TOWN OF RIDGEFIELD
Planning and Zoning Department

To: Carson C. Fincham, Chairman
Cc: Kelly Ryan, ZBA Administrator
Patricia Sullivan, Town of Ridgefield Counsel
William Hennessey, Esq.
Peter Olson, Esq.

From: Richard S. Baldelli, Director, Planning and Zoning, ZEO

Re: Appeal No. 21-014, Zoning Permit Z-21-316

Date: September 10, 2021

Memorandum supporting Zoning Permit Z-21-316 issuance

In response to Attorney Olson's claims that the April 9, 2021, Zoning Permit (Z-21-316) issued for construction for "*Additions and Renovation to existing residence to add an additional apartment in the rear*", for the premises at 63 Prospect Street was inappropriately issued, I offer the following comments and exhibits to the Board.

As evidenced by CGS Sec.8-2h. below, the law in Connecticut provides undisputable protection to zoning applications that have been filed, or approved, prior to a change in the regulations:

Sec. 8-2h. Zoning applications filed prior to change in zoning regulations not required to comply with change. Applications for building permit or certificate of occupancy filed prior to adoption of zoning regulations not required to comply with regulations. (a) An application filed with a zoning commission, planning and zoning commission, zoning board of appeals or agency exercising zoning authority of a town, city or borough which is in conformance with the applicable zoning regulations as of the time of filing shall not be required to comply with, nor shall it be disapproved for the reason that it does not comply with, any change in the zoning regulations or the boundaries of zoning districts of such town, city or borough taking effect after the filing of such application.

On April 17, 2007, in compliance with Sec.407.0 of the Zoning Regulations that were in effect on April 17, 2007, the Giardini Limited Partnership and Pierandri Realty, LLC, submitted an application for Site Plan Approval (File #2007-038-SPA) to Planning and Zoning for authorization to allow the construction of 21 Units of Housing, for the premises at 63-67 Prospect Street.

On May 1, 2007, Sec.407.0 was deleted in its entirety from the Zoning Regulations.

On May 15, 2007, pursuant to CGS Sec.8-2h, and in compliance with Sec.407.0 of the Zoning Regulations that were in effect on April 17, 2007, the Planning and Zoning Commission approved the application for Site Plan Approval (File #2007-038-SPA) for 21 Units of Housing for the premises at 63-67 Prospect Street

On March 22, 2016, pursuant to Sec. CGS Sec.8-3 (m) the Planning and Zoning Commission granted a 5-year extension to the above-cited Site Plan Approval. The 5-year extension extended the statutory expiration date of the Site Plan Approval to May 15, 2021.

In September of 2020, legislative Public Act 20-7-18 modified the expiration date of the cited Site Plan Approval as follows:
§ 18 — RIDGEFIELD PLANNING AND ZONING COMMISSION SITE PLAN APPROVAL EXTENSION
The act extends indefinitely a site plan approval the Ridgefield Planning and Zoning Commission granted on May 15, 2007, and subsequently extended for the construction of residential multifamily structures. Under the act, the approval, including any modifications to the site plan, does not expire as long as the applicant has obtained all of the necessary building permits and started construction by the approval's expiration date.
The act's extension applies regardless of the law that makes certain land use approvals valid for between nine and 14 years (CGS § 8-3(m)).

Pursuant to PA 20-7-18, if Building Permits are obtained, and construction started by May 15, 2021, the Site Plan Approval does not expire.

On March 9, 2021, as required by Condition 1 of the May 15, 2007, Site Plan Approval, at the request of the property owner, the Planning and Zoning Commission performed a review of a Landscape Plan for the premises.

On April 5, 2021, a Development Application for a Zoning Permit, to construct one (1), of the twenty-one (21,) approved dwelling units was submitted to the Land Use Office.

On April 7, 2021, as required by Condition 2 of the Site Plan Approval, Tessa Jucaite, P.E. of TJ Engineering, LLC, the engineering firm retained by the Town to review the Site Plan's detailed engineering plan that shows the proposed contours, drainage structures and site utilities, performed a final review of the 63 – 67 Prospect Street, April 1, 2021, revised Stormwater Management Plan. Ms. Jucaite deemed the April 1, 2021, Stormwater Management Plan to be acceptable.

On April 8, 2021, per Condition 3 of the Site Plan Approval, at the request of the property owner, I inspected the erosion and sedimentation control measures installed at the 63 Prospect Street premises. The installed erosion and sediment control measures Passed the inspection.

On April 9, 2021, relying on the May 15, 2007, Site Plan Approval; the March 22, 2016, Planning and Zoning Commission Site Plan Approval extension; the March 9, 2021, Planning and Zoning Commission Landscape review; the CGS 8-3(m) and PA 20-7-18, Site Plan Approval timeline extensions, compliance with the Site Plan Approval's Conditions of Approval; Zoning Permit (Z-21-316) was issued.

....

In his appeal of the issuance of the Zoning Permit, Attorney Olson makes several attempts to invalidate the May 15, 2007, Site Plan Approval, clearly, Connecticut law is not on his side.

Unquestionably stated in CGS Sec.8-2h., and very well-articulated in the July 20, 2021, Appellate Court, Boyajian v Vernon decision, the timeframe within which to appeal the 2007 Site Plan Approval has long since expired, thereby bringing Attorney Olson's attempt to attack the 2007 Site Plan Approval to a complete stop.

Boyajian v Town of Vernon Planning and Zoning, states in part:

[T]he rule requiring interested parties to challenge zoning decisions in a timely manner rest[s] in large part . . . on the need for stability in land use planning and the need for justified reliance by all interested parties—the interested property owner, any interested neighbors and the town—on the decisions of the zoning authorities.'' (Internal quotation marks omitted.) Reardon v. Zoning Board of Appeals, 311 Conn. 356, 366, 87 A.3d 1070 (2014); see also Lallier v. Zoning Board of Appeals, 119 Conn. App. 71, 78–79, 986 A.2d 343 (''[L]itigation about the merits of a cease and desist order does not permit a collateral attack on the validity of the underlying zoning decision that was not challenged at the time that it was made . . . In light of [Upjohn Co. and Torrington], the trial court in the present case properly declined to address the merits of the defendants' disagreement with the zoning commission's . . . approval of the plaintiff's . . . proposal.'' (Citations omitted; footnote omitted.)), cert. denied, 295 Conn. 914, 990 A.2d 345 (2010).

Additionally, stated in Boyajian v Vernon:

the court recognized that the plaintiffs' arguments posed ''some very interesting and challenging legal issues.''9 ''The court determine[d], however, that it need not resolve those conundrums. This is because no appeal was taken from the decision in which all these issues could have been adjudicated. Whether the [board's] decision was erroneous became immaterial once the appeal period expired.'' The trial court characterized the plaintiffs' contention with the commission's decision, insofar as the plaintiffs sought independent review of the commission's decision to grant a special permit predicated on an allegedly void variance, as an impermissible ''collateral attack on an unappealed . . . decision . . ..''

Attorney Olson may not agree with the Planning and Zoning Commission's May 15, 2007, Site Plan Approval, however, as Connecticut law and the courts will not allow such an impermissible collateral attack on the unappealed 2007 Site Plan Approval, his attack upon the Site Plan Approval by way of this appeal of Zoning Permit Z-21-316 is a fruitless effort.

....

Regarding Attorney Olson's claim that the basement - "permits the construction of living space", although an incorrect set of floor plans were initially uploaded to the Building Permit application component of the Development Application*, the property owner has attached compliant floor plans to the Zoning Permit application component of the Development Application. The compliant floor plans show: a first floor kitchen and living area, a second floor with two bedrooms and bathrooms, and *the basement with a garage and storage space.*

The floor plan attached to the Zoning Permit application is in compliance with:
Sec.407.E.(2). Basement and attic shall be for nonresidential purposes only, and
Sec. 407.F.(5). Basement garages shall be permitted.

....

Contrary to Attorney Olson's claim in numbers 5 and 6 of his "Description of Appeal", wherein he claims that the addition authorized by Zoning Permit Z-21-316 is not compliant with building setbacks, separation, building height, etc., this claim appears to be another attempt by Attorney Olson to have the Board bypass the *statutory requirements of* this application *only having to be compliant with the R-5 Zone, Sec.407.0 regulations*, and inappropriately attempt to have the Board hold the approved Site Plan Approval and the issued Zoning Permit to the current MFDD Zone Bulk and Dimension Zoning Regulations

Do not be misled by this attempt to circumvent the CGS, and case law. The Lot Coverage and Setbacks zoning table shown on the Class A-2 survey that has been submitted as a component of this Zoning Permit application shows that the proposed addition is compliant with all of the applicable R-5 Zone, Sec.407.0 Bulk and Dimension Standards.

....

Notwithstanding Attorney Olson's opinion that another deficient of the Zoning Permit is the lack of new parking spaces, I point out to the Board that Sec.407.F.(4) requires 300 square feet of parking per family unit**. This premises contains two (2) separate residences. A two-family unit (front building) and a single-family unit (rear building). Zoning Permit Z-21-316 authorizes construction of an addition that will add a one-family unit to the existing two-family unit, for a total of 3-family units in the front building. Including the family unit authorized by Zoning Permit Z-21-316, there will be a total of four-family units on the property. Per Sec.407.F.(4), the three-family unit building and the single-family unit building will require a total of 1,200 square feet of parking area on the premises. The property contains more than three-thousand square feet of pavement that is available for parking. In addition to the existing 3,000 square feet of existing pavement available for parking, there is a two-car garage on the premises. And, the proposed one-family unit addition authorized by this Zoning Permit includes the construction of a one-car garage. Not counting available parking areas in the front and rear yards***, the cumulative paved parking area for the property is 3,000 square feet, **and** 3 garage parking spaces.

*Corrected floor plans have since been attached to the Building Permit application component of the Development Application.
**Sec.407.F.(4) does not require the Parking Area to be paved.
***In addition to the paved parking area and the garages, this reasonably level property can also accommodate additional Parking Area square footage in the front and rear yards.

