MINUTES OF THE CHESHIRE PLANNING AND ZONING COMMISSION
PUBLIC HEARING HELD AT 7:30 P.M. HELD ON MONDAY, NOVEMBER 22,
2010, IN COUNCIL CHAMBERS, TOWN HALL, 84 SOUTH MAIN STREET,
CHESHIRE CT 06410

Present
Sean Strollo, Chairman; Earl Kurtz, Vice Chairman; Martin Cobern, S. Woody
Dawson, Patti Flynn Harris, Gil Linder, Louis Todisco.
Alternates - James Bulger, Ed Gaudio
Absent: Sylvia Nichols and Leslie Marinaro (Alternate)
Absent: Staff Present: William Voelker, Town Planner

I. CALL TO ORDER
Mr. Strollo called the public hearing to order at 7:31 p.m.

Mr. Strollo read the fire safety announcement.

II. ROLL CALL
Mr. Maidelis called the roll.

III. DETERMINATION OF QUORUM
Following roll call a quorum was determined to be present.

IV. PLEDGE OF ALLEGIANCE
The group Pledged Allegiance to the Flag.

V. BUSINESS

1. Subdivision Application
   PH 10/25/10
   Diversified Cook Hill LLC
   PH 11/8/10
   Plank Road
   PH 11/22/10
   14-Lots
   MAD 01/26/11
   TABLED TO DECEMBER 13, 2010.

2. Special Permit Application
   PH 11/8/10
   Cheshire Fitness Zone
   PH 11/22/10
   716 South Main Street
   MAD 01/26/11
   Physical Therapy & Women’s Fitness Gym

   (Mr. Strollo recused himself from this application due to possible conflict of
   interest)

Vice-Chairman Kurtz chaired this portion of the public hearing.

Mr. Cobern informed the Commission that he has familiarized himself with
the minutes and record of this application.
Darin Overton, P.E. Milone & MacBroom represented the applicant.

Mr. Overton stated that the commission raised some concerns at the last public hearing and to address them an updated letter was submitted regarding the parking. The owner sent additional counts for parking usage at the current location. Also included is a table from the initial letter which Mr. Overton wrote which summarizes the parking. This table is a summary over one week of average parking, and a breakdown on a daily basis. In the initial letter it was noted there was a peak parking demand of 25 spaces, and the second updated count for one day ticked this up to 26 spaces.

There was additional information done on the site which is included in the letter. Mr. Overton said that the information provided by the applicant backs up the already submitted information to the commission, and additional data to support what was included on the application. The applicant believes there is adequate parking available for all of the uses.

Town Planner Voelker informed the commission that a book of photographs was received in the Planning Department from John Ricci, which show the usage of the property lot over a two week period.

Based on the proposed use and square footage, Mr. Cobern asked about the number of parking spaces required for this application.

Mr. Todisco confirmed that there are 53 parking spaces on the property available to the buildings.

Mr. Overton said that was correct.

Ms. Flynn Harris posed a question about the overflow from the adjacent office building and whether or not this has been discussed with the owner of this building.

This is an issue and Mr. Overton said he understands the owner of the adjacent building has been sent a letter stating the occupants of his building have no right to park at 714-716 South Main Street.

Ms. Flynn Harris asked if there would be signage about this “no parking”.

According to Mr. Overton the owners know they are not permitted to park at 714-716 property and employees have been informed of this fact.

Mr. Todisco visited the site and noted there are three lines of parking in the rear, and down the hill are more spaces. He asked if these spaces are included in the 53 spaces.
On the application site plan it shows all the parking rows and Mr. Overton said there are rows behind 714-716, and spaces are numbered 1 to 53.

With regard to 728 South Main Street, Mr. Cobern asked about access across the subject parking lot.

Mr. Overton said there are rights of access and egress from the light through the subject property over to 728.

