

**CITY OF NORWALK
ZONING COMMISSION
September 16, 2015**

PRESENT: Adam Blank, Chair; Linda Kruk; Emily Wilson; Jill Jacobson; Nathan Sumpter; Rod Johnson; Doug Stern

STAFF: Michael Greene; Mike Wrinn; Frank Strauch

OTHERS: Atty Al Vasko; Lance Zimmerman; Manny Silva; Chris Johnson; Mike Mushak; Heike C Reichert; Mark Thomford; Rafael Pallota; Atty Bill Hennessy; Bruce Beinfeld; Tom Ryder; Atty John Casey; Lynelle Jones; Lisa Thompson; Shari Burton; Tammy Langalas; Maggie Trudeau; Julie Burton; Shirley Nichols; Ed Schmidt; Charles Schoendorf; Mike Mushak; Lisa Wilson Grant; Clay Fowler; Joe Natchby; Gus Pappajohn; Peter Consellas; Wes Oliver; Mark Lessen; Liz Beinfeld; Susan Hurwitt; Eric Raines; Keith Brown; Bill Jason

I. CALL TO ORDER

Mr. Blank called the meeting to order at 7:31 p.m.

II. ROLL CALL

Mr. Greene took the roll.

III. PUBLIC HEARINGS

- a. #4-15SP – Rackson Corp. – 380 Main Avenue – 6,558 sq ft, 2-story freestanding restaurant (Burger King) in existing shopping center

Atty Vasko introduced the project team and handed in the certified, return receipt cards evidencing notice of the public hearing to the neighbors. He oriented the commissioners as to the location of the property on an aerial map. He then gave a brief description of the application which included storm water management and traffic.

Lance Zimmerman, the architect on the project, continued the presentation by showing the commissioners the site plan of the Burger King building. He then described the building materials. He showed the commissioners pictures of the signs and noted that the project met Zoning requirements. He discussed the landscaping, the drive-thru and the garbage pick-up. He described the interior as well as the second floor storage area. Mr. Zimmerman then answered questions about the sidewalks and the lighting. There was a question about the trees behind the buildings. While Mr. Zimmerman tried to find the answer, Manny Silva continued the presentation.

Mr. Silva, the civil engineer, discussed the impervious surfaces. He said there would be 47 parking spaces and discussed the storm water management for the shopping plaza. He said they would improve the water quality leaving the site. There is a maintenance plan in place and adding some catch basins. Mr. Silva discussed what would be used during construction to prevent mud from being dragged into the parking lot. There was also a discussion about sidewalks and painting crosswalks for pedestrians. He then discussed the lighting plan which would be full cut-off lights with no light spilling onto the street.

Mr. Zimmerman then answered the question of what type of trees would be planted behind the building and noted that there was quite a bit of landscaping at the back of the building. Mr. Blank said that he would like trees to be planted that were larger than what was planned.

Chris Johnson, an owner of Raston Corp. which owns several Burger Kings in the area, told the commissioners his background and said he would be happy to answer any of their questions.

Atty Vasko said that Mr. Thompson, the traffic engineer would be happy to answer questions.

Mr. Blank said that if the public had any questions, Mr. Thompson could answer them. Atty Vasko then showed the commissioners pictures of the crosswalk to gain access to the site from a nearby high school. He then discussed concerns about odors that may come from the building. He did say that state of the art equipment would be used to reduce them but that there might not be anything else that can be done.

Mr. Blank reminded everyone of the rules of the public hearing before any members of the public could speak.

Mike Mushak, a former Zoning Commissioner, spoke in favor of the application because it fits in with a 2006 Main Avenue corridor report.

Heike C Reichert, 9 Linden Heights, had questions about hours of operation and delivery hours. She would also like to see a healthier restaurant come into that shopping area. She wanted to know where Burger King was getting its food from. She had concerns about animal cruelty, ventilation and rats in the trash.

Mark Thomford had questions about the lighting which could shine up the ridge where he lived as well as trash from Burger King.

No one spoke in support of the project.

Atty Vasko said that the hours of operation would be 6 a.m. – 11 p.m. but could go to 5:30 a.m. – midnight. Deliveries would only be from 8 a.m. – 3 p.m. Manny Silva addressed the lighting questions. He said that the LED lights in a shoebox should not be seen from above. Atty Vasko continued by saying the project would not have an adverse impact on traffic in the area and that trash would be picked up during the day. He said that there were probably odors from the other restaurants in the area and that whether Burger King served free range eggs was a personal choice and not a zoning issue.

