

MEETING NOTICE AND AGENDA

MANSFIELD PLANNING AND ZONING COMMISSION

Monday, November 3, 2014 ▪ 7:10 PM

Or Upon Completion of Inland Wetlands Agency Meeting

Audrey P. Beck Municipal Building ▪ 4 South Eagleville Road ▪ Council Chambers

- 1. Call to Order**
- 2. Roll Call**
- 3. Approval of Minutes**
 - a. October 20, 2014 Meeting
- 4. Zoning Agent's Report**
- 5. Old Business**
 - a. Other
- 6. New Business**
 - a. Sign Request, 625 Middle Turnpike, OMS Development, PZC File #983
Memo from Zoning Agent
 - b. New Subdivision Application, 153 Moulton Road, Mason Brook, LLC, PZC File# 1328
 - c. New Subdivision Application, 140 Codfish Falls Road, S. Guyette, PZC File #1329
 - d. 2015 Meeting Schedule
Memo from Director of Planning
 - e. Other
- 7. Mansfield Tomorrow | Our Plan ▶ Our Future**
 - a. Discussion of Draft Plan of Conservation and Development
- 8. Reports from Officers and Committees**
 - a. Chairman's Report
 - b. Regional Planning Commission
 - c. Regulatory Review Committee
 - d. Subcommittee on Infrastructure
 - e. Planning and Development Director's Report
 - f. Other
- 9. Communications and Bills**
 - a. ZBA Public Hearing Notice 11/12/14
 - b. 10/29/14 Memo to OSTA from Town Manger Hart
 - c. Fall 2014 CFPZA
 - d. Other
- 10. Adjournment**

DRAFT MINUTES
MANSFIELD PLANNING AND ZONING COMMISSION
Regular Meeting
Monday, October 20, 2014
Council Chamber, Audrey P. Beck Municipal Building

Members present: Vice Chairman B. Ryan, R. Hall, K. Holt, G. Lewis, P. Plante, K. Rawn,
Members absent: J. Goodwin, B. Chandy, B. Pociask,
Alternates present: S. Westa
Alternates absent: P. Aho, V. Ward
Staff Present: Linda Painter, Director of Planning and Development
Curt Hirsch, Zoning Agent

Vice Chairman Ryan called the meeting to order at 7:29 p.m. and appointed Westa to act in member's absence and Rawn to act as Secretary.

Approval of Minutes:

a. October 6, 2014 Special Meeting

Hall MOVED, Plante seconded, to approve the 10-6-14 minutes as written. MOTION PASSED with all in favor except Ryan who was disqualified.

Zoning Agent's Report:

None.

Old Business:

None.

New Business:

Request for Modification, East Brook F, LLC, 95 Storrs Road, PZC File #432-2

John Everett of New England Design, representing the applicant, reviewed the modification request to utilize existing space formerly occupied by JC Penney. After review and questions and answers, the commission expressed concern with a notation on the plan from Meehan and Goodwin that refers to the "future reserved parcel" at the northeast corner of the site...noting that no plans for a future parcel have ever been approved.

Rawn MOVED, Holt seconded, to authorize the PZC Chair and Zoning Agent to approve the October 8, 2014 modification request of East Brook F, LLC; East Brook T, LLC; and East Brook W, LLC (PZC File # 432-2) for changes to the east and west building facades and parking/loading areas for the former J.C. Penney store on property owned by the applicants and located at 95 Storrs Road, as shown on plans dated 10/6/2014 as revised through 10/17/2014 and as described in application submissions. This authorization is subject to the following conditions:

1. Any further exterior modifications to address storefront access for the vacant tenant space shall require approval from the Commission.
2. Use of the vacant tenant space for a use other than those specified in Article Seven, Section L.3.a shall require approval from the Commission.
3. In accordance with Section L.3.c, any future division of the remaining vacant tenant space shall require approval from the Commission.
4. While depicted on the elevations, signs have not been reviewed as part of this modification request. Sign permits must be obtained; review for compliance with regulations shall be completed at that time.

5. The approval of this modification is limited to the changes proposed as part of this application and does not include any site and building improvements shown on the existing conditions survey that were made as part of the Michael's addition (PZC File #1307).

MOTION PASSED UNANIMOUSLY.

Mansfield Tomorrow | Our Plan ▶ Our Future:

Painter stated that staff will be sending out potential dates for special meetings in November, noting that the first two weeks of November we will try to meet twice a week.

Reports from Officers and Committees:

It was noted that staff is working on setting up a Regulatory Review Committee meeting.

Communications and Bills:

Noted.

Adjournment:

The Vice Chairman adjourned the meeting at 8:02 p.m.

Respectfully submitted,

Kenneth Rawn, Acting Secretary



Town of Mansfield



CURT B. HIRSCH
ZONING AGENT
HIRSCHCB@MANSFIELDCT.ORG

AUDREY P. BECK BUILDING
4 SOUTH EAGLEVILLE ROAD
MANSFIELD, CT 06268-2599
(860) 429-3341

Memo to: Planning and Zoning Commission
From: Curt Hirsch, Zoning Agent
Date: October 30, 2014

MONTHLY PERMIT ACTIVITY for October 2014

ZONING PERMITS

<u>Name</u>	<u>Address</u>	<u>Purpose</u>
Straub	38 Boulder La.	8 x 12 shed
Morrissey	147 Coventry Rd.	above pool and deck
Fazzins	127 Gurleyville Rd.	enlarge deck
Young	83 River Rd.	8 x 12 shed
Popp/Joshua's Trust	Hanks Hill Rd.	lot-line revision
Lamb	54 Mansfield Hollow Rd.	lot-line revision
Parker	710 Storrs Rd.	in-ground pool
Beaudoin Bros.	Lot 13 Monticello Rd.	1 fm dw
Stanton	29 Browns Rd.	12 x 20 sunroom

