TOWN OF KILLINGLY, CT
PLANNING AND ZONING COMMISSION

TUESDAY – FEBRUARY 22, 2022

Regular Meeting – HYDBRID MEETING
7:00 PM

TOWN MEETING ROOM – 2ND FLOOR
Killingly Town Hall
172 Main Street
Killingly, CT

THE PUBLIC IS ALLOWED TO ATTEND THE MEETING IN PERSON
OR THE PUBLIC MAY VIEW THIS MEETING AS DESCRIBED BELOW

AGENDA

THE PUBLIC CAN VIEW THIS MEETING ON FACEBOOK LIVE.
GO TO www.killinglyct.gov AND CLICK ON FACEBOOK LIVE AT THE BOTTOM OF THE PAGE.

I. **CALL TO ORDER/ROLL CALL**

II. **SEATING OF ALTERNATES**

III. **AGENDA ADDENDUM**

IV. **CITIZENS' COMMENTS ON ITEMS NOT SUBJECT TO PUBLIC HEARING** (Individual presentations not to exceed 3 minutes; limited to an aggregate of 21 minutes unless otherwise indicated by a majority vote of the Commission)
NOTE: Public comments can be emailed to publiccomment@killinglyct.gov or mailed to the Town of Killingly, 172 Main Street, Killingly, CT 06239 on or before the meeting. All public comment must be received prior to 2:00 PM the day of the meeting. Public comment received will be posted on the Town's website www.killingct.gov.
NOTE: To participate in the CITIZENS' COMMENTS– the public may join the meeting via telephone while viewing the meeting on Facebook live.
To join by phone please dial 1-415-655-0001; and use the access code 2630-203-8265 when prompted.

V. **COMMISSION/STAFF RESPONSES TO CITIZENS' COMMENTS**

VI. **PUBLIC HEARINGS – (review / discussion / action)**
NOTE: To participate in THE PUBLIC HEARINGS – the public may join the meeting via telephone while viewing the meeting on Facebook live.
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(CONTINUED ON NEXT PAGE)

1) **Special Permit Ap #21-1273;** David Kode (Frito-Lay/Landowner); 1886 Upper Maple St; GIS MAP 62, LOT 53; 94 acres; Ind Zone; for portion of proposed building addition that will exceed the maximum height of 50 ft for said zone, with a proposed height of 86 ft, 8.5 inches. **LIMITED CONT. FROM 01/18/2022**

2) **Special Permit Ap #21-1277**; American Storage Centers, LLC (Landowner same); 551 Westcott Road; GIS MAP 214; LOT 5; ~3.8 acres; General Commercial Zone; construction of 6 new buildings & conversion of existing building to establish a self-service storage facility (420.2.2.[q]). **HEARING CLOSED, DISCUSSION & DECISION – FROM 01/18/2022**

Hearings' segment closes.
Meeting Business will continue.

VII. UNFINISHED BUSINESS – (review / discussion / action)

1) **Special Permit Ap #21-1273;** David Kode (Frito-Lay/Landowner); 1886 Upper Maple St; GIS MAP 62, LOT 53; 94 acres; Ind Zone; for portion of proposed building addition that will exceed the maximum height of 50 ft for said zone, with a proposed height of 86 ft, 8.5 inches.

2) **Site Plan Application #21-1275**; David Kode (Frito-Lay/Landowner); 1886 Upper Maple St; GIS MAP 62, LOT 53; 94 acres; Ind Zone; for the proposed building additions that will be under the allowed height.

3) **Special Permit Ap #21-1277**; American Storage Centers, LLC (Landowner same); 551 Westcott Road; GIS MAP 214; LOT 5; ~3.8 acres; General Commercial Zone; construction of 6 new buildings & conversion of existing building to establish a self-service storage facility (420.2.2.[q]).

VIII. NEW BUSINESS – (review/discussion/action)

NOTE: There is already one public hearing scheduled for Monday, March 21, 2022.

1) **Special Permit Ap #22-1282**; Jolley Commons, LLC (Applicant/Owner); 120 Wauregan Road; GIS MAP 220, LOT 21; ~6.4 acres; General Commercial Zone; excavation and removal of gravel products; under Section 560, et seq (Earth Filling and Excavation); Section 700 et seq (Special Permits); and Section 470 et Seq (Site Plan Review) of the Town of Killingly Zoning Regulations. **Receive and schedule for public hearing. Proposed date Monday, March 21, 2022.**

2) **Special Permit Ap #22-1283**; Steven E. MacCormack (Applicant/Owner); 42 Mechanic St; GIS MAP 181; LOT 104; ~0.13 acres; **AND** 26 Oak St; GIS MAP 181; LOT 105; ~0.25 acres; both Borough General Commercial Zone; self-service storage facility in two pre-existing buildings; under Section 430, et seq (General Commercial) and Section 700 et seq (Special Permit) of the Borough of Danielson Zoning Regulations. **Receive and schedule for public hearing. Proposed date Monday, March 21, 2022.**

3) **Zone MAP Change Ap #22.1284**; State of CT; Aquifer Area Program Implementation Letter for Map Delineation; 360 Lake Road; GIS MAP 61; LOT 52; ~11 acres; Industrial Zone; Level "A" Mapping Approval for the Connecticut Water Company's Killingly Industrial Park Well Field. **Receive and schedule for public hearing. Proposed date Monday, March 21, 2022.**

(*) Applications submitted prior to 5:00 PM on TUESDAY, FEBRUARY 15, 2022, will be on the agenda as New Business, with a "date of receipt" of TUESDAY FEBRUARY 22, 2022, and may be scheduled for action during the next regularly scheduled meeting of **MONDAY, MARCH 21, 2022.**
(*) Applications submitted by 12:00 noon on FRIDAY, FEBRUARY 18, 2022, will be received by the Commission ("date of receipt") on TUESDAY, February 22, 2022. However, these applications may not be scheduled for action on MONDAY, MARCH 21, 2022, as they were submitted after the Commission's deadline. This is in accordance with Commission policy to administer Public Act 03-177, effective October 1, 2003.

IX. ADOPTION OF MINUTES – (review/discussion/action)

1) Regular Meeting Minutes – Tuesday, January 18, 2022

X. OTHER / MISCELLANEOUS – (review / discussion / action)

1) ***WORKSHOP – Discussion*** – should the zoning regulations allow for an accessory structure to be constructed on a vacant parcel of real estate without the primary structure being in place?
2) ***WORKSHOP – Discussion*** – Five Mile River Overlay District.

XI. CORRESPONDENCE

XII. DEPARTMENTAL REPORTS – (review/discussion/action)

A. Zoning Enforcement Officer's & Zoning Board of Appeal's Report(s)

B. Inland Wetlands and Watercourses Agent's Report

C. Building Office Report

XIII. ECONOMIC DEVELOPMENT DIRECTOR REPORT

XIV. TOWN COUNCIL LIAISON REPORT

XV. ADJOURNMENT

VI. PUBLIC HEARINGS & VII. UNFINISHED BUSINESS– (review / discussion / action)

(*) Special Permit Ap #21-1273; David Kode (Frito-Lay/Landowner); 1886 Upper Maple St; GIS MAP 62, LOT 53; 94 acres; Ind Zone; for portion of proposed building addition that will exceed the maximum height of 50 ft for said zone, with a proposed height of 86 ft, 8.5 inches.

(*) Site Plan Application #21-1275; David Kode (Frito-Lay/Landowner); 1886 Upper Maple St; GIS MAP 62, LOT 53; 94 acres; Ind Zone; for the proposed building additions that will be under the allowed height.

APPLICANT(S):	David Kode
LANDOWNER(S):	Frito-Lay/Landowner
SUBJECT PROPERTY:	1886 Upper Maple Street
ASSESSOR'S INFO:	GIS MAP 62; Lot 53; 94 acres
ZONING DISTRICT:	Industrial Zone
REQUEST:	**Special Permit 21-1273** – for portion of proposed building addition that will exceed the maximum height of 50 ft for said zone, with a proposed height of 86 ft, 8.5 inches **Site Plan 21-1275** – for the proposed building additions that will be under the allowed height

(*) **SPECIAL PERMIT AP #21-1273** – To allow the height of the new Automatic Stock Retrieval System (ASRS) which will be an eight (8) rack system within the constructed building with the proposed height of 86 ft, 8.5 inches.

NOTE: This is a limited continuance from the January 18, 2022, meeting. At that meeting Attorney Slater gave his recommendation, based upon the agreement on the record –

- The Intervenor and the Applicant will exchange proposed conditions with one another; and Staff (along with Legal Counsel) will work together to create a set of proposed conditions to the Commission Members.
- The public hearing be continued and the only testimony that will be accepted and heard, attorneys or otherwise, will be strictly related to the cut and fill information that was requested by the Chairman and Commissioner Card.
- Attorney Slater stated that the public hearing will still be open and the public cannot be denied an opportunity to speak '**ON THIS ONE ISSUE**'. The Intervenor and the Applicant must submit their proposed conditions to staff by February 1st.
- Brian Card clarified that he is requesting that Section 560.4.b and 560.4.c of the Zoning Regulations be addressed.

1) The Killingly Zoning Regulations ("Regulations") allow such a height in Section 450 (Dimensional Requirements); Subsection 450.3.1 (Height in Industrial Zones)

2) The Applicant did testify as to why they were requesting the additional building height and to the efficiency of the 8-rack system

3) The Applicant did provide the PZC with architectural plans, and presented a power point presentation on how the eight (8) rack system would work, etc.

4) Members of the Lake Association did voice some objection to the height; however, their objections were mostly based upon their concern over noise level.

5) It should be noted that Frito-Lay has agreed to conduct sound studies to verify that they comply with CT DEEP noise standards and the Town's ordinance.

Please note that both legal counsel and staff will be in attendance if the commission members have any further questions regarding this application.

Please note that the issues listed above are clearly for the special permit request submitted by the Applicant.

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(*) **SITE PLAN APPLICATION #21-1275** – For the proposed buildings that will be under the 50 ft height, landscaping, buffering, parking, etc.

The following are a list of concerns either voiced by abutters, or commission members

1) Request for further information regarding the "CUT & FILL" – the applicant has provided said information on the additional plans submitted to town staff and included in your packet

2) Noise Level – the applicant has testified that they are willing to conduct a sound study test after construction is completed to verify that they are in compliance with CT DEEP regulations and the Town of Killingly Ordinance (Noise).

3) Traffic Flow on Site – the applicant has provided a plan showing the traffic flow on the site.

4) Landscape / Buffering – the applicant presented an outlook presentation where they compared the required landscaping and buffering requirements of prior applications were indeed completed. The applicant has agreed to increase the number of trees on site to continue to maintain the proper landscape and forest plantings as required.

5) The uses all shown on the site plans are allowed uses under the Industrial Zone, and therefore the review of this site plan is considered administrative – to verify that all the proposals meet the requirements of the Killingly Zoning Ordinances.

6) Lighting – the lighting shown on the site plans meet with night sky compliance.

Please note that both legal counsel and staff will be in attendance if the commission members have any further questions regarding this application.

Proposed Conditions of Approval Submitted by Applicant Frito-Lay, Inc. (2/8/2022)
Site Plan Application #21-1275

1. Following construction of the plant expansion that is the subject of this site plan application (the "Project") and within 90 days after the completion of installation of associated new manufacturing and rooftop equipment, Frito-Lay shall conduct sound survey testing at up to three (3) residential properties on the west side of Upper Maple Street through an acoustical consultant to confirm that the facility is in compliance with the noise regulations promulgated by the Connecticut Department of Energy and Environmental Protection which are set forth in Regulations of Connecticut State Agencies Section 22a-69-1 et. seq. (the "CT DEEP Regulations"). These locations are to be determined in consultation with the Town Engineer. The Town Engineer will be notified at least two days in advance of the proposed sound survey test date and time. Sound survey tests shall be conducted in conformance with the requirements of the CT DEEP Regulations and in substantial conformity with acoustical test methods and procedures specified in generally accepted outdoor sound survey standards, including ASTM E1503-14. Sound survey tests will be conducted at a time determined by the Town Engineer. Test results shall be submitted to the Planning and Zoning Commission through the Planning and Development Office of the Town of Killingly within 45 days of the sound survey testing.

2. Frito-Lay shall install additional landscaping on the western portion of the Frito-Lay property consisting of up to 50 trees comprised of white spruce and red cedar, with a minimum height of 6 feet. The specific locations where such trees are to be installed shall be determined by Planning and Development office staff. Five (5) years after installation of these plantings, Planning and Development Office staff shall conduct a field inspection of the plantings to determine if additional plantings are necessary to maintain an effective visual barrier.

3. In connection with the construction of the Project, contracts with construction subcontractors shall include language directing the subcontractors to utilize carpooling measures for their employees traveling to the site during construction to reduce the overall number of vehicles.

4. All construction traffic associated with the Project, including truck traffic and construction worker traffic, shall be routed through the Attawaugan Crossing Road access point to the Frito-Lay property.

5. In connection with the Haskell response dated January 14, 2022 to the CLA Engineers, Inc. (CLA) review comments dated January 12, 2022, the additional information which Haskell indicates will be provided in response to CLA review comments 2, 8, 11, 12, 14, 16, 17, 18, 19, 20 and 22 shall be submitted to the Town Engineer for review and approval prior to the issuance of a building permit.

Proposed Conditions of Approval

Site Plan Application #21-1275 and, as relevant, Special Permit Application #21-1273

Submitted by Intervenor Alexander's Lake Homeowners' Association, Inc.

February 8, 2022

1. The Applicant shall conduct noise testing at a minimum of three residential properties on the west side of Upper Maple Street through a noise consultant both prior to construction and within 60 days of full operation of the Applicant's expanded facility, in order to confirm that the facility is in compliance with the noise regulations promulgated by the Connecticut Department of Energy and Environmental Protection. Test results shall be publicly submitted to the Planning and Zoning Commission through the Planning and Development Office of the Town of Killingly. Specific sound measurement protocol, enclosed herein, shall be implemented for this testing.

2. The Applicant shall develop a forest management plan and maintain the forested buffer indicated on the 2010 Special Permit (which shall be included on all existing and future plans).

3. The Applicant shall add green infrastructure improvements, such as electric charging stations and bike racks, per Section 532.

4. The Applicant shall add landscaping along the southeastern border.

5. The Applicant shall remove the 15 trailer parking spaces shown on Sheet 2C-124.

6. The Applicant shall add shields to the existing light fixtures at the Yellin lot to minimize light pollution.

7. The Applicant shall stipulate that all construction traffic (including materials, workers and the removal of materials) be routed through the Attawaugan Crossing Road access point.

8. The Applicant shall stipulate and that all construction workers park at either the Attawaugan Crossing Road/Upper Maple Street lot, the former Poludniak lot or at the vacant restaurant across Attawaugan Crossing Road.

9. The Applicant shall submit a construction phasing and management plan address any additional concerns raised by the Commission or its engineer.

10. The Applicant shall post a bond to insure implementation of the above.

Environmental Sound Compliance Test
Sound Measurement Protocol

Frito-Lay Facility Expansion
Killingly, CT

1. General Requirements for Sound Measurements

1.1. *Sound Level Meter and Octave Band Filters*
All sound measurements shall be conducted using a sound level meter that meets the requirements of IEC 61672-1:2013 for Class 1 precision instrumentation. For frequency analysis, one-third octave band filters shall conform to IEC 61260-1:2014. For all measurements, the sound level meter time response will be set to "fast" response. Microphones will be outfitted with an appropriate windscreen for outdoors measurements.

1.2. *Field Calibration*
The sound level meter shall be field calibrated immediately before and after each measurement series, and after any change in equipment conditions such as a battery replacement. Calibration shall be conducted using an acoustic calibrator that is recommended by the sound level meter manufacturer and conforms to IEC/EN 60942:2017 Class 1.

1.3. *Atmospheric Conditions*
Environmental sound measurement shall not be conducted during adverse weather conditions. Measurements should be avoided during periods when the average wind speed exceeds 6 meters per second (13 mph). Measurements during excessive wind speeds shall be noted accordingly on data sheets and their validity reviewed as necessary. Measurements shall not be conducted during periods of precipitation or wet surface road conditions. Weather conditions shall be noted on measurement data sheets.

1.4. *Third-Party Observer*
Measurements should be scheduled at least two days in advance and coordinated with the Town Engineer to allow for a third-party observer during the measurements.

2. Sound Measurements

2.1. *Measurement Locations*
Sound compliance testing should be performed at a minimum of three residential properties on the west side of Upper Maple Street. The attached Figure 1 provides general measurement locations. These locations are to be determined in consultation with the Town Engineer to assure that they provide direct line of sight to the plant and not shielded by any significant obstructions.

