

NEWINGTON TOWN PLAN AND ZONING COMMISSION

June 25, 2008

Regular Meeting

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
Chairman Hall
Commissioner Kornichuk
Commissioner Pane (7:05)
Commissioner Pruet
Commissioner Schatz
Commissioner Camerota
Commissioner Ganley

Commissioners Absent

Commissioner Niro

Staff Present

Ed Meehan, Town Planner

II. PUBLIC HEARINGS

None.

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

None

IV. MINUTES

June 11, 2008 – Regular Meeting
June 11, 2008 – Special Meeting

Commissioner Pruet moved to accept the minutes of the June 11, 2008 Regular meeting and the June 11, 2008 Special Meeting. The motion was seconded by Commissioner Fox. The vote was unanimously in favor of the motion with six voting YES.

V. COMMUNICATIONS AND REPORTS

Ed Meehan: Two quick items. One is from the Newington Chamber of Commerce thanking the Commission for your support and again working with them on the car show. Last week they had a very good turnout, so they were happy to do that and something that they want to continue in the future.

The second thing that I want to report is, we've received through the Town Managers office yesterday that OPM is very likely to give the Commission a favorable ruling on our request for funding to complete our Plan of Conservation and Development. Back in March a letter was prepared to OPM asking for fund support. Many communities in Connecticut such as Newington have been trying to get their plan done in house and so have put money aside in the budget for that and we believe, we haven't seen the contract documents yet but we believe that we may be awarded \$20,000.00 to begin that effort. There are some components that we have already done, some that we need to update but that hopefully will push us over the finish line to bring that to public hearing.

VI. NEW BUSINESS

None.

VII. OLD BUSINESS

- A. **Petition 25-08 – 580 Church Street, Three Angels Seventh Day Adventist Church, owner and applicant, represented by James Cassidy, Hallisey, Pearson & Cassidy, Engineering Associates, 35 Cold Spring Road, Rocky Hill, CT 06067, Amendment of Special Exception Petition 03-05, “changes to architectural elevations”. Condition of Approval granted March 23, 2005, R-20 Zone District. Public Hearing closed May 28, 2008. Sixty five day decision period ends August 2, 2008.**

Commissioner Kornichuk moved that Petition 25-08 – 580 Church Street, Three Angels Seventh Day Adventist Church, owner and applicant, represented by James Cassidy, Hallisey, Pearson & Cassidy, Engineering Associates, 35 Cold Spring Road, Rocky Hill, CT 06067, Amendment of Special Exception Petition 03-05, “changes to architectural elevations”. Condition of Approval granted March 23, 2005, R-20 Zone District be postponed to July 9, 2008.

The motion was seconded by Commissioner Fox.

Chairman Hall: Discussion again?

Ed Meehan: Just to give the Commission a brief update. Subsequent to the Commission's last meeting and the closure of the public hearing, the applicant as you may recall submitted supplemental information on the issue of noise emanating from these two air handlers, particularly the one on Church Street was an issue and we discussed at the last meeting what they had proposed in the way of baffling equipment, vinyl fencing and landscaping and distance to neighboring properties. We continued to review that, and we pointed out to the applicant two very important issues, first, even with the mitigation measures that they were proposing they didn't comply with the noise ordinance. The lowest decibel level still didn't achieve what they needed to achieve for night time readings and some of the decibel levels at the higher end exceeded the fifty five dba that is a standard for a residential zone. This is a residential zone to a residential zone measurement. Secondly, they were under the assumption when they submitted the supplemental information, they were showing a six foot fence, and the plan that was presented at public hearing and the standard in the zoning regulations is a maximum four foot fence in a residential zone in the front yard and this property has two front yards. I pointed that out to the applicant. They asked for additional time to address those two issues, they had suggested possibly extending the height of the versa-lock wall which, they are creating wells out of versa-lock and they go to grade. Each well is between four and five feet deep and they were thinking about raising that versa-lock wall to a height of four feet. Between myself and the Building Department, I mean, that may or may not work. In my opinion, it's not going to screen

the unit, what they are proposing on Church Street because the unit sits in the well but it doesn't sit at the bottom of the well. The pipes, the air exchange pipes sweep under that into the building so it basically is an almost four and a half foot, I'll call it a curve or a stand and then you have a four and a half foot unit on top of that. So it's up, up out of the well. So there is the issue of screening that from an aesthetic point of view, and the more important issue of reducing the decibel and there is also the issue of eliminating it, completely eliminating it. They haven't provided us with the details that we can look at in the way of a profile of the unit, or how they would construct it to know whether it would comply with zoning. So we advised them of all these issues, and so they asked for a postponement. You have until your August meeting to vote on this. Until we see something that shows us how they are going to construct it, you know, there are a lot of loose ends with that. First, if they decide to attach any of this enclosure to the building, in staff's opinion that becomes an encroachment to the front yard setback and they would have to eliminate it. The issue of, on the Church Street side coming in over the domestic water line and the fire line, this is a big issue, particularly if you are talking about a masonry wall or a poured concrete wall on top of that. Raises the question of footing and frost protection and they didn't have answers to that, so we suggested that they get those answers before they pursue that. Over on the Pane Road side, that air handling unit is almost opposite the Planned Development Zone, that is the property that runs up from Progress Circle, not as close to any residential on that side, it's set back from the street, but they still in our opinion should have mitigation measures and fencing on that side.

Another outstanding issue is this issue of the draining the well on the Church Street side. They have a four inch PVC pipe going to a swale. If they eliminate that well, that system, they don't need that pipe. That was suggested to them. Or if they do that, either tying it into a forty five degree elbow so that it doesn't come straight out down the street, or tie it into the existing system as was suggested to them. They are in agreement that they would like to eliminate the handicapped space on Church Street. They would have to get permission from the State Building Department. They would like to reduce the magnitude of the sidewalks leading out to Pane Road from the exit doors. Those have to be made out of concrete, they can't be blacktop, and they need to redesign those. So those are the outstanding issues. Some of those are Site Plan and some are Special Exception, the ones that relate to the Special Exception, the architectural changes are directly related to these air handling units outside that were never shown on the original plans. So that covers both petitions, really.

Commissioner Ganley: There's a clock running on this obviously, since they have submitted. Do you think that by July 9th they'll have had an opportunity to make these corrections to the satisfaction of the Commission?

Ed Meehan: I don't know, I mean, you have two meetings in July to act on this, and then the sixty-five days is up. I think it's up August 2nd, if I recall.

Commissioner Ganley: Do you think it might be in their best interest, and it's a procedural matter, to simply reject their petition, which then gives them a sufficient amount of lead time to make the corrections and then resubmit because if what you are saying is true, they are just going to run out of time doing it this way, so maybe we ought to give them a fresh time at bat, is what I am getting at.

Ed Meehan: Well, I think that if they don't have something ready by the second meeting in July, that night they should do exactly what you said, I mean, you have sixty-five days, they may have time to satisfy that. It's difficult to give them constructive feedback based on a narrative of what they want to do. We really need to see it in plan and profile because if they, they may be submitting something well intended to satisfy the zoning issues like the height of the fence and the setback and everything, but if that doesn't address the noise mitigation and it can't be built,

they're just going around in circles, if they can't address the building code, like the frost protection and coming in over this domestic waterline, and the fire line, or they can't meet the wind load on the fence, or whatever it is, there are all kinds of different building code issues here, that drive the design of this. Then I think they may need more time and they should probably withdraw without prejudice.....

Commissioner Ganley: Withdraw or something, I don't know how well they are served by all who do these things for them.

Ed Meehan: Well, we have had exchanges with their architect, Regina Winters, very responsive the last couple of days but I think they need some engineering input here. Not just design input.

