

**MINUTES FOR THE PLANNING & ZONING BOARD MEETING  
HELD TUESDAY, OCTOBER 4, 2011; 7:30 P.M.  
AT THE CITY HALL AUDITORIUM, 110 RIVER STREET, MILFORD**

**A. PLEDGE OF ALLEGIANCE**

**B. ROLL CALL**

**Members Present:** Edward Mead, Mark Bender, Victor Ferrante, Robert Dickman, Gregory Vetter, (Vice Chair); Janet Golden, KathyLynn Patterson, George Gasper, Kevin Liddy, Susan Shaw, Chair.

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

**Mme. Chair:** Asked for a motion to reorder the agenda for two items as follows: Item #2, Proposed Text Amendment to Zoning Regulations be moved after Old Business, behind 90 Heenan Drive. Also asked that Item H, Plan of Conservation and Development come after the proposed text amendment to the zoning regulations.

**Mr. Vetter:** So moved.

**Mr. Liddy:** Second.

All members voted in favor of reordering the agenda as noted.

**C. CLOSED PUBLIC HEARINGS**

**1. PUBLIC HEARING – Closed 9/6/2011; Expires 11/10/2011**

**EASTERN STEEL ROAD (ZONE ID)** - Petition of John Knuff, Esq. for a Special exception and Site Plan Review to permit a package store selling alcoholic liquor on Map 80, Block 810, Parcel 13A, of which Wiehl Properties, Inc. is the owner.

**Mme. Chair:** This application requires a two-thirds vote (7 members) for a Special Exception. The Chair asked if there was any discussion.

There being no discussion, the Chair asked for a motion.

**Mrs. Patterson:** Motion to approve Petition of John Knuff, Esq. for a Special Exception and Site Plan Review to permit a package store selling alcoholic liquor on Map 80, Block 810, Parcel 13A, of which Wiehl Properties, Inc. is the owner.

**Mrs. Golden:** Second.

All members voted in favor of approval of the motion. The motion passed unanimously.

**MINUTES FOR THE PLANNING & ZONING BOARD MEETING  
HELD TUESDAY, OCTOBER 4, 2011; 7:30 P.M.  
AT THE CITY HALL AUDITORIUM, 110 RIVER STREET, MILFORD**

**3. PUBLIC HEARING – Closed 9/20/2011; Expires 11/24/2011**

**26 & 32 HIGGINS DRIVE (ZONE ID)** – Petition of Kevin Curseaden, Esq., on behalf of Mary E. Stark, d/b/a Bark Avenue Pet House, for a Special Exception and Site Plan Review to establish a Dog Day Care facility on Map 80, Block 810, Parcels 15D and 15E, of which D'Amato Investments, LLC is the owner.

**Mme. Chair:** This, too, is a Special Exception and requires a two-thirds vote from the Board. Asked if there was any discussion on this application.

**Mr. Bender:** At the last meeting it was said they would put a speed bump in the driveway.

**Mme. Chair:** Said it could be added to any motion.

**Mr. Bender:** Petition of Kevin Curseaden, Esq., on behalf of Mary E. Stark, d/b/a Bark Avenue Pet House, for a Special Exception and Site Plan Review to establish a Dog Day Care facility on Map 80, Block 810, Parcels 15D and 15E, of which D'Amato Investments, LLC is the owner, with the addition of a speed bump on the entrance side at the drop-off area.

**Mrs. Golden:** Second.

**Mr. Sulkis:** Asked which driveway. It is the driveway where there is parallel parking where the entrance to the building is.

All members voted in favor of the motion. The motion passed unanimously.

**D. NEW BUSINESS**

4. **48 POINT LOOKOUT EAST (ZONE R-12.5)** Petition of Westcott and Mapes for Coastal Area Management Site Plan Review approval for substantial improvement to a Single Family Residence and to regrade in the flood plain on Map 28, Block 581, Parcel 23, of which Peter Lovell and Patricia Shea-Lovell are the owners.

**Raymond Paier, Chief Engineer, Westcott & Mapes, Inc., 142 Temple Street, New Haven, CT.** Acting as agent for the homeowners, Peter Lovell and Patricia Shea Lovell. Also present is John Wicko, Architect for the project. The location of the property was described via a site display. Parcel is .51 acres, with beachfront property, bounded by Point Lookout East, two residential properties to the north and to the east. The Point Lookout Beach Association property to the west and bounded by approximately 60 feet of beach frontage on Long Island Sound. The applicants have worked with Ms. Harrigan and DEEP staff on past beach violations by the previous owners. That property has been restored to get the NOV removed.

**MINUTES FOR THE PLANNING & ZONING BOARD MEETING  
HELD TUESDAY, OCTOBER 4, 2011; 7:30 P.M.  
AT THE CITY HALL AUDITORIUM, 110 RIVER STREET, MILFORD**

The applicant is now before the Board seeking site plan approval for restoration embetterments for the property upland of all waterfront. There is no activity under this application on the beach, near the beach, water or waterfront. It is all upland area and it is restoration for activities that were performed by past homeowners.

The property is unique in that it has four distinct FEMA flood zones. There is a VE FEMA zone down by the water and two Zone X's, which are above the 100 and 500 year flood. Most importantly, and the area of interest for the applicant is the FEMA flood zone AE. That is a high risk flood zone. He is working with FEMA and discussing with them the condition of the property and the activity that occurred under the past owner. There is currently a sunroom, a slate patio, walkway, retaining wall, garden walls and a number of other features, all within this flood zone AE, which is a high hazard zone. The AE is a known elevation determined by FEMA, elevation 11. The property owners wish to restore the property such that they no longer have that impact and are no longer in that AE zone and FEMA has acknowledged that and endorses that activity, as long as it goes through the process. That be removal of all the impacts that are in that zone, i.e., removal of the sunroom, retaining wall, garden walls, slate patio, etc., as well as penetration into the lower level. He showed entrance ways and hatchways on the diagram, which will be eliminated architecturally. The hardscape will be removed and restore it to a pervious, more natural state, and raise the elevation out of the AE zone. Upon doing that, the residence will be out of the high risk zone, restored as it used to be and a LOMAR-F, a letter of map revision for fill, with FEMA and the City and that would be done after the CAM approval process.

