

Approved
7/8/14

**New Milford Zoning Board of Adjustment
Work Session
June 10, 2014**

Chairman Schaffenberger called the Work Session of the New Milford Zoning Board of Adjustment to order at 7:32 pm and read the Open Public Meeting Act.

ROLL CALL

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

REVIEW OF MINUTES –

The Board Members reviewed the minutes for April 8, April 24, May 13, 2014 and there were no changes.

RESOLUTION

14-02 Mintz – 478 Arbor Place -Block 1709 Lot 6 - Addition/add a level

Building Coverage

The Board Members reviewed the resolution and there were no changes. Mr. Sproviero stated he sent a copy to the resolution to applicants counsel and has received no comments.

OLD BUSINESS

13-02 Alex and Sons Real Estate, LLC – 391 Madison Avenue - Block 1211 Lot 32

Three story 10 unit multiple dwelling with parking underneath building

Use, building coverage, front yard and height

The Chairman assumed they would begin with objector's presentation at this meeting. The Board Attorney asked Mr. Alampi if he anticipated any additional witness testimony on behalf of the applicant. Mr. Alampi said no.

There was a discussion on the July meeting date. Mr. Sproviero would be on vacation but would attend the meeting.

The Chairman asked the Board Members to fill out the Financial Disclosure Statements that have been sent to them from the Clerk's office. The members would comply.

There was a discussion on the Fresh and Fancy Farms advertisement regarding monthly dinners during the spring and summer at the Farm. Mr. Sproviero said they were approved to operate a farm with a retail component not a restaurant facility. The Board Attorney did not believe this was an approved use at the site and would confer with the Borough Attorney. Mr. Binetti thought what they were doing was something good for the town but felt they should not do it behind their backs. Mr. Sproviero said the Board was not the enforcement entity but there was an enforcement entity to enforce and issue summons. The Chairman asked if one of the conditions of the approval was that there would be no tables and chairs from his other business on the property. The Board Attorney said the intent was for storage purposes not utilization purposes. Mr. Loonam thought if they were serving food the health department would be involved. The Board Attorney agreed and added the zoning component would also be implicated.

The Board Attorney stated Mr. Del Vecchio advised him that they have initiated suit in the Superior Court of New Jersey challenging the Board's adverse determination with regard to the NMRA application. They have not served the board yet and service would be accomplished once Mr. Del Vecchio received a filed copy of the complaint from the court. Mr. Sproviero said it has been their practice that authorization from counsel to proceed and funding for litigation was from Mayor and Council. He has been asked to attend the Mayor and Council meeting on June 23, 2014 to advise the Mayor and Council. He said the Borough Attorney said the Zoning Board of Adjustment had to approve the attorney to represent the board. The Board Attorney requested their consideration of a motion to recommend the appointment of counsel to represent them in the lawsuit. The motion would be reflected in the minutes and it would be sent to the Mayor and Council. The Board Attorney said to avoid any procedural problems he would confirm the motion by way of resolution at the July meeting. The Chairman clarified that the Zoning Board was being sued and the Board should appoint counsel now to defend them. The Board Attorney agreed the Zoning Board was being sued and they were aware the lawsuit was pending. Mr. Sproviero would like to be in a position for him or their designated counsel to accept service. He said if he was going to represent the Board, he would be more proactive than reactive. Mr. Loonam asked if the Borough was also being sued. Mr. Sproviero answered no but there was a lawsuit against the Planning Board and the Borough. One was against the Borough as a developer's rights action that said the borough's current zoning scheme does not provide sufficient opportunity for a developer to implement a low and moderate income housing project. If the court finds there was an insufficient development opportunity, then the developer gets to designate what that development opportunity would be as opposed to the borough or the board via its zoning jurisdiction. The Board Attorney said the challenging of the denial of the Hekemian application lawsuit as well as the separate developer's rights action against the municipality are so inextricably bound to each other that they should be heard as one big case. The Chairman questioned how the Zoning Board could appoint a lawyer to represent them when they have no money to pay that person. The Board Attorney said the Board Members were making a recommendation to the Mayor and Council. The Chairman asked if the Mayor and Council had the final say in this. Mr. Sproviero said yes.