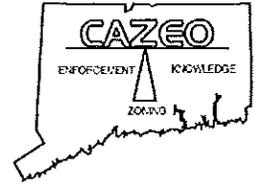
CERTIFICATES OF COMPLIANCE

Beaudoin Const.	1 Uncus Ct.	rear deck
Ramesh	17 Thornbush Rd. Ext	shed
Mango	253 Spring Hill Rd.	shed
Town of Mansfield	10 S. Eagleville Rd.	boat storage rack
Mott	46a Highland Rd.	garage addition
South / Castelli	341 Mulberry Rd.	enlarge deck
Zhen	1812 Storrs Rd.	two sheds
Prewitt	4 Pine Ridge La.	front porch
Beebe	12 Beebe La.	addition
Rice	147 Stafford Rd.	addition/efficiency unit
Hancock	21 Holly Dr.	shed
Zimmer	43 Bundy La.	shed

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Town of Mansfield



CURT B. HIRSCH
ZONING AGENT
HIRSCHCB@MANSFIELDCT.ORG

AUDREY P. BECK BUILDING
4 SOUTH EAGLEVILLE ROAD
MANSFIELD, CT 06268-2599
(860) 429-3341

To: Planning & Zoning Commission
From: Curt B. Hirsch, Zoning Agent
Date: October 27, 2014

Re: Sign request, 625 Middle Turnpike, PZC # 983
Toast On 4 Corners, restaurant

625 Middle Turnpike has been known as the *Zenny's* property for over thirty years. *Zenny's* was operated as a full-service restaurant with a banquet facility for many of those years. The property is now owned by OMS Development and the building is being divided between two new operators. *Toast On 4 Corners* will operate as a breakfast and lunch restaurant in the front portion of the building, and the *Deanston House* will operate strictly as a banquet-type facility in the rear portion of the building. Both businesses are currently constructing their renovations. There is no customer access to the building on the front façade of the building – the façade fronting on Middle Turnpike. Each business has a separate customer entrance off of the parking lot on the west and north sides of the building.

Rossi Brother's has applied for two, 25 sq. ft. building identity signs for *Toast On 4 Corners*. One would be placed on the street façade as per Article X.C.5.a of the zoning regulations and will be in compliance with the size and location criteria of the regulations. Section C.6.e allows the Commission to authorize a second, building sign on the façade of the principal customer entrance, provided the PZC determines that said sign *will clearly promote traffic safety, the public convenience and excellence in design and aesthetic character*. Both signs are the same dimensions and no illumination is being proposed. The regulations will allow "building identity" signs to identify a building occupant without a permit, provided they are no larger than two sq. ft. in size.

Due to the buildings close proximity to the street, it is set back less than 20 feet, a driver from either direction would not see a "front façade" sign until passing the building. A sign placed on the west façade facing the parking lot, would allow an east-bound driver to see the sign more than 300 feet before the entrance to the parking lot. A west-bound driver would see the front-façade sign approximately 80 to 100 feet before the driveway entrance. I expect that both businesses will take advantage of the free-standing sign formerly used by *Zenny's*. It is located on the west side of the building, in front of the parking lot. No application has been submitted for this sign however.

In my opinion, one purpose of a sign is to identify a site or use, in a manner that is clear and understandable, so as to give adequate advance notice to a motorist looking for a particular site, and providing him with sufficient time to react while travelling at an appropriate speed. I believe that a second sign will meet the approval criteria of promoting public safety and public convenience. The proposed sign, in the shape of a slice of toast and depicting a fried egg, is certainly unique. Meeting the test of excellence in design and aesthetic character is an individual call that I will leave to the Commission.

I recommend that the PZC approve the request of Rossi Brothers, on behalf of *Toast On 4 Corners*, for a second, building identity sign, as submitted in an application package dated 10/15/14, because the proposed sign will be in compliance with Article X, Section C.6.e of the zoning regulations.

Town of Mansfield
PLANNING AND ZONING COMMISSION

ZONING PERMIT APPLICATION - SIGNS

APPLICANT/OWNER SECTION (please print)

1. 675 MIDDLE TURNPIKE Site Location
2. PB-3 Zone
3. PETER RUSSI Applicants Name | 34 WEST ST STAFFORD CT 06076 Address | 860 689-9229 Phone
4. JOHN REUBER Property Owners Name | _____ Address | 1 860 487-9446 Phone
5. TOAST ON 4 CORNERS Name of Business / Development

6. TYPE OF SIGN (check all that apply)

A. Identity sign for the designated type of use:

- CONFORMING
- NON-CONFORMING
- Free Standing
- Gasoline Station
- Church
- Mobil Home Park
- Multi-Family Development

Attached to building

Permanent Farm Stand

Each sign 5' x 5'
no illumination

- B. Off-site Directional sign
- C. Grand Opening Event sign
- D. Storrs Center – Special Design District

7. Information regarding the proposed sign(s): The applicant shall submit a sketch of the proposed sign showing overall dimensions, height above the ground to top of any free-standing sign, position on building for attached signs, method of lighting, construction materials, and any other information deemed necessary to review this application. For free-standing signs, the applicant shall also submit a plot plan which shows the proposed sign location upon the site with distances to adjacent property lines, streets and driveways.

