MEMBERS PRESENT: Rich Carey, William Evasick, Howard Haberman, Joseph Tuozzola (Chrmn.)
ALTERNATES PRESENT: John Collins, Tom Nichol
STAFF PRESENT: Kathy Kuchta, Zoning Enforcement Officer; Rose Elliott, Clerk

The meeting was called to order at 7:00 p.m.

A. CONSIDERATION OF AGENDA ITEMS

1. **Alpha Street** (Zone R-18) Stephen W. Studer, attorney, for John P. Horton, appellant, for Milford Heights, LLC, owner – appeal the decision of the City Planner in the interpretation and application of Sections 6.2.1 and 6.2.6 of the Milford Zoning Regulations to Alpha Street as per correspondence dated February 25, 2011. Map 69, Block 711, Parcel 17A.

Withdrawn.

2. **767 East Broadway** (Zone R-5) Stephen W. Studer, attorney, for Irene Buckley & Ann Marie Mockler, owners – request to vary Sec. 4.1.7.3 to permit existing 3' high open, metal fences to remain between the rear wall of the principal dwelling and Long Island Sound. CAM received. Map 22, Block 474, Parcel 28.

Stephen Studer, attorney with Berchem, Moses & Devlin, 75 Broad Street, passed out materials to the Board. He reminded the Board members he was here in February to 1.) appeal the decision of the Zoning Enforcement Officer and 2.) ask for a variance for the same address. Both applications were denied. The fences, erected in 2009, replaced the old fencing there since 1950. They are located on the side property line between the back of the house and Long Island Sound. The new fence is a newer, studier and more attractive modern fence. The owners do not feel this is a new fence and they had the right to upgrade and improve the fence. All the concerns brought up at the February hearing have been addressed. 1.) The DEEP notice of violation has been rescinded and their letter dated January 18, 2011 states that both fences are located above the high tide line and do not require any permits. 2.) The survey used in the first application used older USGS Datum of 1929, while the revised survey used the current NAVD Datum of 1988. There was confusion and doubt about the earlier survey and its accuracy, that has now been cleared. 3.) The front portion of the fence encroached beyond the front property line and that has now been corrected. The hardship is the property is a narrow lot, directly adjacent to a public right-of-way. The nearest cross street, James Street, has over 20 houses on it, whose residents all use the public accessway to the beach. There needs to be a delineation of the public accessway for both the homeowners and the public. The fences provide privacy and security and deters people from using the owners' backyard as beach. People have been dumping trash, using water from the house along with their beach toys and beach chairs. He passed out pictures to the Board showing a portion of the fence which was damaged by a neighbor's deck that was torn loose during storm Irene. Other than that, the fences weathered the storm fairly well. The strict application of Sec. 4.1.7.3 to a 34' wide lot next to a 10' wide public accessway is a hardship that deprives the property owners of the quiet use and enjoyment of their land. He discussed the fence

regulations first enacted in 1991 and what followed in 1997. He noted that while they hoped the Board would grant a variance to allow both the fences to remain, the Board could vote to approve one fence and not the other. The fence on the easterly side, next to the public accessway, is the more critical of the two fences.

Mr. Carey asked Ms. Kuchta why the violation order was sent.
Ms. Kuchta answered the City allows homeowners to maintain their existing fences but doesn't allow a complete replacement. The former fence at this property was completely replaced. The regulation allows existing fences to remain in kind. If part of your fence is taken down, you can keep the same fence and you can repair it but you cannot completely remove it and install a new fence.
Mr. Evasick asked Ms. Kuchta how many accessways there are on the shoreline to which she answered approximately 85 public accessways.
Mr. Evasick asked if there were records on how many fences are on those accessways.
Ms. Kuchta said she did not know.
Mr. Evasick confirmed that fences along the accessways are not looked at any differently than fences outside of the accessways to which Ms. Kuchta said that was correct. He asked if these were deeded accessways or City property.
Ms. Kuchta said the accessways are owned by the City and the City chooses not to maintain fences there.
Atty. Studer said it is an open accessway to all citizens from the State of Connecticut and elsewhere.
Chrmn. Tuozzola noted what has been happening is as fences have been deteriorating through the years, they were not allowed to be rebuilt. This fence was rebuilt with a completely different type of fence. Fences can become projectiles.
Atty. Studer said the pictures show that didn't happen. The fence was knocked down, but it is still on the property. The problem occurred when the neighbor's deck became loose and damaged the fence.
Chrmn. Tuozzola added the City's position on fences is that once they come down, they are not to be rebuilt because the City is trying to eliminate fences up and down the shoreline.
Mr. Collins confirmed the possibility of a compromise of allowing one fence instead of both to which Atty. Studer agreed, restating the easterly fence would be the more critical fence.
Atty. Studer said they take exception to the policy behind the City's adoption of the regulations. They recognize that it is to keep the shoreline open and unemcumbered and that is not a bad thing. This property is unique because of the accessway. That is the basis for their hardship. They have a special set of circumstances which require some physical demarcation of private property from public property.

FAVOR:

Barbara Whitcomb, owner of 741 East Broadway, said the fences have marked the side property lines for years. The fences have been replaced with studier and more attractive fences. They merely prevent people walking down the adjoining public accessway from cutting across their property to access the beach.

Rob Cleveland, 768 East Broadway, lives across the street. The accessway is his view to Long Island Sound and his access to the beach. The new fence is much nicer than the old and you don't even notice it.
Jerry Bencivenga, lives at 27 Cedarhill Road, and is the owner of 772 East Broadway, said he applauds the newer fence and the whole property and added the fence defines where people can walk safely.
George Hammel, 763 East Broadway, said this house has been in their family since 1950. The fence is important for privacy and safety. It's the most attractive fence on the beach. They are asking you to allow them to enjoy the quality of life they've enjoyed for 61 years. It doesn't adversely affect the neighbors.

There being no one to speak in opposition the hearing was closed.

DISCUSSION:

Mr. Evasick noted Milford has a long shoreline and fences are important. He would have hoped when the regulations were created it would have been recognized that accessways are a unique situation. He thought that maybe the motion should be split and to allow the fence to remain on that one side. Mr. Haberman agreed that maybe there should be an exception made for the accessways. Maybe people on the shoreline should be able to replace their fences with nicer, higher quality fences but since that is what the regulations state, he wasn't sure whether the Zoning Board of Appeals was the vehicle to change the regulations. Mr. Carey said he felt a hardship was shown and the Zoning Board of Appeals was in existence to vary a regulation when there's a hardship. He agreed the adjacent owners of an accessway should be allowed to have a fence. He is struggling with the idea that if parts of an existing fence fall down or get old and rickety, those parts can be replaced. However, you can't put up a new fence because we are afraid it would become a projectile in a hurricane. That logic didn't make sense to him as he felt the new fence would be more studier than the old fence. He would be in favor of splitting the variance request.

