

**MINUTES  
Of the Township of West Milford  
ZONING BOARD OF ADJUSTMENT  
January 22, 2013  
Regular Meeting**

Robert Brady, Board Chairman, opened the Regular Meeting of the Zoning Board of Adjustment at 7:43 p.m. The Board Secretary read the Legal Notice.

**Pledge**

The Chairman explained to all in attendance that the Pledge of Allegiance was recited at the Reorganization Meeting. Mr. Olivo listened to the previous meeting when the McDonald's application was heard and signed a form for the record.

Mr. Brady explained to the public about the Board of Adjustment, explained the Open Public Meetings Act of the State of New Jersey. Appeals go to the Superior Court of the State of New Jersey. He introduced the Board Attorney. The applicant explains the application first then anyone speaking for or against the application is given the opportunity to do so. The Meeting follows a printed agenda. If needed a break will be at approximately 9:00. There are no new applications after 10:30, no new testimony after 11:00.

**Roll Call**

**Present:** Russell Curving, Steven Castronova, James Olivo, Frank Curcio, Arthur McQuaid, Michael Siesta, Michael Gerst, Clint Space, Robert Brady

**Also Present:** Stephen Glatt, Board Attorney, William H. Drew, Board Planner, Michael Cristaldi, Board Engineer, Michael Hakim, Landscape Architect, Denyse Todd, Board Secretary

**Absent:** none

**MEMORIALIZATIONS**

**STEPHEN B. GLATT, ESQ.**

**RESOLUTION NO. 1-2013**

Professional Contract

**Motion by Steven Castronova** to memorialize Resolution No. 1-2013

**Second by Arthur McQuaid**

**Roll Call Vote:**

**Yes:** Russell Curving, Steven Castronova, James Olivo, Frank Curcio, Arthur McQuaid, Michael Siesta and Robert Brady

**No:** none

**WILLIAM H. DREW**

**RESOLUTION NO. 2-2013**

Professional Contract

**Motion by Steven Castronova** to memorialize Resolution No. 2-2013

**Second by Russell Curving**

**Roll Call Vote:**

**Yes:** Russell Curving, Steven Castronova, James Olivo, Frank Curcio, Arthur McQuaid, Michael Siesta and Robert Brady

**No:** none

**MICHAEL CRISTALDI-ALAIMO GROUP**

**RESOLUTION NO. 3-2013**

Professional Contract

**Motion by Steven Castronova** to memorialize Resolution No. 3-2013

**Second by James Olivo**

**Roll Call Vote:**

**Yes:** Russell Curving, Steven Castronova, James Olivo, Frank Curcio, Arthur McQuaid, Michael Siesta and Robert Brady

**No:** none



Mr. Drew wanted the Board to know that at the meeting, they discussed a number of different alternatives and they all came to the conclusion that with the modifications just explained, addressed his concerns with pedestrian safety because they increased the distance from the curb line to the front entrance by 15 which is required by ordinance. They eliminated a variance, they also directed the traffic flow from the exiting drive thru window to turn right out of the site so they will not be turning left and passing down in front of the restaurant. Any traffic that is in front of the restaurant will be minimized because all of the drive thru traffic will be directed to the right and out to the main driveway which exits the overall site. There are some island modifications at the drive thru exit that will further direct traffic to the right and not turn left. With those modifications the safety concerns that he expressed to the Board last month have been resolved.

The other change was with the drive thru itself and the curb line. Also, with the eastern curb line and some mature evergreen trees that they would like to save and modify the drive thru to the west so they can maintain the trees two are not in great shape but three are so they reconfigured the drive thru and shifted it to the west. In addition, the new curb line and the sidewalk in front that the County wanted are shown on the plan. It allowed the area to be graded down and landscaped. There is more greenery as the curb line comes out to the south. There is another tree a Weeping Blue Spruce ornamental tree, which is in front, and they are able to save that as well. Underneath the trees in the corner, there will be a water quality rain garden a small area for the storm water. There were comments about enhancing the landscaping in there and putting in decorative grasses. There were notes and striping changes. The Police memo was received where an area should have a stop or yield, so the main parking field would have the right of way and bypass lane would yield. Cross stripe walks were in the notes and they introduced striping for ingress driveway only, they wanted to keep that aisle a little wider for vehicles turning around but they have striping to reinforce that it is one way, also pavement markings and Do Not Enter signs at both those islands. Mr. Wyciskala added that the modification with the island that is at the end of where the drive thru comes out, eliminated one parking space to avoid the conflict of a car backing out where the drive thru is but they were able to add a space in another location to maintain the 18 spaces.

