

NEWINGTON TOWN PLAN AND ZONING COMMISSION

Regular Meeting

October 7, 2008

Chairman Cathleen Hall called the regular meeting of the Newington Town Plan and Zoning Commission to order at 7:00 p.m. in Conference Room 3 at the Newington Town Hall, 131 Cedar Street, Newington, Connecticut

I. ROLL CALL

Commissioners Present

Commissioner Fox
Commissioner Ganley
Chairman Hall
Commissioner Kornichuk
Commissioner Pane
Commissioner Pruett
Commissioner Schatz
Commissioner Camerota

Commissioners Absent

Commissioner Casasanta
Commissioner Niro

Staff Present

Ed Meehan, Town Planner

II. PUBLIC HEARINGS

- A. PETITION 46-08 – 240 Day Street, former Merrow Machine Co., 240 Day Street, LLC owner, Mill Pond Church, Inc., 705 North Mountain Road, Suite A-210, Newington, CT 06111 contact Joel Ressinger, Senior Pastor, request for Special Exception, Section 3.2.1 Church Use, I Zone District.**

Chairman Hall: If the applicant is present, if you would come forward, state your name and address for the record, and we are here to listen to your petition.

Joel Ressinger: Senior Pastor Mill Pond Church

John Kelly: Good evening Madam Chairman, Commissioners, representing the applicant, Mill Pond Church, Inc.

Chairman Hall: Would you like to present your proposal?

John Kelly: Yes, thank you. As the agenda indicates, this is an application for a Special Exception, Mill Pond Church is a church and they would like to have a special exception granted for the property located at 240 Day Street which is, for those of you who recall, is the former Merrow Machine plant, and that is located on the corner of Day Street and Francis Avenue, very close to the Cashway Lumber site, adjacent to that site. The building is a total of 52,000 square feet. The church is proposing that approximately 9,000 square feet of that building be converted for church offices as well as church assembly space. That would be this section of the property.

The other portion of the building would remain as it is. The building, that portion of the building has been largely vacant for several years, and Section 3.2.1 of your regulations allows for churches and houses of worship to be granted really, in any zone but particularly in this case it is an industrial zone. The goal of the owner of the property is to have the property back in use. Mill Pond Church, Inc., would be a tenant, they would be leasing the property from the owner, 240 Day Street, LLC and they would be using it for their church functions for worship certainly on Sunday and I believe they have youth programs on Wednesday nights and Pastor will talk a little bit about that, and of course the day to day ministry which they may have various organizations, subcommittees, smaller organizations within the church, meeting on a daily basis.

In your regulations, the Commission in granting a Special Exception or a Special Permit would be looking at the need for the proposed use in the proposed location. Mill Pond Church certainly needs the space, I've been working with Pastor Joel for about a year now looking for space and Newington is a built out town and a lot of the property is occupied. This particular property, former manufacturing space though, as we know in this community, former manufacturing space isn't necessarily occupied and certainly this, the Merrow Machine building has been unoccupied and vacant for several years, and again, they are looking for a partial use, as I pointed out earlier, and quite frankly, I don't know when manufacturing is going to be coming back to these buildings, or other manufacturing locations in the community and with the new technologies and computers and things like that perhaps manufacturing that does return, we hope it does at some point, may even need new facilities, so the use of this building may be changing, even though it was once, well it is presently zoned for industrial.

The Commission will also look at the existing and probable future character of the neighborhood. Again, I'm just going through Section 5.2.6 of your regulations. That corner is an area that is kind of the edge of the industrial use. Yes, there is the Cashway which is slightly to the west of it, but down Francis Avenue you have residences and across the street you have a building that has been used as a church, I don't know if there is a church using it presently, but certainly, this is kind of at the edge of the industrial use for that area and using it as a church I don't think would be terribly inconsistent with the kind of transition area that is going on there. It certainly wouldn't really change the character of the neighborhood.

The size, type of location of main accessory buildings, in relation to other structures, it's an existing building, there's not going to be any, there is no proposal here to increase the footprint of the building. As I indicated, the entire building is 52,000 square feet, the church only needs about 9,000 square feet, so just a portion of that.

Traffic circulation within the site, and around the site. As you can see, it is at the intersection of Francis Avenue and Day Street. Within the site there is parking, I'll just point that out, there's parking here and some parking here, but there really is no traffic circulation really, it just comes off of Day Street, and then there's the parking across Day Street, over here, the approximately just about one hundred spaces over here. As far as the traffic in that area, again, those are not high traffic count streets, really, Day Street has other factories, and residences at the other end, but again, they are not major traffic producers, and of course Francis Avenue at that corner again has the Cashway development there, but they later on, as you go towards Main Street, you have residences and it's not a high traffic street. Nothing that the church would be doing really would change the character of that area in terms of traffic. It's really not going to generate too much traffic except perhaps for the Sunday worship, when, there are 150 members, I'm sure Pastor would like to see all 150 there, but give or take a few, they're not, that's the only traffic that would be Sunday mornings. The other times, on Wednesdays they have a youth organization that meets at night, and again, that would be (inaudible.) Sunday mornings is an off hour for traffic certainly in this area because there are really no other businesses open on Sunday at that time, and the Wednesday night program for the youth, that is also after hours, seven o'clock and later. That's really not going to be an issue with traffic.

Availability of public water and sewers, there already is that, and nothing that the church is going to do is going to overload that. Frankly, manufacturing in many cases would generate more uses for water than the church and church related programs.

