

**New Milford Zoning Board of Adjustment
Work Session
December 11, 2012**

Chairman Schaffenberger called the Work Session of the New Milford Zoning Board of Adjustment to order at 7:00 pm and read the Open Public Meeting Act.

ROLL CALL

Mr. Appice	Present
Mr. Binetti	Present
Ms. DeBari	Present
Mr. Denis	Present
Father Hadodo	Present (705)
Mr. Loonam	Present
Mr. Rebsch	Present
Mr. Stokes Vice Chairman	Present
Mr. Schaffenberger-Chairman	Present
Ms. Batistic- Engineer	Absent (710)
Mr. Sproviero - Attorney	Present

REVIEW OF MINUTES – Special Meeting for October 18, 2012

The Board Members reviewed the minutes and there were no changes.

SCHEDULE OF MEETINGS FOR 2013

The Board Members reviewed the dates and there were no changes.

OLD BUSINESS

12- 05 - 1109 Alessandrini Avenue – Block 205 Lot 20 - New House – variances for building coverage, height, stories, projections into required yards, driveway /curbcut

The Chairman said the applicant was requesting variances for height, building coverage, front yard encroachment, driveway / curb cut and stories. He added there was a letter from the Board Engineer regarding the application that the Board would address.

12-03 – 105 New Bridge Properties, LLC – Block 113 Lots 4, 5, 6 –Parking Lot/Restaurant Expansion –Use, Impervious lot coverage, front and side yard setback, off street parking, signs and seating

The Board Members had no comments.

12-01- New Milford Redevelopment Associates - Block 1309 Lot 1.02 –Mixed Use Development – Supermarket, Bank and Residential Multifamily Housing

The Board Attorney stated there were two different sets of revised plans and the Board Members were mailed the revised architectural plans in their packets. He noted today the Board Members

received revised site plans but he did not anticipate that there would be any testimony regarding the site plans.

There were new referral letters from the Fire Department, the Shade Tree Commission and the Environmental Commission.

The Chairman informed the Board they had packets with RFQ's to be reviewed for the January Reorganization Meeting.

Motion to close was made by Ms. DeBari, seconded by Mr. Loonam and carried by all.

**New Milford Zoning Board of Adjustment
Public Session
December 11, 2012**

Chairman Schaffenberger called the Public Session of the New Milford Zoning Board of Adjustment to order at 7:16 pm and read the Open Public Meeting Act.

ROLL CALL

Mr. Appice		Present
Mr. Binetti		Present
Ms. DeBari		Present
Mr. Denis		Present
Father Hadodo		Present
Mr. Loonam		Present
Mr. Rebsch		Present
Mr. Stokes	Vice Chairman	Present
Mr. Schaffenberger	Chairman	Present
Ms. Batistic-	Engineer	Present
Mr. Grygiel	Planner	Present (830)
Mr. Sproviero -	Attorney	Present

PLEDGE OF ALLEGIANCE

OFFICIAL MINUTES OF THE SPECIAL MEETING – October 18, 2012

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

Schedule of Meetings 2013

Motion to accept the 2013 schedule of meetings was made by Mr. Loonam, seconded by Mr. Stokes.

The motion passed on a roll call vote as follows:

For the motion: Members Loonam, Stokes, Binetti, DeBari, Denis, Hadodo, Schaffenberger
Approved 7-0

The Board Attorney informed the Board they have been provided with an ordinance approved on second reading by Mayor and Council relating to an amendment to the sign ordinance, which permits LED signage. There was a brief discussion on the ordinance and clarification on lighting beyond the property line. Mr. Loonam questioned if flashing signs were allowed. Mr. Sproviero answered no.

