MINUTES FOR ONE (1) PUBLIC HEARING
OF THE PLANNING & ZONING BOARD
HELD TUESDAY, OCTOBER 20, 2009; 7:30 P.M.
CITY HALL AUDITORIUM, 110 RIVER STREET, MILFORD

The Chair made an announcement that two of the regulations scheduled for review at tonight's meeting will be tabled. Received information from the City Attorney late in the day, so there was not enough time to review the recommended changes. The regulations in question are Sec. 3.1.3.4, Poultry and Poultry Coops and Sec. 5.17, Special Event/Temporary Tents. Hopes this has not inconvenienced anyone.

The Planning and Zoning Public Hearing of October 20, 2009 was called to order by the Chair at 7:30 p.m.

A. PLEDGE OF ALLEGIANCE

B. ROLL CALL

Members Present: Mark Bender, Frank Goodrich, Janet Golden, Kathy Patterson, Kim Rose, Kevin Liddy, Susan Shaw, Greg Vetter, Jeanne Cervin, Chair, Victor Ferrante (7:37)

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

C. PUBLIC HEARING LEFT OPEN FROM 10/6/09; CLOSES BY 11/10/09; exp. 12/10/09

1. **100 GULF STREET (ZONE LI)** Petition of Melissa Marter for a Special Exception and Site Plan Review to establish a dog resort which will provide dog daycare, boarding, dog grooming and dog training on Map 55, Block 816, Parcel 2, of which One Hundred GSM Company is the owner.

Mme. Chair: Was not present at the last meeting but viewed the DVD of the meeting and will be voting on this item.

Mrs. Patterson: Recused herself from voting as she did not listen to or view the DVD of the meeting due to family circumstances.

Mrs. Golden: Was able to view the DVD and will vote on this item.

Mme. Chair: The public hearing was left open for receipt of information from the applicant. Asked Mr. Oliver if there was any information from the applicant on the issue of sound.

Ray Oliver, Architect, 3 Lafayette Street. Does not have information regarding the sound ordinance. Does not know if the applicant had the opportunity to check with the lawyer. The City Planner was going to check with the City's Attorney to see if there was any ordinance related to noise.

With regard to another point of information related to the consulting engineer's recommendation that a concrete curb be used in place of the bituminous curb and a timber guard rail proposed, after multiple discussions between Bob Wheway, consulting engineer to the City and Glenn Behrle of the Engineering Department, it was determined that the concrete curb was the best solution. The applicant is prepared to put in the concrete curb.

Mme. Chair: Asked Staff for his advice regarding discussions with legal counsel.

Mr. Sulkis: Because it is a Special Exception the Board can take into account any information presented. Sound can be considered, however, the City has no standards for sound. In the cities that do have those standards, there are readings against the ambient noise of the particular location. In a noise study there would be ambient sound levels that are taken and if the use goes above the ambient sound, then that could be considered a problem. If it goes below or equal to, then it is usually fine. Milford does not have any of those standards at this time.

Mr. Bender: Cited Section 5.11.6.3 addresses noise to that level. It does not get into specifics and is somewhat literal, but it does address noise specifically.

Mr. Sulkis: These are the kinds of things that the Board can take into account, but to what standard is it? When one states that something is loud and it is a nuisance, then compared to what? What is the standard? The problem is there is no standard.

Mme. Chair: Closed the public hearing.

Mr. Bender: It is a good business but he has an issue with the noise. The Board has the performance standard they can go by. In a Special Exception there is also Sec. 7.3.2, which is inconvenient to the predominant character of the neighborhood. Thinks there will be noise there with 25 dogs and will affect the neighborhood.

Mr. Goodrich: Reviewed the LI regulations for permitted, special or accessory uses. Mentioned allowable businesses in this zone which could be noisy or pollute the environment for the neighbors, i.e. manufacturing, printing presses, scientific and research labs, parking garages, etc. The regulations do not require a buffer on this property because it is not adjacent to any residential district.

Ms. Shaw: Stated this will be a 24-hour facility. Concerned about the outdoor run and what hours it would be used. Suggested there be a time stipulation for using the outdoor run.

Mme. Chair: Said she was in agreement. Suggested the garage doors be closed between the hours of 6:00 p.m. and 9:00 a.m. That would be one way of regulating some of the outside noise.

Ms. Shaw: At the last meeting Daniel Street was brought up in that when the door was opened, the sound became an issue for the neighbors.

Mr. Liddy: Stated he had some comments on this application: He is a dog owner and believes there is a need for and should be more dog care centers in Milford. This property is in his district and he is aware of the implications of the application with regard to his constituents.

Believes the main issue is the noise that would be generated by 27 barking dogs. Recalled dogs barking when they heard church bells in a park when he was growing up. This property is near a church and would affect the quietude of the church parishoners. Mr. Cardone, an educator, had expressed concerns about the school children of St. Mary's. The school opens its windows in the spring and fall. A barking dog would be a distraction to the children. Parents are paying approximately $8,000 annually for their children to attend St. Mary's School. If they are paying so much money for their children's early education and if that begins to decline due to a nearby business, they may take their children elsewhere. The Board hears about applicants stating that a new business is good for employment, taxes, etc., but if a private school closes it lays off its employees and potentially the children could get transferred to Milford's public schools.

Bill Perry, the real estate agent stated there are many empty commercial and industrial buildings in Milford. Believes Ms. Marter should have worked with a real estate broker to find three or four other properties that suit her needs and mitigate the concerns of her neighbors.

Both the applicant and its opposition were given two weeks to submit a professional audio test. Nothing was forthcoming from either party, nor was an extension of time requested. Believes it is incumbent upon the applicant to prove that no ill effects would be visited upon the surrounding community from the noise created by 27 barking dogs. From the comments made, he most likely will not vote for approval of this application.

