

Approved
2/11/14

**New Milford Zoning Board of Adjustment
Work Session
January 9, 2014**

Chairman Schaffenberger called the Work Session of the New Milford Zoning Board of Adjustment to order at 7:38 pm and read the Open Public Meeting Act.

ROLL CALL

Mr. Binetti	Absent
Ms. DeBari	Present
Mr. Denis	Present
Fr. Hadodo	Absent
Mr. Ix	Absent
Mr. Loonam	Present
Mr. Rebsch	Present
Mr. Stokes Vice Chairman	Absent
Mr. Schaffenberger-Chairman	Present
Ms. Batistic – Engineer	Present
Mr. Sproviero - Attorney	Present
Also present	
Mr. Grygiel – Planner	Present

REVIEW OF MINUTES – October 8 and October 29, 2013

The Board Members reviewed the minutes and there was a change.

SCHEDULE OF MEETINGS – 2014

The Board Attorney stated the Board would vote on the schedule of meeting and explained because of Veteran’s Day the November meeting was scheduled for Wednesday, November 12, 2014.

The Chairman asked the members to review their 2014 updated phone numbers and addresses and the 2013 annual application report. The annual report would be voted on January 14 and then submitted to the Mayor and Council and Planning Board., said the Chairman.

Chairman Schaffenberger told the members to review the RFQ’s for Board Attorney that have been sent to them which would be voted on at the Reorganization meeting.

OLD BUSINESS

**13-02 Alex and Sons Real Estate, LLC – 391 Madison Avenue - Block 1211 Lot 32
Three story 14 unit multiple dwelling with parking underneath building
Use, building coverage, front yard and height**

The Chairman stated there was a letter from Carmine Alampi asking to carry the application until February 11, 2014 that would be read into the record at the Public Session.

Mr. Loonam questioned if it was acceptable that the applicant requests the application be carried over and over again. The Board Attorney said as long as the applicant keeps extending the time in which they have to render a determination. He further explained the constraints upon the Board relates to their requirement to complete the application within the time provided by the statute and the applicant has continued to extend it. The Board Attorney felt the applicant was trying to come up with some alternative plan.

**12-01 New Milford Redevelopment Associate, LLC – Block 1309 Lot 1.02
Supermarket, Bank and Multifamily Residential Units
Height, stories, building and impervious coverage, use and parking**

The Chairman said there was a letter from Kinsey & Hand that would be addressed by the Board Attorney at the public session.

The Chairman clarified for the record that this meeting was their December 9, 2013 meeting that was postponed due to the weather. The regular scheduled meeting was January 14, 2014.

The Board Attorney stated they had four members for the NMRA which was a quorum but understood Mr. Loonam would need to leave the meeting at 9:30 at which point they would lose their quorum and would be done at that point.

Motion to close work session was made by Mr. Loonam, seconded by Mr. Rebsch and carried by all.

**New Milford Zoning Board of Adjustment
Public Session
January 9, 2014**

Chairman Schaffenberger called the Public Session of the New Milford Zoning Board of Adjustment to order at 8:04 pm and read the Open Public Meeting Act.

ROLL CALL

Mr. Binetti		Absent
Ms. DeBari		Present
Mr. Denis		Present
Father Hadodo		Absent
Mr. Ix		Absent
Mr. Loonam		Present
Mr. Rebsch		Present
Mr. Stokes	Vice Chairman	Present
Mr. Schaffenberger-	Chairman	Present
Mr. Sproviero -	Attorney	Present
Ms. Batistic	Engineer	Present
Also Present		
Mr. Grygiel	Planner	Present

PLEDGE OF ALLEGIANCE

OFFICIAL MINUTES OF THE WORK SESSION – October 8, 2013

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

OFFICIAL MINUTES OF THE PUBLIC SESSION – October 8, 2013

Motion to accept the minutes with a change were made by Mr. Loonam, seconded by Mr. Denis and carried by all.

OFFICIAL MINUTES OF THE SPECIAL MEETING – October 29, 2013

Motion to accept the minutes were made by Mr. Loonam, seconded by Ms. DeBari and carried by all.

SCHEDULE OF MEETINGS – 2014

Motion made by Mr. Loonam, seconded by Mr. Rebsch to accept the 2014 Schedule of Meetings.

