

December 21, 2016, revised January 24, 2017 per Commission review at the January 19, 2017 meeting

MINUTES: THE ZONING BOARD OF APPEALS, Town of Hamden, held a Public Hearing and Regular Meeting on Thursday, December 15, 2016 at 7:00 p.m. in the Legislative Council Chambers, Memorial Town Hall, 2372 Whitney Avenue, Hamden, CT with the following results:

Commissioners in attendance:

Jeff Vita, Chair
Wayne Chorney
Fran Nelson
Suzanne Carroll
Steve Walsh, (left at 9:02 p.m.), Sitting
for Elaine Dove

Staff in attendance:

Dan Kops, Town Planner
Tim Lee, Assistant Town Attorney
Stacy Shellard, Commission Clerk
Genevieve Bertolini, Stenographer
Holly Masi, Zoning Enforcement Officer

Mr. Vita called the meeting to order at 7:04 p.m., reviewed the agenda and meeting procedures, and the panel introduced themselves.

A. Public Hearing

Mr. Vita stated that items 3, 4 and 5 would be heard first.

3) 16-6610 3936 Whitney Avenue, T3.5 zone, Request variance: Section 652.2.e to allow a septic system where public sewer is required for a mixed use site, Pierce Lindsay & Alan Faticone, Applicant

Ms. Joan Molloy, Attorney, addressed the Commission and reviewed the history of the property. She stated that the site is permitted for four residential units and commercial use. There are currently six units and when her clients purchased the property in 2005 they did not check the legality of all the units. Ms. Molloy said there is a special permit under review to legalize the 6 units pending the outcome of the variance request. She said the variance request is to allow the uses without hooking up to public sewers. Ms. Malloy noted that the closest public sewer connection to this site is located at Whitney Avenue and West Todd Street. QVHD has issued a permit for the proposed use. Ms. Malloy stated that she did receive a copy of the letter from Mr. Lawrence Fazzone, President, Canal Commons Homeowners Association. The letter questions if all the proper permits for the septic system have been received. Ms. Malloy agrees with Mr. Fazzone that all the regulations should be complied with and all necessary permits should be obtained. She believes this has been done by receiving the permit from QVHD. Ms. Malloy stated that Canal Commons is a larger complex and produces over 5,000 gallons of discharge a day and was required to get permits from the DEEP and the State. This site produces less than 2,000 gallons of discharge a day and is therefore not required to go through the State review processes.

Mr. Vita said the applicants received a Notice of Violation from QVHD and a copy is in the Commissioners packets. Also in the packet is the QVHD approval for the septic system. Ms. Malloy confirmed that the letter and the permit are included in the packet.

Mr. Nelson said the permit from QVHD shows eight residential units. Ms. Malloy reviewed the permit and it permits only six residential units and commercial use. The calculations for the amount of discharge were done and included both residential use and commercial use. Mr. Nelson asked if the septic system is 1,250 gallons. Ms. Malloy replied yes. Mr. Nelson asked if the size of the system was included in the QVHD approval. Ms. Malloy replied yes.

Mr. Chorney asked if all the N.O.V. violations have been addressed. If not, would the applicants be open to accepting that the violations be addressed as a condition of approval. Ms. Malloy replied that it is her understanding that QVHD has made recommendations and some have been implemented. The remaining recommendations are pending approval of the Special Permit.

Mr. Vita stated that a letter dated December 13, 2016 from Mr. Lawrence Fazzino was received. He asked Ms. Holly Masi, Zoning Enforcement Officer, if the question of a State permit and ground water permit should go before the IWC or the Sewer Commission.

Mr. Tim Lee, Assistant Town Attorney, stated that there is not a need for the applicant to go before the Sewer Commission because the site is not connected to sewers. The jurisdiction of the IWC would depend on the location of the septic system and if it is within 200 feet of a watercourse or wetland.

Mr. Vita asked for comments in favor and against the application. There were none.

Mr. Vita closed the Public Hearing.

4) 16-6611 820 & 830 Dixwell Avenue, T-4 zone, Request variances: Section 360.1.b to eliminate streetscreen, Section 591.1.15.d provide a 4ft 7inch landscaped area where 5'ft is required for a parking lot, Aris W Stalis, Aris Land Studio, LLC, Applicant.

Mr. Aris Stalis, Applicant, addressed the Commission and stated that the land is owned by Achievement First Elm City, a non-profit charter elementary school. Mr. Stalis reviewed the history of the site and the surrounding properties. He submitted a letter of support (Exhibit 1) from Faith Temple Revival Center, dated December 7, 2016. Mr. Stalis reviewed the proposed site plan, parking plan, landscaping and planting plan.

Mr. Chorney asked if the proposed four foot high perimeter fence will be placed on piers. Mr. Stalis replied yes, except on the west side of the site to allow for an adjustment in the grade. Mr. Chorney asked if the proposed plan will allow for handicap accessibility on to Cherry Ann Street. Mr. Stalis replied yes and reviewed the proposed site plan.

Mr. Chorney referred to Section 591.1.3 and stated that the regulation requires a bike rack for every 10 parking spaces. Mr. Stalis replied that he spoke with Mr. Dan Kops, Town Planner, and it was determined that a bike rack was not necessary in the parking lot. One could be placed outside the school.

Mr. Chorney feels the corner parking spaces may create an issue. Mr. Stalis replied that there is enough turning room for vehicles using the spaces. Mr. Vita stated that the placement of the parking spaces would be addressed by the Planning & Zoning Commission.

Mr. Vita asked for comments in favor of the application:

Ms. Latrecia Bromell, 21-23 Alstrum Street, addressed the Commission and reviewed the location of her parents' home and the history of the site. Ms. Bromell is concerned about the traffic and trash generated from the nearby club Chazmo's and that the people will use Alstrum Street as a cut-through. She is also concerned how the parking lot will be used when the school is not in session. She asked if the parking area will be gated. Mr. Vita stated that her concerns are valid, but it is not something that would be addressed by the ZBA.

Ms. Bromell reviewed the proposed site plan with Mr. Stalis.

Mr. Vita asked for comments against the application:

Ms. Jean Koepke, 26 Alstrum Street, addressed the Commission and stated she is concerned that the proposed plan will create more traffic on Alstrum Street. She reviewed the site and the traffic pattern that would occur when entering and exiting the site. Ms. Koepke asked why people could not enter and exit the site from Dixwell Avenue. She stated that she is not opposed to the proposed use but is concerned about the traffic if it were to be approved. Ms. Koepke asked who will be using the parking lot when the school is not in session. She feels that the numbers of parking spaces proposed are excessive. She questioned how the fencing and screening will look from Alstrum Street.

