

**TOWN PLAN AND ZONING COMMISSION  
TOWN OF FAIRFIELD  
MINUTES OF MEETING – September 27, 2022**

The Town Plan and Zoning Commission held a Special Meeting at 6:30 p.m., Tuesday, September 27, 2022. The Town conducted its meeting at the Fairfield Fire School, 205 Richard White Way, Fairfield, Connecticut, and via WEBEX.

Members Present: Tommy Noonan, Chairman; Lenny Braman, Vice Chairman; Meg Francis, Secretary; Kathy Braun; Alexis Harrison; Steve Levy.

Alternate Members Present: Sarah Keitt and Steve Leahy (via WEBEX).

Town Department Members Present: Jim Wendt, Planning Director  
Emmeline Harrigan, Asst. Planning Director  
Josephine M. Keogh, Clerk

Ms. Keitt sat for Mr. Ford.

**Meeting Minutes** Motion was made by Ms. Francis, seconded by Ms. Harrison and members present **VOTED TO APPROVE** the Meeting Minutes of September 13, 2022.

**2500 Black Rock Turnpike** Motion was made by Ms. Francis, seconded by Mr. Braman and members present unanimously **VOTED TO MOVE TO PUBLIC HEARING** the Special Permit application of Lenox Properties, LLC for an addition to an existing commercial building. Des. Comm. Dist.

**Zoning Regulation Amendment** Motion was made by Ms. Harrison, seconded by Ms. Francis and members present unanimously **VOTED TO MOVE TO PUBLIC HEARING** the Application of the Economic Development Commission to amend Sections 12.3.15, 12.4.17, 12.5.15, 13.14.2, 21.16.3.12 and 28.6.12 relating to provisions for outdoor dining.

**Zoning Regulation Amendment** Motion was made by Ms. Braun, seconded by Ms. Keitt and members present unanimously **VOTED TO DENY** the Application of 15 Unquowa Road, LLC to amend Section 12.3 of the Zoning Regulations (Center Designed Business District). Proposed new Section 12.3.29 “Inclusionary Multi-Family Residential Use with a Housing Opportunity or Workforce Housing Component”.

**15 Unquowa Road** Motion was made by Mr. Braman, seconded by Ms. Keitt and members present unanimously **VOTED TO DENY** the Zoning Compliance application of 15 Unquowa Road, LLC pertaining to the construction of a 63-unit residential building pursuant to Section 8-30g of the CT General Statutes. Cent Des. Bus. Dist.

With regard to the environmental intervention filed by Fairfield Center Alliance, LLC; motion was made by Ms. Braun, seconded by Ms. Harrison and the members present unanimously voted the intervener has satisfied the standards of Section 22a-19 and further finds that the proposal involves conduct which is reasonably likely to have the effect of unreasonably polluting, impairing or destroying the public trust in the air, water or other natural resources of the state.

The Commission further issues the following Collective Statement:

**Introduction**

The subject parcel is 0.473 acres in size and located within the Center Designed Business District. The site is bounded on the east by Unquowa Road, the west by Sanford Street with adjoining commercial properties on the north and south. The existing site has multiple buildings comprising 13,500 square feet of mixed commercial occupancies as well as a small residence. The application seeks a regulation amendment and site plan approval for a six story 63-unit residential building with at grade and below grade parking beneath the building. Vehicle access is proposed via Sanford Street with two 2-way driveways (one for the grade level parking area and one for the below grade parking structure).

There are 3 separate issues for which the Commission must make findings and vote:

- 1) The proposed zoning regulation amendment.
- 2) The proposed zoning compliance application for the actual development, and
- 3) Findings with regard to the intervention petition file pursuant to Sec. 22a-19 of the CT General Statutes.

With regard to the first two issues, the standards of review are those articulated in Sec. 8-30g of the CT Gen Statutes:

The burden shall be on the Commission to prove that the decision is based on sufficient evidence in the record.

The decision is necessary to protect a public interest in health, safety or other matters within the Commission's jurisdiction.

