

SUBJECT TO APPROVAL

**MADISON PLANNING AND ZONING COMMISSION
REGULAR MEETING MINUTES
Feb. 20, 2020**

The regular meeting of the Madison Planning and Zoning Commission was conducted Thursday, Feb. 20, 2020, at 7 p.m., in Meeting Room A at Madison Town Campus.

MEMBERS PRESENT

Chairman Ronald Clark, Vice Chairman James Matteson, Secretary Elliott Hitchcock, Thomas Burland, Joseph Bunovsky, Jr., John K. Mathers, Joel Miller, and Giselle Mcdowall.

MEMBERS ABSENT

Brian Richardson.

ALTERNATES PRESENT

Peter Roos and Seonaid Hay.

OTHERS PRESENT

Director of Planning and Economic Development David Anderson. MCTV videotaped the meeting.

The regular meeting of the Madison Planning and Zoning Commission was called to order at approximately 7 p.m. by Chairman Ronald Clark.

REGULAR MEETING AGENDA ITEMS (Scheduled for 7:00 P.M.):

Approval of Minutes: Regular Meeting—Dec. 19, 2019

Commissioner John K. Mathers made the motion to approve the Dec. 19, 2019 minutes as submitted; it was seconded by Vice Chairman James Matteson and unanimously approved.

Vote to accept the Dec. 19, 2019 minutes as submitted passed 8-0-0.

IN FAVOR: Chairman Clark, Vice Chairman Matteson, Secretary Elliott Hitchcock, and Commissioners Mathers, Joel Miller, Thomas Burland, Giselle Mcdowall, and Joseph Bunovsky, Jr.

Opposed: None.

Abstained: None.

Site Walk Minutes—Jan. 11, 2020

Commissioner Burland made the motion to accept the minutes of the Jan. 11, 2020 site walk, as amended, by adding Commissioner Giselle Mcdowall as being present on the site walk; it was seconded by Commissioner Bunovsky and unanimously approved.

Vote to accept the Jan. 11, 2020 minutes as amended passed, 8-0-0.

IN FAVOR: Chairman Clark, Vice Chairman Matteson, Secretary Hitchcock, and Commissioners Mathers, Miller, Burland, Mcdowall, and Bunovsky.

OPPOSED: None.

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ABSTAINED: None.

Regular Meeting—Jan. 16, 2020

Commissioner Bunovsky made the motion to accept the Jan. 16, 2020 minutes as amended, with two changes on Page 5, first full paragraph, as follows: *Mr. Barnes stated that in the DEEP permit, there is a winter storage plan; the boats can stay in the water—they do not need to come out, changing the word boats to docks; and in the last sentence of that paragraph, Chairman Clark stated that he does not think that a building that was on the property 70 years ago needs to be grandfathered, to state that Chairman Clark stated that the septic system with the health code is grandfathered, but the building is not grandfathered.* Commissioner Burland seconded the motion and it was unanimously approved.

Vote to approve the Jan. 16, 2020 minutes as amended passed, 8-0-0.

IN FAVOR: Chairman Clark, Vice Chairman Matteson, Secretary Hitchcock, and Commissioners Mathers, Miller, Burland, Mcdowal, and Bunovsky.

OPPOSED: None.

ABSTAINED: None.

Planning Meeting—Feb. 6, 2020

Chairman Clark made the motion to accept the Feb. 6, 2020 minutes as submitted; it was seconded by Commissioner Mathers and unanimously approved.

Vote to approve the Feb. 6, 2020 minutes as submitted passed, 8-0-0.

IN FAVOR: Chairman Clark, Vice Chairman Matteson, Secretary Hitchcock, and Commissioners Mathers, Miller, Burland, Mcdowal, and Bunovsky.

OPPOSED: None.

ABSTAINED: None.

Remarks: ACCA Liaison Report ~ The Advisory Committee on Community Appearance (ACCA) reviewed plans from Chase bank to replace the former Guilford Savings Bank on Boston Post Road, according to Commissioner Bunovsky. ACCA had already asked the developers to return with another plan, which was presented last week, however it is a very modern and contemporary building, about which ACCA was not happy, and so the developers were told to go back to the drawing board, according to Commissioner Bunovsky.

