

**MINUTES OF PUBLIC HEARING
HELD BY THE PLANNING AND ZONING COMMISSION
SEPTEMBER 17, 2018**

ROLL CALL:

Members Present: Andy Kidd, Acting Chair
Michael Stebe, Secretary
Timothy Bergin

Alternate Members Sitting: Patrick Kennedy
Teresa Ike

Alternate: Julian Stoppelman

Absent: Eric Prause, Chairman
Jessica Scorso

Also Present: Gary Anderson, Director of Planning
Matthew Bordeaux, Senior Planner
Nancy Martel, Recording Secretary

The Chairman opened the Public Hearing at 7:00 PM. The Secretary read the legal notice when the call was made.

REDEEMED CHRISTIAN CHURCH OF GOD – Request a special exception per Art. II, Sec. 5.02.02 for a place of worship use at 73 Summit Street. – Special Exception (2018-083)

Attorney Stephen Penny, Manchester, CT, introduced himself as representing the applicant. Attorney Penny projected the site plan and its location on Summit Street, as well as the property’s configuration, size and bordering properties, including Bigelow Brook. Both public water and sewer are available to the site, he reported.

The building size, layout and associated parking were approved by the Commission in 1973, according to Attorney Penny. He enumerated the previous tenants as well as the current tenant, an adult day care center, in a portion of the building. The applicant church owns the property, stated Attorney Penny.

Attorney Penny described the permitted uses in the Residence B zone. He pointed out that Art. II, Sec. 1.00.02 deals with special exception uses in residential zones, and described the requirements, which the proposal fulfills. He reported that special exception uses are subject to the criteria set forth in Art. IV, Sec. 20 of the regulations regarding special exception uses generally, and Art. IV, Sec. 9 of the regulations regarding parking.

The Plan of Conservation and Development characterizes the area as “traditional suburban,” which Attorney Penny described in detail. It is clear that the Plan of Conservation and Development, he stated,

like the zoning regulations themselves, contemplated the proposed place of worship use in a one- or two-story structure in this mixed use, though predominately residential, neighborhood.

In reviewing the use proposed by the applicant and the aspects of the particular site where it would be located, Attorney Penny said, the project involves an interior-only renovation and change of use for a portion of the existing building to a place of worship and the continued use of another portion of the building as an adult day-care center. Attorney Penny recounted the hours the church is most active.

Mr. Andrew Bushnell, Professional Engineer and Licensed Land Surveyor with Bushnell Associates, 563 Woodbridge Street, Manchester, introduced himself as the project engineer for the project and surveyor for the site plan preparation. Mr. Bushnell gave a detailed description of the site, as well as the surrounding properties.

Mr. Bushnell projected photos of the building, including the landscaping and parking. He described the driveway and retaining wall in addition to the other side, which would require the removal and reconstruction of a retaining wall. Mr. Bushnell reported that moving the retaining wall would limit the access to the building. He stated that the 13.29 ft. driveway width has worked for many years, and there is plenty of sight line, as well as room for a car to pull over to let an opposing car through.

The original site plan depicted dumpsters in the back parking area towards the brook, according to Mr. Bushnell. He pointed to the area where the dumpsters will be placed, after further consideration of the flood plain and wetlands. He explained that the dumpsters will not be visible from the street with the new configuration. Mr. Bushnell displayed the area and described the condominiums, the parking area, the dumpsters and the surrounding area. There will be a total of 33 parking spaces, including 2 handicapped spaces and 4 loading spaces, which are required for the adult day care center. Mr. Bushnell reported the adult day care center maintains five vans on the site and the church will have one van on the site. The recommendation is to store the adult day care vans on the nights and weekends in the back to allow for worshipper parking closer to the building; there will be two handicapped spaces in the front to allow access to the front door. He reported the parking spaces will be restriped to meet current 9' x 18' requirements.

Another issue that has arisen, according to Mr. Bushnell, is the floodway. In a floodway, there is a flow of water; in a flood plain the water pools in a storage area. Therefore, he reported, there should not be anything to hamper the flow, i.e., landscaping, bushes, trees, fences and guardrails. In his opinion, the guardrail may be too restrictive to water flow in the floodway and pre-cast concrete wheel stops would be better. There are existing catch basins to drain the water from the parking lot into the brook, which was part of the 1973 improvement, as well as a concrete sidewalk in good condition along Summit Street.

