



City of Bridgeport
Zoning Department
PLANNING AND ECONOMIC DEVELOPMENT

45 Lyon Terrace • Bridgeport, Connecticut 06604
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Re: Zoning Compliance Application for Proposed Development Project at 1773, 1843, and 1849 Madison Avenue, Bridgeport (“Project”)

Based on new information recently brought to the attention of the City’s Zoning Department, as well as conferences with legal counsel for the City, and in light of the attached correspondence dated July 27, 2023, from the Office of the City Attorney, I hereby advise you as follows:

1. Plan approval for the above-referenced Project was entered electronically on or about October 17, 2022, and revoked and/or rescinded on or about January 8, 2023 (because no consolidation map of lots 1773, 1843 and 1849 Madison Avenue was filed/recorded). On or about March 14, 2023, subsequent to the 3 lots being consolidated, plan approval was electronically re-entered for the Project. Any and all plan approvals entered electronically (or otherwise granted) for this Project are null and void *ab initio*, and/or have been revoked and/or rescinded, for the reasons stated herein, as well as those set forth in the attached correspondence from the Office of the City Attorney.
2. All necessary elements for the Project’s Zoning Compliance Application were not submitted at the time of filing (December 30 or 31, 2021) (also referred to as “Application”). Specifically:
 - (a) The applicants did not take part in, or submit the information required for, a Technical Review prior to filing the Application as mandated by 2010 Zoning Regs., Sec. 14-12;
 - (b) the Application was not filed “together with the pertinent application fee” (See 2010 Regs, subsections 13-5(b) and 14-1-3; and Zoning Compliance Application at section entitled *Instructions*). The fee was not paid until approximately 10.5 months after the Application for Zoning Compliance was submitted;
 - (c) the Application failed to comply with the mandate that “[t]he application shall be accompanied by letters from all utilities confirming that any necessary hookups can be made”. (2010 Regs. Sec. 14-1-4 b.); and
 - (d) the Application (as amended) failed to include the required use variance for the lot known as 1861 Madison Avenue (2010 Regs. 14-1-4 c.).
3. The Project, as currently modified, requires first a use variance from the Zoning Board of Appeals and then site plan approval by the Planning and Zoning Commission (2010 Zoning Regs. subsection 14-7-1 b.) which precludes the Zoning Official from approving the Application.

3. The Project, as currently modified, requires first a use variance from the Zoning Board of Appeals and then site plan approval by the Planning and Zoning Commission (2010 Zoning Regs. subsection 14-7-1 b.) which precludes the Zoning Official from approving the Application.
4. The Project's Zoning Compliance Application remains incomplete and is not in conformance with the 2010 Zoning Regulations due to failure to file all submittal requirements and is hereby denied for the reasons stated herein, as well as those set forth in the attached correspondence from the Office of the City Attorney. The required letters from all utilities confirming that any necessary hookups can be made (2010 Zoning Regs. subsection 14-1-4 b.) and a use variance for a 4th lot at 1861 Madison Avenue to provide access to off-street parking for the Project (2010 Zoning Regs. subsections 14-1-4 c. and 14-7-1 b.) to be issued by the Zoning Board of Appeals were never filed.
5. The above-referenced Project's Zoning Compliance Application has not undergone required Site Plan Review by the Planning and Zoning Commission.
6. The Application contained material misrepresentations of fact, including but not limited to: (a) Lots 1773, 1843, and 1849 Madison Avenue constituted a single consolidated parcel, and (b) the parcel at 1861 Madison Avenue (which was subsequently presented as a material modification on or about April 2023) was not included in the Application nor shown on the site development plan for the Project, but was included in the architectural plans for the Project without being disclosed or otherwise properly identified. The Parcel at 1861 Madison Avenue is not zoned OR-G and thus is not appropriate as part of this Application, (being located in an R-A zone), nor is it proper to use that parcel as proposed (for site circulation and access to off-street parking for the Project) absent a use variance from the ZBA. The 2010 Zoning Regulations are clear that an application which requires a use variance is required to obtain site plan approval from the City's Planning and Zoning Commission (Planning and Zoning Commission). (See Sec. 12-20 and 14-2-2). The Applicants have not obtained and submitted evidence of having first obtained a use variance for 1861 Madison Avenue. Accordingly, the application for the proposed use is not eligible for administrative review.
7. Based upon incompleteness, an accumulation of misrepresentations, modified submissions, failures to comply with the requirements of the 2010 Zoning Regulations, the passage of an inordinate amount of time and other material irregularities, the Application for Zoning Compliance did not conform to the regulations in effect at the time it was filed (2010 Zoning Regs.), and for these and other reasons previously stated herein, as well as those set forth in the attached correspondence from the Office of the City Attorney, the Project Application for Zoning Compliance is hereby denied.

8. Alternatively, the Application for Zoning Compliance, as currently modified, constitutes a new application which is subject to review in accordance with the 2022 Zoning Regulations presently in effect (for the reasons stated herein) or, assuming arguendo, that Conn. Gen. Stat. Sec. 8-2h is inapplicable to decisions of the Zoning Official, the 2022 Zoning Regulations are applicable and since the Application does not comply with such regulations; and it is hereby denied.

9. A (properly issued) zoning plan approval or certificate of zoning compliance is required before a building permit can be issued by the municipal Building Official. Therefore, the Zoning Official's approval, or sign off, for the foundation permit for this Project (which permit apparently was issued in 2023 by the Building Official), also is null and void *ab initio* and/or has been revoked and/or rescinded. Notice of this decision is being sent to the Building Official to serve as the basis for his declaring null and void *ab initio*, and/or revoking, and/or rescinding the Project's foundation permit since it was predicated upon an erroneous plan approval as to zoning compliance.

10. Any newly filed Zoning Compliance Application and other applications for this Project will be reviewed pursuant to the current 2022 Zoning Regulations.

NOTE - a right to appeal to the ZBA from the decisions to: (1) determine null and void *ab initio*, and/or revoke, and/or rescind the Project plan approvals and (2) deny the Zoning Compliance Application is afforded to the applicants by Conn. Gen. Stat. Sec. 8-6 and 2010 Regs. Sec. 13-2-2 a.

Cordially



Paul Boucher
Zoning Department

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Mr. Paul Boucher
Zoning Department
Office of Planning and Zoning
45 Lyon Terrace
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July 27, 2023

**Re: LEGAL REPORT Concerning Proposed Development Project at
1773, 1843, and 1849 Madison Avenue, Bridgeport**

Dear Mr. Boucher:

I. ISSUE

As you are aware, at the direction of Mayor Ganim, the Office of the City Attorney has reviewed the facts, law, and official public records on file concerning the zoning approval, certification, and permitting process for a proposed project consisting of a four-story, 177 dwelling unit residential apartment complex at the above-referenced site on Madison Avenue ("Project"), including the issue as to which set of City Zoning Regulations governs review of applications for, and issuance of, such documents. This review has been conducted with input and assistance from the City's zoning, building and economic development departments, as well as outside legal counsel. During the meetings conducted regarding this matter, such offices welcomed our input and requested written legal analysis and guidance. (see duties and responsibilities of the City Attorney per Bridgeport City Charter, Chapter 7, Sec. 4 and Code of Ordinances, Sec. 2.10.080).

During this review of the Project, the Connecticut General Statutes as well as the City's 2010 Zoning Regulations were examined. Applicable state statutes and pertinent provisions of the prior zoning regulations are set forth in Appendix A which is attached to this letter.

II. STATEMENT OF RELEVANT FACTS

- The City adopted a set of zoning regulations effective January 1, 2010, which was amended on various occasions, and which remained in effect through December 31, 2021 ("2010 Zoning Regulations" or "2010 Zoning Regs.").

- An application entitled Zoning Compliance Application dated December 29, 2021, apparently was filed for the Project on December 30 or 31, 2021 (the “Application for Zoning Compliance” or the “Application”) by the law firm of Russo & Rizio, LLC on behalf of 1775 Madison Investments, LLC and 1849 Madison Investments, LLC (the “Applicants”).
 - The Zoning Compliance Application in its “*Instructions*” section expressly states in pertinent part that “Fees, payable at the time of making application, are not refundable and are in an amount established by the City Council.” (per 2010 Zoning Regs. at Section 14-8-3)
 - Bridgeport Code of Ordinances, Sec. 2.102.060 established a fee schedule pursuant to which a fee of \$2,015 was due at the time the Applicants filed its Zoning Compliance Application for the Project.
 - Effective January 1, 2022, the City adopted a successor set of zoning regulations (“2022 Zoning Regulations”) to succeed the 2010 Zoning Regulations.
 - The Zoning Compliance Application was not complete until the required fees were paid. (per 2010 Zoning Regs. at Section 14-8-4)
 - The fee for the Zoning Compliance Application for this Project was not paid until October 12, 2022.
 - The Zoning Compliance Application for the Project remains incomplete to date, since the required (per 2010 Zoning Regs. at Section 14-1-4 b.) letters from the utilities have not been filed.
 - Nevertheless, on October 17, 2022 (within fifteen (15) days of receipt of the requisite application fee on October 12, 2022) the Zoning Department electronically entered plan approval for the Project, with a notation that the plan approval expired a year later on October 17, 2023. (see 2010 Zoning Regs. at Sections 14-1-5 and 14-1-7 c.)
 - It is our understanding that the Zoning Department applied the 2010 Zoning Regs. in its review of the Project’s Zoning Compliance Application.
 - The Zoning Compliance Application for the Project expressly states in the section entitled “EXPIRATION” that: “*The Zoning compliance Certificate approval shall expire 12 months from the date of approval unless a building permit has been issued and construction has commenced and is being diligently pursued.*” (per 2010 Zoning Regs. at Section 14-1-7 c.)
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- On or about January 8, 2023, the plan approval was revoked and/or rescinded because no consolidation map of the 3 lots (1773,1843 and 1849 Madison Avenue) was filed/recorded.

