



TOWN OF NEWTOWN

ZONING BOARD OF APPEALS

MINUTES

Regular Meeting

Wednesday July 13, 2016 at 7:30 pm

Municipal Center – Council Chambers

These minutes are subject to approval by the Zoning Board of Appeals.

Present: Charles Annett III, Alan Clavette, Barbara O'Connor, Ross Carley, Timothy Cronin, Jane Sharpe, Stephen Singlak, Joseph Bojnowski

Also Present: George Benson (Director of Planning), Jean St. Jean (Borough Zoning Official), Robert Sibley (Deputy Director of Land Use), Michael Lynch (Legal Counsel), Georgia Contois (Clerk)

The meeting was opened by Chairman Annett at 7:32pm, and Ms. O'Connor called the roll.

With no changes to be made on the Minutes from June 1, 2016, Mr. Carley made a motion to accept. Mr. Clavette seconded. All were in favor.

Docket # 16-05 Application of Daniel Amaral to appeal for Correction of Alleged Error in a decision of the Zoning Officer who on June 17, 2016 issued violations of certain sections (1.06.100, 1.06.600, 1.06.1300, 1.06.900) of the Newtown Zoning Regulations.

Ms. O'Connor read the call for the hearing.

Attorney Robert Hall, 43 Main Street, and Daniel Amaral, 41 Elm Street, approached the board and introduced themselves. Mr. Hall submitted an Affidavit for the mailings. He first clarified a discrepancy of the quantity of lots included in the Amaral property. Through much discussion and research, Mr. Hall determined that there is only one lot; 40 South Main Street. Mr. Hall submitted many documents to the Board including surveys, letters, and aerial photographs via GIS.

Alan Shephard, 1 Glover Avenue, presented a parking layout plan to alleviate concerns over the parking lot and correct encroachments to the wetlands. The plan included planted islands and designated spots for different sized vehicles. Mr. Hall explained that according to Newtown's Zoning Regulations, a building consisting of 8,420 square feet would require 43 parking spaces. A large part of upgrading the lot would be to clean up debris and excess materials. Rob Sherwood, 246 Federal Road (Brookfield), submitted a landscape plan to 'green-up' the site and return it to a residential feel.

Mr. Hall defended the Applicant's position against the Zoning Enforcement Officer, and briefly explained why they did not believe each named regulation was applicable. He started by disputing that "junk" by definition is open to opinion, and if organization was brought to the site, there would be no disorderly accumulation. Mr. Annett wanted to know if all of the vehicles were registered or not. Mr. Amaral believed most vehicles are. Mr. Hall asked the Board to consider holding off on making a decision until their meeting in September to allow work to be done on the property in the mean-time.

Mr. Sibley spoke towards the violation, saying he has been actively monitoring the site for possible Enforcement since August of 2015. He spoke of the violation folder for the record, which included a listing of vehicles and items on the property, maps, and photo documentation. He also made reference to a Special Exception from 1982 and a Zone Change from 1967, which are on file in the Land Use Department. Mr. Sibley spoke about the accumulated waste and abandoned vehicles, as well as the lack of a new car sales permit. Ms. O'Connor questioned the timing of the violation, stating that Mr. Amaral has not changed the lot over the course of many years. Mr. Sibley explained that violations against the property have been compiling incrementally. He also clarified that the use of a lot for commercial parking has not been allowed in any zone per the Newtown Zoning Regulations.

Mr. Hall wanted to be sure that the violation folder was submitted for the record, and asked for a recess to review all of the documents in the file. Upon returning, Mr. Hall asked to submit a map from the violation folder as its own separate exhibit. He asked the Board if they had been to the site, and could note anything visible that would affect the application. Mr. Annett told Mr. Hall and Mr. Amaral that the removal of the large trees by the road brought view to many violations that were in plain sight. However, he stated that the submitted landscaping plan is out of the purview of the ZBA. Mr. Sibley also clarified that the violation folder, as well as the Special Exception and Zone Change, continue to be available in the Land Use office. The violation folder was entered into the record.

Mr. Annett declared the hearing closed at 9:35pm, and opened a discussion between Board members. Many members agreed that there was excess junk on the property, but it did not fall to the description of a junkyard. Much discussion ensued about the sales of used vehicles given that the primary use is not the sales of new vehicles. Mr. Carley believed this use to be 'grandfathered' and many agreed. Mr. Annette asked for a five minute recess to speak with the Counsel. Upon returning, discussion continued regarding the practice of selling used cars on the property. Mr. Clavette requested information from Mr. Lynch regarding this issue. Mr. Lynch advised the Board that the property was located in a B-2 zone that allowed the sale of new cars and the accessory use of selling used cars. Those activities were therefore conforming uses of the property. When the new car sales terminated, used cars could no longer be sold as an accessory use under the regulations. The practice of selling used cars, was not a non-conforming use because it was permitted as an accessory use under the regulations. Therefore, the lot cannot be 'grandfathered' to only sell used vehicles.

The Chairman requested that the Board vote on each separate violation listed in the Enforcement Officer's Violation letter:

Section 1.06.100 – Automobile Junkyards – Voted to **NOT UPHOLD**

| | |
|------------------|----------------|
| Annett..... AYE | Carley.....AYE |
| Clavette.....AYE | Cronin.....AYE |
| O'Connor.....AYE | |

Section 1.06.600 – Unregistered Vehicles – Voted to **UPHOLD**

| | |
|------------------|----------------|
| Annett..... AYE | Carley.....AYE |
| Clavette.....AYE | Cronin.....AYE |
| O'Connor.....AYE | |

Section 1.06.1300 – Accumulation of Waste, Abandoned or Used Materials – Voted to **UPHOLD**

| | |
|------------------|----------------|
| Annett..... AYE | Carley.....AYE |
| Clavette.....AYE | Cronin.....AYE |
| O'Connor.....NAY | |

Vehicle Storage – Commercial Parking Lots – Voted to **UPHOLD**

Annett..... AYE
Clavette.....AYE
O’Connor.....NAY

Carley.....NAY
Cronin.....AYE

Section 1.06.900 – Used Car Sales – Voted to **UPHOLD**

Annett..... AYE
Clavette.....AYE
O’Connor.....AYE

Carley.....NAY
Cronin.....AYE

Before closing the meeting, Mr. Clavette thanked Mr. Cronin for his 21 years of service to the Town on various boards. He will be moving out of state, and will be greatly missed.

With no other business, Ms. Sharpe presented a motion to adjourn. Mr. Cronin seconded. All members were in favor. The meeting was adjourned at 10:49pm.

Zoning Board of Appeals of the Town of Newtown

*Respectfully Submitted,
Georgia Contois, Clerk*



Exhibit "A"

BOOK 474 PAGE 560

5058

Executors' Deed of Distribution

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

WHEREAS, DANIEL J. AMARAL, of 41 Elm Drive, Newtown, Connecticut, and JOHN P. MALONEY, of 2602 East Verbena Drive, Phoenix, Arizona, are the duly appointed and acting Executors of the Will of ANTHONY AMARAL, late of the Town of Newtown, who died on January 28, 1989, and whose Estate is being administered under the jurisdiction of the Probate Court for the District of Newtown, Connecticut; and

WHEREAS, said Will, in Article SECOND thereof, devises to DANIEL J. AMARAL certain real property which had been owned by said Anthony Amaral at the time of his death; and

WHEREAS, said Daniel J. Amaral and John P. Maloney, as such Executors, now desire to distribute such real property in accordance with the provisions of said Article SECOND; and said Daniel J. Amaral wishes that such distribution be made to him;

NOW THEREFORE, KNOW YE, that DANIEL J. AMARAL and JOHN P. MALONEY, Executors of the Will of ANTHONY AMARAL, in consideration of the sum of One Dollar (\$1.00) received to their full satisfaction of DANIEL J. AMARAL, of 41 Elm Drive, Newtown, Connecticut, and pursuant to the terms of Article SECOND of the Will of said ANTHONY AMARAL do grant, bargain, sell and confirm unto said DANIEL J. AMARAL all the right, title, interest, claim and demand which said Anthony Amaral had at the time of death, or which they, as Executors of the Will of Anthony Amaral, have or ought to have in and to those two certain pieces or parcels of land, with the buildings and improvements thereon (the "premises"), identified in the Inventory of the Executors of the Estate of Anthony Amaral filed in the Probate Court for the District of Newtown as the "second parcel," which two pieces are situated in the Town of Newtown, County of Fairfield and State of Connecticut and more particularly described as follows:

First Piece:

Commencing at Intersection of the Town Road (Borough Lane) and State Highway (Main Street), thence S. 31° E. 149' 9"; thence S. 28° E. 50' 3"; thence S. 75° W. 237'; thence N. 10° 40" W. 200'; thence N. 86° 30' E. 67'; thence N. 71° E. 105' 6" to the point or place of beginning, containing .94 of an acre bounded North by the Town Road (Borough Lane); East by the State Highway (Main Street); South and West by the Second piece hereinafter described.

Being the same premises described in the Warranty Deed from Helen Egan to Anthony Amaral dated December 13, 1932 and recorded December 13, 1932 in Volume 81, Page 68 of the Newtown Land Records.

Second Piece:

Commencing at a point on the westerly side of Main Street, also known as Route #25, that marks the southeast corner of the first piece, hereinabove described; thence proceeding southerly along the westerly side of said Main Street for a distance of 427.22 feet;

Thence South, 73', 53' 30" West, 334.89 feet, said last course being along land now or formerly of John W. and Ruth W. Trend;

Thence North, 16', 18' West, 619.99 feet, said last course being along land of Mary Helen Amaral;

Thence easterly along the southerly line of Borough Lane, 50';

TAT93-52162

BOOK 474 PAGE 561
2

Thence South, 12', 29' 10" East, 200 feet, said last course being along the first piece hereinabove described;

Thence North, 71', 9', 20", 246.47 feet to the point of place of beginning, said last course being along the first piece, hereinabove described;

Containing 3.209 acres, more or less.

Being the same premises described in the Quit Claim Deed from Mary Helen Amaral to Anthony Amaral dated May 4, 1970 and recorded May 4, 1970 in Volume 218, Page 90 of the Newtown Land Records.

Said Premises being known as 40 South Main Street.

Said Premises being subject to the effect, if any, of the following:

1. An easement to The Newtown Water Company dated November 29, 1929 and recorded December 2, 1929 in Volume 76, Page 130 of the Newtown Land Records;
2. An agreement between Anthony Amaral and The Newtown Water Company dated May 12, 1966 and recorded May 23, 1966 in Volume 194, Page 461 of the Newtown Land Records, and
3. A drainage easement to the State of Connecticut dated October 26, 1970 and recorded January 13, 1971 in Volume 222, Page 151 of the Newtown Land Records.

TO HAVE AND TO HOLD the above granted and bargained premises, with the apurtenances thereof, unto the said distributee, his heirs and assigns, to his and their own proper use and benefit forever. And the said Daniel J. Amaral and John P. Maloney, as Executors of the Will of Anthony Amaral, do hereby covenant with the said distributee, his heirs and assigns that they have full power and authority, as such Executors, to grant, bargain, sell and confirm the above described premises in manner and form aforesaid, and they, as such Executors, do further covenant to the said distributee, his heirs and assigns, that they have not previously conveyed said premises as aforesaid.

IN WITNESS WHEREOF, Daniel J. Amaral and John P. Maloney, as Executors of the Will of Anthony Amaral, have hereunto set their hands and seals as of this 11th day of August, 1993.

Signed, Sealed, and Delivered
in the presence of:

James C. T. Trevisan
James C. T. Trevisan
MARION C. TREVISAN

Daniel J. Amaral
Daniel J. Amaral
Co-Executor u/w Anthony Amaral

John P. Maloney
John P. Maloney
L.S.
Capri A. Whaley

John P. Maloney
John P. Maloney
Co-Executor u/w Anthony Amaral

BOOK **474** PAGE **562**

STATE OF CONNECTICUT)
)
COUNTY OF FAIRFIELD) SS:

On this the 11th day of August, 1993, before me, ~~James W. Venman~~ the undersigned officer, personally appeared Daniel J. Amaral, known to me (or satisfactorily proven) to be the person described in the foregoing instrument, and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand.

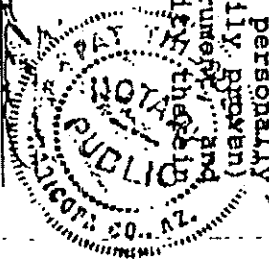
James W. Venman
James W. Venman
Commissioner of the Superior Court

STATE OF ARIZONA)
)
COUNTY OF MARICOPA) SS:

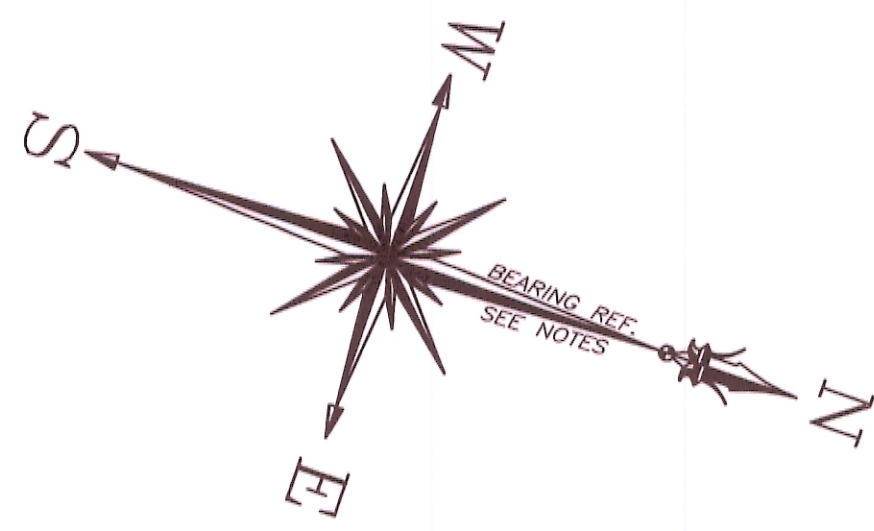
On this the 11th day of August, 1993, before me, ~~James W. Venman~~ the undersigned officer, personally appeared John P. Maloney, known to me (or satisfactorily proven) to be the person described in the foregoing instrument, and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand.

