

**Town of Milton
Planning & Zoning Committee
Special Meeting
January 23, 2007
8:00 P.M**

Members Present:

Linda Rogers	Dean Sherman	Michael Filicko
Ginny Weeks	Louise Frey	Gene Steele
Richard Greig	Carol Bruce	

Others Present:

Bob Kerr	John Brady	Robin Davis
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Public Hearing

1. An application of Mulberry Street properties for special permitted use to permit operating a restaurant at 122 Mulberry Street further identified by Sussex County Tax Map and Parcel 235-14-19-106. This property is located within the town center zoning district.

Linda Rogers: Is there anyone present on behalf of this application? Please state your name and identify yourself for the record, please.

Scott Pierce on behalf of the Iguana Grill; and I am Andrew Rucci, Iguana Grill.

Linda Rogers: You just basically want to open it back up as a restaurant.

Applicant: Absolutely.

Linda Rogers: Do you have anything else you would like to add to that?

Applicant: I don't know if anyone's been at the Rehoboth location, but it's basically going to be the same menu...burgers, quesadillas, a lot of basic food. We plan on putting a deck on the outside to obviously optimize the beautiful view that's out there on Wagamon's Pond. Besides that, we're just looking to enhance the downtown area of Milton.

Linda Rogers: Does anyone have any comments or questions they'd like to make? Do you want to state your name for the record, please?

Audience (Melissa Jane Donovan Burke): I would like to know your plans for usage of the deck and the gazebo.

Applicant: Basically, the deck is going to be an outside area for primarily dining. There will be small area, there on the board is a picture of it, that we're planning a small bar to perhaps hold about six people, nothing that would be extravagant; it would just complement the outside area mainly for the people who are sitting outside to have a nearby place to grab a drink or so. We're not looking at anything major; it's basically just to complement the outside area to give people who are enjoying food outside another option. Especially on warm weather days that we have in the spring and fall around here, it's nice to be able to eat outside and enjoy the view.

Linda Rogers: Does anyone else have any questions?

Audience (Mary Van House): I live on Lake Drive and I, for one, am very pleased that you're going to work on that property, but I do have a couple of concerns. Do you plan on having live music or amplified music out on the deck? With us having just six houses on that street, anything there is going to come right across the pond at us. So I have a concern about that, and then I have a question. I don't know who would answer this. There is a parking lot there, I know, but if the parking lot is full, I would be concerned that people would be trying to park along our street there; and there's no real access on the roadway there, and people would end up parking on our grass. We own the land across from our houses, so I was wondering how you were going to handle that. I have an issue with that.

Linda Rogers: How many parking spaces were provided?

Applicant: Our spot can handle 30 cars, and we were planning that after those 30 spaces were filled that people would use the town area right across from the library, plus on the other side of the dam. We plan on utilizing both parking lots that the town already has in the town center area, plus the 30 spots that we have designated on the property that belongs to the Mulberry Street properties. Plus, on the street, directly in front of the restaurant, there are six designated spots that were cut into the sidewalk right there. I don't think parking on Lake Drive is going to be an issue. As far as the music goes, we do plan on having live music inside; at this time, we don't plan on having any music on the deck other than a stereo system with low music that will pump some music to that area, not loud. If there was music on the outside, it would definitely be during the daytime and something that would be acoustical, that would just complement people who are dining. When people are eating, you don't want them to be offended by the sound, so if they were 15-30 feet away, obviously we wouldn't want people 200-300 feet away to be offended noise-wise; we definitely wouldn't want diners to be offended by a loud sound.

Linda Rogers: Does anyone else have any other comments or questions?

Audience: I just wanted to let you know that I personally take issue very much with this concept of outdoor music, and I know you mean well when you say "low", but it comes across this area just like church bells, vehemently. And I don't want to be forced to have to listen to what you choose to play daily, and not be able to get away from it. I spent a great deal of money to move back into my home and live in the quiet, peaceful town of Milton. I'm enjoying having you come here, but I hope that you don't bring something that imposes on the people who live on the street there.

Applicant: We are looking to be a part of this community. We are not trying to be against anyone in the community. As far as the music goes, with any restaurant that you enter, there's light music that's playing, whether it's inside or outside, and that's the kind of music that we're talking about. We're not talking about putting fans out on the deck, and blowing out the neighborhood or anything along those lines. We just want a nice atmosphere while people are dining, nothing loud or offensive. And if it is and you're hearing it, and it bothers you, please step up and speak to us. We can tone it down. We're not bad people and trying to stir up animosity.

Audience: No, I don't think you are. But I don't think everyone's aware that when they do something like that, other people are forced to live with it, and you don't have much control over getting it turned down.

Applicant: I do understand and am aware of how sound carries over the water, and I lived in front of a lake for many years and so feel your pain in that. We're going to encourage you to say if it's offensive, and most of it will be inside. We're open to having you come and say, this is too loud, give us input, and not feel that this isn't what we expected after attending the zoning meeting.

Linda Rogers: Does anyone else have any comments or questions?

Louise Frey: I have a few questions. The lighting on the deck, it's going to be shaded like you see in the drawing, that the lamps are shaded. Is there going to be any overspill onto the residential area with those lights?

Applicant: All the lighting on the deck would be geared out toward the parking lot and toward the dam. We're not planning on having anything else except for what already exists. There won't be any lighting that heads up towards the residential area at all.

Louise Frey: And there is one light in the parking lot that's burned out, you know that, correct? And that will be fixed?

Applicant: Yes.

Louise Frey: And in the parking lot, you're also using the parking on parcel 138? Is that going to be striped?

Applicant: We're going to bring someone in to give us an idea on how to maximize or to figure out the best possible situation for that lot. We don't want it to be chaotic. Your question is the overspill onto Mulberry Street. No, we're going to bring someone in that's an expert to give us the best setup.

Louise Frey: And what about handicapped parking?

Applicant: We plan on handicapped parking being along the front. We plan on looking out on Wagamon's Pond being at the front door. We plan on having people, when they come from the driveway or parking lot, to go toward the front door to enter. So we encourage that, and we have to talk to someone in town about...to put those 5 or 6 spots in the front that are cut out to have at least 2 or 3 of them handicapped accessible.