2.2. *Facility Operational Sound Level*
The entire Frito-Lay facility should be fully operational at maximum capacity. To minimize interference from traffic related noise sources, measurements will be conducted during the early morning hours (midnight to 4:00 a.m.). The measurement

interval for each measurement shall be 10-minutes. Measurements shall include statistical A-weighted sound level descriptors (L_{eq}, L_{max}, L_1, L_{10}, L_{50}, L_{90}, and L_{min}) and on-third octave band spectra (L_{eq}, L_{max}, L_1, L_{10}, L_{50}, L_{90}, and L_{min}). The instrument shall be tripod mounted with the microphone positioned approximately 1.5 meters (5 ft.) above the ground for all measurements.

2.3. *Insect Sound Corrections*
In the event that insect sounds are a dominant source of ambient sound levels (as identified by spectral analysis), ANS-weighting as generally described in ANSI S 12.100-2014 can be implemented. However, the highest low pass filter cutoff frequency should be determined by the spectral data and not arbitrarily set at 1000 Hz. All significant sound sources shall be identified, and significant transient sounds shall be noted.

3. Compliance

3.1. *Regulations of Connecticut State Agencies Section 22a-69-1 – 22a-69-7.4*
Sound measurement will be conducted at residential receptor properties. The appropriate limit for a Class C emitter at these properties is 51 dBA. However, per Section 22a-69-3.3 this limit should be reduced to 46 dBA if it is determined by Section 22a-69-1.2(r) that one or more prominent discrete tones exist.

3.2. *Sound Level Metrics*
For continuous sources of sound the L_{90} metric is appropriate for comparison to the compliance limits stated above. If there are time varying or transient sources, alternate metrics including L_{eq} or L_{max} should be used to properly assess the impact of the time varying or transient sources.

4. Report

4.1. *Compliance Report*
Within 2 weeks of testing, Frito-Lay will submit a written report that documents the measurement results and provides an assessment of facility compliance. The report should include:

4.1.1. Site Plan indicating the Project area and the sound measurement locations.

4.1.2. Weather data during the measurement periods.

4.1.3. Documentation confirming that the entire facility was operating at full capacity during the measurements.

4.1.4. For each measurement location:

4.1.4.1. Time history (1-second intervals) for the 10-minute sample.

4.1.4.2. Table of measured A-weighted or ANS-weighted sound levels (L_{eq}, L_{max}, L_1, L_{10}, L_{50}, L_{90}, and L_{min}).

4.1.4.3. Plots of the measured one-third octave band sound levels (L_{90}).

5. Noise Mitigation

5.1. *Excessive Sound Emissions*

If the results the sound testing determine that the facility is producing sound levels that exceed appropriate limits, Frito-Lay will have 60 days to develop and implement a noise mitigation plan.

5.2. *Post Mitigation Testing*

Upon completion of the mitigation plan, to demonstrate compliance, Frito-Lay will repeat the protocol described herein.

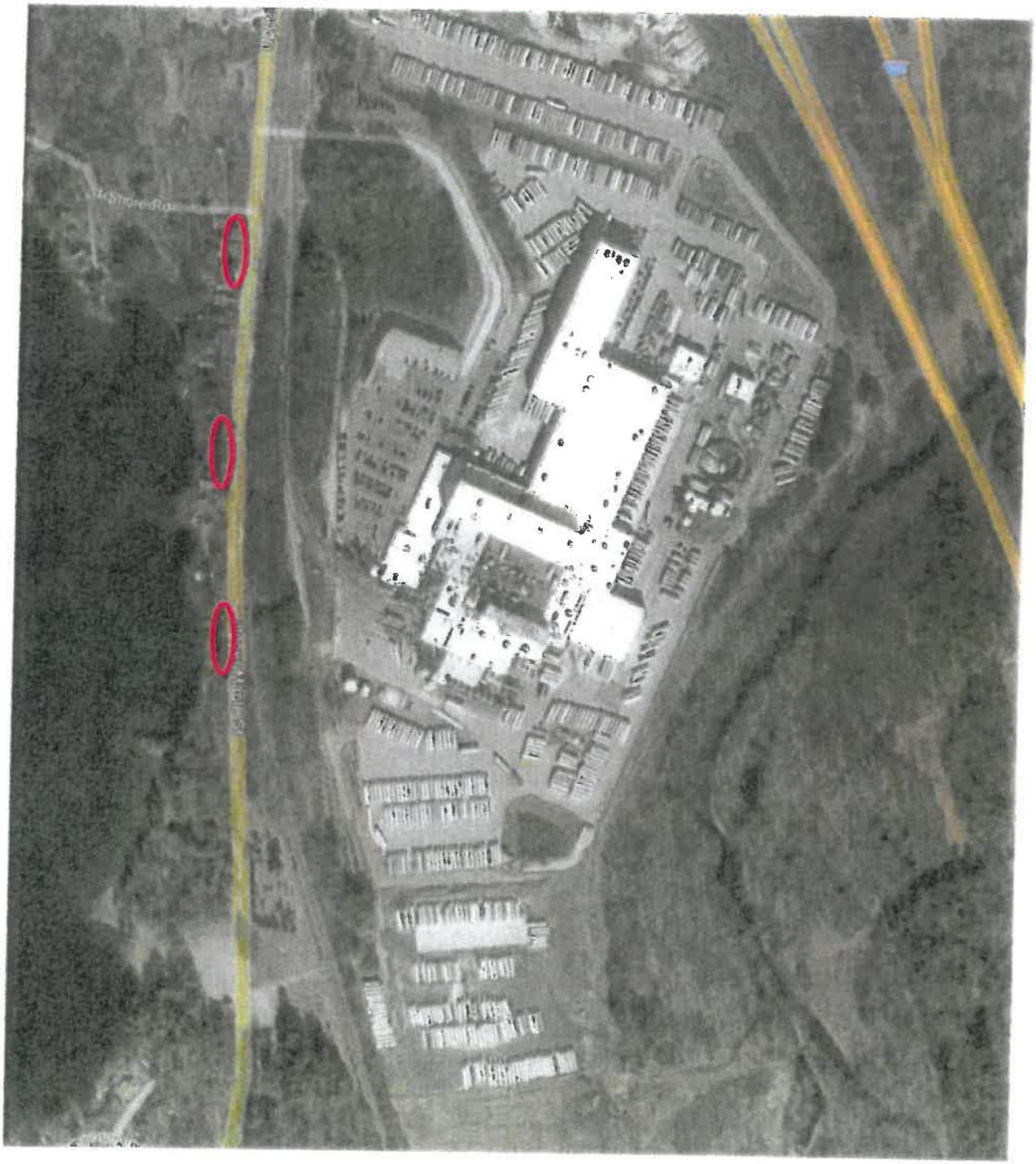

Figure 1. Generally Recommended Locations for Sound Compliance Testing

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5.2. *Post Mitigation Testing*

Upon completion of the mitigation plan, to demonstrate compliance, Frito-Lay will repeat the protocol described herein.

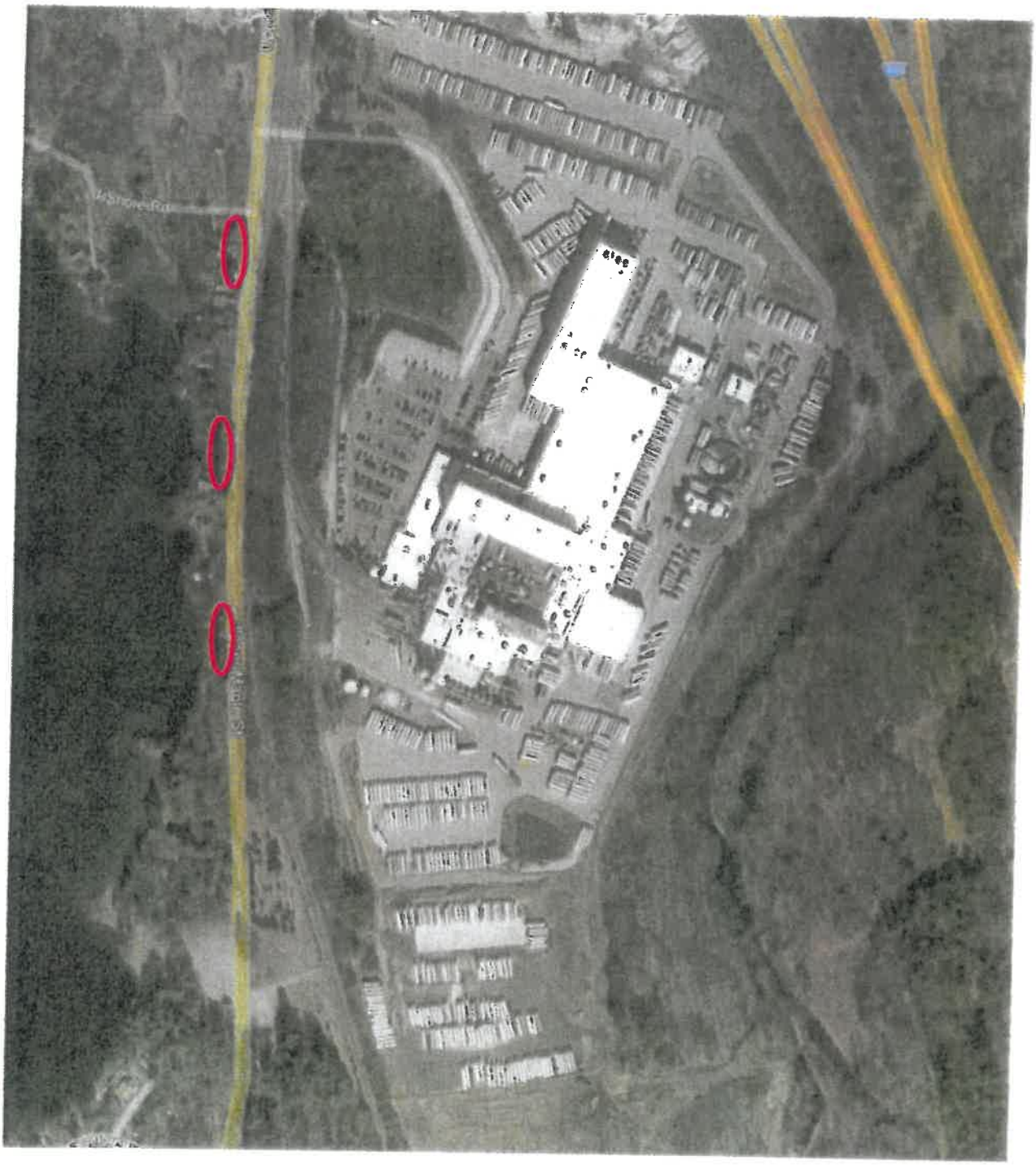


Figure 1. Generally Recommended Locations for Sound Compliance Testing

VII. UNFINISHED BUSINESS – (review/discussion/action)

3) **Special Permit Ap #21-1277**; American Storage Centers, LLC (Landowner same); 551 Westcott Road; GIS MAP 214; LOT 5; ~3.8 acres; General Commercial Zone; construction of 6 new buildings & conversion of existing building to establish a self-service storage facility (420.2.2.[q]).

APPLICANT(S):	American Storage Centers, LLC
LANDOWNER(S):	American Sports Centers, LLC
SUBJECT PROPERTY:	551 Westcott Road
ASSESSOR'S INFO:	GIS MAP 214, LOT 5, ~3.8 acres
ZONING DISTRICT:	General Commercial
REQUEST:	construction of 6 new buildings & conversion of existing building to establish mini storage facility (self-service storage facility)
REGULATIONS:	Article VII – Special Permit, Section 700 – et sec. Section 470 – Site Plan Review Section 420.2.2[q] – Self-Service Storage Facility

Background:
This matter came before the Commission on Tuesday, January 18, 2022. The Commission heard the testimony of the applicant's representative and the public regarding same. After all the testimony was heard, the hearing was closed. Tonight's discussion is strictly between staff and the commission (no further testimony can be taken) and a motion to be made. Directly below are staff's comments -

1) Concern regarding the use of millings on the site – Staff has supplied the email from David Capacchione, Town Engineer where he requested that a "hox mix asphalt" be used.

a) Permissible lot coverage in General Commercial zone is 65% by right; or

b) Lot coverage in the General Commercial zone may be increased from 65% to 75% with a Special Permit by the Planning and Zoning Commission Provided – The applicant proposes to pay to the Town a fee; 1. In the amount equal to the fair market value of the lot multiplied by the percentage of the excess of the lot coverage; and 2. To be placed in a fund to be used by the Town for the purpose of preserving or acquiring land for open space, conservation recreation, aesthetic, historical, environmental, agricultural, or other purposes (Section 420.2)

2) Fire and Traffic Safety – a) to allow firetrucks access to all buildings on the premises it has been requested that at least a 20' "driveway/road" between the buildings and the planted buffer (the building farthest to the left is only 15').

3) Fire and Ambulance Services – a) there should be a Knox box at the gate to allow fire and ambulance crews access to the premises.

4) Snow Plowing & Storage – a) are the aisles between the buildings and at each back corner large enough to allow for proper snow plowing and where would the snow piles be put. If snow piles were on site would the

5) Lighting on Buildings – All lighting on buildings should be tilted downward and make sure not lighting goes off the premises.

6) There is a list of conditions under Section 420.2.2(q.)[2] (Special Permit Uses – Self-Service Storage Facilities – Conditions) which must be adhered to by the applicant. Staff suggests that reference to those conditions be made in the Commission's motion.

PRIOR STAFF COMMENTS AND SUGGESTIONS

1) Town Engineer
   a. Town Engineer would prefer hot mix asphalt and not millings
   b. Town Engineer has requested that the drainage calcs be done over based on hot mix asphalt
2) P&D Staff
   a. The landscaping plan along the outer boundaries is just ornamental trees and ornamental grass
   b. Commission may request certain trees and/or grass (to make sure the border screen is complete) as a condition of approval. OR the commission may require applicant show their plans for the proposed trees / and grass to staff and staff can give the final approval of landscaping
   c. There are no lighting details – should remind applicant that all lighting should be dark sky compliant. ,

Ann-Marie Aubrey

From: David Capacchione
Sent: Thursday, January 13, 2022 3:04 PM
To: Ann-Marie Aubrey; Jonathan Blake
Subject: American Storage Center LLC

Follow Up Flag: Follow up
Flag Status: Flagged

Hello all,

I have reviewed the plans and drainage calcs for the above referenced project which were submitted by Killingly Engineering Associates.

I have asked Norm to revise the drainage calcs.
Also did you have a conversation with him on allowing millings for the drive area?
As this is a permanent structure I would prefer hot mix asphalt.
Thanks and please call with any questions.
D. Cap.

TOWN OF KILLINGLY, CT
PLANNING AND ZONING COMMISSION

TUESDAY – JANUARY 18, 2022
Regular Meeting – HYDBRID MEETING
7:00 PM

TOWN MEETING ROOM – 2ND FLOOR
Killingly Town Hall
172 Main Street
Killingly, CT

THE PUBLIC IS ALLOWED TO ATTEND THE MEETING IN PERSON
OR THE PUBLIC MAY VIEW THIS MEETING AS DESCRIBED BELOW

MINUTES

THE PUBLIC CAN VIEW THIS MEETING ON FACEBOOK LIVE.
GO TO www.killinglyct.gov AND CLICK ON FACEBOOK LIVE AT THE BOTTOM OF THE PAGE.

I. **CALL TO ORDER** – Chair, Keith Thurlow, called the meeting to order at 7:04 p.m.

ROLL CALL – Virge Lorents, John Sarantopoulos, Matthew Wendorf were present in person.
Brian Card and Keith Thurlow were present via Webex.

Staff Present – Ann-Marie Aubrey, Director of Planning & Development; Jonathan Blake, Planner I & ZEO; Ken Slater, Town Attorney, Halloran & Sage; Jill St. Clair, Director of Economic Development (all were present in person).

Also Present (in person) – Attorney Joseph Hammer, Day Pitney, LLC; David Kode, Design Director and Architect with Haskell Company (Project Consultant); Scott Hesketh, Traffic Engineer with F.A. Hesketh & Associates; Roger Gieseke, Frito-Lay (Senior Project Engineer); Brian Dotolo, Haskell (Project Director); Sil Quenga, Frito-Lay (Director of Engineering and Maintenance); Karen Johnson, 1819 Upper Maple Street; Norm Thibeault, Killingly Engineering Associates; Carol Riley, Cook Hill Road; Attorney Michael P. Carey, Suisman Shapiro; Nicholas Durgarian, Douglas Construction; Ulla Tiik-Barclay, Town Council Liaison.
(via Webex) – Steven Cole, Haskell (Civil Engineer); Bennett Brooks, President of Brooks Acoustics Corporation; Attorney Mary Miller, representing the Alexanders Lake Homeowners Association; Douglas Bell, Acoustics Expert; Robert Deluca; Scott Lyons, Haskell; Kevin Krump, Haskell; J.S. Perreault, Recording Secretary.

