

Holley Place Project

In the Lakeville National Register
Historic District

Intervenors' Opposition to the
Special Permit Application
#2021-0123

April 14, 2021

Planning and Zoning Public Hearing



Intervenors' Agenda

A. Presentations from:

1. Rachel D. Carley, Architectural Historian, Litchfield, CT
2. Brian J. Miller, AICP, Principal of Miller Planning Group, Wallingford, CT
3. Dainius Virbickas, P.E., Principal of Artel Engineering, Inc., Brookfield, CT

B. Intervenors' Counsel addressing the following issues:

1. Legality of the two Intervenors' apartment uses
2. Use of the private right-of-way
3. Commission's obligation to consider off-site alternatives
4. Applicant's SHPO review status
5. Applicant's CHFA application

Rachel D. Carley

Architectural Historian and
Preservation Consultant

WHY A NATIONAL REGISTER HISTORIC DISTRICT?

SINCE 1996

A district set apart as distinctive and important,
in the care and protection of the town

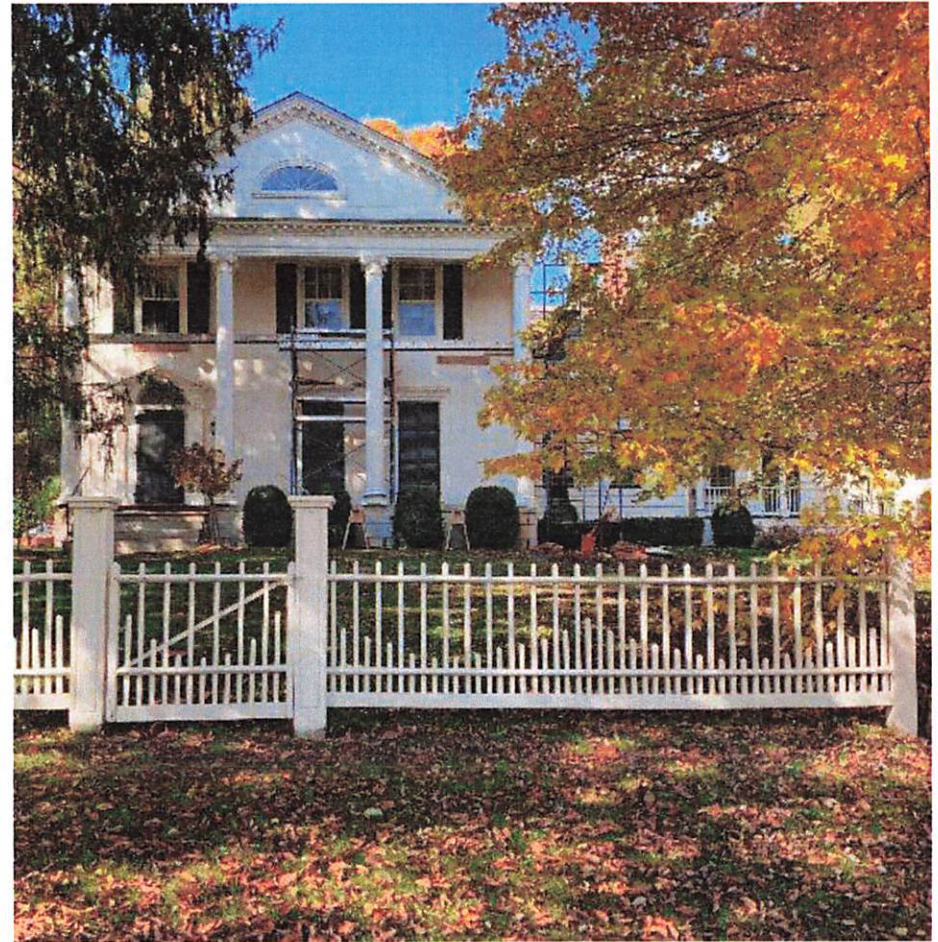
Overseen by the U.S. Department of Interior, the National Register of Historic Places is the official list of our country's buildings, districts, structures, sites and objects *worthy of preservation*.

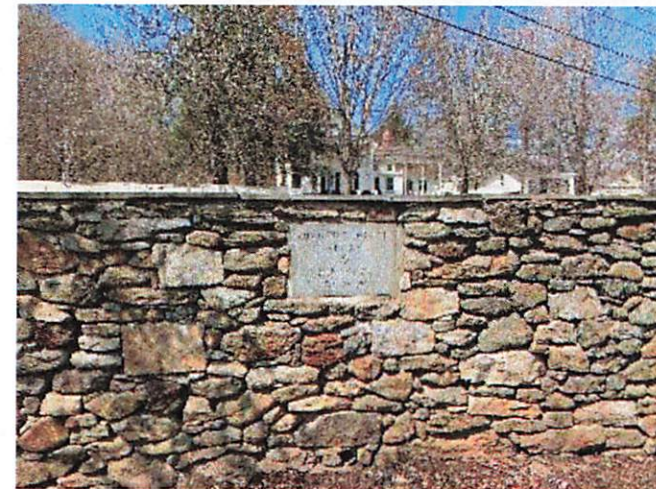
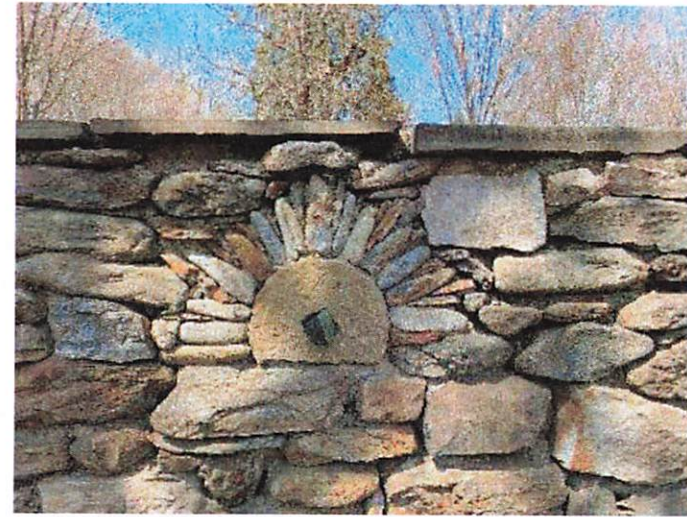
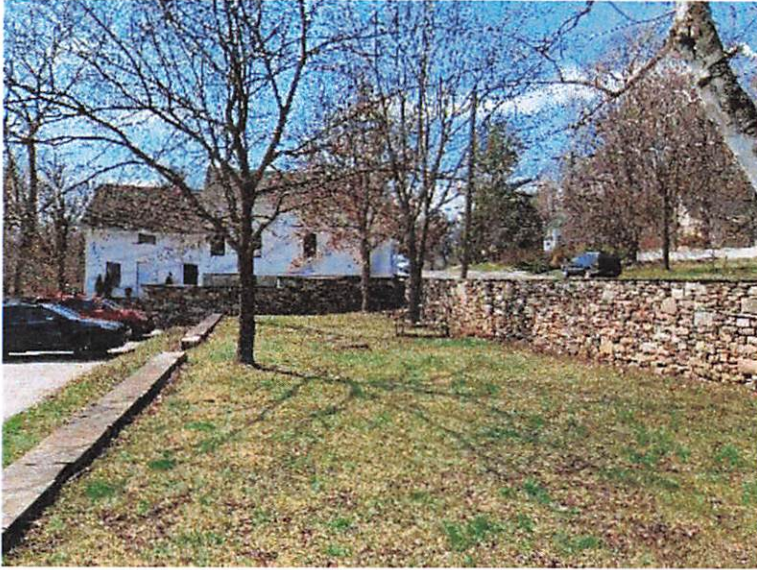
People and buildings associated with the development of the early iron industry in America

Production of armaments during the American Revolution

Significance as the town's center of transportation, including early highways, turnpikes and railroads