PUBLIC COMMENTS AND QUESTIONS
Dr. Mike Ackley, 714 South Main Street, addressed the commission regarding the parking issues on the subject property, stating that at the end of the tenancy of Milone and MacBroom there were parking issues. Most of the time his parking was not impacted too much. In the past he had designated signs for 6 slots and 3 for his staff. His issue is that he has 4 employees and 4 to 6 patients an hour, including the senior van and group home which sometimes need the handicapped spaces. With a physical therapy operation there is usually a larger staff and more comings and goings. Dr. Ackley is concerned because 716 is a large building, and at 714 he plans expansion of his practice, and has concerns about the parking. Dr. Ackley said he does not appreciate an outsider coming into his offices and grilling his employees. He did research and based on the square footage he uses, he should have 10 to 12 parking spaces. His practice uses the handicapped spaces all the time. His office hours are Monday and Wednesday, 8:30 a.m. to 3 p.m.; 2 Fridays a month from 8:30 a.m. to 9 p.m.; Tuesday and Thursday 8:30 a.m. to 6:30 p.m. with patients arriving at 1 p.m. Most days are half days for seeing patients. With an expansion of his practice, Dr. Ackley said he needs to know he can use the 12 spaces allocated to him for his medical office.

Mr. Kurtz noted that most of the applicant’s cars would be in the parking lot earlier in the day and later in the day.

Dr. Ackley explained he uses the maximum number of spaces; he sees a patient every 10 minutes; and a new patient and other services are half hour appointments. 50% of his patients are handicapped or elderly, and his staff parks in the rear of the building. His parking space count includes these handicapped spaces, and he believes the applicant will also need handicapped spaces.

Mr. Voelker said that this building by itself with a 1 space per 200 s.f. ratio finished space for professional office would be 42 spaces. There are two buildings on the site which share 53 spaces. Mr. Voelker noted that in the past the PZC made a decision that this number of spaces was sufficient to service both of these buildings. The regulations were re-drafted to give the PZC the ability to evaluate these situations, including peak usage, hours promoting
The applicant provided an analysis on how the parking lots will be used.

With respect to Dr. Ackley’s comments, Mr. Overton agreed that in the last year of his firm’s occupancy of the building they could not longer fit. He recalls the parking lot being full on a regular basis. Mr. Overton said that the owner/applicant has done careful counts of his use and has documented his parking needs. When Milone and MacBroom occupied the building the employees were there all the time and office hours were similar to other uses on the site. With the new use several employees work outside the office and peaks are, generally, outside normal business hours.

In reviewing the information submitted by Mr. Ricci regarding the parking, Mr. Overton said it appears the peak usage on the site now is 15 cars. The proposed use is 26 cars, and this totals 41 maximum spaces occupied, leaving 12 spaces. There is still adequate parking available for the uses to operate properly with sufficient room for expansion.

Mr. Overton commented on parking being based on the maximum possible use of the building, not just partial occupancy and expansion at a future date.

It was stated by Mr. Overton that Cheshire Fitness Zone will be using the full space of the building.

Mr. Cobern asked if Mr. Ricci would be willing to restore the reserved signs for 8 or 10 spaces for the doctor’s business.

There has been some discussion about signage for assigned parking across the site and Mr. Overton said nothing has been agreed on by the owners.

Mr. Gaudio asked about the number of employees of Milone and MacBroom in this building during their occupancy.

The firm was in both buildings occupying 5 floors, and Mr. Overton said he could not provide an accurate number of employees.

Attorney Kevin Hecht represented Dave Brzozowski, owner of Medacist Solutions Group, 714 South Main Street. He asked how much space the fitness center currently occupies, and if we are looking at 26 cars during peak hours.

In response, Mr. Overton stated that the applicant occupies 6,000 s.f. of space at the Watch Factory location, and the maximum one day peak was 26 cars between 5 p.m. and 6 p.m.

The photographs submitted at the hearing were given to Attorney Hecht to review.
Kerry Leventhal, 70 Francis Court, stated that the Cheshire Fitness Center is her place of business, that she is a fitness instructor, and mother of a disabled child receiving physical therapy at the center. Ms. Leventhal commented on the fact that this is a building for sale, with a bid for purchase which was accepted, and some business will go into this building. The number of parking spaces are a fact and the square footage of the building will not change regardless of what business occupies the space. She assumes there will be more handicapped spaces for the building, and said there is no control over where the doctor’s patients park. The employees and owners know where to park. Ms. Leventhal stated that she does not believe someone should not purchase the property because two current owners are against it. She believes all the discussion about parking spaces is a waste of time.

It was explained by Mr. Cobern that not every use of a building has the same parking requirements; there are different uses which may require more or less spaces. While it may seem a waste of time to discuss parking spaces, Mr. Cobern advised that the commission is required to follow the regulations and make sure the application is consistent with them, and that is what it is trying to do…and not make trouble for anyone.

