



TOWN OF MIDDLEBURY

Planning & Zoning Commission

1212 Whittemore Road

Middlebury, Connecticut 06762

(203) 577-4162 ph

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November 2, 2023

REGULAR MEETING

MINUTES

REGULAR MEMBERS PRESENT

Terry Smith, Chairman

William Stowell, Vice Chairman

Matthew Robison

Joseph Drauss

REGULAR MEMBERS ABSENT

Erika Carrington

ALTERNATE MEMBERS PRESENT

Paul Anderson

ALTERNATE MEMBERS ABSENT

Frank Mirovsky

Gerald Lukowski

ALSO PRESENT

John Calabrese, P.E.

Curtis Bosco, Z.E.O.

Attorney Gail McTaggart

CALL TO ORDER

Chairman Smith called the Regular Meeting to order at 7:01 p.m.

ROLL CALL AND DESIGNATION OF ALTERNATES

Chairman Smith announced Regular Members Smith, Stowell, Robison & Drauss and Alternate Member Anderson as present. Regular Member Carrington and Alternate Members Mirovsky & Lukowski were absent. He appointed Alternate Member Anderson to act in place of absent Regular Member Carrington.

PUBLIC HEARINGS

1. Jad Harb, JTH Builders, LLC/Washington Drive – Application for an 11-Lot Subdivision on 60.135 acres, Sycamore Place (Application #23-42Z)(Continued)

Chairman Smith called the continued public hearing to order at 7:01 p.m. He announced Regular Members Smith, Stowell, Robison & Drauss and Alternate Member Anderson as present. He appointed Alternate Member Anderson to act in place of absent Regular Member Carrington.

Luke Sofair, P.E. with John Paul Garcia, P.E. of Garcia & Associates, 190 Fairwood Road, Bethany, CT 06524 spoke on behalf of the applicant. He stated that they incorporated the comments from Hiram Peck, Town Planner, John Calabrese, P.E. and the Fire Marshal. They received the sign-off from the Fire Marshal last week, changed the name of the road to White Birch Lane and the thirty (30) acres will be going to the town for open space which connects to existing open space.

Chairman Smith stated that an encroachment still exists, therefore, he suggested that the commission close the public hearing and asked that Mr. Sofair meet with the town attorney to come up with a solution.

Luke Sofair, P.E. replied that they do have it shown as a sale but he believes his client's intent is to deed it over to the LoRussos.

Chairman Smith expressed his approval of the intent, however, he requested that the town attorney submit a letter stating that she is fine with it.

Motion: to close the Public Hearing at 7:04 p.m. Made by William Stowell, seconded by Paul Anderson. Unanimous Approval.

- 2. Attorney Edward G. Fitzpatrick for Southford Park, LLC/764 Southford Road, Middlebury, CT 06762 – Application for a Text Change regarding Height in LI-200 Zone pursuant to Sec. 42.2 of the Regulations (Application #23-58Z)**
- 3. Attorney Edward G. Fitzpatrick for Southford Park, LLC/764 Southford Road, Middlebury, CT 06762 – Application for Site Plan Approval (Application #23-59Z)**
- 4. Attorney Edward G. Fitzpatrick for Southford Park, LLC/764 Southford Road, Middlebury, CT 06762 – Application for a Special Exception for an Excavation and Grading Permit pursuant to Sec. 64 of the Regulations (Application #23-60Z)**

Chairman Smith called the three (3) public hearing to order at 7:05 p.m. and ran them concurrently. He announced Regular Members Smith, Stowell, Robison & Drauss and Alternate Member Anderson as present. He appointed Alternate Member Anderson to act in place of absent Regular Member Carrington.

Attorney Edward (Ned) Fitzpatrick of 203 Church Street, Suite 4, Naugatuck, CT 06770 spoke on behalf of the applicant, Southford Park, LLC. He questioned if the commission received a response from NVCOG and the Fire Marshal.

Chairman Smith confirmed receipt of the November 1, 2023 letter from Brian Proulx, Fire Marshal indicting his approval of the site plan with the amendments and medications discussed during his meeting with Ryan McEvoy on October 31, 2023. He added that he did not receive anything from NVCOG as of this time and requested that Attorney Fitzpatrick follow up with Curtis Bosco, Z.E.O.

