



TOWN OF NEW MILFORD

Office of the Zoning Commission
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ZONING COMMISSION REGULAR MEETING MINUTES JUNE 28, 2016

Present: William Taylor, Chairman, *seated and voting (except 4c)*
James Volinski, Secretary, *seated and voting*
Charles Bogie, Member, *seated and voting*
Thomas O'Brien, Member, *seated and voting*
Richard Saitta, Alternate, *seated and voting (4c only) (left at 9:18pm)*
Rob DiMichele, Alternate, *seated and voting*
Laura Regan, Zoning Enforcement Officer, *not seated or voting*

Absent: Sharon Ward, Vice Chairwoman

1) CALL TO ORDER AND PLEDGE OF ALLEGIANCE:

Mr. Taylor called the regular meeting of June 28, 2016 to order at 7:02pm and led the room in the Pledge of Allegiance and a moment of silence. Mr. Taylor seated Mr. DiMichele.

2) PUBLIC PARTICIPATION:

Mr. Taylor opened the floor to any public participation, there was no public comment.

3) PUBLIC HEARINGS:

- a. **WITHDRAWN - Depot Street Realty Holding Company Inc., Special Permit and Site Plan Applications under Chapters 105, 175, and 180 to allow the establishment and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 July 12, 2016 with 30 day extension**

Mr. Taylor moved to accept the letter of withdrawal 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.

- b. **Robert and Doreen Dumas, Special Permit and Site Plan Applications under Section 025-090 and variance 15-3038 to allow a 1-bedroom accessory apartment on the 2nd floor/loft of an existing detached garage on property located at 27 Jotham Road, Map 40, Lot 137 in the R-40 zone. *Request to waive class A-2 survey, existing conditions map, engineered site plan, parking and loading plan, stormwater management plan, lighting plan, landscape plan, traffic study, and soil erosion and sediment control plan. Close by July 26, 2016***

Mr. Volinski read the public hearing legal notice.

Ms. Regan distributed photos of the property, inside and outside. Ms. Regan referenced a memo from James Ferlow, Wetlands Enforcement Officer, dated May 10, 2016, stating that no individual wetlands permit is required. Ms. Regan referenced the Staff Report dated June 23, 2016, and reviewed the location, existing conditions and site history of the property as well as the proposal requesting approval for an existing accessory apartment that was constructed in the unfinished loft above the detached garage to remain. The loft was originally converted into a 2-bedroom apartment when Mrs. Dumas' parents got ill and required 24 hour care. On 2/18/15, the ZBA granted relief from the minimum lot area requirement, but denied the variance request for relief from the 1-bedroom maximum restriction. The applicants have recently completed interior renovations to convert one of the bedrooms into a den/office that can only be accessed through the remaining bedroom. According to the floor plan, the apartment consists of a kitchen, bathroom, living room, bedroom, and den/office. Mr. and Mrs. Dumas own the property, are over 55 years old, and will live in the main dwelling, with the apartment being rented by a family friend; therefore all age and occupancy requirements have been met. Ms. Regan noted that she had included in the Staff Report each section of Section 025-090.

Robert and Doreen Dumas were present to address the Commission and provided return certified mail receipts.

Ms. Regan referenced the Staff Report Comments and Questions section. Question 1) requested clarification on the size of the accessory building/garage and the size of the accessory apartment. The tax assessor records show the footprint as 900 SF, but the applicants indicated the accessory apartment is 920 SF. Mr. Dumas stated that he and his wife must have measured wrong, stating it couldn't possibly be 920 SF, he felt the apartment was approximately 700 SF of living space. Ms. Regan asked about Question 2) inquiring about the 3rd garage bay off the west side of the garage that does not appear on the Tax Assessor's Field Card, and when it was added. Mr. Dumas stated that it has been there approximately 15 years, it has no foundation. Mrs. Dumas provided photos of the garage bay, noting it is strictly for storage and noted that she had moved the garbage cans and debris, which answers Question 3 of the Staff Report.

Mr. Taylor opened the floor to any public participation.

Richard Johnen, 34 Jotham Rd, expressed his opposition to the proposal, stating he has lived on this street for 30 years and that this neighborhood has always been a single family residential street. Mr. Johnen feels that allowing this would change the demeanor of the street, reduce the value of homes in the neighborhood and open the floodgates for other accessory apartments and rentals.

Virginia Verhoff, 32 Jotham Rd, expressed her opposition to the proposal as it would set a precedence, stating that it has always been a safe neighborhood for families and children, and opening it up to rentals would make it a thoroughfare.

Melissa Alford wished to ask a question with regard to accessory apartments in general, whether an accessory apartment is like a mother-in-law suite, where it is not necessarily a rental. Mr. Taylor stated that if the property owner is over 55 years old then it can be rented to a nonfamily member. He noted that the property must also be owner occupied.

Mr. Volinski moved to waive the class A-2 survey, existing conditions map, engineered site plan, parking and loading plan, stormwater management plan, lighting plan, landscape plan, traffic study, and soil erosion and sediment control plan for Robert and Doreen Dumas, Special Permit and Site Plan Applications under Section 025-090 and variance 15-3038 to allow a 1-bedroom accessory apartment on the 2nd floor/loft of an existing detached garage on property located at 27 Jotham Road, Map 40, Lot 137 in the R-40 zone. The motion was seconded by Mr. DiMichele and carried unanimously.

Mr. Bogie moved to close the public hearing for Robert and Doreen Dumas, Special Permit and Site Plan Applications under Section 025-090 and variance 15-3038 to allow a 1-bedroom accessory apartment on the 2nd floor/loft of an existing detached garage on property located at 27 Jotham Road, Map 40, Lot 137 in the R-40 zone. The motion was seconded by Mr. Volinski and carried unanimously.

- c. **New Options Healing, LLC, Application to the Amend the New Milford Zoning Regulations, Chapter 45, General Business Zone, Section 045-020, Permitted Uses, subsection 3, to add “Medical Marijuana Dispensary Facilities” as permitted use in the B-2 zone subject to special permit and site plan approval in accordance with the provisions of Chapters 175 and 180 of the Zoning Regulations. Close by July 12, 2016**

Ms. Regan stated that she had done some research on state regulations with regard to medical marijuana dispensary facilities and provided documentation for the Commission Members. Ms. Regan noted a document entitled “Medical Marijuana Dispensary Facility License” printed from the Department of Consumer Protection website, noting that at the top in bold lettering it states that the Department is not currently accepting applications. Mr. Taylor reminded the Commission that this is an application to amend the zoning regulations only and that there is no application for a specific property at this time. Mr. Regan said the website includes FAQs for the 2015 Requests for Applications (RFA). One question reads as follows: “If a town’s regulation states that a dispensary facility can be within 300 feet of a school, church, etc. and the state regulations say it cannot be within 1,000 feet, which policy do we follow? Answer: The State Regulations **do not** impose a 1,000 foot restriction. Moreover, Sec 21a-408-15(7) of the Regulations requires that all applicable state and local building, fire and zoning requirements and local ordinances will be met.” Mr. Taylor states this means there is no state statute stating that a dispensary facility cannot be located within a specific distance from schools, churches, residences, hospitals, and other sensitive uses. However, an application filed with the state must demonstrate compliance with local zoning regulations, so the Town can impose its own separation distance. Mr. Taylor stated that the Commission had considered this similar regulation change 2 years ago. Mr. Taylor stated that if they impose such a restriction, any applicant must follow the Commission’s regulation.

