

Approved  
2/9/16

**New Milford Zoning Board of Adjustment  
Work/Reorganization Session  
January 12, 2016**

Chairman Schaffenberger called the Work Session of the New Milford Zoning Board of Adjustment to order at 7:00 pm and read the Open Public Meeting Act.

**ROLL CALL**

Mr. Adelung	Present
Ms. DeBari	Absent
Mr. Denis	Present
Mr. Joseph	Present
Mr. Loonam	Present
Mr. Rebsch	Present
Mr. Stokes	Absent
Mr. Weisbrot	Present
Mr. Schaffenberger- Chairman	Present
Mr. Sproviero - Attorney	Present
Ms. Batistic – Engineer	Present

**REORGANIZATION – 2016**

The Board Attorney swore in Mr. Loonam for a four year term as a full member with term expiring 12/31/19

The Board Attorney swore in Mr. Adelung for a two year terms as an alternate member with a term expiring 12/31/17.

The Chairman called for a motion to dissolve the Firm of Boswell Engineering.

Motion made by Mr. Loonam, seconded by Mr. Rebsch and carried by all.

The Chairman called for a motion to dissolve the legal counsel of Scott Sproviero, Esq.

Motion made by Mr. Weisbrot, seconded by Mr. Loonam and carried by all.

The Chairman called for a motion to dissolve Ms. DeBari from her obligation to the Zoning Board, that being Vice Chair.

Motion made by Mr. Loonam, seconded by Mr. Rebsch and carried by all.

The Chairman called for a motion to dissolve Mr. Schaffenberger from his obligation to the Zoning Board, that being Chairman.

Motion made by Mr. Loonam, seconded by Mr. Denis and carried by all.

Meeting turned over to the senior member, Mr. Schaffenberger.

Mr. Schafffenberger called for a motion to nominate a Chairman for 2016.  
Motion made by Mr. Loonam to nominate Karl Schafffenberger, seconded by Mr. Rebsch.  
The motion passed on a roll call as follows:  
For the motion: Members Loonam, Rebsch, Denis, Weisbrot, Joseph, Adelong  
Abstain: Member Schafffenberger  
No other nominations.

Motion made by Mr. Rebsch to nominate Mr. Loonam as Vice Chairman, seconded by Mr. Adelong.  
The motion passed on a roll call as follows:  
For the motion: Members Rebsch, Adelong, Denis, Loonam, Joseph, Schafffenberger  
Abstain: Member Weisbrot  
No other nominations.

The Chairman called for a motion to nominate a Board Attorney for 2016.  
Motion made by Mr. Loonam to nominate Scott Sproviero, seconded by Mr. Rebsch.  
The motion passed on a roll call as follows:  
For the motion: Members Loonam, Rebsch, Denis, Weisbrot, Joseph, Adelong, Schafffenberger.  
No other nominations.

The Board Attorney stated there was no RFQ submission for the Engineer because the Borough appoints a Borough Engineer by way of a RFQ selection and appoints the engineer for terms of up to three years. Boswell Engineer was appointed by Mayor and Council in January 2014 with a term ending December 31, 2016. The Board Attorney stated it has been the Board's practice that in those years that there has not been a separate RFQ seeking a new borough engineer. They have recognized Boswell McClave Engineering as the borough engineer to serve as the engineering consultant for the board. Mr. Sproviero stated they were recognizing that Boswell Engineering as the borough engineer would likewise service as the Board Engineer thru the conclusion of their contract ending December 31, 2016. He added the resolution before the board sets forth that process and determination.

Mr. Loonam wanted clarification that the Board could seek another engineer and not go with who the Mayor and Council appoints. Mr. Sproviero agreed and said the land use law provides that the board as a separate entity from the Mayor and Council has the right to select their own professionals. The Chairman clarified that this was not a reflection on the Board Engineer but thought it was a good idea to request RFQ's for both their attorney and engineer next year.

The Chairman called for a motion to approve the resolution for Boswell Engineering for 2016.  
Motion made by Mr. Weisbrot, seconded by Mr. Denis and carried by all.  
The motion passed on a roll call as follows:  
For the motion: Members Weisbrot, Denis, Loonam, Rebsch, Joseph, Adelong, Schafffenberger.

#### **REVIEW OF MINUTES – December 8, 2015**

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

## **ANNUAL REPORT 2015**

No one wished to comment or make a change.

The Chairman gave Ms. Batistic the PSEG plans with their revisions to be reviewed.

### **OLD BUSINESS**

15-08 Institute for Education Achievement – Block 1211 Lots 32/33

Construct new adult educational building

Conditional use, height, parking

There were new plans that were received on 1/8/16. Ms. Batistic stated she received the plans via email. The Chairman assumed Mr. Urdang would review the plans with the Board.

### **NEW BUSINESS**

15-07 Kahn – 244 Main Street – Block 1312 Lot 1

Three story 6 unit mixed use residential townhouse/commercial building

The Chairman stated they had referrals from the Chief of Police dated 1/5/16 and DPW dated 1/8/16.

The Chairman asked which variances would be a D Variance. The Board Attorney said not with the front yard, rear yard or maximum impervious variances. There was a D variance for maximum density and maybe with the maximum building coverage. The Chairman asked if the height was a D variance. The Board Attorney said it was a C variance because it was for stories.

