

MEMBERS PRESENT: Rich Carey, Howard Haberman, Fred Katen, Ed Mead, Nanci Seltzer

ALTERNATES PRESENT: David Hulme

STAFF PRESENT: David Sulkis, City Planner, Linda Stock, Zoning Enforcement Officer; Rose Elliott, Clerk

The meeting was called to order at 7:01 p.m.

A. CONSIDERATION OF AGENDA ITEMS

1. **90 Heenan Drive** (Zone CBDD) Leo P. Carroll, attorney, for 90 Heenan Drive, LLC, owner – appeal the decision of the City Planner to rescind a Certificate of Zoning Compliance. Map 91, Block 807, Parcel 2.

Leo Carroll, 26 Cherry Street, attorney for Louis and James D'Amato, stated he had two procedural issues before he begins. First, he said he would like Mr. Sulkis be removed from sitting with the Board and that he sit in the audience with the rest of the public. He is not a member of this Board nor is he a staff member for the Board. He feels this is the appropriate place for him to sit as the hearing will be long and difficult. Secondly, he wants it made clear that under CT Case Law, no undue deference is to be given to Mr. Sulkis or his opinion. Nothing outside the record is to be considered. An otherwise valid Certificate was issued to Mr. D'Amato in May 2008, and it was attempted to be rescinded by Mr. Sulkis without cause, reason, due process or hearing. He asked anyone who was contacted or lobbied by Mr. Sulkis to recuse themselves. Mr. Katen replied that Mr. Sulkis is a member of the City and all the representatives of the City, sit on that side of the room. He denied Atty. Carroll's request. He then asked the Board to speak up if they have been approached by Mr. Sulkis. No one spoke. Atty. Carroll began by saying this serious matter began in May of 2008, when he approached then Assistant City Planner, Peter Crabtree, under Sec. 6.4.1 of the Zoning Regulations, which provides for a Certificate of Zoning Compliance for non-conforming lots. After passing out paperwork to the Board, he then continued that on April 9, 2008, he forwarded a letter to Mr. Crabtree, outlining the compliance of Sec. 6.4.1. Subsequently, Mr. Crabtree reviewed the paperwork and after additional information was provided to him, issued a placard and it was posted for 15 days without appeal. A Certificate was then issued for a non-conforming lot as to area. On December 19, 2008, Mr. Sulkis, without warning or advanced notice, attempted to rescind the Certificate. They are here tonight to appeal that attempt. The purpose of this meeting is not to review what Mr. Crabtree did but to review what Mr. Sulkis did. They are asking the Board to overturn the action of Mr. Sulkis in attempting to revoke the Certificate. There is no authority allowing the revocation of a Certificate where no violation has occurred and none existed. Sec. 8.13.1 of the City of Milford Zoning Regulations requires that an injunction, mandamus, abatement, summons or other appropriate action to prevent the violation be taken. This was not done. It was a unilateral decision to overturn a prior action of a zoning officer without warning, without notice and without due process. Nothing has changed except that Mr. D'Amato relied on the Certificate of Zoning Compliance and began the design work for a complying project for the property. He provided plans to begin development work. Mr. Sulkis' actions are an attempt to circumvent the property rights of Mr. D'Amato and to prevent

the applicant from filing an application with Planning and Zoning for the future approval of the property. If his actions are allowed to stand, no one's Certificate of Zoning Compliance is safe. Any Certificate of Zoning Compliance within the City, can be revoked and this is not right. He repeated that no deference is to be given to Mr. Sulkis as the City Planner and cited a case that states clearly the Zoning Board of Appeals is the reviewing Board and makes the determination as to whether or not Mr. Sulkis' actions were proper and appropriate. He wondered how his actions could be considered proper and appropriate when it was done without notice, without warning, without a hearing and without due process. The applicant followed the procedure of Sec. 6.4.1 of the Regulations and no one took an appeal; it is a valid Certificate of Zoning Compliance. Mr. Sulkis took it upon himself to attempt to revoke the Certificate in detriment of Mr. D'Amato's rights.

Ms. Seltzer asked for clarity on what brought this to Mr. Sulkis' attention to which Atty. Carroll said they had met with Mr. Sulkis on three or four occasions over the course of six months to discuss the development of a manufactured home park just like the one next to it, the relocated Ryder Park. They were in the process of redrawing plans for the third or fourth time, as is necessary with the City Planner, when they received his letter on December 19, 2008.

Chrmn. Katen said it would be hard to ignore the reason Mr. Crabtree issued the Certificate when there was no need to.

Atty. Carroll said it doesn't matter why Mr. Crabtree made his ruling, it matters why Mr. Sulkis made his ruling. They are not appealing Mr. Crabtree's Certificate as that was done long ago; they are appealing Mr. Sulkis, who has erred here. He could not take an appeal of Mr. Crabtree so he attempted to circumvent the law and to rescind the Certificate.

Chrmn. Katen said he understood what Atty. Carroll was saying but still felt the Board has to find out why there was a Certificate issued when one didn't need to be. He then asked the question of Mr. Sulkis, as the City Planner.

Mr. Sulkis said the Board has a copy of the memo sent to them when the appeal was originally scheduled for the January meeting.

Atty. Carroll said he had never seen that memo to which Mr. Sulkis said the memo has been in the file since December 19, 2008 and either Atty. Carroll or Atty. Curseaden has been in the office numerous times reviewing the file. Mr. Sulkis continued the Certificate was issued for a non-conforming lot. The problem is the lot is totally conforming. It meets the Zoning requirements for that zone. He would issue the applicant a brand new Certificate of Zoning Compliance without the words "non-conforming". That is why he did what he did.