Commission Chair ~ No report.

Town Planner ~ Director of Planning and Economic Development David Anderson stated that on March 19, 2020, there will be a public hearing on amending Section 3.46 related to its language—removing the stipulation that only non-profit agencies be allowed, and changing it to allow for-profit organizations, as well. He also stated that the director of beaches and recreation has sent a proposal for a small kayak launch on Cottage Road to the state Department of Environmental Energy and Protection (DEEP) for review, and it will be discussed as a regular meeting agenda in March.

Chairman Clark adjourned the meeting at 7:15 p.m., to be reconvened at 7:30 p.m., for the public hearing items.

PUBLIC HEARING ITEMS (Scheduled for 7:30 P.M.):

Chairman Clark stated that there would be two public hearing items on the agenda.

P&Z 19-22+CSP. 4 Boston Post Road. Map 44, Lot 57. C District. Owner/Applicant: Yarde Realty Company. Special Exception Permit to construct a 1,684 sq. ft. one-story multi-use building, including a 20-seat restaurant, 2-bedroom apartment, marina office/storage area, covered outdoor storage area with deck above, paved driveway/parking area, winter boat storage area, site lighting, landscaping, and associated improvements. A boardwalk is proposed along the west side of the property and the proposed docks/dock walkways and davit on the west side of the property were previously approved by Connecticut DEEP and Army Corps of Engineers. **Continued from January 16, 2020.**

Chairman Clark asked Secretary Elliott Hitchcock and Commissioners John K. Mathers, Joseph Bunovsky, Jr., Thomas Burland and Peter Roos, all of whom had been previously absent, whether they had read the minutes and materials, viewed the videotapes of the meetings, and were prepared and felt comfortable about serving in the continued public hearing for 4 Boston Post Road. All answered affirmatively. Chairman Clark seated Alternate Commissioner Roos for absent Commissioner Brian Richardson and stated that Alternate Commissioner Ron Bodinson has recused himself from further involvement in the 4 Boston Post Road application—a recusal decision he made by himself. In addition, the Madison Land Conservation Trust submitted a Petition to Intervene, but it may choose to withdraw that petition and participate in the public hearing process, instead, according to Chairman Clark. It was ascertained that the Madison Land Conservation Trust was withdrawing the petition but would continue its involvement through the public hearing process. Attorney Marjorie Shansky, representing the 4 Boston Post Road owner and applicant, Yarde Realty Company, asked whether the petition would be physically withdrawn and removed, so it will no longer be a part of the record. Director of Planning and Economic Development David Anderson stated that the petition is known as Exhibit 3 and that it will be removed from the record. Ms. Shansky submitted **EXHIBIT 1**, Statement of Qualifications from Davison Environmental, **EXHIBIT 2**, Revised Statement of Use by Yarde Realty Company, and **EXHIBIT 3**, an updated memorandum from state Department of Energy and Environmental Protection (DEEP) Deputy Commissioner Betsey Wingfield, dated Feb. 14, 2020, that Ms. Shansky stated clarifies the January letter that DEEP originally submitted and includes three bulleted statements that satisfy DEEP concerns. **EXHIBIT 4**, a Feb. 20, 2020 letter from Attorney Marjorie Shansky and **EXHIBIT 5**, from Michael Barnes, the East River Landing Marina Operations Outline for 4 Boston Post Road, were also submitted into the record by Ms. Shansky. In terms of Exhibit 5, Commissioner Clark stated that it is impossible for the Planning and Zoning Commission to digest it, not having seen a copy of it, and Mr. Anderson stated that he had received it via email at dinner that evening. The Advisory Committee on Community Appearance (ACCA) and the Economic Development Commission have endorsed the application, and the Zoning Board of Appeals approved the variance, according to Ms. Shansky. Fill on the site has been reduced, in the permit there is a condition that no construction may take place from March 30 to Aug. 15, due to the nesting season of the endangered migrating birds, inactivity of which also applies to the upland area, and the applicant agrees to the condition, according to Ms. Shansky. The Connecticut Coastal Management Act seeks to have a reconciliation of development and conservation, and this application satisfies all of those qualifications, according to Ms. Shansky. On Feb. 7, 2020 a request was made of a Natural Diversity Data Base (NDDDB) update, but that has not yet been received, and Ms. Shansky stated that it will be presented when it arrives, if the Planning and Zoning Commission wants it. Professional Engineer Joseph

