A. ROLL CALL

Chairman Ludtke called to order the meeting of the Planning and Zoning Board at 7:34 pm.

Members Present: Scott Willey, Mark Lofthouse, Kevin Liddy, Jack Jansen, Frank Goodrich, Nancy Seltzer, John Ludtke, Chairman, (Tony Giannattasio 8:10 pm)

Not Present: Jeanne Cervin, Patricia Champney

Staff: David Sulkis, City Planner, Peter Crabtree, Assistant City Planner, Phyllis Leggett, Board Clerk.

B. PUBLIC HEARINGS HELD 8/21/07; exp. 10/25/07

1. <u>1200 BOSTON POST ROAD</u> (ZONE CDD-5 AND R-18) Petition of John Zyrlis, TPA Design Group, for a Special Permit to construct a 10,000 SF retail building and a Special Exception to expand the parking area within the R-18 zone, on Map 89 and portion of Map 87, Block 832, Parcel 10, of which 217 State Milford LLC is the owner.

Mr. Jansen: Was not at the last Public Hearing. Read the minutes and listened to the tape of the meeting. Will participate in the discussion.

Mr. Lofthouse: Was not present at the last Public Hearing. Read the minutes and listened to the tape of the meeting. Will participate in the discussion.

Chairman Ludtke to Staff: Where do we stand on this application? Was additional information requested?

Mr. Crabtree: One member had an issue with the driveway, other than that there were no negative comments.

Mr. Jansen: From the tapes, a traffic study was requested and the Board was waiting for a report.

Ms. Seltzer: We were waiting to here from DOT with a formal traffic study because it is right by the highway.

Mr. Sulkis: Stated because the property is on the Boston Post Road, the applicant would be getting an amendment to their certificate from the DOT. If they said they were going to provide a traffic report, that would be coming from the applicant, not the State Department of Transportation.

Chairman Ludtke: Recalled the applicant saying they had a traffic report coming from the State but it would not be received in time for the Board to make its decision within the 65-day period.

Mr. Crabtree: Had spoken with the applicant. The applicant has to get approval from the planning board before they can go to the STC for their certificate. Also stated there is no other place they can put the driveway on the site.

Mr. Goodrich: They have more than required parking spaces. At one time they had to do a traffic study to get the project approved initially.

Ms. Seltzer: Very concerned about adding another boxed-in store that would contribute to the traffic in that area, especially being so close to I-95.

Chairman Ludtke to Mr. Sulkis: The fact that this property is on a state highway and the STC is doing the traffic study on it, basically takes the matter out of the Board's hands, correct?

Mr. Sulkis: Correct.

Mr. Jansen: Understand Ms. Seltzer's concern, but the purpose of the Post Road is for commercial purposes. If the traffic becomes too heavy, measures are taken to correct it by the State, i.e. road widening. If this business is to be banned because of the traffic that it will generate, then most of the businesses in the Post Road area will have to be banned.

Ms. Seltzer: It is not traffic as much as the merging of traffic at that intersection coming out of the parking lot.

Mr. Jansen: No concern with the traffic at all. Question is whether the Board is going to allow the expansion of parking in the residential zone. Apparently, there was a mistake made when the new zoning map was produced and the area was zoned to include residences. Either change the zone to commercial or grant the Special Exception.

Mr. Lofthouse to Staff: With a Special Exception, does it give the Board a little more control over certain adjustments the Board might request?

Mr. Sulkis: Not necessarily. The buffer still has to be provided between the commercial property and the residential property.

Mr. Lofthouse: With a Special Exception, the Board can be more specific, i.e. if they plan a 20' buffer and the Board thinks they would like to see a 30' buffer, they can condition the approval.

Mr. Sulkis: There would have to be a good reason for it.

Mr. Jansen: Suggest making the Special Exception. The zone change can be done at a later date.

Mr. Goodrich: Suggest direction be given to Staff to write a motion of approval for a Special Exception for this site.

Chairman Ludtke to Staff: Write a motion for approval, taking into consideration the suggestions of the Tree Commission.

2. <u>22 HOLLYWOOD AVENUE</u> (ZONE R-10) Petition of Gregory and Theresa Pallo for a Special Permit to construct an accessory apartment on Map 25, Block 222, Parcel 1D, of which Gregory and Theresa Pallo are the owners.