Ms. Regan has also provided the Commission with another document from the Department of Consumer Protection’s website entitled “Medical Marijuana Dispensary Facility License Required for Application”, which provides an overview of the application and license requirements for a medical

marijuana dispensary facility. Section B of this document lists the location and site plan information that must be provided with an application to the state. Item 2 states: “Documents sufficient to establish that the applicant is authorized to conduct business in Connecticut and that state and local building, fire, and zoning requirements and local ordinances are met for the proposed dispensary facility”. Item 5 requires “Photographs of the surrounding neighborhood and businesses sufficient to evaluate the proposed dispensary facility’s compatibility with commercial or residential structures already constructed, or under construction, within the immediate neighborhood”. Item 7 requires “A map that identifies all places used primarily for religious worship, public or private school, convent, charitable institution, whether supported by private or public funds, hospital or veterans’ home or any camp or military establishment that are within 1,000 feet of the proposed dispensary facility location”.

Mr. O’Brien asked for clarification with regard to the history of this proposed zoning regulation change. Mr. Taylor clarified that 2 years ago the Commission proposed a very similar regulation to what is currently being proposed. After receiving input from the public and discussing the proposal, the members thought a separation distance should be required to sensitive uses, such as schools, daycares, etc. Therefore, the Commission decided to withdraw the proposal and then got busy with other business and forgot to revisit the regulation change.

Ms. Regan made note of the last piece of documentation provided to the Commission was excerpts from CT General Statutes, Section 21a-408-1 to 21a-408-70. Ms. Regan reviewed the excerpts with the Commission.

Russell Lutz, New Options Healing, LLC, was present to address the Commission. Mr. Lutz asked if there is already an allowance for manufacturing and growing and if there is a distance limitation with regard to schools, churches, etc. Ms. Regan stated that the Zoning Regulations do allow medical marijuana production facilities with no separation distance requirements. Ms. Regan stated that her recollection of public input was not the objection for production facilities, but more concern for the sale and it being in the community.

Mr. DiMichele asked if there is any regulation with regard to the distance between dispensaries. Ms. Regan stated that there is not, but the state does take into consideration the impact of multiple licensees in a community. Mr. DiMichele asked the applicant why he chose New Milford. Mr. Lutz stated that he likes New Milford and it is accessible to residents of Fairfield County, noting that the Bethel dispensary has a huge volume of patients and he would like to alleviate some of that demand as well as provide access for patients in the northern portion of the state. Mr. DiMichele asked if Mr. Lutz has approached other towns, to which Mr. Lutz replied that he is also looking at Brookfield, but thinks New Milford is a good location.

Mr. Taylor opened the floor to any public participation.

Donna Peterson, New Milford, stated her opposition to the proposal and stated that her neighborhood already has big marijuana problems and feels the police could do more. Allowing the sale of marijuana would in her opinion only make things worse.

Melissa Alford, New Milford, asked if there is a state requirement of a market study for the distance of these locations and if so, did the applicant provide one. Mr. Taylor stated that there is application for a facility at a specific property. He explained that this is a request for legislative change to zoning regulations only.

Mr. Taylor asked the Commission if they had any other questions. Ms. Regan said that prior to any decision, they must decide if a separation distance restriction is going to be added, for what specific uses, and how it would be measured, from property line to property line, or building to building, for example. Mr. Taylor asked Ms. Regan if she had discussed modifying the proposal with the Commission's attorney. Ms. Regan stated that she had and was advised that if they are making the regulation more restrictive and protecting people's property rights then it would be allowed. They could not make the regulation less restrictive because it could infringe on people's property rights and have a potentially negative impact. Mr. Taylor stated that they would continue the public hearing to discuss a specific separation distance requirement and allow for public comment.

Ms. Regan stated that she had received a letter of opposition from a Susan Kustoz, dated June 24, 2016. A copy of the letter is part of the record and on file in the Zoning Office.

- d. **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 July 26, 2016 with 30 day extension.***

Russ Posthauer, PE, President, CCA, was present on behalf of the applicant. Mr. Posthauer stated that he had provided a letter and a memo from the applicant. Mr. Posthauer stated that he sat his client down, explained the process, and advised him that now was the time to disclose all of the uses he was hoping to achieve with regard to this property, so that every time he visits the property there is not another issue discovered. Mr. Posthauer stated the changes from the last response. He said his client is proposing to use the inside of the building for the repair of his equipment only and for storage, which will require bringing electric to the building. There is a well on site for water. He did not know the status of the septic system, but knows that Brookfield sewer is available to him. Mr. Posthauer stated that the applicant's employees park behind the building. Mr. Posthauer stated the current situation is working for the applicant, even though he knows he is not supposed to be there, and there is no public access or invitation to the site. Mr. Posthauer stated that he had the applicant write a letter, or rather he wrote it, and they went over it multiple times to make sure there were no misunderstandings. Mr. Posthauer stated that his client is not deliberately trying to avoid compliance, but it's more of a lack of knowledge of how the process works.

Mr. Taylor noted the provided interior floor plan, asking about water and if it is being brought in. Mr. Posthauer stated there is a well on site, there is water there, just no electricity to run it. Ms. Regan asked if the water lines are in place. Mr. Posthauer stated it was an active well when the Roggs owned the property.

Mr. Bogie asked about the septic. Mr. Posthauer replied that he didn't know where it used to be or if it still exists or the impact with the modifications out front, but there is a Brookfield sanitary manhole near the driveway, noting that part of the building is in Brookfield so he would be allowed to hook up.

Ms. Regan asked for clarification regarding the repair of equipment and whether that also included vehicles. Mr. Posthauer stated the applicant has a small tractor, power and hand tools. Ms. Regan inquired about his fleet of vehicles. Mr. Posthauer stated that he cannot get his dump trucks into the building.

Mr. Saitta asked about the previous discussion regarding the unauthorized use as a body shop. Mr. Posthauer stated that the client did not admit that and he told the applicant that he cannot do that and to be honest about the intended uses he is planning.

Mr. O'Brien asked if the applicant is currently using the building. Mr. Posthauer stated that the applicant says he is not currently using the building and has removed all of his belongings. Mr. Posthauer state that he believed the Fire Marshal has since inspected the building, but he did not know the details of that report. Mr. O'Brien stated that every time he goes by this building, there is activity there.

Mr. Bogie asked for clarification on what part of the property he is currently using. Mr. Posthauer stated that the property is very confusing. Ms. Regan clarified that it is Unit 3, but the mailing address is 600 Danbury Road, #4. Mr. Posthauer referenced the condominium map, noting where the church's easement is, and noting the portion of the property that is in Brookfield. Mr. Bogie asked about the old rolls of astroturf and whether they would be removed, Mr. Posthauer stated they would be removed, even though they are technically in Brookfield.

Mr. Saitta asked if the applicant is intending to purchase the building. Mr. Posthauer stated that he is under contract to purchase it. Mr. Posthauer also wished to warn the Commission that the stuff inside the building is to be stored in a new building to be constructed on church property. Mr. Bogie noted the inside of the building is filled with sets and props belonging to the church for their seasonal plays.

Mr. DiMichele asked if the building is even safe. Ms. Regan stated that she went in with the Fire Marshal last week and will be bringing the building inspector with her next time, she noted the open pit and that there is no floor in the center of the building. Mr. Posthauer explained it was excavated due to remediation and an environmental clean up because it was previously a machine shop, stating that DEEP closed it out in 2009. Mr. Taylor asked if DEEP says the property is good to go. Mr. Posthauer stated that per his phone conversations with them, it is. Mr. Taylor asked if they planned to repave or finish the floor. Mr. Posthauer stated it could be filled with gravel. Mr. Saitta stated that if he is repairing equipment inside the building and has a spill, there has to be an impervious floor, otherwise you will end up with another environmental problem. Mr. Posthauer stated he didn't know the code with regard to that, but it would make sense. Mr. Taylor stated that repair shops generally have oil containment systems and plans, assuming this will also have to have that. Mr. Posthauer stated it would only be small engine repair. Mr. Taylor reminded Mr. Posthauer that he stated that the client would also be repairing his vehicles. Mr. Posthauer stated only the tractor, the dump trucks won't fit and he hasn't seen the regular trucks in there. Mr. Bogie stated he has seen them in there.