Louise Frey: And the ramp that's right there to go in as access?

Applicant: Yes. There won't be any entrances, except for fire codes, from the parking lot into the restaurant. We are going to be guiding everyone through the front door, at least that's our plan, with the possible handicapped places directly in front of the front door.

Louise Frey: And that sandwich board sign that's existing now, do you plan to leave that there?

Applicant: That's gone. The only reason it's there is because it already existed. The deck will be over that. There'll be some small signs on each side that will fit the code.

Linda Rogers: Does anyone else have any other questions?

Ginny Weeks: Quick clarification. So you mean that you need a little indentation in the sidewalk for your on-street parking. That's what you're suggesting for the handicapped.

Applicant: We would like to make at least two or three spots as handicapped-accessible. If we need more, we would gladly put more inside the parking lot. We just felt because of the proximity to the front door, they would be the most realistic spots for the handicapped. That's where our ramp's going to be also, so it only makes sense for them to be right in front.

Ginny Weeks: Where's the dumpster going to be? The one behind the building...where are you planning to put it?

Applicant: I would like it behind the building...I'm not certain we show on that, the back portion from looking from Body's would probably be about 6 feet high, it will be covered as far as aesthetic views.

Ginny Weeks: So as far as the fence, are you planning to run it along the lot line with Bodie's? Besides that, will the dumpster be enclosed?

Applicant: It would be separate receptacles and they would be enclosed within that fence.

Ginny Weeks: Will they be enclosed on all four sides, is what I'm asking, in the event of overspill, etc.

Applicant: There are a couple of different ways to deal with dumpsters. You can have a huge dumpster, which we learned with Rehoboth is very problematic as far as odor goes, so we're bringing the same concept over from there, is that we'll have about 10 or 12 smaller receptacles just like your own. This cuts down on a lot of the odor, and stuff sitting there for long periods of time, and they also close. We'll probably just put about 10-12 behind the fence.

Ginny Weeks: But, people coming into the parking lot would be able to see them.

Applicant: No, that would be closed off.

Ginny Weeks: Because you know we have a little bit of a problem over at Irish Eyes with spillage; theirs is fenced in, but stuff seems to leak out onto the brick walkway and such. I'd like to see that prevented as much as possible.

Linda Rogers: Does anyone else have any questions?

Michael Filicko: Gentlemen, I am familiar with your restaurant in Rehoboth, and it's a very nice establishment, but I do empathize with the citizens here. I would like you to guarantee them that they would not be able to hear the music. Could you do that?

Applicant: Could we guarantee...are you talking about the inside music or the stereo music outside?

Michael Filicko: The outside music.

Applicant: We can guarantee that we will keep it down low, but I don't know how good people's hearing is...we're not looking to be a party place.

Michael Filicko: Yes, I know that, but as these people are citizens, as the lady has said, she doesn't want to hear it, and she shouldn't have to. It's as if someone had a barking dog in the neighborhood.

Applicant: I understand, and if there was an issue, she can call us and we'll turn it down than what it already is. We'll work with you.

Michael Filicko: Ma'am, is that sufficient for you?

Audience: If they're willing to work with me, but I'm not so sure...I love to sit on my porch in the summer. Am I going to have to listen to what's going on in my neighborhood?

Michael Filicko: Is it far enough away. I would think it would be far enough away that if you're playing dinner music that people on Lake Drive would not have to hear it.

Applicant: Yes, that's our intent. Granted, noises do carry. I've grown up in the area, southern Delaware, and I know that on open fields and lakes, sometimes sounds on a clear night carry. But, yes, if there's an issue with the noise, please do call us and we'll turn it down.

Michael Filicko: And this also depends on which way the wind's blowing.

Applicant: Sure, I can tell you just from the Rehoboth location that we keep our outside porch area at a certain level. Many times, people will call me and ask to turn it down; I'll also get calls that ask us to turn it up. We'll have it at a reasonable level, and this will not be a problem or an issue, because I deal with it all the time in Rehoboth, and within 20 minutes the problem's resolved. We have people who live only a few blocks away that complain that it's always an issue with other establishments. We're here to make things work. And I can say that being at the Rehoboth location for approximately ten years, we have never had a person to complain about it being too loud. I understand Rehoboth is slightly different from Milton, but there are still several residential people on the street where we are, and it has never been an issue. If you go over to Maryland Avenue, you'll have many people who complain about the music at the Moon or certain other places, and we've never had that. We let our menu and atmosphere dictate what kind of place we are. I usually don't see entertainment being a problem with us.

Ginny Weeks: What kind of music are you going to have inside the establishment?

Applicant: I've talked to a few people, acoustic-wise, and it wouldn't be an every weekend kind of thing. We're looking at occasionally, maybe once or twice month. We're not an entertainment kind of establishment. We do like to offer a nice atmosphere, an enjoyable place to go, a place to get good food...that's where we're coming from.

Ginny Weeks: This is not an attack. This is just trying to gather information. I'm personally delighted to see you come.

Applicant: I hire all the entertainment for the Rehoboth establishment.

Ginny Weeks: My concern is that I do not believe that building to be very soundproof if you were to have a band in there with amplifiers, and such.

Applicant: We're looking at acoustic sets. First of all, the music would be located within the existing bar area, which is not very big to begin with, so we're not going to get any big bands in there. Being that I hired people for the Rehoboth location, which, if any of you have been there, is very small, so we only are familiar small-time bands; and the feedback I'm getting from you is great that there's not a need to get any bigger because obviously it's going to offend people as far as the sound, etc. We're going to limit our entertainment to a certain level, a certain number of people...

Ginny Weeks: Earlier you stated that if there were music outside, if you had a stereo outside, it would be during the daytime. What would be the hour of cutoff?

Applicant: I would say about 9:00 P.M.

Ginny Weeks: Okay, so it goes into the evening more than daytime.

Applicant: Yes, it would be like a radio, not at a high decibel.

Ginny Weeks: What would you say the decibel would be?

Applicant: Depends on when those laws were written. I've seen some Rehoboth laws that were written in the forties that if a milk truck went by, lots of bottles would crack. I can't answer that specifically, but I would want the feedback from the residents. You know you're not attacking us, and I want positive feedback. We want people to say, you're doing this right, you're doing that right...that's great, it's comfortable, we can deal with that...I think it's a give-and-take; I know it's a great setting, very picturesque, we want to see a place that does well there, I think it's a win-win situation.

