



# TOWN OF NEW MILFORD

Office of the Zoning Commission  
10 Main Street  
New Milford, Connecticut 06776  
(860) 355-6095 • zoning@newmilford.org  
www.newmilford.org

## ZONING COMMISSION REGULAR MEETING MINUTES July 11, 2017

**Present:** **William Taylor**, Chairman, *seated and voting*  
**Sharon Ward**, Vice Chairwoman, *seated and voting*  
**James Volinski**, Secretary, *seated and voting*  
**Charles Bogie**, Member, *seated and voting*  
**Rob DiMichele**, Alternate, *seated and voting*  
**Richard Saitta**, Alternate, *not seated or voting (arrived at 7:03pm)*  
**Laura Regan**, Zoning Enforcement Officer, *not seated or voting*

**Absent:** **Thomas O'Brien**, Member

### 1) CALL TO ORDER AND PLEDGE OF ALLEGIANCE:

Chairman Taylor called the July 11, 2017 Regular Meeting to order at 7:01pm and led the room in the Pledge of Allegiance and a moment of silence. Mr. Taylor seated Mr. DiMichele for Mr. O'Brien.

Mr. Saitta arrived at 7:03pm.

### 2) PUBLIC PARTICIPATION:

Mr. Taylor opened the floor to any public participation.

Nancy Saggese, 195 Candlewood Mountain Road, thanked the Commission for their approval of the airport hanger venue, adding that everything has been working out great. Ms. Saggese wished to discuss the Candlewood Solar proposal, adding that she is very much against the project as it will adversely affect her business and her quality of life. Ms. Saggese stated that the proposed addition of 176,000 solar panels would be about 75 yards from her home and have a negative impact on her health, well being and quality of life.

Carl Dunham, Candlewood Mountain Road, stated that the correct number of proposed solar panels was 76,000, which will cover 80 acres of land, and affect approximately 20 acres of farmland, and approximately 60 acres of forestland. He said they will have to cut all of the trees down and denude the property. Mr. Dunham stated that what really troubled him was that he attended the Town Council meeting the previous evening and was led to believe that there would be a public hearing by the CT Siting Council on October 5. Mr. Dunham stated that he had asked to have the matter added to the Council's agenda so that the Town could consider being a party and possibly hiring a consultant to review the application. Mr. Dunham stated that he had spoken to the Siting Council that morning and there is no commitment to hold a public hearing, which means if it goes forward as a petition it can go forward within 60 days, and is at the whim of the Siting Council. Mr. Dunham urged the Commission to contact the Siting Council to inform them that the Zoning Commission is having a public hearing

and they should as well. Mr. Dunham stated that people on their street have no idea what is going on and there has been no public input, adding that there is no transparency on what this will look like. Mr. Dunham stated that the Siting Council is planning to have a meeting July 20, 2017 at which time they will render a decision on whether to have a public hearing or not, Mr. Dunham urged the Commission to contact them prior so that information can be obtained and public input can be heard.

### 3) PUBLIC HEARINGS:

- a. **Jonathan & Kelly Opdyke, Special Permit and Site Plan Applications under Section 025-090 and 025-110(B)(3) to allow an accessory apartment in a detached accessory building on property located at 25 Squire Hill Road, Map 78, Lot 40 in the R-80 zone. *Request to waive stormwater management plan, lighting plan, landscape plan, and traffic study. Close by July 25, 2017 or receive extension***

Mr. Volinski read the public hearing legal notice. The certified mail return receipts were submitted for the record. Ms. Regan stated that she had distributed copies of the floor plan, elevation drawings, existing conditions map and site plan. Ms. Regan referenced the Staff Report, dated July 3, 2017, reviewing the location, existing conditions and site history, as well as the proposal to allow the conversion of a detached barn into an accessory apartment, which would be served by a separate septic system. In addition to the special permit requests, the applicant has already received approvals to relocate the existing barn approximately 15' further back/north into the property, which will comply with minimum yard setbacks, and its conversion into an accessory apartment will not render the structure more nonconforming.

Paul Szymanski, PE, of Arthur H. Howland and Associates, was present on behalf of the applicant. Mr. Szymanski stated that the proposal is to reutilize the existing barn structure, adding that a company called East Coast Barn Builders specialized in taking historical barns, deconstructing them, and reutilizing the materials to construct more modern structures. Mr. Szymanski stated that the accessory apartment will be used by the applicant's parents when they visit, and that it will be not be rented or occupied fulltime.

Mr. Taylor asked Mr. Szymanski to explain the reutilization process. Mr. Szymanski stated that they basically reuse every timber and cladding. The timber frame itself is taken down piece by piece, and then reconstructed, obviously replacing certain parts that are rotted and utilizing pieces from other historical barns that have been harvested. Mr. Szymanski stated that usually the bottom 12-18" is dry rotted and needs to be replaced. Ms. Saitta asked if a new concrete slab or a new foundation will be put down, to which Mr. Szymanski replied that it will have a new foundation.

Mr. Szymanski stated that the current barn is located adjacent to a 36" copper beach tree, which is one of the oldest specimens in Town. He noted that the entire property contains some of the oldest specimens of trees and shrubs he has seen, and great care has been taken to preserve them, including redesign of the septic system.