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Wren stated that recommendations were taken from Biologist and Soil Scientist Michael Klein and Mr. Anderson to enhance and increase the buffer systems, and he showed plans indicating the increases, which provide significant distances between the tidal wetlands edge, the top of the slope, and also the parking area. DEEP requested five to eight feet, minimum, but the application now has a minimum of 10 feet—one is five feet, however it has been increased to six feet, according to Mr. Wren. The majority of the buffer areas are 10 feet, according to Mr. Wren. The parking area elevation has been lowered to 6.5 feet, but the grades for the Americans with Disabilities Act (ADA) accessibility to the building have not changed, according to Mr. Wren. Fill now totals 6,310 square feet, representing a 20 percent reduction to what was originally proposed, according to Mr. Wren, with 65 percent of the fill in the front portion and 35 percent in the back portion. He presented what has been called “the blue plan,” with three shades of blue—the lightest blue represents natural ground being left as is, the middle shade of blue is the sloped portion, and the dark blue is the area on top of the slope. All of that results in 1.5 feet and a 20 percent decrease in the fill, Mr. Wren stated. Vice Chairman James Matteson questioned the effect of reducing the fill on the south side and leaving the front area the same—he stated that the pitch, or the grade, is being increased, and he wondered if the planners have considered the effect on surface runoff. Mr. Wren stated that the rear parking area has crushed stone, so there will be no surface runoff, and even if there were surface runoff, it would go into the vegetative buffer strip. Chairman Clark stated that there has been an adjustment between the first public hearing and the second, in that originally there would be winter boat storage, but now there is winter and summer boat storage, and he asked how many boats would be accommodated for the summer storage. Property Owner Michael Barnes stated that 40 to 60 boats would be seen, but it depends on the length of the boats; he took aerial photographs of other marinas similar in size to 4 Boston Post Road, and he stated that he saw 40 to 60 boats. In the summer storage, in dry dock, there would be as many as 40 boats, along with 45 slips, so that comes to 85, and Chairman Clark questioned the parking availability with those numbers. A two to one ratio and the fourth of July, which is considered the busiest of the summer for boating, were used; assuming all 45 wet slips are rented, 28 are not connected to the main dock, and there are another 17 boat slips, roughly, remaining; with that information, Mr. Barnes stated that he can assure the Planning and Zoning Commission that the parking is excessive. The marina manager will be responsible for all activities in the boat storage area and will coordinate launching the boats in the water—no one will move the boats unassisted, according to Mr. Barnes. Chairman Clark stated that it seems, potentially, the safety aspect has not been thought out. Chairman Clark described a fourth of July scenario where 20 boats arrive, requiring 20 boat launchings that day, all down the driveway, and launchings will happen 40 times that day, with the other 20 representing boats being removed from the water, and he stated that he is getting more uncomfortable with it. Mr. Barnes stated that all of the surrounding towns use the two to one ratio, and a national boating association uses the fourth of July for the busiest day of the year, adding that he has provided the documentation for that. Commissioner Joel Miller asked who puts the boats in the storage area, and Mr. Barnes stated that it is the marina operator, adding that Clinton and Guilford both have the two to one ratio and Old Lyme is one to one. Chairman Clark stated that he wants to make sure there is adequate parking. The national industry publication that submits the two to one ratio relying on the fourth of July is similar to the Connecticut Marine Trades Association, according to Mr. Barnes. Mr. Anderson stated that the Planning and Zoning Commission did previously discuss this two to one ratio and did accept it. Mr. Wren stated that the parking calculations assume everything is fully functioning—10 spaces at the restaurant/retail space, won’t be used early

