

**MINUTES FOR THE PUBLIC HEARING MEETING OF THE
PLANNING & ZONING BOARD
HELD TUESDAY, JANUARY 18, 2011; 7:30 P.M.
CITY HALL AUDITORIUM, 110 RIVER STREET, MILFORD**

Ms. Shaw called the January 18, 2011 meeting of the Planning and Zoning Board to order at 7:30 p.m.

A. PLEDGE OF ALLEGIANCE

B. ROLL CALL

Members Present: Edward Mead, Mark Bender, Gregory Vetter, Robert Dickman, Kevin Liddy, Janet Golden, KathyLynn Patterson, George Gasper, Victor Ferrante, Susan Shaw

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

C. ELECTION OF CHAIRMAN AND VICE-CHAIRMAN

Ms. Shaw: Noted the first order of business was the election for Chair and Vice Chair. She asked Mrs. Harrigan to conduct the election for the Board.

Mrs. Harrigan: Asked for nominations for Chair.

Mr. Bender: Nominated Gregory Vetter for Chair.

Mr. Dickman: Second.

Mrs. Harrigan: Asked for any other nominations.

Mrs. Golden: Nominated Susan Shaw for Chair. She read a statement in support of Susan Shaw's nomination.

Mr. Gasper: Seconded the nomination.

There were no other nominations. The matter was put to a vote.

Mrs. Harrigan: Those in favor of Mr. Vetter for Chair.

Five members voted for Mr. Vetter.

Those in favor of Ms. Shaw?

Five votes for Ms. Shaw. There is a tie vote

Mr. Vetter: Made a suggestion to go to a paper ballot to assure privacy in voting.

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Mrs. Harrigan: Any additional nominations? (No response)

Ms. Shaw: Is that a motion to go to paper ballots?

Mr. Vetter: Yes.

Ms. Shaw: Seconded the motion.

Nine members voted in favor. Mr. Dickman opposed. Motion passed.

Ms. Shaw asked for clarification of the nominees.

Mrs. Harrigan: Mr. Vetter and Ms. Shaw are nominated for Chair.

Ballots were passed out by Mrs. Harrigan.

Mr. Liddy: Suggested it might be beneficial to hear from the two candidates and hear what their goals would be as chairman of the Board, especially with the Plan of Conservation due this year.

Ms. Shaw: Stated if everyone was in consent to do this, she would speak and left it to Mr. Vetter if he would like to do so as well.

Mr. Vetter: Stated he has been on the Board for three years and served four years prior on the Inland Wetlands Board. The Plan of Conservation and Development is a significant and overriding task of the Board. There are 51 items that must be taken action on as a City, which were not addressed since the Plan was last updated and is a project to be acted upon over the next 10-11 months. Many items have come up in the past three years that should be reviewed and improved with regard to regulation changes as well as the Board's dealings with the Planning and Zoning office. The Board always conducts itself in the best interest of the City and is generous with its time as well as patient and accommodating to the people of Milford as they attempt to figure out some of the regulations. As an experienced consulting and project manager he felt qualified to undertake this challenge.

Ms. Shaw: Read a statement noting that it has been a difficult few weeks for all the Board members. Despite everything that has gone on, it is up to the ten Board members to make the decision as to how they move forward with respect to the independence of the Board. She has been a member of the Board for three years and Chair for the past year. She has maintained the independence of the Board, in a non-partisan fashion through open discussion, transparency

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and fairness and will continue this. She takes this Board seriously and in three years has missed one meeting. As chair she has devoted countless hours to making sure that procedures and rules were abided by and anything else required were carried out. Most of the Board's decisions have been close to unanimity. Review of the Plan of Conservation and Development has begun and it is very important for the Board to hear everyone in the community on this issue, as it will affect everyone in the City. Stated she would not serve as chair if she was not certain she could meet the challenges that will be forthcoming.

Mrs. Harrigan: Outlined how the paper balloting would take place.

The ballots were tabulated with one representative of each party overseeing the count by Mrs. Harrigan. Ed Mead and George Gasper assisted.

Mrs. Harrigan: Another tie vote. Are there additional nominations?
There being none, do another vote by ballot? Any objections?

Ms. Shaw: Suggested another paper ballot.

Mrs. Harrigan: Another tie vote.

Mr. Ferrante: Try again.

Mrs. Harrigan: Distributed the ballots again. Another tie.

Mr. Ferrante: For purposes of getting to the business portion of the agenda, moved to reorder the agenda and have the existing chair conduct the business portion of the meeting and hold the elections after the business was concluded.

Mrs. Shaw: Second.

Mr. Vetter: The alternative is to have a recess and attempt to come up with a solution. Recommended that the Secretary facilitate the meeting in order to conduct the business and hold the elections after that.

Made an amendment to the motion that the temporary Secretary facilitate the meeting.

Mr. Bender: Seconded.

Mrs. Harrigan stated she did not think she could conduct the meeting as she is not a member of the Board.

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Mr. Vetter: Stated she would act as moderator and not have a voting role.

Mrs. Shaw: Although this is a point of contention, the Board has a chair and vice chair. Mrs. Harrigan is correct and an elected member of the Board needs to run the meetings.

Mrs. Harrigan agreed as she could not participate in the discussion or direct the course of the meeting other than to conduct the election.

Mr. Vetter: Stated he thought otherwise. She could facilitate the meeting but not vote. She could speak to the applications as she would as the assistant city planner. The point would be to allow the Board to continue with conducting business that results in the same activity for the City. The procedure will not change and there is no preclusion for Mrs. Harrigan to do this under the direction of the Board.

Ms. Shaw: She believes it is precluded by the fact that the Board has a chair. Mr. Vetter is addressing the crisis as if the Board does not have an elected official of this Board to run a meeting and it places Mrs. Harrigan in a difficult position of having to mediate a difference between the Board.

Mr. Dickman: Disagreed with Mr. Vetter and Commissioner Shaw. Agreed that it is not appropriate for Mrs. Harrigan to moderate the meeting, but he also does not agree that the Board has a sitting chair. He thought that the elections should be continued because that is part of the business of the City and he will vote accordingly.

