



## **TOWN OF MIDDLEBURY**

*Planning & Zoning Commission*

*1212 Whittemore Road*

*Middlebury, Connecticut 06762*

*(203) 577-4162 ph*

*(203) 598-7640 fx*

**November 4, 2021**

**REGULAR MEETING**

**MINUTES**

**REGULAR MEMBERS PRESENT**

Terry Smith, Chairman

William Stowell, Vice Chairman

Erika Carrington

Matthew Robison

**REGULAR MEMBERS ABSENT**

Joseph Drauss

**ALTERNATE MEMBERS PRESENT**

Paul Anderson

**ALTERNATE MEMBERS ABSENT**

Kevin Zupkus

**ALSO PRESENT**

Curtis Bosco, Z.E.O. until 7:18 p.m.

John Calabrese, P.E.

**CALL TO ORDER**

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

**ROLL CALL AND DESIGNATION OF ALTERNATES**

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

## **PUBLIC HEARINGS**

### **1. Bright & Early Child Care/April Lukasik/489 Middlebury Rd. Lower Level- Application for a Special Exception for a daycare nursery pursuant to Section 52.10.2 (Application #2021-10-2)**

Chairman Smith called the Public Hearing to order at 7:01 p.m. He read the Legal Notice published in Voices on 10-20-21 & 10-27-21 for the record.

Tom Edwards, Architect, spoke on behalf of the applicant. The 2-level building has grade level access and exits on both levels. The daycare will be in the lower portion of the building which contains 12,500 square feet. Adjacent and to the rear will be the three (3) playground areas. They will be adjacent to the sidewalk that feeds the front of the building in order for staff and children can go directly to a playground without having to cross any traffic or parking area. They are proposing to remove 14 parking spaces as it is his understanding that 35 are required. They are also proposing to relocate the handicap spaces. The site was previously approved for a Special Exception in 2008 for a daycare. He reviewed the older A2 Survey that depicted the existing parking as well as the overflow parking which was deferred if necessary.

John Calabrese, P.E. reviewed his Engineering Review dated 11-2-21. The current use, according to the plans, requires 59 parking spaces. The proposed use results in an additional 37 spots. The vacant areas of the building may be occupied in the future and that must be taken into consideration. He emphasized that the correct parking calculation for said areas should be one (1) parking space per 200 square feet as opposed to the proposed calculation of one (1) parking space per 300 square feet.

William Stowell agreed that the possibility of the vacant spots being occupied in the future should be taken into consideration.

Al Secondino, contractor, stated that bollards will be positioned by the fencing for safety concerns.

Chairman Smith stated that an additional row of sixteen (16) parking spaces would be adequate.

Tom Edwards questioned if they could be deferred.

Chairman Smith declined his request. He also suggested one-way traffic with angled parking as he does not feel two-way traffic would work in said area.

Matthew Robison inquired what the playground surface would be constructed of.

Tom Edwards stated that woodchips, grass and a granulated rubber coating will be utilized.

Dave Generali questioned the need for another Daycare in town.

Chairman Smith implied that it is not within this commission's purview.

**Motion:** to close the Public Hearing at 7:15 p.m. Made by Erika Carrington, seconded by Paul Anderson. Unanimous Approval.

## **2. Temporary Moratorium on Cannabis Establishments**

Chairman Smith called the Public Hearing to order at 7:16 p.m. He read the following for the record:

- Legal Notice published in Voices on 10-20-21 & 10-27-21
- Proposed Zoning Text Amendment
- NVCOG Staff Referral Report from Keith D. Rosenfeld, Regional Municipal Planner, dated 11-3-21

There were no comments or questions from the members of the commission or from the public.

**Motion:** to close the Public Hearing at 7:23 p.m. Made by William Stowell, seconded by Matthew Robison. Unanimous Approval.

## **MINUTE APPROVAL**

## **3. Discussion of the Minutes of the Regular Meeting held on October 7, 2021**

**Motion:** to approve the Minutes as submitted. Made by William Stowell, seconded by Erika Carrington. Unanimous Approval.

## **OLD BUSINESS**

None

## **NEW BUSINESS**

### **4. Bright & Early Child Care/April Lukasik/489 Middlebury Rd. Lower Level- Application for a Special Exception for a daycare nursery pursuant to Section 52.10.2 (Application #2021-10-2)**

**Motion:** to approve the Special Exception with the condition of providing 16 additional parking spaces. Made by Erika Carrington, seconded by Paul Anderson. Unanimous Approval.

