

**SHELTON PLANNING AND ZONING COMMISSION**                      **OCT. 11, 2011**

The Shelton Planning and Zoning Commission held a regular meeting on October 11, 2011 at 7:00 p.m., Shelton City Hall, Room, Room 303, 54 Hill Street, Shelton, CT. The Chairman reserved the right to take items out of sequence.

Commissioners Present:                      Chairperson Ruth Parkins  
   Commissioner Joan Flannery  
   Commissioner Virginia Harger  
   Commissioner Thomas McGorty  
   Commissioner Anthony Pogoda

Staff Present:                                      Richard Schultz, Administrator  
   Anthony Panico, Consultant  
   Karin Tuke, Recording Secretary

Tapes (2) and correspondence and attachments on file in the City/Town Clerk's Office and the Planning and Zoning Office and on the City of Shelton Website [www.cityofshelton.org](http://www.cityofshelton.org)

**CALL TO ORDER/PLEDGE OF ALLEGIANCE**

Chairperson Parkins called the meeting to order at 7:00 p.m. with the Pledge of Allegiance and a roll call.

Chair Parkins requested a motion to add an agenda item under Other Business for an 8-24 Referral to lease a portion of Lafayette School for commercial and office space.

**On a motion made by Thomas McGorty seconded by Virginia Harger, it was unanimously voted to add an Agenda item under Other Business for an 8-24 Referral to lease a portion of Lafayette School for commercial and office space.**

**OLD BUSINESS**

**APPLICATIONS FOR CERTIFICATE OF ZONING COMPLIANCE**

**SEPARATE #5997 JOHN PAM, LLC, 500 RIVER ROAD, BUSINESSES**

Mr. Schultz stated that this is the site that he reported on at the last meeting in which they needed a use variance. This is the property on the Housatonic River. The variance was granted and it was conveyed to the ZBA that they not waive the submission required for this Commission and that any landscaping that may be necessary is included.

He stated that after reading the Statement of Use, Staff will report that they visited the site and it is well-screened. The subject property contains an 8,900 square foot building. The type of businesses that will occupy it will be for both landscaping and tree service; this is two separate entities. The hours of operation will be Monday through Saturday, 7 a.m. to 5 p.m. There will be 10 total parking spaces and 9 company vehicles. Four of the vehicles will be stored inside the building. There will be 10 employees total for both entities. Outside equipment will include a wood splitter, 3 small registered trailers. Inside equipment includes a wood chipper, lawn mowers and plows. The previous tenant was the Chestnut Stair Company (manufacturing) and the property is zoned industrial IA-3. The subject site is now accessed directly by a private driveway from River Road. He added that this is a good thing because it used to be accessed from Fanny Street.

Mr. Schultz showed the Commission some photos of the location.

Chair Parkins asked if the wood chipper and the splitter are something that they do on-site or do they take it with them to a location that they're working on.

Mr. Schultz responded that they take it with them to another location.

Mr. Panico asked if they were going to be storing some material on site.

Mr. Schultz responded yes, there is some material but the equipment (inaudible). He indicated that the photos show that the building and the existing vegetation clearly screens it from the Housatonic in the summer and the winter months. The owner lives at the end of Fanny Street where currently he has a double row of evergreens, so Fanny Street is also screened well. He added that the Commission was quite concerned about the visual impact to the river front and Fanny Street.

Mr. Panico stated that they won't be aware of it. They discussed keeping it on the inboard side so that the building is between the storage area and the River except for a small area where it is tucked behind the building. It's maybe 10 or 12 feet wide, about half the length of the back of the building, and it is very well tree'd.

Chair Parkins asked if he went down there.

Mr. Panico responded yes, they went down to the site.

Mr. Schultz added that most importantly, the property is well-maintained, and that's what the Commission wants to see in a transitional area like this.

Mr. Panico stated that the driveway coming down would be screened by a stockade fence.

Mr. Schultz stated that it is such a hallow on River Road and this is a nice pocket. He indicated that Staff recommends approval.

Comm. Flannery asked if there would be any noise from the wood chippers or the wood splitters.

Mr. Schultz responded no.

**On a motion made by Anthony Pogoda seconded by Thomas McGorty, it was unanimously voted to approve Separate #5997.**

**SEPARATE #6009 RALPH MATTO, 77 BRIDGE STREET, INTERIOR RENOVATION**

**SEPARATE #6004 RALPH MATTO, 77 BRIDGE STREET, BUSINESS**

Mr. Schultz states that both of these are for the same site. Separate #6009 is for the partitioning of the convenience store and that was done prior to tonight's meeting. Separate #6004 is for the business.

Chair Parkins asked if it was the first floor that had been split.

Mr. Schultz responded yes. The new business area contains a little over 1,000 square feet, 2 employees (owner + 1) and the hours of operation are 8 a.m. to 5 p.m., Monday through Friday. There is a municipal parking lot located in the back. Access to his business will be on the Post Office side and there is an entrance in the back as well.

Comm. Pogoda asked what type of business this would be.

Mr. Schultz responded that it is for architectural services.

Comm. Harger asked if the side entrance was something they used to get upstairs for the art studio.

Mr. Schultz responded yes, it's goes to the second floor and it's a common wall. The owner is Ralph Matto and this is one of his sons, Joseph Matto. He added that it was a nice fit. Staff recommends approval.

**On a motion made by Anthony Pogoda seconded by Virginia Harger, it was unanimously voted to approve Separate #6009 and Separate #6004.**

**SEPARATE #6021 LOUREIRO ENGINEERING ASSOC., 550 RIVER ROAD**

Mr. Schultz provided a map of the site and indicated that this was the former Pop Rivet Fastener site and then it was the Benhart (?) Technologies.

**George Andrews, P.E., L.E.R. and Vice President, Loureiro Engineering Associates, Inc., 100 Northwest Drive, Plainville, CT addressed the Commission.**

Mr. Andrews stated that he wanted to give a brief history of the site, explain what they would like to do, and request approval to proceed with the project. The site is located just behind the existing latex foam facility. The property has been subdivided. He showed the location where the factory operated back in the 1950's providing a variety of different metal processing operations that discharged into a lagoon just along side of the river. He explained that waste water discharges would allow separation of solids, so the lagoon was essentially filled with metal hydroxide sludge.

Mr. Andrews indicated that in about 1975, a waste water treatment plant was constructed within the factory to alleviate that in response to the Clean Water Act. In 1979, some of the material from within the lagoon had migrated by floods, etc. into other areas of the site. In 1979, it was consolidated into one location and 1985 it was capped in place. It was all done under the EPA and DEP participation.

Mr. Andrews stated that they became involved in 1999 and they did some investigations on this site. He showed the location where they advanced about 52 soil borings and they identified some additional sludge that had not been picked up in 1979 and shipped it offsite. Presently, they are evaluating the existing cap which was placed in about 1985.

Mr. Andrews indicated that the technology at that time was polyvinyl chloride for the cap material. Over the years, polyvinyl chloride becomes brittle and tree roots have been allowed to grow through the cap, and throughout the cap. If you see a cap today, typically it is not seen with trees on it. The tree roots have penetrated the cap. They are proposing to come in by accessing the site through the adjacent parcel. They have deeded right-of-way through that parcel for access until they are able to close this area of the parcel out. They are working with the DEP right now. He has a tentative approval from the DEP that he hoped he could have brought tonight. He is expecting a written approval from the DEP by this coming Thursday to proceed with this project.

Mr. Andrews indicated that they are looking to clear the trees from the site, remove some of the existing riff raff, top soil, retain it and reuse it after they recap it. They are going to recap it with 40 mil high density polyethylene. It is a different product than had been used back in 1985. The durability is unknown at this point but it's been used for about 25 years or so; it has good longevity. They expect to get at least 50 years from it. He indicated that the restoration plan includes a wildlife seed mix on the top. They won't be able to plant any trees on that. They'll actually have to maintain it as a seeded area with mowing once a year. The seed mix selected is indigenous to the area; it is from New England wetland plants.

Mr. Andrews stated that the lower portion will mimic the finish that was installed back in 1985. It consists of two different types of riff raff with a heavier one for the bottom and a wider riff raff for the top. The riff raff is intended to stabilize the lower portion that is subjected to occasional flooding. Maintenance is essentially a quick mow at the end of the year. A lot of the seeds basically re-germinate.

Comm. Harger asked what the area of the site was.

Mr. Andrews responded that 31,000 to 32,000 square feet.

Chair Parkins asked if there would be any requirement to continually monitor any wells.

Mr. Andrews responded yes, they have a variety of wells on the site for this particular unit. He showed the three different locations and the location of one other that was up gradient from them. He indicated that those wells are part of a closure requirement and they will definitely be required to monitor those twice a year for probably the next five years. Then they would hope to ask the DEP for reduction in that over time. It will probably go to once a year and then after another five years they might be able to get it reduced to once every two or three years. There will be ongoing monitoring. It is a requirement as well as to conduct inspections for eternity on the unit.