- On or about March 14, 2023, subsequent to the 3 lots being consolidated, approval was electronically re-entered for the Project.
- The Zoning Compliance Application does not include 1861 Madison Avenue, an adjoining parcel of land. However, Sheet A-1 of the accompanying architectural plans, entitled “Garage Level Plan” depicts both on-site traffic circulation and parking situated on 1861 Madison Avenue without disclosing that fact.
- Prior to January 1, 2022, 1861 Madison Avenue was zoned R-A, not OR-G.
- Under the 2010 Zoning Regulations multi-family residential use is not permitted in the R-A zone. Accordingly, on-site traffic circulation and parking are also not permitted principal or accessory uses in that zone.
- A Consolidation Map (encompassing 1773, 184, and 1849 Madison Avenue) was filed on or about March 14, 2023.
- On or about April 2023, the applicants further modified the site plan accompanying the Zoning Compliance Application to include 1861 Madison Avenue as part of the development site for the provision of on-site parking and on-site vehicular circulation for the Project. The modification further included a new parking lot on the combined parcels.
- No written Certificate of Zoning Compliance has been issued for the Project to date.

III. DISCUSSION / ANALYSIS of PLAN APPROVAL

It is this office’s understanding that as a result of new information brought to light during the course of this review, you now have serious questions, concerns, and reservations as to whether or not the plan approval for the Project at 1773, 1843 and 1849 Madison Avenue, Bridgeport was issued by your office on the basis of incomplete and inaccurate information. As an interim response, as Zoning Official, you temporarily revoked all such plan approvals while you review the impact, if any, of that new information, and obtain legal guidance from the City Attorney’s Office. In the notice of your temporary revocation, you advised the Applicants that, in the interim, they may not rely upon this prior approval.

Based on our further discussions and analysis, our understanding is that it would be proper for you, as Zoning Official, to determine to revoke the plan approvals for the Project and to deny the Application for Zoning Compliance for various reasons, including, but not limited to, the following:

1. The Application For Zoning Compliance is not Complete and in Conformance with the 2010 Zoning Regulations

Assuming arguendo that the provisions of Connecticut General Statutes Section 8-2h apply to the Application for Zoning Compliance (see discussion below, at section 3), for one or

more of the reasons discussed both in this section and elsewhere in this report, the Application for Zoning Compliance for the Project is not complete and in conformance with the applicable procedural and substantive provisions of the zoning regulations in effect at the time of its filing. Consequently, it failed to meet the requirements for filing and approval and should have been rejected/refused or denied.

The pertinent application fee set by the Bridgeport City Council and known to the Applicants was not paid at the time the Application for Zoning Compliance was filed. Indeed, it was not paid until approximately 10.5 months later. The failure to pay the requisite fee, despite a request to do so in February 2022, from the Zoning Department, appears to have been deliberate, perhaps with the intention of delaying the date by which a plan approval, if issued, would expire, or delaying the date after which the Application could no longer be materially modified.

Secondly, the Applicants did not comply with the provision in the 2010 Zoning Regulations which required them to submit letters from all utilities at the time of making application.

In addition, the Applicants also failed to conform to other provisions of the Regulations. The Application and its accompanying site development plan describe the three (3) lots for which a determination of zoning compliance is requested, as consisting of 1773, 1843 and 1849 Madison Avenue. The architectural plan, Sheet A-1 which depicts the proposed off-street parking for the Project indicates, however, that a substantial number of the proposed parking spaces were to be constructed on an adjacent, residentially zoned, lot which was not part of the Application. This fact was not disclosed anywhere on the Application and was only recently discovered by the Zoning Office and the Zoning Official. Furthermore, the proposal to use property not part of the development site and not shown on the site development plan as an integral part of the development is obviously not in conformance with the 2010 Zoning Regulations. Further, the undisclosed 4th parcel, known as 1861 Madison Avenue, was in a different zoning district from the rest of the properties which make up the Project. The Application for Zoning Compliance represents that the property to be developed is in the OR-G zone. However, 1861 Madison Avenue was situated in the R-A zone and the proposed use of that lot, i.e., for parking and on-site traffic circulation, is not a permitted use and would require a use variance from the Zoning Board of Appeals. Accordingly, since the Application did not properly disclose the Applicants' intention to develop a 4th lot as part of the Project, not only did the Application fail to comply with the substantive provisions of the 2010 Zoning Regulations, it also failed to comply with the procedural provisions (e.g. See Section 14-1-4, the Application was not accompanied by all required approvals since the Applicants never applied for and have not obtained the required use variance for 1861 Madison Avenue).

The failure to obtain a use variance prior to filing the Application for Zoning Compliance is both a procedural non-conformance, and a substantive non-conformance with the 2010 Zoning Regulations in two important respects. First, it proposes a use which is not allowed in the R-A zone. Secondly, it means the Zoning Enforcement Officer has no authority to review the proposal administratively in that section 14-2-2 requires site plan review by the Planning and Zoning Commission if an application "involves a variance of use (Section 14-7-1 b.)."

The Application should also be denied for failure to conform to Section 14-12 of the 2010 Zoning Regulations which requires a two-step review process prior to submitting a formal application to the Planning and Zoning Commission, the Zoning Board of Appeals or the Zoning Office. The provisions of Section 14-12 are mandatory, yet the Applicants did not take part in, or submit the information required for, a Technical Review prior to filing the Application.

Assuming *arguendo* that officials of the City's Zoning Department are in fact deemed to be "an agency exercising zoning authority", then pursuant to Connecticut statutory law the City's Zoning Department in reviewing this Project's Application for Certificate of Zoning Compliance was legally obligated to apply the zoning regulations in effect at the time of the filing of the application for certificate of zoning compliance. "Connecticut state courts interpreting § 8-2h have held that, regardless of later amendments, only those regulations that were in place at the time an application was filed may be applied to that application . . . The plain language of the statute, however, establishes that applications that are in conformance with the applicable zoning regulations as the of the time of filing, and no others, may be so 'grandfathered.'" (Citations omitted.) *Granite State Outdoor Advertising, Inc. v. Orange*, 303 F3d 450, 452 (2nd Cir. 2002)."
Valley Mobile Home Park, LLC v. Naugatuck Zoning Comm'n, No. CV0904019300S, 2012 WL 2899103, at 7 (Conn. Super. Ct. June 18, 2012).

Therefore, even if applications filed with the City's Zoning Enforcement Officer are, in general, subject to Section 8-2h (a), this Project's Zoning Compliance Application still would have had to be "filed" prior to January 1, 2022, in order for the *grandfather* clause protection of Section 8-2h (a) to apply to this Project. In reviewing the Zoning Compliance Application for this Project, it is apparent that this application was not "complete" prior to January 1, 2022 (nor even as of the present date), for the reasons that all necessary elements were not submitted at the time of filing (December 30 or 31, 2021). Specifically, as stated hereinbefore:

(1) The Applicants did not take part in, or submit the information required for, a Technical Review prior to filing the Application as mandated by 2010 Zoning Regs. Sec. 14-12.

(2) the application was not filed "together with the pertinent application fee" (See 2010 Regs, subsections 13-5(b) and 14-1-3; and Zoning Compliance Application at section entitled *Instructions*). The fee was not paid until approximately 10.5 months after the Application for Zoning Compliance was submitted, and

(3) the application failed to comply with the mandate that "[t]he application shall be accompanied by . . . letters from all utilities confirming that any necessary hookups can be made". (2010 Regs. Sec. 14-1-4 b.).

(4) the application (as amended) failed to include the required use variance for the lot known as 1861 Madison Avenue (2010 Regs. 14-1-4 c.).

