



# *Town of Colchester, CT*

127 Norwich Avenue, Colchester, Connecticut 06415

PLANNING & ZONING COMMISSION

WEDNESDAY, September 1, 2021

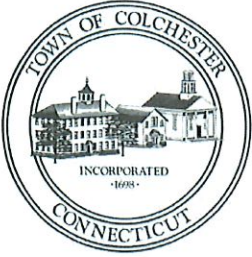
MEETING AT 7:00 P.M.

Virtual Meeting to be held via ZOOM. For a link to the ZOOM meeting please visit the Town of Colchester Public Meetings Calendar at [www.colchesterct.gov](http://www.colchesterct.gov)

## AGENDA

1. **Call to Order**
2. **Additions to the Agenda**
3. **Minutes of Previous Meeting**
  - a. August 18, 2021
4. **Public Hearings**
  - a. Town of Colchester Planning and Zoning Department – Regulation Text Amendment (2021-009) Moratorium on Marijuana Establishments
  - b. 120 South Main, LLC – 139 South Main Street – Regulation Text Amendment (2021-011) Drive-Through Windows in Town Center
5. **Five Minute Session for the Public**
6. **Pending Applications**
7. **New Applications**
8. **Preliminary Reviews**
9. **Old Business**
10. **New Business**
  - a. Town of Colchester Planning and Zoning Department – Regulation Text Amendment (2021-009) Moratorium on Marijuana Establishments
  - b. 120 South Main, LLC – 139 South Main Street – Regulation Text Amendment (2021-011) Drive-Through Windows in Town Center
11. **Planning Issues and Discussions**
12. **Correspondence**
13. **Adjournment**

*Gayle Furman*  
GAYLE FURMAN  
TOWN CLERK  
2021 AUG 30 PM 12:06  
RECEIVED  
COLCHESTER, CT



# Town of Colchester, Connecticut

127 Norwich Avenue, Colchester, Connecticut 06415

Website: [www.colchesterct.gov](http://www.colchesterct.gov)

## PLANNING AND ZONING COMMISSION

Wednesday, August 18, 2021

7:00 p.m.

Virtual Meeting

## MEETING MINUTES

**Members Present:** Chair Joe Mathieu, Mark Noniewicz, Bruce Hayn, Stephanie Smith, Meaghan Kehoegreen

**Members Absent:** Vice Chair John Novak, Jason Tinelle and Ian Lily

**Others Present** Planner, Matthew Bordeaux, Asst. Planner/ZEO Daphne Schaub, Clerk, Kamey Cavanaugh

1. **Call To Order** – Chairman Mathieu called the meeting to order at 7:03 p.m.

2. **Changes or Additions to Agenda**

*Mr. Noniewicz made a motion to change the language of Agenda Item 7A to read Regulation Text Amendment (2021-009) Moratorium on Cannabis Establishments. Mr. Hayn seconded the motion. The motion carried.*

3. **Minutes of Previous Meeting**

a. **July 21, 2021**

*Mr. Hayn moved to approve the minutes dated July 21, 2021. Ms. Kehoegreen seconded the motion. The motion carried; Mr. Noniewicz abstained.*

4. **Public Hearing**- None

5. **Five Minute Session for the Public** – None

6. **Pending Application** – None

7. **New Applications**

a. **Town of Colchester Planning and Zoning Department – Regulation Text Amendment (2021-009) Moratorium on Marijuana Establishments**

Mr. Bordeaux reported the public hearing for this agenda item is set for September 1, 2021 with notices to be in the newspaper on September 20<sup>th</sup> and 27<sup>th</sup>, 2021. The application and language can be found on the Colchester website or by clicking this link.

[DRAFT - Moratorium on Marijuana Establishments](#)

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2021 AUG 20 AM 10:58  
Gayle Furman  
TOWN CLERK

MINUTES

Wednesday, August 18, 2021

Planning & Zoning Commission

**b. Sharr Realty – 139 S. Main Street - Site Plan Modification Administrative Review (2021-010)**

Mr. Bordeaux stated this item falls under the recently approved regulation amendment for administrative approval for minor modifications of previously approved site plan. This is an application that is currently being processed, and a conclusion by staff has not yet been reached. After staff has reviewed, it will then be determined if it can be approved by staff or will need to be referred to the commission for review.