Mr. Vetter: Stated he has gone to the site several times. His concern is the garage door. Believes if limitations are put on the hours that the dogs can go outside it would be helpful. Unfortunately, there is a fair amount of glass on the back end of the property which does not help with the insulation of the sound the way the rest of the building does. From his experience, in places like this, the dogs are much calmer than everyone thinks. It is not like going to the pound

where it is more chaotic. These places tend to be more calm than one would think and he has housed his dogs in such facilities. However, he is concerned about the noise. Thinks the applicant should be allowed to try this and hope that through other town ordinances or if there are other issues, they should be addressed separately.

Mr. Goodrich: Mentioned he had suggested limiting the hours of the outdoor dog run to keep the noise down. He referenced the Motion to Approve for 26 Higgins Drive. Stated "Applicant is to submit architectural construction drawings for the installation of interior soundproofing to mitigate dog barking for neighbors. The Applicant shall install these soundproofing measures". Reminded the Board what was done on a previous application.

Ms. Rose: Made a motion to approve the application of 100 Gulf Street, Zone LI, petition of Melissa Marter for a Special Exception and Site Plan Review to establish a dog resort which will provide dog daycare, boarding, dog groom and dog training on Map 55, Block 816, Parcel 2, of which 100 GSM Company is the owner, with the condition that the outside doors will be open only during the hours of 9:00 a.m. to 6:00 p.m.

Ms. Shaw: Second.

Mme. Chair: This is a Special Exception, which requires two thirds of the voting members. Tonight there are nine members voting. Need six votes for approval.

Mr. Bender: Need to be more specific. The outdoor run door is in question, not all the doors as was stated in the motion.

Ms. Rose: Corrected her motion for the condition to read that the dog run door remain open only during the hours of 9:00 a.m. to 6:00 p.m.

Mr. Goodrich: Asked about closing the windows to satisfy the neighbors.

Mr. Bender: You can't tell people when to open and close their windows. If the Board believes there is too much noise it should vote against it.

Mme. Chair: Said she believed the windows are extraneous.

Ms. Shaw: Regarding Higgins Drive, the distances were a lot closer than the case of the condominiums and certainly more distance in terms of St. Mary's Church.

Mr. Bender: Asked if Higgins Drive was in a heavy industrial zone.

Mr. Sulkis: It was a different zone. It was industrial, not heavy industrial.

Mr. Ferrante: Would add about the door closing and that there be no outdoor activity during that time from 6:00 p.m. to 9:00 a.m.

Amended the motion to say that in addition to the door being closed, that there be no outdoor activity between the hours of 6:00 p.m. and 9:00 a.m.

Mr. Vetter: Second.

Nine members voted in favor of the amendment.

Mr. Bender: The Board can state 6:00 pm to 9:00 am, but it does not know the demographics. There could be people working the third shift that are sleeping during those hours. Noise is noise. It is irrelevant what time it is and what is going on.

Mr. Goodrich: Stated the neighbors could call the State DEP if there are any noise issues.

A vote was taken: Seven members voted in favor of the motion; Messrs. Liddy and Bender voted against the motion.

2. **PROPOSED TEXT AMENDMENTS TO ZONING REGULATIONS**

    1. **Sec. 3.1.3.4 Poultry and Poultry Coops** – This replaces Sections 3.1.3.4 and 3.1.3.5. **(Tabled)**

    2. **Sec. 3.17.4.1 Minimum Lot Requirements** – (1) Change from 2,000 SF to 4,000 SF for two-family dwellings.

Mme. Chair: Anyone to speak in favor of this regulation change?

John Grant, JLG Designs, 11 Ettidore Park. In favor of making this change of increasing the footage requirement for two family dwellings to 4,000 SF.

Mme. Chair: Anyone else to speak in favor? Anyone in opposition?

    3. **Sec. 3.19.5.4 (New) Prohibited Uses** – No junkyard; or outside storage yards shall be permitted.

Mme. Chair: This will be a new regulation added to the CDD-4 zone. Anyone to speak in favor? (No response) Anyone in opposition?

Brian Lema, Esq., Bercham Moses & Devlin, residing at 17 Maple Street. Not opposed to the prohibition of junkyards. Has concerns about the prohibition of outside storage yards. It may not be intended, but believes it is inconsistent with the regulation on the preceding page, Sec. 3.19.3.2, which allows accessory, outside storage of equipment, merchandise, materials and supplies, clearly subordinate and customarily incidental to the primary use, and that outside storage area is limited to 15%. The current regulation, 19.3.2, is appropriate and limited in scope and would not like to see that changed, but if the Board intends to go forward with this, he thinks there is an inconsistency in the prohibition vs. what is expressly allowed under that section

Mme. Chair: Clarified if Mr. Lema meant that he would like to see the 15% carried through.

Mr. Lema: The current regulation as drafted in 3.19.3.2 is reasonable in scope. It does not allow the accessory outside storage to overtake the principal uses allowed in the zone. He thinks there are a number of uses allowed in the zone that outside storage on a limited basis would be appropriate. He fails to see the need to prohibit, all together, outside storage yards in that particular zone.

John Grant, JLG Designs, 11 Ettidore Park. Overall in favor of this. However, as was previously mentioned, to state that all outside storage would be prohibited would not be good. Presently there are about 45 parcels in this particular zone. Out of that there are about 22-25 businesses that have outside storage in one way or another. Would suggest that the Board rewrite the information. In full agreement with no junkyard, however, he would suggest in CDD-1, CDD-2 and CDD-5, there are the words “no outside storage”, but there is the word “principal in front of it”. Thinks that the word “principal” should be put in front of it. That would still allow the storage and would solve the problem of cutting out all exterior storage. but to state that all outside storage would be prohibited. Suggested the Board

4. **Sec. 4.1.7.4 (New) Fences and Walls** - Allowance of an eight foot chain link or similar fence to be erected in an HDD, ID and LI zones, upon obtaining a zoning permit.