"[A] zoning regulation is legislative in nature, and its interpretation involves the principles of statutory interpretation" (Internal quotation marks omitted.) *Barbieri v. Planning & Zoning Commission*, 80 Conn. App. 169, 174, 833 A. 2d 939 (2003). In construing statutes, we presume that there is a purpose behind every sentence, clause, or phrase used in an act and that

no part of a statute is superfluous.” (Internal quotation marks omitted.) *Echavarria v. National Grange Mutual Ins. Co.*, 275 Conn. 408, 415, 880 A 2d 882 (2005). “Whenever possible, the language of zoning regulations will be construed so that no clause is deemed superfluous, void or insignificant . . . The regulations must be interpreted so as to reconcile their provisions and make them operative so far as possible . . . *Farmington-Girard, LLC v. Planning and Zoning Commission of the City of Hartford*, 339 Conn. 268, (2021). See also *Heim v. Zoning Board of Appeals*, 289 Conn. 709, 715-716 (2008). *Jalowiec Realty Associate, L.P. v. Planning & Zoning Commission*, 278 Conn. 408, 414 (2006). Conn. Gen. Stat., Sec. 1-1. Words and phrases. Construction of statutes expressly states: “(a) In the construction of the statutes, words and phrases shall be construed according to the commonly approved usage of the language. . . .” Moreover, the 2010 Zoning Regulations at Section 2-1 states: “In the construction of these Regulations, words and phrases shall be construed according to the commonly-approved usage of the language, except that technical words and phrases that have acquired a particular and appropriate meaning in law shall be construed accordingly. . . . The word “shall” is mandatory and not directory. . . .”

The term “accompany” means “to go with as an associate or companion”. Merriam-Webster Dictionary [Accompany Definition & Meaning - Merriam-Webster](#). The phrase “accompanied by” is defined by the *Cambridge Dictionary* as meaning: “to go with someone [or something] or to be provided or exist at the same time as something; provided with or existing at the same time as something.” <https://dictionary.cambridge.org/dictionary/english/accompany>. “Using ‘by’ with an inanimate object means that two things come together or simultaneously. It means that one object goes with something else. So, when we say ‘waffles are accompanied by syrup,’ we mean that waffles and *on*)(*grammarhow.com*), [Writing & Speaking Tips](#), by Lassen, Martin. In essence then, to be “accompanied by” something means that it arrives at the same time or simultaneously.

Thus, in accordance with the rules of statutory construction and the provisions of the City’s Zoning Regulations, the requirement for filing fees (see 2010 Zoning Regs. subsections 13-5(b) and 14-1-3; 14-8-3, and 14-8-4; and Zoning Compliance Application at section entitled *Instructions*), and (2) the mandate that the application shall be accompanied by letters from all utilities confirming that any necessary hookups can be made (see 2010 Zoning Regs. subsection 14-1-4) mean, in plain language, that they must be filed with and at the same time as the Zoning Compliance Application form. (see 2010 Zoning Regs. Section 2-1 which expressly states: The word “shall” is mandatory and not directory.) A mandatory provision in a statute, regulation, or other law is one which if not followed renders the proceeding to which it relates illegal and void. In contrast, a directory provision is an enactment that provides only what should be done, but without provision for enforcement or sanctions.

The unpublished Superior Court opinion, *Valley Mobile Home Park, LLC v. Naugatuck Zoning Commission*, Superior Court of Connecticut, Judicial District of Waterbury, No. CV0904019300S, Pellegrino, JTR, 54 Conn. L. Rptr. 254, 2012 WL 2899103, (June 18, 2012) held that an incomplete special permit application pending before the Naugatuck zoning commission was entitled to enjoy Conn. Gen. Stat. Sec. 8-2h grandfathering privileges, despite the applicant’s failure to submit with the initial filing various items enumerated in the “special permit checklist” (including an inland wetlands report, a fire protection report, a police report

and a water company report). This Superior Court decision is distinguishable from the current situation in that Bridgeport's Zoning Regulations at Section 2-1 clearly establishes "shall" as mandatory, such that the missing utility letters are necessary to complete the application. Moreover, the *Valley Mobile Home Park, LLC* decision seemingly improperly construed the import of an absence of plain language in the Waterbury Zoning Regulations specifying that all the required elements of the special permit application "must be submitted at the time that the application is initially filed". The Court disregarded traditional rules of statutory construction by ignoring the plain language of the regulations as adopted, relying instead on what the regulations could have been drafted to say. Tellingly the Court in the *Valley Mobile* decision stated: "In the present case, the parties have not cited, and this court's research has not revealed, any authority regarding how strictly 'conformance' with applicable regulations is to be construed under §8-2h." 54 Conn. L. Rptr. 254, 259. Again, our Project is distinguishable in that the City's Zoning Regulations expressly provide that the use of the term "shall" is mandatory, not directory. (Zoning Regs. Sec. 2-1).

Although a court is not bound by a zoning board's interpretation of its regulations, a board's reasonable, time-tested interpretation is given great weight. *Doyen v. Zoning Board of Appeals*, 67 Conn. App. 597, 603-604, 789 A.2d 478, cert. denied, 260 Conn. 901, 793 A.2d 1088 (2002). *Jalowiec Realty Associate, L.P. v. Planning & Zoning Commission*, 278 Conn. 408, 414 (2006). (a site plan application was complete notwithstanding plaintiff's failure to submit an obligatory sewer permit in light of commission's long-term practices and time-tested interpretation of the regulation, because evidence established that, in practice the commission seldom, if ever, required applicants to submit sewer permits with their site plan applications.)

The Court in *Valley Mobile Home Park, LLC*, supra, (citing the CT Supreme Court's Decision in the *Jalowiec Realty Associates* case) also relied in its decision on the prior common practice of the town's planning and zoning commission with respect to accepting supporting documents and revisions to a special permit application throughout the public hearing process, and ruled that "in accordance with the commission's time-tested interpretation of its regulations governing special permit application, [defendant] Nichols' application was complete notwithstanding its subsequent submission of the requisite reports." However, the *Jalowiec* Decision is distinguishable in that the plain language of the Ansonia zoning regulations was not as plain and clear as that in the Bridgeport regulations. Indeed, the obligation in the Ansonia regulations for documents to accompany a site plan submission was a qualified one (unlike the Bridgeport regulations), and stated in pertinent part "and shall be accompanied by the following *where appropriate*. . . (Emphasis added). *Jalowiec Realty Associates, L.P.*, supra at 410.

The decision in the matter of *Farmington-Girard, LLC v. Planning and Zoning Commission of the City of Hartford*, 339 Conn. 268 (2021) (held that the city's [Hartford] zoning administrator did not have the authority to reject or void the plaintiff's application for a special permit on the ground that it was incomplete). This case, too, is distinguishable from the matter at hand as the substantive matter at issue was the Hartford zoning administrator's decision to void a special permit because it was incomplete. The Supreme Court relied on its finding that "Nothing in . . . the [Hartford zoning] regulations or the enabling statutes suggests that zoning administrators have any authority to act, authoritatively, definitively, or for any reason, on an application for a special permit.

Assuming the requirements for a complete application established by 2010 Zoning Regs. subsections 14-1-3 and 14-1-4 were indeed mandatory, the legal consequence would be that the application could have been rejected/refused or denied because it failed to conform to the procedural requirements of the regulations in effect at the time of the attempted filing. The Applicant would then have been required to resubmit a new complete Zoning Compliance Application. In the event a complete application was not filed prior to January 1, 2022 (which it was not), then any such new application would not have benefited from of the *grandfather* provisions of Section 8-2h (a), and therefore would have been subject to review under the new 2022 Zoning Regulations.

However, even though the Project's incomplete Zoning Compliance Application was not rejected or refused; the incomplete application should not have been reviewed prior to being complete and, thus, should not have resulted in the October 17, 2022, entry of plan approval. The Application for this Project clearly was incomplete as of January 1, 2022; and to date, remains incomplete.

Once a complete application was filed, such application should have been subject to review in accordance with the zoning regulations in effect as of such date. For the foregoing reasons, if and when completed, the Application for this Project should be reviewed in accordance with the 2022 Zoning Regulations. Although no certificate of zoning compliance has been approved (or denied) for the Project to date, plan approval apparently was electronically entered on October 17, 2022, by the City's Zoning Official, following payment of the requisite \$2015 application fee (established by BPT Code of Ordinances, § 2.102.060 G.) on October 12, 2022, with a notation that the plan approval's one (1) year expiration date for this Project is October 17, 2023.

2. **Plan as Modified does Not Qualify for Administrative Review Process by Zoning Official and Constitutes a New Application**

- The application for zoning compliance was reviewed administratively and subsequently approved by the zoning department and Zoning Official because it appeared at that time to satisfy the criteria for administrative review set forth in the 2010 Zoning Regs.
- The approved plan was recently (on or about April 2023) modified to incorporate a 4th lot (1861 Madison Avenue) into the site development plan for the Project, previously comprised only of 1773, 1843, and 1849 Madison Avenue.
- The recent inclusion of 1861 Madison Avenue changed the Zoning Compliance Application in a material and fundamental way. The application no longer complies with the standards for administrative review pursuant to the 2010 Zoning Regulations; and, more importantly, it is a new application due to the April 2023 modification.

