

**TOWN OF SHEFFIELD  
ZONING BOARD OF APPEALS  
DECEMBER 12, 2013  
UPSTAIRS MEETING ROOM  
7:00 PM**

Board Members Present: Bart Elsbach, Chairman  
Eric Carlson  
Allison Lasso  
Trudy Weaver Miller  
Greig Siedor

Others Present: Jill Hughes, Recording Secretary  
Members of the Public

Chairman Bart Elsbach called the meeting to order at 7:00 pm.

The legal notice was read regarding the application of Bayer Material Science LLC for a Special Permit, under the provisions of Sections 5.2.1 and 5.2.2 of the Town's Zoning By-laws to construct a new 4,850 square foot addition to an existing light manufacturing facility located at 119 Salisbury Road.

Chairman Elsbach informed the public that the Board would be entering into Executive Session and would be returning to open session.

**Eric Carlson motioned, with a second from Greig Siedor to enter into Executive Session. The motion carried as follows:**

**Bart Elsbach-Aye**

**Eric Carlson-Aye**

**Allison Lasso-Aye**

**Trudy Weaver Miller-Aye**

**Greig Siedor-Aye**

The Board excused themselves and went to the downstairs meeting room for Executive Session.

**Allison Lasso motioned, with a second from Trudy Weaver Miller to re-open the public meeting. The motion passed 5-0 and the public meeting re-opened at 7:45 pm.**

Chairman Elsbach read the mail and a discussion ensued. The Board of Selectmen is looking for one of the members of the Zoning Board to serve on the By-law Review Committee. Eric Carlson is interested and has spoken to the Town Administrator.

Chairman Elsbach asked for a motion to approve outstanding meeting minutes. **Trudy Weaver Miller motioned, with a second from Eric Carlson to approve the October 17, 2013 minutes as amended. The motion passed 4-0. Greig Siedor abstained from the vote.**

*Eric Carlson motioned, with a second from Allison Lasso to approve the October 17, 2013 Executive Session minutes as amended. The motion passed 4-0. Greig Siedor abstained from the vote.*

*Trudy Weaver Miller motioned, with a second from Allison Lasso to re-open the public hearing for Bayer Material Science. The motion passed 5-0 and the hearing started at 7:55 pm.*

Jeff Randall and Darren Harris from Hill Engineering were present to represent Bayer. Also present were Tim Ryan, Ron Tanner, Don Frese and Mark DiCarlo from Bayer. Mr. Randall stated that the application is being filed under Section 5.2 Special Permit required under both Section 5.2.1 Alteration, change or substantial extension of a nonconforming use and Section 5.2.2 Reconstruction, extension or structural change of a nonconforming structure or alteration of a nonconforming structure. The project is in the Village Center District and the new addition meets all setback requirements. Mr. Randall stated that the ZBA will base its decision on Section 9.4.2, whether the proposed addition will outweigh any potential adverse effects to the town or neighborhood. Bayer feels that the positive aspects outweigh any detrimental effects to the town. The project will result in an increased tax revenue, provide temporary construction jobs and eventually permanent jobs once new machine in the facility is operational, there will be no new access road as the product will be moved internally using the existing loading dock, traffic flow should equal the truck traffic during the years of 2006/2007, applicant will utilize existing utilities and the project should not require any additional public services and there is no environmental impact. As far as noise complaints they do not anticipate any and it was pointed out that there have been no complaints in many years.

Chairman Elsbach inquired about the parking. Mr. Randall explained there is no requirement for parking in the Village Center District, but that there is adequate parking on site and this addition fills in an area between two buildings and would not require additional parking spaces.

Allison Lasso asked about the possibility of Bayer coming before the ZBA in the future to add new parking. The response was no. Ms. Lasso also asked about Bayer adding new employees. The response was yes they do plan to add to the staff in the future.

Greig Siedor wanted it clarified that in one part of Bayer's application it states the new addition should create new jobs and on another page it states it will create new jobs. Bayer responded that as the business grows they will be adding new jobs and that once the new equipment is up and running it is their intention for jobs to increase.

