

2014-06-04 P&Z Reg Mtg Minutes

**Planning & Zoning Commission
Town of Brooklyn
Regular Meeting Minutes
Wednesday, June 4, 2014
Clifford B. Green Meeting Center
69 South Main Street
7 p.m.**

- I. Call to Order** – Carlene Kelleher, Chair, called the meeting to order at 7:07 pm.
- II. Roll Call** – Carlene Kelleher, Deane Rettig, Craig Dunlop, Donald Francis, David Fuss, Aaron Kerouack, Derek Wesolowski. Michelle Sigfridson was absent with notice.

Staff Present – Jana Roberson, AICP, Land Use Administrator.

- III. Seating of Alternates** – None.

- IV. Adoption of Minutes:**

1. Regular Meeting Minutes May 7, 2014.

Motion by D. Rettig to approve the Minutes of Regular Meeting of May 7, 2014, as presented. Second by D. Francis. Motion carried 6-0. David Fuss abstained because he had not attended that meeting.

- V. Public Commentary**

Steven Goulter, The Learning Center, 464 Pomfret Road stated that he will be applying for a zoning/building permit next week for a greenhouse. He stated that he feels that he would not need to come before the Commission because the property is zoned RA.

J. Roberson stated that she had consulted with Land Use Attorney, Peter Alter, last week regarding the greenhouse and whether it would qualify as an agricultural use. Attorney Alter's opinion was that

agricultural would be a secondary use to the primary use of private school, and therefore, would require special permit.

Mr. Goulter stated that he had spoken to J. Roberson over a month ago regarding this matter and that Ms. Roberson had stated (at that time) that it probably wouldn't require a special permit. Therefore, he went forward and the greenhouse is ready to be shipped here and he has people ready to work to install it.

Motion by D. Fuss to poll the Commission regarding whether the 30' x 96' greenhouse structure that The Learning Clinic will be applying for a building permit to build on their property at 464 Pomfret Road for educational purposes should be considered a secondary/ accessory use (agricultural) to the primary use (private school) to determine whether it would require public hearing for special permit. Second by D. Francis.

Discussion ensued.

Motion by D. Francis to support the original opinion that J. Roberson expressed to Mr. Goulter during an informal conversation when he approached her (a month prior) on the subject of the greenhouse that The Learning Clinic would like to build on their property at 464 Pomfret Road. She had, at that time, expressed that application for a special permit may not be necessary. She has, however, consulted with the Land Use Attorney, Peter Alter, and found that his opinion differs. She informed the Commission of Attorney Alter's comments that agriculture would be a secondary use to the primary use of private school which would require application for special permit with public hearing.

Discussion continued before taking a poll of the Commission according to the motion made by D. Fuss earlier. The Commission consulted the Regulations for the possibility of site plan modification.

There was no actual vote by the Members of the Commission for the motion made by D. Fuss for a poll, however, they went ahead with the poll. Results as follows:

For the poll, the Commission Members answered the question, "Is The Learning Clinic's greenhouse structure agriculture on its own or is it part of the school?"

Results of Poll: D. Wesolowski – part of the school; D. Fuss – part of the school; D. Francis – part of the school; Deane Rettig – part of the school; Carlene Kelleher – part of the school;

C. Kelleher suggested that J. Roberson follow up with Land Use Attorney, Peter Alter, to see if there is a way that the Commission can legally (in accordance with the Regulations) accommodate The Learning Clinic's request to consider the greenhouse as purely agricultural and not require special permit application. D. Fuss stated that this would satisfy him. D. Francis stated that there is no guarantee of the end result.

D. Francis withdrew his motion above.

Motion by D. Francis to reject the opinion and recommendation of Land Use Attorney, Peter Alter, regarding the greenhouse that The Learning Clinic, would like to build at their 464 Pomfret Road property. Second by D. Fuss. There was no vote on this motion.