Mr. Blank closed the public hearing.

b. #17-15CAM – Pentecostal Church John 3:16 – 8 Woodward Avenue – Replacement church

Mr. Blank opened the public hearing.

Rafael Pallota began the presentation with a brief overview of the application. He showed an aerial map of the property. The property had suffered damage during Hurricane Sandy. The use would be the same as the old church. Since they were maintaining the same curb cuts, they assumed that the traffic would be the same. Mr. Blank noted that there was a thorough presentation by the applicant's project team at the committee level. There were no questions from the commissioners or any comment by the public.

Mr. Blank closed the public hearing.

c. #16-15CAM – B. Beinfeld – 2 Nearwater Road – New single family residence

Mr. Blank opened the public hearing.

Atty Bill Hennessy began the presentation by handing in the certified, return receipt cards, evidencing notice of the public hearing to the neighbors. He also introduced the members of the project team. He noted that this application does not require a permit from the Department of Energy and Environmental Protection ("DEEP") and that it complies with Zoning regulations.

Mr. Beinfeld thanked the audience for being there and said that his appreciation of the neighbors and the birds and fish had increased since he moved to this property. He then showed a short video of his credentials, both personally and professionally.

Atty Hennessy went over the background of the property when a trolley line ran through it and showed them pictures of what it looked like, long ago. The trolley started in 1894 and ended in 1933 when the tracks were abandoned. He discussed the small cottage that was on the property and the lot which went to Nearwater Rd. The kitchen would be removed in the cottage. It will

be an accessory structure to the proposed house on the property. The utility lines would be removed and put underground. He then showed the commissioners what is currently in the area now. He also showed them pictures of the current house as well as the view corridor. He described that the house mimicked the lot which is long and narrow. He then showed them renderings of what the house would look like. He showed renderings of the house from several different angles. He noted that the water would pass under the house. The garage touches the ground. He then gave them descriptions of the interior with renderings of what the house would look like.

Tom Ryder, a biologist at LandTech, continued the presentation by discussing the coastal resources. He described the property including electric, water and sewer utilities. He said that the property was below elevation level 13. He described the tidal flats and wetlands. He then described the proposed how the house would be built on piles so as to elevate it. He discussed the storm water management and the silt fence. He said that if they were installed properly and maintained, they worked well.

There was a little discussion about whether Mr. Ryder should continue or Atty Casey should address the DEEP's letter to the applicant. It was decided that Mr. Ryder would finish his presentation and then Atty Casey would present.

Mr. Ryder continued by discussing the elevation of the house. Not much landfill would be brought in for the house. He also noted that Mr. Beinfeld had been adding native plants which had stabilized the slopes of the property. He discussed some of the plants that would be installed to enhance the property as well as help the shoreline. He concluded by saying there would be no impact to coastal resources. There was a discussion as to why Mr. Ryder could not get in touch with Marcy Balint at DEEP.

Atty Casey continued the presentation by first telling the commissioners about his background. He then explained how he was asked to join the project team. He then discussed the Freedom of Information ("FOI") request that was sent to the DEEP. The project team had asked the staff at DEEP to speak with them, either on the phone or in person. Atty Casey and Atty Hennessey went over a timeline of their contact with DEEP, either Marcy Balint or Brian Thompson. It started on July 2. Atty Hennessey said that it was discourteous of the staff to wait until the last minute to send out their comments when they could have met and addressed all of their concerns.

At one point during the public hearing, an audience member asked if some people behind her could quiet down because she could not hear. Mr. Blank reiterated the same.

Atty Casey said that he spoke with Brian Thompson this same day and explained that there seemed to be some misunderstanding. He reminded the commissioners that the comments by the DEEP are not binding on the commission and are advisory only. Atty Casey then discussed his memo. He noted that the proposed house is smaller than those in the area. He then discussed the idea in Ms. Balint's letter which set forth concerns about having 2 residential areas on the property.

Mr. Blank noted that people should not be making assumptions of what might happen in the future, i.e., that the current structure on the property would become a 2nd residence, even after the kitchen had been removed.

Atty Casey continued to go over Ms. Balint's letter and he again reiterated that he would have liked the chance to discuss the application, personally with her. He was concerned that some of the items in her letter were speculation. He then passed out 2 other memos. He went over procures of the current structure. He said to the commissioners that there is always going to be some impact on coastal resources. He also said that this is just 1 more house in a residential neighborhood.

