

**New Milford Zoning Board of Adjustment  
Special Meeting  
November 19, 2012**

Vice Chairman Stokes called the Public Session of the New Milford Zoning Board of Adjustment to order at 7:20 pm and read the Open Public Meeting Act.

**ROLL CALL**

Mr. Appice	Present
Mr. Binetti	Present
Ms. DeBari	Present
Mr. Denis	Present
Father Hadodo	Absent
Mr. Loonam	Present
Mr. Rebsch	Present
Mr. Stokes Vice Chairman	Present
Mr. Schaffenberger-Chairman	Present
Ms. Batistic- Engineer	Present
Mr. Grygiel Planner	Present (815)
Mr. Sproviero – Board Attorney	Present

**PLEDGE OF ALLEGIANCE**

**RESOLUTION**

**12- 04 – Gospel Fellowship Church - Block 913 Lot 1 -Use of property as a House of Worship, Side and Rear Yard Buffer, Parking**

The Board Attorney reviewed the resolution with the Board Members and stated the Chairman and Mr. Urdang had some comments that had been incorporated into the resolution. Mr. Sproviero explained the resolution also memorialized the fact that at the last meeting, at the recommendation of the Board's Engineer, an alternative plan was developed which reduced parking spaces and created more green space. This plan was adopted and in addition to the conditions in the resolution the approval was subject to and contingent upon the approval of the revised plans by the Board Engineer. The Chairman asked for an explanation of paragraph 9. The Board Attorney read paragraph 9 for the record and explained the RLUIPA statute. He explained that under federal discrimination law if a municipal body treated an application for religious institutions differently than it would apply the local land use for any other type of use the Board would be subject to damages under federal law. The Board's determination did not reach that issue because they found the applicant had satisfied the local requirements for granting the conditional use. The Board Attorney explained in the event a third party sued to overturn the application this paragraph enabled the Board to assert any RLUIPA defenses that the Board or the applicant may have and permitted the Board to supplement the record in order to make findings in accordance with RLUIPA federal statute.

Ms. Batistic questioned if there would be a developers agreement. Mr. Sproviero answered he would include it in the resolution.

**Motion** to memorialize the resolution with the change was made by Mr. Stokes, seconded by Mr. Binetti.

The motion passed on a roll call vote as follows:

For the Motion: Members Stokes, Binetti, Loonam, DeBari, Appice, Schaffenberger

**12-03 – 105 New Bridge Properties, LLC – Block 113 Lots 4, 5, 6 – Parking lot/Restaurant Expansion – use, impervious lot coverage, front and side yard setback, parking**

Mr. Sproviero noted the applicant's counsel was present and explained the Board conducted a special meeting in closed session on the grounds of potential and anticipated litigation with regard to the disposition of this application for use and associated bulk variances approved on October 9, 2012. He stated members of the Board expressed concern, confusion and the potential for mistake. The Board Attorney explained a post determination review of the proofs of record resulted in certain findings which were the site plan and zoning table represented the current seating of the restaurant at 130 seats and the existing seating at 200 seats. He stated based on that discrepancy the idea of a rehearing on that limited issue be conducted. The Board Attorney read the resolution into the record.

Mr. Robert Costa said his name and zoning schedule was mentioned in the resolution and wanted to make a statement. Mr. Sproviero interrupted and said he would have his time to speak but not at this hearing. Mr. Costa stated the zoning schedule said previously approved by the Zoning Board of Adjustment in July 12, 2005 and it did not say the existing seating. Mr. Sproviero said that was why a hearing was required on that issue and he would have an opportunity to explain it.

