



just pave the parking that they thought they would need for the data center that they were proposing at that time. He indicated that, to date, they wanted the flexibility to use the building as a general office building since the data center use isn't being realized. Based on the approval that they received from P&Z, Condition #3 indicated that they would need to come before the Board again if they wanted to make any modifications.

Mr. Silva stated that their modification is to utilize the full parking required originally by the Regulations for a general office use. He showed that on the original data center plans they had proposed to grade out and build drainage structures for the full office use with the full amount of parking required; however, they did not propose to pave that area completely. They only paved the spaces required for the data center. So, actually, the system was actually overdesigned for that phase of the project.

Mr. Silva indicated that if this had become a full data center, they probably would not need to pave that area. They would like to have the flexibility to put in the required parking for this building.

He showed a rendering of the building that is approximately 120,000 square feet and they have a total of 415 proposed parking spaces, as required by the Zoning Regulations for both parcels. The total for both parcels would be 813.

Mr. Silva showed on the rendering that there was no longer a need for generators in one location. On another drawing he showed an additional, expanded parking field to the west, to the east and along the back where the generators were at one time. The previous approval was for a general office building, but they had some leniency because of the specific use and it did not require the parking requirements in the Zoning Regulations.

Chair Parkins asked what they were proposing for parking at that point.

Mr. Silva responded that the building was essentially the same, slightly larger in square footage due to equipment required such as the generators. The building was 130,572 square feet and they only proposed 75 spaces for that use.

Chair Parkins asked for clarification that their original proposal was 75 spaces for a 135,000 square foot data center.

Mr. Silva responded yes, that is correct. However, now they cannot guarantee that the specific use is going to be a data center so they have to bring the parking up to meet the regulations for general office. That requires them to propose what they had originally proposed in front of the Wetlands Commission, but they were asked to reduce the amount of impervious area. He showed the site plan with 415 parking spaces and it is 120,000 square foot building.

Mr. Silva indicated that the engineering of the project is similar. He showed that they have the same fill area and cut-in the back along the rock face. The grading is similar to the original approval because they were required to grade the site and leave it as gravel. They have some sporadic landscaping in different areas.

Mr. Silva stated that they have some existing sanitary lines that come through where the building is being proposed. They worked out with the adjacent owner, to re-route the sanitary line around the building with a new easement, a new pipe to be put in prior to construction. The storm water system is also very similar to the original approval except now there are a couple more catch basins in areas where there wasn't pavement before, but the control system was designed for the impervious area that they see here.

They had to design it that way due to the fact that in the future the use may be general office.

Mr. Silva showed the location of storage pipes in front of the building underneath the parking lot and the control structure with a secondary treatment unit. This collects the storm water on site and infiltrates it through 5 foot high pipes. They can get away with that kind of large pipe because this is a fill site. As they are building up the site, they will put those large pipes underground. It also acts to clean and cool the storm water discharge that is going to go to the existing wetlands here. He stated that was in all in the original Wetlands approval.

On another drawing, Mr. Silva showed how the site slopes from the north to the south. He showed location of the meandering driveway coming down. He stated that they have already had some contact with the DOT prior to this project coming in. Based upon the DOT comments, he showed the location of the driveway curb cut to create better sight distance. He showed the high point that was their concern. He indicated that this will have to go in front of the STC because it does qualify as a major traffic generator so they will scrutinize the plan drainage.

Mr. Silva stated that because of the previous approval, they have already gotten the ball rolling with STC. They had them look at the whole drainage area for this whole subdivision and how it ties into the culvert on River Road. It is very extensive. In regard to traffic, they are looking at this to fit into their future plans for Constitution Boulevard and Route 8.

Mr. Silva indicated that he would provide itemized responses to the City Engineers comments. There was a landscaping plan submitted for the previous approval which he will update for this.

The soil erosion plan is the basic soil erosion required by the State, silt sacks on all catch basins and silt fence around the whole disturbed area. There is an anti-tracking pad here – that was one of the comments on the letter read by the Secretary. They do have outlet protection. They just stake hay bales at the new outlet and where the plunge pool is going to end up being in its final state.

He explained how they would provide protection by cutting into the rock to create a waterfall type of rock cut where the water will cascade down into a basin area. There will be a pipe underneath to bring it around to the outlet structure where it goes back into the wetland. They don't want to disrupt that flow of water to the wetlands that are currently there.

He showed how they would realign the sanitary sewer profile. It is an 8-inch line that has a couple of drops because of the grade difference. The storm lines are going to pick up that intermittent stream with a 30 inch pipe. The capacity of it is large enough that it can accommodate the rerouting around their building in the event of substantial rainfall.

Mr. Silva described some details regarding the tackle domes for the sidewalks required by accessibility regulations, and the soil grit separators called a downstream defender.

Chair Parkins asked if it would be concrete pre-fab.

Mr. Silva responded yes, concrete pre-fab silo with a plastic insert. It actually causes the water to circulate inside which will slow down the particles in the water, drop it below a comb into an area that catches all the debris. It has a siphon hood on the inside of the comb so that the floatables cannot leave this

unit either. The way they clean it is by coming into the manhole, down the middle of the plastic insert and vacuum out the oils by skimming it and then they take the vacuum hose down to the bottom and take out all the particles. This unit is 2.65 microns and the 95%? (inaudible) efficiency so it is one of the better units. They also have the typical trench detail for all the utilities they are going to have on site. He discussed standard pavement detail, outlet structure with headwall, and dumpster pad location, chain link fence for area that is above rock cut so that people from Pitney Bowes don't come down the rock cut.

Chair Parkins asked how much of a buffer they had up there.

Mr. Silva responded that he thinks it is about 10 or 15 feet. Their site (Pitney Bowes) has drainage coming off of it down that intermittent stream and that's why they put that 30" pipe there.

Mr. Silva discussed the 48" manhole details, breakaways and concrete walk and curbing. He explained the control structure for the drainage which is a 6'x6' box with a 5 1/2' wall. The orifice that controls it is 24" and it's raised to hold back the 1" rainstorm and infiltrate that.

He showed the cross section detail of the storage units and indicated that they would be 60" pipes in series, manifolded together into a gravel bed and feed the water into the ground. He showed cross-sections of the fill area into 4 cross sections, the slopes, and how the building fits into the existing grade versus the fill.

Mr. Silva showed the proposed floor plan with an open floor area for various uses to be subdivided, the defined lobby in the center, elevators, stairs, and bathrooms. Previously, this was all a data center. The façade is now going to be more glass, more open. It will be pre-cast columns and glass. Previously, with the data center the windows didn't need to be as wide because it was for computers but with the general office use they wanted to open up the building and get more light in.

Mr. Silva indicated that the back of the building is one level higher so the main entrance in the rear of the building is actually the second floor. He added that it would be good for the distribution of parking.

Chair Parkins asked if there were any loading docks proposed.

Mr. Silva responded that the loading docks would be on the side of the building. He showed the location of loading docks and explained that they were internal docks, garage doors that come in through the lower level of the first floor.

Comm. McGorty asked where the dumpster was located.

Mr. Silva showed the location of the dumpsters on the site plan.

Chair Parkins asked if they were just overhead doors.

