



DEPARTMENT OF DEVELOPMENT SERVICES – PLANNING DIVISION
REPORT: Text Amendment for Assembly Use Lot Size
for consideration July 12, 2022

STAFF REPORT

TO: Planning & Zoning Commission
PREPARED BY: Paul Ashworth, Senior Planner
paul.ashworth@hartford.gov

PROJECT: Assembly Use Lot Size Text Amendment
P&Z-COMM-2022-0262

ZONE: Citywide

TYPE: Zoning Text Amendment per Section 1.3.5 to reduce the required lot size in Section 3.3.2.A(c) for assembly uses in the MS, MX, CX and ID districts from minimum three (3) acres to minimum one-half (1/2) acres.

APPLICANT: The Church of Jesus Christ of Latter-day Saints
c/o James D’Alton Murphy, Esq

BACKGROUND INFORMATION

The applicant is requesting a text amendment (see Attachment 1) to reduce the required lot size for assembly uses in the MS, MX, CS and ID districts in order to expand the number of parcels within the City of Hartford that could accommodate an assembly use. The applicant has argued that the current 3-acre minimum lot size requirement places “...unreasonable limits and substantial burden” on the organization’s free exercise of religion and may therefore be ripe to litigation under the federal Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) and Connecticut’s Act Concerning Religious Freedom (ACRF). The applicant originally requested to remove the lot size requirement entirely for churches, and leave the lot size requirement the same for other assembly uses. The current request, to reduce the lot size requirement for all assembly uses to one half (1/2) acres is the result of cooperation between the applicant and City staff.

KEY APPLICATION TIMELINES

- Application Submission Date: May 9, 2022
- Date Application Accepted as Complete: May 9, 2022
- Application Date of Receipt: May 24, 2022 (sooner of either: date of next regularly scheduled meeting, or 35 days after acceptance of complete application)
- Public Hearing is scheduled to open on Tuesday, July 12, 2022; Open Hearing Deadline: July 28, 2022.

- Close Hearing Deadline (if opens July 12, 2022): (35 days after opening) Tuesday, August 16, 2022
- CT General Statutes Sec.8-7D allow that the applicant may consent to one or more extensions of time, provided the total extension of all time periods shall not be for longer than 65 days.

LEGAL STANDARD

Standard for Application Type:

The Commission reviews requests for zoning amendments in accordance with Zoning Regulations section 1.3.5. The Commission must consider the plan of conservation and development and state on the record its findings on the consistency of the proposed amendment with such plan.

STANDARD SPECIFIC TO THE USE

Section 1.3.5.G.(2): In making its decision on a proposed amendment, the commission must consider the plan of conservation and development and state on the record its findings on the consistency of the proposed amendment with such plan.

Section 3.3.2.A. Assembly. A facility that has organized services, meetings, or programs to benefit, educate, or promote discourse amongst the residents of the community in a public or private setting, with incidental entertainment. Includes such uses as houses of worship, community centers, and recreation centers.

- (1) **Neighborhood Assembly.** An assembly use that occupies a building with less than 10,000 square feet of gross floor area.
- (2) **General Assembly.** An assembly use that occupies a building with 10,000 square feet or more gross floor area.
- (3) When noted as subject to conditions ("●") or requires a special permit ("○") in Figure 3.2 -A Table of Principal Uses, the following regulations apply:
 - (a) **Minimum Lot Frontage.** A minimum lot frontage of 100 feet is required for all Neighborhood Assembly Uses. A minimum lot frontage of 150 feet is required for all General Assembly Uses.
 - (b) **Street Type.** When located in an N or NX district, General Assembly uses shall front a Boulevard or Avenue street type. Refer to 9.0 Street Types.
 - (c) **Minimum Lot Area.** The following minimum lot areas for all assembly uses, exclusive of any other uses on the same lot, are required: 5 acres in the N-1 district, 4 acres in all other NX and N districts, and 3 acres in every other district, except in the DT districts, where there is no minimum acreage required.
 - (d) **N-1 District.** In the N-1 district, only existing houses of worship are permitted, and any addition to or expansion of such houses of worship or their accessory parking facilities shall not be permitted.

Plan of Conservation & Development (POCD)

Green400

- **Resiliency** – Hartford has begun to plan for resiliency, that is, the ability to recover quickly when problems arise. Ensuring that Hartford families and businesses are resilient during and

after power outages, food shortages, drought, infestation, and other threatening conditions can ensure the city thrives.

Grow400

- **Development**

- o Grow the grand list. Increasing the tax base by promoting development, particularly in the opportunity, enterprise, and North Hartford Promise zones, will stabilize city finances and expand services.
- o Convert Closed schools to community use. Transforming closed school sites to senior housing, recreation facilities, and/or neighborhood-based day cares will allow intergenerational aging in place.

Live400 –

- **Health** – Hartford has nationally-known hospitals, community health clinics and professional training programs. Development of new and consolidated wellness programs in underserved areas and publicizing available service can connect people to the healthy future they deserve.
 - o Engage anchor institutions in wellness efforts.
 - o Build a North End wellness center.
 - o Increase education about sexual health.

FINDING OF FACTS

City of Hartford Parcel Data*

- Total Parcels – 17,327 (excludes tax parcels)
- Total Parcels in Zoning Districts MS, MX, CX & ID – 1,621
 - o Greater than 3 acres – 167
 - o Greater than .5 acres – 699

*Information based on City of Hartford Assessor data using parcels with associated lot size data. Data downloaded from the City of Hartford website March 29, 2022 (updated nightly).

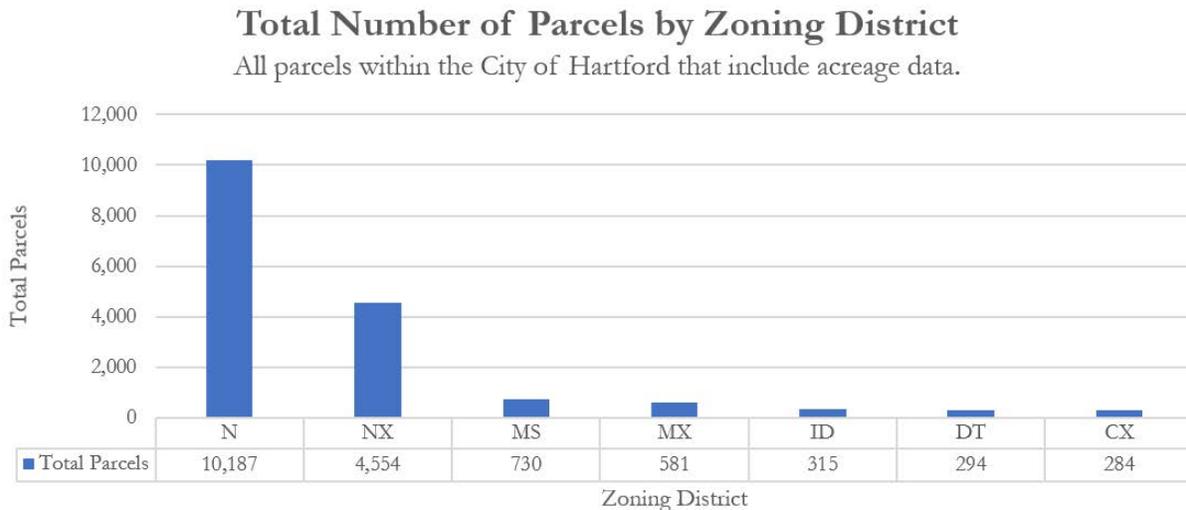


Figure 1. Total parcels by district – City of Hartford Property Assessor 2022

Percentage of Citywide Assessed Property Value Exempt from Taxation**

- Hartford - 50.7%
- CT Average - 14.2%
- Hartford is surpassed only by Mansfield and New Haven for percentage of assessed value in tax exempt status in CT.

** Data from the Connecticut Office of Policy and Management's April 2021 report "Municipal Fiscal Indicators 2015-2019". See Attachment 2 for an excerpt of that report.

