



TOWN OF NEWTOWN
PLANNING & ZONING COMMISSION
MINUTES

REGULAR MEETING

Council Chambers

3 Primrose Street, Newtown, CT 06470

October 3, 2019 at 7:30 p.m.

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

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

Mr. Mitchell called the meeting to order at 7:31 p.m.

Mr. Mitchell began by stating that Referral 19.25 is not a public hearing, which means there will be no testimonies from the audience.

Public Hearings

Application 19.22 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 plans titled "13 Hawleyville Road LLC, 13 Hawleyville Road (Route 25), Newtown, Connecticut" dated 9/3/19, and supporting documents submitted to the Land Use Agency 9/5/19 and 9/19/19.

Due to a neighbor notification error, Application 19.22 was not heard. This application is expected to be heard at the next regular meeting of 10/17/19.

Application 19.19 by CPCI, LLC, for a Text Amendment to the Newtown Zoning Regulations, to add a section under Appendix B for South Main Village Design District #7 (SDD7), so as to permit a gas station/convenience store, including food service with fixed seats, for a property located at 147-151 South Main Street, as shown on supporting documents submitted to the Land Use Agency 9/4/19.

Application 19.20 by CPCI, LLC, for a Zone Change from M-1 to SDD7, for a property located at 147-151 South Main Street, as shown on a set of plans titled "Proposed Filling Station Reconstruction, CPCI, LLC, 147-151 South Main Street, Newtown, CT 06470" and supporting documents submitted to the Land Use Agency 9/4/19.

Application 19.21 by CPCI, LLC, for a Special Exception, for a property located at 147-151 South Main Street, so as to raze and rebuild an existing gas station/convenience store, with new design to include food service with fixed seats, as shown on a set of plans titled "Proposed Filling Station Reconstruction, CPCI, LLC, 147-151 South Main Street, Newtown, CT 06470" and supporting documents submitted to the Land Use Agency 9/4/19.

George Benson explained that Applications 19.19, 19.20, and 19.21 would be heard in a single presentation, but would be voted on separately by the Commission.

Hugh Sullivan, an architect from Bennett Sullivan Associates and Mark Smith, a civil engineer from CMG, introduced themselves as speaking on behalf of the application. Mr. Smith distributed the latest text of the proposed text amendment and a Google Maps aerial image of the site.

Mr. Smith presented a plan of the site as-is, which is 6.7 acres with about 1.25 acres that have been developed for the current gas station. He explained the proposed new gas station would remain within the same 1.25 acre footprint. There are issues with the current parking, pumps, and well layout. The underground tanks are reaching the end of their 30-year lifespan and need to be replaced by Connecticut State Statute.

The use of the property will remain the same: a filling station and convenience store. The curb cuts will be reduced, the pump canopy will be moved further back from the street, and new underground tanks will be installed. All gas station safety measures will be compliant with State Statutes. A complete stormwater management system will be put in place, whereas the current gas station has no system at all. Mr. Smith next addressed the landscape plan, which includes plantings to disguise the propane tank behind the building. The renovations will add a few thousand feet of paving, but will remove a few thousand feet of gravel yard.

Mr. Sullivan distributed renderings of the convenience store building. The roof has gabled ends rather than a hipped-roof structure. Windows will overlook a flower garden planted along the side of the building. Mr. Sullivan showed photographs of the current site, which appears to be in a state of disrepair. This new store will be 3,000 square feet and features coolers, a retail area, cashier counter, storage area, restrooms, and a small cafe. Mr. Sullivan presented the elevations of the buildings and canopy from multiple perspectives, indicating that the structure of the building echoes the Wheels convenience store that is currently on Church Hill Road. The photometric plan is dark-sky compliant and depicts zero light trespass beyond the property line.

Mr. Smith added that he had reviewed the Special Exception criteria and the Plan of Conservation and Development (POCD), so the site plan was created to be in keeping with those.

Ms. Cox asked if the back of the site was to be tarred. Mr. Smith showed on the site plan that the slope on the back is going to be planted with a low maintenance slope-mix. She stated that her main concern is the wetlands. Mr. Smith said there is no grading within 50 feet and no structures within 100 feet of the wetlands. Mr. Smith also spoke about the safety measures surrounding the features of the gas station.

