



25 Percent is Not Enough

On Tuesday May 14th, the Norwich Zoning Board of Appeals issued a strong pro-business statement by granting a variance at 156 North Main Street. The Board was acting on a petition filed by Pietro Camardella who owns the property, which was formerly a Polish Club (private club) south of Greeneville. Pietro bought the property in 1999 and has only been able to use 25 percent of his building because the property has no off-street parking spaces.

The city's zoning regulations mandate that any change of use from a private club to a different activity be required to provide the off-street parking. Because the property was developed decades prior to the adoption of zoning, parking was never considered in the site layout. There is no place to accommodate off-street parking on Pietro's property.

Because his property did not have the required parking, but the condition was created prior to the zoning regulations, it is considered legal nonconforming ("grandfathered" is the non-technical term). Prior to zoning 100 percent of the property was able to be used, after zoning was adopted this condition was allowed to continue as long as the property remained a private club. By granting the variance, the Board recognizes that the zoning regulations created a hardship that was unique to this property and prevents 75 percent of the building to be viably marketed and used for business purposes. Kudos to the ZBA for enabling Pietro to gain additional use of this property.

Here is a copy of the report we submitted in support of the Variance application. In addition to the ZBA members, special thanks to Tianne Curtis - Zoning Enforcement Officer, Linda Lee Smith- Zoning Administrator and Peter Davis- Director of Planning and Neighborhood Services for helping us help Pietro.

156 North Main Street

**Documentation in
Support of the
Variance Application**

5.14.2013

Grounds for a Variance

The report “Zoning Variances”, prepared by the State of Connecticut Office of Legislative Research (OLR) Report, identifies the case law interpretation of the phrase “exceptional difficulty or unusual hardship”:

“The statutes do not define “exceptional difficulty or unusual hardship,” but these terms have been construed in an extensive body of case law. In Dupont and several earlier cases, the courts held that a hardship must be different in kind from that affecting properties in the same zoning district in order for the ZBA to grant a variance. Similarly, the Supreme Court has held that when a ZBA grants a variance on grounds that apply to many other properties in a given area, it effectively establishes a new zoning ordinance applicable to that area, which exceeds the ZBA's authority. Ward v. Zoning Board of Appeals of Town of Hartford, 153 Conn. 141 (1965).”

The “*Legal Nonconforming Elements*” table identifies the many areas where this property is different from what would, or should be, found on a typical site located within the GC zoning district.

It is the applicant’s position that these deviations from conformity, and the fact that 75% of the building has been vacant since 1999 as a result of the zoning regulations, creates exceptional difficulty to use the property.

To read the OLR report:
cga.ct.gov/2007/rpt/2007-R-0231.htm

Property Details

156 North Main Street is in a General Commercial district (GC) zoned property located north of Downtown and south of Greenville village. A 9,900 square foot, two-story building occupies the 6,534 square foot lot. Each floor is 4,950 square feet, and the building footprint of 4,950 square feet occupies about 76 percent of the site.

The Assessor’s Office has estimated a construction year of 1911, as noted in the city’s Assessors Database. In 1949 the Polish American Citizens Club purchased the property. They owned the property until 1999 when the current owner acquired it. There are no off-street parking spaces, nor is there room to accommodate the establishment of off-street parking spaces on this property.

What is the nature of the request?

156 North Main Street has no off-street parking spaces, nor has room to accommodate any off-street parking spaces, a situation that was present prior to the adoption of zoning regulations in the city. When the zoning regulations were adopted, this property became a legal nonconformity. There is a need to recognize the legal nonconformity to reconcile the economic limitations imposed by the regulations. Therefore, this application requests that the city recognize the non-conforming parking, assigned to the private club, be usable by other land use activities occurring on these premises, through the issuance of a variance.

