

**New Milford Zoning Board of Adjustment
Work Session
June 12, 2012**

Chairman Schaffenberger called the Work Session of the New Milford Zoning Board of Adjustment to order at 7:35 pm and read the Open Public Meeting Act.

ROLL CALL

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|-----------------------------|---------|
| Mr. Appice | Absent |
| Mr. Binetti | Present |
| Ms. DeBari | Present |
| Mr. Denis | Present |
| Father Hadodo | Present |
| Mr. Loonam | Absent |
| Mr. Rebsch | Present |
| Mr. Stokes Vice Chairman | Present |
| Mr. Schaffenberger-Chairman | Present |
| Ms. Batistic- Engineer | Present |
| Mr. Sproviero - Attorney | Present |

REVIEW OF MINUTES – April 19, 2012, May 8, 2012 and May 17, 2012

The Board Members reviewed the minutes for the Work and Public sessions and there were no changes.

OLD BUSINESS

12-02 Fresh & Fancy Farms – Block 904 Lot 43 - 575 River Road

The Board Members reviewed the application. The Board Attorney believed the applicant concluded with the testimony and would open to the public for their comments.

12- 01 - New Milford Redevelopment Associates – Block 1309 Lot 1.02 – Mixed use Development.

The Board Members had no questions or comments regarding the application.

NEW BUSINESS

12-03 – 105 New Bridge Properties, LLC – Block 113 Lots 4, 5, 6 –Parking Lot/Restaurant Expansion

The Board Members reviewed the application. The Chairman stated the applicant was seeking seven variances. There was a use variance, impervious lot coverage, front and side yard setbacks, parking, signs and seating. The Chairman said there were referral letters from the DPW, Police, Fire, Shade Tree and Environmental. The Board Attorney added they received correspondence from the Township of Teaneck. Mr. Sproviero explained he contacted the Township Manager and urged his attendance at the meeting so his comments would be on record.

12-04 – Gospel Fellowship Church – Block 913 Lot 1 – 111 Henley Avenue –

The Chairman stated they were seeking a D variance for a conditional use and parking. There was also referral letters from Health, Police, DPW, Fire, Health and Shade Tree and Environmental.

Motion to close was made by Ms. DeBari, seconded by Fr. Hadodo and carried by all.

**New Milford Zoning Board of Adjustment
Public Session
June 12, 2012**

Chairman Schaffenberger called the Public Session of the New Milford Zoning Board of Adjustment to order at 7:51 pm and read the Open Public Meeting Act.

ROLL CALL

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| Mr. Appice | | Absent |
| Mr. Binetti | | Present |
| Ms. DeBari | | Present |
| Mr. Denis | | Present |
| Father Hadodo | | Present |
| Mr. Loonam | | Absent |
| Mr. Rebsch | | Present |
| Mr. Stokes | Vice Chairman | Present |
| Mr. Schaffenberger | Chairman | Present |
| Ms. Batistic- | Engineer | Present |
| Mr. Grygiel | Planner | Present (9 PM) |
| Mr. Sproviero - | Attorney | Present |

PLEDGE OF ALLEGIANCE

OFFICIAL MINUTES OF THE SPECIAL MEETING– April 19, 2012

Motion to accept the minutes were made by Fr. Hadodo, seconded by Mr. Binetti and carried by all.

OFFICIAL MINUTES OF THE WORK SESSION – May 8, 2012

Motion to accept the minutes were made by Mr. Binetti, seconded by Mr. Stokes and carried by all.

OFFICIAL MINUTES OF THE PUBLIC SESSION – May 8, 2012

Motion to accept the minutes were made by Mr. Rebsch, seconded by Mr. Stokes and carried by all.

OFFICIAL MINUTES OF THE SPECIAL MEETING – May 17, 2012

Motion to accept the minutes were made by Fr. Hadodo, seconded by Mr. Stokes and carried by all.

OLD BUSINESS

12- 02 Fresh & Fancy Farms – Block 904 Lot 43 - 575 River Road

The Board Attorney stated Ms. DeBari was not present at the last meeting and has certified she reviewed the audio of the proceeding.

Warren Kahn, attorney for applicant, made a correction from the presentation last month. He had indicated the overhang for the barn was 12' where the plans correctly indicated it was an 8' overhang.

The Chairman asked if any Board Members had questions for Mr. Low.