Whereas the zoning permit was issued pursuant to the authority of the May 15, 2007, Site Plan Approval,
Whereas the proposed addition is in compliance with the applicable Sec.407.0 R-5 Zone bulk and dimension requirements,
Whereas there is more than adequate on-premises parking area,
Whereas the knowledge that since at least July 1986 there is no, nor has there been a requirement, policy or regulation that a property owner is required to construct a project in one fell swoop,
Whereas that the phasing of construction projects, via multiple permits, was in 2007, and still is today, a perfectly acceptable method of working on projects throughout Ridgefield,
Whereas Condition number 7 of the Site Plan Approval states "each building on the site shall require a separate Development Permit Application",
Whereas the fact that the Zoning Permit is not for the entire project, but was for a building, does not negate the validity of the Site Plan Approval or the Zoning Permit.

In support of my comments I submit the following Exhibits to the Board:

Exhibit 1 **CGS 8-2h** states that a zoning application or zoning permit is subject to the regulations in effect on the day the application was received, or the permit was issued. And that said zoning applications and zoning permits are not required to comply with any subsequent change in the regulations or zoning districts.

Exhibit 2 **R-5 Zoning Regulations** are the zoning regulations that were in effect on April 17, 2007, the day that this application for Site Plan Approval was submitted to Planning and Zoning.

Exhibit 3 **April 17, 2007 Application for Site Plan Approval** is the application request from the property owner to construct 21-dwelling, units.

Exhibit 4 **May 15, 2007 Site Plan Approval** is the Planning and Zoning approval of the Site Plan application that authorize the construction of 21-dwelling units for the 63-67 Prospect Street premises.

Exhibit 5 **March 31, 2016** is the published Legal Notice recorded with the office of the Town Clerk of the March 22, 2016, Planning and Zoning approval granting a 5-year extension of the May 15, 2007, Site Plan Approval.

Exhibit 6 **CGS 8-3(m)** is the statute that authorizes a Site Plan Approval to be extended to a maximum of 14-years from the date of its approval.

Exhibit 7 **Public Act 20-7-18** is the act that states that this Site Plan Approval does not expire at 14-years, if, the property owner has obtained the necessary Building Permits and has started construction.

Exhibit 8 **March 11, 2021,** published Legal Notice of the March 9, 2021, Planning and Zoning Commission landscape plan review, that was performed per Condition 1 of the May 15, 2007, Site Plan Approval.

Exhibit 9 **April 9, 2021 Zoning Permit** is the issued zoning permit (Z-21-316) that is the subject of this appeal.

Exhibit 10 **Boyajian v Planning and Zoning Commission, Town of Vernon** is the July 20, 2021, Appellate Court decision which states that a party cannot institute a collateral attack on an unappealed decision.

Exhibit 11 **Zoning Table** on the survey that was submitted as a part of the zoning permit application for the addition.

Exhibit 12a **Sec,407.0.E.(2)** states that the basement shall be for nonresidential use only

Exhibit 12b **Sec.407.0.F.(4) and(5)** states that the off-street parking requirement is 300 square feet per dwelling unit, and that basement garages are permitted.

Exhibit 13 **Basement Floor Plan** shows the proposed basement is limited to housing a garage and storage areas.

Thereof, based on all of the above, I respectfully request that the Board dismiss the appeal.

Richard S. Baldelli
Director, Planning and Zoning, ZEO

Exhibit 1
1 Page

Sec. 8-2h. Zoning applications filed prior to change in zoning regulations not required to comply with change. Applications for building permit or certificate of occupancy filed prior to adoption of zoning regulations not required to comply with regulations. (a) An application filed with a zoning commission, planning and zoning commission, zoning board of appeals or agency exercising zoning authority of a town, city or borough which is in conformance with the applicable zoning regulations as of the time of filing shall not be required to comply with, nor shall it be disapproved for the reason that it does not comply with, any change in the zoning regulations or the boundaries of zoning districts of such town, city or borough taking effect after the filing of such application.

(b) An application for a building permit or certificate of occupancy filed with the building official of a city, town or borough prior to the adoption of zoning regulations by such city, town or borough in accordance with this chapter shall not be required to comply with, nor shall it be disapproved for the reason that it does not comply with, such zoning regulations.

Exhibit 2
4 Pages

I. Off-street parking.

See Section 305.02.
(P. and Z. Reg. of 3-2-82, effective 3-5-82; P. and Z. Reg. of 7-10-84, effective 7-13-84; P. and Z. Reg. of 4-24-90, effective 5-4-90; P. and Z. Reg. of 7-21-98, effective 7-31-98; P. and. Z. Reg. of 5-08-01 § 6, effective 5-18-01; P. and Z. Reg. of 7-17-01 § 6, 7-27-01; P. and Z. Reg. of 7-16-02, effective 7-26-02)

407.0 MULTIFAMILY-RESIDENCE R-5 ZONE, 15 FAMILY UNITS PER ACRE

A. Permitted uses.

In a Residence R-5 Zone, no building or premises shall be used and no building shall be erected or altered which is ar-

ranged, intended or designed to be used except for one (1) or more of the following uses:

(1) Any use permitted in Residence R-10 or R-7.5 Zones.

(2) A garden-type apartment building.

B. [Lot density.]

(1) No garden-type apartment building shall have more than fifteen (15) family units in respect of each acre of the land area.

C. [Lot coverage.]

(1) No more than twenty-five (25) per cent of the land area shall be used for buildings.

D. [Setbacks.]

(1) No part of any building or accessory building shall be less than fifty (50) feet distant from the street(s) upon which it abuts.

(2) No part of any building or accessory building shall be less than thirty (30) feet distant from any side lot line.

(3) No part of any building or accessory building shall be less than forty (40) feet distant from the rear lot line.

Editor's note—A planning and zoning commission regulation of October 27, 1970, abolished the Residence R-5 classification but further provided that the regulations as to the Residence R-5 Zones would continue in effect to those locations classified as Residence R-5.

E. Building height, separation.

(1) No building or structure shall exceed a basement and two (2) habitable stories and attic in height above average grade at its perimeter.

(2) Basement and attic area shall be for nonresidential purposes only.

F. [Off-street parking.]

(1) The minimum width of a paved vehicular entrance or exit shall be twenty (20) feet.

(2) The minimum width of a paved vehicular combined entrance and exit shall be thirty-five (35) feet.

(3) All roadway curves within the property shall have a minimum radius of fifty (50) feet.

(4) Off-street parking facilities shall be provided at the rate of three hundred (300) square feet per family unit.

(5) Basement garages shall be permitted.

(6) Carports will be permitted upon Planning and Zoning Commission approval of location, size and construction.

G. [Screening; landscaping.]

(1) Plantings of trees, shrubbery, lawns and other landscape screening will be determined by the Planning and Zoning Commission for each premises at time of application, it being the intention hereby to require all buildings and structures to be reasonably screened by trees and shrubbery from adjoining properties. The Planning and Zoning Commission shall have continuing authority to enforce compliance with the requirements determined.

H. Special requirements for Residence R-5 Zones.

No garden-type apartment building shall be erected or used unless the following special requirements are met:

(1) Public water, sewer and municipal streetlighting shall be available, and all buildings shall be served by public water and sewer.

(2) Police and fire department protection shall be reasonably available.

(3) Exterior laundry drying areas, if any, shall be screened or enclosed.

(4) Garbage containers shall be buried in the ground or kept within a basement or stored in a screened collection area. (P. and Z. Reg. of 3-2-82, effective 3-5-82)

408.0. MULTIFAMILY—RESIDENCE R-5-1 ZONE, 10 FAMILY UNITS PER ACRE*

A. Permitted uses.

In a Residence R-5-1 Zone, no building or premises shall be used and no building shall be erected or altered which is arranged, intended or designed to be used except for one (1) or more the following uses:

(1) Any uses permitted in a Residence RA Zone.

(2) A garden-type apartment building for residential purposes only.

Editor's note—A planning and zoning commission regulation of March 7, 1972, abolished the Residence R-5-1 classification but further provided that the regulations as to the Residence R-5-1 Zones would continue in effect to those locations classified as Residence R-5-1.

B. [Lot density.]

(1) No garden-type apartment building shall have more than ten (10) family units in respect of each acre of the land area.

C. [Lot coverage.]

(1) No more than twenty-five (25) per cent of the land area shall be used for buildings.

D. [Setbacks.]

(1) No part of any building or accessory building shall be less than fifty (50) feet distant from the street upon which it abuts.

(2) No part of any building or any accessory building shall be less than thirty (30) feet distant from any side lot lines.

Exhibit 3
5 Pages

TOWN OF RIDGEFIELD

RECEIVED
APR 17 2007
Planning & Zoning Commission
Inland Wetlands Board

Planning & Zoning Office

Application for Site Plan Approval

	Home Occupation	Date of Application:
	Change of Use	
	Conversion	Name of Business:
	New Use	
	Development Permit (NFIP**)	
X	Other R-5 Site Plan	

Applicant's Name: The Giardini Limited Partnership & Pierandri Realty LLC	Phone Number: John Pierandri 438-8998
Mailing Address: 63 Prospect Street Ridgefield, CT. 06877-4605	
Location of Premise: 63-67 Prospect Street	Zoning District: R-5
Assessor's ID #: E14190 and E14191	
Owner of Record: (Name and Address) The Giardini Limited Partnership & Pierandri Realty LLC, 63 Prospect ST. Ridgefield, CT. 06877-4605	
Description of Proposed Use: 21 multi-family units	
Square Footage of Premises: see attached	Lot Size: 1.415 acres
Current or Last Use of Premises: Residences	Present Use: Residences
Public Sewer or Septic: Public Sewer (If on sewer, applicant must notify WPCA of new or change of use)	Public Water or Well: Public Water

Residential Properties:

Building Coverage: see attached	Building Height: see attached
Floor Area Ratio: see attached	Historical District (yes/no) NO
Front Setback: see attached	Side/Rear Setback: 30' /40 required

Home Occupation and Non-Residential Properties:

Building Coverage: see attached	Building Height: see attached
Front Setback: see attached	Side/Rear Setback: see attached
Square Footage of Proposed Use: see attached	No. of Employees: see attached
No. of Facility/Business-Owned Vehicles: see attached	
No. of Parking Spaces Provided for this Use: see attached	
Total No. of Parking Spaces on the Property: see attached	
List Other Land Uses on Property (include square footage of businesses): see attached	
Additional Information:	

Business Name: The Giordini Limited Partnership ; Pierandri Realty LLC	
Applicant's Name: The Giordini Limited Partnership ; Pierandri Realty LLC	Phone No.: John Pierandri 438-8998
Mailing Address: 63 Prospect Street Ridgefield, CT. 06877-4605	
Location of Premises: 63 Prospect Street for 67 Ridgefield CT. 06877-4605	Zoning District: R-5
Owner of Record: The Giordini Limited Partnership ; Pierandri Realty LLC	Phone No.: John Pierandri 438-8998
Address: 63 Prospect Street Ridgefield, CT. 06877-4605	

Application Fee:	$100.00 ~~$75.00~~	Legal Notice Fee:	$30.00 ~~$25.00~~	State Fee:	$30.00 ~~$30.00~~

Check should be payable to the Town of Ridgefield.