The applicants are also seeking to do typical residential enhancements in conjunction with the work just described. There will be removal and replacement of a deck in the rear of the property and placement of an outside, open air porch for waterfront viewing. There will be some ancillary grading that would take place and lawn establishment for the construction of those features. However, the primary fill area is for the purposes of removal of the AE flood zone.

In working with the Assistant City Planner, Emmeline Harrigan, her comments that on shorefront properties there could be activity that may occur, such as windblown debris during work. A sketch has been provided to indicate that a temporary construction type chain link fence to catch any windblown debris during the construction period, as well as the silt fence to protect against any soil erosion. Letters and emails of approval have been received from the City departments, as well as from John Gaucher of the DEEP. The minor comments from the City Engineer have been addressed and made the amendment to the survey, which has been forwarded to Staff and the City Engineer.

Mr. Paier asked for approval of this application tonight.

**John Wicko, Architect, 50 Broad Street, Milford.** Mentioned this plan will eliminate a setback violation, which is a good thing. The house is undergoing a partial renovation and adding onto the second floor, keeping within the existing footprint. The porch and deck previously noted are shown in the architectural plans.

**MINUTES FOR THE PLANNING & ZONING BOARD MEETING  
HELD TUESDAY, OCTOBER 4, 2011; 7:30 P.M.  
AT THE CITY HALL AUDITORIUM, 110 RIVER STREET, MILFORD**

Mr. Wicko described the architectural renovations that will take place.

**Mrs. Harrigan:** This is an unusual application, in that they are not doing any significant excavation. It is not a brand new house. They are improving the existing house on the footprint where it is located but removing a key portion, which removes this structure from the flood zone. In essence, this property owner has had to correct a good many sins of the prior owners in terms of this property. By removing that portion of the house and filling in the area, they are adding more protections in terms of the house. All the comments that came back on this application are favorable.

**Mr. Liddy:** Asked if removing the house from the AE zone would that lower their insurance premiums?

**Mr. Wicko:** It helps with insurance somewhat but the property is still so close to Long Island Sound, there is a certain level of insurance that will be required.

**Mr. Liddy:** Commented that this property is in his district and he has seen it many times. The remediation they did before is outstanding. They did everything they said they would do and it looks fabulous. Based on Mr. Wicko's experience, this too, will be a fabulous project.

Mr. Liddy made a motion to approve Petition of Westcott and Mapes for Coastal Area Management Site Plan Review approval for substantial improvement to a Single Family Residence and to regrade in the flood plain on Map 28, Block 581, Parcel 23, of which Peter Lovell and Patricia Shea-Lovell are the owners.

**Mrs. Patterson:** Second.

All members voted in favor. The motion was approved unanimously.

**E. OLD BUSINESS**

5. **90 HEENAN DRIVE (ZONE CBDD)** – Reconsideration of 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, pursuant to August 11, 2011 Superior Court decision.

**Mme. Chair:** The Board has received information tonight, including the original motion and other information pertaining to this matter. She has asked the City's Trial Attorney Matthew Woods to be present tonight to answer any questions the Board might have.

**Mr. Ferrante:** Asked if the Board should go into Executive Session on this matter.

**Attorney Woods:** Stated he did not believe so. The judge has issued his decision as a final judgment. There is no more pending litigation. What is before the Board tonight is Judge Cohen's Remand Order, where on Page 29 of his decision said, "The setback

**MINUTES FOR THE PLANNING & ZONING BOARD MEETING  
HELD TUESDAY, OCTOBER 4, 2011; 7:30 P.M.  
AT THE CITY HALL AUDITORIUM, 110 RIVER STREET, MILFORD**

and accessway issues are remanded to the Board with the direction that the Plaintiff's application be reconsidered in a manner consistent with this decision."

By way of background, the Board approved the application of 90 Heenan Drive, LLC, for 28 units of affordable housing, with seven conditions: Two of the conditions were challenged in the appeal to the Superior Court. The other five were not. The two conditions that were challenged and which Judge Cohen invalidated were Condition 2 as set forth in Mr. Sulkis' letter of July 22, 2010, which is Exhibit YYY, Return of Record. Condition 2 required connecting the upper and the lower portions of the project. Condition 7 required a ten-foot side yard setback for the units, rather than a five foot side yard setback. The other five conditions were not challenged and remain in place.

He believes it would be appropriate for the Board to reapprove the application with the same five conditions that were not challenged in court and eliminate Condition 7, which is the 10-foot as opposed to the 5-foot side yard setback, and for Condition 2, which required the upper and lower portions to be connected by road which the judge found practically impossible. Instead, to substitute for that Condition 2, the easement which the applicant had proposed together with the four-foot wide sidewalk, along the access way and the four new street lights, together with whatever else the Board considers appropriate with regard to that rear access way.

**Mme. Chair:** To clarify Mr. Ferrante's point, this decision is unappealable.

**Attorney Woods:** Agreed. It is not a question of litigation strategy. It is a question of complying with the judge's Remand Order.

**Mr. Liddy:** Asked what the Board's options were.

**Mme. Chair:** As Attorney Woods pointed out, the Board can reapprove the application. The memo suggests the Board indicate the new condition # 2 and then condition #7 should be deleted. What the Board would be approving tonight is Item 1, 2, just the revised condition; item 4, 5, 6, and #7 will be excluded. So the application still has to meet the requirements that the Board set forth, except for the items that were just mentioned. According to the attorney, that is the only option the Board has at this point.