Commissioner Ganley: Would it be a practical matter just to advise them of what we think procedurally they ought to do, to kind of get out of this thing gracefully, but then have an opportunity to get back in, at another date.

Ed Meehan: We did tell them about, you know, that's why they sent that e-mail to us asking to be postponed and they understand that they have to get something to the Commission that is sufficient for the Commission to make a decision on by the second meeting in July.

Commissioner Pruett: In the original application, weren't the air handlers inside?

Ed Meehan: We were led to believe that they were because they didn't show anything outside.

Commissioner Pruett: Have they discussed going back to that modification, wouldn't they eliminate a lot of the problems here? Why don't they.....

Ed Meehan: I don't know. I don't know why, I mean, it could simplify certainly the issue of constructing these units outside. It seems to be that it's getting almost to the point of diminishing returns if you have to pour a concrete wall, you have to raise the masonry wall, you have to pay for expensive fencing that meets baffling requirements and may not solve the air.....

Commissioner Pruett: Even if they do that, I would like to see a report from a sound engineer that is going to certify that that problem is going to be eliminated, otherwise, you can't just vote it in, roll the dice and say they are going to eliminate that, it's just too speculative.

Ed Meehan: Yes, that was the message that I got from the Commission at the last meeting, and that was relayed to them, so they have come back with a couple of options, one being the masonry wall or the poured in place concrete wall which certainly would baffle it. They gave us decibel reductions but it creates a whole host of other questions, as I mentioned, some of these building code questions. I don't know what the lost space is inside by bringing this inside, or maybe looking to, these are basically roof top units they want to put on the ground, so they are seven feet long, four feet side, maybe four feet high, they are big units. They need I think, through their architectural professionals maybe some other options to address that, or, one of the things that I heard, and I can't, I'm not a sound engineer or a HVAC engineer obviously, but one of the things that they were talking about is putting part of the unit on the Church Street side in the building, and what they could put outside so that it would take up less space and reduce the noise. I think they are talking to their HVAC engineers about that option.

Commissioner Pane: Split system.

Ed Meehan: Split system, I guess you call it. Inside, that is where they have their domestic water and their fire line coming in that corner, so they have to make space for that too, so there has to

be a coordination between the construction, the code issues related to that, and the zoning issues. We just deal with the zoning issues, but they do drive each other, particularly on this site.

Commissioner Pane: I think Commissioner Ganley is absolutely correct. They should be advised that they probably should withdraw without prejudice and come back with a complete set of plans so that we can see everything and how it affects the residents. One of my other concerns is one of the residents told me that they were talking to the Building Official and the Building Official had pages of unanswered questions, and my concern would be, are any of those things going to affect the site plan, and thus change the site plan, and now the residents didn't have a chance to comment on any of those changes, similar to the last application which came in front of the Commission, the residents approved it, they gave their rubber stamp, the Commission approved it, but the air conditioning was inside, they weren't aware of this big commercial kitchen, and they weren't aware of this handicapped parking space. Then the town building official reviewed the plans and then comes back and says they want to change a couple of things. This Commission used to have the Building Official at the meeting, Wayne Bell used to sit here at the meeting, and he used to tell us whether things affected it or not, and we could be brought right up to date on things. I think the ball has really been dropped here because there are possible changes that could affect the residents even more so, without all the answers answered by the Building Official. It's not totally his fault because they haven't brought everything to him, so I think they should be told that they need to get everything answered, the kitchen should be answered, the air conditioning, the handicapped parking, go to the State, get the answer for the handicapped parking space. Get all the answers now, and then come back to us, when you have everything. Then we will know whether or not we will truly protect the residents. We will have a plan here, we'll be able to look at it and say, okay, all the concerns for the residents have been addressed. That would be my recommendation. Thank you.

Commissioner Fox: Thank you Madam Chairman. I agree wholeheartedly with Domenic and Tom and David that withdrawing without prejudice would be the best idea, because in my view, right from the beginning, two, three years ago, there seemed to be, I won't call it haphazard, but not that well planned out, and when they found all these changes had to be made, you know, this whole plan is very reactionary, rather than being pro-active. I mean, if we have to have a Building Official with us to tell us what, I don't think he can do that in just a public hearing, I think with any petition, with any application, all the i's should be dotted and all the t's should be crossed before it comes to us so that we have not that much to do with it, so I agree, maybe they should withdraw, start over again, get these plans right, and the biggest thing being the air handling units. I was wondering, I don't know Ed, maybe somebody here would know, you are talking about a unit seven by four by four, I was wondering, at least that one that is on Church Street if they can split it up?

Ed Meehan: Well, that is one of the options being looked at.

Commissioner Fox: Maybe using a total of four small units, interspaced, and maybe then they could fit it in another area.

Ed Meehan: I don't think they are talking about four, I think they are talking about part of the system inside and what they can put outside, they put outside. But as far as I know, from my conversations with the building department on where they are with their plan review, there are comments outstanding that the architectural firm has to address. The ones that affect the site plan, the footprint of the building as it relates to zoning, all revolve around these two utility wells. The other questions have to do with some code issues on the mechanical room, structural issues with the trusses, and then the other thing is that the building department applied after they got the new set of plans, the handicapped space, the exiting off of Pane Road, those are things that were not on the original plan.

I will send the message that they should take advantage of the opportunity to withdraw without prejudice if they can't you know, fulfill what they have to do over the next two meetings. I think they would certainly welcome that opportunity because they had two or three different professionals come before you, structural engineer, a soils engineer, the construction manager, plus their civil engineer who has been with the project, Jim Cassidy, since the beginning, so they have something invested in this, plus they bought the property.

Chairman Hall: Any other comments, questions? I have one, I'm assuming and I think we have talked about this, that this whole air handling system is heating and cooling?

Ed Meehan: Correct.

Chairman Hall: So we are talking twelve months out of the year, one way or the other.

Ed Meehan: Yes.

Chairman Hall: And my biggest fear with concrete and metal together is that they may be dropping it, thinking that they are going to baffle the sound, but it also could be just bouncing off that concrete wall and actually amplifying it.

Ed Meehan: It could be echoing and that is one of the things that we asked them, is, are you shooting yourself in the foot by pouring that concrete wall there? Not just structurally, but is it really going to muffle the sound? This is where an applicant needs to get professional input, through their architect who goes to a sound engineer. I think it was someone on the Commission who said, don't build it and then go across the street with a meter, we need to know this before.

Chairman Hall: Any other comments?

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

B. Petition 26-08 580 Church Street, Three Angels Seventh Day Adventist Church, owner and applicant, represented by James Cassidy, Hallisey, Pearson & Cassidy, Engineering Associates, 35 Cold Spring Road, Rocky Hill, CT 06067, Site Plan Modifications to Petition 04-05 approved March 23, 2005.

Commissioner Schatz moved that Petition 26-08 580 Church Street, Three Angels Seventh Day Adventist Church, owner and applicant, represented by James Cassidy, Hallisey, Pearson & Cassidy, Engineering Associates, 35 Cold Spring Road, Rocky Hill, CT 06067, Site Plan Modifications to Petition 04-05 approved March 23, 2005 be postponed to July 9, 2008.

The motion was seconded by Commissioner Pruett.

Chairman Hall: Comments? Anything we need to add to this one? I pretty much goes hand in hand with Petition A, any other comments, questions at this time?

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

C. PETITION 28-08 – 1096 Main Street, Roma Properties III, LLC, owner, Chad Kirby applicant for “Goldburgers” request for Special Permit Section 6.6 Liquor Use Restaurant, B-TC Zone District, waiver of minimum distance separation standards requested.