156 North Main Street is seeking a variance of the required 108 off-street parking spaces to allow future land use activities (requiring an equal, or lesser amount of off-street parking) to be permitted at these premises. Currently 25 percent of the building is authorized by zoning to be used, and a photography studio occupies that space. The remaining 75 percent of the space is required to be vacant because the property does not have the required off-street parking spaces, a requirement applied to this property well after the building was constructed and in active use.

Currently the property has the following legal nonconforming elements: off-street parking, minimum lot size, minimum front yard, and lot coverage as depicted in the table below:

Legal Nonconforming Elements

	156 NORTH MAIN STREET	ZONING REQUIREMENTS	DEVIATION FROM CONFORMITY
Off-street Parking	0 SPACES	108 SPACES	-108 SPACES
Lot Size	6,534 SF	10,000 SF MIN.	-3,466 SF (65% of MIN.)
Lot Coverage*	76% (4,950 SF)	25% MAX.	+51%
Front Yard	0 FEET	20 FEET MIN.	-20 FEET

* Lot coverage is the amount of land occupied by the footprint of the building.

Why was this application submitted?

Section 15.3 of the City’s Zoning Regulations entitled “Nonconforming use” requires that all nonconforming facilities comply with the off-street parking requirements. This has been interpreted to allow all existing nonconforming uses to continue to remain in place, and also allows a change of user (different business owner, or business name). This provision has also been interpreted to disallow the conversion from the existing use to a different use allowed in the zone.

The current use of the property is 25 percent photography studio and 75 percent private club. It is the applicant’s position that the private club activity could resume in the 75 percent vacant space without providing any off-street parking spaces, as this nonconformity has never been abandoned. Changing the private club use to any non-private club use is where the challenge lies. There is very limited market demand for private club space and without a change in use the building is not economically viable.

How were the number of spaces calculated?

The building at 156 North Main Street is 9,900 square feet over two floors. While the whole building was dedicated to the Polish Club at the time zoning was adopted in Norwich, the second floor functioned as a place of assembly, often used by the local Catholic Church. The second floor is essentially in the same condition as when the Polish Club operated and could be used for assembly in the future. This 4,450 square foot space might accommodate over 400 patrons, depending on the room layout and fire code compliance.

There are two ways to calculate the number of off-street parking spaces. The first would involve classifying the entire building as private club applying the private club off-street parking minimum requirements. This would yield a need for 66 spaces. Because the second floor was used for assembly, this basic calculation would be disingenuous to the use and the purpose of the off-street parking requirements.

The second method would be to isolate the two floors and the uses there-in because that was how this space functioned. The first floor as a private club, results in a need for 33 off-street parking spaces. The second floor as a place of assembly could host over 225 seats, based on calculations performed by the City of Norwich Fire Marshal, and increase the parking requirement to 42 additional spaces (code-compliant space could accommodate 400+ seats).

Note Regarding Occupancy

The Fire Marshal’s Office was asked to provide a “back of the envelope” estimate on assembly occupancy of the second floor, to determine whether 225 seats could be accommodated.

Based on his brief review it appears that a code compliant space could accommodate more than 225 seats. Any assembly use on the premises would be limited by the total parking spaces assigned to the site via this variance.

The property owner will need to hire design professionals to determine what code issues need to be resolved prior to occupancy.

The Fire Marshal’s assessment is in no way construed or intended to be permission for occupancy.

Next Steps

The property owner has additional steps to take during this process to enable a tenant to occupy the vacant spaces. Here is a quick overview:

- Zoning Permit
- Building Permit (e.g., ADA, Egress)
- Fire Marshal Review
- Health Permit (if food is served)

