

**New Milford Zoning Board of Adjustment
Work Session
October 9, 2012**

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

REVIEW OF MINUTES – September 11, 2012

The Board Members reviewed the minutes for the work and public session and there were no changes.

Mr. Stokes and Eileen DeBari certified they listened to the recordings from the September 11, 2012 meeting for the Gospel Fellowship Church and 105 New Bridge Properties, LLC applications.

OLD BUSINESS

12-04 – Gospel Fellowship Church – Block 913 Lot 1 – 111 Henley Avenue –

The Board Attorney stated the Board Members had received a site plan alternate sketch submitted by the applicant. He explained the plan eliminated a number of parking spaces resulting in a decrease of impervious coverage on the site. The applicant has not formally amended the plan but presented it to the Board as an alternative plan. Mr. Urdang explained there was no parking variance required for the original plan but if the Board would like the alternate plan which reduced the impervious coverage they would have to grant a variance for the parking.

12-03 – 105 New Bridge Properties, LLC – Block 113 Lots 4, 5, 6 –Parking Lot/Restaurant Expansion

The Chairman asked the Board Engineer to explain the Waterfront Development Permit and the Withdrawal of the Flood Hazard Application. Ms. Batistic explained when the flood area is tidal and within a certain distance from the water body there was a permit required call the Waterfront Development Upland Individual Permit. Ms. Batistic stated the applicant did not need both a Waterfront Development Permit and a Flood Hazard Application because they were both

reviewed the same. The applicant applied for both permits but withdraw the Flood Hazard application because only one was required. The Chairman clarified that the applicant had the required permits. Ms. Batistic agreed.

Ms. DeBari stated after listening to the recording there were a lot of issues raised and she felt there were some valid questions that need to be answered. Mr. Sproviero agreed and believed Mr. Alampi would be offering some comments. Ms. DeBari commented that the Township Manager of Teaneck had concerns with the application and their streets. Mr. Sproviero agreed and added he had discussions with Mr. Broughton inviting his input as to potential solution. The Board Attorney stated Teaneck was in favor of putting the access egress exclusively on New Bridge Road. He explained to him it was a County Road and would implicate County Planning Board jurisdiction and he could contact the County Engineer. The Board Attorney had not heard back from the Township Manager. The Chairman stated the application had not been discussed by the Board and there will be questions. Mr. Loonam asked who would decide on restrictions if half of the road was one town and the other half another town. The Board Attorney was not sure. There was discussion on the roads by the restaurant. Fr. Hadodo suggested a traffic light. The Board Engineer stated there needed to be a lot of cars going thru the intersection to warrant a traffic light. The Board Attorney did not believe the County would approve it.

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

**New Milford Zoning Board of Adjustment
Public Session
October 9, 2012**

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

PLEDGE OF ALLEGIANCE

OFFICIAL MINUTES OF THE WORK SESSION – September 11, 2012

Motion to accept the minutes for the Work Session were made by Mr. Loonam, seconded by Fr. Hadodo and carried by all.

OFFICIAL MINUTES OF THE PUBLIC SESSION – September 11, 2012

Motion to accept the minutes for the Public Session were made by Fr. Hadodo, seconded by Mr. Binetti and carried by all.

OLD BUSINESS

12-04 – Gospel Fellowship Church – Block 913 Lot 1 – 111 Henley Avenue

Mr. Denis had recused himself from the application and stepped down from the dais. Mr. Urdang representing the Gospel Fellowship Church stated they had one witness which would conclude their testimony.

The Board Attorney swore in Mr. Roger De Niscia 347 Upper Mountain Avenue, Upper Montclair, NJ.

The Board Members accepted the qualifications of Mr. De Nisca as an expert witness in Planning.

Mr. Urdang marked the Exhibit A-12 site plan alternative sketch.