The Board Attorney noted that the Board members have received a copy of the COAH proposed 3rd round regulations and he was making the members aware that proposed rules have been proposed and it will be published in the NJ Registry which triggers a public comment period. It

was probably three or four months from implementation. The Chairman questioned the reason why only New Jersey does this. The Board Attorney answered that they were the only court that reads into our constitution being imperative to provide low and moderate income housing by way of official governmental action.

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

**New Milford Zoning Board of Adjustment
Public Session
June 10, 2014**

Chairman Schaffenberger called the Public Session of the New Milford Zoning Board of Adjustment to order at 8:00 pm and read the Open Public Meeting Act.

ROLL CALL

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

PLEDGE OF ALLEGIANCE

OFFICIAL MINUTES OF THE WORK SESSION – April 8, 2014

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

OFFICIAL MINUTES OF THE PUBLIC SESSION–April 8, 2014

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

OFFICIAL MINUTES OF THE SPECIAL SESSION – April 24, 2014

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

OFFICIAL MINUTES OF THE WORK SESSION–May 13, 2014

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

OFFICIAL MINUTES OF THE PUBLIC SESSION–May 13, 2014

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

RESOLUTIONS TO BE MEMORIALIZED

14-02 Mintz – 478 Arbor Place -Block 1709 Lot 6 - Addition/add a level

Motion to memorialize the resolution was made by Mr. Loonam, seconded by Mr. Rebsch

The motion passed on a roll call vote as follows:

For the motion: Members Loonam, Rebsch, Stokes, DeBari, Binetti, Schaffenberger

Approved 6-0.

The Chairman asked for a motion to appoint an attorney to represent the board in the upcoming litigation. The Board Attorney added that the appropriate motion would be to recommend to the Mayor and Council the appointment of the attorney of their choice to represent them in litigation pending in the Superior Court of NJ instituted by NMRA against the New Milford Zoning Board of Adjustment which litigation challenges the Board's adverse determination relating to their development application.

Ms. DeBari made the motion to nominate Scott Sproviero to represent the Board for the pending litigation in the superior court, seconded by Mr. Loonam.

The motion passed on a roll call vote as follows;

For the motion: Members DeBari, Loonam, Binetti, Stokes, Ix, Rebsch, Schaffenberger.

None opposed.

Mr. Sproviero thanked the members.

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 asked the members that did not attend the meeting, if they listened to the recording of the meeting. Mr. Ix did. The Chairman noted that Mr. Rebsch left early. Mr. Rebsch did not have a chance to listen to the recording. Mr. Alampi asked for any vote to be deferred to July 8 because the nature of the application requires 5 affirmative votes and he would like a full complement of board members.

Mr. Alampi said at the last hearing it appeared the public wanted to introduce documents and he would need the opportunity to cross examine those witnesses. He added the architect last month testified mistakenly to 2 two bedrooms and 3 one bedrooms on the first floor and 4 two bedrooms and 2 one bedrooms on the second floor which would total 11 bedrooms. The attorney stated they reduced the application to 10 units. He clarified it was 2 two bedrooms and 3 one bedrooms on the first floor and 3 two bedrooms and 2 one bedrooms on the second floor.

Motion to open to the public on testimony from the objectors was made by Ms. DeBari, seconded by Mr. Ix and carried by all.

Lorraine Mc Mackin, 400 Madison Avenue, wanted the opportunity to make a comment but not offer testimony.

The Board Attorney said they would hear testimony first and follow with public comment. Mr. Alampi agreed to reopen to the public providing the public did not repeat the same issues.

Gene Murray, 425 Madison Avenue, was sworn in by the Board Attorney.

