

THE ZONING COMMISSION
Town of New Fairfield
New, Fairfield, CT 06812
SPECIAL MEETING MINUTES
DATE: June 21, 2021
TIME: 7:30 pm
Virtual Meeting Via Zoom

Call to Order

John Moran called the meeting to order at 7:45 pm.

Present

John Moran, Kevin VanVlack, Stephen Hanrahan, Tomas Kavaliauskas, Gary Mummert, and Town Official Zoning Enforcement Officer, Evan White.

Gary Mummert was elevated to a voting member.

Public Hearing

- 1) **Continued SP-21-004-Special Permit for 302 Ball Pond Road (Consolidated School Site) under section 3.1.2 Special Permit Uses (A). Applicant – Town of New Fairfield.**

John Moran read in a letter from Cohen & Wolf. John Moran clarified that the letter was requested by the First Selectman.

Wesley Marsh, resident and taxpayer, stated that he is still in favor of the permit being granted. John Moran stated that the back up and findings proof has not been received. Rick Regan spoke in support of the bus lot design. He stated that the due diligence has been done by the PBC in research of design, noise, and location of the lot. He stated that the busses have been recently updated to new busses with less exhaust, bus runs would combine, and less personal vehicles at drop off. Julie Stange, a resident, stated that she recently moved to New Fairfield and loves the charm. She stated that the bus lot location cannot be shielded, would take away from the look of the town center, and would affect the value of the home in that area. Julie Stange is not in favor of the bus lot site. Debra Mangini, 251 Ball Pond Road, stated that she is not in favor of the bus lot site. She said that the area is better suited for green space and that there has been a lack of consideration for homeowners in the area. Colin Stange, a resident, stated that he is a homeowner in the area and that housing a fleet of busses in the area would make a considerable impact to the area and is against the bus lot site. Attorney Ray Lubus, clients are the abutting neighbors, stated that he sent a letter to the commission. He stated that zoning should be for a stabilization of property values. He referred to an R-88 zone and commercial vehicle limitations. He referred to the special permit zones and exception to the rules. Attorney Ray Lubus went over the drawbacks, an option for a different plan for access to the proposed bus lot, and suggestions for other sites for the bus lot. George Martinetti, PBC chair and taxpayer, he gave feedback on comments made by previous speakers. John Moran stated that the final drawings have not been received for the changes to the parking lot. George Martinetti stated that the decision would have to be made before final drawings can be sent and that renderings have been sent on multiple occasions. John Moran asked who sent the renderings to zoning. Rick Sanzo asked the commission to take into consideration alternative options that are feasible and prudent due to cost. He does not feel that option 3 or 4 are not prudent due to the additional costs that would entail having to remove educational programs is appropriate. Neil Marcus stated that looking at compatibility when making a decision regarding screening, conditions, and location. John Moran stated that the Zoning Commission should be looking at the property and

making sure the use of the property is the best use. Kevin VanVlack read into the record a letter from Attorney Raymond Lubus dated June 11, 2021 (see enclosure). Don Kellogg, 8 Harvest Road speaking as a taxpayer, wanted to appeal to the Zoning Commission and having the benefit of the town taken into consideration and urges the commission to accept the special permit. Colleen Bott, 255 Ball Pond Road, stated that proposed bus lot is in the heart of the community and will change the feel of New Fairfield. She is against the bus lot location being right in the center of town John Moran asked that the meeting be continued due to all the documentation that was introduced and asked that all board members review all the material, renderings, and documentation.

Kevin VanVlack made a motion to continue the public hearing for SP-21-004-Special Permit for 302 Ball Pond Road (Consolidated School Site) under section 3.1.2 Special Permit Uses (A). Applicant – Town of New Fairfield to a special meeting on July 14, 2021 Gary Mummert seconded the motion

John Moran	Yes
Kevin VanVlack	Yes
Stephen Hanrahan	Yes
Gary Mummert	Yes
Tomas Kavaliauskas	Yes

Business Items

- 1) **SP-21-004-Special Permit for 302 Ball Pond Road (Consolidated School Site) under section 3.1.2 Special Permit Uses (A). Applicant – Town of New Fairfield. – continued to the July 14, 2021 special meeting.**

Correspondence

None

Adjournment

Kevin VanVlack made a motion to adjourn the meeting at 8:59 pm. Tomas Kavaliauskas seconded the motion. **All in favor.**

