AGENDA
GROTON ZONING COMMISSION
FEBRUARY 3, 2016 – 6:30 P.M.
TOWN HALL ANNEX – COMMUNITY ROOM 2

I. ROLL CALL

II. PUBLIC HEARING

1. REGA15-02, Proposed Zoning Regulation Text Amendment to Section 5.2. Proposal is to amend the maximum building height in the Waterfront (WF-20) zoning district from 30 feet to 50 feet (Russell Sergeant, Applicant)*

III. APPROVAL OF THE MINUTES OF meeting of January 6, 2016*

IV. CONSIDERATION OF PUBLIC HEARING

1. REGA15-02, Proposed Zoning Regulation Text Amendment to Section 5.2. Proposal is to amend the maximum building height in the Waterfront (WF-20) zoning district from 30 feet to 50 feet (Russell Sergeant, Applicant)

V. PUBLIC COMMUNICATIONS*

VI. OLD BUSINESS

1. Zoning Regulation Update
   a. Water Resource Protection (WRPD)

VII. NEW BUSINESS

1. Zoning Regulation Update/Preliminary Discussion*
   a. Downtown Development District (DDD)
   b. Waterfront Design District (WDD)
   c. Mixed Use (MX) Zones
   d. Parking/Landscaping
   e. Format
   f. Other
2. Development Guide: Update
3. Report of Commission
4. Receipt of New Applications

VIII. REPORT OF CHAIRPERSON

IX. REPORT OF STAFF

X. ADJOURNMENT

* Enclosed

Next Regular Meeting: March 2, 2016

TOWN OF GROTON
PLANNING AND DEVELOPMENT SERVICES

JONATHAN J. REINER, AICP
DIRECTOR
JREINER@GROTON-CT.GOV

134 GROTON LONG POINT ROAD, GROTON, CONNECTICUT 06340
TELEPHONE (860) 446-5970 FAX (860) 448-4094
WWW.GROTON-CT.GOV

December 17, 2015

VIA EMAIL
Attention: Legal Ads
The Day
P.O. Box 1231
New London, Connecticut 06320

Please publish the following legal ad on January 22, 2016 and January 29, 2016:

TOWN OF GROTON
ZONING COMMISSION
NOTICE OF PUBLIC HEARING

Notice is hereby given that the following public hearing will be held on February 3, 2016 at 6:30 p.m. in Community Room 2, Town Hall Annex, 134 Groton Long Point Road, in said Town, to consider the following:

REGA15-02, Proposed Zoning Regulation Text Amendment to Section 5.2. Proposal is to amend the maximum building height in the Waterfront (WF-20) zoning district from 30 feet to 50 feet (Russell Sergeant, Applicant)

Application is on file and available for public inspection during normal business hours at the Planning Department, 134 Groton Long Point Road. Dated this 22nd day of January 2016 at Groton, Connecticut. (On second insertion please put "Dated this 29th day of January 2016 at Groton, Connecticut".)

Susan Sutherland, Chairperson

Account #30384
P. O. #1600391

Please do not bold. If you have any questions, please do not hesitate to contact me at 860-446-5970.

Sincerely,

Jonathan J. Reiner, AICP
Director

JJR:dlg

REGA15-02

MEMORANDUM

TO: Town of Groton Zoning Commission

FROM: Diane Glemboski, Planner II

DATE: January 27, 2016

SUBJECT: REGA15-02 (WF-20 Height)

The applicant for the Zoning Regulation Amendment (REGA15-02) for Height in the Waterfront District (WF-20) is requesting that the public hearing be opened on February 3, 2016 and continued until the March 2, 2016 Zoning Commission meeting (See Attachment).

The Planning Commission has continued the discussion of the Zoning Commission Referral for REGA15-02 to their February 9, 2016 Planning Commission meeting to obtain additional information/clarification from the applicant and his clients before formally reporting on the application.