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in the day; parking is for optimal use. Chairman Clark stated that the Planning and Zoning Commission was looking at a 42-slip marina, and now it is looking at an 84-boat slip marina, with 40 on land. Mr. Wren stated that with everything built, the application meets parking standards. Chairman Clark stated that in the original application, the words winter boat storage and winter boat storage area are mentioned 10 times. Now there is summer boat storage; it is 84 boats rather than 44 boats at capacity, according to Chairman Clark. At complete capacity, yes, Mr. Wren stated. Commissioner Miller asked if there has ever been a boat marina that has been filled to capacity, and Mr. Barnes stated not to his knowledge—small boat slip marinas usually run at 80 percent capacity. Biologist, Professional Soil Scientist and Professional Wetland Scientist Michael Klein submitted **EXHIBIT 6**, Davison Environmental Feb. 20, 2020 Plans Review, reviewing plans prepared by Indigo Land Design and the preliminary entrance plan prepared by TEC Landscaping Design. The design shows that the slopes are covered with erosion control blankets and a silt fence backed by coir logs. There is no likelihood of runoff, Mr. Klein stated. It will be vegetated with native species, and Mr. Klein stated that they also looked at the landscape plans and suggested that the grassy strip be no-mow, and that there be native and non-native plantings, so there is no significant maintenance required or turf management chemicals needed. While the Madison Land Conservation Trust has withdrawn its petition, Mr. Klein stated that he is sure the trust has the same concerns, so he addressed them during his presentation: There is no threat to the wetland, due to erosion control methods; there is no fill water ward to the coastal resources area; there is no endangered species habitat in the area being proposed for development; and the plans allow for marsh migration, using the state's 2050 sea level rise of 20 inches, so 30 feet will be available for marsh migration. In addition, the Conservation Commission also had comments, which have been addressed in the exhibit, according to Mr. Klein. One comment focused on the erosion of fill on the slope, but this is addressed in the plans, and another comment was a concern about the fill from previous years, but Mr. Klein stated that he does not think that is a concern for this area, since the amount of fill proposed for the site has been reduced. A management plan has been accommodated and all of the changes that have been made to address concerns should not have an adverse effect on the environment. In using the state mandated 2050 sea level rise of 20 inches, Mr. Wren stated that the developers also used the Coastal Jurisdiction Line as a basis for the 20 inches above the expected high tide line. A biologist, Michael Klein, was hired by the applicant for the endangered species of the least shrew within the development area, and this site does not have it; Michael Klein determined this through sight, according to Mr. Anderson, adding that the determination contradicts the NDDDB letter that the Planning and Zoning Commission has. In the NDDDB letter, the agency says that the information is not site specific, Ms. Shansky stated. The least shrew has not been spotted since 1989 and earlier than that, it was spotted in 1940, according to Mr. Barnes. Submitted was **EXHIBIT 7**, John C. Cunningham, Feb. 20, 2020, Review of Buffer Planting.

Chairman Clark asked whether there were any questions from the public. A question was asked about the property owner's plans to dock boats at the marina and to also sell boats, with the inquiry seeking the location of the merchandise. Mr. Barnes stated that there will be 40 to 60 boats on site, assuming all slips are occupied, but he does not see 40 to 60 boats being on the site; paddle boats and kayaks for sale would be placed in storage and how many of them depends on how many are able to be fit into the storage space. Boats docking at the marina would be 13 to 18-foot vessels, and not all of the boats will be in the water, according to Mr. Barnes, who stated he is changing an earlier statement to say that 46 boat slips will be used in the water, and no one will use the storage space on land. Commissioner Joseph Bunovsky, *Page 5. Madison Planning and Zoning Commission, Regular Meeting, Feb. 20, 2020*

Jr., asked for clarification on water dependent use and why a restaurant would be needed in a water dependent use. Ms. Shansky stated that the priority under the Connecticut Coastal Management Act is for water dependent uses, and it permits towns to limit water dependent uses, which Madison has not done. The building is 1,685 square feet, and if there is a restaurant in it, then that complies with water dependent use—it allows that option, according to Ms. Shansky. Kealoha Freidenburg stated that the DEEP says there is letter that is supposed to come about the endangered species, and Mr. Klein says that the least shrew is not there, but it is only three inches long—the salt marsh sparrow is not on site, now, because it is a migratory bird, and she asked why this was being dismissed. Mr. Klein stated that there is no habitat for the salt marsh sparrow in the buildable area of the application, and the least shrew is sometimes found on the edges of salt marshes, but there has been one known location in the last 40 years; this site is dense fill that has been there many years, and it is not habitable to the least shrew. No obligation for an NDDDB was included, according to Ms. Shansky, so instead Davison Environmental was asked to execute a study on the site, and the Planning and Zoning Commission has the information; the applicant has gone the distance on how this meets function and value.

