



TOWN OF MIDDLEBURY

Planning & Zoning Commission

1212 Whittemore Road

Middlebury, Connecticut 06762

(203) 577-4162 ph

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October 6, 2022 REGULAR MEETING MINUTES

REGULAR MEMBERS PRESENT

Terry Smith, Chairman

Matthew Robison

Joseph Drauss

Erika Carrington

REGULAR MEMBERS ABSENT

William Stowell

ALTERNATE MEMBERS PRESENT

Frank Mirovsky

ALTERNATE MEMBERS ABSENT

Paul Anderson

Gerald Lukowski

ALSO PRESENT

John Calabrese, P.E.

Curtis Bosco, Z.E.O.

CALL TO ORDER

Chairman Smith called the Regular Meeting to order at 6:59 p.m.

ROLL CALL AND DESIGNATION OF ALTERNATES

Chairman Smith announced Regular Members Smith, Robison, Carrington & Drauss and Alternate Member Mirovsky as present. Regular Member Stowell and Alternate Members Anderson & Lukowski were absent.

PUBLIC HEARINGS

1. **Hussnain Gondal, Gondal Corporation/Solli Engineering-Application for a Text Amendment to Section 67.1 of the Regulations (Application #2022-5-2)**
2. **Hussnain Gondal, Gondal Corporation/Solli Engineering-Application for a Text Amendment to Sections 9.1, 34.1.7 & 34.4.4 of the Regulations (Application #2022-5-3)**

Chairman Smith called the two (2) Public Hearings to order at 7:00 p.m. and read the following attached documents for the record:

- Letter of opposition, dated 10-6-22, from Attorney Matthew Ranelli of Shipman, 265 Church Street, Suite 1207, New Haven, CT 06510
- Unfavorable Review, dated 9-25-22, from Hiram Peck of Plan Three, P.O. Box 741, Woodbury, CT 06798

Kevin Solli, P.E. with Solli Engineering, 501 Main Street, Suite 2A, Monroe, CT 06468 spoke on behalf of the applicant, Hussnain Gondal, Gondal Corporation, who is the contract purchaser of 1082 Southford Road. He reviewed what he feels are modest proposed text amendments. The first is intended to reduce the radius for the setback requirements for gas station facilities from properties which are used for public or private school, parks, places of worship, charitable institutions, hospitals or libraries within the Gateway Industrial Design District (GIDD). He acknowledged Hiram Peck's expertise but disagrees with much of his review. The change of the buffer has to do with language that they felt was more for clarification for the town and how they already apply their regulations. He pointed out an existing gas station in front of Post University and feels that if the regulation as it currently written was applied in its reading, the gas station would not be permitted as it is within 500 feet of the school in another town. Next, he addressed the separation from the reduction from 500 feet to 350 feet and what he deems as an odd configuration of Long Meadow Elementary School's property. Said property comes out behind two (2) other parcels on the main road. From an objective standpoint, he does not think that the reduction to 350 feet will have a negative impact to the school. In response to the letter of opposition submitted by Attorney Matthew Ranelli, while he respects the firm, he believes they are hired and offer opinions that are their client's best interest. Their client, Alliance Energy, owns a gas station which is closer to a school than this subject property and he suspects they are concerned about the impact of their business should the applications be approved. He reiterated that the unique configuration of the Long Meadow School property simply precludes the ability for an applicant to peruse uses permitted in the zone. With respect to their proposed text amendment geared towards the drive-thru component, he feels they are limited. He stated that they have had success working on other communities where there was a reluctance to allow them by

implementing proper planning strategies and ultimately did not have an adverse impact on the communities. The definition that they created was intended to specifically be tied to Section 34.4, making it limited in its application. In response to Hiram Peck's concerns, he is willing to offer a modest amendment to the language that it would only be allowed within the GIDD. He added convenience for parents of young children as a compelling reason. For a mom to have the capability to go through a drive-thru for a cup of coffee without having to take children out of car seats would add a benefit to the community that he feels is not currently being served within the town of Middlebury. Based on the current regulations and restrictions, there is no economic incentive to invest in the property.