Patricia S. Lucette
Notary Public
My Commission Expires: _____
My Commission Expires April 24, 1999



9:00AM
Rec'd. for Record 8-11-1993
Town Clerk of Newtown
Patricia S. Lucette



N/F
48 SOUTH MAIN
STREET LLC

FIRST PIECE AREA:

V.81, P.68
41,185± S.F.
0.946± ACRES

SECOND PIECE AREA:

V.218, P.90
139,800± S.F.
3.209± ACRES

TOTAL AREA:

180,985± S.F.
4.155± ACRES

NOTES:

THIS SURVEY HAS BEEN PREPARED IN ACCORDANCE WITH SECTIONS 20-300b-1 THROUGH 20-300b-20 OF THE REGULATIONS OF CONNECTICUT STATE AGENCIES - "MINIMUM STANDARDS FOR SURVEYS AND MAPS IN THE STATE OF CONNECTICUT" AS ADOPTED BY THE CONNECTICUT ASSOCIATION OF LAND SURVEYORS, INC. 9/26/96. IT IS A DATA ACCUMULATION PLAN BASED ON A DEPENDENT RESURVEY, CONFORMING TO CLASS "A-2-T-D" ACCURACY AND IS INTENDED TO BE USED FOR DISCUSSION PURPOSES.

PROPERTY IS DEPICTED AS LOT 28-1-5 IN THE ASSESSORS OFFICE.

PROPERTY IS LOCATED IN "B-2" ZONE

A PORTION OF THE PROPERTY LIES IN FEMA FLOOD HAZARD ZONE "X" (0.2% ANNUAL CHANCE FLOOD HAZARD) PER FIRM PANEL 09001C0168F, EFFECTIVE 6-18-2010.

ZONE AND SETBACKS ARE SUBJECT TO THE DETERMINATION OF THE ZONING ENFORCEMENT OFFICER.

REFER TO TOWN CLERK MAP 3878

REFER TO DEED OF RECORD IN BOOK 474, PAGE 560 N.L.R.

REFER TO MAP TITLED "FINAL SUBDIVISION MAP PREPARED FOR MARY HELEN AMARAL" DATED 12-22-06, REVISED 5-26-07, PREPARED BY ROBERT M. HENRICI.

REFER TO MAP TITLED "SITE PLAN - PREPARED FOR AMARAL MOTORS, INC." DATED 4-1-1981 AND PREPARED BY KASPER-RYAN ASSOCIATES.

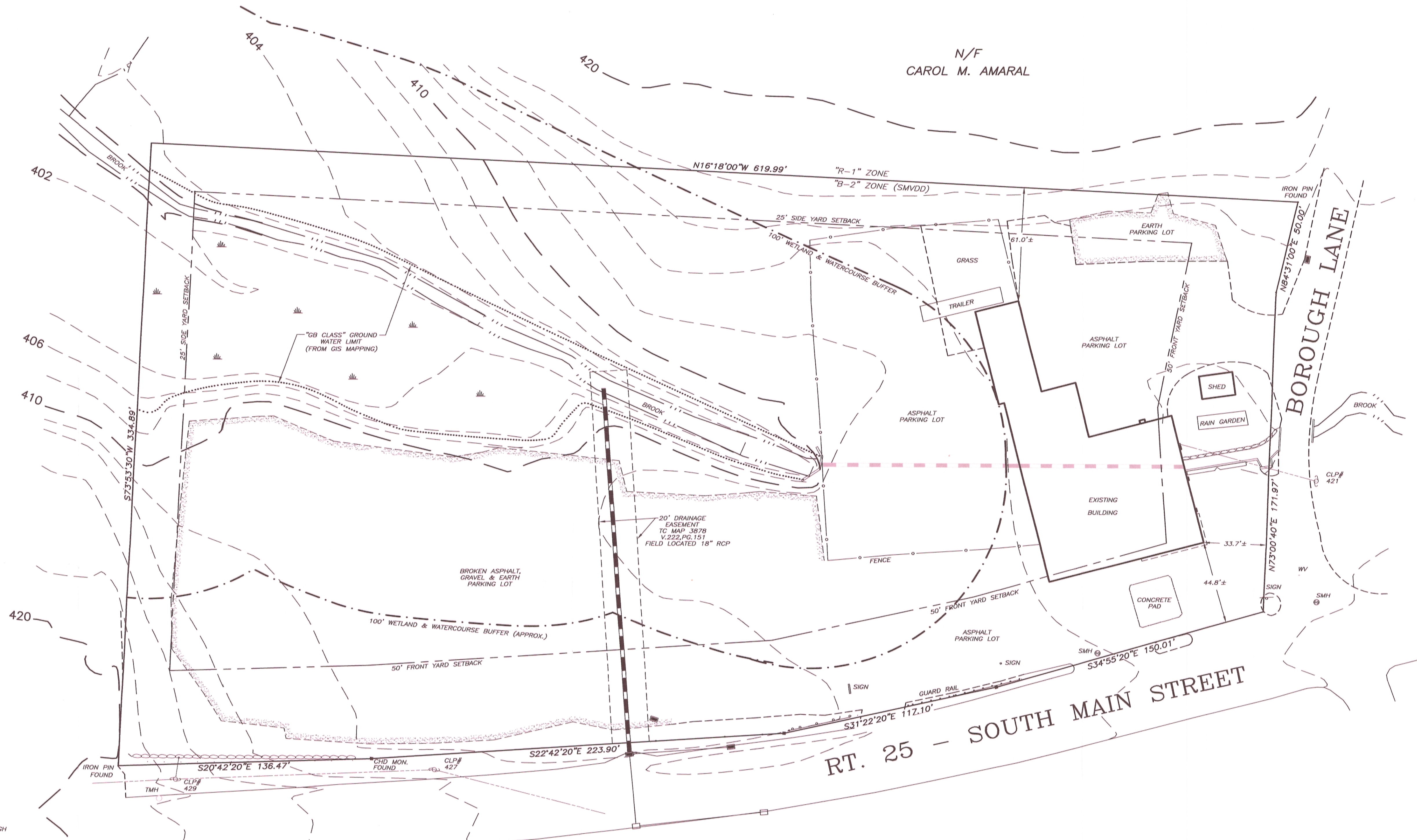
REFER TO MAP TITLED "PRELIMINARY PARKING LAYOUT" PREPARED FOR AMARAL MOTORS, INC. BY NOWAKOWSKI - O'BYMACHOW - KANE, ASSOCIATES, DATED 1-26-16.

UNDERGROUND IMPROVEMENTS OR ENCROACHMENTS IF ANY ARE NOT DEPICTED OR NOTED.

TOPOGRAPHY AND WETLANDS BASED ON TOWN OF NEWTOWN GIS MAPPING.

THIS SURVEY WAS PREPARED FOR A SPECIFIC PURPOSE, ANY USE OTHER THAN THAT WHICH WAS ORIGINALLY INTENDED IS A MISUSE OF THIS INFORMATION AND RENDERS THE PREPARERS DECLARATION NULL AND VOID.

UNAUTHORIZED ALTERATIONS OR ADDITIONS TO THIS SURVEY, WHICH BEARS THE LICENSED SURVEYORS LIVE SIGNATURE AND EMBOSSED SEAL, RENDERS ANY DECLARATION NOTED HEREON NULL AND VOID.



BRAUTIGAM LAND SURVEYORS, P.C.

90 South Main Street
Newtown, Connecticut 06470
Telephone (203) 270-7810
Facsimile (203) 270-8392
E-mail Surveyor@BrautigamLand.com

TO MY KNOWLEDGE AND BELIEF, THIS SURVEY AND MAP ARE "SUBSTANTIALLY CORRECT" AS NOTED HEREON.

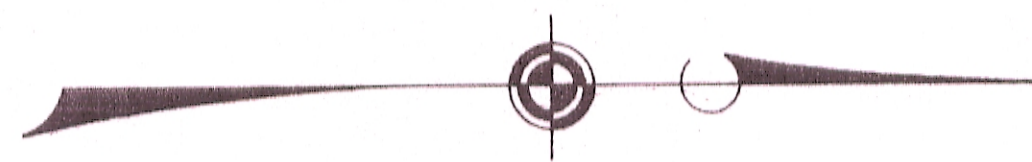
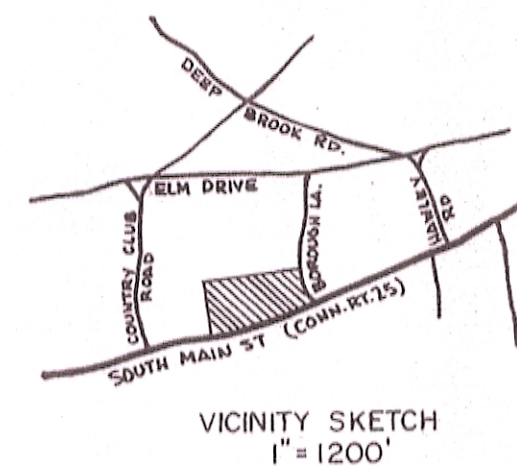
Paul A. Brautigam
PAUL A. BRAUTIGAM CT. LIC. No. 15166

THE SURVEY DEPICTED HEREON IS NULL AND VOID WITHOUT THE LICENSED SURVEYORS LIVE SIGNATURE AND EMBOSSED SEAL.

| | | | | | |
|---------------------|-----------------|-----------------|-----|------|-----------|
| JOB No. 5902010.01 | SCALE: 1" = 30' | DRAWN BY: JAB | No. | DATE | REVISIONS |
| FIELD NOTES: 234.56 | DATE: 6/27/16 | CHECKED BY: PAB | | | |
| | | | | | |
| 5902010-01 DAP1 | | | | | |

DATA ACCUMULATION PLAN
PREPARED FOR
DANIEL J. AMARAL
40 SOUTH MAIN STREET
NEWTOWN, CONNECTICUT





LEGEND

- C.H.D. MONUMENT
- ⊕ FIRE HYDRANT
- ⊕ UTILITY POLE
- STONE WALL
- ⊕ SIGN
- WATER GATE
- CATCH BASIN
- CHAIN LINK FENCE
- ⊕ TELEPHONE MANHOLE
- SANITARY STORM SEWER
- EXISTING CONTOURS
- WET AREA
- PROPOSED CONTOURS
- IRON PIPE
- WETLANDS LINE AS SHOWN ON NEWTOWN INLANDS WETLANDS MAP
- ⊕ WETLANDS AS FLAGGED BY SOIL SCIENTIST

- NOTES:
- ADJOINING OWNERS AND BOUNDARIES SHOWN HEREON WERE TAKEN FROM INFORMATION AVAILABLE AT TOWN OF NEWTOWN ASSESSORS OFFICE.
 - NO SUBSTANTIAL REGRADING REQUIRED.
 - ADDITIONAL ROOF DRAINAGE TO BE TIED INTO EXISTING DRY WELL.
 - NO INCREASE IN NUMBER OF EMPLOYEES.

WETLANDS BOUNDARIES LABELED "FIELD REVISED" & SHOWN AS DASHED LINES HAVE BEEN ESTABLISHED BY

Bruce C. Jaskey 5/21/81

CERTIFIED SOIL SURVEY, SURVEYED & DRAWN ON THIS MAP BY THE OFFICE OF KASPER-RYAN ASSOC.

R.L.S.

TOWN OF NEWTOWN OFFICIAL WETLAND BOUNDARIES ARE LABELED "OFFICIAL TOWN OF NEWTOWN WETLAND LINE".

R.L.S. ON 5/21/81

MAP REFERENCE T.C.# 3878
ALSO MAP PREPARED FOR ANTHONY AMARAL RT. 25, NEWTOWN, CONN.
SCALE 1"=60' 7/12/78
PREPARED BY KASPER-RYAN ASSOC.
DAVID L. RYAN, R.L.S.

| | EXISTING | PROPOSED | ALLOWED |
|---------------|----------|----------|---------|
| BUILDING AREA | 7,220 | 8,420 | 63,343 |
| % COVERAGE | 4.0% | 4.6% | 35% |

I hereby certify that this map and survey were prepared in accordance with the standards and A-2 survey as defined in the code of Practice and Standards of Accuracy and Maps, adopted December 1977, and promulgated by the Connecticut Association of Professional Land Surveyors.

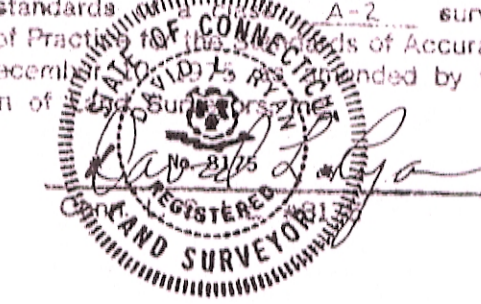


Exhibit "C"
RECEIVED
JUL 13 2016
By *gc*

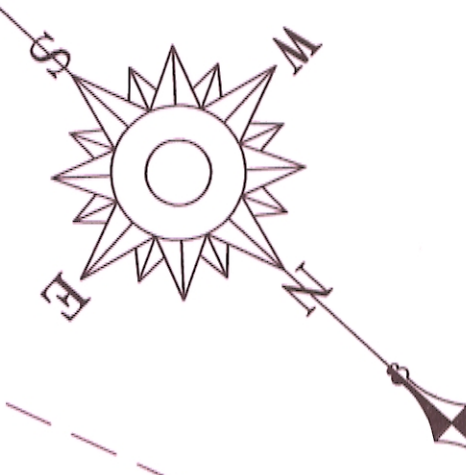
| REVISIONS | | | No. | Description | Date |
|-----------|-------------|------|-----|-------------|------|
| No. | Description | Date | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |
| | | | | | |

SITE PLAN
SOUTH MAIN STREET (CONN. RT. 25)
NEWTOWN, CONNECTICUT
PREPARED FOR
AMARAL MOTORS, INC.
180,980 SQ. FT. - 4.1547 AC. B-2 ZONE

KASPER-RYAN ASSOCIATES Engineers, Surveyors, Planners
Bethel, Connecticut

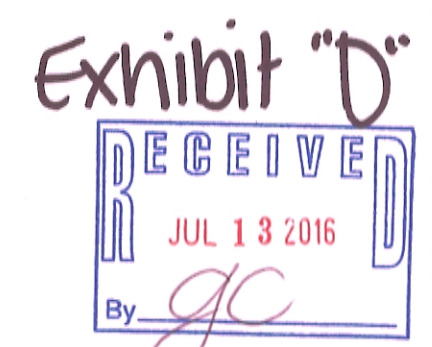
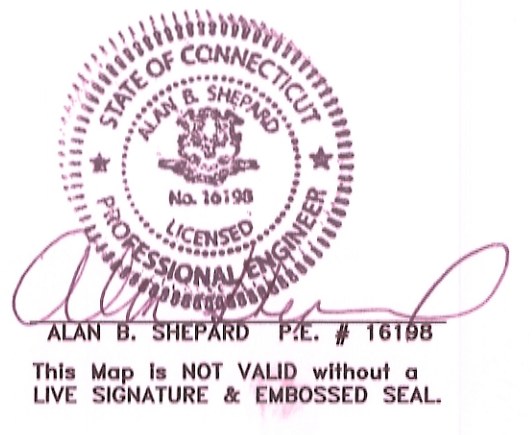
Scale: 1" = 40'
Date: 4/1/81
Sheet 1 of 1
Designed by: OEE
Drawn by: stm
Checked by: OEE/JWK
Proj. No. 719

AREA OF ENCROACHMENT IN WETLANDS = 400 Sq. Ft.
 AREA OF GRADING IN REGULATED AREA = 2,700 Sq. Ft.