There was no further discussion of the item.

Mrs. Harrigan: First motion is to reorder the agenda to place the elections at the end. It requires a 2/3 vote.

Mr. Ferrante: Stated reordering the agenda does not require a 2/3 vote and he made one motion that the existing chair reassume the chair for purposes of conducting the meeting of business and move the voting to the end. That is one motion that requires a simple majority.

Mrs. Shaw: Reordering the agenda does require a 2/3 vote. She views this in the chair's rule that this is reordering rather than a tabling. She thought the motion should be to table, since there is an impasse which would require a majority vote. The chair has ruled that it is a reordering, in which case it is 2/3.

Mr. Liddy: This sets a dangerous precedent by allowing Ms. Shaw to assume

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her position as Chair to conduct the meeting. If the Board cannot come to a decision for chair by the end of the night and the elections are continued to the next meeting, it could result in her continuing to be the chairman the entire year if no chair is established through election. Suggested a recess to caucus and perhaps come to an agreement amongst the members. Wants to conduct the City's business, but it is necessary to have an elected chairman.

Mr. Ferrante: There is a motion made and seconded. The purpose of the motion is to get to the business of the Planning and Zoning Board. He stated Robert's Rules of Order state the Board has a sitting chair. A chair is a sitting chair until a replacement is elected.

Mrs. Harrigan: Asked if this could be put to a vote.

Mr. Vetter: Point of order. There was an amendment to the motion and seconded.

Mrs. Harrigan: Asked to have the amendment repeated.

Mr. Vetter: To reorder the agenda but the meeting be facilitated by the assistant city planner.

Mrs. Harrigan: Said she is only a staff person. Call a vote on the amendment.

Ms. Shaw: This cannot be done. The motion is to reorder the agenda which requires a 2/3 vote.

Mr. Bender: The amendment is more of an opinion that it cannot be done. He does not see anything in his book that says the Board cannot do what it wants to do.

Mrs. Harrigan: Stated she would not conduct the business of the Board as she was not elected to it.

Mr. Bender: Not asking to conduct business, but to moderate and there is a difference.

Mr. Bender: Withdrew his second.

Mr. Vetter: Withdrew his amendment.

Mrs. Harrigan: Vote on the motion. The motion fails.

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Mr. Dickman: Asked for a five minute recess.

Ms. Shaw and Mr. Bender stated their differences as to the present chairman status.

Mrs. Harrigan: Asked for a vote on a recess. 5 no, 5 yes. Motion failed.
Any other nominees? Suggested another round of ballots.

Mr. Dickman: Made a motion to do a hand vote.

Mr. Liddy: Second.

8 in favor; 2 opposed. (Messrs. Bender and Mead) Motion passed.

Vote for Mr. Vetter and Ms. Shaw – 5 to 5.

Mr. Ferrante: Suggested a five minute recess.

Mr. Dickman: Motion for a five minute recess.

Mr. Ferrante: Second.

Motion passed.

[Recess from 8:12 to 8:21].

Mrs. Harrigan: Called the meeting back to order.

Mr. Vetter: Need to go to another vote. Stuck with a split Board until November. There was no foresight at the end of last year's election to resolve this problem. The Board has been split for two years. Last year the Board ended up with a democratic chair and a republican vice chair. Thought this year there would be a republican chair and a democratic vice chair. He thought this would be a natural progression.

Ms. Shaw: Supports having another paper ballot.

Mr. Dickman: Nominations again?

There were no further nominations. Ballots were distributed.

Mrs. Patterson: Suggested moving the ballot area away for more privacy.

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Each member went up separately to cast his ballot and place it in the paper bag provided.

Mrs. Harrigan opened the ballots observed by Messrs. Mead and Gasper.

Mrs. Harrigan: Another tie. Conduct another vote?

Mr. Ferrante: Moved to table the election until the end of the meeting to proceed with the business portion of the agenda.

Ms. Shaw: Second.

Mr. Liddy: Tabling the election is not appropriate and reordering the meeting requires a 2/3 vote. Suggested opening the floor to further nominations.

Vote on the motion: 5 in favor, 5 against.

Mr. Vetter: In an attempt to move forward, he moved to nominate his seat mate for the past two years, Victor Ferrante.

Mr. Liddy: Second.

Mr. Ferrante: Respectfully declined the nomination.

Mrs. Patterson: Would like to table the election to the end of the meeting. There are six applicants present, some appearing twice and this is costing them time and money. Would like Ms. Shaw to chair the meeting until the end of business.

Mr. Ferrante: Second.

Mr. Bender: Suggested a special meeting be held for the purpose of electing a chair.

Mr. Dickman: Does not have the time to commit to a special meeting. Meeting is on the agenda. Would like to continue the elections until a consensus on a chair is reached.

Mr. Ferrante: Stated Mr. Bender's and Mr. Dickman's remarks could be addressed later, if the elections are tabled.

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Mr. Bender: Stated to be clear for the record if this does pass and it is agreed to the motion, it is a temporary solution for tonight. Their point is that it is setting a dangerous precedent that someone else could use years from now and they do not want to do that. The business of the City is important, as is electing a Chair. Wants to make it clear that this will be a temporary solution for tonight.

Mr. Liddy: Suggested the former vice chairman conduct the meeting, as an alternative thought.

Ms. Shaw: Responded since the Board is establishing precedents tonight, what will be established is that the chair will conduct the meeting and the Board will try to get to the end of business and then the election will be continued and hope for some result.

Mr. Ferrante: If this were to be continued and the chair was not available the sitting vice-chair would be appropriate.

Mrs. Harrigan: Motion to a vote. Nine in favor and one opposed (Mr. Dickman) The motion to reorder the election until the end of the business portion of the meeting passed.

D. NEW BUSINESS

1. **135 GULF STREET (ZONE MCDD)** Petition of Christopher Vodola for a Site Plan Review to construct a two-bedroom apartment with a garage underneath, on Map 55, Block 502, Parcel 8, of which LTJW, LLC is the owner.