Mr. Mitchell asked if any of the visuals that were displayed tonight were not already part of the file. Mr. Smith replied only the Google Maps aerial image was new. Mr. Mitchell asked how long this site has been used as a filling station, and Mr. Smith responded at least since 1968.

Mr. Mitchell pointed out that although the impervious surface would be increasing, the plantings and the stormwater system would improve drainage. Mr. Benson added that this was a vast improvement from the current site, which has no stormwater management system at all.

Mr. Mitchell wondered how far around the building fire trucks could get. Mr. Smith demonstrated on the site plan that they would have access to 3 sides of the building, and contributed that a 3,000 gallon firefighting water storage tank would be on site at the Fire Marshal's request.

Mr. Swift asked if the architect had agreed with the Design Advisory Board's (DAB) recommendations. Mr. Sullivan replied that he did not agree with the recommendation regarding the pitched canopy roof, because it is an open-air structure and he found it to be overwhelming the imagery from the street; moreover, it would screen the building. Mr. Sullivan showed the Commission images of a recent project he did where they enhanced the canopy trim, which he would rather do in favor of a pitched roof. He commented that he was not opposed to wrapping the columns with aesthetic material as the DAB suggested, but he would need to check with the Fire Marshal to be sure the materials were nonflammable. Mr. Swift countered that he thought the pitched canopy roof wouldn't look bad and felt Mr. Sullivan should take the DAB's advice.

Ms. Manville asked if this canopy was the same exact one on Church Hill Road. Mr. Sullivan expressed that it was the same, but lower, because they chose to keep the height of the existing canopy on this site. Mr. Meadows asked Mr. Sullivan to explain the difference between the two images on the final page of the photometric plan. Mr. Sullivan demonstrated that one image simply showed the building at a different angle, and did not represent an alternate concept.

Mr. Ruhs asked if the signage would be lit, and Mr. Sullivan said it would be. Mr. Ruhs asked if the hours of operation would remain the same, and Mr. Sullivan confirmed this also. Mr. Ruhs expressed his concern about traffic flow or potential backup with drivers waiting to make a left-hand turn to exit the site. Mr. Smith explained that the intention is to have one exit lane and one entrance lane, but they still have to have the project reviewed by the Department of Transportation (DOT).

Mr. Swift asked Mr. Sullivan to clarify if he was opposed to dressing up the fascia or the canopy's columns, and Mr. Sullivan said he wasn't.

Mr. Mitchell expressed his concern that this parcel has been used as a gas station for a long time, and without an environmental review, he is hesitant to approve a text amendment that would allow the property to be used for "childcare centers," "schools or learning centers," and "elderly care centers." Mr. Smith was unsure if an environmental analysis had been done, but he was not aware of any contamination issues. He commented that a licensed environmental professional will be onsite during the construction. Mr. Mitchell said this does not allay his concerns about the schools or elderly care centers. Mr. Sullivan and Mr. Smith shared that they were perfectly fine striking those uses from the proposed text amendment.

Mr. Swift asked why there was a residential component in this text amendment. Mr. Benson explained that when applicants design an amendment for their own Design District, he encourages them to draw as much language from the Business Zone as possible, which is why the uses of schools, elderly care centers, and residences were included. Mr. Sullivan and Mr. Smith were amenable to taking items 10, 11, 12 and 15 out of the text amendment. Mr. Mitchell pointed out that if in the future someone really wanted to put one of those uses on the site, they could always come back to amend the Design District regulations.

Mr. Smith read through the text amendment. Mr. Benson explained the stipulation about the setbacks: this property has a practically non-existent setback which is grandfathered. This text amendment proposes decreasing the nonconformity by moving further back from the street, even though it is not as large a setback as the B-2 Zone usually has.

With no further questions from the Commission, Mr. Mitchell invited public comment.

Jay Mattegat of 1 Sealand Drive, Newtown, CT explained that he was a Legislative Council member but was speaking tonight as a private citizen who owns property across the street from this site. He said that in 2001, a chemical spill occurred on the site which contaminated two nearby wells, including his. He urged the Commission to require an environmental study on the surrounding wells and those on Pecks Lane to be sure that they are no longer contaminated. Mr. Benson said while this was not within the jurisdiction of the Commission, he would check with the Health Department for Mr. Mattegat.

