LITCHFIELD PLANNING AND ZONING COMMISSION

Litchfield Firehouse, 258 West Street, Litchfield, CT 06759

REGULAR MEETING MINUTES

August 19, 2013 7:02 p.m.

Chairman Susan Lowenthal called the meeting to order at 7:02 p.m.
Present: Commissioners Susan Pitman Lowenthal, Curtis Barrows, Carol Bramley, Peter Losee, David Pavlick, Sky Post and Tom Waterhouse. Alternate Commissioners Ed Doyle and Ralph White and Land Use Administrator Dr. Dennis Tobin.
Absent: Erin Kennedy
Public Comment: There was no public comment.
Appointment of Alternates: Chairman Lowenthal did not appoint alternates as full members.
Appointment of Temporary Secretary: Jo Ann Jaacks was present as recording secretary.

Approval of Minutes for August 5, 2013
Motion: Carol Bramley moved to accept the 8-5-13 minutes with the following minor edits. Tom Waterhouse seconded the motion. It was agreed Mr. Waterhouse did not have to abstain: although he was not present at the 8-5-13 meeting, he had listened to the recording of it. All voted aye and the motion carried. (Edits: Page 1, ¶1, Line 2, Curt Barrows should be Curtis Barrows; Page 1, ¶5, Line 3, should read " . . .Mr. Grimes **objected."** Page 1, #1 should read " . . .the **addition** of Building B . . ."; Page 2, #8 should read " . . .as **recommended** . . ."; Page 2, ¶2, Line 3 should read " . . .they had **several daily deliveries**."; Page 5, , ¶6, Line 2 should read " . . .he recommends the future parking aisle separation from the parking space."

Commissioners' requests: Sky Post requested that the Commission go to Executive Session at the next meeting on September 16 to discuss process.

APPLICATION RECEPTION

Bosson Optical – 29 West Street **8-19-13**
Receive and set public hearing (9-16-13) for Special Exception Business and Professional Offices without hazardous materials for eye doctor offices.

Michael Smith and Michael Bosson were present to discuss this application. Mr. Smith requested the Commission to reconsider the zone change from retail since Bosson Optical consisted of a showroom, waiting room, exam room, office for Mr. Bosson and one eye doctor and their business was selling eyeglasses and contact lenses. They had been told their move from Village Green to the historic district necessitated a Special Exception. He provided site maps for the new space, which was in half of the old Talbot's store.

Dennis Tobin explained the issues of municipal parking, sign approval and permit and building permit for remodeling. Chairman Lowenthal said their application was being received today and a decision would be made at the next meeting.

Motion: David Pavlick moved to set a public hearing on this application. Curtis Barrows seconded the motion. All voted aye and the motion carried.

CONSIDERATION

Stop & Shop Supermarket Company, LLC – Village Green Drive **8-19-13**
Site plan for demolition of 3 existing buildings C, D & E to construct 1 new building (38,000sf), a 2500sf addition to building B and associated site improvements.

Chairman Lowenthal said it was the Commission's consensus at the 8-5-13 meeting that due to the late hour, they would postpone consideration of the Stop & Shop application to the 8-19-13 meeting.

Steven Byrne, Attorney, said the regular members of the Commission present tonight are called to vote on this application and Tom Waterhouse was qualified because he listened to the 8-5-13 meeting recording. Two reports were distributed to Commissioners and are appended to these minutes as Exhibit #1 The Case Against Stop and Shop written by Ralph White, Alternate Commissioner, and Exhibit #2 Peer Review Site Plan Application for Stop & Shop at Village Green MMI #2664-17-4 written by Vincent McDermott of Milone & MacBroom, Inc.

Mr. Byrne said he received a response from Attorney Tom Cody concerning Mr. White's letter and there was discussion concerning the fact that Mr. White is an Alternate Commissioner. If this matter should be reviewed in court, the Commission's decision could be jeopardized. Since all of Mr. White's concerns had been previously expressed and discussed, he advised against making this letter part of the record. Chairman Lowenthal said Mr. White's letter should be in the record of tonight's meeting.

Tom McGowan, town planner consultant, noted there may be a problem in a future case for "failure to follow procedure" and Steven Byrne agreed.

Motion: Tom Waterhouse moved that Commissioners disregard Mr. White's letter. Carol Bramley seconded the motion. All voted aye and the motion carried.

Sky Post moved to deny the Stop & Shop application and recited a list of reasons for doing so. In reply to Mr. Byrne's query about the document being read, Mr. Post replied that it was Ralph White's letter (Exhibit #1 appended hereto). Mr. Byrne said that since the Commission had voted to disregard Mr. White's letter, it could not be used for consideration. Mr. Post withdrew his motion.

Mr. Post moved to deny the Stop & Shop application and recited a list of reasons for doing so. It was then discovered that this was the same document (Mr. White's letter) inadvertently being read again.

Motion: Sky Post moved to withdraw his motion. Carol Bramley seconded the motion. All voted aye and the motion carried.

Motion: Sky Post moved to deny the Stop & Shop application and recited a list of reasons for doing so. Peter Losee seconded the motion. Discussion was held among the Commissioners and Chairman Lowenthal said the site plan has gone through many revisions in an attempt to address concerns raised about truck volume, proximity of the loading dock to the entrance, hazardous and pedestrian safety impacts. She said there are still serious problems such as difficulty of regulating truck deliveries and insufficient space for truck maneuvering. She said Stop & Shop has done their best to work with this site but this situation is "putting a square peg in a round hole."

Curtis Barrows noted that discussion was held at the last meeting about Building B being taken out of the equation. Mr. McDermott said the elimination of Building B should be an attachment to the motion, but this vote should be on the site plan as presented at the 8-5-13 meeting.

Motion: Carol Bramley moved to amend the motion to include page 4 of the Stop & Shop site plan. Curtis Barrows seconded the motion. A "Yes" vote is to deny and a "No" vote is to approve. The following were the voting results: YES: Susan Lowenthal, Peter Losee, Sky Post. NO: David Pavlick, Curtis Barrows, Carol Bramley, Tom Waterhouse.

Carol Bramley asked if conditions submitted by the applicant's attorney at the 8-5-13 meeting were included in Steven Byrne's Suggested Reasons to Support a Motion to Approve Stop & Shop Planning and Zoning Application (Exhibit #3 appended hereto) and Mr. McDermott said yes. She asked about adding language to the motion, specifically about the change from restaurant to office space, prohibition of retail merchandise displayed outside the building, directional signage including the existing stop sign not shown on site plan, and relocating one handicapped space.

Chairman Lowenthal asked about dumpsters and Mr. McDermott said Stop & Shop would have a compactor only, adjacent to the 2 loading docks. She requested that delivery trucks be limited to 4 at a time and that smaller delivery trucks cannot park in a fire lane or the truck maneuvering space.

A member of the audience said that Commissioner Bramley should recuse herself from the Stop & Shop vote since she had "a conflict of interest." Chairman Lowenthal asked Ms. Bramley if she had any such conflict of interest concerning this vote and Ms. Bramley said she did not.

Motion: Carol Bramley moved to approve the Stop & Shop application and recited the reasons for doing so. (Exhibit #3 appended hereto.) Tom Waterhouse seconded the motion. A "Yes" vote is to approve the application and a "No"

vote is to deny the application. The following were the voting results: NO: Susan Lowenthal, Peter Losee, Sky Post. YES: David Pavlick, Curtis Barrows, Carol Bramley, Tom Waterhouse.

Conditional changes to be made include limiting the loading area to 4 trucks, easement language to be submitted via legal instrument, no dumpsters allowed, no retail merchandise of any kind to be displayed outside Stop & Shop, directional signage to be provided to DRAC, relocation of one handicapped space that is nearest to the loading dock by taking one in the row of 13, and the stop sign at the end of the boulevard is to remain.

Motion: David Pavlick moved to amend Carol's motion with these additional changes and conditions (as shown in red on the document displayed on the screen by Nicole Burnham, Stop & Shop consultant). Curtis Barrows seconded the motion. All voted aye and the motion carried.

It was noted that points raised by interveners concerning wetlands and other environmental issues were being addressed in this amendment. (Exhibit #4 appended hereto.)

Motion: David Pavlick moved to approve the Stop & Shop application as amended. Curtis Barrows seconded the motion. The following were the voting results: NO: Susan Lowenthal, Peter Losee, Sky Post. YES: David Pavlick, Curtis Barrows, Carol Bramley, Tom Waterhouse.

At 9:27p.m., the Stop & Shop Consideration concluded.

PUBLIC HEARINGS

The Forman School – 54 Norfolk Road – Modification to Special Exception Education Institution to increase campus by adding 21.4 acres with one existing single-family dwelling.

David Pavlick recused himself from this hearing due to a relationship with the Forman School and left the meeting. Chairman Lowenthal appointed Alternate Commissioner Edmund Doyle to replace Mr. Pavlick.

Robert D'Andrea appeared on behalf of the Forman School for a continuation of the 7-15-13 hearing. Chairman Lowenthal said if he was presenting new material, the public would have a right to respond. Mr. D'Andrea read several letters including those written by R. Derwin Clothiers, Colonial Greenhouse, Nick Fabbri-electrician, Mark Murphy-pharmacist, Flowers of Distinction, Sportsmen of Litchfield and William Jacobs – all in support of the Forman School's application.

He also read a letter from Oles & Jerram concerning assessed property value and Mr. Oles was present to confirm the contents were written by him. He displayed a photo of the property at 54 Norfolk Road (the Youngling property) taken in June and said the property would look identical to this when owned by Forman School. He said he has appraised the majority of Litchfield properties for the past 40 years and the Forman School properties have never lowered through appraised values.

Dennis McMorrow, Engineer, displayed a site plan depicting what an individual owner could do on this property without requiring Planning & Zoning approval. The current R-80 zoning would allow a subdivision into two lots and tennis courts could be added in the front where tall trees are now.

Adam Man, Forman School Headmaster, spoke about the financial health of the school; their endowment has grown by 21% and is approximately $6Mil. He described how Forman School has been a "good neighbor" by offering their athletic facilities to Litchfield schools and residents, and patronizing local businesses and service professionals. He displayed photos of headmaster homes for other private schools in Litchfield County, indicating they are all larger than the one at 23 Norfolk Road where he currently resides. He said a larger space is necessary to host student gatherings, prospective student families, and entertain donors for fundraising. He said there are currently 190 students, and their goal is to have 200.

In answer to Dennis Tobin's query about Forman's sustainability and green movement programs, Mr. Man mentioned rain gardens, recycling, green dorm challenges, and solar panels. He did not know if the Youngling property could be transformed into a "green" building.

Chairman Lowenthal said a member of the public had asked about a conservation easement and Mr. Man replied the trustees agreed they would have such an easement of 150ft with no buildings being constructed within that easement.

Mr. Man answered questions about whether a larger home would lead to more donations, the history of the Harriet Beecher Stowe home, options on-site for a larger headmaster house, and concern about Forman's future need for more dormitories.

Tom Waterhouse observed that Forman could buy the Youngling house if they wished to, but what they were really asking for was a tax-exempt status for this property when it was not really for "educational purposes." Also, Forman's promised payment of $10,000/year to the town in lieu of property taxes might not be continued if the financial health of the school declines and that would represent a loss of tax revenue to Litchfield.

Chairman Lowenthal read several letters from neighbors, parents of Forman students and Litchfield residents expressing opposition to this Special Exception Modification.

Attorney Peter Herbst, representing the co-applicant Mr. Youngling, spoke in favor of approval for this Special Exception.

Michael Zizka, Murtha Cullina LLP, Attorney for the opponents to the Forman School Special Exception Modification, read a letter (Exhibit #5 appended hereto) outlining the reasons this application should be denied, including: the application is legally unnecessary and would harm public interests, a similar application was previously denied, the application as presented has no valid land use purpose but is intended solely to create a financial benefit to one specific landowner, the application lacks an adequate factual predicate for approval, the special exception could not be limited to the Forman School and approval of the application would serve no public land use interest.

Allen Adriance, educational consultant, presented his professional opinion that it was not necessary for a headmaster's residence to be on the school campus nor was it necessary for a headmaster's home to be lavish for fundraising purposes. (Exhibit #6 appended hereto.)

Mr. Zizka also distributed copies of the town's previous denial to Forman School to purchase the Youngling property dated May 14, 1993 (Exhibit #7 appended hereto), a pertinent court case with a similar zoning change (Exhibit #8 appended hereto) and pertinent Connecticut Zoning Regulations Sec. 8-2 (Exhibit #9 appended hereto). He read a letter from State Trooper James Holmes stating there were no recorded accidents on Norfolk, indicating there was not an undue safety hazard for students and others to cross the road to the current headmaster's house.

John Godal presented a signed petition in opposition of approval and Jay Abbott spoke in opposition, saying this would not be in the best interests of the neighborhood or Litchfield residents. A letter from Barbara Putnam was read, stating that the Youngling residence was built by her grandparents and her father taught at Forman School; she urged that this property remain residential.

