

**New Milford Zoning Board of Adjustment
Work Session
June 11, 2013**

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

ROLL CALL

Mr. Binetti		Present
Ms. DeBari		Present
Mr. Denis		Present
Fr. Hadodo		Present
Mr. Ix		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 – April 18, 2013

The Board Members reviewed the minutes for the Special Meeting session and there were no changes.

NEW BUSINESS

13-03 Gorin – 221 Birchwood Road – Block 119 Lot 7 – New House – Building Coverage

The Board Members reviewed the application. The Chairman noted the applicant had 7500 s.f. but did not have a 75' frontage. The Members received a letter from Boswell Engineering dated June 7, 2013.

OLD BUSINESS

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

Three story 14 unit multiple dwelling with parking underneath building

Use, building coverage, front yard and height

The Board Attorney said they received a copy of the traffic study prepared by Dolan & Dean dated March 28, 2013. The Chairman added the Board's traffic engineer, Mr. Berge Tombalakian, would be present for the application. The Board Members had no comments.

12-01 New Milford Redevelopment Associate, LLC – Block 1309 Lot 1.02

Supermarket, Bank and Multifamily Residential Units

Height, stories, building and impervious coverage, use and parking

The Board Attorney stated the members were in receipt of a letter dated June 3, 2013 from Mr. Del Vecchio stating the applicant did not intend to proceed with an amended application in

accordance with the agreement previously reached between the applicant and the Board of Education. There was also correspondence dated June 4, 2013 from Giblin & Giblin in response to Mr. Del Vecchio's correspondence dated June 3, 2013. There was correspondence received June 11, 2013 from Mr. Alonso which was a motion to dismiss the application of New Milford Redevelopment Associates as a result of former Acting Chairman Stokes participation in the proceeding. The Board Attorney stated this was a serious and complicated issue and he was unaware of any procedure that existed for the Board to entertain a motion to dismiss. The Board Attorney was not in a position to give the Board an opinion until he had the time to research and analyze the relief requested of Mr. Alonso.

Mr. Loonam questioned why the letter from Mr. Del Vecchio said it was the applicant's understanding that it would have been the zoning board's intention to treat the amendment to the application as a new application. Mr. Sproviero would ask Mr. Del Vecchio. Mr. Loonam requested Dr. Kinsey back to the Board to hear his opinion on the proposed 24 units and how it related to the inherently beneficial use. The Board Attorney explained he could ask the applicant but they don't have to produce him. He added if the applicant does not bring him back there was a series of issues that flowed from that.

Mr. Sproviero said one of the things discussed at the time of Mr. Binetti's recusal was that the applicant's position was to ensure that the record was in no way deemed to be infected by any conflict that may have existed. Mr. Del Vecchio had prepared a series of transcripts of the proceedings that have been redacted to exclude Mr. Binetti's statements. There has been a request to distribute it to the members to read before making a determination. The Board Attorney believed if there was any argument to be made that the record was somehow infected that protocol has been deemed sufficient to cure any potential discrepancies, deficiencies or conflicts. The Board Attorney explained that in reading those redacted transcripts they would constitute the record upon which the Board should predicate their determination.

The Chairman asked if someone suggested the record was affected and if Mr. Alonso was the one who inspired this. The Board Attorney said what inspired it was the continuing effort to make sure the integrity of the proceedings were preserved and resorting to all available means to insulate any claims of record. Ms. DeBari clarified these were transcripts that had comments from Mr. Binetti. Mr. Sproviero agreed. Ms. DeBari asked why the Board had never received any transcripts from the applicant. Mr. Sproviero said they have requested on a few occasions.

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

**New Milford Zoning Board of Adjustment
Public Session
June 11, 2013**

Chairman Schaffenberger called the Public Session of the New Milford Zoning Board of Adjustment to order at 8:06 pm and read the Open Public Meeting Act.

ROLL CALL

Mr. Binetti		Present
Ms. DeBari		Present
Mr. Denis		Present
Father Hadodo		Present
Mr. Ix		Present
Mr. Loonam		Present
Mr. Rebsch		Present
Mr. Stokes	Vice Chairman	Present
Mr. Schaffenberger	Chairman	Present
Ms. Batistic-	Engineer	Present
Mr. Sproviero -	Attorney	Present
Also Present		
Mr. Tombalakian	Traffic engineer	Present (9:00)
Mr. Grygiel	Planner	Present (10:00)

PLEDGE OF ALLEGIANCE

OFFICIAL MINUTES OF THE SPECIAL MEETING – April 18, 2013

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

NEW BUSINESS

13-03 Gorin – 221 Birchwood Road – Block 119 Lot 7 – New House – Building Coverage

Mr. Ari Weisbrot, attorney for the applicant, explained the application required one variance for lot coverage with a property size of 10,295 sf. The variance was required because it was an irregular, unique shaped lot which imposed an undue hardship on the applicant to enjoy their land. The attorney said they had young children and an elderly disabled parent that would be staying with them.

The Chairman questioned his comments on the applicant's property size. Mr. Weisbrot said the property was 10,295 s.f. with 18% coverage permitted and explained for a lot less than 10,000 s.f. 20% coverage was permitted.

Mr. Weisbrot introduced Michael Donly, the applicant's engineer, to give testimony as to the relief requested for the variance.

The Board Attorney swore in Michael Donly, 426 Hudson Street, Hackensack, NJ. The Board Members accepted the qualifications of Mr. Donly as an expert in the field of engineering.

