

**MINUTES FOR THREE (3) PUBLIC HEARINGS
HELD TUESDAY, DECEMBER 21, 2010; 7:30 P.M.
CITY HALL AUDITORIUM, 110 RIVER STREET, MILFORD**

The Chair called to order the December 21, 2010, Public Hearing of the Planning and Zoning Board at 7:30 p.m.

A. PLEDGE OF ALLEGIANCE

B. ROLL CALL

Members Present: Edward Mead, Mark Bender, KathyLynn Patterson, Robert Dickman, Kevin Liddy, Vice Chair; Gregory Vetter, George Gasper, Susan Shaw, Chair

Not Present: Janet Golden, Victor Ferrante

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

C. PUBLIC HEARINGS CLOSE BY 12/21/10; Expires 2/24/11

1. **2007 BRIDGEPORT AVENUE (ZONE CDD-3)** – Petition of Sammer Karout for a Special Exception and Site Plan Review to allow the establishment of a hookah lounge to be located on Map 43, Block 543, Parcel 25, of which Jaser Enterprise LLC is the owner.

Mme. Chair: Read the caption of the first scheduled public hearing and reviewed the public hearing process for the attending public.

Marissa Bigelli, Esq. of Attorney Alexander Scheirer's office stated Mr. Scheirer was detained momentarily and asked if the public hearing could be taken out of order until his arrival.

Mr. Vetter: Moved to table the application and proceed with 12 Blair Street.

Mrs. Patterson: Second.

All members voted in favor of tabling the public hearing pending Mr. Scheirer's arrival.

2. **12 BLAIR STREET (ZONE R-5)** – Petition of Thomas Lynch, Esq. for a Special Exception and Site Plan Review to allow a second dwelling in the garage located on Map 27, Block 453, Parcel 7, of which John and Helen DiNoia are the owners.

Thomas Lynch, Esq., 63 Cherry Street, Milford, representing the DiNoias, the owners of the property who are seeking a Special Exception to allow a second dwelling unit in the cottage that is located in the rear portion of the property.

Blair Street is located near the East Broadway section of Milford across the street from LI Sound, running east to west on the tidal marsh that runs between the State property and Seaside Avenue.

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The applicants purchased the property about a year ago. It was advertised through the Multiple Listing Service through Raveis Realty as a bungalow with a second cottage. The owners live in Yonkers, New York. They bought the property with the intention of having this as a summer use residence along with their extended family.

The house that is located in the front portion with the street address of 12 Blair Street was constructed in 1925, prior to the institution of Milford's zoning regulations, which took place by City ordinance between 1930 and 1931. The City Assessor shows there are two dwellings that are being taxed. The cottage that is located to the rear consists of some 460 square feet. It is listed on the tax records as having three rooms. It has a large living area with a bedroom area, a kitchen and eat-in area. There are separate utilities that service both of the properties; UI as well as the SCGC. The site plan that Codespoti has prepared shows the existing site, which will have no change for the purpose of this application. This is not an application to expand a nonconforming use. The site, as it exists now, has been this way for 80 years. The house was built in 1925 and the cottage was built in 1930.

Mr. Lynch relayed the events that have brought this matter before the Board. A Cease and Desist Order was issued by the Zoning Enforcement Officer, Kathy Kuchta last August, which brought this matter to the applicants' attention. When they bought this house they did not know that a permit had not been issued for the construction of the cottage and there would not have because the cottage was built before zoning regulations were adopted.

In meeting with Mr. Sulkis it was discussed that under Section 8.5 of the regulations, an appeal of the zoning enforcement officer's decision could be made with the Zoning Board of Appeals. Mr. Lynch stated he preferred not to take that route. His intention was to be proactive and come before the Planning and Zoning Board with a Special Exception to legalize the existing situation. This situation came to light because the DeNoias wanted to make renovations to the interior of the cottage and went to the Building Department for a permit.

Mr. Lynch distributed exhibits which he outlined and explained to the Board. (The exhibits are date stamped into the record)

Mr. Sulkis asked that a proposed layout be prepared in the event the application is approved. The proposed and existing floor plan are included in the exhibit.

Concluded that there are different routes that could be taken to legalize the property without going to court. It has been an existing use that has been in effect for 80 years.

Mr. Sulkis: Most of what Mr. Lynch said is correct. However, there are some corrections: The house was permitted in 1925. The accessory structure in the yard was permitted in 1930 according to the accessor's cards. However, in 1963, the owner

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at that time went to the ZBA to do what is before the Board tonight, which was to convert the accessory structure into a cottage in 1963. This was not built from day one in 1925 as a cottage. In 1963 that application to the ZBA was denied.

In 1966 the property owner went back to the ZBA to ask to do the same thing, and were denied again. The Board has received memos from Linda Stock, who in 2001 made a report that this structure may have been used as a dwelling but she could not get in to confirm it, but in her memo of 2001 to the record noted there was never an approved residential use of that accessory structure.

Mr. Lynch: It was his understanding in 1963, the homeowner came in to expand the cottage and Linda mentions that in her 2001 memo. "in 1963 Mr. Herman Schumaker, then owner of the above referenced property applied to the Zoning Board of Appeals to use an accessory building as a dwelling unit and to erect an addition to same." This is different. The owner is not looking to expand or add to the use. Something happened in 1963 and since no one knows exactly what happened, it is clear that Linda found something in the files to indicate that there was going to be an expansion of that structure.

Mr. Sulkis: Stated he has the actual application to the ZBA from 1963. At that time they went to the Board asking for "use of an accessory building as a dwelling and erect an addition to the same". At that time they wanted to convert it to a dwelling and make it larger. That was their intent in 1963.

Mr. Liddy: Asked what is the maximum size of an accessory apartment.

Mr. Sulkis: A maximum of 800 square feet, minimum of 425 square feet. According to the regulations it must be part of the main structure.

Mrs. Patterson: Was the building ever occupied? Is water separate for this building?

Mr. Lynch: Yes to both questions.

Mme. Chair: When was it last occupied?

Mr. Lynch: The people had already moved out before the DeNoias took ownership.

Mr. Mead: Was it a converted garage?

Mr. Lynch: No. It has always been a cottage.

He stated that Mrs. DeNoia went to some of the neighbors who signed a petition in favor of her application, which he submitted as part of the record.