Attorney Hecht stated that it is important for the commission to understand that Mr. and Mrs. Brzozowski made an investment in 714-716 South Main Street condominium complex, and occupies 714 as their business site.

Brzozowski Exhibit #1 – Transaction history of the purchase of 714 South Main Street.

Attorney Hecht explained that during negotiations for the purchase of the property the only way to do this was to condominiumize the property. He stated that the exhibit submitted includes the warranty deed to the Ricci’s in 1992, building permit to Ricci Construction Group to build 716 South Main Street, quit claim to Robin Ricci for 714-716 South Main Street LLC, declaration of condominium for both buildings on the land records under CGS, warranty deed where his client purchased the property at 714 for a considerable sum of money.

According to Mr. Hecht the reason his clients are here is because of their substantial investment in the property intending to fully occupy the property both with a tenant and their own business. The potential use threatens their investment and diminish the property value without sufficient parking. When there was one owner of all three buildings, the parking was fine, with control over the parking. Now, there will be no control. If the PZC approves this use, which is more intensive than the prior use, there will be a threat and impact on the Brzozowski property.
Attorney Hecht said that this property does not meet the parking requirements for both buildings and the application should not be approved.

Brzozowski Exhibit #2 – Assessor’s Cards for 714 and 716 South Main Street.

Brzozowski Exhibit #3 - Parking Analysis for 714 and 716 South Main Street.

Attorney Hecht reviewed the parking analysis and building measurements for both buildings.

714 South Main Street measurement of 6,838 s.f. Unit #2, calculations total 33 parking spaces required; 716 South Main Street measurement of 8,400 s.f., calculations total 89 parking spaces required.

Assessor’s card calculations show 2913 s.f. for 714 South Main Street, for a total of 25 parking spaces required; 8,107 s.f. for 716 South Main Street requires 54 parking spaces; the total requirement for parking spaces under the Assessor’s card analysis is 79 spaces.

The subject parking lot has 53 spaces and it is not adequate under Section 33 of the Parking Regulations. Attorney Hecht stated that the Brzozowki’s are entitled to full use of their building, as they have made an investment, and are entitled to have the building full and occupy the parking they need. Attorney Hecht stated that the commission is being asked to approve a new and more intensive use which will require more parking spaces. Control of the parking worked when the building was owned by the same party, but this is not the case today.

Mr. Kurtz stated that Mr. Ricci made an investment in the buildings with 53 parking spaces, without having 79 spaces.

At the time the condominium was formed, Mr. Hecht said there was a representation made as to how many spaces there were. Looking at the building permits and Assessor’s cards they show less space in each building. On 716 there was only 6,000 s.f. not 8,700 s.f. and Milone and MacBroom built all three levels with some attic space occupied.

Attorney Hecht stated that Mr. and Mrs. Brzozowski are entitled to the value of their purchase and investment. To now change to a more intensive us which exceeds and does not meet the current parking regulations is inappropriate and contrary to law.

There are multiple uses proposed by the applicant and Mr. Hecht said he cannot figure them out, and is not sure if there is more than one business proposed for this building.

Brzozowski Exhibit #4 – Cheshire Fitness Zone home page on the internet.
In looking at this information, Mr. Hecht said that the proposed use is physical therapy, occupational therapy, aquatic therapy, weight management, children’s fitness classes, sports training and birthday parties. He said the last two activities are not permitted in the R2-A zone under Para. 36A and C. As for the other therapies provided, he is not sure how the commission would categorize them. For all of them, under Section 33 there is one space required for every 150 s.f. of usable space. The Commission must first determine what the use is; whether it is permitted under the regulations in this zone; and, if permitted, have the requirements of Section 33 been met and satisfied. According to Mr. Hecht some of the proposed used are not permitted in this zone, and if they are, the parking requirements have not been satisfied.

Attorney Hecht asked the commission to carefully consider the fact that once this use is approved, even though the user states his peak times, a special permit is being granted which runs with the land. Therefore, Mr. Brzozowski will forever share a piece of property and common parking with another user having a more intensive use during normal business hours when he and Dr. Ackley operate their businesses. There is a potential impact on the value of the Brzozowski property. Mr. Hecht stated it is inappropriate and contrary to law for the commission to approve this application and it will diminish his client’s property.

Mr. Brzozowski submitted copies of photographs he took of the property.

Exhibit #5 – Brzozowski photographs of 714-716 South Main Street property, and the 728 South Main Street building.