Attorney Edward (Ned) Fitzpatrick agreed to do so and reminded the members of this commission of the other approvals from the Conservation Commission and WPCA-Capacity Approval that have already been made part of the file. He shared that they made some revisions to the plans based on public comments and comments from the Benson Woods Phase II property owner, who they met with. At their request, the applicant will be performing an Acoustic Survey.

Joseph Zink, President and CEO of Atlantic Management, 205 Newbury Street, Framingham, MA 01701 stated that they conducted further research on clear heights requirements with the National Association for Industrial and Office Parks (NAIOP) which is comprised of approximately 20,000 members across the U.S.A. The NAIOP report is something he offered to supply to the members of the commission should they request it. They collect data from tenants, brokers and various other users. For buildings 500,000+ ft, they recommend 40-42 foot clear, which would result in a 47-48 foot high building. However, they do not think they need said height and believe that a 36 foot clear with 42 feet of actual structure would be adequate. Over 50% of pallets come as 64" high, of which 10" is the size of rack. Six (6) pallets would fit into a 36' clear building. Currently, the general market area for this type of facility with this height range from a medical device company for storage and warehousing, and some are bulk and food warehousing. He indicated that the market can change at any time.

Tony Iacovino, Project Architect & Senior Associate with SMMA, 1000 Massachusetts Avenue, Cambridge, MA 02138 and 275 Promenade Street, Suite 275, Providence, RI 02908 echoed that the height they are seeking is the most appropriate and provides the maximum flexibility for the use of the building, now and in the future. He reiterated that they would be willing to provide the NAIOP report if requested.

Ryan McEvoy, P.E. with SLR, 99 Realty Drive, Cheshire, CT 06410 provided a presentation beginning with a description of the property as it currently exists. They are proposing two (2) warehouse-style buildings. The larger building (aka A1) is approximately 539,500 sf, while the smaller building (aka A2) is estimated at 130,000 sf. He reviewed the revised plans. As a result of the their meeting with the owner of the Benson Woods Phase II property, the applicant changed the orientation of building A2 so the loading docks will no longer be located on the north side of the building. Doing so has allowed them to eliminate the roadway that was previously proposed to circle the entire building. Alternatively, they are now limiting the 18' wide driveway to emergency access only. All tractor trailers will enter the site on the east side to the loading docks and exit the same way. Passenger vehicles will park in the lot in the front of the building. As part of their revisions, they also reconfigured the driveway entrance coming off of Southford Road by dividing the entrance into two (2) components: an angled driveway coming into Southford Road sized to allow tractor trailers to enter and exit from Southford Road/Exit 16 and a secondary 24' wide driveway which is sized to allow for emergency, passenger, and small delivery vehicles only to come from the east into the site. They are designed so that tractor trailers will not be able to negotiate the turn in from either driveway coming from Christian Road and they will not be able to exit either driveway to the left onto Christian Road. As reinforcement, curbed raised medians and multiple directional signs are proposed.

Tony Iacovino, Project Architect & Senior Associate with SMMA, proceeded to review the prospective renderings which were intended to indicate how well screened the buildings will be from the surrounding streets/locations during various seasons and times. They also showcased other options for building colors, expected lighting and an aerial view of the buildings depicting photovoltaic (PV) systems on the roofs.

David Sullivan, P.E. & Manager of Highways & Transportation Planning with SLR 195 Church Street, 7th Floor, New Haven, CT 06510 distributed and reviewed his Supplemental Capacity Analysis dated November 2, 2023. Said analysis reflects the addition of two (2) intersections: Benson Road and Judd Road in order to measure the impacts of the neighboring schools. They also reanalyzed the intersections at Christian Road and Old Waterbury Road. They hired a firm to conduct the counts of over a 12-hour period (6:00am-6:00pm). He noted that the morning peak-hour data resulted in some irregularities and they have been working with the consultant who indicated that there was a malfunction and offered to recount the morning hours. Once the new information is received, it will be forwarded for consideration. He then proceeded to review the data from 2:00pm-3:00pm, 3:00pm-4:00pm and 4:00pm-5:00pm. He pointed out that since two intersections were analyzed at multiple times, they were able to judge the validity of both data sets. They also obtained school data to compare to the p.m. peak hour data to see if there were any differences in their findings. He concluded by stating that the more current counts provided similar results to the initial counts and that the school peak hours had similar

characteristics as the peak hour did in terms of how the intersections where the schools are exiting onto Route 188 would operate. Although it was not part of his report, he stated that they expect just under 1,000 in + out trips on the site by an estimated 480 vehicles (cars, FedEx, etc.) on an all-day basis. Of those, approximately 15%-16% will be truck trips. When a truck enters and leaves, it constitutes 2 trips. In addition, AM peak hour is expected to produce 7 round trip truck trips and 5 round trip truck trips during PM peak hour.