Carol Bruce: I have a question. I think I'm overlooking a piece...the 30 parking spaces seems like more than could actually fit in there, with the decking you're proposing and so I have a question about something you need to see is a sketch of how those...

Bob Kerr: Yes. There's no parking shown on the plans that were submitted, or the number of spaces that are provided. The existing building under the revised zoning ordinance would require 87 spaces. They don't say how many square feet are required. The deck appears to be about 1400 square feet, so that would be another 14 parking places, or potentially 100 places could be needed. There should be a plan showing how many are on site so that you can determine whether you wish to waive that requirement for on-site, which you're allowed to do in the town center, and how many parking places there are in the general area.

Carol Bruce: And, the other question I had in terms of actually not being able to see the parking: I wonder if there's any way to put in handicap places near the front door without having that parking has to basically back out on the road to pull out, which doesn't seem very safe.

Applicant: This area along Mulberry Street is kind of cut out... (demonstration on the drawing showing parking spots, etc.) This would be, starting here, probably 60-70 feet which would encompass...this is the proposed ramp...these spots here would access that ramp. We would like to put as many handicapped spots in front to be closer to that ramp.

Carol Bruce: So overall what I'm saying is that we need a little more defined work on how the parking would go in there, and I'm thrilled to see you come to town, and thrilled to see anybody using that building sitting there, and I'm super thrilled to see a deck going on,

Applicant: Well, we did get rid of those windows that had BB gun holes in them...I don't know if anyone's noticed that so far... The architectural drawings are slightly misleading in the fact that that property is actually two lots, and the drawings of the building are actually only showing on one lot. There's a second lot that's almost of equal size next to it where the parking would be located, and that's not showing in that lot drawing; the survey is right next to it to show the actual size. The decking is not on the survey line, it only comes to that corner line right there (demonstration of the lines on the drawing) All that excess is parking area.

Carol Bruce: I know from Norma's and everything, there were never any 30 cars crunched in there.

Applicant: Are you saying more, or...

Carol Bruce: Fewer. I'm sure more could be crunched in, and I just need to know that Bob's okay with the parking...

Applicant: I think that was just an estimate that the landlord gave us; once we hire a professional who says you can fit 22 and we have our 5 or 6 in the front and then hopefully, and we can always tell people when they come in, please park right in town center, and enjoy Milton.

Linda Rogers: Does anyone have any additional questions?

Ginny Weeks: What is the square footage of the deck? It was not supplied to us.

Applicant: I believe it's 30' by 30' with the leg that reaches along the front, so...I'm trying to think with this section along the front, probably 1,000 square feet in total.

Ginny Weeks: And the inside? We have no dimensions here at all.

Applicant: The inside's 2600 square feet overall. It's a 28' by 28' dining room, and also 19' by 31' bar area which has been there forever, totaling probably around 90 people on the inside maximum; outside, 50 people maximum. Total would be 140 people, but that is a large amount of people, and those are codes that are set by and approved as Mulberry

Street Café as 95 seats for the inside, and 60 additional on the outside according to the drawing.

Ginny Weeks: So you're saying that the total footage is 3600 square feet?

Applicant: Correct, I would say yes, not far from that.

Gene Steele: And your lease does include both lots?

Applicant: Correct.

Gene Steele: And they can't be separated? And the property owner can't sell that parking lot?

Applicant: As long as we're under a lease, the entire property is leased to us for the term of the lease.

Linda Rogers: Does anyone else have any questions? Please state your name for the record.

Audience (Susanne Thurman): I also live on Lake Drive and we want to welcome you, and it sounds like you're trying to be good neighbors; but I still have a concern with the sound level on the outside deck. Because water amplifies sound 5-10 times, it's going to be much different from the sound carrying in Rehoboth, I was wondering if it could be a compromise to not have music on the deck whereas you are having music inside. In addition, just the sound of up to 50 people on the deck, that's going to be an increase in noise level. While we're used to just the birds and the occasional car, that's going to be a change to our lifestyle. Obviously, we live here because of that lifestyle. And I don't want to have to keep calling you either to ask you to turn it down. That's my question.

Applicant: So, you're asking us if we will say right now that we will have no music on the deck. I can't say that right now.

Linda Rogers: Mr. Brady, do you have a comment?

John Brady: I'm just reminding the members of the public that when you make your comment, you're actually talking to the commission. The commission is the one that asks questions at public hearings, technically. Madame Chair, for purpose of the public hearing and establish proper record that's been alluded to: words such as bar area, small bar on the deck, but I have not heard anything articulated as to whether or not alcoholic beverages would be served. In addition you may want to get, for the record, the exact operating hours...are they going to be open 24 hours a day, are they going to be open 6:00 A.M. to 11:00 P.M., the hours for operation on the deck, pursuant to the chapters that you were acting under tonight, including parking, including the town center, including the preliminary site plan...so you have the proper information in the public hearing in order to make a record in case anyone takes exception to your decisions tonight. And you also have the right to put any conditions that are legitimately related to the evidence that you received in the public hearing.

Linda Rogers: So, what hours are you going to be open?

Applicant: As an establishment on the whole, we'll be open 11:00 A.M. to 1:00 A.M. I must say that, even in Rehoboth which is a much bigger epicenter for summer tourism and people hanging out late-night, I bartend there, Scott's bartended there forever, many nights, even on weekends, we are done by 11-11:30 P.M.; and people go elsewhere. We've always been known as a popular bar/restaurant until for the hours between 11:00 A.M. and 9:00 or 10:00 P.M. and then people start to filter out. But we always put our hours at 1:00 A.M. and that kind of dictates that. But I can say, as far as a sound issue, if we didn't have sound, and I'm not even saying loud sound, on our porch, I would daresay

people would be asking, “Where is the music?” and I’m not talking about loud music. I’m talking about casual, quiet, background music that people are accustomed to when they go out to dinner. I can’t sit here and say we’re not going to have music on the outside. I can guarantee that it’s not going to be offensive to a majority of people who are local residents. If we didn’t have any music, most of our customers would be asking for music.

