

**MINUTES FOR THE PUBLIC HEARING MEETING
OF THE PLANNING & ZONING BOARD
HELD TUESDAY, FEBRUARY 15, 2011; 7:30 P.M.
CITY HALL AUDITORIUM, 110 RIVER STREET, MILFORD**

Susan Shaw called the February 15, 2011 meeting of the Planning and Zoning Board to order at 7:36 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: David Sulkis, City Planner; Emmeline Harrigan, Assistant City Planner; Phyllis Leggett, Board Clerk.

(Recording difficulties were experienced from 7:36 to 8:10)

C. ELECTION OF CHAIRMAN AND VICE-CHAIRMAN

Ms. Shaw turned the meeting over to David Sulkis, Secretary, in order to conduct the election for Chair.

Susan Shaw was nominated for Chair by Janet Golden.
Gregory Vetter was nominated for Chair by Kevin Liddy.

A hand vote was conducted, the result being 5 votes for Susan Shaw and 5 votes for Gregory Vetter.

Mr. Liddy made a motion that the chair position be determined by a coin toss.
There was no second to this motion. The motion did not carry.

Mr. Dickman made a motion to take a paper ballot, seconded by Mr. Bender.

Mr. Ferrante suggested conducting one more ballot and then move on to the people's business.

Mr. Dickman noted it would take a 2/3 vote to reorder the agenda.

Mr. Vetter stated he did not like this divisiveness. He apologized to those he might offend. The first priority should be the people's business.

Mr. Dickman asked for a five minute recess.

Mr. Sulkis called for a five minute recess.

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[A recess was taken from 7:57 to 8:02]]

Mr. Mead stated that there were two good candidates nominated for Chair. He suggested Ms. Shaw act as Chair until June 30, 2011 and Greg Vetter act as Chair from July 1, 2011 to December 31, 2011.

Mr. Sulkis stated the by-laws do not have that provision in them and would have to be changed to accommodate that provision for an election.

Mr. Mead thought this was the best solution to resolve the deadlock and the other party has not offered any suggestions as to how to resolve the tie votes.

Mr. Ferrante stated he would not undertake a change in by-laws in the heat of the moment. The by-laws had not contemplated this event. He would not want to come up with some hasty fix.

Mrs. Golden made a motion to vote again.

Mrs. Patterson suggested paper ballots.

Mr. Sulkis: six votes for Susan Shaw, 4 votes for Greg Vetter. Susan Shaw has been reelected Chair. He turned the gavel over to Chairman Shaw.

Mme. Chair: Thanked the audience for their patience and thanked the Board. Entertained nominations for Vice-Chair.

Mrs. Patterson: In view of tonight's events she feels that there is a unified party and a unified Chair, and she would like to nominate Greg Vetter as vice chair of the Board as she feels he will serve the Board in the best possible way.

Mrs. Golden: Second.

Mrs. Shaw: Asked for any other nominations.

Mr. Ferrante: There being no other nominations, moved that the Secretary cast one vote for Mr. Vetter as Vice Chair.

Mr. Dickman: Nominated himself for the position of Vice Chair of the Board.

Mr. Liddy: Second.

Ms. Shaw: Mr. Dickman and Mr. Vetter are nominated.

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Mr. Mead: Asked for a paper ballot.

Mme. Chair: Ballots were tallied: 5 to 5 tie.

Asked for nominations for vice-chair again.

Mrs. Patterson: Motion to table vice chair election to the next meeting.

Mr. Ferrante: Second.

Mr. Liddy: That is reordering the agenda and a 2/3 vote would be required.

Mme. Chair: The motion is to table which requires a majority vote which would be 6 votes. Reordering agenda is 2/3 votes.

A vote was taken to table the election – 5 votes.

Opposed to tabling the election - 5 votes.

Motion to table fails.

Asked for another ballot vote. Same nominations.

Vote tally: 6 votes for Greg Vetter and 4 votes for Robert Dickman.

Mr. Vetter was elected Vice-Chair. He was congratulated.

[Mr. Bender left the meeting at 8:20 pm]

D. PUBLIC HEARING CLOSED 1/18/11; Expires 4/5/11

1. **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.

Mme. Chair: This is an application for a Special Exception which requires a two-thirds vote of the Board. The Board has discretion with special exceptions. She had asked Mr. Sulkis to list some of the issues with parking, lighting and the number of spaces required for the use. Asked Mr. Sulkis if he had the parking calculation.

Mr. Sulkis: Said he had stated in his original report based on the testimony that had been given and the type of use which requires 40 spaces. The entire property based on the uses as they current exist, including this particular use would require 140 spaces. There are approximately 72 spaces available are shown on the survey, but that is with two caveats. One is they need to produce an executed long term lease for the 20

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spaces that are along Bridgeport Avenue because those spaces are not on their property. If the Board wants to waive the requirement for parking, it has the ability to do so. Parking spaces in the rear cannot be counted as they are not on their property. It is a bonus that it is there. Cannot officially count them. It will be far less than the 140.