II. **SEATING OF ALTERNATES** – None.

III. **AGENDA ADDENDUM** – None.

IV. **CITIZENS' COMMENTS ON ITEMS NOT SUBJECT TO PUBLIC HEARING** (Individual presentations not to exceed 3 minutes; limited to an aggregate of 21 minutes unless otherwise indicated by a majority vote of the Commission)
NOTE: Public comments can be emailed to publiccomment@killinglyct.gov or mailed to the Town of Killingly, 172 Main Street, Killingly, CT 06239 on or before the meeting. All public comment must be received prior to

2:00 PM the day of the meeting. Public comment received will be posted on the Town's website www.killingct.gov.
NOTE: To participate in the CITIZENS' COMMENTS– the public may join the meeting via telephone while viewing the meeting on Facebook live.
To join by phone please dial 1-415-655-0001; and use the access code 2630-941-0114 when prompted.

Ann-Marie Aubrey read aloud the above public comment/call-in information.

There were no comments from the public.

V. COMMISSION/STAFF RESPONSES TO CITIZENS' COMMENTS

VI. PUBLIC HEARINGS – (review / discussion / action)

NOTE: To participate in THE PUBLIC HEARINGS – the public may join the meeting via telephone while viewing the meeting on Facebook live.
To join by phone please dial 1-415-655-0001; and use the access code 2630-941-0114 when prompted

1) **Special Permit Ap #21-1273;** David Kode (Frito-Lay/Landowner); 1886 Upper Maple St; GIS MAP 62, LOT 53; 94 acres; Ind Zone; for portion of proposed building addition that will exceed the maximum height of 50 ft for said zone, with a proposed height of 86 ft, 8.5 inches.

Attorney Joseph Hammer, represented the Applicant. He noted that this is the third meeting that the PZC has considered the Special Permit and the Site Plan applications and he commented that their goal for tonight is provide some additional information and responses to comments from the last meeting and that they hope that the proceedings for both applications will be completed tonight. Attorney Hammer stated that they would address questions, if any, regarding the third-party review by CLA Engineers, Inc. (dated January 12, 2022) or the response letter from Haskell (dated January 14, 2022). Attorney Hammer stated that, after the last meeting, Staff had provided them with a copy of a 2011 Planting Plan. Frito-Lay has prepared slides (submitted to Staff on January 14, 2022) showing existing conditions that show that there were plantings implemented, by Frito-Lay, that are consistent with that plan.

Steven Cole, Civil Engineer with Haskell, reviewed revised designs around the Auto Parking and the Trailer Spaces. Twenty-six revised drawings had been submitted and he reviewed the following (plans were displayed as discussed):

- Overall Site Plan
  - Auto Parking Lot revised design nets 172 added spaces to the site
  - 289-foot separation from Upper Maple Street right-of-way to the closest point on the Auto Parking Lot, exceeding the existing buffer area of 271 feet.
  - 15 Trailer Spaced – There was a reduction in the number of spaces, they went to an angled approach meeting the 25-foot required buffer space (Section 430.2.5).
  - Meet all required setbacks per Table A for the Industrial Classification.
  - Restriping existing ADA spaces to be in compliance with State of CT.
- Enlarged Geometry Plan for the 15 Trailers Spaces on the south side of the site. Contains detail for the ADA spaces.
  - Meets the 25-foot required setback.
  - Currently matches the Yellin Lot trailer parking stall back of curb alignment – 28 feet with a 6-foot shoulder and proposed fence.
  - Improvement for tractor trailer traffic: they will be paving the drive as it extends off of the existing gravel drive. He referred back to the Overall Site Plan and explained that the existing gravel road will remain undisturbed except for paving improvements at the south end. This will remain open.
- Enlarged Geometry Plan for the Employee Auto Lot
  - Indicated snow storage area.
  - Net add of 172 spaces.
  - Will have a sidewalk connection to the existing employee auto lot on the south side.
  - 289-foot separation from Upper Maple Street right-of-way to the closest point of pavement.
  - Fencing to be routed in a manner so as not to disturb any trees.

- Landscaping Plan - Trailer Lot
  - Plan to have standard white spruces with red cedars along the back curb within the 28-foot offset from the property line to the back of the trailer stalls.
  - He explained that they plan to maintain some of the existing berms. He explained that existing grades along the drive would be maintained and that minimal earthwork would be required to promote the flow-thru traffic from the southern lot.
- Landscaping Plan – Auto Parking Lot
  - Indicated where they plan to add white cedars or white spruces and red cedars along the embankment.
  - He explained that a lot of analysis had been done on the elevations for the Auto Parking Lot. He explained and indicated where they are proposing an 11-foot berm to match existing which will tie-in with the existing parking lot as you transition north where there will be a 4-foot high berm (which will be planted) above the proposed Auto Parking Lot which will extend around the perimeter of the Auto Parking Lot around to the existing drive. He said that this method would be the least impact to trees and the existing terrain and to provide adequate screening to limit line of sight to the Auto Parking Lot. He said that Cut & Fill analysis was determined to limit the amount of export material.
  - 5,500 s.f. of provided landscape (5,360 s.f. of green space is required by the Town). He said that they are providing it at the perimeter of the parking lot as well.

QUESTIONS/COMMENTS FROM COMMISSION MEMBERS:

Keith Thurlow questioned Cut & Fill. Mr. Cole explained that they do not have yardage calculations at this time. He said that a full cut analysis would be performed and that it would be provided to CLA Engineers. Attorney Hammer explained that they did their best to respond to the third-party review, but there are a number of items that they need to provide information for and he stated that they are agreeable to impose, as a condition of approval, that all of those items be provided prior to the issuance of a building permit.

Brian Card commented that per the Regulations, the Cut & Fill calculations should be provided to the PZC as part of the decision-making process, not provided to Staff to follow-up on at a later date. Mr. Card asked if anyone would be addressing the 2010 prior approval Forest Management Plan regarding landscaping maintenance or integration of the buffer between the site and the railyard. Attorney Hammer referred to the slides that Sil Quenga of Frito-Lay had prepared that he had previously mentioned. Attorney Hammer stated that they feel that they have met the intent of that Forest Management Plan and that they are maintaining everything out there on the west side of the gravel drive as well. Mr. Cole referred to Sheet 2C-222 of the engineering documents and stated that they had provided Cut for the Auto Parking Lot. Regarding the CLA comment, Mr. Cole said that they cannot speak to what is expected to be hauled off site or truck generation at this time. Mr. Cole stated that Sheet 2C-222 shows 19,000 c.y. volume of cut for the Auto Parking Lot which was specifically requested by Town Engineer, David Capacchione. It does not take into account other areas of the site. Mr. Card noted that the PZC is to evaluate the off-site hauling volume leaving the site. Mr. Cole stated that a full site analysis will be done and they will work with construction team members on trip generation.

Scott Hesketh, Traffic Engineer with F.A. Hesketh & Associates, addressed the question raised at the last meeting regarding volume of truck traffic to and from the Facility and how it would impact the level of service calculations provided:

- Mr. Hesketh explained that ITE projected a total of 24 peak-hour truck trips for the existing Facility and 34 peak-hour truck trips for the expanded Facility. After speaking with the operations staff at the Facility, they were informed that the average peak-hour volume of truck trips currently is 26 (two higher than the ITE projected) and they are projecting a total average of 40 peak-hour trips for the expanded development (six trucks per hour higher than the ITE projected). His opinion is that these are similar numbers in terms of the capacity analysis standpoint. He does not believe that the minor increase in truck traffic would impact the levels of service calculations at the site driveway intersection. Specifically, since they are projecting and overall level of service "B" at the Attawaugan Crossing Road and the site driveway intersection with a westbound level of service "C" for the westbound approach, at that location, under the combined traffic conditions. The minor increase in trucks would not significantly impact the results of that analysis and would not change their opinion as to the ability of the local roadway network to accommodate this proposed expansion.

QUESTIONS/COMMENTS FROM COMMISSION MEMBERS:

Keith Thurlow asked for clarification as to whether these are truck trips for product or construction. Mr. Hesketh stated that it is for post-construction, production operations.

Bennett Brooks, Licensed Engineer and President of Brooks Acoustics Corporation, gave a Power Point presentation:

- Regarding the question raised on December 20, 2021, regarding the rooftop units on the ASRS: Mr. Brooks explained that, based on the current design drawings and equipment specifications for the Project, they modeled the sound generated by the four different types of rooftop equipment (rooftop units/make-up air units/supply fans/exhaust fans) to the west property line and across the right-of-way, Upper Maple Street, and the railroad to the nearest residence.
  - He explained that they applied lab test data from the manufacturers for their mathematical model taking into account any sources (the building/any barriers/distance/atmospheric conditions/terrain/etc.) according to the international standards for this type of calculation. They did ten calculations.
  - He displayed a table and gave a summary of the study which had been submitted with a report. At the nearest house on Upper Maple Street, the highest level obtained through the model was 39 dBA. At the property line, it was 40 dBA (equivalent to a quiet whisper). Supply and Exhaust Fans at the nearest house were 34 dBA. The maximum number of units operating (12) would be 38 dBA. For the high bay only it would be 26 dBA and 32 dBA. He said that it is a fairly quiet system as quiet units were selected for the Project and there is a lot of distance. The criteria they used was nighttime hours (10 p.m. to 7 a.m.) sound level limit of 51 dBA (equivalent to a very quiet voice) mandated by the State of Connecticut. The 39dBA from the ASRS at the house is well below the existing background level. He said it will not significantly increase the existing Plant level. No roof walls, sound screens or parapets will be needed, so there is no height increase proposed. He said that it will be very quiet or, likely, not even audible at the residences in the neighborhood.

QUESTIONS/COMMENTS FROM COMMISSION MEMBERS:

Matthew Wendorf asked that Mr. Brooks compare the current operating dBA rating to what it would be with the equipment added on. Mr. Brooks explained that they did some engineering studies based on the existing configuration. There were recent upgrades made to the starch recovery system toward the south end of the Plant to quiet some of that equipment. They did some before and after studies, but did not do a full compliance study at the residences because the State of CT mandates that you do it at the residences, including the rights-of-way between the sound source and the receiver. He said that they did some estimates based on previous work that they had done with Frito-Lay over the years. The level that they were getting for the full Plant was in the range of 46-48 dBA based on the engineering study (which is below the 51 dBA at night). He said that the upgrade to the starch system was successful in removing some of the sound which gives them a good basis for moving forward.

John Sarantopoulos asked about a statement that had been made at a previous meeting regarding a sheen/residue on the water of the Lake produced by the Facility. Roger Gieseke, Frito-Lay Senior Project Engineer, stated that a comment had been made by a member of the public, but, to his knowledge, Frito-Lay is not aware of any evidence that supports that statement. Mr. Thurlow commented that, if this becomes an issue, a water test would answer that question.

Keith Thurlow stated that he is still concerned about the buffering because, when on Maple Street heading north, you can see the top section of the existing ASRS building and he feels that you will see even more when the new building goes up. He suggested a more permanent buffering to protect the residential/recreational area. Sil Quenga, Director of Engineering and Maintenance with Frito-Lay, responded. The 2011 Forest Management Plan and photos were displayed as Mr. Quenga gave his explanation of the line of trees/ sight line/plantings for each photo. Mr. Quenga explained that the 2010 project to install the Scoops line in the potato receiving area was never completed, so they plan to install a grove of trees there in the spring. Mr. Kode explained that six seasonal views were previously submitted. Attorney Hammer stated that, Frito-Lay, as a condition of approval, would be willing to work with Staff/Commission to define the scope and add some trees. Mr. Thurlow stated that his interpretation is that impacts would need to be minimized year round. Mr. Thurlow referred to a berm behind other businesses in the Industrial Park that also has a heavy tree buffer behind it and he feels that Frito-Lay could do more in this short section to provide more permanent buffering. Sil Quenga referred to Slides #18-#25 which were displayed showing seasonal views and spoke about different trees that have been or could be added. Mr. Thurlow stated that where the spur goes in, there is a wide-open view and he feels that this is an issue that needs to be addressed and that it does not meet the Regulations by not having a year-round buffering. Attorney Hammer, again, offered that it could be handled as a condition of approval, subject to Staff approval. Mr. Thurlow commented that part of it is that the tree management plan was supposed to be implemented as part of the 2010 project.

Brian Card asked Mr. Brooks about follow-up proof testing at the end of Construction to validate the model to ensure that the results are consistent with the modeling to ensure that we do not exceed the noise standard. Mr. Brooks stated that they have been engaged by Frito-Lay to conduct the follow-up testing and it is in the Plan.

Brian Card asked about test pits, to verify bedrock/groundwater, which are to be done at a later date. Mr. Card asked about the method to remove bedrock (Gravel Regulations, Section 560), if needed. Steven Cole explained that it depends on what they find. He does not foresee it as an issue, as he has seen boulders in the area which they can crush. Brian Dotolo, Project Director with Haskell, commented that they had done some blasting of ledge in the past or they could chip and hammer and process it into gravel and use it as fill. Mr. Card stated that the proper information (Cut & Fill), in accordance with Section 560, needs to be presented to the PZC so they can evaluate it appropriately. Mr. Dotolo stated that they will provided the information.

PUBLIC COMMENTS:

Karen Johnson, 1819 Upper Maple Street, had submitted a letter outlining her concerns regarding zoning deficiencies and said that some of them have been addressed, but the majority have not. She feels that the Application is incomplete. She suggested that the public hearing not be closed tonight. She explained her feeling that a good, comprehensive set of baseline information is needed and more time is needed to review what has been recently submitted. She stated that they have hired a consultant, Douglas Bell (report submitted earlier in the day), regarding the noise issue (present via Webex). She feels that this is an opportunity to put in reasonable conditions and reasonable ongoing monitoring. She said that this is an opportunity to correct what was wrong 40 years ago which is a set of plans that don't have enough detail and don't have reasonable considerations for off-site impacts for the neighborhood.

Attorney Mary Miller, represented the Alexanders Lake Homeowners Association, explained that they are concerned with what has been done, to date, regarding noise mitigation. They hired their own expert to do an acoustic analysis to inform the Commission what needs to be done and what kind of parameters should be in place. She explained that the major reason she was hired was that if the noise issue is not properly taken into account, they have the right to appeal. She expects that there will be some recommendations with a post-construction noise study.

Douglas Bell, Senior Principal Consultant and President his Acoustics Company (an Acoustical Consulting Firm from Massachusetts), stated that he had recently reviewed some documents that had been prepared and that he had watched video of previous testimony. Mr. Bell stated that his letter (submitted earlier in the day) outlines his comments. He reviewed his comments from the letter:

- There has not been a definitive statement from Frito-Lay that they comply with State Regulations. There is a requirement for a tonal analysis. He explained that if there are tones that meet that criteria, the limits are not 51 dBA as stated, but would be reduced to 46 dBA which, he said, makes a big difference.
- Mr. Bell stated that, when you review a project like this, it's not the noise source of the various components, but it is still the aggregate of the Facility and the new additional sources that need to be reviewed. He explained that the next step, knowing what your existing impacts are, you would have to do acoustic modeling and goal setting such that, when you add new components to the Facility, the accumulated noise sources first meet the local noise criteria/Regulations and also don't create a noise nuisance.
- Mr. Bell said that there needs to be a comprehensive Facility noise evaluation that looks at the various phases of the project and any other new noise sources and combines them with what is already out there to be able to assert that these limits and goals are not exceeded. He explained that it needs to be comprehensive so that it can be peer reviewed and evaluated in such a way that it shows a site plan showing all of the noise sources that are modeled, showing a table of all the sound power levels of all of the sources so that they can be reviewed to make sure that they fall within what would be expected. If there is noise mitigation in the design, it needs to be included in there so that later, it can be determined whether it was implemented by the contractor. He said that there needs to be a fairly comprehensive report (utilizing ISO 96-13 Standards) that defines acoustic goals at the appropriate receptor locations, mostly the sensitive noise receptors along the east side of Upper Maple Street.
- Finally, post construction (can be on a phase basis), Mr. Bell said that there needs to be acoustic testing at the receptor properties again to determine and demonstrate that the project is still in compliance and has met its acoustic goals. This would require submission of a protocol to be reviewed and accepted by the Town prior to implementation.

- Mr. Bell stated that, based on the data that he reviewed, it is pretty clear that there are acoustic impacts from the Frito-Lay Facility already in the neighborhood and the key is to try to minimize them and keep them in context with the existing acoustic environment and demonstrate that all in advance so that you're not trying to control something that might be very difficult to do at the end.

Attorney Mary Miller requested that the public hearing be continued and she stated that Mr. Bell could be available to answer questions at a future meeting.

QUESTIONS/COMMENTS FROM COMMISSION MEMBERS:

Virge Lorents asked if she had a question after the meeting, could she ask it through Staff. Ann-Marie Aubrey stated Commission Members could forward questions to Staff. Town Attorney, Ken Slater stated that would be okay if the public hearing is not closed.

John Sarantopoulos questioned why the reports are not completed at this point. He feels that all of the information should have been submitted.
Attorney Hammer reviewed the timeline:

- The Application was submitted on August 6, 2021, it was received by the Commission on August 16th.
- Attorney Hammer requested a continuance in September to continue negotiations with the Lake Association.
- There were public hearings on November 15th and December 20th.
- Discussions with the Lake Association began in late August and continued up until the November 15th meeting.
- Prior to the November 15th meeting they provided the Lake Association with a complete copy of the March 2021 Report by Mr. Brooks which summarized his October 2020 Field Sound Test.

