



**TOWN OF NEWTOWN**  
PLANNING & ZONING COMMISSION

MINUTES  
REGULAR MEETING  
Council Chambers

3 Primrose Street, Newtown, CT 06470  
September 5, 2019 at 7:30 p.m.

**Present:** Don Mitchell, James Swift, Barbara Manville, Benjamin Toby, David Rosen, David Ruhs

**Absent:** Roy Meadows, Corinne Cox

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

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

**Public Hearing**

**(Continuation) Application 19.17 by the Town of Newtown, for a Text Amendment to the Newtown Zoning Regulations, 6.04.400(d), to update the regulation to be consistent with other zoning regulations including the Sandy Hook Design District, as detailed on a document submitted to the Land Use Agency dated 7/24/19.**

The public hearing for this application was postponed for technical reasons.

**Application 19.14 by the Town of Newtown, for a Text Amendment to Newtown Zoning Regulation §1.02 Definition: Farmer's Market, to permanently add Food Trucks as a feature of the Farmer's Market after a successful trial period, as detailed on a document submitted to the Land Use Agency entitled "Amendment to Zoning Regulation: Definition, Fairfield Hills Farmer's Market," dated 8/19/19.**

George Benson asked the Commission to recall the trial period a few years ago for having food trucks at the Farmers Market. Everything went well, so the Land Use Agency would now like to make the amendment permanent. Mr. Mitchell wondered if there were any issues that came up during the trial period such as traffic or littering, but Mr. Benson said nothing went wrong. Mr. Mitchell asked why the regulation didn't specify the location of the food trucks, and Mr. Benson said the location of the Farmers Market itself had changed and may change again. Mr. Swift asked if there was any issue limiting the number of trucks. Mr. Benson replied that even though the amendment allows three, there are usually only one or two.

Mr. Mitchell invited public comment. No one came forward.

Mr. Swift moved to close the public hearing. Ms. Manville seconded. Mr. Mitchell appointed alternates Mr. Ruhs and Mr. Toby to replace the absent Ms. Cox and Mr. Meadows. All were in favor and the public hearing was closed at 7:38 p.m.

Ms. Manville read the following into the record:

*BE IT RESOLVED that Application 19.14 by the Town of Newtown, for a Text Amendment to Newtown Zoning Regulation §1.02 Definition: Farmer's Market, to permanently add Food Trucks as a feature of the Farmer's Market after a successful trial period, as detailed on a document submitted to the Land Use Agency entitled "Amendment to Zoning Regulation: Definition, Fairfield Hills Farmer's Market," dated 8/19/19 SHALL BE APPROVED.*

*BE IT FURTHER RESOLVED that the approval shall become effective September 28, 2019.*

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

The Commission voted as follows:

Donald Mitchell - AYE  
James Swift - AYE  
Barbara Manville - AYE  
Benjamin Toby - AYE  
David Ruhs - AYE

The motion to accept Application 19.14 carried unanimously.

**Application 19.18 by James F. Walsh, for a Zone Change for 32 Berkshire Road (M-B-L: 44-4-2) from M-5 to B-2 and a Zone Change for the parcel M-B-L: 44-4-4, Berkshire Road, from R-2 to B-2, as detailed on a set of plans entitled "Zoning Location Survey of 32 Berkshire Road & State of CT, Parcel: 96-94-70A, Newtown, Connecticut" dated 7/25/19; a set of plans entitled "Proposed Development, 32 Berkshire Road, Sandy Hook, Connecticut" dated 7/16/19; and supporting documents submitted to the Land Use Agency 8/20/19.**

Kevin Solli of Solli Engineering introduced himself and spoke on behalf of Mr. Walsh's application. He began his presentation by showing the location of parcels 44-4-2 and 44-4-4 on several maps. He pointed out that the Zone Change application is for two parcels: 32 Berkshire Road and a small triangular parcel that is currently owned by the Connecticut Department of Transportation (DOT). The latter is zoned as Residential and there is no use for it. Mr. Solli shared that today a letter from the DOT was received stating that Mr. Walsh had made an offer on that parcel, after the Town of Newtown neglected to buy it first.

Mr. Solli said that the applicant is looking to change both parcels to B-2. 32 Berkshire is currently zoned as M-5 and being used as a mulch yard, while parcel 44-4-4 does not have an address and is zoned as R-2. Mr. Solli explained that the re-zoning will complement road improvements that have been exacted by the Town of Newtown and road improvements that have been proposed by the DOT. He displayed maps that demonstrated the DOT's proposed improvements in the area surrounding Exit 11 of Interstate 84, as well as a roadway plan published by the DOT and the consequential projected reduction in traffic queue times.

Mr. Solli stated that the change from M-5 to B-2 will allow for reinvestment in the property and for environmental and stormwater measures to be incorporated as part of the site plan. M-5 does allow for retail, but B-2 would also allow restaurant space. He further reminded the Commission that the

triangular parcel does not have any current use and is not contributing to the tax base; by rezoning it from R-2 to B-2, it could become a part of 32 Berkshire (assuming it is purchased by the applicant) and become a usable piece of land.

