

TOWN OF NEWINGTON  
**ZONING BOARD OF APPEALS**  
Thursday, May 7, 2020 - 7:00 P.M.  
Conference Room L101

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**AGENDA**

1. Roll Call
2. Work Session
  - 2.1. PETITION # 00-20-02: "Firestone Complete Auto Care Center" Is Requesting Location Approval For A Dealer's And Repairs License At 2897 Berlin Turnpike In Accordance With Sec. 14-54 Of The Connecticut General Statutes.

Documents:

[ZBA STAFF REPORT - 2897 BTP \(LOCATION APPROVAL\).PDF](#)  
[ZBA DMV APPLICATION 4.21.20.PDF](#)

3. Minutes Of Previous Meetings
  - 3.1. Meeting Minutes - Special Meeting April 8, 2020

Documents:

[MEETING MINUTES FINAL - \(4-8-2020\) ZBA.PDF](#)

4. Communications And Reports
5. New Business
6. Old Business
7. Adjournment



Keith Chapman  
Acting Town Manager

# TOWN OF NEWINGTON

131 Cedar Street Newington, Connecticut 06111

## Zoning Board of Appeals

To: Zoning Board of Appeals  
From: Andrew Armstrong, ZEO  
Date: May 7, 2020  
Subject: **Petition #00-20-02: “Firestone Complete Auto Care Center” is requesting Location Approval for a dealer’s and repairs license at 2897 Berlin Turnpike in accordance with Sec. 14-54 of the Connecticut General Statutes.**

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### **Description of Petition #00-20-02:**

The applicant is requesting Department of Motor Vehicles location approval for the existing “Firestone Complete Auto Care Center” at 2897 Berlin Turnpike. The property is zoned Planned Development (PD) and was recently approved by this Zoning Board of Appeals in April for four (4) Variances related to the proximity to a residential zone.

Under § 14-55, the Board’s task is to determine whether the location at issue is “suitable” for an automotive use. The statute states that the board must decide whether “such location has been found suitable for the business intended, with due consideration to its location in reference to schools, churches, theaters, traffic conditions, width of highway and effect on public travel.” In 2013, the TPZ granted DMV location approval as part of the original land use approvals for the Firestone facility. At that time, it assessed the requisite suitability criteria and found the location to be suitable.

### **Staff Comments:**

The applicant is seeking location approval related to the “suitability” of the property for an automotive use. The automotive use “Firestone” is proposing no new changes and has existed and functioned at this location for several years. The applicant has previously undertaken noise mitigation measures that will protect the residential properties on Main Street.

I received email correspondence on April 23<sup>rd</sup> from Attorney Tim Hollister who represents both the nearby auto users and homeowners stating that he and his clients are also in support of this request. In addition, considering that this same Board recently approved several Variances for the same use and property, I believe the location approval is appropriate.

I have no objection to his request.

cc:  
SB Newington 433 LLC, file

Phone: (860) 665-8575 Fax: (860) 665-8577  
aarmstrong@newingtonct.gov

Amy E. Souchuns, Esq.  
Asouchuns@hssklaw.com

April 21, 2020

Mr. Andrew Armstrong  
Zoning Enforcement Officer  
Town of Newington  
131 Cedar Street  
Newington, CT 06111

Re: DMV Location Approval Application  
SB Newington 433, LLC, Owner  
Firestone Complete Care Auto Center, 2897 Berlin Turnpike

Dear Mr. Armstrong:

On behalf of SB Newington 433, LLC and in accordance with Conn. Gen. Stat. § 14-54, please accept this letter as an application to the Zoning Board of Appeals (“Board”) for Department of Motor Vehicles location approval for the Firestone Complete Care Auto Center, 2897 Berlin Turnpike. The applicant also requests that the Board waive the public hearing requirement in light of the prior location approval issued for this property.

As you may be aware, the recently amended Newington Zoning Regulations specify that the Town Plan and Zoning Commission (“TPZC”) decide location approvals. However, the regulation conflicts with the governing statute – specifically Conn. Gen. Stat. § 14-54 – which mandates that such approvals be issued by a town’s zoning board of appeals. An earlier version of the statute authorized each municipality to select which land use body would hear and decide DMV location approvals, which was the basis for the Regulations’ designation of TPZC.