Chairman Clark asked whether anyone in the public wanted to speak in favor of the application. Common sense would say that in order for Mr. Barnes to maintain a safe operation of the marina, he would have to say when he cannot take on any more and send potential customers away, according to Andy Davis, adding he is sure this applicant has adequate common sense to do so, and therefore, he is in support of the application. Bruce Beebe stated that he is speaking in favor of the application; capital investment is needed in this town, as well as its recreational value, adding that this project is good for Madison. It meets and exceeds the standards in design, Mr. Beebe stated, adding that he has nothing to do with this project, financially, and has nothing to gain from it. It is in his neighborhood, he loves his neighborhood, and he welcomes the marina to it, Mr. Beebe stated.

Speaking in opposition to the application, Madison Land Conservation Trust President Benjamin Diebold stated that the trust is still opposed to the amount of fill, because, as the DEEP letter noted, it does not need to be there, and the fill is incredibly bad for the marsh. Fillmore McPherson stated that it might seem like a very spiffy idea to put so much into this development, but he compared it to trying to cram more than two weeks of clothes into luggage, when going on a two-week vacation. He stated that the applicant could do better with less on the site; one of the drivers for the fill is the septic drainage, due to plans for a restaurant/retail space, and an apartment. That drainage fill took up half of the lot, Mr. McPherson stated. The development could be made smaller by having the office up on pilings with an ADA ramp, and there would be no need for a large septic system to accommodate a restaurant, according to Mr. McPherson. Joseph Maco expressed concern for protecting the wetlands and the marsh, as well as someday making the spot a very public area for oysters. Kealoha Freidenburg stated that she believes there is a lot going on for such a small space; Madison has nice marshlands in town, and she is not sure that that much development is needed on that space.

Ms. Shansky stated that if the Planning and Zoning Commission deems it necessary to hold the public hearing open to allow the commissioners to review everything that has been submitted, this would be agreeable. Mr. Wren stated that of 49,000 square feet on site, 15,000 square feet is vegetative buffer, which is all around the entire site, and is important for the marsh and

marsh migration. Mr. Wren stated that they had a meeting in Hartford with DEEP, and DEEP felt its letter was very supportive of the water dependent use. The fill is needed for the building to be ADA compliant, for the parking, and for the septic system—the elevation has to be above ground water for the septic system, according to Mr. Wren. In terms of the restaurant or retail space, those uses are very similar to the site’s original uses; a 20-seat maximum for the restaurant was agreed upon, and for parking and the septic system, the plans show the most intensive use of the site, according to Mr. Wren. There was an eight-foot elevation, and it has been lowered to 6.5 feet, and the applicants feel this is consistent with DEEP’s letter; a 20 percent reduction of fill is appropriate, but it is not a viable project if less fill than that is used, according to Mr. Wren. The previous use of the site and the water dependent use is something that should be encouraged and preserved, as DEEP recommends, according to Mr. Wren. This is the kind of site on which uses should be concentrated; it is far more appropriate to intensify uses on this site, rather than going to a virgin site, Mr. Klein stated. Mr. Barnes stated that he, too, would like to encourage public use of the area for the oysters, but the Department of Aquaculture, as of 2016, determined this area was not for oysters, and it does not think this is a good idea, now. There is only a 1,685 square foot building on site, and Mr. Barnes stated that he cannot have a restaurant, retail space and office functioning all at the same time; the slope is sufficient enough for runoff that goes to an off site buffer. Mr. Barnes stated that he does not want hearsay turned into facts; they have submitted the DEEP letter and the DEEP deputy commissioner’s letter, which has made revisions to the first letter. Mr. Wren stated that the building is a one-story building and always has been.