Mr. O'Brien inquired about the size of the pit, stating that it appeared to be more than half the size of the building. After some discussion and analyzing of the diagram, all parties agreed it was about half the size of the building.

Mr. Bogie stated that one of the support columns on the shed roof side on the east side of the building is just hanging there due to excavation.

Mr. Taylor stated he would leave the structural issues with the building to the Building Department. The concern is land use, and the use of the facility to repair anything larger than a small engine, and what kind of regulations he is under from the DEEP to do so. If the applicant is repairing pickup trucks or something of that size, what is his containment policy? Mr. Posthauer stated that he would find that out.

Mr. O'Brien asked why the applicant has not shown up to answer questions, stating that Mr. Posthauer seems to be confused as to what is going on. Mr. Posthauer stated that he wasn't confused and could bring him. Mr. Taylor stated that the applicant does not have to come before the Commission, it is his right to send an authorized agent. Mr. O'Brien stated that it would be helpful, since it is a messy complicated issue.

Ms. Regan stated that at the last meeting she asked that written proposal be submitted for the Commission's review with timelines as to when the proposed improvements would be completed. She noted that this information is important because they are operating without proper approvals and are in violation of the Zoning Regulations as well as other town regulations. Mr. Bogie stated if you have employees, you have to have a bathroom. Mr. Taylor stated that this is a unique situation, while he is under contract, he does not own the building, which means the church still owns it, and they are allowing him to use it without permits, noting there is a difference between small vehicles and tools and large trucks and tractors. Mr. Bogie noted there is a lot going on there, including boats and boat trailers, and landscaping materials. Ms. Regan stated the outside storage is a special permit use, noting the Commission has to decide if boat storage is a customary accessory use to a landscaping business. Mr. Posthauer stated per the dictionary, warehousing is defined as a space, not a building. Ms. Regan stated that they have not applied for a general warehouse use, but rather a landscaping business with accessory outside storage. Mr. Posthauer stated he was just saying that warehousing was a permitted use in this zone. Mr. Taylor asked that the applicant define his "shop uses" and exactly what equipment will be stored and repaired. Mr. Taylor stated a spill on gravel goes directly into the ground.

Mr. Saitta asked Mr. Posthauer to also inquire if he would be utilizing or storing any large tanks used for fertilizer or insect control. Mr. Posthauer stated he would find out.

Ms. Regan asked for clarification on whether the applicant is proposing to connect to the Brookfield sewer. Mr. Posthauer stated it would depend on what they find out about the septic system and what the Brookfield regulations are.

Mr. Taylor opened the floor to any public participation. There was no public comment. Mr. Taylor stated the public hearing would be continued to the next regularly scheduled meeting.

- e. **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 and to add the use of auto sales with outside storage of vehicles and associated drainage, parking, landscaping, and lighting on property located a 4 Lanesville Road, Map 14.1, Lot 89 in the IC Zone. *Request to waive traffic study.* Close by July 26, 2016**

Mr. Volinski read the public hearing legal notice.

Ms. Regan noted that she had received the return certified mail receipts from the applicant. Ms. Regan was in receipt of a memo from Brian Ohmen, Fire Marshal, dated June 27, 2016, stating his office had completed a life safety review and had no concerns with accessibility to this site at this time. Ms. Regan also said she received a review letter from Dan Stanton, PE, Town Engineer, dated June 8, 2016. Ms. Regan referenced her Staff Report dated June 22, 2016, and reviewed the location, site history and existing conditions as well as the proposal requesting Special Permit and Site Plan approval under Chapters 60, 175, and 180 to allow building and site modifications to reutilize the existing auto repair facility and to add the use of auto sales with outside storage of vehicles and

associated drainage, parking, landscaping, and lighting. Building renovations include the installation of 5 new overhead doors along the west side of the building, 10 new building mounted lights, as well as security lights. Site renovations include driveway and paved parking area expansion, as well as a proposed large gravel parking area for “vehicles in-service”. New retaining walls and fencing are proposed. Lot coverage is proposed to increase from 9.52% to 24.1%. Landscaping and stormwater management improvements are also proposed.

Paul Szymanski, PE, Arthur H. Howland & Associates, was present on behalf of the applicant. Mr. Szymanski reviewed the current conditions and neighboring properties. Mr. Szymanski stated in 1996 Connecticut Auto Body did receive approval, with the stipulation that the cars under repair be stored in a fenced in area, which turned out to be just a chain link fence with no buffering. Mr. Szymanski stated the proposal includes the utilization of the existing paved parking area to the east for customer access. The southerly portion of the site would be utilized for car storage for cars that are under repair. They are proposing a 6 ft stockade fence for the southerly portion extending to the easterly property line for screening from Route 7 and abutting properties. Mr. Szymanski stated it is also topographically screened due to the proposed grading. Mr. Szymanski stated they are proposing a ramp up to access the proposed addition of the 5 new overhead doors. Mr. Szymanski stated that stormwater management is such that the site drains from the north to the south and are currently before the Wetlands Commission seeking approval for the stormwater management plan.

Mr. Taylor asked about the parking location on the south side with all the stormwater draining in that direction, he would assume that they would include a catch basins in there. Mr. Szymanski there will be a heavily vegetated buffer which will discharge into a wet basin and provide additional treatment. Mr. Taylor asked for clarification on how leaks will be contained for the vehicles under repair stored in the gravel lot. Mr. Szymanski stated that there won't necessarily be any leakage, stating the majority of repair business that they do are oil changes, brakes and similar minor repairs, stating that they are dealing with those concerns at the Wetlands level and are on a positive track with them, but the application is still pending.

Mr. Szymanski returned to his presentation, stating that on the westerly side of the property they are proposing 11 spaces to be utilized for storage and sales of used cars. Mr. Szymanski stated that the owners currently operate out of the two Bridge Street locations and wish to consolidate to one location. Mr. Szymanski stated they are proposing landscaping along the entire front setback. They are proposing lighting above the garage bay doors, as well as security lights.

Mr. Szymanski referenced the Comments and Questions portion of the Staff Report and addressed them. With regard to Comment 1), Mr. Szymanski noted recognition that there is a legal preexisting nonconformity which they are not increasing in any way. Comment 2) was requesting a dumpster location, which after discussing with the applicant, will be located within the stockade fenced area. Comment 3) was a request for renderings and floor plans, to which Mr. Szymanski stated the floor plan is not to change, and that he will provide a written summary and pictures. Mr. Szymanski noted the only exterior revisions are the addition of the garage bay doors. Mr. Bogie asked if the existing doors will remain, to which Mr. Szymanski replied they would remain, the idea being vehicles to be able to pass through the building. Comment 4) applied to the cuts and fills to which Mr. Szymanski replied that the site is balanced within 20 cubic yards, but he will provide exact numbers. Comment 5) was regarding the existing septic, and noted that they are planning to connect to sewer. Comment 6) related to traffic circulation on site, Mr. Szymanski demonstrated on the site plan how traffic would flow through the site. Mr. Saitta asked if there was a landscaping plan, to which Mr. Szymanski replied yes and that the plantings schedule is on the site plan. Comment 7) with regard to landscape areas, Mr. Szymanski explained the color coded depiction delineating the proposed landscaped areas.

