



TOWN OF MIDDLEBURY

Planning & Zoning Commission

1212 Whittemore Road

Middlebury, Connecticut 06762

(203) 577-4162 ph

(203) 598-7640 fx

November 3, 2022

REGULAR MEETING

MINUTES

REGULAR MEMBERS PRESENT

Terry Smith, Chairman

William Stowell

Matthew Robison

Joseph Drauss

Erika Carrington

REGULAR MEMBERS ABSENT

ALTERNATE MEMBERS PRESENT

Frank Mirovsky

ALTERNATE MEMBERS ABSENT

Paul Anderson

Gerald Lukowski

ALSO PRESENT

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, Stowell, Robison, Carrington & Drauss and Alternate Member Mirovsky as present. Alternate Members Anderson & Lukowski were absent. For the record, he stated that he received an email from Commissioner Stowell informing him that although he was not present for the

October 6, 2022 Regular Meeting, he did read the Minutes, listened to the recording and feels he is able to vote on all subject matters.

PUBLIC HEARINGS

1. **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)**
2. **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 7:00 p.m. and ran them concurrently.

Attorney Michael McVerry of 35 Porter Avenue, Naugatuck, CT 06770 spoke on behalf of the applicant. He confirmed that he received Hiram Peck's October 29, 2022 report (see attached) on Monday, October 31, 2022. As a result of Mr. Peck's report, Attorney McVerry amended their original proposed text amendment to the attached proposed amendment, which he submitted for the record. Essentially, Attorney McVerry used some of Mr. Peck's suggested text and made minor changes. He also added an amendment to Section 63.1.

Chairman voiced his concerns with respect to the size of the sign. He requested that a wooden structure, using the exact dimensions, be erected in the location where the applicant wishes to place his sign.

Hiram Peck stated that there are reasons for the content within his report, pointed out that utility wires are in close proximity of the existing sign and for the commission to be mindful with respect to the lighting.

Chairman Smith requested to continue the public hearings.

Attorney McVerry added that he would send an email request for an extension.

Curtis Bosco, Z.E.O. requested that he cc Rachelle Behuniak, Recording Clerk when sending.

Chairman Smith confirmed that the sign would only change once per week.

Carol Moriarty expressed her concern that if approved, this would change the character of the road, set a precedent and turn into the Boston Post Road.

Chairman Smith shared her concerns but acknowledged the difficulty and this commission's efforts in keeping up with today's technology while maintaining the character of the town.

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 December 1, 2022. Made by Joseph Drauss, seconded by Erika Carrington. 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 December 1, 2022. Made by Joseph Drauss, seconded by Erika Carrington. Unanimous Approval.

3. **CGS Section 8-1bb, Temporary Health Care Structures, Section (j) which allows a municipality to opt out of CGS Section 8-1bb regarding authorization for the installation of temporary healthcare structures (Application #2022-10-1)**
4. **CGS Section 8-2o, zoning regulations for accessory apartments, municipal opt out exception of CGS Section 8-2o. Section (f) which allows municipalities to opt out of applicable subsections (a) and (d) inclusive of CGS 8-2 (Application #2022-10-2)**
5. **CGS Section 8-2p, municipal opt out for dwelling unit parking space limitations, which allows municipalities to opt out of CGS subsection (d) of Section 8-2 (Application #2022-10-3)**

Chairman Smith called the three (3) Public Hearings to order at 7:15 p.m. and indicated that they would run concurrently. He read the Legal Notice published in Voices on October 19th and October 26th, 2022 for the record.

Hiram Peck reviewed his October 30, 2022 memo to the Commission

Temporary Health Care Structures

- Purpose - For elderly or people who are in need of special care and allowed in any residential zone
- Allows one (1) such (mobile) structure to be towed upon a residential lot after a municipal permit, which must be issued within fifteen (15) days of the application. This could potentially give the Commission some difficulty and staff some choices to make in a short period of time
- No Public Hearing is required for these, thus making it difficult to deny them

- Structures must be removed within 120 days of the cessation of the use

Accessory Apartments

- Allows an accessory apartment to be permitted on any residential lot containing a single-family dwelling
- Allows for a maximum of floor area to be 30% of the net floor area of the existing SF dwelling or 1,000 square feet, whichever is less
- Requires that all setbacks and other codes such as fire, building and health code be met
- Max requirement of one parking space per accessory apartment
- Short term rentals may be prohibited – Some feel they alter the character of the neighborhood
- Application is as of right, and while a site plan may be required, a public hearing may not be required
- Application to be approved within 65 days of submission, but 65 days of extensions may be granted by the applicant

