

AGENDA  
GROTON ZONING COMMISSION  
APRIL 6, 2016 - 6:30 P.M.  
TOWN HALL ANNEX - COMMUNITY ROOM 2

I. ROLL CALL

II. PUBLIC HEARING

1. REGA16-01, Proposed Zoning Regulation Text Amendment to Sections 6.2 (Downtown Development District); 6.3 (Waterfront Design District); 7.1-36 (Drive Through Facilities); 7.2-5 (Off-Street Parking and Loading); 7.4-4 (Buffer Areas) and 7.5 (Sidewalks). (Town of Groton Zoning Commission, Applicant)\*

III. CONSIDERATION OF PUBLIC HEARING

1. REGA16-01, Proposed Zoning Regulation Text Amendment to Sections 6.2, 6.3, 7.1-36, 7.2-5, 7.4-4, and 7.5 (Town of Groton Zoning Commission, Applicant)

IV. PUBLIC COMMUNICATIONS

V. APPROVAL OF THE MINUTES

1. February 17, 2016 Special Meeting\*
2. March 2, 2016\*

VI. OLD BUSINESS

1. Zoning Regulation Update

VII. NEW BUSINESS

1. Fieldcrest Water Storage Tank, 115 Oslo Street - Determination for Height Modification per Section 4.4\*
2. Report of Commission
3. Receipt of New Applications

VIII. EXECUTIVE SESSION

1. *Whittle v. Zoning Commission*, KNL-CV-12-6012917-S: Executive session to discuss pending litigation\*

IX. REPORT OF CHAIRPERSON

X. REPORT OF STAFF

XI. ADJOURNMENT

\* Enclosed

Next Regular Meeting: May 4, 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

March 1, 2016

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

Please publish the following legal ad on March 25 and April 1, 2016:

### TOWN OF GROTON ZONING COMMISSION NOTICE OF PUBLIC HEARING

Notice is hereby given that the following public hearing will be held on April 6, 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:

REGA16-01, Proposed Zoning Regulation Text Amendment to Sections 6.2 (Downtown Development District); 6.3 (Waterfront Design District); 7.1-36 (Drive Through Facilities); 7.2-5 (Off-Street Parking and Loading); 7.4-4 (Buffer Areas) and 7.5 (Sidewalks). (Town of Groton Zoning Commission, 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 25<sup>th</sup> day of March 2016 at Groton, Connecticut. (On second insertion please put "Dated this 1<sup>st</sup> day of April 2016 at Groton, Connecticut".)

Susan Sutherland, Chairperson

Account #30384  
P. O. #16000391

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

Sincerely,

Deborah G. Jones  
Assistant Director

DGJ:dlg  
email 3/1/16  
#20551

## MEMORANDUM

TO: Town of Groton Zoning Commission  
FROM: Diane Glemboski, Planner II  
DATE: March 31, 2016  
SUBJECT: REGA16-01, Proposed Zoning Regulation Text Amendment

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### I. OVERVIEW

The Zoning Commission is proposing regulation amendments to Sections 6.2 (Downtown Development District); 6.3 (Waterfront Design District); 7.1-36 (Drive Through Facilities); 7.2-5 (Off-Street Parking and Loading); 7.4-4 (Buffer Areas) and 7.5 (Sidewalks). The proposed zoning regulation amendments are attached for your review (Attachment A).

In general, the amendments would modify the following:

- Section 6.2 (Downtown Development District (DDD)) - Modify Section 6.2-4 and 6.2-5 for front and side yard requirements
- Section 6.3 (Waterfront Design District (WDD)) - Modify Section 6.3-4 Building and Development Standards to be more consistent with current parking practices and the remove the ability for the Planning Commission to waive any site design standards.
- Section 7.2-5 (Off-Street Parking and Loading) - Modify Section 7.2-5 for leasing parking space within the WDD
- Section 7.4-4 (Landscaping) - Modification to buffer requirements by deleting entire Section 7.4-4 and replace with 3 options for buffers.
- Section 7.5 (Sidewalks) - Modify Section 7.5-2 for location of sidewalk, Section 7.5-4 for internal sidewalks requirements, and Section 7.5-5 for clarification of options for meeting frontage sidewalks
- Section 7.1-36 (Drive Through Facilities) - Modify Section 7.1-36 for the required number of stacking spaces for banks/financial institutions, remove design standards for stacking at window and/or order board, and remove Nautilus Memorial Design District (NMDD) from being a non-permitted zone for a drive-through facility.

### II. BACKGROUND

The following is a discussion of the recommendations for Zoning Regulation Text Amendment (REGA16-01) for the various Sections of the Zoning Regulations. These recommendations are based on discussions with Staff and the Zoning Commission and analysis by the Town Attorney and are due to decisions rendered in Connecticut court

REGA16-01

cases over the last several years. In *Mackenzie v. Planning and Zoning Commission of the Town of Monroe, et al.*, 146 Conn. App. 406 (2013), the State Appellate Court held that the defendant Monroe Planning and Zoning Commission improperly approved an application for special exception approval by “waiving”: (i) a setback provision; and (ii) a landscape buffer requirement. The Appellate Court invalidated a number of broadly written special exception regulations and held that the contested regulations exceeded the scope of authority vested with a municipal zoning commission, and that under current Connecticut statutory framework only the zoning board of appeals has the authority to vary zoning regulatory requirements. Several other superior court cases after 2013 have applied *Mackenzie* in formulated a decision. In addition, several memos from the Town Attorney have discussed these cases and the implications of the Zoning Regulations as currently written (Attachment B).

1. Downtown Development District DDD (Section 6.2)

The application includes text changes to Section 6.2-for minimum front yards and Section 6.2-5 for minimum side and rear yards. The requirement for a front yard along Route 1 has been changed from a minimum of 75-ft to a minimum of 20-feet. This is more consistent with current planning and design recommendation for a mixed use, walkable downtown district. The sideyard setback has been changed from 30-feet to a minimum of 10-feet. A legally executed party wall agreement would allow for a sideyard setback from 0 to 10-ft. The proposed changes also remove the discretion that the Planning Commission previously had to reduce the dimensional requirements for the front, side, or rear yard.

2. Waterfront Design District WDD (Section 6.3)

The proposed is to modify the parking requirements in the WDD to be more consistent with current practices (Section 6.3-4H). The text change also removes the current ability of the Planning Commission to waive any site design standard requirements of the WDD. The WDD is a mixed use district with minimum onsite parking for the various uses. Currently, any new use would require onsite parking as per Section 7.2-3 of the Zoning Regulations or off-site parking as per Section 7.2-5. The Planning Commission has historically waived or modified the parking requirements within this district and has also applied the “5/8<sup>th</sup> rule” to the uses within the district. This “5/8<sup>th</sup> rule” was based on previous parking studies of the Mystic Area and a determination by the Planning Commission that the regulations, in some cases, required more parking spaces than were actually needed within the district. The 5/8 ratio (about 63%) became a policy that has been implemented for proposed uses within the WDD based on the current waiver ability of Section 6.3-4H.

The proposed text is to reduce the parking requirements of the WDD to 50% of the current requirements of Section 7.2-3. This would be substantially consistent with the current practice of the “5/8<sup>th</sup> rule”. In addition, the amendment would also codify the ability of the Planning Commission to allow a commercial use to substitute the continued participation in a parking validation program for 100% of the requirement parking.

Parking could still be met for the use by providing offsite parking in accordance with Section 7.2-5.

3. Off- Street Parking and Loading (Section 7.2-5)

Section 7.2-5 is updated for the offsite parking requirements in the WDD. The requirements for the term of the lease are changed from a 10 year lease to a 1 year lease, with automatic renewals. Copies of the annual lease would also be required to be provided to the Office of Planning and Development Services. In addition, any termination of the lease and/or diminishment of the number of parking spaces would require additional review by staff and/or the appropriate commission. The current requirement of an initial lease for a 10 year period does not require any additional lease renewals after this period. In addition, many sites with parking in the WDD are reluctant to give a lease for a 10 year period.

4. Landscaping Buffer Area (Section 7.4-4)

The proposal is to delete the entire Section 7.4-4 and to replace it with language that limits the discretion now allowed within the regulations. Currently, buffers are required to provide privacy from noise, headlight glare, and visual intrusion to residential dwellings. Buffers are required along and within all boundaries of a lot that has a conditional use or a lot that is in a commercial or industrial district that is abutting or directly across a local street from any lot in a residential district. Currently the Planning Commission can modify buffers if it meets the intent of the regulations.

The new language would provide options for meeting the buffer requirements on a site plan. These options include a standard buffer width with landscaping, a berm/fence/wall with landscaping, or a natural vegetative buffer with a minimum width requirement.

5. Sidewalks (Section 7.5)

Section 7.5-2 is updated to clarify design and location requirements for public sidewalks. Section 7.5-4 is modified to clarify when the Planning Commission may require internal sidewalks on a site plan. Options for public frontage sidewalks are clarified in Section 7.5-5 and include the ability to postpone construction, substitute an alternative design or location, or eliminate the need for a public frontage sidewalk under specific circumstances.

6. Drive Through Facilities (Section 7.1-36)

Currently, all drive-through facilities (except Drug Store Pick-Up Windows/Facilities) require 10 stacking spaces for each drive-through lane. The proposal is to keep the 10 stacking space requirement for restaurants but to decrease it to a minimum of 5 stacking spaces for Banks and Financial Institutions. Also, the NMDD is removed from being a non-permitted zone for a drive-through to be consistent with previous changes made to the NMDD (Section 6.10)

REGA16-01

### III. ANALYSIS

In developing this analysis, staff has considered the following sources.

- The Town's 2002 POCD
- The Town's draft 2016 POCD
- The Current Zoning Regulations and Zoning Map (Comprehensive Plan)
- Review and comments from the Groton Public Works Department
- Review and comments from the Groton Planning Commission
- Review and comments from the Town Attorney
- Review by Southeastern Connecticut Council of Governments (SCCOG)
- Review by CT DEEP

The amendments to the various sections of the regulations were developed after discussions with the Zoning Commission, Town staff and the Town Attorney and are based on providing clarification for specific sections of the regulations and to eliminate the ability of the Planning or Zoning Commission to waive certain sections of the regulations based on nonspecific language.

The 2002 Plan of Conservation and Development (POCD) and the 2016 Draft Plan of Conservation and Development note various goals, specific strategies and tasks within the context of the documents. The proposed amendments to the zoning regulations were reviewed with the 2002 POCD and the 2016 Draft POCD and found consistent with the following goals, objectives and recommendations:

- Reinforce community structure
- Revise regulations to promote and enhance existing and new nodes and nurture nodes
- Simplify business zoning and procedures
- Promote good design
- Evaluate current zones and development standards to determine if districts, uses, setbacks and other requirements area appropriate.
- Review parking requirements to ensure appropriate standards are in place for different uses and areas.

The Planning Commission reviewed the proposed Zoning Regulation Amendment REGA16-01 on March 6th and March 22<sup>th</sup> and recommended approval of all Sections of the proposed amendment (Attachment C).

The Town of Groton Department of Public Works reviewed the proposal and commented on the Sections 7.5-2 and 7.5-5.B. to clarify specific language and/or add language for design standards, easements, and maintenance (Attachment D).

The Southeastern Connecticut Council of Governments (SCCOG) Regional Planning Commission has reviewed the proposed text amendments and has determined that the amendments would not have any adverse inter-municipal impact (Attachment E).

The amendments were sent to the CT Department of Energy and Environment - Office of Long Island Sound Programs (OLISP) and the CT Department of Health, Drinking Water Section. CTDEEP OLSP responded and noted that it supports the proposed WDD district modification to reduce parking requirements, where appropriate, that encourage

REGA16-01

uses of waterfront sites for water dependent activities (Attachment F). Any response from the CT Department of Health will be provided at the public hearing. Currently, staff believes the proposed text amendment provides for reasonable considerations of the environment and protection of Long Island Sound in accordance with the provisions of CGS 8-2.

Staff is currently waiting for the Town Attorney to review the proposal and will provide comments from the Town Attorney and any other comments received from different departments and agencies at the public hearing.

Staff has also reviewed the proposed text amendments based on various comments on the need to simplify and clarify language to the extent possible with all proposed text amendments. Staff will be proposing a few minor changes to the text that do not change the meaning of the text but clarify the language and make the regulations easier to read and understand. The proposed Zoning Regulation Amendment REGA16-01 will address critical sections of the text related to the *Mackenzie* decision and will allow for continued development and processing of applications within various areas of the Town of Groton. There are other sections of the Zoning Regulations that are not as critical to be addressed at this time and can wait for the comprehensive updating of the regulations over the next few years. Also, the comprehensive updating will allow staff and the consultants to simplify and clarify language for the entire document.

#### IV. SUMMARY AND RECOMMENDATIONS

The proposed application REGA16-01 is to change various sections of the zoning regulations including: Sections 6.2 (Downtown Development District); 6.3 (Waterfront Design District); 7.1-36 (Drive through Facilities); 7.2-5 (Off-Street Parking and Loading); 7.4-4 (Buffer Areas) and 7.5 (Sidewalks). These recommendations are based on discussions with Staff and the Zoning Commission and analysis by the Town Attorney due to decisions in Connecticut court cases, specifically, *Mackenzie v. Planning and Zoning Commission or the Town of Monroe, et al.*, 146 Conn. App. 406 (2013). In *Mackenzie*, the State Appellate Court held that a Planning and Zoning Commission improperly approved an application for special exception by “waiving” certain standards within the zoning regulations and clarified that only the Zoning Board of Appeals could approve changes to the Zoning Regulations through the variance process.