**Mr. Liddy:** Asked in Item 7, where safety, health and welfare in the 10-foot setbacks were noted, they can now put 5-foot setbacks, which are less safe? Is that what the judge said?

**Mme. Chair:** Stated she read the ruling and that is what the judge said. They looked at the fire and police reports that were received. Since those reports were somewhat favorable, the judge took those reports over the Board's concerns.

**Mr. Vetter:** Where the Board came to a conclusion about the safety issues, the judge said the police and fire reports superseded the Board's view.

Asked if this was like a line item veto where the judge looks at this set of conditions and decides what is good and not good. The statement was made that the Board should

**MINUTES FOR THE PLANNING & ZONING BOARD MEETING  
HELD TUESDAY, OCTOBER 4, 2011; 7:30 P.M.  
AT THE CITY HALL AUDITORIUM, 110 RIVER STREET, MILFORD**

reconsider the application and consider bringing it into alignment with the judge's recommendations? It sounds like there is no reconsidering. It sounds like the judge says do this and that is the end of it.

**Attorney Woods:** Basically, yes.

**Mr. Mead:** Asked if there was a report from the Police Department that recommended to connect the bottom property to the top property with a road. If the judge used that for his determination, why wouldn't he consider that?

**Mme. Chair:** There were actually two memos. The first memo the Police Department recommended to connect the upper and lower portions. Subsequent findings by the Police Department said why it was preferable. She believes the Court looked at the second memo, not the first.

**Mr. Bender:** Asked why the entire Board did not see the ruling, and is it too late to do so.

**Mr. Vetter:** Asked if there was a time limit to this order.

**Mr. Woods:** The judge did not ask the Board to act within a specific time limit. That means the Board has a reasonable time to respond. If the Board exceeds whatever that reasonable amount of time is, then other things can come into play. But no, there is no deadline.

**Mme. Chair:** So the Board members can see the ruling and they can formulate any additional questions. Asked if this matter could be picked up at a later date, perhaps at the next meeting.

**Mr. Dickman:** Stated he would like to see the ruling and would like to be able to ask questions, but he does not see why the Board should not have a motion and a vote on this if his review of the material and his questions will not change what the ruling was and what the Board has to do.

**Mr. Ferrante:** Asked if the appeal period has passed.

**Attorney Woods:** Yes.

**Mr. Ferrante:** He would like to see the ruling. Based on what he has received he does not know what is in and what is out.

**Mme. Chair:** Asked if Mr. Ferrante wanted to hold off on a vote.

**Mr. Ferrante:** Yes, for one meeting.

**Mme. Chair to Mr. Dickman:** The members appear to want to see the ruling and hold off voting.

**MINUTES FOR THE PLANNING & ZONING BOARD MEETING  
HELD TUESDAY, OCTOBER 4, 2011; 7:30 P.M.  
AT THE CITY HALL AUDITORIUM, 110 RIVER STREET, MILFORD**

**Mr. Vetter:** Asked if the Board has the opportunity to appeal the judge's decision and go to another court, or is this not an option?

**Attorney Woods:** Explained: You cannot appeal a zoning decision. You have to file a Petition for Certification and get three judges on the Appellate Court to vote in favor of allowing the appeal and then if you get three votes to allow the appeal, then you can file your appeal. It does not mean you will win your appeal, but it means you get into the batter's box.

**Mr. Vetter:** And "we" chose not to do that?

**Attorney Woods:** That was the decision. Believes after the Board reads the judge's decision of 29 pages, they will realize why the decision was made.

**Mme. Chair:** Asked who made the decision.

**Attorney Woods:** The City Attorney.

**Mme. Chair:** It appears the Board has chosen to wait and hold this over for a vote at the next session. She thanked Mr. Woods for his time tonight.

## **2. PROPOSED TEXT AMENDMENT TO ZONING REGULATIONS**

1. Section 2.5.6 Non-Conforming Plan, Construction or Use
2. Section 6.1 Non-Conforming Uses, Structures and Lots

**Mme. Chair:** Made clear, for the record, that this is a regulation change suggested by the Mayor. The last press report had the damage from storm Irene to be 542 houses, of which 100 have been recorded or registered with FEMA. The Mayor suggested that for homes that received substantial damage, that the Planning and Zoning Board review two sections of its regulations bearing on side yard and front yard setbacks and that the Board also consider allowing for continuation of uses as they were prior to the storm. She noted she had heard from a lot of people and there is some confusion, but this affects only substantial damage, 50% or over and only refers to the principal structure. This does not include, as it is written as it has been presented; fences, garages or any other non principal structure. The Mayor's proposal also states a specific time frame. After the initial presentation by the Mayor and the City Attorney and through discussion, it was agreed there was a need to clarify the language of the proposal and to seek a regulation change, rather than a suspension, which was originally suggested. The Mayor requested that the Board hold a public hearing on September 20<sup>th</sup>. The Board did that. Tonight the Board will decide in what manner to move forward.

The Chair noted that for all the members who saw the damage and hearing from the public, neighbors and friends, everyone is disheartened and saddened by the damage and every member on the Board is committed to do his utmost to ensure that homes in the community are brought back to life.

Thought the discussion would start on Section 2.5.6. Non-Conforming Plan, Construction or Use.

**MINUTES FOR THE PLANNING & ZONING BOARD MEETING  
HELD TUESDAY, OCTOBER 4, 2011; 7:30 P.M.  
AT THE CITY HALL AUDITORIUM, 110 RIVER STREET, MILFORD**

**Mr. Bender:** Noted someone who spoke at the last meeting had a three unit home, which would now be illegal. The home could not be built again with three units on it.