Atty Hennessey continued the presentation by explaining that the cottage would have the kitchen removed so that it would become an accessory structure. He also did not think the comments from Ms. Balint were handled correctly.

Atty Casey spoke again about how the application was handled by the DEEP.

Mr. Blanked went over the rules for the public portion of the hearing and asked everyone to not interrupt.

Lynelle Jones spoke in opposition to the project at this public hearing. She read a letter from Diane Lauricella who asked that the cottage be removed.

Lisa Thompson, 24 Highland Ave., spoke in opposition to the application. She showed the commissioners pictures of the current house on the property at high tide and low tide as well as older photos of when the trolley rode on the property. She asked them to have the cottage removed. She was concerned that if it remained, it would eventually be elevated.

Shari Burton, Indian Spring Road, spoke in opposition to the application. She urged the commissioners to follow DEEP's recommendations as well as walking the property.

Tammy Langalas, Indian Spring Road, spoke in opposition to the application. She questioned the strict guidelines for fresh water.

Maggie Trudeau read 2 letters into the record from the Pine Point Association which were in opposition to the application. They both requested that the commissioners uphold the DEEP recommendations.

Julie Burton spoke in opposition to the application. She also handed in some letters from other residents in the area, including a former owner of the property, which were also against the application.

Shirley Nichols spoke in opposition to the application. She said that she is a member of the Darien Land Trust and has never seen such strong language from the DEEP. She passed out copies of the comments of state representatives, to the commissioners, which urged the commissioners to take the advice of those at DEEP.

Ed Schmidt, an attorney hired by some of the neighbors, in Farm Creek, that day, spoke in opposition to the application. He had concerns about the DEEP's letter. He thought it was a strong letter and discussed many of the points with the commissioners. He had concerns about the structure on the property as well as to what would happen during the construction process. He recommended that the parties try to work this out because if it went to court, it would take a long time to resolve the differences.

Charles Schoendorf, Vice President of SaveFarmCreek.org, spoke in opposition to the application. He explained how between taxpayer funds and private funding this land had been preserved. He thought they should not ignore the DEEP letter.

Mike Mushak, 50 Elmwood Avenue, a former Zoning Commissioner, spoke in support of the application. He spoke of property rights and environmental protection, which are written in Fed., state and city regulations including the Harbor Management Act. He was concerned these regulations did not matter. He thought the cottage should be removed as a compromise.

Lisa Wilson Grant, 377 Highland Avenue, spoke in opposition to the application. She believed that since the DEEP letter was so detailed, it should be reviewed more carefully. She thinks the cottage should be removed.

Clay Fowler spoke in support of the application. He thought that the size of house was not any larger than other houses in the area and that it should be kept into perspective.

Joe Natchby spoke in support of the application as well as in support of Mr. Beinfeld. His projects have brought value to the city. The proposed structure is the same as the others in the area.

Gus Pappajohn stated that the house can be constructed on the property.

Peter Consellas spoke in opposition to the application. He thought that it would lead to

bigger problems.

Wes Oliver, formerly of 10 Nearwater Rd., said that he knew the former owner who would come to his house when 2 Nearwater Rd. would flood.

Mark Lessen spoke in support of the application. He thought that Mr. Beinfeld was not being treated fairly because he was complying with zoning regulations.

Liz Beinfeld, Mr. Beinfeld's sister, spoke in support of the application and wondered why the cottage is important to everyone.

Susan Hurwitt, a former resident of Rowayton, spoke in opposition because this was a protected estuary.

Eric Raines spoke in support of the application and Mr. Beinfeld. He believed that Mr. Beinfeld always had respect for the property and the land.

Keith Brown spoke in support of the application and Mr. Beinfeld. He would like to see the cottage remain. He thought that the property would become a model as to the right way to develop lands.

Bill Jason, 50 Sammis Street, spoke in support of keeping the cottage.

At this point, there was a discussion as to whether to continue the public hearing. Due to the late hour of the meeting, it was decided that the rebuttal would be scheduled for the next Zoning Commission on October 21, 2015.