Location and type of display signs, they are proposing a sign indicating that it is Mill Pond Church, but they are not going to be, but it's probably going to be affixed to the building, they are not looking to add any signage, certainly nothing of any significant size for the property, and again, as far as adjacent property, any kind of affects on adjacent property. The footprint of the building is not going to change, they are not looking to add parking, there is sufficient parking immediately around the building, and of course across the street on Day Street, to more than handle their parking needs and so again, it's just really going to put a building, that portion of the building has been out of use for quite a long time back into use, and your regulations do permit churches and houses of worship to locate in an industrial zone by Special Exception and Pastor Joel will just take a few minutes to talk about the church, and then we will certainly entertain any questions.

Pastor Joel Ressinger: Thank you, thank you very much for the opportunity to present this, I really appreciate it. I asked John what I should do this evening and I suggested preaching, and he said no, that wouldn't be appropriate, I suggested jokes, he said, I have heard your jokes, that wouldn't be appropriate, so I think that I'm here for atmosphere, to give you a sense of some of the programs and the use, and maybe what the aesthetics of the building would be like when all is said and done. We have talked about, and I apologize, one of the drawings is very rough, we have a large contingent of teens and college students and one of them said, "Oh, Pastor Joel, let me draw the front." and she did a rough, a very rough sketch. We would like to make the front look somewhat colonial, New England like as much as can be done with a building of that nature, but we are going to try to put some columns out front, stucco, and make it more appealing than it is now.

The inside, the front section will still be office space, and meeting room space and the main warehouse area that we will use, the portion of it that we have, will be a coffee house style atmosphere, tables, chairs, that is how we meet now, we're a very casual contemporary kind of a coffee house style worship setting, so we continue that. As John mentioned, the big use will be Sunday morning, where we have, right now we're at about a hundred on a Sunday morning, if everybody showed up it would be 150, but you know, that doesn't happen except Christmas and Easter, I think. So, we hope to grow of course, but right now, that is where we are. The other use, large group use is Wednesday night. We say as a church we do two things, we love God, we love people. That kind of breaks down into two types of meeting, one being the large meeting, Sunday morning, Wednesday night for the youth, the youth meeting is about thirty or so, thirty to fifty at the high end, being Wednesday night at 7:00p.m., and then the rest of the events, love people events are small groups. Some are at homes, or in homes, some of those however would meet at the facility but they would never be more than fifteen people at a time, so again, as far as parking, traffic, it would be pretty limited other than the Sunday morning and the Wednesday night. I did bring a copy of our brochure that gives some more information on the church, I can certainly leave those with you.

We are currently renting space, and have been, we've rented at Martin Kellogg, we've rented Children's Theater, we're working with the Newington Children's Theater now, and we rent office space on North Mountain Road. It would be our desire to put everything in one place and be there 24/7 which is what is appealing to us about this possibility. It's not having to move everything in and out every single week, because I'm old and tired, and I want to see that change. Again, thank you for the time to consider.

Chairman Hall: Thank you. Anyone from the public wishing to speak in favor of this petition? Anyone wishing to speak against it? Anyone wishing to speak? We see no public, so Ed, what can you tell us about this that we haven't heard.

Ed Meehan: Don't know if Pastor Joel had a chance to look at the e-mail, I sent you an e-mail today, the staff report.

Pastor Joel Ressinger: Oh, I didn't see that, I'm sorry.

Ed Meehan: You hit on most of the questions already and the type of information that I was suggesting that the Commission know about, the size of the congregation now and in the future, the church events you have mentioned. This building appears to have two stories, are you using both floors?

Pastor Joe Ressler: Not yet, at this point we are just leasing the main floor at the bottom. We did ask the Fire Marshal and the Building Inspector to kind of walk through with us and based on their recommendations and just a quick overview, we thought it would be wiser just to stay on the same floor for the time being.

Ed Meehan: You mentioned that there is a drawing, some sort of embellishment to the front façade. This building sits just about right on the twenty-five foot setback line, so any sort of build out off of that is going to be difficult to do, so I just caution you on getting too ambitious, if this is approved. Check to make sure you meet the setbacks.
I didn't notice a lot of building lighting, or ground lighting around the entrance to the building. Have you observed this building at night? What is the adequacy of lighting?

Pastor Joe Ressler: I haven't actually gone at night but I know that the owner has been very open about adding things that are necessary, so for our sake, for security's sake and whatever regulations there are I'm sure he would comply with that.

Ed Meehan: I think that is going to be important. Then there is the issue, related to that is, you have parking on the east side of Day Street, well over a hundred spaces so you have to make sure that the cross walk is there, it's adequately lit. The spaces on the south side of the building, opposite Francis Avenue, I was over there today, may be six or seven spaces there, pulling out of that driveway which is sloped down to Francis Avenue is very dangerous. You have a large tree that blocks your sight lines, plus you have a vertical and horizontal curve so I would not encourage people to exit out of that driveway, maybe entrance, but never exit out. It's not a safe place on that bend.

One of the largest issues and we talked about this when you first came in and met with me, this whole operation of a church in an industrial zone and a building that was built back in '53 for industrial uses. There will be hopefully, other tenants moving into that building, and if there are other industrial tenants or commercial tenants, the compatibility of that with church operations, the need to have adequate parking, and not have conflicts between the uses is something that I think Mill Pond Church has to think about before they invest a lot of money in this location, and it's something the Commission needs to think about, the compatibility of a church in an industrial zone.

