

Approved
9/10/13

**New Milford Zoning Board of Adjustment
Work Session
July 18, 2013**

Chairman Schaffenberger called the Work Session of the New Milford Zoning Board of Adjustment to order at 6:30 pm and read the Open Public Meeting Act.

ROLL CALL

Mr. Binetti		Present
Ms. DeBari		Present
Mr. Denis		Present
Fr. Hadodo		Absent
Mr. Ix		Present
Mr. Loonam		Present (6:40)
Mr. Rebsch		Present
Mr. Stokes	Vice Chairman	Present
Mr. Schaffenberger	Chairman	Present
Ms. Batistic-	Engineer	Present
Mr. Sproviero -	Attorney	Present

REVIEW OF MINUTES – May 14 and May 23, 2013

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

NEW BUSINESS

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

Appeal of determination of zoning officer

The Board Attorney explained the background for this application and said it was difficult to say whether or not this was a preexisting condition that has been used as a house of worship on the property in question or whether there was at some time variance relief granted that allowed the property to be used as it is being used notwithstanding the noncompliant conditions. The Board Attorney said what was so unique was no prior records existed because of the Borough fire in the 80's and the applicant also did not have any prior records maintained from the current user of the property. There were no changes just one congregation replacing another congregation and in the absence of any demonstration of a prior variance the application was denied, said the Board Attorney.

The Board Attorney thought proofs would be presented to suggest the use was currently in effect as a result of some prior determination that allowed it. If there was some prior variance relief, Mr. Sproviero said they did not need to be here. He further explained if there was no variance relief, there needs to be a review of the terms of compliance with a conditional use ordinance. According to Mr. Sproviero, if the Board determines the denial by the zoning officer was

appropriate then the applicant seeks a variance for approval of the conditional use. The Chairman assumed Mr. Urdang would be under protest with this denial. The Board Attorney agreed that he would be under the opinion that the applicant did not have to be here. The Chairman thought it would be a good idea to create a record since everyone was in agreement that there was no record because of the fire. The Board Attorney agreed the Board could create a record now but the Board could not recreate a record from the past.

Mr. Stokes asked if they knew whether the requirements for the relief that might have been sought in 1955 were required by the zoning plan. Mr. Sproviero said it might not have existed and it might have become a non-conforming use as result of post occupancy changes in the zoning ordinance.

The Chairman noted there were referral letters from the police, DPW and the fire advisory board. At the request of the Chairman, a capacity load was done by the fire marshal.

OLD BUSINESS

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 Chairman said the objectors would be heard. The Board Attorney said Oradell's traffic engineer would also be present. The Board Members had no comments.

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 Mr. Grygiel would not be present but a representative from the firm would be attending. The applicant would also have their planner. The Board members had no comments.

Motion to close work session was made by Ms. DeBari, seconded by Mr. Stokes and carried by all.

**New Milford Zoning Board of Adjustment
Public Session
July 18, 2013**

Chairman Schaffenberger called the Public Session of the New Milford Zoning Board of Adjustment to order at 6:44 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. Preiss	Planner	Present (10:00)

PLEDGE OF ALLEGIANCE

OFFICIAL MINUTES OF THE WORK SESSION – May 14, 2013

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

OFFICIAL MINUTES OF THE PUBLIC SESSION – MAY 14, 2013

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

OFFICIAL MINUTES OF THE SPECIAL MEETING – May 28, 2013

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

NEW BUSINESS

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

Appeal of determination of zoning officer

Mr. Elliot Urdang, attorney representing Top Stone Church, thanked the Board for accommodating this application and agreed with Mr. Sproviero's comments describing the situation of this application. Mr. Urdang said the unusual thing about this application was because there were no municipal records, they did not know what the legal status was of the New Milford Jewish Community Center. They do know there has been a house of worship on the site for 48 years. From a legal point of view, Mr. Urdang did not think it mattered because if it was a non conforming use it was not an expansion of a non conforming use. He noted if it was a

conditional use that use under the Coventry Square case was trumped by the fact the use was inherently beneficial and by the federal statute RLUIPA.

Mr. Urdang had two witnesses, Ms. Hilda Schwartz, a member of the New Milford Jewish Center and Reverend Yi from Top Stone Church to fill in the factual gaps.

The Board Attorney swore in Ms. Hilda Schwartz, 2200 North Central Road, Fort Lee, NJ.

Mr. Urdang marked as an **Exhibit A-1** survey of property dated 8/18/1955.

Mr. Urdang asked if she could identify the structure on the survey as the original layout of the building when she became a member in 1955. Ms. Schwarz agreed that was the original building. The Board Attorney stated this was not for the accuracy of the survey but for the layout of the building.

Mr. Urdang marked as **Exhibit A-2** survey dated 12/3/1965.