Mr. Silva responded yes, overhead doors where the trucks pull into a dock.

Chair Parkins asked if they have any plans to put in a generator.

Mr. Silva responded that at this point, no. He knows that previously, they had 8 of them. He indicated that if the data center use comes in, then they'll have to come before the Board again.

Comm. Pogoda commented that the dumpster is going to have to be enclosed in an enclosure in the same materials as the building. He can work that out with Staff.

Mr. Silva commented that in the previous approval, they were inside the generator house/enclosure so now they'll have to make a separate one.

Chair Parkins asked if they were going to do a full build out of the parking – 415.

Mr. Silva responded yes, they are going to build out the parking to give them the flexibility for the space. Without it, they would be restricted – they were restricted in the previous approval as just for a data center use.

Chair Parkins asked if any of the Commissioners had any questions.

Comm. Flannery asked if they would be blocking up the windows if it becomes a data center later.

Mr. Silva responded that if the data center takes up the whole space as it did in the previous approval, yes, but maybe not – it depends on how the user wants to use the space. If they have to have that wall space for their servers, then the windows will be blocked. He doesn't think it will be that visible from the street.

Chair Parkins commented that it would be a dark tinted window so if they block it, it will be from the inside.

Comm. Flannery explained her reason for asking the question. She works in a brand new school and the whole outside is glass. They have a problem with birds flying into the buildings and dropping dead. She was wondering about the type of glass and if the birds would be able to see it.

Mr. Silva responded that there is a kind of glass now with perforations that polarizes the glass and makes it a little shadowy. It is what everyone is using in the commercial industry because it is bad PR to see a lot of dead birds around.

Comm. Pogoda asked if they would be coming in to increase the size of the building if they become a data center again, or would it stay the same. He knows that it is not much more than what it was before but asked if this is the plan they intend to use even if the data center comes in.

Mr. Silva responded yes, that's correct.

Chair Parkins stated that they would probably just be adding generators.

Mr. Silva responded yes, that's correct.

With no further questions from the Commissioners, Chair Parkins indicated that they would open the public hearing for anyone in the audience that would like to speak in favor or against this proposal. There was no one wishing to speak.

Chair Parkins asked the Commissioners if they had a consensus to continue this public hearing to get the information requested by the City Engineer.

Comm. Pogoda commented that he thinks that they could close the public hearing and just let Staff take the information that it would need to present to them. He doesn't think there is any additional information that they need.

Mr. Schultz stated that Staff is comfortable with it because they have been working with the Applicant for a long time on the build out, so this isn't something that they didn't anticipate.

Mr. Schultz asked Mr. Silva to meet with Staff.

Mr. Silva responded that he would go through it item by item to address all his concerns. He's sure that Staff will have some additional after that.

Chair Parkins requested a motion if there was a consensus to close the public hearing.

**On a motion made by Anthony Pogoda seconded by Thomas McGorty, it was unanimously voted to close the public hearing for Application #10-25.**

**APPLICATION #10-26, GREG KAPETONEAS FOR SPECIAL EXCEPTION/SITE PLAN APPROVAL (RELOCATION OF CAPTAIN'S PIZZA) 515 BPT. AVE. (MAP 50, LOT 13), CA-2 DISTRICT.**

Chair Parkins asked the P&Z Secretary to read the Call of the Hearing. Comm. Harger read the call of the hearing and two pieces of correspondence.

**\*See attached correspondence to Richard Schultz from City Engineer, Robert Kulacz dated December 30, 2010.**

**\*See attached correspondence to Richard Schultz from Fire Marshal, James Tortora dated January 19, 2011.**

**Robert DeLibro and Greg Kapetoneas addressed the Commission.**

Mr. Kapetoneas indicated that the space is 1830 square feet. It was the former Blimpie's/Coldstone location. Captain's Pizza would like to move to this location. There is currently a dedicated, enclosed dumpster area in the back just for the food use which was a requirement from the prior tenant.

Mr. Kapetoneas stated that he had the hours of the tenants in the plaza and there shouldn't be any conflict with prime or peak hours.

Comm. Harger asked what their hours would be.

Mr. DeLibro responded that they would have the same hours that they have now, 8 a.m. to 9:30 or 10:00 p.m.

Comm. Flannery asked if this was half Blimpie's and half Coldstone.

Mr. Kapetoneas responded yes, they were both under the same roof with one entrance. They were owned by the same company.

Chair Parkins asked what the size of their current restaurant was.

Mr. Kapetoneas responded about 3000.

Chair Parkins commented that is what she thought – so they are downsizing.

Mr. Kapetoneas responded yes, correct.

Comm. Harger asked what they planned to have inside – all sit down?

Mr. Kapetoneas responded that they submitted a floor plan. There will be a service counter and about 9 tables – booths and tables.

Comm. Pogoda asked if they would have a separate dumpster for the grease.

Mr. Kapetoneas responded yes, that would go in the enclosed area where there is provided space.

Chair Parkins asked if their take out/pick-up would be using the same entrance.

Mr. Kapetoneas responded yes, pick-up will be to the right when you walk in the door.

Comm. Pogoda asked if they would be designating those three spaces for take-out with some sort of signage.

Mr. Kapetoneas responded yes, they would like to, with the Commission's permission. Those are three handicapped now and they would like to bring those down to the Quest end of the plaza and one right in the front. If they have been to this plaza, right in front it is ramped with no steps and it accommodates a wheelchair. It would be the best.

Chair Parkins asked if most of their deliveries came throughout the day or mostly in the morning.

Mr. Kapetoneas responded mostly in the morning.

Chair Parkins commented that she noticed that the Cork & Keg get their deliveries in the morning; she saw the Budweiser truck parked backed along the side so they could come in to the back.

Mr. DeLibro responded that their deliveries mostly come in the morning and they usually get in before 12 noon.

Chair Parkins indicated that she thinks at this site it should strongly be encouraged to do that.

Mr. Schultz asked the Applicant to state for the record that the occupants were notified.

Mr. Kapetoneas responded that the occupants were notified and he had drafted a letter for the previous hearing that had been cancelled stating that everyone was in favor of them coming.

With no other questions or comments from the Commissioners, Chair Parkins opened up the public hearing to members of the audience who wished to speak in favor of or against this proposal. There were no comments.

**On a motion made by Joan Flannery seconded by Anthony Pogoda, it was unanimously voted to close the public hearing for Application #10-26.**

**End of Tape 1A, 7:40 p.m.**

**APPLICATION #10-27, HONG FU, INC., DBA HUNAN PAN FOR SPECIAL EXCEPTION/SITE PLAN APPROVAL (HIBACHI SERVICE AND SERVICE BAR), 303 BPT. AVE. (MAP 303, LOT 16), RB DISTRICT.**

Chair Parkins asked the Secretary to read the Call of the Hearing. Comm. Harger read the call of the hearing and two pieces of correspondence.

