent:** Nick Cabral

**Also Present:** George Benson, Director of Planning, Christine O'Neill, Clerk

Mr. Mitchell called the meeting to order at 7:35 p.m.

**Discussion & Vote**

**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, 1/7/20, and 3/5/20 and supporting documents submitted to the Land Use Agency 11/25/19, 12/12/19, 1/10/20, 1/16/20, and 3/5/20.**

Mr. Mitchell reminded everyone that the public hearing for this application had been closed, and that the discussion would be solely among the Commissioners.

Mr. Mitchell read the following into the record:

*BE IT RESOLVED that 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, 1/7/20, and 3/5/20 and supporting documents submitted to the Land Use Agency 11/25/19, 12/12/19, 1/10/20, 1/16/20, and 3/5/20 SHALL BE APPROVED.*

*BE IT FURTHER RESOLVED that it shall become effective June 27, 2020.*

Mr. Swift made a motion to accept. Mr. Bloom seconded.

Mr. Swift invited each member to explain their perspective. Ms. Cox began, sharing that the Hawleyville district contains a legal office, cigar shop, two restaurants, firehouse, post office, insurance office, liquor store, churches, small factories, and the unfinished gas station and unfinished apartment

buildings. Mr. Mitchell clarified that the apartment buildings are not actually in the Hawleyville district. Mr. Benson added that the church south of Interstate-84 isn't in the Hawleyville district either. Ms. Cox said the Commission needs to promote a business district with mixed use activities and a typical village center – and to a lesser degree, to accommodate services for Exit 9 and I-84.

Ms. Manville referenced the Plan of Conservation and Development (POCD), quoting page 6: "Newtown will succeed in attracting commercial businesses at a rate equal to its growth and the design of the town's roads and traffic patterns will enhance business development while minimizing traffic congestion for the residents."

Mr. Swift shared that his primary worry is traffic. The Commission seemed to be most concerned, he stated, that the land use code used to generate the traffic report (945) was inaccurate. Code 945 is for a filling station with a convenience store; the actual project, Mr. Swift explained, is a large convenience store with fuel pumps. Therefore, he would not accept the traffic report as written.

Mr. Mitchell reminded everyone that land use code 945 refers to a gas station with an accessory convenience store, specifically for ten pumps and an over 2,000 square foot convenience store. A modification of the site plan by the applicant resulted in six pumps, but the traffic study was never updated to reflect this. Six pumps should trigger a different code (853) which anticipates a larger number of traffic trips per pump - approximately 50% more. Mr. Mitchell said that the Commission heard two reasons that 945 is accurate. The first is that actual counts at a similar site matched the figures generated by the code. Mr. Mitchell explained that the site is located on Backus Avenue in Danbury, which is not near an Interstate. The Commission also heard that 75% of the traffic that would come to the site in Hawleyville would be from the Interstate. By that reasoning, the Backus Avenue project cannot be used as a fair comparison to Hawleyville. The second piece of evidence supporting the use of 945 was a supplemental report submitted by traffic engineer Mike Galante, which said that the State Department of Transportation (DOT) accepted the use of code 945. Mr. Mitchell pointed out that the report also notes that the DOT gave their approval based on the assumption that the gas station was the primary and dominant use and the convenience store was secondary. Furthermore, Mr. Mitchell recalled that the applicant's presentations suggested the main money-maker of this site would be the convenience store as opposed to the gas pumps. Mr. Benson contributed that this was true of most gas stations. Mr. Mitchell concluded that the use of land use code 945 was improper for the traffic study.

Mr. Benson wondered if the Commission used the convenience store instead of the fuel pumps to determine the primary traffic coming to and from the site, wouldn't the number of trips be less? Mr. Mitchell said that if the code used was inaccurate, the Commission did not have any data to rely on at all. Mr. Mitchell referenced the land use code descriptions and ITE Trip Generation, 10th Edition, which are part of the public record. Mr. Swift was in agreement with the points Mr. Mitchell had made.