Mme. Chair: Read the petition which represented 18, 26, 26, 19 14 and 13 Blair Street.

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Anyone in favor of the application? (No response)

Anyone opposed to the application? (No response)

Mr. Lynch: He and Mr. Sulkis had discussed there could be a stipulation to the approval that the cottage will never be rented out. The use would be strictly for their extended family.

The Chair closed the public hearing.

Mr. Vetter: Made a motion to hear Item No. 1, 2007 Bridgeport Avenue.

Mrs. Patterson: Second.

All members voted in favor of hearing the first scheduled public hearing.

1. **2007 BRIDGEPORT AVENUE (ZONE CDD-3)** – Petition of Sammer Karout for a Special Exception and Site Plan Review to allow the establishment of a hookah lounge to be located on Map 43, Block 543, Parcel 25, of which Jaser Enterprise LLC is the owner.

Alexander Scheirer, Esq., 2519 Whitney Avenue, Hamden, representing the applicant to open a hookah lounge, which would be a social gathering location for individuals to partake in the use of a “hookah”, or what is commonly called a “water pipe”. A hookah lounge is a cultural and social meeting place for people indigenous to the Middle East, parts of India and Pakistan. There would be strict compliance with regulations and laws in all areas such as Federal, State and the City of Milford as they regard the use of tobacco products. Also cognizant of the fact that there is a need to comply with regulations from the City of Milford and the State of Connecticut, related to the health and safety of the use of such products on the premises. To that extent the applicant had applied to the State Department of Public Health for a ruling as to whether or not such a use is permitted. There are several localities within the State of Connecticut, in New Haven and Fairfield Counties, where there are numerous hookah lounges in operation.

The Milford Board of Health is concerned with the sanitary conditions of the hookah lounge. The applicant is very aware of the various implements in connection with the use of the water pipe. There would be no entertainment, no food, beverages (alcoholic or otherwise) on the premises. This will be strictly a social gathering location for people to commune, converse and to exchange ideas and thoughts. There will not be the sale of the any products that would pose a risk to the community or the population at large.

The lounge would be located on Bridgeport Avenue, in a strip shopping center that was constructed in the 1950's. The location is comprised of 11 other retail establishments

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that are very active, especially in the daytime. One of the establishments is The Olive Tree, which is a restaurant/deli that serves Middle-Eastern food, which has become a community gathering place to people of certain ethnic origins. The hookah lounge would be a positive addition to the overall community of Milford, which would further promote Milford as being an all inclusive community.

An ad hoc traffic survey was conducted in order to precipitate the traffic impact if the hookah lounge was to be located in the shopping center. No impact is anticipated, but would work with the police department should any traffic situation arise.

The applicant is mindful of the fact that any activities that might take place at the 2007 Bridgeport Avenue location would have to be consistent with whatever regulations, laws or requirements may be imposed by the community at large, by the police department, by the Health Department and to keep a location that is safe and enjoyable to those who frequent it. It will not be closed to people outside the community and the applicant will be mindful of whatever the federal laws are regarding the use of tobacco products.

Mme. Chair: Noted Mr. Sulkis had prepared a staff report on this application. Asked if he wanted to review it.

Mr. Sulkis: Regarding the Memorandum of Decision, it was mentioned the age of the people entering the establishment would have to be 18 years or older. It also mentions that people bringing their own alcohol had to be 21 years or older.

Mr. Scheirer: Replied it was their intention not to limit but to prohibit the use of any alcohol beverages on the premises. Also, any individual coming on the premises would have to be 18 years or older, in compliance with federal and state law.

Mr. Sulkis: For the record, there would be no allowable alcohol consumption?

Mr. Scheirer: No.

Mr. Sulkis: What about people bringing food into the establishment, since the establishment will not be preparing food.

Mr. Scheirer: One of the prohibitions that were imposed by the Department of Public Health and also as set forth by the City of Milford Health Department, there would be no consumption of food on the premises. That is understood.

Mr. Sulkis: Reviewed his report which passes no judgment on the use that has been presented by Mr. Scheirer, but goes through the application and how it is classified. There is a portion on page two that talks about no food or beverages will be served on the premises, but patrons will be allowed that. Based on Mr. Scheirer's comments, the Board can disregard that.

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The background of the report talks about how this application came into being. It started in 2009 when the former zoning enforcement officer, Linda Stock, issued a Cease and Desist to the property owner and Hookah Lounge owner, deciding the conversion without permits of 2007 Bridgeport Avenue from a vacant retail space to a Hookah Lounge. That discovery of the Hookah Lounge use was subject to a Health Department order of 2009 and subject to a separate adjudication process.

The applicant and his representatives met with Mr. Sulkis periodically since June of 2009 on the application that is before the Board. It was determined that the Hookah Lounge was not as of right use because it could not be classified as a store for sale of goods or performance of personal services; nor a food or beverage establishment or an eating place. It is not an indoor place of entertainment. Since it is not any of these things, it is considered a Special Exception. As a private club, the only ones the regulations talk about are ones that are for charitable in nature.

The next part of his report explains what a water pipe (hookah) is, which language comes from the State Memorandum of Decision.

Of concern are some items that need clarification: The floor plan submitted on October 21, 2010 shows 1992 sq. ft. gross space. All the seating appears to be built in and the actual number of seats has not been provided on the main floor plan. There are no plans showing separate tables or chairs. The plans call out a large dance area located in the middle of the seating area. Based on what Mr. Scheirer has said tonight, that there would not be entertainment, may prove to be a discrepancy. In contrast to this, the Statement of Use, shows 44 seats with no separate tables or chairs and the dance area has been replaced by decorative art and a fountain.

The Board needs to determine from the applicant which is the accurate floor plan. The earlier referenced State of Connecticut Memorandum states there would be about 60 hookah pipes that would be available for customers. In trying to understand the occupancy numbers, it should be determined how many hookah pipes are available; how many people can smoke from one hookah at a time. All this is leading into parking.