COMMENTS RECEIVED (DEPARTMENTS, AGENCIES, NRZs, PUBLIC)

The neighboring towns of Bloomfield, East Hartford, Newington, West Hartford, Wethersfield and Windsor were notified of the proposed text amendment on June 10, 2022. The Central Region Council of Governments (CRCOG) was notified of the proposed text amendment on June 13, 2022. The CRCOG responded on July 8, 2022 that they have no objection to the proposed text amendment.

ANALYSIS

The proposed text amendment to reduce the minimum lot size for assembly uses in the MS, MX, CX, and ID districts would increase the number of potentially viable parcels for new assembly uses. The current three (3) acre requirement in these districts restricts new assembly uses to a limited number of locations. An assembly use is defined by the Hartford Zoning Regulations (the Regulations) as "A facility that has organized services, meetings, or programs to benefit, educate, or promote discourse amongst the residents of the community in a public or private setting, with incidental entertainment. Includes such uses as houses of worship, community centers, and recreation centers (Sec.3.3.2.A)." The assembly use definition includes common local institutions that contribute to community cohesion and resilience. Purveyors of these uses are also commonly tax-exempt organizations such as non-profits or religious organizations. Because of the tax status of these organizations, the City has an interest in regulation so that the positive benefits are realized, while also maintaining an adequate tax base to enable the City to provide other essential services, infrastructure, and schools.

It is widely acknowledged by the emergency preparedness community that a healthy, resilient community recovers faster from disasters or emergencies. One part of a resilient, healthy community is a high level of social connectedness and community organization. Assembly uses such as community centers and recreation centers are common and effective means of encouraging connectedness within a community and provide programs to "benefit, educate and promote discourse (Sec.3.3.2.A)" amongst community members. The POCD explicitly recognizes Resiliency as an overarching goal of the Green400 element. The proposed text amendment is consistent in that it would allow for new assembly uses to open on more properties thereby potentially increasing community resilience. The POCD further identifies specific assembly use goals in neighborhoods and locations in the city in the Grow400 and the Live400 elements. The POCD clearly intends to allow some expansion of assembly uses in the city.

According to a State of Connecticut Office of Policy and Management report released in 2021, approximately half (50.7%) of the assessed property value in the City of Hartford holds a tax-exempt status. According to the same report, Hartford is only surpassed in this metric by two other municipalities, Mansfield and New Haven. The average percentage of tax-exempt property value for a town in Connecticut is only 14.2%. The disproportionate amount of tax-exempt property in the

City of Hartford reduces revenue and makes it more difficult for the City to continue providing services such as infrastructure maintenance and schools to residents. Assembly uses, by their nature, are more commonly held by tax exempt entities such as non-profits and religious organizations. The use of an appropriate lot acreage minimum could help reduce the rate at which new assembly uses relocate to Hartford. The preservation of taxable land is consistent with the POCD (see Grow400 element - "Grow the Grand List") in that it allows the City to raise funds to provide services that contribute to the health and welfare of Hartford Residents.

With regard to their application to relocate the place of worship, the applicant has provided an argument that the lot size requirement is in violation of the federal Religious Land Use and Institutionalized Persons Act of 2000 (RLUIPA) and Connecticut's Act Concerning Religious Freedom (ACRF). More specifically, the applicant has contended that the lot size requirement places a substantial burden on any religious organization attempting to practice their religion in the Hartford because the regulation is overly restrictive and makes the majority of properties unavailable to these uses (see Attachment 3). It should be noted that the Hartford Zoning Regulations do not single out places of worship but rather group a variety of assembly uses. Of the ~18,000 parcels in the city, only ~167 parcels meet the requirements of Sec.3.3.2.A. No additional analysis has been done regarding the availability of these parcels for the establishment of a new use. The proposed reduction of the lot size requirement via this text amendment would roughly quadruple the number of viable parcels however, consideration should also be made for how the reduced lot size may impact the use of different Building Types. Assembly uses (distinct from Entertainment Assembly) are permitted in all zones by special permit. Likewise, they are permitted in a variety of Building Types other than civic buildings. With the proposed change, the likelihood that an Assembly use would be found in a Building Type typically associated with a smaller lot increases. Of note, House A and Row Buildings in the MX-1 and MX-2 Districts, House B Buildings in the MX-1 District, Cottage Commercial Buildings in MS Districts on minimum 1/2 acre parcels would be impacted. As of this writing no data is available to assess how many of these Building Types would qualify for such use. While this warrants consideration, this change also embodies and encourages more mixed use development, which is consistent with the intent of the zoning regulations. For these reasons, staff find that the proposed one half (1/2) acre minimum will substantially ease restrictions on all assembly uses while still contributing to the preservation of taxable land consistent with the POCD.

STAFF RECOMMENDATION

Staff recommend approval of this application.

A draft resolution follows.

ATTACHMENTS

1. Proposed Text Amendment
2. Municipal Fiscal Indicators 2015-2019 - Excerpt
3. Applicant's Position Letter dated April 1, 2022

REVIEWED AND EDITED BY,

Aimee Chambers, Director



CITY OF HARTFORD
PLANNING & ZONING COMMISSION RESOLUTION
TEXT AMENDMENT TO SECTION 3.3.2.A REDUCING THE MINIMUM LOT SIZE
REQUIREMENT FOR ASSEMBLY USES IN THE MS, MX, CX AND ID DISTRICTS

- Whereas,** The City of Hartford Planning & Zoning Commission reviewed the application and attached documents regarding the request for a Zoning Text Amendment per Section 1.3.5 to reduce the required lot size in Section 3.3.2.A(c) for assembly uses in the MS, MX, CX and ID districts from minimum three (3) acres to minimum one-half (1/2) acres; and
- Whereas,** Section 1.3.5 requires that the Commission consider the plan of conservation and development (the POCD) and state on the record its findings on the consistency of the proposed amendment with such plan; and
- Whereas,** The POCD in the Green400 element identifies increasing Resiliency, or the ability of Hartford families and businesses to recover quickly when problems arise, as an overarching goal of the city; and
- Whereas,** It is commonly accepted that more socially connected, cohesive neighborhoods and communities are generally more resilient; and
- Whereas,** Assembly uses, which include but are not limited to community centers, recreation centers and places of worship, are associated with an increased level of social connectedness and cohesivity; and
- Whereas,** Section 3.3.2.A(c) of the Zoning Regulations (the Regulations) currently requires that all new assembly uses locate on parcels not less than three (3) acres in size; and
- Whereas,** The lot size requirement of Section 3.3.2.A(c) eliminates most viable parcels and when the rest of the Zoning Regulations are considered, represents an overly burdensome requirement; and
- Whereas,** The Live400 and Grow400 elements of the POCD includes goals such as “Build a North End wellness center” and “Convert closed schools to community use” that express an intention to encourage the expansion of some assembly uses in the city; and

Whereas, The Grow400 element of the POCD includes a goal to “Grow the grand list”, or to increase the tax base thereby stabilizing the city’s finances and expanding services that provide for the health and welfare of its residents; and

Whereas, Proprietors of assembly uses, by their nature, are more commonly held by tax exempt entities; and

Whereas, The proposed text amendment is consistent with the POCD in that it will make it easier for new assembly uses to locate within the city while still providing a reasonable regulation that could help keep land in a taxable status, thereby stabilizing City finances; and

Now therefore Be It

Resolved, The City of Hartford Planning & Zoning Commission hereby **finds/ does not find** that the proposed Zoning Text Amendment is consistent with the Plan of Conservation & Development: and

Resolved, The City of Hartford Planning & Zoning Commission hereby **denies/approves** the request for a Zoning Text Amendment per Section 1.3.5 to reduce the required lot size in Section 3.3.2.A(c) for assembly uses in the MS, MX, CX and ID districts from minimum three (3) acres to minimum one-half (1/2) acres:

Be It Further,

Resolved, This 12th day of July, 2022.

