

SCOTT RITTER/THE DAY | SOURCES: CARTODB; OPENSTREETMAP; RCDA

Four projects in New London's Fort Trumbull neighborhood are either under way or in the approval process. The planning and zoning commission on Thursday approved a proposal by Optimus Construction Management to build a 100-unit residential complex and a 100-room extended-stay hotel on three parcels, shown above in blue.

## Facilities that receive Medicare subject to mandate, court rules

**FROM A1**  
devised by the Occupational Safety and Health Administration (OSHA), the court said that although the risks associated with coronavirus occur in many workplaces, "it is not an occupational hazard in most."  
"COVID-19 can and does spread at home, in schools, during sporting events, and everywhere else that people gather. That kind of universal risk is no different from the day-to-day dangers that all face from crime, air pollution, or any number of communicable diseases," the order says. "Permitting OSHA to regulate the hazards of daily life — simply because most Americans have jobs and face those same risks while on the clock — would significantly expand OSHA's regulatory authority without clear congressional authorization."

In their dissent, the court's three liberal justices, said the majority's decision would hinder the federal government's ability to counter "the unparalleled threat" American workers face.

"Acting outside of its competence and without legal basis, the Court displaces the judgments of the Government officials given the responsibility to respond to workplace health emergencies," Breyer, Kagan and Sotomayor wrote.

Lower courts were split on the ability of federal agencies to impose such requirements. The Supreme Court on Friday held a highly unusual oral argument on the policies, lasting more than 3 1/2 hours.

Businesses and 27 Republican-led states asked the court to put on hold the workplace requirements proposed by OSHA, which had been upheld by a lower court.

The Biden administration asked that the requirements for health care workers, which courts had put on hold for about half the states, be allowed to move forward.

The majority of justices who supported allowing that mandate to take effect said in an unsigned order that the secretary of health and human services was allowed to take unprecedented action. "Of course," they wrote, "the vaccine mandate goes further than what the Secretary has done in the past to implement infection control. But he has

never had to address an infection problem of this scale and scope before. In any event, there can be no doubt that addressing infection problems in Medicare and Medicaid facilities is what he does."

Thomas dissented, saying Congress did not expressly authorize the power to require vaccinations. "These cases are not about the efficacy or importance of COVID-19 vaccines. They are only about whether [the Centers for Medicare and Medicaid Services] has the statutory authority to force health care workers, by coercing their employers, to undergo a medical procedure they do not want and cannot undo," he wrote, joined by Alito, Gorsuch and Barrett.

In weighing previous challenges to coronavirus restrictions and requirements, the court has been largely deferential to state responses to the pandemic — but skeptical of the powers of federal agencies.

That seemed to be the case Friday when court considered the OSHA rule.

Federal law grants OSHA authority to issue emergency rules for up to six months to protect employees "exposed to grave danger" from "substances or agents determined to be toxic or physically harmful or from new hazards." The administration said that gives OSHA not only the authority but also the responsibility to act.

The temporary rule would have given companies with 100 or more workers a choice: mandate all employees be vaccinated or require unvaccinated employees to provide weekly negative coronavirus test results and wear face coverings to work on-site.

The rules were set to take effect Jan. 4, but OSHA pushed back the date in response to the litigation and said it would not immediately issue citations for those not in compliance.

Soon after the administration announced the rules for private companies in November, the U.S. Court of Appeals for the 5th Circuit blocked enforcement of the policy.

But lawsuits emerged around the nation and were consolidated for review by a different court. A panel of the U.S. Court of Appeals for the 6th Circuit dissolved the 5th

Circuit's stay, saying the rules could go into effect.

The other challenged policy was a vaccination requirement for what the White House says is more than 17 million health care workers at 76,000 facilities that receive federal money tied to Medicare and Medicaid.

The administration has pointed to federal law that gives the secretary of the Department of Health and Human Services the ability to impose requirements necessary for the "health and safety" of patients. For decades, it says, the secretary has had authority to require participating health care providers to establish programs for the prevention and control of infectious diseases within the facilities.