The Sims Memorial Church, right across the street, looks like it's in operation. It's very well kept, I was up there today looking at it, it's right across the driveway from the Francis Avenue side. Handicapped parking would need to be provided. I saw some, looked like parking up against the building. Generally the parking, I don't know if the landlord is going to address this for you, needs to be re-stripped, in some areas need to be patched and re-paved because it is not in very good shape, and that whole south end of the building needs to be spruced up.

The last couple items that I would mention, two things, one on our part, the New Britain Herald did not properly advertise this in the newspaper. There was apparently between the staff that handles legal classified there was a mix-up. They didn't put it in the paper at the right time, and I didn't see a public notice sign out there today. So you need to get a public notice sign up. In that regard, the Commission should keep the public hearing open to cover the procedural part of this. So that is pretty much it.

Chairman Hall: Questions from the Commissioners?

Commissioner Ganley: I'm just trying to line up this sketch here with this. Can you show me where the doorway is on this one, on the engineering map? This is the one here.....

Pastor Joel Ressinger: Right, that is the office space, so there is a doorway here, the main entrance to the office space, there is a separate doorway here.

Commissioner Ganley: Is that this doorway? Which doorway is that one?

Pastor Joel Ressinger: Let's see, where are we here. This is Francis.....

Ed Meehan: You can show it on this one, you can fold that back. That is the best one so that everyone can see.

Pastor Joel Ressinger: So, Francis and Day, there's a main entrance that comes into the first floor here, and that's the office facility, and there are some open rooms that we would be using for office space, classroom, and then there is a doorway into the main warehouse section, which is here, and there is a separate outside door that you don't see on the smaller map to the warehouse space, which is right about here. So there would actually be two ways to enter the warehouse piece of it, through the office or through here, and there is also an emergency exit out of the back.

Ed Meehan: So the warehouse space is not shown on the sketch.

Pastor Joel Ressinger: Not on that little sketch no, just on the large one.

Commissioner Ganley: Thank you.

Commissioner Fox: I don't know how the rest of the Commission feels, but since we are going to keep the hearing open, and I don't want to make it any more difficult on Pastor Ressinger, he's a nice guy, should I say, his church has been like the wandering Jew.....

Chairman Hall: Only you can say that.

Commissioner Fox: Only I can say that, it's a name of a plant too, you know. But anyway, without putting too much stress on him, can we get maybe a simple elevation of what the entrance would look like? Would that be too difficult?

Pastor Joel Ressinger: A drawing of the entrance?

Commissioner Fox: Yes, just you know, a little more than this.

Ed Meehan: Well, that's, my observation was the same. First of all, if you look at the site plan, it's like a foot and a half off the set-back line, so any sort of façade treatment is going to really be right up against the building. If you build it out you are going to have to put footings and other structural features and it can't be over the set-back line, so some thought is going to have to be done as to what you are going to do to call attention to that entrance way.

Commissioner Ganley: It's called aesthetically pleasing.

Ed Meehan: Yes, the rest of the building is a low profile, I think I took a picture of it here for you.

John Kelly: Pastor has had church members trying to, in fact, church members made that very rough drawing, but trying to conceptualize what they would be looking to do. That is still kind of in

the development stages, but certainly the church is very concerned, obviously about having it look like it's a church, obviously within the confines and limitations of the property, obviously they can't do anything that is going to go over the setback lines and things like that, but they do want to make it more appealing to the neighborhood, and take the factory look out as much as possible and make it look like a church.

Pastor Joel Ressinger: One of the things proposed was to do stucco overlay on the brick in front and then just façade columns which again, depending on the setback line may or may not be doable. The columns might just add a little character, make it more aesthetically creative.

Chairman Hall: Well then you also have that roof line too, the overhang, that probably would be building your upper part, well, it's not really an arch.....

Ed Meehan: Gable.

Chairman Hall: Yeah, gable, that's a good term for it. That would be above that, it would be farther back.

Ed Meehan: It has like a horizontal projection, shelter, over the door.

Pastor Joel Ressinger: So we will probably try to use that, financially of course it will be less expensive to keep that structure intact, but to put something over it, as much as possible, to make it look prettier.

Chairman Hall: Make it look less factory. Other questions from the Commissioners?

Commissioner Fox: Just real quick, and I notice that, you called it a shelf, an awning, now is that, would that be included like, is that part of the building. In other words, does that impede on the twenty-five foot setback?

Ed Meehan: It's part of the building, so it cannot project.....

Commissioner Fox: It cannot project, okay, so that is within it, so there may be a little room.....

Ed Meehan: Maybe a foot, at the most a foot and a half.

Chairman Hall: Creative construction.

Pastor Joel Ressinger: If I could, just quickly, touch on the use from our perspective, in talking with the owner, most of our use, as John mentioned, would be Sunday morning which wouldn't conflict with most of the industrial use that he would want to lease the building for. Wednesday night would be the other possible exception, but that is still a relatively small group, thirty right now, possibly fifty as the high end, and we don't foresee any conflict as far as parking, or you know, interference with that. The owner doesn't feel that way either. Certainly it is something that we would keep an eye on in the future because obviously we don't want to be impeded in what we are doing, and they wouldn't want to be either. But I don't envision a whole lot of activities Monday through Friday nine to five which would conflict with most businesses.

John Kelly: The landlord has also represented to Pastor Joel that, obviously the landlord wants the rest of the building occupied as well, there is going to be another 42,000 square feet to lease, and they are looking for small machine shops, warehousing, the kinds of things that are normally associated with this type of building in this area, but again, he is sensitive to the parking issues, and he has assured Pastor Joel that nothing is, no new tenants are going to cause any parking

problems for the church, if the church is permitted to occupy that other space, so he is going to keep that as an important consideration as he is leasing to other tenants.