Staff believes, as proposed, the amendments meet the intent of the comprehensive plan of Zoning Regulations, the 2002 Plan of Conservation and Development and recommendations will be provided at the public hearing.

DJG:

REGA16-01

Preliminary Changes are in highlighted for each Section

Strikeout = deleted text

Bold and Underline = added text

**Downtown Development District (DDD) (Section 6.2-4 and 6.2-5)**

- ***Modification of front and side setback requirements***

**6.2 Downtown Development District**

**6.2-4 Minimum Front Yards**

Each lot in the DDD shall have a front yard not less than 20 feet in depth. ~~except along Route 1 where the setback requirement is 75 feet. The setback along Route 1 can be reduced to no less than 30 feet if the Planning Commission finds that a lesser dimension can best carry out the objectives of the DDD.~~

**6.2-5 Minimum Side and Rear Yards**

Each lot in the DDD shall have ~~side and a~~ rear yards of not less than 30 feet in width or depth. ~~provided that the Planning Commission may approve a site plan with a side or rear yard with a lesser dimension where it finds that the site plans of two adjacent lots can best carry out the objectives of the DDD by placing buildings in closer proximity than otherwise permitted.~~

**Each lot in the DDD shall have a side yard of not less than 10 feet unless a party wall agreement has been properly executed and recorded which may allow for a sideyard setback from 0 to 10-feet.**

~~No two buildings on such adjacent lots shall be less than 20 feet apart except where they are immediately adjacent to each other, with adjacent walls of masonry construction or where they are built to a common party wall of masonry construction.~~

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**Waterfront Design District (WDD) (Section 6.3-4 Building and Development Standards)**

- **Modify Parking Requirements to be more consistent with current practices**
- **Remove ability for Planning Commission to Waive any site design standard requirements**

**6.3 Waterfront Design District (Rev. Eff: 5/1/15)**

**6.3-4 Building and Development Standards**

- A. The maximum height of any structure within the WDD shall not exceed 25 feet except for every 10% reduction of allowed coverage, an additional 5 feet of height will be permitted up to a maximum of 40 feet.
- B. In no case shall new construction at the foundation line be located less than 25 feet from the Mystic River at mean water level elevation.
- C. In no case shall new construction be located within 10 feet of any property line unless a party line agreement has been properly executed and recorded.
- D. In no case shall building coverage exceed 65% of the lot area.
- E. Multi-family residential units shall be limited to efficiency and one or two bedrooms, and density of new multi-family housing shall be one unit per 4,000 sq. ft. of land area.
- F. A Certificate of Appropriateness shall be obtained as required by the Historic District Commission regulations prior to the start of construction and issuance of a building permit.
- G. Where the Planning Commission deems it feasible, it may approve a site plan for a use which does not have direct access from a Town approved road, provided that adequate and safe pedestrian access is provided.

**H. Parking**

- a. Parking space requirements for a use in the WDD shall be 50% of the requirements of Section 7.2-3.
- b. A commercial use may substitute the continuous participation in a parking validation program for 100 % of the parking space requirements provided:
  - The commercial use provides signage at all times that clearly demonstrates participation in the parking validation program in the front window or entrance, on any menu for a restaurant, at any register, and at any outdoor seating area.
  - Annual proof of participation in the validation program shall be provided to the Office of Planning and Development each January for the previous year.
- c. Parking may be provided offsite in accordance with Section 7.2-5.

There shall be an ongoing obligation for a use to maintain the required number of spaces or participation in a validation program, as set forth in this Section. Any diminishment of the number of parking spaces or not participating in a parking validation program shall require review by the Office of Planning and Development Services and/or the appropriate commission.

~~The Planning Commission may waive any of the requirements of off-street parking where it is demonstrated that existing parking facilities are available and adequate only in accordance with the provisions of Section 7.2-5 and 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.~~

- I. Any lot created in a Waterfront Design District zone after the effective date of this paragraph shall conform to the requirements of an RS-8 zone as listed in Section 5.2 except as noted above.

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- J. Any applicant for a special permit shall demonstrate how the proposed site plan achieves the objective of provision of pedestrian access to the riverfront and preserves visual access where feasible and appropriate.

***Off-Street Parking and Loading (Section 7.2-5)***

- ***Modify Section 7.2-5 for Leasing Space within the WDD***

**7.2-5 Location of Required and/or Additional Parking Facilities (Eff: 5/1/99)**

Required and/or additional parking facilities shall be located on the same lot as the building or other use which they serve except as follows:

- A. Because the WDD is important to the Town's economy, provides a local service and employment base, and because its physical integrity and historic and architectural character must be protected, and further because it is desirable to utilize existing buildings as fully and as effectively as possible, and because land area for parking within the WDD zone is very limited, required parking for uses within the WDD zone may be provided on sites other than the sites which they serve provided that:
1. Said spaces are within 500 feet walking distance of the lot or use which they serve and are within the WDD.
  2. Such spaces shall preferably be in same ownership as the use which they serve. However, evidence of a lease of such spaces and a minimum term of ~~10 years~~ **1 year, with automatic annual renewals**, shall be acceptable. Such lease shall be ~~recorded in the Land Records of~~ **submitted to the Town prior to the filing of the site plan in the Land Records and copies of annual renewals shall also be provided to the Office of Planning and Development Services.** Further, the obligation to maintain the required number of spaces as set forth in Section 7.2-2 is not diminished by the leasing option permitted under this section. **Any termination of a lease and/or diminishment of the number of parking spaces shall require review by the Office of Planning and Development Services and/or the appropriate commission.**

Landscaping (Section 7.4-4)

- *Modification to Buffer Requirements by deleting entire Section 7.4-4 and replace with below text.*

**7.4-4 Buffer Area**

The purpose of the buffer area is to provide privacy from noise, headlight glare, and visual intrusion to residential dwellings. A buffer area shall be required along and within all boundaries of a lot abutting or directly across a local street from any lot in a residential district. Such buffer area shall comply with at least one of the following minimum standards (A, B or C) and details shall be provided to support the option chosen. The Planning Commission shall have the ability to make the ultimate determination on which option will be used.

**A. Buffer Width and Landscape Planting: Provide both the minimum width and landscape plantings.**

Width: The minimum width of buffer areas shall be as follows:

- Conditional uses in or abutting any residential district - 25 feet
- All commercial districts abutting a residential district - 15 feet
- All Industrial districts abutting a residential district - 30 feet

Landscape Plantings: At a minimum, the planting shall consist of evergreen trees 6 feet in height planted at intervals of 10 feet on center. Non-evergreen planting may be included to supplement evergreen planting, but not to take its place.

- B. Berm/ Fence/Wall and Landscape Planting: Provide both a berm/fence/wall and landscape plantings.

Berm/Fence/Wall:

A 6 to 8 foot high earthen berm or solid and opaque wall or fence at a location, height, design, and materials approved by the Planning Commission.

Landscape Plantings: Landscaping, including trees and shrubs, shall be provided to enhance and soften the area of the berm, fence or wall.

- C. Natural Vegetation: This option may be used where the existing landscaping/vegetated area provides adequate buffering between the two properties and meets the following:

Natural Vegetation: The existing vegetation includes a healthy stand of trees that will be maintained and the width of the existing vegetation is a minimum of 1.5 times the required buffer width in A above.

## Sidewalks

- **Modify Section 7.5-2 for location of sidewalk**
- **Modify Section 7.5-4 for Internal Sidewalks requirements**
- **Modify Section 7.5-5 for clarification of options for meeting Frontage Sidewalks**

## 7.5 Sidewalks

### 7.5-2 Frontage Sidewalks (Eff: 6/1/92)

Sidewalks as required by this section shall be constructed at minimum, along the entire road frontage of a site, shall be 5 feet in width along arterial and collector roads and 4 feet in width along local roads, concrete, and provide for handicapped access at curb cuts and road intersections, unless otherwise stipulated or modified by the Planning Commission. Nothing in this section shall be deemed to restrict the Planning Commission from requiring wider sidewalks considered necessary in conjunction with development of particular sites such as schools, commercial centers, multi-family developments, institutional uses, and other, more intense, pedestrian generators. Where a road is slated for reconstruction, the Commission may allow temporary sidewalks built to a lesser standard.

The Town of Groton Road and Drainage Standards shall be used to design public sidewalks along Town roads and the appropriate Connecticut Department of Transportation Design Manual shall be used for public sidewalks along State roads. Sidewalks shall be located 1 foot off of the property line or 8 feet off the gutter line, the exact location to be determined at the time of application. Where a location of a public sidewalk of 8 feet off the gutter line is required, and this location falls outside of the road right-of-way onto private property, the applicant may exercise one of two options. The applicant may choose to deed property to the Town increasing the width of the right-of-way, or the applicant may grant an easement to the Town allowing the public to pass and

repass over the portion of the sidewalk located on private property. In either case noted above, at the time of site plan application, setbacks will be measured from the original property line.

#### 7.5-4 Internal Sidewalks (Eff: 6/1/92)

The Planning Commission may require public sidewalks along a site's frontage shall be to connected to the buildings and/or land uses on the site by a system of internal sidewalks in any of the following circumstances:

- on newly developed sites
- on redeveloped sites that can reasonably accommodate an internal sidewalk network without major impacts to the parking lot design.
- on sites where there will be pedestrian activity from the frontage sidewalk based on the proposed onsite use.

This internal system of sidewalks should also function to serve people walking from on-site parking lots to the main entrances of any building or any other point of on-site pedestrian destination. In addition, the Planning Commission may require internal sidewalks to connect to adjacent properties where there is evidence that significant cross-movement of pedestrians will occur.

Internal sidewalks shall be constructed of concrete, unless otherwise approved by the Planning Commission, and shall be a minimum of 4 feet wide. In cases where parking abuts the internal sidewalk, the walk shall be 6 feet wide.

#### 7.5-5 Options

- A. Postponement: If in the opinion of the Planning Commission frontage sidewalks do not appear to be warranted at the time due to lack of existing/anticipated development in the area and/or resulting pedestrian traffic, the Commission may postpone the installation of the frontage sidewalk to a later date. In exercising this option, the applicant must demonstrate and the Commission must find that the postponement of installing the frontage sidewalk will not significantly endanger the health, safety and welfare of the existing or anticipated pedestrian traffic along the

frontage of the property. If this option is exercised, the approved site plan shall provide all necessary information concerning the future sidewalk including, but not limited to, location, grades, elevations, and other details necessary for the future construction of said sidewalk.

In addition, prior to filing the approved site plan on which this option is exercised, the developer and Commission shall enter into a written, binding agreement indicating that sidewalks will be installed at a later date which 1) has been determined at the time of approval, or 2) will be determined at a future date when conditions change (i.e. additional development or pedestrian activity in the area, Town-initiated sidewalk extensions, etc.). This agreement shall be filed in Land Records.

B. **Substitution:** ~~Where a new road system is being constructed as a result of a commercial, industrial/office, or multi family development, The Planning Commission may allow an alternative to frontage sidewalks, such as a bike path or running/walking trail or a different location. This option is intended to provide an alternative to frontage sidewalks in those developments which are self-contained, and/or where internal sidewalks connecting one property to another would better serve the walking public~~ the following circumstances:

- \* where the existing structures, vegetation, wetlands or topography make it impractical to provide the concrete sidewalk, or
- \* where an alternative design or location will better serve the non-vehicular transportation network in the area, or
- \* where a system of internal sidewalks connecting one property to another would better serve the walking public.

D. **Elimination:** The Commission may waive eliminate the requirement for frontage sidewalks altogether where the applicant demonstrates and the Commission finds that 1) there will be no significant pedestrian movement to the site and/or between the site and those adjacent to it, and/or 2)

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topography or other physical limitations prohibit the reasonable installation of said sidewalk.

**Drive Through Facilities**

- ***Modify Section 7.1-36 to allow 5 stacking spaces for banks/financial institutions instead of the 10 stacking spaces now required.***
- ***Remove design standards for stacking at window and/or order board.***
- ***Remove NMDD from being a non-permitted zone for a drive-through based on previous changes made to the NMDD district (Section 6.10)***

**7.1-36 Drive Through Facilities (New Eff: 11/1/92)**

Drive through facilities are permitted accessory uses on lots equal to or greater than 20,000 square feet in any non-residential zone, except OMF and NMDD, in which the principal use is permitted, subject to the following conditions:

- A. Drive through facilities, including required stacking lanes, shall be located in the rear or side yards only.
- B. Drive through facilities shall not generate the need for an additional driveway curb cut.
- C. **Restaurants:** A minimum of 10 stacking spaces shall be provided on site for each drive through station, including the vehicle being serviced. ~~Where an order board and pickup window are involved, a minimum of 5 stacking spaces shall be provided before both the window and the board for a total of 10, including the vehicle being serviced.~~  
**Banks/Financial Institutions:** A minimum of 5 stacking spaces shall be provided on site for each drive through station, including the vehicle being serviced.  
**Drug Store Pick – Up Windows/Facilities:** See Section 7.1-44
- D. Stacking lanes shall be a minimum of 10 feet wide and each space shown shall be 20 feet long.
- E. Stacking lanes shall be separate from internal aisles which allow traffic to circulate through the site without entering the drive through facility.

