

**ZONING BOARD OF APPEALS
REGULAR MEETING MINUTES**

The Brooklyn Zoning Board of Appeals held a public hearing and special meeting on Tuesday, March 26, 2019 at 6:30 p.m. at the Clifford B. Green Meeting enter, 69 South Main Street, Brooklyn, CT on the following:

Present: Dan Ross, Bill Macnamara, Stephen Mylly and Lucien Brodeur.

Absent: Bruce Parsons with notice.

Staff Present: Martha Fraenkel, ZEO, Rick Ives, First Selectman, Attorney Peter Alter, Audrey Cross-Lussier, Recording Secretary.

Also Present: David Held, Bob Kelleher, Pam Lukin, Linda Trahan, Ken Niemann, Marcel Dessert, Michael Galloway, Maurice Lapierre, public in attendance.

Call to Order: The meeting was called to order at 6:30 p.m.

Seating of Alternates: None.

Approval of Minutes: Regular Meeting Minutes January 28, 2019.

A motion was made by Lucien Brodeur to accept the meeting minutes of January 28, 2019 as written. Stephen Mylly seconds this motion. No discussion held. All in favor. The motion passes unanimously.

Public Hearing

Reading of Legal Notice: Chairman Ross reads the public hearing notice into the record and opens the public hearing.

ZBA19-002 Brooklyn Sand and Gravel LLC, 530 Wauregan Road, Map 30, Lot 97, RA Zone for variances of the Zoning Regulations pertaining to an existing gravel operation, as follows:

1. Section 13.3.3.1 for a ten-year permit term in lieu of one year currently allowed;

2. Section 13.5.2 for 1) a setback of 20 feet from property line where 100 ft is required; 2) setback of 50 ft from offsite structures where 200 ft is required; 3) zero setback between excavation and highway line where 100 ft is required;
3. Section 13.5.3 for a slope of up to 30% within 25 feet of a highway where no slope exceeding 10% within 200 ft of highway is required;
4. Section 13.5.4.2 to increase the amount of material that may be imported for processing on site, from an amount equal to the material mined on site to ten times the amount mined on site.

David Held, P. E., with Provost and Rovero represents application ZBA19-002. Mr. Held submits copies of certificate of mailings to adjoining property owners for the record.

Mr. Held comments that the applicant is requesting several variances each as a separate request. The applicant would like to give the Commission the flexibility and ability to act on pieces and parts as seen fit.

Secondly, the applicant understands there are specific requirements that the Commission has when evaluating the application by granting variances - proof of hardships, the hardships are not self-imposed, the hardships are not financial in nature and being unique to the property.

In conversation with Ms. Fraenkel, the Commission may request a site walk to look at the property to review the various variance requests.

Mr. Held reviews an aerial photo taken in 1970 of the property and surrounding area. Since 1934 to 2016 the State has done periodic aerial photography of the entire state. This particular year's photo is handy because the Town of Brooklyn's Zoning Regulations were enacted in 1973.

The highlighted area in orange adjacent to the Quinebaug River shows there was gravel excavation and processing going on at this site in 1970 when the photo was taken. Mr. Held references the electrical transmission right of way through the property, the original cemetery plot for the catholic church off of Route 205 where there has been an expansion adjacent to the site well within the boundaries to the subject properties. To clarify the location for Commission members, Mr. Held demonstrates the site entrance, the church, cemetery and electrical transmission lines on the aerial photo.

Mr. Held reviews sheets 2 and 3 of the excavation plans to locate where the variance requests will take effect. In summary, Brooklyn Sand and Gravel excavate material on the site; they import material from other locations; the combined total of excavation and total imported materials are processed on the site with two processing plants that produce fine and coarse aggregate which are various grades of sands and crushed/washed stone as concrete products to support Jolley Concrete and Jolley Block. The reference on the top of the sheet is the Quinebaug River which is the boundary of the property as well as the town line between Plainfield on the upper part and Brooklyn on the lower part. The bottom of the sheet is Route 205.