Ms. Seltzer asked Mr. Sulkis to clarify why the Regulations say a minimum of 10 acres in one place and 10,000 square feet in another place to which Mr. Sulkis said if the applicant were seeking a single family cluster development, they would need a minimum of 10 acres. The issue is the Certificate says this is a non-conforming lot, which it is incorrect because it completely complies with the zoning requirements.

Atty. Carroll replied that the purpose of the Cascade Boulevard Design District, it is to create residential areas where there are features for environmental protection. Because of these features, sites with more densely clustered single family housing in exchange for retention of large areas of open space are encouraged. No practical use of this property can be made except for single family cluster development like the

relocated Ryder Park. If it wasn't created for that then this is spot zoning. The lot was undersized the day the Planning and Zoning Board changed the Regulations to require 10 acres.

Mr. Sulkis added that the zone allows for single family homes. There is nothing to prevent the owner of the property from building single family homes.

Atty. Carroll responded that as a practical matter, that is impossible due to the topography, the nature of the surrounding area and the relocated Ryder Trailer Park next door. This zone was created for cluster development, manufactured housing, which are single family houses.

FAVOR:

Peter Crabtree, 64 Stanley Street, former Assistant City Planner, said the letter from Mr. Sulkis states they have met on several previous occasions. After meeting several times, and then deciding the application is not good is improper. There is no irreparable harm here. At worse case, the Planning Board would have to listen to Mr. D'Amato and decide that it is a terrible application and deny it. To him, it is unproductive to try to upset the process at this late date.

Chrmn. Katen asked why the Certificate was issued when it appears that it didn't need a Certificate to which Mr. Crabtree replied the section of the Regulations that allows that type of housing required the 10 acres, not the 10,000 sq. ft. That was the purpose of putting the sign up because it is not a walk-in permit. The sign allows someone who thinks it is wrong to come forward and appeal it so these issues don't come up after it is relied on or construction begun. This is why the posting of a sign was incorporated into the Regulations.

Ms. Seltzer asked what defines the 10 acres specification and the 10,000 square foot specification.

Mr. Crabtree said the 10,000 sq. ft. is listed for some uses and the 10 acres is listed as a minimum for other uses. It was for the other uses that the sign was posted. It requires a Special Permit and needs to go before the Planning Board.

OPPOSITION:

Stephen Povroznik, 17 Marble Lane, said he agrees with the City Planner and he should know as he was on the Planning and Zoning Board when these Regulations were written and he understands the intent. This zone was not designed for only clustered or manufactured homes; single family homes can be built there.

Larry Nugent, 16 Barn Lane, also agreed with the City Planner and feels the application should be denied.

Albert Hricz, 135 McQuillan Drive, agrees the application should be denied. The hillside area is very unstable and any work would be detrimental to that section.

Jim Flynn, 5 Marble Lane, agreed the application should be denied.

Mr. Sulkis agreed there is no violation. He did what he did because he found a mistake. He said Atty. Carroll is trying to give you the impression that there is no ability when a mistake is made for correction. If Atty. Carroll disagrees with what he did and if he disagrees with what the Board does tonight and he wants to take it further, that is his right. With all due respect to Mr. Crabtree, he disagrees with what he did. No

permits were ever issued on this property. It is a complying lot and a new Certificate of Zoning Compliance could be issued. It was complying the day the Planning and Zoning Board created that zone and the day Mr. D'Amato bought it. It is simply an administrative mistake.

REBUTTAL:

Atty. Carroll said Mr. Sulkis says a mistake was made. The fact of the matter is when a mistake is made, you can't just say oops and rip the paper up, which is what he tried to do. He should have come before the Planning and Zoning Board and had a hearing as to the validity of the Certificate of Zoning Compliance. He didn't do that. He took it upon himself to issue a rescission letter, which is wrong. Everyone in the City of Milford should fear their Certificates of Zoning Compliance could be revoked if Mr. Sulkis sees a mistake. Even if it is a good faith mistake, it still can be revoked. People depend and rely on those Certificates. We ask that you reverse the decision. If Mr. Sulkis had acted by the book, we wouldn't be here tonight. Mr. Crabtree's interpretation is just as valid as Mr. Sulkis'. We are looking at Mr. Sulkis' action here, not Mr. Crabtree's, in unilaterally trying to revoke a Certificate of Zoning Compliance without due process.

The hearing was closed.

DISCUSSION:

Mr. Carey said he could see Atty. Carroll's point where his client was issued a Certificate of Zoning Compliance and now it's being taken away. He wondered if there was a way to get a ruling from the City Attorney on what the implications were here. He could also see Mr. Sulkis' point as it does appear there was a mistake made. But what would have happened if the project had gone forward and then the mistake was found? Mr. Mead commented the Certificate was issued back in May of 2008 and Mr. Sulkis' letter was dated December 19, 2008; seven months later. Why the lengthy time lapse before the matter was brought up and the letter sent? Ms. Seltzer commented that if the applicant was talking to Mr. Crabtree about doing something similar to Ryder Park, the Regulations clearly state it is a Special Use and the minimum area is 10 acres. She believed that is where Mr. Crabtree took his information from. The applicant is looking to do a single family clustered housing project, which falls into the 10 acre component and not under the 10,000 sq. ft. component. Therefore, her perception is to agree with Mr. Crabtree's assessment. Mr. Carey said the Certificate was already issued and a significant amount of time has passed. Now it is being taken away from the applicant. He repeated he would like to get clarification from the legal department. Mr. Haberman agreed and said he wanted to know the process. If something has already been issued and is deemed incorrect, what is the process to correct it. Does Mr. Sulkis have the authority to do it administratively or does Sec. 8.13.1 of the Regulations apply? Mr. Sulkis stated according to the conversations he had with the City Attorney, the answer is yes, he can do it, to which Atty. Carroll objected saying Mr. Sulkis is not a member of the Zoning Board of Appeals and should not be participating in the discussion. Chrmn. Katen agreed. Mr. Haberman repeated his statement that he would like procedural clarification. Mr. Mead commented the