Mr. Saitta asked about the stockade fence, and whether it will be along the southern side as well. Mr. Szymanski stated that is existing forest so they were not proposing it in that area. Mr. Saitta asked about the color and material of the proposed fence. Mr. Szymanski replied that it probably would be wood, but could be PVC. Mr. O'Brien asked about the proposed gate, to which Mr. Szymanski replied it would be a sliding gate. Mr. O'Brien asked what would be stored in the back lot. Mr. Szymanski replied cars that are under repair. Comment 8) was with respect to parking, noting that 13-19 spaces are recommended, and they are providing 14. Mr. Szymanski asked the applicant how many employees at most she has. Magaly Jarrin, the applicant and property owner replied currently there are 7 in the combined locations. Mr. Taylor inquired where the employees will park to which Mr. Szymanski stated they will use the regular parking with overflow in the rear lot. Mr. Taylor asked how many repair bays, to which Mr. Szymanski replied there are 5. Mr. Taylor stated that 5 waiting customers plus 7 employees will add up quickly. Mr. Szymanski noted the overflow in the rear has approximately 40 spaces to utilize, noting it is easily accessed, which touches on Comment 9. Mr. DiMichele asked for clarification with regard to auto body repair. Ms. Regan stated that Zoning Regulation does not differentiate between auto repair and auto body repair. Mr. DiMichele felt that auto body repair opens up the possibility of a spray booth. Mr. Szymanski acknowledged there will be a spray booth which is a state permitting process and they will comply, noting the exhaust released inside and outside of the building, OSHA will also be involved as part of that process as well. Mr. Bogie asked if there will be a container for scrap metal, to which Mr. Szymanski stated he will talk to the applicant about it and make sure it is screened. Comment 9) regarding the size of the spaces was addressed with Mr. Szymanski explaining that because they are auto sales and employee parking, the size was sufficient. Comment 10) regarding preservation of existing mature trees, Mr. Szymanski stated that the proposed grading may require the loss of some mature trees, but noted other large specimens will remain as well as noting the landscape improvements they plan to implement, including the northwest corner of the property which includes the island of the gas station, which they will also be landscaping in accordance with regulations. Mr. Szymanski stated they did provide a lighting plan to address Comment 12), including motion sensor lighting, which he clarified will turn off after 15 minutes. The last comment regarding signage requirements was addressed with Mr. Szymanski stating they would comply with all requirements.

Mr. Taylor noted that they had received a memo from Dan Stanton, PE, dated June 8, 2016, asking if Mr. Szymanski was going to respond to it. Mr. Szymanski stated that most of the comments had been addressed, except for the concern about car carriers and Lanesville Road, noting that they do not use car carriers, perhaps a tow truck dropping a single car, but not large shipments of cars. It could be added if they feel it is needed. Mr. Taylor stated that it would protect for future uses, not just this application.

Mr. Taylor opened the floor to any public participation.

Robert Kovacs, Owner, Valero Gas Station, 315 Danbury Road, stated that when he bought the land from the Grange Hall, they maintained a 20 foot easement and never sold that portion of property. Mr. Kovacs added that adding all the cars will take away the greenery. Mr. Kovacs stated that the state required them to add oil separators and doesn't see the applicant being required to adhere to the same regulations he was. Mr. Kovacs feels the increased auto storage and additional bay doors will make the property look like a junkyard. Mr. Kovacs states that the property has been abandoned for years and therefore the preexisting nonconforming should not apply.

Paul Szymanski wished to address the nonconformity, noting the only nonconformity is the northwest corner of the building and the vestibule, noting when the Jarrins first approached him, they stated they wanted to convert the front area to used car sales. Mr. Szymanski stated that he explained to them that

a 40 ft. front setback is required, noting the frontage is on Lanesville Road, not on Route 7, and are in compliance with regulations. Mr. Szymanski stated they are landscaping and leaving the required amount of land in a natural state as required by the regulations. Mr. Szymanski stated the only cars that will be visible on the west side of the property are the used cars for sale. Mr. O'Brien asked Mr. Szymanski to demonstrate again where the stockade fence will be, to which Mr. Szymanski demonstrated on the site map the perimeters of the proposed fence.

Linda Kovacs, Co-Owner, Valero Gas Station, 315 Danbury Road stated her concern that the owner's current business on Bridge Street looks terrible, that the cars are jammed on the property and it looks awful. Mrs. Kovacs stated that she does not want this business next to her property.

Magaly Jarrin, Co-Owner, J & J Capital Investments, stated that they are a growing business, which is why their current business location is jammed with cars and why they propose to have the large rear lot at the new location. Ms. Jarrin stated their main goal will be to keep the new location looking nice and presentable, and they will abide by DEEP regulations. Ms. Jarrin felt that her business will go hand in hand with the gas station and feels like the ugly side of the auto repair business will be confined to the fenced in back area of the property.

Mr. Taylor stated the public hearing would remain open and continue at the next meeting on July, 12, 2016, and advised Mr. Szymanski to provide the written responses to all of the questions.

4) NEW BUSINESS:

- a. **WITHDRAWN - 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**

Mr. Taylor moved to accept the letter of withdrawal from 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. The motion was seconded by Mr. Volinski and carried unanimously.

- b. **Brian Pieck, Site Plan Application under Chapters 65 and 175 to allow the erection of a 6' x 6' tent with the outside storage and display of inventory as an accessory use to an existing retail business (House of Warmth Stove and Fireplace Shop), on property located at 449 Danbury Road, Map 10, Lot 16 in the IC zone. Request to waive Class A-2 survey, existing conditions map, engineered site plan, building floor plans and renderings, parking and loading plan, stormwater management plan, lighting plan, landscape plan, traffic study, and soil erosion and sediment control plan. Decision by July 26, 2016**

Ms. Regan referenced her Staff Report dated June 27, 2016, reviewing the location, site history and existing conditions as well as the proposal of the property owner and business owner of House of Warmth, Brian Pieck, to allow the erection of a 6' x 6' tent with outside storage and display of inventory, specifically grills, as an accessory use to his existing retail business. According to the site

plan, the tent will be located in the southwest corner of the property and utilized Thursday – Saturday from 11am – 3pm for the months of April, May, June, July, and August.

Brian Pieck, property owner and owner of House of Warmth, was present to address the Commission. Mr. Pieck stated that he was looking to grow his outside kitchen and barbecue grill business.

Ms. Regan referenced the Comments and Questions section of the Staff Report. Ms. Regan read Comment 1) which pertained to ensuring that no outside display or storage encroaches into the 40' front yard setback and requires that all outside storage and display, including the tent, be located behind the front line of the building, which on the applicant's site plan would be no closer than the 3rd parking space back in the row of parking spaces along the south side property line. To ensure no encroachments occur onto the neighboring property, any approval should also require that all outside storage and display be contained to the paved portion of the property. Mr. Pieck referenced the provided aerial pictures, stating he felt the setback border was closer to the 2nd parking space, stating that in any event it didn't really matter to him and he would make sure it is 40 feet off the front line and it would be no problem to move it slightly. Ms. Regan noted that he may want to eliminate or block off those 2 parking spaces seasonally, perhaps with cones. Mr. Pieck said that one of his tenants usually parks there, but noted he would move his business van to another location and allow his tenant to park in that spot to keep all parties happy. Mr. Saitta asked Mr. Pieck if he would be adding any signs in or around the tent. Mr. Pieck stated he thought he was allowed 15 SF of signage, noting he has two 4 SF signs he would like to utilize. Ms. Regan stated that in addition to the permanent freestanding sign, each business is allowed 1 temporary advertising sign, 8 SF maximum. Mr. Pieck asked if he could display his 2 small signs to which Ms. Regan replied that only 1 is permitted. However, she said he could have 2 different signs provided only 1 was displayed at a time. Ms. Regan referenced Question 2) asking if all inventory will be confined to the 6' x 6' display tent. Mr. Pieck responded that his intention is 4 grills only, completely contained under the tent, in the shade. Mr. Saitta inquired about the grassy area between the parking lot and Route 7, asking if the applicant would be landscaping that area. Ms. Regan replied that is the State Right of Way and they do not want landscaping on their property. Comment 3) referenced the parking lot conditions, noting there are no parking concerns. Mr. Saitta asked if there are any dumpsters, to which Mr. Pieck referenced the site map showing Mr. Saitta where the two dumpsters are located, noting 1 for garbage and 1 for cardboard. Comment 4) dealt with signage which had previously been addressed. Comment 5) stated the Summary of Recommended Conditions: a. All outside display and storage of inventory, including the proposed 6' x 6' tent must comply with the 40' front yard setback and shall be located behind the front line of the existing building and contained to the paved portions of the site. b. A maximum of 1 temporary advertising sign is permitted per business, with no additional signs permitted on the tent or in the outside display area.