Mr. Szymanski went over each subsection of Section 025-090 to demonstrate that the application is in compliance. Subsection 1, Mr. Szymanski stated the existing cottage/cabin labeled on the survey is just a shed, adding that is not living space or habitable and is just for storage. Subsection 2 states that the proposal is compliant with the minimum lot area requirement. Mr. Szymanski stated that subsection 3 is not applicable because the apartment will be in a detached accessory building. Mr. Szymanski stated that subsection 4 pertains to minimum lot area requirements which they are compliant with. Subsection 5 demonstrates compliance with minimum and maximum square footage of total finished floor area. Subsection 6 pertaining to the remaining living area of the single family

dwelling was not applicable as there are no proposed changes to the primary residence. Regarding subsection 7, which states the regulation prohibits more than one bedroom, Mr. Szymanski stated that the accessory apartment technically has 0 bedrooms from a health code prospective because the lofts will not have room privacy, and is therefore in compliance with the 1 bedroom restriction. Mr. Szymanski stated that the property owners submitted an affidavit stating that their parents will occupy the proposed accessory apartment, which complies with subsection 8. Subsection 9 states that the owner of the dwelling must occupy either the dwelling or the accessory apartment, to which Mr. Szymanski stated that they will continue to live in the primary residence. Subsection 10 states that there shall be no fewer than 4 off-street parking spaces, which Mr. Szymanski demonstrated that the applicant is in compliance with. No new curb cuts are proposed, so they also comply with Subsection 11. Subsection 12 states that prior to the issuance of a zoning permit, they must obtain Health Department review and approval, to which Mr. Szymanski stated that he had provided the required documents from the Health Department to Ms. Regan. Per Subsection 13, the property cannot be part of a condominium complex, which it is not. Subsection 14 requires that the proposed apartment/dwelling shall preserve and maintain the single family residential appearance consistent with the character of the neighborhood, to which Mr. Szymanski stated that he believes the design of the building complies with this requirement.

Mr. Szymanski then reviewed the Comments and Questions in the ZEO's staff report. Comment 1, he said speaks to the Tax Assessor's listing of a cabin and requests additional information as to the use and contents of the cabin to determine whether it already constitutes a second dwelling unit on the property. Mr. Szymanski stated that the building is a shed, and will submit pictures or have Ms. Regan visit the property to verify that. Mr. Taylor stated that if it shows as a cabin on the Tax Assessor's Field Card, then it needs to be changed to avoid any issues in the future. Ms. Regan stated that one of the conditions of approval will be that prior to issuance of a zoning permit, documentation shall be submitted that the Tax Assessor's designation as an existing cabin does not constitute zoning's definition of a dwelling unit and at no time shall the property contain more than one accessory dwelling. Mr. Taylor asked if there are any utilities to the subject cabin. Mr. Szymanski replied no, and they will be more than happy to get that cleared up as it will reduce the property taxes.

Comment 2 deals with Section 025-090(5) and its maximum square footage requirement for an accessory apartment. There was some discussion with regard to the language of the regulation which states, in part, that an accessory apartment/dwelling "shall not be greater than 1,000 SF or [not and/or] more than 50% of the total finished floor area of the primary residence..." Since the proposed 1,928 SF accessory apartment is less than 50% of the total finished floor area of the primary residence, Mr. Szymanski stated that it complies.

Comment 3, discussed the 1 bedroom maximum restriction, to which Mr. Szymanski responded that apartment will have a loft, which does not meet the definition of a bedroom, so it will comply.

Question 4 discusses the existing driveway and parking area and asks if a driveway extension or any additional parking is proposed closer to the apartment, to which Mr. Szymanski stated no additional parking or driveway extension is proposed. Mr. Taylor asked how the apartment will be accessed, to which Mr. Szymanski stated that typically they would enter the house and exit out the back patio and walk about 80 feet across the grass to where the building will be located.

Regarding Comment 5, Mr. Szymanski noted that the Health Department approval has been obtained and submitted for the record. Mr. Szymanski stated he would be happy to answer any further questions.

Mr. Bogie asked Mr. Szymanski why the apartment will not have a bedroom. Mr. Szymanski stated that it was designed as a loft. Mr. Taylor asked if any of the Commission members had any further questions. There were none. Mr. Taylor then opened the floor to any public participation.

Paul Hanchett, 71 Bear Hill Road, stated that he lives directly across the river from the Opdykes, and has lived there since 2005. Mr. Hanchett stated that they have always enjoyed the view across the river of the old red barn, and is distressed that they will have to look at this new building. He explained that they moved up from Manhattan to get away from the noise and buildings and since early April the Opdykes, he said have been cutting trees down and wood chipping them, sometimes as early as 6-7am and going until it got dark, Monday through Friday, which has been very disruptive. Mr. Hanchett stated that he and other neighbors have contacted the Opdykes regarding the disturbances to which they replied they were not aware because they are mostly weekend residents. Mr. Hanchett stated that building will be around 24' high and will take up most of their view. Mr. Hanchett stated it appears that the Opdykes have also built a dam in the river with a pump to pull up the water to the barn.

Ms. Ward stated that the dam could be a very serious violation and recommended that Mr. Hanchett also contact the Wetlands Department. Ms. Ward also explained that the construction hours can be limited as a condition of approval, and agreed that what Mr. Hanchett described sounded excessive.