Chairman Hall: Other questions from the Commissioners? I only have one more. You mentioned that Wednesday is 7:00 p.m., and that would be maybe 7:00 to 10:00 p.m. at the latest?

Pastor Joel Ressinger: Yes.

Chairman Hall: Sunday morning, I either missed it, or you didn't say what the hours are.

Pastor Joel Ressinger: We did not, and I apologize, it's 8:30 and 10:30 a.m. so we're typically in setting up at 7:30 and out of there by 12:30 p.m. or 1:00 p.m. at the latest.

Chairman Hall: So you have two services, one at 8:30 and one at 10:30.

Pastor Joel Ressinger: Yes, have to be done by kick-off for football.

John Kelly: Also Pastor walked the building with the Fire Marshal and the Building Inspector. Do you just want to kind of show, just point out the different uses of the different sections of the building, just kind of rough, give the Commissioners an idea.

Pastor Joel Ressinger: Okay, this larger drawing, I'll use this because it contains everything.....

John Kelly: And show where the line is, as far as the existing, the part that you're not going to occupy and then the dividing line, what you are going to occupy and what you are not going to occupy.

Pastor Joel Ressinger: We will occupy everything from this line forward toward Francis. Everything behind it would be used for other industrial use. This section here, prior to this dotted line is where the large open meeting space would be, everything else over here is already office space and large meeting room, I say large, conference room size or smaller I guess. First floor, basement won't be in use and the upper floor, second floor won't be in use by us, so it will just be unoccupied.

John Kelly: And the parking, you said you have twenty spots.....

Pastor Joel Ressinger: Well, yeah, there's about a hundred across the street, and they need to be re-marked, so we are guesstimating here, I put ten here and ten to twenty over here, although the comments made by the Town Planner.....

Ed Meehan: I counted six or seven because of the angle, and they aren't marked, either.

Pastor Joel Ressinger: So we would want to use primarily the ones across the street and then for handicapped access, the ones right here at the front.

John Kelly: And those parking counts are well within the requirements of the regulations.

Ed Meehan: Yeah, if you had 150 it would be a minimum of fifty spaces. It's one space for three occupants is what we are looking for.

Pastor Joel Ressinger: I should mention too, the owner has promised me that if, for whatever reason, we needed more parking, he owns you know, I think it's about two acres over here, all

together, so he is willing to add on parking spaces, but I told him I didn't foresee that with a hundred spaces, unless we grow dramatically within the next two or three years, and that would be a happy problem.

Chairman Hall: Any other questions? As the Town Planner has said, there is a red and white sign that needs to go on the property, so people know that there is a petition, and we do need to leave this open because we have to have it in The New Britain Herald legally. There is a legal notice that must be presented, and it got messed up this time, so.....

John Kelly: And we can pick up the sign here? Thank you Madam Chair, thank you Commissioners.

Pastor Joel Ressinger: Thank you very much.

Chairman Hall: Thank you, and our next meeting is the 22nd.

II. PUBLIC PARTICIPATION (relative to items not listed on the Agenda-each speaker limited to two minutes.)

None.

IV. MINUTES

September 24, 2008

Commissioner Fox moved to accept the minutes of the September 24, 2008 regular meeting. The motion was seconded by Commissioner Kornichuk. The vote was unanimously in favor of the motion with seven voting YES.

V. COMMUNICATIONS AND REPORTS

Ed Meehan: Two quick items, this OPM letter, Office of Policy and Management, sending out letters to all municipalities reminding them under the new statutory changes and amendments to the enabling legislation for plans of conservation and development. We have to have our plan done and effective by July 1, 2010. We started on this in house about a year ago, we made some progress, we've got the land use component, the vacant land, the opportunities map we call it, and some other well, basically land inventory, all the GIS mapping is done, and we sent out requests to some other boards and commissions to help share their input. We got some feedback from Economic Development and that is the only Commission that we got feedback from, so we need to re-energize this, and we do have a grant. We applied for a grant over the summer, a \$20,000 grant to assist us, to do this, so I think that we are going to see a lull in the economy over the next several months, so at my level we will do a request for proposal and sit down with your guidance and set up a calendar schedule to do workshops on this and get the plan back in shape. Our last plan was done in '96 I believe, '97, it's a ten year forward looking plan, so I don't expect, given our land supply that we will see dramatic changes, but there is always policy issues, and input from the public and other boards and commissions that you want to recognize in your plan of development. That is going to be a big project, going forward. The other is the annual report which was sent down to the Town Manager's office, summarizing the various activities over the past fiscal year. You know about that, and that's about it.

Chairman Hall: Any questions of Ed?

VI. OLD BUSINESS

A. PETITION 44-08 3567 Berlin Turnpike Sam's/L.A.Fitness "Pad Site" Newington-Berlin Retail, LLC owner, Delta Building Corporation, 269 Main Street, Cromwell, CT 06416 attention Jay Stuart, applicant, request for building elevations approval, 6,500 sq. ft. pad building site plan approved Petition 62-06, 11-20-2006, PD Planned Development District.

