

Approved
10/8/13

**New Milford Zoning Board of Adjustment
Work Session
August 13, 2013**

Chairman Schaffenberger called the Work Session of the New Milford Zoning Board of Adjustment to order at 7:30 pm and read the Open Public Meeting Act.

ROLL CALL

Mr. Binetti		Present
Ms. DeBari		Present (7:40)
Mr. Denis		Present
Fr. Hadodo		Absent
Mr. Ix		Present
Mr. Loonam		Present
Mr. Rebsch		Present
Mr. Stokes	Vice Chairman	Absent
Mr. Schaffenberger	Chairman	Present
Ms. Batistic-	Engineer	Present
Mr. Sproviero -	Attorney	Present

REVIEW OF MINUTES – June 11 and June 27, 2013

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

RESOLUTION

13-04 Top Stone Church – 435 River Road – Block 1115 Lot 1.01

Appeal of determination of zoning officer

The Board Attorney reviewed the resolution and changes with the Board Members. He added that the mechanism discussed with the applicant's counsel at the time of the application to address any parking problems was addressed in the resolution. The request for the issuance of the certificate of the zoning compliance was granted subject to the Board's reservation to refer any on-street parking concerns to the governing body of the Borough of New Milford to compel the applicant to provide alternative parking solutions should the use of the premises as proposed by the applicant create substantial adverse impacts upon the ability of the residents of the surrounding neighborhood to continue to engage in on-street parking of the residents vehicles in proximity to their homes. He added with this parking clause if the parking became problematic there would be things that could be done unilaterally by the governing body.

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 said the application would not be heard at this hearing and the letter from the applicant's attorney dated 8/12/13 would be read into the record at the public session.

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 Board Attorney said they would be continuing with the objectors. Ms. DeBari commented that the public expected the NMRA application to be second on the agenda and asked if the public was notified of the change. The Board Attorney stated efforts were made by the Board Secretary to contact a representative in hopes that the word would be spread as best as could be.

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

**New Milford Zoning Board of Adjustment
Public Session
August 13, 2013**

Chairman Schaffenberger called the Public Session of the New Milford Zoning Board of Adjustment to order at 8:03 pm and read the Open Public Meeting Act.

ROLL CALL

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

PLEDGE OF ALLEGIANCE

OFFICIAL MINUTES OF THE WORK SESSION – June 11, 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 – June 11, 2013

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

OFFICIAL MINUTES OF THE SPECIAL MEETING – June 27, 2013

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

RESOLUTION TO BE MEMORIALIZED

13-04 Top Stone Church – 435 River Road – Block 1115 Lot 1.01

Appeal of determination of zoning officer

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

The motion passed on a roll call as follows:

For the motion: Members Loonam, Binetti, Denis, DeBari, Ix, Schaffenberger

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 read into the record a letter dated 8/12/13 from Carmine Alampi requesting this matter be carried to the Tuesday, September 10, 2013 agenda.

**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**

Mr. Stephen Eisdorfer, counsel from the firm of Hill Wallack LLP on behalf of the applicant, asked for a special meeting in August and September. The Board Members were not available for any additional meetings in August and a tentative September 16th special meeting was scheduled.

The Board Attorney said there was a question from Mr. Del Vecchio at a previous hearing asking Mr. Gadaleta if he spoke with anyone on the Board or the governing body regarding the application. Mr. Sproviero understood Mr. Gadaleta wanted to clarify his statement. Mr. Eisdorfer had no objection for that limited purpose.

Michael Gadaleta, 270 Demarest Avenue, explained that following his testimony at the July 18th hearing Mr. Del Vecchio posed a question and he was not sure he heard the question correctly. Mr. Gadaleta added that he filed an OPRA request for a copy of the hearing. Mr. Gadaleta explained that after listening to the record, Mr. Del Vecchio had asked if he had any conversations with any governing body members regarding this application. The resident commented that Mr. Del Vecchio had asked specifically if he spoke with members of the governing body regarding this application. Mr. Gadaleta said there have been National Nights Out. He added they had a National Night Out last year and SOD was formed. He said at that time there were conversations with council members but not regarding the application so his answer remains on the record as no. Mr. Gadaleta said the second question was if he had the same conversation with any Board Members regarding the application. To keep the record clear, Mr. Gadaleta said that there have been no conversations regarding this application with any Board Member. He added that some members of the Board and council members have come to SOD functions but there have been no conversations between himself and any governing body members or zoning board members regarding this application. Mr. Eisdorfer questioned his testimony that board members attended SOD functions. Mr. Gadaleta corrected himself and said at the time of the elections, SOD had a get together and some candidates running for reelection came to a SOD meeting and expressed their desire not to rezone the property and support SOD. According to Mr. Gadaleta, Mr. Berner and Mr. Rebsch were at candidate's night. Mr. Eisdorfer asked if there were any other members. Mr. Gadaleta could not recall any other members.

