

**MINUTES FOR ONE (1) PUBLIC HEARING
OF THE PLANNING & ZONING BOARD TO BE HELD
TUESDAY, MAY 1, 2012; AT 7:30 P.M. AT THE
CITY HALL AUDITORIUM, 110 RIVER STREET**

Chairman Mark Bender called to order the May 1st meeting of the Planning and Zoning Board at 7:30 p.m.

A. PLEDGE OF ALLEGIANCE

B. ROLL CALL

Members Present: Jeanne Cervin, Ben Gettinger, John Grant, Edward Mead (Vice Chair); Dan Rindos, Joseph Della Monica, Jr., Tom Nichol, Mark Bender, Chair; (Ward Willis 7:34)

Not Present: Michael Casey

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

C. PUBLIC HEARING CLOSED 4/17/2012; expires 6/21/2012

1. **54 WILSON STREET (ZONE R-10)** – Petition of Gregory Field for a two-lot subdivision on Map 89, Block 832, Parcel 13, of which BAMF Homes is the owner.

Ms. Cervin: The Board agreed the subdivision should have sidewalks and curbs in place.

Chairman Bender: Agreed about the sidewalks. The method of payment for open space was discussed; possibly with a ratio of 25% land donation and 75% in cash payment.

Mr. Sulkis: Stated the open space ratio would be whatever the Board wished.

Ms. Cervin: Said upon further consideration that it would be of greater benefit to the City to have the open space fee paid 100% in monetary funds, as there was no value to the small amount of wetlands that were being contributed and there would be no access to the public to sit and enjoy the adjacent conservation property. The money would be better spent in the Open Space Fund.

Mr. Sulkis: Stated there is no appraised value of the property as yet.

Mr. Bender: Agreed with Ms. Cervin's suggestion of 100% payment to the Open Space Fund.

Ms. Cervin: There are some Linden trees that are there now that will be affected by the installation of sidewalks and should be moved to other parts of the subdivision.

Mr. Sulkis: The applicant has agreed to this and will work with him as to the placement of these trees on the property.

Mr. Mead: Made a motion to approve 54 Wilson Street with conditions:

1. Sidewalks and curbs will be installed.

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2. The Open Space fee will be made as a monetary contribution In lieu of the proposed 15,000 SF of wetlands.
3. The applicant will work with Staff to relocate the two trees that are presently on the street that have to be removed.

Mr. Willis: Second.

Ms. Cervin: Noted the Conservation report requested the trash that is currently in the wetlands be removed.

All members voted in favor. The motion passed unanimously.

D. NEW BUSINESS

2. **254 WEST MAIN STREET (ZONE SFA-10)** – Petition of Lisa Polizzo for a Site Plan Review to construct a chicken coop and raise chickens on Map 53, Block 309, Parcels 4 and 5, of which Polizzo is the owner.

Lisa Polizzo, 254 West Main Street, Milford. Introduced her daughter Julia Polizzo who will be in charge of the chicken project, together with her husband Robert Polizzo, who would be building the coop.

Julia Polizzo: Addressed the Board and said she would like to keep chickens at her house. A 4-foot x 6-foot coop with a 6-foot x 6-foot run will be built. The coop will be constructed with 2 x 4, 2 x 8 lumber, plywood and chicken wire. The top will be covered with chicken wire to the chickens contained as well as protect them from predators. The coop and run would be four feet from the property line. There will be four hens to start and will never have more than eight chickens and they will never have a rooster. The chicken feed will be kept in one of the sheds on the property. The amount of feed that will be kept is 50 lbs per month; enough to feed the chickens but not too much to attract rodents. The feed will be kept in an air tight metal container so rodents cannot chew through it. Rodent traps will be kept nearby. No food will be kept in the coop overnight. Any spills will be cleaned up immediately. The chicken manure will be cleaned out of the coop at least twice a month and will be used for composting for use in gardens.

Mr. Grant: Asked what the purpose of raising chickens? A 4-H project?

Julia Polizzo: Mostly for the eggs and chicken manure for the garden. Many of her friends have chickens and she likes chickens.

Mrs. Polizzo: Julie is an animal lover and this would be a good responsibility for her. She has had experience with chickens through her friends who have them.

Ms. Cervin: Asked if the neighbors were informed of this project, especially the neighbor on whose side the coop will be.

Mrs. Polizzo: Yes. They seem excited about the project.

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Mr. Willis: Asked about the setbacks from the road and neighbors.