**\*See attached correspondence to Richard Schultz from City Engineer, Robert Kulacz, dated December 30, 2010.**

**\*See attached correspondence to Richard Schultz from Fire Marshal, James Tortora dated January 19, 2011.**

**Atty. Dominick Thomas, 315 Main Street, Derby, CT addressed the Commission representing the Applicant.**

Atty. Thomas presented the notification letters, the certified responses and photos of the sign posted on the property the 2<sup>nd</sup> time on top of the snow. He distributed 11 x 17 copies of the floor plan to the Commissioners. He indicated that the changes are taking place on the ground floor. The second floor is staying exactly the same.

Atty. Thomas stated that historically, many years ago as Laretti's Restaurant, the ground floor was catering which obviously can be a more intensive parking issue with banquets there. This is a scaled down version of a proposal made in 2007 so there is no additional parking needed. There is a reason that the four spaces across the street are labeled "reserved" spaces. They have an easement there for up to seven spaces head in. They don't believe that they are needed. They also have an easement on the daycare for employee parking but the employees are brought in by van. A couple of them will park in the commuter lot and be brought in which is acceptable but others are brought in directly from where they live.

Atty. Thomas stated that they believe that they have the 40 spaces that are required, marked reserved. In addition to that, there were three dumpsters that were not in an enclosure. They are proposing adding a dumpster enclosure. Dumpster pick-up is early in the morning because there is no breakfast service here so that is why it can be in front of the spaces.

Atty. Thomas indicated that he'll start with the interior changes made on the ground floor and Joe Mingolello will address that. He added that they could find it on Page 2 of the 3 page hand-out.

**Joe Mingolello, Mingolello & Hayes Architects, Offices in Huntington Center, Shelton addressed the Commission.** Mr. Mingolello explained that the orientation is the lower level parking lot at the end of the building and there is another parking lot at the upper section and that is the main entrance for dining. As Atty. Thomas stated, this was a party room and catering for many, many years. The owner would like to add four (4) hibachi tables. He showed the location of the lower level entrance where there would be a little lobby, a waiting area with a small bench, a service bar and the 4 hibachi tables. Each hibachi table serves 9 people, so that would be 36 seats. He showed the location of the men's/women's restrooms, liquor storage room, prep kitchen with freezer/cooler and a small office. It is a simple plan and a much scaled down version of what was submitted back in 2007.

Comm. Flannery asked if the waiting area was just for people waiting to be seated.

Mr. Mingolello responded yes, correct.

Chair Parkins asked if there was a lounge or bar down there.

Mr. Mingolello responded no, it's a service bar.

Mr. Mingolello stated the lower level was just a waiting area and no food is served there – just at the hibachi tables.

Comm. Pogoda asked how much seating was upstairs.

Mr. Mingolello asked the owner (name not provided) and he responded that on the existing floor plan it was about 71 including the bar.

Comm. Pogoda asked how many seats at the bar.

Mr. Mingolello asked the owner and he responded 6 seats. But that includes the sushi bar too – so it's 14 seats.

Atty. Thomas commented that during the course of this application, and they've been talking for several months, he had the Client observe the parking. Before the snows, even when he was busy upstairs, there was no one parking below. All the parking for upstairs for his lunch and dinner was being accommodated up on the top with no problem whatsoever. He had the owner observe this for a good period of time. Basically, the downstairs complies with the square footage. Shelton's parking regulations for restaurants is based upon square footage, not the number of seats because it is not an assumption that everyone comes to a restaurant by themselves. Most of the time, for example, there is a table for four and two cars.

Chair Parkins asked if there was outside access from the lower parking level into the restaurant.

Mr. Mingolello responded yes, and showed the entrance on the lower level, the lower parking lot, the area to walk along the back and the lower lobby area. He explained that it connects to the upstairs main dining room too. It has always been that way; people will park below and come inside and go up.

Comm. Pogoda asked if there had been any effort made to work with the daycare across the street to get that parking in the evening and on weekends because they cannot have even one car sitting on that street at any time.

Atty. Thomas responded yes, they understand that.

Comm. Pogoda added that they have a lot of seating here and he thinks that the parking is going to be tight. He asked if they have worked with the daycare across the street to use their parking on the weekends and in the evenings.

Atty. Thomas responded that there is an easement to use that for employee parking. They don't really need it. The prior owner owned all the properties but their parking ratio is not based upon seats. The parking ratio is based upon patron area – that is your regulations. This is an approved use in a Restricted Business Area. The only reason that it is a Special Exception is because of 5-18, they require all food establishments to go through a public hearing. But their parking ratio is based upon 7500 square feet of patron area which was computed by the architect. If they look at the site plan, which is the first page, they will see that it complies. They have 40 spaces based upon that. The only thing that they did here was to generate 7 spaces across the street where they have this – and he would like Alan Shepard to speak on this first - but they have 7 spaces over here if they were done head in, but it would require more disturbance. He knows that there were situations way back when, when it was a catering hall, because he was there for some of those events and there was a problem of spilling over. Catering and those types of events, such as a political fundraiser, they have more people coming in single cars. Downstairs they are proposing a

typical restaurant. So even though they have 36 people, they could very well have 10 cars or they have 12 cars for those 36 people depending upon the ...

Comm. Flannery stated that they could have 18 cars – 36 people with 2 people per car would need 18 spaces.

Atty. Thomas responded yes, that is a possibility but their own regulations say it is 7500 – it isn't 1 per seat or 2 per seat.

Comm. Flannery commented that maybe they could leave out a table and some chairs.

Atty. Thomas stated that the Commission has their own regulations and he is following those regulations. He is complying with the regulations. If in fact there is any issue, they have the four reserve spaces across the street. Alan is complying with the Engineer's request for five – he has already had conversations with him. At this point, he'd like to have Alan Shepard, the engineer, discuss those changes and he can address the issues of the parking.

**Alan Shepard, P.E., Nowakowski, O'Bymachow & Kane, 415 Howe Avenue, Shelton addressed the Commission.**

Mr. Shepard indicated that when this was originally let out for Sunwood, there were easements granted for parking and there were parking space easements across the street. They were approved at that time; they were pull in parking spaces. When Sunwood and the restaurants went in, that was built out and that was the retaining wall that is out there today. So that was constructed back at that time. They never used these parking spaces and now it has grown over but if they go in, they can see where the wall was put in there and built out for it. So, they have the ability to put extra spaces over there.

Mr. Shepard showed them the reserve spaces, parallel parking, on the site plan that comply with the regulations. They have an agreement with the next door neighbor for 10 parking spaces from the daycare. He showed the Commission an additional seven in another location.

Chair Parkins asked if that small jog-off was the daycare – and they have that agreement.

Mr. Shepard responded yes, they have that agreement and they've had it for a couple of years now.

Comm. Pogoda asked if they had the agreement to park there in the evenings and on the weekends.

Mr. Shepard responded yes. He added that in some of the other towns, one car space for four seats is not uncommon for a restaurant-type of place. If it is a diner with people in and out faster it would be something else, but not for a sit-down restaurant. One car per four is not uncommon in this area.

Comm. Flannery asked if they had a sign saying that there was additional parking across the street at the daycare.

Mr. Shepard responded that it is just for the employees.

Comm. Pogoda commented that if people can't park there – then they don't have the additional 10 spaces. He added that Atty. Thomas just stated that they bring in the employees in a van. So if they bring them in a van, the employees don't have to park there, so why can't it be used for patrons?