Mr. Kidd noted that at the pre-application meeting, there was a discussion about the narrow driveway and the potential for a conflict with cars and pedestrians. One question at that time was whether there is a back entrance that is usable for people parking in the rear.

Mr. Bushnell pointed to the doors in the rear of the building and described the potential utilization of the parking lot.

Mr. Kidd noted that on Wednesday or Thursday evenings there will be bible study. Approximately 14 participants would be expected, he said, and he asked whether the vans would be in the back of the building.

Mr. Bushnell indicated the projected utilizations of the parking areas.

Mr. Kidd assumed that all attendees on a Thursday could potentially park in the front, which would mitigate any light pollution situation.

Mr. Bergin commented that, in the event of an overflow of parking, the ability to do that would be easier if the dumpster were moved away from the original enclosure. He questioned whether there would be a possibility to add another block or two along the border, even if there is no striping.

Mr. Bushnell stated that could be done.

Mr. Bergin reported that, in lieu of accepting the Traffic Engineer's recommendation, it would be prudent to additionally buffer that area.

Mr. Kidd asked Mr. Bordeaux to comment on the flood plain situation and his take from a different perspective from the Town's Traffic Engineer, perhaps not understanding the impact to the flood plain.

Mr. Bordeaux stated the Traffic Engineer reviews for safety concerns, capacity concerns of the parking lot as a whole, and the number of required spaces. When he reviews his plans, according to Mr. Bordeaux, the Traffic Engineer identifies any potential safety hazards and recommends the optimal solution. In this case, early on in the discussions with the applicant, it was stated that the floodway area should be kept clear from any new obstructions that could capture debris and alter the course of a flood flow. The topic was first discussed with relation to the landscaping/buffering requirement and the potential for an alternative to the use of fencing, he stated, vs. the recommendation for a metal beam rail by the Traffic Engineer. If the applicant is comfortable and the Commission is comfortable, Town Staff is comfortable with the approach of wheel stops, stated Mr. Bordeaux.

Mr. Kidd asked, if someone hit the gas rather than the brake and went over the embankment, with the recommendation to install a guardrail, if there would be any liability for the Town.

Mr. Bordeaux explained the site is private.

Mr. Anderson noted there is always liability. No matter what decision is made, anyone can sue anyone at any time. He agreed with Mr. Bordeaux that the plan mitigates the risk. It is a solution that meets in the middle between traffic safety and taking into account the location of the brook. In his opinion, this is a reasonable approach.

Mr. Stebe noted that there were some comments in the Commission members' memo. The landscape buffer has been addressed by Town Staff. Another comment referred to a firewall buffer, he noted. The third item mentioned the driveway access point from front to back, Mr. Stebe stated. He referred to the comment that it was last revised in 1973. Art. IV, Sec. 9.02.10 delineates the width, Mr. Stebe noted, and he questioned whether there is a way to determine what the width requirement was prior to the 2016 revision.

Mr. Bordeaux reported he and Attorney Penny had discussed the matter. Attorney Penny indicated his office's hard copy regulations have not been updated recently. In fact, he stated, the adoption of the regulation specifying the width of the driveway and various other dimensional requirements was adopted in 2016. He explained that Attorney Penny's hard copy makes no mention of the required width prior to the date. Most likely, the requirement may have been in the public improvement standards prior

to 2016, but that typically applies to public improvements. Therefore, this may have been approved with a 13 ft. driveway width in 1973 as it currently exists, he explained.

Mr. Stebe inquired whether the Commission would have the right to declare the applicant must expand it if the applicant is simply re-striping.

Mr. Bordeaux commented that if there was a serious safety concern and it would deem the site unsuitable for the proposed use, the Commission could require it. The driveway did not raise a flag with the Fire Marshal in terms of safety, he reported, and it was brought to the attention of the applicant because 16 ft. one way is specified in the regulation.

Attorney Penny noted the Zoning Enforcement Officer will highlight the regulations as they exist now and apply them to the application. He referred to a Supreme Court case that makes clear that this driveway is a legal non-conforming structure, which was approved by the Commission in 1973. The applicant is making no exterior physical changes to the property. Consequently, Attorney Penny stated, the applicant has a legal right to rely on the 13.2 ft. in place, and the applicant should not be required to conform to a regulation that came into existence in the 2016 revision.

