

**MINUTES FOR THE PLANNING & ZONING BOARD
MEETING HELD
TUESDAY, APRIL 21, 2009; 7:30 P.M.
CITY HALL AUDITORIUM, 110 RIVER STREET, MILFORD**

Acting Chair, Kim Rose, called the April 21, 2009 meeting of the Planning and Zoning Board to order at 7:32 p.m.

A. PLEDGE OF ALLEGIANCE

B. ROLL CALL

Members Present: Frank Goodrich, Mark Bender, Janet Golden, KathyLynn Patterson, Kevin Liddy, Susan Shaw, Greg Vetter, Sr., Victor Ferrante, Kim Rose, Acting Chair.

Not Present: Jeanne Cervin, Chair.

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

C PUBLIC HEARING CLOSES BY 5/12/09; exp. 6/11/09

1. **598 WEST AVENUE (ZONE CDD-1)** Petition of Barrett Outdoor Communications, Inc. for approval of a Special Permit and Site Plan Review for the reduction and relocation of commercial advertising signs on Map 42, Block 304, Parcel 1A, of which Riverbrook, LLC is the owner.

Mrs. Patterson: Was not in attendance at the last meeting. Saw the tape of the last meeting. Will vote tonight.

Mr. Goodrich: Spoke about the application to remove three signs and replace them with one sign, which would be a billboard reduction of 75%. If the Board does not approve the application, the applicant might use the three existing billboards and the trees might be removed or at least topped because they are much further away from the highway. Despite the residents' objections, the billboards would be more visible if the trees are cut back. The applicant has tried to place the new billboard where the trees would not be cut back as much.

Mme. Chair: Agreed that it was a thoughtful plan on the part of the applicant. The noise barrier to the residents might be best served through barriers, although the property is adjacent to the highway. In support of the application.

Mrs. Patterson: Made a motion to approve the petition of Barrett Outdoor Communication, Inc. for a Special Permit and Site Plan Review to remove the three existing outdoor signs on properties located on Erna Avenue and replace them with one sign located at 598 West Avenue, pursuant to section 5.3.6.7.

Mrs. Golden: Second.

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Mr. Vetter: Watched the DVD of the last meeting. Agrees with Mr. Goodrich. It's a challenge because from the clubhouse and from the perspective of someone living in the development, either side of the development will end up with these signs. The application was thoughtful and probably the least intrusive and best design for the area.

Mr. Goodrich to Staff: Asked if the three waivers should be incorporated in the motion.

Ms. Shaw: Amend the motion to include the three waivers as follows:

1. Minimum Side Yard Setbacks requires 20' and 0' is provided.
2. Minimum Distance from Highway Right-Of-Way requires 50' and 0' is provided.
3. Maximum Height Above Ground requires 40' and 46' is provided.

Mr. Goodrich: Second.

Mr. Liddy: How wide is the right of way from the highway?

Mr. Sulkis: Believes it is 50-60 feet between the right of way property line and the edge of pavement.

Mr. Bender: The State DOT will have to approve this, won't they?

Mr. Sulkis: The DOT will have to approve this.

Mr. Goodrich: When will the three existing billboards be removed?

Mr. Sulkis: The permit for the new billboard will not be granted until the other three billboards are removed. Most likely will be simultaneous with the demolition permit.

Mme. Chair: Vote on the amendment.

All members voted in favor. The amendment passed unanimously.

Mme. Chair: Vote on the motion.

All members voted in favor. The motion passed unanimously.

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CONTINUED PUBLIC HEARING CLOSES BY 4/30/09; exp. 6/24/09

2. **12 FRANCIS STREET (ZONE R-7.5)** Pursuant to Sec. 7.1.3.14 of the City of Milford Zoning Regulations, the Planning and Zoning Board will review and consider whether to revoke the zoning permit issued to Joseph Voll on April 17, 2007, for work to be performed at the property located at 12 Francis Street, Assessor's Map 6, Block 84, Parcel 2, and owned by Antoinette Voll.

Mme. Chair: The applicant requested to keep the Public Hearing open in order to receive additional information from the DEP. Asked the Board to keep their comments and questions to the new information being provided. Asked Staff for a summary of the items.

Ms. Harrigan: What the Board is reviewing: For the potential revocation of the deck, hot tub and pool for 12 Francis Street based on the Planning and Zoning Department's understanding of the Coastal Site Plan application that was approved that resources were not identified. It is only the deck, hot tub and pool which either one impact the resources, which based on information that the Department has, understands to have been in place prior to the application being reviewed by the Board. Also, the pool is currently not compliant with FEMA National Flood Insurance Program requirements and also because the Coastal Site Plan application was not adhered to based on the excavated fill that was spread over the site. As a reminder, when you regrade the site that is within 25 feet of a flood plain, you are required to apply for a Special Permit. For example, the Har property on Melba Street. They had to come back for a retaining wall because they regraded a portion of that retaining wall. About two months ago they had to come before the Board for a Special Permit. It was identified for that property that they were within 25 feet of the flood plain and they came in. So, this property, like that property, is subject to the same requirement.