Back to the poll:

C. Dunlop – part of the school; Aaron Kerouack – part of the school. All seven Members present agreed with Land Use Attorney, Peter Alter, that the greenhouse would be part of the school.

D. Francis reworded his Motion to the following: Motion by D. Francis to reject the opinion and recommendation of Land Use Attorney, Peter Alter, regarding the greenhouse that The Learning Clinic would like to build at their 464 Pomfret Road property, and to move forward with the original thought of J. Roberson during the informal conversation she had with Mr. Goulter a month ago being that she thought that application for special permit may not be necessary. Second by D. Fuss.

Discussion ensued.

Results of Vote: D. Francis – yes; D. Fuss – yes; D. Wesolowski – no; D. Rettig – no; Carlene Kelleher – no; C. Dunlop – no; A. Kerouack – no. Motion denied 5-2.

Motion by D. Rettig that J. Roberson consult with Land Use Attorney, Peter Alter, on Thursday, June 5, 2014 (if available) to ask whether

there is a way for the Commission to proceed without requiring The Learning Clinic to go through the special permit process regarding the greenhouse structure that they would like to build on their property at 464 Pomfret Road, with the hope of having a response for Mr. Goulter of The Learning Clinic by Monday, June 9, 2014. Second by C. Dunlop.

Mr. Goulter informed the Commission that The Learning Clinic will be applying for a special permit for a pool enclosure.

Mr. Goulter also informed the Commission that The Learning Clinic has a residential property adjacent to the main campus area and that they would like to put in a small turn-out area in the driveway so cars can pass each other safely.

Discussion ensued.

C. Kelleher stated that there was a consensus among the Commission that there was not a problem with this issue.

Motion carried unanimously.

VI. Unfinished Business:

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

- 1. Review of Zoning Permit Revision.

J. Roberson gave an explanation of the revisions to the Zoning Permit. A copy had been provided in the packets to the Commission Members.

Motion by D. Rettig to endorse the language drafted/added by J. Roberson to the Zoning Permit as follows:

On the front side

- Applicant's Name, Phone, and Street Name & Number

On the back side

- Before a Certificate of Occupancy can be issued, a Certificate of Zoning Compliance must be obtained from the Zoning Enforcement Officer certifying that the work has been completed in a manner consistent with the Zoning Permit application and that the requirements of the Zoning Regulations are met. This requires a final inspection by the Zoning Enforcement Officer.

- RIGHT TO APPEAL ZONING ACTIONS

Any action of a Zoning Enforcement Officer, including the issuance of a Zoning Permit or a Certificate of Zoning Compliance, is an appealable action within thirty days of issuance as per Connecticut General Statutes Sec. 8-7. The Town of Brooklyn does not publish legal notices for the issuance of a Zoning Permit or a Certificate of Zoning Compliance. You are hereby informed that you may publish a legal notice to certify the issuance of a Zoning Permit or a Certificate of Zoning Compliance in order to start the appeals period. Any such notice shall contain (A) a description of the building use, or structure, (B) the location of the building, use or structure, (C) the identity of the applicant, and (D) a statement that an aggrieved person may appeal to the zoning board of appeals in accordance with the provisions of Connecticut General Statutes 8-7, as amended.

Second by A. Kerouack. Motion carried unanimously.

2. Review of 2014 Priorities.

J. Roberson provided copies of the revised sheet to the Commission Members for their review.

The Commission decided on the following changes:

- Strike “(re-write)” from the third bullet item: Build-out Analysis (and Charrette) of the PC District and change the Timeframe to Nov/Dec 2014;
- Change the Timeframe for the fourth, fifth, and sixth bullet items to Mid 2015.

Discussion ensued.

J. Roberson stated that for Charrette, a facilitated public input process is probably a better way to state what she is hoping for.