Virge Lorents commented that it is a big project with a series of complicated issues and she feels that it is good to take the time to get it done better than it has been done in the past.

John Sarantopoulos stated agreement with Karen Johnson. He feels that it is being drawn out and that both sides have to be responsible to expedite it.

THERE WERE NO COMMENTS FROM THE PUBLIC.

COMMENTS FROM STAFF:

Ann-Marie Aubrey had no comments or questions.

Town Attorney, Ken Slater explained that the Commission needs to evaluate whether they have enough information to set conditions of approval, or denial. He noted that the Applicant has proposed that they have a series of conditions that they would comply with as conditions of approval. He also noted that if the Commission feels that it should see additional information before making a decision, then the public hearing should be kept open. Ms. Lorents explained that she feels that it would be premature to vote on this Application tonight. Attorney Slater asked Attorney Hammer if the Applicant has additional information to present. Attorney Hammer explained that he has additional comments and proposed conditions to review with the Commission, but that they are comfortable with the public hearing be closed tonight. Attorney Hammer stated that if the public hearing is not closed tonight, he feels it should be very narrowly defined and if the intervener is allowed to submit any additional expert testimony/evidence at the next hearing, it would be extremely prejudicial to the Applicant because there are time limits on these proceedings. If they are allowed to present at the next meeting, the Applicant is deprived of a meaningful opportunity to digest it, understand it, question it and possibly, respond to it. He offered to review their proposed conditions of approval.

Attorney Slater asked Attorney Miller if there is particular new information that she needs more time for that she has not had an opportunity to present, so that the Commission could narrowly define should the public hearing be kept open. Attorney Miller explained that there is one thing that they would like to speak to which would be potentially helpful to everyone and that is conditions. She feels that a series of conditions are necessary should the Application be approved. She feels that they would not be prepared to respond to the conditions (with suggestions of their own conditions) when presented by Attorney Hammer. Attorney Miller requested that the public hearing remain open and stated that they would be willing to be limited to that they be permitted to submit their suggestions in response to

Attorney Hammer's proposed conditions. Attorney Slater explained that if the Commission feels that they have enough information to work with Staff to fashion conditions, they could close the public hearing and they would have 65 days to render their decision or, if the Commission feels it is necessary to keep the public hearing open to allow more information to be presented, they could do that, but it should be narrowed to just that information.

Motion was made by John Sarantopoulos to close the public hearing for **Special Permit Ap #21-1273;** David Kode (Frito-Lay/Landowner); 1886 Upper Maple St; GIS MAP 62, LOT 53; 94 acres; Ind Zone; for portion of proposed building addition that will exceed the maximum height of 50 ft for said zone, with a proposed height of 86 ft, 8.5 inches.
There was no second.
Discussion:
Attorney Slater recommended that the motion be withdrawn to give the Applicant an opportunity to close and they wanted to present some proposed conditions.
Mr. Sarantopoulos withdrew his motion.

Discussion continued. Mr. Thurlow stated his reason why he feels the public hearing should be kept open: He would like to see more information regarding Cut & Fill; where the material would be going; counting of truck traffic and direction they would be travelling; and a more comprehensive plan for the buffering.
Steven Cole stated that they will provide a full Cut & Fill Analysis and haul-off volume. He explained that the 19,000 c.y. is only for the auto parking lot, which had been requested by Town Engineer, David Capacchione.
Brian Dotolo stated that the location of the fill is yet to be determined and that no subcontracts have been awarded yet.

Brian Card stated that he does not feel that Section 560 has been adequately addressed, but it may be able to be addressed in conditions. He feels that they have adequate information regarding the other items to address them formally in conditions.

Matthew Wendorf and Virge Lorents both stated agreement with Mr. Thurlow and Mr. Card.

John Sarantopoulos stated that he is good.

Attorney Slater asked Attorney Hammer if the analysis regarding Cut & Fill could be available for the next meeting. Attorney Hammer stated that he thinks it could. Attorney Slater stated that feels that the public hearing could be closed tonight. Attorney Slater also suggested that, if kept open, discussion be narrowed down to presenting information on just the Cut & Fill Analysis and associated truck traffic and proposed conditions from the intervener regarding noise, no further expert testimony submissions. Attorney Hammer agreed. Attorney Miller stated that she feels that is an appropriate way to proceed and she stated that she would be drafting noise conditions with assistance from Mr. Bell. Attorney Slater stated, regarding it being a public hearing, that comments would be limited to just those two items.

Attorney Hammer stated that they hope that the Commission would be comfortable closing the public hearing tonight and he noted that the letters from Mr. Bell and Karen Johnson already laid out the conditions that they are looking for regarding sound.

John Sarantopoulos, again, mentioned the film on the water statement that had been made.

Attorney Hammer stated, again, that if the public hearing is continued, he hopes that it will be limited to the two items agreed upon as there was no specific evidence of a film on the water. Attorney Hammer also commented about the intervener coming under the Environmental Protect Act and he questions whether further contributions they make on noise and sound conditions would be under the Environmental Protection Act. Attorney Miller objected to Attorney Hammer's comment, explaining that she has raised noise issued under this Act a lot all the way up to the Supreme Court.

Attorney Hammer continued:
Regarding the Special Permit Application for the height increase, he referred to testimony by Gregg Hoell, Frito-Lay Supply Chain Senior Engineer, as to the need for the height for the functioning of the automated storage facility. Mr. Hoell testified that a lower height would not only be inefficient, but would require a substantially larger building footprint which would have the effect of pushing parking and other things on this site farther to the west. They feel the proposed height is in keeping with the Industrial Zoning of the property, with the existing developed site and the manufacturing facility and with

the existing height of the ASRS building. Mr. Brooks has testified as to his modeling and has given his opinion that we will be in compliance, not only with the equipment that is on the higher portion of the ASRS, but all of it. Attorney Hammer noted that the ASRS storage facility does not contain any manufacturing operations. They feel that they have demonstrated compliance with the ASRS height request that is the subject of the Special Permit Application.

Regarding the Site Plan Application, Frito-Lay's manufacturing and warehousing use is a use that is permitted by right which narrows the scope of the traffic review. Attorney Hammer stated that they have made significant changes to the Plans in response to things that Commission Members have said, the Lake Association has said, and members of the public have said. They moved the expanded parking lot location more east of the treed area, the gravel drive will remain, they downsized the little pocket of trailer parking and it will be at a lower grade with additional plantings, and the lighting at the employee parking lot has been lowered. Regarding noise, Mr. Brooks did two rounds of testing as a result of discussions that Mr. Gieseke had with Mr. Suchy of the Lake Association: October 2020 and again in December after equipment was installed to further mitigate noise on the starch recovery system and Mr. Bennett's December Report documents that this has had a beneficial effect. Mr. Brooks has indicated that he believes that the Plant is currently in compliance with applicable noise standards and will remain in compliance with those noise standards.

Attorney Hammer stated that, in terms of the request for modeling, etc. in advance, he feels that it goes beyond the scope of the Regulations. He said that Mr. Brooks will be involved every step of the way on the selection and installation locations of the equipment for the manufacturing portion. Regarding the third-party engineering review outstanding comments, they feel that they are all things that can appropriately be handled as a condition of approval.

In terms of the environmental intervention, Attorney Hammer stated that just the filing of the petition doesn't affect how you handle an application any differently than normal and it does not expand the jurisdiction of the Commission over natural resources that you don't have covered in your regulations. The intervening party has the burden of establishing that it is reasonably likely that there will be unreasonable harm to a natural resource that is both within the scope of the CT Environmental Protection Act and within the jurisdiction of this Commission under the particular type of application that you are reviewing. He noted that a lot of the concerns in the petition relate to the location of the employee parking lot going into the treed area to the west of the gravel drive and that has been eliminated. He said that the allegation is that odor and noise could, potentially, have an impact on wildlife in the area of the Lake. He said that there has been no evidence of that at all and it is something that would be very involved and complex and would require expert testimony. He explained that if the Commission agrees that there hasn't been anything there, then they would be operating under their normal standard of review and they don't need to consider feasible or prudent alternatives. Attorney Hammer provided Staff and Commission Members with a copy of a summary of his comments, a copy of his suggested conditions of approval, and a proposed finding that says that the intervener has not established a likelihood of unreasonable harm.

Attorney Hammer read aloud his five proposed conditions:

1) Following construction of the Plant expansion, that is the subject of this Site Plan Application, and the completion of the installation of associated new manufacturing and rooftop equipment, Frito-Lay shall conduct noise testing at up to three residential properties on the west side of Upper Maple Street through a noise consultant to confirm that the Facility is in compliance with noise regulations promulgated by the CT Department of Environmental Protection Act Regulations at CT State Agencies Section 22A-69-1. The testing locations are to be determined in consultation with the Town Engineer. Test results shall be submitted to the Planning and Zoning Commission through the Planning and Development Office of the Town of Killingly.

   Attorney Hammer explained that testing of up to three properties on the west side of Upper Maple Street was a suggestion from the Lake Association.

2) In connection with the construction of the Plant expansion that is the subject of this Site Plan Application, contracts with construction subcontractors shall include language requiring all of the subcontractors to utilize carpooling measures for their employees travelling to the site during construction to reduce the overall number of vehicles.

3) In connection with the Haskell response dated January 14, 2022, to the CLA Engineers review comments dated January 12, 2022, the additional information which Haskell indicates will be provided in response to

CLA review comments #2, #8, #11, #12, #14, #16, #17, #18, #19, #20 and #22 shall be submitted to the Town Engineer for review prior to the issuance of a building permit.

4) Regarding Cut & Fill, Attorney Hammer questions whether Section 560 of the Regulations applies in this instance because he feels that those regulations are primarily geared toward sand and gravel operations as the principal activity. He feels that there is an exception for removal in the course of an approved construction project and he questions whether the Cut & Fill information is a requirement. However, he said that if the Commission feels strongly about wanting to see that information and some estimate of the number of trucks and the period of time over which that activity would happen, they would be willing to supply it prior to the issuance of a building permit.

5) Regarding the buffering, Attorney Hammer stated that the area of concern needs to be identified, specifically, and he said that the Applicant shall work with Town Staff to develop a plan for the installation of additional landscaping of a reasonable scope (such as fast-growing trees) in that area.

QUESTIONS/COMMENTS FROM COMMISSION MEMBERS:
Virge Lorents stated that she is good.
John Sarantopoulos stated that he is good.
Matthew Wendorf stated that he is good because Commission Members will have time to go over the conditions. Mr. Thurlow stated that Attorney Hammer's proposed conditions seem pretty thorough.
Brian Card referred Attorney Hammer to Section 560.4.b and c. for the Earth Regulations language, "The Commission may require information."

Attorney Hammer submitted copies of Mr. Brooks' presentation to Ann-Marie Aubrey.

THERE WERE NO FURTHER COMMENTS FROM THE PUBLIC.

THERE WERE NO FURTHER COMMENTS FROM COMMISSION MEMBERS.

QUESTIONS/COMMENTS FROM STAFF:
Ms. Aubrey commented that the Commission would decide whether to keep the public hearing open, limited to the items of concern, as suggested by Attorney Slater. She noted that permission from the Applicant would be needed. Attorney Slater explained that a motion to continue would not be necessary, just a consensus of the Commission to keep it open for that limited purpose and stating that Members of the Commission could question that. Attorney Slater stated that Attorney Hammer could, on behalf of his client, consent to the extension of time for the narrow purpose of the intervener to have an opportunity to propose conditions and the additional information regarding Cut & Fill be presented (the only material that can be submitted). Attorney Hammer stated that there would be no testimony by experts or others, it would be only lawyers only offering their opinions on what they would like to see regarding conditions.

Attorney Hammer spoke about timeline and he noted that the time for completing the public hearing for the Special Permit Application will run out prior to the next meeting (on or about January 28th). He also noted that the Site Plan Application will be okay for the next meeting, but not beyond. He voiced concern about, if continued, the Commission possibly not reaching a decision at the February meeting, which, he said, could be very prejudicial to the Applicant. Discussion continued regarding timeline. Attorney Hammer stated that he feels that the February meeting would be the last window for the Commission to make a decision on the Site Plan Application. Attorney Slater stated to Chair, Keith Thurlow that he interprets that there is no consent for an extension and he spoke about timeline and about the risk of an automatic approval of a Site Plan when the two applications are integrated together. Attorney Slater stated that he thought that he and Attorney Hammer were in agreement that the timeframe for the Special Permit would govern (to be acted on before the Site Plan) and he said, if that is true, then, as long as the Applicant consents, even if it has gone beyond the 65 days, the Statute would ordinarily allow the consent and the Applicant could not claim to have an automatic approval. If Attorney Hammer agrees that the Special Permit has to be acted on before the Site Plan and he consents to continue the public hearing to next month, that would start the 65-day clock running. Attorney Hammer stated that they want to work with the Commission and he said that, if the Commission feels strongly about continuing the Special Permit public hearing to the February meeting and tackle both things together, they would agree with that. Attorney Hammer, again, voiced concern regarding timing out on the Site Plan Application and he suggested that if

anyone has any more proposed conditions, they be submitted two weeks prior to the February meeting. Attorney Slater asked Attorney Miller if she would agree to provide her proposed conditions with two weeks. Attorney Miller stated that she could provide them to the Commission within two weeks, but she would like to speak with Attorney Hammer before then in case he will be adding or changing any of his proposed conditions. Attorney Hammer stated agreement with this. There was more discussion regarding timeline. Attorney Slater asked Attorney Hammer if he would agree on the record that the Commission is not statutorily required to decide the Site Plan Application before the next meeting. Attorney Hammer stated that they agree if you are extending so you don't have to make a decision before the February 22nd meeting. Attorney Hammer voiced concern over whether there would be a need for anyone to speak at the next meeting if things are submitted in advance. Attorney Slater stated that the intervener's Attorney would have an opportunity to propose conditions and he asked Attorney Miller if it is acceptable that the only testimony at the February be limited to the Cut & Fill information requested by some Commission Members. Attorney Miller stated that it is acceptable and she asked if she is to submit conditions, specifically, just to noise. Attorney Hammer stated that is his understanding. Attorney Slater asked Attorney Hammer if he had any concerns about that since there isn't going to be any debate. Attorney Hammer stated that if all that is being allowed is submission in writing by the Counsel of proposed conditions, if the Commission deems it appropriate to allow any conditions beyond noise, they won't object to that, but again, it is with the understanding that there is going to be no argument by Counsel, no testimony or evidence. The only new factual material will be the Applicant presenting what happens to 19,000 c.y., number of trucks and there won't be any back-and-forth with the intervener or discussion.

Attorney Slater gave his recommendation, based on the agreement on the record:

- The Intervener and the Applicant will exchange proposed conditions with one another and Staff and will work together to propose conditions to the Commission.
- The public hearing be continued and the only testimony that will be accepted and heard, attorneys or otherwise, will be strictly related to the Cut & Fill information that was requested by the Chairman and Commissioner Card. Attorney Hammer stated that it is only the Applicant that will be presenting on that issue. There was discussion and Attorney Slater stated that the public hearing will still be open and the public cannot be denied an opportunity to speak on this one issue. The Intervener and the Applicant must submit their proposed conditions to Staff by February 1st. Brian Card clarified that he is requesting that Section 560.4.b and 560.4.c of the Zoning Regulations be addressed.

Matthew Wendorf stated that he does not feel that a motion is necessary. Mr. Thurlow asked the Commission if there is a consensus to follow the guidelines as presented by the Town Attorney:
John Sarantopoulos – abstained.
Matthew Wendorf – yes.
Virge Lorents – yes.
Brian Card – yes.
Keith Thurlow – yes.

Consensus Results: 4-0-1

COMMENTS FROM STAFF:
Ann-Marie Aubrey stated that conditions need to be in her office on February 1st.

2) **Special Permit Ap #21-1277**; American Storage Centers, LLC (Landowner same); 551 Westcott Road; GIS MAP 214; LOT 5; ~3.8 acres; General Commercial Zone; construction of 6 new buildings & conversion of existing building to establish a self-service storage facility (420.2.2.[q]).

Norm Thibeault, Killingly Engineering Associates, represented the Applicant and gave an overview (plans were displayed as discussed):

- Existing 12,000 s.f. building currently houses American Sport Centers (indoor soccer fields, batting cage).
- Proposal is construct six new mini-storage buildings with units of various sizes (5'x10' to 10'x15') all individually accessible from the outside.
- Units to be leased/rented.
- Section 420.2.2.q of the Regulations was referenced as an allowed use in the GC Zone.

