

PLANNING & ZONING COMMISSION
July 8, 2013 Meeting Minutes

These minutes are not official until approved at a subsequent meeting.

Commission Members Present: Vincent Zimnoch, Alan Gannuscio, Jim Szepanski, Peter Juszczynski, and Alexa Brengi

Commission Members Absent: Paul Harrington (Alternate)

Town Staff Present: Patrice Carson (Interim Town Planner), and Dana Steele (Town Engineer)

I. Call to Order

Chairman Zimnoch called the meeting to order at 7:04 pm.

II. Roll Call

Commission roll call was taken.

Mr. Gannuscio stated that Alexa Brengi is now a full member of the commission, replacing Anthony Scarfo.

III. Approval of Minutes from the June 10, 2013 Regular Meeting

It was **MOVED** (Zimnoch) and **SECONDED** (Szepanski) and **PASSED** (Unanimous, 4-0, Brengi Abstaining) that the Planning & Zoning Commission approve the June 10, 2013 minutes.

IV. Public Hearings

A. Public hearing on the application of “Q”-Lungian Enterprises, d/b/a Pool Table Magic, for the property at 75 Ella Grasso Turnpike for the currently pending application for the change of use of the property as well as to alter the site plan of the building and to add the new use of live entertainment

B. Public hearing on the special use permit application for the new liquor permit at 75 Ella Grasso Turnpike, “Q”-Lungian Enterprises, d/b/a Pool Table Magic

Mr. Szepanski read the rules for conducting a public hearing.

The Recording Secretary read the legal notice that was published in the *Journal Inquirer* on June 26, 2013 and July 3, 2013.

Chairman Zimnoch pointed out that there are two separate applications before the commission tonight—one is for the use and one is for the liquor permit.

Attorney Daniel Silver of the law firm Silver & Silver, One Liberty Square, New Britain, and Mark Kulungian of Pool Table Magic, 75 Ella Grasso Turnpike, addressed the commission. Attorney Silver stated for the record that the exhibits on the first application will be made part of the application for the second permit application, so the record should show that the information which is received in one is part of both applications, with the caveat that later he will have a few comments to make that are specific to the second application. Attorney Silver acknowledged the large turnout this evening (on a hot July night the day after a holiday weekend) which says something about the character of this town. He stated, "I also want everyone to understand that although I acknowledge and respect each and every one of the participants this evening to express themselves, we too have certain first amendment rights, and although this commission does not have jurisdiction to hear constitutional issues, let me just say, and I'm sure you know, there are some great constitutional issues which hopefully do not have to be raised in some other forum, but nonetheless, I am not going to be getting into this, this is not a show of constitutional law tonight, this is a zoning hearing, and I respect that, but there is an undertone I'm going to refer to something just peripherally during my discussion so that the record is replete/full of what our position is in this matter, but I'm not going to put this commission in jeopardy of doing something and trying to rule. But at the same time I would also expect that this body is going to look at this application and it's not going to make a decision based on the basis of morality. This is a zoning hearing and we'll talk about the issues. That's what we're here for tonight."

Attorney Silver then introduced himself for this reason: during the course of these proceedings he is going to address the commission with some business concepts which he has learned and been a part of as a lawyer for the past 43 years representing people within the adult entertainment industry and others with first amendment issues. This application seeks a modification of an existing site plan and a special permit for an amusement enterprise to allow the performance of exotic dancers as set forth in detail in the application. The concept of a gentlemen's club, a drinking establishment where adult entertainment is offered, is an old concept and is no longer a workable business model. The business model being used today is a concept in which this type of entertainment is to be used in conjunction with another business aspect, enhancing the restaurant. Attorney Silver stated, "My client's concept is nothing more than a continuation of his restaurant with an extended menu."