Linda Rogers: Does anyone have any additional questions or something new to offer?

Bernice Edwards: On the plans, is that your service bar that’s going to be on the outside deck.

Ginny Weeks: Can I clarify that please? Did you not say that you would have people gathering at that bar? I believe that earlier you said you would have a bar for about 6-7 people. Will drinks and such be being made at that bar?

Applicant: Yes, pending approval.

Ginny Weeks: Would that be a wet bar?

Applicant: No, we would not be looking to run water or have drainage of water out to that bar. It would totally be bottle or can-served. We choose not to get into an issue of extra sewage or drainage into and from that area.

Michael Filicko: As Mr. Brady has asked, it is a full alcohol establishment, meaning spirits as well as beer and wine?

Applicant: Yes, that’s in the area. We are in the process of applying for a transfer of the liquor license that was existent for the Mulberry Street Café, and we would then apply for an additional license.

Bob Kerr: If I could correct something I said before, I said that 86-87 parking spaces were required for the existing building, and I read the area of the entire parcel, not the area of the building, so it’s 2900 square feet of the existing building. That would be 29 spaces; it one space per 100 square feet of building.

Linda Rogers: Does anyone else have any new questions or new information?

Audience (Sarah Burnham): I live on the corner of Lake Drive. I was wondering, would you be running the music until 1:00 A.M.?

Applicant: No, on the outside, if we had live entertainment it would be on the inside, and sometimes it does go to 1:00 A.M. and that would be unusual. I’ve done it many times in Rehoboth where I’ve had police come by and walk down Baltimore Avenue and say, “You need to tell your musicians to tone it down.” So if the case that it was too loud one night, I would encourage the police to let me know as far as the decibel is concerned. As a community standpoint, if someone is not happy with it, I would gladly comply. That is a rare occurrence in Rehoboth.

Audience (Sarah Burnham): And I was concerned about parking on my grass.

Applicant: Oh, you can make a little money off that.

Linda Rogers: Does anyone have any new or different questions to ask? Is there anymore information you need to obtain from the applicant? If not, I entertain a motion to close the hearing on the restaurant portion of the application.

Ginny Weeks: Motion to close the public hearing on this application.

Bernice Edwards: Second.

Linda Rogers: We have a motion and second. All in favor –“Aye”. Opposed – none.

2. An application from Mulberry Street Properties requesting preliminary site plan approval for construction on exterior dining deck and covered gazebo at the same location.

Linda Rogers: You've already indicated that there's going to be a deck that will seat approximately 60 people, correct? Does anyone else have any questions that you feel haven't been answered?

“”: I have a memorandum that I often do for you. I can either pass it out now or when you go to the business portion of the meeting. What is your pleasure?

(Memos were passed out)

“”: The first item, I think, has already been covered, that the property is in the town center district. It was a former restaurant and became nonconforming when the town center zoning district was established; and then, the fact that it's been closed for over a year is the reason for the first part of the hearing. A major portion of this site is within the 100-year flood plain, and the town ordinance does have things that must be addressed for the deck as part of that: that it does not impede the flow of flood waters, and that it be built to the standards of Chapter 22 of the town code and FEMA regulations. Many of the items that are required for preliminary site plan have not been provided, such as: the size of the building, the size of the lots, and the number of parking places, the data column of what's being provided. Other things that should be added to the site plan included things to be discussed: the fencing, the landscaping, and the signage, the location of dumpsters, and all of those types of items, and also exactly where the 100-year flood plain line is. There's no place shown for loading or unloading. I assume it will be in the back, but nothing details that on the drawings, the existing and proposed elevations. This lot is non-conforming in size. It did exist when the zoning ordinance was created, but the zoning ordinance requires 100' depth to the lot. This lot existed prior to that, but I wanted you to be aware that was a requirement. The freezer in the back, which is existing, appears to be closer than 10 feet to the property line, and there is a 10 foot setback on the back property line. The side and front had zero setback requirements under the town center ordinance. They show landscaping to be along the deck in the front of the property but no real details on the landscaping or landscaping on any other portion of the property, or any fencing that was discussed earlier along the north or east property lines to shield the back of the building, which looks like the back of a restaurant; how you as the commission would like to see it look to the adjoining areas to the north and east. Lighting is shown to be along the edge of the deck, but there're no details on the type of lighting or the foot candles, or the intensity of the lighting, how it will shine out. Would it cast light out across the lake or will it be a direct lighting just on the deck? The seating is shown for an additional 60 on the deck based on 35 gallons per day; that would require an additional 9 EDUs for water and sewer. As we all know, the town has a shortage of sewer capacity, and whether that capacity is available needs to be discussed with Council and that would be a decision of whether they want to allow the additional EDUs to be used, whether the remaining capacity of the treatment plant could be allocated for this use or whether there would have to be limit of the number of seats or a time limit as to when those seats could be used.

“”: I would like to say regarding that, the 60 that's shown on that. Remember, it's probably going to be a seven-month outside deck. This winter was a little different, but

we're talking about November through February that the deck is going to be basically barren. So, during those months, think about music, noise, and also capacity with the gallons for the system in town. We're now only talking probably 6 ½ to 7 months of the year regarding the outside deck.

“”: The EDU issue though is really concerned about the peak day. The treatment plant, both the water system and the sewage system have to be able to handle the peak flow basically with everyone discharging it at full capacity. I guess it's not an issue provided that there is an agreement that the two parcels remain under the same joint ownership. The gate actually coming off the deck actually swings into the other parcel. Typically, if that lot were to be sold or could be sold, basically the gate could open and bang into an adjoining building. It probably is not an issue based on what was discussed this evening, but it is a potential problem.

“”: Does anyone else have any questions?

“”: This is not going to be a popular question, but with all of that missing, why is this before us? If this is so incomplete an application, it's not fair to those gentlemen, and it's not fair to us. Why is this here if we don't have this information?

“”: I can explain a little bit. I know what has happened in the past and I'm saying I know we're trying to correct what's happened in the past. This application as you're seeing it has come before the previous Board basically the same way. It came before tonight as what it has been in the past. Many times in the past, the Board has given preliminary approval as long as all the information is put on the final. That's why the information is probably the same as what it was as the last time it was applied. I'm not saying it makes sense....