Mr. Evasick made a motion to split the variance to separate the westerly fence on the neighbor's side and the easterly fence which abuts the accessway with Mr. Carey seconding. He felt there was due cause to allow the fence adjacent to the accessway to control the public's travel down to the beach. The motion failed to carry.

Mr. Haberman made a motion to deny the application in its entirety with Mr. Carey seconding. There was no hardship shown. The motion failed to carry 2-3 with Messrs. Carey and Haberman voting in favor and Messrs. Evasick, Nichol and Tuozzola voting against.

3. **30 Wildwood Avenue** (Zone R-5) Thomas B. Lynch, attorney, for Kenneth & Lisa Lesinsky, owners – appeal the decision of the Zoning Enforcement Officer in her denial of request for lot certification per Sec. 6.4.2 of the Zoning Regulations. Map 12, Block 123, Parcel 10.

Thomas Lynch, attorney with Lynch, Trembicki and Boynton, 63 Cherry Street, passed out paperwork to the Board. His clients have owned the property for several years. On

the site is a 1,600 sq. ft. residence, built in 1920. The property itself consists of three building lots. The lots are legal, non-conforming lots shown on a 1910 subdivision map for Miles Stowe lots on Walnut Beach. The residence is on Wildwood and the two lots are located behind it on Fairwood. Church Street runs the entire length of the property, which is basically a passway. There is nothing more than a lawn there with no permanent structures and no merging of the property. He read from Sec. 6.4.2 of the Zoning Regulations. In July of 2006, Atty. Mager representing the owners, applied to Linda Stock, ZEO, for a certification of the lots. Ms. Stock found the lots to be merged by a pool. In 2007, Atty. Mager sent to Kathy Kuchta, ZEO, an affidavit from tenants stating the pool was a temporary blow-up pool. Ms. Kuchta informed Atty. Mager the lots had been merged. Atty. Lynch said he got involved over the summer, to again pursue an application for certification of the lot. His clients were able to track down the former tenants and get the brochure for the blow-up pool. It was not a permanent structure. The affidavit says the tenants used it once. The brochure says it was a blow-up pool. The lots have not been merged.

OPPOSITION:

Kathy Kuchta, Zoning Enforcement Officer for the City of Milford, said she does many 6.4.2's and researches the land records and websites on the computer. When she receives a 6.4.2 request, an attorney submits an entire packet to her including the original subdivision map, titles to the property and site plan of the proposed house on the lot. This complete packet was submitted by Atty. Mager to Linda Stock in July 2006. She visited the site and found a pool which she felt was not a blow-up pool. On March 31, 2007, another complete packet was received from Atty. Mager for a Sec. 6.4.2 certification request. On April 7, 2011, she made her decision that the lots were merged because of the same reason, the pool. Once she renders her decision, a time limit of fifteen days is given in which to appeal her decision. What Atty. Lynch sent her was a letter saying he was in receipt of a letter she sent to Atty. Mager denying the lot certification. His letter went on to request her to reconsider her position and if no response was received by July 5th, he would assume it to be a denial of his request and file a request to the Zoning Board of Appeals. The appeal period ran from April 7, 2011 to fifteen days later. A new fifteen day appeal period can't be reactivated by a letter asking to her to reconsider her opinion. So because of the fact the fifteen days had already passed, their can be no appeal of her decision, it is too late. When asked, she was told by the City Attorney's office that a request for a reconsideration of a denial, which is filed outside of the appeal period, does not reactivate the appeal period from the original denial.

REBUTTAL:

Atty. Lynch said Ms. Kuchta did not discuss the merits of the presentation. Ms. Stock is not present at this meeting to confirm she saw a pool there in 2007, while he has submitted an affidavit that the tenants have signed indicating what the use was. He researched it within the time frame and asked Ms. Kuchta to reconsider her decision to deny. He submitted additional evidence and that makes it a whole different ballgame. She was basing her decision on a swimming pool. In his letter of June 22, 2011, he submitted the brochure for the pool and asked her to reconsider her decision. The file

is complete. The certification procedure was done. He asked the Board to overturn her decision.

Mr. Nichol said the brochure for the temporary pool that was set up for one and one half days indicates a need for 110 power to use in filtering and a ground fault protector to ensure safety. You are saying it was only set up for one and one half days.
Atty. Lynch said the tenants signed an affidavit.
Chrmn. Tuozzola said the issue seems to be the Zoning Enforcement Officer made her denial on April 7th and the appeal period runs for fifteen days. The additional information was sent on June 22nd, so the request was made beyond the appeal period. Maybe another application should be made before even hearing this tonight.
Atty. Lynch said when he wrote to her on June 22nd, with the additional information, he asked her to reconsider her denial. The regulation mirrors Sec. 83 and 88 of the State Statutes for filing an appeal in the Superior Court within fifteen days. The ZEO makes a decision and if he wants to appeal it to the Superior Court, he would have to do it within fifteen days. No appeal was taken to court. In June, when they received the brochure, they submitted it with a letter asking her to reconsider her decision. When he hadn't heard from her within fifteen days after that, they filed their application.

The hearing was closed.

DISCUSSION:

Mr. Carey said there is no evidence that shows there was a pool there so there was no merger. Mr. Evasick said there are two issues: not responding in a timely manner and whether the lots have been merged. Mr. Haberman said you can't discuss whether the lots have been merged or not until you settle whether it is within the appeal period or not. If it's outside the appeal period, we can't even begin to discuss whether it's merged or not. Mr. Evasick asked if there had been any discussion with the City Attorney's office. He didn't feel comfortable making a decision without that opinion. Mr. Haberman said the ZEO said the City Attorney had given an opinion, whether that opinion would change he wasn't sure. There would be no harm in asking again. Mr. Carey agreed.

Mr. Carey made a motion to table this item until further clarification from the City Attorney's office with Mr. Evasick seconding. The motion carried unanimously with Messrs. Evasick, Haberman, Carey, Nichol and Tuozzola voting.

4. **25 Springdale Street** (Zone R-7.5) Timothy Folsom, appellant, Edward H. & Cheryl Edelmann, owners – appeal the decision of the Zoning Enforcement Officer regarding Sec. 6.4.2 Use of Non-Conforming Lots When Applicants or Predecessor Own/Owned Adjacent Land. Map 29, Block 540, portion of Parcel 6.

