

**MINUTES FOR A MEETING OF THE
PLANNING & ZONING BOARD
HELD TUESDAY, MARCH 2, 2010; 7:30 P.M.
CITY HALL AUDITORIUM, 110 RIVER STREET, MILFORD**

Due to technical difficulties, the Chair called to order the March 2, 2010, Planning and Zoning Board meeting at 7:37 p.m.

A. PLEDGE OF ALLEGIANCE

Mme. Chair: Asked for a moment of silence in memory of John Heron and his sister Alexis Heron who died tragically last Sunday.

B. ROLL CALL

MEMBERS PRESENT: Edward Mead, Mark Bender, KathyLynn Patterson, Robert Dickman, Kevin Liddy, Janet Golden, Gregory Vetter, Victor Ferrante

NOT PRESENT: Kim Rose

STAFF: David Sulkis, City Planner; Emmeline Harrigan, Assistant City Planner; Phyllis Leggett, Board Clerk.

C. 141-159 MERWIN AVENUE – INFORMAL DISCUSSION

Mme Chair: An application for a Special Exception and Site Plan Review regarding this property came before the Board on July 1, 2008.

Mme. Chair: Asked Mr. Sulkis to give a recap of this situation.

Mr. Sulkis: They are not here tonight related to the Board's previous actions on this property. The applicant had come before the board several times in order to seek Special Exceptions for the property and the Board turned them down.

There were several issues regarding this property, among them, no permits were issued when the work took place. A cease and desist order was issued and no other work can take place.

After the Board's last meeting when the Special Exception was denied, the applicant went to the Building Department to start the process to get the building permits. However, in order to get a building permit, a zoning permit from the Planning and Zoning Department has to be issued first. They came to Planning and Zoning to seek a zoning permit. The zoning permit could not be issued based on the previous board actions and what had taken place on the property.

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The Board has a letter dated April 13, 2009 to Mr. Migliore, which states why Mr. Sulkis could not issue a zoning permit. That letter allowed Mr. Migliore to go before the Zoning Board of Appeals to appeal Mr. Sulkis' decision not to issue a zoning permit, which is what the applicant did. The Zoning Board of Appeals upheld Mr. Sulkis' action. The applicant thereupon had the right to go to court and sue the Board of Zoning Appeals and the City. That is what has occurred.

At this time the City is in court with the applicant over the issue that Mr. Sulkis did not issue a zoning permit. As part of this process the judge has recommended both parties try to do something with this property before the lawsuit moves forward. That is what is happening this evening. The applicant wants to meet informally with the Board to discuss some alternatives and ideas for that property. Even if the ZBA appeal is settled, the applicant still has to come before the Planning and Zoning Board to get site plan and Special Exception approval

As part of the process of this informal discussion, the Board can give any guidance and share any concerns they have with Mr. Migliore. Because this is an informal discussion, allowed by statute, statements made by the board members are not binding for the future. The Board is also not obligated to settle the lawsuit.

Mr. Liddy: Asked if the Board had permission from the City Attorney's office to discuss this matter.

Mr. Sulkis: Stated it was within the Board's jurisdiction and within the state statutes and regulations to do as the judge asked, which is to try to see if there is some common ground that can be reached between the applicant and this Board.

Dan Migliore, 75 Gateway, Hamden, CT., here on behalf of Millwood Properties, the owner of the Beach House Restaurant, a contiguous property, which is the property in question and three properties directly across the street which are residential properties.

Thanked the Board for coming to discuss the situation tonight, and to David Sulkis, who has spent an exhaustive amount of time helping them through the process. This process was started over three years ago in an effort to craft a use for the property next to the Beach House Restaurant.