Board has to decide on Mr. Sulkis' letter and not what Mr. Crabtree did and agreed that clarification was needed. Mr. Mead asked if when the placard was posted, was there any paperwork in the file stating what the proposed use was. The Board then reviewed the file. Ms. Stock noted the original request to Mr. Crabtree from Atty. Carroll came on April 9, 2008 and does not state the proposed use. Chrmn. Katen said it sounded like Mr. Crabtree issued the Certificate without knowing officially what the use would be to which Ms. Stock stated the use was not written down.

Mr. Carey made a motion to table the item until further clarification could be obtained from the City Attorney with Ms. Seltzer seconding. He stated his reason is he is not comfortable with the fact that the Certificate was issued and is now being taken away. The motion carried unanimously with Ms. Seltzer, Messrs. Carey, Haberman, Mead and Katen voting.

2. **90 Heenan Drive thru 225-249 and 205-215 Research Drive** (Zone CBDD & ID)
Leo P. Carroll, attorney, for 90 Heenan Drive, LLC & D'Amato Investments, LLC, owners, respectively – request to vary Sec. 2.5.5 to allow 50' private right of way access from Research Drive to 90 Heenan Drive. Map 91, Block 807, Parcel 2, 13A45, 13A6.

Leo Carroll, 26 Cherry Street, said the applicants are requesting the variance to create a 50' private right-of-way to the upper portion of the lot. There is a slope of about 48' covering a distance of slightly over 100'. It is impossible to traverse this slope with any safe road or cutbacks. He submitted pictures to the Board and explained each one. The configuration of the slope is such that you cannot reach the upper reaches of this property from Heenan Drive. What is being proposed is a 50' private right-of-way to comply with the Zoning Regulations. The topography is the hardship.

Mr. Mead asked if there is a temporary road already put in.

Mr. D'Amato, 183 Quarry Road, said they went in to clear the debris and had to put a road in because the elevation drops so much at that point they had to put in some material to gain access.

Mr. Mead asked what portion of the four acres is at the top to which Mr. D'Amato said about half.

Ms. Seltzer said the easement would go from the commercial area to the residential area to which Atty. Carroll agreed.

Ms. Seltzer asked if that would be the only access in and out of the property.

Atty. Carroll said the access would be from Heenan Drive for the lower area but for the upper area, the access would be through the industrial property. He added they have spoken with the Police Dept. and the Fire Dept. and they didn't have a problem with it. The purpose of the zone is to preserve some natural features, such as the topography, which is what they are going to do.

Mr. Hulme asked if the access from Heenan Drive would connect the access to Research Drive to which Atty. Carroll said there would be some type of barrier or buffer which would be created to prevent people from going up or down.

OPPOSITION:

Mr. Sulkis, City Planner, told the Board this is the wrong venue for what the applicant is proposing. What they are looking to do is modify a Site Plan of the adjacent industrial park to gain a private access way to this other property. A property, which under the Regulations, has access. It may not be the best access, but there is access on Heenan Drive. Mr. D'Amato knew when he bought this property it had a large gully and would be difficult to traverse from Heenan Drive to the back part of the property. It is a modification of Site Plan approval and is under the purview of the Planning and Zoning Board. It is also a change of use, which this Board has no purview in; only the Planning and Zoning Board can change the use of a property.

Stephan Povroznik, 17 Marble Lane, agreed with the City Planner. It takes 10 acres for this cluster type development. They have only four acres containing a steep grade and wetlands.

REBUTTAL:

Atty. Carroll said they would have to go back before the Planning and Zoning Board to have the accessway approved and would modify the Site Plan for the other properties on Research Drive at that time. The Zoning Board of Appeals is needed to see the hardship different properties have.

The hearing was closed.

DISCUSSION:

Chrmn. Katen felt by approving this prior to getting the City Attorney's opinion is premature. Ms. Seltzer agreed with the Chairman. Mr. Mead also agreed and thought the Board should table the item. Mr. Haberman said if it has to go before the Planning and Zoning Board anyway, it could be handled there. The other Board members agreed.

Ms. Seltzer made a motion to deny with Mr. Haberman seconding. The reason is approval now would be putting the cart before the horse. The motion carried unanimously with Ms. Seltzer, Messrs. Hulme, Mead, Haberman and Katen voting.

3. **53 Pelham Street** (Zone R-7.5) Karen Fitzmaurice, owner – request to vary Sec. 3.1.3.9 to allow camper within front yard and 5' from side property line where 6' is required. CAM received. Map 29, Block 548, Parcel 6.

