

**MINUTES FOR THE MEETING  
OF THE PLANNING & ZONING BOARD  
HELD TUESDAY, MAY 4, 2010; 7:30 P.M.  
CITY HALL AUDITORIUM, 110 RIVER STREET, MILFORD**

The Chair called to order the May 4, 2010 meeting of the Planning and Zoning Board at 7:30 p.m.

**A. PLEDGE OF ALLEGIANCE**

**B. ROLL CALL**

**Members Present:** Edward Mead, Mark Bender, Kathy Patterson, Kevin Liddy, Victor Ferrante, Susan Shaw, Chair. Greg Vetter arrived 8:45 p.m.

**Not Present:** Robert Dickman, Janet Golden

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

**C. NEW BUSINESS**

1. **171-173 KINGS HIGHWAY (ZONE R-7.5)** Petition of Gregory Field for a Coastal Area Management Site Plan Review to construct a single family residence on Map 60, Block 795, Parcel 3A, of which Gregory Field is the owner.

**Gregory Field, 183 Wolf Harbor Road, Milford.** He and his wife have purchased 171-173 Kings Highway, which consist of two single family dwellings. One of the dwellings has two apartments and the other has one unit, for a total of three units. The buildings are in poor repair and they will be demolished in order to construct a new residence with a detached garage.

**Ms. Harrigan:** This application was reviewed by the DEP and the on-call engineer. They have provided comments which have been incorporated into the version of the plans that the Board has received. This property has very limited direct coastal resources. The beach is quite small and it is only located in front of the sea wall. Otherwise the site slopes upward quite a bit. The house will be constructed to meet the flood hazard zone standards for the site where the building is located and it meets those requirements.

**Mr. Liddy:** Asked if the writing on the wall in front of the house would be removed.

**Mr. Field:** Yes.

**Mr. Mead:** On the third floor of the drawings a bathroom is roughed in. How many bathrooms will there be?

**Mr. Field:** Has no plans to finish the upstairs. The plumbing pipes will be on that third floor and will be unfinished space for storage only.

**MINUTES FOR THE MEETING  
OF THE PLANNING & ZONING BOARD  
HELD TUESDAY, MAY 4, 2010; 7:30 P.M.  
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**Mr. Ferrante:** Asked if it was another four-story building.

**Ms. Harrigan:** Explained that the house met the height requirements and was three stories, which is allowed.

**Mr. Field:** Confirmed the new construction would be a one-family residence.

**Ms. Rose:** Made a motion to approve the CAMSPR application of Gregory Field to construct a single family residence at 171-173 Kings Highway.

**Mrs. Patterson:** Second.

All members voted in favor.

2. **30-32 and 36-38 BROAD STREET (ZONE MCDD)** Request by John W. Knuff, Esq. for an informal discussion regarding proposed development of the above captioned properties.

**John Knuff, Esq. 147 North Broad Street, Milford.** Introduced Joshua Swerling from Bohler Engineering; Stephen McGrane, Architect, Gensler Architects and Russ Barton and Brian Aberton, principals of one of the two properties, all present on behalf of TD Bank. The properties are identified as 30-32 and 36-38 Broad Street. 30-32 is a vacant lot and 36-38 is the site of the former Harrison's hardware building. Mr. Knuff thanked the Board for entertaining them on an informal basis.

This proposed project is a bit of a hybrid. They are aware their proposal will receive considerable scrutiny because 1) It is located on the Green, which is the cultural and commercial heart of the city and 2) It is located in the MCDD zone and there are special design guidelines in regard to the building design and the signage that is applied to the MCDD that also reflects the importance of the Green. Also aware that it is the site of the former Harrison's Hardware building and even though it has been vacant for a number of years, it holds a place of nostalgia for many in the city. Does not think there is any true architectural significance to that building, but they understand how it is viewed by many. They have spoken to Mr. Platt, the **City historian** and hope to continue a dialog with him.

A bank in the MCDD is a permitted use. All that is required is a site plan application and with such applications, the board's discretion is very limited. They do not feel this would be an appropriate way to move forward with this proposed project, given the importance of this location.

They are looking to accomplish three things tonight: 1) Describe the present condition of the building and why it is unfit for commercial use; 2) Briefly describe the site plan and 3) Discuss the proposed architecture in the context of the

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CITY HALL AUDITORIUM, 110 RIVER STREET, MILFORD**

design guidelines. Aware that there are separate signage guidelines and that will be discussed as well.

The property at 30-32 Broad Street is a simple, narrow rectangle and is presently unapproved. The lot where Harrison's is located, 36-38 is a very oddly shaped parcel with an unusually shaped building on it. The parcels are subject to various easements, both for a right-of-way and for city parking. This design respects those easements. There are probably six or seven different encumbrances that somehow affect these premises.

Bohler Engineering investigated the condition of the Harrison's building to see if it could be reused in any commercially viable way. While their research focused on their intended use, the results show it is not suitable for any commercial use. Highlights of the architectural report regarding the existing building: It is 100% wood frame construction on a rubble stone foundation. The exterior is combination vinyl siding and asphalt shingles and water damage is evident throughout the building. There are lolly columns approximately every 10 feet which are holding up the first floor ceiling. The ceiling is only 7-1/2 feet high, which is too low for any retail or commercial use. Described the decayed and structural deficiencies of the Harrison's building. Any user would have to bring the building into compliance with the current building code and ADA standards. Not possible to reuse the existing Harrison's building. Inquiries into using the existing building never worked out because of its condition.

**Josh Swerling, Bohler Engineering.** Proposed site plan that has been developed demolishes the Harrison's building completely. Tried to maintain the footprint but architects deemed it unfeasible. Site is 2/3 acre with the two properties. The proposed building is in the front of the building at 0 setback. 2,560 SF is being contemplated. Two lane drive-thru that can comply with the regulations and stacking requirements. 12 newly created parking spaces. 24 currently exist are incorporated into the municipal parking space. Circulation would be maintained through the existing drive aisle that is enter only. The exiting maneuver from the drive-thrus would be accommodated through a curb cut onto Broad Street. This would be consistent with other users on the street.