Brie Cox, 72 Bear Hill Road, stated that they have owned the house for approximately 1 ½ months and they had no idea about this prior to purchasing the home. Like the Opdykes, they are generally only weekend residents, and they have not met them yet. Ms. Cox stated that the Opdykes had sent a letter to the previous owners of her property stating that this had already been approved by Zoning, so she asked for clarification. Ms. Cox stated that the old barn has already been taken down and the new foundation has been poured. Ms. Cox said the previous weekend they were woken up Saturday morning at 8am to the sound of trucks and pounding noises, and to Mr. Szymanski's credit, they called him and he was able to get construction stopped within 30 minutes. Ms. Cox worries that the applicant's will have little motivation to adhere to the construction hours and wonders how they will be enforced. Ms. Cox also worries that her view will now be a construction pit, and for how long. Ms. Cox felt the language of the regulation relating to maximum square footage was not clear, and therefore had it reviewed by an attorney who agreed it was vague.

Mr. Taylor clarified that the application had not been approved and explained the public hearing process.

Mr. Hanchett asked for clarification as to why the Opdykes were allowed to build a larger barn. When they had to replace their barn/garage after a tree damaged it, they were very limited on what could be done and had to adhere to strict standards using the same footprint and height, etc. Ms. Regan stated that it sounds like the Hanchett's barn was preexisting nonconforming with regard to setbacks, so when it was rebuilt it had to be built on the exact footprint it was originally built on to the same dimensions, volume, and height. Ms. Regan explained that the Opdyke's barn was nonconforming, but they are relocating it in compliance with setbacks. Therefore, she said it will be conforming and it is not limited to the same footprint or size. It is the use of the barn as an accessory apartment that requires special permit approval from the Commission.

Ms. Regan noted a memo received from James Ferlow, Wetlands Enforcement Officer, dated July 5, 2017, stating that the Wetlands Commission approved the application to move the barn during their May 25, 2017, and provided a copy of the permit with conditions for the record.

Mr. Taylor asked Ms. Regan to contact Mr. Ferlow regarding the alleged damming and installation of a pump in the river, adding that this is a very sensitive area. Mr. Szymanski asked for clarification as to the location of the dam. Mr. Hanchett stated it was directly across from his property, and Mr. Szymanski stated he would check into it. Mr. Szymanski also noted that in response to the complaints about the construction hours, the Opdykes have volunteered to not operate construction on weekends and holidays going forward. There was some discussion on reasonable hours and Mr. Taylor stated they would discuss it during the business meeting.

Mr. DiMichele asked if the footprint and height are the same for the new barn. Mr. Szymanski stated that the footprint is very close, and the height is about 18” taller than previous barn. Mr. Szymanski stated the proposed width on the north end is approximately 23’ and the length is 53’ 1”. Mr. DiMichele asked if there is a count of how many trees they plan to remove. Mr. Szymanski stated that prior to this proposal, the applicants had hired a forester to review the health of the forest, and it was determined that too many pine trees were planted too close together, and the dead ones needed to be removed and the forest thinned for preservation of the canopy. Mr. Szymanski stated the only trees being removed relating to this project are 2-3” diameter dogwoods, taking careful consideration of the older larger, trees in the placement of the new barn.

There were no further comments or questions.

*Mr. Volinski moved to waive stormwater management plan, lighting plan, landscape plan, and traffic study for Jonathan & Kelly Opdyke, Special Permit and Site Plan Applications under Section 025-090 and 025-110(B)(3) to allow an accessory apartment in a detached accessory building on property located at 25 Squire Hill Road, Map 78, Lot 40 in the R-80 zone. The motion was seconded by Ms. Ward and carried unanimously.*

*Mr. Bogie moved to close the public hearing for Jonathan & Kelly Opdyke, Special Permit and Site Plan Applications under Section 025-090 and 025-110(B)(3) to allow an accessory apartment in a detached accessory building on property located at 25 Squire Hill Road, Map 78, Lot 40 in the R-80 zone. The motion was seconded by Mr. Volinski and carried unanimously.*

- b. Sinan M. Abdallah, Special Permit and Site Plan Applications under Section 025-080(1), and Chapters 120, 175, and 180 to allow a total of 3 residential dwelling units, 2 in the single family dwelling and 1 in the detached accessory building, and associated parking, on property located at 109 Housatonic Avenue, Map 35.1, Lot 44 in the R-20 Zone. Request to waive lighting plan, traffic study, and soil erosion and sediment control plan. Close by July 25, 2017 or receive extension**