Commissioner Pane moved that PETITION 28-08 – 1096 Main Street, Roma Properties III, LLC, owner, Chad Kirby applicant for “Goldburgers” request for Special Permit Section 6.6 Liquor Use Restaurant, B-TC Zone District, waiver of minimum distance separation standards requested be approved the Commission finding that the service of liquor, at this small restaurant is in harmony with the purpose of the zoning plan for business uses within the Town Center area. (Section 6.6.4 B)

The Commission further determines that the request to waive the separation distance can be granted because in it’s opinion this restaurant liquor use permit will not create a concentration of liquor outlets in the area (Section 6.6.4.A); the proximity of use will not adversely affect the near by church property (Section 6.6.4.C); and the restaurant’s liquor use will not create traffic hazards (Section 6.6.4.D).

Conditions of Approval

1. Liquor use shall be limited only to beer and wine sales.
2. Evening hours of operation shall end at 10:00 p.m., seven days per week.
3. Modification to the kitchen equipment shall be submitted to the Building Department and Fire Marshal for review and approval.
4. Service of beer and wine at outside seating shall comply with the requirements of the Department of Consumer Protection.
5. The Special Permit Certificate of Approval shall not be signed by the Town Planner until the applicant submits to the Town Manager:
 - a. Revised outside seating layout.
 - b. Revised Indemnification and Hold Harmless Agreement.
 - c. Certificate of Liability Insurance binder naming the Town of Newington as additional insured.
6. This Special Permit for restaurant liquor use is limited to the applicant doing business as “Goldburgers” and is not transferable without prior approval of the Commission.

The motion was seconded by Commissioner Kornichuk.

Chairman Hall: Discussion, any comments Ed that you might have?

Ed Meehan: No, I don’t have anything.

Commissioner Fox: I’d just like to make a few comments for the record, not to try to wave anybody one way or the other, but I can’t help but wonder how many waivers you can give in one area like this. I agree that it is a small restaurant, and it probably will not cause any problems. I do feel that, and that leads me to think that maybe one of these days there will be undue concentration of liquor outlets, although this is not a full restaurant permit, it’s just a beer and wine permit. I don’t really like where this is going, I personally really don’t think we want to see every other store front being a liquor outlet, being some place that serves liquor, whether it’s a full restaurant or a beer and wine permit. That being said, I’ll rest.

Chairman Hall: Any other comments, questions?

I know what you are saying Mike, it’s just that I think that when you are a small business owner, and you try to provide to the public what the public wants, or what you think they want, and I think

in this economic time, in particular for business people, I think in the past couple of months, we've seen several businesses that we thought would never even consider a liquor license, I think it's just one more way of having them try to stay in business, honestly. So I think we have to question do we want to stand in the way of that, if it doesn't cause what we consider to be a hazard or a problem, I don't know, I know what you are saying in the sense that it seems like we are having quite a few of these all of a sudden, I think it is probably a sign of the economic times more than anything else.

Commissioner Fox: That may very well be, and that is, but I don't know what that says about how the restaurant owners in the town, what they think of the clientele in Newington. I'm not being sarcastic, I'm not casting aspirations or anything, but I think what they are telling us is, you know, we can't operate a restaurant, or even a Laundromat without serving liquor. I mean, I getting into too abstract things, I mean, right now there is something like seven bars between Lowry Place and the north side of East Cedar Street.

Chairman Hall: Or liquor licenses.

Commissioner Fox: Liquor licenses, okay, and that doesn't include the package stores.

Commissioner Ganley: If I could draw your attention to that rendering of the center of town, which has been approved for some improvements to the tune of about a million bucks, I would suspect that we are then going to see some more come in as the various businesses probably modify the rear portions of the buildings facing on the revised center and in fact come into us with probably want to put a deck you know, for a cocktail lounge out there, I don't see it lessening quite frankly, I see the thing is going to expand, I think you will see an opportunity there for business purposes to probably say look, we can expand the back of the building, put a deck on it, apply for a liquor license, and have some people looking out at this pavilion, or green or fountain, or whatever it is out there, so I don't see, your point is well taken, I don't see an end to this, I think this is going to provide an opportunity for more applicants to come in and realize the business opportunities, so I think we are going to be wrestling with this for a while, but I don't have an answer as to how we are going to handle it.

Chairman Hall: I don't think we do, because I think a viable town center, whether or think of Middletown, or West Hartford, or even Collinsville, which isn't a bustling metropolis, but when you have a place of public gathering, it seems as it, if you don't have a liquor license, you are limited in what you are able to do, business wise. Whether it's a sign of the times, or what, but if it is, now the flip side of this is, if we find as time goes on that these become problems, what is our recourse. Let's say we do encourage business and approve these liquor licenses and what all, what if a couple of years down the road we find that there is a problem, what recourse do we have?

Commissioner Pane: Madam Chairman, this could have a time limit couldn't it?

Ed Meehan: The suggested motion says that it's not transferable, without.....

Commissioner Pane: Couldn't it have a trial time period, under Special Exception?

Ed Meehan: For things like day care facilities, you do require renewal, one or two years, I think you did that once with one liquor establishment, and then eventually released that, but you kept the imposition on it that it had to be approved by you before it was transferred to keep track of what was presented to you, and your understanding of how it was operating was going to be continued if it was transferred.

Commissioner Fox: We do that with automotive use, don't we?

Ed Meehan: Yes.

Commissioner Pruet: I see what Mike is saying, I don't think there is anybody in the center who came forward and objected to it, so you know, your point was well taken, we have to change with the times, I think if we didn't this guy would definitely go out of business. I think he's a good business owner in the center and I think would go along with it, again the analogy is Farmington Avenue, West Hartford, I mean, you walk out the door, there is bar, bar, bar, bar liquor license. I think if it was going to be a negative effect somebody would have come forward with infringement on other people's business or if there was a problem for the public they would have come forward.

Commissioner Pane: I would just like to say I think Commissioner Fox has got a good idea, we should be keeping an eye on it for the rest of the town center though, just keep an eye on it because we don't want it to get out of hand. I came in about four or five minutes after seven, and it looks like, is this plan for the town center here, is this something that was discussed or.....

Chairman Hall: No, this was here when we got here tonight.

Commissioner Pane: Wasn't sure if I missed something, thank you Madam Chairman.

Chairman Hall: Any other comments, questions?

Commissioner Schatz: I don't see any harm in it, I listened to everybody else, I don't see any harm in it at this point in time. They're not putting a washer and dryer in the back.

Chairman Hall: Again, it's a businessman trying to create and maintain?

Commissioner Kornichuk: Ed, through the Chair, is there a way that we can put a time limitation on this, where we can look at it again? I know you said that we did it to automotive, is there anything in the regulations that says we can.

Ed Meehan: Yes there is.

Commissioner Pane: We could ask them to come back in twelve months, or twenty-four months?

Commissioner Kornichuk: I just wondered if there is something in the regulations that says we can't do that?

Ed Meehan: Section 5.2.9, the Commission may attach a time limit to a Special Exception or a Special Permit when it determines that such condition will protect adjacent property and character of the neighborhood. If the time limit is made a condition of approval, the Commission may revoke it for due cause after public hearing. So if you put a two year time limit on this, after two years, usually it's the responsibility of the applicant to ask for renewal and to come back before you, and if you have issues, then you have a public hearing and after due process you can cancel the public hearing, it's like a conditional use almost, something that is a conditional use.

Commissioner Kornichuk: I wouldn't see any problem with putting a two year time limit, if this is going to satisfy the rest of the Commissioners, make them feel a little better, what's the harm?

