



# TOWN OF NEW MILFORD

Office of the Zoning Commission  
10 Main Street  
New Milford, Connecticut 06776  
Telephone (860) 355-6095 • Fax (860) 210-2664  
www.newmilford.org

## ZONING COMMISSION SPECIAL MEETING MINUTES MAY 24, 2016

**Present:** Sharon Ward, Vice Chairwoman, *seated and voting*  
James Volinski, Secretary, *seated and voting*  
Charles Bogie, Member, *seated and voting* (left the meeting at 9:30pm)  
Thomas O'Brien, Member, *seated and voting*  
Rob DiMichele, Alternate, *seated and voting*  
Laura Regan, Zoning Enforcement Officer, *not seated or voting*

**Absent:** William Taylor, Chairman  
Joseph Girardot, Alternate  
Richard Saitta, Alternate

### 1) CALL TO ORDER AND PLEDGE OF ALLEGIANCE:

Ms. Ward called the Special Meeting of May 24, 2016 to order at 7:00pm and led the room in the Pledge of Allegiance. Ms. Ward seated Mr. DiMichele.

### 2) PUBLIC PARTICIPATION:

Ms. Ward opened the floor to any public participation.

Larry Greenspan, 17 Terrace Place, addressed the Commission with regard to the Jennings Oil public hearing and whether there are any Zoning Regulations with regard to hazmat material storage in the B-2 or Industrial Zones. Ms. Regan replied that this would fall under the Fire Code and would be reviewed by the Fire Marshal.

### 3) PUBLIC HEARINGS:

- a. Town of New Milford, Special Permit and Site Plan Applications under Chapters 80, 175, and 180 to allow the construction of a 1,512 SF, 1-story addition to the Richmond Senior Center for use as a multi-purpose room, on property located at 40 Main Street, Map 35.2, Lot 197, in the VC zone. ***Request to waive traffic study, lighting plan, and landscape plan. Close by May 24, 2016***

Ms. Regan made note of several memos received. Three memos from Mike Zarba, PE, Public Works Director, all dated May 19, 2016, addressing the comments from the Town Engineer, the comments from the Wetlands Enforcement Officer, and the comments from the Zoning Staff Review. A memo from Daniel Stanton, PE, Town Engineer, dated May 24, 2016, stating the applicant and his engineer have answered his comments and questions and he has no further comments at this time. Ms. Regan made note of the outstanding information regarding access and easements, stating that the town attorney had reviewed the easements and determined other than the northerly Elm Street access, which

is by licensure from the New Milford/Danbury Hospital, the Town owns by deed or prescriptively, which is continued open use, 40 Main Street, including the building, parking, and westerly access on Main Street.

Mike Zarba, PE, Public Works Director, as well as David Wenchell, Project Architect, from Silver/Petrucci & Associates, and Donald Smith, Consulting Civil Engineer, were present to address the Commission. Mr. Zarba presented several photos to depict the existing landscaping and describe how it will look after the completion of the project. Mr. Bogie stated he had been to the site since the last meeting and had seen the layout.

Ms. Ward asked Mr. Zarba if he had any additional comments with regard to his discussion with the town engineer. Mr. Zarba stated that they had discussed and updated the plans with regard to the recharger systems. Mr. Zarba stated they had also discussed access and easements and noted that Main Street is officially their designated access, with the second access easement being granted in 1991 from the hospital as well as some additional parking spaces that were added at that time. Ms. Ward made note of the updated storm water management plan that was received.

Mr. DiMichele asked Mr. Zarba how seniors will be able to access the Senior Center during construction. Mr. Zarba indicated where the temporary walk way will be during the 4-5 month construction process stating that it will be a stone/gravel material and will be handicap accessible. Mr. Zarba added that they are very excited to maximize the grant dollars they received and to provide a much needed improvement to the Senior Center.

*Mr. Volinski moved to waive the traffic study, lighting plan, and landscape plan for Town of New Milford, Special Permit and Site Plan Applications under Chapters 80, 175, and 180 to allow the construction of a 1,512 SF, 1-story addition to the Richmond Senior Center for use as a multi-purpose room, on property located at 40 Main Street, Map 35.2, Lot 197, in the VC zone. The motion was seconded by Mr. O'Brien and carried unanimously.*

*Mr. Bogie moved to close the public hearing for Town of New Milford, Special Permit and Site Plan Applications under Chapters 80, 175, and 180 to allow the construction of a 1,512 SF, 1-story addition to the Richmond Senior Center for use as a multi-purpose room, on property located at 40 Main Street, Map 35.2, Lot 197, in the VC zone. The motion was seconded by Mr. DiMichele and carried unanimously.*

- b. Depot Street Realty Holding Company Inc., Special Permit and Site Plan Applications under Chapters 105, 175, and 180 to allow the establishment and completion of a 19-unit Planned Residential Development (PRD) that was previously approved and partially constructed as a 19-unit Active Adult Community (AAC), on property located at 1 - 6 and 8 Hardwoods Circle, and 1 - 12 Tall Oaks Drive, Map 42, Lots 6 and 6.1 in the R-40 Zone. ***Request to waive traffic study. Close by May 24, 2016***

Ms. Ward asked Ms. Regan if there was any new material to present. Ms. Regan stated that she had met with the applicants engineer at the site that day and that there was an updated existing conditions map of the site that would be presented.

Paul Szymanski, PE, President Arthur H. Howland & Associates, P.C., stated that since the last meeting the survey crew had completed as-builts on existing residences, walkways, driveways, the private road, the graded infrastructure, as well as the existing topography of the entire disturbed area and the existing landscaping. A response in writing will be provided with regard the conversation with the Zoning Enforcement Officer. Mr. Szymanski provided updated existing conditions site maps to all the Commission members, as well as an overlay of the previously approved site plan map to demonstrate that the units that have been constructed are in the exact locations that they were proposed. The configuration and grade of the roadway and the topography for the currently developed areas were also demonstrated as they were proposed and approved. Mr. Szymanski stated that the assertion that there was additional excessive excavation done was false. Mr. Szymanski stated that these documents have been certified by the land surveyor and demonstrate compliance with lot coverage based on the current existing residences, being at 1.65 percent lot coverage, which is less than the allowed 25 percent. The proposed construction of the remaining units will be somewhere around 5 to 6 percent.