Attorney Edward (Ned) Fitzpatrick referenced Section 42 of the Regulations and noted that it specifically states that vehicular access is an ancillary use to the principal use of the property.

Julia Fiore, Senior Economist & Planner with SLR Consulting, submitted and reviewed the data within her Economic Benefits Report, dated November 1, 2023. She described said type of report as an input-output analysis using a regional economic model so one is able to model and project how an investment in the local economy, such as constructing buildings or creating jobs, would have a ripple effect and create indirect jobs in the supply chain and also increase household spending through increased income in the local area.

Mark Fougere, AICP of Fougere Planning & Development, Inc. reviewed the local benefits from the proposed new use, replacing the existing office building. They looked at the region and a number of warehouses with different sizes to try and obtain an estimate of what type of property tax revenue the new use would generate and came up with an average of \$48.92/sf which for this project will be \$32,750,000 in value generating just over \$1,000,000 in value. The existing properties on the site generate approximately \$212,000/yr, creating a net gross of approximately \$843,000/yr in revenue to the community. He went on to state that another revenue stream potential from the proposed project is from personal property as many of the warehouses have significant assets in them that are taxable and provided a range of \$10.89/sf - \$35.59/sf for consideration. He identified the Vehicle Excise Tax from the tractor trailers as a possible revenue stream and designated \$75,000/ea to an estimated 50 tractor trailers which would generate approximately \$84,600/yr. In conclusion he estimates a range of 1.3-1.9 million in revenue for the proposed project. With the existing property revenue being \$249,000, he projects net new revenue in the 1.1-1.7 million range. Revenue will also be generated from the building permit, which is estimated at over 1.1 million.

Attorney Edward (Ned) Fitzpatrick stated that they have listened to the principle neighboring property owner and some members of the public and in turn have tried to be concise and comprehensive. He believes that everything they provided is doable, sensible and in accordance with the Regulations, particularly Section 42. With respect to the financial aspect of the benefits that go toward the POCD, he added that they are outlined and encouraged several times for both commercial and industrial growth in the community. He reiterated that they addressed the concerns regarding the hard right turn out of the site and that the proposed high grade curbing must be approved by DOT.

Chairman Smith acknowledged receipt of the Architectural Review and with an attached Report on Southford Road Project from Chairman Terry McAuliffe of the Economic Development Commission, indicating said commission's vote to not approve the project. He then proceeded to list the names of the following people that sent in correspondence expressing their opposition of the proposed project:

1. Christine & Ralph Sloan of 199 Ridgewood Drive
2. Jennifer Ceresa of 104 Yale Avenue
3. John & Catherine Grasso of 128 Ridgewood Drive
4. Matt & Amanda Mariani of 15 Brookside
5. Ralph & Maryann Barra
6. Steve Huebner of 98 Ridgewood Drive
7. Philip & Maryann Thompson of 113 Periwinkle Drive
8. Arlene & Joseph Ferrara of Avalon Farms
9. Michael Yantorno of 7 Hampshire Court
10. Barbara Yantorno of 7 Hampshire Court
11. Chris & Joan Maloney of 1 Hackamore Circle
12. Marcia Tejada
13. Rev. Rebecca Spencer of 352 Judd Hill Road
14. Laura Dobrindt of 620 Christian Road
15. Riki Chovau of 1035 Middlebury Road
16. Robert & Debby Stellavato of 208 Sugar Maple Way
17. Joe Puzzo of 42 Avalon Drive
18. Michael & Christine Giordano
19. Debbi & Joe Kirincic of 12 Fairview Lane
20. Kathleen Collette of 66 Judd Hill Road
21. Maria Cantito of 356 Kelly Road
22. Sam Dexter of 148 North Street
23. Donnetta Campbell of 331 South Street
24. Neil Cybart of 3 Hampshire Court
25. Mel & Alena Persenaire of 17 Somerset Drive
26. Jonathan & Marjorie Hertz of 159 Ridgeview Drive
27. Jennifer Cybart of 3 Hampshire Court
28. Sally Romano of 1 Brookside Drive

Chairman Smith invited members of the public to speak and explained that there would be a 3-minute time limit for each person.