Chairman Hall: There isn't and I think after two years we are going to know the outcome of this situation anyway.

Ed Meehan: The only feedback that I have gotten on that just to share it with you, some businesses if they are in a lease situation, a time limit could affect the lease negotiations or they probably would have to time this special permit for liquor with their annual license with Consumer Protection. It's about a six hundred dollar per year permit. That would be the mechanics that they would have to work out. This is purely an area where the Commission has discretion, and the whole conversation about what you want to see in your town center is your purview as land use makers, policy makers.

Chairman Hall: And that leads to another question that I have. Let's say Chad Kirby is no longer permittee of Goldburgers, does this approval run with the property or would it run with him?

Ed Meehan: The way I would interpret it is if it maintains its operations as Goldburgers, and it's maintaining the same type of operation that it presented to you, it's closing before ten, it's serving beer and wine, it's taking care of all it's requirements for using the public right of way, the public seating and Chad Kirby sells it to Joe Smith, as long as it maintains that, it's okay. It's when they try to change it from Goldburgers to some other type of bar/restaurant operation, and it's not what the Commission understood with it's approval, so that is when they would have to come back.

Chairman Hall: So we do have that right.

Commissioner Fox: Through the Chairman, Ed, so if Chad Kirby decides to sell the business, and stops being the permittee and moves somewhere else, he can't be the permittee so he sells the business to somebody and they keep the name Goldburgers, but they have a new permittee.

Ed Meehan: The way that I see this, as long as they are operating the same way that they presented it to you, it doesn't make any difference whether it's Chad Kirby the permittee or John Jones or Joe Smith or whatever, it's the operation of the business from a land use point of view.

Commissioner Fox: All right, then clear this up for me, you have a new permittee, he keeps the name Goldburgers, but he wants, maybe called Goldburgers but he no longer serves food except for sandwiches, to satisfy the state statute, so it's just a bar now, he may still only be serving beer and wine, but it's a different use.

Ed Meehan: As long as he has that Department of Consumer Restaurant permit for beer and wine, that's why that is in there, he's complying with what they presented to you. If they came back and said, or this guy said, I want to now change this to a full liquor permit, he'd have to come back to you.

One thing that you should know when you waive any distance separation, it requires a two thirds vote.

Commissioner Pane: Commissioner Kornichuk mentioned a time line, are we going ahead with anything like that or not?

Commissioner Kornichuk: Through the Chair, is it the will of the Commission?

Commissioner Fox: Well, just to throw this out, to see if it is the will of the Commission, and for discussion if you want to, I move that we add Condition number seven, and state, this special permit for restaurant liquor use will be reviewed twenty-four months after the issuance of the liquor permit by the State Liquor Commission.

Commissioner Pane: I'll second that.

Commissioner Ganley: Well, we can't direct the State Liquor Commission.

Commissioner Fox: No, we're not.

Chairman Hall: It kind of sounded like that was what he was saying, but I know what he was saying.

Commissioner Ganley: But what he said is going to be in writing.

Ed Meehan: I interpreted that if they issue the permit on June 30th, it's twenty-four months from June 30th.

Commissioner Fox: Twenty-four months from June 30th, the town Planning and Zoning Commission will review it.

Chairman Hall: Any comment or discussion on the addition?

Commissioner Pane: Madam Chairman, some of the Commissioners were concerned about it changing use and stuff, you could make this just for Chad Kirby himself and Goldburgs. It was mentioned, I just thought I would mention it.

Commissioner Fox: I don't think that is necessary.

Chairman Hall: All right, so we will vote on the amendment.

The vote was in favor of the amendment, with five voting yes and one nay (Schatz).

The vote on the petition, as amended was in favor of the petition, with six voting YES.

D. PETITION 31-08 – 1052 Main Street (Rear) Motta Investments owner, Salvatore Motta, 12 Cumberland Place, Rocky Hill, CT 06067, applicant request for Special Exception Section 3.12.1 Restaurant Use, B-TC Zone District. Hearing closed June 11, 2008. Sixty five day decision period ends August 14, 2008.

Commissioner Fox moved that PETITION 31-08 – 1052 Main Street (Rear) Motta Investments owner, Salvatore Motta, 12 Cumberland Place, Rocky Hill, CT 06067, applicant request for Special Exception Section 3.12.1 Restaurant Use, B-TC Zone District be approved based on the following:

1. Restaurant use is appropriate within the Town Center Business District and compatible with adjacent land uses.
2. Parking for the restaurant use will be available within the municipal parking lot on land that was donated to the Town by the previous property owner of 1052 Main Street.
3. The restaurant area shall occupy not more than 885 sq. ft. of the renovated floor space at 1052 Main Street (Rear), final floor plan layout shall be approved by the Building Official and Fire Marshal.

The motion was seconded by Commissioner Pruet.

Chairman Hall: Discussion, Ed, anything that you want to add to this?

Ed Meehan: The only thing that I would add that this number three condition is important from the respect that that floor plan layout that was submitted by the applicant, we discussed it with the building department before it came to you, we noticed some issues with handicapped accessibility and the dimensions of the proposed bathrooms very close to the kitchen area that

are going to have to be changed which will I believe downsize the occupancy of this, so that is why that is in there.

Commissioner Kornichuk: I have one question? Wasn't this supposed to be for wine? You know, a restaurant with wine, should we have that in there?

Ed Meehan: There is a companion application that goes with this.

Commissioner Schatz: Are we going to add the same thing we did with the first one?

Chairman Hall: That would be Petition 32-08. So we will get to that in a minute. Any other comments or questions on this as far as the restaurant use?

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

E. PETITION 32-08 - 1052 Main Street (Rear) Motta Investments owner, Salvatore Motta, 12 Cumberland Place, Rocky Hill, CT 06067, applicant request for Special Permit for Liquor Use – Restaurant, B-TC Zone District, waiver of minimum separation distance requested. Hearing closed June 11, 2008. Sixty five day decision period ends August 16, 2008.

Commissioner Pruett moved that PETITION 32-08 - 1052 Main Street (Rear) Motta Investments owner, Salvatore Motta, 12 Cumberland Place, Rocky Hill, CT 06067, applicant request for Special Permit for Liquor Use – Restaurant, B-TC Zone District, waiver of minimum separation distance requested be approved the Commission finding that the service of liquor, at this small restaurant is in harmony with the purpose of the zoning plan for business uses within the Town Center area. (Section 6.6.4 B).

The Commission further determines that the request to waive the separation distance can be granted because in it's opinion this restaurant liquor use permit will not create a concentration of liquor outlets in the area (Section 6.6.4 A); the proximity of use will not adversely affect the near by church property (Section 6.6.4 C); and the restaurant's liquor use will not create traffic hazards (Section 6.6.4 D)

Conditions of Approval

1. Approval is granted for a full restaurant liquor permit.
2. There shall be no entertainment and no outside seating for this restaurant use.
3. Hours of operation shall be Tuesday and Wednesday 11:00 a.m. to 11:00 p.m.; Thursdays 11:00 a.m. to 12:00 a.m.; Friday and Saturday 11:00 a.m. to 1:00 a.m.; and Sunday 4:00 p.m. to 9:00 p.m.
4. This Special Permit for restaurant liquor use is limited to the applicant and is not transferable without the prior approval of the Commission.

The motion was seconded by Commissioner Kornichuk.

Chairman Hall: Discussion again, Ed.

Ed Meehan: I don't have anything to add.

Commissioner Pruett: Probably put the same stipulation as we did with the Goldburgers to review it in two years. You know, you can't have one without the other.

Commissioner Fox: He's applying for a full restaurant liquor permit, because you know, all he talked about was wine, if I remember correctly.

