

PLANNING AND ZONING BOARD MINUTES FOR ONLINE MEETING HELD TUESDAY 16 MARCH 2021, 7:00 PM

The meeting of the Planning and Zoning Board came to order at 7:00p.m.

A. PLEDGE OF ALLEGIANCE AND MOMENT OF SILENCE

B. ROLL CALL

Members Present: N. Austin, J. Castignoli, J. Kader, B. Kaligian, P. Kearney, J. Mortimer, C.S. Moore, J. Quish, R. Satti

Not Present: M. Zahariades

Staff: Joe Griffith, DPLU Director, David Sulkis, City Planner; Meg Greene, Rec. Sec'y

C. NEW BUSINESS: None

D. PUBLIC HEARINGS

CLOSE BY APRIL 20, 2021; VOTE BY JUNE 24, 2021

- 1) **67 Prospect Street** (Zone MCDD) Petition of Patrick Rose, Rose Tiso and Company, for a Site Plan Review with a Coastal Area Site Plan Review for a proposed Mixed Use Commercial Building on Map 54, Block 817, Parcel 6, of which 67 Prospect Street LLC is the owner.

Attorney Lynch, 63 Cherry St, reviewed open items from the previous meeting. He wanted to address neighbors' concerns about traffic and delivery trucks, saying Civil Engineer Manny Silva had revised the site plan to include a truck turnaround for deliveries from Amazon or UPS such that they had no need to back out into Prospect Street. He said Mr. Oliver's comments about the rear landscaping buffer had also been addressed. He noted that there had been discussion about drainage, but referred to the original design, which was reviewed and accepted by the City Engineer, stressing that it is the City Engineer's job to address issues like water runoff or other infrastructure concerns. He underscored that the City Engineer had approved the plan. He said that the meeting between Greg, Manny, and Bob Hiza (cemetery's engineer) had occurred and Mr. Silva would report on it. He said that Mr. Hiza said the proposed system is adequate and set up an arrangement for the 3 engineers to meet on site to review test holes and assure that no further alterations are needed. He said the testing process can be made a condition of any potential approval. He said there was also a deliverable on getting an opinion from the City Attorney about the board's discretion regarding Section 7 regarding whether a permitted use is by definition "of character" with a zone. He reviewed a 1998 case he argued regarding a restaurant being converted to a medical building. He said the court upheld the PZ board's decision with direct comment on Article 7, that pronounced that Section 7 cannot be the basis for denial of a site plan.

Mr. Silva, P.E., Rose Tiso, 35 Brentwood, Fairfield, shared a screen showing the turning area for delivery trucks and carting. He also displayed a drawing of an evergreen screen along the east side of the property in addition to the original screening. He showed a summary of the meeting regarding gallery capacity to manage a 100-year storm with no runoff to any neighboring properties.

Chairman Quish asked about the criteria for determining a turning radius; Mr. Silva said he used the Department of Transportation (DOT) standard for delivery vehicles. **Mr. Silva** described the progress of the trucks throughout the parking lot for 30' vehicles.

Chairman Quish confirmed that such a vehicle could haul the proposed sized dumpster. Chairman Quish asked for more detail about the scale of the landscaping. **Mr. Silva** described red maple, red oak, and Atlantic cedar trees to provide natural screening along with white cedar and Wichita blue juniper, chosen because they do not attract deer. He said that in 5 years, the red oak would be 15' high, from a starting size of 8'-10'. He said the Atlantic cedars go in at 8' but quickly grow to around 15' as well. Asked if taller trees would be available for plant from the start of the project, Mr. Silva said such tall trees are harder to come by and harder to plant without damaging them. He said that the planned trees are already large compared to average landscaping.

Attorney Lynch stressed that this entire review process had taken 3 years that included reaching a settlement with the city in court that mandates saving and restoring the Baldwin home. He asked the board to use zoning application of the law to come to a decision.