- Conversion Fee: see Fee Schedule.
- National Flood Insurance Program: see Sec. 325.0 of the Zoning Regulations.

This Site Plan Approval is based upon plans and documentation submitted. Falsification, by misrepresentation or omission, or failure to comply with the conditions of approval, shall declare this Site Plan Approval null and void and may constitute a violation of the Ridgefield Zoning Regulations. Any modifications or alteration to the approved plans shall require further review and/or approval.

Delphine Pierandri for James Brady — 4/13/07

Applicant's Signature — Date

Delphine Pierandri for James Brady — 4/13/07

Owner's Signature — Date

Do not write below this line -- Office Use Only

Variances Required:		
Department of Health Approval	Date:	Signature:
Fire Marshall Approval	Date:	Signature:
WPCA Approval	Date:	Signature:
Action by Planning Director		
	Date:	Signature:

JOHN KENYON KINNEAR, JR. ARCHITECT A.I.A.

April 10, 2007

Project: **63-67 Prospect Street**
Pierandri Realty LLC
Ridgefield, CT

Re: **Zoning Regulations – R-5 Zone**

		Permitted	Proposed
A.	Permitted Uses	Garden-type apts.	Garden-type apts.
B.	Lot Density	15 Units/Acre	1.415 acres = 21 units
C.	Lot Coverage	25%	18%
D.	Setbacks		
	Front	50'	51'
	Side	30'	30.5'
	Rear	40'	130'
E.	Building Height	Basement, 2 stories, attic	Basement, 2 stories, attic
F.	Off-Street Parking		
	1. Paved Entrance	20' wide one way	20' wide one way
	2. Paved Entrance	35' wide two ways	N/A
	3. Roadway Curves	50' radius	N/A
	4. Off-street Parking	300 Sq.Ft./Unit = 6,300 Sq.Ft.	6,600 Sq.Ft. = 33 spaces
	5. Basement Garages	Permitted	6 provided
	6. Carports	Permitted	N/A
G.	Screening/Landscaping	Required	(see Landscape Plan)
H.	Special Requirements – R-5 Zone		
	1. Public Water, Sewer and Street Lighting	Required	Available to site
	2. Police & Fire Dept. Available	Required	Available to site
	3. Exterior Laundry Drying Areas, Screened or Enclosed	Required	N/A
	4. Garbage Containers Stored in Screened Collection Area	Required	Provided (see Plan for location)

317 MADISON AVE. SUITE 1200, NEW YORK, NEW YORK 10017 TEL 212-682-8390 FAX 212-682-8408

Reg. of 7-17-01 § 6, 7-27-01; P. and Z. Reg. of 7-16-02, effective 7-26-02; P. and Z. Reg. 2-3-04, effective 2-13-04)

407.0 MULTIFAMILY-RESIDENCE R-5 ZONE, 15 FAMILY UNITS PER ACRE

A. **Permitted uses.**

In a Residence R-5 Zone, no building or premises shall be used and no building shall be erected or altered which is arranged, intended or designed to be used except for one (1) or more of the following uses:

(1) Any use permitted in Residence R-10 or R-7.5 Zones.
(2) A garden-type apartment building.

B. **[Lot density.]**

(1) No garden-type apartment building shall have more than fifteen (15) family units in respect of each acre of the land area.

C. **[Lot coverage.]**

(1) no more than twenty-five (25) percent of the land area shall be used for buildings.

D. **[Setbacks.]**

(1) No part of any building or accessory building shall be less than fifty (50) feet distant from the street(s) upon which it abuts.
(2) No part of any building or accessory building shall be less than thirty (30) feet distant from any side lot line.
(3) No part of any building or accessory building shall be less than forty (40) feet distant from the rear lot line.

Editor's note – A planning and zoning commission regulation of October 27, 1970, abolished the Residence R-5 classification but further provided that the regulations as to the Residence R-5 Zones would continue in effect to those locations classified as Residence R-5.

E. **Building height, separation.**

(1) No building or structure shall exceed a basement and two (2) habitable stories and attic in height above average grade at its perimeter.
(2) Basement and attic area shall be for nonresidential purpose only.

F. **[Off-street parking.]**

(1) The minimum width of a paved vehicular entrance or exit shall be twenty (20) feet.
(2) The minimum width of a paved vehicular combined entrance and exit shall be thirty-five (35) feet.
(3) All roadway curves within the property shall have a minimum radius of fifty (50) feet.

(4) Off-street parking facilities shall be provided at the rate of three hundred (300) square feet per family unit.
(5) Basement garages shall be permitted.
(6) Carports will be permitted upon Planning and Zoning Commission approval of location, size and construction.

G. **[Screening; landscaping.]**

(1) Plantings of trees, shrubbery, lawns and other landscape screening will be determined by the Planning and Zoning Commission for each premises at time of application, it being the intention hereby to require all buildings and structures to be reasonably screened by trees and shrubbery from adjoining properties. The Planning and Zoning Commission shall have continuing authority to enforce compliance with the requirements determined.

H. **Special requirements for Residence R-5 Zones.**

No garden-type apartment building shall be erected or used unless the following special requirements are met:

(1) Public water, sewer and municipal street lighting shall be available, and all buildings shall be served by public water and sewer.
(2) Police and fire department protection shall be reasonably available.
(3) Exterior laundry drying areas, if any, shall be screened or enclosed.
(4) Garbage containers shall be buried in the ground or kept within a basement or stored in a screened collection area. (P. and Z. Reg. of 3-2-82, effective 3-5-82)

408.0 MULTIFAMILY-RESIDENCE R-5-1 ZONE, 10 FAMILY UNITS PER ACRE*

A. **Permitted uses.**

In a Residence R-5-1 Zone, no building or premises shall be used and no building shall be erected or altered which is arranged, intended or designed to be used except for one (1) or more of the following uses:

(1) Any use permitted in Residence R-A Zone.
(2) A garden-type apartment building for residential purposes only.

Editor's note – A planning and zoning commission regulation of March 7, 1972, abolished the Residence R-5-1 classification but further provided that the regulations as to the Residence R-5-1 Zones would continue in effect to those locations classified as Residence R-5-1.

B. **[Lot density.]**

(1) No garden-type apartment building shall have more than ten (10) family units in respect of each acre of the land area.

C. **[Lot coverage.]**

Exhibit 4
2 Pages

TOWN OF RIDGEFIELD

Planning & Zoning Commission

June 4, 2007

Mr. John Pierandri
The Giardini Limited Partnership
c/o Pierandri Realty, LLC and James Giardini
63 Prospect Street
Ridgefield, CT 06877

Re: Application for Site Plan Approval
21 Units of Housing and Landscaping Plan at 63-67 Prospect St.
pursuant to Sec. 407.0 (R-5 Zone) of the Zoning Regulations
File #2007-038-SPA

Dear Mr. Pierandri:

This is to inform you that the Planning and Zoning Commission, at its meeting held on May 15, 2007, voted to approve the site plan entitled, "Site Plan/Landscaping Plan, Garden Apartments, Pierandri Realty LLC and The Giardini Limited Partnership, 63-67 Prospect Street, Ridgefield, CT," last revised 5/7/07, prepared by John Kenyon Kinnear, Jr., A.I.A. This is a plan that shows 17 dwelling units in 4 new residential multi-family structures, and 4 additional units within an existing residential dwelling (with a new wing/addition) on the site, for a total of 21 dwelling units. The plan also includes provision for 32 parking spaces (4 are interior, garage spaces). The Commission reviewed the plan under the zoning regulations in effect prior to May 1, 2007, and approved the plan with the following condition:

1. The Commission will require additional review and may revise the landscaping plan on the east and west boundaries of the site following actual surveying of the property lines.
    a. Existing large trees and shrubs on the east and west boundaries of the site, contiguous to the neighboring properties, may be required to be saved.
    b. The Commission may require appropriate plantings based on height and size, after considering the nature and height of existing landscaping on the adjacent properties.

In addition to the Commission's consideration of the landscaping plan noted above, the following will be required as a result of review of the plans by the Director of Planning, the Fire Marshal, and the Highway Department:

2. A detailed engineering plan showing contours, drainage structures, and site utilities shall be presented for review to the Director of Planning and the Town Engineer prior to the issuance of any zoning permit for construction.

3. The Plan shall show erosion controls and shall outline construction phasing and the method for erosion control for the duration of the project construction.
    a. Prior to the issuance of any zoning permit or the commencement of any construction activity, all erosion and sedimentation control structures shall be installed in accordance with approved plans and specifications under the terms and conditions of this permit, with strict adherence to the *2002 Guidelines for Soil Erosion and Sediment Control,* DEP Bulletin 34.

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4. As noted in the memorandum dated April 30, 2007 from Fire Marshal David Lathrop (copy attached), no vehicles shall be allowed to park on the west side of the driveway unless areas are specifically marked to permit parking.

