

**Town of Milford
Zoning Board of Adjustment Minutes
Dakota Partners, Inc.
and 37 Wilton Road Milford, LLC
and 282 Route 101, LLC
Case #2012-15
Re-Hearing -Variance**

Present: Kevin Johnson, Chairman
Fletcher Seagroves
Zach Tripp
Laura Horning

Absent: Len Harten

Secretary: Peg Ouellette

The applicant, Dakota Partners, Inc. along with the owners of 37 Wilton Road Milford, LLC and 282 Route 101, LLC, of Map 6, Lot 13, located at 37 Wilton Rd., in the ICI district, are requesting a Variance from Article V, Section 5.08 to permit up to fifty (50) residential units in the ICI District.

THE MINUTES FROM JUN 7, 2012 WERE APPROVED ON AUG 16, 2012

Kevin Johnson, Chairman, read the notice of hearing into the record as well as the list of abutters. Mark Daigle and Eli Levine of Dakota Partners were present along with Attorney Andrew Prolman. K. Johnson stated that this is a re-hearing of the case which was denied by the ZBA at a May meeting. He then invited the applicants forward to present their case.

Attorney A. Prolman came forward, representing the applicants. He presented letters of support to the Board which had been presented at the last meeting, with original signatures which were not on the letters when previously presented. He stated they are there to request a variance from Section 5.08 of the ordinance to permit 50 residential units at the Pine Valley Mill, which are not allowed in the ICI District. He stated much of the discussion will be repetitive of both the initial hearing and re-hearing but for the record they will go through it all to address, in addition to the variance criteria, some of the concerns that had been brought up. He stated the project hasn't changed but they have additional information. One of the big issues before the Board was public safety and traffic concerns. Chad Brannan of Fieldstone Land Consultants was present, along with Stephen Pernaw, a traffic engineer/consultant. He stated that S. Pernaw has worked on projects for the Town of Milford in the past.

Chad Brannan came forward and said over the last three months he has been working with Dakota Partners on survey and engineering aspects pertaining to the redevelopment of the subject property, including plan preparation. They performed an existing condition survey, met with Milford and Wilton town officials, and performed numerous site inspections and an engineering analysis to address public safety concerns, which was presented to the Board. In comparing the existing conditions with the proposal, they believed the project is a betterment project. In their opinion, nearly everything – if not everything – being proposed should improve the property and those surrounding it. The mill building is approximately 70,000 SF with several commercial tenants and a large portion of vacant space. The majority of the existing tenants access the property from Wilton Rd. which is mostly a free-for-all. Parking and access off Wilton Rd. consists of a continuous paved area of approx. 480 linear feet. Traffic movement along this stretch consists of direct access to parking spaces, with people backing from Wilton Rd. into spaces as well as backing out of Wilton Rd. spaces. The majority of people back into the spaces because it is dangerous to back out onto Wilton Rd., as it is somewhat blind. This section of road also provides access to the delivery areas for the businesses. There is a crosswalk for the occasional pedestrian traffic. The proposal is to redevelop the property, maintaining approx. 25,000 SF of commercial space, which will be commercial and retail, situated on the south side of the mill building along Wilton Rd. All of the commercial access will be on Wilton Rd. The remaining 45,000 SF of space will be converted into 50 residential apartments with access on North River Rd. with the associated parking. The concept proposes significant improvements to the Wilton Rd. area. He pointed out on the plan that the existing 480 ft. of linear pavement is wide open to vehicular traffic. The proposal consists of reconfiguring the parking area on site as well as installing curbing and defining two access points, with one being two-way and the one further to the west being one-way. Along with restricting and improving traffic flow, there are improvements to the landscaping and reduction in paved area to provide drainage improvements. Landscaping will be situated so as not to impede sight distance. He stated those are details that will be addressed in the planning stages; there have been some site studies at this location which will be addressed by Mr. Pernaw. Other proposed improvements will be installing additional street signage, relocating existing street signage and installing additional landscaping, especially near the intersection of North River Rd. which is currently paved but will be landscaped. The intersection of North River Rd. and Wilton Rd. will be improved because the turning movement from Wilton Rd. into North River Rd. is rather tight and was supposed to have been improved with the Falcon Ridge development. The entrance off North River Rd. will be restriped so that vehicles will be approaching at a better angle which will improve safety. Parking at the rear will be for residential use. The paved area will be reduced by reconfiguring the parking and by additional landscaping. There is an area on the east side of the rear that could accommodate any additional parking required. He stated that the redevelopment of the site will reduce the overall impervious area and improve runoff. Overall the project will improve on existing conditions

and improve the safety of the property and its surroundings. Before handing the floor to Mr. Pernaw, he asked if the Board had any questions.

