

**TOWN OF BROOKLYN  
PLANNING AND ZONING COMMISSION  
Regular Meeting  
Wednesday, July 2, 2019  
Clifford B. Green Meeting Center  
69 South Main Street  
6:30 p.m.**

**MINUTES**

- I. Call to Order** – Michelle Sigfridson , Chair, called the meeting to order at 6:36 p.m.
- II. Roll Call** – Michelle Sigfridson, Carleen Kelleher, Earl Starks, Alan Fitzgerald, Austin Tanner. Rick Ives, First Selectman and ex Officio Member was also present (left at 8:00 p.m.). Jules D’Agostino arrived at approximately 6:45 p.m.

**III. Seating of Alternates** – None.

**IV. Adoption of Minutes:** Regular Meeting June 18, 2019

Motion was made by A. Tanner to approve the Minutes of the Regular Meeting of June 18, 2019. Second by E. Starks. Motion carried (4-0-1). C. Kelleher abstained as she had not attended that meeting.

**V. Public Commentary** – None.

**VI. Unfinished Business:**

- a. **Reading of Legal Notice:** None.
- b. **Continued Public Hearings:** None.
- c. **New Public Hearings:** None.
- d. **Other Unfinished Business:**

- 1. **SPG 19-002 Gravel Special Permit-** Brooklyn Sand & Gravel, LLC, 64+- acres, 530 Wauregan Road (Assessor’s Map 30, Lots 97, 97-1, 97-2), Proposed removal of approximately 112,000 cubic yards of sand and gravel.

C. Kelleher stated that she is prepared for tonight’s meeting because she had reviewed the audio recording and the minutes of the June 18, 2019 meeting which she had not attended.

J. Roberson gave an overview of what had happened regarding this Application and how she prepared her Staff guidance sheet (provided to Commission Members) regarding possible conditions of approval:

- Reviewed the 2018 Special Permit renewal conditions.
- Referred to the most recent gravel special permit that had been approved earlier this year (on Route 169 - Arters), for consistency.
- Tried to respond to concerns that had been raised at the previous meeting (outlined in the Minutes).
- Changed the order to make the topical conditions near each other in the list.
- She noted that the Commission may modify the sample motion to approve as they find it appropriate, if they choose to use it. She stated that she had not drafted a sample motion to deny, but had provided instructions: consider the evidence on the record; special permit criteria outlined in Section 5.7 of the Zoning Regulations.
- By Statute, the Commission has until August 22, 2019, to act on this Application.

M. Sigfridson commented that the Commission had previously discussed how motions should be structured. If a motion to approve were made, if anyone does not vote in the affirmative, he/she should give the reason(s).

There was discussion regarding traffic counters. This was addressed in #7 of the Staff Guidance Sheet sample motion which the Commission may choose to use, remove, modify. Ms. Kelleher asked where the numbers for truck traffic came from. Ms. Roberson explained that the estimated 60 average and 80 maximum had come from the plans (note on Sheet 5) submitted in 2018. The current plan set has a slight change in the language “estimated 60 average” and “estimated 80 maximum.” Her Staff Guidance Sheet (#7) contains clarifying language. She stated that she had verified that a trip is one way (from point A to point B). “Trip” is a generally accepted term. It is within the authority of the Commission to limit the number of trips based on impacts to the neighborhood. Ms. Kelleher asked if that many truck trips are necessary to accomplish what Mr. Jolly wants to do. Mr. Starks stated that he doesn’t think that he’d be bringing the trucks in if he didn’t need the material somewhere else. Ms. Sigfridson feels that counting trucks or limiting truck traffic just extends the life of the gravel bank. She feels that limiting the amount of imported material would cut the traffic in half, it would cut down on the dust and noise, limit the impact on the neighborhood, and would also address the concerns of it being a never-ending gravel operation in a residential zone. She referred to the Zoning Regulations which don’t state that processing or importation of material have to be allowed. Ms. Kelleher agreed with Ms. Sigfridson and would like more discussion on this.

Mr. Ives commented that if the processing were allowed to go forward with the materials that are mined on site, it would accomplish a lot. It is evident that the neighbors want to see an end. It is a business, but it is also a gravel bank and it has probably used up its life (there is a lot of silt in the ground). He feels that this is, perhaps, an opportunity to go in that direction. He agreed that limiting truck trips would only extend the life of the gravel bank. Mr. Tanner commented that the important thing is that it is ending and, if they continue as they are, it is going to come to an end in two years. The business should not be penalized and Mr. Jolly has to realize that there is an end to it and he would need time to finish pending business. Mr. Starks agreed with this. Ms. Sigfridson commented that more test pits had been done and some showed some quality material and they were trying to decide whether to open up new areas. The fact that it is continuing as a processing plant for other material weighs into that and she is not sure if it is appropriate for the Commission to be encouraging that use.