Mr. Stokes asked the applicant to explain the proposed sign. Mr. Low stated it would be 10' off the curb line, 36 sq. ft. and 12' from the bottom to top. He stated the sign was to show it was a separate farm. Mr. Stokes asked if the gable end of the proposed barn would be a better place for signage. Mr. Low wanted a sign that people did not have to slow down to see. Ms. Batistic asked if the sign was 10' from the curb line or 10' from the property line. Mr. Low clarified it would be 10' from the curb line.

Mr. Sproviero read the plans as the sign was 5' from the property line and asked if that was the same as 10' from the curb line. Ms. Batistic stated the curb was curved and there was a straight property line. The Board Engineer said typically property lines were 10' from the curb line. Mr. Sproviero asked if an additional variance would be required for the sign since the plans showed the sign 5' from the property line. Ms. Batistic agreed.

Ms. DeBari asked what the size was of his existing sign. Mr. Low believed it was 6' x 4' and he was asking for a 36 sq ft sign because nobody sees the existing sign. Ms. DeBari stated she always notices his existing sign. Ms. DeBari asked if the sign would be illuminated. Mr. Low answered no.

Mr. Rebsch commented that the front on the property looked very crowded and the sign would add more confusion. Mr. Rebsch had questions regarding the bridge and the comments made by the fire department to have a bridge strong enough for the foot traffic of fire fighters. . Mr. Low answered it would be built to code.

The Chairman requested that the Construction Official answer some questions on the bridge.

The Board Attorney swore in James Taormina, Construction Official/ Building Subcode Official for the building department.

Mr. Taormina stated the bridge had no footing supports and violated the barrier free code as far as accessibility. He explained the minimum width was 36" and the bridge was 34" which could be adjusted to comply. The Chairman clarified the issues were the footings and width needed to be 36". The Construction Official agreed. Mr. Rebsch questioned if it needed engineering. Mr. Low answered he was required to submit plans. Ms. Batistic explained there were a lot of structures on this site plan and all of the structures had to be engineered. She stated it had to be to code. Mr. Sproviero agreed that between the Construction Official and the Municipal Engineer the parameters of the code requirements would be established. The Board Attorney added anything approved was subject to compliance with the requirements of the Construction Official and Municipal Engineer. Ms. Batistic agreed. She stated not only the bridge but all structures.

Ms. DeBari asked if the bridge was being used. Mr. Low answered no it was blocked off. Ms. DeBari asked if it was because he was in violation. Mr. Low agreed.

Fr. Hadodo and the Chairman questioned who had jurisdiction over the sign. The Board Attorney stated the Board had jurisdiction over the variances. He found no distinction between the signage for identification purposes and signage for advertising purposes. The Board Attorney read verbatim into the record the paragraph on signs. Mr. Stokes read the restrictions in the deed and thought that this type of a sign was not inconsistent with the terms of the easement. The Board Attorney understood but said he did not feel it qualified the signs in anyway. Mr. Low said they had a meeting with the County and they had no problem with amending this deed and it was hastily written. Mr. Sproviero said there might be other options for the applicant. He stated a sandwich sign could be a temporary solution until the applicant could resolve the language in the deed restriction. . The Chairman clarified that the Board did not have jurisdiction over signage. The Board Attorney stated it was his opinion that the deed restrictions contained in the deed of easement prohibit signage. Ms. DeBari asked about the bridge. The Board Attorney stated the Board could only act upon the relief the applicant seeks within the jurisdiction of the Board. Ms. Batistic stated the bridge already exists the sign did not.

Motion to open to the public was made by Ms. DeBari, seconded by Mr. Denis and carried by all.

Mr. Michael Perrone 179 Holland Avenue questioned why the applicant would want to build a new barn when he had an existing barn that could be repaired which would make it more feasible for the operation of the farm. He added there would be no growing space. Mr. Low answered the barn would be too costly to repair and stated he would have more growing space because he had less coverage with the greenhouses.

Motion to close was made by Fr. Hadodo, seconded by Mr. Stokes and carried by all.