At this point copies of exhibits were distributed to commission members. Attorney Silver went on to say, "My client's concepts include a type of entertainment which will be used solely in conjunction with the restaurant," and referred to Exhibit 7, the six-page, full-restaurant menu. "It is an extended menu over what is there today. This is part of the concept that Mark is attempting to do. This is an upscale plan, it's an upscale facility. It is not a drinking place, but a restaurant, and he feels that the entertainment will add not only to the restaurant but to the history and the continuation of the billiards enterprise which has been going on since 2005 when it was first approved by this commission." He then referred to Exhibit 1, a brief history of Mark and Pool Table Magic. He asked the record to show that Mark was inducted

into the New England Pool and Billiards Hall of Fame. Attorney Silver stated, "All my client wishes to do in this application is to continue the present restaurant with the expanded menu as well as continue the billiards operation which includes the leagues, recreational, and instructional at the same level that we have now. All we are really doing is adding a stage for this type of entertainment."

Attorney Silver felt it was imperative to give a brief history so the record is complete and can have this information. All these documents are contained within the exhibits and are now part of the record. In September 2012, the commission approved his site plan modification and special permit for alcoholic beverages as a restaurant with on-site consumption (Exhibit 2). In October 2012, Mark made an application for a site plan modification, also seeking the type of entertainment of exotic dancers, but his application called for this use to be an accessory use (Exhibit 3). That application was made on February 7, 2013, and the commission denied the application for accessory use on the basis that it did not consider the use of the entertainment an accessory use. Attorney Silver stated, "Then, which you had a right to do under your zoning regulations, I believe it's section 401 of your regulations, you made a decision that his proposed entertainment use was very similar to that to being an amusement enterprise, which you have a right to do, and that by ruling that he had those rights, that he should make an application to the commission for a special permit and modification of a site plan that the entertainment was more rightfully considered to be, although it wasn't specifically indicated in your permitted uses, the regulations specifically allow the commission to make that decision that is close to something which is a permitted use, and therefore you will allow that use according to the restrictions for that use, and as we all know, an amusement enterprise requires a special permit under your regulations in Windsor Locks. So, as a result of your ruling, after the publication of that hearing, no appeal was taken. An application was then brought for a special permit. It included the...I meant the modification of site plan. And understand, going back right to the application that the client made in October, the sole reason for the application for modification of site plan was for the purpose of adding 14 parking spaces. That was the sole reason for the change of the site plan, was to add the 14 spaces. We needed those 14 spaces because we envisioned an increase of employees. So that the 14 spaces which have been included in the application for you this evening is the same as the application that Mark made last October was to accommodate those 14 additional spaces. You'll notice the application...the restaurant seating that you approved was 83 seats for the restaurant. Our new application is 83 seats. The total occupancy level as set by the Fire Marshal was 234 people last September of 2012. The occupancy, and the Fire Marshal has agreed to this, and he has given a letter as part of the record, that it is still 234 people. We are not doing anything different than merely adding spaces for increased employees because we need additional employees as he envisions what he plans to put forward."

Attorney Silver went on to state, "Going forward, on Exhibit 4, the commission after the application was submitted for the special permit, which was dated March 5, 2013, requested and indicated that you felt that an application for a special permit for alcohol, an amendment for modification for that permit, was required. I know I indicated to counsel for the town, I indicated to others, including in some meetings with Patrice, and I believe I mentioned that when we had a special meeting on that which was dated April 22, that it was my feeling that a special permit, a modification of that special permit for alcohol was not necessary, that because of the small change that we were anticipating, that legally that I felt that the existing special permit was grandfathered and that there was no necessity to apply for a new special permit. However, the board, in its discretion, and I have the minutes attached, specifically stated that, I remember, Mr. Chairman, you indicated and it was approved by the board, that in the event that an application for a special permit for alcohol was not submitted, the board in its discretion would deem the application to be incomplete and would dismiss the application. And so the minutes that I have attached so reflect. I say this because it is still my contention, and I want the record to so indicate, that we do not feel that an application is required. However, we made the decision, and we'll live by it, that at that point we were not going to appeal the commission's decision on the question of whether we did or we did not have to apply for that permit. We did apply for that permit, but I want the record to show that we've applied for that permit without prejudice to indicate that we feel and hopefully we will not have to go forward in any future arena but that to contest that particular issue as to whether or not a special permit is required. I know that's a technical thing and it's difficult for everybody. However, it is our opinion that such an application is not necessarily, is not required, but we did make that application without prejudice, that we reiterate that this evening so that the application would not have been dismissed as being incomplete. So all the applications were submitted."

