

**New Milford Zoning Board of Adjustment
Special Meeting
March 28, 2013**

Mr. Stokes called the Public Session of the New Milford Zoning Board of Adjustment to order at 7:41 pm and read the Open Public Meeting Act.

ROLL CALL

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

PLEDGE OF ALLEGIANCE

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

Karl Schaffenberger and Father Hadodo have recused themselves from the application.

The Board Attorney informed the public that the Board had a closed session discussion relating to the litigation filed on March 14, 2013 referring to New Milford Redevelopment Associates, LLC vs New Milford Zoning Board of Adjustment. Mr. Sproviero said NMRA filed an action seeking relief from the Court to determine whether or not Mr. Stokes does or does not have a conflict as a result of the Board of Education through its superintendent appearance in this matter. The Board Attorney stated the action remains pending before the court and a hearing with regard to the issuance of preliminary injunction was scheduled for April 3, 2013. Mr. Sproviero said New Milford's statement of opposition was filed. He added they have had an opportunity to discuss as a matter of litigation the status of the lawsuit, the law involved, issues presented by it and the ramifications of the same and in particular the arguments relative to the conflict.

Mr. Stokes said he read both briefs and stated there have been several decisions by judges that the perception of a possible conflict was a reason to step down. Mr. Stokes said he

would recuse himself based on the case law that someone might perceive him as having a conflict. The Board Attorney understood his determination and thought it was the prudent course and it was the Board and public's loss that Mr. Stokes' attention, passion and expertise with regard to hearing applications would not be part of the process. The Board Attorney said if the Board was to precede with the more prudent course of action, Mr. Stokes's determination was appropriate. The Board Attorney explained it has always been the policy and procedure of the Board that the senior member would step in and asked if there was an opposition. There was no opposition so Ms. DeBari took over the position as chair.

The Board Attorney commented there has been correspondence from objectors but they have not been disseminated to the Board.

Mr. Del Vecchio member of the firm of Beattie Padovano on behalf of the applicant handed the Board Secretary a check for escrow and the special meeting. He also requested copies of the communications from objectors. Mr. Del Vecchio asked for confirmation on the meetings for April. The Board agreed on a special meeting for April 18 at 7 PM and the regular scheduled meeting would be April 9, 2013 at 7:30PM.

Mr. Del Vecchio thought they were getting close to concluding their direct presentation of the case and wanted everyone to know the procedure once they close their direct case so they would be prepared. Mr. Sproviero thought the objectors would follow and the last evidence presented was from the Board. The Board Attorney stated the Board anticipated the Planner, Real Estate Valuation Expert, Engineer and Traffic Engineer. Mr. Del Vecchio reserved the right to direct at the end of it. There was also discussion on the site walk and the Board Attorney gave Mr. Del Vecchio the agreement of indemnity for signatures.

Mr. Del Vecchio called the architect, Mr. Thomas Ashbahian.

The Board Attorney swore in Mr. Thomas Ashbahian, 39 Spring Street, Ramsey NJ. The Board accepted the qualifications for Mr. Ashbahian as an expert in the field of architecture.

Mr. Del Vecchio marked as Exhibit:

Exhibit A-44 – set of two sheets on exterior elevations

The architect described the four elevations of the proposed building and said the building was brick except for the side facing Madison Avenue by the loading docks. Mr. Ashbahian described the covered sidewalk and columns that connected the two entries. Mr. Del Vecchio clarified that the signage was for illustration purposes and not intended to be the actual signage for this center. The architect agreed. Mr. Del Vecchio stated the sign package if approved would be filed with the Board at a later date. Mr. Del Vecchio asked for the vertical height distance from grade to the upper most point of the tower. Mr. Ashbahian said from grade to the highest point was 37'2", the height of the building from grade was 24' and between the two towers it was 26'. There was discussion on the roof

plan showing a central HVAC approximately 8-10' high and chiller racks 4' high. Mr. Del Vecchio asked if the mechanicals would be visible from street elevation. Mr. Ashbahian said the units would not be visible from the ground. He added the rear elevation was a color masonry block and the base would be concrete with two loading areas for the building and this was to keep deliveries out of the front of the building and keep it in the rear. The architect stated there was a large container inside the building, which the trash was kept and compacted.