Mr. Solli pointed out that this area is in the Aquifer Protection District, and that changing from an M-5 zone would preclude some industrial, environmentally harmful uses. He quoted the Plan of Conservation and Development to demonstrate that this rezoning would produce jobs, develop the economy, and supplement the tax base.

Finally, Mr. Solli displayed a site plan for a potential retail building as an example of what might be developed on the property. He invited the Commission to ask any questions.

Mr. Benson added that although the B-2 zone allows gas stations, because this parcel is in the Aquifer Protection District a gas station would not be allowed here.

Mr. Ruhs asked how large both parcels are combined. Mr. Solli replied 3.17 acres. Mr. Mitchell confirmed with Mr. Solli that he was looking to change the zoning of the entire parcel, which is the case. Mr. Mitchell asked if the small triangular lot that the applicant was looking to acquire was currently part of the State's larger parcel. Mr. Benson clarified that it is its own parcel, and is a remnant from The Old Road which used to run through the area.

Mr. Swift asked to look at the potential development plan, but Mr. Benson reminded him that this application was for a Zone Change and that the potential site plan was not relevant.

Mr. Toby asked if there were any differences in setbacks between the two zones. Mr. Solli went through the setback requirements and confirmed that they are either the same or not applicable. The only significant difference is that the bulk outdoor storage requirement is much larger in the M-5 zone than in B-2, which Mr. Solli pointed out as a positive improvement.

Mr. Swift wanted to highlight that the potential site plan was misleading in showing an entrance/exit onto Toddy Hill Road when that is not necessarily going to be the case. Mr. Benson stated that the site plan was part of the presentation only to demonstrate a possibility of what could be developed and should not be part of the Commission's discussion.

Mr. Toby asked where sidewalks were being proposed by the DOT. Mr. Solli demonstrated that the sidewalks would be across the entire limit of the improvement area. Mr. Mitchell had further questions about signalization of the DOT improvements, which Mr. Solli addressed.

Mr. Mitchell felt that changing the zone to Business would change the character of the intersection, but with the DOT acquiring and demolishing the five residential properties across from 32 Berkshire, that change is taking place anyway. Mr. Rosen agreed and added that the property can currently be developed as M-5, so the switch to B-2 is not that significant of a change.

Mr. Mitchell asked about the letter from the State, in which the DOT declared that they have received a deposit from the applicant demonstrating his intention to purchase the triangular parcel. Mr. Solli submitted the letter to the public record.

Mr. Toby asked if there would be setback issues with the DOT taking the front portion of the property, and Mr. Solli said no because the taking has already been considered in the planning done so far.

Mr. Rosen asked if there were any limitations on the types of businesses allowed due to the site's proximity to the high school. Mr. Benson said it was far enough away from the high school that it would not be an issue. Mr. Solli said the site is roughly 1,500 feet from the high school.

Mr. Solli explained that last night, the Zoning Board of Appeals (ZBA) granted a front setback Variance for parking with the condition that the taking at the front of the parcel by the DOT goes forward. Mr. Toby was confused as to why Mr. Solli didn't bring this up when he specifically asked if there were any setback issues.

Mr. Mitchell invited public comment.

Dan Holmes of the Pootatuck Watershed Association (PWA) shared that as a local landscaper, he has purchased materials from the current mulch yard. He is concerned about pavement impacting the watershed and Aquifer Protection District, stating that he has seen very few examples of recent development in Newtown that is both visually attractive and environmentally sensitive. Mr. Holmes shared that this change in zone could be good as it would take away the runoff and sedimentation from the current mulch piles. He wondered what the community could do to protect water sources with the DOT's plans for road improvement, posing the question to the Commission. Mr. Mitchell replied that with respect to the environment, the Town is somewhat at the mercy of the State. Mr. Benson contributed that DEEP reviews DOT projects, and that the Town can bring up concerns and comments on such projects even though the Town does not have any regulatory authority over the State. He encouraged PWA to bring concerns to the Land Use Agency which can pass along that input to the State.

Mr. Swift asked how the properties are assessed. The clerk used the Tax Assessor site to look up the values, which were \$297,300 for 32 Berkshire and \$47,850 for the other parcel. Mr. Solli and Mr. Benson contributed that the assessment may not reflect the recent land cut that took a portion of 32 Berkshire and turned it into 4 Toddy Hill Road.

The Commission returned to traffic questions, and Mr. Benson asked Mr. Solli if he felt the Zone Change would impact the level of traffic. Mr. Solli replied no.

Ms. Manville moved to close the public hearing. Mr. Mitchell seconded. All were in favor and the public hearing was closed at 8:36 p.m.

Mr. Mitchell expressed that this seemed to be a tradeoff, in which changing from an M-5 would reduce the chance of industrial uses but a B-2 use might increase traffic. He liked the idea of providing services for the people in the area. Mr. Rosen felt there was a positive side to its proximity to the high school. Mr. Swift wondered about kids walking to a potential restaurant and how that might be dangerous for traffic. Mr. Swift also had concerns about adding traffic to Toddy Hill Road. He stated that he has been hearing for eight years that people who live on Toddy Hill do not want more traffic. Mr. Benson pointed out that restaurant traffic does not usually coincide with rush hours.

