

**TOWN OF BROOKLYN
PLANNING AND ZONING COMMISSION
Regular Meeting
Wednesday, June 3, 2020
Clifford B. Green Meeting Center
69 South Main Street
6:30 p.m.**

To join this meeting via the web or phone, follow the below instructions:	
Web Go to www.webex.com On the top right, click Join Enter meeting information: 717285652 Enter meeting password: MBkhtJrF846 Click join meeting	Phone Dial 1-408-418-9388 Enter meeting number: 717285652 You can bypass attendee number by pressing #

MINUTES

- I. Call to Order** – Michelle Sigfridson, Chair, called the meeting to order at 7:10 p.m.
- II. Roll Call** – Michelle Sigfridson, Carlene Kelleher, Earl Starks, Alan Fitzgerald, Austin Tanner, Charles Sczuroski.

Staff Present: Jana Roberson, Director of Community Development.

Also Present: Paul Archer, Archer Surveying; Attorney Harry Heller; David Held, Provost & Rovero; Attorney Madeline Smith, In-house Counsel for Rawson Materials; Kermit Hua, PE, PTOE, KWH Enterprise, LLC; Brad Kerns, Massa Multimedia Architecture; Matthew and Jennifer Nemeth, Ice Box.

- III. Seating of Alternates** – None.

- IV. Adoption of Minutes:** Regular Meeting May 19, 2020

Motion was made by C. Sczuroski to accept the Minutes of the Regular Meeting of May 19, 2020. Second by C. Kelleher. No discussion.

Roll Call Vote: A. Tanner – yes; E. Starks – yes; A. Fitzgerald – yes; C. Kelleher – yes; C. Sczuroski – yes; M. Sigfridson – yes.

Motion carried unanimously (6-0-0).

- V. Public Commentary**

Paul Archer, Archer Surveying, stated, for the record, that Archer Surveying is not associated with the project of Jason Donahey that received Site Plan Approval at the meeting of May 19, 2020. Mr. Archer explained that he had received certified mail stating that his project had been approved. It showed that Mr. Archer's perimeter survey was used and that a parking demonstration had been added to the survey by Jana Roberson. Mr. Archer asked that he would like a paper trail that shows that Archer Surveying had nothing to do with preparing the site plan for the project.

Ms. Sigfridson stated that the Minutes from this Meeting will reflect his statement.

- VI. Unfinished Business:**

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

- 1. **SPG 19-003** – Gravel Special Permit, Strategic Commercial Realty, Inc, d/b/a Rawson Materials, 30 acres on south side of Maynard Road (Map 29, Lot 5) in the RA Zone; Excavation of approximately 1.05 million cubic yards of sand and gravel.

Jana Roberson gave a brief overview:

- Initial proposal was to remove 1.2 million c.y. of material, however, the volume has been revised to 1.05 million c.y. to reflect some changes in the area of disturbance from the initial Application which is relative to the IWWC approval.
- IWWC approval was obtained (copy of approval letter was included in packets to Commission Members). This action has been appealed by the Applicant, however, it is Ms. Roberson's understanding that the PZC should still be proceeding with the Gravel Special Permit. She explained that if the IWWC approval were changed somehow, it would mean that they would have to come back before the PZC.
- A new set of plans that reflects the approval granted by the IWWC was also included in packets to Commission Members.
- There were some questions from the March public hearing regarding the Traffic Analysis (Traffic Engineer, Kermit Hua was not in attendance at this time).

There were no questions from Commission Members at this time.

Attorney Harry Heller, 736 Route 32, Uncasville, CT, represented the Applicant. Attorney Heller announced that David Held, Professional Engineer with Provost & Rovero and Attorney Madeline Smith, In-House Counsel for the Applicant were also present. Attorney Heller gave an overview:

- Special Permit Application seeking approval to excavate 1 million +/- c.y. on Maynard Road.
- Application is filed pursuant to the Excavation Regulations contained in Section 13.5 of the Zoning Ordinance. Because it is a Special Permit Applicant, the Applicant is required to satisfy the permitting criteria for a Special Permit contained in Section 5.7. An Environmental Impact Statement (EIS) was submitted as requested by vote of the PZC, pursuant to Section 5.8. All information has been submitted and reviewed in depth with the Commission.
- Attorney Heller explained that we were close to the end of the public hearing process at the time that the COVID-19 Pandemic began after the public hearing on March 4, 2020. He stated that he would not go over all of the information currently in the record regarding this proceeding. At the point we left off, a Report had been received from Wayne Botching regarding whether or not there would be any impacts to groundwater quality or groundwater quantity as a result of the proposed excavation. Mr. Botching's Report indicated that he had no concerns based upon his hydrogeological investigation. With respect to water quality, he did want to ensure that clean fill would be utilized for the backfilling of any slope formed on the site. Clean fill, for the purposes of this Application, means washed silt from the material that is washed at the Laframboise Processing Plant in Canterbury. Attorney Heller stated that Mr. Botching said that it should be indicated, as part of the record, that he is satisfied that there would be no groundwater quality issue with respect to this Application.
- Regarding the Traffic Analysis prepared by Kermit Hua that was presented at the March 4, 2020 public hearing (Mr. Hua had been present), analyzing the potential traffic impact to Maynard Road in Brooklyn and Wauregan Road in Canterbury. Attorney Heller stated that he had made a brief presentation regarding some discrepancies in the Report:
 - 1) Mr. Hua had indicated that the number of trips per day was 2,000 which is inconsistent with the information that Mr. Held had obtained from the DOT and with actual counts which he had conducted and are contained in his report (part of the record) which demonstrates that the average daily trips on Maynard Road/Wauregan Road are approximately 530 trips per day.
 - 2) Mr. Hua had also reviewed accident data on Maynard Road/Wauregan Road in his Report. Over a three-year period, there were only two reported accidents on the road, neither of which involved any gravel hauling trucks: One was a single car accident; the other occurred during a snowstorm (there is a letter from Mr. Held, included in the record, which indicates the type of vehicle involved in the snowstorm. It was not a tri-

axle truck and, in Mr. Held's professional opinion, that accident did not involve any gravel hauling activity).