Mr. Kahn stated the applicant was seeking to make improvements all in accordance with the Right to Farm Act. The applicant was seeking variances for building coverage proposing 25.9% required 18 %. Mr. Kahn stated the Board Engineer indicated that the prior owner had greater coverage. The applicant was proposing 4 structures where five previously existed. He stated they were relocating an existing greenhouse to the rear of the property, constructing a new 36x60 barn with a 8' overhang where the prior greenhouse was located, a new 26x60' greenhouse, replace an existing shed with a planting shed and existing greenhouse. The Chairman clarified that the height of 36'x60' barn would be 22' and 18' for the shed/greenhouse. Mr. Kahn agreed and stated they would need two height variances. He stated the applicant gave testimony to support the need for the height of the barns because of storage and equipment. The applicant was also seeking a rear yard setback proposing 10' required 55' and the sign would require three variances.

Mr. Low stated the proposed sign would be a wooden carved sign and he would take away some things so it would not be congested. Mr. Rebsch asked if it would be on a pole. Mr. Low answered it would be on two poles. Mr. Sproviero stated there would be three variances implicated by the sign - the use, size and the location of the sign. Mr. Kahn said the applicant was also requesting the installation of a gate. He understood the restrictions of the deed but was asking the Board if they would consider the approval of the gate if the deed were modified to

provide for the installation of a gate so the applicant would not have to reappear before the Board. Mr. Sproviero asked what municipal ordinance was being implicated by the installation of the gate. Mr. Kahn answered none. The Board Attorney stated he was asking the Board to grant relief from the easement and the Board did not have that authority and could only grant relief from the requirements of the zoning ordinance. The Board Attorney's opinion to the Board was that they did not have jurisdiction over the request to install the sign and fence. Mr. Sproviero said the Board did not have jurisdiction to amend the deed of easement and the applicant would have to go to the County of Bergen. Mr. Low asked if the County approved the installation of a gate did he have to come back to the Board. The Board Attorney answered he did not think they would have to come back as long as they were in compliance with all of the zoning requirements.

Mr. Kahn requested the Board to consider the sign. The Board Attorney agreed it did implicate variance relief. Mr. Kahn asked if the Board felt there was a restriction in the deed for the sign then the vote could be contingent on the fact that the deed be amended to provide for a sign. The Board Attorney understood he was requesting variance relief subject to the possible future amendment of the deed. The Chairman questioned how they could grant relief contingent upon something that the Board had no idea how the deed of easement would be changed. The Board Attorney said the members would have to take that into consideration when evaluating the request.

Motion to open to the public to comment on the application was made by Ms. DeBari, seconded by Fr. Hadodo and carried by all.

Anna Leone 505 Boulevard was sworn in by the Board Attorney. Ms. Leone commented that she had a difficult time trying to find the name of the farm. She stated because of traffic you could not slow down or stop. Ms. Leone stated one day when there was no traffic she was able to stop to look and then saw the sign in the back. The resident said if she did not look for it she would have drove right by. She did not know the applicant but she knew Perrone's Farm by name. Ms. Leone felt when there is a new farm next door a visible sign would be good for new comers.

The Chairman thought they made it clear that they understood the sign issue but it was whether or not the Board had jurisdiction over it.

Ms. Flanagan 275 Fulton Street was sworn in by the Board Attorney. The resident also stated she did not know the resident but felt it a privilege to live in a town with two farms. She felt the Board should give this business an opportunity that they deserved to let the residents know they were in the area. They should be able to advertise to welcome people in other areas and show off the town that there are two farms. The resident said maybe someone could instruct the owner on what he needs to do to cut through all the red tape to go to the County and do what is necessary to get a sign for his business.

Motion to close was made by Fr. Hadodo, seconded by Ms. DeBari and carried by all.

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The Board Attorney reviewed the variances requested. He stated there were D variances for maximum height restriction for 22' barn and 18' greenhouse where 15' was required.. He added another D variance was for the use of a sign. The Board Attorney advised the Board that their jurisdiction was limited to granting relief from the requirements of the zoning ordinance. He stated certain variances being sought specifically the sign not only implicated the zoning ordinance but was the subject of the deed of easement. The use of the land for farm purposes was deeded to the original property owner and the applicant as the current owner was bound by its terms.