IV. REPORT OF PLAN REVIEW COMMITTEE, JILL JACOBSON, CHAIR

a. Action on Items III. a., b. and c.

i. #4-15SP – Rackson Corp. – 380 Main Avenue – 6,558 sq ft, 2-story freestanding restaurant (Burger King) in existing shopping center

**** MS. JACOBSON MOVED: BE IT RESOLVED** that application #9-15SP – Rackson Corp. – 380 Main Avenue – 6,558 square foot. 2- Story freestanding restaurant (Burger King) in existing shopping center, and as shown on A-2 Survey titled: "Property And Topographic Survey, Prepared For H-D Main Avenue Limited Partnership 380 Main Avenue, Norwalk, Connecticut, Scale: 1"=40', Date: 2/12/2014 and Revised to 8/10/2015" by CCA, LLC Engineering and Surveying, Land Surveyors, Richard A. Bunnell, Land Surveyor – Connecticut Registration No. 15562 and on the engineering plans by Rose, Tiso & Co., LLC Engineers (Fairfield, CT)., dated 2/16/2015 and revised to 6/17/2015 and the architectural plans by Zimmerman Architecture dated 9/26/2013 and revised to 7/29/ 2015 be **APPROVED** with the following conditions:

1. That all required CEAC signoffs are submitted; and
2. That proof of a submittal to the State DOT be submitted; and
3. That a surety, in an amount to be determined by staff, be submitted to guarantee the installation of the required erosion and sediment controls; and
4. That a surety, in an amount to be determined by staff, be submitted to guarantee the installation of the required improvements; and
5. That all soil and erosion controls be in place and verified by an inspection by Staff prior to the start of any work on the site; and
6. That any additional needed soil and sedimentation controls be installed at the direction of the staff; and
7. That the proposed dumpsters be locked and properly screened; and
8. That the hours of garbage pick-up and any deliveries be no earlier than 7 a.m. and no later than 7 p.m.; and
9. That all signage, existing and proposed, comply with the zoning regulations; and
10. That any changes to the plan be reviewed and approved prior to those changes being implemented; and

11. That a final certified “as-built” will be required to verify the completed project is built in accordance with the Zoning Regulations (height, setback, etc.); and
12. That a stormwater system be maintained per the maintenance plan submitted; and
13. That any graffiti on the site, now or in the future, be removed immediately; and
14. That all HVAC units shall be located in conformance with the applicable zoning setbacks and as per 118-522 B (4) (e); and
15. That a crosswalk be installed from the property owned by The City of Norwalk to the proposed location of the Burger King be installed; and

BE IT FURTHER RESOLVED that the proposal complies with the applicable sections of the Norwalk Building Zone Regulations, specifically Sections 118-522, “Business # 2 Zone” and 118-1450 “Special Permit”; and

BE IT FURTHER RESOLVED that a Certificate of Special Permit **AND** map be placed on the Norwalk Land Records; and

BE IT FURTHER RESOLVED that the effective date of this approval shall be September 25, 2015.

Ms. Wilson seconded.

Emily Wilson; Linda Kruk; Adam Blank; Nate Sumpter; Jill Jacobson; Doug Stern and Rod Johnson voted in favor.

No one opposed.

No one abstained.

- ii. #17-15CAM – Pentecostal Church John 3:16 – 8 Woodward Avenue – Replacement church

**** MS. JACOBSON MOVED: BE IT RESOLVED BY THE NORWALK ZONING COMMISSION** that the application by Pentecostal Church John 3:16 at 8 Woodward Avenue for a two story with mezzanine 23,800 sq. ft. replacement house of worship as shown on plans by Petracca Design and Engineering, Smithtown, NY, revised to 5/7/15 be approved with the following conditions:

1. That all required sedimentation and erosion controls be in place prior to the start of the any construction related activity on the site; and
2. That all required CEAC signoffs be submitted; and
3. That the existing on site storm drainage be brought up to City standards, as required; and,

BE IT FURTHER RESOLVED that the proposal complies with the applicable coastal resource and use policies; and

BE IT FURTHER RESOLVED that the effective date of this approval shall be September 25, 2015.

Mr. Sumpter seconded.

Emily Wilson; Linda Kruk; Adam Blank; Nate Sumpter; Jill Jacobson; Doug Stern and Rod Johnson voted in favor.

No one opposed.

No one abstained.