The motion passed on a roll call as follows:

For the motion: Members Loonam, Rebsch, Denis, DeBari, Schaffenberger

Approved 5-0

**13-02 Alex and Sons Real Estate, LLC – 391 Madison Avenue – Block 1211 Lot 32
Three Story 14 Unit Multiple Dwelling with parking underneath building
Use, Building Coverage, Front Yard and Height**

Chairman Schaffenberger read Mr. Alampi's letter dated 1/7/14 into the record requesting that the application be rescheduled to the February 11, 2014 public hearing and the applicant agreed to extend the application review period to February 28, 2014.

**12-01 New Milford Redevelopment Associates, LLC – Block 1309 Lot 1.02
Supermarket, Bank and Multifamily Residential Units
Height, stories, building and impervious coverage, use and parking**

Karl Schaffenberger, Ronald Stokes, Joseph Binetti and Father Hadodo have previously recused themselves from the application.

The Board Attorney stated the Board has received correspondence and a revised table issued by Dr. Kinsey dated 12/3/13 directed to Stephen Eisdorfer. Mr. Sproviero read the letter into the record that corrected an error in the Affordable Housing Rents, Bergen County – 2013 exhibit.

Mr. Del Vecchio marked the letter as exhibit A-53.

Mr. Del Vecchio requested a special meeting for January. The Board Members scheduled a special meeting for Thursday January 23, 2014 at 7 PM.

Mr. Del Vecchio said they agreed to bring back Dr. Kinsey for the exclusive reason for allowing the Board Attorney the opportunity to ask additional questions. The Board Attorney stated he did not even start and said they had closed to the public. He questioned if the attorneys had an opportunity to cross-examine. Mr. Del Vecchio said the public portion was closed and Mr. Alonso did not request Dr. Kinsey to come back. He stated he reconfirmed at the end of the last meeting that the only reason they were bringing him back was for Mr. Sproviero's questions. Mr. Alonso said he did not know Dr. Kinsey would be testifying and was here that day solely to present his motion with regard to the redacted transcripts and left to prepare for a jury trial. Mr. Alonso said the problem he had which he has expressed several times was the applicant always brings in documents and plans the day of the meeting and presents it, enters it as an exhibit and does not file it with the Board Secretary. Mr. Alonso said under the MLUL any document that they would rely upon must be filed 10 days before. Mr. Del Vecchio said that was incorrect and the MLUL only requires that on the initial application and not for subsequent meetings. The Board Attorney asked Mr. Alonso if he wanted the opportunity to question Dr. Kinsey. Mr. Alonso agreed. Mr. Sproviero asked Mr. Del Vecchio what was the prejudice to his client if he permitted it. Mr. Del Vecchio said he wanted to put their architect's testimony in first and thought because they were bringing back Dr. Kinsey only for Mr. Sproviero's questioning they would be able to finish both at this hearing. Mr. Del Vecchio said the public portion was closed and Mr. Alonso and any objector's counsel was part of the public portion. Mr. Del Vecchio said the prejudice was the public portion was closed and they have prepared their witness to answer any questions from the Board Attorney. The Board Attorney stated Mr. Alonso's questions might

eliminate some of his questions and he had a right to re-open to the public for the circumstances that present themselves. The Board Attorney thought Mr. Alonso as an objector's counsel was entitled to conduct a cross examination of Dr. Kinsey and did not see any prejudice as it related to either the merits of the application or moving forward with the application. Mr. Del Vecchio said the prejudice could be that Mr. Alonso was not present for Dr. Kinsey's redirect and might be asking the same questions. The Board Attorney said then it would be asked and answered. Mr. Del Vecchio said the Board could do what it wants but he did not see any basis for reopening and did not think it was proper.

The Board Attorney's recommendation was to permit Mr. Alonso to testify and it could be considered by a motion to reopen to the public for the sole purpose of permitting the cross examination of Dr. Kinsey. Ms. DeBari asked if there was a motion. Motion was made by Mr. Rebsch, seconded by Mr. Denis. All present was in favor none opposed.

Mr. Del Vecchio marked as Exhibit A-54 the architectural plans two sheets dated 10/2/13.