Mr. Stebe sought to address all the comments in the memo to the Commission, noting that the last paragraph refers to the occupancy and design changes inside to separate the two tenants for fire separation.

Attorney Penny noted that is a matter involving the building code. He noted that Alan Lamson, the principle at FLB Architecture & Planning, and the Fire Marshal will have to work through that matter. The church will have to make certain modifications to the building that will meet the life safety code and provide appropriate fire protection, according to Attorney Penny. He commented that if the Commission is comfortable approving the application from a zoning perspective, that approval does not need to be delayed by virtue of the fire separation issue.

Mr. Kennedy stated that the Commission does have the right to examine whether the width of the driveway would be a problem.

Mr. Stoppelman complimented the changes, moving the parking spaces to the side and having a back entrance, which should help alleviate the issue of pedestrians and cars.

Mr. Mark Lamson, Architectural Engineer, FLB Architecture & Planning, introduced himself. He reported there will be two minor changes to the outside of the building. There will be a ramp installed to make the right side door accessible. He explained the church will have signage within the zoning regulations. Mr. Lamson displayed the plan of the inside of the building, and explained all the changes to be made for the church purposes.

Attorney Penny enumerated the general criteria in Art. IV, Sec. 20 of the regulations as follows:

1. The Commission must find that this is a suitable location for the use and is compatible with the neighborhood. The proposed place of worship use is permitted by special exception in the zone while the-to-be continued adult day care use is permitted as of right, Attorney Penny said. The two uses are particularly compatible given their differing hours of principle activity, with the day care operation focused on normal weekday hours and the church on one weekday evening and one weekend day. The proposed church use is less intensive in this predominantly residential

neighborhood than the commercial uses that have existed at the site since its original development in 1973. The proposal is also consistent with the Plan of Conservation and Development being located in the traditional suburban mixed use area that extends along both sides of Summit Street.

2. Another criterion is adequate streets for use. Summit Street is classified in the Plan of Development as a collector roadway, meaning that it is, as set forth on Page 41 of the Plan, one of those streets that form the major transportation corridors for Manchester. The traffic impact statement submitted by the applicant concludes that the activities proposed by the application will not have an adverse impact on Summit Street. The Town Traffic Engineer's comment addresses an unrelated matter and does not challenge the conclusion of the applicant's report. The Commission is to consider whether there is adequate parking and access, Attorney Penny said. The 33 standard and 2 handicapped parking spaces identified on the proposed site plan exceed the requirements of the zoning regulations. Some of the parishioners arrive by the church-owned van and there are no Town Staff comments of concern expressed in this regard. While the Traffic Engineer suggested a metal beam to separate the parking area from Bigelow Brook, there will be curb stops in place, and such a guardrail would arguably constitute an obstruction in the floodway in violation of Art. II, Sec. 19.05.03(a) of the zoning regulations prohibiting such encroachments. The Zoning Enforcement Officer highlighted the width of the existing access drive to the parking area being only 13.29 in width. The existing width is dictated by a retaining wall on one side and a steep slope along the property line on the other, which cannot be remedied without the construction of an expensive multi-thousand dollar retaining wall, Attorney Penny said. This is a pre-existing condition approved by the Commission in 1973. This condition was identified to the Commission at the pre-application meeting, and there was discussion about the traffic being one way in prior to the Sunday worship service and one way out thereafter. The requirement of 16 ft. width for a private driveway entered the regulations in 2016, with the revision of Art. IV, Sec. 9.02.10(b). The driveway constitutes a non-conforming structure, one that was legal when constructed but does not meet the current minimum size requirements. As such, he said, it is protected as a legal nonconformity. As the non-conforming structure is not being expanded by the current proposal, there is no violation of the regulations. He noted that Judge Fuller addresses the circumstance in his book on Connecticut Land Use Law at Sec. 52.1, which was explained in detail.
3. There are adequate public utilities. The applicant's Utility Impact Statement concludes that the proposed use will not have an adverse impact on the currently utilized public utilities. The Town Engineering staff found no issues with the applicant's proposed use of the available public water and sewer infrastructure and there are no adverse Staff comments in that regard, Attorney Penny said. The presently-existing storm water drainage facilities on Summit Street, which discharge into Bigelow Brook, were also found to be adequate and the absence of exterior site construction obviated the need for an erosion and sediment control plan.
4. The Commission is to determine whether there are suitable structures for the use. The photographs submitted establish that the existing building height, size, and design, particularly at this formerly-commercial location, are compatible with the height, sizes and designs of its mixed use neighbors.
5. The Commission is to consider environmental protection and conservation. There are no such issues on the long-developed site as there are no exterior physical changes proposed, Attorney Penny said. If anything, the existence of the unchanged exterior structures and utilities for over four decades confirms that the site works environmentally as is. As highlighted by the Senior