Mr. Vita explained that the issue of the look of the street screening and landscaping will be addressed by the Planning & Zoning Commission if the variance is granted.

Mr. Stalis stated that he is willing to meet with Ms. Koepke to review the location of the fencing and the planting plan.

Mr. Vita closed the Public Hearing.

5) 16-6612 380 Mather Street, T-5 zone, Request variances: Table 3.4 & Figure 3.7 to permit a front yard setback of 29.5 ft where a maximum of 12 ft is allowed for Building 1, Section 550.2.7.a to permit 2 freestanding signs where only 1 is allowed, Section 550.2.7.g to allow two free standing signs totaling 51sf where a maximum of 32sf is allowed, Canal Crossings, LLC, Applicant

Mr. Ted Hart, Professional Engineer, addressed the Commission and reviewed the variance requests. He noted that the approved location of building one needs to be changed to meet the UI requirements. Mr. Hart reviewed the site and the location of the proposed signs. He noted one of the free standing signs will be located on an archway.

Mr. Chorney stated that the ground sign will need to have the location's address on it. Mr. Hart replied the address will be on the sign. Mr. Chorney stated he would like to see the sign itself to make sure that the address is visible. Mr. Chorney stated that the height of the archway should be approved by the Fire Department. Mr. Hart replied he will be working with the Fire Department to make sure that there are no issues.

Mr. Nelson asked how far apart the signs will be. Mr. Hart replied approximately 10 feet. He reviewed the proposed signs and noted that the signs will need Planning & Zoning approval.

Mr. Vita asked for comments in favor of the application:

Mr. Myron Hul, Councilman, Sixth District, addressed the Commission and stated that he was on the Planning & Zoning Commission when the original application for this site was approved. He stated that the proposed project was a significant effort and it is a major project for the Town. Mr. Hul stated that the variances being requested are minor in nature and he urged the Commission to approve the application.

Mr. Vita asked for comments against the application. There were none.

Mr. Vita closed the Public Hearing.

Mr. Vita stated that items 1 & 2 would be heard simultaneously.

Mr. Nelson made the motion to combine item 1 & item 2's public hearings. Ms. Carroll seconded the motion. The motion passed unanimously.

1) 16-6608 1715 Whitney Avenue, Request to appeal the decision of the Zoning Enforcement Officer's approval of a Sober House (dated 10/18/16), Spring Glen Civic Association, Applicant

2) 16-6609 1715 Whitney Avenue, Request to appeal the decision of the Zoning Enforcement Officer's approval of a Sober House (dated 10/18/16), Danielle & John Daley, Applicant

Mr. Tim Lee, Assistant Town Attorney, read a statement by Mr. Dan Kops, Town Planner, who was unable to attend due to a family medical emergency.

APPEALS 16-6608 AND 16-6609
OF DECISION TO GRANT A ZONING PERMIT
FOR THE HOUSE AT 1715 WHITNEY AVENUE
DECEMBER 15, 2016

The owner of the property at 1715 Whitney Avenue, Ms. Jennifer Barba, submitted a Zoning Permit for a Sober House for nine clients plus one staff person on August 5th. Staff evaluated the application over the next several weeks, listening to the concerns of neighboring residents and requesting that the applicant provide additional information, a simple floor plan and parking plan. The applicant ultimately provided a signed, notarized affidavit that assigns responsibility for operating the Sober house, describes the rules residents must follow and limits total occupancy to ten people.

Throughout the review process staff consulted with the Town Attorney's Office regarding the treatment of Sober Houses. The advice we received from Town attorneys and outside counsel was very clear and consistent – the provisions of the Fair Housing Act as Amended in 1988 and the Americans With Disabilities Act apply to Sober Houses and those laws override local regulations. Failure to approve the Zoning Permit would put Hamden in jeopardy of losing the resulting lawsuit and paying a significant fine. Thus, after receiving all of the requested documentation from the applicant the Zoning Enforcement Officer approved the Zoning Permit application for the Sober House on October 18th.

Mr. Lee stated that under section 632.1 of the Hamden Zoning Regulations, Sober Houses are permitted in all zoning districts subject to an issuance of a zoning permit by the Planning & Zoning Department. The application for a Sober House does not require either site plan or special permit approval from the Planning & Zoning Commission. However, the situation presented by the appeals is unique because the property is located within the Spring Glen Village District and the property appears on a registry of historic properties within the State of Connecticut.

Mr. Lee stated that under Section 452.6 of the zoning regulations as set forth the list of permitted uses of the residentially zoned portion of the Spring Glen Village District, a sober house is not an expressly permitted use. However, section 452.6.1.1a permits "other uses which are required to be permitted by Federal or State Law". In addition, Section 452.6.2 states that the conversion of any property or structure into a use other than a single family dwelling requires a special permit, "unless exempt from such permitting requirements by State or Federal Law". While not necessarily exempt from local regulation, a

sober house is protected by Federal law. Loosely defined a sober house is a property where recovering addicts live in a group home setting. The homes are generally located in residential neighborhoods. The group homes in a residential neighborhood provide persons with disabilities with the most normalized living environment, allowing for interaction for those without disabilities which helps to improve the treatment outcomes. Individuals recovering from alcohol and drug addiction are recognized as disabled under the Americans with Disabilities Act and the Fair Housing Act as amended. As a result, a sober house receives protection from discrimination under Federal Law. Under the Fair Housing Act a municipality is required to treat a sober house in a nondiscriminatory manner. A municipality must treat a sober house in the same manner it would treat other individuals residing in a house. Since the Town does not require a family to obtain a special permit before it moves into a single family house in the Spring Glen Village District, likewise, the Town should not require a sober house to obtain a special permit. It would be treating the individuals residing in a sober house differently than the individuals who reside in a single family house. As a result, the regulation is discriminatory in its application of sober houses because it treats them differently than other individuals. When faced with such discrimination the Town is required to make "a reasonable accommodation" under the Fair Housing Act. In this case, the reasonable accommodation was to require that the sober house not apply for a special permit because of the discriminatory effect. The Town decided to treat the sober house in the exact same manner the Town would treat other single families residing within the Spring Glen Village District.