Bohler was asked if any of their retail clients would consider reconditioning the Harrison's building to which their response was negative based on the building's condition and the amount of work that would be necessary to rework it.

**Stephen McGrane, Architect, Gresler Architecture Design and Planning.** The building structure at present is not conducive for reuse and a new structure is proposed. The building structure would not be compliant with existing building codes, handicapped accessibility and would be an issue for anyone thinking of using the building. TD Bank believes it has to look to a new building design. A design has been developed that would be sensitive to the context of the

**MINUTES FOR THE MEETING  
OF THE PLANNING & ZONING BOARD  
HELD TUESDAY, MAY 4, 2010; 7:30 P.M.  
CITY HALL AUDITORIUM, 110 RIVER STREET, MILFORD**

guidelines for Milford's downtown area. A building has been designed that adopts the materials existing in the downtown. The scale of the building is brought to the pedestrian level. Have incorporated details that incorporate historic details and are sensitive to the buildings around it. Recognize the need to be sensitive to what is existing. Proposing articulation with different colors of brick and articulating some of the windows that are similar to the neighboring buildings. Downtown district is more strict in signage than in other areas. What will be proposed will be harmonious with the context of the surrounding buildings and scale of the area.

[Renderings of the proposed building were circulated among the Board members.]

**Mr. Sulkis:** Asked Mr. Knuff to point out to the Board members what is the actual Harrison's site and what is the empty lot next to the Harrison's site. Also asked who Mr. Knuff was representing.

**Mr. Knuff:** Showed via the display the two parcels in question. Stated he represented TD Bank, as did those present with him. They do not represent the property owners of either parcel.

**Ms. Rose:** Asked Mr. Knuff if the project being presented was a done deal.

**Mr. Knuff:** Stated it was not a done deal. It would be a lease. He did not represent TD Bank on the transaction, which he did not believe was concluded yet. Attempting a dialog with the Commission to hear their thoughts about the proposed architecture and to follow the guidelines established by the City to the best extent possible.

**Mr. Bender:** Exiting onto North Broad with the drive-thru presents a concern, especially when there are fairs on the Green and a lot of pedestrian about. Also adding a lot more traffic to the one-way driveway that is there now.

**Mr. Knuff:** Does not have the same concern about cars entering the site. This will provide an easier way to access those spaces that the City has an easement on. Leaving the site will be only those cars going through the drive-thru. Drivers using drive-thrus are acquainted with the necessary procedure when coming to the street and pedestrian walkways.

**Mr. Bender:** Thought there was no room for error in that area if either the pedestrian or driver is not paying attention. It works in theory but may not work in reality.

**Mr. Liddy:** Agreed with Mr. Bender's comments. Suggested the bank be moved farther back and due to its location on a corner with pedestrians and a light, it presents a safety issue.

**MINUTES FOR THE MEETING  
OF THE PLANNING & ZONING BOARD  
HELD TUESDAY, MAY 4, 2010; 7:30 P.M.  
CITY HALL AUDITORIUM, 110 RIVER STREET, MILFORD**

**Ms. Rose to Staff:** Asked if there was historical protection on the Harrison's building.

**Mr. Sulkis:** It is subject to the Demolition Delay Ordinance and it is on the Historic inventory, but there is nothing in the regulations that would prevent it from being demolished.

**Mme. Chair:** Asked if Mr. Platt could shed some light on the historic significance of the Harrison's Hardware building.

**Richard Platt, City Historian.** The Harrison's building is not part of any historic district, which would be the most powerful protection any structure could have. It is on the Historic Resources Inventory List, which is an advisory list, with no legal status. It is over 75 years old and would be subject to delay of demolition, which gives those who want to save the building a chance to buy some time to find a viable alternative. The building is mainly a community landmark with no architectural significance. The mural on the side of the building is mentioned in the historic inventory. There are interior aspects of the building that could be used, for example, the wooden bins.

**Mr. Ferrante to Mr. Platt:** Asked what he thought of the proposed building that would take Harrison's place.

**Mr. Knuff:** Said he would talk to his client about retaining the mural or any other feature of the building the Board requested, if possible.

**Mr. Platt:** Thought the proposed structure would fit into the Green area. Stated that saying the structure could not be saved is a matter of opinion and any building can be restored.

**Mr. Bender:** How long has the building been empty?

**Mr. Platt:** Believes it has been vacant since 2006.

**Ms. Rose:** What is the estimated cost of demolition and the estimated cost of building the bank building.

**Mr. Knuff:** Stated he did not know.

**Mr. Liddy:** Asked if there were other TD banks in Milford.

**Mr. Knuff:** At the Milford Crossing.

**Mr. Liddy:** Liked the wooden floors of the old hardware store. Asked if they could be used in the proposed new building.

**Mr. Knuff:** Did not think it was possible to salvage just the floor.

**MINUTES FOR THE MEETING  
OF THE PLANNING & ZONING BOARD  
HELD TUESDAY, MAY 4, 2010; 7:30 P.M.  
CITY HALL AUDITORIUM, 110 RIVER STREET, MILFORD**

**Ms. Shaw:** Asked what Mr. Knuff meant about not using the building for retail use. Noted the historic and nostalgic reference to Harrison's as an anchor to draw people to the downtown retail trade and retail establishments have suffered in the years since Harrison's has not been in business. The proposed project, not being a retail establishment will have a negative impact on Broad Street.

**Mr. Bender:** Four years for a building to be vacant is a long time. Believes some type of business should go in that space.

**Mr. Ferrante:** The 20-car drive-thru being squeezed onto the Green seems to be more of a suburban use.

**Mr. Knuff:** Agreed about the required car stacking, especially where there are two drive-thru windows. Noted that this building was not a prototype building, but was designed specifically for this site. Stated that no tenant has attempted to use that property for the time it has been vacant speaks volumes as to the marketability and viability of that site.

**Ms. Rose:** Does not like the architecture of the building, especially on the side. Favorite downtown architecture is the Bistro Basque building. Thought it would cost TD Bank more money to raze and build a new structure than to rehab the existing building.

**Mr. Knuff:** It is cheaper to build a new building.

**Ms. Rose:** Agrees with Ms. Shaw in preferring a retail or restaurant to go into the space. Does not like the side of building.