Mr. Szymanski addressed the minimum requirement of 2 parking spaces per dwelling unit plus 1 off street visitor parking space per 4 dwelling units, stating the proposed units will provide a minimum of 3, most will provide 4 spaces. Mr. Szymanski stated the plans are fully compliant with conservation easements with the previously approved plans as well as from a PRD standpoint. The plan will include supplemental landscaping on the north side of the property, as well as the eastern edge of the property, and along the frontage north of the entrance way based on comments from staff to provide additional buffering from Aspetuck Ridge Road. Mr. Szymanski encouraged members of the Commission to visit the site, stating that previous comments made about the unsightliness, construction equipment, and exposed pipes are false, any pipes sticking out of the ground are previously installed utilities that have not been utilized and lots that are not mowed are due to not having been graded yet. Mr. Szymanski stated they are not proposing to change the visual aspect of the proposal, nor the size of the units, they are maintaining consistency. Mr. Szymanski stated that he would provide the additional information requested prior to the next meeting with ample time for the Commission and public to review.

Ms. Ward opened the floor for public participation.

Anthony Carrato, 3 Hardwood Circle, stated that if the bank's request to remove the age restriction helps the project get completed, that he and his wife think that is just fine, getting the project finished would be a good thing.

Tapani Seppa, 3 Tall Oaks Drive, stated that he did not feel the previous comparison to Ridgefield and other towns was accurate, as he has lived in both and they are very different with regard to zoning regulations. Mr. Seppa stated he was not against making the area developable, stating he didn't feel keeping the age restriction will work.

Charlie Raymond, former Zoning Commission member, stated he voted in good faith to approve this original nicely presented project. Now he feels that they are being asked to bail out a project that has failed for a variety of reasons, and being asked to down zone which he feels is not fair for those who purchased with the intent of having an Active Adult Community. Mr. Raymond feels this is bad policy and bad practice looking to the future, stating that while the market may not be good now, that if it were built as proposed, it could be marketable in the future. Mr. Raymond stated that because they were lax in monitoring of the property, he feels up to double the amount of proposed excavation may have occurred.

Jeanette Hicks, 145 Aspetuck Ridge Road, stated that in regards to waiving of the traffic study, she feels that traffic increases and issues with line of sight should be addressed, stating the entrance is uphill and sloping with curves, causing multiple cars to crash into her yard and neighboring properties. Ms. Hicks stated that she is opposed to the hybrid zoning model being proposed, and would prefer it revert back to traditional R-40 zoning. Ms. Hicks stated putting 19, 4-5 bedroom homes on this land, jeopardizes the beautiful area and existing trout stream and is not the proper use for this land and sets a bad precedence.

Brooks Temple, New Milford resident, stated that his previous comparison to Ridgefield was misunderstood, that he mentioned 3 other Active Adult Communities in New Milford and around the country are selling just fine, that the need is growing. Mr. Temple stated that he is disappointed that some units being advertised for sale are listed as 3 bedroom dwellings. Mr. Temple stated the vision of a quiet and comfortable Active Adult Community with paved golf cart paths perhaps leading to the swim and tennis club or the trout stream would have been nice.

Daniel Readyoff, Attorney for Helen Lillis, stated that in continuing to review this file, when this development was approved the maximum number of bedrooms per dwelling unit was to be 2 bedrooms, demonstrating the development is not in compliance. Mr. Readyoff referenced documents provided by Mr. Szymanski stating that only 1 house has a permit to discharge for 2 bedrooms, 3 have a permit to discharge for 3 bedrooms and 2 have permits to discharge for 4 bedrooms, for a total of 19 bedrooms which is basically half of those allowed, allocated to less than one third of the proposed homes. Mr. Readyoff questions how this could happen when the regulations clearly state 2 bedrooms per dwelling unit, stating that there have been discrepancies in what constitutes a bedroom. Mr. Readyoff stated the unfinished aesthetic and poor marketing strategies have been problematic. Mr. Readyoff reiterated Mr. Taylor's previous statement that zoning decisions are not based on the economics of a project and that the only consideration is the land use and adherence to the Zoning Regulations, questioning whether the Zoning Commission looks to see if the applicant is in compliance with the current conditions, which they are not. Mr. Readyoff and his client wish the community to be left the way it is, enforcing the bedroom restriction, or revert back to the original R-40 designation. Mr. Readyoff read into record a letter from his client, Helen Lillis, 171 Aspetuck Ridge Road, stating that while she was opposed to this development, she had to, in good faith, accept it and trust that the promises made would be kept. She feels that there is no place for children to play, that the space is not adequate for this type of use and does not protect the current property owners. Ms. Lillis asks the Commission to please vote no on this proposal.

Brian Walton, 172 Aspetuck Ridge Road, expressed his encouragement to Commission to leave the development as is or let it revert to the previous R-40 Zone and not allow the developers and bank to have it both ways.

Ms. Ward read into record a letter from John Kane, 7 Crossman Road, writing in response to the newspaper article with regard to the bedroom restrictions, stating the bank and developers bought into this endeavor with full knowledge of what they were buying. As a taxpayer, he does not want a higher mill rate so that real estate developers are guaranteed a profit, this is not the way free enterprise should work in his opinion.

Paul Szymanski wished to clarify several items brought up during public comment. The first being with regard to the bank, Depot Street Realty Holding Company, purchasing this for development purposes, stating the land records show the property was taken back by foreclosure, it is not an investment for the bank, it is a loss for the bank.

Mr. O'Brien asked for clarification if the bank is the developer. Mr. Szymanski clarified that the bank is not the developer, they foreclosed on the property and wish to sell it, noting they have in good faith tried to develop and sell units, some of the original units had sold for as much as \$650,000 and recently sold for as little as \$325,000.