Based on testimony that was given they would be limiting their occupancy to 40 people.

Mr. Sulkis noted the other issues: Based on prior testimony, the applicant would be limiting their occupancy to 40 people. The hours of operation would be 7:00 pm to 1:00 am. According to the Statement of Use patrons would be allowed to bring their own food and beverages, including alcoholic beverages. Food and beverages would not be provided on the premises. Based on the original site plan presented to the Board, it shows a dance floor in the middle of the club. The dance floor has not been discussed but is shown on the floor plan.

A photometric survey should be submitted with a permanent lighting plan and fixtures. The UI agreement for Light the Night is a non-complying plan and does not meet the City regulations and it is a lease for the lights. If and when the photometric lighting plan is provided a new site plan will have to be provided if the lighting plan includes the installation of any poles. They have to demonstrate that any of those light poles or telephone poles are in compliance with the zoning regulations.

There has been testimony and documentation given that on the front parking area they are in the process of executing a five-year lease with the DOT. When this board approves off-site parking, the Board looks for long-term leases of 20-50 years, even 100 years. That is something for the board to consider. They are offering a 5 year lease. The lease should be longer, especially if the club is successful, they will need the parking.

They did not comply with Sec. 5.16.4, which is required in site plans as to where the dumpster will be located and how is it housed.

Any improvements to the site and utilization of the rear parking should include, based on concerns raised by several board members during the hearing that there should be proper directional signage and pavement markings for the parking area in the rear. The owner of the property offered the lounge to have exclusive rights to parking in the rear but because this use is part of an overall shopping plaza, there should not be a restriction as to who uses the parking, be it in the front or the back.

If the Board decides to move forward on this they would need to get all the information and figure out how many spaces would need to be waived in terms of parking and because the parking is becoming new and official, the Board would waive the front and rear buffer requirements for the parking. Those are the big land use issues.

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Mme. Shaw: What would the waiver be for?

Mr. Sulkis: Need 140 spaces for this proposed use and everything else. They say they have 72 spaces, but they do not. Probably the only spaces that could be officially counted would be the spaces along the front of the building, but the ones along the roadway, unless they obtain an executed lease that says they can use it, those spaces cannot be counted. Then the spaces along the rear property line are not on their property, so they cannot be officially counted. So, whatever the official number of spaces that are left on the property, the Board would have to waive whatever the deficit is.

Mr. Liddy: Why wouldn't the State give a long term lease?

Mr. Sulkis: Could not speculate on what the State does. The testimony given was the State would give a 5 year lease with the option to renew for two five-year terms.

Mr. Ferrante: The use could be permitted with the limit from 7:00 p.m. to 1:00 a.m. Most of the other tenants of this shopping center are daytime users.

Mr. Sulkis: Laundromat, pizza place and Chinese take-out which go beyond 7:00 pm.

Mr. Ferrante: In view of that could the calculation for required parking be lower?

Messrs. Sulkis and Ferrante discussed the parking situation for the existing businesses that do business in the evening and how the parking calculations could be broken down to determine the spaces necessary for a parking waiver.

Mr. Vetter: Asked if 72 spaces included the Bridgeport Avenue and rear spaces and if 127 was the low count and 140 the high count.

Mr. Sulkis: Yes. The uses that do not include the proposal require 100 spaces.

Mr. Liddy: His constituents have concerns about the health issue. Is it within the Board's purview to rule on the health issue?

Mr. Sulkis: Board has to look at the health, safety and welfare of the community. Milford has an active Health Department and if an activity is legal, there are laws that dictate whether or not that activity can take place. As a Special Exception, the Board can vote on whether it feels this is an appropriate use for this location.

Mr. Dickman: What would it take to make a motion that is complete and vote on it tonight? Is the parking calculation the single issue holding it up?

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Mr. Sulkis: The applicant has not fulfilled the requirements for a Special Exception and Site Plan Approval. No photometric survey and lighting plan.

Mr. Dickman: The photometric plan can be conditioned in the approval. Is it the calculation of the parking spaces that cannot be calculated tonight holding up an approval?

Mr. Sulkis: Yes.

Mr. Mead: Commented that last year the Board approved Johnny Ray's with three businesses there and if all were open at the same time there would not be enough parking.

Mme. Chair: Still unclear how to fill in the necessary parking spaces for a waiver, even if the number was lowered to some degree.

Mr. Sulkis: Based on the uses in the plaza today they need 100 parking spaces . Hookah Lounge needs 40 alone. They are showing 72 on the site plan, 20 of which are on Bridgeport Avenue, which is not on their property so they don't count. They cannot be counted unless the Board approves it. Based on the testimony the State of CT will lease those spaces for 5 years. Most of the rear spaces are over the property line and if whoever owns it gives them written permission and the Board approves it, they don't count.

Mr. Dickman: Wouldn't any business that has customers coming in and out raise the number of parking spots that are needed, even if it is a different type of business?

Mr. Sulkis: Dealing with an old shopping plaza, whose use is other things . What is triggering the space issue is it is a Special Exception. This use is not permitted, but is not prohibited.