Robert Doyle spoke in support of the Special Exception, indicating a longtime relationship with the Forman School serving on the Board of Trustees and the belief that a large headmaster's home is necessary to entertain and impress. Tom Witherspoon also spoke in support of the Special Exception, stating that the tax exempt status should not be relevant to Planning & Zoning.

Robert D'Andrea and Peter Herbst requested a continuation of the public hearing. Mr. Herbst said he would be away on 9-16-13 and requested a different date. Chairman Lowenthal said that changing the set meeting time would not be possible but the hearing could be extended to 10-21-13. Mr. Herbst, after conferring with his client, said he would be present at the 9-16-13 meeting, which will be held in the Bantam Annex.

Chairman Lowenthal noted that it was now past 11 p.m. and there was one more item on the agenda under public hearings. The applicant's representative indicated his presentation would be very brief.

Motion: Curtis Barrows moved that the meeting continue to include this agenda item. Sky Post seconded the motion. All voted aye and the motion carried.

Chairman Lowenthal called for a brief break, then reconvened the meeting. She read a legal notice that appeared in the newspaper concerning this Special Exception.

Bert Audy – T.P.S. Inc. (Greenberg) – 184 Fern Avenue – Special Exception Accessory Apartment above new 3-car garage

Mark Lancor, Dymar land surveyors and engineers, exhibited a site plan and floor plans showing an apartment that would be used to house the applicant's parents who regularly visit. This would be a converted use of existing space above the garage. The approximate 500sf apartment would include a bathroom, bedroom, kitchenette and small dining area, plus 2 means of egress.

Motion: Curtis Barrows moved to close the public hearing. Tom Waterhouse seconded the motion. All voted aye and the motion carried.

Motion: Carol Bramley moved to approve the application for a Special Exception Accessory Apartment. Sky Post seconded the motion. All voted aye and the motion carried.

There was neither old business nor new business and Chairman Lowenthal noted that she had already read correspondence into the record.

Motion: Curtis Barrows moved to adjourn at 12 a.m. Mr. Waterhouse seconded the motion. All voted aye and the motion carried.

Respectfully submitted,

Jo Ann Jaacks
Recording Secretary

Date: August 21, 2013

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The Case Against Stop and Shop

Ralph White, Alternate Commissioner
August 18, 2013

In order to independently inform myself of the actual amounts of truck traffic at the current Stop and Shop store I observed the site over two days. The results of my study are appended hereto as pages 13-15. I documented (and photographed) eighteen trucks over the two day period. These findings place into doubt the traffic congestion and pedestrian safety situation depicted by the Applicant for the new site. My study also records a number of other observations about the docking area in general.

After extensive analysis I have concluded that the Stop and Shop Site Plan Application is fatally flawed in several respects and the Planning and Zoning Commission should decline it. The reasons for doing so are listed below.

	Reasons for Declining the Stop and Shop Application	Principal Basis	Page
1	The plan contributes to traffic congestion.	Article VI, Section 1, 2,b	2
2	No provision is made for delivery trucks which unload with ramps rather than loading docks.	Article VI Section 1, 2,c	3
3	Large trucks encroach into oncoming traffic lanes as they turn, creating a public safety hazard.	Article VI, Section 1, 2,a,c	3
4	The proposed prohibition against tractor trailers on Commons Drive is neither viable nor enforceable.	Article VI, Section 1, 3, 4	4
5	The number of parking spaces in the plan is far fewer than required.	Article VI, Section 1, 5	5
6	Twenty-seven parking spaces remain positioned so as to create a public safety hazard.	Article VI, Section 1, 2,a	7
7	Provisions for pedestrian safety are inadequate.	Article VI, Section 1, 2,a	7
8	Parking spaces are not sized according to regulations	Article II, Section 2	8
9	Stormwater management practices are inadequate.	CT DEP 2004 Stormwater Quality Manual, Ch 6, 11	9
10	Existing soil and groundwater contamination presents an environmental hazard which threatens Litchfield's aquifer.	M&M Peer Reviews of July 29, August 14; Applicant's Wetlands testimony	10

11	Inadequate green space is provided.	Article IV, Section 2B Article VI, Section 2	12
12	No provision is made for multiple dumpsters.	Article VI, Section 1, 2,c	12

1. <u>The plan contributes to traffic congestion.</u>
   a. Article VI, Section 1, 2, b states, "Vehicular access to a lot and circulation on a lot shall be design (sic) in a manner that...avoids traffic congestion on any street..."
   b. The applicant's slide presentation of July 15 revealed congestion increases as follows:
      i. West on Route 202: 193 feet, an increase of 35 feet,
      ii. East on Route 202: 296 feet, an increase of 97 feet,
      iii. South on Commons Drive: 152 feet, an increase of 72 feet
   c. Mr. McDermott's July 29 Peer Review notes in 1.1 that "notable increased vehicle queuing is expected in the future at the intersections, with 95th percentile queues on U.S. Route 202 during peak hours lengthened by four of five and sometimes upwards of eight vehicles on certain approaches. [...] At Commons Drive, queues on U.S. Route 202 are worstened as well."
      i. Mr. McDermott goes on to cite the applicant's "proposed off-site improvements" and also goes on to offer his own "more holistic approach."
      ii. But the Commission must make its decision based on the site plan as submitted, not with the inclusion of hoped for future infrastructural enhancements of U.S Route 202 by the State, or of Mr. McDermott's de-facto annexation of U.S Route 202 into the applicant's site plan.
      iii. Article IX, Section 1, 9 provides for minor modifications of a site plan by the Commission Chairman, but the modifications suggested by Mr. McDermott[1] are off-site and go far beyond what might be considered a "minor modification."
   d. Moreover, Mr. Byrne is clear, in his July 3 opinion, that Commissioners may use their own experience and judgment in evaluating consultants' analysis and conclusions. If a few more large delivery trucks were assumed into the applicant's forecast automobile queues, the queue lengths and wait times could involve one or more signal light changes.

[1] It was initially noted by the Intervener, and subsequently acknowledged by Mr. McDermott during the Public Hearing, that Stop and Shop is a client of his firm, Milone and McBroom, and that the firm touts its relationship with the applicant on its website. Under the circumstances Milone and McBroom should have declined the Commission's offer of this engagement due to the inevitable appearance of a conflict of interest.

2. No provision is made for delivery trucks which unload with ramps rather than loading docks.
    a. One of the startling discoveries which this writer made in his two day study of truck delivery traffic at the current Stop and Shop was that about half of all delivery trucks are not capable of unloading at a dock.[2] Such trucks, hereinafter referred to as "box trucks," unload by extending a ramp from their cargo bays to the ground. Drivers wheel their merchandise down the ramp, across the parking lot, and up the ramp to the store using hand trucks.
    b. The proposed site plan provides three loading docks for use by tractor trailers but does not provide a location for box trucks to deliver merchandise. These trucks (Entenmanns, Boar's Head, Dari Farms, and numerous unmarked trucks) will not be permitted to park in front of Stop and Shop because it is marked "No Parking, Fire Zone" in the plan. Freed from the constraint of using docks, box trucks come and go randomly. Once the delivery is made, the drivers sit in the parked truck and do paperwork, smoke, and make phone calls for an average of 20 minutes before departing. On one occasion this writer photographed three box trucks and one tractor trailer clustered around the loading docks. (And this is to supply a store half the size of the new one so the Commission must visualize this truck traffic as doubling).
    c. Because box trucks are unloaded by hand rather than with the electric trolleys which unload tractor trailers' merchandise, it is difficult to imagine box trucks parking a great distance from the store. One such location suggests itself, however (see 6, a, below). If the fifteen parking spaces flagged above as hazardous to customers were removed, those two locations would be ideal places for box trucks (or semis for that matter) to park while waiting to get closer to unload. In fact if their loads were light they could wheel their hand trucks from those spaces to the loading docks. If anyone has to traverse the truck thoroughfare wouldn't it be preferable that they be truck drivers trundling their cargo rather than mothers pushing carts and minding children?

3. <u>Large trucks encroach into oncoming traffic lanes as they turn, creating a public safety hazard.</u>
    a. Both the applicant and Mr. McDermott expect large trucks making wide turns to encroach into oncoming traffic lanes at the intersection of Commons Drive with Route 202. Litchfield Commons also saw the risk and drove a hard bargain for the use of Commons Drive.
    b. Mr. McDermott adds that such lane encroachments would also occur at both ends of what he refers to as the "connector" between the proposed parking lot and Commons Drive.

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[2] Nine out of eighteen trucks on Saturday and Wednesday were box trucks. Of these, two or three appeared to be capable of docking.

c. Mr. McDermott also notes in subsequent Peer Reviews that large trucks would similarly encroach on other lanes upon entering the site while eastbound on Route 202 due to the narrow curb cut.
d. The applicant justifies this encroachment by the low traffic volume, a contention which Mr. McDermott disputes in his Peer Review. The basis of Mr. McDermott's dispute is that 2,000 trips per day should not be construed as "low volume." Yet here again, Mr. McDermott goes on to coach the applicant in how to achieve regulatory compliance by relocating the so-called "stop bars" at these intersections. In this matter, however, the Commission is concerned only with the violation of the mandatory General Standards, which state, "Vehicular access to a lot...shall be designed in a manner that...safeguards against hazards to traffic ... in the street and upon the lot, and...provides safe and convenient circulation upon the lot." The site plan as originally proposed exposes other vehicles and pedestrians to risk both on site and at its entrances and exits.
e. The applicant's proffer to prohibit the largest trucks from using Commons Drive as a condition of approval constitutes an acknowledgement of this public safety hazard. See 4 below for an explanation of why this proffer is neither viable nor enforceable.

4. <u>The proposed prohibition against tractor trailers on Commons Drive is neither viable nor enforceable.</u>
   a. The Applicant's August 5 proffer titled "Potential Conditions of Approval" suggests that the Commission approve the application with the restriction of tractor trailer trucks from using Commons Drive. Such a condition of approval is not feasible in that it is neither *binding* nor *enforceable*.
      i. The reason that the tractor trailer restriction is not *binding* is that only by amending the existing common access easement and by registering the amended agreement with the deeds of both properties would the proffered restriction become legally binding to current and future owners of the properties. Without these specific steps (specified in Article VI, 3) the "condition of approval" would be nothing more than a "gentlemen's agreement," which could be abrogated by *either* of the parties.
      ii. There are four reasons that the tractor trailer restriction is not *enforceable*.
         1. *First*, most tractor trailers are not under the control of Stop and Shop. Only one in three such trips on Saturdays and one in four on Weekdays are made by Stop and Shop tractor trailers.[3] The drivers of other vendors' trucks may not feel bound by the property owner's gentlemen's agreement with Litchfield Commons.

[3] This writer visited the current Stop and Shop on August 10, 14, and 19 (a Saturday, Wednesday, and Monday) and kept careful logs of which trucks visited which docks and took photos of each truck. The logs are attached to this document as an appendix.

2. *Second*, it is not only tractor trailers which make wide turns which encroach into oncoming lanes. Large box trucks also make such incursions into oncoming lanes and it has not been proposed as a condition of approval that they be restricted from using Commons Drive.
3. *Third*, as Commons Drive is private property, neither Town nor State police would be authorized to issue traffic violation tickets to drivers disregarding the signage. Drivers would quickly find that they can ignore the signage with impunity.
4. And, *fourth*, who could possibly consider it a viable solution to ~~force every tractor trailer~~ departing this site in the direction of adjacent residential neighborhoods and toward Litchfield's Historic District? The law of averages says that east will be 180 degrees away from where half of them want to go. Those trucks are going to turn around *somewhere*, and probably not very far away. South Lake Street comes to mind. The North Lake – Prospect – North Street loop? How about a quick tour around Litchfield's three century old village green?

b. Not only is the Applicant's proffer offensive to reason, it conflicts with the General Conditions pointed out by our legal advisor, Attorney Byrne, that no traffic congestion result from the plan. It also conflicts with Article VI, Section 1, 4, a, which states "Wherever possible, vehicular access to and from the lot shall be arranged to avoid traffic use of local residential streets located in or bordered by a Residential Zone."

5. <u>The number of parking spaces in the plan is far fewer than required.</u>

a.

Building	Space	Theirs	Ours	Explanation of Variance
A	Litchfield Laundry	7	10	1.16 x 8 = 9.28 = 10
	Nova and Chabad	22	22	
	Señor Panchos	6	41	They call it an upper floor office. We call it a ground floor restaurant
	Former Verizon	5	18	They call it upper floor office. We call it ground floor retail.
	Moma Spa	4	11	It's ground floor retail[4]
	Village Cleaners	4	11	It's ground floor retail
	Dunkin Donuts	24	24	
	Total Bldg. A	82	147	
B	Wine Market	14	14	
	Kawasaki	31	47	*Substantial evidence* for the 50% reduction was not presented.[5]

[4] This point was made, unequivocally by Mr. McDermott in his initial peer review.