Enclosure

Cohen & Wolf Letter
 Attorney Raymond Lubus letter dated June 11, 2021

Received by email on 05/26/2023 @ 8:30 a.m.
 by Chrystie M. Bontempo, Asst. Town Clerk, New Fairfield



LETTER ADDRESSING COMMERCIAL NATURE OF BUSES

NEIL R. MARCUS
Please Reply To Danbury
E-mail: nmarcus@cohenandwolf.com

June 18, 2021

Zoning Commission
Town of New Fairfield
Attn: John F. Moran, Chairman
4 Brush Hill Road
New Fairfield, CT 06812

Re: SP-21-004- Special Permit for 302 Ball Pond Road, New Fairfield

Dear Chairman Moran and Members of the Commission,

At the Public Hearing on the proposed special permit to allow construction of a school bus parking lot at 302 Ball Pond Road on the portion of the site that is currently permitted for the Consolidated School, a question was raised by you and other members of the Commission seeking guidance to determine if the bus lot could be permitted as an accessory to a school use when the building is slated to be demolished. We have been asked by the First Selectman to research this question and render an opinion for you to rely on.

The first line of inquiry is the Zoning Regulations themselves. The subject application is pursuant Section 3.1.2 which allows special permit uses in the R-88 zone where the property lies. Section 3.1.2.A allows both municipal buildings (schools) and municipal "uses" (not specifically defined). There is no language that connects a municipal use as an accessory use to a specific municipal building. The word "accessory" does not appear in this section of the Regulations nor does the word "school". Section 3.1.2.B does, however, specifically allow educational uses. It is appropriate for the Commission to read these two sections together and conclude that a school is allowed by Special Permit in the R-88 zone as a municipal building housing an educational use.

The Commission must determine if the parking of school buses in the Town of New Fairfield is a municipal use. During the last session of the public hearing a number of speakers in opposition to the subject application objected to the application as a commercial use not allowed in the R-88 zone. To the contrary, the record does not reflect that the proposed bus lot is a commercial use. It is not unusual for a town or school board to outsource transportation services to a private company. That does not change the nature of the service to a commercial operation if it is limited to providing transportation solely for the town's schools. The Commission can accept the testimony presented by the applicant on this issue since there did not seem to be any contrary testimony offered. A common requirement in municipal transportation contracts is a requirement by the Town or the School Board to provide bus parking. This has been the case in New Fairfield for many years. It is no different from outsourcing cafeteria services to a private food service company that requires the use of a school kitchen and cafeteria space. If the Commission were to find, as has been suggested by public comment, that outsourcing services to private contractors creates a commercial use, that finding will have broad application to the operation of the New Fairfield Schools. It could affect private contractors providing a number of municipal uses that are allowed in the R-88 zone.

Sketch 48 #1

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PO. Box 1821
BRIDGEPORT, CT 06601-1821
TEL: (203) 368-0211
FAX: (203) 394-9901

158 DEER HILL AVENUE
DANBURY, CT 06810
TEL: (203) 792-2771
FAX: (203) 791-8149

320 POST ROAD WEST
WESTPORT, CT 06880
TEL: (203) 222-1034
FAX: (203) 227-1373

LETTER ADDRESSING COMMENTS
SUBMITTED TO ZONING

Zoning Commission
Town of New Fairfield
John T. Moran, Chairman
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On the other hand, if the Commission concludes that the transportation contract for school buses is a municipal use, then the subject application is allowed in the R-88 zone, whether the Consolidated School building remains in place or is demolished since the use is not accessory to the building.

The property at 302 Ball Pond Road has been the subject of approximately six separate land use applications going back to the late 1940's. Most recently the Town has received zoning approvals that allow other municipal uses on the site relating to police and fire services pursuant to the prior versions of Section 3.1.2.A and B of the current zoning regulations. The subject application is consistent with the other uses allowed on the same parcel for municipal purposes.

Respectfully submitted,
Cohen and Wolf, P.C.

