

**MINUTES FOR THE PLANNING & ZONING BOARD MEETING
BE HELD TUESDAY, JULY 6, 2010; 7:30 P.M.
CITY HALL AUDITORIUM, 110 RIVER STREET, MILFORD**

The Chair called to order the July 6, 2010 meeting of the Planning and Zoning Board at 7:30 p.m.

A. PLEDGE OF ALLEGIANCE

B. ROLL CALL

Members Present: Edward Mead, Robert Dickman, Kevin Liddy, Kim Rose, Janet Golden, Victor Ferrante, Susan Shaw, Chair. (Mark Bender 7:41)

Not Present: KathyLynn Patterson, Gregory Vetter, Sr.

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

C. NEW BUSINESS

1. **83 CARRINGTON AVENUE (ZONE R-12.5)** Petition of Lesley Hamel for Coastal Area Management Site Plan Review approval to construct a single family residence on Map 45, Block 509, Parcel 2, of which Lesley Hamel is the owner.

Joseph Codespoti, Jr., Codespoti & Associates, Professional Engineers and Land Surveys in Orange, CT, representing Lesley Hamel, the property owner of 83 Carrington Drive located off Milford Harbor. The lot size is approximately 80 x 290 feet. The lot area is 26,781 SF. The property is at elevation 12 and sloping to the harbor to about elevation 7. There is presently an existing house with an attached garage; a boat house in the rear of the property, a boat ramp, as well as a removable dock in the harbor. There is also a storage shed and paved driveway. Proposing to demolish and remove the existing house and garage and construct a new house. There would be no other work toward Milford Harbor. All the other accessory structures would remain. All the work would be done above the 100 year flood line. This has been marked and surveyed and is incorporated on the plan and in accordance with FEMA regulations. This application complies with the Coastal Area Management requirements and putting them into effect.

The CAM report goes into detail as to what is proposed to be done in the CAM area. Half the property that remains in the flood area will not be disturbed. The proposed house will be a single family home that will not be too imposing for the property.

Ms. Harrigan: This CAM application is different from other CAM applications in that the Board has to look at properties that have to adhere to the flood hazard regulations and don't have basements and have to be elevated up. This CAM is more for the construction mitigation measures, which are shown on SP-2.

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Mr. Ferrante: Asked why there were two driveways on the property, as he was concerned about impervious surfaces.

Mr. Codespoti: The proposed driveway will be for the new house and the other exists as the driveway to the boathouse in the back of the property.

Mr. Liddy: Questioned a comment in the letter from Westcott and Mapes dated June 22, 2010.

Ms. Harrigan: The City is being required to adopt new maps. Over the past months FEMA has been pushing back the deadline. She has told CAM applicants if they would like to use the new mapping they must specify in their plans that that is what they are choosing to use. A lot of the times when the period of construction will be complete, the new maps will be in effect and it will be less confusing for insurance purposes and if they are building to meet flood zone requirements, they will be met whether it is the old maps or the new maps.

Ms. Rose: Made a motion to approve the CAM application of Lesley Hamel for new home construction at 83 Carrington Avenue.

Mrs. Golden: Second.

All members voted in favor. The motion passed unanimously.

(Mark Bender arrived at 7:41 p.m.)

2. WHEELERS FARMS AND WOLF HARBOR ROADS (ZONE R-A)

Request by AvalonBay Communities, Inc. for a five-year extension of a Special Permit/Site Plan for 160 Units of Age-Restricted Housing on Map 105, Block 914, Parcel 19, approved on January 17, 2006, of which AvalonBay Communities, Inc. or AvalonBay Milford II Development, Inc. is the owner.

Mme. Chair: The letter received from Avalon Bay raised a question that was submitted to the City Attorney regarding what is the time for this application, were it to expire and if the Board needed to take any action.

Mr. Sulkis: Explained that the application was subject to a stipulated agreement that was reached between the Planning and Zoning Board and the applicant back in 2006. That stipulated agreement should be good for 20 years. The question that has been asked of Counsel is whether or not they have to actually ask for the extension. If this were a normal application that was up to expire then they would be coming in where they would have to ask for that extension. But because this was a stipulated agreement, it is not clear whether or not the Board actually has to do anything.

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He suggested the Board table this matter until counsel gives some guidance. There is no rush as the stipulated agreement started in January of 2006, so the Board has until January 2011 to take action.

Mr. Ferrante: Moved to table this item.

Mrs. Golden: Second.

All members voted in favor to table this item.

