

NEWINGTON TOWN PLAN AND ZONING COMMISSION

November 9, 2011

Regular Meeting

Chairman Pruet called the regular meeting of the Newington Town Plan and Zoning Commission to order at 7:00 p.m. in Conference Room L101 at the Newington Town Hall, 131 Cedar Street, Newington, Connecticut.

**I. ROLL CALL**

Commissioners Present

Commissioner Anest  
Commissioner Camerota  
Commissioner Lenares  
Commissioner Pane  
Chairman Pruet  
Commissioner Schatz  
Commissioner Aieta

Commissioners Absent

Commissioner Hall  
Commissioner Turco

Staff Present

Ed Meehan, Town Planner

Commissioner Aieta was seated for Commissioner Hall.

**II. PUBLIC HEARINGS**

- A. PETITION 31-11 – 54 Pane Road Mike’s Auto Service, Michael Gronski owner, Bianca Signs Inc., applicant 99 Newington Avenue, New Britain CT 06051 request for Special Exception Section 6.2.4 Ground Sign PD Zone District.**

Chairman Pruet: If the petitioner would come up please to the podium, state your name and address for the record.

Paul Bianca, 99 Newington Avenue, Bianca Sign Company. We’re proposing a four foot by six foot double faced sign cabinet extruded aluminum cabinet, sign face is lexium, internal lighting, seven feet off the ground to the top of the sign, as you can see from the bottom of the sign. That’s pretty much it if there are any questions.

Chairman Pruet: Ed, comments from the staff.

Ed Meehan: Attached to the illustration of the ground sign, double sided ground sign is a location map provided by the applicant. It’s in the front yard of the auto business there, the auto repair business, and it meets the standards. The building is sixty feet on Pane Road and the public entrance side is twenty feet internal to the parking lot, so that the small sign, four feet by six feet meets your standards, internally illuminated.

Chairman Pruet: Thank you. Commissioner comments? Okay.

Commissioner Anest: What are the colors? I mean.....

Chairman Pruet: Same as this?

Commissioner Anest: Oh, you know what, mine is black and white. Okay, I'm sorry.

Commissioner Aieta: Which one are you looking at? There are two different signs.

Chairman Pruet: Mike's.

Commissioner Aieta: Oh, it's Mike's. I'm sorry.

Chairman Pruet: Paul, you can have a seat. It's a public hearing, in case anybody from the public...This is a public hearing. Anybody from the public wishing to speak for this petition? Anybody from the public wishing to speak against this petition? Okay, seeing none....

Commissioner Pane: Mr. Chairman, I'd like to make a motion that we close this and move it to Old Business.

The motion was seconded by Commissioner Aieta. The vote was unanimously in favor of the motion, with seven voting YES.

**B. PETITION 32-11 – 256 New Britain Avenue, Bel-Air Manor, Dr. Robert Sbriglio owner, Bianca Signs, Inc, 99 Newington Avenue, New Britain, CT 06051 applicant, request for Special Exception Section 6.2.4 Ground Sign B-Business Zone District.**

Paul Bianca, 99 Newington Avenue: Okay, we have another ground sign here for Bel-Air Manor. We have an existing double faced sign on the property now that they are proposing to remove. They want to go with a single faced sign facing New Britain Avenue, and this shows the set back here. This is set back a little further than the existing sign is. They would like to move it over to the middle of the property. It is the only sign they have there. They don't have anything on the building. This sign would be would not be internally lit. It would be external spotlights on the sign. The sign itself is synthetic compressed sign foam, I have a prototype there and the letters would be carved into the foam and I'm open to any questions.

Commissioner Aieta: Is it like a drivet?

Paul Bianca: Well, it has a drivet finish on it, right.

Commissioner Aieta: That holds up pretty well?

Paul Bianca: Absolutely. That has been in the industry for about twenty years now actually.

Commissioner Aieta: It's a nice looking sign.

Paul Bianca: You can do a lot with it. It will last forever.

Chairman Pruet: Ed, your comments, and I'm curious about where they want to put it, if you have a map location.

Ed Meehan: Yeah, I want to pass it around. I didn't make copies because the sign location that you submitted shows a perpendicular sign, double sided, and I know that is single sided so I didn't want to copy and get the Commission members confused. Is that where the single sided sign wants to go? Facing New Britain Avenue?

Paul Bianca: This highlighted yellow area?

Ed Meehan: Yes.

Paul Bianca: That is where their existing sign is now, but there should be a place marked here where the single faced is going, right in the middle of the property.

Ed Meehan: Okay, look about three inches up there, so it's on the driveway. I see that. It's internal for the site then, it's not.....

Paul Bianca: Did I put that in the right place, that's in the middle of the property.

Ed Meehan: It's up the driveway. How are you going to see it from New Britain Avenue? It's going to be pretty far in, isn't it? It's back at least, it's up on that little hill going toward the new addition to Bel-Air, right?

Paul Bianca: Well, the existing driveway is in brown there right?

Commissioner Aieta: This is the driveway from New Britain Avenue, this is the existing sign, this is the new addition, and your sign, you can't read it from New Britain Avenue.

Paul Bianca: I'm sorry, I have this in the wrong place.

Ed Meehan: Yeah, I thought it would be closer to the street.

Commissioner Pane: Almost where the mailboxes are?

Commissioner Aieta: Yeah, that's not right.

Paul Bianca: Okay, here's the driveway, and here is the existing sign, it should be over here actually.

Ed Meehan: We need that clarified, because when I saw that, I said you aren't going to put a sign like that way inside the site.

Paul Bianca: No, it's going to be facing New Britain Avenue, you can tell me what the minimum setback is, I think we might have a fifteen foot right of way there with the state.

Ed Meehan: There's the state right of way and there is also a sanitary underneath, you need to verify where the utilities are. You have a street address on the sign, so you want to have it where people going the location.....

Chairman Pruettt: Identify it.

Commissioner Aieta: The location has to be right because it's only one sided, it's going to be facing New Britain Avenue as you look at the property. We're going to have to see a map of where you are going to put it, because we have to make sure that it doesn't interfere with the sight lines going in and out of the driveway for traffic.

Paul Bianca: Right, well, it's not going to be double faced.....

Commissioner Aieta: I understand.

Paul Bianca: It's only going to be twelve inches wide as far as the sight line, but as far as, he wants to come back about twenty-five feet actually from the road.

Commissioner Pane: And face it straight out to New Britain Avenue, so as you are coming you can see it. It's set back about twenty-five feet, you can see it better.

Paul Bianca: Yeah, a little further back. Someone thought that the driveway there was the road there, that's why it was put in the wrong place.

Ed Meehan: So, is the existing double faced sign going to stay?

Paul Bianca: No, that's going to come out.

Ed Meehan: Okay.

Commissioner Aieta: You want to take this map and locate it and then show it to us if you want to try to move it along tonight, or you are going to have to come back with a map that shows the location.

Chairman Pruet: Yeah, we need an exact location of where it is going to be.

Paul Bianca: Would that work?

Ed Meehan: That's off your property. There's the property line.

Paul Bianca: Oh really. That's where the existing sign is.

Ed Meehan: Why can't you just put it right there? Is this existing sign lit?

Paul Bianca: It has ground lighting.

Ed Meehan: So then you just use the existing wiring to the ground lighting for your new sign instead of perpendicular, you make it parallel to the road.

Paul Bianca: You said this is the property line right here?

Ed Meehan: Yeah, and then it goes over here. This is Emanuel Baptist Church over here, there's the house out front here, this is the new addition, and that sign way back there, doesn't, you could talk to your client, but I would think you would put it where.....

Paul Bianca: Well, we had walked out here somewhere in this area, and I thought he said it was his property.

Ed Meehan: Nope. Not according to this map. That's the property line, and that is the setback line.

Commissioner Aieta: Mr. Chairman, maybe we should continue this until the next meeting, have him bring in a map.

Chairman Pruet: Maybe you should speak to your client, make sure that he approves of that site, and then come back and see us.

Paul Bianca: Two weeks from now?

Chairman Pruet: Monday night, the 21<sup>st</sup>. Thanksgiving week. This way, you are not speaking for him, and you will have the exact location.

Audience: Can I say something about that?

Commissioner Pane: You've got to wait a minute.

Commissioner Aieta: You'll be able to talk when we close the hear..., when it's time for the public. You'll have an opportunity to talk tonight.

Chairman Pruet: Any other comments Ed?

Ed Meehan: Just to get the location squared away.

Chairman Pruet: This is a public hearing, anybody wishing to speak in favor of this petition? Anybody wishing to speak against this petition? Come up to the podium, state your name and address.

Beng Tart Tran, 265 New Britain Avenue: This is the first time that I am here seeing this notice. You guys have the benefit of the plan, I do not have the benefit of the plan. So I do not know what to say in the sense that whether I object or approve because I do not know where it is going to be placed. All I know is that two weeks ago the owner of the place cut down all of the pine trees, the bungalow in front, are they going to place it over there? Or are they going to replace the existing sign?

Chairman Pruet: You are going to have to stay tuned, because we don't know either.