Attorney Silver further stated, "This application has generated obviously a lot of controversy within the town, as can be seen not only by the number of people that are appearing here this evening to voice their views, but as well as the great deal of scrutiny which we have gone through in our site plan modification application. I did indicate that we have, what we are proposing to our site plan, again, is merely a modification to increase the parking by 14 spaces. The site plan, and we'll have the engineer run through it, shows there are 64 spaces required, and we have supplied 64 spaces." He also said that many meetings were held with town staff, and every comment that the town planner and town engineer made they have complied with. He then stated, "We feel that we meet all of your parking regulations as those regulations are clearly set forth. As we all know, the commission, on the site plan application, must make the ruling based on not your feeling, but what the zoning regulations say. We feel we have done that completely. We submitted a more detailed lighting proposal and complied with drainage comments. We meet all of your regulations. The number of seats for the restaurant and occupancy stays the same. The only thing in dispute for this whole application, as far as we are concerned, is that of sidewalks."

Attorney Silver referred to Exhibit 12, item 6, which pertains to sidewalks. They feel that a sidewalk is not required under the commission's regulations. However, if the commission makes a finding that a sidewalk is necessary, they are not waiving that issue, but at the same time, they will agree, without waiving it for judicial review, to construct a sidewalk as a condition to approval of a special permit, while reserving the right to challenge that in any future court proceeding.

Len Norton, of Broad Brook, the licensed engineer responsible for this site plan, addressed the commission. He pointed out that the entire modification to the site plan is in the rear quarter of the property. They added a 14-space parking lot. He discussed runoff and drainage issues, the lighting plan which proposes three new lights with 14-foot poles, and the parking analysis showing 64 required spaces. He noted that with the addition of the 14 parking spaces, they had to add an additional handicapped space. He also briefly discussed the seating chart as it pertains to parking. There was some confusion about the date on the site plan, which was June 25, 2013. Chairman Zimnoch asked if it corresponded to the latest floor plan, which had 94 seats, as opposed to 84 seats. The date on this floor plan was May 8, 2013. Mr. Kulungian stated this was an outdated plan, that another plan was submitted to Ms. Carson a week ago Friday. Ms. Carson said there was no revision date on this newer plan, so there would be no way to tell which plan was which. Attorney Silver reiterated that this application is for 84 seats. He apologized that the date was not changed on the map. It was an oversight. He asked that the record reflect that the number of seats they are showing and the number of seats they intend to offer is 84 seats. Mr. Kulungian also added, for clarification, that Ms. Carson has a copy that he hand delivered to her office. She gave him photocopies of stamped, received dates of the most current interior layout and the most current site plan layout. Ms. Carson can refer to the correct copies and can clarify any confusion.

Mr. Steele stated he did not receive the June 25, 2013 revision and asked for clarification of what has changed from May 8, 2013 to June 25, 2013. Attorney Silver responded that the only difference in that site plan was the number of employees and the seating. Mr. Steele asked if the parking calculation table is the only thing that changed. Attorney Silver responded that the parking calculation still amounted to the 64 spaces, given the calculations, so yes.

Attorney Silver stated that during their meetings with staff, it was requested that a floor layout be done by an architect and that it be sealed. John Wilcox, registered architect with the firm of Russell & Dawson of East Hartford, addressed the commission. He noted that the final drawings have his stamp and seal in the lower right corner. The changes being made to the building itself are minor. Attorney Silver pointed out that Exhibit 13 contains calculation statistics for the restaurant space. Mr. Wilcox briefly discussed these calculations. Attorney Silver commented that they thought it was appropriate not to consider the entire premises as the restaurant even though it was approved, given the concerns of the commission at the last meeting with regard to the new regulation and Mike's Blue Collar Bar.