Pursuant to Section 14-8-4 of the Bridgeport Zoning Regulations, "All applications are considered final once submitted with the requisite fees and shall not be *materially* modified." (emphasis supplied) Although the requisite fees were not submitted until October, 2022, on or about April 2023, (approximately 16 months after applying) the Applicants modified their

Application for Zoning Compliance to include an additional piece of property (i.e. 1861 Madison Avenue) for the provision of on-site parking and traffic circulation, initially, [eventually the use of 1861 Madison Avenue was limited to on-site traffic circulation] in order to provide access to the rear of the development site. The inclusion of 1861 Madison Avenue more than a year after filing is a very material modification of the Application which is not allowed by the 2010 Zoning Regulations. Accordingly, given both the material nature of the modification and the lengthy passage of time since the initial Application, and given that the modification occurred after payment of the fees, the changed Application would constitute a new application which is no longer grandfathered under Connecticut General States 8-2h (if ever applicable) and must be reviewed in accordance with the 2022 Zoning Regulations which apply to all new applications filed since January 1, 2022. Further, as noted elsewhere, since the proposed use requires a use variance (and one has not been obtained) the Zoning Enforcement Officer is without authority to accept or administratively review an Application for Zoning Compliance. Instead, in the appropriate sequence, this proposal must be submitted both to the Planning and Zoning Commission for site plan review, and also to the Zoning Board of Appeals for approval of a request for a use variance.

Despite the consolidation of the parcels at 1773, 1843 and 1849 Madison Avenue, the entire development site now is no longer located on a single contiguous lot, but rather is on 2 separate lots, which is inconsistent with the applicable requirements of the City Zoning Department as previously communicated to the applicants.

Also, the 4th lot, 1861 Madison Avenue, was zoned R-A (not OR-G as is the remainder of the site); and the contemplated use of 1861 Madison Avenue is for an internal site driveway to connect parking on the rear portion of 1773 Madison Avenue with the on-site parking and driveway proposed for the front portion of the same lot. The developer's apparent intent is to provide additional parking for the contemplated multifamily development on a portion of 1773 Madison Avenue. As previously noted, the proposed use of 1861 Madison Avenue is not a permitted use and would require a use variance from the ZBA. The 2010 Zoning Regulations are clear that an application which requires a use variance is required to obtain site plan approval from the City's Planning and Zoning Commission. (See Sec. 14-2-2). Accordingly, the application for the proposed use is not eligible for administrative review.

As a consequence of this most recent plan modification, the Zoning Official does not possess regulatory authority to approve the plan as modified. Therefore, it is appropriate for you to revoke any and all plan approvals and to deny the Zoning Compliance Application. Given the inclusion of sheet A-1 with the materials submitted with the initial Application for Zoning Compliance, which clearly does not include a 4th lot, one might conclude that the Application either concealed or mischaracterized the Applicants' intent, *ab initio*, with respect to 1861 Madison Avenue.

3. Conn. Gen. Stat. Sec. 8-2h (a) Is Inapplicable to Rulings by Zoning Official

Conn. Gen. Stat. Sec. 8-2h (a) states: "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.”

“The current rule in this state is that the validity of a planning and zoning commission’s action is to be determined by reference to the zoning laws and regulations in effect at the time that the challenged action was taken.” *Michel v. Planning & Zoning Commission*, 28 Conn. 923(1992). The provisions of § 8-2h . . . are directed at situations where an application is filed with zoning authority that seeks to make use of land in a manner permitted under regulations existing at the time the application is filed. In those circumstances, § 8-2h requires the zoning authority, acting in its administrative capacity, to process the application in accordance with the regulations in effect at the time the application is filed.” *Homart Development Co. v. Planning & Zoning Commission*, 26 Conn. App. 212, 218 (1991).

By the plain language of Section 8-2h (a), such statutory provision does not appear to apply to applications filed with the City’s Zoning Official, Zoning Enforcement Officer or Zoning Office. Rather, the grandfathering protections of Section 8-2h (a) apply only to the enumerated public bodies - a zoning commission, planning and zoning commission, zoning board of appeals, or agency exercising zoning authority.

An individual administrative agent appointed by the Planning and Zoning Commission (Zoning Official), who together with his designees shall be the Zoning Enforcement Officers of the City (2010 Regs. subsections 13-4-1 and 13-4-2) is not a zoning commission (see Conn. Gen. Stat. §8-1 and 2010 Regs. Sec. 13-3-1), a planning and zoning commission, or a zoning board of appeals (Conn. Gen. Stat. §8-5 and 2010 Regs. Sec. 13-2). Neither is the City’s Zoning Office. The decisions of these zoning officials are appealable to the Zoning Board of Appeals (2010 Regs. Sec. 14-10-1 and Conn. Gen. Stat. §8-7), while decisions of the Planning and Zoning Commission (2010 Regs. Sec. 14-10-3 and Conn. Gen. Stat. §8-9) and the Zoning Board of Appeals (2010 Regs. Sec. 14-10-2 and Conn. Gen. Stat. §8-8) are appealable to Connecticut Superior Court.

The general statutes do not appear to contain a definition of the term “agency exercising zoning authority.” However, it appears that neither the Zoning Official nor Zoning Enforcement Officer is an “agency exercising zoning authority.” As stated above, the Zoning Official is an individual appointee of the Planning and Zoning Commission (2010 Regs. subsection 13-4-1); and the Zoning Enforcement Officer is “an official of the City of Bridgeport Zoning Department” (2010 Regs. Sec. 2-2 *Definitions*). The Zoning Official and his designees are the Zoning Enforcement Officers of the City (see Section 13-4-2)

Further, Connecticut General Statutes 8-2h(b), which refers to, and grandfathers, certain enumerated applications filed with a municipal building official, does not include applications filed for review by a municipal zoning official within the provisions of the statute.

4. The Zoning Enforcement Officer Lacks Authority under the 2010 Zoning Regulations to Review the Application For Zoning Compliance

The 2010 Zoning Regulations permit administrative review of certain applications in limited circumstances. Sections 12-20, 14-1-6 and 14-2-2 permit administrative review of

certain uses which are permitted as of right and are not subject to a public hearing. Section 14-2-2, in particular, provides that certain enumerated uses are eligible for administrative review by staff rather than the Planning and Zoning Commission: (i) one and two family dwellings (ii) community gardens and (iii) the Administrative Review uses listed in Article 12 (see Section 12-20), but only so long as an enumerated use does not involve one of four listed criteria in Section 14-2-2. Pursuant to the regulations, any application which involves a use variance, a special permit, coastal site plan approval or a subdivision (excluding permitted first cuts) requires site plan review by the Planning and Zoning Commission and would not be eligible for Administrative Review. The Project does not fit any of the enumerated uses eligible for Administrative Review and, as such, the Zoning Enforcement Officer lacks the authority to conduct an administrative review; especially given the inclusion of land outside the development site which would, if included, require a variance of use.

Consequently, the Application for Zoning Compliance also does not conform to the 2010 Zoning Regulations regarding Administrative Review. The Applicants should have filed an application for site plan review by the Planning and Zoning Commission.

5. **Project's Zoning Compliance Application Contained Material Misrepresentations of Fact**

The plans and maps submitted for the Project's Zoning Compliance Application inaccurately and misleadingly presented Lots 1773, 1843, and 1849 Madison Avenue as constituting a single consolidated parcel. In fact, the 3 addresses listed on the Application were not consolidated until on or about March 2023. Moreover, sheet A-1, the garage level plan, attached to the application is also misleading in that it depicts a substantial number of the proposed on-site parking spaces on 1861 Madison Avenue (even though that property is not part of the Project), and does not clearly state or label that fact, or the fact that a material number of the proposed parking spaces for the Project are actually on an adjoining parcel which is not properly zoned for that purpose. It is not until approximately 16 months later that the Applicants presented 1861 Madison Avenue as a modification to the Application. This 4th parcel was not zoned as OR-G and thus was not appropriate as part of this Application, (as it is located in an R-A zone); nor are the uses proposed for such parcel (i.e., to enhance internal site circulation and provide access to additional off-street parking for the Project) allowed in the RA zone absent a use variance from the ZBA.

The 2010 Zoning Regulations subsection 14-1-7 b. *Certificate Revocation* state: '[t]he Zoning Enforcement Officer shall revoke a Certificate of Zoning Compliance upon a finding that the Certificate application contained material misrepresentations of fact or a finding that the parameters of the permit are materially violated by work or activity that does not conform to the approved plans for which the Certificate has been issued.