C. Kelleher stated that the Subdivision Regulations will not be included in the re-write and she is hoping that the Subdivision Regulations Subcommittee will become active again to review and revise those regulations. She also mentioned that there is just one small section of the Gravel Bank Regulations that needs to be amended.

VII. New Business:

a. Applications:

1. SP14-003 Pierce Memorial Baptist Home, 44 Canterbury Road, Map 24, Lot 148, VCD Zone, 24.12 Acres; Handicap Access Ramp.

Thomas Gaccione, Administrator, represented Pierce Memorial Baptist Home. He stated that they would like to install a new handicap-access ramp to the right side of the building. This will require new footing under the porch to support it and new decking. It is to be pressure treated and painted white.

J. Roberson provided photographs that she had obtained from the internet as no photos had been submitted. C. Kelleher stated that public hearing is required.

J. Roberson stated that more detail is needed for the handicap ramp (a framing plan showing distances, grades, etc.).

Motion by D. Rettig to schedule a public hearing on Application SP14-003 Special Permit in VCD for Pierce Baptist Home, 44 Canterbury Road (Map 24, Lot 148) to the next regular meeting of the Planning and Zoning Commission to be held on July 2, 2014, at 7:00 pm, at the Clifford B. Green Memorial Building located at 69 South Main Street, Brooklyn, CT. Second by D. Fuss. Motion carried unanimously.

2. SD14-001 Jeff Weaver, Tatnic Hill Road, Map 15, Lot 5 RA Zone, 8-Lot Subdivision.

Paul Archer, Archer Surveying, LLC, represented the Applicant, Jeff Weaver, who was seated in the audience.

C. Kelleher asked the Commission to determine whether or not to require public hearing for this Subdivision as it is not mandatory. Mr.

Archer stated that this is a conservation subdivision that is fairly straightforward with no roads (everything is off of the main road), most of the houses within 100 feet of the main road, no major grading, no cuts, no fills, very simple. He stated that they have been in for preliminary review several times, they have been approved by Wetlands and would like the Commission to hear this Application tonight and not have to wait for a public hearing. Mr. Archer handed a copy of a letter that he wrote to Nick Bellantone, State Archeologist, to J. Roberson to be submitted for the record.

J. Roberson stated that she has information from the Wetlands Commission.

J. Roberson explained that this is a proposed conservation subdivision of a 19.5 acre parcel that has never been subdivided before. They would like to make eight lots. There was one earlier informal presentation to the P&Z Commission where the Commission was receptive to the conservation subdivision option which will allow the house lots to be considerably smaller with the remainder of the land dedicated to open space. This proposal would provide 50 percent open space (9.98 acres) which is ten percent more than what is required. The Conservation Commission did not feel that fee in lieu of open space was appropriate because there is habitat value, it is part of a large unfragmented forest block, and it is quite steep so they do not feel it is appropriate for public land.

J. Roberson stated that the recommendation of the Conservation Commission to the P&Z Commission is a "Declaration of Permanent Restrictions and Covenants" (J. Roberson had drafted this language). She provided copies of the draft to the Commission Members for their review/consideration. She explained that the ownership would remain private, but, by deed, there are only certain things that can be done with that land.

Mr. Archer showed on the drawing the area proposed (1.21 acres which abuts the Eber Farm) to be deeded to Mr. Eber to become part of the Eber Farm. Mr. Archer showed the area proposed for open space and explained that they would like to deed this to Lot #8 with the "Declaration of Permanent Restrictions and Covenants."

J. Roberson read from the "Declaration of Permanent Restrictions and Covenants" as recommended by the Conservation Commission:

1. No structure of any kind may be built on said parcel.
2. No motorized vehicles.
3. No application of herbicides or pesticides.
4. No hunting or trapping.
5. No dumping.
6. No fires.
7. No livestock or clearing of land for agricultural purposes.
8. No mining or natural resource extraction.
9. No harvesting of timber or firewood except as part of a long-term management plan prepared by a professional forester. No liquidation cuts or clear-cutting are allowed.
10. At any point in the future, if land in the general vicinity of said parcel is protected as public open space and public access is needed over this parcel, then this parcel may be utilized for non-vehicular access by the public to access interior open space. If necessary, the stone wall located parallel to Tatnic Hill Road on said parcel may need to be opened to allow for pedestrian access.