There was some discussion about access to the kitchen, the size of the kitchen, and whether the kitchen is big enough to support the menu. Also discussed was the term “dining bar” and what was meant by this term. Mr. Gannuscio asked if it was a dining area or a bar area. Attorney Silver replied that it is a food service area with seats, and it is not a bar with the sale of alcoholic beverages. Ms. Carson asked about the area in blue on the plan. Attorney Silver replied that there will be food served at the bar in the blue, there will be liquor sold at that bar, so under the regulation they have interpreted that as part of the bar area, but food will be served at every seat in the facility. Chairman Zimnoch asked, “But alcohol will be served as well at every seat?” Attorney Silver replied, “That is correct. At that one location alcohol will be served by a bartender.” Ms. Carson asked, “So there’s really no difference, then, between that area and the area, say, around the platform?” Mr. Kulungian answered, “Of course there’s a difference. The difference is with regard to how the commission has addressed a bar area versus a dining area. The key difference seems to be the addition of a bartender where a bartender serves you directly the drink. The bartender would mix the drink and hand it to you directly. Table side service, as it is referred to in the business, is when a waitress delivers your drink because you gave the order to the waitress...” He also went on to say, “We also expanded the bar area, even though I disagreed. At great length, Dana, Patrice, and myself discussed this point, whether or not the bar area would be just the seats at the bar, cutting the elevated area in half, which I feel it should be. However, at the discretion and request of Dana, as the Town Engineer, I decided to include the entire elevated area, even though those chairs on the front side facing the spectator area where people sit and eat customarily to watch the games of pool would be considered the dining area, but as a courtesy, I decided to include it in the bar area to make the point clear that we meet the criteria for the new regulation of being less than 20%.”

Regarding the issue of the special permit for alcohol, Attorney Silver wanted to indicate to the commission that they did submit this application even though it is his opinion that an application is not necessary, given the changes are not substantial and the existing permit is grandfathered in. Also, Section 507 of the new ordinance would not make this applicable to existing locations. For the record, he feels they have been in existence before this regulation went into effect. Attorney Silver referred to Exhibit 10, Section 503.A.5 of the regulation on alcohol effective February 1, 2013, and Exhibit 11, Section 30-22 of the Connecticut General Statutes, which gives the definition of a restaurant.

Attorney Silver summarized: “I would just like to point out to you that where secondary effects may be, for the record, an important matter when it comes to adoption of a zoning regulation, I do not feel that secondary effects has any effect or being or constitutional basis when it comes to this particular application. When we made this application there was no ordinance in place that you have now.” Also, “I would like the record to reflect that there a number of constitutional issues which I am not going to be raising concerning also the requirement of a special permit in this application dealing with constitutional issues of dealing with licensing and speech.

That's as far as I'm going to go with this at this point. As I indicated, this commission has no standing or jurisdiction to hear constitutional issues, and I would reserve that if for whatever reason this went to court at a later time, that would be reserved for future discussion."

Chairman Zimnoch commented that state statute 30-22, which defines a restaurant, refers to a full course meal as something that a restaurant serves. He asked, "Looking at your menu, how can you put together a full course meal?" Attorney Silver replied that a meal is a meal, and the menu speaks for itself. "The interpretation of the statute, and this has been interpreted by the liquor control commission, is a restaurant is approved as long as it has four hot meals that are served at all times....We fully comply with 30-22."

Mr. Gannuscio commented that he takes great issue with a statement made by Attorney Silver that this site plan has been subject to increased scrutiny by its unusually in-depth review and the large amount of time spent on it. Mr. Gannuscio has been on this board for 18 years, and he pointed out that just in the last two years both Walgreen's and Margarita's underwent intense scrutiny. Attorney Silver stated he is not criticizing staff and offered his apologies.

At this time Chairman Zimnoch opened up the public hearing for comments from the public in favor of this application.* Michael Bracken, 12 Tinker Drive, spoke in favor of this application.

At this time the floor was opened up for comments in opposition. The following people spoke in opposition to this application: (1) Bonnie Karkowski, 1852 Poquonock Avenue, Windsor (presented a petition with signatures of 281 Windsor residents and 28 letters from individuals residing in Windsor and surrounding towns); (2) Doris McAusland, 29 Marshall Road; (3) Mary Campbell, 24 Center Street; (4) Pastor Earl Imswiler, representing himself, the Living Waters Fellowship, 200 Spring Street, and the Ministerial Alliance (presented a letter from the Windsor Locks Ministerial Alliance that was in the local newspaper); (5) Frances Urbank, 505 Denslow Street; (6) Deb Zorick, Fernwood Drive; (7) Attorney Paul Smith, 27 South Main Street, representing himself and the Windsor Locks Citizens for a Safe Community (presented a letter from Hilton Worldwide).

