

TOWN OF VERNON  
Planning & Zoning Commission (PZC)  
Meeting Notice

For  
Thursday, October 7, 2010, 7:30 PM  
at

Council Chambers, Third Floor  
Memorial Building  
14 Park Place  
Rockville/Vernon, CT

AGENDA

(September 17, 2010)

1. Call to Order & Roll Call
2. Administrative Actions/ Requests
  - 2.1 Communications received NOT related to Agenda items
  - 2.2 Amendment / Adoption of Agenda - Additional business to be considered under agenda item #6 "Other Business"
  - 2.3 Acceptance of Minutes
3. Public Hearings
  - 3.1 Continued Hearing for Application (**PZ-2010-13**) of Ellington Prospect LLC for Zoning Amendment to Section 3.26 Re-use, Adaptive of the Vernon Zoning Regulations to include a new category of buildings.
  - 3.2 Continued Hearing for Application [**PZ-2010-17**] of Marina Rodriguez, Vernon CED Coordinator, for an Amendment to the Zoning Regulations, Section 4.25.2, PDZ I-84 Exit 67 Area.
4. Old Business
  - 4.1 Plan of Conservation and Development
  - 4.2 Bylaws

5. New Business.

5.1 Receipt of Applications:

6. Other Business

6.1 Additional business to be considered should be introduced under PZC meeting agenda item “#2.2 Amendment / Adoption of Agenda” at the beginning of the meeting.

7. Adjournment.

Lester Finkle, Chairperson

RECEIVED  
VERNON TOWN CLERK

September 20, 2010

10 SEP 30 AM 11:47

To Whom It May Concern,

It is with much regret and sorrow that I need to resign from my position on the Planning and Zoning Board. My work schedule has changed and doesn't allow me enough time for this commitment. I have enjoyed working with other community members towards improving our town.

Thank You,

A handwritten signature in black ink, appearing to read "Keith Lauzon", with a long horizontal stroke extending to the right.

Keith Lauzon

CC:  
Planning & Zoning  
Administration

**Continued Hearing: Marina Rodriguez  
Zone Amendment, Section 4.25.2  
PZ-2010-17**

TOWN OF VERNON PLANNING & ZONING COMMISSION (PZC)APPLICATION

This form is to be used to apply to the Vernon Planning & Zoning Commission (PZC) for a change of zoning district, amendment of the Zoning Regulations, Site Plan of Development (POD), Special Permit(s), amendment of the Subdivision Regulations, and/or approval of a (re) subdivision. Provide all the information requested.

The applicant must be the property owner, the property owner's agent, the Town of Vernon, or someone with a direct financial interest in the subject property; said interest shall be explained and written permission for this application must be obtained from the property owner and submitted with this application if the applicant is not the property owner (ZR Section 2.3).

*The list of approvals and the references to sections of the Regulations are for informational purposes only to assist with preparation of the PZC application and are not a definitive statement of the sole requirements that may apply to a specific project.*

The applicant understands that the application is complete only when all information and documents required by the PZC have been submitted and, further, that any approval by the PZC relies upon complete and accurate information being provided by the applicant. **Incorrect information provided by the applicant may make the approval invalid.** The PZC may require additional information to be provided by the applicant in the course of reviewing the application and during the monitoring of the project.

Provide all the information requested:

RECEIVED

AUG 2011

**I. APPLICANT:**

Name: Marina Rodriguez, AICP

Title: Economic Development Coordinator

Company: Town of Vernon

Address: 14 Park Place

Vernon, CT 06066

Telephone: 870-3667 Fax: \_\_\_\_\_

E-mail: \_\_\_\_\_

**II. PROPERTY OWNER (S):**

Name: Not applicable

Title: \_\_\_\_\_

Company: \_\_\_\_\_

Address: \_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

E-mail: \_\_\_\_\_

If the applicant is not the property owner, include a letter from the property owner authorizing the applicant to seek approval by the PZC. (ZR Section 2.3)

### III. PROPERTY

Address: \_\_\_\_\_

Assessor's ID Code:      Map # \_\_\_\_\_ Block # \_\_\_\_\_ Lot/Parcel # \_\_\_\_\_

Land Record Reference to Deed Description: Volume: \_\_\_\_\_ Page \_\_\_\_\_

USGS Location of Site:

Map Quadrangle Name: Rockville Map Quadrangle #: 39

Circle the Sub-regional Drainage Basin #:

3108 4500 4502 4503 Other: \_\_\_\_\_

Does this site contain a watercourse and/or wetlands? (See the Inland Wetlands Map and IWR Section 2.14, 2.15, 2.23, 2.24, 3.11; 4)

☐ No

☐ Yes

☐ No work will be done in regulated area

☐ Work will be done in the regulated area

☐ IWC application has been submitted

☐ IWC application has not been submitted

Zoning District \_\_\_\_\_

Is this property located within five hundred (500) feet of a municipal boundary?

☐ No

☐ Yes:

☐ Bolton

☐ Coventry

☐ Ellington

☐ Manchester

☐ South Windsor

☐ Tolland

Check if Historic Status Applies:

☐ Located in historic district:

☐ Rockville

☐ Talcottville

☐ Individual historic property

#### IV. PROJECT

Project Name: Not applicable

Project Contact Person:

Name: \_\_\_\_\_

Title: \_\_\_\_\_

Company: \_\_\_\_\_

Address: \_\_\_\_\_

\_\_\_\_\_

Telephone: \_\_\_\_\_ Fax: \_\_\_\_\_

E-mail: \_\_\_\_\_

## V. PZC APPLICATION PROJECT SUMMARY

Describe the project briefly in regard to the purpose of the project and the activities that will occur. Attach to this application a complete and detailed description with maps and documentation as required by the "Town of Vernon Zoning Regulations" and "Town of Vernon Subdivision Regulations".

Purpose: Amendment to Sec. 4.25.2 PDZ I-84 Exit 67 Area of the Vernon Zoning Regulations, Re: setbacks

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General Activities: For consistency with the Vernon POCD, to maintain fixed minimum setback requirements and to facilitate better site design

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## VI. APPROVAL (S) REQUESTED

☐ Subdivision or Resubdivision

- ☐ Subdivision (Sub. Sec. 4, 5, 6)
- ☐ Resubdivision (Sub. Sec. 4, 5, 6)
- ☐ Minor modification of subdivision or resubdivision (Sub. Sec. 4.6)
- ☐ Town acceptance of a road (Sub. Sec. 6.5-6.8 & 9)
- ☐ Amendment of Subdivision Regulations (Sub. Sec. II)

See Subdivision Regulations Sec. 4 for application fee schedules.

☐ Soil Erosion and Sediment Control Plan (ESCP) (ZR Sec. 2.117; 18) (Sub. 6.14)

☐ Site Plan of Development (POD) (ZR Sec. 14)

- ☐ POD approval (ZR Sec. 14.1.1.1; 14.1.2)
- ☐ Modification of an approved POD (ZR Sec. 14.1.1.1)
- ☐ Minor modification of a site POD (ZR Sec. 14.1.1.2)

☐ Special Permit(s) (ZR Section 17.3)

- ☐ Special Permit in an aquifer area (ZR Sec. 2.4; 2.5; 2.119; 20)
- ☐ Special Permit for excavation (ZR Sec. 2.52; 2.79; 15)
- ☐ Special Permit for use in a district (ZR Sec. 1.2 & 4)
  
- ☐ Special Permit for lot coverage (ZR Sec. 1.2; 2.61; 2.68; 4)
- ☐ Special Permit for signs (ZR Sec. 1.2; 2.106-115; 4; 16; 21.7)
- ☐ Special Permit for parking (ZR Sec. 4; 12; 21.4)
  
- ☐ Special Permit for elderly housing (ZR Sec. 2.60; 17.4)
- ☐ Special Permit for Bed & Breakfast (B & B) (ZR Sec. 2.9; 17.3.4)
- ☐ Special Permit for serving alcohol (ZR Sec. 2.103, 17.1)
  
- ☐ Special Permit for massage (ZR Sec. 2.76-78; 4)
- ☐ Special Permit for telecommunications (ZR Sec. 2.21; 3.23 & 23)
- ☐ Special Permit for dumps and/or incinerators (ZR Section 8)

\_\_\_\_ Other Special Permit(s). Cite ZR Section and describe activity:

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\_\_\_\_ Special Permit modifications (ZR Sec. 17.3.2.2). Cite ZR Section and describe activity.