Mr. Urdang asked the witness if Exhibit A-2 was the present configuration of the New Milford Jewish Community Center. Ms. Schwartz agreed. Mr. Urdang asked if she had any participation in the creation of the expanded New Milford Jewish Center. Ms. Schwartz said her husband was co-chairman of the building committee with her as the secretary. Mr. Urdang asked if she was aware of any applications filed with the Borough of New Milford. Ms. Schwartz believed all necessary applications were filed and recalled they had to purchase the house on Baldwin Avenue in order to construct the building. Mr. Urdang asked if she recalled any proceedings before any court in New Milford prior to construction. Ms. Schwartz did not remember. Mr. Urdang asked if she recalled that various officials made inspections at the new building. Ms. Schwartz thought they were because they were located on River Road and they were not hiding anything. Mr. Urdang asked if New Milford made accommodations for use of another facility for the Jewish Center during construction. Ms. Schwartz said they held services at the New Milford Borough Hall and VFW. Mr. Urdang asked if a Certificate of Occupancy was issued. Ms. Schwartz did not know but assumed they complied because they would not have been permitted to occupy the building.

Mr. Urdang asked how many congregants the Jewish Center had in 1965. Ms. Schwartz said 400-500 members with a Hebrew School, Sunday school and a school during the week with approximately 400 children. Mr. Urdang asked if there was a social hall that held receptions. Ms. Schwartz agreed. Mr. Urdang asked when they had the largest number of congregants at the Jewish Center. Ms. Schwartz said they had the largest membership between 1970-1980 but in the last 15 years they were down to about 100 members. Mr. Urdang asked if there were religious school activities. Ms. Schwartz said not in the last couple of years. Mr. Urdang asked if the premises were used for youth activities from 1965 to the present. Ms. Schwartz agreed. Mr. Urdang asked if the premises had receptions for bar/bat mitzvahs and weddings. Ms. Schwartz agreed and said a couple hundred people would attend. After a bar/bat mitzvah, Ms. Schwartz said they held a luncheon after the services. Mr. Urdang asked if there were two kitchens. Ms. Schwartz agreed. Mr. Urdang asked what the typical attendance was for a Friday night and Saturday morning during their peak years. Ms. Schwartz thought 150-200 people. Mr. Urdang

asked how many people attended the high holidays. Ms. Schwartz said they filled the facility with about 400-500 members. Mr. Urdang asked how many fixed seats were in the sanctuary. Ms. Schwartz thought 148 but doors opened up. The Chairman asked how many additional seats were there when the doors opened up. Ms. Schwartz did not know.

Motion to open to the public was made by Ms. DeBari, seconded by Mr. Ix and carried by all. No one wished to be heard in the audience.

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

Ms. DeBari asked if there were complaints from people regarding parking along side streets. Ms. Schwartz said the town only permitted parking on one side of the street but on the high holidays the police permitted parking on both sides of the street. The Chairman questioned if anyone from Baldwin Avenue or Myrtle Avenue complained about the parking. Ms. Schwartz said not to her. Mr. Urdang asked the witness if there was onsite parking. Ms. Schwartz said no because the building was built before churches were required to have parking. Ms. DeBari asked how many members walked to services. Ms. Schwartz said this was a conservative congregation and thought about 20-30 members walked. Ms. DeBari asked how long the services were. Ms. Schwartz said an average Saturday morning service was 9 am –12 noon. The Board Attorney asked how many services were conducted during Friday and Saturday. Ms. Schwartz said one on Friday and Saturday. Mr. Urdang questioned if they had organization meetings in the evening. The witness agreed.

Mr. Binetti asked if they had private parties. Ms. Schwartz said on occasion. The Chairman asked if the private parties were for members only. Ms. Schwartz thought so. Ms. DeBari recalled Flea Markets at the site. Ms. Schwartz agreed and said they also started the town wide garage sales.

The Board Attorney swore in Pastor David Yi, 130 Winthrop Place, Englewood, NJ.

Mr. Urdang asked how long he has been the religious leader at the Top Stone Church. Pastor Yi said 8 years located at St. Paul's Church in Englewood, which he had to vacate at the end of August. Mr. Urdang asked if he entered into a contract to purchase the Jewish Center waiting for an approval. Pastor Yi agreed.

Mr. Urdang asked if they proposed any changes to the existing facility on the inside or outside. Pastor Yi answered no. Mr. Urdang asked if his proposed use was less intense than what Ms. Schwartz testified to. Pastor Yi said yes and their congregation was less than 100 people including children and anticipated a future growth of 15-20 people per year. Mr. Urdang asked how many services were there on Sunday. Pastor Yi said services were 9am-10 am and 11 am-12 noon and children had a Sunday school. The Pastor explained after services the Korean tradition was that some members would bring food to church and they would be warming soup. Mr. Urdang clarified that although there were two kitchens, the only use of the kitchen would be warming food for the luncheon. The Pastor said typically they would be warming soup and the luncheon lasted approximately 30 minutes. There were Wednesday services from 7:45pm –9 pm with less than 20 members attending and prayer service on Tuesday through Saturday from 5:45 am – 6:30am with approximately 6 people in attendance.

Mr. Urdang reviewed the referral letter from the Chief of Police. Pastor Yi answered that there would not be a full or part time school on the site only Sunday school, no day care or nursery school, the facility would not be rented out to any non associated groups and it would not be used as a catering hall. The Pastor thought they might have youth activities once a week but had no plans yet.

Mr. Urdang clarified there was no parking on site, the issue of parking was important and the applicant was inheriting the parking that existed. Pastor Yi was agreeable to designating someone to act as a contact person between residents and the Borough should a problem occur.