Ms. Harrigan: There are no specific setback requirements for chicken coops. The applicable accessory structure setbacks are those that are applied for this proposal. In this zone they need to maintain a four foot separation off the side property line.

Mr. DellaMonica: Asked if the coop would have runoff of manure if it rains heavily. Also, what kind of rodent traps would be used, considering other pets in the neighborhood.

Ms. Polizzo: There would be a shingled roof on the coop. No manure should fall outside the coop. There would be small traps in the rafters of the shed. No traps will be kept on the ground.

Chairman Bender: Under 3.1.3.4, there must be an annual review. Asked if that is done by Staff or the Board.

Ms. Harrigan: Staff does this.

Chairman Bender: Explained to the applicant that this review is done in the event there are problems they can be addressed and Staff will be made aware of this.

Mr. Willis: Made a motion to approve the application of Lisa Polizzo to construct a chicken coop and raise chickens.

Mr. Rindos: Second.

Chairman Bender: Asked Ms. Harrigan if the number of chickens should be kept to 4-8 or 20?

Ms. Emmeline: The Health Department approved the plan identified by the applicant in their Statement of Use. Their Statement of Use is part of this approval.

Mr. Willis: Amended his motion to include "approved per the Statement of Use submitted by the applicant with an annual review to be conducted by Staff".

Mr. Rindos: Seconded the amendment to the motion.

Mr. Grant: Noted the property was within 70 feet of the wetlands. Asked if Inland Wetlands has looked at the project.

Ms. Harrigan: Yes, the Inland Wetlands Officer was consulted and she considered this structure much like a shed. She provides a letter of determination that it does not require her board's approval.

All members voted in favor of approving the applicant to construct a chicken coop and own chickens.

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D. OLD BUSINESS

1. **134 OLD GATE LANE (ZONE ID)** – Petition of Gus Grigoriadis for Coastal Area Management Site Plan Review and Site Plan Review to construct a new restaurant on Map 68, Block 811, Parcel 6F in the ID zone, of which Dare Associates, LLC is the owner.

(Mr. Grant recused himself and left the meeting)

Chairman Bender: There was a lengthy presentation of this application two weeks ago. There were some issues with interpretation and different opinions concerning gross floor area; definition of floor vs. cellar; public access area in the rear of the property.

Mr. Rindos: Stated after carefully looking at the plans and the site, it seems like the situation is where the property is a little bit small for what the property is to be used for. There are some givens in this situation: It is known how many cars typically come to Pop's and park there in the morning; the Board understands the business; It is known there will probably not be much going on there after 3:00 in the afternoon. He tends to think that if the family feels this is what they want to do with this property, he can support it. He can see where the requirements can be changed for the number of parking spaces. He can understand that the basement would never be used for seating or for any use of this kind. He is in favor of passing the application.

Mr. Bender: He thinks there is a parking issue of some sort. He thinks downstairs is debateable. He would lean towards having more (parking). Also, there is a patio or something out there with a grill that has the potential of being used in the future. He notices next door is being used. There are tractors over there and so they are already sharing parking with 134. He would lean toward getting more parking from an adjacent property, which would make him feel more comfortable.

Ms. Cervin: Agrees with Mr. Bender. Appears the two properties are owned by the same person and they are doing some work on that property. Wondering if they are preparing for shared parking, but there is parking available back there and that would be one option for more parking spaces. There is also the questionable issue about increasing the seating from 103 to 123 once the water usage is determined. Although that does not affect the square footage, it is more people using the building. Also know the deck or patio area was not used as part of the square footage in terms of the number of parking spaces that are required. There are many concerns about parking. Also, the Board should not be thinking of Pop's and what they mean to the Board as a City, but just that it is a restaurant and who knows what could happen with that property as a restaurant in the future. There are serious difficulties that she sees with limiting or accepting the proposal of parking as it exists now.

Mr. Willis: Noted he was concerned about the parking. At the last meeting a conservation easement was mentioned and he would like to see that as a condition.

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Mr. DellaMonica: This application appears to him as being unique, although he is new to the Board. He did not think there was an egress from the basement.

Mr. Gordon: There is a single egress.