Ed Meehan: He talked about a wine bar, but in the query between Commission members and me, and the applicant, he mentioned that he wanted a full liquor permit, it's in the minutes. A wine lounge, he called it.

Commissioner Schatz: The hours are different from Goldburgs?

Chairman Hall: Well I think that 1:00 a.m. is, Friday and Saturday until 1:00 a.m.

Ed Meehan: Yeah, this is what the applicant put into the record.

Chairman Hall: I think Goldburgers is up to 10:00 p.m. Other questions, comments?

Commissioner Ganley: Don't we have to put the amendment in?

Ed Meehan: Twenty-four months after the issuance of the Consumer Protection Liquor License.

The vote was in favor of the amendment with five voting YES, and one abstention (Fox.)

The vote for the petition, as amended was in favor of the motion, with five voting YES and one abstention (Fox.)

Chairman Hall: I would like to move down to public participation at the moment, there is a reason for that, well, actually, let me take this back, Petitions for Scheduling, Petition A., I would like to ask if there is anyone who would like to go into executive session.

Commissioner Pruettt: Motion to go into executive session.

Commissioner Fox. Second.

Chairman Hall: All right, and we will move that to after Item 11. So we will move Petition A, to Item 11A, we'll call it.

VIII. PETITIONS FOR SCHEDULING (TPZ July 9, 2008 and July 23, 2008.)

- A. Petition 70-06 – 57 Church Street, John A. Amaning applicant and owner, c/p Attorney Vincent F. Sabatini, One Market Square, Newington, CT 06111 request for Special Exception Section 6.7 Interior Lot, R-20 Zone District. Denied by Commission, January 10, 2007, remanded back to Commission pursuant to Memorandum of Decision, March 26, 2008, Henry S. Cohen, Judge. Schedule for presentation July 9, 2008.

IX. PUBLIC PARTICIPATION

(For items not listed on agenda)

Stephen Tabor, Rockledge Drive. I was reading the minutes of the past prior meetings and the bond on the slope grading on the property of the adjacent property owner, 62 Rockledge Drive is going to be called on the 28th of this month. Is there any update on that, or.....

Ed Meehan: I believe it is the 26th. There is a scheduled site inspection, I believe it is the 26th, tomorrow, and if the work is not done, Mr. Webster, who posted the bond is notified and we cash

his money in the financial office and through the Town Attorney we approach Mr. Alderi, say we want to come on his property, he has to give us a hold harmless and all those things and we will proceed to install the landscape plantings.

Stephen Tabor: Now, here's the thing, what's the time line on this? Are we talking months, or in the fall probably?

Ed Meehan: Well I think optimally we'd be better to do it when the weather cools down a little bit.

Stephen Tabor: Right. And I will be notified prior to this happening?

Ed Meehan: If you so request, we will notify you.

Stephen Tabor: Yeah, I have requested it in writing.

Ed Meehan: I think you are on record as granting permission.....

Stephen Tabor: Yeah, I put it in a letter to Art Hanke.

Ed Meehan: Okay, so we will do that. We did have a conversation with your neighbor and they just said they are not going to do anything, so that is why this Commission was notified and they proceeded.

Stephen Tabor: Now the issue of the bond amount, and how the bond is taken, and what determines the bond amount, the bond is secured for the purpose of the proper grading of that slope, okay, now say it can't be done for the bond amount, is the Town of Newington still responsible?

Ed Meehan: I don't think so. The bond was taken for three items, if I recall, one was the connection of the roof leaders to the street system; we have an agreement on that; one was the grading, which the property owner claims was done, and you know there was grading done there because it ended up on your property; and the third was this landscape plan.

Stephen Tabor: What grading was done?

Ed Meehan: There was removal of some of the top part of his site.

Stephen Tabor: I beg to differ on that. It's been eroding down onto my property and what I am wondering is like when you guys come out to do the work, you've got to remove all that material that is on my property, correct? All the erosion, over four years time.....

Ed Meehan: I don't know what we are going to do yet until we get out there. We're going to do the best we can with the money we have to do some sort of a ground cover which will hopefully stabilize that slope.

Stephen Tabor: Because see what, from the beginning of this, four years ago, I keep saying, you guys keep insisting on planting flowers or planting ground cover, I'm saying more grading, with excavators, dump trucks, you know, you have to get tri-axles in there to grade it to get the proper slope and if the proper slope can't be achieved according to the subdivision requirements, you need to put a retaining wall in there. Now, you take the \$2500.00 bond, who determines the bond amount and if the Town is negligent in not taking the proper amount of bond money, the Town is responsible, yes?

Ed Meehan: No. I don't think what you want with a retaining wall, tri-axles, and heavy equipment is the practical way to handle this and there was material removed because I believe you were trying to get repayment of money from.....

Stephen Tabor: Oh, that was when the house was built.

Ed Meehan: And that was when the material was, there was a c.o. issued then, at that time, to him, and the material ended up on your property.

Stephen Tabor: From Larry Webster.

Ed Meehan: Yeah, so they came in and graded it. We are going to try to do the practical thing, whether it will keep both neighbors happy, I doubt it. But we have to do it within the parameters of the \$2500.00, and if there are legal charges, that is outside the \$2500.00.

Stephen Tabor: Legal charges for who?

Ed Meehan: For the Town.

Stephen Tabor: Now, in terms of like, when I was at a prior meeting here, you guys all voted and said it is to be graded to the full satisfaction of the Town and me, Stephen Tabor, so

Ed Meehan: I don't recall that.

Stephen Tabor: Yeah, it's in the minutes

Ed Meehan: To the full satisfaction of.....

Stephen Tabor: To the full satisfaction of me and the Town. Now if it's not graded to my full satisfaction, I go out there and look at it, and say, this is unacceptable, the grade hasn't changed, it's not acceptable. What is my recourse after that, if the bond money is used up, do we let it remain in violation indefinitely.

Ed Meehan: Maybe you and your neighbor can work it out.

Stephen Tabor: Well.....

Ed Meehan: Because we are not going to keep getting in the middle of you guys.

Stephen Tabor: Well it's not the fact that you are in the middle, you set the requirements for the subdivision, you enforced those requirements....

Ed Meehan: I beg to differ with you, we've been over this before, five years now.

Stephen Tabor: Right.

Ed Meehan: Both plans busted the subdivision design, you both built custom houses that changed the layout.

Stephen Tabor: So did everybody else on the street.

Ed Meehan: But everybody else worked together and they blended their sites.

Stephen Tabor: They didn't have a slope like we did.

Ed Meehan: Well, some of them didn't overfill their property in the beginning, like you did, and encroached on the town property, they didn't change it dramatically like you did and Mr. Alderi did, so there is enough, in my opinion, blame to go around for everybody. We have been trying to make this work for five years. This is, in my opinion, the final way that we are going to get it done. There is erosion, there is not a lot of ground cover there in the way of soil, we'll do the best we can. We'll have to go out and through the town procedures, basically get quotations from landscape companies, and I think most of it could be done with a couple guys working out there with small equipment, in my opinion not much more than a couple of wheel barrows and some soil and maybe some mulch, and fit in what they can to stabilize that slope. But to go at this thing with heavy equipment, bobcats or anything else, is going to cause more problems than it is going to solve.

Stephen Tabor: But see, when I applied for my building permit, I received an approved plot plan for my home which gives me permission from the Town of Newington, says, okay, everything is fine, we checked everything, you can build your house. So you guys assumed when you issue the plot plan you check all the grades. The Town is responsible for verifying all the grades of adjoining properties and everything are in compliance with the town requirements. So you issue my permit, to build, you stamped that plan approved, I build my house to that plan, yet that's.....