J. Roberson explained #10 and stated that Land Use Attorney, Peter Alter, will review the “Declaration of Permanent Restrictions and Covenants” if endorsed by the P&Z Commission.

Discussion ensued.

J. Roberson stated that the P&Z Commission is receiving this Application tonight and needs time to review it. She did not recommend acting on it tonight and she offered to consult with Land Use Attorney, Peter Alter, to see if it could be scheduled for the next special meeting on June 17th. She explained that public hearing is only mandatory if it is a re-subdivision. Mr. Archer stated that this is not a re-subdivision.

Discussion ensued.

J. Roberson mentioned some potential conditions for approval (provided the 50 foot right-of-way is met – which she would like to verify):

- Minimize the cuts in the stone wall along the road and to require them to rebuild it on either side;
- To retain the rear stone wall continuous line that goes through all the lots. This would be part of preserving the cultural

resource.

- Open space area to be marked with plastic discs/placards "Protected Land."

C. Kelleher asked the Members of the Commission if they have decided whether or not to require public hearing:

D. Wesolowski – public hearing; D. Francis – no public hearing; D. Fuss – no public hearing; D. Rettig – no public hearing; C. Dunlop – no public hearing; A. Kerouack – public hearing. Consensus for no public hearing.

Mr. Archer offered to send letters to notify the all the abutters so that if they had questions, they could go to J. Roberson's office to look at the plans, and/or attend the special meeting to voice their opinions.

C. Kelleher stated that this would be a nice compromise.

Mr. Archer gave his presentation:

- Eight lots – all a little greater than 30,000 s.f. (except for Lot #1).
- Most have 100' frontage, some have more.
- Everything is tighter with the conservation subdivision (houses/wells/septic system locations).
- Overhead electric.
- Wetlands approved – little or no impact on wetlands. Very minor grading as everything flows gently to the north.
- Ground water in the area is pretty high.
- Most of the houses will be raised ranches and capes of approx. 1250 s.f.
- No sight line issues.
- No issues with drainage or watercourses.
- Open space to be deeded to one or two lot owners (per decision of the Commission) with the "Declaration of Permanent Restrictions and Covenants."

C. Kelleher urged the Commission Members to review the Conservation Subdivision Regulations.

Motion by D. Rettig to table Application SD14-001, Eight Lot Subdivision for Jeffrey Weaver, Tatnic Hill Road, Map 15, Lot 5 RA Zone, 19.5 Acres, to the next special meeting, Tuesday, June 17, 2014, at 7:00 pm, at the Clifford B. Green Memorial Building located at 69 South Main Street,

Brooklyn, CT. Second by D. Fuss. Motion carried unanimously.

3. SPG14-001 Strategic Commercial Realty, Inc. d/b/a/ Rawson Materials, Rukstela Road and Allen Hill Road Extension, Map 30, Lots 12A, 15, 16, 17, and 18, RA Zone; Removal of earth materials from site.

J. Roberson stated that no one was present to represent Rawson Materials. The Application was received on May 27th and was grossly deficient:

- They did not use the proper forms
- Don't know how much material they are removing
- They have not submitted a Wetlands Applications

J. Roberson explained that Rawson's gravel special permit had expired in 2012 and that they have not renewed it, so they have been operating without approval. She sent a Notice of Zoning Violation and urged them to submit an application. However, she reviewed their plans (she provided copies of the first two sheets to the Commission Members) and compared them to the aerial photo and tax map and she discovered that they have conducted gravel removal in an area that has never been referenced in any of their applications. She stated that there were ponds that no longer exist. She stated that the plans they submitted are from an old survey. This is a cause for concern.