- 3) Mr. Hua indicates, in his report, that the carrying capacity of Maynard Road and Wauregan Road is about 1,200 vehicle trips per hour. When comparing it with the hourly daily trips reported in his report, it varied between 1 in about 50 trips per hour on the road. You can see that that road is operating at a very small percentage of its carrying capacity.
- 4) Mr. Hua had recommended that trucking operations on Maynard Road be limited to the hours of 9 a.m. to 4 p.m. Attorney Heller explained that this is, functionally, not possible for the Application. The construction-related activities begin operating at 7 a.m. and you cannot have two hours of down time before you can start operating. Nine o'clock is a severe imposition on the operation of activity. Attorney Heller explained that a review of the statistics contained in Mr. Hua's report shows that there is no basis for that recommendation. Attorney Heller said that there is no difference in the traffic utilizing that road at all, from any analytical perspective, between 7 a.m. and 5 p.m. Attorney Heller referred to the hours of operation contained in Section 13.5.7 of the Regulations (which authorizes operations between 7 a.m. and 6 p.m. with operation on Saturday).
- 5) Attorney Heller referred to extensive discussion that had taken place, with respect to this Application, regarding terms and provisions of the Amended and Re-stated Canterbury Agreement and the applicability of that Agreement to truck traffic on Maynard Road. The Agreement limits the amount of truck traffic that can enter and exit the Laframboise Processing Facility in Canterbury from the east and from the west. Limit is 75 round trips or 150 trip ends, from each direction. Attorney Heller stated that, under the Agreement, they could have 75 round trips per day between the Maynard Road site and the Laframboise Processing Facility. Regarding concerns that the Amended and Re-stated Canterbury Agreement had not yet been approved by the Court, Attorney Heller explained it is because the Courts have been shut down (due to the COVID 19 Pandemic). He explained that it is currently enforceable as a contractual agreement, but, if the Commission is concerned that it may never be implemented, those parameters could be incorporated as conditions of approval in conjunction with its deliberations on this Special Permit. He said that, as stated previously at the public hearing, the Applicant has contractually agreed to those parameters and is willing to live by them.

Attorney Heller stated that the traffic that would be generated by this proposed excavation operation would have no impact on Maynard Road because it is a public road and, under the Canterbury Agreement, the Applicant has the contractual right and, under the 2015 stipulation, the right under a judgment of the Superior Court, to utilize a public road for purposes of accessing the Laframboise Processing Facility. That means whether the truck trips are coming from the Maynard Road site or the Potvin site or from other sources further to the east, the same amount of potential truck traffic is authorized to use Maynard Road to access the Laframboise Processing Facility. In addition, it is a parameter of the Application that truck traffic from this proposed excavation site will go only to the Laframboise Processing Facility and there will be no hauling of raw material out of the Potvin site to any other location. Attorney Heller stated that the traffic impacts of this proposed activity satisfy the permitting requirements contained in Section 5.7 and the considerations in the Environmental Impact Statement in Section 5.8 of the Regulations.

- 6) There have been modifications to the Site Development Plan (revision dated March 12, 2020 – has been submitted) since the last public hearing (early March) as a result of the decision of the IWWC which imposed a greater setback than their Application contemplated, both from the Quinebaug River and the Kettle Wetland in the easterly portion of the site. He

introduced David Held to review the changes made to address those conditions of approval.

Mr. Held referred to the plan showing the northeasterly part of the project where the most significant changes in setbacks occurred and he explained that the IWWC is requiring 125-foot setback from the actual edge from the River watercourse, therefore, they have pulled back excavation there. Similarly the IWWC is requiring a 125-foot setback from the Kettle Wetland in the southeast corner of the site, so they have also pulled back the grades there. As an end result, final grades will be at a higher elevation in the easterly side. Cross-section drawings detail how they will do the over-excavation on the side slopes and then creating the final slopes by backfilling them. It does not change the bottom elevation that they are removing material from, it just changes the final grades when the restoration is completed on the site. It is reducing the amount of material that would be coming out of the site by approximately 150,000 c.y. from what was originally proposed.

Attorney Heller referred to concern noted in the Staff Report regarding slope stability and potential for erosion to the Quinebaug River and the Kettle Wetland. He called attention to the presentation which had been made to the Commission regarding the manner in which the excavation would be conducted as well as the profiles contained in both the original Site Development Plan and the current revision. He explained that it is a totally self-contained excavation and that the methodology for accomplishing the excavation is to access the site from Maynard Road and to create an operating base in the center of the site (Phase One) and then, the whole operation will be accomplished through the down cutting where embankment material will be pulled into the operating floor of the excavation and then hauled out by tri-axle truck to the Laframboise Processing Facility. There will never be any operations on the exterior embankment areas in the direction of either the Quinebaug River or the Kettle Wetland. There is no physical potential for any erosion or sedimentation to either of those resources.