Mr. Carmine Alampi understood the Board wanted to keep an accurate record of their review of their applications but suggested language changes in the resolution. The attorney thought the comment referring to false information was strong and showed intent to deceive. The Board Attorney stated there was no allegation of fault. Mr. Alampi answered he was not attacking the Board's procedure but was suggesting there was verbiage in the resolution that went beyond what may or may not have not happened. He understood the Board would not be entertaining the argument and presentation on reconciling the seating chart on the floor plan tonight but just wanted to reopen it. The Board Attorney agreed. Mr. Alampi understood the Board was attempting to take action without prejudice for the Board, the applicant and the public's interest. Mr. Alampi did not think rescinding the approval was the correct method. The Board Attorney offered the approval be suspended. Mr. Alampi agreed. The Board Attorney stated it was not the Board's intention in any way to invoke or implicate Res Judicata. He stated the Board wanted the applicant to have a full, fair and open hearing on that issue to resolve any inconsistencies in the record. Mr. Alampi also had an issue with a rehearing the proofs

but wanted to reopen the hearing on notice to the public to discuss and reconcile the floor plan and site plan. Mr. Alampi stated the architectural plans submitted in the package were originally prepared without any seating details and suggested to the architect that he should fill it in based on fire code and based upon square footage and show the build out. Mr. Alampi said if the Board looked at Mr. Costa's chart for the parking it was true to the earlier resolutions. He noted that Ms. Batistic pointed out some confusion on the seating at the October 9th hearing. Mr. Sproviero stated the Board's motivation was accuracy of the record and any determination made with respect to the application be predicated on a full, complete and clear record.

Mr. Alampi had asked Mr. Scalera to get the 2004 floor plan and noted the plan showed the bar without stools. The Chairman stated our 2004 plan showed stools. Mr. Sproviero stated the Board's message was to get it right for his client and the Board's protection. Mr. Alampi understood a rehearing would have to occur because if it did not occur there would be a cloud over this. The Board Attorney was comfortable making the proposed modifications to the resolution and would change false to inaccurate, rescission to suspension and rehearing to reopen. The Chairman questioned the distinction between rescind and suspend. The Board Attorney explained the Board did not want the implication to exist that there was an automatic denial that would operate against the applicant in that Res Judicata would attach and the applicant would not be able to come back and get this issue right. The Chairman clarified that suspension would be the proper word. The Board Attorney agreed and stated the Board would renote.

Mr. Loonam questioned if this was suspended did the applicant have to request to extend the 120 days. Mr. Alampi stated the application had been heard but for the record they would extend the time thru the end of the year. The Board Attorney stated at the next meeting there were two other applications in December and the Board would put them on the December agenda. The Board Attorney agreed to issue a notice and start the meeting at 7 PM.

**Motion** to memorialize the resolution as amended was made by Mr. Stokes, seconded by Mr. Denis.

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

Recess 8 - 816 PM

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

The Board Attorney clarified that the recused members were Chairman Schaffenberger, Father Hadodo and Peter Rebsch. He stated there were now six members with a quorum of four.

Mr. Del Vecchio member of the firm of Beattie Padovano on behalf of the applicant stated they lost some of their meeting time and requested a special meeting. There was a discussion on special meetings and the Board Attorney stated they had November 29<sup>th</sup>

open. Mr. Del Vecchio answered he would take it back to their professionals and clear the date with them and also asked as an alternative that the meeting on the 11<sup>th</sup> be dedicated entirely to this application. The Board Attorney answered there were two other applications scheduled in December. Mr. Sproviero polled the Board for the November 29<sup>th</sup> and they had a quorum. Mr. Del Vecchio said he would have to check with Ms. Dolan for her availability. Ms. Batistic stated Mr. Tombalakian was not available on the 29<sup>th</sup>. The Board Attorney asked Mr. Del Vecchio to communicate with him during the course of the week.

Mr. Del Vecchio stated there was discussion at the last meeting as a result of the recusal of Mr. Rebsch to have a Planning Board member take a seat with the Board. He researched the matter and did not believe the statute would allow a Planning Board member be seated with the Zoning Board at this time to continue to hear the application. Mr. Sproviero would look into the matter.

Mr. Del Vecchio recalled Mr. Dipple to conclude his testimony. Mr. Stokes reminded the audience of the guidelines for questioning the witness and that there were a few people that had not asked questions. He stated Mr. Perrone from the Shade Tree Commission had questions for the witness.