8. Certification: The applicant certifies that all information submitted in this application is true and accurate and that upon issuance of a Zoning Permit to erect the proposed sign(s) the applicant shall comply with the regulations regarding signs and any special conditions that may be placed upon this permit. Furthermore, the applicant shall notify the Zoning Agent when the sign has been installed so that an inspection may be made to verify compliance.

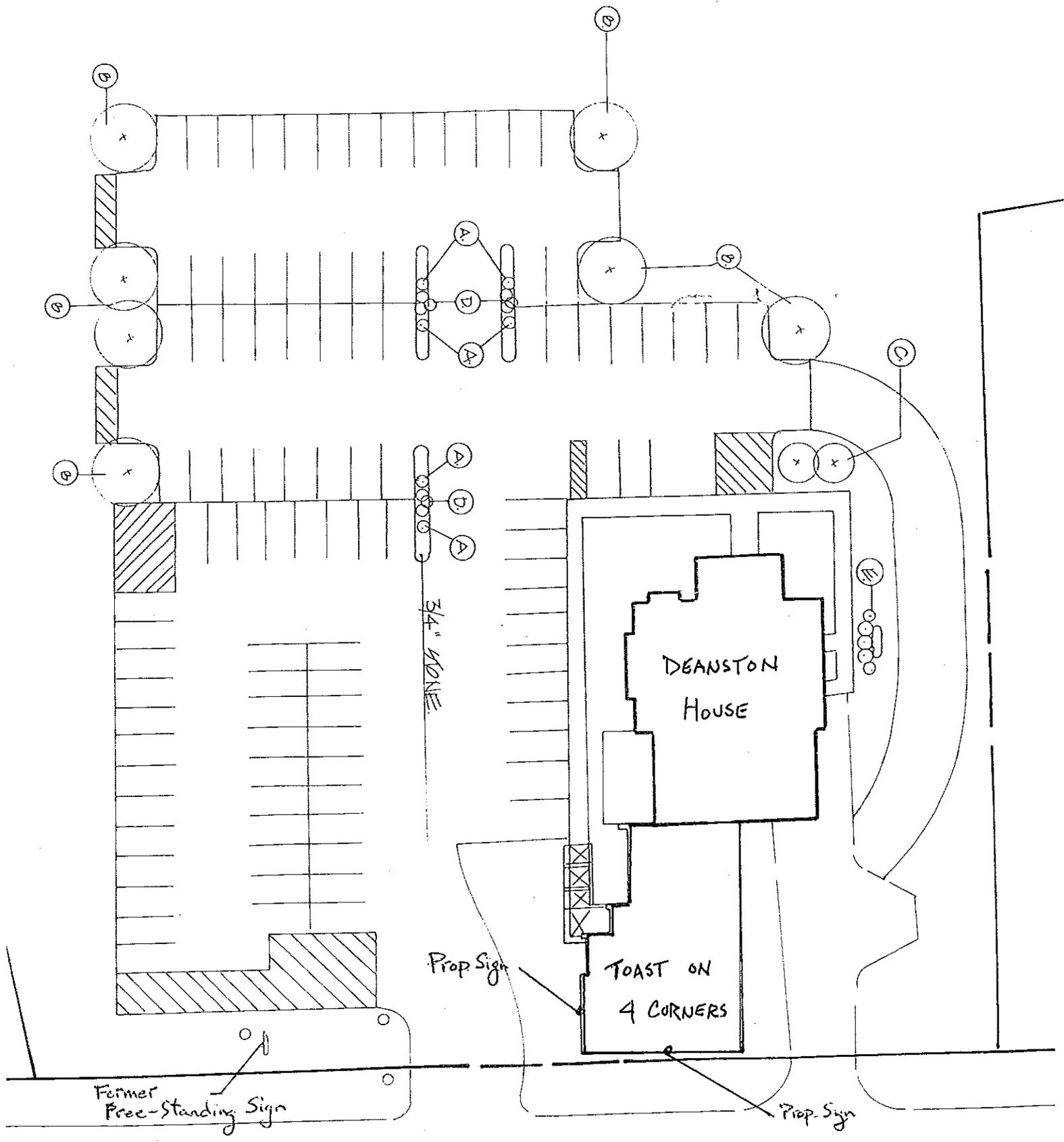
X  Applicants Signature

10/15/14 Date

6. Possible Variations Regarding the Number and Size of Signs

Rev. 12.15.12
to remove 3' x 4'