Mr. Urdang asked the Pastor about special events at the church. The Pastor said there were usually two weddings conducted a year at the church and a reception could follow a wedding at the church.

The Chairman clarified that his testimony was that he hoped the congregation would expand 15-20 people a year and would there be a maximum amount of members for the church. Mr. Urdang thought 200 because he was the only pastor. Chairman Schaffenberger questioned if he would have a congregation of 400 with an additional pastor. Pastor Yi did not think so. Mr. Urdang told Pastor Yi that the Board was looking for a maximum number for the congregation. Pastor Yi agreed to 250 members. Ms. DeBari did not know any church that refused members. Mr. Urdang noted that the Gospel Church was clear that at 400 members it would be their policy to start another church. Ms. DeBari asked where most of their parishioners came from. The Pastor said Cresskill, Closter, Paramus, Ridgewood and Palisades Park.

Mr. Stokes asked if there were plans to redesign and refurbish the area of worship. The Pastor said no. Mr. Stokes asked if they received a total amount of fixed seats from the Fire Marshal. The Chairman said 148 fixed seats. Mr. Stokes pointed out if there were two services using every seat that would be maxed out with 300 people.

Mr. Loonam clarified that the applicant wanted to leave his current location for a new place for his congregation. Pastor Yi agreed. Mr. Loonam commented that his congregation would be considerably smaller and agreed that it was probably preexisting non-conforming but he did not know what happened or what was promised in 1955 or 1965. This was a good time to make this reasonable for the neighbors in terms of parking, said Mr. Loonam. He added that this should not be left wide open after these proceeding because of a concern if they sold and another house of worship wanted 800 parishioners. Mr. Urdang understood but said if it was a non-conforming use for over 48 years and if the use was violated in terms of a variance, he thought the Borough would have acted upon it. According to Mr. Urdang, he assumed the activities during the 48 years were permitted and fell within the scope of variance granted. He added this use was far less intense than the Jewish Community Center.

The Board Attorney questioned his testimony regarding parking issues. Mr. Urdang said they would designate a specific person to be contacted whether by the neighbors or the Borough to try to solve any problem. The Board Attorney asked if his client considered offsite parking accommodations. Mr. Urdang said not at this point. Mr. Sproviero asked in the event there was a

problem would his client consider it. If a problem developed, Mr. Urdang said his client would use their best efforts to attain it. The Board Attorney questioned who would make the determination that future investigations of an offsite alternative commence. Mr. Urdang thought if the police identified a problem, the applicant would agree to meet and make an effort to resolve the problem.

Mr. Loonam asked what was allowed regarding parking on Myrtle Avenue and Baldwin Avenue. Mr. Urdang said parking on one side of the street. Mr. Loonam said this was an application before the Board without any parking and questioned if the Board had to deal with the issue on parking. The applicant would have to understand if they park illegally they would be ticketed, said Mr. Loonam.

Mr. Stokes said if a variance was granted it would be for offsite parking. The Chairman questioned if there could be a variance for offsite parking. Mr. Sproviero said they would permit the use knowing that the variance being sought was relief from the onsite parking requirement. Mr. Stokes assumed there was a maximum number for seating in the original application. Mr. Sproviero suggested a condition with a number on the fixed seats.

Motion to open to the public was made by Mr. Stokes, seconded by Mr. Loonam carried by all. No one wished to question Pastor Yi.

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

Mr. Urdang explained this was an unusual situation procedurally because it was in part an appeal from the zoning officer's denial. He added in his rider there were only certain available alternatives. Mr. Urdang said if in 1965 it was a non-conforming use, then the proposed usage was not an expansion of the non conforming use and was entitled to a certificate of occupancy. He added the more likely scenario would be if in 1965 when the building was constructed there had to be an approval by a board, then this fell within the scope of that variance and was entitled to a certificate of continued occupancy. In regard to the conditional use pertaining to houses of worship, this use and the lack of parking antedated the ordinance change where it was a prior non-conforming use, which they were not expanding. The final alternative was they need a D3 variance from the conditional use requirements. He said the two things concerning the status of the applicant were it was an inherently beneficial use and the federal statute of RLUIPA. According to Mr. Urdang, he did not envision a substantial problem because what was being proposed was so substantially less that existed on the site.

Mr. Rebsch had concerns that 48 years ago conservative members might have walked and now there were more cars per family. Mr. Urdang said in that case there would be factual findings that congregants would have been prohibited to drive on the Sabbath. Mr. Urdang added if they violated a condition of a variance, the Borough would have enforced that condition. Mr. Rebsch said for several years the congregation had been very small. Mr. Urdang said the applicant would have less cars. The Board Attorney said the facts introduced to the hearing was at one time it was a substantially more intense use than what was being proposed by his client but today they were currently comparable. Mr. Loonam agreed that Mr. Urdang was arguing it was a less intensive use. Mr. Urdang said if they imposed a condition of 250 congregants and in ten years it was

creating a problem, the applicant would have a right to come back to the Board and ask to modify the condition.

Mr. Stokes had concerns if the applicant gutted the inside and built a new facility. Mr. Urdang said they would require a permit. Mr. Sproviero said the way to address that would be to fix the number of fixed seats. According to the Board Attorney, the Board could not impose unreasonable restraints on the congregation's ability to function as a congregation. He was more willing to impose limitations on the number of congregants rather than impose limitations on the structural aspects of the facility.

