

DOCKET NO. NNH-CV-19-6055772-S : SUPERIOR COURT
COCCOMO BROTHERS ASSOCIATES, LLC : JUDICIAL DISTRICT OF
NEW BRITAIN AT NEW BRITAIN
v.

PLANNING & ZONING
COMMISSION OF TOWN OF BERLIN AND
NEWPORT REALTY GROUP, LLC : MAY ____, 2020

STIPULATION FOR JUDGMENT

1. This action was commenced by the Plaintiff Coccoma Brothers Associates, LLC (“Plaintiff”) against the Planning and Zoning Commission of the Town of Berlin (“Planning and Zoning Commission” or “Commission”) and Newport Realty Group, LLC (“Newport”) to appeal the decision of the Commission to approve the site plan and special permit applications submitted by Newport to construct a transit oriented village district development on real property owned by the Town of Berlin at 861, 889, 903, and 913 Farmington Avenue, Berlin, Connecticut (“Subject Property”). [The Plaintiff and Defendants may collectively be referred to as the “Parties.”].

2. Plaintiff is the owner of the real property known as 873 Farmington Avenue, Berlin, Connecticut which abuts a portion of the Subject Property (“Plaintiff’s Property”).

3. At the public hearing on the special permit and site plan applications, the Plaintiff’s principal, Thomas P. Coccoma, Jr., appeared before the Commission to oppose said applications on the grounds that the proposed development would allegedly have an environmental impact on Plaintiff’s Property. Said grounds form a basis for the instant appeal and have been resolved by a written settlement agreement separate and apart from the terms and conditions herein (“Settlement Agreement”).

4. It is the intent of the Parties to resolve this matter without the time and expense of further litigation and without any admission of liability or fault.

5. The Parties stipulate that Judgment should enter in this matter in accordance with the terms and conditions contained herein.

6. The Parties agree that the terms of the Judgment, subject to approval of this Court, shall be as follows:

(a) GENERAL TERMS AND CONDITIONS

(1) The general purpose of the specific terms of the Stipulation is to enable additional development of Plaintiff's Property pursuant to the attached site plan ("Settlement Plan") as described in detail at paragraph 6(b) herein and in coordination with development of the Subject Property.

(2) The Parties covenant that they are each willing to enter into commercially reasonable easement agreements, cost-sharing agreements, and other cooperative terms and conditions to coordinate development of said Properties, consistent with the expressed purpose and terms of this Stipulation.

(3) The Plaintiff agrees to comply with the requirements of all federal, state and local Codes, Regulations, Ordinances, and laws in developing Plaintiff's Property. The Plaintiff also understands and agrees that it must obtain approvals from the Commission and Planning and Zoning Staff and the Fire Marshal prior to requesting and obtaining a Certificate of Occupancy in compliance with the Building Code and agrees that it will provide access to the Town of Berlin's Building, Fire, and Planning and Zoning Departments for all required and desired inspections of the Plaintiff's Property. Furthermore, if the Plaintiff desires to change any use of Plaintiff's Property in the future, the Plaintiff acknowledges and agrees that such change in use will require additional permits and/or approvals and agrees that such permits and approvals will be sought and obtained prior to such use being put into effect.

(4) It is expressly understood and agreed that no provision of this Stipulation shall be interpreted as requiring the issuance of any permit or approval by any official, employee, department, board, or commission of the Town of Berlin, but for approval by the defendant Planning and Zoning Commission of a site plan submitted by the Plaintiff which is in full compliance with the Settlement Plan described in paragraph 6(b) below.

(5) It is expressly understood and agreed that the Certificate of Special Permit issued in favor of Newport Realty Group, LLC (the "Permit") and the decision of the Town of Berlin Planning and Zoning Commission of September 19, 2019 approving with conditions the special permit and site plan applications of Newport Realty Group, LLC (the "Approval") shall remain in full force and effect and Newport Realty Group, LLC may proceed with its development plans for the Subject Property known as Steele Center at Farmington Avenue in accordance with said Permit and Approval. Furthermore, Newport Realty Group, LLC's development of the Subject Property is and shall remain separate and apart from any development of the Plaintiff's Property pursuant to the Settlement Plan or otherwise as Newport Realty Group, LLC's rights and

obligations pursuant to the Permit and Approval are in no way conditioned upon any aspect of the Settlement Plan.