LOCATION MAP
 (Approx. Scale: 1"=200')

- NOTES:
1. Field Topography Base Information is from Site Plan prepared by Kasper-Ryan Associates, dated April 1, 1981, prepared for Amaral Motors, Inc.
 2. Wetlands locations were taken from the Site Plan prepared by Kasper-Ryan Associates, dated April 1, 1981, prepared for Amaral Motors, Inc.



| | |
|---|------------------------|
| PRELIMINARY PARKING LAYOUT PREPARED FOR AMARAL MOTORS, INC. 40 SOUTH MAIN STREET NEWTOWN, CONNECTICUT | |
| SCALE: 1"= 40' | DATE: JANUARY 26, 2016 |
| | |
| MAP# | A-4175 |
| SEARCH | 4968 |
| FB/PG | 552/25 |
| DRAWING | 102075 |
| NOK CIVIL ENGINEERING LAND SURVEYING NOWAKOWSKI - O'BRYEN - KANE, ASSOCIATES CIVIL ENGINEERING & LAND SURVEYING 415 HOWE AVENUE SHELTON, CONNECTICUT 06484 PHONE: (203) 924-7745 FAX: (203) 924-7526 <i>Records Since 1980</i> | |
| DATE: | DESCRIPTION |
| | REVISIONS |

TOWN HALL SOUTH
4 FAIRFIELD CIRCLE SOUTH
NEWTOWN, CONNECTICUT 06470
TEL. (203) 270-4276
FAX (203) 270-1528



TOWN OF NEWTOWN
PLANNING AND ZONING COMMISSION

GARY FRENETTE
ZONING ENFORCEMENT OFFICER

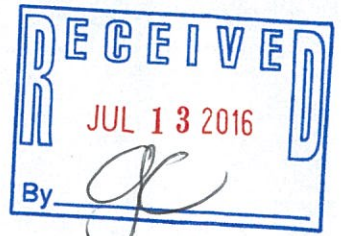


Exhibit "E"

June 24, 1999

Mr. William A. Trudeau, Jr.
47-49 South Main Street
Newtown, CT 06470

RE: Storage of Newtown Oil Trucks

Dear Mr. Trudeau:

This letter is in response to your request of storing your oil trucks at Amaral Motors, Inc.

After reviewing this request, this would be allowed at that location, as Amaral's is a non-conforming situation. As I had stated in my last letter, these trucks must be off your site by July 1, 1999.

If you have any questions, please feel free to contact me at any time.

Very truly yours,

A handwritten signature in black ink, appearing to read 'Gary Frenette', with a long horizontal line extending to the right.

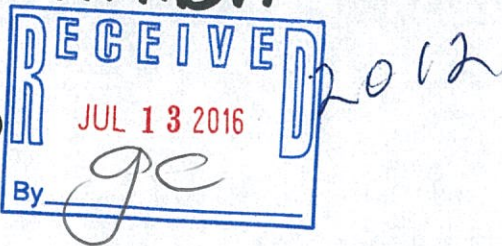
Gary Frenette
Zoning Enforcement Officer

GF/mm

cc: Joseph Walsh, Esq.

6-28-99
Daniel Amaral
OK to park
2- 6 wheel Oil
Trucks

Town of Newtown Geographic Information System (GIS)



Date Printed: 9/17/2015



MAP DISCLAIMER - NOTICE OF LIABILITY

This map is for assessment purposes only. It is not for legal description or conveyances. All information is subject to verification by any user. The Town of Newtown and its mapping contractors assume no legal responsibility for the information contained herein.

Approximate Scale: 1 inch = 100 feet



2007

Town of Newtown

Geographic Information System (GIS)



Date Printed: 9/17/2015



MAP DISCLAIMER - NOTICE OF LIABILITY

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Approximate Scale: 1 inch = 100 feet



Town of Newtown

Geographic Information System (GIS)

2002



Date Printed: 9/17/2015



MAP DISCLAIMER - NOTICE OF LIABILITY

This map is for assessment purposes only. It is not for legal description or conveyances. All information is subject to verification by any user. The Town of Newtown and its mapping contractors assume no legal responsibility for the information contained herein.

Approximate Scale: 1 inch = 100 feet







Google

<https://www.google.com/maps/@41.009158,-73.2888486,558a,21v,90h/data=!3m1!1e3>
Exhibit "H"

LINES & POINT TO POINT

Imagery ©2016 Google, Map data ©2016 Google

50 ft



2007

BOROUGH LANE

SOUTH MAIN STREET RT 25

COUNTRY CLUB ROAD

ELMDRIVE

QUEEN STREET

25

860



1 OF 1
 LP-1.0
 DRAWING NO:
 JOB NO: 16-04
 DATE: 04.12.16
 SCALE: AS NOTED
 REVISIONS:

RECEIVED
 JUL 13 2016
 By: [Signature]

Exhibit I

CLIENT:
Amaral Motors
 South Main Street
 Newtown CT

PRODUCT:
LANDSCAPE PLAN

ROBERT SHERWOOD
 LANDSCAPE ARCHITECT, LLC

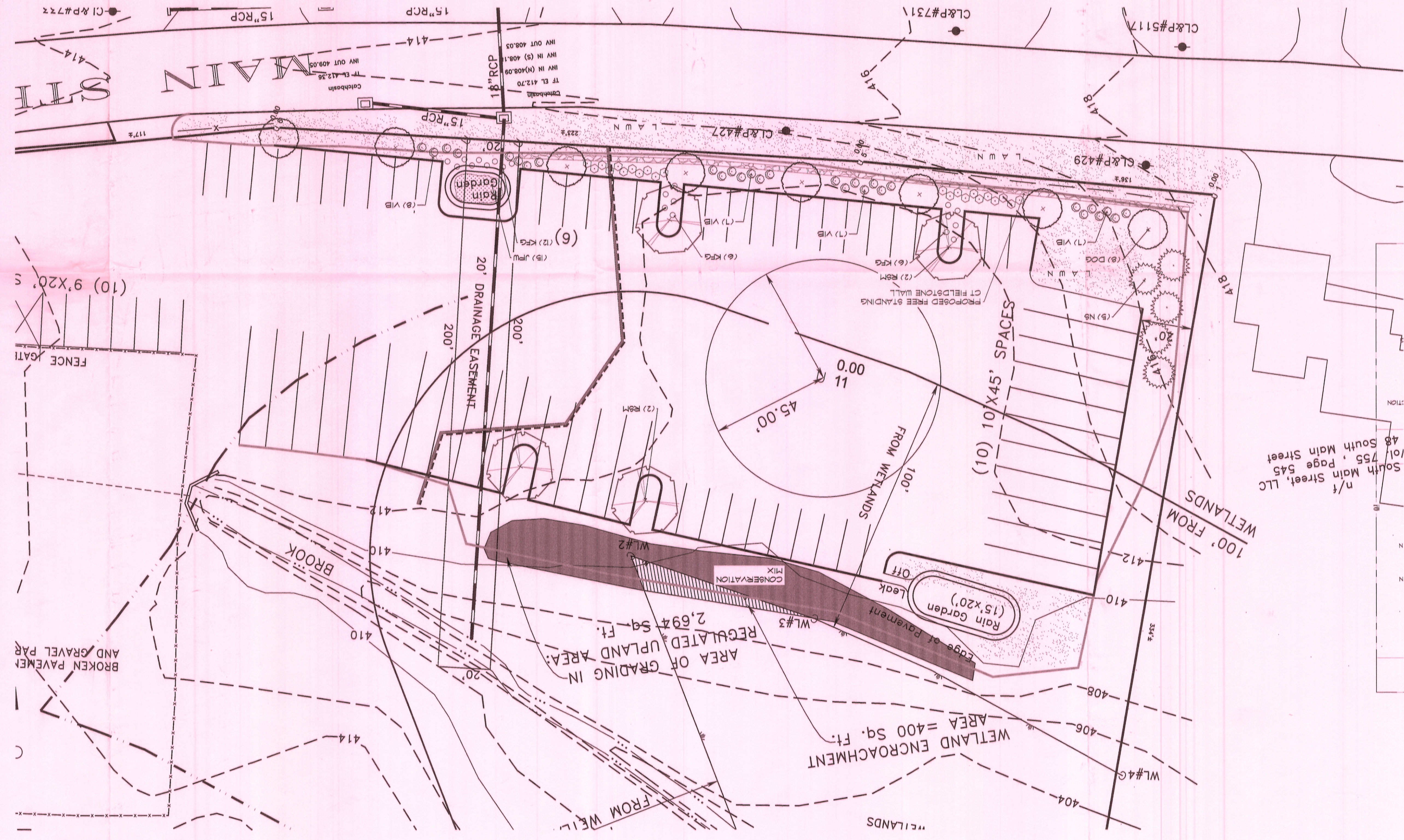
P.O. BOX 964, BROOKFIELD CT 06804
 PH: 203.798.1547 c: 203.994.5337 e: robert@sherwoodllc.com

NORTH: [North Arrow]

NOTES:
 1. Survey information taken from a site plan prepared by NCK refer to this survey for more information.
 2. Location of existing utilities not performed by this office, confirm location of all utilities prior to construction, CALL Call before you dig.
 3. Contractor to verify all grades and dimensions prior to construction, contractor to inform Landscapes Architect with any discrepancies.

PLANT LIST

| Qty. | Sp. | Common / Botanical Name | Size |
|------|-----|-----------------------------------|-------------|
| 4 | Rst | Acacia retusa October Glory | 3 1/2" Cal. |
| 6 | DOG | Canis Florida Cloud 9 | 2" Cal. |
| 29 | VIB | Viburnum plicatum var. venustum | 3" HL. |
| 22 | IG | Hamamelis virginica | 24" HL. |
| 24 | KFG | Kalm's Aster | 3" Com. |
| 18 | JFW | Eupatorium maculatum Joe Pye weed | 3" Com. |



MEADOW MAINTENANCE:
 YEAR 1:
 1. MEADOW IS SEEDED IN PREVIOUS FALL, OVER SEED USING 50% OF ORIGINAL SEED MIX, RAKE VIGOROUSLY TO ESTABLISH SEED CONTACT WITH SOIL.
 2. IRRIGATE DAILY IMMEDIATELY AFTER SEEDING AND CONTINUE UNTIL SUBSTANTIAL GERMINATION IS ACHIEVED. REDUCE IRRIGATION TO 1-2 INCH ONLY. IF RAINFALL IS NOT SUFFICIENT TO MAINTAIN GROUND, IT IS IMPORTANT TO MONITOR MOISTURE LEVELS IN SOIL AND TO AVOID OVER WATERING WHICH WILL REDUCE SEED GERMINATION.
 3. HOW TO 4: WHENEVER WEEDS REACH 12" HT. DO NOT PULL WEEDS BY HAND - THIS WILL DISTURB DESIRED ADJACENT PLANTS.
 4. DO NOT ADD FERTILIZER TO SOIL.
 YEAR 2:
 1. OVER SEED IN SPRING ONLY. IF PLANTS FROM ORIGINAL SEEDING HAVE NOT COVERED THE ENTIRE AREA.
 2. IRRIGATE ONLY IF OVER SEEDING WEEDS REACH 12" HT. DO NOT PULL WEEDS BY HAND - THIS WILL DISTURB DESIRED ADJACENT PLANTS.
 3. HOW TO 4: WHENEVER WEEDS REACH 12" HT. DO NOT PULL WEEDS BY HAND - THIS WILL DISTURB DESIRED ADJACENT PLANTS.
 4. DO NOT ADD FERTILIZER TO SOIL.
 YEAR 3:
 1. ELIMINATE ALL IRRIGATION.
 2. HOW TO 4: ONLY IN LATE FALL, MOWING CAN BE REDUCED TO 2 INCHES AFTER 30 DAYS AND CONTINUE TO DO SO UNTIL A SATISFACTORY STAND OF GRASS HAS BEEN ESTABLISHED.
 3. RESEED ALL AREAS THAT DO NOT SHOW A SATISFACTORY STAND OF GRASS AFTER 30 DAYS AND CONTINUE TO DO SO UNTIL A SATISFACTORY STAND OF GRASS HAS BEEN ESTABLISHED.
 4. LOOSELY APPLY STRAW MULCH TO ALL SEEDING AREAS.

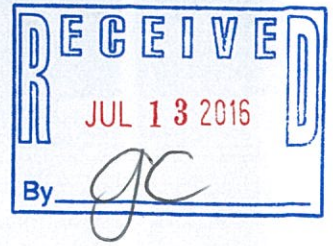
SEEDING NOTES:
 CONSERVATION MIX:
 INCLUDES BLUESTEM 35% PATRIOT 6%, COMMON EVENING PRIMROSE 10%, LITTLE BLUESTEM 35% PATRIOT 6%, COMMON EVENING PRIMROSE 10%.
 OR BY APPROVED PLACING IN SUCH A MANNER THAT A IMPROVE STAND BETWEEN AUGUST 15 AND OCTOBER 1 AND DURING APPROVED PERIODS LANDSCAPE ARCHITECT.
 2. THE RATE OF SEEDING SHALL BE 1 POUND PER 1000 SQ. FEET BY HAND OR BY APPROVED PLACING IN SUCH A MANNER THAT A IMPROVE STAND WITH A FINE TOOTHED RAKE.
 3. GRASS SEED SHALL BE SOUN ONLY BETWEEN APRIL AND JUNE 1 AND BETWEEN AUGUST 15 AND OCTOBER 1 AND DURING APPROVED PERIODS LANDSCAPE ARCHITECT.
 4. LOOSELY APPLY STRAW MULCH TO ALL SEEDING AREAS.

n/f
 South Main Street, LLC
 48 South Main Street
 06455, Page 545

Exhibit "J"

Monday, July 11, 2016

AMARAL MOTORS PLANT IMAGES



October Glory Maple

Acer Rubrum 'October Glory'



Cloud 9 Dogwood

Cornus Florida 'Cloud 9'



Monday, July 11, 2016

Wentworth Viburnum

Viburnum Plicatum 'Wentworth'



Shamrock Inkberry

Ilex Glabra 'Shamrock'



Monday, July 11, 2016

Karl Foerster Grass

Calamagrostis X Acut. 'Karl Foerster'



Joe Pye Weed

Eupatorium Macuiatum

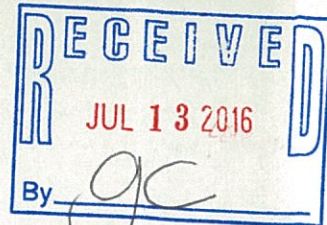


Exhibit "K"

CHINTZ-N-PRINTS
OF NEWTOWN, INC.

