

**MINUTES FOR TWO (2) PUBLIC HEARINGS
BY THE PLANNING AND ZONING BOARD
HELD TUESDAY, AUGUST 6, 2013; AT 7:30 P.M.
AT THE CITY HALL AUDITORIUM, 110 RIVER STREET**

The August 6, 2013 meeting of the Planning and Zoning Board was called to order at 7:30 p.m. by Chairman Mark Bender.

A. PLEDGE OF ALLEGIANCE AND MOMENT OF SILENCE

B. ROLL CALL

Members Present: Ward Willis, Jeanne Cervin, Benjamin Gettinger, John Grant, Edward Mead (Vice Chair); Dan Rindos, Michael Casey, Joseph DellaMonica, Jr., Tom Nichol, Mark Bender (Chairman)

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

Chairman Bender: Congratulated Board member, Joe DellaMonica, for his well known heroism in saving someone from a burning car while en route to a social gathering in New Jersey. (Round of applause for Joe D)

C. TABLED ITEM - CGS 8-24 APPROVAL

1. **ABANDONMENT OF PARK LANE** – In accordance with the request made by Robert Evans to the City of Milford for abandonment of subject parcel identified on a map entitled “Milford Downs”, dated 1929.

Mr. Sulkis: The first map shows Park Lane as it was originally laid out, which does not exist today. The second map is the current tax map which shows what that right of way area looks like today. The abandonment of this street will not create any landlocked parcels. Every parcel on the block has access to the existing streets. This is tying up a loose end from 1943 when it was brought up to be abandoned by the Town Plan Commission at that time. The abandonment was requested by someone whose property abutted Park Lane. This property will be divided among all the property owners in accordance with State procedures.

Mr. Willis: Made a motion to approve the CGS 8-24 request to abandon Park Lane.

All members voted in favor of the motion for approval.

D. PUBLIC HEARINGS – Close by 9/10/2013; expires on 11/14/2013

2. **737 EAST BROADWAY (ZONE R-5)** Petition of John Wicko for Special Permit and Coastal Area Management Site Plan Review approval to construct a new single family residence within 25 feet of mean high tide on Map 22, Block 474, Parcel 18, of which Jacqueline Campbell is the owner.

John Wicko, 50 Broad Street, Milford, representing Jackie Campbell for construction of a new single family residence that was damaged in TS Irene and Sandy. The house

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is in the VE zone. The site is 4,858 SF and is in conformance with all the zoning regulations. It will be demolished and removed from the site. The new house will be elevated and engineered to withstand the wave action of the VE zone. He reviewed the elevations of the proposed house. There will be off-street parking under the new residence. There will be a floating slab which meets all the breakaway capabilities in the VE zone. The CAM report describes the coastal resources in or near the property. Construction will be started in the fall and go in through the winter. A silt fence and 6 foot high construction fence will be installed to keep the debris from going into the beach area. Existing underground utilities.

Ms. Harrigan: This application was sent to the DEEP and Office of LI Sound Programs. They were satisfied with the coastal mitigation measures that were proposed on the plan. The excavated materials for the foundations will not be relocated in front of the structure to help with dune development because soil testing found peet, which would not be desirable on the beachfront.

Mr. DellaMonica: Asked about the attic staircase. Will it be pull down or walk up?

Mr. Wicko: It will be pull-down attic stairs large enough for the mechanical unit and for human to get into the attic. Not a habitable space.

Mr. Mead: Can sand be brought in to build the dunes?

Ms. Harrigan: She does not think that was John Gaucher's intention and he would not want to impose that kind of expense on the homeowner.

The Chair opened the public hearing portion of the application. Asked if anyone was in favor: (No response). Asked if anyone was opposed to the application (No response).

The public hearing was closed.

Mr. Rindos: Made a motion to approve the petition of John Wicko for Special Permit and Coastal Area Management Site Plan Review approval to construct a new single family residence within 25 feet of mean high tide on Map 22, Block 474, Parcel 18, of which Jacqueline Campbell is the owner.