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  ✓   Zoning:

\_\_\_\_ Site specific change of zoning district and map (ZR Sec. 1.2; 1.3; 4)

  ✓   Amendment of Zoning Regulations (Sec. 1.2; 1.3; 4)

**See attached proposal.**

*See Zoning Regulations Section 22 for application fee schedules.*

APPLICANT SHALL FILE A COPY OF ANY PROPOSED REGULATION AMENDMENT, ZONE CHANGE, OR WETLANDS REDESIGNATION WITH THE TOWN CLERK TEN (10) DAYS PRIOR TO THE HEARING AS PER SECTIONS 8-3(a) AND (d) AND 22a-42a (b) OF THE GENERAL STATUTES. CERTIFICATION OF THE FILING UNDER THESE SECTIONS BY THE APPLICANT MUST BE PRESENTED AT THE PUBLIC HEARING.

Per Connecticut General Statutes (CGS) Section 8-26: If an application submitted to the Planning & Zoning Commission (PZC) involves any activity or area regulated under the wetlands statutes, an application for this activity must be filed with the Inland Wetlands Commission (IWC) on or before the day the Planning & Zoning Commission (PZC) application is filed by the applicant. (IWR Sec. 3.11)

Per CGS Sec. 8-31: If the proposed activity is to take place within a watershed of a Water company, the applicant is required to file a copy of the application with the Water Company via certified mail within seven (7) days of the date of the application. (IWR Sec. 4.3.6).

The applicant, undersigned, has reviewed the "Town of Vernon Planning and Zoning Regulations and Inland Wetlands and Watercourses Regulations" and has prepared this application with complete and accurate information:

Property Owner, Applicant, or Applicant's Agent:

Marina C. Rodriguez  
Signature

8-18-10  
Date

\_\_\_\_\_  
Signature

\_\_\_\_\_  
Date

*TO BE FILLED IN BY THE PLANNING DEPARTMENT*

Date Application Submitted 8-18-10

Date Application Received by Commission 8-19-10

PZC File: PZ-2010-17

Proposed amendment to Section 4.25.2 of the Zoning Regulations of the Town of Vernon to read as follows, with deletions in brackets:

#### 4.25 Planned Development Zone (PDZ): I-84 Exit #67 Area

4.25.1 \*\*\*\*\*

#### 4.25.2 Open Space Requirements:

	Standard Requirement	Abutting Residential*	[Aggregate Building(s) Footprint (s) Exceeds 40,000 Square Feet**]
4.25.2.1 *****			
4.25.2.2 *****			
4.25.2.3 Minimum front yard	50 feet	50 feet*	
4.25.2.4 Minimum rear yard	50 feet	100 feet*	[125 feet**]
4.25.2.5 Minimum side yard	50 feet	100 feet*	[125 feet**]
4.25.2.6 *****			
4.25.2.7 *****			

#### Notes:

\* Applies only to specific yard(s) abutting residential use or residential zoning district.  
[\*\* An additional twenty-five feet(25') of depth of [front,] rear, and side yards is required for each additional twenty thousand square feet (20,000 SF) of building(s) footprint(s) area over the first forty thousand square feet (40,000 SF) aggregate areas of building(s) footprint(s) up to a maximum of two hundred feet (200') depth.]

4.25.3 \*\*\*\*\*

#### 4.25.4 Special Permit/Site Plan:

- 4.25.4.1 \*\*\*\*\*
  - 4.25.4.1.1 \*\*\*\*\*
  - 4.25.4.1.2 \*\*\*\*\*
  - 4.25.4.1.3 \*\*\*\*\*
  - 4.25.4.1.4 \*\*\*\*\*
  - 4.25.4.1.5 \*\*\*\*\*
- 4.25.4.2 \*\*\*\*\*
- 4.25.4.3 \*\*\*\*\*
  - 4.25.4.3.1 \*\*\*\*\*
  - 4.25.4.3.2 \*\*\*\*\*
  - 4.25.4.3.3 \*\*\*\*\*
    - 4.25.4.3.3.1 \*\*\*\*\*

