

Atty. Thomas indicated that what he would be presenting today will show that none of those are based on any planning or zoning issues. Atty. Thomas stated that the concern of his client is that if this procedure continues - and he will present financial information - it will put him out of business.

The misrepresentation that has taken place throughout this entire process on the Car Wash has been that only the car wash was approved; therefore, they can't approve the oil and lube. Atty. Thomas stated that was false. He presented the minutes of February through June of 2004 when this was considered. He added that when that went through, and in even in 2005, the words "oil" or "lube" were never discussed. His client, unfortunately, was of the opinion, that a full-service car wash meant an accessory oil and lube facility. Atty. Thomas stated that he will point out why his client thought that and the circumstances shortly.

Atty. Thomas explained that in the history of these applications, before he became involved, his client came to P&Z with a proposal for a car wash. He was told he could not have a car wash alone but he could have it with something else. So his client came up with an application that had self-storage, a car wash, a bank and some small offices. Atty. Thomas indicated that in the middle of that application, he became involved.

Atty. Thomas noted that one of the things that impacts this site is the fact that it has excess right of way and a non-access line to Bridgeport Avenue – so even though this is a piece of property with an address of 376 Bridgeport Avenue, it can't be accessed from Bridgeport Avenue. Then once the turn is made onto Platt Road, Todd Road which intersects with it complicates the traffic patterns of this property making it more difficult to create an entrance/exit situation.

Atty. Thomas stated that when the traffic reports were submitted several years ago and this Commission looked at the traffic generated by a bank (which was probably outdated considering how much banking is done online now), the Commission denied the application. It was suggested to his client that he come back in with an application having a less intense use. One of the things requested, throughout this whole thing, was that he give something in the front that shields the car wash. His client came back in with a mixed use – retail and office building – located in the front (Bridgeport Avenue side). After a series of hearings, meetings and discussions, the Commission said it would be too intense – a single use thing in the front would be more appropriate. At just about the same time Vazzi's was looking for a location on Bridgeport Avenue after having been shut out of two or three other locations; so Aziz's came along and asked to be there.

Atty. Thomas indicated that Application #3 commenced at the end of 2003 into 2004 – there was now a restaurant in the front and car wash in the back. At that point, as stated in the minutes of the May meeting, there was a quote from Mr. Panico regarding the applicant's primary interest in this whole development – and that it all started with a car wash; the Commission indicated that it would only be an acceptable situation as part of a complex that involved more than just a car wash.

Atty. Thomas continued to read previous meeting minutes stating that the Commission had been disturbed by the lack of room there to handle all of it – the car wash, the bank, the storage facility and the offices – so the car wash came back with a restaurant. He read other comments taken from previous meeting minutes proposing that the restaurant could be phased in with the other use or they could just approve the one use. Atty. Thomas summarized that the point was -- there was never a discussion of just restricting it to a car wash because they discussed putting it on with other uses. He asked that the Commission, in their decision-making, please not say to his applicant, that there

was any discussion back then, when it was approved, that it was never going to be anything other than a car wash within that building – because that is not correct.

Atty. Thomas continued to recall from the minutes of the public hearing that there was a lot of support for the application – and usually, it is the other way around – but people wanted to see a car wash there.

Atty. Thomas indicated that after it was approved in June 2004 for just the car wash; then in March of 2005, the detailed plans were approved for the building with the detail bays. Atty. Thomas provided an approval of the basic development plan showing no reference to an oil and lube on the site because it hadn't been discussed.

Atty. Thomas stated that the first time it came up was when construction was taking place. At that point, the Building Official went to the site and instructed the framer, Glen Blanchette, to stop the construction and required him to put 5x8 fire proof drywall in the ceilings of those bays being prepared for oil change that was being constructed - and he was stopped. At that point, there was a discussion with P&Z Staff and his client was told that he did not have approval to do an oil change. They suggested that he wait 6 months after it opens and see whether or not any problems develop on the site.

Atty. Thomas stated that it is now four years after two applications, refusals, and denials. The Court sustained the denial of the accessory use on the grounds that in the course of its decision that they have the opportunity to go and ask the Commission to amend it's Statement of Uses – and that would be the better procedure. Judge Radcliffe denied that, saying that it is a zone change, and it is hard for him to overturn the absolute discretion that a Commission has. So this is a situation with enormous public support for a full service car wash. There is a full service car wash across town with an oil change.

Atty. Thomas stated, for the record, that this is a situation where they've been told over and over again that there are no extra employees. They have never had a traffic problem at this site. It was designed with the building in the rear, oriented in such a way that it has the greatest amount of stacking of any car wash - and they've never had a problem with it.

During this time, there has been no diminishing of public support in the petitions submitted before, in the petitions since last September, and in the petitions since the last continuance. People support an oil change being included. It is an accessory to the main use. It is not going to be advertised as an oil change. It is part of it because it is a sit-and-wait service that is rendered.

Atty. Thomas indicated that his client has shown, over the years, that clearly he has the ability to do it. The reason he has the ability to do it, and assumed he could do it, is because of the size of the building. He would never have built that size of a building if he was not going to have an oil changing ability. There is not one car wash anywhere around here that looks like that one. It has two floors; two tunnels? (one of them a hand wash), and presently, he is losing hundreds of thousands of dollars a year – and cannot survive with that big building.

Atty. Thomas commented that in going through the history of this, what bothers him, in all the zoning he has done, is that there is not one zoning – not one good reason at all for the denial of this use on this site.

Atty. Thomas distributed an updated aerial photograph to show the location of Splash Car Wash in the center and the businesses surrounding it. He noted that there are other people, businesses, competitors and otherwise in the area,

changing oil. Next door to the car wash is the AT&T Truck Maintenance Facility where they change oil, tires, doors, and other maintenance of all their service trucks.

Atty. Thomas noted that there are two auto dealerships across the street that offer oil changes, and going down Todd Road they have Professional Tire changing oil. Until Crabtree-Haas left, they also changed oil.

He showed photographs of areas across the street from the car wash where a machine shop is located, and around the corner there is a major construction company and a major waste and recycling facility. Atty. Thomas indicated that one of the reasons for denial last time was that it was a residential area. The only residential area is one house that was just sold. There are condominiums across the street behind the office building and behind the oil-changing car dealerships – and they haven't been impacted by that. He concluded that for the last year there has been large crane storage across the street from his client's place of business.

Atty. Thomas mentioned that they also have a retail rental facility with an automobile related use inside. This is also an automobile related use that would have absolutely no impact upon the size of the building – it won't be made any bigger. There would be no extra employees and hardly any extra traffic at all because a lot of people changing oil would come on slower days for the car wash. Even if they all came at once, the car wash was built to accommodate that.

He showed photos of the interior retail space and mentioned that they sell a variety of items in much the same way that Walgreens does. He showed pictures of the car wash area with landscaping – because it is part of a PDD. It is expensive to maintain landscaping and his client isn't going to be able to maintain it at the present costs. Atty. Thomas showed photos of the OPD zoned area across the street that is being used for the storage of large cranes.

Atty. Thomas submitted letters and printed email correspondence for the record including letters from Splash Car Wash and emails from Simonize just to point out to the Commission why nobody, right now, builds a car wash anymore, if they have sufficient land, without an oil change facility. What it refers to is the "sit and wait business," in other words – it's the type of thing where people come in, they sit, they have their car done or have an oil change done. It is done under the supervision of the DEP, it is environmentally safe. He referenced an email from individuals at Simonize to Splash Car Wash citing this accessory use. He submitted a letter from the chief Operating Officer of Splash Car Washes and a member of the Car Wash Association to explain that oil changes are a part of car washes.

He resubmitted another copy of a letter, which was probably part of prior records from 2006, governing the same issues and pointing out that oil changes are part of car washes. They are an appropriate accessory use.

Atty. Thomas indicated that after his client got approval, he went to the State and asked if he could buy the excess right of way. At that point, he knew he had a problem if he was ever going to use the front part which is now a big grass field. He showed the Commissioners an aerial photo of the car wash with the boundaries drawn in. He continued to say that when he went to the State to request buying excess right of way, they told his client "sure." The State submitted it to their Engineers, Drainage, and Traffic people. After an analysis, where they determined how much wider they wanted to keep the highway line for Bridgeport Avenue, they decided that they were going to go into procedures to sell property to his client. He stated that this property is a slope, and no one would have believed anybody other than his client buying it. The Commission's approval required that he put in a detention basin, which he put in, and it drains into this piece of property.

Atty. Thomas stated that then he got a call from the State saying that the City is exercising its right for a public use. Atty. Thomas indicated that he could not repeat what he said to that person at the State DOT – because it would not be suitable for the record.

Atty. Thomas stated that he wanted to check this out with Professional Engineer, Jim Swift; he asked Mr. Swift what the City could possibly want for public use. Mr. Swift commented that there was no reason and the City Engineer even backed that up – the State kept all the property that was needed to widen the intersection and put in drainage. Atty. Thomas continued that the City of Shelton got Representative Belden to propose a Special Act authorizing City purchase by the State. And to his shock, the reason it was done, is because is that the State will not give away this property if it is not for public use. And there is no way to do it. He asked the Commissioners to look at the aerial view and showed the marked areas for “public use.”