The variances requested effectively only have to do with one parcel Lot 97 which has frontage on Route 205. There are other small lots 97-1 and 97-2 which are part of the overall site. The truck entrance is Lot 97-1/Lot 97-2. Chairman Ross asked if this is depicted on the plan. Mr. Held comments it is referenced in the notes, but not the individual lot lines.

Mr. Held demonstrates on site plan and discusses the variances requested:

Section 13.5.2 for 1) a setback of 20 feet from property line where 100 ft is required; 2) setback of 50 ft from offsite structures where 200 ft is required; 3) zero setback between excavation and highway line where 100 ft is required.

The site is regulated and inspected by MSHA on a regular basis. To effectively reuse this lot for any useful purpose, the hillside has to be removed. It can be done as part of a subdivision application showing grading. This is obvious usable sand and gravel material. The applicant would like to remove this material and put it to good use and prepare the property for a future reuse. It is the applicant's desire to provide a secondary means of access to maintain the power lines from the frontage and along the easement. The proposed grading will allow this. In order to effectively do the grading, the setback variances are required. Impact to the neighbors would be fairly minimal. The digging would be from the current active side working the bank towards Route 205. There is no opportunity for stormwater to flow down onto the abutting properties and essentially the work will be on the low side of the bank.

How this meets the criteria to for the Commission to grant a variance - It is unique to the property, this is the frontage for the property, it is also a unique feature to the property that this is where marketable material is located, it is good planning to allow the applicant to take the material out and put it to good use and prepare the property for future use. As also mentioned, the secondary electrical transmission right of way through the property is a unique feature of the site as well.

Section 13.5.3 for a slope of up to 30% within 25 feet of a highway where no slope exceeding 10% within 200 ft of highway is required.

The regulations state that within 200 feet of a highway cannot have a slope exceeding 10%. To effectively do this grading and prepare this property for any kind of use, slopes need to be created in excess of 10% within the confines of the highway right of way. Mr. Held reviews sheet 4 of 6 of the site plan with Commission members. The final grading involves creating a very gentle slope into the active portion of the site. In order to grade the side slopes against the site property lines a slope greater than 10% is needed. The final grade shown would be 30% which extend up to the Route 205 right of way, in some instances they go within the right of way which requires a DOT permit as the slope starts in the right of way line.

Section 13.3.3.1 for a ten-year permit term in lieu of one year currently allowed.

The one-year permit is honoris both in terms of applicants and the Commission and Town Staff time and resources. As it relates to the property it creates an additional hardship because of the

way the Town's Wetlands Regulations are written which requires the applicant to obtain a new wetlands permit every year. The only thing they have to obtain a wetlands permit for is an existing disturbance adjacent to the river which has been in place for 25 to 30 years. Because of continual activity, they are required to get a wetlands permit in addition to the special gravel permit renewal every year. This is an undue economic hardship on the applicant as well as being a poor use of resources from the Town's standpoint. As far as the 10- year permit term, this site deals with a limited amount of material. They excavate approximately 40,000 yards off of this site and importing about the same every year. They are processing it on site and sending it out as aggregate products for concrete. The purpose of doing this is because of the limited amount of material that is dealt with on this site. It is an undue hardship on the applicant with this situation, it is not a large-scale excavation or processing facility that might go through hundreds of thousands of yards a year. It seems to make more sense and better use of the Town's resources.

Section 13.5.4.2 to increase the amount of material that may be imported for processing on site, from an amount equal to the material mined on site to ten times the amount mined on site.

Currently the regulations require a 50/50 match. You are allowed to import the same amount of material or less than what is excavated on site. The applicant has been providing records to Town Staff which would substantiate they have been complying as long as they have been asked to provide these records. There is a finite amount of material that exists on this site that can be excavated off. The operation as a whole is intended to be a temporary operation and not a permanent fixture in town. They are not asking to strictly import material as they recognize the value of having this with some sort of end date in the future, they are asking for an increase of the material that could be imported which would be up to 10 x that mined on the site. The applicant feels that this makes sense for this site as a unique situation because of the limited amount of material that his handled there. From a planning standpoint, the applicant feels it makes sense to allow this to remain for a little bit longer as it is already set up for that operation, the infrastructure is already in place, the disturbance is already there.