Mr. Sproviero explained there were certain conservation restrictions and prohibiting acts that were included in the deed of easement that include a prohibition of signs. The Board Attorney stated they have reviewed this and expressed varying interpretations and his interpretation was that signage was prohibited by way of the deed of easement. The Board did not have jurisdiction to amend the deed of easement. The Board Attorney explained the Board could vote on the issue but if the Board favorably considers it they need to understand it would result in the terms contrary to the prohibition in the deed of easement. Mr. Stokes questioned why they would even address it. Mr. Sproviero answered they were seeking relief from the zoning ordinance unlike the gate and fence issue where they were asking relief from the deed. The Board Attorney stated if the Board did not vote on it they would not have the right to seek an appeal. Mr. Sproviero stated in order to dispose of their request for variance relief and preserve their rights on appeal the Board would have to vote on it. Mr. Sproviero stated if they want to put a sign on a 12' pole they would need variance relief.

The Chairman asked for a motion for a rear yard variance proposed 10' required 55'.

Motion was made by Fr. Hadodo to grant the 10' rear yard variance, seconded by Mr. Stokes.

Mr. Stokes said the applicant demonstrated that it was a farm and the greenhouses existed. It was the intent of the municipality to keep it a farm.

The motion passed on a roll call vote as follows:

For the motion: Hadodo, Stokes, Binetti, DeBari, Denis, Rebsch, Schaffenberger

Vote: 7-0

The Chairman asked for a motion for a height variance for a 60x36 barn with a proposed 22' height 15' required.

Motion was made by Mr. Stokes, seconded by Fr. Hadodo to grant the 22' height variance.

Mr. Stokes felt the applicant was developing the property in the intent that it was laid out by the municipality and the farm act. He thought the applicant demonstrated it was not an overbearing barn and it was consistent with neighborhood and the next-door farm. The Chairman was for the motion because he visited the existing barn and felt it would not be existing for long. He also thought the exhibits of the 15' barn showed it would not be a barn and would be unusable.

The motion passed on a roll call vote as follows:

For the motion: Stokes, Hadodo, Binetti, Denis, Rebsch, Schaffenberger

Against the motion: DeBari

Vote: 6-1

The Chairman asked for a motion for a shed/greenhouse with a proposed height 18' required 15'. **Motion** was made by Mr. Stokes, seconded by Mr. Binetti to grant the variance for the construction of the potting shed with the proposed 18' height required 15'. Mr. Stokes looked at this shed and felt it was falling apart.

The motion passed on a roll call vote as follows:

For the Motion: Stokes, Binetti, Denis, Hadodo, Rebsch

Against the Motion: DeBari, Schaffenberger

Vote: 5-2

The Chairman asked for a motion for building coverage variance proposed 25.9% required 18%. **Motion** was made by Mr. Stokes, seconded by Fr. Hadodo to grant the variance for building coverage. Mr. Stokes said the applicant demonstrated that the previous owner had more coverage overall with the greenhouses and felt it would promote business as intended by the deed and the municipality.

For the Motion: Stokes, Hadodo, Binetti, Denis, Rebsch, Schaffenberger

Against the Motion: DeBari

Vote: 6-1

The Chairman asked for a motion for preexisting side yard variance.

Motion was made by Mr. Stokes, seconded by Mr. Rebsch to grant the variance for side yard preexisting condition.

For the Motion: Stokes, Rebsch, Binetti, DeBari, Denis, Hadodo, Schaffenberger

Vote: 7-0

The Chairman asked for a motion for the use of a sign in a residential zone.

Motion was made by Fr. Hadodo, seconded by Mr. Denis to grant the use of a sign.

For the Motion: Hadodo, Denis, Binetti,

Against the Motion: DeBari, Stokes, Rebsch, Schaffenberger

Ms. DeBari was not comfortable voting on this because they were bound by the terms of the deed. Mr. Stokes stated he could not vote on something that was unknown and this was not part of the Board's jurisdiction.

Vote: 3-4

The Chairman explained the applicant did not get the sign variance but they were free to go to the County and if the County approves it the applicant would have to come back.

OLD BUSINESS

12- 01 New Milford Redevelopment Associates – Block 1309 Lot 1.02 - Mixed Use Development

Having already recused himself from the New Milford Redevelopment Associates application, Chairman Schaffenberger turned the meeting over to Vice Chairman Stokes. Father Hadodo also had recused himself from the application and stepped down from the dais.

Mr. Stephen Eisdorfer from Hill Wallack LLP was representing New Milford Redevelopment Associates.

The Board Attorney swore in Mark W. Sussman 220 South Orange Avenue, Livingston NJ.