Stated she had presented the Board with a packet wherein the minutes from the January 20th meeting were enclosed to help refresh the Board's memory as to what was presented both by Staff and the Applicant at that hearing and also supplied them with additional information and correspondence that came from the DEP, both regarding the Coastal Site Plan application and the continuing efforts by Mr. Voll to try to retrofit his pool foundation to meet the requirements, as well as information from Ms. Moch, who is his consultant, who, at the January 20th meeting submitted a restoration plan to the Board and then provided additional comments after that time.

This evening some additional materials have been handed out to the Board; some from the applicant, which they can address, and also an additional letter from the DEP. In the packet that was mailed to the Board there was a draft letter

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from the DEP. This is a more final letter that includes some of the discussion. When the hearing was left open on January 20th, it was specifically for the DEP to respond to the restoration plan. Since then there has been a bit of back and forth between the applicant submitting material to the DEP in terms of what they said was submitted and what was reviewed as part of the hearing. Planning and Zoning does not have those materials on file. What has been submitted has been information that was supplied to the Zoning Board of Appeals and was specifically stamped into the record and is part of that file. The Planning and Zoning Board file does not contain that information, so again, we don't have those specific photographs.

What occurred after was Mr. Voll submitted photographs to the DEP and said, "These are the photographs that were submitted to the Board". We said, "Well, we don't have those photographs. We have photographs on file for the ZBA, but we do not have these on file for the Planning and Zoning Board. "

Stated that she and John Gaucher went back and listened to the tape of the Planning and Zoning Board hearings, and it was clear that there were two photographs that were described that John has included in the April 21st letter. It sounds like photographs 1 and 2 may have been part of that presentation, but it is not clear because the other photographs were not discussed in any detail and it cannot be determined what those photographs were.

Have to go back to what are the facts that we have as to what was identified for this site in terms of the coastal resources. The site plan does not identify any vegetation on site. The coastal site plan review does not identify any vegetation on site. Then there are photographs which we understand from listening to the audiotape of the hearing identify certain portions of the site but does that identify the coastal resources that have been impacted. The Board has to review that information and make a determination.

Also supplied the Board with current photographs of the site. Although there is a cease and desist order in place, Mr. Voll finished his deck and his hot tub and did it over the noncompliant pool foundation. Again, it has been expressed by the applicant and the applicant's representatives that they are going to remove that pool foundation but we are not sure how they are going to do that since they built the deck over it. It will certainly make it more difficult.

The other thing that has occurred directly adjacent to the site, and because of what has been identified in terms of the Francis Street extension, Mr. Voll correctly identified that people have been kind of following the beach and ending up on what is likely his property. So it is hard to determine exactly where this is located, but there is now cordoned off piping plover habitat that is directly adjacent to this property. Only mention this because depending on what the

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Board decides, there is still a cease and desist order in place because there was regrading that occurred on site. What has been discussed is a restoration plan to return vegetation to the site that was covered by that excavated fill and unfortunately, because there is an identified piping plover habitat area, which is a federally protected, not only state protected species, this will now affect the restoration plan in terms of when this can occur, because there is a specific time frame or the applicant, in doing the restoration plan may not be able to perform that work. So this will have to be considered.

Mme. Chair: In listening to the tapes of that original meeting, how many photographs were discussed?

Ms. Harrigan: Two photos specifically, however there are a series of photographs about the site. Mr. Grew, the architect, says "You can see the house, it's on the right hand side and this is looking up towards Francis Street". The second photograph he describes is specifically about the passage way, which is kind of the shared passage way that is behind the house. So, those are the two photographs that are specifically identified. The other photographs are unclear based on listening to the audio.

Mr. Goodrich: Don't understand the statement that the ZBA and P & Z have two different files.

Ms. Harrigan: They are two different boards. What is presented to the Zoning Board of Appeals for a variance request may not be the same thing that is submitted, for example, for a zoning permit. When there is an application that requires a Coastal Site Plan Review, that coastal site plan review is not always filled out in its entirety with all that information, if an applicant is requesting a variance at the same time. The site plan that they are asking to vary, needs to remain the same, but there may be modifications to the project before it gets to the Planning and Zoning Board.

Mr. Goodrich: The DEP reviews all the CAMS before they go to the P & Z Board?

Ms. Harrigan: They do now. In the past it depended on the project, to be honest.

Kevin Curseaden, Esq., Stevens, Carroll and Carveth, 26 Cherry Street, representing Mr. Voll and his wife, who are present with Alexandra Moch, the environmental consultant. He understands the limited purpose that the hearing has been left open for. Agree with some of what Ms. Harrigan has said tonight. There has been a lot of back and forth with information he has provided to DEP put on the file, information and conversations back and forth with Staff and the

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DEP. Asked to make a couple of comments so that they could move forward with this. Just received the latest letter from the DEP at approximately 4:45 today. The Board has 65 days to make a decision from the date that the public hearing closes. Believes with all the information the Board has been presented, especially in the past week or so since the last hearing, that the Board take the time to read and digest all of it before a conclusion is reached.