**c. 120 South Main, LLC – 139 South Main Street – Regulation Text Amendment (2021-011) Drive-Through Windows in Town Center**

Mr. Bordeaux reported the public hearing for this agenda item is set for September 1, 2021 with notices to be in the newspaper on September 20<sup>th</sup> and 27<sup>th</sup>, 2021. The application and language can be found on the Colchester website or by clicking this link. [\*\*DRAFT - Drive-Through Window in Town Center\*\*](#)

**8. Preliminary Reviews-** None

**9. Old Business –** None

**10. New Business-** None

**11. Planning Issues and Discussions**

**a. Section 8.2 – Affordable Housing for Two-Family Residential Structures**

Mr. Bordeaux stated that the Regulations distinctly define single family, two-family and multifamily residential uses. Recently it has been brought to the attention of staff that when you look at the affordable housing inclusion zoning regulations in Section 8.2, they make the distinction between single family and multifamily. Staff is looking for direction as to how to apply the inclusionary zoning regulations to a two-family (2 units on a single lot). Staff will research surrounding towns and further information will be provided to the Commission for discussion.

**12. Old Business –** None

**13. New Business –** None

**14. Correspondence**

**a. Public Hearing Notice from Town of East Haddam**

This notice has been presented to the members of the Planning and Zoning Commission for review due to Colchesters proximity to East Haddam.

**b. Connecticut Federation of Planning and Zoning Agencies Quarterly Newsletter**

Included for review. Discussion of accessory apartments and the 'opt out' provision. The discussion of creating a sub-committee to further educate the members will be on a September agenda and staff will create a list of resources that would be needed to address the issues.

**15. Adjournment –**

*Mr. Hayn moved to adjourn. Ms. Kehogreen seconded the motion and all members voted in favor. The meeting of August 18, 2021 adjourned at 8:02 p.m.*

Respectfully Submitted,

*Kamey Cavanaugh*, Clerk

**TOWN OF COLCHESTER  
LEGAL NOTICE**

The Planning and Zoning Commission will hold a virtual public hearing on September 1, 2021, at 7:00 P.M. to hear and consider the following petitions:

- 1. Town of Colchester Planning and Zoning Department – Zoning Regulation Text Amendment (2021-009)** – Amend Section 8.12 Uses Subject to Moratorium of the Town of Colchester Land Development Regulations to adopt a moratorium on acceptance or consideration of applications for Cannabis Establishments for a period of twelve (12) months.
- 2. 120 South Main, LLC – Zoning Regulation Text Amendment (2021-011)** – Amend Section 5.3 of the Town of Colchester Land Development Regulations to permit drive-through windows subject to approval of a Special Permit.

At this hearing interested persons may be heard and written communications received. A copy of this petition is in the Planning and Zoning Department and the Town Clerk's Office, Town Hall, 127 Norwich Avenue, and may be inspected during regular business hours (8:30 a.m. – 4:30 p.m. Monday through Friday).

Planning and Zoning Commission  
Joseph Mathieu, Chair



**TOWN OF COLCHESTER  
PLANNING AND ZONING DEPARTMENT**

**TO:** Planning and Zoning Commission

**FROM:** Matthew R. Bordeaux, Planning Director *MRB*

**DATE:** August 16, 2021

**RE:** Town of Colchester Planning and Zoning Department – Regulation Text Amendment (2021-009) – Moratorium on Cannabis Establishments

***Introduction***

The 2021 Special Session of the State Legislative Assembly saw the passage of a law which decriminalizes the sale and use of marijuana. The new law, known as CT Public Act No. 21-1 “An Act Concerning Responsible and Equitable Regulation of Adult-Use Cannabis”, allows for the operation of ‘Cannabis Establishments’ which are defined as: producer, dispensary facility, cultivator, micro-cultivator, retailer, hybrid retailer, food and beverage manufacturer, product manufacturer, product packager”.

Under the new state law, a municipality may, by amending its zoning regulations or by adopting an ordinance, prohibit cannabis establishments or regulate such establishments by adopting reasonable restrictions regarding the hours of operation, signage and/or establish restrictions on their proximity to a church, school or charitable institution. The Public Act enables Planning and Zoning Commissions to regulate cannabis establishments by Special Permit approval. If a municipality fails to adopt a regulation or ordinance, then cannabis establishments are to be treated the same as any similar use.