Karen Fitzmaurice, 53 Pelham Street, presented pictures to the Board. She explained her camper trailer is located 22 ½' from the street line. It is 11' from her front property line and 5' from the side property line. The camper trailer is a 21' 2007 Keystone Outback, purchased in October of 2007. From 1991 to 2007, she owned a 22' 1983 Lindy camper trailer, which was replaced when the new one was purchased. The current camper trailer occupies a slightly smaller footprint than the one that was there previously. Her lot is non-conforming and predates zoning. She doesn't have access

to the rear yard to store the camper trailer there. If it were placed closer to the home, it would impede access to the house in the event of an emergency. She would also like to keep it 8' from the shed to maintain clear access to the house. She added she has three cars and three parking spaces and the camper trailer has no impact on her parking issues. She and her family have used the camper trailer for travel for the past 18 years. She submitted a list of neighbors in favor of the application.

Mr. Mead asked why after 19 years, with the camper being in the same place, is she here tonight to which Ms. Fitzmaurice replied a neighbor complained.

Mr. Mead asked the neighbor is just complaining now?

Ms. Fitzmaurice said that was correct and added that unfortunately she and the complainant are also involved in a lawsuit over property lines.

Chrmn. Katen asked if the shed is in compliance to which Ms. Fitzmaurice said she has a permit for the shed. He added for 18 years this camper has been in the driveway and no one has complained. Was it illegal all this time?

Ms. Stock said she has never received any complaints on it and never did an inspection on it.

FAVOR:

Inaudible, 55 Pelham Street, said the trailer has never been an issue or a problem.

Tracy Donegan, 123 Beachland Avenue, supports the application.

Michael Donegan, 123 Beachland Avenue, supports the application as it obstructs no views or access. It blocks no fire or medical response access. The complainant cannot see the trailer from their property at 127 Melba Street. He submitted to the Board an aerial map that shows the applicant and the complainant's residences.

Bill Fitzmaurice, 53 Pelham Street, said this current trailer is slightly smaller than the previous unit and they have never had a complaint on it.

OPPOSITION:

Wanda Har, 127 Melba Street, submitted pictures and paperwork to the Board. She said there is no hardship for this variance. The owners created their own hardship by choosing to ignore the Regulations. The RV is located in the front yard and is not registered. There is also a boat in the front yard. It is an eyesore. This RV can also be used as an accessory apartment. The Donegans who spoke in favor cannot see the trailer.

REBUTTAL:

Ms. Fitzmaurice, said the previous camper trailer is no longer registered because she doesn't own it anymore; the new camper trailer is registered. She also doesn't own a boat and hasn't owned one in almost a year. When she did have one it was never stored on the property. It was stored year round at Port Milford. She doesn't use the camper trailer as an accessory apartment. She added the Donegans can't see the camper trailer and neither can the Hars.

The hearing was closed.

DISCUSSION:

Chrmn. Katen said for 17 years no one has complained and for 17 years it was in violation of the Regulations. Mr. Carey said they are here to vary the Regulations. Ms. Seltzer said the size of the lot is the hardship. Mr. Hulme said the neighbor directly affected by the trailer is in support of the application. Mr. Carey said what the neighbors have to say is irrelevant. What matters is whether there is a hardship or not, which there is, the width of their lot.

Mr. Carey made a motion to approve with Mr. Mead seconding. The hardship is the width of the lot. The motion carried 4-1 with Ms. Seltzer, Messrs. Mead, Haberman and Carey in favor and Katen voting against.

4. **432 Merwin Avenue cor. Pier Court** (Zone R-10) Brian Maslar, owner – request to vary Sec. 4.1.7 fences and walls to allow 6' high fence within front yard. CAM required. Map 81, Block 709, Parcel 6.

Brian Maslar, 432 Merwin Avenue, submitted photos to the Board. He had a 6' high, solid white vinyl fence constructed that contained the entire backyard. He didn't realize he had two front yards. He has 2 young children and put the fence up as a matter of safety. There is a slight slope in the backyard so the fence would keep any balls from bouncing away or from someone just walking by and picking up a kid. No views or sight lines are hindered on either street. He read a letter of support from his closest neighbors into the record. Part of the safety issue is he has an estranged father that he is concerned might do something.

Ms. Seltzer said the slope of the yard appeared to be 18-24 inches and asked if the fence could have been moved in 18-24 inches so it doesn't fall into the sloped area to which Mr. Maslar said the house is set back on the lot and they are trying to maximize the usage of their small backyard.

Chrmn. Katen stated the fence is right on the sidewalk.

Mr. Mead asked if a fence contractor put up the fence to which Mr. Maslar said that was correct, Discount Fence, formerly of Milford. They have since gone out of business. They didn't inform him of the fence requirements; although he admitted, as the homeowner, he should have looked into it himself.

FAVOR:

Joseph J. Prisco, 11 Riverdale Road, is in favor of the application. The street is very busy. He maintains his beautiful property.

OPPOSITION:

Marie Paoletta, 523 Orange Avenue, said she was in the same situation, as her lot is a corner lot. She applied for a variance to keep her 6' high solid privacy fence as she lived near a ballfield and was denied. She had to take down her fence. She is against the application.

REBUTTAL:

Mr. Maslar said he wished she could have kept her fence as well. As a parent of two boys, he feels the 6' high fence would contain them better than a 4' fence. He read a letter of support into the record.

The hearing was closed.

DISCUSSION:

Ms. Seltzer said she feels there are other options for the applicant. Chrmn. Katen said the fence is out of character with the neighborhood. Mr. Haberman said you feel for the applicant but it is right on the sidewalk, so he did have an issue with it.