The Board Attorney swore in Mr. Jerry R. Simon, Lessard Design, 8521 Leesburg Pike, Vienna, VA. The Board Members accepted the qualifications of Mr. Simon as an expert in the field of architecture.

Mr. Del Vecchio asked Mr. Simon if he was asked to develop a prototypical plan for a building that was proposed to be a bank. Mr. Simon said yes and explained the building was brick with portions that were stucco. The architect stated the roof elevations were between 14' and 18' and there was a tower with proposed signage that was 27'. There was a drive thru portion that was 11' x 38' for a drive up window and depository door and there would be two types of brick in terms of color, which has not been decided on. A mechanical screen was shown on the roof for a HVAC system.

Mr. Del Vecchio clarified that the front elevation was oriented towards the west which was the adjacent residential proposed building. Mr. Simon agreed and said when entering the site there was a parking area to the south and a crosswalk for sidewalk and pedestrian circulation into the building. Mr. Del Vecchio verified that the arrows on the drawing correspond to the elevations. Mr. Simon stated the pylon sign was 21'4" High, 13'4" in breadth, 24" in depth, 16 sq ft for the Shop Rite sign and allocated 19 sq ft for the bank sign. Mr. Simon said the sign area for the bank was 2' x 9'4" and the font style and size was to be determined. Mr. Del Vecchio asked if it was a two-sided sign. Mr. Simon agreed.

Ms. DeBari asked if the drive up was facing River Road. Mr. Simon agreed. Ms. DeBari questioned that the front of the building was facing west. Mr. Simon agreed and said the reason for that was for site circulation. The Board Attorney asked if what was depicted on the exhibit, as the Back/Drive Up elevation was in fact the front elevation. Mr. Simon said the front elevation was the west side of the building. The Board Attorney clarified that the front of the building would not be facing the street front. Mr. Simon said the Back/Drive up elevation was facing River Road. Mr. Sproviero stated that what was depicted, as the front elevation would be facing away from River Road. Mr. Simon agreed. Mr. Rebsch said there were no dimensions on the

Board Members plans. Mr. Denis questioned that driving down River Road they would be looking at a Shop Rite/bank sign. Mr. Simon said the two-sided pylon sign was perpendicular to River Road.

The Board Attorney said correspondence was issued 10/24/13 to the Board by the Board Engineer. Mr. Sproviero said the letter mentioned there was additional variance relief required because there were multiple signs. Ms. Batistic said the site plan showed three locations of the proposed pylon sign and the key map on this plan showed only two signs on each side on an angle by the driveway, which Mr. Simon testified it, would be perpendicular to River Road. Mr. Simon thought it was modified and on the landscape plans it showed the one perpendicular pylon sign. He added on Sheet C-04 and C-05 it indicated the monument sign and on C-05, C-11 and C-12 it showed landscaping around the pylon sign. Ms. Batistic clarified that the proposed sign shown on these plans would be at three locations. Mr. Del Vecchio said two signs were proposed one sign was proposed on River Road and the other at the Main entrance. Ms. Batistic said the site plan and landscaping plan showed three pylon signs. It showed one at each driveway at Main Street, one opposite Demarest and one on River Road. The Board Attorney said on the key map it appeared there were two signs directly across from Demarest. Ms. Batistic thought Mr. Simon clarified there would be one perpendicular sign at that location. Mr. Del Vecchio reviewed the plans and agreed that Ms. Batistic was correct that there were three signs on Mr. Dipple's plan. Ms. DeBari asked if there would be two or three. Mr. Del Vecchio confirmed that there would be three signs. Ms. DeBari questioned if the three signs would be the proposed size on exhibit A-54. Mr. Del Vecchio agreed. Ms. Batistic said the distance from the right away would be what was indicated on Mr. Dipple's plan. Mr. Del Vecchio agreed that they were all shown at a 10' distance on Mr. Dipple's plan. Ms. Batistic said this was the only detail for a sign and she did not know about any variance for the different signs on the facade shown on the previous plan because no details were provided. The Board Attorney clarified what has been contemplated by way of this application was three pylon signs with the dimensions depicted on page 2 of exhibit A-54. Mr. Simon agreed.