Commissioner Ganley moved that PETITION 44-08 3567 Berlin Turnpike Sam's/L.A.Fitness "Pad Site" Newington-Berlin Retail, LLC owner, Delta Building Corporation, 269 Main Street, Cromwell, CT 06416 attention Jay Stuart, applicant, request for building elevations approval, 6,500 sq. ft. pad building site plan approved Petition 62-06, 11-20-2006, PD Planned Development District be approved based on the elevations entitled "Realm Realty Retail Building" Sheet A-2, dated 9-24-08 prepared by Reza Manzouri Architect.

Prior to the Commission Chairman signing the elevations mylars the location of the dumpster enclosure, constructed of block material to match the building, shall be shown on the rear (north) elevation.

Add note to elevation plan "Sheet A-2" that roof top units shall be screened using panel enclosures around each unit.

The motion was seconded by Commissioner Fox.

Chairman Hall: Discussion? Ed, do you have anything to add?

Ed Meehan: The two items in the suggested motion reflect what we observed and the applicant committed to when they presented to you last meeting. They had mislabeled the dumpster, they had it on the wrong side, so it has to be shown on the back, and enclosed to match the building. They did not have time to do that. Then he provided the Commission with some line of sight elevation sketches which I think satisfied your concern about the raw exposed rooftop units and since it's pretty much impossible to screen these from all angles, the offer was made to put the panels immediately around each unit which would be one way of making them look more attractive, that's why that is suggested here tonight. He also said he could have, depending on his tenant, he could go from two units to four, so that's another reason to have some of these panels up there, to cover up some of the more industrial looking part of the equipment on the roof.

Chairman Hall: Any questions or comments, clarifications. Everybody knows what we are talking about as far as this pad site in the center over there. If you have driven around depending on which direction you come from, it's like a mouse maze over there now, but certainly from the turnpike, you can see the other roofs as well, so this isn't going to be anything that is going to be any different than what is over there, except they are taking the pains to enclose the units on the roof.

The vote was unanimously in favor of the motion, with seven voting YES.

Commissioner Pane: Madam Chairman, I'm going to recuse myself from Petition 43-08 since I'm the owner of the building at 105\113 Pane Road.

Commissioner Camerota was seated for Commissioner Pane.

B. PETITION 43-08 – 105B Pane Road, Roberto Cerasani applicant, 11 Watch Hill Circle, Cromwell, CT 06416 applicant, 105/113 Pane Road Complex, LLC owner, request for Special Permit Section 3.18 Amendment of Certificate of Location, Auto Repairer, PD Zone District.

Commissioner Schatz moved that Petition 43-08 105B Pane Road, Roberto Cerasani applicant, 11 Watch Hill Circle, Cromwell, CT 06416 applicant, 105/113 Pane Road Complex, LLC owner, request for Special Permit Section 3.18 Amendment of Certificate of Location, Auto Repairer, PD Zone District be postponed to October 22, 2008.

The motion was seconded by Commissioner Kornichuk.

Chairman Hall: Discussion? We didn't really discuss it too much the last time. It is something that is, something that we really need to feel comfortable about, because this can have long term ramifications. Remember we took this regulation out, or the last sitting group took it out, and now this, although it is different, it may be construed as being the same, so we have to be very comfortable as a group that when we make this decision, it is going to be the right one. So, Ed, do you have some other information that you can help us with tonight.

Ed Meehan: Yeah, I've been doing some additional research, actually went back of course to our zoning regulations, and did some additional reading on the situation when you amend your zoning regulations you essentially create non-conforming uses. They are frozen in time, when this was taken out of the regulations. So the various auto related uses all around town are basically grandfathered at the location that they are at and zoning regulates the physical location, it regulates the use, the occupancy as far as the size of the building inside where the space is where the business is being conducted, or if it affects a residential zone, the placement of the home on the lot as far as setbacks and so forth. Zoning doesn't regulate the occupant. So the issue here, in my mind, and I believe this is correct from reading some of the correspondence and some of the things that we see in zoning, the fact that this license is being conveyed to another party, the business is being sold and a new licensee is being created, it not really the point. The point is that it's a legal non-conforming use, and the location of that use, which this Commission regulates, you regulate location, has not changed. It's still going to be 2,000 square feet, it's still in the same footprint that it was prior to the zoning regulations being changed and there is no external modifications being proposed to the building. That's the information that the applicant put on the land records. Other than a demising wall, or fire wall down the middle here, inside the building, there's no physical changes. So, in that respect, I see this as a continuation of a legal non-conforming use. So this travels with the land at this location just like any existing gas station or car repair use in town now exists. If they have a license and they have a Special Exception, they can sell that license to a new business, but the use at that location continues there until they terminate it, and they walk away, they change the use, they create an interim use, and even then there is some case law that says they can continue if they don't terminate it willingly or was destroyed by fire or something like that. So I think from that respect, that is what makes this important to discuss a little bit further. I had gotten several inquiries since this was taken out of the regulations, can we switch, can we swap a license from one street to another, completely different part of town? Can we buy somebody's license, like the license for the gas station across from Gianni's, that hasn't been built yet, and move it over to another part of town? Well you can't because that's the change of location. That's a substantial change of location, which makes I think the situation down on Pane Road, different in that respect.

A couple of other notes that I will share with you, you know, they are not terminating the business, the business is still going to be a car repair business, doesn't make any difference whether they now are going to do repairs for the general public versus clients of Salem Motors. We don't have any control over who they service, nor does the DMV, that's a business decision, again, we don't regulate the occupant in that sense.