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

**New Milford Zoning Board of Adjustment  
Public Session  
January 12, 2016**

Chairman Schaffenberger called the Public Session of the New Milford Zoning Board of Adjustment to order at 7:44 pm and read the Open Public Meeting Act

**ROLL CALL**

Mr. Adelung	Present
Ms. DeBari	Absent
Mr. Denis	Present
Mr. Joseph	Present
Mr. Loonam-Vice Chairman	Present
Mr. Rebsch	Present
Mr. Stokes	Absent
Mr. Weisbrot	Present
Mr. Schaffenberger-Chairman	Present
Mr. Sproviero - Attorney	Present
Ms. Batistic – Engineer	Present
Mr. Grygiel	Present

**PLEDGE OF ALLEGIANCE**

**OFFICIAL MINUTES OF THE WORK SESSION – December 8, 2015**

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

**OFFICIAL MINUTES OF THE PUBLIC SESSION –December 8, 2015**

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

The Board Attorney explained that they have prepared the Annual Report that has the applications that was considered in the past year and the subject matter and dispositions of the applications. Mr. Sproviero said the resolution categorizes the predominant issues that were determined by the Board during 2015. The resolution sets forth that there was a pattern of proposed development of uses, which a number of applications of that nature seem to be increasing as the years go on. The Zoning Board recommends that the planning board in their work with the master plan should look at it and make a determination as to what if any modification of relief or modification of the zoning ordinance should be contemplated as a result of the trend of development.

## **RESOLUTION FOR ANNUAL REPORT**

The Chairman called for a motion authorizing the transmittal of the annual report to the Mayor and Council.

Motion made by Mr. Rebsch, seconded by Mr. Denis.

The motion passed on a roll call vote as follows:

For the Motion: Members Rebsch, Denis, Loonam, Weisbrot, Joseph, Adelung, Schaffenberger.

## **OLD BUSINESS**

### **15-08 Institute for Educational Achievement- Block 1211 Lots 32/33**

#### **Construct new adult education building**

#### **Conditional use, height, parking**

Mr. Elliot Urdang, on behalf of the Institute for Educational Achievement (IEA), noted that they have completed all of the testimony. The issue that remained open was the location of the easterly driveway because it has to be coordinated with the County. Mr. Urdang said in the interim the County has approved the location for the easterly driveway which is shown on the latest site plan submitted to the Board. Mr. Urdang said there was still things they had to deal with the County but nothing that was within the jurisdiction of the board. He stated there was no reason to withhold a decision while the County makes their decision on the other issues. The Chairman clarified that the Board could vote on the application. The Board Attorney stated subject to continuing jurisdiction of the county planning board.

Mr. Olivo was recalled and he was still under oath.

Mr. Olivo said there was a resubmission made as part of the application. The plan was prepared by Azzolina & Feury Engineering last revised 1/7/16. The site plan was for the purposes of IEA School and nothing has changed on the site plan with the exception of the driveway that has been aligned with the drive aisle located to the easterly extent of the property. He stated the parking would be exactly the same in terms of the parking count, which were 71 parking stalls.

Mr. Olivo discussed this with the County verbally and the County Planner issued an email correspondence. The County Planner commented that the driveway location shown on this plan was acceptable to the County. The Chairman asked if that was official or an informal comment. Mr. Olivo said it was part of an official correspondence sent to him. The Board Attorney stated it did not constitute a final approval by the County. Mr. Olivo agreed that there was a process to go through under which they would approve it. Mr. Urdang asked if there were any other items that would be within the jurisdiction of the zoning board that would have to be approved by the county. Mr. Olivo did not believe so. He added there were comments about curbs, ADA ramps at the driveway, sidewalks all things within county jurisdiction and nothing within the site.

The Chairman asked if it was a right hand turn only exiting the driveway. Mr. Olivo said it was a full movement for each of the driveways.

Mr. Rebsch asked if there were sidewalks in front of the school. Mr. Olivo said yes.

Mr. Denis thought the teachers should park in the park lot vs parking in residential areas. The Chairman said it could be a condition of the approval if the application was approved.

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

No one in the audience wished to ask the witness any questions.

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

The Board Attorney said some of the conditions for the application would be:

- 1) The Zoning Board's approval would be subject to the continuing jurisdiction of all governmental agencies exercising jurisdiction over the development of the premises including but not limited to the Bergen County Planning Board. In the event that any approval by the Bergen County Planning Board results in any changes or modifications of the site plan solely in the jurisdiction of the zoning board presented and approved by the applicant, they would have to return to the board.
- 2) The applicant shall require all employees to utilize onsite parking.
- 3) Compliance with the Engineer's review letter.

The Chairman asked what the County might do to cause this application to come back to the Board. Mr. Sproviero said some of the items would be if they changed their minds regarding the email to Mr. Olivo and changed the driveway location or eliminating parking spaces. Mr. Sproviero said it was not likely that it would happen. Mr. Urdang added that if it happens the applicant would return to the board.

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

No one in the audience wished to ask the witness questions.

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

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

No one wished to comment on this application.