Beng Tart Tran: The existing sign is perpendicular to New Britain, and you guys seem to have some knowledge right now, by advising him how to do it. I assume you (inaudible) but I have not seen anything at all, neither have my two neighbors. But from what I heard, they are going to place it parallel to New Britain, it's going to be facing my house, I don't know which site again, I don't know which site it going to be placed, and the lights, shining in, and as it is now, they cut down all of the trees and from my room, and from my home, I can see all of the lights from Bel-Air Manor. In the past we had a lot of pine trees, so the point here is, where is it going to be placed? Is it going to replace the existing sign which is perpendicular, double sided, behind two pillars, which can be seen from both way traffic, coming west and east, and that is no skin off my nose, it's fine. But if you are going to place parallel, directly in front of my house or my neighbor's house, then I think you know, I would be against it. How big is it, I don't know.

Commissioner Aieta: Well, we'll give you a copy of the sign before.....

Beng Tart Tran: I went onto your web site to look at the section said eighteen feet high, maximum fifteen feet, one hundred and fifty square feet, one side, another side, three hundred. Eighteen feet high, three times my height.

Commissioner Aieta: It's only 48 inches high and it's 99 1/2 inches wide. I'm going to give you, you've got the plan?

Chairman Pruet: So anyway sir, we'll know exactly where the location will be at the next meeting because the petitioner wasn't exactly sure where the owner wants it to be put so....

Beng Tart Tran: If he wants to take it there, up the hill, fine with me because that is way, way in, no skin off my nose again.

Chairman Pruet: Okay, gotcha.

Beng Tart Tran: But then, am I supposed to come on the 21<sup>st</sup> and state.....

Chairman Pruet: Yes, it will still be open so you can do that if you wish.

Beng Tart Tran: How will be the procedure. I mean, if I'm against it, my neighbors, against it then where will they go.

Chairman Pruet: Well, that's why we are here.

Beng Tart Tran: I will be guided by you guys, you know. Okay, thank you sir.

Chairman Pruet: Paul, you have an opportunity to come up and rebut that, or keep your comments to the next meeting.

Paul Bianca: Next meeting.

Chairman Pruet: Fine, very good. We will keep this petition open.

**C. PETITION 33-11 – 2385 Berlin Turnpike Puerto Villarta Restaurant LLC owner and applicant, contact Juan Carlos Rodriguez, 2385 Berlin Turnpike, Newington, CT 06111 request for site plan modification parking expansion and waiver landscape buffer, Berlin Turnpike Business Zone, B-BT District.**

Chairman Pruet: Is the petitioner here? Sir, if you would come up to the podium and state your name and address for the record.

Joseph Green, Robert Green Associates: I am the engineer on record for this particular project. What we are requesting is a parking lot expansion of the existing parking lot to the rear of the property and also a small addition onto the restaurant in the front. There is a request for a waiver of the landscaping and this afternoon when I met with Mr. Meehan he requested that I take pictures of the landscaping and the fencing in the back and I'd like to submit these. The (inaudible) show that the existing fencing in the back is either a stockade fence or a chain line fence with the slats in it, vinyl slats and then also a row of pines of varying size and also some deciduous trees that are in here, mainly oak trees.

Chairman Pruet: Okay, so the expansion is the green area, is that.....

Joseph Green: The existing parking lot is roughly in here, and they want to add to the back.

Commissioner Lenares: Could you just go over that one more time, step around.....

Joseph Green: Oh, sorry.

Commissioner Lenares: That's all right, where does the existing one stop?

Joseph Green: It starts roughly in here, and we want to go to here. The green is the existing landscaping, and then the proposed addition is right off the front.

Commissioner Lenares: I see, thank you.

Commissioner Aieta: Ed, what are the requirements for a buffer between the residential and this property as far as.....

Ed Meehan: This property is in the Berlin Turnpike business zone and the zoning regulations from residential to commercial is a twenty-five foot buffer.

Commissioner Aieta: And what are you.....

Joseph Green: We're at fourteen.

Ed Meehan: That's why the waiver request has been asked.

Commissioner Aieta: Do you plan on planting, what is the planting in the area of the fourteen feet?

Joseph Green: We hope to utilize the existing plantings that are right here.

Commissioner Aieta: The existing plantings don't have any vegetation from the ground to about twenty feet in the air from what I see. That's in the back. These are all pine type trees and all of the, they're bare.....

Joseph Green: So we can add, if you would like, we can add arborvitae or something as, along the back there.

Commissioner Aieta: The way it is now, even though there is no planting, there is still a buffer because it is open space, now you're going to have cars that are going to be fourteen feet to the residence zone, parked up close to the residence zone. You need some kind of a, if the Commission would even consider a reduction in that twenty-five feet you are going to have to beef that up really good so that it protects the neighbors from the lights and noise and everything else.

Joseph Green: I think the existing fence will help, but by adding the trees or the arborvitae or something that is equitable, I'm sure we can do that.

Chairman Pruet: Ed, comments about that.

Ed Meehan: Yeah, in this area, the under story of the pines, they are white pines which have pretty much died off or been skinned off, so it's combination of filling in where the chain link fence is not completed, maybe extending the solid stockade fence and then I would recommend maybe a double row of arborvitae, staggered, so that if they fill in over time you have a much denser buffer with the fence and with the arborvitae.

Commissioner Aieta: The problem is, if you plant them under the pine trees they are not going to grow.

Ed Meehan: Well, I think arborvitae will grow in there.

Commissioner Pane: Well, then when they reach a certain age they are going to be overwhelmed with the white pines because the white pines, the tree line is at twelve feet or something so the arborvitae grow up to thirty feet.

Ed Meehan: Well, it won't happen that fast and if you.....

Commissioner Pane: Well it will happen

Ed Meehan: And if you do take the white pines out, you will still have some benefit.

Commissioner Pane: The problem is I think the white pines are probably on residential property probably right?

Joseph Green: No, they are on our property, they are just on the property line, but they are on our property. They are essentially right in back of the fence, and the fence is on our property.

Ed Meehan: Is the stockade fence continuous or are there openings in it? I think there were a couple of spots, one back there....

Joseph Green: Yeah, there is a slight opening back here, to the south, but I think the remainder, I think from the picture it shows an entire line, stockade or.....

Ed Meehan: What I have observed also is over the summer, that people are parking in this area now.

Joseph Green: That's the grassy area, correct, it is employee parking and that is why he would like to expand the parking.

Ed Meehan: So I think you really need to make sure that this buffer is going to be.....

Commissioner Pane: Are they waiving some, part of the ten percent in the parking lot too?

Ed Meehan: No, just the buffer.

Commissioner Pane: Just the buffer.

Ed Meehan: They have to meet the ten percent in the parking lot.

Commissioner Pane: I would rather waive part of the ten percent than the buffer that is close to the residential, if you did it the opposite way if it is possible. I mean, it only makes sense because the buffer is extremely important to the residential.

Ed Meehan: That is something that the Commission could talk about. There is no strict provision for waiving the ten percent green space, but see those four islands and the nose on the north, if you eliminated those and converted those to parking, the parking that is facing towards the west, the residential backyards may be a wash. You may have a couple of spaces going that way and the rest are all re-stripping.

Commissioner Pane: Maybe there is something else that we could look at.

Ed Meehan: And the parking lot wouldn't be as busy as it is with all of those islands out.

Ed Meehan: That's what I think you are saying, Domenic. The lighting is going to be, any new lighting fixtures will match with what is out there now?

Joseph Green: Correct.

Ed Meehan: And they are increasing the number of handicapped spaces to meet the requirements.

Commissioner Pane: Are we going to see what the little building is going to look like?

Ed Meehan: It's a build out of the corner.

Commissioner Pane: Yeah, what's it going to look like?

Ed Meehan: I don't know what it is going to look like.

Commissioner Pane: Well, is that part of the application?

Ed Meehan: It is, it's showing a six hundred square feet addition.

Commissioner Aieta: Is that for additional patrons? Seating?

Joseph Green: Correct.

Commissioner Pane: I'd like to see what it looks, what it is going to look like at the next meeting.

Commissioner Aieta: What does that do to the increase in the parking?

Ed Meehan: I asked one of the proprietors before the meeting if that was already calculated into the floor area for parking count purposes and he, I think should explain how they calculated this.

Joseph Green: For the addition? Everything is.....

Ed Meehan: Excuse me, it's like 5300 gross floor area.....

Joseph Green: 4300, we're at roughly 4300 square feet and we had 20 per thousand, and we came up with 89.

Ed Meehan: And is that square footage open to the public, or gross floor area?

Joseph Green: Open to the public.

Ed Meehan: Okay, and does that include the 25 x 25, the new area?

Joseph Green: Yes it does.

Ed Meehan: It does, okay, that's what I was trying to find out before the meeting.

Chairman Pruet: I'm just concerned what Domenic said too, recommending removing those four parking areas there and expand.....

Commissioner Pane: There's light fixtures probably in those islands so there's, you might be able to do something, but I would have to look at the light fixtures, but my point was I'd rather see the green space in the parking area waived and squeeze in some parking spaces in there, rather than waiving part of the twenty-five foot buffer which is extremely important to the residential neighborhood which we said in our 2020 Plan that if anything, we wanted to increase so I wouldn't want to decrease it. And then I would want to look at some trees or better fencing and a combination of that. I'd like to, I'll probably take a drive over there and take a look at the area.

Commissioner Aieta: We have to make up fourteen parking places if we don't.....

Commissioner Pane: How many parking spaces originally do you have? And what is and how many more new ones are you trying to get?

Joseph Green: We had roughly around sixty, so we're trying to add another twenty-nine.

Commissioner Pane: So you are saying that the sixty didn't comply, Ed from the original? Because he said it needed eighty-nine.