Mr. Mitchell, Ms. Manville, and Mr. Toby agreed that this was a step in the right direction for the area.

Mr. Toby was concerned that the ZBA approval came before the Planning and Zoning Commission hearing. Mr. Benson explained that the Land Use Agency's procedure is to have the ZBA grant a Variance first, and that the applicant was asked to apply in this order.

Mr. Swift had objections to the potential of a restaurant being developed on the parcel and generating traffic. Mr. Benson reiterated that this was not the appropriate time for these questions, and they could be addressed when the Site Development Plan is submitted. Mr. Benson confirmed that a new building that is more than 1,500 square feet of improvement would definitely need to come before the Commission.

Mr. Swift wondered if there had been any monitoring on the site to back up the claim that there is negative runoff and stormwater impacts on the current site. Mr. Benson said no monitoring had been done on this particular site, but that he was speaking from experience and a 30-year background in environmental biology.

Ms. Manville read the following into the record:

*BE IT RESOLVED that Application 19.18 by James F. Walsh, for a Zone Change for 32 Berkshire Road (M-B-L: 44-4-2) from M-5 to B-2 and a Zone Change for the parcel M-B-L: 44-4-4, Berkshire Road, from R-2 to B-2, as detailed on a set of plans entitled "Zoning Location Survey of 32 Berkshire Road & State of CT, Parcel: 96-94-70A, Newtown, Connecticut" dated 7/25/19; a set of plans entitled "Proposed Development, 32 Berkshire Road, Sandy Hook, Connecticut" dated 7/16/19; and supporting documents submitted to the Land Use Agency 8/20/19 SHALL BE APPROVED.*

*BE IT FURTHER RESOLVED that it shall become effective September 28, 2019.*

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

Mr. Mitchell made a motion that the Zone Change for parcel 44-4-4 only be effective if Mr. Walsh acquires the parcel from the State. Mr. Ruhs seconded. Mr. Swift wondered why it was relevant to the Commission. Mr. Benson thought it was a good idea to put in that wording as a matter of legal procedure. All were in favor and Mr. Mitchell's amendment was approved.

The new resolution reads as follows:

*BE IT RESOLVED that Application 19.18 by James F. Walsh, for a Zone Change for 32 Berkshire Road (M-B-L: 44-4-2) from M-5 to B-2 and a Zone Change for the parcel M-B-L: 44-4-4, Berkshire Road, from R-2 to B-2, as detailed on a set of plans entitled "Zoning Location Survey of 32 Berkshire Road & State of CT, Parcel: 96-94-70A, Newtown, Connecticut" dated 7/25/19; a set of plans entitled "Proposed Development, 32 Berkshire Road, Sandy Hook, Connecticut" dated 7/16/19; and supporting documents submitted to the Land Use Agency 8/20/19 SHALL BE APPROVED, CONDITIONAL UPON THE TRANSFER OF PARCEL 44-4-4 FROM THE STATE OF CONNECTICUT TO THE APPLICANT.*

*BE IT FURTHER RESOLVED that it shall become effective September 28, 2019.*

Mr. Swift made a motion to approve as amended. Mr. Mitchell seconded.

The Commission voted as follows:

Donald Mitchell - AYE  
James Swift - NAY  
Barbara Manville - AYE  
Benjamin Toby - AYE  
David Ruhs - AYE

The motion to accept Application 19.18 as amended carried, with a vote of 4-1.

### **Minutes**

Mr. Mitchell made a motion to approve the minutes from August 15, 2019. Ms. Manville seconded. All members were in favor and the minutes from August 15, 2019 were approved.

### **Director's Report**

*Clerk: Failure of Newtown Bee to public legal notice for Application 19.17*

The Clerk addressed the failure of the Newtown Bee to publish legal notices regarding the public hearing for Application 19.17. Ms. O'Neill stated that the public file now has a printed email as proof that she sent the legal notices to Sherri Baggett of the Newtown Bee. Ms. O'Neill assured the Commission that the legal notices for this application had been resubmitted and she has both certificates of publication in the public file now. She apologizes for the inconvenience.

*Riverwalk amendments, cf. Application 15.01 and 18.02*

Mr. Benson said that the Riverwalk development has come forward with another version of site plans. This version is a conglomeration of the various changes that have been approved by the Commission in the past. Mr. Benson asked the Commission to give their input as to whether or not these changes could be approved administratively, or if the Commission felt that they warranted a public hearing.

Mr. Benson invited the public and the Commission to take a look at the new site plans, so they could determine if they required a public hearing. The consensus was that the Commission would like the Riverwalk changes (specifically the garages near Washington Avenue) to come before them as an Amendment to a Special Exception.

### **Adjournment**

Mr. Rosen made a motion to adjourn. Ms. Manville seconded. All members were in favor and the meeting was adjourned at 9:10 p.m.

*Respectfully submitted,  
Christine O'Neill, clerk*