By Neil R. Marcus
Neil R. Marcus

NRM/cgh

↓
KIND OF SAME IS A NEW USE

RAYMOND C. LUBUS

Attorney at Law

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New Fairfield, CT 06812
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June 11, 2021

John Moran, Chairman
Zoning Commission
Town of New Fairfield
4 Brush Hill Road
New Fairfield, CT 06812

RE: Special Permit Application 2021004
Bus Parking and Distribution Center
302 Ball Pond Road

Dear Mr. Chairman and Zoning Commission Members:

I am following up in writing, prior to the next Zoning Commission on Monday, June 14, 2021, on behalf of my clients who all support "Option 4", described below, developed by the PBC. I am writing to provide you with documentation to reflect that the selection by the New Fairfield PBC to go forward with a Bus Depot Distribution Center at the Consolidated school demolition site, which has been identified as "Option 2", is being driven by the fiscal concerns of the PBC of the two new school projects. Approval for special permits for activities or uses not permitted by right in a particular zone must focus on the concerns of the nearby residents, the needs of the New Fairfield community, and the necessary safeguards that should be in place, as was discussed at the Zoning Commission Meeting on Wednesday, June 9, 2021.

The PBC intended to notify the Zoning Commission of their decision to go forward with Option 2 in their Special Permit Application by sending a memorandum to the ZEO and the Zoning Commission Chairman. This memorandum had yet to be distributed to all Zoning Commission members or made available to the public prior to the June 9, 2021 meeting.

The PBC memorandum indicating that the PBC investigated alternative sites for the bus parking distribution center other than at the Consolidated school. The PBC indicated they looked at the Town Drop-off Center on Bigelow Road; areas behind MHHS; private parking area off of Saw Mill Road; and, looked at potential parking in another town other than New Fairfield. The PBC determined none of these options would be viable and there was no formal plans developed for any of these alternatives.

The PBC memorandum indicates, however, that the PBC did pay for the plan development and cost estimates for four (4) options the PBC would be considering. Three (3) of those options were for placing the Bus Parking and Distribution Center at the

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Consolidated school site at 302 Ball Pond Road, which would be Option 1, Option 2 and Option 3, and an alternative site, Option 4, at NFHS on a piece of land that is east of the Rebel Turf Soccer field, north of the community playground and west of Hidden Valley.

The PBC did expend approx. an additional \$28,000. to have all four of these options drawn up and have a cost estimate prepared.

In the memorandum you are now reviewing before the Monday, June 14, Zoning Meeting, the PBC provides, in their viewpoint, what they see as the advantages and disadvantages of each of the four (4) options.

Option 1 was the plan that was approved in January of 2021 by the PBC and it was forwarded to the Zoning Commission as part of the initial special permit application. The public hearing was set on Option 1 before the Zoning Commission, and thankfully my clients, were given a written notice of that by the Zoning Commission.

We learned at last Wednesday's zoning meeting that a meeting, prior to the special permit application being submitted, had been set up with various members of the Board of Education and PBC with residents who lived on Gillotti Road across from MHHS and NFHS. No such meeting, or invitation to meet, ever occurred for the residents who live on Ball Pond Road across from the Consolidated School site, to discuss a proposed bus parking and distribution center sites.

At the opening of the Zoning Commission public hearing on the special permit application many of the Ball Pond Road residents expressed their deep concerns about the Option 1 proposal, specifically the detrimental course of traffic as Option 1 has only a single entry and exit for all the busses. The neighbors were looking at potentially 120 trips in and out each day that the busses are operating which could be as early as 6:30 am at the current High School schedule and running late at night, with the sports attendance schedule. The residents expressed deep concern regarding the detrimental effect on their property values, the diminished aesthetic presentation of a bus parking at the Consolidated school site, diesel fuel fumes, light pollution, and noise. At that meeting, the commission also expressed concerns about the type of manmade and natural screenings and buffers that should be included in any design projects.

Overall, both Zoning Commission members and the residents expressed a strong desire for the PBC to consider other alternative sites for its location. A site that would be much more compatible when establishing a permanent bus parking and distribution center in our community.

I am including minutes from the meetings of the PBC that deal with the bus parking and distribution center options and you will see that there was a special meeting held by the Permanent Building Committee on March 19, 2021, which at that time Option 3 was presented by the PBC development team as an alternative to Option 1. It was presented with representations that they were trying to address all of the concerns that were presented by all the abutting neighbors at the prior public hearings.