“”: I understand that's how it was in the past, but I assume Attorney Brady would suggest, also, that we should not be approving something or plans we haven't seen, or that are going to come up, or going to be submitted. We should be approving on what is before us and enters into the record.

“”: This application was received in Town Hall during the week between Christmas and New Year's. That was the week that Robin was on vacation. It was accepted by a town employee and was told that it would be on the next scheduled meeting of Planning and Zoning. When I was given all the information, we have requirements of "Notice" letters that have to be mailed out. Apparently, the notices went out because we have members of the public here tonight. But there're certain "Notice" letters that have to go out by distance. "Notice" letters could not have been mailed out by the time this was originally set. So I directed that last week's meeting be cancelled after consulting with the Chair and had it rescheduled for a meeting here tonight. I get the packets; Mr. Kerr gets the packets; we do our review. What we came up with was, as of January 1, 2007 we're trying to be stricter, by giving notice that you need to have all this information or else it'll be delayed another month. But to be fair to the applicants, they weren't told this when they brought it in. It was received while Robin was away, and to quote Jim Nabors, "Surprise, surprise, surprise!" Surprise is exactly what Robin found on his desk when he got back from his vacation, and we had made representations that this would be heard in January. So, yes, your concerns have been discussed and we are trying to implement them to make sure that all this information is in the packet before it comes to you for a decision. But this is one that was in the pipeline because it previously had information gathered and representations were made. So I said we had to rely on that and have it at

the January meeting. As you see, you got a report because it got to Mr. Kerr late as well. It is our goal that all the information gets to you, and if it's not in by the deadline, it's not going to be presented. But you have to give notice to everyone, and the date we chose for that notice was January 1, and they complied with all the requirements that were in effect when they applied.

“”: You can rest assured that the changes that are on here or the changes the town is requesting that we will meet with our architect and make sure that all the specifications discussed tonight are met. I can give you my word on that. I don't know if that means anything.

“”: It does, and I don't like to see you squeezed, because time is of the essence here. You want to open in May, and we want you to open up in May. But I find it disturbing that we are going to be asked to approve something that we don't have the plans for, on the hopes the plans are going to come in and they're going to be representational of what we would like to see.

“”: Isn't this just a preliminary site plan?

“”: Yes, this is a preliminary site plan.

“”: They're going to have to put any changes that you require them to make on there, they'll have to come back, and if it's still not up to your standards, then you can still not approve the final.

“”: This was not advertised as a conceptual site plan, so this is not the informal working to get the field.

“”: It wasn't advertised as any kind of site plan.

“”: Yes, it was. If you look, it's advertised under “Public Hearing: B. Preliminary Site Plan for A. Special Permitted Use.” The special permitted use is proper because you don't have to have a final site plan to have the special permitted use, because that's what has to be incorporated.

“”: So they have to come back for final anyway.

“”: That is correct. We have a complicated system. You get to visit twice.

“”: And sometimes I misread things. I apologize. Thank you.

“”: So, if we get preliminary approval tonight, what you're saying is we cannot touch a thing until next month's meeting when we come back with the other stuff.

“”: We have no procedure under the current ordinance for a preliminary and final site plan approval to be done at the same meeting. There has to be “notice” given between meetings. This was an issue that came up last fall here in town when the school district wanted final site plan approval for the additions to schools in Milton. And there is nothing in the Town Charter or the Planning and Zoning ordinances that permit you to come in one shot and get all the approvals the same night. It doesn't require a second public hearing; it does require that the information that you get from the preliminary site plan and the findings from Planning and Zoning be communicated to you, and then you have to respond back with a final site plan approval incorporating those changes and conditions pursuant to our code. It's different from a lot of other towns. The other thing is that we don't have a noise ordinance. The noise ordinance in this town is not decibel-fed. But I guess it is fed by the discerning ear of the residents. So, although we don't have a sound meter, per se, we have residents who apparently have good hearing.

“”: I guess we were misled in our understanding of what this should be...it's not a preliminary, but a conceptual.

“”: Conceptual is something different. Anyone can come in front and have a conceptual, and that is not binding, but it still has to be followed by a preliminary and a final hearing. You’re not required to have a conceptual. Your first bite of the apple can be preliminary. But you have to have two separate meetings, with notice, with only one public hearing.

“”: And I would certainly not want to see it any other way. As a commissioner, that’s little enough time to consider some of this, and hopefully, at this meeting you all are taking away a lot of information about the kinds of things we need to see, so I think it’s a mutual benefit.

“”: And just let me clarify: The “special permitted use.” It sounds like you said, “We already fixed a window. We were doing stuff inside.” By getting your “special permitted use” if that’s recommended tonight and approved, that’s fine. You can work inside. The way you put in preliminary site plan approval was the exterior dining deck and gazebo. Until you have the final, a building permit cannot be issued for the construction of the deck and gazebo. Improvements (and I’m just trying to make sure it’s complete): You had also talked about fixing the lighting, doing things. Mindful of the fact that it’s in the town center, and we have a sign ordinance, you couldn’t erect the sign, but if you had to fix the fence or do something associated with the outside of the building as long as it wasn’t the deck, per se, you can do that, with the approval of “special permitted use”. And we already said earlier in the record that because it was not in use as a restaurant for more than one year, that’s why it had to come back in front of the commission for “special permitted use” in the town center.

“”: Does anyone else have any questions about the deck preliminary portion of this application?

“”: I have one quick one. So we won’t get “special use permit” after tonight, or...

“”: If they vote “yes”, yes. If they vote “no”, no.

“”: Gentlemen, we don’t mean to discourage you. I find this as an eyesore to the town, and I am certainly hoping to be able to work with you as you are, I think, willing to work with us. As Ms. Weeks has stated, I certainly wish that our ordinances state that more information come before us before we grant preliminary approval. Unfortunately we don’t have that in our ordinance at this time. Is that correct, Mr. Brady?

“”: The ordinance does permit work if... See, there are two parts to this and Madame Chair has been very good at defining the two parts. The “special permitted use” allows them to go in and get that restaurant ready to go. What I said about the site plan approval, that is for the construction of the deck and the gazebo. And that is what would have to come back for the final site plan approval before a building permit could be issued for that construction. The improvements to the outside: If they’re fixing the fence, if they’re fixing the freezer, or complying with all those other things, striping the parking lot, etc., with a “special permitted use”, they can go ahead and do that, if you approve.

