

**MINUTES FOR THREE (3) PUBLIC HEARINGS  
OF THE PLANNING AND ZONING BOARD  
HELD TUESDAY, MARCH 4, 2014 AT 7:30 P.M.  
AT THE CITY HALL AUDITORIUM, 110 RIVER STREET**

Chairman Benjamin Gettinger called to order the March 4, 2014 meeting of the Planning and Zoning Board at 7:35 p.m.

**A. PLEDGE OF ALLEGIANCE AND MOMENT OF SILENCE**

**B. ROLL CALL**

**Members Present:** Terrence Copeland, Michael Dolan, John Grant, Jeanne Cervin, Vice Chair; Edward Mead, Carl Moore, Tom Nichol, Tom Panzella, Jim Quish, Benjamin Gettinger, Chair.

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

- C. 1. 8-24 APPROVAL (TABLED FROM 2/24/2014 MEETING)** Request for sale or transfer pursuant to CGS 8-24 of Colonial Avenue/Riverside Drive passways, exclusively to the abutting property owner(s), as depicted on the attached maps.

Debra Kelly, Assistant City Attorney gave a summary as to why this 8-24 item has come before the Board after it had been previously approved as an abandonment by the Planning and Zoning Board on January 5, 2010. The City owns the property in fee, and Board approval is required for the sale or transfer of this property to the abutting property owners.

Upon approval by the Board of Aldermen the abutting property owners will be able to bid on the property via sealed bids. Currently the abutting property owners have an easement that allows them access that would not be disrupted. The ownership or transfer would be ownership in fee, but any easement rights would continue.

**Motion:** Ms. Cervin made a motion for 8-24 approval under Connecticut General Statutes to sell or transfer the Colonial Avenue/Riverside Drive passways.

**Second:** Mr. Nichol, second.

**Discussion:** None.

**In favor:** All members voted in favor of approval.

**Motion:** Approved.

**D. OLD BUSINESS**

- 2. Proposed Zoning Regulation Text Changes Petitioned by Mayor Benjamin G. Blake, In Accordance with the Provisions of Connecticut General Statute 8-3b**

**Section 6.2 – Non-Conforming Uses**

**Section 6.2.6 – Discontinuance**

**Section 6.3 – Non-Conforming Structures**

**Section 6.3.6 – Restoration**

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**Debra Kelly, Assistant City Attorney.** Following the February 4, 2014 meeting, where Sections 6.2.6 and 6.3.6 were voted on, there were comments and concerns from various sources with regard to what was being voted on and the vote that took place. There was a meeting with P & Z/DPLU staff at the City Attorney's office on February 10<sup>th</sup> to discuss the vote and how one section could pass without the other. Mr. Sulkis suggested having a motion for reconsideration made in order to address the two regulation changes anew. At the meeting held on February 24<sup>th</sup>, which was a special meeting, the Board, by majority, voted to reconsider the two regulation changes, which are on tonight's agenda for Board consideration of approval. The public hearing remains closed but the Board can discuss it.

Attorney Kelly distributed the context of the two proposed section changes to the Board.

Attorney Kelly reviewed Section 6.2.6 regarding Restoration for Legal Non-Conforming Uses . The context of this regulation change was explained.

Attorney Kelly reviewed Section 6.3.6 regarding Restoration. The context of this regulation change was explained.

Mr. Sulkis stated that Staff had not received the proposed changes.

**Attorney Kelly:** An email had been sent containing the changes that were being proposed which she believed he received.

In response to Chairman Gettinger's inquiry, Attorney Kelly explained the scenario in which the two regulation changes would be applied.

**Chairman Gettinger:** Clarified under the current system a homeowner could go to the ZBA but it would be application specific. If a variance was granted that would run with the land regardless of the reason why a house was destroyed or taken down. The Mayor is proposing to allow everybody, without taking the chance of going to a Board, to be able to rebuild their nonconforming structure. This will all be applicable to the proposed regulations.

Questions were raised by the Board members regarding potential applications of the regulations, as well as the wording of the two regulations. Attorney Kelly responded to these queries. It was also noted that these regulation changes are not limited to shoreline communities.

