



## **TOWN OF MIDDLEBURY**

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

### **December 5, 2019 REGULAR MEETING MINUTES**

#### **REGULAR MEMBERS PRESENT**

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

#### **REGULAR MEMBERS ABSENT**

#### **ALTERNATE MEMBERS PRESENT**

#### **ALTERNATE MEMBERS ABSENT**

Jeffrey Grosberg

#### **ALSO PRESENT**

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

#### **CALL TO ORDER**

Chairman Smith called the Regular Meeting to order at 7:04 p.m.

#### **ROLL CALL AND DESIGNATION OF ALTERNATES**

Chairman Smith announced Regular Members Smith, Stowell, Robison, Carrington & Drauss as present. Alternate Member Grosberg was absent.

## **PUBLIC HEARINGS**

### **1. Peter Vileisis/288 Watertown Road – Application for a Special Exception for an Excavation & Grading Permit pursuant to Section 64 (Application #2019-9-1) (Continued)**

Attorney Franklin Pilicy of 365 Main St #3, Watertown, CT 06795 spoke on behalf of the applicant. He stated that per the request of the Commission, additional site investigations were performed to better quantify the amount of fill that had been deposited over time and to perform additional soil testing to determine that quality of the soil is appropriate.

Siyuan Cao, P.E. of Civil 1 located at 43 Sherman Hill Road, Woodbury, CT submitted and reviewed the revised report from Down to Earth dated 12-4-19 with the Commission. He stated that 11,900 cubic yards of existing fill was calculated on site.

Timothy Carr, L.E.P. of Down to Earth, 122 Church Street, Naugatuck, CT 06770 submitted a. He stated that they completed four (4) deep test pits, at depths of between five (5) and eight (8) feet below grade. Trace pesticide residues were detected in test pit #4 but are being attributed to there being an active agricultural operation at one time and prior to 1978 said pesticides were legally applied to soils. Overall, the fill consists of clean sand and gravel.

John Calabrese, P.E. stated that he is satisfied with the testing that was performed.

Siyuan Cao, P.E. went on to state that the applicant is proposing to add an additional 4,720 cubic yards of fill to build a new road as the existing access does not meet the sight line requirements.

Chairman Smith stated that should the Commission approve the application, he will make the recommendations stated in the Engineering Review submitted by John Calabrese, P.E. a condition of approval. In addition, hours of work will be weekdays from 8:00 a.m. to 4:00 p.m. and Saturdays from 8:00 a.m. to 12:00 p.m.

**Motion:** to close the Public Hearing at 7:14 p.m. Made by Erika Carrington, seconded by Joseph Drauss. Unanimous Approval.

2. **Boch Middlebury-Waterbury, LLC/1628, 1648 & 1672 Straits Turnpike – Application for a Motor Vehicle Dealership and accessory uses per Sections 31.4.3 and 52.10.9 (Application #2019-10-1)**
3. **Boch Middlebury-Waterbury, LLC/1628, 1648 & 1672 Straits Turnpike – Application for signage per Sections 63 and 52.10.10 (Application #2019-10-2)**
4. **Boch Middlebury-Waterbury, LLC/1628, 1648 & 1672 Straits Turnpike – Application for Excavation & Grading per Section 64 (Application #2019-10-3)**

Chairman Smith called the Public Hearings to order at 7:15 p.m. He stated that all of the Public Hearings for Boch Middlebury-Waterbury, LLC would be dealt with concurrently. He read the Legal Notice published in Voices on 11-20-19 & 11-27-19 for the record.

Attorney Michael McVerry of 35 Porter Avenue, Naugatuck, CT 06770 spoke on behalf of the applicant. Boch is the contract purchaser of the three subject properties.