Mr. Casey: Second.

All members voted in favor of approval.

3. **108 WATERBURY AVENUE (ZONE R-5)** Petition of James McElroy for Special Permit and Coastal Area Management Site Plan Review approval to construct a single family residence within 25 feet of mean high tide on Map 13, Block 135, Parcel 5, of which Diane Davenport is the owner.

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James McElroy, 26 Hauser Street, Milford. This property was damaged in TS Irene and substantially damaged by Storm Sandy. Will replace the existing residence almost identical in footprint to what was previously there. A variance was granted for the front yard setback. The house will be more centered on the lot than it was before. The placement of the house was moved back from the water than it was previously, as suggested by John Gaucher of the DEEP. The house is designed in accordance with the current FEMA regulations.

Two parking spaces underneath the house at ground level and two additional parking spaces were added in the driveway. No on street parking allowed on Waterbury Avenue. The design and structure of the home was described.

Ms. Harrigan: Because of the location of this property near the coastal jurisdiction line, the plans were sent to another DEEP person for approval, Sue Jacobson. She felt comfortable that the work would be occurring outside the coastal jurisdiction area. There was a revision where the deck had to be pulled out of the coastal jurisdiction area. The City regulations do not allow construction over the high tide line. The engineering plan needs to be revised to reflect the design plans. It shows the 12 foot instead of a 6 foot. The applicant is asking the Board to approve the attic plan as shown unfinished as a storage area that is accessible by stairs.

Mr. Nichol: Noted he saw a lot of dirt piles and building materials on the property.

Mr. McElroy: That is the neighbor's material who is rebuilding his house and it was put on this property temporarily. He believes that has been taken care of by the contractor. It was a temporary arrangement.

Mr. Nichol: Will all of it be removed?

Mr. McElroy: Yes, everything has been or will be removed.

The Chair opened the public hearing portion of the application. Asked if anyone was in favor: (No response). Asked if anyone was opposed to the application (No response).

Mr. DellaMonica: Made a motion to approve the Petition of James McElroy for Special Permit and Coastal Area Management Site Plan Review approval to construct a single family residence within 25 feet of mean high tide on Map 13, Block 135, Parcel 5, of which Diane Davenport is the owner with the conditions noted in the staff review and comments on correction of the engineering plan and a waiver to be filed on the land records for the attic stairs.

Mr. Nichol: Second.

All members voted in favor of approval of the motion.

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E. OLD BUSINESS

PUBLIC HEARINGS – Closed 7/16/2013; expires on 10/25/2013

4. **258 & 266 BOSTON POST ROAD (ZONE CDD-1)** Petition of Benjamin Proto, Esq. for Special Permit and Site Plan Review approval to construct a Cumberland Farms Gas Station and Convenience Store on Map 53, Block 305A, Parcels 1 and 3, of which TVJL, LLC is the owner.

Mr. Rindos: Stated he was not at the last meeting but watched the DVD recording of the meeting and read all the minutes and he would participate in this discussion.

Chairman Bender: Thought it was a good plan and did not want that large empty lot there. However, he does not like making a left turn from the Boston Post Road coming from the Devon area into the gas station. There will be a backup at the light and will cause a traffic problem.

Mr. DellaMonica: This was approved by DOT. He believes this will be a traffic control issue and the Police Department may have to monitor the traffic and refer back to the DOT for a possible change.

Mr. Willis: Thinks there should be something on that empty lot, but the traffic in that area is already an issue. He does not think this is the best use for this site.

Discussion ensued about the police doing a traffic study after the business is open. The DOT may not do anything, even though traffic is already an issue.

Chairman Bender: Thinks there will be a lot of cutting through around Bailey Lane and suggested speed bumps to curtail this.

Mr. Mead: The applicant said there would not be parking in the rear. He agreed about the speed bumps and he could see where people would cut through to go to Baily Lane, even though there will be Do Not Enter signs because it will be one way coming from the other side.

Ms. Cervin: Also recalled the applicant saying there would be enough parking and parking in the rear would not be needed.