IV. **Authority to Revoke / Rescind Issuance of Certificates / Licenses / Approvals**

Decisions whether to revoke / rescind prior land use approvals, certifications, permits, etc. for this Project (and then to apply the proper set of zoning regulations to any newly filed such applications) may substantively impact what development is permitted on the properties in

question, and thereby not only impact the interests and property rights of the owners and/or applicants, but also has the potential to affect those of abutters and any other aggrieved parties.

The authority to render a decision as to when the application for Certificate of Zoning Compliance was in fact “filed” with the Zoning Enforcement Officer, and thus which set of zoning regulations to apply to the review of such application, rests (in the first instance) with the City’s Zoning Official (2010 Regs. subsection 13-4-2 *Zoning Enforcement Officer* and subsection 13-4-3 *Powers and Duties*).

The 2010 Zoning Regulations at subsection 14-1-7 b. *Certificate Revocation* state: “[t]he Zoning Enforcement Officer shall revoke a Certificate of Zoning Compliance upon a finding that the Certificate application contained material misrepresentations of fact or a finding that the parameters of the permit are materially violated by work or activity that does not conform to the approved plans for which the Certificate has been issued. In accordance with 2010 Regs. Section 2-1, these bases for revocation of a Certificate of Zoning Compliance are mandatory. However, they are not necessarily exclusive.

2010 Zoning Regulations Article 13 ADMINISTRATION provides the Zoning Enforcement Officer with miscellaneous powers and duties and expressly states: “[f]urthermore, the descriptions of the powers and duties provided in this Article 13 are not meant to be exhaustive but are meant instead to be descriptions of those primary duties that are relevant to the application, administration and enforcement of these regulations. Moreover, enforcement authority is expressly granted pursuant to 2010 Zoning Regs. Section 13-4 *Enforcement*, wherein the Zoning Official and his designees are identified as the City’s Zoning Enforcement Officers with the responsibility and authority to enforce the provisions of the Zoning Regulations in accordance with administrative rules and procedures established by the Planning and Zoning Commission.

In addition, Connecticut caselaw supports the proposition that application of the wrong set of zoning regulations would provide a basis for proper revocation of the Plan Approval issued for the Project. “A zoning or building permit or certificate may be revoked or nullified where it was illegally issued, as where it was unauthorized, or violates or does not comply with, or conform to, the zoning laws. . . .” 101A *C.J.S. Zoning and Land Planning* § 300. A zoning “officer may revoke a permit in the proper circumstance.” *Ross v. Zoning Bd. of Appeals of Town of Westport*, 118 Conn. App. 90, 101–02 (2009) (Ross, however, affirmed the reversal of the decision of the ZBA which upheld a zoning officer’s revocation of a permit based on inapplicable regulations.). That a zoning officer may revoke a permit in the proper circumstances, “[T]hat authority is necessarily premised on a finding that the conditions of the permit or certificate have not been satisfied.” *Id.*, 102. The Court in *Ross* cites several cases standing for the unobjectionable proposition that a zoning committee or appeals board may revoke a permit after subsequently determining that the property is non-complying. See, e.g., *Manchester v. Zoning Board of Appeals*, 18 Conn. App. 69,73, 556 A. 2d 946 (1989) (upholding revocation of zoning permit after zoning board of appeals subsequently determined lot was not valid non-conforming use), cert. denied, 212 Conn. 804, 561 A.2d 946 (1989).

Any such decisions of the Zoning Official or Zoning Enforcement Officer are appealable first to the Zoning Board of Appeals (Conn. Gen. Stat. §8-6 and 2010 Zoning Regs. subsections 13-2-2 a. 1. and 14-10-1) and then to the State Court (Conn. Gen. Stat. §8-8 and Zoning Regs. subsection 14-10-2). Therefore, the Zoning Enforcement Officer is not the final arbiter of this matter; and any revocation / rescission of plan approval) for the Project would most likely be the subject of administrative and judicial review.

V. Zoning Official's Potential Remedial Actions

Based upon the law and upon the findings and assessments as set forth herein, it may be proper and prudent for the City's Zoning Department and Building Department to revoke and/or rescind any approvals, certifications or permits (e.g., plan approval and foundation permit) issued to date that are premised upon the Zoning Enforcement Officer's apparent approval of this Project as complying with the 2010 Zoning Regulations.

Should the City's Zoning Official concur with this analysis and determine to exercise the authority vested in the City's Zoning Enforcement Officer by the City's Zoning Regulations (Regs. Sec. 13-4 *Enforcement* and subsection 14-1-7 b. *Certificate Revocation*); then the Zoning Official should consider notifying the Project Applicants that (i) the Application for Zoning Compliance, as currently modified, constitutes a new application which is subject to review in accordance with the 2022 Zoning Regulations presently in effect; (ii) alternatively, he has no authority to issue a plan approval since the Project, as currently modified, requires first a use variance from the Zoning Board of Appeals and then site plan approval by the Planning and Zoning Commission (2010 Zoning Regs. subsection 14-7-1 b.); (iii) based upon incompleteness, an accumulation of misrepresentations, modified submissions, failures to comply with the requirements of the 2010 Zoning Regulations, the passage of an inordinate amount of time and other material irregularities, the Application for Zoning Compliance did not conform to the regulations in effect at the time it was filed; (iv) all plan approvals issued for this Project are null and void *ab initio*, and/or revoked, and/or rescinded; and (v) the Project's Zoning Compliance Application is denied. Such written notification should include notice of Applicants' right to appeal to the ZBA from the Zoning Department's decisions in accordance with Conn. Gen. Stat. Sec. 8-6 and 2010 Zoning Regs. Sec. 13-2-2 a. The following is some suggested notice language for your review and consideration:

Re: Zoning Compliance Application for Proposed Development Project at 1773, 1843, and 1849 Madison Avenue, Bridgeport ("Project")

Based on new information recently brought to the attention of the City's Zoning Department, as well as conferences with legal counsel for the City, and in light of the attached correspondence dated July 27, 2023, from the Office of the City Attorney, I hereby advise you as follows:

1. Plan approval for the above-referenced Project was entered electronically on or about October 17, 2022, and revoked and/or rescinded on or about January 8, 2023 (because no consolidation map of lots 1773, 1843 and 1849 Madison Avenue was filed/recorded). On or about March 14, 2023, subsequent to the 3 lots being consolidated, plan approval was

electronically re-entered for the Project. Any and all plan approvals entered electronically (or otherwise granted) for this Project are null and void *ab initio*, and/or have been revoked and/or rescinded, for the reasons stated herein, as well as those set forth in the attached correspondence from the Office of the City Attorney.

2. All necessary elements for the Project's Zoning Compliance Application were not submitted at the time of filing (December 30 or 31, 2021) (also referred to as "Application"). Specifically:
 - (a) The applicants did not take part in, or submit the information required for, a Technical Review prior to filing the Application as mandated by 2010 Zoning Regs., Sec. 14-12;
 - (b) the Application was not filed "together with the pertinent application fee" (See 2010 Regs, subsections 13-5(b) and 14-1-3; and Zoning Compliance Application at section entitled *Instructions*). The fee was not paid until approximately 10.5 months after the Application for Zoning Compliance was submitted;
 - (c) the Application failed to comply with the mandate that "[t]he application shall be accompanied by . . . letters from all utilities confirming that any necessary hookups can be made". (2010 Regs. Sec. 14-1-4 b.); and
 - (d) the Application (as amended) failed to include the required use variance for the lot known as 1861 Madison Avenue (2010 Regs. 14-1-4 c.).
3. The Project, as currently modified, requires first a use variance from the Zoning Board of Appeals and then site plan approval by the Planning and Zoning Commission (2010 Zoning Regs. subsection 14-7-1 b.) which precludes the Zoning Official from approving the Application.
4. The Project's Zoning Compliance Application remains incomplete and is not in conformance with the 2010 Zoning Regulations due to failure to file all submittal requirements and is hereby denied for the reasons stated herein, as well as those set forth in the attached correspondence from the Office of the City Attorney. The required letters from all utilities confirming that any necessary hookups can be made (2010 Zoning Regs. subsection 14-1-4 b.) and a use variance for a 4th lot at 1861 Madison Avenue to provide access to off-street parking for the Project (2010 Zoning Regs. subsections 14-1-4 c. and 14-7-1 b.) to be issued by the Zoning Board of Appeals were never filed.
5. The above-referenced Project's Zoning Compliance Application has not undergone required Site Plan Review by the Planning and Zoning Commission.
6. The Application contained material misrepresentations of fact, including but not limited to: (a) Lots 1773, 1843, and 1849 Madison Avenue constituted a single consolidated parcel, and (b) the parcel at 1861 Madison Avenue (which was subsequently presented as a material modification on or about April 2023) was not included in the Application nor

shown on the site development plan for the Project, but was included in the architectural plans for the Project without being disclosed or otherwise properly identified. The Parcel at 1861 Madison Avenue is not zoned OR-G and thus is not appropriate as part of this Application, (being located in an R-A zone), nor is it proper to use that parcel as proposed (for site circulation and access to off-street parking for the Project) absent a use variance from the ZBA. The 2010 Zoning Regulations are clear that an application which requires a use variance is required to obtain site plan approval from the City's Planning and Zoning Commission (Planning and Zoning Commission). (See Sec. 12-20 and 14-2-2). The Applicants have not obtained and submitted evidence of having first obtained a use variance for 1861 Madison Avenue. Accordingly, the application for the proposed use is not eligible for administrative review.

