

TO: Town Council

FROM: Alter & Pearson, LLC

DATE: December 20, 2021 (*revised December 30, 2021*)

RE: Narrative for Warehouse 38 – Application for a Change of Zone from Residence A to Adaptive Redevelopment Zone and Approval of Site Development Plan – 38 Hubbard Street

Permitting History – 2014 Town Council Approval (*see attachments*)

- **12/19/2013:** Conservation Commission approved the transmittal of an Environmental Impact Report to the Town Plan & Zoning Commission and Town Council regarding the conversion of the former consolidate cigar warehouse located at 38 Hubbard Street to 40 residential units (rental). The Inland Wetlands & Watercourses Agency approved an application for regulated activity at 1906 Main Street (abuts 38 Hubbard Street to the south) which consisted of the installation of a drainage pipe and outfall area within both the wetland and upland review area. The wetland permit expired on 12/19/2018.
- **04/29/2014:** Town Plan & Zoning Commission made a favorable recommendation to the Town Council on the Change of Zone from Residence A to Adaptive Redevelopment Zone for 40 residential units and issued a §4.11 Flood Zone Special Permit, which permit is recorded with the Glastonbury Town Clerk and remains valid.
- **06/24/2014:** The Town Council approved the Change of Zone from Residence A to Adaptive Redevelopment Zone and a Site Development Plan, with several conditions, including limiting all units from the lower level and limiting the total number of units to 31 to be located on the upper two floors.
- **07/15/2014:** The Approval was appealed to the Superior Court by the Applicant.
- **08/12/2015:** Judge Marshall K. Berger issued a Memorandum of Decision dismissing the appeal in part, and remanding the appeal in part. Judge Berger remanded the matter back to the Town Council for consideration as to the condition restricting construction of units on the lower level. The Town Council never reconsidered the condition as directed to by the Court.

Site

The property is 1.209± acres (52,690± s.f.) and located on the south side of Hubbard Street (the “Site”) in the Residence A Zone, and contains the former Consolidated Cigar Warehouse which is a three-story wood framed building with an existing footprint of 18,446 s.f., and several additions. A small garage is located in the southeast corner of the Site, and a loading dock is located on the west side of the existing warehouse. The Site is generally flat and slopes less than 3% from the north to the south.

Original 2021 Proposal

The Applicant J S Advisors, LLC, is the contract purchaser of the property, and originally proposed to substantially duplicate the approved adaptive redevelopment the existing warehouse into 31 condominium units located on the upper two floors of the existing building. The below changes were made to the Site in accordance with the conditions of approval imposed by the Town Council in its 06/24/2014 approval:

- 8 tandem spaces were converted into 2 single parking spaces and an open area in the southeast corner of the parking lot was created for truck turning movements;

- 40 parking spaces were provided (10 tandem parking spaces and 30 single parking spaces); and
- Carport structure was deleted.

Amended 2021 Proposal

The Applicant and its design team met with the Adaptive Redevelopment Zone Subcommittee, comprised of representative members of the Town Council and the Town Plan and Zoning Commission, on two occasions. As a result of the meetings, refinements to the plan as originally submitted have been made in response to suggestions from the Subcommittee Members.

The following changes have been incorporated into the plans submitted for consideration for approval:

1. Changes to Plan Based on 10/21/2021 Subcommittee Meeting:

- Parking reconfiguration to provide 47 parking spaces (9 tandem parking spaces and 38 single parking spaces);
- Assigned Parking Plan Provided:
 - 9 of the 2-BR units sold a tandem space
 - 22 units sold 1 parking space
 - 6 spaces could be sold to unit owners
 - 5 visitor spaces would not be sold
 - 2 deferred visitor spaces (in front of building) would not be sold
 - 3 handicapped spaces would not be sold
- Truck turnaround area provided in southeast corner of site;
- Added detailed fenestration to the southeast and southwest corners of the building to replicate the details on the front/street-facing side of the building;
- Created a passive sitting area for residents in the site's greenspace facing the Hubbard Green;
- Provided samples of exterior materials and colors to be utilized;

2. Changes to Plan Based on 12/13/2021 Subcommittee Meeting, for Presentation at Public Hearings:

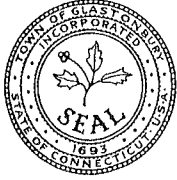
- Reduced the unit count to 30 condominiums (20 2-BR units and 10 1-BR units);
- Reduced parking count to 45 parking spaces (9 tandem spaces and 36 single spaces), no longer any parking spaces in front of building;
- Assigned Parking Plan Provided:
 - 9 of the 2-BR units sold a tandem space
 - 21 units sold 1 parking space
 - 6 spaces could be sold to unit owners or used as additional visitor spaces
 - 5 visitor spaces would not be sold
 - 3 handicapped spaces would not be sold
- Added triple windows to front of the building to more closely match the array that was originally approved;
- Increased the width of the trim around the windows to more closely match the trim style that was originally approved;
- Eliminated the gates at the north and south ends of the westerly side yard;
- Confirmed that a fence (not white vinyl) would remain along the westerly boundary in accordance with the agreement with the westerly neighbor;

- Screening to be provided to any utility meters, gas service fixtures on westerly side of building after elimination of the gates.

The plan as presented is in full compliance with all provisions of the Adaptive Redevelopment Zone Regulations. The plan proposes 1.5 parking spaces per unit, for a total of 45 parking spaces (note that the parking count is based on treating 9 tandem spaces as a single space and excluding the second tandem space). Additionally, electric car charging stations will be available for all units and indoor bike storage is provided on the first level. All other approvals and/or recommendations, (Inland Wetlands, WPCA, Beautification) have been completed and are final. All of the required supporting reports and documentation has been submitted. The proposal is in full compliance and satisfaction of the Plan of Conservation and Development that calls for the creative, adaptive reuse of this iconic building as noted below:

- The Site is located in Planning Area 4 (Town Center).
- Planning Area 4 (Town Center), Policies, Residential and Mixed Use (2) (pg. 42): *Support the establishment of a variety of residential opportunities in the Town Center area, including new construction, adaptive reuse, accessory apartments, and upper-level residential above street level retail uses, where appropriate and as permitted by the Town Center regulations.*
- Planning Area 4 (Town Center), Policies, Residential and Mixed Use (7) (Page 42): *Protect, maintain and enhance the streetscape trees and plantings within the Town Center.*
- Planning Area 4 (Town Center), Policies, Historic Preservation (1) (pg. 42): *Continue to support adaptive reuse of existing commercial/industrial properties, e.g., the Nap Brothers Complex and Hubbard Street Warehouse (formerly Consolidated Cigar). Consider using Adaptive Redevelopment Zone (ARZ) regulations for reuse of these sites if appropriate.*
- Planning Area 4 (Town Center), Policies, Transportation (2) (Page 43): *Continue to include pedestrian and bicycle-friendly access and amenities on properties within the Town Center that are subject to Special Permit action by the Town Plan and Zoning Commission. Completion of a unified sidewalk system is strongly encouraged. Install additional bike racks in sensible locations.*
- Planning Area 4 (Town Center), Policies, Stormwater Management (2) (Page 44): *Encourage treatment of stormwater runoff from both pervious and impervious surfaces to protect the Salmon and Hubbard Brook stratified drift aquifers, which underlie much of the Town Center.*

Other Approvals and Court Decision



RETURN TO:
ALTER
PEARSON, LLC
ATTORNEYS AT LAW

701 Hebron Avenue
P.O. Box 1530
Glastonbury, CT 06033

Town of Glastonbury



2155 MAIN STREET • P.O. BOX 6523 • GLASTONBURY, CONNECTICUT 06033-6523

TOWN PLAN AND
ZONING COMMISSION

SECTION 4.11 FLOOD ZONE SPECIAL PERMIT
REAPPROVAL

APPLICANT

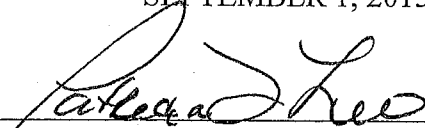
/OWNER: L.A.C. GROUP LLC
58 COTSWOLD CLOSE
GLASTONBURY, CT 06033

RE: 1906 MAIN STREET

MOVED, that the Town Plan and Zoning Commission reapprove the application of L.A.C. Group, LLC for a Section 4.11 Special Permit concerning a drainage outfall structure located on property at 1906 Main Street, in accordance with plans on file in the Office of Community Development, and in compliance with the following condition:

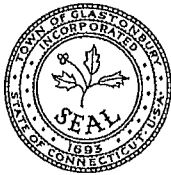
1. Prior to the issuance of a Certificate of Occupancy at 38 Hubbard Street, certification from a professional engineer shall be required confirming no loss of flood storage capacity.

APPROVED: TOWN PLAN AND ZONING COMMISSION
SEPTEMBER 1, 2015



PATRICIA V. LOW, ACTING CHAIRMAN





Town of Glastonbury

2155 MAIN STREET • P.O. BOX 6523 • GLASTONBURY, CT 06033-6523 • (860) 652-7500
FAX (860) 652-7505

Richard J. Johnson
Town Manager

July 2, 2014

Mr. Dominick Calciano
L.A.C. Group, LLC
58 Cotswold Close
Glastonbury, Connecticut 06033

Re: Zone Change Application – 38 Hubbard Street

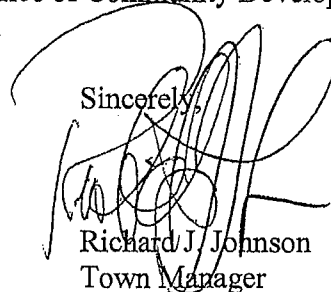
Dear Mr. Calciano:

Following a public hearing on June 24, 2014 the Glastonbury Town Council (Zoning Authority) approved your application for a Change of Zone from Residence A Zone to Adaptive Redevelopment Zone – 1.2073 acre parcel known as 38 Hubbard Street and a Site Development Plan for residential reuse of the existing structure on the premises in accordance with the terms of the attached resolution which was filed with the Town Clerk on June 27, 2014.

In accordance with Section 4.17.3 of the Building-Zone Regulations, certified mylar plans of the Site Development Plan shall be filed in the Office of the Town Clerk no later than December 22, 2014. Please forward a paper copy of the Site Development Plan to the Office of Community Development for review prior to printing the record mylars. Finally, strict compliance with conditions of approval and all other Town protocols is required and expected for this project. Please clearly convey Town expectations and requirements to all those who will be involved in the project. Failure to comply with Conditions of Approval is subject to financial penalties pursuant to Article VIII of the Glastonbury Town Code.