Mr. Loonam had questions on the heights of the towers compared to the rest of the building. The architect said at the loading docks the elevations dropped 4' so along the loading dock exposure was 28'. Mr. Loonam asked if looking at the roofline of the building from the rear would it be a uniform and straight across the structure. The architect said the roofline continued around the entire building with the exception of the towers. He added the most significant grading was along the back by the truck docks. Ms. Batistic clarified that the HVAC was 8-10' high. Mr. Ashbahian agreed. Ms. Batistic asked how high the parapet was. Mr. Ashbahian said the roof structure would be about 20'-21'. The Board Engineer thought the mechanical would be visible from River Road. Mr. Ashbahian said you would not see the mechanicals even sitting in a car on River Road. The Board Attorney asked if it could be seen from the rear. The architect answered no. Mr. Sproviero asked what the chiller racks were used for. The architect answered it was part of the refrigeration system. Ms. DeBari asked if there were 30 of them. Mr. Ashbahian agreed.

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

John Rutledge 335 River Road, asked what the decibel level was for the machinery in operation. The architect did not know but said units were hundreds or a thousand feet from any building. Mr. Rutledge did not agree with 1,000 feet because there was a high school next to the building. The resident clarified the units would not be visible to the customers in the lot or across the street on River Road. Mr. Ashbahian agreed and did not think there was any elevation that was great enough to give a view onto the roof. Mr. Rutledge asked if there was a possibility that the mechanicals would be visible to the high school students. The architect said it was possible if they were not paying attention. Mr. Rutledge said it was a possibility that the students were not paying attention because they were being distracted.

Michael Gadaleta 270 Demarest Avenue, questioned how many units would be on the roof. Mr. Ashbahian said the main equipment was a single unit and there were two 4 ton units that serviced the pharmacy area. Mr. Gadaleta said Mr. Pagano gave testimony that there would be no mechanical equipment outside the building. Mr. Ashbahian was not present at that testimony but found it hard to believe there would be no mechanical equipment outside. Mr. Gadaleta questioned if this was a revision and should Mr. Pagano's testimony be stricken. The architect thought maybe the representative misunderstood the question. The resident asked what size the mechanical unit was and if it could be 50 tons. The architect did not know the size but agreed it could be 50 tons.

The resident asked if he was aware if any borings have been taken. The architect answered no. Mr. Gadaleta asked if the supermarket was designed for 100 pounds live load. Mr. Ashbahian said including live and dead load it would probably be over 200 pounds. Mr. Gadaleta asked if it would be a large 500 piles job if the soil boring came back unsuitable for conventional fittings and piles had to be installed. The architect said it probably would be a short pile job and he thought the soil would be adequate for a single story building. He added there were too significant buildings on either side that at the time piles would not have been used. Mr. Gadaleta asked if he would be surprised that the high school was a pile job. The architect said they determine how the foundation would be done when the soil analysis was done. Mr. Gadaleta questioned if he coordinated his coverage with the engineering plan because now there was a covered sidewalk. Mr. Ashbahian said it was the same building, same coverage and same footprint. Mr. Gadaleta commented the building fronted four streets so the rear of the building was not really the rear of the building but it actually fronted on a well traversed Madison Street which was the entrance to New Milford. Mr. Ashbahian agreed the building had exposure on all four sides and the rear was basically the utility area and not a place they would try to attract attention. There was a significant difference in distance between the back of the building and Madison. He thought there would be landscaping and the back of the building should be well obscured from Madison. Mr. Gadaleta had questions on heights and clarified that according to the engineer the finished floor for the supermarket was 18 and the top of the building was 44. He also questioned the architect's testimony that River Road was at 27 and that the elevation on River Road was 33. The architect reviewed the elevations.