**Mme. Chair:** Wanted to speak to setbacks before uses. Thought the Mayor's proposal regarding side yard and front yard is fine. Would like to see it go a little bit further. She has had several discussions with the City Planner and Staff and looked at other regulations. She sees the issue as being one of fairness. She would like to see it brought forward. Her notion is for any disaster, including fire, (just for the setbacks). Also, in listening to people who spoke, the time frame that is suggested is too short. The reality is that for many people, it will be very hard to get started and there is a lot to go through. She wants to make sure that anyone who suffered a disaster has the time to do what is required. At this time she is suggesting that the Board get a clarification of the Mayor's request, just about setbacks, that states something close to the following:

"In residential districts should the primary structure be destroyed by over 50% of the physical structure, due to natural disaster or fire, the primary structure can be rebuilt in the location and on the same footprint provided that the structure shall in no way include any nonconformity. Restoration work must begin within one year and be completed within two years. All other zoning regulations governing the district, including use remain and in flood zones, all primary structures must meet FEMA regulations.

**Mr. Ferrante:** Disagreed. Thinks the proposal by the Mayor was a suspension of zoning regulations. No matter what the Board does to it, that is what it still is. What is being suggested is a suspension of side yard regulations and that is absolutely inappropriate and may be in further violation of FEMA. Does not believe the words "suspension of zoning" , to be in suspension of zoning and in violation of FEMA.

Mr. Ferrante went on to say that the Board has two functions. Although the Board listens to applications on a biweekly basis, and the Board adjudicates those applications, the Board's function is two-fold; it is a legislative or regulatory body, and an enforcement body.

When someone comes to the Board for an individual application, it is the Board's duty to treat that person fairly. The Board can only consider that application. The purpose of zoning is not for the individual applicant or group of applicants. The purpose of zoning is for the community as a whole. There are different zones that allow distinct uses. By making this change, in addition to a suspension, the Board is creating a special class of applicants and that is not the purpose of the regulatory body. It is the right of everybody in the city of Milford to rely on the zoning regulations. If someone has an illegal structure and it comes down, his neighbors and all the neighbors should be able to expect this Board and this community to honor those regulations. The Board and Community cannot suspend the regulations ham handedly, because the community at large is the one that benefits from the regulations. While the Board cannot consider someone else's view, light or sound on an individual application, it must consider those when the Board propagates rules and regulations.



**MINUTES FOR THE PLANNING & ZONING BOARD MEETING  
HELD TUESDAY, OCTOBER 4, 2011; 7:30 P.M.  
AT THE CITY HALL AUDITORIUM, 110 RIVER STREET, MILFORD**

Other reasons this proposed change should not come before the Board is that no Board should legislate in a crisis. You deal with the people who need help in the crisis situation, but the regulations should not be changed that will affect everybody else. The people of the town are entitled to what the zoning regulations are meant for. They have been in effect for 70-80 years. The people of the City are entitled to what the zoning regulations do for the community as a whole.

Mr. Ferrante spoke about the FEMA Community Rating System for the City. He discussed the higher the rating in this system, the lower the flood insurance rate for everyone living in the community. He discussed how this rating system works and where Milford places in this system, and how Milford's rating for discount insurance is affected due to the tight setbacks of properties and the variances that allow setbacks to be eased. Each time the Board approves a side yard variance or encroachment or to allow what is illegal to become legal, the Board impinges upon the conveyance capacity of the water and increase the damage to all the other houses and raise the cost of flood insurance. The Board should not legislate in a crisis, but should consider the community as a whole, not a class of applicants, when the regulations are made. There is no delay here as there are regulations in place right now that cover everything. Recommends turn it down and move on.

**Mme. Chair:** Asked Mrs. Harrigan to elaborate about the Community Rating System for Milford's flood related costs.

**Mrs. Harrigan:** Explained how the ratings are derived and that there is a very comprehensive checklist involved.

**Mr. Dickman:** Took issue with Mr. Ferrante's comment that the Board is trying to make something legal that is presently illegal. It is clear both in the proposed suspension and the proposed regulation change that the Board is not looking to make anything illegal, legal. Looking to allow a legal non-conformity to maintain that legal non-conformity, without having to first go through the ZBA or the P & Z Board, so that time could be saved for those people who were injured due to the hurricane.

**Mr. Ferrante:** The term legally non-conforming means that it is nonconforming, which is another term for illegal. It is only legal because it has existed for more than three years. But when it comes down it is down and that is why the regulations were written 70-80 years ago for that purpose.

**Mr. Ferrante:** Said he was suggesting holding the newer construction to 7-1/2 feet from the property line.

**Mme. Chair:** On a nonconforming lot the issues are more complicated. Raising a house, the house is still there. Moving it two foot over is moving a structure two feet over. Normally this would go to the ZBA and be perceived as a hardship. Noted if someone is going to raise their house and the house is not 50% damaged, you do not have to come before the Board and do not need a variance. Everything stays the same. There had been some confusion about this. If your house has not met the 50%, you can raise it and not worry about what your existing setbacks are.

**MINUTES FOR THE PLANNING & ZONING BOARD MEETING  
HELD TUESDAY, OCTOBER 4, 2011; 7:30 P.M.  
AT THE CITY HALL AUDITORIUM, 110 RIVER STREET, MILFORD**

**Mr. Bender:** Someone who spoke at the public hearing stated the cost to move her house over a couple of feet would be approximately \$100,000. Based on the magnitude of what happened, that is something to consider.