Should you have any questions, please contact the Office of Community Development directly at (860) 652-7510. Best wishes for a successful project.

Sincerely,



Richard J. Johnson
Town Manager

RJJ/KEL/gfm

cc: Peter R. Carey, Building Official
Kenith E. Leslie, Community Development Director
John Rook, AICP, Planner
Attorney Peter Alter
Attorney Meghan Alter
Dutton Associates



Glastonbury Town Council (Zoning Authority)
Resolution – ARZ Rezoning – 38 Hubbard Street
June 24, 2014

BE IT RESOLVED, that the Glastonbury Town Council (Zoning Authority) hereby approves a Change of Zone from Residence A Zone to Adaptive Redevelopment Zone – 1.2073 acre parcel known as 38 Hubbard Street and a Site Development Plan for residential reuse of the existing structure on the premises together with associated parking and other site improvements in accordance with the following plans:

“TITLE SHEET & INDEX PLAN WAREHOUSE 38 ON THE GREEN RESIDENTIAL CONVERSION 38 HUBBARD STREET PREPARED FOR LAC GROUP, LLC GLASTONBURY, CONNECTICUT DUTTON ASSOCIATES, LLC LAND SURVEYORS AND CIVIL ENGINEERS 67 EASTERN BOULEVARD GLASTONBURY, CONNECTICUT 06033 TEL: 860-633-9401 FAX: 860-633-8851 EMAIL: JIMD@DUTTONASSOCIATESLLC.COM DATE: 10/14/2013 SCALE: 1” = 20’ SHEET 1 OF 14 A-08-034-IND FILE: 08034.DWG 11/5/2013 – COMMENTS 12/19/2013 – PATIOS 02/21/2014 – TPZ SUBMISSION 05/15/2014 COUNCIL SUBMISSION”

“LAYOUT PLAN WAREHOUSE 38 ON THE GREEN RESIDENTIAL CONVERSION 38 HUBBARD STREET PREPARED FOR LAC GROUP, LLC GLASTONBURY, CONNECTICUT DUTTON ASSOCIATES, LLC LAND SURVEYORS AND CIVIL ENGINEERS 67 EASTERN BOULEVARD GLASTONBURY, CONNECTICUT 06033 TEL: 860-633-9401 FAX: 860-633-8851 EMAIL: JIMD@DUTTONASSOCIATESLLC.COM DATE: 10/14/2013 SCALE: 1” = 20’ SHEET 4 OF 14 A-08-034-LAY FILE: 08034.DWG 11/5/2013 – COMMENTS 12/19/2013 – PATIOS 02/21/2014 – TPZ SUBMISSION 05/15/2014 COUNCIL SUBMISSION”

“UTILITY PLAN WAREHOUSE 38 ON THE GREEN RESIDENTIAL CONVERSION 38 HUBBARD STREET PREPARED FOR LAC GROUP, LLC GLASTONBURY, CONNECTICUT DUTTON ASSOCIATES, LLC LAND SURVEYORS AND CIVIL ENGINEERS 67 EASTERN BOULEVARD GLASTONBURY, CONNECTICUT 06033 TEL: 860-633-9401 FAX: 860-633-8851 EMAIL: JIMD@DUTTONASSOCIATESLLC.COM DATE: 10/14/2013 SCALE: 1” = 20’ SHEET 5 OF 14 A-08-034-LAY FILE: 08034.DWG 11/5/2013 – COMMENTS 12/19/2013 – PATIOS 02/21/2014 – TPZ SUBMISSION 05/15/2014 COUNCIL SUBMISSION”

“GRADING, EROSION & SEDIMENT CONTROL PLAN WAREHOUSE 38 ON THE GREEN RESIDENTIAL CONVERSION 38 HUBBARD STREET PREPARED FOR LACGROUP, LLC GLASTONBURY, CONNECTICUT DUTTON ASSOCIATES, LLC LAND SURVEYORS AND CIVIL ENGINEERS 67 EASTERN BOULEVARD GLASTONBURY, CONNECTICUT 06033 TEL: 860-633-9401 FAX: 860-633-8851 EMAIL: JIMD@DUTTONASSOCIATESLLC.COM DATE: 10/14/2013 SCALE: 1” = 20’ SHEET 6 OF 14 A-08-034-LAY FILE: 08034.DWG 11/5/2013 – COMMENTS 12/19/2013 – PATIOS 02/21/2014 – TPZ SUBMISSION 05/15/2014 COUNCIL SUBMISSION”

“WAREHOUSE 38 ON THE GREEN HUBBARD STREET GLASTONBURY, CT J.
ALEXOPOULOS LAND. ARCH. SEPT. 30, 2013 REV. OCT. 28, 2013 REV. NOV. 5, 2013 REV.
JAN. 5, 2014 REV. FEB. 25, 2014”

“LIGHTING PLAN WAREHOUSE 38 ON THE GREEN RESIDENTIAL CONVERSION 38
HUBBARD STREET PREPARED FOR LAC GROUP, LLC GLASTONBURY, CONNECTICUT
DUTTON ASSOCIATES, LLC LAND SURVEYORS AND CIVIL ENGINEERS 67 EASTERN
BOULEVARD GLASTONBURY, CONNECTICUT 06033 TEL: 860-633-9401 FAX: 860-633-
8851 EMAIL: JIMD@DUTTONASSOCIATESLLC.COM DATE: 10/14/2013 SCALE: 1” = 20’
SHEET 8 OF 14 A-08-034-LTG FILE: 08034.DWG 11/5/2013 – COMMENTS 12/19/2013 –
PATIOS 02/21/2014 – TPZ SUBMISSION 05/15/2014 COUNCIL SUBMISSION”

“LIGHTING DETAILS WAREHOUSE 38 ON THE GREEN RESIDENTIAL CONVERSION 38
HUBBARD STREET PREPARED FOR LAC GROUP, LLC GLASTONBURY, CONNECTICUT
DUTTON ASSOCIATES, LLC LAND SURVEYORS AND CIVIL ENGINEERS 67 EASTERN
BOULEVARD GLASTONBURY, CONNECTICUT 06033 TEL: 860-633-9401 FAX: 860-633-
8851 EMAIL: JIMD@DUTTONASSOCIATESLLC.COM DATE: 10/14/2013 SCALE: AS
SHOWN SHEET 9 OF 14 A-08-034-LTG-D FILE: 08034.DWG 11/5/2013 – COMMENTS
12/19/2013 – PATIOS 02/21/2014 – TPZ SUBMISSION 05/15/2014 COUNCIL SUBMISSION ”

“GENERAL NOTES AND DETAILS WAREHOUSE 38 ON THE GREEN RESIDENTIAL
CONVERSION 38 HUBBARD STREET PREPARED FOR LAC GROUP, LLC
GLASTONBURY, CONNECTICUT DUTTON ASSOCIATES, LLC LAND SURVEYORS AND
CIVIL ENGINEERS 67 EASTERN BOULEVARD GLASTONBURY, CONNECTICUT 06033
TEL: 860-633-9401 FAX: 860-633-8851 EMAIL: JIMD@DUTTONASSOCIATESLLC.COM
DATE: 10/14/2013 SCALE: AS SHOWN SHEET 10 OF 14 A-13-025-D1 FILE: 13025.DWG
11/5/2013 – COMMENTS 12/19/2013 – PATIOS 02/21/2014 – TPZ SUBMISSION 05/15/2014
COUNCIL SUBMISSION”

“GENERAL NOTES AND DETAILS WAREHOUSE 38 ON THE GREEN RESIDENTIAL
CONVERSION 38 HUBBARD STREET PREPARED FOR LAC GROUP, LLC
GLASTONBURY, CONNECTICUT DUTTON ASSOCIATES, LLC LAND SURVEYORS AND
CIVIL ENGINEERS 67 EASTERN BOULEVARD GLASTONBURY, CONNECTICUT 06033
TEL: 860-633-9401 FAX: 860-633-8851 EMAIL: JIMD@DUTTONASSOCIATESLLC.COM
DATE: 10/14/2013 SCALE: AS SHOWN SHEET 11 OF 14 A-08-034-D2 FILE: 08034.DWG
11/5/2013 – COMMENTS 12/19/2013 – PATIOS 02/21/2014 – TPZ SUBMISSION 5/15/2014
COUNCIL SUBMISSION ”

“GENERAL NOTES AND DETAILS WAREHOUSE 38 ON THE GREEN RESIDENTIAL
CONVERSION 38 HUBBARD STREET PREPARED FOR LAC GROUP, LLC
GLASTONBURY, CONNECTICUT DUTTON ASSOCIATES, LLC LAND SURVEYORS AND
CIVIL ENGINEERS 67 EASTERN BOULEVARD GLASTONBURY, CONNECTICUT 06033
TEL: 860-633-9401 FAX: 860-633-8851 EMAIL: JIMD@DUTTONASSOCIATESLLC.COM
DATE: 10/14/2013 SCALE: 1” = 20’ SHEET 12 OF 14 A-08-034-D3 FILE: 08034.DWG
11/5/2013 – COMMENTS 12/19/2013 – PATIOS 02/21/2014 – TPZ SUBMISSION 05/15/2014
COUNCIL SUBMISSION”

"APPROVALS WAREHOUSE 38 ON THE GREEN RESIDENTIAL CONVERSION 38 HUBBARD STREET PREPARED FOR LAC GROUP, LLC GLASTONBURY, CONNECTICUT DUTTON ASSOCIATES, LLC LAND SURVEYORS AND CIVIL ENGINEERS 67 EASTERN BOULEVARD GLASTONBURY, CONNECTICUT 06033 TEL: 860-633-9401 FAX: 860-633-8851 EMAIL: JIMD@DUTTONASSOCIATESLLC.COM DATE: 10/14/2013 SCALE: NO SCALE SHEET 14 OF 14 A-08-034-APP FILE: 08034.DWG 11/5/2013 – COMMENTS 12/19/2013 – PATIOS 02/21/2014 – TPZ SUBMISSION 05/15/2014 COUNCIL SUBMISSION"

