

PLANNING AND ZONING BOARD MINUTES FOR MEETING HELD TUESDAY 6 SEPTEMBER 2022, 7:00 PM

The meeting of the Planning and Zoning Board came to order at 7:00p.m.

A. PLEDGE OF ALLEGIANCE AND MOMENT OF SILENCE

B. ROLL CALL

Members Present: N. Austin, J. Castignoli, E. Hirsch, J. Kader, B. Kaligian, C.S. Moore, J. Quish, R. Satti, M. Zahariades

Not Present: J. Mortimer

Staff: D. Sulkis, City Planner; M. Greene, Rec. Sec'y; J. Griffith, DPLU Director

Chairman Quish opened the meeting.

C. NEW BUSINESS

VOTE BY NOVEMBER 10, 2022

- 1) **4 Oxford Road** (Zone LI) Petition of David Marasow for a Site Plan Review to construct 14 live-work units at Map 102, Block 702, Parcels 4D-1, 4D-3, 4D-5, 4D-7, and 4D-8, of which Oxford Condos, LLC is the owner.

Attorney Kevin Curseaden, 3 Lafayette Street, addressed the board. He reviewed his original presentation, acknowledging that the City Engineer required a revised drainage report and the Inland Wetlands Officer asked that a video camera be sent down the storm drain to ascertain that it is still functional. He said the applicant is agreeable to these conditions. **Mr. Satti** asked about the other units; **Attorney Curseaden** said they will remain commercial units.

Mr. Sulkis read his report which reinforced conditions proposed by the City Engineer and Inland Wetlands Officer. He said the application is substantially compliant with the zoning regulations.

DISCUSSION

Mr. Satti moved to approve with the following modifications the Petition of David Marasow for a Site Plan Review to construct 14 live-work units at Map 102, Block 702, Parcels 4D-1, 4D-3, 4D-5, 4D-7, and 4D-8, of which Oxford Condos, LLC is the owner

With the following conditions:

The Applicant will provide updated stormwater drainage and drainage system information to the satisfaction of the City Engineer, more specifically, submission of a stormwater report and a satisfactory video inspection of the existing stormwater line.

Second: Mr. Kader seconded.

Discussion: None.

Vote: Motion carried unanimously.

D. PUBLIC HEARINGS

CLOSE BY SEPTEMBER 6, 2022; VOTE BY NOVEMBER 9, 2022

- 1) **Proposed Regulation Change 22-4** Petition of Kevin Curseaden, Esq. for a change to Article VII, Sections 7.1.1.1, 7.1.1.2, and 7.1.1.3 to change Site Plan Review Procedures

Mr. Sulkis said a submission in opposition to the regulation attached to the materials received by the board.

Attorney Curseaden addressed the board. He said that he is submitting the application as a private citizen based on his experience of preparing and working with zoning regulations and applications. He said he wished to improve organizational efficiencies, rather than disparage any individual. He referenced the KRIT (Kimball Report Implementation Team) project which was undertaken in 2007 timeframe to analyze delays in the permitting process. Written by the Kimball & Associates, it recommended creation of a Department of Permitting and Land Use overseen by a director, rather than independently managed departments of Zoning, Building, and Inland Wetlands. He reviewed management changes that followed the report, saying that because the current director is an architect, previous Building Inspection inefficiencies were remedied quickly. He said that in the Planning and Zoning department, some steps from the KRIT project may have been implemented, perhaps as internal departmental policies that he does not have visibility into, but bureaucratic issues have remained, possibly exacerbated by COVID or overwhelming work levels. He said many of his clients have expressed frustration with the length of the review process, referencing State Statute 8-7d's timeline for submission and review. He said that, specifically, the review period for a Site Plan Review is 65 days and if it takes longer, the application is automatically approved. He said some case law he has researched highlights the importance courts attach to timely review. He said that under current DPLU practice, an application is not given a date that starts the 65-day clock until the city planner's review is complete. He said was not proposing to exclude the city planner from plan review but suggested that the director could appoint additional authorized reviewers. He said a bottleneck exists and that Milford is different because in other municipalities, the application clock of 65 days starts ticking when the application is delivered. He said taking the earlier-

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application-date approach doesn't preclude review and he agrees that the board should not be presented with less-than-solid applications, but he said that he interprets court rulings as finding long review processes unacceptable. He said he has read administrative summaries with a reference to departmental policies, but feels that if such policies impact applicants, they should be published and applied uniformly. He also said that the applicants who are members of an LLC, should be disclosed to avoid conflicts of interest.