	Total Bldg B	44	61	
C	Giant Stop and Shop	224	231	They failed to "park" the two mezzanines, a 1,029 sq ft one in the rear and a 1,000 one in the front.[6]
	Bldg C Total	224	231	
Total		337	425	This is a shortfall of 88 spaces.

b. A shortfall of 88 parking spaces is sufficient reason on its own to decline the application.
c. The Applicant is brazen in asking the Commission to believe that...
    i. ...the space which housed Señor Panchos until a few days ago should be "parked" (their usage) as an upper floor office. It has been a ground floor restaurant for the last thirty years. You drive to the front door. You do not have to ascend a staircase to get to the customer service area. You stand on ground level sidewalk when you look into the bar to see if any of your friends are there. Moreover there is no guarantee that the present owner or a future owner would feel bound by a gentleman's agreement not to lease the space to a restaurant. Such a restriction would have to be registered with the deed in order to have full force and effect in perpetuity. In short it's a subterfuge and a transparent one at that. They need to "park" 41 spaces, not 6.
    ii. ...the space formerly occupied by Verizon and the spaces currently occupied by Moma Spa and the Village Cleaners are also "upper floor." Again, you drive right up to their front doors and you enter their customer service areas without ascending staircases. They need to "park" 147 spaces for Building A, not 82.
    iii. ...both the former Verizon and Panchos should be "parked" as retail and restaurant, respectively. Neither have ever been used as office space since the building was constructed. Office space is neither space's "highest and best use," so no owner would lease the space as office space. The applicant hasn't offered to register such a restriction on the deed.

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[5] Attorney Byrne notes in his July 3 Opinion that in order to qualify for the 50% reduction in the required number of parking spaces it is incumbent upon the applicant to submit evidence that the designated restaurants conduct a major portion of their business during the evening. "It is well established that the Commission's decision must be based upon substantial evidence in the record." This is so even if the Commission has previously allowed the reduction at the site. He further says that "approving the 50% reduced rate without any evidence could be seen as an arbitrary decision by the Commission and subject to reversal by a reviewing court." The affidavit from Mr. Greenberg claiming the reduction for the applicant cannot be construed as "substantial evidence."

[6] The rear mezzanine is in the printed plan. The front one was referenced by the Applicant's architect during the Inland Wetlands testimony in answer to a question about why the roof line could not be lowered.

iv. ...Kawasaki Restaurant conducts the "major portion of their business during evening hours" (Article VI, 1, 5, i). Attorney Byrne's July 3 Opinion (footnote 4, page 5) states that "substantial evidence" is required to permit the claimed 50% reduction in parking spaces. The applicant did not present the required substantial evidence so they need 47, not 31 spaces.

6. Twenty-seven parking spaces remain positioned so as to create a public safety hazard.
   a. The final version of the moving target which was the applicant's site plan still depicts 23 spaces along the main truck thoroughfare leading to Building C's loading docks, just north of the truck turning circle. These cars would have to back out into truck traffic on the principal access route to the loading docks. They constitute a public safety hazard and should be removed. These spaces are relatively close to the store's main entrance and could expected to be used frequently.
   b. A similar hazard exists in 4 spaces located at the truck entrance for building A. They should be removed.
   c. These eliminated twenty-three spaces would make ideal truck idling areas. The current plan provides no spaces for trucks awaiting their turn at a loading dock.
   d. The site plan is already short 88 parking spaces (see above) and the loss of these twenty-seven spaces would create a parking shortage of 115 spaces.

7. Provisions for pedestrian safety are inadequate.
   a. The Regulations' mandatory General Standards, VI, Section 1, a, require that a plan shall comprise "safeguards against hazards to traffic and pedestrians in the street and upon the lot."
   b. Inadequate pedestrian crosswalks between lots
      i. The site plan provides 200 parking spaces in front of Stop and Shop (Building C). The required number of spaces for this floor area is 231 (see 5, above). Thus, 31 of the spaces which lie outside Building C's main parking area must be considered as allocated to Building C.
      ii. A similar situation exists with Building A, which provides 45 spaces versus a required 147. Visitors to Building A would also have to park outside the conveniently located spaces.
      iii. Pedestrians walking to and from their cars in Building C and A, but parked in the Building B lot would have to cross main traffic thoroughfares, and across delivery truck thoroughfares. By situating docks in the front of the store, and by allocating spaces beyond the internal circulation route this plan creates an intractable public safety hazard.
      iv. In its final proffer of potential conditions of approval the Applicant defers to the Commission in siting adequate pedestrian crosswalks.

But it is not the Commission's responsibility to solve problems which the applicant found intractable.

c. Inadequate pedestrian lanes in the head-to-head parking spines.
   i. Only one of the three head-to-head parking spines proposed for Building C features a dedicated pedestrian walkway down the middle of the spine. Chairman Lowenthal repeatedly questioned the applicant about this inadequacy. The Applicant's infuriating reply was, "People get used to it."
   ii. I visited the six largest grocery stores in Torrington and discovered that the best practice in this regard is at BJ's Wholesale Club, which provides one dedicated pedestrian walkway per two head-to-head spines. This site plan depicts three such spines so best practices (for Torrington) prescribes two pedestrian walkways. More pedestrian walkways is safer than fewer and the Litchfield Planning and Zoning Commission has the right to set its own best practices in this matter. One pedestrian walkway on each head to head spine would set a sound public safety standard for Litchfield.

d. In considering the points in b, and c, above Commissioners should keep in mind that the pedestrian safety features of a grocery store should recognize the fact that many shoppers will be pushing grocery carts or may have small children in tow, or both. The point is that while the absence of pedestrian spines might be acceptable in a municipal lot such as the one in Litchfield's Historic District, a higher standard should be imposed a super-sized grocery store in the interest of public safety.

8. <u>Parking spaces are not sized according to regulations.</u>
   a. The applicant's site plan is non-compliant with Litchfield's Planning and Zoning Regulations in that it does not provide for 300 square foot parking spaces.
   b. Attorney Byrne's July 3 opinion is unequivocal in stating that the Commission has no alternative but to enforce the 300 square foot definition of a parking space irrespective of its past practice. The Court of Appeals of Connecticut case of Fedus v. P&Z of Colchester deals with just such a case. The circuitous logic by which nebulous nearby asphalt accrues toward the required 300 square feet is absurd. Commissioners do not need to pay consultants to tell them what a parking space is or is not. This particular regulation may be flawed but until it is remedied, Attorney Byrne asserts, the Commission is bound to enforce it as written.
   c. The applicant's contention that Fedus doesn't apply is convincingly contradicted by Attorney Byrne. A Commissioner taking the time to read through the Appellate Court's Fedus decision attached to Attorney Byrne's July 3 Opinion will see that the decisive issue in Fedus was not the use of concrete versus plastic in drainage pipes but whether the past practice of ignoring a regulation endows a Commission with the authority to continue to disregard it. To quote the Court in Fedus, "A commission is not at liberty to ignore its existing regulations and to treat them as invalid."

d. Mr. McDermott disagrees but this is a legal matter and his views are trumped by Attorney Byrnes'.
e. If the Commission were to deem the existing regulation dealing with parking space dimensions to be difficult to apply in practice, it would be preferable to apply it literally one last time in its flawed form and then to amend the regulation. To do otherwise guarantees being overturned (as the Court did in the case of Fedus).

9. Stormwater management practices are inadequate.
   a. In his July 29 Peer Review Mr. McDermott unambiguously states that "the proposed storm water management system does not meet all of the standards of the 2004 Connecticut Stormwater Quality Manual." He does not explain this but he apparently means that the Manual's primary stormwater management practices are not being followed. He makes his peace with this shortcoming by noting that "the proposed plan is an improvement over existing conditions."
      i. "Improvement over existing conditions" is found only in the *retrofit* chapter of the Manual to which Mr. McDermott refers.
      ii. For redevelopments such an "improvement" standard is not adequate and the mandate for the removal of 80% of TSSs (total suspended solids) supersedes it.
   b. This is a redevelopment, not a retrofit. For heaven's sake, the May 2013 traffic study from Vanasse, Hagan, Brustlin, Inc. (VNB) is titled "Proposed Village Green *Redevelopment.*" And even Mr. McDermott himself refers to it as a redevelopment in his July 29 Peer Review in stating, "...there is no reason to delay site *redevelopment* based upon the presence of groundwater contamination."
   c. Stormwater management techniques for retrofits are found in Chapter 10 of the State's 2004 Manual. This chapter states that a retrofit is the modification of an existing stormwater treatment protocol for an existing development. "This chapter describes opportunities and techniques for retrofitting existing, developed sites to improve or enhance water quality mitigation functions." It might be understandable for the applicant to obscure as a retrofit the complete demolition of three existing buildings, extensive environmental remediation, the trucking in of tons of fill, and the construction of a building twice the size of the largest existing building in Litchfield – but it would be most remarkable for the Commission to concur.
   d. For redevelopment projects the 2004 Manual specifies primary stormwater treatment practices. The applicant is proposing a hybrid of secondary practices and primary practices. The Commission cannot be confident that the 80% TSS load reduction can be achieved by such a hybrid approach.
   e. That the Inlands Wetlands Commission approved this application provides cold comfort since it did so by a split vote, indicating that some Wetlands' commissioners found the applicant's plan unsatisfactory. And Wetlands'

decision is currently being appealed on the very grounds discussed here so the Wetlands decision cannot be considered final. Very cold comfort.

10. Existing soil and groundwater contamination presents an environmental hazard which threatens Litchfield's aquifer.
    a. The Applicant acknowledges that monitoring wells installed by the Connecticut Department of Environmental Protection had documented groundwater contamination at this site before they were paved over during the development of Village Green.
    b. Mr. McDermott's July 29 Peer Review notes that the source of the contamination has not been conclusively determined but leakage from one or more of several possible petrochemical product storage tanks is suspected. Notwithstanding the applicant's failure to include a remediation plan in the original site plan, and notwithstanding the uncertain source of the contamination, Mr. McDermott states "there is no reason to delay site redevelopment based upon the presence of groundwater contamination." This is a remarkable conclusion for a site directly above Litchfield's aquifer. It is more remarkable considering the known facts about monitoring wells being paved over and the documented loss (by CT DEP) of the results of past tests. Moreover, the Commission has only the applicant's attestation that further testing and remediation cannot commence without risking damage to the existing Building C. Even if this attestation were independently proven it cannot relieve the owner of the responsibility to remediate the site to a stable state prior to redevelopment.
    c. Both parties cite Mr. McDermott's peer review and testimony in support of their positions. The Applicant takes comfort from Mr. McDermott's conclusion that the redevelopment, by removing known contaminants, cannot help but have an overall positive impact. Moreover, Mr. McDermott finds no reason to delay approval due to groundwater contamination. The Intervener, on the other hand, cites Mr. McDermott's doubts about the ultimate source or sources of contaminants. How, the Intervener asks, can Mr. McDermott be so confident that the Applicant's site plan, as submitted, will remediate soil and groundwater contaminants when the cause or causes is unknown?
    d. Overall, it is my view that the Intervener has made the more compelling case and I believe that the Commission should find that approval of the site plan would bring a *reasonable likelihood of an unreasonable pollution* (Attorney Grimes' paraphrasing of the Connecticut General Statutes). However, the location of the applicant's property, directly above a public aquifer, combined with the uncertain causes of the existing contamination inevitably elevate public safety to a decisive criterion. That which might be an acceptable risk elsewhere due to its low probability should not be acceptable above Litchfield's sole-source aquifer.

11. Inadequate Green Space is provided

a. The chart in Article IV, 2,b specifies a minimum of 30% green space for the B202 zone.
b. The Applicant meets the 30% standard only by aggregating the area comprising the stormwater management detention basins into the calculation's numerator, to which Mr. McDermott concurs. His August 14 Peer Review deducts only the perennially wet portions from the Applicant's calculations, resulting in an adjustment of less than one percent.
c. While there is no disputing Mr. McDermott's math the Commission must consider the fundamental purpose of the green space regulation, as described in Article VI, Section 2. "Such open space shall be for the express purpose of maintaining the street tree belts along the streets, dividing parking bays or areas and generally maintaining the open character and appearance of the town." A stormwater management detention basin fails to meet this fundamental purpose and should not be scored toward the 30% minimum.
d. When the site plan's stormwater management detention basins are subtracted from the 30% calculation the site plan fails to conform to regulatory requirements. The Commission must subtract them because they are not located along street tree belts, they do not divide parking areas, and they clearly do not maintain the open character and appearance of the town.