REGA15-02

Russell E. Sergeant, A.I.A.
ARCHITECT
3 Rowland St. Mystic CT 06355
(860) 536-3925
rustysergeant@aol.com

Susan Sutherland, chairman
Zoning Commission
Town of Groton
134 Groton Long Point Rd.
Groton, CT 06340

January 26, 2016

RE: Zoning Amendment for Height in WF-20 Zone

Dear Ms. Sutherland,

I have proposed an amendment to increase the allowable building height in the WF20 zone to more carefully reflect the nature of the activities that occur there. In the last Planning Commission meeting concerns and questions on the referral from your commission that can best be addressed by my clients.

Unfortunately they are not available for the Planning Commission tonight and we have requested a delay until their February 9th meeting where we can present the issues we are facing.

We would like to defer our presentation to your commission until the March 2nd meeting.

Regards,

RECEIVED
JAN 26 2016
PLANNING DEPARTMENT
TOWN OF GROTON, CT

REGA15-02

MINUTES
TOWN OF GROTON
ZONING COMMISSION
JANUARY 6, 2016 – 6:30 P.M.
TOWN HALL ANNEX – COMMUNITY ROOM 2

I. ROLL CALL

Regular members present:	Hudecek, Marquardt, Sayer, Sutherland
Alternate members present:	Smith
Absent:	Bancroft
Staff present:	Allen, Glemboski, Jones, Reiner, Gilot

Acting Chair Hudecek called the meeting to order at 6:30 p.m. and seated Smith for Sutherland.

II. APPROVAL OF THE MINUTES

1. December 2, 2015

MOTION: To approve the minutes of meeting of December 2, 2015, as written.

Motion made by Marquardt, seconded by Smith, passed unanimously.

III. PUBLIC COMMUNICATIONS – None

The WRPD discussion was moved to next on the agenda.

I. NEW BUSINESS

1. Water Resource Protection district (WRPD) Regulations

Staff welcomed Nate Kelly and Jeff Davis from Horsley Witten Group, Ledyard officials, and members of Groton Open Space Association.

Nate Kelly reviewed his memo that was submitted to staff, addressing watershed supply protection, protection of reservoirs and surface water. Kelly said that besides toxic materials, spills, etc. two other things to be mindful of are: 1) surface runoff (streets, parking lots, etc.) and 2) ground water. He performed a GIS exercise on the characteristics of the watershed. Most is zoned residential, but there is development potential. Most property adjacent to the reservoir is owned by Groton Utilities. He discussed a framework for a potential tiered system, with more than one protection area, based on distance from the reservoir and associated water bodies, with stricter regulations for more sensitive areas. Groton Utilities has classes for their own lands (Class 1 and Class 2, which are defined and regulated through state statutes). Mr. Kelly discussed determining what is base for the mapping, setbacks from the resource. He showed what it would look like on a map to have setbacks of 200 and 250 ft. He showed how the watershed was delineated, and how they may be able to refine the map.

How to regulate specific uses and how to provide more clarity on uses that are conditional, prohibitive, or by right, etc. was discussed. The State aquifer protection program provides good guidance. Discussion continued on those uses that may not be allowed within a 250 ft. setback area, and the need to adapt specific terms/language into Groton's regulations. Discussion ensued on land uses, vs. activities and the need for the activity to be regulated.

Mr. Kelly said that with regard to stormwater runoff, the State has a good stormwater manual and a good E&S manual. What they will do is look at the State recommendations and make sure that Groton chooses the right ones.

Next steps will be to look at the map; they have not yet mapped setbacks on wetlands that feed the reservoir. They will bring some of this information with them to the next meeting. The Commission discussed the regulation rewrite and the table of uses. Sayer asked if there was any direction from FEMA with regard to climate change, etc., that may affect the watershed, and if staff considered protection of additional land as open space to further protect the watershed. Staff said they believe Groton Utilities has already identified those areas best left as open space for the watershed. Mr. Kelly feels the biggest problem is deciding what is regulated and what is prohibited. Staff said Rick Stevens of Groton Utilities has been working closely with staff.