Such interests clearly outweigh the need for affordable housing and

Such public interests cannot be protected by reasonable changes to the proposed development.

## **Zoning Regulation Amendment**

The regulation amendment seeks to add new Section 12.3.29 within the Center Designed Business District to permit inclusionary multi-family residential use in set-aside developments, pursuant to Section 8-30g of the CT General Statutes. The highlights of the proposed regulation include the provision for multi-family residential buildings with the following site and design guidelines:

Minimum lot size of 1/3 acre or 14, 520 square feet;

Minimum street frontage of 50 feet;

Access to existing public water and public sewer;

Site must be located within 400 feet of a public mode of transportation such as a rail station.

Building may not exceed seven stories of livable floor area, not including below grade living or parking area or rooftop amenities;

Zero setbacks permitted on all sides; maximum building height of 7 stories and 70 feet;

Permitted impervious lot coverage of 100% of the area of the lot;

Permitted dwelling unit density of 65 units per one-third acre (195 units / acre);  
Minimum parking of 1 space per dwelling unit, however 10% of parking may be permitted within 500 feet.

The record includes a map that shows the potential eligible area to which the proposed amendment could apply (the area within 400 feet of a public mode of transportation being a train station or GBTA bus stop). The result shows that almost the entire downtown would be potentially eligible. Since the proposed regulation does not require any commercial occupancy on the ground floor or any portion of a proposed building, the proposed regulation would potentially permit the gradual elimination of any commercial occupancy in the entire historic commercial downtown.

The Town's own 2019 Transit Oriented Development (TOD) Study recognizes the demand to include greater housing opportunity in our downtown, however the recommendations in that study emphasize that requiring at least a ground floor commercial presence is critical to maintaining a vibrant, pedestrian friendly commercial corridor. This is especially important since only approximately 5% of Fairfield's land is zoned for commercial use.

The TOD study recommends modifying the current downtown height regulation from 5 stories and 50 feet to 4 stories and 52 feet. The proposed regulations proposal exceeds that recommendation by 3 stories.

The potential impact of the zoning regulation was the subject of considerable discussion during the hearing. The Commission raised the concern regarding the proposed design requirements including but limited to proposed height of 7 stories and the fact that commercial uses, particularly in the ground floor are not permitted. The record includes a memo from the Economic Development Commission that emphasizes the concerns raised by the Commission and the initial staff report noting:

- Only 4.5% of the Town’s land is zoned for commercial uses, creating an imperative to preserve these locations for commercial applications;
- Fairfield’s downtown is a key economic driver and regional destination for dining, entertainment and shopping, contributing 22% of the Town’s property tax revenues, which in turn accounts for 93% of the Town’s operating budget;
- The proposed text amendment would permit residential use without any requirement for ground floor commercial occupancy in virtually the entire downtown, displacing commercial uses as is the case in the present application, which would have a deleterious effect on the Town’s commercial center and historic downtown.

The viability of the Town’s commercial center is a matter of great public interest. During the hearing, applicant’s counsel acknowledged that at some point there would be a tipping point where the Commission would need to deny applications to stop the commercial degradation of downtown, however asserted that this application did not reach such a point.

It is noteworthy that even the Town’s Affordable Housing Committee indicated, in their 6/13/22 letter, that they were troubled by the scale and height of the development indicating the proposal is “well beyond the norm for other set aside development proposals proposed under CGS 8-30g.”

### **Regulation Amendment Findings**

The Commission makes the following findings with regard to the regulation amendment:

The Commission finds that the Center Designed Business District is the economic and emotional center of our town, essentially its heartbeat.

The Commission further finds that the proposed regulation clearly does not comport with the guidelines set forth in the Transit Oriented Development Study, which states in its introduction “At Fairfield Downtown, small scale infill development will support the continued vitality of Fairfield’s beloved downtown shopping and dining district.”

The Commission further finds the proposed text amendment does not align with the Commission's long standing vision for Fairfield and is in fact detrimental to business. If approved, the Post Road between Granville Street to the west and Beach Road to the east would be zoned to allow replacement of current modest sized mixed-use buildings into residential buildings without any commercial occupancy on the first floor. Over time, this would transform our vibrant downtown into a desert, devoid of any business activity, replaced by a long stretch of high-rise apartment buildings.