Messrs. Jansen and Lofthouse: Stated they had listened to the recording of the last meeting and would be voting on the application.

Mr. Goodrich: Summarized that the application was in order for the approval of a Special Permit to construct an accessory apartment.

Mr. Lofthouse: Motion to approve.

Mr. Goodrich: Second.

All members voted in favor. Motion carried unanimously.

C. OLD BUSINESS

3. 27 and 33 BROADWAY (ZONE CDD-2) Petition of Vincent Bagdasarian for a Special Exception and Coastal Area Management Site Plan Review to allow a fourth residential unit to remain at 27 Broadway; with combined parking for adjoining building at 33 Broadway on Map 16, Block 147, Parcels 4 and 3, of which Vincent Bagdasarian is the owner. (Meeting Held 8/7/07; exp. 10/12/07)

- **Mr. Goodrich**: This is an improvement to the area. The motion should state that the two properties should stay combined under one ownership. This was not in the motion prepared by Staff.
- **Mr. Jansen to Staff:** Since they are combining parking, is this considered a combined or joined property?
- **Mr. Crabtree**: Stated by accepting a fourth dwelling unit at 27 Broadway, in return they would be allowed to share the parking with 33 Broadway. Explained if they should ever change the property, it would have to come back to the Board for the change. Basically the properties are stuck together.
- **Mr. Lofthouse**: Concerned with the application in the event one of the properties is split some day. Such a situation had existed in the downtown area that caused a problem between Smith Funeral Home and Rainbow Gardens. Some day someone may want to knock down one of the houses and make it a one-family but they cannot because there is a parking lot in the rear. Do not think the fourth unit should be allowed. Should stay the way it is.
- **Ms. Seltzer**: Having trouble without definitive statements in the motion. It is not tight enough. Want to make sure that what ultimately happens, the Board is giving it the most thought possible.
- **Mr. Jansen to Staff:** Are these currently legal noncompliant lots or are they legal lots?
- **Mr. Crabtree**: You only need 2000 in this zone, a CDD-2. There is a partial easement on Lot 67. Explained that the purpose of merging the property is for parking purposes.
- **Mr. Sulkis:** Said the properties are both nonconforming because you cannot have more than two units in a single building in the CDD-2.
- **Mr. Goodrich:** Reviewed the parking situation and said that in order to do this, the property has to be combined.
- **Mr. Jansen**: Two options: Either the properties are combined into one unit, or written into the land use as a permanent easement for parking, so that if they sold one of these properties, they cannot say you can't park here anymore.
- **Ms. Seltzer**: Will not feel comfortable with this unless the two properties are merged.

Chairman Ludtke to Staff: Stated he had read the "merged section" in the regulations to mean once parking is used on the neighboring lot, that they are automatically merged.

Mr. Crabtree: Agreed with the Chairman's interpretation. Aside from curing the problem with the fourth unit, merged parking was the purpose of this application. If the property was to be sold, a CO would not be granted because they are joined together by virtue of the map with the shared parking.

Mr. Sulkis: They would still have to have cross-easements for the parking on the property. The easements would have to be approved and be in perpetuity.

Chairman Ludtke: Reviewed how he understood this situation. Due to the density of the number of units and the bizarre parking situation that he did not see as feasible, asked staff for clarification.

Mr. Crabtree: Gave the history of #27 and the problem he had with this property was parking and number of units. He said the new owner is trying to improve these properties. This is not all conforming parking. It is still short. It is still undersized, but is a somewhat better situation than exists at present. No matter what happens they will never be conforming properties. It is up to the board to decide whether the proposed application will be better than what exists at this time.

Mr. Jansen: Would vote against the motion as written. There needs to be a perpetuity easement for this parking, so regardless of future ownership, the combined parking remains as outlined.

Mr. Crabtree: Suggested keeping the motion but add an amendment to it.

Mr. Sulkis: Agrees with Mr. Jansen. It should be on the land records for substantiation.

Ms. Seltzer: Asked how the City Attorney could get involved if the property was to be sold.

Mr. Sulkis: The City would not get involved. It would be a private property issue between the owners. All the City would care about is the parking stay the same.

Chairman Ludtke: This has come before the Board in the past. Previously had a problem with the number of living units and the case history of the property. Prefers to keep the main floor for retail use, which would give shared parking day vs. night time users.