The DEP is right in their March 19th and April 21st letter. It is really up to the Board to decide whether there was sufficient information at the time that the approving board approved this project. That there was sufficient information presented to them. It is our position, and believes the evidence shows, that they had sufficient information. Stated that in his letter of April 17th, with exhibits attached, there was a letter from the architect who said that he had presented all of the same photographs that night to the Planning and Zoning Board on September 19th that were submitted to the ZBA. Why they are not in the Planning and Zoning file, he does not know. Maybe they were put back in the ZBA file. Cannot answer that and no one can really answer that. The point is that the benefit of the doubt has to be given to Mr. Voll and the benefit of the doubt has to be given to the approving board that they got the adequate information that they needed. He listened to the tapes and recommended that the Board listen to the tapes. He knows that under the statute there will not be another meeting before the public hearing is closed. April 29th is the 100th day under the guidelines to not consider any other evidence. Does not think he or staff should submit anything else after tonight. After listening to the tapes he has a different interpretation from Ms. Harrigan. She says only two photographs were identified. He talks about photographs earlier on in his presentation and then talks about a couple of other photographs. It's just not clear. And if it's not clear it is not fair to Mr. Voll. It is not fair to go back and basically figure out whether that previous board made the right decision. That is not what this is about. It is not about whether they made the right decision or whether this board would have made a different decision, it's whether they had sufficient information at the time to approve the project.

Spoke of an email received today from Mark Lofthouse, a previous board member, sent to Mr. Sulkis. Does not see anything in the evidence that suggests that the Board can go back and revoke the permit. If the site plan did not show the adequate vegetation, or the resources according to what Mr. Sulkis' standards are now, that is one aspect of the evidence. Do not know what pictures were shown. Do not know whether someone on that board went down and visited the site. Does know from listening to the tapes that John Ludtke asked Peter Crabtree if there were any issues that the Board should be aware of and Peter Crabtree said no. Peter Crabtree, the Assistant City Planner at the time had reviewed the application and had accepted the application. There were questions Mr. Liddy brought up, if you go back and listen to the tapes about who

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prepares CAM reports. The answer was that anyone could prepare one and Mr. Liddy was concerned about what the qualifications were for someone preparing a CAM report. (Mr. Curseaden said he was paraphrasing because he could not remember word for word what Mr. Sulkis said.) Mr. Sulkis said it was Codespoti & Associates, so there is comfort in that as they are the on-call engineers for the City of Milford. If the Board takes all that into consideration and you take what he has given you and not to necessarily discount what Staff has told the Board, it does not provide this Board with sufficient information to go back and revoke the permit. The Board is trying to figure out whether they had that information at the time. If there are any questions, or if it sounds like or it appears, those are all ambiguous statements. It is all speculation that the Board did not adequately have the information or go out to the site or anything along those lines.

Mr. Curseaden pointed out that the pictures that were given to the Board tonight that were taken yesterday -- the rules of evidence for a Planning and Zoning meeting are a lot different, but he objected to the relevancy. They are outside the scope of what the hearing was left open for. Also felt they are prejudicial because now there is a piping plover sign that maybe someone from the Audubon Society came over and put on Mr. Voll's property this past week. That is what Mr. Voll has told him. Thinks it is prejudicial. Also believes it is prejudicial the fact that if there is supposedly a violation of the cease and desist order, that is not relevant to what is being discussed tonight. Mr. Voll has been diligent in trying to get the pool foundation ironed out with the engineers and with the DEP. There is a letter from Art Christian, one of the engineers up at DEP where he is getting close to an acceptable structure for that pool foundation. That is something that may have to be figured out another day, but that is another point that was brought up that he is responding to.

Thinks that the real point is that the DEP has no problem with the way the project is as approved. They say that in their most recent letter that was received today. They state that if they had reviewed it at the time that they may have asked to scale it down a bit, but they would not have recommended disapproval. There is nothing to show that adequate measures cannot be put into place to rectify the situation as it is right now. That is the real purpose of the Coastal Management Act. That is why the applicants go through the process in the first place. Does not know why the applicant would have to scale back the project or scale back the deck based on the limited information that the Board has, by revoking the previous permit.

Pointed out that there had been comments that it is very easy to say, well if somebody doesn't like something then they can bring it to the Superior Court. But that is not beneficial to the Applicant. Do not want to spend two years and legal fees to do something like that. It will also be expensive for the City of Milford because the City of Milford usually hires outside counsel ...

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Mr. Ferrante: Madam Chair. Does not think that ever came up and does not think it is appropriate to discuss now. Sounds like a threat of appeal.

Mme. Chair: Agreed with Mr. Ferrante.

Mr. Curseaden: Will wrap it up, however, Mr. Sulkis said that at the last meeting. It is in the minutes.

In summary, the proper resolution is to allow the project to stay as is. If it is required to get a Special Permit for the regrading, that is one thing. Does not think the project should be revoked.

Mme. Chair: Asked the Board if they had any questions.

Mr. Bender: Asked why Mr. Curseaden did not think the Cease and Desist Order was relevant. Based on the review of what was going on, he believed a Cease and Desist Order was given on the work on the deck and that has been completed.

Mr. Curseaden: It is Ms. Harrigan's opinion that it has been completed.

Mr. Bender: Said he was there today and the deck is more done than it was before the Cease and Desist Order was given. Only thing that was missing was a continuous rail that the Building Department would make them put in. There are swings hung and everything.

Mr. Curseaden: This is the first he is hearing about this or seeing the photos. The Board is here to revoke a permit on whether the applicant violated the Coastal Site Plan Review and the regrading and did not get a permit for the regrading. That is not relevant to whether he violated the Cease and Desist Order. They are two separate matters. Would think that technically there would have to be a separate hearing on that. Not discounting what Mr. Bender said either, but believes they are two separate things.