Mr. Mitchell further pointed out that the traffic report analyzes flows and rates, but does not consider safety. He pointed out that the only testimonies he heard about traffic safety were concerns from the public and anecdotal accounts of hazards and congestion. Ms. Cox felt that putting a sidewalk into the site plan was unsafe; Mr. Benson reminded her that the POCD calls for applicants to include sidewalks.

Mr. Benson pointed out that the DOT did an analysis of the site and determined that there was not enough congestion to warrant a traffic signal.

Mr. Mitchell also brought up the levels of service rating system (where "A" indicates the most ideal flow of traffic, and "F" indicates the longest delays). Given the services levels that already exist on Route 6, he wondered how anyone would make a left turn out of the gas station. By one calculation, 85% of the

traffic leaving the driveway would take left turns. Ultimately he felt it would result in more traffic conflict.

Ms. Cox remembered that Mr. Galante had stated there would be a significant delay coming out of the gas station. Mr. Mitchell added that 300 feet to the left of that egress was also an entrance and exit for I-84. He stated that he is not opposed to a gas station - though he wonders what it would add to the intent of the Hawleyville district, given that this is one of the last undeveloped parcels in Hawleyville.

Ms. Cox said another concern was that Pond Brook, which is the third largest watershed in Newtown, is right near the proposed gas station. Mr. Mitchell reminded her that engineer Dainius Virbickas had gone over all the safety features of the gas station. Ms. Cox explained that nearby in Brookfield, there were numerous incidents with contaminants from gas stations impacting wells. Mr. Mitchell felt it was not appropriate to bring up a new point after the public hearing was closed, and Mr. Benson pointed out that those incidents occurred before the today's thorough safety measures were required of all gas stations.

Mr. Benson reminded everyone that the Commission (in the past) had approved the potential for two gas stations within the Hawleyville district. Therefore, he explained, it shouldn't be a surprise that this gas station is proposed for the area. He also took this opportunity to remind the Commissioners that if they vote to deny the gas station, they need to have sound, evidence-based reasoning for the denial that will hold up in court. Mr. Swift responded to Mr. Benson's point about two gas stations, saying that just because it is an allowed use in the district, that does not mean the Commission is obligated to approve it. The fact that the Commission did approve one gas station for the district shows that they are not opposed to gas stations, but each application and site must be considered individually. Mr. Benson and Mr. Swift discussed the importance of citing legally-sound reasons for denial.

Mr. Mitchell recalled the assertion that the Commission required this applicant to submit a traffic analysis when no such analysis was required of NEMCO, the applicant for the other gas station in the district. Mr. Mitchell wanted to respond to the notion that this was arbitrary or unfair. He pointed out that the NEMCO site was not in an "F" level of service area, and that NEMCO was the reconstruction of a former building, whereas the currently proposed gas station would be new. As is permitted in the regulations, the Commission waived the requirement for NEMCO to submit an analysis. On the other hand, Mr. Mitchell considered the traffic at the current site "so problematic that it would have been derelict not to require a traffic report." Mr. Swift added that members of the public expressed many concerns about traffic for this gas station, but not for NEMCO.

Mr. Mitchell acknowledged that actual speed of cars in the area as opposed to the calculated speeds from traffic data had not been provided.

Mr. Mitchell invited Mr. Bloom to speak, but Mr. Bloom was hesitant. He eventually said his fellow Commissioners had asked him how he was going to vote, which is illegal. He felt that the Commission had forced the applicant to drop down from 16 pumps (from their initial submission, Application 19.22) to 6. When Mr. Bloom served on this Commission in the past, he saw a denied application evolve into a million-dollar court case for the Town of Newtown; therefore, he would not let another decision lead the Town into court again.