The following members of the public spoke in opposition of the proposal:

1. Frank Perrella of 25 Edgar Road – He voiced his concerns with respect to traffic on Route 63 & Route 64, the potential of Watertown putting up a similar project and also referenced a Waterbury Republican-American article dated December 5, 2004 titled State Eyes Clogged Roads which stated that Route 64 was one of the five most clogged intersections in the state. He then questioned what improvements have been made in the last 20 years to enhance traffic studies.

Attorney Edward (Ned) Fitzpatrick replied that they are not going that way, therefore, that intersection is a moot point. He also offered to have David Sullivan, P.E. & Manager of Highways & Transportation Planning with SLR address the concern at the end of the presentation.

2. Bob Nerney of 414 Long Meadow Road – He spoke and submitted a statement titled Comments and Concerns to the Middlebury Planning and Zoning Commission Regarding the Southford Park Traffic Assessment Prepared by SLR, Inc. with Attachment 1. In comparing the applicant's traffic report from October to the one presented this evening, he questioned how 35% more traffic could be added and end up with a better level of service. He also questioned how a traffic report that was based on a 35-65% slip that has now changed affects other parts of the traffic study. In terms of the regulation, he believes it to be purely discretionary, stressed that this commission is under no obligation to approve the project and pointed out that the POCD is filled with reasons to keep the town as is.
3. Susan Striker of 189 Ridgewood Drive – She mentioned that she has yet to hear anyone speak in favor of the development. She questioned why this proposal is even being considered as the town has existing rules that are against it. She expressed her frustration that it is being considered, approved and ruining the town. She echoed the fact that the Economic Development Commission did not approve the project and stated that all of the concerns about children, traffic, pollution, etc. does not seem to matter to anybody.
4. Attorney Thomas Porzio of 7 Pelham Way – He stated that he submitted an opposition statement, dated October 5, 2023, at that evening's meeting and asked that the members please read it as well as the Economic Development Commission Report, dated October 30, 2023, in its entirety. He added that it tracks much of the same issues and concerns that he put forth in his opposition. He believes that the project does not meet the definition of warehousing, that it is not defined in the Regulations and that a definition cannot be made up. He continued to declare that a warehouse is defined as a building used primarily for storage of goods and material prior to distribution that are produced in conjunction with a manufacturing facility. He emphasized that there are no tenants or potential tenants,

therefore, it is unknown what will go there. There is no evidence that there will be a connection with a manufacturing facility within close proximity of the project. He questioned how the term “Flex-Industrial Space” could be used by the applicant when it is not defined anywhere. He referenced Part II, pages 5-7 of the EDC Report and avowed that they agree with his analysis. As part of his profession, he has read regulations and statutes, attended zoning meetings and represented developers, and he stressed that this proposal does not meet the Regulations. He concluded by stating that preventing tractor trailer drivers from taking a right or left will never happen and that per the POCD, the intersections of Route 64 & Route 63 must be taken into consideration with any project.

5. Stephen Badger of 46 Ridgewood Drive – He spoke and submitted his statement for the record. He encouraged the commission, should they chose to approve the project, to consider it as a variance as opposed to increasing the Regulations.
6. Pat Francisco of 369 Three Mile Hill Road – He expressed his agreement with Attorney Porzio and added that the truck drivers have a mile to turn around and go back the other way. He then proceeded to ask the following questions which he submitted for the record:
 - a. How many police officers will be need to prevent the trucks from going through town?
 - b. Does the town have enough fire fighters and is there a need to create a paid fire force?
 - c. Federal law requires that drivers need to rest 30 minutes after driving 8 hours, however they must rest 10 hours after driving 14 hours. Where will they stay? Southford Park? Route 188? The trucks are equipped with a/c and heating and with trucks running, he voiced his concerns with respect to air quality, especially being is close proximity of the schools.
7. John Pollard of 197 Chesham Dr. – He read and submitted his statement for the record.
8. Dana Shepard of 302 Hemlock Lane – She shared that she lives in Benson Woods and utilized a site plan showcasing both Benson Woods and the Timex property. She then displayed an overlay of what the proposed facility will look like next to Benson Woods, which was printed to scale. She acknowledged the revised plans that were presented this evening, however, she pointed out the loading docks that will be pointed towards Benson Woods. She also shared photos she took from the wooded area and pointed out the top of the existing Timex building and sundial. One of the photos depicted the wooded area at Benson Woods and she stated that the area beyond it without trees is the Timex property. She added that when the trees are taken down to build the other houses and roads, there will no longer be a tree buffer to hide the building. There are three (3) areas where the driveway or parking is ten (10) feet from the property line which makes her question if