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A number of site plans were worked on with the City Planner and it was determined that a mini-warehouse would be a positive contribution and the least imposition to that particular community in terms of parking, population and traffic. A particular time frame for use and access to the mini-storage was established which would not conflict with the time and use of the restaurant. This plan was brought before the Board and was denied due to its nonconforming use and the fact that the builder initiated this project of constructing the mini-warehouse and had not taken out the appropriate permits to do so. Applicant has learned this is an act that is not easily forgiven. As part of the current proposal they are prepared to pay the penalties. The penalties have ranged from paying the building department for the work that was done; up to the penalty of removing everything that was done to the building, including roof, windows and doors.

There are two points of view with regard to what the property owner thought and what the City thinks: 1) The applicant felt that they had a continued, vested and grandfathered right to use this property as a mini-warehouse. Mr. Sulkis and others felt differently. 2) Owners argued that this property had always been used as a warehouse and this was a continuation of this use and they should be grandfathered for that.

The City argued: 1) That use had not been continuous; it had been broken for a number of years; 2) 50% of work had been done to the property, which took the property out of the grandfathered status. The property owner argues that 50% of the work had not been done.

In presenting this matter to the Court, the judge saw merit in both arguments and suggested a settlement be sought by both parties.

A lot of time has been spent in looking at what is permissible on the property and there are many business opportunities permissible on the site. Unfortunately, those that are appealing to the owner would require him to be proactive in the business. At this stage of his life, the owner would prefer not to be actively involved. Other ideas with brokers and business contacts did not work out.

The property owner has come to the Board with a proposal that sustains his interest in using this property for a mini-warehouse. There are 50 small units. Propose the same restrictive visitation and parking availability. What came out very clearly in the early meetings with the neighbors and the Board, were the consequences to the work that was done there without a permit; the negative impact to the neighbors; and the property owners' attitude they should be allowed to continue with their plans.

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Mr. Migliore outlined Millwood Properties proposed plan:

Millwood owns three residential properties across Merwin Avenue opposite the Beach House restaurant. Two properties have been demolished and one residence has been renovated and is on the market for sale. Propose to use the two vacant building lots to compensate for the excess parking currently attributable to the Beach House Restaurant. (A diagram of the area showing the vacant lots was distributed to the Board.) They still contend that the mini-warehouse would not increase or further burden the parking because it will not be open any time that the restaurant is open and would not be open after a certain hour at night and would not be open in the morning to disturb the neighbors. Intend to landscape the parking area and not leave it a barren piece of asphalt.

He believes Millwood has beautified that particular area of Merwin Avenue by the work they have done on their properties. He and David agreed to the concept that in the future, should the property owner decide to build homes on the two residential sites that would now be used for parking lots, that would be allowed and the mini-storage facility would be demolished. They would propose one exception to this: If in the event they could find replacement parking (i.e. through acquisition of nearby properties), they could substitute that parking for new parking. That is the substance of his discussions with Mr. Sulkis.

Mr. Vetter: Asked if the previous board denials were primarily based on parking.

Mr. Migliore: He believes it was a reluctance to expand a nonconforming use.

Mr. Vetter: Parking must have been an issue because they are intending to solve the problem with the lots across the street. Asked how many units were proposed before the renovations, as 50 are proposed now.

Mr. Migliore: Significantly less than is now being proposed; 12-15 units. The proposed use would be different from the way it has been used.

Mr. Vetter: Asked how practical it would be to have parking across the street from the storage facility when parking at the storage facility would seem a necessary requirement.

Mr. Migliore: When the storage facility would be open there would be ample parking on the site. The restaurant would be closed and there would be other parking in the vicinity. Only for use during day hours, up to 5:00-6:00.

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Mr. Sulkis: For Mr. Vetter's edification, Mr. Migliore has described the historic use well, but what has brought him here tonight is the fact that the building was altered and rehabbed to become a commercial building with separate units of commercial space. The historic use of the storage had disappeared. The intent after the storage ceased was to turn this into a multi-unit commercial strip mall. What is being described tonight as a new self-storage facility was the last proposal brought to the Board and is being discussed again tonight with the added issue of trying to mitigate the parking.