(b) THE SETTLEMENT PLAN

The Parties agree that the Plaintiff's Property can be developed pursuant to the attached concept site plan ("Settlement Plan"), subject to a complete submission to and review and approval by the Planning and Zoning Commission and incorporation of and compliance with all Commission and departmental comments and conditions, to include the following:

(1) General Terms and Conditions

(a) An addition to be constructed shall not exceed a 2,260 square foot total footprint and two and one-half (2 ½) stories with commercial use and an ADA compliant apartment unit at rear of ground/street level, four (4) apartment units on second floor, and one (1) apartment unit on half (1/2) story/ third floor ("Addition");

(b) Part of this 2,260 square foot Addition shall be dedicated to building entry, delivery area, and access to commercial uses of the existing building and to all uses of the Addition as well as for storage related to the residential uses of both existing building and the Addition;

(c) Separate entry/access for upper floor apartment uses pursuant to Town of Berlin Zoning Regulations ("Zoning Regulations") § VIII.F.3.a.ii.(5);

(d) Approval by the Commission of all architectural, landscaping and streetscape, and material and design standards; and

(e) Plaintiff shall post a bond in an amount to be determined by Town Staff in accordance with the applicable provisions of the Zoning Regulations.

(2) Permitted Uses

(a) Restaurant use with patio at existing building at Plaintiff's Property limited to ground floor/street level with a maximum occupancy on combined interior and exterior/patio space of no more than one hundred twenty (120) persons or in the alternative, if plaintiff is unable to lease this area for restaurant use, non-restaurant use as allowed in the zone with required parking equal to or less than restaurant use may be permitted with administrative approval of Planning and Zoning Department Staff, including any necessary conditions as determined by Staff;

(b) Business uses in Addition to be located at front/along the public way of the ground floor/at street level, with a storefront compliant with Kensington Overlay Zone at Section VIII.K. of Zoning Regulations;

(c) Residential use of two (2) one-bedroom residential apartments on second floor of the existing building to remain;

(d) Residential use of one (1) ADA/ICC Code on Accessibility and ANSI 117.1 Code compliant one-bedroom apartment at ground/street level located at and accessed from the rear of Addition;

(e) Residential use of four (4) one-bedroom apartments on second floor of Addition;

(f) Residential use of one (1) one-bedroom apartment on third floor/half story of Addition;

(g) Additional bedrooms in excess to what is described in (c-f) above shall require review and specific approval of Commission; and

(h) Specified permitted uses may be placed in either building provided the total square footage dedicated to each use conforms with the square footages specified in section (3) below. Square footages are estimated. Actual dimensions will be based on an improvement location A-2 survey and architectural floor plans prepared by an architect licensed in the State of Connecticut for permit approvals in accordance with the Zoning Regulations.

(3) Square Footage of Permitted Uses at Plaintiff's Property

	USE	GROSS FLOOR AREA (SF)*	AREA OF ADDITION (SF)
<u>FIRST FLOOR</u>	Streetfront Restaurant/1 st Fl.	2,320 (maximum occupancy of 120 persons)	
	Streetfront Business Use/1 st Fl.	960	1,200 maximum

<u>FIRST FLOOR ADDITION ONLY</u>	Access/1 st Fl. Rear	310	310 maximum
<u>FIRST FLOOR ADDITION ONLY</u>	ADA Compliant 1-BR Apt./1 st Fl. Rear	750 minimum	750
<u>SECOND FLOOR EXISTING</u>	2 1-BR Apts./2 nd Fl.	2,320	
<u>SECOND FLOOR ADDITION</u>	4 1-BR Apts./2 nd Fl.	2,380	2,380
<u>THIRD FLOOR ADDITION</u>	1 1-BR Apt./3 rd Fl.	1,200	1,200
	<u>TOTAL:</u>	10,240 GFA (SF)	5,840 (SF)

* Square footages are estimated. Actual dimensions will be based on an improvement location A-2 survey and architectural floor plans prepared by an architect licensed in the State of Connecticut for permit approvals in accordance with the Zoning Regulations.

(4) Parking

(a) Pursuant to § VIII.F.2.b. and § VIII.F.6. of the Zoning Regulations, when a property owner develops property in accordance with the provisions of the Kensington Overlay District, the regulations and design standards of § VIII.F. supersede the required minimum number of spaces in the parking requirements of the Zoning Regulations and parking requirements shall be approved by the Commission based upon

information that demonstrates that there is adequate parking for the use(s) to satisfy the anticipated parking demand. In addition, the Commission can require installation of on-street parking or may accept shared off-street or off-site parking areas to satisfy anticipated parking demand.