### **5. Temporary Moratorium on Cannabis Establishments**

**Motion:** to approve the attached Zoning Text Amendment for the Temporary Moratorium on Cannabis Establishments, in effect for six (6) months through May 4, 2022. Made by Matthew Robison, seconded by William Stowell. Unanimous Approval.

### **6. Peter Vileisis/288 Watertown Rd. – Application for a 5 Lot Subdivision (Application #2021-10-3)**

Emily Jones, P.E. with Civil 1 Engineering in Woodbury spoke on behalf of the applicant and reviewed the revised plans with the Commission. The proposal is for a 5-lot residential subdivision on Watertown Road, to be known as Fox Hollow Subdivision. The two (2) parcels total approximately 36 acres in an R-40 Zone. The small lot is referred to as the Pond Lot while the other contains a house and driveway to the south. The house will not be under the HOA. There is an existing dirt access road from Watertown Road, providing access to the back. Most of the front of the property has been cleared while the rear contains a mixture of brush and woods. There is no sanitary sewer or public water, therefore, the approved building lots will need to be served by septic systems and wells. They recently revamped the design, which resulted in a loss, and are now proposing 5 lots. Lot 1 will continue to be served by its own driveway, while the others will be served by a common driveway (442 linear feet). The Pond Lot will absorb the remainder of the land that does not go to open space within the subdivision. Approximately 66 acres of open space is provided. Approval was granted from Torrington Health District as well as the Conservation Commission. The driveway will be 22 feet wide with a turnaround at the end. The HOA will share the cost and maintenance of the common driveway and the raingarden in the rear of lot 3. They are cognizant that sight distance is a concern and profiles for sight distances in both directions were done. Uphill they are providing 375 feet of sight distance and 575 feet downhill. While the speed limit is 25mph, it is a collector road. For a design speed of 30mph, the DOT would require 335 feet of sight distance for a public roadway. Visual obstructions (large tree near powerlines and tall

brush) will be removed and they are proposing some easements to keep the sight distance clear. They plan to seek approval from the FD & PD. She added that they plan to do a lot line revision and then a subdivision. Ultimately, there will be 2 frontage lots and 3 interior lots.

**Motion:** to set a Public Hearing for December 2, 2021. Made by Erika Carrington, seconded by Matthew Robison. Unanimous Approval.

**7. Michaud Development Group, LLC/Granite Woods/Nutmeg & Stevens Rds. – Application for a multi-family development in Senior Residential District (Application #2021-10-4)**

Emily Jones, P.E. with Civil 1 Engineering in Woodbury spoke on behalf of Michaud Development Group, LLC and reviewed the plans with the Commission. There three (3) adjoining lots were the subject of a zone change to the Senior Residential District (SRD) in 2004, and total 11.5 acres. One portion is accessed from Nutmeg Road (Parcel A), while the other is accessed from Stevens Road (Parcel B). The site is currently wooded with areas of existing rock outcroppings and a large wetland which is centrally located on the property. Previous plans were approved in 2004, when it was known as Woodland Spur. Since then, an updated A2 Survey was performed and they hired a soil scientist to update the wetlands flaggings. They are proposing 24 single family dwellings with two (2) private cul-de-sacs, 11 on Lot A and 13 on Lot B with a recreational/picnic area and gravel walking path which connects the two. Each parcel has its own storm drainage system, water, sanitary sewer and stormwater management plan. She submitted her letter with renderings dated 11-4-21 and a letter from property owner David Theroux dated 10-27-21 for the record. They also plan to go before the Economic Development commission for architectural review.

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

**8. 1365, LLC/1365 West Street-Application for a Site Plan Modification (Application #2021-11-1)**

Dean Yimoyines reviewed his plans with the Commission. He is process of performing demo on the interior of the existing Juniper's Restaurant building and is looking to modify the previous approval by including a patio on the side and to extend the slab that is on the backside of the restaurant. They are proposing the fermenting of beer in the building with a full service restaurant and bar as well as construct a stone wall around the patio with the possibility of shrubbery within the wall. There will be 4 tanks to start with but they may add two (2) more and will serve as a divider.