Maximum Parking Requirements

- Required parking spaces are restricted to a maximum of 1 parking space per studio and 1 bedroom unit and 2 parking spaces for 2 or more bedroom dwelling units.
- Applicant may provide more spaces but they cannot be required by the municipality

Opt out Requirements

- The Planning and Zoning commission must hold a properly noticed public hearing to discuss the specific items.
- If the Commission wishes to opt out, the Commission must state the reasons for the intention to opt out and the vote to do so must be at least a 2/3 majority.
- If the 2/3 vote is obtained, the matter(s) must be forwarded to the Board of Selectmen for discussion and vote. In order for the vote to opt out to pass, a vote of 2/3 in favor of opting out must be achieved. Legal notice publication of the action is required.
- If a 2/3 majority vote to opt out of the three items is not achieved, the items remain as contained in the referenced legislation and are to be integrated into local land use regulations.
- Both Commissions must concur in order to opt out
- Decision to opt out must be made by the end of December 2022, otherwise by January 1, 2023 the statute will take effect as written

Motion: to close the Public Hearing for CGS Section 8-1bb, Temporary Health Care Structures, Section (j) which allows a municipality to opt out of CGS Section 8-1bb regarding authorization for the installation of temporary healthcare structures (Application #2022-10-1). Made by Erika Carrington, seconded by Matthew Robison. Unanimous Approval.

Motion: to close the Public Hearing for CGS Section 8-2o, zoning regulations for accessory apartments, municipal opt out exception of CGS Section 8-2o. Section (f) which allows municipalities to opt out of applicable subsections (a) and (d) inclusive of CGS 8-2 (Application #2022-10-2). Made by Erika Carrington, seconded by Matthew Robison. Unanimous Approval.

Motion: to close the Public Hearing for CGS Section 8-2p, municipal opt out for dwelling unit parking space limitations, which allows municipalities to opt out of CGS subsection (d) of Section 8-2 (Application #2022-10-3). Made by Erika Carrington, seconded by Matthew Robison. Unanimous Approval.

MINUTE APPROVAL

6. Discussion of the Minutes of the Special Meeting held on October 6, 2022

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

7. Discussion of the Minutes of the Regular Meeting held on October 6, 2022

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

OLD BUSINESS

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

Curtis Bosco, Z.E.O, confirmed that he received all of the fees associated with the application.

Chairman started the conversation by saying that he considered this but he continuously reflects back to and agrees with Hiram Peck's report. As a result, he added that he cannot bring himself to vote in favor of the application. He believes it will change the character of the town and the Regulations are in place for a reason.

Matthew Robison added that he is not typically in favor of making changes to the Regulations to accommodate single applications.

Joseph Drauss concurred with Matthew Robison.

Motion: to deny the application as submitted for a Text Amendment to Section 67.1 of the Regulations (Application #2022-5-2). Made by Joseph Drauss, seconded by William Stowell.

Discussion:

Matthew Robison stated that although he was absent for the August 4th and September 7th 2022 Public Hearings, he did read the Minutes, listen to the recordings and will be voting.

Unanimous Approval.

9. 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 reiterated his feelings that it will change the character of the town, the Regulations are in place for a reason and this Commission is charged with maintaining that character.

Motion: to deny the application as submitted for a Text Amendment to Sections 9.1, 34.1.7 & 34.4.4 of the Regulations. Made by Matthew Robison, seconded by Joseph Drauss. Unanimous Approval.

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

Attorney Franklin Pilicy of Watertown, CT spoke on behalf of the applicant.

Chairman Smith shared that his concerns regarding heavy equipment going down the private driveway was not intended to try to prevent the applicant from using his land. There is a history of not allowing heavy equipment to travel through completed subdivisions. He went on to state that Attorney Pilicy informed him that the applicant has no plans to do so.

Attorney Pilicy stated that he is not aware of any plans, however, the applicant wants to reserve the right to do so someday.

Chairman Smith confirmed that it would then need to be turned into a road.

Attorney Pilcy stated that he informed his client that any proposed use of that property is going to have to meet whatever Regulations are in existence at the time he proposes the use.

Motion: to approve the application per the attached Resolution. Made by Erika Carrington, seconded by William Stowell.

Discussion:

Matthew Robison stated that although he was absent for the August 4th and September 7th 2022 Public Hearings, he did read the Minutes, listen to the recordings and will be voting.

Unanimous Approval.

11. 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.

12. 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.

13. Jim Mele/39 Sandy Beach Road - Application for a site plan modification (Application #2022-11-1)

Jim Mele stated that he received approval two (2) months ago from this Commission for only a foundation with a stipulations that they were to go through the state to do the holding tank and go back to what they originally had. He received a letter dated August 19, 2022 from Matthew A. Pawlik, PE, RS with the State of Connecticut Department of Public Health. Mr. Mele indicated they would allow them to rebuild their cottage provided the applicant goes back to the original size of the original cottage (800 square feet).