David Brzozowski, 80 Abrahams Road, owner of 714 South Main Street, stated he purchased the property with 53 parking spaces, but did not expect a more intensive use than the prior use. Mr. Brzozowski has 12 employees and about 15 cars on a daily basis for his business, with vendors coming into the office. He is using 55% of the square footage of the building, and noted he purchased the building looking to future expansion. He would need another 6 to 8 parking spaces for expansion. The business is an internet health care information company; it services 700 hospitals across the country; and the business is growing all the time, bringing on new developers and people to occupy the building. By changing the use of the building next door would narrow his chances of expansion. There is not enough parking, and with the next use and his expansion the parking lot will be totally full, with encroachment by the Osterman building. In the past there was one owner of the three buildings with control over the parking. The proposed use will hurt his business now and down the road.

Mr. Linder asked Mr. Brzozowski about his purchase of this building, and when it was purchased.

In reply, Mr. Brzozowski said he purchased the building in September 2007.
Mr. Linder noted that Mr. Brzozowski purchased a condominium which shares the parking lot with the other condominium unit of 716 South Main Street. He asked if there is anything in the condo common documents which allocates or has commentary about the parking spaces for rights of multiple owners.

According to Mr. Brzozowski there is nothing in the condo documents regarding parking.

Mr. Linder stated that the parking issue is silent with nothing governing the issue. He said that what is being presented to the commission is that Mr. Brzozowski figures his unit is entitled to 33 parking spaces. He asked if he thought he was entitled to 33 spaces out of the 53 spaces when he purchased the condo unit.

Mr. Brzozowski said he thought he would be using more spaces.

Mr. Linder cited the fact that Mr. Brzozowski purchased this property knowing there was 53 parking spots, knowing he might need more than 33 spaces, and also knowing there was an 8,700 s.f. building that shares those 53 spots. He asked what Mr. Brzozowski thought would happen with the 53 spaces.

In response, Mr. Brzozowski said the size of the 716 building changes all the time…it was once 6,000 s.f. and now is 8,400 s.f. He explained that the condo situation was put on him at the last minute, and he tried to carve out the property to buy as one piece, but this was changed at the time of the contract. The seller could not carve out the property as two separate pieces because the property was expanded and the two building are too close. He tried to negotiate parking spaces as well as the building itself. The parties could not come to terms.

Mr. Linder said that Mr. Brzozowski went into the contract knowing there was 8,400 s.f. building and this owner would be entitled to share the parking spaces.

At the time, Mr. Brzozowski said he thought the building was 6,000 s.f.

Mr. Todisco commented on the fact that, at the present time, Mr. Brzozowski is not using all the space in his condo unit. He asked if Mr. Brzozowski leases to the doctor, and if his space is included in the percentage used.

Mr. Brzozowski said he is using about 55% of the space left over from the doctor’s 1,630 s.f.

With the doctor’s office space taken out, Mr. Todisco said this leaves 2,700 s.f. and Mr. Brzozowski is using 55% to 60% of this space.

There is 2,700 s.f. left based on the Assessor’s card, and Mr. Brzozowski said he really has 4,400 s.f. left, of which he is using 55%. 

On page 5 of the condo documents, Article 5A-1, Mr. Cobern asked for clarification on the Declaration of the Office Park. Mr. Cobern read part of this section on limited common elements into the record.

From this section of the agreement, Mr. Cobern said it appears Mr. Brzozowski has exclusive use of the parking immediately surrounding his building. He asked how many spaces this represents.

Attorney Hecht said this is less than 10 spaces.

Based on Mr. Hecht’s calculations, Mr. Cobern stated that the applicant has 22 parking spaces, or 25 spaces using the Assessor’s card. In addition to his limited common spaces, Mr. Cobern said Mr. Brzozowski has the right to use the common parking which is not part of anybody’s limited common space.

Stating that is correct, Attorney Hecht said that doing the math as we know it now, it appears we need between 79 and 89 parking spaces. At the time there was some believe that each unit had less square footage than it was. His point is that, given the office use, it would be one space for every 200 s.f. and this is what is client expected. The proposed use requires one space for every 150 s.f.. This would impact his client’s parking situation. 728 (actual address is 726) South Main was owned by the same parties which condominiumized 714-716 South Main Street. There was control of traffic and enforcement of parking under one owner.

With approval of the proposed application Attorney Hecht said that 716 would have 8,400 s.f. totally utilized and developed and this would be a nightmare for Mr. Brzozowski. With an office use his client would not be coming before the commission. The applicant is trying to intensify the use at 716 which results in a real parking issue.

