

**MINUTES FOR THE REGULAR MEETING
OF THE PLANNING & ZONING BOARD HELD
TUESDAY, SEPTEMBER 4, 2012; AT 7:30 P.M. AT THE
CITY HALL AUDITORIUM, 110 RIVER STREET**

Chairman Mark Bender called to order the September 4, 2012 meeting of the Planning and Zoning Board at 7:30 p.m.

A. PLEDGE OF ALLEGIANCE AND MOMENT OF SILENCE

B. ROLL CALL

MEMBERS PRESENT: Ward Willis, Jeanne Cervin, John Grant, Edward Mead, (Vice Chair); Dan Rindos, Michael Casey, Joseph DellaMonica, Tom Nichol, Mark Bender (Chair)

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

C. PUBLIC HEARING - Closed 8/21/2012; expires 10/25/2012

1. **475 NEW HAVEN AVENUE (ZONE CDD-4)** – Petition of Anthony Giordano & Associates for Special Permit, Coastal Area Management Site Plan Review and Site Plan Review approval to construct a restaurant with outside roof deck seating on Map 56, Block 506, Parcel 2, of which MCM Realty is the owner.

Chairman Bender: The public hearing has been held. All the information has been received. This is the time for the Board to discuss this application.

Mr. Grant: Over the weekend he took a survey of District 5, where this restaurant would be located. He determined that 60% of the eating establishments in that district do not have adequate parking per the regulations. The mall, strip centers and downtown are in a different category. He represents District 5 and visits many of these restaurants. He does not believe that being a few cars short of the parking regulations should be a reason to not approve this application, especially in view of the fact that there is a vacant lot on which someone wishes to construct a nice building, which will add to the City's revenue.

Mr. DellaMonica: He has lived in Milford over 40 years and for most of that time the lot has been vacant after the Ship's Wheel was taken down. Garbage has been strewn there and there is an unkempt fence, rats, etc. District 5 is his district as well. The new owner is well liked by everyone who knows and has done business with him. He is trying to upgrade his business. A small shortage of parking should not prohibit him from starting this business on that site.

Mr. Rindos: Has spoken before that he believes the parking regulations should be reexamined. The parking requirements may not be adequate for the amount of land that is available in the City. Want to see the City grow and encourage entrepreneurial endeavors. He sees this as a potential benefit to the area creating new jobs, stimulate business and add tax dollars.

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Mr. Mead: He did his own study for this project. He looked at two nearby restaurants; Jimmy's Pizza on New Haven Avenue. He went to the City Assessor's website. It is .41 acre. The total gross square footage is 11,500 SF and they have 18-20 parking spaces.

He also went to the former D'Angelo's sub store on Old Gate Lane that is now vacant. He counted 31 parking spaces and two handicapped and a total gross square footage of that area is 16,967. The applicant's project is 17,504 SF. The relationship between all three of the restaurants is similar. Jimmy's is nonconforming because it was previously a restaurant. The comparison between D'Angelo's and Michael Anthony's is similar. He is in favor of this application.

Ms. Cervin: Not in favor of the applicable. She has thought about this for a long time and wrote down the reasons why she was not in favor of approval. This has been a troubled application from the beginning. It has been a challenge for the Board. A new build with this number of waiver requests should be a yellow, if not, red flag to the Board. It is not uncommon to receive waiver requests with adaptive reuse applications, but with a new build the Board should expect their regulations to be followed with waivers granted only under very exceptional circumstances.

Six waivers have been requested. Why? As stated by Mr. Raymond at the July 17th public hearing, this is a very tiny lot. Is a tiny lot a justification for numerous waiver requests? This application is an attempt to squeeze a larger project onto a very small lot and then to validate it by asking for waivers. In her time on the Board in the past she has never experienced this number of waivers being requested for a new project. As representatives of the City of Milford, the Board is charged to promote the health, safety and general welfare of the inhabitants of the City of Milford and to make decisions consistent with the policies and objectives of the Plan of Conservation and Development. The Board should be attuned to this right now as the updated Plan of Conservation and Development is being worked on at this time and the regulations are based on that plan and they were ten years ago. What the Board presently has in the Plan and what it will have in the forthcoming Plan is the following, pertaining to the CDD-4 District, which this application is located:

"Because of the potential impact on adjacent coastal resources, there is need for specific development controls in this area. In addition to the protection of natural resources in this area of critical concern there is a need to improve the overall image of the area. Zoning and site development standards should be regarded to monitor development to ensure the protection of resources as well as improve site and streetscape appearance. Landscaping, berms and buffers, the extent of impervious surfaces, parking layout, the siting of structures, signage and the location of site entrances and exits should all be addressed as part of the new site development standards upon which many of our regulations are founded."