So my thoughts would be that this is a continuation of a legal non-conforming use at the same location, same size, same footprint. If this involved an increase or an expansion of this location, say the operator said we are going to go from 2,000 square feet to 6,000 square feet, that's an increase of a legal non-conforming use, but you can't increase it, you have to stay within your bounds. You can increase a legal non-conforming use as long as you don't make it more non-conforming, and that usually applies to the placement of a building on a building lot, so your front set-back line and your side set-back line are non-conforming, they project over the set-back line, but you have fifteen feet to the back set-back line, under the principles of zoning you could add fifteen feet because you wouldn't be increasing the non-conformity, but you couldn't add to the front or side. So there are some nuances there, in this case, this just regulates the use. So, the applicant is essentially buying, the guy who is going to buy this business is buying a pre-existing legal non-conforming use in a specific location, and it's going to remain at it's physical size and placement, and in that respect, I believe it is protected by Section 5 of your zoning regulations which pertains to legal non-conforming uses as well as the general statutes, which protects these types of uses. I would feel comfortable in that sort of discussion of it, I don't, there is a new license being created, definitely, because it's going to go from Salem Motors to a new LLC but that's not a zoning decision, that's a business decision. It's not a new space or new location being created, that's what I think the difference is. It's kind of subtle but it's an important difference, I think.

Commissioner Ganley: On Hartford Avenue, there are a couple of auto related services, in fact they are side by side, remember we had made some decisions about those two buildings, down on Hartford Avenue.

Chairman Hall: Way down on Hartford Avenue?

Commissioner Ganley: Yeah, almost down to the Hartford line.

Commissioner Fox: The one next to D & D

Commissioner Ganley: One was a gas station, as I recollect, and now he wants to do some auto related services. If he were to go back to a gas station, on that site, again, do all the kinds of things that would let him just sell diesel fuel to trucks, that would be covered, even though he is changing the nature of what he does?

Ed Meehan: Yeah, he's changing the nature of the business, but he's grandfathered. He's still an auto related use. It comes under a different section of the statutes as far as the Department of Motor Vehicles, for auto dealer and repairs you go to DMV, sell gasoline and diesel fuel, go to Consumer Protection, but they are both auto related in our zoning regulations.

Commissioner Ganley: Okay, even if he then said that I have my desk here, and the guy that is going to sell the diesel fuel is at this desk over here and he's going to be called Harvey's Diesel Fuel, Inc., in my building, selling diesel fuel out on the pad. That would be rather similar, I would think.

Ed Meehan: Does Harvey need a new license from DMV?

Commissioner Ganley: Oh, he's going to sell diesel fuel, so he would need to.....

Ed Meehan: Well, you would have to put tanks in the ground, and.....

Commissioner Ganley: That's right, but he'll do all of that stuff, he'll do all of it.

Ed Meehan: Nothing happens to the location. It's an increase in the business. A classic example of increasing a legal non-conforming use is someone who buys a 5,000 square foot restaurant, and when he buys it, it has twenty tables and chairs. It's a little luncheonette place. His business gets so good, he figures out a floor plan that max's out at fifty. He's permitted to intensify it, because he hasn't changed the use. If he can meet all the code requirements, fire, health, sanitation, so you can grow your business, they cannot stop you from growing your business. Maybe the example that you mentioned would be analogous to that.

Commissioner Ganley: Thank you.

Commissioner Pruett: I understand what the Town Planner said, but I don't understand the reason for postponement.

Chairman Hall: Well, this is what the amendment is, and if you wish to say no to this, and do something besides postpone it, we have that right, but right now it is requested to be postponed until the 22nd, to give it a little bit more thought, if you think you need it. Definitely more discussion this evening. If you choose not to do that, and you say no to this, do whatever you want.

Commissioner Kornichuk: I take it as Commissioner Pruett just said, from what Ed just said, I can understand everything that he just said, and I can understand postponing, but I really don't understand why we are postponing it.

Chairman Hall: We have the option, if we think we need more time to consider this, to investigate anything else or whatever. It is an option.

Commissioner Fox: On the same line, if we vote against postponing it, can we just use this motion, just change the last words to be approved, and then vote on that motion? I don't see any reason for keeping this on the table. If it seems like they are not going to postpone it, if they're not, I'd like to vote on it tonight.

Ed Meehan: Can I comment?

Chairman Hall: Sure.

Ed Meehan: Because this is the first time that I know of this has come before you, I think you may want to put some language in the motion that sets the bar, so to speak, as to how future interpretations are going to ride on this.

Commissioner Fox: That's why I was asking the question.

Ed Meehan: Or someone may come back and say, well you did it down on Pane Road, why can he do it and I can't do it. Again, what I discussed was, when we had this public hearing, somewhat of a unique situation, the license stays in the same location. That's probably not going

to happen very frequently. I think other examples are, they are going to try to move them around town. I have to say when this was brought to public hearing, to take it out of the regulations, this was pointed out as a big issue, creating so many legal non-conformings in Newington. There are a lot of auto related uses. It was brought up at the public hearing and it was brought up by Town Attorney Steve Nassau when he reviewed, he said, you are going to create a lot of heartaches with this. But if we do it right, and you make a good record, I think you are on solid ground. That's all I would recommend.

Commissioner Ganley: So the addendum sentence would be prefaced by something, that we would approve this with the understanding that, and then you would stipulate three or four things that our understanding of this approval means to us, and should mean to the petitioner.

Ed Meehan: Yes. Well, I have something written, but it wasn't ever word processed, so.....