39 SOUTH MAIN STREET
NEWTOWN, CONNECTICUT (Route 25)

PHONE NEWTOWN GARDEN 6-2022



7/13/16

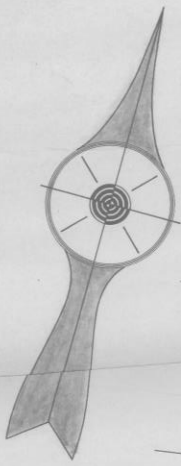
Dan,

Received notification from concerning parking of trucks & construction equipment. Have prior plans so can't come but, just wanted you to know I don't have a problem with the parking.

The parking has been going on for many years so don't know why it is a problem now. Is the alternative for all the owners of the vehicles to take them home to residential neighborhoods?

Sincerely,
David Gardner - Owner

RECEIVED
APR 7 1957
TOWN OF NEWTON
PLANNING & ZONING COMMISSION



FINAL
SUBDIVISION
Map

PREPARED FOR

Mary Helen Amaral

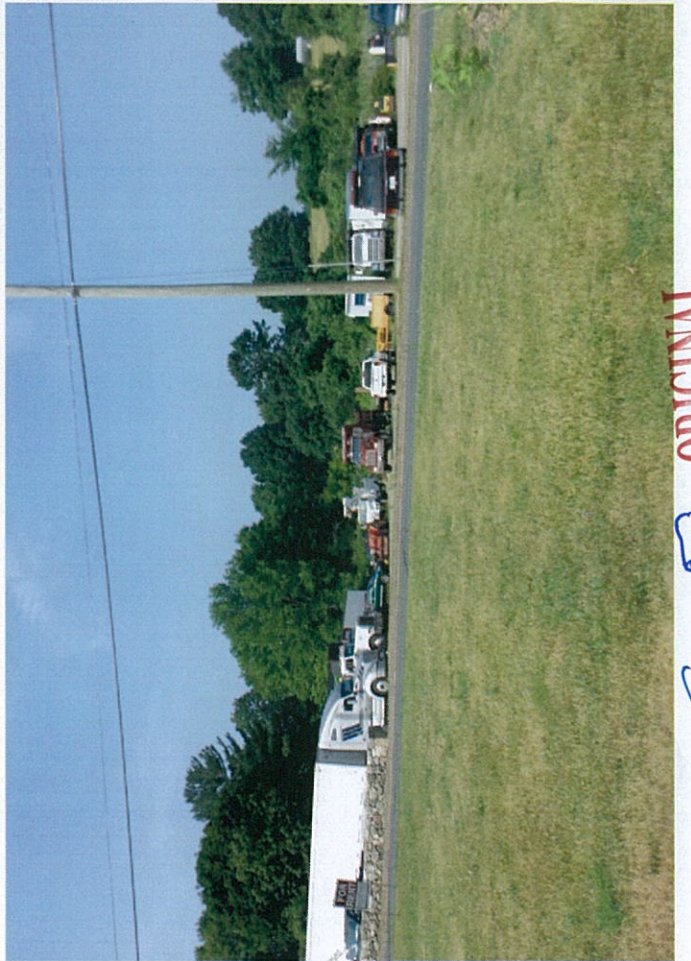
NEWTON, CONNECTICUT
TOTAL AREA = 13.484 AC.

RECORDS DEPARTMENT
PAGE TO FILE
ON FILE WITH TOWN
CLERK'S OFFICE



Robert M. Henrich
TOWN CLERK
Dec 22, 1954
1957

Amarais - 42 South main St. - 07 July 2016



Sibling ORIGINAL

Amarals

- 42 South main St.

ORIGINAL 07 July 2016



Amarals

- 42 South main St

ORIGINAL 7 July 2016



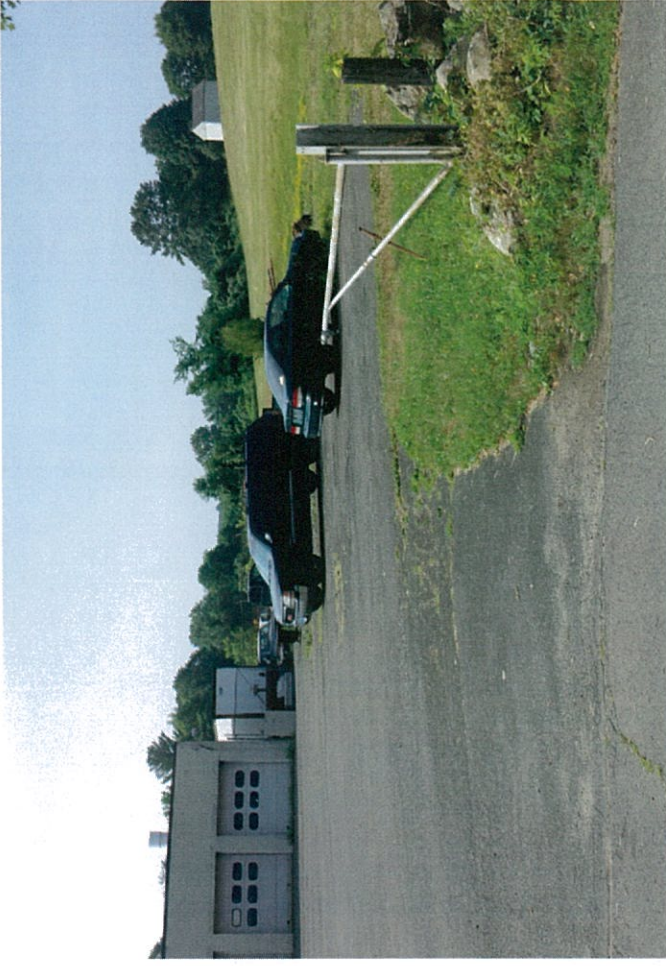
Amarals

- 42 South Main St

ORIGINAL



07 July 2016



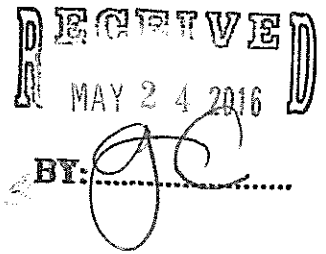
Amarals - 42 South main st - 07 July 2016



ORIGINAL



LAW OFFICES
ROBERT H. HALL, P.C.
43 MAIN STREET
NEWTOWN, CONNECTICUT 06470
TELEPHONE (203) 426-8177
FAX (203) 426-6529



ROBERT H. HALL

May 23, 2016

EMAIL ADDRESS
roberthallpc@yahoo.com

HAND DELIVERED

Mr. George M. Benson
Land Use Director
3 Primrose Street
Newtown, CT 06470

Mr. Robert Sibley
Associate Land Use Director
3 Primrose Street
Newtown, CT 06470

Re: Dan Amaral/Subdivision of Property

Dear George and Rob:

First of all, thank you for talking to me on such short notice. I am sure that I was "loaded for bear" when I came in.

Something was troubling me while we were talking and I could not put my finger on it. I realize now that what was troubling me was I used to go to that garage when I was six years old and that was long before the subdivision law in Newtown! The fact is, the corner piece shown as "Anthony Amaral" became a separate piece in 1932, when he built the garage. From what I see in your notes on the map, you had already learned that.

In any event, there has been no other cut to expand the "Anthony Amaral" parcel. Adding extra land is not a subdivision. The addition of land to the "Anthony Amaral" parcel was not a subdivision, only a readjustment of the boundaries.

I realize that you have an understanding that by filing the map for a zoning change it "morphed" in to a subdivision map showing the extra two acre lot at the southerly end of the Danny Amaral property.

ROBERT H. HALL, P.C.

Mr. George M. Benson
Mr. Robert Sibley
May 23, 2016
Page 2

I am looking forward to seeing what you find in the file because it will shed light on whether or not that is a correct analysis or whether, if it was an attempt to create a second lot, it was futile.

I realize that you believe a two acre lot in a business zone might be beneficial, but I am not sure that Danny sees it that way. It is, of course, a subject for discussion in connection with seeking to make Danny's property more acceptable.

Very truly yours,



Robert H. Hall

RHH/kl

cc: Mr. Daniel Amaral

RE: 42 SOUTH MAIN STREET, NEWTOWN, CT 06470
TOWN OF NEWTOWN VS. DANIEL J. AMARAL, AMARAL MOTORS INC.

STATE OF CONNECTICUT

SS: NEWTOWN

APRIL 11, 2016

COUNTY OF FAIRFIELD

Then and there, by virtue hereof, of the original Notice Of Zoning Violation - Cease And Desist Letter and Supporting documents (13 pages), I made service upon the within named defendant(s):

DANIEL J. AMARAL

By leaving, a true and attested copy, of the original, Notice Of Zoning Violation - Cease And Desist Letter and Supporting documents (13 pages), in the foregoing matter, with and in the hands of:

DANIEL J. AMARAL, at, AMARAL, AMARAL MOTORS INC., 42 SOUTH MAIN STREET, NEWTOWN, CT 06470

one such copy for each of the within named defendant(s).

The within and foregoing is a true and attested copy of the original Notice Of Zoning Violation - Cease And Desist Letter and Supporting documents (13 pages), with my doings hereon endorsed.

| | |
|-------------|-------------|
| Fees | |
| Travel | \$ 14.80 |
| Copies | 14.00 |
| Service | 40.00 |
| Endorsement | <u>1.20</u> |
| Total | \$ 70.00 |

Attest:



Richard T. DeLucia
Connecticut State Marshal, Fairfield County

3 Primrose Street
Newtown, CT 06470
(203) 270-4276
(203) 270-4278 Fax
www.newtown-ct.gov

Gary Frenette
Zoning Officer



TOWN OF NEWTOWN
LAND USE AGENCY

Notice of Zoning Violation- Cease and Desist

March 31, 2016

Mr. Daniel J. Amaral
Amaral Motors Inc.
40 South Main Street
Newtown, CT 06470

Re: Vacant Lot (Assessors Map 21, Block 1, Lot 5A)
42 South Main Street - Old Construction Equipment, Trucks, Debris, etc.

Dear Mr. Amaral,

This letter is in regard to the above referenced matter.

Your building lot at 42 South Main Street in Newtown, Ct 06470, has several zoning violations on it.

Specifically the following items:

1. The storage of junk, numerous old snow plows, wooden pallets, construction debris, construction equipment and approximately 59 vehicles of assorted makes and models, 18 wheelers, tri-axles, vans, etc. (see attached list).
 - a. These items are a violation of section 1.06.006 (see copy).
 - b. These items are a violation of section 1.06.1300 (see copy).
 - c. These items are a violation of section 1.06.100 (see copy).
2. The use of the parcel as a parking lot without a primary use. The parcel is currently zoned B-2 (see attached map) with uses permitted, and Special Exception uses permitted in Article IV section 3. The zone does not allow for a parking lot as a primary use.

Upon receipt of this letter, you will have a period of forty-five (45) days to remove all the debris, vehicles, trailers, etc. from 42 South Main Street.

If you have any questions please feel free to contact me at any time.

I thank you in advance for your anticipated cooperation in this matter.

Very truly yours,

Gary Frenette, Zoning Officer

3/12/2012

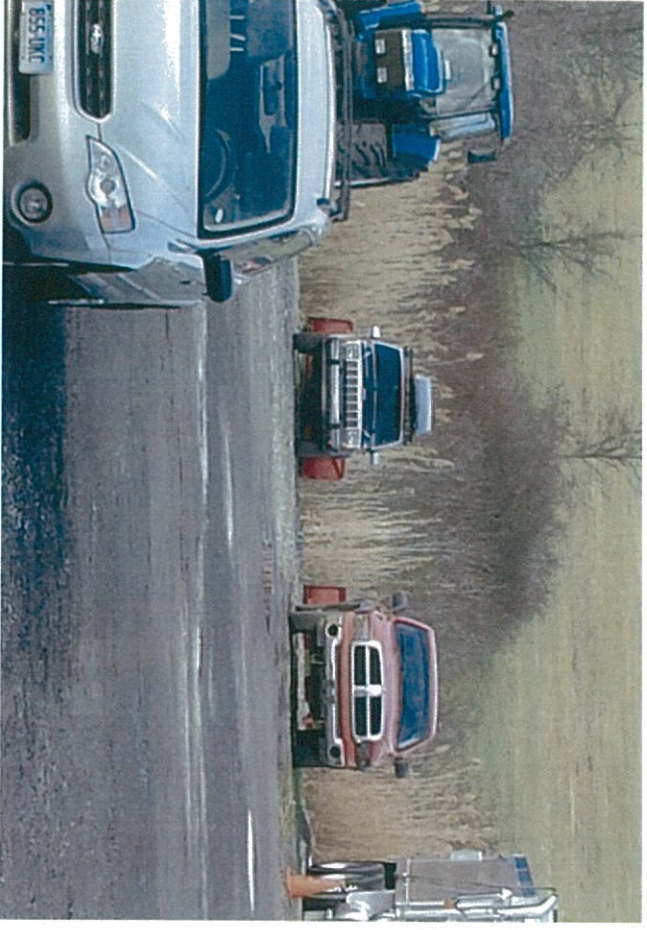
MS Security

412 South Main St.



3/17/2016 RS Summary

42 South Main St.



3/17/2011

Tom Linnery



1/2 South Main St.