Mr. Sproviero said the Board was here because there were insufficient facts to support the zoning official's determination as to whether or not this case could proceed as a continuation of a preexisting non-conforming use. Mr. Sproviero said it was certainly arguable that the applicant has established that this use and the non-conforming aspects of the parking use predated any parking requirements and this was a continuation of a preexisting non conforming use. The Board Attorney also said there was no court documentation as to what approvals were granted other than the fact it has been operating for near 50 years and no one has tried to shut it down. He thought the Board had sufficient evidence to consider this as an application for relief from the existing conditional use ordinance and had the ability to impose conditions. Mr. Sproviero explained if the Board thought this was no more than a continuation of a preexisting non-conforming and would overturn the denial issued by the zoning officer then under those circumstances the Board would not be able to impose conditions.

Mr. Urdang asked what happened if there were 148 fixed seats and the congregation grew. Mr. Urdang did not see what the limiting of seats did. Mr. Sproviero thought the applicant agreed to no more than 250 congregants. Mr. Urdang agreed and said if they grew to the point that they need more than 250 congregants, the applicant would have to come back to the Board.

The Board Members reviewed the occupant load from the Fire Marshal. Mr. Urdang said if there was a condition for a specific number of congregants he would ask for an allowance for the special days like Christmas and Easter. The Board Attorney said unfortunately those were the days for the greatest demand for on street parking for the neighbors. The Board Attorney said if there was a parking problem it didn't matter if they were below 250 congregants because the resolution mechanism would be triggered by municipal action.

The Chairman clarified the determination was whether it was by variance or overturn the position of the zoning officer. The Board Attorney said the two separate sets of finding where: 1) the zoning officer acted correctly based upon the facts and 2) the facts supported the disposition of the conditional use application. The Chairman said the other option for the Board was they could overturn the decision of the zoning officer. The Board Attorney agreed.

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

Denise La Viola, 304 Mack Place, commented on the parking issues and felt that members walked to the synagogue but now people would be driving to the Korean Church. The Board Attorney stated Ms. Schwartz already testified to how many members walked to the synagogue.

Catherine Rittereiser, 170 North Park Drive, lived in the neighborhood and did not believe only 10-20 people walk to the synagogue.

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

The Chairman polled the Board to determine if they wanted to overturn the determination by the zoning officer or do this by way of variance. Mr. Loonam clarified that overturn meant preexisting non-conforming. Mr. Sproviero said correct.

Mr. Rebsch	overturn
Mr. Loonam	overturn
Mr. Stokes	overturn
Mr. Ix	overturn
Mr. Denis	overturn
Mr. Binetti	overturn
Ms. DeBari	variance
Chairman Schaffenberger	variance

The Board Attorney clarified a motion to overturn the zoning officer's determination that the certificate of zoning compliance not be issued because it has not been demonstrated that this was a preexisting non-conforming use. He added a yes was to overturn the determination and to recognize it as a preexisting non-conforming use. Mr. Sproviero asked Mr. Urdang if the Board made this determination would the applicant agree to the parking resolution mechanism as a condition of the determination. Mr. Urdang agreed.

Motion made by Mr. Stokes to overturn the zoning officer's determination, seconded by Mr. Loonam.

A motion passed on a vote call as follows:

For the motion: Members Stokes, Loonam, Binetti, Denis, Ix

Against the motion: Members DeBari, Schaffenberger

Approved 5-2

OLD BUSINESS

12-01 New Milford Redevelopment Associates, LLC – Block 1309 Lot 1.02 Supermarket, Bank and Multifamily Residential Units

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

Mr. Del Vecchio, member of the firm of Beattie Padovano on behalf of the applicant, clarified the Board scheduled a special meeting for August 1, 2013 at 7 pm and the regular scheduled meeting would be August 13, 2013.

Mr. Del Vecchio noted that the exhibits were marked at the last hearing O-1 through O-6 but some exhibits were already marked O-1 through O-3 dated June 21, 2012. He requested the exhibits from June 21, 2012 be designated as O-1A, O-2A and O-3A. The Board Attorney agreed.

Michael J. Gadaleta, 270 Demarest Avenue, New Milford was sworn in by the Board Attorney. Mr. Gadaleta asked to be heard as an expert. The Board Members accepted the qualifications of Mr. Gadaleta as an expert in the field of architecture.

The Board Attorney marked as Exhibit O-7 - Michael Gadaleta's report. Mr. Gadaleta stated that he wrote everything in this report, he took all photos, and plans were included in the report. He stated the purpose of his analysis was to provide a review of the engineering documents prepared by Mr. Dipple, to assess the accuracy of information provided in the engineering document, rebuke testimony of experts from NMRA, assess the negative impact this project would impose to the surrounding neighborhood, offer architectural opinion on the site plan design, building placement and current zoning, examine the proposed entrance and exit locations, traffic flow, and document the Mayor and Council initiatives to protect the students and provide pedestrian safety.