**Mr. Knuff:** Used the adage, "The perfect be the enemy of the good", to describe the current situation whereby an image is established as to what "could" be, but in reality the potential of a restaurant or retail store renovating that building is not

likely, since those types of businesses have not made any real attempt to try to reuse that building.

**Ms. Rose:** Asked if some usable parts of the building could be donated to the Milford Historical Society.

**Mr. Knuff:** Anticipated such a request and will speak to the client about salvaging portions of the building of historical significance.

**Mme. Chair:** Why can't the new building be reminiscent of Harrison's? Can it be built new or use some of the components to look similar to Harrison's?

**MINUTES FOR THE MEETING  
OF THE PLANNING & ZONING BOARD  
HELD TUESDAY, MAY 4, 2010; 7:30 P.M.  
CITY HALL AUDITORIUM, 110 RIVER STREET, MILFORD**

**Mr. Swerling:** The building has great nostalgic value to the community, but it does not have a lot of historical value. It does not stand up to any historic architectural guidelines.

**Mr. Ferrante:** The bank design does not incorporate the charm of Milford's New England Green.

**Mr. Mead:** Agreed with Mr. Liddy's suggestion of pushing the building back and suggested incorporating a step and large glass windows in the front, as the hardware store had. Also, keeping the roof flat or an A-frame in the front would be in keeping with the downtown look.

**Mr. Knuff:** Will look at sliding the building back and review the Board's comments on the design.

**Mr. Liddy:** Asked Mr. Sulkis for his thoughts on the building's design.

**Mr. Sulkis:** These things are always subjective and his opinion is no better or worse than anyone else's, despite his years of experience. Gives the same guidance to any applicant who proposes anything downtown, which is this is a New England Green and the elements that the Board has always considered are pitched roofs, natural exterior products such as stone and wood. They have a flat roof and that is not a New England design.

**Ms. Rose:** Suggested the applicant look at some of the older photos of Harrison's before it was vinyl sided and incorporate some of those architectural features.

**Mr. Knuff:** Stated he was not diminishing the regard that those who grew up in this town have for the Harrison's building. He was speaking solely from the architectural aspect of the building.

**Mr. Sulkis:** Added this building is in the Commercial Core Subdistrict and the regulations recommend a minimum of two stories. Not unlike other banks along the Green, it is designed as one story.

**Mr. Knuff:** There are a number of other buildings that are one-story with flat roofs.

**Mr. McGrane:** Showed the Board another design of building that had a pitched roof in order to relate to some of the buildings downtown and also, to give the building more height. The tower is 23 feet high. The roof itself is approximately 20 feet high. Believe the flat roof would relate to the neighboring buildings.

**Mr. Zwerling:** One of the goals in designing this project is to be LEEDS certified. The type of roof is a factor in LEEDS certified development.

**MINUTES FOR THE MEETING  
OF THE PLANNING & ZONING BOARD  
HELD TUESDAY, MAY 4, 2010; 7:30 P.M.  
CITY HALL AUDITORIUM, 110 RIVER STREET, MILFORD**

**Mr. Liddy:** What level of LEEDS certification?

**Mr. McGrane:** Will be LEEDS certified but not sure at this point to what degree. Could be a silver level of certification.

**Mr. Knuff:** Thanked the Board for giving the applicant so much of its time.

3. **333-335 NAUGATUCK AVENUE (ZONE CDD-2)** Request by Rizio LAR, LLC for a determination of parking adequacy on Map 15, Block 239, Lot 14, of which Rizio LAR, LLC is the owner.

**Millie Rizio**, as one of the managing members of Rizio LAR, LLC, requested to allow the expansion of the Incas Peruvian Restaurant into an adjoining unit that is vacant. The restaurant is doing very well. They have had to turn away clientele because they do not have the facilities to accommodate them. Need expansion for additional refrigeration, an ice machine and storage. Would like to turn over the third unit as a storage facility so they can add more tables to the restaurant.

**Mr. Sulkis:** They currently have 20 parking spaces. With expansion of the restaurant they would need 27 parking spaces and above the restaurant there are four apartment units and each apartment requires one parking space. They cannot accommodate everything on that site. They are in a CDD-2 zone which allows the Board to find for parking adequacy, which means they do not have to provide all the required parking on site. They could locate it off-site. They could park on the street. That particular zone is not unlike the MCDD downtown where there are older buildings and smaller properties which make parking difficult.

The applicant distributed a month-to-month agreement with the liquor store across the street where they could accommodate some overflow parking.

**Mr. Bender:** Questioned the month-to-month agreement because it can change within a month. Cannot use paper as an agreement.

**Ms. Rizio:** Explained why the liquor store did not want to set up a long term agreement in the event he wants to expand his business in the future.

**Mr. Sulkis:** Getting an off-site agreement is an option. It is not necessarily a requirement in this particular zone if the Board feels that there are other alternatives to parking on site, i.e. off-street parking

**Ms. Shaw:** Happy that a business is doing so well, especially in that part of the City. It appears that the Board approving parking adequacy is all that is necessary for this request.

**Ms. Rose:** Asked if all the apartments were rented.



**MINUTES FOR THE MEETING  
OF THE PLANNING & ZONING BOARD  
HELD TUESDAY, MAY 4, 2010; 7:30 P.M.  
CITY HALL AUDITORIUM, 110 RIVER STREET, MILFORD**

**Ms. Rizio:** There are four single tenants in the apartments upstairs. Each is entitled to one space. Additional parking available on Roswell Street, which borders the property.

**Ms. Rose:** Once Inca expands, how many units will be available?

**Ms. Rizio:** Two more units will be available which can be restricted so as not to require too much additional parking. The parking lot will be used at different hours for different types of businesses. Parking lot is rarely full.

**Ms. Rose:** Verified that the parking lot is rarely full. She lives very nearby.

**Ms. Rizio:** Wants to give Incas Restaurant the opportunity to have the storage space in the next unit and add another six tables to the restaurant.

**Mr. Ferrante:** Asked if liquor, wine or beer was sold in the restaurant.

**Ms. Rizio:** No alcoholic beverages are served.

**Mr. Sulkis:** They do not have a liquor license because they have less than 2000 SF and cannot qualify for a liquor permit under the regulations.