Steve Perrone, Shade Tree Commission, asked how many trees would be removed as a result of the road being widened. Mr. Dipple believed it was 6 or 7. Mr. Del Vecchio asked if Mr. Perrone was speaking on behalf of the Shade Tree Commission or as a resident. Mr. Perrone answered as the Shade Tree Chairman. Mr. Del Vecchio asked if the Shade Tree Commission authorized him to speak at this meeting and at what meeting did this take place. Mr. Perrone answered yes and it was thru phone calls with all the members on Friday afternoon. Mr. Perrone asked if he knew how old the trees were. Mr. Dipple answered no. Mr. Perrone asked Mr. Dipple if he would be surprised that they were close to 80 years old. Mr. Dipple answered he would not be surprised. Mr. Perrone asked if the road was widened would the intersection at Cecchino and River be changed. Mr. Dipple answered there was no change to that intersection but the street would be widened north of that location. Mr. Perrone asked if the trees would not be touched closest to the High School. Mr. Dipple answered no the existing trees were along River Road along the existing sidewalk in front of the United Water Property. Mr. Perrone asked if they would be replaced. Mr. Dipple answered yes. Mr. Perrone asked what kind and size of trees would be replaced. Mr. Dipple answered 3-½ caliber Sycamores. Mr. Perrone asked if he would believe that any of those trees were heritage trees. Mr. Dipple did not believe they were because they were 36” in diameter. Mr. Perrone asked if he had a copy of the tree ordinance. Mr. Dipple answered he reviewed it. Mr. Perrone stated the ordinance read that a heritage tree had a trunk diameter of 36” or more; of a particular historical significance or over 50 years of age.

Betty Verdejo 24 So. William St, Bergenfield said that previous testimony was no large trucks would go down River Road and now he mentioned if there was a flood they would go down River Road.. Mr. Dipple responded there was a comment from one of the Borough’s professionals who recommended changing the radii of the driveways in case

there was a flooding event on Madison the driveways could accommodate the trucks. Mr. Dipple stated the information provided to him was the trucks would enter the site from the west and he provided exhibits which showed the turning movements.. Ms. Verdejo said Mr. Pagano said there would be no deliveries to Shop Rite if there was flooding or snow. Mr. Dipple stated he only testified to the changes to the radii of the driveways and did not testify that this would or would not happen. Ms. Verdejo stated the current fire apparatus was not sufficient to service the four story residential building and asked who would purchase the new fire engine.. Mr. Del Vecchio had no information to indicate the current fire apparatus was not able to service a building of this size.

John D'Ambrosio 482 Luhmann Drive asked if he personally designed parking structures. Mr. Dipple answered no. The resident questioned that the revised architectural drawings had two entrances and Mr. Dipple's plan had one entrance to the garage. Mr. Dipple concurred that the architect had drawn another entrance to the garage, which he did not fully agree to and the final design was not complete. There was discussion regarding the floor of the garage.

Arthur Simone 256 Demarest Avenue asked what the distance was from Cecchino to the main entrance. Mr. Dipple answered 320'. The resident asked how long the left turn lane was. Mr. Dipple answered the queuing distance was 80', which is roughly 4 cars. The resident had concerns with blocking the thru lane on River Road. Mr. Dipple answered possibly 6-7 cars could obstruct traffic flow. The resident questioned if there would be gridlock at Milford Avenue and Cecchino. Mr. Dipple thought it was a question for Ms. Dolan.

John Rutledge 335 River Road asked for the distance southbound from Main Street to the property line of the lot where the fence was. Mr. Dipple answered 270'. The resident said of the 270' he assumed the 6' setback started at the fence line. Mr. Dipple answered no it didn't start for another 150'. Mr. Rutledge asked where the 6' cut line started from Main Street. Mr. Dipple answered about 430'. There was discussion on the taper lengths. Mr. Rutledge asked if the 6' setback went as far as Cecchino Drive. Mr. Dipple answered no but testified the entire impact to the road totaled 460'.