F. Seagroves had none.

L. Horning asked about lighting the back parking area.

C. Brannan stated he suspected that if the current lighting is inadequate there would be some proposed, but that has not been discussed with the designer. They would address that with the Planning Board.

L. Horning said it was a matter of curiosity, as there are street lights on the other side of the street back there; she didn't know if they planned to put more in.

Z. Tripp had no questions.

Stephen Pernaw of Pernaw & Company came forward. He stated that they prepared a trip generation analysis for the project, which should be part of the record in a memo dated May 9. He cited his credentials as a licensed traffic engineer as well as his national certification as a Professional Traffic Operations Engineer. He referred to the memorandum, Table 1, which was intended to compare trip generation of 50 residential apartments with two other possible uses of that space, being light industrial and manufacturing. Data was provided for morning peak hours, typically 7am to 8am or 8am to 9am and the evening peak hours of 4pm to 5pm or 5pm to 6pm. They estimated that during the p.m. peak hour, 50 apartments would generate 31 trips. Under a general light industrial use it would be 44 trips and under manufacturing it would be 33. He stated new information that offices could be allowed in that space, which would be 67 trips. What is being proposed is less intense from a traffic standpoint than other possible uses.

F. Seagroves stated that the chart shows 31 trips at night. He asked if this meant 31 cars would be coming in.

S. Pernaw said 31 would be the total in as well as out—20 entering and 11 exiting.

F. Seagroves asked if there are 50 residents, all working first shift, wouldn't there be 50 cars going in and out?

S. Pernaw said not everyone works at the same time – everybody has a different schedule. He said the information comes from the Institute of Transportation Engineers Trip Generation Manual. Whenever a study is done in NH they are told to use that source so everything is uniform. He stated it comes from data across the country where actual apartment sites were counted.

L. Horning asked if the estimate of 31, where the proposed use is apartments, and 67, where the proposed use is offices, were median or extreme.

S. Pernaw said the figures refer to average conditions.

L. Horning asked if it is a base line average.

S. Pernaw said yes. He continued by saying that after completing the trip generation analysis and pointing out the benefits of having residences, he was asked to look at the intersection in terms of safety and traffic operations. They went out to the site and did data collection. He showed an aerial photo displaying the existing structure with Wilton Rd. and North River Rd. They started by researching the available traffic data; previous counts done at the bridge at Wilton Rd. showed daily volume of 7,800 cars. He cautioned that daily numbers are basically meaningless because over the course of 24 hours there are alternating peaks and lows and that he was concerned with the highest flow. A count on Rt. 101 at the Wilton town line totaled 15,000 cars a day. At around half of that, with 7,800, he said he would not call Wilton Rd. a high volume road. In data collection they focused on the North River Rd. intersection, conducted a morning and evening count. He handed out a schematic diagram of the intersection of Wilton Rd. and North River Rd. showing the morning count done from 7am to 9am because they don't know when the peak hours will be. From the two-hour data, they calculated on May 31 the peak hour was from 7:15am to 8:15am. In the evening they counted from 4pm to 6pm and determined the peak hour was 4:30pm to 5:30pm. He noted that in the morning most people, about 66%, are headed to Milford; in the evening most flow is in the opposite (westbound) direction, about 58%. North River Rd. is handling on an hourly basis 71 in the morning and 77 in the afternoon. While doing the count, they observed traffic operations. He said in his

opinion, the #1 safety concern is site distance. Another thing to consider is location of proposed driveways and design of the intersection (correct number of lanes and the necessity of turn lanes, traffic lanes and stop signs). He showed a chart of site distances left and right. Looking left you can see back to the bridge and to the right over 400 ft. so this is fine. He would only caution the town on foliage and vegetation. There is clear visibility looking out the existing driveway on North River Rd., back to the intersection. Concerning the relocation of driveways, he pointed out the westerly site driveway which is proposed tentatively to be an exit only; he said there is plenty of site distance in both directions. He pointed out that the road is posted for 25 mph speed limit. The National Green Book shows the minimum stopping site distance for 25 mph is 155 feet.

K. Johnson asked what the distance is from the proposed parking lot exit to North River Rd.

S. Pernaw said Chad Brannan could answer that. He stated that looking in both directions you have 400 ft and 365 ft; comparing that to the posted limit you need 200 ft for 30 mph and 250 ft. for 35 mph. He then commented on the wide open pavement area which is not good from an access management standpoint with random turning points and cars turning at acute angles.

