

TOWN OF WOODBURY
Zoning Board of Appeals
281 Main Street South
Woodbury, CT 06798
203.263.3467 ▪ www.woodburyct.org

MEETING MINUTES – NOVEMBER 19, 2024 - 7:30 PM
Shove Building, 281 Main Street South

MEMBERS PRESENT

Joe Donato
Adam Goldberg
Mike Novak, Chairman
Robert Ratzenberger
Claudette Volage

ALTERNATES PRESENT

Jane Donn

ALTERNATES ABSENT

Seth Bernstein
Demetrius Leonard

NOTED OTHERS PRESENT: Ted Mannello, Atty. Pilicy, Hiram Peck, Atty. Hoyler, Atty. Kaelin (Town Attorney)

OPENING OF MEETING

- Call to Order – Chairman Novak called the meeting to order at 7:31 p.m.
- Seating of Members / Alternates – Seated for the meeting were regular members Donato, Goldberg, Novak, Ratzenberger and Volage

LITIGATION MATTERS

Peck vs. Town of Woodbury Zoning Board of Appeals / 22-ZBA-2206 – 858 Main Street North / Map 25, Lot 30 / OS-60 District / Superior Court Decision Remand to ZBA / Special Permit – Change of Nonconforming Use. Ted Mannello (applicant/owner)

Chairman Novak reminded members of the Conflict of Interest statutes and regulations. No member expressed a conflict.

At this time, Member Donato recused himself from the discussion due to his absence at the last meeting.

A draft resolution addressing the court remand was reviewed by the Board. Members did not indicate any edits to the draft.

MOTION:

To approve the draft resolution dated November 19, 2024 as presented related to Peck vs. Town of Woodbury Zoning Board of Appeals / 22-ZBA-2206 – 858 Main Street North / Map 25, Lot 30 / OS-60 District / Superior Court Decision Remand to ZBA / Special Permit – Change of Nonconforming Use. Ted Mannello (applicant/owner).

Moved by **GOLDBERG**, Seconded by **VOLAGE**

Vote: 4-0-0 – **Approved** – Motion Passed

Aye Goldberg, Novak, Ratzenberger, Volage

Nay None

Abstain None

CORRESPONDENCE

24-ZBA-0001 – Stiles Road Quarry Variance Nighttime Operations Notifications

Emails from October 25 and November 2, 2024, were noted as having been received notifying of asphalt plant production activities scheduled for Saturday nights. As part of their approval, O&G is to request authorization from the ZEO for these instances. No concerns were expressed by the Board regarding these specific paving projects.

ADMINISTRATIVE

- Meeting Minutes – 10/21/24

MOTION:

To accept the Minutes of the October 21, 2024, meeting as presented.

Moved by **VOLAGE**, Seconded by **RATZENBERGER**

Vote: 5-0-0 – **Approved** – Motion Passed

Aye Donato, Goldberg, Novak, Ratzenberger, Volage

Nay None

Abstain None

- 2025 Annual Regular Meeting Schedule

The schedule was reviewed by the Board and the Tuesday meetings were identified.

MOTION:

To accept the 2025 Annual Regular Meeting Schedule.

Moved by **DONATO**, Seconded by **RATZENBERGER**

Vote: 5-0-0 – **Approved** – Motion Passed

Aye Donato, Goldberg, Novak, Ratzenberger, Volage

Nay None

Abstain None

PRIVILEGE OF THE FLOOR – Atty. Pilicy requested a copy of the motion from the earlier discussion. There were no others present for Privilege of the Floor.

ADJOURNMENT

MOTION:

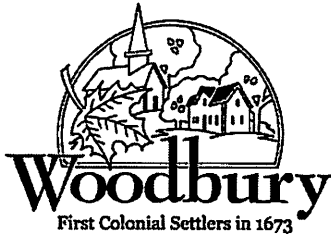
To adjourn the meeting at 7:43 p.m.

Made by **RATZENBERGER** with no objections.

Respectfully Submitted,
Anne Firlings
Anne Firlings, ZBA Clerk

RECEIVED & FILED
IN WOODBURY, CT

This 21st day of Nov 2024
at 3:05 o'clock PM
Anne M. Firlings
Town Clerk



Town of Woodbury Zoning Board of Appeals

281 Main Street South
Woodbury, CT 06798
203.263.3467 ▪ www.woodburyct.org

SPECIAL PERMIT / SITE PLAN APPROVAL

22-ZBA-2206 – 858 Main Street North

Change of Nonconforming Use – Husky Energy and Propane, LLC
Ted Mannello (owner/applicant)

RESPONSE TO COURT REMAND

Date of Resolution Adoption: November 19, 2024

Applicant: Ted Mannello – Husky Energy and Propane, LLC
Owner: Ted Mannello
Application: Court Remand Response: 22-ZBA-2206 – Special Permit for Change of Nonconforming Use pursuant to Zoning §1.4.4.1, §8.2 and §9.6.1.3.
Project: Change of existing nonconforming use (as was authorized pursuant to Special Permit 17-ZBA-1760) to a new nonconforming use for a HVAC business “Husky Energy and Propane, LLC providing business related storage and office use.
Address: 858 Main Street North – Map 25, Lot 30 – 2.3 acres
Zone: OS-60 District

