

**TOWN OF BROOKLYN
PLANNING AND ZONING COMMISSION**

**Regular Meeting
Tuesday, March 19, 2019
Clifford B. Green Meeting Center
69 South Main Street
6:30 p.m.**

MINUTES

- I. Call to Order** – Carleen Kelleher, Acting Chair, called the meeting to order at 6:33 p.m.
- II. Roll Call** - Carleen Kelleher, Jules D’Agostino, Austin Tanner, Earl Starks; Alan Fitzgerald – Alternate. M. Sigfridson was absent with notice.

III. Seating of Alternates

Motion was made by E. Starks to seat Alternate Allen Fitzgerald as a Voting Member for this meeting. Second by J. D’Agostino. Motion carried unanimously (4-0-0).

IV. Adoption of Minutes: Regular Meeting March 6, 2019

Motion was made by J. D’Agostino to approve the Minutes of the Regular Meeting of March 6, 2019, as presented. Second by E. Starks. Motion carried unanimously (5-0-0).

Site Walk March 12, 2019

Motion was made by A. Tanner to approve the Minutes of the Site Walk regarding SPG 19-001 of March 12, 2019. Second by C. Kelleher.

Discussion: C. Kelleher questioned the time that the Site Walk ended. J. Roberson will change the word “commenced” to “ended.”

Motion carried unanimously (5-0-0).

IV. Public Commentary – None.

VI. Unfinished Business:

a. Reading of Legal Notice – It had been read at the previous meeting.

b. Continued Public Hearings:

- 1. SPG 19-001 Gravel Special Permit** - HM & E Co, LLC/Applicant, E. Arters/Owner, 120 acres, 291 Canterbury Road (Assessor’s Map 23, Lot 1; Map 22 Lot 1-2; Map 22, Lot 1-4), Phased excavation of approximately 20,000 cubic yards of rock.

Norm Thibeault, Killingly Engineering Associates, represented the Applicant. Present and seated in the audience: Property Owner, Elaine Arters; her son Harry Arters; and Doug Hartin, Proprietor of HM & Co, LLC.

Mr. Thibeault gave a brief history of the operation (mining rock by hand) which was started in 1953 by the late Harry Arters and his brother, Jack Arters. Mr. Hartin began working there approximately 17 years ago and had been under the assumption that the operation had been permitted since he had received a total of seven blasting permits, over the years, from the Fire Marshal. It was when a new

blasting company was hired, that the operation was discovered because of the noise created when they used a larger charge than required, which alerted neighbors who, then, called the Town.

Mr. Thibeault gave a brief overview of the proposal:

- IWWC approval had been received prior to the Site Walk on March 12, 2019.
- Proposing to remove approximately 20,000 cubic yards of rock from an area of approximately .8 acre.

One of the main topics discussed at the Site Walk was the entrance and the difficulty turning to the south (right) when coming out. The Applicant is willing to post signage at the exit - "No Right Turn" or "Left Turn Only." There is only one customer that turns right.

There are no safety issues with regard to the sight line which is extensive (you can see over 500 feet in either direction).

New issue that has come up since the last meeting:

- There is a 2.4 acre Conservation Easement across a portion of the access drive. It had been created as part of a 4-lot subdivision that was done in 1993 (under the name of Greb). He indicated the areas on the plan and he explained that the existing dirt path (which is utilized to access the quarry area) was there at the time, the only difference is, that the path now comes down through the 50-foot access strip instead of two properties over like it did back in 1993 when the subdivision was created. He indicated the area where the dirt path of the gravel access road crosses through the Conservation Easement. The language in the deed for that easement clearly states that no motorized vehicles are allowed there. Mr. Thibeault spoke with Attorney Bill Sweeney who advised that there may be rights associated with the path that precede and supersede the easement and that it would not be able to be resolved quickly and it would take some time to research and it would need to be discussed with the Town's Attorney.

Mr. Thibeault and J. Roberson had discussed possibly doing a land swap which would release a portion of the easement and an easement could be provided in another area (adjacent to Blackwell's Brook and at the edge of an existing agricultural field which would provide approximately 50 percent more land area than the existing easement). He indicated the areas that he suggested could be swapped.