“”: No one else has any questions of the applicant? Do we want to entertain a motion to close this preliminary review portion of the public hearing?

“”: Do we need to make a motion to approve the preliminary?

“”: No, that’s not on the agenda. We’re just doing the public hearing portions.

“”: Only if you still go further in the agenda.

“”: I make a motion to close the preliminary review portion of the public hearing.

(Motion was seconded and carried.)

Correction/Additions to Agenda

Linda Rogers: Are there any additions or corrections to be made to the agenda?

“”: Do I hear a motion to approve the agenda?

(Motion was made, seconded and carried.)

New Business

1. An application of Mulberry Street Properties for “Special Permitted Use” to operate the restaurant at 122 Mulberry Street.

“”: I move that we permit the special use with the following stipulations: that they come back with a display of what signage will be put up; that they stripe the parking lot; that they put up the fence they presented that they were going to do; that the dumpsters or trash cans are screened from public view. Does anyone have anything they’d like to add?

“”: You should at least address the noise situation. I’m not sure exactly what to do, unless we were to try and impose a conditional use on the use of outdoor music for one year, and then hear it again in a year, and see what comments were made, if they were indeed were cooperating with their neighbors

“”: Mr. Sherman, issues with the deck would be germane under B... You don’t have to be sorry; I’m just trying to keep you legally correct. Under A, the inside use of the restaurant is the current motion.

“”: We may want to use the same tool for the inside, because even though Norma’s has some inside music, with this being a totally different venue, we may want to use a one-year grace period for the inside.

“”: Actually you’re right, and if you wait just a moment, I believe that under “special uses” somewhere in here it says that we can call them back. So I would like to add to the motion that the outside music, if it becomes a problem with the neighbors, they can apply through Robin to have us re-hear the music permit for this “special use”. Does that work for you?

“”: Yes, or address the music radiating from the inside.

“”: Any noise that you can hear on Lake Avenue or the other properties that becomes a nuisance, I believe, there’s a provision that with the “special use” we can request them to come back and address, and perhaps remove the “special use” if it’s not fixed.

“”: It’s a delicate issue because it’s really not fair to hold the restaurant any more or less accountable than the rest of the neighbors. If for some reason there was a dispute amongst the neighbors, they may have a grievance that the music’s too loud, when indeed their neighbor’s stereo’s much louder. So I think it’s something we would need to hear and evaluate, and then advise.

“”: And I would expect a report from the Code Enforcement Officer at that time.

“”: We have a motion with a stipulation about seeing the signage, striping the parking lot, fencing dumpsters to be screened, and to be reviewed sometime within a one-year period in reference to the sound.

“”: Or sooner, if needed.

Motion was seconded.

John Brady: Madame Chair, pursuant to Chapter 3, Title 25, I advise Board of Adjustment and advising Planning and Zoning that you should use a roll call vote, and if somebody votes against the motion, to state the reasons why you're voting against the motion.

Linda Rogers: Roll call vote:

"": Carol: Yes

"": Yes

"": Yes

"": Yes

"": Yes

"": Yes

(Motion was carried unanimously.) That approves the special use exception to reopen as a restaurant.

2. An application from Mulberry Street Properties Preliminary site plan review for the deck.

Linda Rogers: Does someone have a motion or a comment?

Ginny Weeks: May I ask the attorney a question, please. How would we phrase this to allow this to go forward to give them preliminary use conditional upon them providing us at least one week before the next meeting with whatever it is that involves the engineer?

John Brady: That sounds perfectly fine to me in that format. The motion would be to grant conditional site plan use or the construction of an interior dining deck and covered gazebo of 122 Mulberry Street, further identified by Sussex County Tax Map and Parcel No. 2-35-14.19-106.00, a parcel updated the town center zoning district with the following information to be supplied at least one week prior to the consideration of the application for final site plan approval, those conditions being as follows:

Ginny Weeks: Can I just ask the point of information? I'm only wondering why wouldn't we turn down that part B, given that they're going to come back with further plans.

"": Because they have to come back as a preliminary and then as a final again. So it would require two more visits.

Ginny Weeks: It would be a hardship on them. I would request that they meet with the City Engineer at some point and get the proper list as specified in his memorandum. I also would like to know the exact square footage and the number of parking spots required so that we can read into the record if the Planning and Zoning Commission needs to forgive any of that parking, and we can do so in a proper way so they're not penalized in the future.

John Brady: I think the specifics they would need and part of what Robin would send would be as follows: To comply with Chapter 22 of the town ordinance regarding the flood ordinance, regarding all of the items for 6.15 of preliminary site plan are included in the final site plan application, that the delineation of off-street parking spaces pursuant to 7.22 be complied with, or the request to consider utilizing the town center parking lots that are maintained by the town of Milton. In addition to the parking spots on the parcels that they have control over showing with specificity the location of the loading zone that

would be utilized, the location for the multiple trash receptacles that they discussed in the public hearing, clarification on the freezer that may be less than 10 feet from the property line, noting the type of landscaping that will be provided around the restaurant area and clarifying the lighting and the seating for the deck, and checking with the Fire Marshall's office, the Alcoholic Beverage Control Commissioner, and then the other licenses and requirements, Department of Health, and any other requirements that may be necessary for the construction of the deck.

“”: How many weeks until our next meeting, because we're late. Are there only three weeks until our next meeting, correct?

“”: There's an extra week; there're five Tuesdays this month.

“”: Am I incorrect that this would be reviewed a month from now on that Tuesday, and then looked at a month after that?

“”: No, sir. Coming back for final site plan approval would be permitted. The Planning and Zoning Commission next meets February 20 at 7:00 P.M.

“”: If you have all that information to is a week ahead of time, at least a week.

“”: Third Tuesday, correct?

“”: If I have the plans complete a little bit earlier, so that let's some extra review time...

“”: Absolutely. When would you like to have it submitted?

“”: It would be nice to have two weeks.

“”: Do you think you could have it to us in two weeks?

“”: There a couple things we have to go over with our architect.