- F. Stacking lanes shall provide one additional storage space after each station for exiting vehicles; said space shall be separate from other circulation aisles and shall be at least 50 feet from the curb line of the street to which it will exit.
- G. Stacking lanes shall be designed and located so as to minimize traffic congestion and to promote pedestrian safety through the use of pavement markings, signs, and designated walkways.

# 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.)

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 is 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.

# 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)

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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<sup>1</sup> (the Monroe PZC did not file a brief with the Appellate Court, and merely adopted the applicant’s brief)<sup>2</sup>. 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 MacDonal’d’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

<sup>1</sup> 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.

<sup>2</sup> 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.

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

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] 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 contrast, 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.

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.

MEMORANDUM

TO: Zoning Commission

FROM:  Deborah G. Jones, Assistant Director of Planning and Development

DATE: March 23, 2016

SUBJECT: Planning Commission Referral regarding REGA#16-01, Proposed Zoning Regulation Text Amendments

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At its meeting on March 22, 2016, the Planning Commission reviewed the referral listed below and made the following motion:

Zoning Commission Referral for April 6, 2016 Public Hearing

REGA16-01, Proposed Zoning Regulation Text Amendment to Sections 6.2 (Downtown Development District); 6.3 (Waterfront Design District); 7.1-36 (Drive-Through Facilities); 7.2-5 (Off-Street Parking and Loading); 7.4-4 (Buffer Areas) and 7.5 (Sidewalks). (Town of Groton Zoning Commission, Applicant.

MOTION: The Planning Commission recommends approval of the proposed Zoning Text Amendment application REGA16-01, Sections:

- 6.2 (Downtown Development District);
- 6.3 (Waterfront Design District);
- 7.1-36 (Drive-Through Facilities);
- 7.2-5 (Off-Street Parking and Loading);
- 7.4-4 (Buffer Areas) and
- 7.5 (Sidewalks).

DGJ:rms

"C"

**GROTON**  
**PUBLIC WORKS**

**M E M O R A N D U M**

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**TO: Diane Glemboski, Planning**

**FROM: Public Works** *GAK*

**DATE: March 14, 2016**

**SUBJECT: Zoning Regulations Text Amendments**

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Comments on proposed amendments to the Town of Groton Zoning Regulations received by this office in a memo from you dated March 2, 2016.

1. Section 7.5-2, change the proposed text in the second paragraph, first sentence, to:

"The Town of Groton Department of Public Works Road and Drainage Standards shall be used for the design of public sidewalks along Town roads. The more stringent design standards of either the Town of Groton Department of Public Works Road and Drainage Standards or the Connecticut Department of Transportation Highway Design Manual shall be used for public sidewalks along state roads."

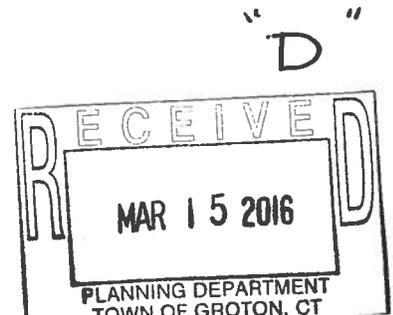
2. Section 7.5-2, add the following to the last sentence of the second paragraph:

"... allowing the public to pass and repass over the portion of the sidewalk located on private property and to allow the Town to maintain and replace this same portion of the sidewalk."

3. Section 7.5-5.B, in the first bullet, change "concrete sidewalk" to "frontage sidewalk".

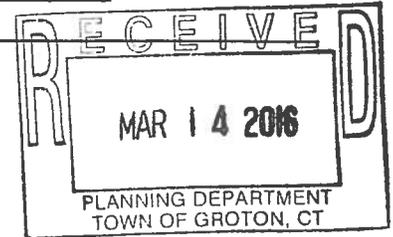
4. Section 7.5-5.B, add the following language:

"Any alternative frontage sidewalk or internal sidewalk located on private property shall be maintained by the property owner."



**SOUTHEASTERN CONNECTICUT COUNCIL OF GOVERNMENTS**

5 Connecticut Avenue, Norwich, Connecticut 06360  
(860) 889-2324/Fax: (860) 889-1222/Email: [office@seccog.org](mailto:office@seccog.org)



March 10, 2016

Jonathan J. Reiner, Director  
Planning and Development Services  
Town of Groton  
134 Groton Long Point Road  
Groton, CT 06340

Dear Mr. Reiner:

I am writing in response to the proposed text revisions to the Groton Zoning Regulations concerning Sections 6.2, 6.3, 7.1-36, 7.2-5, 7.4-4, and 7.5 as referenced in your correspondence dated March 2, 2016. The proposed revisions were referred to this agency under the provisions of Section 8-3b. of the Connecticut General Statutes and received on March 7, 2015 (via mail).

Based on a review of the information submitted, it was determined that the proposed text amendments would not have any adverse inter-municipal impact.

If you have any questions, please contact me at 889-2324.

Sincerely,

A handwritten signature in cursive script that reads "Thomas H. Seidel".

Thomas H. Seidel  
Senior Planner

“ E ”

**Member Municipalities:**

Bozrah \* Colchester \* East Lyme \* Franklin \* Griswold \* City of Groton \* Town of Groton \* Lebanon \* Ledyard \* Lisbon \* Montville \* New London \* North Stonington \* Norwich \* Preston \* Salem \* Sprague \* Stonington \* Stonington Borough \* Waterford \* Windham

## Glemboski, Diane

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**From:** Kozak, David <David.Kozak@ct.gov>  
**Sent:** Thursday, March 31, 2016 8:33 AM  
**To:** Glemboski, Diane  
**Subject:** RE: Town of Groton Regulation Amendment REGA16-01

Diane-

Thank you for the reminder regarding proposed Town of Groton Regulation Amendment REGA16-01. CT DEEP OLISP supports the proposed WDD district modifications to reduce parking requirements, where appropriate, that encourage uses of waterfront sites for water-dependent activities. By-the-way, I am unfamiliar with the 2013 'McKenzie' CT Appellate Court decision. If the decision addresses uses within marine or water-dependent use zones, or other coastal/environmental quality matters, would you please send me a copy?

-Dave

**From:** Glemboski, Diane [<mailto:DGlemboski@groton-ct.gov>]  
**Sent:** Wednesday, March 30, 2016 10:41 AM  
**To:** Kozak, David  
**Subject:** Town of Groton Regulation Amendment REGA16-01

Dave.

We sent CTDEEP a referral for a Zoning Regulation Amendment REGA16-01 (I think the letter referenced REGA16-02 instead of REGA16-01). The application is for changes to various sections of the regulations to address the MacKenzie appellate court determination for issuing waivers by the Zoning or Planning Commission.

If you have any comments would you please provide them by the public hearing on April 6, 2016.

Thanks. Diane

MINUTES  
SPECIAL MEETING  
TOWN OF GROTON  
ZONING COMMISSION  
FEBRUARY 17, 2016 - 6:30 P.M.  
TOWN HALL ANNEX - COMMUNITY ROOM 2

I. ROLL CALL

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

Chairperson Sutherland called the meeting to order at 6:30 p.m. and seated Smith as a voting member.

II. PUBLIC COMMUNICATIONS

Chairperson Sutherland invited the audience to speak and if there was time after the presentation they would have another opportunity. There were no comments at this time.

III. ITEMS OF BUSINESS

1. WRPD - Discussion with Horsley Witten Group

Nate Kelly, Horsley Witten Group, provided background and an update on their progress on the WRPD, consolidation of zoning districts and the use table.

Structure - Mr. Kelly explained what the zoning regulations govern and in order to have oversight of storage, floor drains, etc., inside the building may require an ordinance. It was recommended that the use allowances in the WRPD section be moved to the use table. The commissioners asked about the track record of the use of an ordinance within the water protection districts. He explained that they are mostly used with stormwater regulations, but they would provide more control for the town; enforcement with a code of ordinances is more flexible. The Commission had concerns with committing the town to a greater workload if an ordinance was adopted. Discussion ensued on what existing businesses within the WRPD would be impacted by an ordinance. The commission thought the use table was difficult to follow.

Process - Expanded language was provided on how a WRPD district boundary could be challenged and modified. Erosion and sediment controls, site plan review and stormwater plans need to improve how they interplay with the WRPD regulations. A new subsection dealing with the alteration of sites that contain non-conforming uses was discussed. The commission considered what amount of increased non-conforming would be allowed, whether a smaller amount than the existing 50 percent should be considered, or raise the percentage for additional protections, or incentivize with additional controls.

Standards - The commission reviewed recommendations of not allowing pervious pavement, specific stormwater BMPs for surface water supply protection, water quality volume requirements and replacement of underground storage tanks and septic locations.

Code of ordinances - Mr. Kelly noted the ordinance would identify potential pollutant sources, standards for specific uses, and inspections/penalties.

Staff concerns and next steps were reviewed, including review of the stormwater standards, inspection and enforcement for the town, consistency, and definitions.

The commission discussed percentages of impervious on a site that would require treatment, sites with poor treatment systems or extensive impervious; older sites with constraints that may need incentive for redevelopment, and pre-existing non-conforming sites that would be subject to new rules with a code of ordinances.

The commission said they prefer to use redlined drafts showing the actual changes.

Mr. Kelly and the commission reviewed the WRPD map that showed existing sewers and non-conforming WRPD uses. Discussion ensued on the law with regard to reducing the non-conforming uses, standards for abandonment of the non-conforming uses, and standards for granting variances or special permits for abandoned or non-conforming uses. Mr. Kelly reminded the commission that changing zoning does not change what exists. The commission considered what to keep as prohibited, what can stay with standards, and the balance between the economy and the environment.

Jim Furlong, 57 Fishtown Lane, Mystic, spoke about the proposed minimum 50 ft. buffer, and that the town may be justified in increasing the buffer if the town is responsible for the water, it would be a good argument that was not arbitrary. He asked if this would carry over to wetlands.

Sydney Van Zandt, 3 Front Street, Noank, spoke about runoff discharge, and her concern with 100 or 500 year storms in recent past. She suggested using 100 or 500 year storms rather than 25 year storms for the standards. She suggested more wording on pervious pavement for new development, or taking away pervious. She suggested that the town look at the active senior housing and stormwater runoff language.

Zell Steever, 81 Main Street, Groton, said he spoke two sessions ago about wetlands and FEMA flood hazard maps. He is concerned with regulatory requirements to meet FEMA standards and wetland requirements. He said he would like to see all three standards integrated onto one map in an overall plan; concerned with what would happen if all three standards went in different directions, especially for new development or redevelopment. He spoke about the expansion of residential housing in FEMA flood hazard zones, and the Town's need to consider sea level rise. He said the Town needs better management of its town's resources; treatment of polluted water becomes the expense of the town. He asked them to think about the long-term development of the community, and the POCD.

Mike Cherry, Planning & Zoning Commission Chairman, Town of Ledyard, spoke about protection of the drinking water as well as other water, adaptive reuse, and pre-existing non-conforming issues.

Joan Smith, 37 Island Circle, spoke about inspections, stormwater treatment, concerns that inspection schedules must be written in the regulations or ordinances, or it won't happen. She recommended pervious with vegetation, and pervious with collection beneath it. She said they shouldn't abandon pervious but upgrade the required treatment and design standards.

## 2. Table of Permitted Uses

Jeff Davis, Horsley Witten Group, presented a draft of proposed new residential zones, which consolidate the existing districts, based on the recommendations of Vanasse Hangen Brustlin's audit. Each of the proposed districts was explained for the commission.

Mr. Davis said the commission may want to consider one or maybe two multifamily zones, as well as creating a zone specifically for open space, which could be two tiered - one for active recreation, one for passive recreation. He said the town should consider the potential merging of the existing R8 zone with the WDD to create a village zone. He discussed overlay zones such as the WRPD and historic district consideration in the village district. He suggested they could consider a maximum number of units for older single family home that may be split into multi-family.

An open space district for town-owned parks and state-owned parks will need to be added to use table.

Mr. Davis reviewed the proposed consolidation of the commercial districts, and the uses allowed in each. He recommended keep the WF-20 waterfront district as marine dependent only.

Joan Smith, 37 Island Circle, had concerns with keeping businesses from creeping into the residential area in a combined Mystic district.

Zell Steever, 81 Main Street, had concerns with losing commercial parts of communities, maybe should not be so rigid; diversity should be considered.

Mr. Davis reviewed the proposed industrial zones, and asked if the commission saw a need for a mixed use industrial.

Staff said they preferred the consolidated districts and the uses would need to be reviewed for the use tables.

## 3. Draft Text Amendments (MacKenzie)

Staff detailed the changes made based on the Commission's comments from their previous meeting and discussed including drive-through stacking spaces for certain uses like banks. She stated that the Town Attorney was comfortable with the language proposed.

MOTION: To schedule a public hearing for the Mackenzie text amendments for April 6, 2016.

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

IV. ADJOURNMENT

Motion to adjourn at 8:30 p.m. made by Hudecek, seconded by Smith, so voted unanimously.

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Susan Marquardt, Secretary  
Zoning Commission

Prepared by Debra Gilot  
Office Assistant III

NOT APPROVED

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

I. ROLL CALL

Regular members present: Marquardt, Sutherland, Hudecek, Sayer

Alternate members present: Smith

Absent:

Staff present: Glemboski, Jones, Gilot

Chairperson Sutherland called the meeting to order at 6:30 p.m. and seated Smith as a voting member.

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) - Continued

Chairperson Sutherland reread the legal notice.