Christian Vodola: 43 Morehouse Avenue, Milford.

Mrs. Harrigan: This is an allowed use in the MCDD zone. Favorable comments have been received from the City departments and the engineer on call. No waivers are being requested.

Mr. Liddy: How many garage spaces?

Mrs. Harrigan: Three car garage.

Mr. Bender: Made a motion to approve the application.

Mrs. Patterson: Second.

All members voted in favor. The motion passed.

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2. **23 BAYSHORE DRIVE (ZONE R-5)** - Petition of Quality Craft Builders, LLC for Revised Site Plan Review approval to construct stairs to an unfinished attic area, on Map 29, Block 565, Parcel 2, of which Kristen Arisian is the owner.

David Salerno, Quality Craft Builders, 9 Old Colony Road, Monroe, CT. Requesting the Board's approval to allow the owner to put a set of stairs going from the third floor to the attic. There was some confusion when the original house plans called for attic access, which could be called the fourth floor. He met with Mrs. Harrigan and they discussed building a temporary, non-attached captain's style stairs to get into the attic space, because the person had a medical condition. He was under the assumption that it was okay to build the temporary stairs. It was thought the stairs would be okay because it was temporary and not attached to anything. When the Building Department came up to do the inspection they wanted a handrail put on. He contacted Mrs. Harrigan as one of the agreements was that a permanent handrail could not be put on the stairs. At that point they determined the stairs were not going to be a safe option.

At this point it was decided to bring the matter before the Board. He understands the point behind not having a fourth floor. In this case the house is only 33 feet to the mid-point, so it is below the maximum height and the space is under six-feet for height. There is a small space for storage and mechanicals. It is impossible to make a living space. The structural ties cannot be altered, or else the structure would be unsafe. It is strictly due to a medical condition that the request is being made.

Ms. Shaw to Mrs. Harrigan: This application had been heard before with regard to the outer structure of the cupola?

Mrs. Harrigan: This came before the Board as a Coastal Site Plan. At the time of review, there was a pull-down attic stair. She explained that for the definition of attic, there are certain criteria that have to be met in order for that space not to be considered a habitable floor or a story. The Office applies that very strictly. It has to meet all three criteria. It cannot have stair access. Those areas that are greater than six feet in height can be no wider than ten feet. It cannot extend more than 50% of the length of the attic. All things are applied because the way the definition is worded is if it does not meet those three criteria, then the Board has to make a determination that they do not consider this to be habitable or that they have to make the choice.

When it was reviewed with the Building Department, they said that what the builder had put into place was not going to be acceptable. They had to put a

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standard set of stairs, otherwise the Building Department could not sign off on it. It has to be something that they consider to be safe, if it is not going to be pull down attic stairs. Because of that staff would consider this to be a staircase, would then consider this to be a story, but the Board can make its own determination and it is clear in the definition that that is what is intended.

Ms. Shaw: Asked if this meets with the stairway regulations or not?

Mrs. Harrigan: There was another project where a "captain's ladder" was installed. It was a detachable ladder that could be put in place unhooked and then put aside and it was for rooftop access. That was something that was allowed. Mr. Salerno attempted to recreate the same thing, but it does not meet building code requirements so he will have to go back to the approval that is in place, which is a pull-down attic stair, which he has indicated his client is not able to operate, or he is going to have to have some other method to that attic access that is acceptable to the Building Department.

Mrs. Patterson: Asked if this request is only because of a medical condition.

Mr. Salerno: Yes. He stated he had a letter from the owner which states she has had recurrent right shoulder dislocations for the past 25 years and has undergone four separate surgeries to stabilize the area. She does not have the capabilities of pulling down something from above.

Mrs. Patterson: Made a motion to approve the application because the owner has a medical condition that would be different from most.

Ms. Shaw: Asked if there were more questions to Mr. Salerno before a second to the motion is stated.

Mr. Ferrante: If there are permanent stairs, there is a usable attic and that is what the Board is trying to avoid. If it is just for storage, why is there a deck and why is there a 36-inch door going to the deck? This is usable space. It seems to be circumventing the regulations.

Mr. Salerno: It is a very small, uninhabitable space. The height of the area is only six feet. The minimum state code is 6'8", so this is well below that area. She cannot alter that. She wanted the views and that is why the deck and door are there. They had also asked for the pull down stairs and when it came to the issue of the shoulder, he went back to Emmeline to see if there was a way to do this. That is when they thought the temporary stairs would work. It was not to circumvent or try to get a finished floor space.

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Mr. Liddy: Asked why the pull down stairs could not be left down permanently.

Mr. Salerno: When the attic stairs are pulled down it blocks the hallway. He indicated on the drawings that there was no space for a pull down attic stairs to go.

Mr. Liddy: Asked if there was a basement or storage area.

Mr. Salerno: No. The house is on piers and is wide open underneath.

Mr. Vetter: Asked if there was a way to provide power to the attic stairs.

Mr. Salerno: There are attic stairs that have mechanical power, but the owner cannot afford them.

Mr. Vetter: Stated there are other options to the stairs, and the way the area is presented it could easily become a finished space and become a story.

Mr. Salerno: It was never the intention to maximize the space.

Mr. Mead: Asked if it was known about the owner's medical condition of 25 years when the construction was designed.

Mr. Salerno: Stated he did not know about the medical condition at all. The attic pull down was approved and that is when they realized there was a problem and he came to see Emmeline about any other options. She mentioned the captain's ladder and that is what they tried to get.

Mr. Mead: If the owner would have a hard time using the pull down stairs in the first place, why would a deck be placed in that area if she could not use the stairs.

Mr. Salerno: It was placed there as a turret would be, strictly for the view; not to be used for storage. She was going to pull down the attic. He did not know about the problem until he purchased the attic stairs and realized it was an issue and met with Emmeline for an alternative route.

Mr. Bender: Thought building a staircase would be more costly than buying an automated pull down stairs.