Mr. Volinski read the public hearing legal notice. The certified mail return receipts were submitted for the record. Ms. Regan stated that the Commission members had copies of the existing conditions map, site plan, floor plans, and Staff Report dated July 10, 2017. Ms. Regan reviewed the location, existing conditions and site history as well as the proposal requesting Special Permit and Site Plan approval under Section 025-080(1), and Chapters 120, 175, and 180 for a total of 3 residential dwelling units, 2 in the single family dwelling and 1 in the detached accessory building, and associated parking. According to the letter of request and floor plans, Unit A will be a 1,851 SF, 4-bedroom apartment located on the 1<sup>st</sup> and 2<sup>nd</sup> floors of the main house, Unit B will be an 840 SF, 2-bedroom apartment located in the basement of the main house, and Unit C will be an 870 SF, 2-bedroom apartment located about the detached garage. A parking area of 6 spaces is proposed to the rear of the main house,

surfaced with 1/2" processed gravel and delineated with 6' x 6' treated timber. To offset the loss of floodplain storage associated with the installation of the parking lot a small depressed rain garden is proposed adjacent to the garage. Ms. Regan then outlined compliance with Section 025-080 Conversion of Existing Dwellings, noting that the property is located in the original sewer district, the main house was constructed in 1893 and the detached garage/barn was constructed in 1955, a total of 3 dwelling units are proposed, which is under the maximum number of 4 allowed, and each unit contains more than the 500 SF minimum required. The proposal also meets the off street parking requirement of a minimum of 2 spaces per dwelling unit. In regards to the requirement about exterior building modifications, Ms. Regan noted the applicant recently received a mechanical permit from the Building Department to replace siding and windows, and stated there are questions regarding that in the Comments and Questions section of the report. Ms. Regan also noted that over 500 SF of lawn area will be maintained on the property which complies with the recreational area requirement.

Sinan Abdallah, the owner of 109 Housatonic Avenue, was present. Mr. Abdallah stated that he purchased the property in 2015, and prior to closing his attorney reviewed the Zoning Office file and informed him that the property was eligible to be converted from single family to multifamily, and that he would just need to apply for a special permit. Mr. Abdallah stated that he did not realize that it would be this much work. He did complete the required site plan and A-2 survey as required and his intention was to legalize the use, adding that the property is currently vacant as he has not completed the renovations. Mr. Abdallah stated that he thought the property has been used as multifamily and for business purposes since the 1960's, and statements from the neighbors indicate that the apartments in the basement and above the garage have been occupied by tenants in recent history, which encouraged him to apply for the special permit and he hopes that the Commission will approve it.

Ms. Ward asked Mr. Abdallah if his intention is to live on the property, to which he responded that he plans to live in the main dwelling and rent the other 2 apartments. Ms. Ward stated that one of the main concerns is the basement apartment, adding that it is not a matter of *if* it will flood, but *when* it will flood. Ms. Ward asked Mr. Abdallah if he would consider giving up the basement apartment, to which he responded that he would have to think about it. Mr. Taylor asked for specifics regarding the floodplain to which Ms. Regan replied that the elevation of the proposed basement apartment is approximately 10 feet below the base flood elevation. Ms. Regan added that the Zoning Office file contains complaints about the conditions of the apartments being moldy and wet in the past. Ms. Ward stated that while she realizes that Mr. Abdallah was not responsible for the past, they try not to put people in places that are going to flood and the floodplain boundary is well established in this location.

Ms. Regan then reviewed the Questions and Comments section of the Staff Report. Question 1 asks since one of the dwelling units is proposed above the detached garage, the Commission must decide if Section 025-080 was intended to also allow the conversion of accessory buildings into dwelling units. Mr. Taylor asked for clarification as to whether they have statements from past tenants stating there was a dwelling over the garage, to which Ms. Regan responded that they have letters from neighbors which state that the space was used as a dwelling. The letter from the property owner states that when zoning was adopted in 1971, the garage was used to manufacture costume jewelry. Mr. Taylor clarified that those uses were therefore operating without permission to do so as this is located in the R-20 Single Family Zone.

Comment 2 discusses Section 025-080(f) which states that there shall be no external alterations of the structure with the exception of exterior renovations needed to meet proper access and egress from the structure. Comment 2a states that the applicant recently obtained a mechanical permit from the Building Department to replace the siding and windows, adding that the applicant should review with the Commission all of the recent external alterations that have been made to both structures along with

any additional modifications that are proposed. Comment 2b asks if the applicant has consulted with the Building Department about the proposed use change to multifamily to determine if additional changes will be required for proper access and egress from the structures. Mr. Abdallah stated that he did not yet consult with the Building Official, as he was under the impression that he was supposed to do that after he had finished with Zoning. Mr. Abdallah stated his heating contractor went to obtain a permit to update the lines in the basement but they told him they cannot do that without the special permit approval from Zoning. Mr. Abdallah stated there are no proposed changes except to replace the old windows and doors with new ones. Ms. Regan stated that because these apartments were never approved by the Building Department, they have to make sure that they have proper access and egress. Mr. Bogie added that window sizes may be an issue for egress in the bedrooms because they have to be of a certain height and width. Ms. Ward asked if there is currently a separate entrance for the basement apartment, to which Mr. Abdallah replied that it does have its own entrance, kitchen, bathroom, etc...as it has been used by previous tenants and each unit has 2 egresses. Mr. Abdallah was advised to consult with the Building Department.

Comment 3 asks for clarification in regards to the stormwater management plan since one was not provided nor requested to be waived. Mr. Abdallah replied that, he would like to add that waiver to his request as well.