5. All building plans must meet applicable building and fire code requirements for multi-family dwellings.

6. The driveway shall be marked for one-way traffic circulation as shown on the plans, entering off Prospect Street and exiting at Sunset Lane.
    a. In order to prevent the use of the driveway for through-traffic, and further to prevent vehicles from entering off Sunset Lane, a one-way gate shall be installed at the Sunset Lane exit (similar in function to the gate at the adjoining Wisteria Gardens complex).

7. Each building on the site shall require a separate Development Permit Application including the submission of two copies of a stamped and sealed class A-2 survey showing the location of the proposed structure.
    a. An A-2 as-built survey for each of the structures is required prior to the issuance of the Zoning Certificate of Compliance for each of the buildings.
    b. Prior to the issuance of the final Zoning Certificate of Compliance for the last dwelling unit (building) to be constructed or renovated on the site, an A-2 as-built survey shall be submitted showing the location of all site utilities, parking and vehicular areas, and buildings on the site.

8. The applicant is required to obtain permits and to comply with all applicable requirements of the Water Pollution Control Authority, the public water supply company, and the Ridgefield Department of Health.

9. In accordance with Connecticut General Statutes Sec. 8-3(i), approval of the Site Plan expires on 5/15/2012.

If you have any questions, please contact me.

Very truly yours,

Betty Brosius

Betty Brosius, MPA, AICP
Director of Planning

cc: John K. Kinnear, A.I.A.
Richard Baldelli, Zoning Enforcement Officer
William Reynolds, Building Official
Diana Van Ness, WPCA Administrator
David Lathrop, Fire Marshal
Edward Briggs, Director of Health
Peter Hill, Director of Public Services
Charles Fisher, P.E., Town Engineer
Subject File

Exhibit 5
1 Page

at 2:20PM
Caitlin Butler Asst

Pz 03.22.2016
Ridgefield Press

to be published: March 31, 2016

LEGAL NOTICE

Notice is hereby given that the Planning and Zoning Commission of the Town of Ridgefield, at its meeting of March 22, 2016, took the following actions:

Item I: APPROVED with conditions. #2016-009-REV (SP)-REV(VDC): (1) Revision to Special Permit for the modification of previously approved plans, replacing a single structure with a building of reduced size and a storage shed, and modifications to street lighting plan anding roof alterations; and (2) Revision to the Village District Application at 29 Prospect Street in the CBD zone. Owner/Applicant: 29 Prospect Street, LLC. Authorized Agent: Philip Doyle.

Item II: APPROVED with conditions. #2007-038-SPA: APPROVED: Request for 5-year extension of Site Plan Approval granted on 5/15/07 for a 21-unit multi-family development, approved under the now-repealed Multifamily Residence R-5 Zone (15 unit/acre) for property located at 63-67 Prospect Street, currently zoned MFDD, extended to 5/15/21 pursuant to Public Act 11-5 and Connecticut General Statutes Section 8-3(m). Owner/Applicant: The Giardini Limited Partnership and Pierandi Realty, LLC.

Item III: APPROVED with conditions. #2016-027-VDC: Village District application for two (2) front facing awnings and one (1) rear facing awning at 398 Main Street in the CBD zone. Owner: Masonic Temple Association % William R. Deickler. Applicant: Coldwell Banker Association. Authorized Agent: Virgil Williams.

PLANNING AND ZONING COMMISSION
Town of Ridgefield

By: Rebecca Mucchetti, Chairman
Dated: March 31, 2016

Exhibit 6
1 Page

TOWN OF RIDGEFIELD
Planning and Zoning Department

CGS 8-3

(m) Notwithstanding the provisions of this section, any site plan approval made under this section prior to July 1, 2011, that has not expired prior to May 9, 2011, except an approval made under subsection (j) of this section, shall expire not less than nine years after the date of such approval and the commission may grant one or more extensions of time to complete all or part of the work in connection with such site plan, provided no approval, including all extensions, shall be valid for more than fourteen years from the date the site plan was approved.

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Exhibit 7
1 Page

law allowed the council to do so if the district failed to issue bonds by July 1, 2020. The act extends the deadline for the district to issue bonds to July 1, 2025.

§ 17 — STEAP GRANT TO BRANFORD

The act requires the OPM secretary to pay a $500,000 STEAP grant to Branford for the costs of demolishing and reconstructing the Indian Neck Firehouse. OPM must do so regardless of any period of performance date related to the contract between the town and DECD.

§ 18 — RIDGEFIELD PLANNING AND ZONING COMMISSION SITE PLAN APPROVAL EXTENSION

The act extends indefinitely a site plan approval the Ridgefield Planning and Zoning Commission granted on May 15, 2007, and subsequently extended for the construction of residential multifamily structures. Under the act, the approval, including any modifications to the site plan, does not expire as long as the applicant has obtained all of the necessary building permits and started construction by the approval's expiration date.

The act's extension applies regardless of the law that makes certain land use approvals valid for between nine and 14 years (CGS § 8-3(m)).

Exhibit 8
1 Page

TOWN OF RIDGEFIELD
Planning and Zoning Department

Notice of Decision for Tuesday, March 9, 2021 Published on March 11, 2021 on Website: www.ridgefieldct.org

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LEGAL NOTICE Notice is hereby given that the Planning and Zoning Commission of the Town of Ridgefield, at its meeting of March 9, 2021, took the following actions:

Item I: APPROVED: #2020-080-REV(SP): Revision to Special Permit Application per Section 9.2 of the Town of Ridgefield Zoning Regulations, to install ground mounted solar system for a property located at 900 Ridgebury Road (Boehringer-Ingelheim Pharmaceuticals) in RAA zone. Owner: Boehringer-Ingelheim Pharmaceuticals. Applicant: Louth Callan Renewables, LLC.

Item II: APPROVED: #MISC-21-2: Review of condition #1 of #2007-038-SPA pertaining to final landscaping plan for a property located at 63-67 Prospect Street in MFDD Zone. Owner/Applicant: The Giardini Limited Partnership and Pierandri Realty LLC. Authorized Agent: Meaghan Miles.

Item III: ADOPTED: #A-21-1: Regulation amendment Application per Section 9.2.B of the Town of Ridgefield Zoning Regulations to amend Section 3.3.B.e.i and 3.3.B.2.ii proposing expanding Accessory Dwelling Unit opportunities. Commission initiated. Effective: 3/12/2021

PLANNING AND ZONING COMMISSION
Rebecca Mucchetti, Chair

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Exhibit 9
2 Pages

ZONING PERMIT

Planning & Zoning Department - Town Hall Annex
66 Prospect Street Tel. (203) 431-2766 Fax: (203) 431-2737
Town of Ridgefield

Permit No.:	Z-21-316
Permit For:	Additions/Alterations
Property Owner:	GIARDINI LIMITED PARTNERSHIP,THE AND PIERANDRI REALTY, LLC
Owner's Address:	63 PROSPECT ST RIDGEFIELD, CT 068774605
Property Address:	63 PROSPECT ST
Zone:	R-5 **Lot Size:** 1.14 **Lot No:** E14-0190

Project Description:
Additions and Renovation to existing residence to add an additional apartment in the rear

Conditions of Approval:

- Erosion and Sediment Control measures shall be maintained in strict adherence to the 2002 Guidelines for Soil Erosion Control, DEEP Bulletin 34, as amended, and the Town of Ridgefield Modified Erosion Control standards, effective September 1, 2018, and shall remain in place until all work is complete and the site is fully stabilized.
- A Class A-2 Zoning Improvement survey showing the installed foundation shall be submitted to the Planning and Zoning Department prior to any work being started on the building walls.
- Prior to the Certificate of Zoning Compliance being issued, a Class A-2 "As-built" survey, prepared by a Connecticut licensed surveyor, showing the completed project, all buildings, structures, stormwater management system, and all site improvements shall be submitted to the Planning and Zoning Department.
- The surveyor shall state the Lot Coverage of all buildings in percentage.
- The surveyor shall state the Building Height.
- The surveyor shall state the Impervious Surfaces coverage in square feet.

Compliance with the June 4, 2007, #2007-038-SPA approval.
- Certification from a Connecticut licensed engineer that the stormwater management system applicaible to this zoning permit has been properly installed and is functioning as designed.
- Certification from a Connecticut licensed landscape architect that the landscaping applicable to this zoning permit has been installed according to the approved landscaping plan.

Richard Bartell — April 9, 2021

Zoning Enforcement Official — **Date**

TOWN OF RIDGEFIELD
ZONING ENFORCEMENT OFFICER

In accordance with Connecticut General Statute Section 8-3(f) the owner of the subject property and/or the applicant for a Zoning Permit or Certificate of Zoning Compliance may provide notice of such Zoning Permit or Certificate of Zoning Compliance by publication in a newspaper having substantial circulation in Ridgefield stating that the Zoning Permit or Certificate of Zoning Compliance has been issued. Any such notice shall contain: (A) a description of the building, use or structure, (B) the location of the building, use or structure, (C) the identity of the application, and (D) a statement that an aggrieved person may appeal to the Zoning Board of Appeals in accordance with the provisions of Connecticut General Statutes Section 8-7, as amended, and the rules and regulations of the Zoning Board of Appeals.

In accordance with Connecticut General Statute Section 8-7, the issuance of a Zoning Permit or Certificate of Zoning Compliance may be appealed to the Zoning Board of Appeals within the time frame for appeal set by the Board. The appeal period for an aggrieved person shall commence at the earliest of the following : (1)upon receipt of the order, requirement or decision from which such person may appeal, (2) upon publication of a notice in accordance with Subsection (f) of section 8-3, as amended, or (3) upon actual or constructive notice of such order, requirement or decision.

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Exhibit 10
15 Pages

JAMES BOYAJIAN ET AL. *v.* PLANNING AND ZONING COMMISSION OF THE TOWN OF VERNON
(AC 43273)

Prescott, Suarez and Vitale, Js.