The Board will need to determine the amount of required parking. The applicant proposed to classify the use as personal services with a requirement for eight parking spaces. Mr. Sulkis stated he disagreed with this calculation. The proposed use is more akin to a place of public assembly, (as heard this evening), while restaurant, which has a requirement of one per 75 sq. ft. respectively. By this calculation the applicant needs to provide either 40 or 27 spaces, depending on how the Board wants to classify this. The Board will need to determine if enough parking exists or if enough parking exists that can be shared between the other existing businesses and the proposed business. In making this determination, the Board needs to know what the proposed hours of operation would be for the Hookah Lounge.

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All of the parking abutting Bridgeport Avenue, which in this case is 20 spaces, is located off site in the State of Connecticut right-of-way. A signed and executed lease agreement will need to be provided between the State of Connecticut and the property owner, in order for the Board to consider those spaces as legitimate for the properties used to count towards provided parking. In the packets there is correspondence from the State that they will enter into a lease agreement. They have agreed to do it but no executed lease has been provided. Also the terms of the lease, i.e. one year, six months, etc. are not known.

The rear parking area goes behind the property boundary into a 12-foot service lane. The lane is not owned by the City, so presumably it would be divided between the property and the adjacent property.

The site plan lacks detail regarding how many parking spots exist that meet the zoning standards. The plan shows approximately 72 spaces. The applicant has provided a table of other uses in the plaza in the amount of parking that would be required under current regulations. The applicant's parking matrix shows a need for 100 spaces, not including what the applicant would need. So, as stated earlier, it is estimated that the applicant needs either 27 or 40 spaces, in addition to the need for 100 spaces for the other tenants of the shopping plaza.

The Lighting Plan: A lighting plan as required under Section 5.2 has not been provided. The applicant and applicant's representatives have stated they did not want to provide photometric survey due to the cost. It is unknown whether the building meets the current zoning standards for light trespass and if adequate lighting exists to utilize the parking behind the building in a safe manner.

Sign Plan: No sign plan has been included. A Hookah Lounge sign has been installed without permits.

Board Action: The Board needs to determine those issues that were brought up earlier in the report and whether the proposed use is in compliance with the zoning regulations, in particular, Sections 7.1, 7.2, 7.3 and 5.11.

Mr. Bender: Questioned the statement of use that says it would be "open to the public at large to partake in the cultural experience it will have to offer". So it will be open to the public.

Mr. Scheirer: That is correct.

Mr. Bender: In the State of Connecticut Department of Public Health, Public Health Hearing Section Memorandum of Decision states: "... (2) the property is a private club and, therefore, does not constitute a public nuisance as defined under the General Statutes and Regulations...". That is a contradiction.

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The Statement of Use says it is open to the public. The State says that the applicant says it is a private club. Which is it?

Mr. Scheirer: It was presented originally as a private club. He attempted to explain that it would be open to those members of the public who go there and decide to join it.

Mr. Bender: Asked is it a private club or for anybody to go in there.

Mr. Scheirer: It was originally presented to Mr. Sulkis as being a private club.

Mr. Bender: So the Statement of Use is incorrect.

Mr. Scheirer: Correct.

Mme. Chair: Asked Mr. Scheirer if she was not understanding and could he clarify: Is he now saying that it is a private club?

Mr. Scheirer: It is a private club in the context that if a person desires to join the club, to enter it and partake of the hookah, the answer is yes. The reason this was done originally was to avoid having people come through the door and possibly engaging in abuses of tobacco use. They are mindful of the State and Federal statutes and regulations, especially those that came into effect this past year relative to the use of tobacco products.

Mme. Chair: Attempted to be clear on the use. This falls under the City of Milford regulations retail personal service establishment. It is a membership. Someone will pay money and they will get a card.

Mr. Scheirer: Correct.

Mrs. Patterson: What are the hours of operation?

Mr. Scheirer: Primarily during evening hours due to the fact that the other shops in the strip are mainly daytime businesses. Would not want to cause congestion in that plaza. Hours will be between 7:00 p.m. and 1:00 a.m.

Mr. Vetter: Clarified that in order to allow smoking in this establishment, this would be a private club where cards would be issued, dues paid, etc. Asked if there would be any documentation of the club, such as, bylaws, a mission statement and any other documents necessary for a private club.

Mr. Scheirer: Those would be constituted, but they do not want to put the cart before the horse. If application is approved bylaws and other legal requirements for a club would be instituted.

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Mme. Chair: Under a Special Exception request, the establishment does not qualify as a club, as there is a financial gain from selling products for use with a water pipe. That is in the Statement of Use. Questioned if the Statement of Use was operable.

Mr. Scheirer: Said he thought the Statement of Use has exceeded its effective life span and the paragraph that the Chair is referring to needs to be modified in order for it to be consistent with the restrictions placed upon the use of the premises by the Department of Public Health and the City of Milford Health Department.

Mr. Liddy: The applicant has been ignoring the regulations all along. The Statement of Use is convoluted. If the Board approves the application with various conditions, why should the Board believe the conditions along with the rules and regulations would now be adhered to? There had been no site plan, no parking or lighting plan. No permits for signs.

Mr. Scheirer: Agreed with Mr. Liddy, and stated as these issues have been brought to the attorneys' attention, they have made it a point to tell the applicant that he must abide by the rules and regulations at the local, state and federal level, and if that is not done, there will be consequences.

Mme. Chair: Asked about a plan for ventilation.

Mr. Scheirer: The doctor in charge of the Health Department has offered assistance in establishing whatever means should be in place with regard to ventilation on the premises, as well as the hygienic uses of the water pipe and the water pipe hoses. The applicant is more than willing to cooperate with him.

Mr. Vetter: Asked if the Olive Tree grocery was owned by the applicant and how long have they been in business.

Mr. Scheier: Yes, the same owner, who has been in this business for six years.

Mr. Liddy: Asked for an explanation as to how contamination through the use of the water pipe would be mitigated.

Mr. Scheirer: The water pipe would not be passed around from person to person. There would be a one time use of a hose to the water pipe. After each use, the hose would be discarded.

Mr. Liddy: Noted that the product being used is not always tobacco that contains tar and nicotine. Asked what kind of tobacco is used.

Mr. Scheirer: It is a special type of tobacco that is primarily grown to be flavored, primarily fruit flavored. The tips used would also be disposed.

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(The applicant showed the disposable tips and hoses that would be used. The hoses are individually packaged and would be disposed of after each use.)

Mr. Bender: 66 hookahs. How are the customers serviced? Will there be enough for all patrons?