Federal and Victorian architecture





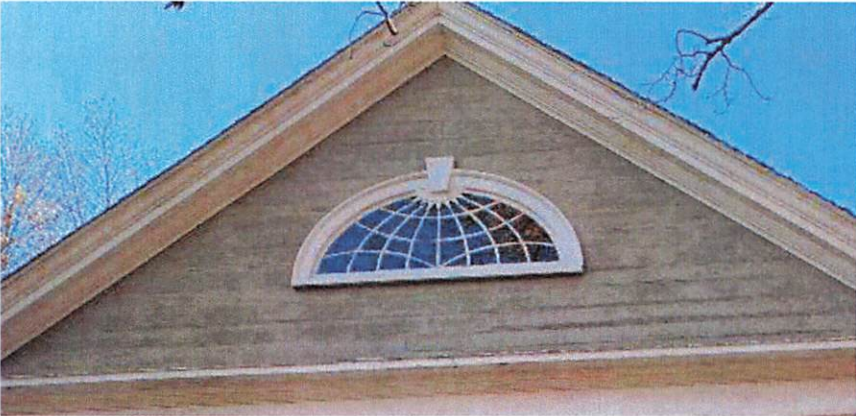
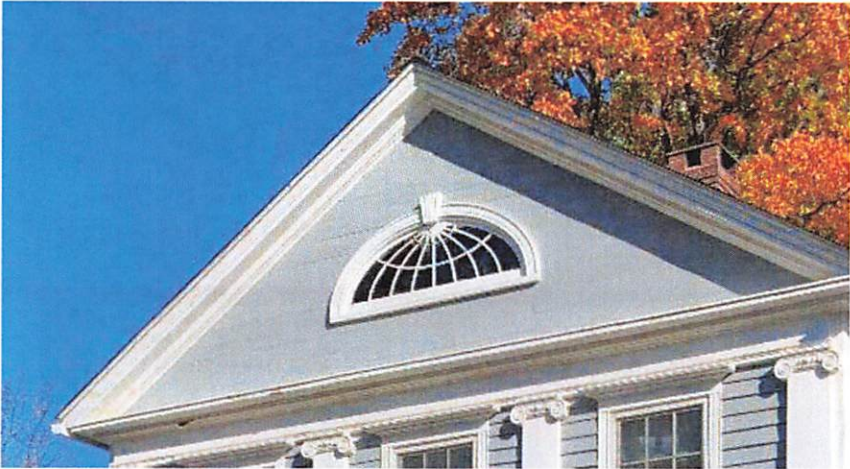
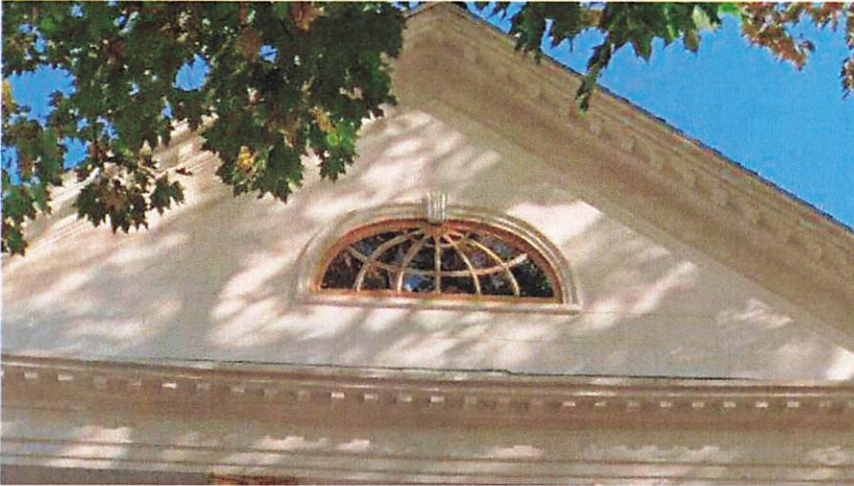
Bicentennial Park

- Destruction of a contributing resource to the district
- Park is integral to the District's Open Space Context
- Historic Walls Preserved from the Holley Block Foundations



Federal and 18th-Century Context/Legacy

- Dimension
- Detail
- Craftsmanship





Federal and 18th-Century Context/Legacy

- Dimension
- Detail
- Craftsmanship
- Classical Inspiration

Holley-Williams House 1808



Context, Scale and Character

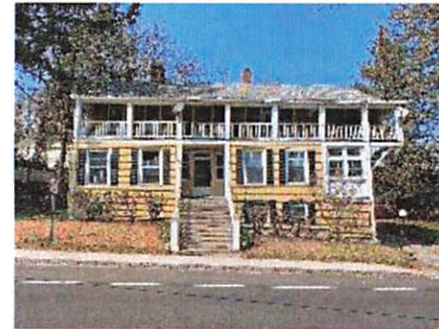
Historic Fencing

Green setbacks, small plazas and lawns

Trees and outbuildings



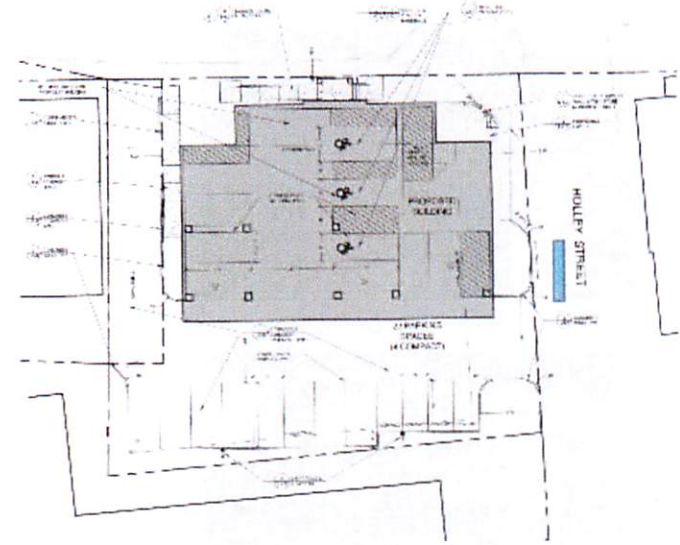
Holley Manufacturing Co. 1886



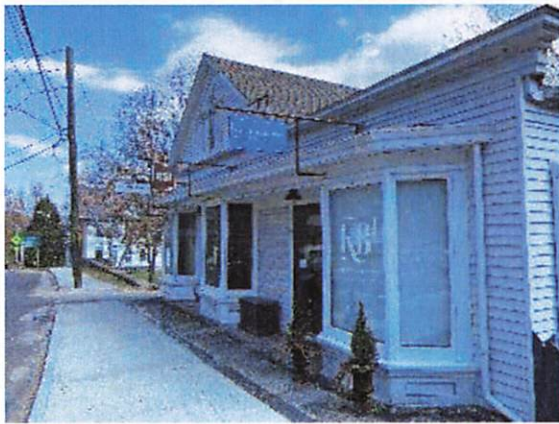
Farnham Tavern, 7 Millerton Road 1759/95