Mr. Ferrante: Are the spaces on Bridgeport Avenue currently in use and have they been in use for a long time?

Mr. Sulkis: Yes.

Mme. Chair: In order for the Board to move forward with a proposed motion it would include the photometric survey, the parking calculations and if they are able to get the 20 year lease from the State and the use of the rear parking. What number of spaces would the Board need to waiver?

Mr. Vetter: The dumpster located in the rear would have to be addressed.

Mr. Liddy: Who else has a lease agreement with the State?

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Mr. Sulkis: No one.

Mr. Liddy: Why is it necessary?

Mr. Sulkis: You can't approve a use on somebody else's property.

Mme. Chair: This will be taken up again at the next meeting.

Mr. Liddy: Will there be a motion for the next meeting?

Mme. Chair: Would like to have a motion for the next meeting. Mr. Sulkis had done some work for her but when she looked at the waivers without knowing the number she did not think it worth the Board's time because the consensus is that the Board needs that number.

Mr. Ferrante: Asked if this information had been made known to the applicant.

Mr. Sulkis: From day one.

E. NEW BUSINESS

2. REQUEST TO PURCHASE CITY PROPERTY – WAY STREET

Request by Greg Field and Warren Field, Jr., to purchase vacant land on Map 25, Block 218, Parcels 8 & 10, Zone R-12.5, of which the City of Milford is the owner.

Buddy Field, 957 West River Street. He and his brother own the properties on Way Street that abut the city-owned properties they would like to purchase. This is a paper street as there is no road there. They own six of the lots on that road. They are all certified 40 x 100 foot lots and have variances on them to build single family homes. It will remain the six houses that have been approved as building lots. Want to make some lot line adjustments to increase the lot sizes so they will be more conforming to the area. If the City decides not to sell the property, those lots will remain vacant and will be a liability to the City and to the new homeowners that will be living around it. He considers it a win-win situation where the City is getting rid of a piece of property that is basically in the middle of nowhere.

[Mrs. Golden left the room at 8:50]

Mr. Liddy: Who owns #11 on Way Street?

Mr. Field: They are trying to find her but think she might be dead.

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Mr. Liddy: Asked if this is passed will it go on the tax roll as income for the City.

Mr. Sulkis: Noted the Board's approval allows the request to go to the Board of Aldermen and then it usually goes to the City Attorney's office for an "auction".

Mr. Liddy: Clarified eventually it would go back on the City's tax rolls.

Mr. Mead: When the lots are combined what will the sizes be?

Mr. Field: Explained that the lots would be adjusted. Lots 7 and 8 would be adjusted to 81 feet and the other one would be 79 feet. On the other side of the road on Parcel 9, 8 and 10 would be incorporated into lot 9 to make it an 80-foot lot and lots 16, 15, 14, 13 and 12 would be combined and their lot lines would be adjusted to equal out the sizes. Quickly calculated, approximately 60-foot wide lots, whereas the lots are now 40-foot lots.

Mr. Liddy: Asked how the lot sizes were being adjusted.

Mr. Field: Explained the method of determining how the lot sizes would be adjusted.

Mr. Ferrante: Stated he was not entirely comfortable with the Board's role in approving these requests for purchasing City-owned property. He does not feel the Board has enough information on these sales of City property. Believes this procedure should be examined in the future.

Mr. Sulkis: Sometimes the City identifies lots on its own and the process is the same whereby it goes to all the Boards and Commissions and then to the Board of Aldermen for sale. Sometimes the applicant can come to the City because they have identified a parcel that may or may not be significant and this is the process. Planning and Zoning is the intake for these requests. It does not happen often, but it does happen.

Mr. Liddy: Asked what is presently on the City-owned lots.

Mr. Field: Nothing is there. Everything is undeveloped. Everything highlighted is owned by him or his brother or by the City of Milford. He described the streets in the surrounding area as to whether they were developed or undeveloped.

Mr. Sulkis: These applications are handled like every other application. This request has been circulated through all the City departments (ie, sewer, park and rec, economic development), who might have an interest in the land. All those

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departments indicated there was no interest in the sale of the lots. This is not a case where the applicant comes to the board and no one else is looking at it or weighing in on it.

Mme. Chair: The Board's role is only to recommend to the Board of Aldermen?

Mr. Sulkis: Yes. Typically when a referral to the Board of Aldermen is made they can take a simple majority vote. If there is something that is referred to them with no response or this board denied the action, the Board of Aldermen takes a 2/3 vote to approve it.

Mr. Vetter: The Board of Aldermen sets the price?

Mr. Sulkis: They approve the idea of selling it. It then goes to the City Attorney's office and they figure out if there will be any deed restrictions, no deed restrictions, and other criteria. Then they determine how they will sell it. At that point it typically goes to auction.

Mr. Vetter: Made a motion to approve the request by Greg Field and Warren Field, Jr., to purchase vacant land on Map 25, Block 218, Parcels 8 & 10, Zone R-12.5, of which the City of Milford is the owner.