Russell Sergeant and partners of Mystic Shipyard were present. Jeff Marshall, Mystic Shipyard, 423 Pendleton Hill Road, North Stonington, gave a history of the site. The boatyard was founded in 1843. He presented some pictures which showed the site as it looked in the 1930's and as it looks today. The maximum height in this zoning district is 30 ft. He explained that the boat repair business has changed, and over the years, the size of boats has increased, with a demand for indoor heated space for year-round repair work on these larger boats, which will not fit in the existing sheds. A larger lift is needed to accommodate the larger boats.

Ron Helbig, 750 Groton Long Point Road, one of the principals of Mystic Shipyard, described the business as a premier yacht repair and storage facility, one of the last working waterfront uses. He said the height amendment was requested because customers are turned away as the boatyard cannot accommodate the larger ships. A larger lift would be required to haul the larger boats. The existing lift has been modified and barely fits in the existing building. A larger building would be built to accommodate a larger 100 ton lift, and a 35 ft. door would be required. An amendment of the height to 45 ft. for boat sheds was recommended by the Planning Commission.

Sergeant distributed a handout and discussed the zoning analysis of the district. Mr. Sergeant detailed Willow Point, the properties in the WF district which includes residential properties, and other mixed uses in the district. The flood elevation was discussed. Mr. Sergeant said the 45 ft. height as recommended by the Planning Commission would work for the applicant's shed, so they proposed to modify the amendment to 45 ft. The shed would be a one story building.

Mr. Sergeant discussed the industrial and commercial nature of the business. A commercial building height usually allows many stories. The Waterfront Design District (WDD) allows up to 45 feet with reduced lot coverage. Marinas in the WDD

have the opportunity to reduce the lot coverage in order to increase the building height. The applicant is asking for parity with other marinas. In this hybrid mixed use zone, a shed is specifically for boat yard use. No other lots in the district could probably accommodate a building of that height.

Ron Helbig spoke about the nature of the business in that the quantity of the ships may be shrinking, but the size of the yachts is growing. Winter storage of the boats is provided on the site. Mr. Helbig detailed the new building proposed, which would include impervious surface with floor drains, sprinklered, ventilated and heated, so that they could work on bigger boats during the winter. He stated that the Zoning Official confirmed that the use is allowed. The Commission discussed the definition of "shed".

Staff reviewed her memo to the Commission. Initially, the applicant asked for 50 ft. for sheds for the repair of boats with the maximum height measured to the peak of any structure. The Planning Commission recommended a lower height of 45 ft, but measured as currently described in the zoning regulations, and not as the application initially proposed. The applicant amended their request to what the Planning Commission recommended.

Staff read the Planning Commission referral into the record. The Town Attorney found the request to be legally satisfactory, the Southeastern Council of Governments found no adverse inter-municipal impact. State of Connecticut DEEP Office of Long Island Sound Programs had no comment.

Staff stated that the 2002 POCD and the draft POCD both recommended keeping waterfront sites for water dependent uses.

Staff clarified that "30/45" meant that 30 ft. would be the maximum height for all other uses in the district except for the boat sheds.

The Chair asked for comments from the public and there were none.

The public hearing was closed at 7:17 pm.

### III. 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)

**MOTION:** The Town of Groton Zoning Commission hereby modifies and adopts zoning regulation text amendment application #REGA15-02, amendment to Section 5.2 (Table of Lot, Yard and Building Requirements by Zoning District) for maximum height in the WF-20 Zoning District, pursuant to the following modifications, findings and reasons for approval:

Modifications:

1. Amend Table 5.2 for Maximum Building Height (Feet) in WF-20 district to read "30/45 (12)"

2. Notation (12) in Table 5.2 is added to read:  
“(12) A maximum height of 45-feet allowed for sheds used for construction, repair, and storage of boats limited to a single floor with mezzanines as allowed by the Connecticut State Building Code”

Findings and Reasons for Approval:

1. These amendments are consistent with the Town’s 2002 Plan of Conservation and Development and the Municipal Coastal Program, with particular regard to continuing to place highest priority on waterfront sites for water-dependent uses and continuing to manage coastal activities in conformance with State guidance.
2. The adopted modifications address issues raised by the Planning Commission and during the public hearing process and include text modifications that limit the allowance for an increase in height in the WF-20 district to a specific water-dependent use. The modifications take into account the balance between the physical needs of a water-dependent use and preserving the quality of life of the surrounding neighborhood.
3. These amendments are made in accordance with a comprehensive plan and provide for reasonable consideration of the environment in accordance with the provisions of CGS 8-2. The State of Connecticut Department of Energy and Environmental Protection has reviewed the proposed amendments and has determined that they do not raise coastal resource or coastal use public policy issues and are consistent with the relevant goals and policies of the State’s Coastal Zone Management Act.

The effective date of this amendment shall be April 1, 2016.

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

IV. PUBLIC COMMUNICATIONS

Thomas Potter, 154 Walker Hill Road addressed the Commission. He asked if the commission had any questions or comments on the correspondence he had submitted to the commission which was included in their agenda packet.

The Chair said zoning enforcement issues do not come before the Zoning Commission, and he should be appealing the Zoning Official’s decision to the Zoning Board of Appeals.

Staff said a copy of a letter sent to Mr. Gates regarding the Spicer Mansion at 15 Elm Street was enclosed in their agenda packets.

V. APPROVAL OF THE MINUTES

MOTION: To approve the minutes of the regular meeting of February 3, 2016 as amended.

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

MOTION: To approve the minutes of the special meeting of February 3, 2016 as amended.

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

VI. OLD BUSINESS

1. Zoning Regulation Update

a. Water Resource Protection (WRPD)

Staff distributed a worksheet to the commission with all the uses from the zoning regulations use table listed. Staff and commissioners began reviewing each of the uses, to discuss what the commission would want permitted, not permitted, or permitted with conditions.

b. Zoning Districts and Table of Permitted Uses

The commissioners provided some comments to staff with regard to a table of permitted uses. They thought the table was too busy, difficult to read. If a use is not allowed, it should be left blank. They thought maybe using color to enhance the permitted uses, and color illustrations, and titled tabs. Also, hyperlinks would be useful.

VII. NEW BUSINESS

1. Report of Commission - None

2. Receipt of New Applications – None; the next meeting will have the regulation amendment public hearing.

VIII. REPORT OF CHAIRPERSON - None

IX. REPORT OF STAFF

Staff said the Town Council will discuss the OPDS budget on March 29<sup>th</sup>. Staff has proposed a large amount for re-writing the zoning regulations. Staff hopes the commissioners will go to the meeting and speak in favor of the budget. The commission discussed possible dates for another special meeting workshop. Staff will check with Horsley Witten for availability.

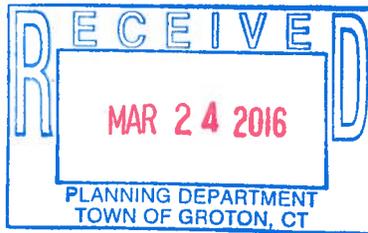
X. ADJOURNMENT

Motion to adjourn at 8:35 p.m. made by Hudecek, seconded by Smith, so voted unanimously.

---

Susan Marquardt, Secretary  
Zoning Commission

10100018A-01-03  
March 22, 2016



Susan Sutherland, Chairperson  
Zoning Commission  
Town Hall Annex  
134 Groton Long Point Road  
Groton, CT 06340

9171 9690 0935 0118 4484 18

**Re: Height of proposed Fieldcrest Water Storage Tank  
115 Oslo Street, Groton, Connecticut  
Aquarion Water Company**

Dear Ms. Sutherland:

On behalf of Aquarion Water Company ("Aquarion"), we request a determination from the Zoning Commission that the height of the proposed Fieldcrest Water Storage Tank is reasonable and necessary per Section 4.4 of the Zoning Regulations.

The existing Fieldcrest water storage tank is an ellipsoidal elevated steel tank constructed in 1959, and located at 35 Nantucket Drive in Groton. This tank serves the northwestern portion of Aquarion's Mystic System in the Town of Groton ("Fieldcrest Water Level"). Tighe & Bond prepared an analysis in September 2014 to evaluate the supply and storage capacity in the Fieldcrest Water Level. The storage capacity evaluation showed that the Fieldcrest Tank, which is the only storage facility in the water level, does not currently provide adequate emergency storage.

Based on the condition of the existing Fieldcrest Tank and the additional storage capacity needed, a new storage tank was recommended. The selected site for the new tank is on the Northeast Academy parcel located off of Ann Avenue in Groton, Connecticut. The project location is depicted on Figure 1, attached for reference.

The existing hydraulic grade of the Fieldcrest Water Level is 303 feet above mean sea level (NAVD88 datum). In order to provide adequate pressure and fire protection to customers in the Fieldcrest Water Level, the hydraulic grade of the proposed tank must be kept at 303 feet. The elevation of the selected location is 179 ft NAVD88. Given this base elevation, the proposed tank must be 124 feet above grade to the tank overflow level to provide the required hydraulic grade of 303 feet. The actual height of the proposed tank will be approximately 134 ft including the tank roof, railings, and appurtenances. The height of the proposed tank is necessary for Aquarion to continue to provide drinking water to its service connections in the Fieldcrest Water Level.

The proposed tank site is located within the RU-40 Zone, which is a Residential District. According to Table 5.1-3 in the Zoning Regulations, water storage tanks are listed as a permitted use in Residential Districts.

If you have any questions, or require additional information, please feel free to contact me at (413) 572-3276 or at JNMcClellan@TigheBond.com.

*FIELDCREST  
H<sub>2</sub>O*



Very truly yours,

**TIGHE & BOND, INC.**



John McClellan, Ph.D., P.E.  
Vice President

Copy: Shokoofeh Rezazadeh, Aquarion Water Company

\\SRV\Projects\A\A1000 AWC\18 - Fieldcrest Alternatives Analysis Update\Permitting Submittals\Site Plan Application\Zoning - Tank Height.Doc

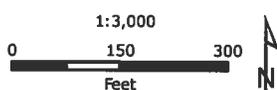


**Legend**

- Proposed Tank
- Water Resource Protection Area
- Approximate Work Area
- Parcel Boundary



Based on 2012 Statewide Leaf-Off Orthophotography.



**FIGURE 1 LOCATION MAP**

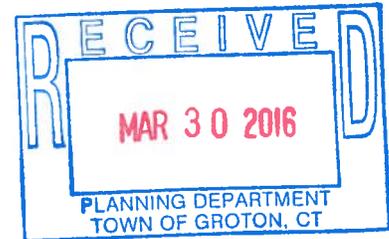
Location Map  
 Aquarion Water Company  
 Fieldcrest Water Storage Tank  
 Groton, Connecticut  
 March 2016

*Fieldcrest HD*

10100018A-01-03  
March 28, 2016

Susan Sutherland, Chairperson  
Zoning Commission  
Town Hall Annex  
134 Groton Long Point Road  
Groton, CT 06340

**Re: Height of proposed Fieldcrest Water Storage Tank  
Supplemental Information  
115 Oslo Street, Groton, Connecticut  
Aquarion Water Company**



Dear Ms. Sutherland:

We are providing additional information regarding the tank height determination in response to Diane Glemboski's request via email on March 24, 2016. Responses to the information requested are as follows (*responses are provided in italics*):

1. A plan of the tank showing the tank location.

*Please see the attached Proposed Conditions Site Plan (Sheet 3). This plan shows the location of the tank on the Northeast Academy property.*

2. A plan showing what the tank will look like and delineating the height of the tank on the plan.

*A section view is shown on the attached Tank Elevation and Plan (Sheet 9). The tank is also shown on the attached tank rendering, which provides a view of the tank from the backyard of 135 Ann Avenue.*

3. Address the need for 10' additional height above the 124-feet and show on the plan.

*As shown on the section view provided on the Tank Elevation and Plan (Sheet 9), an additional 10 feet are needed above the required hydraulic grade of 303 feet to accommodate the tank roof, tank vent, access hatches, handrail, and Federal Aviation Administration (FAA) obstruction light.*

4. Any additional information you think will help the Zoning Commission make a determination on the need for and location of the proposed storage tank.

*As discussed in our initial letter to the Zoning Commission dated March 22, 2016, a storage capacity evaluation showed that the Fieldcrest Tank, which is the only storage facility in the water level, does not currently provide adequate emergency storage. A leak and subsequent emergency repairs to, and inspection of, the Fieldcrest storage tank in 2013 increased the urgency for replacement of the tank.*

*Several sites were evaluated for the new water storage tank. The Northeast Academy site is the most preferable parcel for a replacement elevated tank based on its owner (Town of Groton), land use (portions of the site are undeveloped), and its proximity to existing water main. Alternate tank sites were limited by site elevation based on the required tank hydraulic grade of 303 feet (NAVD88 datum). The*



*Northeast Academy site location will also maximize the available pressure and flow available for the Northeast Academy fire suppression system. The Northeast Academy parcel has an additional advantage over the existing Fieldcrest Tank parcel for a replacement tank because the new elevated tank can be constructed while the existing Fieldcrest Tank is in service. With only one tank in the Fieldcrest Water Level, it is important to keep one tank in service to provide equalization and emergency storage. The existing tank site is too small to construct a second tank on the same parcel. The location of the tank on the Northeast Academy site was selected based on site limitations including property boundaries and set back requirements, topography, wetlands, and existing structures.*

If you have any questions, please feel free to contact me at (413) 572-3276 or at JNMcClellan@TigheBond.com.