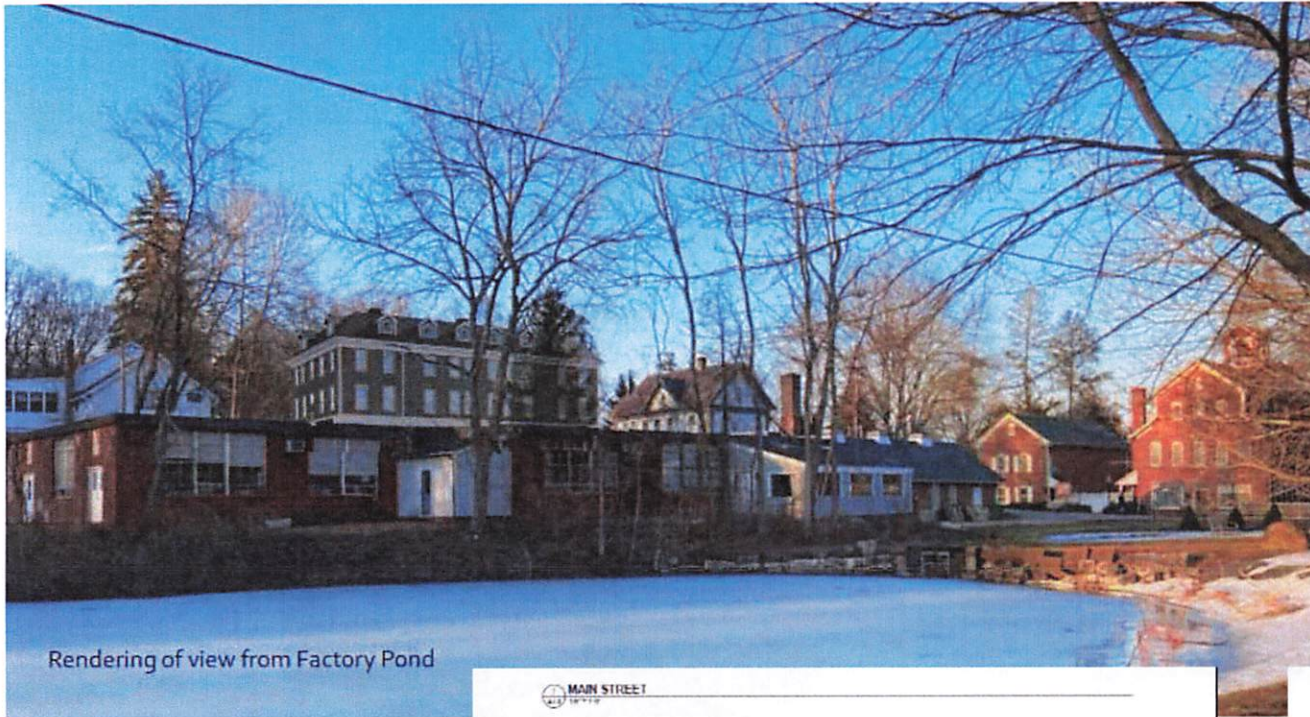
Hubbard House, 3 Millerton Road c. 1830



How much concrete and what does it look like?



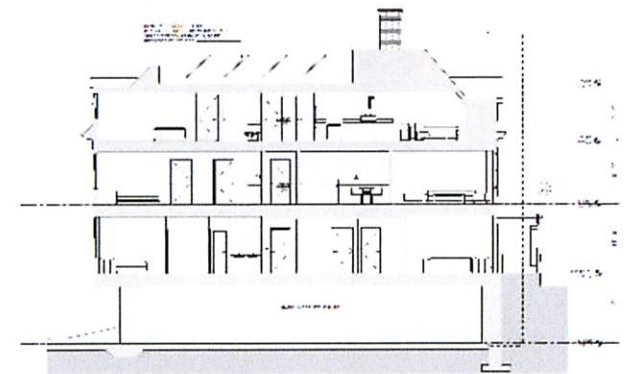
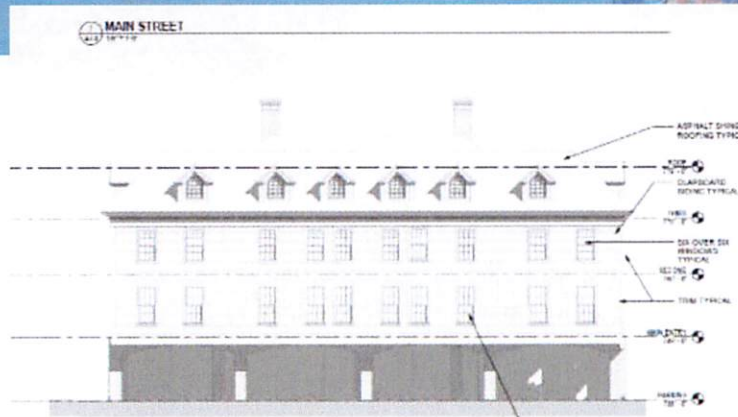


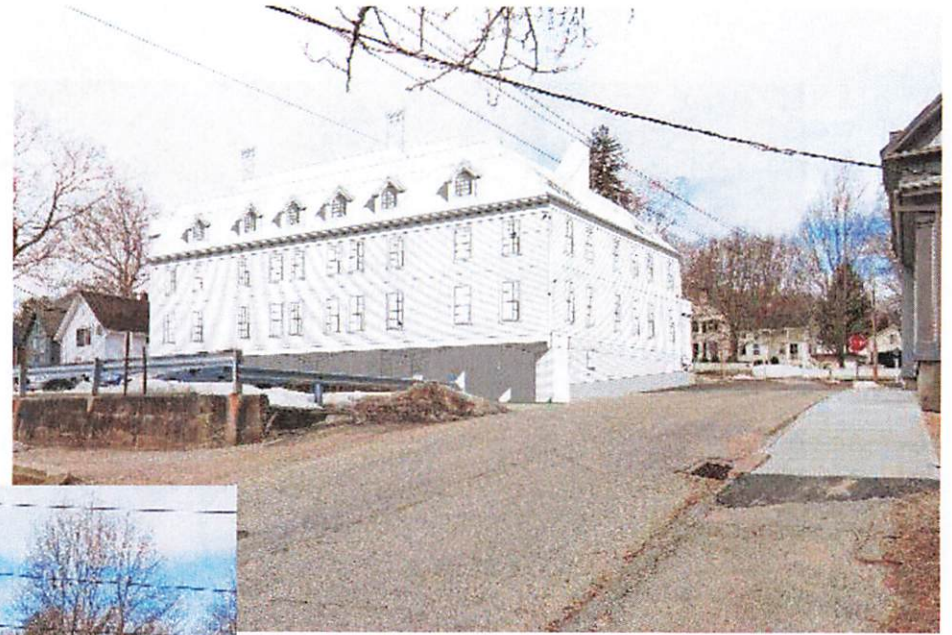


Rendering of view from Factory Pond

Density/Massing
Bulk
Scale

Height = 46 feet, 3 inches
plus chimneys (7 feet)





Displaying 3 of 6 renderings prepared by Brent Buck, AIA (Exhibit 16).

Bulk
Massive Roof Area
Garage Bays

Open Space
Three parks as part of context





Save Bicentennial Park!

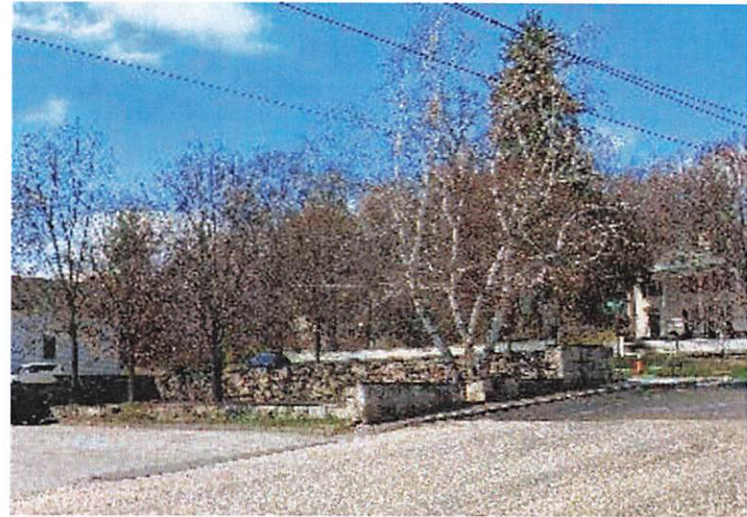
Do not desecrate a historic site

Honor the place of this historic district in town history

Local district created in 1970

Expanded with the National Register district in 1996

Lakeville Historic District is unique: the only such district that commemorates industrial and immigrant history in town as a historic neighborhood