Syllabus

The plaintiffs, B and J Co., operated a liquor store in the town of Vernon. The town's zoning regulations required establishments that sell alcoholic liquors to be separated by a distance of no less than 3000 feet. T filed an application with the town's zoning board of appeals for a variance that would allow him to establish a liquor store in a location that was 2935 feet from the plaintiffs' store. The board scheduled a public hearing on the application and provided notice of the hearing to the abutting landowners by letter and to the general public in a local newspaper. At the conclusion of the hearing, which the plaintiffs did not attend, the board voted to approve the variance. T then submitted an application to the town's planning and zoning commission for a special permit to allow the sale of alcohol at the property. After a public hearing, at which B spoke on the record and claimed that the underlying variance was void, the commission approved the special permit application. The plaintiffs appealed the commission's decision to the Superior Court, claiming, inter alia, that the variance was void, that the commission should not have relied on the variance in determining whether to grant the special permit, and that the board lacked the authority to grant the variance. The trial court denied the appeal, and the plaintiffs, on the granting of certification, appealed to this court. *Held* that the plaintiffs' failure to appeal from the decision of the board that granted the application for the variance rendered their opposition to the commission's decision to grant the special permit an impermissible collateral attack on the validity of the variance: once the statutory period to appeal the board's decision to grant the variance had expired, the decision became final; moreover, collateral attacks on the decisions of zoning authorities are generally impermissible in light of the need for stability in land use planning and the need for justified reliance by the interested parties; furthermore, the plaintiffs failed to demonstrate that either of the conditions that may permit a collateral attack on a previously unchallenged zoning decision were satisfied, as, because the board acted within its statutorily authorized power to vary zoning regulations, its decision was not so far outside of what could have been regarded as a valid exercise of zoning power that there could not have been any justified reliance on it, and the plaintiffs' argument that the continued maintenance of the variance would violate a strong public policy because it varied the town's zoning regulations was unavailing because it merely described the purpose of a variance.

Argued March 3—officially released July 20, 2021

Procedural History

Appeal from the decision of the defendant granting a special permit application filed by Jagdev Toor, brought to the Superior Court in the judicial district of Tolland where the court, *Sicilian, J.*, granted the motion of Jagdev Toor to intervene as a defendant; thereafter, the matter was tried to the court, *Hon. Samuel J. Sferrazza*, judge trial referee; judgment denying the appeal, from which the plaintiffs, on the granting of certification, appealed to this court. *Affirmed.*

James H. Howard, for the appellants (plaintiffs).

Louis A. Spadaccini, with whom, on the brief, were

Martin B. Burke and *Roseann Canny*, for the appellee (defendant).

Opinion

PRESCOTT, J. This appeal requires us to consider whether the plaintiffs, who failed to appeal from a decision of the local zoning board of appeals to grant a variance; see General Statutes § 8-8 (b); may nevertheless collaterally attack the validity of that variance by opposing, before the local planning and zoning commission, a special permit application related to the property to which the variance attached. We conclude that the plaintiffs may not collaterally attack the validity of the variance.

The plaintiffs, James Boyajian and JPB, LLC,[1] appeal from the judgment of the trial court. The trial court denied the plaintiffs' appeal from the decision of the defendant, the Planning and Zoning Commission of the Town of Vernon (commission), granting a special permit application filed by the intervening defendant, Jagdev Toor.[2] As they did before the trial court, the plaintiffs claim that (1) the variance that the Zoning Board of Appeals of the town of Vernon (board) granted to Toor, and which otherwise entitled Toor to receive the special permit, was void, (2) the commission, in granting the special permit, improperly relied on the variance, and (3) the board lacked the authority to grant the variance. Essentially, each of these claims is a challenge to the validity of the variance granted to Toor by the board. We conclude that the plaintiffs' failure to appeal from the decision of the board that granted Toor's application for the variance renders the plaintiffs' opposition to the commission's decision to grant Toor's special permit application an impermissible collateral attack on the validity of the variance. Accordingly, we affirm the judgment of the Superior Court.

The following facts and procedural history are relevant to our resolution of this appeal. Boyajian is the sole owner of JPB, LLC. The plaintiffs operate Riley's Liquor, located at 312 Hartford Turnpike in Vernon. The Vernon Zoning Regulations (zoning regulations) mandate that establishments that sell alcoholic liquors be separated by a distance of no less than 3000 feet, measured in a straight line from the main public access doors of each establishment. Vernon Zoning Regs., § 17.1.2. Toor sought to open and operate a liquor store at a commercial building located at 206 Talcottville Road in Vernon (property), which was located 2935 feet from Riley's Liquor. On or around January 31, 2018, Toor filed an application to the board for a variance[3] from the 3000 foot separating distance requirement by sixty-five feet to permit the 2935 foot separating distance between the property and Riley's Liquor. In the absence of the variance, the proposed liquor store would have violated the distance requirement contained in the zoning regulations.

The board scheduled a public hearing on the variance

application for April 18, 2018. In anticipation of the hearing, the board provided notice of the variance application and hearing by letter to abutting property owners and to the public in the Journal Inquirer. On April 18, 2018, the board held a public hearing and, on its conclusion, voted to approve the variance by a four to one vote. The plaintiffs did not attend the hearing. The board notified Toor of its approval on April 19, 2018. At no point did the plaintiffs appeal from the board's decision to grant the variance.[4]

In July, 2018, Toor submitted to the commission an application for a special permit for the sale of alcohol at the property. The commission held a public hearing on the special permit application on August 16, 2018, at which Boyajian spoke on the record[5] and expressed, inter alia, his contention that the underlying variance was void.[6] At the conclusion of the hearing, the commission voted to approve the special permit application by a five to one vote and noted that the variance was "in effect" at the time of the hearing.[7]

The plaintiffs appealed the commission's approval of the special permit application to the Superior Court. In their brief to the trial court, the plaintiffs argued, in relevant part, that (1) the variance was void, (2) the board lacked the authority to grant the variance, (3) the commission's reliance on the void variance was a "flawed foundation upon which [it] premised its" approval of the special permit, and (4) the commission "ignored" the zoning regulations, which otherwise prohibited approval of the special permit.[8]

The trial court, *Hon. Samuel J. Sferrazza,* judge trial referee, denied the appeal. In considering whether the commission should have independently reviewed the property's compliance with the statutory separating distance requirement and the validity of the underlying variance, the court recognized that the plaintiffs' arguments posed "some very interesting and challenging legal issues."[9] "The court determine[d], however, that it need not resolve those conundrums. This is because no appeal was taken from the decision in which all these issues could have been adjudicated. Whether the [board's] decision was erroneous became immaterial once the appeal period expired." The trial court characterized the plaintiffs' contention with the commission's decision, insofar as the plaintiffs sought independent review of the commission's decision to grant a special permit predicated on an allegedly void variance, as an impermissible "collateral attack on an unappealed . . . decision . . . ." Because the trial court concluded that the attack did not fall under one of the potential exceptions the Supreme Court identified in *Upjohn Co.* v. *Zoning Board of Appeals,* 224 Conn. 96, 104–105, 616 A.2d 793 (1992), the plaintiffs could not prevail on the issue. Pursuant to Practice Book § 81-1 et seq. and § 8-8 (o), the plaintiffs requested certification to appeal to

this court. Upon consideration of the plaintiffs' petition, we granted review.

The plaintiffs claim that the trial court improperly upheld the commission's decision to grant the special permit application. More specifically, the plaintiffs argue that (1) the underlying variance granted to Toor was void, (2) in determining whether Toor qualified for the special permit, the commission should have applied the standards prescribed by the zoning regulations, rather than relying solely on the variance, and (3) the board lacked the statutory authority to grant the variance.[10] The defendant argues in response that the plaintiffs' opposition to the commission's decision to grant the special permit constitutes an impermissible collateral attack on the board's approval of the variance. It argues that the commission and the trial court properly rejected the plaintiffs' arguments on the ground that the plaintiffs should have raised their claim on direct appeal from the board's decision to grant the variance. We agree with the defendant.

We first set forth the relevant law, including our standard of review. On appeal, we review the trial court's legal conclusion that the plaintiffs' opposition to the commission's decision to grant the special permit application is an impermissible collateral attack on the board's decision to grant the variance application. Resolution of this issue presents a question of law over which our review is plenary. *Santarsiero* v. *Planning & Zoning Commission*, 165 Conn. App. 761, 772, 140 A.3d 336 (2016) ("[b]ecause the court . . . made conclusions of law in its memorandum of decision [in this case], our review is plenary" (internal quotation marks omitted)).

"A special permit allows a property owner to use his property in a manner expressly permitted by the local zoning regulations." (Internal quotation marks omitted.) *Putnam Park Apartments, Inc.* v. *Planning & Zoning Commission*, 193 Conn. App. 42, 53, 218 A.3d 1127 (2019). An applicant may apply for a special permit from a zoning commission; see General Statutes § 8-2 (a); and "[i]t is well settled that [for a commission to grant] a special permit, an applicant must satisf[y] all conditions imposed by the regulations." (Internal quotation marks omitted.) *St. Joseph's High School, Inc.* v. *Planning & Zoning Commission*, 176 Conn. App. 570, 591, 170 A.3d 73 (2017). "[A]lthough it is true that the zoning commission does not have discretion to deny a special permit when the proposal meets the standards, it does have discretion to determine whether the proposal meets the standards set forth in the regulations. If, during the exercise of its discretion, the zoning commission decides that all of the standards enumerated in the special permit regulations are met, then it can no longer deny the application. The converse is, however, equally true. Thus, the zoning commission can exercise

its discretion during the review of the proposed special [permit], as it applies the regulations to the specific application before it." (Emphasis omitted; internal quotation marks omitted.) Id., 593–94. "In making such determinations, moreover, a zoning commission may rely heavily upon general considerations such as public health, safety and welfare." (Internal quotation marks omitted.) *Torrington* v. *Zoning Commission*, 261 Conn. 759, 770, 806 A.2d 1020 (2002).