"EAST SIDE ELEVATION SCALE: 1/8" – 1"-0" WAREHOUSE 38 ON THE GREEN GLASTONBURY, CT CALCIANO BUILDERS GLASTONBURY, CT BARTON PARTNERS ARCHITECTS PLANNERS, INC. 700 E. MAIN STREET, 3RD FLOOR NORRISTOWN, PA 19401-4122 P 610.930.2800 F 610.930.2808 1 OF 4 PROJECT NUMBER: 13010 DATE: 2014.06.10"

"WEST ELEVATION SCALE: 1/8" – 1"-0" WAREHOUSE 38 ON THE GREEN GLASTONBURY, CT CALCIANO BUILDERS GLASTONBURY, CT BARTON PARTNERS ARCHITECTS PLANNERS, INC. 700 E. MAIN STREET, 3RD FLOOR NORRISTOWN, PA 19401-4122 P 610.930.2800 F 610.930.2808 2 OF 4 PROJECT NUMBER: 13010 DATE: 2014.06.10"

"NORTH ELEVATION SCALE: 1/8" – 1"-0" WAREHOUSE 38 ON THE GREEN GLASTONBURY, CT CALCIANO BUILDERS GLASTONBURY, CT BARTON PARTNERS ARCHITECTS PLANNERS, INC. 700 E. MAIN STREET, 3RD FLOOR NORRISTOWN, PA 19401-4122 P 610.930.2800 F 610.930.2808 3 OF 4 PROJECT NUMBER: 13010 DATE: 2014.06.10"

"SOUTH ELEVATION SCALE: 1/8" – 1"-0" WAREHOUSE 38 ON THE GREEN GLASTONBURY, CT CALCIANO BUILDERS GLASTONBURY, CT BARTON PARTNERS ARCHITECTS PLANNERS, INC. 700 E. MAIN STREET, 3RD FLOOR NORRISTOWN, PA 19401-4122 P 610.930.2800 F 610.930.2808 4 OF 4 PROJECT NUMBER: 13010 DATE: 2014.06.10"

and in compliance with the following conditions:

1. Nine ground-level dwelling units shall be deleted for a total of 31 dwelling units on the upper two floors in accordance with plans submitted. The existing flat roof shall be retained. There shall be no dwelling units on the ground level.
2. HVAC units (low profile) shall be installed on the flat rooftop and screened appropriately.
3. The parking layout shall be modified as follows:
 - a.) Five spaces in front of the building shall be deleted.
 - b.) Ten tandem spaces (20 total spaces) shall be maintained along the southerly property line commencing on the westerly side of the parcel.
 - c.) The remaining four tandem spaces (8 total spaces) shall be converted to 2 spaces and open area extending to the southeast corner of the parcel.

There shall be a total of 50 parking spaces for the project.

4. The carport structure shall be deleted.
5. The existing basement window openings shall remain.
6. The vacated basement area may be used only for common tenant purposes.
7. Compliance with the resolution as recommended by the Conservation Commission during its meeting of December 19, 2013.
8. Compliance with standards contained in a report from the Fire Marshal, File #14-024, plans reviewed 3-13-14.
9. A sanitary sewer manhole shall be installed along the proposed sanitary sewer lateral serving the building.
10. Fence and dumpster enclosure details shall be indicated on final plans for filing.
11. Metal waste containers shall be provided at the site to facilitate the collection of refuse material generated from construction activities. Such material shall not be buried or burned at the site.
12. Installation of soil erosion and sedimentation control and stabilization measures shall be the Permittee's responsibility. Once installed these measures shall then be inspected by the Environmental Planner prior to land disturbance activities. Afterwards it then shall be the Permittee's responsibility to inspect these control measures during, and immediately following, substantial storm events and maintain and/or replace the control measures, when needed, on a regular basis until the site is vegetatively stabilized. The Environmental Planner is hereby authorized to require additional soil erosion and sediment controls and stabilization measures to address situations that arise on the site.
13. Prior to the issuance of a Certificate of Occupancy, certification from a professional engineer shall be required confirming that the stormwater management system was constructed in conformance with the approved design.
14. Prior to the issuance of a Certificate of Occupancy, certification from a landscape architect shall be required confirming that landscape plants were installed in accordance with the approved landscape plan.
15. Compliance with the agreements listed in the March 14, 2014 memorandum of understanding between L.A.C. Group, LLC and Jonathan and Elizabeth Susat. This document shall be depicted on final plans for filing.
16. The effective date of this zone change action shall be July 14, 2014.

and in accordance with the following findings:

1. Project development details as modified by this approval, including a reduced number of dwelling units and reduced on-site parking, conform to the purpose, intent and development standards of the Adaptive Redevelopment Zone regulations, including Floor Area Ratio, parking and the preservation and enhancement of interior and exterior architectural and historic building element.
2. The adaptive reuse of the existing structure is consistent with policies contained in the 2007-2017 Plan of Conservation and Development including the provision of increased and innovative housing opportunities within the Town Center and with immediate access to public transit.
3. The Legal Traffic Authority (Chief of Police) and the Town Engineer have concluded that traffic generated by the development can be safely accommodated by existing roadways and intersections.
4. The residential reuse of this building will fully eliminate the non-conforming industrial uses on the premises.

Yolanda D. O'Lenick


Yolanda D. O'Lenick
Executive Secretary to the Town Manager/
Acting Council Clerk

June 26, 2014

Date

MEMORANDUM

To: Town Plan & Zoning Commission and Town Council (Zoning Authority)

From: John Rook, AICP, Planner, 

Date: January 8, 2014

Re: Environmental Impact Statement – proposed rezoning of 38 Hubbard Street from Residence A Zone to Adaptive Redevelopment Zone - Warehouse 38 On The Green - 40 residential units

At its Regular Meeting of December 19, 2013, the Conservation Commission approved the following resolution:

MOVED, that the Conservation Commission transmits an Environmental Impact Statement regarding the proposed Warehouse 38 on the Green, Adaptive Redevelopment Zone project, located at 38 Hubbard Street, to the Town Council and Town Plan and Zoning Commission; the Commission's statement pertains to the submitted Environmental Impact Report for Warehouse 38 On The Green, 38 Hubbard Street, Glastonbury, Connecticut, prepared for LAC Group, LLC submitted by John P. Ianni, Professional Soil Scientist, of Highland Soils, LLC, dated October 31, 2013; and the Commission confirms it is in agreement with said report and its conclusions that this project should not result in a significant adverse impact upon the natural resources and environment.

JR:gfm

cc: Attorneys Peter and Meghan Alter
Dutton Associates, LLC, C.E.



TOWN OF GLASTONBURY
FIRE MARSHAL'S OFFICE
SITE PLAN/SUBDIVISION REVIEW

PROJECT: L.A.C. Group Apartments LOCATION: 38 Hubbard Street

DEVELOPER: L.A.C. group LLC

NEW CONSTRUCTION CHANGE OF USE SUBDIVISION COMMERCIAL

OCCUPANCY CLASSIFICATION: Group R F.M.O. FILE # 14-024

PROPOSED FIRE PROTECTION: via full AS & the GVFD

ENGINEER'S PLAN # A-08-034-IND INITIAL PLAN REVISED PLAN: 2-21-14

ENGINEER: Dutton Associates

ADDRESS AND PHONE: 67 Eastern Blvd Glastonbury 860-633-9401

DATE PLANS RECEIVED: 3-12-14 DATE PLANS REVIEWED: 3-13-14

COMMENTS:

It would appear that the entire east side of the parking lot will need to be posted as a fire lane in accordance with signs that meet the Uniform Traffic Standards. The location of and the method of posting will need to be depicted on the final drawings of record submitted to the town.

Address numerals will need to be provided. A rapid entry vault will need to be provided. The disposal of construction debris by open burning is not permitted.

The use of and location of temporary fuel tanks utilized for construction purposes will need to be reviewed by this office.

REVIEWED BY: Chris Siwy-Fire Marshal

PAGE 1 OF 1

cc: Applicant
 File

MEMORANDUM OF UNDERSTANDING BETWEEN
LAC GROUP, LLC
AND
JONATHAN AND ELIZABETH SUSAT

LAC Group, LLC ("LAC"), is the owner of property known as 38 Hubbard Street ("the Property") which is currently used for a warehouse. LAC intends to file an application for a change of zone from the existing Residence A Zone to Adaptive Redevelopment Zone (ARZ) in order to allow conversion of the warehouse to multi-family residential use ("the Development"). This application will be filed before the Glastonbury Town Council, acting with the advice of the Glastonbury Town Plan and Zoning Commission.

Jonathan and Elizabeth Susat ("the Susats") own and reside in a home located directly adjacent to the Property at 24 Hubbard Street. The Susats and LAC have had discussions about the potential impacts of the Development on the Susats, and they have agreed that the Development will incorporate the agreements reflected in this Memorandum of Understanding; LAC will modify its plans to reflect these agreements; will construct the Development, if approved, in accordance with these agreements; and the parties will jointly ask the Town Council to make these agreements conditions of approval if the zone change application is granted.