Mr. Scheirer: One hookah per patron and they can all be accommodated. The proposed number of 66 was at the high end of the scale. The concerns are traffic, parking and not to create any type of problem in the shopping plaza or on Bridgeport Avenue.

Mr. Liddy: Asked if someone who comes down from the neighboring bar on that strip could gain access to the private club.

Mr. Scheirer: Based on the layout of the premises, upon entering to the right there is going to be a desk, where there will be a host or hostess. At that point one could apply as a member for a fee, or the alternative, would be to leave. They do not want stragglers to come in. The purpose of the establishment is to have people enjoy a communal, relaxed environment where they can talk; not one in which people can carouse.

Mme. Chair: Asked if there was anyone to speak in favor of the application.

Scott Kurlanski, 285 Seaside Avenue. Lives close to the proposed location. He does marketing for the City of New Haven. New Haven has experienced a renaissance of many ethnically diverse cultures, which has attracted many different types of businesses into New Haven, including several hookah lounges. There is a hookah bar on the ground floor of an older office building that faces the Green. It also houses the Chamber of Commerce. The lounge brings people in from Yale and other businesses in the New Haven area. He has never witnessed any type of disturbance or problem with the hookah bar being on site. It is different from a bar where people drink alcohol and can have too much to drink. He would have no problem with having this business in his back yard. Believes it will add to the vibrancy and diversity of the City of Milford.

Ellen Murphy, 26 Sandpiper Crescent. Not a member of the community that would partake in the Hookah Lounge, but has been exposed through her work in the UN, having lived and worked abroad for 16 years. Was impressed with the culture and diversity that this type of opportunity can bring and offer to Milford. Would support this and is in favor of diversity and the positive impact it could have on Milford.

Rebecca Muller, 132 Bernier Terrace. Stated she has been married to a Middle Easterner for 17 years and has been a patron of hookah lounges for many years. There are very few places where she could get together with friends where alcohol is not part of the scene. Having a hookah lounge is good for those people who do not drink alcohol.

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Also, she and her husband just opened a hookah lounge on Black Rock Turnpike, Fairfield last March. They have never had any trouble at their establishment. People who come there are relaxed and laid back. They want to sit, socialize and smoke. They use the lounge's wi-fi, read a book, do crossword puzzles, etc. It is not a night club or discotheque where people can bring booze and get drunk. It is an adult environment where they sit and enjoy this tobacco product. She agrees it would be a great thing in Milford which promotes itself on diversity in the town.

Mme. Chair: Anyone to speak in opposition?

Constance Young, 37 Loomis Street . Not here about the diversity issue of the clients, but concerned about the health point of view. Professor Emeritus at the University of Sacred Heart and is on the Milford Board of Health.

Stated there was information deleted in the Notice of Violation that was originally submitted by Dr. McBride. There were comments about the concern for sanitation of the hookah water pipes and the porous hoses of the hookah pipes pose a communicable disease risk. The final decision by the hearing officer in the decision stated that the local health department failed to establish that the method used to clean the pipes is inefficient to sanitize the main porous parts of the pipe. In the final decision there is a lengthy discussion of the conditions for invoking the public nuisance as titled in the notice. The conclusion of the hearing officer was that there was insufficient evidence to establish a public nuisance. Read a portion of a letter from Attorney General Richard Blumenthal who wanted to express his support for the efforts of the Milford Department to reduce the adverse health effects of the community use of hookahs at the site in Milford, as was articulated in the Order to Cease and Desist for source of public nuisance, such as hookah smoking has a deleterious effect on the public health. Numerous studies and reports conclude that smoking a hookah is more dangerous than smoking a cigarette, due to the high concentration of carcinogens and toxins. A hookah is a source of bacteria and infection.

Stated her reasons for commenting are health related. 1) There is a lack of a clear protocol for the sanitization of the disposable set up and hookah pipe, as well as maintaining cleanliness through hand washing by the employees. The evidence for potential transmission of disease, such as, tuberculosis, due to possible improper sanitization is evident in the literature. There is no available information on line as to how to clean hookah apparatus, which makes the concern even greater. 2) The charcoal in the hookah increases the health risks by producing high levels of carbon monoxide and other cancer causing chemicals. The concern about high levels of carbon monoxide would logically increase as the number of smokers increase. This raises the question of adequacy of intervention to accommodate the anticipated increase in carbon monoxide. 3) There is the presence of unknown or untested ingredients in products of second hand smoke at the Hookah Lounge, even though they

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are described as not being tobacco. The tobacco ingredients to be used in the hookah pipe are listed as hydro herbal molasses tobacco and is described as the finest premium organic herbs and flavors with no further details. The effect of the herbal tobacco, in her estimation is not clear.

Stated that the City Attorney's office has been involved in these proceedings since the beginning and is fully supportive of the position of the actions that the City Health Department is taking.

Finally, her concern remains there is specific and incontrovertible evidence and danger related directly to hookah smoking which outside research does not support that there should be a lack of concern for the public welfare. Commented on the legal aspects and the fact that it would be a private club and whether that makes a difference in terms of smoking, but as a health care person, the City of Milford would still be concerned about the health of the individuals who would be in this private club.

Rebuttal by the Applicant:

Mr. Scheirer: Addressed the comments of the person who spoke in opposition. She was correct in stating that many of the products that are smoked are not tobacco and have zero nicotine or tar in them. There has been no decisive medical evidence pro or con relative to smoking these types of products. This will not be an establishment that will be offering its wares to the general public, nor will it seek to induce the general public to come in and partake of the atmosphere of that which it has to offer to those who desire to enter the premises and participate in the hookah lounge experience. People make their own decisions in life and sometimes do things they should not do. The establishment will seek to work with the City of Milford Board of Health. It will work with the head of the Board of Health and the Health Department on all levels. Mr. Sammer Karout, the owner of the Hookah Lounge as well as the Olive Tree Restaurant in the same plaza, is a member of the community. He looks to the community for support and for approval. It is not his aim or desire to be an individual who is not compliant with the goals and objectives of the community in operating his business establishments.

Rebuttal by the Opposition:

Ms. Young: Reiterated the health concern. It is not 100% provable. There is information from the World Health Organization. There is concern that young people in their twenties will be interested in doing this kind of thing. Concern about the transmission of tuberculosis, which is on the rise.