The Commission finds that the proposed amendment goes far beyond the scope of the proposed project to encompass the entire downtown, which is not in the long term interest of the Town.

The Commission further finds the proposed 100 percent lot coverage; zero setbacks and proposed unprecedented height would constitute an unreasonable density impact that would create issues of pedestrian and vehicular safety that would be devastating to downtown.

Therefore, the Commission finds that the proposed regulation amendment will cause irreversible permanent economic and social damage to the town, eliminating commercial uses and destroying the very attributes that attract people to our downtown.

The Commission further finds that the decision to deny the regulation amendment is necessary to protect the public interest in health, safety and other articulated matters within the Commission's jurisdiction. Such interests clearly outweigh the need for affordable housing and such public interests cannot be protected by reasonable changes to the proposed development.

In addition, the Commission also finds that the proposed regulation amendment is not consistent with the Plan of Conservation and Development. Time, experience and responsible planning for contemporary or future conditions does not reasonably indicate the need for the proposed amendment.

It has not been demonstrated that the proposal is warranted and would serve the general health, welfare and safety of the Town.

The proposed amendment would promote a level of development that would not serve to protect property values in the neighborhood and enhance the community and accomplish a transition in physical site characteristics between areas of unlike characteristics.

The proposed amendment would permit a level of development that would increase undue traffic congestion.

## **Zoning Compliance**

The development proposal for a 63-unit residential building is comprised of 16-studio units, 4 one-bedroom units and 43 two-bedroom units for a total of 106 bedrooms. A total of 60 parking spaces are proposed. This results in overall proposed density and parking of:

63 units = 133 units/acre

106 bedrooms = 224 bedrooms/acre

60 parking spaces = 0.95 spaces/unit or 0.57 spaces/bedroom.

This represents an unprecedented density compared to any other Transit Oriented Developments or 8-30g affordable housing application. The applicant made reference to nearby 78 Unquowa Place as a comparable development in the neighborhood however, the 15 Unquowa proposal is 1.5 times the density of 78 Unquowa Place, whether measured by either units or by bedrooms per acre.

The main focus of the discussion centered around 3 main topics; sewer, drainage/construction, and traffic /parking.

Sewer: The applicant sought Water Pollution Control Authority (WPCA) approval in 2020 for a mixed-use project comprised of 4,000 square feet of retail, 5,000 square feet of office and 36 residential units. The December 9, 2020 WPCA minutes reflect a discussion of a “conceptual plan to upgrade the existing 8” sewer main to 10” from Sanford Street to Reef Road.”

The WPCA provided conditional approval to accept the concept as presented with the condition to install a new 10” section of line from Sanford Street to Reef Road subject to DOT approval and permits, additional flow analysis and testing and agreement from the utilities for the proposed plan.

The applicant made a second application to the WPCA in 2022, for a 65-unit solely residential development. Rather than upgrade the sewer capacity, the applicant argued that there is sufficient capacity in the existing line without the need to upgrade.

Due to concerns that the peak flows would exceed 80% capacity (standard industry design threshold) the WPCA denied that application without prejudice. The decision is presently under appeal. The applicant argues that the 2020 WPCA approval, which includes the provision to upgrade the sewer main from 8” to 10”, would provide adequate capacity for the proposed larger residential development and therefore asserts there is a reasonable probability to achieve final approval to make the sewer upgrade. In the

alternative, should the applicant prevail in their appeal of the 2022 WPCA denial, no sewer upgrade would be required. Neither outcome has been determined at this point.