Mr. Szymanski responded to the statement made that perhaps double the amount of excavation had occurred, stating that was false and the land surveys show the original and current topography. Mr. Szymanski addressed the comment about the line of sight concerns, stating that he would locate the original approval, noting the line of sight had not changed since then. With regard to traffic volume, he will provide traffic volume counts based on the number of bedrooms, which will be limited to 50 total.

With regard to the golf cart paths, he noted that was never approved and they have no intention of adding that, however, there was and still is a small recreational walking path proposed in the southwest corner of the property. Mr. Szymanski stated they are adhering to the original conservation easement and they are willing to ease a comparable amount, about 40 percent of the site. Mr. Szymanski states that a PRD Zoning designation is much clearer about bedroom designation and easier to enforce, if the development reverted back to the R-40 Zone it would be completely non-conforming, and in an R-40 no buffers are required. The proposed topographic and vegetative screening of a minimum of 50 feet provides significantly more buffering. Mr. Szymanski stated he would provide further comments in writing to show the proposed landscaping and demonstrate compliance with each and every section of the PRD regulations.

Ms. Ward had Mr. Szymanski sign the extension and stated the public hearing would remain open and continue at the next meeting on June 14, 2016.

Mr. DiMichele asked for clarification on the number of bedrooms that will be built, wanting an accurate, exact number of bedrooms being proposed for each dwelling in writing. Mr. Szymanski stated he would provide that at the next meeting.

Mr. O'Brien stated his concern that the original approval limited the number of bedrooms per dwelling to 2, but the as-builts show some have 3 or 4. Ms. Regan stated that the previous definition of a bedroom was unclear and made it possible to add rooms that were not defined as bedrooms, and has since been clarified, so that the bedrooms are now accounted for, and included in the limit of 50 for the development. Ms. Regan noted that she has filed caveats on the land records so that anyone purchasing them understands per the Zoning Regulations, even though they may be marketed as having 3 or 4 bedrooms, they are only allowed 2 bedrooms. Mr. Szymanski added that the current restrictions limit the occupancy to 2 persons plus 1 guest for a certain amount of time, which would be lifted under the PRD. Ms. Regan asked Mr. Szymanski to provide a draft of those modifications.

Jeanette Hicks, 145 Aspetuck Ridge Road, questioned the proposed buffer zone, stating the PRD Zone requires a 100 ft buffer zone around the entire perimeter, stating that she feels the applicant is asking for the easiest solution with the proposed hybrid zone.

***Ms. Ward moved to accept a 30 day extension for Depot Street Realty Holding Company Inc., Special Permit and Site Plan Applications under Chapters 105, 175, and 180 to allow the establishment and completion of a 19-unit Planned Residential Development (PRD) that was previously approved and partially constructed as a 19-unit Active Adult Community (AAC), on property located at 1 - 6 and 8 Hardwoods Circle, and 1 - 12***

*Tall Oaks Drive, Map 42, Lots 6 and 6.1 in the R-40 Zone. The motion was seconded by Mr. Volinski and carried unanimously.*

- c. First Hartford Realty Corporation, Special Permit and Site Plan Applications under Chapters 60, 175, and 180 and CGS Section 14-321 to allow the construction of a gasoline service station and convenience market, along with associated parking, landscaping, lighting, and drainage, on property located at 376 Danbury Road, Map 10.3, Lot 26 in the IC zone. **Close by May 24, 2016**

Ms. Ward asked Ms. Regan if there was any new information to add to which Ms. Regan replied nothing new had been received.

David Albanese, Moots Pellegrini, Attorney at Law, provided written responses prepared by VHB in response to the Zoning Enforcement Officer's Staff Report and Milone & MacBroom's Peer Review Reports. Mr. Albanese stated that a response had not been completed for the Milone & MacBroom Traffic Peer Review, but would be forthcoming after Mr. O'Leary addressed the Commission about the proposed curb cuts.

Patrick O'Leary, PE, Principal, VHB, was present to address the Commission. Mr. O'Leary submitted copies of the DOT Right of Way Plans that break the non-access line to permit the curb cut. Mr. O'Leary made note of the Release of Rights in bold black lettering on the Highway of Release Map that is on file both in the land records as well as with the DOT, which was acquired by the landowner and is in full effect for the site, noting it is limited to a right turn in and right turn out, never to break the median barrier. The client is respectfully requesting to leave the curb cuts as proposed, stating to alleviate the concerns of the Commission, they could post signs limiting certain traffic turns during peak hours.

Mr. Bogie interjected that that was not acceptable. Mr. O'Leary stated that he understood, and will go back to applicant to convey the sentiments of the Commission. Ms. Regan reminded Mr. O'Leary that the Curb Cut and Access Management Plan only shows one curb cut on Larson Road and one curb cut on Danbury Road. Mr. O'Leary stated that without the planned first curb cut into the site on Larson Road, unfortunately the site no longer works.

Mr. Bogie asked for clarification as to why they believe the site no longer works without that curb cut. Mr. O'Leary stated that it would not be possible for the fuel tanker to make deliveries. Mr. Bogie stated that if the tanker can make the first turn, he sees no reason why he couldn't make the same turn further up Larson Road and into the site. Mr. O'Leary stated the turn radius would be a 180 degree turn and noted the traffic survey agreed that it would not work. Mr. O'Leary respectfully requested that the Commission at least consider the additional curb cut marked as an in-only access. Mr. O'Leary stated that there are currently two curb cuts into the site from Larson Road that they plan to leave where they are, which is pre-existing non-conforming. One other proposal they would like to seek input on is the location of the crosswalk across Larson Road from the High School into the site. Mr. O'Leary and the Commission members discussed the different options and where the optimal location would be. Mr. Bogie and Mr. O'Brien stated that the High School kids will use the most direct route and not necessarily pay attention to crosswalks or walk only on sidewalks.

Ms. Ward reminded Mr. O'Leary that the Commission's primary concern is for safety, for pedestrians and for the public with regard to tanker trucks entering and exiting the site.

Mr. O'Brien asked if either of these crosswalk and alternate sidewalk plans would take away from the proposed green space. Mr. O'Leary stated that either way, green space is lost. Mr. DiMichele suggested moving the curb cut to avoid losing green space. Mr. O'Leary stated that the ideal situation is to have the curb cut align with the high school driveway.