Mr. DellaMonica: Wants to be fair to the people that live in the area plus the commuters in the morning and also want to have something in that space. He suggested removing the entry at the Post Road. There will still be two entrances on either side of the establishment with access for emergency equipment, which will accommodate tanks for gasoline storage.

Mr. Sulkis: Stated it was the DOT's decision to have the entrance from the Post Road. It was not originally presented to him that way. It is the State's road.

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Chairman Bender: Asked if the Board could modify the entrance.

Mr. Sulkis: Did not know because it is a State road, which the City has no jurisdiction over.

Mr. Mead: Noted the DOT would not allow a change the Board wanted to make at the CVS store at Schoolhouse Road for safety purposes.

Mr. Sulkis: The plans are shown to the State for their approval beforehand so that the applicant knows what he can and cannot do with regard to the State road.

Mr. Rindos: Made a motion to approve the petition of Benjamin Proto, Esq. for Special Permit and Site Plan Review approval to construct a Cumberland Farms Gas Station and Convenience Store on Map 53, Block 305A, Parcels 1 and 3, of which TVJL, LLC is the owner.

Mr. Sulkis: Condition that there will be traffic mitigation measures such as speed bumps to be added to the rear driveway.

There was discussion as to how a traffic study, by whom, and what would be accomplished was discussed.

Ms. Cervin: The horse is already out of the barn. If there was a decision that counters the site plan, then the whole plan would be at issue.

Chairman Bender: Agreed that you don't have a true traffic study until the place is actually open.

The Board discussed conducting a traffic study by the Board and the fact the applicant had conducted a traffic study and the manner in which the traffic study pertained to the business and the location.

Mr. Nichol: If this becomes a traffic nightmare, will Cumberland Farms step up to the plate to have the traffic controlled by the police? If accidents occur, Milford Police will respond before the State Police will. This should be part of the approval.

Mr. DellaMonica: If the Chief of Police feels there is a safety issue, he, or a representative will speak to Cumberland Farms and suggest that something be done. He does not think that having a policeman standing there will make less cars go there.

Mr. Gettinger: second.

Nine members in favor of approval. Ward Willis voted against.

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5. **21 DANIEL STREET (ZONE MCDD)** Petition of John Wicko, Architect, for Special Permit and Site Plan Review approval to construct a full service restaurant with outdoor dining and three residential apartments on Map 54, Block 397, Parcel 1, of which Richard Ciardiello is the owner.

Mr. Gettinger: Stated he has a procedural problem with this application. He does not think the Board should be deciding applications where the applicant does not own part of the land they are trying to build on. It is speculative. There are enough applications out there that should take precedent over speculative applications. He thinks the applicant should get Board of Aldermen approval. Once they have the land they can come before this Board and then a decision can be made.

Mr. Bender: The Board discussed that they could approve the application without the patio as an option.

Mr. Gettinger: He would be in favor of doing that. His only issue with this is that the applicant is attempting to use land that the applicant does not and may not own.

Mr. Bender: Agreed.

Mr. Sulkis: What was just described is not how things have been done in the past. Café Atlantique was the same way. Other proposals that utilized property, such as Key Hyundai where they are utilizing City land, part of the process is to present the Board with the potential for the full development and then when and if they go through the proposal, assuming it is approved, they follow up with the rest of that process. That is fairly routine in developments like this.

Mr. Gettinger: Noted the Board could spend two nights on this application. It can never come to fruition and the Board wasted four hours of its time when applications could be decided that could go forward as is. There is a mechanism in place where the applicant can try to get the land he needs to make the application and then come before the Board.

Chairman Bender: As a compromise make it a condition of the applicant getting the land approved.

Mr. Gettinger: Was not in favor of this. He wants the application to come back for 8-24 approval.

Mr. Sulkis: That will be a legal decision on the City's part as to what process they are going to pursue, depending upon the type of agreement that the City may or may not enter into with the property owner. Just as it has done with other property owners.

Chairman Bender: Key Hyundai brought information about the open space they were accessing. The Board does not have that type of information, nor anything from the City Attorney's office on the matter.

