

MEMORANDUM

OFFICE OF COMMUNITY DEVELOPMENT

SECTION 12.9 MINOR CHANGE TO A SPECIAL PERMIT FOR
A CHANGE OF USE FROM OFFICE TO SPA AT
136 NEW LONDON TURNPIKE
MEETING DATE: JUNE 1, 2021, CONTINUED FROM MAY 18, 2021

REGULAR MEETING ITEM #3
06-01-2021 AGENDA

UPDATE

- On May 18, 2021 this agenda item was left open and continued to June 1, 2021.
- The Town Plan and Zoning Commission requested that the Town Attorney review the applicant's easement document to ensure it is in compliance with Section 4.13.6.i.2 of the Town Center Zone regulation.
- The Town Attorney has reviewed the applicant's revised easement document and made recommendations.

To:
Town Plan and Zoning
Commission

From:
Office of Community
Development Staff

Memo Date:
May 28, 2021

Zoning District:
Town Center (TC) Zone

Applicant/Owner:
SBU, LLC

REVIEW

Included for Commission review are the following:

- An email from the Town Attorney containing recommendations

MEMORANDUM

OFFICE OF COMMUNITY DEVELOPMENT

**SECTION 12.9 MINOR CHANGE TO A SPECIAL PERMIT FOR
A CHANGE OF USE FROM OFFICE TO SPA AT
136 NEW LONDON TURNPIKE
MEETING DATE: MAY 18, 2021**