**Mr. Sulkis:** Stated he could not find information on the Robert T. Stafford Disaster Relief and Emergency Assistance Act and sections referred to in the new regulations. He wondered if these sections and subsection are correct.

**Attorney Kelly:** Responded if there were scribe's errors they could be corrected. The Stafford Act determines what a natural disaster is in Connecticut. That has always been the source for actions regarding storm damage. Any such errors in the regulations or the ordinance can be corrected.

**Ms. Cervin:** Has concerns about these regulation changes and is as confused by them as she was before. She has an issue with some of the wording. Would like to have more time to review them. She will vote against it.

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**Chairman Gettinger:** In favor of this change in fairness to property owners. Does not know how anyone would be against this.

**Ms. Harrigan:** Asked about the 50% substantial damage interpretation and the foundation requirement.

**Attorney Kelly:** The 50% for substantial damage is separate and apart for the 50% contemplated in the regulation change.

**Chairman Gettinger:** Proposed a five minute recess to read through the proposed changes while the Assistant City Attorney was here to answer questions. Might not have that opportunity the next time.

**Motion:** Mr. Grant made a motion for a five minute recess.

**Second:** Chairman Gettinger, second.

**Discussion:** None.

**In favor:** All members voted in favor of a five minute recess.

Five minute recess from 8:12 to 8:17 pm

**Chairman Gettinger:** Asked the City Attorney if the proposal is to amend the proposed regulation to the language that was contained in the paperwork that was distributed to the Board members tonight.

**Motion:** Mr. Quish made a motion to approve the two regulation changes containing the wording in the document distributed to the Planning and Zoning Board by the Assistant City Attorney tonight.

**Second:** Mr. Grant second.

**Discussion:** Ms. Cervin said she did not want to be perceived as being hard hearted by voting against the regulation. She has compassion for many people for many reasons.

**Via Voice Vote in Favor of the Motion:** Ms. Cervin – Nay; Mr. Copeland – Yes; Mr. Dolan – Yes; Chairman Gettinger – Yes; Mr. Grant – Yes; Mr. Mead – Yes; Mr. Moore – Yes; Mr. Nichol – Yes; Mr. Panzella – Yes; Mr. Quish – Yes.

**Motion:** Carried 9 to 1.

The regulation changes will become effective March 24, 2014.

The Chair asked for a motion to reorder the agenda to take Items F4 and F5, Public Hearings, before Item E, the left open public hearing on 121, 123 and 131 West Main Street.

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**Motion:** Ms. Cervin made a motion to reorder the agenda as stated by the Chair.

**Second:** Mr. Panzella

**Discussion:** None.

**In favor:** All

**Motion:** Carried.

**F. PUBLIC HEARINGS – Close by 3/25//2014; expires on 5/29/2014**

4. **259 HOUSATONIC DRIVE (ZONE R-10)** Petition of David Hallman for Special Permit and Coastal Area Management Site Plan Review approval to construct a dock on Map 11, Block 17, Parcel 5, of which David Hallman is the owner.

**John Lust, Permitting Agent in Connecticut, Branford CT.** Representing the Hallman family. He processed their DEEP permit and received authorization from the DEEP in April 2013. The homeowners would like to replace a pre-existing wooden pier, ramp and float on their property. The pier is 185 feet in length and is wood in construction. The ramp leading to a floating dock is 22 feet in length. The floating dock would be 100 SF in size. It is elevated to 9 feet because they out over an extensive tidal wetland area.

**Ms. Harrigan:** Had nothing to add. The State issued a State permit for the project. More than half of the construction is within the State's jurisdiction. The City has the authority to review and grant a permit for the portion that is above mean high water.

**Discussion:** None.

The Chair opened the hearing to the public. No one to speak in favor or opposed.

**Chairman Gettinger:** Closed the public hearing.

**Mr. Quish:** Asked what the CJL, stood for, as noted in the report.

**Mr. Lust:** CJL refers to elevation and it is the limit of the DEEP's jurisdiction. It corresponds very closely to the mean high tide line, which is the beginning of the City's jurisdiction.