Mr. Ferrante: Second.

A vote was taken: Eight members voted in favor. [Mrs. Golden and Mr. Bender were not present for the vote].

3. REQUEST TO PURCHASE CITY PROPERTY – WESTMOOR ROAD

Request by Chris Field to purchase vacant land located on Map 30, Block 644, Parcel 8, Zone R-12.5, of which the City of Milford is the owner.

Buddy Field representing Gregory and Christopher Field, the property was an undeveloped subdivision approved around the turn of the century. They are certified building lots. They are asking to purchase the land between the two properties the Fields own to add more property to each building lot to make them more conforming to the area.

Mr. Liddy: Asked for clarification of roads that were on the map submitted.

Mr. Field: Mr. Field described the area to which Mr. Liddy referred.

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Mr. Vetter: This is a little different from the other application as it has a planning and zoning feeling to it. When there are lots this size they use it a lot and instead of single family lots does it become a development of some kind. Where the others were small pieces of land to be added onto existing lots, combining these may have a planning impact for what goes on by the shore.

Asked Mr. Field if there was a specific intent to combine these lots.

Mr. Field: When the street is developed there will be this one piece of property that is going to be overgrown. Overgrown property will make the homeowners on either side upset because the property next to them is not kept up. It becomes a liability to the City. When the older subdivisions were over 50-60 years ago, one house at a time, people are not going inquire about your property. With an area like this where it is all being developed at once, usually you try to develop the whole piece so the whole street is new and safe. There is no liability to anyone. The City-owned lot would be incorporated into the other three that are approved, so there will not be another building lot; just three lots greater in size.

Mr. Field: Gave the background and status of all the lots in question.

Mrs. Patterson: Asked what was going to happen to lot 6.

Mr. Field: Lot 6 is City-owned. Right now the road will be continued about half-way down onto lot 7. That is where the road will end. Anything beyond that is wetlands and cannot be developed. The City owns that piece. Whoever buys lot 7 could say they want to make their lot bigger and ask the City to sell it. It cannot be developed.

Mr. Liddy: Asked that photographs of the property be submitted for such a request in the future.

Mr. Mead: Asked if the three lots would be made into three lots.

Mr. Field: No, two.

Mr. Liddy: Made a motion to approve the request by Christopher Field to purchase vacant land located on Map 30, Block 644, Parcel 8, Zone R-12.5, of which the City of Milford is the owner.

Mr. Dickman: Second.

Mr. Vetter: Expressed concern that the Planning and Zoning Board is the only City body looking at this request to sell its property without someone from the

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Mayor or City Attorney's office having an opinion on this, even though it may eventually get there.

Mr. Sulkis: It has been circulated throughout the various City departments who had no objection to it being sold. If the Mayor's office has an issue with this, he would let the Board of Aldermen know, as the Board of Aldermen will ultimately make the decision.

Mme. Chair: Asked if this would routinely go to the Conservation Commission as well.

Mr. Sulkis: Not lots of this size.

A vote was taken: Eight members voted in favor. Mrs. Golden and Mr. Bender were not present for the vote.

4. REQUEST TO PURCHASE CITY PROPERTY – HARRIET AVENUE

Request by Joanne Haydusky to purchase vacant land located on Map 25, Block 216, Lot 20, Zone R-12.5, of which the City of Milford is the owner.

The applicant was not present. Mr. Sulkis stated if the Board was comfortable making a decision without the applicant being present, it could do so.

Mr. Liddy: Asked Staff to describe the area around the property in question.

Mr. Vetter: Stevens Ford.

Mr. Liddy: It is very similar to the previous application.

Mr. Vetter: Noted that the map submitted shows it is a 60-foot wide parcel looking to add 20 feet.

Mme. Chair: Asked if the Board thought they needed to speak to the applicant, or could they handle it on their own.

Mr. Ferrante: Motion made to table in order for the applicant to be present.

Mrs. Patterson: Second.

Mr. Vetter: From the map she wants to add the vacant and abandoned piece of land behind her home. Not sure if she is aware that she should have come tonight. This looks pretty innocuous.

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Mr. Liddy: Agreed. She probably just wants to take care of it. She can't do anything else with it.

Mrs. Patterson: Since the applicant is not present to answer any questions, it should not be speculated as to what the property could be used for.

A vote was taken: Five members voted in favor of the motion to table; three members voted against the motion. Mrs. Golden and Mr. Bender were not present for the vote.

[Mrs. Golden returned at 9:15 p.m.]

4. **523 WHEELERS FARM ROAD (SOUTHWICK PHASE II)**
Request for a one-year extension of time on the Minor Amendment to Special Permit and Site Plan Review approvals.

Mr. Sulkis: This is a routine administrative matter. It was previously in litigation and they won the court case. They are asking for an extension of time to begin construction.

Mr. Ferrante: Moved to approve the one year extension.

Mrs. Patterson: Second.

A vote was taken: Eight members voted in favor. Mr. Liddy opposed. Mr. Bender was not present. The motion passed.