(b) Parking and driveways to be constructed as shown in the Settlement Plan on 861 and 873 Farmington Avenue with a minimum of thirty-two (32) on-site parking spaces. Said parking requirement was calculated based upon reductions for shared mixed uses, proximity to the Train Station, and availability of on-street parking and shared parking areas.

(c) Each residential apartment unit shall have one (1) parking space on-site designated for its exclusive use, unless a tenant(s) advise(s) Plaintiff in writing that he/she/they do not require use of a parking space for his/her/their residential apartment unit. One (1) of the two (2) parking spaces behind the Addition shall be a designated handicap space for the ADA compliant residential one-bedroom apartment use at ground/street level at the rear of the Addition.

(d) All on-site parking shall be free of charge. There shall be no pay-to-park on-site.

(5) Shared Access and Parking, Site Improvements, and Maintenance Related to 861 and 873 Farmington Avenue

(a) As shown on the attached Settlement Plan, the real property at 861 and 873 Farmington Avenue, the former to be transferred from the Town of Berlin to the defendant Newport and the latter being Plaintiff's Property, will have a common access and parking area.

(b) Easement agreements and necessary cost-sharing agreements will be prepared, executed, and filed on the Berlin land records to accomplish this shared access and parking plan.

(c) Two (2) existing curb cuts will be eliminated as shown on the Settlement Plan.

(d) As common areas, the access and parking areas will be shared improvement areas, including the parking lot pavement, drainage, islands, curbs, and any landscaping required in the islands.

(e) The properties will be landscaped in a coordinated manner with each property performing its own landscaping and sidewalk improvements on its site and in the Farmington Avenue right of way

contiguous to and immediately south of its property. Sidewalks at Farmington Avenue will be maintained at their current location.

(f) The Plaintiff and defendant Newport will each provide lighting for its parking area and will feed the lighting from its building. Both parties will use the same lighting fixtures as approved by the Town Staff.

(g) The Plaintiff and defendant Newport will share the cost of any required off-site improvements related to access, parking, and drainage, including but not limited to the addition of catch basins in Farmington Avenue.

(h) Division of costs for shared improvement areas will be based on the percentage of the total combined building square footage that will be developed on each site. Based on the attached Settlement Plan, 10,240 square feet (80% of the total square footage) will be developed on 873 Farmington Avenue and 3,000 square feet (20% of the total square footage) will be developed on 861 Farmington Avenue.

(i) One (1) contractor will be selected to perform site work in the shared improvement areas. Each property owner will solicit proposal(s) and submit a "bid". The contractor that submits the lowest bid will be selected to do the work. Contracts will be in the name of both property owners and costs will be prorated. Based on the attached Settlement Plan, 10,240 square feet (80% of the total square footage) will be developed on 873 Farmington Avenue and 3,000 square feet (20% of the total square footage) will be developed on 861 Farmington Avenue.

(j) One contractor will also be selected for annual maintenance of the shared improvement areas. Each property owner will solicit proposal(s) and submit a "bid." The contractor that submits the lowest bid will be selected to do the work. Contracts will be in the name of both property owners and costs will be prorated. Based on the attached Settlement Plan, 10,240 square feet (80% of the total square footage) will be developed on 873 Farmington Avenue and 3,000 square feet (20% of the total square footage) will be developed on 861 Farmington Avenue.

(k) The Plaintiff and defendant Newport will jointly manage the contractors performing engineering, construction, and maintenance work for the shared improvement areas.

(l) The parties' cost sharing agreements will have a provision related to default of prorated contributions.

(m) Yantic River Consultants, LLC has prepared a proposal to engineer the full site plan based on the Settlement Plan to be submitted to the Commission (including surveying and other sub-consultant services as needed). If the Plaintiff is not satisfied with this proposal, it may solicit and submit another bid for this work. The low bidder will be selected. The contract will be in the name of both property owners and costs will be prorated. Based on the attached Settlement Plan, 10,240 square feet (80% of the total square footage) will be developed on 873 Farmington Avenue and 3,000 square feet (20% of the total square footage) will be developed on 861 Farmington Avenue.

(n) If it is necessary to phase the work because both parties are not ready to commence development of the property at the same time, then phasing will be in accordance with the attached phasing plans depending on which party is ready to start first. Costs incurred for work performed in shared improvement areas will be allocated in the same manner if the project is phased.