Gail Ablamsky 557 Mabie Street, asked how long and wide was the building. The architect stated the building was 350' across the main façade and 200' in the other direction.

Ms. Flannigan 275 Fulton Street, questioned if the HVAC would be emitting smoke and fumes. The architect said it was constantly bringing in new air and expelling air from inside the building. The resident questioned if there would be any pollution. The architect said the only area that would have any emissions would be the deli area but it would be within environmental regulations.

Denise La Viola 304 Mack Place, asked if this plan has gone ahead without knowledge of the soil base in addition to being on a floodplain. Mr. Ashbahian said he had no knowledge of soil boring tests but it was a one-story relatively lightweight building and the soils could be readily handled. The resident asked why the preliminary identification of the land base was not done prior to the design. Mr. Ashbahian said it was not necessary with this level of design. The resident had questions on the boundaries and the property being in the floodplain. Mr. Del Vecchio objected and stated that the buildings were not in the floodplain. The resident understood this had been based on old floodplain boundaries and not the new floodplain boundaries. Mr. Del Vecchio said that had been testified to and to read the minutes. Ms. Batistic clarified that there were not any new maps and FEMA was in the process of doing it and the site was not a floodplain according to the current map. Mr. Sproviero explained the Board Members had to

determine the application based on the status, law and regulations as they exist at the time of the application and they have not changed. Ms. Batistic stated based on what they know now it will not change much, if any, in this area.

Emily Rostkowski 103 Fulton Street, asked if they have done any other supermarkets of the same size that she could see. The Architect answered in Wyckoff and the Ramsey Interstate Shopping Center. The resident asked if they were next to a high school. Mr. Ashbahian answered no.

Todd Ghiosay 334 Morris Lane, asked if he reviewed any contaminant or environmental reports related to the property. The architect answered no. Mr. Ghiosay asked if he ever put a supermarket on a lot that had known groundwater contamination problems. Mr. Ashbahian answered yes at a former dry cleaner site in Waldwick. Mr. Ghiosay asked if he was aware there were other buildings on the site. The architect answered yes. The resident asked if he thought the residential building would be affected by any noise, size, scope and level of activity from the equipment. The architect answered no. Mr. Ghiosay clarified that the parapet was 26' from finished floor and River Road was 27' and questioned visibility of the mechanicals. Mr. Ashbahian said the Board Engineer inquired about that. Ms. Batistic said she did not agree that he was correct that one would not be able to see the mechanicals. The architect said he was using the numbers.

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

The Board Attorney clarified that he was unable to give information on decibels level coming from the units and asked if he could give the Board Engineer the model number information to research the decibel level. Mr. Del Vecchio stated that all of the roof top mechanical units would meet state noise code and fall within all regulatory limits established by the code.

RECESS

Mr. Del Vecchio stated Mr. Dipple was being called back to answer the questions regarding the sewer capacity for the sanitary sewer flow out in the street and an exact count of the trees along River Road impacted by the proposed widening. Mr. Del Vecchio said their project architect on the residential had reported his height calculation measurement to the midpoint of the roof. He advised Mr. Lessard that the New Milford ordinance required the calculation to the highest point of the roof and Mr. Dipple had calculated that number.

Mr. Del Vecchio marked as **Exhibit A-45** six 11x17 sheets of the plan previously submitted with the corrected information.

Mr. Del Vecchio recalled Mr. Dipple who still remained under oath and was qualified and previously accepted by the Board.

Mr. Del Vecchio asked the engineer if Mr. Ashbahian accurately calculated the height of the supermarket structure. Mr. Dipple answered 37'2" was correct. Mr. Del Vecchio asked if he reviewed the height calculation for the residential structure. Mr. Dipple said the error occurred when the Lessard Group took the measurement from the midpoint of a peaked roof. The Engineer stated on C-03 overall site plan he amended the zoning table to show that the maximum building height would be three stories and 44'.