Joseph Green: Well, that's because of the addition and things like that, so if we are adding onto the building, we obviously need to add more parking.

Commissioner Pane: Yeah, but you're only adding six hundred square feet and you are going to add twenty-nine parking spaces.

Joseph Green: I think it may have been non-conforming before but I'm not positive.

Commissioner Pane: Well, if it was, I want to know whether or not, I want some history to see, was it non-conforming, did they have the proper amount of parking spaces the last time they came in, or not. Maybe we don't have to pick up twenty-nine parking spaces.

Ed Meehan: Or, does your client just want to build it out to maximize the parking?

Joseph Green: Probably that, yeah, plus his employees, essentially that is the place that they are parking, on the lawn.

Ed Meehan: Because you could pick up, if you eliminated those internal islands, just looking at it, you are going to pick up eight spaces right there, nine, maybe ten spaces. If the line stripping, the nine by eighteen works for you.

Chairman Pruet: Any other comments from the Commissioners?

Ed Meehan: So if that is the direction, the Commission has not waived internal green space before. You have provisions in the regulations to waive buffers, but if that is the sense of the Commission, in favor of the residents.....

Commissioner Aieta: We don't know, we don't know what the number is, if we can get it any other way. If he maintains the twenty-five foot buffer, he's going to lose fourteen spaces against the....

Commissioner Pane: So he still picks up fifteen.

Commissioner Aieta: What?

Commissioner Pane: He still picks up fifteen spaces. You lose fourteen and then out of that fourteen that you lose, maybe you can pick up another four to six somewhere else somewhere else in the islands, so now you've only, you've kept the buffer and you are only out six spaces to what you were proposing.

Joseph Green: I will get an answer for you on this non-conforming today.....

Commissioner Pane: Well, I think our staff is going to give us a history of that.

Ed Meehan: We can look that up for you.

Joseph Green: Okay.

Commissioner Pane: Maybe if we could see another layout of it, to show the twenty-five foot buffer with appropriate buffering for the residential neighborhood and then maybe see a little layout of what that little build-out is going to look like, would be nice and then when you are doing your layout, if you can pick up a few spots in the parking lot some where there is green space, if you think you can pick up some of those as parking spaces, then propose that to us. I think the Commission, and I don't want to speak for the whole Commission but I think maybe the Commission would rather see some of those waived instead of the buffer next to the residential area.

Chairman Pruet: Anybody else want to add?

Commissioner Schatz: I agree with Domenic on this. I know the sketch on the map was an addition, but you know.....

Chairman Pruet: I think more information is needed on that, take another look and see what you have.

Commissioner Aieta: Mr. Chairman, we want to accommodate the owner with his request to do this, but we want to make sure, we have an opportunity as a Commission to reinforce the buffer next to the residence zone, and that is what we're going to accomplish. We will try to make it work, but we are going to want to see that buffer, a real buffer for the residents, and we will help you make it work. If we have to waive some of the parking, or cut into some of the islands to make additional parking, we'll try to make it work, but we are going to look for you to provide us with a real buffer for the residents there.

Chairman Pruet: Anybody else?

Commissioner Camerota: I have been there and I do see that employees park in that area, but are they, do they park currently as close as this proposed parking would be, to the neighbors? It seems as if they pack them in so they can't really move in and out.

Joseph Green: Well, today when I was there, there was only one row so, if the existing parking is in here, it could be almost the length of the car, one row of cars.

Commissioner Aieta: It's deceiving. You have to look at the first map that shows the existing conditions. It's a big area that they are eating into.

Commissioner Camerota: Right, and I know that there is parking there now, but my view is that this is taking up a lot more space than they currently are.

Ed Meehan: The other side of this, if that works, if the Commission's direction on this right now, it may help with your drainage, because you will have less impervious coverage, and I know that you are working with the Town Engineer.

Joseph Green: Yes, I spoke with Chris Greenlaw today about the drainage, resolving that.

Commissioner Pane: What was his concern?

Joseph Green: Well, there are catch basins that are there, there's a pair of catch basins here, one right here, and one right here that we wanted to utilize. We were there today and every map that we looked at, there's a drainage system. We don't know if that drainage system, and there are two different, I think he showed me four maps, two of the maps showed different drainage systems, one was a dry well, and one was a galley system. Another map showed it in a different location, so it's a matter of really finding out what is there, because we may be able to utilize that, if we proved to him that the drainage works, then we don't have to make any drainage improvements, just essentially stripping the top.

Ed Meehan: We have some history on this site. I guess this was called George Diamonds, and then, that was the original restaurant, and then there was a Mr. Donut up in one corner here, and this is one of the few areas in Newington where we actually have some sandy soil, so the catch basins, and the manholes the engineer is referring to may be a galley system with infiltration. So that's good to know, and if you can reduce the impervious coverage, maybe the existing system, with some site work might work. We have to get out there with some equipment I think.

Joseph Green: That's what we are going to do.

Chairman Pruet: Anything else? Just for the record, this is not a public hearing, this is under New Business. So, we are going to keep this open. We are going to be meeting on the 21<sup>st</sup> Ed?

Ed Meehan: Monday night.

Chairman Pruet: Monday night, Thanksgiving week, so you can come back.

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

Holly Harlow, 11 Edmond St: This is an editorial that I submitted to the Town Crier this morning. I entitled it Town Plan and Zoning Commission Cedar Mountain Decision. "In the end the denial of the Wetlands Permit, flaws in the plans and regulation violations that took twenty-one months (inaudible) to rectify made no difference. In the end the risk to public health and safety, the well being of the community and the insistence of the public had no bearing. In the end, it was the opinion of six of the seven member commission which decided the fate of development on Cedar Mountain. Six residents, most of whom don't live in the mountain neighborhood, just like the hundreds of residents who flooded town hall with (inaudible.) This citizen volunteers appointed by one of other political town committees willing to go along with the plan over legal fears and what Toll Brothers might have done if they didn't. Six people of an opinion never expressed by any other member of the public that surrendering to this housing development was worth the exchange of the forty-four acres discarded by the developer. The type of land which regulations said they could not use. In the absence of public participation Town Plan and Zoning Commissioners have only regulations and their own opinions to draw on when making land use decisions. With the

presence of evidence in the record and overwhelming public opposition how is it acceptable that the opinions of a commission of seven individuals decide for the rest of us?

Chairman Pruet: Thank you. Anyone else from the public wishing to speak?

**IV. MINUTES**

October 26, 2011 – Regular Meeting

Commissioner Pane: Mr. Chairman, I have a correction. Page 19, down below it says, "Commissioner Anest says, I'm in favor of it because of what it does, as a fueling station, not because of who presented it," and then it goes to you Mr. Chairman, before you spoke I had said "nobody accused you of anything." I believe. I would like that checked out and put into the minutes, please.

Chairman Pruet: Okay, we will have Norine check the tape and is there is a correction, we will be happy to make that.

Commissioner Pane: Thank you very much Mr. Chairman.

The motion was seconded by Commissioner Lenares. The vote was unanimously in favor of the motion, with seven voting YES.

**V. COMMUNICATIONS AND REPORTS**

None

**VI. NEW BUSINESS**

Chairman Pruet: We did Petition 33-11 under Public Hearing, I apologize for that error.

**VII. OLD BUSINESS**

- A. PETITION 28-11 – 3573 Berlin Turnpike at corner of Rowley Street, known as Maguire Sports Bar, Brown Realty LLC owner, contact James Brown 59 Cove Road, Lyme, CT 06371 request for Special Exception Section 3.19 and 3.15.4 restaurant use with drive through window service, PD Zone District. Public hearing closed October 26, 2011. Sixty-five day decision period ends December 30, 2011.**

Commissioner Anest moved that Petition 28-11 - 3573 Berlin Turnpike at corner of Rowley Street, known as Maguire Sports Bar, Brown Realty LLC owner, contact James Brown 59 Cove Road, Lyme, CT 06371 request for Special Exception Section 3.19 and 3.15.4 restaurant use with drive through window service, PD Zone District be approved the Commission finding:

1. The applicant has demonstrated compliance with design requirements of Section 3.15.4.
2. The Special Exception standards of Section 5.2.6 addressing: location, character of the area, location of buildings, traffic circulation, public utility services, signage, lighting and safeguards to protect adjacent property, have been addressed.

3. This Special Exception approval shall not become effective until the site plan modifications required for approval of Petition 30-11 are submitted to the Town Planner for review and the mylars are signed by the Commission Chairman.

The motion was seconded by Commissioner Schatz.

Chairman Pruet: Discussions on this motion?

Commissioner Aieta: Mr. Chairman, under this second condition, it talks about signage, I don't think we discussed the signage on the site, I don't know why that would be in there as part of one of the conditions. It would have to come back to this Commission. Did they show signage?

Ed Meehan: They submitted a concept sign and a location at the southeast corner for a sign...

Chairman Pruet: The gateway one?

Ed Meehan: The gateway plaza signage. It would have to come back for a full Special Exception.

Commissioner Aieta: So the approval for this is for the basic drive through window special exception?

Ed Meehan: Yes, and then generic special exception standards apply, and here is the copy of what, this is the concept of what they submitted to you.

Commissioner Aieta: Where is that on the plan.

Ed Meehan: It's supposed to be at the intersection of Rowley and Berlin Turnpike, in that corner. I don't think their revised plans show that location, one of the revisions on the staff site plan check list.

Commissioner Aieta: The plan that I've got C-2, the layout plan, it shows a sign but it's in the road.