This lot abuts Gulf Pond and empties directly into Long Island Sound. To grant landscaping and other waivers in this environmentally vulnerable area would not be in compliance with the POCD, nor would it be good environmental protection or planning. Instead it would be ignoring regulations that could partially ameliorate some of the

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pollutants from runoff into this already fragile eco system which is Milford's largest natural resource. How can we extend parking waivers that will not provide for adequate and in her mind, safe parking? Just down the road there is an example of what a congested and unsafe inadequate parking lot looks like. Jimm's Apizza, already mentioned near Buckingham and New Haven Avenues on weekend nights is a parking nightmare with cars illegally parked on New Haven Avenue. She has personally witnessed one accident in that lot and several near misses. When she drove by last Saturday night there were three cars parked illegally on New Haven Avenue.

If the Board grants the parking waivers at 475 New Haven Avenue, she believes the Board could have a repeat of a similar hazardous scenario. Also, the take-out component of this plan ensures that there will be more traffic coming and going in the parking lot. This, along with the minimal parking could be a serious safety hazard.

Milford's restaurant parking regulations are on the liberal side compared to many other municipalities, although some may not believe this. She has done some comparisons and does not believe these regulations need to be changed. However, if some members think they should be changed, then let the Board take a closer look at them and not allow willy-nilly waivers, which is a terrible practice, a bad precedent and could create accusations of favoritism.

With regard to the issue of the four off-site employee spots, the regulations could not be more explicit in spelling out the conditions upon which these could be granted. Section 5.1.9 states that the parking spots must be in ownership of the property owner and recorded in the land records as an encumbrance on the land. A five or fifteen year lease definitely does not meet this requirement. The owner is a next door property owner, not the applicant, who would be the lease holder and there is no encumbrance on the land records. As with all applications in the making of its decisions, the Board members need to remember to look ahead as to what impact its decisions could have in the future. What happens when the lease is up? And again, what precedent is the Board setting in bypassing this regulation?

When she brought up the issue of a snow shelf, Mr. Smith acknowledged that he was unaware of this concept, which might be understandable because of his lack of his experience in handling land use applications. As Board members know, this can be a significant concern and especially one where the land is so environmentally vulnerable and has very limited parking. Where does the applicant plan to deposit plowed snow? It looks like there would be three options: On some of the already limited parking spaces; on the neighbor's property; or in Gulf Pond; none of which would be acceptable.

Landscaping waiver. The regulations state that they must be met or exceeded. Here they are grossly under the requirements. To include rip rap as meeting part of the landscaping requirement is really grasping at straws.

It is always hard not to be influenced by character witnesses. The Board heard from many who expressed high respect and liking from Mr. Anthony. She has no reason to doubt that he is a very good and respected person. But as land use decision makers,

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the Board should not be influenced by negative or positive remarks about an applicant, nor should the Board be influenced one way or another by the reputation or character of the applicant's representative. The decision should be based solely on the principles of good land use and what is best for the City of Milford. In Mr. Smith's opening statements in the July 17th, public hearing, he said that he was coming before this Board to comply with the regulations. She guesses this was for some of the regulations, certainly not for six of them.

Ms. Cervin concluded that she hoped the Board members could look at what is before them in an objective, ethical way and uphold the charge that has been given them. She believes that they would not be upholding the principles or intent of the regulations, or the objectives of the POCD if the Board approves this application.

Chairman Bender: He tries to negate the first meeting where the applicant was basically unprepared. The second public hearing found the drainage issue resolved. Asked if the DEP was okay with it and signed off on it.

Mr. Sulkis: That is correct, but that still leaves the six that are not complying.

Mr. Rindos: Made a motion to approve the waivers for 475 New Haven Avenue, Zone CDD-4 in the Petition of Anthony Giordano & Associates for Special Permit, Coastal Area Management Site Plan Review and Site Plan Review approval to construct a restaurant with outside roof deck seating on Map 56, Block 506, Parcel 2, of which MCM Realty is the owner.

Mr. Casey: Second.

Chairman Bender: The waivers should be noted specifically.

Mr. Rindos: Amended his motion to specify the waivers that were requested.

1. Required 27.6 parking spaces; 25 were provided.

Mr. Sulkis: That is incorrect. 41 spaces are required for the restaurant, so whatever they are providing, subtract that from 41 and that is the waiver.

Mr. Rindos: The applicant is short 12 parking spaces. The waiver on the landscaping standards. The front landscaping area buffer is short under Landscaping Section 5.14.4. Landscaping of parking area needs to be landscaped 2.9% is provided. Landscape of the inlands; size of the inlands needs to be waived. The buffer at the property line near the rear needs a waiver and the landscaping between the parking and the building requires a waiver.

Chairman Bender: There is a motion and a second. More discussion on the motion?

