



Town of Groton, Connecticut
Zoning Commission
Special Meeting Agenda

Office of Planning and
Development Services
Town Hall Annex
134 Groton Long Point Road
Groton, CT 06340
860-446-5970

Wednesday, July 18, 2018

6:30 PM

Town Hall Annex - Community Room 2

I. ROLL CALL

II. PUBLIC HEARINGS

- II.1. Special Permit #359, 1091 Poquonnock Road (Valvoline Instant Oil Change, Applicant)

III. CONSIDERATION OF PUBLIC HEARINGS

- III.1. Special Permit #359, 1091 Poquonnock Road (Valvoline Instant Oil Change, Applicant)

IV. PUBLIC COMMUNICATIONS

V. NEW BUSINESS

- V.1. Receipt of New Applications
V.2. Attachment on Legal Issues for P&Z Commissions - Review and Discussion

VI. REPORT OF CHAIRPERSON

VII. REPORT OF STAFF

VIII. ADJOURNMENT

Next Regular Meeting: August 1, 2018



Zoning Commission Agenda Item

To: Zoning Commission

From: Office of Planning and Development Services

Subject: SPEC359 Special Permit #359, 1091 Poquonnock Road (Valvoline Instant Oil Change, Applicant)

Background:

Staff will distribute a draft motion at the meeting.

Recommendation or Commission Action:

Attachments:

Special Permit #359 Legal Notice

1091 Poquonnock Road-Attachments to Special Permit Application

Staff Summary - Special Permit #359



TOWN OF GROTON

PLANNING AND DEVELOPMENT SERVICES

DEBORAH G. JONES
ASSISTANT DIRECTOR
DJONES@GROTON-CT.GOV

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June 28, 2018

VIA EMAIL

The Day
P.O. Box 1231
New London, CT 06320
legal@theday.com

Please publish the following legal ad on July 6, 2018 and July 13, 2018:

TOWN OF GROTON
ZONING COMMISSION
NOTICE OF PUBLIC HEARING

Notice is hereby given that the following public hearing will be held on July 18, 2018 at 6:30 p.m. in Community Room 2, Town Hall Annex, 134 Groton Long Point Road, in said Town, to consider the following:

Special Permit #359, 1091 Poquonnock Road, PIN #169806376741 CA-12 Zone. Proposal is to allow "Limited Repair". Review is per Section 7.1-25 and 8.3 of the Zoning Regulations. (Valvoline Instant Oil Change, Applicant)

Application is on file and available for public inspection during normal business hours at the Planning Department, 134 Groton Long Point Road. Dated this 6th day of July, 2018 at Groton, Connecticut. (On second insertion please put "Dated this 13th day of July, 2018 at Groton, Connecticut".)

Susan Sutherland, Chairperson

Account #30384
P. O. # 18000297

If you have any questions, please do not hesitate to contact me at 860-446-5970.

Sincerely,

Deborah G. Jones
Assistant Director

DGJ:dlg

Attachment to Land Use Application – Special Permit for Valvoline Instant Oil Change located at 1091 Poquonnock Road, Groton, CT

7.1-25 The cars enter the building from the back. During most of the year, the bay doors are closed on the street side. We do not perform services outside the building. Our service menu is for maintenance services only. We require the LR for one service, Air Conditioning recharge. Most times our customers are in and out in 30 minutes or less. We do not store any materials outside of the building.

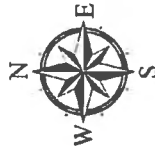
8.3-8 This site has operated as a quick lube facility since 1995. To our knowledge, we have not received any complaints from our neighbors about noise, service hours or cleanliness. While the site is on the small side, there is adequate ingress and egress for the use. In addition, we have the required parking that the State of CT DMV mandates. We do not believe there is any public safety issue. All utilities already exist at the site. All of the generated waste (oil, filters and coolant) is removed by properly licensed haulers. There are no floor drains. There are no in-ground storage tanks of any kind.

- A. This location has operated as a quick lube continuously since 1995. High Line Lube, LLC is the third operator. This new zoning request will make a negligible change in the daily customer traffic, if any. It will not require any change to the building or the lot. Currently we see an average of 50-55 customers a day and have no reason to expect any changes.
- B. The building and the lot will not require any changes. Neighbors and visitors will not be impacted.
- C. The services to be performed will not cause any additional noise nor create any condition that would negatively affect the mixed-use neighborhood. It will not impact orderly development of the area.
- D. The egress/ingress, parking and circulation are sufficient at the current time; we do not see any reason that would change.
- E. The streets and traffic regulations have been adequate since 1995 to the present. We do not see any reason that would change.
- F. Given that we do not expect a measurable change in the locations traffic, we do not see any public safety issues.
- G. There will be no changes to the utilities at the location. There will be no need for any additional services. We see no reason these will not continue to be sufficient for our needs.
- H. We do not feel there will be any negative environmental impact to the area as this property does not border wetlands or conservation areas. Also, we currently follow the proper guidelines for disposal of all hazardous materials and will continue to do so.