L. Horning asked for the location of the inlet, to allow cars in and out, in proximity to the bridge.

S. Pernaw said Chad Brannan would be addressing that. He stated that the last set of photos is from that location and to the right is plenty and to the left they measured 270 ft.

L. Horning pointed to the photo asking if that would be the first curb cut.

S. Pernaw said yes and it is limited to 270 ft because of the railing, but that is fine. He said in terms of design they can look at numbers and determine what type of lane configurations are needed at the intersection. Based on volumes observed in May, and making a worst case estimate, they concluded that each approach to the intersection will operate with one lane and there is no need for a second lane or turn lane. They ran numbers through capacity analysis comparing hourly demand with hourly capacity and different movement in the intersection i.e. capacity of cars getting out of North River Rd. is a function of existing exit volume. This intersection on that particular level was operating well below capacity. You can have levels of service A to F, with F meaning you have to wait 50 seconds at a stop and A meaning 5 to 10 seconds. Coming out of North River Rd. is B in a.m. and p.m. peaks. If you went at 8:30 a.m. it would be A. The other level is left turn onto North River Rd. Today is A on a.m. and p.m. with on-site ... it will still be A.

Z. Tripp asked if he has a source comparing to industrial.

S. Pernaw said no.

Z. Tripp asked whether he had any feeling for that.

S. Pernaw said you could have a borderline situation, possibly certainly C or D, but it probably would stay B. He continued that one concern with the count was the right turn driveways in the event of too many people taking a right and going over the double yellow line on North River Rd. He said there is no problem today with line volume but it should be avoided. They recommended to the client to increase radius of that corner. He was pleased someone already saw that and is doing it. He shared his thought that the wide open area on Wilton Rd. would be a major improvement. Post-development conditions, with the improvements and 50 apartments, will be far better than today.

C. Brannan gave the figure requested regarding distance from the proposed parking exit to North River Rd.

K. Johnson said they do meet the guidelines for speed in excess of 25 mph. He then asked for any other questions from the Board.

A. Prolman introduced Mark Daigle who was there to answer any questions.

M. Daigle wanted to run through the material in the application packet. The first document was a proposed development plan. Portions of the first, second and third floors will be 33 residential one-bedroom units approx. 670 SF and 17 two-bedroom units approx. 900 SF.

K. Johnson asked if they know how that compares with the size of other 1 and 2 bedroom units available in town.

A. Prolman said he doesn't know but probably smaller.

L. Horning said she has friends who rent and it seems to be about 900 to 1,100 SF for 2 bedrooms.

K. Johnson said it sounds like they would be on the smaller side of the generally available apartments.

I. Levine responded that they haven't looked at what the average is but in buildings they surveyed, they are at 900 SF for two bedrooms.

A. Prolman continued, saying the 25,000 SF of commercial space will stay.

K. asked if that includes the separate building.

A. Prolman said it did.

Z. Tripp asked if the non-residential portion of the mill would only be conducive to commercial, or would some be conducive to industrial.

A. Prolman stated they don't see this as an industrial site; they see it as what is there today—small retail. Earthworks is the largest but they are small i.e. light manufacturing of high-end microphones. What is there today is what they see as appropriate for the site and appropriate with residential.

K. Johnson said the blacksmith is probably as industrial as you would have in that building because that building is not conducive to that kind of industry.

A. Prolman said that is jumping to the hardship. The building was not originally conducive; it was a mill.

L. Horning said there could be a small packaging or copying center.

K. Johnson said electronics assembly would be considered manufacturing under the definition.

A. Prolman said Earthworks, for example, is both manufacturing and research and development, even though it's small scale. This is not the type of place that will have large scale industrial uses.

He then moved to Exhibit A, the appraiser's analysis of abutting property values. In the last paragraph of his April 17, 2012 letter, John Frank, licensed appraiser, states *"In my opinion, there would be no diminution of value to any abutting properties by the development of the proposed mixed of residential and commercial uses at the Pine Valley Mill. In fact, development of the new apartment construction and continued commercial occupancy at this location would serve as an additional stabilizing force for the entire neighborhood and would serve as an additional transitional use from strictly commercial uses along Route 101 to a more residential neighborhood character."* A. Prolman stated that in previous discussions the Board was unanimous that there would not be any diminution of value to the neighboring properties. However, he pointed out the appraiser's comment that there would be a transition from the commercial use on Rt. 101 to the residential heading toward Wilton Road.