Very truly yours,

**TIGHE & BOND, INC.**



John McClellan, Ph.D., P.E.  
Vice President

Copy: Shokoofeh Rezazadeh, Aquarion Water Company

J:\A\A1000 AWC\18 - Fieldcrest Alternatives Analysis Update\Permitting Submittals\Site Plan Application\To Zoning\Supp Letter - Zoning - Tank Height.Doc



RECEIVED  
MAR 30 2016  
PLANNING DEPARTMENT  
TOWN OF GILTON, CT

Fieldcrest  
H2O

2016/03/08

MEMORANDUM

TO: Zoning Commission  
FROM:  Deb Jones, Assistant Director of Planning and Development  
DATE: March 31, 2016  
SUBJECT: *Whittle v. Zoning Commission*, KNL-CV-12-6012917-S

---

Attached you will find the February 16, 2012 Notice of Grant of Special Permit #321 regarding the Whittle Earth Processing Facility, 0 Yetter Road. This Permit has not yet been filed in land records. Attorney Carey asked that you review this Permit in advance of the Executive Session.

DGJ:dlg

Attachment

Whittle

TOWN OF GROTON  
ZONING COMMISSION

NOTICE OF GRANT OF SPECIAL PERMIT #321

This is to certify that on February 16, 2012 the Zoning Commission of the Town of Groton granted a Special Permit under Section 6.3-3 of the Groton Zoning Regulations as follows:

1. Owner of Record: Whittle Earth Products Facility
2. Description of the premises: 0 Yetter Road
3. Description of special permit: For excavation, processing and sales of earth products and the importation of material for on-site processing, including periodic crushing operations.

CONDITIONS AND MODIFICATIONS:

1. Property  
Excavation, importation, processing, storage and sale shall be limited to lands identified by the Town as PIN #270015625780, consisting of approximately 77 acres. The permitted uses shall not in any way or at any time be extended to any other property located within the Town of Groton.
2. Permittee(s)  
This permit shall issue jointly and in common to William T. Whittle and Richard A. Whittle, who per the application, owned the subject property at the time of application. Any subsequent conveyance in whole or in part of the permit is governed by the limitations imposed by the stipulated agreement. Such limits shall not be included in this Special Permit and if enforcement of the terms of the Stipulated Agreement in this regard is deemed necessary by others, compliance with those limitations shall be enforced through other appropriate legal means.
3. Permitted Uses Generally
  - a. Excavation, grading, processing, stockpiling and sale of 518,000 cubic yards of earth products imported to the site, subject to the limits of this permit. The permit shall be primarily for the purpose of earth materials processing and sale, and secondarily but necessarily, for the purpose of rendering the site more suitable for planting and harvesting crops, such as corn.
  - b. The excavation, grading, processing, stockpiling and/or sale of no more than 50,000 cubic yards of naturally occurring earth material from the site.
  - c. The location and use of equipment necessary to and associated with the permitted uses, as specifically disclosed and described in the application, and as further limited by the conditions of this permit.
  - d. The temporary on-site fueling of permitted vehicles and equipment by mobile means and limited to the location depicted on the plans of record.
  - e. Agriculture, specifically planting, growing and harvesting of crops such as corn.

WHITTLE

- f. This permit shall not in any way be construed to allow any other use of the site.
4. Future Use
    - a. Conversion of the property to uses other than agricultural fields and related irrigation ponds and drainage will require a modification of this special permit by means of approval of an application to the zoning commission, which approval may include requirements deemed necessary to remediate the site to a condition that is suitable for the prospective alternative use.
    - b. In addition, the scope of this permit is limited to the use as permitted and does not imply any additional future modifications or expansion. Accordingly, any notes or references on the plans to "future expansion" or "future expansion area" shall be removed.
  5. Special Permit Renewal
    - a. The permit shall be subject to renewal every two years, commencing from the date of the initial approval or the lawful resolution of any appeals which may be taken of this approval. Permit renewal shall be administered through the Zoning Commission's review of a complete special permit application, which application shall include at a minimum detailed plans and a narrative describing the operation's actual compliance with all permit conditions and limitations, measures taken to address any prior compliance matters, and the volume and type of materials excavated, processed, stored and sold during the previous permit phase.
    - b. In the event the permittee(s) fails to receive approval of permit renewal prior to the date of expiration of a current permitted phase, all operations subject this permit shall immediately cease and not be re-initiated until said extension approval has been granted and any conditions or stipulations relating thereto have been satisfied.
  6. Site Access
    - a. All vehicles shall access the site via the existing approved Route 184 "commercial access drive." The sole exception shall be that farm equipment not associated with the earth materials operation, such as tractors, trailers and cultivating and harvesting equipment may access the site via the existing "farm access road" off Yetter Road immediately south of and abutting land now or formerly of David Waikus and also via the existing "farm access road" immediately west of stockpile "H."
    - b. To the maximum extent possible, all farm equipment and vehicle access shall be via the farm access road west of stockpile "H" which drive shall be designated as the principal non-commercial (farm) access drive.
    - c. The existing farm access road adjacent to Waikus shall be an ancillary, subordinate "farm access road" and its use shall be limited to the minimum necessary. As part of the reclamation plan required in Phase I, the 50 foot section of the roughly 150 foot long southerly "leg" of this drive that is depicted as encroaching onto the Turner property shall be removed or abandoned in place and relocated a minimum of 20 feet north of the Turner property line. The former area of this leg shall then be planted with hardy evergreens 15 feet on center by extending the required planting buffer required to be installed west of Turner, easterly an additional 100 feet.

WHITTLE

- d. If the relocation of this drive leg requires a wetland permit application, the owners shall submit such application within 30 calendar days of the recording of this special permit, and if that application is denied, access by farm equipment and vehicles to the "crop planting area" immediately west of Turner shall be made either via the alternative "main" farm access road or via the remaining portions of the ancillary farm access road (i.e. proceeding north of stockpiles "Q" and "R") and vehicular access to the southerly leg shall be prohibited by placement of physical barriers at its north end (where it connects to the main drive) and at its west end (where it connects to the "crop planting area").
- e. The existing drive adjacent (west) of lands now or formerly of Scott Turner shall be eliminated and the area restored as required herein. All use of this drive shall cease immediately upon recording of the approved special permit and concurrently, the drive's access to Yetter shall be physically blocked by means of a gate, chain, large boulders or some other appropriate barrier placed at the right of way line.

7. Noise

- a. For purposes of this special permit the term "daytime" shall mean 8:00 am to 5:00 pm. All other times shall be considered "night time."
- b. The maximum daytime decibel level at any property line from all operations shall not exceed 54 dBA.
- c. The maximum night time decibel level at any property line from all operations shall not exceed 45 dBA.
- d. Temporary and limited deviations from these maximum noise levels shall be allowed only in order to expedite and complete the phase I remediation work required herein.
- e. Prior to the operation of any processing equipment, the owner shall engage the services of a certified professional to determine the actual decibel levels at the property lines from the operation of the equipment. In the event this "baseline" does not comply with the maximum decibel levels allowed in this permit, the equipment shall not be operated until sufficient measures have been taken to meet the standard, as confirmed by subsequent testing and certification.
- f. There shall only be one portable rock "crusher" not exceeding the present crusher capacity (Lippman Milwaukee jaw crusher with secondary Cedarapids cone crusher or Town approved equivalent) permitted on site and operating at any one time and if other processing equipment is operating at the same time, the maximum decibel levels shall include all operations.
- g. The location of the portable temporary crusher shall be as indicated on the plans of record. All portions of the crusher and any equipment serving the crusher, shall be a minimum of 20 feet below the finished floor elevation of the existing Turner residence. In addition, the crusher shall also be surrounded by stockpiles and/or other noise mitigation structures.
- h. The crushing of earth material, including but not limited to rock, concrete and bituminous shall be limited to daytime hours up to a maximum of fifty total business days per year and only between May 1 to June 30 and September 1 to November 1. A "day" for compliance with this condition shall mean the nine hour period between 8:00 am and 5:00 pm, regardless of whether or not the actual crushing on a given day occurs during the entire permissible day.

WHITTLE

Absolutely no processing of any kind shall occur during nighttime hours or on Saturday or Sunday, or on any national holiday.

- i. Access to the site by Town staff and their consultants shall be permitted for compliance review and such access shall not be unreasonably denied.
8. Management of Material
- a. The maximum overall material volume over the life of permit/use, including in the aggregate both onsite and offsite material, shall not exceed 568,000 cubic yards.
  - b. No more than 115,000 cubic yards of materials shall be stockpiled on site at any one point in time.
  - c. No stockpile shall exceed elevation 175 feet above mean sea level.
  - d. Stockpile side slopes and any other cut slopes shall not exceed a 1 ½ to 1 slope and shall be temporarily stabilized if not actively being worked, in accordance with State DEEP and Town of Groton standards.
  - e. Crushing shall only occur in the location permitted and subject to all of the limitations contained in this permit. Prior to the initiation of crushing, the owner shall notify the zoning official.
  - f. The use shall at all times comply with DEEP Air Compliance standards and at a minimum, sufficient measures shall be taken to control dust from leaving the site, including but not necessarily limited to, application of water; stabilization of stockpiles and other denuded areas not being actively worked; reduction of stockpile volumes, height and number; planting of evergreens at key property lines; and retention of existing wooded areas around the perimeter of the site.
  - g. Prior to initiation of any processing, the property owner shall provide OPDS with a copy of the completed and submitted DEEP Air Compliance application form 208, and any related documentation, including but not necessarily limited to, section IV of form 208 with respect to any processing equipment to be used on this property.
9. WRPD (Water Resources Protection District)
- a. A minimum of ten (10) acres of the northeast portion of the site located within the WRPD overlay zone shall be left undisturbed in its natural condition. This area shall be shown on the final approved plans and shall be located in a way that maximizes the protection of surface and groundwater resources.
  - b. Prior to the excavation of onsite material within 250 feet of any adjacent property, the owner/applicant shall submit a report to OPDS, prepared by a certified professional and evaluating the potential impacts of the full scope of the approved excavation on potable water quality. As determined by the report, the owner shall implement any recommendations contained in the report intended to protect present and future groundwater resources.
10. Fueling, Maintenance and Storage of Equipment and Vehicles
- Onsite vehicle and equipment fueling shall be limited to the minimum necessary and shall be accomplished by temporary mobile means located outside the WRPD portion of the site. No storage of fuel shall be permitted anywhere on the site. A scale detail of the designated and approved temporary fueling facility shall be provided on the final plans including an impermeable surface and sufficient containment. Any spills or discharges of fuel, oil, hydraulic fluid or like materials shall be immediately reported to the Office of Planning and Development Services Environmental Planner

WHITTLE

and to the State DEEP Spill Unit. A detailed "Spill Contingency Plan" shall be provided as part of the final post-approval submittals and at a minimum, the fueling station shall be equipped with materials to clean up and/or contain any inadvertent spills.

11. Phase I Remediation and Land Use Restriction (Easterly Area)

Phase I of the project shall include work to remediate conditions adjacent to the Turner property and to convert and limit this area to agricultural use. Material necessary to accomplish this requirement shall be taken from existing onsite stockpiles in a manner intended to further implement the requirements of this permit. A detailed plan drawn to scale showing the full extent of the crop field, means of access to this field for farm vehicles and equipment, changes required herein to screening and farm road locations/extent, additional required plantings, the extent and means of abandonment of the existing drive along the west property line of Turner, a construction sequence and project duration, planting details, notes, construction details and other typical information shall be provided for review and shall be approved as part of the required "check print" prior to recording the permit on the land records. The plan shall indicate that the area shall be restricted from all other uses, and appropriate means of restricting the use of this area may be required to be shown on the plan and to be installed and maintained in the field.

12. Bonding

Prior to recording of the special permit, the owner shall provide a surety to the Town, in a form and amount acceptable to the Town, for the purposes of funding noise studies by third party certified professionals; as a means of mitigating potential spills and related groundwater contamination; to assure sufficient stabilization and dust control; and to assure completion of phase I remedial work.

13. Blasting

Blasting shall be incidental and limited to the minimum necessary to provide access to natural onsite material approved for excavation as part of this permit. No blasting shall occur within 250 feet of any property line until a report has been provided to OPDS by a certified professional, assessing the potential impacts of any such blasting on adjacent properties, included but not necessarily limited to, existing potable water supply wells, septic disposal systems and other structures that might be affected by the proposed blasting.

14. Agricultural Restriction

Prior to recording of the special permit and as a condition of approval of the special permit, the owner shall properly execute and record on the land evidence records of the Town, a legally binding land use restriction, with the Town of Groton as the beneficiary, limiting the use of twenty (20) acres of existing active farmland under his/her ownership and presently being used for agricultural purposes only, such as orchards or croplands. Recording of the approved, executed document shall be accompanied by a survey sufficient to depict the extent of the acreage so restricted and in addition, the boundary of such acreage shall be field marked by appropriate markers to be maintained by the owner in place for the duration of the special permit.

In the event any land subject to this limitation is converted to any other use, such conversion shall result in rendering the special permit null and void for all purposes, and all use of the special permit property shall cease immediately upon written

WHITTLE

notification to the owners by the Town of Groton Zoning Official. The only exception shall be conversions which occur by virtue of a lawful action of a governmental authority, such as a taking of land for street right of way, utility easements, grading rights or for similar public purposes.

15. Permit Modifications

All proposed modifications to the terms of this permit shall be administered by means of review and action on a complete special permit application to the zoning commission, including a public hearing at the sole discretion of the commission, whether or not the proposed changes are deemed substantial.