Timothy Folsom, 11 Mills Avenue, passed out paperwork to the Board and said his appeal is based on Sec. 6.4.2 (3A) & (3B) where the lot has been utilized in conjunction with the adjacent property thus constituting a merger. Vacant Lot #399, merged with the adjacent property, Lots #398, #397 and #396, in 1966 when the house at 25 Springdale Street hooked up to the city of Milford sewer system. The lateral line for the

sewer crosses from Lot #398 through the easterly edge of Lot #399 before running northerly to Sprindale Street. He referenced the case of Laurel Beach vs. the Zoning Board of Appeals of the City of Milford et al. He noted an affidavit included in the paperwork, from the property owner of record at the time the sewer waste line was installed, Alan Jepson, evidencing that his intent and conduct regarding Lot #399, was that it was part of a single parcel, known as 25 Springdale Street. Had the owner wished to keep the lot separate from the adjacent lots, they could have brought the waste line through Lot #398 to the sewer main or had an easement written into the title allowing the waste line egress through Lot #399 to the sewer main. Neither of which was done, because the property owner never differentiated Lot #399 from the adjacent Lots #396, #397 and #398. The sewer is a non-temporary utilization of the property. One reason why Ms. Kuchta felt the sewer waste line did not merge the lots was the sewer line could be moved from Lot #399 and over to the adjacent Lot #398, which is directly opposite of what Section 6.4.2 (3B)(c) states. He was told by Ms. Kuchta that utilities are exempt from creating mergers, however, he could not find where this was stated in the regulations, and if they are exempt, a sewer lateral is not a utility. Sec. 6.4.2 (3A) states … the lot has never been utilized in conjunction with the adjacent property so that the identity of the lot in question has not merged with the adjacent property. He noted a probate certificate dated July 19, 1940 bequething Lots #397 & #398 from John R. VanDine to estate of Jessie E. VanDine along with Lot #399. On April 9, 1941, an additional probate certificate bequethes all 3 lots to Raymond Johnson. Both certificates are dated subsequent to Milford adopting the regulations in 1930. They show Lot #399's identity was merged with Lots #397 & #398. On December 22, 1945, the property was sold along with a fourth lot, #396 and these four lots have remained together since and are known as 25 Springdale Street. He quoted other cases in his appeal and referenced other items passed out to the Board members such as the City of Milford's 1980 revaluation card, assignment of mortgage, State of CT Judgement lien, Internal Revenue paperwork, etc. Lastly, all 5 required items were not addressed by the attorney, Joseph J. Mager, Jr., when he wrote …the applicant represents information and belief the property has not been used in conjunction with the adjacent property, not he himself as the attorney; along with not giving an opinion in an accompanying Certificate of Title.

OPPOSED:

Kathleen Kuchta, Zoning Enforcement Officer, City of Milford, said this particular Sec. 6.4.2 certification was difficult because she found some errors on the title. A sewer easement wasn't shown and had to be researched in the sewer department and added to the plan by the surveyor. She carefully researches each and every application. They are small lots. This lot was created in 1912 by a subdivision and is allowed to remain as it was then, provided it hasn't been merged. When Mr. Folsom first came into the office, he discussed with her a rope tied between the trees for a dog run as a merger of the property. On the second visit, a cable line through the air to the house. On the third visit, she told him she had discovered an easement and had informed the surveyor it needed to be shown on the plan. The Engineering Dept., along with a private contractor, put a camera in to determine where the sewer line was located. She spoke with the former Zoning Enforcement Officer, Linda Stock, who said that because easements are granted all over the City to pass over properties to connect to

sewer lines, they never consider that as a merger of a property. Mr. Jepson's letter said he did not intend for this lot to be used for other purposes, but he also never merged it. There were no barns or sheds or brick barbeques or pools. The City Attorney's office did not feel that something that could be relocated or be granted an easement would merge the property. Attorney Mager's non-committal letter as to whether or not he felt the lot was never used in conjunction with the adjacent lot, is the same standard verbiage used in all the attorney's letters of request for certification. What merges a lot is the actual use of the land by the occupants for parking, driveways, sheds or an encroaching deck attached to #25 Springdale Street. All of the non-conforming lots have one address. This particular property on Springdale Street is made up of four parcels, three are permanently merged together, one has never been merged. Even though they are getting one tax bill and getting taxed as one property, once that fourth lot is certified, it would get its own identity and address. She based her decision on her research along with her conversations with the Engineering Dept., the City Attorney's office, the former Zoning Enforcement Officer, the fact that easements are granted easily and the sewer lines can be relocated. This lot has not been merged.

Joseph Gelb, 28 Lawrence Avenue, said he opposed the appeal for all the reasons stated by the Zoning Enforcement Officer. He is working with the owners to get the lot approved.

REBUTTAL:

Mr. Folsom stated on August 9, 2011, he confirmed with the Engineering Dept. that the waste line from the residence did run through part of Lot #399 to the street. He met with Ms. Kuchta, who said Codespoti said a waste line would not constitute a merger and she had checked with the City Attorney and Linda Stock and both agreed. He appreciated she made herself available to the wisdom of the City Attorney and her predecessor, however, the decision was her and hers alone to make. Especially, when one member of the group, Codespoti, is the person who drew up the plan.

The hearing was closed.

DISCUSSION:

Mr. Carey agreed with the Zoning Enforcement Officer that a sewer line does not constitute a merger.

Mr. Carey made a motion to uphold the decision of the ZEO with Mr. Nichol seconding. The motion carried unanimously with Messrs. Evasick, Carey, Haberman, Nichol and Tuozzola voting.

Ms. Kuchta stated that she did not consult with Codespoti for his opinion. She told Mr. Folsom she was waiting for a new map from Mr. Codespoti in order to show where the sewer line and the easement were going to be.

5. **30 Soundview Avenue** (Zone R-5) John Torres, appellant, for Leonard Wisniewski, owner – request to vary Sec. 3.1.4.1 side yard setback to 6.3' in lieu of 10' required to rebuild 70% of existing residence according to Sec. 6.2.6. Vary Sec. 5.1.4, two minimum space requirement for parking. CAM received. Map 49, Block 732, Parcel 6.

APPLICANT NOT PRESENT.

Several neighbors in attendance voiced their displeasure and frustration in their waiting for hours for the item to be heard and the applicant not showing up.

6. **69 Beach Avenue** (Zone R-7.5) Max S. Case, attorney, for Henry B. & Amy B. Goldstein, owners – appeal the decision of the Zoning Enforcement Officer's order dated August 2, 2011 concerning alleged fences at 69 Beach Avenue, Milford in violation of Sec. 4.1.7.3 of the Milford Zoning Regulations. Map 71, Block 755, Parcel 5.

Max Case, attorney, 57 Plains Road, passed out paperwork to the Board. The Goldsteins purchased the property in 2006. The seawall is well within the boundary property line. The ownership of seawalls, especially in the Borough of Woodmont, has been a contentious issue for some time. It culminated in the Supreme Court decision of Mihalczo v. Borough of Woodmont, where it was found the seawall along the portion of Beach Avenue, was owned by the respective property owners from their high water mark. The Borough of Woodmont did not have an easement or prescriptive right or way over that seawall. The seawall is clearly owned by his clients and it was important for them to prevent people from traversing the seawall, which had been found to be dangerous and hazardous by a judge. They decided to put up two gates in April of 2011. He described what both gates were comprised of: 2 posts, 2 latches, 2 hinges and a notice stating private property, no trespassing. The Zoning Enforcement Officer has misconstrued Sec. 4.1.7.3, which clearly prohibits fences, walls and shrub rows between the mean high water mark and the applicable wall of the principal structure. Sec. 11.2 of the Zoning Regulations provides twenty-three pages of definitions. Fences, walls and shrub rows are not part of the definitions. You then check the CT General Statutes or Webster's Dictionary. He read the definition from the dictionary for a fence, a wall and a gate. If the Planning & Zoning Board wanted to restrict gates in this area, it could have easily amended Sec. 4.1.7.3 in the regulations to include gates. He submitted two letters of support for the gates from neighbors.