Mme. Chair: Stated she has also been to the home and seen the completed deck and the hot tub. It does not bode well with this item being in front of Planning and Zoning for revocation of a permit, although it will not play in her decision, but it is not the right thing to be doing when you are in the middle of a zoning decision such as this, to continue to go on and do work like this. Also has to say that Mr. Curseaden's comments about the plovers that somebody from the Audubon came back and plopped a sign is absolutely ridiculous. This is the plover season. Sure you live in Milford and know about the plovers. Does not take well to that comment either.

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Mrs. Golden: Also, if you are to regrade in a flood plain you need a Special Permit and you are not to disturb coastal resources. So when this sand was put over that and it was disrupting the dunes, could you explain that?

Mr. Curseaden: We talked about that earlier with regrading or actually coming back and getting a Special Permit if that is required. But it has also been DEP's estimation that there has been no harm done by that because that sand is the same sand that has been on site. If you look at the DEP's letters, then that is basically what they say.

Ms. Shaw: You have asked for an extension of time and the Board has been extending a lot of time. Question is: With the Cease and Desist, do you know if your client is going to cease and desist any further activities while the Board reviews this?

Mr. Curseaden: Responded he would talk to his client about that. This accusation just came out ten minutes before the hearing.

Ms. Shaw: Just want to be clear on this because he came to the Board and asked for an extension of time prior to their voting on this and he specifically asked because of the recent cease and desist, because you had gotten one you asked for a delay for the Board to review this.

Mr. Curseaden: No. A delay was requested so that comments could be obtained from the DEP.

Ms. Shaw: In that time further work has gone forward and now you are asking for additional time for this Board ...

Mr. Curseaden: Not asking for additional time for the Applicant. Just think it would be beneficial if the Board members listened to the tapes and made up their minds for themselves. The Board is hearing what his opinion of the tape is and they are hearing what Ms. Harrigan's opinion of the tape is and what DEP's comments on the tape are. Think it is much better for the Board members to listen for themselves. There is no benefit to him to extend the hearing tonight.

Asked to comment on Ms. Rose's statement about the plovers. It was not the intent of his statement about the piping plovers that it was something haphazard or unimportant. Point was in the spectrum of this hearing and the reason they are here tonight, is something entirely new that is being brought to the Board's attention. Thinks it is prejudicial, because if there is a piping plover nest, yes, it is important to be noted, but was that there two years ago? There is no evidence to show that it was. So he thinks it is unfair and prejudicial to have it shown tonight. That is the comment, not that it is an unimportant resource to protect.

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Mme. Chair: Thanked Mr. Curseaden and said she agreed with him.

Mr. Liddy: Read from DEP correspondence regarding removing the pool. Stated he did not see anything addressing how the pool would be removed. How will that be done?

Mr. Curseaden: Stated he did not know but he believed Mr. Voll has a plan.

Mr. Liddy: Stated he thought the Board should have the plans as to how they were going to follow the State of Connecticut's recommendation to remove the pool before they vote on this, because based on the fact that he ignores the cease and desist, how does the Board know that he will remove the pool that the State of Connecticut almost demands that he do. Wants to see the plans to remove the pool before the Board votes.

Mme. Chair: Asked Ms. Harrigan if she would like to comment on the removal of the pool.

Ms. Harrigan: The only comment she would like to add for the removal of the pool is this is directly tied to Mr. Voll's ability to get a CO. So if he wants to occupy his house, he has got to address his pool, He either has to retrofit it to meet FEMA requirements, or he has got to remove that pool foundation. When you are in a flood plain, before you are issued your Certificate of Building Compliance, which is given by the Building Department which says you meet all of the code requirements, part of what is required in a flood plain is that you have a certified professional indicate that you meet all of the criteria of the National Flood Insurance Program. That includes the Free of Obstruction Criteria, which pertains to a coastal high hazard zone such as this house is located in, that you have built on the required piers to meet the building code standards. Before they can even get a building certificate to occupy his house, he has to address this issue. It's up to the Board to determine whether this affects their vote or not affects your vote, but he is not going to get into his house.

Mr. Liddy: Asked what would prevent him from living in his house without a CO.

Ms. Harrigan: That would unfortunately require more administrative action by the City. They would have to cite him for occupying without a Certificate of Occupancy and issue a Cease and Desist Order.

Mr. Liddy: Which they ignore.

Mme. Chair: Asked if any other Board members had questions regarding the additional comments that they received from the DEP to be addressed to Mr. Curseaden?

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Mr. Ferrante: Asked Ms. Harrigan to go over the pool and building permit. No pool in the building permit. A different pool coming before the Board. Referred to a memo she had previous submitted.

Ms. Harrigan: Provided the Board with this information at the January 20, 2009 hearing. Provided the Board with a brief summary of the series of events that transpired as Mr. Voll was going through the permitting process.

Mr. Ferrante: Quoted from the memo: "Allowed for construction of a single-family residence with an attached deck with an endless pool and hot tub all on elevated piers to meet the City's flood hazard requirements." Is that correct?

Ms. Harrigan: That is correct.

Mr. Ferrante: The building permit had the pool crossed off. No pool, correct?