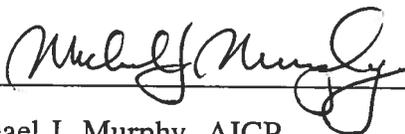
16. Land Records and Post Approval Administrative Requirements

This permit shall not be valid until a copy is recorded on the land evidence records of the Town. The recorded permit shall include all conditions of approval in their entirety.

17. Plan Modifications and Post-Approval Administrative Matters

The final plans shall be revised as appropriate to address all of the above conditions and modifications, including but not necessarily limited to plan notes, details, annotations, and other information. Such plans shall be provided to the Manager of Planning Services for review, approval and recording in mylar form on the Land Records, prior to recording of the approved special permit.

ZONING COMMISSION

By 

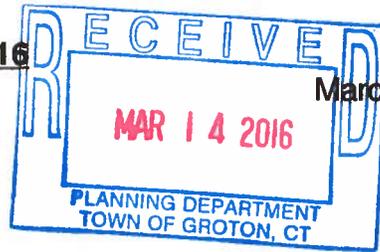
Michael J. Murphy, AICP  
Director of Planning and Development

Date: February 23, 2012

NOTE: This notice is to be recorded on the Land Records of the Town of Groton, indexed in the grantor's index under the name of the record owner.

WHITTLE

Corrected Copy of Letter, dated March 10, 2016



March 11, 2016

Zoning Commission  
Town of Groton  
134 Groton Long Point Road  
Groton, CT 06340

Subject: Failure of the Designated Zoning Official to Interpret the Zoning Regulations That Require the Zoning Commission to Direct the Zoning Official to Perform the Duties of the Job Description for the Manager of Inspection Services

To: Susan Sutherland, Chairperson

Section 8.1-1 of the Zoning Regulations states that **“These regulations shall be enforced by the Zoning Commission, acting by and through the Zoning Official.”**

The Town of Groton web site states the following for Inspection Services;

**“The Inspection Services Division of OPDS is responsible for the enforcement of building, electrical, plumbing and mechanical codes, along with applicable zoning regulations and State Statutes.”**

The Town of Groton Job Description for the Manager of Inspection Services states the following:

#### **“CLASSIFICATION OVERVIEW**

The Manager is also responsible for enforcement **and interpretation** of the Town of Groton’s zoning regulations. The Manager will also serve as the Town Building Official **and Zoning Enforcement Officer.**

#### **ESSENTIAL DUTIES AND RESPONSIBILITIES**

Develops and administrates policy and procedure necessary to the successful completion of work **adhering to both State and Federal statute guidelines.**

**Confers with** contractors, Town officials and the public to provide information and to resolve problems and complaints.

**This position requires the ability to read, analyze and interpret complex documents and the ability to respond effectively to complaints from citizens, regulatory agencies or members of the business community.**

**The incumbent will also be required to define problems, collect and analyze data and raw valid conclusions, applying the principles of logic or scientific thinking in dealing with a variety of abstract and concrete variables.”**

The current Manger of Inspection Services has served in this capacity for 20 years, and possesses the background, training and experience needed to perform these duties.

Except for the Connecticut General Statutes pertaining to Licensing & Permits (as required in Section 7.1-37 H. of the Zoning Relations on Page 7-28), all the documents essential to a logical reading, analysis, interpretation and resolution of this issue have been provided to the Manager of Inspection Services, and consultation with other Town officials has also been available. Additional Connecticut General Statutes on Licensing & Permits are enclosed, even though they are **only required** for a Community Residential Counseling Facility.

Therefore, I respectfully request the Zoning Commission to take the following actions as part of its meeting on April 6, 2016:

1. Direct the Zoning Official to read, analyze and interpret the following statements found in documents assembled by the Zoning Commission in 1993 as part of their deliberations that led to the Amendment effective July 1, 1993:

a. Minutes of the Groton Zoning Commission Meeting on May 5, 1993:

Page 1 Section II. 2. 2nd paragraph. "He [Attorney Carberry, representing The Connection, Inc., Applicant] noted that after discussing this proposal with staff, they decided to create a new amendment which would clarify this type of facility for The Connection, Inc.'s proposal **and any future proposals**. ..... He noted that **zoning is only the first step in opening a Community Residential Counseling Facility; there would be at least two to three more licensing procedures required by the State**. ....

Page 1 Section II. 2. 3rd paragraph. Attorney Carberry noted that the Zoning Regulations do not provide standards under which the regulations should be changed, and noted that this amendment should be approved for two reasons. The first being that there is a gap in the regulations concerning a Community Residential Counseling Facility in that it does not neatly fit into any existing regulation, and the second reason for approval being that the new amendment **would give the Zoning and Planning Commissions more power with the proposed conditions which would have to be met**. ....

Page 2. Section II. 2. 1st paragraph. She [Jackie Massett] stated that the women in this facility **are there by choice** which gives them a vested interest in the programs. She noted that she understands that a **major fear** is that drug addicts from other towns will use this facility and she noted that the residents of The Connection Inc. facility must be drug free when they enter. .... She closed by stating that the proposed regulation amendment **protects the citizens of Groton in that it allows further control with the proposed conditions**. ....

Page 3. Section II. 2. 1st full paragraph. Commissioner O'Beirne stated his opposition to staff's previous comment that the Commission needs to address land use issues **and not the individuals** using Community Residential Counseling Facilities. He stated he is concerned with there being no reservations on these types of facilities, only the general statement of these facilities excluding correction programs. **O'Beirne stated that the Commission has to think of the residents of single family areas who might be impacted with these types of facilities**. He questioned if a facility under this definition would provide treatment for a drug abuser who was ordered by a court to get treatment or go to jail. Attorney Carberry stated that he could review the wording that would eliminate these facilities from providing correction programs in lieu of a criminal justice program. Commissioner Reid stated opposition with there being no control over the individuals receiving treatment once a facility was established. Staff noted that the State regulates the internal operations of this type of facility and **the Town regulates the external development**. ....

Page 7. Section II. 2. Continuing paragraph. He [Commissioner O'Beirne] feels that stating in the definition that correction programs shall not be included does not provide a sufficient limitation to the types of facilities which could fall under this definition, **and fears for the surrounding residential neighborhoods**. ....

Page 7. Section II. 2. 3rd paragraph. The Commission stated that they would like to see .... expansion on and clarification of what a "correction program" means, **[and] wording that would avoid setting up an attraction which would create a potential hazard for children and residents of surrounding areas**, .... "

b. EXAMPLES OF SOME PROGRAMS INCLUDED OR EXCLUDED FROM DEFINITION OF COMMUNITY RESIDENTIAL COUNSELING FACILITY

(Second Page of Document):

Type of Program Emergency Housing for Homeless Individuals

Statute 17-590

Supervising State Agencies Department of Human Resources

Permitted by New Definition? No

Reason not Permitted Not Counseling Program

[Parenthetical Note: I have included this document for review because Form 990-EZ, filed by Community of Hope, Incorporated for the Fiscal Year 2013 [the latest year available from the IRS] contains the following statement in Part III., Line 28: "Provided supporting, educational, and rehabilitation services to **qualified homeless citizens** to give them the opportunity to re-enter society as contributing members."]

2. Using logic, explain in writing why the Zoning Commission went to such great lengths to establish a stringent, controlled environment for the creation of the definition of a Community Residential Counseling Facility that;

(a) could provide services to persons who either sought rehabilitation from drug or alcohol addiction on a voluntary basis; or to "first-time" offenders who opted to participate in such a structured program rather than spend time in a Correctional Facility; and,

(b) could **not** provide these same services in a stringent, controlled environment to any person "... under the jurisdiction of the Department of Correction pursuant to [Chapter 125] Section 18-100 of the Connecticut General Statutes or court ordered treatment programs under Section 17a-653 to 17a-656 [as revised under Chapter 319j, Section 17a-686 to 17a-701].

 3. Again using logic, explain in writing why, on the other hand, the referrals **not permitted in 2. (b) above** would be considered as a **permitted referral** to a halfway house, group home, or community or private residence for temporary housing in an R-12 Residential District. In making this decision, please keep in mind that Annette Eldridge, Executive Director for Community of Hope, Incorporated, stated the following at the meeting of the Zoning Board of Appeals on December 9, 2015, concerning ZBA#15-15;

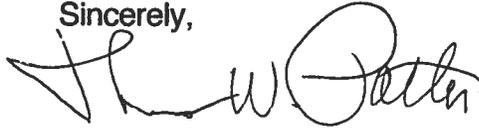
o - The House Mother is an unpaid volunteer.

o - Some of the persons that are being temporarily housed are required to wear an ankle bracelet as a monitoring device required by the State Department of Correction.

4. Stipulate a due date of not more than 30 days for the written interpretation by the Manager of Inspection Services, with a copy mailed to the undersigned.

I can state unequivocally that The Manager of Inspection Services has **never** provided any interpretation or explanation to me, written or verbal, from the date I first requested it (i.e., November 5, 2015) to the date of this letter.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas W. Potter". The signature is fluid and cursive, with the first name "Thomas" starting with a large, stylized 'T' and the last name "Potter" ending with a large, circular flourish.

Thomas W. Potter

Encl (included with Letter dated March 10, 2016)

Job Description - Manager of Inspection Services

Connecticut General Statutes:

Chapter 376b - Alcohol and Drug Counselors

Chapter 382a - Behavior Analysts

Chapter 383b - Clinical Social Workers and Master Social Workers

Chapter 383c - Professional Counselors

Chapter 410 - Lodging Houses

March 26, 2016

Zoning Commission  
Town of Groton  
134 Groton Long Point Road  
Groton, CT 06340

Subject: Request for Clarification of the Minutes of the Zoning Commission Meeting  
on March 2, 2016

To: Susan Sutherland, Chairperson

Dear Madam Chairperson,

I recently downloaded the Minutes of the subject meeting (copy enclosed), and was confused by the following statement:

"IV. PUBLIC COMMUNICATIONS

The Chair said zoning enforcement issues do not come before the Zoning Commission, and he [Mr. Potter] should be appealing the Zoning Official's decision to the Zoning Board of Appeals."

This statement seems to conflict with the current Zoning Regulations, as follows:

"SECTION 8  
ADMINISTRATION AND ENFORCEMENT

8.1 Zoning Enforcement

8.1-1 Authority

These regulations shall be enforced by the Zoning Commission, acting by and through the Zoning Official."

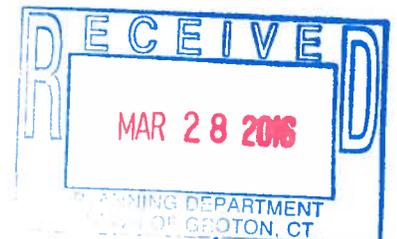
Perhaps it is possible that these potentially conflicting statements originated during the Meeting of the Zoning Commission on February 3, 2016 (copy enclosed). The Minutes of this meeting included the following remarks:

"V. PUBLIC COMMUNICATIONS

..... Staff said that zoning enforcement issues do not come before the Zoning Commission, .....

I would like to take just a few minutes at the next regular meeting of the Zoning Commission on April 6, 2016, to clarify the following issues;

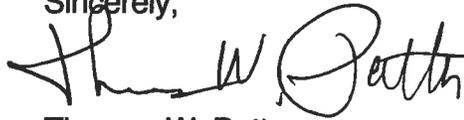
o - Does the language in the Zoning Regulations, under Section 8.1-1, take precedent over the statements in the Minutes of the Zoning Commission meetings on February 3, 2016 and March 2, 2016?



o - Is Kevin Quinn, the Manager of Inspection Services, considered to be the "Zoning Official" referenced in Section 8.1-1 of the Zoning Regulations?

Thank you for your consideration on these matters.

Sincerely,

A handwritten signature in black ink, appearing to read "Thomas W. Potter". The signature is written in a cursive style with a large, prominent "P" at the end.

Thomas W. Potter  
154 Walker Hill Road  
Groton, CT 06340

Encls. a/s

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

I. ROLL CALL

Regular members present: Marquardt, Sutherland, Hudecek, Sayer

Alternate members present: Smith

Absent:

Staff present: Glemboski, Jones, Reiner, Gilot

Chairperson Sutherland called the meeting to order at 6:47 p.m. and seated Smith as a voting member.

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)

Chairperson Sutherland read the legal notice. The Chairperson noted that the applicant requested that the public hearing be continued to the next regular meeting in March.

MOTION: To continue the public hearing to the next regular meeting on March 2, 2016.

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

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

MOTION: To approve the minutes of meeting of January 6, 2016 as amended.

Motion made by Hudecek, seconded by Sayer. Motion passed 4-1-0, 1 abstention (Sutherland).

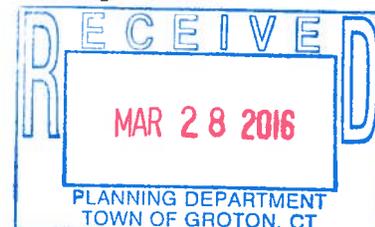
IV. CONSIDERATION OF PUBLIC HEARING

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)

The public hearing was continued to March 2, 2016.

V. PUBLIC COMMUNICATIONS

Thomas Potter, 154 Walker Hill Road, submitted a letter to the Zoning Commission dated January 27, 2016 regarding the State of Connecticut's Department of Corrections referrals of unrelated persons permitted in the RS zone.



Staff said the Zoning Official has been working with the Town Attorney regarding the duplex, with four unrelated residents. Staff said that zoning enforcement matters do not come before the Zoning Commission, but are heard by the Zoning Board of Appeals. Staff said the Zoning Official and the Town Attorney have responded to Mr. Potter and he can appeal the interpretation to the Zoning Board of Appeals.