Attorney Smith stated that this is a special use permit application, not a site plan application, and as a matter of law the commission's discretion to approve or deny this is much wider than if this were simply a site plan application. This has not really been explained in the record--that this is a special application for entertainment, and that entertainment is performances which would take place on the applicant's premises where female performers would perform sexually explicit dance routines, and said performers would perform topless. The applicant is asking for a special use permit to have a strip club. What this means for the town—it's detrimental to the commercial neighbors who are adjacent to this property, to the Route 75 businesses, to the Route 75 corridor development that people have been working on, to all

businesses in town, and to residential areas. Attorney Smith would like to remind the commission that residential areas about this use, and in the opinion of many people, it will bring crime, prostitution, drugs, and sexual harassment. Attorney Smith also would like the record to reflect, "Under 1103, we look at criteria for a special use permit, and that includes the location and size of the use, the nature and intensity of the operations connected with it, and then the size of the building and so forth, and whether such use will be in harmony and appropriate with the orderly development of the district in which it is located, and I submit to you that this application absolutely, utterly, and completely fails that test." He submitted to the commission a letter from Hilton Worldwide who owns Homewood Suites.

More people speaking in opposition to this application are: (8) Athene Zaleski, representing Pride Stores at 246 Cottage Street, Springfield, Massachusetts, and a direct abutter (77 Ella Grasso Turnpike) to Pool Table Magic (presented a letter from Robert Bolduc, Founder and Advisor of Pride Stores); (9) Frank D'Amato, Skyline Restaurant; (10) William Rousseau, 407 Elmwood Drive; (11) Sharon Williams, 119 Center Street; (12) Sandy Kanigowski, 40 Hazel Street; (13) Gina Pastula, Skyline Restaurant, 106 Ella Grasso Turnpike; (14) Kevin Casey, 3 Ella Grasso Turnpike; (15) Carl Philbrick, 70 Grove Street (presented a letter as EIDC Chairman); (16) Ron King, 461 North Street; (17) John Sullivan, 51 Ross Way; (18) Bethany Sullivan, 30 Roberts Street; (19) Chris Weigert, 469 Halfway House Road; (20) Karen Giannelli, 2 Colombo Terrace; (21) George Colli, owner of properties on Route 75; (22) Jackie Weigert, 469 Halfway House Road; (23) Kelly Sullivan, 30 Roberts Street; (24) Marty Ross, Navy Commander of WL Air Base, 156 Grove Street; (25) Steve Wawruck, First Selectman, 18 Burnap Road; (26) Linda Landuski, 50 Elm Street; (27) Esther Caranjo, 5 Michelle Road, Windsor; and (28) Jason Smith, 55 Dove Court.

*Unless otherwise noted, persons listed above reside in Windsor Locks.

Ms. Carson read letters and emails received into her office regarding this application from (1) Kevin and Diane Pomeroy, 6 Jackson Street; (2) Jared Carillo, President of Bradley Regional COC; (3) Linda McGovern, Poquonock resident; (4) Kristen Barbarotta, President of Windsor Chamber of Commerce; (5) Catherine Cicero, 486 Stone Road, Windsor; and (6) Leona and Bill Sawka, 41 Eastview Drive, Windsor.