Mr. Shepard responded that when they do restaurant parking, they are counting the employees and the patrons in a ratio. So if they have employee parking somewhere else, it would open up spots for patrons.

Comm. Pogoda stated yes, but Atty. Thomas stated that the employees are brought in by a van so they aren't using it. He asked why the public can't use that. So, they don't have an agreement.

Chair Parkins commented that the agreement is for employees only, right?

Atty. Thomas responded that he hasn't reviewed the agreement with respect to that. Their position here was to provide the parking in accordance with the regulations.

Chair Parkins commented that she is going to count how many times he is going to say that.

Atty. Thomas responded that he doesn't want, without having the easements, he is aware of these down here and there is a note on the map that says it, but they don't really need it. He added that he thinks that too many projects have too much pavement – too much asphalt because they've put in parking that is not needed. In his memory, the only time that this has been a problem was when this was a catering hall.

Chair Parkins stated that it would be the best case for him to have a very successful business and have all these spaces. She understands that he is proposing the parking per their regulations but, occasionally, they'll do that but it becomes a very popular restaurant. She'll name a very popular, former restaurant on Bridgeport Avenue where there were major parking issues. People were parking on the road.

Atty. Thomas asked if it was for the catering.

Comm. Pogoda responded it was Madison's and it wasn't just for the catering.

Atty. Thomas indicated that he was aware of that every time because he got the phone calls. The only time they ever had the problem of a spillover was when they ran catering events.

Chair Parkins responded that she could argue that point, but she won't today, because she frequented that place often. She stated that her concern was that if these folks park out on the road, this is a private road. So the police don't even have the authority to go and ticket these people. They could, technically, create a safety hazard by blocking the road and they have no authority to correct it.

Atty. Thomas stated that they have a Zoning authority to correct it.

Chair Parkins responded that the Zoning people don't work all night to tell people to move their cars.

Mr. Shepard stated that he thinks the client is willing to agree to build this parking lot out fully if need be.

Chair Parkins responded that it needs to be.

Atty. Thomas stated that they could put in parallel parking - it's disturbing more – it would be the seven spaces over there instead of four. It wouldn't be parallel it would be perpendicular parking.

Comm. McGorty asked if they could get a maximum of 7 spaces in there.

Atty. Thomas responded yes, if they do them perpendicular. Again, his suggestion would be to reserve them and see if there is a problem and a spill out before they begin to disturb the area. He doesn't see the need for it. Staff can monitor it.

Mr. Shepard stated that it is graded for it and there is a catch basin out there and that was all done with the Sunwood work. He met with John Cook about a year ago and he could handle it administratively. He asked for a couple of things.

Atty. Thomas indicated that the reason they are proposing it is because based upon the client's current business, and the added business, and the amount of parking that exists with the current business, and the amount of spaces that are used.

Chair Parkins stated that good hibachi and good sushi restaurants draw big crowds.

Atty. Thomas responded that he has the current business upstairs.

Chair Parkins indicated that they don't have a hibachi upstairs so that is a different draw.

Mr. Shepard asked if the Commission would consider having the Staff monitor it and if the client states it for the record that he'll build it out fully for the parking lot.

Atty. Thomas added that they could make it a condition.

Comm. McGorty stated that he agrees, they would have to Cease & Desist if they weren't going to build it out.

Atty. Thomas responded yes, exactly.

Comm. Flannery asked about the north side of the building and if they could put any parking there.

Mr. Shepard responded that area was landscaped – it's the front entrance.

Atty. Thomas stated that they wouldn't want to do that. It is a landscaped area with trees and they would have to take down trees.

Mr. Shepard added that across the street is already graded out for it and the walls are already installed.

Comm. Sedlock asked how many employees work at one time.

The owner of Hunan Pan (name not provided) responded that on Friday and Saturday night, he had ten people working.

Comm. Sedlock asked how many of those ten drove in.

The owner of Hunan Pan responded just one. Everybody else (inaudible)

Comm. Sedlock commented that there are seven parking spaces across the street that are grown in. He asked why they can't clear that out and use it for

employee parking and use the ten spaces that already existed at that house across the street.

Chair Parkins responded that across the street is a liability issue. She's sure that the tenants don't want public on there, which would make sense.

Comm. McGorty stated that they could use the daycare for the employees if they all decided to drive cars in one day.

Atty. Thomas responded that if they did seven, it would be three over their required square footage. The only concern was that it is a natural area and it's a greater disturbance to go in about 20 feet.

Chair Parkins stated that what she is hearing from the other Commission members is that they would want that as a safety net option and they would put it as a condition. But they aren't requesting that it be done right now because if it is in a natural state and not needed then let it remain that way. But as a safety net, if it becomes an issue there is going to be a condition.

Comm. Pogoda stated that they don't want to put any more asphalt than is needed, especially in an area such as that, but he would feel more comfortable with that being there. Hopefully, he is very successful. He's gone to hibachi and it does get crowded so, hopefully, he does have a need for that. They want to see him do well.

Chair Parkins asked if seven was the max that the area could be built out to.

Mr. Shepard responded that was where they had it before but he could probably squeeze one more in but he'd like to speak to John Cook about it first.

Atty. Thomas stated that in talking about spaces, they are talking about 9 ½' x 18'. If they have an undefined area that is reprocessed over there it could be more than seven spaces but technically he is not supposed to say it is more than 7 spaces because a space is defined by measurements. They did take out the outdoor water slide though.

Atty. Thomas commented that he had the owner watch to see how many times people parked below and there is really a defined area with his restaurant and successful sushi bar upstairs. The other important thing is the three dumpsters located (inaudible).

Comm. Flannery indicated that she parks in that lower parking lot for take-out.

Atty. Thomas stated that the times he has gone there he parks on top even though he doesn't mind walking.

Chair Parkins commented that people are always looking for convenience of the closest they can park. If they can't find parking, then they are going to turn around and leave to go to another restaurant. But they definitely don't want people parking on that road.

Atty. Thomas stated that there is no question about that. Even though it is a private road, it's a Zoning Enforcement issue that there is no parking on the road. They don't have the permission to park on the road.

Chair Parkins stated that could be a condition – signs saying that there is no parking on the road.

Atty. Thomas responded that they could put signs on their property but they have no ability to put signs on that property.

Comm. Pogoda stated that the Traffic Authority would have to do that.

Chair Parkins added that it would be the Condo Association. Well, if it becomes a problem then...

Comm. Sedlock asked if it has become a problem in the past.

Mr. Schultz responded yes, but it was years ago, when it was Lauretti's.

Atty. Thomas stated that when it was Lauretti's and they would have an event – he had been to events there where he had to park on the road. It's those types of events where they are prone to having people coming individually in a car – from work or something like that.

Mr. Shepard stated that for a sit-down restaurant, people are more likely to group up in cars or drive as couples.

Atty. Thomas noted that this restaurant does not have a destination bar unless they consider the sushi bar to be a destination bar. One of the problems with Madison's was the fact that there had been no destination bar on Bridgeport Avenue and then all of a sudden there became a destination bar which is a lot different than a bar that you sit in to get a drink before eating. So they ended up with a bar crowd and a restaurant crowd.