Ms. Regan stated that she will consult with the Public Works Department who will make recommendations to the Traffic Authority for approval of where the crosswalk should be.

Mr. O'Leary stated he would go back to his client and try to convey the Commission's concerns and suggestions and try to reach common ground with regard to the curb cuts, crosswalk and sidewalks. Mr. O'Leary made note of the written responses to the engineering comments, stating that his client would prefer to do a percolation test prior to the issuance of a building permit, not at this time. Mr. O'Leary stated that they will work with the Commission's engineer for stormwater management that is acceptable, noting that they are flexible to the satisfaction of the Commission. Ms. Regan asked Ms. Ward if that was permissible, Ms. Ward stated that is permissible as long as the hearing remains open, which it will. Mr. O'Leary distributed updated landscaping calculations and noted that the applicant is willing to modify plans to the satisfaction of the Commission. Mr. O'Leary made note of the potential sight line easement requested near the existing home bordering the rear of the property, stating that his client would respectfully request not to have to engage in that activity and felt it was an unusual request. Mr. O'Leary stated that his client would be happy to post more speed limit signs if the Commission wished.

Ms. Regan stated that Department of Public Works would be consulted with regard to the curb cuts, driveways and signage on Larson Road, as it is a Town road.

Ms. Ward opened the floor to public participation.

Patricia Greenspan, 17 Terrace Place, stated that she is still very offended at the possibility of having an egress road from a gasoline station sharing with the traffic coming out of the high school. Mrs. Greenspan stated that it is a very poor plan in her opinion. Mrs. Greenspan stated the primary concern should be the safety of the children and feels the application should be denied.

Marion Szollosy, 520 Danbury Road, stated her opposition to this application. Ms. Szollosy stated that it will lead to bad dietary decisions by unsupervised children. Ms. Szollosy stated that there is potential danger from predators, stalkers, and drug dealers who may use this location to prey upon the children. She stated that the seating area will become a new hangout for teens and ultimately stir up trouble. Ms. Szollosy stated that the primary reason Cumberland Farms chose this location is because of the potential business associated with the high school. Ms. Szollosy stated that her family owns the gas station up the road and she knows first hand the types of people who hang out in and around these types of businesses. Ms. Szollosy made note of available DOT traffic count information and stated the danger of fuel storage and transportation next to the High School. Ms. Szollosy made note of a bulletin from June 2008 regarding Route 7 and Route 202 Curb Cut and Access Management Overlay Zone, recommending that no driveways be allowed along this frontage or at this intersection due to potential traffic conflicts.

Mr. O'Brien stated that the applicant had been previously asked to provide an updated traffic study to include the effects of the traffic from the High School activities and buses. Mr. O'Leary stated that he would provide that at the next meeting.

Ms. Ward asked Mr. O’Leary to also provide safety records from Cumberland Farms in response to the safety concerns expressed about the fuel storage and transportation, as it will be in close proximity to the High School. Mr. O’Leary stated that he would provide them at the next meeting.

*Ms. Ward moved to accept a 30 day extension for First Hartford Realty Corporation, Special Permit and Site Plan Applications under Chapters 60, 175, and 180 and CGS Section 14-321 to allow the construction of a gasoline service station and convenience market, along with associated parking, landscaping, lighting, and drainage, on property located at 376 Danbury Road, Map 10.3, Lot 26 in the IC zone. The motion was seconded by Mr. Volinski and carried unanimously.*

- d. Sunny View School, Application to Amend the New Milford Zoning Regulations, Chapter 25, Section 025-100, Special Permit Uses in Residential Districts, to add subsection (w) as follows: “A school may have a caretaker residential unit not to exceed 1,200 square feet of living area. The living space shall have existed prior to December 1, 1971”. **Close by June 14, 2016**

Mr. Volinski read the public hearing legal notice.

Ms. Regan noted that she had received a memo from the Northwest Hills Council of Governments, dated May 5, 2016, stating that their staff has reviewed this referral and finds no apparent conflict with regional plans and policies, or the known concerns of the neighboring towns. This response will be sent to the Land Use Administrator and Chief Elected Official in each of the neighboring towns listed. Ms. Regan noted an email received from Jonathan Chu of West Conn dated April 14, 2016, stating the opinion of West Conn staff is that the proposal is of local concern, but with minimal inter municipal impact, therefore it is not being forwarded to adjacent municipalities and regional staff is making no comment. Ms. Regan noted a memo from John Sideman, Planning Commission Vice Chairman, dated May 10, 2016, stating at it’s May 5, 2016, Regular Meeting, the Planning Commission recommended in favor of the amendment of Section 025-100, the Commission found the proposal to be consistent with the plan of conservation and development. The memo stated that the vote passed with a 3-2 vote. Ms. Regan referenced the Staff Report dated May 20, 2016.

Tom Pilla was present to address the Commission on behalf of Sunny View School. Mr. Pilla discussed the history of the property, built as a single family home and then changed to a school. Mr. Pilla stated that what the applicant wishes to do is to have a caretaker occupy the house, and they have proposed a text change to the Zoning Regulation to read “A school may have a caretaker residential unit not to exceed 1,200 square feet of living area. The living space shall have existed prior to December 1, 1971” to allow this.

Mr. Bogie interjected that the part that bothers him with this wording is that the wording states that any house built before 1971, could essentially be turned into a daycare with an accessory apartment.

Mr. Pilla stated that if you tour the campus, the house is already existing, stating it makes sense to allow it to be used for a caretaker’s residence. Mr. Pilla stated the sustainability of schools is dwindling and this could help it keep its doors open, and noted it would be a shame to lose another school. Mr. Pilla stated they do not wish to change the landscape of the property or build or construct anything new, they simply wish to use the existing house as a residence for a caretaker who will be a school employee, who will be fingerprinted and background checked. Mr. Pilla stated that the applicant had looked at other ways to achieve this allowance, such as a zone change or variance



request, but was advised that a text amendment made the most sense, and Mr. Pilla noted that input from the Commission was welcome to achieve a satisfactory text amendment.