Discussion ensued.

J. Roberson will issue a Cease and Desist Order. She suggested that the Commission receive the Application and allow them more time to submit a complete application by the next meeting.

D. Francis asked if Rawson had met their closure plan for the permit that expired in 2012. J. Roberson stated that she suspects that they have not (they are not done with their excavating). D. Francis asked if they ever redeemed their bond. J. Roberson explained that the company usually does not send a letter (stating that it is still good) unless asked for it. It is more of a paper bond.

Discussion ensued.

D. Francis stated that when J. Roberson speaks to Attorney Alter, she should ask when a permit is issued, whether the access has to be onto

Brooklyn Road, or if it can go southerly and cross a road in the adjoining town. J. Roberson stated that there is an inter-municipal notice requirement for any special permit that is within 500 feet of a Town boundary. She stated that it is her understanding that, when Rawson started using this southern haul road into Canterbury, it was never part of a previous approval.

D. Francis stated that Rawson still owes the Town road work.

Discussion ensued.

Motion by D. Rettig to accept Application SPG14-001 Strategic Commercial Realty, Inc. d/b/a/ Rawson Materials, Rukstela Road and Allen Hill Road Extension, Map 30, Lots 12A, 15, 16, 17, and 18, RA Zone; Removal of earth materials from site, and table any action, with regard to this Application, until the next regular meeting of the Planning and Zoning Commission to be held on July 2, 2014, at 7:00 pm, at the Clifford B. Green Memorial Building located at 69 South Main Street, Brooklyn, CT.

D. Rettig withdrew this motion after being informed that the Commission does not have to vote to accept.

b. Other New Business – None.

VIII. Reports of Officers and Committees:

1. Zoning Enforcement Officer's Report May 2014.

J. Roberson reported:

- 133 Wauregan Road, Dale Lyon. Complaints regarding activity on the property. She found that he has been operating his home enterprise (landscaping business) without a permit for quite some time. She asked him to apply for a home enterprise permit and Wetlands permit. DEEP contacted her regarding air quality/dust. The Army Corp. of Engineers contacted her regarding dredging of the pond. Mr. Lyon has been cooperative.
- Brooklyn is part of a traffic safety experiment – On Route 6 center line rumble strips have been installed.

2. Wal-Mart Update.

- D. Fuss stated that Wal-Mart will be replacing trees this weekend.

- J. Roberson stated they will also replace the island trees (under contract).
- J. Roberson stated that the Town Engineer prepared a letter with recommended action for repair of the detention basin.

Discussion regarding Courtesy Ford.

D. Rettig mentioned that, at the corner of Mason and Tatnic Road, he almost had a second collision with another vehicle. He feels the white fence/shrubs are a hazard – at the stop sign, you can't see up the street. J. Roberson will look into it.

3. Correspondence - None.
4. Regulations Subcommittee – Nothing.
5. Route 169 Recommendations Follow-up Subcommittee – Nothing.
6. Budget – In Packets.
7. Chairman's Report – None.

IX. Public Commentary

Linda Trahan, 26 Maynard Road, spoke on the Rawson situation. She stated that the aerial photo wouldn't show what is currently there because the majority of the excavation happened after that time. In summer/fall of 2013, they took out 350,000 c.y. and Mr. Rawson testified to that in court. She said that he stated that Brooklyn was aware that he was using the gravel haul road to remove it.

Ms. Trahan asked that the Cease and Desist be issued. She provided copies of an article from 2006 (Brooklyn was reviewing pit permits because it was a problem).

She stated her continued concern for the record. She stated that it seems that they get away with whatever they want. She asked for vigilance.

X. Adjourn

Motion by D. Rettig to adjourn at 10:07 pm. Second by D. Fuss. Motion carried unanimously.

Respectfully submitted,

J.S. Perreault

Recording Clerk