3/17/2014

RD Simmy

72 South Main St.



3/17/2016 : Evenings

Rob Sibley @ 10 AM

3/17/2016

(6)
(2) Sysco

| | | | |
|----------------------------|--|-------------------------|-----|
| Tractor Trailer + cab | - 1 | Vac trailer | - 1 |
| Trailer only | - III III | trailer wood chipper | - 1 |
| cab only | - III 1 | Sprayer tank | - 1 |
| Tractor Trail Tanker + cab | - 1 1 | | |
| Tri axle Dump Truck | - 1 1 | Bucket attachment | |
| Dual axle Dump Truck | - | contractor debris | |
| Single " | - 1 1 1 | | |
| Heavy equipment Trailer | - 1 | | |
| equipment Trailer | - 1 1 | | |
| Box truck | - 1 1 | | |
| office Trailer | - 1 1 | | |
| Generator on Trailer | - 1 | | |
| Snow plows | - III | | |
| Pick up | - III 1 | | |
| van | - 1 1 | | |
| car/SUV | - III 1 1 1 1 | | |
| 55 gallon Drum | - 1 | | |
| 5 gallon Pails | - 1 1 | | |
| Farm Tractor | - 1 | | |
| Masonry Dump truck | - | | |
| Home Trail camper | - 1 1 1 | | |
| Vac Tanker Truck | - 1 | | |
| Pallets | - 80 90 estimate | | |
| Telephone Poles | - 1 | | |
| Boat trailer | - 1 | | |
| Utility crane truck | - 1 1 | | |

Rob Sibley
 3/17/2016

Total - 59
Vehicles

TD Family

min

8/27/2015

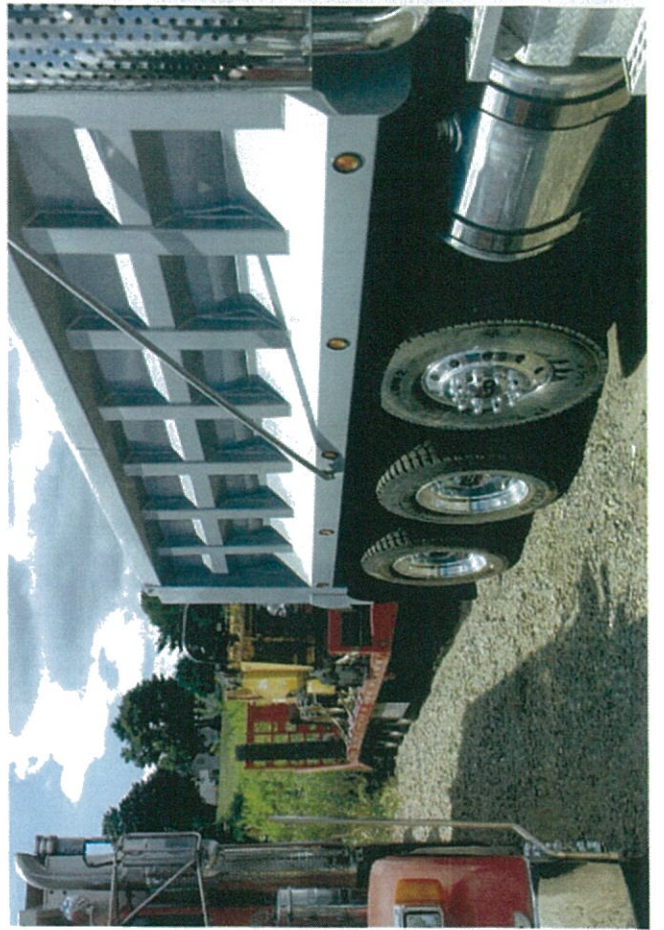


42 Soaker





MS Ling 42 Baste man ST. 8/27/15



ARTICLE I - GENERAL

SECTION 6 – PROHIBITED USES

1.06 The following *uses, buildings or structures* are specifically prohibited throughout all *zones*, even if only an *accessory use*:

1.06.100 Automobile *junkyards, junkyards*, the processing of junk materials, or motor vehicle body shops;

1.06.200 *Amusement parks, drive-in theaters and race tracks*;

1.06.300 Manufacture of poison, toxic chemicals or explosives;

1.06.400 *Mobile home parks, trailer parks* and individually occupied *mobile homes or trailers*, except as set forth in 8.11.130 and 8.11.140 herein;

1.06.500 Rock or stone crushers, processing of sand, sand and gravel, or concrete batch plants. Rock crushing except as set forth in Section 8.08.330 herein.

1.06.600 Storage outdoors of any unregistered motor vehicle or obsolete and/or unused contractors' machinery or equipment. This section shall not prohibit outdoor storage of unregistered operable motor vehicles used on farms.

1.06.700 Slaughterhouse, rendering plant or refinery,

1.06.800 Tank farm or individual above ground storage tanks over 5,000 gallons capacity, except that the 5,000 gallon limitation shall not apply to above ground tanks located in industrial *zones*; (Amended March 18, 2002)

1.06.900 Used car sales *lot* except where conducted on the same premises as a new car sales *lot* and clearly incidental thereto.

1.06.1000 Dissemination of smoke, dust, observable gas or fumes, noise, odor, vibration, or light beyond the *lot* on which the *use* is being conducted. Violation of the specific performance standards established by Article VIII, Section 10 of these regulations for the Industrial *Zones* in which they apply shall automatically be considered a violation of this section. This section may also be found to be violated in any *zone* where the *Zoning Enforcement Officer* finds the existence of the items listed in the first sentence of this section without regard to said performance standards.

1.06.1100 Menace by reason of fire, explosion or other potential hazard to person or property.

1.06.1200 Any discharge into the atmosphere, the ground or any *watercourse* or other body of water of any substance which, in the form and quantity discharged, will damage the fauna and flora of the *lot* in question, or which will be harmful to persons breathing the atmosphere or drinking or bathing in the water on or off the *lot*.

1.06.1300 Disorderly accumulation of waste, abandoned or used materials, where visible from adjacent *streets* or *lots*.

R-1

R-1/2

B-2

R-1

B-1

B-1



TOWN OF NEWTOWN, CT
G.I.S. GEOGRAPHIC INFORMATION SYSTEMS



Johnson, 1993 WL 452147 (Vertefeville, J.) (must show irreparable harm and lack of adequate remedy at law). Even if a showing of irreparable harm and lack of adequate remedy of law is not required for a temporary (or permanent) injunction, the municipality must still demonstrate that it is equitable to grant the injunction. Masayda v. Pedroncelli, 43 Conn. App. 443, 447 (1996). Note that a decision to issue a temporary injunction is not appealable, and one judge cited that fact as a reason for not granting a temporary injunction even though the court was likely to approve a permanent injunction. Hausman v. Bernardo, 2008 WL 279802.

d. Defenses to municipal enforcement action.

(1) Estoppel: Besides defenses on the merits (e.g. the zoning officer misinterpreted the regulations, or the activity alleged did not occur), a municipality may be estopped from enforcing zoning regulations. The party claiming estoppel must prove that:

- i. an authority of the municipality had done or said something calculated or intended to induce the party to believe that certain facts existed and the party acted on the belief;
- ii. the party had exercised due diligence to ascertain the truth and not only lacked the knowledge of the true state of things, but also had no convenient means of acquiring that knowledge; and
- iii. the party would be subjected to substantial loss if the municipality were permitted to negate the acts of its agents. Dornfried v. October Twenty-Four, Inc., 230 Conn. 622, 634-36 (1994); West Hartford v.

Rechel, 190 Conn. 114, 121 (1983); Woodbury Donuts, LLC v. Zoning Board of Appeals, 139 Conn. App. 748 (2012). See also, Levine v. Town of Sterling, 300 Conn. 521 (2011) (“substantial loss” element requires party to demonstrate significant expenditures on project but does not require party to demonstrate a capital investment in property).

Estoppel defenses are not usually successful. But see Crisman v. Zoning Board of Appeals, 137 Conn. App. 61, cert. denied, 307 Conn. 908 (2012) (municipal estoppel established when ZEO granted zoning permit for garage and property owner spent \$100,000 on project prior to issuance of cease and desist orders); Cangiano v. Mingione, 2004 WL 1784748 (2004) (Zoarski, J.) (Municipality estopped from revoking building permit after building permits were issued and construction of dwelling was 95% complete at a cost of \$500,000).

(2) Selective Enforcement. Although several cases have suggested that selective enforcement may be a defense to a zoning enforcement action, I have not found a case where this has been successful. Goulet v. Zoning Board of Appeals, 117 Conn. App. 333, 343-44 cert. denied, 294 Conn. 909 (2009) (ZEO and ZBA not bound by earlier mistaken interpretation of regulation with respect to a different property in absence of other circumstances); Fillion v. Hannon, 106 Conn. App. 745 (2008) (fact that vehicles illegally parked on other properties did not establish that regulations were selectively enforced against plaintiff because plaintiff failed to show the ZEO had received and

Section 1.4 — INDUSTRIAL (M-1) DISTRICT

Permitted Uses

- 11/1/65
- a. All principal and accessory uses permitted in the Residential and Farming District and the two business districts (Retail Business and General Business).
 - b. Laboratories devoted to research, design and experimentation.
 - c. General, operational and service offices of local or regional public utility companies.
 - d. Office buildings.
 - e. Light industrial uses including fabricating, processing, converting, altering, or assembling of products, the operations of which are conducted solely within a building or a group of buildings.
 - f. Uses clearly accessory to the principal use.
 - g. No use shall cause or result in dissemination of dust, smoke, observable gas, fumes or odor.
 - h. Other requirements:
 1. Exterior Lighting — Exterior spot lighting or other illumination shall be installed so as to prevent any nuisance to adjacent residential areas or to traffic on the highway.
 2. Traffic Safety — Access and service roads shall be properly related to the street system to avoid unsafe conditions and traffic congestion.
 3. Landscaping and Grading — The front yard shall be graded, planted and maintained in an attractive manner. No grading shall take place and no trees shall be removed in such manner as to be injurious to adjacent property.
 - i. Radio towers, utility towers, water towers, and water tanks ~~are permitted~~ subject to the granting of a special exception by the Zoning Board of Appeals. Before granting any such special exception, the Board of Appeals shall find that:
 1. The proposed use will not substantially impair property values in the neighborhood.
 2. The proposed use is in harmony with the general intent and purpose of these regulations.

The special exception requirements of this sub-section i. shall not be applicable to an industrial operation in existence in the Town of Newtown on August 25, 1958, including one which thereafter becomes located in an Industrial District and meets all of the other requirements of that District. The restrictions and requirements on maximum height of buildings and structures contained in Section 2 of Article IV of these regulations shall not apply to any structure erected or permitted in conformance with this sub-section i.

Section 1.5 — INDUSTRIAL (M-2) DISTRICTS

Permitted Uses

- a. All principal and accessory uses permitted in the Industrial M-1 District.
- b. Storage of contractor's equipment and machinery in current use.
- c. No use shall cause or result in dissemination of dust, smoke, observable gas, fumes or odor.
- d. Other requirements — The same requirements as to exterior lighting, traffic safety and landscaping applicable to the Industrial M-1 District shall also apply to the Industrial M-2 Districts.

NONCONFORMING USES

By Lewis K. Wise, Esq.
Rogin, Nassau, Caplan, Lassman & Hirtle, LLC
Hartford, CT
Edited and Updated (2003) by Marvin P. Bellis, Esq.
Murtha Cullina LLP
Hartford, CT

I. Definition and Status of Nonconforming Us.

A. A nonconforming use is usually defined as a use lawfully in existence on the date regulations are adopted that would make such use unlawful if begun thereafter. See Cummings v. Tripp, 204 Conn. 67, 91-92 (1987). The use must be actually in existence on that date, "known in the neighborhood" and not merely contemplated. The property must be so utilized as to be "irrevocably committed" to the use. Francini v. Zoning Board of Appeals, 228 Conn. 785 (1994). However, "neither the extent, quantity nor quality of the use" is relevant to determining whether a use was in existence. . . . The court is not generally required to speculate as to the number of acts or business transactions necessary to constitute an existing use." Helicopter Associates, Inc. v. Stamford, 201 Conn. 700,713 (1986). Thus, five commercial flights from a heliport in approximately one year were deemed sufficient to establish the nonconforming commercial use of the facility in Helicopter Associates. On the other hand, a state permit allowing the expansion of a landfill from 90 feet in height to 190 feet in height did not constitute the basis for a nonconforming use of the expanded landfill where there was no actual use in excess of 90 feet. Bauer v. Waste Management, 234 Conn. 221 (1995).

generator instead of a hand screener at a gravel pit was held to be an unlawful expansion of the nonconforming use because of the increase in noise, vibration and dust.

D. Area of Use.

1. It is also settled in Connecticut that generally “. . . an extension of the space allotted to a nonconforming use is a proscribed extension of that nonconforming use . . .” Raffaele v. Planning and Zoning Board of Appeals, 157 Conn. 454,462 (1969).

2. A nonconforming use, however, may be extended to other portions of a building or structure if the structure "was specifically designed with the intention that there would be a subsequent extension of the use from the portions in which it was initiated to other portions. Where it was designed for the purpose, extension of the use to those portions not theretofore utilized does not involve a change in the nature and character of the use. Consequently, it is not considered as an expansion.” 4 Ziegler, Rathkopf's The Law of Zoning and Planning, Chap. 51.07, p. 51-123 (4th ed. 1985). In Keller v. City of Bellingham, 600 P.2d. 1276 (Wash. 1979), a plant manufactured chlorine through the use of 26 electrolytic cells. The plant had been built to accommodate 32 cells. The addition of six cells after the plant had become nonconforming was held not to constitute an unlawful expansion of the use because the plant was originally designed for 32 cells.

3. Similarly, under the "natural expansion doctrine" a nonconforming use may be expanded beyond the area of a tract that it occupied

when zoning was adopted. Generally, there must be an objective manifestation of intent to appropriate the remainder of the parcel for the use at the time of nonconformity. Connecticut Resources Recovery Auth. v. Planning & Zoning Commission, 225 Conn. 731 (1993). However, where a "diminishing asset" use is at issue, such as a mining or excavation operation, no objective manifestation of intent is necessary since, by its nature, such an operation involves the continuance of such use over the entire parcel of land. Kovacs v. Zoning Board of Appeals of New Milford, CV 01085684S, 2002 Conn. Super. LEXS 4111 (December 17, 2002). Even so, nonconforming excavation operations may still be regulated and subject to permitting requirements. Id.; see also Section IV below.

E. Change to Less Offensive Use.

Not all changes in the character of a nonconforming use are considered to be unlawful. If the change is to a "less offensive" use, it may be protected. Thus, the owners of property who enjoyed a nonconforming use as a foundry were entitled to a variance for a change to a "less offensive" nonconforming use as an automobile repair shop. Adolphson v. Zoning Board of Appeals, 205 Conn. 703 (1988). On the other hand, the court held in Dornfried v. Plainville, 7 Conn. L. Rptr. 6 (Aug. 31, 1992) that it was impermissible to allow a change from a nonconforming mobile home to a nonconforming two-family house even though the latter was "less offensive" because the hardship standard was not satisfied.