3. **314 BRIDGEPORT AVENUE – DEVONSHIRE VILLAGE (ZONE CDD-2 AND R-7.5-)** Request by Brian Lema for an extension of a Special Exception and Site Plan Review approval granted on August 4, 2009, to construct a 10-unit multi-family residential building on Map 24, Block 381, Parcel 1, of which D.A. Black, Inc. is the owner.

Brian Lema, Esq., Berchem, Moses and Devlin, 75 Broad Street, Milford. Present on behalf of the property owner, D.A. Black, Inc. Special Exception and Site Plan Review approval had been obtained in August 2009 for the construction of a 10 unit multi-family dwelling with 20 parking spaces on the site, which is valid for one year. That has not been done on this particular site. Before the Board to request an extension for an additional one year period of time for the applicant to commence construction of the project.

Mme. Chair: The Board has two new members who had not been on the board when the Special Exception was approved.

Mr. Bender: Asked if there have been any changes in the plans since it was approved.

Mr. Lema: There are no changes to the plans. The plans were stamped June 30, 2010 because that was the date the Planning and Zoning Office received the plans for distribution to the Board at this meeting.

Mr. Liddy to Mr. Sulkis: How many extensions can be obtained?

Mr. Sulkis: There is no limit to the number of extensions allowed for a Special Exception.

Ms. Rose: Asked how soon to project would be started.

Mr. Lema: Could not be specific about the date, but they definitely would like to proceed with the project, but did not have an exact time frame.

Ms. Rose: Asked if the owner could clean up the property as she had previously requested.

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Mr. Lema: Said he would relay the message to the owner.

Mr. Liddy: Made a motion to approve the request by D.A. Black, Inc. for a one year extension of the Special Exception and Site Plan Review approval previously granted on August 4, 2009.

Mr. Dickman: Second.

All members voted in favor to approve the motion.

D. OLD BUSINESS

4. **130 MERWIN AVENUE (ZONE R-7.5)** – Petition of Washington Cabezas, Jr., Engineer, for Coastal Area Management Site Plan Review approval to construct a single family residence on Map 59, Block 737, Parcel 19, of which Lufam Homes, LLC is the owner.

Washington Cabezas, Jr., Licensed Land Surveyor and Professional Engineer. Came before the Board two weeks ago. There were a couple of issues that needed to be straightened out. The approval by the Public Works Director has been received and is in the file. There was also the issue of a single family house having four parking spaces. Ms. Harrigan and he had discussed this and they believed requesting a waiver for the four spaces underneath the garage level would be the best resolution. Otherwise it would be dead space that could not be used otherwise.

Mr. Liddy: No changes on the four-car garage issue?

Ms. Harrigan: This is particular to these types of properties where the flood hazard regulations do not allow the homeowner to use that for anything other than parking, entryways and storage where nothing will be covered in that space. They cannot use it for any other habitable purpose, because it is below the base flood elevations. There are not many options for that space. If they were to enclose it just to enclose it to limit the flow through of that space, they have to add more venting, it is a higher cost. For properties in the flood zone these are already higher construction homes because of the specially engineered foundations that have to be designed for this type of structure. It would be asking a lot of the homeowner to add that for what is essentially dead space

Mr. Liddy: Allowing a four car garage opens the door for all the other residents to request four car garages.

Ms. Rose: Thought that a waiver was going to be created so that the Board would not be going against its own zoning regulations by approving this application.

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Ms. Harrigan: Had hoped a waiver would be obtained to allow for parking below the elevated structure.

Ms. Rose: For this particular application only?

Ms. Harrigan: Yes.

Mr. Sulkis: This is an unusual situation. The Board can look at tweaking the regulations.

The Board discussed this parking situation and the off-street parking situation as it pertained, especially to Merwin Avenue. The idea of changing the tandem parking regulation was to remove cars from the street.

Mme. Chair: The applicant is being placed in an untenable situation. The intention of the regulation needs to be firmed up.

Mr. Sulkis: Clarified under the present regulations the applicant would be allowed to park three cars underneath the house.

Ms. Harrigan: In terms of the visual aspect from the street, this will only have a two-car wide garage door. It will look like a two-car garage even though it has depth to park more vehicles. It is not going to be a four-car wide garage that will be ominous at the street elevation.

Mr. Bender: For this house it makes sense, but the concern is the next house and the house after that.

Mr. Sulkis: This is a problem that is unique to the flood zone. This is not going to be a problem all over the city. The current regulation addresses the visual issue of having a four car garage with four doors and a garage that is the size of the main structure of the house.

Mme. Chair: Any approval of this house will be with a waiver.

Ms. Rose: Motion to approve 130 Merwin Avenue for CAM approval to construct a single family with a waiver for one additional parking space underneath.