Mr. O'Brien inquired as to who the employee is that is currently living in the house. Mr. Pilla replied that Sandra Simoes, co-owner of the school, daughter of Alair Dease, also a co-owner of the school, is currently residing there.

Ms. Ward requested clarification as to whether the caretaker's residence will be occupied by school employees exclusively. Mr. Bogie stated his concern with who would monitor that, it would be difficult to verify, and sets a precedence for other schools and daycares.

Sandra Simoes, co-owner of Sunny View School, was present to address the Commission. Ms. Simoes stated that all employees are fingerprinted and have background checks. Ms. Simoes stated that they have repaired many aspects of the home, including the lack of useable water since 2008, stating that a new water system has been installed and is tested monthly by the state.

Ms. Regan reminded the Commission that this public hearing item is not about the location or this particular school, the issue at hand pertains to the amendment of the text of the Single Family Residence District Zoning Regulation, noting that the Commission has to step back and look at the more global perspective of this text amendment.

Ms. Regan referenced the Staff Report to give an overview of the application, noting the attachment of the existing applicable Zoning Regulations. The applicant's request states that "Given the security issues that have confronted our schools, it is paramount that someone live on site". If approved, a school with a caretaker's apartment would be permitted in any of the single family residence districts and subsequently be allowed in the B-1, B-2, IC, and I zones as well. Ms. Regan thought it important to point out how detailed the standards are for these regulations and outlined relevant standards the Commission should consider, including minimum lot requirements, public sewer and water, minimum and maximum living area requirements, whether the residential living unit must be in the same building as the school or not, limiting to 1 residential unit per property, exterior alterations, and parking requirements. Ms. Regan stated an amendment to the regulations must be in harmony with the comprehensive plan and be for the good of the community as a whole and protect the residential character of the single family zones.

Mr. O'Brien asked Mr. Pilla which staff suggested a text amendment as a possible solution. Mr. Pilla replied that the staff at Planning and Zoning had suggested the text amendment. Ms. Regan acknowledged that she and Ms. Millard suggested it in light of the existing violation, stating that the only options are to request a zone change, a regulation text amendment or discontinue the apartment use. Mr. O'Brien asked when the house had become unoccupiable, to which Ms. Regan replied that when the daycare was approved it was converted to be solely a daycare. The current situation was brought to the attention of the zoning office by the Fire Marshal after the fire department was dispatched after a fire alarm was set off due to cooking in the house. There was no fire at the residence, however the Fire Marshal made note that the occupancy had changed since it was previously inspected.

Mr. Pilla invited the Commission members to visit the school to get a better feel and stated he would provide anything further the Commission needed. Ms. Regan reminded Mr. Pilla and the Commission members that the focus was specifically on the text amendment and not the school itself, noting that if approved, they would need to then come back before the Commission with a Special Permit Application. Ms. Simoes wished to add that with all of the big corporations coming into town, she felt

that considerations should be shown to the small businesses in town, going back to the roots of what is really needed. Ms. Simoes stated that she has been working with children and at risk youth for over 20 years and that she and her mother Alair Dease have done a lot for the community. Ms. Simoes stated that they have experienced vandalism and feel that a caretaker would perhaps ease the safety concerns. Ms. Simoes stated that she contacted the Police Department regarding the vandalism and stated the Chief of Police was nice enough to work with her, he came in, they cleaned it up, and they worked together. Ms. Simoes stated that if you take a look at the property, there have been big changes that the community is happy about.

Ms. Ward opened the floor to public participation.

Jon Seidman, 2 Owens Lane, stated that this property is currently in violation of Zoning Regulations. Mr. Seidman referenced the vandalism and security concerns stated as the reason for this application, noting that there are no police complaint records on file. Mr. Seidman stated he did not feel that background checks, fingerprinting or water systems had anything to do with the matter at hand, which is changing the Zoning Regulation text. Mr. Seidman stated that as a parent he would not feel comfortable with an apartment on the same premises as a school or daycare, there would be no control of who would be present. Mr. Seidman felt the applicant was being evasive as to who is currently living there and whether they are a school employee. Mr. Seidman suggested security cameras, a chain across the driveway, or increased police patrol to solve some of their security concerns. Mr. Seidman feels that the text change is still spot zoning and an attempt to remediate a violation.

Ms. Ward read into record a letter from John Kane, Member, Planning Commission, stating that the proposed amendment is confusing, poorly drafted and self redundant, stating that there is nothing in the amendment that the applicant could not achieve with the special permit process or ZBA. Mr. Kane stated that to open the door for any daycare or school to allow a dwelling unit, is to unnecessarily open the door to unintended consequences. Mr. Kane stated that this is spot zoning and stated the applicant failed to supply an answer to the Planning Commission when asked why they did not pursue a special permit or a ZBA variance, noting there is an appropriate process for this applicant and it should be used.

Ms. Simoes wished to address these comments. Ms. Simoes stated that she did indeed call the police, she did not make a formal report and did not ask for the name of the officer, but that they did send someone out to clean, but wanted to clarify that she did not say he came to the site itself. Ms. Simoes stated that the site is set back and because of that it would be advantageous to have a caretaker. Ms. Simoes stated that there are background checks and fingerprints of employees as well as being able to verify with pay stubs. Ms. Simoes stated that there is no money for cameras and chains, she stated that the officer advised her to put up "NO TRESPASSING" signs, which she did and they were taken down. Ms. Simoes stated that they have done everything they are supposed to do and this is the last piece they need, to the satisfaction of all parties.

Mr. Pilla stated that both parties who spoke against the application are Planning Commission members who voted no on this application, and feels their motivation is political. Mr. Pilla expressed his frustration in that in the 45 years he has been in this town, he has never seen an instance where a Commissioner called the police to verify complaints, and felt Mr. Seidman should be ashamed of himself.

Ms. Ward stated the public hearing would continue at the next meeting June 14, 2016.

Mr. Bogie left the meeting at 9:30pm.