Mr. Potter addressed the commission again. He said the subject property is not a community residential counseling facility. He said the zoning regulations are silent on those Connecticut general statutes and asked how it is possible that the Dept. of Corrections can make referrals if it is not stated in the regulations. The Chairperson said the Zoning Official will review those as well.

The Commission would like staff to provide a follow-up for the next regular meeting.

## VI. OLD BUSINESS

### 1. Zoning Regulation Update

#### a. Water Resource Protection (WRPD)

Staff noted that they emailed the commissioners an update from Horsley Witten Group, which was received this afternoon. The memo provided a summary of what has been done, and was looking for direction on how to proceed.

Staff said after the last meeting, the consultants did a windshield survey of the district. They have since done more intensive GIS mapping of setbacks from streams and wetlands. Staff had a workshop with the consultants last Friday to address some of these issues. The topo is very irregular in the WRPD. The GIS analysis showed the 100 year floodplain is outside that setback in certain areas. There are many pre-existing non-conforming uses in the WRPD. Horsley Witten told staff that based on the number of existing non-conformities, and the complex water system, they would not recommend the two-tiered system. They recommended the Commission use best management practices, conditional uses, and decide how to regulate. The POCD had recommended considering a two-tier system. Based on the complex environmental system, staff asked what uses would be allowed, and what would be prohibited. The asked Horsley Witten to look at existing prohibited uses, and compare to the DEEP recommendations and previous work they had done for other towns. Staff would like to start talking through some of these uses. The DEEP recommendations are based on aquifer sources not surface water sources. Definitions will need to be very explicit.

A Code of Ordinances could be used, which would need to be approved by the Town Council, as another enforcement method. Discussion ensued on how many existing fuel stations, auto dealerships, car washes, etc., are currently in the WRPD, and how many grandfathered systems have been brought up to date. They will not be able to just prohibit; the old ones will never want to leave, and will hang onto the older systems. The Chair said "Kennels" should be looked at as a separate topic, to be considered later. Staff would have a map made showing these nonconforming uses. Changing the regulations only affects uses going forward. Ordinances can affect those uses already existing, and can go inside the buildings, not just outside. Staff is not sure how enforcement would work in that area. Ordinances would not be zoning, but the

Zoning Official enforces the blight ordinance and may also be enforcing any other ordinances that may be added. An ordinance may provide for regular inspections. Staff provided some examples. Non-point source pollution from sites, change of use through eventual slight modification, making prohibited uses allowable in order to regulate, and town responsibility for drainage basins in subdivisions were all discussed. Staff said suggestions for use table consolidation and zoning districts will be sent to the Zoning Commission next week. The use table will be defined consistently throughout the regulations.

Staff explained that Table 1 shows those uses already regulated or prohibited in the WRPD. The Commission needs to define the uses, and decide on conditions. Additional items should be prohibited in addition to the existing prohibited uses. A new column in the use table for "WRPD" was suggested.

The Commission would like to see how many businesses would be grandfathered in the WRPD, and then discuss it again. The Commission concurred to abandon the tiered method of regulating.

The Commission discussed the following recommendations:

- They agree with one overlay.
- Need more definitions
- Code of ordinances – the Commission needed additional information on how it would work.

Staff said conditions that could be in regulations, or others that need to be an ordinance will be discussed further on. This would not require a large monetary investment, but they will be able to better approach the Town Council when they have more information to bring them.

## VII. NEW BUSINESS

### 1. Zoning Regulation Update/Preliminary Discussion

#### a. Downtown Development District (DDD)

Staff provided a handout relative to the Mackenzie case. The Planning Commission is not able to waive many items in the regulations. Staff said they need to decide if or where they are stopping development, and where changes can be made. A major hardship for new development in the DDD is the front yard setback, which is currently 75 feet. Another issue is the sideyard setback. It is currently 30 feet; staff recommends 10 feet, or 0 if there is a party wall agreement. If the regulations aren't changed, an applicant would need to get a variance, and the new rules are that variances can no longer be granted unless the applicant can show an extreme hardship. These changes would also encourage walkability and bikability, to get retail up closer to the road. Staff said these may change with the major rewrite of the regulations, but for now will eliminate the need for a variance. Staff would like the commission to hold a public hearing sooner than later, if they like the proposal.

#### b. Waterfront Design District (WDD)

Staff said design standards are such that if you wanted to build anything on many of the lots right now, you could not, based on the existing standards. Originally, the Planning Commission could waive design standards. Staff reviewed the WDD

language and said there needs to be a comprehensive review of the entire district for any design changes. Staff said no new building or new addition is anticipated for the next year, so staff focused on the immediate concerns in the WDD that the Planning Commission could no longer waive, such as parking.

c. Mixed Use (MX Zones)

The Chair discussed the mixed use nodes. They should be shown on the map so that developers can see it on the map, and know it is available. She thought it was a good point that they should be "shovel ready", ready to go. Staff explained the complicated requirements for the existing MX zone. The Town should make it easy to develop if they want an area developed in a certain way. The Commission agreed that was a good concept. They would like to see some sketches and consistent design standards.

Staff will bring more defined language based on the Commission comments, and the Commission could schedule a public hearing for April or May.

Staff said a special meeting may be necessary and they will poll the Commission when they have available dates.

d. Parking/Landscaping

**Parking:** Staff said parking in the WDD is a big issue. The five-eighths rule the Planning Commission uses to waive parking requirements can no longer be used. The language which staff proposed is 50% deduction, which is close to the five-eighths rule. Or the Commission could eliminate the parking requirements completely, or eliminate with proof of participation in the parking validation program. Providing employee satellite parking for downtown businesses was discussed. The Planning Commission cannot waive any requirements unless it is in regulations. This change will be made now, but may change again when the entire rewrite is done. The Commission was in agreement with the parking as presented by staff.

**Landscaping:** Staff said the applicant must either meet the buffer standards, or go for variance. The regulations should provide a range, or options. Staff is still working through the buffer area, with regard to topo, etc. Staff will provide more detail for the next meeting.

**Sidewalks:** The Commission noted that the regulations need to provide a range rather than "should" on page 12. Staff will look at this again.

e. Format

Staff had sent some samples to the Commission. Staff said "Clearzoning" was a good example. Cromwell was also good, but did not contain hyperlinks. The Commission agreed that two-column is difficult to read online. The sections need to be identified first.

f. Other - None

2. Development Guide: Update

Staff said there has not been any time to work on the development guide. They are meeting tomorrow with the Norwich Community Development Corporation (NCDC) to discuss working with them on a business development guide. The development process guide project may need to be postponed while the town is in the process of changing the development process.

3. Report of Commission - None
4. Receipt of New Applications - None

VIII. REPORT OF CHAIRPERSON

The Chair said that Commissioner Mark Bancroft resigned due to his personal work load. Commissioner Bill Middleton also resigned. The Chair noted that Smith could consider becoming a regular member. He said he would be submitting an application for the position. The Commission needs more key people, with the important work they will be doing on the regulation rewrite.

Chairperson Sutherland told staff she would like to see the Zoning Commission's work mentioned more frequently in the department's monthly report.

IX. REPORT OF STAFF

Staff explained that the Town Council recently held a goal setting session. One of its goals was combining the Planning and Zoning Commissions. Staff said they are opposed to that at this time, as the Commission has too much work to be done and will be focusing on the regulatory rewrite.

Staff told the Commission that the US Fish & Wildlife Service has proposed a great thicket refuge.

Staff reminded the Commission that the Connecticut Federation of Planning and Zoning Agencies will hold their annual dinner meeting on March 17<sup>th</sup> at the Aqua Turf Restaurant. She asked anyone interest in attending to let staff know.

X. ADJOURNMENT

Motion to adjourn at 8:35 p.m. made by Hudecek, seconded by Marquardt, so voted unanimously.

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Susan Marquardt, Secretary  
Zoning Commission

Prepared by Debra Gilot  
Office Assistant III

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

I. ROLL CALL

Regular members present: Marquardt, Sutherland, Hudecek, Sayer

Alternate members present: Smith

Absent:

Staff present: Glemboski, Jones, Gilot

Chairperson Sutherland called the meeting to order at 6:30 p.m. and seated Smith as a voting member.

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) - Continued

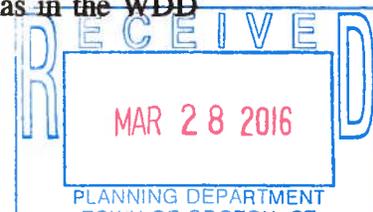
Chairperson Sutherland reread the legal notice.

Russell Sergeant and partners of Mystic Shipyard were present. Jeff Marshall, Mystic Shipyard, 423 Pendleton Hill Road, North Stonington, gave a history of the site. The boatyard was founded in 1843. He presented some pictures which showed the site as it looked in the 1930's and as it looks today. The maximum height in this zoning district is 30 ft. He explained that the boat repair business has changed, and over the years, the size of boats has increased, with a demand for indoor heated space for year-round repair work on these larger boats, which will not fit in the existing sheds. A larger lift is needed to accommodate the larger boats.

Ron Helbig, 750 Groton Long Point Road, one of the principals of Mystic Shipyard, described the business as a premier yacht repair and storage facility, one of the last working waterfront uses. He said the height amendment was requested because customers are turned away as the boatyard cannot accommodate the larger ships. A larger lift would be required to haul the larger boats. The existing lift has been modified and barely fits in the existing building. A larger building would be built to accommodate a larger 100 ton lift, and a 35 ft. door would be required. An amendment of the height to 45 ft. for boat sheds was recommended by the Planning Commission.

Sergeant distributed a handout and discussed the zoning analysis of the district. Mr. Sergeant detailed Willow Point, the properties in the WF district which includes residential properties, and other mixed uses in the district. The flood elevation was discussed. Mr. Sergeant said the 45 ft. height as recommended by the Planning Commission would work for the applicant's shed, so they proposed to modify the amendment to 45 ft. The shed would be a one story building.

Mr. Sergeant discussed the industrial and commercial nature of the business. A commercial building height usually allows many stories. The Waterfront Design District (WDD) allows up to 45 feet with reduced lot coverage. Marinas in the WDD



have the opportunity to reduce the lot coverage in order to increase the building height. The applicant is asking for parity with other marinas. In this hybrid mixed use zone, a shed is specifically for boat yard use. No other lots in the district could probably accommodate a building of that height.

Ron Helbig spoke about the nature of the business in that the quantity of the ships may be shrinking, but the size of the yachts is growing. Winter storage of the boats is provided on the site. Mr. Helbig detailed the new building proposed, which would include impervious surface with floor drains, sprinklered, ventilated and heated, so that they could work on bigger boats during the winter. He stated that the Zoning Official confirmed that the use is allowed. The Commission discussed the definition of "shed".

Staff reviewed her memo to the Commission. Initially, the applicant asked for 50 ft. for sheds for the repair of boats with the maximum height measured to the peak of any structure. The Planning Commission recommended a lower height of 45 ft, but measured as currently described in the zoning regulations, and not as the application initially proposed. The applicant amended their request to what the Planning Commission recommended.

Staff read the Planning Commission referral into the record. The Town Attorney found the request to be legally satisfactory, the Southeastern Council of Governments found no adverse inter-municipal impact. State of Connecticut DEEP Office of Long Island Sound Programs had no comment.

Staff stated that the 2002 POCD and the draft POCD both recommended keeping waterfront sites for water dependent uses.

Staff clarified that "30/45" meant that 30 ft. would be the maximum height for all other uses in the district except for the boat sheds.

The Chair asked for comments from the public and there were none.

The public hearing was closed at 7:17 pm.

### III. 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)

**MOTION:** The Town of Groton Zoning Commission hereby modifies and adopts zoning regulation text amendment application #REGA15-02, amendment to Section 5.2 (Table of Lot, Yard and Building Requirements by Zoning District) for maximum height in the WF-20 Zoning District, pursuant to the following modifications, findings and reasons for approval:

Modifications:

1. Amend Table 5.2 for Maximum Building Height (Feet) in WF-20 district to read "30/45 (12)"

2. Notation (12) in Table 5.2 is added to read:  
“(12) A maximum height of 45-feet allowed for sheds used for construction, repair, and storage of boats limited to a single floor with mezzanines as allowed by the Connecticut State Building Code”

Findings and Reasons for Approval:

1. These amendments are consistent with the Town’s 2002 Plan of Conservation and Development and the Municipal Coastal Program, with particular regard to continuing to place highest priority on waterfront sites for water-dependent uses and continuing to manage coastal activities in conformance with State guidance.
2. The adopted modifications address issues raised by the Planning Commission and during the public hearing process and include text modifications that limit the allowance for an increase in height in the WF-20 district to a specific water-dependent use. The modifications take into account the balance between the physical needs of a water-dependent use and preserving the quality of life of the surrounding neighborhood.
3. These amendments are made in accordance with a comprehensive plan and provide for reasonable consideration of the environment in accordance with the provisions of CGS 8-2. The State of Connecticut Department of Energy and Environmental Protection has reviewed the proposed amendments and has determined that they do not raise coastal resource or coastal use public policy issues and are consistent with the relevant goals and policies of the State’s Coastal Zone Management Act.

The effective date of this amendment shall be April 1, 2016.

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

IV. PUBLIC COMMUNICATIONS

Thomas Potter, 154 Walker Hill Road addressed the Commission. He asked if the commission had any questions or comments on the correspondence he had submitted to the commission which was included in their agenda packet.