The agreements are as follows:

- Lighting, including building-mounted lighting, will be full cut-off fixtures and there will be no building-mounted flood lights.
- There will be no barbecue or other active recreational use in the front yard (the area between the building and Hubbard Street).
- There will be no balconies.
- LAC will hire a pest control company to exterminate pests prior to disturbance of the interior of the building.
- The removal of hazardous wastes in or on the premises will be conducted under careful supervision.
- Construction will be restricted for outside work to the hours of 7:30 am to 6 pm, Monday through Friday, Saturday from 8:30 am to 5:00 pm and Sundays only for emergency or highly unusual circumstances, commencing no earlier than 9:00 am in recognition of the Village Green senior housing, as well as the Susats. Additionally, for interior work, once the structure has been completely framed out and exterior walls and windows are in place to act as sound barriers, work may take place between the hours of 7:30 am to 9:00 pm, provided no noise complaints are received. Activities outside these hours will only be undertaken in emergency or highly unusual circumstances.
- Construction litter and dust will be controlled.
- There will be no more than four (4) patios for the four (4) ground level apartments closest to Hubbard Street, provided that the southerly limit of the southern-most

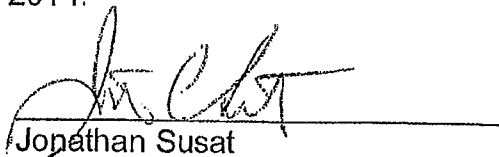
- patio extends no further south than as shown on Exhibit A attached to this letter.
- There will be fences between the four agreed-upon patios, as well as along the westerly side of the building. The plans will be revised to delete the fencing that was to be in between the patios that are being eliminated, and also the wall-mounted exterior lights for those patios. The fence parallel to the building will remain as shown previously.
- If the HVAC units are located on the roof, they will be centered down the middle of the roof, with one unit serving each apartment (or a small group of apartments). This means that each unit will be smaller in height and of lesser noise generation than would be the case with a whole-building or zone HVAC system. The top of the HVAC units will be no higher than six (6') feet from the roof surface (not the top of the parapet). An alternative now being considered is to locate the HVAC units in a utility closet located in each apartment unit, with no structures located outside the building. This alternative may include the use of shallow pitched roof instead of the existing flat roof. This alternative would be acceptable to the Susats.
- LAC will add maple trees, to a total of eight (8), which shall be Acer Karpick in lieu of the Acer Armstrong initially specified, approximately opposite the 6" spruce on the Susat property. The precise locations of all maple trees will be set in the field with both of our clients and their landscaper participating. The size of the Karpick maples will be no less than 4" caliper at time of planting and be from Mullane, TLC, or Planter's Choice nursery, or such other reputable nursery approved by Susats.
- The four (4) inkberry shrubs proposed at the northwest corner of the property will be replaced with four (4) three-foot Roseumelegans Rhododendrons.
- LAC may change the floor plan for the first floor (the floor above ground floor) such that the current two two-bedroom units on the southern-most end of the building would become three one-bedroom units, for a total of 41 units. The Susats would have no objection to this change in unit count and bedroom configuration.
- Window size on the west side of the building will be no larger nor more numerous than depicted on Exhibit B.
- The Susats will submit to the Glastonbury Town Plan and Zoning Commission and Town Council the letter attached hereto as Exhibit C.

Dated at Glastonbury this 14th day of March, 2014.

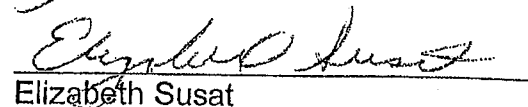
LAC GROUP, LCC



By Dominick Calclano
Its Duly Authorized Agent



Jonathan Susat



Elizabeth Susat

EXHIBIT A

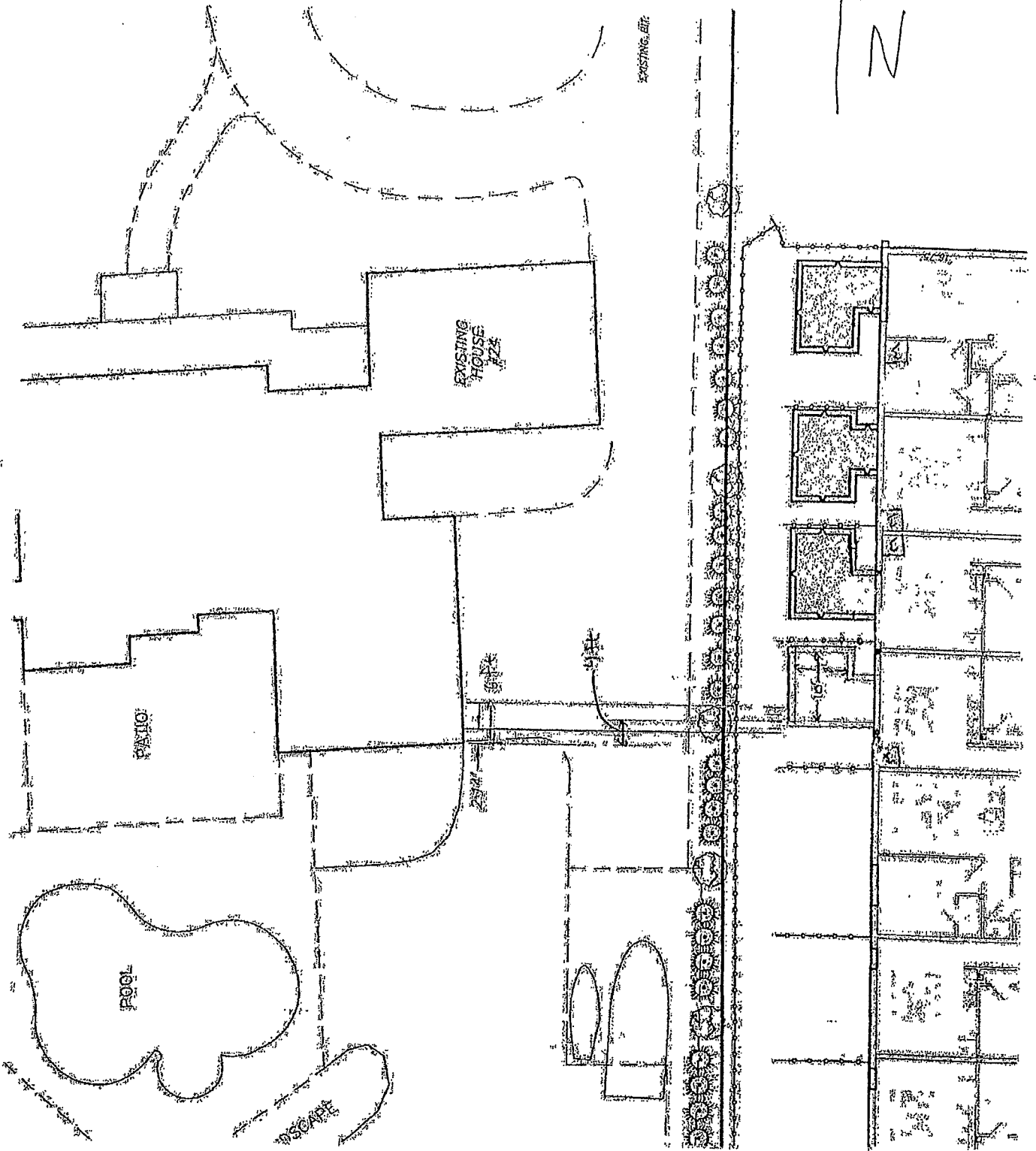
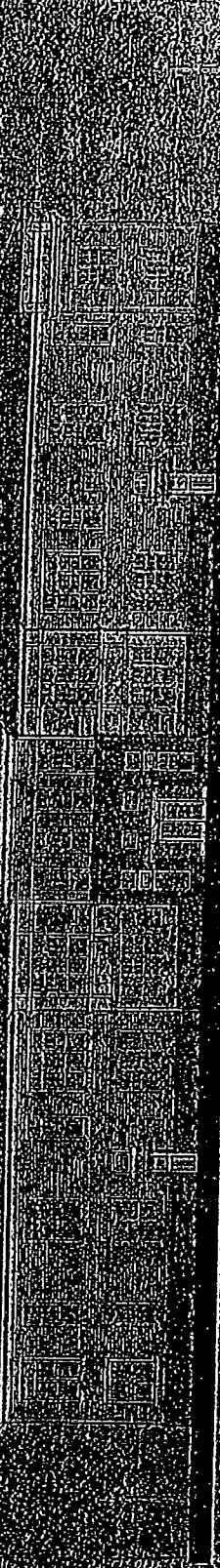
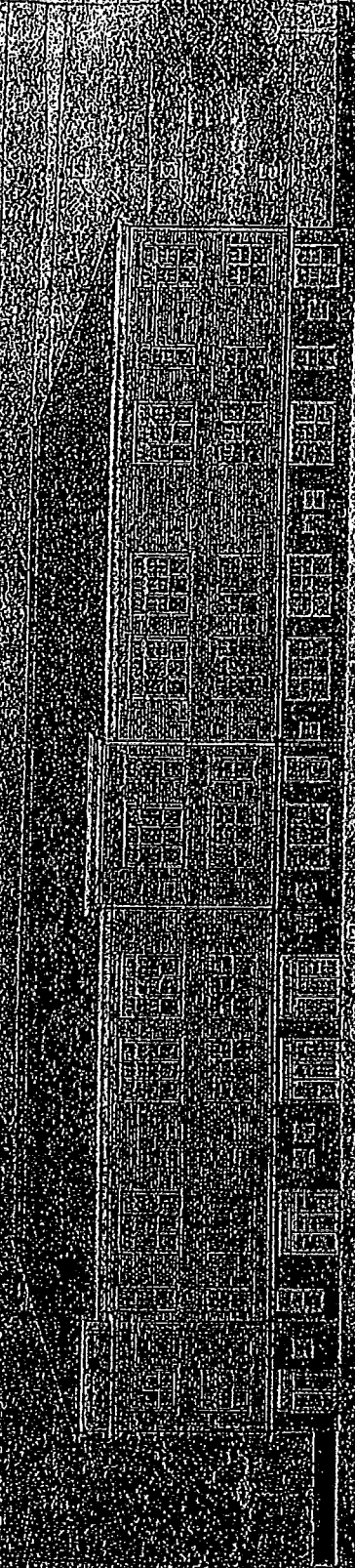


EXHIBIT B



FRONT ELEVATION
WATERHOUSE



SIDE ELEVATION
WATERHOUSE

ALCOA BUILDERS
100 WATER ST
PROVIDENCE, RI 02903

WATERHOUSE 38 ON THE GREEN
GLASTONBURY, CT

F. B. BARRON PARTNERS
1065
PROVIDENCE, RI 02903

EXHIBIT L

BRANSE, WILLIS & KNAPP, LLC

148 EASTERN BOULEVARD SUITE 301
GLASTONBURY, CONNECTICUT 06033
TELEPHONE: (860) 659-3735
FAX: (860) 659-9368

MARK K. BRANSE
MATTHEW J. WILLIS*
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*ADMITTED IN MASSACHUSETTS

OF COUNSEL:
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roschner@bransewillis.com

HAND DELIVERED

March 14, 2014

Sharon Purfill, Esq, Chairman
Glastonbury Town Plan and Zoning Commission

And

Stuart Beckett, III, Chairman
Glastonbury Town Council
2155 Main Street
Glastonbury CT 06033

RE: 38 Hubbard Street Adaptive Re-Use – LAC Group, LLC

Dear Chairpersons Purfill and Beckett:

I represent Dr. Jonathan and Betsy Susat, owners and residents of a home at 24 Hubbard Street. As the Commission and the Council are aware, Dr. and Mrs. Susat recognize the community benefits of a reasonable adaptive re-use of the former Consolidated Cigar warehouse at 38 Hubbard Street, immediately east of their home. They understand that conversion of the warehouse to a multi-family residential use, and the construction work necessary to achieve that, will involve a certain degree of unavoidable adverse impacts on their enjoyment of their home. As I have pointed out before, that home was built around the home of Betsy Susat's parents, Charles and Jean Ames, and is the home where Betsy was born and raised. This is a very special place to Jon and Betsy, but they understand that things change and they have no desire to obstruct progress.