Attorney Heller stated that they believe that the Application satisfies the permitting criteria in Section 13.5 and Section 5.7. The Environmental Impact Statement demonstrates matters in which many of the general evaluation criteria have been satisfied in conjunction with this excavation. He urged that the Commission approve the Application.

COMMENTS FROM STAFF

Ms. Roberson noted (for the record) that a Report had been obtained from a qualified, professional transportation engineer and that the Applicant had not provided a report from a comparable professional that contradicts anything that was in the Report. She noted that, regarding the accident on Maynard Road (which Attorney Heller had stated did not involve a truck involved in gravel operations), the Report identified the truck as a Peterbuilt 348 which is a Class 7 or 8 truck (it was a dump truck). The Report was included in packets to Commission Members.

COMMENTS FROM COMMISSION MEMBERS

M. Sigfridson commented that a condition of approval could be to require that the speed limit signs on Maynard Road be upgraded to solar-powered feedback signs. Attorney Heller stated, for the record, that the Applicant would agree to that.

COMMENTS FROM THE PUBLIC – None.

Attorney Heller responded to Ms. Roberson's comment by urging the Commission Members to review the Traffic Engineer's Report. He said that the conclusions reached in the Report are not consistent with the data presented. He referred to a table in the Report which documents hourly traffic counts for a 24-hour period taken by Mr. Hua, the Traffic Engineer. Attorney Heller stated that there is no statistical difference between the hours of 7 a.m. and 9 a.m., when it is important to the Applicant to be operating with the traffic on that

road, later hours during the day where Mr. Hua says operation is permissible. Traffic counts for some of the later morning hours were higher than between 7 a.m. and 9 a.m.

Kermit Hua, KWH Enterprise, LLC, stated that he did not have anything to add to what he had discussed at the last public hearing and he explained that it is up to the Commission to decide if his recommendations are agreeable and also acceptable to the Applicant. Mr. Hua stated that he agrees with the Attorney that this is a low volume road. Mr. Hua's main concern was the narrowness of the road to accommodate the large trucks which basically use the whole width of the road. He explained that his concern, and the reason he recommended the hour restriction, is that there may be a conflict with vehicles on the road during peak time when people are traveling to work (especially considering the manner that those trucks drive on this narrow road).

Motion was made by C. Kelleher to close the public hearing for **SPG 19-003** – Gravel Special Permit, Strategic Commercial Realty, Inc, d/b/a Rawson Materials, 30 acres on south side of Maynard Road (Map 29, Lot 5) in the RA Zone; Excavation of approximately 1.05 million cubic yards of sand and gravel. Second by A. Fitzgerald. No discussion.

Roll Call Vote: E. Starks – yes; A. Fitzgerald – yes; C. Kelleher – yes; C. Sczuroski – yes; A. Tanner – yes; M. Sigfridson – yes. Motion carried unanimously (6-0-0).

d. Other Unfinished Business:

1. **SPG 19-003** – Gravel Special Permit, Strategic Commercial Realty, Inc, d/b/a Rawson Materials, 30 acres on south side of Maynard Road (Map 29, Lot 5) in the RA Zone; Excavation of approximately 1.05 million cubic yards of sand and gravel.

There was discussion regarding timeline. There is an additional 65 days to take action if the Commission chooses not to take action at tonight.

Ms. Roberson explained about the request to waive the setback requirements. The agreement with Tilcon (who owns the property to the northeast) was previously entered into the record. Ordinarily, you cannot excavate gravel right up to the property line, but there is a provision in the Regulations that, with the agreement of the neighboring property owner, it may be allowed by a vote of the Commission.

Motion was made by A. Fitzgerald, in accordance with Section 13.5.2.1 of the Brooklyn Zoning Regulations, to approve the request for a waiver by Strategic Commercial Realty d/b/a/ Rawson Materials to waive the 100' residential setback requirement to the abutting parcel identified as 3 Maynard Road (Assessor's Map 29, Lot 11) owned by TILCON, INC on the grounds that a written agreement has been entered into the record as between Strategic Commercial Realty and TILCON, INC. authorizing the excavation up to the shared property boundary on the condition that the owner of the subject parcel will reciprocate when and if TILCON should apply for permission to excavate. As a condition of the granting of this waiver, the applicant must maintain soil erosion control measures in place and the Land Use Office shall have the authority to direct that additional erosion and sedimentation control measures be installed if deemed necessary to maintain adequate protection from erosion and sedimentation. Second by C. Kelleher. No discussion.

Roll Call Vote: A. Fitzgerald - yes; C. Kelleher – yes; C. Sczuroski – yes; E. Starks – yes; M. Sigfridson – yes. A. Tanner may have been having technical difficulties as he did not answer when called.

Motion carried (5-0-0).