Ms. Cervin: Stated she was severely outnumbered in her opinions. At one of the previous meetings Mr. Mead brought up the possibility of the applicant removing the seasonal deck

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which would help out with the parking problem. The applicant asked that the Board not include this because it was seasonal, but she thinks this is not a rational reason to exclude parking requirements. He has also calculated the parking regulations in a different way than the regulations call for. Because of her concerns she made an amendment to the motion that the seasonal deck be removed.

Chairman Bender: There is an amendment to the motion to remove the deck.

Mr. Willis: Second.

Chairman Bender: Asked how many parking spaces would be affected by removal of the deck.

Mr. Sulkis: The roof deck equals seven spaces.

Chairman Bender: There is a motion and an amended motion to remove the deck, which was seconded. That would knock out seven parking spaces. Asked for discussion on the amended motion.

Ms. Cervin: Added that the applicant calculated parking spaces differently from what the requirements call for. One was how he calculated the take out and also the office space. There is already considerable compromise here by saying the 27 spots or 29, whatever was calculated. She disagrees with that, but she thinks it makes a difference to some degree if 7 spaces are taken out.

Chairman Bender: The 12 spots calculated is based on the Staff report, so there was an agreement there on those numbers.

Mr. Sulkis: They require 41 parking spaces based on how the parking is calculated . Based on the floor plan they are presenting, they are short 12 spaces.

Chairman Bender: There is an amendment to vote on. Asked if everyone understood the amendment.

Mr. Willis: For clarification asked if the seasonal deck was to be removed, they would be short five spaces?

Chairman Bender: Asked who was in favor of the amendment to take out the deck. Messrs. Mead and Willis and Ms. Cervin voted in favor of removing the seasonal deck. Messrs. Gettinger, Grant, Rindos, Casey, Della Monica, Nichol and the Chair voted against removal of the deck.

The amendment failed.

Chairman Bender: There is a motion on the floor to approve the application with the requested waivers.

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A vote was taken: Messrs. Willis, Gettinger, Grant, Rindos, Casey, Della Monica, Nichol and the Chair voted in favor of the motion to approve.

Ms. Cervin: Voted against the motion to approve.

The motion was approved.

D. CONTINUED PUBLIC HEARING – CLOSE BY 9/25/2012; expires 11/29/2012

2. **PROPOSED ZONE TEXT CHANGE Section 3.16 Corridor Design Development District 1 – Community Design: CDD-1.** Petition of Kevin J. Curseaden, Esq., on behalf of GJS Properties, LLC, to add Section 3.16.4.2(5) to change the parking ratio for health club facilities containing no more than 20,000 SF from 1 parking space per 50 SF to 1 parking space per 125 SF.

Chairman Bender: Recollected the public hearing was left open in case there was any more parking data to be received.

Kevin Curseaden, Esq., 26 Cherry Street, Milford. Representing the applicant and owner, GJS Properties. Only thing he has to add is a copy of the parking map that was previously on the board that showed all the parking spaces that would be required under the regulation for health clubs. He asked once the public hearing is closed to roll the record from this public hearing into the site plan application so that none of that information has to be repeated. (A copy of the parking map was distributed to the Board and date stamped into the record.)

Chairman Bender: Asked if there were any questions before the hearing is closed. At the last meeting a lot of data was received on the parking study. The Board can ask their questions on the information presented.

Mr. Nichol: He saw in the back of the old Saturn site about 100 cars parked. They have no plates. Asked who they belong to.

Mr. Curseaden: That is a short term agreement with Enterprise Car Rental for them to temporarily store cars there which can be easily removed.

Chairman Bender: Asked if there was anyone to speak in favor of the text change application. (No response) Anyone opposed to the text change regulation (No response).

The Chair closed the public hearing.

The Chair stated he thought the traffic study was excellent and very informative. Does not know if there is any information to refute it. Interesting to note if the Edge Fitness Center would require 376 parking spaces. If Planet Fitness was to be built under these regulations they would require 381 parking spaces. That is a lot of asphalt and it seems to be too many for a health club. Right now the Edge has 140 spaces and that is not enough, but not sure if they would need 376 parking spaces.

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Ms. Cervin: This is like patchwork regulating, similar to spot zoning. Very similar to what was proposed on Buckingham Avenue. Her sense is if the Board is going to change a regulation they cannot do it on the spot like this and especially not change it from 1 per 50 SF to 1 per 125 without an understanding of how the 125 was reached. Also why would the Board not be looking in a broader sense to change these regulations all together rather than doing it from spot to spot. It is poor planning and a poor way of changing the regulations. She is not in favor of changing the regulation at this time and in this way. She thinks the Board can take a look at this and if there are changes needed in the regulations to do so but this is not the way to go about it.

Mr. Grant: Building codes also state that the building occupancy is based on 50 SF per person for a health club. It is configured a little differently in the building code as opposed to the zoning regulation. He did some calculations and it comes out if it was 75 SF per person in the regulations it would balance out with the occupancy load of the building. He thinks 125 SF is a little bit too high of a number to consider to make a change on.