Chair Parkins commented that is why they raise those concerns. She asked if there were any other questions from the Commissioners. She opened it up to the public for anyone in the audience who wanted to speak in favor of or against the proposal.

**Richard Lewis, 299 Old Bridgeport Avenue, Shelton addressed the Commission.** Mr. Lewis provided photographs of the proposed area for the Commissioners. He indicated that he would start with the ten questions he has about the service bar. He asked if the addition of the service bar extend the hours that the restaurant is currently open. If so, by how much longer.

He asked what Hunan Pan's plans were for providing a designated smoking area. Will any proposed smoking area be properly buffered to reduce noise and light that may interfere with the surrounding residential homes? Presently, there are three homes - #289,#299( himself) and #301.

Will smoking be restricted to the designated smoking area?

Will eating and drinking be allowed outside the building in any proposed smoking area or anywhere else on the Hunan Pan property outside the structure?

If a designated smoking area is established, will any entertainment or music be allowed to play outside of the building.?

Mr. Lewis asked what guidelines will be provided to the Hunan Pan to insure compliance with any state or town noise abatement ordinances. Currently, the Hunan Pan is a restaurant that closes at 10:00 p.m. nightly.

Will the proposed service bar change the nature of the Hunan Pan business from a restaurant to a banquet hall? Is a banquet hall permissible in a RBD zone?

Mr. Lewis stated that his concern is that people come in, eat there, they leave but if it becomes a bar, then people wait for their drinks and they want to smoke. They can't smoke indoors, so they'll smoke outdoors. That is his problem – noise abatement.

Mr. Lewis stated that he had some concerns about the proposed additional parking. The history of this area has been of concern to him for the following reasons.

A few years ago the section of the road at the bottom of Sunwood Drive was flooded with more than 6 inches of water after each rainfall. To relieve this problem, (inaudible) was removed to allow the water to flow into Burial Ground Brook. After more than a year of this run-off, the sand washed into the brook causing the brook to fill up with the sand. The sand reduced the depth from 2-3 feet deep to less than 1 foot deep, 50 feet down from this unauthorized discharge point. This reduction in the depth of the brook has caused massive erosion on his property that has increased the width of the brook from 6 feet to 12 feet wide. After speaking to the Sunwood Condominium Association representative about the matter, a new discharge point was created with asphalt and sewer (inaudible). This newly created discharge point has caused the rocks that align the brook to fall into the brook. Many of these rocks weigh as much as 200 lbs. In addition, sand still flows into Burial Ground Brook. Burial Ground Brook runs all year long. It has never dried up and flows at various rates constantly. He has taken this matter up with Inland Wetlands Commissioner on several occasions. It is to his understanding that a permit was never issued to remove the initial 12 feet of curbing or the newly created discharge point. This proposed area falls within 75 feet of the waterway that is under the authority of Shelton's Inland Wetland department. He marked this in red on a map that he is providing to Planning & Zoning. Burial Ground Brook supported a large variety of animals such as large fish, ducks, cranes, turtles and other land and water animals. Many of these animals have moved elsewhere since the initial 12 feet of curbing have been removed allowing sand to reduce the depth of Burial Ground Brook on his property.

Mr. Lewis requested that before any decision is made about approving proposed parking within 75 feet of Burial Ground Brook, he'd like to request that some notification be made to Inland Wetlands as to the effect that such parking will have on the brook. He asked if any unauthorized discharge point created in the past be approved by the Shelton Inland Wetland Commission before any additional parking spaces are considered by P&Z.

Mr. Lewis indicated that the proposed parking spaces on the map presented by the attorney representing Hunan Pan indicates four reserved parallel parking spaces marked #37, #38, #39 and #40. Although only four parking are indicated, there is a requested allowance for up to 7 cars to park in this proposed off street parking. He believes that this point should be considered as to exactly how many cars will be permitted to park in these spaces and for whom they are reserved. What will keep others from parking in these reserved parking spaces?

Mr. Lewis stated that Parking Space #38 is proposed to sit over a currently unauthorized drainage mark on a map. He pointed out that the area marked "catch basin" does not exist and is a point at which the stones fall into Burial Ground Brook. Until this drainage was dug, he never had a problem with stones falling into the water in this area.

Mr. Lewis discussed buffering and encroachment on his property boundaries. In order for anyone to safely open his or her door in the proposed parallel parking spaces, the car must be far enough off the road to insure that no one is struck when getting out of the vehicle. The Parking Space #40 shown on the map and

marked in blue has two problems. The first problem is that a car cannot be far enough from the edge of Sunwood Drive and ensure safe exit from the vehicle on the driver's side. The passenger side is too close to the culvert to be able to open the door. Parking Space #40 is also close to Old Bridgeport Avenue and Sunwood Drive, approx. 40 feet. A car coming around that corner may not have enough time to stop if a parked car's doors suddenly open. The entire proposed parking area will require the cutting and removal of trees and shrubs which will allow more erosion. He asked that if the parking is approved, that a year round tree such as a fast growing evergreen be planted on the boundary on his side to prevent any erosion and provide his property with a sound and light barrier from cars parked in the proposed reserved parallel off the street parking area.

Mr. Lewis indicated that there is only a few feet from proposed Parking Space #40 and his property. There is not enough space to plant evergreens and shrubs between the passenger's side of the vehicle and the drop-off into the brook.

Mr. Lewis stated that Parking Space #40 will also be sitting on three 36" RCP pipes for an extended period of time. He asked how the weight, over an extended period of time effect the condition and integrity of these pipes that run under Sunwood Drive. He also wanted to point out that where they want to put the parking, there are gas and electrical lines buried under there and they have had problems with that in the past.

Mr. Lewis stated that he strongly objects to the Parking Space marked #40 from being considered by P&Z due to the numerous points that he has mentioned. He cannot speak for Sunwood Condominium Association in regards to the proposed parking spaces #37, #38 and #39. He is willing to compromise on these spaces from his side of the boundary lines as long as consideration is made to the points that he has stated.

Mr. Lewis concluded that any trees and shrubs removed must be replaced with a buffer of some type that will protect his property year round from the noise and lights from any parked vehicles. Measures must be taken to prevent any current or future erosion. The exact number of cars must be clarified. Parking Space #40 should not be approved. A map alone is not enough to assess the danger or infringement on his privacy or property rights. He asks that a representative from P&Z look at the proposed off street parking in person and report back to this Board. Inland Wetlands should be notified of this proposal and its impact within 75 feet of Burial Ground Brook and any wetlands involved. Mr. Lewis stated that he spoke to Mr. Cook and he is not aware of any permit that was ever pulled out for the drainage. People smoke at a banquet or service bar, proper buffering to keep a residential area quiet at night and a noise abatement ordinance should be considered.

Mr. Lewis stated that he wishes the owners of Hunan Pan success in their endeavors and would like to cooperate so that they can achieve their goals of being a profitable business. He hopes that the Hunan Pan will be working with their neighbors to avoid any future confrontations. Please be advised that as a good neighbor, he would call the owners Hunan Pan first if they do not live up to any agreements (inaudible) before this Board. If at such time the proposed service bar and parking variances are approved, he will expect the Hunan Pan to live up to any arrangement and considerations made before this Board. Failure to do so will force him to call the Police if it gets too loud after 10 p.m. He will go to the Mayor and the Board of Aldermen if he finds it necessary to call the police on a regular basis.