- e. O & G Industries, Inc., Application for a 3 year renewal of a commercial excavation permit under Chapter 140, on property located at 33 Boardman Road, Map 47, Lot 73 in the Industrial Zone. **Close by June 14, 2016**

Mr. Volinski read the public hearing legal notice.

Ms. Regan noted a memo received from James Ferlow, Wetlands Enforcement Officer, dated May 17, 2016, stating that all expansions to the excavation permit area are outside of upland review area and native wetland systems, noting this project does not require individual Wetland Commission approval. Ms. Regan then referenced the Staff Report, dated May 19, 2016, and distributed photos of the site along with Google Earth images. Ms. Regan gave a brief history overview of the quarry site, noting that a portion of the 347 acre subject property is believed to have been continuously operated as a commercial earth excavation mine for more than 100 years. As a result, it is accepted that the Boardman Quarry, now operated as O & G, is a preexisting, nonconforming use, which is allowed to continue. Noting that in 2003 when a permit renewal application was denied to a previous operator, the decision was appealed to the Connecticut Supreme Court, who reversed the decision and ruled the site could continue to be mined, provided it is done so in compliance with the New Milford Zoning Regulations. Section 140-060(7) allows for 3 year permit terms, the current permit for O & G expires May 31, 2016.

Kenneth Faroni, Director of Planning and Permits, O & G Industries, was present to address the Commission and provided the return certified mail receipts as well as a photo of the posted public hearing sign. Mr. Faroni stated that they are applying for a 3 year permit under regulations for an area just slightly over 56 acres, up 6 acres from the previous permit of 50 acres, stating the only other change in the permit pertains to stockpiles, stating they have a large stockpile of fines, which is very small particulate matter from the washing operation where they are producing finely course aggregate such as sand and stone.

Mr. Faroni presented a large site map of the property explaining the different areas of the property and answered Mr. O'Brien's question as to where the entrance to the property is located. Mr. Faroni showed where the mining operations are currently happening and stated that while they are allowed to mine the entire 347 acres, they will probably never do so due to the very thick, steep, overburden. Mr. O'Brien asked Mr. Faroni to explain what overburden refers to. Mr. Faroni stated it is vegetation, topsoil, subsoil and the till, which consists of boulders, sand, and gravel.

Mr. Faroni noted the updated topography, stating they have 2,700 feet of open face currently. They have implemented a plan to create a notch to advance the working faces to the north and to the south, which will create less of an impact during blasting to the closest neighbors, which are approximately 1800-1900 feet away. Mr. Faroni stated that they had applied for a water diversion permit, which was issued by the DEEP in April 2014, stating they have 3-4 sources of groundwater that they draw water from as make up water, they have 3 water recycling ponds, stating 90 percent of the water they use is all recycled in a closed loop system. Mr. Faroni stated they have to submit annual reports with regard to water usage to DEEP, which was submitted for the record. Mr. Faroni stated that he has also provided a storm water management plan, which is also on file with the DEEP.

Mr. Faroni noted where the truck scales and office are located, stating that no changes were proposed there, but noting that the entrance to the property has had some landscaping upgrades. Mr. Faroni stated that in 2013 they did 30 blasts, in 2014 they did 49 blasts, in 2015 they did 58 blasts, stating that this year will be significantly less, only having done 2 blasts this year due to the fact that they had a lot

of material already on the ground to utilize. Mr. Faroni stated that they always set up 3 seismographs, including one at Andrew Nichols Sawmill Road residence. Mr. Faroni explained the notification system to area neighbors 24 hours in advance, prior to any blast, either by phone or email per their request.

Mr. Faroni again noted the surplus of the fine particulate matter that needs to be dredged, stating that currently they are running the quarry 4 days per week, with the 5<sup>th</sup> day being maintenance. Mr. Faroni stated that due to production demands in the coming weeks they will need to be running the quarry 5 days a week and are seeking permission to do the maintenance work, such as dredging, on Saturdays for a limited time. Mr. Faroni stated that they would operate from 8am – 4pm and not necessarily every Saturday nor all 8 of those hours, depending on the moisture levels of the dredged fine particulate matter. Mr. Faroni noted that they would add squelcher alarms to the back up alarms on the heavy equipment to lessen the noise pollution. Mr. Faroni noted that perhaps the Commission could approve it at least on a trial basis to see how it goes, noting they don't run the quarry 52 weeks of the year.

Mr. DiMichele inquired if there would be in and out truck traffic on those Saturdays, to which Mr. Faroni stated there would be none, all maintenance work would be internal to the site. Ms. Regan asked Mr. Faroni if he was requesting the Saturday maintenance allowance for the months of June through December. Mr. Faroni stated that he would prefer not to have specific months, noting that they may need to start as early as March in 2017, depending on production demands. Mr. Faroni stated that they could provide a record of the Saturday dredging activities and compare that to any complaints that are received for a trial basis.

Ms. Ward read into the record an email from Andrew Nichols, 21 and 23 Sawmill Road, stating that aside from the weekly unpleasant blasting and tainted water leaking onto his property, he has also noted a marked increase in cracks to his foundation as well as an increased radon levels. Mr. Nichols stated that he is quite concerned about the increased radon levels and will need to engage a remediation service. Mr. Nichols stated it would be prudent for the town to undertake a study to determine if there has been a spike in radon levels on properties abutting this property and to not make any decisions on renewals until this analysis has been completed. Mr. Nichols included some internet links to studies showing correlation to quarry blasting with increased radon levels.

Mr. Faroni stated that he had also received the email and had read the articles, stating that they take all necessary precautions and the seismograph reading show the blasts are not enough to cause any damage including concrete foundation cracks or cosmetic damage, noting that radon is a naturally occurring gas that comes up from the ground. Mr. Faroni stated that he had submitted seismograph reading results which will show that there could not possibly be any damage or subsequent radon increases due to the blasting at this site. Mr. Faroni wished to respectfully request approval based on their compliance with Zoning, permit conditions being in place, it being preexisting nonconforming, their employment of the best management practices, a storm water management plan in place that is monitored daily, their comprehensive site compliance evaluations done every 6 months, daily checks that hay bales are in place and basins are draining properly, and diversion permits in place with records being kept about water usage. They are respectfully requesting to exceed the 4 acre maximum for excavation, which has always been granted in the past.