1. #1628 = 1.38 acres in Middlebury; 1.6 acres in Waterbury
2. #1648 = approximately 1.5 acres in Middlebury; slight piece in Waterbury
3. #1672 = 1.5 acres in Middlebury; 1.9 acres in Waterbury

Concurrently they are in the application process with Waterbury for the same approvals. Said property is zoned CA-40. In March of 2019, text change approval was granted by this Commission which allows an automobile dealership in this area on Straits Turnpike. Boch Middlebury-Waterbury is a subsidiary of Subaru New England which is the wholesale dealer for Subaru in the New England area. He submitted a document titled About Subaru of New England as well as Premier Subaru Middlebury for the record. They are working with Robert Aline of Premier Subaru of Watertown who is looking to relocate and construct said dealership at the subject property. He submitted the additional documentation for the record indicating their respective approvals:

- Letter dated 11-21-19 from Torrington Area Health District
- Letter dated 11-13-19 from John J. Proulx, Fire Marshal, Middlebury
- Letter dated 11-18-19 from Francis Dabbo, Chief of Police
- WPCA 11-19-19 Meeting Minutes
- Letter dated 11-22-19 from Debbie Lichwalla, WPCA Secretary, Borough of Naugatuck referencing their approval at their 11-21-19 Regular Meeting
- Memo dated 11-26-19 from Terry McAuliffe, Chairman, Economic & Industrial Development Commission
- Email dated 12-3-19 from Chief Brett Kales confirming that a hydrant will be put near Rt. 63 in front of building and a knox box will be installed

- Conservation Commission 11-26-19 Meeting Minutes
- Contact list for Michael A. Clemmey of Subaru of New England, Jim Desper of Subaru of New England & Tim Toomey of BPS Realty

Waterbury has a Public Hearing scheduled for 1-21-20 on zoning. They are also waiting for approval from the Wetlands Officer if necessary.

They are proposing to build a 27,300 square foot car dealership as well as a 5,900 square foot mezzanine totaling 33,200 square feet and adjacent parking which will exist in both towns. The building will be entirely located in Middlebury. The parking requirements have been met in both towns. A traffic study was performed by Keskeith Associates and the report was previously submitted with the application which indicated there will be no significant impact expected from this project. They are proposing to excavate 6,600 cubic yards of fill. He also added that the adjacent property owners were notified via certified mail and that he will provide Curtis Bosco, Z.E.O. with the return receipts.

David Hughes, P.E. of 57 Norway Street, Oakville, CT 06779 submitted the following documentation for the record:

- Email dated 11-22-19 from David Hughes to Ron Ferris of CTDOT
- Lighting Specifications Order Guide from Gardco
- Plans dated 10-23-19 with a latest revision date of 12-2-19

He went on to review the revised plans with the Commission and confirmed that there will be no access to the property from Park Road. There will be two (2) entrances with two (2) curb cuts, circular traffic flow around the building and a loading area on the north side of the property. With 156 parking spaces, the parking requirements are met. The display places in the front contains an additional 24 spaces according to the regulations. The two (2) signs which will be on the north side will be a pylon sign and the north side of the south entrance will be a monument sign. There will be sanitary sewer hookup with a 2,000 gallon oil grit separator for the floor drains and the building. They also plan to go to DEEP to obtain a permit for the floor drains. The gas line will be connected on the south side of the building and will cross Straits Turnpike as the gas line is on the west side, going north & south on Straits Turnpike. They met with CT Water for an extension of the water main. The laterals will be crossing over Straits Turnpike going west but may change a bit due to the request of the fire hydrant being on their side of the road and plans have been sent to CT Water for their review. The detention basin will be built first and the sediment basin during construction. Earth excavation specifications results for

Middlebury is just under 7,000 cubic yards. The net cut will be 5,700 cubic yards. In Waterbury they need 4,800 cubic yards of fill. The net that will leave the site is only 900 cubic yards by way of approximately 50 trips over a 2-4 month period. There will be single and double headed poles and wall packs on the building as well as ornamental and flowering trees. Per motor vehicle requirement, there will be a 30 foot buffer from the pavement to the property line on the north and south. They do not anticipate hitting any ledge however, some hoe-ramming may be need due to existing large boulders.

Michael McVerry stated that Waterbury will be having their meeting at the end of January and suspects that they are waiting for the Middlebury action as the bulk of what will happen will take place in Middlebury.

John A. Matthews of John Matthews Architecture, 817 Boston Post Rd., Madison, CT 06443 reviewed the architectural renderings, floor plans and building elevations with the Commission. He also showed a photograph of the Branford facility which will be very similar as well as examples of the materials that will be utilized to construct the building.