Our goal from the outset has been to minimize the adverse impacts of the LAC Group proposal, particularly with regard to maximizing the privacy and quiet of the Susat home and yard. After cordial discussions with Dominick Calciano of LAC Group, LLC, and James Dutton, L.S., of Dutton Associates, we have struck what we feel is a fair balance between the legitimate needs of both parties. The agreements which resulted from those discussions are attached to this letter, and the parties jointly ask that these items

Sharon Purfill, Esq., Chairman
Stewart Becket, III, Chairman
March 14, 2014
Page Two

be made conditions of approval if the Council, in its discretion, approves the LAC Group application for a zone change to Adaptive Reuse Zone in accordance with Section 4.17 of the Glastonbury Building-Zone Regulations.

Dr. and Mrs. Susat sincerely appreciate the courtesy and sensitivity that Mr. Calciano has consistently displayed in all of our discussions. We feel the attached Memorandum of Understanding reflects a spirit of cooperation and respect for the needs of both parties.

We thank you for your consideration.

Very truly yours,



Mark Branse

Enclosure

Cc Dr. and Mrs. Jonathan Susat
Dominick Calciano
Peter J. Alter, Esq.
James Dutton, L.S.

MKB

M:\MARK\Letters\TPZ Council Hubbard REV.ltr.doc

L.A.C. Group, LLC

v.

Town Council of the Town of Glastonbury et al

No. LNDCV146053214S

**Superior Court of Connecticut, Judicial District of Hartford, Hartford, Land Use Litigation
Docket**

August 12, 2015

MEMORANDUM OF DECISION

Marshall K. Berger, J.

I

The plaintiff, L.A.C. Group, LLC, owns a 1.12-acre parcel of land upon which a former Consolidated Cigar warehouse (warehouse) sits at 38 Hubbard Street in Glastonbury. The warehouse is a seventy-five-year-old, three-story building constituting a nonconforming use in the Residence A zone, which allows homes on 15, 000 square foot lots. (Return of Record [ROR], Item 64, pp. 25-26.) On March 3, 2014, the plaintiff applied to the defendant, the town council^[1] (council), for a change of zone from Residence A to the Adaptive Redevelopment Zone (ARZ)^[2] and for site development plan approval to redevelop the warehouse into forty apartments. (ROR, Item 3.) Pursuant to § 16 of the Glastonbury building-zone regulations (regulations),^[3] the council referred the application to the Glastonbury town plan and zoning commission (commission) for a public hearing and recommendation.^[4] (ROR, Item 3.)

The public hearing allegedly convened on March 18, 2014, and continued on April 1, 2014. On April 29, 2014, the commission made a favorable recommendation for the forty-unit complex to the council. (ROR, Item 24.)

The council then held a public hearing on May 27, 2014, on June 10, 2014, and continued it to June 24, 2014. (ROR, Items 61-63.) On June 18, 2014, the plaintiff modified its application reducing the number of units to thirty-six with fifty-six parking spaces. (ROR, Item 42; Item 63, p. 1.) After the public hearing was closed on June 24, 2014, the council during its regular meeting voted to approve the application subject to certain conditions, including a reduction to thirty-one units. (ROR, Item 54; Item 63, pp. 18-29.) Notice of the decision was published in the *Hartford Courant* on July 2, 2014. (ROR, Item 55.)

The plaintiff commenced this appeal on July 15, 2014, alleging that some of the council's conditions of approval were illegal, arbitrary, capricious, and an abuse of discretion. On September 5, 2014, Jonathan Susat and Elizabeth Susat (intervenors), whose property abuts the subject property on the west, sought to intervene in the matter; the motion was granted on October 8, 2014.^[5] The council filed the return of record on December 8, 2014, and an answer on February 4, 2015. On March 9, 2015, the plaintiff filed its brief. A stipulation partially correcting record item sixty-three was filed on April 10, 2015. On May 7, 2015, the council filed its brief and it supplemented the record by filing a copy of the regulations, record item sixty-four, on June 5, 2015. The court heard the appeal on June 23, 2015.

II

General Statutes § 8-8(b), in relevant part, provides that " any person aggrieved by any decision of a board . . . may take an appeal to the superior court for the judicial district in which the municipality is located . . ." " It is well established that a party may be aggrieved for purposes of appeal by virtue of its status as a property owner." *Handsome, Inc. v. Planning & Zoning Commission*, 317 Conn. 515, 527 (July 14, 2015). In the present case, the plaintiff owned the subject property at the time of the application and still owns the property for which the zone change and site development plan were approved with conditions. Thus, this court finds that the plaintiff is aggrieved.

As to the intervenors, General Statutes § 8-8(a)(1), in relevant part, provides that " 'aggrieved person' includes any person owning land in this state that abuts or is within a radius of one hundred feet of any portion of the land involved in the decision of the board." The intervenors filed a stipulation in which the parties agreed that the intervenors owned their abutting property at the time of the application and still own their property at the time this appeal was heard. Accordingly, this court also finds that they are aggrieved.

III

A

It is important to note that plaintiff is not contesting the validity of the regulations or the statutory authority authorizing the creation of the ARZ district. As a threshold issue, the plaintiff argues that the council was acting in both a legislative and administrative capacity in conditionally approving the plaintiff's zone change and site development plan. The council argues that it acted in its legislative capacity on both. The court agrees with the council.

" [I]n traditional zoning appeals, the scope of judicial review depends on whether the zoning commission has acted in its legislative or administrative capacity. The discretion of a legislative body, because of its constituted role as formulator of public policy, is much broader than that of an administrative board, which serves a quasi-judicial function . . . Acting in such legislative capacity, the local [zoning] board is free to amend [or to refuse to amend] its regulations whenever time, experience, and responsible planning for contemporary or future conditions reasonably indicate the need for [or the undesirability of] a change . . . Zoning must be sufficiently flexible to meet the demands of increased population and evolutionary changes in such fields as architecture, transportation, and redevelopment . . . The responsibility for meeting these demands rests, under our law, with the reasoned discretion of each municipality acting through its duly authorized zoning commission . . . In contrast, when acting in an administrative capacity, a zoning commission's more limited function is to determine whether the applicant's proposed use is one which satisfies the standards set forth in the [existing] regulations and the statutes . . . In fulfilling its administrative function, a zoning commission is less concerned with the development of public policy than with the correct application of law to facts in the particular case." (Internal quotation marks omitted.) *MacKenzie v. Planning & Zoning Commission*, 146 Conn.App. 406, 436, 77 A.3d 904 (2013).

The council argues that the ARZ is a planned development district. The creation of a planned development district is comparable to the creation of a floating zone.^[6] *Campion v. Board of Aldermen*, 278 Conn. 500, 515, 899 A.2d 542 (2006). The Supreme Court has stated that a

floating zone " is legislatively predeemed compatible with the area in which it eventually locates if specified standards are met and the particular application is not unreasonable." *Sheridan v. Planning Board*, 159 Conn. 1, 16, 266 A.2d 396 (1969). The plaintiff does not dispute that the council acts in a legislative capacity when approving zone changes. See, e.g., *Konigsberg v. Board of Aldermen*, 283 Conn. 553, 581, 930 A.2d 1 (2007). Nevertheless, the plaintiff argues that the broad discretion afforded to the council in considering the zone change did not equally apply to the imposition of conditions on the site development plan. As support for this argument, the plaintiff points to § 4.17.3 of the regulations which, in relevant part, provides that "[a]pproval of the Site Development Plan may include such changes, limitations, restrictions or conditions, as the Zoning Authority shall consider necessary to protect the public health, safety, convenience and property values. Adherence to applicable standards and requirements of Section 12.4 of the Building-Zone Regulations shall be required." (ROR, Item 64, p. 76.)

The plaintiff cites *MacKenzie v. Planning & Zoning Commission*, *supra*, 146 Conn.App. 437-40, as support for its argument. *MacKenzie* involves, however, a design district instead of the planned development district in the present case. *Id.*, 409. Indeed, the *MacKenzie* court held, " a commission's decision to enact a floating zone or planned development district is legislative in nature. *Campion v. Board of Aldermen*, *supra*, 278 Conn. 526 ('the approval of a planned development district creates a new zoning district, and like any other adoption of a new zone, is legislative in nature'); *Sheridan v. Planning Board*, [*supra*, 159 Conn. 16] . . . ('the floating zone is the product of legislative action') . . . [T]he critical difference between floating zones and planned development districts on the one hand, and design districts . . ., on the other, is the fact that in the latter 'the regulations themselves were not changed and no new zoning district was established.' As the Supreme Court explained in great detail in *Campion v. Board of Aldermen*, *supra*, 517-19, both floating zones and planned development districts entail amendment of zoning regulations and the creation of a new zoning district." (Footnote omitted.) *MacKenzie v. Planning & Zoning Commission*, *supra*, 440-41.

In the present case, the council created a new district. The broad grant of discretion in § 4.17.3 to the council is unlike that in *MacKenzie* where the court held that the commission unlawfully attempted to vary its regulations. See *id.*, 430. Indeed, the situation presented here is more similar to that in *Campion*. In *Campion*, the New Haven town plan commission *conditionally* granted the developer's application for a planned development district and the board of alderman approved the application after further modifying it. *Campion v. Board of Aldermen*, *supra*, 278 Conn. 505. The court held that the relevant zoning ordinance was " not a delegation of authority from a legislative body to an administrative agency. It is not necessary, therefore, that detailed standards for the enactment of zone changes or new zoning districts be set forth in the zoning ordinance itself, because such an evaluation is already contemplated by our precedent establishing that a legislative action must be in accord with the city's comprehensive plan and reasonably related to the police powers enumerated in the city's enabling legislation." *Id.*, 528-29; see also *Sheridan v. Planning Board*, *supra*, 159 Conn. 17-18 (" Section 550 of the Stamford charter [26 Spec. Laws 1234, No. 619 § 550] provides, in part, that '[t]he zoning board is authorized to regulate the height, number of stories and size of buildings and other structures; the

percentage of the area of the lot that may be occupied; the size of yards, courts and other open spaces; the density of population and the location and use of buildings, structures and land for trade, industry, residence or other purposes; and the height, size, location and character of advertising signs and billboards.' We feel that this language, just as that in General Statutes § 8-2, is sufficiently broad to permit the creation of floating zones. In creating a floating zone, and in applying it to a particular area, the Stamford zoning board is regulating the location and use of buildings and land in a manner which clearly is permitted under the enabling act in question").