(6) Timeframe for Completion of Site Plan Improvements

All site improvements in connection with the approved site plan shall be performed and completed in strict compliance with the site plan as approved by the Commission and shall be completed within five (5) years from the date of the Commission's approval thereof. Failure to complete all site improvements within such period shall result in automatic expiration of the approval of such site plan. In the event of automatic expiration, a new site plan must be submitted as the Settlement Plan will be void. Any extension permitted by statute are to be expressly approved by the Commission.

7. In the event that it is necessary for any Party to file a Motion to Enforce any provision of this Stipulation, said Party shall be entitled to recover all costs incurred in connection with enforcement, including reasonable attorney's fees.

8. This Stipulation for Judgment will be recorded on the Berlin land records following entry of judgment in accordance therewith by the Court in the above-captioned action.

9. This Court shall maintain continuing jurisdiction over this matter for purposes of enforcing the rights and obligations of the Parties as set forth herein.

10. All costs and attorney's fees incurred by the Plaintiff in pursuit of this action, for preparation and execution of the Settlement Plan, the preparation and submission of the full site plan to the Commission shall be borne by the Plaintiff alone and all costs and attorney's fees incurred for the drafting, execution, and recording of the easement and cost-sharing agreements shall be borne by the parties to said agreements..

11. The terms and provisions of this Stipulation shall inure to the benefit of and be binding upon the Parties and their respective heirs, legal representatives, successors, and assigns.

12. This Stipulation is absolute and unconditional and, together with the Settlement Agreement, constitutes the full, complete and entire understanding and agreement between the Parties with respect to the subject matter hereof and supersedes any prior negotiations, commitments, agreements, representations, promises, statements, warranties, covenants, or understandings, whether oral or in writing, that any party hereto may claim exists, all of which negotiations, commitments, agreements, representations, promises, statements, warranties, covenants, or understandings are expressly merged herein. No other representations, promises, statements, warranties, covenants, or understandings or other prior or contemporaneous negotiations, commitments, or agreements, oral or written, respecting such matters that are not specifically incorporated herein and in the Settlement Agreement shall be deemed in any way to exist or to bind any of the Parties hereto. Each of the Parties hereto acknowledges and affirms that it has not executed this Stipulation in reliance upon any representations, promises, statements, warranties, covenants, or undertakings not contained within this Stipulation. The Parties acknowledges that they were represented by legal counsel of their choice in connection with the review and negotiation of this Stipulation. This Stipulation may not be amended, modified, altered, changed, limited or terminated, except by a writing signed by all of the Parties hereto.

This Stipulation, along with the Settlement Agreement, contains the entire agreement between the Parties with respect to the matters set forth herein, and may not be changed or terminated orally.

13. In accordance with the Rules of Practice, the Commission published notice of its consideration of this Stipulation in a newspaper of general circulation on May 22, 2020 advising interested members of the public that they could appear and offer public comment on same at its regular meeting held on May 28, 2020. After review and consideration of the Stipulation at said meeting, the Commission voted to authorize undersigned counsel for the Commission to execute the Stipulation on its behalf.

14. This Stipulation may be executed by signature transmitted via facsimile or by e-mail in PDF format, each of which shall be an original signature. The Stipulation may be executed in any number of counterparts, each of which, when so executed and delivered, shall be an original, but all of which together shall constitute one agreement binding upon all of the Parties hereto.

THE PLAINTIFF /-
COCCOMO BROTHERS
ASSOCIATES LLC

THE DEFENDANT -
PLANNING AND ZONING
COMMISSION OF TOWN OF BERLIN

By _____
Matthew J. Cholewa
MCholewa@greenelawpc.com
Greene Law, P.C.
11 Talcott Notch Road
Farmington, CT 06032
Tel. (860) 676-1336
Juris No. 428354

By _____
Jennifer N. Coppola
JCoppola@cd-llp.com
Ciulla & Donofrio, LLP
127 Washington Avenue
North Haven, CT 06473
Tel. (203) 239-9828
Fax (203) 234-0379
Firm Juris No. 412770