Ed Meehan: It should be behind the property line.

Chairman Pruet: Could we stipulate that on the.....

Ed Meehan: Well, you have two options, you could just take it out of the motion, because you are going to have to see it later anyway if they come forward with a pylon sign.....

Commissioner Aieta: Unless there is a different plan that has more details than this site plan layout sheet 2, but this doesn't show it.

Ed Meehan: No, it's not on the plan, it's when, my October 26<sup>th</sup> staff report, one of the items I listed for the applicant's engineer to add to the plan.

Chairman Pruet: Wasn't it shown on that, we had the green, wasn't it shown on that too? On the map that you had with the green space?

Ed Meehan: That's over there, I don't think it's shown on that. It should be right there, right where the bump out is. That's where it is supposed to be. When they revised the site plan, it would be shown in the southeast corner, in that bump out at the corner of the site. You aren't going to see it now because it wasn't put on the site plan.

Commissioner Aieta: I think we have to take that out of the motion and make it a separate motion. It's an eighteen foot sign.

Commissioner Pane: There were a couple of other issues I asked the Town Planner about Section 6.10.5 (C), conforming to our regulations on that. I think the Commission needs to talk about that, about the waiver of the front yard.

Chairman Pruet: That's in a different petition.

Commissioner Pane: But it affects it. You approve this, if, it's part of the whole project.

Chairman Pruet: Well no, this is for the drive through restaurant portion of it.

Commissioner Pane: I just think Mr. Chairman, we should have, we shouldn't be reading any motions yet, we just had the thing, we only had it, we haven't talked about this too long, but okay, you run the way you want to run it. If it's only for the drive through, that's fine.

Chairman Pruet: Any other comments?

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

Chairman Pruet: Frank, if you could read the next draft motion?

Commissioner Aieta: Let me read it myself because I might not want to read it because I might not be in favor of this motion.

**B. PETITION 29-11 - 3573 Berlin Turnpike at corner of Rowley Street, known as Maguire Sports Bar, Brown Realty LLC owner, contact James Brown 59 Cove Road, Lyme, CT 06371 request for Special Exception Section 3.19 restaurant use PD Zone District. Public hearing closed October 26, 2011. Sixty-five day decision period ends December 30, 2011.**

Commissioner Aieta moved that Petition 29-11 – 3573 Berlin Turnpike at corner of Rowley Street known as Maguire Sports Bar, Brown Realty LLC owner, contact James Brown 59 Cove Road, Lyme, CT 06371 request for Special Exception Section 3.19 restaurant use PD Zone District be approved the Commission finding that the proposed location is compatible with the surrounding area and furthers the Commission's 2020 Plan of Conservation and Development visions for reuse of gateway "opportunity sites," and business services which enhance the Berlin Turnpike's trade location within the region.

This Special Exception approval shall not become effective until the site plan modifications required for approval of Petition 30-11 are submitted to the Town Planner and the mylars are signed by the Commission Chairman.

The motion was seconded by Commissioner Schatz.

Chairman Pruet: Discussion on the motion?

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

**C. PETITION 30-11 – 3573 Turnpike at corner of Rowley Street, known as Maguire Sports Bar, Brown Realty LLC owner, contact James Brown 59 Cove Road, Lyme, CT 06371 request for Site plan Development, Section 5.3 for multiple building commercial plaza and waiver of front yard green space setback, Section 6.10.4 (B) Inland Wetlands Agency Report required. Decision period ends December 30, 2011.**

Commissioner Pane moved that Petition 30-11 - 3573 Turnpike at corner of Rowley Street, known as Maguire Sports Bar, Brown Realty LLC owner, contact James Brown 59 Cove Road, Lyme, CT 06371 request for Site plan Development, Section 5.3 for multiple building commercial plaza and waiver of front yard green space setback, Section 6.10.4 (B) be approved based on the following requirements:

1. The site plan drawings dated 9-27-11 prepared by Torres Engineering, Inc. shall be revised to address review comments of the Fire Marshal and the design modifications recommended in the Town Planner's Staff Report, October 26, 2011.
2. The stormwater management design shall be revised to the satisfaction of the Town Engineer prior to the signing of the site plan mylars by the Commission Chairman.
3. The architecture elevations prepared by Dante J. Boffi Design, LLC dated September 7, 2011 are the approved plans for this project.
4. The Commission approves waiver of Section 6.10.4 (B) finding that the 35' front yard setback on Rowley Street, the application of the 35' green space on the Berlin Turnpike and the 50' Inland Wetlands building setback along the rear boundary limits redevelopment of this gateway location. Further the Commission finds that the proposed site plan restores green space along the Turnpike frontage by the removal of pavement and parking from the State right of way.
5. Prior to the issuance of the first Certificate of Use and Occupancy, the applicant's project engineer shall certify to the Town Engineer that the site's storm water management system has been installed in accordance with the approved plan.
6. The Inland Wetlands Agency permit approval, Application 2011-09 is acknowledged and made a part of this site development plan approval.

The motion was seconded by Commissioner Schatz.

Chairman Pruet: Discussion?

Commissioner Aieta: Mr. Chairman, if I might start? We have a great part of that green space that you see up on the plan there is not even the property owner's property. It's the State of Connecticut right of way that is green. If part of that green space that is his, about five feet, so if the State of Connecticut decides to come in and widen the road or put an extra lane there, we've got five feet of green space between the development and the roadway. That's the reality of it. A waiver of thirty-five feet is not even, is not even allowed per our regulations. An eighty-six percent reduction in the setback buffer is not allowed per our regulations. The regulation section is Section 6.10, on page 84 of your regulations if you want to look at it and read along with what it says. Section 6.10.2, " Generally the green

space will be located in the yard area most particularly in the front yard.” Section 6.10.4, “On the Berlin Turnpike the front yard green space and landscaping area is most important to the public interest for the preservation and enhancement of property values and control of traffic function and reduction of hazards.” This is talking about green space that is on the property owner’s property, not the state property. It looks all well and good on this plan that you have all of that green space, but it’s not the property owner’s property. That’s not what this is saying. It’s saying that’s it’s a thirty-five foot, you’re talking about thirty-five feet that is on the property owners property because we don’t know what is going to happen to the Berlin Turnpike piece of property. It goes on to say, under Section 6.10.4 (B) “ New construction of businesses and industrial uses shall provide front yard green space and landscaping at least 35 feet. The Commission may waive this requirement in whole or in part in accordance with the procedures of Section 6.10.5 (C).” Now we could, it says we could waive whole or in part in accordance with this section, so you have to go down to Section 6.10.5 (C), and read that to determine how much you could waive. “The Commission reserves the right to alter the buffer requirement when in its opinion the individual nature, topographical or manmade utilities of the site clearly indicate that the buffer requirement is inappropriate. The buffer may not be increased to more than double nor decreased to less than half of the requirement herein and any such action shall require a two-thirds vote of the Commission members present.” So what they are saying is that you have the, if you read that, and read the whole thing together you have the ability to reduce the thirty-five feet by fifty percent. That’s what that says, not a reduction of one hundred percent of the buffer. Fifty percent of the thirty-five feet, which is seventeen and a half feet. That’s the maximum you can reduce it. And we are reducing it by eighty-six percent. We’re reducing it down from thirty-five feet to five feet. The regulations don’t provide us an avenue to do that. It’s not in there. This is what it says. You want to change the regulations to accommodate this, then change this section. You can’t, I mean, we can’t keep going and doing zoning by, and have regulations and stuff and go against it. If you want to make these kinds of changes and provide this kind of stuff, then let’s take it out of the regulations or modify the regulations to accommodate it. You’re going to have, you know, you set a precedent, you’ll have everybody along the turnpike doing the same thing, asking for a reduction in the front yard. The problem is, we don’t know what the State is going to do with that property in front, and there are other areas on the turnpike where you know, when stuff happens they add breakdown lanes, they add turning lanes, they do all kinds of stuff and we don’t know what is going to happen in the future, we could end up with a five foot strip of green space in front of that property. One of the other concerns that I have is the snow removal on the property. We talked about it briefly at the meeting, I’m sorry I missed the last meeting, but we talked about it briefly. There is no place on this property to store, put or store snow. You can’t put it on the state property, it’s, you just can’t use the state property as a snow removal location.

Chairman Pruet: I asked that same question and the consensus was that there was adequate, they would be moving it off the property behind the proposed building in the back, and he has snow shelf spots that would be put there by payloader, if they can’t plow it away, they are going to remove it from the area.

Commissioner Pane: The Town Planner told us that we can’t put snow behind that building because there is a water way though. Behind that building there is a water way, so you can’t put the snow there. You can’t pile snow up, it’s a wetlands and a water way.

Chairman Pruet: Isn’t there space.....

Ed Meehan: I think what Domenic is talking about is that green strip on the west side, is regulated wetland area. So that would be something.....

Commissioner Aieta: You eliminate the back piece and you eliminate the state property, Section 7.4.17 Snow removal in the regulations, "provisions shall be made for the storage of snow from parking areas within the site, in a location which is both appropriate and not required for other purposes. This area shall be shown on the plan as "Snow Storage Area."

Ed Meehan: You wouldn't be able to pile it on the green space, but you would lose those parking spaces along the back near the dumpster by plowing it in there which would be on the hard surface, but you have to keep that open because that's where you have your truck traffic or delivery stuff.

Chairman Pruet: What about Frank's comments on the.....