Ms. Harrigan: Actually what had happened and what is not uncommon is the owner chose to split his building permit. He got his foundation permit first and started work on the foundations while his house permit was being reviewed. The foundations were reviewed separately. They were approved. He was granted a permit. He started to excavate to build his piles. Then what happened was as his house plans were getting reviewed John Gaucher in 2007 reviewed the site for the silt fence and then during an inspection in July 2008, the Building Department issued a stop work order because the foundations were not built to the plans that had gone through the Coastal Site Plan Review and the building permit process. The foundations were different, including the pool foundation. It was a rectangular block instead of on piers.

Mr. Ferrante: Isn't that a violation right there? The Board approves a certain plan and then either he submits a different plan to the Building Department, as one possibility, or he submits the plan but builds it differently. Isn't that a violation?

Ms. Harrigan: It is inconsistent with both the approval of the Coastal Site Plan Review and it is inconsistent with the building permits that were issued, and you have to build to those permits. That is why there is usually a job site set on site for the Building Department when they go out and do inspections to make sure what you are building is what has been approved. So it is inconsistent and it does not correlate, but she does not know that the Building Department calls it a violation. They issue a stop work order and they try to rectify the condition. It depends ...

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Mr. Ferrante: It is a violation of what the Board approved.

Ms. Harrigan: Correct.

Mr. Ferrante: When the mode of construction is spelled out in a plan, and the Board sees these plans all the time where they have silt fences, hay bales, all of those things. Architects or engineers go to great lengths to describe methods to control during construction. Was that done here?

Ms. Harrigan: It was described in the Coastal Site Plan report. Planning and Zoning does not have a plan on file.

Mr. Ferrante: Spreading the sand out was not in that plan, right?

Ms. Harrigan: That is correct. It was indicated that there would be no alteration of the beach resources.

Mr. Ferrante: So that is a violation of the whole approval isn't it, or is it?

Ms. Harrigan: It's inconsistent with what was approved, yes.

Mme. Chair: Asked if there were any more questions for Mr. Curseaden.

Mr. Curseaden: Asked if Mr. Voll could respond to Mr. Ferrante.

Mme. Chair: Stated that was what she did not want to get into, as far as opening this discussion. She wanted to close the public hearing.

Mr. Curseaden: We will keep it brief.

Mme. Chair: Yes, you may respond.

Joseph G. Voll, an owner of 12 Francis Street. Asked to clarify some of the confusion on the foundation. The original approvals from Planning and Zoning were for a pool, hot tub and all that. Originally it was all going to be on piers. What happened was when you go for a building permit on the water there are also other requirements which have to be met through a structural engineer. So basically the Building Department gave him a permit for the footings and foundation and then they needed a structural engineer to stamp the footings that they would meet the hurricane codes, the share loads and the uplift loads. The structural engineer modified the footing and foundation plans to make them bigger. The footings are bigger underneath in the ground than was originally planned to meet the structural needs of the house to meet the share loads and the lift loads. The structural engineer said the proper way to do the pool is not to put it on piers but to fill in and make it solid structure 20 inches wide. It's hollow

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inside and just fill it with sand. So basically, it's a full footing, full foundation that was required by the structural engineer. Not that he wanted to change it because it was going to cost him a lot more money. What happened was it was stamped by the Building Department and approved, and also stamped by Zoning. If the Board looks at the record they will see the same footing, the same foundations that are there, revised by the engineer. They were stamped by the Building Department and approved and stamped by the Zoning Department. When he found out when he came to the last meeting, the issue came up with the structure because it is solid by the pool. There is no problem with the structure, but it becomes an obstruction under FEMA's definition if it is a solid structure. He talked to Mr. Art Christian and had it certified under FEMA certification by a structural engineer. It cost thousands of dollars for the structural engineer to take the original foundation and certify it to Art Christian. He verified that there would be no problem with uplift or deflection. There are certain questions you have to meet when you have what is considered an obstruction. The engineer did all the fluid and mechanical tests and it met the tests. Mr. Christian came back and said they preferred the way the standard regulation is and they should have piers, so is there a way to modify it? The engineer came up with another plan that was submitted 4-5 weeks ago, at additional cost, and he modified the existing plans and made openings on the foundation. Because basically you can have a solid structure for a pool. You can build it on grade or above grade, but based on the flood elevation of three feet, you have to be up on piers. He was clever and designed it. He opened up the existing foundation and made openings around the eight foot perimeter in the front, sixteen feet in the back and cut openings. So Art Christian's last letter that just came in last week and it is referenced in the new letter from the DEP, he is fine with the existing plan as long as the opening is made one foot bigger, which is no problem. Mr. Voll spoke to the engineer yesterday and now he is revising the same foundation. All he is doing is making it one foot wider. This way the structure turns into a foundation, into the six piers and he is fine with it and they are going to stamp it and he will be okay with the pool foundation as it is. That is why they did not tear it down, because they were working with the State DEP FEMA to modify the existing foundation to make sure it meets all the requirements. It will meet all the requirements because you can see by his last letter, which says if they widen it by one foot on each section the foundation will be fine with FEMA and fine with DEP.

Mme. Chair: Thanked Mr. Voll and asked if there were any further questions for Mr. Curseaden. No further questions from the Board.

Declared the public hearing closed.