Mr. Migliore: Agreed there had been a concept that had not gone before the Building or Zoning departments to use this building as a 5-6 stall retail area. That would have been the preference of Millwood, but that use was never applied for.

Mr. Bender: Very familiar with the neighborhood. Asked how many parking spaces are projected?

Mr. Migliore: Did not know how many spaces there would be.

Mr. Bender: Asked about the hazards that the roof had created for the neighbors and that the applicant was supposed to remedy and the fact that nothing had been done to date in this regard.

Mr. Migliore: Work was done on the roof to stop the creation of ice dams on the roof and ice from falling off onto the neighbor's property, which was the major complaint. There has been no structural change to the roof.

Mr. Bender: The illegal roof was not remedied. Only tried to stop the action from the illegal roof.

Mr. Migliore: Yes. The roof surface has been changed, but no structural changes have taken place.

Mrs. Patterson: The neighbors complained in the back of the property where there were sewers, there was no way to put up a buffer on the property.

Mr. Migliore: Right now there is a stockade-type fence. A landscape barrier that would be agreeable to the neighbors would be established in that area. There are about three feet involved.

Mrs. Patterson: Asked if the neighbors had been consulted with regard to the roof and any new plans that are being considered.

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Mr. Migliore: The neighbors have not received formal notice of this meeting, but the owners have been in discussions with the neighbors over various matters.

Mr. Sulkis: Stated the public is aware of this meeting, because it is advertised.

Mme. Chair: Should this application come before the Board it would be a public hearing.

Mrs. Golden: Asked what amends have been made to the neighbors who have suffered as a result of the parking issue, i.e., the cancer patient who had to park at Adams Supermarket and walk back to her home.

Mr. Migliore: Stated he thought that more could be done to reach out to the neighbors in this regard. He believed that the neighbor referred to had an issue with the weekend, night and traffic problem that was caused by the restaurant and not the mini-storage facility that is being proposed. By providing more parking that situation would be alleviated.

Mr. Bender: Will the parking area be designed just for the restaurant or could it be used for other purposes?

Mr. Migliore: When not in use by the restaurant on the weekends or evenings, it could be open to the neighbors, especially those who do not have driveways. Not their intention to restrict the use solely for the restaurant.

Mr. Bender: Asked how the process would be incorporated in order to change the parking lots back into residential building lots.

Mr. Sulkis: It would be in a legal agreement between the City and the applicant. It would be put on the land records and be enforced when necessary.

Mr. Bender: There is a plan for the restaurant hours, but this cannot be controlled. The restaurant can decide to open for breakfast or lunch.

Mr. Migliore: That is correct, especially if the restaurant was to be sold. For the purposes of the mini storage, they would work closely with the board to restrict the times. The storage facility will be designed for the community, i.e. summer residents who want to use it for storage temporarily.

Mme. Chair: Asked if valet parking for the restaurant had ever been considered, because the issue presented is the same as that which had previously been

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denied, it is still expanding the nonconformity of the property. Asked what the down side would in having valet parking and have mini-storage units and clean up the rest of the area by having gardens, etc.

Mr. Migliore: Does not see a down side to valet parking, especially if the other area across the street is available.

Mme. Chair: Asked if this restaurant was a neighborhood or community restaurant.

Mr. Migliore: Could not characterize it strictly as a neighborhood restaurant. There is a New Haven element that frequents the restaurant, especially in the summer months.

There were questions and answers regarding parking at the restaurant:

Q: If the storage building was removed, how much parking could be provided?

A: 25-30 spaces.

Q: Would the number of spaces be less than adequate when the restaurant is busy, i.e., on the weekends?

A: There are 32-36 spaces on site. If another 20-25 spaces were added, they would substantially reduce the amount of parking on Merwin Avenue. It is seldom that the restaurant is so busy that parking goes far up Merwin Ave.

Mr. Liddy: How could the hours of operation be enforced so that the warehouse would not be operating at the same time as the restaurant?