Mr. Thibeault further explained that, although the Arters now own the property where they are proposing to put the modified conservation easement across, it was not part of the original subdivision. The question is: Is it acceptable to provide a modified conservation easement or a portion of a modified conservation easement on a property that was not part of the original subdivision even though they are all under the same ownership at this time?

Ms. Roberson spoke with the Town Attorney who confirmed that the easement could be modified while following certain procedures. She said that the Town Attorney also confirmed that it could be on other land that was not part of the original subdivision. Reason being that all four lots have been conveyed since the sub-divider owned them.

Mr. Thibeault stated that he has spoken with Mr. Arters about this and that it would be acceptable to them.

This must go before the Conservation Commission (April 1, 2019) before the PZC can act on it. Mr. Thibeault stated, for the record, that time is of the essence and Mr. Hartin is concerned for the people who work for him. The potential for selling rock this summer and continuing the business is pretty slim because customers are not loyal. They will buy the rock from wherever they can get it. Mr. Thibeault requested that the Commission consider approving the Application conditionally upon an agreement with the Conservation

Commission to modify the conservation easement. Mr. Hartin is aware of additional costs he may incur (survey, mylar, refiling of deed).

Mr. Thibeault answered questions from the Commission and Ms. Roberson:

- He indicated the locations of the pit and the easement on the plan.

Ms. Roberson explained two reasons why the Conservation Commission must review and approve this Application:

- The Conservation Commission is in charge of conservation easements.
- The Chairman is the one who actually signed this easement.

Ms. Roberson advised that, if the PZC is interested in entertaining the idea of this conservation easement area swap, it should be discussed in more detail. And, also with the consideration that the Conservation Commission has to take action on it. She said that the PZC should not be sending something to the Conservation Commission that they may find unacceptable. She explained that third-party conditions should not be allowed.

Upon being asked by Ms. Roberson, Mr. Thibeault addressed the research process that he and his surveyor partner utilized in researching this piece of land. He explained that their focus was on the topography and activity that was happening on this very limited area. The driveway had been used for many years by the Arters, previous owners, and those associated with doing work there. The easement plan shows it in the 1990's. Mr. Thibeault explained that, when he met with Mr. Hartin for the first time, Mr. Hartin told him that there was an access to the spot through Mrs. Arter's other property and Mr. Hartin explained where it was and he said that is what they use, and that is where they met. So, this is what they showed on the plans. He said they did not see the conservation easement. Mr. Thibeault stated that, perhaps, they should have researched the access easement, but there was no need to for what they were doing. There was no reason to question what Mr. Hartin and Mrs. Arters said. Ms. Roberson disagreed because a licensed surveyor does not go by the owner's word, he goes by his own research. Mr. Thibeault agreed with that and he explained that they did not sign the plan to that easement. He signed the plan to the information shown on the plans. They did not survey the entire property.

Ms. Roberson asked if the Commission would want to consider the proposal of a land swap. Ms. Kelleher feels that it seems reasonable and does not see any negative impact. Mr. Tanner feels that the land swap makes a lot of sense, however, he voiced concern for taking primary agricultural land out of production. Mr. Thibeault explained that it is the portion of the land that is not being used for agriculture and he indicated the area on the plan. Mr. Tanner stated that they have all seen the property and are impressed with the operation and would like to do what they can to move forward, but they have to deal with the road blocks.

Mr. D'Agostino asked about the options. Ms. Roberson answered that one option is to deny another is to consider a land swap (either this proposal or another type of swap) and she explained that changing the boundaries of the conservation easement is a modification of the 1993 Subdivision. She stated that the Conservation Commission has to be involved in this conversation and that procedures need to be followed. Another option would be to not act on it tonight.

A. Fitzgerald suggested approving it "as noted." He feels that Mr. Hartin has done everything possible. A. Tanner is uncomfortable with approving it conditionally without knowing what the conditions are until the Conservation Commission acts on it.

Mr. Hartin explained that five years ago, if he knew that he would have to go through this process, he probably would not have done it because he wasn't that involved at that time. But, when he received the permit to blast, that changed the dynamic and he invested \$100,000 in equipment. He asked for leniency so he can move forward and resolve this. He said he is willing to do whatever he has to do. He said that all of this is to simply to be able to cross the road that has been crossed by Mr.