- Property approximately 3.8 acres and much of the property is currently developed. Some paved surfaces, some compacted gravel surfaces.
- They are providing a 25-foot landscape buffer around the perimeter of the site as well as privacy fencing.
- There will be a gated access to the site and renters will have an access card to gain entry to the facility.
- There are multiple surfaces and, in order to alleviate impervious surface (which are at approximately 53 percent total), he indicated that there will vegetated areas around the site, there will be some pavement millings and some crushed stone surfaces, as well, to minimize the amount of run-off on the site.
- Regarding drainage, they are not proposing any type of drainage structures. He indicated where there are two infiltration basins in the front of the site. He said that test holes showed that it is all gravel on the site. He said that they have the opportunity to take any kind of drainage from the site and infiltrate it right back into the soils. For frozen ground conditions, there are stand pipes within the basins and he explained that, in the spring when there is melting, they will be able to infiltrate the water down below the frost level. Town Engineer, David Capacchione has reviewed the drainage computations and he has indicated that the storm water design is in compliance with the Town's storm water regulations, as well as, the MS4 regulations that requires minimizing run-off from the site.
- Much of the properties around the perimeter of the site are not developed. They are very heavily wooded/vegetated so, with the 25-foot buffer and the fencing, there is substantial buffer around the perimeter.
- He explained that this is, typically, a very low-impact use (2-4 cars on weekdays and 10-12 cars on weekends).
- The existing building (Sports Center) will, ultimately, be converted to storage, as well, and will be climate-controlled storage.
- The only power to the mini-storage buildings would be for lighting on the exterior. They have specified low-impact, dark-sky compliant sconces (with shades) on the buildings.
- Buildings likely to be constructed one at a time according to demand. There may be some larger units (15'x15' or 15'x20') if there is a demand for it. Total number of units depends on size of units. The configuration they show on the Plan is 260 units total (50 s.f. to 150 s.f.).
- A good use for the site.
- Material left from the former Buy-Rite will be cleaned up as a result of this Application.
- He explained that, currently, all of the storm water runs left to right and sheet flows to the other property. By constructing this project, they will be able to collect and infiltrate the storm water and their computations show a significant reduction in the amount of storm water run-off to the adjacent property.

QUESTIONS/COMMENTS FROM COMMISSION MEMBERS:

Virge Lorents asked about a drainage hole in the center of the parking lot. Mr. Thibeault stated that there are no drainage structures on the property.

Keith Thurlow asked about the fence lines, what the landscaping buffer will be, about rocks/riprap/tailings, about the basins, whether it would be a manned facility, and he asked about the entrance. Mr. Thibeault explained that the fence line is just inside of the property line. Mr. Thibeault stated that there would be a combination of flowering shrubs, ornamental grasses, some grass and mulch. Mr. Thibeault stated that there will be a trap rock mix (a DOT mix) as specified on the Plan. It will be a 3-inch minus mixed with stone dust so it will compact better. He explained that it should be fine for foot traffic. Mr. Thurlow stated concern that it is rather coarse. Mr. Thibeault stated that the basins will be grassed and he explained that they are rather shallow with 4-1 slopes, about two-feet deep and they will look like little depressions in the terrain. Mr. Thibeault stated that there will be an office for one employee because people will have to go in there to reserve units. Mr. Thibeault explained/indicated where the keyed gated entrance and automatic gated egress would be.

Brian Card asked if the main building would be staying recreational, about the parking lot, if the landscaping is at grade level with the millings, about snow storage, and about lighting detail. Mr. Thibeault explained that, eventually, it would be converted to climate-controlled storage which will have a main entrance that people will need to enter to get to their units on the interior. Mr. Thibeault explained/indicated that the front parking lot would be utilized for the climate-controlled storage and to get to the other storage buildings, you would have to go through the gate which will be one-way traffic. Mr. Thibeault will add detail/location for the one-way traffic sign to the Plans. Mr. Thibeault explained that the landscaping beds are slightly raised (approximately 6-inches) from the edge of the millings. Mr. Thibeault offered that they could add curbing, as shown on the Plan along the back and right side of the site, to prevent people from backing up onto it or to prevent mulch from flowing onto the travel ways. Mr. Thibeault explained that snow would likely have to be plowed to the front parking lot and then have it removed from the site. He stated, in reality, there is no reason why they couldn't put it where the front storm water basin is and let it melt in place. Mr. Card voiced concern and suggested that they need to think about snow storage on the corners. Mr. Thibeault explained

that they layout came from the manufacturer and that they have experience with removing snow from these types of developments. He said that they recommend 20 feet between the buildings and the Plan is giving 24 feet. Mr. Card stated that his concern is not between the buildings, but on the ends. Mr. Thibeault explained that the lighting detail for the building-mounted lights is shown on Sheet 4 of the new set of Plans. There is no pole lighting proposed. Mr. Thibeault explained that he thinks, for safety purposes, the lights would be on all of the time, but if the Commission prefers motion-activated, he does not think that would be problematic.

QUESTIONS/COMMENTS FROM STAFF:
Jonathan Blake asked about the responsible party, American Storage Centers, LLC, being the new entity taking over the site. Mr. Thibeault stated "correct."
Mr. Blake asked if a decision had been made regarding the type of fencing. Mr. Thibeault stated that no decision had been made, but he guessed that it would probably be chain link with privacy slats as it is more cost effective.

QUESTIONS/COMMENTS FROM COMMISSION MEMBERS:
Keith Thurlow asked if every building on the Plan will have lights. Mr. Thibeault stated "yes."
John Sarantopoulos asked if this would be completed in one shot. Mr. Thibeault explained that it is his understanding that they will construct one or two at a time according to the demand for the different unit sizes (as needed basis). He explained that they go up quickly as they are premanufactured buildings on a poured concrete slab.
Keith Thurlow stated concern again regarding the 3-inch minus and he stated that he works with it a lot and it is difficult to maintain and keep it down. He feels that there should be something more workable as a surface. Mr. Thibeault offered to modify to use a stone-dust mix or something of that nature. Mr. Thurlow was agreeable to this. Ann-Marie Aubrey noted that Town Engineer, David Capacchione requested that he would like to have the site on asphalt. Mr. Thibeault explained that Mr. Capacchione did not say that he preferred asphalt, he asked if the Commission allows the use of millings. Mr. Thibeault stated that he believes that he has used them in the past, but if the Commission prefers that it be paved, Mr. Thibeault feels that if millings are put down in warmer weather and they are compacted well, they do a nice job. Mr. Thibeault stated concern about corners. Mr. Thibeault explained that they had to work with existing paved surface to not exceed the impervious percentage. The existing pavement around the existing building is going to be replaced with millings.
Brian Card asked how big the ornamental trees will get. Mr. Thibeault stated that they would grow to 10-12 feet tall. The ornamental grasses will grow to 5-6 feet tall. The fence is a six-foot fence. Mr. Thibeault explained that the existing neighboring residence is several hundred feet from the property boundary and there is existing vegetation up to the property line. The fence will be between the existing vegetation and the proposed vegetative buffer. Mr. Card commented that the fence will hide most of the vegetative buffer. Mr. Card stated that he still has concern regarding snow storage.

THERE WERE NO FURTHER COMMENTS FROM COMMISSION MEMBERS OR FROM STAFF

PUBLIC COMMENTS:
Carol Riley, Cook Hill Road, asked if there will be a generator. Mr. Thibeault stated that there would not be a generator. Mr. Blake noted that, typically, the gates have battery backup.

Motion was made by Virge Lorents to close the public hearing for **Special Permit Ap #21-1277**; American Storage Centers, LLC (Landowner same); 551 Westcott Road; GIS MAP 214; LOT 5; ~3.8 acres; General Commercial Zone; construction of 6 new buildings & conversion of existing building to establish a self-service storage facility (420.2.2.[q]).
Second by Matthew Wendorf. No discussion.
Roll Call Vote: Brian Card – no; Virge Lorents – yes; John Sarantopoulos – yes; Matthew Wendorf – yes; Keith Thurlow – yes.
Motion carried (4-1-0).

3) **Zone MAP Change Ap #21-1278**; Douglas Construction (Jim Vance/Landowner) & Laurel A. Horne (Applicant & Landowner); 605 Providence Pike; GIS MAP 224, LOT 14; ~177 acres, RD **AND** 613 Providence Pike; GIS MAP 224, LOT 13, ~4.6 acres, RD; request to change zoning from Rural Development to General Commercial.

Attorney Michael Carey represented the Applicant. Nicholas Durgarian, President of Operations with Douglas Construction, was also present. Attorney Carey stated that, due to the time (10:45 p.m.), the Applicant would prefer to extend the public hearing to the March meeting (Mr. Durgarian will be out of Town in February). Since there were a number of people in the audience, Mr. Thurlow offered to allow the public, if unable to come in March, to comment. Mr. Durgarian explained that a

lot of time and consideration had been put into preparing the Application, based on comments from Staff and the public, and that a lot of the concerns may be addressed in their presentation. Attorney Slater commented that it is appropriate for Chairman Thurlow to give members of the public who may be unable to attend in March an opportunity to speak tonight, however, he noted that, ideally, it would be better to comment after hearing the Application.

PUBLIC COMMENTS:
A woman from the audience asked that this Application be first on the agenda in March since they waited four hours. For the record, the Applicant stated that he is in agreement with that.

Ann-Marie Aubrey confirmed that this Application would be first on the agenda for the March 21st meeting.
Another member of the public, present in the audience who will be unable to attend in March, submitted her comments to Ms. Aubrey in writing.

Motion was made by John Sarantopoulos to continue the public hearing for **Zone MAP Change Ap #21-1278**; Douglas Construction (Jim Vance/Landowner) & Laurel A. Horne (Applicant & Landowner); 605 Providence Pike; GIS MAP 224, LOT 14; ~177 acres, RD **AND** 613 Providence Pike; GIS MAP 224, LOT 13, ~4.6 acres, RD; request to change zoning from Rural Development to General Commercial, to the regularly scheduled meeting of Monday, March 21, 2022, Town Meeting Room, 2nd Floor, 172 Main Street, at 7:00 p.m.
Second by Virge Lorents. No discussion.
Motion carried unanimously (5-0-0).

VII. UNFINISHED BUSINESS – (review / discussion / action)

1) **Special Permit Ap #21-1273;** David Kode (Frito-Lay/Landowner); 1886 Upper Maple St; GIS MAP 62, LOT 53; 94 acres; Ind Zone; for portion of proposed building addition that will exceed the maximum height of 50 ft for said zone, with a proposed height of 86 ft, 8.5 inches. - **Continued to the February 22nd Meeting along with Site Plan Application #21-1275.**

2) **Site Plan Application #21-1275**; David Kode (Frito-Lay/Landowner); 1886 Upper Maple St; GIS MAP 62, LOT 53; 94 acres; Ind Zone; for the proposed building additions that will be under the allowed height. - **Continued to the February 22nd Meeting along with Special Permit Application #21-1273.**

3) **Special Permit Ap #21-1277**; American Storage Centers, LLC (Landowner same); 551 Westcott Road; GIS MAP 214; LOT 5; ~3.8 acres; General Commercial Zone; construction of 6 new buildings & conversion of existing building to establish a self-service storage facility (420.2.2.[q]). - **Public hearing closed, action to be taken at the February 22nd Meeting.**

4) **Zone MAP Change Ap #21-1278**; Douglas Construction (Jim Vance/Landowner) & Laurel A. Horne (Applicant & Landowner); 605 Providence Pike; GIS MAP 224, LOT 14; ~177 acres, RD **AND** 613 Providence Pike; GIS MAP 224, LOT 13, ~4.6 acres, RD; request to change zoning from Rural Development to General Commercial. - **Continued to the March 21st Meeting.**

Town Attorney, Ken Slater left the meeting at this time.

VIII. NEW BUSINESS – (review/discussion/action)

1) **Site Plan Review Ap #22-1279** – Richard and Nancy Blake (Jonathan and Sarah Blake / Owners); 20 Woodward Street; GIS MAP 159; LOT 18; ~0.49 acres; Medium Density; detached secondary dwelling unit per Section 566.6 and Site Plan Review Section 470, et al; 26' x 26' residence w/ a 6' x 26' front porch, requires demolition of existing 16' x 20' pole barn. **Receive, and refer to staff for review.**

Motion was made by Matthew Wendorf to receive and refer to Staff **Site Plan Review Ap #22-1279** – Richard and Nancy Blake (Jonathan and Sarah Blake / Owners); 20 Woodward Street; GIS MAP 159; LOT 18; ~0.49 acres; Medium Density; detached secondary dwelling unit per Section 566.6 and Site Plan Review Section 470, et al; 26' x 26' residence w/ a 6' x 26' front porch, requires demolition of existing 16' x 20' pole barn.
Second by Virge Lorents. No discussion.
Motion carried unanimously (5-0-0).

2) **Site Plan Review Ap #22-1280** – Tammy Rainville & Robert LaBonte (Tammy Rainville / Owner); 146 Pineville Road; GIS MAP 18, LOT 23, ~7.0 acres; Rural Development; detached secondary dwelling unit per Section 566.6 and Site Plan Review Section 470; construction of a 30' x 50' detached garage w/an attached 18' x 47' attached secondary dwelling unit. **Receive, and refer to staff for review.**

Motion was made by Matthew Wendorf to receive and refer to Staff **Site Plan Review Ap #22-1280** – Tammy Rainville & Robert LaBonte (Tammy Rainville / Owner); 146 Pineville Road; GIS MAP 18, LOT 23, ~7.0 acres; Rural Development; detached secondary dwelling unit per Section 566.6 and Site Plan Review Section 470; construction of a 30' x 50' detached garage w/an attached 18' x 47' attached secondary dwelling unit.
Second by Virge Lorents. No discussion.
Motion carried unanimously by voice vote (5-0-0).

IX. ADOPTION OF MINUTES – (review/discussion/action)

1) Regular Meeting Minutes – November 15, 2021
2) Special Meeting / Workshop Minutes – December 13, 2021
3) Regular Meeting Minutes – December 20, 2021

Motion was made by Virge Lorents to adopt the Regular Meeting Minutes of November 15, 2021; the Special Meeting / Workshop Minutes of December 13, 2021; and the Regular Meeting Minutes of December 20, 2021.
Second by John Sarantopoulos. No discussion.
Motion carried unanimously by voice vote (5-0-0).

X. OTHER / MISCELLANEOUS – (review / discussion / action)

1) ***WORKSHOP – Discussion*** – should the zoning regulations allow for an accessory structure to be constructed on a vacant parcel of real estate without the primary structure being in place? Discussion continued to FEB. 15, 2021.
2) ***WORKSHOP – Discussion*** – Five Mile River Overlay District. Discussion continued to FEB.15, 2021.

XI. CORRESPONDENCE

1) List of Planning and Zoning Commission Meeting Dates for 2022. – No discussion.

XII. DEPARTMENTAL REPORTS – (review/discussion/action)

A. Zoning Enforcement Officer's & Zoning Board of Appeal's Report(s) – No discussion.

B. Inland Wetlands and Watercourses Agent's Report – No discussion.

C. Building Office Report – No discussion.

XIII. ECONOMIC DEVELOPMENT DIRECTOR REPORT – No representation.

XIV. TOWN COUNCIL LIAISON REPORT

Ulla Tiik-Barclay, Town Council Liaison, reported on recent actions/appointments by the Town Council and the BOE.

XV. ADJOURNMENT

Motion was made by Virge Lorents to adjourn at 10:52 p.m.
Second by Brian Card. No discussion.
Motion carried unanimously by voice vote (5-0-0).