ZONING REQUIREMENT	PRIVATE CLUB	PRIVATE CLUB AND ASSEMBLY
ZR 15.1.6 For restaurant or other eating and drinking places and clubs, one [off-street] parking space for every 150 square feet of gross floor area, exclusive of basement storage	4,950 SF on first floor / 150 = 33 spaces PLUS 4,950 SF on second floor / 150 = 33 spaces	4,950 SF on first floor / 150 = 33 spaces PLUS
ZR 15.1.11 For theaters and places of assembly, indoor amusement and recreation, one parking space for each three seats or one [off-street] parking space for every 200 square feet of gross floor area, whichever is greater.		4,950 SF on second floor / 200 = 25 spaces OR 225 seats / 3 = 75 spaces
MAXIMUM OFF STREET PARKING REQUIRED	66 SPACES	108 SPACES

The Off-Street Parking Requirements table to the right describes the number of spaces that would be required if the building were solely utilized as a private club, and then compares how the building was actually used as a hybrid of a private club on the first floor (4,950 SF) and assembly on the second floor (4,950 SF).

The assembly use has two calculation options. The higher of these two calculations is the one that is used.

If this variance is granted, where will people park?

Where did people park their cars before the private Polish Club shuttered its doors? It is estimated that the Polish Club operated from 1911 to 1999, and it had zero off-street parking spaces. That operation was allowed to continue (as it should have been) without having any parking. Under current regulations the club could still operate today without any off-street parking.

Route 12, aka North Main Street, the street the property is located along, is a state-owned road with on-street parking spaces. The pavement width in this section of the Route is about 50 feet wide. A standard road has two 12-foot wide travel lanes, or a total of 24-feet. This leaves about 26-feet for on-street parking (on-street parking spaces need 9-feet of width).

These spaces have not been demarcated through line stripping, however, based on standard Federal Highway Administration and Connecticut Department of Transportation on-street parking spacing and separation requirements, there appears to be capacity for 21 cars on the north side and up to 22 cars on the south side of North Main Street in the public right-of-way.

On-street parking specifications:

- 22' long stalls; 25 foot separation from crosswalks, stop signs or intersecting streets has been accommodated
- 10 foot separate from fire hydrants driveways and handicapped ramps has also been accommodated

On-Street Parking near 156 North Main Street



While 156 North Main Street has zero parking spaces, there are on-street parking spaces located nearby.

There is also an opportunity to enhance the on-street parking and for private property owners to cooperate on a parking strategy for this neighborhood.

	NORTH SIDE	SOUTH SIDE	TOTAL
ROAD FRONTAGE	915'	939'	1,854'
POTENTIAL SPACES	37	40	77
TOTAL ON-STREET SPACES	21*	22**	43

*Curb cut consolidation / elimination of non-functioning curb cuts would increase this number dramatically

**17 spaces currently authorized

108 seems like a big number, how can this variance be granted?

Variations can only be granted when there is a documented hardship related to the use of the property. Hardships cannot be self-created, or within the property-owners control and must be evaluated on a case-by-case basis. The property owner must prove that the use of the property is deprived because of the zoning requirements. The *Legal Nonconforming Elements* table and the *Grounds for a Variance* sidebar on page 1 identified four areas where exceptional difficulty exists on this property:

- off-street parking - there are no spaces on the premises, and there is insufficient room to provide off-street parking,
- minimum lot size - the lot is smaller than the size prescribed by the zoning regulations,
- lot coverage - the building exceeds the coverage prescribed by the zoning regulations, and
- minimum front yard - the building encroaches into the front yard.

In this specific case, the hardship was created in 1959 by the city of Norwich when the General Commercial district bulk requirements and the off-street parking standards were adopted. Upon adoption, these rules were then applied to a property that was built and occupied prior to the adoption of zoning.

The change of use from a Private Club to a photography studio in 1999 limited the occupancy of the building to 25 percent of the total square footage of space on the property. About 75 percent of the existing building is functionally non-useable for any commercial activity because of the off-street parking requirements in the zoning regulations. Relief from the off-street parking requirements would enable the property owner to achieve economic viability by being able to use the property in a manner consistent with the uses allowed in the GC zone.