the developer can put in an acoustic wall in said area and how big will it be. It will be visible through the existing trees and she does not believe that anyone will live to see any planted trees in an effort to hide the building. She submitted a reduced version of the existing site plan with the overlay of the proposed project as well as a written statement.

9. Don Andrews of 21 Avalon Drive – He indicated his displeasure of the invisible building pictures that were presented this evening. He voiced his concerns with respect to the light being emitted by the windows after dark. He ran Google map to the approximate location of the clearing that was cut from Waterbury and showed that the preferred route coming through town rather than down I84. Apple Maps produced that same findings and he also looked up Southford Park and Nest Daycare came up. He questioned what will happens when tractor trailers come through town and where they will turn around. He acknowledged the desire to limit children from coming into town for school tax reasons, however, he stated that there are kids now and that they should be protected like older citizens. He urged all to read the Economic Development Commission Report.
10. Gary Klein of Avalon Farms & member of the HOA Executive Board – He read and submitted his statement for the record on behalf of the 80+ residents/homeowners.
11. Tom Rice of Hawkeye Farm/Judd Hill Road – He stated that he is in agreement with what was said by the other residents. He added that Hawkeye Farm has been in existence for 200 years and Judd Hill Road has not been looked at. He pointed out the woodland, pond, scenic area, stated that it has the most rural stretches in town and requested renderings for it. To him, the colors of the buildings are irrelevant. He believes there are problems on all four (4) sides of the property and wants to see where the numbers are coming from for economic development study.
12. Steve Haigh - 642 Watertown Road – He stated that he does not understand how the proposal meets the POCD. He questioned how the section heading down toward Exit 17, which encourages the development of foot traffic, could go in conjunction with tractor trailer traffic. He believes that the distance between the traffic lights at Exit 16 is equivalent to one tractor trailer. He questioned the potential need for additional fire equipment/trucks. He suspects that because this is an enterprise zone which would result in an 80% tax abatement for five years.
13. Diana Anton of 27 Kelly Road – She thanked the commission members for their patience and time. She read her statement for the record which implored the commission not to allow any special exceptions or changes to the Regulations until they are seriously looked at and how they will best work with the vision of the residents of Middlebury.

14. Michael Giordano of 4 Devon Court – He voiced his concerns with respect to safety for school children, pedestrians, bicyclists, and motorists who utilize Route 188. He questioned if the local or state police will regulate the traffic flow. He has witnessed the congestion on Route 188 due to accidents on I84 between Exits 16 & 17. Approving the application without knowing the building usage or the tenant is not a wise decision in his opinion. He questioned if there is a potential for explosive materials or chemicals. He added that “Flex- Industrial Space” is not defined in the Regulations. He believes that the proposal will have deleterious consequences to the environment in the micro and macro ecosystems and that the increase of noise and air pollution will decrease the quality of life, particularly the potential health hazard to those with compromised or complex medical issues. Increased stresses on the infrastructure should also be expected. Lastly, he thanked the commission members for their efforts in maintaining the duty and integrity of the community.
15. Jennifer Mahr of 68 Abbott Farm Rd. and President of MSTA – She expressed her gratitude for the residents that continue to show up and advocate for the community. She stated that Attorney Edward (Ned) Fitzpatrick assures everyone that the project complies with the POCD. She then recited the contents of page 43 of the POCD. She followed by stating that they have heard no positives to the project, other than it gives Middlebury additional tax revenue and that it is the applicant’s job to prove that this project complies with the Regulations. She reminded the commission that at the January 5, 2023 Planning & Zoning public hearing, this design was called a distribution facility which required three (3) text amendments for it to rearrange the Regulations to fit in. Following ten (10) months of opposition, a state law that bans the approval of warehouse or distribution facilities over 100,000 sf in the town, the name of building (Industrial-Flex Space) and property lines have changed but the building design itself has not. While one building became smaller and turned 90° to appease the Benson Woods developer, there is nothing different about the design of the building. She added that the connection between its industrial-flex space, that it can be used in various ways and that the tenant is unknown, are the opposite of why we standards and regulations are in place. She reiterated that it is the applicant’s duty to prove that they fit, not the commission’s duty to bend the regulations for what the applicant wants.
16. Manesh Dodia of 151 Judd Hill Road – He questioned why the name “Southford Park” as there is no park and while there is Southford Road, it has nothing to do with the name or the property within the town. Utilizing FedEx as an example for the tenant, with the building 70% filled, it would need approximately 4,800 truckloads of material. The average turnover for FedEx is 2.5 days. 4,800 loads divided by 2.5 calculates to an estimated 2,000 trucks per day. When including distribution, there is a potential of 8,000 trucks per day. He calculated within one mile, based on tax data from the town, that Middlebury generates approximately 6.4 million in taxes. He then stated that the town