Chrmn. Tuozzola asked if anyone could use this walkway to which Atty. Case said no, it is private property.
Chrmn. Tuozzola asked how many properties are along the seawall.
Atty. Case said about eight or nine, from 89 Beach Avenue to 69 Beach Avenue.
Mr. Carey said the seawall was used as a sidewalk for many years. He added he was part of the lawsuit, when he first moved into the Borough, which they lost in court.
Mr. Evasick asked if continuous gates could be run down to the high water mark to which Atty. Case noted as this regulation is written, that is possible. He added it is easy enough to amend the regulations to remedy that.
Mr. Collins asked if there were any other gates or fences on this seawall?
Atty. Case said there are other fences, but they predate the zoning regulations.

OPPOSITION:

Kathleen Kuchta, Zoning Enforcement Officer, City of Milford, read the fence regulation into the record. The regulation was created to protect the property, to lower property damage during storm events. Irene was a tropical storm, not a hurricane and it removed one section of this fence gate along with a chunk of the seawall. Had it been a hurricane, where might this heavy, metal fence have ended up. When she was at the property, it looked like a gate, but it did not open. Whether you want to call it a gate or a fence, a gate is a section of fence. It has been installed between the rear of the house and the high water mark and are prohibited. Sec. 11.2 does not define the word fence, because we know what a fence is. She read into the record the definition of a fence.

Mr. Haberman confirmed a gate was a fence.
Ms. Kuchta said it looks like a fence, it has latches, although it did not open the day she was there.
Mr. Evasick said according to the regulations, a gate is not explicitly described.
Ms. Kuchta said she believes that is because a gate is a section of fence and meets the description of a fence.

REBUTTAL:

Atty. Case said this gate has an upper and lower latch, it is a gate. It would be very easy for the Planning & Zoning Board to simply add no fences, including gates, walls and shrubs, into the regulations. Everyone would then know what they were dealing with.

The hearing was closed.

DISCUSSION:

Mr. Evasick said he has a problem with someone coming into the Planning and Zoning office to comment the gate was locked, when there was a sign saying private property, no trespassing. Why would someone need to go through that gate, whether it's locked or unlocked. Regardless of the vote this evening, we need to make a request of the Planning and Zoning Board to rewrite that regulation.

Mr. Evasick made a motion to approve the appeal with Mr. Carey seconding. Whether it is a fence or not is confusing and somewhat vague. The motion failed to carry 2-3 with Messrs. Evasick and Carey voting with the motion and Messrs. Haberman, Nichol and Tuozzola voting against.

The Board took a recess at 9:39 p.m. and returned at 9:45 p.m.

7. **990 Naugatuck Avenue** (Zone HDD) Daniel A. Silver, attorney, for Recycling, Inc. owner - appeal the decision of the Assistant City Planner's Cease & Desist order dated August 10, 2011. Map 40, Block 300, Parcel 2.

Charles Willinger, attorney, Willinger, Willinger & Bucci, Bridgeport, said Recycling, Inc. is owned by Darlene Chapdelaine, who is the sole shareholder, president and director. They are here because of two cease and desist letters dated August 11, 2011 and August 12, 2011, from the Assistant City Planner, Emmeline Harrigan. They are not sure if the August 12th letter supercedes the August 11th letter.

Chrmn. Tuozzola asked Ms. Harrigan to come up and clarify to which Ms. Harrigan approached the podium and said both letters were sent, they could appeal both.

Atty. Willinger said they are appealing both. It seems the cease and desist letter on August 12, 2011 was sent for 1.) Signs. Three sections of the regulations were noted; 2.) Use. Sec. 3.12.1 and 3.12.11, seem to say the use is permitted but they need a coastal site plan review. The August 11, 2011 cease and desist letter was sent and cites 3.12.2.5, which indicates the use is not prohibited and may be permitted by Special Exception. He was not sure what they needed as the letters were very confusing. Their position is they need neither site plan nor special exception and the use is not prohibited. 3.) Coastal site plan. The ACP's position is they have not applied for coastal site plan review approval. 4.) Zoning permit. The Zoning Enforcement Officer needs to approve of the permit. He passed out exhibit books to the Board. There is a copy of an affidavit (tab 1) from Joseph Barrett saying his family purchased this property in 1955 and the Housatonic Terminal Corporation operated on the site, 24 hours a day, 7 days a week. It was a heavy industrial use called salvage at that time, now called recycling, with an average of 150 trucks a day going in and out of the site. Mr. Barrett never intended to abandon the use on that site. He spoke regarding an aerial photo from 1956, (tab 2) which looks pretty much the way it does today. The Barrett family operated on this site until 1995. During the time period from 1995 to 2004, they attempted to market the property for sale and it was marketed as a recycling facility which was its highest and best use. In 2004, they entered into a lease with a company, Associated Recycling, which was a non-licensed recycling facility with scores of roll-off containers. In 2008, Darlene and Recycling Inc., entered into an agreement with the Barrrett family to continue a recycling use. She went to the DEP and on December 15, 2008, (tab 3) received a permit to operate a limited processing facility – to receive, store and process only recyclable material… expiring on August 15, 2010. This permit was renewed on December 1, 2010, (tab 4) to expire on August 15, 2015. Before the DEP can issue a permit, (pg. 11 of 42) they are required to find this activity is consistent with all applicable goals and policies and will not cause adverse impact to coastal resources. Their site plan (pg. 14 of 42) has also been approved by the DEP. Operating conditions (pg. 17 of 42) state they need to have a sign; which was one of the items in Ms. Harrigan's cease and desist letter. With this permit in hand, they opened for business on April 20, 2011, doing about the same thing that was done for the past 55 years. A DEP Site Plan is required (tab 5) and was approved. Atty. Dan Silver, attorney, filed a declaratory judgement action in Milford Superior Court to determine if the City zoning authorities had jurisdiction over the use and operation of this facility. The City said they have zoning jurisdiction, notwithstanding what the DEP was doing. Atty. Silver took an appeal (tab 6) and the court decision was clear. On November 2, 2010, the judge held the City was wrong and the City's regulations have no jurisdiction and was preempted by the DEP. The legislature has demonstrated its

intent to occupy the entire field of regulation. The DEP has sole jurisdiction of the site and not local zoning. The City's position is, even though the DEP is involved in recycling facilities (pg. 16), the DEP is just the minimum standards and the local authorities have the right to regulate over and above the DEP. The court said (pg 17) this was not correct and not what the law was meant to do. There is one area where the City can regulate solid waste and that is in the location of a landfill. The court said the legislature (pg 18) has demonstrated an intent to occupy, to the exclusion of local zoning authority, the entire field. Prior to October 1, 2006, (tab 8), the local zoning authorities had the right to regulate solid waste disposal. That was repealed and became solely a DEP function. There were two signs, one in the city right of way, which was removed. The second sign was on the fence and they propose to remove it and (tab 11) install a 10'x10' sign at the entrance. If the City wants the sign in another location, they would listen. The state says you are required to file a coastal site plan review only when you are filing another application. They are not filing for any application. It is clear the Board must overrule the decision of the ACP based upon the law of preemption.