Under the Public Act, only a certain number of cannabis establishments can be approved for any given municipality. Only one cannabis retailer and one micro-cultivator can be approved for every 25,000 residents. The Public Act address various issues on municipalities’ authority to regulate cannabis such as allowing them to hold a local referendum on whether to allow the sale of recreational-use marijuana or whether to allow certain types of cannabis businesses within the municipality and allowing them to charge certain cannabis establishments for initial public safety expenses.

The Colchester First Selectman’s office has advised that public education and input will likely influence how the town wishes to address some of the issues the municipality has the authority to regulate. The Planning and Zoning Department is anticipating direction from the First Selectman’s office regarding how this community conversation will unfold. Therefore, the Planning and Zoning Department proposes a moratorium on the receipt of new applications for cannabis establishments while the community processes the new legislation and considers its impacts.

***Moratorium on Cannabis Establishments***

A zoning regulation text amendment is required to adopt a moratorium on a specific use. A moratorium must be limited in scope, establish a reasonable timeframe and have a specific reason or desired outcome.

The proposed draft would replace the moratorium last adopted by the Commission in Section 8.12 regarding Medical Marijuana Production Facilities and Medical Marijuana Dispensaries. The proposed draft substantially mimics the previous language, with amendments applicable to the new Public Act.

The proposed draft defines Cannabis Establishments for use in this Section consistent with the Public Act. As you are aware, the Commission has recently adopted the Large-Scale Indoor Agricultural Floating Zone. The recently adopted regulation provides a path for the establishment of large-scale production facilities, satisfying the requirement that the use be addressed in the regulations or risk being permitted subject to a similarly permitted activity already addressed in our regulations. The moratorium specifically addresses retail sales.

The previous moratorium, now expired, was intended to provide time for the Commission to address the regulation of Medical Marijuana Dispensaries and Production Facilities. To date, the Commission has not addressed the regulation of dispensaries. The proposed regulation amendment includes 'dispensaries' and 'hybrid retailer', terms intended to address medical marijuana sales as distinct from recreational use sales.

The proposed regulation amendment specifies that the duration of the moratorium will be twelve (12) months from adoption. The sale of recreational marijuana and any associated regulations to be promulgated by the CT Department of Consumer Protection in accordance with the Public Act does not go into effect until Summer 2022.

The proposed regulation amendment clearly states the intent of the moratorium. The reason for the moratorium is to allow the Colchester Planning and Zoning Commission to review Public Act 21-1 "An Act Concerning Responsible and Equitable Regulation of Adult-Use Cannabis" and the associated regulation of cannabis establishments, and to draft and adopt municipal regulations regarding the sale of marijuana within the Town of Colchester.

***Draft Motion***

*Move to approve Regulation Text Amendment (2021-009) to adopt a moratorium of any application for the retail sale medical marijuana or recreational cannabis by cannabis establishments for a period of twelve (12) months to allow the Planning and Zoning Commission to review Public Act 21-1 "An Act Concerning Responsible and Equitable Regulation of Adult-Use Cannabis" and to draft and adopt appropriate regulations.*

*Effective Date: September 20, 2021*

MRB

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Attachment

## Zoning Regulation Amendment

### Addition to Section 8.0 Use Standards

#### Section 8.12 for Uses Subject to Moratorium:

Under Public Act 21-1 a “cannabis establishment” is a producer, dispensary facility, cultivator, micro-cultivator, retailer, hybrid retailer (i.e., licensed to sell both recreational cannabis and medical marijuana), food and beverage manufacturer, product manufacturer, product packager, delivery service or transporter.

The Town of Colchester Planning and Zoning Commission shall not accept or consider any application to permit a Cannabis Establishment licensed to sell recreational cannabis or medical marijuana as defined by Connecticut Public Act 21-1 for a period of twelve (12) month commencing from the effective date of TBD, 2021. The reason for the moratorium is to allow the Colchester Planning and Zoning Commission to review Public Act No. 21-1 “An Act Concerning Responsible and Equitable Regulation of Adult-Use Cannabis” and the associated regulation of Cannabis Establishments, and to draft and adopt municipal regulations regarding the retail sale of recreational cannabis or medical marijuana within the Town of Colchester. The expiration date of said moratorium will be TBD, 2022 unless extended by the Colchester Planning and Zoning Commission.