Mr. De Niscia stated he reviewed the submitted plans and zoning ordinance as it pertained to this application and visited the site and surrounding area. The planner described the site had the racquetball club building and to the north of the building was a paved parking area which accommodated 49 cars. He added there was an access driveway on Henley Avenue on the easterly boundary of the site and a second driveway on the westerly boundary of the site on Harvard. He added to the north of the parking area was a wide-open area with natural landscaped condition that acted as a buffer to the site and its neighbors to the north. Mr. Urdang asked if the Racquetball Club obtained approval from the Planning Board for an extension of the parking area. Mr. De Niscia said there was approval from the Planning Board to expand the parking area to accommodate 115 spaces. The planner stated at the same time the planning board granted site plan approval and the Racquetball Club obtained approval from the NJDEP to expand the parking area. He explained the approvals were still in effect. The Planner added the NJDEP approval was good to the end of 2014 because of the permit extension act. The Board Attorney asked what NJDEP approval was required. Mr. De Niscia answered it was for wetlands buffer. The Planner described the area with the surrounding businesses and industrial buildings. He explained to the north of the site was a residential area but Harvard Street had been permanently blocked so there was no access from the industrial area to the residential area.

The Planner stated the applicant was a Korean Presbyterian Church presently located in Bergenfield and due to the growth of their congregation they needed additional space. The racquetball club was adaptable because of the way it was built and its design. He explained the only change to the site plan was a small utility shed. The Planner stated there were no changes to the building but it does propose a change to the parking area to expand to a total of 115 parking spaces. Mr. De Niscia explained the Board received an alternative parking layout. Mr. Urdang clarified that the NJDEP approval and the Planning Board approval remained valid until the end of the 2014. The site plan submitted to this Board was basically the same plan approved by the Planning Board. Mr. De Niscia agreed. The Planner explained the alternate plan would reduce the amount of parking from 115 to 75 parking spaces based on the traffic expert testimony and discussions with the Board. The traffic expert's opinion was that the site would function with a reduced amount of parking spaces. The Planner agreed with this testimony and stated the 75 spaces were suitable and appropriate. He stated there were two important planning and zoning benefits. It would utilize less land and the amount of impervious surface would be reduced from 60.7% to 53.8% that would substantially lessen the potential for flooding. The Chairman asked for the square footage on it. The Planner answered the initial impervious surface was 54,971 sq ft and the alternative plan submitted was 48,727 with a difference of 6,244 sq ft less. The Planner also said a benefit was the buffer in the north was 70 feet and would increase to 83.5 feet in width which created a wider buffer. Mr. De Niscia stated this would provide a greater separation between the parking area and the Church and the nearest neighbor to the north. He said it also created a greater visual open space on the site. The Chairman clarified it was approved for 115 spaces so the proposed impervious of 54,971 sq ft was already approved. The Planner agreed.

Mr. Urdang stated the applicant was taking the position that even though they complied with the parking if the Board preferred they would be okay with 75 parking spaces. The applicant's attorney stated the reason they were before the Board was that they needed a conditional use variance. The Planner agreed that the site was in an industrial zone district and a house of worship was a permitted conditional use in this district. He explained there were standards for