Ed Meehan: Well, I think it's a matter of interpretation. Historically, let me give you some background because I looked into this because Domenic asked the same question at one of the prior meetings. Couple of things, first that section reads whole or in part in accordance with the procedures of Section 6.10.5 (C). The procedures listed in 6.10.5 (C) are the requirements for a two thirds vote. The substantive part of Section C is substantive standards of the criteria of how much you can reduce a buffer by.

Commissioner Aieta: And you think you can reduce a buffer by one hundred percent?

Ed Meehan: The Commission has done it. They've done it.....

Commissioner Aieta: Well Ed, the Commission might have done it, not this Commission, people are sitting here now.

Ed Meehan: You are talking about a precedent, the precedent is TGIFridays, when that site....

Commissioner Pane: That doesn't make it right though.

Commissioner Aieta: Yeah, that's not right.

Ed Meehan: That's how they interpreted it, and ....

Commissioner Aieta: Now it's a different Commission and we have the opportunity, the interpretation of these regulations is the responsibility of this Commission. If this Commission wants to interpret that you can reduce it all the way down, then let's.....

Ed Meehan: But you should be consistent, and the consistency and.....

Commissioner Aieta: We can't be consistent with a Commission that did something wrong, okay, how can you be consistent with a Commission in the past that did something wrong. They put up a sign on the Berlin Turnpike at Walgreens that's never in compliance with the regulations, that was wrong.

Ed Meehan: That's not the subject tonight.

Commissioner Aieta: Are we supposed to be consistent with that too?

Ed Meehan: The Commission members that voted on the TGIFridays waiver in whole, interpreted it that they were doing it right, because it was a corner site, with two front yard setbacks, and it was an out parcel, similar to two out parcels here, and again, it was an

opportunity to maximize the development on the site in a careful way without affecting traffic. This site has the extra limitation of the fifty foot wetland buffer on the back side, which even restricts it further.

Commissioner Pane: That's not our problem. It's a limitation, it's a limitation for the property owner.

Ed Meehan: And by example, I mean, just in a prior application, you talked about waiving ten percent green space on another site. That's not even reserved in your regulations, at least you have a procedure in place for a two thirds vote to waive this, and the Commission reserved it for yourself. But you just can't go ahead and reserve the right to waive ten percent, it's not in your regulations.

Commissioner Pane: When you tell the Commission about waiving it by two thirds vote you don't read, you don't read the whole thing. The buffer may not be increased to more than double, nor decreased to less than half the requirements, and then such action shall require a two thirds vote, so that's the procedure so the following is, you can't increase the buffer more than twice and you can't decrease it less than half and then.....

Commissioner Camerota: I read it to say if you are going to increase it, or decrease it by more than fifty percent, then you need the two thirds vote.

Commissioner Pane: No, no, you need a two thirds vote just to take anything off. To waive any part of it. You need a two thirds vote to waive any part of it.

Ed Meehan: Well, the letter, and here's the Commission action in January 18, 2005, again, this is the TGIFriday site, and the Commission said "the request to waiver the thirty-five foot buffer along the Berlin Turnpike right of way is granted by the Commission finding that the applicant, application of the setback would create an irregular parking layout and poor traffic circulation pattern on the site for this out parcel location." And they waived it.

Commissioner Aieta: How much did they waive?

Ed Meehan: They waived thirty-five feet, the whole thing.

Commissioner Aieta: They waived the whole thing.

Ed Meehan: Yes.

Commissioner Aieta: Then we have to clarify the language in this regulation, because I read it that you can't do it that way. I don't know, maybe I'm reading it wrong, but I don't think so.

Chairman Pruet: So, our language is interpretative, is that.....

Ed Meehan: You interpret it and you apply it and you try to look for precedent and be consistent with the precedents of prior applications, and I did have a heads up from the last meeting, I went back and researched this, and that is the site I found. The other sites that I looked at, because I thought the Commission may have waived it were the Outback site, and Ruby Tuesday's but those sites were much bigger and they didn't ask for a waiver, and La-Z-Boy site it was, the building was set back thirty-five feet, but there was a modification because there was a driveway in front of La-Z-Boy. It wasn't a waiver like this, but it was a waiver applied, but it's your interpretation.

Commissioner Pane: Once again, 6.10.4 (B) we're talking about the front yard green space, "this requirement can be waived in whole, and in part, but in, and the key word here is in accordance with the procedures of Section 6.10.5 (C). So you have to read the whole section of 6.10.5 (C) and the key part down there is the buffer may not be increased to more than double, or decreased to less than half of the requirements and any such action, or any such waiver requires a two thirds vote. The reason that was in there was that they didn't want buffers to be totally eliminated. To waive one hundred percent of a buffer, what do you have buffers for?

Commissioner Aieta: You wouldn't even have this section, if you had the ability to waive one hundred percent of the buffer, you wouldn't have that whole thing in there.

Chairman Pruet: I realize that too, but what I'm looking at right now, right now it is non-conforming, right, and it's hardly any, you know what I mean?

Commissioner Aieta: No one wants to accommodate this site more than I do. I want to see that McGuire's Sports Bar down, I would love to see a bank there, I think this cleans up this whole site, I think it's a gateway site, this is what we are looking for in these types of areas, but you have to do it within the confines of the regulations, I mean, you can't waive stuff, and what Ed said, if we can't waive ten percent, it's not allowed in the parking, then they've got to come back and figure another way. If we're, I wouldn't recommend waiving the twenty-five foot setback on the other site, the Mexican restaurant for the buffer to the residence zone. I mean, it's in there. You have the potential of having a five foot strip of green space in front of this site at some point in time.

Chairman Pruet: If the state comes in and says .....

Commissioner Aieta: If the state comes in.

Commissioner Pane: Who knows what happens ten, fifteen years down the road?

Ed Meehan: Right now you have twenty feet of parking and black top in the state right of way.

Commissioner Aieta: I understand.....

Ed Meehan: You're getting that back anyway.

Commissioner Pane: The state is getting that back.

Chairman Pruet: Ed, let me ask you, anything in your career that you can think of where the state came in and said, hey, this is our property, we're going to take it back.

Ed Meehan: Oh yeah. I mean, they can nibble away at it. Who knows, ten years from now, they can put in another turning lane in there.

Chairman Pruet: I mean, has that ever happened?

Ed Meehan: If there was a reason for them to widen the turnpike and they needed another turning lane, then they would nibble nine feet, ten feet out of there for a turning lane. There are no plans in the corridor study to widen the turnpike, the long range corridor study.

Commissioner Camerota: The thing about the state owning that property, even if it was owned by the owner all the way to the road, the state wants to widen the road, they could take it anyway, so to me it doesn't make a difference if the state owns it or not. If they need it for public purposes to widen the road, to add a lane, or to make the highway safer, they can do it anyway.

Commissioner Schatz: I was on the Commission when Friday's came in, and I think the state was pleased that Friday's wanted to take over that property and take care of it. At that time, there was tons of parking over there, you know, the lot was empty most of the time, and since then with Friday's in there, it's busy, makes out well. In ten years, yeah, the state might come down, but in ten years we might not be around either, so it might not make any difference. This should have been brought up you know, three meetings ago, not now. I don't have a problem, the place is going to look beautiful.....

Commissioner Aieta: Dave, I'm just curious, how, show me how I can understand how you are interpreting that, because I keep reading that, and I keep reading the same thing.....

Commissioner Camerota: Norine is going to yell at you guys, talking at the same time.

Chairman Pruet: Anybody else have thoughts on this?

Commissioner Lenares: Yeah, I just read it, because I didn't read it before, and I went back to B and it kicks you down to C, from 6.10.4 (B) to 6.10.5 (C) where it refers you to the bottom of the page on 84.....

Commissioner Aieta: These are the critical words in there in part C, not decrease less than half the requirement.

Commissioner Lenares: Let me just say something before I say how I interpret it. I don't, I understand that he is in the state right of way now, and using their land and we are going to be giving it back to them, I get that, I don't like the fact that at some point if they put a turning lane in, you only have five feet. That's not good. I'm not saying that will ever happen. I don't know, I don't really like that and if it was a five foot buffer on a slow street, hey, this is the turnpike, that I would need to be convinced about, but as far as the interpretation, it says the buffer may not, and I'm sorry to read this again, but the buffer may not be increased to more than double, nor decreased to less than half the requirements herein and any such action, the such action that they are talking about are the two prior conditions, meaning more than double or decreased to less than half, any of those actions shall require a two thirds vote, meaning that they are legal, but in terms, they are in accordance, but they need a two thirds vote rather than a majority vote in order to do those extreme changes. That's how .....

Commissioner Aieta: Up in B, it says landscaping shall be at least thirty five feet, so half of thirty five feet is seventeen and a half feet, that's the maximum you can decrease it.

Commissioner Lenares: No. I'm reading it differently in saying that anything drastic enough, more than seventeen and a half feet requires a two thirds vote. That's how I'm interpreting it.

Chairman Pruet: Yeah, I think that's where the protection is.

Commissioner Aieta: So you think the Commission has the right to eliminate one hundred percent of a buffer?

Commissioner Lenares: Only if you have two thirds vote.

Commissioner Pane: No, it was never the intention of this Commission to ever waive one hundred percent of a buffer which would also mean that buffer that the prior applicant came in, instead of waiving fourteen feet, waive a hundred percent of it. Does that make sense? Absolutely not.

Commissioner Lenares: If you are going to waive one hundred percent of a buffer, you might as well not even have the regulation.