- a. Gasoline Service Stations: In addition to the one freestanding sign that may be authorized for commercial and industrial uses, gasoline service stations may utilize one additional sign with Zoning Permit approval, for price information, provided the sign does not exceed twelve (12) square feet. Provided sightline or traffic safety problems are not created, the second sign shall be mounted on the same post as the primary identity sign.
- b. For shopping centers with five or more separate stores where the subject buildings are set back a mini-mum of one hundred and fifty (150) feet from the highway clearance setback line, the primary free-standing identity sign may be increased from thirty-two (32) square feet to forty (40) square feet in area, with Zoning Permit approval.
- c. Authorized freestanding identity signs may include a dimension greater than eight (8) feet, provided the Planning and Zoning Commission determines that the longer sign will not create safety problems and provided the proposed sign promotes excellence in design and aesthetic character (see Article a commercial or X, Sections C.10 through C.12).
- d. Where a commercial or industrial use or multi-family housing project is located on an individual site that has frontage and public access on more than one public street, a second freestanding identity sign may be authorized on the same lot, provided the sign is no larger than twelve (12) square feet in area, provided said sign is located near a public access way and provided the Planning and Zoning Commission determines that said sign will clearly promote traffic safety, the public convenience and excellence in design and aesthetic character (see Article X, Sections C.10 through C.12).
- e. Where a commercial or industrial use has a direct principal customer entrance on a building facade that is not the front facade provided for in subsection 5.a.2 or 5.b.2 above, one additional attached identity sign may be authorized, provided the sign is no larger than one (1) square foot of area for each linear foot of façade upon which the subject entrance is located, and provided the Planning and Zoning Commission determines that said sign will clearly promote traffic safety, the public convenience and excellence in design and aesthetic character. For the purpose of this subsection, a customer entrance off a common mall entry is not considered a direct principal customer entrance (see Article X, Sections C.10 through C.12).
- f. Where an industrial park development within the IP or RD/LI zones has a number of distinct uses on separate lots but utilizes a collective identity, additional free-standing identity signs may be authorized, provided the Planning and Zoning Commission determines that the proposed signs are appropriately located and designed to promote traffic safety, the public convenience and excellence in design and aesthetic character, provided no sign is larger than thirty-two (32) square feet in size and provided all signs authorized under this subsection for a particular development project are uniform in size, shape and color (see Article X, Sections C.10 through C.12).
- g. For commercial, industrial, multi-family or mobile home park uses, the PZC may authorize one additional identity sign that is composed of evergreen plantings or other natural materials. Said signs shall only be authorized where the applicant