Darlene Chapdelaine, passed out paperwork to the Board. She said there is another site she would like the commission to look at. It's a solid waste facility, Waste Conversions Technology, which recently submitted an application to DEP for a 450% increase in all types of solid waste. They have never been issued a cease and desist order and have no sign permits.
Chrmn. Tuozzola questioned the comparison being made to which Ms. Chapdelaine said she was setting the record because part of her argument is selective enforcement. In response to one of the Board members saying they didn't want to hear the comparison, Ms. Chapdelaine said she would end the discussion and make it part of her presentation as far as the discriminatory behavior of the zoning enforcement officer and all the evidence in here for such.

Atty. Willinger said they are aware of the tremendous amount of publicity, political pressure and neighbor pressure, but they have faith the Board would decide the appeal on the law. He spoke of the need for recycling and submitted the Milford Mirror, dated June 30, 2011, showing where the second lead story is an article regarding the beginning of the new, single stream recycling program. Ironically, the lead story is an article regarding the City's opposition to their recycling facility. Recycling Inc. would be a stellar corporate citizen and would employ in their expanded facility, up to 200 people.

OPPOSITION:

Emmeline Harrigan, Assistant City Planner, said there were two signs installed on this location. One was in the public right-of-way. A separate order was sent by the Engineering Dept. requiring its removal. That sign was then relocated onto private property, not property owned by Recycling Inc. A second order was sent for that sign and it was removed. One sign remains located on a fence which per zoning regulations, is prohibited. All signs require zoning approval, a zoning permit and a building permit. The signs need to be inspected and installed in a manner that is safe and proper. Local jurisdiction matters. The local authorities have the right to say what

the size of the sign can be and what the required setbacks are. The state permit leaves it up to the local jurisdiction to establish what is appropriate, given the zone and the local municipality's requirements for signage. As outlined in her cease and desist order, the general permit is specific. It says, provided it's consistent with the Coastal Area Management, not that it's been reviewed and has been found to be consistent. It is leading you towards another jurisdiction to review that Coastal Site Plan application. Per State Statute Sec. 22a-105, that jurisdiction lies with the municipality. Exemptions that are allowed for coastal site plan applications include very minor things like sheds, and signs. The proposed use of this site does not fall under that exemption. Specifically, uses that are proposed within the coastal boundary area can be exempted except when they are directly adjacent to coastal waters, as this site is. Therefore, the City of Milford, as the coastal municipality, has jurisdiction to review this application. The Coastal Management Act is designed specifically to protect the coastal resources and promote water dependant uses on sites directly water adjacent. The City argues the use that was previously there was discontinued. It was replaced by other uses that we have listed in our permit history for this property, including a canine training facility and other uses we have issued permits for. Once replaced, the coastal management act does not want to see tank farms on this site. The Gulf oil tank farm that was there, wouldn't be allowed to be there today. We still believe local jurisdiction applies to this application. There is one zoning enforcement officer working for the City with a population of 54,000, and 18,000 residential parcels, let alone the commercial parcels. She has to act on any complaints she receives. Since January, she has issued 102 violations for signs alone.

Mathew Woods, trial counsel for the City of Milford, told the Board the context of the judge's decision is important (tab 6), because it was issued, as a result of a lawsuit that Recycling Inc. and other parties brought against the City of Milford and other parties. The judge's decision is inextricably tied to the allegations of the complaint. The footnote of the judge's decision (pg 2 of tab 6) says on June 16, 2009, the planning and zoning board amended Sec. 3.12.5.3 which prohibits various activities, including the activities that Recycling Inc. seeks to do on the property. It also says that resultantly, the plaintiff's proposed use is prohibited at its property. In its complaint, the plaintiff seeks a declaratory judgement to determine whether the local zoning regulations of the City of Milford relating to the plaintiff's proposed use, as a solid waste facility, are preempted by state statutes in that the legislature has demonstrated its intent to occupy the entire field of regulations in the area of solid waste management. What Recycling Inc. was asking the judge to do was decide whether or not the zoning regulation dealing with the plaintiff's use of its property was preempted by the State Statute. The motion for summary judgement (pg 3) that Recycling Inc. filed in this case, was seeking a declaration from this court that General Statutes Sec. 22a-207, preempts Sec. 3.12.5.3 of the Milford Zoning Regulations, which deals with the prohibited uses including what Recycling, Inc. plans to do with this property. The judge analyzed the law of preemption (pg 5), analyzed the history of the statute and eventually concluded (pg 18) the plaintiff's request for a declaration of its rights and priviledges in the affirmative (the plaintiff seeks a declaratory judgement to determine whether the local zoning regulations of the City of Milford relating to the plaintiff's proposed use as a solid waste facility as defined, etc. are preempted, pg 2). The judge determined since the plaintiff's proposed use was not a land fill, that the State Statute did in fact, preempt

local zoning regulations pertaining to use. He does not believe that a fair reading of the case indicates that all local regulations are preempted. It's the City Attorney's position that the decision does not hold that the State Statute preempts all zoning - it preempts zoning with regard to use. For example, if the zoning regulation said a particular piece of property was zoned residential and the use of recycling was specifically prohibited and if somehow the applicant got a DEP permit that allowed a recycling facility, that would preempt or trump the local prohibition against such use. So the decision and the statute do not preempt local zoning regulations with regard to side yard setbacks, building height, signage, lot coverage, site plan requirement, and coastal area management site plan approved by the zoning board. None of that was found to be preemptive in Judge Hiller's decision. In your consideration of the appeal tonight, consider it on its merits and don't be sidetracked by the claim that you have no alternative but to sustain the appeal because of Judge Hiller's decision. That is not what the decision says.