12- 05 - 1109 Alessandrini Avenue – Bromberg - Block 205 Lot 20 – New House- variances for building coverage, height, stories, projections into required yards, driveway /curb cut

Mr. Ari Weisbrot attorney representing the applicant said there was a new and improved application. The Attorney recalled the Board had expressed concerns at the last meeting so the

applicant went back with their professionals and spent a lot of time to make adjustments to address the Board's concerns. He reviewed the proposed variances for building coverage proposed at 25.1% reduced to 24.9%, height proposed at 31.89% reduced to 29.95% which no longer required a variance, proposed 3 stories reduced to 2.76 stories, front steps proposed at 16' reduced to 5' and the driveway /curb cut proposed at 28.3' and reduced to 24'.

Mr. Weisbrot asked Mr. Kevin Brodie to discuss the revisions. The Board Attorney reminded Mr. Brodie he was still under oath.

The Board Attorney marked as exhibit A-3 revised plans.

The Architect explained that the building coverage was reduced to 24.9% on paper due to a discrepancy between the architectural and engineering drawings. The Chairman clarified it was a drafting error. Mr. Brodie agreed and said there were no changes on their end. He stated the number of stories was reduced to 2.76 and the house was lowered 18" on the garage slab and the garage ceiling was lowered 6". The Board Attorney asked how he accomplished that. Mr. Brodie said they dropped the garage slab down 2' and it was 1' below the 98.3. Mr. Sproviero asked what the degree of the slope for the driveway was by having it 1' below curb grade. Mr. Brodie answered a 3.6 % slope. Mr. Sproviero asked if that created any problems for drainage, access or bottoming out the vehicles. Mr. Brodie answered it would not bottom out the vehicles and the drainage issue would be taken care of by a french drain in front of the garage into to a sump pump to a retention pit. They also added a generator to the plans in case of a power failure. Mr. Brodie said now the stairs came down 6 risers onto a platform on grade and the sidewalk sloped down towards the curb with some intermediate steps to the curb and four steps to the driveway. The architect said the driveway curb cut was reduced to 24' wide.

The Board Attorney asked if the basement kitchen was eliminated. Mr. Brodie agreed. He discussed the retaining wall and reviewed all changes and elevations on the plans.

Father Hadodo asked for the size of the driveway and curb cut. Mr. Brodie answered 24'. Father Hadodo questioned if a garage was considered livable space and was it below grade. Mr. Brodie said it was covered on the south side by grade so it was more than 50% below grade. Mr. Sproviero clarified that the applicant sought their relief under a hardship standard which was due from topographic circumstances and explained the slope on the property. Father Hadodo asked if it was calculated from the four corners of the house. The Board Attorney answered yes. Ms. Batistic added that the livable space had nothing to do with the height or stories.

Mr. Binetti thought they did a nice job.

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

There was no one in the audience who wished to be heard.

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

The Chairman said the applicant made substantial changes to the plans but he was not clear on the steps. Mr. Brodie explained the original elevation was 107.92 and it was now 105.4 with a 2.6' drop. The Chairman asked how many steps was that. The architect answered they eliminated 4 steps.

Mr. Weisbrot thanked the Board for their consideration and the applicant took all the comments from the Board to try to satisfy their concerns and requested the variances be approved.

The Board Attorney stated there were still four variances, which have been substantially reduced. There was building coverage, story, front step, driveway and curb cut variances. Mr. Sproviero repeated that the basis for the relief being sought was predicated upon the hardship standard due to the topography of the property.

The Chairman said they have dealt previously with a story issue that was on a property sloped side to side. The Board Attorney agreed. Mr. Stokes added it was self-induced. The Chairman agreed. Mr. Stokes said this property was lowered down as far as they could in the back of the building and the other property in question was substantially above grade. The Chairman asked for clarification on the calculation of the back property line, which changed the building coverage. Mr. Brodie explained the footprint and that Azzolina & Feury had calculated extra square footage for the house, which did not exist.