Mr. Panico asked if they will have responsibility to design and construct.

Mr. Andrews responded yes.

Mr. Panico asked if that meant it was not going to be a design that they just bid out to somebody.

Mr. Andrews responded yes, that's correct. They are turn-key firm and they are providing the L.E.P. (Licensed Environmental Professionals) for this site and they are also a contracting firm under one roof. They have been involved with the permitting stage, gaining the DEP approval and he'll be involved as a Project Manager in the construction as well.

Chair Parkins asked who owns the property right now.

Mr. Andrews responded Emhart Technologies.

Chair Parkins asked if they were hired by them to monitor, do clean up and capping.

Mr. Andrews responded yes, correct.

Mr. Panico added that essentially, they are under orders from the DEP.

Chair Parkins asked why they need the Commission's approval.

Mr. Panico responded because there is minor difference in ground surface between where it is today and where it will be. They are not able to go in and remove all of the old cap because they don't want to disturb what is there. So they will simply be stripping the loam off of the top, which is about six inches or so, as well as the riff raff. The riff raff will be recycled and replaced but then, having taken the loam off, they will be spreading a thin, couple-inch layer base for the new membrane. Then they'll put another blanket of fill on top of the new membrane. The result is 18" to 2' changing grade through this upper area. It blends into the hillside so it is not going to be a bump out in the middle of a field somewhere. He added that technically, it is a filling operation.

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

Comm. Harger asked how deep the sludge and the other materials to be capped were.

Mr. Andrews responded that he couldn't answer that question because he was not involved in the initial capping operation. Of course, they won't bore through it at this point. He indicated that his expectation would be that the sludge, at the time of deposition, was probably a little bit above the water table, typically two to four feet above the water table.

Mr. Panico asked if there was any possibility that the added weight of the new material would in any way cause the poor material to ooze out someplace or escape somewhere.

Mr. Andrews responded no, it has actually been stabilized and when they consolidated, there is a fairly significant report that was submitted to the EPA on that issue. It specifically addressed some of the geo-tech matters. They consolidated with the sand in the process of the capping and the sand adds a little bit of a binder to the sludge. He thinks that the stabilization has been demonstrated over the last 25 years with no demonstration of creeping on the existing closed cell.

Mr. Panico asked if someone were to walk across that area, would there be any sensation at all of (inaudible)...

Mr. Andrews responded no, and it is actually loaded with trees right now. He added that the facility was closed and there were some transitions in businesses and this was kind of out on the river. He thinks the focus had been more on the upper portion and it was not maintained. No one had been mowing it and once the trees were there, it looked so beautiful that no one wanted to cut them down at that point. Mr. Andrews commented that they are stuck with what they have at this point which is a compromised cap.

Chair Parkins asked if anything could be built on that.

Mr. Andrews responded that they are going to have to file a Land Use Restriction that is going to be recorded on land records in Town Hall and filed with the DEP. That will preclude any activities or disruption to that cap on top of that. If someone needed to put another cap, they could get a release to that Land Use Restriction if they need to perform some activity on it. To get a release they would have to demonstrate and document what that release is for and re-file another Land Use Restriction.

Mr. Panico commented that the only people that could release it would be the DEP.

Mr. Andrews responded yes, that's correct. It would be the Commissioner of the DEP who would actually have to release that.

With no further questions, Chair Parkins asked for a motion to approve.

**On a motion made by Anthony Pogoda seconded by Thomas McGorty, it was unanimously voted to approve Separate #6021.**

**SEPARATE #5995 SIGN PRO, INC. 42 BRIDGEPORT AVENUE, SIGN**

Mr. Schultz provided photographs of the proposed signage and indicated that this was the wall sign for Fastenol. He recalled that the Commission had looked at a version when they approved the occupancy. He added that this is for the renovated building at 42 Bridgeport Avenue. It is 25" high by 120" long. This is an aluminum, non-internally illuminated sign. It is exactly what the Commission saw, but they didn't know where they were going to put it at that time or the specific dimensions.

Mr. Panico asked if the color would be black.

Mr. Schultz responded yes.

**On a motion made by Anthony Pogoda seconded by Virginia Harger, it was unanimously voted to approve Separate #5995.**

**SEPARATE #6022 AMERICAN SIGN INC., 811 RIVER ROAD, SIGNS**

Mr. Schultz stated that this is the River Road Car Wash with new ownership. They are proposing replacements for their wall sign and their ground sign.

Chair Parkins reviewed the proposed rendering and commented that if there are going to be any numbers on it, it should be the address because "\$3.99" is going to look like 399 River Road.

Mr. Schultz indicated that the Applicant is present. There is a side issue going on with the new ownership and they'd like to address the exterior materials of the building too which triggers a site plan application for this Commission. They were unaware of it. Staff stopped it today and they are here to address that issue as well. This is in addition to the replacement signage.

Chair Parkins asked what parts of the monument sign were coming off – Auto Spa and the other stuff too?

Mr. Schultz responded yes, and it's a net reduction in height.

Chair Parkins indicated that she would like to see an address on there.

Comm. Pogoda agreed and said yes, a street address and get rid of the "\$3.99."

Mr. Schultz asked if the Applicant would like to address that.

**Mike Schulman, owner of Russell Speeder's Car Wash addressed the Commission.** Mr. Schulman indicated that if the Commission wants, they can put an address on the top of the sign, but in all his other locations he has the price out on the street because it is a fairly aggressive price.

Mr. Panico asked what they would do if the price changed.

Mr. Schulman responded that, occasionally, it is very rare, they would change the sign, change the face.

Comm. Flannery asked where he had other locations.

Mr. Schulman responded that they are in Milford on Cherry Street and in Norwalk on Route 7 about ½ mile from the Merritt Parkway.

Chair Parkins indicated that they don't allow any of those large inflatable's.

Mr. Schultz stated that they are requesting two wall signs, the north face and the south face.

Chair Parkins commented that she didn't think – she asked if, somehow, they could incorporate that without it being on the sign because they don't allow advertising on the signage. She asked where his entrance and exit signs would be going.

Mr. Schulman responded that the "Entrance" sign would be on the Body Shop side and the "Exit" would be on the Subway side.

Comm. Harger asked if he was reusing the existing monument pylons.

Mr. Schulman responded yes, but it will be lower overall from what is existing there now.

Chair Parkins indicated that she thinks it will confuse people driving by because they'll think that the address is 399.

Mr. Schulman responded that they have shroud on the bottom, if it would be preferable to put it on the bottom. Based upon the sign sizes that they are allowed, that is why they put it on the top. He offered to put the full address in another location in smaller letters – 811 River Road - making it clear that it's the street address.

Comm. Harger indicated that the size of the address would be important so that people could read it.

Mr. Schulman stated that they could put a box or something on top of the sign and they could put the "\$3.99" on the shroud that houses the two (inaudible).

Chair Parkins commented that the "Enter" and "Exit" signs are five feet high. She asked what the purpose of the exit sign was because there is really only one way to exit.

Mr. Schulman responded that due to the flow during the busier times, and as seen in the other car washes that they operate, if they don't delineate the "Entrance" and "Exit," then people will pull in against the flow causing accidents and back-ups onto the roadway.

Chair Parkins asked if he would still be doing the oil lube.

Mr. Schulman responded yes, they will be doing a five-minute oil change.

Chair Parkins asked if they would be advertising that anywhere on the signage.

Mr. Schulman responded that it wouldn't be on the street signage because there is not enough street signage to do that so he will go for the higher traffic business and market to those people on the premises. With 40 square feet on a

monument sign on the street, the old sign, in his opinion, is too confusing. He is going to go with less information and hope that he can market to the existing people coming through.

Comm. Harger asked if the "Entrance" and "Exit" signs were five feet off of the ground. She commented that was pretty high off of the ground.

Mr. Schultz commented that they are directional signs.

Chair Parkins indicated that it was pretty tall for a directional sign.

Mr. Schulman responded that if they would like, they can lower it, it's not a problem.

Mr. Schultz stated that they are usually three or four feet high, but the applicant is willing to bring that height down.

Chair Parkins asked where the "Exit" sign would go.

Mr. Schulman responded that it would be in the median area by the Subway side of the property.

Chair Parkins asked if he meant the strip between the Car Wash and Subway.

Mr. Schulman responded yes.

Chair Parkins commented that it doesn't make sense because there is only one way to come out of that car wash.

Mr. Schulman responded that he agrees that there is only one way to come out but for someone driving up from the Merritt Parkway, they might try to make a left and enter in there. They try to make it easier for people – they have a location in Norwalk that is about 50 years old and customers still pull in the wrong way.

Chair Parkins agreed that people would do that and turn in there anyway.