conditional use. The Planner stated there were seven standards that were required and the applicant met all but two. One of the variances was parking in the front yard, which had been granted a variance so there was no change. The other variance was along the access driveway on the easterly side where there was a setback variance that was an existing condition and also was granted a variance for the racquetball club previously. There were no changes to the existing conditions. Mr. De Niscia thought it was important to understand the racquetball club was a permitted use and the standards applied were actually the same standards but because a house of worship was a conditional permitted use it had a greater burden. The Planner explained only the zoning board could grant variances on conditional use standards. The conditional use variance had a lesser burden of proof on the applicant. The standards and variances already exist and have been approved. Mr. De Niscia added that although the church was a conditional permitted use it was also considered an inherently beneficial use that had a lesser standard of proof. Mr. Urdang clarified a conditional use variance had a lesser standard than a D(1) variance where the use was not permitted in the zone. Mr. Urdang explained that because the use was inherently beneficial the already diluted standard of the D(3) variance was even more diluted because it was an inherently beneficial use. The Planner agreed and added the fact it was inherently beneficial constituted the positive reasons. He stated it was further demonstrated by the zoning ordinance, which considered the site and area suited for the House of Worship. Mr. Urdang clarified that because it was an inherently beneficial use there was a special reason criteria and because the use was inherently beneficial the affirmative criteria for special reasons was deemed to be presumptively satisfied. Mr. De Niscia agreed. Mr. Urdang stated that all inherently beneficial use cases were negative criteria cases. The Planner agreed and explained there was a four-step process that had been established by court decisions known as the SICA case. The United States Constitution and State Constitution protected a House of Worship so public interest was automatically satisfied. The Planner said with this application there were no detrimental impacts. He explained with regard to traffic the expert testified the House of Worship would have substantially less traffic generated than the racquetball club. The Planner stated with regard to floods which was taken care of in the original approval for the racquetball club from NJDEP for the larger parking area and with the alternative plan the impervious coverage would be substantially lessened and drainage conditions would improve. He stated the Court could impose reasonable conditions to limit or reduce adverse impacts. The applicant had suggested some conditions could be the Church would not be rented out, leased or used by anyone else other than the congregation, the Fellowship Hall would be used only in connection with the Sanctuary use and not by others, the applicant agreed to hire an off duty policeman at the applicants expense to monitor traffic if the chief of police determined there was a traffic problem, the applicant would cap the growth of the church to 400 members and the applicant proposed an alternative parking plan which would reduce impervious coverage.

The planner stated the applicant tried to reduce the impact of traffic, flooding and parking and thought if there were any detriments they were minimal and not substantial. It was Mr. De Niscia's opinion that the application met the four-step process that was included in the SICA decision. The Planner discussed the Religious Land Use and Institutionalized Persons Act (RLUIPA) that gives protection to a House of Worship. The Planner said the applicant met all the requirements protected under current legislation. He added the statute said the government could not implement a land use regulation in a way that treats a house of worship in a different way than a non-religious entity. He added previously the planning board had granted variances

for a commercial use so the same variances must be granted for a religious use. Mr. De Niscia stated considering the Municipal Land Use Law, Court decisions and the Federal Statute, he thought what the applicant was requesting in terms of variances and site plan approval must be approved by the Board. He added the application met all the criteria for the Board to approve the application. The Chairman asked if he had the DEP approval. Mr. Urdang had previously marked it into evidence.

Ms. DeBari asked if the Church would be opened every day because of religious instruction for children. Mr. Urdang agreed. Ms. DeBari asked what would happen when they reached 400 members. The Planner answered it would split to another congregation. Ms. DeBari asked how many members were affiliated with the church now. Mr. Urdang answered 300. Ms. DeBari clarified this would not become a daycare facility. Mr. Urdang answered another condition was there would be no nursery school. Ms. DeBari questioned if there would be outside playground equipment. Mr. Urdang answered no.

Mr. Rebsch asked clarification from the Board Attorney if both church and parking lot were an inherently beneficial use. Mr. Sproviero stated it was the use that was inherently beneficial and there were conditions that flow from the use. The applicant seeks relief as a conditional use. He explained the Board would look at the use not necessarily the individual components. The Board Attorney did not disagree that they were entitled to inherently beneficial use standards.

Mr. Loonam had concerns regarding the flooding and if the applicant had a plan for the members in case the floodwater came quickly. Mr. Urdang stated the egress and ingress meets all the safety requirements. The Church was aware and sensitive to the flooding and Mr. Urdang felt the Church would come up with an emergency plan for evacuation. Mr. Binetti felt the applicant understood the risks. Mr. Urdang agreed they understood the risks.

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

No one wished to be heard in the audience.

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

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

No one wished to be heard in the audience.