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

The Chairman asked how many variances the applicant was seeking. The Board Attorney stated there was a conditional use for an expansion of a preexisting condition, height variance which was a C variance because it is a 32' commercial building and the applicant was seeking 33.5', front yard parking variance and a fence permit. Mr. Urdang said there was waiver listed on the site plan. The Chairman clarified that a conditional use was a D Variance. Mr. Sproviero agreed.

Mr. Loonam questioned that another application allowed for a 35' height for commercial. Mr. Grygiel explained there were specific standards for a house of worship and school, which limited

it to 32'. Mr. Grygiel said that since it was a conditional use standard for the height, it would be a D3 variance. The Board Attorney agreed.

The Chairman entertained a motion to grant or deny the applicant's request subject to conditions:

- 1) The applicant shall require all employees to utilize onsite parking
- 2) The approval was subject to the continuing jurisdiction of those governmental agencies exercising jurisdiction over the development of the premises including the Bergen County Planning Board with the understanding that if the Bergen County Planning Board did anything that alters the jurisdictional requirements of what the board was approving the applicant would have to return to seek relief
- 3) Compliance with the engineers review letter
- 4) Consolidation of the various lots implicated by this development project and effectuates the merger of the same. Ms. Batistic felt they would need a developer's agreement because they will have to inspect the improvements.
- 5) Subject to a developer's agreement.

**Motion** made by Mr. Denis to approve the application with the conditions, seconded by Mr. Rebsch. Mr. Denis commented that it was a great asset to have a school of this nature for this community. He stated that his observations of the site have been well maintained grounds. The motion passed on a roll call vote as follows:

**For the motion:** Members Denis, Rebsch, Loonam, Weisbrot, Joseph, Adelung, Schaffenberg.  
Approved 7-0

Mr. Loonam added that the applicant has met all the burdens of proof and met the criteria for an inherently beneficial use. He did not think from a legal standpoint this Board had any reason to deny this application. Mr. Loonam said they have expressed and proved to this board that there was a need in the community for the school. He added they have issued a thorough application for the Board.

## NEW BUSINESS

### **15- 07- 244 Main Street Properties, LLC -Block 1312 Lot 1 Expand a two story mixed use building – 3 story mixed use building Density variance and multiple C Variances**

Mr. Carmine Alampi, attorney for the applicant, stated that 244 Main Street Properties, LLC was a limited liability company. He stated that Scott Kahn was one of the principal members who have been a lifelong resident of New Milford. Mr. Alampi noted they have provided notice to the public by publication in the newspaper and certified mail to property owners within 200'.

Mr. Alampi said this was an application on Main Street to develop the property which was presently had one story retail. The zone allows for mixed use of residential and commercial. The application calls for the retail building to remain in the position it was on the corner of the property and renovate and extend the first floor by creating a row of garages. On the second and third floor there would be a total of six residential apartments. Mr. Alampi explained they were in front of the zoning board because the ordinance talks about permitting mixed use but based upon the size of the property they could have one residential unit for every 5,000 sf of property.

Mr. Alampi explained they were asking for 6 units and their property was not 30,000 sf. and this was a variance because of the density ratio to the property. Mr. Alampi did not realize that according to the ordinance, if the majority of the development was residential, the applicant must comply with the residential setbacks. Mr. Alampi said Mr. Grygiel's report brought it to his attention.

Mr. Alampi said the applicant was here asking for six dwelling units not 2.5 units and they were here because of the setback requirements. He stated the impervious coverage would go down slightly even though they were providing more than sufficient parking. The Board Attorney noted that there was a story variance required. Mr. Alampi agreed it was for the number of stories.

Mr. Alampi said they received a review letter from the police department who had no negative comments and the DPW issued a letter and their engineer would address their comments.

The Chairman said New Milford's ordinance stated that if the majority of the property was used for residential even if in a business zone the setbacks apply. The Chairman asked if the impervious and lot coverage also apply. Mr. Grygiel said yes. The Chairman clarified that the residential lot coverage, building coverage and impervious coverage would apply to this application if it was predominantly residential. Mr. Grygiel said it is an ordinance that has been identified that the planning board is looking to rectify. They have recommended some changes to the B zone because of that very reason but currently that is how it is written. Mr. Grygiel said it is applicable and it is a hurdle for anyone looking to develop this type of use in this zone. Mr. Alampi said the planning board is looking at it because they have become aware that the master plan encourages mixed uses especially in the business district. Mr. Alampi was confident that the planning board would recommend to the governing body to reconcile it. The Board Attorney stated the current law applies and the applicant would present their proofs as make their arguments to why they have sustained their burden of proof to receive variances. The Chairman noted the applicant will have additional variances and it is now not predominantly residential. The Board Attorney said it not a preexisting non-conformity because the non-conformity results from the action taken with respect to the improvement of the development.

Mr. Denis questioned if the building would be sprinkled. Mr. Alampi said the architect would address it and said the board did not have the authority to request an upgrade of the sprinkler system but said most of his clients decide to go with it because of their insurance premiums and to make sure their residents were safe. Mr. Alampi thought they were leaning towards the higher-grade sprinkler system.