Chair Parkins asked the other Commissioners how they felt about the price. She asked the applicant if he did advertising in local paper because it is kind of his trademark that they are an inexpensive car wash.

Mr. Schulman responded that it is inexpensive to advertise it on the street. He has it in all his locations on the street.

Comm. Harger stated that he mentioned putting it down below on the monument sign.

Mr. Schulman responded yes, they could put a box on the stop saying 811 River Road.

Chair Parkins indicated that she doesn't like the price on the top. She thinks the address should be up there. It doesn't need to be confusing. Keep the price down below and then it can be changed, if you need to change it.

Mr. Schulman responded OK, he'll put the price at the bottom and 811 on the top.

Comm. Harger asked about the height of the "Entrance" and "Exit" signs.

Chair Parkins asked the other Commissioners if they felt they should be lower.

Comm. McGorty responded that it was a little high.

Mr. Panico commented that if they have a winter like the last winter, they might need to have that height.

Mr. Schultz asked if they wanted to have it at 4 feet.

Comm. Harger questioned the sight lines for people looking left to right.

Mr. Schultz stated that they would check that before it is installed because it is an important one.

Mr. Panico commented that all in all, he thought this was a much better solution than what is presently there, which is just a terrible hodgepodge.

Chair Parkins asked if it was going to be all black, as shown.

Mr. Schulman responded (inaudible).

Chair Parkins indicated that she would just have the signs brought down to 3 or 4 feet.

Mr. Panico asked if everything was illuminated.

Mr. Schulman responded yes.

Chair Parkins commented that he might save himself some money and not put that "Exit" sign, especially with that lube in the middle, people will go in and out and around.

Comm. McGorty stated that it is just one of those things. There are people that are going to ignore it and others that truly do not know where they are going and that road moves pretty quick.

Comm. Harger indicated that she was confused and asked where he was going to put the Lube sign.

Mr. Schultz responded no, they weren't going to have one. Their focus is on the inexpensive price of the Car Wash.

Comm. McGorty asked if the entrance was wide enough for two lanes to go out. He asked if there was enough space and a delineation when cars come out to get dried off and when cars come out of the lube. He asked if it is marked off so that cars coming out of the lube won't go out the entrance.

Mr. Schulman responded yes. If someone leaves the lube and they go to the right, and to go to the exit, there is enough room for two cars. I guess it was originally set up (inaudible)

Chair Parkins stated that the question was really about the cars going left.

Comm. McGorty indicated that if there are cars occupying the "Exit," they are going to take the path of least resistance and that is by going out the "Entrance."

Mr. Schulman responded that he would just say that he doesn't think it will be that crowded with this service.

Chair Parkins asked if he was doing windows.

Mr. Schulman responded yes, they are, but in the self-serve bays so it is going to be a higher price. So this service will be "sit in the car ride-through" so there won't be cars sitting at the Exit pad getting their (inaudible). He thinks the reason why it was built with two lanes of exit was so that one car could take a left and another car could take a right at the same time when the traffic cleared. He thinks that might have been the reason.

Comm. Harger asked if the parking lot would be striped to show which way to exit and enter.

Mr. Schulman responded yes.

Mr. Panico commented that it is really functioning as a "do not enter" sign.

Mr. Schulman responded yes, to keep the flow (inaudible)

Chair Parkins asked if they stay in their car.

Mr. Schulman stated that they offer the interior, but it is a small percentage of people that get it.

Chair Parkins asked who would drive the car through in that case.

Mr. Schulman responded that the customer would still stay in the car and pull around to the existing bay.

Comm. McGorty commented that he thinks it is important to have it because people not familiar with the area might come up and want to pull in the exit.

Chair Parkins agreed and stated that it just doesn't need to be five feet high. She asked the applicant to lower the "Exit and "Enter" signs, lower the "\$3.99" price and put the street address on the top.

Mr. Panico asked Rick to confirm that the "Entrance" and "Exit" signs do not conflict with any visibility. Mr. Schultz agreed.

**On a motion made by Virginia Harger seconded by Thomas McGorty, it was voted (4-1) to approve Separate #6022 with the noted modifications. Comm. Pogoda voted in opposition.**

Mr. Schultz stated that the Applicant wanted to quickly address the exterior upgrades to the building.

Mr. Schulman apologized to the Commission that this issue came up in this fashion but 95% of their facilities are brick-faced. He showed a photo of one of the locations that is about 25 or 30 years old. He indicated that they have a block look and they never had to get a permit to do the stucco with a brick veneer finish. He apologized that they were unaware of that and indicated that it was their mistake. They started the work and he found out that there was a problem with doing it. He asked how to deal with the issue.

Comm. Harger referenced the photo and asked if this was the stucco that would be made to resemble a brick.

Mr. Schulman responded yes and he has someone here from the stucco company to explain how it is done. It is basically a three stage process of screening, two coats of stucco with the third coat having a colored concrete,

then they do a stencil. He added that people have come to their existing facilities and commented that they thought it was real brick.

Chair Parkins asked if he was going to have a sign on the front of the building.

Mr. Schulman responded there is no sign in the front. In some of the pictures there are signs on the front of the building that they have taken off in order to do the brick face. The photos show a brick face that was done about 10 years ago.

Mr. Schultz stated that Staff wanted to advise the Commission that this was not simulated plastic brick.

Mr. Schulman added that it was a traditional stucco, one inch thick.

Chair Parkins asked Rick if he had seen it.

Mr. Schultz responded no, but he had Staff go down.

Comm. McGorty commented that he drove by there today and saw it, it is basically a facelift.

Mr. Schulman responded that they are basically trying to make it look like their other facilities and let everyone know that it is under a different ownership.

Chair Parkins asked if he was going to keep the piqued roofs like this.

Mr. Schulman responded no, they are going to make it flat.

Mr. Schultz indicated that the question is that the job was stopped and the Commission's next meeting isn't until November 1<sup>st</sup>.

Chair Parkins asked if the price is put on the monument sign, will all the different pricing on the façade be removed.

Mr. Schulman responded yes, they removed all of it in order to do the brick face.

Comm. Harger asked if there were any other modifications that he was making.

Mr. Schulman responded that they are going to do the asphalt and concrete but he was told that the asphalt and concrete didn't require a permit. They are upgrading the asphalt so it looks completely renovated.

Chair Parkins asked Rick how the Commission should handle this because it was not on the agenda.

Mr. Schultz responded that they could add it to the agenda and dispose of it tonight so that they can proceed with the work or advise them to proceed and formally act on it November 1<sup>st</sup>. Staff would continue to monitor it. This Commission is well-versed on exterior materials and wanted to know what type of grade the material was.

Comm. McGorty commented that if they give approval, Rick would have to be on top of it because it could be costly if they run in the wrong direction.

Chair Parkins suggested adding it to the agenda, approve it with the condition that Rick go down and check it.

Mr. Schulman responded that they have a small spot already done if he would like to come down and see it.

Chair Parkins indicated that they would approve it pending Rick's visit or Staff's approval.

**On a motion made by Thomas McGorty seconded by Joan Flannery, it was unanimously voted to accept Separate #165 for Russell Speeder's Car Wash request for exterior renovations.**

**On a motion made by Virginia Harger seconded by Thomas McGorty, it was unanimously voted to approve Separate #165 Russell Speeder's Car Wash request for exterior renovations pending Staff visit and approval.**

**SEPARATE #6023 WILLIAM HODOSI, 803 RIVER ROAD, SIGN**

Mr. Schultz stated that this is the sign for Body Shop 110. It is 4' x 8' – 32 square feet. They allow up to 40 square feet. He indicated that the structure is 12' x 6'. He showed the Commissioners a location map and rendering of the signage.

Comm. McGorty asked if this was on the wall facing #110.

Mr. Schultz responded yes, facing the building to the left side and to the right of the entrance drive going in.

Comm. Flannery asked why it has 110 on the sign.

Chair Parkins responded because that is the name of the place, Body Shop 110 on Route 110.

Mr. Schultz added that he is drawing the location in with the trade name.

Mr. Panico asked where on the building the sign was going.

Mr. Schultz responded it's not – it's a ground sign.

Comm. Pogoda asked if anything would be going on the building.

Mr. Schultz responded that the Commission already approved that wall signage. Staff recommends approval.

Mr. Panico asked if it would be solid brick face.

**William Hodosi, owner of Body Shop 110, 803 River Road, Shelton addressed the Commission.** He confirmed that it would be all brick.

Comm. Harger asked what the height would be.

Mr. Hodosi responded six feet.

Mr. Schultz added that the sign itself is 4' x 8'.

Mr. Panico asked if the address was going to be visible. He commented that the top of the brick is 6 feet, the sign itself is four feet, then the bottom of the sign is couple of feet off the ground.

Mr. Schultz asked Mr. Hodosi if he could incorporate the address on the top.

Mr. Hodosi responded yes, that's fine.

Mr. Schultz stated that the Commission consistently asks to see it on the top.