Mr. Vetter: Asked if the Board had a clear picture as to what DEP is recommending or could Ms. Harrigan give a summary so that the Board is clear

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as to what the final recommendations are. From the email received today it seems that the pool is still in motion, but not sure about the status of the deck. Want to make sure the Board is clear on what the DEP is recommending.

Ms. Harrigan: The DEP is recommending that the Board look at all the facts that they have in front of them to determine whether or not it feels that the Coastal Site Plan Review adequately addressed the coastal resources as they existed on site. With that, the Board needs to make its determination as to whether or not it feels that the plan that was approved for the deck, the pool and the hot tub interferes with what potentially was coastal resources that were not identified. If the Board feels that is the case, then it needs to act on the facts that it has and that it believes to be true. What they are saying very clearly is that although Mr. Voll is working to try to get his pool foundation compliant, it still is not compliant. What the DEP is clear in saying is that they do feel that there was regrading that occurred and there was vegetation on site based on photographs that they took in 2007 that was covered up and destroyed and that needs to be addressed. There needs to be some sort of restoration plan. That is the guidance from the DEP. They did kind of respond to Ms. Moch's plan that was submitted for the January 20th hearing and they felt the restoration plan at that time did not include enough plantings. So the Board can go back more specifically to comments about that restoration plan in that February 2nd letter from the DEP, if the Board has any additional questions.

Mr. Bender: What specifically was the Cease and Desist order for?

Ms. Harrigan: It is part of the January 20th packet, but the cease and desist order --- the zoning regulations are very clear. In both the Flood Hazard section and in the Coastal Site Plan Review section, it is very clear that you are not supposed to disturb dunes. In this Coastal Site Plan application itself, where there is a page that has been developed by the DEP, it defines dunes or sand flats. It defines places that have vegetation. For staff, when I issued my cease and desist, it was because there were dunes that I felt that had not been identified in the coastal site plan review ...

Mr. Bender: Not so much why, but what? Stop all work completely? Stop work on the deck ---

Ms. Harrigan: Yes. It was very specific to the deck, the pool and the hot tub and any regrading activities. It was very specific.

Mrs. Golden to Ms. Harrison: Pointed to a picture of the vegetation and stated that the house goes all the way out to that. He was also talking about that if he took sand off of this area and puts it over there because it's already sand taken from here, it's ok to put it on top of that. That's not correct.

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Mrs. Harrigan: We asked that question of the DEP and they said because it is native material, that although it should not have been done, that that native material would not be harmful to the existing site, because it was not as if they were bringing topsoil from somewhere else and throwing it on the beach. It is beach sand. It is something that the DEP said could remain.

Mrs. Golden: If they wanted to put in more beach grass, the right time to do that would be March and April. We are already at the end of April. We have had a cold spring, but ...

Mrs. Harrigan: Had a call into the DEP to their beach ecosystem specialist, but unfortunately, he did not call back to let her know if there was any extended planting time, given seasonal changes, variability if it is a colder season. In the January 20th packet information was provided by UConn's Sea Grant Program which gave information concerning restoration plans, which stated March and April were the prime times for planting.

Mme. Chair: Asked Mrs. Golden to identify the photographs to which she was referring.

Mrs. Golden: City of Milford, January 15, 2009, subject 12 Francis Street. Page 4, aerial photograph.

Mr. Goodrich: Stated the structural engineer changed the footings. That is normal. That's why when projects are done we get as-builts, because there are discrepancies between various committees, boards and agencies as to what the requirements are. So it is normal that there is an issue with the footing changes. This is not the first applicant to have this situation.

Regrading: Every construction project when they dig for a foundation or do anything has some type of regrading. It is normal. Does not see any evidence to show that the ground level now is substantially different than it was before. There are no dunes. Slight waves in the sand but not dunes. Disagrees with Staff on this.

Also, the regulations do not support the whole procedure here. [Mr. Goodrich read from portions of the Zoning Regulations] Site Plan Approval, 7.1.1. Applicant submits to staff. Staff reviews it. When they are comfortable with it and think it conforms they send it off to various departments, including DEP, who may or may not have bothered to look at it. It's not the Applicant's fault. When it complies with all the regulations, Staff signs off on it and it comes to the Planning and Zoning Board. "Coastal Site Plan Review 5.12.4, Planning and Zoning Board action review for compliance." That was done. Consistency with coastal policies, because they got approval. That was done. Acceptability of potential

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adverse impacts. Adequacy of measures taken in mitigation – adverse impacts. “The Board shall approve, modify, condition or deny.” The Applicant came before the Board. If we missed it that’s the Staff’s fault and the Planning and Zoning Board’s fault, not the Applicant’s fault.

Under our CAM 5.12.5 Violations. “Any activity undertaken without CAM approval shall be considered a public nuisance or subject to enforcement remedies.” They got approval. They came before us, the previous board. They got their CAM approval. They got their Site Plan approval. The whole thing that seems questionable is the foundation and that is being worked on.

Mme. Chair: Stated she agreed with Mr. Goodrich. You can only approve what is put in front of you. The whole point of this application and the Staff’s point of view on this is we are not necessarily convinced that what was presented is actually what was there at the time of the application. So even today, if the Board is presented with an application, it is taken for granted that what the Board is presented with is true and correct. If the Board finds out six months from now, something was missing, is that Staff’s fault, is that the Board’s fault or is it the Applicant’s fault? It is the Applicant’s duty to provide burden of proof.