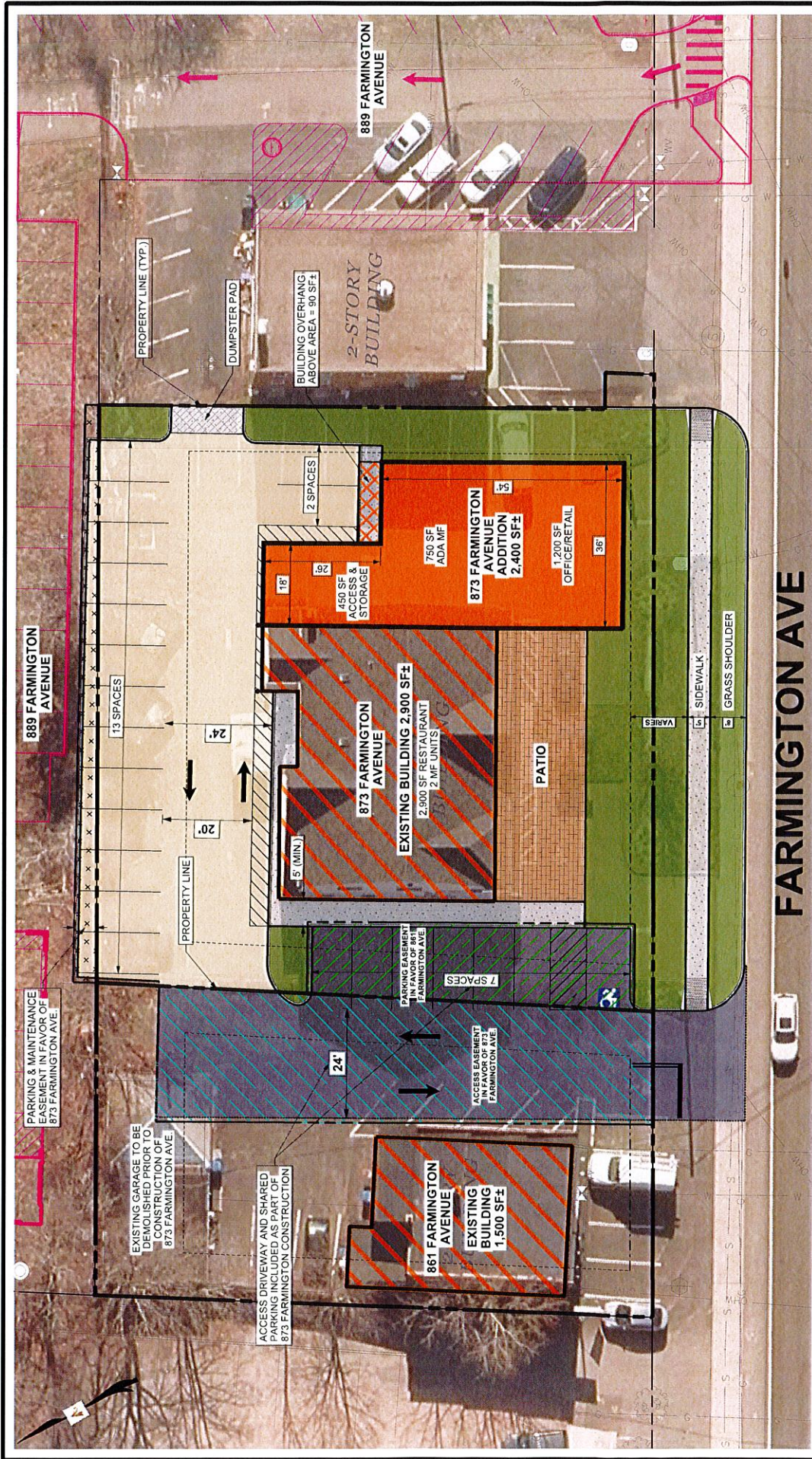
AND

AND

THE DEFENDANT -
NEWPORT REALTY GROUP, LLC

By _____
Thomas P. Cocomo, Jr.
Its Manager

By _____
Eric Grant
EGrant@yamingrant.com
Yamin & Grant, LLC
83 Bank Street
Waterbury, CT 06702
Tel. (203) 574-5175
Fax (203) 573-1131
Firm Juris No. 418063



