



**TOWN OF OXFORD  
PLANNING & ZONING COMMISSION**  
S.B. Church Memorial Town Hall  
486 Oxford Road, Oxford, Connecticut 06478-1298  
[www.Oxford-CT.gov](http://www.Oxford-CT.gov)

**Planning & Zoning Commission**  
**Regular Meeting Minutes**  
**Tuesday, November 16, 2021**  
7:30 PM – Main Meeting Room  
S.B. Church Memorial Town Hall

The meeting is accessible online by using the following information:

**Meeting Link:**

<https://zoom.us/j/6727345461?pwd=d3NvbG8zWmNSWnlVQmgrZGdBNyt6dz09>

**Meeting ID:** 672 734 5461

**Passcode:** 588851

**Join by Phone:** +1 929 205 6099

**I. CALL TO ORDER**

Chairman Pat Cocchiarella called the meeting to order at 7:30 PM.

**II. PLEDGE OF ALLEGIANCE**

**III. ROLL CALL**

**Present:** Joshua Dykstra, Pete Zbras, Dave Sauter, Pat Cocchiarella, Brett Olbrys, Dan Wall, and Jesse Schremmer.

**Also Present:** Kevin McSherry, Land Use Counsel, Steve Macary, ZEO, and Jessica Pennell, Coordinator.

**IV. SEATING OF ALTERNATES**

No alternates were seated.

**V. PUBLIC HEARINGS**

**A. Recessed Public Hearings:**

1. **Z- 21-133 [COMM] – 60 Oxford Road – Owner & Applicant:** Pitt-Conn Holdings, LLC,  
15 Apple Drive, Oxford, CT 06478 – Proposed “Dunkin Donuts”  
*(Special Exception – Article 10, and Article 7 - Section 7.7.3.2- Drive Thru Window)*

*(Referred to Planning & Zoning Engineer, Jim Galligan)*

***Recessed on 10/19/21, 35 days to close the Public Hearing; 11/22/21.***

***(Request Extension from the applicant if the public hearing is recessed)***

***(Approved by Wetlands on 11/9/21 –Applicant has submitted the revised plans)***

**Commission Secretary Brett Olbrys** read a letter dated 11/16/21 from Planning & Zoning Engineer, James Galligan. (Attachment A).

**Donald Smith Jr.**, engineer for the applicant, 36 Greenbriar Circle, Seymour represents the applicant. He explained to the Commission the revisions that were made to the plan in order to secure wetlands approval, which was obtained at the last wetlands meeting. He noted the major changes: the removal of the 400 sq. ft. projection of the building and removed three (3) parking spaces. The final number of parking spaces provided on the plan is twenty-one (21), which does not meet the requirements when calculated per the zoning regulations. He responded to Jim Galligan's comments regarding the Department of Transportation. He noted that the DOT provided guidelines and traffic flows through the terminals. He submitted two (2) pages of a DOT study of fifteen (15) Dunkin Donuts throughout the state. He noted that the recommendation of the DOT is fourteen (14) parking spaces be provided in the queue.

**Mr. Smith** also reiterated that this is a legal non-conforming lot, that is served by municipal water and natural gas. He also described the proposed improvements to the exterior of the building, site lighting, and dumpster enclosure. He explained that the project site does not meet the thresholds listed in the zoning regulations to require a traffic study. He also noted that the applicant does not expect an impact on emergency services.

**Chairman Cocchiarella** opened the discussion to questions from the Commission.

Commissioners had general questions regarding the inside seating and the connection to sewer and water.

**Mr. Smith** noted that there were no changes to the indoor seating, and the current owner has a current connection to the sanitary sewer system.

**Commissioner Zbras** brought up questions regarding the safety regarding the size of the trucks making the deliveries as well as the time of deliveries.

**Mr. Smith** noted that the deliveries would be scheduled during off hours, and explained further how a tractor-trailer would navigate the parking lot.

**Commissioner Zbras** explained that he has been visiting the Dunkin Donuts morning, afternoon, and evening for the last few weeks and has safety concerns about larger trucks pulling off onto the shoulder of Route 67.

**Chairman Cocchiarella** asked Commissioner Zbras to note the date, time, and location on the photo, and submit it for the record.

**Commissioner Zbras** stated that it was taken on Route 67 right across the street from the Dunkin Donuts, at three (3) o'clock in the afternoon.