Mr. Loonam asked if there originally requested a height variance relief for multiple signs. Mr. Del Vecchio would have to go back and check.

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

Mr. Alonso questioned that they were proposing two different signs. Mr. Simon agreed there were free standing pylon signs and a signage on the bank. Mr. Alonso clarified that the front of the building was facing west and was the sign going to be on the front or the back of the building. Mr. Simon said the proposed signs were facing River Road and Cecchino Drive. Mr. Alonso clarified it would be 27' high. According to Mr. Simon, that portion of the building would be that high. Mr. Alonso asked if that sign would be lit. Mr. Simon said typically they are lit but he could not answer if it would be lit from the front or back lit. Mr. Alonso asked if he was aware the site slopes down away from River Road. Mr. Simon agreed. Mr. Alonso asked if he was aware of any impact with the lights to the homes across River Road. Mr. Simon did not know what the lighting package would be for the bank. Mr. Alonso asked if that was something the Board could be provided with. Mr. Simon said not until there was a tenant for the space. Mr.

Alonso asked for the height of the pylon sign. Mr. Simon said 21'4". Mr. Alonso questioned how far the sign would be off the sidewalk. Mr. Simon said 10'. Mr. Alonso asked if that sign would be illuminated. Mr. Simon assumed it would be. Mr. Alonso asked what type of lighting would be used for the Shop Rite sign. Mr. Simon said typically they were backlit. Mr. Alonso asked if they would be lit for 24 hours. Mr. Simon did not know.

Mr. Alonso asked where the armored truck would make their deliveries relative to the apartment building. Mr. Simon said it might be different for each bank and there was no interior layout because they did not know who the tenant would be. Mr. Alonso asked if the back of the building faced River Road. Mr. Alonso said the drive up elevation faced River Road. Mr. Alonso asked if there was any proposed decorative lighting on the buildings. Mr. Simon thought there would be downward lighting in the ceiling of the drive thru.

Michael Gadaleta, 270 Demarest Avenue, asked why the bank faced west instead of River Road. Mr. Simon said the stacking of cars would be better served and it would get them into the site further. Mr. Gadaleta stated that River Road was a commuter street and all the businesses face River Road so why did they turn their back on River Road and not face a commercial street. Mr. Simon said they did not turn their backs but it was mainly being driven for access into the site. Mr. Gadaleta questioned that they also designed the residential building, which faced the drainage basin and now the bank has turned its back on River Road and asked if it was impetuous for the people renting the apartments that their bedrooms were facing the front of the bank. Mr. Simon would defer to Mr. Lessard's testimony for the residential because he was not involved with the residential. Mr. Gadaleta questioned that the residential building designed by his firm was seeking a height variance for the aesthetics of the pitched roof yet the bank has a flat roof. Mr. Simon said they were compliant with the overall design of the commercial aspect and it was a prototype. Mr. Gadaleta asked if it would be beneficial to have a pitched roof to fit into the neighborhood and conceal all the mechanical equipment and noise produced. Mr. Simon did not think with regard to noise it would be contained differently than with a screen. Mr. Gadaleta asked if they could come back with a plan concealing all mechanicals. Mr. Simon would have to defer that to the developer. The resident asked if he thought it was a good plan that they were sharing a parking lot and there was no differentiation. Mr. Simon said preferred parking was segregated from the Shop Rite parking lot. Mr. Gadaleta asked Mr. Simon if it made a lot of sense to connect all the parking lots together and questioned the safety for a child in the residential area if a car from the bank rushed pass the apartment building. Mr. Simon said they have done a number of mixed-use projects and they all function well and added those issues could happen in a single-family neighborhood. Mr. Gadaleta thought the residential should be facing Cecchino and the bank should be facing River Road. Mr. Simon said he was entitled to his opinion. Mr. Gadaleta asked Mr. Simon how many developments he did in the northeast that faced opposite the street. Mr. Simon would have to research that. Mr. Gadaleta asked if the bank was facing the other direction would the residents have more privacy. Mr. Simon would have to defer that to the developer to see if they would revisit it. Mr. Gadaleta said in New Milford they try to have some design continuity and questioned that there does not seem to be any design continuity between the residential building and the bank. Mr. Simon said he was not addressing the residential but as far as the bank and the Shop Rite they were looking at them as a unit in terms of design. Mr. Gadaleta said his firm was designing the residential building and asked why

the bank and residential development did not complement each other. Mr. Simon would defer that to the developer if they want to revisit it.