Sammer Karout, 4112 Avalon Drive, Orange, CT. He is the owner of the Olive Tree Restaurant and Hookah Lounge. He has a family and with the economy he looked for another means to provide a decent living for his family. Thought of the Hookah Lounge as a means to generate more income and to provide cultural diversity. Explained that

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the Health Department rejected his application in 2009, stating it was a public nuisance. He appealed this decision within a week. That night an inspection was made by the Health Department, accompanied by the police. He was asked how the hookah was sanitized and Mr. Karout told him how it was done. When asked about the hoses, he said he was getting a delivery of individual hoses and showed the disposable pieces he would be using. He was shut down the next day as a public nuisance. He (Health Dept. officer) came up with different ideas: Tuberculosis, Hepatitis, communicable disease, going on and on. Mr. Karout met with the City Attorney and his assistant. After a couple of months they tried to go again. He said yes and then a few days later said no. So he had to appeal the State Department of Public Health.

This business is cultural between the east and the west. It is ethical and social. It will not harm anyone and he will abide by the laws and regulations of the federal government and the state and local regulations and will not break any laws.

Mr. Karout showed the disposable hoses he will use that are individually packaged, which cost more, but the sanitization of these disposable hoses is more important than the profit.

Mr. Karout presented a petition with 700 signatures in favor of establishing the Hookah Lounge.

Mme. Chair: Could not read all the names on the petition, but read as follows: "To Whom It May Concern: We are in favor of the Olive Tree Hookah Lounge opening at 2007 Bridgeport Avenue, Milford. We believe this will bring additional business to the City of Milford and will continue to add to the diversity of what our city has to offer."

Mr. Liddy: Asked how many nighttime businesses would be open at the same time as the lounge.

Mr. Sulkis: There is a pizza place; a Chinese take-out. The Board will have to make a determination based on the uses that are there, potential uses that could be there. Looking at the site what they have now, based on the testimony, the Board has an easier way to compute what they need in parking. It is a place of public assembly. That would mean they would need 40 parking spaces for that use alone.

Mr. Vetter: Are the parking spaces in the back being used now?

Mr. Sulkis: They are showing them on the site plan as being available. A number of them, 15 or 16, go over the property line into a 12-foot alley/access way that does not belong to the property owner, the City or the property owner on the other side. Usually in the cases when there are accessways or alleyways with no clear ownership and the City does not want it, then they are usually divided among the property owners. Did not know if those parking spaces would be fully on that property.

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Mr. Vetter: Wanted to know if there were actual parking spaces in the back.

Mr. Sulkis: Had not visited the site in some time. When he did see it there had been dumpsters scattered about the back. He did not think all the spaces depicted on the site plan would be usable.

Mr. Liddy: Did drive through the back of the shopping center. There were about 12 spaces with dumpsters spread around. He did not see lights behind the building. He described the back area and how cars would have to maneuver to go in and out.

Mr. Sulkis: That is why it is part of Planning and Zoning's requirements if there is to be parking, it has to be decided what is usable. Also, lighting plans are required. If a third of the parking is behind the building and is usable, then based upon the hours of operation, does a safe condition exist. Is it too dark, if there are lights, do they meet the regulations? That information was not provided by the applicant. He did not want to provide one.

Mr. Scheirer: It was not that the Applicant did not want to provide a lighting survey. He could not find someone who would provide the lighting survey and be willing to draft a proposal at a reasonable cost. The cost was prohibitive.

He added that the concern over the number of vehicles coming onto the property during the off hours may be postulated upon a maximum traffic volume coming into the Hookah Lounge. One of the biggest concerns is to be in compliance with the Fire Marshal's requirements for the City of Milford. This is not going to be a mosh pit where 200 people get together. Far be it from that. The Fire Marshal has made it clear that the occupancy of the premises will be strictly enforced for many reasons, all of which are good reasons.

Mr. Scheirer estimated the volume of traffic in the parking lot generated for the Hookah Lounge would be 20-27 cars, under optimal conditions.

Mr. Liddy: Requested a revised Statement of Use.

Mme. Chair: Agreed with Mr. Liddy. Requested the following be addressed:

1. A ventilation plan
2. Hours of operation.
3. Signage (current), and for the back of the building if parking is to be used there.
4. A lighting plan for the rear of the building.

Mr. Sulkis: Legitimacy of the front parking spaces. Need to see an executed lease from the State and know what the terms are with regard to the length of time.

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Mr. Bender: The applicant does not have the resources of a larger business, such as CVS or Schick. Could the applicant provide something that would satisfy the requirement and be of a lesser cost to him?

Mr. Sulkis: The regulations do not distinguish the size. It is the requirement of a Special Exception or Special Permit. Planning and Zoning must know that what is there is in compliance with the regulations.

Mr. Bender: Is this specifically defined in the regulations?

Mr. Sulkis: Yes.

Mr. Vetter: Thought the landlord might have a photometric survey because it is a shopping center development.

Mr. Scheirer: The landlord has been contacted on many occasions and basically said it is not their problem.

The Chair left the public hearing open to receive the information requested.

3. PROPOSED TEXT AMENDMENT TO ZONING REGULATIONS

Section 4.1.7.3 Fences and Walls

Mme. Chair: This is a text change. It involves the insertion of three items, ***rivers, streams or tidal wetlands***, to the existing regulation governing fences and walls.

Mrs. Harrigan: This is an existing regulation in place. As a result of an application that went before the Zoning Board of Appeals, who wanted to add rivers, streams or tidal wetlands to the existing regulation and that is the only change proposed tonight. The other portions of the regulation remain in place. What is up for discussion is whether the Board feels that rivers, streams or tidal wetlands are adequately addressed in terms of that application. That was an application where there was an applicant on the Housatonic River. The way the prior enforcement officer had instituted the regulation was that the Housatonic River was part of LI Sound, it's brackish, it's tidal marsh land. They had always applied that to be LI Sound. When the variance went before the Zoning Board of Appeals, the ZBA felt differently; that the Housatonic River was a separate entity and that is the reason why the change is proposed this evening.

Mme. Chair: Read a correspondence received via email from Charles and Lily Flannigan, 38 Prospect Street, who explained they could not attend the meeting on Tuesday, however, they have no objection to this expansion of this regulation to include the Wepawaug River area.