5. **364 BRIDGEPORT AVENUE (POST ROAD COMMONS)**
Request for a one-year extension of time on the Special Exception and Site Plan Review approval granted on April 15, 2008

Mr. Ferrante: Moved to approve.

Mr. Dickman: Second.

All members present voted in favor.

F. OLD BUSINESS

7. **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.

Mme. Chair: Acknowledged that there was a communication from a Board member,

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copied to the board members and sent to the City Planner's office regarding 23 Bayshore Drive. The communication did not discuss the applicant's request that the Board is considering tonight, a request for a waiver to construct stairs to an unfinished attic area, nor did this communication reflect the view of the Board, nor does it predetermine any action by this Board as a whole regarding the current application.

Insofar as issues outside the purview of this Board, not specific to the application that is under review, were posed and distributed outside of a public meeting, she is asking the City Planner to address the concerns raised in that communication so that it becomes part of the public record. Also, in order to ensure that the public record is clear and

complete, the applicant or the applicant's representative is also asked to respond or comment on any and all issues raised in that communication or respond to the City Planner, if they so choose. Mr. Sulkis was asked for his comments.

Mr. Sulkis: An issue was raised that had nothing to do with the application regarding the approval by this board to construct this structure. The plans showed the deck of the house of a particular width. Upon inspection by the building department and P & Z staff it was discovered that the deck was wider than what was approved by the Board. However, it is allowable within the regulations to be that width. It is totally permissible, in that if this was any other application at any other location in the City, if someone walked into the Planning and Zoning office, they would be given a permit for the deck in the front of the house as it was built. The permit and plans for that deck have been revised to reflect what is actually there.

Mrs. Golden: Due to the correspondence that has gone through she is not comfortable voting on this. Will recuse herself from this matter.

Mrs. Patterson: Also not comfortable with what has transpired and will recuse herself from this matter.

Thomas Lynch, Esq. Lynch Trembecki & Boynton, Cherry Street, Milford. He has been retained by the owner of the property to supplement some of the comments that were made at the last meeting and hopefully push this application across the finish line so that the City building officials can come out and do a final inspection and put this to rest.

Asked if any of the other Board members see fit to recuse themselves from acting on this application.

Mr. Liddy: Recused himself because he is at the head of this controversy.

Mr. Lynch: Distributed a handout to the Board members. He represents a client who has a house that is 99 and 44/100% complete. The issue arose at the last meeting at

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which he was present. He was not representing the client at that time but heard some of the comments made at that time and was then contacted by Kristin to assist her in finalizing the presentation of this application. The question arose that the intent of the so-called fourth floor of this structure could be used as habitable space. The word "intent" should be focused on in considering the amendment to the CAM and Site Plan approval that the Board had previously acted on. All the discussion at the last meeting centered around the definition section of the Regulations, specifically Article 11.2, which defines what an attic is and whether or not a finished stairway can go up to an attic.

He stated it was his understanding that Ms. Arisian's contractor, David Salerno had met with staff, specifically, Emmeline Harrigan and there was some discussion about a

temporary stairway going up to access the attic area. When the final inspection was done by the Building Department, it was determined that it was not permissible under the building code and a stairway would have to be constructed with a railing, and that is where the situation is tonight.

David Salerno has put together an amended stairway, and unfinished construction-type stairway, the type of stairway that is used going down basements. The intent here is to show that this will not be habitable space. Mr. Lynch handed out two pages: One is a recitation of the State Building Code, specifically it sets forth that ceiling height for habitable space should be a minimum of 7'6". Again, reviewing the plans there is a 6-foot high clearance in the upper area of the attic, so that any use of that as habitable space would be impermissible under the State Building Code.

Also reviewed the minutes of the last meeting and noted Mr. Ferrante focused on the deck issue. There is a deck that was constructed and amended, made a little bit larger which was addressed by Mr. Sulkis' comments. There seemed to be the implication that having a deck on the fourth floor showed some sort of intent to have that as habitable space.

Mr. Lynch noted several buildings around the City that had decks or balconies with sliders, but they were not finished spaces. Also sees situations, especially along the shorefront, where there are widow walks across the tops of the houses. He does not think intent can be read into the fact that there is a deck on the upper level of this house, the intent to make that area habitable, merely because the deck is there. Because of the proximity to Bayview Beach, the deck provides a clear water view. He does not think that looking at the deck in and unto itself creates any sort of intent for the homeowner to occupy that as habitable space.

The plans that were submitted by Mr. Salerno clearly show that the mechanical elements of the house are located in this upper area. The comments were made and he has supplemented the comments with the letter that the owner supplied her with from her doctor, Dr. Kaplan, to show that any type of pull-down stairs is unreasonable

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for her to have in her house because of prior shoulder problems. She has had surgeries and the doctor's letter evidences that.

