



TOWN OF KILLINGLY, CT
PLANNING AND ZONING COMMISSION

RECEIVED
TOWN CLERK, KILLINGLY, CT
2022 MAY 13 AM 8:14

MONDAY – MAY 16, 2022
Regular Meeting – HYBRID MEETING
7:00 PM

Elizabeth M. Wilson

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. ELECTION OF OFFICERS FOR THIS YEAR - ORGANIZATIONAL
 - 1) Chair
 - 2) Vice-Chair
 - 3) Secretary
- III. SEATING OF ALTERNATES
- IV. AGENDA ADDENDUM
- V. 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. 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.killinglyct.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 871 0662 when prompted.

- VI. COMMISSION/STAFF RESPONSES TO CITIZENS' COMMENTS
- VII. SET EFFECTIVE DATE FOR ZONE MAP CHANGE – (review / discussion / action)
 - 1) **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. Said Zone MAP Change was approved on Monday, April 18, 2022 – however, must schedule an effective date for the Zone Map Change. Suggested effective date – Monday, June 13, 2022, at 12:01 am.

VIII. 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 871 0662 when prompted

- 1) **Spec Perm Ap #22-1282**; Jolley Commons, LLC (Applicant/Owner); 120 Wauregan Rd; GIS MAP 220, LOT 21; ~6.4 acres; Gen Comm Zone; excavation & removal of gravel products; under Sect 560, et seq (Earth Filling & Excavation); Sect 700 et seq (Spec Perm); & Sect 470 et Seq (Site Plan) of the TOK Zoning Regs. **CONT FROM 4/18/22**.
- 2) **Zone TEXT Change Ap # 22-1287** – Town of Killingly, special permitted use under Business Park, General Commercial, Light Industrial, Mill Mixed Use and Mixed-Use Interchange Zones for the creation of cannabis establishments
- 3) **Special Permit Ap # 22-1289** – Dayville Four Corners, LLC (Applicant/Owner); 730 (736) Hartford Turnpike, GIS MAP 115, LOT 6, General Commercial Zone, ~7.07 acres, request use of existing space in building for liquor, beer & wine sales, under TOK Zoning Regs under 420.2.1(a) with reference to 420.1.2(i).
- 4) **Special Permit Ap# 22-1291** – Melting Point Welding & Fabrication, LLC (Weld, LLC / Owner), 543 Wauregan Road, GIS MAP 262, LOT 20, Light Industrial, ~2.1 acres; to conduct manufacturing activities pursuant to TOK Zoning Regs. Sec. 430.2.2(b).
- 5) **Zone TEXT Change Ap #22-1292** – Town of Killingly, allowing garages as a primary use in in rural development and low-density-zones only.

Hearings' segment closes.
Meeting Business will continue.

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

- 1) **Spec Perm Ap #22-1282**; Jolley Commons, LLC (Applicant/Owner); 120 Wauregan Rd; GIS MAP 220, LOT 21; ~6.4 acres; Gen Comm Zone; excavation & removal of gravel products; under Sect 560, et seq (Earth Filling & Excavation); Sect 700 et seq (Spec Perm); & Sect 470 et Seq (Site Plan) of the TOK Zoning Regs.
- 2) **Zone TEXT Change Ap # 22-1287** – Town of Killingly, special permitted use under Business Park, General Commercial, Light Industrial, Mill Mixed Use and Mixed-Use Interchange Zones for the creation of cannabis establishments.
- 3) **Special Permit Ap # 22-1289** – Dayville Four Corners, LLC (Applicant/Owner); 730 (736) Hartford Turnpike, GIS MAP 115, LOT 6, General Commercial Zone, ~7.07 acres, request use of existing space in building for liquor, beer & wine sales, under TOK Zoning Regs under 420.2.1(a) with reference to 420.1.2(i).
- 4) **Special Permit Ap# 22-1291** – Melting Point Welding & Fabrication, LLC (Weld, LLC / Owner), 543 Wauregan Road, GIS MAP 262, LOT 20, Light Industrial, ~2.1 acres; to conduct manufacturing activities pursuant to TOK Zoning Regs. Sec. 430.2.2(b).
- 5) **Zone TEXT Change Ap #22-1292** – Town of Killingly, allowing garages as a primary use in in rural development and low-density-zones only.

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

- 1) **BY-LAWS** – Does the Commission want to schedule a time limit for meetings? Do they want to allow the meeting to continue for an additional hour, provided someone makes a motion at least 15 minutes prior to the scheduled closing of meeting? Review / discussion this meeting – any formal action to be taken on June 20, 2022.
- 2) **OPT OUT** – Accessory Dwelling Units State Statute vs. Secondary Dwelling Units Town of Killingly Zoning Regulations – prepare to opt out of the state statute requirements.

(*) Applications submitted prior to 5:00 PM on MONDAY, MAY 9, 2022, will be on the agenda as New Business, with a “date of receipt” of MONDAY, MAY 16, 2022, and may be scheduled for action during the next regularly scheduled meeting of **MONDAY, JUNE 20, 2022**.

(*) Applications submitted by 12:00 noon on FRIDAY, MAY 13, 2022, will be received by the Commission (“date of receipt”) on MONDAY, MAY 16, 2022. However, these applications may not be scheduled for action on MONDAY, JUNE 20, 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.

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

1) Regular Meeting Minutes – APRIL 18, 2022

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

1) Five Mile River Overlay District – staff review still in process

XIII. CORRESPONDENCE

XIV. 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

XV. ECONOMIC DEVELOPMENT DIRECTOR REPORT

XVI. TOWN COUNCIL LIAISON REPORT

XVII. ADJOURNMENT

VII. SET EFFECTIVE DATE FOR ZONE MAP CHANGE

1) **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.

Said Zone MAP Change was approved on Monday, April 18, 2022 – however, the commission must schedule an effective date for the Zone Map Change. Suggested effective date – Monday, June 13, 2022, at 12:01 am.

NOTE: THE HEARING ON THIS MATTER IS CLOSED, AND THE COMMISSION APPROVED THE ZONE CHANGE BY A SUPER MAJORITY VOTE OF 4 TO 1 - NO FURTHER DISCUSSION OF THE APPLICATION IS ALLOWED.

HOWEVER, THE COMMISSION MUST SET AN EFFECTIVE DATE FOR THE MAP CHANGE.

STAFF RECOMMENDS AN EFFECTIVE DATE OF MONDAY, JUNE 13, 2022, AT 12:01 AM. (as this follows the commission's standard procedure and allows for proper publication of the effective date)

VIII. PUBLIC HEARINGS & IX. UNFINISHED BUSINESS– (review / discussion / action)

1) **Spec Perm Ap #22-1282**; Jolley Commons, LLC (Applicant/Owner); 120 Wauregan Rd; GIS MAP 220, LOT 21; ~6.4 acres; Gen Comm Zone; excavation & removal of gravel products; under Sect 560, et seq (Earth Filling & Excavation); Sect 700 et seq (Spec Perm); & Sect 470 et Seq (Site Plan) of the TOK Zoning Regs.

APPLICANT(S):	Jolley Commons, LLC
LANDOWNER(S):	Jolley Commons, LLC
SUBJECT PROPERTY:	120 Wauregan Road
ASSESSOR’S INFO:	GIS MAP 220, LOT 21
ACREAGE:	~6.4 acres
ZONING DISTRICT:	General Commercial Zone
REQUEST:	Request for excavation and removal of gravel products
Zoning Regulations:	Town of Killingly Section 470 – Site Plan Section 560 – Earth Filling and Excavation Subsections 560.1(Intent to and including 560.9 (Approval Criteria) Article VII – Special Permits

NOTE: THIS IS A CONTINUATION FROM MONDAY, APRIL 18, 2022 - HEARING WAS NOT CLOSED – SO THE COMMISSION MEMBERS ARE FREE TO ASK THE APPLICANT FOR ANYMORE INFORMATION, ETC.

Documents -

- 1) Site Plans
 - 2) Aquifer Protection Area Maps
 - 3) Hydrologic Soil Group – Description
 - 4) Hydrologic Soil Group – Map
 - 5) Natural Diversity Data Base Areas Map
 - 6) Letter dated March 11, 2022 – from CT DOT – denial to work within the State right of way or perform work that may affect State property
- =====

Legal Notices

- 1) Legal Notice was posted in the Town Clerk’s Office on Thursday, March 31, 2022
- 2) Legal Notice was posted to the Town’s Website the same day
- 3) Legal Notice was published in the Norwich Bulletin on Monday 4/4/2022 & Monday 4/11/2022
- 4) A placard was posted at the site and was observed by the ZEO on Friday 4/8/2022

Secondary Legal Notices

- 1) Legal Notice posted in the Town Clerk’s Office on Thursday, April 21, 2022
- 2) Legal Notice posted to Town’s website same day

PZC MEETING MONDAY, APRIL 18, 2022 & MONDAY, MAY 16, 2022

- 3) Legal Notice published in the Norwich Bulletin on Monday 5/2/2022 and Monday 5/9/2022
- 4) Placard is at the site is observed by the ZEO.

Other Required Approvals

- 1) State of Connecticut DOT – right to work within the State right of way

Staff Comments

- 1) The real estate that is a subject of this application is located along Route 12 South (120 Wauregan Road), and is known as Jolley Commons
 - 2) Should be noted that railroad property abuts this property, and that it is an active freight train rail
 - 3) Staff has some concerns due to the location of the railroad – and the intensity of the gravel operation; and the site is tight
 - 4) Commission members should carefully read the Earth Filling and Excavation Section of the Town of Killingly Zoning Regulations as the requirements for such an operation are clearly stated in said section
 - 5) Commission Members on behalf of the general-public carefully go through the requirements during the time of the hearing
 - 6) As this is a special permit the Commission, if they decide to approve, may put conditions on the approval that would protect the general-public
-

Killingly Engineering Associates

Civil Engineering & Surveying

P.O. Box 421 Killingly, CT 06241
Phone: 860-779-7299
www.killinglyengineering.com



April 18, 2022

Mr. David Capacchione, P.E., Town Engineer
Town of Killingly Engineering Dept.
172 Main Street
Killingly, CT 06239

**RE: Proposed Gravel Excavation
120 Wauregan Road**

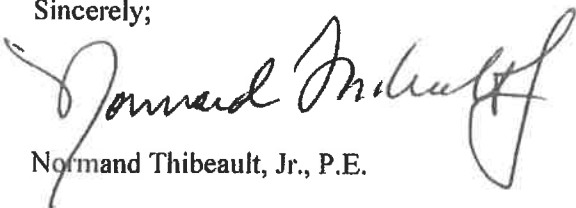
Dear Mr. Capacchione;

In response to review comments regarding the referenced project, we offer the following:

1. We have obtained approval from the CTDOT and their approval condition notes have been added to the plans. Specifically, CTDOT wanted the plans to specify that the access driveway would be removed, curb re-installed and the area restored. Additionally, the plans note that any future use of the site would require additional review from the CTDOT.
2. The anti-tracking construction entrance will be removed after completion of the excavation.
3. Pavement marking details are not required; the makings called out on the plans are existing.
4. A detail for the wood chip berm is shown on sheet 6 of the plans.
5. CTDOT has reviewed the plans and is not concerned about drainage into Route 12. The proposed haybales, silt fencing and berms will keep the minimal drainage from the well-drained soils contained on site.
6. Additional haybale check dams and haybale barriers have been shown on the plans.
7. A copy of the CTDOT approval is attached herein.

I trust that these changes have addressed your comments. Please feel free to contact me if there are any further questions.

Sincerely;



Normand Thibeault, Jr., P.E.

RECEIVED

APR 18 2022

PLANNING & ZONING DEPT.
TOWN OF KILLINGLY



STATE OF CONNECTICUT
DEPARTMENT OF TRANSPORTATION
DISTRICT II
171 Salem Turnpike
Norwich, Connecticut 06360
Phone:



April 12, 2022

Mr: Normand Thibeault, Jr., P.E.
Killingly Engineering Associates
P.O. Box 421
Dayville, CT 06360

Dear Mr. Thibeault:

Subject: Excavation Plan for Jolley Commons, LLC
Wauregan Road / Route 12
Town of Killingly

This office has completed our review of the submitted plans entitled, "Excavation Plan for Jolley Commons, LLC – Wauregan Road – Killingly, Connecticut" dated December 21, 2021, and last revised March 21, 2022. A final determination has been made and we find the proposal acceptable with two further comments at this time.

Comments:

1. Revise plans to show temp access will be removed, the curb is to be replaced, and the disturbed area will be restored.
2. Add a note to the plan set stating any future development of the site will require plans to be submitted to our office for review.

As regulated by Connecticut General Statute 13b-17, no work is to commence within the State right of way without first obtaining a DOT encroachment permit. In order to obtain the required encroachment permit, the following documents must be provided:


- Two complete sets of the latest plans (40 scale or larger).
- A completed encroachment permit application (State Form PMT-1 Rev. 5/91).
- A Bond on State Form CLA-5 in the amount of \$10,000 in the owner or developer's name.
- Proof of minimum insurance requirements (General Liability of \$1,000,000 and Aggregate of \$2,000,000). Insurance may be carried by the contractor.
- A check or money order in the amount of \$45 payable to "Treasurer – State of Connecticut."

These forms, along with additional information, may be obtained at www.ct.gov/dot.

This approval is valid for 3 years from the issue date of this letter.

If you have any questions in regard to this matter, please contact Mr. Gary Brigham of this office at (860) 823-3114, or by email at gary.brigham@ct.gov.

Sincerely,

For 
Carlos M. Wimberly
Special Services Section Manager
Bureau of Highway Operations

cc: Killingly Planning and Zoning

An Equal Opportunity Employer
Printed on recycled or recovered paper

AQUIFER PROTECTION AREAS

Killingly, CT

December 23, 2021

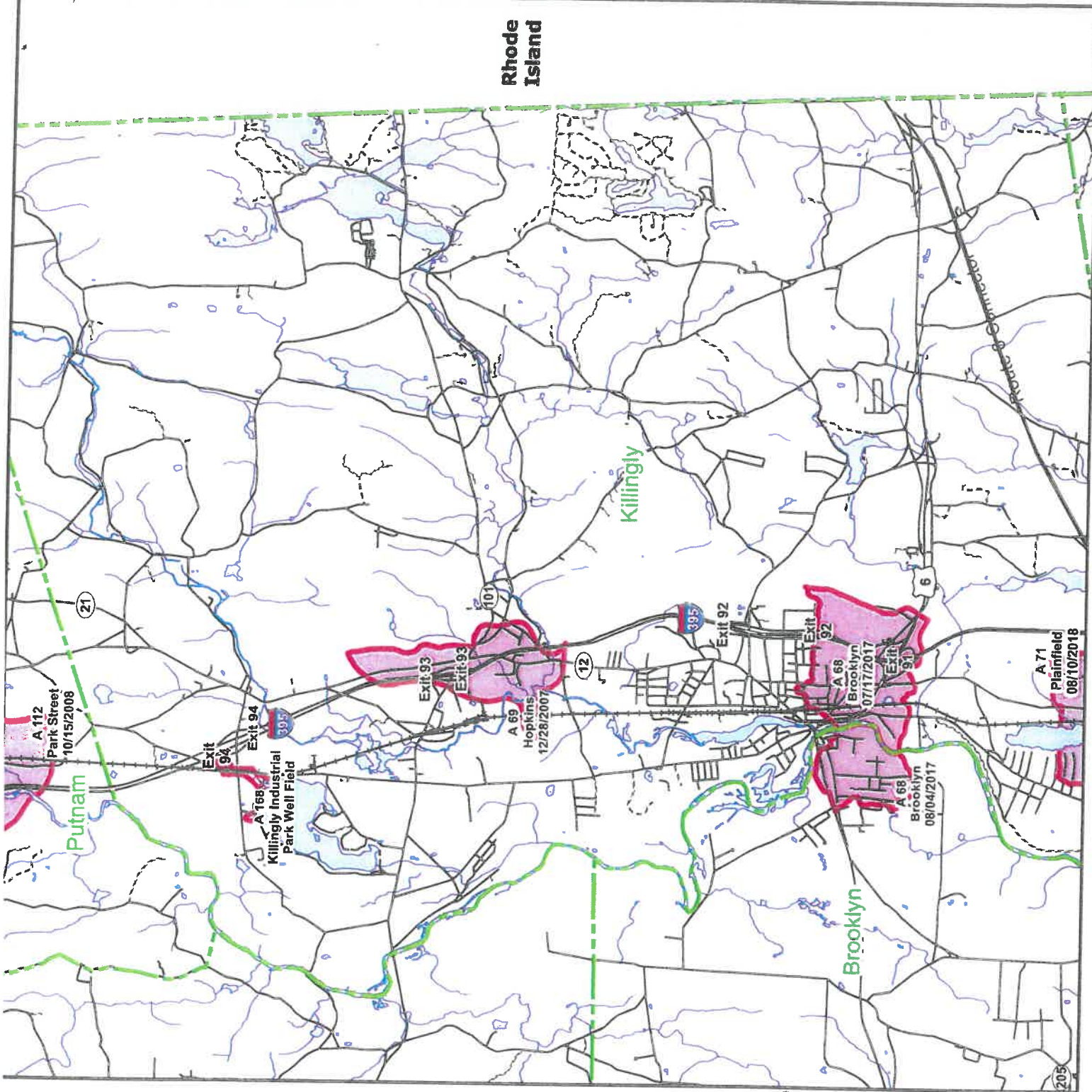
-  Level A APA (Final Adopted)
-  Level A APA (Final)
-  Level B APA (Preliminary)
-  Town Boundary

NOTE: The Aquifer Protection Areas were delineated through Connecticut's Level A and Level B Mapping Processes. Aquifer Protection Areas are delineated for active public water supply wells in stratified drift that serve more than 1000 people, in accordance with Sections 22a-354c and 22a-354z of the Connecticut General Statutes. Level B Mapping delineates a preliminary aquifer protection area, providing an estimate of the land area from which the well draws its water. Level A Mapping delineates the final Aquifer Protection Area, which becomes the regulatory boundary for land use controls designed to protect the well from contamination. As Level A Mapping is completed for each well field and approved by DEEP, it replaces the Level B Mapping. Final Adopted Level A Areas are those where towns have land use regulations for them. Massachusetts and Rhode Island Wellhead Protection Areas may be shown for informational purposes.

QUESTIONS:
 Bureau of Water Protection and Land Reuse
 Planning and Standards Division
 Phone: (860) 424-3020
www.ct.gov/deep/aquiferprotection



STATE OF CONNECTICUT
 DEPARTMENT OF
 ENERGY & ENVIRONMENTAL PROTECTION
 79 Elm Street
 Hartford, CT 06106-5127



Rhode Island

Description

Hydrologic soil groups are based on estimates of runoff potential. Soils are assigned to one of four groups according to the rate of water infiltration when the soils are not protected by vegetation, are thoroughly wet, and receive precipitation from long-duration storms.

The soils in the United States are assigned to four groups (A, B, C, and D) and three dual classes (A/D, B/D, and C/D). The groups are defined as follows:

Group A. Soils having a high infiltration rate (low runoff potential) when thoroughly wet. These consist mainly of deep, well drained to excessively drained sands or gravelly sands. These soils have a high rate of water transmission.

Group B. Soils having a moderate infiltration rate when thoroughly wet. These consist chiefly of moderately deep or deep, moderately well drained or well drained soils that have moderately fine texture to moderately coarse texture. These soils have a moderate rate of water transmission.

Group C. Soils having a slow infiltration rate when thoroughly wet. These consist chiefly of soils having a layer that impedes the downward movement of water or soils of moderately fine texture or fine texture. These soils have a slow rate of water transmission.

Group D. Soils having a very slow infiltration rate (high runoff potential) when thoroughly wet. These consist chiefly of clays that have a high shrink-swell potential, soils that have a high water table, soils that have a claypan or clay layer at or near the surface, and soils that are shallow over nearly impervious material. These soils have a very slow rate of water transmission.

If a soil is assigned to a dual hydrologic group (A/D, B/D, or C/D), the first letter is for drained areas and the second is for undrained areas. Only the soils that in their natural condition are in group D are assigned to dual classes.