Attorney Matthew Ranelli of Shipman, 265 Church Street, Suite 1207, New Haven, CT 06510 spoke on behalf of his client, Alliance Energy, and reiterated the reasons for their opposition of the applications stated in their letter dated 10-6-22.

Joseph Drauss requested clarification on the shape of Long Meadow School's parcel.

Kevin Solli, P.E. with Solli Engineering reviewed where the property finger extends and wraps around two (2) other parcels.

Matthew Robison questioned how far from the center of their proposed entrance would he be to the corner of the school's lot.

Kevin Solli, P.E. with Solli Engineering estimated it to be 360 feet away and confirmed that there is no alternative for the placement of the building so as to meet the current 500 foot requirement.

Matthew Robison declared that he is not fearful of change but rather he is fearful of garbage. Additionally, that there are certain activities that they do not want near schools and other institutions mentioned and feels that if they reduce it here, it would set a precedent and could be challenged.

Kevin Solli, P.E. with Solli Engineering expressed his understanding and again mentioned the 500 foot requirement not being applied to the gas station that currently exists near Post University.

Chairman Smith affirmed that he cannot say it was not applied as he believes it was caused by expansion by Post University.

Erika Carrington questioned if there will be the sale of beer.

Kevin Solli, P.E. with Solli Engineering was uncertain but confirmed that those are

separate requirements regulated by other means. At this point, they are not requesting the ability to sell beer and should not be affected by the proposed amendments.

Chairman Smith suggested to close the Public Hearings and not act on them so as to give them time to think about all that has been presented.

Motion: to close the Public Hearing for Hussnain Gondal, Gondal Corporation/Solli Engineering-Application for a Text Amendment to Section 67.1 of the Regulations on 10-6-2022. Made by Joseph Drauss, seconded by Matthew Robison. Unanimous Approval.

Motion: to close the Public Hearing for Hussnain Gondal, Gondal Corporation/Solli Engineering-Application for a Text Amendment to Sections 9.1, 34.1.7 & 34.4.4 of the Regulations on 10-6-2022. Made by Joseph Drauss, seconded by Matthew Robison. Unanimous Approval.

3. **JSD Partners Southford, LLC/1067 Southford Road aka 1101 Southford Road-Application for a Text Amendment pursuant to Section 63 of the Regulations (Application #2022-8-3)**
4. **JSD Partners Southford, LLC/1067 Southford Road aka 1101 Southford Road-Application for Special Exception pursuant to Sections 63.8.2 (A) & (B) of the Regulations (Application #2022-8-1)**

Chairman Smith called the two (2) Public Hearings to order at 7:33 p.m. For the record, he read the Legal Notice published in Voices on 9-21-22 & 9-28-22 and a letter from NVCOG, dated 9-15-22, stating the application would not have an intermunicipal impact.

Attorney Michael McVerry of 35 Porter Avenue, Naugatuck, CT 06770 spoke on behalf of the applicant. His client is looking to allow digitally produced signs, all while being as unobtrusive as possible.

Dean Yimoyines feels that traditional advertising is no longer effective and that digitally produces signs are the best and most cost effective way to advertise. For example, being able to advertise a weekly sale in a highly trafficked area would help his business tremendously.

Attorney Michael McVerry stated that the existing sign is 16 & ½ feet high and the proposed digital sign will be 22 & ½ feet high which includes the post at the top.

Dean Yimoyines added that he only measured to the top of the sign, not the post.

Chairman Smith requested to continue the Public Hearings to give Hiram Peck of Plan Three time to submit his review and the Commission ample time to examine the proposals. He did express his concerns about the height being twice as high as what is currently allowed.

Dean Yimoyines reminded him that it is a 7 & ½ acre site and that from the standpoint of trying to promote economic development, it is one of the few things happening in Middlebury. He fears that the little guy will be wiped off the face of the earth by the Amazons of the world and that more commercial economic development is needed in town.