Mr. Lee stated that the second major issue raised in the appeal was the fact that the property is on a historic registry. Section 660 of the zoning regulations is titled Preservation of Historic Structures. It states "Any addition to or modification of a building that has been designated on a local, state or national historic register shall be subject to Special Permit approval". At some point, the property owner replaced the existing windows with new energy efficient windows at the property. A concerned neighbor notified the Building Official who inspected the property and decided that the work performed did not require a permit from the Building Official. At that time, the Building Official checked to see if the property was registered as a historic property. He determined that it was not. However, apparently the property is on a historic registry but is listed under a different address. Ultimately, it was an issue without much significance. If the Planning Department had been made aware that the property was on the State registry prior to the installation of the windows, the department would likely have determined that the replacement of the windows would not be an addition or modification that required a special permit. Furthermore, even if it had been determined that the replacement windows required a Special Permit, the sole issue before the Planning & Zoning Commission on the special permit would have rebated to the replacement of the windows. The issue of whether this property was a suitable location for a sober house would not have been before the Planning & Zoning Commission and those issues would not have been permitted to be presented to the Planning & Zoning Commission because the sole issue would have been can they replace the windows with new energy efficient windows.

Mr. Lee stated that for those reasons the Office of the Town Attorney instructed the Zoning Enforcement Officer to issue a Zoning Permit to allow the sober house at this address. Upon receipt of the notice that the Town had issued the permit, two individuals, including representatives of the Spring Glen Civic Association appealed that decision. The appeal is before the Board tonight.

Mr. Lee stated that in making a decision on this application the Town did review several documents and literature regarding sober houses and the interplay of the Fair Housing Act the American With Disabilities Act and local zoning regulations as it relates to sober houses and group homes. Mr. Lee submitted for the record: Planning and Zoning for Group Homes: Local Government Obligations and Liability Under the Fair Housing Amendments Act by Brian Connolly who is a lawyer from Colorado and Dwight Merriam who is a land use expert, nationally recognized with the law firm of Robinson & Cole, Hartford, CT (Exhibit 1), Joint Statement Of the Department of Justice And The Department Of Housing And Urban Development, regarding Group Homes, Local Land Use, And The Fair Housing Act, 2015 (Exhibit 2), and a Joint Statement Of The Department of Housing And Urban Development And The Department of

Justice, regarding State And Local Land Use Laws And Practices And The Application Of The Fair Housing Act (Exhibit 3).

Mr. John Morrison, President, Spring Glen Civic Association, addressed the Commission and stated that he finds it has been a very unusual opening for an appeal for pre information to be given and that it should have come after his presentation.

Mr. Morrison referred to and reviewed Section 452.1 Purpose of the Spring Glen Village District and an article Inside the \$35 Billion Addiction Treatment Industry (Exhibit 4). He noted that the purpose is to preserve Whitney Avenue as it is seen so that it does not turn into what has occurred up in Mt. Carmel. Thirty years ago Mt. Carmel was just like Whitney Avenue which was homes in a residential area and a walking area. It is now all businesses, lawyers' offices and doctors' offices. The Spring Glen Village District is a very unique area of historic homes and residences. It is a walking neighborhood with children walking to St. Rita's School and Spring Glen School every morning and afternoon past the corner where the Sober House is located (Humiston House). Mr. Morrison stated that the article about sober houses appeared in the Forbes Magazine on April 27, 2015. He said that much of the opinion of sober houses has started to change and they are being ruled against by the courts in various states. Sober houses are a 35 billion dollar industry and are not just some type of a charity or something to help the poor and disabled elderly. It is not government supported. Sober houses are businesses that charge \$15,000 to \$26,000.00 per month to the people that are there. It serves the very well to do or the children of the very well to do who are addicted or coming off of being treated for addiction and now trying to go back into society.

Mr. Morrison stated that this location would be dealing with males who are between the ages of 18 years to 28 years old and are recovering addicts who have gone through treatment and are now at a sobriety center. They are now in the final 6 months before returning to normal life. This is fine, however, the location is the wrong place for a sober house.

Mr. Morrison submitted and reviewed Historic Hamden-a guide, a picture of 1715 Whitney Avenue, the Humiston historic house located at the corner of Haverford Street at 1715 Whitney Avenue, which dates back to 1769, and a list of historic homes in Hamden (Exhibit 5). He noted that the guide was published by the Historical Society in 1976 for the 200 year anniversary of the American Revolution. Inserted on page 12 is a picture of the Humiston house, a colonial clapboard, that was restored to its original condition in the mid-20th century. It contains a central chimney with "random width chestnut flooring" and is furnished with 18th century random period pieces. The most important part of the house is the door and carved corners which are the most outstanding in New England. The house is on the State registry. It is not registered by the address, but by the name of the house (Humiston House). Everyone knew this, including the Town Planner. The house belonged to Justus Humiston who was a major figure with a major family in the history of Hamden in the early part of the 18th century. Mr. Humiston was not a justice and the correct spelling of his name was "Justus" which was spelt wrong in the State Registry. The house was placed on the registry just before the bicentennial year (1976). It is one of the two oldest houses in Spring Glen with the other being the Ford House located on Ford Street since 1769. Years ago Whitney Avenue was known as the Cheshire Turnpike and ran from Cheshire down to where St. Rita's is located and then split off where Ford street and is across where Lake Whitney is currently. In the booklet it shows a stone with the four mile marker going down to New Haven. The marker is directly across the street from the Humiston House at Elihu Street and Whitney Avenue.

Mr. Vita asked what the history being given to the Commission has to do with the appeal. Mr. Morrison stated that it has to do with the history of the house itself. The house has the windows that have been

spoken about and the door being the rarest corner pieces within New England. It is considered a primary example of the work that was being done in the period before the Revolution. It has now been destroyed and the windows have been ripped out. Included in the booklet is a picture of the original windows. The colored picture shows the replacement windows and door which destroyed the beautiful work of the original ones.

Mr. Vita asked what Mr. Morrison has presented has to do with the use of the house as a sober house and if it is an appropriate use in the area. Mr. Morrison replied that the house is historic and should be saved. Mr. Vita said if the house is on the national registry there are certain things that can be done, but it is a separate issue. The issue before the Commission is if it is an appropriate location for a sober house. Mr. Morrison stated that the Planning Office did not do its job by recognizing the house it is and saving it. What needs to be done is to restore the house and that should be paid for by the people who own it. The work was done before a permit was issued for a sober house.