Joaquin Bouzas, Inglese Architecture, 150 Union Avenue, East Rutherford, NJ was sworn in by the Board Attorney.

The Board Members accepted the qualification of Mr. Bouzas as an expert in architecture. Mr. Alampi marked as **Exhibit A-1** -the three sheet architectural plans dated 12/4/15.

Mr. Bouzas said the property along Main Street was 100.04' and the depth was approximately 125-127' along Summit Avenue. Mr. Alampi stated the property was 12,636 sf and meets the



minimum lot size. Mr. Bouzas agreed. Mr. Alampi asked if the existing building would be moved or demolished in any way or work the project into the building. Mr. Bouzas said they were trying to keep the existing structure. Mr. Alampi asked if the building was getting any closer to the setbacks. The Architect said no and it was to the property line 10'3" and on Summit Avenue it was 14'9" to the property line, which would remain.

Mr. Alampi asked what the existing 2 story building consisted of presently. Mr. Bouzas said it was retail space on the ground store, which he believed was a hair salon and one unit above it. Mr. Alampi said it was already a mixed use. Mr. Alampi clarified that the setbacks requirements if approved would be required to meet the residential standards. Mr. Bouzas agreed. There was discussion on the location of the building being moved to the middle of the lot. Mr. Bouzas said with leaving the building where it is located, it would give them ample parking. They had 12 spaces, which included a handicap space. There was a 24' aisle, which makes it easy to get in and out, and plenty of room to move around. Mr. Bouzas said sheet P-2 showed the west elevations on Summit Avenue. They continued the residential feel along Summit Avenue. There were garage doors with two parking spaces within each bay. He added they were respecting the architecture that was within the adjacent neighborhood. He discussed the materials on the building and said this would be slab on grade. On sheet P-1 it showed they not only had 12 parking spaces but they also had another 6 open parking spaces tucked under the building on the right hand side. Mr. Alampi asked what the total number of parking spaces. Mr. Bouzas said 22 spaces.

Mr. Bouzas discussed the floor plan. He stated they would have a 2 hour fire rated partition separating the units. Mr. Alampi stated there were three units on one level and the upper level exactly the same. Mr. Bouzas said yes and each unit was a two bedroom, two bathrooms and all open living space approximately 1200 sf.

Mr. Bouzas said there was ledgerstone veneer applied to the ground floor, siding, each unit had a nice size picture window, each stairwell had a window, siding shingle for the third floor. Mr. Alampi asked if there was any living space in the attic. Mr. Bouzas said no.

Mr. Bouzas said they would have to comply with the new code of 2015 IBC. This would be a wood frame construction so it would need a 13R sprinkler system within the units. He explained the 13R meant just the living spaces and any bathrooms above 55 sf would have sprinklers. Mr. Bouzas said they don't have to do any small closets or concealed spaces. Mr. Alampi asked if they could accommodate the additional sprinklers in the closet and such. Mr. Bouzas said it would cost a couple thousand dollars to upgrade. Mr. Alampi questioned if it was feasible to upgrade. Mr. Bouzas said yes. The Chairman asked if the fire suppression walls go straight to the top of the roof. Mr. Bouzas said they go to the underside of the roof and extend 4' in each direction.

Mr. Alampi stated the sheet marked P-3 showed an illustration of where the parking spaces would be and asked if it would be left open. Mr. Bouzas said there were six spaces and it would be open. Also on P-3 was the elevation facing Main Street which was the existing retail store with the stone application on the first floor, said Mr. Alampi.

Mr. Alampi marked as **Exhibit A2** – revised plan facing Main Street.

Mr. Alampi told the Chairman that this plan was not filed with the Board but they had received a comment letter that the wall was too bland facing Main Street. Mr. Bouzas said the elevation showed additional windows. Mr. Alampi asked what the length of the building was. Mr. Bouzas said the length was 91' and the property was 125' deep. Mr. Alampi asked if the sign was existing. Mr. Bouzas said it was the existing sign and they were not proposing any changes in size. Mr. Bouzas said there would be gooseneck lights. Mr. Alampi asked if there was elevator service. Mr. Bouzas said no.

The Chairman asked what the size of the parking spaces were. Mr. Bouzas said 9x18. The Chairman asked if there would be one handicap parking space. Mr. Bouzas said yes. The Chairman asked what the age of the building was. Mr. Bouzas did not know. The Chairman said on Exhibit A2 he agreed with the need for windows. He asked if they would consider putting windows in the bathrooms. Mr. Bouzas agreed to more windows to balance it out showing the best locations on the plan. Mr. Alampi asked if they could put more windows on the other side of the building. Mr. Bouzas said they could. Mr. Alampi noted they would be adding six windows on that side.

Mr. Denis said the apartments looked nice. He asked if there would be children in the units and was there play areas for any children in the units. Mr. Bouzas said some children might be there.

Mr. Loonam thought the new windows would be an improvement. He asked if they would still be seeking three stories by virtue of the existing business. Mr. Alampi agreed and said 30 percent of the footprint would be existing. Mr. Loonam asked if this architecturally and aesthetically fit into the neighborhood. Mr. Bouzas believed the architect being proposed was a very downtown main street type of architect. He said it was nothing that would look out of place and felt it would look like it belonged.