12. No Provision is made for multiple dumpsters.
a. The existing Stop and Shop has a docked trash compactor[7] and three dumpsters. One dumpster is dedicated to organic recycling. A second is dedicated to fryolator grease. Two others are conventional solid waste dumpsters. One of these is probably Rite Aid's so let's say that three are Stop and Shop's.
b. There is no provision for the placement of dumpsters in the most recent version of Stop and Shop's site plan. When asked at Design Review, the applicant responded that there would be only one dumpster and that it would be placed at the discretion of the manager. Well, there won't be one; there will be at least three. There are three at the current store and this one's twice the size. And there are very few places for them to be sited. They can't be placed in the fire zone. And they can't be placed near the front doors. And they can't be placed in the busy loading dock operation. Nor the truck turnaround circle. And they can't be located in any of the vehicle thoroughfares. That leaves only one place: parking spaces allocated to other uses. Try to imagine a fryolator grease dumpster in the parking space next to yours.

[7] "Compactor" is a very delicate word for a twenty foot trash dumpster docked to a machine mounted on the wall of the store which compresses trash prior to its deposition into a dumpster mounted on steel wheels. It is a dumpster on steroids and it stinks. At the Village Green location it would be visible from the street.

c. The Commission should consider the fact that several dumpsters (the store will nearly double, after all) will be sited in several of the parking spaces nearest the building.
d. Oh, there's also a rat bait/trap box in the area of the existing dumpsters so the Commission might also consider where that item is likely to be placed if this project were to get approved. The Commission might consider a rat trap as evidence that the site attracts vermin, therefore constituting a public health hazard.

Truck Study

Stop and Shop Current Location
Ralph White

Note on Loading Docks (West to East)

- One dock services two doors. One goes to the bottle and can recycling operation and the other is labled "Dairy."
- The General Delivery (GD) dock is nearly perpendicular to the Dairy dock such that two trucks cannot simultaneously dock. The GD dock is the busiest.
- The freezer dock services a heavy door labeled "Freezer."
- The produce dock services a standard door labeled "Produce."
- A fifth dock appears to service the Rite Aid store

Note on Dumpsters

- The store's principal dumpster is a 20 foot long USA container which docks to the store's compactor.
- A second dumpster is dedicated to "Fryolator Grease Only," and presumably is for the drippings from the rotisserie chicken operation.
- A third dumpster, from USA, is labeled for "Organic Recycling." On the second day of this study a large pile of garbage lay on the ground around the dumpster.
- A fourth dumpster, from USA, is a typical trash model
- A fifth dumpster, from USA, is presumably for the Rite Aid Store

Note on General Appearance

- There is some litter in the grass behind the lot, some of which can be attributed to specific trucks, e.g., Entenmann's, and Keebler.
- There was a pile of garbage next to the Organic Recycling dumpster. The area has a mild odor of garbage which gets stronger closer to the docks.
- The HVAC unit has a very loud hum and periodically (once per minute, on average) makes a honking noise like a submarine about to dive.
- The dock area is used to store produce cartons, stacks of pallets, bakery trolleys, beverage cases. There is also sewer access, roof access, and Siamese fittings for fire suppression.
- There is a box of rat poison near the Produce Dock. A yellow tag on the grass carries a warning about a 7/29/13 pesticide application with a "keep children and pets away" icon.

Note on Line Striping in Front Parking Lot

- The parking spaces at the existing Stop and Shop feature seven foot wide spaces with a two foot buffer strip between spaces.
- The parking spaces in the Village Green development feature single-lined spaces which average a few inches less than nine feet
- Cars tend to line up straighter in the double lined spaces
- Shopping carts can unloaded from a safer position between cars with double striping.

Observations on Saturday

Observations made from 10:00 am to 6:00 pm and all activity was photographed. Summary: 13 trucks, of which 6 were tractor trailers (semis) and two had signage indicating they were operated by Stop and Shop

10:00

- White bakery box truck, unloads with ramp, not at dock. When unloaded, moves to a remote location on the lot and remains for another 60 minutes.
- "Hood" semi docks at Dairy dock

11:00

- Unlabeled white box truck parks behind the first box truck, unloads with ramp
- Gold Fuso box truck parks alongside the first. Baked goods. Unloads with ramp.

11:49

- Entenmanns truck parks near GD dock, unloads with ramp
- Frito-Lay large box truck docks at GD dock
- Coca Cola semi parks 15 minutes, engine idling, waiting for Frito Lay to depart GD dock.
- Minivan parks in the midst of the three trucks described above. Driver enters store.

12:30

- Coke semi leaves without docking (Frito Lay is hogging the dock – Frito is owned by Coke rival, PepsiCo.)
- Stop and Shop semi docks at Dairy for 15 minutes, then repositions to the Freezer Dock.

1:00

- White semi docks at Dairy dock
- S&S semi redocks at Produce

1:30

- Coke semi returns, docks at now vacant GD dock

2:00

- Coke semi still at GD. At 2:10 Coke semi drives to front parking lot and parks near the Route 202 entrance, engine idling, until 2:22. Departs.

2:30:

- White Isuzu cab-over box truck parks in the western thoroughfare though all docks are free. Driver goes inside ten minutes, then backs into the GD dock

3:30

- White Isuzu still at GD dock

4:00

- White Isuzu has moved around to the front lot where it is parked with its engine off and the driver gone.

5:00

- Stop and Shop semi at GD dock
- Isuzu box gone from front lot

8:00

- Dedicated Contract Services semi at GD dock

Observations on Wednesday
Observations were made from 7:30 to 5:00, and all activity was photographed.
Summary: 5 trucks, of which 3 were semis and one was Stop and Shop

8:15

- First delivery of the day. Pepsi semi at GD dock
- 8:24: Allied Mechanical Services tradesman's van parks near HVAC machine (at dock level between the Dairy and GD docks.)

8:39

- Keebler semi parks, waits for Pepsi to depart GD dock, engine idling.

9:00

- Keebler semi backs into GD dock. Loud beeping while reversing. None of the other trucks observed featured beeping in reverse.

9:30 – 11:00

- Stop and Shop semi docks three times as it had done on Saturday. Engine off while at docks.

10:00

- Unmarked white semi docks at Dairy
- Stop and Shop semi has to wait for unmarked semi to depart before it makes its final docking of the day.

12:45

- Dari Farms freezer box truck parks near GD for a quick delivery

2:30

- White Isuzu box truck parked at GD dock

Overall Conclusions from this study:

If this Saturday is typical for a Saturday and this Wednesday is typical for a weekday, and if there are no deliveries on Sundays, then this store is serviced by 38 delivery trucks during a typical week. If the new store is to be approximately 65% larger than the existing store then some 63 trucks per week would be expected to service the building. Of these, approximately 20 would likely be tractor trailers. Only 7 of these would be expected to be Stop and Shop trucks. The Applicant's assertion that only 12 trucks per week would service the site and that the only non Stop and Shop tractor trailers would be Dunkin Donuts' is not accurate.

This study did not count tractor trailers servicing Dunkin Donuts, so any assumptions about that traffic must be added to the above.

Draft Motion to Deny the Application

Whereas Stop & Shop Supermarket Company LLC (the "Applicant") has submitted a Site Plan Application (the "Plan") to redevelop an 8.03 acre property known as Village Green Drive, identified at Map 196, Block 49, Lots 21, 29, and 30, and,

Whereas the Applicant has proposed to demolish three existing structures and construct a 38,000 square foot supermarket building and related parking and stormwater management facilities (the "Project"), and

Whereas such activities are regulated by the Litchfield Planning and Zoning Commission (the "Commission"), and

After consideration of all of the evidence submitted, and with the professional guidance of Commission staff on technical issues, and also relying upon the individual expertise of Commission members, and upon the testimony in support of and in opposition to the application,

Now, therefore, it is resolved that the Commission denies the Application for the reasons here listed:

1. The Project would contribute to traffic congestion at the entrances and exits from and to public streets, and
2. Congestion would be created within the site by numerous delivery trucks, many of which would not be designed to utilize the loading docks and thus would have to unload elsewhere on the site, and
3. Large trucks making wide turns would encroach into oncoming traffic lanes both on site and entering and exiting the site, creating a public safety hazard, and
4. The proposed prohibition against tractor trailers using Commons Drive is neither viable nor enforceable, and
5. The number of parking spaces provided in the Plan falls far short of the number required by Regulations, and
6. Twenty-seven parking spaces are positioned along the internal truck delivery routes, thus creating a public safety hazard, and
7. Provisions for pedestrian safety within the site are inadequate, and
8. Parking spaces are not sized according to regulations, and
9. Stormwater management practices are inadequate, and
10. Existing soil and ground water contamination presents an environmental hazard which threatens Litchfield's aquifer, and
11. Inadequate green space is provided, and
12. Since there is no provision for siting the multiple dumpsters which the grocery store would require, dumpsters would likely be placed either on parking spaces designated for customers or in driving lanes. Additionally these dumpsters stink and they attract rats, creating a public safety hazard.

(2)

Engineering, Planning
Landscape Architecture
and Environmental Science

MILONE & MACBROOM®

August 14, 2013

Planning and Zoning Commission
Town of Litchfield
Town Hall Annex
P. O. Box 12
80 Doyle Road
Bantam, CT 06750

RE: Peer Review
Site Plan Application
Stop & Shop at Village Green
Litchfield, Connecticut
MMI #2664-17-4

Dear Members of the Commission:

We have reviewed the materials for the above-referenced application submitted by the applicant in response to Milone & MacBroom, Inc.'s (MMI) July 29, 2013 comment letter. Items reviewed include the applicant's letter from Robinson & Cole dated August 1, 2013, the PLAN Litchfield letter dated August 5, 2013, as well as items brought up at the recent Litchfield Planning and Zoning hearing on August 5, 2013. We have framed this letter to follow the format of our July 29 letter, and the numbering sequence below is consistent with that letter.

1.0 Traffic

1.1 The applicant states that they have no objection to discussing with the Connecticut Department of Transportation and the Office of the State Traffic Administration (OSTA), during the state-level OSTA Certificate Application process, restriping the section of U.S. Route 202 from South Lake Street to just west of Constitution Way as shown on MMI's conceptual restriping plan. In our opinion, this would be a more holistic approach to improving the overall flow of traffic on U.S. Route 202 than the minor lengthening of the westbound left-turn lane to enter the site that was proposed by the applicant. We are satisfied with this response and recommend that the applicant's submission to OSTA that includes this entire restriping of U.S. Route 202 be made a condition of an approval.

1.2 The applicant has provided a plan to restripe Commons Drive at the approach to U.S. Route 202 to provide 150 feet of exclusive left-turn lane that is separate from the shared through/right-turn lane. We are satisfied with this response and recommend that the restriping of Commons Drive be a condition of approval.

2.0 Parking and Circulation

2.1 Required Spaces

The applicant has submitted a site plan (sheets SP-1 ALT-2 and SP-2 ALT-2) showing a total of 337 parking spaces on Village Green – 224 spaces for the proposed Stop & Shop, 82 spaces for Building A, and 31 spaces for Building B. This total is the result of several assumptions, including the elimination of the proposed 2,500-square-foot addition to Building B; using the 50% shared parking reduction for the Kawasaki Japanese Restaurant as being primarily an evening use; that the former Senior Panchos, Nova Venture, Chabad Lubavitch, and other vacant retail space will become office space; and the classification of the former Senior Panchos and other vacant space as upper-floor space consistent with the existing approval of the parking at Village Green. The applicant provided a written statement that the vacant space in Building A will be offered only as office space.

A question was raised regarding the spaces assigned to the retail space in Building A. The applicant incorrectly assigned six spaces per thousand square feet whereas the regulations require eight spaces. The net result would be an increase of two spaces. The total of 337 spaces for the entire property includes the two additional spaces for Building A.

In addition, as requested by the commission at a prior hearing, the applicant provided parking demand data associated with the existing Stop & Shop and Rite Aid indicating that not all of the 224 proposed Stop & Shop spaces may regularly be utilized. The applicant counted a peak demand of 3.3 parked vehicles per 1,000 square feet of Stop & Shop, plus Rite Aid, floor space during the time frame of Friday, July 26, 2013, through Saturday, July 27, 2013. If applying this demand of 3.3 parked vehicles per 1,000 square feet of floor area to the proposed Stop & Shop, the demand would be 127 parked vehicles.

In our review of the information provided on the revised site plan, the applicant has provided a sufficient number of parking spaces as required by the regulations and consistent with the commission's approval of previous applications related to Village Green.

2.2 Size of Parking Space

The applicant has submitted an illustration showing available parking area including spaces and drive aisles associated with the proposed reuse of the site. The materials provided by the applicant document that the total paved area excluding truck loading space, passageways, and driveways but including the aisle between parking stalls is over 300 square feet per parking space. This is consistent with the commission's past application of the definition of a parking space.