Returning back to the 1970 aerial photo, it is clear that mining and processing has been going on site that predates zoning.

Floor open to the public for comments:

Rick Ives, First Selectman – Mr. Ives does not agree with the economic hardship for the setback variance. With regards to the ten-year permit term, PZC has been looking into extending the term, but Mr. Ives has not heard 10 years mentioned and feels this is way too long. With regards to the amount that may be imported for processing on the site, from an amount equal to the material mined on the site to ten times the amount mined on the site, this would bring 400,000 cubic yards in. The truck traffic now is stifling. Mr. Ives is opposed to this.

Ken Niemann, 573 Wauregan Road, lives directly across from the gravel bank. Mr. Niemann asks with the addition, what is the number of yards that are going to be excavated. Mr. Held stated in the area that they are digging now they are proposing an additional 59,000 yards. In the area of the dimensional variances with frontage on Route 205 where the power lines go through,

it is divided up into two proposed phases. The first phase is 97,000 yards and the second one is 62,000 yards. Mr. Niemann comments that without the variances he has no more gravel. Mr. Held commented no. Mr. Niemann disagrees, why would he want to haul this gravel if there was gravel. The truck traffic in the residential area starts 5:50 a.m. every morning and sometimes at 4 a.m. The people who live on the road do not want this anymore. It is very obvious that the only thing Mr. Jolley is worried about is his pocket because it will cost him a lot of money to move his equipment. Mr. Niemann power washes his house twice a year. There is not an oil water separator at the existing garage, and they are power washing equipment out in front of the building, this is illegal. He continues to do this and has been doing this for years. The only hardship is on Mr. Jolley's wallet. The people who live on Route 205 have suffered dearly. Mr. Niemann also comments on behalf of Theresa an 84-year old nearby resident who has concerns.

Marcel Dessert, 601 Wauregan Road. Asks how many yards are left on the plan now to be removed? Mr. Held would have to investigate the answer to this question. Mr. Dessert comments about the slopes with abutting land owners. Mr. Dessert walked the back of Mr. Galloway's property, there is a 25-foot slope down to the garage, what is going to be done about this? Mr. Held asks Mr. Dessert to address his questions through the Chairman. Mr. Dessert comments with regards to the dust, lack of reclamation and truck traffic.

Maurice Lapierre, 574 Wauregan Road – employee of Brooklyn Sand and Gravel is involved with accurate record keeping.

Michael Galloway, 588 Wauregan Road – Mr. Galloway's driveway is right next to Brooklyn Sand and Gravel and experiences a lot of dust. Mr. Galloway reviews the site plan with Mr. Held with regards to the proposed construction of a new driveway. Discussion ensued.

Mr. Niemann comments with regards to the regulation changes. The regulations were put there for a reason to protect adjacent land owners. A gravel operation has to have gravel, or you do not have a gravel bank. Mr. Niemann does not buy the hardship case.

Linda Trahan, 26 Maynard Road - Ms. Trahan voices her concerns, gravel operations are supposed to be finite. This gravel operation has been going on for many years. Unfortunately, over the years and up until recently there has been spotty enforcement by the Town. With regards to the first request increasing a 1-year permit to 10 years, Ms. Trahan is in total disagreement. These are operations that need to be watched closely. Ms. Trahan feels the 1-year should stay, 10 year is excessive. With regards to bringing in more material from off site, this is a processing plant which should be in an industrial area and not in the current location. This constitutes spot zoning.

Pam Lukin, 20 Maynard Road – Ms. Lukin discusses the longevity of the gravel bank operation from 1970 which brings it to currently 49 years. The operation is intended to be finite. Another concern is using on site material to do reclamation and mediation. Ms. Lukin does not agree with the 10-year permit. Ms. Lukin recommends the Commission members take a site walk down to the edge of the Quinebaug River and the cemetery area.