Ms. Batistic stated there were only 2 two-car garages and asked who would get the garages. The Board Engineer also asked if they would have to pay extra and how the garages connected to the units. Mr. Bouzas said there was no connection from the garage to the stairwell. They would have to park and come out of the garage. He did not know who would get the garage. Ms. Batistic asked if it was possible if no one wanted the garage it would be rented out to someone that does not live there. Mr. Alampi said they were not looking to that and it was a question of enforcement. Ms. Batistic questioned if parking would be assigned to commercial. Mr. Alampi said the parking lot would be commercial but underneath the building would be for the tenants.

Mr. Rebsch had concerns about entering from Main Street and exiting on Summit. Mr. Bouzas said it was a 24' wide aisle.

Mr. Grygiel said as noted in his letter there was a discrepancy between the architectural plans and the site plans. Mr. Bouzas said they have corrected it and the site plan would prevail. Mr. Grygiel said there were lights shown on the site plans that were not on the architectural plans. Mr. Bouzas said they will need them but they will be there. Mr. Alampi asked if there was lighting proposed for the underneath parking. Mr. Bouzas said that would be lit.

Mr. Loonam asked if cars for the parking spaces numbered 20-23 would have to pull into the garage and park and not park in the driveway. Mr. Bouzas said correct.

The Chairman clarified that there was lighting for the six spaces under the garage and asked if there was lighting for the parking lot.

Mr. Alampi marked as **Exhibit A-3** – single sheet showing the lights mounted on the building Mr. Bouzas said this exhibit showed wall light mounted on the building, which would spill onto the parking area.

Mr. Rebsch said the DPW review letter indicated that the garbage/recycling area is too small to accommodate six two bedroom units and a business and asked if they have addressed that issue. Mr. Bouzas said no but they can make it larger. Mr. Rebsch asked if a truck would be backing into the area or will the tenants be dragging containers to the street. Mr. Bouzas did not know if this would be private pick up but believed that trash could be put out on the street for regular pickup.

Mr. Loonam asked what the parking requirement was for a residential component. Mr. Bouzas said they had 2 spaces per unit. Mr. Loonam saw 10 parking spaces for tenants and asked where the other 2 were. Mr. Bouzas said it would be the spaces marked 1 – 11 and there was a handicap space. Mr. Loonam clarified that tenants could park in those spaces as well. Mr. Bouzas agreed. Mr. Alampi said commercial was restricted to the parking lot area but residents could park there. Mr. Loonam asked how many parking spaces were required for the business. Mr. Bouzas said seven spaces. He added they needed 19 spaces and they were proposing 22 spaces.

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

Ron Phillips, 244 Summit Avenue, asked if the garages would be facing Summit Avenue. Mr. Bouzas agreed. Mr. Phillips asked how far back where the garages from the curb. Mr. Bouzas answered 14'9" to the property line. Mr. Phillips clarified that there would be 7 spaces for commercial. Mr. Bouzas said 7 were required but there were 12 spaces. Mr. Phillips asked if there were plans for landscaping. Mr. Bouzas said along the back of the property bushes and evergreens and the corner of Main/Summit would have landscaping. Mr. Phillips asked even though they were in compliance with the code, did he think there would be any negative impact on the residents on Summit Avenue. The resident noted that currently the parking lot was full. Mr. Bouzas believed they were providing ample parking for the six units and one retail space and did not think there would be a negative impact for the residents on Summit Avenue. Mr. Phillips asked if it would take away any on street parking on Summit. Mr. Bouzas said no. The Chairman asked what was there on Summit currently in terms to parking. Mr. Bouzas said that was a question for the site engineer.

Roy Williams, 265 Summit Avenue, asked where the residents would put their garbage cans. Mr. Bouzas said there was a screened enclosure but because the town did not feel is large enough they would make it larger. Mr. Williams asked if the pickup would be on Main Street. Mr.

Bouzas thought it would be on Summit Avenue. Mr. Williams asked if the driveway was one way. Mr. Bouzas answered yes. Mr. Williams asked if there would be a one way sign. Mr. Bouzas said they would confirm that with the site engineer. Mr. Williams had a concern that tenants would use their garage for storage and park in the driveway. Mr. Bouzas said it was not deep enough to park a car and would overhang the property line onto the sidewalk. Mr. Williams noted that people in New Milford park cars that overhang into the sidewalk and you have to walk in the street. Mr. Williams asked where the AC units would be. Mr. Bouzas said they would be in the recessed area behind the existing retail space. The Chairman asked if that area was open. Mr. Bouzas answered it was an open inset but out of the drive aisle. The Chairman asked how far back it was recessed. Mr. Bouzas answered 5'. The resident was concerned about the rodents from the trash.

Mr. Williams asked if there were plans to expand the retail. Mr. Bouzas said no. Mr. Williams was concerned if they were changing the nature of the business because there was a problem with the customers from Pancho's Restaurant parking in front of homes. Mr. Williams asked if the applicant would need board approval if they wanted a restaurant. Mr. Sproviero said it would not require a use variance in the context of this application and would be a permitted use. Mr. Alampi said it might implicate parking and may need to return for site plan approval. Mr. Sproviero agreed. Mr. Grygiel pointed out that in the ordinance restaurants were not permitted in the business zone but only if it was part of a shopping center. He added the ordinance was antiquated the way it written. Mr. Alampi asked what they considered a shopping center.

