



TOWN OF MIDDLEBURY

Planning & Zoning Commission

1212 Whittemore Road

Middlebury, Connecticut 06762

(203) 577-4162 ph

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August 5, 2021 REGULAR MEETING MINUTES

REGULAR MEMBERS PRESENT

Terry Smith, Chairman
William Stowell, Vice Chairman
Erika Carrington
Joseph Drauss

REGULAR MEMBERS ABSENT

Matthew Robison

ALTERNATE MEMBERS PRESENT

Paul Anderson

ALTERNATE MEMBERS ABSENT

Kevin Zupkus

ALSO PRESENT

Curtis Bosco, Z.E.O.
John Calabrese, P.E.

CALL TO ORDER

Chairman Smith called the Regular Meeting to order at 7:00 p.m.

ROLL CALL AND DESIGNATION OF ALTERNATES

Chairman Smith announced Regular Members Smith, Stowell, Carrington & Drauss and Alternate Member Anderson as present. Alternate Member Zupkus was absent. He thanked Paul Anderson for agreeing to serve as a new Alternate Member of the Commission and appointed him to act in place of absent Regular Member Robison.

PUBLIC HEARINGS

1. Ter-Geo, LLC/Russell Antonacci/896 Middlebury Rd.-Application for a Special Exception for Property Management Companies pursuant to Section 35.5.2 of the Regulations (Residential Transition District) (Application #2021-6-1)

Chairman Smith stated that Attorney Michael McVerry of 35 Porter Avenue, Naugatuck, CT 06770 submitted a letter on behalf of his clients, dated August 5, 2021, requesting to continue Public Hearing as he did grant an extension. Therefore, the Public Hearing will be tabled the hearing and plans to open it again on September 2, 2021.

MINUTE APPROVAL

2. Discussion of the Minutes of the Regular Meeting held on July 1, 2021

Chairman Smith stated the Paul Anderson would need to recuse himself from voting as he was not present for the meeting.

Motion: to approve the Minutes as submitted. Made by Erika Carrington, seconded by Joseph Drauss. Paul Anderson recused himself. Unanimous Approval.

OLD BUSINESS

3. Ter-Geo, LLC/Russell Antonacci/896 Middlebury Rd.-Application for a Special Exception for Property Management Companies pursuant to Section 35.5.2 of the Regulations (Residential Transition District) (Application #2021-6-1)

Discussion was tabled.

4. Middlebury Land Development/North Benson Rd. – Discussion and possible action regarding Benson Woods Subdivision (Application #2021-6-2)

Attorney Jennifer Yoxall of Carmody, Torrance, Sandak & Hennessey LLP spoke on behalf of the applicant and provided the following documentation:

- Letter dated June 16, 2021, Re: Benson Woods Subdivision
- Subdivision Map prepared for Timex Corporation by Bradford E. Smith & Son, map date 4-23-02, Revised 4-25-03

- Letter dated June 23, 2021, Re: Benson Woods Permit Expirations
- Letter dated July 6, 2021, Re: Benson Woods Permit Expirations
- Substitute house Bill No. 6531, Public Act No. 21.34

She went on to state that they have a 2-lot subdivision (Lot 1 = Timex Corporation Headquarters, Lot 2 = Phase 2 of the Benson Woods Development). The subdivision map shows a road and open space. The road has not been constructed and the open space has not gone to the HOA because they have not started Phase 2. The subdivision approval included conditions that addressed the road and the open space as well as some subdivision monuments. They continue to return to this Commission for renewals and permits and she wanted to ensure that this Commission would not say that due to the fact that they have not complied with the conditions, that it was no good. The road and the open space are also covered by the Final Development Plan and she feels that is what they should be governed by. They submit bonds as they move forward with the phases and plan to continue to do so. Therefore, she feels there is no need for a subdivision bond as it will be covered by a Site Development Bond under the Final Development Plans. Section 22.9.1 of the Regulation addresses the open space, therefore, she feels there is no need for subdivision conditions and asked that this Commission amend the approval to take them out. This would eliminate the need for continuously returning to extend or renew. She provided a Resolution for this Commission's consideration.

Chairman Smith stated that he wanted more time to review all of the documents, to confer with Town Counsel and would continue this discussion next month.

Attorney Jennifer Yoxall expressed her understanding. In addition, she went on to state that with the new Public Act No. 21.34 (Substitute house Bill No. 6531) that has extended the Permit expiration dates, they have several permits and wanted confirmation on all of the expiration dates associated with this development.

Motion: The commission agreed that the Community Building Special Exception expires 10-5-2035, the Section 64 Excavation & Grading Permit and the Final Development Plan expires 12-5-2030 in agreement with the recently passed legislation, Public Act 21-34. Made by William Stowell, seconded by Joseph Drauss. Unanimous Approval.

5. 1365, LLC/1395, 1405 Middlebury Rd.-Application for Site Plan (Application #2021-6-3)

Attorney Michael McVerry of 35 Porter Avenue, Naugatuck, CT 06770 spoke on behalf of the applicant who is seeking approval for an additional parking spaces with

crossings over the greenway. Conservation Commission approval was granted on 7-27-2021.