Ms. Regan referenced Comment 4, which notes that the entire property is located in the 100-Year Floodplain with portions also in the floodway; therefore, the application is subject to the requirements of Chapter 120, Floodplain Management Regulations. Ms. Regan read aloud Sections 120-020(2) which states *“In any area of special flood hazard, no structure shall be constructed or substantially improved, nor shall the development of any land be made, until a plan for the proposed construction or improvement or land development, meeting the requirements of the floodplain management regulations, has been approved by the Zoning Commission”*. Ms. Regan read Section 120-050 which states *“New construction and substantial improvement of any residential structure shall have the lowest floor, including basement, elevated to or above the base flood elevation”*. Ms. Regan stated that in her opinion, the 2 new apartments represent new residential construction and therefore must be elevated to or above the base flood elevation of 216, and according to the property survey, the elevation of the basement apartment is 206.3 and the elevation of the unit above the garage is estimated at 214.6.

Ms. Regan stated that in reviewing this application the Commission should refer to Section 120-010, the Purpose and Objectives of the Floodplain Regulations as well as the report from Inland Wetlands Commission, dated 7/6/17. Copies of both are attached to the end of the staff report and part of the record. Ms. Regan stated that the Wetlands Commission has concerns about the 100-Year floodplain and the elevations of the proposed residential units and the frequency the property floods. Therefore, they recommend that the Zoning Commission require a study to determine if the renovations that have recently occurred and the ones proposed constitute a “substantial improvement” under the Floodplain Management Regulations.

Mr. Taylor stated that the question is with the wording of “substantial improvement”. Ms. Regan read the definition of “substantial improvement” from Chapter 120 into the record: “any construction, rehabilitation, addition, or other improvement of a structure, the cost of which equals or exceeds 50 percent of the market value of the structure before the start of construction of the improvement”. Ms. Regan stated that if the proposed and required improvements meet the definition of a substantial improvement, then the lowest floor, including basement, must be elevated to or above the base flood elevation.

Ms. Regan explained that tenants in the unit on the 1<sup>st</sup> and 2<sup>nd</sup> floors of the main house can seek refuge above the floodplain elevation unlike the basement unit and the unit above garage, which are both on a single level below the base flood elevation. Therefore, in the event of a flood, tenants will be displaced. Ms. Regan asked what provisions will be made for tenants. Additionally, Ms. Regan stated that according to FEMA the property owner does not currently have flood insurance. Mr. Abdallah stated that he has met with an insurance agent and is planning to obtain flood insurance.

Mr. Taylor asked Mr. Abdallah if this is all new information to him and what steps he has taken to address it. Mr. Abdallah stated that he was trying to educate himself. Mr. Taylor stated that the FEMA regulations are very complicated and detailed and he should seek some assistance in his efforts to understand and adhere to their rigorous standards, adding that this will not be an easy task. Ms. Regan also recommended that Mr. Abdallah consult with the Building Official to determine whether the proposed residential units can be permitted under the current building code and if any alterations will be required. Mr. Taylor stated it was critical that Mr. Abdallah meet with the Building Official to provide and obtain additional information.

Ms. Regan stated that given all of the complexities and safety issues associated with this application, she recommends referred it to the Zoning Commission Attorney for an opinion on compliance with the floodplain regulations and whether the additional dwelling units will render the nonconforming garage and main house, more nonconforming. Mr. Taylor added that he would also like an opinion on comment number 1 in the staff report that deals with whether or not Section 025-080 allows accessory buildings to be converted into dwelling units.

Mr. Taylor asked Mr. Abdallah if he had any questions of the Commission, adding that he realizes that this is complicated and a lot to take in, adding that the Commission must make decisions based on the rules and regulations. Ms. Taylor suggested that Mr. Abdallah get some assistance with the FEMA and the Floodplain Management Regulations. Mr. Abdallah asked about the comment that Ms. Regan made about this being new construction, to which Ms. Regan replied that is why she is recommending that the application be referred to the Commission's attorney, with Mr. Taylor adding that a legal opinion is necessary as they do not want to mislead the applicant. Ms. Ward stated that the number one concern has to be the safety of the tenants, including Mr. Abdallah and his family.

Mr. Taylor opened the floor to any public participation, there was no public comment. The public hearing was continued to the next regularly scheduled meeting on July 25, 2017.

#### **4) NEW BUSINESS:**

None

#### **5) OLD BUSINESS:**

- a. Keith and Theresa Krepil, Site Plan Modification Application under Chapters 60 and 175 to allow modifications to the 6/24/14 Special Permit (2014-07) and Site Plan Approval for a construction yard with outside storage of equipment and materials and construction of a covered parking area; a use change to retail on the 1<sup>st</sup> floor and enclosed porch of an existing single family dwelling and accessory building; and annual retail sales of Christmas trees, all on property located at 501 Danbury Road, Map 7, Lot 79 in the IC zone. ***Request to waive stormwater management plan, lighting plan, landscape plan, traffic study, and soil erosion and sediment control plan. Decision by July 11, 2017 or receive extension (35 days remaining)***



Mr. Taylor referenced a letter of withdrawal received from Dainius Virbickas, PE, of Artel Engineering, on behalf of the applicants.

