



TOWN OF NEWTOWN
PLANNING & ZONING COMMISSION

MINUTES
REGULAR MEETING
Council Chambers
3 Primrose Street
Newtown, CT 06470
June 6, 2019 at 7:30 p.m.

Present: Don Mitchell, James Swift, Barbara Manville, Corinne Cox, David Rosen, Benjamin Toby

Absent: Roy Meadows

Also Present: George Benson, Director of Planning and Land Use and Christine O’Neill, Clerk

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

Public Hearing

Application 19.10 by Centrica Business Solutions, Inc., for an Amendment to a Special Exception, for a property located at 139 Toddy Hill Road, to allow installation of an array of solar panels, as shown in a set of plans titled, “Masonicare, Special Exception Amendment – Solar Array, Permitting Set, Not for Construction, 139 Toddy Hill Road, Newtown, CT,” dated 5/17/19 and a supporting document submitted 5/21/19.

Siyuan Cao, a project manager from Civil 1, spoke representing Centrica Business Solutions. He explained that the proposal is to build a solar array on a rocky, sloped area of the property that is currently about 100 feet higher than the main building. The access drive to the existing septic system would also be extended about 300 feet. The solar array is 4 acres, and the clearing of trees would be 6 acres. The property in total is around 45 acres. The closest house from this project is 530 feet away, and 110 feet lower in elevation. The solar panels would be affixed using earth screws.

Ron Lewis, the senior project manager from Centrica, added that the trees would be felled and the earth disturbance is largely limited to the length of the access road.

Mr. Mitchell asked if there would be any visual from roads or for neighbors. Mr. Cao confirmed that the array would not be visible due to the elevation and the dense forestation of the surrounding area.

Mr. Swift asked if Mr. Lewis had a tree count and average trunk diameter. Mr. Lewis replied that he did not know the number of trees, but that they had a roughly three- to six-inch diameter.

Mr. Mitchell asked if the access way would be paved or gravel, and Mr. Lewis said that it would be gravel. Mr. Mitchell also confirmed that this would be a passive operation, with no generators. Mr. Cao added that the array would be fenced in with a gate at the end of the access road.

Mr. Mitchell asked about the transformer and equipment on the property, and Mr. Lewis responded that they would be using Eversource’s existing equipment.

Miss Cox asked if the solar array would cover all of Masonicare’s energy needs. Mr. Lewis estimated that it would cover 80-90%. The Commission wondered if there was potential for the expansion of the

array to cover 100% of Masonicare's energy needs, but Mr. Lewis expressed that the notion had not been discussed, nor did he think it plausible to mobilize another crew in the future to expand the solar array. Mr. Mitchell later commented that covering 85% of energy needs did not seem excessive, as though Masonicare was looking to make money off generating electricity.

Mr. Toby asked if the project had a CREC contract, and Mr. Lewis replied yes, it had already been executed with Eversource. Mr. Lewis stated that this was unsure about the details, because the question was more in the realm of sales and he did not feel equipped to answer. Mr. Toby also wondered how many kilowatts would be for the whole array, and Mr. Lewis replied 700 on the AC side.

Mr. Swift wondered if roof-mounted solar panels would have been an option. According to Mr. Lewis, Masonicare was not an ideal candidate for roof panels due to limited space.

Mr. Mitchell opened the floor to public comment.

Cindy Hughes of 190 Toddy Hill Road, Newtown, CT asked if trees would be cut down on the west side of Ashlar (Masonicare) to increase the amount of lighting. She also asked if there would be glare. Mr. Lewis and Mr. Cao demonstrated where the tree-clearing would take place and he affirmed that they would not cut down trees on the west side of the building. Mr. Lewis and Mr. Cao explained that the solar array would be at an angle and too high to produce visible glare.