The Board accepted the qualifications of Mr. Sussman as an expert in appraisal land valuations.

Mr. Sussman stated he was assigned to analyze the potential impact if any that the proposed mixed-use project might have on nearby residential properties. He reviewed case information, concept plans, inspected the property, looked at the surrounding area and also went out into the market and collected data. He discussed the properties surrounding the United Water property. Mr. Sussman explained he searched for areas with single-family residents in direct proximity to shopping centers and mixed-use projects similar to the subject property. He located three shopping centers in Bergen County that had single-family residents in close proximity that had sold. He stated they also searched for other sales of similar homes in the neighborhood. Mr. Eisdorfer clarified he compared the value of properties directly adjacent to the shopping center with the value of similar properties away from the shopping center. Mr. Sussman agreed. He stated they analyzed the Washington Towne Centre, Boulder Run Shopping Center and Emerson Shopping Plaza. He discussed four sales of single-family homes located opposite the shopping centers and sales of similar single-family homes not proximate to any commercial use for each shopping center. He said adjustments were made to the sale for differences with the exception of a location adjustment for proximity to a shopping center. Mr. Sussman stated the analysis indicated there were no significant differences caused by the sale prices as a result of the homes proximity to the shopping centers. Mr. Sussman's opinion was that this project as planned would not have any significant impact on the nearby residents.

Mr. Eisdorfer marked as Exhibit A-29 Summary Appraisal Consulting Report

Mr. Denis asked if any of the other developments were close to a flood plain. Mr. Sussman stated that was not the focus of his analysis so he could not answer the question. Mr. Denis commented that Mr. Sussman looked at the property and there has been flooding in the past few years. He stated houses have been touched by water. Mr. Denis commented there would be traffic in front of a houses going into the site everyday which would affect the property values of those homes.

Mr. Binetti commented that Mr. Sussman was using 2005 figures and felt those numbers were not effective in this case. He did not think these were good comparables. Mr. Sussman answered they were not trying to compare values in 2005 to today. Mr. Binetti stated in 2005 people were buying anywhere. Mr. Sussman stated the analysis at Boulder Run was in 2007. Ms. DeBari questioned if the analysis was to say the homes would not lose value next to this developed site. Mr. Binetti stated it was common sense that the prices of the homes would be lower next to a shopping center. Mr. Sussman stated that was not what his data was showing. Mr. Binetti felt his data was inaccurate.

Mr. Rebsch asked how large was the Washington Township Shopping Center and Boulder Run. Mr. Sussman said the Boulder Run was larger than the proposed site. Mr. Rebsch asked if any of the developments had apartments units. Mr. Sussman answered Boulder Run. Mr. Rebsch did not agree with the comparisons.

Mr. Stokes asked what year the analyses were done at each shopping center. Mr. Sussman answered Washington Township was 2005, Boulder Run was in 2006-2007, Emerson /Westwood was 2004-2005. Mr. Stokes asked if the project in Boulder Run was built at the time of the comparisons. Mr. Sussman answered yes. Mr. Stokes asked when the mixed-use project was built. Mr. Sussman was not sure. Mr. Stokes stated the new development might not be reflected in this comparison.

Mr. Paul Grygiel asked what the difference in time between when the commercial use was introduced to when the sales took place. Mr. Sussman answered they were existing centers. Mr. Grygiel asked how many residential units were in Boulder Run. Mr. Sussman answered 16 units. Mr. Grygiel asked how many resident units were proposed at New Milford's site. Mr. Sussman answered 221 units.

Motion to open to the public was made by Mr. Rebsch, seconded by Mr. Binetti and carried by all.