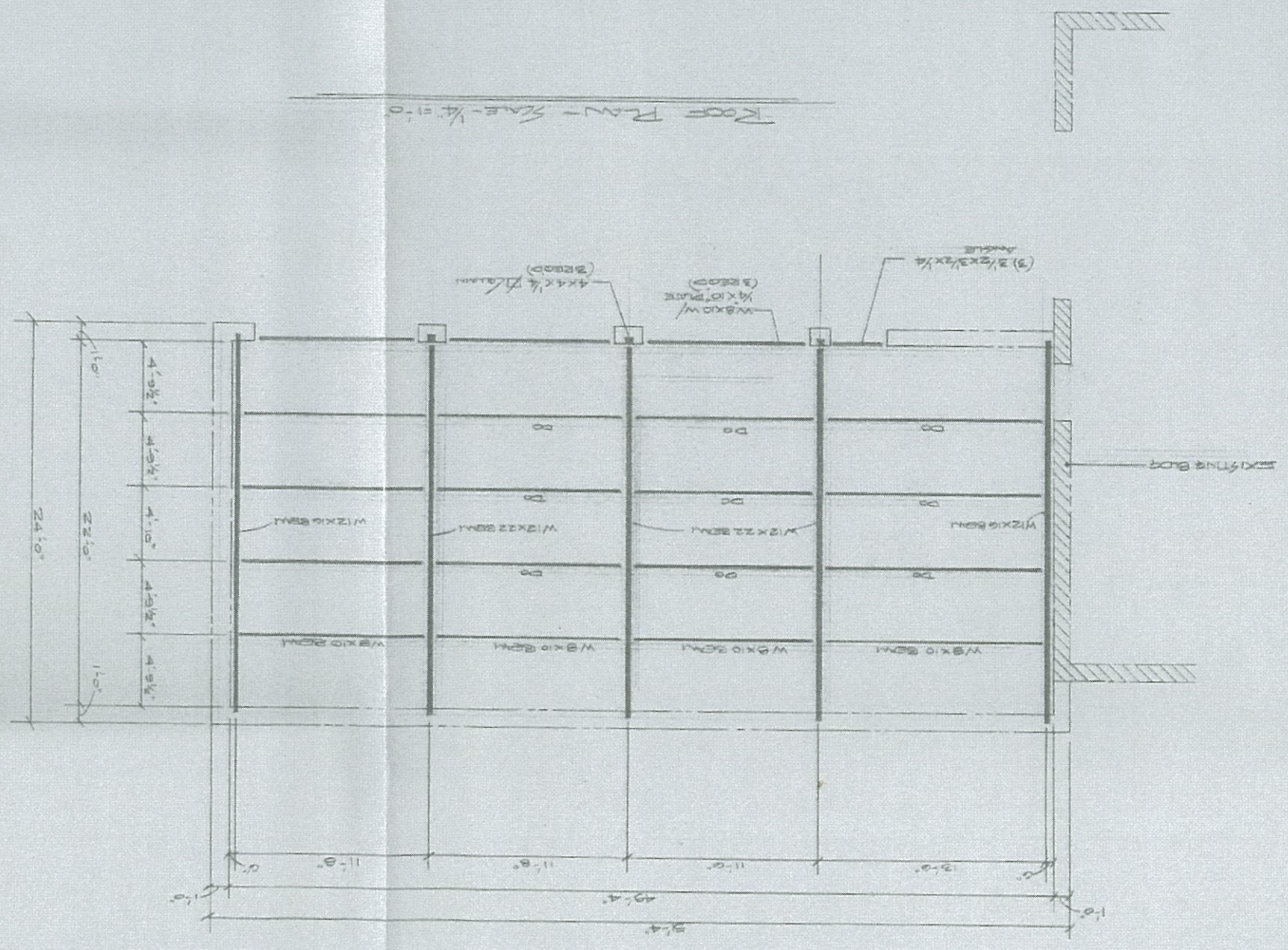

 J.H. Mon

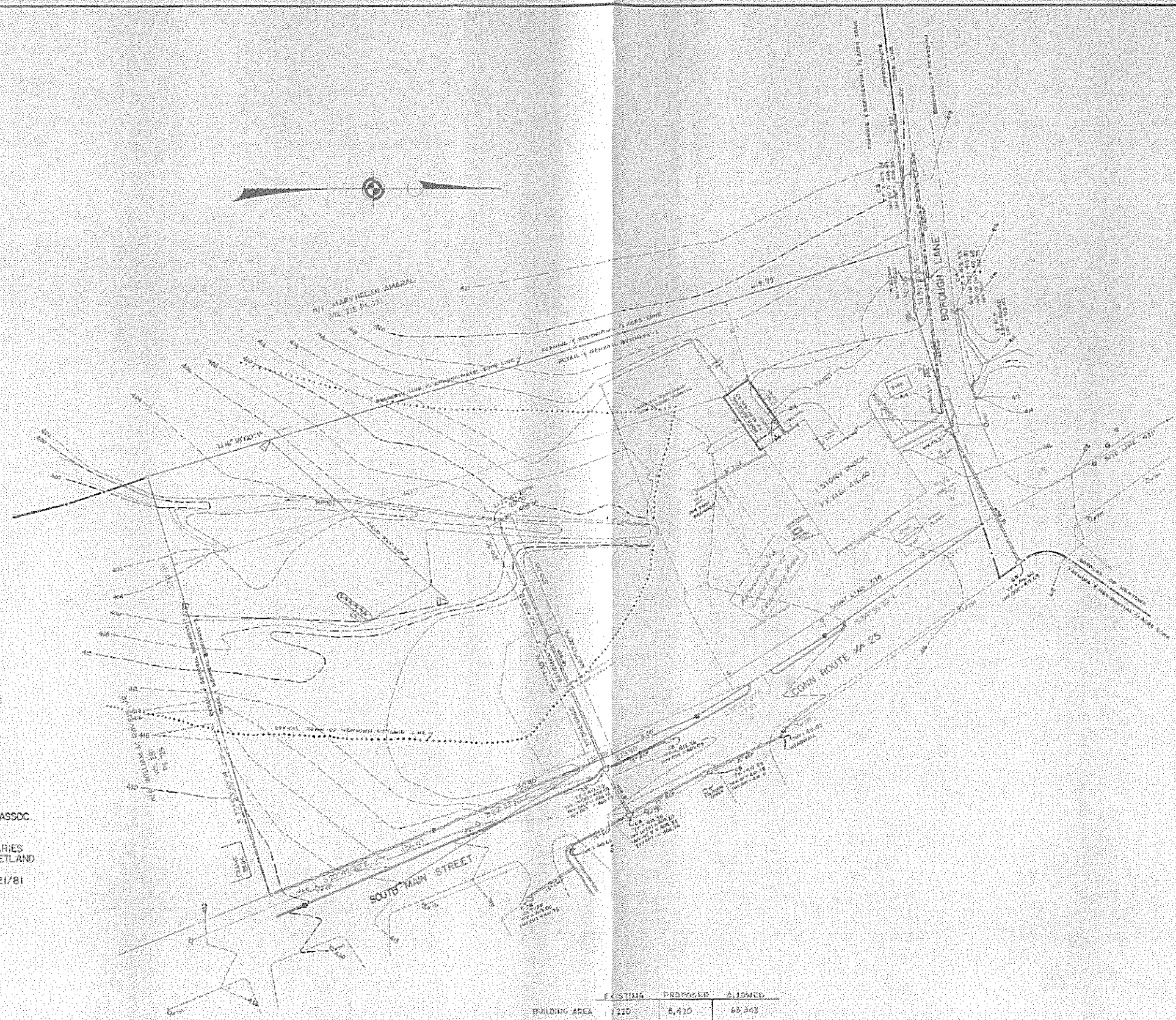
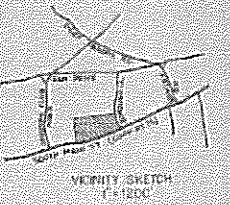
PROJECT AVIACA MOTORS
 NEWTOWN, CONN.
DATE 9-5-02 **DRAWN BY** RGL
APPROVED BY [Signature]

DRAWING NO. 08780



UNITED CONSTRUCTION & ENGINEERING INC.
 Torrington, Conn. 06790





- NOTES
- 1) ADJOINING OWNERS' AND BOUNDARIES SHOWN HEREON WERE TAKEN FROM INFORMATION AVAILABLE AT TOWN OF NEWTOWN ASSESSORS OFFICE.
 - 2) NO SUBSTANTIAL REGRADING REQUIRED.
 - 3) ADDITIONAL ROOF DRAINAGE TO BE TIED INTO EXISTING DRY WELL.
 - 4) NO INCREASE IN NUMBER OF EMPLOYEES.

WETLANDS BOUNDARIES LABELED "FIELD REVISOR" & SHOWN AS DASHED LINES HAVE BEEN ESTABLISHED BY
Bruce C. Jockey 5/21/81
 CERTIFIED SOIL CONSERVATIONIST, SURVEYED & DRAWN ON THIS MAP BY DAVID L. RYAN, R.L.S. OF KASPER-RYAN ASSOC.
 TOWN OF NEWTOWN, CT. WETLAND BOUNDARIES ARE LABELED "FIELD REVISOR" TOWN OF NEWTOWN WETLAND LINE" R.L.S. ON 5/21/81

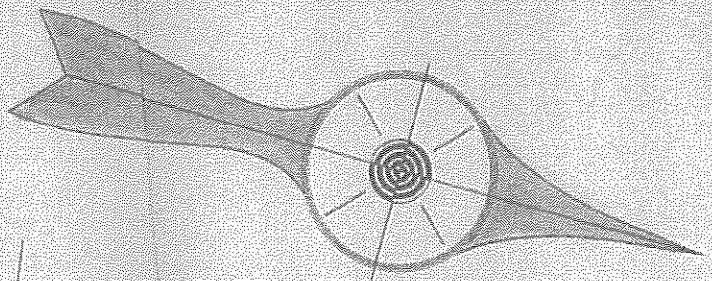
MAP REFERENCE T.C.# 3478
 ALSO MAP PREPARED FOR ANTHONY AMARAL
 RT 25, NEWTOWN, CONN.
 SCALE 1"=60' 7/12/78
 PREPARED BY KASPER-RYAN ASSOC.
 DAVID L. RYAN, R.L.S.

| | EXISTING | PROPOSED | ALLOWED |
|---------------|----------|----------|---------|
| BUILDING AREA | 7,320 | 8,420 | 65,843 |
| % COVERAGE | 8.0% | 44% | 55% |

- LEGEND
- G.H.D. MONUMENT
 - FIRE HYDRANT
 - UTILITY POLE
 - STONE WALL
 - SIGN
 - WATER GATE
 - CATCH BASIN
 - CHAIN LINK FENCE
 - TELEPHONE MANHOLE
 - SANITARY STORM SEWER
 - EXISTING CONTOURS
 - WET AREA
 - PROPOSED CONTOURS
 - IRON PIPE
 - WETLANDS LINE AS SHOWN ON NEWTOWN INLANDS WETLANDS MAP
 - WETLANDS AS FLAGGED BY SOIL SCIENTIST

| REVISIONS | | | SITE PLAN | Scale 1"=60' |
|-----------|-------------|------|--|---------------------|
| No. | Description | Date | | |
| | | | SOUTH MAIN STREET (CONN. RT. 25) NEWTOWN, CONNECTICUT | Date 4/1/81 |
| | | | | |
| | | | PREPARED FOR AMARAL MOTORS, INC. | Sheet 1 of 1 |
| | | | 180,980 SQ. FT. - 4.1547 AC. | Designed by: DEE |
| | | | B-2 ZONE | Drawn by: STM |
| | | | KASPER-RYAN ASSOCIATES | Checked by: DEE/JWK |
| | | | Site, Connecticut | Plot No. 719 |

I hereby certify that the map and site plan were prepared in accordance with the standards and minimum requirements as defined in the code of Practice of the State of Connecticut and that the map and site plan were prepared by the professional association of the State of Connecticut.
 DAVID L. RYAN
 R.L.S.
 LAND SURVEYOR



MARCUS A.
&
HELEN M.
AMARAL

DANIEL T.
&
MARCUS A.
AMARAL

DANIEL T. AMARAL

1/2 Acre Zone
BUSHES
WOODS
S-2 E

BOROUGH LAKE

ANTHONY
AMARAL

2004 AC

1205 AC

MAIN STREET
(ROUTE #25)

SCHWBITZER

THOMAS J. O'CONNOR
JOHN P. O'BYRNE JR.

NEWTON COUNTRY CLUB
REALTY CORP.

ELM DRIVE

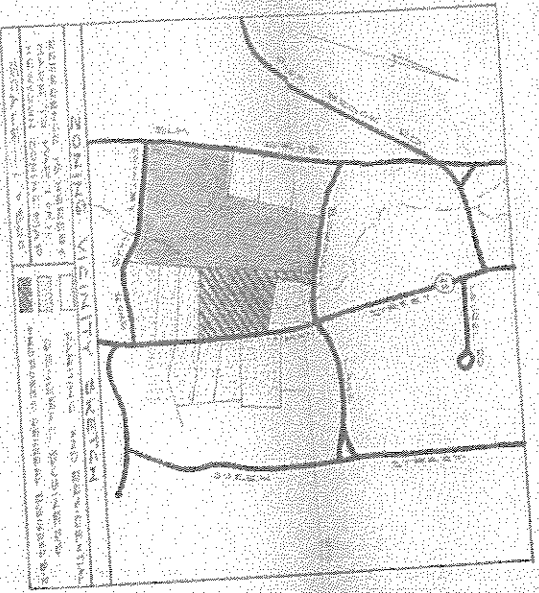
COUNTRY CLUB ROAD

FINAL
SUBDIVISION
MAP

PREPARED FOR

Mary Helen Amaral

NEWTOWN, CONNECTICUT
TOTAL AREA - 13.484 AC.



RECEIVED
APR 7 1967
TOWN OF NEWTON
PLANNING & ZONING COMMISSION

Stick to
BASIC
Certified
Postage (m)
2 12

July 11, 1967

Mr. Earle W. Smith, Attorney at Law
955 Main Street
Bridgeport, Connecticut

Re: Application of Mary Helen Amaral for the purpose of changing the Zoning Map and Zoning Classification from Farming and Residential to General Business-2 a parcel of land abutting the westerly side of Route 25 between property of Anthony Amaral and Hugh F. and Joan S. Schweitzer.

Dear Mr. Smith:

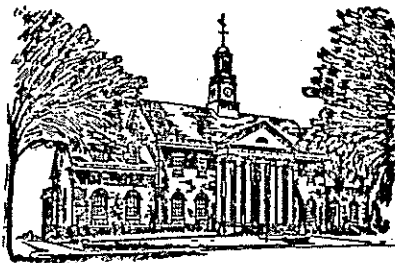
With reference to the above, the Commission is pleased to inform you that at its regular meeting of July 7, 1967, action was taken to approve the application as submitted.

Sincerely yours,

Arthur Spector, Chairman
Planning and Zoning Commission

blr
Cert. Mail: #335792
Enc. (1)

TOWN OF NEWTOWN
NEWTOWN, CONN.



PLANNING & ZONING
COMMISSION

P U B L I C N O T I C E

Notice is hereby given that at its regular monthly meeting held on July 7, 1967, the Newtown Planning and Zoning Commission took action upon the following subdivisions of land:

Val Hair, - "Pond Brook Terrace", final map, Berkshire Road, Rte 34,
9.695 Acres, 8 Lots, R-1 - APPROVED.

J. Sherwood Edwards - final map, Little Brook Lane, 13 Lots, 18.9
Acres, R-1 - APPROVED ONLY - Lots 1, 2, 3, 4, 5, 11, 12
and 13. REJECTED - Lots 6, 7, 8, 9 and 10.

I. David and Rose Falker - preliminary map, "Wyldwood Hills",
Jeremiah and Bennett's Bridge Roads, 15.951 Acres, 10
Lots, R-1 and R-2 - APPROVED .