Brian J. Miller, AICP
Miller Planning
Group
Wallingford, CT

Response to Issues Raised at March 22, 2021 Public Hearing

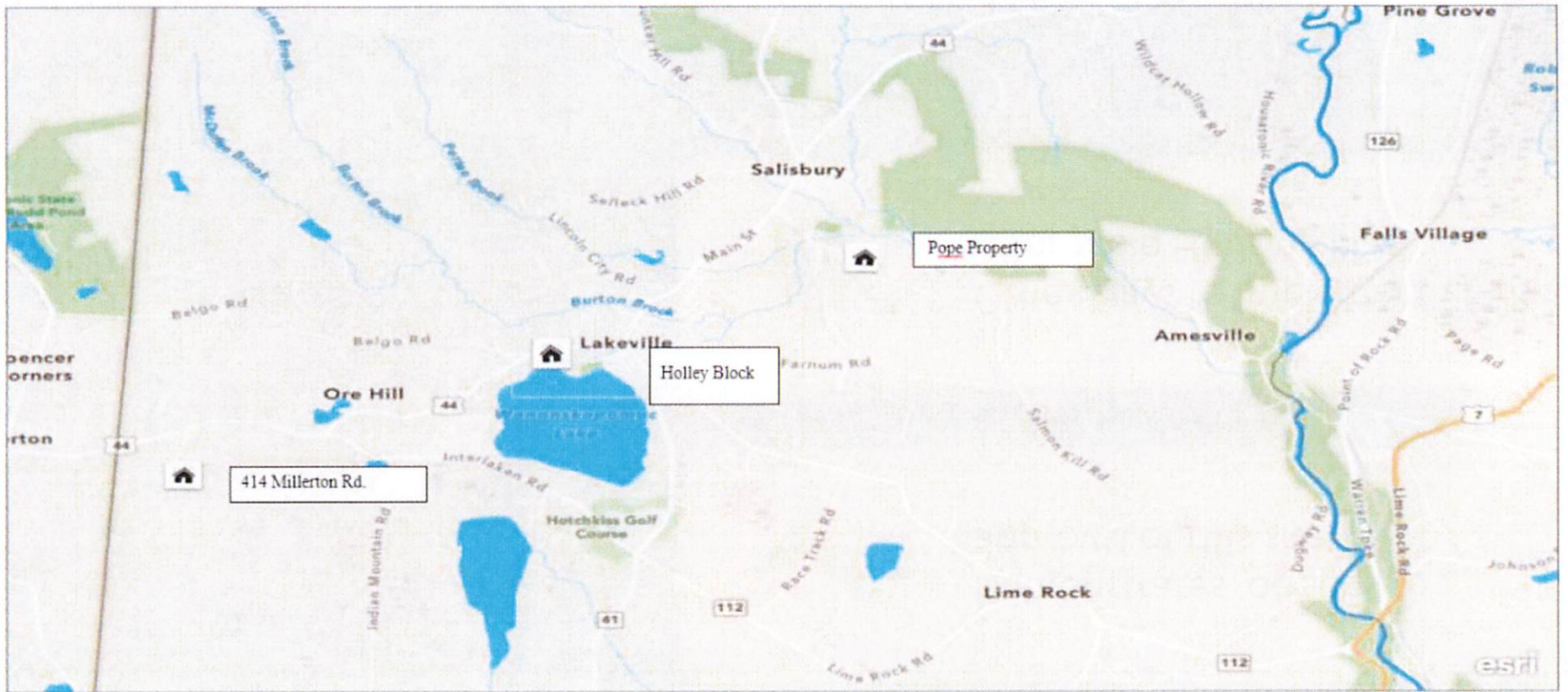
Two Alternative Sites



Demonstrates options to approval of this site



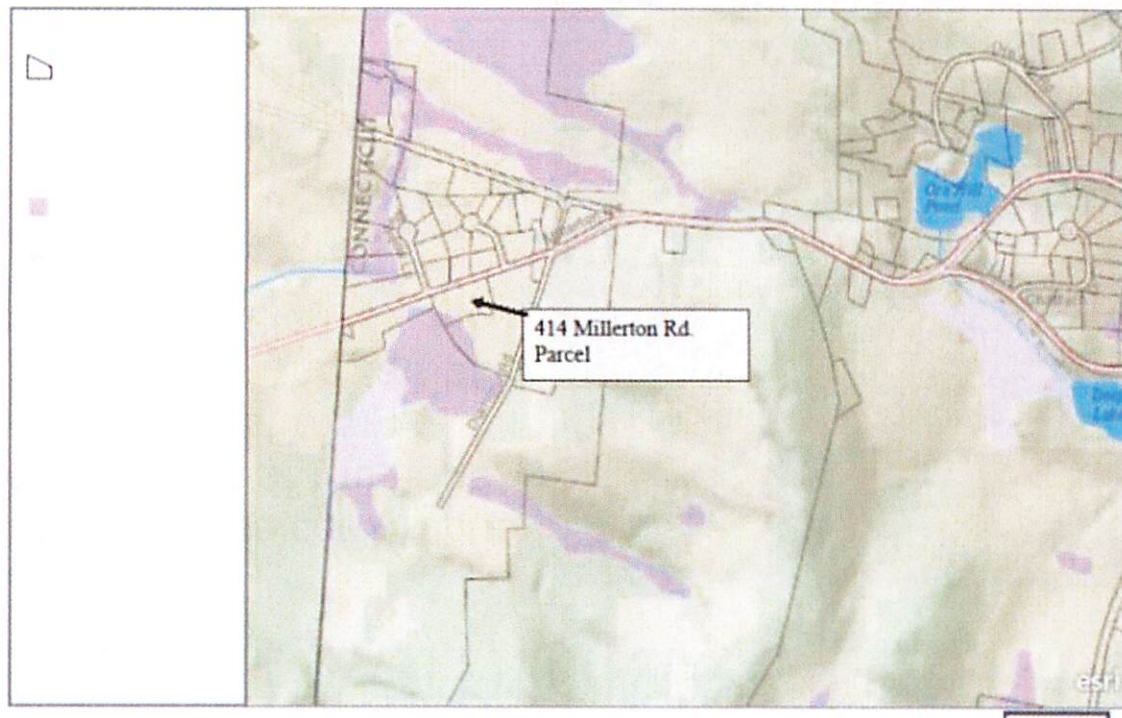
Other ways to Implement 2018 Affordable Housing Plan



Location of Alternative Affordable Housing Sites

414 Millerton Road Map of Inland Wetlands

Attachment A



Pope Land Committee Final Report

“They stated that the construction of units on portions of the Pope property would assist them in meeting the goals of the Salisbury Affordable Housing Plan”



Plan of Conservation and Development

Goals for our Village Centers include:

- Increase ease of pedestrian circulation, vehicular circulation, and *parking*. (Emphasis added.)
- Incorporating more varied housing in the Village Centers, and
- Improving overall aesthetics.

	Increasing the number and range of housing units in Salisbury,
	Encouraging the development of accessory apartments in existing structures,
	Establishing cluster housing to preserve open space,
	Endorsing the practice of mixed-use properties in the village center (to provide for second-story apartments over existing businesses), and
	Encouraging the conversion of existing buildings in the village centers into multi-unit housing.

Provide for Housing Options

None of the goals or recommendations was site specific, regarding the use of the subject property.

Dainius Virbickas, P.E., a
principal in the firm of Artel
Engineering, Inc.