Mr. Gadaleta discussed exhibit C-01 dated 11/14/11 revised 12/11/12-labeled cover sheet. He said the lot was zoned Residential A and the tax map indicated commercial zones on the opposite side of the Hackensack River. The architect commented that this was the only drawing that showed the property in the context of the one and two family residents on the north side. According to Mr. Gadaleta, the drawing C-02 labeled existing conditions plan, did not indicate the roadway widths for Main Street, Madison Avenue, River Road or Cecchino Drive. Mr. Gadaleta read a 2004 letter from Kathy Sayer, Borough Administrator and the 2004 resolution. He said the Board recognized that the student population was in danger and commissioned the County to obtain and control the street and now it was no longer a county road. Mr. Gadaleta added that presently there were no sidewalks at the student parking on Cecchino Drive and the intersections were not identified by name nor the high school student parking was shown on the plan at Cecchino Drive.

Mr. Gadaleta said the 1980 DEP Flood hazard limit area was indicated on the plan and Mr. Dipple testified that the property did not flood with the exception along Madison Avenue. According to Mr. Gadaleta, the documentation from USGS indicated that recent flooding events have exceeded elevation 18'. Mr. Del Vecchio objected that this information was outside the area of architecture. He added an architect could not prepare under his NJ license topographical maps. He objected to any testimony on his marked up version of the existing conditions plan. The Board Attorney questioned what had been done to this map. Mr. Gadaleta explained he took information from the USGS and interpreted it onto the map and he was not engineering anything. The Board Attorney said no comments made Mr. Gadaleta were to be considered expert testimony in the field of engineering. Mr. Gadaleta agreed and added he was taking information as a researcher and interpolating that information into the evidence. The Board had no objections. Mr. Del Vecchio felt this was commentary and no longer factual testimony and reserved for public comment. Mr. Gadaleta said with every project that he dealt with the first thing he was presented with was a site plan prepared by an engineer. He added it was his responsibility to his client to understand all the information on the site plan including elevations, curb elevations and sidewalks. He said it was his responsibility as an architect to establish everything that happens on the building. Mr. Gadaleta said he did not prepare the survey. The Board Attorney did not see any harm with his testimony and believed it fell within his

architectural analysis. Mr. Del Vecchio objected. Acting Chair DeBari said his objection was noted. Mr. Gadaleta discussed the marked up existing conditions plan with the contour line of 18' which ran around the site. According to Mr. Gadaleta, all of the area in the open space was potentially underwater during a hurricane or flooding event. He stated the landowner has elevated the existing berms along the river bypass to elevation 16, 17, 18 even as high as 21.50'. The adjoining parcel across the river remained at elevation 5, 6 and less than 8. He showed photos indicating an access gate opposite Demarest Avenue and said existing structures noted on the site plan were 2 buildings, three sheds and a few trailers. He said this was proof of storage and not proof of prior construction activity.

Discussing the analysis of the overall site plan, Mr. Gadaleta stated there was a 70,000 sf shopping center, the residential building approximately 30,000 sf, a 4,200 sf bank and associated parking for 438 spaces. There were four above ground penetration/infiltration islands with a total retention island area approximately 127,500 sf.

According to Mr. Gadaleta, the plan lacked physical dimensions of the structures. He stated the apartment building measured 60'x160' long, the bank measured 60'x70' long, the supermarket measured approximately 350' long x 220' wide and the largest island measured approximately 350'x270'. Referring to Exhibit C-03 overall site plan, Mr. Gadaleta said Madison Avenue and Demarest Avenue, Washington Avenue and Lenox Avenue intersections were not identified on the overall site plan. He added that crosswalks or handicap ramps at River Road & Cecchino Drive, crosswalks at the intersection of Demarest Avenue, Main Street & Washington were also not identified.

Mr. Gadaleta discussed the proposed supermarket being orientated toward the residential streets of River Road and Demarest Avenue regardless of the 300' street frontage along Madison Avenue. Mr. Gadaleta commented that he questioned Mr. Dipple regarding the orientation of the structures. He stated the location of the residential building was awkward and was between a bank parking lot and retention island. The residential building was surrounded by parking spaces and access roads with the remaining green space of 12,900 sf shared by the residents.. There was an oversized parking lot for the bank. Mr. Gadaleta said a better design would have the residential building on the residential corner of River Road and Cecchino Drive with a separate parking lot and entrance for their use. There were no plans for playground equipment, passive recreation area or benches. The supermarket design has the loading docks and truck bays dominating the Madison Avenue streetscape. Mr. Gadaleta said the 95,000 sf retention island 2 opposite the high school would be a future mosquito breeding ground.

Mr. Gadaleta stated on exhibit C-06 - the grading drainage and utility plan showed the final grades established north of the Demarest Avenue intersection and indicated that the northern half of the proposed development was almost all impervious coverage. According to the architect, if a hurricane event similar to the storms in 2007 and 2011 occurred all surface parking below elevation 18.00' would be under flood water, all three detention basins would be below water and the flood waters would enter the supermarket with several inches of water above the finished floor. He added that the flood chart from the United States Geological Society indicated the flood stage in 2007 was 12.36 feet above the base plane of New Milford which was established at elevation 6.25'. Mr. Gadaleta explained adding 12.36, which was the elevation of the flood to

New Milord's base plane of 6.25' came out to 18.61. He added that the Shop Rite had a finished floor of 18.