Asked if the audience had any questions regarding their individual property that they not speak about that at this time.

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Asked if anyone wished to speak in opposition to the proposed regulation change.

Ben Blake, 5 Anchorage Drive. Here to address the zoning regulation changes that would prohibit fences, shrubs, and walls from properties that abut rivers, streams, and tidal wetlands. Earlier this evening he spoke to someone who reminded him that good fences make good neighbors. Understands that proverb is open to interpretation. Also understands that fences by their nature are divisive, but this particular change to the regulations would prohibit all walls, all fences, all shrubs, regardless of the appropriateness and regardless of what purpose they would serve. There are many circumstances and situations where shrubs, fences and walls serve a legitimate and very important purpose.

Mr. Blake noted the many purposes that fences serve. Most importantly, where properties abut tidal wetlands and streams, fences serve as a barrier of protection for little children who may drown.

He noted as a new parent he spent the last several months baby-proofing his house and although they may not be aesthetically pleasing, they serve the purpose of making sure he does not fall down the stairs and ensure that he does not climb into the fireplace.

Mr. Blake's parents' house is located on a tidal wetland, as well as the Indian and Wepawaug Rivers. This particular property would be affected by this zoning change. He wants to make sure that when he brings his son to his parents' house, it will be safe, because when his son gets old enough to run, he assuredly would run toward the water. Mr. Blake wants to have the opportunity to put a protective barrier up to ensure that his son will not drown. He noted the irony that if he had a pool in his backyard, a fence would be required.

He stated this particular regulation targets properties of people whose homes abut the water and it strikes him as something that is dangerous; that there may be a legitimate purpose behind what is in front of the Board tonight, but the way the proposed regulation is drafted is overly broad and it puts the community in jeopardy.

Mr. Blake asked that the Board vote down this proposal, or withdraw it from the agenda.

Mr. Liddy: Asked how the community is put in jeopardy.

Mr. Blake: Responded, without protective barriers for children you are making it more likely that there are going to be drownings. He cited an example of friends in the family who had twins who lived near the tidal wetlands. As a young child, one of the twins wandered into the water and drowned. This is an instance where fences have their purpose. They are not always divisive in nature. They serve a purpose, as do walls and shrubs.

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John Grant, 11 Ettadore Park. Opposed to the text changes to 4.1.7.3. Barriers have a very good purpose in society and serve as protection for children, pets, wildlife, property, buildings, natural resources. By saying someone cannot have a fence, a wall or any kind of shrubs for protection or barrier, you open the City up for liability if someone gets hurts or property gets destroyed. The regulation does not say anything about fences for construction areas. It just says no fences at all. So, if a construction company is doing any kind of work and the criteria falls within this text regulation, they would not be able to put up a construction fence for protection.

In addition, there are other regulations that exist that conflict with this proposed text change, such as allowing 8 foot fences in certain zones that abut the water.

Not in agreement with no privacy fencing. Privacy fencing has a purpose. Section 5.14.7 for refuse and recycling states that you must have a barrier around your container so it cannot be seen. If such a requirement falls within a waterway area, the fence cannot be erected, but the regulation says you are supposed to have a fence. There are several areas of contradiction within the various sections of the regulations.

Disagrees with making the property owner go before the City Planner and P&Z Board for approval in instances where a fence is required by the State of Connecticut building code. Cannot understand why the homeowner's time and money should be wasted to come before the Board and City Planner for something that is required by the building code.

Mr. Grant noted he had letters from two people who asked him to represent them at tonight's meeting. One from Leonard Hall, residing at 321 Anderson Avenue, who disagreed with the text changes and with other wording within the existing regulation. Another letter was from Attorney Henry Elstein, 1087 Broad Street, submitted a letter that states the proposed regulation cannot be passed at all and the existing regulation needs to be repealed. (Said letters are on file at the Planning and Zoning Office.)

Gina Badalamenti, 20 Bayshore Drive. Waterfront property on the LI Sound. Opposed to the amended language. This regulation was put into effect on April 18, 1997, yet is posted without discuss the grandfather structures that are in existence. As a beachfront property owner she is exposed to continual harassment from neighbors who do not live where she lives and don't pay the taxes that she pays, so that they can come in and enjoy her private property. She has gone to the Planning and Zoning Office, has obtained attorneys to start a civil action against them. The Police Department has been involved. Her civil liberties are being infringed upon and objects to this expanding this to other people who are waterfront property owners. Would like to know the purpose of removing fences. Perhaps a regulation should be considered that will stipulate the height and type of fence that would be appropriate so that one could have private property, privately marked out so that owners could have the quiet enjoyment of their property, without bothering anybody's perception of their view and everyone knows where they could and could not be so that they do not have

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trespassing. Asking the property owners to take down their fences makes the City liable to mitigate the risk of trespassing neighbors.

Ben Lebov, 22 River Edge. [Noted the acoustics of the room are not good. Not sure of what the cause of the extension to the estuaries is.] It should be taken into account there is a fundamental difference in the nature of the estuaries as opposed to the beachfront. The bulk of the property of people who live on estuaries is at the waterside, so if you are asking to take a fence from the back of the house, you are eliminating most of the backyard. Primary concern is safety. Has been living on Gulf Pond for 35 years. There have had a fence which has come in handy. Parents know how children can suddenly disappear. The fence is an added protection. He noted a recent incident in a nearby town where a two year old child got out of the house and drowned in the water behind the house. He noted when he was in Europe he saw incidents where children had access to machinery that could be harmful to them that was not enclosed and said that could never happen in America.

Brian Lema, 17 Maple Street. Appearing on his own behalf as a parent tonight. These proposed changes go well beyond the initial intent of the regulation when it was put into effect. As an attorney in town he represented the matter that is the subject of this proposed change with regard to a dispute over a fence on the Housatonic River. These broad changes go beyond the initial intent of the regulation that was adopted and applied to LI Sound. This regulation essentially prohibits fences on a vast number of properties throughout the community. Looking at a GIS map on the City's website shows all the types of waterways throughout the City. Asked why the board would want to impose additional burdens on homeowners. Why adopt a new regulation that would prohibit not only fences, but stone walls and shrubs, and all the questions that will arise from such regulation enactment. There is no justification to extend the prohibition of fences on Long Island Sound to virtually half the community and affect so many property owners. As a lawyer, he noted it would be a good thing, because it will cause a lot of neighbor disputes and give opportunity for civil litigation. As a citizen he does not think it is a wise decision or from a planning perspective and asked the Board not to adopt it.