Attorney Michael McVerry added that the sign sits on a pedestal, which elevates it even more.

Hussnain Gondal of 14 Independence Circle stated that as a resident and businessman of the community he is in favor of the applications.

Chairman Smith voiced that he does not disagree with the digital component, however the size, how often it changes and brightness are all important things to consider.

Dean Yimoyines confirmed that the illuminated portion would be positioned on the bottom of the sign.

Motion: to continue the Public Hearing for JSD Partners Southford, LLC/1067 Southford Road aka 1101 Southford Road-Application for a Text Amendment pursuant to Section 63 of the Regulations (Application #2022-8-3) on November 3, 2022. Made by Erika Carrington, seconded by Matthew Robison. Unanimous Approval.

Motion: to continue the Public Hearing for JSD Partners Southford, LLC/1067 Southford Road aka 1101 Southford Road-Application for Special Exception pursuant to Sections 63.8.2 (A) & (B) of the Regulations (Application #2022-8-1) on November 3, 2022. Made by Erika Carrington, seconded by Matthew Robison. Unanimous Approval.

5. Arthur H. Howland Associates P.C./1000 Southford Road - Zoning Permit and Site Plan Application for a convenience store, motor vehicle filling station and car wash. Special Exception Application as per Sec. 52 and 34.4.4 of the Regulations (Application #2022-8-2)

Chairman Smith stated that Curtis Bosco, Z.E.O. received an email from Paul Szymaski, on October 6, 2022 at 3:49 p.m. serving as a withdrawal without prejudice. He is in the process of preparing a response to the peer reviews and plans to resubmit his application in the near future.

MINUTE APPROVAL

6. Discussion of the Minutes of the Regular Meeting held on September 1, 2022

Motion: to approve the Minutes as submitted. Made by Erika Carrington, seconded by Joseph Drauss.

Discussion:

Matthew Robison recused himself as he was not present for said meeting.

Chairman Smith appointed Alternate Member Frank Mirovsky to act in place of Regular Member Robison.

Unanimous Approval.

OLD BUSINESS

7. Hussnain Gondal, Gondal Corporation/Solli Engineering-Application for a Text Amendment to Section 67.1 of the Regulations (Application #2022-5-2)

Discussion was tabled.

8. Hussnain Gondal, Gondal Corporation/Solli Engineering-Application for a Text Amendment to Sections 9.1, 34.1.7 & 34.4.4 of the Regulations (Application #2022-5-3)

Discussion was tabled.

9. Peter Vileisis/288 Watertown Rd.-Application for a 5-Lot Subdivision (Application #2022-7-1)

Emily Jones, P.E. with Civil 1 Engineering in Woodbury, CT spoke on behalf of the applicant. The outstanding question pertained to the ownership and rights for the access and drainage easements. The documents that were submitted by Attorney Franklin Pilicy's office outline all of the easements due to the fact that this project involves a private driveway. All easements are in favor of the other lots that they are not on. For example, the drainage easement that is located on Lot 3 is in favor of Lots 1, 2, 4 & 5, giving them rights to go onto the property and bearing responsibility to assist in maintenance of the property. They also have prohibition for damaging the drainage or the rain garden. In other words, if one property owner causes damage, it is their sole responsibility to repair it. All documents will be known by the homeowners at the time of purchase.

Chairman Smith requested clarification on sheet C 2.1 of the revised plans dated 9-20-22. The note for the access, access easement in favor of Lot 5-10 (Pond Lot) and a drainage easement in favor of Lots 1, 3, 4 & 5.

Emily Jones, P.E. stated that they are overlapping easements and in the documentation, the back lot has right to access through that easement but they do not have any responsibility for the drainage within it.

Chairman Smith's understanding was that the owner of the Pond Lot (applicant) can go through this to access the back lot, which is his property. Due to previous issues with construction and activity being performed without permits, etc., he questioned if it is the applicant's intent to continue to do so on the rear lot.