Mr. Lee stated that the relevance is that under Section 660 of the regulations that the house is a historic house and that when doing a modification the zoning regulations require a special permit. Mr. Morrison's argument is that the Planning Office should have required the owner of the property to submit a special permit application before making changes to the windows. Mr. Vita questioned what it had to do with the issue before the ZBA.

Mr. Morrison stated that the owner is responsible to restore the windows and doors. Neighbors have reported that woodwork was also ripped out from within the house. All kinds of destructive damage was done to a historic house that was one of the oldest houses in Hamden. Mr. Vita stated that he tends to agree with Mr. Morrison, however, he feels that a complaint should be filed with the National Historic Registry to deal with the issue. He questioned what the issues had to do with the location of a sober house and if it is appropriate. Mr. Morrison stated that if the house had not been purchased as a sober house the work done would not have happened.

Mr. Morrison submitted and reviewed pictures of the parking that is occurring on Haverford Street (Exhibit 6). It shows the parking problems that are occurring because of the sober house. The pictures show cars parked on the street and the sidewalks. One of the pictures shows a car turning off of Whitney Avenue and if another car were coming down the street it would be hit because the street is narrow. Mr. Morrison stated that Haverford is a wavy street. There is no parking on the street until you get to the last 4-5 houses. He is unsure why there are no "No Parking" signs. For a decade or more there were signs that did not allow parking in front of the Humiston House. There are children every day crossing the street as they go to and from school. Cars weave in and out because of people parking on the street for the sober house. They should not be parking on the street.

Mr. Nelson asked if the Police Department has been called about the parking issues. Mr. Morrison replied that someone did call the Police and that parking is not allowed on the side walk but people are allowed to park on the street. Mr. Nelson stated that people are allowed to park on the street. Mr. Morrison said that it is unknown what happened to the "No Parking" signs. Going down the right hand side of Haverford Street there are no parking signs except for the last few houses. The rumor is that many years ago the sign was pulled out in front of the Steiner house. Mr. Morrison stated that the issue is a public safety issue.

Mr. Morrison said that the parking situation can be argued. He submitted a hand sketched floor plan of the house which was done by the applicant, a picture of a driveway, an affidavit that not more than five cars will be parked on the property and a GIS picture of the property (Exhibit 7). There will be 10 people

in the house and it is being said that there will be only 5 cars. The affidavit states that all residents will either attend school or a vocational program, be gainfully employed or do volunteer work. Mr. Morrison said that the chance that only five cars will be at the site is in question with young men between the ages of 18 and 28. All will probably have cars and will want to drive and park. The owner of the property has suggested that they will park on the brick driveway and that it might hold five cars all in a row. However, someone would have to get out of line and drive up a 45 degree hill which will be difficult during bad weather. The house was never intended to have that many people living in it. In the Spring Glen Village District only two cars are allowed to park on a site located in the R-4 zone and they are not allowed to park on the side of a house. Mr. Morrison referred to the picture of the house and said that it shows the brick driveway and additional land that could have a parking area. However, Web Brook is located to the right hand side of the area. The brook runs down Webside drive parallel to Whitney Avenue and is a public water supply. Mr. Morrison feels that the use of chemicals to control ice during bad weather or fluids from parked vehicles could get into the water supply. He feels that there is no available parking for use by the sober house. Mr. Morrison stated that because of the issues with parking it creates problems for a sober house with 9 recovering addicts and a person who lives there. The location is not a place for a sober house. A permit should not have been issued without a special permit approved by the Planning and Zoning Commission. According to the zoning regulations a person cannot park in side yard nor do any kind of parking lot without going through the Planning & Zoning Commission. Mr. Morrison stated that the sober house should not be at 1715 Whitney Avenue and the historic house should be restored. A historic house should not have cars parking in side yards or driveways and should not have parking lots built because of the public water supply. Mr. Morrison stated that the appeal should be upheld and the sober house voted down.

Mr. Joshua Milrad, Attorney, addressed the Commission and stated that he agrees with Mr. Tim Lee, Assistant Town Attorney, that the case law states that reasonable accommodations need to be made for the sober house. He disagrees that every application or reason that the Town Attorney has applied to every ordinance in the Town has been disregarded. The case law does not say out that you need to throw out the zoning regulations and Mr. Milrad feels that is what the Town has done in this case. Mr. Milrad stated that he would present the four general bases for the appeal. The Town Attorney had no authority to tell the Town Planning Office to issue the permit because the zoning ordinances require that the Planning & Zoning Commission need to look at the application. Mr. Milrad reviewed the parking regulation under section 5.5. He stated that the Town Attorney does not have the authority to usurp the power of the Planning & Zoning Commission. The parking determination was never made by the Planning and Zoning Commission. When speaking of reasonable accommodations in the case law, it talks about the after effects. This would be after the Town has properly applied its zoning regulations and determined what was or should happen. In this case every aspect of this application was ignored by ripping out this section of the zoning regulation.

Mr. Milrad stated that this location is in a historic area of Hamden and it does not comply with any of the zoning requirements. The house is located on the corner of Whitney Avenue and Haverford Street. This house and the house located directly next to it on Haverford Street are required to comply with the Village District Historic Act. This application required a special permit under the Village District Act. It is not discriminatory to be required to submit an application for a special permit and would not be an act of discrimination. There are multiple cases that speak of towns requiring applications for sober houses to be submitted by Special Permit. The Town Attorney stated that he looked at the Statutes and the regulations and decided that he and the Planning Office had the power to issue the permit, when the zoning

regulations clearly state it is not within their authority. According to case law reasonable accommodations can be made after the zoning regulations have been followed.

Mr. Milrad stated that the parking for the site was submitted on a plan that shows parking for five cars and does not comply with the specs of the property. The diagram does not comply with any of the regulations. Mr. Milrad submitted pictures of the driveway on the property (Exhibit 8) that show it does not comply with requirements for driveways. He stated if you look at the diagram submitted with the application vs. the actual dimensions of the driveway, it is not in compliance. Mr. Milrad stated that the Town Attorney or the Planning Office does not have the authority to grant the approval. He reviewed Section 5.5 which states that the Planning & Zoning Commission determine how many parking spaces are required.