Chairman Smith declared that while he has not had the opportunity to review it, he provided Mr. Mele with a copy of the attached packet from Mark Lubus, Town of Middlebury Building Official which includes the following:

- Letter to Middlebury Planning & Zoning Commission from Mark Lubus, Town of Middlebury Building Official

- Letter dated August 19, 2022 from Matthew A. Pawlik, PE, RS with the State of Connecticut Department of Public Health
- Email dated June 3, 2022 from Joseph V. Cassidy, P.E. | (Ret.) State Building Inspector, Office of the State Building Inspector to Melanie of Ricci Construction Group

Jim Mele went on to state that the letter states that as long as they have the same number of plumbing fixtures, they would be able to put the holding tank back in and draw water from the lake like they originally had, with the stipulation that it continues to be a seasonal cottage and only used in the summer.

Chairman Smith wanted Mr. Mele to confirm that he is no longer referring to it being uninhabitable.

Jim Mele replied that with the permission from the State to have a holding tank, he believes they can go back to it being habitable.

Chairman Smith requested verification from someone: Building Department, State Building Official. He also informed Mr. Mele that he needs to file an application.

Matthew Robison questioned the square footage of the old cottage.

Jim Mele replied 800 square feet.

Matthew Robison asked why Mark Lubus referenced a state demo was issued for a 650 square foot house.

Erika Carrington questioned if there was a porch on it.

Jim Mele responded that they obtained a site plan from a licensed architect that calculated the square footage at 800. He added that possibly the 650 was from several years ago.

Matthew Robison reiterated that a state demo was issued for a 650 square foot house and it needs to be clarified.

Jim Mele added that he has the original footprint of the cottage in the plot plan.

Chairman Smith instructed him to meet with Curtis Bosco, Z.E.O. for the next meeting.

NEW BUSINESS

14. CGS Section 8-1bb, Temporary Health Care Structures, Section (j) which allows a municipality to opt out of CGS Section 8-1bb regarding authorization for the installation of temporary healthcare structures (Application #2022-10-1)

Motion: to opt out per the attached Resolution. Made by William Stowell, seconded by Joseph Drauss. Unanimous Approval.

15. CGS Section 8-2o, zoning regulations for accessory apartments, municipal opt out exception of CGS Section 8-2o. Section (f) which allows municipalities to opt out of applicable subsections (a) and (d) inclusive of CGS 8-2 (Application #2022-10-2)

Motion: to opt out per the attached Resolution. Made by William Stowell, seconded by Erika Carrington. Unanimous Approval.

16. CGS Section 8-2p, municipal opt out for dwelling unit parking space limitations, which allows municipalities to opt out of CGS subsection (d) of Section 8-2 (Application #2022-10-3)

Motion: to opt out per the attached Resolution. Made by Matthew Robison, seconded by Joseph Drauss. Unanimous Approval.

OTHER BUSINESS

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

None

18. Enforcement Report

Curtis Bosco, Z.E.O. shared that Benson Woods was sold to a private firm. They have a different design and use a different engineer who has found some flaws, for example unit 72 called for a basement level garage. He went on to state that field changes are common and asked Smith & Co. to overlay the old footprint with new footprint, which he then reviewed with the Commission.

William Stowell requested that they remove the broken sign on the corner of Route 188 and Christian Road.

Chairman Smith requested that Curtis Bosco, Z.E.O. take a look at the lights at the Citgo Station.

William Stowell added that the issue of residents leaving their garbage cans at the end of their driveway needs to be addressed.

19. Adjournment

Motion: to adjourn the meeting at 8:13 p.m. Made by Erika Carrington, seconded by Matthew Robison. Unanimous Approval.

*The next Regular Meeting of the Planning & Zoning Commission is scheduled for December 1, 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



Hiram W. Peck III, AICP
Planning Consultant
P.O. Box 741
Woodbury, CT 06798
203.266.0551
planthree@earthlink.net

October 29, 2022

To: Middlebury Planning and Zoning Commission

From: Hiram Peck, AICP, CFM, Planning Consultant

Re: Proposed amendment to Zoning Regulations (signs)

NOTE: This review is based on material received for this application. It is my understanding that the application is intended to pertain to 1101 Southford Road which property is located in the GIDD zone. This distinction is important as several comments are based on this understanding.

After visiting the GIDD zoned properties and specifically the property at 1101 Southford Road the following review comments are offered for your consideration. A copy of the material I reviewed is attached so as to avoid any confusion.

First: Comments regarding the proposed zoning amendment revision language.