4.25.4.3.3.2 \*\*\*\*\*  
4.25.4.3.4 \*\*\*\*\*  
4.25.4.3.5 \*\*\*\*\*  
4.25.4.3.6 \*\*\*\*\*  
4.25.4.3.7 \*\*\*\*\*  
4.25.4.3.8 \*\*\*\*\*  
4.25.4.3.9 \*\*\*\*\*  
4.25.4.3.11 \*\*\*\*\*  
4.25.4.3.13 \*\*\*\*\*  
4.25.4.3.14 \*\*\*\*\*  
4.25.4.3.15.1 \*\*\*\*\*  
4.25.4.3.15.2 \*\*\*\*\*  
4.25.4.3.15.3 \*\*\*\*\*  
4.25.4.3.15.4 \*\*\*\*\*  
4.25.4.3.16 \*\*\*\*\*  
4.25.4.3.16.1 \*\*\*\*\*  
4.25.4.3.16.2 \*\*\*\*\*  
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4.25.4.3.16.4 \*\*\*\*\*  
4.25.4.3.16.5 \*\*\*\*\*  
4.25.4.3.16.6 \*\*\*\*\*  
4.25.4.3.16.7 \*\*\*\*\*  
4.25.4.3.16.8 \*\*\*\*\*

4.25.5 \*\*\*\*\*

4.25.6 \*\*\*\*\*

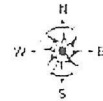
4.25.6.1 \*\*\*\*\*  
4.25.6.2 \*\*\*\*\*  
4.25.6.3 \*\*\*\*\*

4.25.7 \*\*\*\*\*

4.25.7.1 \*\*\*\*\*  
4.25.7.1.1 \*\*\*\*\*  
4.25.7.1.2 \*\*\*\*\*  
4.25.7.1.3 \*\*\*\*\*  
4.25.7.1.4 \*\*\*\*\*  
4.25.7.2 \*\*\*\*\*  
4.25.7.2.1 \*\*\*\*\*  
4.25.7.2.2 \*\*\*\*\*  
4.25.7.3 \*\*\*\*\*  
4.25.7.3.1 \*\*\*\*\*  
4.25.7.3.2 \*\*\*\*\*  
4.25.7.4 \*\*\*\*\*



Subject Property: 55 Reservoir Rd.



### Legend

- Buildings
- Lot Lines
- Bridges
- Pavement
- Town Line
- Wetlands
- Streams
- Water Courses
- Water Bodies



0 1,400 2

1 inch = 500 feet

## MEMORANDUM

DATE: September 30, 2010

TO: Planning & Zoning Commission

FROM: Marina C. Rodriguez, AICP, CED Coordinator

RE: Application **PZ-2010-17** of Marina Rodriguez, Vernon Economic Development Coordinator to amend Section 4.25.2 of the Zoning Regulations, Area and Yard Requirements in the Planned Development Zone - I-84 Exit 67 Area to maintain standard minimum setback requirements and delete additional incremental setbacks.

At the PZC meeting of 9/16/10 the Commission asked me to conduct research about the background of the incremental open space requirements for the PDZ I84 Exit 67 zone, approved by PZC in 2005.

### Materials reviewed:

I reviewed the available information in the official town files, including minutes and correspondence, and other materials related to this item. The official files include several memorandums from Mr. Bruce Hoben, AICP, from Planimetrics who worked with the Commission and the Town Planner on the changes proposed at the time. There is no final report on file. I also listened to the tapes available for 6/9/05 and 6/13/05 of the public hearing, PZC deliberations and vote. The following are my findings.

### Findings<sup>1</sup>:

Materials from March 2005 show that the PZC expressed concerns regarding protection of the Tankerhoosen watershed and objection to "big box" retail facilities. A memorandum from Mr. Hoben to the PZC dated 3/17/05 drafted amended standards for open space requirements that added standard setback requirements for side(s) abutting residential uses from 20 feet to 50 feet as shown in underline below:

### Open Space Requirements:

		<u>Abutting Residential</u>
Minimum lot area	1 acre	<u>1 acre</u>
Minimum lot width	150 feet	<u>150 feet</u>
Minimum front yard	35 feet	<u>35 feet</u>
Minimum rear yard	20 feet	<u>50 feet</u>
Minimum side yard	20 feet	<u>50 feet</u>
Maximum lot coverage	60percent	<u>60 percent</u>

<sup>1</sup> The terms "open space", "yards", and "setbacks" are used interchangeably during the process in 2005.