Ms. DeBari stated there was a letter from Ms. Batistic and would he comply with all of her concerns. Mr. Brodie said yes. The Chairman requested the architect to review the letter. Mr. Brodie read the letter into the record and discussed an issue brought up by the Borough Engineer regarding protective railings to be installed on walls higher than 2'. Ms. Batistic stated the retaining wall was high and at some point it was 7' high and she had concerns with safety for children and wanted a protection. Mr. Brodie asked if they could start the railing 10' in and use a landscape buffer for the lower height. Ms. Batistic said shrubbery would be acceptable and there was a discussion regarding the safety issues on the driveway. Mr. Weisbrot clarified sufficient shrubbery would be installed below 30". Ms. Batistic had reviewed and approved the seepage pit design calculations from the engineer.

The Chairman asked Mr. Weisbrot if he was going to bifurcate. Mr. Weisbrot said if it was not approved in bulk then by law they need to figure which one was being denied and which was being approved and then have an individual vote. Ms. DeBari believed if any Board Members had issues with any of the variances they could discuss it. Ms. DeBari believed they had done a substantial amount of work and basically addressed the Board's concerns and did a good job. Mr. Loonam did not like the 24' curb cut but the fact was the applicant worked very hard to amend the application. He did have concerns with the retaining wall. Ms. Weisbrot assured the Board it would be safe. The Chairman read the DPW referral letter into the record stating they were agreeable to a 24' curb cut. Mr. Loonam understood this was a situation that a 24' curb cut was somewhat warranted because of the wall.

Mr. Stokes stated there was no way to eliminate the story, he did not think the coverage was excessive, the applicant made all efforts to lower the garage, he felt a 28' curb cut was excessive but they reduced it to 24' which they would need to get in on a busy street, on a hill and down a

driveway. He did not have a problem with the revised stairs but felt the railing by the retaining wall should be the engineer's decision. Mr. Stokes liked the idea of a natural fence by the street and a railing when it got to 4'. The Chairman clarified there would be a 1' variance for the stairs, 4' for the driveway/ curb cut, coverage was 20% and requested 24.9%, and stories allowed 2.5 proposed 2.76.

Mr. Stokes made a motion to approve the variances, seconded by Ms. DeBari.

The motion passed on a roll call vote as follows:

For the Motion: Members Stokes, DeBari, Binetti, Denis, Hadodo, Loonam, Schaffenberg
Variance granted 7-0

12-03 – 105 New Bridge Properties, LLC – Block 113 Lots 4, 5, 6 –Parking Lot/Restaurant Expansion –Use, Impervious lot coverage, front and side yard setback, off street parking, signs and seating

Carmine Alampi, representing the applicant, stated the Board had wished to reopen the proceeding to seek clarification on the application which was approved in October and the Board had issued notice to the public. Mr. Alampi stated the New Bridge Restaurant had a history of being a full service restaurant on the site in this zone. He stated questions arose with regard to what was approved previously and what the operation had evolved into. Mr. Alampi said the application presented was positive in nature dealing with an existing restaurant that was highly successful and an addition less than 1,000 sq ft would host 60 additional seats. He said when they calculated the parking based upon the plan they would support the required parking with the new parking lot design. He said the application was to acquire two residential properties, demolish the homes and build a new parking area. He stated the New Milford ordinance required for every 4 seats one parking space was required. The attorney said they calculated a total of 260 seats in the facility and stated the parking was controlled by the parking provided on the site not controlled by the size or square footage of the building. He stated when they presented the application this calendar year after seven years of operation, the architect reviewed the floor plan and he asked him to fill the floor plan with seats and tables. Mr. Alampi discussed the activity of the restaurant. He added the floor area and fire code regulation and structure of the building allowed for greater capacity so they decided to show that on the upper level there was an average of 80 seats. He said the banquet room did not have fixed seating and was not open to the public because it was for functions or parties. He stated the main dining room showed 62 seats which was consistent with the original application and in the lounge area of the bar area there was more seating and tables but in the current operation of the facility they had primarily sets of 4. Mr. Alampi stated his plan showed no stools around the bar and the Board had a plan with seating around the bar. He believed the Board's plan was the first plan filed but the plan adopted had no stools. Mr. Alampi stated they were not hiding anything and there were 18 bar stools occupied regularly by patrons. He said they were here for clarification and the review of the ordinance specifically on site parking regulations and the number of parking spaces required to the number of seating. He stated the current application met the parking requirement and was a benefit to the neighborhood as well as themselves.