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

Mr. Urdang gave his summation. He explained there was a specific legal matrix in which this decision had to be made. Mr. Urdang stated one was State law (Inherently Beneficial) and the other was Federal Statute (RLUIPA). He explained Inherently Beneficial did not change the burden of proof. The burden of proof was on the applicant but it does change how the applicant meets that burden of proof. The three criteria that had to be satisfied was the affirmative criteria for special reasons and two negative criteria that it was not substantially detrimental to the public

good and that it would not substantially impair the intent and the purpose of the zoning plan or zoning ordinance. He stated an inherently beneficial use case was a substantially negative criteria case that had a balancing test. He reviewed the four-step test. Mr. Urdang stated with RLUIPA it only applied to houses of worship and it changed the burden of proof. The burden shifts to the Board to find a compelling governmental interest. The applicant's attorney added that RLUIPA provides for damages and attorney fees. Mr. Urdang stated he did not know if it was the concern of this Board but rather the Mayor and Council but the fact that there was a Racquetball Club as a permitted use and a house of worship as a conditional use it would seem to violate the equal terms provision of RLUIPA. He added it could be taken into consideration although the Board could not remedy it. The Board Attorney stated he would not even suggest that it was appropriate for the Board in the course of their deliberations to take into account the ordinance may or may not be in firm. The Board was to apply the law, as it exists which will include the ordinance, NJ Land Use Act and RLUIPA. Mr. Urdang agreed with the Board Attorney in regard to the ordinance that it was not in the Boards control but may be a matter for the Mayor and Council to consider. Mr. Urdang felt the application was a compelling one for approval and sought the granting of the variances requested.

The Chairman questioned if the application would be bifurcated. The Board Attorney stated the two specific areas of deviation from complying with the conditional use requirements were the parking in the front yard and the setback from the east. Mr. Sproviero stated both of those were integral to granting the conditional use. He added if the Board denies one the Board denies the entirety of the application so there was nothing to bifurcate. The Chairman asked if it was the applicant's decision as to which plan they were presenting to the Board. The Board Attorney agreed. Mr. Urdang stated it was their offer but the Board's choice. Mr. Loonam asked if this application could trigger additional COAH requirements. Mr. Sproviero did not believe so. Mr. Rebsch asked if the parking could be reduced more. Mr. Urdang answered they were comfortable with 75 spaces. Mr. Stokes felt the self-imposed conditions would be part of the variance granted. Ms. DeBari asked the Board to discuss if they preferred the alternative parking plan.

Ms. Batistic suggested a revision to the alternative plan. She did not like the 24' wide aisle with one row of parking. She suggested another design to reduce the impervious more. Her recommendation was to make the driveway halfway and have parking on both sides.

RECESS

The Board Attorney stated the alternative plan was the more attractive of the two but the Board Engineer had identified certain modifications that would make the alternative plan better. The modifications would be on the record to seek the applicants consent for the Board to consider the alternative proposal with the modifications suggested by the Board Engineer. Ms. Batistic stated in order to minimize the impervious area and keep 75 parking stalls she suggested instead of having one 24' wide aisle feeding one side of parking stalls shorten the northern parking area and have the aisle feed two sides. She stated this would reduce approximately 2800 sq ft of impervious area and keep the number of stalls to 75-78 stalls. The Engineer said the drainage would have to be adjusted. Ms. Batistic clarified that the exit to Harvard would be on the southern portion of the parking. Mr. Urdang marked as exhibit A-13 the Board Engineer's sketch on the alternative plan.

The Chairman clarified if the application was approved the design would be adjusted by Mr. Hubschman and have correspondence with Ms. Batistic. Mr. Urdang stated the approval would

be subject to the Board's engineer's approval. The Board Attorney said in addition to any modifications with drainage calculations and seepage pits if needed.

The Board Attorney clarified that RLUIPA was a burden shifting statute implemented for the protection of the religious freedom of various congregations. He stated the standard articulated by the applicant was correct. If the Board denied the application and were challenged in that denial, RLUIPA would require the Board to demonstrate compelling governmental interests in support of its denial. The Board Attorney articulated the conditions from the applicant for the record:

- No day care or nursery school on site
- No rental of premises or any portion thereof to any third parties for any purposes
- The entirety of the facility would be utilized for congregational purposes only
- Require traffic control by an officer at the applicant's expense in the event the chief of police determines it necessary.
- The maximum size of the congregation would be no more than 400 parishioners
- The revised alternative plan inclusive of drainage calculations satisfactory to the Board Engineer
- No catering on premises
- Food limited to light lunch

Mr. Stokes questioned if they were seeking a D(3) variance. The Board Attorney stated the reduction of the parking spaces triggered a parking variance. He stated there were three components for the conditional use variance – parking spaces, set back and parking deficiencies. The Board Attorney stated the last condition was subject to the formation of the developer's agreement between the Borough and the applicant. Mr. Sproviero stated this was a D variance and the applicant needed five affirmative votes to pass.