WHEREAS on December 19, 2022, the Woodbury Zoning Board of Appeals (“ZBA”) approved Special Permit application 22-ZBA-2206 for property consisting of approximately 2.3 acres of land located at 858 Main Street North as shown on Assessor Map 25, Lot 30, zoned OS-60 District; and

WHEREAS the ZBA Special Permit Approval granted a change of the existing nonconforming use, as was previously authorized pursuant to Special Permit 17-ZBA-1760, to a new nonconforming use to permit a HVAC business “Husky Energy and Propane, LLC” consisting of business-related storage and administrative office use; and

WHEREAS the ZBA Special Permit Approval was appealed to the State of Connecticut Superior Court (Docket No. UWY-CV-23-6068929) by the abutting neighbor to the southeast pursuant to the provisions of §8-8 of the Connecticut General Statutes; and

WHEREAS the Court sustained the appeal and remanded the matter back to the ZBA with the following instructions:

1. *The Woodbury ZBA is directed to either require the applicant to submit a site plan which is customary and consistent the applicable regulations and to properly consider it, or to specifically waive such requirement and explain on the record why a site plan is not required for the Woodbury ZBA to make a reliable and lawful decision concerning the special permit application in this matter.*
2. *The Woodbury ZBA is directed to either require the applicant to have its proposed activities reviewed by the Inland Wetlands Commission, or state on the record why such review is not required despite the presence of a stream and the storage and handling of hazardous materials.*
3. *The Woodbury ZBA is directed to specifically consider the quality and character of the proposed use, including the storage of hazardous materials, and to explain on the record why the character of the new proposed use is or is not an inappropriate expansion of the previously allowed non-conforming uses.*
4. *The Woodbury ZBA is directed to specifically describe on the record the construction, location and extent of the buffer that is required to be installed.*

NOW THEREFORE BE IT RESOLVED pursuant to the Court remand and instructions, the ZBA hereby finds and responds as follows:

- Item 1 Site Plan** – No changes to the building, parking area or other exterior site improvements are proposed. It is noted that during the public hearing for the original application the applicant did present to the ZBA a Site Plan as noted in the meeting transcript beginning at Page 17, Line 2 through Page 18, Line 14 and as included as Exhibit A8 (Property/Boundary Survey, prepared by Connecticut licensed Land Surveyor Roy V. Cheney, LLS, dated April 2017) of the Return of Record, showing the subject property, existing building and other site improvements on the property, as well as the site wetlands/watercourse and associated 100-foot Upland Review Area. Notwithstanding, as part of the ZBA’s consideration of the Court’s remand, the applicant submitted an additional certified/sealed Site Plan prepared by Mark S. Riefenhauser of Smith & Company (Surveyors/Engineers), a Connecticut licensed Professional Engineer, dated July 31, 2024, revised to September 5, 2024. The ZBA finds the submitted Site Plan to be of sufficient detail and content in satisfaction of the requirements for such as required by the Zoning Regulations. The submitted Site Plan sufficiently details the site boundaries, topography, stonewalls, wetlands/watercourse (as delineated by William Kenny, a Certified Professional Wetland Scientist, a Soil Scientist, Registered Landscape Architect and a Certified Organic Land Care Professional) and associated 100-foot Upland Review Area, abutting streets, building, parking area, well, septic tank, fencing, dumpster and other site features. As previously noted, the new use does not propose or involve any exterior changes to the footprint, mass, location, construction or appearance of the existing building, nor are any changes to the parking area or other existing exterior site improvements proposed or involved.
- Item 2 Wetlands** – Since the decision of the Court was issued, the applicant applied to the Woodbury Inland Wetlands and Watercourses Agency (IWWA) for a jurisdictional determination and provided to the IWWA the Smith & Company Site Plan referenced above in Item 1. The IWWA conducted a field visit on August 25, 2024. On September 23, 2024, the IWWA found that the applicant’s change of nonconforming use does not involve any regulated activities under the jurisdiction of the IWWA, thereby resulting in the issuance of a Jurisdictional Ruling of Non-Regulated Activity.

Item 3 Use – During the Special Permit public hearing, the ZBA did consider matters of quality and character of the proposed new use, including the storage of hazardous materials, as well as the verbal comments and written materials from the Plaintiff and their attorneys. Further, the ZBA did compare the use characteristics of the prior nonconforming use to that of the proposed nonconforming use, finding that the proposed change in nonconforming use was equal to or less intensive.