Rating Options

Aggregation Method: Dominant Condition


















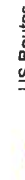
















Component Percent Cutoff: None Specified

Tie-break Rule: Higher

Hydrologic Soil Group

Map unit symbol	Map unit name	Rating	Acres in AOI	Percent of AOI
29A	Agawam fine sandy loam, 0 to 3 percent slopes	B	0.5	12.9%
38C	Hinckley loamy sand, 3 to 15 percent slopes	A	2.5	62.0%
38E	Hinckley loamy sand, 15 to 45 percent slopes	A	1.0	24.9%
306	Udorthents-Urban land complex	B	0.0	0.1%
Totals for Area of Interest			4.0	100.0%

MAP LEGEND

 Area of Interest (AOI)	 C
 Soils	 C/D
 Soil Rating Polygons	 D
 A	 Not rated or not available
 A/D	Water Features
 B	 Streams and Canals
 B/D	Transportation
 C	 Rails
 C/D	 Interstate Highways
 D	 US Routes
 Not rated or not available	 Major Roads
Soil Rating Lines	 Local Roads
 A	Background
 A/D	 Aerial Photography
 B	
 B/D	
 C	
 C/D	
 D	
 Not rated or not available	
Soil Rating Points	
 A	
 A/D	
 B	
 B/D	

MAP INFORMATION

The soil surveys that comprise your AOI were mapped at 1:12,000.

Warning: Soil Map may not be valid at this scale.

Enlargement of maps beyond the scale of mapping can cause misunderstanding of the detail of mapping and accuracy of soil line placement. The maps do not show the small areas of contrasting soils that could have been shown at a more detailed scale.

Please rely on the bar scale on each map sheet for map measurements.

Source of Map: Natural Resources Conservation Service
Web Soil Survey URL:
Coordinate System: Web Mercator (EPSG:3857)

Maps from the Web Soil Survey are based on the Web Mercator projection, which preserves direction and shape but distorts distance and area. A projection that preserves area, such as the Albers equal-area conic projection, should be used if more accurate calculations of distance or area are required.

This product is generated from the USDA-NRCS certified data as of the version date(s) listed below.

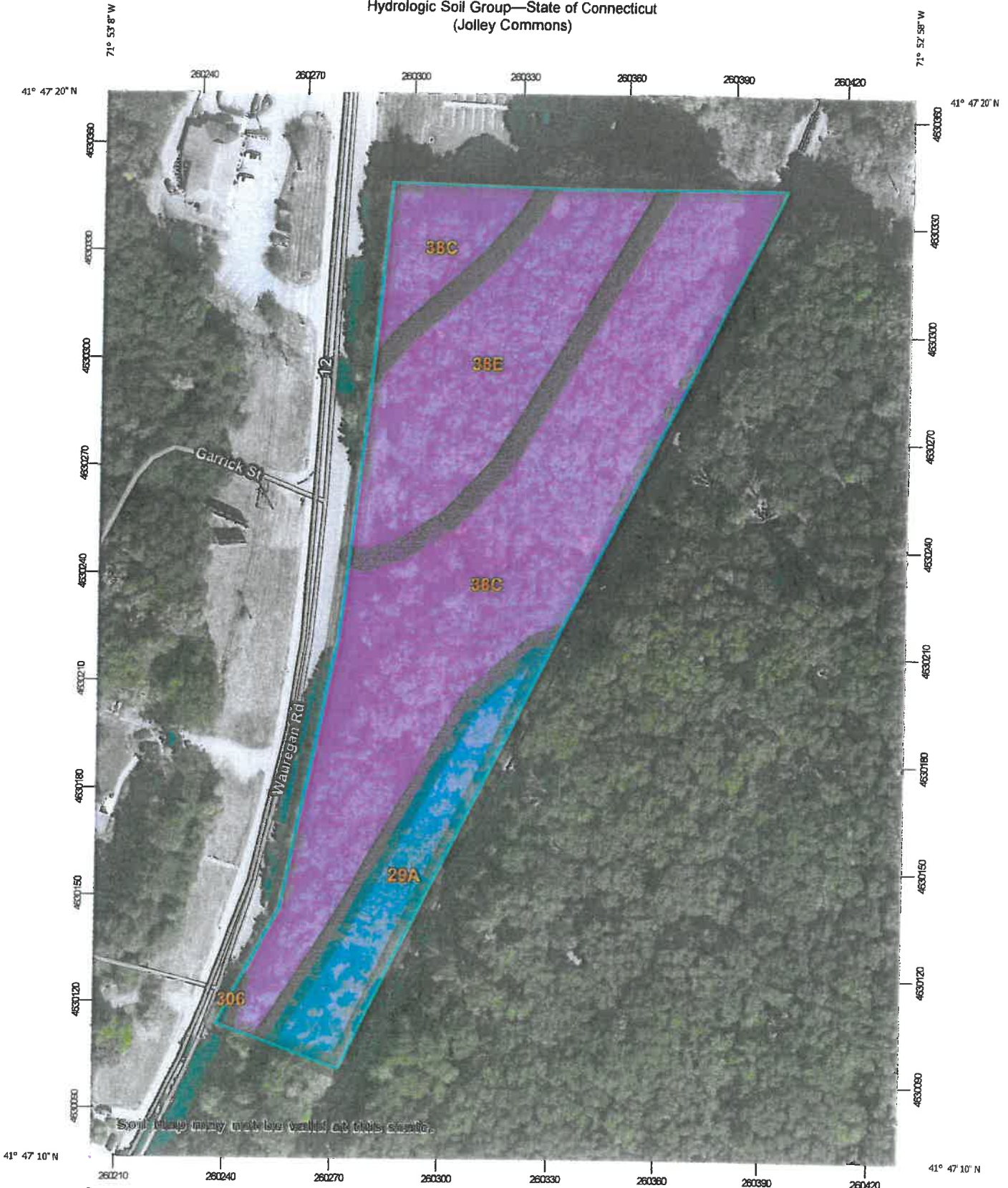
Soil Survey Area: State of Connecticut
Survey Area Data: Version 21, Sep 7, 2021

Soil map units are labeled (as space allows) for map scales 1:50,000 or larger.

Date(s) aerial images were photographed: Sep 16, 2020—Oct 1, 2020

The orthophoto or other base map on which the soil lines were compiled and digitized probably differs from the background imagery displayed on these maps. As a result, some minor shifting of map unit boundaries may be evident.

Hydrologic Soil Group—State of Connecticut
(Jolley Commons)



Map Scale: 1:1,450 if printed on A portrait (8.5" x 11") sheet.



Map projection: Web Mercator Corner coordinates: WGS84 Edge tics: UTM Zone 19N WGS84

Natural Diversity Data Base Areas

KILLINGLY, CT

December 2021

-  State and Federal Listed Species
-  Critical Habitat
-  Town Boundary

NOTE: This map shows general locations of State and Federal Listed Species and Critical Habitats. Information on listed species is collected and compiled by the Natural Diversity Data Base (NDDDB) from a variety of data sources. Exact locations of species have been buffered to produce the generalized locations.

This map is intended for use as a preliminary screening tool for conducting a Natural Diversity Data Base Review Request. To use the map, locate the project boundaries and any additional affected areas if the project is within a hatched area there may be a potential conflict with a listed species. For more information, complete a Request for Natural Diversity Data Base State Listed Species Review form (DEP-APP-007), and submit it to the NDDDB along with the required maps and information. More detailed instructions are provided with the request form on our website.

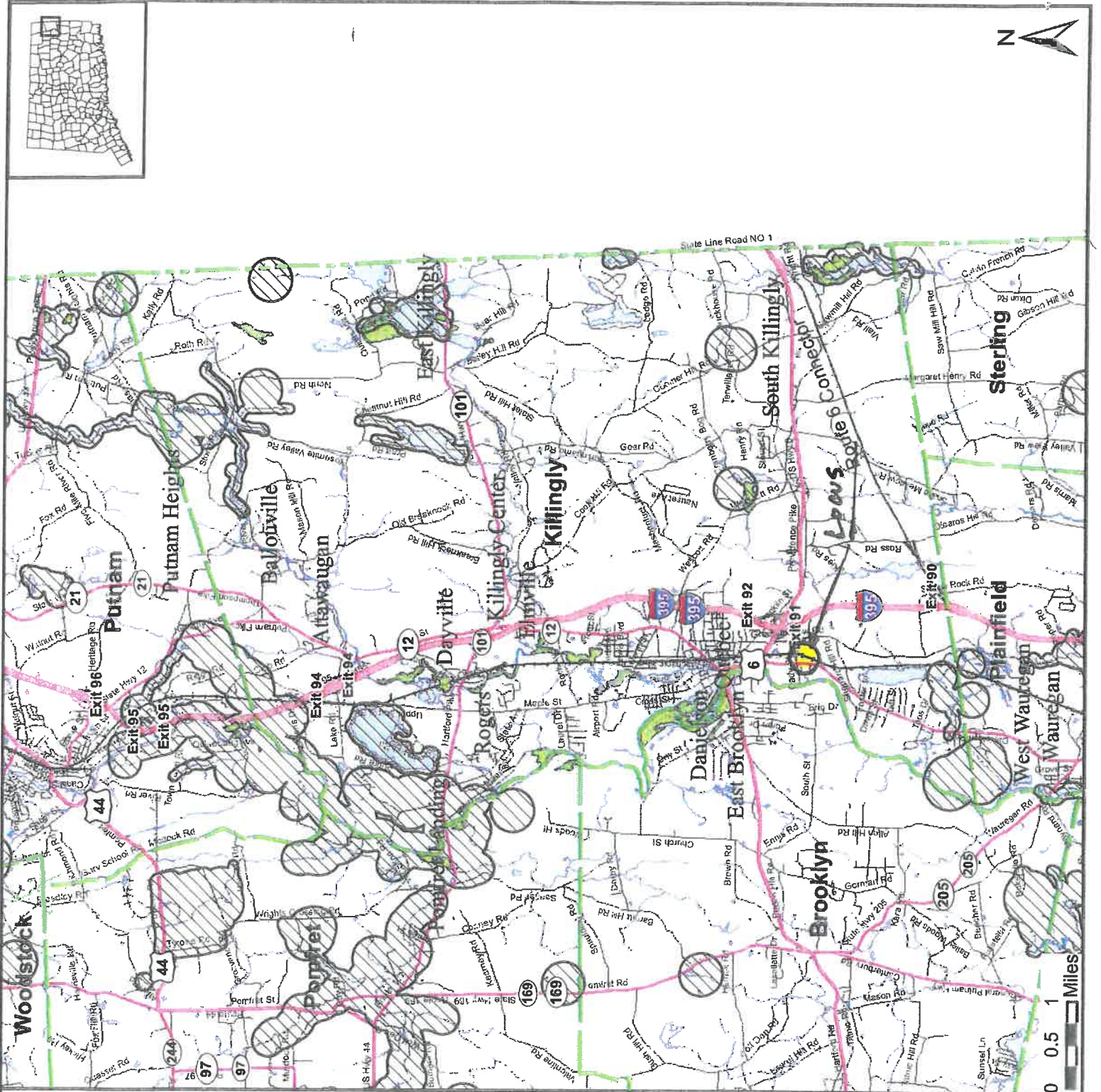
www.ct.gov/deep/nddbrequest

Use the CTECO Interactive Map Viewers at <http://cteco.uconn.edu> to more precisely search for and locate a site and to view aerial imagery with NDDDB Areas.

QUESTIONS: Department of Energy and Environmental Protection (DEEP)
79 Elm St, Hartford, CT 06106
email: deep.nddbrequest@ct.gov
Phone: (860) 424-3011



Connecticut Department of
Energy & Environmental Protection
Bureau of Natural Resources
Wildlife Division





STATE OF CONNECTICUT
DEPARTMENT OF TRANSPORTATION

DISTRICT II
171 Salem Turnpike
Norwich, Connecticut 06360
Phone:



~~March 11, 2022~~

Mr. Normand Thibeault, Jr., P.E.
Killingly Engineering Associates
P.O. Box 421
Dayville, CT 06360

Dear Mr. Thibeault:

Subject: ~~Excavation Plan for Jolley Commons, LLC~~
~~Waurogon Road / Route 12~~
Town of Killingly

The Department of Transportation (Department) has reviewed your latest plans for the above-noted subject received February 16, 2022, entitled, "Excavation Plan for Jolley Commons, LLC" dated December 21, 2021.

~~Your submittal/application to work within the State right of way or perform work that may affect State property is denied based on the following comments:~~

1. The 85% speeds in this area are 49 MPH; therefore, sightlines of 545' are required.
2. Provide a STOP sign at proposed temporary drive.

When you resubmit, please provide two sets of plans, 40 scale or larger, reflecting the above-noted comments.

Please note that any resubmission may generate additional comments and concerns and in no way guarantees the issuance of an encroachment permit. An encroachment permit must be obtained prior to performing any work within or affecting the highway right of way.

If you have any questions in regard to this matter, please contact Mr. Gary Brigham of this office at (860) 823-3114, or by email at gary.brigham@ct.gov.

Sincerely,

Carlos M. Wimberly
Special Services Section Manager
Bureau of Highway Operations

cc: Killingly Planning and Zoning

RECEIVED
MAR 17 2022

TOWN OF KILLINGLY
BUILDING DEPARTMENT

Good afternoon,

We live directly across from this proposed project and have some concerns. Unfortunately, we are unavailable to attend this meeting in person. We plan to attend through Facebook Live, however, technology sometimes fails us and, if that happens, we want our comments noted and addressed.

This hill that is going to be taken down and leveled is directly across from our driveway. We have concerns about the effect of erosion and the resulting effect on our driveway, shed, and yard. When our driveway was installed, the state told us that if we ever have any excessive runoff issues, they would be responsible and would address it. Is Jolley's going to be as responsible? We would like to have this issue addressed.

Taking out all this gravel is going to create a lot of dust and airborne debris. We spend a lot of time outdoors and garden organically. The plans state that the ground will be wet down occasionally. Is that going to be a strong enough measure to deal with the dust and airborne debris that is going to be released? We would like to have this issue addressed.

Route 12 is very busy. Most people travel way over the 45-mph speed limit. There was a bus accident right in front of our driveway when my older daughter was in high school, several deer have been hit and left right in front of our driveway, and a person traveling too fast rammed into our mailbox and took it out. When our new driveway was installed, the state was concerned about visibility and had to conduct a test to see if it was safe to even be installed. We have to say, most days we leave our driveway quickly because as soon as we exit, someone is right behind us traveling way too fast. Where is the entrance/exit going to be? If it's directly in front of our driveway, we have concerns about accidents and safely entering/leaving our property. We would like to have this issue addressed.

Also, what is going to be done with the leveled property after the gravel removal is completed? We assume they will be adding onto Jolley Commons. If that is the case, will you be blasting for a foundation? We have a well adjacent to Route 12 and we don't want it harmed in any way. We also have an 86-year-old foundation on our house that is solid and never leaks; our cellar is bone dry year round and we'd like to keep it that way. We would like to have this issue addressed.

We have lived here for almost 20 years. We are tax-paying law-abiding citizens that maintain a beautiful property, always improving our lot, and deserve respect. We have nothing against Jolley Concrete – we've even bought product from them in the past. But we want these concerns addressed.

Sincerely,

Charles and Jaucqueta Santerre
147 Wauregan Rd.,
Danielson, CT 06239

RECEIVED

APR 18 2022

PLANNING & ZONING DEPT.
TOWN OF KILLINGLY

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

2) **Zone TEXT Change Ap # 22-1287** – Town of Killingly, special permitted use under Business Park, General Commercial, Light Industrial, Mill Mixed Use and Mixed-Use Interchange Zones for the creation of cannabis establishments

APPLICANT(S):	Town of Killingly
LANDOWNER(S):	D/N/A
SUBJECT PROPERTY:	D/N/A
ASSESSOR’S INFO:	D/N/A
ACREAGE AMOUNT:	D/N/A
ZONING DISTRICT:	Business Park, General Commercial, Light Industrial, Mill Mixed Use, and Mixed-Use Interchange Zone
REQUEST:	The creation of cannabis establishments by special permit only.
REGULATIONS:	ARTICLE IX – Section 900

Documents Attached

1) Draft copy of the proposed cannabis establishment regulations

Legal Notices

- 1) Legal Notice was sent to NECCOG via email.
 - 2) Memorandum of proposed zone text change posted in Town Clerk’s Office April 21, 2022
 - 3) Legal Notice posted in Town Clerk’s Office on April 21, 2022
 - 4) Legal Notice published in Norwich Bulletin on Monday, 5/2/2022 and Monday, 5/9/2022
-

STAFF COMMENTS AND SUGGESTIONS

- 1) Staff has received some comments regarding the 200-foot buffer zone from an abutting residential district and will discuss those comments with commission members during the public hearing.
- 2) The proposed regulations are the same regulations that the commission has previously discussed during their workshop.
- 3) If the commission does approve this zone text change, then the commission must state an effective date for the zone text change – **staff recommends an effective date of Monday, June 13, 2022, at 12:01 am.**
- 4) If the commission does approve this zone text change, then the commission must also make a motion to end the moratorium on cannabis establishments – **staff recommends that the moratorium be lifted (become null and void) at the end of business on Friday, June 10, 2022, at 1:00 pm.**

Cannabis Establishment

Add Section xxx.x.x under Special Permitted Uses in the Borough Central Business District, Borough General Commercial, Business Park, General Commercial, Light Industrial, Industrial, Mill Mixed Use and Mixed-Use Interchange Zones.

x. Cannabis Establishment

The purpose of these Zoning Regulation is to regulate the location and operation of cannabis sales, cultivation, or production in accordance with SB 1201 – An Act Concerning Responsible and Equitable Regulation of Adult-Use Cannabis and Connecticut General Statute 420f – Palliative Use of Marijuana, as amended from time to time.

1. Separation requirements
 - a. The cannabis establishment shall not be within a five hundred (500) foot radius of any part of any building or structure used for the purpose of a school, house of worship, library, public playground, Town parks and recreation facilities, daycare centers/nurseries, municipal building, or Board of Education facility open to the public, as measured from entrance of the above use (for parks or similar outdoor uses it is from the property line) to the entrance of the proposed cannabis establishment.
 - b. A two hundred (200') foot buffer zone shall be required when abutting a residential district, as measured from the property line.
2. The application must include the following:
 - a. The map identifying all the locations of all above referenced uses within five hundred (500') feet of the proposed cannabis establishment.
 - b. Noise abatement methods used, if necessary.
 - c. Odor controls used, if necessary.
 - d. Security methods implemented.
 - e. Water consumption estimates and handling of wastewaters.
 - f. Exterior lighting and signage; all exterior lighting shall be night sky compliant.
 - g. Emergency power; location of generators, if necessary.
3. No cannabis establishment shall be allowed within the same building, structure, or portion thereof that is used for residential purposes. In the mixed use zones the cannabis establishment should be in a separate building from any residential uses on that property.
4. All cannabis establishments shall have an adequate security system to prevent and detect diversion, theft, or loss of cannabis, utilizing commercial grade equipment meeting at least the minimum requirements of the Department of Consumer Protection Title 21a – Consumer Protection Section 21a-408-62.
5. The production and/or storage of cannabis shall be conducted indoors.
6. Hours of operation for any retail component, shall be limited to between 9 am to 9 pm, Monday through Saturday and between 10 am to 6 pm, Sunday.
7. Copy of all State Permitting must be on file with the Town of Killingly Planning Office and displayed within the Cannabis Establishment.

Disclaimer: Marijuana, whether medical or recreational, continues to be listed on Schedule I of the U.S. Controlled Substances Act (CSA) and is therefore still illegal under federal law. Any applications for cannabis dispensaries and/or production facilities are done under SB1201 and Connecticut General Statute 420f and at total risk of the applicant.

Definitions add for purpose of this regulation

Cannabis – Marijuana as defined in Section 21a-240, CGS.

Cannabis Establishment – Producer, dispensary facility, cultivator, micro-cultivator, retailer, hybrid retailer, food and beverage manufacturer, product manufacturer, product packager and or delivery service.