Planner in a memo to the Commission, enhanced landscaping or other structures on the southerly side of the property would potentially violate the provisions of Art. II, Sec. 19.05.03(a) prohibiting encroachment in the floodway of Bigelow Brook. It is within the discretion of the Commission, under Art. II, Sec. 1.00.02(e)(4) to determine what may be required to “adequately screen adjoining residential properties” from the places of worship special exception use. The provision initially contemplates the need for a landscaped berm including evergreen trees, masonry wall or a combination thereof to achieve such screening. It goes on to say that “fencing shall be required when landscaping walls and/or grading cannot provide the required screening due to topography, preservation of specimen trees or other important natural features, avoidance of wetlands or similar conditions.” The corollary of that provision of the regulations is that existing vegetation (landscaping) and/or natural topography (grading) may be sufficient to meet the screening requirement without the need for fencing, a landscaped berm or masonry walls, a circumstance which exists here, Attorney Penny stated. The applicant is requesting a waiver of the specific requirements of Art. II, Sec. 1.00.02(e)(4).

Attorney Penny noted there are no Staff comments that would preclude a favorable decision. The proposed church use will be less impactful on the predominantly residential area than the prior commercial use. He reported the use is a special exception use in the zone, compatible with the immediate mixed use neighborhood contemplated by the Plan of Conservation and Development. The existing building is compatible in height, size, and design with the neighborhood, according to Attorney Penny. He concluded that all factors suggest the correctness of an approval of the application for the special exception place of worship use in the zone at this location.

Mr. Kennedy commented that the proposed motion of approval mentions modifications as specified in the memo from the Zoning Enforcement Officer. He questioned whether that pertains to the 12 ft. wide driveway.

Mr. Bordeaux explained that the memo from the Zoning Enforcement Officer stated that there are two remaining concerns from his original Staff review memo: (1) driveway width, and (2) landscaping requirements. He noted both have been addressed at this meeting. If the Commission were to approve the application with the modifications as proposed, according to Mr. Bordeaux, it would fulfill the outstanding comments from the memo.

Attorney Penny offered an apology to Mr. Davis, the Zoning Enforcement Officer, because after seeing his comment, Attorney Penny’s instinct was that there was something wrong about it. He noted he was not able to find in his legal research the answer until shortly before the meeting.

Mr. Bordeaux reiterated that if the Commission wishes to approve the application as described, the memo from Mr. Davis can be dismissed.

Ms. Christine Keegan, owner of the property to the north of the site, introduced herself. She stated she is not entirely convinced that the driveway is wide enough for exiting the property in the event of an emergency. The Traffic Engineer stated there is adequate parking onsite, but she is concerned about potential parking on the street, which happens periodically when there are events in the neighborhood. Ms. Keegan stated that drivers speed to the area from the south. She noted she is concerned that there will be parking on the street if the church grows. Ms. Keegan questioned whether the Town or the church have plans for calming traffic during the periods when cars will be entering and exiting the driveway.

Mr. William Keegan introduced himself. Mr. Keegan reported he works from home and has a window that overlooks the driveway. He has watched people become trapped in the narrow space. There are many pedestrians that cut through the driveway to the high school. In addition, cars speed through that area, he reported, and there is a very narrow window of visibility.

MOTION: Mr. Kennedy moved to close the public hearing. Mr. Bergin seconded the motion and all members voted in favor.

The Acting Chairman closed the public hearing at 8:00 P.M.

I certify these minutes were adopted on the following date:

October 1, 2018
_____ Date

_____ Eric Prause, Chairman

NOTICE: A DIGITAL RECORDING OF THIS PUBLIC HEARING CAN BE HEARD IN THE PLANNING DEPARTMENT.