**Mme. Chair:** Speaking from her own situation, there are houses that have been on those lots on those setbacks since the 1920s. Thinks Mr. Ferrante was right about what zoning is about. She is asking for an exception when there is a disaster, not just for this hurricane or a class, but for a regulation to state if it is a disaster, such as a fire, as long as the nonconformity is not being increased in any way, then it should be allowed.

**Mr. Ferrante:** Did not see how a fire could be included in these regulations. Fires happen frequently and for all too many reasons.

**Mr. Dickman:** Agreed with Mr. Ferrante about a fire and that something should be built differently if it burned.

**Mr. Bender:** Some homes that were destroyed by trees, etc. were not just waterfront properties. Thinks the Board should look at just this event and not speculate about what could come up.

**Mme. Chair:** This has affected 500 homes to whatever capacity, but thinks whether it is one home or 500 homes that suffered a disaster, the same rules should apply. Believes it is only fair.

**Mr. Dickman:** By using this logic, this event is something akin to a wild fire in a forest, where it is terrible that all the trees burned but now the forest will grow back healthier for it. He rejects this notion and feels it is callous. Thinks if there is any time to legislate it would be after a crisis, not in a crisis.

**Mr. Ferrante:** Agreed, but thought the Board should strive to grow back that forest healthy with using the land use development criteria and low density zoning to reduce the damage potential within the flood plain and help maintain flood storage and conveyance capacity.

**Mr. Dickman:** Asked if he was suggesting that there be fewer houses altogether.

**Mr. Bender:** Asked if raising houses would be increasing the water conveyance.

**Mrs. Harrigan:** Stated it depends on certain situations.

**Mme. Chair:** Reiterated, if the house is damaged over 50% it has to be raised if it has not already been raised.

**Mr. Vetter:** The Board represents the community and is put here by its constituents. If the Board does not seek out the tools that are available to it in a crisis in order to help the community move through a crisis more quickly, does not understand why the Board would not want to pursue that. Understands the principle argument by Mr. Ferrante but

**MINUTES FOR THE PLANNING & ZONING BOARD MEETING  
HELD TUESDAY, OCTOBER 4, 2011; 7:30 P.M.  
AT THE CITY HALL AUDITORIUM, 110 RIVER STREET, MILFORD**

there is something logical about letting people continue on with the way things have been in a nonconforming legal use and moving this process along. The community as a whole, and this is a huge part of the community that has been impacted by this. The reality is it is high density where people live down by the water. That cannot be changed quickly or easily or through this kind of method. This area will be high density forever, because there is no chance of these large parcels of land being bought up and brought together and having acres of properties in the flood zone.

**Mme. Chair:** Asked Mr. Sulkis, in relation to other similar communities, if what the Board would be doing is unique in terms of allowing building on the same setbacks, in a crisis.

**Mr. Sulkis:** Yes and no. There are communities that have a restoration clause. Some towns have a restoration rebuild clause that expires. Some towns have regulations where if you lose the nonconforming use you have to build it to be conforming. There is no model that is used exclusively by any of the communities around the state.

**Mr. Liddy:** Asked if residents could get flood insurance if they put rebuild the same house on the same footprint that came down.

**Mrs. Harrigan:** If they exceed the 50% damage or they have a combination of a contractor's estimate which includes damage repair and improvement, that exceeds 50% of the market value, they will be required to adhere to the flood hazard requirements.

**Mrs. Harrigan:** Still do not have a number. People are still doing research as to what they want to do.

**Mr. Dickman:** Took issue with Mr. Ferrante's comment that the Board is looking to make something illegal, legal. Looking to allow people who have a legal nonconformity, maintain that situation.

**Mr. Ferrante:** Legally nonconforming means it is nonconforming. Only legal because it existed for more than 3 years. But when it comes down, it's down.

**Mr. Bender:** If some of the homes are raised, would that be a conveyance?

**Mrs. Harrigan:** It could be.

**Mr. Vetter:** The Board is elected to help the community. Does not understand why the Board cannot help people who are suffering due to this crisis.

**Mr. Sulkis:** Some towns have a restoration clause and some have a restoration clause that expires. Some towns have the same regulation as Milford. There is no one model that is used.

**Mr. Liddy:** Asked if a house was reconstructed just as it was before, could they get flood insurance?

**MINUTES FOR THE PLANNING & ZONING BOARD MEETING  
HELD TUESDAY, OCTOBER 4, 2011; 7:30 P.M.  
AT THE CITY HALL AUDITORIUM, 110 RIVER STREET, MILFORD**

**Mrs. Harrigan:** Explained how this might work.

**Mr. Ferrante:** Suggested holding the new construction to 7.5 feet setback.

**Mme. Chair:** Nonconforming lots are a little more involved.

**Mrs. Patterson:** Stated if people want to go back to the way their principal residence was, it should be allowed.

**Mme Chair:** Thought what Mr. Ferrante said was very eloquent and she agreed with him, but in a disaster such as this, there should be a regulation.

**Mr. Ferrante:** Believes that the regulations were designed with a fire in mind. If it burns down it should be rebuilt properly.

**Mr. Bender:** There are instances where homes were lost due to a tree falling on it. Not all waterfront properties involved.

**Mr. Ferrante:** Still has a problem with changing the regulations for a certain class. Talking about a small class of most likely shorefront properties that are nonconforming. Should not be rewriting a regulation.

**Mr. Liddy:** Concerned that someone in a single family zone can rebuild as a two family because there were no plans previously and they want additional income, so they build a two family.

The Board discussed uses and what could potentially happen when homes were rebuilt and would they be rebuilt according to what was allowed in their zone. For example, a multi-family could be built where the area only allows a single family usage.

**Mr. Mead:** Asked for clarification: It was said if a house was not 50% damaged and they wanted to raise it they could. What if a house is a 2-family home on the beach? The Plan of Conservation and Development is trying to eliminate them in the future.