REGULAR MEETING ITEM #3
05-18-2021 AGENDA

EXECUTIVE SUMMARY

To:
Town Plan and Zoning
Commission

From:
Office of Community
Development Staff

Memo Date:
May 14, 2021

Zoning District:
Town Center (TC) Zone

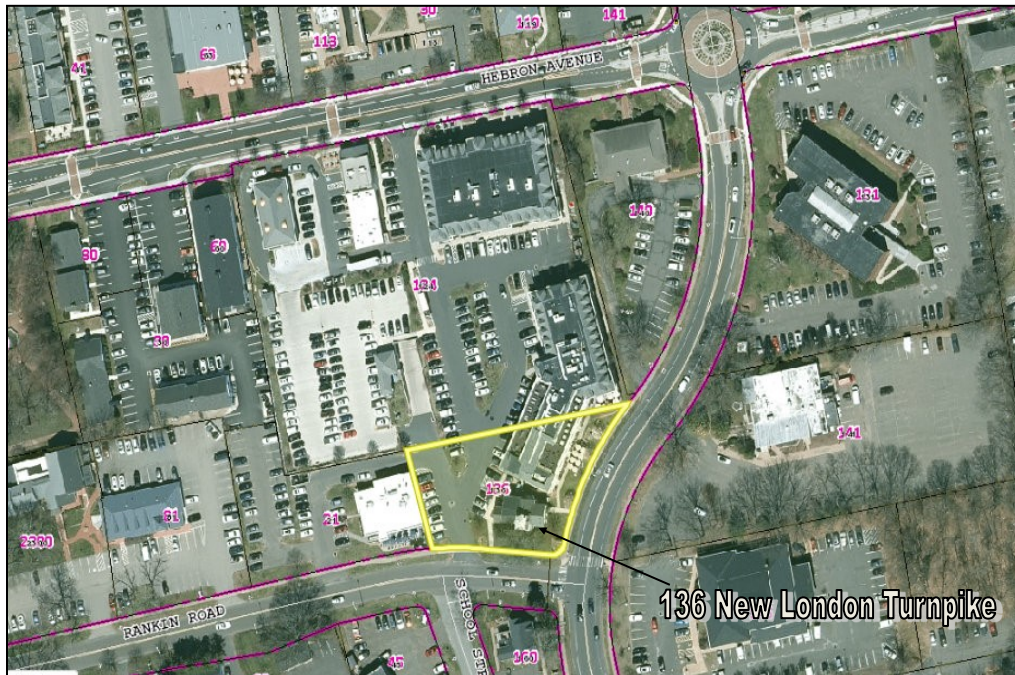
Applicant/Owner:
SBU, LLC

- The applicant is requesting a change of use from office to a spa at 136 New London Turnpike.
- The change in use results in an increase in the number of required parking spaces from 6 spaces to 12 spaces.
- The site, which is a part of the Eric Town Square (ETS) development cannot accommodate the 6 extra required spaces because ETS was approved as part of the Central District Zone which had different parking requirements.
- The change of the Central District Zone to Town Center Zone makes ETS legally non-conforming with regard to parking as it does not meet the parking requirement for the Town Center Zone.
- The applicant is proposing to provide the 6 additional parking spaces for the employees of the proposed spa at a property that they own at 119/141 Hebron Avenue.
- Section 9.5 of the Building—Zone Regulations requires a review to ensure there is adequate on-site parking to accommodate the proposed uses.
- Section 9.6 and 4.13.6.i.2 of the Building-Zone Regulations allow for joint use of off-street parking subject to approval by the Town Plan and Zoning Commission.

REVIEW

Included for Commission review are the following:

- Town of Glastonbury staff memoranda
- A copy of the application
- Floor plans
- Memoranda from the project architect and engineer
- A draft easement document
- Minutes from the April 28, 2021 meeting of the Plans Review Subcommittee.



Above—Aerial view of 136 New London Turnpike; Below—Street View of 136 New London Turnpike



SITE DESCRIPTION [See plan set sheet entitled “Property/Topographic Survey Showing Existing Conditions”]

The subject site is a .57 acre parcel with a 3,271 square foot residential style structure built in 1820 that has been converted to office/commercial space located at the southeast corner of the lot. Also on the lot is a portion of the building known as 120 Hebron Avenue which is part of the Eric Town Square Development. Access to the site is through curb cuts off of Rankin Road and Hebron Avenue. Parking for the site is located on the western portion of the lot.

ADJACENT USES

The site has retail and office uses on all sides.

PROPOSAL [See plan sheets A100 entitled “Basement and 1st Floor Layouts”, plan sheet A101 entitled “2nd and 3rd Floor Layouts”, memorandum from Hans Hansen AIA entitled “Useable Square Footage Calculations”, memorandum from Jonathan H. Sczurek P.E. entitled “Proposed Spa 136 New London Turnpike Glastonbury, CT 06333” and a draft parking easement document entitled “Declaration of Easement & Parking Lease”]

The applicant is requesting a change of use from office to spa at 136 New London Turnpike. Section 9.5 of the Building—Zone Regulations requires a review to ensure there is adequate on-site parking to accommodate the proposed uses. According to the information provided by the project engineer and project architect, the total required parking for the new use will increase from 6 to 12 spaces. Additionally, the tenant anticipates the need for up to 16 parking spaces. The applicant is proposing to provide the 6 additional required parking spaces and 4 additional desired spaces at the property they own at 119/141 Hebron Avenue.

The shared parking arrangement will be executed through an easement which the applicant will file with the Town of Glastonbury Town Clerk’s Office. The easement will allow for the employees and customers of 136 New London Turnpike to access on a non-conflicting basis 10 parking spaces at 119/141 Hebron Avenue between the hours of 9:00 am and 7:00 pm Monday to Friday and 9:00 am to 4:00 pm on Saturday and Sunday. The easement will expire in 2031 unless otherwise terminated or renewed.

ZONING ANALYSIS AND CONSISTENCY WITH THE PLAN OF CONSERVATION AND DEVELOPMENT

Personal Services such as hair and body salons are a permitted use in the Town Center Zone. Section 9.5 of the Building—Zone Regulations requires a review to ensure there is adequate on-site parking to accommodate the proposed uses. The required parking for office use under the Central District Zone was 1 space for every 300 square feet of useable floor area. Section 9.11 states the required parking for hair/body salons and spas is 1 space for every 150 square feet of useable floor area. Section 9.6 and 4.13.6.i.2 of the Building-Zone Regulations allow for joint use of off-street parking subject to approval of the Town Plan and Zoning Commission.

The project is consistent the following policies of the 2018—2028 Plan of Conservation and Development:

Planning Area 3—Transportation

- Work proactively with owners of parcels containing multiple business / commercial uses to ensure there is adequate parking for all existing and proposed uses.