Cultivator – A person that is licensed to engage in the cultivation, growing and propagation of the cannabis plant at an establishment with not less than fifteen thousand (15,000) square feet of grow space.

Delivery Service – A person that is licensed to deliver cannabis from (A) micro-cultivators, retailers, and hybrid retailers to consumers and research program subjects, and (B) hybrid retailers and dispensary facilities to qualifying patients, caregivers, and research program subjects, as defined in Section 21a-408, C.G.S., or to hospices or other inpatient care facilities licensed by the Department of Public Health pursuant to Chapter 368v, C.G.S. that have a protocol for the handling and distribution of cannabis that has been approved by the department, or a combination thereof.

Dispensary Facility – Means a place of business where cannabis may be dispensed, sold, or distributed in accordance with Chapter 420f, C.G.S. and any regulations adopted thereunder, to qualifying patients and caregivers, and to which the department has issued a dispensary facility license under Chapter 420f, C.G.S. and any regulations adopted thereunder.

Food and Beverage Manufacturer – A person that is licensed to own and operate a place of business that acquires cannabis and creates food and beverages.

Hybrid Retailer – A person that is licensed to purchase cannabis and sell cannabis and medical marijuana products.

Micro-cultivator – A person licensed to engage in the cultivation, growing and propagation of the cannabis plant at an establishment containing not less than two thousand (2,000) square feet and not more than ten thousand (10,000) square feet of grow space, prior to any expansion authorized by the commissioner.

Person – An individual, partnership, limited liability company, society, association, joint stock company, corporation, estate, receiver, trustee, assignee, referee or any other legal entity and any other person acting in a fiduciary or representative capacity, whether appointed by a court or otherwise, and any combination thereof.

Product Manufacturer – A person, excluding a producer, that is licensed to obtain cannabis, extract and manufacture products exclusive to such license type and who may sell or transfer cannabis and cannabis products to laboratories, research programs and cannabis establishments.

Produce Packager – A person that is licensed to package and label cannabis and cannabis products.

Producer – Grows cannabis for medicinal use.

Retailer – A person, excluding a dispensary facility that is licensed to purchase cannabis and cannabis products from producers, cultivators, product manufacturers and food and beverage manufacturers and to sell cannabis and cannabis products to consumers and research programs.

Transporter – Means a person licensed to transport cannabis between cannabis establishments, laboratories, and research programs.

Add Definition to Section 310

School – Any building or part thereof or accessory facilities there to which is designed and constructed to provide full time instruction and education, associated with a program of study which meets the requirements of the educational laws of the State of Connecticut. Includes public, private, charter, and parochial schools, at the primary (day-care & kindergarten), elementary, middle school and high school levels; excludes home schools. For the purposes of these regulations home schools are still considered a private residence.

*****Notes*****

Another consideration is for a cannabis establishment that is exclusively an indoor grow facility, be allowed by Special Permit in the Rural Development Zone. Provided the property is a min. of ten (10) acres and all buffering & conditions stated above. Systems must be in place to prevent odor.

Currently only the retail and micro cultivator license types under Cannabis Establishments the Town of Killingly is capped at one (1) of each license type. (1 – 25,000 residents allow for one (1) of each type per the State of Connecticut and current State law for the municipality). There is currently no cap on other license types that are also considered Cannabis Establishments under the law in each municipality. There is pending legislation that proposes eliminating the cap or changing the ratio of number of residents per license type issued.

Upon passage of this text amendment, Section 640 – Temporary and Limited Moratorium on Cannabis Establishments, will be lifted and removed from the Town of Killingly and Borough of Danielson Zoning Regulations.

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

3) **Special Permit Ap # 22-1289** – Dayville Four Corners, LLC (Applicant/Owner); 730 (736) Hartford Turnpike, GIS MAP 115, LOT 6, General Commercial Zone, ~7.07 acres, request use of existing space in building for liquor, beer & wine sales, under TOK Zoning Regs under 420.2.1(a) with reference to 420.1.2(i).

APPLICANT(S): Dayville Four Corners, LLC.
LANDOWNER(S): Same
SUBJECT PROPERTY: 736 Hartford Pike
ASSESSOR’S INFO: GIS MAP 115, LOT 6
ACREAGE AMOUNT: ~7.07 acres
ZONING DISTRICT: General Commercial
REQUEST: Special Permit for a Liquor Store
REGULATIONS: Section 420.2.1(a) with reference to 420.1.2(i)
Special Permit – Article VII.
Site Plan – Section 470

Documents Attached

- 1) Letter dated May 10, 2022, from MidPoint Engineering & Consulting
 - 2) Letter dated November 2, 2016, from MidPoint Engineering & Consulting (referred to in 5/10/2022 letter)
 - 3) Compilation Plan – showing an overview of the shopping plaza
 - 4) Interior layout of the proposed “liquor store unit”
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Legal Notices

- 1) Legal Notice posted in Town Clerk’s Office on April 21, 2022
 - 2) Legal Notice published in Norwich Bulletin on Monday, 5/2/2022 and Monday, 5/9/2022
 - 3) Placard posted at the site as witnessed by the ZEO
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STAFF COMMENTS AND SUGGESTIONS

- 1) That the commission review the regulations listed above, and verify that the applicant has met all those standards,
- 2) That the commission listen to the testimony being given by the applicant and others,
- 3) Staff does not see an issue with a liquor store at this site; however, the State will make the final determination if this site qualifies for a liquor sales license,

May 10, 2022

Ann-Marie Aubrey
Director of Planning & Development
Town of Killingly, Connecticut
172 Main Street
Danielson, CT 06239

RE: Dayville Four Corners Shopping Center, 710-736 Hartford Pike

MidPoint Engineering + Consulting, on behalf of our Client, Dayville Four Corners, LLC, is pleased to submit this letter in support of the special permit application for proposed liquor sales use at the Dayville Four Corners shopping center. The proposed use will occupy the easterly portion of the existing building. This space was previously occupied by "Halloween Spirit" on a seasonal basis and was a portion of the building that was originally occupied by "Beit Brothers" supermarket. The Town has assigned an address of 736 Hartford Pike for this unit.

A preliminary floor plan has been attached to the application which shows, in general, the configuration of the existing space. The proposed liquor use does not have a final floor plan, however, it is expected that no more than 80 percent of the floor area will be dedicated to retail sales. Other space will be used for storage. No improvements are proposed outside the building footprint.

MidPoint completed the attached parking analysis as part of the site plan approval process for the Harbor Freight store also located within the building. The proposed liquor store use agrees with that analysis and thus parking for the center would remain compliant with zoning regulations.

Please contact me at (508) 721-1900 or via email at pdoherty@midpointengineering.com if you need any additional information.

Sincerely,

MidPoint Engineering + Consulting, LLC



Patrick P. Doherty, PE, LEED AP
Principal

cc Michael O'Brien

November 2, 2016

Ann-Marie Aubrey
Director of Planning & Development
Town of Killingly, Connecticut
172 Main Street
Danielson, CT 06239

RE: Four Corners Plaza, Dayville, CT – Harbor Freight Tools

MidPoint Engineering + Consulting (MidPoint), has performed an analysis of parking requirements in support of re-tenanting a portion of the existing Four Corners Plaza building located at 730 Hartford Turnpike (Rte. 101) in Dayville, Connecticut. The existing building pre-dates current zoning regulations and thus does not contain a sufficient number of parking spaces to meet the calculated ratios in the regulations. Section 530 of the Zoning Regulations states that " If any existing use of land or structure is changed to a use requiring additional spaces to comply with this Section, such additional spaces shall be provided for the new use in accordance with the standards hereinafter specified."

This analysis has been performed based on the premise that the site will be in compliance with zoning regulations should the calculated number of spaces of the reconfigured building be less than or equal to the calculated number of spaces of the original configuration of the building.

The original building contained two uses which had areas dedicated to retail sales and storage. A large mezzanine for storage was located in the western portion of the building adding to the total square footage. A previous consultant of the Owner, Vanasse Hangen Brustlin, Inc. (VHB), calculated that the total required parking for the original configuration of the building was 382 spaces.

The configuration of space within the original building has changed and there are now six (6) demised spaces. Planet Fitness, Salvation Army, ALDI and Dollar Tree operate in four (4) of the demised spaces, two spaces are currently vacant.

Dayville Four Corners, LLC is seeking approval to allow Harbor Freight Tools retail store to occupy vacant Space E shown on Landlord Plan A-1 dated 2/8/16. Space H shown on this plan will remain vacant.

MidPoint Engineering + Consulting calculated the number of parking spaces required for the reconfigured building. The calculations considered the existing retail users, Harbor Freight Tools and assumed that the remaining vacant space will be occupied by a retail use tenant with 20 percent of the area dedicated non sales area.

The attached spreadsheet shows that the required number of parking spaces for the reconfigured building is 371 spaces. This total is less than the required parking of the original building which is 383 spaces. Occupancy of Space E by Harbor Freight Tools will therefore be

in compliance with the parking requirements of the Zoning Regulations. Additionally, future occupancy of the remaining vacant space within the building by retail tenants will be in compliance with the regulations.

If you have any question or require any additional information, please contact Patrick Doherty at (508) 721-1900 or via email at pdoherty@midpointengineering.com.

Sincerely,

MidPoint Engineering + Consulting

A handwritten signature in black ink, appearing to read "Pat P. Doherty", with a long horizontal flourish extending to the right.

Patrick P. Doherty, PE, LEED AP
Principal



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

4) **Special Permit Ap# 22-1291** – Melting Point Welding & Fabrication, LLC (Weld, LLC / Owner), 543 Wauregan Road, GIS MAP 262, LOT 20, Light Industrial, ~2.1 acres; to conduct manufacturing activities pursuant to TOK Zoning Regs. Sec. 430.2.2(b).

APPLICANT(S): Melting Point Welding & Fabrication, Inc.
LANDOWNER(S): Weld, LLC
SUBJECT PROPERTY: 543 Wauregan Road
ASSESSOR'S INFO: GIS MAP 262, LOT 20
ACREAGE AMOUNT: ~2.1 acres
ZONING DISTRICT: Light Industrial
REQUEST: to conduct manufacturing activities
REGULATIONS: Section – 430.2.2(b)
Special Permit – Article VII.
Site Plan – Section 470

Documents Attached

- 1) Application with fee
 - 2) Letter dated April 11, 2022, from Attorney Timothy Bleasdale – explains application
 - 3) Exhibit 1 – Deed
 - 4) Exhibit 2 – General Information regarding applicant
 - 5) Exhibit 3 – General Floor plan
 - 6) Exhibit 4 – Letters from supporters of applicant
 - 7) Exhibit 5 – DEEP aquifer protection area map
 - 8) Exhibit 6 – Print from TOK GIS Map
 - 9) Exhibit 7 – Map showing abutting landowners
-
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Legal Notices

- 1) Legal Notice posted in Town Clerk's Office on April 21, 2022
 - 2) Legal Notice published in Norwich Bulletin on Monday, 5/2/2022 and Monday, 5/9/2022
 - 3) Placard posted at the site as witnessed by the ZEO
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STAFF COMMENTS AND SUGGESTIONS

- 1) That the commission review the regulations listed above, and verify that the applicant has met all those standards,
- 2) That the commission listen to the testimony being given by the applicant and others,

Office Use Only

Application #:	22-1291
Date Submitted:	4-11-2022
Received By:	AMA
Fee:	585 chr
Date Rec'd by Commission/Board:	4-18-22

APPLICATION TYPE:

- Site Plan Review
- Special Permit
- Subdivision
- Zone Text Change
- Zone Map Change
- Zoning Board of Appeals

TO BE COMPLETED BY THE APPLICANT -- PLEASE PRINT

Applicant's Name:	Melting Point Welding & Fabrication, INC
Mailing Address:	954 Norwich Road, Plainfield, CT 06374
Day Phone:	Atty Tim Bleasdale 860-442-0367
Landowner:	Weld, LLC
Mailing Address:	594 Norwich Road, Plainfield, CT 06374
Day Phone:	Atty Tim Bleasdale 860-442-0367

LOCATION OF PROPERTY

Address:	543 Wauregan Road
GIS #	4088
Lot:	202
Zoning District:	LI
Lot Size:	~2.1 acres
Frontage:	~219' on Wauregan ~329' on Ludovanne

INTENT OF APPLICATION / PROPOSED ACTIVITY

Description:

Please see attached letter from agent Attorney Timothy D. Bleasdale, of Waller, Smith & Palmer, P.C. Attorney Bleasdale should be the Commission's primary point of contact at either tbleasdale@wallersmithpalmer.com or 860-442-0367.

ZONING BOARD OF APPEALS APPLICATIONS ONLY

- A variance in the application of the Zoning Regulations is requested.
- There is an error in an order, requirement or decision made by the Zoning Enforcement Officer (Appeal).
- Other (Specify Above).


Signature of Applicant

4/7/2022
Date


Signature of Owner (if different from Applicant)

4/7/2022
Date



**WALLER
SMITH &
PALMER**^{PC}
Attorneys at Law

EDWARD B. O'CONNELL
TRACY M. COLLINS*
PHILIP M. JOHNSTONE+
CHARLES C. ANDERSON
KERIN M. WOODS+
ELLEN C. BROWN*
MARK S. ZAMARKA
CATHERINE A. MARRION
TIMOTHY D. BLEASDALE

April 11, 2022

Planning and Zoning Commission
Killingly Town Hall
172 Main Street
Killingly, CT 06239

OF COUNSEL:
ROBERT W. MARRION
ROBERT P. ANDERSON, JR
FREDERICK B. GAHAGAN

+ ALSO ADMITTED IN RI
*ALSO ADMITTED IN MA

RE: Special Permit Application of Melting Point Welding & Fabrication, LLC
Property Location: 543 Wauregan Road

Dear Commissioners,

This office represents the Melting Point Welding & Fabrication, LLC regarding its site plan and special permit application to use the property located at 543 Wauregan Road for manufacturing under Sec. 430.2.2.b. of the Zoning Regulations ("Regulations"). Our office also represents the owner of the subject property, Weld, LLC. We last appeared before the Commission in December at which time the Commission granted Weld, LLC's application to rezone the property to the Light Industrial ("LI") District, which has allowed us to proceed on the present application.

The requirement for a special permit in this case is triggered by the square footage of the building we propose to use. Sec. 430.2.2.b. provides that any of the as of right use permitted by Sec. 430.2.1 are allowed by special permit where the use exceeds 15,000 square feet in floor area. Here, we propose to engage in manufacturing of miscellaneous metal products, which is allowable under Sec. 430.2.1, and the structure we propose to use is approximately 22,000 square feet. We therefore are submitting the present application for a special permit to conduct manufacturing activities pursuant to Sec. 430.2.2.b.

The Proposed Use

The applicant, Melting Point Welding & Fabrication, LLC ("Melting Point"), is presently located in Plainfield, and this application is intended to allow it to relocate its business to 543 Wauregan Road, Killingly. Melting Point is engaged in the fabrication or manufacturing of welded metal products, such as wrought iron staircases and railings. The Regulations classify such activities as a manufacturing use, which is permissible in the LI District pursuant to Sec. 430.2.2.b.

Melting Point's hours of operation generally vary by the requirements of a particular job, however, the general proposed hours of operation are as follows:

- Office Hours: 7:30 a.m. to 5 p.m., Monday - Friday
- Workshop Hours: 6 a.m. to 2:30 p.m., Monday - Friday
- Field Hours (off site): 7 a.m. to 4:30 p.m.
- Weekend hours limited to owner performing office work and smaller equipment and vehicle maintenance tasks. No employees work in the shop on the weekends.

Presently, Melting Point has 15 employees, including 3 office employees, 5 workshop employees, and 7 field work employees. The total number of employees fluctuates according to business demands; however, the applicant estimates that it is not likely to increase its total number of employees beyond 25 in the future. Any such additional employees would be a mixture of on-site workshop employees and off-site field work employees. Also working on site are: the owner/president of Melting Point, Brian Caya, and Melting Point's vice president, Joanna Burgess. Field work employees primarily work off site, but will come to the property to collect products, materials, tools, etc. for transport to and use at off-site work locations. Beyond the listed employees who work on-site, the business does not generate traffic in that it is not open to the general public and will not routinely have customers coming and going from the property.

Melting Point's present operations generate a small amount of additional commercial traffic in the form of deliveries. Off loading of the below identified deliveries typically takes less than 20 minutes and, when necessary, employs the use of an overhead crane or forklift. While subject to change as business requires, deliveries are typically:

- Steel delivery as needed, but generally one to three deliveries per week. Some weeks there are no steel deliveries.
- Consumables delivery once per week
- UPS/FedEx type deliveries once per day.

The applicant is not proposing any outdoor storage. From time to time, the applicant anticipates that finished products may be loaded on trailers that will wait outside in the parking lot to be hauled to a work site, however, any such waiting time is anticipated to be less than 24 hours in most cases and would be screened from neighboring properties by the vegetative buffer the applicant is proposing to create along Wauregan Road and Lucienne Avenue.

For additional general information regarding Melting Point and to see photographs of examples of its work products, please see Exhibit 2 attached hereto.

The Property – 543 Wauregan Road

The subject of this application is the property located at 543 Wauregan Road. See Exhibit 1 attached to this letter for the deed with the legal description of the property. The property is approximately 2.1 acres and has frontage on both Lucienne Avenue and Wauregan Road. It was recently rezoned from the GC District to the LI

District on the application of its owner, Weld, LLC, in order to make the present application possible.

The site is fully developed being occupied by an approximately 22,000 square foot building and an associated parking lot containing in excess of 80 parking spaces. It is served by a private well and septic system. The existing improvements were approved by the Commission when they were originally constructed. The property is the former site of a Benny's store, and it is the applicant's understanding that the site has been unoccupied and underutilized since sometime in late 2017. This application presents an opportunity to revitalize the property and return it to productive economic use.

The present application proposes to reuse the existing site improvements rather than remove them and construct new buildings, parking areas, or other improvements. The existing improvements are more than adequate to accommodate the needs of Melting Point, and to allow it to conduct its business entirely indoors.

The changes the application intends to make in the near term to the main structure on the property are interior and will be made in cooperation with the Town's Building Department, but do not require specific separate permitting by this Commission. We have, however, included as Exhibit 3 to this letter a general floor plan for the interior use of the property.

Also included in this application is information regarding two potential additions to the structure that may be added within the next five years. These additions are alternatives to each other, and one or the other would be added if business conditions allow. Both options entail changes to the existing loading dock to move the off-loading of steel deliveries indoors. The applicant seeks the Commissions approval for the applicant to proceed with one of these options should it become feasible within the next five years. The two options are:

- Option 1: Construct a truck ramp over the existing loading dock, which would facilitate delivery trucks backing fully into the building for off-loading. See Exhibit 3 to this letter for an illustration.
- Option 2: Construct an addition at the existing loading dock that would enclose a portion of the loading dock driveway to permit off-loading of trucks indoors.

We believe that either of these options, if feasible in within the next five years, will provide a benefit to neighbors by moving all off-loading activities indoors.

This application also propose to make changes to the property on its border with Wauregan Road and Lucienne Avenue. In these locations, the applicant proposes to create a 25-foot-wide vegetative buffer, in accordance with Sec. 430.2.5 of the Regulations. At present, the property has very little vegetative screening from residential properties located to the east across Wauregan Road and to the north across Lucienne Avenue. This application will help bring this property into conformance

with the vegetative screening requirements of the LI District and, in this direct way, will be a benefit to neighboring properties, which currently have an unobstructed view of a long-vacant retail store. We also anticipate the removal of some pavement to create the buffer, which will also decrease impermeable surfaces.

The property is not located in an aquifer protection area. See DEEP Map attached hereto as Exhibit 5. This application seeks to reuse existing improvements and will disturb less than a half acre of land. On this basis, an erosion and sediment control plan is not required pursuant to Sec. 430.2.2 of the Regulations. The property is not located in public water and sewer supply area. According to Town records, the property contains non-hydric soils and does not contain any watercourses or similar features. A print out of the relevant Town GIS Map regarding hydric soils and watercourses is attached hereto as Exhibit 6. Also attached hereto as Exhibit 7 is a map identifying abutting landowners.