Town of Groton



1091 Poquonock Road



Disclaimer:
The planimetric and topographic information depicted on this map was compiled by The Sanborn Map Company based on an aerial flight performed in April 2009. The parcel and property line information depicted on this map has been compiled from recorded deed, map, assessor records, and other sources of information. The information is provided as a general guide and is not a substitute for a professional survey. The Town of Groton and its employees are not responsible for any errors or omissions in this map. THIS MAP IS NOT TO BE USED FOR THE TRANSFER OF PROPERTY.

Horizontal Datum: North American Datum of 1983 (NAD83)
Vertical Datum: Mean Sea Level

North American Datum of 1983 (NAD83)

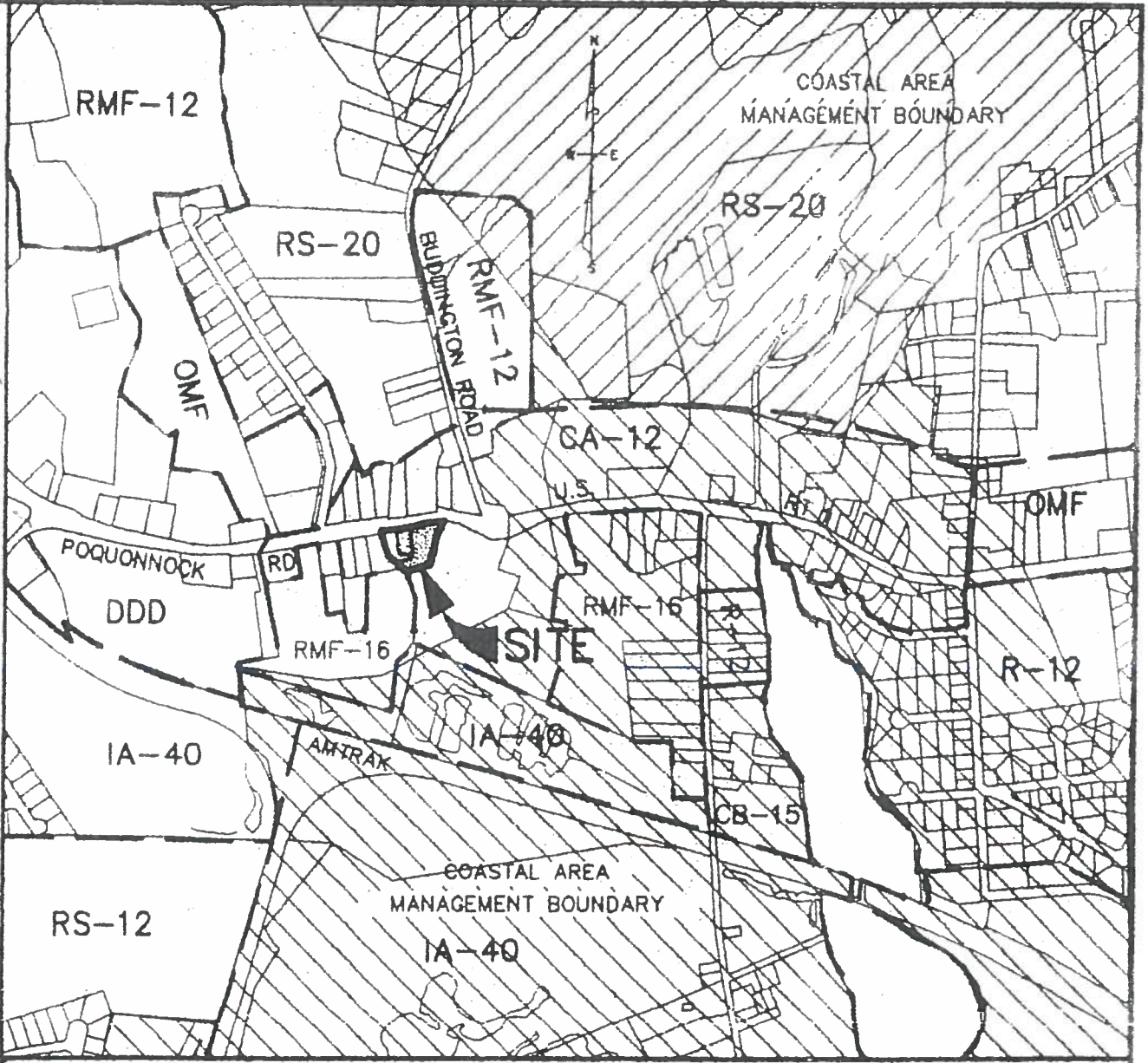


PLANNING DEPARTMENT
TOWN OF GROTON, CT

Date: 5/15/2018



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JUN - 5 2018
PLANNING DEPARTMENT
TOWN OF GROTON, CT



LOCATION MAP
SCALE: 1"=1000'



NOTES

Staff Summary Sheet

<u>APPLICATION #:</u> SPEC#359	<u>APPLICATION TYPE:</u> Special Permit	<u>STAFF PLANNER:</u> DGJ
<u>PROJECT NAME:</u> Valvoline Instant Oil Change		
<u>ADDRESS / LOCATION:</u> 1091 Poquonnock Road		
<u>CAM:</u> No	<u>WRPD:</u> No	<u>WETLANDS:</u> No
<u>TERMINAL ACTION DATE:</u>		<u>SUMMARY DATE:</u> July 12, 2018
<u>PUBLIC HEARING CLOSED:</u>		<u>SITE AREA:</u> .42 AC # SQ FT
<u>EXISTING LAND USE / ZONING:</u> Oil Change Facility / CA		
<u>SURROUNDING LAND USE / ZONING DISTRICT(S):</u>		
NORTH: Commercial / CA SOUTH: Rehab facility / CA		
EAST: Vacant / CA WEST: Residential / CA		
<u>HISTORY:</u> The Valvoline Oil Change site plan was approved in 1994 and has been operating since its construction later that year.		
<u>PROJECT DESCRIPTION:</u> The State of Connecticut now requires quick oil change facilities to be in compliance with municipal zoning regulations for limited repair facilities. There will be no additional services provided by this business and there will be no changes to the site as a result of this project.		
<u>LIST AGENCIES WITH OUTSTANDING COMMENTS:</u> None		
<u>MODIFICATIONS / WAIVERS:</u> None		
<u>LAND USE / DEVELOPMENT ISSUES ANALYSIS:</u> Limited Repair facilities are allowed in the CA zone subject to a special permit per section 7-1.25. The applicant is able to meet all the conditions of this section.		



Zoning Commission Agenda Item

To: Zoning Commission
From: Office of Planning and Development Services
Subject: Attachment on Legal Issues for P&Z Commissions - Review and Discussion