Mr. Migliore: Time locks will be used so that they cannot be operated during certain times. There may be a person working there during peak times.

Mr. Ferrante: Asked Mr. Sulkis to clarify how notice of tonight's meeting had been posted.

Mr. Sulkis: It goes to the Town Clerk and is posted on the City website.

Mr. Ferrante: Clarified that the agenda was posted, but there were no notices to the neighbors, therefore, the absence of neighbors should not be construed in any way in this matter.

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Mr. Ferrante: Asked Mr. Migliore if he had an ownership interest in Millwood Properties and/or the restaurant.

Mr. Migliore: Stated he had no ownership in either enterprise and his role was solely as a consultant.

Mr. Ferrante: Asked why the owners would not at this point take another tack and move on and abandon the idea of the warehouse right next to the restaurant, which he felt was a detriment to the restaurant. Rhetorically asked if there is a point in this process where the owners have to say "let me move on", and stop pushing this project. Although there have been many apologies tonight, the owners have thumbed their noses at the neighborhood; at the regulations; at the Board and the whole process. Also mentioned the parking area across the street and the caveat to allow it to change; that would be building in litigation.

Mr. Migliore: Discussions have been held with the Mitchells, who had the ice problem and things are not as adversarial as they were.

He explained the thought process that went into changing the area across the street, should the real estate market improve.

The alternatives would be to go into another business or lease the property to other businesses. The owner does not want to get into some of the other businesses that he would be limited to at this point. One such business allowed would be selling flowers, vegetables, or a farmers market-type operation.

Mr. Ferrante: Stated the Board cannot fix everything and things will turn around in the next few years.

Mr. Bender: The building does not look like the typical storage facility. This is a small building.

Mme. Chair: Commented that what has been built is nicely done and looks like retail spaces.

Mr. Migliore: Showed the Board renderings of the storage facility which looks like small retail units.

Mr. Liddy: Asked if the majority of the Board would like to see the storage facility removed, what would Millwood want from the City in return?

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Mr. Migliore: That had not been contemplated, although the possibility of the City could compel Millwood to remove those aspects of the building that were done without permits. That would leave a building without windows, remove the roof and bring it back to its original state.

Mr. Sulkis: The building ultimately might have to be demolished, because the City considers this a new building, over 50% reconstructed. It cannot revert to its former state of disrepair.

Mr. Migliore: When the Cease and Desist Order was rendered, in addition to stopping the work that was ongoing on that building, all the site work was stopped. Taxes and insurance are being paid on this building and it is important that some income be generated from the property.

Mr. Vetter: Asked if the application came before the Board again, would there be specific exceptions that would have to be granted?

Mr. Sulkis: The restaurant and building are in a residential zone and there will be a change of use. According to the regulations, the change would have to conform to the zone that is there. If they propose a use that is not called out in the regulations but is not prohibited, then they would need a Special Exception. There is nothing being proposed at this time that would not require a Special Exception.

Mr. Vetter: Does not see that this proposed use will change any of the challenges already presented. This sounds like the same kind of plan and has the same issues they had in the past, which is a kind of use of the property that the neighbor does not want, that the Board does not have to allow and has problems around parking.

Mr. Migliore: Stated he did not agree that the neighborhood does not want it. At the last hearing there were only two parties, (who are related), who objected to this proposal.

Mr. Vetter: The Board would have to deal with whether they want to allow this kind of building.

Mr. Migliore: Stated he felt confident that the majority of the community would overwhelmingly support his client's view.

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Mrs. Patterson: There were pictures presented by the neighbors at the public hearing. Saw photos of the ice sliding onto the property. That was a health and safety issue. There are also concerns that this property can be a fire hazard. Will there be a sprinkler system installed? What other safety measures would be taken aside from the fire code standards?

Mr. Migliore: Would take all recommended safety measures over the standard code. Would do everything possible to avoid the risks of the ice sliding in such a way as to cause a hazard to any neighbor. Would welcome any suggestions for improvement of these conditions if there is a favorable response for the project by the Board.