Special Permit Criteria

Section 720.4 of the Regulations identifies 7 criteria for use by the Commission in evaluating a special permit application. While the Regulations require the Commission to consider the overall accord with the public health, safety and welfare, the 7 criteria are a useful tool in determining whether to grant the special permit application. For ease of reference, below we have recited each criterion followed by our analysis. The Commission may adopt this analysis as its findings relating to these criteria as support for a decision granting our application.

720.4.a. The nature of the proposed site, including its size and shape and the proposed size, shape and arrangement of structures.

We propose to reuse all existing improvements and presently propose only minor alteration to the existing structure. The sole immediate change to the site proposed by this application is the addition of an approximately 25-foot-wide vegetative buffer along Wauregan Road and Lucienne Avenue that is currently lacking but required by Sec. 430.2.5 of the Regulations. The additional alterations of the building that we propose here are minor reworking of the loading dock area of the property in order to move off-loading of deliveries indoors and we seek permission to add these additional improvements within the next five years if they become feasible.

720.4.b. The resulting traffic patterns; adequacy of proposed off-street parking and loading and avoidance of hazards to pedestrians.

We propose to reuse all existing improvements and do not propose any changes to traffic patterns on site or traffic patterns for ingress/egress from the site. The existing improvements have previously been reviewed by this Commission when they were constructed. The existing parking lot contains in excess of 80 parking spaces, which is more than adequate to support the

proposed use. The applicant has only 15 employees at present and does not generally have customers coming to its workshop. The existing improvements provide for ingress/egress off Wauregan Road on the southeast corner of the property and ingress/egress off Lucienne Avenue on the northeaster boundary of the property. Additionally, the existing improvements allow for access to a loading dock off Lucienne Avenue.

The past uses of this property have been for a retail store that was open to the general public, and generated a great deal of customer and delivery traffic. By contrast, the proposed manufacturing use is not one that will attract a great deal of traffic from patrons or the general public. Traffic to and from the property will be primarily employees of the company and necessary deliveries. In this way, the proposed use can be reasonably expected to produce significantly less traffic than when the property was actively used as a retail store.

720.4.c. The nature of the surrounding area and the extent to which the proposed use or feature will be in harmony with the surrounding area or will serve as a transition between unlike areas and will protect property values and preserve and enhance the beauty of the area.

The existing improvements on the property, which will be reused, have been in place for decades and are therefore already a part of the surrounding area. This proposal will increase or enhance the beauty of the area in that the property currently lacks a vegetative buffer on Wauregan Road and Lucienne Avenue and this application proposes to create one in accordance with Section 430.2.5 of the Regulations.

The proposed use, manufacturing pursuant to Sec. 430.2.2.b, will be in harmony with the surrounding area. Manufacturing is a permitted use in the LI District, and the LI District specifically provides that the approved uses are intended to be "located adjacent to, or nearby, residential districts" and are uses that are expected to be "clean, quiet and free of hazardous or objectionable elements such as noise, odor, dust, smoke, and glare." The applicant's operations will comply with these provisions and will minimize impact on neighboring residential properties across Lucienne Avenue and Wauregan Road by conducting all manufacturing work in doors.

720.4.d. The proximity of dwellings, churches, schools, public buildings, and other places of public gatherings.

There are no churches, schools, public buildings or other places of public gathering in the immediate area of the property. There are residences located across the street from the property. The closest residence on Wauregan Road, using approximate distances on the Town's GIS Maps, is located approximately 365 feet from the building in which the applicant proposes to operate its

business. On Lucienne Avenue, the closest residences are located approximately 247 feet and 215 feet away from the building. The applicant proposes to conduct all manufacturing activities in doors, which will greatly minimize any impact on these residences. Additionally, the applicant is proposing to create a vegetative buffer along Wauregan Road and Lucienne Avenue, which will be of benefit to these residences by providing improved screening of the property.

In our previous appearances before the Commission, the applicant's neighbors David and Lois Dupointe, who live next door to the applicant's current manufacturing facility, wrote to the Commission to express their view that the applicant is a good neighbor and does not disturb them. Copies of those previous letters are attached hereto as Exhibit 4. To be clear, these letters have been included here only for the purpose of sharing this commentary regarding the applicant being a good neighbor. Any specific support for the present applications from the Dupointes would be submitted by them separately.

720.4.e. The avoidance of potential nuisance.

The proposed manufacturing use is one that is specifically permitted by the LI District Regulations. The LI District specifically provides that the approved uses are intended to be "located adjacent to, or nearby, residential districts" and are uses that are expected to be "clean, quiet and free of hazardous or objectionable elements such as noise, odor, dust, smoke, and glare." The applicant's operations will comply with these provisions and will minimize impact on neighboring properties by conducting all manufacturing work in doors.

More importantly, this proposal can be expected to have a positive impact on the surrounding area. This application will help facilitate the revitalization of this underutilized property. It is the applicant's understanding that the property has been unoccupied for some years now, appearing to passersby to be a large abandoned commercial property. Such properties are sometimes referred to as "greyfields," due to their negative impact on the surrounding area. Greyfields give an area a somewhat abandoned and outdated feel and can depress interest in investing in the area. A neighbor of the property, Barbara Laliberte, spoke about this abandoned feeling and its effect on the neighborhood during a public hearing on our zone change application in October 2021. Ms. Laliberte spoke about how the property had become a gathering place for teenagers driving recklessly in the parking lot and generally engaging in activities concerning to the neighbors. She indicated that a change to allow the applicant to bring the present application would be beneficial to the neighborhood.

720.4.f. All standards contained in these Regulations.

The proposed use is not among those expressly prohibited by Sec. 430.2.4 and generally conforms with all other requirements of the Commission's Regulations. The proposed use is a permitted use pursuant to Sec. 430.2.2.b.

720.4.g. The Plan of Development for the Town of Killingly and other expressions of the purpose and intent of these Regulations.

The proposal is also consistent with the objectives of the Town's Plan of Conservation and Development ("POCD"). Killingly's POCD identifies numerous policy goals for the future of the Town. Three areas of focus are particularly relevant to this application: Sec. 3.2 Economics; Section 3.5 Land Use; and, Sec. 3.6 Natural Resources.

First, Sec. 3.2 (economics) sets forth a series of economic goals and policies intended to help Killingly be competitive with other area towns and to increase the quantity, quality, and diversification of employers. One policy identified to achieve this is an action item on page 19 directing the Town to make efforts to attract new businesses to Town. Granting this application will directly contribute to this action item by facilitating the relocation of a business from the neighboring town of Plainfield to Killingly. This will also contribute to improving the quantity, quality, and diversity of employers in Killingly.

Second, Sec. 3.5 (land use) makes clear that Killingly's zoning policies should be moving toward encouraging redevelopment and revitalization of existing economic, industrial, and commercial areas rather than expanding development into less developed rural areas. The POCD describes these goals as implementing Smart Growth Principles to managing the development or redevelopment of the Town in a way that does not destroy the unique character of the Town or reduce the rural areas of Town. Page 35 of the POCD sets two objectives that are relevant here. First, the POCD directs the Town to plan and implement responsible redevelopment. Second, the POCD directs the Town to encourage and promote business development within the existing commercial and industrial areas rather than expanding into residential or rural areas. This application contributes to both goals by allowing the applicants to revitalize an underutilized existing commercial property in an area of mixed commercial and industrial uses. This application will not fundamentally change the character or nature of the neighborhood, but will promote new business growth and responsible redevelopment.

Finally, Sec. 3.6 (natural resources) sets forth Killingly's goals of protecting and maintaining the undeveloped natural resources it has at present. Page 45 of the POCD directs the Town to do this by encouraging development projects involving revitalization and redevelopment rather than new development on previously untouched lands. This application seeks to do just that – revitalize an existing underutilized property rather than break new ground in undeveloped areas. Page 45 also directs the Town to protect its natural resources by

encouraging the reduction of stormwater runoff by reducing the amount of impervious parking areas in the Town. This application will contribute to this goal because, as noted previously, this application necessarily involves a reduction in impervious surfaces to achieve the required 25-foot-wide vegetative buffer in the LI District.

Based on the above discussion of the Commission's special permit criteria, we respectfully submit that the Commission can find that the proposed use is in accord with the public health, safety and welfare.

We hope the Commission finds this information useful in your analysis of our special permit application. We would be pleased to respond to any questions or comments the Commission or its staff might have.

Very truly yours,



Timothy D. Bleasdale, of
Waller, Smith & Palmer, P.C.

Encl.

1. Exhibit 1 – Deed
2. Exhibit 2 – General information regarding the applicant
3. Exhibit 3 – General floorplan
4. Exhibit 4 – Letters from David and Lois Dupointe from October 2021 application
5. Exhibit 5 – DEEP aquifer protection area map
6. Exhibit 6 – Print from Town GIS Map regarding lack of watercourses or hydric soils
7. Exhibit 7 – Map showing abutting landowners



Local Tax \$1875.00

State Tax \$9375.00

Return to:
TCORS P.C.
P.O. Box 58
New London, CT 06320

WARRANTY DEED

TO ALL PEOPLE TO WHOM THESE PRESENTS SHALL COME, GREETING:

KNOW YE, that **CGCT KILLINGLY LLC**, a Connecticut limited liability company, having an address of 1414 Atwood Avenue, Johnston, Rhode Island 02919, acting herein by Crown Holdings II LLC, a Rhode Island limited liability company, its sole member, (hereafter "Grantor"), for good and valuable consideration received to its full satisfaction of **WELD LLC**, a limited liability company, organized and existing under the laws of the State of Connecticut, (hereafter "Grantee") does give, grant, bargain, sell and confirm unto the said Grantee, with **WARRANTY COVENANTS**, a certain piece or parcel of land, with all improvements thereon and appurtenances thereto, located in the Town of Killingly, County of Windham and State of Connecticut (the "Premises"), being known as 543 Wauregan Road, Killingly, Connecticut, as more particularly described in Schedule A attached hereto and made a part hereof.

Said Premises are conveyed together with any buildings and improvements thereon and all of the estate and rights of the Grantor in and to said Premises.

Said Premises are conveyed free and clear of all encumbrances except as set forth on Schedule B attached hereto and made a part hereof.

TO HAVE AND TO HOLD the above granted and bargained Premises, with the appurtenances thereof, unto it, the said Grantee, its successors and assigns forever, to their own proper use and behoof. And also the said Grantor does for itself its successors and assigns, covenant with the said Grantee, its successors and assigns, that at and until the ensembling of these presents, it is well seised of the Premises, as a good indefeasible estate in FEE SIMPLE; and has good right to bargain and sell the same in the manner and form as is above written; and that the same is free from all encumbrances whatsoever, except as hereinbefore mentioned.

AND FURTHERMORE, the said Grantor does by these presents bind itself and its successors and assigns forever to WARRANT AND DEFEND the above granted and bargained premises to the said Grantee, its successors and assigns, against all claims and demands whatsoever, except as hereinbefore mentioned.

[SIGNATURE PAGE TO FOLLOW]



IN WITNESS WHEREOF, Grantor has hereunto set its hand and seal or has caused these presents to be executed by its undersigned this 2nd day of March, 2020.

Signed, Sealed and Delivered in presence of:

CGCT KILLINGLY LLC

BY: Crown Holdings II LLC
Its Sole Member

By: 1992 Alfred Carpionato Trust Agreement-CA, Its Sole Member

Witnesses as to all:

[Signature]
Witness:

[Signature]
Witness:

[Signature]
By: Angelo R. Marocco, as Trustee of the 1992 Alfred Carpionato Trust Agreement -CA

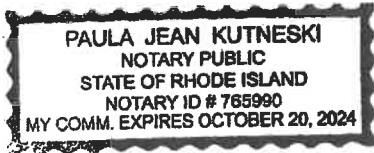
[Signature]
By: Sheryl A. Carpionato, as Trustee of the 1992 Alfred Carpionato Trust Agreement -CA

[Signature]
By: Gary J. Famiglietti, as Trustee of the 1992 Alfred Carpionato Trust Agreement -CA

[Signature]
By: Kelly M. Coates, as Trustee of the 1992 Alfred Carpionato Trust Agreement -CA

STATE OF RHODE ISLAND)
COUNTY OF Providence) ss. _____

On this the 2nd day of March, 2022, before me, the undersigned officer, personally appeared Angelo R. Marocco, Sheryl A. Carpionato, Gary J. Famiglietti and Kelly M. Coates, each being known to me (or satisfactorily proven) to be the person whose name is subscribed to the within instrument, and acknowledged himself/herself to be one of the four Trustees of the 1992 Alfred Carpionato Trust Agreement –CA, which Trust is the sole member of Crown Holdings II LLC, a Rhode Island limited liability company, and which limited liability company is the sole Member of CGCT KILLINGLY LLC and that each, as such Trustee, being authorized so to do, executed the foregoing instrument as the free act and deed of the Grantor, for the purposes contained therein by signing the name of Crown Holdings II LLC by himself/herself as such Trustee, duly authorized.



Paula Jean Kutneski
Notary Public Paula Jean Kutneski
My Commission Expires: 10/20/24

SCHEDULE A

SCHEDULE A, PROPERTY DESCRIPTION

A certain parcel of land located on the westerly side of Wauregan Road (Route #12) in the Town of Killingly, County of Windham, State of Connecticut and being shown as Lot #20 on a plan titled "Property Survey Plan Prepared for WAUREGAN REALTY, INC., Wauregan Road (Route #12), Killingly, Connecticut, Scale: 1" = 30', Date: 07/12/2004, KWP Associates Surveying, Engineering and Site Planning", said lot being bounded and described as follows:

Beginning at Connecticut Highway Department monument in the westerly line of Wauregan Road marking a corner of the herein described parcel, said monument being located 15 feet more or less southwesterly of the intersection of Wauregan Road, (Route #12) with Lucienne Avenue; thence N 35° 17' 37" E 14.84 feet along the westerly line of Wauregan Road (Route #12) to a point; thence N 58° 59' 34" W 328.29 feet to a point; thence N 63° 49' 36" W 5.15 feet to an iron pin; thence N 61 ° 1 0' 36" W 69.86 feet to an iron pin, the last three courses following the southerly line of Lucienne Avenue; thence S 28° 03' 55" W 253.20 feet to an iron pin; thence S 61 ° 56' 05" E 75.00 feet to an iron pin, the last two courses being bounded westerly and southerly by land now or formerly of Deary Bros. II, L.L.C.; thence S 62° 45' 02" E 300.03 feet to an iron pin, the last course being bounded southerly by land now or formerly of Ronald Jacobs, Trustee; thence in a northeasterly direction 218.50 feet along a curve to the right having a radius of 1,950.10 feet (the chord of said curve being N 29° 47' 29" E 218.39 feet) to a point; thence S 56° 57' 51" E 19.49 feet to a Connecticut Highway Department monument and point of beginning, the last two courses following the westerly line of Wauregan Road (Route #12).

Together with a Right of Way over the northeasterly corner of land now or formerly of Ronald Jacobs, Trustee as shown on the above referenced plan. See Volume 136, Page 193 and Volume 299, Page 18 of the Town of Killingly Land Records.



SCHEDULE B

Title Encumbrances

1. Real Estate Taxes to the Town of Killingly on the List of October 1, 2020, and thereafter.
2. District Tax to Dyer Manor Fire District as the same may be due and payable.
3. Parking spaces over street line of Boston Post Road as shown on a survey entitled "ALTA/NSPS LAND TITLE SURVEY CARPIONATO GROUP, LLC 543 WAUREGAN ROAD LOT 20, MAP 262 TOWN OF KILLINGLY, WINDHAM COUNTY STATE OF CONNECTICUT" dated 3-15-18 by Control Point Associates, Inc.
4. Terms and conditions regarding a Right of Way over northeasterly corner of land now or formerly of Ronald Jacobs, Trustee as referenced in Volume 136, Page 193 and Volume 299, Page 18 of the Killingly Land Records.
5. Easement to Connecticut Light and Power Company as set forth in Volume 321, Page 269 of the Killingly Land Records.
6. Special Permit recorded in Volume 988, Page 29 of the Killingly Land Records.



**954 Norwich Rd.
Plainfield, CT 06374**

Ph. 860-564-3766

Fax 860-564-3756

www.mpwelding.com

Melting Point Welding & Fabrication would like to take the opportunity to introduce ourselves to you. Melting Point was started in February of 2011 with one goal in mind to provide professional, quality work. Our experience is rooted in custom fabrication, building construction, ornamental, miscellaneous metals, and structural steel fabrication. With our expertise in metal pan stairs and railings.

Melting Point has a proven track record of successful completion of projects with contracts ranging from a few thousand dollars to over 1.7 million dollars. Melting Point has the know-how, ability, equipment, and workforce to take on projects of all kinds whether it be fabrication only, or fabrication and installation, we are capable.

Our Services include:

- In-shop fabrication of various metals, including stainless steel, aluminum, bronze, and brass
- MIG, TIG, and ARC welding
- Bending, shearing, cutting, and forming of metals
- High-Definition Plasma cutting and plate processing
- Erection of structural steel and misc. metals
- Millwright service
- Crane Service - 70 Ton Hydraulic crane and 17 Ton Boom truck

How the process works:

Projects are received for bid from general contractors, the owner Brian Caya reviews the drawings and specifications and provides an estimate. Once a contract is signed the project is turned over to one of our two project managers, Craig Saad, and Justin LeBeau. They will study the drawings and field measure when necessary to create shop drawings to fabricate from and erection drawings for the installation crew. Once the drawings are approved by the architect and engineers, the material is ordered and will be delivered to the shop to be off loaded inside the building with overhead cranes and forklifts. The drawings are then released to our shop foreman Carl Smith, who will distribute them and coordinate the fabrication with the shop welders. Once fabrication is complete they will receive a coat of shop primer and be loaded for transport to the jobsite via our own trucks for erection/installation. In some cases, the products may leave the shop bare and be sent to a galvanizer, powder coater, or other specialty coating depending on the job requirements. At that time, it falls in the hands of one of our field foremen either Matt DeCrescenzo, or Jean Lajeunesse and their field welders to complete the installation.