**Mr. Smith** stated that the DOT would address any vehicles that are parking alongside Route 67.

**Commissioner Sauter** expressed his concern that patrons going inside would have to walk through the drive thru lane and suggested a sign, light, crosswalk, etc., to inform those in the queue that pedestrians have the right-of-way.

**Mr. Smith** addressed Commissioner Sauter's suggestion of a crosswalk.

**Commissioner Sauter** questioned the loss of a parking space if they installed a crosswalk.

**Mr. Smith** replied to Commissioner Sauter's question, stating that they will not lose a parking space

**Commissioner Kerwin** requested the entire study from the DOT.

**Mr. Smith** stated that he would submit the study in its entirety.

**Commissioner Kerwin** made comments regarding the parking, and the discretion of the Commission regarding a traffic study for a special exception. He also expressed concerns with the current time constraints for the public hearing.

**Kevin McSherry, Land Use Counsel** addressed Commissioner Kerwin's concerns regarding the time requirements for the public hearing.

**Commissioner Kerwin** requested the Commission get their own traffic study. He also asked Attorney McSherry if the Commission could disregard the regulations with respect to the minimum number of parking spaces.

Discussion ensued between the Commission and Attorney McSherry regarding interpretation of the parking regulations, and when it would be appropriate to consider certain hardships that would be referred to the Zoning Board of Appeals.

**Mr. Smith** noted that the proposed Dunkin Donuts is being considered a "restaurant" based on the table of permitted uses. He stated they do not classify the Dunkin Donuts a "restaurant".

There was a brief discussion between Commissioner Kerwin and Mr. Smith regarding the classification of the proposed Dunkin Donuts.

**Chairman Cocchiarella** asked if anyone else have any comments at this time?

**Commissioner Zbras** and Mr. Smith discussed the parking that would be required for tenant on the second floor.

Commissioners had a discussion regarding the differences between walking through the crosswalks and the probability of crossing traffic in parking lots overall, as well as whether there is a specific standard for crosswalk. They also discussed if the installation of the crosswalk would cause the loss of a parking space in the drive-thru queue. They also discussed the installation of crosswalks and if that would cause more cars to back up out onto Route 67.

**Chairman Cocchiarella** asked if anyone from the audience has any further questions for the applicant.

**James Tzepos, 15 Apple Drive**, applicant, answered some of the Commissioners questions. He explained that deliveries are scheduled for four (4), in the morning, not during regular business hours. He also

explained the employee parking, which is located at the rear of the building, therefore, the cars parked there will not be pulling in and out of the queue line frequently.

**Chairman Cocchiarella** stated that there are parking and traffic questions. He opened the discussion regarding the traffic study.

**Commissioner Kerwin** stated that it would be beneficial to have this plan reviewed for independent analysis and see whether they feel that fourteen (14) spaces is inadequate for that queue.

Discussion ensued regarding how the Commission and applicant can work through the procedural time constraints and still get all the relevant information.

**Chairman Cocchiarella** stated that the Commission will need an extension from the applicant.

**Commission Secretary Olbrys** questioned how a traffic study works.

**Mr. Smith** explained the basic process for compiling and analyzing data for a traffic study.

**Chairman Cocchiarella** stated that the Commission has two (2) items to consider, the traffic study, and the extension.

**Attorney McSherry, Commissioners, staff, and Mr. Smith** discussed the length of the extension, and what steps the Commission should take to find a traffic engineer.

**MOTION BY Commissioner Kerwin** to get an independent traffic study.

**Second by Commissioner Zbras.**

**All (7) Ayes.**

Motion passed unanimously.

**Chairman Cocchiarella** requested a sixty (60) day extension from the applicant's representative, and stated that the Public Hearing will be recessed to *Tuesday, December 7, 2021, at 7:30 PM.*

**Mr. Smith** agreed and confirmed that the Public Hearing is recessed to December 7, 2021, at 7:30 PM.

#### **B. New Public Hearing:**

1. **Z-21-142 [VCMUD] – 400 Boulder Pass – Owner & Applicant:** The Residences at Quarry Walk, LLC in c/o Attorney Dominick Thomas, 315 Main Street, P.O. Box 313, Derby, CT (*Re-subdivision – Article 6, Section 6.2.4*)

#### **Public Hearing Correspondence:**

- a. Email from Tom Haynes dated 9/16/21- Statement regarding re-subdivision

**Chairman Pat Cocchiarella** outlined the Public Hearing procedures and called for any conflicts of interest.

There were no conflicts of interest stated by any Commission members.