The architect discussed Exhibit C-07 grading, drainage and Utility plan 2 – which indicated the development below the Demarest Avenue intersection adjacent to Cecchino and the high school. He noted the southern half of the development was dominated by the detention basin 2 and adjacent to the high school was parking for students along Cecchino Drive. He commented that the detention basin did not count as site coverage in the zoning calculation and there have been no efforts to have this detention below grade or to preserve the land above for open space. According to Mr. Gadaleta, flooding events similar to Floyd, Irene or Sandy would completely inundate the basin rendering it useless.

Mr. Gadaleta discussed the Exhibit C-10 Tree Management Plan. He stated 90,000 sf of forested land contained approximately 260 trees. The architect read part of the Shade Tree Ordinance into the record on the purpose, definitions, regulations, tree removal permits, development, redevelopment and subdivision application, criteria for approval of plan and tree removal and powers and duties. The architect summarized that the intent of the Shade Tree Ordinance was to prevent the indiscriminate removal and clear cutting of the last few remaining vacant lots. Mr. Gadaleta noted only 29 trees were surveyed but 12 trees were greater than 20" diameter. He said according to the document the sample area total caliber of the trunk size was 542 inches of tree trunk. According to Mr. Gadaleta, the developer has ignored the ordinance prohibiting clear cutting of lots and removal of trees on a slope. Mr. Dipple's testimony was there were no heritage trees on site, said Mr. Gadaleta. The architect testified that the River Road tree berm did not overlap the footprint of the supermarket. He thought the developer and the designer could propose a site plan with every tree remaining to respect the quiet nature of the residential neighborhood.

Mr. Gadaleta said that Main Street to the north was the neighborhood business district. The resident referred to resolutions introduced by the Mayor and Council to seek out federal grant money. According to Mr. Gadaleta, grants were funded for pedestrian safety and streetscape improvements, traffic calming measures were installed to encourage new neighborhood businesses and stabilize the current establishments. . He noted that the northern property line at Main Street abuts the existing businesses yet the proposed bank was located in the residential district of River Road.

Mr. Gadaleta said the traffic report was formatted in such a way that it was hard to add 2 peak periods from different charts and come up with the total. Mr. Del Vecchio objected to the entry of testimony regarding traffic because an architect was not qualified to interpolate traffic engineering studies. Mr. Gadaleta said he was not entering testimony but rather summarizing the traffic report. Mr. Del Vecchio said that would be commentary and not offering factual information. The architect disagreed and said he has taken the proposed build and no build scenarios and added the numbers. The Board Attorney did not see any harm if it was a case of arithmetic subject to the applicant having the ability on their rebuttal case to put their expert back up. Mr. Del Vecchio questioned if the testimony of Mr. Gadaleta regarding the traffic testimony be covered under proof of expert testimony. The Board Attorney said no but it was fact testimony. The architect discussed two charts titled Peak hour's typical weekday conditions and

Peak hours Saturday conditions. He noted on a weekday the intersection of Demarest Avenue and River Road would see an increase of 768 cars during peak hours. On Saturday Peak hours, the same intersection had an increase of 354 cars. According to Mr. Gadaleta, almost every immediate existing surrounding intersection would see an increase of at least 200 cars.

Mr. Gadaleta commented that all vehicular traffic was designed to disburse thru the narrow residential sleepy quiet street of River Road, Demarest Avenue, Main Street Washington Avenue and Lenox Avenue. He added that during a heavy rainfall, Main Street, Washington Avenue, Lenox Avenue and Boulevard were impassible.

The architect commented that there has been no testimony from the Planner or the Developer on any attempts to acquire any properties at the corner of River Road & Main Street to attain street frontage. No attempts have been made by the developer to conform to the residential A zoning, said Mr. Gadaleta. He noted the height of the supermarket did not take into account the mechanical equipment. Mr. Gadaleta said the apartment building could have been designed with the permitted 2 ½ stories and no plans have been presented for the bank.

Mr. Gadaleta stated there have been repeated requests for soil test and samples for dangerous carcinogens and heavy metals, soil logs or geotechnical information, additional traffic counts on adjoining streets, offsite improvements of curbs, sidewalks, crosswalks, and pedestrian safety measures, no environmental impact study and no clarification for delivery of goods and services during a multi day flood event.

According to the architect, the developer has ignored the additional impact this development would have on the already flood prone areas by adding impervious coverage. Mr. Gadaleta had colored in the 1980 DEP Map showing the areas along the River in the flood zone and indicated on the map where the subject area was located. The architect said Mr. Steck testified that the Mayor and Council missed the opportunity to conform to COAH requirements because they did not allow built land on Carlton Place, which was on the bay of the creek. Mr. Gadaleta stated that Mr. Steck was wrong that the Mayor and Council missed the opportunity to add to the COAH obligation. He added the Borough purchased that land and created the opportunity to prevent additional flooding downstream. Mr. Gadaleta told the Board that the time was now to prevent any additional development that would so severely affect the property of others.

The Board Attorney marked as Exhibit O-7 Mr. Gadaleta's presentation.