Comm. Harger asked about the overall height.

Mr. Panico asked what the width of the brick pylon would be.

Mr. Schultz responded that it was 12' x 6'. They allow up to 15 feet for a monument sign.

Mr. Panico commented that it would be 2 feet of brick on each side of the sign and about three feet below it.

Comm. Harger stated that her concern was that it is such a solid wall and it might restrict the sight lines. She asked if it was set back by the building or near the road.

Comm. McGorty commented that it looks like it is set back by the building.

Mr. Schultz stated that it is set back far because it is a State right-of-way.

**On a motion made by Anthony Pogoda seconded by Thomas McGorty, it was unanimously voted to approve Separate #6023.**

**End of Tape 1A, 7:49 p.m.**

Chair Parkins asked if any of the Commissioners had any questions on the Staff Separates #6010-#6016.

Comm. Flannery asked for more information about the home offices.

Mr. Schultz indicated that Separate #6013 on 42 Basking Ridge Road is a contractor, no equipment storage. Separate #6012 at 98 Oak Avenue is a marketing based business and Separate #6008 on 15 Rushbrook Lane is an internet website business.

Comm. Flannery asked about Separate #4985 for Avalon Bay and a parking garage.

Mr. Schultz explained that is the 250 unit with the structured garage on Canal Street.

Chair Parkins added that they have to build the garage first and then build the complex around it.

Comm. Harger asked if Separate #6014, 55 Gray Street for the roof over the patio would fully enclose it.

Mr. Schultz responded no.

### **PUBLIC PORTION**

Chair Parkins asked if there was anyone in the audience wishing to address the Commission on any item that is not on the agenda.

**On a motion made by Virginia Harger seconded by Thomas McGorty, it was unanimously voted to close the Public Portion of the meeting.**

**NEW BUSINESS**

**APPLICATION #11-17 ROBERT SPINELLI FOR RESUBDIVISION APPROVAL (2 LOTS: CRYSTAL LANE ESTATES), CRYSTAL LANE, R-1 DISTRICT (MAP 25, LOTS 38 AND 81) – ACCEPT AND SCHEDULE PUBLIC HEARING**

Mr. Schultz indicated that Crystal Lane is off of Isinglass Road. There was a residual parcel, ½ acre sitting by itself. The adjacent property owner had an oversized lot and they took a ½ acre from that and they've put it together to make a one acre lot. It is in full compliance but it triggers a public hearing because it is a subdivision. No variances have been requested.

**On a motion made by Thomas McGorty seconded by Virginia Harger, it was unanimously voted to accept Application #11-17 and schedule a public hearing for November 1, 2011.**

**APPLICATION #11-18 PINE ROCK AUTO SALES, INC. FOR MODIFICATION OF USED CAR DEALER LICENSE (INCREASE FROM 8 TO 12 VEHICLES), 1 SENECA TRAIL (MAP 5A, LOT 39). CA-2 DISTRICT – ACCEPT FOR REVIEW**

Mr. Schultz indicated that Staff would like to provide a quick overview of this. At last month's meeting, this came under Zoning Enforcement and a Cease and Desist Order was issued. The current license holder has not complied with the Department of Motor Vehicle's License and the conditions that were imposed by the ZBA back in 1985.

Mr. Schultz indicated that the conditions of approval were as follows:

- No more than 8 vehicles can be parked or stored on the premises. He added that includes outside and inside.
- No vehicles in cooperation with the business can be parked on the public street that fronts Seneca Trail.

There have been allegations that vehicles have been parked there, although he hasn't taken a photograph. Also, the complaint was made regarding junkyard conditions and anti-blight. The property owner did remove the vegetation but the order that this department issued found that there were junkyard conditions.

Mr. Schultz stated that "junkyard conditions" means motor vehicle parts and/or vehicles that can no longer be used for parts in this type of business – buying used vehicles. He can disassemble and reuse the parts, but if the parts are in such bad condition and can't be used (i.e., a completely rusted away, not street-worthy vehicle) – that would be junkyard conditions.

Mr. Schultz stated that because of the order that was issued, he received this application with a statement that he would like to read to the Commission from Pine Rock Auto Sales Inc.

"Due to the changing climate of our business, the below signed respectively requests a modification to the conditions of our existing permit. These changes are necessary and would insure our business survives in this difficult business climate."

Mr. Schultz stated that the State Statutes back in the 80's required the ZBA to hold motor vehicles licenses. That has since changed, and this Commission has been doing it for about ten years.

Also things have changed since this permit was obtained and those changes dictate the following conditions: the deed to this property filed in City Clerk's Office showing this upper lot and existing structures are entirely on this property. At any one time there may be 12 cars on the lot of the property.

Mr. Schultz indicated that the request before the Commission is to increase the amount of cars allowed from 8 to 12. Obviously, this Commission is going to re-evaluate the conditions that the ZBA imposed.

All of the automobile parts including tires, batteries, etc. will be stored so that they are not visible from the street. Mr. Schultz stated that the Commission may decide that they be stored inside the building.

There will be no accumulation of junk or junk cars on the premises. Obviously, no community in the State of Connecticut, unless you have a valid junkyard license, wants to see junkyard conditions.

No cars will be parked on Seneca Trail. A barrier will be added to the fence to block views from neighboring business and residential properties.

Mr. Schultz stated that is their explanation of why they are submitting their application for the Commission to consider a modification. The Commission will review this, make a determination and then it goes to the Department of Motor Vehicles. The Cease and Desist Order has been issued and received by certified mail. There are residents here tonight who may want to express their feelings either in support or in opposition. This is what is going on. Clearly, the property needs to be cleaned up and the property owner has acknowledged it.

Chair Parkins asked how long the request has been presented to them for clean up.

Mr. Schultz responded that his initial contact goes back to mid-September of this year. The license holder, however, has been in violation of the Department of Motor Vehicle license for many years.

Mr. Panico commented that Rick's citing the date the formal action was taken. He asked when the enforcement action got started.

Mr. Schultz responded a couple weeks ago – at the last meeting.

Chair Parkins asked how long the conditions have been in existence prior to that coming about (inaudible)

Mr. Schultz responded about 1985.

Chair Parkins asked if they've had this condition of having more than 8 vehicles and not being in compliance with their license since 1985.

Mr. Schultz responded that he doesn't know for sure but it has been for many years. The residents in that area have expressed it for many years – a decade is a fair assessment.

Chair Parkins commented that rather than get rid of the extra cars to get it back down to their requirement of eight cars, they want keep the situation as it is and change the license.

Mr. Schultz responded yes, they are hoping that the Commission will consider their proposal to have four additional vehicles.

Chair Parkins stated that their business is auto sales. She asked if they actually sell cars or do they...

Mr. Schultz responded yes, that they sell the parts or they can sell the whole vehicle.

Chair Parkins asked if that isn't what junkyards do – don't they take apart junk cars and sell the parts.

Mr. Schultz responded that the State no longer issues that type of license and they did not apply for that license. They applied for used car sales.

Comm. Pogoda asked if they should even be selling used parts.

Mr. Schultz responded that they can under their current license but they can't store vehicles or parts that are no longer worthy of being used. They can buy a whole car and sell the whole car. They can buy a whole car and sell off the parts of it (i.e., the motor, the chassis, windows, etc.).

Comm. Pogoda asked if they have to get rid of the car body as soon as those parts are sold.

Chair Parkins asked if they dismantle the cars.

Mr. Schultz responded that they keep the vehicle because they can sell everything – the doors, all the components of it, etc.

Comm. McGorty commented that they can sell the whole thing in bits and pieces.

Chair Parkins asked how big this parcel was.

Mr. Schultz responded that it is small and showed the Commissioners an A-2 Survey of the location.

Comm. Pogoda asked how long there have been junkyard conditions.

Mr. Schultz responded that he just got involved recently but he would say that it has been over a decade.

Comm. Pogoda commented that if the junkyard conditions have been there for about a decade, or five years or even two years – he asked if there have been complaints from the residents in that period of time.

Mr. Schultz responded yes.

Comm. Pogoda asked if anything had been done after the residents complained about it.

Chair Parkins commented that is what she is trying to figure out. She asked how many vehicles are typically kept inside of the building.

Mr. Schultz asked Mr. Sciongay how many vehicles he keeps inside.

Mr. Michael Sciongay responded six, which are his own personal cars that have nothing to do with the business. They're (inaudible)

Chair Parkins asked if this would be for 12 cars in addition to his personal vehicles.

Mr. Schultz stated that he counted 20 cars on the outside. He has clearly exceeded the maximum. Eight includes the inside and the outside.

Comm. Flannery asked if his personal cars were being included with that 8 or 12.

Mr. Schultz responded that the conditions of approval are quite clear. No more than eight motor vehicles on the premises. Obviously, he can come and go to the site with his own personal vehicle but if he is storing it there on a regular basis then they are including it. They have had situations like that and they don't get into the games like that. If it is a repeated parking and storing, it is included but he has a right to come and go daily, obviously.