Dana Steele, Town Engineer, discussed his report dated July 2, 2013. First, Mr. Steele commented on why a traffic analysis had been requested. He had concerns whether this was going to result in an increase in trip generation for the site resulting in a decreased level of service requiring improvements to the two-lane driveway. The analysis concluded that there would not be an increase in the level of service, and therefore modifications to the driveway are not warranted. Second, Mr. Steele stated that parking calculations were based on the total proposed seating of 84 rather than on the total occupancy rate of 234, and the commission must determine the appropriate way to calculate this. Third, Mr. Steele went on to say that he recommends sidewalks be required as a condition of approval of this application. Lastly, he pointed out that

he just received the floor plan tonight and has not had a chance to review it, but it looks like not all of the bar area is included in the applicant's calculations. The applicant claims there is 472 square feet of bar area, but Mr. Steele did some rough calculations and came up with a much larger number (719 square feet). Mr. Steele recommends that the commission look at the sketch of the kitchen and bar area and determine if that is the correct delineation of the bar area in regard to section 503.A. He also noted that it appears from the floor plan that the total dining area is approximately 11%, with more than half of that being in the banquet area in the rear. One last comment by Mr. Steele was that the traffic analysis was based on the maximum capacity of the building, which is 234 seats, and the capacity for a restaurant of that size, almost 9,000 square feet, would seem to be greater than 84 seats.

Ms. Carson discussed her report dated July 1, 2013. The reports from the Police Chief dated July 1, 2013 and the Fire Marshal dated July 3, 2013 were read into the record.

Chairman Zimnoch opened the floor for the applicant's rebuttal.

Attorney Silver addressed the commission. He pointed out that the secondary effects Attorney Smith referred to are from studies that took place almost 40 years ago and have no relevance to the application today. Also, the concept that was presented tonight is different from the old typical Gentlemen's Club. He went on to say that this venue, the restaurant and billiards, has already been approved and has nothing to do with secondary effects. Furthermore, "We are here in a special permit application based upon your finding in February that when you denied the application so the use was not an accessory use, and made a finding of the fact, this was closely resembles an amusement enterprise. That decision was made and the commission indicated that a special permit on the basis of that decision should be applied for. That decision was rendered, it was duly published, and it was not appealed. This is not the time to talk about that issue. We're here because the commission made a finding that we are...closely resemble, therefore are permitted, subject to the issuance of a special permit. That's what we are here for and that's what the record clearly indicates... Yes, you have under your regulation substantial discretion...We are not here to talk about constitutional issues, but the record must reflect that this commission under first amendment jurisprudence may not have the discretion in the licensing of speech that your regulation talks about it, that speech may be different than other types of uses. I'm not asking you to make a finding, I'm just raising that for the record. I think we comply with your regulations. If you wanted a regulation for additional parking for different types of uses it would have to spelled out in the regulation. That is not in the regulation. We discussed this with staff and the engineer. We talked about parking...We really did not understand that there was a problem with the parking count because we meet the regulation as it stands today...We are here under the zoning regulations and we comply for site plan purposes with your regulations."

As to the question of the traffic study, he stated that the parameters of the traffic study came from the town engineer. He then introduced Scott Hesketh, a licensed professional engineer from F.A. Hesketh & Associates, to answer questions from the commission about the traffic study. Mr. Steele did not have questions, but he did comment that the premise of Mr. Hesketh's argument is looking at maximum capacity of occupancy of the building, which will be the same before and after development, so trip generation is essentially the same. He also said that if the building does achieve maximum occupancy under existing conditions, then it's an accurate reflection of that. If it doesn't, then it may not, but the report is what it is. Attorney Silver asked Mr. Hesketh to address the commission. Mr. Hesketh briefly discussed his report dated June 27, 2013. He commented that he believes he has addressed the issues that Mr. Steele listed and does not feel there is any significant difference of opinion between them. This particular site has an existing two-lane egress and he believes this is an appropriate driveway treatment and will operate at good levels of service. Mr. Steele pointed out that he and Mr. Hesketh did discuss the accident history, and there does not appear to be a strong statistical correlation between the two lanes versus the single lane, which was another contributing factor in reaching a consensus with regard to the existing driveway.