He asked that the Board focus on the plans that are before them. Article 11.2 says that all of these things combined; a stairway, a clearance of six feet, a 10-foot wide area use of the upper level more than 50% of the length of the house are all elements where the Board can make a conclusion that it may be used as habitable space, but he is submitting that the owner's intent is not to use that space as a living area. She needs it for storage and that was the intent. The way the house is built, the attic is provided for storage and nothing more.

Mr. Lynch noted that David Salerno and Kristin Artisian were present to answer questions if necessary.

Mr. Ferrante: Isn't using the deck with a glass of wine habitation?

Mr. Lynch: No. He noted he had a condominium at Seabreeze and used it for the purpose he described. It is unfinished. No sheetrock. Mechanical storage. Almost half the space is used by the air exchanger of the air conditioning unit and other mechanicals.

This all comes down to enforcement. He made the suggestion that could be part of the approval that the owner submit photos on a regular basis to show the area is maintained as non-habitable.

Mr. Dickman: Asked if the reason this is before the Board is due to the stairway, not the room at the top of the stairway. If this was a retractable attic ladder, the Board would not be reviewing this.

Mrs. Harrigan: Agreed.

Mme. Chair: The definition of an attic is very helpful. Asked what would happen if the house were to be sold. How would the buyer know they are not buying a four-story property?

Mrs. Harrigan: It could be required that something be filed on the land records for a restriction on the property.

Mr. Lynch: Stated that would be agreeable.

Mr. Mead: He had asked at the last meeting if the builder knew about the owner's medical condition when they drew up the plans, because they had the pull-down stairway in the plans and then they put in the temporary one for construction. That was the question, why was the stairway not incorporated in the first set of plans?

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Mr. Lynch: Said he had no response to this.

Mr. Mead: Also, if the mechanicals and equipment was in the attic area, how could machinery and such equipment be accessed with a pull-down attic stairs? The interpretation by staff was that space could be interpreted as habitable area.

Mrs. Harrigan: Staff applies the definition of attic very strictly. It is clear in the regulations that it gives the Board some discretion to allow for stairs if they feel the other criteria are met. She noted she applies all three standards to this definition very strictly. If the Board wants to allow for any of those considerations to be altered, that is up to the Board, but it is clear in the definition.

Mme. Chair: The question is "Is this habitable space"?

Mr. Lynch: Said he is asking the Board to say that it is not.

Mr. Ferrante: Suggested Mr. Sulkis prepare the source of enforcement he thinks necessary in the event the Board should go that way.

Mme. Chair: Asked if Mr. Ferrante wanted to delay action on this.

Mr. Ferrante: Yes.

Mr. Vetter: Motion to deny the 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.

There was no second to the motion.

Mr. Dickman: Made a motion to approve 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.

Mr. Mead: Second.

Mr. Vetter: Concerned that it sets a precedent and he thinks it is habitable space.

Mme. Chair: Would it help if there were means of enforcement, such as a deed restriction or anything else that would help people feel more comfortable that this was not going to be habitable or forming a slippery slope. Stated she felt conflicted by this. If the question is, is this habitable, she personally does not have a problem with it.

Mr. Vetter: Thinks the regulation is clear on this and he is sticking with his opinion.

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Mr. Dickman: This is a person who has a medical condition that would prohibit her from using a retractable ladder that was discussed at the last meeting. Because of that it is reasonable to approve a standard set of stairs that go into an attic space. Failing that he might have voted differently, but under the circumstances he cannot see not accommodating this request because it is a documented medical problem that the applicant is presenting to the Board.

Mme. Chair: Would ask that the motion be amended due to the medical condition.

Mr. Ferrante: Does not think the medical condition can be waived for something that is clear in the regulations. Cannot ask the administrative staff to enforce this type of condition.

Mr. Lynch: Make it clear that the fourth level of this house is not to be used as a living space.

Mr. Dickman: Made a motion to amend his original motion to include a deed restriction prohibiting the future use of the attic space as a livable fourth floor.

Mr. Sulkis: Suggested after that restriction add the restriction of any dormers.

Mr. Dickman: Add the restriction of any dormers.

Mr. Vetter: Second.

Mr. Dickman restated his motion: To approve the 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. Include with that a deed restriction to prohibit any future owner from making the attic space a habitable fourth floor and prohibit the installation of any dormers.

Mr. Vetter: Second.

Mr. Ferrante: Not any future owner, it is "the" owner.

He suggested that this is a bitter pill to swallow and the Board should see a motion in writing.

Mme.Chair: There is a motion on the floor. Either vote on it or remove it with its amendments and provide a written motion if that is what the Board would like.

Mr. Vetter: Noted he supported the amendment because there would be some level of

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restriction.

Mr. Sulkis: Suggested staff put a motion into writing which would address the concerns of the Board and have it ready for the next meeting.

Mr. Vetter: Withdrew his second.

Messrs. Mead and Vetter withdrew their seconds to all the motions involved.

Mr. Dickman: Withdrew his motion and amendments.

8. **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.
(Withdrawn)

Mme. Chair: Noted the application had been withdrawn.