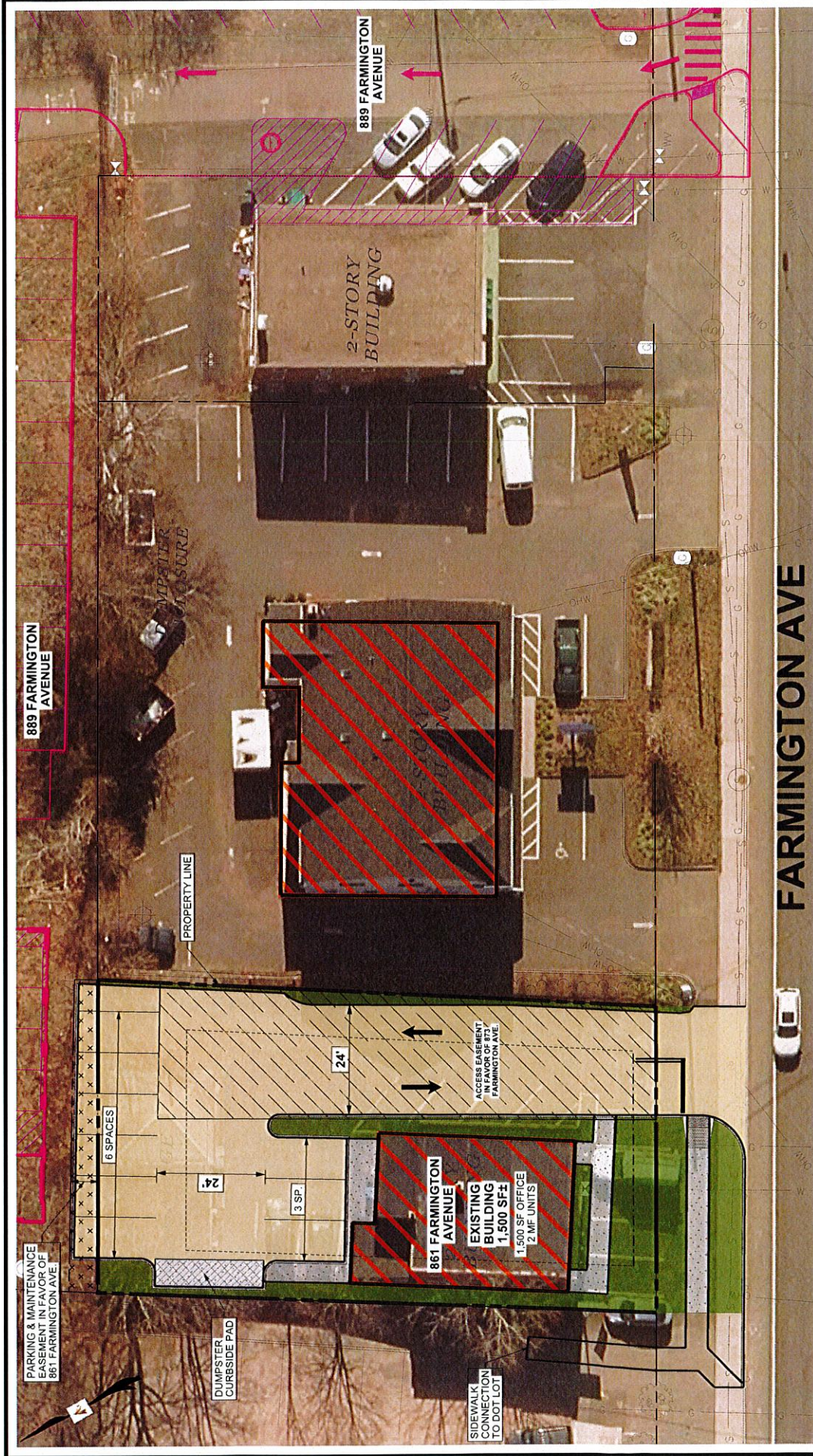
FARMINGTON AVE

CONTACT INFORMATION
 YANCIE RIVER CONSULTANTS, LLC
 191 NORWICH AVENUE
 LEBANON, CT 06249
 Phone: (860) 367-7264
 Fax: (860) 367-7265
 Web: www.yancieriverconsultants.com



SCALE: 1" = 20'
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 PROJECT NO: 00060 - 001
 DATE: 5/6/20
 SHEET NO: C1-2

861-873 ACCESS & PARKING IMPROVEMENTS
 PREPARED FOR TOWN OF BERLIN
CONCEPT LAYOUT - 873 CONSTRUCTION PHASE
 861 & 873 FARMINGTON AVENUE
 BERLIN, CT



SCALE: 1" = 20'

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PROJECT NO 00060 - 001

DATE 5/6/20

SHEET NO C1-1

CONTACT INFORMATION

YANKEE CONSULTANTS, LLC
 191 NORWICH AVENUE
 LEBANON, CONN 06249
 Phone (860) 367-7264
 Email yconsultants@gmail.com
 Web www.yconsultants.com

861-873 ACCESS & PARKING IMPROVEMENTS
PREPARED FOR TOWN OF BERLIN

CONCEPT LAYOUT - 861 CONSTRUCTION PHASE
861 & 873 FARMINGTON AVENUE
 BERLIN, CT