Our office hours are 7:00am – 5:30pm

Our shop hours are 6:00am – 4:30pm

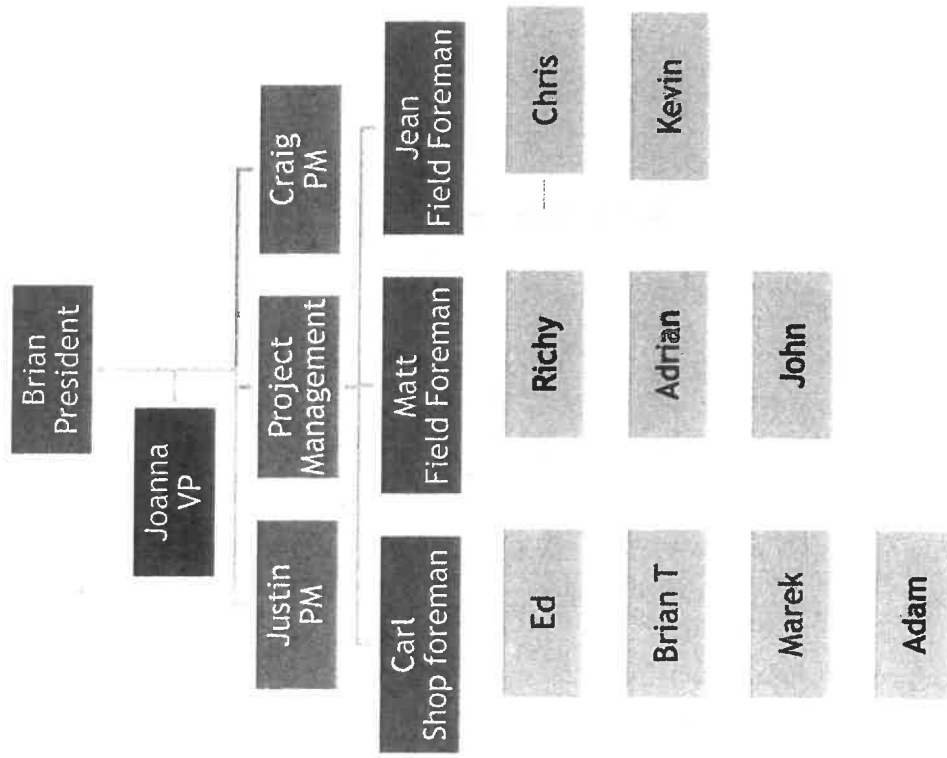
Our field hours are 7am-4:30pm (at the jobsite, leave and return to the shop at time respective to travel distance)

Our hours are subject to change due to jobsite requirements



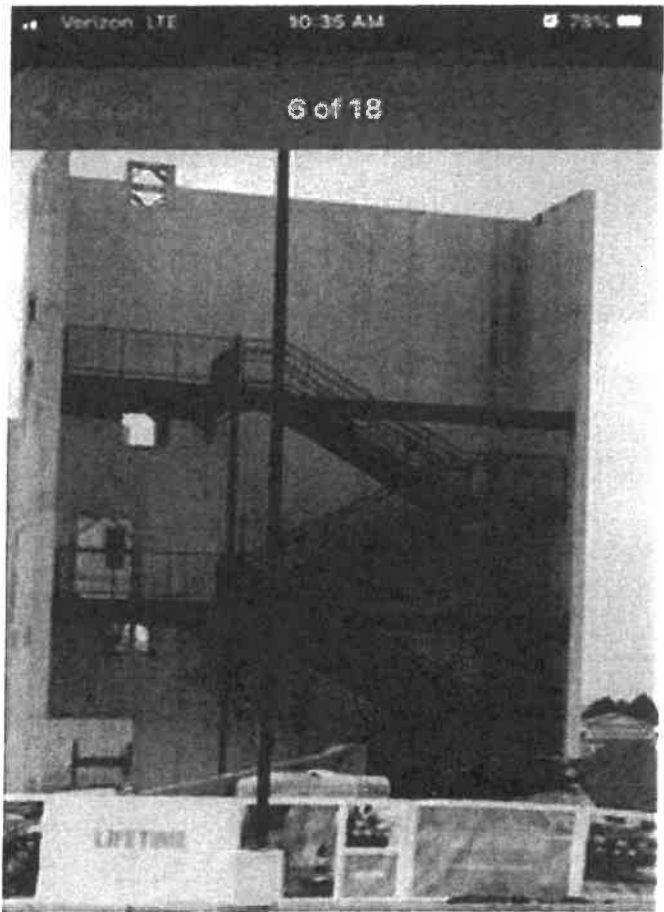
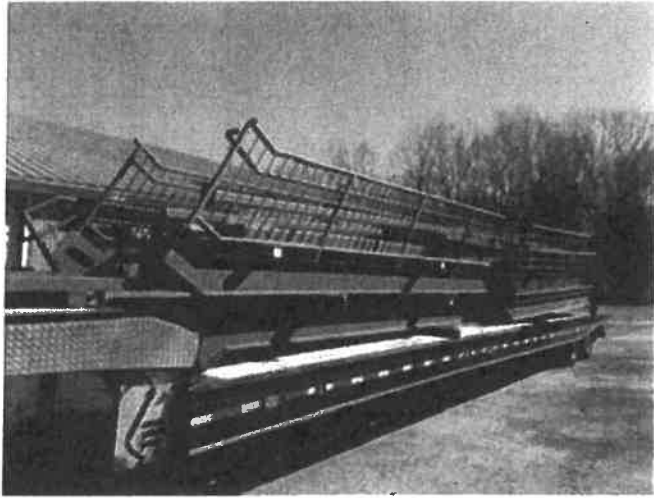


Organizational Chart

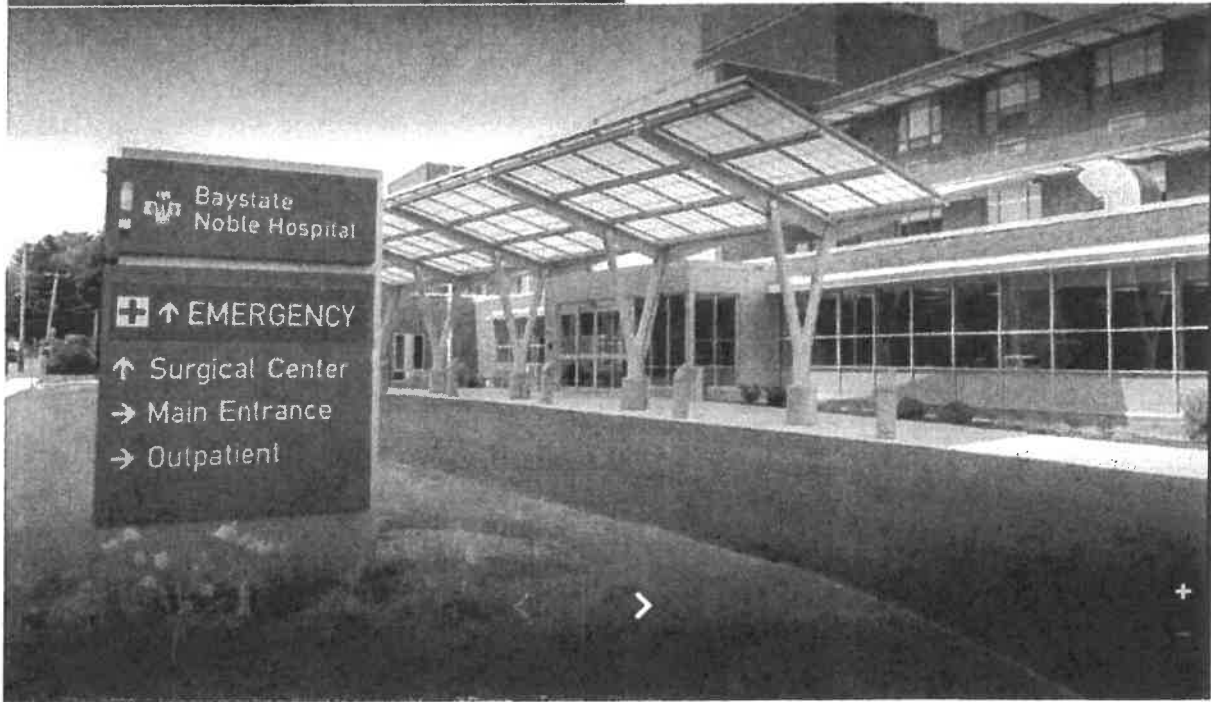
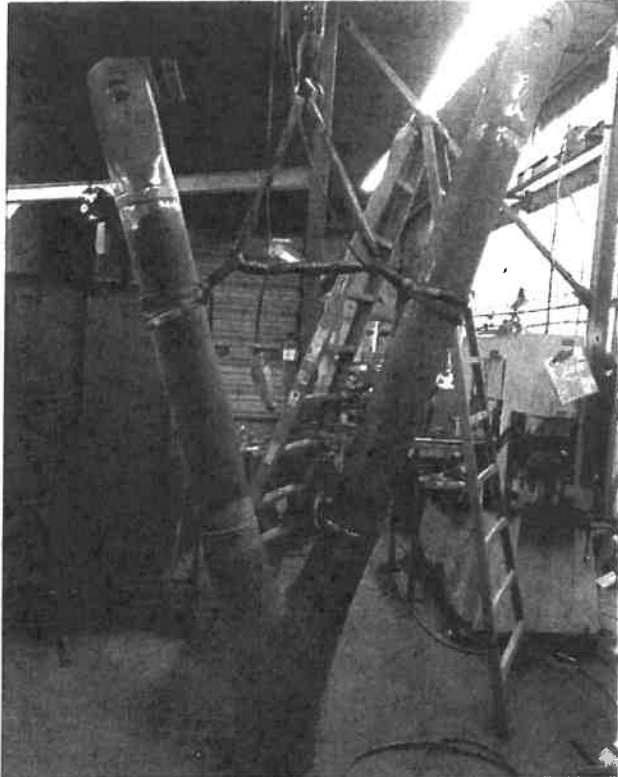




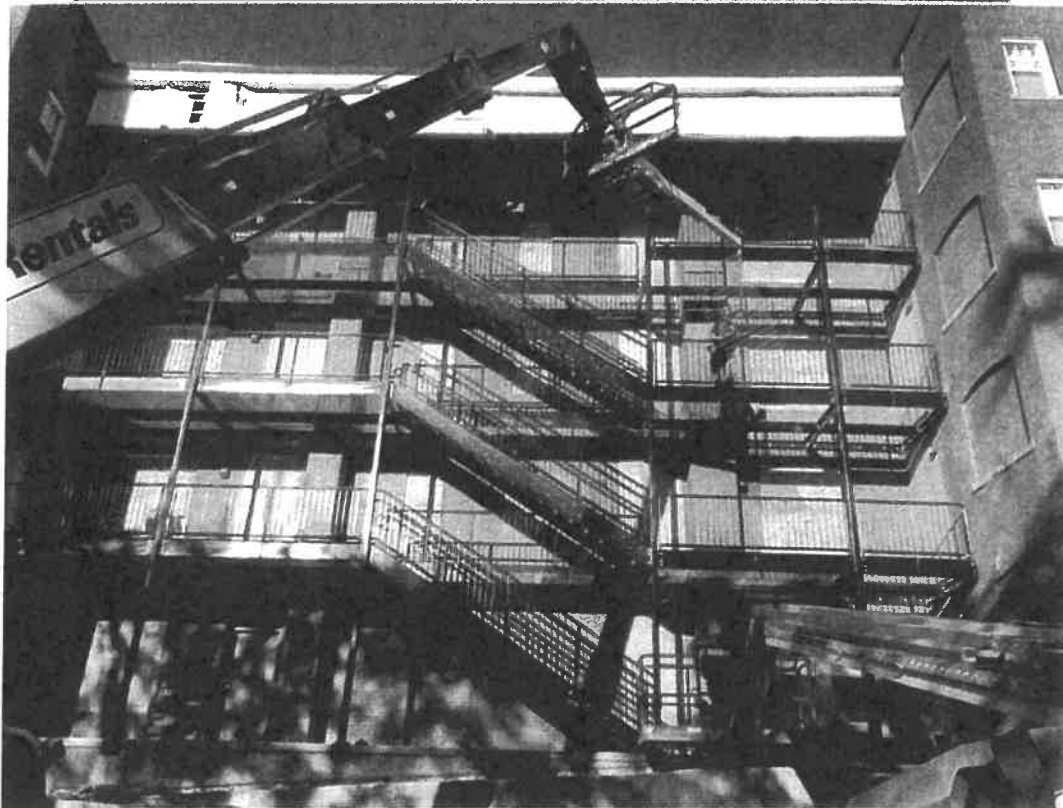
Rhode Island Public Transit Authority



Lifetime Fitness



Baystate Noble Hospital



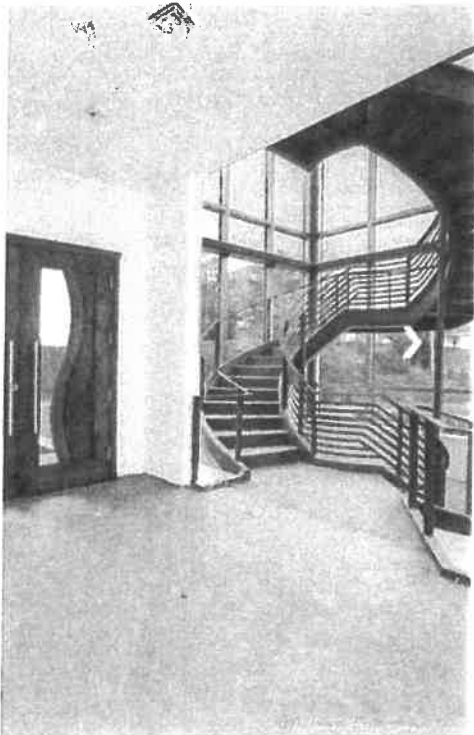
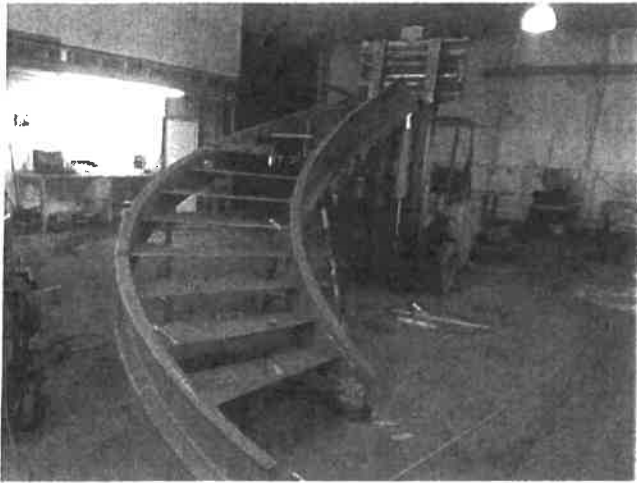
Maple Commons



U.S Coast Guard



60 Tupelo RD, Swampscott, MA



COPY

Dear Members of the Planning and Zoning Commission,


My name is David Dupointe and I am writing in support of Application #21-1274 to change the zone of 543 Wauregan Road to the Light Industrial District. Please add this letter to the Commission's record at the public hearing on this application.

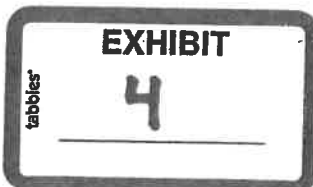
I support this application because I believe it would be good for Killingly and the neighborhood. This application will help a new business, Melting Point Welding and Fabrication, LLC, relocate to Killingly and this will help revitalize the long vacant building at 543 Wauregan Road.

→ Good quiet neighbor, takes care of lawn. Good people own Melting Point and work there.

Thank you for considering my comments and I ask that you please grant application #21-1274.

Sincerely,


942 Norwich Rd
Plainfield Ct 06374



COPY

Dear Members of the Planning and Zoning Commission,

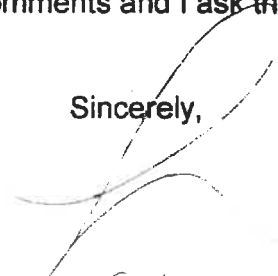
My name is Lois Dupont and I am writing in support of Application #21-1274 to change the zone of 543 Wauregan Road to the Light Industrial District. Please add this letter to the Commission's record at the public hearing on this application.

I support this application because I believe it would be good for Killingly and the neighborhood. This application will help a new business, Melting Point Welding and Fabrication, LLC, relocate to Killingly and this will help revitalize the long vacant building at 543 Wauregan Road.

→ | Good respectable neighbors |

Thank you for considering my comments and I ask that you please grant application #21-1274.

Sincerely,


Lois Dupont
Plainfield CT 06034

Connecticut Aquifer Protection Areas

Connecticut Department of Energy and Environmental Protection - Aquifer Protection Area Program

Other Bookmarks

Find address or place

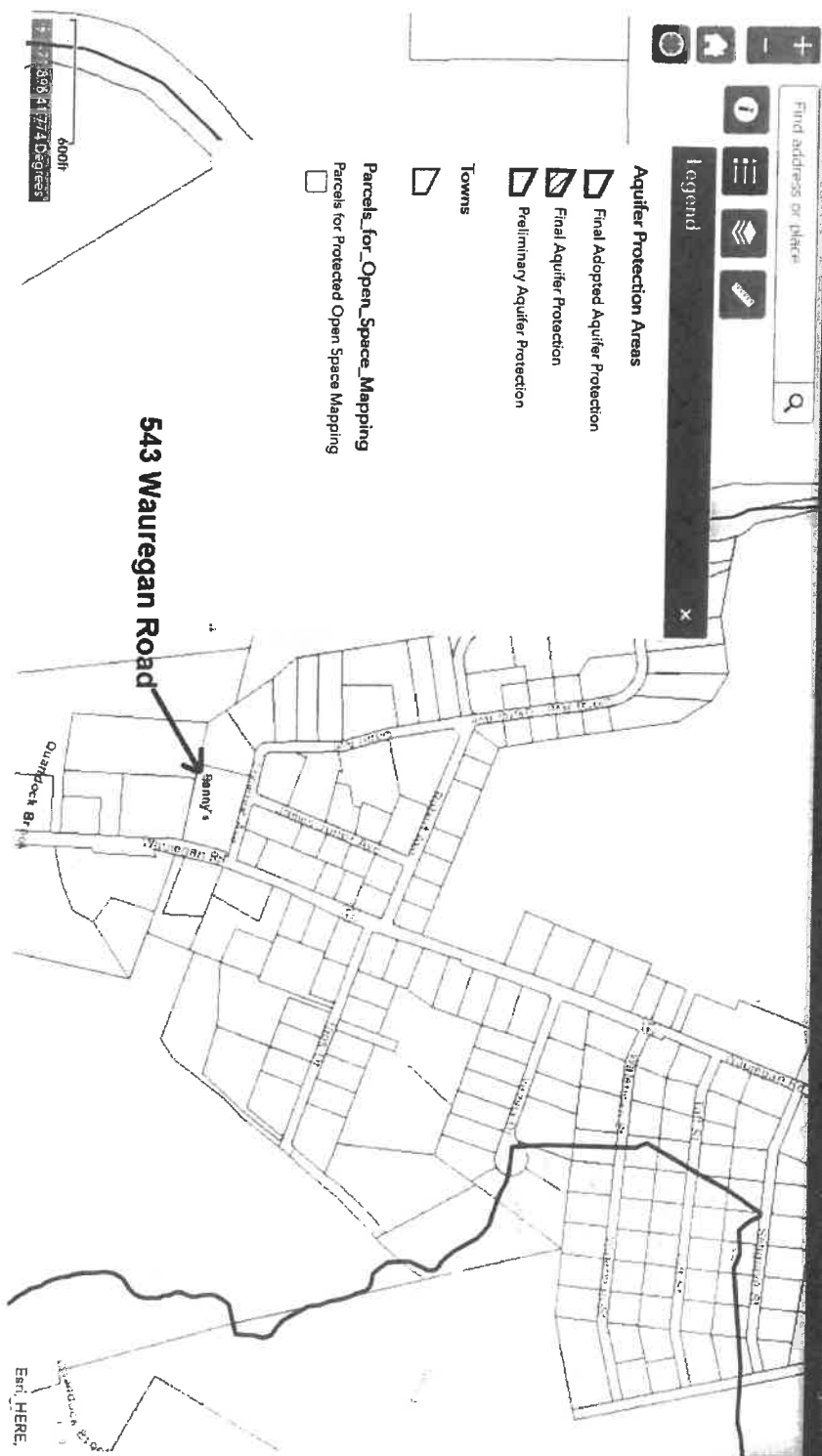
Legend

- Final Adopted Aquifer Protection
- Final Aquifer Protection
- Preliminary Aquifer Protection
- Towns

Aquifer Protection Areas

- Final Adopted Aquifer Protection
- Final Aquifer Protection
- Preliminary Aquifer Protection

Parcels for Open_Space Mapping
Parcels for Protected Open Space Mapping



Query By Attributes

Tasks

Results

No task.

EXHIBIT
5
esppqpa

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

5) **Zone TEXT Change Ap #22-1292** – Town of Killingly, allowing garages as a primary use in rural development and low-density-zones only.

APPLICANT(S): Town of Killingly
LANDOWNER(S): D/N/A
SUBJECT PROPERTY: D/N/A
ASSESSOR’S INFO: D/N/A
ACREAGE AMOUNT: D/N/A
ZONING DISTRICT: Rural Development and Low-Density Zones Only
REQUEST: To allow garages as a primary allowed use
REGULATIONS: ARTICLE IX – Section 900

Documents Attached

1) Draft copy of the proposed regulations

Legal Notices

- 1) Legal Notice was sent to NECCOG via email.
 - 2) Memorandum of proposed zone text change posted in Town Clerk’s Office April 21, 2022
 - 3) Legal Notice posted in Town Clerk’s Office on April 21, 2022
 - 4) Legal Notice published in Norwich Bulletin on Monday, 5/2/2022 and Monday, 5/9/2022
-
-

STAFF COMMENTS AND SUGGESTIONS

- 1) The proposed regulations are the same regulations that the commission has previously discussed during their workshop.
- 2) If the commission does approve this zone text change, then the commission must state an effective date for the zone text change – **staff recommends an effective date of Monday, June 13, 2022, at 12:01 am.**

STAND ALONE GARAGES

NOTE: to be added to Rural Development and Low-Density Zones Only.