Attorney Silver continued his rebuttal. There was a question on the diagram, and it is their contention that the area which is in blue is the bar area, per the commission's regulation. The architect has stamped this as to the square foot of that area, and they stand by this calculation based on how the ordinance reads and how it is interpreted within this plan. Attorney Silver stated they are willing to subject this application to some reasonable conditions for the purpose of what they want to do with this facility. He distributed to the commission a set of proposed conditions which they are proposing which would deal with the very items discussed tonight, including signage and the way the property looks. He stated, "We will agree to everything that's been set forth in this package which to me indicates that we are willing to listen. We are listening to the community, we listened to what they had to say, and we are coming forth and putting our money where our mouth is that this is not going to be the old type institution. This is a concept which is different. This is run in conjunction with other past approvals. We are not changing anything except for the introduction of the stage. I think these are reasonable conditions and conditions which my client is willing to abide by." Attorney Silver pointed out that they are not renting any parking spaces, this is part of their property. He also stated, "This is a restaurant use, and we are going by your regulation, 30-22, which has been set forth, and you are required to follow your own regulation in determining what constitutes a restaurant for that purpose....We feel that this is a type of restaurant which has never been studied, so that none of the studies that have ever been generated affect this type of business that we are setting forth herein. I can't think of any specific restaurant-type of facility in Connecticut that meets the description that we have here, and I can tell you now that I probably represent about 80% of all of the adult establishments in the State of Connecticut at one point or another, and I am not aware of any establishment that is attempting to put this concept into play. This is a new concept....What Mark is

attempting to put forth here is not what people think it is. Yes, is there going to be topless dancing? Yes, there would be. Yes, we made that clear in the application. We're not trying to hide anything. That's what we are doing, but a small segment of our business."

Attorney Silver went on to state, "As far as the sidewalk issue, I think that was made clear that we disagree with the town engineer, I respect him greatly, after all he is the town engineer, but what his feeling is as to the intention of the commission has no merit as a basis of the law, it's what the ordinance reads, and the ordinance to us is clear if you read it under Connecticut law how you construe the zoning ordinance. But, on the other hand, if you disagree, the applicant would agree to put the sidewalk in at his expense and have those subject to the approval by the town engineer and/or the commission, as you see fit."

Attorney Silver noted: In the 1990's the town passed an ordinance dealing with restrictions and location of adult businesses. That ordinance is in the record and is part of their original application. They submitted as part of their application a report dated February 2013 by Gary LeClair, a certified land surveyor, which indicates that the establishment is 528 feet from the nearest residential district. He stated that the town engineer had no issues with this report.

Attorney Silver continued, "There was a lot of talk about criminal activity, but remember this is going to be what we consider to be just an aspect of this. We took and generated from the Windsor Locks Police Department calls for service from 2005 to present of several facilities in the near area. We took calls for service for the following locations: Pool Table Magic, Skyline Restaurant, Ramada Inn, and Homewood Suites....The calls for service at my client's establishment as it sits right now, is a fraction, almost nothing, compared to Homewood, Ramada, and Skyline. I'm going to offer these for the record. These calls speak for themselves." Mr. Kulungian added that these reports start in 2005 and only go through October 2012, but he would be happy to submit reports from October 2012 to present if necessary. Attorney Silver remarked that there is "much, much, much more crime in dealing with the Ramada and even the Skyline and Homeline than you are with Pool Table Magic. As a matter of fact, if you go through the calls for service, there's really nothing...of a serious crime level. Somebody indicated tonight something's going on there, I'm telling you there is nothing going on there. Any reports is speculative. I appreciate the comments of the Police Department, but that is speculative on a project which he has been given no real information, he was not here this evening to comment on what we're putting forth and what our business concept is, so I think we have to take that report for what it is. If he is basing that report on something else like secondary effects, I've already addressed those subjects." Mr. Szepanski remarked that, looking at Pool Table Magic, this is the way the business exists now and doesn't have the new business concept in it, so he's not sure what this really means. Attorney Silver replied, "We can't, we're not open, we can't give you calls for service. I think there were comments tonight that the way he runs

his business now may be indicative of the future...and this is the only reason this is being submitted, but I agree with you.” Chairman Zimnoch commented that one of the reasons he is trying to change the business is because it’s a failing business, so the commission has to look at these in that context. Mr. Kulungian said the indication of these reports is to show a managerial style. Attorney Silver said you have to look at it in the context for what is submitted, but you cannot speculate as to the future. Chairman Zimnoch replied there was a comment from the public tonight that the place was not open a lot of times when it should have been, and the other businesses are 24-hour businesses, so the commission will take it into the proper context. Mr. Kulungian pointed out that his hours are noted on the door and on the phone recording. Also, he stated, “I don’t think 35 years is a failing business. This year represents my 35th year in business....We’ve been here for eight years, we’ve been successful. My taxes are all paid on time, I’m paid up to date, my bills are paid on time, I’ve got credit with all my creditors. I don’t think it’s appropriate for you to make that comment, Mr. Chairman.” He added that these reports that he has submitted are representations of what’s happened over the past eight years and shows the way he conducts his business and how Skyline, Ramada Inn, and Homewood Suites conducts theirs.

