

TOWN OF BROOKLYN
P.O. Box 356 • Route 6 and 169
BROOKLYN, CONNECTICUT 06234

Town Offices
860-779-3411

**ZONING BOARD OF APPEALS
SPECIAL MEETING MINUTES**

The Brooklyn Zoning Board of Appeals held a public hearing and special meeting on Tuesday, April 23, 2019 at 6:30 p.m. at the Clifford B. Green Meeting Center, 69 South Main Street, Brooklyn, CT on the following:

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

Absent: None.

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

Also Present: David Held, Bob and Carlene Kelleher, Wayne Jolley, public in attendance.

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

Seating of Alternates: None.

Approval of Minutes:

1. Special Meeting Minutes March 26, 2019.

A motion was made by Lou Brodeur to accept the meeting minutes of March 26, 2019 as presented. William Macnamara seconded this motion. No discussion held. All in favor. The motion passes unanimously.

2. Site Walk Minutes April 9, 2019.

A motion was made by Bill Macnamara to accept the site walk meeting minutes of April 9, 2019 as presented. Steven Mylly seconds this motion. No discussion held. All in favor. The motion passes unanimously.

Continued Public Hearings:

- 1. ZBA 19-002 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:**

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

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;

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;

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.

Bruce Parson stated for the record that he did a site walk visit on April 11, 2019, at 10:50 a.m., he met with an employee of Brooklyn Sand and Gravel. Mr. Parsons also reviewed the meeting minutes of 3/26/19 and listened to the recording.

Carlene Kelleher, Vice Chairman of the Brooklyn Planning and Zoning Commission read into the record a letter dated April 23, 2019 from the Planning and Zoning Commission addressed to Dan Ross, Chairman of Zoning Board of Appeals. (see attached)

Bill Macnamara asked for clarification of Sec. 8-6. Attorney Alter commented for the record the copy of Sec.8-6 that was provided is identical to the Connecticut General Statutes Sec. 8-6 Powers and duties of board of appeals as of January 1, 2019.

Bill Macnamara asked who on the PZC Commission endorsed this letter and when. Ms. Kelleher stated at their last PZC meeting 4/16/19 the letter was endorsed. It was the consensus of the Commission to endorse but not anonymous. One member did not disagree with the content of the letter, however, did not agree it should be sent to the ZBA.

Bill Macnamara asked how does slope or set back effect property values? Ms. Kelleher commented that the setback will bring the operation of the gravel pit closer to a residence. Mr. Macnamara asked if this will affect property values. Ms. Kelleher commented that if you look at the whole gravel bank regulations you will see that it carefully lays out the restoration that needs to be done as the gravel is excavated, you cannot excavate more than 5 acres before bringing it back to the part that was excavated.

Chairman Ross opens the floor for new additional information that was not heard in the previous meeting.

David Held, Provost and Rovero submits for the record revised plans reflecting the proposed grading since the transmission line poles have been replaced on the site. Mr. Held demonstrates the grading revisions made on sheet 4 of the site plan.

The variances on the southerly side which abuts the former church property do not need all the same magnitude of variance next to the property line to accomplish what they are doing. The applicant recognizes and understands that the plans submitted as part of this application are subject to conditions by the Commission.

Marcel Dessert, 601 Wauregan Road. Mr. Dessert voices his concerns with regards to Brooklyn Sand and Gravel. Mr. Dessert states the site is a total disaster, nobody there knows how to grade anything. The site needs to go away, this man has had 50 years to clean this place up and he has done nothing to clean anything up over there. There are at least 40 acres open to the wind. Mr. Dessert asked members when they did their site walk did you see stuff blowing around? Mr. Macnamara stated no, it rained the night before, it was not a windy day. Mr. Dessert commented that the dust follows the trucks right out onto Mr. Niemann's house. Mr. Dessert comments that we don't want this, we don't want these trucks, we don't want the importing of the gravel. Last week there were four trucks, one from Branford, CT showed up at about 7:30 a.m. with material in the truck. Where did this come from, what is it? Anybody who shows up with a truck of dirt the guy buys it. Mr. Dessert comments that he does not blame him, he can do it and get away with it, I don't blame him one bit. Where is this stuff coming from, nobody knows? Mr. Dessert asked Mr. Jolley where's this coming from, four truck loads from Brandford. Mr. Jolley commented no such thing. Mr. Dessert commented they are all sick of it and they don't want it there no more, it's time to go away.