The *Campion* court compared and distinguished planned development districts from a floating zone. " [W]e acknowledge that a floating zone differs from a planned development district in certain respects. We conclude, however, that these differences are largely procedural in nature and are not significant enough to invalidate planned development districts that derive their authority from the city's 1925 Special Act. For example, a floating zone is approved in two discrete steps--first, the zone is created in the form of a text amendment, but without connection to a particular parcel of property--and second, the zone is later landed on a particular property through a zoning map amendment. In short, with respect to floating zones, development plans for specific properties within a district are approved separately from the zoning map amendment. Planned development districts . . . however, combine into a single step the approval of a zoning map amendment and a general development plan for the district. This procedural discrepancy does not change the fact that both floating zones and planned development districts have the effect of alter[ing] the zone boundaries of [an] area by carving a new zone out of an existing one." (Internal quotation marks omitted.) *Campion v. Board of Aldermen*, *supra*, 278 Conn. 518-19.

Furthermore, in *Blakeman v. Planning & Zoning Commission*, 82 Conn.App. 632, 634-35, 846 A.2d 950, cert. denied, 270 Conn. 905, 853 A.2d 521 (2004), the plaintiffs submitted a petition for the creation of a planned development district with an application for development plans for twenty-four condominium units. The plans were approved, but the units were not completed within the time frame provided for by the regulations. *Id.*, 635-36. The plaintiffs submitted a second application, and the commission approved it with several conditions including a reduction in the number of units to eighteen. *Id.*, 636. The plaintiffs appealed arguing that the commission was acting in its administrative capacity on the second application and the trial court agreed treating the second application as a special permit. *Id.* The Appellate Court disagreed and held, " approval of the plans submitted by the plaintiffs is inextricably intertwined with the process of petitioning for the creation of a district, which is, of course, a zone change. For example, attaining approval of the plans is merely one step in the overall process of obtaining a district. Thus, when the defendant acted on the plans that accompanied the petition, whether those that were approved in 1993 or those that were submitted in 2000, it was acting in its legislative capacity." (Footnote omitted.) *Id.*, 643-44. The court concluded that the commission " acted within its broad authority and discretion when it determined that the reduction of the number of condominium units would ameliorate the adverse impact of the development on the surrounding neighborhood." [7] *Id.*, 645-46.

In the present case, Glastonbury created the ARZ zone allowing for the reuse of any seventy-five year old, 7500 square foot or larger building. Even with the limitations placed by the council, the plaintiff can construct at a density over ten times that allowed for the current

residential use, i.e., thirty-one units on 1.2 acres. The general standards--those referenced in § 12.4, which are not dissimilar to those in § 4.17.4--are still encompassed within the legislative action in creating the zone. The ARZ regulations provide for a one-step procedure for approval of the zoning map amendment and the site development plan. Specifically, § 4.17.4, in relevant part, provides: " Because the intent of this ordinance is to approve a Zone Change to ARZ only when a Site Development Plan is approved concurrently, the zone change to ARZ and the Site Development Plan will be approved or denied as one motion." (ROR, Item 64, p. 76.) The map amendment and the site development plan were approved as one motion; (ROR, Item 54; Item 63, pp. 28-29); as in *Campion v. Board of Aldermen, supra*, 278 Conn. 505. Thus, this court rejects the plaintiff's argument that the council was acting in an administrative capacity when approving the site development plan.

B

Additionally, the plaintiff argues that its appeal must be sustained regardless of what capacity the council was acting in, because there is no evidence--let alone substantial evidence--in the record to support the council's decision. The plaintiff asserts that its application met all regulatory requirements and that the town staff did not object to the plaintiff's site development plan. The council counters that its conditions of approval were reasonably supported by the record.

" [T]he commission, acting in a legislative capacity, [has] broad authority to adopt the amendments . . . In such circumstances, it is not the function of the court to retry the case. Conclusions reached by the commission must be upheld by the trial court if they are reasonably supported by the record. The credibility of the witnesses and the determination of issues of fact are matters solely within the province of the agency. The question is not whether the trial court would have reached the same conclusion but whether the record before the agency supports the decision reached . . . Acting in such legislative capacity, the local board is free to amend its regulations whenever time, experience, and responsible planning for contemporary or future conditions reasonably indicate the need for a change . . . The discretion of a legislative body, because of its constituted role as formulator of public policy, is much broader than that of an administrative board, which serves a quasi-judicial function . . . This legislative discretion is 'wide and liberal, ' and must not be disturbed by the courts unless the party aggrieved by that decision establishes that the commission acted arbitrarily or illegally . . . Zoning must be sufficiently flexible to meet the demands of increased population and evolutionary changes in such fields as architecture, transportation, and redevelopment . . . The responsibility for meeting these demands rests, under our law, with the reasoned discretion of each municipality acting through its duly authorized zoning commission. Courts will not interfere with these local legislative decisions unless the action taken is clearly contrary to law or in abuse of discretion . . . Within these broad parameters, [t]he test of the action of the commission is twofold: (1) The zone change must be in accord with a comprehensive plan . . . and (2) it must be reasonably related to the normal police power purposes enumerated in § 8-2." (Citations omitted; internal quotation marks omitted.) *Protect Hamden/North Haven from Excessive Traffic & Pollution, Inc. v. Planning & Zoning Commission*, 220 Conn. 527, 542-44, 600 A.2d 757 (1991).

The council approved the site development plan, but placed certain conditions, including: a reduction of the number of units to thirty-one with no units on the ground floor, the elimination of five parking spaces in the front of the building, and the reduction of four tandem spaces to two spaces for a total of fifty parking spaces for the complex. The council provided no stated reason for its decision or these modifications. Therefore, the court must search the record. See *id.*, 544 ("the failure of the zoning agency to give such reasons requires the court to search the entire record to find a basis for the commission's decision" [internal quotation marks omitted]).

The plaintiff's March 3, 2014 plan sought to develop the warehouse into forty apartments with nine units on the first level, which is partially below grade. (ROR, Items 5-8; Item 63, pp. 14-15.) The proposal included a twenty-two foot "L" shaped parking area containing thirty-five, nine by eighteen feet parking spaces and fourteen, nine by thirty-six feet tandem parking spaces, which have only one point of entry and exit for the proposed two vehicles.^[8] (ROR, Item 3.) Section 9.1(b) of the regulations requires a twenty-four foot "maneuvering lane" for off-street parking and loading. (ROR, Item 64, p. 125.)

On April 29, 2014, the commission recommended approval, in relevant part, finding: " 1. The project adheres to the purpose, intent and development standards of the Adaptive Redevelopment Zone regulations, including Floor Area Ratio and parking standards . . . 3. The project is consistent with the 2007-2017 Plan of Conservation and Development specifically with regard to providing increased and innovative housing opportunities and will provide access to public transportation. The adaptive reuse of the subject property was specifically identified in the Plan of Conservation and Development.^[9] 4. The Legal Traffic Authority and Town Engineer have concluded that traffic generated by the project can be safely accommodated by existing roadways and intersections. Other Town administrative professionals raised no issues with the proposal in their review." (ROR, Item 24; Item 27.)

Thereafter, a traffic engineer, James G. Bubaris of Bubaris Traffic Associates, was retained by certain neighbors, and submitted a report, dated May 27, 2014, criticizing the tandem parking spaces. (ROR, Item 44.) Bubaris supplemented this with another report, dated June 10, 2014, suggesting a resolution to the tandem parking spaces problem by reducing the number of units to between twenty-eight and thirty-one. (ROR, Item 45.) By letter to the council, dated June 18, 2014, the plaintiff offered two modifications to its proposal--both of which would reduce the number of units to thirty-six and the number of parking spaces from sixty-three to fifty-six. (ROR, Item 42.) The plaintiff maintained that this is the minimum number of units that would make the development economically feasible.^[10] (ROR, Item 42; Item 60, p. 6.) The proposals also eliminated seven parking spaces, including some tandem spaces and several parking spaces in front of the building line, thereby reducing the total number of parking spaces to fifty-six.^[11]

Robert Baltramaitis, the plaintiff's licensed professional engineer, and later James Dutton of Dutton Associates, LLC, Land Surveyors and Civil Engineers, submitted a parking study showing that the number of parking spaces was more than sufficient, and that the stacked or tandem parking spaces would "not pose any sort of safety concern and will not create insufficient available parking." (ROR, Item 33, pp. 34-71; Item 58, pp. 8-9; Item 61, pp. 15-17, 23.) In a report, dated June 24, 2014, Bubaris criticized the two modified proposals because they failed to include

areas for snow removal and because the plans continued to provide for tandem parking spaces; this time he recommended a reduction in residential units to twenty-eight. (ROR, Item 46.)

On June 24, 2014 following the public hearing, the council conditionally approved the application by a six to two vote. (ROR, Item 54; Item 63, pp. 28-29.) The discussion leading to the approval of the one motion specifically stated: " The suggested conditions. And we are suggesting they become new conditions 1 through 6 and then you would pick up with the remaining conditions that came to you from the Planning and Zoning Commission at 7 through 15. Condition No. 1, 9 ground level dwelling unit shall be deleted for a total of 31 dwelling units on the upper . . . on the two upper floors the existing flat roof shall be retained. There shall be no dwelling units on the ground level. Condition 2, HVAC units low profile shall be installed on the flat rooftop. Three, the parking layout shall be modified as follows in accordance with that plan. Five spaces in the front of the building shall be deleted. Ten tandem spaces (20 total spaces) shall be maintained along the southerly property line commencing on the westerly side of the parcel. The remaining four tandem configuration spaces, 8 total spaces, shall be converted to 2 spaces and an open area extending to the south east corner of the parcel. There should be a total of 50 parking spaces for the project. (4) the carport structure should be deleted; (5) The existing basement window opening shall remain and (6) The vacated basement area may be used for common tenant purposes/space." [12] (ROR, Item 63, p. 26.)