Stand Alone Garage for Personal Storage:

- 1) A site-plan review application is required, as well as a zoning permit and building permit.
- 2) The structure is to be used by the property owner only for their personal use.
- 3) The total square footage of the structure shall not exceed 1,200 square feet.
- 4) The structure must meet all the set-back requirements of the underlying zone.
- 5) Storage and display of any materials shall not be permitted on the premises outside of the structure.
- 6) Such structure shall not change the residential character of the neighborhood in any visibly manner.
- 7) The use of such structure shall not create objectionable noise, smoke, odor, toxic fumes, waste products, vibration or unsightly conditions that would set the structure apart in its surroundings or degrade residential property in the neighborhood.
- 8) The use of said structure shall not cause traffic to or from said structure in greater volumes than would normally be expected in a residential neighborhood.



TOWN OF KILLINGLY, CT
PLANNING AND ZONING COMMISSION

MONDAY – APRIL 18, 2022
Regular Meeting – HYBRID 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.

RECEIVED
TOWN CLERK, KILLINGLY, CT
2022 APR 29 AM 10:46
Elizabeth M. Quisenberry

- I. **CALL TO ORDER** – Chair, Keith Thurlow, called the meeting to order at 7:03 p.m.
- ROLL CALL** – Brian Card, Virge Lorents, John Sarantopoulos, Michael Hewko, Keith Thurlow (all were present in person).
Matthew Wendorf arrived at 7:37 p.m.
- Staff Present** – Ann-Marie Aubrey, Director of Planning & Development; Ken Slater, Town Attorney, Halloran & Sage; Jonathan Blake, Planner I/ZEO; Jill St. Clair, Director of Economic Development (all were present in person).
- Also Present (in person)** –Attorney Michael Carey, Law Firm of Suisman Shapiro and Associates; Nicholas Durgarian, Douglas Construction; Jim Rossman, Project Engineer with Stadia Engineering; Norm Thibeault; Killingly Engineering Associates; Wayne Jolley; Representatives from Stantec Consulting Services and Antinozzi Associates; Ulla Tiik-Barclay; Town Council Liaison; J.S. Perreault, Recording Secretary.
There were approximately 10 people in the audience.
- Present via Webex** – Jaucqueta Santerre
- II. **SEATING OF ALTERNATES**
- Michael Hewko was seated as a voting Member for this meeting (in the absence of Matthew Wendorf).
- 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. 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.killinglyct.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 2631 755 2865 when prompted.

Ann-Marie Aubrey read aloud the above call-in information. There were no comments from the public received and there were no callers with public comments.

V. COMMISSION/STAFF RESPONSES TO CITIZENS' COMMENT – None.

VI. PUBLIC HEARING CLOSED MARCH 21, 2022 – (review / discussion / action)

1) **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.

There was discussion with Town Attorney, Ken Slater regarding whether a motion to approve can be made without giving reasons. Ms. Lorents stated that she was making a motion to approve to open discussion.

Motion was made by Virge Lorents to approve **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.

Second by Brian Card.

Discussion:

- Mr. Sarantopoulos asked about the petition that had been filed by the area property owners. Attorney Ken Slater explained that they are still verifying the number of signers/property owners on the petition. He advised the Commission to vote tonight and he explained that whether the vote passes or fails could be contingent upon the number of valid signers on the petition. At this time, they cannot say whether the petition meets the requirements of the General Statutes. Attorney Slater explained that it is also not clear whether 3 or 4 votes of the Commission Members are needed for the vote to pass until the details of the petition are verified. The Statute requires that people who are owners of at least 20 percent of the area within 500 feet have to petition in order to require the super majority. Attorney Slater explained that, in this instance, the subject property would not be included.
- Mr. Hewko stated his concerns regarding traffic, noise, wells for domestic and fire prevention, the concept plan.
- Mr. Card commented that a lot of flexibility changes have been made over the last six or seven years to allow for development in this Town. He noted that some of the things that are currently allowed under Rural could be more detrimental to the area than GC. He explained that he has some of the same concerns, but he feels that for this particular tract, it would be beneficial to the Town. He agrees with the EDC that we need to be flexible in offering businesses to relocate to this Town. This parcel, which is on a major highway and has limited uses because of no water or sewer, needs to be looked at from a development standpoint. He feels that it fits with the POCD. He feels that it is a potential better use for the Town. He feels that if it went residential it would be more of a draw on taxpayer issues (school systems, roads, conservation areas). Somebody is going to buy the property and develop it (180 potential houses). What do we want to see on that 180 acres?
- Mr. Sarantopoulos expressed disagreement with Mr. Card. He feels that we want a good school system, but want to stop residential building because we're afraid of having to pay to support school children coming into our system. He wants to know what the grade is on the highway (he guessed 4 percent) and he would like to

know what the State thinks about access for industrial off of Route 6. He said it is surrounded by residential and the neighbors don't want it. He referred to Section 902 regarding excavation which states that it should be made so that it does not devalue property and it is to be returned back to its original state. He referred to Sections 120, 402 (GC), 430.2 (Light Industrial), 436.1 (Intent), Village District. He feels that it should not be put within that area and cause property owners to wonder about property value, quality of life, pollution and noise. He feels that Killingly should find another area for this.

- Ms. Lorents explained she has found that it is possible to have a commercial development that works out in an area that looks unpromising (e.g. Killingly Commons).
- Mr. Thurlow asked how wide the gap is where it appears that it has access to Snake Meadow. Matthew Wendorf arrived at 7:37 p.m. He recused himself and left the room. Jon Blake displayed the GIS map and explained that there is at least 25 feet on that one, particular portion.
- Mr. Sarantopoulos voiced disagreement with Ms. Lorents' statement about Killingly Commons.

Roll Call Vote: Brian Card – yes; Virge Lorents – yes; John Sarantopoulos – no; Michael Hewko – yes; Keith Thurlow – yes.

Ms. Lorents noted the following reasons for approval:

- The property is located on Route 6 which is an underutilized highway.
- The ability to access Route 6 is a plus for a commercial operation.

Attorney Slater explained that he was able to verify that, for the petition, all owners would have been needed (husband and wife joint owners would both need to protest), but it is irrelevant, in this case, because the vote was 4 out of 5 in favor, therefore, it passes. Attorney Slater explained that other Members could suggest others reasons for approval and then the group, by consensus, could adopt them, or they could state individual reasons.

Four Members of the Commission (Brian Card, Virge Lorents, Michael Hewko and Keith Thurlow) were in agreement with Ms. Lorents' reasons for approval and Mr. Card added the following:

- The POCD requires that we identify areas for potential commercial development which is what we did on areas of major highways.
- It is enhancing small businesses and commercial enterprises.

Motion #1 carried (4-1-0)

John Sarantopoulos was opposed. Matthew Wendorf had recused himself.

Matthew Wendorf resumed his position of Regular Voting Member and Michael Hewko resumed his position as Alternate Member.

VII. 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 2631 755 2865 when prompted

1) **Spec Perm Ap #22-1282**: Jolley Commons, LLC (Applicant/Owner); 120 Wauregan Rd; GIS MAP 220, LOT 21; ~6.4 acres; Gen Comm Zone; excavation & removal of gravel products; under Sect 560, et seq (Earth Filling & Excavation); Sect 700 et seq (Spec Perm); & Sect 470 et Seq (Site Plan) of the TOK Zoning Regs.

Norm Thibeault, Killingly Engineering Associates, represented the Applicant and gave an overview. Wayne Jolley was also present in person. Maps were displayed as discussed.

- Numerous businesses are located on the parcel in strip plaza fashion.
- They are proposing to excavate slightly over 65,000 c.y. of material from the site which will produce a flatter site which could be developed at some point in the future.
- They are not proposing any buildings or particular use for the property at this time.

- A copy of the approval letter from the CT DOT (dated April 12, 2022) had been submitted to Staff earlier in the day and was provided to Commission Members along with copies of the most current maps. Mr. Thibeault read aloud from the letter and stated that the two notes were added to Sheet 5 of the Plans (Sight Line Demonstration).
- They are proposing a temporary entrance at the far norther end. He indicated a small plateau area along Route 12 which is where they would be working the face, working toward the east and toward the south. He stated that as they work in that direction, they would move the materials out.
- Mr. Jolley has two trucks to transport the material. They anticipate 2 or 3 truckloads per hour. On any given day during the excavation, there would be no more than 25 truckloads per day leaving the site. Using 25 truckloads per day, they estimate 175 working days (not necessarily continuous) to remove the proposed amount of material.
- The intention is to complete this entire project and restore the site within a year, which he thinks is a reasonable expectation. Permits issued are good for a three year period and he anticipates that the site would be completed well within that period.
- Comments from Town Engineer, David Capacchione have been addressed:
Plans have been modified to include comments from CT DOT.
Anti-tracking pad will be removed, the area will be restored and curbing will be put back in as well.
The comment regarding pavement marking details is irrelevant. Existing conditions are shown on Page 2 of the Plans. He has spoken with Mr. Capacchione about this.
Detail for earthen or wood chip berm has been included on Page 4 of the Plans. It will be constructed parallel to Route 12 with the intent to keep any storm water that might be generated or sediment from being transported onto Route 12. He explained that they don't feel that there will be a lot of storm water generation as these are excessively well-drained soils.
He indicated where they have modified the plan to include staked hay bale check dams along both cut slopes.
- The site will be excavated in a down-cutting method.
- The excavation is on less than 2 acres of the 6.4 acre parcel. It is minor in nature than some of the larger projects that have been approved in Town.
- Mr. Thibeault read aloud and addressed concerns raised in the letter received on April 18, 2022, from members of the public, Charles and Jaucqueta Santerre of 147 Wauregan Road:
The Santerre's property is across from the furthest southern portion of the parcel.
Regarding their concern for erosion/run-off, Mr. Thibeault explained that they would be creating a berm along the front and the area where the loading is will be slightly depressed. The DOT has reviewed the plan and did not have any concerns. The Drainage Engineer did not have any comment on the plan.
Regarding their concern for dust/airborne debris, Mr. Thibeault explained that Mr. Jolley as a lot of experience in the sand and gravel business and it would behoove him to utilize application of water. They do not propose utilizing calcium chloride on the site (from an environmental standpoint). He emphasized that it is a small-scale operation.
Regarding their concern for the entrance/exit, Mr. Thibeault explained that the driveway is at the far northern end of the proposed excavation site, as far from their driveway as it could be. They have well over 700 feet of sight line distance in both directions from the proposed driveway. The trucks will be able to access and egress the site safely.
Regarding their concern for blasting, Mr. Thibeault explained that they do not anticipate ledge on the site at all. He said that there was no ledge when the Jolley Commons side was excavated in a similar fashion to what is being proposed here. It is very well-drained sand and gravels on the site.
Mr. Thibeault stated that Mr. Jolley has had a business in this community for a couple of generations and has respect for his neighbors and the other property owners. He said that this is a short-term operation and, hopefully, there will be some additional building done there and Jolley Commons might be expanded. This is preparing the property in a manner so that it could be developed at some point in the future.

QUESTIONS/COMMENTS FROM COMMISSION MEMBERS:

- **Brian Card** asked about the phasing plan for the 2.5 acres of cutting area, storm water control and calculations, revegetation plan, topsoil stockpile,
Mr. Thibeault referred to Sheet 3 of the Plans which shows the first phase which is the bulk (2/3) of the cut.
Mr. Thibeault explained about, and indicated on the plan, the staked hay bales and silt fence. The intention is to keep as much of the storm water from entering where they will be doing the excavation. As the excavation proceeds from north to south (as the areas get stabilized), a line of staked hay bales will be put in place at that time. Portions of the phase will be stabilized as they work down that face. He said that since this is not a large operation, it will be easy to keep things stabilized and restored as they work their way south down that face. He indicated and explained about where they are proposing a berm and an 8-10 foot wide, storm water infiltration swale along the front of the site. That area is not going to be compacted and it is a pretty small drainage area.
Mr. Thibeault explained that he had not provided drainage calculations, but he had spoken with Town Engineer, David Capacchione and he did not request that they be provided. Mr. Card asked that they be provided, for the record, to show that the Applicant is comfortable that the storm water is going to infiltrate and that there is a mechanism/system in place and if it does not, what is going to happen (flooding potentially on Route 12). Mr. Card flow is from south to north and 4 percent is a pretty good slope for a swale.
Mr. Thibeault reviewed the sequence of operations on Sheet 6 of the Plans.
Mr. Thibeault indicated where the topsoil would be stockpiled. He explained that he probably scaled it incorrectly and that it would probably be twice the size shown on the Plan. The material excavated won't be stockpiled. There will be no processing. It will be taken off the face, loaded onto a truck and taken off the site.
- **John Sarantopoulos** asked about how the railroad track would be handled.
Mr. Thibeault explained that the closest point to the railroad track is a little over 70 feet away. They have not notified the railroad because they are not proposing any work within their right-of-way.
- **Keith Thurlow** asked how far out from the property to the final cut.
Mr. Thibeault explained and indicated on the Plan that it is about 25 feet. Mr. Thurlow stated that it is supposed to be 50 feet. Ann-Marie Aubrey referred to Page 9 of 15, (she read from Section 560.7.i.2). Mr. Thibeault explained that they would have to fill to be even at that property line. He said that it makes sense that you can't be below grade at the road. Mr. Thurlow stated that he thinks that the intent is that there is supposed to be 50 feet from a property line before cutting takes place to keep it stable to protect the neighbor's property rights. Ms. Aubrey suggested doing a site walk with the Town Engineer. Mr. Thibeault offered to discuss that portion of the Regulations with Staff.
Keith Thurlow asked what they would do if ledge is encountered.
Mr. Thibeault stated that Mr. Jolley says that he is pretty sure that there is no ledge there, but if they did encounter ledge, they would not blast it.
- **Brian Card** - Regarding Item 560.7.i.3 regarding anything within 150 feet of an existing dwelling. He asked that this be verified on the Plans. Mr. Thibeault agreed.
Mr. Card asked if there are any issues on the hill and he asked if the land to the east, across the road, goes up in topography.
Mr. Thibeault stated that yes, the land continues to go up from the property line to the railroad tracks, it is 16-18 feet higher. He did not note any issues on the hill when he was out there.
- **John Sarantopoulos** asked about the drop from the railroad.
Mr. Thibeault explained that the drop-off from the railroad to the property line is much steeper than what the final grades on the site are going to be. He indicated that they have 2.5 to 1 slopes on the final grades on the property. There are 1 to 1, or even steeper, slopes coming off the railroad tracks to the

property line. Mr. Thurlow requested that Mr. Thibeault send a letter to the railroad and Mr. Thibeault agreed to do that and he will provide a copy to Staff.

There were no questions from Staff.

Wayne Jolley, Owner of Jolley Commons, indicated an area where they will fill to make it level with the parking lot. Mr. Thibeault stated that this was shown on the Plans.

QUESTIONS/COMMENTS FROM COMMISSION MEMBERS:

- **Keith Thurlow** asked about lighting, equipment or fuel being stored on site, hours of operation. Mr. Jolley stated that there may be a pay loader there during daytime, not at night; no fuel – they have their own fuel truck; no lights. Mr. Thibeault stated that hours of operation are on the Plans and are per the Regulations. Maximum of 7 a.m. – 6 p.m. Monday – Friday, 8 a.m. – 12 p.m. Saturday, no Sundays, no holidays.

There were no questions or comments from the public.

QUESTIONS/COMMENTS FROM STAFF and COMMISSION:

- **Ann-Marie Aubrey** stated that she will do a site walk with the Town Engineer.
- **Jonathan Blake** asked if the Plans show new or existing wire (guardrail) at the roadway. Mr. Thibeault stated that there is no guardrail. They are showing silt fence.
- **Brian Card** asked if a bond is being proposed. Mr. Thibeault explained that they had not prepared one, but if they are coming back, they would do that. He will review Section 560.8 with the Town Engineer.
- **Keith Thurlow** asked about the overall estimate for completion. Mr. Thibeault explained that they hope to be complete in a year, but it depends on demand. He does not believe that they would need to renew the permit.

Open items noted: Performance Bond; E&S storm water calculations; letter to the railroad; Section 560.7.i items; site visit.

There were no further questions or comments.

Motion was made by Virge Lorents to continue the public hearing for **Spec Perm Ap #22-1282**; Jolley Commons, LLC (Applicant/Owner); 120 Wauregan Rd; GIS MAP 220, LOT 21; ~6.4 acres; Gen Comm Zone; excavation & removal of gravel products; under Sect 560, et seq (Earth Filling & Excavation); Sect 700 et seq (Spec Perm); & Sect 470 et Seq (Site Plan) of the TOK Zoning Regs., to Monday, May 16, 2022, Town Meeting Room, 2nd Floor, 172 Main Street, at 7:00 p.m. Second by John Sarantopoulos. No discussion.
Motion carried unanimously by voice vote (5-0-0).

2) **Spec Perm Ap # 22-1286** – American Storage Centers, LLC, (American Sports Centers, Inc./Landowner); 551 Westcott Rd; GIS MAP 214; LOT 5; ~3.8 acres; GC; request to construct 6 new buildings & convert 1 existing building to establish a self-service storage facility; under TOK Zoning Regs Section 420.2.2[q].

Ann-Marie Aubrey stated that new Plans had been provided to Commission Members.

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

- Mr. Thibeault stated that the Owner is looking to do a mini storage facility which seems to be a sufficient use for the property.

- The Applicant had come before the PZC previously and the problematic items were: millings that were unacceptable for the site; concerns regarding crushed stone surfaces; moving around the site; snow storage. They took another look at it and made some modifications based upon concerns of the Commission and based upon Staff review.
- They are proposing six buildings a couple, of which, have been slightly reduced in size. The large building to the south is slightly narrower to provide a little more travel width between the property line and the building and the building to the west is also narrower.
- Regarding millings between the buildings which would be problematic for snow removal and maintaining the site, to stay below the 65 percent for impervious surfaces (they are at 64.1 percent), there are two storm water basins and perimeter landscaping which are pervious surface. Along the center of the property along Westcott Road, there is a large area of pavement which is unnecessary and they are removing a good portion of it in order to provide the pervious surfaces needed to meet the Zoning requirements. This also give a lot more area for snow storage. They also have the grass area out front. He explained that they modified the fencing along Westcott Road and the storm water infiltration basin could also be used in the winter months for snow storage. So, they have quite a substantial area now for snow storage that they did not have previously, giving the opportunity to melt in place and infiltrate into the soil which, he said, are very well drained.
- They provided storm water calculations to Engineering and they have approved them.
- They provided turning templates on the site to show that vehicles could move around the buildings. Around the larger building, they were able to get a 30-foot truck around the perimeter of the building in the center of the lot. Around the perimeter, it works well for cars or trucks with trailers as they have 24-foot travel widths for most of the aisles. They have a 20-foot, one-way travel lane along the southern property line. He indicated where they have 21 feet to the west.
- Regarding traffic patterns, they have 4-foot, painted traffic arrows to show traffic going in a counter-clockwise motion.
- Site entrance is off of Westcott Road with a kiosk entry. There will be a gate. Per request of the Engineer, they moved the kiosk in deeper, so it is about 60 feet off of Westcott Road. This will allow a pickup truck pulling a trailer to pull completely into the site.
- There is a dedicated entrance and a dedicated egress and the traffic patterns will allow the configuration to work pretty well.
- Steel bollards around the corners of all of the buildings.
- Lighting on the buildings will be dark-sky compliant, motion-sensor lighting.
- They have not received approval from the CT DOT yet, but Mr. Thibeault spoke with Gary Brigham, from DOT District 2, who said that they just haven't had time to get to it yet as they are backed-up right now. Mr. Thibeault suggested that a condition of approval could be that no building permits are issued until final approval is received from the DOT. He said that the Town Engineer does not have a problem with that since we are using the existing curb cuts for the site (not modifying them in any way). Ann-Marie Aubrey verified that Town Engineer, David Capacchione has reviewed storm water and the curb cuts.