[A five minute break was taken from 9:50 to 9:55]

G. PROPOSED TEXT REGULATION AMENDMENT TO ZONING REGULATIONS

9. Section 4.1.7.3 Fences and Walls

Mme. Chair: Referred to Mrs. Harrigan for an update.

Mrs. Harrigan: Based on the public testimony, the recommendation was to add the Housatonic River to the proposed regulation. Based on the public testimony there was concern about broadening it beyond that and that will take a more significant conversation amongst the Board before the Board thinks about what that next regulation might be if there is a concern about fences along greenway. So, that is not part of the consideration tonight.

Just for this evening it is to insert into the existing text which reads, "in the case of any yard which abuts Long Island Sound and insert "the Housatonic River" only, no fences, walls or shrub rows shall be permitted within the area located between the mean high water mark, etc., with the existing regulation in place. That would be the only change, to insert "the Housatonic River"

Mme. Chair: It was a very productive public hearing. The public thought it was over reaching and impacted too many areas. The question came up how does it affect Gulf Pond, or would it not affect Gulf Pond?

Mrs. Harrigan: It wouldn't.

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Mr. Vetter: Thought the public's comments were well founded. The original regulation was to deal with Long Island Sound. From his experience in the Rivercliff area near the Housatonic and so many of the properties along the River, especially at dead ends, have and need these fences. The points brought up during the public hearing, which were from residents along the Housatonic River were applicable.

Mr. Sulkis: What prompted this was the Housatonic River was always considered as part of the LI Sound. Someone had challenged that and went to the ZBA and was successful. That is what is prompting the clarification and including the Housatonic River. Those fences that are existing are grandfathered in are not going to change.

Mr. Vetter: If someone puts up a fence that is obstructing a view, he would rather have the Board deal with that rather than conclusively say no fences allowed.

Mrs. Harrigan: Along the Housatonic River there are portions that are actually owned by the State DEP or owned by other property owners. What might be envisioned to be a "waterfront" property is not a waterfront property at all. In the current regulations, if your property does not front Long Island Sound or does not front the Housatonic River, you can have a fence up to your back property line. It is only the properties that extend all the way to the water.

Mr. Vetter: If they have a dock does that mean that they extend all the way to the water.

Mrs. Harrigan: Usually.

Mr. Liddy: There is a boat club on the Milford side near Route One along the Housatonic River. He thinks they have fences there to keep people out from going onto the boats and onto the dock. If a storm came and blew the fence away, would they not be able to put the fence back up to protect the boat owners?

Mrs. Harrigan: Stated she thought it would depend on where it was located. It would have to be looked at on a case by case basis to see if was compliant or not.

Mr. Ferrante: Asked if the change excluded tidal waters.

Mrs. Harrigan: At this time, yes. The Board can discuss this at a later time. The Board was responding to the initial concern. The other discussion is much broader. Would have to look to the Plan of Conservation and Development for guidance and then the Board would have to discuss this to determine whether they want to move forward with additional restriction.

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Mme. Chair: Said she was supportive of this change. Try to protect the views and the view scapes that are there.

Mr. Liddy: Would like it looked into as to how other towns, such as Westport, Darien, Stamford, deal with restrictions along the rivers. There are so many towns with rivers.

Mrs. Harrigan: Research can be done on this.

Mr. Vetter: Asked about properties with yards going down to the river versus properties that are on the beach with sand.

Mme. Chair: Noted that the properties along the river are generally larger properties than those on the beach where the lots are small and the side views are compromised. She is in support of this change. Asked if the Board wanted to tweak this further or vote to have it move forward.

Mr. Liddy: Wanted to see what information research provides.

Mr. Ferrante: Suggested moving forward on this regulation change.

Mr. Sulkis: This regulation change should take effect on Friday, March 11th.

Mr. Ferrante: Move to adopt the change of Sec. 4.1.7.3, fences and walls as it is written in the agenda.

Mrs. Golden: Second.

A vote was taken: Five members voted for the motion; four members voted opposed to the motion. The motion failed as a 2/3 vote is required to change a regulation.

Mr. Ferrante: Noted he was surprised by the vote. Other than Mr. Liddy's request for research, asked what other objection the board members had.

Mr. Vetter: Knowing the area down there, it is a burden to take away the fences from people who live there. If a size restriction on fences was imposed, or a change of that nature, he would be open to discussion. By saying someone cannot have a fence, it impacts all those houses.

Mr. Ferrante: Asked if further work could be done on this change.

Mr. Mead: Throughout the public hearing the main concern was safety for the children, mainly because there was an incident in trouble when a little boy drowned in the river in

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Trumbull. A lot of the homes on the Housatonic have fences that need to be there. Also noted staff has said that the Housatonic is part of Long Island Sound, but he believes it is not.

Mr. Dickman: The most persuasive input from the public hearing was from Alderman Blake, that safety is the primary factor in this. If the Board was to reconsider something like this he would like input from the public again. Unless that happens he is opposed to the regulation change.

Mme. Chair: Asked if the Board wanted Staff to work on a change that incorporated some type of permitted fencing, that would take water views into account.