Gene Murray 425 Madison Avenue had questions on the exit onto Main Street from the site and if there was a revision in the width of the exit. Mr. Dipple answered there was no revision to that driveway. Mr. Murray questioned the testimony that a left turn lane was added from Main to Washington. Mr. Dipple said his testimony was that if it was determined it was not permitted, they would have a solid stripe with no left turn lane. The resident asked if there was a change to the width of Main Street with that configuration change. Mr. Dipple answered yes. Mr. Murray asked what the current and proposed width was. Mr. Dipple answered the current width was 30' and the proposed was 36'. Mr. Murray questioned if the intention was to dissuade trucks from making a right to avoid the intersection at Main and River Road. Mr. Dipple had not seen that request. Mr. Murray asked for the width and length of the throat at that exit. Mr. Dipple answered 30' for two lanes. The resident asked if Ms. Dolan proposed any shoulder to the proposed 36' widening. Mr. Dipple answered no. Mr. Murray asked if there had been any modeling

done to confirm whether the tractor-trailers up to 60' wheelbase could make the turn exiting right or left. Mr. Dipple answered yes. Mr. Murray asked if there had been any conversation with Ms. Dolan regarding the minimum AASHTO guidelines for a roadway three lanes of that width. Mr. Dipple stated she provided him with a sketch which was a standard configuration. Mr. Murray said Ms. Dolan testified that the road was a fairly high capacity stretch of highway and asked what the AASHTO guidelines were for a road with that type of volume. Mr. Dipple did not know. The resident questioned that the 36' was not in compliance with guidelines, which recommended a 1-2' shoulder on each side of the road. Mr. Dipple answered there was a recommendation by the Borough's Traffic Engineer that there should be a wider lane but his knowledge was this met the standard but he would look if there was another standard regarding shoulders. Mr. Murray asked if there were any accommodations in the plan for school bus parking. Mr. Dipple answered there was no change to Madison at that location.

Marc Leibman, appearing on behalf of Austin Ashley, asked if there were any provisions in the site plan for back up generators for the residential or commercial building. Mr. Dipple believed in the back of the site there was a mechanical area and assumed it would include a back up generator for the commercial building. Mr. Leibman questioned that the residential building with the elevators would require a decent amount of power to operate one and questioned its size and location. Mr. Dipple said Mr. Lessard would be best to answer those questions. Mr. Leibman asked if the bank would need a separate generator. Mr. Dipple said it would be a decision of the bank.

Louis Flora appearing on behalf of the Borough of Oradell from the law firm of Giblin and Giblin, 2 Forest Avenue, Paramus asked if the plans submitted were in part a response to Mr. Tombalakian's review comments. Mr. Dipple agreed that certain questions dealt with changes to the civil engineering plans and he addressed them in the plans. Mr. Flora asked if there was a written document in response to Mr. Tombalakian's October 15<sup>th</sup> letter. Mr. Dipple had not responded or seen a response to that. Mr. Flora asked if he intended to prepare a response to it based on site engineering. Mr. Dipple had not. Mr. Flora said that Mr. Tombalakian's letter suggested that on the parking lot design the applicant should provide testimony on the adequacy of the single exit driveway for the parking garage which was 428 spaces where the surface parking lot had four driveways for 354 spaces.. Mr. Flora questioned that the revised site plan showed one exit to the parking garage and the architectural showed two. Mr. Dipple said the revised plan showed two. Mr. Flora asked if it would be one or two exits. Mr. Dipple believed there would be a discussion on that. Mr. Flora questioned a second driveway would need width of lanes, site distances, signage and striping shown on the site plan. Mr. Dipple agreed. Mr. Flora questioned that no change had been made on the parking lot design comment that the bank site be reversed. Mr. Dipple did not believe his client agreed with the comment. Mr. Flora asked if anyone on his design team contacted Mr. Tombalakian regarding this comment. Mr. Dipple knew Ms. Dolan had been in contact with him but did not know if they discussed that comment. Mr. Flora questioned there was a comment in the report regarding the original design entitled River Road Turn Lane Exhibit dated Sept 18, 2012 stating the lane widths were two narrow for sufficient vehicular movement and they recommended lane widths be modified. He stated Mr. Tombalakian

recommended the right thru lane be 12', the left turn lane 11' and the receiving lane 15' where they proposed a 13' receiving lane.. Mr. Dipple had testified they used a 13' lane for the thru lane in the past and it had been accepted by Bergen County and other jurisdictions. Mr. Flora asked if there were any changes on the River Road/Madison intersection on the revised plan. Mr. Dipple answered no.