Ken Niemann, 573 Wauregan Road. Mr. Niemann commented that it is time, when the gravel is gone. Mr. Niemann commented that he understands that they currently do not have a gravel bank permit and does not know how he is operating without one. There was a gravel truck coming in south from Route 205 this morning at 6:50 a.m. Mr. Niemann and Mr. Dessert went to neighbor's doors to discuss this situation. The neighbors have had enough. Nothing personal against Wayne Jolley, but it has to be done.

Chairman Ross commented we appreciate the public comments. The board will further deliberate the application.

Public Hearing Closes

A motion was made by Lou Brodeur to close the public hearing. Bill Macnamara seconds the motion. No discussion held. All in favor. The motion passes unanimously.

Unfinished Business:

- 1. ZBA 19-002 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:**

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

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;

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;

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.

Chairman Ross commented that as the result of the site walk the information offered by the applicant has not demonstrated a hardship. There must be a hardship to vary the regulations, the Commission must take this into consideration.

Bruce Parsons agrees with Chairman Ross.

Ms. Fraenkel commented for the Commission's consideration, within the original submitted application, the hardships are stated by the applicant for each variance request.

Mr. Macnamara questioned was this particular business an established use prior to zoning. Attorney Alter commented it has not been established. There has been some testimony offered as to how long it has been in place, but the variances sought don't relate to the element of being grandfathered.

Mr. Macnamara questioned according to some of the public hearing comments, how is Mr. Jolley been granted a permit at all after all of these years if it is not an already an established use. Attorney Alter commented that it is his understanding that he has received a permit. Mr. Macnamara commented that he has had many permits over the years. Attorney Alter commented that the operation of a gravel bank is a permitted by special permit in the RA Zone. It is not an illegal use in the zone as long as all of the requirements of the gravel bank special permit are satisfied. What is before the Commission is a number of requests where the applicant has indicated that he is not able to meet those requirements, and he is asking this board, which is the proper board, to grant relief because his argument is he has demonstrated a hardship that the regulation imposes on his particular operation that would be under the law, as talked about previously, has to be unique to this property, cannot be financial in nature, cannot be self-created. If the Commission is satisfied that there is enough evidence that those elements have been met, than the Commission could find a hardship, which should be stated on the record as to exactly what it is and then under Connecticut General Statutes 8-6 and your own regulations under Section 17, you could discuss and vote to grant the variances. The Commission has considered each of these as a separate request. The Commission could act on each one separately and approve half or disapprove half of them if some of them you may find satisfy an adequate hardship that meets those legal test we've talked about has been presented to you. To provide guidance, Attorney Alter prepared and passed out potential draft motion suggestions in both directions, motions to approve, and motions to deny.

Chairman Ross commented that to grant any variance there needs to be a demonstrated hardship unique to the property which would prevent the applicant to continue his business under the present rules and regulations by which he has been operating under all these years.

Mr. Macnamara commented for Section 13.3.3.1 the 10-year permit, is it possible to grant a 2-year permit since it is going to be modified in the regulations. Attorney Alter commented that

because there has testimony presented tonight that the Planning and Zoning Commission in its new regulations, which is about to be sent to public hearing, intends to change it to 2 years. Ms. Fraenkel commented that Brooklyn Sand and Gravel presently has a pending Gravel Special Permit with the Planning and Zoning Commission Discussion ensued.

Chairman Ross polls Commission members with regards to hardships that are particular to this property. Ms. Fraenkel reads into the record the requested variances and hardships. (See attached). Discussion ensued.