Mr. Goodrich: 27 Broadway already has approval for the use of the ground floor for a living unit.

Mr. Jansen: Do not think shared parking between commercial and residential works.

Ms. Seltzer: This is a dense area. Not sure approving this application will make the situation better, especially with parking.

Mr. Willey: Disagree. The way this is set up this plan significantly improves the area and the parking area. Agree with the easement issue.

Mr. Jansen: Made a motion to grant the Special Exception with an amendment to the motion for a parking easement to be entered on the land records. Staff can provide the wording of the easement amendment.

Mr. Goodrich: Second.

Mr. Jansen: The parking allows one unencumbered space per unit, which is what the Board has approved in the past. There are 8 unencumbered spaces for 8 units.

Mr. Willey: What is the motion?

Chairman Ludtke: Motion as presented with an amendment for cross-easements, wordage by Staff.

Mr. Jansen: If anyone is uncomfortable with this, Staff can prepare a new motion incorporating the cross-easement wordage and present it

Ms. Seltzer: Want to see this in writing before a vote is taken.

Mr. Jansen: Motion to table this till the next meeting.

Mr. Lofthouse: Second.

All members voted in favor of tabling the motion to the next meeting.

4. <u>188 CLARK STREET</u> (ZONE CDD-1) Petition of D'Andrea Corporation for a Site Plan Review to construct a Dunkin' Donuts on Map 53, Block 305, Parcel 4, of which Mimi and Margaret Faustini are the owners.

Mr. Giannattasio: Announced his arrival (8:10) to the Board.

Stephen Studer, Esq., 75 Broad Street, Milford, representing the applicant, D'Andrea Corporation. Came before the Board two weeks ago. Requests for some changes by the Board were made. Have made those changes:

- 1. Modified the site lighting plan and it had been delivered to Mr. Sulkis on Friday for his review. Mr. Gordon, the site engineer, could not be present tonight. However, he confirmed that the lighting plan is fully compliant with the regulations.
- 2. The landscaping plan was revised. Tree species have been varied and two trees along Route 1 have been added in accordance with Steve Wing's suggestions. The tree species are Honey Locust and Village Green Zacova (similar to Elm but not susceptible to the Elm disease).
- 3. A second exit lane from the property onto the Boston Post Road could be provided as a condition of approval.
- 4. Calls have been made to the Tree Warden and two calls were placed to the Police Department traffic officer. None of the calls have been returned to Messrs. Gordon or Studer.
- 5. An updated report from the ITE manual had been requested. Mr. Ditman will discuss this.

Henry Ditman, Barkan & Mess Associates, Branford, CT. Mr. Sulkis asked for a comparison of the trip rates for donut shops that the CT DOT uses with the trip rates found in the Institute of Transportation Engineers Manual (ITE).

Misled the Board last time because there is a difference between the trip rates by CT DOT and the ITE, because he has not used the ITE manual in some time.

A three-page report was distributed that showed six tables depicting a similar type of use to donut shops taken from the ITE Trip Generation, 7th Edition. The ITE did not have a category specific to donut shops. The CT DOT did their own traffic study of donut shops and came up with the numbers that were used in the traffic study presented previously for this application. (The report was stamped into the record)

Mr. Sulkis: Asked Mr. Ditman to find the closest fit for the type of restaurant use that this is according to Milford's zoning regulations and to fit it against the ITE manual.

Mr. Studer: Stated to compare Dunkin' Donuts to McDonalds or Burger King is not relevant. Mr. Ditman took the trip survey from establishments most closely related to the Dunkin' Donuts restaurant use.

Mr. Sulkis: It could also be a drive-in establishment and the ITE manual may break it out differently. If we are looking at numbers we have to look at those that most closely approximate the use that is before the Board.

Mr. Ditman: The CT DOT numbers that were used in the study had restaurants with and without drive-thrus.

Messrs. Sulkis and Ditman continued to discuss the types of restaurants used in the traffic study and the food category that most describes the applicant.

Mr. Liddy: Think it was brought up at the last meeting that Dunkin' Donuts is starting to expand its menu to expand their food menu.

Chairman Ludtke: Asked if the ITE manual was a backup to using DOT supplied figures.