A. Prolman continued on to discuss the variance criteria and showed a color aerial photo.

K. Johnson asked why there are areas on the photo that are in the district that are not colored.

A. Prolman pointed out the heavy black line surrounding the ICI district and goes over to the auto repair on Rt. 101 and the gas station and over onto their side of the river. Those spaces not colored are the vacant area across the street on Wilton Road, including the former proposed ten-unit development. The variance for that development has expired, so it was not included because it is vacant. Some areas are not included because nothing is going on there.

K. Johnson said they are also concerned with what could be going on there. He asked A. Prolman to explain the zoning directly behind the commercial.

A. Prolman said that North River Road is residential, the mill is ICI, behind the mill is all residential on the north side of Wilton Road, North River Road and Maple and going into Wilton; across the street from the mill is some residential. Heading west on Wilton Road is ICI, vacant land and railroad tracks. Beyond the river is industrial zoning and on the other side of Rt. 101 is commercial zoning and ICI beyond the Irving Gas station. He said their point is to show the unique nature of the mill in the area. It is a bigger building than other commercial uses in the area. There is a lot of residential surrounding it as well as vacant land. The point of the exhibit is to show the uniqueness of the building in and of itself and his other point is that this ICI district is different from other ICI districts, which he will address further later. He then referred to the next two pages regarding traffic and pedestrian safety, and S. Pernaw's study in summary that traffic is safe both before and after the proposed development. C. Brannan has presented his report speaking about the site improvements. He then said he wanted to give an update on the Falcon Ridge plan. S.

Pernaw had told him that all looks good except for the intersection of North River Road and Wilton Road. A. Prolman told him that he had been part of the permit team for the Falcon Ridge project, and part of that project that their developers are responsible for is improving the intersection; you can see the improvements: a better turning radius, new stop lights, new signs, and better sight distance. He had an enlargement of the plans and it is exactly what S. Pernaw said; it has been approved and vetted and is part of the approval process with the Town. He said the developer of that project in conjunction with Continental Paving and Whiting Realty Development are coming to the Planning Board on June 19th to extend approval times when that off-site work has to get done. He said he is expecting that work will be done by this fall, but if for some reason it isn't, it will be done in conjunction with this project. Dakota Partners recognize it is an important piece of the safety elements. If Falcon Ridge doesn't get it done, the Dakota Partners will work with the Falcon Ridge developers to make sure it gets done. It will be done prior to certificates of occupancy, one way or the other.

A. Prolman continued regarding the bus stop easement. When the ten-lot subdivision was before the ZBA, the Planning Board and the Planning Board Chair stated they would like a bus stop easement; at the time they didn't know when or where it would be but had asked the developers if, when it is ready, they would grant the easement and the developers agreed. Although the variance for that ten-lot development has expired, it is still a good idea. There are still the same owners, so they are proposing to put it on the table as a possible condition of approval because it is a good long-term plan, so they are adding that to this application.

A. Prolman then turned to the zoning map and prior arguments about this ICI district being different and distinct from others in Town, as the others have visibility and access on the main road, which their property does not have. It is a leftover from the old mill zoning; it is different from other ICI districts because there is no visibility or access to a main road and Wilton Road is residential road not designed for heavy truck traffic.

A. Prolman then addressed project density and factoring out acreage that could be attributable to commercial and retail uses. Pine Valley Mill comes in around the middle of other projects in town in regards to units per acre; the proposal is much less dense than senior housing—66 with theirs and 100 with senior housing.

A. Prolman said regarding the West Elm Street gateway, it gets to the spirit and intent. The voters said they wanted this gateway district and to control what the entrance to the Town looks like. This project fits with the gateway district. He said regarding architectural heritage, it is proposed to have the building listed on the National Register of Historic Places. This fits with what the voters wanted last March.

A. Prolman then referred to letters of support submitted with the packet. He understands there are additional letters that came in which the Chair will be reading into the record. He then asked for any questions.

L. Horning wanted to say she apologized because she previously took into consideration the ten-lot subdivision across the street. That was an error; it had not occurred that the variance had expired. There were no further questions from the Board.

K. Johnson opened the meeting for public comment.

G. Scaife, resident of Milford and Town Administrator, came forward and expressed his support for the project as Town Administrator. He believed it met several criteria. It is a unique property with limited applications that could go there that would justify the financial investment they would like to see. The goal in the administration for many years was to encourage certain types of development they perceive as favorable. He believed this type of investment is good for Milford and the tax rate in that it expands. They always try to increase commercial/industrial to lessen the burden on residential. It will have a long term positive impact on the tax rate. He stated that Stephen Trombly, who was present earlier but had to leave, requested that Mr. Scaife express Mr. Trombly's support for this project for the same reasons. In this economy, to think that we have this opportunity for an investment of this quality and size and for this type of unique structure, it had his support.