Pertinent staff correspondence and draft motions are attached.

EASEMENT AGREEMENT FOR PARKING SPACES

EASEMENT AGREEMENT entered into May __, 2021, by and between Eric S1, LLC, a Connecticut limited liability company with an address at 119 & 141 Hebron Avenue, Glastonbury, Connecticut, as Grantor, and SBU, LLC, a Connecticut limited liability company with an address of PO Box 733, Glastonbury, Connecticut, as Grantee.

WHEREAS, the Grantor wishes to provide the means whereby Grantee, for good and sufficient consideration, shall be able to comply with the parking requirements of the Town of Glastonbury Building and Zone Regulations regarding off-street parking, by placing in reserve parking spaces on property owned by it at 119 & 141 Hebron Avenue for use by Grantee, and is herein granting an easement over and across land more particularly described in Exhibit A attached hereto and made a part hereof, and for other purposes, as herein detailed; and

WHEREAS, the Grantor is the owner of the property described in Exhibit A attached hereto and made a part hereof, which property shall hereinafter be sometimes called the Easement Area; and

WHEREAS, the Grantor desires to grant unto the Grantee, its successors and assigns, this Nonexclusive Easement over and across the Easement Area, and for other purposes, as herein detailed; and

WHEREAS, the Grantor wishes to grant to the Grantee, its successors and assigns, a License to use up to ten (10) parking spaces under certain terms and conditions and with certain restrictions and limitations; and

WHEREAS, the parties hereto have agreed that the Grantor shall grant a Nonexclusive Easement unto itself, the Grantee and the other parties hereinbefore and hereinafter mentioned over and across the Easement Area, and a License for the use of up to ten (10) parking spaces, for the uses and purposes hereinafter set forth subject to the reservations and

conditions hereinafter contained; and

NOW, THEREFORE, in consideration of the sum of \$10 and other good and valuable consideration in hand paid by the parties hereto, each to the other, simultaneously with the execution and delivery of these presents, the receipt whereof is hereby acknowledged, the parties hereto covenant and agree as follows:

1. **Grant.** The Grantor does hereby grant unto itself, the Grantee, and unto their servants, agents, employees, guests, licensees, assigns, and invitees, subject to the reservations and conditions hereinafter contained, a Nonexclusive Private Easement over and across the aforescribed Easement Area, and to park a maximum of ten (10) cars,.

Said Easement is to allow the Grantee to move over and across the aforescribed Easement Area, for the purpose of ingress into and egress from the parking spaces to which the Easement has also been granted.

2. **Time Limitations, Additional Spaces, and No Conflict in Use.** The License herein granted is limited to the parking spaces along the south end of Grantor's property and is granted for the hours of 9:00 a.m. to 7:00 p.m. Mondays through Fridays, and 9:00 a.m. to 4:00 p.m. on Saturdays and Sundays. Grantor represents that these restrictions assure non-conflict in the use of the parking spaces to which the License has been granted.

3. **Termination.** Said Easement and License shall exist and continue in effect unless terminated in writing by an instrument executed by the parties or their successors or assigns, which writing shall be recorded on the Glastonbury Land Records,

4. **Reservation of rights.** The Easement and the right to use the Easement Area by the parties referred to above shall be Nonexclusive. The Grantor hereby retains, and shall have the right to the use of the Easement Area, and the right to grant to other parties and property owners the right to use the Easement Area for ingress and egress, and service, and for other uses, provided such other uses shall not unreasonably interfere with the use of the Easement Area of the parties referred to in paragraph 1 above. The Grantor reserves, and shall have the right to install, connect, and maintain, from time to time, in the Easement Area, sewer, gas, water and electric lines and pipes,

telephone lines and conduits, poles and wires, and all utility lines and mains, and to use the Easement Area for other purposes, provided such uses for other purposes shall not unreasonably interfere with the use of the Easement Area by the parties referred to in paragraph 1 above entitled to the use thereof. Grantor may promulgate rules and regulations governing the use of the Easement Area and licensed parking spaces by Grantee, its servants, agents, employees, guests, licensees, assigns, and invitees.