**Motion:** Mr. Mead to approve 259 Housatonic Drive.

**Second:** Mr. Nichol.

**Discussion:** None.

**In favor:** All members voted in favor of the motion to approve.

**Motion:** Carried.

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5. **727 EAST BROADWAY (ZONE R-5)** Petition of Thomas Lynch, Esq. for Special Permit and Coastal Area Management Site Plan Review approval to construct a single family residence within 25 feet of high tide on Map 22, Block 474, Parcel 16, of which Theodore J. Theodorsen is the owner.

**Thomas Lynch, Esq., 63 Cherry Street, Milford.** Representing the Theodorsens who are not present tonight. Existing house was built in the 1920s. Substantial damage from both storms. Complete raising of the existing house. In November the application went before the ZBA and were granted a variance because the new deck encroached on the northeasterly side of the property. Comments by Mr. Gaucher of the DEEP will be adhered to. The new house will be 2400 SF. It will be raised up meeting the AE and VE elevations. The 1700 SF existing house will be torn down.

**Ms. Harrigan:** Asked if there were questions on the stairway to the roof deck. These are interior stairs that lead up to the roof deck level, but it is just the stairs. There is no access into the attic.

**Chairman Gettinger:** No one to speak in favor or against the application.

Chairman Gettinger closed the public hearing.

**Motion:** Mr. Grant moved to approve the application of 727 East Broadway as presented.

**Second:** Mr. Copeland

**Discussion:** None.

**In favor:** All members voted in favor of approval.

**Motion:** Carried.

**E. PUBLIC HEARING (LEFT OPEN) – Close by 3/11/2014; expires on 5/15/2014**

3. **121, 123 AND 131 WEST MAIN STREET (ZONES RO and SFA-10)** – Petition of Metro Star Capital, LLC for Zone Boundary Change and Site Plan Review approval to construct a mixed use building with 48 residential units and office space on Map 65, Block 321, Parcels 19, 20 and 24A, of which 121 West Main Street Associates, LLC is the owner.

**Chairman Gettinger:** Left the public hearing open for purposes of discussing the Impact Analysis Report.

**Robert Smith, Managing Member of Metro Star Capital,** the contract purchaser of 121, 123 and 131 West Main Street. Also present are Stan Gniazdowski from Realty Concepts, the author of the Impact Study and Steve Olman, Sr. Traffic Engineer with Alfred Benesch & Company, who performed the traffic study.

**Mr. Quish:** Question on the impact analysis. Were numbers reviewed about total one bedroom apartments available in the area and is there data as to how long the typical one bedroom renter stays in the unit. What is the transient rate?

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**Mr. Gniazdowski:** Did not have that information available. Just generic information pertaining to price of the units. This is not an 8-30g application.

**Mr. Mead:** What was the average vacancy rate in the units Mr. Smith held and still holds?

**Mr. Smith:** 97-98% occupancy in the summer months, dropping to 93% in the winter months. Average is (was) 95% occupancy.

**Mr. Quish:** Asked if he had the turnover radius of his apts.

**Mr. Smith:** Turnover rate in Milford is 45%. 18 months average stay. There are only one and two bedrooms.

**Mr. Grant:** Site Plan. The dumpster is about 15 feet off the house that is there. Could the dumpster be relocated to another part of the property.

**Mr. Smith:** Would certainly work with Staff on moving the dumpster.

**Ms. Cervin:** Traffic study. Questioned the decrease in peak hours of traffic.

**Steve Olman:** Registered professional engineer in Connecticut. He was requested to do an analysis of what traffic the building on the site could generate and what the proposed use would generate. He explained how the traffic studies are conducted and the modalities used.

**Mr. Dolan:** Does the traffic study take into account the proximity of the complex to the train station? Any knowledge of how many residents would be walking to the train station?

**Mr. Olman:** This is theoretical and hypothetical. Does not know how many people would be walking to the train.

**Mr. Grant:** Why is this not spot zoning.

**Mr. Sulkis:** They are just moving the zone line that abuts the lot.

**Mr. Panzella:** Traffic is going to increase. Traffic will increase from what it is now. 72 cars plus the office space would be in use.

**Mr. Gniazdowski:** These would be spread out during the day. Not in peak hours. People will be walking to the train. The traffic report is a generic report as if there was no train station there.