*Mr. Taylor moved to accept the letter of withdrawal for Keith and Theresa Krepil, Site Plan Modification Application under Chapters 60 and 175 to allow modifications to the 6/24/14 Special Permit (2014-07) and Site Plan Approval for a construction yard with outside storage of equipment and materials and construction of a covered parking area; a use change to retail on the 1<sup>st</sup> floor and enclosed porch of an existing single family dwelling and accessory building; and annual retail sales of Christmas trees, all on property located at 501 Danbury Road, Map 7, Lot 79 in the IC zone. Request to waive stormwater management plan, lighting plan, landscape plan, traffic study, and soil erosion and sediment control plan. The motion was seconded by Mr. Volinski and carried unanimously.*

**6) ACCEPT FOR PUBLIC HEARING:**

- a. Public Informational Hearing: Candlewood Solar, LLC, Petition for a Declaratory Ruling filed with the CT Siting Council under CGS Chapter 277a, for the construction and operation of a 20 megawatt AC solar photovoltaic electric generating facility on a 163 acre parcel located at 197 Candlewood Mountain Road, Map 26, Lot 67.1 and associated electrical interconnection to Eversource Energy's Rocky River Substation on Kent Road. **Suggested Hearing Date: July 25, 2017**
- b. Bette Anne Wallace, Special Permit and Site Plan Applications under Section 025-090 to allow an 884 SF, 1-bedroom accessory apartment in the finished basement of the existing dwelling located at 299 Aspetuck Ridge Road, Map 55, Lot 109, in the R-80 zone. **Suggested Public Hearing Date: August 22, 2017**

Mr. Taylor made reference to the Public Informational Hearing for Candlewood Solar, LLC. He said last year one of the principals who wished to build this solar facility came before the Commission to give a brief overview of the project. Mr. Taylor stated that at that time, the proposal contained numerous errors and misrepresentations regarding who they had met with in the town and what those town officials had said. Of particular concern was a statement that they had met with Zoning and that Zoning had approved the project, which was not the case. He said he also has concerns with how close this facility will be to the airport and with the amount of farmland and forestland that will be lost. Since the CT Siting Council will be the ones deciding on this application, Mr. Taylor asked Ms. Regan to draft a letter to the Siting Council recommending that they hold a public hearing in the Town of New Milford for this application. Mr. Taylor stated that this was his opinion, so he asked each member if they agreed. Mr. Bogie, Ms. Ward, Mr. Volinski, Mr. DiMichele all agreed and asked to include their names on the letter. Mr. Taylor asked Ms. Regan to send the letter certified mail with signature receipt required to ensure it was received prior to the Council's July 20, 2017 meeting.

*Mr. Taylor moved to accept for public hearing Agenda Items 6a and 6b on the dates suggested. The motion was seconded by Mr. Volinski and carried unanimously.*

A recess was requested by Mr. Bogie. Mr. Taylor called for a five minute recess at 8:25pm. The meeting resumed at 8:30pm.

## 7) BUSINESS MEETING:

- a. Discussion and possible decisions on the evening's agenda

Agenda Item 3a: Jonathan & Kelly Opdyke, Special Permit and Site Plan Applications under Section 025-090 and 025-110(B)(3) to allow an accessory apartment in a detached accessory building on property located at 25 Squire Hill Road, Map 78, Lot 40 in the R-80 zone.

Mr. Taylor stated that he had a few comments, the first one being the discussion with regard to the language of the regulation which states an accessory apartment/dwelling "shall not be greater than 1,000 SF *or* more than 50% of the total finished floor area". Mr. Taylor stated that the Commission was somewhat at fault for not wording the regulation clearly, not anticipating this situation, however as the regulations reads the size of the apartment complies and it is not unprecedented to approve an accessory apartment over 1,000 SF as they have in the past. Mr. Bogie again asked if it is to be used as a guesthouse, why is there no bedroom. Mr. Saitta asked if there was a bedroom requirement. Ms. Regan stated that it designed more like a loft or studio, which meets the definition of a dwelling unit, and is allowed under the regulation. Mr. Taylor stated another concern was regarding the hours of construction, adding that starting as early as 6 or 7am and running until late utilizing lights was not acceptable. There was some discussion amongst the Commission members as to what constitutes proper construction hours, with the consensus being to stipulate 8am to 4:30pm, with all trucks and workers offsite by 5pm, with no construction related activities occurring on weekends or holidays. Mr. Taylor stated his final concern was regarding the damming and installation of the sump pump in the river, with Ms. Ward wondering how that was not caught by the Wetlands Commission. Ms. Regan stated that she would discuss this concern with Mr. Ferlow. Ms. Ward asked about the height of the new barn, to which Ms. Regan replied that it will be 24' in height, which complies with the maximum height regulation. Mr. DiMichele asked if there is any say as to where the construction outhouse is stored, adding that it would not be pleasant to have to look at that, to which Mr. Taylor replied that Ms. Regan could relay that request to the applicant.

*Mr. Taylor moved to adopt the Resolution of Approval for Jonathan & Kelly Opdyke, Special Permit and Site Plan Applications under Section 025-090 and 025-110(B)(3) to allow an accessory apartment in a detached accessory building on property located at 25 Squire Hill Road, Map 78, Lot 40 in the R-80 zone, with an additional condition being added that construction related activities associated with the accessory apartment be limited to Monday – Friday from 8am to 4:30pm, with no construction related activities occurring on the weekends or holidays. The motion was seconded by Ms. Ward and carried unanimously.*

- b. Discussion and possible decision on the following closed public hearings
  - i. Town of New Milford, Special Permit and Site Plan Applications under Section 025-100 and Chapters 175 and 180 to allow a use change of [49,600 SF of] an existing 75,000 SF building from a decommissioned elementary school to a community building, including municipal offices, on property located at 2 Pickett District Road and 75 Danbury Road, Map 22.4, Lots 29 and 30 in the R-40 zone. **Decision by August 22, 2017**

Mr. Taylor noted that Mr. DiMichele was seated and asked Mr. DiMichele if he had listened to the recording and read the minutes of the one meeting he missed, to which he replied that he had.