Mr. DellaMonica: Having worked in restaurants before, he knows the basement is not a place you are going to serve food to people, especially if the kitchen is upstairs. It does not make any business sense. He believes the availability for parking will be there in the future. It could be if it becomes an issue as far as spaces go, because the adjacent property is owned by the person who is selling the property to Pop's. He does not have an issue with the parking as some of the other members have, although it may become an issue if the restaurant becomes more popular now that it would be on a main road. As far as the deck in the back and the easements, he believes it is a moot point as that property has never been used for recreation purposes to his knowledge. He noted that the rear deck is only seven feet wide by 25 or 28 feet long. Does not think a seven foot wide deck will be able to accommodate people eating on the back deck.

Ms. Cervin: Asked to differentiate between public access in terms of opening it up to the public vs having a viewing platform vs just having the easement in perpetuity as was mentioned last time when Ms. Harrigan explained the whole project about creating a greenway along the Indian River. It complies with the Plan of Conservation and Development as well. Mr. Gordon at the last meeting agreed to this condition. It does not impinge on the use of the property in any way and may be helpful in the future for this whole endeavor. She would be in favor of having that easement in perpetuity, but not the viewing deck. That would require more parking and that would not be necessary for the City.

Chairman Bender: Mr. Gordon said a conservation easement could be provided. He asked Staff to explain what a conservation easement means to the property.

Ms Harrigan: Explained that a conservation easement does not mean that something is going to be developed at this time. It sets aside that particular section of land depending on the terms of the easement itself for potential future access. When the Yale Study was done not every segment of the river would be used for public access to walk upon, but there were vistas that could be protected from upland sections. Conservation easements can mean different things depending on the environment in which it is located. It means that it can be set aside and never developed for this portion of the parcel.

Chairman Bender: Mr. Gordon has already stated that is something they would be willing to do and it would not affect the plans going forward.

Mr. Willis: Concerned about the parking. Asked about the proposed hours of operation. Would the hours be the same as the restaurant's current business hours?

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Mr. Gordon: The hours of operation will be 6:00 a.m. to 8:00 p.m.

Mr. Nichol: Agreed with what Mr. DellaMonico had stated. He believes the parking will be adequate.

Ms. Cervin: Asked Mr. Gordon if he had explored shared parking.

Mr. Gordon: Said he would like to respond to a number of the items that were mentioned.

Chairman Bender: Asked that he be specific to anything that was previously discussed and not get off target on what is being discussed tonight.

Mr. Gordon: The applicant was asked to look at shared parking and is there anything he could do to add more parking to the plan. Shared parking was explored. Real world circumstances of liability, having to have a hold harmless agreement in insurances and neither of the adjoiners is in a position to offer that. Also, a condition to have parking on a neighbor's property creates an issue in financing the project. When you have an approval that is sort of an approval but requires something from someone else, that adversely affects financing. Shared parking was not a successful option.

He noted he looked at the site plan and with a slight modification he could add two more parking spaces.

Chairman Bender: Noted the only option for shared parking would be the adjacent property that is owned by the same owner of 134 Old Gate Lane.

Mr. Gordon: The person on one side is the seller and the other side is not. Both property owners were approached and neither are in positions where they could do shared parking officially. They will not put up a fence or a gate that will prevent someone from parking there, but they cannot go into an agreement which would expose them to liability. He did make the inquiry.

He looked into making an adjustment and making one of the driveways an "Exit Only" and he could add two more parking spaces by doing that. He also did an analysis of the parking and based on the existing facility and the proposed, the cars per patron actually goes up by 60% because 20% more parking spaces are being added than there currently are and seating is being reduced by 27%. When both changes are worked together it is a significant increase in the ratio of cars per patron, even if at some future date he was to expand the seating, he would have almost a 29% increase in parking ratio.

Mr. Gordon stated he did some research in the history of the regulations. He consulted with Peter Crabtree on the regulations. According to the former assistant city planner for 37 years, it was never the practice to count areas where patrons or staff did not occupy. Mr. Gordon noted he did the plans for the Athenian Diner on the Post Road. It

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has a full basement (corrected to cellar), loaded with coolers and that required 50

parking spaces. By the current interpretation from Staff it would now require 100 spaces and no one has ever seen anything close to that at the Athenian Diner. Also, Gusto's has a walk out basement and it has a party room, so that is a totally different scenario since there are patrons down there and they use that space. The comparison should be apples to apples and Gusto's is not the same as what is proposed here.

The point to consider is this is an administrative action. It meets the regulations, therefore it is just administered, not discretion. He offered Mr. Crabtree's letter and the parking analysis which were date stamped into the record. Mr. Gordon read a quote from Mr. Crabtree's letter, which basically stated if the regulation is vague, the tie goes to the petitioner.