Trudy Weaver Miller brought up concerns relating to traffic flow/safety and that the plan shows an overhead door. Mr. Randall responded that the traffic flow will equal the years of 2006/2007 when volume was higher and that the new machine will increase volume. The overhead door is shown on the plan to get the machine inside the building, but that they may not need it. The machine may be brought in before any siding goes on the building. No vehicles will be using the door as the product will be moved internally using the existing loading dock.

Chairman Elsbach requested explanation regarding the traffic flow. Bayer responded that in 2006/2007 their volume was higher which increased truck traffic. Volume was higher then because the economy was better. They want to bring product back at the same

volume and in order to do that they need this addition to house a new machine. Truck traffic will increase once the project is finished.

Chairman Elsbach brought up Section 9.2.2 criteria for variances. He asked if there was anything specific relating to the soil conditions, shape or topography unique to the lot and what requires them to put this addition there in the spot they choose. Bayer responded that the addition needs to go there due to the internal flow of the building and the product of the business. Eric Carlson stated that the argument here is not the shape of the building, but the impact on the neighborhood and that is the only issue. Greig Siedor mentioned that Bayer is there asking for a special permit, not asking for a variance. Bayer responded that he was correct. A discussion ensued regarding nonconforming uses.

Greig Siedor asked about the nature of the machine they plan on using in the addition and why it will not create a noise problem especially since the building is close to Salisbury Road. Bayer responded that because of newer technology it is a quieter machine. The walls and doors, including the maintenance door showed on the plans will be sound proof. A discussion ensued.

Chairman Elsbach asked about the external lighting on the addition. Bayer responded that they do not have that plan right now. All exit doors have lighting, which will point down and there is lighting in the parking lot, but generally the parking lot is fairly dark. Chairman Elsbach mentioned the dark sky guidelines for external lighting. Elsbach mentioned that the Planning Board would require people doing new construction adhere to dark sky, which includes the wattage, lights are pointed down so that they are not disruptive to the immediate area and that lights are not shining up into the sky. Bayer responded that they have been in town since 1949 and they will do whatever needs to be done to be a good neighbor. There is no parking lot in the area of the addition so there will not be a need for parking lot lighting. Chairman Elsbach mentioned that the ZBA may include conditions regarding dark sky on the permit if granted. Jeff Randall mentioned that where the addition is going there are two "man doors" that exit out with the lights above them so essentially they will have those same two doors again.

Allison Lasso mentioned that there is a trash compactor shown in the proposed area and would like to know where it will be moved. Jeff Randall responded that they intend to move it out back of the building but is not sure where as it has not been decided and a discussion ensued. Allison mentioned parking and paving in the future out in the back. Bayer responded that they cannot pave out back due to the wetland area.

Greig Siedor asked Bayer what hours they run the compactor. Bayer responded that it runs on an as needed basis and that it could run in the middle of the night if it needs to. Chairman Elsbach asked about the hours of operation. Bayer said the plant runs twenty four hours a day.

Chairman Elsbach asked about the timeline for construction (anticipated start/finish date) and how disruptive it would be for the neighborhood. Bayer responded that they do not have a construction schedule at this point since this is the first step in the process. They do not have a building permit as they are in the early stage of planning.

Chairman Elsbach asked if the Board or the public had any comments or questions. There were none.

Chairman Elsbach asked for a motion to close the public hearing. *Eric Carlson motioned, with a second from Trudy Weaver Miller to close the public hearing portion for Bayer Material Science. The motion passed 5-0 and the public hearing closed at 8:30 pm.*

A discussion ensued over whether to deliberate about the Bayer application tonight or to schedule another date. It was decided to schedule a future date for the Board to deliberate. Chairman Elsbach informed Bayer that they would be contacted about the next meeting date.

Chairman Elsbach asked for a motion to open the public hearing for Old Castle Retail, Inc. *Eric Carlson motioned, with a second from Trudy Weaver Miller to open the public hearing for Old Castle Retail, Inc. The motion passed 5-0 and the public hearing began at 8:35pm.*

George Johannesen of Allied Engineering was present to represent Bonsal American which is a division of Old Castle product group for a Special Permit for an continuation of a non-conforming use and a Variance relating to the height of the proposed silo structure under the provisions of Sections 4 and 5 of the Town's Zoning By-laws. Also present were Bob Guilcrest of Allied Engineering and Tom Richard of Bonsal. The property is located off Clayton Road in the Rural District.