will generate less revenue from the development than the lost revenue of 1.2 million with a decrease in property value of 20% after five (5) years. He added that the average lifecycle of distribution warehouses is eleven (11) years.

17. William Bailey of 197 White Avenue – He expressed his frustration regarding truckers using a Jake Brake, which he experiences frequently at all times of the day and night, and would like to see a moratorium banning their use.
18. Ann (Raimo) Zimkus of 500 Woodside Avenue – She voiced her concerns surrounding Exit 17, the potential for an increase of accidents, the tenant being unknown, new trucks, GPS directing the trucks through town when I84 is backed up, lithium batteries and seniors that still drive or ride transit buses. She concluded by commending the commission for work.
19. Dr. Scott Peterson of 317 Tranquility Rd. and President of Middlebury Land Trust – He expressed his appreciation of the MSTA for their formalized efforts. He believes that some of the information presented by the applicant regarding tax revenues are deceptive. He believes that the comparison to a company that is withdrawing from the community is meaningless and an alternative proposition would be more reasonable. He reiterated that a realtor recently lost an important sale in town, that the likelihood of the tax base falling is real, that offsets and special favors will be given to whoever develops their business in town, and that most of the jobs mentioned will not be in town and will be short-lived.

Attorney Edward (Ned) Fitzpatrick thanked everyone for their comments/questions and responded to some as follows:

- a. The property taxes of \$212,000/yr for Timex will remain the same whether Timex is there or not.
- b. They intend to present evidence next month of a point of sale with regard to a property that almost adjoins the site that sold for a 22% premium ten months after the project was proposed.
- c. They will not be receiving or requesting any special tax credits or considerations.
- d. Regarding page 43 of the POCD, he emphasized that it states that the town faces a significant challenge because there is limited availability for commercial and industrial development, putting Middlebury at a disadvantage to other towns. He added that it encourages growth and development.
- e. It should be noted that 35 acres of the proposal is to be placed in an easement, provision, or covenant which may be required by the town of Middlebury pursuant to its requirements. It is noted on the plans and said provision specifically complies with page 18 of the POCD concerning the preservation of wetlands, watercourses and meadows and they remain committed to preserving said sensitive areas.

David Sullivan, P.E. & Manager of Highways & Transportation Planning with SLR addressed other comments as follows:

- a. They are not proposing that 100% of the traffic will head toward Exit 16, but rather 100% of the trucks. They project that 1/3 of car traffic will go towards Exit 17 and 2/3 of car traffic towards Exit 16.
- b. They used the criteria set forth by the Office of State Traffic Administration. Said criteria for including an intersection, such as Route 63 & Route 64, is as if they're adding 50 left turns or 100 total trips (all directions all turns) to an intersection. By those criteria, all they would have to be analyzing is the site driveway. They went beyond the criteria for what they would normally do. By the time they get to that intersection, they estimate a handful of car trips which would not impact the activities there, regardless of the conditions.
- c. There is no level of service F at Judd Road and Strongtown Road as it was not part of the original traffic study and is why the follow-up study. The level of service F in the original study was at Old Waterbury Road and is where they had the recommendation to improve it. They believe that with timing changes, they can improve upon level of service F.

Attorney Edward (Ned) Fitzpatrick stated that they had nothing further to present this evening but that all of their professionals would remain in attendance to answer any comments.

William Stowell questioned where the photo was of the equipment on top of the roof that he requested last month.