**Mr. Mead:** Noted the Redwood Restaurant is next door and has about seven spaces.

**Mr. Ferrante:** Asked if the Board could revisit the parking situation should the restaurant apply for a liquor permit.

**Mr. Sulkis:** Responded if they were allowed a liquor permit under the regulations, parking would not be a factor.

**Mr. Bender:** Made a motion to approve the motion to approve the request for finding of parking adequacy for 20 spaces where 31 would be required, at 333-335 Naugatuck Avenue.

**Ms. Rose:** second.

All members voted in favor of the motion.

(A recess was taken from 8:55 to 9:03)

**MINUTES FOR THE MEETING  
OF THE PLANNING & ZONING BOARD  
HELD TUESDAY, MAY 4, 2010; 7:30 P.M.  
CITY HALL AUDITORIUM, 110 RIVER STREET, MILFORD**

**D. PUBLIC HEARING CONTINUED - CLOSE BY 5/4/10; exp. 5/19/10**

4. **90 HEENAN DRIVE (ZONE CBDD)** Petition of 90 Heenan Drive, LLC for Site Plan Review approval to construct affordable housing units pursuant to CGS Section 8-30g on Map 91, Block 807, Parcel 2, of which 90 Heenan Drive, LLC is the owner.

**Leo Carroll, Stevens, Carroll and Carveth, 26 Cherry Street, Milford.** Hopes to finish the public hearing tonight. Present with Messrs. D'Amato, Brian Miller, AICP and Ron Wassmer, Engineer. Listed the items that were sent to the Board members in the past two weeks: 1) Mr. D'Amato's letter to the Board on April 21, 2010; 2) Brian Miller's response to Mr. Ivers' letter dated April 27, 2010; 3) Letter from Mr. Wassmer dated April 27, 2010, and 4) Environmental site assessment requested by Mr. Liddy. Drawings SK-1 through SK-5 were sent to the Board as well.

Referenced Mr. D'Amato's letter. He wanted to offer the opportunity to the Board to explain his opinion of what the application was. The purpose of the letter was to outline his opinion of the application. Substance was that the Board could approve the application as presented or deny it. Or, the Board could approve the application as modified. Or, the Board could close the hearing and allow him to file another application for a Special Permit under the CBDD zone. That would be for 26 manufactured homes, two bedrooms each, under the Special Permit section of the CBDD. There would be no affordable component to this application and would be age restricted to one member of the household being over 55. This would eliminate some of the problems with the affordability process and allows the project to be an adult community. The Board has 65 days after the close of the hearing to make the decision, the hearing on the Special Permit could take place and then the Board could make the decision as to whether or not this complies with the Special Permit process of the City.

**Mme. Shaw:** Asked to clarify: What the Board is talking about is the 8-30g application. Not talking about anything else.

**Mr. Carroll:** Offering the Board an alternative.

**Mme. Chair:** Only thing that can be considered is the 8-30g application. Mr. Carroll can come back with another application at another time if he chooses.

**Mr. Carroll:** Asked if the Chair was speaking on behalf of the Board.

**Mme. Chair:** Replied yes, because that is the application before the board.

**Mr. Carroll:** That is true but there are other ways to handle this.

**Mme. Chair:** Introduced Thomas Ivers, the City's fair housing authority, who is present to respond to questions on the affordability components of the plan.

**MINUTES FOR THE MEETING  
OF THE PLANNING & ZONING BOARD  
HELD TUESDAY, MAY 4, 2010; 7:30 P.M.  
CITY HALL AUDITORIUM, 110 RIVER STREET, MILFORD**

She asked Mr. Ivers if he had any comments to make before questions were taken.

**Mr. Ivers:** There are two components: the Affordability Plan and Affirmative Fair Housing Marketing Plan. The present Affordability Plan is fine. The original Affordability plan had errors and has been corrected. The fair housing marketing plans he has seen in the past have been very clear as to the affordable component, which was significantly less than the fair housing cost. This plan is very unclear as to the cost of the affordable components. The applicant needs to do something to explain how the units are going to be marketed.

**Ms. Shaw:** Mr. Ivers had done a comparison to Ryder Woods and a project in Stonington. Mr. Miller, in his letter, said this information was not relevant. How are prices set?

**Mr. Ivers:** The developer refused to provide any market information to address the prices, so he used Ryder Woods as a comparable because of its location, similar housing opportunity in town. The Ledyard development was discussed in terms of its structure and cost. He discussed the formulas used in establishing sales prices for this type of project.

**Mme. Chair:** Asked what would be a violation of the Fair Housing Law.

**Mr. Ivers:** The regulations make specific reference to the Human Rights and Opportunity Statutes. One of the statutes says it is illegal to discriminate against any person in the terms and conditions or privileges of the sale or rental of a unit. How does one determine if the terms and conditions are not placing buyers of restricted units at a disadvantage. Section 41a-64c was cited.

**Ms. Rose:** How does this project's paperwork compare with other 8-30g projects that Mr. Ivers has seen.

**Mr. Ivers:** Affordability Plan is very comparable. Most ways the marketing plan is also, but it lacks a permissible sales price.

**Mr. Ferrante:** Will the sales price affect the City's percentage requirement for affordable housing?

**Mr. Ivers:** No. When these units receive certificates of occupancy, they are added to the list of affordable housing. It is a percentage that goes up very slowly. What is affordable is what meets the regulations for affordability.

**Mr. Vetter:** If the Board approves this application, is the marketing plan binding as presented?

**MINUTES FOR THE MEETING  
OF THE PLANNING & ZONING BOARD  
HELD TUESDAY, MAY 4, 2010; 7:30 P.M.  
CITY HALL AUDITORIUM, 110 RIVER STREET, MILFORD**

**Mr. Ivers:** Certain things can change in the time period that it will be developed. There is some flexibility, however, basic concepts should remain the same.

**Mr. Mead:** Is there a restriction on the affordability based on the number of bedrooms per unit?

**Mr. Ivers:** Affordability is based on family size, which dictates income and income dictates price. The statute requires a proportionate number of units be pro rated out.