Bruce Blake, 5 River Edge. Owns property since 1975 which abuts Gulf Pond. Gulf Pond is a terminus of the Indian River where it mixes with water from LI Sound and other waterways. House is 200 feet from the high tide mark. On three sides most of the abutting properties are separated by fences erected to protect pets, children and to define the property lines. In the years of ownership they have experienced tax increases over and above the typical increases, perhaps because the land is considered waterfront rather than swampland. The fences in place now allow a certain amount of privacy. Also feels if he wants privacy it is within his rights. Why should his property be different from other streets that would not be included in this regulation change. This regulation is too broad to speak to hundreds of properties that are in Milford that are situated on tidal areas, rivers and streams.

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Victor Lamberti, 12 Bayshore Drive. Opposed to the revision because he is opposed to the original statute, which should be amended or repealed. Fences are not the issue about where beachfront property ends. Having no fence does not preclude the owner's right to keep property private and will make confrontations with neighbors more likely. It will increase trespassing and cause more issues with the police. Asked about fences on top of sea walls and fences on decks. Read international proverbs stating the importance of fences between neighbors.

Lynn Swanson, 228 Shadyside Lane. Was very upset about the proposed change as well as the regulation that is in force at this time. Regulation in effect is difficult for the lay person to understand. Has a fence for her garden. If she did not have a fence it would be overrun by neighbors' children and dogs wandering through her property. A homeowner spends years trying to make their landscape and property beautiful. Has shrubs, plants and trees in the low lying area that borders the wetlands and serve an important purpose to protect erosion.

Stan Swanson, 228 Shadyside Lane. There is a sewer line going in the back of the property. The City is going to plant shrubs and plants along the back of his property. Another neighbor is having the City put a fence on the back of his property. How will this affect ...

Mme. Chair: The Board is not discussing individual properties as she mentioned before. Also, construction fencing is covered by another regulation. Discussion will be focused solely on the proposed regulation change.

Asked Mrs. Harrigan for her comments regarding the overwhelming issue, which is safety.

Mrs. Harrigan: The existing regulation does address a couple of properties who asked about sea walls and decks. The fences around inground pools would not be affected. Where fences are required by the building code a fence will be allowed to be put in, the minimum that is required by the building code is the maximum that would be allowed to be installed by the regulation. That is already existing in the regulations and was not proposed to be changed at all. That would also apply to those properties adjacent to rivers, streams and tidal wetlands.

The Board has heard a lot of comments this evening and can talk about whether they feel the insertion of rivers, streams and tidal wetlands is too broad. In looking at the Plan of Conservation and Development, there are specific sections that outline preserving the openness of those greenways and specifically recommend it. Altering the existing language was not proposed tonight, rather to talk about whether or not the Board wants to add those properties adjacent to rivers, streams and tidal wetlands.

Mme. Chair: There were no further comments and the public hearing was closed. She thanked everyone who came down tonight to give the Board their input.

[A recess was taken from 9:40 pm to 9:49 pm]

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D. NEW BUSINESS

4. **254 MELBA STREET (ZONE BD)** – Petition of Greg Davies for a Site Plan Review for sale of alcoholic liquor in a package store with a waiver request from the distance required from a playground on Map 39, Block 542, Parcel 2, of which Melba Realty, LLC is the owner.

Gregory Davies, 64 Sylvan Court. Here to propose for the waiver to 254 Melba Street basically two items. One is the liquor license that the property had for over 50 years when it was the Melba Pharmacy. Mr. Kaufman was the last person to own that permit and a copy is enclosed in the information the board received. The second reason is the ball field that is part of the now defunct Point Beach Elementary School, which is now closed and became part of a condo association. The playground now consists of a neglected basketball court and the remnants of a baseball field. The only thing left there is home plate and the backstop. He has spoken with the City of Milford Recreation Department and they do not use the facilities and they do issue a blanket permit to Little League and to Milford United Soccer. They do not allow any games. One of the reasons is there is no parking and adults cannot watch their children play. Practices are allowed. Milford United Soccer cannot play games because the field is too small and there are no goal posts.

Melba Pharmacy has been closed almost four years. This would be a great opportunity to grow some business in the City. He has grown up in Milford; worked here his whole life and would like to open a small business, as small businesses are the basis for the community.

Mme. Chair: Stated there was a letter from Mr. McCarthy, the recreation director.

Mrs. Harrigan: Mr. Davis summarized his request very clearly. This is a site plan review item which is why it was brought before the Board.

Mr. Vetter: Asked what the total square footage of space in the shopping center?

Mr. Davies: The supermarket is a separate parcel of land, but owned by the same person. The area wants to rent is 3,400 SF.

Mr. Bender: Asked about the list of names and addresses contained in the information he distributed to the Board.

Mr. Davies: Zoning requires that all the parcels of land be listed that are 300 feet from the property. A map is drawn out as to what parcels they actually touch.

He is a wine salesman. He intends this to be a wine shop. He may sell beer and liquor but it will not be a place where you can buy a large format (ie, 40 oz. cans of beer). More of a specialized wine shop with tastings, and a place where people can discuss learn about and enjoy wines.

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Mme. Chair: Asked about Melba Pharmacy's last permit.

Mr. Davies: He spoke to Joseph Kaufman, the last permit owner. His father had applied for and received a liquor permit over 50 years ago when the school was open.

Mr. Vetter: Asked the proximity of the nearest liquor facility.

Mr. Davies: Milford Wines and Spirits, 1.6 miles away. The proposed site meets all the regulations with the exception of the 300 feet, which is now 100 feet.

Mr. Liddy: Asked what "off premise sales" were.

Mr. Davies: When one makes a purchase and walks out with it, as opposed to consuming it on the premises.

Mrs. Patterson: Very happy a business would be going in this area, rather than other projects that have been proposed.

Mme. Chair: The Board is being asked to approve a waiver having to do with 300 feet. Asked if the Board wanted to entertain a motion regarding this application.