Mme. Chair: Read the newly worded proposed new section: “Section 4.1.7.4 – Subject to prior approval, issuance of a zoning permit in the HDD, ID and LI zones, an 8-foot chain link or similar security fence that does not obscure this building may be erected along the property line behind the front setback requirement by the district. Barbed wire or similar security wire may be allowed atop the fence, provided the parcel does not abut a residential district. The maximum 8-feet height shall include the barbed or similar security wire.” A six foot fence was previously allowed and the Board opted for 8 feet in these particular zones.

Anyone to speak in favor?

John Grant, JLG Designs, 11 Ettidore Park. In favor of this regulation change.

5. **Sec. 5.1.4 Off-Street Parking Requirements** – Refers to parking space changes and tandem parking prohibition in two family and multiple family dwellings; parking space changes for some commercial uses.

Mr. Ferrante: The Board has just received the newest proposed changes. How does that affect the public speaking about these regulation changes? Also, can the Board speak to the changes it has just received?

Mme. Chair: The changes do not affect the substance of the proposed regulation change.

Mr. Sulkis: They are technical changes that have been recommended by the City Attorney's office. They do not change the meaning or the intent of the regulations before the Board. They are available to the public. Remember, these are all fluid changes that can be tweaked.

Mr. Ferrante: With respect to the one the Board is presently addressing, Mr. Sulkis' memo to the Board notes, "Off-street parking (related to tandem parking) no change to this section…" That means no change to the proposed section.

Mr. Sulkis: Correct.

Mr. Ferrante: Asked Mr. Sulkis with his definition of tandem parking, did he think it appropriate to say "parking one car lengthwise in front of another"? Should it be added "whether one car is garaged or not"?

Mr. Sulkis: That is up to the Board. Part of it will depend on the context in which it is used, so if it is a single family house it will not matter. Where there are multi-family houses it will matter. If the Board feels that people are not using their garages as garages and are trying to get credit for parking, then the regulation can say that is not included.

Mr. Ferrante: Stated this came up because some of the Board members had objected to the space in front of a garage being counted as two. Wanted to make it clear that that situation is among what the Board is prohibiting.

Mr. Sulkis: Then that can be added to the definition. It can be worded "parking one car lengthwise in front of another, whether or not one is open or in an enclosure".

Mr. Ferrante: Does not want to create a loophole. The Board has always called that tandem parking without the definition. Now that a definition has been added, he wants to make sure it includes that.

Asked why the poultry and poultry coops regulation was tabled.

Mme. Chair: Legal came forward with not an easy fix to change the chicken coop regulations, so it was decided to hold up on that and review what legal gave to the Board. It was not anything simple. The same thing with temporary tents.

Mr. Ferrante: Asked why this information just came today?

Mr. Sulkis: Responded he has no control over when legal gives its opinions. Those two had been changed and brought to the office today.

Mr. Vetter: Questioned the tandem parking wording version that he had. He read the portion of the verbiage to which he was referring.

Mme. Chair: The point is to define tandem parking and how to word it. This can be done at a following meeting.

Mrs. Patterson: Noted the word "car" should be changed to "vehicle".

Mme. Chair: That kind of change can also be made at the next meeting.

Anyone to speak in favor? (No response) Anyone to speak against?

The chair clarified that what is being changed in this regulation is how the number of parking spaces is calculated and take-out restaurants was added; one space per each 250 SF and health clubs; one space for each 50 SF.

Ray Oliver, Architect, 3 Lafayette Street. Had a general comment relating to what Mr. Ferrante said. He said the meeting notice listed the regulation changes by section with a brief description. These regulation changes were not available on the website in the full text.

Board Secretary stated the proposed changes have been on line on the Planning and Zoning Department's web page.

Mr. Oliver: Stated it was important that the notices should be as complete as possible because these changes affect a lot of people and there are not many people present to respond.

With regard to the off-street parking regulation, there has been a problem with the tandem stack parking in condominium or multi-family units. Those units belong to a family. It is easy enough to tell your son or your wife that you have to

go and move out. To an extent it is an invented problem. Furthermore, to increase the amount of paved area is not a green solution to what is trying to be done. That parking space in front of the garage, the driveway, exists and it might as well be used instead of creating an additional 300 sf of paved area on the site.

On the other hand, if the Board is trying to deal with the density of multi-family projects and if this is a back door way of dealing with that, he thinks the Board should confront this straight on instead of trying to deal with it through the parking requirement.

Mme. Chair: Stated she did not think this was the intent at all.

Mr. Ferrante: Asked how Mr. Oliver thought the Board should deal with the density question.

Mr. Oliver: Responded if it is R-16, you can say it is R-14. If it is R-9, you can say it's R-6. There are ways to deal straight on with the densities that are being suggested. Each zone now has different ways to compute density. Some of it is based on a certain number of square feet per bedroom on a site in a CDD zone, so there are lots of variations to the way the density is being used in Milford. If density is the issue, deal with the density. Don't suggest that the developers have to pave more area in order to reduce the density.

Brian Lema, Esq.17 Maple Street. Supports Mr. Oliver's comments. In addition, with regard to the proposal of four spaces for a two-family dwelling, the number of spaces may be appropriate but he thinks the prohibition in that instance against tandem parking is particularly misplaced, because there are a number of residences that are two-family houses that will have a single wide driveway. The proposed regulation will eliminate the use of that driveway as a parking area if it also has a garage. As Mr. Oliver stated, it will require homeowners to pave their land in order to provide the required parking. In that case the cure is worse than the perceived problem. It will also render a number of those two-family dwellings nonconforming as to parking because they may not have the area for double wide parking in a number of locations in the City.