Mr. Donly reviewed the site conditions and noted the applicant had a 60' wide front lot line making it narrow in the front and an irregular sized lot. He stated the existing Cape Cod home would be demolished, the existing driveway and rear deck would be removed and a new single family home would be constructed on a new foundation. A new driveway with a new curb cut would be installed on the right side of the property with new concrete curbing and repair any sidewalks damaged during construction. Mr. Donly said the new driveway would be sloped down towards the house with the garage under the house. There would be a French drain in front of the garage doors and a new deck in the rear. The engineer discussed the trees that would be removed on their property. According to Mr. Donly, they proposed to pipe all the roof drains into three new seepage pits to reduce the amount of runoff to the adjoining properties. The Engineer said calculations were prepared and would be submitted to the Borough Engineer.

The Engineer stated the applicant was not seeking any variances for yard setbacks and proposed a 12.6 ft side yard setback at the left side of the house, an 8' side yard setback at the right of the house, a 28.4 ft. rear yard setback, front yard setback of 28.5 ft. Mr. Donly said they were seeking a variance for lot coverage. The existing home/deck was 1,224 sf and the applicant was proposing a 2,626 sf dwelling/deck which was 25.5% lot coverage. The applicant was proposing a 20' wide driveway which would accommodate 4 cars and 2 cars in the garage. The Engineer said there was a total of 357 c.y. of soil removed from the site. There were two retaining walls on the sides of the driveway but no detail was provided and calculations would be provided before construction.

Mr. Donly stated the dwelling would help make the town and street more attractive. He added the proposed house would have hardiplank siding and cultured stone foundation. It was his opinion that it was an improvement for the lot and street. It was a modern house with good architectural features. The new home would have new wiring and new mechanicals making it a safer house which was a positive benefit in the MLUL. In regard to any detrimental effects upon the zoning ordinance, Mr. Donly's opinion was it was a single family home keeping with the neighborhood. He added other homes have replaced older homes on Birchwood that were similar in scope and aesthetics. The engineer did not believe there was a negative impact because of the irregular shaped lot and the small lot coverage made it difficult to conform to the zoning ordinance. They were proposing a modern house that might have a larger ground floor than another house but its purpose was to accommodate elderly people and their growing family. Mr. Donly said for those reasons, he believed the variance should be granted for this application.

Mr. Sproviero marked as exhibit A-1 the drawings collectively.

The Chairman commented that the lot was 10,295 sf with a 60 ft frontage and questioned why the proposed house was not moved back and over to the left to have a larger side yard. Mr. Donly said the intent was to keep the front steps closer to the sidewalk. He added that keeping the house in the proposed location would provide a larger backyard for the children. The Chairman said it was a large house with a 7.5' side yard setback. Mr. Donly noted that they were

providing seepage pits in the rear yard which needed to be 10' off the rear yard which should be located as far away from the house as possible.

The Chairman asked how many bedrooms and bathrooms were proposed. Mr. Donly said there was a total of 5 bedrooms and 6 baths.

The Board Attorney swore in the applicant Ms. Aviva Gorin, 221 Birchwood Road, New Milford.

Father Hadodo commented there was egress in the basement and asked if it would be rented. Ms. Gorin said the basement would not be rented and the reason for egress was they anticipated a live in caregiver for their children and parents. Father Hadodo asked if the seepage pits were 500 gallon capacity. Mr. Donly agreed. Father Hadodo agreed with moving the house to the left because of the window well on the right side of the house being close to the fence. Father Hadodo asked why there were two offices in the home. Ms. Gorin said both of them work from home.

Mr. Ix clarified there would be a caregiver sleeping in the basement and on the plans there was a proposed office with egress. He questioned if that was where the caregiver would sleep. Ms. Gorin said the space would be used as an office now and if they need someone they would convert it into a caregiver room.

Ms. DeBari questioned the use of the large exercise room indicated on the plans. Ms. Gorin explained they had not finalized the plans for the basement but was hoping to put in a library and playroom. Ms. DeBari asked how large her family was. Ms. Gorin said they had three children and her mother-in-law was planning to move in with them and anticipated her parents at some time also moving in.

Mr. Loonam was concerned with the right side of the house and asked what was the current right side yard setback of the existing house. Ms. Gorin believed it was 11'. Mr. Loonam asked how far the neighbor on the right was off the property line. Ms. Gorin believed their garage had more than a 12' setback and the house was after the garage. Mr. Loonam asked what the current height was for their existing house. Mr. Donly estimated 21'. Mr. Loonam thought that the side of the proposed house would be significantly higher and encroach on their neighbor. Mr. Loonam noted the applicant was permitted a 7.5' setback because of the 60' frontage but felt that was taking advantage of the irregular lot. Mr. Loonam said the height and position of the house might also affect the light on their neighbor's property and thought that the Chairman's suggestion with moving the house a bit might help the neighbors. Ms. Gorin said if they moved the house back it would infringe on some of the neighbor's sunlight but could agree on moving it over. Mr. Loonam said the difference between the permitted 18% and the proposed 25.5% was significant but agreed they had the required side yard setbacks. He noted the applicant did not have to move the house but thought because the lot coverage variance requested was 25.5% the Board might look favorably upon the request if there was some give and take and the house was moved over. Ms. Gorin understood.

Mr. Stokes thought they could move the house to get at least 10' on each side.

The Board Engineer asked what the block pad was for in the rear of the property. Mr. Donly said it was an old cinderblock pad that was used for a shed. Ms. Batistic said if they were to build a shed at some point, they should request a variance now or they have to come back to the Board. Ms. Gorin said they were not building a shed.