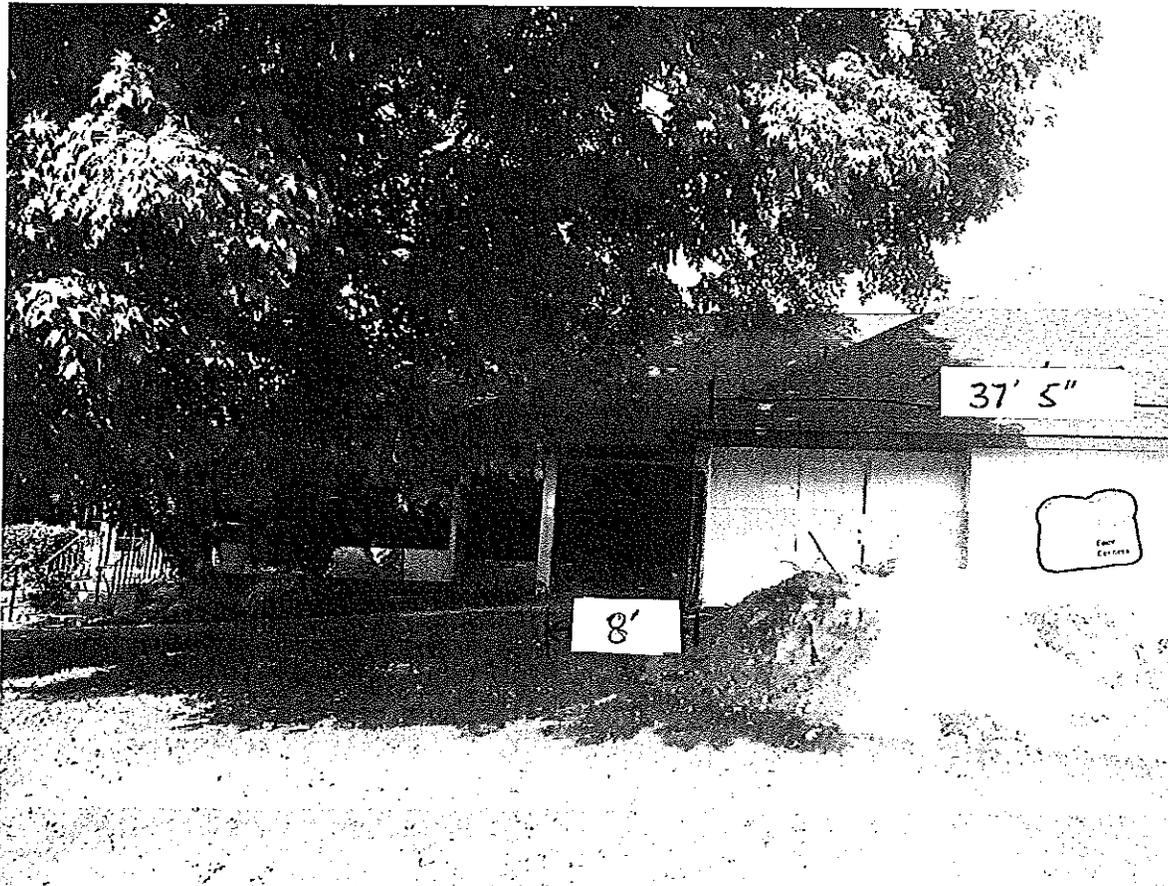
MIDDLE

TURNPIKE

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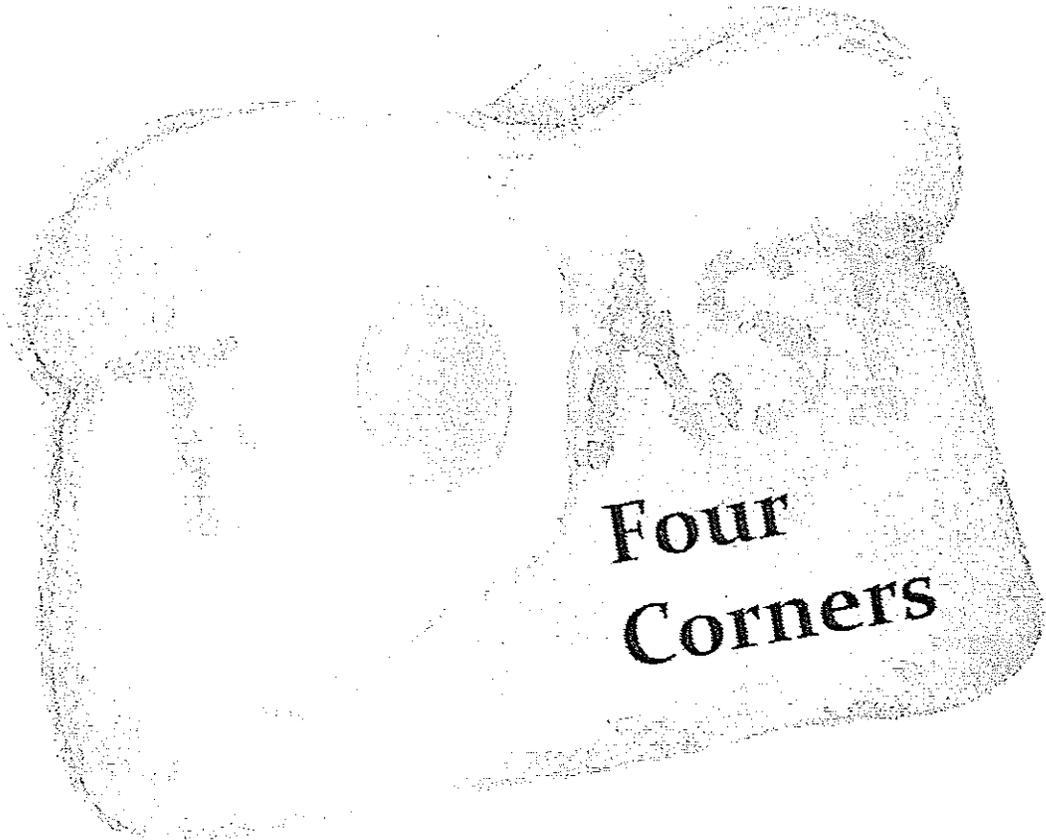
FRONT



→ WBST

8'

8' 6\"/>A small white sign with a hand-drawn outline and the text '8' 6\"/>



Sign is 5' x 5'

RECEIPT OF APPLICATION FOR A SUBDIVISION:

_____, move and _____ seconds to receive the

SUBDIVISION application (file # 1328)

submitted by Mason Brook LLC

for a 1-lot subdivision

on property located 153 Moulton Road

as shown on plans dated August 2014,

and as described in other application submissions, and to refer said application to the Fire Marshal, Assistant Town Engineer, Conservation Commission, and Eastern Highlands Health District, for review and comments.

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file # 1328
filing date _____

**MANSFIELD PLANNING & ZONING COMMISSION
APPLICATION FOR SUBDIVISION OR RESUBDIVISION APPROVAL**

Name of subdivision 153 Moulton Road Subdivision "Mason Brook Heights"

Name of subdivider (applicant) Mason Brook LLC - ~~LLC~~ Phone # 860. 805. 3276
(please PRINT)

Address 192 Ravine Rd Storrs CT 06268
(street) (town) (state) (zip)

Signature [Signature], member (owner member)
(optionee) Date 10/28/14
10/28/14

OWNER (IF OTHER THAN SUBDIVIDER)

Name _____ Phone # _____
(please PRINT)

Address _____
(street) (town) (state) (zip)

Signature _____ Date _____

FEES

See Town Council-approved Fee Schedule & Eastern Highlands Health District Review Fee Schedule
(Subdivisions will not be reviewed by Eastern Highlands Health District unless an Application for Plan Review has been submitted)