Attachment 1 – Proposed Text Amendment

Proposed Text Amendment

Reduce the Minimum Lot Area Requirement for Assembly Uses

3.3.2.A Assembly (p. 72)

- (3) When noted as subject to conditions . . . or requires a special permit . . . in Figure 3.2-A Table of Principal Uses, the following regulations apply:

(c) **Minimum Lot Area.** The following minimum lot areas for all assembly uses, exclusive of any other uses on the same lot, are required: 5 acres in the N-1 district, 4 acres in all other NX and N districts, and ~~3 acres~~ **0.5 acres** in every other district, except in the DT districts, where there is no minimum acreage-required.

Attachment 2 – Municipal Fiscal Indicators 2015-2019 - Excerpt

Tax Exempt Property - October 1, 2019 Assessed Valuation *

	2019 Net Grand List (FY 2020-2021)	2019 Grand List - Tax Exempt Property	Total Assessed Value 2019 Grand List	Tax Exempt Property as a % of 2019 Grand List
ANDOVER	266,021,716	12,916,200	278,937,916	4.6%
ANSONIA	997,719,668	131,847,800	1,129,567,468	11.7%
ASHFORD	305,594,167	37,574,380	343,168,547	10.9%
AVON	2,572,968,792	241,452,983	2,814,421,775	8.6%
BARKHAMSTED	357,841,267	20,227,430	378,068,697	5.4%
BEACON FALLS	489,471,302	41,682,400	531,153,702	7.8%
BERLIN	2,371,147,569	191,602,385	2,562,749,954	7.5%
BETHANY	570,108,525	39,140,580	609,249,105	6.4%
BETHEL	2,069,253,190	110,922,490	2,180,175,680	5.1%
BETHLEHEM	369,630,654	33,681,250	403,311,904	8.4%
BLOOMFIELD	2,377,731,476	253,834,420	2,631,565,896	9.6%
BOLTON	446,875,681	30,696,760	477,572,441	6.4%
BOZRAH	249,908,090	13,901,750	263,809,840	5.3%
BRANFORD	3,685,043,062	336,118,020	4,021,161,082	8.4%
BRIDGEPORT	6,459,357,818	2,350,378,292	8,809,736,110	26.7%
BRIDGEWATER	380,294,129	37,992,870	418,286,999	9.1%
BRISTOL	3,998,922,007	422,873,360	4,421,795,367	9.6%
BROOKFIELD	2,294,164,785	125,039,330	2,419,204,115	5.2%
BROOKLYN	572,206,169	43,039,340	615,245,509	7.0%
BURLINGTON	962,823,273	48,904,860	1,011,728,133	4.8%
CANAAN	182,623,414	61,794,300	244,417,714	25.3%
CANTERBURY	373,802,199	17,117,300	390,919,499	4.4%
CANTON	1,091,662,174	84,557,520	1,176,219,694	7.2%
CHAPLIN	214,121,270	19,401,700	233,522,970	8.3%
CHESHIRE	2,844,122,567	395,604,950	3,239,727,517	12.2%
CHESTER	444,963,225	28,610,520	473,573,745	6.0%
CLINTON	1,552,835,994	110,998,280	1,663,834,274	6.7%
COLCHESTER	1,240,099,632	103,923,800	1,344,023,432	7.7%
COLEBROOK	187,947,722	17,543,940	205,491,662	8.5%
COLUMBIA	497,844,603	29,806,300	527,650,903	5.6%

	2019 Net Grand List (FY 2020-2021)	2019 Grand List - Tax Exempt Property	Total Assessed Value 2019 Grand List	Tax Exempt Property as a % of 2019 Grand List
CORNWALL	397,174,336	31,540,200	428,714,536	7.4%
COVENTRY	1,022,688,960	61,802,300	1,084,491,260	5.7%
CROMWELL	1,503,304,528	100,374,120	1,603,678,648	6.3%
DANBURY	7,894,236,562	1,518,461,100	9,412,697,662	16.1%
DARIEN	8,563,942,856	631,497,090	9,195,439,946	6.9%
DEEP RIVER	510,538,685	124,696,580	635,235,265	19.6%
DERBY	737,853,083	154,039,460	891,892,543	17.3%
DURHAM	708,446,111	39,093,180	747,539,291	5.2%
EAST GRANBY	606,429,287	16,726,430	623,155,717	2.7%
EAST HADDAM	894,795,125	178,753,800	1,073,548,925	16.7%
EAST HAMPTON	1,157,009,633	75,052,520	1,232,062,153	6.1%
EAST HARTFORD	2,794,244,994	94,604,953	2,888,849,947	3.3%
EAST HAVEN	1,998,355,067	483,975,270	2,482,330,337	19.5%
EAST LYME	2,211,575,174	206,498,245	2,418,073,419	8.5%
EAST WINDSOR	969,013,461	274,676,697	1,243,690,158	22.1%
EASTFORD	156,759,636	83,129,370	239,889,006	34.7%
EASTON	1,293,684,525	89,705,880	1,383,390,405	6.5%
ELLINGTON	1,430,893,301	78,218,030	1,509,111,331	5.2%
ENFIELD	2,935,378,717	367,556,470	3,302,935,187	11.1%
ESSEX	1,072,369,339	51,326,200	1,123,695,539	4.6%
FAIRFIELD	11,078,745,395	1,245,912,070	12,324,657,465	10.1%
FARMINGTON	3,699,967,077	1,436,414,380	5,136,381,457	28.0%
FRANKLIN	234,364,090	16,253,590	250,617,680	6.5%
GLASTONBURY	4,275,795,625	258,871,180	4,534,666,805	5.7%
GOSHEN	565,212,635	28,615,160	593,827,795	4.8%
GRANBY	1,021,020,023	65,806,720	1,086,826,743	6.1%
GREENWICH	33,413,779,040	3,614,576,140	37,028,355,180	9.8%
GRISWOLD	736,545,069	84,457,710	821,002,779	10.3%
GROTON	3,731,651,292	1,332,581,110	5,064,232,402	26.3%
GUILFORD	3,024,387,034	252,099,910	3,276,486,944	7.7%

Tax Exempt Property - October 1, 2019 Assessed Valuation *

	2019 Net Grand List (FY 2020-2021)	2019 Grand List - Tax Exempt Property	Total Assessed Value 2019 Grand List	Tax Exempt Property as a % of 2019 Grand List
HADDAM	958,466,491	67,564,600	1,026,031,091	6.6%
HAMDEN	3,898,588,859	725,639,150	4,624,228,009	15.7%
HAMPTON	150,186,640	16,431,340	166,617,980	9.9%
HARTFORD	4,036,000,866	4,146,935,223	8,182,936,089	50.7%
HARTLAND	202,045,426	26,997,750	229,043,176	11.8%
HARWINTON	578,540,031	20,579,048	599,119,079	3.4%
HEBRON	787,098,230	66,970,830	854,069,060	7.8%
KENT	594,799,624	124,134,800	718,934,424	17.3%
KILLINGLY	1,366,453,264	193,245,010	1,559,698,274	12.4%
KILLINGWORTH	708,219,060	51,021,890	759,240,950	6.7%
LEBANON	670,755,353	48,492,450	719,247,803	6.7%
LEDYARD	1,116,363,177	185,690,260	1,302,053,437	14.3%
LISBON	393,567,182	24,123,130	417,690,312	5.8%
LITCHFIELD	1,058,744,955	169,991,040	1,228,735,995	13.8%
LYME	500,861,491	34,974,223	535,835,714	6.5%
MADISON	2,950,410,178	298,888,700	3,249,298,878	9.2%
MANCHESTER	4,068,945,883	405,495,090	4,474,440,973	9.1%
MANSFIELD	1,133,261,826	1,568,268,525	2,701,530,351	58.1%
MARLBOROUGH	599,411,995	27,587,850	626,999,845	4.4%
MERIDEN	3,165,652,548	603,371,790	3,769,024,338	16.0%
MIDDLEBURY	971,472,766	80,608,600	1,052,081,366	7.7%
MIDDLEFIELD	433,455,794	30,616,000	464,071,794	6.6%
MIDDLETOWN	3,551,614,070	1,394,296,136	4,945,910,206	28.2%
MILFORD	6,658,268,153	550,322,630	7,208,590,783	7.6%
MONROE	2,222,048,377	138,337,200	2,360,385,577	5.9%
MONTVILLE	1,326,114,186	315,466,490	1,641,580,676	19.2%
MORRIS	339,916,574	56,009,940	395,926,514	14.1%
NAUGATUCK	1,729,411,108	142,510,420	1,871,921,528	7.6%
NEW BRITAIN	2,684,633,277	1,241,410,280	3,926,043,557	31.6%
NEW CANAAN	7,733,939,643	652,321,320	8,386,260,963	7.8%