Kathy Bauer, resident of 247 North River Road, spoke. She said regarding the apartments, she had people asking her why the developers feel there is a demand for these apartments since Milford has a lot of apartments. They could go into the rent structure or whatever they feel as developers would be a demand for these apartments.

Roberto Arista of Dakota Partners responded that in surveying the market they found that vacancy rates are very low which means there is demand for apartments in Milford. They are also developing a majority of one bedroom units as opposed to two bedrooms because there is a dearth of one bedroom units. They did a survey of 500 units and only about 60 were single bedroom, roughly 11 percent. In terms of price, average Milford rents are already affordable in the sense of what would be mandated by the state. Their rents will be in line with today's market which is below the maximum affordable rent, probably in the \$700-\$730 range for single bedroom and \$900-\$950 for two bedrooms. Looking at apartment stock in Milford, if you are in the smaller size units, these rents are slightly lower because of the location being far away from the center. This is all projection, but that is what they are aiming for. They feel there will be strong demand for single bedroom units and that is why they skewed the apartment numbers toward single bedroom units.

L. Horning asked if the rents will be structured to include utilities.

R. Arista responded that they don't know. They are aiming to exclude utilities; in general tenants prefer to control those costs.

K. Johnson posed a curiosity question. In their experience, do they find residential space drives jobs or jobs drive residential space?

R. Arista said he didn't know how to answer, but thought that if you provide residential space that clearly the businesses in the area will see there is a workforce ready to take on jobs, so he would say that having the residential space is a good thing for the area.

L. Horning inquired whether there will be an on-site manager for the apartment tenants and whether snow removal on walkways and entrances would be individualized to tenants or part of general maintenance.

R. Arista responded there will be on-site management and that would be part of the building maintenance.

K. Johnson asked for further questions. There were none, so he closed the public portion of the meeting. He then read the correspondence received regarding this case into the record:

1. Dated April 19, 2012 addressed to the ZBA from Diane Tenaglia of Accents With Style in Pine Valley Mill supporting the project.

2. Dated ? addressed to the ZBA, from Dara Forleo, owner of Doggie Bag and Day Spaw in the Pine Valley Mill, supporting the project.

3. Dated June 7, 2012 addressed to the Chairman, Milford ZBA from Milford Improvement Team, supporting the project.

4. E-mail dated June 7, 2012 addressed to the Zoning Board from Charles F. Worcester, who supports adaptive re-use of the historic mill complex but opposes the project because of the mixed use of industrial and residential in the same building. He raised concerns with noise, odor, vibration, and other Industrial Environmental issues and asked whether the applicant is willing to trade the Industrial zoning for the entire site for Residential zoning reclassification, even if it meant displacing some of the current tenants.

Z. Tripp said according to the previous letter, Mr. Worcester is on the Board of Directors of Milford Improvement Team.

K. Bauer addressed the Chairman and stated that Mr. Worcester is on the Milford Improvement Team but is also Chairman of the Historical Commission.

K. Johnson said he would come back to this one; while he could respond to several of the issues he would prefer the applicants did so.

5. Dated June 4, 2012 addressed to Kevin Johnson, Chairman of the ZBA, from the Economic Development Advisory Council supporting the project.

Z. Tripp proposed taking a short break at this point. The Chair called for a 5-minute break at 9:10pm. The meeting resumed at 9:15pm.

A. Prolman spoke regarding K. Bauer's question concerning apartment rents, and said he can't wait to get down to an 899-900 SF apartment. Regarding Mr. Worcester's comments that industrial and residential don't mix, they would agree. There is no intent to have any heavy industrial at this site. It doesn't make sense for the owners to have heavy industrial use and residences because then the residents call the property manager with complaints that they can't sleep with the noise and want their rent lowered. It doesn't work at this site because the space is not conducive to industrial use; it is an old mill with low ceilings and columns. Industrial uses today want big empty boxes with high ceilings and high bays. The use there today with commercial use is going to be the type of use going forward. Regarding the proposal about swapping, he didn't think they could do that.

K. Johnson asked to address that. He read from Mr. Worcester's e-mail which said, in part, "*Is the applicant willing to trade off the Industrial Zoning for this entire site for the Residential Zoning reclassification, even to the point of displacing some of the current Tenants?*" K. Johnson stated that the Board is not rezoning area. They are considering the grant of a variance which will allow a use that is not specified in the ordinance. While the Board could probably put a provision with the granting of the variance that there be no heavy industrial he doesn't believe that is necessary because the applicants want to put apartments in and they're not going to put apartments in with heavy industrial that will conflict with the residents. In addition, as A. Prolman testified, this particular building is not conducive to any new heavy industrial. It is not the type of space available for any heavy industry that would create odor, noise, vibrations and other issues that residents may have. That is a moot point; they are not reclassifying it and from the applicants' testimony the concern of this e-mail has been addressed.