In addition, this variance would recognize that the vested rights already assigned to the private club use can be assigned to other permitted uses. This would enable the property owner to transfer those rights to other uses that are permitted in the GC zone and to market the vacant space. The property owner recognizes that other code issues (e.g., building, fire, health) will have to be resolved prior to occupancy.

Nonconforming Uses

The city's Zoning Regulations manage the development of real estate in the city. When the city adopted zoning, it could not eliminate structures and uses that were already in existence. Thus, if a property was used in a manner that was different from how it was zoned, it then became legally nonconforming. These activities may remain even though they do not comply with the zoning laws.

As long as the property having nonconforming use status does not change, its status is protected. Problems arise, however, when change occurs.

In general, substantial alterations in the nature of the business, new equipment that is not a replacement but a subterfuge to expand the use of the property, or a new structure amount to illegal expansion or extension. These types of actions will result in the loss of the nonconforming use status and the closing of the business.

Adapted from:
legal-
dictionary.thefreedictionary.com
/Nonconforming+Use

The Transitive Property for Nonconforming Off-Street Parking

In zoning, when one permitted use changes to another permitted use the function of the parking is not a factor for consideration. Essentially the evaluation standard is one parking space = one parking space.

It does not matter whether the parking space is actually used 24 hours per day, or 3 minutes per day. If a permitted use requires six parking spaces and six are provided the standard has been met.

That should also be the case when legal nonconforming parking conditions exist. If a property has been assigned a level of nonconformity of 108 spaces due to a specific use, then, applying the transitive property (if A=B, B=C, then A=C) those spaces should be assigned to any other conforming use, provided the use does not require more than the level of nonconformity (less than or equal to 108 spaces).

If A = B and B = C, then A = C. So, How is this different?

While the property is nonconforming, the zoning regulations allow the private club operation to continue. To not do so may have been considered a regulatory taking and subjected the city to legal exposure. This is one of the fundamental reasons that nonconformities are allowed to continue. In this case the parking nonconforming is a vested right that exists for the private club. This right stays with the property until the owner has decided to abandon the right and can be transferred from user to user. The challenge is that it cannot be transferred from use to use. What would happen if a public assembly use were proposed for this property?

It is the applicant’s position that the private club and public assembly uses are similar in functional attributes. The only material difference between these operations is that membership is required for the private club.

TYPICAL LAND USE ACTIVITIES	PRIVATE CLUB	PUBLIC ASSEMBLY
People Assemble	YES	YES
Food / Beverages Served (with proper permits)	YES	YES
Live Entertainment	YES	YES
Off Street Parking Required	YES	YES
Goods Sold	YES	YES
Open to the Public	NO	YES
Membership Required	YES	NO
Ticketed Events	YES	YES
Hall Rental	YES	YES
Signs Allowed	YES	YES
Alcohol sales (with proper permits)	YES	YES
Gym / Exercise Equipment	YES	MAYBE

Membership is the only element that is different between these two activities

This being the case, the private club’s vested nonconforming parking should be eligible to be reassigned to the public assembly use, and then to other uses that require up to 108 total parking spaces. In the real estate world it is important that vested rights remain vested rights.

Overview about Off-Street Parking & Zoning

With the advent of the automobile, the need to park cars became an important consideration for land development within communities across the United States. Today, it is estimated that there are about three parking spaces available for each and every car in the US. Many of these spaces sit idle, waiting patiently to be used, some are rarely used, and many are never used.

Where do all of these spaces come from? Part of the answer can be found in local regulations. Norwich, like many other Connecticut communities, has established a minimum off-street parking requirement for a variety of land use activities that could be proposed in the city.

These requirements are applied to the square footage of the proposed building, the number of units, the number of beds, and / or the number of employees that will work on the property. This then informs the property owner of their responsibility to provide the required number of parking spaces on their premises.

Not every property can satisfy this requirement. Many developed properties that do not meet the minimum off-street parking requirements in the city's zoning regulations are considered legally non-conforming for as long as the current land use activity remains in place, and no action is required (see sidebar).