Mr. Studer: The CT DOT information provided the most specific and appropriate information is available because it is unique to Connecticut and it deals with the exact type of use that is being proposed. Mr. Sulkis requested the survey information from the ITE manual.

Mr. Lofthouse: Did not see a drawing of the elevation of the vinyl screen fence along Clark Street. Liked the fact there is no access onto Clark Street. Is there proposed signage that will be facing Clark Street? Is there an architectural elevation of the screening of the dumpster? Requested elevations and architectural design of the screening around the dumpsters as well as the fencing.

Mr. Sulkis: They are only allowed one ground sign and that would be on the Post Road.

Mr. Studer: The dumpster is set into the grade a bit. No elevation for this has been given, but it can be provided.

Mr. Lofthouse: Stated the positives as he saw them: Separate drive-thru lane; two cut outs on the drive-thru so that people can opt out; egress from the property onto West Main and the Post Road; excellent use for the site; architecturals comply with what the Board has been requesting on the Post Road. Great entry way getting off the highway, off the Post Road and going downtown.

Mr. Studer: Can do brick around the dumpster enclosure. No fence detail. Can be whatever the Board wants. Right now it is 4'high, but will build it as high as the Board allows and in whatever design they would suggest.

Mr. Jansen: No qualms about traffic in this area. Dunkin' Donuts will not generate enough traffic in that area to hold up traffic in that area.

Ms. Seltzer: OK with the traffic and trip information. Has heard enough about it. This has been a vacant lot for many years. Will be a good use of the land. Will be a nice, clean property.

Mr. Liddy: Asked if follow-up was made to the police department based on their report.

Mr. Studer: Placed two calls to the officer in question. Received no response.

Ms. Seltzer: There have been instances where the Board has not gone along with the police recommendation. Appreciate all the departments' input, but the final decision should not rest with the Police Department's comments.

Chairman Ludtke: Asked where Mr. Sulkis stood on the memo recommending denial which he had prepared for the August 21 meeting.

Mr. Sulkis: Reminded the Board to ignore his recommendation number 2. Stated he had concerns about the waivers requested, especially for parking which he did not think met the regulations. Thought it would be better to have more fencing along West Main Street to hide the dumpster that is located in the front of the property at the corner of Clark and West Main Street. This is an unusual situation. Suggested better fencing on West Main Street so anyone driving by is not looking at the dumpster. Also asking for waivers for the landscaping buffers. If the Board feels these situations warrant the waivers to be given, it is up to them.

Ms. Seltzer: Asked if additional information for the fencing and dumpster enclosure be submitted at the next meeting before a final decision is made

Mr. Studer: Stated he did not know what additional information could be provided to the Board. The developers are under a time constraint for construction. The fence can be any height and type that the Board requests and is acceptable by Staff.

Ms. Seltzer: Maintained she would like to see designs of the fencing, especially at Clark Street, the residential portion of the property.

Mr. Jansen: There is no motion prepared at this time. Recommend Staff prepare a motion for approval and bring along fence drawings and dumpster enclosures.

Chairman Ludtke: Would like to see more detail on the landscaping.

Mr. Willey: Asked if Mr. Sulkis could contact Sgt. Sharoh regarding the Police Department's review.

Mr. Goodrich: Read from the Police Commissioner's Report wherein it appears to state that they give the application their approval.

Mr. Sulkis: Board wants a motion to approve and the applicant to supply some fence detail; elevations of the dumpster; landscaping detail and call the Police Department.

Mr. Jansen: They are not asking for a large waiver on parking. Most of the cars go through the drive thru.

Mr. Lofthouse: Agreed with Mr. Jansen.

D. NEW BUSINESS

1349 BOSTON POST ROAD- ARBY'S RESTAURANT (ZONE SCD)
 Petition of Milford Crossing Investors, LLC for an Amendment to a Special Permit and Minor Amendment to a Site Plan Review to construct an Arby's Restaurant on Map 89 and 90, Block 812, Parcels 42, 42B, 44, 45, 46, of which Milford Crossing Investors, LLC is the owner.

Chairman Ludtke: This application came before him when he met with Mr. Sulkis regarding this plan. It was their opinion this was of a minor nature and could have been handled administratively. Because a board member had asked that this building come back for architectural review, it is now presented to the Board.