J. D’Agostino (arrived at approximately 6:45 p.m.) spoke of compromise. He suggested the following:

- Only approve Phase 1 (which the Commission was told would be done this fall);
- Limit truck traffic to 20 trucks per day;
- Increase observation by the ZEO - planned visits and unplanned visits;
- The Commission needs to help them find a way to end the business. He said they have been a good business and are good people in Town, but a number of people have expressed to the Commission that it is time for them to leave.

He stated that he would not favor any vote allowing Phase 2 to take place. There was discussion regarding truck traffic extending the life of the gravel bank. Ms. Sigfridson explained that the Commission cannot put a date on it and also that you would need to point to evidence on the record as to why you could approve Phase 1 meets the standards, but that Phase 2 does not meet the standards. Mr. D’Agostino stated that he has identified five Sections in the Zoning Regulations. Mr. Tanner commented that restoration of Phase 1 should need to be done before starting Phase 2. Mr. D’Agostino feels that leveraging restoration, which is a requirement, against opening Phase 2, is not a good deal. He said that the business won’t end until Phase 1 ends in the fall, and, in that time, he can ease out of the business which we were told he could move it out in less than a year. E. Starks asked if Mr. D’Agostino thinks that Mr. Jolly could phase out the business in less than a year. Mr. D’Agostino stated that he does not know the answer to that question. Mr. D’Agostino said that, two years ago, he had stated that Mr. Jolly should be thinking about phasing out the business. Mr. Tanner stated that he thinks everyone is in agreement that it must come to an end, but this fall is not very far away.

Ms. Sigfridson asked if anyone else on the Commission would like to consider allowing Phase 1, but not Phase 2. There were no comments from the Commission regarding this question. Ms. Sigfridson stated that this would not be the Commission's compromise. Mr. D'Agostino stated that he knows where he is going to stand.

Ms. Roberson mentioned that an alternate proposal could be to not allow importation. Mr. D'Agostino stated that he does not know of any way to observe it or control it. Mr. Ives spoke of using counters and that there should be very few trucks going in. C. Kelleher commented that this would address cutting down on truck traffic and the accompanying dust/nuisance. She feels that this is worth exploring. Some Commission Members indicated interest. Discussion continued. Mr. D'Agostino continued to voice disagreement with allowing Phase 2. He feels that this business will still be in operation five years from now. Ms. Sigfridson explained that gravel operations (using the special permit standards) fundamentally, are not in harmony with conforming with the neighborhood, but are specifically allowed an exception because we, as a society, need them. Therefore, it is not ideal to have it there, but we do allow them. She feels it is a little arbitrary to allow Phase 1, but not Phase 2. She feels that if we can allow Mr. Jolly to do his business and to take the material out of the ground, that is there, in a way that is less disruptive to the neighbors is a win-win situation. Mr. D'Agostino disagreed. Ms. Kelleher commented that, if the imported processing is eliminated, there would be no incentive to keep it going. Mr. D'Agostino commented that the only way to keep track is with counters (the amount of weight of the truck that comes in). Mr. Ives feels that the neighbors would be watching the trucks and that they would let the Town know if they suspect non-compliance. He feels that this is a compromise that provides most of what it takes to slow down the operation and have it go in a year, or maybe two. He said there won't be incentive for him to be there any longer if he cannot bring anything more in.

Mr. D'Agostino asked if anyone on the Commission could guarantee the following:

- That restoration would start when Phase 1 is complete.  
Ms. Roberson read from the notes on the plans regarding the timing of restoration which also spoke of enforcement action including the use of bond funds.  
Mr. Ives explained that if it were a condition of approval, the Commission has the right to call the bond if they do not comply with conditions of approval.  
Ms. Kelleher and Ms. Sigfridson stated that they do not feel that anyone on the Commission would hesitate to exercise the right to use the performance bond should the need arise.  
Mr. D'Agostino stated that he (in the four years that he has been on the Commission) has never seen the Commission call a bond even though there were many times they could have.
- That there would not be a Phase 3.  
Ms. Sigfridson explained that there no way to know because there could always be another Application.  
Mr. D'Agostino stated he does not want to put 50+ people out of work, but there needs to be a way to phase it out and it may take a year which is fine (whatever it takes). He feels that his plan is a fair and equitable way to phase the business out.