Mr. Dickman: Restated his opinion.

Mrs. Harrigan: Will provide a map for the next meeting to show how few properties are involved on the Housatonic River.

Mr. Mead: Asked if the bird sanctuary in wetlands at Milford Point Road was considered part of the Housatonic?

Mrs. Harrigan: That has always been considered Long Island Sound. She went on to state the parameters of the Sound and the River. Also it was a bird habitat which is different from other properties along the river, some of which are industrial.

H. LIAISON REPORTS – None

I. APPROVAL OF MINUTES – (1/4/11, 1/18/11)

Mme. Chair: The January 4, 2011 minutes have not been approved. Asked to have the minutes approved.

Mr. Vetter: So moved.

Mr. Liddy: Second.

Mr. Mead noted that five members were not at the meeting and it could not be approved.

Mrs. Golden: Stated the 1/4/11 meeting did not reflect that Ms. Shaw attempted to open the meeting as Chair.

Mr. Vetter: Asked if there were minutes if there was no meeting?

Mr. Dickman: Reviewing Robert's Rules it was still a meeting.

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Mme. Chair: Confirmed her understanding is that even if no business takes place, it meets the requirements of a meeting. You can do things, but you can't decide anything.

Mrs. Golden: Made a motion to approve the 1/4/11 minutes with the change she noted.

Mrs. Patterson: Seconded the motion.

A vote was taken: Five members voted in favor; four members were opposed to approval. The minutes were approved.

Mr. Dickman: Made a motion to approve the minutes of January 18, 2011.

Mr. Liddy: Second.

All members voted in favor.

J. CHAIR'S REPORT

The Chair thanked the Board and Mr. Vetter. The Green Book does not anticipate everything that can arise for the Board. The board members have notes and suggestions as to how to make changes in the Green Book and the bylaws. Board should think about how they want to do this: As a whole board; as a separate committee that meets on occasion and comes back, or discuss it together with the help of staff. Think about it and come back with a plan.

Mrs. Patterson: Suggested if there is a subcommittee there be two democrats and two republicans who will bring back information to the board.

Mr. Vetter: Do they have to take the whole green book or just a part of it that addresses certain issues in the bylaws

Mme. Chair: Saw other items she would like to see addressed to clarify the language.

Mr. Sulkis: Offered his assistance to work on the aspect of elections and how to address situations with regard to a tie vote. That would be the most pressing issue to address at this time.

Mme. Chair: Seating. The Board has been sitting by party which is counterproductive. Would like to work out new seating arrangements for the next meeting.

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Mr. Vetter: Asked if the Regulations could be reprinted with all the regulation amendments included.

Mr. Sulkis: This can be done but there is always an upcoming regulation change to be added. Working on an up to date website zoning regulation document, which is what would be printed, but that has not been completed as yet.

K. STAFF REPORT

Mr. Sulkis: Working on the Plan of Conservation and Development. Emmeline met with the high school social studies coordinator today. Mr. Sulkis will be meeting with the Chamber on Friday. Will be scheduling meetings with other boards and commissions for their initial input.

Mr. Vetter: Asked if a time line for these meetings has been laid out.

Mrs. Harrigan: One had been provided to the Board previously, which now needs to be updated. The Mayor's Open Space Advisory Committee had scheduled a meeting with Joan Nichols from the Connecticut Farm Bureau as well as Elizabeth Moore from

the Connecticut Farmland Trust. It is required to include a chapter on agriculture. The City of Milford has a strong agricultural heritage, but there are not much farms left today. It was interesting for them to come down and speak about the state of the regulations which they thought were positive with respect to allowing small farms and what next steps could be taken to allow people to garden on small plots, also known as urban farming. The regulations are fairly inclusive for these uses. The consideration of areas for community gardens is being discussed by Staff.

The Open Space Advisory Survey was distributed to the Board. It provides information from the survey group that was polled; how the survey was conducted; the results that they found and sets a base for open space needs for the POCD.

The social studies coordinator for the Milford Public Schools is positive and excited about a civic project in which children of different school ages can all be involved. She mentioned the opportunities to use different types of media available for age groups such as K-2, 3-5, and up.

Mr. Vetter: Asked how the Board would receive feedback from the different meetings with the different groups she discussed.

Mrs. Harrigan: The summary she gave tonight was generally based on what was discussed and said. The other component which would not be within the purview of the POCD is more of an economic development argument. She and Mr. Sulkis will continue to give staff summaries.

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Mr. Sulkis: This is the initial stage to get them thinking. There will be public meetings and charettes in the coming months. Will get a good sense from these meetings what is on people's minds. There will be plenty of public input. When the plan is put together the public will be able to comment on that.

Mr. Liddy: Asked the deadline date for the Plan.

Mr. Sulkis: The current plan will expire in 2012. A new plan will be approved by the end of 2012.

Mr. Dickman: Made a motion to adjourn at 10:35 pm.

Mr. Liddy: Second.

The next meeting will be held on March 1, 2011.

Phyllis Leggett, Board Clerk