Chairman Bender: Believes the application is about what it could be, as well. The point was made last time but the Board has to look at what it could be in the future.

Mr. Gordon: Stated that is addressed in the parking analysis. If somebody should come in in the future and try to use that cellar and put prep areas and do other things there, that would be a zoning violation and would be noncompliant and it would be a zoning enforcement issue. If someone does something that is not part of the approval or does not meet it, that is a violation. They get cited for it and have to quit the operation. Pop's is the applicant. Pop's is going to comply with the regulations.

Chairman Bender to Mr. Sulkis: **Should** the new parking analysis be brought to the police for their review?

Mr. Sulkis: Noted he had not seen the changes to the plan and he should have a chance to review it.

Ms. Cervin: Spoke to the issue of Mr. Gordon consulting with Mr. Crabtree. She takes offense at what he did. She trusts the City Planner. Mr. Crabtree has not worked for the City for a number of years. She does not believe Mr. Crabtree is the end authority on this issue by any means and she wanted to make that point.

Mr. Gordon: Stated he believed 30 years working for the City would give some history to the matter

Ms. Cervin: Responded, perhaps.

Chairman Bender: Asked if the Board members saw the new parking layout. He asked if the Board wanted to consider this as an option, then it has to be run through because of the driveway change.

Mr. Mead: With regard to changing the driveway, he recalled when they tried to make one driveway an exit, not entrance and exit, at the new CVS on Bridgeport Avenue, the DOT said no. This is a State road as well. Between Staff, the Police Department and maybe DOT might consider taking a look at it.

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Mr. Gordon: Said the applicant fully complies with the regulations. He is trying to respond to the request can he find any other way to get more parking. The plan he just submitted is his best effort.

Mr. Mead: Asked if more parking could not be obtained, could the building be made smaller?

Mr. Gordon: Replied he believes it would disappear.

Chairman Bender: The Board has to decide whether if it wants to look at this application as is. If it should consider the couple of extra spaces and a review would have to be made to obtain the right input before a decision is made. Asked for the Board's feedback on this. Asked if the Board wants to move forward with a motion to vote on the application as presented last time or consider the plan that will give two more spaces. To Mr. Mead's point, it is a good possibility this plan will not fly with the departments that review it.

Mr. Gordon: If the application was to be approved, a condition could be made if it is accepted by the police and the State, that driveway configuration to add the two spaces could be a condition.

Mr. Sulkis: Stated he would have an issue with that because whether or not the State or the police agree with it, he may have an issue with the placement of at least one of these spaces, because this plan looks like one that was presented earlier in the application process and was rejected. He thinks it would be best to consider it based on the previous parking layout.

Mr. Gettinger: Said he was comfortable approving the application the way it was originally presented. He thinks a motion should be made and voted on.

Mr. Gettinger made a motion to approve the application as originally presented with the conservation easement.

Mr. Rindos: Second.

Mr. Sulkis: If the Board makes that kind of a motion, then it would have to decide which of the waivers it would be granted. He referred to his memo that he presented at the public hearing, there is a choice of different parking waivers. It sounds as if based on the testimony of the applicant's representative, the only one that would apply would be "C", which would be waiving requirement 7.1.3.50.

Mr. Gettinger: As part of the application he would move to waive the parking requirement.

Chairman Bender: Asked if the conservation easement was clear to the board members.

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Ms. Harrigan: Did not know if there was an area specifically designated. That would have to be further developed with Staff.

Mr. Gordon: Recalled that it was said everything up to and including the tidal wetland line. The inland wetlands line could be included as well.

Chairman Bender: Quoted from the 4/17/12 Minutes, "A conservation easement could be provided up to the tidal wetlands area".

Mr. Sulkis: In the motion be specific about the number of parking spaces to be waived. In this case it would be 17.

Mr. Gettinger: As part of the motion it would be the waiver of 17 parking spaces. He also waived the buffer requirement.

Chairman Bender: The motion is still being clarified. There is a parking waiver of 17 spaces. There is a buffer waiver and a conservation easement that is still being defined.

Ms. Harrigan: Suggested the conservation easement go to the inland-wetlands flag, which looks to be approximately 10-15 feet.

Mr. Gordon: The easement can be made larger by including the inland-wetlands..

Chairman Bender: A conservation easement up to the inland wetlands flag. He noted Mr. Rindos seconded the motion.