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

The Board Attorney questioned if Mr. Dipple anticipated any further site plan revisions because a number of his responses indicated that there were certain design parameters that may not finalized. Mr. Dipple answered it was possible and there were a few inconsistencies found and the resolution would require conditions to be addressed. Mr. Sproviero asked if there was any other design parameters that were needed to be refined in order to finalize this site plan that was before the Board. Mr. Dipple answered no.

Mr. Binetti questioned the Board had a lot of questions for Ms. Dolan and would her final outcome effect his reports resulting in him returning to the Board. . Mr. Dipple did not know what the future outcome of those would be but he needed to confer with Ms. Dolan on two items related to striping one being the left turn lane from Main onto Washington and the other was the way the arrow was depicted at the driveway facing Demarest Avenue.

Mr. Loonam asked if the left turn lane was positioned based upon where they expected the most traffic. Mr. Dipple answered yes and Ms. Dolan did a traffic analysis and it analyzed all the intersections and roadways. Mr. Loonam clarified that it was a result of her analysis rather than an intention of where they would like people to enter the site. Mr. Dipple did not think it was designed because all three uses were there. Mr. Loonam asked if the bank was on the plan to drive a certain clientele to the area to then go to the supermarket. Mr. Dipple could not speak for his client but it was common that banks and supermarkets were together. Mr. Loonam questioned if his client wasn't willing to consider moving the bank as per the comment letter because of visibility. Mr. Dipple thought it had a lot to do with visibility. Mr. Loonam questioned if the design for the parking at the bank was to keep supermarket traffic out of that parking lot. Mr. Dipple answered no.

Mr. Binetti asked if the main exit for the residential building was coming out to River Road and Demarest Avenue. Mr. Dipple answered they would exit the parking garage and exit onto the thru driveway thru the site and could take a left or right. He explained there was a left and right but the question was if there should be a straight.

## RECESS

Mr. Denis had concerns with the 428 parking stalls for the residential building and questioned the impact of the traffic with all the residents leaving for work, bank traffic

and supermarket traffic leaving the site during rush hour and children going to school. Mr. Dipple stated Ms. Dolan had prepared a traffic impact analysis and she would be able to answer the question. He added the architect had proposed a second entrance to the garage but did not know if that would have any impact on the streets and also discussed exiting onto Madison. Mr. Denis had concerns with the train and traffic.

Mr. Stokes questioned why there were no crosswalks in River Road crossing over to Demarest Avenue. Mr. Dipple stated that was a thru movement 25mph road and it was not the safest move to do a mid block crosswalk at an uncontrolled intersection. He did not agree it would be a safe place for a crosswalk. Mr. Stokes questioned if it was a law to have a crosswalk there. Mr. Dipple said the law was you had to stop at a crosswalk but he did not think a mid block crosswalk was always a good thing but he would take it under advisement. Mr. Stokes questioned if there was parking for the leasing office. Mr. Dipple answered the buildings tend to have a small office for leasing and the parking at the bank was over parked by 14 spaces which could be used for the leasing.

Ms. DeBari asked if the leasing would be a separate building. Mr. Dipple stated it was usually one of the units.

Mr. Binetti stated Cecchino Drive was a dangerous street to begin with and he felt everyone affiliated with the complex would over use it. He asked how they would address that street. Mr. Del Vecchio answered it was a traffic impact question and if it was a dangerous street now he encouraged they have the governing body address the condition now because it had nothing to do with their development. Ms. DeBari thought it had everything to do with the development. Mr. Binetti stated there would be more people traveling thru the street. Mr. Del Vecchio stated Ms. Dolan's traffic impact analysis did address that. Mr. Loonam felt Mr. Binetti's opinion was this development would significantly exacerbate the condition. Mr. Binetti agreed.