Mr. Stokes felt the applicant had presented a good case and had offered to reduce the amount of coverage to their parking lot to a minimum. He believed they presented a compelling case.

Mr. Stokes made a motion to grant the variance with the three components and the conditions, seconded by Ms. DeBari

The **motion** passed on a roll call vote as follows:

For the motion: Members Stokes, DeBari, Binetti, Hadodo, Loonam, Appice, Schaffenberger

Against the motion: None

Approved 7-0

12-03 – 105 New Bridge Properties, LLC – Block 113 Lots 4, 5, 6 –Parking Lot/Restaurant Expansion

Mr. Carmine Alampi stated this was a continuation of the application and they had concluded the testimony. He reminded the Board this was a use variance application and they were in a residential zone and it was a commercial enterprise. Mr. Alampi stated the property has been used as a restaurant and the Board previously had granted an approval by variance for a demolition and the new facility known as The New Bridge Inn. They had filed an application to

expand the restaurant in the bar/dining area. The applicant had an opportunity to acquire two properties along Old New Bridge Road. Mr. Alampi stated it was a fine dining area and it generated a good reputation. The enlargement of the parking area was critical to maintaining the operation. The attorney stated the Board had reminded the applicant that they committed to valet parking service and they did not comply. He stated they engaged in valet parking on Friday and Saturday night but it was not warranted for lunch. Mr. Alampi explained with regard to the proposed parking area they created 65 parking spaces in total for freestyle self service parking and with the valet service there would be over 100 car parking capacity. They understood the residents had a concern with the parking area. The Board and the applicant were sensitive to it. Mr. Alampi stated relieving the curb line parking would be a greater benefit to the neighborhood. They believed it was a good use, good planning and good zoning. Mr. Alampi said the enlargement of the building was not correlated to the parking lot. He stated that since the applicant was spending that kind of money to improve the properties and add the parking lot they also had some issues in the dining room that served the bar area and dining room. The applicant was adding 60 seats but adding 40 parking spaces. Mr. Alampi thought the Board would agree with him that this would be a benefit to the immediate neighborhood. He stated the restaurant was not going away and would not shut down but it would continue to maintain itself in that neighborhood and he felt this parking would be a benefit to those who live there. Mr. Alampi thought the Board could in good conscience support this application and find that both special reasons had been established and they thought there would be a substantial positive impact as of result of this. He added there was testimony from Mr. Costa regarding the parking lot that there will not be more flooding because of this but it would be a controlled situation and an improvement. Mr. Alampi stated this total project should be an overall improvement in the flood control and parking. They have finalized the DEP permits. Mr. Alampi stated the applicant revised the driveways to a single driveway at the recommendation of the Board. He added the County had approved that revision. Mr. Alampi stated they had the State agency that regulates construction in the flood plain that issued a State permit and the County that regulates the traffic flow on county roads and has adopted the Board's recommendation for a centered full service driveway. Mr. Alampi suggested recommendations to the Teaneck neighbors to petition their own government to install speed bumps and perhaps make their road a one-way street.

The Chairman asked about the variance for the sign. Mr. Alampi stated there was a sign variance for setback and height of the sign. Mr. Alampi stated there was brief testimony on the location of the sign and size.