Motion was made by C. Kelleher to approve the Gravel Special Permit application of Strategic Commercial Realty d/b/a/ Rawson Materials on the 30 acres on south side of Maynard Road (Map 29, Lot 5), identified in the files of the Brooklyn Land Use Office as SPG 19-003, to remove up to 1,050,000 cubic yards of sand and gravel, as the standards of Article 13 and Article 5 are satisfied in accordance with all final documents and testimony submitted with the application and subject to 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 review prior to printing on archival material. The final approved plans bearing the seal and signature of the appropriate professionals, signed by the Commission Chairs, shall be recorded along with the Special Permit in the office of the Town Clerk.
- 2) Prior to the commencement of any activity undertaken in accordance with this approval, a performance bond in favor of the Town of Brooklyn in the amount of \$180,500 will be submitted to the Brooklyn Land Use Department. The form and content of the bond shall be reviewed and approved by Town staff. No activity shall occur on the site until the bond has been provided in final form to the Town and approved. The bond shall remain in place for the life of the operation including restoration of the property to the satisfaction of the Town unless this requirement is modified by the Planning and Zoning Commission.
- 3) Excavation activity and volumes of material shall be as shown on the plans titled "Proposed Gravel Excavation Maynard Road Brooklyn, Connecticut" prepared by Provost & Rovero dated October 2, 2019, last revised March 12, 2020 (and as further revised by these conditions).
- 4) 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 10 of the approved plans. At no time shall more than five acres be left in an unrestored condition in accordance with Sec. 13.5.10 of the Brooklyn Zoning Regulations.
- 5) Erosion and sedimentation control measures shall be installed to minimize the risk of sedimentation impacting water quality. The Land Use Office shall have the authority to direct that additional erosion and sedimentation control measures be installed if deemed necessary to maintain adequate protection from erosion and sedimentation.
- 6) In accordance with the recommendation of the consulting traffic engineer to reduce conflicts between residential and gravel-related traffic, heavy truck traffic (vehicles used to transport material) shall not enter or exit the site except between the hours of 9:00 AM-4:00 pm on weekdays to avoid conflict with local vehicles during normal commuting hours.
- 7) In accordance with the recommendation of the consulting traffic engineer to reduce and control vehicle speeds to a more safe speed on the principal roadway access, the applicant shall enhance two existing 25 mph speed limit signs near the two ends of Maynard Road—one facing southwest near the Canterbury town line, and the other facing northeast across from 3 Maynard Road—with solar-powered radar feedback signs showing the speeds of approaching vehicles to be installed below normal speed limit signs.
- 8) Dust shall be controlled throughout the year using water or calcium chloride treatment on surfaces 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. The Land Use Office shall have the authority to direct that additional dust control measures be installed and employed if deemed necessary to maintain adequate protection from ambient dust within or beyond the site.
- 9) Written reports of the volume of excavated materials shall be submitted by the permittee to the Brooklyn Zoning Enforcement Officer quarterly in March, June, September, and December.
- 10) The permit renewal date is May 3, 2021. The renewal procedure shall be as specified in Section 6.O.7 of the Brooklyn Zoning Regulations (effective 10-15-2019).

Second by A. Fitzgerald.

Discussion:

M. Sigfridson noted that Attorney Heller had addressed that hours of operation from 9 a.m. to 4 p.m. would be a hardship for the Applicant as gravel operations typically start early at 7 a.m.

A. Tanner stated that gravel operations start at 7 a.m. and he explained that having to wait to start at 9 a.m. would be a real hardship for the Applicant because of the way those businesses operate. Mr. Tanner also suggested that there be monthly reports rather than quarterly reports to keep on top of it better.

C. Sczuroski agreed with the 7 a.m. start time. Mr. Sczuroski asked that the Canterbury Agreement be referenced in the approval. Ms. Roberson commented that the Applicant has stated, on the record, that the Canterbury Agreement states hours of operation. Ms. Sigfridson and Ms. Kelleher noted that the Canterbury Agreement is referenced in the Plans.

A. Fitzgerald commented that if you spread out the allowed 75 loads per day over time, it decreases the amount of truck traffic on the road per hour. Mr. Fitzgerald stated that he agrees with Mr. Tanner.

Ms. Sigfridson asked if there is any opposition to changing 9 a.m. to 7 a.m. in Condition #6. There was no opposition stated.

There was discussion regarding Mr. Tanner's suggestion to change Condition #9, quarterly reporting to monthly reporting. Ms. Sigfridson asked if there is any opposition to changing the reporting from quarterly to monthly in Condition #9. There was no opposition stated.

There was discussion regarding Condition #7:

- Regarding adding the solar-powered signs - Ms. Roberson explained that this would be an off-site improvement and that it should only be included as a condition of approval if the Applicant is willing to do it and the local traffic authority (First Selectman) approves it.
- Mr. Fitzgerald suggested adding the following to Condition #7: "Trucks Entering" and "Trucks Exiting" signs going in each direction on Maynard Road.

The Sightline Demonstration Plan was displayed showing the detail of the entrance, but it did not show "Trucks Entering" signage. Ms. Roberson stated that she may have not displayed the correct plan, so this signage may be included.

Ms. Roberson noted that, although the Public Hearing is closed, the Applicant had expressed a willingness to do the solar-powered signs which would be more expensive than the "Trucks Entering" type of sign. Ms. Sigfridson commented that the "Trucks Entering" signs would be protecting the truck drivers as well as on-coming traffic, so she is hopeful that the Applicant would be agreeable to installing them in addition to the solar-powered signs that they had agreed to.

Ms. Sigfridson asked if there is any opposition to adding DOT standard "Trucks Entering" and "Trucks Exiting" signs to Condition #7. There was no opposition stated.

There was discussion regarding hours of operation:

Ms. Roberson commented that she had made reference to the Canterbury Agreement and Section 13.5.7 of the Regulations and that both relate to hours of operation and both are part of the record.

Section 13.5.7 – hours of operation on a typical weekday are from 7 a.m. to 6 p.m. and on Saturdays from 7 a.m. to 12 p.m.

Canterbury Agreement Section 16.8.a – hours of operation are identified from 7 a.m. to 4:30 p.m. and on Saturdays from 7 a.m. to 1 p.m.

Consensus among Commission Members to state the hours of operation in the Conditions of Approval #6 as follows: Saturdays from 7 a.m. to 12 p.m.