Respectfully submitted,

J.S. Perreault
Recording Clerk

PZC MEETING
FEB. 22, 2022

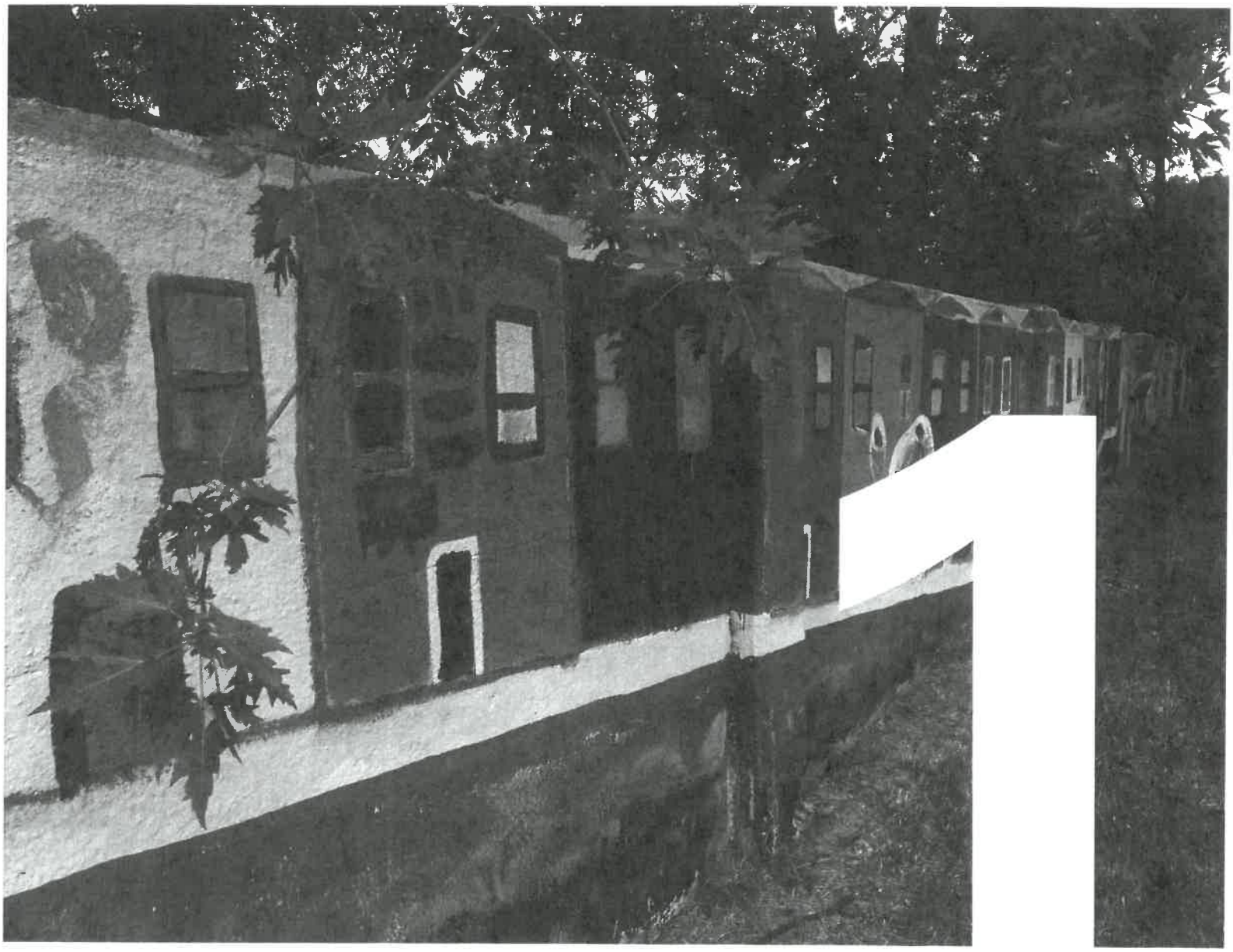
ZONING PRACTICE

JANUARY **2022**

AMERICAN PLANNING ASSOCIATION

ISSUE NUMBER 1

PRACTICE RACIAL EQUITY



Ending Zoning's Racist Legacy

By Jennifer M. Raitt

In the summer of 2020 following the murder of George Floyd, my daughter opened a discussion about systemic racism and asked me questions which became personal and pointed. *She asked what my professional role was in relation to systemic racism.* My daughter's question put me on a journey of dismantling my work. During my career, I reflected, I had in fact developed and implemented policies and zoning laws that impact where people live, where people work, where people play, and where people could enjoy a strong quality of life, or not. I asked myself who benefited from and who was harmed by policies I promoted. My role, advantages, and privilege in the system felt clear which made me want to dig deeper.

The discussion with my daughter prompted me to consider the roots of urban planning in the U.S., which made me wonder more broadly: *Are planners engaged in a collective silence about our origin story? How can we continue to work together to address the harmful impact and undue burdens of zoning and land use planning on people of color?* This article will introduce readers to the history of zoning practice and contemporary planning in the United States, highlight federal policies and programs that had a direct impact on racial segregation, and discuss new equitable zoning policies and practices.

PLANNING AND RACE FOUNDATIONS

When I was an undergraduate student, white teachers taught me urban planning, geography, and American studies. I read literature written by white people. White people provided me with their perspectives. My professors taught us that while some planners were powerful and influential, many had power but were rarely influential. My notes from one class included, "the field can be very frustrating... Planners are basically advisors with little or no power." As a student, I wondered how planners could influence those with power and advise and build capacity to empower others. My class notes continued, "planning emerged largely as a response to urbanization and the problems it brought." Land-use planning and zoning laws were born to wrangle the potential for human chaos. Early planners determined that separating uses and creating community order would create a new peace. That "chaos" and resulting "peace" initially meant dividing specific races and classes of people, locating multifamily dwellings away from single-family dwellings, and ensuring toxic industries were far from residential uses.

As I continued exploring the history of planning and zoning, I ventured into the vault in my office which holds many older planning documents and materials telling the story of the early days of planning in the community where I work, a suburb in Greater Boston. In one large box, I discovered documents from the early 1900s that included proceedings from the American City Planning Institute, National Conference on City Planning, and International Federation for Town and Country Planning and Garden Cities convening of town, city, and regional planners in New York City in 1925. Some of the documents were revealing, showing a pattern of our community following national trends and new rules. Meeting notes and correspondence showed interest in conformity to strict zoning standards and dimensional regulations, and those who joined the town's first planning board sought out the best practices of the time.

In the early 1900s, communities in the U.S. were responding to population growth, coupled with industrialization, addressing overcrowding, congestion, and disease. This was a tall order for most communities. White, upper-middle class people were the social reformers who urged communities to consider the benefits of open space while also promoting separation of uses and people. The underbelly of what contemporary planners might tag as *sprawl* was intended to address population density, separate industry from people, and separate people, by race and ethnicity. The roots of planning also had a hand in influencing major

infrastructure and transformational projects for nearly a century. The location of water and sewer lines, streetcar lines, and later highways all played a role in separating and segregating people.

New York passed the nation's first comprehensive zoning ordinance in 1916 in response to the unregulated development of tall buildings and industrial uses encroaching upon wealthy residential neighborhoods. The perception that negative uses would ruin wealthy neighborhoods gave rise to using methods to prevent what were then viewed as "incompatible" uses. Separating uses was a racially motivated exercise directed at separating people of different races and ethnicities. Communities hired prominent early planning professionals to create legally defensible racial zoning plans intended to segregate Black residential areas, particularly as The Great Migration of Blacks moving from rural communities in the South to larger cities in the North and West continued. Districting ordinances and racial zoning plans were foundational for early zoning decisions, setting precedent for years to come.

A series of Supreme Court cases shaped the future of racially discriminatory zoning. Buchanan v. Warley, a landmark case from 1917, deemed municipal racial zoning ordinances unconstitutional. These ordinances, which sought to prohibit Black people in Louisville, Kentucky, from purchasing property in neighborhoods with white majorities was in violation of the 14th amendment (Buchanan v. Warley, 245 U.S. 60). However, this ruling was far from the last word. Following the ruling, President Woodrow Wilson, who played a historically significant role in limiting the rights of Black people, designed a national committee to create a model zoning law. Wilson appointed several segregationists to the committee. By 1924, the committee released a highly influential zoning model for states to amend or adopt whole cloth: the State Standard Zoning Enabling Act.

The Supreme Court "Euclid" case allowed communities to adopt zoning to "see that the right sort of buildings are put in appropriate places and the wrong sort excluded from inappropriate places," thereby legally allowing the segregation of land uses, and by extension *people*, in neighborhoods and cities (Village of Euclid v. Ambler Realty Co., 272 U.S. 365). This important decision allowed municipalities to use race-neutral language to achieve the racially motivated goals that precipitated the Buchanan v. Warley case. Zoning laws continued to be used to enforce segregation but were publicly promoted as a tool to protect and enhance property values. Zoning laws were a demonstration of government power to socially engineer exclusion.

This foundational early planning work ultimately shaped public policies to contain Black residential expansion. Many communities continued to enforce explicit racial zoning in defiance of court rulings until 1951, when they were again ruled unconstitutional. Racial covenants could not be enforced by courts, but there was still a long way to go until the sale, lease, or renting of property was free from discrimination and ultimately banned in the late 1960s. By then, exclusionary zoning began to proliferate.

It is important to note that the phrase *exclusionary zoning* has different meanings in different contexts. The original meaning refers to practices, such as explicit racial zoning, that are clearly illegal under federal and state law. However, most contemporary discussions of exclusionary zoning focus on facially race-neutral zoning provisions that are presumably legal under state zoning enabling laws. These provisions, such as inclusionary housing requirements that could never be triggered due to other zoning provisions that essentially ban larger developments, appear harmless but in fact result in de facto segregation. The exclusionary zoning that this author encourages contemporary planners to undo is a legal practice that prevents households with lower incomes, which are disproportionately composed of Black, Indigenous, and people of color (BIPOC), from living in wealthy and middle-class neighborhoods across the U.S.

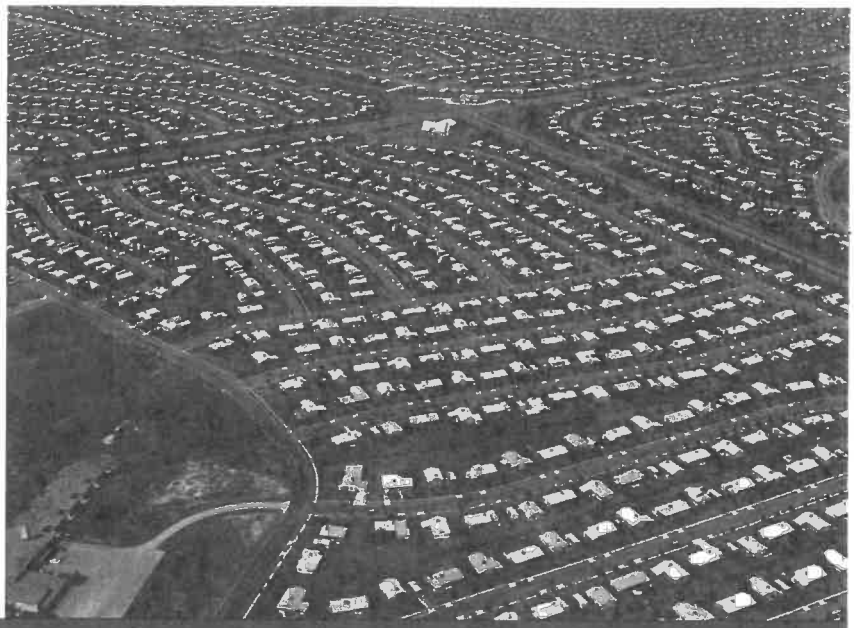
This leads me back to my original questions. What was the original purpose of zoning, and how much of that legacy remains today? Zoning was about conditioning and restricting, balancing values of private property and public good. Zoning is one of a community's police powers. A technical and legal framework that governs everyday life. Zoning is inherently political, and planners serve in more than an advisory role in the scheme of zoning.

FUELED BY THE FEDS

Federal dollars significantly shaped the modern American landscape. By the 1930s, federal policy and finance caught up with racialized zoning and land use to drive residential segregation. In 1933, the Home Owners' Refinancing Act, also known as the Home Owners' Loan Act, aimed to jump-start a sluggish market, address foreclosures, and increase housing construction. The Home Owners Loan Corporation (HOLC) was established and eventually generated residential security maps that drew lines around and rated each neighborhood in larger metropolitan areas across the U.S. The rating scale was from A to D, with A being an area of preferred investment and D being the riskiest. The ratings were largely based on race and the segregated geography established by racialized zoning. One of the eight criteria that comprised a higher grade was if deed and zoning restrictions were in place to sufficiently protect a neighborhood from social groups and incompatible land uses. The HOLC maps led to the term *redlining* since a neighborhood that netted a D grade was outlined in red. The Veterans Administration and the Federal Housing Administration (FHA) utilized the HOLC map classifications to determine credit worthiness.

We can still see the consequences of these maps and decisions; where the HOLC map boundaries were drawn, racial segregation, low homeownership rates, and low home values abound. The maps channeled investment that subsequently led to areas of disinvestment. The federal government and the private sector perpetuated and maintained this system of decades. Even today, non-bank lenders have continued this pattern of investment.

Following years of establishing districts and zoning laws and ordinances, the 1940s and 1950s saw updates to comprehensive plans from the 1920s. While communities



Shaunl (Wikimedia Commons)

FHA financing for the Levittown suburban housing development required homes only to be sold to whites.

developed plans that continued patterns of segregation, the federal government began deploying programs and policies that furthered segregation and limited who had access to improved neighborhoods and communities. Some of those programs developed out of New Deal policies (public housing, redlining, suburban racial covenants); the GI Bill (home loan guaranty, FHA underwriting standards); urban renewal; the Housing Act; and the Federal Highway Act. Ultimately, a cocktail of money and a new regulatory scheme solidified a segregated landscape. Federal dollars flowed toward urban renewal projects and highway expansion. Redlining became more insidious in the form of discriminatory lending and blockbusting. Lastly, zoning laws reinforced exclusion with even more restrictive residential development rules, which effectively maintained the status quo.

The 1960s brought about the promise of social transformation and new legal tools to challenge exclusionary zoning and practices via the Fair Housing Act and Civil Rights Act. These acts, as well as other federal actions, prohibited discrimination but also tied these laws to funding that communities received, creating a duty to comply.

The Civil Rights Act of 1964 provides protection against discrimination based on race, color, or national origin in any federally funded program or activity. The Fair Housing Act prohibits discrimination in the sale, rental and financing of dwellings based on race, color, religion, sex, or national origin. The act was amended in 1988 to add disability and familial status to the list of protected classes. Additionally, Section 504 of the Rehabilitation Act of 1973 expanded protected classes to provide protection against discrimination for people with disabilities in any federally funded program or activity. The Americans with Disabilities Act (ADA) expanded protections against discrimination for persons with disabilities provided in Section 504 to include any state or local services, programs, or activities.

Two acts specifically addressed discrimination based on age: The Age Discrimination Act of 1975 expanded protected classes to provide protection against discrimination based on age in any federally funded program or activity. And the Housing for Older Persons Act of 1995 provided an exemption from the Fair Housing Act for senior housing communities based on specific criteria.

From its inception in 1968, the Fair Housing Act (i.e., Title VIII of the Civil Rights Act) not only prohibited discrimination in housing-related activities and transactions but also imposed a duty to affirmatively further fair housing (AFFH). The AFFH is a framework for local governments, states, and public housing authorities—which are considered participating jurisdictions for federal funding—to take meaningful actions to overcome historic patterns of segregation, promote fair housing choice, and foster inclusive communities that are free from discrimination. AFFH means taking meaningful actions, including combating discrimination, addressing significant disparities in housing needs and in access to opportunity, and establishing and maintaining compliance with civil rights and fair housing laws. For communities receiving federal funds, the duty to meet fair housing extends to all program participants' activities and programs relating to housing and development. Meaningful actions are expected to achieve a material positive change, such as a zoning amendment aimed at providing more housing choices for protected classes.

The Fair Housing Act has its limitations. Notably, federal fair housing law does not prohibit class-based discrimination. Some states have addressed this independent of the federal government, like Massachusetts which has anti-discrimination laws that broaden those protected classes to include income source, specifically people who receive housing assistance. Without these added protections, there is a loophole for discrimination against people with lower incomes in need of better housing and mobility options (Hannah-Jones 2015). The Village of Arlington Heights v. Metropolitan Housing Development Corp. Supreme Court decision in 1977 asserted that exclusionary zoning

Király-Seth (Wikimedia Commons)

The Birwood Wall is a 6-foot high wall constructed in 1941 in Detroit to separate a new whites-only housing subdivision from an existing redlined Black neighborhood. Community activists have since reclaimed portions of the wall for murals and public art.

is not unconstitutional. While not de jure segregation, exclusionary zoning policies contribute to the same patterns of segregation as pre-*Buchanan v. Warley*. Class-based discrimination tends to have a disparate impact on BIPOC communities, compounding the racial discrimination of the past (Chen 2015). In other words, the class-based discrimination embodied in today's exclusionary zoning is, in its outcome, de facto racial discrimination.

Despite these legal options that could be used to challenge exclusionary zoning and practices, parallel problems emerged. Communities were becoming unaffordable and exclusive, while displacement, eviction, and housing instability became pervasive. This is the discriminatory effect and impact of exclusionary policies and practices. Black people lost generations of equity, which whites gained due to racially discriminatory practices, as well as private, restrictive covenants and deeds. The origins of zoning and planning informs the present: a bifurcated social geography. How can today's planners untangle a web of government-sanctioned public policies combined with opportunity-driven private decisions that led to exclusionary outcomes? What should reform and progress look like today?

ADDRESSING AND UNDOING HARMS

Years of exclusionary laws and practice have a consequence. Some places across the U.S. have limited to no racial and ethnic diversity and are older and slow to grow and accept new residential development, which forces renters to bear the brunt of housing cost burdens. The underlying zoning practices have overinflated land values and created high-cost regions. A desire to change can be saddled with lack of political will, limited staff or volunteer capacity or financial resources, and limited courage to face the driving hail of the status quo and racism. Housing discrimination, the lack of understanding of fair access to housing as a civil right, and inability to understand and apply fair housing laws from the 1960s persists.

Fifty plus years after the passage of the Fair Housing Act, the summer of 2020 brought renewed energy and urgency for addressing systemic racism and undoing harms. The conversation with my daughter prompted many other questions, including: *What was I doing, or could I do differently to be anti-racist? How do I ensure that all voices are heard and part of creating solutions?*

As planners our body of work should include intentionally making room for and creating belonging for all. Planners may make statements about inclusivity and equity and simultaneously create a plan and create a process of amending zoning. Moving to action is important for planners. A plan should not stay on a shelf. But the urgency of today requires thoughtfulness as we elevate plans and move beyond amending zoning. While zoning is but one critical element in the puzzle, it is just that, one element.