Atty. Thomas stated that while this was going on, his client asked if he could clean the property up. However, Zoning Enforcement told him he could not touch the property – this is State property that the City wants to buy. The State inquired about the drainage easement in place and said it was illegally there. Atty. Thomas produced the Encroachment Permit from District 3, which they were given because there was no reason for the City to take it – and they assumed his client was going to buy it. The State has requested that the drainage be removed and he told them – in technical, legal terms to “pound sand” – it is part of his PDD approval and he is keeping it there.

Atty. Thomas indicated that if the City wants this property- then fine – let the City take it with their drainage easement. While he was preparing for this public hearing, he was sitting in a BOA Meeting to discuss Access Road when lo and behold there is a proposal for the State a month ago to give the property to the City under the Special Act with the drainage easement – and they said “no” let the State care of it. At that point, he spoke to Shelton Corporation Counsel, explained it to them and the reasoning given – he had to laugh – the reasoning was that they wanted to have Bus Stop. There is 50 feet of State Grass before getting to this piece. No one would make it to the bus in time before it pulled away. There is no reason for it whatsoever. They can’t figure it out. But in his mind, it fits in with the same reasoning why his client being denied this accessory use - which should be appropriate.

Atty. Thomas referenced the aerial photograph and commented that there is litter all around it. He explained that when his client goes in to clean up litter, people descend upon him and tell him to stop because he isn’t supposed to be doing anything there. The State is not cleaning it up and certainly, the City is not cleaning it up. Atty. Thomas indicated that there concern is that they don’t know why this is happening – and the result of everything, as it appears to his client, is that they want him out of business.

Atty. Thomas submitted a letter from his client’s accountant discussing revenue over 4 years of operation for the size of the car wash that he has. It included his operating expenses, and the loss of revenue from lack of an oil/lube center. He added that it is difficult for a businessman to share his economics in a public meeting, but his client is being forced to do this. Two to three of the five detail bays would be used for that. It would be part and parcel – they already have the sheet rock. They were also told that they couldn’t put drains in there – in other words, they can’t have interior drains if they do oil changes.

Atty. Thomas stated that he had representatives here tonight to discuss that with the Commission. He argued that his feeling on this and the very first argument

he made on this issue is that it is an appropriate accessory use. However, this procedure is to save his client's business and to ask that the Commission to do this.

His client is so confident that there will be no impact that he would even accept a one year approval. Atty. Thomas stated that it is not their job as zoners to protect competitors whether it be Curtiss Ryan or anybody else – that is not zoning and that is not planning.

Atty. Thomas stated that this is an area where this use would have no impact and it was never prohibited in the original approval – it was never discussed. Their position is that this is an accessory use to the car wash. The people that would be using it would be car wash customers – as seen from the information he has presented to the Commission.

Atty. Thomas concluded that at this point, if he sounds a little frustrated, it is because he is expressing the frustration of his client who is quite upset. He is here to make a reasonable request. He can find no reason in planning, zoning or any other reason to prevent him from operating the oil and lube facility within the existing car wash - that is overbuilt for just a car wash. His client is in a situation where the use of the front is limited – he can never have a second entrance. The only way that he'll ever get use of the front is if somehow, somehow, he negotiated with AT&T to have the ability to enter through their property because there is no other way in. He concluded and indicated that he would answer any questions they have.

Chairman Pogoda asked the Commission members if they had any questions.

Comm. Jones asked Atty. Thomas why he thinks this has been denied over and over again?

Atty. Thomas responded that it is not his job to speculate. He would like to be able to sit and tell a client, this is the reason – planning-wise or zoning-wise, and look at the regulations.

Atty. Thomas stated that when he argued before Judge Radcliffe, his position was that it was part and parcel of the case that had been established with the PDD and zone changes. The fact that there are zone changes is a two edge sword giving ultimate discretion. And that discretion – and he argued it but the judge didn't agree – that discretion is abused in a situation like this. He told Comm. Jones that he could not guess a reason. He was asked the same question that Comm. Jones just asked by the Judge in the first appeal and he told him that he did not know.

He stated that the first time they were asked to go back and have a public hearing and modify it. The second time, after they had the public hearing, their discretion is so broad that they can technically deny it for any reason. At this point, whatever the reasoning is, and he hopes it is not to protect competitors, but he can't read anything into the regulations to find out why - but this is going to put his client out of business. It is as simple as that – because he was forced to build, as part of the approval, such an elaborate car wash, creating debt and now he has no cost center.

Atty. Thomas stated that he wanted to return to a comment made at the April or May 2004 meeting – that it is a rare situation for him to come before this Commission and have the public supporting the project come out to support it. Most of the time only the people opposed to a project speak out.

And other than Sal DeFillippo, who opposes all PDD's and three people who spoke about traffic of which they have created none – everyone else spoke in favor of the car wash. As seen from the petitions, nobody can find a reason to oppose it, other than competitors.

Comm. Harger asked exactly how many bays were there for oil changes.

Atty. Thomas responded that there are five and the proposal is to use two or three of the bays, certainly he would accept two at this point, although he could use three. He added that his client is so confident, that if he was given permission to use two bays for a year, the Commission wouldn't find any impact.

Atty. Thomas stressed that this is not a situation where people can come in and change their own oil. It is strictly controlled, and Jay can answer any questions, strictly controlled by DEP regulations, recycling of old oil, tanks on site, etc. They don't even have lifts. There is nothing impermeable, if something spills, it stays in the bay.

Comm. Harger asked if there was any activity going on in any of those bays right now.

Atty. Thomas responded that they are being used for storage.

Comm. McGorty stated that his concern would be the parking. He commented that his experience with these two or three bay places used for quick oil change is that they get busy on weekends. He added that there are some in Bridgeport on Main Street where they have a line of cars out of the driveway and there are a lot of cars waiting. He asked where they could accommodate all those vehicles at this location.

Jason Frank, District Manager, Splash Car Wash addressed the Commission. Mr. Frank indicated that he was familiar with the property there and in response to his question – it would not be for customers to just come in and get an oil change. It would be for car wash customers to get an oil change after the wash; so as they are coming through and their cars are being washed, when it's finished, they can get an oil change or before they go in, they can get the oil change. Therefore, while they are doing the oil change on some cars, the others will be getting their service through the wash. It's a quick service – it takes about 15 minutes.

Comm. McGorty asked if that means a person can't just drive in off the street and get an oil change.

Mr. Frank responded that it wouldn't be offered that way.

Comm. McGorty asked if he would though - be able to just drive in off the street and get an oil change – without getting the car washed.

Atty. Thomas responded yes, he could; but he thinks Mr. Frank is trying to say that most of the customers come in that way. He asked them to look at the aerial photograph to see that there is parking available in the front, parking along the bays, and, if there were to be a problem, the area along the Bridgeport Avenue side, which is well-shielded, can easily be turned into additional parking.

Comm. McGorty commented that was different, because his concern is the amount of traffic being generated by having it. He noted that there really is nothing else like it around the area, which is great to offer, but it will increase traffic. He asked if there were any other quick-lubes around.

Atty. Thomas responded that Curtiss-Ryan offers it – anyone can pull in any time of the day. They offer a sit and wait, he knows this because his wife has Honda and she goes there to get her oil changed.

Comm. McGorty commented that his belief is that most of people who use that are getting their cars serviced there. People don't typically drop in off the street at a dealership to get an oil change – they tend to go to a quick-lube.

Atty. Thomas responded if they were going to do that, and he doesn't think they've had any problems with the quick lube place on River Road – and there is nothing else there – that place isn't near car dealerships, Professional Tire. There is a gas station there that doesn't offer quick lube. Secondly, if customers were going to wait in line, the stacking here is enormous.

Comm. McGorty commented yes, but that is for the car wash.

Atty. Thomas responded that they would have to go through that same thing to get through there to do it. If there is going to be a line, and there are only two bays operating, they are going to have to park and wait for the other cars to leave. He stated that is why he mentioned the parking – because people aren't going to sit in there and back out. There is going to be parking. He reiterated that there is an oil and lube facility on River Road, and he is not aware of any complaints or of anything ever happening there with people waiting or backing out. They will park their cars and wait until they can have the oil change done. If they have to wait a long time, then they'll probably leave anyway.

Comm. McGorty indicated that in his point about the traffic – there is nothing quite like that in the area. Forget about Curtiss-Ryan and the other dealerships – he does not believe that the masses use that type of service by going to a dealership because they probably figure they'll pay a lot more. Unless they specifically have a car from there, and the warranty is up or whatever, people will use a quick lube. He stated that he's been to them and he knows that they generate quite a bit of traffic. Comm. McGorty added that he thinks that they may have a logistics problem to accommodate what they would like to do. By having cars wait in line while trying to accommodate people getting a car wash, they are not going to just be filtered through there. They can't just keep driving around in a loop until a bay opens up; he does not think that is possible.

Atty. Thomas responded No – they are going to park.

Comm. McGorty asked where they were going to park.

Atty. Thomas responded that there are spaces in the front and on the side, and if they have that problem, they can create more spaces in the back.

Comm. McGorty indicated that he can see that there are about ten spaces in the front but they have 15 to 25 employees.