Drainage / Construction: The April 4, 2022 Engineering Dept. report raises concerns about groundwater, given the proposed below grade parking structure. The record indicates that Sanford Street and nearby properties suffer periodic flooding and the Town's drainage system cannot accommodate the pumping of groundwater, nor can groundwater be discharged to the sanitary sewer. At the initial public hearing (6/14) the site engineer reported that ground water was approximately 10 feet below grade and the building had been designed to be water tight. The Commission raised concerns about the potential of the proposed building to displace groundwater thereby making conditions worse for adjacent properties. Despite assurances given at the initial hearing, at the outset of the second public hearing (6/28), the applicant's design team explained that the building had been re-designed to raise floor of the parking structure by 2 feet to create greater separation from groundwater. Throughout the hearing, the engineers from both the Town and the intervener opined that adequate testing had not been done to establish an accurate depth to groundwater. Given the history of periodic flooding and the inability of the Town's drainage system to accommodate additional groundwater and further given the applicant's mid-hearing re-design, the Commission finds that there is a reasonable likelihood that the development would be detrimental to public health and safety by exacerbating known conditions of flooding.

Inconsistencies between the testimony of the building designer and the actual plans, as they were modified throughout the hearing, raise fundamental concerns as to whether the project can be built as presented. Sheet A-2 (rev. date 3/21/22 and further revised 6/15/22) both clearly show building support columns projecting into and thereby reducing the width of both two-way access drives despite testimony that the minimum clear width of 20 feet is provided. Similarly, the width of the building openings for both driveways is shown at less than 18 feet despite testimony that the minimum standard 20 feet is provided. When challenged on the discrepancy, the building designer indicated that the final plans would show a 20-foot clear width without explaining or demonstrating how or if that could be accomplished. The Fairfield Zoning Regulations standard for a safe and convenient two-way driveway width is 24 feet. Without reference, the applicant asserts the proper standard is 20 feet. The applicant's own plans however do not meet this claimed lesser standard.

At the request of the Commission, the applicant submitted a building rendering from the south perspective showing the proposed building's relationship with the adjacent Community Theater. Upon receipt of that revised rendering on 7/25/22, TPZ staff notified the applicant that the rendering and building elevation drawings show horizontal offsets for balconies for certain units; however, the floor plans show a consistent horizontal plane with no balconies. This discrepancy lead to confusion at the last hearing session (8/9) as to the number of units and bedrooms that were actually proposed. The exterior building plans do not match the floor plans.

Traffic / Parking The applicant’s traffic report projects site generated traffic for 63-units to be:

Weekday AM peak hour	25 trips; 5 in 20 out
Weekday PM peak hour	30 trips; 20 in 10 out
Saturday mid-day	30 trips; 15 in 15 out

The report compares this traffic impact to “existing site generated traffic” (ITE estimates) of AM= 115, PM = 60, Saturday mid. = 105, arguing the development will result in a net reduction of traffic trips. This estimate of existing site generated traffic is despite actual site driveway counts of (10, 20 and 20) in each of the hours studied.

The Commission challenged the validity of using the ITE estimates as a base line of existing traffic, given the Commission’s familiarity with this well-known downtown site. The applicant’s traffic engineer offered a rebuttal document dated August 8, 2022. Traffic response bullet points 3 and 4 (un-numbered) are completely contradictory. The third bullet explains why the ITE estimated trip generation for the existing conditions exceed projected future conditions, while the fourth bullet indicates that existing traffic was not counted because very little of the traffic associated with the business today park on the property.

These statements support the Commission’s assertion that the generalized data supplied by the ITE manual over-estimates the existing site traffic and therefore under-reports the increase in traffic volume that will result from this proposal.

The site plan proposes 60 parking spaces for 63 dwelling units with 106 bedrooms and an unspecified number of dens. The traffic report and testimony indicates that upwards of 15 cars will have to park off-site. The applicant argues that there is sufficient nearby parking in the area to accommodate the anticipated overflow. It is unprecedented for an applicant to concede that the anticipated required parking neither can be nor will be accommodated on-site.