Mr. Taylor stated that Ms. Regan had circulated a Draft Resolution, to which he had a few modifications he would like to discuss. Mr. Taylor stated that he had gone back over the information

presented during the various public hearings with regard to the usage related to Social Services, specifically the Food Bank. Families, he said, must have safe access to the site. Mr. Taylor stated that he has visited the site a few times in the past week and the concern is still with pedestrian access to the site from the point at which buses would drop people off along Route 7, adding that there is no lined crosswalk or point of landing on either side. Mr. Taylor stated that there has to be an access point that is cleared and maintained in the wintertime. People cannot be waiting to be picked up or dropped off in a snowbank in the winter, adding that safety needs to be the number one concern. Mr. Bogie interjected that the Methodist Church, which sits across the street also distributes food from their food bank from 4-6pm on the same day as social services, which may or may not add to the volume, but could increase the occurrence of families crossing that intersection.

Ms. Regan reviewed condition 4(c) of the Draft Resolution of Approval, which reads that, “A pedestrian walkway from the bus stop on Danbury Road/Route 7 to the parking lot shall be constructed or written documentation received from HARTransit stating that all passengers, traveling in both the northbound and southbound directions, will be dropped off in the circular drive off Pickett District Road. That if the pedestrian walkway is to be constructed, then prior to construction, final location, design, and construction details shall be provided for review and approval by the ZEO, Town ADA Compliance Officer, and Public Works Director”.

Mr. Taylor stated that regardless of whether the bus comes in and out of the site, it is his opinion that that partial sidewalk and corner landing need to be constructed and maintained. Mr. Volinski added that the concern is also for those people who are waiting for the bus, so that they do not have to stand in the road or in a mountain of snow or slush. Mr. Bogie asked how the bus will know to pick people up, to which Ms. Regan stated it was her understanding that they would commit certain pick up times or perhaps there is a phone in option that could be explored. Ms. Ward stated that it also needs to be out of the state right of way. Mr. Taylor stated that it is up to the applicant to provide safe access to the site northbound and southbound. Mr. Bogie added that while they don't know how many people will access the site by bus, one accident is too many. Mr. Taylor agreed, adding that specifically Social Services and the food bank would not receive zoning signoff for a CO until these improvements are complete. Ms. Ward agreed that this was reasonable and they have adequate space to do so.

Mr. DiMichele asked about the usage of the different agencies, expressing concerns about the unoccupied areas becoming storage. Mr. Taylor stated that those areas of the building that are listed as unoccupied will not be used for storage and will remain unoccupied until such time that they come back before the Commission. Mr. Taylor wanted to reiterate that any non town agency that wishes to come into this site will require that all phases of the site plan will be completed, to which Ms. Regan read from the Resolution of Approval which states that prior to the issuance of a Zoning Certificate of Compliance, signoff on a Certificate of Occupancy and/or use of the building, all of the site plan improvements shall be completed in accordance with the approved plans, and that any change or expansion of the uses approved by the Resolution, or any uses proposed in the unoccupied portions of the building shall require additional approval from the Zoning Commission. Ms. Regan stated that the only exceptions would be with regard to the landscaping and sidewalks and infiltration swales, adding that the proposed sidewalk depicted on the approved site plan along the property's frontage on Pickett District Road and Danbury Road/Route 7 and a portion of the property's southerly boundary, along with the grass infiltration swales/level spreaders, shall be completed within 5 years and/or prior to any further occupancy of the building's remaining 25,000 SF, whichever occurs first. With regard to landscaping, Phases 1A and 1B on the approved landscaping plan referenced shall be completed by October 1, 2018.

Ms. Regan referenced Provision 5h, regarding community events, noting that the property owner shall be responsible for coordinating all community events to ensure safe access, adequate parking, proper safety measures and staff, and that all required permits have been obtained. Ms. Regan asked if everyone was ok with that language, to which Mr. Taylor and Ms. Ward indicated they were.

Mr. DiMichele asked about the cafeteria and who will maintain and have access to that. Ms. Regan stated that the cafeteria is part of the proposed community space, but that the kitchen area is part of the 25,000 SF of unoccupied space. The kitchen, she said has been stripped down and currently has no appliances.

Mr. Taylor stated that it has always been the expectation of the Zoning Commission that the Town of New Milford should set the highest example. Ms. Ward stated that this started out as a difficult application but she feels that they now meet the regulations and have done a good job. Ms. Regan reviewed the modifications that were discussed and are stated below in the motion to adopt the Resolution of Approval.