5. **Relocation.** The Grantor reserves and shall have the right, from time to time, to relocate all or a portion of the Easement Area as same may exist, from time to time, and to widen all or a portion of the Easement Area, as well as to designate other or substitute parking spaces under the License.

6. **Other Uses.** The Grantor reserves, and shall have the right, from time to time to:

- (a) Utilize the Easement Area, as the same may exist from time to time, for purposes of beautification of the surrounding areas, and other properties owned by the Grantor; and
- (b) Utilize the Easement Area, as the same may exist from time to time, for installation thereof of directional signs, and for promenades, landscaped and grassed areas, street lighting and other like improvements, as the same may be constructed or placed thereupon, from time to time, in the sole discretion of the Grantor;

Provided, however, that the exercise of the rights reserved by the Grantor shall not unreasonably interfere with the use of the Easement Area and Licensed parking spaces by the parties entitled to the use thereof.

7. **Additions.** The Grantee shall not place or construct any obstruction, permanent or temporary in nature, in the Easement Area or make any additions or improvement to the Easement Area without the prior written consent of the Grantor.

IN WITNESS WHEREOF, the parties have hereunto set their own hands and seals the day and year first above written.

ERIC S1, LLC

By _____
Allan H. Schwartz, Member
Duly Authorized

SBU, LLC

By _____
Allan H. Schwartz, Member
Duly Authorized

STATE OF CONNECTICUT)

)
COUNTY OF HARTFORD) ss: _____, 2021

Personally appeared Allan H. Schwartz, Member of Eric S1, LLC, signer and sealer of the foregoing instrument and acknowledged the same to be his free act and deed, and the free act and deed of Eric S1, LLC before me.

Notary Public/
Commissioner of the Superior Court

STATE OF CONNECTICUT)

)
COUNTY OF HARTFORD) ss: _____, 2021

Personally appeared Allan H. Schwartz, Member of SBU, LLC, signer and sealer of the foregoing instrument and acknowledged the same to be his free act and deed, and the free act and deed of SBU, LLC, before me.

Notary Public/
Commissioner of the Superior Court

EXHIBIT A—EASEMENT AREA

From: [Ranelli, Matt](#)
To: [rebecca augur](#); [jonathan mullen](#)
Cc: [Richard Johnson](#); [Hrekul, Lilia N.](#)
Subject: RE: Glastonbury TPZ Easement Review Request
Date: Friday, May 28, 2021 4:18:35 PM

Rebecca and Jon:

Thank you for discussing this issue with us on the phone today. Per our phone conversation, we suggest the following revisions and if the TPZ is inclined to approval the application, we suggest they applicant provide a revised draft prior to approval:

1. Paragraph 1: This paragraph should ensure that at least the minimum number of spaces are provided. We suggest deleting the “a maximum of” from the first sentence in the paragraph. If for some reason, the applicant insist on keeping the “maximum of” ten cars language, then the TPZ could compromise by agreeing to “a minimum of six (6) cars and a maximum of ten (10) cars” based on our understanding that six additional parking spaces are what is needed to comply with zoning.
2. Paragraph 2: This paragraph should be broad enough to ensure that the required parking spaces are available during all hours of operation. We suggest adding the **highlighted** language to paragraph 2: “The License herein granted is limited to the parking spaces along the south end of Grantor’s property and is granted for the hours of **operation approved or allowed by the Glastonbury Town Plan & Zoning Commission, which are anticipated to be as follows**: 9:00 a.m. to 7:00 p.m. Mondays through Fridays, and 9:00 a.m. to 4:00 p.m. on Saturdays and Sundays...”
3. Paragraph 3: This paragraph would allow the parties to terminate the easement without any approval or even notice to the TPZ. This seems inconsistent with the “permanent” easement portion of the regulation especially if the two properties are owned or controlled by the same party. We suggest amending this provision to require either written approval of the TPZ or that the grantee must forfeit the special permit and provide written notice to the TPZ prior agreeing to terminate the easement. Please let us know if you would like us to draft proposed language.
4. Paragraph 4: The regulations requires the parking spaces be “available to the respective users on a non-conflicting basis.” Portions of this provision seem contrary to that requirement. We suggest the changes below to Paragraph 4: “The Easement and the right to use the Easement Area by the parties referred to above shall be Nonexclusive. The Grantor hereby retains, and shall have the right to the use of the Easement Area, ~~and the right to grant to other parties and property owners the right to use the Easement Area for ingress and egress, and service, and for other uses,~~ provided such ~~other~~ uses shall not unreasonably interfere with the use of the Easement Area of the parties referred to in paragraph 1 above. The Grantor reserves, and shall have the right to install, connect, and maintain, from time to time, in the Easement Area, sewer, gas, water and electric lines and pipes, telephone lines and conduits, poles and wires, and all utility lines and mains, ~~and to use the Easement Area for other purposes,~~ provided such uses ~~for other purposes~~ shall not unreasonably interfere with the use of the Easement Area by the parties referred to in paragraph 1 above entitled to the use thereof. Grantor may promulgate **reasonable** rules and regulations governing the use of the Easement Area and licensed parking spaces by Grantee, its servants, agents, employees, guests,