Tony Iacovino, Project Architect & Senior Associate at SMMA stated that the mechanical units were shown on the aerial rendering that was presented this evening, which he believes were shown more excessively than what is likely to be used. He again displayed the photo for viewing and indicated that the areas shown in a lighter color represent the openings within the photovoltaic (PV) field where the rooftop units will be located as well as access for roof drains and small ventilator fans. All of the units are present in all of the models shown this evening. He acknowledged that they are not small units (8'-10' tall) but are located at least 50'-100' apart on the roof and well back from the roof edge. He offered to provide additional information and side views of the units.

Chairman Smith questioned if they would be behind a parapet.

Tony Iacovino, Project Architect & Senior Associate at SMMA, replied that the detail they typically use has the roof up to the edge of the wall, therefore, the wall does not stick up beyond the edge. He added that they will provide additional elevations.

William Stowell questioned what the region is with respect to jobs.

Julia Fiore, Senior Economist & Planner with SLR Consulting, responded that the direct jobs would be in Middlebury and the model uses data for the county.

William Stowell requested comparisons to Wethersfield, etc. and the current curbing information that is set by the state.

Ryan McEvoy, P.E. with SLR, stated that within the state right of way, they like to see a typical concrete or granite curbing 6" in height with a straight edge.

Matthew Robison asked if the applicant was changing the 44' to 36'.

Attorney Edward (Ned) Fitzpatrick clarified that they are requesting a text change to 44' but the building they are proposing is 42'. The reason why they are asking for the 44' is due to the emerging technologies, the electronics and robotics may require additional structures in the roof to carry them. The 36' represents the clear height.

Paul Anderson questioned how the timing changings for the two (2) lights by Patty's Pantry would work since they are so close together.

David Sullivan, P.E. & Manager of Highways & Transportation Planning with SLR, replied that certain programing is set up and can be achieved by a single controller or two (2) controllers that communicate with each other which provides more flexibility. He apologized for not having the signal plan available, however, their recommendations are based on the programing that was provided for the particular intersections which is their input. Modifications could be made but the recommendations that they ultimately present to the Division of Traffic. If the result is the expected benefit, it could be made a condition of approval. If it is a minor change, they may have their maintenance workers/district office monitor it and make the change in the future, but in this particular case he believes they are beneficial enough that they will be conditions of approval.

William Stowell requested that details for the proposed barrier be provided next month, including distance from the property line, can it be done, height, etc.

Attorney Edward (Ned) Fitzpatrick stated that they will be prepared to address it at the next hearing in conjunction with the acoustical calculations.

Alice Dimartino stated that when I84 is backed up a tractor trailer is not going to come off of Exit 16 because their GPS is directing them elsewhere. She asked how this will this be controlled.

Attorney Edward (Ned) Fitzpatrick submitted a letter of request for an extension of the public hearing to December and a he added that a copy was provided to town counsel.

Motion: to continue the three (3) Public Hearings on December 7, 2023. Made by Paul Anderson, seconded by Matthew Robison. Unanimous Approval.

Melanie Peters of 173 Ridgewood Drive submitted her November 2, 2023 letter of opposition for the record.

Chairman Smith called a brief recess at 9:04 p.m. and the meeting reconvened at 9:16 p.m.

MINUTE APPROVAL

5. Discussion of the Minutes of the Regular Meeting held on October 5, 2023

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

OLD BUSINESS

6. Jad Harb, JTH Builders, LLC/Washington Drive – Application for an 11-Lot Subdivision on 60.135 acres, Sycamore Place (Application #23-42Z)

No discussion.

7. James A. Christiano/Nick Road – Application for a 6-Lot Subdivision on 20.45 acres, Trout Estates (Application #23-45Z)

Chairman Smith stated the applicant made some changes and revised the plans with respect to his concerns regarding the encroachment. He did receive a memo from Attorney Dana D'Angelo stating that she too is satisfied with it.

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

8. Attorney Edward G. Fitzpatrick for Southford Park, LLC/764 Southford Road, Middlebury, CT 06762 – Application for a Text Change regarding Height in LI-200 Zone pursuant to Sec. 42.2 of the Regulations (Application #23-58Z)

No discussion.

9. Attorney Edward G. Fitzpatrick for Southford Park, LLC/764 Southford Road, Middlebury, CT 06762 – Application for Site Plan Approval (Application #23-59Z)

No discussion.