The Chairman agreed that the current application took care of the parking requirement but in 2004 it was agreed that the restaurant would have 130 seats and that number came from the available parking. Mr. Alampi stated they would not dispute the 130 seats but what was not clear

in the resolution was if they were talking about a la carte or dining room. The Chairman thought what brought the applicant to the Board was parking issues which was testified to by the public. He felt the parking issues were from the additional seating and felt seats were seats no matter where they came from. The Chairman stated the applicant was allowed 130 seats and added almost 70 without adding any parking which was where the problem was. He felt the applicant was seeking relief from a problem they created themselves. The Chairman thought if there were 130 seats in the restaurant and the valet service had been maintained they would not have the parking issues testified to by the residents. Mr. Alampi did not think that was a valid statement because there was no valet service mandated by the ordinance and 30 or more seats were triggered to the activity level of the banquet room which were movable seats. The Chairman stated whether it was a banquet room or not people who sit on the seats drive there.

Mr. Stokes stated he did not agree with the statement that they satisfied the parking problem. The problem was the Board granted the parking on the amount of seats and Mr. Alampi stated it was based on the fire ordinance. He questioned how many seats were allowed in the restaurant. The Chairman stated he had the minutes from 2004 and the architect noted a maximum of 150 patrons could occupy the building. Mr. Stokes stated that was the architect's opinion based on his sketch and he thought the fire load was the biggest indicator. Mr. Alampi stated the restaurant in terms of occupancy was regulated by the fire safety and fire regulation codes. Mr. Alampi stated the Chairman's point was they contributed to the parking difficulty but was the solution not to resolve it because they have come with a solution and they asked the Board to accept the facts for what they were.

Mr. Alampi stated they illustrated with the current application to fill the rooms to the capacity based on the fire code square footage. The Chairman stated there were 196 seats in the restaurant and they were regulated by the fire codes but they were also confined by the agreement made by the Board. He stated maybe the solution was to have 130 seats. Mr. Alampi answered maybe the solution was a reconsideration of that restriction or to seek relief from that or the best solution was to find more parking and seek relief which was what this application was all about. They have had an opportunity now to acquire these properties, to expand the parking and address it. He understood the Chairman's concern about the record, about the presentation and history of the application but they were offering a solution to allow them to continue to operate to enlarge their parking and to provide relief in the overflow parking.

Mr. Alampi said this was a request by the Board but one that was necessary and one that they were receptive to participate in and it was a clarification of what had developed in this business.

The Board Attorney stated there was a 2004 application that involved a parking variance and by the strict terms of the resolution it appeared the parking variance granted was predicated upon the existence of 130 seats at the facility and the site plan on this application had the existing seating at 130 seats. Mr. Alampi gave his interpretation of what that 130 represented. The Board Attorney stated the issues were one that looked back and one that looked forward. The issue looking back was what was the significance of the 130 and how did they go from 130 to something greater. The second issue was they were asking for a parking variance which was predicated upon the existence of 260 seats. Mr. Stokes asked if the Board was asking for a