Mr. Del Vecchio noted that the information provided was on M.G. New York Architects letterhead. Mr. Gadaleta agreed. Mr. Del Vecchio asked if the document was submitted under the authority of that corporate entity. Mr. Gadaleta agreed. Mr. Del Vecchio asked if he was a principal of that entity. Mr. Gadaleta responded he was the sole principal. Mr. Del Vecchio asked if the entity was registered as an agency in New Jersey. Mr. Gadaleta answered he was licensed in NJ. Mr. Del Vecchio asked if the entity was licensed in New Jersey. Mr. Gadaleta said he was a New York corporation and it was unfortunate if it inferred he violated some corporate policy because of his business letterhead. He added he was a licensed professional. Mr. Del Vecchio asked prior to this evening with regard to this testimony, had he spoke with any members of the governing body regarding this application. Mr. Gadaleta said no. Mr. Del Vecchio clarified

whether at a public meeting or otherwise. Mr. Gadaleta said none. Mr. Del Vecchio asked if he ever spoke with a member of this Board concerning this application. Mr. Gadaleta said none. Mr. Del Vecchio clarified neither in this meeting room nor outside the meeting room. Mr. Gadaleta said that was correct and he was well aware of the parameters.

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

John Rutledge, 335 River Road, asked if he was aware of a document prepared by Dr. Robinson, NJ State Climatologist. Mr. Gadaleta said he knew it existed but was not familiar with it.

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

Lori Barton, 399 Roslyn Avenue, was sworn in by the Board Attorney. Ms. Barton submitted a cover of the appraisal report with a few pages by Ernest Del Guercio prepared for the Borough Administrator in 2010. Mr. Del Vecchio objected to the entry of the document that it was an appraisal report prepared by appraisal systems for the Hackensack Water Property consisting of 15.5 acres and it contained pages of photographs that could not be authenticated and it was an incomplete document. The Board Attorney agreed with Mr. Del Vecchio but suggested she reached out to Mr. Del Guercio office for a sworn statement that he took the photos.

Mr. Del Vecchio stated the application would be carried to August 1, 2013 at 7 PM.

Recess

**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**

Mr. Carmine representing Alex and Sons Real Estate, LLC stated the testimony has been completed from the engineer, architect and traffic consultants. He recalled the architect, Mr. Dattoli, previously sworn in and still under oath because there was a change on one side of the façade of the building.

The Architect stated revisions were made to sheet A-1 building elevations and A-3 first second floor plan dated July 11, 2013. He stated he eliminated the balconies on the east side of the building and removed the sliding glass doors and replaced them with windows. The reason for the change was because of a comment from a neighbor to the east that indicated there would be an invasion to his privacy. Mr. Dattoli commented to minimize that they eliminated the balconies so there would be no outside activity from the apartments. He explained they added small roofs over the new windows to break up the roof. Mr. Alampi stated they would submit plans with the revisions.

The Chairman referred to A-1 and asked if the proposed peaks on the roof were cosmetic. Mr. Dattoli agreed. The Board Attorney clarified that the peaks of the roof did not affect the height of the building. The architect agreed. Ms. DeBari asked if there were balconies on the west side of the building. Mr. Dattoli said yes.

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

Ulises Cabrera, 659 Columbia Street, asked if there would be two lanes in and out of the garage area. The architect stated there was a 24' wide driveway with two lanes.

Mr. Varkey, 401 Madison Avenue, said his bedroom window would face the second story windows and affect his privacy. He asked how far from his property line was the building. The architect answered from the property line to the building was 20'. Mr. Alampi said there was no code violation and windows were permitted on any side of the building within 5' of the property line.

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

The Board Attorney swore in Mr. Kenneth Ochab, 12-16 Fair Lawn Avenue, Fair Lawn, NJ. The Board Members accepted the qualifications of Mr. Ochab as a licensed professional planner for the purposes of the use variance for multiple dwelling projects in a single family zone.

Mr. Schaffenberger asked Mr. Ochab if he ever represented an objector. Mr. Ochab said he had on rare occasions but he did not like to do it. Mr. Schaffenberger asked why that was. Mr. Ochab did not feel comfortable doing it and did not like representing objectors. He further explained over the past 15 years he has represented applicants and felt comfortable doing that or the role of sitting with a Board as their advisor.

Mr. Ochab said he reviewed the application, written documents, reports, architectural and engineering plans, and reviewed zoning ordinances, the master plan and reexamination reports and visited and inspected the site. The planner said unless the use was inherently beneficial, the NJ case law required them to show under the Medici case that the site was particularly suited for the proposed use and they need to reconcile the use variance application with the master plan.

Mr. Alampi marked as Exhibit A-8 aerial photograph depicting the zone designations
Exhibit A-9 aerial photograph of the site

The planner discussed Exhibit A-8 stating the subject property was in the R-A zone with the front of the site just short of 140'. He added the conditions on the site had a single family home and a garage, which have all been removed, the rear of the property drops off and the back of the property were wetlands or wetland buffer area. Mr. Ochab noted that the surrounding area was clearly mixed with the Institute for Education Achievement (IEA), two single family homes, business and apartments. He added that the IEA and the proposed site were two of the largest properties within the Madison Avenue corridor with the exception of the garden apartments.