SUBDIVISION DATA

Location:
153 Moulton Road, Storrs, CT

Zoning district RAR-90 Total # of acres 25
Total # of lots one

EXTENSION OF TIME

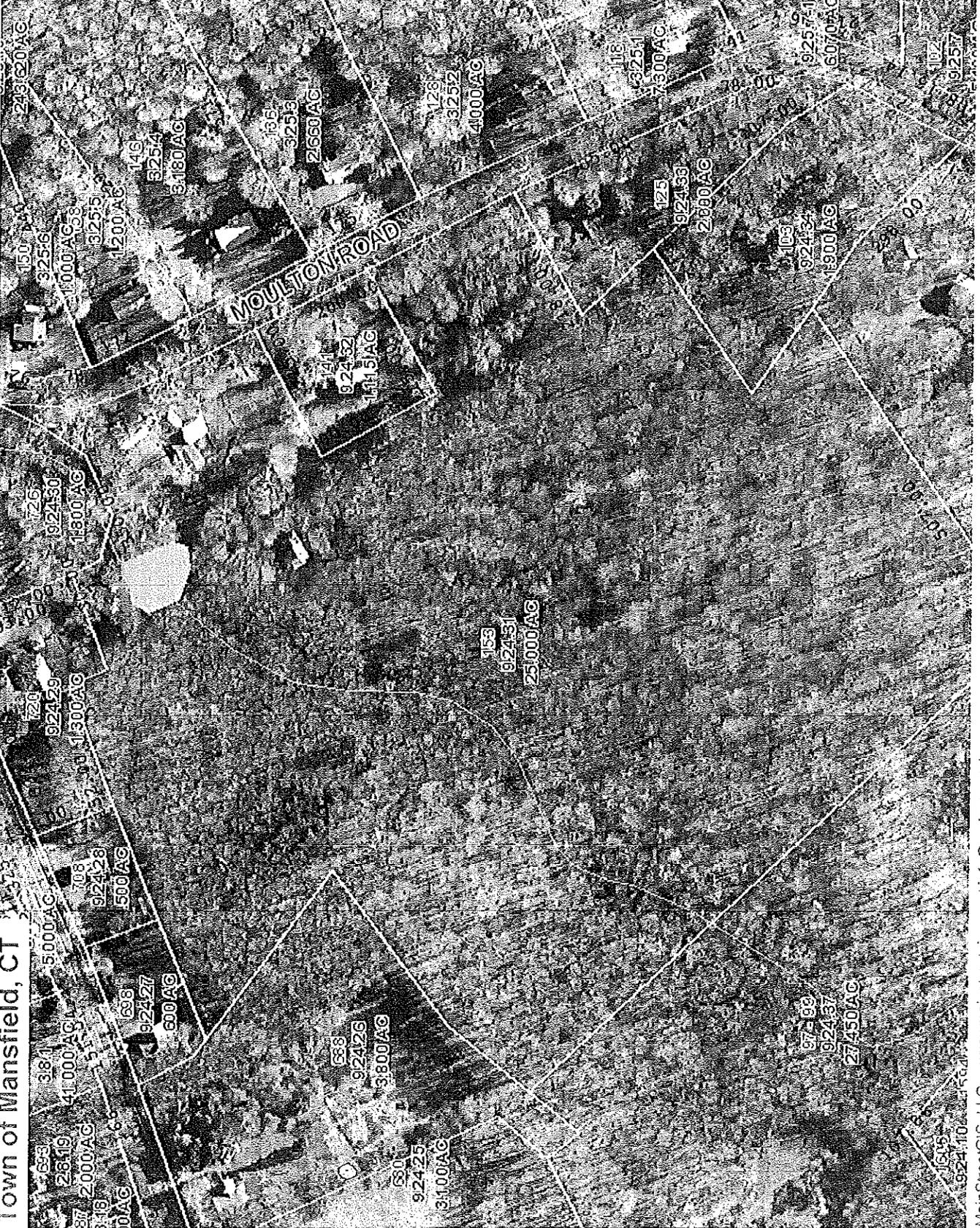
Pursuant to Section 8-26d, subsection (b) of the Connecticut General Statutes, the undersigned applicant hereby consents to an extension of time within which the Planning and Zoning Commission is required by law to approve, modify and approve or disapprove a subdivision plan known as

_____ and located at/on _____

It is agreed that such extension of time shall not exceed 65 days and it is understood that this extension of time is in addition to the first 65-day period after the receipt of the application by the Planning & Zoning Commission.

Signature _____ Date _____
Posted: 2006 11 15

Town of Mansfield, CT



- Zoning
- Conservation
- Railroad
- Trails
- Parcels
- Streams
- water
- wetlands



1 in = 212.8 ft

Printed:
4/24/2014

MainStreetGIS

MainStreetGIS, LLC - www.mainstreetgis.com / info@mainstreetgis.com

Disclaimer: This map is for assessment purposes only. It is not valid for use as a survey or for conveyance

RECEIPT OF APPLICATION FOR A SUBDIVISION:

_____, move and _____ seconds to receive the

SUBDIVISION application (file # 1329)

submitted by Steven Guyette

for a 3-lot subdivision

on property located 140 Codfish Falls Road

as shown on plans dated 9/25/14,

and as described in other application submissions, and to refer said application to the Fire Marshal, Assistant Town Engineer, Conservation Commission, and Eastern Highlands Health District, for review and comments.

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filing date 11-29-14 file # 1329

**MANSFIELD PLANNING & ZONING COMMISSION
APPLICATION FOR SUBDIVISION OR RESUBDIVISION APPROVAL**

Name of subdivision Guyette Estates

Name of subdivider (applicant) Steven Guyette Phone # 860-428-6895
(please PRINT)

Address 38B Crystal Lane, Storrs, CT 06268
(street) (town) (state) (zip)

Signature [Handwritten Signature] (owner
(optionee)
(applicant) Date 10/20/2014

OWNER (IF OTHER THAN SUBDIVIDER)

Name Elaine Guyette (owner) Phone # c/o Steven Guyette 860-428-6895
(please PRINT)

Address 140 Codfish Falls Road, Storrs, CT 06268
(street) (town) (state) (zip)

Signature [Handwritten Signature: Elaine Guyette] Date 10/26/2014

FEES

See Town Council-approved Fee Schedule & Eastern Highlands Health District Review Fee Schedule
(Subdivisions will not be reviewed by Eastern Highlands Health District unless an Application for Plan Review has been submitted)

SUBDIVISION DATA

Location: 140 Codfish Falls Road
Storrs, CT 06268

Zoning district RAR-90 Total # of acres 55.22
Total # of lots 3

EXTENSION OF TIME

Pursuant to Section 8-26d, subsection (b) of the Connecticut General Statutes, the undersigned applicant hereby consents to an extension of time within which the Planning and Zoning Commission is required by law to approve, modify and approve or disapprove a subdivision plan known as

_____ and located at/on _____

It is agreed that such extension of time shall not exceed 65 days and it is understood that this extension of time is in addition to the first 65-day period after the receipt of the application by the Planning & Zoning Commission.

Signature _____ Date _____
Posted: 2008 11 15

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TOWN OF MANSFIELD
DEPARTMENT OF PLANNING AND DEVELOPMENT

LINDA M. PAINTER, AICP, DIRECTOR

Memo to: Planning and Zoning Commission
From: Linda M. Painter, AICP, Director of Planning and Development
Date: October 30, 2014
Subject: 2015 Draft Meeting Schedule

Please review the attached 2015 draft meeting schedule for the Planning and Zoning Commission and Inland Wetland Agency. Also note that several meeting dates are on Tuesday due to a Monday Holiday.