Mr. Del Vecchio asked Mr. Dipple if sufficient capacity existed in the pipes to accommodate both the residential and commercial development on the site. Mr. Dipple said the study was still ongoing and they have installed a flow meter which was currently installed in the sewer main that runs along the west side of the site. He added the pipe was a 16" sanitary sewer. The Engineer stated he reviewed and reduced the data received back and it flows between 6"-9" deep typically throughout the day. Mr. Dipple explained at the peak flow the sanitary sewer has a depth of 9" and carrying about 650,000 gallons per day. The engineer added that this development when using the DEP projected sanitary sewer flow rates only produced 15,000 -20,000 gallons per day which was very small compared to what the sewer was carrying at its peak. Mr. Dipple stated they would continue to monitor it for another two weeks and they have shown they have monitored it during rainfalls events.

Mr. Rebsch asked how old the system was. Mr. Dipple did not know the age of the sewer.

Ms. Batistic asked if they would provide the reports of the flow tests. Mr. Dipple answered they would.

Mr. Del Vecchio asked Mr. Dipple if he counted, investigated and measured the trees that were along the applicant's frontage of River Road in the right of way. Mr. Dipple agreed and discussed the revised plan labeled tree management plan. He stated there were 11 street trees along the frontage but three trees were to the north of the site in front of lot 6. Mr. Dipple explained with the changes to River Road and widening of the driveways, eight of the eleven trees would be removed. He added only 6 were London Plain trees and he thought two of them were Pine Oaks. Mr. Dipple said they were proposing eight new London Plain trees that would be filling in the gaps creating a consistent row of the trees. Mr. Del Vecchio asked if there would be any removal of trees caused by the widening at Main Street. Mr. Dipple said there were a number of trees in that area that were on the property and were not in the right of way. He said there were five trees that were within the property and those trees would come down.

Ms. DeBari questioned the plan and asked if he was removing seven or eight trees. Mr. Dipple answered there were eight trees being removed and replacing eight London Plain. Ms. DeBari asked what size the trees would be. Mr. Dipple said they consulted with a landscape architect who assisted with the designs so they were proposing a maximum size of 5' caliber.

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

John DeSantis 190 Powell Drive, asked what the capacity of a 16” pipe was. Mr. Dipple said he did not have that number but said it typically flows half full so it might be about 1.2 million gallons a day. Mr. DeSantis was concerned about infiltration and questioned how many inches of rain per hour did they monitor. Mr. Dipple did not analyze that data but said during days that rain there were higher consistent flow than the peaks on a dry day. The Engineer said he had not made a summary of it. Mr. DeSantis asked if was going to do a summary. Mr. Dipple said he could produce a document that showed what they saw which would include a total rainfall. Mr. DeSantis asked if any groundwater was continuously coming into the pipe because if water was coming in than sewage could be going out. Mr. Dipple said it was possible.

Mr. DeSantis questioned the reason that eight trees were being removed. Mr. Dipple said to accommodate a left turn lane. Mr. DeSantis questioned that the caliber of the trees that were being removed were about 30”. Mr. Dipple said they varied in size from 13” – 30” and the trees being replaced were about 20’-25’ in height at the time of planting. Mr. DeSantis asked if they could be replaced with a larger caliber tree. Mr. Dipple said possibly slightly larger because there were challenges to planting a larger tree. He said the larger the tree the more susceptible to wind damage because roots have not taken hold yet. Mr. DeSantis asked if the height of the building changed any of the variances requested. Mr. Dipple answered yes. The Board Attorney clarified that it would not create any new variance but the variance being sought was being exacerbated.

Michael Gadaleta 270 Demarest Avenue, asked what type of approval was required to remove street trees. Mr. Dipple said there had been discussion that if there was an application before the zoning board they would have the authority. Mr. Gadaleta asked if they submitted the revised plan to the Shade Tree Commission and if there had been any conversation with them. Mr. Dipple said no the plan was just revised and they have not discussed it with the Shade Tree Commission. The resident asked if there would be any buffering for the adjoining neighbors. Mr. Dipple said there was no change to the landscaping other than these trees.