Ms. Regan referenced a memo from James Ferlow, Wetlands Enforcement Officer, dated June 28, 2016, stating no individual wetlands permit is required, but recommending an additional condition with regard to staking the tent so that it remains secure during storm and wind events. Mr. Pieck stated he learned the hard way already, that they are on their second tent, and that he found long aluminum nails and hammered them into the blacktop, noting his intention is to just have the tent up for a few hours, during business hours, and it will be taken down at the end of the business day.

Mr. Taylor asked if anyone else had any questions for Mr. Pieck. There were no additional questions.

- c. **Aquarion Water Company of CT, Site Plan Modification Application under Chapters 25 and 175 to allow modifications to the September 22, 2015 Special Permit (2015-15) and Site Plan Approval for the construction of a new pump station and underground storage tanks**

with associated site upgrades on property located on 21 Forest Drive, Map 4, Lot 6 in the R-80 zone. *Request to waive parking and loading plan, stormwater management plan, lighting plan, and traffic study. Decision by August 23, 2016*

Mr. Taylor stated the he was recusing himself due to the fact that the company he works for has a business relationship with the applicant. Mr. Saitta was seated.

Ms. Regan referenced her Staff Report dated June 28, 2016, reviewing the location and existing conditions. Ms. Regan also noted the background of the application, original conditions of approval and an excerpt from the September 21, 2015 Staff Report. Ms. Regan noted that the proposed site plan is a scaled down version of the original plan and they have reduced the scope and disturbance of the project. She asked the applicant to review the specific changes with the Commission.

Zachary Kuegler, Project Engineer, Snyder Civil Engineering, LLC, stated that due to economic decisions and the extent of the proposed disturbance, Aquarion decided to revise the design. Mr. Kuegler stated that the existing well house is approximately 12' x 12', noting the proposed addition is approximately 12' x 18'. They were previously proposing to demolish the existing building and building a new building. The single 30,000 gallon tank will be removed and replaced with two 20,000 gallon storage tanks in the approximately the same location. Mr. Kuegler referenced the proposed addition of a buffer screening along the road and necessary site upgrades such as a retaining wall and some drainage piping. Mr. Kuegler stated to further minimize impact and disturbance, they have eliminated plans to reconstruct the access way, removed the installation of electrical conduits and water piping, and are no longer replacing a standby generator. Mr. Kuegler stated that covered the changes to the site plan and asked if the Commission had any questions.

Mr. Bogie asked if any work has been done on the site. Mr. Kuegler stated that no work has been done on the site.

Ms. Regan referenced the Questions and Comments section of the Staff Report. Comment 1) noted that the location of the existing pump station is preexisting nonconforming due to its encroachment into the 40' minimum west side setback and the addition to the pump station is proposed on the east side of the existing building, outside the 40' front setback. Therefore, the addition is conforming and does not require a variance or render the building more nonconforming. Comment 2) asked the applicant to review the proposed landscaping and screening, noting the revised plans may have a greater impact on the neighboring residential properties than the previously approved plans, asking if there are opportunities for additional screening. Mr. Kuegler stated that if the Commission would like, they could add an additional grouping of trees by the access drive for screening.

Mr. O'Brien requested clarification as to the location of the property. Ms. Regan referenced page 2 of the staff report explaining the location of the property.

Mr. Bogie inquired if the original plan included a different access way, to which Ms. Regan responded that it included expansion of the access way, which the revised plan does not.

Mr. Saitta asked for clarification on the original plan to leave the tanks in place, now they are proposing to remove the tanks. Ms. Regan noted the previous plan stated they would be abandoned in place. Mr. Kuegler stated that was a concern during the previous application, noting the Commission asked that they be removed, so that is included in the current plan. Mr. Saitta inquired about the 6 ft chain link fence, and whether it will be visible from the residences in the area, adding that whatever

could be done to make it look more natural would be a positive. Mr. Kuegler proposed that a good solution would be to swap the location of the trees and the fence, so that the trees are outside the fence.

Mr. O'Brien asked how the tanks are removed. Mr. Kuegler stated that they are usually removed with an excavator and cut into pieces before being hauled away. Mr. DiMichele asked if the tanks are fully submerged. Mr. Kuegler responded that they are fully submerged except for a 30" diameter access.

Mr. Bogie inquired about concerns stated at the previous public hearing. Ms. Regan stated that she had the previous application Mr. Bogie and Mr. Kuegler compared the two site plans. Ms. Regan stated that her recollection of the concern was the coordination of the access ways during construction with regard to the neighbors. Mr. Kuegler stated that Aquarion is very mindful of their customers and wishes to keep them happy and will coordinate access with their neighboring property owners.

Mr. O'Brien asked why there is currently no public hearing on this. Mr. Bogie stated that the original plan was larger in scope and disturbance and the current plan is less intrusive. Ms. Regan stated that she had the minutes from the previous public hearing. Ms. Regan reviewed the previous concerns were about rate hikes, when the construction would be completed, and sediment run off onto the access way. Ms. Regan stated that they could add a condition that upon completion of the project, the ZEO could inspect the screening and consult with the neighbors to see if additional screening is needed.

Mr. Kuegler stated the changes to the site include additional buffer screening with the chain link fence being located behind the trees, and the pump station will be a little bit longer. Mr. Bogie stated that he was simply trying to make sure the concerns of the neighbors were addressed and stated that this plan appears to be less intrusive.

Mr. O'Brien asked if the purpose of this proposal is to add capacity or to upgrade. Mr. Kuegler stated it was both, noting the existing pump station is very cramped, and showing photos of the interior, where the operators have trouble functioning. Mr. Kuegler stated they will be improving the disinfection of the water as required by the Department of Public Health.

Mr. DiMichele asked if the driveway will be gravel or paved. Mr. Kuegler responded that in the contract bid they are requesting pricing for gravel and paved, and Aquarion will determine which is economically feasible. Mr. DiMichele expressed his concern for the gravel option, noting gravel will spill out onto the roadway, to which Mr. Kuegler replied that there is a paved apron at the end of the driveway that will be improved and is uphill.

Ms. Regan reviewed the 6 conditions of approval from the previous application. With the exception of the requested changes to address the landscaping revisions and fencing, Ms. Regan did not think any changes were needed and recommended that any approval be subject to these same conditions. The Commission members had no further questions.

Mr. Saitta was unseated and left the meeting. Mr. Taylor was reseated.

- d. **Auto Technic, LLC and Technic Properties, LLC vs. New Milford Zoning Commission: Litchfield Superior Court proposed settlement: Auto Technic, LLC & Technic Properties, LLC, Site Plan Modification Application under Chapters 45 and 175 and variances 02-2444, 11-2937, and 16-3057 to allow modifications to the April 9, 2013 Special Permit (2013-02) and Site Plan Approval and April 28, 2015 Site Plan Modification for the expansion of the outside storage of vehicles accessory to an existing auto dealer and repairer on property located at 6 Danbury Road, Map 28.4, Lot 6 in the B-2 zone. This is a**

settlement of the applicant's appeal and modification of the original site plan approval pursuant to the applicant's Application. *Request to waive building floor plans and renderings, parking and loading plan, stormwater management plan, lighting plan, traffic study, and soil erosion and sediment control plan.* Decision by July 26, 2016

Ms. Regan distributed site plans, landscaping plans and surveys to the Commission members. Ms. Regan referenced the Staff Report dated June 27, 2016, explaining that this is a settlement of the applicant's appeal and modification of the original site plan approval pursuant to the applicant's Application. Ms. Regan reviewed the site location, site history and existing conditions, as well as the proposal of the submitted Site Plan Modification Application under Chapters 45 and 175 and variances 02-2444, 11-2937, and 16-3057 to allow modifications to the April 9, 2013 Special Permit (2013-02) and Site Plan Approval and April 28, 2015 Site Plan Modification for the expansion of the outside storage of vehicles accessory to an existing auto dealer and repairer on the property located at 6 Danbury Road. Prior to submitting this application, the applicant filed for a variance application (16-3057) with the ZBA, which was granted January 20, 2016, for relief from the front setback and landscape area of 10' to 0. The submitted Site Plan Modification Application was approved by the Commission on April 28, 2015, subject to conditions in an Amended Resolution of Approval, dated April 9, 2013 and amended April 28, 2015. However, on May 19, 2015, Auto Technic, LLC and Technic Properties, LLC, filed an appeal of the Zoning Commission approval in Litchfield Superior Court.