By contrast, "a variance is an expression of explicit authority to contravene local zoning ordinances." *R & R Pool & Patio, Inc.* v. *Zoning Board of Appeals*, 129 Conn. App. 275, 286, 19 A.3d 715 (2011). "Zoning boards of appeals are authorized to grant variances in cases in which enforcement of a regulation would cause unusual hardship . . . ." *Mayer-Wittmann* v. *Zoning Board of Appeals*, 333 Conn. 624, 640, 218 A.3d 37 (2019). "[W]e have interpreted [General Statutes] § 8-6 to authorize a zoning board of appeals to grant a variance . . . when two basic requirements are satisfied: (1) the variance must be shown not to affect substantially the comprehensive zoning plan, and (2) adherence to the strict letter of the zoning ordinance must be shown to cause unusual hardship unnecessary to the carrying out of the general purpose of the zoning plan." (Internal quotation marks omitted.) *Turek* v. *Zoning Board of Appeals*, 196 Conn. App. 122, 134, 229 A.3d 737, cert. denied, 335 Conn. 915, 229 A.3d 729 (2020). "Interpretation of the zoning regulations is a function of a zoning board of appeals. The variance power exists to permit what is prohibited in a particular zone. . . . [T]he zoning board of appeals is the court of equity of the zoning process . . . ." (Internal quotation marks omitted.) *Santarsiero* v. *Planning & Zoning Commission*, supra, 165 Conn. App. 779.

Although an aggrieved individual may challenge the decision of a zoning authority; see, e.g., General Statutes § 8-8 (b); as a general rule, "one may not institute a collateral action challenging the decision of a zoning authority." *Torrington* v. *Zoning Commission*, supra, 261 Conn. 767. "A collateral attack is an attack upon a judgment, decree or order offered in an action or proceeding other than that in which it was obtained, in support of the contentions of an adversary in the action or proceeding . . . ." (Internal quotation marks omitted.) *Warner* v. *Brochendorff*, 136 Conn. App. 24, 32 n.7, 43 A.3d 785, cert. denied, 306 Conn. 902, 52 A.3d 728 (2012). A party asserting a collateral attack "attempt[s] to avoid, defeat, or evade [a judgment], or deny its force and effect, in some incidental proceeding not provided by law for the express purpose of attacking it." (Internal quotation marks omitted.) *Lewis* v. *Planning & Zoning Commission*, 49 Conn. App. 684, 688–89 n.5, 717 A.2d 246 (1998). "A collateral attack on a judgment is a procedurally impermissible substitute for an

National Mortgage Assn. v. *Farina*, 182 Conn. App. 844, 853, 191 A.3d 206 (2018); see also *Upjohn Co.* v. *Zoning Board of Appeals*, supra, 224 Conn. 103 (suggesting that "[i]t would be fundamentally unfair . . . to permit" collateral attack).

"The reason for the rule against collateral attack is well stated in these words: The law aims to invest judicial transactions with the utmost permanency consistent with justice. . . . Public policy requires that a term be put to litigation and that judgments, as solemn records upon which valuable rights rest, should not lightly be disturbed or overthrown. . . . [T]he law has established appropriate proceedings to which a judgment party may always resort when he deems himself wronged by the court's decision. . . . If he omits or neglects to test the soundness of the judgment by these or other direct methods available for that purpose, he is in no position to urge its defective or erroneous character when it is pleaded or produced in evidence against him in subsequent proceedings. Unless it is entirely invalid and that fact is disclosed by an inspection of the record itself the judgment is invulnerable to indirect assaults upon it." (Internal quotation marks omitted.) *Federal National Mortgage Assn.* v. *Farina*, supra, 182 Conn. App. 853.

"[W]e have ordinarily recognized that the failure of a party to appeal from the action of a zoning authority renders that action final so that the correctness of that action is no longer subject to review by a court." *Upjohn Co.* v. *Zoning Board of Appeals*, supra, 224 Conn. 102. Thus, "the general rule [is] that one may not institute a collateral action challenging the decision of a zoning authority. . . . [T]he rule requiring interested parties to challenge zoning decisions in a timely manner rest[s] in large part . . . on the need for stability in land use planning and the need for justified reliance by all interested parties—the interested property owner, any interested neighbors and the town—on the decisions of the zoning authorities." (Internal quotation marks omitted.) *Reardon* v. *Zoning Board of Appeals*, 311 Conn. 356, 366, 87 A.3d 1070 (2014); see also *Lallier* v. *Zoning Board of Appeals*, 119 Conn. App. 71, 78–79, 986 A.2d 343 ("[L]itigation about the merits of a cease and desist order does not permit a collateral attack on the validity of the underlying zoning decision that was not challenged at the time that it was made . . . . In light of [*Upjohn Co.* and *Torrington*], the trial court in the present case properly declined to address the merits of the defendants' disagreement with the zoning commission's . . . approval of the plaintiff's . . . proposal." (Citations omitted; footnote omitted.)), cert. denied, 295 Conn. 914, 990 A.2d 345 (2010).

In *Upjohn Co.* v. *Zoning Board of Appeals*, supra, 224 Conn. 102, our Supreme Court determined that a plaintiff may not collaterally attack a condition to an

approved zoning permit application because the plaintiff had failed to appeal the condition at the time it was imposed. The plaintiff in *Upjohn Co.* had applied to the local planning and zoning commission to build structures on its property, and the commission approved the zoning permit application, subject to several conditions. Id., 98. The plaintiff "did not appeal or otherwise challenge the validity or imposition of" one condition with which it later failed to comply. Id., 98–99. When a zoning enforcement officer served the plaintiff with a cease and desist order for failure to comply with the condition, the plaintiff appealed to the zoning board of appeals and, subsequently, to the trial court, contesting the validity of the underlying condition. Id., 99. The trial court sustained the appeal. Id., 100.

On review, our Supreme Court agreed with the zoning board of appeals that "the trial court incorrectly concluded that [the plaintiff] could collaterally attack the validity of [the] condition . . . in the enforcement proceedings more than three years after its imposition by the commission and acceptance by [the plaintiff]." Id. "We conclude that [the plaintiff], having secured the permits . . . subject to [the] condition . . . and not having challenged the condition by appeal at that time, was precluded from doing so in the [later] enforcement proceedings . . . . [W]hen a party has a statutory right of appeal from the decision of an administrative agency, he may not, instead of appealing, bring an independent action to test the very issue which the appeal was designed to test. . . . It would be inconsistent with th[e] needs [of stability in land use planning and justified reliance by interested parties] to permit, in this case, a challenge to a condition imposed on a zoning permit when the town seeks to enforce it more than three years later." (Citations omitted; internal quotation marks omitted.) Id., 102.

Subsequent cases have applied the rule set forth in *Upjohn Co.* In a somewhat related procedural context, our Supreme Court in *Torrington* v. *Zoning Commission*, supra, 261 Conn. 761, 767–68, applied the rule set forth in *Upjohn Co.* to an action in which a plaintiff attacked a stipulated judgment it had previously failed to appeal. Because the plaintiff had ample notice and opportunity to challenge the judgment at the time it was entered, it could "not [later] collaterally attack the stipulated judgment." Id., 767, 770.

In *Santarsiero* v. *Planning & Zoning Commission*, supra, 165 Conn. App. 779, this court upheld a trial court's determination that a collateral attack by the plaintiffs, nearby property owners, was impermissible under the circumstances. The zoning board in *Santarsiero* had granted an application filed by a landowner for a variance to construct a restaurant with a drive-up window in a zone that specifically prohibited such windows. Id., 764–65. The plaintiffs received notice of

the hearing but did not appeal the decision of the board. Id., 765, 777. Relying on the variance, the landowner applied for a special exception[11] from the local planning and zoning commission, and the commission granted the exception. Id., 765–66. Following three years of related disputes, the plaintiffs appealed to the trial court and attacked, inter alia, the validity of the variance. Id., 770. The trial court dismissed the plaintiff's appeal. Id.

On appeal to this court, the plaintiffs in *Santarsiero* reiterated their argument that the trial court improperly upheld the actions of the commission because the zoning board's decision to grant the variance, on which the commission's decision was predicated, "was not a valid exercise of zoning power and there could not have been any justified reliance on it." Id., 778. This court disagreed. Id., 776. This court noted that the "variance formed the basis of the commission's authority to grant the . . . special exception to the defendant," and the plaintiffs failed to appeal from the variance. Id., 776–77. Accordingly, the plaintiff's opposition to the commission's decision to grant the special exception application, premised on its opposition to the board's granting of the variance application, constituted an impermissible collateral attack. Id., 779.

Upjohn Co. and its progeny govern our resolution of the present appeal, and *Santarsiero* is on all fours with the case before us. Nothing in the record suggests that the plaintiffs in the present case were prevented from raising by direct appeal their substantive contentions concerning the validity of the variance. Yet, just as in *Santarsiero*, the plaintiffs failed to appeal from the board's decision to grant the variance. See id., 777. Once the statutory period to appeal the board decision had expired, the board's decision to grant the variance became final. See *Upjohn Co.* v. *Zoning Board of Appeals*, supra, 224 Conn. 102. Nevertheless, the plaintiffs attacked the validity of the variance at the commission's hearing on the special permit application. Once again, just as in *Santarsiero*, the variance here "formed the basis of the commission's authority to grant the [special permit] to" Toor; *Santarsiero* v. *Planning & Zoning Commission*, supra, 165 Conn. App. 776; which, according to the plaintiffs, required the commission to deny the special permit application. The commission nonetheless approved the special permit application.[12] The plaintiffs asserted the same argument to the trial court and insisted that the commission's reliance on the variance was misplaced because the variance was void. The trial court concluded that the plaintiffs' argument concerning the variance was an impermissible substitute for an appeal of the board's decision. Finally, the grounds on which the plaintiffs appeal to this court rest entirely on their challenges to the validity of the variance.[13] The plaintiffs' failure to appeal the board's granting of the variance ostensibly forecloses consider-

v. *Sweeney*, 148 Conn. App. 616, 627–28, 86 A.3d 486 (prohibiting collateral "attack on *the substance* of the wetlands permit, which . . . the plaintiffs could have done" by filing appeal (emphasis in original)), cert. denied, 311 Conn. 949, 90 A.3d 978 (2014). Consequently, their collateral attack on the variance is impermissible, unless it falls within one of the exceptions to the general rule barring collateral attacks.