Ms. Batistic questioned Mr. Alampi's testimony that they were adding 60 seats but the zoning table had existing 130 seats proposed 260. Ms. Batistic asked Mr. Alampi for the total number of seats. Mr. Alampi answered a total of 260 counting the bar, stools and dining rooms. Ms. Batistic stated those areas existed now. The Board Engineer asked what was the existing number of seats because their zoning said 130 which she believed was approved at the previous application. Ms. Batistic added the new was 260 so that was 130 more. Mr. Alampi said the total count was 260. The Board Engineer questioned that the architectural plans showed 200 seats so where were the additional 60 seats going. Mr. Alampi answered there were 200 previously and 60 additional. Ms. Batistic clarified that existing was 200. Mr. Alampi agreed and said they reviewed this with the architect.

The Board Attorney questioned if there were any variances that occurred from the expansion of the restaurant. Mr. Alampi answered the expansion was 954 sq ft and did not trigger any setback,

side yard or impervious additional coverage or variance because it was over the parking lot area now. The Board Attorney questioned the second floor deck. Mr. Alampi answered it was a flat roof over the dining area. The Board Attorney asked if it would be utilized for outdoor food service. Mr. Alampi answered no. Mr. Scalera said no one could get there from a room. Mr. Sproviero asked if there would be cocktails there. Mr. Binetti asked if he would allow smoking out there. Mr. Scalera answered no. The Board Attorney clarified it would be used for decorative purposes only. Mr. Scalera answered yes. The Board Attorney asked if there would be a problem to impose a condition that there would be no form of food service or customer access to the deck area. Mr. Alampi did not have a problem with that since it was not part of the plan to create a rooftop café. There would be mechanical devices over the dining area.

The Board Attorney clarified it was the applicants position that they would provide valet service on Friday and Saturday evenings and private catered affairs. Mr. Alampi stated that was for a modification of the variance granted eight years ago to ask for an adjustment to that condition. He clarified they would use valet service if they had a function that would use the whole banquet room. Mr. Sproviero stated they imposed conditions specifically with valet requirements and they were not complied with so what assurance did the Board have if they impose conditions that the applicant will comply. Mr. Alampi said they could not give any greater assurance than the fact that the market conditions and the operation of the business did know how the activity would run. There was a full valet service that was hardly used in the daytime so they abandoned it. It would make sense they would use valet service on Friday and Saturday night and would live up to it. Mr. Alampi did not think the abandonment of the valet service was the cause of any problem in the neighborhood because when they were busy they did have valet service. The Board Attorney stated it was done unilaterally by the applicant but did not mean any disrespect to the Board. The Board Attorney stated it could have been easily corrected by making an application to rescind and explain to the Board the issue. Mr. Scalera explained during the day customers did not want to pay a valet. The Chairman stated that was not the point. He said Mr. Alampi testified with the new application there were certain things that make sense and questioned if they don't make sense would the applicant unilaterally change the terms. Mr. Alampi understood and said the proper procedure would be to file application to reconsider the condition. Mr. Stokes asked if the valet service was brought up by the organization because they were deficient in parking or did the Board impose it. The Board Attorney reviewed the resolution but did not review the full minutes of the past application and it did not give any indication either way. Mr. Alampi remembers there was a concern about the sufficiency of the parking for the purpose of using the valet to give the maximum parking in the parking lot because they would pick up another 15-20 parking spaces by valet. Mr. Alampi stated there was a condition and they would not argue the point that the applicant did not adhere to it and the valet service during the weekdays were abandoned. He added they would need valet parking during the weekend nights and when there was a function for the banquet rooms and it was an amenity that they would provide.

The Board Attorney asked if the covered patio located on the first floor would be utilized for any food service. Mr. Alampi answered in compliance with the State laws for smoking it would be utilized for smoking. Mr. Sproviero clarified there would be no tables on the patio. Mr. Alampi answered no.

Mr. Appice asked if there was a way to prevent people from parking on the street if the parking lot was empty. Mr. Alampi stated during the daytime the parking lots would be underutilized and

some people would park at the curb but thought the issue was when there were 200 people. Ms. DeBari suggested a sign stating complimentary valet service. Mr. Scalera answered it was complimentary. Mr. Scalera stated the complaints were about the staff parking in front of their houses and the employees will now park in the new lot. Mr. Alampi stated they will encourage the people to use the parking lot but they could not force customers to use it. Ms. DeBari suggested Teaneck residents might want to request sign restrictions like residential parking only on the street. Mr. Alampi stated that would be an improvement but New Milford did not have jurisdiction on that area.