Mr. Milrad referred to Mr. Vita's question about historical homes and stated that the courts have upheld that in order to protect the integrity of a historic home alterations are to be considered. This did not happen with the removal of the door and windows. Mr. Milrad said that the door and windows have survived many wars and blizzards. He stated how much history was there until the Town Planning Department determined it was okay to proceed. Everything the Town was supposed to look at and follow in the regulations was ignored when the permit was submitted.

Mr. Milrad stated that there is not one case that requires the zoning book be thrown out the window and he feels that this is what happened. Nothing about the approval complies with the regulations and the process was completely ignored. He stated that the application should go through the process and proper accommodations can be made at the proper time.

Mr. Vita asked Mr. Milrad what his position was on whether the federal law, specific to the ADA, trumps local regulations or how they interact. Mr. Milrad said this cannot be determined until after it is seen how the application is treated, the conditions put on by the Planning & Zoning Commission, put on the approval, how many cars are allowed, what driveway requirements are needed and historic homes. If someone moves in and is part of a single family it would still be subject to the historic home regulations. Mr. Milrad feels that Mr. Vita's question comes at the end of the equation. He stated that he thinks that the Town is very noble in what it wants to do. His client is not against the sober house, but is against the location because it is a 1769 house. The Town should think very carefully about what it permits and how it protects its history. The Town should enforce its own zoning regulations. Mr. Vita asked if there is a way for the Town to review the applicant's use of the house by saying pursuant to the zoning regulations we are going to require parking and public safety to be addressed. Mr. Milrad replied yes. He said that a Town in Rhode Island had decided that it did not want a sober house where it was located and bought it by eminent domain. The Town was sued for discrimination and the Federal Court determined it was not. There are statutes for states that say you cannot put sober houses within 650 feet of each other and this was determined to be okay. There are many case laws that show zoning regulations can be applied. Mr. Milrad stated that the Planning Office acted on its own without the Planning & Zoning Commission. He understands the Town Attorney's concern and Mr. Milrad agrees that the case laws state reasonable accommodations are required, but there is a time in place.

Mr. Nelson asked if it is Hamden's responsibility to protect the historical houses or is it the association governed by residents. Mr. Lee replied that the issue is whether the owner of the house should have applied for a special permit. Hamden has a zoning regulation Section 660 that requires a special permit if you make additions or modification to a structure that is on a historic registry. This has nothing to do with whether the house is a sober house and would apply to any property owner. It is clear that the property

owner did not apply for a special permit prior to making changes to the windows or the front door. It only came to the attention of the Planning Office after the work had been done. Mr. Lee stated that it is the position of the Planning Department that the changes made would not have been significant modifications which would have required a special permit. There are special permit requirements for making modifications to a house in a historic district. A concerned citizen or group could bring an injunction action to stop changes to a historic structure.

Mr. Nelson asked who enforces historic districts. Mr. Lee stated that this property is not located in a historic district but the Spring Glen Village District. The property does appear on a historic registry. The property is subject to the zoning regulation which requires a special permit. The Town Planner after the fact determined that the changes proposed would not have required a special permit. At the time this determination was made the windows had already been changed.

Mr. Milrad stated that the Spring Glen Village District regulation requires a special permit in this instance because it does not allow for this type of application in this house where it is located. Mr. Lee replied that the question asked by Mr. Nelson was with regard to the historic district and the historic structure. He appreciates the issues of a sober house at this property.

Ms. Carroll asked if there is an overall building plan because you are putting 10 people in a house that was built in the 1700's and is probably a tinder box. She said that the look of windows does change the character of the entire house. Mr. Lee replied that the Town Planner made a determination after the fact that the changes did not require a special permit. The Building Office inspected the interior of the property and determined that the property is fit for this type of occupancy. Ms. Carroll stated that there are no fire escapes on the house. Mr. Lee replied that the Building Inspector determined it was okay.

Mr. Nelson asked if there is available parking on Whitney Avenue and other side streets that are close to this house. Mr. Lee stated that he assumed there is parking on Whitney Avenue and heard Mr. Morrison say there is parking permitted on Haverford Street. Mr. Lee reviewed the parking in the area with Mr. Nelson.

Mr. Milrad stated that other parking areas cannot be used to conform with the zoning regulations unless a lease agreement is obtained. This was not done for this site and there is no parking on Whitney Avenue and you cannot use any other area to have the house comply. This is for the Planning & Zoning Commission to review. Mr. Milrad feels the appeal should be granted and the parking issue addressed at the Planning & Zoning Commission.

Mr. Nelson feels that there may be parking at other places and the regulations do allow on street parking. Mr. Milrad submitted and reviewed Table 5.5 (Exhibit 9). He stated that the Town cannot grant the permit without looking at the parking situation and approval from the Planning & Zoning Commission.

Mr. Vita asked if depending on the outcome of the ZBA's review of the subject property, if it has any further regulatory stops before the sober house continues its use. Mr. Lee replied that if the ZBA were to deny the appeal then the sober house has its permits in place and can operate. If the ZBA sustains the appeal the property owner could submit an application to the Planning & Zoning Commission, appeal the decision to the Superior Court or commence an action in Federal Court claiming that the Town and ZBA are in violation of their rights under the Fair Housing Act and the American with Disabilities Act.

Mr. Milrad stated that he does not agree with Mr. Lee's assessment because there is no case that he has reviewed that talks about the fact that a Town has followed its standard facility regulations and he has

considered for discrimination in this context. There is case law that says that the Town does not have to throw out its zoning regulations and this is what has been done.

Mr. Vita asked if the appeal is denied will there be any more regulatory scrutiny of the use of this home. Mr. Lee stated that if the appeal is denied there will be no more scrutiny from the Town's perspective. The permit would be considered issued and the owner could operate the sober house at this location. Anyone who disagrees with the decision could take the issue to the court to be reviewed.

Mr. Chorney reviewed Section 720.5.9-Neighborhood Character and asked how it relates to this application. Mr. Lee replied that he is unsure. He reviewed to Section 632.1 and it states that sober houses are permitted within any district within the Town of Hamden, subject to a zoning permit. Had the property not been located within the Spring Glen Village District, the Town would have issued the zoning permit and the property owner would have been entitled to a zoning permit for a sober house. It would not have required a special permit or site review. The property is located within the Spring Glen Village District and there are regulations unique to the village district. There is a provision in its regulation that states that when converting a use from a single family home to something else, you are subject to submitting a special permit to the Planning & Zoning Commission.