Comm. Flannery asked if they were just accepting this for review tonight.

Mr. Schultz indicated that he wants the Commission to understand that there is an existing Cease and Desist Order that says clean it up.

Comm. Harger asked when that was issued.

Mr. Schultz responded a couple of weeks ago and it says to clean up within 10 days. He has exceeded it.

Chair Parkins asked if any clean up at all had been done.

Mr. Schultz responded minimal – he hasn't been down there in over a week. He asked Mr. Sciongay if any cars had been removed.

Mr. Sciongay responded that one is gone and two are waiting to be picked up. He said that by the end of October he would get rid of 3 or 4. It will be more than that actually by the end of the month.

Mr. Schultz recommended that the Commissioners go to Seneca Trail when they have an opportunity to see it. All the vegetation has been removed and they can see it from the street.

Chair Parkins asked what he means by it's been removed.

Mr. Schultz responded that the vegetation was in violation of the Anti-Blight Ordinance and that was removed. Now it has more of a visual impact.

Comm. Pogoda suggested that they table this until they have a chance to go down there and see what he is doing.

**Atty. Richard Volo, 435 New Haven Avenue, Derby, CT addressed the Commission.** Atty. Volo stated that he was representing Joann and Adriano Monaco who own the adjacent parcels at 845 and 851 River Road and 17 Algonquin Terrace. As a matter of public record, he wants to advise the Commission that a lawsuit been filed and an injunction hearing is being held on November 7<sup>th</sup> against the property owners for the violation of the Shelton Zoning Regulations. The law provides that property owners can sue for private nuisance and seek to enforce zoning violations in addition to this Board taking abatement action. His clients have incurred the cost, expense and trouble to initiate that lawsuit and the Superior Court for the Judicial District of Ansonia and Milford is having a hearing on November 7<sup>th</sup> to proceed with whether or not an injunction should be issued to cause enforcement of your regulations. In light of that, he

would ask the Board to please table any application or any expansion or modification of the existing license or permit until that hearing is held. As a matter of fact, probably members of this Commission would be subpoenaed to attend that hearing.

Furthermore, Atty. Volo provided photographs taken recently by his clients supporting what the Zoning Enforcement Officer has said concerning the violations. His clients would testify they have been in existence for approximately 20 years. His clients have incurred expenses for environmental contamination examination, incurred costs for an appraisal to show that the devaluation of their properties is about \$35K to 50K because of the condition of this .168 acre parcel. The abatement order has been ignored for 3 weeks tomorrow and he is seeking to expand it and not to comply with it.

Atty. Volo stated that it belies his imagination that the Board would even consider the validity of the application to modify until the Cease and Desist is complied with. Furthermore, the Pine Rock Deli was denied insurance coverage because of the condition of this adjacent parcel. They have finally secured coverage at an increased cost of \$2000 /year. His client is suffering economically because of the condition of this adjacent parcel, the violation of the zoning regulations, and the violation of the motor vehicle license. If they don't receive help from this Commission, they don't know what is going to happen because it has gone on for so long.

An unidentified speaker asked Atty. Volo why his clients wanted to purchase this property.

Atty. Volo responded that it is no secret that they would buy it just to clean it up and raze it.

Chair Parkins indicated that they would need to take their discussion into the hallway because they won't allow any bickering back and forth with the applicant.

Mr. Schultz asked the Chair to table this in light of what is going on and he'll seek a legal opinion from Corporation Counsel on the appropriateness of accepting this application because if they do, they are bound to start the clock tonight. The Commission meets again on November 1<sup>st</sup>.

Chair Parkins agreed that if there is a suit pending in the court, she'd like to do that.

**Cynthia Kasper, 12 Saginaw Trail, Shelton, addressed the Commission.**

Ms. Kasper showed photographs to the Commission of the property as it looked in 1990. She explained that he was in violation twenty years ago on that property.

Chair Parkins responded that this documentation answers her question as to how long this has been in existence. By presenting that to the Court, they'll be able to make a decision.

Ms. Kasper wanted the Commission to note that she took pictures of what is inside some of these vehicles because they are filled with trash.

Mr. Schultz commented that the DMV has been assisting his department because they can revoke his license.

Chair Parkins stated that just the fact that they had to issue a Cease and Desist Order to begin with and three weeks later little has been done except for them

to basically ask to keep it and make it worse. She indicated that she was not comfortable making any decision on this and she asked Mr. Schultz to get a legal opinion on it.

Mr. Schultz responded yes and he'll continue to work with the DMV because they may go to the extreme too.

**On a motion made by Virginia Harger seconded by Anthony Pogoda, it was unanimously voted to table Application #11-18 in order to obtain a legal opinion.**

**APPLICATION #11-19 DAVID BLACK FOR MODIFICATION OF SITE PLAN APPROVAL (PARKING EXPANSION), 10 MOUNTAIN VIEW DRIVE (MAP 65, LOT 8), LIP DISTRICT – ACCEPT, REVIEW AND POSSIBLE ACTION**

**Edward Leavy, P.E. addressed the Commission.** Mr. Leavy indicated that this is an existing parcel and they have two existing parking areas that they would like to add to. He showed a site map of the location and explained that they would like to expand the front parking lot that is parallel with Mountainview Drive and extend the other parking lot out a short distance. They need to gain some space. Nothing changes in terms of use and there are no variances.

Mr. Panico indicated that he was doodling on this site plan and it seems that he could create all but one parking space by just turning around the parking pattern. They would lose a couple of spaces but they wouldn't have to take all that grass out. He stated that he came out with one less space than the proposed plan.

Mr. Leavy responded OK, then instead of getting 27, they'd be getting 26.

Mr. Panico stated that seems like a lot of extra pavement and loss of landscaping for the sake of one parking space.

Mr. Leavy commented that if it works, it works.

Mr. Panico explained that he did it all by scale. He took 60 feet across, took out the two corner spaces and turned the pattern around and stated that it should fit.

Mr. Leavy stated that they could live with one less space. He commented that his client wants to do the other lot first though.

Chair Parkins asked for clarification as to where the building entrance was located. Mr. Leavy showed the location of the building entry and the location of some overhead doors.

Mr. Panico asked Mr. Leavy to re-examine the grading because it seems like he might be able to lower this embankment a little bit by reversing the grade. It does require them to put some drainage in but it may be a better trade off. He commented that it was pretty straightforward. There is no other place on the site that they can make more parking.

Mr. Schultz read reports from the Fire Marshal, City Engineer, P&Z Staff Report and a Draft Motion.

**On a motion made by Anthony Pogoda seconded by Thomas McGorty, it was unanimously voted to accept Application #11-19.**

\*See attached correspondence to Richard Schultz, P&Z Administrator from James Tortora dated October 11, 2011.

\*See attached correspondence to Richard Schultz, P&Z Administrator from Robert Kulacz, City Engineer dated October 5, 2011.

\*See attached Planning & Zoning Report dated October 11, 2011.

**On a motion made by Anthony Pogoda seconded by Thomas McGorty, it was unanimously voted to approve Application #11-19 with conditions.**

**APPLICATION #11-20 HUNTINGTON PLAZA ASSOCIATES, LLC FOR MODIFICATION OF SITE PLAN APPROVAL (EXTERIOR BUILDING RENOVATION AND BUILDING ADDITION), 34-40 AND 43-51 HUNTINGTON STREET (MAP 74, LOT 26), CA-2 DISTRICT- ACCEPT, REVIEW AND POSSIBLE ACTION**

Mr. Schultz indicated that all the buildings are going to be renovated but the first phase is going to be Beechwood and the Wellington because they need to have access to the second floor.

**Neil Hayes, Mingoello & Hayes Architects, 90 Huntington Street, Shelton addressed the Commission.**

Mr. Hayes showed the site plan and explained that the property had recently changed hands from the Beard family to Huntington Plaza Associates and Jim Mas is present as the owner's representative.

He showed the site plan and the location of the Beechwood Building, TD Bank and Wellington Villa. He explained that the areas marked in red were the improvement areas in terms of adding building area or square footage.

Mr. Hayes showed the concept for the front of the Beechwood and explained that they would redo the storefront glazing. It is single paint glazing right now and there is no energy efficiency to it at all. They want to cover up some of the stone and introduce more brick, add some dormers, and soften the building up in the front with some landscaping. The dormers give it some vertical element because it is such a long building.

Mr. Hayes showed the location at each end where there are currently two loading docks. They want to enclose them, put a brick veneer around them, put a garage door on them and all the trash that they now see won't be visible anymore.

Mr. Hayes showed a photo of a cardboard recycling dumpster – a huge compactor that they plan to screen from Huntington Street by building a large brick wall.

He showed the only place that they would be adding square footage on the Beechwood Building by the doorways at the front of the building.