Atty. Thomas responded by pointing to a site map of the car wash to show that there are 7 spaces in the front, spaces along the bay that can be created and in the back there are 11 spaces plus the area of grass between the two indentations that can be turned into extra parking – if there is a problem.

Atty. Thomas reiterated that is why he offered to be given an approval for one year and if there is a problem, it will be addressed. If there is a problem that cannot be addressed, then they can pull the approval. He offered to do it, and if there is a problem, they will go away. It can be put on the record that the Commission has that discretion – because they know that there is not going to

be a problem. This is so overbuilt, so stacked...for the car wash and so much room to park anybody waiting for an oil change.

Comm. McGorty responded that it is a fluid type of traffic; it's not static. It's not built for static type of parking, and that is his concern. They have a loop strictly for cars coming into a car wash – he's been to that car wash. That is his concern, that right now, they cannot accommodate a large group of people that are going to take advantage of those new services being offered.

End of Tape 1A 7:45 p.m.

Comm. Jones asked the Splash Car Wash Manager what the distance was from the street to the back of that property where it starts to loop around. He asked how many cars could they fit in that one lane.

Mr. Frank responded that it would be guess – in that one lane - it's about 15, maybe more.

Comm. Jones replied that if they can fit 15 -20 cars in there – then they are doing pretty good.

(Inaudible – multiple discussions)

Mr. Frank indicated that he could address a couple of other issues. He stated that it has been there experience when they've added oil changes to the existing car washes that they have in their chain, they have not had a single incident where it has increased the amount of traffic to the location. He continued to state that if a particular car wash was washing "X" amount of cars/year before they built the oil change, it is not washing any more or any less now – it has stayed the same. Mr. Frank stated that they have found that when their customers need an oil change, they'll do it when they get their car washed or when they go to get their car washed, then they'll get the oil changed. So, they don't make an extra trip. They don't come twice, they come to get a car wash one time and get the oil changed at that time.

Mr. Frank stated that generally, the percentage of their customers that get their oil changed, and they monitor this information closely, and the percentage of car wash customers that also get an oil changes, averages out to be 10-15%. So, in saying that they wash a 100 cars in a day – only 10 or 15 of those cars will get their oil changed. If they are in business for a 10 hour day, its 1-1 ½ or 2 cars an hour.

Comm. McGorty asked if there were more people getting oil changes than getting car washes – his point is that they are offering a new service and it might be a lot more popular than the car wash service. The car wash service can accommodate a fluid flow of cars that go in and out in a few minutes. With the oil change operations that he has seen, with as many as 5 bays, he's seen cars stacked 8 or more on a Saturday even when there are competitive ones in the same area. Comm. McGorty stated that his point is that there is not a lot of competition in the area for this. He knows that this will increase their business and he wants to know if they can accommodate those cars stacking because they can't turn over cars in an oil change, like they would in a car wash – it takes longer. He commented that he has concerns about them being able to accommodate it on the site.

Comm. McGorty continued that he does not agree that they will go in the same line as the car wash. They have to go and park and wait 15 – 20 minutes for the next spot. There are areas available for parking in the future, but can they accommodate it now if it opens up and gets really busy, and possibly backs up

into the road. He asked how they could monitor or control that without having a traffic nightmare within the facility. That is his concern because he has seen some very busy quick lube centers, not car washes. He thinks this will be popular there because most people don't go to a dealership for an oil change.

Atty. Thomas responded that there is an example of one on River Road that has never had a problem.

Comm. McGorty asked how many bays they have there – one?

Atty. Thomas responded that there were 2 or 3 bays and there is (inaudible – multiple discussions).

Comm. McGorty commented that he doesn't patronize the River Road one much but he's seen their line coming out to the road – and he thinks that is mostly for the car wash.

Atty. Thomas responded that they have plenty of room on this site, if they need static parking. If people come in for an oil change on days, for instance, in which it's a rainy day, the car wash is overbuilt and the site is so under utilized as far as the number of spaces. He commented that he supposes Mr. Newman would get on his hands and knees and kiss the ground if he had a problem with being able to park cars on the site and accommodate because the business is that good. Atty. Thomas stated that at peak times, when this car wash has done more cars than anything, there has never been a problem with traffic. If they are going to have an oil change, and looking at the number of spaces available, they have the ability to accommodate many cars for static parking, if that is the case. They have parking in the front, parking on the side and parking in the back. They can create 10 or 11 more spaces. They have the experience – and if there is a big rush, they have the size on this site.... They are one of the few car washes, if not the only one, with this much room.

Comm. McGorty commented that he just doesn't want to see it proposed with the parking allocated to it. They must have some projections on what this oil change facility will do to their business.

Atty. Thomas responded that they don't anticipate it – because he does have projections from the Splash Car Washes that 10 – 15% of their business will be with customers having a car wash and an oil change. They have to make a decision when the car is closed if they are still going to operate the oil change facility because there are expenses associated with that. If they do, then there is obviously more than enough room. If they have 10% of their customers coming in on a busy day, and in looking at the number of spaces that they have, they have more than enough room there. Atty. Thomas stated that he would be glad to work with Staff and they will be glad to address the issue. But they have the example on River Road – and there is no problem. He asked that they not create the problem here through speculation. There is no issue and they have the room if they do need to address it.

Comm. Parkins commented that there is a little bit of a difference between these two car washes though because there is basically a drive through and a hand wash. She stated that she typically does the drive through and then pulls over and vacuums her own car herself. But they don't have that on River Road – the option to vacuum your own car. So there are 4 or 5 spaces allotted without those vacuums – would they be proposing to remove that service from the car wash.

Atty. Thomas responded that they can relocate that if necessary, and in discussions with Staff, they could relocate the vacuums. If that is the case... (inaudible)

Comm. Parkins commented that is what she thinks Tom might have been eluding too – let's see what the plan is for that because there is a difference from the River Road car wash - because that's a service that they offer. Quite frankly, that is one of the reasons that she uses that service and if it wasn't available, she might not go there.

Comm. Harger asked how many employees they have at any one time.

Mr. Frank responded that it's seasonal, so it can vary. They are busier in the wintertime than the summertime for the cash wash but he would say about 10 - 15 employees.

Comm. Harger asked if there was designated parking for those employees.

Mr. Frank responded that many of them take the bus.

Comm. Harger asked how many driving employees he had.

Mr. Frank responded about 4 or 5.

Comm. McGorty commented that he thinks a lot of them park on the side by the bays. He asked how it would work if they don't increase the employee headcount with the oil change – are the car wash employees going to run over to the oil change bays. Who is going to do the oil changes?

Mr. Frank responded that there are always employees on Staff that are not always doing something.

Atty. Thomas responded that employees usually park in the back area and there are usually only 4 or 5 employee cars there, even during the busiest times.

Mr. Frank commented that another experience that Splash has is that half of their business goes through that full service, hand wash side and that is about a 15 minute service in itself.

Comm. McGorty responded that's staging and it isn't the issue with that one – the flow is much quicker.

Mr. Frank stated that compared to the River Road car wash, they have twice the stacking that they have.

Comm. McGorty indicated that it is his concern is about people coming through the automated wash which is fairly quick; but there will also be drop-ins from off the street. He would use it – it's a great service and a great thing to have. He indicated that he thinks that they are underestimating how busy it could possibly get with people driving in there. He could see a congestion nightmare if people pull in and back around on a Saturday.

Mr. Frank responded that he just based this upon their experience. They've had five or six of these now, and they have not had that problem.

Comm. McGorty asked if the areas were demographically the same and, also, there is not a lot of competition around there for that service.

Comm. Harger asked Atty. Thomas if he had a view of this from the other direction showing the bays.

Atty. Thomas commented that he has them on his laptop but not here. Mr. Panico commented that at some point, they'll need a site plan.

Comm. McGorty added that is what he'd really like to see – a site plan that is thorough to see what it could accommodate.

Comm. Jones asked Mr. Frank how many of these bays are double X sheet rock, fire protected.

Mr. Frank responded that all 5 of them were.

Atty. Thomas responded that the Detailed Development Plans were, obviously, submitted at a prior meeting, if the Commission thinks it is appropriate, he has no problem keeping the public hearing open and bringing it back so that they can respond to them. If Splash, the biggest car wash has done it and hasn't had a problem with it; he understands Comm. McGorty's comments, however, he thinks that he's referring to Jiffy Lubes where that is their main business – there's no car wash. He reiterated that when there is a lot of business, he wants to stress, that there is static parking here beyond what could be found at any other car wash with an oil and lube. If people don't like static parking, then they probably won't come here anyway. But, if they would like them show where it can be done, they will be happy to present the scenario of customer driving in just for an oil & lube and where the overflow could go. Obviously, Mr. Newman would be very happy if there was an overabundance of cars using the oil change. They think he can address this because of the size of the site and it's not being fully used.

Mr. Frank commented that also based on a 15 minute time interval of doing the cars using only two bays they would be able to process 8 cars in one hour. So, if they are going to be in business for a 10 hour day, that would be 80 cars before they ran into a situation of needing to park any cars. Mr. Frank added that he would be hard pressed, in the state of Connecticut, to find an oil change associated with a car wash that does an average 80 cars a day to 100 cars a day. He just doesn't think they exist.