At the public workshop held on 3/21/05 Mr. Hoben presented zoning strategies for the Exit 67 district that added a new landscape buffer within the yard area and again showed the proposed increase of the standard yard requirements when abutting residential uses from 20 feet to 50 feet.

A memorandum from Mr. Hoben to the PZC dated 4/5/05 and stamped 4/7/05 states that it contains the proposed regulation that was discussed and requested by PZC at its meeting of 3/31/05. A record of the minutes of the special meeting of 3/31/05 could not be found. The proposed regulation added incremental open space requirements as shown in underline below:

Open Space Requirements:

		<u>Abutting Residential</u>	<u>Building in excess of 60,000 square feet</u>
Minimum lot area	1 acre		
Minimum lot width	150 feet		
Minimum front yard	35 feet	<u>35 feet</u>	<u>50 feet</u>
Minimum rear yard	20 feet	<u>60 feet</u>	<u>80 feet</u>
Minimum side yard	20 feet	<u>60 feet</u>	<u>80 feet</u>
Maximum lot coverage	60percent		
<u>Minimum lot area re-zone to Vernon Gateway Zone</u>	<u>40 acres</u>		

I found anonymous and undated material on Planimetrics letterhead that contained different incremental open space requirements as shown in bold below:

Open Space Requirements:

		<u>Abutting Residential</u>	<u>Building in excess of 40,000 square feet</u> <b>an additional 25 sq. feet front, rear and side yard is required for every additional 10,000 sq. feet of building</b>
Minimum lot area	1 acre		
Minimum lot width	150 feet		
Minimum front yard	<b>50 feet</b>	<b>50 feet</b>	<b>75 feet</b>
Minimum rear yard	<b>50 feet</b>	<b>100 feet</b>	<b>125 feet</b>
Minimum side yard	<b>50 feet</b>	<b>100 feet</b>	<b>125 feet</b>
Maximum lot coverage	60percent		

A memorandum from Mr. Thomas Joyce, Town Planner to PZC transmits a draft of proposed amendments as presented by Mr. Hoben at PZC meeting of 4/21/05. It contains open space requirements as shown below in bold and with alternate requirements in the gray shaded columns:

Open Space Requirements:

		<b>Abutting Residential</b>	<b>Building footprint in excess of 40,000 square feet</b>  <b>An additional 25 sq. feet front, rear and side yard is required for every additional 10,000 sq. feet of building over 40,000 sq. feet</b>	<b>Abutting Residential</b>	<b>Building footprint in excess of 40,000 sq. feet abutting residential</b>
Minimum lot area	1 acre				
Minimum lot width	150 feet				
Minimum front yard	<b>50 feet</b>	<b>50 feet</b>	<b>75 feet</b>	<b>50 feet</b>	<b>50 feet</b>
Minimum rear yard	<b>50 feet</b>	<b>100 feet</b>	<b>125 feet</b>	<b>75 feet</b>	<b>100 feet</b>
Minimum side yard	<b>50 feet</b>	<b>100 feet</b>	<b>125 feet</b>	<b>75 feet</b>	<b>100 feet</b>
Maximum lot coverage	60percent				

I reviewed the record of the public hearing held 6/9/05 and PZC deliberations and decision on 6/13/05. The PZC was trying to be responsive to concerns expressed over the preservation of residential uses, the environment, neighborhood character and potential negative effects of "big box" development. The PZC was concerned about having visually appealing development and discouraging the construction of large buildings.

During PZC deliberations, Commissioner Mary Kelly submitted a written memorandum to PZC supporting her position for the incremental open space requirements. In the Memorandum she rejected the open space requirements initially proposed by Planimetrics because she felt that they would encourage large scale development and discourage open space. She felt that having the incremental open space requirements would address the negative effects of large buildings.

Mr. Hoben cautioned the Commission that using the incremental open space requirements to limit building size was not the appropriate way to do it; it could have the unintended consequences of stopping large buildings and would push development to the center of the property where there may be natural resources. He cited that the property affected is only 500 feet wide so you would not be able to construct a large building. He gave examples of building sizes by use, such as grocery stores nowadays being over 40,000 square feet; and usually are 1 - 2 acres in size.