Arters and his brother since 1953. Mr. Hartin explained that if he can't operate during the time that he needs to, there is no reason to go any further because you get a bad name when you can't supply. He said two weeks is a lot of time. He said that this problem with the easement came up well after they had addressed everything that they had to address within the requirements of the permit itself. He said they are going to correct it, but he asked for the opportunity to go to work by approving it tonight with the condition that it will go to the Conservation Commission.

Mr. Fitzgerald stated that there is a covenant in the easement and asked who, from the Town, would be the person that would act for the Town to by-pass the covenant. Ms. Roberson answered that Steven Broderick, the Chairman of the Conservation Commission had signed it and he would be that person. Ms. Roberson had discussed this with the Land Use Attorney and the Conservation Commission is the Signatory.

E. Starks suggested that Mr. Hartin could prep his rock and he could be stockpiling it now and making a product.

A.J. Kerouac asked about the date on the conservation easement. A. Tanner answered October 5, 1993. Mr. Kerouac asked if the Conservation Commission is claiming that they were unaware that this was a use then. He commented that being a member of the public living in this Town, you can't not know about it. He said it falls into the Grandfathering category.

Elaine Arters stated that her brother-in-law was trying to say that it came under grandfathering because it has been going on for years and years and it is so low-key that people don't know that it is going on.

J. D'Agostino proposed a solution which Ms. Roberson said would be a third-party condition (as discussed earlier). She explained that the PZC cannot act tonight, but could refer it to the Conservation Commission. Discussion ensued. Ms. Roberson noted that something else that Attorney Alter felt was critical to the process of amending the Conservation Easement is notice to all of the other land owners in the subdivision (2 owned by Arters and 2 others). Ms. Roberson also noted the following:

- Turning issues, which could be a written condition of approval, that they are only allowed to enter and exit the property from the north.
- The access road is so close to 355 Canterbury Road (it hugs the property line on two sides of the lot) and, in order to protect Lot 3, the Commission may want to consider a requirement that the corner boundary pin be located in the field and marked in a permanent way. Trucks cut the corner and encroach on that property. She suggested that the apron could be modified (widened the apron where the haul road intersects with Route 169) to allow trucks to the south.
- Consider a condition relating to the number of trucks per day.
- Consider a bond which is standard procedure for special permits of this nature in this Town.

A.J. Kerouac asked how long this has been there and operating and he commented that this wasn't caught when there was an evaluation of every earth operation in Town a few years back. He wondered if it had been Grandfathered back then and maybe that is why it did not appear on the list. He said that he was trying to lead the Commission to make a decision to help a local business. Mr. Tanner explained that it had not been found, but now that the Commission knows that it is there, they cannot turn their backs. Mr. Kerouac suggested that if the Town created the problem, it could decide to be the solution. Mr. Tanner stated that if they wanted Grandfathering, they should have fought it, but by applying for the permit, they gave up the Grandfathering. Ms. Roberson was asked if she agreed with what Mr. Tanner said and she said, "absolutely." Ms. Roberson explained that, in 2014, she had reviewed permits that had been issued and that she had not scoured the Town looking for evidence of earth excavation. She looked at files to determine if they were current or not. She said that this had not come to her attention until last year.

Motion was made by A. Tanner that the Planning and Zoning Commission has reviewed the Application for SPG 19-001 **Gravel Special Permit** - HM & E Co, LLC/Applicant, E. Arters/Owner, 120 acres, 291 Canterbury Road (Assessor's Map 23, Lot 1; Map 22 Lot 1-2; Map 22, Lot 1-4), Phased excavation of approximately 20,000 cubic yards of rock and recommends that the Conservation Commission consider allowing a land swap to permit the Application to move forward.

Discussion:

Mr. Thibeault stated that it does not have to be the configuration that he has presented. He is open to other suggestions/recommendations they may have, aside from taking a spot that would alleviate the possibility of developing a lot that it crosses right now. Mr. Tanner's motion did not specify Mr. Thibeault's plan.

Barbara Forte, 425 Canterbury Road, commented that it had been suggested that she bring to the attention of the Commission to be very specific in what they do permit because sometimes, once all the permits are in, it can be sold as something larger.

Mr. Thibeault clarified that the duration of the permit is ten years and requires renewal every year for ten years and the maximum amount of material that can be taken out, over the ten years, is 20,000 yards, as clearly defined in the Application. The approval would be conditioned as to what it is confined to.