Weekdays from 7 a.m. to 4:30 p.m.

There was discussion regarding truck traffic counters regarding concerns of residents on Maynard Road. Ms. Roberson displayed information regarding the truck trip tickets/slips from the Canterbury Agreement for viewing. Mr. Sczuroski commented that the Applicant had stated that they are willing to give Brooklyn access to the truck trip tickets. This was found to be satisfactory to Commission Members.

Motion was made by A. Tanner to amend C. Kelleher's Motion to approve, with conditions, the Gravel Special Permit application of Strategic Commercial Realty d/b/a/ Rawson Materials on the 30 acres on south side of Maynard Road (Map 29, Lot 5), identified in the files of the Brooklyn Land Use Office as SPG 19-003, to incorporate the following changes:

- 1) Condition #6 - Change the hours of operation to be from 7 a.m. – 4:30 p.m. on weekdays and from 7 a.m. – 12 p.m. on Saturdays.
- 2) Condition #7 – Add the following to the end of the sentence, "and install entrance warning signage."
- 3) Condition #9 – Change from quarterly reporting in March, June, September, and December to monthly reporting.

Second by A. Fitzgerald. No discussion.

Roll Call Vote to Amend the Main Motion: C. Sczuroski – yes; A. Tanner – yes; E. Starks – yes; A. Fitzgerald – yes; C. Kelleher – yes; M. Sigfridson – yes. Motion carried unanimously (6-0-0).

There was discussion regarding the language for Condition #7 for the entrance warning signage.

Roll Call Vote on the Main Motion As Amended: C. Kelleher – yes; C. Sczuroski – yes; A. Tanner – yes; E. Starks – yes; A. Fitzgerald – yes; M. Sigfridson – yes. Motion carried unanimously (6-0-0).

2. **SPG 19-004** – Gravel Special Permit, Strategic Commercial Realty, Inc, d/b/a Rawson Materials, 200 acres+ on the south side of Rukstela Road (Map 21, Lot 7; Map 30, Lot 16) in the RA Zone; Excavation of approximately 1.55 million cubic yards of sand and gravel.

M. Sigfridson stated that the public hearing had previously been closed. J. Roberson gave a summary:

- Last Plan Revision was February 14, 2020.
- Notwithstanding the important natural resources on the site, it has been approved by the IWWC. She stated that she believes the concerns have been addressed, although she would like Commission Members to have an opportunity to express any outlying concerns, she does not have anything additional at this point.

Motion was made by A. Fitzgerald to approve the Gravel Special Permit application of Strategic Commercial Realty d/b/a/ Rawson Materials on the 200 acres+ on the south side of Rukstela Road (Map 21, Lot 7; Map 30, Lot 16), identified in the files of the Brooklyn Land Use Office as SPG 19-004, to remove up to 1,551,000 cubic yards of sand and gravel, as the standards of Article 13 and Article 5 are satisfied in accordance with all final documents and testimony submitted with the application and subject to 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 review prior to printing on archival material. The final approved plans bearing the seal and signature of the appropriate professionals, signed by Commission Chairs, and shall be recorded along with the Special Permit in the office of the Town Clerk.
- 2) Prior to the commencement of any activity undertaken in accordance with this approval, a performance bond in favor of the Town of Brooklyn in the amount of \$247,950 will be submitted to the Brooklyn Land Use Department. The form and content of the bond shall be reviewed and approved by Town staff. No activity shall occur on the site until the bond has been approved and provided in final form to the Town. The bond shall remain in place for the life of the operation including restoration of the property to the satisfaction of the Town unless this requirement is modified by the Planning and Zoning Commission.
- 3) Excavation activity and volumes shall be as shown on the plans titled “Proposed Gravel Excavation southerly of Rukstela Road Brooklyn, Connecticut” prepared by Provost & Rovero dated September 27, 2019, last revised February 14, 2020 (and as further revised by these conditions).
- 4) 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 14 of the approved plans. At no time shall more than five acres be left in an unrestored condition in accordance with Sec. 13.5.10 of the Brooklyn Zoning Regulations except for the pond areas (Phase 3W and 5E). If the final Phases 3W and 5E are delayed for more than one year, restoration shall commence immediately with permanent vegetative cover being established during the first available Spring or Fall growing season.
- 5) Erosion and sedimentation control measures shall be installed around the ponds to minimize the risk of sedimentation to the water quality. The Land Use Office shall have the authority to direct that additional erosion and sedimentation control measures be installed if deemed necessary to maintain adequate protection from erosion and sedimentation.
- 6) An oil absorbent boom must be in place at the water line of the pond(s) whenever hydraulic equipment is within 40 feet of the water in the pond(s). In freezing conditions, the boom shall be at the landward edge of the ice. An oil absorbent boom must be in place in the water, surrounding hydraulic equipment, whenever hydraulic equipment is operating in the water in the pond(s).
- 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. The Land Use Office shall have the authority to direct that additional dust control measures be installed and employed if deemed necessary to maintain adequate protection from ambient dust within or beyond the site.
- 8) Reporting of the volume of excavated materials shall be submitted by the permittee to the Brooklyn Zoning Enforcement Officer quarterly in March, June, September, and December.
- 9) The permit renewal date is May 3, 2021. The renewal procedure shall be as specified in Section 6.O.7 of the Brooklyn Zoning Regulations (effective 10-15-2019).