There was discussion regarding how long it would take to remove the material and get rid of the stockpiles. Ms. Sigfridson commented that Mr. Held had estimated that, based on the proposed plans, they would be out of there within a couple of years. She noted that there is no guarantee, nor is it within the Commissions's authority to require a guarantee regarding the timeline.

A. Fitzgerald suggested that clearing limits for Phase 2 be added to the plans so that they don't remove the whole buffer. J. Roberson clarified 200' from a structure on adjacent land, 100' from a property boundary, and she explained about road slope within proximity. M. Sigfridson read from Section 13.5.2 (25 feet). The Applicant chose to go 100 feet.

M. Sigfridson asked if the Commission had any comments regarding conditions. C. Kelleher asked about if restoration can start on other areas (not involved in Phase 1) on the property. Ms. Roberson explained that there are 21 acres open (which are in use) at this time and referred to and explained what she had recommended in the Staff Guidance Sheet. There was discussion. Ms. Roberson read from Section 13.5.10. She noted that she had suggested a phased restoration plan where the Commission could prioritize which areas should be restored first, recognizing that there are portions of the site that are in use.

Ms. Sigfridson suggested the following:

- Change the wording of #4 of the Staff Guidance Sheet (regarding imported materials) to, "No material shall be imported to the site. Only material on site as of the date of approval may be processed." She feels that increased traffic, noise, dust, concerns about the way in which it is counted/double counted, make importation of material to the site out of harmony with the residential neighborhood. Neighbors on that street are clearly impacted due to the people who have attended and testified at the public hearings and the number of signatures on the petition that had been submitted. Importation is the main concern of neighbors as well as property values.
- Remove #7 (regarding vehicle counter)

J. D'Agostino suggested changing #7 (regarding the number of truck trips). A. Fitzgerald commented that 50,000 c.y. would take one year to remove at 60 truck loads per week (12 trucks per day - each holding 15 c.y.). Mr. Ives feels that 12 trucks per day would be a much more reasonable number and he asked if there would be a need to count. Discussion continued.

A. Tanner asked about whether Mr. Jolly could bring in material to mix with what he has on site to sell? M. Sigfridson feels that it would need to be no importation at all for enforcement purposes.

E. Starks asked about an effective date to wrap up importation. There was discussion. No importation after August 1<sup>st</sup> to allow some time for Mr. Jolly to transition his business. Mr. Starks suggested that Mr. Jolly be allowed to bring in material if needed. Mr. D'Agostino feels that whatever is needed is already there. Ms. Sigfridson stated that Mr. Jolly had not mentioned that it was needed during the public hearing (when it was discussed).

Motion was made by C. Kelleher to approve the Gravel Special Permit application of Brooklyn Sand and Gravel for the property located at 530 Wauregan Road, Assessor's Map 30, Lots 97, 97-1, and 97-2, identified in the files of the Brooklyn Land Use Office as SPG 19-002, proposed removal of 112,000 cubic yards of sand and gravel, and processing of such material, in accordance with all final documents and testimony submitted with the Application and including the following conditions:

- 1) The Inland Wetlands and Watercourses Commission approval with conditions and the Planning and Zoning Commission approval with conditions must be included on the final recorded special permit plans. Draft final approved plans shall be printed on paper and submitted to town staff for checking prior to printing on archival material. The final approved plans bearing the seal and signature of the appropriate professionals and the July 2, 2024 expiration date shall be printed on archival material, signed by Commission Chairs, and recorded along with the Special Permit in the office of the Town Clerk.
- 2) The submitted performance bond in the amount of \$200,000 shall remain in place for the life of the operation including restoration of the property to the satisfaction of the Town unless modified by the Planning and Zoning Commission or its designated Staff.