**Mr. Smith:** The POCD encourages this development near the train station.

Chairman Gettinger opened the hearing to the public and gave the public speaking procedure. People to speak in favor of the application - None. Anyone to speak against the application?

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**Bertha Gallant, 135 West Main Street.** Specifically requesting information on the traffic study. The traffic study is hypothetical. This report is increasing the average daily traffic by 160%. Why weren't the State traffic studies taken into consideration at that corner. These studies are done once every three years across the State of Connecticut. One was done at West Main Street and Housatonic Avenue within three years. The average traffic through that area is 7600 trips. That is directly from the State of Connecticut website that takes traffic count information. How would a project of this size actually going to ease the traffic flow there.

Second question regarding the report: Where in the study does it make the case for the zoning change. It is an adjacent property, however, the MCDD zoning, would allow the potential for something else, such as a restaurant, should this project not take place. Once the zoning is changed any number of projects could go through on that property. As she understands it, once the zoning is changed it is changed in perpetuity. She questions where in the study is the zoning issue addressed.

**James Rude, 141 West Main Street.** Lives on the corner of High Street and West Main Street in an historic house. Implores the Board not to change the zoning for the two parcels. The MCDD has expanded sufficiently into residential and mixed zone neighborhoods. There is substantial traffic on these corners all day long with two schools; City municipal buildings and as a bypass for US 1. The brick building that is currently on the property is underutilized. Doubtful that it is hypothetically creating 260 ins and outs. Even with hypothetical numbers it would be approximately 600 additional trips per day. The thought of looking out his window and seeing a building larger than the new one at the harbor is disconcerting. The property values will be negatively affected.

**Ann Maher, 50 Prospect Street.** She agrees about the traffic increase. Heard a lot of anecdotal evidence, as well as hypothetical evidence regarding traffic. In the development built across the street from where she lives, about a third of the people do not take the train. This is where the numbers become different from reality. There is increased traffic on Prospect Street as a result of the 51 apartments that have been built. It does not come at one time, but it goes on all day long. It will be a similar process in the proposed project.

The zone change is a major thing. Prospect Street is not an MCDD neighborhood. Encroachment is something that should be considered.

**Steve Rathbun, 44 Prospect Street.** Traffic studies are great in theory but not in reality. Heard the same thing on Prospect Street, that traffic would not increase. Perhaps six people walk to the train station in the morning and afternoon. Can quash this whole thing by stopping the zone change.

**Rebuttal:**

**Mr. Gniazdowski:** The property is analyzed as if the zone change has already taken place.

**Mr. Olman:** He did not do counts to the driveways for the existing use. If the building is under utilized today, the traffic will be lower than the numbers he has given. Unfortunately, the equations are based on studies done around the country. He has no way of knowing how many are done around train stations and how many are not. He would guess that 10% to 20% of the people sounds reasonable, but he does not know. Best way to do a study would be to have a like, kind and quality project and get those numbers, which would be a single study.

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No one to speak further.

No questions from the Board.

Chairman Gettinger closed the public hearing.

**Mr. Sulkis:** No comments.

**Discussion:**

**Mr. Quish:** The balance between residential and commercial use is about 96% residential and 4% commercial. Other zones have residential uses, even in CDD-1, 67% residential. To call this a mixed use area is not valid. The Board does not have a true benchmark or direction as to what parameters the Board should have in order to change a zone. The zone lines were made for specific reasons. The Board should ask Staff to see what a purely residential compliant project would look like with respect to density and traffic it might generate. Residents' quality of life not being taken into consideration.

**Ms. Cervin:** Would like to know what other buildings could be built in the RO zone.

**Mr. Mead:** Is pleased this is a fair market project with a high standard building.

**Mr. Quish:** What is the development potential in the present zone and if it was residential only and not a mixed use. What would that do to the neighborhood. He is not convinced it is mixed use. Believes this is being done to create more density.

**Ms. Cervin:** This fits into the POCD.

**Mr. Quish:** When it comes to moving a zone line it should meet certain criteria. It should not be just moving the line over to accommodate the project.

**Ms. Cervin:** RO is mixed use – Residential office at this time.

**Mr. Quish:** If the zone is changed and the project is approved under mixed use, there are certain requirements as to what can be built and what it would be as residential only.