There is no problem complying with Michael Hakim, Landscape Architect, report.

The Board Engineer had questions about the proposed rain garden does not provide for seepage, his original letter was about the increase in runoff and he suggested to put in some kind of seepage. With the rain garden there is room to put it in a little stone seepage pit to catch it and have it seep back into the ground. The professional for the applicant said no problem. The water will collect at the curb and run into the rain garden. Mr. Hakim asked about catch basins there are none everything sheets across surface drainage then enters the rain garden through two flush curb points, he was concerned about leaf debris and other debris that may collect on the pavement, if the curb points get clogged, they would have a drainage system that does not work too well he wanted that addressed. Mr. Jaworski indicated that they could provide multiple curb breaks along the curb line to that and perhaps a small swale now that there is room in the front, by pulling the curb out they can grade that area. They can create a swale and multiple curb breaks or put an inlet that will drain to the rain garden. They will look at it with the office and see which is appropriate. He does not think it will be a problem to see that the water gets there.

John McDonough was sworn in by the Board Attorney, he is a Licensed Professional Planner in the State of NJ he is a member of the American Institute of Certified Planners which is a National certification, testified in NJ Courts as an expert in planning matters. He has been before hundreds of Boards but does not believe in West Milford. He is a Landscape Architect. He has been called as a witness for Landscape matters before courts and boards as well.

Mr. Wyciskala began questioning Mr. McDonough, he has been retained as a planner and landscape architect for the evening. Mr. McDonough was at the last meeting and did hear the testimony of Mr. Sparone and he was at the meeting of the Professionals on January 9.

A-7 was marked into evidence it is a 3-page exhibit. The first page is an aerial photograph downloaded from the Bing website and the other 2 photographs he took himself. The purpose is to lay a foundation with respect to the condition of the property and the context of the property within its setting. The first sheet is outlined in yellow it is a lot inside a lot. This will tie in with the overhaul of the center. The site was previously developed and currently existing as a McDonald's restaurant. The building is relatively set back from the roadway with parking in the front and the drive thru wrapping around, this is a configuration and a layout which is essentially being mimicked by the proposed design, taking the footprint positioning it in the back of the property, cleaning up some circulation elements of the drive thru and improving the parking. There are a variety of land uses in the area. The dominant being the shopping center, to the east is a woodland buffer area, across the street to the south is a mix of residential and commercial and woodlands as well, it is a varied area. The McDonald's as a restaurant fits well within the context of this commingling of land uses. The plan will be a reconstruction of the present layout with some improvements. The existing McDonald's is aged and dated and it is outdated. The applicant wants to modernize the existing facility with the new architecture which is a café style architecture targeting a mature audience it will have softer earth tones and improvement over the older imaging. There are photos in A-7 showing the abundance of paving on the site the applicant will reduce the 30-foot wide aisles, which is too much. There are photos showing the surrounding areas and the shopping center.

Some inherent flaws besides the dated architecture and the inefficient circulation, there was a lack of parking on the facility. There were a hundred seats and new application will half that amount. The present parking is under supplied, the applicant is proposing to add 6 more spaces or increase the parking so they will be in

compliance. The property has weak front landscape, bare spots, extra wide road width, and that will be cured as part of this application working with the landscape architect and putting in a nice row of plantings, and splash in color in front.

The upgrades discussed so far is the ingress only off the center access for the County, the increase of the front landscape, the increase of the front island opposite of the drive thru which will enable them to add more landscaping, the increase of the rear buffer to save the trees along the woodland. The elimination of the parking space, which was a conflict spot opposite the drive thru, upgrading the architecture, landscape architecture, the efficiencies going with that. These are the betterments that are associated with the application from a site-planning standpoint as put forth before the Board. Tying that to the Zoning Ordinance and to the Statutory Criteria that would go with the variance relief, they are in the CC Community Commercial Zone, which does allow this use as a permitted conditional use subject to 5 conditions. Normally a use variance is for a use that is not permitted in a zone but here there is a distinction and that the applicant is subject to a lesser burden to the extent that the applicant does not need to demonstrate that the use belongs there in the first place but rather a look at the conditions and whether or not not adhering to those conditions is overly problematic or causes insurmountable difficulties with the site and surrounding properties. Three of the five criteria the application hits including have a separate entrance and exit driveway, one way on site circulation, the applicant hits the requirement for stacking of the drive thru to accommodate 10 cars on site and also to provide a maintenance agreement for litter control and landscaping including garbage receptacles on the property which are there now. The two conditions that the applicant does not hit is to have internal circulation separated from the building door of 15 feet. The aisle has been pulled 15 feet away from the front door but there is an unavoidable variance associated with the drive thru which has to be adjacent to the building. That is an existing and proposed condition that the applicant cannot accommodate. At the meeting with the professionals, they were able to pull the front circulation area 15 feet away from the front door which is more or less a pedestrian corridor. They are not dealing with a pedestrian corridor associated with the drive thru. The other condition they cannot meet is the fact that they have a landscape area of at least 20 feet in width being provided along all property lines going back to the aerial photo, they cannot accommodate that because they have a shared parking and circulation arrangement with the shopping center. There are zero buffers. Those are the two conditional use variances associated with the application. There is also a sign variance associated with the site to be located off premises. The applicant needs relief for the off premises sign to be located on the shopping center as opposed to the applicant's site. The reason for that is because the property line does not include the access driveway. The access driveway is shifted over on the shopping center and that is where the sign needs to be to demark the entrance to the property. There are several bulk variances relating to building setbacks and buffers as well.