Mr. Swift remembered that when Mr. Bennett spoke about the economics of the gas station, he questioned if it would even be economically viable. Consequently, Mr. Swift wondered if the applicant might return to the Commission in the future saying that unless they could add more pumps, they would need to shut down.

Mr. Swift recalled that during the public hearing there was the assertion that the restaurant that had been previously approved for the site (but never built) would have the same traffic volume as the proposed gas station. Mr. Benson said if a special exception with a certain traffic volume was approved, and a new project with a different use but the same volume is denied, that would not hold up in court. Mr. Mitchell and Ms. Manville made points about different traffic *patterns* as opposed to *volumes* creating hazardous conditions. Mr. Swift explained that since the Commission does not accept the traffic report as valid, they cannot accurately say the restaurant and gas station would have the same volume of traffic. Mr. Benson urged the Commission to state that they do not accept the traffic report as valid in their denial letter, if they choose to deny.

Mr. Mitchell felt an extra layer of skepticism because the purpose of this traffic report was not to give an independent view of the traffic the site would generate, but was rather designed to match as closely as possible a prior approval.

The Commission felt they were ready to vote.

The Commission voted as follows:

Donald Mitchell - NAY  
James Swift - NAY  
Barbara Manville - NAY  
Corinne Cox - NAY  
Dennis Bloom - AYE

The motion to approve Application 19.31 did not carry.

Mr. Mitchell made a second resolution:

*BE IT RESOLVED that 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, 1/7/20, and 3/5/20 and supporting documents submitted to the Land Use Agency 11/25/19, 12/12/19, 1/10/20, 1/16/20, and 3/5/20 IS FOUND INCONSISTENT WITH THE PLAN OF CONSERVATION AND DEVELOPMENT, AND SHALL BE DENIED.*

Mr. Benson asked if Mr. Mitchell was going to list the reasons for denial. Mr. Mitchell explained that, if the Commission does not list reasons, the judge has no restrictions as to how he can assess and support the decision of the Commission. He also felt the reasons for denial were too nuanced to draft into writing tonight.

**Attorney Bennett spoke to withdraw the application. At the time that he spoke, it was unclear whether this was a valid withdrawal. Mr. Mitchell assured Attorney Bennett that the potential withdrawal had been noted in the record.**

Mr. Swift accepted Mr. Mitchell's motion. Ms. Cox seconded.

The Commission voted to deny the application as follows:

Donald Mitchell - AYE  
James Swift - AYE  
Barbara Manville - AYE

Corinne Cox - AYE  
Dennis Bloom - NAY

The motion to deny Application 19.31 carried 4-1.

### **Referral**

*Referral from the Town of Bethel for an 8-30g application for a property located at 47 Shelley Road, Bethel, CT*

Mr. Benson said that since the Town of Bethel would likely not have grounds to deny an 8-30g application, there was virtually no point in Newtown responding to the referral. Mr. Rosen contributed that Shelley Road is located near the Dodgingtown border. Mr. Mitchell asked that a letter be written saying that the Commission has no comment.

### **Minutes**

Mr. Mitchell made a motion to approve the minutes from the meeting of March 5, 2020. Mr. Bloom seconded. All were in favor and the minutes from the meeting of March 5, 2020 were approved unanimously.

### **Director's Report**

Mr. Benson shared that First Selectman Rosenthal would like to see in-person meetings resume in July, though it is ultimately up to Mr. Benson and Mr. Mitchell. Both agreed that it was too early to decide.

### **Adjournment**

Mr. Rosen made a motion to adjourn. Mr. Mitchell seconded. All members were in favor and the meeting was adjourned at 8:58 p.m.

*Respectfully submitted,  
Christine O'Neill, Clerk*

A recording of the meeting can be found here:

[https://drive.google.com/drive/folders/1jU47mlSN70rIGbMB7r\\_r1MDgXlSVxMDR?ths=true](https://drive.google.com/drive/folders/1jU47mlSN70rIGbMB7r_r1MDgXlSVxMDR?ths=true)