Ed Meehan: And it took us two years to get the as built.

Stephen Tabor: What do you mean two years? I had my as built as my house was built, then you guys lost it, and I had to have another as built done last year.

Ed Meehan: It wasn't last year, it was.....

Stephen Tabor: The year before.

Ed Meehan: It took a couple of years to get the as built.

Stephen Tabor: I still don't have a c.o.

Ed Meehan: Why not?

Stephen Tabor: You guys never gave me one. I met everything I had to do.

Ed Meehan: That is something you should take up with the Building Department,

Stephen Tabor: Right.

Ed Meehan: If you want to live in a house without a c.o., that goes beyond what this Commission is involved in with. That is basically building code issues. But we are going to try to do the best we can, and I don't think we can resolve everybody's problems down there, but there are twenty-six houses built in that subdivision and some of them did have.....

Stephen Tabor: Twenty.

Ed Meehan: Twenty. Twenty, I stand corrected. There were quite of bit of changes as some of the custom houses came in on both sides of the street, and the neighbors have worked it out. I don't feel that the Town is responsible for some of the things that you are saying that we are responsible for.

Chairman Hall: I know that when we did take that action, we did it in good faith and we will assume that the Town will also do its job in good faith, and it will work out fine. Does anybody have a question?

Commissioner Pane: Madam Chairman, through the Chair, I just have to say I agree with Ed. The only way to correct this is by hand, you're going to have to put some top soil back up on the slope, add some ground cover and then maybe add some mulch, maybe a couple of boulders here and there to reduce the water from coming over. I know it's not going to be perfect for the applicant, or for Steve here, you might not be totally satisfied, but the erosion will stop, and that, lets face it, this whole thing is not going to be a perfect situation here, but this \$2500.00 should stop the erosion onto your property. I think that is a big achievement.

Stephen Tabor: The only thing that I am worried about is that slope is nearly a ninety degree angle right now. Just throwing some top soil on it, it's still going to erode, they need to do something with the angle of the slope, and that means equipment.

Commissioner Pane: No, if you add that, you could even add some jute fabric, they have fabric you could add and then plant the plants in there, the fabric will hold, okay, the fabric gets pinned to the soil and that will hold the soil back, and then add some mulch and then the plantings, and when the plantings continue to grow, it should lock the soil in there. So, it's not going to be what you exactly want, but it will, what the Town Planner is planning on doing over there will stop the erosion.

Stephen Tabor: But before they allow for everything, all that stuff that is on my property, should I dig, clean it up?

Commissioner Pane: No, leave it alone. Let them take off the soil that has eroded down onto the ground, and then if they have to reseed some of your area there, that's all hand work. Have some confidence in the Town Planner. I think he will take care of your project.

Stephen Tabor: Okay, thank you.

Chairman Hall: Thank you.

Getting back to public participation, anyone else from the public wishing to speak?

X. REMARKS BY COMMISSIONERS

A. Discussion of Accessory Apartment Draft Zoning Regulations

Ed Meehan: I just put this on because the Commission members had just a quick glimpse of it at the last meeting, and we have been discussing it for several months. You received comments from the Town Attorney; we did some research in neighboring towns, how they address it, so the draft is for your consideration. If there are changes that you want to make to the draft, certainly will be happy to do that for you and you know, I think eventually you want to bring this back as a policy issue to public hearing. If you want to put it back in the regulations, you have to go through the public hearing process and all the notices associated with that. If you haven't got specific changes, the other thing is to bring it to public hearing and give the public a chance to give you their insights into it and then you have the benefit of that before you adopt it. If you make substantial changes you've got to go back to public hearing again, so that is why I was trying to get as much from you now as possible. Substantial changes will be, they would have to be pretty dramatic. Say you eliminated the requirement for architectural compatibility, I think that would have to go back to public hearing. Or you said that an accessory apartment had to have at least

a thousand square feet, something like that, measurable changes to the regulations. Small changes wouldn't have to go back to public hearing.

Chairman Hall: Questions, comments?

Commissioner Ganley: Regarding 6.13.1, the occupancy of at least one residence shall be by a person 62 years of age and older, the Town Attorney's letter, "therefore in closing, it is my advice that any regulation reinstating accessory apartments stay clear of any blood, marriage or adoption requirement, and that age restrictions be avoided as well." That is the letter than he sent to us some time back including his opinion of our doing away with accessory apartments in the first place. So I think we ought not to get back into that again and just eliminate that age requirement.

6.13.3, I was thinking maybe give the applicant a range and what I had written down to myself was this, accessory apartments shall contain at least twenty five percent but no more than thirty percent of the gross livable floor plan provided that the twenty-five percent required, minimum cannot be less than 500 square feet. So we give them a range to come in with. He can't exceed thirty, but he's got to have at least twenty-five. In other words, I don't want to see him come in here with, asking to build a hovel in the building, so I'd like, well, you know, they will get away with what they will can away with, so if we can get him up to twenty-five or thirty, at least it will be some reasonable living space for the person.

The other thing is, under the old philosophy of, called in-law apartment at the time, it was access to the primary living area. This is going to be an apartment and anybody that person can rent to is going to live there, so I'm suggesting no access to the primary living area. That the person accesses the apartment that they are renting just from their own private entrance, and in addition to that, the floor plan of the accessory apartment shall be submitted to the Fire Marshal to ensure that the placement of the doors providing access to said apartment shall serve as safe and timely exits during an emergency. The building is configured differently, I'd like to be sure that the Fire Marshal is satisfied that should something occur, since there is not going to be any access to the primary living area, which in most instances is up three or four steps by the way, that he may require a second door to get out of there. I'd like him to make a pass on what he thinks about this, depending on where the utilities are placed and how those utilities will access that apartment.

The other one is, the accessory apartment may have common utilities. I'm saying shall, in both instances. Shall have common utilities, let's see, shall have separate metering devices and separate utilities, because it's an apartment.

Commissioner Fox: May have separate, not shall.

Commissioner Ganley: Handicapped, I think we have to be told up front if there is an handicapped person in there, and that should make us look once again at the plan, especially having the Fire Marshal make a pass on it, and I think that the applicant should signify on the application if a handicapped person is going to be in there, so we will know up front what the purpose of the apartment is. It may be someone he knows, wants to rent to, and I think we have to take a look at that, we have to know right off the bat, and that has to be included in the regs so we can review that line with accommodating properly by virtue of the site plan and the (inaudible) of the handicapped person. Those are my comments, thank you.

Commissioner Pane: Madam Chairman, I'd just like to state for the record, and I'm not going to get into this too much, except some of those conditions that Commissioner Ganley has proposed is just promoting apartments, and we're trying not to do that. For instance, the separate entranceway, if it was truly for family, and it truly had special needs then they would not mind entering through the regular residence, okay, so that it still looks like a single family residence. Number two, separate utilities, absolutely not! Now you've got two family apartments in a single

family dwelling, possibly. I would not recommend having separate utilities. And there are probably a few other comments but I will reserve those for later. Thank you Madam Chairman.

Commissioner Fox: Thank you Madam Chairman. I think that, I have to agree Tom, that you are actually dividing these two residences from each other and I really don't think that is the idea of a quote unquote accessory apartment. We had discussed possibly having interaction between the two residences, sliding doors or whatever and no other exit. I was thinking about that, and I think there should be an exterior exit from the accessory apartment only for fire safety, but I don't think they should be excluded from the main dwelling, and nor do I agree with separate utilities. That's all I have right now.

Chairman Hall: Any other comments, questions?