Chairman Clark stated that he was hopeful of closing the public hearing, however there is a lot of information the Planning and Zoning Commission has not been able to review; summer storage would be no storage, because all the boats will be in the water, and parking needs to be clarified. Ms. Shansky stated that for the purpose of the Planning and Zoning Commission having the opportunity to read the letters and ask questions, if there are any, answers will be provided in a timely fashion to the commission. All commissioners agreed to keep the public hearing open and to continue it.

Commissioner Bunovsky made the motion to continue the public hearing; it was seconded by Vice Chairman Matteson and unanimously approved.

Vote to continue the public hearing passed, 9-0-0.

IN FAVOR: Chairman Clark, Vice Chairman Matteson, Secretary Hitchcock, and Commissioners Bunovsky, Mathers, Roos, Miller, Burland, and Mcdowall.

OPPOSED: None.

ABSTAINED: None.

The public hearing will be continued until March 19, 2020, Mr. Anderson stated.

20-02. Regulation Amendment. Petitioner: The General’s Residence at Madison, LLC. Petition for Regulation Change to Section 3.12, Special Use Regulations for Small Cluster Developments, to add Section 3.12(f) to permit a minimum front yard setback of twenty-five (25) feet.

Attorney Timothy Herbst gave a history of the project, summarizing a Jan. 10, 2020 Executive Page 7. *Madison Planning and Zoning Commission, Regular Meeting, Feb. 20, 2020*

Summary he had given to Director of Planning and Economic Development David Anderson, which is a part of the record regarding the petition for the regulation amendment, proposed changes to Section 3.12 of the Madison Zoning Regulations. In May 2019, the Planning and Zoning Commission considered an application for the project at the General's Residence at 908 and 916 Boston Post Rad. The General's Residence is 908 Boston Post Road, and an adjacent home is on 916 Boston Post Road. The Planning and Zoning Commission unanimously granted a special exception permit in May 2019, and the property was rezoned to allow for cluster development, as provided under the provisions of 3.12 of the Madison Zoning Regulations; the two properties together abut East Wharf Road, Boston Post Road and Fence Creek, according to Mr. Herbst. He asked that the Planning and Zoning Commission incorporate the comments he made in May 2019, with reference to the project complying with the Madison Plan of Conservation and Development, and that they be made a part of the record; Mr. Anderson agreed to do so. The proposed development has been met with excitement in the Madison community, and as of January 10, the company, The General's Residence at Madison, LLC, has received executed reservation agreements from existing Madison residents seeking to downsize and remain in town, Mr. Herbst stated. This development provides alternate forms of housing, creates a walkable community near to the downtown area, and it preserves the historically significant General's Residence, Mr. Herbst stated. This amendment is being sought because there is a new owner who has found that while there are those interested in purchasing the units, several have brought up the fact that the current Planning and Zoning Commission approval has detached garages, and for safety reasons, they prefer attached garages, according to Mr. Herbst. There was also a request to increase the allowable square footage, which the Planning and Zoning Commission did, by changing the regulations to allow the square footage to increase from 1,125 square feet to 2,250 square feet, with a 40-foot front yard setback, according to Mr. Herbst. To achieve the desired outcome of attached garages, while ensuring that the overall site plan interconnects appropriately, it has been concluded that a minor text amendment of Section 3.12 is required to address the minimum front yard setback; the applicant seeks a reduction in it from the existing 40-feet to a new front yard setback of 25 feet, according to Mr. Herbst. This recommended revision to the front yard setback is designed to give more breathing room and more space to the abutting property owners, according to Mr. Herbst. Madison's Transition District (T District) allows for limited commercial development near commercial centers, but defines a single family residential dwelling as a permitted use under Section 6.4, and that district calls for a minimum front yard setback of 20 feet, according to Mr. Herbst. The R3 and R4 residential zones call for a minimum front yard setback of 30 feet, and the current minimum front yard setback for the R-5 zone is 25 feet, he stated. To be consistent with these standards, the applicant's proposal to amend Section 3.12 represents an average of those minimum front yard setbacks, according to Mr. Herbst. This regulation amendment can and will be applied fairly and uniformly town wide, according to Mr. Herbst. This regulation amendment will allow repositioning of the nine units away from Fence Creek and abutters; facilitate attached garages, while mitigating the appearance of overcrowding on the site; provide better safety for residents, as well as better access for ingress and egress on the site; enhance the community garden in the development's center; and allow for a streamlined and more efficient process in rehabilitating The General's Residence, according to Mr. Herbst. Professional Engineer and Land Surveyor Thomas A. Stevens presented **EXHIBIT 1**, a color-coded site plan of the General's Residence at Fence Creek. The site is comprised of 2.28 acres, with two lots being combined to form a single lot, Mr. Stevens stated. Because of parking requirements on East wharf Road, the applicant is looking for relief on Boston Post Road for 25 feet, as opposed to 40 feet, Mr. Stevens stated. The plans in the exhibit included: a watershed