The conditional use criteria, there is a case called the Coventry square case which states the enhanced proofs that would be associated with the use variance before this Board are not needed here. We only look at the impact of not meeting those two conditions in terms of the circulation off set needing 15 feet and only having 2.7 feet, the door is not stepping out onto the circulation aisle, the aisle they would be stepping out to is now 15 feet away. The applicant is going to block off any sort of egress over to the drive thru with a protective fence system that you typically see with a McDonald's arrangement there will not be a pedestrian crossing this is a condition that has existed without detriment for the entire time the present McDonald's has been there. In terms of the circulation offset, he indicated it could be granted without substantial detriment to the public good or without substantial impairment to intent purpose of the ordinance. In terms of the buffers along the front of the property the applicant is required to have 20 feet, the applicant is providing 10.8 feet. That is taking an existing condition and making it better, it is only 10.4 feet now, increasing it horizontally and vertically introducing plantings, getting rid of the wall and replacing with grading and proportionally the percentage of the lot that is associated with the buffer will meet the intent of the ordinance. They are looking at 30 plus plants to soften and screen and it will meet the intent of the buffer separation along the front of the property. Along the eastern edge of the property by the woodland there is a buffer of 12 feet prior to the meeting with the professionals it was only 2 feet, that is getting increased by 10 feet to protect the trees, that variance is justifiable because adjacent is the wooded area. They have a varied perimeter buffer that meets the 20 foot requirement in certain spots, they are only asking for relief where it narrows to 12 feet. The west and south side are adjacent to a parking lot so there is zero buffers that is staying the same.

Discussing the negative criteria the plan overcomes any problems that are associated with not meeting all of the conditions, there is nothing substantially detrimental about the relief associated with the D3 variance. The positive criteria or the purposes of the statute, he found a nexus with purpose A the promotion of the general welfare by the overall functionality of the site associated with this configuration and purpose I the promotion of a desirable visual environment which is improving the aesthetic of the site. The D1 variance is the off premises sign and they are presently looking at an entry way that is offset 800 feet from the intersection at Marshall Hill Road which is off the map on the first page of the exhibit that he put forth. Visibility is difficult from a horizontal standpoint and also vertically since the building and entryway is 20 feet lower than the intersection. The applicant is looking for height relief associated with the location relief. 20 feet high is what the applicant is looking for which he indicated is justifiable by virtue of the fact they are 20 feet lower than the primary vantage point, the applicant is also looking for area relief, the sign will be 100 square feet in area and that is double of what the ordinance will allow, the justification for that is they are dealing with a McDonald's panel that is 9 feet horizontal and 4 feet vertical, 36 square feet in mass which is under the 50 square feet allowed by ordinance. The arches are what trigger the additional square feet, the arches are more than 50% open so their mass is not as extensive as if solid. They are looking for location relief, height and area relief of the sign. From a statutory standpoint the variance is justified by the virtue of the unique setting, location and the property line arrangement of the site. The benefit is clear and safe identification of the site. The negative side is that the sign will not be overbearing in the context of the other signage that is on the shopping center.

He does not feel it is a substantial departure from what is contemplated under the ordinance in terms of the overall mass and context of the area.