Maurice Lapierre, 574 Wauregan Road – Mr. Lapierre assures the public in attendance that he is a certified health instructor who is audited yearly for dust and noise. There has never been a safety audit failed for dust and noise. The water truck runs down the road numerous times per day. They are audited once a year for noise. They are well within the parameters of mind, safety, health administration. Mr. Lapierre would be more than happy to review the audits with anyone.

Chairman Ross recommends scheduling a site walk and tabling the public hearing.

A motion was made by Stephen Mylly to schedule a site walk of the property. Lucien Brodeur seconds this motion. No discussion held. All in favor. The motion passes unanimously.

Ms. Fraenkel asks Mr. Held if there are other areas that could be mined other than the proposed, Phase 2 and Phase 3.

Mr. Held stated there are other areas that could be mined. Mr. Held reviews this on the site plan page 2 of 6.

Chairman Ross asked within the current regulations, how much estimated material is left on site. Mr. Held does not have this information. Chairman Ross asked if this information could be obtained. Mr. Held commented not in the short term, they would have to do many borings on the property to determine this.

Mr. Niemann asked how far they are currently from the water table. Mr. Held reviewed the current information with Mr. Niemann.

Mr. Macnamara asked could a 10-year permit not prevent any oversight at all from the Town? Mr. Held commented in terms of the existing special permits and renewals of the permits granted, in the five years that Mr. Held has been involved with the property there has never been any inclination that the Town is not going to look at this and require strict record keeping. It's the matter of not having to apply for a new permit until the 10 years are up. There would still be the same oversight that PZC would condition of any permit, the same annual record keeping and submission of those records as far as truck traffic, etc. There are similar requirements from IWWC on their annual permit. The applicant anticipates that they would not have to apply for a renewal permit every single year. Discussion ensued.

Selectman Ives comments that this is purely assumption. There are no rules or regulations about 10 years permit, this is why it is continued annually. Mr. Ives still does not hear what the hardship is.

Mr. Held addresses the hardship. It is written in the application itself. "Hardship: The property is unique because of the limited amount of material excavated and processed on the property. Processing, stockpiling and general operation of the site is very consistent from year to year because all processing equipment is semi-permanently located."

Chairman Ross asks in what way is this a hardship. Mr. Held comments that this is a very small operation, and this makes it unique to typical gravel operations in Brooklyn. Chairman Ross states this is for the board to consider.

Pam Lukin comments that she finds this hardship to be troubling. A 10-year plan is asking to be there for 10 more years. Ms. Lukin does not feel that this is unique in any way. This may set precedent for other gravel banks in town.

Mr. Macnamara questions Land Use Attorney Peter Alter, is there anything in the regulations on 10-year permits. Attorney Alter comments no. Mr. Macnamara comments that the 13.3.3.1 should not be considered in this application because ZBA has no jurisdiction over it. How can this be varied if it is not in the regulations.

Attorney Alter comments Section 13 Gravel Bank Regulations under Brooklyn Zoning Regulations, a special permit for an excavation operation must be renewed annually as stated in the regulation which currently exists. The issue of whether someone can apply for a variance of that, Attorney Alter does not feel is in dispute. The applicant can apply for a variance, but they have to demonstrate to the board that request relieves him of a hardship that the board has to find exists, that only exists on this piece of property for its particular situation. It has to be unique to this property. Every gravel operation permit in Brooklyn operates under a special permit must renew annually under the regulation. That is a regulation that is set by PZC as the zoning authority in this town, so you are effectively being asked to take the roll of Planning and Zoning Commission and change one year to ten years, and to do that you would have to find the applicant has demonstrated to the board that there is a unique hardship imposed on it by that requirement. Mr. Macnamara asked if there is a precedent for this. Attorney Alter stated no. Mr. Macnamara asks what do other State of Connecticut Planning and Zoning Commission's state. Attorney Alter commented that he deals with quarries and sand and gravel operations in many towns mostly representing operators. Attorney Alter knows of no town that provides a ten-year permit. Most towns are on a two-year basis that he deals with. Some are one, some are three, but he has never gone to a town that is more than three. There is a reason, it requires the town to oversee the operation on a regular basis. The regulation is adopted to bring to mind that there is a gravel operation and there are a lot of rules that need to be followed and we are going to check to be sure they are being followed. Attorney Alter commented that there is no suggestion in the new draft PZC regulations that they are going to a 10-year permit. Mr. Macnamara asks with this notice preceding the establishment of the new zoning regulations, do the zoning regulations proposed after this put forth apply. Attorney Alter commented that if the variance is granted that it goes with the land and it is recorded on the land records and it is done. Chairman Ross commented that it is only specific to that property if a hardship is found.