2.3 Internal Vehicular Circulation

The applicant's revised site plan shows that all parking (15 spaces) has been removed from the connector drive between Village Green and Litchfield Commons as we have previously recommended. We view this as an improvement to internal vehicle circulation and safety and recommend that this modification be incorporated in the project as a condition of approval.

2.4 Pedestrian Circulation

The applicant has provided a plan highlighting the proposed pedestrian connections within and around the site. On-site walkways are shown connecting the proposed Stop & Shop directly with Building A, the Commons, and to the existing sidewalk on U.S Route 202. There will be a walkway from Building B to the sidewalk. Pedestrians wishing to walk from Building B to the other buildings on the site without walking in the parking lot will need to follow the route onto the Route 202 sidewalk and then follow the walkway system in front of Building A. The walkway network is an improvement over the existing condition at Village Green.

2.5 Truck Turning Movements

The applicant proposes to restrict tractor trailer trucks (e.g., WB-62) from using Commons Drive. This would be accomplished through operational controls by Stop & Shop and using signage on the site. The proposed signage on the site is to include two signs to be located at the internal intersection of the Village Green driveway with the connector drive to Litchfield Commons that will state "NO TRACTOR TRAILERS." In addition, the applicant has represented during the hearing process that Stop & Shop will provide a truck management plan that will include details of how Stop & Shop will schedule deliveries such that no more than three tractor trailers are at the site at the same time. In addition, the plan should also include routing details for any trucks that will ultimately travel west on U.S. Route 202.

As discussed during the hearing, WB-62 tractor trailer trucks turning right to enter the Village Green driveway from U.S. Route 202 may not be able to do so within the existing pavement width as shown on the site plan without modification to the curb radii. This work would mostly be within the state right-of-way and would come under review during the OSTA Certificate process.

3.0 Site Grading

This comment was addressed and does not require additional discussion.

4.0 Stormwater Management

4.1 Storm Drainage System

The applicant provided revised drainage computations that reduced the slope of the discharge pipe into Detention Basin 2. This modification is acceptable and should be incorporated into the final project plans as a condition of approval.

4.2 Connecticut General Statutes Section 22a-19(b)

The August 5 hearing included lengthy discussion regarding the potential environmental impact associated with the development. These issues were discussed at length during the Inland Wetlands Commission hearings for this application, and members of the Planning and Zoning Commission were encouraged to review the approval from the Inland Wetlands Commission to gain understanding of how that commission dealt with these important issues. In our opinion, the proposed modifications to the site and stormwater management represent an improvement over existing conditions. This opinion was echoed by the Connecticut Department of Public Health in its letter of July 25, 2013 and by Aquarion Water Company in its letter dated May 16, 2013.

4.3 Zoning Regulations Article VI, Section 3.2

This comment needs no further discussion.

4.4 Stormwater System Design Baseline for Existing Conditions

There is extensive testimony in the public hearing record regarding baseline conditions for the stormwater system design. The applicant has used existing conditions as the baseline against which improvements are analyzed. PLAN Litchfield's consultant has stated that predeveloped conditions should be the baseline, assuming the site was wooded prior to the 1980s construction. We have agreed with the applicant's approach and, in our opinion, any attempt to use conditions other than existing as a baseline would require assumptions that are beyond the scope of sound engineering judgment.

4.5 Consistency with *2004 Connecticut Stormwater Quality Manual*

There has been a great deal of discussion throughout the hearing process with respect to the *2004 Connecticut Stormwater Quality Manual*. In our opinion, this project adequately provides for the treatment of stormwater from the postdevelopment site. This opinion was echoed by Lenard Engineering, acting on behalf of the White Memorial Foundation, as a result of its review of the application. Following is a recap of the relevant issues discussed:

Retrofit versus Redevelopment – PLAN Litchfield's consultant stated that the project is a redevelopment and so should meet all of the requirements of the stormwater quality manual. In our July 29 letter, we offered definitions of retrofit and redevelopment, and the commission will need to determine how to consider this project.

80% Removal of Total Suspended Solids – The only quantitative treatment standard in the *Stormwater Quality Manual* is the requirement for the removal of 80% of total suspended solids from the postdevelopment site. This is a standard that was adopted by EPA a number of years ago. The removal efficiency is evaluated using annual rainfall for the site location rather than a predevelopment to postdevelopment comparison. In Appendix E of the Stormwater Management Report dated May 2, 2013 prepared by BL Companies, the applicant demonstrated that the proposed stormwater treatment system provides in excess of 80% removal of total suspended solids.

Use of Secondary Treatment versus Primary Treatment Practices – PLAN Litchfield's consultant has consistently stated that the application is deficient because it does not provide a primary treatment practice as defined in the *Stormwater Quality Manual*. The proposed plan calls for a combination of primary and secondary practices. Secondary practices include deep sump catch basins and hydrodynamic separators. Primary treatment includes the proposed micropool stormwater management ponds proposed in DB1 and DB2. Our interpretation of the *Stormwater Quality Manual* is that the use of secondary practices is acceptable. The manual defines them as secondary practices because on their own they do not meet the 80% removal criteria discussed above. Therefore, secondary practices are not recommended as the only stormwater treatment practice on a site. In this case, the applicant proposes a combination of primary and secondary practices and has demonstrated through standard engineering calculations that the 80% removal efficiency of total suspended solids is met.

Water Quality Volume (WQV) – PLAN Litchfield has stated that the proposed Detention Basins DB1 and DB2 do not provide the water quality volume required to meet the standards in the manual. The applicant in a letter dated August 2, 2013 from EBI Consulting stated that the proposed plan provides for 50% of the WQV to be stored in the sediment forebay with the remaining WQV provided in the micropool extended detention basin. This statement is supported by the design report and computations provided in the May 2, 2013 Stormwater Management Report. Upon further review of the supporting computations contained within the May 2, 2013 report, we concur that the proposed plan meets the WQV requirements for a micropool extended detention system.

4.6 Use of Deicing Materials

Our July 29 letter addressed this issue, and we also discussed it at the August 5 hearing. Perhaps most importantly, this issue was discussed at length by the Inland Wetlands Commission and addressed its concerns through a condition of approval. In summary, literature suggests that chlorinated deicing chemicals do impact vegetation and the water quality of receiving streams. However, the extent of that impact and its long-term effects are unknown. To the best of our knowledge, no community in Connecticut (or in the United States) has banned the use of chlorinated deicing agents. Holding this applicant to a different standard than other recent applications (and presumably future applications) would be difficult to defend should legal action be pursued.

5.0 Materials Management

5.1 Imported Fill

This issue was discussed at the August 5 hearing, and testing standards are included as a condition in the Inland Wetlands Commission approval of the application. The applicant has provided a protocol with which we are satisfied.

5.2 Spill Prevention Plan

Our one concern about this plan related to clarifying how the shutoff valving from the trench drains would be identified. The applicant provided a sketch depicting the markings that will be installed. We are satisfied with the response and recommend that the markings be incorporated into the project plans as a condition of approval.

6.0 Underground Storage Tanks

It is now well documented that leaking Underground Storage Tanks (USTs) were removed from the site at some time in the past and that contaminated soils potentially remain on site. If the project is approved, the commission may wish to include a condition that requires removal of the contaminated soils. We would also recommend that the commission require the applicant to provide to the town copies of all reports regarding ongoing site monitoring as required per the Connecticut Department of Energy & Environmental Protection.

7.0 Green Space

The applicant has provided a computation showing that 33.7% of the site is "Green Space" as defined in the regulations. PLAN Litchfield suggested that including the stormwater management area in the green space computation is contradictory to the definition of green space since the computation includes the existing and proposed wetland areas within the detention basins. In re-examining this issue, we believe that a watercourse as defined by the Inland Wetland Regulation within the stormwater basin should not be included in the green

space computation. For purposes of the calculation of green space, watercourses are those areas within the basins that will be wet for extended periods of time. Based on the stormwater computations, the area below elevation 67.60 in DB-1 and below elevation 54.82 in DB2 may be permanently wet, or at least wet for extended periods of time, and therefore should be excluded from the green space computation. We estimate that this is equal to 0.06 acres of wetland, making the total green space on the site 2.6 acres or 32.7%. In our opinion, the applicant meets the requirement of Article IV, Section 2.2A of the regulations.

We will be pleased to elaborate on the issues presented in this letter at the final meeting on August 19. In the meantime, please feel free to contact me.

Very truly yours,

MILONE & MACBROOM, INC.

Vincent C. McDermott, FASLA, AICP
Senior Vice President

cc: Steven Byrne, Esq.

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3

SUGGESTED REASONS TO SUPPORT A MOTION TO APPROVE FOR PZC DISCUSSION

RE: STOP & SHOP PLANNING AND ZONING APPLICATION

Whereas, The Stop & Shop Supermarket Company, LLC (the Applicant) has applied to the Litchfield Planning and Zoning Commission (the Commission) for approval of a site plan to demolish three existing buildings having a ground area of approximately 26,000 square feet and a total floor area of approximately 44,000 square feet; to construct a new grocery store containing approximately 38,000 square feet, an addition to an existing building containing 2,500 square feet for use as a restaurant, the total floor area of the development having approximately 61,000 square feet; and to make modifications to the existing parking lot, access drives, lighting, landscaping, drainage, and other site improvements at a property located in the B202 zone at Village Green Drive, referred to as Village Green owned by 6645 Federal Realty Square, LLC;

Whereas, the application included site plans and other supporting documents submitted in accordance with Article IX, Section 1 of the Litchfield Zoning Regulations;

Whereas, the application has been referred by either the Applicant or the Commission for comment and recommendation to the town's Architectural Review Committee, Water Pollution Control Commission, Fire Marshal, Aquarion Water Company, and the Connecticut Department of Public Health (CTDPH);

Whereas, the Applicant applied to and received approval with conditions from the Litchfield Inland Wetlands Commission for certain regulated activities related to the proposed site development;

Whereas, the Commission initiated a public hearing on June 3, 2013 and continued the hearing on three subsequent occasions with appropriate extensions of time for continuations granted by the Applicant;

Whereas, interventions to the application have been filed pursuant to Section 22a-19 of the Connecticut General Statutes by PLAN Litchfield and other individuals;

Whereas, the Applicant has modified the application and site plans in response to issues and concerns raised by the Commission, its planning and engineering consultant, the interveners, and others during the public hearing process;

Whereas, the Commission makes the following findings:

1. The proposed use of the property is permitted as of right in the B202 zone subject to approval of a site plan by the Commission.

2. The architectural plans for the proposed building as amended have received a favorable recommendation from the Architectural Review Committee.

3. The application has received favorable recommendations from the town's Water Pollution Control Commission with respect to the adequacy of sewage disposal and from the town's Fire Marshal with respect to fire safety.

4. The application has received favorable comments from Aquarion Water Company stating that the proposed use is not a regulated activity under Section 4 of Public Act 06-53 related to aquifer protection, and the proposed changes are compliant with Aquifer Protection Area requirements and incorporate accepted groundwater protection practices.

5. CTDPH has provided comments pursuant to Section 25-32f of the Connecticut General Statutes with respect to potential impact on the Hamill Wellfield noting that the proposed development is consistent with aquifer protection measures contained in Connecticut's Aquifer Protection Area *Program Municipal Manual*, and the proposed stormwater management conditions "...appear to be an improvement over current conditions; therefore, reducing the potential for negative impact to the water supply."

6. The application and site plan are consistent with the requirements of Article IX, Section 1.5 of the Zoning Regulations in that the plans meet the submission requirements of Section 1,5.a; have proper and adequate provision for vehicular traffic, service access, control of site entrances and exits onto Route 202, and parking and loading; have proper provision for the protection of existing residences through the maintenance and enhancement of the existing vegetation on the east side of the property and by providing site landscaping in accordance with the regulations; provide building illustrations that have been approved by the Architectural Review Committee; provide adequate sewage disposal through the approval of the Water Pollution Control Authority and for water supply utilizing the existing public water supply system; and have provided for underground utilities.

7. The application and plan meet the area, dimension, and use regulations set forth in Article IV, Section 2 of the Regulations.

8. The application and site plan meet the requirements of Article VI, Section 1 of the Regulations related to access, circulation, and off-street parking and off-street loading in that access to and from Village Green is now and will continue to be from U.S. Route 202 and not a local street in a residential zone; Route 202 has and will continue to have the traffic-carrying capacity with the improvements proposed by this application including extension and improvements to turning lanes, traffic direction islands, and traffic controls; the connection to the adjoining nonresidential property referred to as the Commons will be maintained and improved; the number of parking spaces required by the Regulations consistent with the Commission's past practices and application to uses at Village Green will be provided; and parking spaces that

exceed the minimum requirement of 300 square feet per space consistent with the Commission's past practice and application to the parking on the Village Green property will be provided.

9. Except for tractor trailers, traffic from the Village Green property will continue to have the ability to utilize Commons Drive on the adjacent property consistent with the existing easement.