Ed Meehan: I think when this was constructed, and it is poorly worded, I grant you, we're talking about two different things. We are talking about a buffer between residential and non-residential land, fifty feet if it is auto related, twenty five if commercial to residential, a buffer. That's one design criteria. The second one, is this front yard green space concept which is different than a buffer.

Commissioner Aieta: That is what we are talking about here.

Ed Meehan: That's why it says, in whole or in part, and if you are going to waive it in whole or in part, from thirty-five feet down to zero or whatever, you have to have the procedure of a two thirds vote. That's what I believe this is saying. There's two parts, a procedural part and a substantive part.

Commissioner Pane: Then why would they even write in here, may not be increased to more than double, nor decreased to less than half of the requirements, they would not have even written that in there.

Ed Meehan: I think that is referring, Domenic, to buffers.

Commissioner Pane: No, it's referring to all of it. The buffers, it refers to front yards, it's all grouped the same, the green space. If you go to the headlines, it says, green space, landscaping and buffer requirements. One of the requirements is C, the buffer may not be increased to more than double nor decreased to less than half of the requirement. That was put in this regulation so that you would never reduce something by more than fifty percent.

Chairman Pruet: But, there would still be a buffer.

Commissioner Pane: Correct. Because otherwise if you reduce it more than fifty percent there would be no buffer.

Ed Meehan: And B, above that is very specific as far as buffers and buffer standards and...

Commissioner Lenares: I think another way to try to interpret it, I think, I just thought of it, if you voted to waive the buffer, let's say ten feet, instead of half, fifty percent of the thirty five, you would only need a majority vote, and I think what C means that if you vote to waive it extremely, more than half, more than seventeen and a half feet, you need a two thirds. I'm not interpreting it as whether you can decrease it or not, but how much you increase depending....

Commissioner Aieta: Why would they have the language in there about increasing and decreasing by more than half, why would they even put the language in there?

Ed Meehan: I don't think you can apply this interpretation to a one hundred percent waiver of a residential buffer, because that language doesn't have the word whole or in part, the whole

or in part just refers to the front yard green space. Let's take the example of Puerto Vallarta, you could not waive that buffer less than twelve and a half feet.

Commissioner Pane: I don't understand.....

Chairman Pruet: Why?

Ed Meehan: Because it doesn't have the language in whole or in part, where the front yard green space, which is not a buffer, has that whole language.

Commissioner Pane: On Dave's point, a minute ago he said well, if it's just a ten foot waiver you don't need two thirds, well that's not correct, because the Commission may waive this requirement in whole or in part in accordance with the procedures of Section 6.10.5 9 (C) so you have to go down to 6.10. 5 (C) and read the whole thing and you have to apply everything that is in C whenever you want to waive any part of a buffer.

Ed Meehan: Well, the only procedural language in C is the two thirds vote.

Commissioner Pane: No it's not. It says here you can increase and you, nor double nor decrease.....

Ed Meehan: That isn't procedural, those are substantive or design criteria. Those are not procedural. A vote, a two thirds.....

Commissioner Pane: It says, comma, and any such action, that action, shall require the two thirds vote, so those are, the buffer may not be increased to more than double, nor decreased to less than half the requirement herein, comma, and any such action shall require a two thirds vote, so anything involving the buffer requires a two thirds vote.....

Commissioner Aieta: If you wanted to decrease it.

Commissioner Pane: If you wanted to decrease it or increase it more than....

Commissioner Aieta: Fifty percent.

Commissioner Pane: Or increase the buffer.

Commissioner Lenares: Yeah, I agree.

Commissioner Anest: But if you want to do it by five, you don't need that.

Commissioner Lenares: If you wanted to do it by five feet, you don't need it. You don't need a two thirds vote.

Commissioner Pane: It says, if you are waiving any part of the buffer.....

Commissioner Aieta: Less than half, we've got thirty-five feet is the requirement, half of it is seventeen and a half feet, if you want.....

Commissioner Pane: You still need a two thirds vote.

Commissioner Lenares: No.

Commissioner Pane: Why?

Commissioner Lenares: It says right here, any such action which includes....

Commissioner Pane: Wait a minute, where are you reading?

Commissioner Lenares: I'm reading the second to last line, any such action which, that means the prior two things of, not increasing it more than double or decreasing it less than half, shall require a two thirds vote.

Commissioner Pane: No, any such action. Any waiving....

Commissioner Lenares: When you read the words, any such actions, that means the actions that were previously stated before the comma.

Commissioner Pane: Which is any increasing or any decreasing of the buffer.

Commissioner Lenares: No. Any increasing to more than double, or decreasing less than half.

Commissioner Pane: Okay, fine. I agree, so if it is less than half, then there.....

Commissioner Lenares: You just need a majority.

Commissioner Pane: You just need a majority, but if you are trying to decrease.....

Commissioner Lenares: Decrease less than half.

Commissioner Pane: But even two thirds, if you say two thirds, it says that you can't, the buffer may not, may not be increased to more than double nor decreased to less than half, so how do you explain that.

Commissioner Lenares: Because if you only want to decrease it by five feet.....

Commissioner Aieta: Okay, so you're saying the thirty-five feet we could reduce it down to thirty feet.....

Commissioner Anest: Reduce it to twenty five, anything up to seventeen and a half.

Commissioner Aieta: Okay, that's fine. They are looking to bring this down to five feet.

Commissioner Lenares: Oh, I still agree with that.

Commissioner Pane: Agree with what?

Commissioner Lenares: With the five feet, I'm a little skeptical, because now you only have five feet between you and the turnpike, I said that right from the beginning. But the way that you interpret this is a little different, but.....

Commissioner Pane: So you agree with that, this can't be waived less than half of the.....

Commissioner Lenares: No, I'm saying it could, I'm just not saying, I'm saying I think it is legal to do, I'm just.....

Commissioner Pane: To reduce a buffer? You thought, you think that the Commissions, the prior Commissions thought that hey, if something special comes in, we'll reduce the buffer down to zero, yeah, yeah.

Chairman Pruet: I think there is a prohibition to do that. You can't eliminate the buffer down to zero.

Commissioner Pane: You're doing that.

Commissioner Aieta: You are saying yes you can, by saying in whole. In whole means one hundred percent.

Ed Meehan: Because they are treating it not as a buffer, but as front yard green space.

Commissioner Pane: It's all the same. It's all being treated the same. It's all in the same section, Section 6.10, green space, landscape and buffers requirement, all must comply with these.....

Chairman Pruet: And I would say that you couldn't get two thirds of a Commission to eliminate any buffer, because you would be out of your mind to do it. That's how I interpret it.

Commissioner Aieta: So what do we do at this point, I mean, you are going to end up with five feet. Is that a reasonable, is that reasonable?

Ed Meehan: It's up to you. That's where the interpretation, you apply it as best you can. You are going to get five feet and I think that's the bottom line with this plan. And you are going to get back, I don't know, eighteen, twenty-five feet of black top, that is black top now.

Commissioner Pane: Please, Mr. Chairman, don't misunderstand me. I don't want the Commission or Commission members or members of the public to misunderstand me. I think this is an excellent thing, I think it's nice for the gateway and everything, I'm all for it, but you know, we have to follow our regulations a little bit and I disagree with waiving the majority of any buffer or front yard green space.

Chairman Pruet: I agree with what you are trying to say, but I think we have the provisions to interpret, to do, interpret this as two thirds to reduce this below the criteria, because in my opinion, nobody in their right mind, on this Commission would eliminate a buffer, period. That's why that two thirds is in there. I would like to get everybody's opinion on that if I may. The opinion I'm looking for is, do we have the authority to interpret this as it's presented, and as it's presented in this petition here to have this existing, the greenway, where it's actually increasing from the existing non-conforming parking lot to have more green space and still maintain a buffer. That's what we are looking at tonight, and how it is presented to us, and that green space they have right now is more than what they have in the existing parking lot on their present.

Commissioner Pane: You shouldn't count the state right of way though.

Chairman Pruet: Well.....

Commissioner Pane: You shouldn't count that.

Chairman Pruet: May I finish my remarks and then you will be free to add yours. Right now we would be picking up twenty-five feet, Ed, something like that?

Ed Meehan: At least an eighteen foot parking stall plus half the travel way which is, eighteen plus twelve, yeah.

Chairman Pruet: And, what you have to keep in mind is, are we interpreting this to protect the fact that we do have a buffer criteria and do we have the right to do that. That's what I want to hear from all of the Commissioners here, and if you have anything else you might want to add to that.

Commissioner Camerota: I think, as I said, I think the way to interpret this is that you can reduce it down to zero. I don't think we want to do that, and I agree, I think looking at the application as presented, this would be a situation where reducing it to, only getting the five feet is beneficial to the project, and gives us more than what is there now. I do have the concern about using the state property, but I don't think it would matter if they owned it, the state could come in and take it to widen the road anyway, so I don't think we can assume that is going to happen, or not happen. It's nothing we can predict, so I don't think it should weigh heavily in our decision making.

Commissioner Schatz: I agree with Michelle, what she is saying, but I'm also saying that this discussion should have come three weeks ago, or a couple of meeting ago, it shouldn't be now when we are trying approve something.

Commissioner Aieta: Well, maybe we are trying to approve it prematurely.

Commissioner Schatz: Frank, I'm not talking to you.

Commissioner Aieta: Maybe we are trying to approve it prematurely.