Mr. DellaMonica: Agrees with Ms. Cervin. Coming into a situation for a specific business to change the entire regulation he thinks might be out of context for what the Board needs to do. Parking is obviously a major issue. With some of the current regulations the entire City will be paved if people move into the vacant buildings. That is something that needs to be looked into. If the Board hears the specific application they can possibly look at the parking as a waiver.

Mr. Rindos: This is specifically a text change for the health club portion of the minimum off street parking requirements. No other type of business is being addressed in this text change. The text change only relates to health clubs.

Chairman Bender: Noted the change relates to health clubs specifically in the CDD-1 zone, not across the City.

Mr. Rindos: Maybe 50 SF is too small based on when this was written. He toured the property and there are two football fields of unlined parking in the back of the building. There is plenty of room there for a health club.

Mr. Willis: The regulation for parking spaces at health clubs right now is too small. The business models of gyms have changed over the years and the regulation is definitely not adequate. He sees no problem in doing this text change.

Chairman Bender to Staff: What are the ramifications of doing a text change and then changing the regulation in the future?

Mr. Sulkis: There is an application to deal with now. In the future should the Board want to change something that should be looked at separately and the applicant can come back with a site plan that may or may not conform to whatever the new regulation is. If the Board denies the text change he is assuming the applicant will not present a site plan that cannot be approved based on the current regulations, and would withdraw it.

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Chairman Bender: If the text change was to be approved, going forward the Board could still do a regulation change across the City for it.

Mr. Sulkis: The regulations can be changed at any time for anything.

Chairman Bender: All the steps for a regulation change would have to be followed.

Mr. Sulkis: It gets the full review; city and regional.

Mr. Mead to Staff: Just down the street M & M Farms is advertised at 20,000 SF, which is approximately the same size as this project. If the health club was to go there, that parking lot is smaller than what they are looking at now.

Mr. Sulkis: This application is less than 20,000 SF but in a much larger building with other uses that have to be parked. The M & M Farms is a different site. Parking would vary depending upon the use. Not every parcel can accommodate every use. The regulations are very good about that and are not unlike regulations in other municipalities. Some uses fit on some properties and some uses do not.

Chairman Bender: This is a text change for this location. If for some reason this went through and they went through for their site plan they would chew up all the parking for that location.

Mr. Sulkis: The Board can change the regulation but they may not agree with what is shown on the site plan. Like the former application it needs a bunch of waivers. For this application they are not parking the entire site for the entire building. They are ignoring parts of the building saying they don't have to park that until they have a use later on.

Chairman Bender: Parking is only one issue, but a big one on that property. It is his thought that if the text regulation change was to be approved it does not solve their entire problem for that property.

Mr. Sulkis: It would change the standard. By passing this regulation change the Board might be passing on the same problem to a different property, or may be passing on some conformity to a different property. It is his opinion that if the Board is looking to make a change city-wide, they might want to look at it holistically, versus on a piece by piece basis. However, there is an application before the Board and they have to figure out what they are going to do.

Chairman Bender: After reviewing the study it is hard to refute what they are coming up with as far as a standard.

Mr. Sulkis: Noted the Board's standards are based on the experience here in town. The Board does not have to refute a standard just because someone comes before it and offers an alternative to its standards, it is up to the Board to evaluate. Just because they show

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you want they are doing in Wisconsin or some other area, the Board's standards which were changed three years ago are based on what happened locally.

Chairman Bender: Asked if Mr. Sulkis thought the Edge needed 390 parking spaces.

Mr. Sulkis: It depends on who you ask and what time of day they go there.

Chairman Bender: Asked if Mr. Sulkis specifically thought 390 parking spaces were needed at the Edge.

Mr. Sulkis: Probably at peak times depending on the classes. It comes close.

Chairman Bender: The most they ever had in there is approximately 250 at one time.

Ms. Cervin: Stated she did not know how the Board could determine the 50 vs. 125 from the information they have right now. In changing this she thinks the Board needs a study themselves, not the applicant's study, that gives the Board information from their side of the picture. She thinks this again is trying to adapt a regulation to one particular site and that is a terrible policy. This would also impact the other use of that building, whatever that might be at whatever time. She did not see how the Board could responsibly make this change.

Mr. Willis: Asked if the Board was basing this decision on the parking situations at other gyms, namely the Edge, Planet Fitness and another Crunch facility.

Chairman Bender: The data is everything that has been presented at the public hearing which includes the contents of the traffic study, which includes what Mr. Willis just stated. The Chair clarified that this regulation change would have no bearing on the existing gyms, unless they were to be in this district (CDD-1).