parking variance. The Board Attorney clarified they were asking for a use variance to accommodate the parking lot. Mr. Alampi stated which eliminated the parking variance. Mr. Alampi stated there were 32 parking spaces without valet service and he asked the architect to show that on the plans. Mr. Sproviero asked if that was a coincidence that it was the number in the resolution. Mr. Alampi answered yes it was based upon the existing parking lot as self service. Mr. Alampi stating they were showing that they were averaging 30 more seats upstairs for parties and 18 bar stools. They eliminated the parking variance requirement with the granting of the use variance. The Chairman stated they would not need a variance at all if the restaurant had 130 seats. Mr. Alampi stated there was no way a restaurant would be constrained in that fashion. The Chairman asked if the restaurant ever had 130 seats. Mr. Alampi did not know but thought the seating today had been operating that way for at least five years. The Chairman said that was what concerned him because they never had 130 seats and they loaded up the restaurant with what they needed and that was what created their parking problem. Mr. Alampi answered there were changes to the area regarding the smoking laws. He stated there was no question that if you went to the restaurant there would be 196 seats and there was no question that the floor plan showed it and they did not try to hide it. Mr. Alampi stated the issue was did the Board feel they could support their own decision in granting the variance and did the variance provide additional parking and relief for the onsite parking. Mr. Alampi said the Chairman thought it was a created situation. The Chairman agreed. Mr. Alampi said any successful restaurant created an impact and the issue was how they resolved that impact. The Chairman stated that was not the issue. Mr. Alampi said it was the issue and perhaps they should have should have come to the Board to be relieved of some of these conditions. Mr. Alampi stated this was not a debate but rather a procedure and clarification.

Mr. Loonam asked about the quads and bar stools. He questioned his testimony regarding the bar stools being for single patrons and stated minimizing the 18 bar stools was a mistake because there was a car for one person versus maybe a car for a quad. Mr. Alampi understood. Mr. Loonam said when Mr. Alampi had mentioned the abandoning of the valet service he asked at that time what would they find was abandoned next. Mr. Loonam said Mr. Alampi's response was all he could do was present the application and show it to them and all they had was their word. Mr. Loonam said he did not say this was intentional but here we are again. Mr. Loonam stated there was a history of this. Mr. Alampi said that was not true because the floor plan had showed in detail in this application the full occupancy and full use of the building. Mr. Alampi said to go forward with this facility with the entire floor plan showing all the seating. He stated they based it on the total parking and the total seating for the entire space and felt there would be a reduction of the seats for entertainment area. Mr. Alampi stated they were here to reconcile the past record and current application.

The Board Attorney clarified that the 260 seats to predicate the parking requirement in the current application was the maximum amount of seats at the restaurant. Mr. Alampi stated they were using an average for the banquet room. Mr. Sproviero felt there would be a significant level of comfort if Board heard that 260 seats was the maximum occupancy by way of seating and would his client agree to a condition limiting seating at 260. Mr. Alampi questioned what if there was a party hosting 90 people. Mr. Sproviero stated they would have to pull seats out of downstairs. Mr. Alampi answered they would agree to a total count of 260 seats regardless to the activity. The Board Attorney explained he was looking for a way to establish some specificity

both for the members of the Board and for his client to abide. Mr. Alampi stated they would agree to the specific total of 260 seats.

Fr. Hadodo felt to improve a local business was good for tax rates and jobs but not at the neighbors expense. He felt 65 parking spaces was not enough but they agreed on it and should honor their commitment. Fr. Hadodo felt there should be no more than 260 seats and felt the town in the future should enforce it.

The Board Attorney stated the Board would either make a motion to confirm the prior determination inclusive of the conditions and the inclusion of the additional condition that would limit the total seating to 260 seats or a motion to vacate the prior approval.

Mr. Stokes asked what happened if they violate this. Mr. Sproviero answered the zoning officer had the authority to issue a complaint that would be heard in the municipal court. He agreed with the 260 seats but he feared the same thing the Chairman discussed that today it could be solved and tomorrow there could be new problem. Mr. Stokes had concerns regarding the fire code and said 260 seats were approved with the addition.

Mr. Loonam felt the only time there would be 260 people would be a weekend night when the Fire Marshall or Zoning Officer would not be there. Mr. Stokes said the Fire Marshall could be called at any time.

Ms. DeBari asked if there was an occupancy load. Mr. Sproviero answered yes but there was no zoning ordinance that limited seating or occupancy based on square footage. Mr. Alampi stated they had to agree to the fire occupancy load.

The Chairman clarified if there were more than 130 seats in the restaurant now the restaurant could be cited. The Board Attorney stated it was certainly open to that interpretation but Mr. Alampi might interpret it differently.