Second by A. Fitzgerald.

Mr. Fitzgerald asked, in order to approve it, if conditions can be added. He said this would help the neighbors who have taken the time to come to the meetings. It was stated that it would be part of the approval. Ms. Kelleher suggested covering all aspects of the approval tonight. All Commissioners were in agreement that they would like to be able to help Mr. Hartin.

Motion carried unanimously (5-0-0).

Mr. Thibeault asked about notification of the property owners associated with the easement. Ms. Roberson suggested that he do it right away by a letter sent by certified mail.

Mr. Hartin asked for the timeline: April 1st – Conservation Commission meeting. Ms. Roberson will provide information ahead of time so they will be ready for that night. Mr. Tanner stated that he will attend. Ms. Kelleher thinks that M. Sigfridson may speak with the Chair.

There was discussion regarding conditions and the following were decided upon:

- Maximum of six trucks per week.
- Northerly entrance and exit only.
- Hours of Operation: Monday – Friday 7 a.m. to 6 p.m.; Saturday 7 a.m. – 12 p.m.; no activity on Sundays or major holidays.
- Due to the location of the site, stockpiles and equipment are not visible to adjacent properties, and the site itself will not compromise the scenic and natural view of Route 169.

No bonding.

Ms. Kelleher stated that she assumes that the PZC will be prepared to approve this assuming that the Conservation Commission has met and agree with (the rest of her statement was inaudible due to noise in the room). She asked if she is correct and someone answered, "yes." There was no objection.

Mr. Thibeault stated that he will notify the property owners affected by the Conservation Easement tomorrow.

Ms. Kelleher apologized on behalf of the Commission, as she feels it is a unanimous opinion, that this glitch has developed and that they wish they could approve it, but she gave her assurance that they will be approving it next time.

J. Roberson will make sure it gets on the Conservation Commission's agenda for April 1st. She will also relay the PZC's comments/recommendation in a letter to the Conservation Commission.

c. **New Public Hearings:** None.

d. **Other Unfinished Business:**

1. **SPG 19-001 Gravel Special Permit** - HM & E Co, LLC/Applicant, E. Arters/Owner, 120 acres, 291 Canterbury Road (Assessor's Map 23, Lot 1; Map 22 Lot 1-2; Map 22, Lot 1-4), Phased excavation of approximately 20,000 cubic yards of rock.

Motion was made by A. Tanner to table SPG 19-001 **Gravel Special Permit** - HM & E Co, LLC/Applicant, E. Arters/Owner, 120 acres, 291 Canterbury Road (Assessor's Map 23, Lot 1; Map 22 Lot 1-2; Map 22, Lot 1-4), Phased excavation of approximately 20,000 cubic yards of rock to the Wednesday, April 3, 2019, Regular Meeting of the Planning and Zoning Commission at 6:30 p.m., in the Clifford B. Green Meeting Center, 69 South Main Street, Brooklyn, CT. Second by A. Fitzgerald. Motion carried unanimously (5-0-0).

2. **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 218,000 cubic yards of sand and gravel.

J. Roberson explained that it is a collection of variances and that the ZBA will hold a hearing on March 26th.

Ms. Kelleher mentioned that the PZC may want to do a site walk.

There was discussion and Ms. Roberson displayed and oriented the area using Google Earth.

VII. **New Business:**

a. **Applications:**

1. **SPR 19-002 Site Plan Review** – Brandon Longe/Applicant, Ayana Hotel, LLC/Owner, ~1 acre, 479 Providence Road (Assessor's Map 41, Lot 110), Second floor addition for expansion of caretaker's unit.

J. Roberson explained that she had provided copies of the building plans that were on file to Mr. Longe, however, the portion of the building that is being added to was not included on the plans. So, Mr. Longe is trying to figure out how to proceed.

Ms. Roberson had asked Mr. Longe for a photo rendering of what the actual building would look like because the photos that he had submitted were of another building.