**ZONING REGULATION AMENDMENT**

**Addition to Section 8.0 Use Standards**

**Section 8.12 for Uses Subject to Moratorium:**

**8.12 Uses Subject to Moratorium:**

**a. ~~Medical Marijuana Production Facilities and Medical Marijuana Dispensaries~~**

~~The Town of Colchester Planning and Zoning Commission shall not accept or consider any application to permit the establishment of Medical Marijuana Production Facilities and/or Dispensaries for a period of eighteen months commencing from the effective date of July 16, 2018. The reason for the moratorium is to allow the Colchester Planning and Zoning Commission to review the "State of Connecticut Regulation of the Department of Consumer Protection concerning palliative use of Marijuana" and the associated application process for production facilities and dispensaries, and to draft and adopt municipal regulations regarding the production and distribution of medical marijuana within the Town of Colchester. The expiration date of said moratorium will be January 16, 2020 unless extended by the Colchester Planning and Zoning Commission.~~

~~ADOPTED: June 20, 2018~~

~~EFFECTIVE: July 16, 2018~~

**TOWN OF COLCHESTER  
PLANNING AND ZONING DEPARTMENT**

**TO:** Planning and Zoning Commission  
**FROM:** Matthew R. Bordeaux, Planning Director *MRB*  
**DATE:** August 16, 2021  
**RE:** 120 South Main, LLC – Regulation Text Amendment (2021-011)

***Introduction***

The applicant, 120 South Main, LLC, is proposing to amend Section 5.3 of the Land Development Regulations (the Regulations) to permit drive-through windows subject to Special Permit approval from the Planning and Zoning Commission. The applicant’s attorney, Dwight Merriam, has prepared a draft regulation text amendment and *Rationale for Proposed Change* (see attached).

Prior to the rewrite of the Zoning Regulations in 2015, “drive-through service” was a use permitted subject to approval of a Special Permit in the General Commercial District. Currently, “Restaurant with drive through” is a use permitted subject to Special Permit approval in the Arterial Commercial Use District only.

As Attorney Merriam has pointed out in the *Rationale for Proposed Change*, approximately a dozen existing commercial establishments, including a mix of restaurants, banks and pharmacies, have drive-through service facilities in the Town Center Village District.

***Proposed Regulation Amendment***

The applicant is proposing to reintroduce “Drive-Through Service” to the list of uses permitted in the Town Center Village District subject to approval of a Special Permit by the Planning and Zoning Commission. In addition to the Special Permit General Evaluation Criteria outlined in Section 14.8 of the Regulations, the applicant has proposed a series of additional conditions the Commission shall consider when reviewing a proposal for the drive-through service use. The additional conditions proposed by the applicant include technical standards such as minimum lengths and widths of stacking and drive aisles, turning radii, window facility clear-height and noise level of outdoor loudspeakers.

The applicant was advised that since standards applicable to drive-through services existed in the Zoning Regulation prior to the 2015 rewrite, those minimum standards would provide a familiar baseline to be carried over with the proposal. Specifically, section 9.E of the proposed draft addressing stacking space was copied from Section 15. 9 of the old Zoning Regulations.

The applicant's proposal also provides direction for the layout and functionality of the site to avoid the obstruction of on-site vehicular traffic flow to and from required parking and loading spaces. According to the proposed amendment, future applicants "shall provide a traffic study describing peak hours of operations, volume of customers per hour, stacking space for anticipated volume of drive-through vehicles, turning movements, roadway capacity and level of service of nearby streets."

Finally, the proposal provides that the Commission "may approve alternatives to the requirements where it finds that the alternate design, given the characteristics of the site, will be equally or more effective in protecting on- and off-site pedestrian and vehicular traffic safety and minimizing traffic congestion."

### ***Rationale for Proposed Change***

Attorney Merriam notes two reasons why the proposed amendment is in the public's best interest. First, Attorney Merriam notes the importance of contactless transactions as a way to combat the pandemic. Second, Attorney Merriam notes that Connecticut has the 6<sup>th</sup> oldest population in the country and is getting older relative to other states, noting that drive-through services provided access for those with mobility issues.