“”: Well, there's four weeks until our next meeting. We need the dimensions of the building and stuff. I also would like to request in that motion that we have verification that the owner of the second lot will not sell it. Do you have a lease or something that includes both lots? If you would please submit a copy of that to us...

“”: I don't think you can legally tell an owner of a lot they can't sell it. I think you can get representation from the owner that pursuant to the lease that it will not be, since your lease is for both lots...the record needs to have something from the owner showing that there's property that you have access to both lots for the duration of your lease.

“”: In the event it doesn't?

“”: If it doesn't, I will look something up and have an answer next time. The only concern I have that was regulated so far was that one gate swinging across the property line. You're not allowed to cross property lines with something on one property line to the next unless you have a license or an easement. That's the only issue I think that covers that property line other than the parking, and I think you said your lease covered parking access, so I think you're actually okay on that. The ordinance that we have shows that you have to have something from the owner.

“”: In case the lease does not cover that, and there was no parking there, being that we in the town center....

“”: That's where this commission has the power to waive the off-street parking because of its location in the town center. That's already in the town center ordinance.

“”: One of the reasons that it's important for you to supply this to us is with that lot you don't have enough parking, because with the deck, it's about 3600 square feet, so you need 36 parking spots minimal, and you say you have a bout 30. So we're going to have to forgive some parking, and we need to be able to do that exactly. Since we weren't

given the square footage of the restaurant, it's a guess. But that's to protect you in the future.

“”: We have a motion on the floor for all the stipulations that Mr. Brady has read to approve this as a preliminary. Are you comfortable with everything that he's read? Is there a second to that motion?

(Motion was seconded. A roll call vote unanimously carried the motion.)

“”: Let's proceed for a final.

“”: Or at the restaurant to eat.

“”: February 20 is submitted.

“”: February 20, and the information we need.

“”: And the important thing, too, is the EDUs...

“”: The EDUs is something Town Council has to review.

2. Review of the Zoning Ordinance for the Historic Preservation Ordinance.

Stephanie Parker: I just came as head of the committee to be here in case anyone had any questions. The Board of Adjustment has already reviewed it and made a couple of suggestions that I believe have already been forwarded to council. And so I'm here at your pleasure. You should have a proposed ordinance and an amendment that had their corrections.

Linda Rogers: We never got a copy of the amendments. We just have a copy of the original one that was presented.

“”: There's an amendment out there. I'm sorry, my packet got delivered to my office and I wasn't there.

“”: I move we table this until the next meeting.

(Motion was seconded to table review of this ordinance until the next meeting)

“”: I note that I've just gone over Town Council agenda and it is on their agenda in two weeks.

“”: Is there a problem with what you have here?

“”: We don't have the complete alternate.

“”: It's complete, it's just...if I could see it, what was fixed on it...there should be....

“”: Stephanie, what was the amendment change? Do you have a copy of it here?

“”: I do.

“”: I think it was “demolition by neglect”.

“”: You have demolition, but not by neglect.

“”: It was demolition by neglect, and that is the new 4 that's not here under 6; 6.4 demolition by neglect has a fee, I believe. I'm sorry I thought this was the final edition that was sent out with the packet.

“”: My packet goes from 6.3 right to 6.7.

“”: But there is a 6.4 that has “demolition by neglect.”

“”: Stephanie, could you read that to us, please?

“”: I'm trying to locate mine. You're saying 4.9.

“”: We're looking for 6.4, demolition by neglect.

“”: I don't know that I ever got it. I know the Board of Adjustment had it at their meeting.

“”: Well, we do have a motion and a second. Can we rescind those motions until we get this cleared?

“”: Rescind the second; rescind the first motion.

“”: In the half dozen copies I have with me, it doesn't appear that it's in any of them.

“”: Did they review that again tonight, Robin?

“”: No, they did not.

“”: Because they did the roll call the last time.

“”: No, I don't have it.

“”: The last part of it was an amendment that was requested which was a “demolition by neglect”. If you see in there “demolition by intent,” where someone doesn't have it, “demolition by neglect” would cover when someone doesn't keep up a property. There were several questions at the Board of Adjustments, but what happens is they have a broken window, is that neglect? A broken window in itself would not be neglect, per se. But if you step on the porch, and the porch caves in, that's neglect. Rotting timbers, to use the term “imperi material”, if you look at the whole thing together...one broken shutter, one broken window, that's enough for the Code Enforcement Officer to send a violation. Both of those are violations in themselves. But if you see the roof start to cave in on the porch, you see a banister fall down, that leads to what is neglect. Under our current code, it allows the Code Enforcement Officer to put notice on some of the people to a hearing in front of the Board of Adjustment. And what it would be is there is no fine, there is nothing. The penalty now, if you allow something to become neglected that it falls apart, the questions would be: Well, what about across the street here where you see the “Caution” tape, and you see the Condemnation Order posted, would that have covered it if there had been a “demolition by neglect”? Arguably, they come in to get a demolition permit. But if they didn't come in for a permit, that could be grounds if that was in the ordinance to go on. I modeled it after the Commission and the special committee had met. I met with them on two separate occasions, and I got Dover's ordinances. The reason I used Dover over Rehoboth or Lewes, is that Dover just went through a slew of court hearings on theirs. Witness: Mr. Zimmerman; you all know him. Not to any offense to Mr. Zimmerman, but I utilized the Dover ordinances because they were upheld by the Court of Chancery at the Dover Supreme Court as a proper way that people could be subject to penalties, and modified them as an amendment, because when we did the original draft, somehow that paragraph got left out. So that is what the scope of the amendment was when the original draft came through. I shared it with Ms. Parker, and she said, “This is missing.” I agreed, and that's why I did an amendment to it, and I'm sorry it's not here tonight, but that's what the amendment is. Trying to keep this on track so that Town Council could approve it, I will find it for you tomorrow and make sure you all have copies of it in the next day or so. But I'm probably going to ask you based on my recollection to send a recommendation to Town Council so they can do that ordinance at the next meeting. From the testimony that was received on it previously, this will help improve the Historic Preservation district here in town.

“”: When this is sent to the Town Council, will there be a public hearing at the Council level?