Upon remand, the ZBA has again reviewed the application file and Zoning Regulations, as well as the Court's remand decision and instructions, the Jurisdictional Ruling issued by the IWWA, the newer Site Plan submitted by the applicant, and commentary and materials from the Plaintiff and their attorney. The ZBA reaches the same conclusion as for the original application that the new nonconforming use is not an expansion of the previously allowed non-conforming use, will not be materially different nor result in more significant impacts on the surrounding neighborhood, but rather overall will be less intensive in operation and presence at the subject property. The ZBA bases this on the following considerations and findings:

- No exterior changes to the footprint, mass, location, construction, character or appearance of the existing building and site will occur. The applicant did change two existing typical outward pointing floodlights with new downward aimed lights, which is an improvement for the environment and neighboring properties.
- The proposed new business use of the premises will be primarily for the inside storage of materials and the parking of vehicles, as well as for the administrative office of the business, which uses are relatively passive. In contrast, the prior use was a design studio which fabricated onsite model (prototype) home and office furnishing products made of fine wood, leather, metal and the like. The former use also maintained offices where client visits occurred.
- The new use does not include any fabrication or manufacturing activities at the premises, as opposed to the former use that designed and built prototypes of home and office furnishing products. The new use will not involve unusual noise nor generate dust or odors. Any signage will comply with the Zoning Regulations.
- All materials used in the new business will be stored inside the existing building like that for the former use. The new use, like the former use, will at times experience deliveries to the business that are dropped off and left outside before being moved inside or loaded for transport offsite. Similarly, both the former and new use, like all residential and nonresidential uses, will temporarily incur refuse pending its pickup and removal.
- No changes to the existing parking area or access driveway are involved and the parking area will be utilized in the same manner as the prior commercial uses of the property (i.e., for parking of vehicles, receipt of deliveries, for loading and unloading of materials).
- The applicant's installation of a solid wood 6-foot-high fence will provide additional all-year visual screening and buffering to the neighbor to the southeast (Plaintiff), which will also provide additional buffering of noise, which will be minimal from the site use. The ZBA also noted that the subject premises fronts on Route 6, an arterial highway that generates passing traffic noise in the general area; and the added fencing will help buffer that noise as well.

- Hours of operation will be similar except the new use will be less intensive in that it will be primarily active at the site during weekday mornings and afternoons as the business operations occur substantively offsite as opposed to the prior use where all its operations occurred onsite throughout the workday. Further, the new use will rarely (if at all) involve any onsite in-person patrons whereas the former use maintained its offices where client visits would occur. As such, traffic to and from the site will be less overall and less frequently given that most of the working hours are spent offsite.
- The number of employees will be less than that of the prior nonconforming use. Most of the employees of the new use spend most of their business hours offsite.
- The prior nonconforming use included the storage and use of several different hazardous chemicals such as glue, mineral spirits, varnish, lacquer, shellac, turpentine, linseed oil, epoxy resin, wood filler, paint, stain, polyurethane, solvents and likely others. The new use includes none of these chemicals. The new use includes a single 55-gallon drum, located inside the building, that holds methanol, which is used to evaporate moisture from the inside of a new propane storage tank prior to its delivery empty to an offsite client location for installation at that offsite location. The inventory of propane storage tanks onsite are empty and not filled until installed at the offsite client location. The new use also includes propane gas delivery from its company trucks. The propane trucks are licensed by the State of Connecticut. No bulk storage of propane is kept at the site. The ZBA does not find environmental concerns regarding propane because propane is stored as a liquid, but when released into the air, it vaporizes and dissipates, meaning it will not contaminate groundwater, drinking water, marine ecosystems or other sensitive habitats. When vaporized, propane produces virtually no ozone-harming effects (propane does not emit sulfur dioxide, methane, nitrogen oxides, and other wastes) and is not a greenhouse gas in its un-combusted state. Further, the ZBA notes that propane storage tanks are commonplace and can be found on many residential and nonresidential properties. Overall, the number, type and quantity of chemicals used and/or stored at the site for the new use is substantially less concerning than that of the prior nonconforming use.

Item 4 Buffer – As part of the original ZBA approval a buffer consisting of a line of shrubs and/or a fence was required by the ZBA to accommodate comments of the abutting neighbor to the southeast (the Plaintiff). In compliance with that condition of approval the applicant installed sections of solid wood 6-foot-high stockade fencing to extend along the entire southern edge of the existing parking area, thereby screening and buffering direct views of the parking area, building and site activity from the southeast. The fencing is in addition to interceding existing woodlands as well as a considerable topographic drop in elevation from the parking area of 20 feet or more down to the neighbor’s house. The Survey/Site Plan provided as noted above delineates the location and extent of the fencing, which is deemed by the ZBA to be more than satisfactory regarding its location, extent and construction for providing the required screen and buffer.

MOTION

Moved by **GOLDBERG**, Seconded by **VOLAGE**

Vote: 4-0-0 – **APPROVED** – Motion **PASSED**

Aye	Novak, Goldberg, Ratzenberger, Volage
Nay	None
Abstain	None