Mr. Salerno: The stairs cost \$700. The pull down mechanical was close to \$3000.

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Mr. Liddy: Asked why there would be a deck with a door in an attic area if it was not intended for use.

Mr. Bender: Is there a way to condition this that if the house is sold, this use goes away because it is granted under a medical condition.

Mrs. Harrigan: This would be very difficult to enforce. Recommended that if the Board decides to approve this, a condition should be made that it must be filed on the land records. Nowadays, mortgage and other lending companies scrutinize properties carefully. If it is on the land records the condition will come up on the title search. It is an added safety feature for Planning and Zoning, if it is approved.

Mr. Bender: Cited a similar situation that is before the Board on a current application which was not caught when the house was sold.

Mr. Salerno: The owner does not plan on moving at any time. She has resided on the property since 1988. She would be amenable to a condition by the Board and would put in writing that she cannot do anything with the existing space.

Mr. Ferrante: At this time lenders are being very scrutinizing, but that could change in six months or any time in the future and mortgage lenders cannot be relied on to make sure that the Board's conditions are upheld. He sympathizes with the applicant, but does not know if it is an appropriate reason for waiving the regulations.

Ms. Shaw: Asked if the Board would want to take this matter up at the next meeting, if there are no other questions.

Mrs. Patterson: Withdrew her motion.

Ms. Shaw: Asked if the Board was in agreement that the matter could be resumed at the next meeting.

Mr. Gasper: Were hand railings provided on the staircase originally?

Mr. Salerno: On the temporary stairs?

Mr. Gasper: Yes.

Mr. Salerno: No. That is when Building rejected it and he went back to Emmeline. If that would be allowed, that would be okay with him. If a railing

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could be used with the stairs that are there, that would be okay. They don't need actual stairs.

Mr. Gasper: Had an issue with railings. If there was going to be a customized staircase, she would need railings to hold onto.

Mr. Salerno: Stated he was not looking for a stairway.

3. **501 NEW HAVEN AVENUE (ZONE CDD-4)** Petition of Peter Van Geldern, on behalf of Jeffrey's Restaurant, for Site Plan Review approval to find parking adequacy on Map 56, Block 529, Parcel 50, of which 501 New Haven Avenue, LLC is the owner.

Peter Van Geldern, 285 Lafayette Street, Bridgeport representing 501 New Haven Avenue. Recently completed a 475 SF three-season patio over an existing outdoor seating area. Calculating the parking requirements for taking the square footage and dividing it by 15, there is the right amount of parking for the existing building. He is asking for a six parking space waiver for the outdoor seating. The outdoor area has been there since the business started. A six-space parking lot waiver would let the restaurant use the outdoor seating a few months out of the year.

Ms. Shaw: Noted the Police and Sewer Departments had some issues with the parking situation and the water usage.

Mrs. Harrigan: There were two unresolved items that the applicant had to address, one of which was the Police Department's report. The applicant's original plan was to provide parking across the street at Greg's Auto Body. She understands that they have revised that plan in response to the Police Department's comments that it would be dangerous and that they could not support that particular portion of the application.

They have also proposed parking at the Sundae House. The Police Department report indicated that that if vehicles pulling into Jeffrey's parking lot discovered that there was no parking available and had to come out of that parking area to go to the parking lot next door, the situation would be more treacherous than the Police Department would want to support. What they were hoping to have was a paved access way directly from the back of Jeffrey's parking into the Sundae House parking lot. That was their request. The applicant was not yet able to submit that plan that would show compliance with the Police Department's remarks and obtain their sign off.

The second comment was from the Sewer Commission, who, based on water

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usage records from the Regional Water Authority, had determined that their water usage numbers were over what had been approved for the restaurant site. So, the applicant has to propose some water conservation measures in order to get approval from the Sewer Commission.

Mr. Van Geldern: Stated they had met with the Sewer Commission about their comments and they are on the agenda for next month's meeting of the Sewer Commission. He noted they have already addressed a lot of those issues. The large ice machine was not calculated and that is not counted as water to the sewer. There had been a sink leaking for many years. A plumber has corrected that problem. Feel confident that the problems have been solved and will be working with the Sewer Department.

Decided to come before the Board for the six spot waiver. With regard to the Police Department's comments, they will work with the Sundae House. Would like to work towards a solution, rather than to just ask for a waiver. Would like to offer several solutions, if necessary. The Sundae House has been very supportive of their project and the owner is here to give permission to put that pathway through, if need be.

Ms. Shaw: Asked how it would be accomplished, the signage...

Mr. Van Geldern: Had drawings he distributed to the Board. The applicant got the Police Report today and Emmeline suggested they offer a solution. Right now there is a strip of grass; no trees, barely a curb. The Sundae House has gravel parking. Hours of operation for both businesses generally do not overlap.

Mr. Vetter: Asked for the construction history of the patio area.

Mr. Van Geldern: It was originally a patio with outdoor seating for many years. This is a small three season room over the same footprint. It is a non pervious cement patio. Built right over that, which shows the excellent views of the marsh.

Mr. Vetter: Looking at the photo supplied, asked if there would be a patio as well as the three season room.

Mr. Van Geldern: Yes, there is a small patio left. Mrs. Harrigan helped them with the calculations for the remaining patio area that is used in the summer and they came up with six parking spots that would be required.

Mr. Vetter: Asked why this parking calculation had not been addressed in a

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previous application which came before the Board. Asked if the Board was being asked to choose one of the options presented.

Mr. Van Geldern: Their first option is not to infringe on the neighbors at all. Just asking for six spots to be waived and the use is seasonal. They do not believe it was included previously in any calculations. They are over in their parking requirements. They have 42 spaces and 40 are required. Believes the Board would want to bring the parking to code.

Mr. Ferrante: Suggested the access way to the Sundae House be of a pervious material, such as, Grasscrete or gravel and not asphalt, if the Police Department approves the access way area. Suggested this application be tabled pending a response from the Sewer Department and to give Mrs. Harrigan an opportunity to review the suggestions presented.