Rick Stevens, Groton Utilities, spoke about watershed class lands, expanding protection with vegetative buffers, detention and mitigation. Staff asked if there was any particular problem area for inspectors at Groton Utilities. Stevens said the Poheganut Reservoir is shallow; it needs light to let plants grow. They are sensitive to the ecology of the Hempstead Brook watershed and production of turbidity. They also are interested in construction practices (sediment and erosion control), and maintenance of basins.

Mike Cherry, Town of Ledyard Planning and Zoning Commission Chairman, said pre-existing non-conforming uses are a bigger issue at this time for Ledyard.

Mr. Kelly said here may be some opportunities to potentially allow certain things now prohibited by special permit with conditions, and vice versa.

Rick Stevens, Groton Utilities, said salinity is a problem. Salt levels have increased dramatically since the Connecticut Department of Transportation (CONNDOT) switched to brine to de-ice roads. CONNDOT is going to recalibrate trucks on a regular basis to regulate the rates of pre-salting applications and drivers will have maps so they know what the watershed corridor is. CONNDOT has also cleaned outlets on Interstate 95.

The Commission discussed what would be a reasonable setback. Mr. Kelly thinks a 200 ft. minimum for streams is warranted; maybe 300 ft. to the actual reservoir. That will need to be decided.

Staff reviewed the options, discussed changes in technology since the late 80's.

Zell Steever commented that inland wetlands are very important to this, and he hopes they are considered, as well as tidal wetlands. He didn't see anything with regard to flooding and water quality. He thinks looking at the FEMA maps would be

important, as well as the consideration of climate change, which may affect the size of the setback areas.

II. OLD BUSINESS

1. Draft Zoning and Subdivision Regulation Audit – Discussion

Staff said that at the December meeting, the Commission discussed the recommendations they didn't like in the regulation audit, and discussed creating a priority list of what they do want. The focus group will be meeting next Monday. Staff will combine all the comments from the Zoning Commission and the focus group and forward them to the consultant. The next draft will include specific roles for each recommendation; the entire burden will not be on the Zoning Commission.

Hudecek said that the zoning regulation updates have been piecemeal, and he does not want to do that with the new document. He endorsed a wholesale rewrite by an expert that will incorporate all of the recommendations. Staff is asking for funding in the next budget to do the entire rewrite. Some are already ongoing, such as the WRPD. Staff will be asking for about $150,000 in addition to funds already set aside. The regulations haven't been done in over 30 years. It would be better to have experts write the new document, rather than staff. The commission concurred. They said diagrams, colors, etc., in the new design and form of the document is very important, in addition to the content. Staff said recommendations for a zoning update are incorporated within the POCD. Staff thinks the Planning Commission will have a full POCD document in 2 months. The POCD must be adopted by July 1st.

The commission asked staff to send copies or links of some samples of various regulation documents that they think are good.

Marquardt said she is not a fan of overlays, they are confusing. She liked their list of definitions.

Hudecek said there will be challenges with combining boards. Some decisions may need a public forum rather than administrative approval.

Sayer said she prefers the use of performance standards rather than specific uses.

Jim Furlong commented on septic lagoons. He said these areas may be resources that should have a setback around them. Staff said they want to make sure they are really protecting actual water bodies.

Sayer would like a discussion of combining boards, defining the roles, looking at the charter, maybe modifying the roles.

Priorities discussed by the Commission:

1. Definitions
2. Use table
3. The use of special districts (i.e. WDD, NMDD, MX)
4. Format – would it be better to have workshop with staff, or discussions at regular commission meetings. Staff said that would depend on how busy the

Commission is with applications. There may be a need for some special meetings
5. WRPD can be done before the entire rewrite; some of the special districts may also be done before the rewrite.
6. Put specifics on agenda: preliminary review of document, final review, action taken, etc., so that the commission knows what the expectations are.

Staff said they will take any additional comments for the next two weeks.

Staff will send examples for the next meeting, or send out samples electronically.

III. NEW BUSINESS

2. Report of Commission – None

3. Election of Officers

MOTION: To nominate Susan Sutherland as Chairperson.