10. The proposed modification to the existing Village Green property will improve the existing environmental condition and will not have a significant impact on the water resources of the town, particularly the Hamill Well, a position supported by CTDPH and Aquarion Water Company.

11. The short-term environmental impacts associated with proposed construction, including work in wetlands, are deemed to be acceptable given the long-term benefit of implementing the proposed improvements to the stormwater management system consistent with guidelines set forth in the *Stormwater Quality Manual*. This finding is consistent with the approval by the Inland Wetlands Commission.

12. Irreversible and irretrievable loss of wetland and other natural resource systems will not occur as a result of the proposed activity. Direct wetland impact is associated only with implementation of the alternative basin planting plans, and such alternative plan will benefit the wetland system by enhancing habitat value. This finding is consistent with the approval by the Inland Wetlands Commission.

13. The proposed activity constitutes a reasonable use of the property and is consistent with the character of the existing site and the underlying B202 zone. The proposed activities do not present a risk to the health and safety of surrounding water resource systems and do not preclude the reasonable use of adjacent properties including the downstream wetland resources.

14. Feasible and prudent alternatives do not exist that would cause less or no environmental impact to the natural resources of the town. This position is consistent with the approval of the Inland Wetlands Commission.

Now therefore be it resolved that the Litchfield Planning and Zoning Commission approve the above-described application by Stop & Shop Supermarket Company, LLC and the modified site plan for the redevelopment of the Village Green property as shown on the maps and plans attached to this resolution. Said approval is subject to the following modifications and conditions:

1. The application is approved with the plan sheets as shown on the attached list.

2. The grading, drainage, and site utility plans shall be modified to reflect the reconfigured parking area associated with Building B without the 2,500-square-foot

addition, and the detail sheets approved with this application shall include a detail showing a clearly marked and easily accessible valve handle.

3. All tractor trailer trucks shall be restricted from using Commons Drive. This modification shall be implemented through the posting of signs and the establishment of operation controls, including truck delivery management, by Stop & Shop, a copy of which shall be filed with the Land Use Administrator.

4. Commons Drive shall be striped for a distance of 150 feet from the intersection of Route 202 providing for an exclusive left-turn lane separate from the shared through/right-turn lane. The entrance to this property from Route 202 shall be widened so that tractor trailers can exit the property without needing to cross over into other lanes on Route 202.

5. The Applicant's submission to the Connecticut Office of the State Traffic Administration shall include a proposal for the restriping of Route 202 from South Lake Street to Constitution Way, a copy of such submission to be filed with the Land Use Administrator.

6. All crosswalks shall be appropriately striped and shall include appropriate signage in locations approved by the Land Use Administrator.

7. A drop structure shall be included on the plans to reduce the slope of the pipe discharging into Detention Basin 2.

8. The table indicating the percent of green space shall be modified to eliminate the watercourse in Detention Basins 1 and 2 from the calculation of green space.

9. The owner of the property shall provide a sworn affidavit in a form approved by the Commission's attorney stating that Building A shall only be used for office use and that this be recorded on the Litchfield Land Records.

10. The owner of the property shall apply for and obtain a zoning permit for Building A for office use.

11. The parking table shall be modified to indicate that the retail space in Building A has eight spaces per 1,000 square feet.

12. The Applicant shall use clean fill on the project and shall adhere to the material testing protocol presented to the Commission and the requirements of Connecticut Department of Energy & Environmental Protection (CTDEEP) in order to assure proper quality assurance and control for the clean fill and shall provide testing reports and other appropriate documentation to the Land Use Administrator on a weekly basis during the placement of the fill and the construction process.

13. The Applicant shall provide quarterly reports to the Commission concerning the status of the ongoing groundwater sampling; the results of the sampling; a comparison of the results to the numerical criteria specified in the Remediation Standard Regulations (in particular, the water and groundwater protection criteria) and the Connecticut Water Quality Standards (aquatic life criteria); and the status of compliance with current and future directives, requests, and orders from the CTDEEP. The quarterly reports shall include copies of all correspondence including email with CTDEEP related to the ongoing environmental activities on the site. This condition shall remain in effect until such time as CTDEEP provides notice that the terms of the existing consent order have been fulfilled.

14. The Applicant shall conduct regular site inspections before, during, and postconstruction in accordance with the State of Connecticut General Permit for the Discharge of Stormwater and Wastewater Associated with Construction Activities and the Site Inspection Program for Construction and Post-Construction Erosion and Sedimentation Control as contained in the letter from BL Companies dated April 4, 2013. All inspection reports on such activities shall be provided to the Land Use Administrator.

15. Other reasons.

Stop & Shop Application - Final Site Plans

August 19, 2013

MMI #2664-17-4

Sheet	Name	Revision Date
CV-1	Cover Sheet	July 12, 2013
S-1	Site Plan Village Green	November 19, 2010
1	Property & Topographic Survey Village Green	May 16, 2012
GN-1	General Notes	May 2, 2013
SP-1 ALT-2	Diagrammatic Site Plan Alternate 2	August 1, 2013
SP-1A ALT-2	Site Plan Alternate 2	August 1, 2013
SP-2 ALT-2	Site Plan Alternate 2	August 1, 2013
GD-1	Grading & Drainage Plan	July 26, 2013
PR-1	Section Views	May 2, 2013
SU-1	Site Utility Plan	July 12, 2013
LL-1	Landscaping Plan	June 13, 2013
LL-2	Landscaping Notes & Details	May 2, 2013
LP-1	Site Lighting Photometric Plan	July 12, 2013
LP-2	Site Lighting Details	July 12, 2013
EC-1	Sedimentation & Erosion Control Plan Phase 1	July 12, 2013
EC-1A	Sedimentation & Erosion Control Plan Phase 1A	July 12, 2013
EC-2	Sedimentation & Erosion Control Plan Phase 2	July 12, 2013
EC-3	Sedimentation & Erosion Control Plan Phase 3	July 12, 2013
EC-4	Sedimentation & Erosion Control Plan Phase 4	July 12, 2013
EC-5	Sedimentation & Erosion Control Notes	May 2, 2013
DM-1	Diagrammatic Demolition Plan	July 12, 2013
DM-1A	Demolition Plan	July 12, 2013
DN-1	Site Details	May 2, 2013
DN-2	Site Details	May 2, 2013
DN-3	Site Details	July 29, 2013
DN-4	Site Details	May 2, 2013
DN-5	Site Details	May 2, 2013
DN-6	Site Details	May 2, 2013
DN-7	Site Details	May 2, 2013
DN-8	Site Details	May 2, 2013
DN-9	Site Details	May 2, 2013
A1	Exterior Elevations	June 17, 2013

2664-17-4-au1913-1-rpt.docx

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Pursuant to Section 22a-19 of the Connecticut General Statutes, the Commission makes the following findings with respect to the site plan application by Stop & Shop Supermarket to: demolish three existing buildings having a ground area of approximately 26,000 square feet and a total floor area of approximately 44,000 square feet; to construct a new grocery store containing approximately 38,000 square feet; and to make modifications to the existing parking lot, access drives, lighting, landscaping, drainage, and other site improvements at a property located in the B202 zone at Village Green Drive, referred to as Village Green owned by 6645 Federal Realty Square, LLC:

1. The short-term environmental impacts associated with proposed construction, including work in wetlands, are deemed to be acceptable given the long-term benefit of implementing the proposed improvements to the stormwater management system consistent with guidelines set forth in the *Stormwater Quality Manual*. This finding is consistent with the approval by the Inland Wetlands Commission.

2. Irreversible and irretrievable loss of wetland and other natural resource systems will not occur as a result of the proposed activity. Direct wetland impact is associated only with implementation of the alternative basin planting plans, and such alternative plan will benefit the wetland system by enhancing habitat value. This finding is consistent with the approval by the Inland Wetlands Commission.

3. The proposed activity constitutes a reasonable use of the property and is consistent with the character of the existing site and the underlying B202 zone. The proposed activities do not present a risk to the health and safety of surrounding water resource systems and do not preclude the reasonable use of adjacent properties including the downstream wetland resources.

4. Feasible and prudent alternatives do not exist that would cause less or no environmental impact to the natural resources of the town. This position is consistent with the approval of the Inland Wetlands Commission.

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MICHAEL A. ZIZKA
(860) 240-6144
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August 19, 2013

VIA HAND DELIVERY

Litchfield Planning and Zoning Commission
P.O. Box 12
80 Doyle Road
Bantam, CT 06750

Re: Application for Special Exception – Forman School

To the Honorable Chairman Lowenthal and Commission Members:

This firm is legal counsel to a group of Litchfield residents who oppose the pending application of The Forman School for a special exception for 54 Norfolk Road. (We note, at the outset, that the Commission's agenda and draft minutes refer to the application as "Modification to Special Exception Education Institution." That is not a correct description of the application because, to the best of our knowledge, 54 Norfolk Road, which is the only parcel that is actually a subject of the application, currently has no special exception for educational or institutional use, and the acquisition of 54 Norfolk Road by the school would not, in itself, create a merger of the parcels).

On behalf of the Town residents we represent, we ask the Commission to deny the application for the following reasons, as well as for the other reasons presented by Litchfield residents at the public hearing:

I. The Application is Legally Unnecessary and Would Harm Public Interests.

There is no legitimate reason to approve this application. It proposes no change in structures, no change in parking, and, in fact, no specifically educational or institutional uses. Interestingly, the letter dated June 12, 2013, from Adam Man, the Head of School, says that the application is intended to accommodate four to six dinner meetings per year between school trustees and parents of potential students. That description – and, more importantly, that limitation – of proposed uses is nowhere to be found on the actual application.

A special exception is not necessary to allow a school headmaster to host four to six dinner parties at a private residence. Any homeowner is entitled to host dinner parties at his or her home. Indeed, Article V, Section 24B of the Zoning Regulations provides for limited educational instruction in a private home without anything more than

a zoning permit. Therefore, the proposed uses may be readily accommodated without any special exception.

The residential nature of a homeowner's use is not affected by the homeowner's profession. If the Head of School chooses to live in what is now the Youngling residence, or if Forman chooses to have the Head of School live there, the use of the home will still be residential. The fact that a school headmaster is living in a particular house does not make the use "educational" or "institutional." If that were true, then a house occupied by an auto mechanic would need to be permitted as an auto repair facility if the mechanic chose to entertain his or her repair clients for dinner.

Consequently, the only result of the application (and, very likely, one of the principal reasons for the application) is that a special exception for educational use would cause the entire property – the house and all 21.4 acres – to be removed from the tax rolls. Such a result would do nothing to advance any legitimate land use objectives, which are supposed to be based on the suitability of particular property for particular purposes, and not the financial objectives of specific landowners. *See* Conn. Gen. Stat. § 8-2. Since there is clearly no public benefit to having a residential property with substantial acreage removed from the tax rolls for the only specific uses (residential uses) that Forman has admitted it wants, there is no legitimate reason to approve the application. It cannot conceivably be deemed to be part of Litchfield's comprehensive plan of zoning to have some residential parcels become tax exempt, and to have Litchfield's other property owners be obliged to absorb the tax differential.

II. A Similar Application Was Previously Denied.

In 1993, The Forman School submitted an application for a special exception for the Youngling property "to change the existing residential use of the property to educational purposes for administrative offices and a residential apartment." That application was denied on May 3, 1993.

When an application for a special exception has been denied and there has been no material change in circumstances, the Commission should also deny the subsequent application. *Dubiel v. Zoning Bd. of Appeals*, 150 Conn. 75 (1962). It is the applicant's responsibility to demonstrate that the circumstances have materially changed. Forman has made no such showing in this case, nor is there any reason to think that the expansion of an educational campus into a residential zone would be any more suitable today than it was 20 years ago. The area has remained largely unchanged in that time.

Nor can Forman claim that the currently proposed use is less intensive. As discussed in more detail below, its present application proposes no limitation whatsoever on the nature of the "educational institution" uses it has in mind. In that sense, the application is arguably far more intensive than the prior one.

III. The Application As Presented Has No Valid Land Use Purpose, But Is Intended Solely to Create a Financial Benefit to One Specific Landowner.

As noted above, the uses set forth in the applicant's presentation require no special exception to be given to 54 Norfolk Road. They may be conducted just as readily and lawfully if the property remains residential. Therefore, one can perceive only two potential purposes for this application on the part of the school: the ability to acquire a grander house without any tax consequences (a purely financial goal), and/or the premature designation of a 21.4-acre parcel as "educational" without having to explain what "educational" purposes are intended in the future (the "Trojan horse" goal, discussed further below). Neither goal warrants approval of the application.

With regard to the financial goal, a host of court decisions have held that the financial benefit to a specific landowner is not a valid reason on which to base a decision on a zoning application. *E.g., Samp Mortar Lake Co. v. Town Plan & Zoning Commission*, 155 Conn. 310, 315-316 (1967). The Commission is charged with assuring the good of the community by assigning specific use allowances to specific parcels. The suitability of the land for a particular purpose is the proper criterion for a zoning designation, not the financial interests of the landowner.