QUESTIONS/COMMENTS FROM COMMISSION MEMBERS and STAFF:

- **Keith Thurlow** asked about recharge areas, fencing to the south to the inside, a gate and pushing snow down the alleyway.
Mr. Thibeault explained where they are and also the 25-foot landscape buffer around the perimeter of the site.
Mr. Thibeault confirmed that the fencing to the south goes to the inside.
Mr. Thibeault agreed with Mr. Thurlow's suggestion about pushing snow down the alleyway to push it straight through and said he can do that.

- **Matthew Wendorf** commented that the modifications regarding the overall width of the road are a good improvement, but he explained that he feels that snow storage may still be difficult in some areas (corners). He asked about the 20-foot wide roadway on the southern side.
Mr. Thibeault explained that the 20-foot wide roadway is a one-way. He explained that these are very low-traffic uses.
- **Keith Thurlow** asked about slope/pitch from the back of the lot (no catch basin).
Mr. Thibeault explained that there are two infiltration basins on the northern side. Total amount of slope – about four feet of pitch going from the back to the front. He said it's pretty flat. It is one percent and he said that these buildings can be built on a one-percent grade.
Mr. Thurlow voiced concern regarding stagnant water.
Mr. Thibeault explained that these types of sites are pretty flat and in the areas where they think may be problematic, they have basins with infiltrators built into them. He explained that there are very well-drained soils on this site and that they had done some ground-water monitoring on the site in the past.
Mr. Thurlow asked if would be necessary to put one in the middle of the two long runs on the western end.
Mr. Thibeault explained that the center of the building is the high point and they have one percent grading in both directions from that building. There are extensive spot grades. It will be driven by the foundation. The slabs of the foundation will have to be set pretty specifically.
Mr. Thurlow asked about signage.
Mr. Thibeault indicated the location for the proposed sign near the entrance.
Mr. Thurlow asked about designated parking other than in the front, if all access to the building is through the front and number of units inside the building.
Mr. Thibeault stated just in the front and that all access is through the front. He stated that, ultimately, that will be a climate-controlled storage. Mr. Thibeault did not know how many units.
- **Virge Lorents** asked about plantings around the perimeter. She stated concern for the plantings getting overgrown and protruding out into the roadways. She suggested some tall evergreens.
Mr. Thibeault explained that they are calling for dwarf ornamental trees and ornamental grasses. He explained that it is mostly heavily wooded.
Ms. Aubrey stated that they will have privacy slats in the chain-link fence.
- **Mr. Sarantopoulos** commented that he is not concerned about snow because a snow-blower could be used in tight areas rather than pushing it.
Mr. Thibeault explained that the Owner has a truck with a plow and he will be doing his own snow plowing.
- **Jonathan Blake** asked about the well cover in the southeastern corner.
Mr. Thibeault stated that it is in a paved area and has been driven over forever. It is not an exposed well. It is below grade.
Mr. Blake stated that he agrees with Mr. Thurlow regarding the smaller infiltration basin on the south end and running the fence along Westcott Road and go up instead of jogging it in.
Mr. Thibeault agrees and thinks it is a good idea because he said that it makes a lot more sense for snow removal.
- **Matthew Wendorf** asked if he could drive around the site in a pickup truck with 6-foot trailer.
Mr. Thibeault stated that you could.
- **Brian Card** asked about bollards to protect the oil and propane tanks around the existing building.
Mr. Thibeault agreed that they should and he and stated that he would do that.

There were no further questions or comments.

Motion was made by Virge Lorents to close the public hearing for **Spec Perm Ap # 22-1286** – American Storage Centers, LLC, (American Sports Centers, Inc./Landowner); 551 Westcott Rd; GIS MAP 214; LOT 5; ~3.8 acres; GC; request to construct 6 new buildings & convert 1 existing building to establish a self-service storage facility; under TOK Zoning Regs Section 420.2.2[q].

Second by Matthew Wendorf. No discussion.

Motion carried unanimously (5-0-0).

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

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

1) **Spec Perm Ap #22-1282**; Jolley Commons, LLC (Applicant/Owner); 120 Wauregan Rd; GIS MAP 220, LOT 21; ~6.4 acres; Gen Comm Zone; excavation & removal of gravel products; under Sect 560, et seq (Earth Filling & Excavation); Sect 700 et seq (Spec Perm); & Sect 470 et Seq (Site Plan) of the TOK Zoning Regs.

Continued to May 16, 2022.

2) **Spec Perm Ap # 22-1286** – American Storage Centers, LLC, (American Sports Centers, Inc./Landowner); 551 Westcott Rd; GIS MAP 214; LOT 5; ~3.8 acres; GC; request to construct 6 new buildings & convert 1 existing building to establish a self-service storage facility; under TOK Zoning Regs Section 420.2.2[q].

Motion was made by Brian Card to approve **Spec Perm Ap # 22-1286** – American Storage Centers, LLC, (American Sports Centers, Inc./Landowner); 551 Westcott Rd; GIS MAP 214; LOT 5; ~3.8 acres; GC; request to construct 6 new buildings & convert 1 existing building to establish a self-service storage facility; under TOK Zoning Regs Section 420.2.2[q], with the following conditions:

- DOT approval must be received prior to building permit issuance.
- Fencing at the southeast corner be moved to the road side of the basin.
- Lighting be dark-sky compliant with timer based no longer than 30 minutes.
- Proposed site sign at the entrance dimensional requirements be verified with Staff.
- Safety bollards where needed around the building structure, where the utility tanks are, for protection purposes.

Second by Virge Lorents. No discussion.

Roll Call Vote: Virge Lorents – yes; John Sarantopoulos – yes; Matthew Wendorf – yes; Brian Card – yes; Keith Thurlow – yes.

Motion carried unanimously (5-0-0).

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

1) **Zone TEXT Change Ap # 22-1287** – Town of Killingly, special permitted use under Business Park, General Commercial, Light Industrial, Mill Mixed Use and Mixed-Use Interchange Zones for the creation of cannabis establishments. **Schedule for Public Hearing on May 16, 2022.**

Motion was made by Virge Lorents to schedule a public hearing for **Zone TEXT Change Ap # 22-1287** – Town of Killingly, special permitted use under Business Park, General Commercial, Light Industrial, Mill Mixed Use and Mixed-Use Interchange Zones for the creation of cannabis establishments, for Monday, May 16, 2022, Town Meeting Room, 2nd Floor, 172 Main Street, at 7:00 p.m.

Second by John Sarantopoulos. No discussion.

Motion carried unanimously (5-0-0).

2) **Site Plan Ap # 22-1288** – Noah Janetatos (AK Real Estate, LLC / Owner); 162 Main Street, GIS MAP 198, LOT 126, Central Business District (Borough of Danielson Zoning Regulations), ~0.28 acres, for location of new retail business (liquor store) in pre-existing building. **Receive, and assign staff to do site plan, as the retail store will be one tenant, in a multi-tenant pre-existing building.**

Motion was made by Virge Lorents to receive and assign to Staff **Site Plan Ap # 22-1288** – Noah Janetatos (AK Real Estate, LLC / Owner); 162 Main Street, GIS MAP 198, LOT 126, Central Business District (Borough of Danielson Zoning Regulations), ~0.28 acres, for location of new retail business (liquor store) in pre-existing building.

Second by Matthew Wendorf.

There was discussion regarding the location and also about State licensing for liquor.

Motion carried unanimously (5-0-0).

3) **Special Permit Ap # 22-1289** – Dayville Four Corners, LLC (Applicant/Owner); 730 (736) Hartford Turnpike, GIS MAP 115, LOT 6, General Commercial Zone, ~7.07 acres, request use of existing space in building for liquor, beer & wine sales, under TOK Zoning Regs under 420.2.1(a) with reference to 420.1.2(i). **Receive, and schedule for Public Hearing on May 16, 2022.**

Motion was made by Virge Lorents to receive and schedule a public hearing for **Special Permit Ap # 22-1289** – Dayville Four Corners, LLC (Applicant/Owner); 730 (736) Hartford Turnpike, GIS MAP 115, LOT 6, General Commercial Zone, ~7.07 acres, request use of existing space in building for liquor, beer & wine sales, under TOK Zoning Regs under 420.2.1(a) with reference to 420.1.2(i), for Monday, May 16, 2022, Town Meeting Room, 2nd Floor, 172 Main Street, at 7:00 p.m.

Second by John Sarantopoulos.

There was discussion regarding that there is only one liquor license available.

Motion carried unanimously (5-0-0).

4) **Section 8-24 Review Ap # 22-1290** – Town of Killingly (Applicant/Owner); 339 Main Street, GIS MAP 181, LOT 142, Borough High Residential Zone, ~10.5 acres, for expansion and renovation of the Killingly Memorial School. **Review, discussion, action.**

Representatives from Stantec Consulting Services and Antinozzi Associates gave a presentation of the project and answered questions (plans were displayed as discussed):

- Demolition of the western modular is Phase One.
- Eventually the eastern modular will also be demolished.
- 18,000 s.f. addition to be added to the existing building (in the location of the western modular building).
- Existing building to be completely renovated. Adding mechanical, HVAC, electrical, plumbing, fire protection (fully sprinkled system), security/technology systems throughout the existing building.
- Site development work: Bus Loop in front of the building; entrances from Main Street, Hutchins Street and the entrance to the Westfield Avenue property. Circulation pattern is similar, but improved around the entire building.
- The original solar panel project (Green Skies) was put on hold when the Town pursued the expansion and renovation project. The Town still plans to implement the solar project. There are no existing panels on this KMS site.
- State funding has been committed for the project. An explanation was given about the specifics for the funding, the issue of the square footage, and how the State wanted it to be renovated as new. The funding for KMS has been granted in the amount of \$34.
- Ulla Tiik-Barclay explained that this project was approved by Town Council. She explained that they did not have to appropriate much more funding due to the need for replacement of the HVAC system. Mr. Sarantopoulos feels that it should have gone to referendum.

CONNECTICUT FEDERATION OF PLANNING AND ZONING AGENCIES QUARTERLY NEWSLETTER

Spring 2022

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ZONING TO FOCUS ON THE USE OF LAND AND NOT THE USER

The Connecticut Supreme Court affirmed a decision of the State Appellate Court that was originally reported in the Summer 2020 edition of this newsletter. The case involved a concert series sponsored by the Madison Beach Hotel that was held on a town park that abutted the hotel property. Both the hotel and the park were nonconforming uses. The zone wherein they were located allowed single-family homes and only those other uses not detrimental to them. The trial court found that the use by the hotel of an abutting park for concerts illegally expanded the nonconforming status of the hotel. The Appellate Court and Supreme Court disagreed. In doing so, they relied upon the long-established legal axiom that zoning focuses on the use of land and not the user.

In determining whether the concerts illegally expanded a nonconforming use, only the use of the park property was relevant as the hotel did not own the park. Whether or not the nonconforming hotel use had expanded would depend solely upon the use of the hotel property. In regard to whether the nonconforming park use had expanded, the courts looked to the zoning regulations as well as the actual uses taking place at other town parks. In doing so, it found that a free concert series came within the definition of a

public park. Thus, holding the concerts at the nonconforming park was not an expansion. See *Pfister v. Madison Beach Hotel LLC*, 341 Conn. 702 (2022).

74th ANNUAL CONFERENCE

The Federation's Annual Conference was held on March 24, 2022 at the Aqua Turf Country Club in Southington Connecticut. Our principal speaker was Brian Miller of the Miller Planning Group, who made a presentation on the numerous land use Bills that were adopted during the 2021 legislative session. Those who attended the Conference learned what actions their commissions need to take in order to comply with these new laws which affect the regulation of accessory apartments, cannabis establishments, affordable housing and special permits, among others.

In addition to this presentation, Attorney Timothy Sullivan presented Length of Service Wards and Lifetime Achievement Awards to those nominated for these awards. If you would like any of the presentation materials, please contact us at cfpa.live.com.

STATE SUPREME COURT AFFIRMS USE OF PDD'S

The State Supreme Court affirmed an earlier decision by lower

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courts that a zoning commission has the authority under the general statutory grant of zoning authority to amend its zoning regulations to adopt planned development districts. These districts are often developer driven and apply to a single parcel of land. Nonetheless, the Supreme Court found that Connecticut General Statutes Sec. 8-2 provides the necessary authority as the approval of a planned development district is not different from the creation of any other new zoning district.

In this case, aggrieved neighboring property owners challenged the created district as violating the uniformity requirement found in Connecticut General Statutes that all properties within a zone district be treated the same and also being beyond the power of the commission to create.

The court dismissed these arguments, finding that the district did not violate the uniformity requirement as it would treat all property within the new district in the same fashion and, as already discussed, the commission has the authority to adopt a planned development district under its general zoning power to amend its regulations. See *Tillman v. Planning & Zoning Commission*, 341 Conn. 117 (2021).

NONCONFORMING USE CREATED BY STIPULATED JUDGMENT

An application for a special exception to construct an inn on

residentially zoned property was denied by a zoning commission. This decision was appealed, resulting in a stipulated judgment that resulted in the approval of the special exception subject to many conditions. One condition was that any modification to this stipulated judgment would be by application to the commission.

An application to modify the special exception was eventually filed with the zoning commission, which approved it. An appeal by neighbors followed. One of the issues raised was whether by approving the modification, the commission impermissibly allowed for the expansion of a nonconforming use.

The use in question, an inn, did not meet the standard definition of a nonconforming use which is a use or structure prohibited by the zoning regulations but is permitted because of its existence at the time that the zoning regulations were adopted. By existence, it means the use is actual and not just contemplated. The court still found the use to be nonconforming. It did this by finding an additional type of nonconforming use – one created by a stipulated judgment.

In doing so, the court effectively replaced the need to find a use in existence at the time zoning regulations were adopted to instead a use allowed by a stipulated judgment. The basis for this was the long-standing public policy of encouraging the settlement of legal

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disputes. In this case, the stipulated judgment resolved contentious litigation.

The reason for labeling the proposed inn a nonconforming use was the fact that the stipulated judgement allowed the placement of the main inn building within a front yard setback. By labeling it a nonconforming use, the court was able to find that the proposed inn, while not permitted, was still a lawful use. It also allowed for the application of established law regarding the expansion of nonconforming uses, which is what the plaintiffs claimed the modification application would allow.

In regard to the claim that the modified plans would impermissibly allow for the expansion of a nonconforming use, the court found that since the approved footprint of the inn would not expand and the stipulated judgment contained no restrictions as to height, allowing for the modification was not an expansion of the nonconforming inn. *See Parker v. Zoning Commission, 209 Conn. App. 631 (2022).*

2022 LEGISLATIVE UPDATE

If you attended the Annual Conference, you would know that there are several pending Bills that are of concern to the Federation. House Bill 5429 would have allowed the “as of right” development of housing with a minimum overall density of fifteen dwelling units per acre located within a

half-mile radius of any passenger rail or commuter rail station or any bus rapid transit station without limit as to the size of proposed development and drastically reduce the time period allowed to consider such a request. This Bill is now dead.

ANNOUNCEMENTS

Membership Dues

Notices for this year’s annual membership dues were mailed March 1, 2022. The Federation is a nonprofit organization which operates solely on the funds provided by its members. So that we can continue to offer the services you enjoy, please pay promptly.

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 sets forth 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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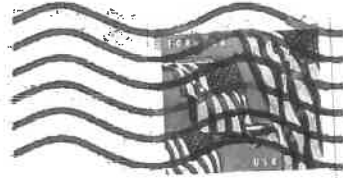
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PRACTICE DEREGULATION



Beyond Use Zoning: The Role of Deregulation in Housing Equity

By John Zeanah, AICP

It is unlikely anyone reading this needs an introduction to the decision made by Minneapolis to eliminate exclusively single-family zoning districts from its code. This bold step, recommended in the city's 2040 comprehensive plan initiated a series of national conversations about the legacy of single-family use districts, exclusionary zoning, and the role of land-use controls in promoting inequities in cities throughout the U.S.

This is a conversation whose time has come, no doubt. But arguably, this conversation has been part of planning's history from the beginning. For example, Judge David Westenhaver observed in his 1924 lower court ruling in *Ambler Realty Co. v. Village of Euclid*, the precursor to the 1926 U.S. Supreme Court decision that entrenched use zoning into the fabric of America, that the effect of zoning "is to classify the population and segregate them according to their income or situation in life" (297 F. 307, 1924). In 1953, California Justice Benjamin Rey Schauer observed "the device of zoning by ordinance was conceived as providing a method whereby discriminatory measures otherwise unlawful could be sustained" (40 Cal.2d 552, 1953). In 1971, President Richard Nixon released a statement on equal housing opportunity, including direction to the Attorney General to bring legal action "where changes in land use regulations are made for what turns out to be a racially discriminatory purpose" (Babcock and Bosselman, 1973).

Today, the efforts of Minneapolis and a handful of other cities have refocused this conversation to center on the preponderance of exclusively single-family residential zoning (i.e., single-family-only zoning). To be sure, focusing reform on single-family use zoning alone serves to loosen the grip the single-family home has had on local land-use policies in the U.S. for decades. But use zoning, or the component of zoning that

establishes permissible uses, is only one method to affect housing density, equity, and choice. Acknowledging the legacy of exclusionary policies must go beyond use zoning to effectively lead to change. After all, it is the limitation on "density of population," not "location and use" the Standard State Zoning Enabling Act advised would "make possible the creation of one-family residence districts."

This article explores various ways local policies restrict population density and constrain the supply of housing choices. It looks beyond single-family use zoning to consider how loosening other development regulations can encourage a variety of forms and patterns of housing. It covers zoning restrictions, such as accessory use standards and bulk regulations, and reviews how related codes, such as building codes, affect housing choices, including those in the "missing middle." Throughout, it presents examples of how some cities, including Memphis, where the author serves as planning director, have taken steps beyond use zoning to advance goals of housing equity in reforming codes and policies.

Previous issues of *Zoning Practice* have done a thorough job of illustrating opportunities to expand inclusionary zoning measures and fair housing policies. This article does not seek to repeat these recommendations. Alternatively, this article seeks to add to this literature by demonstrating avenues where deregulation can be a path to inclusionary policies to enable housing equity and choice.

HISTORY

A generous view of zoning's origins leads us to understand the progressive reformers of the early 1900s found great concern in how U.S. cities were built, organized, and settled. Concerns were heightened over several

possible ills, among them industrial uses and their attendant externalities, encroachment of industrial and commercial uses into residential areas, and housing conditions of urban tenements and tenement dwellers. The U.S. Supreme Court in the *Euclid* decision recognized these issues in its majority opinion, drafted by Justice George Sutherland.

While this view may have merit, a more critical view may consider these restrictions as not merely removing the "pig in the parlor" back to its proper order and arrangement (272 U.S. 365, 1926). For example, Justice Sutherland goes on to deliver the equally colorful statement in the *Euclid* decision that apartments mixing with single family homes were no more than "mere parasites." Edward Bassett, one of the forefathers of modern planning, opens the section on zoning in his 1938 book *the Master Plan* by stating, "our pioneer community will find it wise to prevent multiple houses from being erected everywhere and will limit them to small districts" (Bassett, 1938). This, not to mention, the explicit attempts by cities and developers across the country to promote racial segregation through zoning codes (overturned in *Buchanan v. Warley* in 1917) and racially restrictive covenants (overturned 30 years later in *Shelley v. Kraemer* in 1948).

These overt attempts to segregate population—by race and by use—were extended to include other restrictions. While on their face, efforts to control lot size, lot width, and building height may seem benign, communities began to push the limits on what minimums could be allowed and still be justified as legitimate advancement of health, safety, and general welfare. In some cases, courts have upheld minimum lot size requirements of as much as five to 10 acres (Juergensmeyer et al. 2018). These efforts were largely intended to suppress the supply of available housing to increase

cost and thus narrow the pool of buyers to those in upper-income strata.

Exclusionary zoning measures are often justified by arguments related to protection of community character or historic preservation. These are often makeweight defenses that employ otherwise legitimate values of form, pattern, and context to mask efforts to prevent diversification of population and demographics.