These comments are made in case the Commission decides to adopt the proposal to amend the sign regulations for the GIDD zone. These comments are not intended to apply to any other zone in Middlebury.

1. I recommend all revisions pertaining to signs in the GIDD zone be inserted only in the GIDD zone Section 34. This will avoid confusion and any potential assumption that these revisions pertain to any other zone in Middlebury.
2. The submitted amendment states that some items in "current § 31.4.2" should be deleted. I recommend this deletion NOT be done as it has no impact on the proposed amendment. The applicant should modify their application to exclude this request.
3. If the suggested wording to any amendment is added to the GIDD zone, Section 34, then none of the wording proposed for § 63.5.3 through 63.5.5 are necessary as they would not apply to the GIDD zone sign wording.
4. The wording of the amendment is awkward and unclear as proposed. Suggestions for revising this wording are made as part of this memo.
5. The revision as submitted conflicts with several other sections of the sign regulations as found in section 63. This could be confusing as regulations are either revised or implemented in the future.

6. The proposal to have "digital signs" remain subject to the same requirements contained in the Zoning Regulations for other signs is also confusing as they conflict with those regulations in several ways in terms of height and size, etc.

Based on the above comments the following is recommended in case the Commission decides to consider approving any amendment to its current zoning regulations regarding such signs in the GIDD zone.

Propose a section to be included in the GIDD zone Section 34 as follows:

Section 34.13 - **Signs** permitted in the GIDD zone:

- 34.13.1. Solely in the Gateway Design District electronically controlled signs may be utilized upon approval of a special exception from the Planning and Zoning Commission and upon submission of a site plan showing at least the following minimum requirements. The Commission may ask for additional information in order to clarify what is being proposed.
- 34.13.2. The specific digital resolution shall be presented to the Commission from the applicant at the time of submittal for the special exception application. In addition to the technical data, the applicant shall also submit specific examples of signs showing the exact same degree of resolution and degrees of brightness as viewed from the adjacent roadway and as experienced by passing motorists.
- 34.13.3. The applicant shall also submit a specific menu/agenda showing the proposed electronic displays proposed to be used on the digital sign. Such information shall clearly show the exact type of proposed content and the proposed schedule of revisions/modifications to the digital sign on a weekly basis. It is noted that public interest notices of an emergency nature may be posted at any time if such a sign is approved.
- 34.13.4. The maximum dimensions of any approved digital/electronic sign is to be four (4) feet in height and eight (8) feet in width and shall be counted as part of any other signage approved for the property.
- 34.13.5. A maximum of one (1) such digital/electronic sign may be approved for any single property in the GIDD zone regardless of the property size. In addition no such sign shall be designed or located or erected so as to be visible from any nearby interstate highway.
- 34.13.6. While the total signage for any single property in the GIDD zone shall be limited to a **maximum of 120 square feet for properties with 3 or more businesses**, the following shall also be considered:

- a. The base of the sign shall be constructed of an aesthetically desirable material as determined acceptable by the Commission at the time of submission of the special exception application.
 - b. The base of the sign shall also be suitably landscaped at the time the sign is erected and shall be continuously maintained as long as the sign is erected and in place and the businesses connected thereto are operational.
 - c. The address of the property shall be legibly displayed on the top of the proposed sign and shall be easily readable by any emergency services personnel looking for the property. This address line shall not be counted as part of the sign area.
 - d. The total maximum height of the sign including the sign base shall be no more than twenty (20) feet in height.
 - e. Any such sign placed along a state highway shall be shown on a site plan drawn by a certified professional surveyor to be not located within the state highway right of way. In addition any such sign which is in close proximity to any electric or utility service or power lines shall be constructed so as not to interfere or cause potential interference with the services provided by such power, utility or electric lines.
 - f. The sign details for all portions of any sign in the GIDD zoning district are subject to approval of the Commission or its consultants as the Commission may direct. Such details may include items such as letter type (halo lit letters) not font types and brightness of any signs. Any sign proposed shall have the ability to be dimmed if the Commission determines it is too bright and distracting so as to cause a safety issue.
- 34.13.7. The sign shall be removed within 30 days if the business associated with the approved electronic sign ceases operation. If the property owner desires to seek to use the sign for another business a new special exception application is required to be submitted to the Commission.

The above review comments are intended to be applied to the zoning regulation amendment application submitted. In addition they are intended to be applied to all sites in the GIDD zone. The Commission should be mindful that the proliferation of very large and extremely noticeable signs may not be the intent or the feeling that is intended or desired for the GIDD zone. As a point of emphasis on a particular site which either needs or deserves attention, the large and bright sign that would be possible under a special exception approval as noted above may be acceptable. However consideration should be given to the effect of several such signs concentrated in an otherwise less intensive sign arena should be considered. Thus a distance requirement, which is not included above may be a consideration for the Commission at some point.