The plaintiff argues that the council's conditions reducing the number of units and parking spaces and prohibiting residential units on the lowest level were arbitrary and not supported by substantial evidence in the record. It asserts that the tandem spaces are not prohibited by the regulations and meet the required minimum parking space to unit ratio of 1.5 as required by § 4.17.2(c). The plaintiff stresses that the tandem spaces have been used in other projects and that the council has allowed tandem spaces in its conditional approval here.

This court's review of the record indicates that Bubaris expressed concern about the limitations of the tandem spaces--i.e., while they may allow parking for two vehicles, they could only be assigned to one unit as a practical matter--the narrowness of the access lane and its impact on parking spaces, and the lack of space for trash and snow removal and snow storage. (ROR, Item 46.) The plaintiff in its brief never mentions the testimony of Bubaris, but emphasizes the testimony of Baltramaitis as well as the town staff's submissions.

A denial or a limited approval based upon a failure to comply with the land use regulations concerning parking is not uncommon and constitutes substantial evidence to support an administrative decision. See *Loring v. Planning & Zoning Commission*, 287 Conn. 746, 770, 950 A.2d 494 (2008) (" parking is a proper consideration and subject to some discretion"), citing *Feinson v. Conservation Commission*, 180 Conn. 421, 427, 429 A.2d 910 (1980). The plaintiff cites *Loring* to support its position. In *Loring*, the commission acted in its administrative capacity and denied a site plan application, in part, based on inadequate parking and the trial court sustained the plaintiff's appeal. *Loring v. Planning & Zoning Commission*, *supra*, 752. The Supreme Court held that the trial court had no basis from which to conclude that the denial based on the lack of adequate parking reasonably was supported by the record. *Id.*, 769-71.

In the present case, the council was acting in its legislative capacity and it had broader

discretion in creating this new ARZ zone and conditionally approving the site development plan. Section 4.17.3, in relevant part, provides: " Approval of the Site Development Plan may include such changes, limitations, restrictions or conditions, as the Zoning Authority shall consider necessary to protect the public health, safety, convenience and property values . . ." (ROR, Item 64, p. 76.) In the council's legislative capacity, it has discretion in allowing, precluding, or limiting the use of tandem spaces based on safety concerns when creating this new district. Indeed, this legislative action in adopting standards for this adaptive use is reflected by allowing tandem spaces that are otherwise not provided for in the zoning regulations. In creating the ARZ, the council is thus authorized to consider a variety of health and safety issues in considering the parking requirements of the proposed application that may curtail the plaintiff's goal to develop its desired number of units. " The maximum possible enrichment of a particular developer is not the controlling purpose of zoning." *Sonn v. Planning Commission*, 172 Conn. 156, 161, 374 A.2d 159 (1976).

Bubaris also commented on the twenty-two foot wide drive not meeting the twenty-four foot width requirement of § 9.1(b). (ROR, Item 44, p. 2; Item 45, p. 2; Item 46, p. 2.) He testified that driveway width together with the tandem spaces, the location of the dumpsters, and the lack of an area in which to turn would cause a problem for service vehicles and snow removal. (ROR, Items 44-46.) Baltramaitis, on the other hand, submitted his report based upon fifty units and concluded that the " driveway will operate at excellent levels of service, even during peak commuter time periods." ^[13] (ROR, Item 12, p. 10.)

" [T]he courts allow zoning authorities [broad] discretion in determining the public need and the means of meeting it, because the local authority lives close to the circumstances and conditions [that] create the problem and shape the solution." (Internal quotation marks omitted.) *Lord Family of Windsor, LLC v. Planning & Zoning Commission*, 288 Conn. 730, 736, 954 A.2d 831 (2008). " The credibility of the witnesses and the determination of issues of fact are matters solely within the province of the agency." (Internal quotation marks omitted.) *Protect Hamden/North Haven from Excessive Traffic & Pollution, Inc. v. Planning & Zoning Commission*, *supra*, 220 Conn. at 543. In the present case, Bubaris's testimony undermines that presented by the plaintiff, even if the town staff did not express an opinion on the issue, and it was up to the council to weigh the evidence of the two experts.

The plaintiff further asserts that the council could not ignore the positive recommendation of the commission for the forty-unit development. The record does not indicate anything and the plaintiff points to nothing in the regulations that obligates the council to approve applications that the commission recommends. See *Campion v. Board of Aldermen*, *supra*, 278 Conn. 521 (holding that New Haven's regulations did not designate commission with final decision-making authority). Additionally, " [a]bsent a statutory provision designating which commission is to have overriding responsibility, [however,] the fact that the legislature has given responsibility to more than one agency suggests that each must exercise its own authority, using its standards and procedures, regardless of what the other agencies do under their delegation of power from the state." (Internal quotation marks omitted.) *Smith v. Zoning Board of Appeals*, 227 Conn. 71, 96, 629 A.2d 1089 (1993), cert. denied, 510 U.S. 1164, 114 S.Ct. 1190, 127 L.Ed.2d 540 (1994). In other words, the

commission's recommendations are but one piece of evidence for the council in making its decision. See *Heithaus v. Planning & Zoning Commission*, 258 Conn. 205, 222 n.12, 779 A.2d 750 (2001) (" [b]ecause the zoning commission is not bound by the recommendations of the historic district commission, however, it may weigh the historic district commission's findings as one piece of evidence in considering an historic overlay application"). The council's familiarity with the circumstances and conditions, the evidence in the record, and the presumption that the council knows its land use regulations, including § 9; see *Doyen v. Zoning Board of Appeals*, 67 Conn.App. 597, 609, 789 A.2d 478 (" [g]enerally, it is the function of a zoning board or commission to decide . . . whether a particular section of the zoning regulations applies to a given situation and the manner in which it does apply" [internal quotation marks omitted]), cert. denied, 260 Conn. 901, 793 A.2d 1088 (2002); and its ability to determine which evidence to credit, including which expert to rely on; see *Manor Development Corporation v. Conservation Commission*, 180 Conn. 692, 697, 433 A.2d 999 (1980) (" [a]n administrative agency is not required to believe any witness, even an expert"); all support the council's decision and its conditions--with one exception--imposed by the council in its legislative capacity.^[14]

The one exception is the council's condition that no units be developed on the first floor of the building. Unlike the conditions regarding traffic and parking which find support in the record, nothing in the record relates to the first floor and the condition that no units be built on it. " When, on a zoning appeal, it appears that as a matter of law there was but a single conclusion which the zoning authority could reasonably reach, the court may direct the administrative agency to do or to refrain from doing what the conclusion legally requires . . . In the absence of such circumstances, however, the court upon concluding that the action taken by the administrative agency was illegal, arbitrary or in abuse of its discretion should go no further than to sustain the appeal taken from its action. For the court to go further and direct what action should be taken by the zoning authority would be an impermissible judicial usurpation of the administrative functions of the authority." (Citations omitted; internal quotation marks omitted.) *Thorne v. Zoning Commission*, 178 Conn. 198, 206, 423 A.2d 861 (1979). Because more than a single conclusion might be reached by the council, the matter is remanded back to the council for consideration of this one condition.^[15]

Accordingly, the appeal is dismissed in part and remanded in part as to the condition restricting construction of units on the first floor as discussed previously.

Notes:

[1]Glastonbury's town council is its designated zoning agency pursuant to General Statutes § 8-1.

[2]Section 4.17.1 of the Glastonbury building-zone regulations (regulations) states the purpose of the ARZ: " To facilitate the reuse and redevelopment of property containing underutilized or distressed historic buildings that require renovation/redevelopment and/or environmental remediation. This zone change/site development plan approval regulation shall apply only to properties that present unique development and redevelopment opportunities but include particularly challenging building and site conditions requiring a flexible regulation that can permit innovative development while protecting the general health, safety and welfare. Successful projects will create a rejuvenated property that contains land and/or building uses consistent with

the adopted Plan of Conservation and Development. Expected benefits would include appropriate environmental remediation, environmental enhancement and natural resource protection, new economic development and/or housing opportunities and the adaptive reuse of historic buildings and the preservation of historic property features. Mixed use projects shall be designed in a manner that ensure consideration of the character of the surrounding and underlying district and its suitability for the proposed uses and adequate availability of infrastructure and services." (ROR, Item 64, p. 73.)

[3]Section 16, in relevant part, provides: " Pursuant to and in accordance with the provisions of Section 307 of the Glastonbury Charter, the Town Council acting as the Zoning Commission of the Town of Glastonbury, shall have the power to enact, amend or repeal any Building-Zoning Regulation, provided no such regulation shall be enacted, amended or repealed, nor any public hearing held thereon, until the Town Council shall have received a recommendation thereon from the Town Plan and Zoning Commission, or until thirty-five (35) days shall have elapsed after the Council has requested such a recommendation from such Commission . . .

" The Town Plan and Zoning Commission shall make recommendations to the Town Council for Public Hearing and enactment of any amendments, modifications, additions, or repeal of a Building-Zoning regulation, including changes to the Building-Zone map." (ROR, Item 64, p. 162.)

[4]Section 4.17.3, in relevant part, provides: " Review and recommendation following a public hearing by the Town Plan and Zoning Commission prior to final action by the Town Council shall include a finding that a complete Site Development Plan has been submitted.

" The Town Council (Zoning Authority) may require additional documents to be submitted and explanatory statements or descriptive material to be appended. The Zoning Authority shall approve or disapprove the Zone Change and Site Development Plan after a public hearing in the manner as required by law for a change of zone. Approval of the Site Development Plan may include such changes, limitations, restrictions or conditions, as the Zoning Authority shall consider necessary to protect the public health, safety, convenience and property values. Adherence to applicable standards and requirements of Section 12.4 of the Building-Zone Regulations shall be required . . ." (ROR, Item 64, p. 76.)

Section 4.17.4, in relevant part, provides: " Because the intent of this ordinance is to approve a Zone Change to ARZ only when a Site Development Plan is approved concurrently, the zone change to ARZ and the Site Development Plan will be approved or denied as one motion. The Town Plan and Zoning Commission may recommend and the Zoning Authority may approve a creation of an ARZ provided that finding is made that the facts submitted with the application establish that: a. All standards and requirements of this regulation (Section 4.17) as well as all applicable standards and requirements of Section 12.4 have been met . . ." (ROR, Item 64, p. 76.)