**Motion:** to approve the Site Plan Modification. Made by Erika Carrington, seconded by Paul Anderson. Unanimous Approval.

**OTHER BUSINESS**

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

None

**10. 2022 Planning & Zoning Meeting Schedule**

**Motion:** to approve the attached 2022 Planning Zoning Meeting Schedule with the first meeting date of January 6, 2022. Made by William Stowell, seconded by Matthew Robison. Unanimous Approval.

**11. Enforcement Report**

Curtis Bosco, Z.E.O. was not present to review his report.

Chairman Smith suggested that the members read the portion concerning outdoor dining in the recent Connecticut Federation of Planning & Zoning Agencies' quarterly newsletter.

**12. Adjournment**

**Motion:** to adjourn the meeting at 8:04 p.m. Made by William Stowell, seconded by Matthew Robison. Unanimous Approval.

Filed Subject to Approval,

Respectfully Submitted,

Rachelle Behuniak, Clerk

Original to Brigitte Bessette, Town Clerk

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

**ZONING TEXT AMENDMENT  
SCHEDULED FOR PUBLIC HEARING ON  
THURSDAY, NOVEMBER 4, 2021 AT 7:00PM  
Shepardson Community Center, 1172 Whittemore Road, Middlebury, CT**

**ADD NEW LANGUAGE:**

**SECTION 69 - TEMPORARY MORATORIUM ON CANNABIS ESTABLISHMENTS**

**69.1 Purpose**

This Section has been adopted to provide the Commission with the time necessary to consider adoption of regulations in response to Public Act 21-1 "AN ACT CONCERNING RESPONSIBLE AND EQUITABLE REGULATION OF ADULT CANNABIS USE." Said Public Act provides that a municipality, through its zoning regulations, can prohibit or establish reasonable restrictions on cannabis establishments. If the municipality does not amend its regulations to address this use, then Cannabis Establishments will be deemed a permitted use in those zoning districts where retail and commercial establishments are also permitted. Regulations to be promulgated by the Connecticut Department of Consumer Protection may provide guidance on certain aspects of local regulation of Cannabis Establishments. The regulation of recreational cannabis raises novel legal, planning, and public safety issues, and the Commission needs time to study and consider the regulation of Cannabis Establishments and address such issues, as well as to address the potential impact of the State regulations on local zoning and to undertake a planning process to consider amending the Zoning Regulations regarding regulation of Cannabis Establishments. The Commission intends to adopt a temporary moratorium on the use of land and structures in the Town for Cannabis Establishments so as to allow sufficient time to address the effects of such structures and uses in the Town and to enact regulations in a consistent manner.

**69.2 Definition**

"Cannabis Establishment" means a producer, dispensary facility, cultivator, micro-cultivator, retailer, hybrid retailer, food and beverage manufacturer, product manufacturer, product packager and delivery service but does not include a dispensary facility as provided in 56 section 21a-408-1 of the regulations of Connecticut state agencies.

**69.3 Temporary Moratorium**

For the reasons set forth above and notwithstanding any other provision of the Zoning Regulations to the contrary, the Commission hereby adopts a temporary moratorium on the acceptance of applications or the use of land or structures for a Cannabis Establishment and other uses related to recreational marijuana. The moratorium shall be in effect through *May 4, 2022, 6 months from date of adoption on November 4, 2021* or until such time as the Commission adopts Zoning Regulation amendments that regulate Cannabis Establishments, whichever occurs earlier. During the moratorium period, the Commission shall undertake a planning process to address the potential impacts of recreational cannabis in the Town, and to consider the Connecticut Department of Consumer Protection's regulation of Cannabis Establishments, and shall consider adopting new Zoning Regulations in response to these new issues.



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### **2022 MEETING SCHEDULE Shepardson Community Center – Room 26 7:00 p.m.**

**Thursday – January 6, 2022**

**Thursday – February 3, 2022**

**Thursday – March 3, 2022**

**Thursday – April 7, 2022**

**Thursday – May 5, 2022**

**Thursday – June 2, 2022**

**Thursday – July 7, 2022**

**Thursday – August 4, 2022**

**Thursday – September 1, 2022**

**Thursday – October 6, 2022**

**Thursday – November 3, 2022**

**Thursday – December 1, 2022**

**Approved this 4<sup>th</sup> day of November, 2021**

**Terry Smith,  
Chairman**