Mr. Seltzer made a motion to deny with Mr. Haberman seconding. The fence does not conform to the Regulations. Mr. Carey added there is no hardship. The motion carried unanimously with Ms. Seltzer, Messrs. Mead, Haberman, Carey and Katen voting.

5. **106 Milford Point Road** (Zone R-5) David Pite, attorney, for Anthony Buono, owner – appeal the decision of the Zoning Enforcement Officer in her calculation of substantial improvement. Map 6, Block 85, Parcel 4.

Attorney David Pite, 41 Trumbull Street, said he is the attorney for the owner, Mr. Buono. Mr. Buono believes the denial of a building permit by the Zoning Enforcement Officer was done by an arbitrary and erroneous determination of substantial improvement. Mr. Buono submitted paperwork to the Board. The home was purchased in February of 2009 to be used as a summer home for the family. The owner met with Ms. Stock and was told an inspection was needed before a permit could be issued. On February 17, 2009, he met with Ms. Stock at the property. At which time, she said she believed the dwelling to be near the 50% renovation mark. She indicated she would need to come back with Chief Building Official, Tom Raucci. At the second inspection, February 20, 2009, Mr. Raucci raised concerns about certain items that would need to be replaced to meet health code standards. It was then, the Zoning Enforcement Officer indicated she believed it was over 50% renovation. Mr. Buono asked how it was calculated and how this determination was being made. The proposal for renovations was for \$15,400. The field card shows the house is valued at \$98,650. This doesn't come up to 50%. On February 24, 2009, a Memo for Record, was written by the Zoning Enforcement Officer, where she acknowledged that when the first inspection was done on February 17, 2009, it was near the 50% renovation point. Upon reinspection with Tom Raucci, it was determined that Mr. Buono would have to abide by all the new building codes, including new insulation throughout the home. It was at that point, the memo reads, that she believed the renovations would be well over 50% and advised Mr. Buono of that. No permit would be issued and the home would either have to be raised above the flood elevation or demolished and reconstructed. The home is old and it is impossible to raise it without destroying it. It only needs \$15,000 in renovations, so demolishing it and rebuilding it seems harsh and unfair. Mr. Buono checked the Regulations and found the definition of substantial improvement, page XI-13, states any repair that equals or exceeds 50% of the square

footage of the structure, does not include any project for improvement to comply with existing State or local health, sanitary or safety code specifications. All of the repairs are necessary to insure safe living conditions. The portion of the improvements which pushed it over the 50% level were specifically what Mr. Raucci stated were new improvements necessary to meet building codes. It wasn't at the 50% level on February 17, 2009. Only after the Building Official said all the codes had to be met did it get put over the 50% level. That should not be included in the calculation per the Zoning Regulations.

Anthony Buono, 16 New Haven Avenue, Orange, said he wasn't given a reason on how the 50% calculation was determined. He added the photos submitted to the Board show that the electrical is nearly 100% intact.

Chrmn. Katen noted that it appears that the 15 day appeal period has not been met. In answer to Chrmn. Katen, Ms. Stock explained Mr. Buono was notified on February 20, 2009.

Chrmn. Katen said the house looks uninhabitable from the outside. We rely on the opinion of the two officers from the City that inspected the structure.

OPPOSITION:

Linda Stock, Zoning Enforcement Officer, 70 West River Street, stated the appeal is untimely. The applicant was notified verbally February 20, 2009. The memo for record he refers to is just that, a memo for the record to be placed in the file. They asked for a copy of it and it was faxed to them. The date it was faxed is not his notification date. His notification was on Friday, February 20, 2009, which makes the 15 day appeal period over Saturday, March 7, 2009, and even if we allow the weekend, it would have been over on March 9, 2009. This appeal was filed on March 10, 2009. The application can be denied on that point alone. She stated she did want, however, to explain her position. She stated she was not aggravated when she met with the gentleman. It is her job to answer questions to the best of her knowledge. A permit was never applied for and denied. She submitted pictures to the Board. At the inspection, she noted the interior of the house was gutted. There were new windows, a hole in the roof, the ceilings were redone, no sheetrock, the insulation was ripped off, the toilet in the bathroom wasn't hooked up and there was no kitchen. There was nothing except the walls on the exterior. She added the previous owner must have used the upstairs as living space because there were air conditioners there. The calculation had nothing to do with the \$15,400 renovation amount. The Chief Building Official needed to be at the site with her for the building codes. This Board has seen many applications for over 50% reconstruct on their properties. Any renovations have to meet all the building codes, which doesn't necessarily mean, safety codes. She interprets the Zoning Regulations and is the person who goes on site. If you only have four walls standing, that is going to be over 50% renovation of any building.

Mr. Mead confirmed the 50% reconstruct has nothing to do with the monetary figure but only with the amount of demolition and reconstruction to which Ms. Stock said that was correct.

Ms. Seltzer said the attorney mentioned work the previous owner had done and asked if she was aware of what that work was.

Ms. Stock said she did not know what the work was, but it didn't matter who began the renovations, it is all counted in for the total calculation. She reiterated that Mr. Buono's actual notice was given on February 20, 2009. She could have sent a memo to the Board saying this application was untimely and have it denied or she could have sent it back to the applicant but she let it go through.

REBUTTAL:

Mr. Buono said the application was accepted along with his money, so if they are not going to approve the application based on that, he would like a refund. He still doesn't understand the calculation, but he only wants to renovate the first floor, only 500 sq. ft. They live in Orange and they just want to use it to come down to the beach. It doesn't seem like 50% to him.