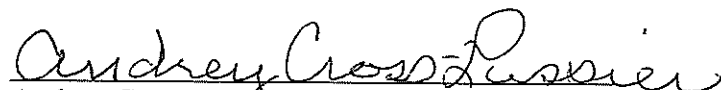
A motion was made by Bruce Parsons based on the information received from the Planning and Zoning Commission, abutting property owners, neighbors within the area, and based on what was seen out there, to deny all the requested variances as it is not in the best interest of the town and the best interest of the neighborhood. This would create many situations out there that would be dangerous. The three variance requests for mining closer to the property line allowing them to acquire more gravel from the property is not a personal hardship, it is a financial hardship because they want to get more out of the mines. Lou Brodeur seconds this motion. Discussion held on the motion.

Amended motion: To deny due to the ability to substantiate a hardship.

All five (5) members in favor to deny. Motion passes unanimously.

Other Business: None.

Adjourn: A motion was made by Chairman Ross to adjourn the meeting at 7:12 p.m. Bruce Parsons seconds this motion. No discussion held. All in favor. Motion passes unanimously.


Audrey Cross-Lussier
Recording Secretary

Provost & Rovero, Inc.

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Requested Variances

Rec'd

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Section 13.3.3.1: One (1) year permit term required.

Requested Variance: Ten (10) year permit term.

Hardship: This 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.

Section 13.5.2: 100 foot residential setback from property line and 200' setback from structures on adjacent land required for any excavation or excavation below highway grade.

Requested Variance: Variance of 80' for setback between excavation and property lines except highway lines to allow excavation within 20' of property lines. Variance of 150' for setback between excavation and structures on adjacent land to allow excavation within 50' of structures on adjacent land. Variance of 100' for setback between excavation and a highway line to allow excavation to the highway line.

Hardship: This property includes an electrical transmission line which is not readily accessible without entry into an active regulated mining and processing facility. The transmission line predates zoning and is not subject to any local zoning requirements. The need to periodically access portions of this line for maintenance or repairs is a hardship to both the applicant and the utility because of the mining and processing operations. The applicant desires to remove marketable sand and gravel materials immediately adjacent to Route 205 to provide a secondary means of access to the transmission line for use by the utility company.

Section 13.5.3: No slope exceeding 10% within 200' of a highway required.

Requested Variance: Variance of 175' to allow slopes up to 30% within 25' of a highway.

Hardship: The location of marketable sand and gravel is a unique feature of the subject property. Creation of the secondary site access noted above and providing for the best utilization of the resources on the subject property may necessitate the creation of slopes up to 30% within 25' of a highway.

Section 13.5.4.2: Material excavated off-site and transported to the subject site for processing provided that the annual quantities of same does not exceed that processed and mined on site.

Requested Variance: Material excavated off-site and transported to the subject site for processing provided that the annual quantities of same does not exceed ten (10) times that mined on site.

Hardship: The subject property has historically processed imported material as well as material mined on site.

PLANNING AND ZONING COMMISSION
TOWN OF BROOKLYN
P.O. BOX 356
CONNECTICUT 06234

April 23, 2019

Dan Ross, Chair
Brooklyn Zoning Board of Appeals
4 Wolf Den Road
Brooklyn, CT 06226

RE: ZBA 19-002 Variance Application of Brooklyn Sand and Gravel LLC, 530 Wauregan Road

Chairman Ross and Members of the Zoning Board of Appeals:

The Zoning Board of Appeals has a difficult but important task in reviewing the variance application of Brooklyn Sand and Gravel. One of the most difficult criteria to evaluate is whether a variance proposal is "in harmony with the general purpose and intent of the Zoning Regulations" as required by Section 8-6(3) of the Connecticut General Statutes (attached).

The Brooklyn Planning and Zoning Commission is uniquely capable of commenting on the general purpose and intent of the Zoning Regulations. The Commission offers the following comments on the variance application of Brooklyn Sand and Gravel to be received as testimony during the public hearing.