With regard to Section 3 regarding multiple family dwellings, it is subjective as to the number of spaces for one and two bedroom units. In efficiency units two spaces is not unreasonable, although the current formula works well with a lesser amount. The result of the three space requirement for two bedroom and three bedroom units is effectively going to significantly reduce the number of projects that will contain 2 or 3 bedroom units, because it will not be practical to provide that level of parking in many locations. Again, if the intent is to eliminate those types of units, the Board will be successful, because very few developers will build 2 or 3 bedroom units if they have to provide three spaces. He questioned the need to actually provide space for three vehicles for each bedroom. In his opinion it seems excessive.

John Grant, JLG Designs, 11 Ettidore Park: Agreed with Messrs. Oliver and Lema. He mentioned that in the original section there are 22 items listed, however, in the current proposed regulation there are only 10 items listed. Items 8, 9 and 10 have been switched as far as the nomenclature, i.e. cafes is changed to restaurants and a few others have been changed. He does not think the other 12 definitions should be lost.

The Chair asked Mr. Sulkis if that was the Board's intent. Mr. Sulkis responded it was not.

John Wicko, 50 Broad Street. The parking change will affect a lot of people, more than the Board realizes. As designers when planning parking lots they consider practical and sensible resolutions. This will create a situation in a single family residence where a family member has to keep moving his/her car out of the way so that other family members can move their cars. Asked the Board to reconsider this change.

Asked if tandem parking would also impact valet parking, where cars can be stacked to get a more efficient use of a parking lot that is served by one individual that moves cars back and forth.

Mr. Oliver: The calculation for the health club, where it specifies going from either fixed seats or down to 50 sf per space (item 6). If the fire code requires 15 sf per seat, to be consistent that would change to 60 sf.

Mr. Liddy to Mr. Sulkis: With regard to tandem parking he envisions cars parking on the sidewalks (where there are sidewalks) and causing a pedestrian to walk around the car into the street. Would that become a zoning or police issue?

Mr. Sulkis: You can't block a public right of way. So, if someone is parking on the sidewalk it will be a police issue.

6. **Sec. 5.17 (New) Special Event/Temporary Tents** – New regulation pertaining to conditions for requests to hold special events and erect temporary tents on commercial properties. **(Tabled)**

7. **Sec. 5.18 (New) Route One Access Easement** – Planning and Zoning Board may require an access easement (for certain permit applications) to a neighboring property along Route One to facilitate vehicular traffic.

Mme. Chair: Anyone to speak in favor?

John Grant, JLG Designs, 11 Ettidore Park: In favor of the regulation.

Louis D'Amato, 183 Quarry Road. Not sure if he is opposed, but stated if it is not spelled out in the event an easement cannot be obtained for the use of an adjacent parking lot, that that the developer should not be prohibited from using this property. The law says you can't, but that should be noted in the regulation so it becomes clear that the developer attempted to do what was stated in the regulation, but in the event he cannot, he can develop his property.

Mme. Chair: Stated that the regulation reads "where practical", so that concern is taken into consideration.

Mr. D'Amato: Suggested the wording be more explicit.

Brian Lema, Esq. Understands the need, but does not agree with the approach being taken to accomplish the result, which is to reduce Route One traffic. Believes this proposal is beyond the powers of the Board to implement. It effectively requires one property owner to convey the legal or title interest in their property to an adjoining property owner. Although it would be discretionary and where practical, the end result is that there will be applications where the Board is going to impose as a condition of approval that the land owner convey an interest in their property to the adjoining property owner. Stated he does not think the Board has the statutory authority to do that and if they did it would require that compensation be given to that land owner for the interest in their property that was taken.

Suggested there is another way of approaching this situation. He submitted a lengthy regulation adopted by the Town of Orange. (The document was received and date stamped into the record.)

Mr. Lema referred to subparagraph (f) of the second page and read it as follows:

> "Where topographic and other conditions are reasonably usable, provision shall be made for circulation driveway connections to or extensions from adjoining lots having similar existing or potential use when such driveway connection will facilitate fire protection services, as approved by the Town Fire Marshal; and/or when such driveway will enable the public to travel between two existing or potential uses, open to the public generally, without need to travel upon a street. Where suitable access or a system of traffic circulation in the vicinity of the lot would be facilitated, provision shall also be made for appropriate continuation and improvement of streets terminating at the lot where the use is to be located."

Mr. Lema stated that is a very clear statement of what he believes the Board is attempting to accomplish with this regulation and it avoids the requirement, even if it is somewhat discretionary, that a property owner actually convey an interest in their property to another person, as an easement would actually have that result.

There are also a number of practical issues when an easement is conveyed: If there is a mortgage on that property, in order for that easement not to potentially get foreclosed out in a mortgage proceeding, a subordination agreement would have to be obtained from the mortgage lender. That would be very difficult with the national mortgage lenders, even if they would be willing to consider it. It could take several months to a year to accomplish this. Also, there are issues of liability and maintenance. In the cross-easements that his firm prepares between properties, each agreement allocates maintenance responsibilities, liabilities and insurance between property owners. All this requires legal documentation. He concluded that he did not think it appropriate to require as a condition of zoning that a property owner undertake that.

Mentioned he also submitted a recent Supreme Court case from 2009, with a slightly different context that dealt with off-site improvements in a subdivision. The Supreme Court held that the zoning board lacked the authority to require property owners to make off site improvements in a subdivision context. While this is not in the same context, (site plan approval vs. subdivision approval), the concept is similar where the property owner is being required to grant off site improvements in connection with the site plan application.