If you have any questions, regarding the above comments, please let me know.

RECEIVED 11-3-22

MIDDLEBURY ZONING REGULATIONS

PROPOSED AMENDMENT TO:

Article III (Section 34 –Gateway Design District)

34.13

1.. Solely in the Gateway Design District electronically digitally produced signs may be utilized as a special exception use as approved by the Planning & Zoning Commission upon submission of a site plan demonstrating at last the following minimum requirements. The Commission may request additional information in order to clarify what is being proposed.

2. The specific digital resolution shall be presented to the Commission from the applicant at the time of submission of the special exception application. In addition to the technical data, the applicant shall also submit examples of signs showing the exact degree of resolution and degrees of brightness as viewed from the adjacent roadway and experienced by passing motorists.

3. The application shall also contain a specific menu/agenda demonstrating the proposed electronic displays proposed to be used on the digital sign. Such information shall clearly demonstrate the exact type of proposed content and the proposed schedule of revisions/modifications to the digital sign on a weekly basis, with revisions/modifications permitted not more that every 7 days with the exception that governmental alerts (i.e., amber, silver or other similar emergency alerts) may be posted at any time.

4. The dimensions of such approved digital signs shall not exceed four (4) feet in height and eight (8) feet in width and shall be counted as part of any other signage approved for the subject property.

5. While the total signage for any single property located in the GIDD Zone shall be limited to a maximum of 130 square feet for properties of three or more businesses, the following shall be considered:

- a. The Base of the sign shall be constructed of an aesthetically desirable material as determine acceptable by the Commission at the time of submission of the special exception application;
- b. The base of the sign shall also be suitably landscaped at the time the sign is erected and shall be continuously maintained as long as the sign is erected and in place and the businesses connected thereto are operational;
- c. The address of the property shall be legibly displayed on the top of the proposes sign and shall be readable by any emergency services personnel looking for the property. The address line shall not be counted as part of the sign area.

- d. The total maximum height of the sign including the sign base shall be no more than 23 feet in height;
- e. Any such sign placed along a state highway shall be shown on a site plan drawn by a certified professional surveyor to be not located within the state highway right of way. Additionally, and such sign which is in close proximity to any electric or utility service or power lines shall be constructed so as not to interfere or cause potential interference with services provided by such power, utility or electric service.
- f. The sign details for all portions of any sign within the GIDD Zoning District are subject to the approval of the Commission. Such details may include items such as letter types (halo lit letters) not font types and brightness of an signs. Any proposed sign shall have the ability to be dimmed if the Commission determines it is too bright and distracting so as to cause a safety issue.

34.13.6 The sign shall be removed within thirty (30) days if the business associated with the approved electronic sign ceases operation. If the property owner desires to seek the use the sign for another business, a new special exception is required to be approved by the Commission.

Article VI Section 63

63.1 Unless otherwise provided in this Section and **Section 34.13**, et seq, no sign shall be established, constructed, reconstructed, enlarged, expanded, moved or structurally altered until an Application for a Certificate of Zoning Compliance therefore has been approved by the Commission.

RESOLUTION

Upon motion by Commissioner Carrington, seconded by Commissioner Stowell, it was voted unanimously to approve the application of Peter Vileisis for a 5-Lot Subdivision located on 288 Watertown Road, for lots to be known as Fox Hollow and as shown on Record Subdivision Map entitled Fox Hollow, 288 Watertown Road, 5-Lot Residential Subdivision and prepared by Civil 1 and dated June 1, 2021, Revised October 31, 2022, all subject to the following conditions:

- a) Signing of the Map by the Town Health Officer;
- b) Providing bond satisfactory to the Board of Selectmen for setting of all monuments required to be set and for any other work deemed by them to required bonding;
- c) Signing of the Map by the First Selectman;
- d) Signing of the Map by the Conservation Commission Chairman;
- e) Posting of a landscape bond as determined by the Board of Selectmen;
- f) Compliance with Section 3.9 & 3.10 of the Subdivision Regulations for the Town of Middlebury.

If the above conditions and or modifications are complied with within 90 days of this decision, the Chairman is authorized to sign the Map. Otherwise, the application is to be considered disapproved and denied.

November 3, 2022

RECEIVED 11-3-2022

TO THE ZONING COMMISSION MEMBERS
REGARDING 39 SANDY BEACH ROAD

Please transcribe into the minutes of your P & Z Meeting on November 3, 2022 as follows:

What I need from the Zoning Commission:
Exact square footage of foundation;
Square footage of each floor;
Use of each floor. Finished room use;
Decks and exterior stair size;
Habitable? Non-habitable? Storage only?
Height of structure from grade.