Mrs. Patterson: Made a motion to approve 254 Melba Street, the Petition of Greg Davies for a Site Plan Review for sale of alcoholic liquor in a package store with a waiver request from the distance required from a playground on Map 39, Block 542, Parcel 2, of which Melba Realty, LLC is the owner.

Mr. Dickman: Second.

Mr. Vetter: There was a reason for the regulation which keeps liquor stores 300 feet from schools and playgrounds, churches, etc. The fact that the park is not currently used is not a good reason to waive the regulation. To waive this requirement is to say that the regulation is not good at all. The park is not being used now, but could be used. Whether or not the 300 feet is reasonable, is a good question, but the fact is it is a requirement now and he assumes it was created for good reason.

He researched this and found out the purpose was to try and not allow this kind of establishment near places where children would congregate and also to allow the Board the number of these kinds of businesses. Those were the two primary reasons he could find for having this regulation at all. His concern was it is out there, it is 300 feet and 300 feet for a reason and has been on the books for a number of years. It is consistent with many communities throughout the country. Does not think the fact that the park is in disarray is not a reason for him to say it is okay to waive the regulation.

Mr. Davies: The State of Connecticut has done away with all these. The only regulation that they have maintained is that there is one liquor permit to every 2500

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residents of the town. All other regulations, including 1500 feet to the competition have been rescinded. He noted that his competition is 200 feet from a playground that is in use and that has always been there.

Mr. Bender: Noted Mr. Vetter's concern and would feel differently if there was a school operating across the street. This type of establishment, as outlined, would be acceptable to him.

Mr. Liddy: Has seen the ball field in use. Asked Staff if this opened the possibility for other establishments within playground and school areas to make similar requests to waive the regulation.

Mr. Sulkis: All applications for waivers by the Board are on a case by case basis. The Board has looked at removing the distance requirements. The Board may want to bring this more in line with the 21st Century.

Seven members voted in favor of the motion. Mr. Vetter voted against the motion.

5. **30 LAVERY LANE (ZONE RA)** – Petition of William German for a Site Plan Review to begin a farm/nursery with 8 accessory buildings on Map 118, Block 909, Parcel 1G, of which William G. and April German are the owners.

William German, 30 Lavery Lane, Milford. This property is the residual of family farmland that was separated in the 1970s. Built a house on the property and would like to reestablish the land for farming use. Is petitioning for a review of farm plans to reinstate the farm. He obtained approval from the necessary City departments, as well as the Department of Agriculture.

Mrs. Harrigan: Site Plan Review application has met all the setback requirements for all the proposed structures on site, obtained inland-wetlands approval and meets the minimum size requirement for a farm. No waivers are being requested. It is straightforward.

Mme. Chair: It is coming before the Board because of its use as a farm and nursery?

Mrs. Harrigan: Yes.

Mme. Chair: In its report, Inland-Wetlands made a recommendation regarding the nursery area, Lot 1C, and would that be part of any approval?

Mrs. Harrigan: Yes.

Mr. Vetter: In the statement of use there was a staging area between the end of the driveway and somewhere along the middle of the driveway. Asked for an explanation.

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Mr. German: Staging area would be where landscape plants would be put in pots. They will be staged there for wholesale use.

Mr. Vetter: Asked where the exact location would be on the map.

Mr. German: On the right hand side (staging area).

Mr. Liddy: Should the abutters' consent form be signed?

Mrs. Harrigan: That is related to the relocation of a portion of a driveway that Mr. German owned. A portion of the neighbor's driveway was located on Mr. German's property, which had to be relocated. That was coordinated with the Engineering Department/

Mrs. Patterson: How many truck deliveries would be coming to the farm on a daily basis? Would he be selling products?

Mr. German: This will be a hobby farm where he would pick up materials. There would be very little traffic going in and out. He might sell items on a tag sale basis, maybe once or twice a year.

Mr. Vetter: Read the regulations and manure is to be stored 50 feet from the neighbor's property. Asked if that was the reason the manure storage was moved forward.

Mr. German: Yes.

Mrs. Harrigan: Clarified the regulation that it was animal shelter had to be 50 feet off the property line, not manure storage which has to be kept in a water tight pit or chamber.

Mrs. Patterson: Will there be runoff from any of the buildings?

Mr. German: This has been addressed and there is a water control plan.

Mme. Chair: Will Inland Wetlands be keeping an eye on this during construction?

Mrs. Harrigan: Yes.

Mr. Vetter: Made a motion to approve the Petition of William German for a Site Plan Review to begin a farm/nursery with 8 accessory buildings on Map 118, Block 909, Parcel 1G, of which William G. and April German are the owners.

Mr. Mead: Second.

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

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E. PLAN OF CONSERVATION AND DEVELOPMENT

Mr. Bender: Asked Mr. Sulkis if he had the list of completed POCD items, which he had requested previously.

Mr. Sulkis: Said he did not. Will have it for the next meeting.

F. PROPOSED REGULATION CHANGES - Discussion

Sec. 3.1.4.3 Building Height in Residential Zones

Mme. Chair: Mr. Sulkis had added an item that had to do with percentage calculation on the roof which had been distributed to the Board in their packet.

The Board chose not to review this information tonight.

G. LIAISON REPORTS

Mrs. Patterson: Attended the Police Commission meeting. They did some traffic studies in the Devon section to put up some more stop signs because of the flow of traffic in order to slow traffic down close to the waterways. Stated it was a great idea for safety purposes.

H. APPROVAL OF MINUTES – (12/7/10)

Mrs. Patterson: Motion to approve the minutes.

Mr. Vetter: Second.

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

I. CHAIR'S REPORT

Noted the Board received the calendar of meetings for 2011; first meeting to be held on January 4, 2011.

Mr. Dickman noted he changed his home telephone number posted on the City website. The P & Z member list will make this change as well.

Mrs. Patterson made a motion to accept the 2011 calendar of meeting dates as presented.

Mr. Dickman: Second.

All members voted to approve the submitted meeting schedule.

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J. STAFF REPORT – None

Motion to adjourn

Mr. Vetter: Motion to adjourn.

Mr. Mead: Second.

The meeting adjourned at 10:21 p.m.

Phyllis Leggett, Board Clerk