Background:

Recommendation or Commission Action:

No recommendation. This item is for commission review and discussion only.

Attachments:

Legal Issues for P & Z Commissions

**Eleven Ways to Loose an Appeal: Legal Issues All
P&Z Commissions and Legal Staff should be Aware of**

CHARLES R. ANDRES
LECLAIRRYAN, PLLC
CCPPA HOT TOPICS – JUNE 8, 2018

11. Messing Up Procedural Details

1. Check to be sure notice to abutters has been mailed within the correct window, and that the notice is correct. (One Town recently almost acted on a P&Z matter where the notice said the hearing was for the ZBA, on a different date). Nobody ever checks these things.
2. Make sure notice published.
3. Picky stuff: Zoning amendments must be filed with Town clerk 10 days before the hearing; Gen. Stat. Sec. 8-3(a); AND filed with Town clerk after the public hearing (even if it is the same regulation). Gen. Stat. Sec. 8-3(d); Farmington-Girard, LLC v. Planning & Zoning Commission, 2014 WL 4815345 (2014).
4. Failure to set an effective date on a text or map amendment: Statute says that Commission must set an effective date of text or map amendment that is after the notice. Gen. Stat. Sec. 8-3 (d). One Commission put the effective date on the date the notice was published and court voided the decision. Wilson v. Planning & Zoning Commission, 260 Conn. 399 (2002).
5. Property descriptions must be adequate. See Peters v. Environmental Protection Board, 25 Conn. App. 164 (1991)(finding inadequate notice providing "The Stamford Environmental Protection Board ... will hold a public hearing to consider information relevant to Application # 8843. Transcon Builders, Inc., for activities on Stillwater Road." "By omitting the specific location of the proposed nursing home, the board issued a defective notice. Referring to the subject property by street name only in a legal notice does not suffice to apprise as much of the populace as possible of the proposed construction.... In addition, we are unpersuaded by the defendant's argument that the general public should have cross-referenced the application number with city hall records, or that earlier newspaper articles had connected the property to Transcon. The statute does not call for cumulative notice, nor does it ask that the general public employ the skills of a research librarian to determine where the subject property is located...")
6. Not deciding applications within time limits or wrongly managing time extensions. Gen. Stat. Sec. 8-7d.