The Architect stated Exhibit A-9 was an attempt to illustrate what the proposed development would look like from an aerial view and this showed the amount of building coverage for the proposed 14-unit building on the property. According to Mr. Ochab, this proposed development fit well within the context of this neighborhood. He added the proposed building location sits back equivalent with the existing buildings to the east, it had a 20' side yard setback on the east

side and about 35' on the west side because of the driveway. The planner said there was only 21% building coverage. Mr. Ochab said in terms of intensity of a use, a planner would look at the density. In regard to density, the planner said the applicant was proposing 12.5 units/acre for the 14 units on over an acre. He calculated the density for the apartment complex to the east was 27 units per acre. The planner said the impervious coverage for the proposed site was 32%, which meant that 68% of the site would be open space. Mr. Alampi asked if the topography and grade of the land and the parking under the building as opposed to surface parking constituted good planning. The planner answered because of the condition of the land allowing them to do that was a reason it was particularly suited for the proposed project.

The planner reviewed that the height D5 variance proposed 37.63' permitted 30' with 7.65' over the requirement. He explained the height was measured from average grade plan, which averaged the corners and the highest peak of the roof. Mr. Alampi questioned if the topography of the property affected the calculation for the height. The planner said it did because the property drops off on Madison Avenue towards the rear. He added the building was shorter in the front and taller in the rear because of the topography. Mr. Ochab said there was a front yard variance because the ordinance required an average of the properties within 200'. As a result, the requirement was 59.2' and the applicant was proposing 45' from the centerline. Mr. Alampi clarified the applicant's front yard setback was because of the school building position. The planner agreed and said the applicant would probably not need a front yard setback variance based on the existing setbacks to the east. Mr. Ochab said the proposed building coverage was 21% were 18% was allowed. He explained the issue was they were using the zoning standard for a single family home to measure the building coverage for a multifamily dwelling. The Board Attorney asked if an impervious variance was being sought. Mr. Alampi said no. Mr. Ochab referred to Exhibit A-9 and explained this was an oversized property and the benefits of the property was it was so large they could position the building in the center of the property facing Madison Avenue by using the topography to minimize the impervious coverage and leaving 68% of the property as open space. According to the planner, the character of the neighborhood was mixed, the density was within range of the garden apartments and he believed this was a better planning alternative for this site as opposed to anything else. He added the proposed site acted as a transition area between the school and the existing homes. Mr. Ochab said regarding the master plan he went back to 1979 looking for something on this property but could not find anything. Mr. Alampi asked why this Madison Avenue corridor had escaped any recommendations. Mr. Ochab said one of the things that comes up in the Master Plan was the Borough was almost fully developed and the proposed property was developed with a house on it. Mr. Ochab added that the proposed driveway opposite Monroe was important for access purposes, which made the site suited for the use. The environmental conditions of the site made this type of use a better plan for this site because with single family home development they found the wetlands become the dumping grounds for lawn clippings and other household waste. Mr. Alampi asked if there were any single family homes on 1 ¼ acre sites. Mr. Ochab answered no.

Mr. Ochab testified that the particular suitability was the nature and physical conditions of the site and whether or not the applicant showed that the proposed use was well suited for the site. He added another factor was the site was oversized and it was one of two properties that were oversized and one was the school. The planner said Madison Avenue was a major artillery road and a county road.

The Planner discussed the negative criteria. The first test was whether or not there was substantial detriment to the public good as a result of passing the variance. Mr. Ochab added every development had some impact but it was his opinion there was not a substantial impact. He added this project would not have an impact to the surrounding neighborhood. The second part was there would not be a substantial impairment to the zoning plan. He felt it was not an impairment to the zoning plan because of the uniqueness of the site and the area was not exclusively residential zoned.

Mr. Alampi marked as exhibit A-10 a series of photographs.

Mr. Ochab said the 4 photographs of the area that he took in March 2013 were not altered and accurately depicts the situation. He said the upper left photograph was standing on Madison Avenue looking at the open area of the site, the upper right photograph was a series of 2 ½ stories homes with various size lots across from the site and the bottom photographs were of the auto shop in the business zone and the garden apartments.

The planner said the rear of the property and the tree line would provide a buffer. He added the front of the property had a landscaping plan submitted. Mr. Ochab said based on the his analysis and presentation of information the site was particularly suited, it could be reconciled with the Master Plan, the impact was not significant and would not substantially impair the zone plan.

The Chairman clarified that the planner's testimony regarding density was the applicant had 12.5 units per acre with 32% impervious coverage and the garden apartments had 27 units per acre. He asked what the impervious coverage was on the garden apartments. The planner estimated about 50%.

Ms. DeBari asked if there was any thought given to moving the building towards the west to give a 30' side yard for the resident on the east. Mr. Alampi said they would look into it but thought the driveway location might impede that.

Mr. Denis questioned if they could build on the back of the property. Mr. Alampi said no that the back 30% was restrained. Mr. Denis said regarding the wetland area the rear of the property has been filled in since the house has been demolished. Mr. Alampi said they could not do that and suggested the Board Engineer meet their engineer to see the property. Mr. Denis also had concerned about the amount of children in the apartments. Mr. Alampi said they would continue with Mr. Ochab at the August meeting.

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

Respectfully submitted,
Maureen Oppelaar