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

No one wished to be heard in the audience.

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

Mr. Weisbrot appreciated the Board's comments and felt their issues were valid. The attorney agreed they were not seeking side yard variances and were within the zoning ordinances on every aspect of the construction except with lot coverage. He added the topography, narrowness and dimensions of the property made it hard to plan but the applicant would agree to move the house over to the left to accommodate some of the concerns of the Board.

The Board Attorney said if the application was approved with the condition to move the house, the Board needed to have some specificity on exactly what they proposed. There was discussion on moving the house. Mr. Weisbrot said the applicant would agree to move the house to the left but did not want to move the house back because of the seepage pits and back yard space. The applicant agreed to move the house to the left 2' to provide the 10' side yard setback as a condition of approval.

Helene Tremblay, 217 Birchwood Road, asked how much distance would there be on the left side of their property. The Board Attorney said with the condition it appeared to be equal sides. The Chairman asked what the distance was between their property line and their house. Ms. Tremblay did not know the distance but said their property was large and thought it was good enough. The Chairman recalled that Ms. Tremblay's house was further from the property line than the house on the right. Ms. Tremblay agreed.

The Board Engineer reviewed her comment letter dated June 7, 2013 and added the applicant had to install a concrete apron at the driveway and they need to provide seepage pit calculations and wall design calculations.

Mr. Loonam alerted the applicant to be careful the height did not exceed the 30' because their height was right at the permitted 30'. The Chairman agreed and added the Board has determined roofs to be removed that exceeded the permitted height.

The Chairman questioned the safety of the retaining walls for the driveway. Mr. Donly thought there would be landscaping and proposed a hedge in lieu of a fence.

Mr. Weisbrot said they would accept the condition to move the house 2' to the left. The Board Attorney said a condition of approval was that the applicant would comply with all the recommendations in the Boswell Engineering review letter. Mr. Weisbrot agreed. The Chairman

read into the record the Shade Tree Referral letter dated 5/30/13 in regard to the applicant requesting a borough tree be removed for their proposed driveway. Mr. Stokes noted that would be a condition of approval.

The Chairman and Mr. Loonam thought this was a very large house. Mr. Weibrot commented that the applicant was not seeking variances on any height, side, front, or rear yard setbacks. He added this would not be the largest house on their block and was very close to the statutory and zoning scheme.

Mr. Binetti made a motion to grant the variance, seconded by Fr. Hadodo with the conditions:

The relocation of the home 2' to the left to provide a 10' side yard

To comply with the Boswell Engineering recommendations dated June 7, 2013

Compliance with the condition of approval issued by the Shade Tree Commission

The motion passed on a roll call vote as follows:

For the Motion: Members Binetti, Hadodo, Denis, Loonam, Stokes, DeBari

Against the Motion: Chairman Schaffenberg

Approved 6-1

OLD BUSINESS

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

Three story 14 unit multiple dwelling with parking underneath building

Use, building coverage, front yard and height

Father Hadodo has previously recused himself from the application.

Mr. Alampi stated this was a continuation of the application and would call Mr. Dean to testify.

Mr. Alampi marked the **exhibit as A-5 Traffic Impact Assessment Report**

The Board Attorney swore in Gary W. Dean, 792 Chimney Rock Road, Martinsville, NJ. The Board Members accepted the qualifications for Mr. Dean as an expert in engineering.

Mr. Dean said his principle purpose was to address the negative criteria and his role was to advise the Board and his client as to whether the traffic impacts that would be sustained from this application were so out of character that it would not adequately be accommodated or as they found with this application the site would operate in a safe and efficient manner.

Mr. Dean said they performed manual traffic counts at the intersections at Madison Avenue, Monroe Avenue and the driveway to the Institute of Educational Achievement (IEA). The Engineer stated the traffic count was done on Wednesday, March 20, 2013 from 7 am to 9 am and from 4:30 pm to 6:30 pm. Mr. Dean explained during the morning peak hour the ambient traffic on Madison Avenue was 1,000 cars per hour.

Mr. Dean explained the school primarily influenced the pattern of traffic between 7:45 am to 8:45 am. In the evening peak hour between 4:30 pm to 6:30 pm, Mr. Dean said the 60 minutes when traffic was the busiest was between 5-6 pm.

The Traffic Engineer discussed the levels of service, which provided a measure of the level of delay encountered at an intersection. According to Mr. Dean, the driveway movement at the IEA operated at a level of service D condition in the morning, traffic now exiting Monroe operated at a level of service E and in the evening there would be less traffic exiting Monroe and Madison Avenue.

Mr. Dean said for the proposed site they projected 8 peak hour trips in the morning comprised of 6 vehicles leaving and 2 vehicles entering and the evening peak hour with 6 vehicles entering and three vehicles leaving. He further explained that they have included a background growth rate. Based on the data from the NJDOT, Mr. Dean said there was an assumed annual 2 percent increase. The Engineer said since 2008, traffic has flat lined because of the economy and home occupations. He noted that last month DOT revised their forecast down to 1% in Bergen County. They have overstated the projected traffic expected on the site. The proposed site would have a level of service C exiting in the morning and evening which was better than the driveway immediately to the east which generated 4x the traffic volume and better than the traffic activity coming from Monroe.

In terms of meeting the negative criteria, Mr. Dean stated the study showed the site could accommodate the traffic and it would not create a detrimental impact on the roadway system. Mr. Alampi asked how many vehicles did the site contribute to the 1,000 vehicles traveling east and west on Madison Avenue during the peak hour. Mr. Dean answered less than one percent.