Virbickas Supplemental Report

The Application and documents submitted by the applicant are incomplete based on the Town of Salisbury Zoning Regulation standards for both, Site Plan review and Special Permit review. Specifically:

- The plans were not prepared by a professional engineer. Section 800.3 of the Salisbury Zoning Regulations states: "The design, layout, computations and plans showing existing and proposed drainage patterns, and construction of storm drainage improvements, driveways, access ways, parking areas, loading areas and other site construction improvements **shall be prepared by a Connecticut Registered Engineer.**"
- A cut/fill analysis by an engineer or registered land surveyor has not been prepared. Our office estimates that the proposed construction will require excavation of greater than 250-cy and will require the subsequent export of more than 250-cy of excavated materials from the site. Section 601.3 of the Salisbury Zoning Regulations states: "Before any Special Permit for Excavation, Filling and Grading may be granted, a written application shall be submitted to the Commission by the property owner or by his agent, on forms provided by the Commission, together with **maps and plans prepared by an engineer or Registered Land Surveyor licensed to practice in the State of Connecticut.**"

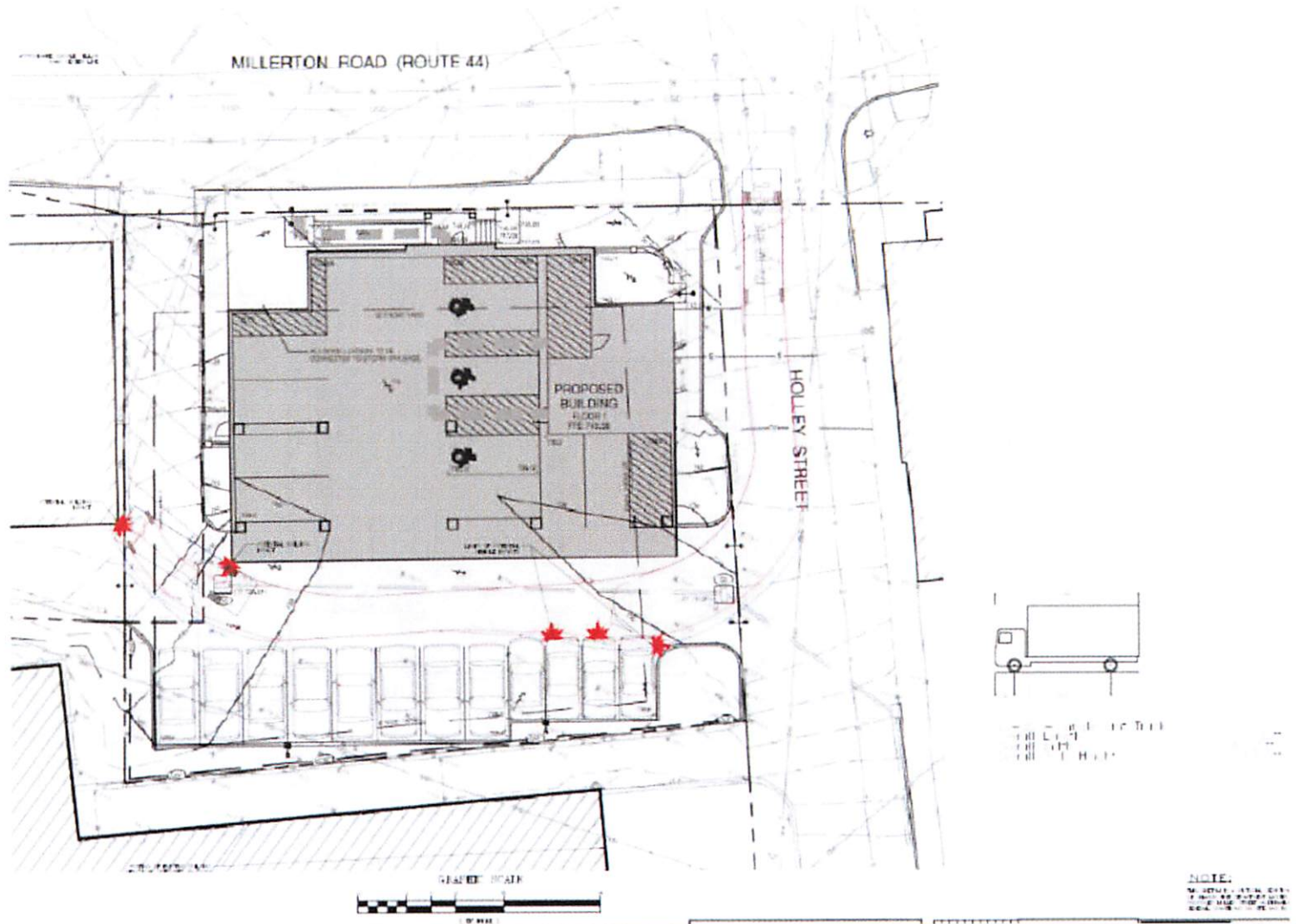
In addition to missing information and certification, the proposed plans are not in compliance with:

- The plans are in violation of the front yard setback requirement for the Holley Street frontage. Section 102.4.b. of the Salisbury Zoning Regulations states: "No building or other structure or part thereof shall be erected, moved, reconstructed, extended, enlarged, or altered except in conformity with these Regulations for the zone and overlay district in which the building or structure is located." As previously stated by this office: **The proposed building's Holley Street front yard setback is not in conformity with the Zoning Regulations. Though the PKSQ district permits an applicant to 'relax' the front yard, the Zoning Regulations are specific in that the 'relaxation' is for the purpose of forming (continuing) a STREET WALL. Placement of the new building as proposed will not form or continue an existing STREET WALL...in fact, it appears that the majority of the building on the adjoining Holley Street frontage is setback from the front line by approximately 30-feet.** Please refer to the attached sketch. Section 405.2. of the Salisbury Zoning Regulations defines STREET WALL as: A street wall is a line of building facades that maintain a consistent front yard setback and minimal side yard setbacks thus forming a "wall."

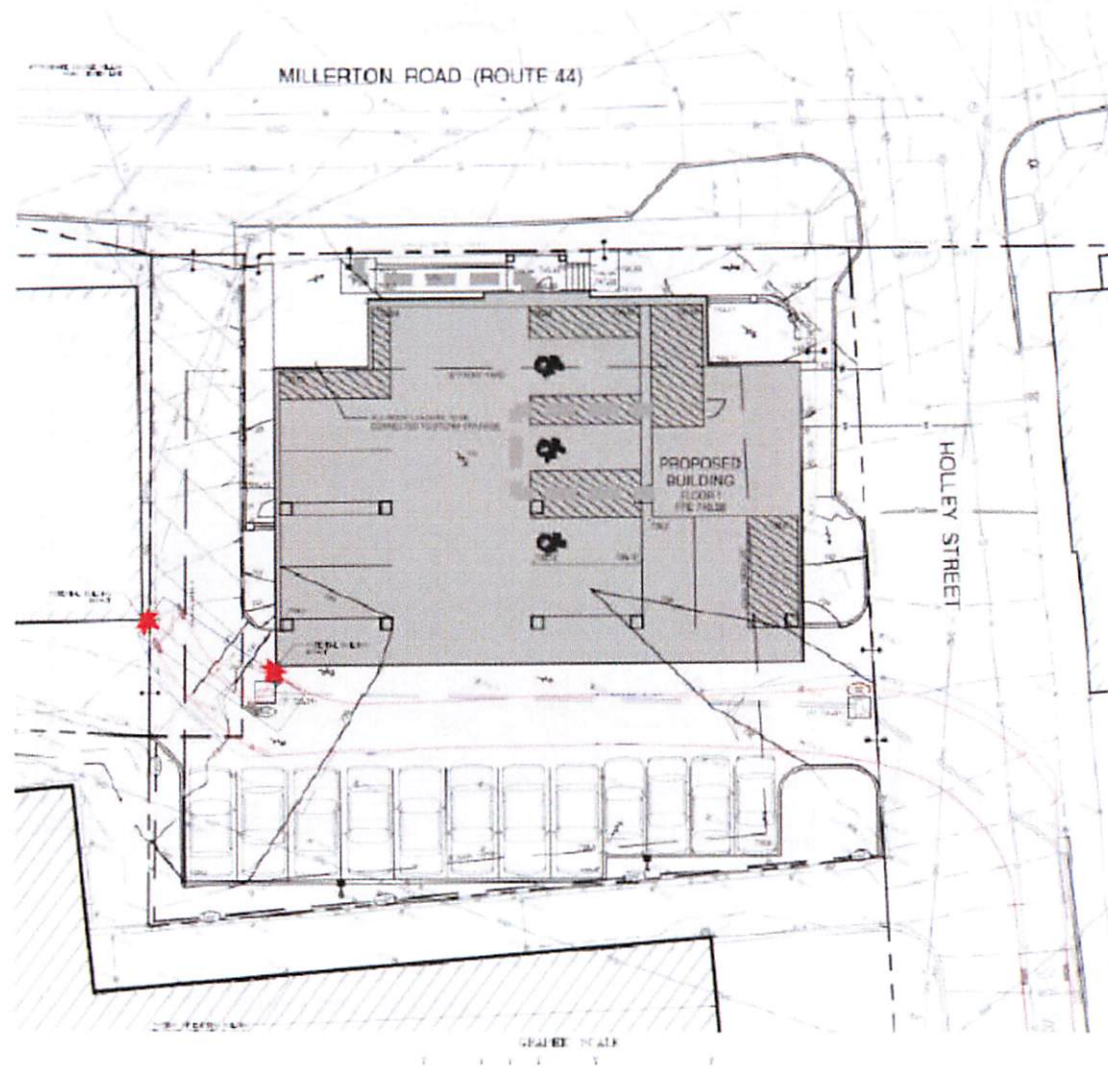
In addition to missing information and certification, the proposed plans are not in compliance with:

- The proposed development, including the elimination of an historic wall and public park and construction of a new 4-story building, is not in the word or spirit of the PKSQ Overlay District. Section 405.1. of the Salisbury Zoning Regulations states: “**The Pocketknife Square Overlay District** is mapped to the parcels within the immediate vicinity of Pocketknife Square, and **promotes** the adaptive **re-use of existing structures** and contextual redevelopment.”
- Vehicular access does not safeguard against hazards. Section 700.5.a.. of the Salisbury Zoning Regulations states: **Vehicular access to a lot and circulation on a lot shall** be designed in a manner that **safeguards against hazards to traffic and pedestrians in the street and upon the lot**; avoids traffic congestion on any street, and provides safe and convenient circulation on the lot. **As designed, the vehicular ingress lane from Holley Street is ‘overhung’ by the proposed building. The proposed vertical clearance (from ground surface to the underside of the structure) appears to vary from approximately 9-feet at the southeast corner of the building to approximately 7.5-feet at the southwestern corner. These minimal clearances pose a hazard to delivery, utility and emergency response vehicles. For example, typical box type delivery trucks are approximately 10’-6” in height.** Please refer to the attached sketches.

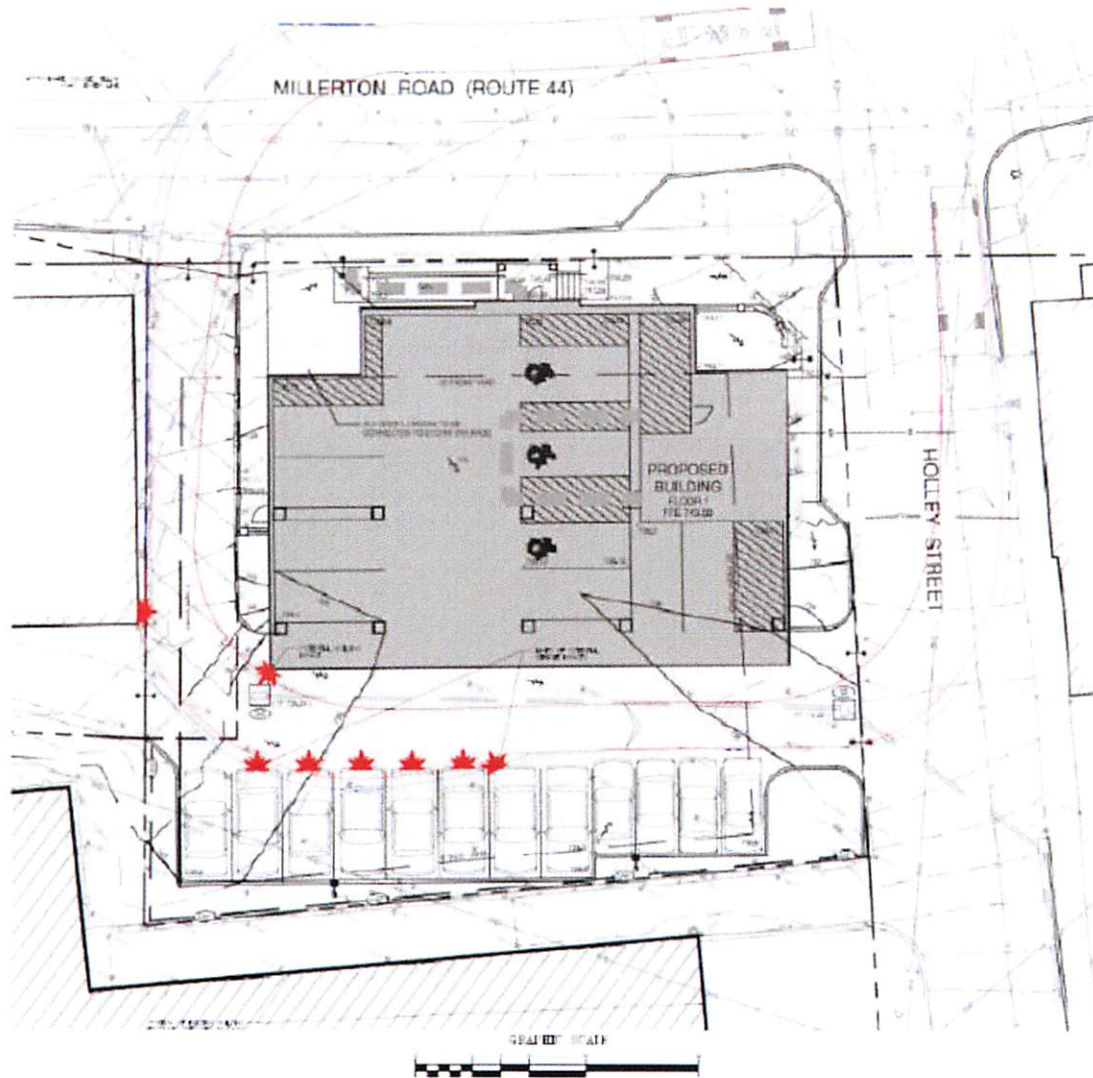
Holley Street
North Entrance:



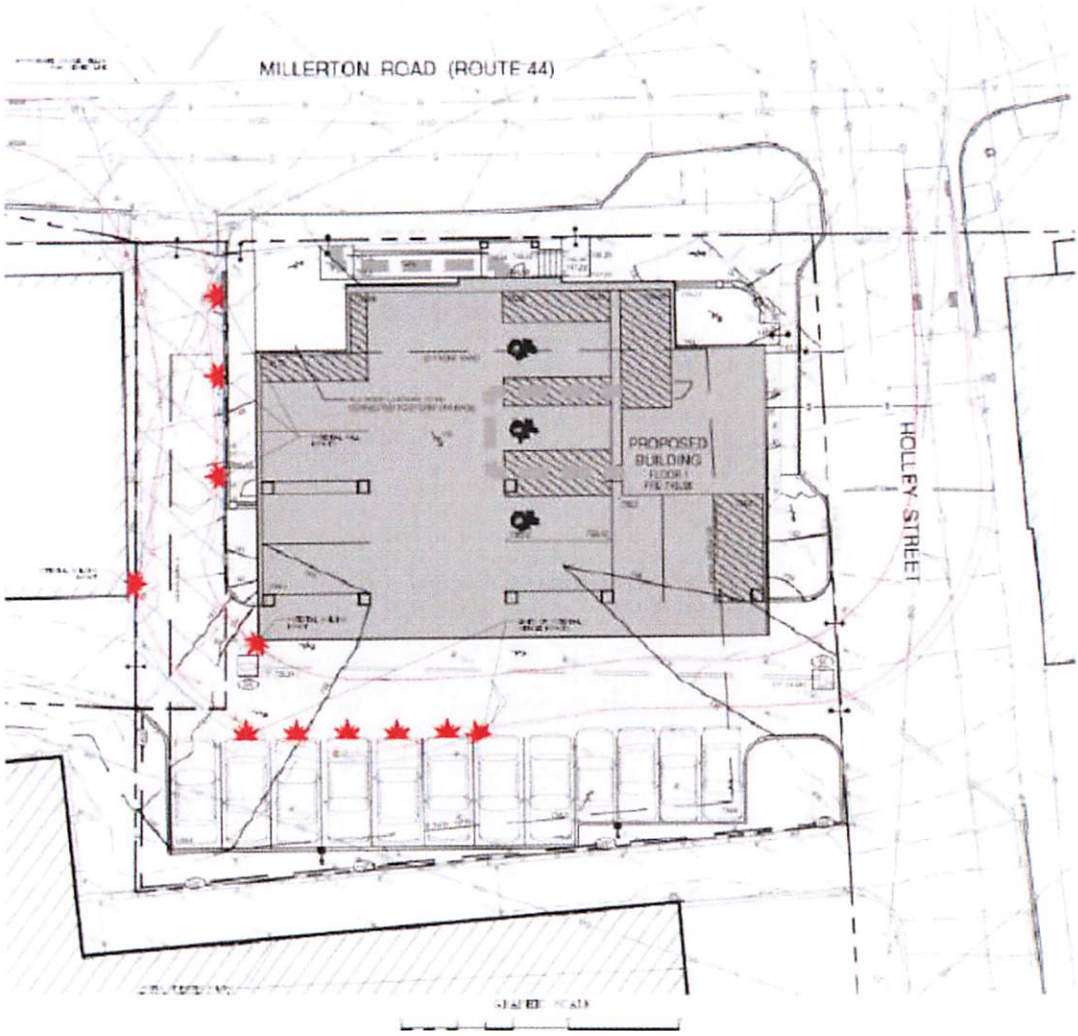
Holley Street
South Entrance:



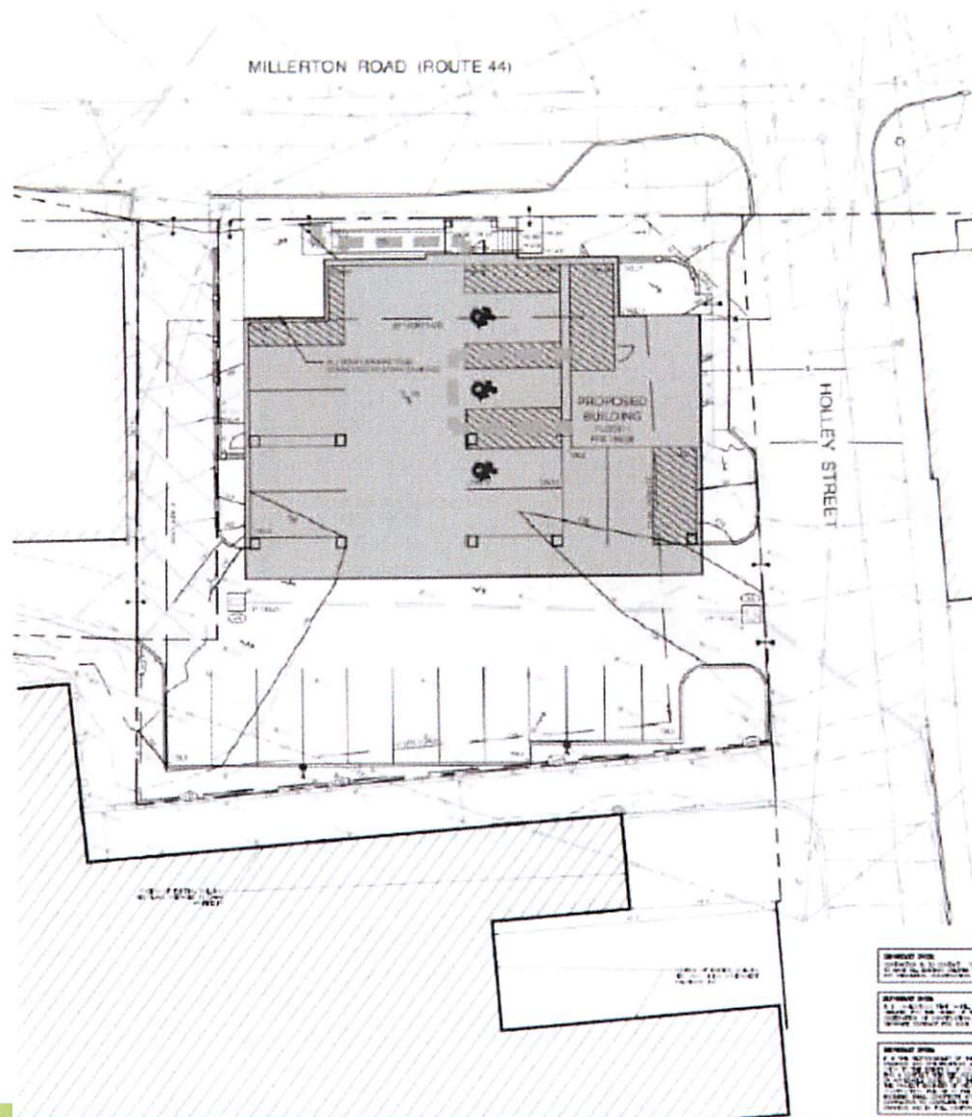
Millerton Road
East Entrance:



Millerton Road
West Entrance:



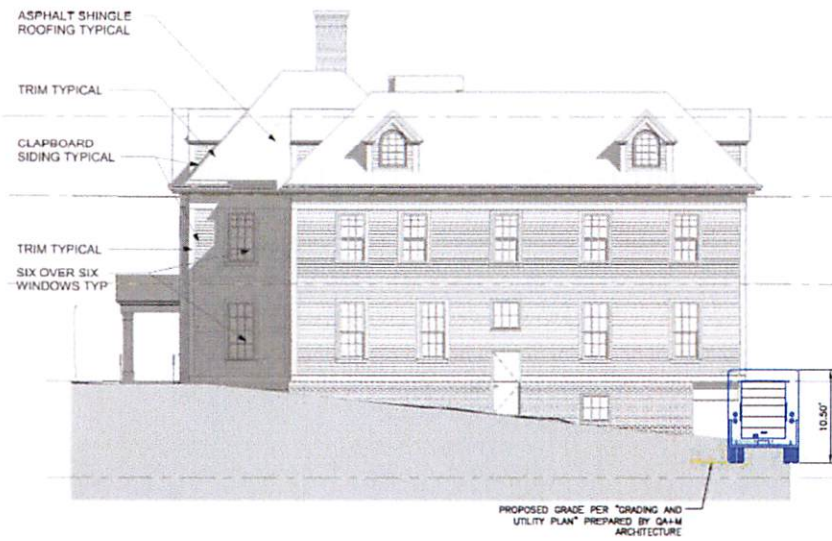
Property
Reference Sketch:



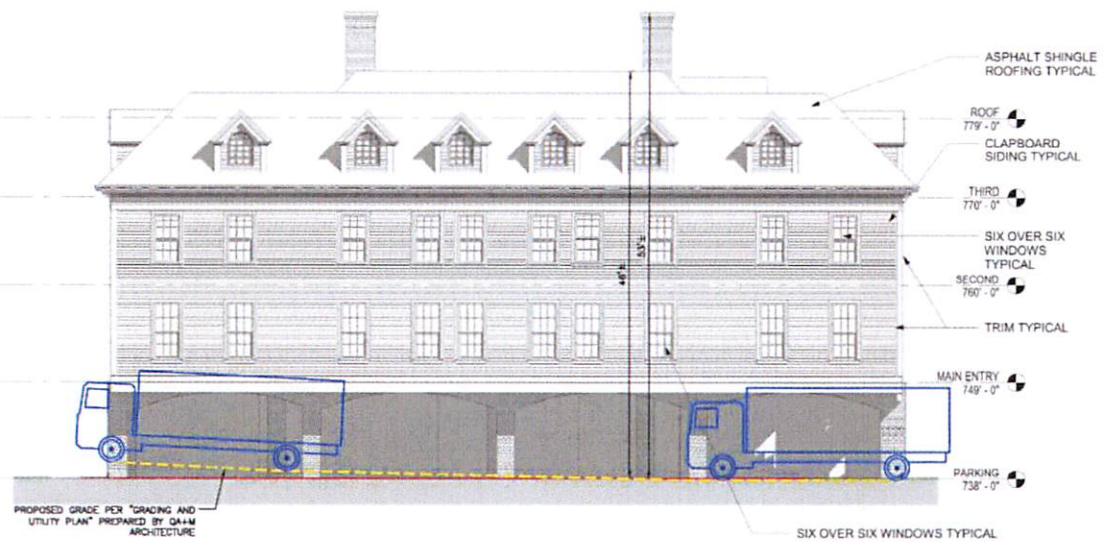
Truck and Building Elevations
(from Holley and Millerton):



Truck and Building Elevations (West and South):



WEST ELEVATION
SCALE 1" = 10'



SOUTH ELEVATION
SCALE 1" = 10'

Legality of two Intervenors' apartment uses (Exhibit 11 – Casagrande Letter 4/8/21)

20 Millerton Road (RJS)

- 2 One-bedroom apartments.
- Since at least 1990.