Mr. Satti said he read the submitted materials and asked how many applicants Attorney Curseaden felt were harmed by the delays. **Mr. Satti** noted a letter of agreement from Attorney Lynch. **Attorney Curseaden** said he once kept track of how many times applications were delayed for a significant amount of time. He said he knew of applicants ranging in size from national developers to local builders who were also frustrated, but reluctant to complain for fear of repercussions. He said applicants must consider being perceived as harassing the reviewer for an answer and triggering a negative reaction. **Mr. Satti** said he would need facts to make a change of this nature. **Attorney Curseaden** said he has been doing this work for 17 years and invited a board member to be an "undercover applicant" and experience the delays firsthand. He said quantifying the dissatisfaction was probably impossible, but compliance with the state statute was the essential issue. He said developers and builders would rather put up with the situation than risk alienating the department and making things worse. He said the building department had been fixed, but he thought this change in the regulation would help zoning. **Mr. Kader** said he felt uncomfortable voting on a change that is essentially internal to the department. **Attorney Curseaden** said he wanted to make the board aware of the issue, based on his experience as an applicant and as a citizen of Milford. **Mr. Castignoli** asked if the regulations subcommittee should be used to address the problem. **Mr. Moore** asked if there have been complaints to staff about delays. **Attorney Curseaden** described a process where a client weighed waiting for a decision versus going to Director Griffith. **Mr. Hirsch** wondered if delays were caused by clients rather than the city planner. **Attorney Curseaden** reiterated that the KRIT project doesn't comply with 8-7d and in his experience, it's very seldom the client causing a delay. He said the issue may be understaffing with a need for another reviewing officer. He said Building Inspection delays were fixed because Director Griffith was extremely familiar with building code and his professional experience. He said he thought that even with no change in current practice, another plan reviewer would help.

Mr. Sulkis said the department follows the intent of the 8-7d and he tries to make the application as solid as possible before board review. He said time taken is in the service of a complete application and that the department deals with facts. He said that if the applicant has command of the facts, the application will go forward; if not, there will be delays. If new information brings new issues, additional review may be required. He said he doesn't discriminate against applicants, but rather insists that applications conform to the requirements of the regulations because they exist to protect both citizens and applicants. He took exception to an inference that he knows outcomes ahead of board presentations. **Chairman Quish** asked if **Mr. Griffith** wanted to address the board.

Joe Griffith, DPLU Director said there are no other reviewing officers other than current staff, that Coastal Area Management reports are delegated to the Zoning Enforcement Office, and that he collaborates with Mr. Sulkis daily. He said the statute reads that once an application is accepted, it starts a clock. He compared it to the Inland Wetland Agency (IWA) process where an application must be complete, not compliant when submitted. He says this starts a robust discussion with urgency on the part of the applicant and agency because the clock is running. **Chairman Quish** and **Mr. Griffith** discussed whether an applicant could hire an independent, competent 3rd party reviewer. **Mr. Griffith** and **Mr. Sulkis** said that in the past, contractors have been hired to work in Building Inspection during long-term staff absences, but not in zoning.

Mr. Satti and **Mr. Sulkis** briefly discussed closing dates, identifying a typo. **Chairman Quish** asked **Mr. Sulkis** said in a city of 55,000 people, there is 1 planner and he does his best with consideration that some applications are more complete and some are problematic. **Attorney Curseaden** referred to the IWA's similar statutory timeline and said that whether or not a need exists to hire others to review applications, the process now in use is still not compliant with statute.

Chairman Quish asked for public comment. Hearing none, he asked if reasons existed to keep the public hearing open. **Mr. Satti** said 3 avenues exist to deal with the item, 1. referring the matter to the Regulations Subcommittee, 2. asking for more information as much of the information provided is anecdotal, or 3. closing the hearing and voting. He advised against the last option.

DISCUSSION

Mr. Castignoli moved to refer the matter to the Regulations Subcommittee.

Second: Mr. Satti seconded.

Discussion: **Mr. Hirsch** asked how the Regulations Subcommittee could perform a fact-finding exercise. **Mr. Satti** said the subcommittee could take the application piece by piece and make specific recommendations.

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Vote: Motion carried unanimously, but at this point, **Mr. Griffith** affirmed that the public hearing remained open. **Mr. Sulkis** examined the implications of referring the item to the subcommittee without closing the public hearing, including the fact that the board is under no obligation to take any action on a request for a regulation change. **Chairman Quish** felt that leaving the hearing open would allow the applicant respond to the recommendations of the subcommittee later.

E. LIAISON REPORTS—None.

F. SUBCOMMITTEE REPORTS— **Chairman Quish** noted that meetings of both subcommittees had been held and described upcoming meetings topics with the Regulations Subcommittee examining Accessory Dwelling Units, and the POCD subcommittee looking forward to an organizational meeting with consultant. He said minutes of both meetings are online.

G. APPROVAL OF MINUTES—**8/16/2022** minutes were approved unanimously.

H. CHAIR'S REPORT – None.

J. STAFF REPORT - None.

K. ADJOURNMENT was at 8:08.

Attest:

M. Greene

New Business, not on the Agenda, may be brought up by a 2/3's vote of those Members present and voting.

ANY INDIVIDUAL WITH A DISABILITY WHO NEEDS SPECIAL ASSISTANCE TO PARTICIPATE IN THE MEETING SHOULD CONTACT THE DIRECTOR OF COMMUNITY DEVELOPMENT, (203) 783-3230, FIVE DAYS PRIOR TO THE MEETING, IF POSSIBLE.