David Hughes, P.E. of 57 Norway Street, Oakville, CT 06779 submitted and reviewed the revised plans with the Commission. He stated that the concept is the same but acknowledged the possibility of, in the future, tying into the previously approved parking area's drainage to the drainage system that is proposed for this parking lot. This parking area would be constructed prior to the previously approved, due to a reduction in construction cost. The crossing for the greenway that is now being shown is more in line with the grades of the greenway rather than where it previously was. The will still remove 3 existing spaces from the former Juniper's Restaurant, have a 24 foot aisle driveway crossing the greenway and accessing the now 53 parking spaces, resulting in a net of 50 spaces. Light poles and landscaping are being proposed and they also provided a detail for the actual crossing. He proposed double yellow or white lines for the access driveway, stop bars and a painted crosswalk in accordance with CT DOT standards. He reviewed the 2 details for safety signage. They are proposing a total of 4 large reflective signs as well as decorative bollards in the greenway.

Chairman Smith directed David Hughes to confer with Public Works Director Dan Norton with respect to the town's requirements.

David Hughes, P.E. agreed to do so.

Joseph Drauss expressed his concerns with respect to traffic and speed and questioned if speedbumps could be placed before the greenway.

Dean Yimoyines replied that one can never plow by speedbumps and cause ice buildup on the greenway.

William Stowell suggested that temporary speedbumps be used.

Chairman Smith requested that the light poles be approximately 14 feet high as opposed to the proposed 20 feet high.

Motion: to approve the application for a Site Plan for 1395 & 1405 Middlebury Rd., Middlebury, CT prepared for 1365, LLC Proposed Parking Lot dated June 25, 2021, Revised to July 30, 2021 with the additions of temporary speed bumps crossing the greenway, lowering the proposed lighting to approximately 14 feet and bollards to comply with Town standards. Made by Joseph Drauss, seconded by William Stowell. Unanimous Approval.

NEW BUSINESS

6. Peter Vileisis/288 Watertown Rd.-Application for a 6 Lot Subdivision (Application #2021-7-1)

Joseph Drauss commented for the record that he resides on a street that is off of Watertown Rd. but does not feel it is a conflict of interest and vowed to judge the project on its merits.

Michael Lambert, P.E. of Civil 1, 43 Sherman Hill Road, Woodbury, CT spoke on behalf of the applicant and reviewed the plans with the Commission. They are proposing a 635 linear foot temporary cul-de-sac with 5 houses. Approval was granted by the Conservation Commission on 7-27-2021 as well as the Torrington Area Health District. He added that a lot line revision is also being proposed as well as designating the street as a town road.

Chairman Smith suggested that they attempt to get some form of approval from the Board of Selectmen that they will accept a new street in town. He also stressed the importance of abiding by the road regulations and drainage as public road requirements will not be waived.

Motion: to set a Public Hearing for 9-2-2021. Made by Erika Carrington, seconded by Paul Anderson. Unanimous Approval.

7. Ardita Topalli/48 Clearview Knoll-Application for Professional Office in a dwelling unit (Application #2021-8-2)

Ardita Topalli stated that she is a dental hygienist and was looking for approval to perform cosmetic teeth whitening services from her home. She confirmed that she is the only employee and that the room, which is located above her garage, is approximately 600 square feet in size and less than 1/3 of the dwelling unit in accordance to Section 8.4 of the Regulations. There is a separate entrance, she sees an estimated 4 clients per day and there is no parking on the streets.

Motion: to approve the application. Made by Erika Carrington, seconded by Joseph Drauss. Unanimous Approval.

8. Boch Middlebury/1648 Straits Turnpike-Site Plan Modifications regarding fence & planting (Application #2021-8-1)

Attorney Michael McVerry of 35 Porter Avenue, Naugatuck, CT 06770 spoke on behalf of the applicant. He reminded the Commission that they granted approval last year for Subaru Car Dealership. The building is scheduled to open sometime in September or October. During the construction process, some things have come to their attention.

David Hughes, P.E. of 57 Norway Street, Oakville, CT 06779 reviewed the revised plans with the Commission and stated that the wooden stockade fence that runs along the southerly boundary is falling apart and they would like to construct a 6 foot high chain-link fence with slats on the north and south lines. It will be placed in front of the stockade fence and replace the existing chain link fence. Initially the stockade fence was shown as part of the berm, but they are going to remove it.

Attorney Michael McVerry went on to add that Tim Toomey, Construction Manager, feels that the approved trees would most likely dying. Alternatively, they would like to increase the plantings along each property line.

Chairman Smith voiced his concerns with respect to being left with a large amount of asphalt should the islands be eliminated.

Tim Toomey, Construction Manager, made mention of the existing large island. The other 4 islands have no curbing and would be flush with the asphalt. In his experience, cars get bumped into and often die.

Chairman Smith suggested that they be moved to the berm's bump-out.

Motion: to approve the Site Plan Modifications per the condition that the trees be moved over to the berm's bump-outs in the parking lot and the addition of the fence. Made by William Stowell, seconded by Erika Carrington. Unanimous Approval.