Chairman Hall: So it is really to give him the opportunity to get it, and I don't see that there is urgency to this, and I do believe that this is an important decision that is going to have ramifications through the years. As long as this regulation stays in our (inaudible), we are going to have to deal with it. We don't want it to come back at us, let's put it that way. So we want to be perfectly clear on what we are doing, and my understanding, again, is that this is not really considered new, this is in essence a transfer from one person to another, it is not a change of usage.

Ed Meehan: It's not a change of use, and it's not a change of location, it's not an increase in the size of the business, it's a change in the licensee, and again, you don't regulate the occupant, you regulate the use, it's location, and all those things that you see under zoning as far as setbacks and parking and so forth.

Chairman Hall: You see, you were all sitting there mulling this over, so you can see that this is not an easy decision.

Commissioner Fox: Well, the only thing that I am mulling over is how, number one, why was the motion written to postpone, instead of writing it with all the qualifications and all the caveats for us to vote on.

Chairman Hall: In order to be able to do a little bit more research to make sure that we're on absolute solid ground before we present this.

Commissioner Schatz: And they are still doing business, I mean, this is not.....

Ed Meehan: It shouldn't affect the business operation.

Commissioner Schatz: That's what I'm saying.

Ed Meehan: It came right on your agenda as a public hearing, they didn't have to wait.

Commissioner Schatz: Exactly, they are still doing business, so this doesn't really affect them that much, dollar wise, and then we can make sure that it doesn't come back when somebody else comes in with an attorney and says.....

Chairman Hall: Right, because this may, somebody else may, I mean, we don't know all the different uses that are out there right now. There may be exactly this type of situation out there, so that, once we have done it here, it becomes precedent, so it may come back at us and we want to make sure that when we vote on this, that we feel one hundred percent that we have covered every aspect of this, and that we do feel comfortable with it.

Ed Meehan: The reverse of this, this is the way I thought when I looked at it, is this, Salem Motors has a legal non-conforming use and zoning cannot take that right away from them, and if you didn't approve this, you're telling Salem Motors that he can't sell his business at this same location. It's like someone has a legal nonconforming house, it may be nonconforming because of yard setbacks, or coverage or height or whatever, the buyer buys it knowing it's legal nonconforming. They can still live there. You can't tell them they can't live there any more. So it's transferable with the land, it's nonconformity is like a grandfathered clause that travels with the land.

Chairman Hall: We're not moving it into the next part of the business, it's simply the same building being subdivided as such.

Commissioner Schatz: And it's not penalizing them by not approving it.

Chairman Hall: Correct.

Commissioner Schatz: I think the right language should be in there.

Chairman Hall: Any other questions.

Commissioner Pruet: If this is for, to give the Town Planner more time to put a more definitive motion, that I understand. I agree with what he said tonight, I don't think there is a problem is he needs more.....

Chairman Hall: It needs to be fine tuned.

Commissioner Pruet: Okay.

Chairman Hall: Any other questions, comments?

The vote was unanimously in favor of the motion, with seven voting YES.

Commissioner Pane returned to the table.

VIII. PETITIONS FOR SCHEDULING (TPZ Wednesday, October 22 and November 12, 2008)

Ed Meehan: Well, right now you just have the continuation of Mill Pond Church, under Public Hearing, and under Old Business you will have 105B Pane Road, Salem Motors and maybe Mill Pond Church if you want to move it to Old Business the same evening. It's up to you. There is nothing that I have right now in the queue line.

Chairman Hall: But that can change.

Commissioner Fox: Ed mentioned Mill Pond Church, I don't see any problems, I don't know if anybody else sees any problems, so Ed, with the approval of the rest of the Commission, maybe

you ought to just draft a motion, and have it all ready, so we can just dispose of it.

Ed Meehan: Well, you want to finish the public hearing. I can structure the agenda with your direction, to put it under Old Business. So you don't have to add it to the agenda, it's already there.

Chairman Hall: Just make sure you all go and drive past the site. I'm sure you have seen it a million times when you have been over there, but just give it a good look, with the idea that 150 people will be going in and out of there, max, on a Sunday morning, youth at night on a Wednesday. Just have that idea, instead of manufacturing.

Commissioner Ganley: And they have to come back to us anyway, certainly defer precisely how the decorative façade will look on that building. We have to look at the use and they can come back at a later date, we can get that off of his table and they can concentrate instead on what the front of the building is going to look like, it might ease his burden somewhat.

Chairman Hall: Right. Any other questions?

IX. PUBLIC PARTICIPATION
(For items not listed on agenda)

None.

X. REMARKS BY COMMISSIONERS

Commissioner Schatz: How come these people don't get the signs when they.....

Ed Meehan: It's attached right to the application for public hearing.

Chairman Hall: I think honestly, at this point, because this has been happening over and over again.....

Commissioner Schatz: At least three times.

Chairman Hall: And I would hate to have any more burden on Adrienne and Linda, but if they could just tape a little sign near the cash register that says, ask them if they need a sign, or want a sign, or whatever because this is happening a lot and it's a shame because it extends it, longer than it should. The poor restaurant on the Berlin Turnpike, she had to come back twice.

Commissioner Fox: Actually, when they take the application, why can't they just give them a sign? Never mind, do you need a sign, just give it to them.

Chairman Hall: That's what I mean, just give it to them.

Ed Meehan: A lot of times they come in, they take the application, they fill it out, and then come back and drop it off, but there is a different color sheet attached to the application, so if you are applying for a public hearing under ZBA or Planning and Zoning, fill out this form, and ask for a sign.