Mr. Panico commented that when the original detailed development plans came in and the Commission questioned about the five bays that were there, it was pointed out to the Commission that a couple of those bays were being reserved for detailing and the other three bays were potentially for people who wanted to wash their vehicle themselves, such as people with trucks and that sort of thing. That is what was represented when the plans were first brought in. There was never any discussion of a possible lube facility. How it came to be double XX sheet rock he doesn't know – that happened after the approval.

Atty. Thomas responded that he wanted to stress that self-wash bays disappeared from the plans long before the detailed development plans. There was actually a version that had self-wash bays on it.

Mr. Panico indicated that the point he was trying to make is that if there was ever an intention, at that time, of putting in a lube facility, it would have been the appropriate time to introduce it. He doesn't think anybody, including the applicant at that time, thought it was ever going to be a lube. Somewhere between then and while it was being constructed; however, that thought must have crept in because that is how it ended up being double XX sheet rock.

Atty. Thomas responded that he wasn't going to dispute any of that.

Mr. Panico indicated that the second question he would ask is, if they could elaborate on how they would propose to define that term "accessory use" so that they could understand how it could be differentiated between Splash providing a lube service as opposed to leasing those bays out for a third party to come in and then run a lube operation.

Atty. Thomas responded that in the prior application, and obviously in this application, its just a letter application, it states that "vehicle bays not to exceed three for the purpose of performing oil change and lubrication only as an accessory to the car wash operation." Atty. Thomas commented that in prior discussions he had provided the restrictions that it can never be separately owned, never separately operated – it had to be part of Splash. In other words, they could not have the car wash operation leasing it to Jiffy Lube.

Atty. Thomas stated that he explained to Mr. Newman that Splash, because it is a PDD, there were be restrictions on the signage; therefore, there could be no big sign saying "Oil Change Facility." There would be no restrictions on their ability to hand out coupons to customers for oil changes, but it could not operate as a separate business. Atty. Thomas indicated that he told Mr. Newman that he could not have five bays for oil change, it would be two or three at the most, and there will be limitations on it. One of those limitations would be that it had to be done by the car wash operators.

Mr. Panico asked if the people that would be doing the oil changing and lubing would be employees of Splash Car Wash.

Atty. Thomas responded yes, and they are at the other facilities.

Comm. Harger asked in the set-up being used right now, is the outer lane supposed to be designated for the quick car wash.

Atty. Thomas responded that in driving in from Platt Road, the outer lane (right lane) is actually the full service and the inner lane (left lane) is quick car wash. The full service is the lane closest to Bridgeport Avenue.

Comm. Harger asked how many spaces were outside the bays in a straight strip there.

Mr. Frank responded that there were 6-7 spaces there, 8 in the front and 8 -10 in the back.

Comm. McGorty asked if there were 7 by where the vacuum cleaners are located.

Mr. Frank responded yes, 7 spaces going up from the location of where the vacuum cleaners are.

Comm. Parkins indicated that she had the same question that Tony had and she asked about the approval that the Commission gave – way back when – with the condition that the only use be for a car wash, why was it not applied for at that point – for a car wash and an oil/lube.

Atty. Thomas responded that his first answer is that it should have been and the second answer is, unfortunately, that the owner assumed that a full-service car wash meant that he'd have the ability to do that – because he is the one that built the one over on River Road. It had an oil and lube facility. And, unfortunately, the people in the car wash business have not been schooled in zoning and planning as far as the requirement of uses.

Comm. Parkins asked what the site plan indicated that those bays were going to be used for.

Atty. Thomas responded that they were detail bays – and in car wash language – detail can mean all of that – it can mean (inaudible).

Mr. Panico commented that he thinks that a site plan will clear up a lot of the confusion as far as parking and stacking of the cars.

Atty. Thomas responded that they would be happy to present a site plan and he asked if could use the existing site plans on file and draw on those rather than (inaudible).

Mr. Panico responded yes, he didn't see why not.

Atty. Thomas stated that he could also provide better pictures of the site.

Comm. Harger asked if there was designated parking for employees in one of those areas.

Atty. Thomas responded that the employees generally park in the back (inaudible). Mr. Frank indicated that they could certainly tell them to park in the back next to the (inaudible).

Chairman Pogoda asked if there were any further questions from the Commission. There were none. He asked if there was anyone from the public with any questions or comments pertaining to this application. There were no questions. He asked for a motion to close the public hearing.

Atty. Thomas requested that it be held open to look at the site plan.

Chairman Pogoda asked the Commissioners if they could look at the site plan after...

Atty. Thomas responded that once the public hearing is closed, it prevents the Commission from having exchange with them regarding the site plan. If they are considering the site plan, he would like to be able to answer any questions. That is his only concern.

Mr. Panico suggested that they keep the public hearing open for the purpose of receiving the site plan without having a dialogue. If they feel they can submit a site plan and annotate it sufficiently to show where cars would wait, park, etc. and how employee parking would be re-organized – perhaps, that is sufficient for the Commission.

Atty. Thomas responded that he would prefer, at the next meeting, at the very least, to be able to do that and respond to any questions that the Commission members may have. He would prefer to be able to respond rather than not be able to answer questions. It would only be to focus on the site plan.

Mr. Panico commented that the purpose of the continuation would be solely for the purpose of examining the site plan.

Chairman Pogoda asked for a motion to hold this public hearing open until the 27th of October.

ON A MOTION MADE BY VIRGINIA HARGER SECONDED BY RUTH PARKINS, IT WAS UNANIMOUSLY VOTED TO CONTINUE TO PUBLIC

HEARING FOR APPLICATION #09-28 UNTIL THE 9/27/09 P&Z MEETING FOR THE PURPOSE OF EVALUATING A SITE PLAN.

At 8:10 p.m. Chairman Pogoda called for a five minute recess for moving on to Old Business.

OLD BUSINESS
APPLICATIONS FOR CERTIFICATES OF ZONING COMPLIANCE

SEPARATE #5064, SHELTON LAKES, 5 LAKE ROAD, SIGN REPLACEMENT

Mr. Schultz indicated that Shelton Lakes is proposing to change the name to Apple Rehab at Shelton Lakes. They are changing the location from the front of the site on Lake Road to the corner where they would have better visibility at Spicebush Lane. He showed the Commission a map of the proposed location and indicated that Staff recommends approval.

On a motion made by Virginia Harger seconded by Thomas McGorty, it was unanimously voted to approve Separate #5064.

SEPARATE #5077, ARNCO SIGN CO. INC., 895 BRIDGEPORT AVE, SIGN

Mr. Schultz indicated that Shoreline Veterinary is replacing their existing ground sign. He showed a rendering of the present signage and the proposed signage. Staff recommends approval.

Comm. Harger asked if there was any special reason for the change to the design.

Mr. Schultz responded that as far as this Commission has sees, everyone is changing their graphics, logos, colors, etc.

Comm. Harger commented that the proposed sign looks so much larger than the existing one.

Mr. Schultz responded that it is within the standards for that PDD – it is boxier and it's internally illuminated; the other one was not – totally. They are looking for more eye-catching graphics.

Comm. Harger asked if they had to keep with the original colors because the original one was maroon and gray and this one looks maroon on white.

Mr. Schultz responded that yes, they are changing the color.

Comm. Harger asked about the street number being down on the bottom.

Mr. Schultz responded that is OK – it has not been a problem for 911 purposes as long as it is visible and perched up high enough.

On a motion made by Joe Sedlock seconded by Chris Jones, it was unanimously voted to approve Separate #5077.

SEPARATE #5068, ARCHER SIGN, 469 BPT. AVENUE, SIGN

Mr. Schultz indicated that this sign change is because Nextel is changing to Sprint. Staff recommends approval as submitted.

Comm. Harger asked if this would be going on a monument.

Mr. Schultz responded yes, monument and a wall sign.

Comm. Parkins asked how many signs are going on this monument sign because she knows that they've given other applicant's a hard time about it.

Mr. Schultz responded that there were five on Bridgeport Avenue and three on Old Stratford Road.

Chairman Pogoda commented that this is just a replacement – not an additional sign.

On a motion made by Chris Jones seconded by Thomas McGorty, it was unanimously voted to approve Separate #5068.

SEPARATE #5023, ADCO SIGN CO., 706 BPT. AVENUE, SIGN

Mr. Schultz stated that this is for V's and they are changing the "V" to Pasta Cucina. Staff recommends approval.

On a motion made by Joe Sedlock seconded by Chris Jones, it was unanimously voted to approve Separate #5023.

SEPARATE #5060, TIM KEOUGH, 19 FOREST PARKWAY, SIGN

The Commissioners reviewed current and proposed signage for this Separate; they had questions regarding which one required approval, as well as, other issues. Applicant was not present; Staff suggested it be tabled until 10/27/09.

On a motion by Virginia Harger seconded by Thomas McGorty, it was unanimously voted to table Separate #5060.

SEPARATE #5066, SHELTON DENTAL GROUP, 169 CENTER STREET, SIGN

Mr. Schultz stated that this is for a corner building with a new occupant; the sign will be over the front door.

On a motion by Virginia Harger seconded by Ruth Parkins, it was unanimously voted to approve Separate #5066.