Atty. Pite said it appears the calculation is based solely upon what the Zoning Enforcement Officer feels is the percentage, which is a dangerous and improper way of determining something this serious. Admittedly, the house is in disrepair, but how can Mr. Buono be told that rather than doing renovations, it is better to tear the whole thing down and rebuild. You are entitled to receive notice of the date when something is denied and when you can appeal it. He concluded Milford's own Regulations state when you are determining the 50% reconstruct calculation, you don't add in the items the Building Official says are needed, which are for safety and health reasons and to bring it up to code. Mr. Buono only wants to fix up an eyesore.

The hearing was closed.

DISCUSSION:

Mr. Mead stated the field card lists the living space total square footage as 704 sq. ft., with gross space as 1332 sq. ft. If you take the 704 sq. ft. and divide it in half, it is 352 sq. ft. The first floor is 506 sq. ft., which is more than 50%. Ms. Seltzer said upon reviewing the pictures, it appears there is more that is not there than what is there. And that is not even including the exterior. Chrmn. Katzen agreed and said we rely on the two zoning officials opinions who have been doing this over the years for the benefit of the City. He added the application was also untimely.

Ms. Seltzer made a motion to deny the appeal and uphold the decision of the Zoning Enforcement Officer with Mr. Carey seconding. The application was untimely and presents itself as significantly more than 50% renovation. The motion carried unanimously with Ms. Seltzer, Messrs. Mead, Haberman, Carey and Katzen voting.

6. **30 Thompson Street** (Zone R-5) William W. Petry, appellant, for Barbara A. Petry, owner – request to vary Sec. 3.1.4.1 side yard setback from 5' to 3.9' to construct addition. CAM required. Map 35, Block 441, Parcel 16.

William Petry, is requesting a variance to construct an addition. They are proposing to move the front of the house out 4' and the rear of the house out 10'. The addition will include a bathroom on the first floor, a bathroom, bedroom and laundry room on the second floor, along with a porch, small deck and a three car garage.

Chrmn. Katen asked how old the home was to which Mr. Petry said it was constructed in 1925. Chrmn. Katen noted the house predates zoning. There being no one to speak in favor or opposition the hearing was closed.

DISCUSSION:

Mr. Carey made a motion to approve with Mr. Mead seconding. The hardship is the width of the lot. The motion carried unanimously with Ms. Seltzer, Messrs. Mead, Haberman, Carey and Katen voting.

7. **3 Fairfield Street cor. Milford Point Road** (Zone R-12.5) Joseph & Claudine Murphy, owners – request to vary Sec. 4.1.7.1 to allow 6' high solid fence within front yard setback. Map 19, Block 234, Parcel 8.

Joseph Murphy, 3 Fairfield Street, said they are looking to put up a 6' high privacy fence on the property. His hardship is the non-conforming lot. The street is busy and the fence is also needed for safety reasons as he has a toddler. His neighbor behind him supports the application. He submitted photos to the Board and explained to the members where the fence would be located.

Mr. Mead asked if the hedges would remain to which Mr. Murphy said that hasn't been determined yet.

Mr. Haberman asked if the fence was for privacy?

Mr. Murphy answered for privacy and safety to which Mr. Haberman said shrubbery could be planted for privacy.

Ms. Seltzer asked if he had considered alternative heights and make-up of the fence.

Mr. Murphy said he did but felt this fence would be the best.

There being no one to speak in favor or opposition the hearing was closed.

DISCUSSION:

Chrmn. Katen said he felt there were other options the applicant could explore. Ms. Seltzer agreed.

Ms. Seltzer made a motion to deny with Mr. Haberman seconding. The reason for denial is the fence does not comply with the Regulations. The motion carried 4-1 with Ms. Seltzer, Messrs. Haberman, Carey and Katen voting in favor and Mr. Mead voting against.

8. **9 Lenox Avenue aka 155 Bridgeport Avenue** (Zone CDD-2) Anthony N. Benedosso, attorney, for Gregory J. D'Agostino, Jr., appellant, for GJD Enterprises, owner – request to vary Sec. 5.3.5.1(1) minimum sign setback from 10' to 2' to erect ground sign. Map 18, Block 10, Parcel 12.

Anthony Benedosso, 51 Cherry Street, attorney, said the variance request is only for the location of the sign; the sign itself is conforming. He submitted pictures to the Board. The visibility of the sign is blocked by the adjacent 3 story building, located at

149 Bridgeport Avenue, which is situated right on the sidewalk. The fact that there is no setback for this building creates the hardship for the property at 9 Lenox Avenue. An unsafe condition could be created for anyone looking for the business if the sign were installed where the Regulations state it should be located. The pole will be located 8' from the property line on Bridgeport Avenue and 2' from the property line on Lenox Avenue. The end of the sign will be 2' from the sidewalk. He spoke of a letter from the Village of Devon Revitalization Committee in support of the application. He submitted paperwork to the Board showing a variance application for the location of a sign, which was approved for Housatonic Glass at 70 Bridgeport Avenue, on May 11, 1999. He also submitted one petition signed by owners and tenants within 200' and another petition signed by owners and tenants outside of the 200'. Mr. D'Agostino has made many significant improvements to the property. The installation of this sign would be another improvement. The sign is an antique. It is over 50 years old and he is purchasing it from a car dealership that is going out of business. It would be in keeping with the character and the nostalgia that is inherent with the Village of Devon.

Chrmn. Katen asked how high the sign is to which Atty. Benedosso answered 18' high.

Ms. Seltzer asked if there was a photo of the sign.

Atty. Benedosso submitted a drawing to the Board.