Mr. Murray said the revised plan had a requirement for 19 parking spaces with 23 provided. He had questioned the engineer at the last meeting about his concern with some parking spaces and a designated fire zone. Mr. Murray said four of the parking spaces designated on the latest plan was in what should be designated in a fire zone under the New Milford Ordinance 13-5 Fire Zone. Mr. Alampi said he needed to qualify himself in the field. Mr. Murray said he was a citizen of New Milford for 40 years with a bachelor's degree from Northeastern University in business administration. The Board Attorney said if Mr. Murray produced an ordinance it speaks for itself. Mr. Alampi wanted to establish that just reading the ordinance was not sufficient. He added there are reports from the Fire Advisory Board and this issue had not been raised. Mr. Murray read ordinance 13-5b on obstructions. He noted it said that *any vehicles parked within ten (10') feet of a multiple dwelling, town house or cooperative shall be considered in the fire zone.* Mr. Murray said in the latest revision 11 of the 23 proposed parking spaces were on the exterior parameter of the building with the balance underneath the building. The resident said parking space 1, 2, 3 and 11 indicated on the site plan were within 10' of the structure and should be designated in a fire zone. Mr. Alampi said in the ordinance it said *The Fire Official may require and designate public or private fire lanes and zones as deemed necessary.* Mr. Alampi said the Fire Advisory Board already submitted their report and have not designated a fire zone. He said it does not say that parking vehicles constitute an obstruction and added that the four parking spaces were excess parking spaces. Mr. Murray said that Brookchester, Dorchester and Madison Arms mark any space within 10' of their structure as fire zones. He asked why they were not taking a proactive means of addressing this issue because these four parking spaces are within 10' of the structure. Mr. Murray said parking spaces 1,2,3 were directly below egress windows and any cars in those spaces would obstruct any firemen from being able to access that window and remove people. Mr. Alampi said that was his opinion. Mr. Sproviero asked Mr. Murray if he had proofs or pictures. Mr. Murray said he went to the complexes but did not take pictures but said any board member could drive thru the sites and see that this fire zone ordinance was enforced at every multiple dwelling unit in town. Mr. Sproviero said the Board would have to look at the predicate proofs to support his conclusion. Mr. Murray said if the Board finds parking spaces 1,2,3 and 11 not valid parking spaces for the site that would decrease the number of available of spaces leaving 17 parking spaces and 2 handicap spaces. Mr. Alampi stated in ordinance 13-5 it reads the Fire Official may require and designate and asked Mr. Murray if the Fire Official made a designation of fire lanes at this site. Mr. Murray said not to his knowledge. Mr. Alampi asked if he reviewed the comment letters or called the Fire Official to ask him about the fire lanes. Mr. Murray said no.

Ms. DeBari asked why the Fire Official did not address the Fire Zone ordinance. Mr. Alampi said we cannot say the Fire Official did not address it but he did not raise it as an issue. The Board Attorney said the Fire Advisory Committee looked at the plan. Mr. Alampi said it was within the jurisdiction of the Fire Official to make the designation but they have not made the designation.

Terence Mc Mackin, 400 Madison Avenue, was sworn in by the Board Attorney. He said he was not an expert in any field but was a resident in the area who had some objections to the project. Mr. Mc Mackin had concerns with the traffic problem on Madison Avenue. Mr. Alampi objected that there was no testimony that there was traffic problems and they had a traffic engineer and a civil engineer testify to these issues. The Chairman asked if Mr. Mc Mackin could be considered

an expert in the traffic problems because he lived across the street from the site for 35 years. The Board Attorney said he does not meet the definition of an expert and said the problem is the categorization of the circumstances as a problem. He said he could offer testimony as to his observations of the traffic conditions. Mr. Mc Mackin said for 35 years he lived at 400 Madison Avenue and made numerous observations on traffic flow. He has seen numerous traffic stoppages in the mornings and afternoons and had photos to show the situations which he took and they were not altered. Mr. Mc Mackin showed Mr. Alampi the photos.