Motion made by Hudecek, seconded by Sayer. Motion passed unanimously.

MOTION: To nominate Steve Hudecek as Vice Chair.

Motion made by Hudecek, seconded by Sayer. Motion passed unanimously.

MOTION: To nominate Susan Marquardt as Secretary.

Motion made by Smith, seconded by Sayer. Motion passed unanimously.

4. Receipt of New Applications

Staff said there are no new applications. There is a public hearing scheduled for the February meeting.

IV. REPORT OF CHAIRPERSON - None

V. REPORT OF STAFF - None

VI. ADJOURNMENT

Motion to adjourn at 8:14 p.m. made by Sayer, seconded by Hudecek, so voted unanimously.

_____
Susan Marquardt, Secretary
Zoning Commission

Prepared by Debra Gilot
Office Assistant III

MEMORANDUM

TO: Town of Groton Zoning Commission

FROM: Diane Glemboski, Planner II DG

DATE: January 28, 2016

SUBJECT: Zoning Regulation Update/Preliminary Discussion*

The Planning Staff has reviewed the *MacKenzie* decision announced by the Connecticut Appellate Court in 2013 with the Town Attorney. Attached are review memos from the Town Attorney dated October 6, 2015 and May 22, 2014. Staff would like to discuss critical sections of the current zoning regulations for possible changes in the very near future to alleviate certain restrictions now placed on development within the Downtown Development District (DDD) and the Waterfront Design District (WDD). In addition, the staff would also like to begin the discussion of parking and landscape requirements in the Town that may need to be changed based on the *MacKenzie* decision.

Chairperson Sutherland has also requested starting a discussion on the current MX zone regulations and the Route 1 corridor.

We do not have any proposed language to send you at this time for any of the items. You may want to review the following Sections of the Zoning Regulations:

a. Section 6.2 (DDD)
b. Section 6.3 (WDD)
c. Section 6.13 (MX)
d. Section 7.2 (Parking)
e. Section 7.4 (Landscaping, Screening and Buffer Areas)

Please bring a copy of your regulations to the next meeting.

ZONING REG UPDATES

Memorandum

Suisman, Shapiro, Wool, Brennan, Gray & Greenberg, P.C.

To: Diane Glemboski (via email)

Cc: Jonathan Reiner (via email)
Deb Jones (via email)
Kevin Quinn (via email)

From: Michael P. Carey

Date: October 6, 2015

Subject: Your Questions re: DDD District Regulations and the *MacKenzie* Decision

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Diane:

You asked whether the *MacKenzie* decision announced by the Connecticut Appellate Court in 2013 precludes the Planning Commission from exercising discretion expressly granted it by §§ 6.2-4 and 6.2-5 of the zoning regulations to grant a potential request to reduce front and side yard setbacks on a parcel in the DDD. In my opinion, *MacKenzie* does preclude the Commission from granting relief under those sections.

Section 6.2-4 requires a 75' front yard setback along Rte. 1, but authorizes the Commission to reduce it to no less than 30" if it "finds that a lesser dimension can better carry out the objectives of the DDD." Similarly, § 6.2-5 authorizes the Commission to reduce side and rear yard setbacks if it finds that a reduced "dimension can best carry out the objectives of the DDD."

These sections are very similar to the provisions of the Monroe regulations that the Appellate Court in *MacKenzie* found to have usurped the exclusive authority of municipal zoning boards of appeals to grant variances and to be in violation of the requirement of General Statutes § 8-2 that the regulations within a zoning district be "uniform." The Monroe regulations allowed its zoning commission to relax certain setback and landscaping requirements where, for example, the commission determined that "minor variations" would provide for the most appropriate and orderly development of land.

Attached is a copy of a memorandum I wrote about *MacKenzie* in May 2014. It explained my disagreement with at least the extent of the *MacKenzie* holding. I continue to think that zoning regulations that call for specific outcomes or ranges of outcomes based on the existence of expressly specified factors do not violate the uniformity requirement or usurp the exclusive authority of zoning boards to grant variances. Page 3 of the 2014 memorandum identified several sections of the DDD regulations that I think should and perhaps could survive *MacKenzie*. I do not think §§ 6.2-4 and 6.2-5 would be among them. (Nor do I suggest you apply the other sections so long as *MacKenzie* remains the law.)