7. FOIA issues: No Snow Days for Commissions. Gibbons, et al. v. Zoning Board of Appeals of Fairfield, et al., 2015 WL 7421673, 61 Conn. L.Rptr. 190 (Oct. 23, 2015) (Super. Ct., J.D. Fairfield) (Radcliffe, J.)(overturning ZBA decision because ZBA failed to open meeting on the date in the notice because Commission cancelled meeting due to snow storm, so the legal notice was inaccurate.) See also C.G.S. §§ 1-228 & 1-229 (FOIA measures for opening and continuing meetings when lack of quorum).

10. Allowing alternate members to participate in deliberations of a matter when they are not seated.

- OK for alternates to participate in public hearing (since it is unknown who will be seated at the time of deliberations), but illegal for them to participate in deliberations because statute does not allow and doing so would effectively enlarge the size of the Commission beyond the number established by the municipal ordinance. Komondy v. Zoning Board of Appeals, 127 Conn. App. 669 (2011)

9. Limiting time for comments by members of the public, either individually or overall.

- Three-minute rule for public OK, provided you allow people to speak a second time when everyone is done. Timber Trails Associates v. Planning and Zoning Commission, 99 Conn. App. 768 (2007).
- Don't think you can limit the applicant or intervenors, though you can recommend moving quickly.

8. Voting on an application when member has not missed a public hearing and not become familiar with the record.

- See Lauer v. Zoning Commission of Redding, 220 Conn. 455 (1991)(remanding to trial court on issue of whether commission member adequately familiarized himself with record, and noting that reading newspaper accounts of the minutes would not be adequate.)

7. "I don't care what the regulations say".

- Relying on loud public opposition, anecdotal evidence, generalized concerns or fears, architectural ugliness of the proposal, "we don't need another one of these in town", etc. as the basis for making a decision.
- Especially for important applications – don't try to rush the approval process. Take time to discuss what you heard, and how it relates to the regulations.

- Judges like it when there is discussion or debate – shows you thought about it and wrestled with it.

6. Admitting during deliberations that commission member or staff has done independent research.

- “After the last meeting, I went down to the site and met with the applicant. He showed me around and now all of my questions have all been answered.” “I’ve talked to a few people about this application...”
- In Ruscio v. Planning & Zoning Commission, 2014 WL 3805482 (2014), the court sustained an appeal from a denial of a subdivision application, because the commission relied on a staff memorandum regarding the dedication of open space that presented issues that the applicant had not had the opportunity to address at the public hearing.

5. Interacting with applicants and their representatives or members of the public in a way that is either far too chummy or far too adversarial.

- Sometimes things sound fine in public but look terrible on paper. Judge will only see a transcript, which may miss the tone, nuances, etc.
- Remarks by a zoning commissioner on ethnicity, even intended as humor, was ground for reversal of a decision adverse to the applicant. Pirozzilo v. Berlin Inland Wetlands Commission, 2002 WL 1009705.
- Recommend referring to persons by last name – Mr. Engineer, or Attorney vs. Bob or Joe, in the Walmart application, even if they have appeared before you 100 times and you are on a first name basis.

4. Trying to enforce illegal regulations.

Are your regulations up to date?

- Termination of non-conforming uses by non-use alone. Since 1988, Gen. Stat. § 8-2 has included the following sentence:

Such regulations shall not provide for the termination of any nonconforming use solely as a result of nonuse for a specified period of time without regard to the intent of the property owner to maintain that use.

But some regulations continue to say nonconforming uses can be terminated by non-use after a given period without intent.