Mr. Milrad stated that he disagrees with Mr. Lee because the parking was ignored and is subject to the Planning & Zoning Commission under Table 5.5.

Mr. Lee reviewed Section 630.2 which deals with the sober house. He stated that Mr. Milrad is referencing the parking table (Table 5.5). The Parking Table for reasons that don't make any sense and are inconsistent with zoning regulations say parking for sober houses is to be determined by the Planning & Zoning Commission. A sober house application never goes to the Planning & Zoning Commission because it is issued by the Town Planner administratively. This is a function of the zoning regulations not being consistent. Mr. Milrad stated that he disagreed with Mr. Lee.

Mr. Walsh referred to the ADA and said the sober house must be treated like a single family. If you have a family who has 10 cars it would not be an issue. This application must be treated in the same way. Mr. Lee replied that Mr. Walsh is correct. Mr. Milrad stated that the Town regulations specifically refer to a sober house and there is nothing in case law that says that the town using its own regulations and enforcing its own regulations is discriminatory. Just because the Town has a regulation that says sober houses are subject to the Commission determining the number of parking spaces it must then go to the Planning & Zoning Commission. If there is a problem after it goes to the Commission then there can be discussions and reasonable accommodations.

Mr. Vita asked for comments in favor of the appeal:

Mr. Henry Dove, 137 Santa Fe Avenue, addressed the Commission and stated that he has a disadvantage because he does not hear well. Everything Mr. Lee said was mumbled. Mr. Vita asked if Mr. Dove heard Mr. Milrad. Mr. Dove was unable to hear Mr. Vita's question. He understands from Mr. Milrad's words and passion it encouraged Mr. Dove to question why he is irate. Mr. Dove agrees that the zoning regulations were not properly enforced. He feels that the Town Attorney or Town Planner made a decision based possibly on the intimidation of the disability act. Mr. Dove stated that he counts on the Planning & Zoning Commission as a resident of Hamden. He does not know if the decision to give the permit to 1715 Whitney Avenue appeared on the public record. Mr. Dove submitted and reviewed a letter he wrote (Exhibit 10).

Mr. John Daley, 20 Haverford Street (Applicant for 16-6609), addressed the Commission and stated that his property abuts 1715 Whitney Avenue. His concern is the parking issue and the fact that 10 residents will have only five cars. He feels that no more than 3 cars can fit in the driveway. There are a lot of children that walk to and from St Rita's School or Spring Glen School. The permit that was issued for this location did not have all the signatures required from the Town. He returned to Hamden to be near his parents and has watched them and the Town die.

Ms. Danielle Daley, 20 Haverford Street (Applicant for 16-6610) addressed the Commission and stated that she and her husband specifically bought in Spring Glen because it was a village district with a historic home right next to them. They have witnessed all of the dismantling of the historic home and cars parking on the planting strip. The cars come in and out very quickly and she is concerned for the safety of her children. Ms. Daley said the issue is not about the sober house, but the location, the use of property and the parking. She and her husband have seen cars lined up in the driveway and small children have gotten out of the cars and played down by Web Brook. She wants to make sure the Town, the area, and the house is protected, not just for the historic value of the house, but the residents.

Ms. Michele Helou, 114 Woodlawn Street addressed the Commission and stated that her primary concern is the historic character of the house. She said that she was saddened to see what happened to one of the few remaining prerevolutionary homes in the town and in the neighborhood. Ms. Helou said that there are questions about who in Hamden is supposed to protect historic properties. The protection is at the local level with Planning & Zoning. The State and National registries only list the properties. The protection is the zoning regulations and the process has not been followed. Ms. Helou stated that the value of her property, neighborhood and community is hurt when a historic resource in her neighborhood has not been protected. Ms. Helou stated that she is an architectural consultant and has worked on historic properties. She reviewed the process to restore historic windows so that they retain their characteristics but are energy efficient. The Hamden officials should have checked to see if the house was on the State registry. Ms. Helou stated that the house should be restored to its original condition because it is a historic resource that adds value to her neighborhood. Ms. Helou submitted pictures of the exterior and interior of the house at 1715 Whitney Avenue (Exhibit 11). Ms. Helou stated that she did some case law research and reviewed her findings for the Fair Housing Act and the ADA. She questioned how many unrelated adults can live in a residential house in Hamden. Prior to 2010 it was six. As of 2015 the student housing regulations do not allow more than 4 students to live in a house. Ms. Helou stated that she is okay to include sober houses in the community such as 4 residents and one to a bedroom. North Haven, East Haven and other Towns put a limit on how many unrelated adults can live together in a home before it is a use that does not fit into an R-4 zone. The zoning regulations protect the value, safety and everything of Ms. Helou's investment and community. Ms. Helou asked if going forward for the next decision on a sober house that the regulations be amended to limit the number of people who can live in a house. It is not an outright protected use. The ADA and Fair Housing Act say that you cannot discriminate if the regulations state how many people can live in any given house. Ms. Helou stated that she is in favor of the appeal.

Ms. Lea Glaser, 78 Spring Glen Terrace, addressed the Commission and stated that she teaches historic preservation at CCSU and is the President of Connecticut Preservation Act. Ms. Glaser read a statement that addresses the house with regard to it being registered as a historic house on the State registry. Mr. Vita asked if the house is on the National registry and Ms. Glaser replied no. Ms. Glaser continued reading her statement.

Mr. Michael D'Agostino, 575 Ridge Road, State Representative, addressed the Commission and stated that he did not hear a case entered into the record by Mr. Lee. It was the Tsombanidis v. City of West

Haven. The Second Circuit case reads that a sober house applied for a special permit from the City of West Haven and it was denied. The Second Circuit held that the denial of the permit was discriminatory. You cannot deny a special permit because it is a sober house. Nothing in the Tsombanidis case, any other case or in the legislation states that going through the special permit process in itself is discriminatory. Mr. D'Agostino said that Mr. Lee has carved this out by saying we have to treat them as a family and they are exempt from the process. Nothing in the case law says that. Also in the Tsombanidis case, the Town of West Haven also said that Fire Code regulations had to apply to the sober house. The Lower Court said that this was pre-textual and was being said because the Town wanted to discriminate against the sober house. The Second Circuit held that application of the fire code was not discriminatory. They are mutual regulations and apply to everybody and everybody must follow the process. Mr. D'Agostino stated that this appeal is about going through the regular process. He said that if the appeal is upheld and the interplay of the Federal regulations, zoning and reasonable accommodations come into play, it is the process where you ask about parking and the fire code and reasonable accommodations would have to be made. Mr. D'Agostino stated that he was on the Hamden Board of Education for 13 years. He believes that a second opinion should be gotten and asked if going through the special permit process discriminatory. There was a case in Massachusetts where a sober house burned down and the town was sued for not having the proper sprinkler system in it. Mr. D'Agostino stated that if the proper process is followed the sober house will eventually get approved.