Ms. DeBari asked how that would be policed. Mr. Alampi stated they would adhere to and agree to the number.

Mr. Appice felt bad for the residents in the area because of the increase of the size of the building and asked when was it big enough. He questioned if they would be buying more property and making it bigger. Mr. Alampi stated there a process and that would be to come before the Board.

Mr. Alampi suggested the first motion be to reaffirm the decision in October to grant the variance.

Ms. DeBari stated the applicant was here tonight for clarification requested by the Board and she felt the biggest issue was the parking and she voted for the application because they would be taking 65 cars off the street that had been detrimental to the area and were now in a parking lot which she felt was a good thing and they agreed to the 260 maximum seats with the addition.

Father Hadodo made a motion to reaffirm the decision on October 9, 2012 to grant the variance with the additional condition of a maximum 260 seats, seconded by Mr. Stokes.

The motion passed on a roll call vote as follows:

For the Motion: Members Hadodo, Stokes, Binetti, Denis, DeBari

Against the Motion: Members Loonam, Schaffenberger

Approved: 5-2

12-01 New Milford Redevelopment Associates Block 1309 Lot 1.02 – Mixed Use Development – Supermarket, Bank and Residential Multifamily Housing

The Board Attorney stated they have received new architectural drawings that reflect modifications to the plans that impacted the scope of the subject matter of the application and the Board received today the revised the site plan drawings and understood although the Board had received them they would not hear any testimony with respect to the site plan tonight. The Board also received correspondence dated 12/4/12 from the Environmental Commission, a letter from the Shade Tree Commission and an updated engineers report from Ms. Batistic dated 12/5/12.

Mr. Eisdorfer requested additional meetings for January 2013. Mr. Sproviero stated they did not have the January calendar but anticipated they would have it at the January 8th meeting.

Mr. Leibman had an issue to bring to the Board's attention before proceeding with the application. He questioned if the Board should be proceeding with the application because there had been a substantial change. He read from the COX book regarding when amended applications were very substantially different from the original it may be treated by the Board and any reviewing court as a new application. He discussed case law referencing Lake Shore Estates v. Denville Twp. Mr. Leibman said there was a 221 unit building downsized to a 24 unit building and he thought the Board needed to come to a conclusion whether this was a very substantially different application which would then need to be filed, a new notice and it needed to be deemed complete. He said this was not a complete application and asked the Board to rule on his motion to deem this application new and incomplete.

Mr. Eisdorfer also cited case laws referencing Schmidhausler v. Planning Bd of Lake Como and Davis v. Planning Bd of Somers which said the Board had discretion to treat an application as an amended application or as a new application and the criterion was if the application was qualitative different. He said this was not a qualitative different application but this was an application for a mixed use development for a supermarket, bank and multifamily residential building. Mr. Eisdorfer said this was still an application for the same but they have downsized. He stated the consequences of treating this as a new application was they would have to bring back all the professionals and start from scratch. He felt this was not efficient, necessary or required by law. He said this was governed by COAH regulations that said the Board was to expedite applications for inclusionary developments and they did not think that would be expediting the application.

The Board Attorney commented on the case laws cited by Mr. Eisdorfer and said this was a discretionary call made by the Board as to whether this modification was so substantial so as to change the nature and qualitative scope of the application. The Board Attorney said the scope that had been sought had not changed but what had changed was the number of units proposed in the residential component. He agreed with the applicant's counsel that the effect of determining this a new application would mean they would have to start from scratch. He anticipated they would need to hear all new testimony relating to the residential component and additional testimony with regard to drainage and possible flooding issues and additional testimony from the traffic consultant. He thought the only testimony that would not change would be Dr. Kinsey's because it was more theoretical in nature.

The Board Attorney did not believe this was a new application and did not think there was a qualitative change in the scope of the application. It was still a mixed-use development with an inclusionary component but the intensity of the residential component had been substantially reduced. He anticipated they would require less variance relief as to the residential component. Mr. Sproviero said this was discretionary call based upon the Board's assessment.