The Chair said zoning enforcement issues do not come before the Zoning Commission, and he should be appealing the Zoning Official’s decision to the Zoning Board of Appeals.

Staff said a copy of a letter sent to Mr. Gates regarding the Spicer Mansion at 15 Elm Street was enclosed in their agenda packets.

V. APPROVAL OF THE MINUTES

MOTION: To approve the minutes of the regular meeting of February 3, 2016 as amended.

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

**MOTION:** To approve the minutes of the special meeting of February 3, 2016 as amended.

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

**VI. OLD BUSINESS**

1. Zoning Regulation Update

a. Water Resource Protection (WRPD)

Staff distributed a worksheet to the commission with all the uses from the zoning regulations use table listed. Staff and commissioners began reviewing each of the uses, to discuss what the commission would want permitted, not permitted, or permitted with conditions.

b. Zoning Districts and Table of Permitted Uses

The commissioners provided some comments to staff with regard to a table of permitted uses. They thought the table was too busy, difficult to read. If a use is not allowed, it should be left blank. They thought maybe using color to enhance the permitted uses, and color illustrations, and titled tabs. Also, hyperlinks would be useful.

**VII. NEW BUSINESS**

1. Report of Commission - None

2. Receipt of New Applications - None; the next meeting will have the regulation amendment public hearing.

**VIII. REPORT OF CHAIRPERSON - None**

**IX. REPORT OF STAFF**

Staff said the Town Council will discuss the OPDS budget on March 29<sup>th</sup>. Staff has proposed a large amount for re-writing the zoning regulations. Staff hopes the commissioners will go to the meeting and speak in favor of the budget. The commission discussed possible dates for another special meeting workshop. Staff will check with Horsley Witten for availability.

**X. ADJOURNMENT**

Motion to adjourn at 8:35 p.m. made by Hudecek, seconded by Smith, so voted unanimously.

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Susan Marquardt, Secretary  
Zoning Commission

Zoning Commission  
March 2, 2016  
Page 5

Prepared by Debra Gilot  
Office Assistant III

NOT APPROVED

### Discussion of the WRPD / Table of Permitted Uses

The commission wanted to know why GU was not participating in these workshops. Staff said the consultant has been working with GU and their suggestions are included in HW recommendations. Staff will be meeting with the consultant and GU next week.

1. Hazardous materials/Waste as Principal Activity – not permitted - Commission agrees to keep it non permitted. They want to hear from GU.
2. Sanitary landfill, et al – not permitted – remain
3. Road Salt storage – not permitted – remain
4. Junk yard – not permitted – remain
5. Automotive service operations – commission discussed allowing or not allowing more; need incentive to upgrade existing stations – they may look at conditions to be placed before they decide. Still undecided.  
Auto Service stations – need more definitions  
Auto sales dealership – new car dealership (with used cars as accessory) could be permitted with conditions.
6. Engine repair -

From: Thomas Potter <tpotter1185@tvconnect.net>  
Subject: **Just Do The Job The Town of Groton Is Paying You To Do**



Date: March 25, 2016 9:02:22 PM EDT

To: Kevin Quinn <kquinn@groton-ct.gov>

Cc: Mark Oefinger <moefinger@groton-ct.gov>, "Jonathan J. Reiner" <jreiner@groton-ct.gov>, Deborah Straszheim <d.straszheim@theday.com>, Linda Gaudet <xmas502000@yahoo.com>, Joan Archer-Chambers <jchambers130@comcast.net>, Deb Gilot <dgilot@groton-ct.gov>

Good Afternoon Mr. Quinn,

The Zoning Commission has a busy agenda which includes a major re-write of the Zoning Regulations. They plan to address some aspects of this task at their next Public Hearing on 4/06/16.

You know all the aspects of what the Zoning Regulations require, but I am compelled to reiterate them for the record.

Section 8.1-1 of the Zoning Regulations states that "These regulations shall be enforced by the Zoning Commission, acting by and through the Zoning Official."

Your Job Description as the Manager of Inspection Services contains explicit language that states unequivocally that you are the Zoning Official for the Town of Groton. The following are excerpts from the Job Description;

"CLASSIFICATION OVERVIEW

The Manager is also responsible for the enforcement and interpretation of the Town of Groton's zoning regulations. The Manager will also serve as the Town Building Official and Zoning Enforcement Officer.

ESSENTIAL DUTIES AND RESPONSIBILITIES

Develops and administrates policy and procedure necessary to the successful completion of work adhering to both State and Federal statute guidelines.

Confers with contractors, Town officials and the public to provide information and to resolve problems and complaints.

This position requires the ability to read, analyze and interpret complex documents and the ability to respond effectively to complaints from citizens, regulatory agencies or members of the business community.

The incumbent will also be required to define problems, collect and analyze data and raw valid conclusions, applying the principles of logic or scientific thinking in dealing with a variety of abstract and concrete variables."

You have served in the position of Manager of Inspection Services for 20 years, and you possess the background, training and experience necessary to perform these duties.

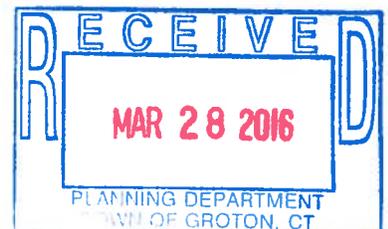
I have been in contact with The Honorable George Jepsen, Attorney General for the State of Connecticut. His office has advised me to exercise my rights as a citizen, property owner, and tax payer, in accordance with the Connecticut General Statutes, and that is exactly what I have been doing for the last four and a half months. I am determined to resolve my concerns and complaints, no matter how long it takes. That means the Zoning Commission will have to devote some of their precious time and resources to a matter that you are responsible for resolving in your capacity as the Manager of Inspection Services.

I have provided the Zoning Commission with reams of documents that pertain to the concerns and complaints I have raised in many e-mails to you. I have written letters to them dated 1/27/16, 2/18/16, 2/24/16, 3/04/16, and 3/11/16 (Corrected Copy of Letter dated 3/10/16). I have written a letter to the Director of Planning and Development, dated 3/04/16, in response to his letter dated 2/12/16. A copy of this letter dated 3/4/16 was also furnished to the Chairperson of the Zoning Commission.

Despite all of this information, you have not provided information to the public to resolve problems and complaints; nor have you responded effectively to complaints from citizens. Yet, these are part of the essential duties and responsibilities of your job description.

Just to refresh your memory, the following is a list of e-mails that I have sent to you which include my concerns and complaints about possible violations of the Zoning Regulations;

o - 11/05/15



- o - 11/06/15
- o - 11/18/15
- o - 12/10/15
- o - 12/11/15
- o - 12/16/15
- o - 01/08/16
- o - 03/08/16
- o - 03/18/16 (Community of Hope, Inc.)
- o - 03/18/16 (Fellowship House Ministries)

Your responses are listed as follows;

- o - 11/17/15 "I am looking into the concerns you raised in your e-mail of 11/05/15. The use of the 3rd floor has yet to be approved, prior to any occupancy of the 3rd floor inspections will be done to assure compliance with applicable codes."
- o - 12/16/15 "I am awaiting some information regarding your concerns. Thank you."

I recall that you attended the Zoning Board of Appeals Public Hearing for ZBA#15-15 on 12/09/15 (even though your name is not listed as "Staff present").

"ZBA#15-15 - 120 Walker Hill Road, Community of Hope/Owner, for a variance to Section 2 (Definitions) to vary the definition of family to allow 12 persons instead of 8 persons to be housed in the existing two family home. PIN#168911554431, R-12 zone."

Seven persons, including myself, spoke in opposition of the requested variance. You may also recall that I proposed an alternative solution to this request;

"If the Board of Zoning Appeals were to approve the request in ZBA#15-15, with a written condition that none of the persons being temporarily housed at these premises can be clients referred by the Department of Correction [since this is not a permitted use in an R-12 Residential District], then this would still allow COH full utilization of the accommodations that are now available for unrelated persons seeking either rehabilitation follow-up for addictions, temporary support for victims of domestic violence, or temporary shelter from being homeless."

For reasons only known to COH, this variance request was withdrawn.

I did a little research on the internet and found that there are many Federal (e.g., Department of Justice) and State grants available for Non-Profit/Charitable Organizations that offer "services" to 2nd, 3rd, etc., offenders who have been incarcerated in a correctional facility. You can believe or not believe it, but there is a "money angle" side to these organizations. For example, there is a cluster of such organizations on Long Hill Road in the Town of Groton (zoned OMF);

- o - Serenity Lodge, LLC - 390 Long Hill Road
- o - Fellowship House Ministries - 466 Long Hill Road
- o - Street View - 542 Long Hill Road
- o - Women's Services - 542 Long Hill Road
- o - Connection, Inc. - 542 Long Hill Road (\*)

(\*) - This non-profit organization has its headquarters in Middletown, CT. I recently visited the Tax Assessor's Office and found several documents that were on file to support their tax exempt status. A document entitled "Tax Exempt Organization Application and Quadrennial Report, dated 10/31/13, showed gross income of \$44,132,736 for the fiscal year ended 6/30/2013. A document entitled "Tax Exempt Return M-3 Rev. 4/05 Groton, Connecticut 2013 Grand List indicated that there were other properties (162 Benham Road, 172 Benham Road, and 43 Depot Road) that were rented to clients as part of a Supportive Housing Project. This document, also dated 10/31/13, showed gross income of \$8,471,317 for the fiscal year ended 6/30/2103 as income for the organization's operation in the Town of Groton.

Sometimes you have to read between the lines to understand the full range of motives behind some organizations.

You will also recall that the Minutes of the Zoning Commission Meeting on 2/03/16 state the following:

"V. PUBLIC COMMUNICATIONS

Mr. Potter addressed the commission again. He said the subject property is not a community residential counseling facility. He said the zoning regulations are silent on those Connecticut general statutes [Chapter 319j and 325] and asked how it

was possible that the Dept. of Corrections can make referrals if it is not stated in the regulations. The Chairperson said the Zoning Official will review those as well. [Underlining added for emphasis]. The Commission would like staff to provide a follow-up for the next regular meeting."

[Parenthetical Note: Mr. Reiner, Director of Planning and Development, was in attendance at this meeting. In a letter dated 2/12/16, He stated the following:

"At its meeting on February 3, 2016, the Groton Zoning Commission asked me to follow up on the issue raised via the question you asked at the bottom of the first page of your January 27, 2016 letter to the Commission Chairperson." Mr. Reiner's letter gave his personal interpretation on the issue I had raised. However, the Zoning Official (Mr. Quinn) has not yet given me his official interpretation on the issue I raised.]

The Minutes of the Zoning Commission Meeting on 3/02/16 state the following:

"IV. PUBLIC COMMUNICATIONS

The Chair said zoning enforcement issues do not come before the Zoning Commission, and he [Mr. Potter] should be appealing the Zoning Official's decision to the Zoning Board of Appeals."

[Parenthetical Note: Question: How does one appeal a decision that has not yet been made by the Zoning Official?]

This entire matter has now reached a point where there seems to be just two alternatives (continuing to ignore my e-mails and continuing to ignore your responsibility to resolve problems and respond effectively to valid concerns and complaints from citizens is not a viable alternative);

1. I can attend the next regular meeting of the Zoning Commission on 4/06/16, and take up the valuable time of the commission by reading the full text of my letter to the Zoning Commission, dated 3/11/16 (simply because the Zoning Official has not yet given me his official interpretation and decision, which is yet to be based on a logical reading, analysis, and interpretation of all the documents; and that's the only way to get the full text of my letter into the official minutes of this meeting); and then I can continue to follow this course at all of the next meetings; or,

2. The real Zoning Official can read, analyze and interpret all the documents, and apply the principles of logic (all in accordance with you Job Description), and save the time for the Zoning Commission to address the proposed revisions to the Zoning Regulations as announced in The Day this morning.

Mr. Quinn, the choice is yours.

o - You issued a Memorandum to the Tax Assessor, dated 8/03/11, Subject: 120 Walker Hill Road;

"Please be advised that the above referenced property address has been changed from a three-family to a two-family dwelling."

o - You can issue another Memorandum to the Tax Assessor, Subject: 120 Walker Hill Road, and change it back to a three-family dwelling. It was originally built as a three-family dwelling, and it is still a three-family dwelling. According to the Zoning Regulations, up to 12 unrelated persons can occupy this building (including the unpaid full-time volunteer who serves as the "House Mother"). Community of Hope, Incorporated does not need a zoning variance to provide temporary housing as a "half-way house" to persons who first seek a structured rehabilitation program on drug or alcohol addiction on a voluntary basis; or provide temporary housing as a "half-way house" to "first-time" offenders who have opted to (i) participate in a structured rehabilitation program rather than spend time in a Correctional Facility, and (ii) then need temporary housing in a "half-way house" environment. It is a well known fact that drug and alcohol abuse is an epidemic in this Town, this State, and in the entire Country. There is no doubt that organizations with in-patient programs like those offered by The Stonington Institute or SCADD have many clients that meet these criteria and could be referred to Community of Hope, Incorporated. The perceived opportunity for monetary gain may not be the same; but then should that be a goal of a "faith based", non-profit, charitable organization?

Sincerely,

Thomas W. Potter

p.s. I respectfully request Ms. Gilot, Office Assistant III, to provide a copy of this e-mail to Susan Sutherland, Chairperson of the Zoning Commission. as soon as possible before the next meeting of the commission on 4/06/16.