**Mr. Carroll:** Mr. Miller will respond to the affordability issue.

**Brian Miller, AICP, Turner Miller Group, Cheshire, CT.** Met with Mr. Ivers and had a philosophical discourse regarding the affordable housing. This law is subject to interpretation and adapts to certain situations and different times. He noted his long history associated with the 8-30g housing panels since the law's establishment in 1989. There are many affordable housing requirements throughout the state, many of which are unmet. It does not address the lower income people. It was intended to address a very specific situation and those are embodied within the statutes. Thirty percent (30%) of the units need to meet certain cost guidelines related to the median income of the area. There is a formula for that. The affordable housing plan that has been submitted meets that formula for 30%. The statute is silent on what the other 70% is supposed to do. On the other 70% you can charge whatever the market will bear. The statute does not mention what those market rate units are supposed to be marketed at. This proposal absolutely meets the requirements of the Affordability Plan of 8-30g. Due to less than exemplary market conditions, the market rate units may be bumping down to what the affordability rates are. Those who qualify for the percentage formula for the affordability component may enjoy a unit at a cheaper cost, due to the lower market conditions. No one will force anyone to buy the restricted units. If there is any misrepresentation made in the sale of a unit, it will

be subject to the heavy restrictions placed on this kind of sale and enforcement by officials and agencies.

**Mme. Chair:** Asked Mr. Sulkis for his comments regarding other materials that the Board received.

**Mr. Sulkis:** Commented that there was a line in one of Mr. Miller's reports that said if he [Mr. Sulkis] had not commented on something he had actually agreed with or approved of what he said. He clarified if he did not comment on something it was not a tacit approval or agreement with anything.

**Mme. Chair:** Asked the public if there was anyone to speak in favor of the application.

**MINUTES FOR THE MEETING  
OF THE PLANNING & ZONING BOARD  
HELD TUESDAY, MAY 4, 2010; 7:30 P.M.  
CITY HALL AUDITORIUM, 110 RIVER STREET, MILFORD**

**Mr. Miller:** Stated if he said that he apologized.

**Mme. Chair:** Asked if there was anyone to speak in favor of the application.

Mr. Louis D'Amato attempted to speak. The Chair asked that the public be given the opportunity to speak. The Board will then ask questions and then Mr. D'Amato would have his chance to speak.

**Mr. Carroll:** Asked the Chair if Mr. D'Amato would not be given the opportunity to speak.

**Mme. Chair:** Reiterated the process she would be following for those who wish to speak.

**Mr. Carroll:** Stated he believed Mr. D'Amato's concern was the Board was losing the thought process with regard to the affordable housing application.

**Mme. Chair:** Affirmed the Board would be returning to this issue. Again, asked for those in favor to speak in favor of the application. (No response) Asked who wished to speak in opposition to the application.

**Albert Hricz, 135 McQuillan Drive:** His only objection is the condition of the slope and the hill above the project that is on the lower level. Has not heard any comments from engineering that this area is stable, well-established and will not continue to degrade as it has.

**George Puskis 60 McQuillan Drive:** Not necessarily opposed. Worried about the hill. Is there enough drainage on that hill? Worry about the homes being put on the top of the hill. Carrying a heavy load up there. Will the hill be able to sustain the weight of all the homes on top?

**Mme. Chair:** Asked if there was anyone else to speak? (No response)

**Rebuttal:**

**Ron Wassmern, PE, CCG, Research Drive, Milford:** Stated that he prepared the plans as a professional engineer and they have been submitted to the town agency and reviewed by professional engineers. He does not believe that their concerns are founded.

**Mr. Bender:** Referred to the letter Mr. Wassmer wrote to Mr. Carroll wherein he stated he observed a lot of water draining on the property that is coming from other places to this property, which he [Mr. Bender] thought referred to the oil sheen mentioned. Mr. Bender interpreted the statements to mean that there is a lot of water draining onto the property and it is coming from other places to this property. With all the discussion about the water on the oil sheen, it appears there is a lot of water that drains through the property.

**MINUTES FOR THE MEETING  
OF THE PLANNING & ZONING BOARD  
HELD TUESDAY, MAY 4, 2010; 7:30 P.M.  
CITY HALL AUDITORIUM, 110 RIVER STREET, MILFORD**

**Mr. Wassmer:** Responded there is a lot of water that drains through Ryder Woods. The water course that is adjacent to this property is located on the Ryder Woods property, not on the property of the application.

**Mr. Bender:** Asked if Mr. Wassmer was saying that 90 Heenan Drive is downstream – a vast majority of Ryder Development ... then saying a lot of stuff goes to Ryder Woods. If Heenan Drive is downstream it would appear that it would appear to end up at 90 Heenan Drive property.

**Mr. Wassmer:** The water course is adjacent between 90 Heenan Drive and Ryder Woods. Ryder Woods extends about a half-mile in towards Cascade Boulevard.

**Mr. Bender:** Stated Mr. Wassmer was saying something different now from what he wrote in his letter by saying the property is downstream of Ryder Woods. Ryder Woods gets a lot of water, which means Heenan Drive gets a lot of water...

**Mr. Wassmer:** Yes, Heenan Drive is downstream of Ryder Woods.

**Mr. Bender:** ...which means that water would end up on 90 Heenan Drive, right?

**Mr. Wassmer:** Attempted to explain as follows: 90 Heenan Drive is a four acre parcel. Ryder Woods is about a 100 acre parcel. It has several water courses on it, several ponds on it. If any water was to come off of 90 Heenan Drive it would be at the very extreme tip of the watershed, right where it crosses under Heenan Drive. So, all the water that is coming off the Turnpike and the railroad is draining onto the Ryder Woods property. It then crosses under Heenan Drive at the same point where 90 Heenan Drive would cross underneath Heenan Drive.

**Mr. Bender:** Said he was looking for a yes or no answer.

**Mr. Wassmer:** Asked for the question so that he could respond with a yes or no.

**Mr. Bender:** What Mr. Wassmer wrote is that there is a lot of water that drains to the Ryder Woods development and either on it, through it, from 95 so that it goes through Ryder Woods Development.