PZC action:

The open space requirements evolved from those initially proposed by the planning consultant to what was approved by PZC. The original proposal increased the open space requirements from 20 feet to 50 feet only on sides abutting residential uses.

The PZC approved to increase the standard requirements, to add increased requirements for abutting residential, to add increased requirements for buildings 40,000 square feet and over, and furthermore, to add incremental requirements for every additional 20,000 square feet of building space over 40,000 square feet. The open space requirements approved were as shown below:

Open Space Requirements:

	Standard Requirement	Abutting Residential*	Aggregate Building(s) Footprint (s) Exceeds 40,000 Square Feet**
Minimum front yard 50 feet	50 feet	50 feet*	75 feet**
Minimum rear yard 50 feet	50 feet	100 feet*	125 feet**
Minimum side yard 50 feet	50 feet	100 feet*	125 feet**

Notes:

\* Applies only to specific yard(s) abutting residential use or residential zoning district.

\*\* An additional twenty-five feet(25') of depth of front, rear and side yards is required for each additional twenty thousand square feet (20,000 SF) of building(s) footprint(s) area over the first forty thousand square feet (40,000 SF) aggregate areas of building(s) footprint(s) up to a maximum of two hundred feet (200') depth.

To: Members of the Planning & Zoning Commission, Staff, and the Public  
From: Mary E. Kelly  
Re: The Open Space Requirements in the Proposed Zoning Regulations

## I. Introduction

It is apparent to me that one major issue to be addressed in tonight's meeting is the graduated open-space requirements for buildings over 40,000 square feet. I have taken the time to review my notes from the various public hearings and all of the written submissions, and wanted to put my thoughts in writing. I apologize for the length but I think this is a critically important issue.

Members of the public have testified that they are very concerned that large scale buildings will increase traffic, prove to be an economic drain, endanger the aquifer, wetlands and the critical ecological environments on these properties, endanger local businesses, drive down property values, and negatively impact the character of nearby neighborhoods and the Town of Vernon in general.

Retail caps of between 30,000-80,000 exist in many communities. Several members of the public urged us to adopt such caps. For many reasons, including the advice of Tom Joyce, we made the initial determination that this was not the best approach at this time. Instead, we tried to take steps which would permit larger scale development, but address the concerns raised during the public hearings.

One of the major ways that we tried to address these concerns is through the open space requirements. Many members of the public have expressed support for these requirements. However, the property owners have indicated that they believe that these requirements are inappropriate.<sup>1</sup> I continue to support the open space plan

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<sup>1</sup> There was also a suggestion that the open space requirements are inconsistent with the desire to increase the tax base. However, we have been provided with no actual evidence that one large scale business is more economically advantageous than several smaller businesses. While it is possible that a retail facility with a 160,000 footprint would produce more tax money than four buildings with 40,000 footprints, it is equally possible that the opposite is true. In fact, articles and other evidence submitted during the public hearing suggests that very large scale buildings

and wanted to address these concerns.

Since these types of restrictions do not involve fundamental rights (like the right to free speech) or suspect classifications (like race or age) they need only be: (1) based on a legitimate zoning purpose and (2) reasonably well tailored to this purpose. In addition, they cannot constitute a taking.

## **II. The Requirements are based on Legitimate Zoning Purposes**

Public testimony- and the furor over the Walmart application- indicates that many residents believe that larger scale buildings:

- (1) impair the viability of pedestrian oriented businesses and/or the development of local businesses;
- (2) impair the character and culture of a community by failing to ensure that new development is on a scale in keeping with existing businesses and homes;
- (3) impair property values because such massive developments are inconsistent with residential communities;
- (4) have a larger impact on nearby neighborhoods when it comes to issues of noise and odors;
- (5) are visually unappealing; and
- (6) reduce desirable open space.

The open space requirements are designed to address these concerns, and minimize the impact of such large buildings. The goals of ensuring open space, protecting nearby residential neighborhoods, encouraging the development of local businesses and pedestrian oriented businesses, protecting the suburban character of the Town, and ensuring that the Town is aesthetically appealing are clearly legitimate zoning purposes.

No less an entity than the Supreme Court of the United States has noted that a planning and zoning commission can protect and promote, "public health, safety, comfort and general welfare". Village of Euclid Ohio v. Ambler Realty Co., 272 US 365 (1926). The concept of public welfare is a broad one.