Mr. Gadaleta commented that the height variance went from 37 to 44 and in terms of height would he agree 44’ was a high three story building. Mr. Dipple said there was a peak roof and that would be a question for the architect. Mr. Gadaleta asked if it was silly to be investigating sewer when they don’t know what was in the soil. He asked if it would be prudent prior to the next meeting to investigate the soils so they would know what kind of construction would be placed there. The resident commented that they were investigating the water flow in pipes but they did not know if the soil could sustain the proposed building. Mr. Dipple said there was testimony from Mr. Ashbahian that in this part of the process it was not necessary and he did not think it was silly to be doing sewers because it was typical protocol of a project of this nature. Mr. Gadaleta asked if the Board had to request soil borings through Boswell Engineering to get them. Mr. Dipple said that was up to him. Mr. Sproviero asked Mr. Del Vecchio what the current status was with the tree permits. Mr. Del Vecchio understood that the zoning or planning board assumed primary responsibility for granting/denying a tree removal permit when

tree removal permits were necessitated by a development that required land use approvals. Mr. Del Vecchio said it was the applicant's position that under the ancillary powers granted to the zoning board to exercise the powers of a site plan approving agency under MLUL, the zoning board would handle the tree removal permit in the context of a use application. Mr. Del Vecchio stated they have filed a tree removal permit when the application was originally filed and the plans have been amended to correct the tree count on the roadway based on Mr. Dipple's investigation. The applicant's position was the tree removal permit was pending here and it was only this Board that could grant/deny the permit. Mr. Gadaleta stated that the Shade Tree Ordinance stated no clear cutting permitted yet the applicant was clear-cutting and asked if that was a variance that was being sought before the Board. Mr. Sproviero said it was not a variance but a tree removal permit was required. The Board Attorney agreed with Mr. Del Vecchio that the tree removal permit fell under the ancillary powers and the zoning board would assume responsibility. The Board Attorney stated that ultimately the Board had to apply the ordinance and hear the recommendations of the Shade Tree Commission and make a determination on that basis. Mr. Gadaleta asked the Board to investigate the matter on the realignment of the road because he understood the Mayor and Council not the planning board made that decision.

Gail Ablamsky 557 Mabie Street, asked who would be responsible for the new trees planted to make sure they survive. Mr. Dipple answered there was a guarantee which was usually that they live through 2 growing seasons and it would be stipulated in the developer's agreement. Mr. Del Vecchio stated that the performance bond covered the trees during construction and once approved a two-year maintenance bond was posted to cover and insure the improvements in place including the landscaping. Ms. Ablamsky asked who would be responsible after two years. Mr. Sproviero said it would ultimately be the obligation and responsibility of the property owner.

Sharon Hillmer 563 Columbia Street, asked how far south did they monitor the flow rate for the sewer. Mr. Dipple said they monitored in one location in a manhole south of the loop of the Hackensack River. Ms. Hillmer asked if he thought the extra flow would make a difference further down the line running at full capacity. Mr. Dipple did not think 15,000-20,000 gallons a day would affect something running at capacity further downstream.

John D'Ambrosio 482 Luhmann Drive, questioned why the Shop Rite was raised up 2'. Mr. Dipple explained they were now proposing a larger above ground detention /infiltration basin and were trying to balance the site. He added by raising it up and having some extra soil from the excavation they were able to decrease the slope of the driveway coming off River Road.

John Rutledge 335 River Road, asked how the sewers would be covered in the ratable to cover the cost of the additional sewage going into the line. Mr. Dipple did not know how sewage was billed in New Milford. Mr. Rutledge asked if he would agree there would be an additional charge for additional sewage. Mr. Dipple said there would be a charge for the slight increase. The Board Attorney assumed the Borough was being billed by an

annual bill by way of the assessments made by BCUA but did not know how they did the distribution of allocation. Mr. Sproviero said that was not a land use question but a tax question.

A resident 275 Fulton Street, said there were eight trees proposed to be removed and asked if he was aware of how much rain water the trees could hold. Mr. Dipple did not know.