Option 3 would change the configuration of the traffic flow of the busses. The busses would have an entrance on the north east corner of the consolidated site to enter but they would exit at the existing Galotti Road exit. This plan change would diminish the traffic by 50% at each entry/exit as opposed to utilizing the same exit for entry and exit. In addition, the location of the parking area was to be pushed back further from Ball Pond Road and further from the residences so that it would be further to the west of the Consolidate school site as a further buffer of noise, vapors and aesthetic quality.

At that same meeting the PBC presented that they were also considering an alternative to the bus parking and distribution center location at the NFHS which became Option 4.

The PBC, when providing you with the memorandum for your June 9 meeting, did not provide you with copies of the materials created for Option 3 and Option 4. However, the PBC did provide its opinion on the advantages and disadvantages of Option 3 and Option 4 in their memorandum. We do feel it is necessary for you to evaluate the plans for Option 3 and Option 4 to determine your own opinion of the advantages and disadvantages. I am including in this package a copy of Option 2 and Option 3 as those had been made available to me. I do not have a copy of the Option 4 plan.

I have formally asked for copy of Option 4 plan so that I could provide that to Zoning Commission members by email immediately on Thursday morning on June 10th, and with a follow-up call to the PBC Chairperson and Dr. Sanso. To date I have yet to receive a response.

At the conclusion of that March 19 meeting my clients indicated that although there was substantial improvements addressing their concerns shown in Option 3 that they would still want the PBC to select an alternative site as their primary choice. You will see a copy of my letter that was sent to the PBC as a follow up.

On April 6, Option 4 was presented at the PBC Meeting as an initial plan. On April 19, the PBC has a special meeting and the Option 4 NFHS site location plan and cost estimate of approximately \$1,426,400. was reviewed. All agreed for the Option 4 plan at the high school to be considered, there would need to be a substantial modification of Option 4 plan specific plan design changes to reduce the cost. I again sent a letter to the PBC describing potential plan changes to consider to reduce the cost.

On May 11, the PBC acknowledged that they had set a meeting for May 14 as a workshop to work on creative ways to reduce the cost aspects of the HS alternative site in Option 4. You will find my letter that was written to the PBC committee chairman as a follow-up.

On May 25 the PBC held a meeting for which they now had four (4) options to consider, the PBC added Option 2 which I have included a copy of. Option 2 puts the bus parking and distribution center in the same location as was originally applied for in Option 1,

June 11, 2021

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however, it had added some manmade and natural additional screening which added as additional costs. This was the first time we saw Option 2. In addition, the PBC still had Option 3 presented but it now included for the first time a cost estimate for Option 3. There was also presented the cost estimate for Option 4. It turns out that Option 2 would cost \$59,870. more than Option 1. Option 3 would cost \$356,505. more than the cost of Option 2, and Option 4 would cost \$55,103. more than Option 3.

What is unique about Option 4 however, was that the PBC and the design team were able to reduce the Option 4 original cost estimate by approximately \$740,000. by addressing reusing the soil from the demolition of the high school as fill, by relocating the dispatch center closer to the utilities, reducing the size of the lot, and finding other parking areas. It appeared to be a win-win situation.

These four (4) options were presented on May 25, 2021 but not voted on. The vote was June 8, at the PBC meeting.

If you have an opportunity to look on-line at the recorded June 8 PBC meeting you will observe that there was no discussion about the four options among the members, rather they went to an immediate vote on a motion to select Option 2 as the plan to present to Zoning. The Option 2 proposal does not resolve the legitimate concerns of the neighboring residents that were being addressed in Option 3 and Option 4 as appropriate alternative sites.

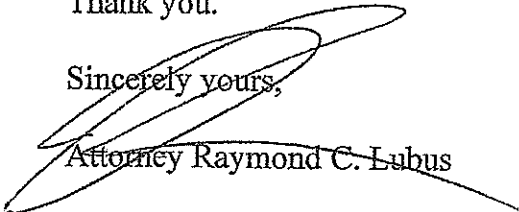
I am hoping that you will find this correspondence helpful in determining that the Option 2 special permit application does not provide the necessary and adequate safeguards for the residents of the Town of New Fairfield for a bus parking and distribution center at 302 Ball Pond Road.

It is my client's position that this application should be denied especially since there is a very viable alternative site which is Option 4.

Please review this material prior to your meeting.

Thank you.

Sincerely yours,


Attorney Raymond C. Lubus

RCL:kk

Attachments

cc: John Mangini, et al.