SEPARATE #5063, PARACO GAS, 198 LEAVENWORTH ROAD, PROPANE CAGES

Mr. Schultz stated that this is Mont's Mart adjacent to White Hill's Shopping Center. They currently have a propane cage, and they want to put in a second one. The first one has worked out well, and, obviously, there is a demand for a second cage which they would like to put it right along the side. He showed a map of the proposed location.

Comm. Harger asked what the capacity of the existing cage was.

Mr. Schultz responded that he believes it is for 30 tanks.

Comm. Harger asked if they would be duplicating that – cage size and quantity.

Mr. Schultz responded yes, it would be the same size and located on the extreme left side overlooking the entrance drive to White Hills Shopping Center from Leavenworth Road.

Mr. Panico asked where the existing cage was located.

Mr. Schultz showed that they were located at the end of the parking lot to the left of the dumpsters. It is ideal for public safety, but it is far away.

On a motion made by Virginia Harger seconded by Joe Sedlock, it was unanimously voted to approve Separate #5063.

APPLICATION #09-28 WHITE HILLS EAGLES RC CLUB FOR SPECIAL EXCEPTION/SITE PLAN APPROVAL (NON-PROFIT MEMBERSHIP CLUB), 178 BIRDSEYE ROAD (MAP 43, LOT 12, R-1A/R-1 DISTRICT) (PUBLIC HEARING CLOSED ON 9/22/09)

Mr. Schultz reminded the public present that after the conclusion of a public hearing, there is no more communication with the Commission, only with Staff. He stated that since the public hearing, Staff has received several pieces of correspondence from the applicant and the adjacent property owners.

Mr. Schultz indicated that he was pleased to report that there appears to be a consensus for a favorable resolution including hours, and some adjustment to the field area, but he received two emails today and there still needs to be some tweaking regarding some conflicting things. But nonetheless, nothing insurmountable; therefore, Staff would like to use the next two weeks to work out these issues in order to prepare a favorable resolution for the 10/27 meeting. He added that he has no problem with the delay because Staff never issued a Cease and Desist Order. There is no issue with controlling the activities there, so that is a non-issue. However, there are a few things that have to be worked out and Staff has always made itself available. He commented that it was good to see the correspondence with both parties looking forward to a favorable resolution on the 27th.

Mr. Schultz noted that as it stands right now, they have a continuation of the public hearing; however, that should be rather quick, and this should be item #2 on that meeting's agenda.

Mr. Schultz commented that everything is favorable and he knows some Commissioners went on their own to the site after the public hearing.

Comm. Harger asked Rick about his reference to changes in the area of the fly zone.

Mr. Panico added that they were also discussing the hours and days for flying.

Mr. Schultz responded by reading from one of the correspondences received. It read that the Club has redesigned the field to put the flying stations further away from the woods and the Naples's property. So, as part of the resolution, Staff will show a map delineating all of the boundaries, etc.

Comm. Harger asked if they could also include some kind of line showing the distance between the line from this house. She added that she went up there but wanted to have a little more clarification on it.

Mr. Schultz responded that he will clarify all of that. Mr. Panico added that there is also photo with all the circles on it that shows all the distances from the control point to the neighboring properties.

Mr. Schultz reiterated that the parties are not pulling apart and they are working together. Obviously, it does not happen overnight but they are moving in the right direction. They will be meeting again in two weeks.

APPLICATION #09-25 BRIDGE TO PRESCHOOL, LLC FOR SPECIAL EXCEPTION/SITE PLAN APPROVAL (PRESCHOOL), 917 BRIDGEPORT AVENUE (MAP 8, LOT 13), OP DISTRICT. (PUBLIC HEARING CLOSED ON 9/22/09)

Mr. Schultz showed the map to the Commission again to show the location for the preschool.

End of Tape 1B 8:35 p.m.

Mr. Schultz stated that he received a favorable response from the Fire Marshal and all comments from the Commission were positive. This is a permitted use with a special exception. He has prepared a draft resolution unless the Commissioners have any further questions, and at the conclusion of the motions, he has a letter that he would like to read.

***See attached Draft Resolution for Special Exception Site Plan Approval for Application #09-25.**

On a motion made by Virginia Harger seconded by Thomas McGorty, it was unanimously roll call voted (6-0) to approve Application #09-25.

Mr. Schultz stated that he had a request from the Applicant, Linda Maude. He read Ms. Maude's letter indicating that since the time she came before the P&Z Commission looking for approval for the Bridge to Preschool, she has had numerous requests from parents, especially of children on the autism spectrum, to start this program as soon as possible. Therefore, she would like to begin the operation on her existing space at 917 Bridgeport Avenue, Pediatric Rehab and Fitness. This would be an interim step to her building out the new space. She is anticipating that this situation would not be for any longer than six months; she hopes the Commission finds her interim step reasonable.

Mr. Schultz added that the Applicant would like to use a portion of the Pediatric Rehab space for a brief time. If the Commission does not have an issue with this, they would be directing Staff to allow this interim occupancy.

Comm. Harger asked if the Fire Marshal has any issue with this interim occupancy load or building capacity.

Mr. Schultz responded that it is all subject to the Fire Marshal approval and the State of Connecticut. However, first he needs a consensus from this Commission.

Comm. Parkins indicated that she was a little confused because she recalled specifically asking the Applicant if this new business was going to have any relationship to the existing business.

Mr. Schultz responded no, it is two separate businesses – they are just side by side and have the same owner.

Comm. Parkins asked if the request is that she start this business in her existing space.

Mr. Schultz responded that there are family members that need the space now and prefer not to wait the six months it will take to complete the work in the new space.

Comm. McGorty asked if the dual use would cease once the new facility is up and running and transition to the new space.

Mr. Schultz responded yes. He is bringing this to the Commission's attention, and if they don't have any issue with it, Staff can handle it at the Staff level.

Comm. Harger asked if the applicant clarified how she was going to separate the two in that one spot while the new location is being built.

Linda Maude, 11 Split Rock Road, Bethany, CT addressed the Commission. Ms. Maude responded and showed a site drawing of the two rooms to be designated for the preschool in her existing space – two classrooms. Again, it would be subject to the approval from the State of Connecticut and the Fire Marshal, who would be looking at her entire facility.

Comm. Parkins asked if there were current clients in the Rehab Center that are asking for the full daycare.

Ms. Maude responded that they are not clients of the Rehab Center –they are totally different.

Chairman Pogoda asked if she was saying that they are prospective clients for the Preschool.

Ms. Maude responded that is correct, they are two and three year olds that are from the community. She also does birth to three work, so there are families from the birth to three program that are looking to be a part of the preschool.

Chairman Pogoda asked how many students can she fit in the smaller classrooms.

Ms. Maude responded that it would 8 two-year olds and probably 4-6 three-year olds at the most. It would not be the same number that they will have in their new space. She added that if the State is going to grant this, they will be looking at her entire facility. It is not just 2500 square feet in those two rooms because the children have access throughout that building. She commented that is how she thinks the State will look at it.

Comm. Parkins asked if the preschoolers would have access to this entire floor.

Ms. Maude responded that it is really all just one – those would just be their two rooms.

Mr. Panico noted that the kids need someplace to run up and down because they don't have any outside space yet.

Ms. Maude responded that they are going to work on the outside play area immediately if they get approval for the other space. But they would also need access to the bathrooms and they have a full functioning kitchen for doing crafts or other activities. During that period of time, there are no pediatric rehab clients in there because that is usually later in the afternoon.

Comm. Harger asked if this preschool was still 9 a.m. to 1 p.m.

Ms. Maude responded that it would be 9:30 a.m. – 12:30 p.m.

Chairman Pogoda asked if that meant that there wouldn't be any inter-mingling between the other business.

Ms. Maude responded yes, typically, the rehab day begins around 3 p.m. – after children get out of school – it's a different age group. There would not be any of the older children there when the smaller ones are there.

Comm. Parkins asked if there were any other rest rooms besides these.

Ms. Maude responded that in this present facility – no, there is not. That is what will take the most time to put in the new facility because they have to put the plumbing and bathrooms in.

Chairman Pogoda commented that all of this still has to be approved by the State.

Ms. Maude responded yes, ultimately it would be the State and Fire Marshal.

Chairman Pogoda asked the Commissioners if they had any other questions and if they would be comfortable with this temporary solution and having Staff handle issues. There was a consensus as long as the State has final approval.

APPLICATION #09-26 DOMINICK THOMAS ON BEHALF OF PAM JOHN, LLC FOR SPECIAL EXCEPTION/SITE PLAN APPROVAL (CONVERSION OF MIX USE TO SIX FAMILY DWELLING), 82-84 HILL STREET (MAP 117D, LOT 70), R-4 DISTRICT (Public Hearing was closed on 9/22/09).

Mr. Schultz presented the site plan for the Commissioners to review and copies of the report/resolution that Mr. Panico would be reading.

Mr. Panico indicated that since the public hearing, he and Rick have met with the Applicant specifically to visit the site and discuss the various issues that were generated at the public hearing to make sure that all the issues were addressed to the best of everyone's ability. As indicated back then, they had specific concerns about the porch area on the Division Avenue side.

Mr. Panico indicated that they came to a reasonable resolution and the things that they discussed insofar as they impact the site plan are shown now. On the site plan, he showed the elimination of the double driveway around the old tree. The tree will be removed, one driveway will be widened out, and there will be a back-around slot so that cars can reverse and head straight out.