10. Attorney Edward G. Fitzpatrick for Southford Park, LLC/764 Southford Road, Middlebury, CT 06762 – Application for a Special Exception for an Excavation and Grading Permit pursuant to Sec. 64 of the Regulations (Application #23-60Z)

No discussion.

NEW BUSINESS

11. Middlebury Planning & Zoning Commission - on its own initiative, in accordance with Public Act 23-142, is proposing Text Amendments to Sections 21.1 and 21.2 regarding Day Nurseries

Chairman Smith stated that the state legislature put in a regulation that Day Nurseries are as right in residential zones and the P&Z Regulations have it as a Special Exception. Therefore, changes are required.

Motion: to schedule a Public Hearing for December 7, 2023. Made by Matthew Robison, seconded by Joseph Drauss. Unanimous Approval.

OTHER BUSINESS

12. Reminder of the following Public Hearings scheduled for December 7, 2023:

- Lawrence Janesky/Artillery Road – Application for a subdivision modification (Application #23-65Z)
- Parkland Estates Homeowners Association, Inc./Park Road - Application for a subdivision modification (Application #23-66Z)
- Kyle P. Richards for Metro Realty Management Corp./124 Kelly Road – Application for a Zone Text Change to add Section 28 Planned Rental Housing Development Overlay District to the Regulations (Application #23-67Z)
- Kyle P. Richards for Metro Realty Management Corp./124 Kelly Road - Zone Map Change Application to change from the current LI-80/R-4/PRD to Section 28 Planned Rental Housing Development Overlay District (Application #23-68Z)

Chairman Smith acknowledged.

13. Gregory Barnes – Informal discussion regarding activities in vineyards

Mr. Barnes was not present.

14. 2024 Planning & Zoning Meeting Schedule

Motion: to approve the 2024 Middlebury Planning & Zoning Schedule. Made by Matthew Robison, seconded by William Stowell. Unanimous Approval.

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

None

16. Enforcement Report

Curtis Bosco, Z.E.O. stated that at the last BOS meeting, Selectman Strobel brought up an issue at 122 Mirey Dam Road and as a result, he issued a cease and desist and received phones from the three owners. He hopes to schedule a meeting to resolve the issue. An additional cease and desist was issued to 1101 Southford Road and the owner has exercised their right to appeal. ZBA met and a public hearing is scheduled for December 1, 2023.

Chairman Smith requested that Curtis Bosco, Z.E.O. email copies of both cease and desist orders.

William Stowell stressed the need to address other areas in town.

Chairman Smith agreed and shared that he know of another Airbnb in town.

17. Adjournment

Motion: to adjourn the meeting at 9:25 p.m. Made by Paul Anderson, seconded by Matthew Robison. Unanimous Approval.

***All documentation is available for public inspection in the Land Use Office.**

***The next Regular Meeting of the Planning & Zoning Commission is scheduled for
December 7, 2023 at 7:00 p.m.**

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

SUBDIVISION/RESUBDIVISION RESOLUTION

Upon motion by Commissioner Stowell, seconded by Commissioner Drauss, it was voted unanimously to approve the application of James A. Christiano for a Subdivision located on Nick Road, for lots to be known as Trout Estates and as shown on Record Subdivision Map entitled Trout Estates and prepared by Meyers Associates and dated July 14, 2023, Revised October 6, 2023, 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 require 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;
- g) Compliance with the report of Calabrese Engineering, dated September 5, 2023;
- h) Compliance with the report of the Fire Marshal;
- i) Compliance with the report of the Director of Public Works; and
- j) Granite curbing shall be used.

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 2, 2023



TOWN OF MIDDLEBURY

Planning & Zoning Commission
1212 Whittemore Road
Middlebury, Connecticut 06762
(203) 577-4162 ph (203) 598-7640 fx

2024 MEETING SCHEDULE **Shepardson Community Center** **Room 26** **7:00 p.m.**

Thursday – January 4, 2024
Thursday – February 1, 2024
Thursday – March 7, 2024
Thursday – April 4, 2024
Thursday – May 2, 2024
Thursday – June 6, 2024
Thursday – July 11, 2024
Thursday – August 1, 2024
Thursday – September 5, 2024
Thursday – October 3, 2024
Thursday – November 7, 2024
Thursday – December 5, 2024

Approved this 2nd day of November, 2023

Terry Smith,
Chairman