There were no conflicts of interest stated by the applicant or his representative.

**Commission Secretary Brett Olbrys** read the Call of the Meeting/Legal Notice.

**Commission Secretary Brett Olbrys** read an email from the applicant, Tom Haynes.

**Attorney Dominick Thomas**, representing the applicant, stated that he has submitted the certificates of mailing, as well as a photo of the sign that was posted on the property to Jessica Pennell. He went onto explain that the reason for the re-subdivision was for financing; as the applicant has stated before, the project is much too large for any single bank to finance. He explained that this is a standard practice for large and financially complex projects.

**Attorney Thomas** also noted that Lot 11-C, the walking trail, is separated out of the ownership and liability of the residential lots at this time.

**Chairman Cocchiarella** reiterated that this is strictly financial issues between mortgages and construction loans.

There were no other comments from the Commission or the public.

**MOTION BY Commission Secretary Olbrys to close the Public Hearing.**

**Second by Commissioner Jesse Schremmer.**

**All (7) Ayes.**

Motion passed unanimously.

**MOTION BY Commissioner Kerwin** to accept and approve Z-21-142, an application for a re-subdivision under Article 6, Section 6.2.4, favorably, with a condition that the applicant shall abide by all representations made by his counsel and representative at today's hearing.

**Second by Commission Secretary Olbrys.**

**All (7) Ayes.**

Motion passed unanimously.

**C. Future Public Hearings – NONE**

## **VI. REGULAR MEETING BUSINESS**

**A. Amendments to the Agenda – NONE**

**B. Audience of Citizens – (Items not listed on the Agenda)**

**C. Correspondence**

**Commission Secretary Brett Olbrys** noted the following correspondence and stated that it is on file in the Planning & Zoning Department.

a. CFPZA Quarterly Newsletter – Fall 2021

b. Letter from CT Department of Public Health

**Re: Statutory Requirements for projects within Drinking Water Watersheds or Aquifer Protection Areas**

**Commission Secretary Olbrys** suggested supplementing the record and have these entered into the record for in their printed form.

**MOTION BY Commission Secretary Olbrys** to add correspondence into the record in it's printed form.  
**Second by Commissioner Kerwin.**

**All (7) Ayes.**

Motion passed unanimously.

**D. Old Business – Matters on which a Public Hearing was held:**

1. **Proposed Amendment to the Zoning Regulations - Proposed 18-month Moratorium on retail sales, manufacture, and cultivation of Marijuana/Cannabis.**

*Public Hearing closed on 9/7/21; Commission unanimously approved an extension for action by 11/16/21.*

**E. Old Business – Other Matters**

1. **Z-02-237 – Mountain Road Estates – “Meadowbrook Estates” (Bond Release Request)**  
***(Referred to ZEO for final inspection)***

**MOTION BY Commissioner Kerwin** to forward this bond release request to Jim Galligan, P&Z Engineer for a final inspection.

**Second by Commissioner Zbras.**

**All (7) Ayes.**

Motion passed unanimously.

2. **Z-07-192- Moose Hill Estates (7 Lot Subdivision)**  
***(Approve & Authorize Chairman to sign Mylar) (Bond Release)***

**Kevin McSherry, Land Use Counsel** briefly updated the Commission on the Board of Selectmen's actions on this Subdivision. He also explained that the Commission needs to take action to authorize the Chairman and Commission Secretary to sign the mylar, and to release the bond. The seven (7) lots are dissolved, and this is again one (1) large lot.

**MOTION BY Commissioner Kerwin** to authorize the Chairman and Commission Secretary to sign the mylar.

**Second by Commissioner Sauter.**

**All (7) Ayes.**

Motion passed unanimously.

**MOTION BY Commissioner Zbras** to release the bond in the amount of \$572,000 for Moose Hill Estates.

**Second by Commission Secretary Olbrys.**

**All (7) Ayes.**

Motion passed unanimously.