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Mr. Sulkis: All proper procedures have to be followed. In the end whatever occurs there will be done through the City process. The patio may or may not be built but that will be up to some other entity who will give that approval and it may not come back to this board. The applicant is being up front with the Board saying that is what they want to do, which is what the Board requests all the applicants to do.

Ms. Cervin: It could be approved without the patio. She is perplexed that the 8-24 was not congruent with this application. This is different from the Key Hyundai issue. This lease was approved by a board eight years ago and it was a five year lease. She cannot imagine why it would still be current. Option would be to approve without the patio. Would also not want the applicant to assume the Board will approve it as well.

Chairman Bender: The Board wants to follow the right procedures and do things properly. The Board has to make it clear about how the patio will be dealt in the application.

Mr. Mead: Asked if the Board could limit the use of the patio if it was approved.

Mr. Sulkis: Did not know the answer. A recommendation could be made by the Board.

Mr. Casey: The patio was public property. The public has spoken. Their statements were very impactful and significant to him. It is not just private property. It is public property and their opinions carry a lot of weight in this situation. When the applicant was asked if the patio was integral to the application, he said it was. Based on that he is inclined to deny it unless they change what they are seeking.

Mr. Bender: One of the speakers had a patio from the City but was against this property having a patio. He was okay with taking the patio off the discussion if it is too convoluted and look at the rest of the application. When the lease is obtained the patio can be looked at separately. It seems that the patio is just a small part of this application.

Ms. Cervin: Concerned about the number of parking spaces that are not being provided for the residential units. There has been a lot of comparison back to what was approved eight years ago and what is being done now and she would rather take that off the table because today is a different situation than eight years ago. The parking spaces are in a difficult area and could be easily blocked. She does not want to set a precedent by allowing this.

Mr. Mead: Also with regard to parking he had asked if a third parking space could be leased at another.

Chairman Bender: There is flexibility in the parking spaces by not renting to people with autos.

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Ms. Cervin: By allowing the spaces it would apply to every mixed use residential unit in the MCDD and you need to be careful about this.

Mr. Mead: Spoke about leasing another spot in the area for the third apartment from another business on River Street or another business in the area. Limiting three apartments to two cars, especially with more than one person living in each apartment could be a problem.

Chairman Bender: One would think someone with cars looking for an apartment would not choose this place to live. The restaurant goes with the Plan of Conservation and Development. He likes that use.

Mr. Rindos: Thinks this is a good use for the property. Conforms to the POCD. He likes restaurants with patios. It is becoming a big part of Milford's restaurant scene. Does not know why they want the apartments. Parking is a problem.

Mr. Mead: Would like to keep the patio for seated use only. Can't move tables to allow dancing in the future.

Chairman Bender: The plans show tables and that is the use.

Ms. Cervin: If another establishment buys the restaurant in the future, would six tables on the patio still stand?

Mr. Sulkis: If the regulations have not changed, the expectation is they would be allowed to have the same patio that the previous owner had. But it depends on the mechanism that would allow the patio and its use. He gave Café Atlantique as an example of such a change.

Mr. Gettinger: If the applicant had gone to the Board of Aldermen first, wouldn't the Board have some of those answers with respect to what type of lease; how long the lease is; what the land could be used for?

Mr. Sulkis: The City Attorney's office will have to decide what the mechanism is for that.

Mr. Gettinger: It would help the Board if they knew what the City was going to do with the lease before the Board made a decision what to do with the land.

Mr. Sulkis: Said the Board has to look at what is within its jurisdiction, which is a site plan that shows a patio on City land. Someone else will decide that part of the plan but the applicant has done what they were to do, which is to provide the Board with their application and be up front with what they are going to do and there is going to be another portion of this that will be outside the Board's jurisdiction that will say yea or nay as to whether the patio can be put in. That should not affect what the Board has to do tonight. In the end the decision as to whether the patio will be in there or not is outside the Board's jurisdiction.