7. Based upon incompleteness, an accumulation of misrepresentations, modified submissions, failures to comply with the requirements of the 2010 Zoning Regulations, the passage of an inordinate amount of time and other material irregularities, the Application for Zoning Compliance did not conform to the regulations in effect at the time it was filed (2010 Zoning Regs.), and for these and other reasons previously stated herein, as well as those set forth in the attached correspondence from the Office of the City Attorney, the Project Application for Zoning Compliance is hereby denied.
8. Alternatively, the Application for Zoning Compliance, as currently modified, constitutes a new application which is subject to review in accordance with the 2022 Zoning Regulations presently in effect (for the reasons stated herein) or, assuming *arguendo*, that Conn. Gen. Stat. Sec. 8-2h is inapplicable to decisions of the Zoning Official, the 2022 Zoning Regulations are applicable and since the Application does not comply with such regulations; and it is hereby denied.
9. A (properly issued) zoning plan approval or certificate of zoning compliance is required before a building permit can be issued by the municipal Building Official. Therefore, the Zoning Official's approval, or sign off, for the foundation permit for this Project (which permit apparently was issued in 2023 by the Building Official), also is null and void *ab initio* and/or has been revoked and/or rescinded. Notice of this decision is being sent to the Building Official to serve as the basis for his declaring null and void *ab initio*, and/or revoking, and/or rescinding the Project's foundation permit since it was predicated upon an erroneous plan approval as to zoning compliance.
10. Any newly filed Zoning Compliance Application and other applications for this Project will be reviewed pursuant to the current 2022 Zoning Regulations.

NOTE - a right to appeal to the ZBA from the decisions to: (1) determine null and void *ab initio*, and/or revoke, and/or rescind the Project plan approvals and (2) deny the Zoning Compliance Application is afforded to the applicants by Conn. Gen. Stat. Sec. 8-6 and 2010 Regs. Sec. 13-2-2 a.

Very truly yours,



Mark T. Anastasi

City Attorney

- c: Daniel Shamas, Chief of Staff
- Thomas Gaudett, Deputy Chief of Staff
- Thomas Gill, OPED Director
- Patrick Kleps, Zoning Department
- Nicholas Sampieri, Zoning Department
- Arben Kica, Building Official
- Robert L. Berchem, Esq.
- Stephen W. Studer, Esq.

APPENDIX A

APPLICABLE STATE STATUTES

Connecticut General Statutes, Sec. 1-1. Words and phrases. Construction of statutes. (a) In the construction of the statutes, words and phrases shall be construed according to the commonly approved usage of the language; and technical words and phrases, and such as have acquired a peculiar and appropriate meaning in the law, shall be construed and understood accordingly

Connecticut General Statutes. 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.

Connecticut General Statutes, Sec. 8-3 Establishment and changing of zoning regulations and districts. Enforcement of regulations. Certification of building permits and certificates of occupancy. Site plans. District for water-dependent uses:

... (f) No building permit or certificate of occupancy shall be issued for a building, use or structure subject to the zoning regulations of a municipality without certification in writing by the official charged with the enforcement of such regulations that such building, use or structure is in conformity with such regulations or is a valid nonconforming use under such regulations. Such official shall inform the applicant for any such certification that such applicant may provide notice of such certification by either (1) publication in a newspaper having substantial circulation in such municipality stating that the certification has been issued, or (2) any other method provided for by local ordinance. 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 applicant, and (D) a statement that an aggrieved person may appeal to the zoning board of appeals in accordance with the provisions of section 8-7. . .

Connecticut General Statutes Sec. 8-6. Powers and duties of board of appeals.

(a) The zoning board of appeals shall have the following powers and duties: (1) To hear and decide appeals where it is alleged that there is an error in any order, requirement or decision made by the

official charged with the enforcement of this chapter or any bylaw, ordinance or regulation adopted under the provisions of this chapter; (2) to hear and decide all matters including special exceptions and special exemptions under section 8-2g upon which it is required to pass by the specific terms of the zoning bylaw, ordinance or regulation; and (3) to determine and vary the application of the zoning bylaws, ordinances or 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 bylaws, ordinances or 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. No such board shall be required to hear any application for the same variance or substantially the same variance for a period of six months after a decision by the board or by a court on an earlier such application. . . .

Connecticut General Statutes, Sec. 8-7. Appeals to board. Hearings. Effective date of exceptions or variances; filing requirements.

The concurring vote of four members of the zoning board of appeals shall be necessary to reverse any order, requirement or decision of the official charged with the enforcement of the zoning regulations or to decide in favor of the applicant any matter upon which it is required to pass under any bylaw, ordinance, rule or regulation or to vary the application of the zoning bylaw, ordinance, rule or regulation. An appeal may be taken to the zoning board of appeals by any person aggrieved or by any officer, department, board or bureau of any municipality aggrieved and shall be taken within such time as is prescribed by a rule adopted by said board, or, if no such rule is adopted by the board, within thirty days, by filing with the zoning commission or the officer from whom the appeal has been taken and with said board a notice of appeal specifying the grounds thereof. Such appeal period shall commence for an aggrieved person at the earliest of the following: (1) Upon receipt of the order, requirement or decision from which such person may appeal, (2) upon the publication of a notice in accordance with subsection (f) of section 8-3, or (3) upon actual or constructive notice of such order, requirement or decision. The officer from whom the appeal has been taken shall forthwith transmit to said board all the papers constituting the record upon which the action appealed from was taken. An appeal shall not stay any such order, requirement or decision which prohibits further construction or expansion of a use in violation of such zoning regulations except to such extent that the board grants a stay thereof. An appeal from any other order, requirement or decision shall stay all proceedings in the action appealed from unless the zoning commission or the officer from whom the appeal has been taken certifies to the zoning board of appeals after the notice of appeal has been filed that by reason of facts stated in the certificate a stay would cause imminent peril to life or property, in which case proceedings shall not be stayed, except by a restraining order which may be granted by a court of record on application, on notice to the zoning commission or the officer from whom the appeal has been taken and on due cause shown. The board shall hold a public hearing on such appeal in accordance with the provisions of section 8-7d. Such board may reverse or affirm wholly or partly or may modify any order, requirement or decision appealed from and shall make such order, requirement or decision as in its opinion should be made in the premises and shall have all the powers of the officer from whom the appeal has been taken but only in accordance with the provisions of this section. Whenever a zoning board of appeals

grants or denies any special exception or variance in the zoning regulations applicable to any property or sustains or reverses wholly or partly any order, requirement or decision appealed from, it shall state upon its records the reason for its decision and the zoning bylaw, ordinance or regulation which is varied in its application or to which an exception is granted and, when a variance is granted, describe specifically the exceptional difficulty or unusual hardship on which its decision is based. Notice of the decision of the board shall be published in a newspaper having a substantial circulation in the municipality and addressed by certified mail to any person who appeals to the board, by its secretary or clerk, under his signature in any written, printed, typewritten or stamped form, within fifteen days after such decision has been rendered. In any case in which such notice is not published within such fifteen-day period, the person who requested or applied for such special exception or variance or took such appeal may provide for the publication of such notice within ten days thereafter. Such exception or variance shall become effective upon the filing of a copy thereof (A) in the office of the town, city or borough clerk, as the case may be, but, in the case of a district, in the offices of both the district clerk and the town clerk of the town in which such district is located, and (B) in the land records of the town in which affected premises are located, in accordance with the provisions of section 8-3d.

VI. PERTINENT PROVISIONS of City's 2010 ZONING REGS.

ARTICLE 2 DEFINITIONS

Section 2-1 General Rules of Construction

In the construction of these Regulations, words and phrases shall be construed according to the commonly approved usage of the language, except that technical words and phrases that have acquired a particular and appropriate meaning in law shall be construed accordingly. All words used in the present tense include the future tense; the singular number includes the plural and the plural number includes the singular; and the masculine gender includes the feminine. The word "shall" is mandatory and not directory. The word "used" shall be deemed also to include "designed, intended or arranged to be used." Unless otherwise specified, all distances shall be measured horizontally.