There was discussion regarding the total volume for accuracy. Ms. Roberson calculated the figures on page 14 of the Plans, which was displayed for viewing, (approximately 330,000 c.y. in the westerly area and 1,221,000 c.y. in the easterly area) and it was found to be accurate (1,551,000).

Second by A. Tanner. No further discussion.

Roll Call Vote: A. Tanner – yes; E. Starks – yes; A. Fitzgerald – yes; C. Kelleher – yes; C. Sczuroski – yes; M. Sigfridson – yes. Motion carried unanimously (6-0-0).

3. **ZRC 20-001 rev** – A proposal to make amendments to the Zoning Regulations concerning accessory buildings, excavation operations, and other various corrections including Sec. 3.A.5.2.1, 3.B.5.2.1, 3.C.5.2.1, 4.A.4.2.1, 4.B.4.2.1, 4.C.4.2.1, 3.C.2.4.5, 4.D.2.1.5, 6.K.2.2, 6.O.4.1, 6.P.3.3, 7.B.5.4.

J. Roberson explained that the public hearing can open on July 1st. All items have been previously discussed by the Commission. She explained that the “rev” is due to the Section regarding donation bins being added at the last meeting of the PZC (May 19, 2020).

Motion was made by A. Fitzgerald to schedule a public hearing for ZRC 20-001 rev – A proposal to make amendments to the Zoning Regulations concerning accessory buildings, excavation operations, and other various corrections including Sec. 3.A.5.2.1, 3.B.5.2.1, 3.C.5.2.1, 4.A.4.2.1, 4.B.4.2.1, 4.C.4.2.1, 3.C.2.4.5, 4.D.2.1.5, 6.K.2.2, 6.O.4.1, 6.P.3.3, 7.B.5.4. for the regular meeting of the Planning and Zoning Commission to be held on July 1, 2020 at 6:30 p.m. in the Clifford B. Green Meeting Center, 69 South Main Street, Brooklyn, CT. Second by C. Sczuroski. No discussion.

Voice Vote Taken: Motion carried unanimously (6-0-0).

VII. New Business:

a. Applications:

1. **ZC 20-001** – Zone Boundary Change to R-30/RA boundary on south side of Day St., Applicant: Jeff Weaver, proposed adjustment to match proposed lot lines in subdivision.

J. Roberson explained that this is a simple zone change to address the zone boundary that doesn't follow parcel lines because there weren't any in that area. She said that it is a very slight change of area.

Motion was made by A. Fitzgerald to schedule a public hearing for ZC 20-001 rev – A proposal to revise the R-30/RA boundary on the south side of Day Street for the regular meeting of the Planning and Zoning Commission to be held on July 1, 2020 at 6:30 p.m. in the Clifford B. Green Meeting Center, 69 South Main Street, Brooklyn, CT. Second by C. Sczuroski. No discussion.

Voice Vote Taken: Motion carried unanimously (6-0-0).

2. **SD 20-001** – 6-Lot Subdivision, Applicant: Jeff Weaver, 8 acres on south side of Day St., (Map 3, Lot 6) in the RA and R-30 Zones; Proposed creation of six residential lots.

M. Sigfridson explained that this is dependent upon Application ZC 20-001 - proposed zone change, and the IWWC.

Ms. Roberson explained that the PZC could schedule a public hearing. There had been a preliminary review with Paul Archer. It has been before the IWWC, but approval has not been received as of this date. Ms. Roberson explained that it would be sent to the Conservation Commission and the Regional Engineer, action by the PZC could not be taken on this proposal without the zone change, but an additional public hearing does not have to be held, unless the PZC so chooses.

Paul Archer, Archer Surveying, represented the Applicant. Mr. Archer stated that this proposal has already been sent to Syl Pauley, Regional Engineer, for IWWC and Mr. Archer had asked that he look at it for both IWWC and for PZC. He said that neither IWWC nor Conservation Commission approval have been received. He said he was in

attendance for preliminary discussion. He explained that, per the Regulations, a public hearing is not required for a subdivision.

There was discussion regarding whether to require a public hearing or whether it would need to be tabled until after the public hearing on the zone change. Ms. Roberson explained that the subdivision is received tonight and the Staff/technical review has already started and she explained that you may not use land in another zone to meet the lot requirements in an adjacent zone, which is what those subdivision plans show. She said that the zone change is not terribly significant – it is a change of about 1 acre of land.

Consensus – No public hearing and to put it on the next agenda.

3. **SP-08-005 Modification #2** – Walmart, 450 Providence Road (Map 41, Lot 10) Re-stripping of eight (8) wider pick-up stalls, new parking lot directional signs and pavement markings, new exterior wall sign.

J. Roberson gave an overview and displayed plan as discussed:

- Walmart has already been approved for a modification to add eight (8) online sales pick-up stalls along the western façade (2018). She said that she believes the number is actually nine (9) pick-up stalls (she indicated the westerly row of stalls on the plan). She explained that they are basically adding a second layer (re-stripping existing parking spots). So, it should actually be nine (9) additional pick-up stalls (she indicated the proposed easterly row of stalls on the detail on the plan), some directional signage, pavement markings, and a wall sign.
- Ms. Roberson explained that it has been identified that some of the signage for each individual stall is a little over what is allowed under the language of the current Regulations.
- Signs would be reviewed by the ZEO following action on this proposal.
- This is due to market forces and current pandemic situation.
- Not creating any additional parking.
- No IWWC approval required.