3. **Z-09-106 – Lot 11 – Woodruff Hill Industrial Park, 62 Prokop Road – Applicant & Owner: Tomsuwa, LLC, 297 White Street, Danbury, CT 06810 (Extension Request)**  
***(Discussion with Possible Action)***

**Jessica Pennell**, Coordinator, explained that Emily Jones, the engineer representing the applicant had planned on attending, but is not able to be present tonight.

**MOTION BY Commission Kerwin** to table this item to the next meeting.

**Second by Commissioner Sauter.**

**All (7) Ayes.**

Motion passed unanimously

**F. New Business – Schedule a Public Hearing - NONE**

**G. New Business – Other**

**1. Show Cause Hearing – 36-40 Hunter's Mountain Road**

The Commission held a Show Cause Hearing for 36-40 Hunter's Mountain Road.

**Attorney McSherry** explained the purpose of a show cause hearing.

**Scott Kimmler**, property owner, 36-40 Hunter's Mountain Road is present for the hearing.

**Steve Macary, ZEO** briefly explained the violations, and actions to date regarding this property. He also submitted photos to the Commission, and a letter from Jim Galligan, P&Z Engineer.

**Commission Secretary Olbrys** read the letter dated 11/15/21 from Jim Galligan.

**Mr. Macary** explained which zoning regulations have been violated, and he also briefly went over the various other Town and State departments that are involved in the investigation. He stated that each department may have different regulations, standards or remediation requests.

**Commissioner Olbrys** asked questions regarding the fine process.

**Mr. Macary** briefly explained the step that he takes when he investigates a zoning violation.

**Attorney McSherry** stated that he and the ZEO spoke about how the land can be restored, and the planning with other departments that would need to be considered. He informed the Commission that the State Arborist is involved, as well as Inland/Wetlands. The Inland/Wetlands department is consulting with a soil scientist. Therefore, at this time, no fines have been assessed from other departments.

**Mr. Macary** explained briefly how he learned of the violations. He also noted that he had spoken to Mr. Kimmler in the officer regarding a lot split. He noted that there was no discussion regarding clear cutting.

**Mr. Kimmler** was invited to speak. He explained the events that led to the clear cutting that he did on his property. He also noted that he does have a survey of the property, and that he will work with the departments to comply with the regulations and restore the land.

**Attorney McSherry** and the Commission discussed if it was an appropriate time to discuss the fines, and they decided that they need more information before having that discussion.

**MOTION BY Commission Secretary Olbrys** to recess the Show Cause hearing.

**Second by Commissioner Kerwin.**

**All (7) Ayes.**

Motion passed unanimously.

## H. Zoning Enforcement

### 15 Old Church Road – Violation – Excavation & Fill

The ZEO explained that the property owner brought in fill, and he issued a Cease & Desist. He requested that the Commission authorize Jim Galligan, P&Z Engineer to go out the property for an inspection.

**MOTION BY Commission Secretary Olbrys** to authorize Jim Galligan to inspect property per the ZEO's request.

**Second by Commissioner Kerwin.**

**All (7) Ayes.**

Motion passed unanimously.

## I. Minutes

1. 10/5/2021- Regular Meeting Minutes
2. 10/19/2021 – Regular Meeting Minutes

## J. Invoices – NONE

## K. Other Business

- a. Updates from Land Use Counsel, Kevin McSherry.

1. Lot #5 & Lot #6 – Riverview Subdivision

**Attorney McSherry** updated the Commission on Riverview Subdivision. He noted that they have surrendered the subdivision, and combined lots five (5) and (6). He stated that now they will just deal with the ZEO to get the Zoning Certificates of Compliance.

- b. Any other items the Commission deems necessary for discussion.

Commission discussed the marijuana moratorium, and the further actions that needed to be taken.

## L. Adjournment

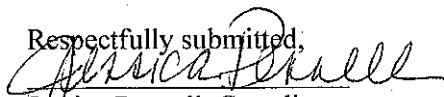
**MOTION BY Commission Secretary Olbrys** to adjourn the meeting at 10:06 P.M.

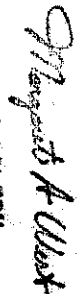
**Second by Commissioner Zbras.**

**All (7) Ayes.**

Motion passed unanimously.