9. Planning Consultant Hiram Peck-Discussion on recently enacted legislation regarding Affordable Housing and Recreational Marijuana

Hiram Peck with Plan Three discussed recently passed legislation with the members of the Commission.

- Public Act No. 21-1 - AN ACT CONCERNING RESPONSIBLE AND EQUITABLE REGULATION OF ADULT-USE CANNABIS

He highlighted the following:

1. Controls – whether this Commission chooses to exercise a control or to simply let the legislation go forward the way it is.
2. Zoning Regulations can prohibit the sale of recreation cannabis, limit the hours, locations and signage and could be put in place with a Public Hearing.
3. Some communities have put prohibition in place
4. This Commission has no control over whether someone uses cannabis in their home, the town certainly has control over where it is consumed in public places like parks, beaches, sidewalks, etc. There is a municipal ordinance component to it.
5. If a group (in favor of or in opposition of) wanted to bring it to referendum, they need 10% of the voting population in town to do so and it would have to be brought to the Town Clerk at least 60 days prior to a regular election in order for it to appear on the ballot. In the referendum is in opposition of it, and the BOS has a different view, there may be some open legal questions but it is his opinion that the Zoning Regulation would stand.
6. He suggested this Commission focus on four (4) sections of the Act (83, 84, 126 & 148) which are relevant to the municipal actions.
7. The first date of retail sale could begin approximately in the middle of 2022, although the State license process is beginning now.
8. The maximum number of retail sales in Middlebury would be one (1): 1 per 25,000 people.
9. The Zoning Regulations can prohibit or regulate a cannabis establishment which grows and then sell.

Chairman Smith stated that it is his understanding that all members of this Commission do not want it in town. He questioned if Mr. Peck would provide this Commission with a Regulation and then possibly schedule a Public Hearing.

Hiram Peck agreed to do so and suggested that the members keep in mind that it won't prevent it from coming to town, however, it prevents it from being sold.

- Public Act No. 21-29 - AN ACT CONCERNING THE ZONING ENABLING ACT, ACCESSORY APARTMENTS, TRAINING FOR CERTAIN LAND USE OFFICIALS, MUNICIPAL AFFORDABLE HOUSING PLANS AND A COMMISSION ON CONNECTICUT'S DEVELOPMENT AND FUTURE.

He highlighted the following:

1. It allows Accessory Dwelling Units (ADUs) effective October 1, 2021 (Sections 1 & 7).
2. Provided it meets the Regulations, staff can sign off on it and it does not require a Public Hearing or go before the Commission.
3. There may be areas in town that don't have an existing single-family dwelling on individual lots and ADUs could be allowed.
4. They must meet all building, fire and zoning codes.
5. Opt-Out Provision – the town can decide to opt-out of accepting this. The opt-out date is January 1, 2023. If the town decides not to opt-out, the Act must be incorporated into the Regulations. Opt-out can be achieved by a 2/3 vote of this Commission **and** a 2/3 vote of the BOS.
6. Consulting fees cannot be raised higher for affordable housing applications.
7. Character (Section 8-2) – The physical sight characteristics need to be clear in terms of what is in the Regulations.
8. Z.E.O. must be trained and certified by Cazeo (Connecticut Association of Zoning Enforcement Officials).
9. Training for Commissioners – 4 hours every other year and must be completed by January 21, 2024. Proof in letter form must be provided to the town as well as the state.
10. Parking requirements are limited. The maximum amount of parking required for a one-bedroom or studio is one parking space. He believes, but is not certain, that should the town want to opt-out of this, doing so is required by October 1, 2021.

He then proceeded to provide the members of the Commission with a Draft of Revised Regulations for their review. He wanted it noted that Outdoor Dining and the Transition Zone have both been included in the Draft, however, the new legislation is not. He suggested they hold 1-2 workshops and end with one copy marked in order for him to make the necessary edits.

OTHER BUSINESS

10. Any other business added to the agenda by a 2/3 vote of the Commission

None

11. Enforcement Report

Curtis Bosco, Z.E.O. briefly reviewed his report which included 1 invoice paid, 8 new construction zone permits, 4 condos, 3 pools and 1 deck. He sent 4 letters, 2 of which have been resolved. He went on to question the Commission if they would consider above ground pools as a temporary structure.

Chairman Smith instructed him to work it out with the building inspector and return to this Commission to finalize a decision. He went on to ask him to contact a representative for the excavation & grading permit approval on Straits Turnpike, as the site looks abandoned, as well as one for Uncle Willie's to discuss violations.

12. Adjournment

Motion: to adjourn the meeting at 8:29 p.m. Made by Erika Carrington, seconded by Joseph Drauss. Unanimous Approval.

Filed Subject to Approval,

Respectfully Submitted,

Rachelle Behuniak, Clerk

Original to Brigitte Bessette, Town Clerk

cc: P&Z Commission Members
Paul Bowler, Chairman, Conservation Commission
Ollie LeDuc, Building Official
Curtis Bosco, Z.E.O.
Ken Long, Chairman, Z.B.A.
Attorney Dana D'Angelo
Rob Rubbo, Director of Health