Mr. Mead asked if the sign would be lit and what the size of the sign's base would be.

Greg D'Agostino, 149 Bridgeport Avenue, said the sign would be lit from within and the base would be 7"x7" and go into a 4"x4" pit.

FAVOR:

Robert (inaudible), proprietor at 177 Bridgeport Avenue, said he is in favor of the application as it will enhance the neighborhood.

OPPOSITION:

Elizabeth Ditchkus, 171 Housatonic Drive, said she is a member of the Devon Revitalization Committee and she voted against it. She has a copy of the map that is on file in Westport for this sign and the dimensions are not the same. There is a 5' difference in the dimensions. She asked the Board to deny the variance request or at least verify the dimensions. Mr. D'Agostino owns the building next door so he has created his hardship with his own building. The sign he is purchasing is located in Westport on a four lane highway. She believes it will be an eyesore situated on a small lot in the center of Devon. Millions of dollars have been spent down there and she is against this application. She repeated there is no hardship other than the one created by his own building.

REBUTTAL:

Atty. Benedosso submitted the sign calculations provided by ABC Signs, a professional sign company. He added that ownership of the adjacent building is not the issue. Mr. D'Agostino didn't put the building there, he acquired the subject property well before he acquired the building next to it. He didn't create this hardship. Ms.

Ditchkus is a member of the Revitalization Committee and the Committee has outvoted her. Mr. D'Agostino is a Devon businessman and is trying to improve the area. The hearing was closed.

DISCUSSION:

Ms. Seltzer stated she sees the hardship and knows how the Devon News juts out to the sidewalk and blocks the view. The sign is interesting and will work well with Bel Air Auto. Mr. Mead wondered if the new sign's design would fit in with the scheme of what is proposed for Devon. Ms. Seltzer stated it won't fit with the proposed light posts but it does fit with the business. It is a downtown area and will be eye-catching and help to draw in business. Mr. Mead wondered if the applicant has looked at the plans for the new sidewalks and streetlights in relation to where this sign is going to be. Ms. Stock believed if there were a problem with the location of the sign and the new sidewalks or streetlights, the Revitalization Committee would have known and brought it to the applicant's attention.

Ms. Seltzer made a motion to approve with Mr. Carey seconding. The hardship is the Devon News building which is large and blocks views. The motion carried unanimously with Ms. Seltzer, Messrs. Mead, Haberman, Carey and Katen voting.

9. **17 Belmont Street** (Zone R-7.5) Dan Vuono, owner – request to vary Sec. 3.1.4.1 side yard setback from 10' to 7'4" (includes overhang) to construct 2 story addition. CAM required. Map 71, Block 771, Parcel 6.

Dave Colantonio, 17 Belmont Street, stated they want to construct a 16'x18' addition which follows the existing lines of the house. The hardship is the size of the lot and it predates zoning.

FAVOR:

Catherine Krom, 12 Belmont Street, is in favor of the application.

There being no one to speak in opposition the hearing was closed.

DISCUSSION:

Chrmn. Katen said they are keeping with the existing lines of the house.

Mr. Carey made a motion to approve with Mr. Haberman seconding. The hardship is the lot is non-conforming and predates zoning. It would be in character with the neighborhood. The motion carried unanimously with Ms. Seltzer, Messrs. Mead, Haberman, Carey and Katen voting.

10. **32 Milford Point Road** (Zone R-7.5) Patrick Devine, appellant, for JNP, LLC, owner – request to vary Sec. 3.1.4.1 front yard setback from 20' to 12' to construct new single family dwelling. CAM received. Map 6, Block 88, Parcel 10.

Deborah Devine, 9 Maddox Avenue, stated this is a reapproval of a variance that had expired for a new single family dwelling. The hardship is the topography of the lot. They did not realize the variance had expired.

Chrmn. Katen confirmed this was previously approved and Mr. Carey asked if it is exactly the same variance to which Ms. Devine answered in the affirmative to both.

There being no one to speak in favor or opposition the hearing was closed.

DISCUSSION:

Chrmn. Katen said this application was previously approved and the topography of the lot is the hardship.

Mr. Carey made a motion to approve with Mr. Haberman seconding. The hardship is the same as the variance originally approved. The motion carried unanimously with Ms. Seltzer, Messrs. Carey, Haberman, Mead and Katen voting.

11. **64 Hawley Avenue** (Zone R-5) Christopher Thorpe, owner – request to vary Sec. 3.1.4.1 rear yard setback for accessory structure from 5' to 0' (includes overhang); vary Sec. 4.1.1.3 accessory structure height from 15' to 19'; vary Sec. 11.2 to allow 529 sq. ft. detached garage where 444 sq. ft. is allowed. CAM required. Map 71, Block 766, Parcel 3.

Christopher Thorpe, 64 Hawley Avenue, is looking for a variance to tear down an existing garage and shed and construct a new garage in its place. He submitted and explained paperwork to the Board. The proposed garage will be in line with the other structures on the accessway. The combined square footage of the existing shed and garage is 572 sq. ft. so what he is proposing would be less at 529 sq. ft. He wants to construct a 23'x23' 2 car garage at 19' high so he could dormer ½ of the roof. The hardship is his lot is non-conforming at 3,992 sq. ft. where 5,000 sq. ft. is required and pre-dates zoning. He has no basement so storage is an issue. His neighbors are in favor of the application and he read a letter of support from his neighbor next door into the record and submitted it to Board.

Mr. Haberman asked what would the second floor be used for to which Mr. Thorpe said storage.