In addition to inequities associated with exclusionary policies, these measures often promote urban sprawl and stretch municipal resources to serve these new areas. In 2019, Memphis recognized this, having grown by 55 percent since 1970 to 324 square miles, with little corresponding rise in population. In addition to the adoption of a new comprehensive plan focusing new growth in the core and neighborhoods, the city voted to deannex five areas along its fringe, including four where large-lot, suburban patterns of housing had been developed.

In response to exclusionary zoning policies, many communities have turned to adding layers of inclusionary zoning policies on top. Typically, inclusionary zoning takes the form of carrot or stick. For example, a community may reward a developer a density bonus as an incentive to providing more affordable housing. On the other hand, the community may impose additional requirements on a development, such as mandating a set-aside of a certain percentage of housing designated as affordable. While inclusionary zoning plays an important role in maintaining affordability in well-functioning market environments, some cities and neighborhoods struggle with attracting new investment to trigger inclusionary measures. While these are important policies to keep on the menu, it is just as important that planners begin to address the complex entanglement of regulations that favor single-family residential and discourage housing options to begin with.

THE ROLE OF THE PLAN

While the authors of the Standard State Zoning Enabling Act may have written with different “purposes in view” than contemporary aims of planning, they established a standard that bears restating in the context of this discussion: “[s]uch regulations shall

be made in accordance with a comprehensive plan.” While the subject of this article is largely deregulation, rather than the creation of new restrictions, the same advice applies—“no zoning should be done without such a comprehensive study.”

The comprehensive plan’s role in enabling housing equity is not only to set the vision for the community, but to direct change in the physical patterns of development throughout the city. Today’s efforts to better incorporate equity into the comprehensive plan should not only account for historical measures responsible for creating inequity within the city, but also to direct communities on how to grow the geography of opportunity by leveraging the tools of plan implementation, including policy and investment. For the purposes of this article, we will assume a universal planning goal of promoting more housing options in more places.

To this end, any change in regulation should be considered comprehensively to understand all potential effects of the policy. In your community, you may decide

increasing housing access everywhere is worth any trade-off, such as the ability to control growth and density of population in certain areas of the city or the need to direct investment in areas where need is greatest. Either way, cities should be aware of what they give up through deregulation and how these decisions comport with the comprehensive plan.

Further, the comprehensive plan process is an ideal stage for planners to gather information to understand demographic changes and market dynamics present in their communities. These factors help cities to determine demand and how regulations may be enabling or constraining the community’s ability to meet demand. Practices like large-lot zoning were only successful in achieving exclusionary aims because demand for the end product elevated the value and priced out many households. But market demand is fluid.

In well-functioning markets, demand elevates sales prices above the cost of construction or renovation. Costs include



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➔ Recent infill housing construction near the University of Memphis on lots of 3,700 square feet have sold for more than double the average sales price of homes countywide.

not only materials and labor, but also cost of acquisition (including land) and property taxes. Limitations imposed by zoning restrictions and requirements imposed by building codes further apply pressure to costs of construction, though these may be less evident on the balance sheet. In lower-functioning markets, demand may not be able to push sales price above cost, creating a development gap.

The point here seems obvious. A shift in consumer preferences away from large-lot homes to smaller lots changes the market price of the two products. Where this happens, once exclusionary measures lose their effect. One takeaway of this reality is that viewing exclusionary regulations cannot assume one fixed, static set of consumer preferences. A second brings us back to the plan. Planning and implementation can contribute to change. Deregulation can invite that change.

ZONING REGULATIONS

Let's begin this analysis with zoning by exploring some of the ways beyond use zoning planners can roll back regulations that may be restricting the ability to provide for housing equity and choice in communities. Each of the examples below are measures that may serve as either physical or financial constraints to creating more housing choices in cities.

In the example given above, where costs outweigh sales price creating a development gap, the difference can be overcome by allowing additional units on a lot or within a structure. To be clear, addressing use zoning regulations are important to enabling this outcome. However, it is not the only way to enable this outcome, nor is single-family use zoning the only impediment in zoning codes to creating housing choice.

Accessory Dwelling Units

Communities across the country have begun to look to accessory dwelling units (ADUs) as a way to increase housing supply without substantial change to regulations or community character. In fact, Minneapolis first found success relaxing ADU regulations before advancing to the step of eliminating single-family use zoning.

Minneapolis looked to other communities, such as Portland, Oregon; Seattle; and Santa Cruz, California, among others, as precedent for its own efforts to relax ADU regulations (Mukhija and Ling 2022). In many respects, comprehensively addressing ADU regulations can provide communities with what some researchers have called “a gateway to more ambitious land use deregulation and higher density in cities” (Mukhija and Ling 2022). Let's examine some key considerations for ADU reform that provide a window to housing reform more generally.

Lot size: In many communities, ADUs may be allowed by-right as accessory uses to single-family homes, but slow to develop due to minimum standards, such as lot size. Currently in Memphis's code, this minimum is 10,000 square feet—a floor that is ill-suited to promote density where it's most desired and most effective. Since 2018, over 20 ADUs proposed to be built on lots of less than 10,000 square feet applied for variances. All have been approved, and all but one without opposition. Following a recent housing study, the city is considering a change to this standard, dropping from 10,000 to 6,000 square feet to open up ADU development in virtually all single-family use districts, but more importantly, in areas the city has targeted for more dense housing around anchors (or centers) of new development activity. While this is progress for Memphis, other cities are leading the way, requiring even lower minimum lot size standards or removing this requirement from ADU regulations altogether.

Parking: Similar to minimum lot size, the requirement for additional parking for each ADU can be a constraint to creating otherwise allowed housing. In many communities, including Minneapolis, zoning code revisions have removed any additional parking requirement for ADUs. In Memphis, under consideration is a proposal to relieve these requirements as long as the ADU does not reduce overall parking on the lot below the code minimum. As an added measure of flexibility, the Memphis proposal would allow the height of the ADU to exceed the principal structure by 1.5 times (while staying within the district height limit) to allow for garage parking on the bottom floor with the living unit on the second floor.

Principal use, number, attachment, and timing: Finally, there are myriad other considerations when reviewing ADU requirements and opportunities for deregulation. Among them are whether to allow an ADU to be an accessory to single-family residence only or any residential use, to allow more than one ADU to occupy a lot with the principal structure; to allow ADUs to be attached or internal to the principal structure, and to allow the ADU to be constructed before the principal structure.

Bulk Regulations

Bulk regulations can compound the exclusionary effects of single-family use zoning. Collectively, regulations, such as minimum lot size or lot area per dwelling unit, maximum height, and maximum floor area ratio, have a large influence on the cost per dwelling unit in a community.

Minimum lot size: Putting aside the recent focus on single-family use zoning, large lot minimum requirements have long been the prototypical example of exclusionary zoning practices. Developing communities—often, but not always suburban—used larger lots to drive up the cost of housing to control the socioeconomic makeup of the population. In this view of exclusionary zoning in practice, consumer preference for this type of housing was high, as families sought other geographic benefits of suburban living. Given this lens of market demand, inequity was created less by the exclusivity of the zone's use and more by the zone's lot size. The simple fix appears to be lowering the minimum. In 1998, Houston (well-known for lacking use zoning) lowered their minimum lot size to as low as 1,400 square feet (Gray and Millsap 2020). In some ways, lowering minimum lot size requirements to a standard of near elimination, such as this, follows similar logic to eliminating parking requirements: Let the market decide. Fifty years ago, the market displayed greater appetite for larger lots. Today, small-lot construction can reach the top of the market, where demand is high for more house and less yard in walkable urban neighborhoods. While adjusting minimum lot size requirements may have been one of the more influential moves to enabling housing equity at one time, today it likely helps more to avoid harm than it achieves good.

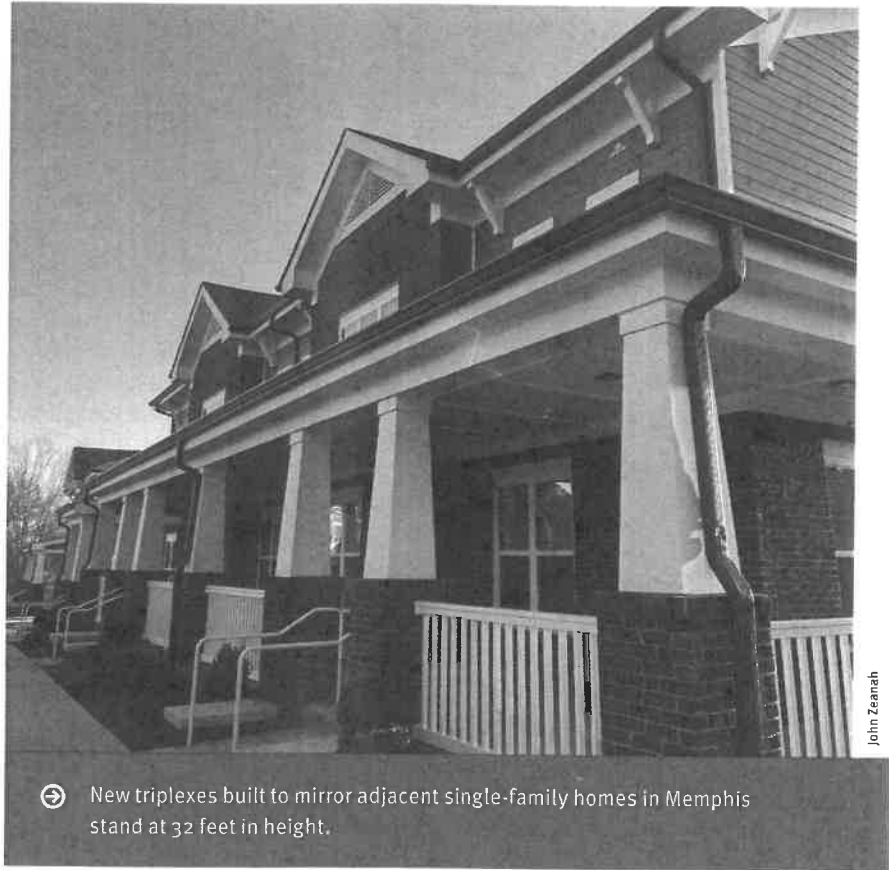
Minimum area per dwelling unit:

A related, more problematic, standard is minimum lot area per dwelling unit. Created to achieve many of the same aims as large lot minimum requirements, lot area per dwelling unit imposes a multiplier effect when additional units are introduced, whether it be an ADU, attached dwellings such as a duplex or triplex, or multiple principal residential structures, such as a cottage court. Communities should also review minimum lot widths in residential zones to determine whether these also provide a barrier to enabling a variety of housing types.

Maximum height:

In the time since Minneapolis made its famous code revision to open exclusively single-family neighborhoods to duplexes and triplexes, several commenters have observed the result has been underwhelming (Brasuell 2020). One of the chief flaws of Minneapolis's change, some have observed, was not addressing bulk regulations, such as lot size and height. It is important to remember one of the reasons Minneapolis made the decision to eliminate exclusively single-family zones was growth pressures within a fixed geographic footprint that is largely developed today. In developed cities and neighborhoods, conversions and rebuilds are likely to be more possible and prevalent than construction on raw land. So it is not too unexpected the change was not followed by a sizable wave in new construction of triplexes. Further, one of the key messages supporters used was that only unit count would change, community character would not. Duplexes and triplexes in formerly single-family neighborhoods would still have to fit within the same building size (Kahlenberg 2019). But to enable a policy aimed at creating more duplexes and triplexes, maximum height is an important barrier to consider. Based on the templates provided by Daniel Parolek in *Missing Middle Housing*, residential height maximums should start at 30 feet to fit a three-story structure. This height would be suitable for a single-family home or a triplex.

Floor area ratio: A final example of a restriction worth targeting in enabling housing equity through zoning code reform is floor area ratio (FAR), or if present in your community's code, minimum floor space.



➞ New triplexes built to mirror adjacent single-family homes in Memphis stand at 32 feet in height.

While many communities do not have residential floor area ratio limits or have removed them from their codes, those that do could offer more opportunity for housing choice by raising maximum floor area ratio, similar to changes proposed by Sacramento, California, in its forthcoming general plan update (Herriges 2021). The draft land-use map, adopted alongside a recommendation to eliminate single-family use zoning, allows greater flexibility for builders to create more options using a maximum floor area ratio of 1.0, up from 0.7. Had the city left the maximum FAR at 0.7, it would have left in place a constraint on floor space largely incompatible with the building types promoted by the elimination of single-family use zoning.

BUILDING CODES

In November 2021, Memphis and Shelby County voted to roll back a significant, but lesser noted regulatory hurdle to building missing middle housing by locally amending

building codes to enable structures of three to six dwelling units to be reviewed by the city and county under the International Residential Code (IRC) rather than the commercial building code that normally applies to residential structures of three units or more.

Like most jurisdictions in the U.S., Memphis and Shelby County relies on the International Code Council's (ICC) standard codes for setting construction regulations. Currently, the International Building Code (IBC) defines many missing middle building types, such as triplexes and fourplexes, as commercial construction since they cross over the three unit or more threshold defined in the code. Following this more restrictive code can often undermine the financial feasibility for a missing middle project. Recognizing standard codes do not always address the economics of a building type, planners and code officials in Memphis and Shelby County set out to amend these codes locally as part their update to the 2021 codes.

The idea for making this change came out of the city's *Memphis 3.0 Comprehensive Plan*. During this process, planners looked at several ways code restrictions prevent the development or redevelopment of walkable, urban communities. Plan recommendations addressed street widths and curb radii regulated by the fire code, use and lot sizes regulated by the zoning code, and building types regulated by construction codes.

The proposal's success was also due in large part to leadership on the city and county's building code advisory board by homebuilders, and one in particular who builds infill missing middle housing in walkable neighborhoods near downtown. After noting how much smoother his 11 cottage-court style residences moved through the regulatory process than two proposed live-work buildings and four quadplexes, the differences in how the commercial code and the residential code apply to small multifamily became clear. These real-life experiences helped the advisory board work with planners

and construction code officials to help make the case for building code changes.

Some of the primary challenges to building missing middle housing types found in the International Building Code pertain to fire separations and sprinkler requirements, loading and shared egress, and requirements for separate mechanical, electrical, and plumbing drawings. Adding to the complexity of the code, and thus cost to build, is elevated permit fees for projects classified as commercial, rather than residential. Finally, homebuilders on the code's advisory board pointed out the likelihood a commercial builder would build small multifamily residential is low, as is the likelihood a homebuilder would be familiar with building from the IBC. This mismatch between builders and codes was also identified by Parolek in *Missing Middle Housing*.

To address changes needed and concerns raised regarding making this change at the local level, Memphis and Shelby County made the following adjustments:

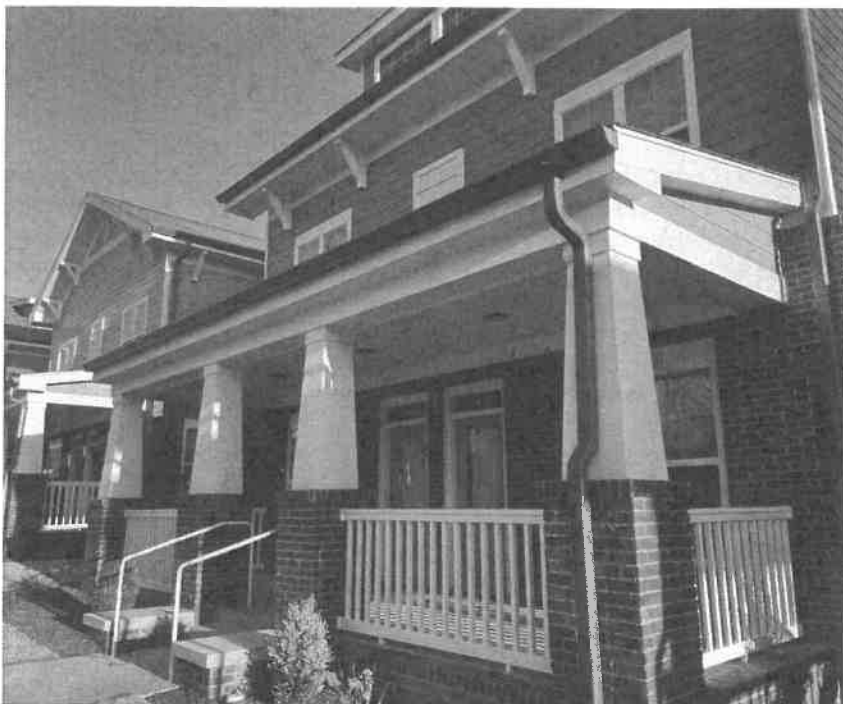
- Modify the scope and definitions of the IBC and IRC to apply the residential code and all subject provisions to three- to six-unit structures.
- Remove the sprinkler requirement for buildings with two-hour fire rated walls and floor/ceiling assemblies.
- Limit public spaces to shared means of egress, but allow upper-floor residences to share common egress.
- No longer require separate mechanical, electrical, and plumbing drawings.

In taking the first step eliminating single-family use zoning, Minneapolis inspired many other communities to adopt their example and build on it further by addressing other bulk regulations that may otherwise prevent new housing types from moving forward. Similarly, Memphis has attempted a first step to define small-scale multifamily, such as triplexes and fourplexes, as residential under the building code. This subjects these structures to less complex regulation, but opportunity for more widespread change is yet to be realized.

This action, like Minneapolis's, is not without challenges. First, not all states in the U.S. allow local jurisdictions to make their own amendments to the "pure code." Even those that do may still need to answer to a state agency on whether local amendments will be accepted or permitted to continue. Second, many code officials view adopting the ICC codes in their pure form as important measures toward the goal of disaster resilience for cities and counties. Given most jurisdictions across the U.S. adopt the ICC's standard building codes, planners should work with construction officials in their communities to not only consider how code changes similar to Memphis's example can be made at the local level, but to gather support for lobbying ICC to make changes in the "pure code" in a future release to better enable missing middle housing through the IRC, while limiting any tradeoff of resilient construction.

CONCLUSION

Despite the recent focus on rolling back historical exclusionary zoning practices by eliminating single-family-only zoning, decisions around single-family use do not



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➡ Six-unit structures in Memphis can now be designed and built to International Residential Code standards.

stand alone as barriers to housing choice. As this article has demonstrated, other zoning restrictions such as accessory uses and bulk and dimensional requirements and other areas normally outside the purview of planners, such as building codes, can be modified to better enable housing equity.

Even beyond zoning and building regulations, property tax laws that assess small-scale multifamily at higher rates on par with large multifamily or commercial buildings disincentivize lower apartment unit counts. Utility connection requirements that place higher cost burden on small-scale multifamily can have the same effect. Off-street parking requirements can constrain both physical and financial viability of situating a small-scale multifamily building on an infill lot. Each of these, on top of zoning and building constraints, add costs to the project. Without sufficient demand, these additional

costs can render housing choice impractical and unbuilt.

Each of us in the planning profession have a responsibility to consider how development policies and regulations in our communities enable housing equity and expand housing choices in more places. Planners should make these considerations as they are preparing the comprehensive plan. Consider population and market dynamics and how these changes influence demand on housing types present in your communities. Consider how goals of housing equity and choice impact other plan goals. Consider use zoning throughout your community and how it supports or works against these goals. Most importantly, work across agencies, disciplines, and the community to go beyond use zoning. There's more standing in our way to create more equitable communities for tomorrow.

ABOUT THE AUTHOR

John Zeanah, AICP, is Director of the Memphis and Shelby County Division of Planning and Development. He leads a cross-functional division responsible for planning, zoning, and development services. Among his accomplishments, Zeanah led the development and adoption of the *Memphis 3.0 Comprehensive Plan*, the city's first comprehensive plan in 40 years and winner of the American Planning Association's Daniel Burnham Award of Excellence for a Comprehensive Plan in 2020 and a Charter Award from the Congress for the New Urbanism in 2021. Zeanah earned his Master of City and Regional Planning degree from the University of Memphis, where he now teaches land-use controls as an adjunct faculty member.

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