He showed the first and second floor renderings and explained that the 1st and 2nd floor stairways are necessary for fire egress purposes that are going to utilize a portion of the existing porch/deck area. In response to the concerns about the visual aspects of it; the bottom line ultimately is that they worked out two of the three sides of the porch area are going to be created as part of the house. Therefore, when it is looked at, what used to be open porch will now appear to be part of the house and it will look the same way in the front. He showed the areas where it would be all solid wall. He showed that from one point upward it will be open because there are no stairs to worry about concealing. The Fire Marshal wants that far wall that opens to the back - he wants that left open; so that was the compromise worked out with the Fire Marshal and Staff finds it very acceptable. He indicated that the drawing is a two-dimensional rendering of the plan.

Comm. Parkins asked if the top floor would be open.

Mr. Panico responded yes, the top floor would be open just as it is now – an open porch area. They discussed things like spindles and things like that, but frankly, he had a lot of concern about that. So, when he went back to the Fire

Marshal – because originally, the Fire Marshall said no, it has to stay open. He went back to the Fire Marshall and they were able to agree and allow him to close this side and the front so that the stairs aren't seen. He added that he thought it was a good solution. Mr. Panico read the Staff's Report/Resolution for Application 09-26.

***See attached P&Z Report for Application #09-26 Special Exception/Site Plan Approval at 82-84 Hill Street.**

Chairman Pogoda asked for a motion if there were no more questions or comments regarding Application #09-26.

On a motion made by Virginia Harger seconded by Chris Jones, it was unanimously roll call voted (6-0) to approve Application #09-26.

NEW BUSINESS

APPLICATION #09-29, STOP & SHOP SUPERMARKET, LLC FOR MINOR MODIFICATION OF DETAILED DEVELOPMENT PLANS FOR PDD #2 (FACADE AND SIGNAGE ALTERATIONS), 898 BRIDGEPORT AVENUE (MAP 9, LOT 14) ACCEPT, REVIEW AND POSSIBLE ACTION

On a motion made by Virginia Harger seconded by Ruth Parkins, it was unanimously voted to accept Application #09-29.

Mr. Schultz indicated that the whole team will be present for the meeting on the 27th, so this will be the third application because they had a scheduling conflict. No action on this for tonight.

APPLICATION #09-30, PREMIER AMERICA REALTY CORP FOR MODIFICATION OF SITE PLAN APPROVAL (SIDEWALK, LANDSCAPE AREAS) 42 – 46 BRIDGEPORT AVENUE, CB-2 DISTRICT (MAP 117D, LOT 3) ACCEPT, DISCUSSION AND POSSIBLE ACTION.

Mr. Schultz presented a site plan for the Bondos Printing building which is under major rehab. He stated that the modifications consist of three items; the first item is to eliminate the Portland cement sidewalk. Presently, they have a bituminous shoulder there which is used as an informal sidewalk. The formal sidewalk is across the street which is Portland cement. The reasoning behind this is because the cars used to park perpendicular. They believe that would look like a fish out of water – a sidewalk, really, to nowhere, but they still need a physical barrier there so that cars do not pull in. Mr. Schultz commented that they think this can be done with Belgian blocks raising it up, because it has to physically be seen.

Mr. Schultz added that the State of Connecticut does not shovel that, so when there is snow, the shelf will be snowed over so cars won't go on it anyway. However, there needs to be some sort of physical demarcation there.

Mr. Panico asked where they were proposing to leave pavement and not leave pavement.

Mr. Schultz responded that this whole area is paved and he showed the location of the proposed Portland cement sidewalk right on the property line. He showed the sidewalk for the pedestrians – tenants.

Mr. Panico commented that he would rather eliminate that.

Mr. Schultz responded that is it – the Applicant is proposing that instead of using block, to pour that with Portland cement. He indicated that was Item #2. Item #1 was to eliminate the concrete sidewalk and put Belgian block there to define that area and not allow perpendicular parking.

Mr. Schultz stated that Item #3 would be to eliminate these walks because now there will be no walkway. One of the walkways is important – the walkway to the apartment because the woman presently living there does use it.

Comm. McGorty asked what would be between the Belgian block and the curb.

Mr. Schultz responded that they would be increasing the landscaping area in that location - using mulch and shrubs.

Mr. Panico asked if they were relying on existing bituminous pavement to walk on.

Mr. Schultz responded that there is an informal sidewalk, a bituminous asphalt that goes to the edge of the road. It's is approx. 3 – 3 ½ feet wide. The pavement comes up to the property line; then they have the proposed concrete sidewalk that goes to nowhere – but he agrees that there needs to be a physical barrier so that the cars don't park perpendicular.

Comm. Harger commented that she didn't think one Belgian block high was going to do very much.

Mr. Schultz responded that was why he wanted the Commissioners to review and discuss this.

There was multiple discussions (inaudible) regarding the curb, the Belgian block, etc. and the need to keep cars from parking perpendicular.

The Commissioners had some other questions regarding the area that required landscaping, height of Belgian block, need for a physical barrier and options to using Belgian block.

Mr. Schultz informed everyone that if they are not comfortable with this, they need to go out now – as a Commission, because the work is being done and he'd like to finish this portion of it. These little, tight urban sites are very difficult.

Comm. Harger asked what the materials on the building would be.

Mr. Schultz responded that it would be vinyl siding –and it is up right now. There will also be some decorative windows.

Comm. Parkins commented that if there is high enough landscaping on the other side, it should be clear that cars should not drive up there.

Mr. Schultz agreed that they could put a high enough hedge.

Mr. Panico asked Rick if they were still going to do the drop off area for the handicapped – he thought it should be flipped around - because he did not like the idea of handicapped appearing to be walking on what looks like the edge of the street.

Mr. Schultz agreed they would need to use the inner walkway. He wants the sidewalk adjacent to the building to be handicapped accessible to be poured instead of Belgian block.

There were continued discussions (multiple discussions, inaudible) regarding the location of the walkway, curb, landscaping, etc...

Mr. Schultz recommended that Mr. Panico go and take a look at it. He commented that there did seem to be a consensus that there needs to be an alternative to the sidewalk to nowhere. He suggested that the Chairman ask for a motion to approve it subject to Staff working it out or (inaudible...)

On a motion made by Thomas McGorty seconded by Ruth Parkins, it was unanimously voted to accept Application #09-30 and table any action until the 10/27/09 P&Z meeting.

APPLICATION #09-31, DOMINICK THOMAS ON BEHALF OF KALICI MANAGEMENT FOR SITE PLAN APPROVAL (ALTERNATIONS TO MIX USE BUILDING), 350 HOWE AVENUE (MAP 117B, Lot 59), CA-2 DISTRICT – ACCEPT, DISCUSSION AND POSSIBLE ACTION.

Mr. Schultz commented that the consensus of the Downtown Subcommittee was to have the property owner submit a site plan which the Commission is accepting tonight. The Applicant will be asking the Commission to go one step further to review it and act on it. This is part of their request to rehab the building; and by rehabilitating it, they have to do significant work on the front façade. They will also see tonight, and the Applicant will detail it, that they are willing to do the Cornell side as well. Staff indicated that there are three sides of importance, including the back because that is adjacent to the residential area. Their main focus is to bring it up to code. The Applicant's attorney will speak on that and at the Subcommittee level, they asked them to provide an elevation, which they have tonight so that the Commission will see what the finished product will look like.

Mr. Panico referenced the submitted drawing and commented that it was not quite true. He added that once the building is straightened out, there will be a wall that is not in the same plane with one of the other walls – it would be in front of it by 9 – 12 inches.

Mr. Panico continued to say that in looking at it today, what has happened is that the wall leans, then the upper floors of the building are plumb, and rather than try to pull it back, they are going to create a new supporting system for the lower floor. But according the engineering drawings, the supporting floor will be out farther.

Atty. Dominick Thomas, Cohen & Thomas, 315 Main Street, Derby, CT addressed the Commission representing the Applicant, Anthony Kalici.

Atty. Thomas responded that he was under the impression that all his client was going to do was a Certificate of Zoning Compliance to redo the building. He indicated that this started with Raze Order 18 months ago from the Building Official. Initially, after the accident the Building Official said that the building was safe; however, six months later, he said it was not. He requested that it be stabilized and a local engineer developed a wall inside to stabilize the building. It was stabilized. A year later, an alleged engineer named Collins, rendered a report saying the building was unsafe and a Raze Order was issued.

Atty. Thomas stated that at that point, the owner, Anthony Kalici came to him. He appealed the Raze Order but there was no Building Department Appeals Board in existence. There is a specific requirement as to who has to be on such a board. This past summer, a Building Department Appeals Board was formed and Mr. Kalici retained a well-respected engineer, Joseph Patinder? who worked on the Birmingham Condos. He went in there and proved that the building was

not going fall down and developed a plan to stabilize the building to reuse as it exists by building stabilizing walls – you don't actually shift the building but build walls so that it appears straight.