Respectfully submitted,

  
Jessica Pennell, Coordinator  
Planning & Zoning Commission

22 JAN 31 PM 2:42  
TOWN OF OXFORD, CT  
  
TOWN CLERK





# NAFIS & YOUNG ENGINEERS, INC

CIVIL / ENVIRONMENTAL  
ENGINEERING & SURVEYING

November 16, 2021

Mr. David T Sauter, Chairman  
Planning and Zoning Commission  
Town of Oxford  
486 Oxford Road  
Oxford, CT 06478

Re: 60 Oxford Road, Oxford, CT

Dear Mr. Sauter:

Nafis and Young Engineers, Inc. (NYE) is in receipt of a Site Plan for the above-referenced address. The proposal is for a change of use from the previous bank to a Dunkin Donuts food service with a driveway window. No significant physical changes are proposed. However, there are two (2) issues that the Commission should consider:

1. This site will now have a drive-thru order window. The Applicant proposes to include fourteen (14) drive thru spaces in the drive-thru queue. The Applicant should demonstrate the adequacy of this number.
2. The side development plan includes twenty-one (21) parking spaces. The parking schedule indicates that twenty-seven (27) spaces are required by the Zoning Regulations. The Commission should determine if you have the authority to approve this shortage or if this issue should be referred to the Oxford Zoning Appeals Commission.

If you should have any questions, please feel free to reach out to me at 203-314-8041.

Sincerely,

James H. Galligan, P.E.  
Nafis & Young Engineers, Inc.  
Town Engineer of Oxford

# CONNECTICUT FEDERATION OF PLANNING AND ZONING AGENCIES QUARTERLY NEWSLETTER

Fall 2021

Volume XXV, Issue 4

## OFF-SITE TRAFFIC AND SAFETY ISSUES CANNOT BE BASIS FOR DENIAL OF SITE PLAN

An application to use a parcel of land for a propane storage facility was denied due to concerns over off-site traffic and emergency response issues. The property was located within an industrial zone where propane storage facilities were a permitted use subject to site plan approval. The Commission held a public hearing on the application where residential neighbors stated their opposition to the application. The record showed that the application met all specific requirements contained in the zoning regulations but did not satisfy general standards such as traffic safety and emergency response.

The denial was appealed to court, where it eventually found its way to the State Court of Appeals. Basing its decision on well-established law, the Court of Appeals found that the Commission's decision to deny the application was in error. The court restated this well-established rule: "The designation of a particular use of property as a permitted use establishes a conclusive presumption that such use does not adversely affect the district and precludes further inquiry into its effect on traffic, municipal services, property values or the general harmony of the district." Since a propane storage facility was a permitted use, the Commission was wrong to look into off-

site traffic concerns and emergency service capabilities in making its decision to deny the application. See *2772 BPR LLC v. Planning & Zoning Commission*, 207 Conn. App. 377 (2021)

## HEARING REQUIRED FOR AUTO DEALER & REPAIRER LICENSE

The State Supreme Court reversed a ruling of the Appellate Court on the issue of whether Connecticut General Statutes Sec. 14-55 was repealed or still in effect. This state statute required that a public hearing be heard on applications for an automobile dealer and repairer license. For many years, it was commonly understood that this section of the regulations was repealed during the 2003 session of the state legislature. The Appellate Court found otherwise based upon a reading of the legislature's actions on this statute. The legislature had first repealed it, then passed a bill amending it. The Appellate Court found the last action of the legislature controlled, thus keeping Sec. 14-55, as amended in force.

The State Supreme Court reversed this decision based upon the fact that the official state statutes had listed Sec. 14-55 as repealed since 2003 and such publications by the state legislature are entitled to significant weight as to what the statutory law of this state is. With Sec. 14-55 eliminated, the requirement for a public hearing on applications for a certificate of location

Written and Edited by  
Attorney Steven E. Byrne  
790 Farmington Ave., Farmington CT 06032  
Tel. (860) 677-7355  
Fax. (860) 677-5262  
[attysbyrne@gmail.com](mailto:attysbyrne@gmail.com)  
[cfpza@live.com](mailto:cfpza@live.com) [www.cfpza.org](http://www.cfpza.org)

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is also eliminated. These applications can now be addressed at a public meeting. *One Elmcroft Stamford LLC v. Zoning Board of Appeals, 337 Conn. 806 (2021).*

## COMPLETENESS OF SPECIAL PERMIT APPLICATION IS ISSUE FOR COMMISSION

When a property owner's application for a special exception was rejected by a land use administrator, he appealed the matter to the Superior Court. The appeal was dismissed by the court, and later by the Appellate Court, on the basis that the property owner did not exhaust his administrative remedies. Both the trial court and appeals court viewed the rejection of the application by the land use administrator as a decision by an officer charged with the enforcement of the zoning regulations. This finding was based in part on the fact that the zoning regulations provided this administrator with the authority to review applications and reject those he found to be incomplete. Thus, the courts found that the decision by this official should have been appealed to the zoning board of appeals before an appeal to court was taken.