Ms. Shaw: What the Board is missing and requires is the approval of the Sewer Commission and for Mrs. Harrigan to review the Police Department's comments.

Mr. Van Geldern: Would prefer to have the six parking space waiver. Should an access way be necessary, he would do it in a pervious material.

Mr. Vetter: Asked if there were time constraints involved.

Mr. Van Geldern: The three season room has been passed and is completed.

Mr. Vetter: Would be satisfied with the access way off the main street and would condition the reply from the Sewer Commission.

Mr. Liddy: The Sundae House in the summer has a very busy parking lot.

Mr. Mead: Suggested the parking access be done in the rear area, away from Route 162 (New Haven Avenue), especially when traffic is heavier in the summer months.

Mr. Van Geldern: That could be done.

Mrs. Harrigan: Noted parking in the front might be more advantageous, as rear parking would require further comment from Inland Wetlands. If the Board is leaning towards having this in the back area, she would have to consult with the Inland Wetlands officer first before a decision is made.

Mr. Ferrante: Suggested the Police and Sewer departments review these items and come back for discussion at the next meeting.

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Mr. Bender: Concurred that the parking area should be in the rear, as parking would keep the cars out of the main flow of the road.

Ms. Shaw: The Board needs to review this further and will take it up at the next meeting.

Mr. Bender: Stated that Mr. Simeone, the owner of the Sundae House was present and he might be able to answer some questions at this time, rather than return.

Mr. Liddy: Asked if Mr. Simeone preferred parking in the front or rear of his property.

James Simeone, Milford. Asked if the Board was looking for a drive-thru car-wise or a path?

Mr. Liddy: Drive the car through.

Mr. Simeone: Stated this would have to be discussed. Jeffrey's is looking for six spaces. How often is he going to be that busy that he will need to park people in his [Mr. Simeone's] lot. He has been at that spot for 46 years. Even at its busiest, the restaurant has never had to park at the Sundae House lot. His agreement at this time is to help them out. Can discuss the plans in more detail. Pulling out onto the street is done all the time. The connection part does not make sense to him.

Mr. Liddy: Asked if there would be signage that additional parking is at the Sundae House.

Mrs. Harrigan: The Police Department recommended it.

4. **1365 BOSTON POST ROAD (ZONE SCD)** Petition of Ceruzzi Holdings LLC, for a Minor Amendment to a Special Permit and Site Plan Review, to construct an additional cabinet on existing ground signage on Map 89, Block 812, Parcel 42, of which Milford Crossing Investors LLC, is the owner.

Danielle Bercury, Hurwitz, Sagarin, 147 Broad Street, Milford. Appearing for Cerruzzi Holdings, LLC, for a Minor Amendment to a Special Permit and Site Plan Review for Milford Crossing Shopping Center. This site was originally approved in August 2003 by way of a Special Permit and Site Plan approval. Asking for the addition of a single cabinet on the two free-standing signs that are

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on the properties located on Boston Post Road and Roses Mill Road. Both signs are exactly the same. Due to some vacancies it might be necessary to subdivide some of the spaces and that is why the additional cabinet is requested. The current signs conform to the Shopping Center District regulations. When the shopping center was originally approved, the Board granted a waiver for the height of the sign. It is 29 feet instead of the permitted 20 feet. This application was submitted to the Police Department and they had no issue with the additional signage. They were notified in the event they saw a traffic complication.

Mr. Ferrante: Moved to approve the petition of Ceruzzi Holdings LLC, for a Minor Amendment to a Special Permit and Site Plan Review, to construct an additional cabinet on existing ground signage on Map 89, Block 812, Parcel 42, of which Milford Crossing Investors LLC, is the owner.

Mr. Dickman: Second.

All members voted in favor.

E. PUBLIC HEARING LEFT OPEN - CLOSE BY 1/30/11; Expires 4/5/11

5. **2007 BRIDGEPORT AVENUE (ZONE CDD-3)** – Petition of Sammer Karout for a Special Exception and Site Plan Review to allow the establishment of a hookah lounge to be located on Map 43, Block 543, Parcel 25, of which Jaser Enterprise LLC is the owner.

(A recess was taken from 9:31 to 9:37 p.m.)

Steve Leo, Esq., 185 Broad Street, Milford, representing Sammer Karout. Handed out a revised Statement of Use that the Board requested at the last meeting. The opening of a hookah lounge has a long history. He met Mr. Karout when he was closed down by the Milford Health Department. At that time issues with Planning and Zoning became apparent. Mr. Leo thought the premises were opened without the use of an attorney. Mr. Karout said he did go through an attorney. Mr. Leo verified that Mr. Karout had all the documentation from the attorney, but what he was told to do was all wrong. Mr. Leo relayed this information because people might be under the impression that Mr. Karout was a person who did not want to follow the rules. That is absolutely not true. He has done everything that he [Mr. Leo] has advised him and everything the Health Department has told him to do. He is very cooperative.

The two items of issue between the original Statement of Use and the Revised Statement of Use is the allowance of food to be brought in by patrons and the

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use of tobacco. The former attorney told the Board absolutely no food or beverages would be brought into the lounge. Mr. Leo produced a letter written to Dr. Dennis McBride dated December 7th stating the intent was to allow food and beverage. Mr. Leo stated he understood that the Board would be very confused as to what Mr. Karout wants to do. The appeal of the Health Department's Cease and Desist order was successful. Mr. Karout complies with all the State regulations on tobacco. Mr. Leo sees no reason not to allow Mr. Karout to open the Hookah Lounge.

Mr. Karout also wrote a letter to the State of Connecticut Department of Public Health and asked if he had to comply with any State regulations and was told he did not. Mr. Leo distributed the letter to the Board.