**Mr. Wassmer:** Yes.

**Mr. Bender:** He [Mr. Wassmer] then states that Heenan Drive is downstream of all this Ryder Woods development. He [Mr. Bender] interprets that to mean that anything that is coming off Ryder Woods is going to go to Heenan Drive, because it is downstream.

**MINUTES FOR THE MEETING  
OF THE PLANNING & ZONING BOARD  
HELD TUESDAY, MAY 4, 2010; 7:30 P.M.  
CITY HALL AUDITORIUM, 110 RIVER STREET, MILFORD**

**Mr. Wassmer:** No, because the water course is not on Heenan Drive. It is on Ryder Woods. The water course is on Ryder Woods property.

**Mr. Bender:** Stated the letter did not say that and should be amended. He interprets downstream to mean it runs downstream.

**Mr. Wassmer:** No. It says that the water courses are on Ryder Woods property.

**Mme. Chair:** Asked if there was rebuttal by the public who have spoken previously.

**Louis D'Amato, 481 Roses Mill Road, Milford.** Attempted to explain the formula of how the affordability component will work from his standpoint as the builder of the project. In terms of this project the lower 60% of the mean income would probably sell in the \$75,000 range. The other 15% will probably sell at the same price as the other units, because the formula works that way. Then, they would follow the regulations as to how to market them and do all the other things that are involved.

Under the Affordable Housing Act three-bedroom units are being built for everyone, including families with children. He is flexible and can move in a number of directions to build the units in the CBDD zone.

**Mr. Liddy:** Thanked Mr. Carroll for the environmental report the Board received. He referred to Mr. D'Amato's letter which indicated his preference would be

Option #3. However, under 8-30g the Board can only deny due to safety reasons. Otherwise the application has to be approved under the statute.

**Mr. Carroll:** Appreciated Mr. Liddy's comments. The situation is interesting in that a situation exists where an 8-30g application has been filed which gives the Board two or three different alternatives: To approve, deny or approve as modified. He suggested another alternative, whereby the Board close the hearing and take no action. The Board does not have to act for 65 days. If the Board felt they could delay the action for 65 days the applicant would immediately file Special Permit application under the CBDD zone for the 26 units, restricting it to two bedroom units. They would come back for another hearing, with the exact same plans that Mr. Wassmer designed for the alternative plan, if that was acceptable to the Board.

**Mr. Liddy:** Said he was not sure that there could be two applications going at the same time.

**Mr. Carroll:** Said yes it can.

**MINUTES FOR THE MEETING  
OF THE PLANNING & ZONING BOARD  
HELD TUESDAY, MAY 4, 2010; 7:30 P.M.  
CITY HALL AUDITORIUM, 110 RIVER STREET, MILFORD**

**Mr. Sulkis:** Stated he did not necessarily agree and clarified the application was not for a Special Permit, it would be for a Special Exception because the regulations state you have to have a minimum of ten acres. They do not have ten acres.

He further stated that this conversation took place more than a year ago in his office regarding the different options the applicant has. The applicant did not want to pursue that at that time. They chose the 8-30g path and now they are trying to scare the Board about the 8-30g and the children. They do not want the Board to take an action. There is an application in front of the Board that they should adjudicate.

**Mr. Carroll:** Responded he was sure he did not scare the board. He reminded Mr. Sulkis there are no Special Exceptions in the CBDD zone. They would come in under the CBDD for a Special Permit and would ask the Board to make the ruling that despite the fact there is only four acres here, this property has been rezoned for this use less than five years ago. Why was this done if not to use it in this manner? The Board at the time thought Ryder Woods was a good use.

Why is this not a good use? Just because there aren't 10 acres? At one point they had a Certificate of Zoning Compliance issued by the Assistant City Planner at that time, but it was revoked, for what reason he does not know. That case is still pending in court.

**Mme. Chair:** Stated the Board could not accept two separate applications simultaneously. As far as the Board is concerned it is dealing only with the 8-30g application and if Mr. Carroll wished to pull the application and re-file, they could.

**Mr. Carroll:** The applicant does not wish to pull the application. Willing to file another Special Permit application. The Board spent over an hour tonight talking about a hypothetical project in downtown Milford. Why can't he discuss the same type of issue within the contents of this hearing.

**Mme. Chair:** That was an informal hearing and this is not. The record must be kept clear and when the public hearing closes the Board can actually arrive at a vote on a motion.

**Mr. Carroll:** Asked if the Chair wanted to close the hearing and go into an informal hearing about the Special Exception?

**Mme. Chair:** Stated she would not.

The Chair inquired of Mr. Sulkis as to form with regard to stopping the hearing and taking on an informal.



**MINUTES FOR THE MEETING  
OF THE PLANNING & ZONING BOARD  
HELD TUESDAY, MAY 4, 2010; 7:30 P.M.  
CITY HALL AUDITORIUM, 110 RIVER STREET, MILFORD**

**Mr. Sulkis:** An application is before the Board. An informal hearing has not been advertised to the public. The public has been participating in this regarding this application. The hearing can be closed and if they would like to submit something to the Board so it can be advertise, as was done for the informal talk tonight, he supposed that could be done. At the same time there is going to be a clock that is ticking and there is an application before the Board. Once the hearing is closed the Board will have 65 days to do something with it. He does not think it is wise to re-muddy the record. The Board has gone through several months of this process and depending on how it comes out they may be satisfied with how this ultimately comes out. In the end if it comes out favorable to them and they still want to do something else, then they can come back and talk to the Board.

**Mme. Chair:** She and Mr. Sulkis have made the point that they have to keep the record clear on the 8-30g application. The Board still has questions regarding this application and the materials that have been submitted. Suggested she not close the public hearing until the Board is satisfied and all the information has been presented. At that time will close the public hearing.

**Mr. Carroll:** Stated it was fine with him to have the public hearing continued but pointed out that the information was provided to the Board in advance of this hearing. They would also have to submit another letter to Mr. Sulkis extending it because the previous extension was only until tonight.

**Mme. Chair:** Corrected her statement and clarified that she wanted to close the public hearing tonight, but the Board still had questions to discuss.

**Mr. Ferrante:** Understands the parameters of the 8-30g. Is there a point at which all of the things that go into another application, i.e., setbacks, parking, congestion, bedrooms per acre, etc., impact public health and safety?