REBUTTAL:

Atty. Willinger said Ms. Harrigan didn't cite any laws or statutes or Judge Hiller's decision. The general permit (tab 4) says a site plan cannot be approved by the DEP, for use and operation, unless there are no CAM issues. The use on the property is the same use you saw in the 1956 aerial and is the same use Mr. Barrett described in his affidavit. It clearly says (pg 18, tab 6) the legislature has demonstrated an intent to occupy to the exclusion of local authority, the entire field of regulation, pertaining to solid waste management…save for the specific exception created … for the land disposal of solid waste.

FAVOR:

Bob Joy, 795 ½ East Broadway, 2nd district alderman, said he is in support of the enforcement actions taken by the City of Milford regarding signage and coastal area management requirements for this address. The same regulations that apply to every business in the City should apply to Recycling Inc. He fully supports recycling and reusing materials in properly permitted facilities. He does not support the activity at this site. He urged the Board to uphold the enforcement actions.

REBUTTAL:

Atty. Willinger said the prior tenant was shut down because it did not have a DEP permit. They have a DEP permit. They don't need one from P&Z.

The hearing was closed.

DISCUSSION:

Mr. Carey said you can read the decision one way or the other way, but he would have to agree with the City Attorney. It has to do with the use. They should not be exempt from obtaining permits for signs or CAM approval.

Mr. Carey made a motion to deny the appeal and uphold the decision of the Assistant City Planner with Mr. Nichol seconding. The motion carried unanimously Messrs. Evasick, Carey, Haberman, Nichol and Tuozzola voting.

8. **679 New Haven Avenue cor. Morris Lane** (Zone R-10) Fortunato C. Fallanca, owner – request to vary Sec. 4.1.2 and Sec. 4.1.7.1 to allow 6 foot high fence on property line (.6' into ROW on 1 corner) in lieu of 25' required along Morris Lane to remain. CAM required. Map 68, Block 712, Parcel 168.

Fortunato C. Fallanca, 679 New Haven Avenue, said he is asking to be allowed to keep a 6' high vinyl fence. There had been a 6' high stockade fence on his property for over 20 years and there was never a problem. When it fell into disrepair they replaced it with the current one. As of next month, the current fence will have been there for one year. He is asking for a variance for a medical hardship, as noted in the letter in the file from a doctor for one of his family members. He told the Board of his interpretation of the fence regulation and how he believed his fence is located in his rear yard.
Chrmn. Tuozzola said a corner lot has two front yards. He referenced the letter in the file and asked how old Heather was.
Mr. Fallanca answered thirty-five years old. She has a fear of her surroundings without any protection. She suffers from post traumatic stress.
Chrmn. Tuozzola noted there are a couple of options, including reducing the height of the fence or moving the fence in more.
Mr. Fallanca told the Board he had the fence erected professionally and the fence people assured him they had done work like this before and it would not be a problem as long as it was not over 6' in height. There was no intention to break any laws.
Mr. Collins confirmed the vinyl fence was put in the same footprint as the old fence.
Mr. Fallanca said yes.
Mr. Evasick suggested working with the zoning office to figure out a way to put a fence there to ensure the quality of life for his daughter but within the required setback requirements of the City.
Mr. Fallanca said according to the regulation, he has two front yards and two side yards and wondered where his backyard was.
Ms. Kuchta agreed with the applicant that the regulation is confusing because you can't have two front yards, two side yards and a rear yard. She added the applicant has a peculiarly shaped lot and a land hardship that he didn't state.

There being no one to speak in favor or opposition the hearing was closed.

DISCUSSION:

Mr. Collins noted the fence was installed by a professional. He saw a serious hardship for this property. Mr. Carey said the shape of the lot and the fact that it is a corner lot is the hardship. You have the right to enjoy privacy in your home and he can't have it. Mr. Evasick said there could be a precedent set here. He recalled an issue with a fence on a corner lot by Platt Tech that had to be removed. Chrmn. Tuozzola said this fence is on a corner lot but it is not on the corner. It doesn't block anyone's views of traffic. The letter in the file would be the only reason we would make an exception for it.

Mr. Carey made a motion to approve with Mr. Haberman seconding. The motion carried 4-1 with Messrs. Carey, Haberman, Nichol and Tuozzola voting in favor and Mr. Evasick voting against.

9. **12 Beach Avenue** (R-5) Brett Kippur, 12 Beach Avenue, owner – request to vary Sec. 3.1.4.1 to 6.7' in lieu of 20' required for rear yard setback; vary Sec. 3.1.4.1 to 4.1' in lieu of 10' required for side yard setback for garage; vary Sec. 3.1.4.1 to 4.2' in lieu of 5' required for side yard setback to enclose existing porch for foyer. CAM required. Map 82, Block 785, Parcel 2.

Brett Kippur and Tracey Kippur, 12 Beach Avenue, said there is a huge parking problem on their street. There is no parking on the left hand side of Beach Avenue and it's very difficult to find parking spaces. Currently they have a one car garage with a single car driveway. Without moving a vehicle into the street, they cannot bring a car into the driveway. The proposed two car garage would allow them to keep two cars in the garage and guests could park in the driveway. The attached breezeway would keep them safe from the elements and would blend in with the neighborhood. He submitted nine letters in favor of the application.
Ms. Kippur said the second variance is for the existing porch. The house was built in 1930 and she believed that possibly an error was made when the house was built as it was erected at 4.2' from the property line. They are not asking to enlarge it – just to enclose it.
Mr. Evasick asked if the whole top of the garage is proposed to be a deck to which Ms. Kippur said yes. However, they were not opposed to closing it in, although it would block the neighbor to the rear's view.
Chrmn. Tuozzola noted the variance for the porch didn't seem like a problem because it was already there but the size of the garage is 28' deep.
Mr. Carey said all the structures in the area are all non-conforming using all the land they can.
Mr. Kippur said the hardship is the lack of parking and they have slipped and fallen on ice in the past.
Mr. Evasick they could get what they want if the breezeway is not attached, but if it is, they would have to look at cutting the depth of the garage and possibly moving the driveway over.
Mr. Carey said this Board is here to grant variances but if there is a way you can construct the garage without a variance then that's what you need to do.

There being no one to speak in opposition the hearing was closed.

OPPOSED:

Jeff Schpero, 6 Swift Street and 11 Beach Avenue, said he didn't believe any attempt was made to contact him nor did he receive a letter from the Kippurs, other than the meeting notice. He objects to the size of the garage and having the deck on top would create noise.
Joe Sastre, 19 Hawley Avenue, said he lives directly behind the Kippurs. He is opposed because the garage is 10.4' away currently and they want to reduce it to 6.7'.

His taxes have doubled because he has quarter views of the water. His views would now be blocked. He has lived there for 43 years and would never think of building a garage so big that would use up all the land.

Kevin Cleary, 10 Beach Avenue, said their property is 10.4' off the fence. They are currently in the process of building a house in which they can retire in. He is opposed to the size of the garage and if the deck is built, it would be 14' away from their house at a height that would be even with his daughter's bedroom window. There are issues of privacy. They purposely designed their own house to be compliant in all respects. He submitted photos to the Board.