The Chairman marked the photos as exhibits:

- 0-2 photos traffic facing westbound on Madison Avenue 3:15 PM
- 0-3 photo on traffic eastbound

Mr. Alampi asked if these photos were of Madison Avenue which was an arterial roadway. Mr. Mc Mackin said it was a county road and he was standing in his driveway when taking the photos. Mr. Alampi said the photo was stamped 3:15 PM and was it on a particular weekday. Mr. Mc Mackin said it was every day of the week. Mr. Alampi said his testimony was this was what occurs five days a week. Mr. Mc Mackin said yes. Mr. Alampi asked if it was his contention that a 10 unit residential building will make a substantial additional negative impact to the volume of traffic. Mr. Mc Mackin said he was offering this as what the daily conditions are and his observations made from the last 35 years. Mr. Mc Mackin stated when there was bad weather the traffic was worse.

Mr. Mc Mackin said the prior master plan stated in a 24 hour period 9,051 vehicles per day passed along Madison Avenue and questioned if that increased. The resident said he spoke to the police chief and asked if there was anything they could do to resolve the traffic flow on Madison. He said the police chief advised him the county was studying the matter.

Mr. Mc Mackin said there was testimony that approximately 12 trees would be removed and he believed 18 would be replaced. The resident showed photos of the property and added he did not see how this project could be completed without removing hundreds of trees. Mr. Alampi stated the diameter of the trunk taken from a certain distance determines what trees were regulated by the tree ordinance. Mr. Alampi said there was an engineering plan and they were required to do an inventory. Mr. Alampi objected to the photos of the trees being entered as exhibits. Mr. Sproviero said to the board members that all regulated trees were set forth on the applicants plan and he overruled the objection because simply seeing the photo did not establish the conclusion that every plant was deemed to be a tree.

The Chairman marked the photos as exhibits:

- 0-4 autumn photo
- 0-5 autumn photo
- 0-6 spring photo
- 0-7 spring photo
- 0-8 deer and headlight
- 0-9 photo of dead grass from truck

The resident said in the old master plan the goals were to maintain the borough as predominately single family community. It also states *great care should be taken to preserve and enhance the natural appearance of the boroughs environmental streetscapes.*

Mr. Mc Mackin had an issue with the environmental impact that this project might have. The resident has observed the wildlife in the area. He showed a photo of a deer with the headlight of a car. Mr. Alampi objected to an isolated photo of a deer and they had no knowledge of the headlight of the truck and did think the board had any jurisdiction over wildlife.

The resident said the EPA and the USGS estimates that it is between 80-100 gallons of water that is consumed and sewage produced each day per person. Mr. Mc Mackin said with the project there was a large volume of water being passed thru the sewage system. He noted that the master plan said that as the sewage system ages it would require more frequent attention. Mr. Mc Mackin has a concern on what type of impact this would have on the sewage system. Mr. Alampi objected that these were self-serving statements. He said there was a sewage system that was antiquated and someone needs to rebuild the system which has nothing to do with this application. Mr. Sproviero said the record of the proceedings reflects the engineer looked at the contribution and they made their calculation on the impact and made a determination on the adequacy of the flow. Ms. Batistic said she reviewed the plan and asked the applicant to verify the adequacy of the existing system for the future flow. Ms. Batistic said Mr. Burns addressed that it will be confirmed that the existing pipe can take the additional flow. The Board Attorney told the resident that his concerns were part of the final approval process. Mr. Alampi said a project of this type might be exempt from a TWA application. Ms. Batistic agreed.

Mr. Mc Mackin questioned the six trucks of debris that were brought in to backfill. Mr. Alampi said they have denied that there was any backfilling. Mr. Mc Mackin could attest to things there that were not there in the past. The Board Attorney said if he did not see it he could not testify to it.