Mr. Gannuscio directed a comment to Attorney Silver: “You said that we ruled that this is an entertainment or amusement enterprise. That’s what you stated.” Attorney Silver responded, “That’s what the minutes so reflect.” Mr. Gannuscio replied, “No it does not. I went to school here in town, I went to college, I went to law school. I think I understand the English language. And, the legal ad and a notice regarding this says, ‘the newly proposed accessory use for the building **might---might** be considered similar to an amusement enterprise.’ In no sense of the word does it say we **do** consider this to be an amusement enterprise.” Attorney Silver answered, “I respectfully disagree.” Mr. Gannuscio asked Attorney Silver if he was at that meeting. He replied, “Yes, I was.” Mr. Gannuscio stated, “It’s in the minutes, it’s in the notice. Where does it say that it **is** an amusement enterprise?” Attorney Silver, “I can construe it...” Mr. Gannuscio, “and you’ve already said that the plain language is what you look at. There’s the plain language—**might**.” Chairman Zimnoch added, “And tonight’s meeting was to decide that.” Attorney Silver, “We’ll just leave it at that, then, that the record speaks for itself.”

It was **MOVED** (Gannuscio) and **SECONDED** (Zimnoch) and **PASSED** (Unanimous, 5-0) that the Planning & Zoning Commission close the public hearing on the application of “Q”-Lungian Enterprises, d/b/a Pool Table Magic, for the property at 75 Ella Grasso Turnpike for the currently pending application for the change of use of the property as well as to alter the site plan of the building and to add the new use of live entertainment and the public hearing on the special use permit application for the new liquor permit at 75 Ella Grasso Turnpike, “Q”-Lungian Enterprises, d/b/a Pool Table Magic.

It was **MOVED** (Gannuscio) and **SECONDED** (Zimnoch) and **PASSED** (Unanimous, 5-0) that the Planning & Zoning Commission table any discussion and/or decision on this matter to the August 12, 2013 meeting.

V. **Reviews** (none)

VI. **Action on Closed Public Hearing Items** (none)

VII. **Old Business**

A. **Discussion with Commission and Staff regarding:**

- i. **T&M and North Group, LLC request for acceptance of roads** (none)
- ii. **Zoning regulations** (none)
- iii. **Subdivision regulations** (none)

VIII. **New Business**

A. **Public Input** (none)

B. **Receive New Applications**

- i. **Site plan modification for repairers license upgraded to used car license on existing site for 61 South Main Street**

It was **MOVED** (Zimnoch) and **SECONDED** (Gannuscio) and **PASSED** (Unanimous, 5-0) that the Planning & Zoning Commission schedule this application for review at the August 12, 2013 meeting.

Ms. Brengi brought to the commission's attention that someone is selling used cars in the Old County Road plaza. Mr. Wawruck noted that they have been a violator for many years.

C. **Informal Discussions**

- i. **Proposed Sexually Oriented Businesses Ordinance**

It was **MOVED** (Gannuscio) and **SECONDED** (Zimnoch) and **PASSED** (Unanimous, 5-0) that the Planning & Zoning Commission continue Item VIII C (i), the Informal Discussion item listed on this evening's agenda, to the special meeting on July 22, 2013.

IX. **Communications and Bills** (none)

X. **Adjournment**

It was **MOVED** (Gannuscio) and **SECONDED** (Szepanski) and **PASSED** (Unanimous, 5-0) that the Planning & Zoning Commission adjourn the July 8, 2013 meeting at 11:38 pm.

Respectfully submitted,
Debbie Seymour
Recording Secretary