Comm. Pogoda asked how far out the doors might project.

Mr. Hayes responded about 10 to 12 feet.

Comm. Pogoda commented that it would be 10 to 12 feet into the sidewalk area.

Mr. Panico added that the sidewalk is being expanded somewhat. He showed the existing pavement line and how far they would be pulling it back. They'll be able to put a couple of tables out there.

Mr. Hayes stated that in terms of the required parking area space size, they can allow more sidewalk area in front of the storefront which allows parking (inaudible).

Chair Parkins asked if they were proposing some kind of curbing or bollards there.

Mr. Hayes responded that they will have to do something like that because when cars pull in there will be an overhang.

Mr. Panico commented that is a high activity area so they don't want to constrain the aisle with too much like you would in the middle of a big parking lot. There's a lot of activity with people running in and out quickly and they need to be a little more generous than they might otherwise be.

Mr. Hayes stated that is going to be Phase 1. They are going to do the front of the building and the loading docks. Phase 2 will be the back of the building and it is money dependent.

Comm. Harger asked if they were proposing some seating in front of the building.

Mr. Hayes responded that they can promote that if they have more sidewalk area.

Chair Parkins commented that it is sort of a safety issue if people are driving up and people are sitting there. You see that more and more where people are driving right into storefronts. They might want to think about how they treat that, from a safety perspective, especially if they have tables out there and people pull up in cars. If they hit the gas instead of the brake, the people sitting there could end up behind the delicatessen.

Comm. Pogoda agreed because they have seen some cars go through some stores lately. He added that his concern would be if people and children were sitting there.

Mr. Hayes responded that tables and chairs aren't necessarily a requirement.

Chair Parkins commented that the only problem with the curbing though is that, with the grocery carts, it is going to limit the access to the cars.

Mr. Mas, the owner's representative added that it was never their intention to have tables up there.

Mr. Hayes indicated that they've introduced an eating area inside of Beechwood to try to keep up with the other stores so they do have the option to sit inside.

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

Chair Parkins stated that they might want to consider some sort of safety approach so that people don't drive into the storefront.

Mr. Panico asked if they're concerned with interfering with the flow of carts across the parking lot. He asked if they allow the carts to go over to the parked cars.

Comm. Pogoda responded yes.

Mr. Panico suggested keeping that sidewalk flush but put a series of attractive bollards all the way down to stop a vehicle from accidentally going into the store.

Mr. Hayes responded that those are all good ideas. He hasn't heard of anyone going through the Beechwood storefront though.

Mr. Panico stated that if they are going to leave the curbing out so that cart traffic can flow back and forth, then they've got to do something to stop the vehicles and control where the vehicles park. They don't want to see wheel stops there.

Chair Parkins asked what he meant by wheel stops.

Mr. Panico responded that they are those curb barriers that they put onto the asphalt. They are hard to clean around, they loosen up and move around becoming safety hazards that people can trip on. They don't want that.

Mr. Hayes added that they get in the way of plowing too.

Comm. Pogoda added that it would not allow access for the carts too.

Mr. Panico commented that it would be better to strategically place bollards so that a car can't fit between them, and then they won't need that curbing. They can distinguish pavement from walkway by the surface texture. They would have some sort of a concrete finished walkway.

Chair Parkins commented that if they are increasing the sidewalk area in front of the store, which will make it look nicer, it's important to have something that stops people because they are going to park as close up as they can. They aren't necessarily going to stay in a stay line with the pavement.

Comm. Pogoda stated that right now, their configuration is back and forth with cars almost over the sidewalk.

Mr. Panico commented that this is going to be a more generous sidewalk by narrowing it down but by the same token they don't make it so narrow that if someone doesn't park properly it takes away from the flow. They may want a little more than a 24' aisle there. He asked Rick if the Fire Marshal going to comment on that aisle.

Mr. Schultz responded yes, he has those reports.

Mr. Panico added that the Fire Marshal may want 30 feet.

Mr. Schultz responded no, he doesn't.

Mr. Hayes added that they tried to get away with less but he's never been able to get away with less than 24 feet.

Mr. Panico stated that normally in the rest of the parking lots that is a proper layout that they have, but in the front here - that is the main circulation. That is where people will go to find their first parking space.

Mr. Hayes showed where the parking is located in the back right now. They could leave it like (inaudible) but then there would be the benefit of having a nice walkway in front of the store.

Comm. Pogoda asked if there was going to be enough room with delivery trucks and people backing up.

Mr. Panico commented that there isn't enough room today to do that. Even with today's width, he doesn't think they can maneuver in and out of those parking spaces.

Comm. Pogoda responded that they do, but not on a crowded day. Early in the morning, the box trucks will be unloading – this decreased width might hurt that.

Mr. Hayes responded that most of those box trucks come early in the morning so the majority of the people traffic is much later on.

Mr. Panico stated that they could stripe out a loading spot right in the front of the loading door so the box truck goes there.

Mr. Hayes responded that they do that now.

Comm. Pogoda responded that he's seen those trucks park in other places too and go back and forth with hand trucks.

Chair Parkins asked how many feet he would be taking away from here.

Mr. Panico responded that by scale it looks like 7 ½ feet that they are adding to the sidewalk area and taking away from the parking lot.

Chair Parkins suggested having ceramic planters there.

Mr. Hayes responded that he doesn't know about ceramic, but he was thinking concrete planters that could act as a barrier.

Chair Parkins commented that it is a very nice looking facility but that may be a deterrent from having people pull up farther than they need to.

Mr. Hayes indicated that they put planters out on the right-of-way right here and they fall apart and fall over.

Comm. Pogoda added that when the snow comes, the plows start pushing them around too.

Chair Parkins indicated that something needs to be there whether it is bollards or curbing or something; preferably not the curbing.

Mr. Hayes stated that they will come up with an idea.

Comm. Harger asked why, on the plan, the sidewalk appears to widen out at one end of the building.

Mr. Hayes responded it's because the building is not parallel to the property line.

Mr. Schultz indicated that he had two reports to read from the Fire Marshal and the P&Z Staff Report. He added that the City Engineer, Robert Kulacz had no comments.

**\*See attached correspondence to Richard Schultz, P&Z Administrator from James Tortora, Fire Marshal dated October 11, 2011.**

**\*See attached P&Z Staff Report dated October 11, 2011.**

**On a motion made by Thomas McGorty seconded by Virginia Harger, it was unanimously voted to accept Application 11-20 for review.**

Mr. Hayes showed samples of the brick material proposed and referenced a photograph of the Beechwood building to explain the random mix.

Comm. Pogoda asked if he was using the shallow or full scale brick.

Mr. Hayes responded that it is going to be a brick veneer so it could be a thin brick because they already have a surface that they are dealing with. The Wellington is a different story so they will use real brick there but with Beechwood, because they are dealing with a veneer already, it is to their advantage to use this because it is more cost effective. He added that when this material is up, no one can tell if it a real brick or not.

Chair Parkins asked if it would be a combination of those three colors.

Mr. Hayes responded yes, and more colors too, there is darker brick, a pink and white too.

Mr. Panico asked if it was a manufactured or real stone.

Mr. Hayes responded that it was real stone – they have thinner stone too.

Chair Parkins asked if they were planning on keeping those big stones in there.

Comm. Flannery commented that they should go with that brick veneer and forget the stone.

Mr. Hayes commented that because Beechwood is on an elevation and it is not really gathering with another elevation, he could keep the stone out of there and he thinks he would prefer to do that. But with the Wellington (inaudible)

Mr. Hayes indicated that these were just samples and in terms of color, he was going to go through this and pick out the colors that they need to make this variegated look happen.

Mr. Hayes showed a proposed rendering of the Wellington and explained that this was more of a marketing problem because the second floor is empty. Due to the non-existence of an elevator people cannot access this building. He showed the front elevation of the building and explained that they would be coming out 18 feet x 21 feet. As soon as people walk in they can take the elevator or the stairs to the second floor and that will solve that problem.

Comm. Pogoda asked if they were basically just going to go right in front of where the stairs are presently located.

Mr. Hayes responded yes. The upstairs is divided with a corridor going down. Raveis Real Estate and an attorney used to be there. There are spaces that are divided and they are going to keep that circulation path right now. If someone comes in to rent the entire floor, he still thinks it is the way to put it because this building is very symmetrical. He is trying to keep it somewhat symmetrical.

Chair Parkins asked if this would be part of Phase I.

Mr. Hayes responded yes, it is part of Phase I. Right now, Phase I is the Beechwood Market, the Wellington Villa and Phase 2 is the rear side of Beechwood. The TD Bank Building is in pretty good shape and he doesn't think that there is any need to address anything there right now. It is the only building with any greenery around it.

Mr. Schultz indicated that he had a draft resolution to read for the modification of site plan for Application 11-20 Phases 1 and 2. He read the draft resolution with the conditions.