Mr. Lewis showed the Commission photographs of Parking Space #40 to show why you cannot fit a car there. He explained the photos and the location of the

brook and the curb and location where a car would go. He showed the location of a grate over Parking Space #38 which was never approved by Wetlands. He showed additional photos taken at the corner of Sunwood and Old Bridgeport Avenue where there are a lot of trees located.

Mr. Lewis indicated that he had a couple of more questions to ask regarding the agreement with Terry Bogart at this time for employee parking. If Terry decides to sell that house, the new owners are not obligated to abide by such an agreement. He'd like the Commission to take that into consideration.

Chair Parkins asked if the house in the photo belonged to Mr. Lewis.

Mr. Lewis responded yes and stated that they border on his property. The parking spaces would probably be within 20 feet of his deck. He is most concerned about Parking Space #40. He realizes that it is difficult to tell in the photos because there is so much snow there right now.

**Joe Miller, 101 Blackbird Court, Sunwood Condominiums, Shelton addressed the Commission.** Mr. Miller stated that they did have a problem in that area for some time with standing water as Rick Lewis mentioned. The Association had an assessment to the unit owners because they have to maintain that road, it is a right-of-way. He questioned that at City Hall about what their obligation is on this right-of-way now that the buildings were put up. As he understood it, the right-of-way was put there so that the construction company could come up with their vehicles and build up the condos. But now the right-of-way apparently goes on and on and on. So they were obligated to repair the road so that at least the standing water wouldn't be there. He doesn't know whether they did a good job or not but the standing water is no longer there so it doesn't freeze in the winter. Mr. Miller stated that now when he sees a new proposal for construction there, right away a red flag goes up that there are going to be more road repairs and then another special assessment to the Association. They are a non-profit organization and the money comes right out of the owners pockets and he doesn't think that is a viable substitute for wanting four additional parking spaces. He agrees with Rick Lewis that there would be a traffic problem there. Especially if it is perpendicular parking. If people are backing out and there is someone coming around that corner, that road is used by the unit owners. There is a possibility of some serious accidents there too. He asked the Commission to seriously consider some of these parking spaces.

Chair Parkins asked Mr. Miller if he was on the Condo Board.

Mr. Miller responded yes, but he isn't here to represent the condo, he is here to represent himself.

Chair Parkins asked if this property was also the restaurant property and if they were included in the assessment.

Mr. Miller responded no, they were assessed because they have the exclusive right-of-way.

Chair Parkins commented that it must be a permanent right-of-way.

Mr. Miller responded yes, unfortunately and it is expensive.

Chair Parkins asked if there was anyone else from the Public wishing to speak for or against the proposal. Being none, she asked the Applicant if they would like to respond.

**End of Tape 1B 8:37 p.m.**

Atty. Thomas stated that the addition of the service bar is as a service bar not as a standing bar with seats. As a service bar it services the patrons downstairs at the tables. The wait staff goes there to get the drinks. It is really not extending any hours. He added that the restaurant closes at 10:00 p.m. and the owner has no plans to expand that.

Chair Parkins asked if that was regulated by the liquor license at all.

Atty. Thomas responded that the liquor license allows them to stay open until 2 a.m. There is no limitation. He does not have a bar crowd. Sushi isn't something that you want at 2 o'clock in the morning.

Atty. Thomas responded to the questions regarding smoking and indicated that they were not asking for a patio or anything like that. If someone wants to smoke, if they are that desperate for a cigarette, they are going to have to walk outside because that is Connecticut's law. They can't smoke inside.

Chair Parkins asked if their client has a smoking location for people right now. Would it be at the top entrance?

Atty. Thomas responded that there is no designated smoking area and no patio intended here. If someone wants to smoke, they have to go out to the parking lot. So there wouldn't be any noise or music associated with the smoking, unless someone is humming or something like that. There is no intention to have any outside activities like that; all the activities are inside so there are no noise abatement issues.

Atty. Thomas indicated that in respect to all these issues, they don't involve his Client. The Association did that. Our Engineer has spoken to John Cook. Obviously, they would have to comply with any Wetlands issues. It is possible, but he is not promising, that if this Commission says to put in those 7 spaces, that some of these issues might be addressed. Because they would have to go to Mr. Cook and to Mr. Kulacz even though this is on private property, to address the issues that were pointed out. They would have to comply.

Chair Parkins asked if it would be at his client's expense.

Atty. Thomas responded that the expense would be at his client's expense because they have a parking easement there. He commented that if there is an issue to extend the parking a little bit so that they can plant a few trees or something, but this isn't a buffer requirement area. He understands that they can still ask for it because this whole area is in the RBD so that extends down to these houses. They have no issue with that. Even with that they would have to comply with whatever Mr. Cook wanted.

Atty. Thomas stated that the effort for the parallel spaces was to create less intrusion but they would have no problem. He thinks Comm. Pogoda's suggestion that it not be a paved area is a good one. Obviously, they can't disturb the pavement that was done by the Association. They would have to work around that but there whole issue is that it isn't going to be required. It becomes an issue between the individual who spoke about it and the Association. The Association is required to maintain the right-of-way.

Chair Parkins stated that they also hope that it is not required, but if it is required, and in looking at these photos, it does impact that house. In looking at them, she realizes how close they are to that house. If they are sitting on their deck on a summer evening, and cars pull in with their headlights, they are going to be impacted. So landscaping to mitigate that would definitely be required as part of the conditions.

Atty. Thomas responded that an arborvitae hedge could be created in that situation.

Comm. Pogoda indicated that he had a question for Alan Shepard. Alan had mentioned that this was previously scoped out. He asked if that length that extends in, that Mr. Lewis had commented on, where the brook goes, was looked into.

Mr. Shepard, P.E. responded that he was out there when Sunwood was having some drainage problems. Their management called him up to take a look at the bottom and he walked it with them. At that time, Nowakowski, O'Bymachow & Kane had done the engineering survey for Sunwood Condominiums. He took a look at the old field books. That was as built and put in a few years ago and it had been overgrown at the time. He thinks that somewhere along the line when this was under construction, stones were placed on the river bankment blocking off that pipe. He showed the location of that pipe on the site plan.

Mr. Shepard indicated that he could hear the water coming through there. He guesses that what happened was, now that Sunwood has opened that up a little bit more, the water is going through there and has eroded the rocks sometime after the 1970's until now. There is a lining along the brook that was not in the original field book. There is a wall in back of it. There is a wall in back of the wall. He thinks that could be fixed fairly easily. He stated that they needed to remember that when it got overgrown, it wasn't being used so whoever put the new wall up, which is kind of an old wall now (but it's newer than when they were under construction because he checked the field records on that), they just covered it up. And because it was not taking much water, it was just left like that. He thinks that they can open that up and make it work.

Chair Parkins commented that is an existing issue that is unrelated to the Applicant.

Atty. Thomas agreed that it had nothing to do with them but they may have to address some concerns that are required to put the parking in there. They may have to go to Wetlands and discuss it with them. He bets that they won't find a permit.