Under § 14-55, the Board’s task is to determine whether the location at issue is “suitable” for an automotive use. The statute states that the board must decide whether “such location has been found suitable for the business intended, with due consideration to its location in reference to schools, churches, theaters, traffic conditions, width of highway and effect on public travel.” In 2013, the TPZC granted DMV location approval as part of the original land use approvals for the Firestone facility. At that time, it assessed the requisite suitability criteria and found the location to be suitable.

The site's suitability is unchanged from that finding. As the Board is aware, there are no schools, churches or theaters in the immediate vicinity of this property; the closest school is John Wallace Middle School, located approximately 2.5 miles from the site. Additionally, the Firestone location on the Berlin Turnpike, a highly travelled state road with multiple northbound and southbound lanes, favors a finding of suitability, as the road has more than sufficient capacity for this automotive use. The traffic report submitted with the original approval request documented that the Firestone use would generate approximately 29 peak hour cars, an amount well within the surrounding road capacity.

Enclosed with this letter is the application fee of \$ 320.00. I understand this will be scheduled for the Board's regularly scheduled meeting on May 7, 2020. If you need anything further, please do not hesitate to contact me.

Sincerely,

*Amy E. Souchuns*

Amy E. Souchuns

TOWN OF NEWINGTON  
ZONING BOARD OF APPEALS  
CONFERENCE ROOM L101  
NEWINGTON, CONNECTICUT  
APRIL 8, 2020

I. Chairman Nicole Pane  
Commissioner Willard Bechter  
Commissioner Timothy Hutvagner  
Commissioner Michael Karanian  
Commissioner Sharon Dunning  
Commissioner Judith Igielski

PRESENT

Andrew J. Armstrong  
ZBA Administrator

2. Public Hearings

2.1 PETITION #00-20-01 SB Newington 433 KK/c "Firestone Complete Auto Care Center" is requesting four (4) variances from Section 3.18.4 Section B.1.2.B and Section 6.11.5 of the Zoning Regulations related to the proximity to a residential zone At 2897 Berlin Turnpike

Documents

ZBA Staff Report-2897 BTP.PDF  
Application - 2897 BTP.PDF  
Applicant cover letter - 2807 BTP.PDF  
Applicant narrative - 2897 BTP.PDF  
Aerial context map - 2897 BTP.PDF  
Applicant materials (Part 1) - 2897 BTP.PDF  
Applicant materials (Part 2) - 2897 BTP.PDF  
Applicant materials (Part 3) - 2897 BTP.PDF

Atty Souchuns:

Directly to the north as I think it was 2180. The litigation brought by the residential neighbors proceeded through the courts. The Firestone facility opened during the pendency of that litigation and also during dependency litigation there were some additional measures implemented designed to minimize any noise that arose out of the Firestone operations and the inspection to the residential property. As a result of the decisions in the appeal of the underlying automotive use regulations as well as the intervening decision by the Appellate court on a legal issue ultimately last fall the court in the nuisance and zoning court enforcement action made this determination of the Firestone approval issue in 2013 was invalid and ordered that the facility would be shut down pending our receipt of new land use approvals. Obviously, given the change of the adjacent property residential, there were some variances that were requested. There was also an effort by the Town Planning and Zoning Commission over the course of last year to make some additional modifications in automotive use regulations and what we see with this application and the companion special permit site plan and DMV for approvals make no modifications to those regulations. We did not want the commission to have to start looking at all of the big picture issues that got scabbled with last year but obviously we needed to come up with a way to allow the Firestone to continue operating and it is under those and the current circumstances the automotive business is indeed an essential service and we have managed to work out terms of a settlement with the adjacent property owners and that would allow us to proceed with the application before you. So, with that background there are variances that we request, all that deal with the fact that the property is directly adjacent to residential zone and those are - there are two contained in Section 3.18.4, the first is that parking