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Ms. Cervin: Cannot believe it will not come back to the Board as an 8-24 approval. Approving it without a patio they would have to come back with an 8-24.

Mr. Mead: Asked how Café Atlantique got their right to the use of City property.

Mr. Sulkis: Did not know offhand.

Mr. Gettinger: Made a motion to approve the petition of John Wicko, Architect, for Special Permit and Site Plan Review approval to construct a full service restaurant with outdoor dining and three residential apartments on Map 54, Block 397, Parcel 1, of which Richard Ciardiello is the owner without the outdoor dining. Essentially approve the application without the use of the City property.

Ms. Cervin: Second.

Mr. Sulkis: Suggested removing the wording of "outdoor dining" from the original description of the application and approve it without outdoor dining.

Mr. Gettinger: Amended his motion to approve to read: "...Approval to construct a full service restaurant and three residential apartments without outdoor dining..."

He stated he did not want to keep the applicant from getting the issue decided. He would like to do it in the order which he believes is correct.

Chairman Bender: This is a very critical part of the area and to make sure the Board has some input into what will happen with the patio and it is not left up to other entities.

Mr. Gettinger: Has an issue with the unknown and not knowing what will happen. It is a procedural issue but it also public property and belongs to the taxpayers. It is not up to the Board to willy nilly approve applications that use property property so easily especially where there is not even a lease in place. More time needs to be taken before public property is taken away for a private use. If whoever has the authority wants to give them a lease, let the application come before the board again.

Mr. Casey: If this is public property and the consensus at the public hearing was against this use. That is meaningful from his perspective. Even in light of the Board comments, he will be voting against it.

Mr. Mead: Asked if the Board approves the use of the land for a patio at an 8-24 request, will it still go before the Board of Aldermen for their approval?

Mr. Sulkis: Yes. It goes to the Board of Aldermen in the event of approval or denial.

Mr. Willis: He agrees about the use of private property and has an issue with the number of parking spaces for the apartments. Although the point has been made that the Board has done this for other business, it does not mean they have to do it in this instance.

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Mr. Sulkis: Described the process that would take place in all likelihood, if the application for the patio came back to the board. Could come back as an Amendment to a Special Permit. If the plans are in order it could come back to the board quickly.

A vote was taken: Messrs. Gettinger, Grant, Mead, Nichol and Bender voted in favor of the motion. Ms. Cervin, Messrs. Willis, Casey and Della Monica voted against the motion. The motion passed.

Mr. Sulkis: Interrupted to suggest that the Board could have made the decision of Denied Without Prejudice to allow the application to be fast tracked to come back before the Board, should the City procedure about the patio area be determined in some manner.

Mr. Gettinger: Stated it was not his intention to not give the applicant the opportunity to come back to the Board once the City property issue was determined.

Mr. Sulkis: Stated the Board should retract the vote they did and do the new motion without prejudice.

Mr. Gettinger: Retracted his previous motion and made a new motion to approve the petition of John Wicko, Architect, for Special Permit and Site Plan Review approval to construct a full service restaurant with three residential apartments on Map 54, Block 397, Parcel 1, of which Richard Ciardiello is the owner, which includes denying without prejudice the outdoor dining patio.

Ms. Cervin: Second.

(A vote on the amended motion was taken) Messrs. Gettinger, Grant, Mead, Rindos, Nichol and Bender voted in favor of the motion. Ms. Cervin, Messrs. Willis, Casey and Della Monica voted against the motion. The motion was approved.

6. **1052 BOSTON POST ROAD (ZONE ICD)** Petition of Larry Yergeau for Special Permit and Site Plan Review approval to construct a new hotel and conduct earth removal operations for further future development on Map 77, Block 832, Parcels 2 and 2A, of which Turnpike Lodge, Inc. is the owner.

Chairman Bender: One of the critical discussions was concerning blasting; State regulations on what will allow it and a 200 foot line.

Mr. Mead: His main concern is for the residents that abut the property on the hill. The work will take 18 months to two years and they must maintain a good working relationship with the neighbors throughout the blasting and rock crushing and to maintain the roadway down to the Post Road on the worksite for cleanliness and debris.