Mr. Brian Murphy, 1712 Whitney Avenue, addressed the Commission and stated that when he moved into the area 7 years ago the first weekend into the house he witnessed what the intersection was really like. There is parking allowed the next block down and that causes traffic going south to have a funnel effect. There are a lot of accidents that happen in this area. Mr. Murphy witnessed three accidents last month and it is a very dangerous intersection. Taking left hand turns onto Haverford Street or Elihu Street is very dangerous. If additional parking is added on Haverford it would be an additional obstacle. Mr. Murphy spoke with Mr. Kops about the situation prior to the zoning permit being approved. Mr. Kops said there had been concerns about the application being approved and several other towns in the area had been sued because of the treatment towards sober houses. Mr. Murphy feels that this was done out of fear or a counsel that was not thinking out the entire situation. He said Mr. Kops ended the conversation by saying that the application would continue to be reviewed but there was not much reason to think it would not be approved. Mr. Kops thought it would cause a little bit of a ruckus in the neighborhood, but would quickly be forgotten. Mr. Murphy stated that he hopes his neighbors do not forget.

Mr. Giuseppe Moscarini, 35 Swarthmore Street, addressed the Commission and stated that he can see the ugly windows from his house. He did not receive any information about the meeting and learned of it through the media. Mr. Moscarini is a Professor of Economics at Yale University and said endless hours were spent discussing the Spring Glen Village District. He explained that his house is located in the Spring Glen Village District and that he cannot build anything onto his house without permission. The District's zoning regulations were to protect new businesses from being opened. Mr. Moscarini feels that the sober house is a business because it is a corporation and there is an employee that works there. He said that the question is whether the sober house is a business. If Spring Glen is opened to businesses that would pale in comparison to the gaping hole in the town by placing one house in the middle of the highest tax revenue area. For this reason the location of the sober house is an ill chosen location and will cost the Town many times what it would cost to find a proper location.

Mr. Paul Garych, 82 Ford Street, addressed the Commission and stated that his house is located near the entrance to the Turn Bridge Facility (sober house) on Ford Street. Since it has moved in there have been

issues with traffic which has changed the character of the street, since the staff routinely goes 60 mph up Ford Street. The other issue is with noise. Every day the landscaping crew uses 3 one hundred db leaf blowers simultaneously year round. Mr. Garych said that if his window is open he cannot have a conversation. There was not a public hearing when Turn Bridge moved into the house. Now that it is in there is no mechanism to deal with it. Mr. Garych feels that local interests are not being addressed because of the ADA and FHA and are being treated like they are radioactive. There are local rights that can be asserted if the Commission decides to do.

Ms. Christine Esposito, 1742 Whitney Avenue, addressed the Commission and stated she walks her dog every morning by this house. Since the sober house has moved in there have been issues with parking on the grass strips on Haverford Street. Ms. Esposito is not against the sober house and it serves a purpose. She feels this particular property and house is inadequate for a sober house because of the parking. Ms. Esposito is in support of the appeal.

Mr. Myron Hul, Councilman, Sixth District, addressed the Commission and stated that the facility on Ford Street has received numerous noise complaints. The Fifth District Council Representative has gone to the administration and police to ask that the noise ordinance be enforced. Mr. Hul said the reply is that there is no recourse with the existing ordinance to restore the quality of life. It is Mr. Hul's understanding that the same or a related organization that operates the Ford Street facility will operate this facility. The quality of life for the residents within the area of this sober house will be affected because Mr. Hul does not see a zebra changing its stripe. Mr. Hul asked that Commission to question and analyze the information received to determine whether the residents are accurate and passionate about the situation. He said that in the Legislative Council Chambers energy efficient double glazed windows were not installed because the building is historic. No one stopped the sober house from destroying the windows. Mr. Hul noted from his time on the Planning & Zoning Commission that street parking was allowed but only at the frontage of the property and if the five cars cannot fit they would be in violation. Mr. Hul feels that there have been a sequence of errors and possibly misjudgments. While Mr. Hul has great respect for Mr. Lee there has been a sequence of errors both large and small. Mr. Hul said recourse would be to go through a suit. The other recourse would be to analyze what has been done, analyze all the regulations and, if determined the zoning permit was issued in error, then take the permit back and go through the special permit process. This would allow everyone to have their say and the final decision would be the Planning & Zoning Commission. Mr. Hul feels that a lot of people have not been heard and should be heard.

Mr. Milrad asked if a certain number of Commission members need to be present, because one member has left. Mr. Vita replied that a vote can take place with four or five members. Mr. Lee stated that the meeting was able to continue because there was a quorum. If a vote were to take place with four members present, 4 affirmative votes would be needed to sustain the appeal. The Commission may want to wait until the fifth member is present to take a vote. The member would need to familiarize himself with what was said after he left.

Mr. Vita asked for comments against the appeal:

Mr. Michael Luzzi, Attorney representing Jennifer Barba, addressed the Commission and stated that the Americans with Disabilities Act and the Fair Housing Act was outlined by Mr. Lee. The Town did its due diligence, as did his client, and the Town acted appropriately. The Fire Marshal did an evaluation. The Zoning Enforcement Officer's questions were addressed. Mr. Luzzi stated that the definition of a sober house and the definition of disability and what is occurring at the property falls with the Fair Housing Act and the Americans with Disabilities Act. Mr. Luzzi feels that the Town and Planning Office acted appropriately. It was asked what the recourse would be if the decision of the board is that the Town did not act appropriately. Administrative rights will be evaluated to determine what the next step will be and if it will go to the Federal Court. Mr. Luzzi stated that if the Commission does not rule against the appeal

it would be acting contrary to the law and his client intends to exercise all the rights, both legal and administratively. His client recognizes the historic aspects of the house, respects it, and anything moving forward will recognize the important of the historical value of the home.