Mr. Swift made a motion to close the public hearing. Mr. Meadows seconded. All were in favor and the public hearing was closed at 8:32 p.m.

Ms. Manville read the following resolution into the record:

BE IT RESOLVED that Application 19.19 by CPCI, LLC, for a Text Amendment to the Newtown Zoning Regulations, to add a section under Appendix B for South Main Village Design District #7 (SDD7), so as to permit a gas station/convenience store, including food service with fixed seats, for a property located at 147-151 South Main Street, as shown on supporting documents submitted to the Land Use Agency 9/4/19 and 10/3/19 SHALL BE APPROVED WITH THE FOLLOWING CONDITIONS: (1) that items 10, 11, 12, and 15 under "Permitted Uses" be eliminated and (2) that any allowed use other than a gas station would require an amendment and a special exception. BE IT FURTHER RESOLVED that the approval shall become effective October 26, 2019.

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

Mr. Mitchell felt that this set of applications represented a vast improvement, especially with the environment controls. The Commission agreed. Mr. Rosen pointed out that the traffic design of the current gas station is unsafe and chaotic, whereas this is a tremendous improvement.

The Commission voted as follows:

Donald Mitchell - AYE
James Swift - AYE
Barbara Manville - AYE
Corinne Cox - AYE
Roy Meadows - AYE

The motion to approve Application 19.19 carried unanimously.

Ms. Manville read the following resolution into the record:

BE IT RESOLVED that Application 19.20 by CPCI, LLC, for a Zone Change from M-1 to SDD7, for a property located at 147-151 South Main Street, as shown on a set of plans titled "Proposed Filling Station Reconstruction, CPCI, LLC, 147-151 South Main Street, Newtown, CT 06470" and supporting documents submitted to the Land Use Agency 9/4/19 and 10/3/19 SHALL BE APPROVED. BE IT FURTHER RESOLVED that the approval shall become effective October 26, 2019.

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

The Commission voted as follows:

Donald Mitchell - AYE
James Swift - AYE
Barbara Manville - AYE
Corinne Cox - AYE
Roy Meadows - AYE

The motion to approve Application 19.20 carried unanimously.

Ms. Manville read the following resolution into the record:

BE IT RESOLVED that Application 19.21 by CPCI, LLC, for a Special Exception, for a property located at 147-151 South Main Street, so as to raze and rebuild an existing gas station/convenience store, with new design to include food service with fixed seats, as shown on a set of plans titled "Proposed Filling Station Reconstruction, CPCI, LLC, 147-151 South Main Street, Newtown, CT 06470" and supporting documents submitted to the Land Use Agency 9/4/19 and 10/3/19 SHALL BE APPROVED. BE IT FURTHER RESOLVED that the approval shall become effective October 26, 2019.

Mr. Swift made a motion to accept. Ms. Cox seconded.

The Commission voted as follows:

Donald Mitchell - AYE
James Swift - AYE
Barbara Manville - AYE
Corinne Cox - AYE
Roy Meadows - AYE

The motion to approve Application 19.21 carried unanimously.

Application 19.24 by Joseph Whelan, for the Resubdivision of a property located at 115A Brushy Hill Road into two residential lots, as shown on a set of plans titled "Re-Subdivision Plan, Lots 20 'Carriage Hill,' Prepared for Whelan Homes LLC, 115A Brushy Hill Road, Newtown, Connecticut" dated 8/26/19, and supporting documents submitted to the Land Use Agency 9/12/19.

Ian Eller of J. Edwards and Associates spoke on behalf of the application. Mr. Eller explained that both lots of the two-lot subdivision would have about two acres of usable land (excluding wetlands and steep slopes). Each proposed home would have four bedrooms and have their own septic systems. The long driveways have the appropriate pull-offs.

Mr. Mitchell asked if 115 Brushy Hill Road, the neighboring property, would be developed. Mr. Eller said that it was currently under construction after an approval about a month ago. The 115 driveway is separated from the two 115A driveways as far as is reasonable given the position of the wetlands.

Mr. Mitchell asked that a note be put in the file that an archaeological review is not required for this parcel. Mr. Whelan said he had followed the direction of Land Use Officer Steve Maguire who hadn't said anything about submitting a letter.