Leslie Cleary, 10 Beach Avenue, said they were one of the neighbors not consulted which raises her suspicions about the project. Ms. Kippur also mentioned to one neighbor that the deck would be for when they entertained. Sometimes they like to have 20 to 30 people over. She doesn't want people looking over onto their property. The Kippurs are new to the neighborhood and she felt they were taking advantage and expected everyone else to adjust to suit them and that it is not fair.

REBUTTAL:

Ms. Kippur said they did try to meet with all the neighbors. They didn't try to circumvent anyone. They are asking for everything upfront so everyone knows where they stand all at once, not piecemeal.

The hearing was closed.

DISCUSSION:

Mr. Carey made a motion to split the variance with Mr. Nichol seconding. He said he didn't have a problem with the porch, just the garage. They could build the garage without a variance. The motion carried unanimously with Messrs. Evasick, Carey, Haberman, Nichol and Tuozzola voting in favor.

Mr. Carey made a motion to approve the porch with Mr. Haberman seconding. The motion carried unanimously with Messrs. Evasick, Carey, Haberman, Nichol and Tuozzola voting.

Mr. Carey made a motion to deny the garage with Mr. Evasick seconding because the garage could be built without a variance. The motion carried unanimously with Messrs. Evasick, Carey, Haberman, Nichol and Tuozzola voting.

10. **274 Broadway cor. Grant Street** (R-7.5) Carmine Perri, attorney, for P.J. Moore, owner – request to vary Sec. 3.1.4.1 side yard setback to 1.9' in lieu of 5' for deck and shower; vary Sec. 3.1.4.1 front yard setback to 7.8' in lieu of 20' required for 2nd floor balcony. CAM received. Map 9, Block 130, Parcel 15.

Carmine Perri, attorney, Bishop, Jackson & Kelly, 472 Wheelers Farms Road, submitted paperwork to the Board and said the strict application of the regulations on this narrow lot would result in an exceptional difficulty. The hardship is a narrow, pre-existing, non-conforming corner lot. He reminded the Board he was here three months

ago. They have resolved the issues with the neighbors at 272 Broadway regarding the deck. They are reducing impervious surfaces as stating in the comprehensive plan of the City of Milford and is compatible with the surrounding neighborhood. The first variance is for the balcony. They have shortened the length and sq. footage by 40 sq. ft. The second variance is for a side shower and platform deck to step into the shower. Some of the Board members were concerned the platform deck was beyond the width of the house and they have now redesigned it to make it flush.

Chrmn. Tuozzola asked if he has the neighbors' approval in writing to which Atty. Perri said he has emails from them and they are not at the meeting this evening.
Mr. Evasick commended the applicant for the changes they made.

There being no one to speak in favor or opposition the hearing was closed.

DISCUSSION:

Mr. Haberman said the applicant has made all the changes suggested by the Board and he had no problem with it. Chrmn. Tuozzola said he had a problem with the shower. Mr. Haberman said the concern last time was with the step up for the shower and they've fixed that. Mr. Evasick said he didn't have a problem with it.

Mr. Evasick made a motion to approve with Mr. Carey seconding. The changes were made from the last meeting and the differences have been worked out with the neighbors. The motion carried 4-1 with Messrs. Evasick, Carey, Haberman and Nichol voting in favor and Chrmn. Tuozzola voting against.

11. **254 Melba Street** (Zone BD) Kevin J. Curseaden, attorney, for Greg Davies, appellant, for Melba Realty, LLC, owner – request to vary Sec. 5.5.1.2 Liquor permit location, from 300' to 80' to allow liquor store. CAM required. Map 39, Block 542, Parcel 2.

Kevin Curseaden, attorney, 26 Cherry Street, said this property is the old Melba Pharmacy. Paperwork was passed out to the Board. The Zoning Board of Appeals granted a variance in 1968 to allow for a liquor permit for the pharmacy to sell beer & liquor. Melba Pharmacy was in existence and selling liquor in a zone, where the sale of liquor was not allowed and while Pt. Beach School was located across the street. The pharmacy continued operating until it closed down and became vacant around 2007. The other businesses in the shopping center are a laundromat and bakery. This past year, the Planning and Zoning Board approved the location for the liquor store along with the waiver for the Section of the Regulations they are before the Board for this evening. The P & Z approval was appealed by a group of package store owners saying it is the job of the Zoning Board of Appeals to waive regulations. They are here this evening trying to resolve that issue by asking for the ZBA to approve the variance. One hardship is the proximity to the claimed public park. The Milford Zoning Regulations are lacking in what a public park or playground is. The City owns the grassy, vacant land across the street. When the condos were developed, the City gave the developer the right of first refusal to purchase and develop this land. Another hardship is the uniqueness of the property. This property and the property next to it

where Beachside is located, are the only two properties out of the six BD zones, comprising thirty properties in the City, that are located within 300' of a claimed public park or playground. These hardships and the long standing use of alcohol sales on the property when the school was still open are reasons this variance should be granted.

Greg Davies, passed out paperwork to the Board and said he is trying to breathe some life into what was Melba Pharmacy by opening a wine shop. The reason for the variance is the field across the street is within the 300' requirement. He met in November with Mr. McCarthy who was not opposed to the liquor store because of the lack of use of the field and its neglect. The property is overgrown and practices cannot be held there. Mr. McCarthy did issue Little League a blanket permit to have overflow practices there. When there are no other fields available, they can have their practice at this field. The same is true for Milford United Youth Soccer. Games are also not held there because there is no parking. He met with Paul Piscitelli for his position on the issue, who met with the Mayor and they both came back and said they would uphold Mr. McCarthy's decision. The pharmacy used to have a full liquor, wine and beer permit while the school was there and there were no issues then. He plans to have no issues now. The pharmacy was granted a variance in 1968. He was granted a waiver in 2010. He has a petition with 546 signatures from people in the neighborhood that want this. The community is begging for it and he has received overwhelming support. It's a derelict store, complete with graffiti and busted windows. His store wouldl create new jobs for 6-8 people and possibly up to 10 people in the future.

Chrmn. Tuozzola confirmed the Planning & Zoning Board approved it but it is under appeal to which Mr. Davies said the appeal is to challenge his waiver saying he should have gotten a variance instead. He would like to receive approval so he could bring a small business into the community.
Mr. Haberman asked if just wine would be sold.
Mr. Davies said no, it would be a full liquor permit, although he wouldn't sell cigarettes or lotto. If you were not twenty-one, there would be no reason for you to come into the store.
Atty. Curseaden said while they are hoping they are successful in the appeal, there is a chance they might not be. That is why obtaining this variance this evening would resolve that matter.