Mr. Vita asked if the appeal is sustained will one of Mr. Luzzi's options be to have his client submit a request through the Planning & Zoning Department and go through the permitting process to address any of the Town's concerns with respect to the use of the house. Mr. Luzzi stated it is one of the options that he will need to discuss it with his client.

Ms. Catharine Balco, 114 Ardmore Street, addressed the Commission and stated that she appreciates the work that the Spring Glen Civic Association has done. She moved to Spring Glen 5 years ago and loves the neighborhood. Ms. Balco understands the issues with parking and the historical nature of the building. Ms. Balco submitted and read a statement (Exhibit 12) in support of sober houses and requirements for them.

Ms. Rhoda Saltz, 94 Old Coach Highway, addressed the Commission and stated she agrees with the previous speaker. The house is unique and the previous owner had been trying to sell it and maintain the financial burden since the death of her parents. The owner had gone to the association asking for help when she was selling the home and no one would help. The house had deteriorated and nobody cared. Ms. Saltz said Mr. Morrison wants to keep things the same, but things do change. Connecticut and Hamden have opioid drug issues that need to be addressed. She asked if the Civic Association would also block people who are healing from chemotherapy, veterans with readjustment problems, minorities and people healing from surgery. Ms. Saltz asked what type of message or moral example does the Spring Glen community want to send. She said that the Town Attorney's expertise and the ADA and FHA have been disregarded and the Spring Glen community feels they are above it. Noise happens with renovation. There is no patience for the process and the sober house and this is very petty. Ms. Saltz feels that the Spring Glen Civic Association feels it is protected by its own American laws and instead should see the sober house as a shining example of pride for this unique community and the unique house that is going into it. There are people with kids who snub their nose and say they do not want their children around it. The residents are saying that it will not happen to me or touch anybody they know, however, it just might. If it does they will want a community to accept the children to heal and move forward. Ms. Saltz feels that people should be a little more accepting, less discriminatory, less self-righteous and intolerant. People must determine what type of community they want to be and what type of example they want to set for their kids.

Ms. Sue Joseph, former owner of 1715 Whitney Avenue, addressed the Commission stated that in the past she did receive some help from Mr. Morrison. She was unable to sell the house as a single family residence. She paid the taxes, the heating bill and did work on the outside of the house for 3 ½ years while the house was on the market. The house was sold to the only people who offered to buy it.

Ms. Saltz stated that she questions the issues with the parking. There is an area next to the house that could be renovated and used for parking. There is a huge parking lot across the street. In the past the residential house could accommodate visiting vehicles when there was a party.

Mr. Milrad stated that there is no parking on Haverford and the signs in front of this site had been pulled out. There is no clearance for parking on the street. A person was recently hit near this house. The pictures that were submitted show parking on the sidewalk and this should not be allowed in Hamden.

Mr. Vita closed the Public Hearing.

B. Regular Meeting

a. Discussion and voting on Public Hearing items

16-6608**16-6609**

Mr. Vita stated that based on the legal and procedural issues being complex, he would like further analysis and evaluations for Applications 16-6608 and 16-6609. Furthermore, Mr. Vita feels additional time is needed to review all the information provided.

Mr. Nelson made the motion to table Applications 16-6608 and 16-6609 until the January 19 meeting. Ms. Carroll seconded the motion. The motion passed unanimously.

16-6610

Mr. Nelson made the motion to approve Application 16-6610. Mr. Chorney seconded the motion. Mr. Chorney asked that the motion to be amended to include: Meet the requirements of QVHD and the list of violations be corrected prior to a permit being issued. Mr. Nelson accepted the amendment. The motion passed unanimously.

16-6611

Mr. Chorney made the motion to approve Application 16-6611. Mr. Nelson seconded the motion. Mr. Chorney stated that the planning office will review the layout of the parking area for the special permit to address the concerns regarding screening and fencing. Mr. Vita stated that the testimony was that the required screening would have been a safety issue because of the possibility that someone could hide behind it. The proposed plan will enhance the streetscape. The motion passed unanimously.

16-6612

Mr. Nelson made the motion to approve Application 16-6612. Mr. Chorney seconded the motion. Mr. Nelson stated that with the size of the project the site needs more signage and the applicant is only asking for an addition of 19 square feet to allow one of the signs to be elevated so that it can be seen when driving by. Mr. Chorney stated that the ground sign should be reviewed to include the street address that can be seen at normal street speed. The movement of Building 1 is mandated by the UI. The motion passed unanimously.

b. Approve Minutes of November 17, 2016

Ms. Carroll made the motion to approve the Minutes of November 17, 2016. Mr. Nelson seconded the motion. The motion passed unanimously.

c. Old Business

There was none.

d. New Business

2017 Meeting Schedule

Mr. Nelson made the motion to approve the 2017 Meeting Schedule. Mr. Chorney seconded the motion. The motion passed unanimously.

Mr. Vita stated that at Bobcat Pizza there is a strobe light on the left side of the building. Ms. Holly Masi, Zoning Enforcement Officer, stated that she spoke with the owner and was told that it was a Christmas

light and that it would be taken down after Christmas. Mr. Vita stated that the light was there well before the Christmas season. Ms. Masi replied that the owner was told that the strobe light should be turned off, the banner that says "Coming Soon" and the flags needed to be removed. Mr. Vita stated that he supports the enforcement.

Mr. Chorney stated that the Playwright Restaurant signage has been in violation for years and no one has ever enforced the regulation.

Mr. Vita asked for clarification on the recommendation from counsel with regard to legal procedural issues (ie: federal law, housing act, ADA, Spring Glen Village District). Mr. Lee asked that the Commission review the material that was submitted from him for discussion at the January 19, 2017.

Mr. Chorney stated that the Commission was mandated to approve the Sanford Street multi-family complex. Ms. Masi stated that the application was received under the C.G.S. 8-30-g.

Mr. Chorney stated that the Commission was also supposed to approve the Hyde School, but because of parking issues it was denied. The applicant went to court and the Town won the need for a special permit.

e. Adjournment

Mr. Nelson made the motion to adjourn. Ms. Carroll seconded the motion. Therefore, the motion passed unanimously.

The meeting adjourned at 10:00 p.m.

Submitted by: _____
Stacy Shellard, Clerk of the Commission