Gregory Cava, Attorney at Law, representing the applicant, was present to address the Commission. Mr. Cava stated that after they had filed the appeal, they met with Ms. Regan and Attorney DiBella and decided that this appeal could probably be resolved with some modifications.

Mr. O'Brien asked Mr. Cava if he could explain why they appealed the approval before he began explaining the current modifications they are seeking. Mr. Cava explained that they were appealing due to the conditions imposed on the Amended Resolution of Approval, noting the nature of the appeal is which conditions remain and which conditions they would like to have removed. Mr. Cava stated the existing building dates back to approximately 1960. Mr. Cava stated the existing conditions that they had issue with related to trucks, which will be removed from the Resolution of Approval. Mr. Cava stated that they have taken out and moved around the conditions relating to the split rail fence, noting that it currently exists and its intent was to block access to/from Peagler Hill Road. Mr. Cava stated they are appealing to the State of Connecticut to acquire that egress only, right turn exit only, out to Peagler Hill Road, for the purpose of a safer exit out of the site. Mr. Cava stated it would be designed to prohibit incoming traffic and they would provide signage. Mr. Taylor and Ms. Regan discussed deed and curb cut restrictions. Mr. Cava stated the State of Connecticut can amend the restriction, noting it would be well advised due to increased safety. Mr. Taylor asked if they had approached the state yet, to which Mr. Cava replied that they had not yet done so. Mr. Taylor asked for a timeframe, to which Mr. Cava replied that they would approach them probably soon. Mr. Taylor asked for a more specific timeframe, noting the main reason for the egress request was for the large truck, and asked Mr. Cava to revisit his previous comment with regard to the truck condition. Mr. Cava stated that the owners of Auto Technic are also involved in BMW racing, and they have previously utilized the truck for transport of their racing vehicles. Mr. Bogie inquired if that truck will be back on the property. Mr. Cava stated that he didn't think so and that it hasn't been there in quite a while, but they didn't want the restriction of trucks on the property due to the fact that it is a commercial property and they want the ability to take deliveries of vehicles.

Mr. Cava stated that if the State does not allow them a curb cut on Peagler Hill the split rail fence. If approved, there may be a gate installed which will be utilized when the business is closed to prevent

cut through traffic on the site. Mr. Cava noted if they receive the egress, those two parking spaces will be relocated or removed. Mr. Cava also stated that they need site plan approval prior to going to the CT DOT.

Before Mr. Cava went over the proposed revisions to the Resolution of Approval, Ms. Regan asked him to finish reviewing the proposed Site Plan Revisions. Ms. Cava said they are proposing the removal of the proposed gravel spreader/stormwater trench in the northwest corner of the property. Mr. Cava stated the concern was that water would sheet flow off the site, but that they have determined that the water infiltrates into the ground and they are not experiencing a sheet flow, noting the occasional flooding of the Housatonic River is an exception and the infiltrator would serve no purpose. Ms. Regan noted that Wetlands had no concerns and the Town Engineer's report did not include any concerns about stormwater management. Revision 2) was concerning the proposed Peagler Hill exit, which was previously discussed. Revision 3) dealt with the minor reconfiguration of the striped island adjacent to the existing driveway/curb cut on Route 7. Mr. Cava referenced the granted variance that allowed the front setback to be 0, stating they are parking up to the property line and not in the state right of way, which is an improvement. Mr. Cava referenced the landscaping plan, noting he counted the plantings, and it appears that every tree and shrub that was required is currently in place. Mr. Bogie asked about the berm at the rear of the property that was a previous concern. Mr. Cava stated the berm is small and serves as an anchor for vegetation.

Russ Posthauer, PE, the applicant's engineer, stated that the original berm proposed went to the middle of the last parking spot, approximately 10 feet short of the property line. Mr. Cava noted it was moved slightly to the east to accommodate the egress driveway. Mr. Cava noted the proposed area to be landscaped.

Mr. Bogie asked how they determine the property line, noting how difficult it is to get in and out of the site. Mr. Cava stated that the cars have been pulled back so that they do not encroach into the existing curb line and demonstrated on the map the property lines.

Mr. Taylor noted that the applicant stated they would not store trucks on the site, however on the modified plan they show a truck/trailer parking area. Mr. Cava stated they designated an area if they have a truck on site, where it is should be, noting that was on the original approved site plan and has not changed.

Mr. Cava referenced the as-built survey that he had just seen today, stating there does seem to be the aggressive spreading of gravel, which has gone into the setback area. The applicant proposes to bring in soil and seed the area by the 1st of August. Mr. Cava stated perhaps giving the ZEO flexibility with that date because weather conditions may cause difficulty in establishing grass. Ms. Regan stated that she had a date of September 1st, but could add a clause with regard to weather conditions permitting. Mr. Cava acknowledged that they will also have to put the timber stops in place. Mr. Cava stated that he felt that covered all of the questions the Commission had and noted the Amended Resolution of Approval that has the Applicant's Proposed Revisions portions stricken with lines and handwritten revisions that was distributed to the Commission members. Mr. Cava noted on page 4 of 5, item 13h, speaking about the signage, asking why it has been highlighted and asking for a reason the signs do not comply. Ms. Regan stated that she did not agree with this item which is why it is crossed off, stating that in general, these are the conditions that have to be adhered to for the life of the site, so regardless if they comply now, in the future they cannot be in violation. Mr. Cava stated that the applicant understood this. Ms. Regan stated that she was not aware of any current sign violations. Mr. Cava wished to clarify item 13g with regard to pedestrian pathways and sidewalks maintenance, noting that there are none on the site at this time nor is there any plan to add them.

Ms. Regan posed the question of timeframes to Mr. Cava, noting Question 12 does say that prior to the use of the expansion area the improvements were to be completed. Mr. Cava made note of the survey, stating that item a. was completed, noting he believed they were in compliance with the landscaping plan, but if they find anything they are not happy with, they would make those changes by the September 1st deadline. Mr. Cava stated they would delineate the 8 parking spaces this summer. Mr. Cava stated that they are trying to park less cars but people take the cars for test drives and then re-park them in various spots. Ms. Regan stated that the curb stops are important and need to be done. Mr. Cava stated that it will probably be done when the grass is planted. Mr. Cava stated that at that time the engineer will check it make sure it is done.

Mr. O'Brien stated there is a ton of foot traffic and asked if sidewalks were ever discussed. Ms. Regan stated that it was discussed but due to the variances granted, there is no room on the site for sidewalks.