Mr. Sulkis will provide a report on the two zones in question, RO and MCDD for the next meeting.

The Board will vote on this application at the next meeting.

**G. NEW BUSINESS**

**6. 306 HIGH STREET – SUBDIVISION BOND RETURN**

Request by Roland Skinner for the release of the remaining subdivision bond on the above captioned property in the amount of \$1,220.00, in accordance with the memo of approval from Richard Tomasco, Interim Public Works Director dated February 18, 2014.

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**Mr. Sulkis:** This is a routine request for the balance of the subdivision bond held for one year after substantial completion of the subdivision is made and the partial subdivision bond return is issued.

**Motion:** Ms. Cervin made a motion for the remaining bond return to Roland Skinner in the amount of \$1,220.00.

**Second:** By Mr. Grant.

**Discussion:** None.

**In favor:** All members

**Motion:** Passed.

#### **H. LIAISON REPORTS**

**Ms. Cervin:** Attended the Board of Aldermen meeting the previous night. There was an item regarding the concern over animals at circuses and events such as that. In order to get a permit from the Planning and Zoning office, they have to bring a certificate from the USDA that certifies them as being healthy and safe. There was also a Resolution to open the Charter and the motion was defeated by one vote, so the Charter will not be open.

#### **I. APPROVAL OF MINUTES – (2/24/2014)**

**Motion:** Ms. Cervin made a motion to approve the Minutes.

**Second:** Mr. Grant.

**Discussion:** None.

**In favor:** All members in favor.

**Motion:** Passed to approve the Minutes of 2/24/14.

#### **J. CHAIR'S REPORT**

**Chairman Gettinger:** He and the Board received a letter from the Orchards Golf Course about a Planning and Zoning application. Asked Mr. Sulkis what this was in reference to.

**Mr. Sulkis:** In reference to a potential Planning and Zoning Board application.

**Chairman Gettinger:** Asked Staff to explain to the new board the two options for open space the applicants have when approved for a subdivision.

**Mr. Sulkis:** Explained that 10% of the value of the land can be donated as open space, if it is able to be added to other land the City owns. The Subdivision Regulations identify what is acceptable for this use, i.e. recreation, passive-active, natural resources, etc. If there is no land adjacent to the

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subdivision that is City property or dedicated open space to which the land could be added, a monetary donation of 10% of the appraised value of the approved lots is made.

**Chairman Gettinger:** Stated he and Vice Chair Cervin had further discussions about the appointment of the Chief Zoning Enforcement Officer. Ms. Cervin wanted the City Attorney to issue a written legal opinion on the matter. He and Ms. Cervin came up with five questions to ask the City Attorney. This list was read to the Board. If the Board agreed, a memo would be sent to the City Attorney asking these questions.

A Board vote was being requested because a vote was taken at the last meeting not to ask the questions. Wants to keep the process consistent.

**Motion:** Mr. Quish made a motion to send the memo asking the questions to the City Attorney.

**Second:** By Ms. Cervin

**Discussion:** None.

**In favor:** Mr. Copeland, Mr. Dolan, Chairman Gettinger, Vice Chairman Cervin, Mr. Mead, Mr. Moore, Mr. Nichol, Mr. Panzella, Mr. Quish.

**Against:** Mr. Grant.

Motion passed to present five questions for the City Attorney to answer in regard to the Mayor's authority to appoint a Chief Zoning Officer.

**K. STAFF REPORT**

**Mr. Sulkis:** Distributed a handout concerning other municipalities' regulations with regard to medical marijuana dispensaries for the Board to review and give him further direction on how they want to proceed.

**Ms. Cervin:** Requested the questions Mr. Sulkis suggested be put in writing for the Board's review.

Chairman Gettinger asked Mr. Sulkis to prepare a site plan for a training session to be held prior to the next scheduled meeting on March 18<sup>th</sup>.

**Motion to adjourn:** Ms. Cervin made a motion to adjourn the meeting.

**Second:** By Chairman Gettinger

**In favor:** All members voted in favor to adjourn the meeting at 9:30 p.m.

*Phyllis Leggett*\_\_\_\_\_

Phyllis Leggett, Board Clerk