Mr. Loonam questioned if there was a road shared by two towns would it need the cooperation between both towns to decide if speed bumps could be installed. Mr. Costa agreed. Mr. Costa suggested stop signs at the intersections. Mr. Loonam asked if there was a future plan for another expansion down the road. Mr. Alampi did not know of any plans but it would be possible there would be more property available. Mr. Loonam recalled eight years ago there was an issue with limited parking and that was the reason for the valet service. He added it was also testimony on the type of restaurant it would be from what it was, that it would be more exclusive than what it had been and they would have valet service which would attract a certain clientele. Mr. Alampi recalled making those representations. Mr. Loonam stated his client has abandoned a condition of approval for a long time and the applicant was not here to adhere to the previous condition but wanted to eliminate the previous requirement. He questioned if the applicant would abandon other conditions. Mr. Alampi could not deny the history of what has happened and they were not asking to avoid the valet condition but to modify it. He would not want the Board to be blinded to the benefit to the added parking and the improvement and parking relief it would bring to the neighborhood. Mr. Loonam felt there was a lack of credibility. He understood that the business was not as busy at certain times but he did not think this parking lot was solely to ease the burden on the neighborhood but with the idea business would do better. Mr. Loonam felt part of the valet condition wasn't for the customers at that time but it was to ease the concerns of the neighbors. He felt by abandoning the requirement they were taking care of the business more than the area. Mr. Loonam stated the application was approved eight years ago based on the totality of it. Mr. Alampi understood and suggested the valet service be throughout the week during the evenings.

Fr. Hadodo asked what the town could have done to enforce it and suggested the neighbors be able to park in their lot. The Board Attorney stated the building department had the right to issue summons.

Mr. Alampi stated if an approval was granted a building permit would be issued and a new certificate of occupancy could put a restriction on the roof area.

The Chairman asked if they would agree that the proposed paver parking lot would not be paved with macadam or concrete. Mr. Alampi agreed and said they would produce a resolution compliance plan.

Ms. DeBari was not sure if valet service was necessary during the week when it was not busy. Fr. Hadodo did not know of a restaurant with 7 day valet service. Mr. Denis thought it could be a burden on the business. Mr. Alampi agreed that he did not know of any restaurant that had valet service 7 days a week.

The Chairman clarified there was a D variance for the use and series of bulk variances. Mr. Alampi stated the existing conditions were the front setback and the side yard setbacks, they

proposed 9x18 parking stalls required 9x20, residency boundary line required 25' proposed 12.5' buffer, parking lot was not creating bulk variances except for the impervious coverage and the third sign triggered a variance for height and setback. The Chairman questioned if a fence variance was required. Ms. Batistic stated a variance was required for a 6' fence on the west property line. Mr. Alampi agreed.

The Board Attorney clarified the conditions would be:

- The proposed paver parking lot would not be paved with macadam or concrete,
- The second level deck or the patio shall not be used for food service of any kind
- The second level deck shall have no customer access
- Valet service shall be provided by the applicant Friday and Saturday evenings and all private catered affairs
- Subject to the developers agreement and resolution compliance plan
- Soundproofing for the fence

Mr. Denis made a motion to grant the variance with the conditions; Mr. Stokes would second the motion if the Board would restrict the valet service for all evenings because it would address part of the Teaneck residents' problems. Mr. Denis felt if there were no functions valet service would not be needed and they have agreed every catered affair would have valet service and Friday and Saturday evenings. Mr. Denis was not amending his motion, seconded by Ms. DeBari.

The **motion** passed on a roll call vote as follows:

For the motion: Members Denis, DeBari, Binetti, Hadodo, Stokes, Schaffenberger

Against the motion: Member Loonam

Approved 6-1

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

Respectfully submitted,
Maureen Oppelaar