Mr. Kurtz asked if anyone has occupying the 716 building since Mr. Brzozowski purchased his building in 2007.

Attorney Hecht replied that this building has not been occupied.

It was stated by Mr. Kurtz that the applicant should realize if an office use goes into 716 there will be fighting for parking spaces the same time as the Brzozowski business needs spaces. Testimony has been given that the applicant would occupy spaces at off peak times.

When all three buildings were owned by one party, Mr. Hecht said the parking almost worked, and it will work with a less intense use, but not be perfect. He said Mr. Brzozowski purchased his property knowing the potential, but not the extent because he did not know the size of the building. Now, the square footage is known, and with each building fully utilized, parking will be a problem.
Dr. Ackley asked the commission how it decides on the number of parking spaces for a parcel of land with this much square footage.

Mr. Kurtz advised that it is based on what is in the regulations.

Dr. Ackley said for the amount of square footage on this property there was never enough parking for the uses. When Ricci managed the property it went well and there was cooperation and trust. He said the commission permitted a lot of square footage on this land. The commission may have to restrict the amount of square footage used in the 716 building to allow for adequate parking usage. Dr. Ackley said this building should not have been approved; it should have been a two story building with 4,000 s.f. He will not stand by and have his parking infringed upon, and will be back to the commission with his concerns. If the Town of Cheshire made a mistake, then there is a big problem which must be rectified, allowing assigned spaces to each occupant, and permit towing if there is a violation.

Mr. Dawson stated that the PZC tries to be fair and give businesses the opportunity to operate in Cheshire. When Mr. Ricci came to the commission he had a good plan with offices on the lower part and a condo minimum complex rental on the upper part. He was part of this approval and still feels it was a great plan. Later, Mr. Ricci changed the plans for the best use of the land. Mr. Dawson noted that the PZC has staff and the town attorney to discuss application issues with, and the commission tries to follow rules and regulations.

As his practice gets busier, Dr. Ackley said he will expand his hours and will need more parking. There is no room to expand parking on the site because of the wetlands. The parking worked with Mr. Ricci as owner, and he is concerned about what will happen in the future.

It was noted by Mr. Cobern that the 716 property was approved in 1993 or 1994, and the property cited by Mr. Dawson was the mixed use building further south on Route 10. He stated that there is a means in the application, that if you have a large parking lot serving several buildings and uses, to approve spaces less than just adding up the individual uses…if there is a good argument made that the uses are such that they don’t peak at the same time. When 716 South Main Street building was approved, Mr. Cobern was not on the commission, but assumes this was the logic used at the time, and regulations were also different at that time. The commission will give the same consideration to the subject application. It is a condominium so uses should be cooperative, and the commission will have to see if everyone’s uses can be accommodated or not.

Attorney Anthony Fazzone addressed the commission, informing them of the fact that he was involved with the preparation of the condominium documents. The last page has the allocation of parking spaces. The Brzozowski unit in the
condominium is allocated 40%; the rear building is allocated at 60% of the common charges; and this is based on the relative size of the buildings at the time. If the Brzozowski building is 6,000 s.f. and he indicated he was told the other building was 6,000 s.f., this would comply that the other building was significantly larger than his. The other building is required to pay 60% of the common charges; and Mr. Brzozowski pays 40% of the common charges.

The condominium map developed at the time, on file in the Town Clerk’s office, is similar to the site plan as shown at the public hearing. Mr. Fazzone said he has approximately 52 parking spaces. Based on the square footage of the buildings, he thinks Mr. Brzozowski could only expect his expansion could allow him to basically use, if you segregated them, 40% of the parking spaces…not 25 spaces which is 50% of the whole area.

Attorney Fazzone said that Mr. Brzozowski was correct, that at the beginning of the negotiations to buy the building, there was talk, discussion and even representation that the property could be subdivided. When the subdivision was looked at, and because of the way the buildings were built, there was not enough room for side line spacing between the two buildings. It was felt that, based on the ZBA and law surrounding that, a variance would not have been approved because there was a self created hardship since the buildings were built by the same person.