Mr. Rindos: Noted in several of the other uses in this zone (CDD-1), you are looking at one parking space for 250 SF. Health clubs is 1 per 50 SF. There seems to be a tremendous imbalance with the number of parking spaces required. Granted some of these are automotive services. Not quite sure what the number should be at the top end, but 50 is too small. Once again there is an opportunity for a business to move into the town and generate revenue and jobs and the zoning restrictions may not apply. He believes the parking ratio was a mistake.

Chairman Bender: Every usage has a different parking need. A gym has a lot more than an auto service, so there will be that parking difference. He is fighting with specific to the zone versus city wide. It has been said to look at this city wide and change it. That is what he is struggling with, but he believes it definitely needs to be changed. Should it be done for this one zone or go at the regulation as a whole?

Ms. Cervin: Made a motion to deny this application at this time. There is not enough accurate information to say yes to this.

Mr. Grant: Second.

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Chairman Bender: Said he thought there was enough information to make a decision. Whether to do it for one zone or for the whole city is the question.

Mr. Rindos: Asked how long would it take to make such a study? How would the Board get more information on this and if it was decided to change the city-wide requirements, what would happen to that piece of property? It would not be able to be used right now for the gym. The change is being made for one specific type of business on one piece of property. He does not see a problem with this.

Chairman Bender: That is one of the issues with changing a regulation. It takes a while by the time it gets to everyone that has to see it. Sometimes the first step of getting the City Attorney's office to okay it can take several months.

Ms. Cervin: Asked if this was the type of precedent the Board wants to set in terms of doing business for the City of Milford. She does not understand it.

Mr. Gettinger: Stated he is against the motion. He is for the text change. He thinks the parking regulations are too restrictive and unrealistic. He thinks the Board should look for ways to bring business and development into Milford and not the other way around. He sees no problem with at least giving the applicant a chance to get to the second argument, which is whether or not their application should be granted.

Mr. Willis: This is a piece of property that has been vacant for a few years and there is a business that wants to come into it. He thinks that the parking will be adequate for what they intend to do. He sees no problem with the text change.

Mr. Gettinger: He added that with respect to the parking, there is no evidence of any safety risk. What is the worst thing that could happen? The Board changes the text and the worst case scenario is people don't go to the gym on a day. There is no evidence of any safety or health issues. He believes the market will eventually correct itself. If this gym does not have enough parking spaces, customers will go elsewhere. The only risk is that someone cannot find a parking space to go to a gym. It is not a hospital. He does not think that is a reason not to let the applicant at least get to the second phase and present his application.

Ms. Cervin: Does not disagree in some way with what Mr. Gettinger has said, but she believes the Board is going about this in the wrong way and it is a terrible precedent to set. The next person can come by and say "Change this for us because you did it for them". How could the board not be seen as doing things "willy nilly", being subjective and show favoritism by creating this type of policy. She believes parking may be an issue in many ways, but she does not agree that this is the way to do it.

Chairman Bender: The problem he sees is that regulation changes take a very long time to process. There are proposed regulations on the agenda since January and they have not moved at all.

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Mr. Casey: Noted there is a mechanism that has been envisioned within the regulations to address this situation where an applicant comes and wants to change the regulations. He thinks to Chairman Bender's point this is a well thought out application and well reasoned. He would not say it is subjective.

Chairman Bender: There is a motion and a second to deny the application for a text change.

A vote was taken: Ms. Cervin and Mr. Grant voted in favor of denial of the application for a text change of the regulation.

The remaining eight members voted against denial of the application.

The motion failed.

Mr. Rindos: Made a motion that the proposed text change, Section 3.16 Corridor Design Development District 1 – Community Design: CDD-1. Petition of Kevin J. Curseaden, Esq., on behalf of GJS Properties, LLC, to add Section 3.16.4.2(5) to change the parking ratio for health club facilities containing no more than 20,000 SF from 1 parking space per 50 SF to 1 parking space per 125 SF.

Mr. Gettinger: Second.

A vote was taken: In favor of the motion: Messrs. Willis, Gettinger, Mead, Rindos, Casey, DellaMonica, Nichol, Chairman Bender.

Ms. Cervin and Mr. Grant voted against approval of the motion.

The motion was approved and the text regulation change will become effective September 24, 2012.

A recess was taken from 8:25 to 8:31 p.m.

E. NEW BUSINESS (POSTPONED FROM 8/21/2012 MEETING)

- **881 BOSTON POST ROAD (ZONE CDD-1)** – Petition of Kevin J. Curseaden, Esq., on behalf of GJS Properties, LLC for a site plan review to establish a Health Club-Fitness Center on Map 77, Block 825, Parcel 64, of which GJS Properties, LLC is the owner.

Mr. Curseaden: Stated he would like this record to run concurrently with the previous record for the application for the zone text change. He noted in the previous hearing the regional planning agencies as well as the city departments have reviewed the site plan and their reports have been received. There are some comments from the Engineering Department that would be conditions of approval. The Police Department, after speaking with them, have issued a favorable report recommending approval with some conditions as

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well. Wetlands and Conservation have no issues. Tree Commission asked for additional trees to be planted. If it is something that has to do with the sight line of the Boston Post Road that the Police Report would be the guiding rule on that.