**Mme. Chair:** If you do not have an issue, you would not have to come before the P & Z Board, unless under the current regulations you are over 50%.

**Mrs. Harrigan:** The way the regulations read now, a permit cannot be issued to expand that nonconformity. Two families have not been elevated in the past, usually single family.

**Mr. Vetter:** If an applicant comes to the P & Z office and there is no history or plans on file for that house and it is in a SF zone, they would be permitted to rebuild a single family home?

**Mrs. Harrigan:** Correct.

**MINUTES FOR THE PLANNING & ZONING BOARD MEETING  
HELD TUESDAY, OCTOBER 4, 2011; 7:30 P.M.  
AT THE CITY HALL AUDITORIUM, 110 RIVER STREET, MILFORD**

Will take a break and try to come back to arrive at a consensus over the issues. That will be done by vote and the City Planner will help draft that final form.

**[Recess from 8:52 p.m. to 9:06 p.m.]**

**Mme. Chair:** Spoke about the process to move this forward tonight and arrive at the language the Board wishes to incorporate, especially for setbacks and uses. The City Planner will draft the final form and that language will go to the government agencies required by State statute. Tonight the language will be provided based on the input tonight.

**Mr. Sulkis:** Outlined the amount of time it could take to get the resolution to the point where another public hearing will be held and after that the Board can vote to enact the changes.

**Mme. Chair:** Asked for the time frame.

**Mr. Sulkis:** The two Councils of Government has 45 days to get back to the Board, the DEEP has 60 days. This is a process that can take time. Those people who will be applying for 50% damage will most likely not be walking into the office before six months due to all the plans they will be required to have. Even those who have started the process have said they do not anticipate pulling a permit for at least a year or more.

**Mr. Mead:** Noted the Mayor's proposal was to be from August 28, 2011 to August 28, 2012. Perhaps that should be extended.

**Mme. Chair:** Had proposed to extend it from beginning within one year and to be completed within two years. That was based on some of the public comments.

**Proposed:** "In residential districts, should the primary structure be destroyed by 50% or more of the physical structure, due to a natural disaster, the primary structure can be rebuilt in the same location and on the same footprint, provided that the structure shall in no way increase any nonconformity. Restoration work must begin within one year and be completed within two years. All of the zoning regulations governing the district remaining in flood zones all primary structures must meet FEMA regulations.

**Mr. Bender:** Noted this was not specific to Irene.

**Mme. Chair:** She feels strongly that it would be fair to not be specific to one occurrence.

**Mr. Bender:** How is natural disaster interpreted?

**Mr. Sulkis:** A definition can be found.

**Mr. Ferrante:** Said it should apply to Irene and change the time to apply, but stick with that because there is a finite entity. If the Board starts to make it all encompassing, then it might not be a good thing either.

**MINUTES FOR THE PLANNING & ZONING BOARD MEETING  
HELD TUESDAY, OCTOBER 4, 2011; 7:30 P.M.  
AT THE CITY HALL AUDITORIUM, 110 RIVER STREET, MILFORD**

**Mr. Vetter:** Agreed. This will give the Board an opportunity to see how this works and can apply it to any future occurrences, as necessary.

**Mme. Chair:** The last storm of significant damage was in 1992. She would prefer that it be all inclusive.

**Mr. Bender:** Agreed with Mr. Vetter.

**Mr. Ferrante:** Suggested the wording be changed to say: "Repair and/or replacement of any pre-existing non-conforming single family structure". Asked that Mr. Sulkis review the wording to make sure it is inclusive or exclusive enough not to include garages.

**Mr. Mead:** A woman that spoke at the public hearing actually has a two-family house on the beach. She will be excluded from this resolution. Now she will be told she has to make it a one-family home?

**Mme. Chair:** With the changes noted by Mr. Ferrante, is the Board prepared to vote? This is just for consensus.

**Mme. Chair:** In residential districts, should the primary structure be repaired or reconstructed by 50% or over of the physical structure due to natural disaster, the primary structure can be rebuilt in the same location on the same footprint, provided that the structure shall in no way increase any non-conformity. Meant to say due to "Storm Irene". Restoration work must begin within one year and be completed within two. Any other language, all other zoning regulations including regulations in flood zones, all primary structures must meet FEMA regulations.

**Mr. Ferrante:** Noted there could be multi-family uses in residential districts.

**Mr. Sulkis:** The types of residential zones that allow multi-family or Single Family Attached are not along the shoreline.

**Mr. Ferrante:** Suggested instead of principal building say "single family structure", because in those instances the setbacks are conforming.

**Mr. Bender:** There could be an SFA two-family, but it's four feet from the property line, so it contradicts what is being done in this section.

**Mme. Chair:** This will be tweaked further and go to the City Attorney's office to make sure that the legislative intent matches what the Board is doing.

Eight members in support of this language. Two members opposed (Liddy and Ferrante).

**Mr. Vetter:** Consistent with what has been talked about, the Board is okay with the setbacks. They can rebuild along the setbacks, legal nonconforming.

**MINUTES FOR THE PLANNING & ZONING BOARD MEETING  
HELD TUESDAY, OCTOBER 4, 2011; 7:30 P.M.  
AT THE CITY HALL AUDITORIUM, 110 RIVER STREET, MILFORD**

With regard to the use, whether one or two family, it is his opinion if it is a legal nonconforming two family now, they can rebuild a two family home. That is the essence of this discussion now. Is the Board allowing a two-family that is not permitted in the current district, if they were building it from scratch, to be built.

**Mr. Sulkis:** Or a three family house, or a business, or whatever it happens to be.

**Mr. Vetter:** Question is are they rebuilding what they have now or is the Board applying usage regulations as if it was a new building. In his opinion they are rebuilding as they have now.