Mr. Taylor stated that the applicant has stated they will try to get the project done, and mentioned some non specific words he is picking up on, noting that at no time after the previous two approved site plans, has the applicant actually complied. He stated that hearing the words "hope" and "try" do not give him confidence that the applicant is going to do it now either. Mr. Bogie agreed, noting the applicant has not even tried to be compliant with any part of it, noting they have not improved access and are jamming cars in the lot. Mr. Cava replied that he didn't feel that was a fair assessment, noting the landscaping has been put in place, they have cleaned up the site considerably, noting that it is an active service business. Mr. Taylor stated that he appreciated that, but there are many active businesses that come in front of the Commission, but that the applicant has signed two contracts and been in violation of both, noting that other businesses don't get to do that. Mr. Taylor stated that as their attorney attempting to settle a lawsuit that the applicant brought against the Commission for granting what was asked for, the applicant has used words like "maybe" and "general compliance", reiterating they are not in compliance and have violated many conditions including using the Peagler Road for years without permission. Mr. Taylor stated they are seeking approval from the Commission prior to requesting the States approval and he feels they may just keep using it without permission. Mr. Cava stated that he feels this is a mischaracterization, they will add the striping by the date requested and will adhere to the other requests by the deadline, and are planning to go to the state for the egress request.

Mr. Bogie asked why the striping can't be done next week, it's been many years that they have known it needs to be done. Mr. Cava stated that he hadn't asked his client that, but didn't see why it couldn't be done. Ms. Regan asked if an October 1st, 2015 deadline for all of the outstanding improvements and site plan requirements was agreeable. Mr. Cava stated his client is committed to completing the project and agreed to the October 1, 2015 deadline. Ms. Regan referenced the previously crossed out date in condition 2 of the Resolution of Approval which will now read October 1, 2016. Mr. Cava agreed that was fine.

Mr. Taylor stated that the history of this site and the applicant's disrespect for the New Milford Zoning Commission has him feeling cautious. Mr. Taylor inquired if the Commission agrees to this deal, this out of court settlement to the lawsuit, what assurances to they have? Will this be made into a judicial order? Ms. Regan noted that their attorney, Randy DiBella, has drafted a motion to approve the withdrawal of the settlement, noting that if they approve the Amended Resolution of Approval, the appeal will be withdrawn from the court.

Mr. Bogie asked how the Commission is going to grant access to the Peagler Hill exit, when they do not have the authority to grant that access. Mr. Taylor stated that the way it is written allows them to apply to the state after they receive zoning approval for the other matters. Mr. Bogie stated his concern that other businesses have to demonstrate the in/out movements of trucks. Ms. Regan stated that a turning movements plan has been provided for an SU-30 sized truck. Mr. Bogie expressed his concern that it has been crossed off and taken out of the Resolution of Approval.

Mr. Taylor asked Mr. Cava if that clause being taken out was part of the negotiations with Attorney DiBella. Mr. Cava stated that it was, noting that the other area businesses have large trucks making deliveries as well. Mr. Bogie stated that he did not feel comfortable with this and noted that he has witnessed the use of the Peagler Hill exit and feels it will continue regardless of what they decide.

The Commission members had no further questions, so Mr. Taylor stated that it would be discussed during the business portion of the meeting.

5) OLD BUSINESS:

None

6) ACCEPT FOR PUBLIC HEARING:

None

7) BUSINESS MEETING:

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

Agenda Item 3b: Robert and Doreen Dumas, Special Permit and Site Plan Applications under Section 025-090 and variance 15-3038 to allow a 1-bedroom accessory apartment on the 2nd floor/loft of an existing detached garage on property located at 27 Jotham Road, Map 40, Lot 137 in the R-40 zone. ***Request to waive class A-2 survey, existing conditions map, engineered site plan, parking and loading plan, stormwater management plan, lighting plan, landscape plan, traffic study, and soil erosion and sediment control plan. Close by July 26, 2016***

Ms. Regan noted that she had drafted a Resolution of Approval for the Commission's consideration.

Mr. Taylor asked the members for their input, stating that it has been quite some time since neighbors have objected to the addition of an accessory apartment use. Ms. Regan noted that is unique in that it is a denser neighborhood, but noted a variance was granted from the minimum lot area requirement. Mr. Taylor noted the rules that read the owner has to be over 55 and live on the property and that with the exception of lot area that a variance has been granted for; the application complies with the regulations. Mr. O'Brien stated his concern was that they did not get permission prior to adding the accessory apartment. Mr. DiMichele asked how the Commission became aware of the situation, to which Ms. Regan replied that an appraiser called the office last year about an apartment and this was the first Zoning was made aware of the apartment.

Mr. Taylor moved to adopt the Resolution of Approval for Robert and Doreen Dumas, Special Permit and Site Plan Applications under Section 025-090 and variance 15-3038 to allow a 1-bedroom accessory apartment on the 2nd floor/loft of an existing detached garage on property located at 27 Jotham Road, Map 40, Lot 137 in the R-40 zone. Request to waive class A-2 survey, existing conditions map, engineered site plan, parking and loading plan, stormwater management plan,

lighting plan, landscape plan, traffic study, and soil erosion and sediment control plan. The motion was seconded by Mr. Volinski and carried unanimously.

Agenda Item 4b: Brian Pieck, Site Plan Application under Chapters 65 and 175 to allow the erection of a 6' x 6' tent with the outside storage and display of inventory as an accessory use to an existing retail business (House of Warmth Stove and Fireplace Shop), on property located at 449 Danbury Road, Map 10, Lot 16 in the IC zone. *Request to waive Class A-2 survey, existing conditions map, engineered site plan, building floor plans and renderings, parking and loading plan, stormwater management plan, lighting plan, landscape plan, traffic study, and soil erosion and sediment control plan. Decision by July 26, 2016*

Mr. Volinski moved to waive Class A-2 survey, existing conditions map, engineered site plan, building floor plans and renderings, parking and loading plan, stormwater management plan, lighting plan, landscape plan, traffic study, and soil erosion and sediment control plan for Brian Pieck, Site Plan Application under Chapters 65 and 175 to allow the erection of a 6' x 6' tent with the outside storage and display of inventory as an accessory use to an existing retail business (House of Warmth Stove and Fireplace Shop), on property located at 449 Danbury Road, Map 10, Lot 16 in the IC zone. The motion was seconded by Mr. O'Brien and carried unanimously.

Mr. Taylor moved to approve Brian Pieck, Site Plan Application under Chapters 65 and 175 to allow the erection of a 6' x 6' tent with the outside storage and display of inventory as an accessory use to an existing retail business (House of Warmth Stove and Fireplace Shop), on property located at 449 Danbury Road, Map 10, Lot 16 in the IC zone with the following conditions: 1) All outside display and storage of inventory, including the proposed 6' x 6' tent must comply with the 40' front yard setback and shall be located behind the front line of the existing building and contained to the paved portions of the site. 2) A maximum of 1 temporary advertising sign is permitted per business; no additional signs shall be permitted on the tent or in the outside display area. 3) The tent must be securely staked when in use. The motion was seconded by Mr. Volinski and carried unanimously.

Agenda Item 4c: Aquarion Water Company of CT, Site Plan Modification Application under Chapters 25 and 175 to allow modifications to the September 22, 2015 Special Permit (2015-15) and Site Plan Approval for the construction of a new pump station and underground storage tanks with associated site upgrades on property located on 21 Forest Drive, Map 4, Lot 6 in the R-80 zone. *Request to waive parking and loading plan, stormwater management plan, lighting plan, and traffic study. Decision by August 23, 2016*

Mr. Taylor reminded the Commission that he had recused himself on this application. Mr. Saitta has left the meeting, so only 4 members were seated for this application.

Mr. Bogie stated that he felt this site plan was much better than the previous site plan, with the changes to the trees and fence being swapped, noting it will be better in appearance for the neighbors. Ms. Regan noted the previous conditions of approval could be used with the discussed changes, 1 being the

additional trees being added south of the driveway and the swapping of the fence and trees. Condition 3, with regard to the demoed materials being removed, including the tank being properly removed and disposed of. Splitting condition 6 into two parts with a. pertaining to engineering certification and b. pertaining to the ZEO inspection of the site to determine if additional screening is required. Mr. DiMichele expressed his concern that fill be brought in to fill the area where the tank will be removed, but the Commission reminded him that 2 new tank will be installed where the old tank is currently located.