If the Board said that too many of the proposed units face too close to retaining walls; the slope of the land is too much; the lack of parking; the overall congestion, all of those things combined affect health and safety, Mr. Carroll would say that is not correct.

**Mr. Carroll:** Said he had discussed this issue with Mr. Ferrante before. The Board cannot just speculate as to problems that may occur. There has to be a reasonable probability that they will occur. They have heard no evidence that some of these problems will occur. There has been speculation that they may occur, but nothing that shows that they will occur. If there are certain aspects of the application that can be corrected by stipulations the Board is required to put those stipulations on, rather than turn down the affordable housing application.

**Mr. Vetter to Mr. Wassmer:** Asked for an explanation from an engineering perspective, how to get comfortable with the ability of the slope to maintain its

**MINUTES FOR THE MEETING  
OF THE PLANNING & ZONING BOARD  
HELD TUESDAY, MAY 4, 2010; 7:30 P.M.  
CITY HALL AUDITORIUM, 110 RIVER STREET, MILFORD**

structure. How does he know, as an engineer, that it will hold the load up there and the adverse effects and some of the loose soil that exists now on the slope, what will the impact be to additional rain, runoff, etc.

**Mr. Wassmer:** The type of soil that is on the site. There is an internal friction angle between soil particles. General engineering concepts are 2:1, 3:1 slopes. Rock slopes can be on a 1:1 slope. Rock cuts can be a 6-foot vertical to one-foot horizontal.

**Mr. Vetter:** Other than the kinds of soil that Mr. Wassmer just described which he thinks he meant holds the slope together, what about the pressure of the building on top of the slope.

**Mr. Wassmer:** If an extensive load was being put on it, then you would have to put a consideration. The loads from a modular home are insignificant.

**Mr. Vetter:** Is that one of the measurements in determining the load bearing capacity?

**Mr. Wassmer:** Load bearing capacity, yes. Soil bearing capacity is the ability of a soil to hold up a vertical load. A multi-story skyscraper in New York City has a deep foundation with piles, etc. A single family home has a small strip footing.

**Mr. Vetter:** The extent of the testing is the soil type? Is there any other kind of testing that is done to make sure that this maintains...

**Mr. Wassmer:** Soil mechanics is the process of determining slope stability.

**Mme. Chair:** There were no further questions from the Board and Mr. Carroll had nothing further to add and all the materials requested were received. The public hearing was declared closed.

**E. PUBLIC HEARING CONTINUED - CLOSE BY 5/25/10; exp. 6/24/10**

5. **145 HIGH STREET AND 0 RAILROAD AVENUE (ZONE MCDD)** Petition of DeLeo Brothers Property Group, LLC for Special Permit and Coastal Area Management Site Plan Review approval for building renovation and reconstruction, 6 residential units, as well as a 15,800 SF parking lot on Map 54, Bock 322, Parcels 1 and 2B, of which DeLeo Brothers Property Group, LLC is the owner.

**Kevin Curseaden, Esq., Stevens Carroll and Carveth, 26 Cherry Street, Milford.** In response to the Board's questions and comments at the last hearing, he is in the process of working on revising the plans. Asked the Chair to continue the hearing to the next meeting so that Mr. Sulkis can review the plans and then get them to the Board.

**MINUTES FOR THE MEETING  
OF THE PLANNING & ZONING BOARD  
HELD TUESDAY, MAY 4, 2010; 7:30 P.M.  
CITY HALL AUDITORIUM, 110 RIVER STREET, MILFORD**

**Mme. Chair:** Clarified the expiration date of the hearing to 5/25/10. The public hearing will be continued at the next meeting which will be May 18, 2010.

Mr. Curseaden clarified the additional information being provided was lighting, fence and dumpster placement. They are talking to the State DOT about the walkway, but that is not something that they can agree to be a condition of the approval. It is going to be a lengthy process and in fairness to the applicant he will try to continue to work through that.

**F. OLD BUSINESS**

**PUBLIC HEARING CLOSE BY 5/25/10; exp. 6/24/10**

**6. PROPOSED ZONE TEXT CHANGE - BUSINESS DISTRICT (ZONE BD)**

To allow drive-in restaurant and drive-in bank window service in the Business District (BD) Zone.

**Mr. Vetter:** Gave the reasons he is not in favor of the proposed text change in the BD zone: Not comfortable with the zone change and the way it would impact some of the other properties, such as Melba Street. With regard to the specific application, it is unfortunate that in this part of Milford, which is rural, and which the City has gone through great pains to take office buildings and set them into the woods, that they have the ability to have a parcel in that area that can open up something like a coffee house or a restaurant. This is not in the character of this area of Milford and it does not belong there.

Further stated you cannot drive down the Merritt from 91 to where it turns into the Hutch and find a coffee house or anything similar, attached to the Merritt Parkway, which is what this proposal may wind up being. This is his district and his constituents are shocked that the Board would have the ability to open any kind of business like this in that area and that is very unfortunate.

With regard to the drive-thru and its effect on that location, a drive-thru would be an on-off ramp to the Merritt. It would be a very convenient way to come off the Merritt and come into this place and flow back on to the Merritt or connector. This is not reasonable from a safety standpoint and to try to have an off stop on a parkway for a drive-thru. Such an enterprise will add to the existing traffic congestion with Kinder Care, the new school that just opened around the corner and offices that are all in that vicinity. Adding a stop for coffee would be a nightmare. It is unfortunate that it cannot be fixed that a restaurant can open on that parcel.

**Ms. Rose:** Agreed with Mr. Vetter. Don't know what will happen to the rest of the BD properties in the years to come. Because that zone allows for a restaurant, it will have to be allowed. Thanked the resident in that area who came

**MINUTES FOR THE MEETING  
OF THE PLANNING & ZONING BOARD  
HELD TUESDAY, MAY 4, 2010; 7:30 P.M.  
CITY HALL AUDITORIUM, 110 RIVER STREET, MILFORD**

to speak at the hearing and thought it unfortunate that the applicant turned around and barked at one of the Board's constituents.