This is for a 17,753 SF health club. The structure or site are not changing other than additions of landscaping and parking spaces. The parking spaces are unlined at present. Landscaping and the buffer will be increased to as much as possible and will still meet the required parking. The remaining warehouse use will not change at this time. The requirement for the parking is on the zoning table, it is 30 or 35 spaces. This was touched upon at the previous hearing, although it is part of the site plan hearing. There is some vacant space in the building that would have to be dedicated or be a condition of approval to require that space be kept vacant. The owner of the property and the applicant, GJS Properties is willing to do that (leave the space vacant for the life of the use on the property, unless the parking regulations or something else changes).

Ray Oliver, Architect, 3 Lafayette Street. Representing the property owners, GJS Properties which is made up of Julie Scap and Gaza Scap, her father who are present tonight. They have owned the building which was the former Angelica Health Services Laundromat for many years. The Saturn dealership was later put on this property, which is one of multiple car dealerships owned by the Scaps. Saturn has gone out of business and the building has been vacant for a few years.

Mr. Oliver described the building on a site board. The health club was described as being the dark gray portion of the building that was the Saturn part of the building. 17,000 SF in that area. The lower level of the building will be maintained as warehouse use and the upper portion will remain vacant as long as the gym would be leased.

The rear of the property is almost all asphalt. Going as far as they can to increase the landscaping area by doing perimeter landscaping, islands and some of the landscaping in the front. It will go from 100% paved to 12,000 SF of pervious surface now, to landscaped with trees and other plantings that are listed in the landscaping plan. The waivers mostly relate to the landscaping and islands. The most substantial amount of property line landscaping is on the back side which is the side that faces the residential area, Sunnyside Court, even though the back of that property is owned by the Volvo dealership, Michael Brockman uses that for car storage. The back property line is fully in conformance with the regulation. The parking ratio is 142 spaces to support the health club itself, which is the 1 to 125 SF that was approved tonight. There is a total parking area of 177 spaces on the site. In off hours when the warehouse is not being used, there would be an additional 35 spaces for the use of the health club.

Multiple versions of the site plan have been reviewed with David Sulkis and staff to try to create the best configuration that can be made. With the help of the Police Department all of the handicapped parking has been located in a covered area behind the building. There is a drop off and pick up zone in the front of the building, so people who do not drive themselves who are possibly handicapped or doing rehab services would be able to be picked up. The bulk of the parking is in the back in a large parking area; not very far from the building entrance.

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Mr. Oliver showed the renderings of the building and the elevations seen from the street and how it would be laid out on the property. There will be a new sign with the Crunch logo. The side driving in along the driveway will have some new doors and windows with some of the new landscaping that shows along that side. The covered parking for the handicapped people in that portion and the back side is the area that would be devoted to the warehouse. The site plan showed the warehouse entrance in the brick portion of the back of the building.

Mr. Oliver noted the Board had copies of the site plan that tabulated all the parking. There is parking for all the health club use with the fitness center which is 17,000 SF. There is Tenant A at 1 to 750 SF, 19,600 SF and 6,850 SF for Tenant B. These locations were shown on the site plan. There is no immediate occupant for that but it is an existing building. The owner does not want to tear down a good building just to be able to lease the space to the fitness center for whatever lease term there might be, because the existing building is very substantial.

The site, grading and drainage will stay exactly as it is. The paved area stays the same other than for the portions of the parking lot that will be removed for the landscaping. All the drainage is currently operative. Gary Wassmer asked for some additional information about the underground piping. There is a brook that crosses the Post Road and goes back to the Sunnyside Court area and he would like some additional investigation as to the size of those pipes that are there, which will be done. He suggested for the landscaped areas instead of using a perimeter curb, that be an open planted area so that drainage from the parking area does not have to go all into the catch basins. Some of the runoff would go into the planted areas and percolate through. He showed on the site plan the dumpster area and the lighting plan. One of the waivers is to maintain the taller light poles at 28 feet on the property, in lieu of the 20 foot light poles required by the regulations. New heads would be put on the poles so that the lighting area conforms with the lighting regulation. There will be no spillage on the adjacent properties that exceeds the .5 foot candle requirement.

The landscaping plan has 45 trees to be planted of a caliper required by the regulations. Some of the planted areas like the end islands instead of them being 9 feet wide, asking for a waiver to be 5 feet wide, which will be enough for the trees to grow and thrive.