Chairman Hall: Maybe as I said, tape a little reminder sign for themselves. I know that they have an awful lot that goes across that counter on any given day, but just, they have to pay for an application, correct?

Ed Meehan: Yeah, for a sign, we reduced it to twenty-five dollars, we got rid of the big metal ones.

Chairman Hall: All right that would be a help. Anyone have anything that they would like to comment on, things that we have seen in the past couple of weeks, some of our petitions are in full bloom, the Spooky House.....

Ed Meehan: The Haunted House is going, Terror on the Turnpike is up, I see more activity over at Holiday Inn Express today, which is a good sign, it got kind of stale there for a while. Some site grading around the foundation, more trusses delivered. The Building Department says they are pretty much set with some of the structural issues. There are still mechanical, and utility issues associated with that property. I guess I'm into staff report, is that all right?

Chairman Hall: That's okay, I guess there weren't any more questions, unless you have a question?

Commissioner Schatz: What is happening over at Dunkin Donuts, anything?

Ed Meehan: They are still grading the site. They finished all the rock excavation, crushing.

Commissioner Schatz: It looks like a lot of rock they have taken out of there.

Ed Meehan: Well, today they are starting to work the slopes. So they haven't pushed anything off the top yet.

Commissioner Fox: What was Alan saying, 5700?

Ed Meehan: Not that much rock, but they did take some off the site, they used some on Brockett Street, so has been moved around, but now, they have been working with Toll Brothers. I met with the project manager for Toll Brothers because Mr. D'Addeo's contractor has permission to go up and to cross onto Toll Brothers property to try to scrape some of the overburden off and repair the fence, which keeps slipping. While he is up there, there is a corner of that site where several years ago Mr. Stamm piled up, there's quite a bit of dirt up there, and that has to be pushed down into the hole.

Commissioner Pane: It has been.

Ed Meehan: Was it down recently? Have they already started it, I wasn't by there today, so that is going to start to fill that hole up.

Commissioner Ganley: This just popped in my ear, talk about this rock removal. Do you recall a newscast about four nights ago, the situation in East Haven where the guy has been quarrying and site preparing five years on a particular site? He said he was going to put apartments up on it, and they are trying to get after this guy, but he keeps quarrying all that precious rock away, and he hasn't done any building yet, and I'm thinking, fast forward to the dealings that we had with the guy up on the top of the hill, I think we dodged a bullet, folks. I think we dodged a bullet.

Commissioner Fox: So in spite of the fact that I still see a sign for commercial real estate, Gagnon is still going in there?

Ed Meehan: Yeah, he's got, his building permits are being processed, the site is being prepared, they've got their discussions going with District One, their curb cut permit, so I think they are trying to get their utility work done before winter sets in, which they probably can do, it's not a very big building.

XI. STAFF REPORT

Ed Meehan: Another project that we are working with the developer on is Hunter Development, on the former Lowe property. They are continuing to go through the State Traffic Commission, exchanging comments back and forth. Tomorrow I'm meeting with Mr. Frisbee and the Town Manager to talk about a recent set of comments that they got from the State Traffic Commission, see if the town has any role in that. We did have some meetings last week at ConnDot with STC staff and the busway people about the Fenn Road busway stop, so that is still going along. Our concern is access to National Welding now that we have foreclosed, making sure we have good access to that.

Commissioner Pruet: Ed, any nibbles on FoodMart? I know there was a grocery store interested in that again, but....

Ed Meehan: Nothing. Last time I checked, went down and did some research for the Economic Development Commission, goes back about a month, taxes hadn't been paid yet and the Town Manager and the Mayor were going to try to get a meeting with the principal partner who is in poor health, so that meeting has not come off yet.

Commissioner Schatz: They relocated the mail boxes. Why didn't they put them down further?

Chairman Hall: They just caused some really close accidents, it's terrible. They are backing out and somebody else is coming in.

Commissioner Fox: There's no light, there's no light there either.

Chairman Hall: Right, at night, forget it.

Ed Meehan: I don't understand it, because we gave them a plan to put the boxes where the drive up window would have been for People's Bank, so you could have like one, everything drive through. It's not safe to put the boxes there now, they probably should have just left them where they were.

Chairman Hall: The really sad thing is to see some people, I'll just leave it at people who drive up and then look, they just stop there....I know there used to be boxes here.

Commissioner Ganley: It's as bad as me, you're in a daze, you walk up, you go to reach for it, and there is no mail box there. You just see a little brown spot on the sidewalk.

Chairman Hall: But, they definitely are too close to the corner. Is there any way to, I mean, does anybody have any control over that, or is it because it is government property they can.....

Ed Meehan: No, they lease that. I can talk to the post office manager.

Chairman Hall: It's literally, I saw one today coming out this way, as one came zooming in, and they missed by about that much.

Ed Meehan: There has to be two, maybe three car lengths, so people have more decision time when they get into the driveway there. I gave her maps on what was going on over there, I'll go over and knock on her door and talk to her.

I did want to ask the Commission if I could take two minutes and go into executive session to talk about legal matters for Three Angels Church, to bring you up to speed.

XII ADJOURNMENT

Commissioner Fox moved to go into executive session at 8:06 p.m. The motion was seconded by Commissioner Pruett. The vote was unanimously in favor of the motion with seven voting YES.

Commissioner Pruett moved to adjourn the executive session and the meeting. The motion was seconded by Commissioner Kornichuk. The executive session and the meeting was adjourned at 8:14 p.m.

Respectfully submitted,

Norine Addis,
Recording Secretary