Susan Kassirer at 6 Still Hill Road, Newtown, CT with property at 98 and 99 Toddy Hill Road asked why this is called a Special Exception. Mr. Mitchell explained that the uses falling under a special exception *are* allowed uses in the zone, but sometimes they may be problematic on certain properties. A special exception allows the Commission to take a closer look at whether the property could sustain the use in question. Moreover, this was an amendment to the original special exception granted to Masonicare. Mr. Cao demonstrated on the site plan to Miss Kassirer where the nearest properties would be, as she was wondering if this would affect her property value.

John Ross of 121 Toddy Hill Road, Newtown, CT inquired as to where the access road would be located. Mr. Lewis demonstrated on the site plans, stating that it runs along the west-facing to the north end of the building. Mr. Ross asked what the construction timeframe would be, and Mr. Lewis responded six weeks. He also explained that the construction equipment would not be excessively large, since a twelve-foot portion of the existing access road limits the size of the machinery. Mr. Ross wondered why the array wouldn't be visible if it is to be so high above everything else. Mr. Lewis stated that the solar panels at their highest point are 8.5 feet while the surrounding trees would be up to 45 feet. When Mr. Ross brought up glare again, Mr. Lewis reported that the only time he had encountered glare issues with ground-mount solar panels were at airports, as they face upwards. Mr. Ross wondered if there would be regular maintenance, and Mr. Lewis responded yes, but it was not equipment-intensive.

Brendan O'Rourke of 63 Marlin Road, Newtown, CT wondered if there would be water use along with the solar array. Mr. Lewis replied no.

Miss Cox wondered what would happen if any piece of equipment broke. Mr. Lewis explained that solar arrays are remotely monitored, and although he did not know if his company would be contracted to do the repairs, they would certainly be taken care of.

Mr. Swift wondered if the site plan showed the borders of the area that would be cleared. Mr. Cao indicated that a gray line on the site plan. Mr. Swift asked why it had to go right up to the property line. Mr. Lewis said that three times the height of the tree is the industry standard for the distance from the solar panel to the nearest tree. Mr. Swift wondered why the array couldn't be moved closer to the building and farther away from the property line, but Mr. Lewis demonstrated on the site plan that the topography would not allow for that.

Miss Kassirer asked if there was consideration of electromagnetic fields and radiation. Mr. Lewis explained that the energy was being absorbed by the panels and that he was not aware of concerns regarding electromagnetic fields and solar arrays.

Tom Langner of 6 Still Hill Road, Newtown, CT shared that about ten years ago a power station was supposed to be erected in the area, but the issue of electromagnetic frequencies came up. He would like to know if there is a certain area beyond this installation where there are frequencies and how this might affect neighbors or wildlife. Mr. Lewis explained that there was no more electricity in that area with the solar array than there would be without the solar array. The electricity that comes into that building currently comes in from underground; adding the solar array just changes the *source*. Mr. Langner stated that he would like a more technical explanation.

Mr. Benson explained that a solar array absorbs energy; it does not emit it. Mr. Cao point out that an electromagnetic current concerns an entire area, whereas this solar array is serving only one building.

Mr. Rosen mentioned that he would have liked to see photographs during the winter from the road-level to assure the neighbors that the array wouldn't be visible even when the deciduous trees were without leaves.

Miss Cox made a motion to close the hearing. Miss Manville seconded. Mr. Swift proposed the idea of doing a site walk and obtaining photographs as due diligence. Miss Cox also said she wanted to do a site walk. The motion was abandoned.

Mr. Swift made a motion to continue the hearing to Thursday, June 20th at 7:30. Miss Cox seconded. All were in favor and the motion was continued to the next regular meeting. The Commission spoke with the applicant about arranging a site visit.

Application 19.11 by James F. Walsh, for a Text Amendment to the Town of Newtown Zoning Regulations, to amend § 2.03, to expand the area where the overlay district is applicable to the area in the vicinity of Exit 11 of Interstate 84, as shown in documents submitted to the Land Use Agency 5/21/19 and an updated map submitted 5/29/19..