Chair Parkins asked if anyone knew who put that in.

Mr. Shepard responded that the original construction was during the construction of Sunwood. Somewhere along the line, someone put a wall up in front of it, and he doesn't know who did that. This new leak off and the new patching was out there. He did meet with Sunwood and they walked it but he did not draw up any plans on it so he is betting that they did not take out a permit.

Chair Parkins asked if "they" was referring to Sunwood.

Mr. Shepard responded yes, because he would of drawn up plans regarding that. They could have gone to somebody else. They probably did it thinking it was an emergency situation because of the ponding water there. If they do the parking, obviously, they are going to have to address the neighbor's concerns.

Comm. Pogoda asked about the utilities that Mr. Lewis had spoken about.

Mr. Shepard responded that he knows that they had a problem with the utilities in there. They fixed that, patched and they haven't had a problem since then. He showed that area with the stream crossing on the site plan. He added that it has been 40 years now since the original development, and he thinks that there

was some settling in there that caused the utility problems. Hopefully, settling happens in the first couple of years and then slows down.

Comm. Pogoda asked if putting the parking over the utilities create a problem in the future.

Mr. Shepard responded no, the piping is H2O loaded and he doesn't think so.

Comm. Flannery asked why Mr. Lewis said that there were already some problems in the past.

Mr. Shepard responded yes, they did have some problems. The property manager from Sunwood told him that they did have some problems with leaking. He explained that when they place a water pipe 4 feet down in a filled area and the gas lines, that area is going to settle a little bit because it is a filled in area. It wasn't compacted and once in a while they get joints that get very old and leaky so they there is a settlement. He isn't surprised about that area if it wasn't compacted properly. It isn't a major thing. A lot of times when they put a road in or put utilities in and it settles and shifts a little bit, they have to come out and repatch them. Sometimes the utilities shift and they shift mostly when they are in a filled section.

Comm. Flannery asked if the person who puts in those parking spaces would be liable for that.

Chair Parkins responded only if they pave it.

Atty. Thomas stated that if they are doing the work, then they have the easement, the issue is that they have to (inaudible).

Comm. Pogoda asked if there was any existing lighting in the lower parking lot and if there isn't, do they intend to put any lighting in.

Atty. Thomas responded that there is lighting there now.

Comm. Pogoda asked if any additional lighting would be put in.

Atty. Thomas responded no.

Chair Parkins indicated that the last time this was proposed they discussed at length, the parking up above. She asked what the difference was, besides the fact that they aren't proposing that parking up above, because it was mentioned that this was scaled down from the original submission.

Mr. Mingollelo responded that there were two additional hibachi tables than what they have here so there was a least another 18 seats.

Comm. Flannery asked if now they have the waiting area instead.

Atty. Thomas responded that they always had the waiting area. It's where the storage and the service bar (inaudible).

Comm. Sedlock asked if the area with the run-off and the erosion on Mr. Lewis's property was a result of the restaurant being there.

Chair Parkins responded no, it's from the construction of the road.

Comm. Sedlock asked if that means the restaurant is not impacting that.

Comm. McGorty responded yes, it's an Association issue.

Atty. Thomas stated yes, the Association maintains the road.

Mr. Richard Lewis commented that the run-off, originally when they had the problem, the condo association took 12' of curbing out. He doesn't know who authorized it. The water flooded his property and that is why the brook is no longer 3' deep. Now it is 1' deep and 12' wide. He doesn't know if it is the condo association or the Hunan Pan but there is a complicated easement in the deed. He has read it but it would take a lawyer to figure it out, but there is insurance involved, co-agreements as to where people should park and a couple of other things.

Mr. Lewis stated that he also wanted to point out something about the utilities that run along where they'd like to put the four parking spaces or seven spaces. The weight of those vehicles will crack those pipes if they are driving on and off – who is going to be responsible when those pipes go? He had water in his yard when the condo pipes broke up above.

Atty. Thomas indicated that he wanted to clarify something. Mr. Shepard did not say anything would crack the pipes. He asked Mr. Shepard to explain it again for the record.

Mr. Shepard stated for the record that the pipes are buried at the proper depths. All the utilities are inspected nowadays – gas, water. They have much stricter inspection procedures now than they did 40 years ago. It is all rated pipe and he did not say that would cause a problem. He said that in an area where they have a fill section in the road, if there is going to be a problem that is usually where they show up.

Comm. McGorty asked if he said that they had problems already there. He asked if they put new pipes in.

Mr. Shepard responded yes, they fixed it.

Atty. Thomas stated, and told Mr. Shepard to correct him if he is wrong, they identified that the minimum depth for a certain pipe is 4 feet and it is identified to be 3'8" then they are going to have to bring it up to 4 feet.

Mr. Shepard commented that when they put in the new lines they would have put it in at the proper elevations. He didn't see them do that work because it was done by Sunwood but the property manager told him about it.

Atty. Thomas clarified that the utilities are in the road not in the proposed parking area.

Comm. Pogoda asked if he was definitely saying it was not in the parking area.

Mr. Shepard showed the area on the site plan where they patched for the pavement that they had to redo.

Comm. Pogoda asked if those lines were put in 4 feet – is that without consideration of the 7 cars sitting on top of it.

Atty. Thomas stated that they have to be installed to take the weight of a vehicle.

Mr. Shepard added that was the designated parking area right from the get-go.

Comm. McGorty asked if the load rating was based upon a static load of a vehicle sitting there.

Mr. Shepard responded yes (inaudible)

Atty. Thomas indicated that yes, but they aren't going to have 7 cars stacked on top of each other. Each space has to have the ability to have a vehicle on it.

Mr. Shepard commented that what they are talking about is over land route utilities going through someone's backyard or something. The utilities here were never considered over land.

Chair Parkins stated that they were approved by the City Engineer and the Inland Wetlands Commission.

Commissioner Flannery asked how many cars they could get in there parallel without Parking Space #40.

Atty. Thomas stated that he is not going to eliminate Space #40 but (inaudible)

Comm. Flannery asked if they don't cut down that tree and they don't use that space, how many they can get in.

Atty. Thomas responded that without impacting where Space #40 is, they could still get 7 in.

Comm. Flannery responded that it's a simple solution then not to impact #40.

Chair Parkins commented that they are hoping that it is not going to be impacted at all.

Comm. McGorty stated that they can put a stipulation in there but he'd rather see it untouched.

Atty. Thomas indicated that since it is not major work to be done, it can be done relatively quickly if it has to be done, but they still have to go before John Cook and the City Engineer.

Chair Parkins asked if the easement required any coordination with the condo association that holds the easement or do they have the full easement and they wouldn't be impacting anything.

Atty. Thomas responded that they have a parking easement. He reviewed that easement and they have the ability to park there and there was actually parking there 20 years ago.

Chair Parkins stated that they have the ability to park there but do they have the ability to expand it.

Atty. Thomas responded that this is on the parking area and they aren't expanding it. They aren't going beyond the easement.

Mr. Shepard added that they would still touch base with them.

Atty. Thomas agreed and stated that they would want to coordinate because they don't want to recreate the ponding situation. Obviously, if this were a City road, and you wouldn't expect Sunwood to spend the money, if this were a City road, it would be ripped up, increase the base and crown it to get rid of the

ponding, but they aren't going to do that on an easement and it is their responsibility and it's a lot more expensive.