The acknowledged parking shortfall creates additional concerns raised by the Commission. Firstly, the available nearby parking claim is based on observations conducted at midnight Friday March 25<sup>th</sup>, 8:00 AM Saturday March 26<sup>th</sup> and midnight Saturday March 26<sup>th</sup>. This is a skewed data set and importantly does not reflect conditions at the time of day when a prospective resident is likely to seek parking. The record shows that the nearby on-street parking is generally occupied throughout the business day and well into the evening due to the many restaurants and other entertainment venues downtown. A prospective resident who returns home from work at

a typical hour is likely not to find nearby on-street parking. Secondly, the two parking areas proposed are not connected. They have separate driveways. Should a resident seek parking in the lower level garage only to find it filled, the driver would then have to exit back onto Sanford Street and enter the other driveway to seek parking on the grade level parking area and vice versa. This will create un-necessary maneuvering on Sanford Street in a very tight space between the driveways before a resident may be resigned to park elsewhere.

The orientation of the building very close to the street presents a problem for both pedestrian safety and exiting vehicle sightlines. The applicant's traffic engineer asserts that proper exiting sightlines are available from both driveways. This is based on excluding the presence of parked cars in the sight line analysis. Both the intervener's engineer and Town Engineer, William Hurley testified that proper sight line is not available if parked vehicles are included in the sight line analysis. Mr. Hurley testified that Sanford Street is not a State highway and the Town has discretion to determine whether or not parked cars should be excluded in the analysis. In this case, due to the consistent and constant occupancy of adjacent on-street parking, it was Mr. Hurley's opinion that parked vehicles should be included in the analysis and if included, proper intersection sight distance is not available and represents a substantial impediment to public safety.

The Commission may consider other factors within its jurisdiction. The Town's commercial base is very small and relies heavily on the restaurants, entertainment venues and small businesses as well as the historic nature of the downtown area centered around the historic SHU Community Theater. The record shows that this development would permanently displace 5-6 local businesses and eliminate parking currently used by the remaining businesses, due to the overflow parking from this development, in the very heart and hub of the Town's commercial center. As such it is not a typical TOD development because it has no commercial component. The Community Theater was conceded to be a historic structure. This massive scale and height of the proposed building would tower over the theater by about almost 40 feet and harm the historic contribution of the theater to the downtown aesthetic and ambiance, which is a major driver for commercial activity downtown.

Both the intervener's engineer and Mr. Hurley agree that the parking garage ramp is excessively steep and the right angle turn at the bottom of the ramp will make maneuvering difficult. The ability of exiting drivers to see pedestrians on the Sanford Street sidewalk is of great concern given the immediate adjacency of the building to the sidewalk. The proposed wall cut-outs are an indicator that there is likely a problem however the cutouts only provide a view in one direction for each respective driveway. The building elevator lobby in between the driveways obstructs the view from the other direction. This lack of view is further compounded by the inadequate width of the driveways as noted earlier. Exiting drivers will have a difficult enough time navigating

the narrow two-way drive opening, let alone simultaneously having the time and wherewithal to properly observe the presence of pedestrians.

### **Zoning Compliance Findings**

The Commission makes the following findings regarding the Zoning Compliance application:

The Commission finds that it has not been established to a reasonable probability that the applicant will prevail without the need to expand the sanitary sewer capacity, nor has it been demonstrated that adequate capacity can be achieved.

The Commission finds that there has been inadequate soil testing to demonstrate that the drainage system will function as designed and inadequate data regarding the depth to ground water.

The Commission further finds that the intervener's expert to be more credible regarding detrimental impact to ground water which will likely result in exacerbating existing known conditions of flooding.

The Commission also finds that the proposed basement drainage system is inadequately designed.

The Commission also finds that the proposed scale and height of the proposed development and its proximity to the historic community theater would marginalize the historic nature of the theater and permanently degrade the very hub and heart of the downtown area.

The Commission also finds that the inadequate parking will both displace 5-6 local businesses, and adversely impact the remaining area businesses by consuming already scarce parking to be used by the parking overflow from the development.