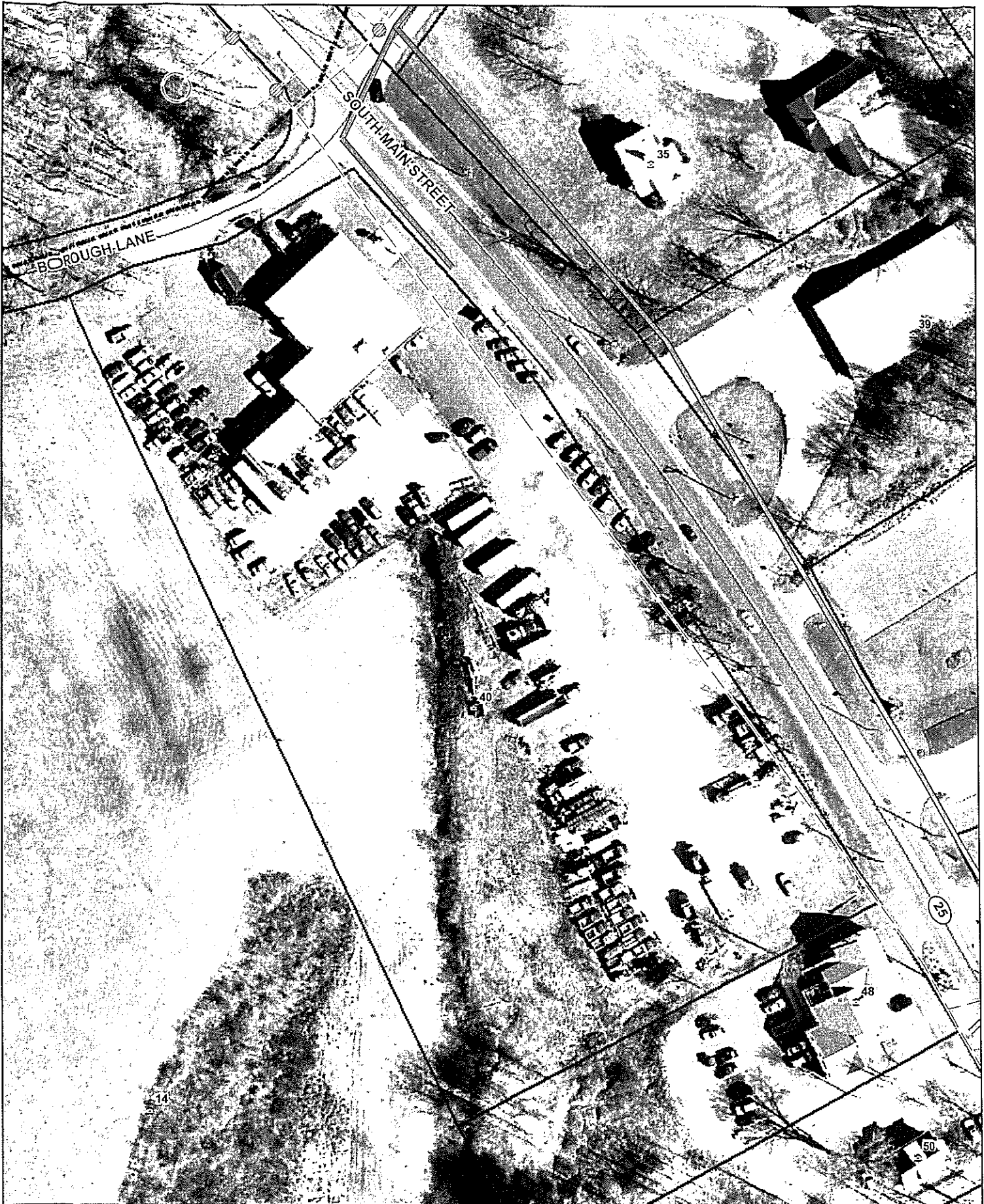
Joseph B. Keating, final map, Sandy Hook District, Riverside Road,
3 Parcels, 3.18 Acres, R-1 - APPROVED.

Application for two changes of zone heard at public hearing on May 19, 1967
were acted upon as follows:

Application of Mary Helen Amaral for the purpose of changing the
zoning map and zoning classification from farming and residential to
General Business-2, a parcel of land abutting the westerly side of Route
25 between property of Anthony Amaral and Hugh F. and Joan S. Schweitzer -
APPROVED.

Application of Val G. Hair for the purpose of changing the zoning
map and zoning classification from residential to B-1, Retail Business,
that 3.02 acres located at the southeasterly junction of Meadowbrook Road
and Route 25 - DISAPPROVED.

NEWTOWN PLANNING AND ZONING COMMISSION
A. Spector, Chairman



TOWN OF NEWTOWN, CT

GIS



1 inch = 84 feet

Data shown on this map were derived from a variety of sources at different scales. This is not a survey and no field verification was performed. This map shall not be used for the transfer of property. Please review the Town of Newtown access policy if you have any questions. By viewing, copying, or otherwise using this map you agree to follow the terms of use. If you feel that you cannot follow this policy contact the GIS Coordinator for the Town of Newtown.





TOWN OF NEWTOWN, CT
 GIS
 60 30 0 60
 Feet

1 inch = 84 feet

Data shown on this map were derived from a variety of sources at different scales. This is not a survey and no field verification was performed. This map shall not be used for the transfer of property. Please review the Town of Newtown access policy if you have any questions. By viewing, copying, or otherwise using this map you agree to follow the terms of use. If you feel that you cannot follow this policy contact the GIS Coordinator for the Town of Newtown.



2002



TOWN OF NEWTOWN, CT
 GIS GEOGRAPHIC INFORMATION SYSTEMS
 0 37.5 75 150 Feet

Data shown on this map were derived from a variety of sources at different scales. This is not a survey and no field verification was performed. This map shall not be used for the transfer of property. Please review the Town of Newtown access policy if you have any questions. By viewing, copying, or otherwise using this map you agree to follow the terms of use. If you feel that you cannot follow this policy contact the GIS Coordinator for the Town of Newtown.



⊗ Street to furthest corner = 210'



TOWN OF NEWTOWN, CT
 G.I.S. (GEOGRAPHIC INFORMATION SYSTEMS)
 75 37.5 0 75
 Feet

Data shown on this map were derived from a variety of sources at different scales. This is not a survey and no field verification was performed. This map shall not be used for the transfer of property. Please review the Town of Newtown access policy if you have any questions. By viewing, copying, or otherwise using this map you agree to follow the terms of use. If you feel that you cannot follow this policy contact the GIS Coordinator for the Town of Newtown.



Bob Hall



BOOK 474 PAGE 562
- 3 -

STATE OF CONNECTICUT)
) ss:
COUNTY OF FAIRFIELD)

On this the 11th day of August, 1993, before me, James W. Venman, the undersigned officer, personally appeared Daniel J. Amaral, known to me (or satisfactorily proven) to be the person described in the foregoing instrument, and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand.

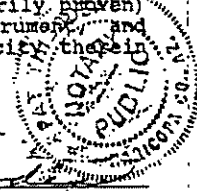
James W. Venman
James W. Venman
Commissioner of the Superior Court

STATE OF ARIZONA)
) ss:
COUNTY OF MARICOPA)

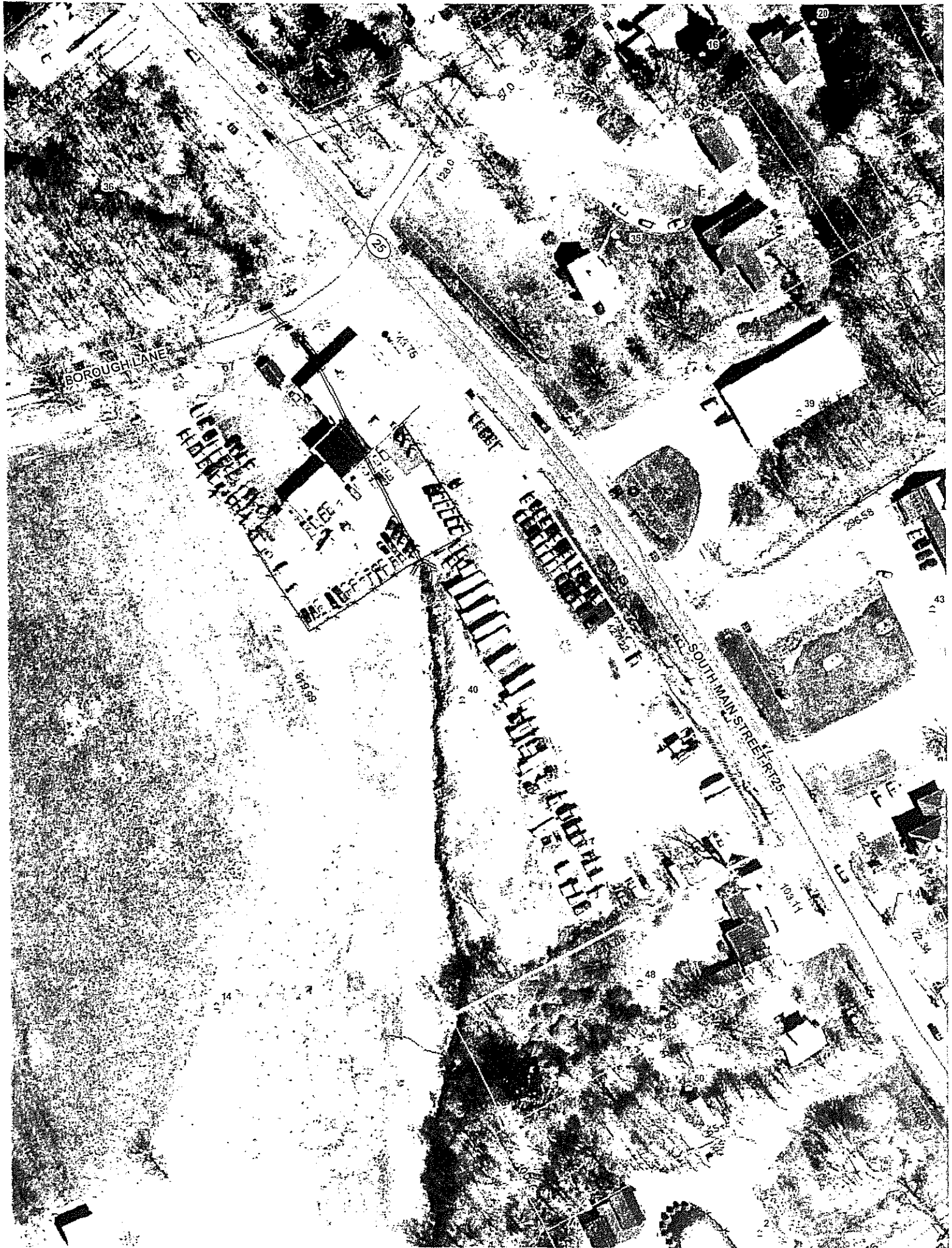
On this the _____ day of August, 1993, before me, Pat Thibodeau, the undersigned officer, personally appeared John P. Maloney, known to me (or satisfactorily proven) to be the person described in the foregoing instrument, and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand.

Pat Thibodeau
Notary Public
My Commission Expires: _____
My Commission Expires April 04, 1993



9:00am
Rec'd. for Record 8-11 1993
Town Clerk of Newtown
Sybil S. Lurtis



0105



TOWN OF NEWTOWN, CT
 GIS DEPARTMENT
 60 30 0 30 60
 Feet



1 inch = 84 feet
 Data shown on this map were derived from a variety of sources at different scales. This is not a survey and no field verification was performed. This map shall not be used for the transfer of property, copying, or otherwise using this map you agree to follow the terms of use. If you feel that you cannot follow this policy contact the GIS Coordinator for the Town of Newtown.



1993

One Piece
5058

BOOK 474 PAGE 560

Executors' Deed of Distribution

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

WHEREAS, DANIEL J. AMARAL, of 41 Elm Drive, Newtown, Connecticut, and JOHN P. MALONEY, of 2602 East Verbena Drive, Phoenix, Arizona, are the duly appointed and acting Executors of the Will of ANTHONY AMARAL, late of the Town of Newtown, who died on January 28, 1989, and whose Estate is being administered under the jurisdiction of the Probate Court for the District of Newtown, Connecticut; and

WHEREAS, said Will, in Article SECOND thereof, devises to DANIEL J. AMARAL certain real property which had been owned by said Anthony Amaral at the time of his death; and

WHEREAS, said Daniel J. Amaral and John P. Maloney, as such Executors, now desire to distribute such real property in accordance with the provisions of said Article SECOND; and said Daniel J. Amaral wishes that such distribution be made to him;

NOW THEREFORE, KNOW YE, that DANIEL J. AMARAL and JOHN P. MALONEY, Executors of the Will of ANTHONY AMARAL, in consideration of the sum of One Dollar (\$1.00) received to their full satisfaction of DANIEL J. AMARAL, of 41 Elm Drive, Newtown, Connecticut, and pursuant to the terms of Article SECOND of the Will of said ANTHONY AMARAL do grant, bargain, sell and confirm unto said DANIEL J. AMARAL all the right, title, interest, claim and demand which said Anthony Amaral had at the time of death, or which they, as Executors of the Will of Anthony Amaral, have or ought to have in and to those two certain pieces or parcels of land, with the buildings and improvements thereon (the "Premises"), identified in the Inventory of the Executors of the Estate of Anthony Amaral filed in the Probate Court for the District of Newtown as the "Second Parcel," which two pieces are situated in the Town of Newtown, County of Fairfield and State of Connecticut and more particularly described as follows:

First Piece:

Commencing at intersection of the Town Road (Borough Lane) and State Highway (Main Street), thence S. 31° E. 149' 9"; thence S. 28° E. 50' 3"; thence S. 75° W. 237'; thence N. 10° 40' W. 200'; thence N. 86° 30' E. 67'; thence N. 71° E. 105' 6" to the point or place of beginning, containing .94 of an acre bounded North by the Town Road (Borough Lane); East by the State Highway (Main Street); South and West by the Second Piece hereinafter described.

Being the same premises described in the Warranty Deed from Helen Egan to Anthony Amaral dated December 13, 1932 and recorded December 13, 1932 in Volume 81, Page 68 of the Newtown Land Records.

Second Piece:

Commencing at a point on the Westerly side of Main Street, also known as Route #25, that marks the southeast corner of the First Piece, hereinabove described; thence proceeding southerly along the westerly side of said Main Street for a distance of 427.22 feet;

Thence South, 73°, 53' 30" West, 334.89 feet, said last course being along land now or formerly of John W. and Ruth W. Trend;

Thence North, 16°, 18' West, 619.99 feet, said last course being along land of Mary Helen Amaral;

Thence easterly along the southerly line of Borough Lane, 50';

TAT93-52162

BOOK 474 PAGE 561
- 2 -

Thence South, 12', 29' 10" East, 200 feet, said last course being along the First Piece hereinabove described;

Thence North, 71', 9', 20", 246.47 feet to the point or place of beginning, said last course being along the First Piece, hereinabove described;

Containing 3.209 acres, more or less.