Mr. Marc Leibman asked if he had the ability to prepare a map to show the locations of each of the comparables house. Mr. Sussman answered yes. Mr. Leibman disagreed with a location of a comparable in Emerson. Mr. Sussman said his information was incorrect. Mr. Leibman said the report without a map did not give the Board much information. Mr. Leibman requested that Mr. Sussman to provide a map. Mr. Leibman asked when he was engaged to prepare this report. Mr. Sussman answered in March. Mr. Leibman commented the report was dated June 12 and when was the first draft prepared. Mr. Eisdorfer objected. The Board Attorney stated evidence and court rules were relaxed and did not see any prejudice to answer the question. Mr. Sussman answered about two weeks ago. Mr. Leibman asked if these were usable sales. Mr. Sussman believed they were and he had the SRI-A on them. Mr. Leibman asked if they were in his report. Mr. Sussman answered no they were in his file. Mr. Leibman asked that it be produced so he could examine it. Mr. Sproviero stated his testimony was it was usable and he would not require him to produce anything but what was in the report. Mr. Leibman repeated the question if the comparables were all usable sales. Mr. Sussman repeated he believed so but added there were also non-usable categories. There was discussion regarding where and how the comparable information was collected. Mr. Leibman asked what the basis was for the adjustments. Mr. Sussman answered most were cost based being differences in square footage, garages, finished basements etc. Mr. Leibman asked if these properties were in commercial or multi family zones. Mr. Sussman answered they were all single-family homes. Mr. Leibman questioned there was no zoning information in his report. Mr. Leibman asked the Chairman that the witness turn over the back up information contained in this report. He would like to be able to cross-examine the witness after he has time to review the report. The Board Attorney advised the Chairman that he did not believe the counsel was entitled to the back up data. Mr. Sproviero felt this would be a good time to stop the testimony and Mr. Leibman would have an opportunity to verify and examine the material and be able to cross examine the credibility of the Mr. Sussman's opinion. Mr. Eisdorfer agreed they would bring the witness back.

Motion to close to the public was made by Ms. DeBari, seconded by Mr. Binetti and carried by all.

There would be a Special Meeting for New Milford Redevelopment on June 21, 2012 7:30PM and Monday July 30, 2012 7 PM.

NEW BUSINESS

12-03 - 105 New Bridge Properties, LLC – Block 113 Lots 4, 5, 6 – Parking lot/Restaurant Expansion

Mr. Carmine Alampi, representing Sanzari's New Bridge Inn, stated the developer of the restaurant had determined to acquire two residential properties to demolish the structures for a parking facility. There was also a proposed addition to provide an additional and a more suitable entertainment center. He stated the one story expansion was approximately 954 sq ft.

Mr. Alampi renoticed that the addition would increase the seating. The Board was provided with proof of service and notice to property owners.

Mr. Alampi stated the parking situation would be enlarged and there would be a total of 66 parking spaces. He stated after discussions with the County Planning Board and technical staff they asked them to recess a little bit from New Bridge Road and cut back and create a 5-6' buffer. The parking spaces were designed to be full size parking spaces self service with drive aisles. Mr. Alampi explained they maintained valet parking on Friday and Saturday evenings and for catered affairs. He said the property was in the residential zone and the restaurant has been operating as a preexisting use. The Attorney stated the applicant had appeared before the Board in 2004 and secured an approval for a use variance and site plan and this application was for a use variance for the parking and addition to the building.

The Board Attorney reported that they received correspondence from the Teaneck Township Manager William Broughton dated June 6, 2012. Mr. Alampi stated he spoke with the Township Attorney and also received a copy of the correspondence. Mr. Sproviero read the letter into the record and explained he had invited his appearance at these proceedings. Mr. Alampi said he had provided all the requested documents to the Teaneck Township Attorney. He stated that correspondence and petitions could not be read in on behalf of a witness but he would not raise an objection at this point. Mr. Alampi said in regard to the letter referring to further aggravating parking conditions he could not believe that adding parking would further exacerbate parking on the streets. Mr. Sproviero said for those reasons he told Mr. Broughton to come to a meeting to put his concerns on record so they could be heard and analyzed by all.

Chairman Schaffenberger recalled the variance in 2004 had conditions that valet parking would be provided at all times. Mr. Alampi stated the Chairman was correct but the valet operation has been reduced because there had not been a need for it. Mr. Alampi stated if the Board grants the approvals they might relax the valet service schedule.

The Board Attorney swore in Robert Costa 325 S River Street Hackensack NJ.

The Board Members accepted the qualifications for Mr. Costa as an expert in engineering and planning witness for the use variance

Mr. Alampi marked as Exhibit A-1 photo board of sheet 2.