The Commission finds that the demonstrated lack of parking will create a detriment to public safety as it is a certainty that cars will enter the site without being able to park. The Commission finds that the testimony of the building designer is not credible based on multiple plan changes and the inconsistencies between the plans and the oral testimony. The Commission finds that the inadequate sight lines for exiting vehicles, with regard to both existing traffic on Sanford Street and pedestrians on the sidewalk, constitute a serious threat to public health and safety. This is due to two-way ingress and egress drives that are too narrow, including a steep ramp from the basement parking level, adjacent parked vehicles on Sanford Street and the design of the building in immediate proximity to the adjacent sidewalk such that views are obstructed.

The Commission therefore finds that the proposed plan will result in certain and unacceptable threats to the public safety and welfare. The Commission further finds that the decision to deny the Zoning Compliance application is necessary to protect the public interest in health, safety and other articulated matters within the Commission's

jurisdiction. Such interests clearly outweigh the need for affordable housing and such public interests cannot be protected by reasonable changes to the proposed development.

**Environmental Intervention** A verified petition to intervene, pursuant to Sect. 22a-19 of the CT General Statutes, was filed by Fairfield Center Alliance, LLC. This section provides that essentially anyone may intervene as a party to an application asserting that the proposed action would involve conduct which is reasonably likely to have the effect of unreasonably polluting, impairing or destroying the public trust in the air, water or other natural resources of the state.

The intervener's petition makes 5 claims:

1. The storm water management system is inadequate to reduce non-point source pollutant loads.
2. The storm water management system is not in compliance with the CT DEEP 2004 Storm Water Quality Manual and is likely to result in unreasonable pollutant loads to ground or surface waters of the State.
3. It has not been proven by factual evidence that the existing Town of Fairfield sanitary sewer can accept the anticipated flows from this site. The resulting exceedance of flow or treatment capacity would be reasonably likely to unreasonably impact effluent discharge quality, which in turn would have detrimental impacts to receiving waters of the State.
4. The proposed underground garages are located in an area, which has a high ground water table and is subject to severe flooding such that there is reasonable likelihood of inadequately treated surface water contamination from the interaction of flood waters with pollutant loads expected from the parking structure.
5. The proposal allows for 100% impervious cover thereby unreasonably interfering with natural infiltration of storm water and flood water that will ultimately be received by Pine Creek Marsh and causing unreasonable pollution to the marsh ecosystem.

The Commission heard voluminous competing testimony regarding these issues offered by the intervener's engineer and the applicant team.

The Commission finds that the intervener has satisfied the standards of Section 22a-19 and further finds that the proposal involves conduct, which is reasonably likely to have the effect of unreasonably polluting, impairing or destroying the public trust in the air, water or other natural resources of the state with regard to all 5 claims of the intervention.

The Commission further finds that there are no feasible and prudent alternatives consistent with the reasonable requirements of the public health safety and welfare.

**1485 Stillson Road** Motion was made by Ms. Harrison, seconded by Ms. Francis and members present unanimously **VOTED TO TABLE** the Resubdivision application of Sand Dollar Development, LLC for two (2) lots in an A Zone.

**11 Unquowa Road** Motion was made by Ms. Francis, seconded by Ms. Keitt and members present **VOTED TO APPROVE** the Zoning Compliance application of Isla & Co Fairfield, LLC for a seasonal canopy enclosure of outdoor dining. Cent. Des. Dist.

### **PUBLIC HEARING**

**801 Post Road** Special Permit application of Saucy, LLC pertaining to additions and alterations to establish a restaurant use as shown on plans entitled “Pizza Co. Restaurant and Bar “, dated 7/5/2022, and prepared by Samuel Gardner, Architect. Des. Comm. Dist. (revision to plan approved on 10/12/21).

Atty. John Knuff presented the application to the Commission.

**40 Hillside Road** Application of 40 Hillside Road, LLC to establish a Neighborhood Designed Business District on land presently zoned Residence AA.

**40 Hillside Road** Special Permit application of 40 Hillside Road, LLC pertaining to the construction of a new veterinary hospital.

Atty. John Fallon presented both applications to the Commission to establish a Neighborhood Designed Business District on land presently zoned Residence AA and to the construction of a new veterinary hospital.

Meeting adjourned at 10:30 p.m.

---

Meg Francis, Secretary

---

Josephine M. Keogh, Clerk