Please Consider – People sleeping there at any time within the structure if deemed uninhabitable – will not be able to be enforced. To limit the number of people staying inside an uninhabitable house the number of rooms and square footage needs to be restricted.

Other properties on the lake will do the same by digging deep foundations and going up two floors or more within 35' height limit.

Please Consider – Potable water from lake is unlikely. Liability if sleeping or occupying full time now becomes the Town of Middlebury's liability if to evict with legal action.

My view – Building department will look at Zoning, Health and Wetlands approvals before reviewing and issuing permit for the intended use.
Building for **habitable** is very restrictive as compared to Health, Wetlands and Zoning. As per State Building Inspectors letter when seeking a modification see attached. Also see the attached letter from the State Public Health Department.

Current Situation – Cease and desist from the Building Department and Torrington Area Health for Jack hammering and digging foundation hole without permit.

Installed holding tank without permission and was asked to remove it by the Health Department.
Multiple applications with different square footage and use.

State demo was issued for a 650 square foot house. Since Mr. Mele demolished the house, he now has to conform to current 2022 CT State Building Code 2021 IRC requirements.



Mark Lubus
Town of Middlebury Building Official

STATE OF CONNECTICUT
DEPARTMENT OF PUBLIC HEALTH



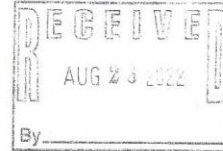
Manisha Juthani, MD
Commissioner

Ned Lamont
Governor
Susan Bysiewicz
Lt. Governor

Environmental Health and Drinking Water Branch

August 19, 2022

James Mele
37 Mattabassett Street
Kensington, CT 06037



RE: Construction and Installation of a Well and Sewage Holding Tank at 39 Sandy Beach Road in Middlebury, CT

Dear Mr. Mele:

This office has received your e-mail inquiry to the Commissioner dated August 1, 2022 regarding a cottage located at 39 Sandy Beach Road in Middlebury. My understanding is that the cottage adjacent to Lake Quassapaug was torn down. In this situation, 9-13-B100a regulations which address building additions and septic systems must be met. These items below are needed prior to any consideration to granting an exception.

- 1.) The Middlebury building inspector allows the structure to be rebuilt and does NOT require the drilling of a well or the installation of a code complying sewage disposal system.
- 2.) If above is permitted, the structure must be rebuilt with the exact same size in habitable square footage, the same number and type of plumbing fixtures (single kitchen sink and half bath-toilet/sink only), without a positive heat source and continue to utilize lake water for interior plumbing use. Essentially the structure must be rebuilt exactly how it was: a seasonal use cottage with very limited amenities.

Should you be able to meet the above noted requirements, please submit your proposal to the Torrington Area Health District for consideration. After the District has reviewed your submittal, they will forward the application to our office.



Phone: (860) 509-7296 • Fax: (860) 509-7295
Telecommunications Relay Service 7-1-1
410 Capitol Avenue, MS#12SEW, P.O. Box 340308
Hartford, Connecticut 06134-0308
www.ct.gov/dph

Affirmative Action/Equal Opportunity Employer



If you have any questions or would like to discuss further, please contact me.

Sincerely,

A handwritten signature in cursive script that reads "Matthew A. Pawlik".

Matthew A. Pawlik, PE, RS
Supervising Sanitary Engineer
Environmental Engineering Program

C: Justin Rompre, RS, TAHD

Mark Lubus

From: Cassidy, Joseph <Joseph.Cassidy@ct.gov>
Sent: Friday, June 3, 2022 12:41 PM
To: mail@ricciconstructiongroup.com
Cc: OSBI, DAS; Mark Lubus
Subject: RE: Question for OSBI

CAUTION: This email originated from outside of the organization. Do not click links or open attachments unless you recognize the sender and know the content is safe. Email support@computercompany.net if you doubt the validity of this email.

Melanie,

I spoke to Mark to get a bit more insight into your situation. From a building code standpoint for the new structure to be occupied it needs to meet the requirements of a dwelling unit. The building code contains some minimum health and safety requirements for a dwelling such as heat, toilet and cooking facilities.

In this case it appears that the site cannot support a septic system and is not served by public sewers. The limitations on the use of a holding tank from the sanitarian appear to not allow the building to have any of the required items for a dwelling. There is not much we can do from the building code side as sewage disposal is required in our code, but the method of disposal is regulated by the Public Health Code. Below are some of the governing code sections from the PHC and the SBC.

Joe

Public Health Code:

Sec. 19-13-B103c. General Provisions

(a) All sewage shall be disposed of by connection to public sewers, by subsurface sewage disposal systems, or by other methods approved by the Commissioner of Public Health, in accordance with the following requirements.