F. Seagroves said the Board cannot change it.

K. Johnson agreed. It is not within the ability of the ZBA to rezone areas. That is an issue for the Planning Board to present to the voters to rezone areas. The ZBA simply hears appeals for special consideration, variances and special exceptions.

L. Horning said that the applicant has requested a variance in the sense that it is not prohibited in the zoning ordinance. It is just not addressed by the ordinance in this ICI district.

K. Johnson asked if there were any questions. There were none.

A. Prolman moved to the criteria and said he was highlighting the variance criteria in the application package. He said they didn't believe it is contrary to public interest; the neighborhood there today will be the neighborhood after development. The mill is not changing. The streetscape will be improved. The residential neighborhood in back will be the same. They are not touching the vacant land. The public interest criteria speaks to whether this will create a threat to public safety or health and welfare which is very similar and case law talks about spirit and intent of the ordinance which somewhat overlaps. The Board heard from Chad Brannan and Steve Pernaw regarding safety issues, which are very important. He also pointed out, that other than Mr. Worcester's comments, there has been no opposition by abutters, neighbors or anyone. There has been a lot of support in town so they feel it is in favor of the public interest, not contrary to.

With regard to spirit and intent he referred to Bill Parker's comments about the underlying intent of the ICI district to provide flexibility to uses. The applicants believe they are within the spirit of the ICI district because senior housing is allowed, and residential use is allowed through the senior housing in the ICI district. The proposal does not unduly violate the ICI objectives. They don't think it will alter the character of the neighborhood. They feel it will improve it, as stated in the appraiser's, Mr. Frank's, letter, that this will provide a good transition from the commercial to residential. They also feel it will improve the character of the neighborhood. With regard to the spirit and public safety, health and welfare, they feel they have addressed those concerns by with improvements to the roads and the improvements to the intersection with Wilton Road. Concerning substantial justice, it is a balancing act. Is there harm to the

Town? Is there gain to the individual? They feel they have significant positives with little to no negatives. The estimated

Renovation is approximately \$12 million—\$11 million for renovation of the residential apartments and \$1 million renovations and upgrades to the commercial portions. They are keeping 25,000 SF as employers/employees, with mixed use, improving the streetscape, and no concern expressed by abutters and neighbors and support from the Town and various committees—all that being in favor. The balance is in their favor. There is no diminution of value, as evidenced by testimony from F & M Appraisal. This was not an issue for the Board previously. They believe they have the same proposal with respect to diminution of value. Finally, A. Prolman addressed the hardship issue which was spoken about at the original hearing. He said there are two criteria: A. whether there is fair and substantial relationship and reasonable use and B. Pre-Simplex Technologies analysis – there would be no other reasonable use without a variance. Focusing on the first portion, the question is whether they have a unique property or are there special conditions of this property that make it unique. They discussed it in terms of the mill, the surrounding neighborhood, the ICI district in the areas as opposed to the other ICI districts. They feel they have a unique ICI district. The next element is there is no fair and substantial relationship between the general purposes of the ordinance and prohibiting the proposed use. Applicants believe they have addressed the concerns of the Board and the criteria regarding public safety. To apply this status, which is relatively new to the application, there would be no substantial reason to prohibit residential use given the improvements and testimony heard regarding the mill. A. Prolman then addressed the question as to whether this is a reasonable use. In the context of other uses in the neighborhood, all residential behind and up the road will be residential, therefore mixed use on Wilton Rodd will be reasonable given the area. The upper lot can conform to the area and meet the spirit and intent with respect to the various uses. The only other thing he would stress is the gateway district, getting to the spirit and intent and hardship. He felt this is an important factor to be considered in the Board's deliberations-- the aspirations of the gateway district are exactly in line with this proposal.

K. Johnson asked for questions from the Board.

Z. Tripp asked if senior housing is permitted with a special exception, why not propose senior housing?

A. Prolman said that is a weak market. He doesn't think it is a good product as a long term project. He would ask the applicants to speak to that.

R. Arista of Dakota stated that there is already plenty of senior housing in town and there would not be more demand for it here.