Kevin Solli of Solli Engineering in Monroe spoke on behalf of James Walsh, the applicant. Mr. Solli referenced the Exit 10 Commercial Design District, which allowed some additional uses such as the Starbucks that will be opening in a week. He showed an aerial view of Interstate-84. The expansion of this District would include one area along Route 34 to the east of Exit 11, to encourage investment and redevelopment of that property.

Mr. Solli mentioned that the Department of Transportation is making significant infrastructure improvements around Exit 11, which include the widening of Route 34 and Toddy Hill Road, as well as a new on-ramp for I-84.

The property that would be impacted by this text amendment has been operated as a mulch yard for many years. Mr. Solli demonstrated on the projector the lot that would be eligible for this District.

The amendment proposes to revise § 2.03 in the Newtown Zoning Regulations. The proposal would be to change the name of the section from Exit 10 Commercial Design District to Interchange Design District, and include language to define the parcel near Exit 11. The permitted uses would be the same as the underlying zones, and the special exception uses would include restaurants with drive-through windows.

Mr. Solli described “protection measures” in the text amendment regarding the aesthetic quality of the buildings and standards for drive-through windows, specifically including the width of lanes, traffic access, and the inclusion of a bypass lane.

Mr. Solli showed a conceptual development plan on the projector. He explained that he has been working closely with DOT so that any proposed development would not impact their project. A portion of the text amendment also specifically addresses how this conforms with the Plan of Conservation and Development.

Mr. Mitchell mentioned that the District in question only has one additional use from the underlying M-5 zone: a drive-through restaurant. He stated that, in essence, this is like an application for a zone change since the proposal is to expand District to only one other property.

Miss Manville wondered how large the parcel was, and Mr. Solli responded that it is 3 acres. Mr. Mitchell wanted to clarify if this would rezone only one portion of the property. Mr. Solli clarified that right now, the mulch yard operation is currently being operated on two properties: 4 Toddy Hill Road and 32 Berkshire Road. The proposed expansion of the District would only apply to the property at 32 Berkshire Road.

Mr. Mitchell restated that the “text amendment” being looked at seemed an awful lot like a zone change. Mr. Solli explained that the new area specified in the amendment would be eligible for exactly the same uses as are currently allowed in the Exit 10 Commercial Design District. Mr. Mitchell said that this proposal would in some senses modify Exit 10 as well, due to the stipulations about the traffic requirements that would now apply to the whole Exit 10 Commercial Design District.

Mr. Toby had serious concerns about the heavy traffic congestion in the area, especially with Newtown High School so close to the parcel in question. He stated that it seemed like a “patently bad idea.”

Mr. Benson commented that the DOT project would significantly improve traffic in that area. He further explained the intended consumers would be those already traveling on the road, and that it would not necessarily draw more traffic from the Interstate.

Mr. Solli offered to provide an analysis of how the intersection would operate after the DOT improvements have been made, commenting that he did not have information with him that night. He

spoke about how the geometrical improvements and addition of new traffic lanes make development on 32 Berkshire practical.

Mr. Swift commented that this seems largely driven by what the DOT is proposing. Mr. Solli expressed that the parcel was in need of being redeveloped regardless, and the timing works well with the DOT improvements proposed. Mr. Swift wondered why this proposal was coming before the Commission at this point, when the DOT project isn't even done. He felt the Commission was being asked to approve something when they didn't really know how the DOT might change the project or how much it would actually improve congestion. Mr. Solli said that development projects take a long time, so the applicant wanted to put forward the proposal at this time to begin the development process.

Mr. Benson confirmed that the State has purchased all the houses that need to be demolished in order to widen the road, which shows a serious commitment on the part of the DOT to finish this project.

Mr. Mitchell pointed out that DOT has, in the past, made changes (which they do have the authority to do) to Commission approvals.