Commissioner Schatz: I understand what Tom is saying, and Commissioner Pane, I understand that, I think if there is a need for this, and we don't know, unless there is a public hearing on this, and as the attorney said, there were some things that we had in there that shouldn't be in there, so work around those things. I think if I had my folks in an accessory apartment, I would want to be able to get to them as quickly as possible from the inside. But on the other hand, I can see where they would want to come and go as they please, too, to come in from the outside on their own, and they probably would want to pay their own bills. My feeling is that it should go out for a public hearing and let's see what the public wants. If they are there, fine. If there is a need for it, fine. I read through all these, and there are things in each town that I like, and some of them are a little crazy, but I feel it should go out to a public hearing. That's where I'm standing, what we want to change and talk about, that can be done in the public and the public will have their comments and there may be some things that they would like to see incorporated that we're not even thinking of.

Commissioner Pruet: Just a clarification from Ed, on 6.13.4, the apartment shall have at least one means of its own outside access convenient to the parking area, that's in conjunction with the main entrance? I think that would suffice with what Tom was alluding to for an extra exit.

Ed Meehan: Yes, that is the intent here, but the architectural style of the home has to be maintained. It has to look like a single family home, say with duplexes, you have two front doors right next to each other, that would not be what we are looking for here.

Commissioner Pruet: But still, I mean, maybe more definition to it, explain further that it would be a safety exit, another exit on the premises, besides that one door. It just seems a little unclear to me.

Commissioner Ganley: Yeah, what it is, just to clarify the clarification. What we are trying to is, we are trying to put some descriptive adjective into a type of an apartment which we don't need any more, because our own town attorney says we can't do it by age, by adoption, we simply can't do it, and I've got it right here. We simply can't do those kinds of things, so discussions about, we can't keep anybody from renting that apartment. If I read this thing literally, who ever comes knocking on the guys door and says, I want to rent that apartment, can rent it. That is what the indication is here. Therefore, it's not an accessory apartment, it's not an in-law apartment, it's not any other fancy name that you might want to call it, it's an apartment, that someone is renting. That's exactly what it is, they are converting a house to that they can rent an apartment to someone. If you are going to do that, I'm suggesting that you make it a bonafide apartment. A couple of doors, their own metered service, whatever else goes along with that. I don't want to see the guy converting a linen closet in the laundry room, and coming in and trying to tell us that it is an apartment. It's got to look like a useful, livable, functional apartment

because my thing is, based on this here, that's exactly what it is going to be. No matter we try to gerrymander these fancy terms about it. It's an apartment.

Commissioner Pane: The Commissioner has a very good point, so maybe, we shouldn't even put it back in the regulations.

Commissioner Ganley: You know something, I believe you haven't covered me. I think you flipped my last card that was face down on the table.

Chairman Hall: Any other questions or comments? The only thing I will say is that I think we have a philosophical disagreement here and I think over the course of discussion of this that is what we will have to iron out, as to what the opinion is of this Commission. We have been quoted the Town Attorney's opinion and I stress opinion, and it is up to us, over the next course of time to establish what we want to have as our regulation, whether we are talking rental or simply accessory apartment. I think the title should give us some hint when we call it accessory, but that will be fully discussed and eventually agreed upon. Any other comment?

Commissioner Ganley: Bear in mind, our own attorney is going to have to defend us when someone takes issue of how cleverly we attempt to craft this thing, keep that in mind folks.

Commissioner Camerota: I had a couple of comments. I did note, and this may help the accessory apartment/rental apartment issue that some of the regulations had a purpose to it. We might want to consider putting what the purpose is if we are going to consider bringing it back in. And then on the architectural style, I think it was in the Glastonbury regulation, if you convert a garage you have to remove the garage doors and make it look like it's part of the house. I think maybe adding something in there would make sense. And then, I'm not really sure of the parking, if it's really sufficiently addressed. Having just three off street parking spaces when there is an accessory apartment, I can see, you know, you have two parents and maybe two teenage kids, and then grandma moves in, possibly five cars if grandma is still driving. So maybe having two additional, when you have an apartment, having two additional spaces in addition to what you already have.

Commissioner Fox: Through the Chairman, Ed, are there any regulations that state the number of cars in a driveway, or the width of a driveway?

Ed Meehan: Yes. You have to have off street parking in Newington for your vehicles, it has to be on a hard surface, it has to be a certain distance from the property line, and normally it's a minimum of two spaces per home. This regulation talks about adding a third one, so they have three. Now you could add additional pavement as long as you don't pave more than fifty percent of your front yard and don't encroach in the five foot setback.

Commissioner Fox: But there is no maximum? Like if you have two bedrooms.....

Ed Meehan: No. I mean, it says at least three. If they thought they had to have more, then they could add, as Michelle said, a fourth or fifth space, but they have to meet those standards, those design standards.

Commissioner Camerota: I was just thinking of when I was on the ZBA and we would always have this issue with off street parking and people coming in, so maybe that would be a way to kind of get them to deal with it before it becomes an issue.

Chairman Hall: Anyone else?

Ed Meehan: The only question that I have, and these are really good comments, the type of feedback that we need, is this issue as to whether you want to limit it to elderly or not. I'm not sure the Town Attorney's letter back in March said you couldn't.

Commissioner Ganley: Read the last sentence.

Ed Meehan: The last sentence says, "therefore in closing it is my advice that any regulation reinstating accessory apartment stay clear of any blood, marriage or adoption requirement and that age restriction be avoided as well." But also, he talks about cases where that is a protected class. This is definitely a policy decision. How open do you want to make this? I think there was only one town, I think it was Berlin, that restricted it by age. The other four or five that we looked at, it was just an apartment. Anybody could live in it as long as they met the design requirements. That's your call.

Chairman Hall: To be continued. Any last comments on this?

B. Discussion of Draft RFP for 690 Cedar Street, National Welding.

Ed Meehan: I got some feedback from the town, I penciled those into the RFP. It's still a work in progress. The environmental consultant is scheduled to come before the Town Council at their meeting on July 8th, to give the Council a complete update on 690 Cedar Street as to where they are with the environmental reports, and want to also that evening talk about possible strategies as we get closer to a foreclosure date, and the options that we have for doing some of this work at our town level, with grant assistance, or turning it over to the private sector. So if there are any more comments on that RFP, it's nothing really pressing, it may be over the next month or so, feedback is always appreciated.

Commissioner Schatz: I have a question, our hotels are limited to four stories?

Ed Meehan: Correct.

Commissioner Schatz: So if somebody wanted to build a hotel there, just for the sake of talking about it, they wanted to build a hotel there, then the third floor would be at ground level, street level at this point. See what I mean?

Ed Meehan: Well, it's in a hole, about twenty-two feet below the grade.

Commissioner Schatz: So you would have two stories below street level, so a builder could come in, maybe we could make an exception if a hotel wanted to be situated there, say a hotel, he could put two stories of parking, and then put the four stories on top.

Ed Meehan: This site has advantages for that. My guess is that the way that the RFP is written it's trying to set a quality standard of what the town is looking for in relationship to the busway and the project next door. That a developer is going to look at your regulations, essentially the Planned Development zone which limits the height and density, and because of the economics of a project like this, come back with some of the things like you just suggested Bob, or try below grade parking, or even try to increase the density, because it's four and a half units per acre now is permitted in the PD Zone, twenty-four acres and the return on investment on a site like that is not going to make it. The value of the site is going to come back to what this board feels is reasonable in that location, for that part of town.

Commissioner Schatz: I think once that goes out I think it will surprise you on how many returns you will get.

Ed Meehan: We hope so, but because of the traffic at that intersection, and the busway and this whole issue with transit oriented development, energy cost, I think you are right. The big nut is going to be what is it going to cost to take the building down and clean it up?