Mr. Leo reviewed the Revised Statement of Use and the questions that arose at the last meeting: Did the furniture plan include a fountain and decorative art? No. He does not plan to do that. The maximum allowance will be 40 patrons. Each person will have one hookah pipe with a disposable hose so there will be no risk of contamination. He will be using a product from Zero Tobacco LLC, that is totally tar, tobacco and nicotine free. No one under 21 will be allowed to drink alcoholic beverages and no food or beverages will be prepared on the premises.

The landlord has given Mr. Karout exclusive use of the rear parking area, which has 16 parking spaces and is not used at all. UI has agreed to provide lighting in the rear under the Light the Night Program. Mr. Leo submitted the letter received from UI about the program.

The lounge will be open from 7:00 p.m. to 1:00 a.m. Most of the businesses in this strip retail area close at five o'clock, with the exception of the Laundromat Dorsey's bar, Papa's Pizza and Fuji Chinese Take Out.

With regard to the State of Connecticut having a right-of-way on Bridgeport Avenue, they have agreed to a five year lease with two five year renewals with the landlord, for a total of 15 years. The documentary evidence to that effect, was distributed to the Board.

The ventilation system comprised of a fan and hood ventilation system is approved for a 2500 SF facility. The lounge will be in the vicinity of 1900 SF.

A petition had been submitted. Another petition of 130 signatures has been added to that petition.

Ms. Shaw: Asked if this would be a private club. Also, would retail items be sold?

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Mrs. Harrigan: Noted a letter received from the the Health Department dated December 20, 2010 in response to Mr. Karout's letter of December 7' 2010, noted the Notice of Violation had been amended and the proposed establishment appears to be in compliance with the State's amended order. The letter also stated the Department of Health still had concerns about the negative public health factor implications, ventilation design and sanitary operation of the facility. The Milford Health Department will continue to exercise its jurisdiction over all matters affecting the public health of Milford.

Ms. Shaw: Stated the Fevised Statement of Use did not discuss if the facility was going to be a membership or retail and some other issues that were in previous statements of use. Asked if some items were missing.

Mr. Leo: Clarified that it was not a private club, because it was a "for profit" establishment, but a nominal membership fee would be required. There would be no retail items sold.

Mr. Bender: By health laws it cannot be public and have smoking. There will have to be a form of membership to get in.

Mr. Leo: State smoking laws are very particular about where smoking can take place. In this case where there are a group of people who are going into some place to do what they want to do and are not harming anyone outside that building, then that is not a public nuisance.

Ms. Shaw: There will be no retail sales, such as buying a hookah pipe as a gift?

Mr. Leo: No. That might attract people who are going in to buy a hookah pipe rather than smoking a hookah.

Mr. Ferrante: No one under 21 can consume alcoholic beverages, but what is the law with respect to tobacco use?

Mr. Leo: 18 is the permitted age for tobacco use.

Mrs. Patterson: How will age entrance be enforced?

Mr. Leo: Knows of machines that are used for this purpose.

Ms. Shaw: Asked for clarification of the approval of the ventilation system.

Mrs. Harrigan: Suggested, based on the letter she read from the Health Department, that whatever ventilation system is either proposed to remain or is

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proposed to replace the existing system, should be reviewed and approved by the Health Department.

Ms. Shaw: Asked if Ms. Harrigan had reviewed the new parking calculations.

Mrs. Harrigan: Had just received the information and had not reviewed it. Also, should the Board find the UI's Light Up the Night Program acceptable, that there be a condition of approval that staff review the fixtures very carefully to make sure they light the area properly.

Ms. Shaw: Asked if this procedure would be in lieu of a lighting plan.

Mrs. Harrigan: UI should provide the City with some sort of fixture design and shielding. Saying they are participating in the program is not sufficient given past problems with fixtures that UI has provided.

Mr. Ferrante: Asked if the backup to what has been presented tonight has been presented to Mrs. Harrigan.

Mr. Leo: No.

Mr. Ferrante: Suggested Staff be given the information to review.

Mr. Vetter: Asked for clarification as to how the membership will work. What will the process be?

Mr. Leo: No one will be denied membership. Anyone who wants to frequent the lounge will pay a small fee.

Mr. Vetter: Requirements will be 18 years of age or older and payment of a fee. Sometimes people sign a notice that they are in a place where smoke is shared.

Mr. Leo: That could be done where people sign warnings when they come in. He believes Dr. McBride will be tenacious in making sure that the ventilation is adequate.

Mr. Bender: How would parking for the Hookah Lounge in the rear be exclusive?

Mr. Leo: There are two existing signs that designate parking for Olive Tree Hookah Lounge only.

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Mr. Bender: Asked if any new businesses comes in do they have to argue for its parking spots?

Mrs. Harrigan: Yes.

Ms. Shaw: Asked if there was anyone to speak in favor of the application. (No response) Anyone opposed to this application? (No response)

Mr. Liddy: Asked if there was anything that the Board requested that was not provided tonight.

Mrs. Harrigan: The public hearing must close tonight. If there is further information required of the applicant, then the applicant must extend the public hearing. Otherwise, what has been received to date is all that can be received in terms of deliberation for the review.

Mr. Ferrante: This applicant has been here a long time. Asked if the public hearing is closed, the items Mr. Leo has brought can be reviewed and the Board could make a motion subject to approval of those items.

Ms. Shaw: All the information received can be used. If additional information, such as an illumination plan is necessary, it can be made a requirement of any approval. No additional information can be received.

Mr. Ferrante: Stated he is hazy about the membership issue, but does not think it is within the Board's purview. There are many hookah lounges around, so this is a matter that can be dealt with. Membership or non membership with respect to the use of tobacco will come up by another agency. He is satisfied with the Statement of Use supplied.

Mr. Bender: Stated he would like clarity from another source as to public vs. private and if it causes issues to the public.

Mrs. Shaw: Referred to an outline from the judge's ruling regarding this. It is part of the record. This document can address the concerns of membership.

Mr. Leo: Read from the Department of Health's decision which concluded that the fact that it was a private club was not the basis of the decision. It was the fact that whatever these people were doing within the premises did affect the general public as a whole.

Ms. Shaw: Asked if the Board wanted further materials to be presented by the applicant.