	2019 Net Grand List (FY 2020-2021)	2019 Grand List - Tax Exempt Property	Total Assessed Value 2019 Grand List	Tax Exempt Property as a % of 2019 Grand List
NEW FAIRFIELD	1,637,925,631	58,288,500	1,696,214,131	3.4%
NEW HARTFORD	695,088,247	40,435,435	735,523,682	5.5%
NEW HAVEN	6,600,438,670	8,474,912,517	15,075,351,187	56.2%
NEW LONDON	1,482,742,141	402,117,470	1,884,859,611	21.3%
NEW MILFORD	2,945,850,093	953,131,270	3,898,981,363	24.4%
NEWINGTON	2,656,844,617	254,388,435	2,911,233,052	8.7%
NEWTOWN	3,231,470,378	306,819,230	3,538,289,608	8.7%
NORFOLK	263,830,254	46,914,060	310,744,314	15.1%
NORTH BRANFORD	1,277,637,621	104,332,791	1,381,970,412	7.5%
NORTH CANAAN	314,719,582	47,540,330	362,259,912	13.1%
NORTH HAVEN	3,112,750,334	346,497,870	3,459,248,204	10.0%
NORTH STONINGTON	528,146,542	68,694,505	596,841,047	11.5%
NORWALK	14,671,608,099	1,355,511,727	16,027,119,826	8.5%
NORWICH	2,019,819,813	660,062,329	2,679,882,142	24.6%
OLD LYME	1,546,421,503	116,780,630	1,663,202,133	7.0%
OLD SAYBROOK	2,299,883,643	161,831,100	2,461,714,743	6.6%
ORANGE	2,117,859,130	164,395,630	2,282,254,760	7.2%
OXFORD	1,558,563,727	106,501,710	1,665,065,437	6.4%
PLAINFIELD	1,011,533,640	108,376,500	1,119,910,140	9.7%
PLAINVILLE	1,410,779,070	117,285,980	1,528,065,050	7.7%
PLYMOUTH	759,243,287	53,664,060	812,907,347	6.6%
POMFRET	359,800,517	103,036,060	462,836,577	22.3%
PORTLAND	840,221,796	53,680,679	893,902,475	6.0%
PRESTON	444,013,380	37,588,477	481,601,857	7.8%
PROSPECT	872,283,801	49,823,780	922,107,581	5.4%
PUTNAM	731,235,598	131,080,800	862,316,398	15.2%
REDDING	1,570,538,958	193,295,250	1,763,834,208	11.0%
RIDGEFIELD	4,883,670,957	516,072,815	5,399,743,772	9.6%
ROCKY HILL	2,235,057,168	284,617,050	2,519,674,218	11.3%
ROXBURY	669,678,440	36,001,770	705,680,210	5.1%

Tax Exempt Property - October 1, 2019 Assessed Valuation *

	2019 Net Grand List (FY 2020-2021)	2019 Grand List - Tax Exempt Property	Total Assessed Value 2019 Grand List	Tax Exempt Property as a % of 2019 Grand List
SALEM	381,108,327	31,894,100	413,002,427	7.7%
SALISBURY	1,280,069,980	183,550,480	1,463,620,460	12.5%
SCOTLAND	111,337,631	11,864,700	123,202,331	9.6%
SEYMOUR	1,221,180,754	82,193,610	1,303,374,364	6.3%
SHARON	734,801,807	72,090,480	806,892,287	8.9%
SHELTON	4,819,806,570	242,239,960	5,062,046,530	4.8%
SHERMAN	695,994,805	23,518,800	719,513,605	3.3%
SIMSBURY	2,508,093,944	352,597,920	2,860,691,864	12.3%
SOMERS	875,830,165	175,285,230	1,051,115,395	16.7%
SOUTH WINDSOR	2,853,659,284	164,573,300	3,018,232,584	5.5%
SOUTHBURY	2,149,645,934	238,929,363	2,388,575,297	10.0%
SOUTHINGTON	4,155,739,125	190,659,813	4,346,398,938	4.4%
SPRAGUE	163,500,064	23,029,110	186,529,174	12.3%
STAFFORD	791,655,853	95,805,800	887,461,653	10.8%
STAMFORD	21,966,307,423	2,994,683,047	24,960,990,470	12.0%
STERLING	237,363,621	22,148,200	259,511,821	8.5%
STONINGTON	2,821,076,431	289,993,450	3,111,069,881	9.3%
STRATFORD	4,769,744,902	456,325,160	5,226,070,062	8.7%
SUFFIELD	1,488,103,220	486,242,660	1,974,345,880	24.6%
THOMASTON	572,028,784	56,729,780	628,758,564	9.0%
THOMPSON	707,513,650	58,414,950	765,928,600	7.6%
TOLLAND	1,275,333,075	141,607,325	1,416,940,400	10.0%
TORRINGTON	2,038,083,612	271,052,250	2,309,135,862	11.7%
TRUMBULL	4,687,218,002	320,304,325	5,007,522,327	6.4%
UNION	93,598,412	10,872,830	104,471,242	10.4%
VERNON	1,840,081,882	206,278,740	2,046,360,622	10.1%
VOLUNTOWN	207,610,030	28,509,480	236,119,510	12.1%
WALLINGFORD	4,273,368,196	646,456,200	4,919,824,396	13.1%
WARREN	381,796,290	17,728,160	399,524,450	4.4%
WASHINGTON	1,225,840,759	185,862,430	1,411,703,189	13.2%

	2019 Net Grand List (FY 2020-2021)	2019 Grand List - Tax Exempt Property	Total Assessed Value 2019 Grand List	Tax Exempt Property as a % of 2019 Grand List
WATERBURY	4,465,712,868	1,609,430,020	6,075,142,888	26.5%
WATERFORD	3,330,956,957	283,248,350	3,614,205,307	7.8%
WATERTOWN	1,842,356,004	272,455,260	2,114,811,264	12.9%
WEST HARTFORD	6,363,394,009	104,398,160	6,467,792,169	1.6%
WEST HAVEN	2,713,659,197	849,807,844	3,563,467,041	23.8%
WESTBROOK	1,162,509,264	662,614,830	1,825,124,094	36.3%
WESTON	2,238,404,346	188,373,310	2,426,777,656	7.8%
WESTPORT	11,441,647,210	1,129,521,400	12,571,168,610	9.0%
WETHERSFIELD	2,336,707,216	204,210,410	2,540,917,626	8.0%
WILLINGTON	445,000,338	26,267,640	471,267,978	5.6%
WILTON	4,278,912,586	406,102,990	4,685,015,576	8.7%
WINCHESTER	728,714,521	92,100,860	820,815,381	11.2%
WINDHAM	959,842,613	652,217,323	1,612,059,936	40.5%
WINDSOR	3,153,873,769	312,374,160	3,466,247,929	9.0%
WINDSOR LOCKS	1,479,189,040	1,155,874,160	2,635,063,200	43.9%
WOLCOTT	1,255,597,875	71,111,590	1,326,709,465	5.4%
WOODBURIDGE	1,111,198,709	121,823,380	1,233,022,089	9.9%
WOODBURY	1,075,565,304	56,927,010	1,132,492,314	5.0%
WOODSTOCK	736,747,766	63,718,270	800,466,036	8.0%
	2019 Net Grand List (FY 2020-2021)	2019 Grand List - Tax Exempt Property	Total Assessed Value 2019 Grand List	Tax Exempt Property as a % of 2019 Grand List
** Total **	384,853,652,588	63,496,500,470	448,350,153,058	14.2%