George Johannesen explained the nature of the business and that Old Castle is looking to erect an additional silo on the Sheffield portion of their property, directly adjacent to an existing set of silos which sit on the North Canaan, CT portion of their property. They are requesting a special permit to erect this structure which will allow them to provide a new product line while potentially increasing new jobs.

Greig Siedor asked how tall the proposed silo is going to be and how tall the older silos are. George Johannesen responded that you cannot see the silo from the front of the building and that the older silos are taller than the proposed one and a discussion ensued. George Johannesen gave the Board a revised set of plans and they were reviewed.

Chairman Elsbach asked what the zoning was in the district and the height indications in North Canaan. George Johannesen responded that it is a Rural District and that he does not know the height restrictions.

George Johannesen explained that adding the new silo would be safer for the employees and the other benefit is that they can create a different product and increase their product line because it is a split silo. He also explained they looked at other locations of where the silo could go, but because of the existing silos it is supplementary to it and it will be recessed down in a hole you will see the silo less. It will not be visible from Clayton Road or from the front of the facility. The silo is a completely closed self-contained unit so there are no emissions of any kind so there is no change of the use.

The reason the applicant wants the height to be 56'-8" is so the material can gravity feed from the new silo to the existing silo. Tom Richard explained how the silos and batch hopper work and a discussion ensued.

George Johannesen gave the Board a new design drawing that showed changes to the size of the foundation underneath the silo.

Chairman Elsbach brought up the variance issue and asked if there was anything specific relating to the soil conditions, shape or topography unique to the lot. George Johannesen responded that topographically, this area is on a lower elevation than the rest of the property, therefore having the positive result of reducing the visual impact of the silo. Greig Siedor asked if there was anything about the property that the company owns in general with regard to soil conditions that drives the selection of this particular location. George responded no, the soil is consistent, but that it is the elevation and the topography that makes the difference. Greig asked George to explain topography and a discussion ensued.

Greig Siedor asked if anyone in the audience had a comment about the project. Resident David West commented about soil conditions and dimensional variances. A discussion ensued.

Allison Lasso wanted to confirm that this was an expansion of the current use. George Johannesen responded that they will be producing the same product but this just allows them to vary it and to produce more. It also allows them to bring in different material to create a new product line.

Chairman Elsbach asked for a motion to close the public hearing. *Eric Carlson motioned, with a second from Trudy Weaver Miller to close the public hearing portion for Old Castle Retail, Inc. The motion passed 5-0 and the public hearing closed at 9:04 pm.*

Chairman Elsbach informed the representatives for Old Castle that the Board would deliberate at their next meeting at a date to be announced.

Harvey/Shunpike Road: Chairman Elsbach spoke about the letter the Board sent to Mr. Harvey on October 18, 2013 regarding the structures on his property and requesting that he respond to the Board within thirty days with his intentions in this regard to resolve the issues that were initiated many years ago concerning the non-compliant structures on the property. The Board has not received a response within the stipulated time frame from Mr. Harvey. Chairman Elsbach recommended that the Board direct the Board of Selectmen to direct the compliance officer to enforce the ZBA ruling which is many years outstanding. Chairman Elsbach asked the Board to enter into a discussion in regard to this and also asked Mr. Harvey and Mr. and Mrs. Butler if they had anything new to add.

Mr. Harvey spoke about the companies that came before the Board this evening and asked the Board to put the issues with his property in perspective. Mr. Harvey pointed out that you cannot see his structures from the road nor does it create any noise.

Chairman Elsbach responded that the Building Inspector made a ruling that the buildings were non-compliant. The decision was appealed to the Zoning Board and the Board upheld the Building Inspector's decision. The decision was then appealed to the Land Court and has again come back to the Zoning Board. A discussion ensued. Chairman Elsbach informed Mr. Harvey that the Zoning Board is following up on their letter to recommend to the Board of Selectmen that they take appropriate action directing the Enforcement Officer to take action on the matter.