The resident discussed the master plan and felt this was not a compatible use of property as discussed in the master plan. Mr. Mc Mackin said if this building was constructed his neighbor would be living in the shadows of the building and would have their airflow restricted because of the height of the building. Mr. Alampi said this was supposed to be testimony that was based on authority and knowledge, not advocating a position but reality supported by evidence or reports. The Board Attorney said that was comment and if he wished to comment he could not come up later. Mr. Mc Mackin did not believe this project belonged there and it served no benefit to the town. He noted crossing guards might be necessary, possible additional personnel for schools and possible additional traffic flow. He said there was nothing positive to be gained from this project and said it was zoned for one family and did not need a monstrous building. He said this needs to be stopped and saw no reason for it to be approved.

The Chairman asked how the board would deal with the issue that if someone testified that they saw trucks bring dirt to the site even though there has been testimony that this has not happened. The Board Attorney said they would assess the credibility of the competing testimony and the board would have to decide which testimony is more credible. He said they would examine the motivation of the testimony and determine what if any verifiable facts support the position. Mr.

Alampi added they need to question if it was within the scope of their review. Mr. Alampi said what material would be brought to the site. They were removing a house, removing a garage, the land was flat and they were looking for redevelopment of the site. The Chairman said he did not know but maybe they were filling in the basement. The Board Attorney said although this was not unimportant it was not focused upon the principal issues that they need to determine whether or not this application should or should not be approved. He felt they need to be focused on the core issues which was the standard articulated in Medici.

Mary Ann Milligan, 407 Madison Avenue, was sworn in by the Board Attorney. Ms. Milligan said she has never received an answer to her question as to whether the dirt was approved that was brought in. She was offended because she knew 5-7 truckloads of dirt were brought in and she was astonished that the developer and attorney denies that this ever happened. Ms. Milligan said she knew that the land was altered and that there was no way that it could have been filled in with the dirt on the property. She added there were trees removed without the permission of the town. The resident said the master plan calls for the Borough to be primarily residential area with single family homes and she did not believe a three story 10 unit building was in conformance with it. She commented on the proposed sidewalk and what would happen with the children when the sidewalk ends and where the children would play at the proposed site. Ms. Milligan thought this project did not belong there and would completely destroy the environment and wanted it to remain residential.

James Clare, 396 Madison Avenue, was sworn in by the Board Attorney. The resident commented he lived directly across from the site and said he had difficulty getting out of his driveway because of the traffic. Mr. Clare had photos from his car trying to get out of his driveway. Mr. Alampi objected that there was no supporting study or traffic engineering or contradictory evidence that was competent. He added that Madison Avenue was a main road, a County Road and traverses not only New Milford but also Dumont up to Cresskill. There was no evidence that a 10 unit development with one or two bedroom units would have a substantial negative impact on the volume of traffic. Mr. Alampi said the more traffic flow that exists the less impact they make on that traffic because it would be a minuscule contribution and the law deals with substantial negative impact. The Board Attorney said to the Chairman that he would recommend that the objection as to whether or not the photos can be identified and constitute evidence be overruled. Mr. Alampi's arguments may be valid on the impact on the evidence but does not preclude the Board considering it. The Chairman added it showed the current traffic conditions. The Chairman asked if he took the photos himself and did not alter them. The resident took the photos and did not alter the photos.

The photos were marked as exhibits:

- 0-10 traffic facing west dated 11/5/13
- 0-11 traffic facing north dated 11/5/13
- 0-12 traffic dated 11/5/13
- 0-13 traffic facing west 5/14/14
- 0-14 traffic facing north dated 5/14/14
- 0-15 traffic facing east dated 5/14/14

Mr. Clare was not an expert in traffic patterns or traffic engineering but said he was a citizen and this was what he saw every day. Putting 10 more cars in there would make it worse, said the resident.