Brad Kerns, Massa Multimedia Architecture, represented the Applicant. Mr. Kerns stated that Ms. Roberson gave a good summary of the proposal, adding that Walmart is seeing an increased demand for online grocery pick-up which is the rationale behind adding the stalls. He stated that they are adding a crosswalk to get to the additional stalls as well as appropriate pedestrian crossing signage for safety purposes. It is noted on the plan that this configuration of re-stripping parking stalls causes an overall reduction of only one parking space in the entire parking lot.

QUESTIONS FROM COMMISSION MEMBERS: None.

Motion was made by A. Tanner to approve the Special Permit modification of Walmart to re-stripe eight (8) additional pick-up stalls, install new parking lot directional signs in compliance with the Zoning Regulations, pavement markings, and a wall sign in compliance with the Zoning Regulations to allow for the orderly and safe pick-up of groceries ordered online in accordance with all final plans, documents and testimony submitted with the application. Second by C. Kelleher.

Discussion: J. Roberson noted that the proposal is to re-stripe nine (9) additional pick-up stalls (It was incorrectly stated on the Staff Guidance to the Commission and on the Agenda).

A. Tanner and C. Kelleher both stated acceptance of the correction increasing to nine. No further discussion.

Roll Call Vote: E. Starks – yes; A. Fitzgerald – yes; C. Kelleher – yes; C. Sczuroski – yes; A. Tanner – yes; M. Sigfridson – yes. Motion carried unanimously (6-0-0).

4. **Request for Waiver of Special Permit Requirement as per Sec. 4.D.6.4.c** – 17 South Main St., The Ice Box, Requestor: Matthew Nemeth, proposed structure in the side yard setback.

Revised Plans and photos were displayed as discussed (Ms. Roberson explained that revised plans had been submitted just before this meeting and she advised Commission Members to view the plans displayed rather than those included in their packets).

Paul Archer, Archer Surveying, represented the Applicant and gave an overview:

- Mr. Archer explained that there are two existing retaining/foundation walls that jet out which he said have been inspected. They would like to cover these walls with a wood deck in the backyard so that they would have better seating arrangements. Mr. Archer said that, per the Regulations, the PZC has the ability to waive the setbacks to within zero inches. He said that the existing wall is two feet off the property line now and that they are not looking to go any closer than what is there now.
- Matthew Nemeth stated that he thinks that the existing foundation was built with the intent for a deck. He said that they looked through the Regulations for exceptions for the setback requirements, but the ZEO didn't agree with their definition of a terrace or similar structures. Therefore, they are requesting a waiver of the special permit. He referred to Section 4.D.6. He said that the development is not significant and is not likely to have more than a negligible impact on traffic, the neighborhood or the environment. He said that the intent of the deck is to drive their customers to their back parking lot and give them space to sit down, especially through COVID-19, they need the outdoor space, and also to make sure that South Main Street is free of obstructions.

Ms. Roberson explained that they would like to build a flat deck and bring it out behind the building adjacent (which they also own) and connect it to the existing porch. Ms. Roberson displayed and explained the property and surrounding area and properties on Google Earth. It is an unusually-shaped lot (incredibly thin and long), unique in the zone. All of the development is on the northern boundary. Both buildings are non-conforming because they are within the 20-foot side yard setback, which also means that the deck is within the 20-foot side yard setback. It comes up to about 2 feet from the property line. She explained that the new Zoning Regulations provide some relief from the 20-foot side yard setback – they allow the PZC to reduce the side yard setback to zero by special permit and furthermore, provides for a waiver of the special permit under certain circumstances. Mr. and Mrs. Nemeth are applying for a waiver under those provisions (Section 4.D.6.4.c). Ms. Roberson read from Section 4.D.6.4. Ms. Roberson indicated the neighborhood properties. She stated that, regarding the environment, there are no wetlands resources in the area. Ms. Roberson stated that Mr. Nemeth had informed her that there had been some conflicts with the driveway with the East Brooklyn Fire Department. She said that the porch is not encroaching on that right-of-way. Mr. Archer explained that the conflict with the driveway is one of the main reasons for trying to encourage people to go to the back to keep them away from the front and out of the roadway. However, they would not be eliminating the front parking spaces. Ms. Roberson displayed a diagram. Mr. Nemeth stated that there would be an ADA ramp and a stairway built into the rear of the deck.

Ms. Roberson stated that the waiver is on page 77 of the Zoning Regulations. She stated that the Commission is authorized to waive the setback if it is found that the two conditions are met:

- The development is not significant; and
- The development is not likely to have more than a negligible impact on traffic, the neighborhood or the environment.

There was discussion regarding the amount of parking. Mr. Nemeth stated that, over the last two days, they have already increased their parking lot by cutting trees and re-exposing the old parking lot that had been there 40 years ago and they now have 40-45 spaces available. Mr. Archer stated that there is ample land to the back, so they have the ability to increase

the parking significantly. He said that most people are just there for about 30 minutes to eat an ice cream. Mr. Archer feels that they are not making the building any more non-conforming than it already is. He explained that they are not expanding past the building footprint and they are using the existing retaining/foundation walls and they would not be encroaching any more than the building already encroaches into the 20-foot setback.

Mr. Sczuroski stated that the existing foundation is 14 feet long and he asked how wide the deck would be. Mr. Archer stated that he thinks that the existing foundation is more than 14 feet long and that the existing retaining wall is probably about 18 or 19 feet long. They are proposing that the deck would be 18 feet long. It will not extend any further than the existing foundation.

Mr. Nemeth stated that the intent is to keep it within the existing structure. Mr. Nemeth explained that there is already a handrail which will probably go up another 10 inches based on hand railing commercial code (which would have to be 42 inches above decking). He said this would be a vertical setback issue. He said that there would be no deck encroaching on any setbacks further than they already are.