Ray Sanford, PE, TPA Design Group, 85 Willow Street, New Haven, representing Milford Crossing, Investors, LLC, for the construction of an Arby's Restaurant. Presented the overall site plan as previously approved by the Board. Described the previously approved building for a 3,850 SF retail space. Described the location of proposed building A-1 which will be 3,016 SF, (smaller than the approved square footage) with drive-thru, parking spaces, and the buildings around it. There will be plantings in addition to those already in the area.

Noted the responses from the City departments. Described the brick exterior of the building. Dumpster enclosure 8' high masonry enclosure with a brick façade to match the building. No change in the site lighting and fixtures from the original plan.

Mr. Liddy: How long will it take to build it?

Mr. Sanford: Would like to get construction started in the fall, do interior in the winter, and open in the spring. A lot of the site is already prepared and utilities are already in place.

Ms. Seltzer: Made a potion to approve the application for a minor amendment to a Special Permit and Site Plan Review.

Mr. Lofthouse: Second.

Mr. Liddy to Staff: Any issues?

Mr. Sulkis: None.

Mr. Sanford: Presented a display that showed elevations and signage that had not previously been distributed to the Board.

Mr.Goodrich: Stated the drawbacks of the parking and drive-thru of this application and stated the parking and drive-thru lay out of the previous application was better.

Mr. Willey: Commented how attractive the Milford Crossing Shopping Center is. Had spoken to Mr. Sulkis about the back of the Golf Galaxy building and asked if anything had been done.

Mr. Sulkis: White spruce trees were planted last fall after their conversation.

Mr. Sanford: Trees have been planted and steps other plantings and materials are being used to help screen the building.

A vote was taken: All members voted in favor. The motion carried unanimously.

6. **STOWE AVENUE (CITY PROJECT)** (**ZONE CDD-2**) Petition of Tom Ivers, Milford Community Development Department for Coastal Area Management Site Plan Review approval for the improvement to the Stowe Avenue beach access located on Map 13, of which the City of Milford is the owner.

Thomas Ivers, 224 Broadway, Block Grant Coordinator for the Milford Community Development Office. Gave a history of how in 1947 the City acquired this shorefront property between Stowe and Laurel Avenues. In 1960 the City acquired another parcel. Approximately two and a half years ago a development was approved on Laurel Avenue that put two more building lots next to these, into a public access easement so that now the entire waterfront between Stowe Avenue and Laurel Avenue is public accessible beach.

Approximately fifteen years ago a property owner at the end of Stowe Avenue illegally dumped a lot of rock material and capped it with concrete in an attempt to avoid storm damage. The City cited this as a violation approximately 12-15 years ago and a lot of the rock was removed. In a DEP study, it was determined that there was still illegal material in that area.

Propose is to clean up this area and make it a public plaza at the end of the dead end street so that it creates an easy access to the approximate 175 feet of beach and waterfront property. \$15,000 from DEP LI Sound Fund has been granted to offset some of the costs to clean up the area. (Site plans of the area were displayed)

Mr. Lofthouse: Think it is a wonderful idea. Make a motion to grant approval to this request.

Ms. Seltzer: Second.

Mr. Liddy: How long will it take to accomplish the plan?

Mr. Ivers: Hopefully this fall, or early next spring.

Ms. Seltzer: Very happy this is happening. This is a barren, ugly, beachfront property. It will be an asset going into the Walnut Beach area. Thanked Mr. Ivers for all the hard work he has done to make this happen.

Chairman Ludtke: Where does this fall with regard federal and state permits?

Mr. Ivers: Because the improvements were kept below the high tide lines, there is no need for state permits. The DEP needs to get a permit from themselves because it involves state money and it is a flood plain. Needs to get a certificate from the DEP that it is consistent with the State's flood plain.

A vote was taken: All members voted in favor. The motion carried unanimously.

D. LIAISON REPORTS

E. APPROVAL OF MINUTES - 8/21/07

Mr. Lofthouse: Motion to approve.

Mr. Goodrich: Second.

Seven members voted in favor (Mr. Jansen abstained)

F. CHAIRMAN'S REPORT

Chairman Ludtke asked Ms. Seltzer to discuss changes to Section 5.5.8.2 of the zoning regulations.

Ms. Seltzer: Asked the Board to amend Sec. 5.5.8.2, pertaining to outside music, so bands, DJs and other musical entertainment in the MCDD and hopefully other areas of the City. The present ordinance is one paragraph. The Board can work with the police on this, as well.