*Source: Municipal form M-13 filed with OPM

Attachment 3 – Applicant’s Position Letter dated April 1, 2022

GREGORY AND ADAMS, P.C.
ATTORNEYS AT LAW
190 OLD RIDGEFIELD ROAD
WILTON, CT 06897
(203) 762-9000
FAX: (203) 834-1628

JULIAN A. GREGORY
(1912 - 2002)

THOMAS T. ADAMS
(1929 - 2015)

ESTABLISHED 1964

NEW YORK OFFICE:
399 KNOLLWOOD ROAD - SUITE 201
WHITE PLAINS, NY 10603
(914) 848-5000

PLEASE REPLY TO SENDER:
JAMES D'ALTON MURPHY
DIRECT DIAL: 203-571-6309
jmurphy@gregoryandadams.com

PAUL H. BURNHAM
SUSAN L. GOLDMAN
J. VANCE HANCOCK
J. CASEY HEALY
MICHAEL LAMAGNA*
DERREL M. MASON*
MATTHEW C. MASON*
JAMES D'ALTON MURPHY*
KATHLEEN L. ROYLE *
RALPH E. SLATER
ROGER R. VALKENBURGH *

* ALSO ADMITTED IN NEW YORK
⊗ ALSO ADMITTED IN VERMONT

WWW.GREGORYANDADAMS.COM

April 1, 2022

BY EMAIL AND FEDERAL EXPRESS

Aimee Chambers and Paul Ashworth
Planning and Zoning Division
City of Hartford Department of Development Services
550 Main Street
Hartford, CT 06103

Re: The Church of Jesus Christ of Latter-day Saints, a Utah corporation sole;
Proposed Relocation to 2035 Broad Street (Zoned MS-2)

Dear Aimee and Paul,

We write in furtherance of our previous conversations in which we discussed the unique challenges faced by the Hartford branch of The Church of Jesus Christ of Latter-day Saints (the "Church") in its attempt to relocate within Hartford. In this letter we will describe the relevant factual, regulatory, and statutory background, illustrate the burden imposed by the Hartford Zoning regulations, and propose applicable text amendments.

The Proposed Broad Street Site Fully Meets the Church's Needs:

By way of background, the Church is organized geographically. Members of the Church are generally expected to attend the congregation within their geographical area for Sunday services. The local divisions of the Church are either grouped into larger congregations, known as wards, or smaller congregations, known as branches.

The Church's Hartford branch (the "Branch") currently leases 3,100 square feet of space at 641 Maple Avenue for its meetinghouse (the "Existing Meetinghouse"). The lease at the Existing Meetinghouse space no longer meets the needs of the Branch, including its lack of room for future growth. After years of real estate market research for a suitable replacement lease, the Branch now seeks to relocate to the first floor

of the building at 2035 Broad Street (the "Property").¹ The Property is zoned MS-2, consists of a parcel 0.602± acres in size, and is improved with a two-story building totaling 9,644 sq. ft. The Church seeks to lease the first floor of the building, which is approximately 4,965 square feet.

The Property is the only leased space that the Church has been able to find that meets its needs for worship within the local community. These needs include, but are not limited to, proximity to the Existing Meetinghouse, which allows the Church to continue to serve its members within the local community,² the Property's proximity to public transportation, which many members rely on to attend services and Branch activities, and the increased space of the Property, which can accommodate the Branch's growth in membership. Currently the Hartford branch has 183 members with pre-COVID-19 average attendance at the Sunday services of approximately 62 members. The Church expects ongoing growth in the years to come. For many years the Church has noted that approximately 20% of its members either walk or use public transportation and that those who drive typically have a family of three or more in the same car. Therefore, the Church projects that only 17 of the 26 parking spaces on site will be used for Sunday services. It is also important to note that ample street parking is available on adjacent streets.

Additionally, the Property will be improved with key features that are necessary for religious practice by the Branch, as dictated by the basic functions and activities of the Church and, consistent with its beliefs, doctrines, and teachings. These basic functions and activities include the need for an adequately-sized sanctuary to seat those who attend Sunday services, classrooms for religious instruction, clergy offices where the Church's lay clergy can confidentially counsel members and coordinate ministries, and a multipurpose room for instruction and religious activities. The attached Proposed Floor Plan (A1.00), prepared by Swartz Architecture, dated March 3, 2022, indicates how the Property will fit the above criteria.

The Property will generally be used on Sundays, one or two weekday evenings, and occasionally Saturday. The Branch may also have occasional, one-hour, early morning gospel study classes for teenagers during the week. The Branch does not operate or host a school, day care, soup kitchen, bingo or any other commercial or political use. There is no daytime administrative staff apart from occasional maintenance personnel. All activities serve the Church's central purpose to bring together its members, provide Christian service, and strengthen members' faith and the religious community.

The Impact of the Applicable Hartford Zoning Regulations:

Because the Branch intends to use the Property as a place of Assembly, which is a permitted principal use in MS-2 zones, the Branch must apply for a special permit, as indicated by the Table of Principal Uses, Figure 3.2-A. The Property is improved with a structure with less than 10,000 square feet, and therefore the Branch's use of the Property would be considered a place of "Neighborhood Assembly." See Hartford Zoning Regulations § 3.3.2.A(1) ("less than 10,000 square feet ..."). Even though the Property meets all of the needs of the Branch, the Branch is prohibited under Hartford's currently drafted Zoning Regulations from using the Property since the lot size is less than three (3) acres. See Figure 3.2-A, Table of Principal Uses; § 3.3.2.A(3)(c) (describing "minimum lot areas" of "3 acres in every other district, except in the DT districts").

¹ The Branch has entered into an agreement to lease the first floor of the Property, and the agreement is contingent upon approval by Planning and Zoning.

² The Property is approximately 0.5 miles from the Existing Meetinghouse.

As you are likely aware, there are very few lots in Hartford with three or more acres of land. Accordingly, the three-acre minimum lot requirement for places of Neighborhood Assembly unreasonably limits and substantially burdens the Branch's exercise of religion.

In addition, depending on how the City classifies the architectural "Building Type" of the Property under Section 4 of the Hartford Zoning Regulations, the City may create additional unreasonable limits and substantial burdens on the Branch's religious exercise. For example, if the City considers the Property to be a "Civic Building Type" under section 4.10, then the Church's intended one-story lease will trigger the "All Stories" requirement of section 4.10.2.C.16, creating an additional limitation that will burden the Branch's exercise of religion.

The Federal and State Statutes and Case Law as Applicable to Land Use Regulation of Religious Uses:

Under federal and state law, such limits and burdens are prohibited by the federal Religious Land Use and Institutionalized Persons Act of 2000 ("RLUIPA"), 42 U.S.C. § 2000cc, and Connecticut's Act Concerning Religious Freedom ("ACRF"), Connecticut General Statutes § 52-571b. Under RLUIPA and ACRF, whenever a land use regulation imposes a "substantial burden" on religious exercise, the government must demonstrate that the regulation is "the least restrictive means" of furthering a "compelling" government interest. 42 U.S.C. § 2000cc(a); C.G.S.A. § 52-571b(b). This is the strictest possible judicial standard.

Courts applying RLUIPA interpret the term "substantial burden" to mean conduct that substantially "pressures" or "influences" the free exercise of religion. *See, e.g., Guru Nanak Sikh Soc. v. County of Sutter*, 456 F.3d 978 (9th Cir. 2006); *Midrash Sephardi v. Town of Surfside*, 366 F.3d 121 (11th Cir. 2004); *Adkins v. Kaspar*, 393 F.3d 559 (5th Cir. 2004).

The burden need not be insuperable to make it substantial. *See Sts. Constantine & Helen Greek Orthodox Church, Inc. v. City of New Berlin*, 396 F.3d 895, 901 (7th Cir. 2005); *Murphy v. Zoning Comm'n of the Town of New Milford*, 289 F.Supp.2d 87, 126 (D. Conn. 2003), *vacated on other grounds*, 402 F.3d 342 (2d Cir. 2005) (restricting the number of people who could attend a prayer service constituted a "substantial burden" and was therefore a violation of the worshipers' rights under both RLUIPA and ACRF).