The layout of the gym was described. It is an open space. There will be fitness equipment; group rooms in the back area of the building; an entry area; locker rooms with bathrooms; tanning beds and a reception area. He showed the overall plan of the building. The fitness area is in the old Saturn area. The first floor area which is an empty warehouse would be occupied as a warehouse and the second floor and depressed loading dock would be on hold. The owner would commit not to occupy that space, as was pointed out earlier. Mr. Oliver concluded the overview of what the plan is for leasing this part of the building and putting it back into service.

Mr. Oliver reviewed and explained the request for waivers which are noted on the site plan.

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Mr. Sulkis: Mr. Oliver did a fine job presenting the application and explaining the waivers.

Mr. Nichol: What are the hours of operation?

David Otti, 12 Parsonage Lane, Greenwich, representing Crunch. Typically operate from 5:00 a.m. to 11:00 p.m, Monday through Thursday. On Friday generally open at 5:00 a.m. and close at 9:00 p.m. Depending upon the time of year open at 5:00 or 6:00 a.m. on Saturday and Sunday and usually close at 9:00 p.m. on the weekends.

Mr. Nichol: Asked about the handicapped parking area.

Mr. Oliver: Showed the covered parking area that would be flush with the ground for the handicapped parking area.

Ms. Cervin: Pleased there would be increased landscaping and there are no buffers or curbs there. Asked about the protection of the landscaping and trees in that area for protection from cars.

Mr. Oliver: Where there is parking perpendicular to the planted areas, there may need to be a wheel stop in front of the tree. The bushes would take care of themselves.

Ms. Cervin: Would like to see some protection for the landscaping.

Asked if the parking requirements influenced the diminishing of the buffer requirements.

Mr. Oliver: It was necessary in some places. Tried to be judicious where the buffers were reduced. The largest area where this was done was along the side of the Volvo dealership.

Ms. Cervin: Did not get the Tree Commission report. Asked about not having trees for sight line reasons. Also inquired about a snow shelf.

Mr. Oliver: Two issues from the Tree Commission: 1. Looking for more diversity in species and that is no problem. 2. Looking to redo landscaping on the Boston Post Road. There are issues being raised on this by the Police Department, DOT, and the Tree Commission concerning this plan.

Mr. Oliver: There are trees in front of the building. They are not in the parking, on the snow shelf area. The Highway Department has had difficulty plowing the road and plowing the salt onto the properties and killing the plants and they have to come back and replant them. Do not have a budget for this. There is a snow shelf.

Chairman Bender: This issue has been brought up in the POCD; sight line vs. plantings.

Mr. DellaMonica: Asked what the waiver for wheel stops at walks was about.

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Mr. Oliver: There is a walkway in the back of the building that is continuous. If you have a walkway you do not want people driving over that walkway and blocking the walkway. It is a wide walk, so if they drive over the bed it will not impact anyone walking past it, but that is what the regulation is trying to address; the vehicle from overlapping a walkway so that a pedestrian cannot get by.

Chairman Bender: Why is the waiver being requested?

Mr. Oliver: There is no use for it at this point. That is where the warehouse that will not be occupied will be. If the owner identifies situations which are problematic and as Jean mentioned, if wheel stops will protect the trees, they will put them there. Do not want to have to put the wheel stops where they are not needed.

Further discussion took place with regard to wheel stops, space needed to provide them and manually shoveling the area where the snow plow could not get around them. Where they are needed they will be installed.

Mr. Mead: Asked about the illumination of the parking lot given the light pole is higher than the regulations state.

Mr. Oliver: The new fixtures will illuminate the parking area according to the regulations so there is no spillage onto the adjacent property in accordance with the .5 foot candles. The efficiency will also be higher.

Ms. Cervin: Referring to the Staff report, Ms. Cervin asked about the parking and the portions of the building that will be able to have parking.

Mr. Oliver: Via the site plan, he showed the portion of the building that was the fitness center (dark gray); the first floor of the building (light gray), and the two crossed out areas are the areas that parking is being provided for on the basis of the warehouse calculation, which is 1 space per 750 SF. If it is a furniture or storage use, they would have that. There is a loading dock that was used for the vans for the laundry service. It is a depressed loading dock without a level floor so the first and second floors are committed not to be used.

Ms. Cervin: Asked Mr. Sulkis to elaborate on the comments in his staff report regarding parking.

Mr. Sulkis: His concern was the applicant was not counting a portion of the warehouse, as was explained. The Board would have to buy into that because typically if there is a building that is existing, it has to be parked. It is there and the uses are known. In this case you know the amounts for the health club and for the warehouse at 750, and then there is more of a building left that is not being counted. That is something the Board has to contend with.

Mr. Curseaden: There is nothing in the regulations that requires the Board to count all the spaces. He respectfully objected to the overture or undertone of "you have to buy into

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that". The applicant and owner of the building have made a firm representation that they will leave that space vacant if the Board makes it a condition of approval, and they will leave that space vacant.

Chairman Bender: How would it work if the warehouse was to be used or if there is a change of use, to whom would the application go?