Section 2-2 Definitions

Except as otherwise defined in these Regulations or as the context may otherwise require, the following words are defined for the purpose of these Regulations as follows: . . .

Zoning Enforcement Officer: A duly authorized official of the City of Bridgeport Zoning Department.

ARTICLE 6 OFFICE / RETAIL ZONES

6-1-4 Urban Design Guidelines: OR & OR-G Zones

. . . b. Parking shall be located to the rear of the principal building, with suitable landscaped islands and perimeter landscaped screening. It shall be in compliance with the minimum parking

stall dimensions, vehicle maneuvering space, aisle width and driveway width dimensions (See Section 11-1). For corner buildings, parking access shall be located on the secondary street. To reduce curb cuts shared access driveways are encouraged. (See Figure 6-A)

ARTICLE 12 SPECIAL PERMIT AND ADMINISTRATIVE REVIEW USES

Section 12-20 Administrative Review Uses and Consent Agendas

- a. Administrative Review Uses: Certain uses indicated as a P (principal permitted) use in a Zone Development Table and not subject to a public hearing shall be subject to site plan review by staff for compliance with these Regulations, which review shall be known as Administrative Review. Examples of such uses are:
 1. Home Office.
 2. Temporary Zoning Permit for Seasonal Outdoor Dining.
 3. Temporary Zoning Permit for Annual, Seasonal, or Special Event.
 4. Subdivision as per Section 14-11-2(a)(1), also known commonly as "first allowable cut."
 5. Change in occupancy from one permitted non-residential use to another permitted non-residential use within the same use group as found in Table 6.
 6. [reserved]
- b. Consent Agenda Action: Staff may place on a Consent Agenda Administrative Review applications and additional applications listed below in (c) and (d). Items on a Consent Agenda are grouped together as a single motion to approve by the reviewing board without discussion or individual motion. No item on a Consent Agenda shall require a public hearing; however, upon request(s) by the applicant or member of the 134 reviewing board, any item may be removed from the Consent Agenda and placed on the full agenda.

ARTICLE 13 ADMINISTRATION

Section 13-1 Interpretation of this Article

This Article 13 describes certain administrative items and the powers and duties of administrative bodies and officers. As indicated, some of the powers and duties described are not controlled by these regulations but are established by City Ordinance or state statute. Furthermore, the descriptions of the powers and duties provided in this Article 13 are not meant to be exhaustive, but are meant instead to be descriptions of those primary duties that are relevant to the application, administration and enforcement of these regulations.

Section 13-2 Zoning Board of Appeals

13-2-2 Powers and Duties:

- a. As provided by Section 8-6 of the General Statutes, the Zoning Board of Appeals has the power to:
 1. Hear and decide appeals where it is alleged that there is an error in any order, requirement or decision made by any official charged with the enforcement of these Regulations;
 2. Hear and decide matters on which it is required to pass by the terms of these Regulations;
 3. Determine and vary the application of the terms of these Regulations in harmony with their general purpose and intent and in conformity with Section 8-6 of the General Statutes and Section 14-5, Variances of these Regulations.

Section 13-3 Planning and Zoning Commission

13-3-1 Composition: As provided by Chapter 19, Section 5 of the 1992 Charter, as revised, the Planning and Zoning Commission is composed of nine members. The terms of office of members and filling of vacancies are as provided by Chapter 19, Section 5, of the 1992 Charter, as revised.

Section 13-4 Enforcement

13-4-1 Enforcement Authority: These Regulations shall be administered and enforced by the Planning and Zoning Commission. The Commission shall appoint an administrative agent, with the title of Zoning Official, with full power to administer and enforce these Regulations on behalf of the Commission. The Commission or the Official or one of his agents may file information with the prosecuting authority upon violation of any of these Regulations.

13-4-2 Zoning Enforcement Officer: The Zoning Official of the City of Bridgeport and his designees shall be the Zoning Enforcement Officers of the City and shall have the enforcement powers and duties described in this Section 13-4. In the event of the Zoning Official's absence from duty, that City official designated as the Assistant Zoning Official shall possess the powers and duties described in this Section 13-4.

13-4-3 Powers and Duties:

- a. The Zoning Enforcement Officer shall have the responsibility and authority to enforce the provisions of these Regulations in accordance with administrative rules and procedures established by the Commission.

b. The Zoning Enforcement Officer is authorized to cause any building, structure, place, premises, use of any land or any work upon any building or structure being erected or altered, whether or not such work is being done under authority of a Zoning Permit, to be inspected at any time; to assess fines and issue notices pursuant to Section 13-5 of these Regulations; and to order the discontinuance of any violations of these Regulations or the remedying of any condition found to be in violation of these Regulations.

c. The Zoning Enforcement Officer shall have the authority and responsibility to review requests for certifications as to zoning compliance, including Certificates of Zoning Compliance, and to issue or deny issuance of the same pursuant to Section 14-1 of these Regulations. . . .

Section 13-5 Fees, Charges, and Expenses

a. Pursuant to Section 8-1c of the General Statutes, application fees and other fees necessary in connection with the procedures set forth in these Regulations, including fees for the preparation of the hearing transcript upon any appeal filed in Court, shall be as established and revised from time to time by ordinance adopted by the Common Council and published in the office of the City Clerk.

b. The Planning and Zoning Commission may establish and revise from time to time a schedule of fees, charges and expenses and a procedure for applications, petitions, site, architectural and other plans, maps, Certificates of Zoning Compliance, permits, inspections, the giving and mailing of notices and the publication thereof, and such other items as are deemed appropriate by the Commission, pertaining to the Zoning Regulations. Until all applicable fees have been paid, no application shall be deemed complete.

ARTICLE 14 PROCEDURES

Section 14-1 Certificate of Zoning Compliance

14-1-1 Certificate of Zoning Compliance Required: No vacant land or any unoccupied portion thereof shall be occupied or used, except for farming or gardening purposes, and no building or structure hereafter erected, reconstructed or structurally altered shall be occupied or used for any purpose whatever and no certificate of occupancy shall be issued unless and until a Certificate of Zoning Compliance is issued stating that the land, building and/or structure and the use(s) to be made of the land, building and/or structure comply in all respects with the provisions of these regulations and the requirements of any approvals granted under these regulations.

14-1-3 Application for Certificate of Zoning Compliance: Application for a Certificate of Zoning Compliance shall be submitted to the Zoning Enforcement Officer by a party having a legal interest in the property, or by the agent of such a party, on forms provided by the Officer, together with the pertinent application fee.

14-1-4 Submittal Requirements: The application shall be accompanied by the following:

- a. Plot plan of the proposed building, structure or use drawn to scale with sufficient clarity to show the lot boundaries; minimum setback lines; the nature of the work to be performed, including off-street parking and buffers, if required; the location of new and existing construction; and the distance of same from the lot lines;
- b. Letters from all utilities confirming that any necessary hookups can be made;
- c. All approvals or variances granted by the Planning and Zoning Commission, the Zoning Board of Appeals, Historic District Commission, and the Inland Wetlands and Watercourses Agency as required by these Regulations, including any site plans, architectural plans, and/or engineering plans pertinent to such approvals; and
- d. Such other information as may be required by the Zoning Enforcement Officer to indicate compliance with these Regulations and to aid in the enforcement of these Regulations.

14-1-5 Review and Disposition: Within 15 days of receiving a complete application, the Zoning Enforcement Officer shall determine whether the proposed development has received all required approvals and/or otherwise conforms to the Regulations and any other pertinent law or regulation and shall approve or deny the application accordingly in writing. If the application is denied, the writing shall state the reasons for the denial. The writing shall also inform the applicant that the disposition may be appealed to the Zoning Board of Appeals.

14-1-6 Administrative Site Plan Review Requirements:

Certain uses indicated as a P (principal permitted) use in a Zone Development Table and not subject to a public hearing shall be subject to site plan review (Section 14-2-5) by staff for compliance with these regulations, which review shall be known as Administrative Review (Section 12-20a).

Applications for Certificate of Zoning Approval will be reviewed for use and compliance with the Zoning Standards and any additional standards and requirements as set forth in the COB's 2010 Zoning Regulations. The application should not be confused with the final "Certificate" which will be issued upon final review, inspection & approval.

Within 15 days of receiving a complete application, a Zoning Official shall determine whether the proposed development has received all required approvals and/or otherwise conforms to these regulations and any other pertinent law or regulation, and shall approve or deny the application accordingly in writing (Section 14-1-5).

Changes to the site plan, floor plans or elevations made at the request of the Building Department, Engineering Department, Fire Marshall or WPCA will require subsequent review and approval by the Zoning Department.