Attorney Merriam further addresses the economic disadvantage of vacant properties and those desirable for redevelopment in the District.

### ***Zoning Regulation Text Amendment***

In accordance with Section 8-3a of the Connecticut General Statutes, "the Commission shall state on the record its findings on consistency of a proposed regulation or boundaries or changes thereof with the plan of development for the municipality."

Section 4.3 of the Plan of Conservation and Development (the POCD or Plan) seeks to "Enhance the Town Center." In order to "Strengthen the Town Center Economically", the Plan identifies the area's "Good" potential role for "Convenience Goods", such as those that would be accessible by drive-through service facilities. The POCD states that "uses and activities which support or enhance the desired role for the Town Center should be located in the Town Center area and discouraged in outlying areas. If such uses are located outside of the Town Center area, they may dilute the overall focus and attractiveness of the Town Center and not create as strong a Town Center as the community wants. Colchester should seek to create a critical mass of activities and focal points to drive interest and draw people to the Town Center."

The POCD also recommends strengthening the Town Center "physically" as a means of enhancement. To do so, the Plan states that "in the event of a conflict between maintaining the character of the Town Center and increasing the capacity of the roadway system, the general approach should be to favor maintaining and enhancing character although there are approaches which will accomplish both objectives." Policy 4.3.A.2 further encourages the Commission to "ensure that the Town Center has a strong pedestrian focus and that driveways and parking areas do not adversely affect the pedestrian realm."

Increasing permitted commercial uses in the Town Center will help to generate the critical mass of activities necessary to attract investment in existing under-utilized spaces. The applicant's proposal to reintroduce drive-through service to the District is an important part of the economic development agenda that may also be perceived to challenge the maintenance and integrity of the desired community character of the Town Center. The POCD appears to recognize that there are approaches to the regulation of certain more challenging uses that can still accomplish both objectives. The Special Permit process, combined with the additional conditions proposed as a part of this regulation amendment, provide the Commission with the authority to comprehensively consider potential impacts in their review of an application for drive-through service facilities.

***Connecticut General Statute 8-3b Referral***

As the proposed regulation amendment applies only to the Town Center District and no part of the District is within 500' of a town boundary, no referral is required.

***Draft Motion***

*Move to approve Regulation Text Amendment (2021-011) proposed by 120 South Main, LLC, to reintroduce drive-through services in the Town Center Village District subject to the approval of a Special Permit from the Planning and Zoning Commission.*

*Effective Date: September 20, 2021*

MRB

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Attachments

### 5.3 USES PERMITTED

The following uses shall be permitted in the TC or WV Districts subject to all applicable requirements of these Regulations:

...

9. Drive-Through Service through the approval of a Special Permit, subject to meeting the following requirements:
  - A. Drive-through lanes shall be consistent with the provisions of Section 10.5.1.D and shall have a minimum 15-foot interior radius at curves.
  - B. Drive-through lanes providing access to and from drive-through windows and order boards shall not obstruct on-site vehicular traffic flow to and from required parking and loading spaces or other driveways providing ingress and egress into and within the site.
  - C. Each entrance to, and exit from, a drive-through lane shall be clearly marked to show the direction of traffic flow by signs and pavement markings or raised curbs.
  - D. The applicant shall provide a traffic study describing peak hours of operations, volume of customers per hour, stacking space for anticipated volume of drive-through vehicles, turning movements, roadway capacity and level of service of nearby streets.
  - E. Drive-through lanes shall have the following minimum stacking space, measured from the order board or service window to the entry point into the drive-through lane.
    1. Fast Food/Drive-In Restaurant with Drive-Up Service Window: ten (10) stacking spaces.
    2. Drive-In Bank/Drive-Up ATM: eight (8) stacking spaces; four (4) stacking spaces per service window if more than one (1) service window provided.
    3. Drug Store/Pharmacy Drive-Up Prescription Service Window: two (2) stacking spaces per service window.
    4. Drive-In Car Wash (Automated or Self Service): ten (10) stacking spaces; four (4) stacking spaces per washing bay if more than one (1) washing bay provided.
    5. All other drive-up service windows shall have ten (10) stacking spaces.