Mr. Williams asked if the Board might reconsider sending notices to more residents than the 200'. The Chairman said no because it was a state statute.

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

Recess

Mr. Adnan Khan, site engineer, 150 River Road, Montville NJ, was sworn in by the Board Attorney.

The Board Members accepted the qualifications of Mr. Khan as a licensed engineer.

Mr. Alampi marked as **Exhibit A-4** – 7 sheet -preliminary and final site plan dated 12/4/15.

Mr. Alampi said the existing two-story building would become a three-story building and asked if the footprint would be enlarged. Mr. Khan said the footprint would be the same. Mr. Khan clarified there would be three curb cuts on Summit Avenue. He added they were proposing a stop sign and a stop bar at the end of the driveway. The engineer stated there was one handicap parking space when entering from Main Street. Mr. Alampi asked if that meets the ADA requirements. Mr. Khan said yes.

Mr. Adelung asked if the handicap parking space counted as the 7 spaces required for commercial. Mr. Khan said it can be used for commercial or residential and it was included in the 22 parking spaces.

Mr. Alampi asked Ms. Batistic if she shared the same concerns as the DPW. Ms. Batistic responded yes. Mr. Khan said they were proposing new sanitary lines for the residential component of the use. The only existing sanitary line that they would reuse was for the commercial that currently exists. He said the DPW also said a video must be provided to DPW which they agreed to. Mr. Khan discussed the runoff at the site. He stated it would ultimately be discharged towards Summit Avenue to the inlets. He explained in addition to the surface runoff they were proposing a roof header system for all the roof area. He added all the roof runoff and generalizing it into the inlet. The engineer stated all impervious coverage on the property would be reduced approximately 2 percent.

Ms. Batistic stated they were taking a large amount of water and dumping it into one catch basin and asked if they considered using more than one. Mr. Khan thought that was a good point and said they could accommodate it by taking the front half of the building and direct it to one outlet and the other half to another one. Mr. Alampi clarified that they would split the diversion of the water 50/50 to each catch basin. Mr. Khan agreed.

Mr. Khan said they were proposing 5 wallpack lights on the building, which was located in the L- shape section of the drive aisle. He stated there would not be any light spillage across the property. The Engineer stated they were proposing 13 evergreens along the eastern property line. He added there was an existing vegetation buffer along the southern property.

Mr. Alampi asked if the proposed vinyl fence was for the trash enclosure. Mr. Khan agreed and said it was 6' high with no roof.

Mr. Alampi asked if the physical position of the building maximize the number of parking that they could accommodate and does it create a good traffic circulation on the site. Mr. Khan said with using the existing structure this was the best option they had that maximized parking and circulation.

Mr. Rebsch thought it would be safer to enter the site on Summit and exit on Main Street because there was a lot of traffic on Main Street and vehicles would stop short to make the sharp right turn into the site from Main. Mr. Khan said they were utilizing the existing curb cut on Main Street. Mr. Rebsch said he was thinking of safety. Ms. Batistic thought that it might be the opposite. Mr. Loonam said they don't know what the business would be and thought Mr. Rebsch brought up a valid point. Mr. Alampi said the preference was when you leave a property you go to a intersection. Ms. Batistic would have the traffic engineer review it and see what his opinion was on this issue. Mr. Alampi said if the board's consultant agreed with it, the applicant would not resist it but thought they should let the professional call it.

Mr. Loonam asked about the porous pavement that was used at Sanzari's parking lot and would it be beneficial at this site. Mr. Alampi said it was a great system but it was a raised system. Mr. Loonam asked if they were keeping the existing macadam or would it be replaced. Mr. Khan said it would be repaved.

Mr. Rebsch asked the board attorney how this would affect COAH. The Board Attorney said there was no indication that any of these were being designated for affordable housing purposes so it doesn't affect it.

Mr. Loonam asked if there was a reason they did not have a thirteenth parking spot. Mr. Khan said it was a mistake and clarified that there were 22 spaces. Mr. Alampi said there were 22 spaces.

Mr. Adelung has questions on the trash. Mr. Khan said they would be enlarging the enclosure and accommodate more cans. The cans would have to be wheeled to the street for curb side pickup. Mr. Adelung asked if the DPW asked for a certain dimension for the trash area. Mr. Khan said the parameter would be one can per resident and one can per commercial use and some cans for recycling. He said they were showing 5 cans and they are now revising it to 10 cans. Mr. Adelung asked if commercial could put cans on the street. The Board Attorney said no that the commercial unit would provide for garbage removal by a separate contractor. Mr. Alampi said they would be using a large heavy-duty plastic garbage container and it would be removed by private sanitation.

Ms. Batistic said the location for the garbage was not suitable for the tenants and it was next to the residential properties. Ms. Batistic asked if they could locate it by one of the garages. Mr. Alampi said they would relocate it and take it away from the neighbors. Mr. Bouzas said they could locate it by the building.