Atty. Thomas stated that they went to the Appeals Board and effectively rebutted totally the fact that building had to be razed. Due to his client's generosity, they asked what his timeframe was for fixing it. His client went and he basically said he would come back before the Appeals Board and he did. At that point, they addressed the issue that the P&Z Commission – who had said that he couldn't just do this and just get a Certificate of Zoning Compliance. Rather than argue about what the requirements were– because his client would have to come back to P&Z when he got tenants in it anyway, they'll just reuse it and stabilize the building. The conundrum is that they promised the Building Appeals Board that they were going to do this work. They have no authority to order a raze order; they've rebutted that. Mr. Wilson wouldn't even bring in the engineer. What was asked for was an elevation.

Atty. Thomas stated that they did not have much time to get it. The purpose of the elevation was simply to show what they would be plan on doing to the front, and what they plan on doing to the side facing Cornell Street so that the brick veneer would be carried around.

The conundrum that everybody is in is this – he wanted to be honest, and said if this Commission were to say no, then they are at a loggerjam - then it just sits there. They can't do anything; it can't be razed because it is stable. This is a proposal that his client agreed to submit. He received it this morning and delivered it. It is an elevation to show what he is going to do once it is straightened out; generally speaking, he's in the process of getting bids. They wanted to know what the materials were and they provided the materials.

Atty. Thomas said that he didn't have the engineer come tonight; he doesn't know exactly where that wall is. All he knows is that when they made the presentation, he was very detailed in explaining how the box at the top stays the way it is and the bottom moves and eventually the walls are going to built. It is not going to be tilted back to begin with; they are going to straighten out the wall after it is stabilized.

Atty. Thomas added that all he knows is that the required engineers who sat on the Building Appeals Board and the Building Official all said "thumbs up," "fine" and "this is great."

Mr. Panico responded that he agrees with everything Atty. Thomas has said, but he is pointing out that the upper floors of the building, which are going to be preserved, today, are 9 – 10 inches further away from the side street than they were before. That is all he is saying.

Mr. Panico continued to say that the bottom floor is going to retain the original footprint. So, when those two conditions are put together, there is a disconnect at this point – and the engineer plans show it.

Atty. Thomas responded that when he drew it for him (inaudible).

Mr. Panico asked if he had those engineer's drawings with him.

End of Tape 2A 9:35 p.m.

Atty. Thomas responded that he didn't have the engineer's drawings with him.

Mr. Panico commented that if he did have the drawings, then he would be able to point it out to him in an instant – there is a detail right on it that shows that joint; and he says it's a simple thing that he can somehow treat it architecturally. He agreed that there is something that can be done, but this drawing, unfortunately, doesn't show it.

Comm. Parkins commented that they thought because there were major renovations to the front of the building, it would be wise to require a site plan - that was the outcome of the Downtown Subcommittee.

Atty. Thomas commented that there were going to be changes (inaudible)...

Mr. Schultz indicated that it's an exterior alteration, and that was confirmed at the meeting, (inaudible) the front façade, John Ruffalo confirmed it.

Comm. Parkins agreed and commented that was what prompted the request for site plan – the alteration.

Comm. Harger asked Rick if they got a report from that Building Committee.

Mr. Schultz responded that no they haven't...

Atty. Thomas stated that the Building Committee is done. Unfortunately, maybe, what his client should have done was ask them to make a decision at the end of the first meeting. It was only a Raze Order. They rebutted the Raze Order – they are done, case is over. His client gratuitously said he wants to know how he's going to fix it because, at that point, the Raze Order was over with. The only way to proceed is to have a Blight Order, if Blight could be proved - but this is a Raze Order; so, now they are caught in a conundrum. They were confused and they didn't know what to do, they just wanted his client to get a building permit and get started. Atty. Thomas indicated that they agreed and said they'd continue the public hearing.

Mr. Panico responded that if they took the position of saying, "Fine, OK, the building is stable now, that's all I need to do" – what was necessary to stabilize the building to install those sheer walls results in compromising the utilitarian value of the property. The only way to overcome that is what the structural engineer is showing; how to provide structural support on the first floor.

Atty. Thomas commented that the structural stuff is inside.

Mr. Panico responded that he understands that, but the compromise is the functional usability of that ground floor space – those sheer walls are there.

Atty. Thomas commented that as it exists right now, with the sheer walls in, it doesn't compromise it; their engineers say that it is stable.

Mr. Panico indicated that is why they need to go through this – to be able to remove those sheer walls.

Atty. Thomas commented that his client has a limited amount of funding. There is one insurance company that may pay a little bit of money. He is in this situation. He went to the individual who is making a bid and this is what he proposed. He agreed to do two sides with brick, new awning signs with retail stucco finish with egress panels on the top.

Mr. Panico indicated that he had one major question – is there going to be a new first floor structural support system for the upper two floors – yes or no?

Atty. Thomas responded that a lawyer can't answer those kind of questions - those plans were submitted to the Building Department.

Mr. Panico asked if he is going to implement these plans, that's all he is asking - he is just trying to find out the facts.

Atty. Thomas responded that they have to, they promised that they would. They've shown that the building is stable as is and the engineers spoke among themselves. He clarified that when he speaks of the engineers he is talking about the Building Appeals Board - it has two engineers on it and three contractors - that is the requirement. So, they had Jim Rotundo, Ed Shalomus (sp?), A.J. Grasso, a plumber named Glover and an electrician whose name he can't recall.

He stated that they walked in and said the building is stable. They asked what they were going to do - Elliot reviewed it, there were a few suggestions about bringing in some sheet rock, doing fire weighted walls, etc. There was a lot of technical discussion he didn't understand about how they were going to do things inside and out. The issue was raised that P&Z wants to have some say in this. At that point, they agreed that 30 days after the Building Permit they would commence work during that period of time. All they are doing to this building is structurally making it sound.

Mr. Panico responded that when he presented these elevations, it was his presumption that this was going to be implemented in conjunction with the structural restoration of the first floor.

Atty. Thomas commented - if he has the money...

MR. Panico adamantly responded that he can't do one without the other.

Atty. Thomas indicated that he doesn't know if they can or not - he's assuming they can - and he's saying that their first step for them is to begin the renovations, bring it up to code and at that point before he can reutilize this building, he has to come in before this Commission and get the Certificate of Zoning Compliance for each of the tenants. That is what he has to do - at this point they are just trying to stabilize the building.

Mr. Panico commented that to Atty. Thomas that he just said the building *is* stabilized.

Atty. Thomas clarified stabilized - for use.

Mr. Panico asked if that meant implementing this structural plan - interior walls and things - this structural system.

Atty. Thomas responded yes, structural things, interior walls, yes.

Mr. Panico commented that all he is pointing out is that, if they implement that structural system, they are going to have that disconnect on the street side - that's all he is saying.

Chairman Pogoda asked Atty. Thomas to provide for the Commission the steps, the progression, from these engineer drawings, the structural integrity of the first floor and the progression of getting this building completed. Once this is done internally, he recalls hearing him say at the meeting they both attended, that he wants to get things going on this first floor. Before doing anything else to the rest of the building that is what he understood was going to take place. He understands the structural work...

Atty. Thomas stated that before he could do the first floor work, they have to do the work shown here – they have to do the storefronts that are there. They are going to have brick, glass, awnings and stucco panels.

Chairman Pogoda commented that at the meeting, he understood that there was going to be siding on here – but now he sees stucco shown.

Anthony Kalici, 164 Chestnut Hill Road, Oxford, CT addressed the Commission. Mr. Kalici indicated that he spoke to the contractor that he has and the contractor told him that this is the new stuff that they use now – it is kind of like a stucco, but it's in a panel. He was thinking of using siding, but the contractor said stucco, but if the Commission wants siding, they could use that – it doesn't matter to him. It is in the same ballpark price range – it looks nice and in style right now.

Chairman Pogoda responded that it may be in style, but personally, for him, he doesn't think it is the style of downtown Shelton. That is his personal opinion. They are trying to stay in one mode – with the exception of one or so, is brick or vinyl on any rehab; such as the homes on Coram Avenue that are vinyl. He doesn't see any plans for the right side of the building. He asked Mr. Kalici if he plans to leave the right side of the building that way without doing any additional work to it, because it is going to be visible coming up Howe Avenue. He commented that he doesn't see any drawings showing anything for that side.

Mr. Kalici responded no he doesn't - but the whole building will be redone in new siding, if they don't like the stucco, that won't use stucco. The whole building will be redone and it will not look the same. The brick will be on two sides but all the sides have to be new siding because it is old.

Atty. Thomas added that when Mr. Petremont's PDD is built then they won't see a thing – if he builds it. The agreement was that they would put the brick for aesthetics (inaudible).

Chairman Pogoda asked if all this will be done prior to any occupancy of the upper or lower floors.

Mr. Kalici responded yes, it would be done before any occupancy, yes, (inaudible).

Chairman Pogoda stated OK, he just wants that on the record – that the building will be completely finished, siding and brick and everything prior...

Mr. Kalici responded that it will look as it does in the picture; if they don't like the stucco, then he'll use something else.

Comm. McGorty asked if all the sides would be uniform.

Comm. Parkins responded no, the brick is just on the front and the Cornell side and the rest is vinyl or stucco.

There was further discussion about the materials to be used and what materials to use on which sides of the building.