It was pointed out by Attorney Fazzone that the Brzozowski’s walked away from the transaction because they could not buy a separate piece of property. They came back and took an active role through their attorney, negotiating the condominium document, the relative percentages and relative votes in the condominium. Attorney Fazzone advised that his office represents Osterman, and there have been discussions with the Planning Department regarding filing an application to increase the parking lot size at this building to accommodate their needs. Attorney Fazzone also advised that the Osterman building is now 726 South Main Street.

Attorney Hecht did the math, and said the percentages were hotly negotiated. Based upon 8,400 s.f. at one space per 150 s.f., 716 South Main Street needs 56 spaces in and of itself for the proposed use. There are only 53 spaces between both buildings. Given what is proposed and the current use, there is no way there is adequate parking. Under Mr. Fazzone’s logic the Brzozowski allocation would be 21 or 22 spaces. This leaves 35 spaces for an 8,400 s.f. building which is insufficient.

What is now permitted under the regulations is in Section 33.5 Joint and Shared Use, and Attorney Hecht read this section into the record. We have piece of land with two structures, with insufficient parking to accommodate the proposed use.
Mr. Overton stated that with respect to the intensity of use, Mr. Hecht’s numbers are not relevant to the application, i.e. how much money his client spent to purchase the property. What is important is the uncertainty of where Mr. Hecht is coming from in establishing what is proposed for the new use is a more intense use. No information has been provided to back up this statement other than the varying numbers of parking spaces per square footage of used space.

The applicant present information that this proposed use applies under the 200 s.f. per one parking space, and Mr. Hecht is representing it as 150 s.f. per parking space. Mr. Overton said the applicant presented information on the actual need for parking being less than the 200 s.f. so there is no reason to look at the 150 s.f. Information has been presented to document that the 200 s.f. applies.

Regarding intensity of use, Mr. Overton said that the applicant has supplied the information on the actual parking needed for the facility. Calculations and information has been prepared and documented on the use of the property in the letters to the commission, along with necessary parking. The intensity of the new use is less than a professional office use as when Milone and MacBroom occupied the building. Mr. Hecht is arguing it is more intensive, and cars from 726 are parking on the grass. When his firm was in the building, Mr. Overton said the office space use was more intensive than the Cheshire Fitness Center. The peak hours for the fitness center have been documented for parking which are outside business hours uses.

In talking about the condo documents, Mr. Overton said there is a 60/40 split. Mr. Hecht’s client would have 21 spaces for 714 and 32 spaces for 716. Mr. Overton said he has presented information which shows proposed use of a maximum of 26 parking spaces, and the applicant is allocated 32 spaces. Based on the information presented there is adequate parking for the proposed change in use which is part of this application.

Under Section 33.1.7 there is the regulation which states 1 space for 200 s.f. for a business and professional office.

Town Planner Voelker said there are two things. This is a professional office which is 1 space per 200 s.f. of finished space. Under 33.1.3, the subject use is kind of a hybrid use, and Mr. Voelker read this section into the record. This gives the commission flexibility to weigh the evidence on whether parking is adequate based on the testimony presented. Section 30, page 30-19, there is a list of proposed uses as a special permit use in the R-20A zone. Everything that is proposed is on line and arguably permitted within this section of the regulations.

Attorney Hecht asked if Mr. Voelker is saying that health and exercise facility use is an office use, because he would disagree.
In response, Mr. Voelker said he is saying that nothing is perfect about the listing of uses. Health and exercise facility has a certain amount of discretion, and clearly what this applicant is doing is generally under this category, which is a special permit use in the R-20A zone. It includes everything that has been stated on the handout, with nothing in conflict.

According to Attorney Hecht there is conflict, i.e. sports training is not permitted in this zone, and the same is for the birthday parties and any commercial use.

Mr. Voelker said he would argue that birthday parties for handicapped kids would fall into the general regimen.

Mr. Hecht said this was not the testimony given, and submitted that Section 33.1.7 Medical Office and Medical Clinics and the like are one space per 150 s.f. of finished space. Section 33.1.7C is most applicable for personal service business and commercial recreation, and this is what birthday parties are.

Mr. Bulger asked if any more handicapped spaces would be needed for the new use permit. He heard testimony that one or two more of these spaces are needed.

In response, Mr. Overton said that the handicapped parking falls under ADA requirements, and is based on the number of spaces in the parking lot. This sets the minimum requirements. At this time he is unsure if more handicapped spaces will be required. It depends on the demand. Handicapped spaces are provided under the State guidelines, and this is usually adequate.

Ms. Leventhal informed the commission that at the fitness center's current space there is only one handicapped parking space.