Ms. Roberson stated that it is not increasing the non-conformity.

Motion was made by C. Kelleher, in accordance with Section 4.D.6.4.c of the Brooklyn Zoning Regulations, to approve the request for a waiver by Matthew and Jennifer Nemeth to waive the 20' side yard setback requirement at 17 South Main Street (Assessor's Map 41, Lot 104) with the finding that the development is not significant and is not likely to have more than a negligible impact, on the neighborhood, or the environment.

Second by A. Fitzgerald. No discussion.

Roll Call Vote: A. Fitzgerald – yes; C. Kelleher – yes; C. Sczuroski – yes; A. Tanner – yes; E. Starks – yes; M. Sigfridson – yes. Motion carried unanimously (6-0-0).

5. **SPR 20-002** – Site Plan Review for the Ice Box, 17 South Main St., Applicant: Matthew Nemeth, proposed rear deck.

Paul Archer, Archer Surveying, represented the Applicant. Mr. Archer stated that the Applicant would like to put a platform down where people can sit and enjoy ice cream outside while complying with the separation requirements due to the COVID-19 pandemic.

A. Tanner asked if there would be a roof or cover or if there would be posts around the porch. Mr. Archer stated that there would not be any roof or cover. Mr. Nemeth stated that there would be posts beneath the side of the blue building. Mr. Archer stated it would have to be reviewed by the Building Inspector before it could be built and approved. Mr. Tanner feels that the plans are not specific enough. Mr. Sczuroski stated that he would like more information as well to get a better idea of the concept.

Mr. Nemeth and Mr. Archer explained that it is a simple deck off the back to provide seating and it is no different than putting a wood deck off the back of a house. Mr. Sczuroski was concerned because it is an elevated deck. Mr. Nemeth stated that the Regulations do not provide a definition of deck and the structure definition does not include the definition of deck.

There was discussion regarding the roles of the PZC vs. the Building Inspector. Ms. Sigfridson suggested that if a Commission Member feels additional information is needed, that they tell the Applicant specifically what is needed.

Ms. Sigfridson asked if the deck extends as one continuous deck behind both buildings. Mr. Archer stated that that is correct. Ms. Sigfridson stated that another plan shows it as being only 35.5 feet long and just extends from one of the existing foundation wall to the other. Mr. Archer explained that, at one point, they thought that they needed to keep the size of the deck to 500 s.f. in order to not initiate a special permit. They later found out that that was not the case. Ms. Roberson explained that the proposal is for the bigger one (1,000 s.f.) and it connects both buildings in the rear. She said that behind the Ice Box it is really inches

above the ground and the other portion would be at the same level as the deck that already exists there and she displayed it for viewing while she explained about it. Mr. Nemeth stated that it is approximately 4.5 feet.

Ms. Kelleher commented that the PZC has approved other structures without asking for detailed plans on those structures and she feels that the Commission has enough information. Mr. Fitzgerald agreed with Ms. Kelleher.

Motion was made by A. Fitzgerald to approve the Site Plan Review application of Matthew and Jennifer Nemeth for a deck at 17 South Main Street (Map 41, Lot 104), identified in the files of the Brooklyn Land Use Office as SPR 20-002, in accordance with all final documents and testimony submitted with the application with the finding that it is consistent with the Zoning Regulations, except as waived, and the site plan objectives. Second by E. Starks.

Discussion:

Mr. Tanner asked about a white spot on the plan between the two decks. Mr. Nemeth explained that it is an existing concrete pad on the ground between the two buildings.

Mr. Tanner asked if the deck is continuous or if there is a break in the middle. Mr. Archer stated that it is a continuous deck.

Ms. Roberson explained that it is a single, continuous piece.

Mr. Fitzgerald explained that the concrete pads are at the same grade as the deck and would become part of the deck seating area.

Mr. Archer explained that the area that Mr. Tanner was questioning is the building.

Mr. Sczuroski asked again about whether the deck would extend further out than the existing walls. Mr. Archer explained that it would not extend past the walls and it is not going any closer to the property line on the right hand side and it is not coming closer to the driveway than the existing walls are. The existing retaining walls are about 19 feet long and the deck is going to be approximately 18 feet out. Discussion continued and Mr. Sczuroski was satisfied.

Roll Call Vote: C. Kelleher – yes; C. Sczuroski – yes; A. Tanner – yes; E. Starks – yes; A. Fitzgerald – yes; M. Sigfridson – yes. Motion carried unanimously (6-0-0).

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

VIII. Reports of Officers and Committees:

a. **Staff Reports**

Margaret Washburn, ZEO, Report, dated June 1, 2020, was included in packets to Commission Members – No discussion.

There was discussion regarding whether to cancel the regularly scheduled meeting of June 16th due to Ms. Roberson being on vacation at that time. The Commission Members were in agreement to cancel the meeting. Next meeting – July 1, 2020.

There was discussion regarding technical problems that Commission Members have been experiencing during the Webex meetings.

b. **Budget Update** – Not included in packets to Commission Members. No discussion.

c. **Correspondence** – None.

d. **Chairman's Report**

Ms. Sigfridson stated that she has identified some issues that need to be addressed regarding hosting the Webex meetings that she has been experiencing. She asked for feedback from Commission Members.

IX. Public Commentary – None.

X. Adjourn

M. Sigfridson adjourned the meeting at 10:40 p.m.

Respectfully submitted,

J.S. Perreault
Recording Secretary