However, Norwich's regulations require a property to come into compliance with the minimum required off-street parking and loading spaces associated with the amount and type of land use activity occurring on the premises when a new land use is proposed, regardless of whether an existing use is currently in place.

This can be a challenge. Many of the older properties, developed prior to the adoption of zoning in 1959, do not have off-street parking. Nationally, recent parking studies have shown that minimum parking requirements have counterproductive results in downtown areas. Minimum parking requirements increase the costs of new development, which decreases the potential density of new projects, decreases the potential tax revenue and can be limit the transformation of a property to maximize on the current market demand.

“You don’t go somewhere to park your car; you go there because you want to be there, and large parking lots in an area reduce the desire to be there.”

Donald Shoup,
The High Cost of Free Parking

Off-Street Parking

Off-street parking is any form of car storage that is not located within the street. It includes parking structures/garages, surface parking lots, single-car garages and driveways.

streetswiki.wikispaces.com

What is a non-conforming use?

Legal nonconforming uses (often called “grandfathered”) involve land use activities that were in place prior to the adoption, or change of, zoning regulations.

The goal of zoning is to seek the elimination of nonconforming uses; however, these uses are permitted to remain in place until they are abandoned by the property owner.

Legal Nonconforming Parking.

Section 15.3 of Norwich's Zoning Regulations requires that all properties in the city come into compliance with the Off Street Parking and Loading requirements.

Zoning is not like the building and fire codes, which can be applied retroactively. For those codes property owners do not have the legal right to imperil the health or impair the safety of the community. Parking is not seen as rising to those standards.

While Norwich's codes are written in that manner, this regulation is not considered retroactively enforceable.

Parking lots are not economic development. We have more care about how we're going to store our cars than about how some of our people are going to live.

Tax Value of a Surface Parking Lot

Surface parking lots have a low assessed value when compared to developed land. For this report, the value of 8 parking lots in downtown Norwich were evaluated. What we found: the average land value per acre is \$237,000, which would generate \$7,400 in property taxes at the current Mill Rate.

Several developed properties were also evaluated. Developed sites had an average per acre value of \$2,800,000 (over 10 times greater than the surface parking lot). This would generate \$88,000 in property tax revenue (not including the personal property taxes).

Parking is important, but is it *that* (10 times more) important?

The Impact of Parking Lots on the Environment

Parking lots are large part of the built environment. Parking lots are typically impervious surfaces, which prevent water from infiltrating the ground. During storm events, this water is discharged into open waterbodies, often with significant environmental impacts.

Impervious surfaces have been identified as one of the largest threats to water quality. It is estimated that as much as 60 percent of the impervious cover in commercial areas is used for parking.

Challenges of Nonconforming Parking

- Some properties have insufficient land area to accommodate the minimum number of required off-street parking or loading spaces.
- Off-street parking lots, located in the wrong places within a village setting can disrupt the urban design elements that make the village attractive and a desirable place to visit.
- Older buildings were often built without any consideration of off-street parking or loading. The city does provide some parking relief for historic structures located in the Chelsea District (ZR 9.4.4) and for commercial and industrial uses near municipal parking facilities (ZR 15.11).
- People perceive parking to be a larger problem than it actually is.
- Traffic engineers have discouraged “parking chaos” by eliminating on-street parking in many places in order to enable traffic capacity and limiting the delay caused by people searching for a parking spot.
- Somewhere in the American zoning psyche the idea that all development needs to mitigate the parking impacts of their land use activity has perversely influenced urban development patterns.

Is parking more value than buildings?



No Room: Many of the properties in Norwich were built before the automobile was invented. There is insufficient lot area to accommodate off-street parking required in the zoning regulations.

The average assessed value / acre of the six buildings above = \$2,843,637



Make Room: In some instances buildings have been demolished, often to meet the need to provide off-street parking. These sites are likely to remain off-street parking lots.

The assessed value / acre of this off-street parking lot = \$362,500.