Mr. Rebsch stated he was never at any SOD meeting.

Lori Barton, 399 Roslyn Avenue, was reminded by the Board Attorney that she remained under oath. Ms. Barton requested to submit evidence from a resource paper on The Benefits of Open Space from the Association of NJ Environmental Commissions. Mr. Eisdorfer objected to the information being an opinion paper. The Board Attorney asked what she intended to prove from this document. Ms. Barton wanted to give some of the benefits of maintaining open space. The Board Attorney stated the document itself could not be emitted as evidence but the Board could hear her presentation if the resident intended on making a presentation that was predicated on what she learned from reading this document. Mr. Eisdorfer stated this was not a comment period but a testimony period or opinions that they were confident to give. The Board Attorney stated she has done her research and could testify to that. Ms. Barton read from the paper reasons

to preserve open space. Some examples were to preserve a connection with the natural world, to provide tranquil noise free islands, to ensure the health and diversity of wild animals and plants, to lessen pollution by absorbing contaminants from the air and water, to maintain outdoor tourism and to avoid costs with development. Mr. Sproviero asked if her intention was to read the document because the Board wanted to hear from her. Ms. Barton wanted the Board to hear what she learned from this document. Ms. Barton read that many conservationists encountered the argument that the town would lose tax ratables if open space was purchased or if development restrictions were placed on it. She added studies showed that residential development costs the municipality more in educational and public services than it generated in tax revenue. In the long term, municipal investment for open space and farmland was usually less costly than development. She added one of the purposes of the MLUL was to provide for light, air and open space.

Ms. Barton said the 1992 study by the Great Swamp Watershed Association concluded that the addition of commercial ratables in Morris County failed to result in lower taxes. She added ratable rich towns contrary to expectations found no tax relief. The tax rate for residential owners and ratable rich communities did not go down because traffic and pollution increased, roads needed to be widened, local quality of life deteriorated and property values went down. She added commercial real estate depreciated where residential real estate increased in value changing the balance of property tax assessments.

Author Linda Howl in her article *Keeping our Garden State Green* pointed out that commercial development might affect state requirements for low and moderate income housing, increase police and fire protection, traffic control, sewage treatment and water supply, said Ms. Barton. She added this document was used by Chatham to revise their Master Plan. Ms. Barton said other benefits for open space included reduced public costs for flood protection, protecting water supply, wetlands and flood plains helped prevent floods, soil conservation, preservation of biological diversity and air purification. She added increased property values were found when open space was preserved. Parking lots and shopping areas decreased property values, said the resident.

Ms. Barton marked as **Exhibit O-10** -New Milford Tax Record. The resident said that commercial property decreased in its value in time so the tax revenue was also reduced. Referring to the exhibit, Ms. Barton said in 2010 Shop Rite was assessed at 6,659,600 and in 2013 it was assessed at 5,262,600. She noted it was going down in value and the taxes being collected were also going down.

Ms. Barton had a document from Realtor.com to discuss what effects property values. Mr. Eisdorfer objected because it was a third party expert opinion. The Board Attorney agreed it was third party information but they had nothing in front of them to establish if it was expert or not. Mr. Sproviero told Ms. Barton she could refer to it but the document itself was non evidentiary in nature. The resident said in her research regarding how property values were determined, it said if it was near shopping it could be good but if it was too close to shopping centers or traffic it could lower the value. In addition, she noted a home might have a higher value when first built with green space views but if zoning permitted green space to develop into a shopping mall, the

home value could decrease. She discussed how zoning could negatively affect homes values in the area.

Ms. Barton took photos of the April Nor'easter 4/16/07 which were not altered and depicted the condition of the property at the time it was taken. Mr. Eisdorfer had no objections.

She marked as exhibits:

O-11 – photos of Madison Avenue behind the high school showing the field house, fences and signs significantly underwater.

Ms. Barton added this photo showed the main entrance for trucks for the proposed site underwater.

O-12- photos of Main Street at the Old Water Works showing the entire area underwater. She indicated that it showed the water rushing and the area that the trucks would be coming down to the proposed Shop Rite.

O-13- photos of flooding on Cecchino Drive and Madison Avenue

O -14-photos of flooding on Cecchino Drive showing the water reaching the Berm.

Ms. Barton took photos of Hurricane Irene 8/28/11 which were not altered and depicted the condition of the property at the time it was taken. Mr. Eisdorfer had no objection.

O-15 & O-16 -photos of flooding by high school cafeteria and the practice soccer field and added this was not in the flood plain according to the DEP map.