licensees, assigns, and invitees, **provided such rules and regulations shall not interfere with Grantee's use of the Easement Area for parking consistent with paragraphs 1 and 2 above.**"

5. Paragraph 5: This paragraph seems to undermine the permanent nature of the required easement and would be likely to lead to confusion or difficulty evaluating compliance. We suggest deleting it. If the parties would like to modify the Easement Area, they can ask for TPZ approval.

6. Paragraph 6: The rights reserved should be limited to those that do not interfere with the required use as parking spaces. We suggest that this paragraph be limited by adding language at the end of Paragraph 6: **"and further provided that nothing in this section will interfere with Grantee's use of the Easement Area for parking consistent with paragraphs 1 and 2 above.**

7. Additional Notes: The easement is unclear because at times it refers to a "license" to use up to ten spaces. Is there a separate license agreement, if not, why is the term license used? Finally, we note that it appears that the parking needs for some of the existing uses have the potential to conflict or coincide with the proposed spa parking demand. The regulation requires: "A written permanent easement between the use parties, which clearly stipulates the terms of the joint use of the parking spaces and ensures that such spaces are committed and available to the respective users on a non-conflicting basis."

We hope this is helpful. Please call or email if you have questions or would like to discuss.

Regards,
Matt

Shipman & Goodwin
COUNSELORS AT LAW

Matthew Ranelli

Shipman & Goodwin LLP

Partner

[265 Church Street - Suite 1207](#)

[New Haven, CT 06510-7013](#)

Tel (203) 836-2805

Fax (203) 836-2802

mraneli@goodwin.com

www.shipmangoodwin.com

Privileged and confidential. If received in error, please notify me by e-mail and delete the message.

From: rebecca augur [mailto:rebecca.augur@glastonbury-ct.gov]

Sent: Friday, May 21, 2021 1:49 PM

To: Ranelli, Matt <MRaneli@goodwin.com>

Cc: Richard Johnson <richard.johnson@glastonbury-ct.gov>

Subject: Glastonbury TPZ Easement Review Request

EXTERNAL EMAIL

Attorney Ranelli,

Please see attached request for review on behalf of the Glastonbury TPZ. They meet again on June 1st. Please let me know if you have any questions. Thanks, Rebecca

Rebecca Augur, AICP

Director of Planning and Land Use Services
Town of Glastonbury
2155 Main St.
Glastonbury, CT 06033
860-652-7515
Rebecca.augur@glastonbury-ct.gov

Please consider the environment before printing a copy of this email.

"This communication, along with any documents, files, or attachments, is intended only for the use of the addressee and may contain legally privileged and confidential information. If you are not the intended recipient, you are hereby notified that any dissemination, distribution, or copying of any information contained in or attached to this communications is strictly prohibited. If you have received this message in error, please notify the sender immediately and destroy the original communication and its attachments without reading, printing, or saving in any manner."

Please consider the environment before printing a copy of this email.

Please consider the environment before printing a copy of this email.