Mr. Liddy to Staff: Have there been any complaints on the property in the past two years?

Mr. Sulkis: None to his knowledge.

Mme. Chair: Recapped the issues.

Mr. Dickman: If this building had gone through the permitting process originally, would this application have been approved? Based on the minutes he read, it appears it would not have. Does not believe that anything discussed tonight changes that.

Mr. Migliore: Thanked the Board for its time, stated he thought tonight's discussion was helpful and hoped there would be further dialog toward a resolution.

D. PROPOSED REGULATION CHANGES

Mme. Chair: Stated she spoke to City Attorney Win Smith. Told him the regulations that were awaiting response from the City Attorney: Poultry regulations; Special Events and Tent Sales and the sign regulations. Mr. Smith told the Chair he was somewhat familiar with the proposed regulation changes and the Chair asked if he could give her a time frame for his department's review as they were important to the Board's constituents.

It was mentioned at the last meeting that items are brought up on the agenda and then dropped without conclusion and such items should be brought up on the agenda regularly. Therefore, two new items have been added to the agenda that will be temporary:

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E. ZONING ENFORCEMENT OFFICER

Mme. Chair: The Mayor has said a zoning enforcement officer will be hired at the start of the new fiscal year, July 2010. In the five month interim, Emmeline Harrigan, the Assistant City Planner will be handling some of those duties.

Ms. Harrigan: Reviewed the information she had prepared for the director of the DPLU, which was distributed to the Board concerning the complaint list she had compiled. She stated she had not been aware that all ZEO correspondence was to go through a staff member who tracked the complaints, so there is a gap between the time Linda Stock became the City Clerk and when she [Ms. Harrigan] started to track the complaints in January. Some orders had to be reissued. She explained the procedure to the Board.

Mme. Chair: Asked how Ms. Harrigan would be prioritizing the complaints.

Ms. Harrigan: Enforcing prior board action and illegal units which have come to the forefront recently, as well as items that come to her attention from the police or fire departments.

Mme. Chair: Noted in Ms. Harrigan's comments that went to the Board of Aldermen that Linda Stock was a "rock star" in performing her duties as zoning enforcement officer.

Ms. Harrigan responded to questions posed by some of the Board members regarding the procedure for handling some of the complaints she has received. There is a lot of detail that goes into each complaint and enforcement of same, as it can ultimately lead to court proceedings, and an accurate case must be established for each potential court hearing.

Mr. Ferrante: Stated it is very difficult for the Board, through the Planning and Zoning office, to monitor that the conditions set forth by the Board are adhered to. It is his belief the Board should get away from allowing such conditions because enforcement is very difficult.

Mme. Chair: Agreed and felt the regulations should be clearer, however, it was important to have flexibility as well.

Ms. Harrigan: Mentioned the City does not have the resources to have additional staff who could work evening hours to investigate violations that occur at night.

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F. BUDGETING FOR PLANNING AND ZONING DEPARTMENT

Mme. Chair: The Finance Board has been making recommendations to the Board of Aldermen. The new Planning and Zoning budget will be part of the overall Department of Permitting and Land Use division budget and it is not clear how much of that budget will come back to the Planning and Zoning office. She and other board members have made it known they would like to be a part of the budget process, especially with regard to the positions of the Assistant City Planner and Zoning Enforcement Officer.

She stated that a letter had been read at the Board of Aldermen meeting concerning Ms. Harrigan's role working as Assistant City Planner, as well as Zoning Enforcement Officer regarding her work load and how her time is utilized.

Mr. Bender: Asked why the Board is now getting involved in budget issues, as it has not in the past.

Mme. Chair: Replied that the departmental change has brought about concerns, especially with regard to the Board's access to Mr. Sulkis and the new budget process.