Mme. Chair: Thanked Mr. Lema and said the Board would take these points into consideration.

8. **Sec. 7.1.2 Site Plan Elements** - Clarification of requirements when applying for site plan reviews.

Mme. Chair: Read the proposed regulation change:

> "Applications submitted shall include a description of all proposed uses including all intended operations, equipment and material; and shall be accompanied by ***a current property survey to A-2 standards*** prepared by a Connecticut licensed land surveyor, drawn to scale of not less than
>
> one inch equals 100 feet in size, not to exceed 24" x 36" and ***a proposed Site Development Plan based on the current certified survey*** showing the proposal and all buildings on adjacent lots within 100 feet of the lot lines of the subject lot. In addition to the ***Survey and*** Site ***Development***

> Plan, the application shall also be accompanied by floor and elevation plans for alterations of all existing structures and for proposed structures. All elevations must show location detail of street number to be utilized by the building. Such numbers shall not be located on any door nor shall any number be less than 5 inches tall. Signs, specifications for building construction and materials proposed for flood-proofing, where applicable, and any such other plans as may be required to fully present the proposal, including the following information where applicable."

Is there anyone to speak in favor of this change? (No response)
Anyone in opposition?

Mr. D'Amato: Does not understand what it means: In the event you come in for a Special Permit and you have a survey over ten years old, Mr. Sulkis said you need a new survey. Those surveys cost $5000. If you are putting in an 800 SF user, how could a property owner afford to spend $5000 for a survey? It presents a problem to all the property owners in town. Surveying is very expensive. He suggested going back to the way it was previously done; using the existing survey, even if it is 25 years old. In most cases none of these buildings have ever changed. Upon review of the building, if someone finds something that is not correct, then a new survey can be requested. Asked if this regulation would apply to individual homeowners who could be putting an addition on their house.

Mr. Sulkis: Cited section 7.1.2 which is Site Plan Elements for new construction. So it is for applications that are subject to site plan review. So this would not affect a regular homeowner. It would affect new commercial.

Mr. D'Amato: Asked if there is an existing building that is not new and if the use of the building is changed would a $5000 survey would be required?

Mr. Sulkis: Responded that this was a public hearing, not a public debate. Corrected himself in that this regulation change would affect people who are in the coastal area management site plan review area, because they must have a current survey.

A brief exchange took place between the Chair and Mr. D'Amato. Mme. Chair stated the Board would take Mr. D'Amato's comments into consideration.

John Grant, JLG Designs, 11 Ettidore Park. An A-2 survey is not required for every application that would be submitted for review, therefore, there should be wording, such as, "at the discretion of the staff". He said he understands that surveys would be required if you are doing a change of use of a building because

of parking requirements and clearances, etc. In a coastal area you would need to know where the flood zones are. However, the word "current" has two meanings; one in time and one in physical contents. He recommended the word "current" survey be defined as to whether it is a survey within the last five years, or is it meant a survey that is currently showing exactly what is on the property. It may have been 20 years ago, but it is still current because nothing has changed. He believes not every project requires a survey; in addition, thinks the word "current" should be defined.

Ray Oliver, Architect: With regard to the survey, the GIS system in the City is incredibly accurate. It has not been used to its full potential, but it has the ability to identify a lot of the changes that have happened. So if there is a change from the actual drawn survey shown, it is easy enough for the planner or assistant planner to identify that change from the GIS data and then make the requirement from that point on. To the extent that you can save the applicant money and a great deal of time, and because the surveyors are not always available and sometimes it can take up to six months to a year to get that information, it would be a big benefit to moving the process along more quickly.

Mme. Chair: Agreed.

9. **Sec. 8.3.6 Principal Building or Use** – A-2 property survey will be required.

Mme. Chair: Read the regulation:

> "If the Zoning Permit sought is for a principal building or use, all dimensions shown on the plot plan relating to the location and size of the lot to be built upon ***shall be submitted on an A-2*** property survey prepared by a Land Surveyor and/or Professional Engineer licensed in the State of Connecticut. This requirement shall be met when deemed necessary by the Zoning Enforcement Officer for any other building, structure or use. At the discretion of the Zoning Enforcement officer, the lot shall be staked out on the ground before construction is started."

The word "current" will be added and will be subject to the definition that is determined.

Anyone to speak in favor (No response) Anyone in opposition?

Brian Lema, Esq. Stated this is where his primary concern lies. It states that the zoning enforcement officer has some discretion. Thinks it would be helpful not only for the zoning office but for the Board and applicants to have an express statement that if in fact there is no change being proposed to the existing site

improvements, that no A-2 survey would be required. The difficulty is with the first sentence in that it is very broad in scope and could conceivably require an applicant to submit an A-2 survey even though the applicant is not proposing any changes to the existing site plan. If there is a change in use of the building, whether it be a change in tenant or change in type of use, if that change is permitted and an application is filed with no site plan changes, why require the applicant to go out and expend and update the survey?

Mme. Chair: Stated the Board was covering that by saying "the requirement would be met when deemed necessary".

Mr. Lema: It would be helpful to have it expressly stated. The staff will have a fair amount of discretion but if there are no changes to the site plan, there would be no need to submit a survey.

Mr. Ferrante: Asked for clarification if Mr. Lema meant that if there is an existing A-2 survey, whether it be three weeks old or 30 years old, if that reflects the current state of affairs, then the A-2 survey should be accepted.

Mr. Lema: Yes.

Mr. Ferrante: Continued…and he would have no objection to the Board requiring an A-2 survey if it reflects the current state of the property?