Exhibit A-2 Area Map and Cover Sheet -10 sheets last revised 5/22/12

Exhibit A-3 Architect Plan one sheet revised 5/22/12

Mr. Costa stated Exhibit A-1 shows the location of the existing restaurant. Mr. Alampi asked if New Bridge Road was a county road. Mr. Costa said it was and he had filed an application with the Bergen County Planning Board. Mr. Alampi asked if he was about to file for DEP review. Mr. Costa answered yes. The DEP was implicated because they were within the Hackensack River basin and the 100-year floodplain. He added because of the proximity to the Hackensack River and tidal floodplain it required a waterfront development permit. Mr. Alampi asked if they were doing anything with regard to the French Brook. Mr. Costa answered no there was no development within the floodway of the brook and no impact to the brook. He stated they were proposing a footbridge over the tributary to get from the proposed parking lot to the current parking lot. The engineer stated the existing lot area was 21,880sf and proposed 41,762sf. He added it was in a Residential zone. Mr. Alampi asked if someone bought and demolished the homes for their own purposes would they also be under DEP jurisdiction. Mr. Costa agreed and added it would be more difficult to expand it for residential because they were in the 100 year floodplain. DEP wants no more impact as far as residential so they would rather see a commercial area in this type of situation.

The Engineer discussed the parking lot and the material to be used. He stated they were using a commercial type paver and would bring samples to the next meeting for the members to see. He explained there was a separation that allows water to go through them. Mr. Alampi asked the Engineer to make an enlargement of A-10. Mr. Costa agreed. Mr. Costa explained the elevations of the property. He discussed Teaneck's concerns about flooding so they did not want to make it higher than everyone else. Mr. Costa stated they would keep the elevation as low as possible and try to maintain the existing grade. He stated they were excavating 680 cubic yard of soil and replacing it with 22" of crushed stone. The Engineer explained there were no catch basins it rains it goes into the stone goes through the paver and goes into a filter bed and stays in the stone. He stated it was 10x the amount of capacity. Mr. Costa told the Members to go to Brookside Park in Westwood to see a similar installation.

Mr. Rebsch had questions and concerns if the stone would float away in flooding. Mr. Costa answered no.

The application was carried to the next regular scheduled meeting on July 10, 2012.

12-04 – Gospel Fellowship Church – Block 913 Lot 1 – 111 Henley Avenue

Mr. Denis recused himself from the application because this business was within 200’ of the application.

Mr. Urdang representing the Gospel Fellowship Church stated this application was proposing to use the Riverview Racquetball Club as a house of worship. Mr. Urdang reviewed the history of this application. He stated the Riverview Racquetball Club in 2007 received site plan approval before the planning board. He explained NJDEP issued a permit to allow construction within the flood hazard area and the approval from the planning board was good by virtue of the permit extension act. The Gospel Fellowship Church was using essentially the same site plan as approved by the Planning Board with minor changes. Mr. Urdang stated an application was made before the Planning Board and it was found after the hearings were completed that the Planning Board did not have jurisdiction but should have been before the Zoning Board.

Mr. Urdang stated the Racquetball Club was a permitted use but a house of worship was a conditional use. He explained it was permitted in the zone but subject to specific items set forth in the ordinance. The Attorney explained that if the applicant needed a variance from one of the conditions a D3 variance would be required. He stated only the zoning board had jurisdiction over it so the Board also had jurisdiction over the site plan. The conditions that the Church did not comply with were parking located in the front and buffer requirements. Mr. Urdang stated the only thing that changed was instead of being a permitted use it was a conditional use and the hearings before the Planning Board were void. Mr. Urdang explained the hardship for the applicant because they had to repeat the testimony for the application.

Mr. Urdang stated under state law this was an inherently beneficial use and this becomes a negative criteria case requiring a 4-prong test. The Attorney stated RLUIPA was a federal statute and explained if the board failed to grant the necessary relief to the applicant it was applying a land use regulation and would have an impact on the applicant and its congregation by depriving them a place to pray. RLUIPA provides for damages and attorney fees in the event the Board unreasonably turns it down.

Mr. Sproviero asked if the Planning Board addressed the conditional use issue. Mr. Urdang answered no if they knew it was a conditional use they would have stopped. Mr. Urdang stated it was the Board’s requirement to determine its own jurisdiction. Mr. Sproviero understood they did not determine their lack of jurisdiction on the basis the applicant did not seek the required conditional use relief. The Board Attorney added the board was not rehearing the conditional use issue.

The application was carried to the next regular scheduled meeting on July 10, 2012.

As there was no further business to discuss, a motion to close was made by Ms. DeBari, seconded by Mr. Denis and carried by all.

Respectfully submitted,
Maureen Oppelaar