less than 25ft for a residential zone boundary and because this property was originally as I said, the property at 2116 Main Street was originally zoned PD the firestone site was designed in compliance with setbacks and location criteria with respect to adjacent commercial properties and not residential. So what we are requesting is to allow 5 feet which is the setback for parking spaces which is in accordance with Section 6.18.1.H that is 5 feet from residential properties rather than the 25ft that is required. Also in Section 3.18.4 no business structure can be located closer than 200ft from the residential zone boundary. The back of the Firestone building is approximately 59ft from the property line and you can see the property line is generally depicted in the redline on the aerial map and that requirement would be as I said otherwise would be 100ft and 6.1.2b which would require not any off street building space be located no closer than 50ft from any lot and residential zones. and on the loading space, it is not a loading dock, it is a loading space at the north west corner of the property adjacent to the internal building and we need to look at the site plan and have it pointed out, adjacent to the area on sheet C3 and is adjacent to the area where the Firestone keeps its inventory. It is shown in that hatched area is where the loading space is directly adjacent to the area marked inventory on the site plan and that variance is only for a foot where 50 feet is required and then the last one is Section 6.11.5 which prohibits any portion of the motor vehicles used within 100 feet of a residential zone and here because we directly abut the residential zone we require a variance to allow zero feet where the 100ft is required. As noted in the application materials we believe that the hardship with respect to this property is not only the court order changes to the regulations that arose out of the 2012 appeal to the zoning regulations by the automotive businesses but also the invalidation of our 2013 approvals----- complicated further by the rezoning of the property at 2116 Main Street to residential. As noted in both our materials and in the staff report we are not proposing any changes. This application and the companion applications from the Town Planning Zoning Commission are to entirely legalize what is on the site right now. There is nothing that is proposed that would be other than what currently exists just for the sake of complete clarity. One of the things that was done in connection with the resolution of the, excuse me, during the course of the litigation to address some of the noise litigation measures there was a fence that was partially enclosing the property that was installed in late 2015 and upon being surveyed earlier this year was discovered to be just off the property onto the adjacent DOT property so the one thing scope of what we would be doing if both of these applications are approved is we would relocate that fence to make sure that it is entirely on our property but otherwise there is no obstruction activity or changes to the site proposed as either as part of the variance request or in connection with the ultimate Town Plan and Zoning approvals. So, if there are any questions I am happy to address them and walk through the technologies.

Chairman Pane: Thank you very much. Does anyone have any questions and if so, would you please state your name first, before you do that. Thank you.

Comm. Dunning: I do have a question. My question is hazardous waste and being close to housing and was that taken into account with that setback so close that does not create a potential risk to residential and wetlands.

Amy Souchuns: So Firestone has a pretty aggressive hazardous waste and I am not even sure if it can be classified as hazardous, but it is a pretty aggressive waste disposal program. There are spill prevention and waste handling materials plans incorporated into their operation. This did receive back in 2012, it did receive wetlands commission approval for the work that was associated with wetlands, so there was and remains, a valid approval that was reviewed by the wetlands commission so I think with respect to any concerns that have been with respect to the wetlands, that was certainly addressed at the time of that approval several years ago and then I think there is, you know, as I said, an aggressive plan and certainly if there were any concerns that would be something within the scope of the TPZ's DMV location approval or its reassessment of a special permit.

Chairman Pane: Any other questions?

Comm. Igielski: What hours are they open?

Amy Souchuns: They are generally open, I believe, weekdays, 7AM to 7PM/8PM and weekends are approximately the same, they are closer a little bit earlier on Saturdays and then on Sunday it is 9AM to 6PM.

Comm. Igielski: What is Saturday again, I did not hear you.

Amy Souchuns: Sorry, I believe it is either 7:00AM or 8:00 AM until approximately 6:00 or 7:00PM.

Comm. Igielski: Okay, has there ever been any noise complaints?

Amy Souchuns: They were addressed in the issues with the adjacent neighbors in the litigation. They have raised various issues with respect to noise and there is a litigation plan that was entered as an order of the court and the most specific item and it was originally a condition of approval for the issue in 2012 that the garage doors on the west side of the building that face the residential property are required to be kept closed except when cars are moving in and out and then there is a prohibition on the use of certain, particularly loud tools when those doors are opened and that was an issue that was ordered by the court, we are asking for that noise litigation plan to be approved as a condition, or included as condition of approval in the special permit at the request of those residential neighbors and we have agreed to that.

Comm. Igielski: Right, because I know there are some individual homes and then you have the assisted living complex right across the street.