Richard Davidson, 685 Berkley, thought River Road was about 5-7' above the height of the parking lot at the southeast corner of the main property. He said River Road was 6' higher than the parking lot, the top of the parapet of the bank was 14' and the top of the mechanical equipment was 16.5'. A driver heading south on River Road looking at elevation 4 with the parapet now being only 8' above River Road, would be looking directly into the underside of the drive up window roof. Mr. Davidson said the next most primary thing he would see driving south on River Road and as he turned into the property would be a flat roof of the building and the canopy. Mr. Simon agreed.

Lori Barton, 399 Roslyn Avenue, asked if those views from River Road would be aesthetically pleasing. Mr. Simon said it was a prototype that had the ability to move as far as mechanically. Ms. Barton said if he was aware that the residential component was completely surrounded by a parking lot and flood protection basin and lacked recreational space. Mr. Simon would not address the residential. Ms. Barton asked if having pylons signs was consistent with the signage in the neighborhood. Mr. Simon was not aware of signage in the neighborhood.

John Rutledge, 335 River Road, asked about the sign at the intersection of Cecchino/ River and if it was set back 10' from the curb line. Mr. Simon believed that was what the document showed. Mr. Rutledge questioned the location of the sign. Mr. Simon said the engineering plan showed the first pylon sheet off of River Road south of the entrance off of River Road. Mr. Rutledge clarified that it was at Demarest entrance on River Road. Mr. Rutledge asked him to explain a pylon sign. Mr. Simon said it was basically a freestanding sign two sided with legs. Mr. Rutledge asked if roof top mechanicals could cause a distraction for the high school students. Mr. Simon said no.

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

The Board Attorney questioned that the roadway adjacent to elevation 4 was the driveway that enters the development that was directly across from Demarest. Mr. Simon agreed. Mr. Sproviero clarified that when entering the site there would not be any signage of any kind just the back of the building. Mr. Simon agreed. Mr. Sproviero said the signage was on the other elevations. He did not understand the reason for that because that would be the point where the majority of the traffic would be coming in. Mr. Simon could not answer as far as the traffic study. The Board Attorney asked what design elements did he incorporate to accommodate the queuing that would result from the operation of the drive thru. Mr. Simon said the idea was to get further into the site and with regard to queuing for the drive thru they would traverse around the back of the bank and exit right or left out. Mr. Sproviero said there appears to be a "pork chop" depicted on the key map by elevation 4. Mr. Simon said on C-05 of the engineering plans it showed it as being striped. It was a one way drive thru and then there was the queuing into the drive up. Mr. Sproviero asked if the "pork chop" was staying there or coming out. Mr. Simon said it was a striped pork chop. The Board Attorney did not see how that would work. Mr. Simon said it was a visual queue to keep drivers on the west side because it was a one way.

Mr. Loonam questioned this was a generic design for a bank and it would change based upon the specific tenant. Mr. Simon said it was a prototype of a 3,400 sf bank. Mr. Del Vecchio said at a previous hearing someone suggested that there might be a fast food use in that location because no elevations or architectural were produced for a bank. Mr. Del Vecchio said in order to address the comment they have produced a generic prototype elevation of a bank to provide comfort that it would be a bank. Ms. DeBari asked what would happen if a bank did not want to go there. Mr. Del Vecchio said they would make an application for whatever it would be and it would still be a use variance before this Board. Mr. Loonam asked if it was conceivable that they would come back to the planning or zoning board to seek a tweak for it when there was a definitive tenant. Mr. Del Vecchio said yes they would come back to the Zoning Board and when they had a tenant they could definitively plan.

Ms. Batistic and Mr. Grygiel looked over the site plan as compared to the architectural and Mr. Grygiel said there were differences between the prototypical building shell on the architectural and site plan. Mr. Grygiel noted that at some point when there was more clarity as to the land user if the project was approved, they would need to adjust plan. The entrance that showed the front was a different side than shown on the site plan, which appears to be facing south and there was landscaping shown along the side of the building, said Mr. Grygiel. He further explained to the Board there were details to be worked out because it was a prototypical bank.