According to the Traffic Engineer, all components of the proposed plan met the Residential Site Improvement Standards (RSIS). Mr. Alampi asked if the amount of parking provided for the 14 apartments, the space sizes and the aisles all met the RSIS requirements. Mr. Dean agreed and said the stalls were 9x20, which were longer than recommended by the RSIS. Mr. Dean referred to the site plan showing two large striped spaces underneath the building left empty to eliminate dead end parking. The traffic engineer said the site driveway located was chosen to create a four-way alignment between Monroe and Madison and explained the RSIS required a 150' centerline separation for safety.

The Chairman marked as an **Exhibit A-6 – Review letter on the traffic review** from Mr. Berge Tombalakian dated May 7, 2013.

Mr. Dean agreed with Mr. Tombalakian's comment regarding the driveway apron design be amended and the applicant would comply and said the recommendations to enhance the site plan were reasonable. They would also provide the additional technical information requested.

Mr. Loonam noted that Mr. Dean referred to the IEA to the east but it was to the west. Mr. Dean agreed.

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

Ms. Lori Barton, 399 Roslyn Avenue, asked how they determined the traffic volume. Mr. Dean said the field staff was present at the intersection with counter equipment and every time a vehicle went by a tally was made. Ms. Barton clarified prior testimony was the garbage truck would back into the site and questioned what would happen to the traffic situation on Madison Avenue as a result of traffic being stopped. Mr. Dean was not present for that testimony but added trash pickup was not generally during rush hour traffic. Ms. Barton asked what the weather conditions were during the count. Mr. Dean said it was clear. Ms. Barton questioned that inclement weather would have an increase of traffic. Mr. Dean agreed. Ms. Barton asked why the study wasn't performed during school hour dismissal. Mr. Dean said the study was not on the school but for this application. The resident clarified that his testimony was during a peak hour 8 vehicles would be leaving the proposed site and what would it be for a permitted single family home. Mr. Dean answered that 6 would leave and 2 would enter the proposed site and there would be one trip for a single family home. Ms. Barton asked if the 2% projection was always accurate. The opinion of the traffic engineer was they tend to be conservative. Ms. Barton classified herself as an expert because she lived in New Milford for 35 years and lived across the street from the Middle School. The resident noted that she took the back way and asked if he was concerned about adding any traffic to the area. Mr. Dean said it was always a concern. Ms. Barton questioned if a single family home would have less of an impact than 14 apartments. Mr. Dean said not by any traffic engineering measure. The Board Attorney said for the record Ms. Barton referred to herself as an expert and has not been qualified by the Board as an expert witness. Any statements made by Ms. Barton could not be considered as an opinion offered by an expert as determined in the MLUL.

Mary Ann Milligan, 407 Madison Avenue, asked why they did their study at Monroe Avenue and not to the east of the property. The traffic engineer explained they start with the area of highest concentration which was at Monroe opposite the site driveway. He stated that one car every half hour had no impact. The resident disagreed and added that Monroe Avenue and Marion Avenue were the two egress streets that leave the school. Ms. Milligan noted that it took 2-3 minutes to get out of her driveway and there was not bus service for the school so every child was brought to school by a parent. Mr. Alampi objected to her opinion at this time and explained she could only ask questions of the witness about his testimony.

Michael Gadaleta, 270 Demarest Avenue, asked if his study considered sidewalks, no sidewalks and cars parked on both sides. Mr. Dean said yes. Mr. Gadaleta asked if that was a normal procedure for a traffic study report. Mr. Dean said their role was to look at the conditions immediately in the site vicinity that influenced the site driveway operation. The resident asked if he was aware of another development proposed in the vicinity and did that come into the study as an increase of traffic that might affect the 2% increase. Mr. Dean said he was aware of the other development and took it into consideration in the preparation of the report.

Terence Mc Mackin, 400 Madison Avenue, asked if he observed the traffic from Madison Avenue westbound into Dumont. Mr. Dean said yes. The resident questioned if this site would have any impact on that. The traffic engineer said not with the projected traffic activity. Mr.

Mc Mackin asked if there would be any problems with emergency vehicles from other towns traveling westbound on Madison Avenue. Mr. Dean said not because of this site and added that this site had no impact on traffic conditions. Mr. Mc Mackin asked if there would be more school traffic with inclement weather. The traffic engineer said that was a condition existing and had nothing to do with the site.

Ulises Cabrera, 659 Columbia Street, asked if Madison Avenue was a county road. Mr. Dean did not recall. Mr. Cabrera asked if Bergen County required machine counters on a county road. Mr. Dean said the county puts them down to do their studies but there were no requirement to put a machine down for his study to a town. The resident questioned his testimony regarding traffic decreasing and asked if that was for New Milford. Mr. Dean said he has seen a decrease in Bergen County but it was not happening in every community and that was why he used the background growth rate. Mr. Cabrera questioned if that was the case in New Milford. Mr. Dean said it was irrelevant because he assumed it would increase in New Milford. The resident said that was relevant.

Lorraine Mc Mackin, 400 Madison Avenue, questioned that a single family home would have two cars exiting and the apartments would have potentially 28 cars exiting the site. The traffic engineer said in one peak hour 6 vehicles would exit the site. The resident clarified that they were not there at 3 pm. Mr. Dean agreed.

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

Mr. Stokes asked regarding the 14 units what criteria brought the number to 6 at the peak hour. Mr. Dean answered under the RSIS, the applicant was required to have ½ space per unit for visitors which would be 7 leaving 21. He added the study said 30% leave in one 60 minute period. Mr. Dean said the way they derived at these projections were from looking at hundreds of traffic studies done and they correlate the number of units to the projected traffic. Mr. Dean said it was not his guess but it was an industry standard projection.