If anything does come up with the property owners in the back, the site owners will help them in any way they can to maintain the good relationship during the course of development.

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Chairman Bender: In the previous development there was a point person who could be called at all times to resolve a problem. Such a person could address the concerns just mentioned.

He likes the new plan for development of a brand name hotel. It will be better than what is there. It may be painful to get there for what has to be done but it will be a definite improvement.

Mr. DellaMonica: Missed a portion of the last meeting. Asked if a schedule of work hours for rock crushing and blasting was determined.

Mr. Rindos: This will be a benefit to the City. It will bring a new dimension of quality hotel to the property.

Mr. Sulkis: With regard to the time the excavation will take place from 8:00 a.m. to 5:00 p.m. and 8:00 a.m. to 2:00 p.m. on Saturday.

Mr. DellaMonica: Had the incorrect hours from a previous sheet that had since been corrected. He did not like the 8:00 a.m. starting time on Saturday given the 55+ housing development directly behind the hotel. Rock crushing is very loud.

Mr. Gettinger: Suggested changing the Saturday hours for excavation, rock crushing and other outdoor work from 9:00 am. to 3:00 p.m.

Ms. Cervin: This is a tremendous upgrade to that part of the City and is consistent with the Plan of Conservation and Development.

She made a motion for approval of the petition of Larry Yergeau for Special Permit and Site Plan Review approval to construct a new hotel and conduct earth removal operations for further future development on Map 77, Block 832, Parcels 2 and 2A, of which Turnpike Lodge, Inc. is the owner, with the following conditions:

1. Creating easements to the neighboring properties.
2. Excavation on Saturday will be from 9:00 a.m. to 3:00 p.m.
3. All the Commission reports and suggestions will be carried out.

She noted the police report, in particular, which wanted to improve pedestrian safety in the parking lot. There were suggestions to provide safety to pedestrians in the parking lot.

Mr. Mead: Seconded.

Chairman Bender: Friendly's and the diner will still be operating and there will be a lot of activity going on there.

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Mr. Sulkis: Read the suggestions that Chief Mello wrote in his report on this application. The approval letter states the approval is in accordance with all the departmental comments.

The daily excavation hours will remain as 8:00 a.m. to 5:00 p.m.

The neighboring properties for the easements are Friendly's and the Athenian Diner. Those are the only two sites that are affected by the interconnecting regulations.

It was discussed that the excavation and blasting is overseen by the State and the Milford Fire Department. This is done to maintain good relationships with all the neighbors. That particular portion of the application comes under someone else's expertise which they have to abide by, which is highly regulated.

A vote was taken. All members voted in favor.

G. REGULATION CHANGES – Update - Rear Lots

Nothing new to report.

H. PROPOSED REGULATION CHANGES – Update

On the agenda for the next public hearing on 8/20/13

I. LIAISON REPORT - None

J. APPROVAL OF MINUTES – (7/16/2013)

Mr. Rindos: Motion to approve.

Mr. Grant: Second.

All members voted in favor of approving the minutes.

K. CHAIR'S REPORT

Ms. Cervin: She and other board members have spoken with Dick Platt about Prospect Street. She told him the Board would be getting back to him, but that he should move forward to see about the issue of the Historic District, that would be at his end. And if there is any possibility of a change, all five property owners need to let the Board know that they want a change.

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Chairman Bender: Said at the meeting that was held on the MCDD that he would look into it further and review the information on the MCDD and the history, because Mr. Platt was not been happy about the results at that meeting.

L. STAFF REPORT – None

Chairman Bender: Asked about the Plan of Conservation books.

Mr. Sulkis: The books were returned to the printers to fix an error. They have not been returned as yet.

Ms. Cervin: Made a motion to adjourn.

Mr. DellaMonica: Second.

All members voted in favor of adjournment at 9:30 p.m. The next meeting will be a public hearing held on August 20, 2013.

Phyllis Leggett
Phyllis Leggett, Board Clerk

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