OPPOSED

Ray Oliver, 404 Gulf Street, representing Milford Cemetery, said Mr. Hiza could not attend the meeting, but that he (Mr. Oliver) would convey Mr. Hiza's intended comments. He said Mr. Silva had reviewed the retention design for a 100-year-storm and that half of the gallonage on the site would be stored in galleries, while the other half would be absorbed into the ground. Mr. Oliver said that the water table in the ground is an unknown, but that the cemetery superintendent says it is less than 4'. He said that given that the exact percolation rate is also unknown, thinking that half of any runoff water will go into the ground quickly is not a good assumption. He acknowledged that City Engineer Pidluski and Mr. Silva would run their tests after construction starts, but asked what would happen if the test is not successful. He said Bob Hiza's assessment was that there should have been a high and low water outflow from the system to assure that the water table is not raised. He said the developer decided not to channel runoff into a storm drain or the Wepawaug River because it would have taken years to complete this project. He emphasized, however, that 4 years have already gone by and this testing could have already been started. He said time is available for testing to produce a guaranteed result.

Ann Maher, 50 Prospect, said she has the same concerns as those expressed by Mr. Oliver on behalf of the cemetery. She said Amazon trucks will continue to stop on the street because it is easier for them than turning around, and that she has seen fire trucks having to swerve around the parked delivery trucks. She said the character and scale of the neighborhood are important and there will be lasting environmental impacts that will change Milford's historic identity.

Ray Oliver added that he was glad the developer had responded to comments about landscaping but was dubious that junipers would have the needed effect of a buffer screen.

Chairman Quish asked for additional public comment. None was offered.

BOARD DISCUSSION

Chairman Quish invited further board comment. **Mr. Castignoli** said the developer had addressed all concerns and the project should go forward. **Ms. Kearney** said she regretted the placement of the project and felt it would fit better elsewhere. **Mr. Mortimer** agreed, but expressed the opinion that Section 7.1 is in the regulations for a reason and could pertain when the scale of the project is not in keeping with the neighborhood. He said he would support a reduced scale. **Mr. Kader** agreed with both comments and said that though he respected the compromises made, he would also welcome a reduction in the scale of the project. He also noted a comment to the effect that Mr. Hiza was "reluctantly approving" the water management plan. **Mr. Satti** noted that he had experienced technical problems during the earlier part of the presentation, but also felt that traffic safety and scale are a concern. He said he would want to condition an approval on completion of the Baldwin House and not allow a Certificate of Occupancy (CO) to be issued to any portion of the project until all work was completed per the settlement with the historic commission. He also wanted language included to make any future runoff be the sole responsibility of the property owner. **Chairman Quish** asked Mr. Sulkis to screen share 7.1 and said Milford's citizens hold the historic downtown dear, making Section 7 more relevant. He read 7.1.3. verbatim, stressing preconditions to undergird the concerns of the neighborhoods. **Mr. Mortimer** agreed. **Mr. Satti** asked for consideration of keeping the hearing open if Attorney Lynch objected to Mr. Satti's vote or motions due to Mr. Satti's not having heard the whole session because of technical problems. Mr. Satti felt he had full grasp of the issues, but he asked Attorney Lynch to share his thoughts on his (Mr. Satti's) ability to make motions or vote.

Chairman Quish invited a rebuttal by Attorney Lynch.

Attorney Lynch asked if Mr. Satti had heard his (Attorney Lynch's) review of Smith v. Milford Planning and Zoning Board. **Mr. Satti** said he had not heard Attorney Lynch's interpretation of that case but that he (Mr. Satti) had read the case and was aware of it. **Attorney Lynch** said he respectfully disagreed with Mr. Oliver's characterization of Mr. Hiza's comments. He stressed that Mr. Hiza's submitted report accepted the plan and that subsequent testing is in place. He urged the board to read Mr. Hiza's report and make their own determinations. He said he spent time speaking about a case that specifically addressed 7.1, arguing that the language of section 7.1 is a general statement of purpose but would only be called into play if an application was not a permitted use. He said case law is judicial opinion, unlike multiple legal opinions presented by opposing attorneys. He said this was not a special use in the MCDD zone, but rather a permitted use, which, by definition, is compatible with the area. He said the building scale meets all the standards of the MCDD zone—no variances were requested or required. He stressed that the project is a case that specifically meets the Milford's zoning regulations and if that is true, the board did not have discretion to deny. **Chairman Quish** disagreed that the board would have discretion.