Variance from Section 13.3.3.1- ten year permit duration instead of one year

- The Planning and Zoning Commission does not find this to be in harmony with the general purpose and intent of the Zoning Regulations. Sec. 13.7 of the Zoning Regulations describes the process for gravel permit renewals. Sec. 13.7.3 provides that the renewal shall be granted provided that the all requirements of the permit have been

met. The intent of the time-limited permit is to ensure yearly compliance of all gravel operations in the Town of Brooklyn with the requirements of their respective permits.

Variance from Section 13.5.2 - a setback of 20 ft from property line where 100 ft is required when adjacent to a residential zone

- The Planning and Zoning Commission does not find this to be in harmony with the general purpose and intent of the Zoning Regulations. According to Sec. 13.1 of the Zoning Regulations, the intent of the gravel bank regulations is “to protect the public safety and property values”. This statement includes the value of adjacent properties. The intent of the 100 ft setback from residential zones is the protection of property values.

Variance from Section 13.5.2 - setback of 50 ft from offsite structures where 200 ft is required

- The Planning and Zoning Commission does not find this to be in harmony with the general purpose and intent of the Zoning Regulations. According to Sec. 13.1 of the Zoning Regulations, the intent of the gravel bank regulations is “to protect the public safety and property values”. This statement includes the value of adjacent properties. The intent of the 200 ft setback from structures on adjacent land is the protection of property values.

Variance from Section 13.5.2 - no setback for excavation below highway grade where 25 ft is required

- The Planning and Zoning Commission does not find this to be in harmony with the general purpose and intent of the Zoning Regulations. According to Sec. 13.1 of the Zoning Regulations, the intent of the gravel bank regulations is “to protect the public safety and property values”. The intent of the 25 ft setback for excavation below the highway grade is the protection of public safety.

Variance from 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 Planning and Zoning Commission does not find this to be in harmony with the general purpose and intent of the Zoning Regulations. According to Sec. 13.1 of the Zoning Regulations, the intent of the gravel bank regulations is “to insure that land will be usable for residential, commercial, or agricultural purposes following the removal of topsoil, sand, gravel, or other fill, and to provide for the re-establishment of ground level and protection of the area by suitable cover”. The intent of the 10% slope between 25-200 ft from a highway is to ensure that the site and the final topography will be suitable for another land use following the completion of excavation activities.

Variance from Section 13.5.4.2 - to increase by ten times the amount of material that may be imported for processing

- The Planning and Zoning Commission does not find this to be in harmony with the general purpose and intent of the Zoning Regulations. According to Sec. 13.1 of the Zoning Regulations, the intent of the gravel bank regulations is “to insure that land will be usable for residential, commercial, or agricultural purposes following the removal of topsoil, sand, gravel, or other fill”. The intent of the processing limit is to ensure that the gravel bank use will eventually terminate when the gravel has been excavated and the site will ultimately be converted to a residential, commercial, or agricultural purpose.

The Brooklyn Planning and Zoning Commission does not feel that any of the proposed variances are in harmony with the general purpose and intent of the Zoning Regulations. Attached please find the complete statement of intent for Zoning Regulations concerning gravel banks (Section 13.1 of the Brooklyn Zoning Regulations).

Additionally, Brooklyn Sand and Gravel applied for a text change to the Zoning Regulations in 2016. That proposal, application ZRC 16-001, involved changes to Sections 13.5.4.2 and 13.5.4.3 of the Brooklyn Zoning Regulations. Specifically, it involved an increase

of imported material for processing on-site up to 100%. This proposal was denied by the Planning and Zoning Commission. The reason given was that the proposal would eliminate the logical terminus of gravel-related activity. In other words, when there is no merchantable gravel available to mine, the gravel operation will cease and the property will be restored for some potential re-use. The Brooklyn Planning and Zoning Commission asserts that the intent of the gravel special permit in the RA Zone is that the use will eventually terminate upon the exhaustion of marketable material on-site and, while imported material for processing is permitted as an accessory use to a gravel excavation, stand-alone processing is not a permitted use in the RA Zone.