The following motion has been prepared if members deem it appropriate. That the Planning & Zoning Commission approve the 2015 meeting schedules for the Planning and Zoning Commission and Inland Wetlands Agency.

Mansfield Planning and Zoning Commission/Inland Wetlands Agency 2015 Meeting Schedule

The Inland Wetlands Agency generally meets on the 1st Monday of the month at 7:00 p.m. in Council Chambers unless otherwise noted. The Mansfield Planning and Zoning Commission generally meet on the 1st and 3rd Monday of the month at 7:00 p.m. in Council Chambers unless otherwise noted. The following are specific meeting dates for 2014. Agendas will be posted 24 hours before the meeting. This schedule is subject to change.

- January 5, 2015
- January 20, 2015 (TUES due to Martin Luther King Jr. Day)
- February 2, 2015
- February 17, 2015 (TUES due to Presidents Day)
- March 2, 2015
- March 16, 2015
- April 6, 2015
- April 20, 2015
- May 4, 2015
- May 18, 2015
- June 1, 2015
- June 15, 2015
- July 6, 2015
- July 20, 2015
- August 3, 2015
- August 17, 2015
- September 8, 2015 (TUES due to Labor Day)
- September 21, 2015
- October 5, 2015
- October 19, 2015
- November 2, 2015
- November 16, 2015
- December 7, 2015
- December 21, 2015

Legal Notice:

The Mansfield Zoning Board of Appeals will hold a public hearing on November 12, 2014 at 7:00 p.m. in the Council Chamber of the Audrey P. Beck Municipal Building, 4 South Eagleville Rd, to hear comments on the following applications:

7:00 P.M. – Joanna Borucinska for a Special Exception of Art IX, Sec C.2.c to construct a 32' x 20' barn with lean-to in the location of an existing non-conforming garage, decreasing the side property setback from 21.7' to 10' at 41 Mulberry Rd.

7:30 P.M. – Julie Menard & Steven Lane for a Special Exception of Art IX, Sec C.2.c for a proposed 8'x 27' front porch on an existing non-conforming residence, reducing the front yard setback from 31' to 23' at 131 Brookside Ln.

At this public hearing, interested parties may appear and written communications may be received. No information shall be received after the close of the public hearing. Additional information is available in the Mansfield Town Clerk's Office. Dated November 12, 2014.

Sarah Accorsi
Chairman

TOWN OF MANSFIELD
OFFICE OF THE TOWN MANAGER



Matthew W. Hart, Town Manager

AUDREY P. BECK BUILDING
FOUR SOUTH EAGLEVILLE ROAD
MANSFIELD, CT 06268-2599
(860) 429-3336
Fax: (860) 429-6863

October 29, 2014

Mr. David Sawicki
Executive Director
Office of the State Traffic Administration
2800 Berlin Turnpike
P.O. Box 317546
Newington, Connecticut 06131-7546

Re: University of Connecticut STEM Residence Hall

Dear Mr. Sawicki:

At its meeting on October 28, 2014, the Mansfield Traffic Authority reviewed the proposed STEM Residence Hall Major Traffic Generator Administrative Decision Request. Based on the application materials provided, the Traffic Authority has determined that the proposed construction of the residence hall would not have a significant impact on the operation of state roads. However, the committee also noted that the following comments, provided to the University as part of the Environmental Impact Evaluation (EIE), should be reiterated:

- We strongly encourage the University to implement the mitigation measures identified in the EIE report prior to opening the building. Transportation Demand Management, expansion of public transportation options and decreasing resident students demand for cars can all serve to mitigate traffic as the University expands. Additionally, the University should periodically evaluate and reassess the effectiveness of these approaches and provide the Town with a report detailing the results.
- The University should instruct its construction contractors to use state roads, not local roads, to access the site to minimize the potential for disturbance in neighborhoods adjacent to campus.

Please contact Linda Painter, Director of Planning and Development (860.429.3330), or John Carrington, Director of Public Works (860.429.3332), if you have any questions regarding these comments.

Sincerely,

Matthew W. Hart
Town Manager/Local Traffic Authority

C: Planning and Zoning Commission
Town Council
Traffic Authority

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**CONNECTICUT FEDERATION OF
PLANNING AND ZONING AGENCIES
QUARTERLY NEWSLETTER**

Fall 2014

Volume XVIII, Issue 4

DIFFICULTY SELLING LOT IS NOT
AN UNUSUAL HARDSHIP

An owner of a parcel of commercially zoned land sought a variance to permit him to use the property as a used car lot. The property was located within a design district which allowed certain office and research uses but did not allow used car lots. The only evidence presented on the issue of unusual hardship was a report from a realtor which stated that due to the restrictions placed upon the lot by the zoning designation, the property was undervalued and at a significant disadvantage as compared to other comparable properties. The property was in an undeveloped state and the owner claimed he was having difficulty selling it. The Board granted the variance, upon which an appeal to court followed.

The State Appellate Court found that the Board's decision was in error. In doing so, the court reaffirmed long standing principles as to when limits placed upon the use of a parcel of property by the zoning regulations amounts to practical confiscation and a finding of unusual hardship. It is not enough to show a diminution in value or frustration in development or investment plans. Instead, it must be shown that the zoning classification of the property destroys its value and renders it unusable for any of the uses permitted. *See Caruso v. ZBA, 150 Conn. App. 831 (2014).*

COMMISSION WITHOUT
AUTHORITY TO ALTER CLEAR
REQUIREMENT IN REGULATIONS

Where the zoning regulations did not permit parking within a front yard, it was improper for a planning and zoning commission to approve a special permit for a church where the parking lot would be located in a space between the front of the building and the street. The commission had argued that since the parking lot would be outside of the front yard setback and another section of the regulations permitted up to 10% of the required parking to be located in a front yard, it was within the commission's authority to approve this front yard parking scheme.