Mrs. Golden: Second.

Mr. Ferrante: Approval requires a simple majority?

Mme. Chair: Yes.

Six members voted in favor; Messrs. Ferrante and Liddy voted against. The motion passed.

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PUBLIC HEARING CLOSED 6/15/10; exp. 8/19/10

5. **169 ORONOQUE ROAD – RITCHIE FARMS (ZONE R-30)** - Petition of David Field for a 3-Lot Subdivision on Map 74, Block 924, Parcels 2C, 2D and 3, of which David Field is the owner.

Mr. Bender: Stated there was a question as to adjusting the sight line which is in the City right of way.

Mr. Sulkis: Reviewed the two issues the Board had discussed at the last meeting, namely, who would maintain the sight line going to the property and increasing it where it was feasible. The applicant's representative had said that was the City's responsibility since it was in the City right of way. He suggested the applicant's attorney come up with a maintenance agreement as to how the sight line would be maintained. There was also discussion as to what standard that sight line adhered to and there was testimony the sight line was designed for 25 MPH when it only had to be designed for 30 MPH, so the sight line was, in fact, adequate. It was just a question of the ongoing maintenance to maintain that adequacy.

The other issue was the decision as to whether the subdivision would be a cluster or standard subdivision. Mr. Sulkis recommended the cluster subdivision be approved.

Mr. Ferrante: Under the impression the applicant was making one proposal, but they presented both versions and explained the difference to show the Board and they recommended the cluster subdivision.

Mr. Bender: Stated there was a difference in theory vs. reality of the speed limit that would be adhered to. Stated he had a problem with the sight line and the mph traveled on the road.

Mr. Sulkis: Suggested a condition be added to the approval that a maintenance agreement be put into place to make sure those sight lines are maintained in perpetuity.

Mr. Bender: Said he had recommended that the driveway at the entranceway being a little wider because the way it was laid out it was a little tight by the last house. There was a very sharp bend at the first driveway and coming around ... someone coming up the driveway, he thought it should be wider.

Mme. Chair: Sight lines and the width of the driveway have been discussed.

Mr. Sulkis: The driveway apron meets the City's requirements.

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Mr. Bender: The lead to the first house is basically a two way area. If you look at that very large very sweep at the entrance or exit from the very first house, someone coming around that first corner or up the driveway will not have enough space.

Mr. Sulkis: Asked if Mr. Bender's concern was whether two cars could pass on the driveway.

[Messrs. Sulkis and Bender reviewed the driveway on the plans]

Mr. Sulkis: Suggested a condition be attached stating that no plantings can be placed in that easement area that can obstruct vision, so that someone coming out of the driveway can easily see what is coming up or down the driveway.

Mr. Bender: Suggested the driveway be made wider and then the situation would not have to be monitored.

Mr. Sulkis: The condition would be part of each house's approval and recorded on the land records. If there is an issue it will be a private dispute between those neighbors.

Mr. Dickman: Stated this is a clustered subdivision similar to Magnolia Ridge on West Rutland Road. The driveway at Magnolia Ridge is similar to the proposed driveway.

Mr. Sulkis: Said the driveway distance is much shorter than that of Magnolia Ridge, which also has a few pull over areas.

Mr. Ferrante: Agreed with Mr. Bender on the sight line issue and thought a maintenance agreement would be appropriate. Thought the 15-foot width driveway should be adequate for two cars.

Mr. Bender: Stated he was not speaking about the whole driveway, just the first driveway making a turn to come out.

Mr. Ferrante: Will there be a maintenance agreement for the sight line?

Mme. Chair: That would be part of the motion.

Mr. Ferrante: Made a motion to approve the Ritchie Farms Subdivision with the stipulation that the owner of the property offer a maintenance agreement for a sight line as described in the plan, which will be recorded in the land records for the protection and safety of the public.

Mrs. Golden: Second.

Seven members voted in favor. Mr. Bender voted against. The motion passed.

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6. **479 NEW HAVEN AVENUE (ZONE CDD-4)** – Petition of David J. King for a two lot re-subdivision (previously approved on 2/1/2005) on Map 56, Block 529, Parcel 2, of which David J. King is the owner.

Mr. Liddy: Asked why this application should be approved if it has gone unfulfilled for five years.

Mr. Sulkis: The mylar was not filed. Now the City will be getting open space.

Mr. Dickman: Made a motion to approve the two lot subdivision previously approved on 2/1/2005.

Mr. Liddy: Second.

Asked about the open space issue and why it had not been included in the first application.