Mr. Berge Tombalakian noted that the applicant address the garbage truck access.

The Zoning Board of Adjustment rescheduled the July 9, 2013 hearing to Thursday July 18, 2013 at 7 pm.

**12-01 - New Milford Redevelopment Associates, LLC – Block 1309 Lot 1.02
Mixed Use Development - Supermarket, Bank and Multifamily Residential Units
Height, stories, building and impervious coverage, use and parking**

Chairman Schaffenberger, Ronald Stokes, Father Hadodo and Mr. Binetti have previously recused themselves from the application.

Mr. Del Vecchio, member of the firm of Beattie Padovano on behalf of the applicant, submitted a letter stating that their anticipated amendment to the application arising from discussions with the Board of Education will not materialize. He explained Mr. Alonso's position to raise an issue

whether it would be new or amended together with their field investigation of the property did not allow the applicant to move forward with their conceptual discussion. Their intention was to proceed with their application as previously constituted and Mr. Steck would complete his cross-examination. Mr. Del Vecchio said they needed to discuss the timing of the application, the schedule of getting this completed and requested a comprehensive list of special meeting dates and the devotion to regular scheduled meeting.

Mr. Sproviero asked what the basis was for the statement in the letter dated June 4, 2013 from Mr. Del Vecchio stating it was the applicant's understanding that it was the zoning board's intention to treat the amended application as a new application. Mr. Del Vecchio said what he alluded to was the last time the issue was raised it was a close call but the Board determined it an amended application. The applicant did not want to take that risk again in light of Mr. Alonso's position. Mr. Sproviero clarified that his decision was not based on any discussions with any Board Member or the Board Attorney. Mr. Del Vecchio agreed.

The Board Attorney understood that the applicant wanted the Board to devote all their efforts to conclude the application. He added there was a special meeting scheduled in May at the applicant's request that was cancelled as a result of the flux in the situation at the site. The Board Attorney stated he did not want the record to reflect in any way that the Board has been less than diligent because the Board has made available at least one additional monthly meeting. The Board Members agreed on a special meeting for June 27, 2013 at 7PM.

The Board Attorney stated the July 9, 2013 has been rescheduled for July 18, 2013. Ms. DeBari, Mr. Ix and Mr. Denis thought July and August should be only for the regular scheduled meeting. Mr. Del Vecchio asked the Board to reconsider a special meeting for July and added he has not discussed with his client if they would grant a further extension beyond June if they could not get special meetings or if they could not get special meetings he requested the entire evening of all regular scheduled hearings until the application was completed. Ms. DeBari questioned the year extension that was discussed at one of the previous hearings. Mr. Del Vecchio answered that their contract extension had no bearings on these proceedings. Ms. DeBari thought the proposed amendment had pushed the Board back and the Board has been more than accommodating. Mr. Sproviero suggested they start the work session for the July 18, 2013 meeting at 7 pm. Mr. Del Vecchio understood the Board's position but they had approximately 28 meetings into this application and thought it was in both of their interests to have finality to the proceedings.

Mr. Loonam said last month he made time out of his schedule for a special meeting to accommodate the applicant. He understood things come up which happened to the applicant last month not being able to attend the meeting but expected the same understanding for board members. Mr. Del Vecchio understood that the Board Members did this on a volunteer basis and it was a thankless job but he was asking for an extra effort to bring the proceedings to a conclusion. Mr. Loonam did not disagree with that but said the Board had made an extra effort and continued to do so. He also noted that from a factual standpoint the application has been amended once and again a potential second amendment that prohibited the Board meeting at the May special meeting.

The Board Attorney stated the Board has received correspondence issued 6/4/13 from Giblin & Giblin that said they were concerned given the changing nature of the application that it would be unfair for the objectors to commence their case at this hearing. Mr. Flora agreed and also wanted to discuss the date and the order for the objector's case. Mr. Sproviero preferred the attorneys went first. Mr. Flora said he would have a witness and Mr. Alonso said he would not have a witness but would rely on the substantial negative impact from the public. Mr. Sproviero stated the objectors should be ready to present their case on June 27, 2013.

Mr. Loonam requested that Dr. Kinsey return to the Board to answer some questions that were imperative for him to make the best possible determination. Mr. Del Vecchio replied that he could make the request but he did not know if they would be bringing him back.

Mr. Sproviero stated there was also correspondence dated June 11, 2013 from Mr. Alonso requesting a dismissal of the application. The Board Attorney stated it was disseminated to the Board at this hearing and wanted the Board to have time to read it. Mr. Sproviero would discuss this on June 27, 2013 to explain to the Board the scope and implications of what Mr. Alonso was asking for and they would not deal with it at this hearing. Mr. Del Vecchio had no objections and replied that 4 hours notice before a hearing for a request to the Board was not sufficient time for him to address it. Mr. Sproviero agreed.

Mr. Sproviero made the Board aware that he received redacted transcripts from Mr. Del Vecchio. Mr. Del Vecchio said there was more to follow. The Board Attorney would review them before he distributed them to the Board.

Mr. Del Vecchio recalled Mr. Steck previously sworn in and remained under oath and was here for any cross examination from the public.