**On a motion made by Anthony Pogoda seconded by Virginia Harger, it was unanimously voted to approve Application 11-20.**

Mr. Schultz added that he forwarded an e-mail to the Commissioners regarding the Shelton Lakes Trail. The Conservation Commission is asking the BOA to contact the Blakemans and Montenarros to extend the sidewalk from Huntington Depot so that it can get to Huntington Plaza so that you can walk down to the back, go on the bridge and continue on. It will all tie in and there is no room for the sidewalk to go in front of the Beechwood. It is going to be a narrow sidewalk but...(inaudible)

### **OTHER MATTERS**

#### **APPROVAL OF THE MINUTES: 9/20/11**

**On a motion made by Anthony Pogoda seconded by Virginia Harger, it was unanimously voted to approve the minutes of 9/20/11.**

#### **APPROVAL OF THE #811-2 AND #811-3: DISCUSSION BY DOMINICK THOMAS**

**Atty. Dominick Thomas, Cohan & Thomas, 315 Main Street, Derby, CT addressed the Commission.** Atty. Thomas indicated that he was representing the applicants, George and Nancy Bernstein. The reason that he asked to be put on the agenda is because he had filed ZBA Applications 811-2 and 811-3 for his clients to get a variance for an additional lot at 1017 Howe Avenue. He wasn't aware that there was a discussion that took place at their August meeting. They asked that the ZBA hearing for this be kept open.

Atty. Thomas stated that he had asked for a variance, Section 5.25. He indicated that Rick's report refers to Section 5.17 and he is assuming that this is the buildable area, the slope requirements that they have. It is actually Section 5.25, you must have renumbered it later on because that is the current regulation. It was amended in 1997 to require 30,000 square feet without certain slopes. He wanted to point out, that requirement, if someone were to check Schedule B, could not be found in Section B. It doesn't even refer you to Section 5.25.

Atty. Thomas indicated that this made reference to clear cutting in lots and he wanted another opportunity to explain what his clients are trying to do. His clients bought the property in 2003. They bought this large parcel of property, 2.41 acres with a small house on it that they have renovated extensively. When they bought it, in their preliminary research and in looking at the adjacent neighbors, they assumed that they had another lot. Subsequent to their buying it, the State sold excess right-of-way. The excess right-of-way was the old road way which was the old #110, the old Howe Avenue. They spent the money at that point to purchase it so that they would have additional property so that they would have sufficient property to make three lots. They would now have more than three acres with a nice, level area and they expanded their frontage substantially. Atty. Thomas referenced some photographs of the property showing their privacy road.

Atty. Thomas indicated that they began their process of due diligence and they called before they dug and found a gas line. There was no easement. It was unmarked and it was actually on their property. It was running along the old

road and actually ran into their property. At that point they came to P&Z, hired a surveyor who did some work for them, Yankee Gas was in discussions with them and they were told by P&Z that they have a slope requirement. They were told that P&Z would never give them three lots, but with a variance they would probably give them two lots because they have so much space.

Atty. Thomas indicated that his clients took many years negotiating with Yankee Gas. Yankee Gas relocated the line, put boulders in and it had to be completely redone. Their own surveyor retired and they are now with Nowakowski, O'Bymachow & Kane. He added that Mike O'Bymachow is here tonight to answer any questions. They then began the process of seeing how they could build an addition onto their existing house and construct a new house for a family member.

Atty. Thomas provided an enlarged version of the site map being used at ZBA to point out that this property and the flat area where the proposed house is to be located. He also provided photographs of the property showing the area next to the existing house.

Comm. Harger asked if this property was way up by Indian Wells.

Atty. Thomas responded yes, pretty much. In driving along there, most of the houses have been built with slopes. He added that before making the presentation to ZBA, he noticed that two houses away from this property is a brand new house built on a slope so he assumed that he would have seen a variance for that but there was none. The assumption that he's making is that it was a pre-existing lot, pre-dating 1997 but the house is literally built with a substantial slope.

Atty. Thomas showed the area of the addition and the location of a beautiful privacy berm where the road had come through. He showed a photo of the view taken from the front corner of the house. Additionally, he showed a three-dimensional model created by his clients to show the location of proposed house on the flat portion of the property, the proposed side yard and the slope in back of the house. It would not have a rear yard.

Atty. Thomas stated that the report talks about clear cutting of the Housatonic and there is no clear cutting. As they can see from the photographs, it shows the rear of house, the location of the septic for the existing house and the tree line that is substantially farther down.

Chair Parkins asked if that was down on the slope.

Atty. Thomas showed the location of the septic on the first set of the slope. It is difficult to photograph because it is taken from the level area where there is brush. The tree line is substantially farther down because this had been a road with rights-of-way on either side. The down slope from the road is where the gas line was located.

Chair Parkins asked for clarification as to what he is talking about with the old road.

Atty. Thomas responded that before 1953, that was the old road way that used to curve in. They straightened it out and in about 2000 that is when the State decided to sell the excess right-of-way. His clients have no intention of cutting anything and they would agree to a conservation easement. He added that they have no intention, on the hillside, of going down, of removing anything except dead trees and invasive species. They have no issue with that and they told the ZBA that.

Mr. Panico commented that they have been faced with applications by new homeowners that have steep backyards, who have found a source of fill and want to fill their backyards to make a level area and they end up denuding 60% of the lot.

Atty. Thomas responded that they are not going to reach the tree line with this proposal.

Mr. Panico responded that he understands that they could create a structure without doing that but they are concerned about future owners.

Atty. Thomas stated that they could deed-restrict it. They have no problem – given where the tree line is located. He showed a picture taken from the road which doesn't fully show the view of the Housatonic through the trees. They have a relatively good view of the river even with the trees in full leaf. He was surprised that it wasn't really that thick. One of the reasons is that the tree line starts farther down then it shoots off sharply. He showed photos of the buffer area in front of the house from two different angles which his clients have no intention of removing because it acts as buffer for the noise of the vehicles. Also, it protects the house because there have been a lot of accidents on that portion of the road.

Atty. Thomas commented that as they can see from his client's 3-dimensional model, the location of the proposed house and the location of the Housatonic River. As they simply said, this would be a home with a side yard, not a back yard.

Comm. Flannery asked if they wanted three lots.

Atty. Thomas responded no, two, they understand that they can't have three. It will be two completely oversized lots. He added that Mike O'Bymachow can explain the construction if there are no retaining walls or anything.

Chair Parkins asked where the septic is located on that scale.

Atty. Thomas showed the location of the septic, the existing house, the existing shed.

**Mike O'Bymachow, P.E., Nowakowski, O'Bymachow & Kane, 415 Main Street, Shelton addressed the Commission.** Mr. O'Bymachow showed the location of the proposed septic tank and the existing septic tank.

Mr. Panico asked if it perks OK in those locations.

Mr. O'Bymachow responded yes, there is a (inaudible)

Mr. Panico asked if he had to bring in cover material.

Mr. O'Bymachow responded that he wasn't sure about that and he'd have to check with Alan. He said that they were pretty good.

Atty. Thomas added that they were approved in 2005 but obviously the perks have expired. It has to be re-perked. There is City water there obviously. There was some discussion about the possibility of sewers but because sewers were brought up to Huntington Way. However, he contacted Blakeman Construction and he was told it was a high pressure line that they cannot connect into it.

Mr. Panico responded that it is because it is a pump system.

Atty. Thomas stated that, unfortunately, the people along that area are not able to connect up to it. But there was no issue with the septic in 2005 and they don't anticipate that there will be a problem right now.

Chair Parkins asked if there wasn't a sewer that comes down from the other way, from in front of where the Indian Wells Station used to be.

Mr. Schultz responded no, it's all septic down there.

Chair Parkins asked if those three-family houses located there were on septic.

Mr. Schultz responded yes.

Mr. O'Bymachow stated that he wanted to point out that the shaded area is the outside of that 25% slope. Everything that they are proposing is going to be within that area. They can take that consideration of that area and go to the zoning table and it still meets the setbacks, impervious areas, percentages of lot coverage and everything like that. Right now, this is town topo and they would have to do a detailed topography of this area. It might be even better up there but right now he doesn't know right now. He added that with the right type of house, it could fit in there really nicely. They only have a 60 foot drop in the back so it is perfect for a walk out.

Mr. Panico responded that it would be a walk-out to a slope that goes like that (he pointed downward).

Mr. O'Bymachow commented that they could still have a 10 foot level area in the back there.

Chair Parkins stated that there is still nothing stopping people from cutting down the trees and then saying "oops."

Mr. O'Bymachow responded that they could put a conservation easement on that. It would be on the land records.

Chair Parkins stated that she knows these owners won't do it but if they ever sell the house, the potential is there. Once they do it, it is done. They have had that situation occur in Shelton many times previously.