Mr. Mitchell invited public comment.

Scott Wakeman of 119 Brushy Hill Road, Newtown, CT, the neighbor across from this subdivision, shared his concern that didn't know how this would impact his property value. He wondered if the installation of these wells would have a negative effective on his well. The clearing of land was also of concern to him. Mr. Whelan explained that the reason these trees had to be cut down because there were piles and holes in that area, and it was not a naturally occurring landscape to begin with. Mr. Wakeman asked Mr. Whelan and Mr. Eller a few other questions about the trees on the properties, with Mr. Whelan commenting that he sought to keep as many trees as possible.

Mr. Swift made a motion to close the public hearing. Ms. Cox seconded. All were in favor and the public hearing was closed at 8:50 p.m.

Mr. Meadows echoed Mr. Mitchell's concern about three driveways being right next to each other, suggesting a shared driveway. Mr. Benson explained shared driveways were discouraged and that the placement of the driveways was in large part dictated by the position of the wetlands.

Ms. Manville read the following resolution into the record:

BE IT RESOLVED that Application 19.24 by Joseph Whelan, for the Resubdivision of a property located at 115A Brushy Hill Road into two residential lots, as shown on a set of plans titled "Re-Subdivision Plan, Lots 20 'Carriage Hill,' Prepared for Whelan Homes LLC, 115A Brushy Hill Road, Newtown, Connecticut" dated 8/26/19, and supporting documents submitted to the Land Use Agency 9/12/19 SHALL BE APPROVED. BE IT FURTHER RESOLVED that the approval shall become effective October 26, 2019.

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

Mr. Mitchell pointed out that one expects vacant land to be developed. He felt that the application was straightforward. He did not see an easy solution to the driveway situation, but clarified that he was still in favor of the application. Ms. Manville said that this development seemed close and encroaching on the properties that face Brushy Hill Road.

The Commission voted as follows:

Donald Mitchell - AYE
James Swift - AYE
Barbara Manville - NAY
Corinne Cox - AYE
Roy Meadows - AYE

The motion to approve Application 19.24 carried with a vote of 4-1.

Application 19.13 by the Town of Newtown, for a Text Amendment to Newtown Zoning Regulations §8.11.120, to clarify Special Event permit processes for for-profit and non-profit organizations, as detailed on a document submitted to the Land Use Agency entitled “Amendment to Zoning Regulation §8.11.120, Special Events,” dated 9/18/19.

Mr. Benson said that the amendment was being proposed to clarify a section in the Regulations that address special event signage, but not special events themselves. With more people doing special events such as food trucks for charity events, the Land Use Agency wanted to write out a regulation which clarifies what has been allowed all along. There is a new, associated form that will be implemented at the Agency.

Mr. Mitchell invited public comment. No one came forward. Mr. Mitchell made a motion to close the public hearing. Mr. Swift seconded. All were in favor and the public hearing was closed at 9:00 p.m.

Ms. Manville read the following resolution into the record:

BE IT RESOLVED that Application 19.13 by the Town of Newtown, for a Text Amendment to Newtown Zoning Regulations §8.11.120, to clarify Special Event permit processes for for-profit and non-profit organizations, as detailed on a document submitted to the Land Use Agency entitled “Amendment to Zoning Regulation §8.11.120, Special Events,” dated 9/18/19 SHALL BE APPROVED. BE IT FURTHER RESOLVED that the approval shall become effective October 26, 2019.

Mr. Swift made a motion to accept. Ms. Cox seconded.

The Commission voted as follows:

Donald Mitchell - AYE
James Swift - AYE
Barbara Manville - AYE
Corinne Cox - AYE
Roy Meadows - AYE

The motion to approve Application 19.13 carried unanimously.

Referral

Referral 19.25 from the Newtown Borough Zoning Commission, originally submitted by 19 Main Street LLC, for a property located at 19 Main Street, for (1) an amendment to the Borough Zoning Regulations and (2) an amendment to the Borough Zoning Map, as detailed in documents submitted to the Land Use Agency 9/13/19.