Emily Jones, P.E. declared that it is not her client's intent, however, it is difficult to access the rear of the lot from his property.

Chairman Smith voiced his concerns with dump trucks/construction equipment traveling the private driveway with children playing in the road and performing additional activity with the equipment in the rear lot. He went on to state that safety is his primary concern and if that is her client's intent, he cannot vote in favor of the application. He suggested that her client submit a letter of intent so as to make it part of the record.

Emily Jones, P.E. confirmed that she understood Chairman Smith's position but would like her client to be able to access his rear lot without having to go through the wetlands. She also declared that the intent of the design is not to extend this to the rear for future development.

Chairman Smith requested that "temporary turnaround easement" be removed from the legend in sheet C 3.1.

Matthew Robison questioned if there were wetland permit approvals for the work that has already been done in Hop Brook.

Chairman Smith believes that there are.

Emily Jones, P.E. agreed to remove "temporary turnaround easement" from the legend in sheet C 3.1 and submit a letter of intent that will clarify that it is not the intent to develop the rear lot or run it as construction site.

**10. JSD Partners Southford, LLC/1067 Southford Road aka 1101 Southford Road-
Application for Text Amendment pursuant to Section 63 (Application #2022-8-3)**

Discussion was tabled.

11. JSD Partners Southford, LLC/1067 Southford Road aka 1101 Southford Road- Application for Special Exception pursuant to Sections 63.8.2 (A) & (B) of the Regulations (Application #2022-8-1)

Discussion was tabled.

12. Arthur H. Howland Associates P.C./1000 Southford Road - Zoning Permit and Site Plan Application for a convenience store, motor vehicle filling station and car wash. Special Exception Application as per Sec. 52 and 34.4.4 of the Regulations (Application #2022-8-2)

Application was withdrawn. See agenda item #5 above.

NEW BUSINESS

13. Lake Quassapaug Amusement Park/2132 Middlebury Road-Application for Site Plan approval for replacement of amusement ride (Application #2022-9-1)

Eric Anderson explained to the Commission that they are seeking approval to remove the Music Fest ride (round in shape) and move the existing Tilt-A-Whirl in its place. Additionally, they are looking to bring in a new ride called the Super Himalaya, which will be erected where the Tilt-A-Whirl was. The Super Himalaya will be a bit bigger in footprint than the Music Fest because it is square in shape. There are no height issues as it is a flat ride. He confirmed that it will have the same sound system that the Music Fest has and will be pointed towards the ticket booth.

Chairman Smith stated that he has no issues with it as long as it is not louder than the Music Fest ride being removed.

Motion: to approve the application for a Site Plan Modification for Lake Quassapaug Amusement Park dated August 4, 2022. Made by Joseph Drauss, seconded by Erika Carrington. Unanimous Approval.

Eric Anderson shared with the Commission that will be adding a couple of bathrooms to the existing pizzeria building and they also plan to remove the wooden deck on the side of the restaurant and replace it with a stone patio. He confirmed that Deborah Seavey, W.E.O. will be doing an administrative approval, but wasn't sure if he need to submit an application for either.

Chairman Smith's only request was that an updated As-built be submitted.

OTHER BUSINESS

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

Public Act 21-29

Chairman Smith stated that several months ago Hiram Peck mentioned Public Act 21-29 and explained that it gives the option for municipalities to opt-out of part of them. Basically it is putting temporary structures on one-family lots and increasing the parking, etc. he requested to add it to the agenda so that a Public Hearing could be scheduled for next month where Hiram will be present to explain it. He will share recent documentation he received from Hiram with the members in the near future.

Motion: to add Public Act 21-29 to the agenda. Made by Joseph Drauss, seconded by Matthew Robison. Unanimous Approval.

Motion: to schedule a Public Hearing for November 3, 2022 regarding the Opt-out Provisions of Public Act 21-29. Made by Erika Carrington, seconded by Joseph Drauss. Unanimous Approval.