The states challenging the policy said the federal government did not have such coercive powers over the states. As a practical matter, they said, worker opposition to the vaccine would cost the facilities skilled employees at the time they are most needed.

A panel of the U.S. Court of Appeals for the 11th Circuit dismissed a request from Florida to stop the requirement. But a district judge in Missouri stopped the rules, and the 5th Circuit agreed with a challenge from Louisiana.

Because of the uncertainty surrounding the litigation, OSHA announced that it would not penalize companies for not complying with employee testing requirements before Feb. 9, as long as employers show "reasonable, good faith efforts" to meet the standards.

In response to concerns about a shortage of health care workers, the administration said the secretary of health and human services has given facilities some flexibility to meet the new requirements, including an additional 60 days to get employees fully vaccinated. The agency also said it will hold off on any enforcement action, as long as 90 percent of the workforce is vaccinated and the facility has a plan to immunize its remaining workers.

The OSHA cases are National Federation of Independent Business v. Department of Labor and Ohio v. Department of Labor. The health care worker cases are Biden v. Missouri and Becerra v. Louisiana.

## Fort Trumbull developer says it will close on property soon

**FROM A1**  
the city, RCDA and Riverbank Construction. Riverbank's lawsuit had for years hindered development of the land.

Fred Mielke, president of Massachusetts-based Optimus Senior Living, the company behind the proposal, said after Thursday's meeting that his intention is to close on the property by the end of the month. A timeline for the start of construction has not yet been determined.

"This is pretty exciting. This has been a long time coming," RCDA board member Mark Christiansen said. "We're excited to see the development on the peninsula and this is just the start of good things to come."

The city has plans in the works to construct a \$30 million recreation center on a Fort Trumbull parcel not far

from the new development. Plans for the facility are still under development, and it is unclear which project might break ground first. A 200-unit apartment complex is also being constructed by RJ Development + Advisors on development parcels 5C 1 and 2 on Howard Street.

The vote on the Thursday's application was 6-1, with Planning and Zoning Commissioner Ronna Stuller casting the lone vote against it.

"No disrespect intended to the developer or RCDA but the original 2000 (Municipal Development Plan) did call for owner occupancy," Stuller said. "Every (Plan of Conservation and Development) I've read since 1997 bemoans the low rate of owner occupancy in New London ... it's a spectacular site and I believe the city is missing an opportunity

by creating apartments rather than owner opportunities."

Optimus initially had pitched the idea of condominiums but changed direction, presumably because of the booming market for apartments in New London. Planning and Zoning Commission Chairman Barry Levine said the panel was voting on a plan that contained "multi-family housing" and any distinction between the different types of housing was not part of the permit approved by the commission.

Optimus specializes in senior living facilities and built a \$17 million, 115-unit senior housing complex in Bozrah called Elmbrook Village. The Fort Trumbull development, however, will not be restricted to seniors.

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## Waterford store celebrates winning ticket

**FROM A1**  
ready a red sign outside that says the store sold the winning \$100,000 Cash5 ticket — that sale was a few months ago to a local customer.

A sign at the counter on Thursday notified customers that the store has sold the winning ticket for the \$2.9 million jackpot and asked them to check their tickets.

Waterford resident Sandy Poulos, who was at the store Thursday, said she saw the news of the jackpot winner on TV and thought "Oh my God, you're kidding me?" and wondered why she didn't buy a ticket. She said she comes to the store every day to pick up a few things and once in a while she will buy a ticket.

"Well, congratulations,"

she told KC as she finished her purchase. "You deserve it. You guys work hard."

Customer Cathy Bishop, also of Waterford, was pleased to hear that the store had sold the winning ticket. "I was very happy," she said. "I come down here all the time. They're very nice guys, and it's nice to see someone in Waterford win." k.drelich@theday.com