ZONING REG UPDATE

Also attached is a copy of a decision released by the Superior Court in December 2014 in a case called *Santarsiero v. Planning and Zoning Commission of the Town of Monroe*. This case involves the same parties, property and project as was at issue in *MacKenzie*. The trial court decision in *MacKenzie* was written by Judge Radcliff; while this decision was written by Judge Trial Referee Gilardi. Of page 6 of 7. JTR Gilardi distinguished *MacKenzie* and rejected the plaintiffs' claim that the commission had violated it by approving an "alternate buffer" between a project site and an adjoining residential zone. The regulations required that the boundary be screened either by a prescribed type of landscaped buffer, consisting of three rows of suitable evergreen trees; by wetlands; or by natural vegetation. The regulation, however, allowed the commission to essentially waive those requirements if it found that existing natural vegetation or inland wetlands areas provided a sufficient buffer. In *Santarsiero*, the majority of the boundary between the site and the residential properties was covered by wetlands or natural vegetation; but there was a significant area that was not, in which the applicant proposed to bury a septic tank and plant eight trees, in lieu of the type of buffer the regulations called for. The commission approved the proposal and the appeal ensued.

JTR Gilardi noted that the adequacy of the alternative screening accepted by the commission (whether it would work) was not the issue. The question instead was whether *MacKenzie* invalidated the regulation that purportedly allowed for the alternate buffer. The court concluded that it did not. JTR Gilardi in my view did not directly address *MacKenzie*. He instead applied case law that allows a local zoning commission when "dealing with a specific regulatory provision" to decide whether and, if so, how the provision applies to a given situation. He found that the Monroe commission had been within and had properly exercised its authority when it applied the regulation allowing for the alternate buffer. The Appellate Court granted Santarsiero's petition for certification to appeal in March 2015, and the case in pending at that court now.

I have located a few other superior court decisions that have applied *MacKenzie*. *Santarsiero* is the only one that has distinguished it or reached a conclusion inconsistent with it. Frankly, however, whether *Santarsiero* is upheld on appeal or not, I do not think that its holding and analysis would allow Groton to reduce the requirements of §§ 6.2-4 or 6.2-5.

Finally, my 2014 memorandum reported that in 2014 the legislature had considered a bill that addressed *MacKenzie*. That bill was not passed, and it does not appear that the legislature took the issue up this year.

Sorry that this went on so long, but frankly I thought it would be useful to see whether there have been any developments in the case law or at the legislature since *MacKenzie*. Perhaps the Appellate Court's decision in *Santarsiero* will help clear away some of the uncertainty as to whether and if so how local zoning regulations will have to be changed to satisfy *MacKenzie*. Please call with any questions or concerns. Thank you for your consideration.

ZONING REG UPDATE

Memorandum

Suisman, Shapiro, Wool, Brennan, Gray & Greenberg, P.C.

ATTORNEY WORK PRODUCT
PRIVILEGED/CONFIDENTIAL

To: Kevin Quinn (via email)

Cc: Deb Jones (via email)
Eileen Duggan (via email)

From: Michael P. Carey MPC

Date: May 22, 2014

Subject: Implications of Connecticut Appellate Court Decision in *MacKenzie v. Planning and Zoning Commission of the Town of Monroe*, 146 Conn. App. 406 (10/15/2013)

Mr. Quinn:

You asked for a written analysis of the referenced decision, particularly as it might affect the interpretation and application of certain Groton zoning regulations, including for example, the Downtown Development District ("DDD") and Waterfront Design District ("WDD") regulations. The Appellate Court in *MacKenzie* held that a special permit granted by the Monroe Planning and Zoning Commission ("PZC") to allow the construction of a McDonald's restaurant was invalid because the application as approved failed to meet setback and landscaped buffer requirements contained in the zoning regulations. The *MacKenzie* Court rejected the arguments by the successful applicant that the PZC had expressly "varied" those requirements, and that the zoning regulations allowed it to do so[1] (the Monroe PZC did not file a brief with the Appellate Court, and merely adopted the applicant's brief)[2]. The regulations relied upon by the applicants included the following statement at the beginning of the section that set forth the dimensional requirements for the Design Business District in which the MacDonald's was proposed:

> [N]o lot shall be used and no building shall be constructed or altered for use for business purposes except in conformance with the following schedule; provided, however, that the [c]ommission may modify lot area, frontage, minimum square and yard requirements where applied to a lot under separate ownership of record on the effective date of these

[1] It does not appear that either of the parties who lost at the Appellate Court, the applicants and the planning and zoning commission, filed a petition for certification to appeal to the Connecticut Supreme Court.

[2] I would be happy to provide you a copy of the decision, but given its excessive length and the fact that not all of it deals with the pertinent issues, I have not attached it to this memorandum.

ZONING REG UPDATE

> regulations, so long as there is adequate provision for sewage disposal and water supply and so long as access to public streets will not create traffic hazard....

That provision of the Monroe regulations is quite similar to the part of § 6.2-3 of the DDD regulations that authorizes the planning commission to "approve the development of any lot with less area or dimensions [then 40,000 sq. ft.] which existed in separate ownership at the effective date of this section, and continuously thereafter, provided the Planning Commission finds that the proposed development and its site plan are compatible with the purposes of the DDD."

The other section of the Monroe regulations that the applicants argued gave the PZC the authority to waive the setback and landscape buffer requirements set out

> [g]eneral requirements [that] shall apply to uses and improvements in all design districts ... (E) Where deemed appropriate in the judgment of the [c]ommission in a specific application, a site plan of development in substantial compliance with the requirements herein may be approved with such minor variations from the strict application of the provisions of these regulations as will provide for the most appropriate use of land and as will protect the public health and safety and preserve property values and as will provide for the most orderly development of land. No variations shall be permitted that violate the integrity of these regulations or that will change that principal classification of permitted land uses....

The Appellate Court held that the quoted provisions are not "proper." It found that they suffer from two flaws; the first being that the Monroe PZC lacked the authority to enact a regulation allowing it to vary the town's zoning regulations because by statute, C.G.S. § 8-6, only a zoning board of appeals may grant variances. The second was that application of the "variance power" granted by those regulations would violate the statutory requirement that zoning regulations within a district be "uniform".

Some Groton zoning regulations in addition to § 6-2-3 are not substantially different from the Monroe regulations at issue in *MacKenzie*. The *MacKenzie* decision thus puts in question whether, for example, certain provisions of the Groton DDD and WDD may be applied as written. §§ 6.2-4, 6.2-5, 6.2-9 ("Downtown Flexibility Standards"), and 6.2-11, authorize the planning commission to reduce certain dimensional requirements. § 6.3-4 of the WDD gives the planning commission discretion to vary dimensional and other requirements. § 6.3-4(H), for example, states that the commission "may waive any of the requirements of off-street parking," subject to a demonstration that certain conditions exist, and that the commission "may waive any of the site design standard requirements of the Waterfront Design District for any use where such waiver would be consistent with the intent of these regulations."

The *MacKenzie* decision is the law of the State of Connecticut, and I certainly cannot advise you to disregard it. But a strong argument can be made that there is a conceptual distinction between the power of a zoning board of appeals to vary the literal terms of a regulation when their application would otherwise result in unusual and substantial hardship and the application of regulations that provide for a prescribed range of outcomes based on the existence of specified conditions. The power to grant "variances" assigned to zoning boards of

ZONING REG UPDATE

appeals is at its foundation required to avoid constitutional violations that would result from the strict application of the zoning regulations to certain properties under certain circumstances. A zoning commission could not enact a regulation that would give it or any land use agency or official the power to vary zoning regulations for any of the reasons for which a zoning board of appeals may do so. But I do not think that zoning regulations that create a range within which bulk or dimensional or parking or other criteria may be alternatively satisfied depending on clearly stated criteria that would apply in every like circumstance would be a "variance" of that type, and I wonder whether *MacKenzie* does or should apply to such regulations.