- List of required items would include at the minimum:
- Completed “Application for Certificate of Zoning Compliance”
- Completed “Application for a Building Permit”
- Site Development Plan
- Landscape Plan
- Floor Plans
- Elevations

Other items that may be pertinent to the project such as:

- Topographic Plan
- Drainage Plan
- Utility Plan
- Soil Erosion & Sedimentation Plan

And any additional information that may be required to process the applications

14-1-7 Certificate of Zoning Compliance:

- a. **Application:** A true copy of the Application For Certificate of Zoning Compliance shall be kept on site and available for public inspection during the course of construction and until completion.
- b. **Certificate Revocation:** The Zoning Enforcement Officer shall revoke a Certificate of Zoning Compliance upon a finding that the Certificate application contained material misrepresentations of fact or a finding that the parameters of the permit are materially violated by work or activity that does not conform to the approved plans for which the Certificate has been issued.
- c. **Certificate Expiration:** The Application For Certificate of Zoning Compliance acceptance shall expire twelve (12) months from the date of acceptance unless a building permit has been issued and construction has commenced and is being diligently pursued.

14-1-8 Issuance of Building Permits: No building permit for the erection, reconstruction or structural alterations of any building or structure shall be issued until:

- a. The permit applicant applies for a Certificate of Zoning Compliance;
- b. A Zoning Enforcement Officer completes an endorsement on the application that an application has been made for a Certificate of Zoning Compliance; and

- c. The Zoning Enforcement Officer certifies on the application for the building permit that the work described in the building permit application and shown on any accompanying plans and specifications will comply with the requirements of these Regulations or any approvals granted under the authority of these Regulations.

Section 14-2 Site Plan

14-2-1 Purpose: The purpose of this Section is to ensure that designated categories of development are comprehensively reviewed for compliance with the requirements of these Regulations and for adequate provision of vehicular and pedestrian circulation, parking, landscaping, buffers, signage, lighting, drainage, utilities and other needs produced by the proposed development. It is also intended that through the procedures established under this Section, development impacts will be evaluated by the Planning & Zoning Commission in light of the City's need to protect its natural, social, and cultural environment in accordance with the adopted Comprehensive Plan, and that adverse development impacts will be minimized.

14-2-2 Site Plan Review Required: Site Plan Review is the standards-based process by which development applications are examined for consistency with the requirements of these Regulations. Site plan review shall be required if:

- a. An application involves a variance of use (Section 14-7-1-b),
 - b. An application involves a special permit (Section 14-4-1-a),
 - c. An application involves a Coastal Site Plan approval, with exceptions (Section 14- 3-3), or
 - d. An application involves a subdivision, with exceptions (Section 14-11-2-a).
- e. If the following uses do not meet any of the five above-listed criteria, the use shall not be subject to a land use board review:
- 1. One-family and two-family dwelling, except where a two-family dwelling is located in a Coastal Zone; see Section 14-3.
 - 2. Community garden
 - 3. Administrative Review uses as listed and regulated in Article 12

Section 14-7 Variance

14-7-1 Purpose; Variances Restricted or Prohibited:

- a. Purpose: This section is intended to allow for variances from the provisions of these Regulations, pursuant to Section 8-6 of the General Statutes, in circumstances where

owing to conditions especially affecting a parcel of land, but not affecting generally the zone in which such parcel is located, a literal enforcement of these Regulations would result in exceptional difficulty or unusual hardship and the variance if granted will be in harmony with these Regulations and their general purpose and intent.

- b. **Site Plan Review Required:** Applications which have been granted a use variance by the Zoning Board of Appeals must thereafter receive site plan approval from the Planning and Zoning Commission. The Commission shall review the plan for compliance with these Regulations, as set forth in Section 14-2, to determine if the minimum standards have been complied with. Absent such compliance, the Commission shall deny the application.

Section 14-8 General Procedures

14-8-3 Fees: Fees for Certificates of Zoning Compliance, and for all applications before the Planning and Zoning Commission and the Zoning Board of Appeals shall be established by the City Council and shall include the estimated cost of any publication.”

14-8-4 Submittal: All applications are considered final once submitted with the requisite fee and shall not be materially modified.

Section 14-10 Appeals

14-10-1 Appeals from Zoning Enforcement Officer: Decisions by the Zoning Enforcement Officer may be appealed to the Zoning Board of Appeals within a thirty (30) day period commencing on day of decision, notification or publication, pursuant to Section 8-7 of the General Statutes. At a public hearing, all interested parties shall be given the opportunity to be heard.

14-10-2 Appeals from Decisions of the Zoning Board of Appeals: Appeals to the Superior Court may be taken by any party aggrieved by a decision of the Zoning Board of Appeals, in accordance with state law and in particular Section 8-8 of the General Statutes.

14-10-3 Appeals from Decisions of the Planning and Zoning Commission: Appeals to the Superior Court may be taken by any party aggrieved by a decision of the Planning and Zoning Commission in accordance with state law and in particular Section 8-9 of the General Statutes.

Section 14-12 Conceptual Urban Design and Technical Reviews

14-12-1 General: Prior to formal submission of a development proposal, the applicant shall be subjected to a two (2) step review process: Conceptual Urban Design Review, followed by Technical Review. The intent of these reviews is to ensure all design and development standards are properly addressed in the proposal prior to submitting a formal application

to the Planning and Zoning Commission, Zoning Board of Appeals, or Zoning Office. The Zoning Official will coordinate these review meetings as necessary.

The first review will be to discuss Conceptual Urban Design goals and parameters regarding how the building and site relate to the area. Items for discussion include building massing, building placement on site, parking location, driveways, landscaping, access to and visibility of main living units or commercial units to street, sidewalks, and street trees.

The second review, Technical Review, will occur with departments such as Fire, Engineering, WPCA, and Building. discussion at this stage will include site plan, utilities, landscaping, parking calculations, floor plans, and elevations indicating materials and color samples. The Table comparing Development Standards per Zoning Regulations shall be included in this submission.

14-12-2 Thresholds Requiring Conceptual Urban Design and Technical Reviews:

Development activities which meet any of the following criteria shall be subject to Conceptual Urban Design Review and Technical Review meetings:

- a. New construction or exterior rehabilitation of any size within any of the following zones: OR, OR-G, OR-R, MU-LI, MU-EM, DVD-CORE, DVD-TOD, DVD-CIVIC, DVD-BLVD, DVD-WF, NCVD, or R-CC.
- b. New construction, rehabilitation, or change of use of 5,000 sq. ft. or more for a commercial or industrial use.
- c. New construction, rehabilitation, or change of use of four (4) or more residential units on a single parcel.
- d. Requires a Special Permit.
- e. Zone Change

14-12-3 Submittal Requirements:

- a. **Conceptual Urban Design Review** – Proposed development projects shall submit five (5) copies of schematic plans and building elevations indicating the following, at the scales indicated. One (1) set of plans is to remain unfolded (rolled). The City may recommend design and layout modifications during this conceptual review meeting. NOTE: These drawings may likely fit onto 11"x17" pages.

1. Site Plan. Show building footprint, parking layout, driveway and landscaping. Scale: 1" = 40'.

2. Area Site Plan. Indicate how the site plan for the proposed development relates to the neighborhood, Show an area of approximately 800' x 1000' with the site in the

center of the map. Color gray or cross-hatch the building footprints of the proposed development. Scale: 1" = 100'.

3. Building Elevations, reflecting proposed site grading, depicting roof, windows, doors, exterior cladding, and any architectural features – porches, stairs, bay windows, dormers, columns, pergolas, etc. Drawings shall be simple line drawings; no color or texture indicated. Scale: 1" = 1/8".

4. Street Elevations. Show proposed building facades and include at a minimum two buildings to each side of site, Scale: 1" = 10'.

5. Photographs of neighboring buildings. On one or two standard letter size pages, show the front view of neighboring buildings (two minimum) to either side of proposed development site and across the street, for a total length of 200' minimum or four (4) buildings per street side, whichever is greater. Include street name and addresses under each row of photographs.

Note: Screen shots from online street photos will meet this requirement. Photo size of approximately 1"x2" is ideal. Individual photos are not acceptable.

b. Technical Review – Following Conceptual Urban Design Review, and any modifications the applicant chooses to incorporate, an application for a Technical Review meeting shall be submitted. The submission shall include the following information and 11 copies:

1. Site Plan, as further outlined in Section 14-2-3b.
2. Utility Plan, as further outlined in Section 14-2-3c.
3. Phasing Plan, as further outlined in Section 14-2-3d.
4. Landscaping Plan.
5. Elevations. Include Plan notations of finishing materials and provide material and color samples.
6. Floor Plans.
7. Parking calculations.
8. Development standards chart.
9. Photographs of neighboring buildings. On one or two standard letter size pages, show the front view of neighboring buildings (two minimum) to either side of proposed development site and across the street, for a total length of 200' minimum or four (4)

buildings 172 per street side, whichever is greater. Include street name and addresses under each row of photographs.

Note: Screen shots from online street photos will meet this requirement. Photo size of approximately 1"x2" is ideal. Individual photos are not acceptable