- b. #14-15CAM – Petro Heating – 24 Woodward Ave – 2,154 sf general office – Report & recommended action

**** MS. JACOBSON MOVED: BE IT RESOLVED** that Coastal Area Management #14-15CAM – Petro Heating & Air – 24 Woodward Avenue – Conversion of existing building to general office and as shown on the architectural drawings submitted by William Thompson , AIA & Associates, LLC, Guilford, CT, dated 9/1/2015 be **APPROVED** subject to the following conditions:

1. That all required CEAC signoffs are submitted; and

2. That a surety, in an amount to be determined by staff, be submitted to guarantee the installation of the required erosion and sediment controls; and
3. That a surety, in an amount to be determined by staff, be submitted to guarantee the installation of the required improvements; and
4. That all soil and erosion controls be in place and verified by an inspection by Staff prior to the start of any work on the site; and
5. That any additional needed soil and sedimentation controls be installed at the direction of the staff; and
6. That all signage, existing and proposed, comply with the zoning regulations; and
7. That any graffiti on the site, now or in the future, be removed immediately; and
8. That all needed permits from the applicable City agencies be obtained; and
9. That all HVAC units shall be located in conformance with the applicable zoning setbacks; and
10. That the 25-year instrument for the 10 parking spaces on 71 Day Street be signed by all parties and filed on the Norwalk Land Records prior to the issuance of a certificate of zoning compliance (temporary or final); and

BE IT FURTHER RESOLVED that the proposal complies with the applicable sections of the Norwalk Building Zone Regulations, specifically Sections §118-700, "Industrial #1 Zone"; and

BE IT FURTHER RESOLVED that the proposal complies with all applicable coastal resource and use policies; and

BE IT FURTHER RESOLVED that the effective date of this approval shall be September 25, 2015.

Mr. Sumpter seconded.

Emily Wilson; Linda Kruk; Adam Blank; Nate Sumpter; Jill Jacobson; Doug Stern and Rod Johnson voted in favor.

No one opposed.

No one abstained.

- c. #19-15 CAM – R&M Counihan – 1 Cudlipp Street – Additions to single family residence – Report & recommended action

**** MS. JACOBSON MOVED: BE IT RESOLVED BY THE NORWALK ZONING COMMISSION** that the application of R&M Counihan for additions and modifications to an existing single family dwelling at #1 Cudlipp Street, as shown on plans by RAC Architecture and Design, Norwalk, CT and by Fairfield County Engineering, Norwalk, CT be APPROVED with the following conditions:

1. That all required sedimentation and erosion controls be in place prior to the start of any construction related activity on the site; and
2. That a wooden construction fence be in place at least 5 ft. inside of the coastal jurisdiction line to insure that no encroachment occurs; and
3. That authorization from DEEP be in place before any work is done in the tidal wetland area, including removal of the shed and garage structure; and
4. That authorization from the State for any work over the existing easement is received prior to any work being undertaken in that area; and
5. That all required CEAC signoffs be submitted; and

BE IT FURTHER RESOLVED that the proposal complies with the applicable coastal resource and use policies; and

BE IT FURTHER RESOLVED that the effective date of this approval shall be September 25, 2015.

Mr. Sumpter seconded.

Emily Wilson; Linda Kruk; Adam Blank; Nate Sumpter; Jill Jacobson; Doug Stern and Rod Johnson voted in favor.

No one opposed.

No one abstained.

- d. d. #X-05SPR – Starbucks – 555 Main Avenue – Request for release of surety – Report & recommended action

**** MS. JACOBSON MOVED: BE IT RESOLVED BY THE NORWALK ZONING COMMISSION** that the surety held on Starbucks, 555 Main Avenue for the installation of a concrete sidewalk across the frontage of the property be released to the owner of the surety as all the required improvements have been properly installed and maintained.

BE IT FURTHER RESOLVED that the effective date of this approval shall be September 25, 2015.

V. APPROVAL OF MINUTES: August 19 and 26, 2015

Ms. Wilson moved to approve the minutes for August 19, 2015

Ms. Kruk seconded.

Emily Wilson; Linda Kruk; Adam Blank; Nate Sumpter; Jill Jacobson; Doug Stern and Rod Johnson voted in favor.

No one opposed.

No one abstained.

Ms. Wilson moved to approve the minutes for August 26, 2015

Ms. Kruk seconded.

Emily Wilson; Linda Kruk; Adam Blank; Nate Sumpter; Jill Jacobson; Doug Stern and Rod Johnson voted in favor.

No one opposed.

No one abstained.

VI. APPOINTMENT OF NOMINATING COMMITTEE

Mr. Blank appointed Emily Wilson, Mr. Sumpter and himself on the nominating committee.

VII. COMMENTS OF DIRECTOR

Mr. Greene had no comments.

VII. COMMENTS OF COMMISSIONERS

The commissioners had no comments.

VIII. ADJOURNMENT

The meeting was adjourned at 11:27 p.m.

Respectfully submitted,

Diana Palmentiero