15. Enforcement Report

Curtis Bosco, Z.E.O. stated that he received an application for a 40' X 30' barn to be constructed on an existing residential property on the corner of Woodland Road. Per Mr. Bosco's request, the applicant secured someone to do an A2 Survey. A Site Plan and Plot Plan were both done. He is proposing a steel building which will be gray with white trim to match his existing house and have 10 X 10 garage doors. He plans to access it through his existing driveway and there is a gate that goes onto the other piece of property. Curt questioned the applicant's intent and warned him that he is limited to 10,000 gross vehicle weight and would need to go through the proper procedures if he does a curb cut. The applicant shared that he has an antique car, lawn equipment and is a wood worker by hobby. Curt feels the applicant is sincere with his intent.

Chairman Smith voiced his concern with the appearance of the structure. He questioned if the applicant could go back to the company to see what they can do to make it look more residential or barnlike.

Curtis Bosco, Z.E.O. stated that he is waiting for additional photos. He then asked the members to visit the property as the location of the barn has been staked.

Chairman Smith agreed to visit the property and wants Curtis Bosco, Z.E.O. to ask him to make it look for residential looking and what type of landscaping and buffer he plans to surround it with.

Curtis Bosco, Z.E.O. agreed to do so and all agreed to let he and Chairman Smith come to a conclusion.

Chairman Smith wants the owner of the Citgo Station to place the air tank on the corner of the building. He acknowledged that that owner of the Sunoco Station only changed the color of the lights, however it's the fact that the light source can still be seen is the issue and wants it addressed.

Erika Carrington made Curtis Bosco, Z.E.O. aware that La Strega has a flashing sign.

16. Adjournment

Motion: to adjourn the meeting at 8:20 p.m. Made by Erika Carrington, seconded by Joseph Drauss. Unanimous Approval.

*The next Regular Meeting of the Planning & Zoning Commission is scheduled for November 3, 2022.

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
Mark Lubus, Building Official
Curtis Bosco, Z.E.O.
Ken Long, Chairman, Z.B.A.
Attorney Dana D'Angelo
Rob Rubbo, Director of Health



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265 Church Street
Suite 1207
New Haven, CT 06510

October 6, 2022

Terry Smith, Chairman,
and Commission Members
Planning and Zoning Commission
Town of Middlebury
1212 Whittemore Road
Middlebury, CT 06762

Re: Hussnain Gondal, Gondal Corporation / Solli Engineering – Application for a Text Amendment to Section 67.1 of the Regulations (Application #2022-5-2);
Hussnain Gondal, Gondal Corporation / Solli Engineering – Application for a Text Amendment to Sections 9.1, 34.1.7, and 34.4.4 of the Regulations (Application #2022-5-3)

Dear Chair Smith and Commission Members:

On behalf of Alliance Energy LLC, we are writing to oppose the above-proposed change to the Middlebury Zoning Regulations to reduce the 500-foot minimum separation distance between gasoline filling stations and public or private schools. The 500-foot minimum distance between school property and gasoline filling stations exists in many towns and is well known to developers looking to buy potential locations for gas stations.

The applicant was or should have been well aware of the limitation when it agreed to purchase the site. The applicant has not provided any good reason or special circumstances why the rule should be changed to accommodate its property - other than to advance its own project. There is an ample supply of properties available for development in Middlebury that comply with the 500-foot buffer for the school. Rather than change the regulations for the entire town, the applicant could instead pursue a site that is already eligible to house a gasoline filling station.

For these reasons, we respectfully request the Commission deny the proposed change.

Sincerely,
Matthew Ranelli
Matthew Ranelli

GMR:ekf
11630792m

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11630792



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September 25, 2022

To: Middlebury Planning and Zoning Commission

From: Hiram Peck, AICP, CFM, Planning Consultant

Re: Gondal Corporation/Solli Engineering, application for zoning text amendments to Sections 67.1, 9.1, 34.1.7 and 34.4.4 of the Middlebury Zoning Regulations.