Mr. Varkey, 401 Madison Avenue, was sworn in by the Board Attorney. Mr. Varkey said people would be walking thru his driveway with the proposed sidewalk. Mr. Alampi objected to the comment and asked the resident if he was opposed with the county improving the property and requesting sidewalks. Mr. Varkey said yes. Mr. Alampi said he does not own the apron of his driveway and asked if he wanted to prevent people from using it. Mr. Varkey said yes. Mr. Alampi said he could not. Mr. Varkey said sex offenders were not allowed near schools and asked how he could assure that there would be no sex offenders residing in the building. Mr. Alampi asked how he could say there would be sex offenders on the site. He added this was not testimony or evidence and was grossly incompetent. The Board Attorney agreed with Mr. Alampi.

Mr. Murray asked Mr. Varkey about the height variance. The Board Attorney said he did not testify to that and cross examination was limited to the scope of their testimony.

Lori Barton, 399 Roslyn Avenue, said this was not evidence but comments. Ms. Barton asked the board to deny all the variances requested. This was a single family home lot and was concerned with building a multifamily dwelling in a mostly single family home neighborhood. She had concerns about introducing more traffic on a two lane road. Ms. Barton said she lived across from the middle school and takes the back way to Boulevard when going to work. The resident thought there was too much traffic already on Madison Avenue in the morning and at school dismissal times. Traffic has been backed up on Madison Avenue from the Boulevard into Dumont, said the resident. Ms. Barton said with a house there would be a few cars but she could not imagine the increase of cars with 10 apartments. Ms. Barton has concerns regarding the trees and the amount of impervious coverage. Ms. Barton noted that the adjacent school application was approved as an inherently beneficial use and this project did not include any affordable housing and did not meet the criteria to be inherently beneficial. Ms. Barton did not see any benefit to New Milford with this development. She felt the only benefit was financial gain to the developer and thought it was an over ambitious plan. Ms. Barton asked the Board to stop the development madness.

Lorraine Mc Mackin, 400 Madison Avenue, commented that this applicant was not looking to establish themselves as a member of the community but he was looking to build an apartment and get financial gain. He was not giving anything back to New Milford. Ms. Mc Mackin said the property could have been developed into two single family homes with two families that would give back to the community. The resident said their expert testified that the 10 units would be less intense on the property because single family residents tend to abuse the wetlands. Ms. Mc Mackin did not believe the Board would consider that as a viable reason not to build two single family homes. She felt all the impervious surface on the site did more of a detriment to the environment. Ms. Mc Mackin said the applicant needs to prove that this applicant was a less intense use than a single family home. The resident did not think he proved that and did not think the Board could approve the application. Ms. Mc Mackin hoped they would deny it for the people in the neighborhood and New Milford.

Lauren Maehrlein, 230 McKinley, commented that the proposed 10 unit development was a more intense use of a property. The resident said if the zoning needs to be changed it should be changed but if it was serving its purpose it should be left in place and enforced. Ms. Maehrlein stated they shouldn't bend their ordinances to benefit builders. The resident questioned if New Milford even needed more rental units.

John Rutledge, 335 River Road, said he respected the right of the applicant to try to profit from their real estate investment. Mr. Rutledge said New Jersey was the most developed state and Bergen County was one of the most developed counties in the state. Mr. Rutledge said Stop Overdevelopment.

Gene Murray, 425 Madison Avenue, commented that the Board needs to consider whether New Milford needs more rental units and it was one of the burden of proofs that Mr. Alampi needs to prove. Mr. Murray said over 33 percent of the community was rental units. The resident noted that none of the testimony presented established that this town needed more rental units and they should take a single family site and convert into a 10 unit apartment complex. The resident thought the applicant was required to prove that under the Medici standard. Mr. Murray thought the positive criteria has not been met by this applicant and that Mr. Alampi focused on particular suitability for the site. The resident questioned whether that argument has been made. Mr. Murray stated that maybe excess traffic is not an issue but the issue is the design of the site and whether the 24' wide driveway is suitable in that location to handle the traffic coming off the site without impacting the existing traffic. Mr. Murray said it was not a full service driveway. Mr. Alampi said it was. Mr. Murray questioned who would enforce the garbage truck and service vehicles making a K turn as opposed to backing in or out from Madison Avenue which could be potentially dangerous to the future residents at the site.