K. Johnson said the applicant is requesting a variance from Section 5.08.3 of the ordinance which is the Integrated Commercial Industrial district enacted in 1995. He read the portion of the ordinance stating the intent of the ICI district, as well as some of the specified uses referred to as "use by right." By special exception there are eight uses, including senior housing. He read the portion that states that any uses of the land or structures not specifically included in the ICI district as acceptable uses, are acceptable by special exception, or exceptional by special use permit, shall be not permitted. He said that is what the Board exists for – to grant variances for uses or area requirements that are not specified in the ordinance. He stated that to meet the criteria for the granting of the variance the applicant must meet five criteria: *"The variance will not be contrary to the public interest; The spirit of the ordinance is observed; Substantial justice is done; The values of surrounding properties are not diminished; and Literal enforcement will result in unnecessary hardship. For the purposes of this subparagraph unnecessary hardship means that owing to special conditions of the property that distinguish it from other properties in the area 1. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of that provision to the property, and 2. The proposed use is a reasonable one."* He stated there is a second criterion if the first is not met, which he did not read.

K. Johnson then continued with the Board's discussion of the criteria.

Could this variance be granted without diminishing the value of abutting properties?

F. Seagroves said yes. The outside of the mill will not change other than more vehicles there. He had forgotten that three or four years ago Centronix was there with 15 employees and that traffic. Since industry had already been there he didn't see that it would diminish values of surrounding property. L. Horning said it could be granted without diminishing value of abutting property. As outlined by the applicant it would be an improvement and exactly what the overlay district is looking for. With placement on the Historic Register, this building would receive substantial improvement and values of surrounding properties would be greatly enhanced.

Z. Tripp agreed with fellow Board members. Values would not be diminished but would be increased, as supported by evidence from F & M in the application.

K. Johnson concurred. They have in the application a letter from a certified appraiser that there should be no negative impact to the abutting property and based on overall testimony in the entire process, this should benefit the area.

Would granting the variance not be contrary to the public interest?

F. Seagroves said yes. The manual speaks about public benefit. As stated tonight the public could benefit if there were apartments and the town would benefit with taxes. He saw no harm.

Z. Tripp said yes. It would not be contrary to the public interest. Allowing residential uses in the ICI district would not unduly violate the zoning objective or alter the character of the neighborhood and would probably improve it. It will support the commercial aspects of businesses there. The fact that the owners are going to have it on the Historic Register will be in the public interest, and having it occupied rather than mostly vacant would be in the public interest.

L. Horning agreed. In light of some of the new evidence provided by the applicant, traffic studies and the density concerns, granting the variance would not be contrary to the public interest. The applicants have adequately addressed concerns with traffic and overall density of the area.

K. Johnson agreed. It would not be contrary to public interest. He referred to the Handbook regarding proving a negative. It says for a variance to be contrary to the public interest it must unduly and to a marked degree violate the basic objectives of the zoning ordinance, and to determine this, does the variance alter the essential character of the neighborhood or threaten the health, safety or general welfare of the public. He didn't think it would alter the essential character of the neighborhood. As was testified, this particular building is surrounded by mostly residential districts; the commercial districts on the side also allow for residential uses. As an island of ICI in this mostly residential and commercial area, allowing residential would have no impact on the character of the neighborhood. Regarding health, they are not proposing uses that would generate anything that would affect health. The applicants have addressed many of the issues and concerns regarding safety with traffic studies and being cognizant of site lines, entrances and exits and improvements. He felt they had addressed any concerns with general safety. Regarding the general welfare, as stated by Z. Tripp, an occupied building would benefit the public more than empty space, so it can contribute to the general welfare.

Would granting the variance do substantial justice?

F. Seagroves said yes. In the Handbook the only guiding rule is that any loss to the individual that is not outweighed by gain to the general public is an injustice. He doesn't see any gain to the public that would be greater than the loss to the applicants.

Z. Tripp said yes. He does think it would be substantial justice. If denied, the applicants would have to continue to find tenants for that building. The applicants are professionals and have been trying to do that and have not been able to, which is why they are applying for residential. He doesn't see the gain to the public by denying.

L. Horning agreed. She said granting would do substantial justice. She cited the applicants' detailed manner in going over all of the criteria addressed in the ordinance in its entirety. This is a blanket determination on the entire variance. She re-read what F. Seagroves had read from the manual regarding any loss outweighed by gain to the public is an injustice. She didn't see how not granting the variance

would do justice; in fact, she felt it would be a serious infraction to the properties around it. So she felt granting the variance would do substantial justice.

K. Johnson agreed. He said, if denied, there would be a loss to the applicant and no gain to the public, except for minimal reduction in traffic flow on Wilton Road. This gain does not outweigh the loss to the applicant by denying. Substantial justice would not be done by denying.

Could the variance be granted without violating the spirit of the ordinance?