In addition, RLUIPA also separately prohibits any land use regulation that (1) "treats religious assembly or institution on less than equal terms with a nonreligious assembly or institution," (2) "discriminates against any assembly or institution on the basis of religion or religious denomination," or (3) "totally excludes ... or unreasonably limits religious assemblies, institutions, or structures within a jurisdiction." 42 U.S.C. § 2000cc(b). Both RLUIPA and ACRF codify established constitutional rules; so, any violation of either also constitutes a violation of federal and state constitutions.

Specific to leases at issue here, land use regulations that violate RLUIPA include zoning laws that limit or restrict a "leasehold ... or other property interest in the regulated land" or even "a contract ... to acquire such an interest." *Id.* § 2000cc-5(5).

At present, there does not appear to be a compelling government interest for Hartford's three-acre minimum lot requirement, and this requirement effectively prohibits places of religious worship from being established within the city. The lack of a compelling government interest for this minimum lot requirement is evidenced by the numerous religious denominations that harmoniously exist on far less acreage within

Hartford. For instance, the Existing Meetinghouse is located on a 0.693-acre lot; and the St. George Armenian Apostolic Church, across the street from the Property, is located on a 0.595-acre lot.

The Connecticut Enabling Legislation and Related Case Law Do Not Support the Three-Acre Minimum and “All-Stories” Requirements:

Further, the three-acre minimum and all-stories requirements also lack the requisite relationship to any of the declared purposes under Connecticut’s zoning enabling act, contained in General Statutes § 8-2, under Chapter 124. Section 8-2 and its applicable case law govern our situation because Hartford has adopted Chapter 124 of the General Statutes per Section 28-4 of the Hartford Municipal Code.

Zoning legislation is only upheld “when it has a rational relation to the public health, safety, welfare and prosperity of the community,” does not violate constitutional provisions, and is not an unreasonable exercise of the police power. *Builders Service Corp., Inc. v. Planning and Zoning Comm’n of East Hampton*, 208 Conn. 267, 283 (1988). In *Builders Service Corp.*, the Connecticut Supreme Court held that East Hampton’s minimum floor area regulation was “not rationally related to the legitimate objectives of zoning, including the promotion of health, safety, and general welfare or conserving the value of buildings.” *Id.* at 306.

As previously discussed, the three-acre minimum violates constitutional rights to free exercise of religion specifically codified relative to land use regulations in RLUIPA and ACRF, and consequently also violates Connecticut case law limiting the legislative authority granted to municipalities pursuant to their police powers. Additionally, the three-acre minimum and all-stories requirements are an unreasonable exercise of police power because they lack the requisite rational relationship to any of the purposes stated in Connecticut General Statutes § 8-2. There is no identifiable benefit to public health, safety, welfare, and prosperity of the community by the imposition of a three-acre minimum lot size or the all-stories requirement for Civic Buildings. Accordingly, these requirements do not “operate[] in a manner reasonably related to . . . [the] legitimate purpose[s] of zoning.” *Id.* at 284.

Request for Advice and Coordination:

In light of the apparent applicability of Federal and Connecticut law to the three-acre and all-stories regulations, particularly as applied to a religious-use applicant such as the Church, we respectfully request your comments in drafting and proposing a text change to the Hartford Zoning Regulations to permit places of Assembly used as houses of worship to operate on lots of adequate size that can handle the Church’s projected use in the zones listed at Figure 3.2-A, Table of Principal Uses. Similarly, we request your help in addressing the all-stories requirement of section 4.10.2.C.16, if determined to be applicable to the Property.

We have attached for your review our proposed text amendments, as well as a number of exhibits which will accompany the various applications soon to be filed for the Church’s Special Permit and Site Plan approvals in addition to a petition for a Text Amendment. These materials may be useful in our discussions and are as follows:

1. Aerial Photos of Property (showing 26 parking spaces);
 - A. City of Hartford 1:600 Property Map
 - B. City of Hartford 1:1,200 Property Map
2. Proposed Floor Plan (A1.00), prepared by Swartz Architecture, dated March 3, 2022;

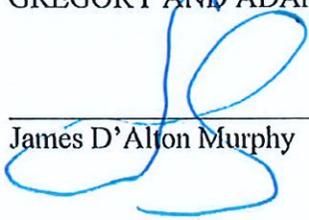
April 1, 2022
Page 5 of 5

3. Quick Facts about the Church;
4. Proposed Text Amendments;
 - A. 3.3.2.A Assembly (p. 72)
 - B. 4.10.2 Civic Building Type Regulations (p. 146-48)
5. Pictures of Property (2035 Broad Street) building and site.

Finally, we respectfully request that we meet by Zoom with both of you and legal counsel for the City to hear your views on these suggested text changes and site plan review. Thank you for your consideration of the Church's request.

Very truly yours,
GREGORY AND ADAMS, P.C.

By



James D'Alfonso Murphy

Enclosures

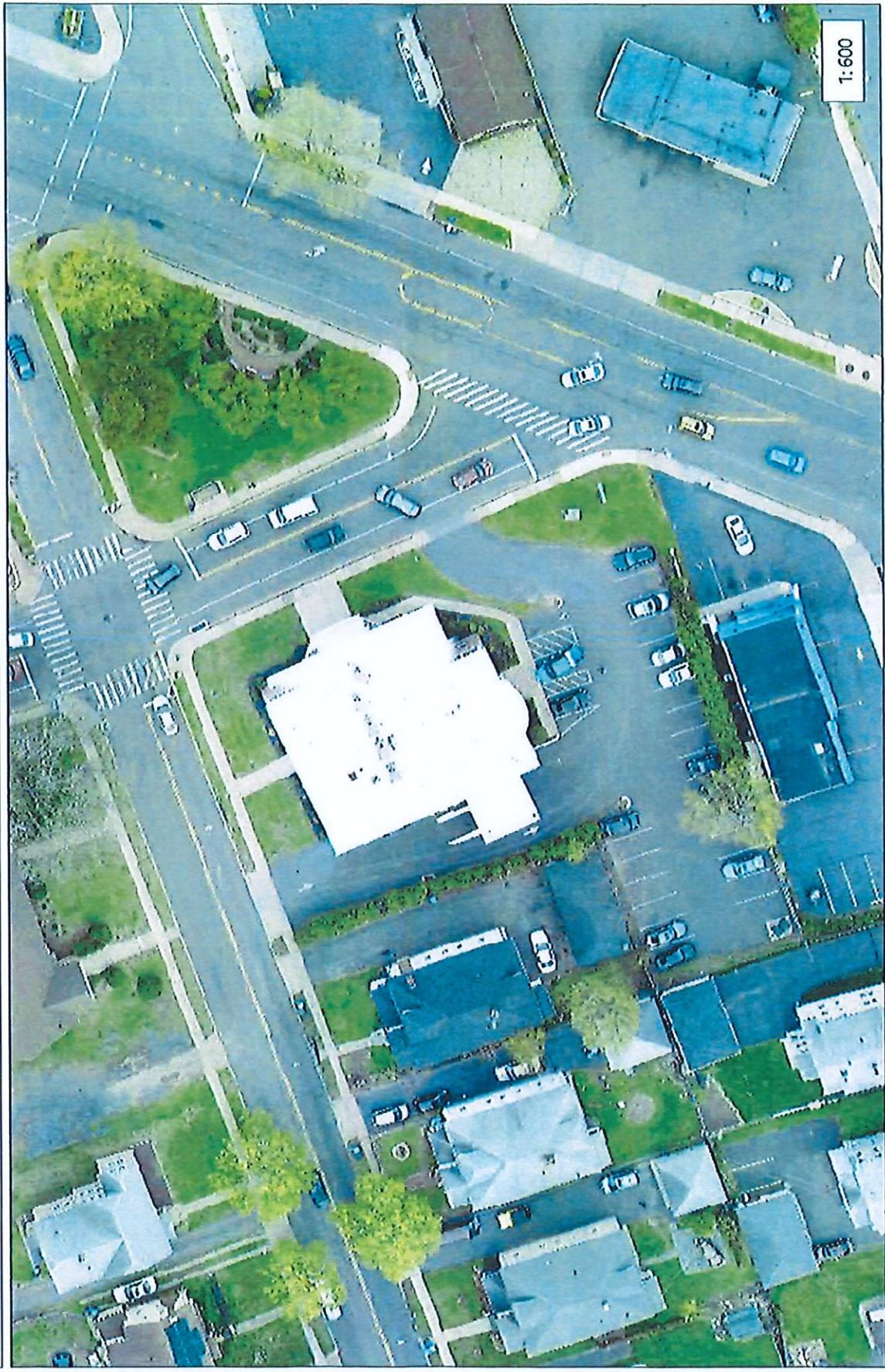
cc: (by email only; with enclosures)
Patricia Turner, Architect and Production Manager
James Ellsworth, Esq., Kirton McConkie
David Scott, Project Development & Construction Manager
Michael Marcheschi, Church of Jesus Christ of Latter-day Saints