The Board Attorney swore in Mr. Peter Steck 80 Maplewood Avenue, Maplewood, NJ. The Board Members accepted the qualifications for Mr. Steck as an expert in the field of professional planning.

Mr. Del Vecchio asked for his familiarity with mixed-use projects that were similar to this proposed project. Mr. Steck answered he was familiar with mixed use and mixed-use inclusionary projects. He discussed projects he was involved with that had affordable components to them. Mr. Steck described the property being substantial in size, owned by United Water, extensive road frontage of over 700' on two roads and had frontage on four separate streets. He stated River Road was a significant roadway. The interior property was vacant and fairly flat surrounded with earth berms with a veneer of trees along the frontages. Mr. Steck stated it had some character that was industrial in nature and over time there was a lot of soil movement on the property. He added currently there was a letter of no further action in terms of contamination issued March 2010 and a small corner of the property was in a flood hazard area. Mr. Steck stated at one time there were negotiations by New Milford to purchase the property but it has not progressed so at the current time the applicant is contract purchaser of the property.



Mr. Del Vecchio marked as exhibit A-36 five sheets dated October 12, 2012 prepared by Mr. Steck. Mr. Steck stated the photographs were secured from the Internet and he described the photographs in the exhibit. Mr. Steck said on the first page was a composite of a State of New Jersey Map from the Department of Transportation referencing County Roads. The Planner said the second page had a reproduction of a rendering the applicant submitted and an aerial photograph from FEMA maps. He described sheet P3 with photographs of the site during different time periods and P4 was a reproduction of New Milford's Land Use Plan dated June 7, 2010. He said the last page had excerpts from the different Master Plans. Mr. Loonam stated the 1930 map was not accurate because it shows the football field which did not exist at that time. Mr. Steck agreed and would verify the date of the photograph. Mr. Steck explained the photographs showed what the prior use of the property was. He said in photograph 6 it showed the activity that occurred within the 1995 –1997 period showing materials deposited in different areas, tracks of vehicles and evergreen trees. The Planner said photograph 5 showed a more recent photo with soil mounds in different locations and the equipment storage area. Mr. Steck stated photograph 4 was an aerial google map. Mr. Del Vecchio asked Mr. Steck in looking at these photographs over time how did he characterize the primary use of the property. The Planner stated the property was not vacant land but it was an industrial type activity. He stated there was earth-moving equipment put on the property, there was a maintenance building, the property had a fairly regular shape and it had the ability to position driveways in multiple locations to take advantage of the road system.

Mr. Steck reviewed that the property was a mixed-use inclusionary project and a mixture of bedrooms, a parking deck for a residential component, 70,500 sq ft supermarket, 4,300 sq ft bank and surface parking spaces for 826 spaces. He stated this was a middle range project and the mixed use inclusionary projects covered a wide range but there was a character to them with meant both the residential and commercial component drive the subsidy for the Mt. Laurel component.

The Planner described the historic site to the north, the corner of River and Main Street had a cluster of commercial uses, there were single family homes and he was aware by looking at the signs there were traffic concerns, to the east there were a row of homes, to the south there was the high school, there were some angled parking which he was not sure was subject to site plan approval, loading area by the high school, Madison Plaza, evidence of traffic produced from the high school because of signage, to the west was the athletic fields and across the river there was some clear areas with contractors use, Oradell's recycling center, a public works garage and NJ Transit Bus storage with trucks and buses coming from that area. He stated River Road was a major spine of the municipality, which cuts thru many areas of the municipality going thru business and residential areas. Mr. Steck said it was a major carrier of traffic in the municipality and said the residential and commercial uses tend to be well maintained.

Mr. Del Vecchio stated the meeting would be carried to December 11, 2012 without further notice.

Mr. Loonam asked if there was any answer regarding the Board being able to walk the property. Mr. Del Vecchio responded they would investigate that and try to get back to him for the December 11, 2012 meeting.

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

Respectfully submitted,  
Maureen Oppelaar