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

RECESS

Mr. Del Vecchio recalled Mr. Steck previously sworn in and qualified as an expert in the field of planning.

Mr. Del Vecchio marked as **Exhibit A-46** was a modification of A-36.

Mr. Steck explained that in A-46 the first page was a reproduction of a map secured from the internet and stated the road that was the extension of Milford Avenue south of subject property was no longer county jurisdiction. The purpose of the exhibit, Mr. Steck explained was to show the subject property proximate to major roads. The second page had a date change and the bottom portion picture was a reduced site plan and he labeled the buildings, P3 the date changed and the photograph 4 was the corrected photo for 1930, P4 no changes, P5 consisted of excerpts from plans and he added the bottom line dated June 2012 was a reference from Mr. Grygiel. The planner said some of the changes to the site were the housing element had no more market rate housing, the 24 units were low and moderate income housing and there were more prominent drainage structures on the property. He felt this was still a mixed use project. Mr. Steck stated in terms of soil contamination the environmental issues were settled on March 25, 2010 with a No further Action Letter from DEP. The application has changed by removing the market rate housing which lessened the parking requirements and the residential building was now a three story building with a peak roof measured at 44'. Since he testified last, the planner said the surrounding area had not changed. Mr. Steck said with the 2004 master plan, there was a documentation of the growth of the municipality which was the single family area with no change, the master plan characterized River Road as a spine running thru the municipality that gave access to commercial developments. The plans said one of the goals was to strengthen the tax base thru non-residential ratables and that the existing shopping centers along River Road and Main Street were outdated and were in need of design and façade improvements. There was also a housing plan element that indicated the Borough recognized there was a need for low and moderate affordable housing as well as age restricted housing. He discussed the circulation element and mentioned that River Road and Madison were referenced as accommodating bus service in the 2004 document. There was reference to the subject property prior to the subdivision stating the site had great redevelopment potential and currently underutilized. In the 2006, it recommended a residential development of the subject property. He added the plan

indicated the Borough was committed to purchase development. In the 2006 plan, Mr. Steck said there was mention of the clean up of the property expected to be at the end of 2006. The planner said in 2008, the Housing Element and Fair Share Plan recommended 200 units of housing 20% reserved for low and moderate income. He added that plan reaffirmed the Borough was committed to purchase development. The planner said the 2010 reexamination report contained the continued goal of encouraging the balance housing supply and recommended securing substantive certification from the Council of Affordable Housing. Mr. Steck discussed the Carlton Place and Gramercy property. He stated on the reexamination plan, the subject property was designated on a land use plan as having two use areas. The northern part of the property that abutted Main Street was recommended for commercial designation and the southern part was recommended for age restricted multifamily residential but no discussion of low and moderate income housing.

Mr. Steck stated today the property was in the RA single-family zone, which was inconsistent with the master plan recommendations. He discussed there was reference to uses that would be permitted as conditional uses such as schools and houses of worship. The planner discussed the coverage and height permitted for the inherently beneficial uses and multifamily town house zone. Mr. Steck said the relief they needed was for the commercial use and multifamily residential use which was not permitted in this zone, the housing proposed was three stories which exceeded the 2 ½ story limit and a height D6 variance for 44' for the residential use and the commercial building was 37'2". The Planner clarified they had the RSIS parking with the residential use and New Milford's code compliance with the bank use. They were using the industry standard for the shopping center use and the applicant was seeking relief because New Milford's code standard required more parking.

Mr. Del Vecchio suggested this would a good breaking point and this matter be carried to the April 9, 2013 hearing without notice.

Mr. Loonam requested again about entry to the property. The Board Attorney stated the access of entry needed signatures from United Water and they would establish a date. There was discussion on dates and times.

The Board Attorney told the public once the applicant was done with their direct witnesses it was their time to put their witnesses, testimony and evidence on and could happen as early as April 9, 2013.

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

Respectfully submitted,
Maureen Oppelaar