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

Ron Phillips, 244 Summit Avenue, said there was no vegetation along the southern property line. Mr. Khan said maybe they could add some landscaping.

Motion to close was made by Mr. Denis, seconded by Mr. Weisbrot and carried by all.

Mr. David Spatz, 60 Friend Terrace, Harrington Park, NJ was sworn in by the Board Attorney.

The Board Members accepted the qualifications of David Spatz as a professional planning consultant.

Mr. Alampi marked as **Exhibit A-5** – photo board of properties in the neighborhood.

Mr. Spatz discussed the photos of properties in the area. Mr. Alampi clarified that the property was in the business zone. Mr. Spatz agreed. Mr. Alampi said the application calls for retaining the commercial/retail structure. Mr. Spatz said mixed uses were permitted in the business zone and the Master Plan suggests it as an appropriate development type in the B-zone on Main Street. Mr. Alampi asked Mr. Spatz if the fact that the master plan addresses and recommends it as an appropriate use help him to develop the evidence of the proofs to support his opinion that the special reasons exist. Mr. Spatz said yes that they need both the purposes of the MLUL and local ordinance. When the master plan specially says the development that they were proposing was

recommended for the area, it enhances the special reason being proposed, said Mr. Spatz. Mr. Alampi asked how he would reconcile the density increase that they feel was an appropriate scale. Mr. Spatz said it was a large piece of property almost twice as large as properties in the area. They compared it to the multifamily dwelling adjacent to the property across the street, which was on a smaller piece of property, and they had a lower density. Mr. Spatz said that property was 27 units/acre and they were 20 units/acre. Mr. Alampi asked if it was his opinion that when compared to other developments it was a lesser density. Mr. Spatz said it was a lesser density than the multifamily use that was located in the business zone. There was a number of mixed uses in the area but there was a number of older and newer buildings. He added there were three story buildings within the area. In terms of use and design they fit in the neighborhood, said Mr. Spatz.

Mr. Alampi asked if he agreed that existing conditions was an underutilization of the property. Mr. Spatz said yes. Mr. Alampi asked if there were several commercial users that utilize the parking on this site that did not occupy the property. Mr. Spatz said yes. Mr. Alampi asked if that was a desirable situation. Mr. Spatz said no and those commercial vehicles were parked adjacent to the residents. Mr. Alampi asked if the redevelopment of this proposal creating primarily residential with a mixed use disaffect the residential neighborhood. Mr. Spatz said having a smaller commercial/ mixed-use building where it was located with a large area of pavement did not enhance the neighborhood. The proposed commercial space up front along Main Street and the residential units as you travel down along other residents fit in, said Mr. Spatz. Mr. Alampi asked if he thought this development would have a substantial negative impact in the business zone or the residential zone. Mr. Spatz did not believe there was any impact and nothing that would be substantial. He believed there would be a positive impact because developing the property provides additional residential uses. Mr. Spatz said improvements being made to the property benefit the municipality, improved drainage conditions and landscaping was private expenditure capital which benefit the public.

Mr. Alampi asked his opinion as to its suitability on the position of the building and the planned development when considering the setback requirement. Mr. Spatz said the existing building required a variance for front yard setback. It meets one of the objectives of the master plan update which recommended eliminating front yard setbacks on Main Street. He added although they met all the standards for the commercial zone they were required because of the residential component to meet the standards for residential zone. Mr. Alampi asked why the master plan would want to eliminate front yard setback and what purpose of planning would be advanced. Mr. Spatz said creating a streetscape where the retail stores and mixed uses were right up to the sidewalk was typical in most business districts. He added the trend was towards allowing and recommending mixed uses.

Mr. Spatz said with a density variance, the testimony he needed to provide was that the site could accommodate the increased density which he believed it could. He stated the site which was twice the size of what the zone required could handle the increased density and they met the zoning from the MLUL and master plan. The planner said they were promoting a visual environment with an improved building and landscaping. Mr. Alampi stated that if they fulfill any one of the purposes they can fulfill the special reason criteria. Mr. Spatz agreed. Mr. Alampi asked if the property could handle the density. Mr. Spatz said it could. Mr. Alampi asked if

adding new housing units was positive for the community. Mr. Spatz agreed and added this was not proposed as affordable housing and would not have an effect on the municipalities COAH requirements. Mr. Alampi asked if this building was positioned in the proper location for this site. Mr. Spatz said yes and building around it was the appropriate way to do it and it maximized the parking. He stated they had two front yards because they were on Summit and Main Street and they were getting closer to the residents behind them but were putting landscaping to screen it. He added the residents on Summit would be looking at a facade with closed garage doors.

The Chairman asked for the calculation of residential units/acre. Mr. Spatz said the size of the property would permit 2.5 units and they were proposing 6 units but when translated to unit per acre they were 20.7 units per acre. The Chairman noted that the use across the street was 27 units/acre. Mr. Spatz said that one was 27.5 units/acre which was a higher density. The Chairman asked how many units they had and how large was that property. Mr. Spatz said 4 units and thought it was about 50x100.