Steven Tencer, 701 William Bliss Drive, asked what type of planner was he. Mr. Steck said he was a land use planner. The resident asked if that was different from an urban planner. Mr. Steck said no. The resident asked if his study was focused solely on site. The planner agreed and also with the impact on the area. The resident asked how large that area was. Mr. Steck said it depended on the impacts and there were considerations that went beyond the property. Mr. Tencer asked if any of the estimates that they were relying on were guaranteed by the applicant. Mr. Steck said there were no guarantees at all in life but the witnesses gave their opinions based on their professional judgments. Mr. Steck asked if any consequences that they might be underestimated would result in costs to the Borough. Mr. Steck said not necessarily and added that the applicant provided witnesses and there was a margin of safety with them. The resident said prior testimony was the height of the supermarket could be lowered and would that be done. Mr. Steck said he had testified that the height variance being sought was for aesthetic purposes and the applicant was not lowering the height of the supermarket. The planner had testified that if they lopped off the prisms it would be a conforming height. The resident asked if that would be done if the Board did not approve the variance. Mr. Steck did not know. The resident asked what the minimum standards were that he testified to. Mr. Steck answered statutory standards, which were the positive and negative criteria. The resident asked what would stop the children from playing in the parking lot and getting into the dumpsters. Mr. Steck said their parents. The resident asked if a three-story walk up was a good place to raise children. Mr. Steck thought this

was a well-designed site because of the amenities that were close to the multifamily use. Mr. Tencer asked what amenities. Mr. Steck said there was parkland, convenient shopping, bus service and a high school.

Lynn Gadaleta, 270 Demarest Avenue, requested to relinquish her time to her husband, Michael.

Mr. Del Vecchio objected that it was a violation of the rules. Mr. Sproviero let it continue.

Michael Gadaleta, 270 Demarest Avenue, asked what proposed amenities were at the site. Mr. Steck said the site plan had a building positioned in a logical location and there was not a requirement that required a swimming pool or play area. This was housing that had advantages just because of its location. Mr. Gadaleta asked if he could describe the height and the exterior material of the bank. Mr. Steck did not recall that it was a conforming height and the material was not relevant to his testimony. The resident asked if he had an opportunity to review the plans for the bank. Mr. Steck said the plans were not at that level of architecture as they were for the supermarket and housing. Mr. Gadaleta asked if there were plans to be submitted for the Board to indicate the architecture for the bank. Mr. Steck said the important issue was the site plan approval, which showed the location for the bank and parking access aisles. The resident asked if the Board had a right to see the architecture proposed for the bank. Mr. Steck said that was not a planning question. He added without a specific tenant one does not know what the architecture would be and all that needs to be shown was that the applicant complies with the Uniform Construction Codes and the ordinances. Mr. Steck said it would be different if it was in a historic district. Mr. Gadaleta asked if the proposed bank had a drive thru window and more parking than required. Mr. Steck agreed. Mr. Gadaleta asked if he would agree that with the drive thru window and extra parking this could be a Mc Donalds. Mr. Steck did not agree with that because it was not a permitted use and the applicant indicated it was a bank. Mr. Steck did not know of any proposal other than the bank on that corner of the site. Mr. Del Vecchio interjected that this was beyond Mr. Steck's qualifications and the applicant has stipulated for the record what the use was for.

The Board Attorney explained when an applicant makes an application for a variance it is for a specific use. He explained they could not get a use variance to build a bank and then put in a White Castle. Mr. Gadaleta understood but said that Mr. Steck testified that he reviewed the architectural plans. The resident questioned if the public was entitled to see the architectural plans proposed for the bank. He questioned the height of the bank and added there was absolutely no information.

John Rutledge, 355 River Road, questioned that his testimony was shaped upon the testimony of other professionals and if the planner listened to recordings or met with the professionals to ask questions. Mr. Steck said in some cases he was present for the testimony, in other cases he read the transcripts of their testimony and sometimes a meeting or phone call. The resident asked if his opinion was formulated by the work done by additional witnesses. Mr. Steck answered it was not formulated by them but it was an opinion that was partly relied on by their areas of expertise. The resident clarified that Mr. Steck formulated his opinion regarding inherently beneficial use for this development in New Milford after spending approximately one week in town and reviewing expert reports and asked if he was in a position to tell the Board and the public that

this development benefited them. Mr. Steck said that was not the criteria for judging the merits of the application. Mr. Rutledge asked if the comments and questions from objectors and public were part of the review or were they irrelevant to his opinion. Mr. Steck said they were part of his review and they could be relevant if they provided factual background that was relevant to the issues. The planner added this process was not an application that was subject to a vote from the public but the purpose of the hearing was to illicit facts and expert opinions.

Gene Murray, 425 Madison Avenue, questioned if prior testimony that the criteria used to justify the approval of the variance was the SICA standard. Mr. Steck answered that was part of it and he had testified it was his opinion that the applicant also met the burden of proof under the Medici criteria. Mr. Murray questioned his testimony that the housing component was inherently beneficial but not the supermarket and bank. Mr. Steck answered if the applicant was proposing only a supermarket and bank it would not be inherently beneficial or an inclusionary project. The planner said a fundamental component of this application was the bank and supermarket were not standing on their own but related to the support for the low and moderate income housing. His opinion was that this composite development was a type of inclusionary development which constituted an inherently beneficial use. Mr. Murray asked if his legal opinion offered was his opinion or an opinion provided by the applicants counsel. Mr. Del Vecchio objected that Mr. Steck never offered a legal opinion only his professional opinions. The Board Attorney clarified that with any licensed professional planner there was a merger of law and planning principles impacted by a series of judicial determinations. They were trained to offer the opinions by reading cases, analyzing and applying them to the situation at hand which was not a legal opinion but the formation of a professional planning opinion which at times depended upon the analysis of a legal determination. Mr. Steck agreed. The resident said he referenced SICA and Medici and questioned that with SICA an inherently beneficial component was a positive criteria that had to be proved and a negative criteria did not have to be addressed. Mr. Steck said that was incorrect and explained the negative criteria still had to be evaluated. Mr. Murray asked if he was aware of any other cases similar to an inherently beneficial use being the COAH housing bundled with one or more commercial uses. Mr. Steck mentioned that it was practice in some municipalities to zone for this type of use like the Boulder Run shopping center in Wyckoff which they created a zone for that but the motivation for enhancing the development was for low and moderate income housing. Mr. Murray said Wyckoff was not similar because they were zoned for residential. The planner said every application was unique and this had its own peculiar characteristics.