"The values it represents are spiritual as well as physical, aesthetic as well

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do not operate as financial benefit to the Town in which they are located.

as monetary. It is within the power of the legislature to determine that the community should be beautiful as well as healthy, spacious as well as clean, well-balanced as well as carefully patrolled”.

Berman v. Parker, 348 US 26 (1954).

Thus, the graduated open space requirements are based on legitimate zoning purposes.

### **III. The Open Space Requirements are Tailored To These Purposes**

The requirements are also carefully tailored to these zoning purposes. Height, bulk, open space and setback requirements are fundamental planning tools which can help achieve legitimate zoning purposes. In the present case the open space requirements are designed to ensure that very large scale facilities do not have a negative impact on the Town by ensuring that there is open space surrounding the building which is in keeping with the size of the footprint. There are several critical components to the open space requirements for large buildings.

First, the open space requirements are designed so that they would not impact the vast majority of potential businesses that could be placed at Exit 67 or Gerber Farms. Buildings with a foot print under 40,000 sq. feet that do not abut residential areas will have open space requirements of 50 feet for the front, side and rear lots. For purposes of illustration the average supermarket is about 40,000; the average chain retail pharmacy is 15,000-30,000; the average small local business is under 15,000. Most facilities in Town would have a foot print of under 40,000 square feet- and most of the possible uses of the land would, therefore, not be impacted by the graduated open space requirements.

The open space requirement **would** impact so-called big box development. For example, the owner of the site on exit 67 mentioned a potential facility with a building footprint of 185,000 sq. feet. For purposes of illustration, my research indicates that 180,000 sq feet is 4.1 acres. That is the building itself- not including parking lots-would cover more than 4 acres. Facilities of this size are not consistent with the size or mass of nearby homes or businesses in either the Exit 67 or Gerber Farms area. Thus, the open space requirements are narrowly tailored to only impact potential businesses that are incompatible -with respect to size- with the surrounding environment. As a planning commission we can and should ensure that such incompatible development does not harm the character and attractiveness of the Town.

Second, enacting the open space requirements helps us to avoid an outright prohibition on such incompatible buildings. Instead, the open space requirements are designed to ameliorate the negative effects of facilities that are not in scale with surrounding homes and businesses.

The open space required on the front, rear, and side yards will keep the building from overwhelming the surroundings and visually dominating the area in a way which is inconsistent with the character and culture of the Town. It will blend better with nearby neighborhoods, and will be more attractive to passers-by and to those who live or work in the area. Because it will reduce the negative visual impact of the “big box”, it will also hopefully ensure that property values remain more stable which is of benefit to the neighbors and to the Town.

Third, by placing these open space requirements on all sides of the building and by ensuring that they are consistent with the mass of the building we will help to ensure that noise and odors are truly buffered. A fifty foot open space requirement, for example, is unlikely to truly contain the noise of an 200,000+ building.

Fourth, the open space requirements initially suggested by Planimetrics actually **encourages** very large scale developments, encourages density, and discourages open space in a way that I think is inconsistent with the Town character and culture, the desires of the residents and the Plan of Conservation and Development.

As is shown below, a developer who chose to place six buildings with footprints of 30,000 sq. feet, would be required to have open space of at least 350 feet between and around the six facilities.

50 . 50 . 50 . 50 . 50 . 50 . 50

However, a developer who chose to create one building with a 180,000 sq. foot footprint- exactly the same amount of building density - would need to have only 100 feet of open space.

50 . 50

The initial plan accordingly encouraged very large buildings, even though such buildings tend to be non-local businesses, and may not be as desirable or economically advantageous to the Town as having a number of more compatibly sized businesses. The open space proposals in the current draft remove this incentive by requiring that the open space required correlate to the size of the building foot print.

According to the Plan of Conservation and Development, the planned mixed use development zones are supposed to facilitate development in these two areas while ensuring that the development is compatible with the existing neighborhoods. I believe that the current proposal which requires open space which is in keeping with the size and mass of the building does this. It is also more consistent with the Town character, and the many goals expressed in the Plan of Conservation and Development. Finally,

I believe that proportional open space is far more aesthetically pleasing. As a consequence, the graduated open space requirements are reasonably well-tailored to legitimate zoning purposes.