**Mme. Chair:** There is nothing in the regulations now if the Board did nothing, that if you had a use that is no longer allowed in the district, you can still come before the Board and get a waiver with a property. There is nothing precluding. Does not want to approve it because when it comes before the Board the community can speak. This is where the Plan talks about the neighbors and rebuilding the community. Opposed to allowing blanket uses, especially in this case where the Board does not know what the uses are.

**Mr. Dickman:** For the purpose of this storm would allow blanket regulation change on use so that people can build back what they had.

**Mr. Bender:** Asked what would the option be if the Board does not do blanket approval.

**Mrs. Harrigan:** Uses are approved via Special Exception as long as they are not expressly prohibited within the district.

**Mme. Chair:** In fairness, the Board has denied people who have had other disasters from reaching into the uses. Here the Board would have a class that would be able to do this. This would be allowed in very dense areas on a shoreline at a time when they are looking at the POCD, specifically to see what can be done to make the shoreline less dense. Thinks in the haste of doing something helpful, the Board would be doing something harmful to the community.

**Mrs. Golden:** How many people would be coming before the Board as a result of passing this?

**Mr. Sulkis:** Too early to tell. Of the 500 structures that were reported, it is not known how many are total losses. Thinks the number will be significantly lower than the 500.

**Mr. Vetter:** Struggles with setbacks as much as the uses. Principally, he is committed to getting the people back to where they were as quickly as possible.

**Mme. Chair:** Agrees that in doing that for Storm Irene the houses have existed for a long time. It is about reconstruction of an existing older house. No building a totally new house.

**MINUTES FOR THE PLANNING & ZONING BOARD MEETING  
HELD TUESDAY, OCTOBER 4, 2011; 7:30 P.M.  
AT THE CITY HALL AUDITORIUM, 110 RIVER STREET, MILFORD**

**Mr. Mead:** He drove by the lady's two family house. It is 2-1/2 stories. If she raises it and now it is over the maximum for height, what happens?

**Mrs. Harrigan:** The floor plan would have to be reviewed.

**Mr. Ferrante:** What if developers buy up these properties, goes to the ZBA and gets the variances. Isn't the Board making it easier for that type of entity to crowd the shoreline? This is the perfect situation for something like this to occur, because they know what situation some people will be in. That is what the Board will be ending up with; those types of applications. That is why the regulations cannot be written in the shadow of an alleged disaster.

**Mr. Dickman:** How many members of the board do not want to change any regulations regarding uses?

8 members in favor - 2 members against (Dickman, Vetter)

**Mme. Chair:** This will go through all the legal processes and come back to the Board for a Public Hearing.

#### **H. PLAN OF CONSERVATION AND DEVELOPMENT**

**Mme. Chair:** Thanked Mr. Plattus for his patience. He is working with the Board and the members of the City Planning Office, and most recently with Milford Progress, Inc. on a Downtown Plan and some other items with regard to waterfront development.

**Alan Plattus, Director of the Yale Urban Design Workshop and a faculty member at the School of Architecture at Yale University.** The Design Center is based at the Yale School of Architecture and has worked with dozens of communities all over the State of Connecticut in the 20 years that the Design Center has been operating. Worked with the City of Milford and Milford Progress ten years ago on the last Plan of Conservation and Development. They are back in Milford because the initial project was such a success. Milford Planning and Zoning and Milford Progress have asked him to update and revise the Downtown Plan in preparation for the new POCD.

He has been asked by Planning and Zoning to work on the following areas: Fowler Field; Cherry Street Corridor; Design Guidelines for the shoreline; and Consideration of the Walnut Beach Community development going forward.

With Milford Progress they have begun the process and have attended the meetings of the Milford Progress Steering Committee and the Milford Progress Board. Have also set up meetings with interested parties, such as property owners and business owners from the downtown area.. Will schedule an evening meeting with the general public.

Key issues: Basically the same as they were ten years ago, some of which have seen substantial progress, others of which have seen little progress and others have had negative progress, particularly in recent years.



**MINUTES FOR THE PLANNING & ZONING BOARD MEETING  
HELD TUESDAY, OCTOBER 4, 2011; 7:30 P.M.  
AT THE CITY HALL AUDITORIUM, 110 RIVER STREET, MILFORD**

The first and most obvious of these is the overall retail environment. This includes the building stock; the appearance of buildings; the functionality of buildings with respect to retail and commercial use. Also looking at development opportunities. Of particular interest is the Harrison's property. Some preliminary design work has started to study alternative possibilities for the redevelopment of that site, which has been shared with the MPI Board. Traffic and parking remains a serious concern for people who are doing business and using or passing through the downtown area on a regular basis.

Milford Progress, as well as Planning and Zoning staff have asked that Fowler Field be looked at to review alternatives to making this site more attractive, efficient and productive to the downtown area. Reconfiguring the usage could be considered that could make room for further development that could reinforce the larger goals of the downtown area, but not displace entirely, the current use. He has had a graduate student at the Architectural School do some preliminary drawings for Fowler Field over the summer.

Cherry Street Corridor. This is the principal gateway to the Town Center. It is the threshold between the highway and the Post Road and is characteristic of the town center. It reflects an uneasy balance of both these areas. Have been asked to look at a way in which there can be a more positive build out over time and to look at some opportunity sites, i.e. the former cinema site. This will not be easy.

Design Guidelines for the Shoreline: This might be moved up in the agenda, in light of the recent storm. Proposing to do a detailed review of the current regulations and how they are working and to look in more detail at the way in which form based design guidelines might supplement the conventional zoning regulations.

Walnut Beach Community and how future development there might reinforce the special character of that area and connect it better with the rest of Milford.