Stacking provisions shall also be made for at least one (1) exiting automobile between each service window and the street. Each stacking space shall be 18 feet in length, and such facilities shall be designed to not interrupt the smooth flow of traffic within the subject site. Dedicated stacking lanes shall be provided separate from any other drive aisle. Where access to such stacking lane is from an interior parking lot drive aisle rather than a street, the edge of the adjacent drive aisle shall be considered the street line.

- F. Additional stacking area. The Commission may require additional stacking area beyond that required by Subsections E.1 and E.2 where it determines, based on the evidence in the record and subject to the Commission making findings of fact, that the proposed use will generate more customer vehicle traffic than the above requirements can accommodate.
- G. Drive-through facilities, including windows and other related facilities, shall be architecturally compatible with the building and the existing or planned streetscape.
- H. Outdoor loudspeakers for any drive-through window shall not produce noise level greater than 50 dB at the closest property line, nearest building of a separate use or a public sidewalk off-site.
- I. To limit damage to buildings in the vicinity of drive-through facilities, at least 10 feet of clear height shall be provided for the drive-through lane and bollards shall be located adjacent to drive-through windows to prevent damage to the building from vehicles.
- J. The Commission may approve alternatives to the requirements of Section 5.3.9 where it finds that the alternate design, given the characteristics of the site, will be equally or more effective in protecting on- and off-site pedestrian and vehicular traffic safety and minimizing traffic congestion.

August 13, 2021

Application of 120 South Main, LLC for an Amendment of the Zoning Regulations

### **RATIONALE FOR PROPOSED CHANGE**

This proposed amendment of the Town of Colchester Zoning Regulations will enable drive-through service in the Village Center/Westchester Village (VC/WV) District.

Drive-through service was previously authorized in the VC/WV District. Several properties have been developed with drive-through service and are currently operating, now as nonconforming uses. Among those properties are:

Starbucks, 95 Linwood Avenue  
Liberty Bank, 219 South Main Street  
United Bank, 99 Linwood Avenue  
Walgreens, 27 Broadway Street (not in GIS)  
CVS: 119 S. Main Street  
Dime Bank: 139 South Main Street  
Berkshire Bank: 63 Norwich Avenue  
TD Bank 64 Norwich Avenue  
Dunkin Donuts: 164 Linwood Avenue  
Dunkin Donuts: 440 South Main Street  
Dunkin Donuts: 723 Middletown Road (WV District)  
McDonalds: 375 South Main Street  
Wendy's: 348 South Main Street

This proposed amendment is warranted for two principal reasons.

First, drive-through service in this commercial district is in the public interest. The recent, and now continuing, pandemic has required that people maintain social distance and have contactless transactions where possible to reduce contagion. See generally <https://www.qsrmagazine.com/outside-insights/value-drive-thru-during-covid-19> A worldwide study, "Drive-thru pharmacy services: A way forward to combat COVID-19 pandemic," has shown the importance of drive-through service for health care in this time of pandemic. <https://www.ncbi.nlm.nih.gov/pmc/articles/PMC7373674/>

This is not the last pandemic we will have. Drive-through service is necessary not only now but will be in the future.

We also have an aging population. Connecticut has the sixth oldest population in the country, and it is getting older relative to others. <https://ctbythenumbers.news/ctnews/2018/09/26/ct-is-6th-oldest-state-in-the-nation-with-projections-pointing-to-even-older-population-economic-ramifications>

With aging, there are increasing issues of mobility and it is difficult and often impossible for many people to walk into an establishment to be served. Obviously, mobility issues are not restricted to older people and there are many others with physical disabilities who need this access and who are disadvantaged without drive-through service.

Second, the widespread prevalence of drive-through service and the demands of the public for it have provided a distinct economic advantage to those properties in the District that have drive-through service. To the extent that some commercial operations may be able to be located outside of Colchester, all of the District is put at a disadvantage for many types of commercial and retail activities in which drive-through service has become the norm.

Vacant properties in the district and those desirable for redevelopment are disadvantaged in the market in not having the ability to provide drive-through service. The potential for getting approval of drive-through service will increase the attractiveness of these properties throughout the District, and it will expedite and enhance their development and redevelopment to the benefit of the Town of Colchester and its citizens.

Care has been taken in drafting these regulations to include standards, submission requirements such as the traffic report, and discretion for the Planning & Zoning Commission to deny a special permit where the standards are not met or to condition approval of a special permit to meet site-specific issues.