M:\MURPHY\Church of Jesus Christ of Latter-day Saints\Hartford Meetinghouse 2022\Letter to Planning Department\Final Enclosures\Letter to Hartford Planning Zoning - 4.1.22 (15)-4894-5695-4138 ver. 1.docx



City of Hartford - Property Map

2035 Broad - 1:600



100 0 50 100 Feet

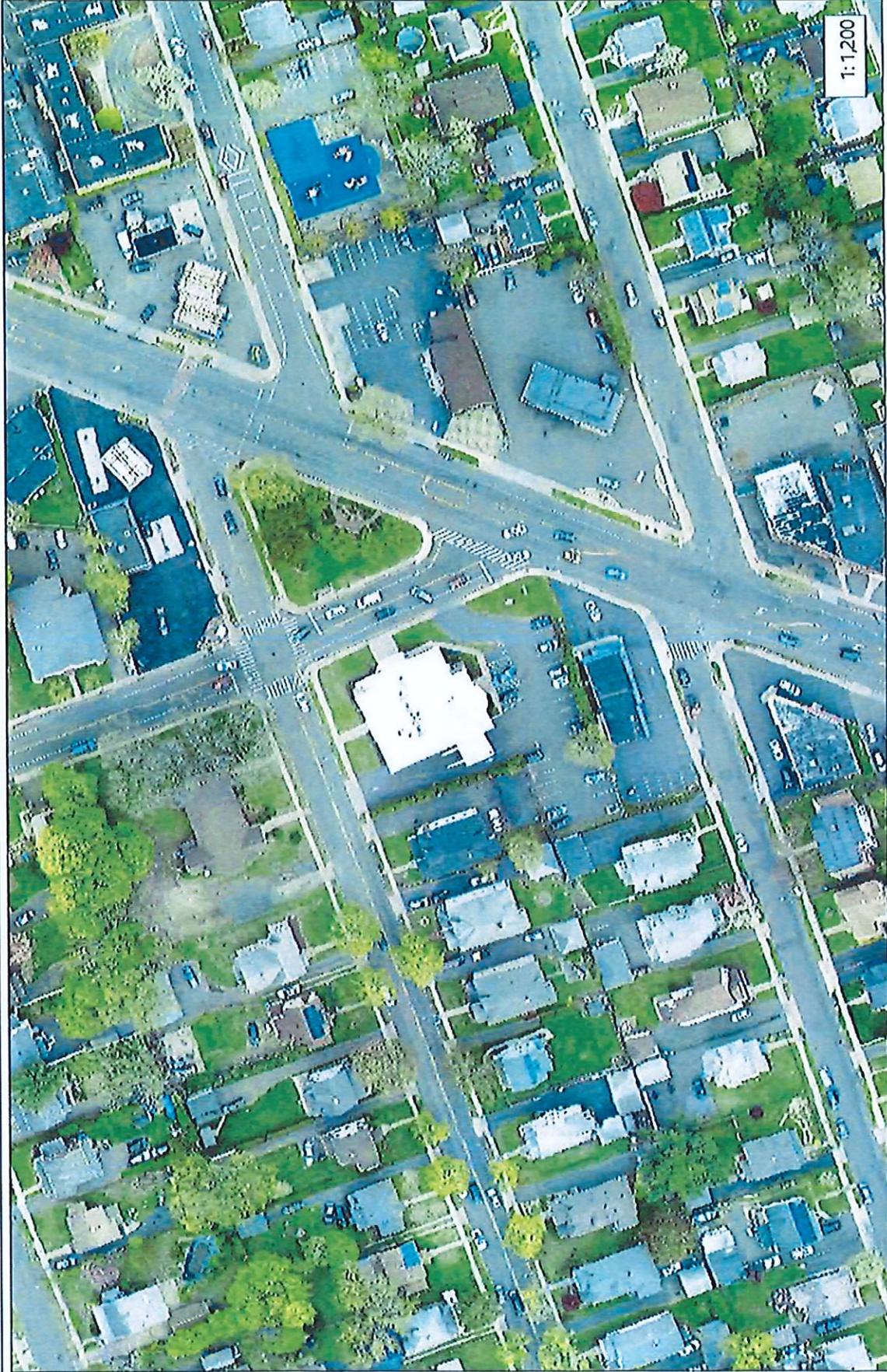
City of Hartford GIS Services - HartfordGIS Date Printed: 3/29/2022

The planimetric and topographic information depicted on this map was compiled by The Simbor Map Company and is based on an aerial flight performed in April 2015. In addition, the City's GIS staff has been updating limited planimetric features on a yearly basis. The intent of this map is to depict a graphical representation of real property information relative to the planimetric features for the City of Hartford and is subject to change as a more accurate survey may develop. The City of Hartford and the mapping company assume no legal responsibility for the information contained in this data. THIS MAP IS NOT TO BE USED FOR THE TRANSFER OF PROPERTY.



City of Hartford - Property Map

2035 Broad - 1:1,200



The planimetric and topographic information depicted on this map was compiled by The Sambaor Map Company and is based on an aerial flight performed in April 2015. In addition, the City's GIS staff has been updating limited planimetric features on a yearly basis. The intent of this map is to depict a graphical representation of real property information relative to the planimetric features for the City of Hartford and is subject to change as a more accurate survey may disclose. The City of Hartford and the mapping company assume no legal responsibility for the information contained in this data. THIS MAP IS NOT TO BE USED FOR THE TRANSFER OF PROPERTY.

200 0 100 200 Feet

City of Hartford GIS Services - HartfordGIS

Date Printed: 3/29/2022

THE CHURCH OF JESUS CHRIST OF LATTER-DAY SAINTS

QUICK FACTS

This statement supplements the accompanying application relative to a chapel of The Church of Jesus Christ of Latter-day Saints. It answers questions about how the chapel will be used and its impact on the neighborhood. It also briefly explains the chapel's religious importance to The Church of Jesus Christ of Latter-day Saints and its local members.

What will the chapel look like?

The basic elements of the chapel will be dictated by worship needs. Key features will include a sanctuary that can seat those who typically attend the Sunday worship services of one congregation, classrooms for religious instruction, clergy offices where the Church's lay clergy can confidentially counsel members and coordinate ministries, and a multipurpose room for instruction and the religious activities of ministries.

How will the chapel be used?

The chapel will be used on Sundays and, on a limited basis, one or two weekday evenings. There is no day school, day care, soup kitchen, bingo or any other commercial or political use. There is no daytime administrative staff apart from occasional maintenance personnel.

Key to Church Terminology

Ward or Branch – a local congregation of members living in a geographically defined area
Stake – a diocese-like grouping of 8-10 congregations
Bishop – the lay minister of a congregation
Stake President – the lay leader of a stake
Meetinghouse – another word for the chapel
Cultural Hall – a multipurpose room used for classroom space, overflow seating, and weekday youth and women's activities
Relief Society – the women's ministry
Primary – the children's ministry
Young Men's and Young Women's – the two halves of the congregation's youth ministry
Priesthood – all males ages 12 and over participate in the Church's lay priesthood; priesthood status does not signify clergy.
Calling – all congregation members serve in "callings" to staff the congregation (e.g., teaching Sunday School, leading the music, coordinating youth activities); there is no professional clergy or staff.