Amy Souchuns: Yeah, it's further back and they have never, the assisted living facility has never raised on any issues, any of the noise issues were not raised by the individual homes directly adjacent and all of those owners, current or former owners were parties to the underlying litigation that we're resolving.

Comm. Igielski: Okay, thank you.

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Chairman Pane:

Any other questions?

John Bachand: I have a couple of questions. I am looking at the overhead and variances are only required for single property, in other words, the next nearest abutting residential property would be outside, they wouldn't need a variance for those other properties, it is strictly affecting this one property, correct?

Amy Souchuns: Correct. So the adjacent property at #2116 is obviously directly adjacent and if you are looking at the aerial map, the property that is still shown to the north as wooded, it is owned by the DOT and then the property at the , just north of #2116 Main Street, you can see a bit of lawn on the aerial map, that party, the former owner of that property is also a party to the underlying litigation is actually the main plaintiff in the litigation.

John Bachand: So if your properties come together it still wouldn't require a variance for that property, correct?

Amy Souchuns: Correct. The property, the DOT property intervenes before you get to the next property north on Main.

John Bachand: At least a hundred feet.

Amy Suchuns: It is approximately a hundred and twenty five, to a hundred and thirty feet depending on where you are along the Firestone property boundary.

John Bachand: So from that distance the closest point would be the northwest corner of the Firestone property to that line, the back line.

Amy Souchuns: Correct.

John Bachand: And then when the property of the 16 property was zoned 32116 property was zoned residential, was that requested by the state?

Amy Souchuns: No, it was a decision, the property was owned by the State of Connecticut at the time and was up for sale as a commercially zoned property and it was the Town Planning Zoning Commission that made the decision to rezone it and my recollection is that their thought process was not to have additional commercial development further north on Main Street and so rezoned that property prior to DOT selling it.

John Bachand: That was done preemptively.

Amy Souchuns: That is my recollection, yes.

Chairman Pane: Thank you, John. Any other questions?  
Would someone make a motion to close the public hearing.

Comm. Igielski: So moved.

Chairman Pane: Anyone second?

Comm. Hutvagner: Second.

Chairman Pane: All in favor? Aye. So we will open it up to public participation

### 3. PUBLIC PARTICIPATION

Attorney Tim Hollister: This is Attorney Tim Hollister, my office used to be in Hartford, but now it is in my dining room. I represent the adjacent property owners that Attorney Souchans has been talking about. I want to thank you, Mr. Armstrong for sending me these materials and setting up the logistics for participating in the meeting. I represent Elaine Matulis of #2116 Main Street, and Dubowsky of 2107 and #2021 Main Street and Colene and Ward Beletzoo who are the owners to #2110 Main Street until mid 2019. This is a very unusual situation but I think the bottom line is that we are trying to resolve it once and for all. For the past six years my clients challenged the operation of the Firestone in two ways, saying that they did not have a valid zoning approval and that they were creating a noise nuisance and the situation that we are trying to deal with tonight really was paused because they had their reasons but fire zone was built and it began operating when these challenges were going on in the court system and so we are now faced with a court order to shut down an existing and ongoing commercial operation and as Amy Suchens said, we did settle the noise aspect in 2017, but now we have this court order which by agreement has been put off pending review by this board of appeals and the Town Planning and Zoning Commission, it would try again - the Firestone zoning approvals, the valid zoning approvals that it needs and Attorney Souchans explained we do have a settlement agreement and I think my message to the ZBA is that we are in agreement with the approval of the application before you because they will resolve the situation. We do have a settlement agreement contingent on and dependent upon this first step of approving the variances. It has been a long and sometimes a very contentious situation but my clients are content that the situation will now be resolved with the valid zoning approvals being issued, the noise conditions and other aspects of the settlement between the private parties. Thank you for the opportunity to speak. Thank you, Mr. Armstrong, thank you Attorney Souchans and that closes my conversation.

Chairman Pane: Thank you very much.

Andrew Armstrong: Thank you, Sir.

So I am going to hang up. Are you all through.

Attorney Hollister: Yes. Just one more thing.  
Are the parties of the hearing on record?

Andrew Armstrong

ZBA Administrator: Yes, that's correct. We actually did close the hearing prior to

Chairman Pane...the public hearing, but kept the public participation open.