In addition, Article VIII, Section 4.b requires the Commission to consider, among other things, "the number of similar existing Special Exception uses in the vicinity." So the Commission must ask itself whether this parcel would be deemed appropriate for educational or institutional purposes if some entity *other* than The Forman School had requested the change. To put it another way, if another school – perhaps a small, competing school – came before the Commission to ask that the parcel be approved for educational and institutional purposes, would the Commission approve it? If the answer is no, then the Commission must also say no to Forman because the special exception, if granted, could also be used by any successor.

IV. The Application Lacks an Adequate Factual Predicate for Approval.

Article VIII of the Zoning Regulations says "Uses specified in these regulations as Special Exceptions are declared to possess such special characteristics that each must be considered a special case." The Commission cannot fully consider any proposed uses without a detailed description of them. If the Commission were to grant a special exception in accordance with the application as submitted – i.e., "educational uses" on a 21.4-acre parcel – without any specified limitations, it would be setting itself up for future arguments and, perhaps, litigation over what Forman (or its successors) are entitled to do on both the developed and presently undeveloped portions of the property.

This application is, basically, a Trojan horse. If this parcel were only one acre in size, so that no other educational or institutional buildings could be added to it, an approval might not create so much risk (although, as noted above, it would still be

unnecessary). However, this parcel is 21.4 acres in size and mostly undeveloped. Since it is a single parcel, the approval of a special exception would apply to the entire parcel, not just the house. Yet Forman has utterly failed to describe any long-term plans for the parcel that would justify a special exception for the entire parcel. In addition, Forman has utterly failed to provide any data or factual analysis of how the long-term development of the parcel for educational or institutional purposes would affect traffic volume and patterns, environmental impacts, neighborhood character, and the like. It simply asks the Commission to approve a special exception for the entire parcel without restriction.

If the Commission were to approve this application without such information, it would be loading the dice for future applications. Suppose, for example, that Forman (or a successor institution if Forman ceases to exist) returned to the Commission with an application for multiple new "educational or institutional" buildings on the parcel. How could the Commission easily deny such an application, having already determined that the entire parcel should receive a special exception for educational and institutional use? The application is an accident waiting to happen. *See Dodson Boatyard, LLC v. Planning & Zoning Commission*, 77 Conn. App. 334 (2003).

Article VIII of the Zoning Regulations requires the Commission to consider whether a site plan "is in harmony with the neighborhood, accomplishes a transition in character between areas of unlike character, protects property values, preserves and enhances the appearance and beauty of the community, and provides a harmonious relationship between existing and proposed buildings in the vicinity, specifically with regard to the visual relationship in terms of scale, proportions and particularly, the historic significance of the existing buildings." Forman's site plan fails to show <u>any</u> educational or institutional uses of the parcel (as noted above, its application fails even to make a persuasive case that its plans for the house are "educational," rather than residential).

If Forman plans to expand its facilities on the parcel, it should be obliged to present a comprehensive plan <u>now</u> in order to justify extending a special exception (and, of course, its desired tax exemption) to the entire parcel. The Commission should not approve a Trojan horse. If Forman should protest that it has no plans for the balance of the property, it should propose, as a condition of approval, that "educational institution" uses be restricted to the home as it currently exists, with no expansion, and that a permanent conservation easement be provided for the undeveloped portion of the property.

V. <u>The Special Exception Could Not Be Limited to The Forman School</u>.

Article VIII of the Zoning Regulations also requires the Commission to consider whether "the number of similar existing Special Exception uses in the vicinity is such that the granting of the proposed Special Exception will not be detrimental to the public

health, safety and welfare." In this case, the existing Special Exception uses include the existing campus, so the proposed expansion of the school must be regarded in the same light as approving an entirely different school on the parcel, because the result would be the same and this Commission is not legally permitted to distinguish between different users. Special exceptions run with the land; they cannot be conditioned on ownership or use by specific people or entities. Therefore, if it is acceptable for Forman to use the property for "educational institution" purposes, it will forever be acceptable for any other entity to use it for such alleged purposes. If Forman later closes or decides that the home and grounds are a financial albatross, it could sell the property to some other school whose educational merits might be far more suspect.

VI. The Approval of the Application Would Serve No Public Land-Use Interest.

No public land-use purpose would be served by adding this property to Forman's campus. The public safety claim about students not having to cross the road to get to the Head of School's house is preposterous – to the best of our clients' knowledge, there has not been a single incident related to students crossing the road to get to the existing Head of School's house, and the road is not heavily traveled. Presumably, if Forman were aware of any such incidents, it would have said so, because it would serve its current purposes.

Moreover, why is it necessary to have "student functions" at the Head of School's residence? Surely the school has other buildings at which a few dinners could be held for the parents of potential students. As was true (and a valid reason for denial) in 1993, the current Forman campus has plenty of room for such functions, and even for new buildings if that were truly necessary. Forman's application materials speak only of added convenience, and that is simply not a proper reason to award a special exception and tax exemption to a home and 21.4 acres of land.

Conclusion

There is no legitimate reason for the Commission to approve Forman's application. It should be denied.

Respectfully submitted,

Michael A. Zizka

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To: Mr. Michael A. Zizka
Murtha Cullina LLP
Attorneys at Law
CityPlace I
185 Asylum Street
Hartford, CT 06103-3469

From: Allen C. Adriance
P.O. Box 228
Topsfield, MA 01983

Date: August 15, 2013

Subject: Questions regarding Forman School

Below are my responses to the two questions posed by you as counsel, as well as some reflections on an additional issue or two, voiced by Jake Nadler on behalf of several Spring Hill neighbors.

As a frame of reference, these opinions are based upon over 45 years of experience serving twelve independent schools as a teacher, division head, academic dean, director of development, assistant headmaster, and headmaster. Additionally, I have had experience as a consultant to many schools and have been a trustee at eight. Perhaps most germane, of the twelve schools where I have been employed, I was either the "permanent" or troubleshooting interim headmaster at ten. These included institutions with elementary, middle, and/or secondary divisions, day and boarding, large and small, coed and single-sex, well-financed and struggling – in almost every region of the country.

Question 1: From the institutional perspective of a private school, is it necessary for a headmaster's residence to be incorporated into the school campus, or may the school operate just as effectively if the headmaster's residence is off campus?

While it is desirable for the headmaster of a boarding school to live on campus, it is not mandatory. Many independent schools operate very effectively without the head residing on campus, although a residence contiguous to the campus or within close proximity is definitely preferable.

Question 2: How important is it to the fundraising abilities of a private school for the headmaster to have a lavish home in which to entertain guests?

I would never argue that for fundraising purposes it is important that the headmaster have a lavish home to entertain guests. Quite the contrary, such an abode could prove to be counter-productive, especially for an institution with limited resources.

A potential donor may well question the wisdom or fiscal responsibility of a school that allocated a disproportionate share of its scarce resources to an opulent residence for the head to the detriment of more educationally prudent expenditures. Savvy donors pay attention to institutional priorities and resource management, and would likely question the appropriateness of this kind of investment. Has the school, for example, effectively assessed (formal cost analysis) the additional expenses associated with weekly/monthly cleaning and maintenance of the residence, grounds upkeep, insurance, and yearly "contributions" to the town of Litchfield to partially compensate for its loss in property tax revenue? What about the "barn"? If it is to be used to house students as suggested, what would be the funding requirements of converting the structure into a small dormitory?

If I were a trustee looking at an ambitious ongoing financial commitment of over $2 million by a school with a very modest endowment of approximately $5 million and a history of operating deficits (despite high tuitions), I would be very skeptical and concerned that I might be jeopardizing my fiduciary responsibilities.

I would also be very concerned about the possibility that a further weakening of the school's financial foundation might ultimately lead to its demise. Indeed, the annals of independent schools are rife with institutional closures throughout the country – particularly in the 1970s and 1990s. While far too numerous to list here, a few regional examples are worth mentioning, including:

In Lenox, Massachusetts alone, three schools closed in the 1970s – specifically, Foxhollow School for Girls (1976); Cranwell Preparatory School (1975); and the Lenox School for Boys (1973). This last school is worth special mention, since its financial failure and subsequent closure was largely due to the unwise investment in a hockey rink, which was intended to attract more students.

In addition, the Stockbridge School (MA) closed its doors in 1976, and the Westledge School (Simsbury, CT) failed in 1978. Founded in 1968 with 90 students, Westledge grew to 270 students, yet the school overextended itself with its expansion program, which ultimately led to its demise. Wykeham Rise School (Washington, CT), known to many of you, closed in 1988, and the Cisqua School (Mt. Kisco, NY) closed in 1972.

Even larger, reasonably endowed institutions have historically not been immune to economic pressures. The Northfield and Mount Hermon Schools (MA) merged in 1971 while facing financial and enrollment challenges, yet were forced to consolidate on the Mount Hermon campus in 2005. The Northfield campus stood empty and deteriorating until its sale in 2009. Abbot Academy (Andover, MA) faced bankruptcy in 1971 and was salvaged by Phillips Academy, one of the nation's most highly endowed schools. Nonetheless, the Abbot campus stood largely unused and unmaintained for over two decades, and when revitalization was finally initiated in the 1990s, the largest and most prominent Abbot building had to be destroyed, and only three of the original campus structures could be rehabilitated.

No school, large or small, financially strong or weak, can take its future for granted. Those with limited resources or unwise allocation of such resources are most vulnerable to failure.

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TOWN OF LITCHFIELD

P.O. BOX 488
LITCHFIELD, CONNECTICUT 06759

TOWN OF LITCHFIELD
LEGAL NOTICE

Notice is hereby given that the Site Plan/Special Exception Application submitted by The Forman School, Inc., to change the existing residential use of the property to educational purposes for administrative offices and a residential apartment, was denied by the Litchfield Planning and Zoning Commission at its meeting of May 3, 1993; property located on 54 Norfolk Road.

A copy of the vote and said application are on file in the Planning and Zoning Office and can be viewed during regular business hours.

Dated in Litchfield, Connecticut this 14th day of May, 1993.

Anne R. Talcott / mw
Anne R. Talcott, Chairman

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155 Conn. 310

155 Conn. 310 (Conn. 1967)

231 A.2d 649

The SAMP MORTAR LAKE COMPANY

v.

TOWN PLAN AND ZONNING COMMISSION OF the TOWN OF FAIRFIELD.

Supreme Court of Connecticut.

July 6, 1967

[231 A.2d 650]

Austin K. Wolf, Bridgeport, for appellant (plaintiff).

John J. Darcy, Town Atty., for appellee (defendant).

Before KING, C.J., and ALCORN, HOUSE, THIM and RYAN, JJ.

155 Conn. 311

HOUSE, Associate Justice.

This is an appeal from a judgment of the Court of Common Pleas dismissing the plaintiff's appeal from a decision of the defendant commission changing the zonal classification of the plaintiff's property, which consists of nine-tenths of an acre on the southeast corner of Samp Mortar Drive and Brookside Drive in Fairfield, from industrial to residence A. The property was the only industrial lot in a large residential section of Fairfield and is the residual piece remaining to the plaintiff after it had subdivided and developed all the surrounding area, where it built approximately 500 one-family houses.

The property is irregularly shaped and is situated in part on the side of a rather steep slope. It is subject to a forty-foot easement which transverses the property lengthwise, parallel with Samp Mortar Drive, on which the property faces. The easement is owned by the Bridgeport Hydraulic Company, and through it, at a depth of approximately three and one-half feet, passes a large water main. The property was at one time the site of a pumping station for the Hydraulic Company and apparently for that reason was classified in the

155 Conn. 312

industrial zone when Fairfield adopted zoning regulations in 1925. At the time of the hearing on the application to rezone, a large brick industrial building on the property was used by the plaintiff as a truck and storage terminal for its vehicles and equipment and, in part, as a teenage center.

It is the contention of the plaintiff that the change of zone from industrial to residence A would cause such a drastic reduction in the value of the premises as to render the action of the commission invalid because it would constitute the taking of the property without just compensation in violation of the applicable provisions of the federal and state constitutions. The plaintiff relies on the rule of such cases as *Suffield Heights Corporation v. Town Planning Commission,* 144 Conn. 425, 429, 133 A.2d 612, and *Del Buono v. Board of Zoning Appeals,* 143 Conn. 673, 678, 124 A.2d 915, 918, in which this court stated that '(a) classification permanently restricting the enjoyment of property to such an extent that it cannot be utilized for any reaonable purpose goes beyond valid regulation and constitutes a taking without due process.' See also *Dooley v. Town Plan & Zoning Commission,* 151 Conn. 304, 308, 197 A.2d 770.