Sunday Worship: Sunday services last two hours, consisting of a congregational meeting in the sanctuary (about an hour) followed by classroom instruction. Classroom instruction is age and sometimes gender-specific so that children, youth and adults receive the gospel in specialized classes according to their own interests and levels of understanding.

For a description of worship services and a schedule of nearby Sunday meetings, visit <https://www.churchofjesuschrist.org/comeuntochrist/belong?lang=eng>. Visitors are always welcome.

Limited use on Weekdays: Besides Sunday services, the congregation may use the proposed chapel on weekday evenings for youth ministry or women's meetings. Evening activities are usually small and seldom last past 9:00 p.m. There may also be a one-hour, early morning gospel study class for teenagers on school days. Friday night or Saturday activities are seldom and are limited to religious or family-themed gatherings. When food is involved, it is prepared at home and

brought to the gathering. All activities have a central purpose to knit together the religious community, provide Christian service, and strengthen faith.

How will the chapel impact neighbors?

- **Traffic:** With virtually no daytime use during the week, the chapel will be quiet and will bring almost no traffic during commute times for six days of the week. The parking lot meets all code criteria and will be sufficient to accommodate time-honored parking needs.
- **Local Use Only:** The chapel will not become a “megachurch.” Unique religious beliefs of The Church of Jesus Christ of Latter-day Saints ensure limited use:
 - In The Church of Jesus Christ of Latter-day Saints, members attend services where they live. All congregations have geographic boundaries. This means the proposed chapel will be regularly used only by people who live within those defined boundaries.
 - Also, The Church of Jesus Christ of Latter-day Saints caps the size of its congregations for religious reasons. There is no paid ministry. Local members run the Church by participating in volunteer “callings.” Church doctrine teaches that all members need the opportunity to actively participate, and that can only happen if congregations remain small.
- **Aesthetics:** The chapel is designed to be a respectful, though understated, tribute to God. It is the smallest possible design that will accommodate worship needs.

We are a part of this community.

Members of The Church of Jesus Christ of Latter-day Saints care deeply about this community. We live and work here, and actively volunteer and participate in schools and other community endeavors, including youth programs, service projects, blood drives, welfare programs, and employment services. The proposed chapel will not only provide an attractive home for local worship, but also enable us to further contribute to the community at large.

Why is the chapel so important?

As one court stated, “the LDS church has as an integral part of its faith the need to gather under one roof to express its strength in unity and to gain strength to express its individual faith.” *Church of Jesus Christ of Latter-day Saints v. Jefferson County*, 741 F. Supp. 1522, 1524 (N.D. Ala. 1990).

The Church and its local members critically need the proposed chapel. Currently, the existing facilities are inadequate, and the lease is expiring.

Is RLUIPA implicated?

The Church’s critical need for the chapel is such that a denial of this application or other unreasonable limitation on the scope or ability to lease space for the chapel would trigger the protections of the Religious Land Use and Institutionalized Persons Act of 2000 (“RLUIPA”). *See*

42 U.S.C. § 2000cc. Congress passed RLUIPA unanimously, and the courts have upheld its constitutionality. RLUIPA does two things:

First, whenever a land use decision substantially burdens the exercise of religion, including the construction or lease of a house of worship, RLUIPA obligates the government to demonstrate that the regulation is “the least restrictive means” of furthering a “compelling” government interest. *Id.* § 2000cc(a).¹ This is the strictest possible judicial standard.

“Religious exercise” includes the “use, building, or conversion of real property for the purpose of religious exercise ...” *Id.* § 2000cc-5(7)(B). “Land use regulation” includes zoning laws that limit or restrict the use of “ownership, leasehold ... or other property interest in the regulated land or a contract ... to acquire such an interest.” *Id.* § 2000cc-5(5).

Second, RLUIPA separately prohibits (1) treating religious assemblies on less than “equal terms” with nonreligious assemblies, (2) discriminating on the basis of religion, or (3) imposing land use regulations that exclude or unreasonably limit religious assemblies from a jurisdiction. *Id.* § 2000cc(b).

Both of RLUIPA’s provisions codify established constitutional rules; so, any violation of RLUIPA also constitutes a violation of federal and state constitutions. *See* U.S. Const. amend I.

Of course, RLUIPA and constitutional mandates need not come into play. As Congress noted, the best way to “avoid the preemptive force” of RLUIPA is to grant a variance, construe discretionary land use criteria in favor of the chapel, or impose reasonable conditions of approval that do not substantially burden religious exercise. 42 U.S.C. § 2000cc-3(e). Here, the Church’s application meets all relevant criteria and should be approved. Moreover, the Church affirms a willingness to accept reasonable conditions of approval, if needed.

Substantial Burden: Courts applying RLUIPA interpret the term “substantial burden” to mean conduct that substantially “pressures” or “influences” the free exercise of religion. *See, e.g., Fortress Bible Church v. Feiner*, 734 F.Supp.2d 409, 503-04 (S.D.N.Y. 2010), *aff’d*, 694 F.3d 208 (2d Cir. 2012); *Guru Nanak Sikh Soc. v. County of Sutter*, 456 F.3d 978 (9th Cir. 2006); *Midrash Sephardi v. Town of Surfside*, 366 F.3d 1214 (11th Cir. 2004); *Adkins v. Kaspar*, 393 F.3d 559 (5th Cir. 2004); *Bethel World Outreach Ministries v. Montgomery Cnty. Council*, 706 F.3d 548, 556 (4th Cir.2013).

The burden need not be insurmountable to make it “substantial.” *See Sts. Constantine & Helen Greek Orthodox Church, Inc. v. City of New Berlin*, 396 F.3d 895 (7th Cir. 2005). Preventing or making it unreasonably difficult to build a worship site, restricting the size of a congregation,

¹ Laws subject to the “compelling interest” test survive only in rare cases. *Church of the Lukumi Babalu Aye v. City of Hialeah*, 508 U.S. 520, 546 (1993). A local government’s generalized interest in enforcing its zoning ordinance, while legitimate, does not constitute a “compelling interest” under RLUIPA. *See, e.g., Westchester Day School v. Village of Mamaronek et al.*, 504 F.3d 338, 353 (2d. Cir. 2007).

Proposed Text Amendments

A. Remove Minimum Lot Area Requirement for Places of Religious Assembly

3.3.2.A Assembly (p. 72)

- (3) When noted as subject to conditions . . . or requires a special permit . . . in Figure 3.2-A Table of Principal Uses, the following regulations apply:

(c) **Minimum Lot Area.** The following minimum lot areas for all assembly uses, exclusive of any other uses on the same lot, are required: 5 acres in the N-1 district, 4 acres in all other NX and N districts, and 3 acres in every other district, except that, in the DT districts and for places of Assembly used as houses of worship, where there is no minimum acreage required requirement is imposed.

B. Remove “All-Stories” Requirement for Civic Building Types in section 4.10.2.C.16 with Amendment of Text to Note 1.

4.10.2 Civic Building Type Regulations (p. 146-48)

C. **Uses.** Refer to figure 4.10-C Civic Building: Height & Use Requirements and 4.18.3 Uses for explanation. Refer to 3.0 for permitted uses:

16. All Stories – except as noted, only civic and institutional uses permitted by district ^{NOTE 1}

E. **Notes.** The following notes are keyed to the requirements in the building type table, A through D:

1. The Civic Building Type shall only be utilized for certain uses per the Building Type table, except that: (a) Civic Building Type buildings over 50 years old may be used for residential and lodging uses, retail uses, service uses, or employment uses; and (b) where at least one story of a Civic Building is occupied by Assembly used as houses of worship, the remaining stories may be occupied by any use permitted by that District under Section 3.0. Further, in some districts, the Civic Building may only be used on a corner lot (refer to Figure 4.1-B Permitted Building Types by District for Residential Districts).