FAVOR:

Lorene Stapleton, 44 Summit Avenue, said she along with her partner Kathy Klein, moved their businesses, Sweet Designs and Kathy's Cookies to the plaza, about one and ½ years ago. A few months later, the laundromat reopened. The traffic and the community are starting to come back. They are in favor of the store and feel it would add to the vibrancy of the whole area.
Judy Nunes, 292 Melba Street, said she was in support. Since Melba Pharmacy closed, she has seen the early signs of blight in that building. She would love to see and support another business in the plaza. She can count on one hand the number of days per year that field is used and that it shouldn't represent a barrier to this project.

John Nevin, 292 Melba Street, said he has seen the vacant store and feels this project is a positive thing that would bring good growth to the area.
Derek Wilson, 14 Coolridge Road, said he is in favor of the application. It has been a shame that the site has been empty for so long. It would be a nice addition to the business that are currently there.
Donald Curry, 19 Dixon Street, said he drives by this property every day and thinks it would be a great place for a package store.
Peter Bogucki, 26 Fenway Street North, wholeheartedly supports any small business that's locally owned and family run attempting to open in Milford. Especially this one as he every reason to believe it would be well run and an asset to that location and Milford as well.
Lindsay King, 66 Stone Manor Drive, previously lived in Woodmont and felt this project would benefit the community and be a liquor store with a decent wine selection so he didn't have to drive to Orange.
Phil Vetro, 10 Carmen Road, said he has lived in the area for forty years and is in support of the application. As a former fireman, he is not in favor of any empty businesses. The business would be great for the community, the shopping center and for the neighbors as well.
Kathy Klein, of Kathy's Cookies, had her business on River Street, and when her lease was up, she saw this empty storefront and took a leap of faith and moved her business here. Her business is mostly wholesale but to her surprise, there isn't a Saturday that she can leave that store before 7 p.m. There isn't a person that comes into her store that is not in favor of the liquor store and this man who, in this economic climate, is willing to take a leap of faith like she did.
Atty. Curseaden submitted letters of support from two people who had to leave the meeting due to the late hour.

OPPOSED:

Stephen Studer, 75 Broad Street, attorney with Berchem, Moses & Devlin, for Scott Griffin, 71 Hawley Avenue, Heidi Stanislowski and Ed Sherman, 56 Orland Street. He submitted paperwork to the Board. Despite all the wonderful accolades of Mr. Davies and his proposed store, the Board cannot approve this request because there is no legal hardship. The regulation provides that liquor should not be sold within 300'of a park or playground. Proximity is not a hardship. It is the purpose behind the regulation that you can agree or disagree with, but it is what it is. The fact that this parcel is one of only two in the Business District is irrelevant and is not a hardship. The regulation applies to all properties in the City of Milford within 300' of a public park or playground, regardless of the zone. The "claimed" public park or playground is not a hardship. It is clearly a public park or playground. It is shown on the Milford website as the Pt. Beach Playground with basketball facilities. It's been used on a continuous basis by the Milford United Soccer and Milford International Little League, for different purposes as well as by the youth in the neighborhood. He read the dictionary's definition of a park and playground into the record. In 2006, a gentleman named Anthony Dula, wrote to the Planning and Zoning office expressing an interest in opening a package store here and inquired whether there would be a problem with its location to the park or playground. Then Assistant City Planner, Peter Crabtree, responded saying "…he has verified the presence of a bona fide playground across the street…. If you are looking

to open a proposed package store here, you would need to get a variance, otherwise, it is not allowed." His client, Mr. Griffin, spoke with the new head of the recreation dept, Paul Piscitelli, who confirmed the status of this area as a permitted playground. The Board must find a legal hardship. It needs to be something which is peculiar to the site in question that does not apply to land or buildings in the district. The prohibition applies equally to all the properties in the district. Denying this application would not deprive the owner of reasonable use of his property. A myriad of other uses could be located here. The variance granted for the pharmacy is not relevant. The pharmacy use was discontinued. In 1968, that section of the regulations, Sec. 5.5.1.2, did not exist, so there was no issue of whether or not it was too close to a park. Economic consequences are not a hardship. There are other people that can and will use the property for a permitted use and there are a number of permitted uses. Mr. McCarthy's opinion is irrelevant to the issue of whether or not the regulation applies to this property. He has no doubt that Mr. Davies has good intentions when he says he would not sell cigarettes or lotto, but you can't base a variance on that - that could change tomorrow.

REBUTTAL:

Atty. Curseaden said the only two people in opposition are either liquor permit holders or liquor store owners. The only reason they have the right to appeal the Planning and Zoning Board approval was due to the fact there is an old state law that says any citizen in a town, can appeal the decision of a board regarding the location of a liquor application. The pharmacy use has not been abandoned. This property is one of only two properties in BD zones in the City that are across the street from this playground.

Chrmn. Tuozzola asked when the Planning and Zoning Board approved this to which Atty. Curseaden said December 21, 2010.
Chrmn. Tuozzola asked if it were in court now.
Atty. Curseaden said yes, they have a hearing in October. Their concern is the issue raised about the Planning and Zoning Board not having the authority to grant a waiver. It might be fatal to them.

The hearing was closed.

DISCUSSION:

Mr. Evasick said he was concerned about the court proceedings. He didn't feel that he was prepared to vote until after the court proceedings. Chrmn. Tuozzola didn't think they should override the Planning and Zoning ruling. Mr. Haberman said he agreed with Mr. Evasick, they should wait until the court process concluded. Mr. Evasick noted the variance could be voted on or postponed. He suggested it be postponed. Ms. Kuchta said there were 65 days in which to hold the hearing and 35 days to vote on it. It can only be postponed until the next meeting and it may take some time in the court system. You can vote to approve or deny it without predjudice with a motion or you could table it to the next meeting or ask for more information.

Mr. Carey made a motion to deny without prejudice with Mr. Evasick seconding. The reason is the need for more information and the applicant can come back after the court date. The motion carried unanimously with Messrs. Evasick, Carey, Haberman, Nichol and Tuozzola voting.

B. TABLED ITEMS
C. OLD BUSINESS
D. NEW BUSINESS

Chrmn. Tuozzola said he would like to begin the meetings with the Pledge of Allegiance. It would get the audience's attention as to the start of the meeting. He proposed this practice begin at the October meeting. The proposal was agreed on by all the members.

E. STAFF UPDATE

Chrmn. Tuozzola noted Mr. Haberman and himself would not be at the October meeting. Ms. Kuchta reminded the other Board members if they were unable to attend the October meeting, it was imperative they call Rose and let her know. There would only be 4 members at the meeting which means an application could only be approved with a unanimous vote. Chrmn. Tuozzola noted the applicants should be made aware of that fact when they come in the office to apply.

F. ACCEPTANCE OF MINUTES FROM AUGUST 9, 2011 HEARING
The minutes were accepted unanimously.

G. ACCEPTANCE OF APPLICATIONS FOR OCTOBER 11, 2011 HEARING

The meeting was adjourned at 12:54 p.m.

Attest:

Rose M. Elliott
Clerk ZBA