Mr. Goodrich: Our regulations state it is the Planning and Zoning office and the Planning and Zoning Board’s responsibility, not the Applicant’s responsibility, which is also why we get plans and agendas ahead of time, so that Planning and Zoning Board members go on site and check.

Mr. Sulkis: Under the CAM act it is the Applicant’s responsibility and duty to provide accurate information to the office and to the planning board. The whole point of this proceeding is that they did not do that, either mistakenly they left out key information on the survey or at the worst case scenario they on purpose left out the information on the survey so that they could get what they want. To say that there is no recourse or procedure if a mistake has been made, is outrageous. And that is why, which is one of the paragraphs that was just quoted from the book, there is enforcement action, and this is it. We have brought the enforcement action to you to remedy the situation. Now you have to make a determination.

Mr. Curseaden to the Chair: Point of order. Respectfully to the Board, to the Chair and to Staff, it is crossing the line now where Staff is now continuing to testify on this application and the public hearing is closed.

Mme. Chair: Interjected the Board is having their discussion now.

Mr. Liddy to Staff: Asked for clarification about the materials the Board had received.

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Mr. Bender: It is clear in the CAM report that the beaches will not be disturbed. It is very clear that they were disturbed. That is one of the big issues and it is directly conflicting with what was said they would do in the CAM report.

Mme. Chair: Had an issue in that this application originally was approved October 2006 and there was a photograph provided by the DEP in December of 2006 that shows the beach grass. She was out at that site a little bit after that time because she received phone calls from area residents up in arms and she saw the beach grass there. So, it depends on whether the Board saw photographs of that beach grass and that dune there or did they not? That is what it boils down to.

Mr. Curseaden in his testimony mentioned something about additional testimony and information. She will be reviewing the tapes of the original meeting. Asked if the Board would be able to speak with Mr. Thompson at the DEP.

Mr. Sulkis: The Board has closed the public hearing, so they have all the information that they have to deal with. They cannot go out and start exploring other venues or collecting information on their own. The public hearing is closed.

Mme. Chair: Can the Board listen to the tapes?

Mr. Sulkis: If they haven't done it by now --- Would have to talk to counsel about that. It's more data gathering that is after the public hearing. Not sure on that. Would tend to think not at this point.

Ms. Shaw: What the Board is trying to ascertain is if in 2006 that report was deficient in any way. If they feel it is deficient, then it is up to the Board to see what course of action to take. Does not think they need to go back. They have all the information they need. Isn't the question to find out and if they believe or not that that report was deficient, and if it was, how do they remedy this.

Mr. Sulkis: That is an accurate statement.

Mr. Ferrante: Believes the Board has exhausted this for the night. There is a lot information here and each member should review it all and continue the discussion at the next meeting.

Mr. Liddy: Referred to the April 21st letter that included the 11 photographs from the ZBA file, which he had not seen before. Asked for a description of each photograph from the perspective of 12 Francis Street, or from what reference point the photograph was taken.

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Mme. Chair: Asked Mr. Liddy if he was sitting on the Planning and Zoning Board at the time this application was originally presented and did he remember seeing any of the photographs.

Mr. Liddy: It has been three years. Hard to remember. A couple look familiar.

Mme. Chair: Asked Mr. Liddy to identify which photographs he was referring to.

Mr. Liddy: Vaguely remembers the photo with the convertible car at the bottom and the one above it.

Mr. Ferrante: Thinks the point is that those were photographs that depict coastal resources that were pictures not available to the Board and the CAM report that was presented did not depict the coastal resources.

Mme. Chair: Stated the reason she asked Mr. Liddy is because allegedly those photographs were included in the original presentation to the other board. Was asking of those pictures does he remember all of them or some of them or what portion.

Mr. Ferrante: Not in this file and they were in the ZBA file, right?

Mme. Chair: Correct.

Mr. Vetter: Thinks Mr. Liddy brought up a good point. When he looks at the first two pictures which have Appendix A written on the page, there is a canoe (or whatever) on the right hand side. In the next picture there is sand on the top and a picture on the house is on the bottom, assumes this is the property that was changed.

Mme. Chair: Asked if Staff could help out on this.

Ms. Harrigan: Described the photos from each perspective. The one from the deck is from the adjacent property. The little boat that is shown is on the neighbor's property. The little bits of vegetation that can be seen from that photograph are on the applicant's site. The other photograph that shows the patchy vegetation is the area to the right, is their site. The sand, this is the rack line. This is the high tide line, the one on the top where you can see dog footprints. That is the rack line. That is at the bottom of the site towards the water. The photograph of the house, this is the previous house that was on site where you can see there is rather thick beach grass and then there is kind of sparser vegetation to the left, but it is unclear how far down on the site this is taken. The next photograph is of the neighboring properties east of the site. The next photograph is the next door neighbor's site to the east. Photograph 1 is the

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prior residence and the view to Francis Street. Photograph 2 is the view to the right where it says "Sea Escape". That is the prior residence at 12 Francis Street and that is the passage way that you are looking down. That is the prior garage on site.

Mr. Goodrich: So photograph 1 of the previous house shows very sparse vegetation.

Mme. Chair: Does everyone want to take Mr. Ferrante's suggestion? Will move along to proposed regulation changes.