Mr. Lema: If an applicant is able to file an application or seek a permit for a change of use to an existing structure and site plan, and there are no changes to the site plan proposed, then there should be no need to update the survey.

Mr. Ferrante: If there was an original survey, even if it was 30 years old, would he object to Planning and Zoning requiring an A-2 survey?

Mr. Lema: If it wasn't required 30 years ago, does not know why it would be required now. There is a building that presumably was approved at some point in time and there has to be some record of the approval in the file. Ideally there would an historic map or survey, but it may not be to an A-2 standard. There are a lot of buildings in town that predate zoning and may not have a survey of record. You have a structure and improvements that are there that have existed for a long time and there are no changes there. Fails to see the need for a survey, if in fact there is no change proposed to those site improvements.

Mr. Ferrante: If there is an old map or an old survey, how does the Board, not measuring things in the field, know there have not been changes?

Mr. Lema: Responded that is an enforcement issue, not an application issue. Requiring a survey will not address that problem. All a current survey will

establish is tell you the location of the current improvements. It will not tell you what was initially approved or where they were 20 years ago.

Mr. Ferrante: If someone brings in an old survey and it turns out there have been additions which have not been approved or are not of record, how does the Board know that the survey presented is current in terms of reflecting the current state of the property?

Mr. Lema: You would only know with an updated survey. But what would be the difference, if the applicant now is not proposing any changes? If there were changes made without zoning approval, then the Board and the staff have remedies available to them.

Mr. Ferrante: Except the Board does not know that illegal changes have been made.

Mr. Lema: But a survey will not tell you that either. It will just tell you what the present conditions are.

Mr. Ferrante: Stated his point is that a current survey will tell the Board.

Mr. Lema: Said he understood what Mr. Ferrante meant, however, there are circumstances, namely, when there are no changes being proposed to the site plan, where a current survey would be necessary.

Stated this proposed section is for zoning permits. For example, someone may request a zoning permit for occupancy or to reopen a restaurant or to change from one type of use to another from a medical use to a legal use. You are seeking a zoning permit for that use. Under those circumstances, even if there had been changes over the years, why would the applicant have to submit a survey when all he is seeking is a zoning permit for the use.

John Grant, JLG Designs, 11 Ettidore Park. Opposed to this regulation in the way it is worded. The section it is in is under items that are supposed to be placed on the site plan that is presented with the application. The existing regulation does not make any sense. This proposed regulation is the same thing. Does not believe every application requires an A-2 survey. Does not think the citizens and property owners should have to do a survey every time they want to make a change of any kind. In the previous regulation, 7.1.2, the Board went to lengths to spell out the words “site development plan” and break that out between the definition of “survey”. In this proposal the word “plot plan” is used. Again there is no definition within the regulations as to what a plot plan is. Said he thought the Board should do a rewrite of this particular section and change the word from “plot plan” to “site development plan”. Also, instead of saying

"shall be submitted on an A-2 survey", it should say that the "site plan submitted shall be based on an A-2 survey". Believes that would fit properly with section 8.3.

He added the GIS system in Milford is accurate and has been used by the staff in the past to gather information. It should be utilized more and not pass the cost onto the homeowners or property owners to come up with a survey every time.

10. **Definition of BUILDING, ACCESSORY** – Proposed text change.

The Chair read the proposed text regulation change:

> **BUILDING, ACCESSORY –** A building which is clearly incidental or subordinate customarily in connection and located on the same lot with the principal building or use; and the ***square*** footage ***(footprint)*** and floor area of such accessory building does not exceed 50% of same of the principal building ***(footprint)***. ***Decks, open porches or stairs shall not be included in determining the 50%.***

Asked if anyone wished to speak to this proposed change.

Brian Lema, Esq.: Opposed to this proposed change. Earlier this evening the Board proposed certain changes that would increase the parking regulations under the regulations. This proposed change to the regulation actually makes it more difficult for property owners to provide parking, (in this case enclosed parking in a garage), and to provide parking that the Board is seeking in its earlier regulations.

This problem does not occur in a vacuum. Many residents go to the ZBA for variances on homes that have small footprints and there is not enough room to build a two-car garage on their property. There are a number of such structures in town, which are primarily capes or older structures. A property owner with a two-story house on a small footprint cannot construct a two-car garage in many instances, especially if decks and porches will now be excluded from the calculation, limiting the footprint even more.

He questioned the need for the 50% restriction because it does not accomplish the result. If the Board wants to limit the size of a garage, then limit the size of the garage. Every property owner should be able to build the same size garage in this town, assuming they can meet the setbacks. People should not be penalized because they happen to live in a cape, as opposed to a ranch. So, having a smaller footprint does not have any relationship to the size of the accessory structure. If the aim is to restrict the size of the accessory structure, then there are other methods to do that where they are controlled by the setback

regulations. This is a perfect opportunity to address a problem that creates a number of variance applications before the ZBA, where property owners come in and they say they have a very small house footprint and need to construct a garage. This regulation would prohibit them from doing that without a variance in far too many instances and makes the situation worse.

Requested that the Board take a look at this regulation and consider an entirely new definition that would actually specify the type of garage that people could build, since this appears to be primarily where it will affect this regulation.

Mr. Goodrich: Noted that he thought the Board was helping property owners with this definition change. The word "footprint" was used, because in some places garages have second floors and that space is not being counted any more. Decks, open porches and stairs are not being counted, which could have been counted before. Believes the Board is allowing homeowners to make accessory structures bigger. Asked if Mr. Lema thought thought that "50%" should be eliminated.

Mr. Lema: Read the proposed regulation change to mean that decks, open porches and stairs to apply to the primary structure or principal building. He read the preceding sentence which indicated that the new provision would exclude decks, open porches and stairs on the principal building from that 50% calculation, which would reduce the footprint of the principal structure even more.