Ms. Barton asked to submit Mr. Titel's article in NJ today.net on NJ Sierra club's position on what was making the flooding worse. Mr. Eisdorfer objected that it was an opinion piece and the person was not here for cross examination. The Board Attorney agreed but said Ms. Barton could tell what the article said leaving out Mr. Titel's opinion. Ms. Barton said from her readings and research, it appeared that nature may be bringing rain but man was making flooding worse because of overdevelopment. Ms. Barton said that forested land would soak up to 3" of water saving a million gallons/acre of downstream flood. According to Ms. Barton, if they were paving over 13 acres than there would be 13 million gallons that may not be absorbed. The Board Attorney asked how she got to the million number. Ms. Barton said from reading articles concerning flooding and how much water was absorbed into undeveloped land. The resident also thought it was important to update the maps of flood hazard areas.

Ms. Barton asked to submit an article dated 7/5/13 from the Record on *Bergen Fighting for Flood Grants* stating since 1993, New Milford had the most flood damage in the county with \$28 million in FEMA claims. Mr. Sproviero asked why she wanted that as an exhibit because she already referred to the article. Ms. Barton agreed and did not submit it as an exhibit. The Board requested to see the article. Mr. Eisdorfer objected to the submission of the article saying it was several levels of hearsay and was inadmissible even under the relaxed standards.

Ms. Barton submitted photos for exhibit which were not altered and depicted the condition of the property at the time it was taken. Mr. Eisdorfer had no objections. She added these were pictures taken in April 2013 showing traffic at intersections not looked at in the original traffic report.

O-17 Madison at Kehoe 4/17/13 8 am.

O-18 Madison at Monroe 4/18/13 8:02am

Ms. Barton submitted as exhibit O-19 - 1964 New Milford High School Year Book/inside cover.

Ms. Barton noted the inside cover page showed the trees in front of the high school being mature

trees. In addition, Ms. Barton noted the Heritage tree definition deals with both diameter and age of trees. Mr. Eisdorfer objected to this on the relevance and added that nobody was proposing to cut down the trees that were in front of the high school in 1964. Ms. Barton said they were proposing to widen the road on River Road and trees would be removed. Mr. Eisdorfer said this was not proximate to the present time. Ms. Barton said that was the point that the trees were over 50 years old. The Board Attorney thought the Board could determine the relevancy of the document.

Ms. Barton submitted as an Exhibit O-20 – letter from Michael Polizzi to Mayor Subrizi dated 1/6/11. Mr. Eisdorfer thought this was awkward to provide views from a school board on this project and it was hearsay and improper. Mr. Eisdorfer said the school board could come and testify. The resident wanted to show that the Board was trying to be part of the decision some time ago. Mr. Sproviero questioned if she was using the letter as a reference point as opposed to their goals and objectives. Mr. Eisdorfer stated it was not an issue before this Board what the views of the school board were. Ms. DeBari interjected that it was an issue before this Board a few months ago when the applicant brought the Board of Education into this application by offering them a piece of property. The Board Attorney agreed and asked how he could say it was not an issue when he brought the lawsuit to remove the acting chair. Ms. DeBari said the Board would consider it. Ms. Barton read the letter into the record.

Ms. Barton had a letter to the Mayor and Council from the New Milford Public School District 9/16/11 that expressed concerns regarding flooding of this property as of 2009. She added they were not interested at that time in development of the property.

Mr. Loonam questioned Ms. Barton's testimony regarding commercial property values declining. Ms. Barton said commercial properties were allowed to depreciate over time while residential properties usually appreciate. Mr. Loonam referred to the document stating it showed 2010 and 2011 land and improvements remained the same. Mr. Loonam noted that in 2012 the land figure remained the same but the improvements went down. He added that in 2013 land value almost doubled. Ms. Barton said the building went down. Mr. Loonam questioned Ms. Barton's testimony if the assessment was going down because they were allowed to depreciate the property or was it because there was a reval. Ms. Barton thought that with a reval the land went up considerably in value but the building was depreciated. Mr. Sproviero stated they don't know if it was depreciated or simply revaluated. Ms. Barton said it went down between 2011 and 2012 before the reval. The Board Attorney said it could be a result of a tax appeal. Mr. Loonam agreed and questioned again if it was depreciated or was there an appeal and a reval. The Board Attorney stated they did not know that. Ms. Barton did not know.

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

Michael Gadaleta, 270 Demarest Avenue, asked if Ms. Barton could summarize what the Bergen record article said. Mr. Eisdorfer objected because the article was hearsay.

Ulises Cabrera, 659 Columbia Street, asked if Ms. Barton zoomed in on the photo in Exhibit O-14. Ms. Barton agreed it was about a 1/3 way up Cecchino Drive because the water was 3' deep.