Miss Cox wondered if someday the District could be expanded again to include Exit 9 as well. Mr. Solli characterized this application as a "baby step" towards accepting drive-through windows in other parts of Newtown, and said he was certainly open going forward to other areas.

Mr. Mitchell said that allowing drive-through windows in Exit 10 was supposed to be the first and last "baby step," according to what he remembered Mr. Solli saying at that previous hearing. He remembered the result of the past discussions being that drive-through windows are not appropriate for Newtown.

Mr. Swift felt that after the formal hearing and vote that disapproved drive-through windows roughly eight months ago, he did not understand why this issue was coming before the Commission again. Mr. Benson stated he did not believe the drive-through windows had been voted on at that time.

Mr. Rosen said he did not understand why a drive-through window was needed. Miss Cox felt it was dangerous given the proximity of the high school.

Mr. Solli expressed that there is a real demand for drive-through windows, especially for commuters along Route 34 who would otherwise need to continue down to the Exit 10 area to make use of the Starbucks drive-through window. It is especially appealing to mothers who don't want to get their children out of the car in order to pick up food.

Mr. Mitchell said that all the benefits of drive-through windows that Mr. Solli mentioned were aired at the past public hearing about drive-through windows, and it was still voted down and ultimately decided that they were not good for Newtown.

Mr. Mitchell also commented that the industrial zone is not really meant for a restaurant. Mr. Solli stated that at some point the property would also apply for a zone change.

Mr. Rosen brought up the traffic congestion again. Mr. Solli explained that at the next public hearing, he would be happy to present analyses of how potential development on 32 Berkshire would affect traffic circulation both with and without DOT improvements.

Mr. Swift felt this would open up the possibility of a developer who wanted to do something similar with Exit 9 coming forward with an application. Mr. Solli countered that the Commission has the ability to vote such an application down, should it be proposed.

Mr. Mitchell commented that development could still happen, but without a drive-through restaurant. Mr. Solli said that a zone change would still need to be applied for, in order for other development that would be appropriate for the parcel.

Mr. Mitchell opened the floor to public comment.

Susan Kassirer of 6 Still Hill Road, Newtown, CT expressed that she is vehemently against this project. She felt it would further destroy the rural character of the Town. She did not feel this was a great opportunity for the community, but a great opportunity for a developer. She commented that vehicles idling in a drive-through line create pollution. Even if the restaurant is not intended to draw people off the Interstate, she said, it invariably will.

James Walsh, the applicant, came forward to speak, but was advised by Mr. Solli not to.

Karen Holden of 68 Berkshire Road, Newtown, CT spoke about the extreme traffic congestion that she regularly has to deal with living so close to Exit 11. Miss Holden explained that the current mulch yard does not generate traffic and she feels that most people aren't negatively impacted due to trees shielding it from view. Miss Holden felt that, at a minimum, this request should wait until the DOT project had been completed to see how much it actually improves traffic.

Keith Alexander of 8 Fawnwood Road, Newtown, CT stated that he feels the community is not ready for another drive-through window, especially because the first one is not even in operation yet. He was also concerned about the Commission's meeting process. He is surprised that a community member can apply for a text amendment but have a non-community member represent them. He was also concerned about how a text amendment could be revised and then presented to the Commission as would "a Washington lobbyist." Moreover, Mr. Alexander felt that empty commercial buildings should be filled before new ones were built.

Ed Seaver of 20 Misty Vale Road, Newtown, CT expressed that this seemed to be a specific request for a drive-through restaurant despite being couched as a text amendment. Mr. Seaver didn't believe that this development wouldn't draw people from off the Interstate. He also was worried about high school kids trying to walk to the restaurant.