Mr. Faroni stated that previously when he appeared before the Commission, some members felt that there was not a sufficient line of credit in place for site reclamation, noting that they are willing to increase that to the satisfaction of the Commission. There was some discussion on different appropriate amounts, with the Commission and Mr. Faroni agreeing to a \$420,000 bond.

Mr. DiMichele asked Mr. Faroni about the fine particulate taking up about 5 acres. Mr. Faroni demonstrated on the map the areas where the fine particulate is stockpiled. Mr. DiMichele expressed his concern about where the run off drains other than the ponds. Mr. Faroni discussed that it starts out as slurry, wet sludge but then as the water evaporates and/or drains it becomes a fine, dry substance.

Mr. Faroni also wished to bring to the attention of the Commission the existing mining tunnel, approximately 7 ft wide and 700 ft long on the property that now serves as a very large bat hibernaculum. Mr. Faroni stated that the DEEP visits the site yearly, usually in March, to count and monitor the bats, which are mostly the “big brown” variety. Mr. Faroni stated that because they do not blast in the winter it does not disturb their hibernation. Through joint efforts with the DEEP, O & G is attempting to construct a new bat tunnel in an alternate location on the property, stating that in 10-15 years they wish to reclaim the area where the current tunnel is located. Mr. Faroni stated that they have contracted with a firm out of Alabama and work will start in June of this year, taking about 4 weeks, making the Commission aware of increased blasts which will be for environmental purposes, not mining production. Mr. Faroni stated that there will be approximately 1 blast a day, they will set up additional seismographs and control traffic. Mr. Faroni was advised by Ms. Ward to alert the Zoning Enforcement Officer when they plan to start so they can be aware of incoming complaint calls.

Mr. O’Brien inquired if there is a possibility of opening the area to the public for a day to explore. Mr. Faroni stated that they have discussed this in the past, stating the DEEP doesn’t really want the general public to be aware of and disturb the bats as well as security issues with regard to the mining operation, but Mr. Faroni did state that the members of the Commission should come by with the Zoning Enforcement Officer to take a look around and get a feel for the site, and perhaps witness a production blast at a safe distance.

Ms. Regan drafted a condition of approval to add to the Resolution of Approval stating that on a 6 month trial basis beginning on June 1, 2016, through December 1, 2016, maintenance work on the recycling pond shall be permitted to occur on Saturdays, no earlier than 8am and no later than 4pm, provided that all truck traffic shall remain internal to the site, squelcher alarms are used on all trucks, the applicant reports all dates and hours of activity to the zoning office, and no processing activities shall occur. Mr. Faroni asked that they be allowed to use squelcher alarms or equivalent. At the end of the 6 month trial basis, the Zoning Enforcement Officer shall be authorized to administratively extend the trial basis for additional 6 month terms at her discretion.

***Mr. Volinski moved to close the public hearing for O & G Industries, Inc., Application for a 3 year renewal of a commercial excavation permit under Chapter 140, on property located at 33 Boardman Road, Map 47, Lot 73 in the Industrial Zone. The motion was seconded by Mr. DiMichele and carried unanimously.***

- f. Alves Landscaping, LLC, Special Permit and Site Plan Applications under Chapters 60, 175, and 180 to allow a landscaping business to use the existing 11,440 SF building for shop and storage uses along with accessory use of outside storage of equipment and materials, on property located at 600 Danbury Road #4, Map 4, Lot 12.4 in the IC zone. ***Request to waive building floor plans and renderings, parking and loading plan, lighting plan, traffic study, and soil erosion and sediment control plan. Close by June 14, 2016***

Mr. Volinski read the public hearing legal notice into record. The applicant was not present but did provide the zoning office with the certified mail return receipts. Ms. Regan noted that she had

received a memo from Russ Posthauer, PE, dated May 19, 2016, asking that the application be tabled and continued at the next meeting.

#### 4) NEW BUSINESS:

- a. Borghesi Building & Engineering Co., Inc., Site Plan Application under Chapters 60, 120 and 175 to allow the construction of 6,096 SF speculative building with shop and storage areas used by a contractor or building tradesman, light industrial, and/or warehousing uses, along with associated parking, landscaping, lighting, drainage, and utilities on property located at 453 Danbury Road, Map 10, Lot 17 in the IC zone. ***Request to waive traffic study. Decision by June 28, 2016***

Ms. Regan noted an email received from Rob Blanchett, Borghesi Building & Engineering Co., Inc., dated May 19, 2016, stating that the owner is rethinking several items and would like to postpone their presentation until the next meeting. Ms. Regan noted their application is also pending in front of the Wetlands Commission.

#### 5) OLD BUSINESS:

None

#### 6) ACCEPT FOR PUBLIC HEARING:

- a. J & J Capital Investments, LLC, Special Permit and Site Plan Applications under Chapters 60, 175, and 180 to allow building and site modifications to reutilize the existing auto repair facility, add the use of auto sales, and expand the outside storage and display of vehicles, along with associated drainage, parking, landscaping, and lighting on property located a 4 Lanesville Road, Map 14.1, Lot 89 in the IC Zone. **Suggested Date: June 28, 2016**

***Ms. Ward moved to accept for public hearing Agenda item 6a on the suggested date. The motion was seconded by Mr. Volinski and carried unanimously.***

#### 7) BUSINESS MEETING:

- a. Discussion and possible decisions on the evening's agenda

Agenda Item 3e: O & G Industries, Inc., Application for a 3 year renewal of a commercial excavation permit under Chapter 140, on property located at 33 Boardman Road, Map 47, Lot 73 in the Industrial Zone. **Close by June 14, 2016**

