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MEMORANDUM

TO: South Windsor Planning and Zoning Commission

FROM: James M. Connor, Esq.
Updike, Kelly & Spellacy, P.C.

RE: Absence of Public Sidewalk Requirements in the I – Industrial Zone

DATE: March 8, 2022

There is nothing in the Zoning Regulations that requires creation of a public sidewalk along either of the site's street frontages. The analysis begins with the recent history of regulations amendments on the subject of sidewalks.

The South Windsor Plan of Conservation and Development (POCD) adopted in July 2013 has several strategies to improve pedestrian and bicycle options. The implementation part of the POCD and the updates of that document indicate which strategies are intended to be implemented through a regulatory approach rather than as public works projects. The revisions tables of the Zoning Regulations and the Subdivision Regulations each record changes following adoption of the POCD involving sidewalks. The Subdivision Regulations are not relevant to this application.

Section 6.7 of the Zoning Regulations, "Pedestrian and Bicycle Accommodations," was added in 2017. This is applicable in the I – Industrial Zone. Other provisions of the Zoning Regulations dealing with sidewalks are applicable only in particular zones, other than the I Zone, or deal with separation of certain design features from "public sidewalks."

Section 6.7 contains mandatory language as follows:

Access to individual buildings within the site shall be from a system of convenient and safe pedestrian ways and shall be incorporated into the plans for any site development plan or parking area in accordance with the following standards:. . . .

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The phrase “within the site” appears to modify “access” not “buildings” and to exclude a requirement of providing access from elsewhere. However, of the seven “standards” that follow, only four use the mandatory “shall,” including the last, the only one dealing with “public sidewalks,” which provides:

7. Pedestrian ways and sidewalks may be provided wherever possible for connections to adjacent lots (developed or undevelopable) or neighborhoods. Maintenance of public sidewalks, including the clearing of snow, shall be the responsibility of the property owner. Pedestrian ways internal to the site should connect to the public sidewalk at the street.

“May” and “should” typically are not construed as mandatory. In the minutes of the meeting of the PZC where the new section was adopted in November 2017, this provision was paraphrased in the staff report in these words:

Pedestrian standards addresses adding walkways from parking areas into buildings and also the design of walk ways to ensure that they provide maximum safety. The regulation encourages the incorporation of decorative materials, raised paver, and/or pavement markers to delineate walk ways and the use of signage as appropriate. There are also provisions requiring interconnection to adjacent lots, where appropriate, as well as providing a connection to a public sidewalk *when available*.

Emphasis added. In addition, the staff report on the new regulations characterizes the relationship between the POCD and the proposed regulations thusly:

In the Transportation section of the Plan of Conservation and Development, one of the goals, Implement More Biking and Walking Options, states: The zoning regulations could be updated to require new commercial development to provide pedestrian infrastructure and bicycle parking *if located in priority areas*. Existing commercial development should be encouraged to make improvements to better attract pedestrian and bike traffic. This text amendment will forward this goal.

Emphasis added. Note that the goal described concerns commercial development, not industrial. Further, Governor’s Highway and Talbot Lane are not priority areas for pedestrian infrastructure in the POCD. The sole commissioner comment noted in the minutes was the following:

Commissioner Wagner spoke in support of the amendment and asked if it was the right place to require new subdivisions and commercial properties to provide bike paths. Director Lipe indicated that language had already been added to subdivision regulations.

This question did not directly relate to public sidewalks. It is possible that the minutes do not exactly reflect Commissioner Wagner’s question or the Director’s reply; the actual subdivision regulations amendments dealt primarily with sidewalks, not bike paths.

Chapter 4, Section C.3(f) of the Subdivision Regulations was amended in June 2017 with new sidewalk requirements. Currently, the regulation states among other things that “Sidewalks may be required in non-residential subdivisions, and on existing streets in accordance with the Town Sidewalk Plan section of the Town Plan of Development.” The subdivision regulations do not apply to the proposed site plan application. However, the key point is that these regulations were amended only about six months prior to the amendment that added Section 6.7 to the Zoning Regulations and were done by the same body acting in its legislative capacity (albeit with an election and change in the chairmanship having occurred between the two). Clearly, the PZC knows what language to use if it intends to make installation of new sidewalks along public streets mandatory, but only used that language in the amended Subdivision Regulations and limited the requirement to locations identified for that purpose in the POCD, which does not apply to Governor’s Highway or Talbot Lane.

The Zoning Regulations use the term “walkways” in appropriate circumstances where the concept is not that of a hard pedestrian amenity alongside a public or private street. In various contexts, the Zoning Regulations use both the phrase “public sidewalk” and “public walkway,” thereby recognizing a distinction between interior development features and features dedicated to public use. The Zoning Regulations also use the term “pedestrian ways,” but never “public pedestrian ways,” often in connection with parking lot design requirements and in distinction from “sidewalks.” “Pedestrian crossing” and “crosswalk” are also terms used in various contexts. “Walkway” may be an umbrella term for all interior pedestrian features whether constructed from concrete, pavers, or asphalt, and inclusive of pedestrian crossings/crosswalks in some contexts.