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Attorney Hollister: Well, I think Attorney Suchens would agree with me that my comments should be part of the record.

Chairman Pane: Yeah, I would agree that any of your comments and any other comments that are called in are certainly part of the record and should be under consideration.

Attorney Hollister: Thank you.

Chairman Pane: Thank you very much, Mr. Hollister, I appreciate that. Can we all agree with the commissioners that we can make that part of the public hearing, what he has said, can we make a motion?

Comm. Dunning: This is Sharon, I will make a motion.

Comm. Bechter: I will second that.

Chairman Pane: All in favor? Aye unanimously.

Attorney Hollister: Okay, then I will sign off.

Comm. Igielski: From what I can hear and understand, the abutting people are okay if we approve this?

Chairman Pane: Yes. Under what Attorney Hollister states that they are all in agreement with the noise compliance and any other variances.

Comm. Igielski: There is an agreement that they have done with him?

Chairman Pane: Yes. And the petitioner will explain that to you if she wants to.

Comm. Igielski: Okay, no, I understand they do have a settlement, all right that's it, it is really different to have a meeting this way, this is just a different experience. Thank you.

Chairman Pane: Any other questions, or anyone from the public wanting to participate, the phone number is 860-665-8736.

Comm. Igielski: How many commissioners are taking part this evening?

Chairman Pane: Seven. Five full members and two alternates. Just for the record, we did post a sign at the Main Door to the entrance to this conference room as well as the two other doors along the side of the building that did provide the television and web site address as well as the call in number for any members of the public but if they did happen to show up here to make a comment at the meeting, there were signs posted to direct them to the on-line process. You can call in 860-665-8736

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Chairman Pane: I make a motion to close the public participation and open the work session.

Comm. Igielski: I second it.

Chairman Pane: All in favor? Aye unanimously.

#### 4. Work Session

Chairman Pane: Does anyone have any comments, questions they would like to talk about?  
Then I will read the petition over again:

21.A. PETITION #00-20-01 SB Newington 433 LLC "Firestone Complete Auto Care Center" is requesting four (4) variances from Section 3.18.4 Section 6.1.2.B and Section 6.11.5 of the Zoning Regulations related to the proximity to a residential zone at 2897 Berlin Turnpike.

John Bachand:....

Andrew J. Armstrong

ZBA Administrator: I don't believe he can speak right now.

Chairman Pane: Only seated members can comment. The general practice is to only have the voting members participate in the deliberations.

Andrew J. Armstrong: I'm sorry John, I think....

John Bachand: .....that's fine.

Andrew J. Armstrong: Thank you.

Comm. Bechter: I think it is a positive thing that the two businesses involved in this decision have come to an agreement and makes it all work out well for both sides. I guess that's a very positive thing.

Chairman Pane:: Thank you, I think the same as well.

Comm. Bechter: You're welcome.

Comm. Igielski: I am glad that it has worked out, especially with the abutting owners and that's it.

Chairman Pane: I agree with Judy that is has totally worked out. Does anyone want to make a motion?

Comm. Bechter: I make a motion to approve the request.

Comm. Karanian: Second.

Chairman Pane: All in favor. Aye unanimously.

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5. MINUTES OR PREVIOUS MEETING

Comm. Karanian: I approve of the previous November 7, 2019 minutes.

Comm. Bechter: Second.

Chairman Pane: All in favor? That would be me, Tim, Mike and Sharon who would vote on that because those were the people who were present at that meeting.

Comm. Dunning: I vote yea, in favor.

Comm. Bechter: I'll say it again.

Comm. Karanian: I'll say it again.

Chairman Pane: Thank you.

6. COMMUNICATIONS AND REPORTS

ZBA Administrator Andrew J. Armstrong: I don't have any communications or reports at this time.

7. ADJOURNMENT

Commissioner Igielski: So moved.

Commissioner Bechter: Second.

Chairman Pane: All in favor? Aye unanimously.  
Thank you very much everyone. I appreciate it.

ZBA Administrator Andrew J. Armstrong Thank you very much everybody.

Respectfully submitted,

  
Sophie Glenn

Recording Secretary

The meeting adjourned at 6:44PM.