Mr. Murray asked if he was familiar with the decision rendered in the Medical Center v. Princeton tp. zoning case. Mr. Steck said he mentioned that case because it presented guidelines on how a Board could analyze ancillary use in its relationship to the inherently beneficial use. Mr. Murray clarified the court said a three prong test would be needed for a Board to evaluate an inherently beneficial use with non inherently beneficial use. Mr. Steck agreed. The resident read the court decision from the Medical Center case stating a zoning board must identify the proposed use and delineate its function, establish how the proposed use was integrated into the core function of the inherently beneficial use and establish what the special location of the proposed use was necessary to advance the purpose of the inherently beneficial use. They deemed it a three part test to the threshold analysis prior to any SICA analysis. Mr. Murray asked why this did not apply to this application. Mr. Steck said this was an inclusionary development

which was on the site and with a separate classification of uses. He believed the Princeton case was for a house purchased in a residential zone that was remote from the hospital. According to the planner, their situation was it was on the same site not remote. Mr. Steck said the only reason the housing for low and moderate households was being produced was that there was an engine which was the supermarket and bank. He added it was an established principle in Mt. Laurel issues that inclusionary development was a proper way to produce housing absent the municipality building on its own or financing from the government. Mr. Murray said in Princeton there was a hospital zone adjacent to a residential zone with the hospital seeking a use variance to put back its office facilities in a residential zone. The resident thought this similar because they were taking a residential zone and rezone it by variance for commercial use using SICA as a crutch. Mr. Steck said they were not rezoning and it was not a crutch but a standard by which he believed the Board should review the application. Mr. Murray would agree with him if it was just an inherently beneficial use. The Board Attorney asked if he applied the standard in Princeton in the development of his opinion. Mr. Steck answered he did and said there was an inherent leakage with the engine that drives the subsidies of this housing. Mr. Murray questioned his testimony that without commercial development the inclusionary housing would not be built because there would be no profit or motive. The planner answered there must be an incentive whether it was market rate housing units or commercial development. The resident asked if there was any record in the MLUL of any stand alone inclusionary housing development without a commercial component. Mr. Steck said the Homes of Hope cases were for low and moderate income housing. Mr. Murray asked if there was a possibility that a developer could develop on a smaller parcel of land a multi unit COAH compliant building within the borough. Mr. Steck said the municipality could fund its own project.

Mr. Murray stated parking was being provided to the apartment complex and the landlord was permitted to charge residents parking on the property. Mr. Steck did not know. Mr. Murray had concerns that residents would use the Shop Rite parking to avoid paying for parking spaces. Mr. Steck said the applicant had code compliant amount of parking and felt there was sufficient parking for the unit. The mechanism to charge for parking was not relevant for the purpose of this variance. Mr. Murray clarified that prior testimony was the site was peculiarly or particularly well suited for the supermarket but said he did not go into detail. Mr. Steck said he did. The resident questioned if this was the only well suited location for a supermarket. Mr. Steck's opinion was this property was particularly suited for the proposed development. The resident clarified that part of this property was in the flood zone and was the existing Shop Rite in the flood zone. The planner did not know. Mr. Murray asked if it made more sense to have a proposed supermarket in a residential zone vs building in an existing commercial zone. Mr. Steck did not think the evaluation of the variance hinged upon the existing Shop Rite location. The resident asked if the destruction of trees at the proposed site made more sense than redevelopment at a site that would not lead to the destruction of the site. The planner's opinion was that the characteristics of the existing Shop Rite site did not relate to the merits of the site. The resident questioned if there was any formal agreement between Inserra and Mr. Hekemian and did they know that Inserra would definitely occupy the site. Mr. Steck did not know what agreements existed and it was immaterial and the Board could not condition approval upon a specific food store. The resident said the Board could condition an approval based on the need of a particular commodity in the community and questioned that Mr. Inserra might not occupy the site. Mr. Steck's understanding was he was interested in occupying the site but it was irrelevant