Our Supreme Court has stated that there may be two types of "exceptional cases" wherein "a collateral attack" may be permissible. *Upjohn Co.* v. *Zoning Board of Appeals*, supra, 224 Conn. 104–105. Our Supreme Court explained, "[w]e recognize . . . that there may be exceptional cases in which a previously unchallenged condition was so far outside what could have been regarded as a valid exercise of zoning power that there could not have been any justified reliance on it, or in which the continued maintenance of a previously unchallenged condition would violate some strong public policy. It may be that in such a case a collateral attack on such a condition should be permitted. We leave that issue to a case that, unlike this case, properly presents it." Id.[14]

"In *Gangemi* v. *Zoning Board of Appeals*, 255 Conn. 143, 150–51, 763 A.2d 1011 (2001), [our Supreme Court] converted this dictum into a holding, and concluded that the continued maintenance of [a] previously unchallenged condition . . . violated the strong public policy against restraints on alienation." *Torrington* v. *Zoning Commission*, supra, 261 Conn. 768. As we have noted, the plaintiffs' attack on the commission's decision to grant the special permit here is premised on the board's alleged lack of authority to grant the variance. Thus, we consider, in turn, the applicability of the exceptions recognized by *Upjohn Co.* to the actions taken by the board in the present case.

We first consider whether the board's decision to grant the variance fell "so far outside what could [be] regarded as a valid exercise of [its] zoning power that there could not have been any justified reliance on it . . . ." *Upjohn Co.* v. *Zoning Board of Appeals*, supra, 224 Conn. 104–105. "[I]t must be an exceptional [case] that will justify disturbing the stability of unchallenged land use decisions. . . . It is not enough that the conduct in question was in violation of the applicable zoning statutes or regulations. . . . [A] litigant who seeks to invoke this exception must meet a very high standard." (Citation omitted; internal quotation marks omitted.) *Torrington* v. *Zoning Commission*, supra, 261 Conn. 768; see, e.g., *Gay* v. *Zoning Board of Appeals*, 59 Conn. App. 380, 388, 757 A.2d 61 (2000) (permitting collateral attack of condition "imposed by [a] board on a parcel that was not the subject of the variance application before it" under first exception of *Upjohn Co.*). "[T]he party seeking to invoke the exception to

the general rule barring collateral attack on a previously unchallenged land use decision . . . ha[s] the burden to establish that the [board or] commission [acted] . . . without an adequate basis on which to do so." *Torrington* v. *Zoning Commission*, supra, 773. "The question of whether an extrajudicial act of a zoning authority is so far outside the valid exercise of zoning power that there could not have been any justified reliance on it, necessarily permits, in an appropriate case, some inquiry into the reasons for that reliance." Id., 775–76; see also *Santarsiero* v. *Planning & Zoning Commission*, supra, 165 Conn. App. 779.

Section 8-6 provides in relevant part: "(a) The zoning board of appeals shall have the following powers and duties . . . (3) to determine and vary the application of the zoning . . . regulations in harmony with their general purpose and intent and with due consideration for conserving the public health, safety, convenience, welfare and property values solely with respect to a parcel of land where, owing to conditions especially affecting such parcel but not affecting generally the district in which it is situated, a literal enforcement of such . . . regulations would result in exceptional difficulty or unusual hardship so that substantial justice will be done and the public safety and welfare secured, provided that the zoning regulations may specify the extent to which uses shall not be permitted by variance in districts in which such uses are not otherwise allowed. . . ."

As we have stated, "[i]nterpretation of the zoning regulations is a function of a zoning board of appeals. The variance power exists to permit what is prohibited in a particular zone." (Internal quotation marks omitted.) *Santarsiero* v. *Planning & Zoning Commission*, supra, 165 Conn. App. 779. The zoning regulations, similarly, recognize the power of the board to hear and decide variance applications. Vernon Zoning Regs., § 17.2.

By granting the variance at issue, the board acted squarely within its statutorily authorized power to vary zoning regulations. General Statutes § 8-6 (a) (3). The board held a hearing to decide whether to approve the application for the variance, which would vary the 3000 foot separating distance requirement between liquor stores under the zoning regulations. Vernon Zoning Regs., § 17.1.2. The record reflects that the board considered the significance of a sixty-five foot variance as well as any alleged hardship. After discussion and consideration of the application, the board granted the application, that is, it varied the 3000 foot requirement to permit a separating distance of 2935 feet. See id.

The plaintiffs, however, contend that the board impermissibly granted the variance because Toor failed to establish a sufficient unique hardship that affected

"the location of property is not a legal basis for the granting of a variance . . . the statute confer[red] no authority upon the [board] to grant such a variance." The plaintiffs also asserted that the effect of the variance conflicted with other zoning regulations. Each of these arguments inherently accepts the "adequate basis on which" the board acted—the statutory power conveyed on the board to vary regulations—and forecloses the suggestion that granting the variance constituted an extrajudicial act. *Torrington* v. *Zoning Commission*, supra, 261 Conn. 769–70, 773. Assuming, arguendo, that the plaintiffs' arguments, as the trial court noted, could have presented a "colorable claim" in an appeal of the board's decision, the plaintiffs' arguments nonetheless fail to render the board's action so far outside what could be regarded as a valid exercise of the board's statutory power that there could not have been any justified reliance on it. That is to say, because the board maintained the power to vary zoning regulations, we are unconvinced that the plaintiffs have met the "very high standard" that would trigger an acceptable collateral attack on the board's action. *Torrington* v. *Zoning Commission*, supra, 768.

We now turn to the second *Upjohn Co.* exception. The court in *Upjohn Co.* suggested that, if "the continued maintenance of a previously unchallenged condition would violate some strong public policy," a collateral attack may be warranted. *Upjohn Co.* v. *Zoning Board of Appeals*, supra, 224 Conn. 105. "We begin by emphasizing that, under this prong of the *Upjohn Co.* formulation, we focus, not on the state of affairs that existed when the condition at issue originally was imposed, but on the current state of affairs in which the condition is being enforced. . . . [W]e focus on the continued maintenance of the condition, and whether, irrespective of the fact that the condition was previously unchallenged, it nonetheless currently violate[s] some strong public policy." (Citation omitted; internal quotation marks omitted.) *Gangemi* v. *Zoning Board of Appeals*, supra, 255 Conn. 150–51. As under the first exception, review under this exception demands a high standard. Compare, e.g., id., 151, 157 (permitting collateral attack on condition to variance that contradicted "the strong and deeply rooted public policy in favor of the free and unrestricted alienability of property" and failed to serve "legal and useful purpose" (internal quotation marks omitted)), with *George* v. *Watertown*, 85 Conn. App. 606, 611–12, 858 A.2d 800 (prohibiting collateral attack on commission action that implicated strong public policy interest but fell within "conformity [of] the law"), cert. denied, 272 Conn. 911, 863 A.2d 702 (2004), and *Caltabiano* v. *L & L Real Estate Holdings II, LLC*, 122 Conn. App. 751, 762, 998 A.2d 1256 (2010) (prohibiting collateral attack on decision made by commission following public hearing at which untruthful representations were allegedly made by interested party and opin-

ing that "misconduct or conflict of interest by members of the board" may, alternatively, "rise to the level of a public policy violation sufficient to support a collateral attack").

Here, the plaintiffs contend that the variance would undermine the "best interests of the town" of Vernon (town). According to the plaintiffs, by adopting its zoning regulations, the town necessarily determined that the allowance of multiple liquor stores within 3000 feet of one another would be "contrary to the best interests of the town." Further, the plaintiffs assert that, if Toor were to open a liquor store on the property, the new store would "establish a new 3000 foot [separating distance] and burden" other preexisting properties. "The applicant's variance, [according to the plaintiffs] will preclude liquor stores from being located within roughly one-half mile of [the] new store." We find the plaintiffs' arguments unavailing.

The plaintiffs' contention that the variance violates public policy because it varies the zoning regulations is not persuasive because it is entirely circular. By definition, "[a] variance constitutes permission to act in a manner that is otherwise prohibited under the zoning law of the town." (Internal quotation marks omitted.) *Mayer-Wittmann* v. *Zoning Board of Appeals*, supra, 333 Conn. 640. Accordingly, every variance granted by a zoning authority, under the plaintiffs' argument, would constitute a violation of public policy sufficient to support a collateral attack. See *Caltabiano* v. *L & L Real Estate Holdings II, LLC*, supra, 122 Conn. App. 762. Such a contention is foreclosed by logic and our existing jurisprudence.

As we have acknowledged, nothing in the record suggests that the plaintiffs could not have expressed their concerns, including those concerns about the number of liquor stores in the town, before the board or on direct appeal. Furthermore, the record establishes that Boyajian expressed before the commission concerns about the number of liquor stores in the town to no avail. Because the continued maintenance of the underlying variance does not "violate some strong public policy"; *Upjohn Co.* v. *Zoning Board of Appeals*, supra, 224 Conn. 105; the plaintiffs may not collaterally attack the board's decision to grant the variance under this exception.

The judgment is affirmed.

In this opinion the other judges concurred.

[1] Collectively, we refer to Boyajian and JPB, LLC, as the plaintiffs. Individually, we refer to Boyajian and JPB, LLC, by their respective names.

[2] Toor filed a motion to intervene in the underlying appeal to the Superior Court, which was granted. Toor has not participated in the present appeal.

[3] "A variance constitutes permission to act in a manner that is otherwise prohibited under the zoning law of the town." (Internal quotation marks omitted.) *Mayer-Wittmann* v. *Zoning Board of Appeals*, 333 Conn. 624, 640, 218 A.3d 37 (2019).

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 . . . . The appeal shall be commenced by service of process . . . within fifteen days from the date that notice of the decision was published as required by the general statutes. . . ." The record demonstrates, and the plaintiffs concede, that notice of the board hearing concerning the variance was published in the Journal Inquirer on April 11, 2018. On April 18, 2018, the board granted the variance at the conclusion of the hearing and notified Toor the following day. The plaintiffs do not claim in this appeal that the board did not give proper notice to the public of its decision to grant the variance.

[5] Boyajian did not identify himself as the owner of JPB, LLC, or the operator of Riley's Liquor in his comments to the commission.