Mr. Sulkis: Nothing has changed other than the original subdivision did not have open space designated. Now it does. Open space will be 10% of the land per the requirements of the subdivision regulations.

Mr. Liddy: Asked again why it was not done the first time.

Mr. Sulkis: Stated he was not here and did not know.

All members voted in favor.

PUBLIC HEARING CLOSED 5/4/10; exp. 7/6/10

7. **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.

Mr. Sulkis: Explained the changes that he made to the motion that had been submitted at the last meeting.

Ms. Rose: Made a motion to approve with conditions 90 Heenan Drive. The motion was read as follows:

The Board approves the layout of Conceptual Alternate Site Plan #2 with the following conditions:

1. Provide evidence acceptable to the City Engineer that the sheeting action down the steep slopes will not adversely impact (striking the housing unit with

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water coming down the steep slope and/or flooded by the water coming down the steep slope) proposed houses on pads 17, 18, 25 and 26. Houses that are adversely impacted by the sheeting action shall not be approved.

2. Approve units in Phase II upper portion. The creation of a private street through the already existing Industrial Park, in the industrial (ID) zone is denied. The (ID) is Milford's heavy industrial zone.

The creation of the private road in the industrial park creates building setback and site plan non-conformities, on multiple properties where they currently do not exist.

The residential road through the industrial Park limits the use of the ID zoned industrial park, which is a de-facto zone change limiting the future use of the Industrially zoned land, thereby adversely impacting future economic development opportunities for Milford.

Having the only vehicular access to the residential use through the Industrial Park which is zoned (ID) is a danger to the public safety, health and welfare by mixing heavy industrial traffic and uses with residential traffic and uses.

The upper portion must be connected to the lower portion on the same site with access to Heenan Drive, per the original police report recommendation. Further, testimony by the applicant indicated that this could be done.

3. Produce a new landscape plan for conceptual Alternative Site Plan #2, providing landscaping along Heenan Drive.
4. Provide a marketing plan that is complete and meets the requirements as specified by the Fair Housing Action Plan Guidelines, as provided by the State of Connecticut.
5. The applicant shall provide engineered drawings for all retaining walls and provide evidence that all hillsides shall be stable during construction/excavation.
6. All site work shall be completed, which includes all utilities and infrastructure, including but not limited to drainage, sewage, retaining walls, roadways, landscaping and house site pads prior to the placement and occupancy of the first housing unit.
7. For the safety, health and welfare of the homeowners, the units shall each provide ten-foot side yards which is the standard of the CBDD, and will help prevent the spread of fire, if that should occur.

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The applicant, on multiple occasions, stated for the record and in the Miller reports, how they wanted to meet, and have met the requirements of the underlying CBDD zone. The ten-foot setback is one of those requirements.

Mr. Liddy: Second.

All members voted in favor of Approval with Conditions of 90 Heenan Drive.

F. PROPOSED REGULATION CHANGES

Mr. Sulkis: Change to Section 9.2.3 Prohibited Variances. Proposes to add a number 4 to address the issue that the Board brought up with the previous application to make it city-wide for the protection, safety and welfare of the people of Milford where there is concern that variances are being granted where there are no hardships and structures are coming too close to one another where they are a safety issue when they catch fire, which has been seen in the recent past.

Proposed the following language for the Board's review:

No application to vary a front, side or rear yard that brings the existing or proposed structure within ten feet or less of any either principal structure on the applicant's or any neighboring or adjacent property shall be allowed.

So a person can go for a variance on side yard setbacks, or front or back setbacks, but if it brings someone within ten feet of whatever is around that property, which can be determined from the A2 survey, that would not be an allowable variance because there would be no hardship.

Mr. Sulkis stated that 99.9% of items that go before the ZBA are not hardships. A hardship is supposed to be something where somebody can absolutely do nothing with their property unless they are granted that variance. What goes before the board are desires, not hardships. This would go a long way toward addressing the issue that the Board had raised, which is concern that houses along the beach are too close to one another.

Mme. Chair: Asked if this regulation would be for principal structure or accessory structures as well.

Mr. Sulkis: Right now it is worded for a principal structure. If the Board wants to make it for any structure, that can be looked at.

Mme. Chair: Mentioned there have been discussions about bay windows and long eaves and overhangs.

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Mr. Sulkis: Those items are subject to variances. Any protrusion from the structure is where it would be measured from.

Mr. Liddy: Would this be for residential zones only? In some areas, such as the downtown, there are zero setbacks and the buildings are right next to each other. Would this just apply to single family homes? How would this be differentiated?