12 Millerton Road (Celeste Shannon)

- 1 four-bedroom apartment.
- Since at least 1977.

1. Commission has no jurisdiction to determine whether a use is illegal or qualifies as nonconforming

- ZEO (Zoning Enforcement Officer)/Zoning Administrator is the official responsible for enforcing the Regulations (Regulations § 900.2).
- See, C.G.S. § 8-12 (“[R]egulations shall be enforced by the officer or official board or authority designated therein....”).
- No enforcement action has ever been taking against these uses for decades.

2. Intervenors have no burden in this proceeding to prove legality of their uses

- As parties, they have standing to show the adverse effects on their businesses of the destruction of Bicentennial Park.
- To disregard these concerns would penalize Intervenors for exercising their First Amendment rights to speak in opposition.

3. Current CG-20 Regulations

- Single Family Dwellings allowed as of right by zoning permit (Regulations § 205.2).
- Multi-family Dwellings allowed by special permit (Regulations § 205.2).
- These units together require only 3 parking spaces.
- Inconceivable that ZEO would even consider issuing cease and desist orders or that such permits (if necessary) would be denied.

4. Even if Commission legally could disregard the 3 spaces needed for these apartments, that would merely reduce the daily use of Bicentennial Park by the cited businesses from 12-16 spaces to 9-13 spaces

Not a material change that undercuts the demonstrated need for the spaces at Bicentennial Park

Will the approval of the Special Permit Application render nearby business uses more nonconforming? (C. Smith Letter to the Commission, 4/8/21)

- We disagree with Attorney's Smith's reasoning and ask for the Commission's counsel to weigh in.
- And the argument that the owner of 24 Millerton Road cannot rely on the explicit terms of the Special Permit requiring all employees to use satellite parking (with 3 such spaces shown on the site plan at Bicentennial Park) because there was no contract between the Town and Applicant is curious. The Commission never insisted on such a contract.
- But even assuming Applicant's counsel's position is correct, fact remains that these nearby businesses will lose most of the Bicentennial Park spaces they have relied on for years.
- Substantial resulting negative impacts.
- Clear basis for denial based on unsuitability of and incompatibility of the apartment building with the neighborhood.

Use of private right-of-way to the west of the proposed apartment building (Exhibit 12 – Casagrande Letter 4/8/21)

- 20 Millerton Road (RJS) has a deeded easement over that right-of-way (Vol. 256, Page 1063).
- Any action by Commission to restrict access over it (i.e., for ingress only) would constitute clear interference with RJS's deeded rights.
- RJS reserves all remedies available to it to enforce its rights under this easement.

Commission's obligation to consider off-site alternatives (Casagrande letter to C. Andres, 4/8/21)

- If Commission determines that the project is reasonably likely to unreasonably impair the public trust in the historic resources of the state, it must consider all available feasible and prudent alternatives, including off-site alternatives (Grimes v. Conservation Comm'n).
- Intervenors have demonstrated that:
 1. The project will destroy Bicentennial Park.
 2. At least 2 other Town properties are feasible and prudent alternatives.
 3. Application thus must be denied on this ground alone.

Commission's obligation to consider off-site alternatives continued

- Applicant claims that denial of the application because of available off-site alternatives would deprive the Town of the right to use its property in violation of takings clause of the Fifth Amendment to the U.S. Constitution (C. Smith letter, 4/8/21).
- U.S. Supreme Court decision in Koontz is inapposite and distinguishable:
 1. Takings clause applies only to private property, not public property.
 2. Town has no reasonable expectation to be able to destroy a historic park held in the "public trust."
 3. Denial of this application would not force the Town to give up its rights to use Bicentennial Park or other town property or to pay money.
 4. No authority under § 22a-19 forbidding a commission from considering off-site alternatives that are not adjacent to the property.



Status of SHPO Review

Applicant has stated:

- “We had on-site meeting with SHPO staff; awaiting its “decision.”

Facts:

- No application has been filed with SHPO.
- SHPO is not issuing any decision.
- The Applicant’s failure to submit anything to SHPO raises substantial questions as to the veracity of its application to CHFA for pre-development funding.

Applicant's application to CHFA for pre-development funding (Exhibit 17)

- Section 4.4 – Requires that “all projects proposed to be assisted through DOH and/or CHFA [shall] consult with SHPO prior to the initiation of activities to be funded through either agency.” (Emphasis added.)
- SHPO’s responsibility – “(1) identification of significant historic, architectural and archeological resources; and (2) advisory assistance to promote compatibility between new development and preservation of the state’s cultural heritage.” (Id.)
- SHPO review is in two stages: First, SHPO assesses “proposed development structures and properties to determine whether or not they are listed ... in ... the National Register of Historic Places.... If so, it is deemed ‘historic’ and worthy of protection.” Second, SHPO “evaluates the impact of the project on the property’s significant materials and character.... Where adverse effects are identified, SHPO will assist developers in identifying alternatives to avoid or reduce negative project impacts.” (Id.) (Emphasis added.)
- “[A]ll applicants must submit a SHPO Project Notification at least 60 days prior to the [funding] application submission deadline ... so that a determination of your property’s historic designation or eligibility is identified early in the process and that any necessary mitigation actions are incorporated into the project design and budget prior to the application deadline.” (Id.) (Emphasis added.)
- “Failure of applicants to properly comply with the 60 day submission requirements or the failure to adequately mitigate historic preservation requirements will result in the removal of the application from consideration for funding in the applicable funding round.” (Id.)

Despite these requirements, the Application:

1. Fails to include the SHPO Project Notification Form (because no such form has been filed).
2. Fails to identify the property as a contributing site on the National Register.
3. Affirmatively misrepresents the existing use of the property as a "currently vacant site" and "currently vacant lot" (Project Narrative, P.1).
4. Never refers to the property as Bicentennial Park.

CEPA intake form (attached to Funding Application, Exhibit 17):

Q: "Is the existing site listed or eligible to be listed on the National or State Registers of Historic Places as determined by the State Historic Preservation Office?"

Applicant's answer: "No."

- Signed by President of Housing Enterprises, Inc.
- Yet another blatant misrepresentation.

- Applicant's failure to identify the property as a historic resource on the National Register and its misidentification as a "vacant lot" constitute material false statements made under penalty of perjury (Application, p. 11 of 11, signed by President of SHC).
- These false and misleading statements to a state agency warrant CHFA's rescission of the funding approval (Id. p. 11 of 11).
- Applicant received these public funds under false pretenses and prevented use of such public monies for a better project.
- Applicant's false statements also undermine its credibility before this Commission, and are grounds for denial of the special permit application.
- Commission should deny this application, and tell Applicant to come back after it resubmits its CHFA funding application including proof of proper notice to SHPO, and if and when such new application is approved.

Conclusion



For the foregoing reasons, Intervenor respectfully request the Commission to deny the special permit application.