He plans to look at these areas in the order he presented, but is prepared to make changes to the agenda as necessary. At this time in the beginning of the process. Will be coming back periodically to get the Board's feedback.

**Mme. Chair:** Would like to move the waterfront design up in the agenda, given the current situation. The Board members concurred.

**Mr. Liddy:** Asked for the final date for delivery of his work.

**Mr. Plattus:** Has to meet with Staff. Individual projects can be at 2-3 month intervals that could overlap.

**Mr. Vetter:** Asked about other areas of the cities, i.e. Route One, North Milford and other areas that have not been mentioned as part of this plan, how will they be handled?

**Mr. Sulkis:** These will be handled mostly by staff. Some of the areas do not need the intense study and expertise that the aforementioned areas need.

**MINUTES FOR THE PLANNING & ZONING BOARD MEETING  
HELD TUESDAY, OCTOBER 4, 2011; 7:30 P.M.  
AT THE CITY HALL AUDITORIUM, 110 RIVER STREET, MILFORD**

**Mr. Vetter:** Believes the representatives of those areas of the City should help coordinate, or at least work with staff to affect change in the Plan. Would like Mr. Plattus to look at the whole city and not compartmentalize.

**Mr. Ferrante:** How does the Board or as individuals give their input to Mr. Plattus while he is formulating his plans? How does the Board know where he is going?

**Mr. Plattus:** Concerned about this as well. Can schedule meetings and more detailed discussions. Do some interviews with people who have particular interests. Holding some public meetings where the Board can participate, or work mainly with staff. He is open to suggestions.

**Mrs. Golden:** Will there be another public hearing where Mr. Plattus will be present?

**Mme. Chair:** Where a section of the plan is near completion and the larger public hearing when the document has been prepared.

**Mr. Gasper:** Asked if Mr. Plattus would be available to attend a public meeting on the West Shore and Walnut Beach areas which has been scheduled for next week.

**Mr. Plattus:** Could not guarantee he could be there, but would have a discussion with Mr. Gasper on this.

**Mme. Chair:** Thanked Mr. Plattus for taking the time to come before the Board.

**F. PROPOSED TEXT REGULATION CHANGE – Discussion**

<b>Section 2.5.5</b>	Lot Access and Rear Lots
<b>Section 9.3.1</b>	Procedures ZBA
<b>Section 5.1.4.2</b>	Prohibit Drive-Thru Windows Curb Cuts and Driveways
<b>Section 3.1.4.1</b>	Revise Table
<b>Section 3.1.4.2</b>	Building Height in Residential Zones
<b>Definition</b>	Crawl Space/Lowest Floor

**Mr. Sulkis:** Will schedule public hearings on Procedures ZBA and Prohibit Drive-Thrus.

**Mme. Chair:** Rear Lots. The Board wanted the language restated so that they could have more options.

**Mr. Dickman:** Opposed to the blanket removal of rear lots. The minutes of July 5<sup>th</sup> reflect the Board's request for rewording of this proposed text change.

Revise Table refers to the matrix that has since been updated in the new Zoning Regulations.

**Mrs. Harrigan:** Crawl Space/Lowest Floor: Just to clarify language, especially on the shoreline properties.

**MINUTES FOR THE PLANNING & ZONING BOARD MEETING  
HELD TUESDAY, OCTOBER 4, 2011; 7:30 P.M.  
AT THE CITY HALL AUDITORIUM, 110 RIVER STREET, MILFORD**

After Mrs.Harrigan's explanation, the Board agreed to pass this onto the necessary agencies.

**G. BOARD MEMBERS' GREEN GUIDELINE BOOK AND BY-LAWS**

Discussion of the Subcommittee's suggestion for the election of the Chairman of the Planning and Zoning Board.

**Mr. Vetter:** Identified things that the Board wanted to focus on. Primary focus is on the election of the Chair and Vice Chair.

1. How often to have the election? Align the election with the municipal elections; every two years.
2. When will election be held? First meeting of the calendar year.
3. Minimum of 6 voting members of the P & Z Board to hold vote for chairperson.
4. In the event of a tie, majority wins.
5. Five rounds of voting.

Vote on this at the next meeting. Will require a majority vote.

**I. LIAISON REPORTS - None.**

**J. APPROVAL OF MINUTES – (9/20/2011)**

**Mrs. Golden:** Motion to approve.

**Mr. Vetter:** Second.

All members voted to approve the minutes of 9/20/2011.

**K. CHAIR'S REPORT**

P & Z Board took a couple of hits at last night's Board of Aldermen's meeting. No foot dragging. Working on this as quickly as it can.

**L. STAFF REPORT**

**Mme. Chair:** Has asked Mr. Sulkis for a memo on 63 James Street. This is the first such application for which CGS 8-24 had been enforced.

**Mr. Sulkis:** Said this can be remedied by just receiving this as a mayor's request, not an 8-24. Mr. Sulkis wrote a memo outlining the procedure on such future requests, which was distributed to the Board. The Board should request the current mayor of the suggested procedure.

**MINUTES FOR THE PLANNING & ZONING BOARD MEETING  
HELD TUESDAY, OCTOBER 4, 2011; 7:30 P.M.  
AT THE CITY HALL AUDITORIUM, 110 RIVER STREET, MILFORD**

**Mrs. Harrigan:** Thursday, October 6th will be a workshop from 5:30 – 6:30 and then 6:30 to 8:00 FEMA coming down talking about what the grant process will be like.

**Mr. Sulkis:** Wednesday, October 12. Devon Walnut Beach POCD meeting.

**Mr. Dickman:** Motion to adjourn.

**Mr. Vetter:** Second.

The meeting adjourned at 10:57 p.m. Next meeting will be held on 10/18/2011.

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Phyllis Leggett, Board Clerk