

ZONING COMMISSION REGULAR MEETING MINUTES
January 23, 2023
7:00 PM
Multi-Purpose - Mulvey Municipal Center
And via ZOOM

Members Present: Chairman Harry Ruppenicker Jr., Vice Chairman Dwayne Xenelis, Regular Member Vincent Gentile, Regular Member Linda Nolf, Regular Member Mike Engels and Alternate Member Jackie Lyman.

Also Present: ZEO Stephen Hnatuk and Land Use Tech Sara Angelini.

A. CALL TO ORDER:

The meeting was called to order at 7:00 p.m. by Chairman Ruppenicker.

B. ESTABLISHMENT OF QUORUM:

All 5 Regular Members were present.

C. RECEIPT OF APPLICATIONS:

None.

D. PUBLIC HEARINGS:

None.

E. NEW BUSINESS:

None.

F. OLD BUSINESS:

1. **ZC2022-017 – Special Permit application for Cannabis Retailer in existing building. Location: 755 Boston Post Rd, Assessor’s M/L: 184/52 Applicant: BUDR Holding 3 LLC, c/o Derrick Gibbs:**
Regular Member Linda Nolf stated for the record that she was late for the November meeting, but she has listened to tape of the Public Hearing.

A motion was made by Harry Ruppenicker, Jr to approve Application ZC2022-017, 755 Boston Post Road Special Permit for Cannabis Retail Establishment with the following conditions:

The Commission finds that the application is compliant with the criteria established for Cannabis Retail Establishments in Zoning Regulations Section 6.S.

The Commission has determined that the sight lines at the exit driveway are sufficient. The Site Traffic Evaluation by James Bubaris, P.E. indicates the minimum recommended site line distances for the site are 588 feet and the site has a site line distance of 600 ft in both the west and east directions.

The Commission has determined that the application meets the requirements for parking as identified in Zoning Regulations section 7.C (31 spaces required / 32 provided) and the applicant’s parking and circulation plan meets the requirements of Zoning Regulations Section 6.S.

The Commission recognizes that the enclosed dumpster may need to be relocated due to concerns with overhead utilities.

CONDITION 1: Prior to the issuance of a Certificate of Zoning Compliance, the applicant shall demonstrate that all spaces meet the requirements set forth in Section 7.C. of the Westbrook Zoning Regulations by identifying all parking spaces on an A-2 Grade As-Built Survey. All spaces are to be paved using bituminous concrete and striped in accordance with the drawings dated October 22, 2022.

CONDITION 2: The Zoning Commission authorizes the ZEO to approve a modified dumpster location should the overhead wires not be able to be relocated given that the overall number of parking spaces will not be reduced, and that the dumpster should remain adequately screened with fencing and additional plantings.

CONDITION 3: In the event of a termination of the leasing agreement with the State of Connecticut, and the subsequent reduction in provided parking spaces, the owner agrees to curtail business operations and/or make provisions for additional parking, to meet the parking requirements detailed in the Westbrook Land Use Regulations.

CONDITION 4: The Zoning Enforcement Officer shall determine that adequate provision has been made for loading / unloading spaces for the intended usage of the site in appropriate locations and any such loading / unloading spaces shall not protrude into any street, designated fire lane, pedestrian, or vehicular access prior to the issuance of a Certificate of Zoning Compliance.

CONDITION 5: In accordance with Zoning Regulations Section 7.5.2, the Zoning Commission prohibits the delivery of Cannabis between the hours of 6:30 AM – 8:15 AM as well as between the hours of 2:30 PM- 3:45 PM, August 23rd - June 20th, Monday – Friday.

Landscaping/Building Specifications:

The Commission acknowledges that the property owner has failed to meet the architectural and landscaping stipulations of Special Permit Application #ZC2017-0016 and, as such, stipulates the below listed condition of approval:

CONDITION 6: Prior to the issuance of a Certificate of Zoning Compliance or the commencement of operations, all outstanding site improvements including landscaping islands, parking spaces, paving, curbing, dumpster location and screening, and landscape buffering shall be completed per the aforementioned approved plans.