Commissioner Schatz: I understand, I understand, okay, the point is, the gentleman has come in with a great plan, cleans up an eyesore, adding more green space, even though the state owns it, we agree on that, and I don't think, in my lifetime, which probably is not as long as yours Frank, we'll see a highway, another lane on the Berlin Turnpike. I think we should go forward with it, on the positive side so the owner and the developer can put a shovel in the property.

Commissioner Lenares: Just, first and foremost, like Bob and Domenic said, I couldn't be more for this project. However we chose to interpret this, this has to get done because it is such a beautiful piece to enter into the town, to see it, Mr. Brown is going to do a bang-up job to get the thing where it's got to be, however we chose to interpret it. As far as the regulations are concerned, I think you can interpret them to make those extreme changes. Not like you said, why would anybody do that, but I think you have the, unfortunately I think you have the right to go to a zero if you wanted to buffer, but like you said, why would you want to, as long as it requires a two thirds vote. I don't think the regulations are written very well, causing obviously this discussion. I would have a concern having the possibility, and you can talk about possibilities in any site that you see, I mean, you can't really get hung up on that, but I mean, what if they did put a turning lane in you know, onto Rowley? Is that a possibility, Ed?

Ed Meehan: Well, it's a possibility. It would depend on a major traffic generator, a commercial development in the area causing.....

Commissioner Lenares: Like that one?

Ed Meehan: No, this is not a major traffic generator. If we had like another Newington Fair, or something south of this site, maybe in Berlin was converted and requiring for some reason a turning lane in that area....

Commissioner Lenares: Or something on Rowley Street maybe if that was ever developed, where those houses are?

Ed Meehan: Rowley Street west of Sam's gas station is residential in Newington, and residential also in Berlin. So our long range corridor plan did not anticipate a turning lane. There already is a right hand turn lane. You can take a right turn on red. You have two through lanes.....

Commissioner Lenares: I'm saying like a dedicated turning lane, I mean, it's not a crazy possibility, like you said, if there was development, but, and it's only because of the fact that it is the turnpike that it would be, I don't want to use the word scary, but it would be tight to have a five foot buffer on the turnpike.

Ed Meehan: I think that Domenic makes a good point and other members. This green space is optimistically shown.

Commissioner Lenares: I agree.

Ed Meehan: And it's optimistically shown because it restores what is paved now, but the north side of this driveway, if they require an entrance only and no exit, they probably will require a deceleration lane, so that wider green north of the driveway may be reduced from a slice down to nine feet. Let me put that out. It's going to be tapered. This is going to, and again it depends on the vertical, this could probably be sliced so it comes in like this, so the people come in and take a right here. On the other hand, they may take this radius and bring it around to discourage any turns out, so it will be just right in, internal circulation, in and out on this drive, in and out on that driveway, and this driveway is problematical.

Commissioner Lenares: We don't know that Ed?

Ed Meehan: This would have to go to the Department of Transportation.

Commissioner Lenares: That's a huge difference.

Ed Meehan: This may be something like that.

Commissioner Lenares: That's a big difference

Ed Meehan: And it may get picked up a little bit on this side, but not very much. I doubt if this one is going to get sliced, down here.

Commissioner Lenares: It wouldn't get sliced if they sliced the top part, that's a big difference in the way of viewing.

Ed Meehan: Yes, because they want people to come in, slow down before they get into the site, safely in, they don't want people coming out that close to the intersection. I've had some general conversations with the traffic engineer at District One, and looked at the plans preliminarily, I reported that to the property owner and his engineer, and they are aware of it, and they will, whatever District One wants they are willing to accommodate it because of the public safety issue.

Commissioner Lenares: Looking at what you just showed me, I never knew that. I would be in favor of that, having the top parking sliced down a little bit, having it an entrance only and having the bottom part greenway extended over to discourage turns.

Ed Meehan: That's pretty likely what will probably happen.

Commissioner Lenares: Probably?

Ed Meehan: We can't put that in as a condition, it's their road.

Commissioner Lenares: That would satisfy me.

Chairman Pruet: Satisfy me too.

Commissioner Lenares: Like I said, and I don't mean to drag this on, I couldn't be any more behind this, the thing has got to happen, let's figure it out, do something because this is going to be beautiful compared to what is there now, not to say what is there now is an eyesore, but compared to this, it doesn't hold a candle.

Commissioner Anest: I agree with what Michelle said, and now that we know that this can be sliced out, but what is the distance, the footage that would be sliced out?

Ed Meehan: Again, I don't know the specifics of it, it's going to depend on survey work out there, the speed of the traffic that they want to slow down, as it comes into the site, the distance from the traffic signal, this is where they do meet one of your conditions for the drive through, from the traffic signal stop bar, to the center lane of this driveway is over 150 feet. That's one of your standards. If this was like maybe fifty feet, they wouldn't meet your drive through here, so, remember, this is a slope down, and it's difficult for people to come out of Stew Leonard's now and get over to that lane to do a U-turn, so they have to take that weaving into account. I can't tell you how they are going to narrow it. I don't think they are going to narrow it a lot, because they want this car to come out and get over. There's also, when you go past Modern Tire, there is a little bit of a hump in the road there, so they don't want to push people into the center lane, not in that inside lane.

Chairman Pruet: I think I heard everyone's comments. Again, our job is to interpret our own regulations, I think we have the know-how and integrity to do that. As this motion is presented, it's going to need two thirds vote to pass it. Any other discussion on it.

Commissioner Aieta: I think the problem with the site and the setbacks and everything, you almost have to give them some kind of relief there because unfortunately he is trying to put fifty pounds of stuff in a five pound bag. The site is overburdened with the amount of square footage on the site. The interior I've looked at real closely, the interior driveways and the radius are small, you can't get a delivery truck, an eighteen wheeler in there to make deliveries. The parking for the restaurant I don't believe is adequate if it's a very successful, and the building in the back with the 15000 square feet, I think the site is overburdened with building, and that is what is causing it where they have to make reductions to accommodate it. Maybe he has to get that square footage to make this a financially feasible prospect, I don't know. We don't take that into consideration. I mean, it has to stand on its own. I look at it, it's not the best thing you can get on that site because it's overcrowded. It's overcrowded to the point where the parking in the two drive throughs are overburdening the site. The entrances and exits and everything, we are leaving a lot of stuff up to conjecture or up to the state to bail us out on, and unfortunately that is the way that the system works,

where we can't say how we want the traffic to exit and enter into the site, but we're leaving a lot up to somebody else to make a decision for us.

Chairman Pruet: In the previous meeting too, I asked questions about tractor trailers and everything else, and the feedback I got was that those businesses wouldn't be serviced by tractor trailers, and number two, and their lease would prohibit tractor trailers and I got that in to Mr. Brown's comments a commitment to do that, and also do, signs would be posted not to allow tractor trailers into the front portion of the building. The concern I had too with Ed, and I asked him this afternoon, is fire safety, would fire trucks be able to come in there? He felt it was adequate, but I asked if he would refer this over to the Fire Marshal to get his approval on it too, and I believe that is in the motion to be reviewed, and approved by him. Any other discussion?

Commissioner Pane: First, as far as Michelle's comment that the state could take the property by eminent domain, we don't design things that way, so, we design things to meet our requirements, could some day could the state take some of the property? Yes. But, we have to leave ample land so that the property works. I understand that we are gaining some state land back, green space there, but it's not his land, so the state at any time, down the road, ten years, fifteen years, twenty years, or whatever, could take it. I think that the front yard setbacks, sets a bad example by reducing it more than half. I agree with reducing it down to half, so that at least there is seventeen and a half feet of green space on his property, and to achieve that it only meant to redesign it a little bit and he might lose a little bit of square footage and I agree with Commissioner Aieta's comments, that it's a tight site in there. There's a lot being proposed in there. I'm all in favor of it, but I just think it's a bad example to reduce something by more than half. I understand that it was done at TGIFridays, and that site has been maximized and I don't agree with them doing that. What this does is that it opens up, it opens up a can of worms that anybody that wants to come in and maximize their property and get a little bit extra, all he has to do is ask for a waiver and waive all of the space. Waive down to five feet, it just, I don't think it was the intention of the regulations and you know I go back over fifteen years on this board, I don't think it was ever the intention of the people that wrote this regulation to waive anything more than half. That's all I have to say. Thank you Mr. Chairman.

Chairman Pruet: Anybody else? We had a pretty good discussion on this. I'm ready to call the questions for the vote. We need a two thirds vote to pass the motion.

The vote was in favor of the motion with five voting YEA and two NAY (Pane, Aieta) after a roll call vote.

VIII. **PETITIONS FOR SCHEDULING** (TPZ Monday November 21, 2011 and December 14, 2011.)

- A. PETITION 34-11 – Request for Zone Regulation amendment to add Section 3.15.8 Crematories regulated by Special Exception Nutmeg State Crematorium, LLC applicant, represented by Attorney Vincent Sabatini, One Market Square, Newington CT 06111. Referral to Capital Region Council of Governments required for inter-town advisory review. Schedule for public hearing November 21, 2011.

- B. PETITION 35-11 – 151 Kitts Lane, Nutmeg State Crematorium, LLC applicant, represented by Attorney Vincent F. Sabatini One Market Square Newington, CT 06111 request for Special Exception for crematorium use at 151 Kitts Lane, Berlin Turnpike Business Zone, B-BT District. Schedule for Public Hearing November 21, 2011.
- C. PETITION 36-11 - 151 Kitts Lane, Nutmeg State Crematorium, LLC applicant, represented by Attorney Vincent F. Sabatini One Market Square Newington, CT 06111 request for site plan modification for crematorium use, Berlin Turnpike Business Zone, B-BT District. Schedule for presentation November 21, 2011.