Being the same premises described in the Quit Claim Deed from Mary Helen Amaral to Anthony Amaral dated May 4, 1970 and recorded May 4, 1970 in Volume 218, Page 90 of the Newtown Land Records.

Said Premises being known as 40 South Main Street.

Said Premises being subject to the effect, if any, of the following:

1. An easement to The Newtown Water Company dated November 29, 1929 and recorded December 2, 1929 in Volume 76, Page 130 of the Newtown Land Records;
2. An agreement between Anthony Amaral and The Newtown Water Company dated May 12, 1966 and recorded May 23, 1966 in Volume 194, Page 461 of the Newtown Land Records, and
3. A drainage easement to the State of Connecticut dated October 26, 1970 and recorded January 13, 1971 in Volume 222, Page 151 of the Newtown Land Records.

TO HAVE AND TO HOLD the above granted and bargained premises, with the appurtenances thereof, unto the said distributee, his heirs and assigns, to his and their own proper use and benefit forever. And the said Daniel J. Amaral and John P. Maloney, as Executors of the Will of Anthony Amaral, do hereby covenant with the said distributee, his heirs and assigns that they have full power and authority, as such Executors, to grant, bargain, sell and confirm the above described premises in manner and form aforesaid, and they, as such Executors, do further covenant to the said distributee, his heirs and assigns, that they have not previously conveyed said premises as aforesaid.

IN WITNESS WHEREOF, Daniel J. Amaral and John P. Maloney, as Executors of the Will of Anthony Amaral, have hereunto set their hands and seals as of this 11th day of August, 1993.

Signed, Sealed, and Delivered in the presence of:

James W. Vignani
JAMES W. VIGNANI

Marion C. Treppisen
MARION C. TREPPISEN

Pat Thibodeaux
Pat Thibodeaux

Lytle A. Juby

Cynthia A. Whaley

Daniel J. Amaral L.S.
Daniel J. Amaral
Co-Executor u/w Anthony Amaral

John P. Maloney L.S.
John P. Maloney
Co-Executor u/w Anthony Amaral

BOOK 474 PAGE 562
- 3 -

STATE OF CONNECTICUT)
) ss:
COUNTY OF FAIRFIELD)

On this the 11th day of August, 1993, before me, *James W. Venman*, the undersigned officer, personally appeared Daniel J. Amaral, known to me (or satisfactorily proven) to be the person described in the foregoing instrument, and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand.

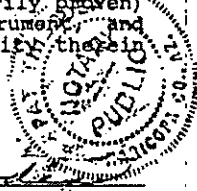
James W. Venman
James W. Venman
Commissioner of the Superior Court

STATE OF ARIZONA)
) ss:
COUNTY OF MARICOPA)

On this the _____ day of August, 1993, before me, *Pat Thibodeau*, the undersigned officer, personally appeared John P. Maloney, known to me (or satisfactorily proven) to be the person described in the foregoing instrument, and acknowledged that he executed the same in the capacity therein stated and for the purposes therein contained.

IN WITNESS WHEREOF, I hereunto set my hand.

Pat Thibodeau
Notary Public
My Commission Expires: _____
My Commission Expires April 04, 1999



9:00am
Rec'd. for Record 8-11 1993
Town Clerk of Newtown
Sybil S. Lurtis

Johnson, 1993 WL 452147 (Vertefeville, J.) (must show irreparable harm and lack of adequate remedy at law). Even if a showing of irreparable harm and lack of adequate remedy of law is not required for a temporary (or permanent) injunction, the municipality must still demonstrate that it is equitable to grant the injunction. Masayda v. Pedroncelli, 43 Conn. App. 443, 447 (1996). Note that a decision to issue a temporary injunction is not appealable, and one judge cited that fact as a reason for not granting a temporary injunction even though the court was likely to approve a permanent injunction. Hausman v. Bernardo, 2008 WL 279802.

d. Defenses to municipal enforcement action.

(1) Estoppel: Besides defenses on the merits (e.g. the zoning officer misinterpreted the regulations, or the activity alleged did not occur), a municipality may be estopped from enforcing zoning regulations. The party claiming estoppel must prove that:

- i. an authority of the municipality had done or said something calculated or intended to induce the party to believe that certain facts existed and the party acted on the belief;
- ii. the party had exercised due diligence to ascertain the truth and not only lacked the knowledge of the true state of things, but also had no convenient means of acquiring that knowledge; and
- iii. the party would be subjected to substantial loss if the municipality were permitted to negate the acts of its agents. Dornfried v. October Twenty-Four, Inc., 230 Conn. 622, 634-36 (1994); West Hartford v.

Rechel, 190 Conn. 114, 121 (1983); Woodbury Donuts, LLC v. Zoning Board of Appeals, 139 Conn. App. 748 (2012). See also, Levine v. Town of Sterling, 300 Conn. 521 (2011) (“substantial loss” element requires party to demonstrate significant expenditures on project but does not require party to demonstrate a capital investment in property).

Estoppel defenses are not usually successful. But see Crisman v. Zoning Board of Appeals, 137 Conn. App. 61, cert. denied, 307 Conn. 908 (2012) (municipal estoppel established when ZEO granted zoning permit for garage and property owner spent \$100,000 on project prior to issuance of cease and desist orders); Cangiano v. Mingione, 2004 WL 1784748 (2004) (Zoarski, J.) (Municipality estopped from revoking building permit after building permits were issued and construction of dwelling was 95% complete at a cost of \$500,000).

(2) Selective Enforcement. Although several cases have suggested that selective enforcement may be a defense to a zoning enforcement action, I have not found a case where this has been successful. Goulet v. Zoning Board of Appeals, 117 Conn. App. 333, 343-44 cert. denied, 294 Conn. 909 (2009) (ZEO and ZBA not bound by earlier mistaken interpretation of regulation with respect to a different property in absence of other circumstances); Fillion v. Hannon, 106 Conn. App. 745 (2008) (fact that vehicles illegally parked on other properties did not establish that regulations were selectively enforced against plaintiff because plaintiff failed to show the ZEO had received and

1/1/65

Each application for a special exception under this sub-section shall be accompanied by:

- 1. A scale drawing of the proposed illuminated sign, specifying the location and manner of the illumination;
 - 2. A drawing showing the general appearance of the proposed illuminated sign from each street from which such illuminated sign may be visible; and
 - 3. A plot plan showing the location of the proposed illuminated sign with relation to existing buildings on the same lot and on all adjacent lots (including lots which would be adjacent but for the existence of a street), the names of the owners of which shall be clearly shown thereon.
- j. Uses clearly accessory to the foregoing principal uses.

Section 1.3 — GENERAL BUSINESS (B-2)

Permitted Uses

- a. All principal and accessory uses permitted in the Farming and Residential and Retail Business Districts.
- b. Printing and publishing establishments.
- c. Hotels and motels.
- d. Public passenger terminals.
- e. Restaurants and ~~tearooms~~ without alcoholic beverages (where sale of alcoholic beverages is contemplated, Article V, Section 5 applies.)
- f. Sale of alcoholic beverages at wholesale and retail and for on-premises consumption subject to the provisions of Article V, Section 5.
- g. Hand laundries, laundromats and dry cleaning establishments.
- h. New motor vehicle salesrooms.
- i. Wholesale business. Storage in bulk of, or warehouse for, such material as building material, clothing, cotton, drugs, dry goods, feed, food, furniture, hardware, ice, machinery, oil and petroleum in quantities less than tank-car-lots, paint and paint supplies, pipe, rubber, shop supplies, tobacco or wood.
- j. Veterinary hospitals.
- k. Boarding kennels.
- l. Uses clearly accessory to the foregoing principal uses.

Zoning Regulations in effect when property at 90 South Main was changed from Residential to B-2.

Section 1.4 — INDUSTRIAL (M-1) DISTRICT

Permitted Uses

- 111/65
- a. All principal and accessory uses permitted in the Residential and Farming District and the two business districts (Retail Business and General Business).
 - b. Laboratories devoted to research, design and experimentation.
 - c. General, operational and service offices of local or regional public utility companies.
 - d. Office buildings.
 - e. Light industrial uses including fabricating, processing, converting, altering, or assembling of products, the operations of which are conducted solely within a building or a group of buildings.
 - f. Uses clearly accessory to the principal use.
 - g. No use shall cause or result in dissemination of dust, smoke, observable gas, fumes or odor.
 - h. Other requirements:
 1. Exterior Lighting — Exterior spot lighting or other illumination shall be installed so as to prevent any nuisance to adjacent residential areas or to traffic on the highway.
 2. Traffic Safety — Access and service roads shall be properly related to the street system to avoid unsafe conditions and traffic congestion.
 3. Landscaping and Grading — The front yard shall be graded, planted and maintained in an attractive manner. No grading shall take place and no trees shall be removed in such manner as to be injurious to adjacent property.
 - i. Radio towers, utility towers, water towers, and water tanks ~~are permitted~~ subject to the granting of a special exception by the Zoning Board of Appeals. Before granting any such special exception, the Board of Appeals shall find that:
 1. The proposed use will not substantially impair property values in the neighborhood.
 2. The proposed use is in harmony with the general intent and purpose of these regulations.

The special exception requirements of this sub-section i. shall not be applicable to an industrial operation in existence in the Town of Newtown on August 25, 1958, including one which thereafter becomes located in an Industrial District and meets all of the other requirements of that District. The restrictions and requirements on maximum height of buildings and structures contained in Section 2 of Article IV of these regulations shall not apply to any structure erected or permitted in conformance with this sub-section i.

Section 1.5 — INDUSTRIAL (M-2) DISTRICTS

Permitted Uses

- a. All principal and accessory uses permitted in the Industrial M-1 District.
- b. Storage of contractor's equipment and machinery in current use.
- c. No use shall cause or result in dissemination of dust, smoke, observable gas, fumes or odor.
- d. Other requirements — The same requirements as to exterior lighting, traffic safety and landscaping applicable to the Industrial M-1 District shall also apply to the Industrial M-2 Districts.

① Storing Construction Equipment was not the original use of the 1932 property. So it can't be "natural" expansion of a non conforming use.

② In 1967 when parcels B+C were rezoned as B-2 and combined with the 1932 parcel, storing equipment was not a legal use in 1967.

③ They began storing construction vehicles on _____

④ "... an expansion of the space allotted to a nonconforming use is a proscribed extension of that nonconforming use..."

~~Texts~~ Rafaele v. Planning + Zoning Board of Appeals, 157 Conn. 454, 462 (1969).

HASTINGS, MN

No. 2-153L
UPC 10334



⑤ If they are allowed to expand - Generally there must be an objective manifestation of intent to appropriate the remainder of the ~~property~~ parcel for the use at the time of nonconformity. - This was not done, also the original non conformity did not include storage of construction equipment. New + Used Car Sales allowed in B-2 zone. But not storage of construction vehicles.

NONCONFORMING USES

By Lewis K. Wise, Esq.
Rogin, Nassau, Caplan, Lassman & Hirtle, LLC
Hartford, CT
Edited and Updated (2003) by Marvin P. Bellis, Esq.
Murtha Cullina LLP
Hartford, CT

I. Definition and Status of Nonconforming Us.

A. A nonconforming use is usually defined as a use lawfully in existence on the date regulations are adopted that would make such use unlawful if begun thereafter. See Cummings v. Tripp, 204 Conn. 67, 91-92 (1987). The use must be actually in existence on that date, "known in the neighborhood" and not merely contemplated. The property must be so utilized as to be "irrevocably committed" to the use. Francini v. Zoning Board of Appeals, 228 Conn. 785 (1994). However, "neither the extent, quantity nor quality of the use" is relevant to determining whether a use was in existence. . . . The court is not generally required to speculate as to the number of acts or business transactions necessary to constitute an existing use." Helicopter Associates. Inc. v. Stamford, 201 Conn. 700,713 (1986). Thus, five commercial flights from a heliport in approximately one year were deemed sufficient to establish the nonconforming commercial use of the facility in Helicopter Associates. On the other hand, a state permit allowing the expansion of a landfill from 90 feet in height to 190 feet in height did not constitute the basis for a nonconforming use of the expanded landfill where there was no actual use in excess of 90 feet. Bauer v. Waste Management, 234 Conn. 221 (1995).

generator instead of a hand screener at a gravel pit was held to be an unlawful expansion of the nonconforming use because of the increase in noise, vibration and dust.

D. Area of Use.

1. It is also settled in Connecticut that generally “. . . an extension of the space allotted to a nonconforming use is a proscribed extension of that nonconforming use . . .” Raffaele v. Planning and Zoning Board of Appeals, 157 Conn. 454,462 (1969).

2. A nonconforming use, however, may be extended to other portions of a building or structure if the structure "was specifically designed with the intention that there would be a subsequent extension of the use from the portions in which it was initiated to other portions. Where it was designed for the purpose, extension of the use to those portions not theretofore utilized does not involve a change in the nature and character of the use. Consequently, it is not considered as an expansion." 4 Ziegler, Rathkopf's The Law of Zoning and Planning, Chap. 51.07, p. 51-123 (4th ed. 1985). In Keller v. City of Bellingham, 600 P.2d. 1276 (Wash. 1979), a plant manufactured chlorine through the use of 26 electrolytic cells. The plant had been built to accommodate 32 cells. The addition of six cells after the plant had become nonconforming was held not to constitute an unlawful expansion of the use because the plant was originally designed for 32 cells.

3. Similarly, under the "natural expansion doctrine" a nonconforming use may be expanded beyond the area of a tract that it occupied

when zoning was adopted. Generally, there must be an objective manifestation of intent to appropriate the remainder of the parcel for the use at the time of nonconformity. Connecticut Resources Recovery Auth. v. Planning & Zoning Commission, 225 Conn. 731 (1993). However, where a "diminishing asset" use is at issue, such as a mining or excavation operation, no objective manifestation of intent is necessary since, by its nature, such an operation involves the continuance of such use over the entire parcel of land. Kovacs v. Zoning Board of Appeals of New Milford, CV 01085684S, 2002 Conn. Super. LEXS 4111 (December 17, 2002). Even so, nonconforming excavation operations may still be regulated and subject to permitting requirements. Id.; see also Section IV below.

E. Change to Less Offensive Use.

Not all changes in the character of a nonconforming use are considered to be unlawful. If the change is to a "less offensive" use, it may be protected. Thus, the owners of property who enjoyed a nonconforming use as a foundry were entitled to a variance for a change to a "less offensive" nonconforming use as an automobile repair shop. Adolphson v. Zoning Board of Appeals, 205 Conn. 703 (1988). On the other hand, the court held in Dornfried v. Plainville, 7 Conn. L. Rptr. 6 (Aug. 31, 1992) that it was impermissible to allow a change from a nonconforming mobile home to a nonconforming two-family house even though the latter was "less offensive" because the hardship standard was not satisfied.