Planners are part of systems that can create and enable equity. Planners have a responsibility to create equitable places. These places are ones that foster inclusion, acknowledge and challenge bias and systems that reinforce racism. Planners must intentionally intervene with institutions and structures that continue to perpetuate racial inequities, implement policy change at multiple levels and across multiple sectors to drive larger systemic change, utilize tools to explicitly integrate racial equity into all operations, and align decisions with racial equity goals and clear, measurable outcomes.

When planners thread equity into plans and policies, not just zoning, it means asking more questions before proposing or implementing policy change. Using an equity orientation helps planners to ask and answer a range of important questions. For example, how was procedural equity applied to include and center people who have been historically excluded from planning processes in the planning, implementation, and evaluation of proposals and projects? When civic and community resources and investments are being debated as part of

a proposal or project, how is distributional equity considered such that racially disparate outcomes are not created by a decision? Finally, as noted earlier in this piece, Black people were harmed by past decisions which led to loss of generations of equity; therefore, when evaluating proposals and policies today, considering how a decision will lead to transgenerational equity rather than result in unfair burden on future generations is also critical.

Countering the historical failures of planning and zoning requires the profession to shift in thinking, methods, training, and practice. It also requires funding and resources. The U.S. Department of Housing and Urban Development (HUD) Sustainable Communities Program funded local and regional jurisdictions for studies, plans, and projects that aimed to advance equity while also encouraging collaborative alignment across federal agencies focused on the environment, housing, and transportation. Sustainable Communities helped spur regional fair housing and equity assessments. The program in part led to the Department of Justice and HUD renewing their commitment to fair housing. HUD went so far as to issue a final rule that require recipients of community development and other federal funds needing to AFFH via special assessments and planning to remove barriers to housing. The assessments may have also led to the local planning and zoning work aimed at undoing exclusionary practices and laws. Unfortunately, the program, funding, and momentum was cut short, as many of the gains from this program were frozen or retracted by the Trump administration.

Despite the fear and feuding, not every jurisdiction gave up on the mission to center equity in all policies. There are renewed efforts that point toward a potential framework for anti-racist zoning and land use. This section is intended to outline first steps in what could be a years-long process of change.

EMERGING STRATEGIES IN BOSTON AND LOUISVILLE

The cities of Boston and Louisville have stepped up to begin incorporating fair housing and equity in future zoning ordinances and bylaws. In Boston, applicants of new residential and mixed-use projects under review by the city will be required to describe how their project will not harm area residents who have historically been discriminated against. The project narrative will incorporate and analyze these data while also assessing the potential risk of displacement due to racial and economic changes that the project may stimulate and determining the project impact on area rental prices. The city will utilize an AFFH assessment tool in its development review process to identify potential effects a project might have on a neighborhood. The tool emerged from the city's Assessment of Fair Housing process started during the Sustainable Communities program. Project applicants will need to describe any measures that will be used to achieve AFFH goals. The city's zoning code includes a list of process and market measures that are aligned with a project size and scope to make it easier for applicants to choose from options that help achieve the city's AFFH goals (Text Amendment No. 446). The code provides additional measures that applicants must also include and achieve when proposing projects in neighborhoods where there is a high risk of displacement or where there is a history of segregation and exclusion.

Project applicants can choose from measures, such as increasing project density to provide more units that are affordable to protected classes, exceeding affordability requirements by creating new housing units for households who make lower incomes, exceeding accessibility requirements for providing more residential units that are ADA accessible, matching or exceeding the percentage of units to accommodate larger households in alignment with the availability of such units in a surrounding neighborhood, and partnering with a nonprofit affordable housing developer to achieve affordability and affirmative marketing and outreach goals. When passing this zoning amendment and new set of requirements, the city empowered a Boston Interagency Fair Housing Development Committee with helping to ensure compliance of the new code. Both the new zoning and the new administrative practice demonstrate how a city can show commitment to fair housing and a renewed, equitable process with improved equity outcomes aligned with an equity plan.

In Louisville, the city is facilitating a planning process aimed at undoing past harms which includes updates to its land development code. The city's efforts identified clear goals and have begun to yield results. For example, the city committed to goals of creating mixed- and diverse housing options, centering environmental justice, and revamping administrative procedures and practices to be more user-friendly and inclusive. The new housing options include allowing accessory dwelling units, allowing two-family homes to be built throughout the city, and providing more flexible design options for adaptive reuse and infill development.

Like Boston, Louisville aims to codify new rules and amend administrative processes and practices. In Louisville, planners assessed the public notification process for city-held public hearings and new projects and identified barriers to participation. Historically, residents who rent their homes did not receive meeting or hearing notices or information about projects. BIPOC households and households with low- to moderate-income were found to be disproportionately impacted by this lack of notice and inability to participate. The city now sends notices to any current resident regardless of tenure.

The Louisville process demonstrates how the community thought broadly about equity. The planning process identified additional barriers that disproportionately impact BIPOC communities, and which need to be addressed to fully advance equity in the city. The plan points to the need to remove highways that divide and have historically hurt BIPOC communities. The location of industrial uses is also described as a harm to neighborhoods with households who make low- to moderate-incomes. Further, the plan notes that some prohibited uses in the city's regulatory framework have a negative effect on BIPOC communities, including prohibiting clotheslines, above-ground pools, window air conditioning units,

outdoor play equipment, parking spaces for commercial vehicles on private property, and basketball hoops. While a planner or a neighborhood association might consider these types of restrictions to be good for aesthetics or design, they have the consequence of creating limitations that disproportionately harm marginalized people and lower-income households.

LOOKING AHEAD

While both examples illustrate that amending zoning or making text amendments to a municipal code are prerequisites to breaking established and embedded practices of racism and exclusion, these measures are clearly not enough to unpack the complicated history of planning and zoning in towns and cities throughout the U.S. This is a complex topic that requires difficult conversations and community dialogue, the courage to face the history of our communities, and a desire to work collaboratively to undo harm. While zoning amendments may immediately help to demonstrate progress in planning, honest questions should be asked by practitioners and scrutinized by the community to identify who benefits and who is excluded in the short-and long-term. Also critical is consideration of the administrative and process components that catalyze planning projects, decisions, and amendments.

Communities lacking the resources of a city like Boston might not be able to move as quickly but can still start the work. It can begin with reviewing existing plans and zoning to determine if inequitable outcomes are the result of zoning requirements. A fair housing analysis can pinpoint the need for different types of housing, or where de facto segregation through zoning continues. Communities can begin the zoning code and map amendment process based on these analyses. Discretionary review processes can be amended to help achieve these goals. Sustained outreach and input from BIPOC communities and households who make lower incomes could help to further evaluate the effectiveness of any zoning amendment in relation to achieving equity goals.

CONCLUSION

As planners, we should ask more questions and take action to acknowledge our history, and work past our fears of change. This must include amending status-quo zoning to increase housing affordability and availability, codifying equity and engagement practices, funding and practicing deeper engagement with communities, and working regionally to address longer-term issues that stretch beyond one community's borders. Additionally, broader efforts targeted at combating racist rhetoric and coded language, and creating transparent and accountable structures for decision-making, are critical to addressing historic and contemporary injustices.

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PRACTICE ADAPTIVE REUSE

Zoning to Promote Office-to-Housing Conversions

By Elizabeth Garvin, AICP, and Mary Madden, AICP

At some point during the 2020 COVID-19 lockdowns, the news media started running two sets of planning-related, future prediction stories. The first set of stories fell into the category of "everybody is leaving our cities, and they will never be the same." And the second set were focused on "when everybody works at home full time, we won't need office space, so that space will convert to residential use on a large scale." Apart from the fact that these ideas are somewhat mutually exclusive, both predictions, over time, have also proven mostly incorrect.

The notion that our cities are dying, for one reason or another, has a long history in American culture (such as when the telephone was invented), and we can expect to hear it again for any number of reasons, including during any election cycle, during a recession, or during the next pandemic. The idea that we should convert nonresidential space into residential use—one type of adaptive reuse, which is the practice of converting existing buildings from one use to another—has also had some high-profile moments. Think of the loft conversions that were done in cities large and small across the 1980s and 1990s. This story may have better "legs" in our current circumstances than betting on the death of our cities.

The purpose of this article is to help planners assess opportunities to use zoning to promote office-to-housing conversions in the communities they serve. It begins with brief summaries of the potential benefits of and widespread roadblocks to this type of conversion. Then, it explores how different zoning standards and techniques affect opportunities to adaptively reuse office spaces for residences. The analysis is focused on adaptive reuse in or near urban centers, rather than a suburban setting. However, suburban retrofitting, as explored in other books and articles, may offer an affordable approach to adaptive reuse for communities without urban adaptive reuse opportunities (Dunham-Jones and Williamson 2011; Tachieva 2010; and Strungys and Jennette 2014).

THE BENEFITS OF COMMERCIAL CONVERSIONS

There are several reasons that cities and towns may be interested in supporting adaptive reuse, in general, and the conversion of commercial space to residential, in particular. Places change over time, and viable structures can be left behind. Despite the post-COVID-19 market rebound, experts still anticipate that the demand for office space will change (Szumilo and Wiegelmann 2021).

Adaptive reuse has some significant considerations weighing in its favor. It is one of the greenest forms of development and construction. Reusing buildings reduces the amount of construction debris going into landfills, as commonly occurs following demolition. In addition, it preempts the need to produce and use new building materials. In comparison, it can take decades for a new building to offset the climate impacts caused by construction. Adaptive reuse can also help retain community character and preserve both historic and meaningful structures in a community.

When the reuse helps stabilize or revitalize a neighborhood, it often contributes to more equitable development within the local fabric. The National Trust for Historic Preservation's ReUrbanism initiative promotes adaptive reuse and finds a "clear link between older, smaller buildings and mixed-vintage blocks and higher rates of women- and minority-ownership of businesses" (Preservation Green Lab 2014). As an added benefit in our current age of contentious public hearings, many commercial buildings are in areas where the community expects to find lots of people (and maybe their cars), which can help reduce the NIMBY-ism that can accompany public discussions about increased density in existing, predominately residential neighborhoods.

Adaptive reuse also reinforces many good planning basics. In terms of economic development, adaptive reuse can bring new life to vacant buildings and revitalize a designated area such as a downtown or aging commercial corridor. It can help rectify the housing-jobs imbalance by adding residences to an area that currently rolls up the sidewalks at close of business. And it has the potential to increase the supply of housing—whether market-rate or affordable—to help address a local housing shortage.

ROADBLOCKS TO COMMERCIAL CONVERSION

Before anybody settles in with a copy of the zoning code and red pen, there are some critical barriers to commercial conversion that zoning cannot solve. Even in the current real estate market, suitable properties for adaptive reuse are still a lot more of a unicorn project than an everyday occurrence. There are three key obstacles to more widespread conversion: (1) structure and conversion costs; (2) building code requirements, structure design, and location; and (3) experience.

Structure and Conversion Costs

Despite the potential positive outcomes, the cost of financing a commercial acquisition and conversion is usually the first and commonly the most significant obstacle to adaptive reuse projects.

In high-demand markets, office space rent can be twice as much, on a per-square-foot basis, as residential rent. Many commercial tenants are committed to long-term leases, meaning that the building owners have a guaranteed income stream,

despite the vacant office space. As COVID-19 lockdowns lift and workers return to offices, the temporary dip in demand and increased vacancies will be in our collective rearview mirror, and any financial pressure that building owners may have experienced during COVID-19 will likely dissipate.

Investors, real estate agents, and architects who work in adaptive reuse believe that a longer trend, maybe a decade or more, of high vacancy rates would be needed to push more conversions. Real estate service firm Cushman & Wakefield is predicting that the commercial real estate market will stabilize to pre-COVID-19 vacancy levels by 2025 and that office demand will continue to grow over the next 10 years (Thorpe and Rockey 2020). This means that property owners will probably not be tempted to sell, and developers will probably not be tempted to buy, commercial real estate for residential conversion in the near term.

Real estate experts also say that despite COVID-19, the vacancy rate is still fairly low, on average, and building owners that are trying to sell have not lowered prices anywhere near low enough to be purchased for conversion (Grabar 2021). Because of the investment required to own and the income stream created through commercial property ownership, there can be very little incentive to either sell or convert a property until it is significantly devalued.

Once a structure is purchased, the developer still must factor in the cost of conversion. The list of interior and exterior changes may include moving walls to reconfigure residential spaces, adding windows, modifying spaces or features to comply with accessibility requirements, adding elevators, creating multiple means of egress, and installing or expanding fire sprinklers. Also, building utilities, such as plumbing and electrical lines, may need to be rerouted from centralized locations and expanded to serve multiple residential spaces with the addition of multiple new meters.

These costs can create a disconnect for a developer or community looking to create anything less expensive than market-rate housing. Multiple case studies of successful adaptive reuse projects note that the project required tax breaks and still resulted in the creation of luxury units. Whether this was to meet perceived market demand or cover project costs, or both, planners should understand what the project pro forma will require to "pencil out" before concluding that an adaptive reuse project will help create any housing that is more affordable than what would otherwise be constructed. Local planning or economic development staff knowledge of how potentially applicable state and federal tax incentives, such as tax increment financing or low-income housing tax credits/historic tax credits, might apply to a project could help a developer's understanding of those programs and increase the probability of a conversion being completed.

Building Code Requirements, Structure Design, and Location

Residential structures typically require more windows, and natural light in general, than can be provided in the conversion of modern, large-scale commercial floorplates. The preferred conversion floorplate is that of a pre-WWII building, which were typically shallower and had larger windows. Many pre-war commercial and industrial buildings in larger cities have been converted over the past 30 years, creating lofts and apartments, and those waves of conversion included many of the easy-to-convert buildings (Grabar 2021).

Post-war, urban lot consolidation was used to enable the construction of much larger commercial buildings with expanded floorplates (Farivar 2021). Converting a large floorplate commercial building—office or retail—to residential use creates a doughnut of residential uses around the exterior and a hole of unusable space in the center. When the building was a commercial use, this space may have been used for retail, conference rooms, storage (pre-cloud, back in the days of paper files), internal offices or open-plan seating, or for functional spaces such as elevators and restrooms. This works in a commercial setting, but it is of limited use in a residential setting, where residential building codes require windows that provide access to natural light and air in habitable rooms.

This problem is not insurmountable, though. According to David Waxman, managing partner at MM Partners in Philadelphia, the conversion of each building needs to be approached individually, where "the building tells you how to lay it out." Future tenants of these new homes are looking for unique spaces, not cookie cutter apartments. One thing that communities can do to help this process along, says Waxman, is to establish a streamlined process to help developers address previous code violations on vacant and abandoned buildings.

Even when the building floorplan can be redesigned or reconfigured in an effective manner, there may be aspects of the site or location that are either expensive to fix or that cannot be fixed. These can include environmental contamination, insufficient infrastructure capacity, or inadequate access to public transportation or shared mobility services (Morley 2019).

Experience

It can take a significant amount of time and effort to work through the highly uncertain approval process common to adaptive reuse projects, particularly in communities where such conversions rarely occur. There will be some developers with previous experience who can navigate the approval process, some developers who appreciate the challenge, and many who understand their current pro forma and development model and have no incentive to try something new. In communities with undeveloped or underutilized land, most developers will find it preferable to build a new apartment complex rather than convert a building designed and constructed for a different purpose.

ASSESSING THE NEED FOR ZONING CHANGES

The impact of zoning on adaptive reuse projects can range from "very helpful" to "project-ending." There are multiple potentially useful zoning tools available that can be used separately or jointly to accommodate, expedite, or incentivize commercial conversion projects. And there can be current regulations that create absolute barriers to adaptive reuse.

Before initiating any zoning changes, planning staff should engage in some big-picture problem solving by: (1) articulating a clear understanding of intent and purpose that identifies what issue(s) the community is trying to address through conversion and in what contexts; (2) assessing which zoning tools are currently available and what new tools might be needed; (3) reviewing the current regulations for common barriers, found in the use table, lot design standards, parking regulations, and review processes; and (4) describing the basic zoning approaches (preferably paired with helpful financial incentives) that the community wants to enable.

It helps to make this assessment three dimensional by considering the geographic places—not just the zoning districts—within the community where conversion projects make sense and then looking at the infrastructure and services (are they compact and walkable? supported by transit? auto-dependent?) needed to make the project successful. At a minimum, the following code requirements should be reviewed and potentially updated, either for a specific location or community-wide, in any community wishing to better accommodate or expedite commercial conversion projects.

Permitted Uses and Use Locations

The applicable zoning must allow residential uses, preferably as a permitted or by-right use. Asking an applicant to first get approval for the core use of the project, through a discretionary review process, such as conditional use review or planned development, adds uncertainty to the project, which always translates to added time and expense for both the applicant and planning staff. Geographic areas of the community that might benefit from commercial conversion should be zoned to allow at least mixed-use development, whether the zoning code is form-based or conventional.