The *MacKenzie* Court also concluded that the challenged regulations violated the requirement that zoning regulations within a district be "uniform". But Fuller's treatise cites a 1988 Connecticut Appellate Court decision for the proposition that there is no violation of the uniformity provision when a requirement is contained in the regulations and applies to all properties in similar situations. 9 Fuller, *Connecticut Practice Series, Land Use Law and Practice (3d Ed.)*, § 22:16, p. 678, fn. 4. Fuller also notes that the Connecticut Supreme Court decision in *Harris v. Zoning Commission*, 259 Conn. 402, 429-35 (2002), rejected the claim that a zoning regulation that excluded inland wetlands and slopes of 25% or more from minimum lot area calculations violated the uniformity requirement. The *Harris* Court held "that the fact that the amendment has [a] a differing *effect* on parcels of land throughout the town does not render its *application* inconsistent or unequal." (Emphasis in original). 259 Conn., supra, p. 431. The Court explained that "[t]he thrust of the statutory requirement of uniformity is equal treatment .... It is undisputed that, although the amendment ultimately has a differing effect on parcels of land depending on the presence and amount of wetlands, watercourses and slopes greater than 25 percent, it is applied to every parcel within its purview consistently and equally. We conclude, therefore, that the trial court properly determined that the amendment does not require different minimum lot sizes, and, therefore, does not violate § 8-2(a) in this respect." Id. The *Harris* Court also rejected the claim that the regulation violated the uniformity requirement because its terms were too "imprecise" to guide the zoning commission in its application. The Court found the terms of the regulation, including the terms wetlands, watercourses and slopes, to be sufficiently precise for its purposes.

Several of the provisions of the DDD that allow the planning commission to grant modifications contain detailed standards both as to when the modifications may be granted and to what extent. See, e.g., §§ 6.2-9(A), (B) (at least the first half) and in the WDD regulations, see, e.g., §§ 6.3-4(A), (C), (G), (H) (at least the first half). By constrast, the Monroe regulations at issue in *MacKenzie* are not precise, and give only vague, almost standardless guidance as to when and why variations might be allowed. The *MacKenzie* Court, however, did not discuss that aspect of the matter.

In addition, the provision in the DDD dealing with preexisting nonconforming lots, § 6.2-3, are at least in part intended to protect pre-existing non-conforming undersized lots. Thus, it arguably has a separate basis for validity in the statutes that require protection of nonconforming uses. The *MacKenzie* decision did not discuss nonconforming use law, perhaps because none of the parties raised the issue. In my experience, regulations like § 6.2-3 are not uncommon.

ZONING REG UPDATE

A bill which would have added a new subsection to the end of C.G.S. § 8-2, the basic zoning enabling statute, was submitted to the just concluded session of the Connecticut legislature. It would have allowed a zoning commission to grant modifications of bulk or dimensional requirements by a three-quarters vote of all members of the commission, so long as the "regulations shall clearly identify any such authorization and specify the conditions under which the zoning commission may grant a modification," and so long as the modification is requested in writing in the original application. However, it does not appear that the bill was enacted. If it had been, it would have created a procedure and an authority similar to the authority granted by the subdivision statutes to planning commissions to waive certain subdivision regulations under specified conditions.

In sum, until *MacKenzie* is judicially overruled, distinguished or clarified, or the legislature enacts a statute similar to the one that was proposed this year, *MacKenzie* is the law and should be followed. If you and/or Ms. Jones wish, I would be happy to further discuss anything in this memorandum and explore options for dealing with the decision, including I suppose possible amendments to Groton's regulations. I would be very interested to hear whether either of you have had any feedback from any of your colleagues from other towns or associations of land use planners or the like regarding the *MacKenzie* decision.

ZONING REG
UPDATE