Mr. Del Vecchio would continue the cross-examination by Mr. Sproviero to Dr. Kinsey. Mr. Sproviero said there was a motion to reopen for the limited purpose to allow Mr. Alonso to question Dr. Kinsey. The Board Attorney reminded Dr. Kinsey he was still under oath.

Mr. Alonso questioned his previous testimony that this was the first time he testified to an inherently beneficial use application. Dr. Kinsey did not recall that but said it was accurate. Mr. Alonso asked if in his report he said that the New Milford deemed that site to be appropriate for affordable housing. Dr. Kinsey agreed in one of the housing elements. Mr. Alonso said he indicated that New Milford has taken no action to implement a plan for the site. Dr. Kinsey said the site was not rezoned as recommended in the housing element. Mr. Alonso said he referred to a 200 unit building with a 20% set aside. Dr. Kinsey agreed. Mr. Alonso said in 2011 NMRA appeared before the Mayor and Council to request that the property be rezoned. Dr. Kinsey vaguely recalled it. Mr. Alonso asked if he was aware that the Mayor and Council took a vote as to whether or not to rezone the property. Dr. Kinsey was not aware of taking a vote in response to a proposal by NMRA. The Board Attorney thought they were battling over semantics. He explained that Mr. Alonso was saying that New Milford took action and that action was not to rezone and Dr. Kinsey was saying the lack of action was the failure to rezone. Mr. Alonso agreed and Dr. Kinsey said his phrase was no action to rezone to implement the plan. The plan he referred to was the 2008 Housing plan, which had recommendations for rezoning. Mr. Alonso said the question goes to the credibility of witness to form an opinion. The Board Attorney said they all knew what the report said, what the actions of the M/C have been and where we stand in respect to this application today as a result of it.

Mr. Alonso said in answering question #10 he conceded that there was no COAH rule, no court decision or generally accepted standards provided which provides guidance or precedent on how

to conduct the analysis. Dr. Kinsey agreed. Mr. Alonso said he was answering a question where there was no legal standard to give guidance. Dr. Kinsey said there was no COAH rule, no court decision or generally accepted standard. Mr. Alonso said he was forming an opinion when there was no legal standard. Dr. Kinsey said his opinion was based on facts. Mr. Alonso said there was no legal standard. Dr. Kinsey agreed there was no generally accepted standard. Mr. Alonso said he used three different approaches. Dr. Kinsey said there were four approaches to analyze the question. Mr. Alonso said he created the standards. Dr. Kinsey said he was proposing four ways of addressing the question. Mr. Alonso asked if he had to meet all four ways. Dr. Kinsey said he was offering an analysis of four different ways to look at a question which there was not a COAH rule or acceptable standard. Mr. Alonso asked for the purpose of this case were they analyzing it as a four-prong test. Mr. Eisdorfer said this calls for a legal conclusion and Dr. Kinsey was taking the facts and providing a rational analysis based on planning concepts. Mr. Eisdorfer said to Mr. Alonso that he keeps sayings standards and Dr. Kinsey keeps saying analysis. The Board Attorney said he was saying approaches. Mr. Alonso said he was proposing four approaches but he was not telling the Board if they need to accept one, all four or the majority of approaches. He asked how the Board makes a determination to answer the question based on the four approaches. Dr. Kinsey would hope the Board would read the report, understand the facts presented and analyzed and reach the same conclusion he did. He added that combining all four approaches, looking at the various forms of analysis that he conducted the proposed set aside was substantial. The Board Attorney clarified they should consider all four approaches in reaching their own determination as to whether substantiality has been demonstrated. Mr. Alonso said it was a subjective approach. Dr. Kinsey hoped the Board would read his report, consider what they heard this evening, analysis the question which he looked at it four different ways, He put together as a planner various facts, other experiences, other standards, other projections and provided footnotes and looked at them all together and hoped the Board would look at it all together as a package.

Mr. Del Vecchio said this matter would carry to January 14 at 7:30. Ms. DeBari said the Reorganization meeting started at 7.

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

Respectfully submitted,
Maureen Oppelaar