“”: Yes, I noticed all of them for public hearings starting at 7:00 P.M. on February 5, it’s going to push back public comment, but they need to have them notice for a public hearing. And the way I read the ordinances, they were introduced, they were referred to committees, and this was referred to both Board of Adjustments and Planning and Zoning. Two others have already cleared your committee, I think last month or in November, on the signs and then enforcement. And the last one on the sex offender ordinance...

“”: May I ask Ms. Parker a question on how the Historic District Commission is handled? The Board of Adjustment officers also serve on the Historic District Commission. Do you close the Board of Adjustment meeting and then open a Historic District Commission meeting?

“”: The way that I have always read the ordinance and viewed it is that they are not two separate entities. There has been a lot wording of Board of Adjustment and Historic Preservation Commission, but the way the ordinance reads is that the Board functions as the Historic Preservation Commission. Their agendas have always been set up separating the two functions. They have the Board of Adjustment items listed on one part of their agenda, and the Historic Preservation items are listed on another part of the agenda. I’m not as familiar with their meetings. Perhaps Mr. Brady knows whether they actually close one section and then go into another section. Robin may know as well. I’m not on the Board, and I don’t attend any of their meetings.

“”: Normally, what John Collier, the Chairman, does, is to usually open one meeting, close it and then open the next, because that’s how we’ve separated them on the agenda. Whether it has to be done that way, I don’t know, but that’s how it’s usually done.

“”: We do it that way and they’re doing it because of the same reason: they’re doing a roll call for their votes also.

“”: The reason I ask, Mr. Brady, is that on the second page of this, for example, in 4.9.7 it consistently refers to the Board of Adjustments, and wouldn’t that be better saying the Historic District Commission so as to avoid confusion?

“”: Because the Board of Adjustments safe tests(?) the Historic Commission, I utilize what the rest of the ordinance said, which was Board of Adjustments.

“”: And in most towns, does the Board of Adjustments sit as the Historic District Commission?

“”: Lewes doesn’t have it that way, but most other towns do, and so does Dover.

“”: May I speak to this? I have one or two things to discuss. You didn’t cover this when you did this: In Section 4.9.1 which is not here, but since you reviewed the whole ordinance, this is the only part that’s not here that I wanted to ask you about, is that the town’s Historic District is linked directly to the national register of historic places, and I would think that we would want to have the ability to make the historic district where we want it and not have to rely on the national registry.

“”: In the current zoning ordinance Section 4.9.1, it does state that because that is what the current Historic District is.

“”: But do we want to limit it like that?

“”: It is not limited. If you look at 4.9.7, Number 7, is Designation of Historic Sites, the last number in 4.9.7, and that allows for.....(reading silently)

“”: My confusion is that here it says “in the intent, the special review of the Historic Preservation design and development practice within the federally designated town of

Milton National Historic District is listed on the National Registrar of Historic Places.” So does that not mean that if we have a historic district that is not within that district, if we want to expand it we will not be able to do that because it doesn’t follow the intent of the ordinance?

“”: What it says, as I understood it, was that we incorporated the federal district as the start of the district and if anybody wants to petition in, they can.

“”: Supposing the town decided that it wanted to incorporate houses on Mulberry Street that perhaps are not on the national registrar in an area. Can they do that?

“”: The town, per se, no, at the moment. But if the owners of the property wanted to come in, they could petition to be included. What was done is the federal district was in place, and they utilized the federal district as a start, and said if anyone wants to come in, it’s their option, but the town wasn’t going to drag anyone in. It could be considered a “taking” in property right issue because there are certain requirements under the Historic District that are not part of the regular, and those people were already covered under the federal requirements, so that was not a “taking”, per se. The short answer to your question is: the town at the moment under the ordinance can’t just say “Okay, we’re going to take Mulberry Street out to the school.” But, if the different owners of the property wish to voluntarily come into the district, then there is a process where they can be included.

“”: My understanding is that being on the National Historic Register puts absolutely no restrictions on your house. You can do anything to it, you can demolish it.

“”: The National Register that the current properties in the town of Milton are on, that is correct.

“”: So, it’s the same “taking” anyway.

“”: If they aren’t on the register, if they were put into the Historic District, that could be an issue if the town was to go that far.

“”: But the town already did that, because there were not restrictions even if they were in the District on what they could do with their property until the town ordinance put those restrictions on them.

“”: I know I checked the litigation history; no one’s sued at that point because they were included.

“”: At that point, several years ago when this was done, the town held public hearings, it was treated as a change of zoning, and the town went through the procedures.

“”: I find that very limiting to the town’s sovereignty. Another thing that if the DOA suggested this or not, but I think that all fees should be related to a fee schedule rather than in an ordinance, because if you want to change the fee, you have to have a public hearing and you have to rewrite the ordinance and all the copies have to be changed. Whereas if you just refer to the town fee schedule, that doesn’t have to be done, correct?

“”: Yes, and no. It has been discussed.

“”: The other thing is that I noticed that on the first page in 4.9.7, you removed G, which means that people who want to build a shed that costs \$1,000 or more, now have to come before you and pay a fee of \$100.

“”: That is how it reads. The current ordinance permits structures of up to 400 square feet being erected on property, and our feeling was that could be quite a sizable structure on someone’s property to not at least be looked at, so that is correct.

“”: It’s not based on square footage, but it’s based on the cost and the materials they used. It seems \$1,000 is not much of a shed. It could be a tiny shed, and they’d still have to come forward with a \$100 payment to have you review it.

“”: That’s how it’s worded.

“”: Anyone else have any questions? Would someone like to make a motion?

“”: I make a motion that we approve of these amendments based on the information given to us by Counsel.

“”: Technically, the way it ought to be worded would be: Recommend the Town Council that they approve the attached zoning ordinance changes relating to the Historic Preservation District with the amendment relating to “demolition by neglect.”, if I understand your motion.

Motion was seconded and roll call vote was taken.

All approved but for Ginny Weeks’ “No” vote. Reasons: “I still find it limiting when it’s connected to the national registry. I still feel that, throughout where it says Board of Adjustments, it should say Historic District Commission; and I think that the fees should not be in this ordinance; they should be on a fee schedule.”

Motion was carried.

“”: Alright, may I ask for a motion to adjourn?

Motion was made, seconded and the meeting was adjourned at 9:36 P.M.