Chrmn. Katen asked if the garage would be located in the same location.

Mr. Thorpe said it would be moved over 2' from the side yard setback but it will be in the same location on the rear yard.

Mr. Mead asked how far from the house would the garage be to which Mr. Thorpe answered the existing garage and shed are 12' away from the house and the proposed garage will be 17' away from the house.

There being no one to speak in favor or opposition the hearing was closed.

DISCUSSION:

Mr. Carey commented that this is a typical lot in the Woodmont area. They are all small beach lots created prior to zoning. Ms. Seltzer added it appeared all the garages were located on the accessway. Mr. Carey stated that the back alleyway is owned by the Borough and there will never be anything done back there. In answer to Chrmn. Katen's question, Ms. Stock added it would be noted on the permit the second floor will be used for storage only. He does not want to construct the whole garage at 19', only the dormer, so that is where the extra 4' comes in.

Mr. Carey made a motion to approve with Mr. Mead seconding. The hardship is the width of the lot. The proposed garage will be less non-conforming than what is there now. The motion carried unanimously with Ms. Seltzer, Messrs. Carey, Haberman, Mead and Katen voting.

12. **112 Beach Avenue thru Village Road** (Zone R-7.5) Joseph & Judith Schubert, appellant, for Judith Schubert Trust, owner – request to vary Sec. 11.2 to allow 1,104 sq. ft. accessory structure where 491 sq. ft. is permitted; vary Sec. 3.1.4.1 front yard setback from 20' to 15' to construct detached garage. CAM required. Map 60, Block 743, Parcel 5.

George Adams, 300 Bic Drive, stated he is the attorney for the Schuberts, who purchased the property a few years ago. It is an oversized lot with just less than 10,500 sq. ft. The owners want to create a space for a garage, beach house and storage facility in a detached structure rather than build an addition. They felt this would preserve the architectural integrity of the house, which predates zoning by 30-40 years. The hardship is this property is a thru lot and has two front yard requirements. The proposed will be in keeping with the neighborhood and the neighbors are in favor of it. He submitted a petition to the Board.

Joseph Schubert, 112 Beach Avenue, said the plans for the garage include a beach bath and shower, storage for cars and a workshop to work on antique cars. They don't want to add on to the house and take away from the pre-1900 architecture. This garage/storage shed/workshop will not be disproportional to the house. The second floor of the garage will be finished only to the extent of plywood and some lighting for the many items they need to store.

Chrmn. Katen asked when the house was built to which Mr. Schubert said 1890.

Mr. Mead confirmed there would be no living space.

Mr. Schubert said that was correct with there only being a bathroom and a shower. The house does not have a shower on the first floor.

FAVOR:

Michael Lunaro, 116 Beach Avenue, in favor of the application.

Dan German, 114 Beach Avenue, in favor of the application.

Jeff Orell, 120 Beach Avenue, in favor of the application.

There being no one to speak in opposition the hearing was closed.

DISCUSSION:

Chrmn. Katen said it is a beautiful house and the plans look great. Mr. Carey added the Woodmont residents would not want to see this home torn down and a mcmanion built in its place.

Mr. Carey made a motion to approve with Mr. Haberman seconding. The reason for approval is this will be in keeping with the character of the neighborhood and will preserve the architectural value to the neighborhood. Mr. Haberman added the hardship is they have two front yards. The motion carried unanimously with Ms. Seltzer, Messrs. Carey, Haberman, Mead and Katen voting.

C. TABLED BUSINESS

D. OLD BUSINESS

E. NEW BUSINESS

1. **156 Fourth Avenue** – Letter received from owner, Daniel J. Lemire, with request for an extension of time.

Ms. Stock read the letter of the request for an extension to the Board.

Mr. Haberman made a motion to approve a one year extension with Mr. Carey seconding. The motion carried unanimously with Ms. Seltzer, Messrs. Carey, Haberman, Mead and Katen voting.

2. **10 Silver Street** – Discussion of proposed settlement of Ziebell v. Zoning Board of Appeals.

Ms. Stock informed the Board that this case has finally come to an end with the Ziebells having to remove the side addition, cut back the deck above the side addition, take the deck in the rear out along with the hot tub and return the property to the way it was previously. They will have a time limit to do this work. Mr. Ziebell was in the office today and was issued a permit. He has to remove the first floor exterior 11'x19'x11' walls to leave an open deck. He will construct a 4'x5' mudroom in the front and demo the 6'3" x19' portion of the second floor deck only leaving a 5' deck along the side. He has to take down the 8'x11' rear deck. He can construct a 3'x5' rear landing with stairs and he is allowed to put back the 6' lattice on the lower deck. They signed the stipulation on April 1, 2009 and a motion is needed by the Board to approve the settlement.

Mr. Mead made a motion to approve the settlement for 10 Silver Street, for the reason that the Ziebells will have to bring the property into compliance with the Zoning Regulations by removing the rear deck and the enclosed portion of the side deck as well as a portion of the 2nd story deck with Mr. Carey seconding. The motion carried unanimously with Ms. Seltzer, Messrs. Carey, Haberman, Mead and Katen voting.

F. STAFF UPDATE

G. ACCEPTANCE OF MINUTES FROM MARCH 19, 2009 MEETING.

The minutes were approved unanimously.

H. ACCEPTANCE OF APPLICATIONS FOR MAY 12, 2009 MEETING.

The meeting was adjourned at 10:30 p.m.

Attest:

Rose M. Elliott
Clerk - ZBA