Mr. Satti asked that Attorney Lynch be consulted as to whether he wished to hold the hearing open to allow Mr. Satti to further review the materials. **Attorney Lynch** said that if Mr. Satti feels confident in voting tonight, he (Attorney Lynch) did not object to closing the public hearing.

Mr. Castignoli asked Mr. Sulkis if the conditions for approval had been satisfied. **Mr. Sulkis** said that the plans addressed the City Engineer and Fire Marshall's concerns, as well as that the Baldwin House restored with wood siding and a bronze plaque.

Chairman Quish thanked the public for their comments and closed the hearing.

Mr. Castignoli moved to approve with the following modifications]; the petition of Patrick Rose, Rose Tiso and Company, for a Site Plan and Coastal Area Management review for a proposed Mixed Use Commercial Building on Map 54, Block 817, Parcel 6, of which 67 Prospect Street LLC is the owner.

Proposed Conditions:

PLANNING AND ZONING BOARD MINUTES FOR ONLINE MEETING HELD TUESDAY 16 MARCH 2021, 7:00 PM

- 1) The original house restored in accordance with the stipulated agreement with the Milford Historic Preservation Commission. All runoff is responsibility of owner, all trees to the left or north of Baldwin House shall be planted at a minimum height of 15 feet tall.

Mr. Kader asked what happens if the motion fails. **Mr. Sulkis** said the motion should be made in the affirmative, such that if a board member disagrees with the motion she or he would vote AGAINST the motion. **Mr. Sulkis** said that if a motion fails, another motion can be made, or the vote could rest with a denial. He said the applicant can appeal decisions, resubmit the application, change submitted plans, or do nothing. He clarified that “automatic approval” only happens in the event of inaction. **Mr. Satti** said he wished to attach a condition that no CO be issued for any of buildings until all 3 portions of the project are complete and that the Baldwin House CO serve as a prerequisite for the entire project. **Chairman Quish** asked for more robust plantings to create more of a visual barrier while recognizing that the project is a permitted use. He said he wants more mature trees, so the neighbors do not have to wait 15 years for an effective buffer. **Mr. Sulkis** reminded the group that there was a motion on the floor. **Mr. Castignoli** reread his motion with Baldwin house clause added. **Chairman Quish** asked if other board members wished to add more conditions. **Ms. Kearney** approved of **Mr. Satti**’s condition regarding the Baldwin House CO. **Mr. Satti** said the language he used regarding the CO was taken directly from the stipulation. **Chairman Quish** asked to amend the motion such that it included the stipulated agreement in its entirety.

Second: Mr. Quish seconded.

Discussion: **Mr. Satti** said he had familiarized himself with all comments regarding the project. He said he respected important points brought out by the community at the public hearings regarding the scale of the project, parking concerns, and providing proper turnaround space. He said he will consider all these factors prior to the vote. **Ms. Austin** agreed with **Mr. Satti** that this is not an easy decision. **Chairman Quish** said the vote could be taken at next meeting, with the motion remaining open on the floor. **Mr. Kader** said he feels torn in that the project will likely benefit downtown but impacts an historic neighborhood.

Chairman Quish noted that this was the 3rd public hearing on the topic. He asked that the vote be postponed, while leaving the motion and second on the floor without objection.

- D. OLD BUSINESS – None
- E. NEW BUSINESS – None
- F. LIAISON REPORTS—None
- G. SUBCOMMITTEE REPORTS— None
- H. APPROVAL OF MINUTES—3/2/2021 minutes were approved unanimously.
- I. CHAIR’S REPORT -None.
- J. STAFF REPORT - None.

Prior to postponement, **Mr. Satti** asked that the open motion be circulated to the board.

K. ADJOURNMENT was at 8:31.

Attest:

M.E. Greene

New Business, not on the Agenda, may be brought up by a 2/3’s vote of those Members present and voting.

ANY INDIVIDUAL WITH A DISABILITY WHO NEEDS SPECIAL ASSISTANCE TO PARTICIPATE IN THE MEETING SHOULD CONTACT THE DIRECTOR OF COMMUNITY DEVELOPMENT, (203) 783-3230, FIVE DAYS PRIOR TO THE MEETING, IF POSSIBLE.