Chair Parkins commented that you learn a lot of things living in a condo.

Mr. Shepard stated that it get complicated sometimes.

Mr. Richard Lewis commented that not all the utilities are under the road and if they look at the picture –normally utilities go below the frost line. How can it be below the frost line? If they look at the culvert, the pipes and the height of the road, those utilities are less than 2 ½ or 3 feet down. And if they consider that there is a light on at the daycare center that means that electrical has to get onto her property. There are wires. They had an electrical failure at one time. They had a water failure at one time on the condo. All he can say is that it should go before the Inland Wetlands Board because this deed is very complicated but there is an intertangling between the Hunan Pan who actually owns both sides of the road and the easement of road that goes up to Sunwood. They would have to read that because it is an important document. It tells who is a party to that easement and who is not.

Chair Parkins indicated that is really a legal matter between the two parties (inaudible).

Mr. Lewis stated that when it affects his brook and his brook is now 12 feet wide. And as far as lights shining into his house...

Chair Parkins responded that those are things they can address but not any kind of arrangements that have been made for easements or that sort of thing.

Mr. Lewis commented OK, he would like Wetlands to look at it because he spoke to John Cook and no permits have been pulled.

Chair Parkins responded that she thinks he must have heard the Applicant say that they are going to be doing that.

Atty. Thomas stated that he thinks that they have answered most of the questions unless the Commission has any more.

Chair Parkins stated that she wanted to just address one thing that Mr. Lewis made in one of his statements. He asked that the trees being planted on his side and she wants to make it clear that cannot be done. They cannot ask an Applicant to plant trees on someone else's property. If the trees are planted, it has to be within the area of their easement.

Comm. McGorty asked if there was the room to do that.

Chair Parkins responded that they'll have to make that work.

Comm. Pogoda added that they have to do a plan and they'll have to see it.

Chair Parkins asked the Commissioners what their consensus was on this.

Comm. Flannery stated that they should table it.

Comm. Pogoda stated that they need to get more information.

Chair Parkins commented that they can keep the public hearing open and take a ride out there.

Comm. Sedlock indicated that he'd like to take a look at it. He asked if the requirements are satisfied with the existing parking spaces that they have right now and with the seats they are proposing.

Chair Parkins responded that their requirements are based upon square footage, not the number of seats.

Comm. Sedlock asked if the 36 spots satisfied the square footage.

Comm. Flannery responded no, they need 40.

Atty. Thomas stated that with the total patron area identified by the engineer, the total amount is 40 spaces. The number of spaces there for the existing use of the building is (inaudible)

Comm. Flannery asked how many parking spaces are there now.

Comm. Pogoda responded there are 36.

Atty. Thomas stated that there are 36 legal parking spaces but if they go out and look where people park, it is closer to almost 40 spaces where people pull in. For example, if they look where it says #9, there are really two or three cars pulled in there.

Comm. Flannery asked if he was saying that there is not enough parking as it is.

Atty. Thomas responded no, these are legal spaces. The cars that park in there – they are unlined right now, so they are actually more cars in there than the number that should be in there, especially in the top area but they have to draw them as legal spaces.

Comm. Sedlock stated that they have to make a decision based upon legal spaces.

Atty. Thomas stated that 22 parking spaces are required for the existing operation right now.

Comm. Pogoda stated that there is more than enough parking for the existing use.

Comm. Sedlock asked if they had to find 4 more spaces if they add the downstairs.

Atty. Thomas responded that they have the parking easement across the street and if they put in 4 parallel, then they can have 7 so they can exceed the parking requirements.

Chair Parkins stated that the Commission would like to see a drawn plan of how they would do that along with some sort of landscaping plan. She indicated that the consensus is that they want to keep the public hearing open so that the Commissioners can go out and take a look at it. She asked the Applicant to consult with John Cook to see if it can be accomplished there.

Mr. Shepard asked if the Commission wanted to go with four spaces or with the seven.

Comm. Pogoda responded seven – the max.

Comm. Flannery asked if they could go for the max without Space #40 so they don't go over the utility lines.

Chair Parkins stated that they still have to do a call before they dig so any utility that is out there will be marked. She indicated that they'll continue this to the regular P&Z meeting on March 8<sup>th</sup>.

**On a motion made by Anthony Pogoda seconded by Thomas McGorty, it was unanimously voted to leave the public hearing open for Application #10-27 until March 8, 2011.**

**OLD BUSINESS**

**APPLICATION #10-25, DATA CENTERS PARTNERS, LLC FOR MODIFICATION OF SPECIAL EXCEPTION/SITE PLAN APPROVAL (OFFICES/DATA CENTER), 145 CONSTITUTION BOULEVARD SOUTH, LIP DISTRICT**

Mr. Schultz read the draft motion to approve the modification of Special Exception Site Plan for P&Z Application #10-25, 120,000 square foot office building and/or data center. On plans entitled "Proposed Office Development" prepared by Rose, Tiso & Co, LLC dated 1/27/05, final revision dated 1/15/07 with the following conditions 1, 3, 4, 5, 14, 15, 18, 21, 22 and lastly the Developer shall be responsible for the purchase and installation of all street signs, traffic control signage.

Comm. Flannery asked if that included Mr. Kulacz's recommendations because he said this should be tabled.

Chair Parkins responded that all his recommendations will be addressed by Staff.

**On a motion made by Virginia Harger seconded by Thomas McGorty, it was unanimously roll call voted (6-0) to approve Application #10-25.**

**APPLICATION #10-26, GREG KAPETONEAS FOR SPECIAL EXCEPTION/SITE PLAN APPROVAL (RELOCATION OF CAPTAIN'S PIZZA) 515 BPT. AVE. (MAP 50, LOT 13), CA-2 DISTRICT.**

Mr. Schultz stated that unless the Commission has objection, Staff is recommending to waive the full site plan submission insofar as this is really occupancy and there is minimal work outside.

Mr. Schultz read the draft motion to waive the full site plan submission and approve the Special Exception/Site Plan for Application #10-26 restaurant with take-out service. Plan is entitled "Captain's Pizza" dated 12/7/10. With the following conditions 5, 18.

Comm. Pogoda asked about the signage.

Mr. Schultz stated that there is no wall signage being considered at this time that would be forthcoming. This is for the occupancy, relocation of handicapped spaces and the take-out signs.

**On a motion made by Joe Sedlock seconded by Thomas McGorty, it was unanimously roll call voted (6-0) to approve Application #10-26.**

**APPLICATION #10-27, HONG FU, INC., DBA HUNAN PAN FOR SPECIAL EXCEPTION/SITE PLAN APPROVAL (HIBACHI SERVICE AND SERVICE BAR), 303 BPT. AVE. (MAP 303, LOT 16), RB DISTRICT.**

**ADJOURNMENT**

**On a motion made by Thomas McGorty seconded by Anthony Pogoda, it was unanimously voted to adjourn the meeting at 9:10 p.m.**

Respectfully submitted,

Karin Tuke  
Recording Secretary, Planning & Zoning Commission