Mr. Lofthouse: Agrees. It is a regulation that should have been altered some time ago. Activity is at its peak in the summer months. Summer visitors would like to go to establishments where entertainment and music is provided. Did not think adopting a noise ordinance and getting the police involved was a good idea. Suggested day and time restrictions be established, but it would still be difficult to enforce. Would leave it to Staff to draft something, preferably before next summer.

Chairman Ludtke: Recalls that restaurants abused the music privilege by being loud and bothered their residential neighbors.

Asked Staff if there was a way to give individual approvals that could be removed if it is abused, rather than have a blanket ordinance that allows the music, but with some restriction, i.e., Special Permit or Exception. The Board would be involved when necessary.

Mr. Sulkis: Stated Chairman Ludtke's suggestion could be done and he has given thought to this subject. He has been working with an applicant who was going to make their own proposal on this section, but they have not done so as yet.

He suggested it should be limited to live, acoustical music, not amplified. Instruments generate their own volume. Stated as much as the City wants a vibrant downtown, if all the establishments that can provide music do so with amplification it could become an issue. If the music is non-amplified, it could be less of an issue. Suggest keeping some of the current language in the regulation and the police department enforcing it, as necessary.

- **Mr. Goodrich:** Have to be careful. Heard music a half mile from his house that came from Stratford. There are restaurants with outdoor dining areas not in the downtown area. Some time ago a church wanted speakers to play church music all the time. Have to be careful of what can emanate from such a regulation.
- **Ms. Seltzer:** Has no problem with amplification in the downtown area. Agrees definitive times should be set. Perhaps look at one area in the City and then look in other zones. Music will enhance what the purpose of the downtown area for which it was established.
- **Mr. Jansen:** Agree with Mr. Sulkis. Music can be so loud people cannot speak to or hear each other. Cited in New Orleans there is music coming from all sections of the French Quarter and it can be very pleasant. It is acoustical, not amplified.
- **Mr. Lofthouse**: Should not limit the amplification. Can be adjusted via the permitted time frame.
- **Mr. Goodrich**: Disagreed. Cited noise levels of motorcycles, blaring speakers in automobiles and how intrusive and annoying it is.
- **Mr. Liddy to Staff**: Asked if it could be looked into as to how other towns on the water handle this situation, i.e., Greenwich, Westport, Stamford.

Mr. Sulkis: Said he would draft something and the Board could tweak it.

Mr. Lofthouse: Stated rewriting the regulation should be a Board action and not of one presented by a--- property owner, as it affects many businesses downtown and their future.

Ms. Seltzer: Is this MCDD only or the entire city?

Mr. Lofthouse: For the MCDD at this time.

Mr. Jansen: Perhaps limiting decibels of acoustical music could be considered.

Mr. Lofthouse: Hard for a policeman to determine how loud something is. Time limit is more enforceable. Can be in effect on certain days and at certain times.

Chairman Ludtke: Asked if Mr. Sulkis would work on such a regulation change.

Mr. Sulkis: Stated he would.

Chairman Ludtke: Met with Mr. Sulkis and approved a lot line adjustment at 35 Opal Street.

G. STAFF REPORT

Mr. Sulkis: Linda Stock was released from the hospital on Saturday. She appears to be doing well.

Later in the month should get the regulation changes back on the Accessory Apartments, architectural structures and sign regulation changes. Preparing a zone change on the map for Twin Oaks Terrace. Will also prepare another zone change on the map for 1200 Boston Post Road, as discussed tonight. Agrees that properties should not be in split zones.

Mr. Goodrich: Requested Mr. Sulkis prepare the changes on the zone map.

Mr. Lofthouse to Mr. Sulkis: Asked if there was anything in the regulations in certain zones as to dumpster screening.

Mr. Lofthouse and Mr. Sulkis discussed this subject, each expressing his own views on the matter.

Mr. Lofthouse: Brought up the subject of drive-thrus. Can something be put in the regulations regarding standards for drive-thrus.

Mr. Sulkis: No matter what the regulations state, there will always be changes proposed depending on the individual property sites.

Mr. Jansen: Motion to adjourn.

Ms. Seltzer: Second.

Meeting adjourned at 9:50 p.m.

Phyllis Leggett, Board Clerk