Mr. Harvey informed the Board that the Land Court judge asked him to try to resolve this matter with the Town, which he did. Chairman Elsbach stated that it has not been resolved, but has come back to the Board. Mr. Harvey got an opinion from an attorney and wanted to share it with the Board. The Board did not wish to review the document.

Mr. Harvey requested that the Board look at the decision and the bylaws again. Chairman Elsbach responded that the Board looked at the original decision and found it to be reasonable. Mr. Harvey asked if the Board reviewed the Zoning Bylaws when they looked at the decision. Chairman Elsbach responded that the decision had a citation of the Zoning Bylaws and they looked at that.

Building Inspector, Tom Carmody asked the Board what statute gives the current Zoning Board jurisdiction to have written the letter to Mr. Harvey asking for any response? Chairman Elsbach responded that he does not know.

Chairman Elsbach asked the Board to request the Board of Selectmen to instruct the Enforcement Officer to enforce compliance with the original Zoning Board decision regarding the property and non-compliant structures. A discussion ensued.

**Greig Siedor motioned, with a second from Allison Lasso for the Zoning Board to refer the matter to the Board of Selectmen with our instructions that they direct the Enforcement Officer to uphold the previous Zoning Board decision.**

A discussion ensued on the matter. Tom Carmody asked the Board if they have seen the letter he sent to the Board of Selectmen back on October 7, 2013 seeking permission to access Town Counsel to pursue this matter. Susan Butler pointed out that she mentioned this letter to the Zoning Board at their October meeting (a copy was handed to the Board). Chairman Elsbach read the letter to the Board.

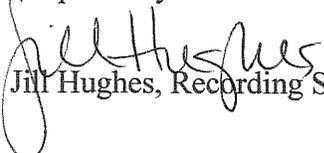
Eric Carlson recommended that the Board table the decision pending the outcome of the letter from Tom Carmody. Chairman Elsbach stated the letter is not to the Zoning Board, but to the Town Administrator regarding use of Town Counsel. Chairman Elsbach asked the Board to move forward with the motion that was presented. A discussion ensued. David West asked the Board if they would entertain further evidence that they are in error enforcing the removal of the structures that are on the property. Chairman Elsbach responded they would not entertain that right now because they are discussing the motion before the Board. Allison Lasso spoke about Tom Carmody's letter to the Town Administrator and that it does not impact her decision on the matter.

Chairman Elsbach asked the Board to vote on the motion. The motion was reread by the recording secretary. A discussion ensued. **Greig Siedor motioned, with a second from Allison Lasso to accept an amendment to his motion to substitute the word recommendation as opposed to instruction.**

Upon request the recording secretary reread the amended motion to the Board, which states **the Zoning Board refer the matter to the Board of Selectmen with our recommendation that they direct the Enforcement Officer to uphold the previous Zoning Board decision. The Board voted on the amended motion and it passed 5-0.**

Chairman Elsbach asked the Board for a motion to adjourn. **Eric Carlson motioned, with a second from Trudy Weaver Miller to adjourn the meeting. The motion passed 5-0 and the meeting adjourned at 9:45 pm.**

Respectfully submitted by:

  
Jill Hughes, Recording Secretary

# Sheffield Zoning Board of Appeals

Date: December 12, 2013

	<b>Name – PLEASE PRINT</b>	<b>Street, Town</b>
1.	Donald Friel	<del>Fairview</del> Bayer Rd
2.	DARREN HARRIS	Hill ENGINEERS, Dalton
3.	Jeff Randall	Hill Engineers Dalton
4.	MARK DICARLO	BNS SHEPHERD SALISBURY RD
5.	Ron Tanner	Bayer, Salisbury Rd
6.	TIM RYAN	BAYER, SALISBURY RD
7.	Michael Harvey	Clawback, NY
8.	Lori Race	Sheffield MA
9.	Edward Race	" "
10.	David West	636 Silver St Sheffield
11.	Thom M Crum	46 PARSONS RD
12.	Susan Butler	481 STAMPERS
13.	Robert Butler	" "
14.	Kim Casey	65 Clayton Rd. Canaan, CT

15. George Johannesen 101-8 Sand Rd No. Canaan, CT

16. Bob Gilcrest 229 Mountain Rd. Norfolk CT

17. Tom Richard 43 Clayton Rd Canaan CT

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