Mr. Weisbrot asked why five units would not be better. Mr. Spatz answered the building was designed three units over three. If they eliminated one of the units on the floor, without chopping the building apart, all of the units would be substantially larger or there would be three or four bedrooms units. He added with a larger apartment there could be substantially more children. Mr. Weisbrot asked if he was told to plan six units and figure out if the density was appropriate or did he do an analysis of how many units would be appropriate for this density. Mr. Spatz answered the site plan that he was provided to review showed six units and he felt as designed it could support the six units. He did not recommend to them to get rid of a unit because he did not have a problem with six units.

Mr. Weisbrot said the Chairman has had strong opinions on height on other one story applications proposing three stories. He asked why the applicant could not go down. Mr. Alampi answered that no one wanted a declining driveway and water coming into the building unless there was no choice. Mr. Weisbrot said they had a lot of them on his block and had no choice. Mr. Spatz said the zone permits 2 ½ stories and 35' and they were at 3 stories and 35'. He added they were only a ½ story greater.

Mr. Loonam asked as a planner in a B-zone in a bedroom community what would be the right use for the site. Mr. Spatz said as the master plan and the ordinance states mixed uses are permitted and the master plan update encourages it. It is to bring in a use that has a more 24-hour activity going on and it was a more preferred development on a main street. Mr. Loonam stated the residential component was about 7500 sf not including the garage and 930 sf for commercial. Mr. Loonam asked if the driving economic force of mixed use in business zone was supposed to be the business not the residential. Mr. Spatz said not at all because some areas have apartment buildings of seven stories with commercial space downstairs. He added it was a mixed use and appropriate for a commercial area and had a larger ratio of residents to commercial. Mr. Loonam said as a planner did he think it was good planning to have the driving economic force be residential component as opposed to the business. Mr. Spatz saw no problem the way it was designed and said it was typical mixed use development in a commercial area. He said on a smaller piece of property it would not fit but with this piece of property he thought it did and the numbers of units were appropriate. Mr. Loonam said he mentioned it was a typical mixed use



and asked if he thought this was typical. Mr. Spatz said yes it was typical of a business area. He thought a three story 35' building in a zone that permits it was appropriate. Mr. Loonam said the business that was a small part of the application was what allows them to have 35'. He was concerned that they were using the business to create an apartment complex and asked if he thought that was what was happening with this application. Mr. Spatz said no and thought the number of units and the size of the building was driven by the fact that there was a piece of property in a zone that required 5,000 sf and they had over 12,000 sf. He thought it was the size of the property that permits the proposed use. Mr. Loonam asked if this was an over utilization of the property. Mr. Spatz said no because he believed the site given its location on the corner and the size of the property could handle the six units and the one commercial space. He added as the courts upheld it was a question can the property sustain the increased density and he said they could. They had an excess amount of parking, drainage could be handled on the property, additional landscaping was proposed and the residents benefits from the rear of their property, said Mr. Spatz. He added it was definitely not an overdevelopment of the property.

Mr. Loonam said he testified that the increased residential development would be a part of what would help to meet the positive criteria. Mr. Spatz said to be able to provide residences of variety of size for a variety of residents of New Milford or new residents to New Milford was a purpose of zoning. He said it was a use permitted in the zoning ordinance and the way it was designed meeting the zoning ordinance and the master plan was a positive impact. Mr. Spatz said the number of units was appropriate given the size. He added that if the commercial space was made larger they would lose parking that served the residents and commercial.

Mr. Loonam asked the planner if it was his opinion that the business should not be subdivided in the future to make two smaller businesses. Mr. Spatz did not have a problem either way because if the total commercial square footage stayed the same it would not change anything. His recommendation would be to keep it this size but smaller spaces would not be inappropriate. Mr. Loonam asked if it was the intention of the applicant to have one business. Mr. Spatz said the proposal was for one business and he had not heard of any discussion to make it two spaces.

Mr. Adelung thought the only way to put more commercial would be to go south which would encroach more into the residential part of the neighborhood. Mr. Spatz agreed. He said the residences being proposed provide a buffer for the other lower density residential uses. Mr. Spatz said to make the commercial bigger just to make it bigger did not serve any purpose or benefit the neighbors.

Motion to open to the public was made by Mr. Adelung, seconded by Mr. Denis and carried by all.

Ron Phillips, 244 Summit Avenue, said that New Milford seemed to have a problem filling commercial vacant space and asked if it reinforced his opinion about having this mixed use development relying on the residential component. Mr. Spatz said there would always be occupancy on the property with the residential units and hopefully they would have a viable commercial use. The resident asked if it was his opinion that the new residents would benefit other businesses on Main Street. Mr. Spatz said bringing residents to a commercial area benefit the commercial area. Mr. Phillips asked if it was ever permissible for a development to have their

trash receptacles out on the curb. Mr. Spatz thought most municipalities did not allow garbage cans left at the curb and showed the resident where they proposed to have the trash enclosure.

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

Mr. Alampi thought the board members would want to see on revised plans the adjustments to the trash location. The Board Attorney suggested before they commit that to a drawing perhaps there could be some communication between the engineers. Mr. Alampi agreed and thought they might recall the engineer. Mr. Alampi said they would return to the February 9<sup>th</sup> meeting.

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

Respectfully submitted,  
Maureen Oppelaar