Mr. Sulkis: It could be limited to the residential zones, but if the underlying zone is a zero setback, no one would be going to the Zoning Board of Appeals to waive a zero setback.

Mr. Ferrante: If the property is vacant next door or is smaller and older, then the first applicant to get to the office wins. Not sure that he likes that scenario.

Mr. Sulkis: That's true. That is how it would work. What that means in the real world is that someone's house will only be 22 feet wide instead of 25 feet wide. As long as they are able to use their property, it is not a hardship.

Mr. Ferrante: Afraid that everyone will bring their plans in right away to be closest to the line.

Mr. Liddy: The ZBA appears to circumvent the Planning and Zoning Board on setbacks in all the zones. How will this regulation prevent them from doing that?

Mr. Sulkis: The ZBA is a relief valve for people who when they are going to utilize their property, there is no way, shape or form under the zoning regulations that they can utilize it without that variance. The reality is that is not what they do. If the neighbors don't complain, what's the harm? The harm is, although it might not be evident immediately, the neighbor will do the same thing and now instead of having houses that should be 20 feet apart, you now have houses that are 5 feet apart. The Board has seen such examples with CAM reviews and has had to approve them because the variances had been granted. In a majority of those cases they did not need to have that variance. It was a desire and the Board granted that desire. That is the nature of ZBAs all over, not only in Milford. This regulation change is a way to attempt to control this situation.

Mme. Chair: Would like to see what could be done with the Zoning Regulations right now and the best input that can be given to the City Planner on this.

Mr. Bender: With regard to fire and safety, would they get a waiver if a sprinkler system was installed?

Mr. Sulkis: That is a building code issue, not a zoning issue. The regulations are very specific about certain things that can and cannot be done. Stated he would like to add something to the proposed change as a relief valve, which

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would be if it was determined that there is no other use for the property without getting that kind of a variance because the 10-foot distance cannot be maintained, that is something the Board would have to look at, but 99.9% of the things that are going to come before that board they will be able to build without needing a variance.

Mr. Mead: Asked about sheds.

Mr. Sulkis: Sheds have not been an issue with the Board. It has been with the main structures, but sheds can be reviewed.

Ms. Harrigan: From her experience with the ZBA she has not seen too many shed applications. If there are shed applications they are for legalizing a preexisting shed already on the property. If that shed goes away it has to meet the new regulations.

Mr. Ferrante: The proposal should include ancillary structures because it is not the new shed the Board is concerned with as much as it is the new construction being close to someone else's shed or ancillary structure. Said it should be included and there would be 10 feet between all the buildings.

Mr. Liddy: Asked how the three car garage issue could be changed?

Ms. Harrigan: This could be put within the flood hazard regulations. FEMA is also requiring that the regulations be updated in conjunction with the adopting the new flood maps by December. Hopefully the Board will see these within a month. The regulations could potentially be put in that section so that it only applies to flood zone properties. Thinks it should be kept as a waiver, on a site review basis, because the Board might not want it universally for all flood zone properties.

Mr. Ferrante: What the Board approved tonight is a space for four cars inside a two-car garage. That is not offensive, but a four-car garage with four bay doors would be.

Mr. Sulkis: A two-car double deep bay would be acceptable as no one has ever questioned the intent of the original regulation and most people would agree that the regulation that is there is to prevent someone coming in with a house that has six garage doors going across.

Mr. Ferrante: Stated to his understanding the zoning regulations allow chickens in most zones and he should not be in a hurry to make the regulations more restrictive.

Mr. Sulkis: Regulations had been drafted that needed to be tweaked and he will bring it back to the board.

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Mme. Chair: Thought this regulation change was being held up by the City Attorney's office.

Mr. Sulkis: Said he would review the file.

Ms. Rose: Asked about the sign regulation changes as well as the proposed sign regulation change.

Ms. Harrigan: The fence regulation was referred out. The sign regulations need to come back to the Board.

Mr. Mead: There was another regulation proposed about tents.

Mr. Sulkis: The tent regulation was held up with the chicken regulation change. Both regulations can come back to the Board.

G. LIAISON REPORTS – None.

H. APPROVAL OF MINUTES – (6/15/10)

Mrs. Golden: Motion to approve.

Ms. Rose: Second.

All members voted in favor of approving the minutes as transcribed.

I. CHAIR'S REPORT - None.

J. STAFF REPORT

Kathy Kuchta, the new zoning enforcement officer will be introduced at the beginning of the next board meeting on July 20th.

Mr.Liddy: Motion to adjourn.

Mr. Ferrante: Second.

All members voted in favor of adjourning the meeting at 8:50 p.m.

Phyllis Leggett, Board Clerk

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