The bulk variances include a side yard the building is on the corner of the property they are looking for 1.2 feet versus 25 feet required. They are presently 1.5 feet. The rear yard is 9.7 feet versus 25 feet required, The foot print is essentially replacement in kind it is not exact. There is a hardship because of this and it will go towards C 1 relief standard. The C 2 standard is the overall benefit of the application, as a whole weighed against from a planning standpoint no negative it is really an unperceivable variance in the context of the overall shopping center. Hand in hand with that are a few buffer variances and carry forth from the conditional use, he carries forth the proofs from there as well. The last variance is the maximum impervious coverage on the property, the applicant is allowed 60% coverage over its total site presently they are at 75.9% in the interest of increasing the parking on the site they need to increase the coverage to 82%. It relates to the parking cures the deficiency that is presently there, the center as a whole does comply with the 60% requirement. The total site meets the intent of the ordinance. All of the bulk variances tie in with the use variance and the overall betterment of the applicant outweighs any detriment. There is an additional sign variance relating to the wall signage on the front face of the building the applicant is looking not only to put the McDonald's text but also the logo which is standard for all of their buildings that's an additional 14 square feet which makes that 55.4 square feet versus 41.4 square feet which is allowed. An additional 14 square feet over the ordinance requirement. The aggregate of the signage of the building is well below the ordinance allowance in terms of what could be allowed which would be 192.7 square feet and they are proposing 124.8 square feet. The signage is within the context of the building and blends in well with the backdrop of the building. He indicated it was a good application and certainly good planning to take an existing land use and let it evolve through the back and forth with the professionals, if they work it out it can result in a positive asset for the community and the shopping center.

Mr. Wyciskala confirmed for the record that there are other preexisting nonconforming site conditions that are not otherwise impacted by this. They are minimum lot area, minimum lot width, lot frontage and lot depth they are dimensional issues associated with the property that presently exist and continues to exist. They are involved in a reconstruction and it triggers new variances. The justification is proof that a building of this mass can exist on a site of this dimension and has been in existence all this time.

Mr. Brady asked if there were any questions of the applicant's expert and he also complimented the planner's presentation.

Mr. Hakim asked Mr. McDonough about the items on his report. Mr. McDonough is going to address it.

1. Rain garden content, consent to plants being placed and will contact Mr. Hakim about the plants going in.
2. Preservation of existing vegetation this was satisfied
3. Modification of the parking lot this was referenced by County Planning Board the end of this there was consent to the changes proposed, sidewalk proposal agreement that they are not connecting to anything and perhaps not necessary as part of the application and remaining as part of the County application.

A Board Member asked if the County was insisting on a sidewalk the applicant stated it was. Some day something might connect. Mr. Hakim would have preferred the cost of that be put to use somewhere in town where they really need it. Mr. Glatt recalled a prior application where the County was requiring a sidewalk and the Planning Board wanted the Board to back on the record for the Board members to express any concerns. If the Board feels it is not necessary although perhaps it should be deferred to people who live in the community. Mr. Castronova recalled that a while back there was a grant to extend the sidewalk down to Lincoln Hill but because of engineering problems, the decision was reversed. Mr. Drew indicated the main constraint was the bridge that would have to be widened because it barely allows for two cars and the grant would not cover the construction of the culvert. Mr. Hakim indicated that the benefit of not putting in the sidewalk is getting additional landscaping and the potential to transfer the value somewhere where a sidewalk would be really needed. If not a possibility then he objects to their inclusion of a sidewalk. Mr. Brady added if the sidewalk was not added there would still be enough impervious surface. Mr. Glatt added if the Board wanted to express the opinion that it is not necessary he will mention it in the resolution. They will not make the determination it is up to the County but they will know the Board's feeling.

Mr. Cristaldi added that he hopes there is no conflict between the plantings and the rain garden and try to use the base of it as a seepage pit. He does not want you to put the stone and you may not have enough soil and it might effect the plantings, the applicant's professionals will discuss with our professionals what the plantings should be and how the stone lays in there.

4. Continuity of the streetscape design and tying into the whole Shoprite site and carry that theme
5. Increase the caliber of the trees to 3 ½ inches
6. they have complied
7. landscaping at the base of sign which applicant will do  
The sign will remain internally illuminated which is also something they need to request relief from. It ties in with the rest of the signage for the shopping center
8. compliance with the white flowering Dogwood
9. substitute a boxwood shrub in place of barberry shrubs, more variety, more deciduous plantings, more colors not just a green wall but some color in front also.
10. compliance

11. a partial compliance looking for more ground cover
12. compliance
13. compliance
14. a right turn only directional sign across from the driveway egress which they will do and also paint the right arrow.
15. deferred to Engineer ingress only lane in close proximity to Marshall Hill the striping should be more exaggerated and forces cars right.
16. pertaining to catch basins and already addressed with more curb cuts
17. landscaping for proposed expanded parking island opposite the drive thru they will comply with that
18. light spillage to the neighbors to the east there is a grid associated with the illumination plan to show that there will be no objectionable offsite glare onto the neighboring properties.
19. landscaping defer to original illustration