Lastly, the Zoning Board of Appeals is limited in the variances it may grant by the Zoning Regulations themselves. Section 17.3 of the Zoning Regulations (attached) outlines these limitations. Specifically, Section 17.3.1 states that "The Board is prohibited from approving a variance that has the effect of permitting a use in any zone that is not permitted in that zone by these Regulations." Section 17.3.2 states that "The Board is prohibited from varying any condition or requirement set forth in these Regulations for a Special Permit or Special Exception use when such uses are only permitted in the subject zone when all conditions or requirements are satisfied." The Planning and Zoning Commission feels that, if approved, some of the proposed variances would run counter to these regulations.

Thank you for the opportunity to comment in this variance application.

If you have any further questions, please contact Jana Butts Roberson, AICP, Brooklyn Director of Community Development/Town Planner at 860-779-3411 Extension 14.

Signed,



Michelle Sigfridson, Chair

Planning & Zoning Commission

CC: File

GENERAL STATUTES OF CONNECTICUT Revised to January 1, 2019

Sec. 8-6. Powers and duties of board of appeals. (a) The zoning board of appeals shall have the following powers and duties: (1) To hear and decide appeals where it is alleged that there is an error in any order, requirement or decision made by the official charged with the enforcement of this chapter or any bylaw, ordinance or regulation adopted under the provisions of this chapter; (2) to hear and decide all matters including special exceptions and special exemptions under section 8-2g upon which it is required to pass by the specific terms of the zoning bylaw, ordinance or regulation; and (3) to determine and vary the application of the zoning bylaws, ordinances or regulations in harmony with their general purpose and intent and with due consideration for conserving the public health, safety, convenience, welfare and property values solely with respect to a parcel of land where, owing to conditions especially affecting such parcel but not affecting generally the district in which it is situated, a literal enforcement of such bylaws, ordinances or regulations would result in exceptional difficulty or unusual hardship so that substantial justice will be done and the public safety and welfare secured, provided that the zoning regulations may specify the extent to which uses shall not be permitted by variance in districts in which such uses are not otherwise allowed. No such board shall be required to hear any application for the same variance or substantially the same variance for a period of six months after a decision by the board or by a court on an earlier such application.

BROOKLYN ZONING REGULATIONS ARTICLE 13 - GRAVEL BANKS

13.1 - Intent: The following regulations regarding the establishment and continuance of gravel banks are intended to protect the public safety and property values by preventing land from becoming worthless due to the removal of topsoil, sand, gravel, or other material, and by preventing the creation of hazards due to deep holes, steep slopes, and embankments. These regulations are designed to insure that land will be usable for residential, commercial, or agricultural purposes following the removal of topsoil, sand, gravel, or other fill, and to provide for the re-establishment of ground level and protection of the area by suitable cover.

BROOKLYN ZONING REGULATIONS ARTICLE 17 - ZONING BOARD OF APPEALS

17.3 - Variance: The Board shall determine and vary the application of these Regulations in harmony with their general purpose and intent, and with due consideration for conserving the public health, safety, convenience, welfare and property values solely with respect to a parcel of land where, owing to conditions especially affecting such parcel but not generally affecting the district in which it is situated, a literal enforcement of such Regulations would result in exceptional difficulty or unusual hardship so that substantial justice will be done and public safety and welfare secured

17.3.1 - The Board is prohibited from approving a variance that has the effect of permitting a use in any zone that is not permitted in that zone by these Regulations.

17.3.2 - The Board is prohibited from varying any condition or requirement set forth in these Regulations for a Special Permit or Special Exception use when such uses are only permitted in the subject zone when all conditions or requirements are satisfied.

17.3.3 - Variances are to be granted sparingly, and only to the minimum extent necessary to allow property to be used for the least intense use that is permitted in the subject zone.

17.3.4 - Variances shall only be granted where such an action would be in harmony with the purposes of these Regulations, and where the literal enforcement of these Regulations would result in unusual hardship.

17.3.5 - The burden is on the applicant to demonstrate that the requirements for a variance have been met.