Background: In order to research the background of these amendments and the applicable regulations, I researched the minutes of several Planning and Zoning Commission meetings and the regulations themselves. The following comments are provided based on the findings of this research.

I have also visited the corridor in this case, the GIDD area and I have also reviewed the applicants submissions in detail.

Comments for the Commission's consideration:

Zoning regulation revisions should be very carefully considered based on the fact that the revisions may then be applied to areas where they were not originally intended. In addition zoning regulation revisions need to be strictly interpreted to avoid applications which were also not originally intended.

The Town of Middlebury has not previously permitted drive-through windows of the type being requested in these revisions. In order to approve the request there should be a compelling reason to deviate from this past practice of not allowing facilities with drive through windows for the uses stated in the application. Without a compelling reason to allow such a use, the Commission would be hard pressed to approve the revisions as requested. An examination of the rationale for the revisions follows.

First, the applicant states the revision only applies to the GIDD district. This is not at all clear from the wording in the application. No such restriction is found in the proposed revision to §9.1 Definitions. The revision proposes to introduce a use currently not found in the regulations. In addition, there is no restriction to the new use found in the proposed definition.

The proposed regulation specifically seeks to void the restriction intentionally placed in the regulations at §34.1.7 which specifically does not permit customers to be served in motor vehicles. Unless the Commission has changed its intent since this regulation was adopted, the proposed revision should not be adopted.

Upon further review the application claims to be in conformance with the most recently adopted POCD. The fact that the POCD serves as an instructional and not a regulatory document means that the POCD wording and intent should be examined to determine its applicability and its applied meaning.

The applicant has provided a "Narrative of Proposed Regulation Amendments." The applicant claims the regulation amendments are consistent with the POCD and cites several sections and what the applicant believes they mean.

The section cited as Chapter 2, Overall Goal, #3 is interpreted extremely narrowly, in my professional planning opinion. For example; Is a gas station with a drive through window viewed as necessary support for "modern emerging industries"? In addition, would this proposed use create the "desired" industrial development and prevent the creation of commercial sprawl as indicated by the POCD?

Further, the POCD Economic Development Objectives call for increasing the Grand List in order to stabilize the tax base. If the GIDD was established to provide for gas stations with drive through facilities, the increase in the tax base will be undesirably small for several reasons. The amount of land in the GIDD is small relative to the size of Middlebury. This land and its use should be put to the highest and best use it can accommodate if it is to grow the Grand List as indicated by the POCD.

The use is available in nearby locations and the number of employees will not be significant. The use of GIDD property for uses that do not require regulation revisions would likely be more preferred. The fact that the revisions are being proposed indicates the original regulations were designed so as not to accommodate a drive through facility.

The section of Chapter 8 of the POCD the applicant cites actually strengthens the above notion that GIDD property is limited and should be used for uses that do not require regulation revisions as to their makeup. The restrictions in place in the existing regulations were placed there for specific reasons. The proposed revisions attempt to detract from those restrictions. A high quality use of the GIDD land which does not require removal specifically stated restrictions would be preferable. If gas stations are to be the basis for economic development in the community, the overall goals of the GIDD may need to be restated.

Finally, the proposal to amend §67.1 including the distance requirement is also misapplied in my professional opinion. The distance should not be reduced for a number of reasons. The 500 foot distance is not excessive and should be maintained. In addition the attempt to limit the Commission's view of uses to "within the Town of Middlebury" is not ideal and flies in the face of actual planning. The Commission's ability to review the uses in the area that will ultimately affect the functioning of the GIDD land is a necessary planning exercise. Then the actual zoning language which does come under the Commission's jurisdiction necessarily falls into its proper place.

RECOMMENDATION: I cannot recommend the adoption of the referenced zoning amendments for the above stated reasons.

If you have any questions or require further clarification, please let me know.