Atty. Thomas responded that then it hasn't been enforced properly. If there is a conservation easement on the property and you cut down trees, there is a right under State Statute to enforce and go after them. He knows because he has been on the other side of the fence. They have no problem with that on the hillside.

Mr. Panico commented that obviously the easement has to be in favor of someone else as well so that the two parties of the easement can't get together and break it, there has to be somebody else (inaudible)...

Atty. Thomas indicated that Statutory Conservation Easements are to the City of Shelton – they are to the City so the Alderman (inaudible)... First of all, Alan Shepard made a point to him that there has been a lot of tree cutting going on and a lot of trees falling down by themselves, and it would be very cost prohibitive to cut trees down on that slope. Hiring professionals to go down on that slope and cut down any more than a single tree, it will cost an arm and a leg because it is so hard to get any equipment down there. If there is a conservation easement on it then it can be posted. It can allow for the removal

of dead trees. Even the removal of invasive species would have to be approved by the Tree Warden. It can be posted in certain locations with white vinyl posts that stand out well every certain amount of feet.

Atty. Thomas commented that they aren't going to be out of character with the neighborhood because as he pointed out, the new house that was built because it was pre-existing was built on a total slope (to him it looked like a good 15-20 feet between the area in front of and the area behind the house). It must have been a pre-existing lot.

Chair Parkins asked if it was a cape that sticks out.

Atty. Thomas responded no, it is a colonial about two houses short of his client's.

Mr. Panico commented that his recollection is that they were pre-existing, non-conforming lots.

Atty. Thomas commented that if they look at the history of this – these are people that have taken the steps, bought the extra land, have two over-sized lots and who have no intention of doing any clear cutting or anything like that. Certainly, if there is no yard, there would be a temptation but they are going to have an enormous side yard here with privacy from the road. Their property goes all the way down to the old road bed. They will have an huge side yard.

Atty. Thomas stated that he is asking the Commission to reconsider their report, and put whatever conditions that seem appropriate. They will be going back to the ZBA next Tuesday for the continuation of their public hearing. He added that his clients are here and Mike O'Bymachow is here to answer any of their technical questions.

Mr. Schultz asked if this would be processed through Planning & Zoning as an as-of-right lot.

Atty. Thomas responded that he hasn't done the title search and he is not sure as to when it was split.

Mr. Schultz commented that if the Commission's consensus is to have him lift the report that they had him write, then he will put in that it will be processed as a two lot subdivision. At such time, the Commission will review certain easement requirements. It sounds like they are going to go with that.

Mr. Panico stated that they have to express a willingness to create appropriate conservation easements.

Mr. Schultz responded yes, they are going to convey that to the ZBA.

Mr. Panico stated that if it is not stipulated in the ZBA variance then they are going to be on site. There needs to be something in the ZBA action that makes reference to the establishment of conservation easements.

Atty. Thomas responded that they have already brought that up.

Mr. Panico added that otherwise, they aren't going to be able to enforce anything.

Atty. Thomas responded yes and no. If they make it a condition of their approval and they have to come in for a subdivision, then this Commission gets a crack at that point. However, the ZBA already brought up the conservation easement and the only concern his client has is the removal of dead trees or

fallen trees and clearing brush out. Conservation easements can be as creative as the Commission wants them to be. They can limit the size of the trees to be cut, etc. so if they send a report saying that a conservation easement is a subdivision requirement, then they will have no problem with that.

Mr. Schultz added that if that is the consensus, then the Commission can direct Staff to modify their report.

Comm. Pogoda commented that they just need stipulate that they can't violate that conservation easement.

Chair Parkins stated that then there are big penalties.

Atty. Thomas indicated that he has done some cases involving the cost of tree-cutting and they would be surprised what the cost of a tree is when they assess for damages.

Comm. Flannery stated that she is really thinking about Old Stratford Road where they were told not to clear cut. They clear cut anyway and they put these tiny Christmas trees in their place.

Chair Parkins responded that there was no conservation easement on that to protect them.

Mr. Schultz added that was also the Tree Warden instruction.

Comm. Pogoda stated that they came to find that out later on.

Comm. Flannery stated that she just wants to make sure that the trees aren't clear cut.

Comm. Pogoda responded that is what they are going to do.

Comm. Flannery asked what happens if they clear cut them anyway.

Chair Parkins responded that it is going to cost them a lot of money.

Comm. Flannery asked if they can be replaced with big trees.

Comm. Pogoda responded that they can never replace a tree that is 40 or 50 years old. They can never get the height of some of those trees but they can make it monetarily painful.

Atty. Thomas added that many times it requires the planting of a like kind of tree plus a penalty. There are many ways to make it enforceable. Nothing is absolutely perfect. That is why he had these pictures taken because these people already have a great view of the River with all the leaves on the trees.

Chair Parkins commented to the applicants that this discussion was not a reflection on them personally but if they sell the property, the next owners may want to have a better view of the River and want to cut those trees down. The Commission has to look at the bigger picture and not just the individuals involved.

Atty. Thomas stated that the Conservation Easement, when the person buys the house and does a title search, it will be the first thing that pops up as being a part of their deed. It is common to require the simple, white postings on the property.

Chair Parkins added that the fact that they are agreeable to doing it is proof that they are not going to do that.

Atty. Thomas commented that if they drive up and down this area, they will see that there hasn't been any clear cutting because it is probably too expensive and too difficult to do with the slope there.

Chair Parkins commented that she is fine with this as long as they have the conservation easement. She asked for a motion to direct Staff.

**On a motion made by Anthony Pogoda seconded by Thomas McGorty, it was unanimously voted to direct Staff to modify the correspondence to the Zoning Board of Appeals regarding ZBA Applications #811-2 and #811-3.**

**11 LADY SLIPPER DRIVE: REQUEST FOR RELEASE OF SEDIMENT EROSION CONTROL BOND AND SITE COMPLETION BOND**

Mr. Schultz read correspondence from Mark IV Construction requesting the release of the \$5000 Cash Bond and the Site Completion bond in the amount of \$25,000 being held by the City. He added that Staff recommends approval.

Mr. Schultz stated that he is glad that they waited a long time because he wanted to make sure that they did not go through a drought. All of the vegetation has taken very nicely. There have been no problems with the monitoring or any of the wells. The shed was relocated – that was a side issue, a civil matter.

**On a motion made by Anthony Pogoda seconded by Virginia Harger, it was unanimously voted to release the Sediment Erosion Control Bond and the Site Completion Bond for property located at 11 Ladyslipper Drive.**

End of Tape 2A, 9:15 p.m.

**TWISTED VINE ESTATE SUBDIVISION: REQUEST FOR REDUCTION OF PERFORMANCE BOND**

Mr. Schultz read correspondence from the City Engineer dated 9/20/11 regarding the completion of the roads and the recommendation to reduce the performance surety of \$382,000 to \$130,000.

**\*See attached correspondence to Richard Schultz, P&Z Administrator from Robert Kulacz dated September 20, 2011.**

Mr. Schultz added that it was great that all the roads were in now and they concentrate on stabilizing the shoulders.

**On a motion made by Anthony Pogoda seconded by Thomas McGorty, it was unanimously voted to approve the request for reduction of the performance bond for the Twisted Vine Estate Subdivision.**

**8-24 REFERRAL: LEASE PORTION OF LAFAYETTE SCHOOL FOR COMMERCIAL USE AND OFFICE SPACE.**

Chair Parkins commented that this is a request to lease it for commercial use but it not quite commercial, it is more of a non-profit.

Mr. Schultz agreed and read the letter from the Mayor's Office dated October 11, 2011 requesting an 8-24 Referral for the City of Shelton to lease a portion of the Lafayette School for commercial and office space.

Chair Parkins added that it is really going to be used for a non-profit center.

Comm. Flannery asked what it is going to be used for.

Chair Parkins responded that it is for Center Stage and there is talk about other non-profits moving in as well.

Mr. Schultz commented that Zoning allows the BOA, the legislative body, to have the final say. This Commission just makes the recommendation.

Comm. Pogoda commented that it is better than letting the thing just sit there like Huntington School did for all those years.

**On a motion made by Anthony Pogoda seconded by Virginia Harger, it was unanimously voted to report favorably on the 8-24 Referral to lease a portion of Lafayette School for commercial use and office space.**

#### **PAYMENT OF BILLS**

**On a motion made by Anthony Pogoda seconded by Thomas McGorty, it was unanimously voted to pay bills, if funds are available.**

#### **STAFF REPORT**

Mr. Schultz reviewed the P&Z Staff Report including pending ZBA Applications, Zoning Enforcement issues, Filling & Grading issues and Subcommittee Reports.

#### **ADJOURNMENT**

**On a motion made by Anthony Pagoda seconded by Virginia Harger, it was unanimously voted to adjourn at 9:30 p.m.**

Respectfully submitted,

Karin Tuke  
Planning & Zoning Commission, Recording Secretary