Mr. Drew asked if there was testimony about the message boards A-6 is the site plan shown in a light tan color where the drive thru will be, the components of the sign on the flip side is the gateway sign which is the lead in to the drive thru and gives a height clearance limit. The COD sign is the customer order display sign which feeds back to the customer of what they ordered. There are two of those because there are two ordering positions. That is in the interest of speeding up the process, the choke point of the process is the order point. So doubling up it will increase the efficiency of the operation. We now have one display and they will ask for two. They will have two menu boards, similar to what is there now and a pre order board so they will have the opportunity to decide what they want before it gets to the order point. Steve Castronova asked if they were open all of the time or limited times. The applicant stated it was his understanding it was a 24-hour drive thru. So message boards will both be on all of the time. M logo will be 48 X 42 inches on three sides of the building, McDonalds name plate which is 41 square foot which is on 2 sides of the building, the gateway sign vertical bar and a horizontal bar across the top to indicate drive thru clearance limit of 9 feet. The details of COD with canopy sign with vertical pole and horizontal extension which will alert customer to order here that is 11 feet 3 inches tall with extension it is 9 feet 4 inches across. The pre-sale menu board is 81 inches X 20 inches across or 10.2 square feet the standard menu board is 43 square feet which is 6 feet 9 inches tall X 103 inches across. Those are the signs. The building has 192.7 square feet 242.7 square feet the proposed in aggregate is 223.8 square feet which is below the budget for the totality of the site. The signage is necessary for the drive thru.

Mr. Drew asked about the 24 hour operation and asked if it was currently 24 hours and the applicant stated it was. They claimed the drive thru was presently and will continue to be. There were no other additional questions of the Board when asked by the Chairman.

Mr. Wyciskala indicated it was a pretty straightforward application they are here for preliminary and final site plan approval with the variance relief that was heard in detail. They appreciate the Boards consideration of the application, they think it will blend in well with the remainder of the improvements. Mr. Castronova asked if they brought samples of the new building materials. At the previous meeting they were asked and agreed to bring samples. It does not seem to match anything the new shopping center has no stone no brick. What is the material made of was the question. It is the new prototype building, basically a brick building and the arcades are a tile in cream color with brick with corrugated metal screen, the awnings and roof top elements are metal and you can see the signage and logo, exhibit A-9. A full brick is being used. Shoprite's proposal is a reddish brick. It is a ceramic tile easiest to clean. There are different color schemes although some do not have brick they have stucco. The tile is standard on all. There are some with a stone finish but they are not as popular.

Mr. Drew recommends against the stucco.

Mr. Brady opened the meeting to the public

Seeing nobody for or against the application, Mr. Siesta moved to close the public portion

Mr. McQuaid second.

Mr. Glatt explained to the Board that our three professionals would like the opportunity to prepare a list of conditions that could be added to a resolution if the application is granted and give a short report for the applicant's benefit. If the Board agreed it would not be voted on at this meeting but carry it to next month where a resolution would be prepared that would indicate if the Board went that way, the resolution will be a granting of the application and the conditions would be added. The professionals wanted the opportunity to digest the testimony today. They would prepare conditions and report at the same time at least 10 days before to respond. They can vote or carry it. If conditions they do not have to reopen to the public. The Board will have conditions as soon as applicant does. The applicant has no problem with it. The meeting could be opened if needed. They will know if experts need to be there. They can vote on application, don't have to carry another month to memorialize. No further notice required.

Motion by Steven Castronova to carry the application

Second by James Olivo

All in favor to carry

**Motion and second to approve Mr. Glatt's bills**

**All in favor to accept Mr. Glatt's Attorney bills**

**Motion and second to approve Mr. Hakim's bills**

**All in favor to accept Mr. Hakim's Landscape Architect bills**

There was discussion with regard to the mandatory Board training; the classes are usually done in the fall.

Mr. Glatt had nothing to report with regard to litigation.

**Motion by Steven Castronova to approve the minutes of December 12, 2012 Special Meeting**

**Second by Russell Curving**

**All in favor to approve**

**Motion by Steven Castronova to adjourn the meeting of January 22, 2013.**

**All in Favor to adjourn the meeting**

**Meeting adjourned at 9:12 p.m.**

**Adopted: February 19, 2013**

Respectfully submitted by,

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Denyse L. Todd, Secretary  
Zoning Board of Adjustment