Ed Meehan: This petition, these are three companion petitions and they all sort of ride together on the first one which is Petition 34-11, which is the policy request for an amendment to the zoning regulations, to add to the regulations Section 3.15. 8 Crematories by Special Exception. I would recommend, two things the Commission should know, first, because of the nature of this amendment it's been referred to the Capital Region Council of Governments, because it affects zone boundaries that abut neighboring towns, so we need additional lead time for that agency to give their advisory comments, and second I would recommend that you wait until your December meeting for a new term of Commission members and not start this the last meeting of your term, so to speak, so you don't split the public hearing between different policy makers. Just hold it over, begin, if you want to begin the public hearing your first meeting in December which would be December 14<sup>th</sup>. That would be for all three of these.

The only other petition that we have been holding off on the side lines, not a petition, but information to come before the Commission is the annual two year update of Balf Quarry, which we should be doing. We've held that for some time. We can do that the next meeting, the 21<sup>st</sup>.

Chairman Pruet: That's the quarry?

Ed Meehan: Is that okay?

Chairman Pruet: Any thoughts on that? We have Mike's sign, under Old Business.

**Petition 31-11**  
**54 Pane Road**  
**Mike's Auto**

Commissioner Camerota moved Petition 31-11 request for Special Exception be approved based on the plan submitted by Bianca Sign showing a double face internally lighted 6 foot by 4 foot sign.

The sign shall be located in the front yard landscape area as shown on the site plan dated 1-12-1995, Mike's Auto Service, approved by the Commission November 9, 1994, Petition 59-94.

The motion was seconded by Commissioner Aieta.

Commissioner Aieta: I'm in favor of the sign being proposed and I'm in favor of it being internally lit only because it is not abutting a residential zone. That whole area down there is all commercial, it's almost on the Berlin Turnpike, there are no houses around, so at night, when it is lit it's not a problem for neighbors trying to sleep, they've got lights flashing in their windows, so I'm in favor of the petition for that reason.

Chairman Pruet: Any further discussion?

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

**IX. REMARKS BY COMMISSIONERS**

Commissioner Anest: I have a question. The 8-24 Referral on Cedar Mountain?

Ed Meehan: I put out, I think it's in your pile, it was also a question from a prior meeting, the statutory language of 8-24. I also stapled the Council's action to that. Before money is appropriated then it needs to be referred to this Commission, a 8-24 report referencing the 2020 Plan.

Chairman Pruet: So do you have any idea when they might do that?

Commissioner Anest: They did it.

Ed Meehan: Well, they haven't referred, that's just showing the action that the Council took. The next step will be for the Manager to sit down with the property owner and negotiate the details that Council has directed him to work out, but before they actually appropriate money and close it's got to be referred here. It will go through the next budget session and then will be referred here.

Chairman Pruet: Any other remarks by Commissioners?

Commissioner Aieta: On the blight ordinance, anything going on there, does that have to come back to this Commission? Do we have any say in it? How is it being, how is it going to be enforced? Who is going to do the enforcement? Anything going on?

Ed Meehan: To tell you the truth, I don't know what is going on with that. We tried to get an annotated version, and I guess there is not one around, and with the storm last week, it got put on the back burner some place.

Commissioner Pane: Mr. Chairman, you told us some time ago that when this came up that there is two parts of this. One part is the blight ordinance which is the, the Council is in charge of, then the other part of this is the enforcement action which this board is in charge of, and you told us that we would have some input on that, and not at a public meeting, but at this board, and it didn't happen.

Chairman Pruet: I conveyed to you what was conveyed to me.

Commissioner Pane: I think a letter should go to the Council and ask them to put a hold on it, and have the enforcement end come to this board, because this board is in charge of the enforcement and so we'd like to see the language there so that we can make recommendations.

Commissioner Aieta: Is that correct? Is he correct in stating that this board, that the enforcement is going to be done by the zoning enforcement officer?

Ed Meehan: No. It hasn't been determined by the ordinance.

Commissioner Aieta: So we don't even know who is going to enforce it.

Ed Meehan: It's open ended, it's up to the Town Manager to determine who the enforcement agent would be. Towns that have adopted similar ordinance, they have their own environmental officers that do this.

Commissioner Aieta: Part of the police department?

Ed Meehan: No, they do wetland agency work, they do their blight, some communities have delegated it to their health officials. We have the health district.

Commissioner Pane: As a board we talked about the Zoning Enforcement Officer handling it, but.....

Ed Meehan: That may be a recommendation you make to Council to consider. We have an ordinance that delegates enforcement of citations obviously to the Zoning Enforcement Officer because it is directly related to zoning. Some of the things proposed in this ordinance for blight, touches on a lot of bases. It touches on liter, health, you know, nuisance with animals, it runs the gamut and it's much broader than what is on the books now because it goes beyond just vacant buildings.

Chairman Pruet: So that is still on-going?

Ed Meehan: I think they need a public hearing.

Commissioner Anest: They did schedule a public hearing, because we talked about it at our last meeting, that we would have to go for public participation to discuss it.

Commissioner Aieta: Don't you think that's a little odd that we have to go to a meeting?

Commissioner Anest: It is, and we had asked for red-line, no red-line, so we don't know what they added or subtracted.

Chairman Pruet: So they are going to start the public hearing process of it on the 22<sup>nd</sup>?

Commissioner Anest: Yes.

Commissioner Pane: Didn't we refer the 2020 Plan to them?

Ed Meehan: By statute you had to refer it.

Commissioner Pane: I understand that. Out of courtesy they should have presented this to us, and I would propose that the Chairman should write a letter and ask them to hold it off and send it to us. Come on, that's only fair.

Chairman Pruet: I will work with Ed on a letter to kick it over to the Town Council, some proper phrase, courtesy to have us review for our remarks.

Ed Meehan: Prior to the public hearing.

Chairman Pruet: Prior to the public hearing.

Commissioner Aieta: Prior to the public hearing, yeah.

Chairman Pruet: So if you could, you're a good letter writer.

**X. STAFF REPORT**

None.

**XI. PUBLIC PARTICIPATION**

(For items not listed on the agenda.)

Rose Lyons, 46 Elton Drive: I sat there and I listened. I didn't hear a lot of things because once again, there are no microphones here. I heard a lot of cross talking which is hard to hear anybody and what they are saying. People behind me are talking, the applicants are leaving, they're going and sitting down and talking to the people who have objections to it, and somebody else is text messaging. Something has to be done with the speakers or something in this room, it's kind of crazy, but I believe on another subject that the blight ordinance is I believe Councilor Cohen said that it has changed so dramatically that you couldn't underline everything. You would have to take the old one and compare it with the new one, that there is nothing that they can show, added or deleted because they just apparently redid the whole thing. I too was quite disappointed in the lack of communication between the TPZ and the Town Council, not so much on your part because apparently you weren't invited to this, but they had a sub-committee, Ken Fridenberg was at the last meeting, or the meeting before, I forget which, I'm so confused with all of the power outages and everything, the meetings being changed, and special meetings, and the head of the Central Connecticut Health District, but no one from this Commission was sitting at that table and I thought it all originated here, and.....

Commissioner Aieta: Why would Ken Fridenberg be there?

Rose Lyons: Because it has to do with people who have health issues and the elderly and is so encompassing, but the Zoning Officer as far as I knew wasn't involved in the talks or whatever, I wasn't on the committee, I'm just telling you what I heard at the last Town Council meeting. So those are the two things, the sound in this room, the communication is kind of hard, and people are talking outside, I guess I should have shut the door, but in any case, I totally agree with Commissioner Pane and anyone else that feels that Commission should have had some say on the blight ordinance.

Chairman Pruet: Thank you. Working on the sound, I am going to step up my efforts to make my opinions known, your opinions also, we need the sound. Coming, we are going to have a screen up here.....

Commissioner Pane: Don't we have older microphones that we can use?

Ed Meehan: Well, we have mics, but we need amplifiers, speaker system....

Commissioner Pane: So what is the hold up?

Ed Meehan: I think it's all on order.

Commissioner Aieta: Maybe Dave could bring in his karaoke box and we could use that.

Chairman Pruet: They want to do an all encompass thing, put the TV up, wire it, blah, blah, it's in the process of. I'll see if I can light a match under them too. Anyone else from the public wishing to speak?

**XII. CLOSING REMARKS BY CHAIRMAN**

Chairman Pruet: First I would like to congratulate Ed on his big victory as the First Selectman of his town, congratulations Ed, and I wish you the best, and hopefully we will have your services until we have a full time replacement for you. I'll just leave it as that. I'd like to also thank Commissioner Bob Schatz, he won't be able to make the last meeting, he's having a little procedure. Bob, thank you very much for all of your time, your efforts, your volunteerism, your tenure on this is deeply appreciated by me, and the rest of the Commissioners too. So, Godspeed to you, and thank you very much.

Commissioner Schatz: Thank you.

**XIII. ADJOURNMENT**

Commissioner Schatz moved to adjourn the meeting. The motion was seconded by Commissioner Pane. The meeting was adjourned at 8:45 p.m.

Respectfully submitted,

Norine Addis,  
Recording Secretary