Asked if the motion was clear. There is a motion to approve with a waiver of 17 parking spaces; a waiver of the buffer as listed on the plan; and a conservation easement up to the inland-wetlands flag. That motion has been made and seconded. It may now be discussed.

There was no further discussion.

A vote was taken: Those in favor of approval: Messrs. Nichol, DellaMonica, Rindos and Gettinger,

Those against approval: Ms. Cervin, Messrs. Willis, Bender and Mead.

[John Grant had recused himself and Michael Casey was not present]

Chairman Bender: A tie vote.

Mr. Sulkis: A tie vote fails. The vote fails.

Mr. Gordon: Asked if the Board wanted to take up a motion on the two additional parking spaces.

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Chairman Bender: The problem with that is according to Staff it was a plan that had previously been submitted and denied.

Mr. Gordon: Asked what the rationale is for a no vote when the application complies and it is an administrative action. This is not discretionary. It is administrative. It is a Site Plan Review; not a Special Permit.

Mr. Ward: Stated he did not think the Board had to respond to that question. It is out of order.

Chairman Bender: Said the Board did not have to respond. As a Board they look at what the waivers are and decide if they feel it is appropriate or not and make their decision.

Mr. Gordon: A waiver of 17 parking spaces was not requested because they strongly believe they comply with the parking requirements. It was Staff that said that a waiver of 17 spaces was required. Is this a determination of the Staff recommendation and the Board is accepting that and a waiver is required in the Board's view? He asked for clarity for the record.

Chairman Bender: Typically after a vote, the Board does not sit and explain to the applicant why it voted yes or no.

Mr. Gordon: Stated usually reasons are on the record. He thanked the Board.

[Mr. Grant returned to the meeting]

E. PROPOSED ZONING REGULATIONS - Discussion

- Sec. 3.1.4.2 Building Height in Residential Zones
- Sec. 2.5.5 Lot Access and Rear Lots
- Sec. 9.2.3 Prohibited Variances

Mr. Sulkis: Memos have been sent to the City Attorney's office to get the update status on the items they have not yet addressed.

F. PLAN OF CONSERVATION AND DEVELOPMENT

- a. Map Development
- b. P & Z/Interest Group Follow-up
- c. Compile Draft Plan

Mr. Sulkis: The consultant is working diligently on their portion of the Plan. He will be getting an update probably by the end of this week as to where they stand. He met with the last week and they are formulating lots of information. Now that the school year is over it allows them to free up other staff time to do the work they were hired to do.

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G. LIAISON REPORTS - None

H. APPROVAL OF MINUTES – (4/17/2012)

Mr. Willis: Motion to approve.

Ms. Cervin: Second.

All members voted in favor of approving the minutes of 4/17/2012.

I. CHAIR'S REPORT - None

J. STAFF REPORT

- Flood Map Update.

Ms. Harrigan: Gave a report of the Revised FEMA flood map meetings that were held last week. 130 people attended the first meeting. Second night over 200 attendees.

Got a good response from members of the community in terms of their better understanding of what the proposed flood map changes mean to them. How it affects neighborhoods in their entirety. Now they are answering questions in the office.

One update was that Summer 2013 is when the adoption of those maps will take place. Thought the adoption date was January 2012. So it is over a year until the adoption of the maps will take place.

Chairman Bender: Asked if there was a website that would give information on the flood maps.

Ms. Harrigan: The Home page of the City's website has a link to Flood Hazard Maps. Trying to work with the public to give them specific information via email.

Ms. Cervin: Asked how the board members liked the Land Use Seminar held on 4/21/2012.

Mr. Rindos: Thought the seminar was excellent. Not much different from what has been reviewed with the Board's workshops, but it was more in depth and the members were able to get more involved. Thought the staff was incredible. Very knowledgeable and good at communicating, as they were teachers. Probably 50-60 participants. A lot of discussion on low income housing, conservation, open space and the same topics the Board struggles with here.

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It was worthwhile and the food was good.

Mr. Grant: All the slides that were shown at both seminars will be available on their website. It will probably be two more weeks.

Chairman Bender: Asked Mr. Grant to provide the Board Clerk with the email address and she will send it to the board members.

Mr. DellaMonica: Made a motion to adjourn.

Mr. Grant: Second.

All members voted in favor of adjourning the meeting at 8:20 p.m. The next meeting will be held on May 15, 2012.

Phyllis Leggett, Board Clerk