Mr. Sulkis: If they come in for a tenant fit up or if there is another use that is not a warehouse, then they would have to come to the office and perhaps the Board. If this plan is accepted as is they would be maxed out.

Chairman Bender: Would the second floor area go in as nonuseable space in Planning and Zoning and the Building Department?

Mr. Sulkis: This is not usually done, so it would have to be something as part of the approval. It would have to be flagged in the system for any change of use or anything that comes into the office for that building.

Ms. Cervin: Could the Board see this in a document provided by the landlord?

Mr. Curseaden: Yes. That was his intention by saying they could make a written representation and it would be easy enough to make some note in the file to indicate that portion of the building could not be used. The building exists and rather than tear it down, the space is dead space.

Mr. Sulkis: If approved, asked that something be put on the land records in case the building gets sold so the next owner knows the space cannot be used without Board approval.

Mr. Curseaden: That is a difficult thing to agree to. There is financing, mortgage companies and banks that do not like to see those types of things on the land record. Putting this into the Planning and Zoning file would be sufficient with affirmative representation from the applicant. In certain cases there are things that should go on the land records; such as an easement or if someone agrees to do something permanently. In this case, there is a lease and it is not known how long it will run. This lease is specific to this tenant. Would not want to put something permanent on the land records.

Mr. Mead: Made a motion to approve Petition of Kevin J. Curseaden, Esq., on behalf of GJS Properties, LLC for a site plan review to establish a Health Club-Fitness Center on Map 77, Block 825, Parcel 64, of which GJS Properties, LLC is the owner. The requested waivers were listed.

Mr. Casey: Second.

Ms. Cervin: Would feel more comfortable if Staff would draft the approval.

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Potential wording of the motion for approval was discussed.

Chairman Bender: Said he had no problem with a motion being drawn up for the next meeting.

Mr. Mead: Withdrew his motion in order for Staff to draw up a motion for the next meeting.

Mr. Casey: Withdrew his second.

F. PROPOSED REGULATION CHANGES

- Sec. 3.1.4.2 Building Height in Residential Zones - POCD will influence
- Sec. 2.5.5 Lot Access and Rear Lots Awaiting CA input
- Sec. 9.2.3 Prohibited Variances - Awaiting City Attorney's input

Chairman Bender: Reviewed the status of the proposed regulations and noted based on tonight's meeting another proposed text change will be forthcoming. Ms. Cervin asked if there was some way to get a response on these proposed changes and why does it take so long with the City Attorney's department.

Mr. Sulkis: He could not say why it was taking so long, but they have been nudged.

G. LIAISON REPORTS - None

H. APPROVAL OF MINUTES – (8/21/2012)

Mr. Grant: Motion to approve.

Mr. DellaMonica: Second.

All members voted in favor of approving the minutes of 8/21/2012.

I. CHAIR'S REPORT

Thanked the Board for their participation in the public hearings on the POCD. Next step will be to discuss the comments and see where it goes from there. Discussion as to the next steps in moving forward to the finalization of the Plan.

Ms. Cervin: Asked about the sidewalks on Tower Street subdivision application approved at the last meeting. The waiver request not to have sidewalks was not clarified or voted upon.

Mr. Sulkis: Stated he was going to address this under Staff Report. The Board granted the waiver on the lot size but nothing was said about the sidewalks.

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He assumed based on previous board action and policy and the fact there are sidewalks on the street, the Board would like to see sidewalks there. However, it would be helpful for the Board to clarify this matter.

Ms. Cervin: Made a motion that sidewalks be provided on the Tower Street property.

Chairman Bender: For clarity, the only waiver was for the lot size. There was no vote on the other waiver, but sidewalks need to be there.

Mr. Sulkis: That is an excellent example of when the Board rushes through approvals. The Board generally discusses the application and then asks Staff to craft a motion, to avoid such ambiguous situations.

Chairman Bender: Did not think the Board could do a motion because the application was closed off.

Mr. Sulkis: The Board can correct mistakes by its next meeting. It is not a mistake, but a clarification. For the record, the Board can vote on the sidewalks being there.

Mr. Gettinger: Seconded.

Chairman Bender: Reminded the Board of the application in question and the discussion with regard to sidewalks.

Mr. Casey: Asked if this should be placed on the agenda for the next Board meeting.

Chairman Bender: This is not a new motion, rather clarity for the Staff. This is clarification of an action taken.

Mr. Sulkis: Asked for the Board to vote on this and have it on the record.

All members voted in favor of approving the clarification that there are to be sidewalks on the 28 Tower Street subdivision property.

J. STAFF REPORT

Mr. Mead: Motion to adjourn.

Mr. Rindos: Second.

All members voted in favor of adjournment at 9:30 p.m.

Phyllis Leggett

Phyllis Leggett, Board Clerk

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