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Mr. Leo was asked to submit all the relevant documentation he had in support of the applicant so that the public hearing could be closed.

The service agreement between UI and the Hookah Lounge was not included. It will be provided to the Planning and Zoning office.

Mrs. Harrigan: Noted that there would have to be specific cut sheets received on the type of lighting fixtures that are proposed to be installed in the rear parking area.

Mr. Liddy: Suggested the public hearing remain open to obtain lighting information.

Ms. Shaw: Noted it was not unusual for the Board to make approval conditional on an acceptable illumination plan.

Mr. Dickman: The document received from UI specifies that the lights will be cut off fixtures to prevent light encroachment on the homes to the rear of said property. Does not know what else the Board could ask this applicant to do. In Mr. Dickman's opinion he has made every effort between the last meeting and this meeting to do everything the Board has asked him to do. It would be unfair to hold open the public hearing any longer.

Mr. Vetter: Agreed that the two main items that are open which are lighting and the parking can be addressed with requirements of the Board's decision. The matter of a club and how that deals with the nuisance law is best handled by the Board of Health and they will maintain that. Not sure that the Board has to definitively include anything about that, other than it would be monitored sufficiently by the Board of Health.

Mr. Bender: Mr. Sulkis said a photometric survey was necessary, despite the cost, and that has not been provided. Does not know how this will be affected if the public hearing is closed.

Ms. Shaw: Agreed, but it was something that could be conditional.

Mr. Leo: A copy of the petition was submitted and date stamped into the record.

Ms. Shaw closed the public hearing.

F. PUBLIC HEARING CLOSED 12/21/10; Expires 2/24/11.

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6. **12 BLAIR STREET (ZONE R-5)** – Petition of Thomas Lynch, Esq. for a Special Exception and Site Plan Review to allow a second dwelling in the garage located on Map 27, Block 453, Parcel 7, of which John and Helen DiNoia are the owners.

Mr. Ferrante: Not present at the meeting but listened to the tape and read the minutes.

Mr. Liddy: What was the Staff's recommendation on this?

Mrs. Harrigan: Mr. Sulkis did not have a recommendation. He just provided the history of how this came to the Board's attention. It was a violation that had been issued for something that was preexisting that had never been permitted. It was a variance that had been applied for and denied, but was built anyway. It is up to the Board as to whether it is acceptable for the use that is there.

Mr. Liddy: What would happen to the second dwelling if the Board rules against its use?

Mrs. Harrigan: If the Board does not approve it, the applicant has the right to appeal. If the appeal is found with the Board, the structure would have to be removed.

Mr. Vetter: Asked if this was common to the area.

Mrs. Harrigan: These are very tight lots. The finger streets that extend into Silver Sands State Park tend to be undersized lots; mainly small cottages. There are some preexisting multi-family residences that are preexisting prior to zoning, but this is a single family zone.

Ms. Shaw: This is called out as a prohibited accessory use in the regulations.

Mr. Dickman: That is what makes this troubling. It does not conform in any way with the regulations as an accepted use, but it has been there for decades.

Ms. Shaw: The owners purchased the home under the notion that this was usable for persons employed by the occupant for domestic purposes. By allowing this, especially on these size lots, would it be setting a precedent for such future requests?

Mr. Vetter: Is it an option to only allow the use for family members on a seasonal basis and never allow it to be rented?

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Mrs. Harrigan: The only thing that is allowed within the regulations is if you go to the prohibited regulations of the single family residential districts, there is something in there that allows for domestic help to live in an accessory structure and that is the only thing.

Ms. Shaw: This is a difficult decision for the Board. The Board would have to decide that this is such a unique situation that the regulations should not apply. She personally does not find it that unique or that great of a hardship, but she feels for the applicant.

Mrs. Patterson: This apartment has been here since 1963, but it has not been used consecutively over that amount of years, so it is not really a hardship to use this.

Mr. Ferrante: It is a very small lot. Agreed about its continuous use.

Mr. Liddy to Mrs. Harrigan: What is the definition of domestic help in the regulations?

Mrs. Harrigan: Read: "Prohibitive Uses. The use of an accessory building for residence purposes, except by persons employed by the occupant of the premises for the purpose of household and domestic management of the premises."

Mr. Liddy: Asked if the applicant's children were paid to help out, would that be considered domestic help? Would that be feasible under the regulations?

Mrs. Harrigan: This would be difficult to maintain over time. These people may get the approval and decide to sell in the near future. It is problematic that there are two kitchens on the property, which designates a separate unit. The office comes across this issue all the time in enforcement where people do an addition on the property and they don't get approval for an accessory apartment, but they put in a kitchen and then they rent a single family house as a two-family dwelling. That is part of the issue, as well.

Mr. Liddy: Asked if removing the kitchen would make a difference.

Mrs. Harrigan: What they are asking for clearly delineates a separate unit.

Mr. Ferrante: Any of the suggestions, i.e. domestic help, part time rental, would present enforcement nightmares. Even if seasonal was allowed, that is not what they are asking for. Concerned about the size of the lot.

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Mr. Vetter: Motion to deny the Petition of Thomas Lynch, Esq. for a Special Exception and Site Plan Review to allow a second dwelling in the garage located on Map 27, Block 453, Parcel 7, of which John and Helen DiNoia are the owners.

Mr. Liddy: Second.

Mr. Vetter: This was discussed a lot and he would be open to any suggestions or creative arguments as to how this is a family area, however, the way the regulations are it is black and white.

Ms. Shaw: Noted she agreed with Mr. Vetter.

Nine members voted in favor. Mr. Bender was opposed. The motion to deny passed.

The business portion of the meeting was concluded. Mrs. Harrigan was asked to continue the process of electing a Board Chair and Vice-Chair.

[A recess was taken from 10:27 pm to 10:38 pm]

Mrs. Harrigan: Asked if there were additional nominations for chair at this time. Seeing none, Ms. Shaw and Mr. Vetter are the nominees. Paper ballots?