- 3) Excavation is limited to the area shown on the plans dated 3/5/19, last revised 6/17/19, prepared by Provost & Rovero.
- 4) Material excavated on site may be processed, but no off-site material shall be imported to the site for processing or other uses after August 1, 2019.
- 5) Reporting shall be submitted by the permittee to the Brooklyn Zoning Enforcement Officer quarterly in March, June, September, and December.
- 6) All truck traffic to and from the operation will remain off Maynard Road and travel on State highways to and from Brooklyn Sand and Gravel on Wauregan Road.
- 7) Dust shall be controlled throughout the year using water or calcium chloride as appropriate for conditions. All trucks exiting or entering the site must have their tarp covers closed. Sweeping of the entrance area shall occur regularly and as needed.
- 8) Restoration shall commence upon completion of each phase of excavation as provided in the Zoning Regulations and as noted in the Restoration Notes on page 6 of the approved plans. Restoration for the 21 acres of additional areas (including parking and driveways, processing plants and ponds, raw and finished material stockpiles) shall commence within the timeframe specified in the Restoration Notes on page 6 of the approved plans. Failure to do so will result in appropriate enforcement action including the use of bond funds to restore the site.
- 9) Three hundred feet of snow fence shall be installed along the western edge of the Phase 1 Excavation Area at the top of the slope and shall remain in place, along with the existing snow fence around the process water pond, to meet requirements for safety as per Section 13.6 of the Brooklyn Zoning Regulations due to steep slopes. There shall be no modification of this requirement unless approval has been granted by the Zoning Enforcement Officer.
- 10) The permit shall be approved for a one-year period from date of issue on July 2, 2019. The renewal date is July 2, 2020. The renewal procedure shall be as specified in Section 13.7 of the Brooklyn Zoning Regulations.

Second by A. Fitzgerald.

Discussion:

J. D'Agostino explained that he feels that the the time has come to help Mr. Jolly to find a way out and that the suggestions by the Commission Members fall short of the Commission's responsibility to do what is right for him, his employees and the Town of Brooklyn.

A. Tanner voiced disagreement. He feels that there is tremendous incentive to finish as his business has been cut in half.

M. Sigfridson explained that she feels this is an appropriate motion. She does not see why the Phase 2 portion of the Application does not comply with the Regulations and, therefore, she feels that it is appropriate to approve it. She said that she has stated why she feels that it is inappropriate to approve the importation of materials.

Mr. Ives commented that Phase 2 allows him to take out the remaining gravel which they said they can do in a two-year period and then, there is no more gravel. He feels that to move faster would severely hamper Mr. Jolly running his business.

Mr. Tanner commented that gravel is a limited resource and it makes sense to take it out.

Motion carried (5-1-0). J. D'Agostino was opposed for the following reason:

- By including Phase 2, it compromises the following Sections of the Zoning Regulations: 5.22 Harmony with the Community; 5.8 Environment Impact; 13.5.11 Requirement for Restoration upon the Completion of the Site (which has not been the case); 13.1 Intent of Gravel Banks (which he believes this permit does not honor); and 13.5.4.3 Truck Traffic.

Ms. Sigfridson expressed thanks to all for their help with making this decision to approve the permit with specific conditions.

R. Ives left at approximately 8:00 p.m.

## **VII. New Business:**

### **a. Applications:**

1. **SPR 19-003 Site Plan Review** – Charles Pike, 52 Wolf Den Rd., Roof-mounted solar panels in Village Center District.

Melissa Burke, Program Coordinator for Sun Run, represented the Applicant and provided photos of what the house at 52 Wolf Den Road would look like with solar panels on it. She also provided photos of a similar house in the Historic District in Kent showing solar panels that they had installed there. She also provided copies of specs for the solar panels and site plans. Mike Coutu, Branch Manager for Sun Run, was also present.

J. Roberson oriented the property by displaying an aerial photo of the area. The property is in the VCD and is within a National Registered Historic District and is labeled as a contributing structure. She stated that the buildings were in very sad condition a few years ago and renovations that have been done have improved the historic look of the property. The barn has been converted into a habitable structure. The original house, still in the process of being renovated, had a porch which has been removed. There are a lot of historic buildings in the vicinity. Ms. Roberson referred to information from the Department of Interiors Restoration Guidelines (as amended) which was included in packets to Commission Members. The buildings face south. They are proposing to put the panels on the street side on the breezeway and on the barn. Ms. Roberson explained that there are solar panels on buildings in the area now. She explained that there are only two options for solar panels on this property: either the proposed location; or ground-mounted in the rear (where it would be less conspicuous from the road). She asked that the Commission consider whether the proposed location is in keeping with the standards of the District.

Ms. Burke and Mr. Coutu explained that the panels would sit approximately 4 inches from the roof. There was discussion. Mr. Starks commented that he is opposed to solar panels on homes in that neighborhood.