John Grant, JLG Designs, 11 Ettidore Park, Milford: Stated he took a typical cape style house and did the calculations on it as far as the regulation. As was mentioned before, the Board is requiring two cars to be off street parking for a single family residence. Most of the houses in Milford are either capes or ranches or split ranches. He calculated what would be the minimum requirements for somebody to build a two-car garage and get it past the building department for the requirements. A two-car garage would be 20' x 23', or 460 SF. A typical cape house is 25' x 33' and would have a footprint of 825 SF. Under the proposed regulation, if one-half of that measurement was taken (412 SF), a two-car garage could not be built. The proposed regulation also states 50% of the floor space. If the outside walls of a house are removed, there is even less square footage remaining, so 50% of that comes to 408 SF remaining. A one car garage could be built, but not a two-car garage.

Using the old method, (which is not broken and should not be fixed), for a typical cape, which usually has a second floor and add 297 SF of space, which would total 1100 SF +/-, and take 50% of that, you could build the 2-car garage because it would meet the necessary square footage. This would also allow for a full storage space above.

Commented he does not know why this definition is being changed, other than attempting to make it simpler for calculations, but the old calculations the way they are written now works perfectly, with allowing a person to build a two-car garage to meet the requirements for off-street parking.

Also, the new regulation is redundant by saying 50% of the footprint and then 50% of the floor space, but then has footprint after it, which means you are only counting the floor space for the first floor. No matter how you look at it, square footage of the footprint or square footage of the first floor, 50% is still the same number.

Mme. Chair: Thanked Mr. Grant for the time and effort he put into reviewing the proposed change.

Louis D'Amato, 183 Quarry Road: Asked how accessory building applied to commercial property with regard to this proposed change. What is an accessory building with respect to commercial property?

Mme. Chair: Replied she would have to look at the regulations to answer that.

Mr. Sulkis: Stated this was a public hearing and not a debate and he could give testimony and opinions.

Mr. D'Amato: Gave an example of the question to which he was seeking an answer.

Mme. Chair: Stated she could not answer the question at this time and would have to consult the regulations. Said she would need more clarification on Mr. D'Amato's comment if he was making one.

Mr. D'Amato: Wanted to know how the proposed change applies to the commercial application and what is an accessory building? In residential it appears to be a garage or perhaps a recreational structure. But what does it mean when it comes to commercial property?

Mr. Sulkis: Depending on which commercial zone the property is in, that particular section of the regulation speaks to the principal and accessory structures for that zone.

Alderman Phil Vetro, 10 Carmen Road. Asked to go on the record as being in full agreement with Messrs. Lema and Grant.

Mme. Chair: Declared the public hearing closed

[A recess was taken from 8:51 to 8:58 pm]

MINUTES FOR ONE (1) PUBLIC HEARING
OF THE PLANNING & ZONING BOARD
HELD TUESDAY, OCTOBER 20, 2009; 7:30 P.M.
CITY HALL AUDITORIUM, 110 RIVER STREET, MILFORD

D. NEW BUSINESS

3. **3 SEAVIEW AVENUE (ZONE R-10)** – Petition of John Wicko, Architect, for a Coastal Area Site Plan Review to construct a new single family residence on Map 6, Block 84, Parcel 46, of which Larry and Hali Moses are the owners.

John Wicko, Architect, 50 Broad Street, Milford. The application is for a Coastal Area Site Plan Review. Reviewed the CAM Report and existing survey. Member of the Laurel Beach Association. There is a stone wall and a brick walk that runs the whole length of Seaview Avenue. This is a vacant parcel on the western end of Seaview Avenue in a developed neighborhood. The parcel's dimensions are long with a house to the left and the right of it. There are some trees to the back of the property at the street. The beach is outside the sea wall.

The CAM and plans were reviewed by John Gaucher of the DEP and accepted the proposed development. A question was raised about the storm water runoff and whether the best storm water practice was being used. A 6-foot drywell was proposed. DEP preferred that the roof runoff would be surface drainage. Worked with the City Engineer and came up with a compromise that satisfied everyone, where a low infiltration system will be used. All city department reviews came back with favorable responses. The reviewing engineer's comments, 1 through 5, will be met.

Reviewed the site plan and floor plan of the proposed 5,000 SF house. The house is in the X flood zone and has a basement. The beach is in the VE zone. Described the means that would be used to prevent water from entering the structure. Described the design and living space of the proposed house, which will be 30-feet high.

Mrs. Harrigan: She and Mr. Wicko had discussed in detail the information relating to Piping Plovers along Laurel Beach. The construction staging is going to be oriented so that they do a lot of the heavy exterior work before plover nesting season. That information is in the CAM report.

Mr. Vetter: Asked if the house was 2-1/2 stories or three stories? There appears to be windows on a third story.

Mr. Wicko: The windows in that area are esthetic. There is a potential for a third story to be there, which is permitted. The intent at this time is for an attic area.

Mr. Goodrich: Motion to approve.

Ms. Rose: Second.

All members voted in favor. Motion passed unanimously.

4. **<u>264 BROADWAY</u> (ZONE R-7.5)** – Petition of Mark Pucci for a Coastal Area Site Plan Review to construct a new single family residence on Map 9, Block 130, Parcel 17A, of which Anna Lamorte is the owner.

Mark Pucci spoke on behalf of Mr. and Mrs. Frank LaMorte who would like to construct a single family, three story home that sits next to the public access way on Hauser Street. There is a 30-foot paper street next to the property. The neighborhood is developed. This is one of the last remaining vacant lots. Received favorable comments from all the city departments. The surveyor and architect are present to answer any questions.