CONDITION 7: At the time of request for Certificate of Occupancy, the ZEO may, at his or her sole discretion, determine that seasonal weather conditions are not ideal for the installation of certain landscaping features. In this event, a performance bond shall be required to cover the installation and supply of all outstanding improvements.

CONDITION 8: The Commission specifically stipulates that the Food Truck, currently located on the adjoining parcel, is not to be accessed through this site. There shall be no parking of vehicles provided for food truck customers, nor shall there be pedestrian access to the food truck across the access drive. The applicant shall take measures to actively prevent food truck patrons from parking on the site. Said measures shall include, but not be limited to, providing instruction to parking attendants to actively intervene in such occurrences; installation of “No Parking” signage along the western property line; and, if deemed necessary by the ZEO, installation of fencing along the property line. Furthermore, the Zoning Enforcement Officer shall notify the Town Sanitarian that parking for the Food Truck is no longer available at the adjacent property.

CONDITION 9: The existing generator and utility box have not been approved by the Zoning Commission and shall be removed by the property owner.

CONDITION 10: The Commission requires the removal of all unregistered vehicles, fire apparatus, trailers, construction equipment, etc. from the site prior to the issuance of a Certificate of Zoning Compliance. Further, the Commission directs the ZEO to immediately commence Enforcement Action should the storage of these items resume.

In accordance with Zoning Regulations Section 9.E.4.2., the Commission has referred this application to the Planning Commission. The Zoning Commission acknowledges the Planning Commission's comments and findings in its report dated November 22, 2022

In accordance with Zoning Regulations Section 9.E.4.C. The Commission has determined that the combined retail/ service / residential mix, proposed by the applicant, is in harmony with the purpose and intent of the Neighborhood Commercial District as well as the currently adopted Plan of Conservation and Development Goals for Promoting Economic Development identified on page 50.

Additional Conditions:

11. Any expansion of the permitted cannabis establishment premises beyond the portion of the building described within the submitted proposed floorplans shall require a modification of this Special Permit by the Commission.

12. For up to thirty (30) days after the opening of the retail location, the Town may charge the applicant/retailer for any necessary and reasonable costs incurred by the Town of Westbrook in accordance with Section 21a-422g of the CT General Statutes.

13. In accordance with the applicant's parking and circulation plan, the applicant shall operate its business on a "by appointment only" basis for the first three (3) months it is open to the public and will allocate its customer pick up times so as to not exceed the maximum number of available parking spaces. Thereafter, the applicant will utilize appointment-only operations on an as-needed basis if parking needs exceeds available parking.

14. The applicant/operator shall continuously maintain all necessary approvals required by the State of Connecticut for the duration of the operation.

15. This conditional approval shall not be considered fully executed until a copy of the State issued license has been provided to the Westbrook Land Use Office. Such approval must be filed within six (6) months of the issuance of this approval unless an extension has been provided in accordance with 6.S.4.

16. No operations, sales or advertisements shall commence without a valid, current license from the State and fully executed Special Permit.

17. This Special Permit approval shall not be considered valid until an endorsed certificate as provided by the Land Use Office has been filed on the Land Records in the Office of the Town Clerk.

18. Prior to the issuance of a Certificate of Zoning Compliance, a final as-built survey depicting all structures, parking lots and spaces, pins, drainage, and landscaping with spot elevations shall be provided.

This approval is made, in part, based upon written and other testimony received at a Public Hearing on the Application that commenced at a Regular Meeting held on November 28, 2022 and closed at a Regular Meeting held on December 19, 2022.

This approval is also made, in part, based on the application and other submitted materials referenced in the Draft motion submitted by Town Planner Steve Hnatuk.

Seconded by V. Gentile.

Motion by D. Xenelis to approve with conditions stated by Ruppenicker, Jr. with additional condition f or one-year time limit on Special Permit approval. The motion was seconded by Linda Nolf

VOTE: Ayes Dwayne Xenelis and Linda Nolf. Nays: Vincent Gentile, Mike Engels and Harry Ruppenicker Jr.