- Off-site improvements: Some subdivision regulations may require off-site improvements in direct violation of Buttermilk Farms v Planning & Zoning Commission, 292 Conn. 317 (2009).
- Signs: illegal to regulate signs based on content (e.g., not OK to say American flags are OK but other flags are not – vs. all flags shall be no more than xx square feet)
- Signs: One superior case says that Commission can regulate only “advertising signs” (term in Gen. Stat. Sec. 8-2) which does not include protest signs. Harris [ZEO] v. Arisian, 2016 WL 551200, 61 Conn. L. Rptr. 679 (Jan. 19, 2016) (Stevens, J).
- Zoning Regulations that authorize Commission to Waive regulations. See MacKenzie v. Planning & Zoning Commission, 146 Conn. App. 406 (2013) (zoning regulations allowing waivers of certain provisions are effectively variances, which can only be granted by zoning boards of
- Other areas where regulations may conflict with law: (1) bonds and surety (possible inconsistencies with Public Acts 12-182 and 11-79); (2) time to complete “work” in site plans and subdivisions and duration wetlands permits (changes by P.A. 12-151, 11-5, and 09-181); (3) restrictions on adult use may conflict with First Amendment, especially where use is allowed by special permit only.

3. Failure of Commission member to disqualify when there is a conflict of interest.

- Member cannot act where he/she has personal or financial interest in application. Basic rules are: financial relationship familial or work relationships with applications; proximity – again does it affect you particularly in a way different than the general public. Ask question: does this benefit you, your family, a close friend or your employer, your customers or clients, in a way NOT shared by the public at large in your town?
- How does the right of fundamental fairness intersect with the statutory proscriptions on a commissioner’s participation in a board’s decision? In particular, is it ever OK for a commission member to disqualify himself and speak in favor or in opposition to an application? Compare Cioffoletti v. Planning & Zoning Commission, 209 Conn. 544, 557 (1989)(where an agency member disqualified himself from all phases of a proceeding and his wife appeared at the public hearing and spoke on his behalf in opposition to the application and read a letter expressing their opposition, the agency member’s conduct was not a prohibited form of participation in violation of Gen Stat. Sec. 22a-42(c)); Ziegler v. Thomaston, 43 Conn. Sup 373, aff’d per curiam, 232 Conn. 270 (1995)(no violation of Sec. 8-11 for husband of disqualified member to submit letter in opposition to application); Gagnon v. Town of Stratford, 2002 WL 31015593

(decision not overturned when zba member disqualified herself and spoke in opposition to application for variance); Ashe v. New Fairfield Conservation Commission, 2001 WL 1265867 (2001)(no violation of 22a-42(c) when wife of recused wetlands member speaks in opposition); WITH Barry v. Borough of Litchfield Historic District Commission, 108 Conn. App. 682 cert. denied, 289 Conn. 942 (2008) (Historic District Commission member recused himself and spoke against application; while such action was not an illegal "participation" in the decision, it was a violation of the right to fundamental fairness because it would be difficult for other Commission members not to have been unfairly influenced by his testimony and to continue to work with the Commission member on other applications if they had approved the application); Sunny Wood Convalescent Home, Inc. v. Zoning Board of Appeals, 1991 WL 172845 (1991)(finding 8-11 to be violated when zba member disqualified himself and spoke in opposition).

2. Engaging in Ex Parte Communications.

- Emailing among the members, discussions off the record,
- Two issues: fundamental fairness, and FOIA.
- Issues are highlighted because of ways that data is stored and preserved today that didn't exist 20 years ago. Texts, emails, and social media.
- Commissioners should not communicate in that way and to the extent that they do communicate they need to do it only through the municipality's servers. If Commission members do communicate in this way and the proceedings are still open for public comment, print out the text/e-mails and put it in the record.
- Example of commission member texting at meeting, someone saw it and made a FOIA request. Problem with having too many gadgets.
- Staff cannot be the conduit for ex parte communications by developer.

1. Failure to Call Attorney when application is governed by laws in lieu of or in addition to Zoning Regulations.

1. Affordable housing applications. C.G.S. § 8-30g;
2. Sign regulation; First Amendment (What is content based regulation. Directional sign vs. advertising – distinction based on content?) If you have to read the sign to know if it's allowed, there's a potential for trouble. Still questions following Reed v Town of Gilbert, 135 S. CT. 2218 (2015). Most likely challenges would come from billboard companies or political groups.

3. Adult uses; First Amendment. Must allow as of right somewhere – not special permit. To allow by special permit only may be a “prior restraint” – a government action that prohibits speech before it can take place. Generally disfavored, particularly when discretion is involved.

4. Group home – sober houses; Americans with Disability Act. Recovering substance abusers are protected persons – obligation to make reasonable accommodation.

5. Churches/ Religious Uses: Religious Land Use and Institutionalized Person Act. (federal) and Connecticut Religious Freedom Act. Can't impose regulation that treat religious assembly on less equal terms than non-religious assembly. Also Substantial burden.

6. Medical marijuana; FEMA variances; AirBnB.

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