Attorney McVerry submitted a photocopy of what the monument Subaru sign by John A. Matthew, 817 Boston Post Rd., Madison, CT 06443 with dimensions of 6' 4" H X 11' 1" X 8' 10" OAH would look like. What they are seeking exceeds the requirements however, the pylon sign would stand 36' 11", 15' X 8'. The signs on the building will consist of 2' for Premier and 3' for Subaru. The façade doesn't come anywhere near the requirements but they do exceed what is in the regulations. Due to the location of the building on the lot and what is dictated by the manufacturer to the dealers, they are requested a special exception for signage.

**Motion:** to continue the Public Hearings on 1-2-20. Made by Matthew Robison, seconded by William Stowell. Unanimous Approval.

### **MINUTE APPROVAL**

#### **5. Discussion of the Minutes of the Regular Meeting held on November 7, 2019**

Joseph Drauss briefly left the room.

**Motion:** to approve the Minutes as submitted. Made by Erika Carrington, seconded by Matthew Robison. Joseph Drauss was not present to vote. Unanimous Approval.

**OLD BUSINESS**

**6. Peter Vileisis/288 Watertown Road – Application for a Special Exception for an Excavation & Grading Permit pursuant to Section 64 (Application #2019-9-1)**

Joseph Drauss returned to the meeting.

Chairman Smith read the Resolution for the record.

**Motion:** to approve the application per the attached Resolution. Made by Erika Carrington, seconded by Matthew Robison. Unanimous Approval.

**7. Boch Middlebury-Waterbury, LLC/1628, 1648 & 1672 Straits Turnpike – Application for a Motor Vehicle Dealership and accessory uses per Sections 31.4.3 and 52.10.9 (Application #2019-10-1)**

Discussion was tabled.

**8. Boch Middlebury-Waterbury, LLC/1628, 1648 & 1672 Straits Turnpike – Application for signage per Sections 63 and 52.10.10 (Application #2019-10-2)**

Discussion was tabled.

**9. Boch Middlebury-Waterbury, LLC/1628, 1648 & 1672 Straits Turnpike – Application for Excavation & Grading per Section 64 (Application #2019-10-3)**

Discussion was tabled.

**NEW BUSINESS**

**11. Pomeroy Enterprises/819 Straits Turnpike – Application for Site Plan Modification (Application #2019-11-1)**

Chairman Smith requested to address this agenda item prior to the 3 Sandy Beach Road agenda item.

Siyuan Cao, P.E. of Civil 1 located at 43 Sherman Hill Road, Woodbury, CT spoke on behalf of the applicant. They are seeking approval for an accessory use structure 18' X 30' in size. It will be place on gravel, secured with metal anchors and used for storage. Approximate 750 square feet of gravel will be installed around the structure.

Chairman Smith stated that landscaping around the shed will be required.

**Motion:** to approve the Site Plan Modification per the condition that landscaping, acceptable to the Town Engineer, be installed after it is erected. Made by Joseph Drauss, seconded by William Stowell. Unanimous Approval.

### **OLD BUSINESS**

#### **10. 3 Sandy Beach Road complaint**

Chairman Smith confirmed that all members received packets regarding the complaint and reiterated that Curtis Bosco, Z.E.O. recused himself.

Attorney Jacqueline O. Kaufman of Carmody, Torrance, Sandak & Hennessey LLP spoke on behalf of Jack Starr & Shauna McManus of 2 Sandy Beach Road. She stated that based on her clients' observation over the past 15 years, the operation at Sandy Beach Swim Club has expanded illegally. She also added that it is not the intention of her clients to put the club out of business. She submitted and reviewed their Sandy Beach Club Development of Time packet with the Commission which they feel depicts how the club disregarded their immediate neighbors, community, health of the lake, and ignores Regulations. The original complaint was filed over 2 ½ years ago and claim to be negatively impacted by the activity that has taken place. She added that it may be because of the zoning enforcement officer's personal relationship with the property owner that has slowed the process down. A meeting occurred about 2 years ago addressing these items and added that they were quickly tabled and not addressed. She requested that what she feels is illegal extension activity be stopped unless and until all of the activity is properly permitted by this Commission as well as Z.B.A. and the Conservation Commission. The following documents were submitted for the record:

- Permit Letter dated 8-10-07 from Thomas M. Morrissey, Bureau Chief, Bureau of Outdoor Recreation, CT DEEP
- Permit Letter dated 8-7-17 from Michael D. Lambert, Bureau Chief, Bureau of Outdoor Recreation, CT DEEP
- Ariel photo of Sandy Beach Club with Littoral Area Dimensions
- Email dated 6-20-17 between R. Michael Payton, Supervisor Navigation & Boating Infrastructure Unit Boating Division, DEEP Marine HQ and Jack Starr
- Copy of a map of Lake Quassapaug
- Photocopies of various photos of the site
- Copy of Land Use Law and Practice §52:3 Extensions, changes, and intensification

Erika Carrington stated that she would be remiss if she didn't say that they all know one another as it is a small town and that she doesn't appreciate Attorney Kaufman accusing the Z.E.O. of stalling because of a personal relationship he has. They all have connections and they do not make decisions based on personal relationships. She also questioned some of the timeline due to her own visits at the club throughout her life.

Attorney Jacqueline O. Kaufman responded that she meant no disrespect to her experience or to the town. However, the one challenge they have had is that there is not a lot of information on record with the town, making it a complicated factor in the way that this property has been permitted to continue.

William Stowell added that he doesn't like one person being singled out and that if it goes back to the 1960s and your blaming the town completely, just say the town and not personal. That is unless it can be proven that someone did something.

Attorney James Strub reminded the members of the Commission of their enforcement capacity as it pertains to the zoning issue.

Mr. Anderson of 3 Sandy Beach Road submitted and reviewed the following documents:

- Historical and Architectural Survey of the Town of Middlebury, CT, Volume I by Project Historian Rachel Carley
- Copy of 1981 property listing with United Farm Agency
- Copy of 7-21-78 application for Certificate of Zoning Compliance
- 1986 Sandy Beach Rules & Regulations
- Letter dated 10-19-10 to Michael Weglarz from Jean Donegan, Z.E.O.
- Letter dated 5-29-12 to Betsy Anderson from Jean Donegan, Z.E.O.
- Zoning Permit Application received 7-6-12
- Photocopies of various photos of the site including tower foundation

He also added that he's attempting to obtain proof from Deborah Seavey, W.E.O. that he is working with her and also plans to submit additional photos.

Chairman Smith stated that they have a lot of material to look through and will do an investigation.

Attorney James Strub added that as they reflect on the materials received, the Commission has whatever time they need to investigate, including a site visit, requests for additional information or sharing of personal experiences.



Chairman Smith added that they will attempt to make a decision before the season starts.

**OTHER BUSINESS**

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

None

**12. Enforcement Report**

Curtis Bosco, Z.E.O. confirmed that all reviewed his report and there were no questions.

**13. Adjournment**

**Motion:** to adjourn the meeting at 8:56 p.m. Made by Joseph Drauss, seconded by Erika Carrington. Unanimous Approval.

Filed Subject to Approval,

Respectfully Submitted,

Rachelle Behuniak, Clerk

Original to Edith Salisbury, Town Clerk

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

## RESOLUTION

Upon motion by Commissioner Carrington, seconded by Commissioner Robison, it was voted unanimously to approve the application of Peter Vileisis for an Excavation & Grading Permit located on 288 Watertown Road, and as shown on Record Subdivision Map entitled Earth Excavation Permitting Set and prepared by Civil 1 and dated September 18, 2019.

The Commission specifically finds The Application:

1. is in compliance with the requirements of the Panning & Zoning Regulations; Section 64;

The Application is subject to the following conditions/modifications:

- a) Providing bond satisfactory to the Commission and the Board of Selectmen;
- b) Posting of a landscape bond as determined by the Board of Selectmen;
- c) Signing of the Map by the First Selectman;
- d) Signing of the Map by the Conservation Officer;
- e) Recommendation stated in Calabrese Engineering letter dated 10-2-19;
- f) Payment of fees related to previously placed fill;
- g) No “Jake Brake” use in residential areas;
- h) Weekday hours of work to be 8:00 a.m. to 4:00 p.m.
- i) Saturday hours of work to be 8:00 a.m. to 12:00 p.m.

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.

December 5, 2019