Ms. Shaw: Asked for a paper ballot.

Mr. Dickman: Objected in order to be consistent with his dislike of the paper ballots.

The paper ballot was conducted on a side table.

Mrs. Harrigan: Another tie vote.

Mr. Vetter: Trying to find some middle ground as it is clear that both candidates are strongly supported by the individual groups. The only thing that he can look to in the Board's guidance is a sense that it states that the Chair's term is for one year. The Chair's term of one year has expired and if a new chair cannot be elected, the Vice-Chair can then step in. In an attempt to find some middle ground he would be open to any suggestions, but this candidate is not appealing and the other candidate cannot get more than five votes. With the Chair's term expired there are no guidelines and no statement about a vice-chair's term expiring, so by rule of the Green Book, the vice-chair becomes chair.

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Mr. Ferrante: Disagreed with Mr. Vetter. He says there is a chair who has not been supplanted by another election and if that is the case, it is the case for the vice-chair. You can't say the chair is out but the vice-chair is not. He disputed the source of Mr. Vetter's reasoning.

Mr. Dickman: He is not relying on any opinion. Relying on page 1-4 of the Green Book, and read the excerpt that he believed proved his point. He noted the section defining the vice chair or any subcommittee chairs' term had been removed.

Mr. Liddy: Noted Robert's Rules strongly suggest and support that past precedence be applied. Going back as far as 30 years, the opening minutes of each meeting has begun with the election of a chair and vice chair each year.

Ms. Shaw: Understands the minutes well and knows a vice-chair has been elected each year. The idea of making a vice chairman automatically chair does not support past practice. Further stated that in the past years the previous year's chair has opened the first meeting for the purpose of a vote for a new chair and vice chair. It was allowed noting the chair had served the board and there may be board business that the chair should continue. Believed the Board could sort this all out.

Mr. Vetter: Agreed that the Board could sort this out as well. He has looked at this to see what could be done. He would propose a different Republican; would return to the vice-chair who was unanimously elected, and offered to nominate a different Democrat. Asked what Ms. Shaw's suggestion was to working beyond the 5-5 tie, because the Board is at an impasse that would not go beyond sticking ballots into a bag. The Board has been split for two years. Leadership has been shared to this point. Leadership should alternate and the Board should move on.

Ms. Shaw: Five members read Robert's Rules and have a disagreement with the other five members. Thinks there is a way to move forward. It should be recognized that there is a chair until a new one is elected.

Mrs. Harrigan: Motion to extend the meeting past 11:00.

Mr. Liddy: Motion to extend the meeting to 11:30.

Mr. Bender: Second.

All members voted in favor.

Mrs. Harrigan: Motion passed.

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Mr. Bender: For the past five years the City Planner has opened up the meeting and the past chair did not.

Ms. Shaw: Should not look at a few past years and decide that is the way it should be.

Mr. Liddy: Still waiting for some ideas to be proposed by the Democrats as to how to break this log jam.

Ms. Shaw: Acknowledging herself as chair would be helpful.

Mr. Bender: That is not an option. They have proposed other options. Not hearing any suggestions from the Democrats is nonproductive.

Mr. Dickman: They [republicans] are trying to go from the ordinance of the Green Book and are negotiating in good faith, but are not getting it back. Until something changes he does not know that the loggerhead can be broken.

Ms. Harrigan asked if there was further discussion or if the Board wanted to vote.
Another paper ballot was taken. Another tie vote.

Mrs. Harrigan: Any other nominations for chair? Discussion? Vote?

Mrs. Golden: Does not think it will be resolved tonight and it is getting very late. Hold a special meeting for elections.

Mr. Dickman: Won't be available to sit at a special meeting would be very limited. Try to resolve it tonight.

Mr. Ferrante: Agrees that a special meeting would be a problem, because everyone has their schedules set up. It does not appear the Board will get anywhere tonight.

Mr. Liddy: Asked about a co-chair situation?

Ms. Shaw: Would not be opposed to thinking about it. Too late to consider it tonight.

Mr. Liddy: Noted there was still 20 minutes left for discussion.

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Mr. Dickman: Suggested keeping the agenda for the next meeting minimal. Without a prior framework for a resolution of this issue, the meeting could go very late again.

Ms. Shaw: Stated she had removed from tonight's agenda a planned hearing on fences. Thinks it is not practical to hold off on applications that are waiting for decisions.

Mr. Bender: Stated the motion should be to place the elections as the first item on any meeting.

Mr. Vetter: Will be prepared to nominate another Republican member if that person can make this commitment. Hopeful at the next meeting there will be some suggestions as to how to move forward with a new recommendation as opposed to what has taken place tonight. Still contends with a split board for two years it makes sense to flip the chairmanship.

Is the motion to move from this meeting and the elections will be the first item on the next agenda?

Mrs. Golden: That is the motion.

Mrs. Patterson: Second.

Mrs. Harrigan: All members voted in favor of placing the elections at the beginning of the agenda for the next scheduled meeting.

Ms. Shaw: Stated there were other agenda items to be discussed.

G. LIAISON REPORTS - None

H. APPROVAL OF MINUTES

Mr. Dickman: Made a motion to approve the minutes.

There was discussion concerning the date of the minutes to be approved.

Mrs. Harrigan: These are the minutes for the January 4th meeting.

Mr. Dickman withdrew his motion.

Ms. Shaw: The minutes for the 12/21 meeting need approval.

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Mr. Dickman: Moved to approve the minutes of the 12/21/10 meeting.

All members voted in favor of approving the minutes.

Ms. Shaw: Asked for approval of the 1/4/11 minutes.

Mr. Dickman: Point of order. That would be a new agenda item and would require a 2/3 vote.

There was no motion to add that item to the agenda.

I. CHAIR'S REPORT - None

J. STAFF REPORT – None

Mr. Vetter: Motion to adjourn.

Mr. Ferrante: Second.

The meeting adjourned at 11:16 p.m. The next scheduled meeting will be held on February 1, 2011.

Phyllis Leggett, Board Clerk