The community should also look at tailoring any applicable ground-floor commercial use requirements. Ground-floor retail design requirements, such as large shopfront windows and generous minimum ceiling heights, are excellent planning tools for creating mixed-use neighborhoods, but they have frequently been applied more widely than needed and can directly conflict with residential conversion.

Anecdotally, planners have been discussing the length of time that required ground-floor commercial space sits vacant, while property owners raise concerns about the impact of those vacancies on rental rates and the impact of the ground-floor commercial space on their ability to obtain financing (Butcha and DePass 2020). The Congress for New Urbanism suggests less restriction on the mix of uses along the ground floor outside of a limited "main street" environment, which is typically no longer than one-quarter mile in length, not throughout the district (Forest et al. 2018).

Cedar Falls, Iowa, recently updated its downtown zoning code and map to limit the requirement for active ground-floor commercial uses (and the related storefront design) to the four blocks of Main Street that comprise the primary downtown retail district (Ordinance Nos. 2994 & 2995).

This allows older structures on streets outside of the downtown core to be converted to a mix of, or fully residential, uses. It also allows building owners to better respond to market demand rather than have vacant shopfronts, as most cities cannot support the amount of retail needed to fill every ground floor in their downtowns.

Lot Size and Dimensional Standards

Ideally, commercial-to-residential conversion will not require any changes to existing lot size or setback requirements. The zoning regulations should allow the structure to be converted as-is on the current lot and within the existing setbacks. Many contemporary zoning codes still require larger setbacks for residential development, or a minimum amount of lot area per dwelling unit, under the assumption that residential uses should be physically separated from nonresidential uses. While giving some residential property owners highly valued personal spaces, these requirements also result in higher infrastructure and public service costs, sprawling development patterns, and residents who believe (thanks in part to planners) that bringing different uses together is somehow bad for the community.

If the current zoning regulations require a minimum amount of lot area per unit or different setbacks for residential uses in commercial or mixed-use districts, these regulations should be revised to allow commercial (or residential) conversion within the existing building envelope. This is particularly true for those locations with small lots and a fine-grained, interconnected street and block structure, such as a downtown environment. Any standards that would require lot consolidation or the removal of structures on adjacent parcels to move forward with an adaptive reuse project should be revised.

Site Changes to Accommodate Parking, Landscaping, or Lighting

Many modern zoning codes are more focused on new or greenfield development than redevelopment or infill, resulting in regulatory gaps that create problems for both applicants and planners. They provide little or no guidance about how to apply parking, landscaping, or open space requirements when changes to an existing structure trigger the applicability of site-related development standards. Or they fail to distinguish between "change in use" requirements in different community contexts—from a historic downtown to more recent development on the edge of town—particularly when there is no expansion of the structure. It is very common to find a zoning code that

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Main Street in downtown Cedar Falls, Iowa.

requires full compliance with "all applicable development standards" when a structure is changed by 50 percent.

Applying development standards oriented to new development to a retail-to-retail conversion (such as changing a pad-site building from a retail shop to a restaurant) is probably more feasible than applying those same standards to a commercial-to-residential conversion, particularly in an urban location. Two categories of zoning code updates can be particularly helpful here: (1) changes to how the applicability threshold is structured and (2) the creation of a process that allows even greater flexibility in application for adaptive reuse.

The starting place for these code changes is moving away from a one-size-fits-all 50 percent change threshold and better specifying where different changes are triggered based on three considerations: (1) the existing area context (and potentially applicable zoning if that is helpful), such as downtown or commercial corridor; (2) the type of development standard and whether it applies to the structure (e.g., façade requirements), use, or site (e.g., parking requirements); and (3) the location of the structure on the site. The applicability of some development standards, such as the amount of parking required, may be triggered by a change in use, while the location of parking (or relocating the parking), would only be required where there were changes to the building's footprint, and even then, the amount of compliance might still be limited.

For example, a community can permit some or all of an increase in required parking to be provided off-site, if the project is located in a walkable, mixed-use area, or reduce the required parking if near transit. A community can address the location of required parking by requiring any new parking to be located behind an existing structure, where there is space available.

The applicability of other development standards might also include a sliding scale of thresholds. Structure or use changes that require full compliance with landscaping standards in a suburban setting may be modified to a street tree or hardscape (e.g., bench, art, or fountain) requirement in an urban or downtown setting. And some categories of development standards, such as architectural or design requirements, should be linked to proposed changes to the part of the building that requires the design, such as a façade, and not an expansion on the rear of the structure.

All of these proposed approaches are intended to limit an outcome where the application of nonessential development standards effectively stops a project. To the maximum extent possible, the zoning standards should be clear when the development standards are triggered in different contexts, recognizing both the site and cost implications of requiring significant changes to existing structures and site layout.

Changes to the applicability thresholds should be paired with the creation of a ministerial (administrative) adjustment process that allows minor modifications to the applicable development standards to make further changes that might be needed to make the development standards site specific. This process can be used to make minor measurement adjustments to account for existing site conditions, such as allowing new parking to encroach into a setback by two feet to avoid paving over an existing infrastructure easement or allowing a street tree to be moved by two feet to accommodate a transit stop.

Creating certainty around how these standards will be applied is important to both the project design and the applicant's ability to obtain financing. "The universe of lenders (for these projects) is small, and they want some certainty," says Waxman.

Nonconformities

Restricting the redevelopment of nonconforming structures, uses, lots, and site features (e.g., the location of parking or access) is often a companion problem to poorly set applicability thresholds. And because most of the structures considered for adaptive reuse are older and have outlasted more than one iteration of the zoning regulations, these projects frequently contend with multiple nonconformities. This problem can effectively freeze the structure and site in place while the property owner seeks relief, unnecessarily adding to the cost and uncertainty of redevelopment.

Communities that recognize this problem may respond with the generous issuance of variances, but that is not a best practice because it still requires the applicant to jump through extra hoops for discretionary approvals to address a problem caused by the zoning code, not the project. Rather, communities should update the nonconformity regulations to recognize that these structures are an integral part of the neighborhood and that redevelopment is a better approach than demolition (Goebel 2020).

Open Space Dedication

A fourth zoning code revision to encourage commercial conversion is building flexibility into open space dedication requirements. As we've seen through our collective COVID-19 experience, the location and availability of park space is both a quality-of-life requirement and an equity concern. Commercial conversions, given their original design as commercial spaces, may be in areas where parks and open spaces were small or nonexistent. Unlike setback standards, or some would argue minimum parking requirements, open space standards should not be shrunk or eliminated for adaptive reuse, but should be reconceived (Bogle, Diby, and Burnstein 2016).

One approach to adding neighborhood open space in an urban setting is to move from traditional on-site open space dedication to payment of in-lieu fees for the creation of off-site parks. Urban parks, in particular, play multiple roles in the community, including creating a sense of place, providing both a cultural amenity and room for other cultural amenities (e.g., art fairs, concerts, and festivals), allowing passive and active recreation, preserving history and heritage, providing environmental and public health benefits by reducing the urban heat island and assisting with stormwater management, and spurring economic development (Ellis and Schwartz 2016). A large-scale example of identifying urban park options is Montgomery County, Maryland's design standards for eight types of urban parks (2019). Alternatively, open space can be incorporated across an adaptive reuse site and structure, as permitted by Santa Ana, California, where community rooms, private balconies, and public courtyards are all considered viable forms of open space (§41-1650 et seq.).

When the pieces come together, adaptive reuse can provide multiple benefits to a community. Philadelphia, for example, has seen the creation of 1,800 apartments in 10 buildings over the past few years (Bond 2021). As one of our oldest cities, Philadelphia has a significant supply of older buildings, so this may not seem surprising, but both the city

and development community have focused on encouraging these conversions. Past updates to the zoning code have allowed the conversion of factories and other industrial structures, recent changes to property tax abatements have created a financial incentive for rehabilitation, and new legislative changes have created flexibility in the application of parking and zoning standards for the redevelopment of qualified historic structures.

Local developers MMPartners have had multiple successful adaptive reuse projects, including the Poth Brewery in North Philadelphia's Brewerytown neighborhood. Started in 2018, this adaptive reuse will result in the conversion of a 148-year-old brick brewery and cold storage building into 135 lofts and 25,000 square feet of commercial space.

NEXT STEPS

Projections for residential construction over the short-term range from slow growth to no growth, despite housing shortages and overheated residential housing markets. Large banks and real estate investors predict that "high borrowing costs and high prices mean that affordability issues will slow demand," and construction will decline (Knightley and van Sante 2021). Additional problems noted by the American Institute of Architects (AIA) in their July Consensus Construction Forecast include unreliable global supply chain and labor shortages (Walsh 2021). The large unknown in this scenario is the impact of the newly adopted Infrastructure and Investment Jobs Act.

While these issues shake themselves out, and returning to the opening consideration of the value of predictions in uncertain times, now is a good time for planners to move forward to smooth the path for upcoming adaptive reuse projects. This should be a three-step process:

1. Update the zoning code.
2. Explore building code options.
3. Share the process and educate the development community.

This article recommends several specific amendments that should help make a functional zoning code better able to accommodate adaptive reuse. Communities can go one step further by putting an adaptive reuse ordinance in place. Models and guides include Preservation Green Lab's model ordinance (2017), the Federal Emergency Management Agency's guide on adaptive design (FEMA 2021), and Chester County, Pennsylvania's tool on adaptive reuse (N.d.).

There are also model building codes for existing buildings. For example, the International Code Council's International Existing Building Code (IEBC), focuses on encouraging the use and reuse of existing buildings. States with their own series of building codes may also have something similar, such as the California Historical Building Code.

The zoning code may be updated and the existing building code adopted, yet the local development community may still be overlooking adaptive reuse opportunities. This is a good time to engage in community outreach, including the development community, property owners, and neighborhoods. Adaptive reuse is more of a team sport than an individual pursuit, and it helps to have the team in place and ready for these projects. Good outreach can include brown-bag lunches and how-to videos. Better outreach can include both process and project education that dig into issues relevant to developers, such as market demand, pro formas, and potential financial incentives.

Communities may still be dealing with COVID-19 throughout 2022 (and 2023); the supply chain may still have more demand than supply; and the naysaying predictions may still seem true. Also true is that in many cities, towns, and counties there are, and will still be, older buildings that can be put to new and more vibrant uses in ways that contribute more housing and improved equity. This is a good time to rework the zoning code to remove barriers and potentially create a specific set of regulations that allow those structures to be put back to work in a way that benefits our neighborhoods, our environment, and our collective future.

Max Grudzinski

The Poth Brewery adaptive reuse project in Philadelphia.

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CONNECTICUT FEDERATION OF PLANNING AND ZONING AGENCIES QUARTERLY NEWSLETTER

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PZC MEETING - FEB. 22, 2022.

COURT RULES VARIANCE CAN NOT BE CHALLENGED AS PART OF SPECIAL EXCEPTION APPROVAL

When a special permit application was approved to locate a liquor store on the applicant's property, an owner of another liquor store appealed the decision to court. The basis for the appeal was that the planning and zoning commission's decision would allow a liquor store in violation of a zoning regulation that imposed a separation distance between such stores. The commission approved the application based in part on the fact that the applicant had applied for a variance from this regulation and the variance had been approved by the zoning board of appeals.

In its appeal of the special exception approval, the plaintiff argued that the variance was void and was thus an improper basis upon which to approve the special exception application. The court found this argument to be a collateral attack upon the variance approval and thus dismissed the appeal. In reaching this decision, the court found that any argument about the validity of the variance approval should have been made by appealing that board's decision. This the plaintiff did not do. Since the appeal period had passed for appealing the variance approval, the plaintiff could not collaterally attack this decision by challenging it now. Once the appeal period passed, the zoning board of appeal's decision to approve the variance became final and could not be disturbed at this later date. *See Boyajian v. Zoning Commission, 206 Conn. App. 118 (2021).*

CERTIFICATE OF LOCATION FOUND TO BE LIKE A SPECIAL PERMIT

A Superior Court ruled that in deciding an appeal of a decision by a planning and zoning commission to approve a certificate of location for a liquor store, it would consider it under the same standard of review as for an appeal of a special permit approval. Basically, the role of the commission is to determine whether the application satisfies the standards contained in the zoning regulations. *Brookside Package LLC v. Planning & Zoning Commission, 70 Conn. L. Rptr. 402 (2020)*

SAVE THE DATE – THE CONFERENCE IS BACK!

The Federation will hold its Annual Conference on March 24, 2022 at the Aqua Turf Country Club in Plantsville CT. The event starts at 5:00 p.m. The program for the Conference will include a presentation on How to Comply with the 2021 Legislation that Applies to Planning and Zoning as well as the 2022 Legislative Agenda. Flyers announcing the event will be sent to all members later this month.

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CONNECTICUT FEDERATION OF PLANNING AND ZONING AGENCIES
QUARTERLY NEWSLETTER

Winter 2022 Volume XXVI, Issue 1

RESCHEDULED COURT HEARING WITHOUT PROPER NOTICE RESULTS IN DUE PROCESS VIOLATION

A long-standing settlement agreement which governed the use of a sand and gravel mine was the subject of a motion to modify. The motion to modify was filed by both parties to the appeal in order to allow for more for the sand and gravel mine to be open for more hours during the evening. Shortly after the motion to modify was filed, a hearing date was set by the court and published on the state judicial website. The parties to the motion subsequently filed a request with the court asking that the hearing be moved up one week. The court granted this motion and duly held the hearing one week prior to the advertised hearing date wherein it approved the motion to modify.

On the scheduled date for the hearing, a neighbor of the sand and gravel mine appeared and filed a motion to intervene pursuant to Connecticut General Statutes Sec. 22a-19. This state statute allows anyone to intervene in a judicial proceeding solely on the issue of protecting the public trust in the air, water or other natural resources of the State from being unreasonably polluted. Since the court had approved the motion to modify one week prior, it dismissed the intervenor's motion to intervene as being untimely.

An appeal of this decision found its way to the state supreme court which held that the lower court was wrong to deny the motion to intervene. By agreeing to advance the hearing date on the motion to modify the settlement agreement one week prior to the published hearing date, the court had deprived the intervenor of a fair and accurate notice which deprived him of due process. *Griswold v. Camputaro, 331 Conn. 701 (2019).*

COMPLIANCE WITH FEMA AND REDUCTION OF NONCONFORMITY ALLOW FOR VARIANCE

The owner of a parcel of property bordering Long Island Sound applied for a building height variance. The variance was needed in order for the owner to qualify for a State grant program which provided financial assistance to homeowners complying with FEMA regulations. In this case, the building height variance was needed so that the dwelling on the parcel could be raised and comply with the new FEMA flood zone requirements.

The application was granted by the zoning board of appeals over the objections of an abutting neighbor. An appeal to court followed.

The court found that a traditional hardship did not exist but recognized that compliance with mandatory FEMA flood regulations can be the basis for a variance. The court did not decide the

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Winter 2022 Volume XXVI, Issue 1

appeal on this basis as compliance in this case was voluntary as an existing home does not need to comply with the new flood regulation requirements.

Instead, the court upheld the Board's decision because the record demonstrated that the overall nonconforming nature of the property would be reduced. The property owner's application, while creating a nonconformity as to building height, would eliminate a lot coverage nonconformity as well as reduce several others. *Fedus v. Zoning Board of Appeals, 66 Conn. L. Rptr. 183 (2018).*

SHORT-TERM RENTALS NOT PERMITED AS A USE OF A SINGLE-FAMILY DWELLING

The Massachusetts Supreme Court addressed an issue that has the attention of many Connecticut land use agencies. The issue is whether short term rentals of single-family dwellings would be permitted as an additional or accessory use of the property. The court found short-terms rentals do not as they conflict with the intended purpose of a single-family zoned district which is to have an area free of commercial, transient uses and instead provide stability and permanence which furthers a sense of community.

The court also found that the short-term rental of a single-family home is not the same as a lodging house or tourist home as both of these envision that the owner of the property is present to supervise his lodgers whereas with a short-term rental, the owner is absent.

It should be noted that a short-term rental is defined as renting a dwelling for fewer than 30 days. *Styller v. Zoning Board of Appeals, 487 Mass. 588 (2021).*

ANNOUNCEMENTS

Lifetime Achievement Award and Length of Service Award

Nomination forms will be sent out later this month for these awards which will be presented to recipients at the Federation's annual conference. You should begin your process of finding worthy nominees now.

Workshops

At the price of $180.00 per session for each agency attending, our workshops are an affordable way for your board to 'stay legal'. Each workshop attendee will receive a booklet which setsforth the 'basics' as well as a booklet on good governance which covers conflict of interest as well as how to run a meeting and a public hearing.

ABOUT THE EDITOR

Steven Byrne is an attorney with an office in Farmington, Connecticut. A principal in the law firm of Byrne & Byrne LLC, he maintains a strong focus in the area of land use law and is available for consultation and representation in all land use matters both at the administrative and court levels.

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