Richard Mide, 660 Columbia Street, referring to Exhibit O-14 questioned if the applicant proposed to remove the berm. Ms. Barton said yes. Mr. Mide clarified that the berm was about one to two blocks south of the proposed Shop Rite. Ms. Barton agreed.

Todd Ghiosay, 334 Morris Lane, also had read the article published in July in the Record and asked if Ms. Barton could read it into the record if the citations came from a FEMA report. Mr. Sproviero stated they were not introducing the FEMA report. Mr. Eisdorfer said the article was hearsay. The Board Attorney said if the FEMA documents were produced that could be considered.

Motion to close was made by Mr. Ix, seconded by Mr. Denis and carried by all.

Recess

Sam Tripsas, 327 Maple Avenue, Oradell, was sworn in by the Board Attorney. Mr. Tripsas submitted 21 photos of the April 2007 Nor'easter that he took showing flooding conditions and said they were not altered and fairly and accurately depicted the conditions. Mr. Eisdorfer said the photos would have to be individually identified.

The Board Attorney marked the photos as Exhibits:

- O-21A -looking east on New Milford Avenue from the Pascack Valley line along the railroad tracks.
- O-21B- looking east on New Milford Avenue towards the Water Works near the intersection of Elm Street/New Milford Avenue.
- O-21C -looking east at the Water Works towards New Milford.
- O-21D- looking east at the Water Works from New Milford Avenue
- O-21E- the beginning of Marginal Road at the New Milford Avenue intersection
- O-21F- looking east at a construction company on Marginal Road.
- O-21G- another view of the construction company
- O-21H- Oradell DPW/ recycling center
- O-21I- Oradell DPW / recycling center looking east
- O-21J- PSEG yard on Marginal Road
- O-21K- PSEG yard looking east on Marginal road
- O-21L- PSEG yard looking east on marginal road
- O-21M- PSEG yard looking east
- O-21N- PSEG yard looking east
- O-21O- NJ transit parking lot connected to PSEG
- O-21P- NJ transit bus garage
- O-21Q- NJ transit bus garage
- O-21R- NJ transit bus garage
- O-21S- NJ transit bus garage
- O-21T- looking in the NJ transit garage
- O-21U- looking in the NJ transit bus garage

Mr. Tripsas explained other objectors showed photos of flooding from the New Milford side and he added it was the same flooding going west. Mr. Tripsas said he took all the photos along the railroad tracks. The resident noted this was typical after every major storm in the last 10 years.

Mr. Eisdorfer questioned his testimony that it was typical after every major storm and verified the storms were Floyd, Tax day storm, Irene and Sandy. Mr. Tripsas agreed.

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

Lori Barton, 399 Roslyn Avenue, asked for an estimate of the depth of the water. Mr. Tripsas said 6' in some places.

John Rutledge, 335 River Road, asked if the floodwater was taking the runoff from those particular areas back into the river. Mr. Tripsas said yes. Mr. Rutledge commented that the contaminants from the DPW and bus terminal were going into the river.

Michael Gadaleta, 270 Demarest Avenue, commented there were no buses in the bus depot photo. Mr. Tripsas agreed. Mr. Gadaleta asked if he observed any bus activity or was the whole area shut down. Mr. Tripsas said it was shut down.

Ulises Cabrera, 659 Columbia Street, asked how long he lived in Oradell. Mr. Tripsas said 23 years. Mr. Cabrera asked how many storms he witnessed. Mr. Tripsas said 4 major storms. Mr. Cabrera asked if the floods were the highest he ever saw in his photo. Mr. Tripsas said it was typical. Mr. Cabrera clarified that Madison Avenue would be the entrance for trucks and asked if Madison Avenue was completely submerged. Mr. Tripsas agreed. Mr. Cabrera asked if he thought traffic would be impossible to go thru in these conditions. Mr. Tripsas said everything was shut down.

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

Ms. DeBari asked if the railroad tracks were covered. Mr. Tripsas said not where he was standing but north towards the Oradell train station it turned into a river bed and the tracks were underwater.

Ms. DeBari asked if anyone else wanted to speak. No one else was ready. Mr. Eisdorfer stated this was amply noticed and everyone knew if they wanted to testify there were 45 minutes left. The Board Attorney said they had as long as the Chair says they have. Mr. Eisdorfer understood but thought the Board should say if there was no one else ready to testify they would move on to the next phase of the hearing. The Board Attorney said if they were not prepared at the next meeting they would move onto the next phase of the proceeding. The Board Attorney told the public if this happened at the next meeting, the Board would move onto the Board's evidentiary presentation.

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

Respectfully submitted,
Maureen Oppelaar