Date of receipt was March 3, 2019, and the PZC's timeframe to act is 65 days. He has submitted a Site Plan Review Application and has paid the fee.

b. **Other:**

1. Discussion of draft update of Brooklyn Zoning Regulations.

The Commission reviewed comments made at the February 19th Second Public Information Session:

PAUL ARCHER'S COMMENTS:

- 1) Family Compound – Consider outside of RA Zone?
Consensus – okay in R-30
- 2) Eliminate 90,000 s.f. in Residential Zone – Suggests 2 acres
Consensus – 2 acres (87,120 s.f.)
- 3) Clerical Correction
- 4) VCZ – Limit of three residential units per structure
The comment about the column for accessory buildings is a clerical error.
- 5) Ms. Roberson will make clerical corrections in NB, RB, VCZ, PLO and throughout.

- 6) Section 6D
 Comment #1 – Residential Compound does not have to be consistent with the three units off of a shared driveway. There were no objections.
 Comment #2 – Must be sub-dividable. There were no objections.
 Comment #3 – Keep four. There were no objections.
 Ms. Roberson will review this Section to address these concerns.
- 7) Section 6.E.2.10 - Clerical
- 8) Section 6.E.2.7 – Add 75 feet in Family Compound to make consistent. There were no objections.

A.J. KEROUAC’S COMMENTS:

- Section 6.E.2.1 – Remove that it must have existing residential use. There were no objections.

CONTINUATION OF PAUL ARCHER’S COMMENTS:

- 9) Section 6.F.4.5 – Put in Multi-Family setbacks for buildings. There were no objections.
- 10) Section 6.I.1 – Clerical. It is for existing and for proposed.
- 11) Section 6.I.2.4 – Already discussed.
- 12) Section 6.Q – Chickens are allowed in the RA Zone. J. Roberson will add language. No change regarding roosters/capons. There were no objections.
- 13) Section 6.Q.2.2 – No Discussion.
- 14) Section 7.A.3.2.3 – One sign per frontage in any Commercial Zone. There were no objections.
- 15) Section 7.B.2.1.2&3 – Take out one parking space for every bedroom. There were no objections.
- 16) Section 7.B.5.3 – All parking spaces 10’ x 20’. There were no objections.
- 17) Section 7.E.1.9 – Increase to 15 percent. There were no objections.
- 18) Section 7.E.2.1 – No Change.
- 19) Section 7.E.2.2 – No Change.
- 20) Section 8.B.4.2 – Exception for existing buildings setbacks. There were no objections.
- 21) Section 8.B.4.3 – J. Roberson will work on language for automatic merger regarding adjacent non-conforming properties for the purposes of zoning.
- 22) Section 9.I.6.3.2 – Clerical.
- 23) Storage/Shipping Containers – Consensus to exempt farmers. Not in VCD, R-10, R-30. There was a suggestion to allow them in Business Zones (Agricultural Businesses). J. Roberson will draft language – use based.
- 24) Section 5.A – No changes were discussed.

CONTINUATION OF A.J. KEROUAC’S COMMENTS:

- Community Center needs to be added to that zone in the new Regulations.

J. Roberson stated that she will find out when the legal review will happen (it is needed as soon as possible to set the date for the public hearing). She feels that it should be done before the public hearing is opened. Ms. Roberson explained about MS4 and Low Impact Development Regulations (LID). C. Kelleher suggested proposing doing the Regulations without the MS4 level incorporated and then doing a text change to add it. Ms. Roberson will speak with Mr. Ives.

It was suggested that Glenn Chalder do a Power Point presentation at the public hearing. Ms. Roberson will ask him.

VIII. Reports of Officers and Committees:

1. Budget – No Discussion.
2. ZEO Report – No Discussion.
3. Correspondence. – No Discussion.
4. Chairman’s Report – No Discussion.

There was discussion regarding filling/restructuring the ZEO position. C. Kelleher and Mr. D’Agostino will speak with Mr. Ives.

IX. Public Commentary

A.J. Kerouac:

- He asked about site plan reviews/change of use and if J. Roberson would need to do it until the ZEO position is filled. Ms. Roberson stated that an interim would need to be appointed.
- Community Center uses (current and future) need to comply with the zone - enforcement action. There was discussion and Ms. Roberson stated that it should be rented in a way that is consistent with the Zoning Regulations. It is currently in the MMUDD, but on the Draft Zoning Map it is in R-30.

X. Adjourn

C. Kelleher adjourned the meeting at 10:03 p.m.

Respectfully submitted,

J.S. Perreault
Recording Secretary