Mr. Kalici concluded that he is going to do everything that he can to make the building look as nice a possible – it is to his benefit to increase the value of it. It will not look the way it looks now – that is all he can say. He added that if the Commission doesn't like the stucco, he won't use it.

Chairman Pogoda added that the stucco is up to all the Commission members.

Atty. Thomas commented that it would be covered up when the proposal for next door is built.

Comm. Harger commented that they don't know when that is going to happen and they want it look uniform coming down the Howe Avenue/Center Street approach on the Cornell side.

Mr. Panico commented that the three sides should be done and on the side where the adjacent property is eventually going to be developed, that can be open for discussion as to how far the brick has to be carried; however, he thinks he does have to wrap the corner a little bit though.

Comm. Jones suggested wrapping it around 10 feet or so.

Mr. Panico requested that the new drawings be drawn up with the vinyl siding instead of the stucco.

Chairman Pogoda suggested that he would like to leave it with the Downtown Subcommittee to work with the Applicant and Staff in regard to the colors – possibly a color on the vinyl. Perhaps, they could bring in some samples to the meeting. He thought it could be left to the DSC and they can report back to the Commission.

Mr. Panico added that the design guy has to deal with wrapping this canopy around and the bottom floor is going to be projecting out from the second floor – so it is going to complicate the canopy around that corner.

Mr. Kalici commented about the detailed drawing (inaudible).

Atty. Thomas indicated that he is sure that his client is going to try to cooperate (inaudible) – but this is not a PDD. He added that he has to go back to the other Board and tell them that he's sorry that they aren't going to get the work done when they want it done because obviously, now, P&Z wants him to get this. The contractor was supposed to begin working in the end of October into November. Now, as Elliot said, without a Certificate of Zoning Compliance, they are not doing it. If they are talking about a Site Plan Approval, then he is going to go back to the Commission – Appeals Board – to tell them that they need to go back to the architect for detailed architectural plans and samples of siding, and thin brick, etc. It is going to be what the Applicant can afford.

Atty. Thomas concluded that he has to deal with two Boards that are pulling at him in different directions – one wants it done and stabilized because the building can't come down because it has been rebutted. He is asking for an approval to do it. He has agreed to wrap the brick around 10 -12 feet down the side and use siding.

Comm. Parkins commented that it is not uncommon for this Commission to ask for material.

Atty. Thomas responded that he knows that and most people comply with it – but that isn't to say that it is proper.

There was further discussion regarding the materials of the awning and Mr. Kalici responded but it was inaudible.

Mr. Panico informed the Applicant that they are going to need more information about that too because they will probably have to go before the BOA because he'll be encroaching on the street line. It looks like it is projecting a foot.

Atty. Thomas responded that this is an application to get him started working on this building because they agreed with the Building Appeals Board that they would do it. As far as other applications, all of them have to be made and he isn't debating that.

Chairman Pogoda commented that he feels that they've got enough of a consensus, he asked for a motion to accept the Application and approve the alterations to the building. He is going to direct the DSC to work with Staff regarding the materials (siding, brick, awning, windows) and details. They can begin doing the internal renovations. Comm. Harger and Staff can set that up with the Applicant.

Mr. Panico commented that a lot of this can be worked out while they are doing the structural work.

Atty. Thomas stated that he'll be happy to bring the engineer and architect contractors that Mr. Kalici decides upon to the DSC or Staff to appropriately address any questions. His promise to the Building Appeals Board is that he would get his client moving on the building as quickly as possible.

On a motion made by Chris Jones seconded by Thomas McGorty, it was unanimously voted to accept Application #09-31.

On a motion made by Chris Jones seconded by Thomas McGorty, it was unanimously voted to approve the alterations to the building and direct the Downtown Subcommittee to work with Staff regarding the materials and details.

PUBLIC PORTION

Atty. Dominick Thomas, Cohen & Thomas, 315 Main Street, Derby, CT addressed the Commission.

Atty. Thomas indicated that he had two quick items - the first, representing 714 LLC, whether they are aware or not, the BOA has finally resolved its issues with the DOT and they are going to be reapplying on (inaudible). He'd like to get permission to sit down with Staff and determine anything that is totally repetitive of what has previously been submitted, and then just submit one copy instead of multiple copies. They can determine if anything is changing, they will submit all new copies, but if there is anything that is not changing they can adapt them into a single copy.

Atty. Thomas indicated that the second thing had to do with his obligation to report to the ZBA on use variances. He is before the ZBA on behalf of Center Stage next Tuesday night to have them utilize the former Subaru showroom for its production until the buildings are taken down – assuming they get approval for the project. He asked this Board simply, if it is before them, to report favorably and authorize Mr. Schultz to write to the ZBA that they have no objection and would look favorably upon the use variance which would, obviously be a temporary use variance, while they search for another site.

Without any further public comments, Chairman Pogoda asked for a motion to close the public portion.

On a motion made by Ruth Parkins seconded by Virginia Harger, it was unanimously voted to close the Public Portion.

OTHER BUSINESS

APPROVAL OF THE MINUTES

On a motion made by Ruth Parkins seconded by Virginia Harger it was unanimously voted to approve the minutes of 7/14/09, 8/11/09 and 9/8/09.

ZONING ENFORCEMENT

1. **54/56 OAK AVENUE**
2. **60/62 OAK AVENUE**
3. **13 HUNTINGTON AVENUE**

Staff is requesting the Commission to authorize legal action. They have been working repeatedly with these property owners to comply with the Shelton Zoning Regulations, and they've have had minimal to no success. They are requesting legal action at this time for these three sites.

Comm. Harger asked what the violations were.

Mr. Schultz responded junkyard conditions, storage of commercial vehicles and a gamut of other items. Staff will continue to pursue these issues.

On a motion made by Thomas McGorty seconded by Virginia Harger, it was unanimously voted to authorize legal action for zoning enforcement of properties located at 54/56 Oak Avenue; 60/62 Oak Avenue and 13 Huntington Avenue.

CRESCENT VILLAGE CONDOMINIUMS: REQUEST ONE YEAR EXTENSION ON SITE PLAN APPROVAL TO COMPLETE PROJECT

Mr. Schultz commented that the 5th year is coming up on the end for the Crescent Village, old Pinecrest Country Club. The Commission has the authority to grant extensions for an additional five year period. The Applicant is only requesting one year and Staff is recommending only doing one year at a time. As they know, because of the economy, things have slowed down. As they also know, they've been reducing the site plans, because they've been progressing. They are requesting a one year extension to complete the project. Staff recommends approval.

On a motion made by Virginia Harger seconded by Ruth Parkins, it was unanimously voted to approve the request for a one year extension on the Site Approval Plan to complete the project at Crescent Village Condominiums.

APPLICATION #09-15 (CRANBERRY HILL ESTATES): MODIFICATION OF CONDITIONS OF APPROVAL (CONVEYANCE OF OPEN SPACE)

Mr. Schultz indicated that this a side issue from the Stop Work Order, because that has been lifted. They have yet to post a bond to do the restoration work; they are having difficulty getting the bond.

Mr. Schultz stated the BOA has advised the City of Shelton that is not interested in accepting the conveyance of the 6.5 acres to the City of Shelton. Accordingly, this Commission has to modify its conditions of approval. He suggested to the Commissioners that before they do this, that they refer this to the Conservation Commission for their recommendation. Staff, at this junction, is suggesting that

the Homeowner's Association take it over, but the Shelton Land Trust is also a possibility. He asked them to direct this to the Conservation Commission for a recommendation.

On a motion made by Ruth Parkins seconded by Thomas McGorty, it was unanimously voted to direct the Modification of the Conditions of Approval (Conveyance of Open Space) for Application #09-15 (Cranberry Hill Estates) to the Conservation Commission for review and recommendation.

APPROVAL OF BILLS

On a motion made by Virginia Harger seconded by Thomas McGorty, it was unanimously voted to approve the payment of bills, if funds are available.

Staff Report

Mr. Schultz indicated that there was an item of note regarding the ZBA Oct 20th Agenda – the use variance for the former Subaru dealership at 405 Bridgeport Avenue by Center Stage for an indoor theater. The property, as they recall, is a restricted business district and a theater use is not a permitted use. He has had a chance to speak to some of the Commissioners and the feeling he is getting is that it is not an obnoxious use or one that would impact the immediate neighborhood but the ZBA is looking for some type of direction. They would be looking for some type of a recommendation that the Commission does not have any comments at this time for the temporary occupancy or go a step further that the proposal is not inconsistent with the overall zoning of the area – mixed use, residential, commercial, and industrial.

Comm. Parkins asked if they mentioned how temporary or how long they would be using it.

Chairman Pogoda commented that he thinks it is temporary until the Applicant brings in another application with plans to raze the building – and at that point, they have to move.

Comm. Parkins responded that's between the landlord and Center Stage – they just have to say whether they agree with approval of the use – so, she's all in favor of it.

Mr. Panico added that it will promote better maintenance of the property.

Mr. Schultz commented that he will be putting it in as a temporary re-use and the Commission has no significant issues.

ADJOURNMENT

On a motion made by Ruth Parkins seconded by Thomas McGorty, it was unanimously voted to adjourn at 9:50 p.m.

Respectfully submitted,

Karin Tuke

Recording Secretary, Planning & Zoning Commission