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map; the proposal approved by the Planning and Zoning Commission last year, with the 40-foot setback line shown in black , on both Boston Post Road and East Wharf Road, with four garages for four units having one-bedroom apartments; the newly allowed square footage with newly attached garages with 40-foot setbacks; a plan showing a subtle difference with the buildings set farther apart, pushed to the 25-foot setback, and adding a driveway to the front; and a final page showing three bedroom units versus two, and each unit having its own attached garage, according to Mr. Stevens. No front yard setback relief is needed on East Wharf Road, but it is needed on Boston Post Road, he stated. Two units will be in the General's Residence, and the other eight units are removed, so there are 10 units in total, Mr. Stevens said. Mr. Herbst stated that the previous application recommended that the outside of the General's Residence would be dressed up but not inhabited; but there have been purchasers interested in knowing whether the General's Residence will be rehabilitated for living; the applicant would like to do that. The General's Residence is currently in a residential zone, and it is allowed, Mr. Herbst stated. In the original proposal, the ninth unit was attached to 908 Boston Post Road, so 908 would be 10; it is not adding a unit, it is taking what is there and making it two, Mr. Herbst stated. This proposal is not affecting Fence Creek in any adverse way, in comparison with the first application, according to Mr. Herbst. The previous application operated under the 40-foot setback, and the green space was being crunched; the applicant wanted to have a walkable green space, according to Mr. Herbst. This proposal fully comports with the Plan of Conservation and Development; 25 feet is based on the average of the zones mentioned, and it is believed this is a reasonable request, according to Mr. Herbst, who added that the developers heard loud and clear the environmental concerns of Fence Creek. It is felt that if the Planning and Zoning Commission grants this regulation amendment request, an eyesore in town will be corrected, and others will look at this development as a model, Mr. Herbst stated. Finally, he stated that the current 40-foot front yard setback goes right through the middle of the General's Residence. Mr. Anderson stated that the commission is considering this proposed amendment to the regulations; if this receives approval, there will be a subsequent public hearing on an application. This regulation does apply potentially to any proposed project within 500 feet of the districts noted, but the Planning and Zoning Commission still has the flexibility to impose the lot size, and there is still flexibility for the setback, Mr. Anderson stated. This change only affects projects that are for small cluster developments, he stated. Commissioner Miller stated that the Planning and Zoning Commission heard a lot of discussion about the plan, and he asked whether there has been a structural survey to make sure the General's Residence is viable for a residential unit. A formal structural assessment has not yet been made, it was stated. Chairman Clark asked whether the fact that the site has frontage on both streets qualifies as a hardship under the Zoning Board of Appeals. Mr. Herbst stated that when the other applicable zones were examined, it seemed that the Planning and Zoning Commission could make the regulation amendment, in acting in a legislative capacity.

Chairman Clark asked for questions from the public and one question sought clarification on the amendment, so Mr. Anderson explained that this is a change to the small cluster development. Chairman Clark asked if anyone wanted to speak in favor of the application. No one did. He asked whether anyone wanted to speak in opposition to it. Keith Ainsworth, environmental attorney, representing Boston Post Road neighbors presented **EXHIBIT 2**, a protest petition under Connecticut General Statutes Section 8-3b, dated Jan. 10, 2020, and stated that there is a real possibility this will create more cluster developments. Exhibit 2 contained the signatures of the owners of the lots within 500 feet of the properties affected by