Mr. Vetter: If the Board is better informed, it will aid each member address constituents' questions on these matters. The Board is involved in the budget at this time because the service and ability of the office to keep up its performance may be at risk. It is best that the Board be proactive in this regard.

Mr. Liddy: Asked if there is a line item in the budget for the zoning enforcement officer and has the position been posted.

Mr. Sulkis: There is a line item on the budget for the ZEO. The position was posted and an interview took place, but the decision was made not to hire anyone until the beginning of the new fiscal year.

G. LIAISON REPORTS

Mr. Mead: Inland-Wetlands Commission. At the last meeting reconstruction of the bridge for pedestrian and emergency vehicles' use in Eisenhower Park was approved. At the 2/17/10 meeting Gabriele Truck and Sales Service on Old Gate Lane received approval for expansion of their building. Provisions for runoff and drainage were made. The building plans may come before this board.

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H. APPROVAL OF MINUTES – (2/2/10)

Mr. Vetter: Moved to approve.

Mrs. Golden: Second.

All members voted in favor of approving the minutes as recorded.

I. CHAIR'S REPORT

Stated she had distributed an article to the Board that appeared in the Milford Mirror about a new web site that provides ecological data.

The Plan of Conservation and Development is very important as a basis for the regulation. Before the end of the next two years it will be necessary to update this document. It is a state statute to do this every ten years and that time is approaching.

Mr. Sulkis: Told the Board that this item is funded in the budget each year.

Mme. Chair: Stated she and approximately six other people spoke about their concerns concerning Kimball, KRIT and DPLU. They expressed their concerns about the lack of clarity the Board has had about the zoning enforcement officer, the budget and the assistant city attorney. Had always had access to the assistant city attorney and now that she is gone there is concern as to delays that may occur; how the Board is to get legal information and other land use matters.

Green Book update. A submittee will be formed to review the book and see what changes could be made. The Board is split 5-5 and when it comes to issues that may be more political, this is a good time to do this. Mr. Liddy has been asked to lead the committee. There will be two members from each party and two alternates.

Mr. Liddy: Stated he would be happy to lead the committee. Suggested the meetings be held prior to each planning and zoning meeting.

Mme. Chair: Mentioned Jack Jensen and Jeanne Cervin had expressed interest in making this change and perhaps they could attend the meetings and give their input.

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Mrs. Golden: Said she would like to be on this committee.

Mr. Bender: Asked if outsiders were permitted to be on the Board's subcommittees.

Mr. Sulkis: If the public is invited to attend these meetings they can attend but cannot be a part of the subcommittee.

Mr. Liddy: Said when he served on such a subcommittee in the past all the board members would show up for the committee meetings to give their input. Invited all members to attend but the four members on the committee would draft the language and incorporate the accepted changes before presenting it to the full board.

Mr. Ferrante: Suggested the matter be tabled until the Board had more clarity from Staff as to the proper formulation of the subcommittee and mission statement. Was the intention to rewrite the green book?

Mme. Chair: Not rewrite. There are some small issues as to the Board's protocol at its meetings that might be changed. The committee may decide it is perfect the way it is, but it would nice to have some fresh eyes on it.

Mr. Bender: Requested that any letter that goes out from the Chair on behalf of the Board should be shown to the Board members prior to it being sent. There have been a couple of instances where there was approval to do a letter, but the Board did not see it until after it was published. Felt that personally, if a letter is to come from the Board, the members should see it first.

Mme. Chair: Point taken.

J. STAFF REPORT

Mr. Sulkis: There are some issues that are being worked on in the office and depending on how those issues turn out, he may or may not have something to report.

Mr. Vetter: Motion to adjourn

Mrs. Golden: Second.

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Mr. Ferrante: Said he received a letter from a citizen which was addressed to many people. Asked if this would be addressed in the usual enforcement manner.

Board Clerk: The letter was received at planning and zoning and was referred to Ms. Harrigan.

All members voted in favor to adjourn at 9:34 p.m.

Phyllis Leggett, Board Clerk