The State Supreme Court disagreed. This court found that while the zoning regulations provided a general provision authorizing the land use administrator to reject incomplete applications, another zoning regulation

addressing special exception applications stated that these applications must be referred to the planning and zoning commission for a decision. This specific regulation is consistent with the state statutory scheme regarding special exceptions which provide that they are to be decided by a planning and zoning commission, among others, and provided a public hearing. The special exception application's completeness was an issue to be decided by the planning and zoning commission and not by its agent. *See Farmington-Girard LLC v. Planning & Zoning Commission, SC 20374 (2021).*

## STAFF REVIEW NOT IMPROPER DELEGATION OF AUTHORITY

A special permit application to allow the use of property for a convenience store and gas station was approved with conditions. One of the conditions was that the town engineer confirm that the application complied with certain dimensional requirements in the zoning regulations. An owner of property located across the street from the proposed project appealed claiming that this was an improper delegation of the commission's authority. The court disagreed.

While section 8-2 of the Connecticut General Standards vests the planning and zoning commission with the authority to approve a special permit application, this commission can assign

Written and Edited by  
Attorney Steven E. Byrne  
790 Farmington Ave., Farmington CT 06032  
Tel. (860) 677-7355  
Fax. (860) 677-5262  
[attysbyrne@gmail.com](mailto:attysbyrne@gmail.com)  
[cfpza@live.com](mailto:cfpza@live.com) [www.cfpza.org](http://www.cfpza.org)

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ministerial acts to town staff. Thus, conditioning its approval on the confirmation by the town engineer that certain dimensional standards had been met by the application was proper condition of approval. See *547 North Avenue Bridgeport RE v. Planning & Zoning Commission*, 70 Conn. L. Rptr. 575 (2021).

## ZONING RESTRICTIONS ON TEMPORARY RENTALS CAN CONSTITUTE A TAKING

When a municipality adopted certain ordinances, which imposed restrictions on the short-term rental of residential properties, several owners filed a lawsuit in federal court. The federal lawsuit was based in part on a claim that the ordinances deprived these residential property owners of a private property right without compensation. In their complaint, they alleged that they had purchased their properties with the expectation that they would be able to recoup their investments by renting them on a short-term basis. The municipality filed a motion to dismiss this claim, which was denied by the court, allowing the case to proceed.

Another issue raised by these property owners was that one of the enacted ordinances required, as a condition to apply for a short-term rental permit, that town officials be allowed to inspect their properties. The court found that this could constitute a warrantless

search. Hopefully, the final decision on these issues will provide some clarity on how this use can be regulated. See *Calvey v. Town of North Elba*, 2021 WL 1146283 (NDNY 3/25/21).

## **MEMBERSHIP DUES**

Notices for this year's annual membership dues were mailed March 1, 2021. The Federation is a nonprofit organization which operates solely on the funds provided by its members. So that we can continue to offer the services you enjoy, please pay promptly. It is important now, more than ever, for the Federation to have the resources to participate in the legislative process and protect your interests.

Increased State oversight of zoning as well as the encroachment of regionalization efforts threaten local control over land use issues. This legislative trend is likely to only increase. Your continued membership is vital if the Federation is to have any success against these continued efforts to take away local authority.

## **Workshops**

If your land use agency recently had an influx of new members or could use a refresher course in land use law, contact us to arrange for a workshop to be held at your next meeting. At the price of \$180.00 per session for each agency attending, it is an affordable way for your commission or board to keep informed.

Written and Edited by  
Attorney Steven E. Byrne  
790 Farmington Ave., Farmington CT 06032  
Tel. (860) 677-7355  
Fax. (860) 677-5262  
[attysbyrne@gmail.com](mailto:attysbyrne@gmail.com)  
[cfpza@live.com](mailto:cfpza@live.com) [www.cfpza.org](http://www.cfpza.org)