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the application 20-02, to change the setback in zoning regulation Section 3.12 from 40 feet to 25 feet. This project is actually viable under the present approval, but the developers want to go from nine units to 10 units, thus reducing the buffer to the neighbors, according to Mr. Ainsworth, who stated that the setback request could go to the Zoning Board of Appeals, but a hardship would have to be proven, and there is no hardship. He also submitted **EXHIBIT 3**, Keith R. Ainsworth letter dated Feb. 20, 2020, with reasons not to approve the application, and he stated that his clients have a right to rely on that 40 feet; zoning is not made to fit the project—a project is made to fit the zone. The number of units could simply be reduced to get rid of the crunch, but the developers want to maximize the units, instead, according to Mr. Ainsworth. Mr. Herbst stated that he wanted a copy of the letter submitted by Attorney Ainsworth, as well as the petition, and he asked that the town attorney review the petition, as well. Mr. Anderson agreed to do so. Terence Rafferty stated that seeking an amendment specific to a property is really a request for a variance; variances require a hardship. When the buyers bought the property, they knew what they bought, he stated; it doesn't suit them, and buyers' remorse is not a hardship. This application is a variance request being made to the wrong committee, according to Mr. Rafferty, who presented **EXHIBIT 4**, for application 20-02, his four statements in opposition to the application. Two more residents spoke in opposition, with one stating she was opposed, and the second stating that when developers look at sites, they assess the risk and the profits; these property owners did the math on the property, and they are motivated by the profit, with the goal being to change the plan to make more money. A third resident expressed a concern for the ripple effect of the development on the town of Madison, for allowing the front yard setback to be 25 feet instead of 40 feet. Others in opposition to the application did so for the following reasons: The application should go before the Zoning Board of Appeals for a variance and should not be heard by the Planning and Zoning Commission; the application is essentially a grab for money; a concern for the viability of the Fence Creek was expressed, and with the state requiring towns to integrate the sea level rise into its plans, Madison should do so; the project is worrisome, because when it rains, the water does back up the marsh; a desire to retain the 40-foot front yard setback, because the General's Residence stands as a cornerstone to the east and a sentry to the west, residents' homes nearby are set back 40 feet, giving pastoral views to others; and the proposed amendment does not meet Downtown Village District regulations. Mr. Herbst asked that the petition be sent to him electronically, as well as to the town attorney; he stated that he would not address the personal attacks that are being made against his client and himself in Mr. Ainsworth's letter. However, when the Planning and Zoning Commission increased the square footage of the units, there were no comments in opposition, and what is being proposed now is a very specific change, Mr. Herbst stated. In Mr. Ainsworth's entire three and one-half-page letter, he fails to show how this application does not comport with the town's Plan of Conservation and Development, according to Mr. Herbst. It is being stated that the Planning and Zoning Commission does not have the right to change this regulation, but Madison has a Planning and Zoning Commission that has been entrusted to do so, according to Mr. Herbst. Mr. Anderson advised the Planning and Zoning Commission to continue the public hearing.

Vice Chairman Matteson made the motion to continue the public hearing; it was seconded by Secretary Hitchcock and unanimously approved.

Vote to continue the public hearing passed, 9-0-0.

IN FAVOR: Chairman Clark, Vice Chairman Matteson, Secretary Hitchcock, and Commissioners Bunovsky, Mathers, Roos, Miller, Burland, and Mcdowall.

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OPPOSED: None.
ABSTAINED: None.

The public hearing will be continued until March 19, 2020, Mr. Anderson stated.

Commissioner Mathers stated that he would like to further discuss how this application would affect the town of Madison, and Mr. Anderson stated that he will get maps for the Planning and Zoning Commission.

Adjournment

Commissioner Miller made the motion to adjourn at 11 p.m.; it was seconded by Commissioner Bunovsky and unanimously approved.

Vote to adjourn at 11 p.m. passed 9-0-0.

IN FAVOR: Chairman Clark, Vice Chairman Matteson, Secretary Hitchcock, and Commissioners Bunovsky, Mathers, Roos, Miller, Burland, and Mcdowall.

OPPOSED: None.

ABSTAINED: None.

Respectfully submitted,
Marlene H. Kennedy, clerk