Mr. Loonam thought the proposed changes were incredibly significant. He said there were a number of board members who recused themselves for comments made based on an application that had 221 residential units. He felt Dr. Kinsey would have to come back because he testified about market rate units vs COAH units and how the relationship was symbiotic. Mr. Loonam said drainage would be different and felt there was a tremendous difference in the application. The Board Attorney felt the Board had to constrain their thought process as to whether or not the nature of the application had changed so to substantially alter the qualitative subject matter of the relief being sought and issues that related to whether or not members were brought back to the Board were inconsequential and should not be part of the analysis.

The Board Attorney assumed if the majority of the Board believed this was a substantial modification and treated it as a new application, the applicant would not be satisfied with the determination and was equally confident that the Board would find themselves in a court of law asking a judge to determine whether or not the Board's determination was appropriate or not. Mr. Sproviero wanted the record to be clear that it was predicated upon the determination that the Board believed the nature of the application was such that it warranted new application treatment and not the collateral effect of what that change of scope was. Mr. Loonam felt this was the single biggest change he had ever seen on an application.

Mr. Stokes asked what the substantial change that was referred to in the case law. Mr. Leibman discussed the cases mentioned. Mr. Leibman said on one of the sets of engineering plans there was a restaurant. Mr. Eisdorfer said that was not on the plans. Mr. Leibman said that was the part of the problem because this was a different application. There was no application before the Board that stated how many of 24 units were affordable housing. Mr. Leibman stated the Board could not deem this application complete until they have all the information and it was not complete as it currently stands.

Mr. Eisdorfer explained the case law in *Macedonian Church v Planning Bd* and *Davis v Planning Bd of Somers*. He said one said it had to be a new application and the other one said it did not

have to be a new application. He said in the Macedonian Church v Planning Bd the application doubled the square footage and the court said it was qualitatively different application. The other one dealt with ingress and egress. He thought that gave brackets for the range of choices. The Board Attorney answered the brackets that they established was that one went to the intensity of the application and the other went to setbacks. He said this clearly impacts the intensity issues. Mr. Eisdorfer said it reduced the intensity. The Board Attorney felt he was not being fair with the Board. He said he had seen the architectural and had the site plan modifications and without having something stating what the documents meant it was difficult to access whether or not this was or was not the type of substantial modification that should or should not warrant this being deemed a new application. Mr. Sproviero felt this jurisdictional question was an essential question and the Board needed to know more before they could determine this issue. The Board Attorney requested a summary from the applicant that was a written document that summarized the scope of the modifications and the applicant's synopsis of why they believe this should not be deemed a new application. He would like the Board Members to have an opportunity to review it and at the January meeting the Board could make a knowing informed determination as to what the law required them to do as they move forward on the revised plans. Mr. Eisdorfer said they would abide with the Board's decision on this but asked if Mr. Lessard could testify tonight. Mr. Leibman stated the record would be cleaner if it was presented from beginning to end with the actual application and the architect would not finish tonight. Mr. Sproviero agreed they would not be done with cross examination in 20 minutes. Mr. Eisdorfer would leave it to the Board's determination. The Board Attorney wanted to make sure they were proceeding in strict accordance with the law and added it was not about convenience but about getting this right. Mr. Stokes agreed. Mr. Stokes polled the Board and they agreed to wait to January 8, 2013.

Mr. Eisdorfer understood there would be a written submission and the Board would make their determination at the January meeting and they would be prepared to put Mr. Lessard on at that meeting. Mr. Stokes asked for the submission no later than December 28, 2012. Mr. Eisdorfer agreed to carry thru the January meeting. Mr. Leibman asked a copy be forwarded to him. Mr. Eisdorfer agreed.

Mr. Loonam asked about the trip to the site. Mr. Eisdorfer stated they were trying to arrange it and figure how to do it consistent with the open public record act that would be acceptable with United Water. Mr. Loonam had concerns about the weather and asked for a determination quickly.

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