Having said all of this, I do think that there are three changes that should be considered based on the input at the last public hearing:

- (1) I believe that a cap of 300 feet for open space makes sense. That is considerable amount of open space and should meet the goals set out above, even for a building in excess of 200,000 sq. feet;
- (2) I believe that we should retain the discretion to approve the placement of pedestrian walkways within the open space. Such walkways would be an attractive addition to some plans and might be consistent with the goals which the open space requirements are designed to achieve.
- (3) I believe that we should retain the discretion to waive any additional open space requirements necessitated by an addition to an existing building with respect to any side of the building which is not affected by the construction.

#### **IV. The Open Space Requirements are Not Confiscatory**

During the public hearing the owners argued that the open space requirements might constitute a taking. That some loss of value to a property may occur is unfortunate but is not sufficient to constitute a taking. Ensuring, "the maximum possible enrichment of a particular landowner is not a controlling purpose of zoning". Senior v. Zoning Commission, 146 Conn. 531, 535 (1959). Instead, a taking occurs only if the change greatly decreases or destroys the value of a piece of land for any of the uses to which it could reasonably be put. To determine if a taking occurs, a court will balance: (1) the degree of diminution in value of the particular piece of property; (2) the nature and degree of the public harm to be prevented and (3) the realistic alternative uses available. Chevron Oil Co. v. Zoning Board of Appeals, 170 Conn. 146, 151 (1976)

Here the degree of public harm if the open space requirements are deleted or diminished will be great. As one Connecticut court recently explained,

the zoning change does prevent public harm in that the zone change minimizes the reduction of open space... the character of the area would change significantly.....there is no evidence in the Record that this zone change will have any adverse impact on the character of the land, but rather will serve to preserve open space and the character of the area....

City of Bridgeport v. Town Plan and Zoning Commission, 2004 Westlaw 1098758 (Conn. Super. 2004)

As in that case, the open space requirements proposed here will minimize the reduction of open space, and preserve the character of both the nearby neighborhoods and the Town.

Balanced against this is the degree of harm to the landowners. While they have claimed that they will be harmed, the landowners have offered no land valuation, no analysis, no expert testimony, and no other empirical evidence tending to show that the value of the land would be destroyed or substantially diminished if the open space requirements are enacted.

A 50% loss of value for one property was mentioned at one point.<sup>2</sup> However, upon questioning it became clear that this figure was based only on the speculation that a 90,000 building would have ½ the value of a 180,000 building. No evidence to support this speculation was produced. More importantly there is no reason to believe that the owner or developer has to choose between having one 180,000 building or one 90,000 building on the property.

Each of the parcels impacted is over 35 acres. If one extremely large retail facility is not feasible because of the open space requirements and/or the existing wetlands, a number of smaller facilities would seem to be feasible. Several smaller facilities could provide even greater value than a single large facility. In addition, multi-family and/or single family housing is clearly available. No evidence of their value was introduced. Therefore, the owners have not shown that the proposed open space requirements would destroy the value of the land for any of the uses to which it could reasonably be put.

Given the absence of any evidence that the value of the property has been substantially impacted, and given the importance of preserving open space, protecting existing neighborhoods, and protecting the character and aesthetic appeal of the Town of Vernon, I believe that the open space requirements are not confiscatory.

## **V. Conclusion**

One of the things made clear to me during this process is that the Town is at a crossroads. There is little remaining buildable land. There are serious concerns about how this will impact the Town. There are concerns about the tax base. There are concerns about the environment. I think that the current draft of the regulations- including the graduated open space requirements- is a carefully balanced approach to addressing these conflicts. We are not prohibiting development- not even those types of development most frightening to some residents. At the same time, we are trying to ensure that the Town of Vernon does not ignore the environment or become a victim of sprawl. The open space requirement is designed to help achieve a Town that is financially stable, but still retains the sense of community and quality of life that can be lost by uncontrolled development.

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<sup>2</sup>Case law suggests that a reduction in value of 50% would **not** be sufficient to constitute a taking. See: City of Bridgeport v. Town Plan and Zoning Commission, 2004 Westlaw 1098758 (noting that reduction in value of 63% was not a taking). While not a taking, an actual reduction of 50% would be of considerable concern to me.