Bryan Atherton of 7 Walnut Drive, Newtown, CT is a real estate broker who stated he is not affiliated with this application in any way. He had spoken at the former public hearing for the text amendment allowing drive-through windows and opposed it due to minimum land requirements that would only benefit larger parcels. First of all, he felt that the DOT project would significantly improve traffic. He furthermore felt that without the anchor of a drive-through, the property may never be developed. Mr. Atherton explained that this location is ideal for a drive-through window. Having a mulch yard on that property currently is "embarrassing."

Mr. Mitchell asked Mr. Atherton, as a real estate expert, if he knew a ballpark figure of how many sales tend to come from a drive-through window versus the walk-in restaurant. Mr. Atherton replied that 52%

of sales come from windows in most cases. It is a safer option than crossing a parking lot, especially with distracted drivers. Miss Cox countered that high schoolers walking to the restaurant would also be dangerous.

Mr. Toby mentioned that at the last hearing about drive-through restaurants, there were about 15 people who spoke in opposition, and only one who spoke in favor. Mr. Benson was not sure that Mr. Toby remembered that figure correctly. He also reminded the Commission that they cannot base a vote just on people stating they are in opposition, as they are the vocal minority; the job of the Commissioners as elected officials is to make a ruling based on the Zoning Regulations, taking the comments of the public into consideration.

Elizabeth Alexander of 8 Fawnwood Road, Newtown, CT disagreed with Mr. Atherton. She felt this parcel was not a good place for a drive-through window. She stated that a lot of students from the high school are new drivers who cause an increased chance for accidents. She also stated that she is not embarrassed by the mulch yard. She welcomes the parcel to redevelop if they would like, but does not feel that a drive-through restaurant is the only option.

John Hunt of 10 Jeremiah Road, Newtown, CT said that his biggest concern is the traffic impact. He avoids Exit 11 because of the bottleneck. He also stated that he believes that a drive-through restaurant will draw people off the Interstate.

Mr. Solli requested that the hearing be left open so he can continue the discussion with more information about the DOT traffic improvements. Having looked up some of the traffic data on his tablet, he shared that currently the average queue at the red light at the intersection of Route 34 and Toddy Hill during morning rush-hour is 60 cars; with the improvements, it would go down to 6. Furthermore, in response to the public who commented about the teenagers at the high school, Mr. Solli felt that providing a place to eat would be a benefit to that demographic.

Mr. Toby did not understand the logic of continuing the hearing when there was such a recent hearing about a similar topic. Mr. Swift agreed. Mr. Mitchell said that they needed to give applicants a chance to make their case, and if Mr. Solli requested the hearing be continued the Commission should not deny him.

Mr. Swift made a motion to continue the hearing to Thursday, June 20th at 7:30. Miss Cox seconded. All were in favor and the motion was continued to the next regular meeting.

Director's Report

Mr. Benson presented a referral from the Town of Brookfield regarding Application #Z-19-37. Four Corners is redeveloping. They would like to expand the zone over towards the road that had the former restaurant The Hearth. Mr. Benson stated that this does not affect Newtown at all. He suggested that the Commission write a letter stating they have no opposition.

Minutes

The approval of the minutes from May 2, 2019 was tabled at the last meeting (May 16, 2019); Miss Cox had requested that the clerk check the audio recording to verify the accuracy of Mr. Hubbard's answer to her question on the occupancy of the Tiny Homes. The clerk emailed Miss Cox the audio file along with a transcription of the section in question. Miss Cox felt that the original wording in the minutes from May 2, 2019 was sufficient to communicate Mr. Hubbard's response.

Mr. Mitchell made a motion to approve the minutes from May 2, 2019. Mr. Swift seconded. All members were in favor and the minutes from May 2, 2019 were approved.

Mr. Mitchell made a motion to approve the minutes from May 16, 2019. Mr. Swift seconded. All members were in favor and the minutes from May 16, 2019 were approved.

Adjournment

Mr. Rosen made a motion to adjourn. Miss Cox seconded. All members were in favor and the meeting was adjourned at 9:57 p.m.

*Respectfully submitted,
Christine O'Neill, clerk*