[6] When he addressed the commission, Boyajian conceded on the record that the granting of the variance was appealable within the statutory period.

[7] Board member Roland Klee noted after the conclusion of the hearing, "the variance is in effect, [it has] been recorded on the [l]and [r]ecords . . . ." Klee later moved to approve the special permit application "based on its compliance with the [s]pecial [p]ermit standards of [§] 17.3.1. [of the zoning regulations]."

[8] The plaintiffs raised as an additional ground for reversing the decision of the commission that the variance had lapsed because of Toor's failure to make any substantial progress on the use in the year following the board's decision. The trial court rejected this ground, finding the following: (1) "no party adduced evidence . . . relevant to" the claim; (2) Toor "expeditiously applied" for the special permit after the board approved the variance; and (3) because the plaintiffs appealed to the trial court just one month after the commission granted the special permit application, Toor was justified in delaying construction until after the resolution of the appeal. The plaintiffs have not raised this issue in the present appeal, and, accordingly, it is not properly before us.

[9] The trial court considered and rejected the merits of the plaintiffs' argument that the variance was fundamentally void. As set forth subsequently in this opinion, we decline to consider the merits of this argument.

[10] The plaintiffs argue that they properly appealed to the trial court the *commission's* improper application of the zoning regulations and, thus, have valid grounds outside of the underlying variance. The plaintiffs contend that, because the commission did not apply the 3000 foot separating distance set forth in the zoning regulations, it "illegal[ly]" granted the special permit application. The plaintiffs' arguments, however, inextricably recognize the alternative separating distance on which the commission relied in granting the special permit—the 2935 foot separating distance, as authorized by the board. Further, before the trial court, when asked whether the plaintiffs asserted any "claim that there was some other provision unrelated to the variance," counsel for the plaintiffs answered, "[n]o. No traffic issue. Nothing like that, Your Honor."

[11] "[T]he terms 'special exception' and '[s]pecial permit' are interchangeable." *American Institute for Neuro-Integrative Development, Inc.* v. *Town Planning & Zoning Commission*, 189 Conn. App. 332, 338–39, 207 A.3d 1053 (2019); see also R. Fuller, 9 Connecticut Practice Series: Land Use Law and Practice (4th Ed. 2015) § 5:1, p. 191.

[12] No section of the zoning regulations expressly allows the commission to ignore a related variance, previously granted by the board, in considering an application for a special permit. Moreover, we note that our Superior Courts have suggested that planning and zoning commissions may not ignore related variances that directly bear on the applications before them. See, e.g., *Scandia Construction & Development Corp.* v. *Planning & Zoning Commission*, Superior Court, judicial district of Danbury, Docket No. CV-01-0341705-S (November 16, 2001).

[13] See footnote 10 of this opinion.

[14] In discussing the *Upjohn Co.* exceptions, our Supreme Court, in *Torrington* v. *Zoning Commission*, supra, 261 Conn. 768, noted that the *Upjohn Co.* exceptions were available "to the extent that a party seeks to attack collaterally a previously unchallenged zoning decision *on the basis of the zoning authority's lack of subject matter jurisdiction* . . . ." (Emphasis added.) The plaintiffs in the present case make no claim that the board lacked subject matter jurisdiction to grant a variance. They simply argue that the commission should not have granted the special permit application, on the basis of the invalidity of the underlying variance. Although our case

apply to cases in which there is no attack as to subject matter jurisdiction of the prior tribunal, we nonetheless consider the exceptions here.

ZONING PER PREVIOUS R-5 APPROVAL

MAXIMUM DENSITY – 15 Units/Acre (61,648 Sq. Ft. = 21 Units)
PROPOSED DENSITY – 21 Units

MAXIMUM LOT COVERAGE – 25%
PROPOSED LOT COVERAGE – 20%+/-

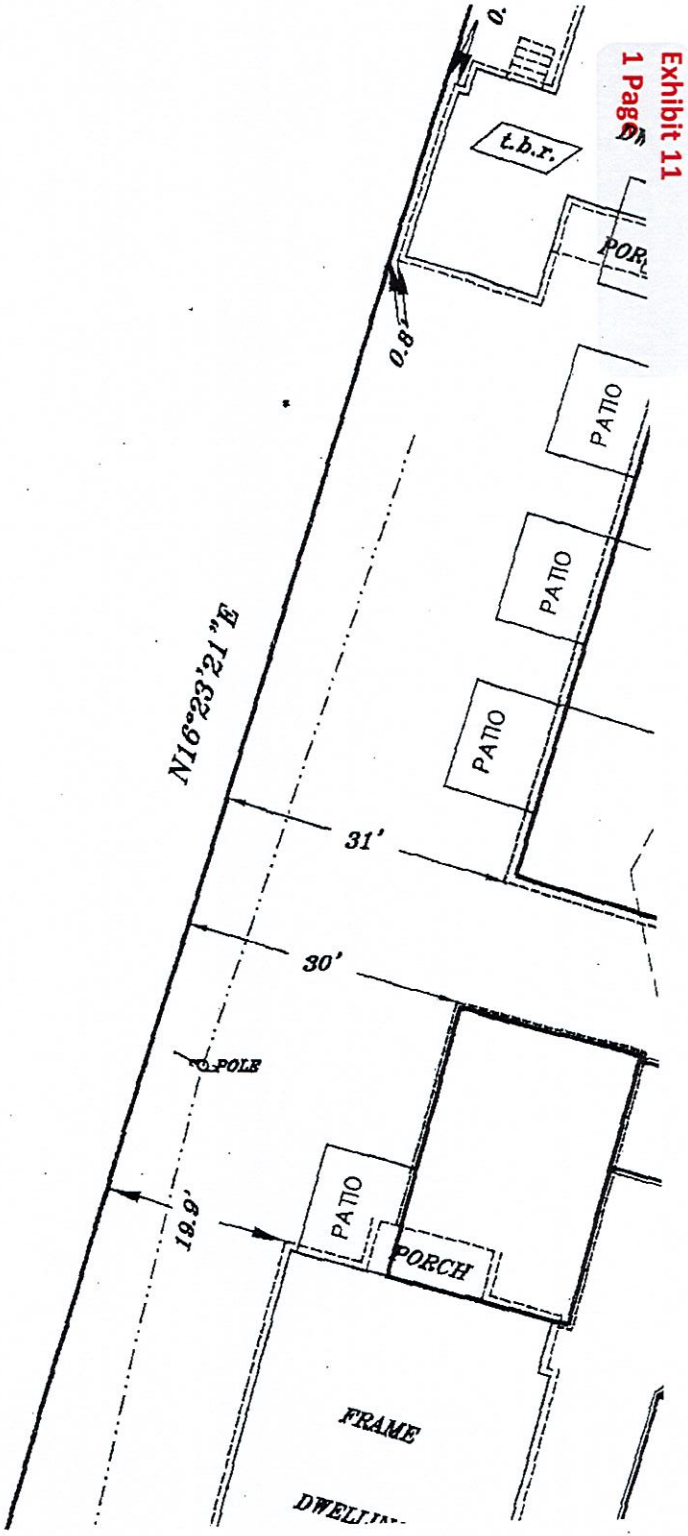
MINIMUM FRONT YARD – 50'
PROPOSED FRONT YARD – 50.6'

MINIMUM SIDE YARD – 30'
PROPOSED SIDE YARD – 30'+

MINIMUM REAR YARD – 40'
PROPOSED REAR YARD – N/A

MAXIMUM BUILDING HEIGHT – TWO STORIES, ATTIC
PROPOSED BUILDING HEIGHT – TWO STORIES, ATTIC

PROPERTY SERVICED BY PUBLIC WATER SUPPLY
AND SEWER



ranged, intended or designed to be used except for one (1) or more of the following uses:

(1) Any use permitted in Residence R-10 or R-7.5 Zones.

(2) A garden-type apartment building.

B. [Lot density.]

(1) No garden-type apartment building shall have more than fifteen (15) family units in respect of each acre of the land area.

C. [Lot coverage.]

(1) No more than twenty-five (25) per cent of the land area shall be used for buildings.

D. [Setbacks.]

(1) No part of any building or accessory building shall be less than fifty (50) feet distant from the street(s) upon which it abuts.

(2) No part of any building or accessory building shall be less than thirty (30) feet distant from any side lot line.

(3) No part of any building or accessory building shall be less than forty (40) feet distant from the rear lot line.

Editor's note—A planning and zoning commission regulation of October 27, 1970, abolished the Residence R-5 classification but further provided that the regulations as to the Residence R-5 Zones would continue in effect to those locations classified as Residence R-5.

E. Building height, separation.

(1) No building or structure shall exceed a basement and two (2) habitable stories and attic in height above average grade at its perimeter.

(2) Basement and attic area shall be for nonresidential purposes only.

Exhibit 12 b
1 Page

F. [Off-street parking.]

(1) The minimum width of a paved vehicular entrance or exit shall be twenty (20) feet.

(2) The minimum width of a paved vehicular combined entrance and exit shall be thirty-five (35) feet.

(3) All roadway curves within the property shall have a minimum radius of fifty (50) feet.

(4) Off-street parking facilities shall be provided at the rate of three hundred (300) square feet per family unit.

(5) Basement garages shall be permitted.

(6) Carports will be permitted upon Planning and Zoning Commission approval of location, size and construction.

G. [Screening; landscaping.]

(1) Plantings of trees, shrubbery, lawns and other landscape screening will be determined by the Planning and Zoning Commission for each premises at time of application, it being the intention hereby to require all buildings and structures to be reasonably screened by trees and shrubbery from adjoining properties. The Planning and Zoning Commission shall have continuing authority to enforce compliance with the requirements determined.

H. Special requirements for Residence R-5 Zones.

No garden-type apartment building shall be erected or used unless the following special requirements are met:

(1) Public water, sewer and municipal streetlighting shall be available, and all buildings shall be served by public water and sewer.

(2) Police and fire department protection shall be reasonably available.

(3) Exterior laundry drying areas, if any, shall be screened or enclosed.

Exhibit 13
1 Page