The State Appellate Court disagreed, requiring the commission to apply its regulations as written, especially where the terms are not ambiguous and no history of how the commission applied this regulation was made part of the record. *See Michos v. PZC, 151 Conn. App. 539 (2014).*

NONCONFORMING STATUS OF
UNDEVELOPED LOTS

A Superior Court decision stated that Section 8-2 of the Connecticut General Statutes only protects an undeveloped lot from subsequent zone changes if it is dedicated to a particular use. The case concerned the owner of a vacant commercially zoned parcel of land that did not conform to the required

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CONNECTICUT FEDERATION OF
PLANNING AND ZONING AGENCIES
QUARTERLY NEWSLETTER

Fall 2014

Volume XVIII, Issue 4

lot size requirement. The lot predated zoning. The owner, when applying for a special permit to develop the property, stated that the lot was nonconforming as to its size. When he was denied his permit, he appealed the decision to superior court.

Relying on the Appellate Court case entitled *Johnson v. Zoning Board of Appeals*, 35 Conn. App. 820 (1994), the court ruled that undeveloped lots that do not conform to the zoning regulations are not afforded any protection by section 8-2. The exception is where the lot has been committed to a particular use. Whether it has or hasn't is an item the owner needs to prove, such as where a lot is part of a residential subdivision and thus committed to an approved future single family use. The court did state that municipal zoning regulations can provide protection to undeveloped nonconforming lots. *See Summit Street Development LLC v. PZC*, 57 Conn. L. Rptr. 563 (2014).

WETLANDS COMMISSION HAS
SOLE AUTHORITY TO DETERMINE
WHETHER USE EXEMPT

A purchaser of a large parcel of property commenced grading activities as well as the construction of a barn and horse riding area. While a building permit had been issued for the barn, no permits had been sought or obtained for the other activities. The wetlands enforcement officer became aware of these activities and sent a cease and

desist order to the property owner. After the show cause hearing was held and the order upheld, the owner contacted the commission claiming her activities were exempt from wetlands regulations because she was conducting farming activities. She was instructed to appear before the commission and request a decision as to this issue. When she failed to do so, an enforcement action, seeking an injunction, was brought to court by the Commission. In her defense, the property owner brought a counter-action claiming that her activities were exempt from the jurisdiction of the commission.

The court struck down her counter action because she had failed to resolve the issue of jurisdiction with the commission. The determination of whether an activity is exempt is, in the first instance, to be determined by the commission. Thus, while her activities may very well have been exempt farming activities, she still needed to apply to the commission for this determination. Her failure to do so meant she conceded to the commission's jurisdiction. This allowed the commission's enforcement action to proceed to a successful conclusion. *See Yorgensen v. Chapdelaine*, 150 Conn. App. 1 (2014).

TOWN PLANNER REPORT FOUND
TO BE EX PARTE EVIDENCE

An application for a one lot subdivision was denied because the

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CONNECTICUT FEDERATION OF
PLANNING AND ZONING AGENCIES
QUARTERLY NEWSLETTER

Fall 2014

Volume XVIII, Issue 4

applicant failed to dedicate any open space as part of the application. During the public hearing, the issue of open space or a fee in lieu of open space was not discussed. At a subsequent meeting after the close of the public hearing, the commission was presented a written opinion by the town planner. Part of her opinion addressed the lack of open space and stated that the application could be denied for that reason. The commission agreed, denying the application.

While the subdivision regulations did support this reason for denial, these regulations also provided that the commission could waive the requirement. Thus, it was not unreasonable for an applicant to not offer open space as part of its application, instead waiting for the Commission to make a request. The fatal flaw to the commission's decision was that this issue was only raised after the close of the hearing, with the commission considering ex parte evidence presented during its meeting to consider the application. This was a violation of the applicant's due process rights and entitled her to a new hearing. *See Ruscio v. PZC, 58 Conn. L. Rptr. 414 (2014).*

U.S. SUPREME COURT OKs
PRAYER AT TOWN MEETINGS

A municipality typically opened its council and commission meetings with a short prayer led by an invited minister or other religious leader.

Complaints were lodged by certain attendees of these public meetings, stating that they violated the separation of church and state. When the town refused to end the prayers at public meetings, the issue wound up before the nation's highest court.

What amounted to a historical journey, the Court found that since this country was founded, prayer has often been part of government. For example, Congress opens its sessions with a prayer. So long as the prayer is non-judgmental and all faiths are provided an opportunity to take part, prayer can be part of a government meeting or assembly. *See Town of Greece New York v. Gallow, No. 12-696 (5/5/14).*

ANNOUNCEMENTS

Workshops

If your land use agency recently had an influx of new members or could use a refresher course in land use law, contact us to arrange for a workshop. At the price of \$175.00 per session for each agency attending, it is an affordable way for your commission or board to keep informed.

ABOUT THE EDITOR

Steven Byrne is an attorney with an office in Farmington, Connecticut. A principle in the firm of Byrne & Byrne LLC, he maintains a strong focus in the area of land use law and is available for consultation and representation in all land use matters both at the administrative and court levels.

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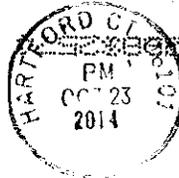
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