Section 12.4 is titled, " Criteria For Evaluating A Special Permit With Design Review Approval, " and provides: " The Commission shall consider and evaluate each and every application for a special permit with design review approval by applying, at a minimum, the following criteria:

a. Appropriateness of Location or Use:

1. The size and intensity of the proposed use or uses and its or their effect on and compatibility with the adopted Town Plan of Development, the specific zone and the neighborhood;

2. The existence of other uses of the same kind or character in the neighborhood and the effect thereof on said neighborhood, and conformity to any adopted neighborhood plan;
3. The existence of other uses of the same kind or character in the neighborhood and the effect thereof on said neighborhood, and conformity to any adopted neighborhood plan;
4. The obstruction of light or air, or the emission of noise, light, smoke, odor, gas dust or vibration in noxious or offensive quantities, and the distance between offensive processes and adjacent properties;
5. The overall effect on values and utilization of neighborhood properties;
6. Unusual topography of the location, the nature, location, and height of buildings, walls, stacks, fences, grades and landscaping of the site;
7. The extent, nature and arrangement of parking facilities, entrances and exits;
8. Problems of fire and police protection;
9. The preservation of the character of the neighborhood;
10. The availability of adequate sewerage and water supply;
11. All other standards prescribed by these Regulations.

b. Conformance: Conformance with the Glastonbury Building-Zone Regulations and, where appropriate, the Glastonbury Subdivision Regulations and any other applicable laws, codes or ordinances.

c. Safety, Health and Environment: Accessibility for emergency vehicles and equipment; property utility, drainage, driveway and similar specifications; proper fire and structural specifications; and no improper impact on the environment. The Commission may seek reports on the application from the appropriate Town departments, such as the Police and Fire Departments, Town Sanitarian, Town Engineer, Town Building Official and Conservation Commission.

d. Overall Design, Architectural Treatment and Aesthetic Character: The basic design of the proposed uses, building or development; the relationship between the buildings and the land; the relationships between uses between buildings or structures; the overall physical appearance of the proposed use, buildings or development and its subsequent compatibility with surrounding development and the neighborhood.

Findings as to design, architectural treatment and aesthetic character shall be made in view of the fact that excessive uniformity, dissimilarity, inappropriateness or poor quality of design in the exterior appearance of buildings erected in any neighborhood adversely affects the desirability of the immediate area and the neighboring areas for residential, business or other purposes, and, by doing so, impairs the benefits of occupancy of existing property in such areas, the stability and value of both improved and unimproved real property in the area, prevents the most appropriate development and use of such areas, produces degeneration of property with attendant deterioration of conditions in the area affecting the health general safety and welfare of the community, and destroys a relationship between the taxable values of real property in the area and the cost of municipal services provided therefore." (ROR, Item 64, pp. 146-47.)

[5] The intervenors entered into an agreement with the plaintiff and did not oppose the plaintiff in the administrative or judicial process. (ROR, Item 58, p. 7.)

[6]" A floating zone is a special detailed use district of undetermined location in which the

proposed kind, size and form of structures must be preapproved. It is legislatively predeemed compatible with the area in which it eventually locates if specified standards are met and the particular application is not unreasonable . . . It differs from the traditional 'Euclidean' zone in that it has no defined boundaries and is said to 'float' over the entire area where it may eventually be established." (Citations omitted.) *Sheridan v. Planning Board*, 159 Conn. 1, 16, 266 A.2d 396 (1969).

[7] This is to be contrasted with the line of cases cited by the plaintiff such as *A. Aiudi & Sons, LLC v. Planning & Zoning Commission*, 267 Conn. 192, 837 A.2d 748 (2003). In *A. Aiudi & Sons*, the court affirmed the Appellate Court's determination " that the plaintiff's application was, 'in substance, ' one for a special exception" and that General Statutes § 8-2(a) rather than General Statutes § 8-3(g) applied. *Id.*, 196-97. The court cited *Etzel v. Zoning Board of Appeals*, 155 Conn. 539, 540-41, 235 A.2d 647 (1967), and *Powers v. Common Council*, 154 Conn. 156, 159-60, 222 A.2d 337 (1966). *Etzel* involved a traditional land use application for a gas station seeking a certificate of approval subject to special conditions, i.e., a special permit. *Etzel v. Zoning Board of Appeals, supra*, 540-41. *Powers*, on the other hand, concerned a process for the designation by the common council, after recommendation by the planning commission, that a specific location within certain districts could be designated a multiple housing project area subject to the regulations for that district. *Powers v. Common Council, supra*, 158. The court held that the council was acting in an administrative capacity in the designation process, which was " in effect a procedure for the granting of a special permit." *Id.*, 159-60. These cases do not control here. The plaintiff further argues that the ARZ zone is not a floating zone since it could only apply to five properties. On June 23, 2015 during the hearing on the appeal before this court, the council's attorney disputed that assertion. While limiting factors are found within §§ 4.17.1 and 4.17.2(b); (ROR, Item 64, pp. 73-74); they do not turn the one-step process here to a two-step process or bifurcate the review of the site development plan from that of the zoning map amendment. See *Blakeman v. Planning & Zoning Commission, supra*, 82 Conn.App. 643 (" approval of the plans submitted by the plaintiffs is inextricably intertwined with the process of petitioning for the creation of a district, which is, of course, a zone change"). Nor should the council be penalized for putting some standards into regulations ahead of time.

[8] Section 4.17.2(c) of the regulations is titled " Development Intensity/Parking Calculation" and, in relevant part, provides: " The Development Intensity Calculation shall be further limited by the ability of the site to provide adequate off-street parking that shall be not less than 1.5 parking spaces per residential unit and parking spaces meeting the requirements of Section 9 of the Building-Zone Regulations for all nonresidential uses. Provided however the zoning authority may reduce the number of non-residential parking spaces required by waiver upon a finding of appropriateness . . ." (ROR, Item 64, p. 74.)

[9] According to the attorneys, the Glastonbury plan of conservation and development (POCD) identifies the subject property as a candidate for adaptive reuse. The portion of the POCD concerning this property is not filed as part of the return of record.

[10] Section 4.17.2, in relevant part, requires that the change of zone and concurrent site development plan approval " shall enhance the overall economic sustainability of the property."

(ROR, Item 64, p. 74.) The plaintiff argues in its brief that "[b]y approving only 31 units, defendant acted contrary to its own regulation, as the Defendant's approval of only 31 units has a significant negative economic impact on the proposal resulting in a negative net equity at completion of more than \$800, 000, and a return on investment of less than 2 percent."

[11] On page eighteen of the council's brief, the council describes the two proposals: " Alternative A proposed by L.A.C. proposed 36 units with eight tandem spaces (16 parking spots) and 40 single spaces. The eight spaces would have to be assigned to eight units (at a ratio of 2.0 spaces/unit) while the 40 spaces would be up for grabs by the remaining 28 units (at a ratio of 1.4 spaces/unit and below the minimum ratio of 1.5 spaces per unit). RE 42-9/A2. L.A.C.'s other revised plan, Alternative B even further skews the results because it calls for a higher percentage of tandem spaces leaving 26 units to compete for 36 spaces (or a ratio of 1.38 spaces/unit. RE 42-10/A3."

[12] Conditions imposed by the commission were also included by the council, but these are not relevant to this appeal. (ROR, Item 54.)

[13] Before this court on June 23, 2015, the plaintiff argued that § 9 of the regulations did not apply to the project because § 4.17.2(c) limits the § 9 parking regulations to non-residential uses.

Section § 4.17.2(c), in relevant part, provides: " The Development Intensity Calculation shall be further limited by the ability of the site to provide adequate off-street parking that shall be not less than 1.5 parking spaces per residential unit and parking spaces meeting the requirements of Section 9 of the Building-Zone Regulations for all non-residential uses . . ." (ROR, Item 64, p. 74.) Indeed, the plaintiff observed that Kenith Leslie, director of community development, noted at the May 27, 2014 public hearing that § 9 did not apply. (ROR, Item 61, pp. 3-4.)

This court need not address this unbriefed issue; see *Yorgensen v. Chapdelaine*, 150 Conn.App. 1, 4 n.2, 90 A.3d 305 (" [W]e are not required to review issues that have been improperly presented to this court through an inadequate brief . . . Analysis, rather than mere abstract assertion, is required in order to avoid abandoning an issue by failing to brief the issue properly . . . Where the parties cite no law and provide no analysis of their claims, we do not review such claims." [Internal quotation marks omitted.]), cert. denied, 314 Conn. 904, 99 A.3d 634 (2014).

[14] Even if the council was acting in its administrative capacity as the plaintiff argues, this court would conclude that substantial evidence exists to support the decision in light of the Bubaris evidence.

[15] The council concludes in footnote 10 in its brief that " it would only be appropriate that the entire matter would have to be remanded to the [council] with instructions for action on both the zone change and site plan." It cites *Vaszauskas v. Zoning Board of Appeals*, 215 Conn. 58, 66, 574 A.2d 212 (1990). In *Vaszauskas*, the court stated, " Since we have concluded, in part I of this opinion, that the board lacked the authority to impose the contested condition, it may be revoked, set aside and declared to be void and of no force . . . The imposition of a void condition, however, does not necessarily render the whole decision illegal and inefficacious. If the decision is otherwise supported by sufficient grounds as found by the board, a modification of the decision may be decreed with a view toward ending further litigation . . . On the other hand, [w]here a condition, which was the chief factor in the granting of an exception, is invalid, the exception must fall . . . This court has reasoned that a condition imposed by a zoning authority is severable, from a

variance that is otherwise valid, if the removal of the condition would in no way destroy the value or effectiveness of the variance . . . On this basis, we have held that the dispositive consideration is whether the condition was an 'integral' part of the zoning authority's decision to grant the variance and, if so, the variance, even if valid in all other respects, cannot be upheld." (Citations omitted; internal quotation marks omitted.) *Id.*, 65-66.

In the present case, the court only concludes that the record does not reasonably support the condition and does not answer the question of whether the placement of units in the basement is integral to the council's decision. To the extent that the placement of the units is integral, the council may choose to reconsider both the zone change and the site development plan.