Mr. Mitchell restated that this was not a public hearing; rather, a decision to be made by the Commission as to whether this text amendment is consistent with the POCD. He shared that there is public correspondence in the file that goes item by item demonstrating that the amendment is not consistent with the POCD. As such, Mr. Mitchell went on, when the Commission makes their recommendation to the Borough Zoning Commission (BZC), they would also need to point to specific text in the POCD to justify their position.

Due to the late submission of some of the correspondence in the folder, Mr. Mitchell and Mr. Benson made a suggestion that they talk about the Referral tonight but continue the discussion to the next meeting, so that the Commissioners have ample time to find passages from the POCD to support their position.

Ms. Manville had a few questions about what was sent to the Commissioners via email. Ms. O'Neill replied that Commissioners will receive emails that are submitted directly through the Town site and Ms. O'Neill will forward any electronic submission directly from the applicant. Public correspondence that is submitted only in hard copy form goes in the folder and will be seen by the Commissioners when they review the applications.

Mr. Swift confirmed that this is not affordable housing, even though one of the letters of support he saw referred to it as such.

Mr. Benson reminded the Commission that they are acting strictly in the capacity of Newtown's Planning body. There is a special section of the POCD that does address the Borough.

Mr. Meadows asked if the Commission had to address spot-zoning. Mr. Benson and Mr. Mitchell said no, that this referral is simply looking at the text creating the Overlay Zone; once it is applied to a certain property that wants a zone change, the question could be addressed.

The POCD is a plan rather than a zoning regulation, and as such requires a lot more interpretation, Mr. Benson and Mr. Mitchell expressed.

Mr. Toby asked if the proposed text amendment would be a starting point, or if it would be the extent of the regulations for that overlay district, pointing out that overlay districts in the Newtown Zoning Regulations appear to be more thorough. Mr. Mitchell confirmed that this text would be it.

Mr. Mitchell asked the Commissioners to consider the following questions as they read through the POCD and the letters submitted by the public: Are multifamily rental units appropriate for the Borough? Would the resulting residential density be appropriate?

Mr. Benson pointed out that the Commission recommending the disapproval of this application would not "stop" the application, but would necessitate a two-thirds favorable vote when it goes before the BZC.

Mr. Toby asked why there was not an affordability component. Mr. Swift asked if an 8-30g affordable housing development could possibly apply for the same property if this application is voted down. Mr. Benson said that it is possible, and the matter could potentially go to court. He explained that developers are likely to increase density of the residential units if they build affordable housing to make up for the lost profits of market-value housing. Mr. Benson contributed his opinion that, based on past experiences, an 8-30g application is very difficult to fight in court.

Mr. Swift asked if it was safe to assume that the property would get developed at some point no matter what. Mr. Benson agreed that it was likely, though not necessarily as housing.

Mr. Mitchell said he would not be present at the next meeting. As such, he requested that the Commission not continue the discussion on this referral until the first November meeting, 11/7/19. This

scheduling would not hold up the application's BZC hearing, which will be held on 11/13/19 in the multipurpose room of the Community Center at 7 p.m. Mr. Mitchell pointed out that the location may change, if it is determined that a BZC hearing cannot take place outside the Borough.

Mr. Olson, the attorney representing the applicant for this referral, requested that a deadline be set for written comments by the public. Mr. Olson expressed that this would allow him time to respond to those comments. The Commission decided that two weeks from today - the end of the business day on October 17th - would be the last date that public could submit comments to the public record.

Mr. Olson and Mr. Benson had a discussion about the deadline for the Commission to respond to the BZC's referral. It was determined that as long as the Commission responded before the BZC's hearing, there would be no issue.

The Commission decided that Referral 19.25 would be continued to 11/7/19.

Minutes

Mr. Mitchell made a motion to approve the minutes from September 19, 2019. Mr. Meadows seconded. All members were in favor and the minutes from September 19, 2019 were approved.

Director's Report

Referral from the Town of Monroe, RAA-2019-06, File #1007E

Mr. Benson explained that this referral outlined a series of text amendments to "clean up" the Town of Monroe Zoning Regulations. No substantive changes were being proposed that would impact Newtown.

Adjournment

Mr. Rosen made a motion to adjourn. Mr. Mitchell seconded. All members were in favor and the meeting was adjourned at 9:36 p.m.

*Respectfully submitted,
Christine O'Neill, clerk*