Mr. Murray still had concerns regarding the number of parking spaces provided on the plan. The resident said it was not his burden to explain why or why not a fire marshal did not designate fire zones but it was the burden of the applicant to bring up the fact that there was a fire zone code and explain why those four spaces were not fire zones. The resident believed there were 17 valid parking spaces and the applicant required 19 parking spaces plus 2 handicap spaces by code. Mr. Murray felt the applicant was two parking spaces short and on that basis alone he thought the application should be turned down.

Mr. Murray said there was case law that speaks about positive criteria being established. In the case WAWA v Old Bridge Zoning Board, the applicant did not establish the need for particular service and the board denied the application. The trial court overturned the denial and the court said the applicant did not make the case that a particular need was required under the positive criteria, said Mr. Murray. The resident said this applicant has only focused on if the lot could support a 10 unit apartment building but did not establish the fact they need 10 additional apartments in the community.

The resident said the proposed 37' height variance next to the neighbor's existing property line would cast a huge shadow on his property. He felt this would change the character of his property which was not addressed by the applicant. Mr. Murray said the applicant testified that

there would be 10 school age children. The resident said the current expense for a student per year was \$10-15,000 and there was no evidence presented that said there would be tax revenue generated by the property to cover that expense. The resident assumed this proposed property would generate a negative impact to a currently overburdened school and budget.

Mr. Murray concluded by saying there was no need for a 10 unit apartment building in that neighborhood and he felt the applicant has not made a positive criteria case that we need this in the community. Mr. Murray asked the Board to deny this unanimously.

Mr. Alampi said there was a case law in Union City that the Supreme Court explained to the legal profession that when it comes to particular suitability you don't have to show there is a need for the use or there was no other location for the use. Mr. Ochab also had addressed the case law from Union City in his testimony, said Mr. Alampi.

Gail Ablamsky, 557 Mabie Street, commented that she lives on a quiet street but she feels for the neighbors who have a lot of traffic and was here to support them. Ms. Ablamsky also said stop overdevelopment and try to keep it a bedroom community.

Donna Tomasini, 411 Charles Street, made the comment to keep it single family homes and that they did not need any more apartments in New Milford.

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

Mr. Alampi said because a member could not get to review the recording he would like to have a full complement of the board before they take a vote and would appreciate that courtesy. The Chairman was agreeable with that request. Mr. Alampi said he has addressed the issues by having recurring testimony and thought it was time at the next meeting to take final action. The Chairman said the next meeting would be July 8, 2014.

Mr. Binetti said if they scaled down the project from a 10 unit apartment to 2 duplexes it would reduce parking spaces. He said they could scale down the bedroom sizes, there would be no dumpster pad needed, there would be four addresses instead of ten and it would generate 48,000 in tax revenue for the town. Mr. Binetti thought that would solve a lot of problems and cut everything down in half.

Mr. Alampi said he was not prepared to respond but would discuss these issues with his client and said it was a generous piece of property and they recognize that the roadway lends itself to other than single family developments but they never say no to a suggestion. They would think about it and explore it.

Paul Grygiel said regarding the master plan, the planning board did adopt the master plan updates on 4/29/14 so the 2004 document that was cited has been updated on 4/29/14 and available on the borough's website. Mr. Grygiel concurred with Mr. Alampi regarding suitability and said the Price v. Himeji case was a different case that needs to be considered regarding suitability.

The Chairman polled the board to see if they would have a full complement of the Board for the vote in July. All members were available.

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

Respectfully submitted,
Maureen Oppelaar