Mr. Held commented that in terms of the 10-year permit, the Commission has the ability to reduce the variances being asked for. Chairman Ross asks if Mr. Held is suggesting that all of the requests are subjective to be varied to some extent or not at all? Mr. Macnamara commented that Mr. Held stated they can be addressed each individually. Mr. Held commented that specific things have been asked for, but they understand that the board may vary some requests to some extent.

Mr. Dessert comments with regards to the trucks that come into the property from New Haven, Branford and Cheshire. There is a black top road around the back of the property that comes out onto Jolley's driveway, use of this road would end the dust problem.

Mr. Galloway reviews the site map with regards to the pines on the hill. Mr. Galloway's property is located near this.

Pam Lukin speaks with regards to some variances being varied to some extent. Ms. Lukin feels that this blows the whole theory of a hardship. They will take anything except the current regulations. This sound suspect.

Chairman Ross commented that within the boards deliberations they will take all of this into consideration.

Ms. Fraenkel asked what's the purpose of the buildings referenced to the active area. Mr. Held comments that they are rented out to contractors. Mr. Lapierre stated the large building is rented by Mr. Jolley to a contractor who stores concrete forms. The second small building is the old well house.

Ms. Fraenkel asks for test pit description. Mr. Held stated the test pit logs are shown on the last sheet of the plan item 7-15. They were excavated in 2016 with hole numbers 7-16. Mr. Held reviews the test pit information.

Ms. Fraenkel asked do those results indicate a marketable product? Mr. Held commented the coarse sand and gravel is a marketable product, the silky and fine sand maybe.

Attorney Alter addresses the site walk visit. To have a site walk visit it continues to be part of the public hearing, but it should not be an opportunity for any discussion, any comments, no comments received from the public. The public can attend as it is a public hearing. Commission members should not make any comments among themselves or accept any comments from anyone. The only person who would do any talking is the site engineer. All he would be doing is acting as a tour guide for the requested variances. After the site walk upon reconvening the public hearing at the next scheduled meeting, any information that the Commission would like on the record, any observations made, or questions, would be asked then. The reason for this is that there will be no record of what anyone said. It is important as a Board that the decision is made to go look at it and get as much information as you can from the engineer. Mr. Held commented that the Commission can ask what they would like to see, and he will show where it is and that is all he will do, technical discussion will not happen on the site walk.

Chairman Ross commented that there will be no testimony or discussion taken on the site walk. When the hearing is reopened all are invited to speak.

Attorney Alter commented that there are 35 days to finish the public hearing.

Commission members agreed unanimously to set a site walk for Tuesday, April 9, 2019 at 9 a.m. Members are to meet on the site, main driveway next to the building.

Commission members agreed unanimously to set the continuation of the special meeting and public hearing on Tuesday, April 23, 2019 at 6:30 p.m.

Other Business: None.

Adjourn: A motion was made by Lucien Brodeur to table the public hearing until April 23, 2019 at 6:30 p.m. The meeting was adjourned at 7:47 p.m. Stephen Mylly seconds this motion. No discussion held. All in favor. The motion passes unanimously.

Audrey Cross-Lussier, Recording Secretary