*Mr. Taylor moved to adopt the Resolution of Approval for the Town of New Milford, Special Permit and Site Plan Applications under Section 025-100 and Chapters 175 and 180 to allow a use change of 49,600 SF of an existing 75,000 SF building from an elementary school to municipal offices and community space, on property located at 2 Pickett District Road and 75 Danbury Road, Map 22.4, Lots 29 and 30 in the R-40 zone, with the following modifications: Provision 4(a)i shall read: "Landscaping Phases 1A and 1B on the approved landscaping plan referenced above in number 1 shall be completed by October 1, 2018"; and Provision 4(c) shall read "A pedestrian walkway from the bus stop on Danbury Road/Route 7 to the parking lot and the circular sidewalk in the northwest corner of the site at the intersection of Danbury Road and Pickett District Road shall be constructed for safe pedestrian access to the site or written documentation received from HARTransit stating that all passengers, traveling in both the northbound and southbound directions, will be dropped off and picked up in the circular drive off Pickett District Road. That if the pedestrian walkway and circular sidewalk are to be constructed, then prior to construction, final location, design, and construction details shall be provided for review and approval by the ZEO, Town ADA Compliance Officer, and Public Works Director". The motion was seconded by Mr. Volinski and carried unanimously.*

**8) ACCEPTANCE OF MINUTES:**

- a. June 27, 2017 Regular Meeting Minutes

*Mr. Taylor moved to accept the June 27, 2017 Regular Meeting Minutes as filed. The motion was seconded by Mr. Volinski and carried unanimously.*

**9) BILLS AND COMMUNICATIONS:**

None

**10) ANY BUSINESS PROPER TO COME BEFORE THE COMMISSION:**

*Mr. Taylor moved to suspend Robert's Rules of Order. The motion was seconded by Mr. Volinski and carried unanimously.*

*Mr. Taylor moved to add items 10a and 10b under "Any Business Proper to Come before the Commission" to tonight's agenda. The motion was seconded by Mr. Volinski and carried unanimously.*

*Mr. Taylor moved to restore Robert's Rules of Order back in force. The motion was seconded by Mr. Bogie and carried unanimously.*

- a. Discussion regarding the proposed temporary use of O & G's former Mason Supply Yard, located at 275 Danbury Road, in the RI zone, *or* their vacant property located at 86 Boardman Road in the I zone by Eversource for a temporary material laydown area for their Transmission Line Maintenance Project.

Ms. Regan stated that she received a phone yesterday call from Ken Faroni of O & G. Mr. Faroni stated Eversource has requested use of their property at 275 Danbury Road, which used to be their Mason Supply Yard, for a temporary material laydown area for their transmission line maintenance project. Ms. Regan stated that in her opinion, this was a viable location because it was previously approved and used for outside storage and the site is nicely landscaped and fenced. Ms. Regan stated that the proposed use would be employee and vehicle parking, storage of steel poles and cross arms, insulators, transmission wire and assorted hardware, including an office trailer.

Ms. Regan stated that Mr. Faroni called again this morning about also using 86 Boardman Road, which is adjacent to their quarry. Ms. Regan stated that the Boardman Road location is currently vacant and had no approvals in place. There is a driveway to the site, and it is a rear lot, so materials stored on the property would not be visible from the street. Mr. Saitta added that is near the little league fields, with other members pointing out that it is residential and it contains a one way driveway and it is a narrow area, which could be problematic for trucks and equipment. The Commission agreed that this was not a good site for the proposed temporary use. A formal application would be required.

Ms. Regan stated that in researching this request she found that they are still holding a \$1000 bond for 275 Danbury Road, which she suggested could continue to be held until this temporary project is complete and used to ensure that the site is restored back to its current state. Mr. DiMichele asked for a change to the fencing, to which the rest of the Commission agreed that they have improved the site with landscaping and are in compliance with the requirements.

Mr. Taylor stated that the Eversource would need to make sure that they adhere to the terms of the adopted Resolution of Approval and Site Plan that were both approved on February 26, 2009.

*Mr. Taylor moved to allow the proposed temporary use of O & G's former Mason Supply Yard, located at 275 Danbury Road, In the RI zone for a temporary material laydown area for their Transmission Line Maintenance Project, subject to compliance with the February 26, 2009 Approved Site Plan and conditions in the February 26, 2009 Adopted Resolution of Approval. The motion was seconded by Mr. Volinski and carried unanimously.*

- b. Discussion regarding request for partial release of Litchfield Crossing, LLC's landscaping and sedimentation and erosion control bond associated with the construction of a 282,000 SF mixed

use retail, office, and restaurant shopping center on property located at 169 Danbury Road in the B-1 zone.

Ms. Regan stated that they are currently holding \$40,000 in bonds for Litchfield Crossing for landscaping and sedimentation and erosion control. Ms. Regan distributed maps of the overall site plan depicted what has been completed, with 173,000 SF built and approximately 97,000 SF still to be built. Ms. Regan distributed an aerial photo demonstrating that the site is stable and that all of the parking, landscaping, and drainage is complete. Ms. Regan asked the Commission members if they would be consider a partial release of the bonds. Mr. Taylor stated he would like them to attempt to improve the grass along the front of the property with Ms. Ward adding that more weed control is needed. The Commission members agreed that the release of half of the bond, \$20,000, was appropriate. The remaining \$20,000 would be held until all construction was completed.

**11) ADJOURNMENT:**

*Mr. Volinski moved to adjourn the meeting at 9:20pm. The motion was seconded by Mr. Taylor and carried unanimously.*

Respectfully Submitted,



Amy Farrell  
Recording Secretary