The motion did not pass.

Regular Member Dwayne Xenelis stated the following for the record:

I will vote no on this application for the following reasons:

1. There was a positive referral from the Planning Commission for the new Zoning Regulations regarding cannabis retail, but there was not a positive referral regarding this application, so is his

opinion that the application is not in compliance with the cannabis regulations. The application is within the cannabis regulations & NCD, but not at this particular location.

2. The work done within the state property encroachment permit has not been approved by the State.
3. The Connecticut DOT lease can be terminated at any time.
4. There are children at the laundromat and there is a bus stop in close proximity to the store location during the time of sales and this can create a playground situation per Section.
5. This location is not appropriate to promote general welfare of the region and its citizen's.
6. The landscape buffers are not adequate, as shown on drawing or what is currently existing. The NCD regulation section (7.A.4.2b), states landscaping shall be shown and the current drawing does not comply and the greenspace has been reduced as it now exists.
7. The applicant states that they will not perform any exterior modifications to the site, yet, the site plan requires substantial work to become compliant. Therefore, I do not understand how this application is compliant.
8. The loading and unloading zones are not shown and/or are not marked on the drawing, as shown by the applicant. This is a public safety issue and emergency vehicles access, based on the site, has constraints of the adjoining property lines and parking area and there are encumbrances that are currently located on the parking lot, including telephone poles and other structures not shown on the drawings submitted. Testimony from a former tenant of the same space states that the unloading and loading zone is not sufficient.
9. There is a site line issue on Route 1. 558 feet of site line is required but the issue has not been resolved with conflicting testimony of the Engineer of record that states that the site line is not sufficient.
10. The parking plan does not designate retail vs. laundromat vs. residential parking. This could lead to people parking in the wrong area.
11. There has been testimony that this type of business will generate large volumes of traffic, as well as evidence from the Old Saybrook Police Chief. This volume of traffic is not in compliance with our NCD Regulations.
12. In Section 3.A.2 it states the purpose of NCD Zone is supposed to be a New England village and street scape. The increased volume of traffic does not fit this description.
13. Traffic volumes will be more than can be absorbed by the existing infrastructure. Therefore, it is not in compliance with the NCD Regulations

Motion to approve with originally stated conditions by H. Ruppenicker. As stated above.

All in favor: L. Nolf, M. Engels, H. Ruppenicker Jr., V. Gentile

Opposed: D. Xenelis

G. COMMISSION BUSINESS:

1. POCD Implementation items:

Dwayne Xenelis went over what items have been addressed and what still needs to be addressed. He will forward a copy of the Town of Guilford's Regulations for reference.

2. Commissioner Training:

A memorandum was distributed that states the 2023 Land Use Commissioner Training Requirements.

3. Monthly Land Use Report:

Report was distributed and discussed. ZEO Hnatuk stated that he will bring an action plan forward to the next meeting for the property located at the corner of Route 145 and Old Clinton Road.

4. Annual Land Use Report:

Distributed.

B. APPROVAL OF MINUTES

1. December 19th, 2022, Minutes

Upon a motion by Dwayne Xenelis, seconded by Linda Nolf, it was:

VOTED: Unanimously to approve the minutes of the December 19, 2022, Regular Meeting as distributed.

176 Boston Post Road:

Gene Trudeau was present and stated that there is a giant sycamore tree located where the pending sidewalk needs to go. He further stated that the sidewalk that he has to install will not connect to any sidewalks on the adjacent properties. ZEO Hnatuk stated that the adjacent properties also have to install sidewalks. There was discussion of how to avoid taking the sycamore tree down. This matter will be handled administratively.

C. ADJOURNMENT:

Upon a motion by Linda Nolf, seconded by Vincent Gentile, it was:

VOTED: Unanimously to adjourn at 8:01 p.m.

Respectfully submitted:

Kathleen H. Kelemen, Recording Clerk