In granting the application for the change of zone, the commission listed seven reasons for its action: (1) The change is in accordance with the adopted comprehensive plan of the town of Fairfield. (2) The change will promote the health and general welfare of the community and the neighborhood. (3) The change provides for the most appropriate use of the property which will be in accordance with the residential character of the neighborhood and the general area. (4) The residential classification will lessen the traffic confusion in the street.

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(5) The conditions pertaining to the original industrial zone classification have substantially changed, and these changes consist of increased residential growth in the area, increased traffic movement along the road and the road extension, all of which require that traffic confusion be lessened by the elimination of the industrial classification. (6) The residential zone classification will provide for the proper [231 A.2d 651] development of the land and maintain property and residential values and prevent the development of the land for industrial purposes, which would seriously reduce the property and residential values of the neighborhood. (7) The character of the land is peculiarly suitable for residential use.

The reasons given by the commission for the change of zone are valid, are fully supported by the record; *Andrew C. Petersen, Inc. v. Town Plan & Zoning Commission,* 154 Conn. 638, 643, 228 A.2d 126; and were confirmed by the court's inspection of the premises, as indicated in its memorandum of decision. 'The object of zoning is to adopt measures to regulate property uses in conformance with a comprehensive plan in a manner to advance the public welfare.' *Steiner, Inc. v. Town Plan & Zoning Commission,* 149 Conn. 74, 75, 175 A.2d 559, 560; *George LaCava & Sons, Inc. v. Town Plan & Zoning Commission,* 154 Conn. 309, 311, 225 A.2d 198. 'The modification of zone boundaries and regulations by a zoning commission partakes of the nature of legislative proceedings. The circumstances and conditions concerning zone changes are peculiarly within the knowledge of the zoning commission.' *Metropolitan Homes, Inc. v. Town Plan & Zoning Commission,* 152 Conn. 7, 10, 202 A.2d 241. Courts cannot substitute their judgment for the wide and liberal discretion vested in the local zoning authority

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when it is acting within its prescribed legislative powers. *Lupinacci v. Planning & Zoning Commission,* 153 Conn. 694, 699, 220 A.2d 274; *Summ v. Zoning Commission,* 150 Conn. 79, 89, 186 A.2d 160. 'Unless there is a clear abuse of discretion by the zoning authority which results in an unwarranted discrimination against the property owner or an unreasonable deprivation of his property rights, the welfare of the public, rather than private gain, is a paramount consideration for the authority. *State v. Hillman,* 110 Conn. 92, 105, 147 A. 294; *Talmadge v. Board of Zoning Appeals,* 141 Conn. 639, 645, 109 A.2d 253.' *Corsino v. Grover,* 148 Conn. 299, 311, 170 A.2d 267, 273, 95 A.L.R.2d 751.

The claims of the plaintiff were ably and fully presented at the hearing Before the commission. There was testimony which, if believed in its entirety, would indicate that the change of zone would result in a substantial reduction in the value of the property. An expert witness testified for the plaintiff that in his opinion the present market value of the land and building was $45,000, the cost of demolishing the building would amount to $15,000 and the value of the two resulting residence building lots would be $8000; all of this, in his opinion, would result in a loss of market value of the property of $52,000. The president of the plaintiff company testified that if the property were confined to a residence A building use, it would cost $11,500 per lot as raw land and that in such circumstances it would not be economically feasible to build two houses thereon which would have to sell in a $15,000 to $16,000 range.

On the other hand, on the appeal to the Court of Common Pleas and in this court, the commission emphasized that although there was no evidence of

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value other than that offered by the plaintiff's witnesses, that testimony, even if credible, was predicated on an immediate conversion of the property to residential uses, whereas, in fact, the plaintiff could continue its own

nonconforming industrial use of the property, although it could not thereafter devote the premises to other permitted industrial uses entirely inappropriate to the large residential community which it had itself constructed in the surrounding area.

There is little doubt that the plaintiff will be disadvantaged economically by the change of zone but the change does not amount to confiscation or deprive the plaintiff of all reasonable use of his land, as was the case in *Dooley v. Town Plan*

[231 A.2d 652] & *Zoning Commission,* 151 Conn. 304, 197 A.2d 770, *Suffield Heights Corporation v. Town Planning Commission,* 144 Conn. 425, 133 A.2d 612, and *Corthouts v. Town of Newington,* 140 Conn. 284, 99 A.2d 112, 38 A.L.R.2d 1136. Paraphrasing what we said in *DeForest & Hotchkiss Co. v. Planning & Zoning Commission,* 152 Conn. 262, 271, 272, 205 A.2d 774, the burden of proving the unconstitutionality of a legislative enactment even though of local origin, is not a light one. Of course, the value of the plaintiff's property would also certainly be enhanced by leaving it in an industrial zone where it would be available for the most objectionable uses permissible in Fairfield. This would also be true of any other nonconforming industrial use in a residential zone. But such a fact would not justify overthrowing the commission's zonal classification as unconstitutional. The maximum possible enrichment of a particular landowner is not a controlling purpose of zoning. The financial effect on a particular owner must be balanced against the health, safety and welfare of the

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community. *Dooley v. Town Plan & Zoning Commission,* supra, 151 Conn. 309, 197 A.2d 770.

The trial court concluded from its review of the evidence, its inspection of the premises and our decision in DeForest & Hotchkiss Co. v. Planning & Zoning Commission, supra, that the reasons set forth by the commission in the minutes of its executive session for allowing this zone change are more than adequate to sustain the commission's action, that the change of zone was not confiscatory but a reasonable exercise of the police power to regulate the use of property, and accordingly was not arbitrary, illegal or in abuse of its discretion. On the record, this was a conclusion which the court could reasonably and logically reach.

There is no error.

In this opinion the other Judges concurred.

(9) AAA

Sec. 8-2. Regulations. (a) The zoning commission of each city, town or borough is authorized to regulate, within the limits of such municipality, the height, number of stories and size of buildings and other structures; the percentage of the area of the lot that may be occupied; the size of yards, courts and other open spaces; the density of population and the location and use of buildings, structures and land for trade, industry, residence or other purposes, including water-dependent uses, as defined in section 22a-93, and the height, size and location of advertising signs and billboards. Such bulk regulations may allow for cluster development, as defined in section 8-18. Such zoning commission may divide the municipality into districts of such number, shape and area as may be best suited to carry out the purposes of this chapter; and, within such districts, it may regulate the erection, construction, reconstruction, alteration or use of buildings or structures and the use of land. All such regulations shall be uniform for each class or kind of buildings, structures or use of land throughout each district, but the regulations in one district may differ from those in another district, and may provide that certain classes or kinds of buildings, structures or uses of land are permitted only after obtaining a special permit or special exception from a zoning commission, planning commission, combined planning and zoning commission or zoning board of appeals, whichever commission or board the regulations may, notwithstanding any special act to the contrary, designate, subject to standards set forth in the regulations and to conditions necessary to protect the public health, safety, convenience and property values. Such regulations shall be made in accordance with a comprehensive plan and in adopting such regulations the commission shall consider the plan of conservation and development prepared under section 8-23. Such regulations shall be designed to lessen congestion in the streets; to secure safety from fire, panic, flood and other dangers; to promote health and the general welfare; to provide adequate light and air; to prevent the overcrowding of land; to avoid undue concentration of population and to facilitate the adequate provision for transportation, water, sewerage, schools, parks and other public requirements. Such regulations shall be made with reasonable consideration as to the character of the district and its peculiar suitability for particular uses and with a view to conserving the value of buildings and encouraging the most appropriate use of land throughout such municipality. Such regulations may, to the extent consistent with soil types, terrain, infrastructure capacity and the plan of conservation and development for the community, provide for cluster development, as defined in section 8-18, in residential zones. Such regulations shall also encourage the development of housing opportunities, including opportunities for multifamily dwellings, consistent with soil types, terrain and infrastructure capacity, for all residents of the municipality and the planning region in which the municipality is located, as designated by the Secretary of the Office of Policy and Management under section 16a-4a. Such regulations shall also promote housing choice and economic diversity in housing, including housing for both low and moderate income households, and shall encourage the development of housing which will meet the housing needs identified in the state's consolidated plan for housing and community development prepared pursuant to section 8-37t and in the housing component and the other components of the state plan of conservation and development prepared pursuant to section 16a-26. Zoning regulations shall be made with reasonable consideration for their impact on agriculture, as defined in subsection (q) of section 1-1. Zoning regulations may be made with reasonable consideration for the protection of historic factors and shall be made with reasonable consideration for the protection of existing and potential public surface and ground drinking water supplies. On and after July 1, 1985, the regulations shall provide that proper provision be made for soil erosion and sediment control pursuant to section 22a-329. Such regulations may also encourage energy-efficient patterns of development, the use of solar and other renewable forms of energy, and energy conservation. The regulations may also provide for incentives for developers who use passive solar energy techniques, as defined in subsection (b) of section 8-25, in planning a residential subdivision development. The incentives may include, but not be limited to, cluster development, higher density development and performance standards for roads, sidewalks and underground facilities in the subdivision. Such regulations may provide for a municipal system for the creation of development rights and the permanent transfer of

such development rights, which may include a system for the variance of density limits in connection with any such transfer. Such regulations may also provide for notice requirements in addition to those required by this chapter. Such regulations may provide for conditions on operations to collect spring water or well water, as defined in section 21a-150, including the time, place and manner of such operations. No such regulations shall prohibit the operation of any family day care home or group day care home in a residential zone. No such regulations shall prohibit the use of receptacles for the storage of items designated for recycling in accordance with section 22a-241b or require that such receptacles comply with provisions for bulk or lot area, or similar provisions, except provisions for side yards, rear yards and front yards. No such regulations shall unreasonably restrict access to or the size of such receptacles for businesses, given the nature of the business and the volume of items designated for recycling in accordance with section 22a-241b, that such business produces in its normal course of business, provided nothing in this section shall be construed to prohibit such regulations from requiring the screening or buffering of such receptacles for aesthetic reasons. Such regulations shall not impose conditions and requirements on manufactured homes having as their narrowest dimension twenty-two feet or more and built in accordance with federal manufactured home construction and safety standards or on lots containing such manufactured homes which are substantially different from conditions and requirements imposed on single-family dwellings and lots containing single-family dwellings. Such regulations shall not impose conditions and requirements on developments to be occupied by manufactured homes having as their narrowest dimension twenty-two feet or more and built in accordance with federal manufactured home construction and safety standards which are substantially different from conditions and requirements imposed on multifamily dwellings, lots containing multifamily dwellings, cluster developments or planned unit developments. Such regulations shall not prohibit the continuance of any nonconforming use, building or structure existing at the time of the adoption of such regulations. Such regulations shall not provide for the termination of any nonconforming use solely as a result of nonuse for a specified period of time without regard to the intent of the property owner to maintain that use. Any city, town or borough which adopts the provisions of this chapter may, by vote of its legislative body, exempt municipal property from the regulations prescribed by the zoning commission of such city, town or borough; but unless it is so voted municipal property shall be subject to such regulations.

(b) In any municipality that is contiguous to Long Island Sound the regulations adopted under this section shall be made with reasonable consideration for restoration and protection of the ecosystem and habitat of Long Island Sound and shall be designed to reduce hypoxia, pathogens, toxic contaminants and floatable debris in Long Island Sound. Such regulations shall provide that the commission consider the environmental impact on Long Island Sound of any proposal for development.

(c) In any municipality where a traprock ridge, as defined in section 8-1aa, or an amphibolite ridge, as defined in section 8-1aa, is located the regulations may provide for development restrictions in ridgeline setback areas, as defined in said section. The regulations may restrict quarrying and clear cutting, except that the following operations and uses shall be permitted in ridgeline setback areas, as of right: (1) Emergency work necessary to protect life and property; (2) any nonconforming uses that were in existence and that were approved on or before the effective date of regulations adopted under this section; and (3) selective timbering, grazing of domesticated animals and passive recreation.

(1949 Rev., S. 837; November, 1955, S. N10; 1959, P.A. 614, S. 2; 661; 1961, P.A. 569; 1963, P.A. 133; 1967, P.A. 801; P.A. 77-509, S. 1; P.A. 78-314, S. 1; P.A. 80-327, S. 1; P.A. 81-334, S. 2; P.A. 83-388, S. 6, 9; P.A. 84-263; P.A. 85-91, S. 2, 5; 85-279, S. 3; P.A. 87-215, S. 1, 7; 87-232; 87-474, S. 1; 87-490, S. 1; P.A. 88-105, S. 2; 88-203, S. 1; P.A. 89-277, S. 1; P.A. 91-170, S. 1; 91-392, S. 1; 91-395, S. 1, 11; P.A. 92-50; P.A. 93-385, S. 3; P.A. 95-239, S. 2; 95-335, S. 14, 26; P.A. 97-296, S. 2, 4; P.A. 98-105, S. 3; P.A. 10-87, S. 4; P.A. 11-124, S. 2; 11-188, S. 3.)