Sec. 19-13-B103f. Non-discharging Sewage Disposal Systems

(a) All non-discharging sewage disposal systems shall be designed, installed and operated in accordance with the Technical Standards and the requirements of this section, unless an exception is granted by the Commissioner upon a determination that system shall provide for the proper and complete disposal and treatment of toilet wastes or gray water.

DPH Technical Standards:

Pursuant to PHC Section 19-13-B103c (a), the Commissioner shall approve sewage holding tanks for buildings governed by PHC Sections 19-13-B103a through 19-13-B103f. Sewage holding tank proposals shall be submitted through the DOH to the Commissioner. Sewage holding tanks must comply with the separating distances cited in Table 1, unless an exception is granted pursuant to PHC Section 19-13-B103d. Sewage holding tanks shall include cleanout manholes to grade to facilitate routine pumping, and be provided with a high-level indicator alarm. The alarm shall be both audible and visual, unless otherwise approved by the DOH, and be located so that it readily alerts building occupants when activated.

State Building Code dwelling requirements:

DWELLING UNIT. A single unit providing complete independent living facilities for one or more persons, including permanent provisions for living, sleeping, eating, cooking and sanitation.

R303.10 Required heating. Where the winter design temperature in Table R301.2(1) is below 60°F (16°C), every dwelling unit shall be provided with heating facilities capable of maintaining a room temperature of not less than 68°F (20°C) at a point 3 feet (914 mm) above the floor and 2 feet (610 mm) from exterior walls in habitable rooms at the design temperature. The installation of one or more portable space heaters shall not be used to achieve compliance with this section.

R306.1 Toilet facilities. Every dwelling unit shall be provided with a water closet, lavatory, and a bathtub or shower.

R306.2 Kitchen. Each dwelling unit shall be provided with a kitchen area and every kitchen area shall be provided with a sink.

R306.3 Sewage disposal. Plumbing fixtures shall be connected to a sanitary sewer or to an approved private sewage disposal system.

R110.1 Use and occupancy. Pursuant to subsection (a) of section 29-265 of the Connecticut General Statutes, no building or structure erected or altered in any municipality after October 1, 1970, shall be occupied or used, in whole or in part, until a certificate of occupancy has been issued by the building official, certifying that such building, structure or work performed pursuant to the building permit substantially complies with the provisions of this code.

Joseph V. Cassidy, P.E. | (Ret.) State Building Inspector
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Connecticut



From: OSBI, DAS <DAS.OSBI@ct.gov>
Sent: Thursday, June 2, 2022 8:35 AM
To: Cassidy, Joseph <Joseph.Cassidy@ct.gov>
Subject: FW: Question for OSBI

Darren Hobbs | Director
Regulatory Compliance ([OSBI](#) | [OSFM](#) | [OEDM](#))
Department of Administrative Services
State of Connecticut

RESOLUTION

Temporary Health Care Structures

Whereas, the Commission has held the required public hearing regarding this subject and as is required by law; and

Whereas, the Commission has discussed this matter including the definitions of such structures and who is permitted to reside in them; and

Whereas, the Commission has reviewed the requirements of the subject statute and the requirements it places on the Town staff, Commission and residents; and

Whereas, the Commission has also considered the benefits the statute offers to the affected individuals as stated in the statute and finds the benefits to the relatively small number of individuals do not outweigh the potential for adverse impacts to the residential communities in which they would be located;

Whereas, the Commission finds that it is in the best interests of the Town of Middlebury's residents as a whole to opt out of this section of the statutes as permitted by CGS section 8-1bb and CGS section 8-2, subdivision 5 of subsection (d) for the following reasons:

1. The time frame required for the permitting of these structures is extremely tight and does not allow for proper and complete staff or Commission review and determination of acceptability for each such application, and
2. The Commission has considered the local need for such structures and has determined that there is no pressing local need for such structures at this time, and that if such need or needs begin to arise, the matter would likely be reconsidered at such time; and

3. The Commission also finds that the potential for significant adverse impact whether in regard to improper or hasty siting, or adverse impact on perceived property values, or adverse impact on Town staffing resources and proper and timely Commission decision making is not acceptable, and
4. The Commission will continue to discuss the local need for such structures in the future and if necessary will more fully consider a properly worded amendment to its regulations which would optimize the skills and ability of the Town staff and Commission members as they consider the optimal resolution for the degree of local need for such uses, and
5. The Commission notes that the ability to allow such individuals as may be in need of a temporary healthcare setup at a residence, could possibly use a space set up or organized as an accessory apartment in an existing residence, which the Commission already does permit, and
6. The Commission finds that facilities to care for such individuals in need of short term or longer term care, may find such facilities already in established commercial facilities in Middlebury.