C. PROPOSED REGULATION CHANGES

Mr. Sulkis: Asked if the Board members had reviewed the proposed regulations he submitted to them at the last meeting and had any comments on them. Had nothing new to add.

Mr. Ferrante: Stated he had reviewed the regulations. Had specific comments on the proposed regulation 3.1.3.4 regarding poultry and poultry coops. (He distributed a sheet on this regulation which noted his suggested changes.)

Stated the Board would want to encourage this given the agrarian roots of New England. Would want to make this as simple as possible to do so, but very carefully. Would not want it subject to a Special Permit and Site Plan approval because that is a very expensive process. Believes that the masses in Milford will not be running out to raise chickens. Someone who is going to have chickens will not have the resources to provide a Special Permit application and Site Plan approval. Therefore, he would do without that. This regulation would apply to all residential zones, but not to condominiums.

Did some research and established that six birds are not a lot. The key is keeping them clean and inspected by the Health Department. Suggests 12 as the number of birds to be allowed. The sanitation or health board has to be involved. They are the ones who will really enforce this regulation. The only time there will be a complaint is if it smells. The worst smell is that of chicken excrement, which needs to be diluted and modified. Does not know how this will be monitored.

Summarized: Would expand the number of birds allowed; not make it an odious requirement; and have it within the setback lines.

Mr. Goodrich: Stated everything Mr. Ferrante said made sense. Only thing he would question is the smaller zones, i.e., R-5 or on those properties with a 2,000

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SF lot with a two-family house on it. Not sure if chickens should be on a property that small.

Mr. Ferrante: This aspect could be refined.

Mr. Sulkis: Stated the minimum he had recommended was the R-12.5 or 12,500 SF minimum lot size.

Mr. Ferrante: Said he would go down to the R-5 zone.

Mr. Sulkis: Commented that is one of the reasons why his office started to look at this, because those are the zones that the office gets complaints from regarding chickens.

Mr. Ferrante: While 5,000 SF seems small, in a space as small as 6 x 6 x 6, 6-8 birds can be kept comfortably and humanely. Has pictures of coops coming.

Mme. Chair: Stated she would like to see this regulation expanded to the CDD-2 and some of the other zones which also have residential.

Mr. Sulkis: The residential requirement in the CDD-2 is 2,000 SF. The proposed regulation changes were meant to prompt this kind of discussion.

Mme. Chair: Ms. Cervin had comments and suggestions on this. Will wait until the next meeting to let her give her comments and continue discussion with Mr. Ferrante.

Mr. Liddy to Staff: Does the Health Dept. have rules and regulations regarding chickens?

Mr. Sulkis: Will speak to Dr. McBride of the Health Department and get his view on this. The typical complaint is from a neighbor, i.e., it smells; there are flies. When the Health Department goes to inspect the complaint those conditions may not exist due to the weather or another factor. They have certain requirements for how waste is handled. Their current standards may be for larger farm animals.

Mme. Chair: Asked if there was further discussion on any of the proposed regulation changes.

Mr. Ferrante: Residential parking. Has been an opponent of tandem parking. Question as to the proposed change: Would the Board be adding a one space burden to the applicant? Would not want to do that because what could be done

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in the smaller homes is eliminate the garage and put a two-car pad outside. That might be the tendency.

Mr. Sulkis: The reason that was written in that manner is in effect, you usually do have tandem parking, if they use the garage for parking, it is tandem parking. The reality is that depending on the size of one's garage, often it is not used for parking, it is used for other things. This change would acknowledge the fact that people might not actually be using their garages for their cars and is it a burden to provide an extra parking space? The Board would have to determine that.

Mr. Ferrante: Would not want to add that burden, but would not want to have the developer say there are two spaces in tandem. So, if you count the garage, okay, but not the apron. Put a space somewhere else, as opposed to putting two spaces somewhere else, which increases the impervious area to the development.

Mr. Sulkis: You hardly ever see a single family home that does not have a two car garage. So whether or not someone keeps a car in the garage or does not, you are going to have your two spaces in front of the garage to get into the garage.

Mr. Ferrante: Concerned that in some of the smaller developments, such as the six unit condominiums, where they are being crammed in and they count that apron as parking.

Mr. Sulkis: This proposal would dictate a different design that would perhaps alleviate that sort of jammed in site plan that seems to be objectionable to people. So, perhaps they would have to jam in less to be able to accommodate better parking design, especially if they can't count the parking garage.

Mr. Ferrante: This can be discussed further.

Discussed the counting of stories and the problem that exists at beach area homes where the breakaway area was used for parking and not counted as a story. Thinks this should be changed to any portion of a level located under a building and take the word "parking" out. Now we know that anything that protrudes four feet or more above finished grade shall count as a story.

Mr. Sulkis: Attempted to recollect what parking situation Mr. Ferrante was referring to.

Mr. Goodrich: Read the Building Department's definition of "living space".

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E. LIAISON REPORTS – None

F. APPROVAL OF MINUTES – (4/7/09)

Mr. Bender: Motion to approve.

Mr. Goodrich: Second.

All members voted in favor. Minutes were approved as recorded.

G. CHAIR'S REPORT – Thanked all the Board members for their help this evening.

H. STAFF REPORT - None

The meeting adjourned at 9:02 p.m.

Phyllis Leggett, Board Clerk