**Mrs. Patterson:** Also lives in that district and the residents are totally against it. It will back up traffic on the Merritt Parkway and will the area will be further congested with school buses coming through there. There are stop signs there and it will be a big safety issue. There are little children in that area. It will be an easy way to pick up a child and get on or off the exit ramp right away.

**Mr. Liddy:** Regarding the statement there are no other coffee shops along the Merritt, there are probably three such places in each direction between Milford and the New York border. There are places to stop along the Merritt, and he does not think that everyone in Connecticut will be stopping here for coffee.

**Mr. Mead:** Why was the original text changed?

**Mr. Sulkis:** The text change was made prior to his time. In 2004 they changed the zoning designation from the GB zone to the BD zone.

**Mr. Mead:** His concern was that the other BD parcels, especially the one at Robert Treat and Meadowside Road would create a hazardous situation if a drive-thru was allowed to be built at that intersection. Also believes the traffic exiting onto Wolf Harbor Road and Wheelers Farms Road would create a dangerous condition.

**Mr. Vetter:** Responded to Mr. Liddy's comments noting the rest stops on the highway are contained and designed to be on the highway. It is not designed to be in his neighborhood.

Made a motion to deny the proposed text change Business District, Zone BD, to allow a drive-in restaurant and drive-in bank window service in the Business District zone.

**Mrs. Patterson:** Second.

Seven members voted in favor of the motion to deny. Mr. Liddy opposed denial of the motion. The motion to deny carried.

**G. PROPOSED REGULATION CHANGES**

**Ms. Harrigan:** Distributed a memo to the Board tonight regarding Zoning Regulation Section 4.1.7, which is in regard to fences. She had issued a cease and desist order recently based on discussion with Linda Stock, former zoning enforcement officer. The particular section that the cease and desist order referred to was Sec. 4.1.7.3, which was read to the Board. She explained this regulation to mean that on waterfront properties you cannot put a fence beyond

**MINUTES FOR THE MEETING  
OF THE PLANNING & ZONING BOARD  
HELD TUESDAY, MAY 4, 2010; 7:30 P.M.  
CITY HALL AUDITORIUM, 110 RIVER STREET, MILFORD**

the rear elevation of the house. It is the only view protection ordinance within the City's zoning regulations. This has always been interpreted to mean the Housatonic River, the Oyster River, the Wepawaug River. In those places fences are not permitted. Her cease and desist order was appealed.

In reviewing the language, although the precedent for the application of this regulation is clear, in discussions with the zoning enforcement officer, she thought the language could be tightened. When coastal area management reviews are done many of the river waters in the City are tidally influenced. They are influenced by LI Sound. They are a part of LI Sound whether it is beach front or waterfront. Believes the language could be clearer. Is asking the Board if they felt the same way and should the language be tightened. She does not know how the ZBA will rule on the appeal of the cease and desist order.

**Mr. Liddy:** Stated he did not know why someone would put up a fence to obscure their view of the water.

**Mr. Ferrante:** Said he would be in favor of the change, but did not know how a Board change of this regulation at this time would affect the appeal in process.

**Ms. Harrigan:** This change cannot be made tonight. It has to go through the proper channels. It was just to ask the question if the Board felt the regulation was fine to stand the way it is.

**Mr. Ferrante:** Said there should be regulations with respect to views and would include lakes, if there are any in the city.

**Mme. Chair:** Agreed with the proposed change and it is the intention of the regulations. It is just firming up the language that cannot be misconstrued and would be a benefit to the people living along the shoreline who are entitled to this.

**Mr. Mead:** Asked if this would extend to wetlands or open bodies of water.

**Ms. Harrigan:** Had attached an email from Linda Stock. She understood that there was supposed to be a regulation change that was to include LI Sound and/or any tidal water body or water course. That would indicate that would be only something that is tidally influenced. If the Board wants to open it up to other water bodies they can do so.

**Mr. Liddy:** The backyards of homes along Prospect Street back onto the river which is not tidally influenced. You would not want people to put fences along that river bank. Should not just be tidally influenced waterways.

**Ms. Harrigan:** That change can be made. She will draft something and bring it back to the Board.

**MINUTES FOR THE MEETING  
OF THE PLANNING & ZONING BOARD  
HELD TUESDAY, MAY 4, 2010; 7:30 P.M.  
CITY HALL AUDITORIUM, 110 RIVER STREET, MILFORD**

**Mr. Sulkis:** They will come back with exact criteria so that everybody understands what the proposed regulation will apply to.

**Mr. Ferrante:** Keeping with the discussion of regulation changes he suggested changing the regulation pertaining to 20 stacked cars at bank drive-thrus. Believes times and technology have changed whereby this regulation may be outdated. There must be statistics that pertain to this information. There was a lot of paved ground on a very location presented at tonight's informal proposal of the TD Bank.

**Mr. Sulkis:** Will check resources that should have these statistics. Added that at one time banks would have only one drive-thru window. At least in the past seven years, pharmacies as well as banks want multiple drive-thru windows. The trend is going in the other direction. Some banks have three drive-thru windows which are utilized, especially on pay days.

He mentioned that the proposed text change that the Board voted on tonight wanted a drive-thru because, no doubt, the potential restaurants for the site would require a drive-thru. People like convenience. He put out the question is allowing a drive-thru at all a good thing in light of the negative environmental conditions it brings with it.

**Mr. Ferrante:** Added it was brought up that the more drive-thru windows there are the shorter the queue that is necessary.

**H. LIAISON REPORTS - None**

**I. APPROVAL OF MINUTES – (4/20/10)**

**Mr. Vetter:** Made a motion to approve.

**Mr. Ferrante:** Seconded the motion.

All attending members voted in favor of approving the 4/20/10 minutes.

**J. CHAIR'S REPORT - None**

**MINUTES FOR THE MEETING  
OF THE PLANNING & ZONING BOARD  
HELD TUESDAY, MAY 4, 2010; 7:30 P.M.  
CITY HALL AUDITORIUM, 110 RIVER STREET, MILFORD**

**K. STAFF REPORT – None.**

**Mr. Liddy:** Motion to adjourn

**Mr. Ferrante:** Second.

All members present voted to adjourn the meeting at 10:35 p.m.

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Phyllis Leggett, Board Clerk