Mrs. Harrigan: This application is basically no different from the prior application. DEP had recommendations, as did the on-call engineer with regard to shallow infiltration on the site. These issues were addressed to the satisfaction of all parties. There is some beach grass located on this site which will be protected during the construction phase. There are no identified piping plovers in this particular area.

Mme. Chair: Asked if all four points of Mr. Gaucher's memo dated August 31, 2009 were addressed.

Mrs. Harrigan: Replied that the flood maps that are used were different from the ones Mr. Gaucher referred to and therefore the interpretation of the base flood elevation was different. She explained how the flood zone changes city-wide can be interpreted differently due to different map interpretations.

Mr. Liddy: Asked who was responsible for the flood compliance certificate?

Mrs. Harrigan: Planning and Zoning does manage the City's National Flood Insurance Program compliance. In her conversations with the State's National Flood Insurance Program Coordinator, she said that either could be used, as long as it is specifically referenced. They are on the cusp of accepting the new maps, most likely by summer 2010. The new maps should be in effect when the house is completed and as long as the datum is consistent, there should be no problem in the issuance of the certificate.

Mme. Chair: Questioned Mr. Gaucher's comment concerning landscaping by the public access, in particular #2 and 3.

Mr. Pucci: None of the material will be stockpiled on site. Everything will be removed and stored off-site. There is an existing fence at the property line of the public access. The current fence will be replaced with a new aluminum styled fence and plantings will be put in when the project is completed.

Mme. Chair: Did not see this in the site plan.

Ms. Shaw: Did not see a design for the fence.

Mr. Pucci: The rendering shows it will be an open aluminum fence, four-feet high which will run from the front to the back corners of the property.

Mr. Ferrante: The house fronts on Hauser Street. That is the area that Mr. Gaucher wanted landscaped. Does not see how that can happen in that front area. Thought the front of the house should be on Seaview. Since the front is on Hauser Street, does it comply? Concerned that the public road will not be maintained.

Mrs. Harrigan: Clarified that this is not a roadway, but sand. Once you get past the improved section of Broadway it becomes sand and is just an unimproved right-of-way. There is existing vegetation within the public right-of-way. She had discussed Mr. Gaucher's comments with him and due to the narrow nature of the lot it is not feasible to save the scrubby looking pines that are in this area. Once the excavation begins it can be determined whether a few trees can be saved. Due to the unusual circumstance of this area, new tree plantings would take up a large amount of space and the zoning regulations do not require it.

Mr. Ferrante: Perhaps the house is too big for the property if a few trees cannot be saved.

Mme. Chair: This is a matter of compliance with the regulations.

Mr. Bender: Asked if the beach grass on the site had been photographed and documented on the site.

Mrs. Harrigan: Said this was done.

Ms. Rose: Asked about the removal of one of the private property signs.

Mrs. Harrigan: Explained that where properties are directly on Long Island Sound and extend to the mean high water, the City's sign regulations allow the property owner to place one sign on the border of their property that indicates it is a private beach.

Ms. Rose: Motion to approve the Coastal Area Management Site Plan application for a new single family residence on 264 Broadway.

Mr. Goodrich: Second.

Mr. Ferrante: Asked about the setbacks of the property.

Mrs. Harrigan: A variance was obtained in August allowing a 10 foot setback from Hauser Street instead of a 20 foot setback.

All members voted in favor of the motion. The motion was approved unanimously.

5. **33 EAST AVENUE (ZONE R-7.5)** – Petition of Thomas Collucci for an extension of time to obtain a zoning permit for a Coastal Area Site Plan (previously approved on 12/16/08), located on Map 38, Block 558, Parcel 90B, of which Thomas Collucci is the owner.

Mr. Sulkis: Stated the extension would be from 12/16/09 to 12/16/10.

Mrs. Patterson: Motion to approve the request of Thomas Collucci for a one year extension of time to apply for a zoning permit for new home construction at 33 East Avenue.

Mr. Bender: Second.

All members voted in favor.

E. PROPOSED REGULATION CHANGES

Mme. Chair: Heard a lot tonight and a lot to discuss at the next meeting. Asked Staff if the rewording of the proposed regulations regarding poultry and tents would be ready for a public hearing in November.

Mr. Sulkis: Yes.

Mme. Chair: Would like to discuss the sign regulations at the next meeting and bring them to a public hearing in November.

Mr. Sulkis: Interjected that would not be possible as the Board has to discuss the regulations and then they have to be circulated to the various agencies, so the earliest they could be brought to a public hearing would be December.

Discussion ensued regarding the possibility of new members being elected and that the sign regulations may not go to a public hearing until January. Present members will have their input regarding the proposed regulations, even if they are not in office next year.

F. LIAISON REPORTS – None.

G. APPROVAL OF MINUTES – (10/6/09)

Mr. Goodrich: Motion to approve.

Mr. Vetter: Second.

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

H. CHAIR'S REPORT

The Chair stated she was out of town at the last meeting and was unable to comment on the KRIT report and subsequent abolishment of the Building and Planning and Zoning departments and the establishment of a new Department of Land Use. She has serious questions about the speed with which this was done and concerns about the recommendations in the KRIT report itself.

Sees that the die is cast and now they have to wait to see how this unfolds and how it will impact the permitting process and the Board. She expects the Board will be given the opportunity to have some input in the process as it moves forward.

She and Mr. Sulkis have been updating the Members' Green Book, which should be ready in January for those people who will need them.

I. STAFF REPORT: None.

Mr. Vetter: Motion to adjourn.

Mr. Liddy: Second.

The next meeting will be held on **Wednesday**, November 4, 2009.

The meeting adjourned at 9:36 p.m.

_____

Phyllis Leggett, Board Clerk