Mr. Bogie moved to waive parking and loading plan, stormwater management plan, lighting plan, and traffic study for Aquarion Water Company of CT, Site Plan Modification Application under Chapters 25 and 175 to allow modifications to the September 22, 2015 Special Permit (2015-15) and Site Plan Approval for the construction of a new pump station and underground storage tanks with associated site upgrades on property located on 21 Forest Drive, Map 4, Lot 6 in the R-80 zone. The motion was seconded by Mr. DiMichele and carried unanimously.

Mr. Volinski moved to accept Aquarion Water Company of CT, Site Plan Modification Application under Chapters 25 and 175 to allow modifications to the September 22, 2015 Special Permit (2015-15) and Site Plan Approval for the construction of a new pump station and underground storage tanks with associated site upgrades on property located on 21 Forest Drive, Map 4, Lot 6 in the R-80 zone. Request to waive parking and loading plan, stormwater management plan, lighting plan, and traffic study. The acceptance is subject to the following conditions: 1) That prior to the issuance of a zoning permit the applicant/developer shall post a \$1,000 landscaping bond to ensure compliance with the proposed plantings shown on the approved site plan with the additional tree grouping discussed as well as the fence being relocated to behind the tree line; 2) That only 1 cutoff light fixture shall be permitted on the pump house. Any additional lighting shall be approved by the ZEO prior to installation; 3) That the tank shall be properly removed and disposed of; 4) That any changes to the color, design, or materials of the pump station shall be approved by the ZEO and/or Zoning Commission; 5) That the applicant shall coordinate access during construction with the owners of the 2 private driveways that Aquarion's driveway crosses; 6) That prior to the issuance of a Zoning Certificate of Compliance, the applicant/developer shall: A. provide certification from a CT licensed professional engineer that he/she has inspected the completed construction work and certifies that all site improvements were completed in accordance with the approved plans, and B. The ZEO shall inspect the landscaping to determine if additional screening is necessary. The motion was seconded by Mr. O'Brien and carried unanimously.

Agenda Item 4d: Auto Technic, LLC and Technic Properties, LLC vs. New Milford Zoning Commission: Litchfield Superior Court proposed settlement: Auto Technic, LLC & Technic Properties, LLC, Site Plan Modification Application under Chapters 45 and 175 and variances 02-2444, 11-2937, and 16-3057 to allow modifications to the April 9, 2013 Special Permit (2013-02) and Site Plan Approval and April 28, 2015 Site Plan Modification for the expansion

of the outside storage of vehicles accessory to an existing auto dealer and repairer on property located at 6 Danbury Road, Map 28.4, Lot 6 in the B-2 zone. This is a settlement of the applicant's appeal and modification of the original site plan approval pursuant to the applicant's Application. ***Request to waive building floor plans and renderings, parking and loading plan, stormwater management plan, lighting plan, traffic study, and soil erosion and sediment control plan.***

Mr. Taylor was reseated.

Mr. Taylor stated that he does not trust that the applicant will follow through. Mr. DiMichele stated that if they approve them now, then they will go to the state to request the egress onto Peagler Hill Road, asking if based on their track record, will they actually go to the state or just continue to use it without permission. Mr. Taylor stated their track record has not been exemplary and they do not follow the rules, however their attorney has negotiated this settlement in good faith. Ms. Regan noted that if the state does approve the removal of the deed restriction, the applicant will need to get a curb cut from the Department of Public Works. Mr. DiMichele asked about the large truck being parked on site. Ms. Regan stated she had not seen the truck on the property in a very long time. Mr. O'Brien asked what would happen with the lawsuit if they turned down the modifications. Ms. Regan stated it would go to litigation, and that a return of record date has already been set. Mr. Taylor stated that everything included in the amended resolution, with the exception of the driveway, adheres to the regulations with the granted variances, and posed the question if continuing with litigation is in the best interest of the Town of New Milford, costing the town thousands of dollars. Mr. DiMichele asked if they could require that if approved, they pave the new driveway. Ms. Regan replied that would be up to the discretion of the Department of Public Works, noting it would be paved in the Town's right of way. Mr. DiMichele stated that the property does look better than it used to. Mr. Bogie expressed his concern how long that would last. Mr. Taylor said let put it to a vote.

Mr. Volinski moved to waive building floor plans and renderings, parking and loading plan, stormwater management plan, lighting plan, traffic study, and soil erosion and sediment control plan for Auto Technic, LLC and Technic Properties, LLC vs. New Milford Zoning Commission: Litchfield Superior Court proposed settlement: Auto Technic, LLC & Technic Properties, LLC, Site Plan Modification Application under Chapters 45 and 175 and variances 02-2444, 11-2937, and 16-3057 to allow modifications to the April 9, 2013 Special Permit (2013-02) and Site Plan Approval and April 28, 2015 Site Plan Modification for the expansion of the outside storage of vehicles accessory to an existing auto dealer and repairer on property located at 6 Danbury Road, Map 28.4, Lot 6 in the B-2 zone. This is a settlement of the applicant's appeal and modification of the original site plan approval pursuant to the applicant's Application. The motion was seconded by Mr. DiMichele and was approved with a vote of 4-1-0. (In favor: Mr. Taylor, Mr. Volinski, Mr. O'Brien, Mr. DiMichele / Opposed: Mr. Bogie)

Mr. Taylor moved to adopt the Amended Resolution of Approval for Auto Technic, LLC and Technic Properties, LLC vs. New Milford Zoning Commission: Litchfield Superior Court proposed settlement: Auto Technic, LLC & Technic Properties, LLC, Site Plan

Modification Application under Chapters 45 and 175 and variances 02-2444, 11-2937, and 16-3057 to allow modifications to the April 9, 2013 Special Permit (2013-02) and Site Plan Approval and April 28, 2015 Site Plan Modification for the expansion of the outside storage of vehicles accessory to an existing auto dealer and repairer on property located at 6 Danbury Road, Map 28.4, Lot 6 in the B-2 zone. This is a settlement of the applicant's appeal and modification of the original site plan approval pursuant to the applicant's Application. Request to waive building floor plans and renderings, parking and loading plan, stormwater management plan, lighting plan, traffic study, and soil erosion and sediment control plan. Condition 2 shall be modified with the stricken date of completion to now read October 1, 2016. The motion was seconded by Mr. Volinski and was approved with a vote of 4-1-0. (In favor: Mr. Taylor, Mr. Volinski, Mr. O'Brien, Mr. DiMichele / Opposed: Mr. Bogie)

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

1. 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. **Decision by July 26, 2016**

8) ACCEPTANCE OF MINUTES:

- a. June 14, 2016 Regular Meeting Minutes

Mr. Taylor moved to approve the June 14, 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 6/1/16, regarding misc. professional services, \$610.50
- b. Bill: Cramer & Anderson, dated 6/1/16, regarding Auto Technic, LLC vs. Zoning Commission, \$111.00
- c. Bill: Cramer & Anderson, dated 6/1/16, regarding 40 Main St, \$592.00
- d. Bill: Cramer & Anderson, dated 6/23/16, regarding Auto Technic vs. Zoning Commission, \$684.50
- e. Bill: Cramer & Anderson, dated 6/23/16, regarding misc. professional services, \$1,184.00
- f. Bill: Cramer & Anderson, dated 6/23/16, regarding, 40 Main St, \$444.00
- g. Bill: Cramer & Anderson, dated 6/23/16, regarding, 170 South Kent Rd, \$740.00

Mr. Taylor moved to approve payment of Agenda Items 9a, 9b, 9c, 9d, 9e, 9f, and 9g to Cramer & Anderson in 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. Volinski moved to adjourn the meeting at 10:50pm. The motion was seconded by Mr. Taylor and carried unanimously.

Respectfully Submitted,

A handwritten signature in cursive script that reads "Amy Farrell".

Amy Farrell
Recording Secretary