***Ms. Ward moved to adopt the Resolution of Approval for O & G Industries, Inc., Application for a 3 year renewal of a commercial excavation permit under Chapter 140, on property located at 33 Boardman Road, Map 47, Lot 73 in the Industrial Zone, with the following amendments: Condition 10 shall read: "That the Irrevocable Standby Letter of Credit in favor of the Town of New Milford for Site Restoration shall be increased to \$420,000."; and the addition of a new condition that reads as follows: "That on a 6 month trial basis beginning June 1, 2016 and ending December 1, 2016, maintenance work on the recycling ponds shall be permitted to occur on Saturdays, no earlier than 8am and no later than 4pm, provided: 1. All truck traffic shall remain internal to the site, 2. Squelcher alarms or approved equivalent are used on all trucks, 3. The applicant reports all dates and***

*hours of activity to the ZEO, 4. No processing activities shall occur. At the end of the 6 month trial basis, the ZEO shall be authorized to administratively extend the trial basis for additional 6 month terms at his/her discretion.” The motion was seconded by Mr. Volinski and carried unanimously.*

b. Discussion and possible decision on the following closed public hearings

1. Jennings Oil Co., Special Permit and Site Plan Applications under Chapters 45, 175, and 180 to allow the construction of a propane storage facility consisting of a 1,600 SF 2-story office building, two 30,000 gallon propane tanks, and a 1,800 SF Low Pressure Gas (LPG) tank storage area with canopy roof, along with associated, parking, outside storage, landscaping, lighting, utilities, and drainage, on property located at 10 Allen Drive, Map 68.4, Lot 29.3 in the B-2 Zone. **Decision by July 12, 2016**

Ms. Regan made note of several of the unique conditions of approval for the Commission. Number 2, with regard to the landscaping modification, due the unique circumstances created by having Allen Drive run through and parallel with the front set back area, the Commission under Section 130-070 authorizes modifications to the front landscaping requirements in harmony with their general intent, allowing the plantings to be dispersed throughout the site rather than concentrated in the 50’ front setback, which will provide additional screening. Number 3, stating that within 60 days, all the existing materials and equipment currently stored on the property in violation of Zoning Regulations shall be permanently removed prior to the issuance of a Zoning Permit. Number 4a states that the applicant will provide the ZEO with final color selections for the tanks, canopy, and office building and with a final gable roof design for the office building. Proof of project approval from the Connecticut DOT will be required. Item 6d notes that privacy slats will be added to the chain link fence along the east and west property boundaries. Ms. Regan noted that on the agenda, there was still wording that included the “1,700 SF #2 Fuel Oil Storage Area”, which she wished excluded from the motion as it is not part of this application and will be addressed separately in the future. Item 7c noted that the applicant shall work closely with the Fire Marshal to ensure the facility is in full compliance with all federal, state, and local fire and safety regulations. Ms. Regan noted that 7f was amended to state that the largest truck allowed on site would be a WB-50.

*Ms. Ward moved to adopt the Resolution of Approval for Jennings Oil Co., Special Permit and Site Plan Applications under Chapters 45, 175, and 180 to allow the construction of a propane storage facility consisting of a 1,600 SF 2-story office building, two 30,000 gallon propane tanks, and a 1,800 SF Low Pressure Gas (LPG) tank storage area with canopy roof, along with associated, parking, outside storage, landscaping, lighting, utilities, and drainage, on property located at 10 Allen Drive, Map 68.4, Lot 29.3 in the B-2 Zone. The motion was seconded by Mr. DiMichele and carried unanimously.*

2. Justin Krul, Special Permit and Site Plan Application under Chapters 90, 175, and 180 to allow the conversion of an existing building into a mixed-use building with a retail use and 1 residential apartment along with associated outside storage and display of inventory, parking, landscaping, and drainage, on property located at 586 Danbury Road #2, Tax Assessor’s Map 4, Lot 12.2 in the Town Landmark District (TLD). **Decision by July 12, 2016**

Ms. Regan noted that prior to the issuance of a zoning permit, the applicant is applying to the State building official to seek a modification on the requirement to have a kitchen sink, depending on that outcome, Mr. Krul will confirm the size and layout of the apartment prior to the permit being issued. Ms. Regan noted item 3c on the Resolution of Approval, with regard to outside storage, having that area delineated and not growing over time. Ms. Regan stated that the 4 existing floodlights on the building will be removed however the 9 existing ornamental lights around the building are permitted to remain. Item 4c addresses that the apartment must be owner occupied, and must be annually certified. Item 4d states that no tarps shall be used to cover outside storage items. Item 4f limits the truck size that shall be allowed, noting nothing larger than a SU-30 box truck and the owner must maintain the “No Tractor Trailer” sign depicted on the site plan.

*Mr. DiMichele moved to adopt the Resolution of Approval for Justin Krul, Special Permit and Site Plan Application under Chapters 90, 175, and 180 to allow the conversion of an existing building into a mixed-use building with a retail use and 1 residential apartment along with associated outside storage and display of inventory, parking, landscaping, and drainage, on property located at 586 Danbury Road #2, Tax Assessor’s Map 4, Lot 12.2 in the Town Landmark District (TLD). The motion was seconded by Mr. Volinski and carried unanimously.*

**8) ACCEPTANCE OF MINUTES:**

- a. May 10, 2016 Regular Meeting Minutes

*Ms. Ward moved to approve the May 10, 2016 Regular Meeting Minutes as filed. The motion was seconded by Mr. Volinski and carried unanimously.*

**9) BILLS AND COMMUNICATIONS:**

- a. Bill: Cramer & Anderson, dated 5/1/16, regarding misc. professional services, \$814.00
- b. Bill: Cramer & Anderson, dated 5/1/16, regarding Auto Technician, LLC vs. Zoning Commission, \$92.50
- c. Bill: Milone & MacBroom, dated 5/9/16, regarding 376 Danbury Rd, \$5,347.00

*Ms. Ward moved to approve payment for Agenda Items 9a, 9b, and 9c for the amounts listed. The motion was seconded by Mr. Volinski and carried unanimously.*

**10) ANY BUSINESS PROPER TO COME BEFORE THE COMMISSION:**

**11) ADJOURNMENT:**

*Mr. O’Brien moved to adjourn the meeting at 10:30pm. The motion was seconded by Mr. Volinski and carried unanimously.*

Respectfully Submitted,



Amy Farrell  
Recording Secretary