There is a difference between the assessor’s card and Mr. Hecht’s measurements, and Mr. Todisco questioned which is correct and why there is a difference in measurements.

Stating he does not know, Mr. Hecht said there could be more finished space without a permit, and is sure that the space is greater than the assessor’s card. He said that Mr. Brozowski’s building is the same as when purchased, with no additional finishing.

Mr. Cobern said that what is relevant to the parking regulations is the finished space.

The commission was informed by Mr. Voelker that it can only leave this public hearing open with the approval of the applicant.
After discussions with the applicant, Mr. Overton stated that there is agreement to leave the hearing open.

THE PUBLIC HEARING WAS CONTINUED TO DECEMBER 13, 2010.

3. Special Permit Application
   Cornwall Properties LLC
   500 Cornwall Avenue
   Building Addition, parking lot extension,
   Relocation of accessory structure, and addition
   Of secondary structure for storage.

Mr. Voelker spoke with Mr. Juliano of Juliano Associates, P.E. which represents the applicant. There is a storm water management issue on the property which requires more data collection. The commission was requested to continue this public hearing until this information is satisfied by the Engineering Department. The issue is that there is high ground water and information is needed on the depth of the ground water to validate the storm water management choices.

THE PUBLIC HEARING WAS CONTINUED TO DECEMBER 13, 2010.

4. Subdivision Application
   Jason Welles
   Welles Properties LLC
   Maple Avenue
   2-lots

Chris Conklin, Conklin & Soroka, 1484 Highland Avenue, represented the applicant for this two lot subdivision. The application was previously submitted and withdrawn last year, and it has not been resubmitted for two lots. The lot is 89,006 sq. ft. in size; it has an existing structure; there is mixed use surrounding the property; and the property has public water and sewers. The existing barn and driveway will be demolished.

Mr. Conklin pointed out the green area on the subdivision map where the subdivision will be built. Lot #1 is over 40,000 sq.ft. and lot #2 is about 49,000 sq.ft.

The commission was informed by Mr. Voelker that the commission will be seeing a separate application regarding the existing building and parking in the near future.

On the development plan, Mr. Conklin pointed out the lots, noting that the existing lot will not change with this application. With the new residential lot, Mr. Conklin stated that there will be a single family home connected to public water and sewers, and it meets all of the zoning regulations. The lot slopes about 8
feet in the rear, and one contour will be changed, with a silt fence for sedimentation controls. There is almost no other vegetation other than grass. He pointed out where the house will be built in the open area, and no trees will be affected other than a few small ones.

Ms. Flynn Harris asked how far the curb cut will be moved.

Mr. Conklin said it would be moved about five feet to the south, and this will avoid disturbing the root system of the oak tree.

A question was raised by Mr. Gaudio on whether 5 or 6 feet is enough to move the driveway considering the oak tree is there. He noted that the vision going north is not good, and this is of particular importance with the school behind this property and school kids in the area. Mr. Gaudio suggested moving the side line further south for safety considerations. He also asked about the other house as a mixed use, and said there were many cars in the parking area.

Mr. Voelker said this subdivision will not affect the conformity or non-conformity of this property.

This is an R20 zone, and Mr. Gaudio asked if it would stay an R-20 zone.

To his knowledge, Mr. Voelker said there is no attempt to rezone this residential lot, and it will remain R-20.

Mr. Conklin advised that the Fire Department had no comments on this application. There are Engineering Department comments which the applicant will address. A letter of feasibility was sent to the WPCA. The last application was approved by WPCA, and it was hoped it would be grandfathered for this application, but this did not happen. There will be resubmission of the application to WPCA.

THE PUBLIC HEARING WAS CONTINUED TO DECEMBER 13, 2010.

5. Zone Text and Subdivision Text Change PH 11/22/10
Planning and Zoning Commission
To amend Section 46 of the Zoning Regulations
And Section 5.3 of the Subdivision Regulations
To comply with FEMA Directives

Mr. Voelker informed the commission that these changes are from the DEP and FEMA, and they must be adopted to maintain the integrity and function of the FEMA program.

THE PUBLIC HEARING WAS CLOSED.

VI. ADJOURNMENT
MOTION by Mr. Cobern; seconded by Ms. Flynn Harris

MOVED to adjourn the public hearing at 9:23 P.M.

VOTE The motion passed unanimously by those present

Attest:

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Marilyn W. Milton, Clerk