Therefore be it resolved that the Commission chooses to opt out of this statutory requirement regarding the statutory requirement for the provision of Temporary Health Care Structures as is permitted, and as noted above.

Votes in favor: 5

Votes in opposition: 0

Motion: Passed

November 3, 2022

RESOLUTION

Accessory Apartments

Whereas, the Commission has held the required public hearing regarding this subject and as is required by law; and

Whereas, the Commission has discussed this matter including the definitions of such structures and requirements for such accessory apartments; and

Whereas, the Commission has reviewed the requirements of the subject statute and the requirements it places on the Town staff, Commission and residents; and

Whereas, the Commission has also considered the benefits the statute offers to the individuals as stated in the statute and finds the benefits to the relatively small number of individuals do not outweigh the potential for adverse impacts to the residential communities in which they would be located in the manner required by the statute;

Whereas, the Commission finds that it is in the best interests of the Town of Middlebury's residents as a whole to opt out of this section of the statutes as permitted by CGS section 8-2o (d) for the following reasons:

1. Accessory apartments may well be needed by current or future residents of Middlebury. However the process that has been established has worked well thus far in terms of protecting the property owners of the area where an accessory apartment is proposed as well as protecting the individuals who may wish to reside in such an apartment, and
2. Currently accessory apartments are proposed and approved on a transparent basis where all affected parties have access to all information concerning any proposed accessory apartment. This has the effect of maintaining confidence in the process that the resulting dwelling unit will

meet all life safety codes thus insuring the safety of all residents regardless of exactly where they may reside, and

3. The current zoning regulations allow attached accessory apartments of the same size as that of the statute, thus making little difference in the physical construction of the accessory apartment itself, and

4. The Commission is in the process of properly reevaluating the entire accessory apartment matter as part of the process of revision of its existing zoning regulations. When the commission properly evaluates the items required by the statute with proper and timely input from the residents, it will consider whether any changes are needed in order to properly preserve the existing physical character of any area in which an accessory apartment could be permitted, and

5. The value of the currently established process for reviewing and evaluating accessory apartments is considered a valuable asset to the application and approval process. While it is well understood that the statute proposes to eliminate the public hearing component of the existing process, the Commission does not consider this an improvement that is worthy of implementation at this time, and

6. The additional time constraints the statute places on the staff and the Commission is not viewed as workable at this time. The time allowed for a decision to be made on such an accessory apartment application is seen as less workable than the present time frame.

Therefore be it resolved that the Commission chooses to opt out of this statutory requirement regarding the statutory requirement for the provision of Accessory Apartments as is permitted, and as noted above.

Votes in favor: 5

Votes in opposition: 0

Motion: Passed

November 3, 2022

RESOLUTION

Maximum Parking Requirements

Whereas, the Commission has held the required public hearing regarding this subject and as is required by law; and

Whereas, the Commission has discussed this matter including the maximum residential parking requirements; and

Whereas, the Commission has reviewed the requirements of the subject statute and the requirements it places on the Town staff, Commission and residents and the physical development of the residential area of Town; and

Whereas, the Commission has also considered the benefits the statute offers to the more compact development as stated in the statute and finds the benefits to the relatively small number of individuals do not outweigh the potential for adverse impacts to the residential communities in which they would be located in the ratio as required by the statute;

Whereas, the Commission finds that it is in the best interests of the Town of Middlebury's residents as a whole to opt out of this section of the statutes as permitted by CGS section 8-2p. and CGS section 8-2subdivision 9 subsection (d) for the following reasons:

1. The Commission finds that there is adequate parking space in the Town to allow developers to comply with existing parking regulations as currently stated in the zoning regulations, and
2. The current regulations prevent the use of street parking except in situations where it is specifically designed, needed or required.
3. The Commission also finds that the currently established parking ratios are not only adequate, but are appropriate for a non-urban community such as Middlebury, and

4. The Commission also finds and wishes to state that all regulations are under review at the current time, and if after further study different parking ratios and parking maximums are found appropriate for a suburban and rural Town such as Middlebury, this will be considered at that time. However the regulatory maximum proposed may be suitable and even desirable for more urban communities, it is found unacceptable for Middlebury at this time.

5. Parking requirements contained in the current zoning regulations are subject to Commission review when site plans are submitted. There is a certain degree of flexibility (not a waiver) with regard to uses that may need an alternative parking standard. The Commission wishes to retain the ability to work with applicants in such situations.

Therefore be it resolved that the Commission chooses to opt out of this statutory requirement regarding the statutory requirement for the provision of maximum number of residential parking spaces as is permitted, and as noted above.

Votes in favor: 5

Votes in opposition: 0

Motion: Passed

November 3, 2022