**E. Starks** – not in favor. He is opposed to solar panels on homes in that neighborhood.

**M. Sigfridson** – feels that roof-mounted is less aesthetically intrusive than ground-mounted. She feels that it is appropriate to treat solar panels differently in the VCD.

**C. Kelleher** – does not feel comfortable with taking a position that tells a homeowner in Brooklyn that they can't have solar panels. She wants to be consistent.

**J. D'Agostino** – asked if other options were considered. Mr. Coutu explained that the other option would be ground-mount due to the pitch of the roof.

There was discussion regarding the authorizing Statute (VCD not being frozen in time). The intent had been rewritten. Ms. Roberson said that the intent of the Zone was to not inhibit improvements and to allow for change as long as there was an appropriate level of attention given to maintaining the look and preservation. She said that you could make the argument that by adding solar panels, you are actually fostering the preservation of these buildings. Ms. Sigfridson added, in a manner that maintains the historic value and distinctive character.

There was discussion regarding the electrical conduit which Mr. Coutu explained they would move to the side (for general aesthetics). Mr. Coutu stated that it looks like the electrical service had been upgraded recently. Ms. Burke explained that in cases where they find that the service needs to be upgraded, they take care of it and bring it up to code. Given the electricity that the Applicant uses, it looks like the proposed panels are all that will be needed.

Mr. D'Agostino commented as to whether to have a public hearing. Ms. Roberson displayed an aerial photo showing the locations of neighbors. There is no neighbor directly across the street, but there are houses in close proximity on either side and one further down across the street. She also displayed the VCD boundaries. There was discussion. Ms. Kelleher expressed that she was not in favor of requiring a public hearing. This Application would still be site plan review under the draft regulations.

Motion was made by A. Tanner to approve the application to install roof-mounted solar panels at Charles Pike's house at 52 Wolf Den Road on the terms that they have and it is viable with the operation of the house. Second by C. Kelleher. There was no discussion.

Results of Vote: A. Tanner – yes; C. Kelleher – yes; M. Sigfridson – yes; J. D'Agostino – no; E. Starks –no; A. Fitzgerald – abstained. (3-2-1).

There was discussion:

Mr. Fitzgerald explained that he abstained because he does not feel that he has the right to tell someone what they can do with their house, but he dislikes solar panels, so he did not want to vote. He feels that there are issues with solar energy and he feels that there has not been enough research done regarding the batteries. The Town Attorney will be consulted as to whether the abstention would count as a vote in this instance.

Mr. D'Agostino stated that he was opposed because he feels that it compromises the historical nature of the neighborhood and is not consistent with the design standards.

Mr. Starks was opposed because of the reasons that he had discussed earlier on the record (i.e. He is opposed to solar panels on homes in that neighborhood).

Ms. Roberson will inform Ms. Burke and Mr. Pike of the Town Attorney's opinion.

**b. Other New Business: None.**

**VIII. Reports of Officers and Committees:**

1. Budget (included in packets to Commission Members).
2. ZEO's Report (included in packets to Commission Members).  
There was discussion.
3. Correspondence – None.
4. Chairman's Report – None.

C. Kelleher asked why the Commission would want to allow imported processing to continue in the new Regulations. She does not see the rational for allowing additional processing in a residential neighborhood. She said there is not a good way to measure it. There was discussion. Mr. D'Agostino suggested removing it from the Draft Regulations. Ms. Roberson will contact all of the people who had given input regarding the Draft Gravel Regulations to let them know that the Commission is thinking of not allowing importation of material for processing in residential zones.

**IX. Public Commentary**

**A.J. Kerouac:**

- He asked about the time between the expiration date of the last permit and today's approval (that does not allow importation). How is everything that has been imported during that time counted? He asked if they are in violation.  
Ms. Roberson explained that it is not an enforceable violation. They were operating without a permit, but they submitted their Application originally in January. There was discussion.
- He commented that he followed a fully-loaded gravel truck from Day Street to Route 205 earlier in the day.
- There was discussion regarding counters/cameras.
- He said that he had asked Ms. Burke of Sun Run if the property is in the Green Historic District (because there are different rules for registered properties) and also about upgrading of the solar panels.

**X. Adjourn**

Motion was made by J. D'Agostino to adjourn at 8:58 p.m. Second by A. Tanner. Motion carried unanimously (6-0-0).

Respectfully submitted,

J.S. Perreault  
Recording Secretary