to his testimony. Mr. Murray asked if he took into consideration the macro impact of the development on the middle income residents living around the existing Shop Rite. The opinion of the planner was approving the application would not result in substantial detriment to the surrounding area. He said the streets were designed to carry more than modest volumes of traffic, it was a large site that provided sufficient area for landscaping and setbacks and because it was a well designed project. Mr. Murray was concerned about all apartments surrounding the existing Shop Rite and the 5-10% who did not drive would need the supermarket for access for their needs and asked if he considered the impact on those residents. Mr. Steck said the future of the existing supermarket was irrelevant to the merits of this application. Mr. Del Vecchio objected to the line of questioning and the witness exceeded the 7 minute time limit. Ms. DeBari thought it was getting late and Mr. Steck would have to come back. Mr. Sproviero would like to finish this resident. Ms. DeBari thought these were good questions and important issues that the board needed to hear. Mr. Del Vecchio disagreed and said the questions were repetitive. Mr. Murray asked if he examined the overflow parking situation at the existing Shop Rite site vs the proposed site. Mr. Steck said no. The resident stated there was an adjacent parking lot to the existing Shop Rite and was he aware of any similar facility adjacent to the proposed site that could handle an overflow parking situation. Mr. Steck said the evidence on the record was that the proposed parking was adequate for the development. Mr. Murray asked if that was his opinion. The planner clarified that the position of the applicant and the traffic expert was that the local code required more parking than needed but there was not an ancillary parking lot off site. Mr. Murray asked if he was aware that Demarest Avenue did not have sidewalks and would be a cut thru for the development. Mr. Steck said it would get additional traffic and he was not sure if it was a pedestrian street. Mr. Murray asked if he expected a decrease in student enrollment and was safety immaterial. The planner said it was immaterial about whether there was an increase in enrollment but safety was important and that was why they had a traffic expert examine it.

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

The Board Attorney asked if he had calculations for the rental units based on the COAH criteria. Mr. Steck said the applicant was proposing a low and moderate income housing project that would comply with COAH standards. Mr. Sproviero asked if anyone ran the calculus of what the applicant anticipated the rentals would be. Mr. Steck said there were standards in the COAH regulations that must be met and it was immaterial to him what the balance sheet was. Mr. Sproviero clarified that it was immaterial to him but what if the calculations were that it was no more affordable than the municipalities existing rental stock. The planner said that was immaterial and the applicant was proposing housing units that would comply with the COAH standards. He further explained that if a garden apartment had a low rent that did not count as a COAH unit because it didn't have the long term protections, the range of bedroom size and the range of income households that COAH required. Mr. Sproviero clarified that in order to satisfy the constitutional imperative that was created by way of Mt. Laurel the actual rental itself was not the only criteria being evaluated. The planner said the occupants had to be income certified and there were rules for both the occupants and the rents charged. Mr. Sproviero questioned if his testimony was that the rental units were for moderate income. The planner said it was low and moderate income. Mr. Sproviero asked if he prepared a plan. Mr. Steck did not prepare a plan. The Board Attorney asked what circumstances would determine whether or not a plan should be prepared. The planner said some municipalities require a report for a use variance in

order to have the application complete. The Board Attorney clarified that he did not think a report was necessary in this application. Mr. Steck agreed. Mr. Sproviero asked if he found this application more or less complex than the usual applications. The planner did not rank applications by complexity and added that each application was unique and this was more complex than someone putting a deck on back of a house. Mr. Sproviero asked if the complexity of the application had any determination on whether or not he would recommend a report. The planner said it was immaterial because what counted was his testimony not the report.

Mr. Loonam asked what was contemplated to come to a determination of something being particularly well suited. Mr. Steck answered there was no precise formula because each application was different. This was a large site, the master plan documents considered it right for redevelopment, right for a range of uses and a potential inclusionary housing site. Mr. Steck said there were public policies that have been adopted that suggest this was an eligible site. Mr. Loonam asked why this proposed site was particularly well suited. Mr. Steck said it was a large site, undeveloped, located on streets that can accommodate the traffic and a site that this municipality planning policies at times suggested it was appropriate for inclusionary development. He added that a supermarket and bank were amenities that he thought fit well with the housing development especially for low and moderate income housing.

Ms. DeBari referred to prior testimony that the municipality said this was a good site in the master plan and asked if he was aware in the master plan there were three different sites for COAH. Mr. Steck said there was Gramercy site that nothing has been built on, there was a site that was purchased for open space and this was the only site available at this time. Ms. DeBari asked if building the Shop Rite increased the COAH obligation. Mr. Steck said it was not clear because the Supreme Court had not ruled on the third round and the applicant was proposing 24 units which were over and above the increase related to the square footage of the commercial development. Mr. Steck said the original testimony of Dr. Kinsey was this would generate 8 units and they were proposing 3x that amount in terms of low and moderate income housing. Ms. DeBari asked who would be responsible for the upkeep of the units. Mr. Steck said the owner of the building.

Mr. Rebsch asked what the current COAH obligation was. Mr. Steck said that had been testified to. Mr. Rebsch questioned that some municipalities that have not provided affordable housing were often municipalities with significant open land. Mr. Steck said there were some cases with open land and other cases they were not. Mr. Rebsch asked if he was a licensed practicing civil engineer. Mr. Steck said no. Mr. Rebsch asked if he actively worked as a planner. Mr. Steck said yes.

Ms. DeBari questioned what was low to moderate income. Mr. Steck did not have the numbers with him but said the Department of Housing and Urban Development produced statistics and there were statutory definitions. He added that moderate income was 80% of the median income and low income was 50% which changed by household size. The theory was a household would not have to pay more than 28-30% of its income for housing expenses. Ms. DeBari clarified that a person would have to be eligible for this. Mr. Steck agreed and said they had to be income certified to be eligible for this housing. Ms. DeBari asked who certified them. The planner said many municipalities have their own housing officer that would do that.

Mr. Loonam questioned if someone qualified for a certain income level and then doubled their income with another job, would they still be eligible to stay there. Mr. Steck was not an operational person but he believed they income certify annually.

Ms. DeBari said it was 11:55 PM and there was special meeting scheduled for June 27, 2013 at 7 PM. Mr. Del Vecchio said they have concluded with Mr. Steck.

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

Respectfully submitted,

Maureen Oppelaar