Commissioner Pruet: When will the Town Council decide if one, the town is going to demolish it, or two, the developer? When will that determination be made?

Ed Meehan: Talking with the leadership, Mayor Wright, Tom Bowen, setting their agenda, they want to get this on for July 8th, so that all the council members get up to speed on the environmental aspects. I think their goal is to try to get something out before the end of the summer for the RFP, and a couple of months for the RFP to get circulated. Our EPA Brownfield grant terminates the end of November, so we want to have, if we are going to go the RFP route, that is the Council's will, if we want to have our responses back before the grant time is up. There is also a brand new program that the State of Connecticut just announced that is called the Municipal Brownfield Pilot Program, and there was legislation passed this last session. Applications are due July 16th, so through the discussions on July 8th, if the Council wants staff to move in that direction, it's a pretty simple application. It's more of a statement, that if our environmental consultants feel that we are ready, they will probably put a place holder in for that application. The whole question is, how far the Town wants to jump into this. Do we want to take over some of the remediation aspects of this if we can get grant funds, or do we want to step back and see what the private sector will do.

Commissioner Pruet: My thought was that it might be more attractive if that thing was demolished, you know, using grant money, etcetera, for a developer.

Chairman Hall: Any other comments, questions?

XI. STAFF REPORT

A. Bond Release Request – Stew Leonard's

Ed Meehan: There is a draft suggested motion there. I went down and checked the site again this afternoon. This was being held essentially because of the plantings along the toe of slope adjacent to the Berlin Turnpike. The tree plantings were not complete and at the time that they asked for the release last fall, there was still erosion on that slope. The erosion is under control and the trees are in, but they haven't done a very good job in mowing up on top where they did clear out some of the trees for better visibility, so that is why that is suggested in the motion. It's up to you.

Chairman Hall: Do you want us to take action on this?

Ed Meehan: They have asked, they sent a letter in asking for their money back, the trees are in and growing, so it's about \$33,000.

Chairman Hall: \$33,500.00.

Ed Meehan: All the rest of the site, this bond also covered some of the landscaping in the islands, the new islands on the site, and they repaired curbing that was broken up after Caldor's left, so it wasn't just planting, but that is what is left over from the last time that we went over there.

Chairman Hall: So what is your.....

Ed Meehan: My recommendation is that you release it, with the request that they pay better attention to mowing the slope and if they can't do it with equipment they can probably do it with weed wackers and up on top, next to Modern Tire they can mow in that corner. It's now about two or three feet high.

Chairman Hall: It looks like hay.

Ed Meehan: Yeah, and next door, Modern Tire cuts it nicely, and they asked us to remove some of the trees because they wanted better visibility, but the better visibility they have is compromised by the character of the shoulder of the road up there. I think their landscape people forgot about it. Stew Leonard's has been pretty cooperative about anything that we have asked.

Commissioner Pane: I was just going to make a comment that it's not Stew Leonard's that does the maintenance, it's the property management that maintains the outside area there, and it is supposed to be to the satisfaction of Stew Leonard's, but that could be why some of that is not getting mowed.

Ed Meehan: Well that's why it says here, the Commission requests Stew Leonard's maintain and mow the area, or direct their maintenance company to get up there with equipment. They had the gentler, flatter part of the slope today was all mowed down at the south end of the property, but as it gets steeper, going into that corner, it's not been cleared.

Chairman Hall: Well, what is our downside if we do release this money? Do we have any leverage at all with them?

Ed Meehan: As far as mowing? Well, we can just keep, but the bond is not being held for them to maintain the property, the bond was held for the plantings and fixing the broken curb and things like that. Like we do for anybody else who doesn't mow their property, we ask them as a business to pay attention to it and keep after them until they do.

Chairman Hall: And maybe someday we will have something in our regulations that will allow us to give a citation for that.

Ed Meehan: Hopefully we are looking at a property maintenance ordinance, if we can have the teeth and the legal authority to do it. That would be what we would call it, and lien the property if the town has to step in, if it is legal.

Commissioner Ganley: You know, there is a lot of uncertainty about this. Can we defer this to another time, to ensure that all the things we have discussed are done? If there is in fact a management group working with Stew Leonard's, I'm not sure we have enough assurances that some of this stuff is going to do done, there seems to be a mix of who is involved here and I think we just maybe let this go another month or so and see what the track record is. That's my suggestion.

Commissioner Pruett: How about a partial release of the bond? Hold back some money. Release three quarters of it or something with the stipulation that they pay attention.....

Chairman Hall: But I think that what Ed just said, because that was my kind of my question, this \$33,500 is really for the landscape plantings and stabilization of the slope, it is not maintenance, so there is a difference.

Commissioner Ganley: Well, if they don't maintain what they just installed, you are going to get a negative effect on the property. Are we not to be somewhat assured that they have allegedly done all this work that there is going to be some way to make sure that it stays. There seems to be a lot of murkiness about this whole thing. I'm not denigrating anything that you have said Ed, I just, the more that we talk about it, the more uncertain the situation.

Ed Meehan: Well, call up the people that we know at Stew Leonard's and say, remind and direct your maintenance people that they are missing an important part of the site that is very visible to the people who drive up and down the Berlin Turnpike. Our experience is that they will jump right on it and take care of it. Get that done, you can act at your next meeting, or the meeting after that.

Chairman Hall: So should we give Ed direction then to state our concerns to the powers that be at Stew Leonard's.

Commissioner Ganley: Yeah, and defer this to another meeting. I think that is a way to serve notice on them.

Chairman Hall: Do we have a consensus on that?

Commissioner Fox: I just have a comment Madam Chairman. I don't know how much we can hold Stew Leonard's responsible for the property management company. I mean, are they, do they hire and fire their property management?

Commissioner Pane: They have a lot of control over them.

Ed Meehan: They have the contract, I mean, it's like you hire a guy to plow the snow and he doesn't plow it, they have to cut the grass.

Commissioner Fox: So Stew Leonard's holds the contract.

Ed Meehan: It's, somebody has, it's either Stew Leonard's or it's Rome Realty, whoever has the real estate agreement down there, but I know, I'm confident, if I pick up the phone and give Doug Hempstead, the Vice-President of Development, who was before you on a couple of occasions, give him a heads up on this, it won't take too long.

Commissioner Fox: Why would we want to defer it then? Why don't we just.....

Chairman Hall: Well, let's put that to the test.

Commissioner Pruett: Or just pass it tonight with a stipulation that it gets done.

Chairman Hall: Yeah, but once you let that horse out of the barn, it's hard to get him back in again. Well I guess we are going to bring this back up again and see if we have any progress.

Commissioner Fox: Madam Chairman, can we go back to Remarks by Commissioners?

Chairman Hall: Certainly.

Commissioner Fox: I was wondering, quite a while ago, Commissioner Ganley brought up some suggestions on enforcing some zoning regulations by ticketing.

Commissioner Ganley: It's still in the hands of the Town Attorney.

Commissioner Fox: Thank you.

Chairman Hall: Any other questions, comments?
I would like a motion to go into executive session.

Commissioner Fox moved to go into executive session at 8:30 p.m.. The motion was seconded by Commission Kornichuk.

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

Commissioner Fox moved to adjourn the executive session at 9:09 p.m The motion was seconded by Commissioner Kornichuk.

The vote was unanimously in favor of the motion.

XII. ADJOURNMENT

Commissioner Pruett moved to adjourn the meeting. The motion was seconded by Commissioner Fox. The meeting was adjourned at 9:10 p.m.

Respectfully submitted,

Norine Addis,
Recording Secretary