F. Seagroves said yes. He referred to the Handbook mentioning lessening congestion in the streets, security, fire, panic and other danger. He felt that regardless of what is put in there the streets may be a little congested, but there had been an industry having 50 employees and he doesn't remember any problems. He saw no problem with this.

Z. Tripp said yes. Granting the variance and allowing up to 50 residential units would not violate the spirit of the ordinance because it will still allow the commercial portion to be present; it is just that residential is not allowed. Also, the applicant alluded to Bill Parker's comments as to how this would fit with the gateway overlay and that the ICI ordinance was outdated. In determining the purpose of this ordinance he looked at what this district would most look like if they grant the variance. He decided it would most look like the limited commercial district. The two uses are similar except limited commercial adds single-family homes with ADUs, not multi-family and senior housing moves from a special exception to an allowed use. Taking all that into consideration he believed that allowing the 50 residential units is still within the spirit of the ordinance.

L. Horning agreed with everything Z. Tripp stated. She referred to the traffic studies and testimony received from the professional engineer. According to the ordinance, as has been noted, sometimes the Planning Board and Zoning Board overlap. This is the case when considering the spirit of the ordinance concerning the language regarding lessening congestion, safety in the streets, fire, panic and other danger, providing adequate light and air, etc. Density and traffic studies play a role in considering whether these variances can be granted. She expressed appreciation for the extent to which the applicants presented evidence in that respect. In light of that she felt that granting the variance could be done without violating the spirit of the ordinance.

K. Johnson agreed that granting the variance could be done without violating the spirit of the ordinance. He referred back to Section 5.08.0 of the ordinance, which states "the intent of the ICI district is to provide an area for sales and service activities both whole and retail as well as industrial activities. This district is intended to be an area in which vehicular oriented business can occur." He stated that while it lists a large number of uses, a number of them allow for stretching the term "overnight use" such as bed-and-breakfast, hotels, hospitals and nursing homes. It is not that they are trying to prohibit people from staying in the district overnight. Additionally, they can take the larger view of the term ordinance, and that is the entire ordinance of the town which allows these kinds of uses in every area surrounding this property except for this one building. He didn't feel it violated the spirit of the ordinance to grant this variance.

Would denial of the variance result in unnecessary hardship taking the following into consideration: A. No fair and substantial relationship exists between the general public purposes of the ordinance provision and the specific application of the provisions to the property; and B. The proposed use is a reasonable one.

F. Seagroves said yes. Under the ordinance as written they could have a bed-and-breakfast, hospital, nursing home, senior housing, etc. He felt that the building is unique such that they could have housing in there and it would not be a problem.

Z. Tripp addressed the second point ("B") first. The proposed use is a reasonable one. Given the location is not on a major road, per testimony of the traffic engineer, a mixed use ICI residential is reasonable, maintaining the commercial portion. It is not changing and having residential and commercial together is reasonable. It is present in other areas of town, like on the Oval where you have residences on top of commercial. He believed the proposed use is reasonable. Regarding a fair and substantial relationship, he

believed relief can be granted without frustrating the purpose of the ordinance as a large portion of the ICI will remain commercial. The applicant is asking to replace the portion that is not suitable for commercial with residential. The applicant testified they are not able to fill the building with commercial use as it is now. Any industrial or manufacturing use would probably not come into this building, per testimony. He didn't think burdening the applicant with the full extent of the ICI is necessary. Regarding a general purpose for hardship, in reading the book, if the restrictions on one parcel are balanced by restrictions on another parcel in the zone and the hardship is shared equally by all property owners, no grounds for a variance exist. Looking at the map of the area in question, the parcels in this ICI make this property unique in that it has a mill on it. The other properties in this specific ICI district are vacant lots. Lot 6-14 abuts a major thoroughfare, Rt. 101, where the applicants' lot 6-13 does not; it is on a secondary road with less traffic. The pre-existing mill and is not conducive to the full application of the ICI.

L. Horning stated, building on what Z. Tripp said, she would say no fair and substantial relationship exists between the general public purposes of the ordinance and the specific application of the provisions to the property and the proposed use is a reasonable one. As the applicants or representative of the applicants stated, the building has lower ceilings. Forcing the applicant to reconstruct the building may be cost prohibitive and would impede getting it on the historical register, which is one of the overlay district desires for the area. In answering B, she said she would like to consider what the applicant didn't entirely state in the application. She has driven by the lot several times and the way the road drops off does make it invisible to the main road, between the vegetation and the drop off, which puts them in a precarious position as far as ICI districts go overall. She agreed with the rest of the Board that no fair and substantial relationship existed between the general public purposes of the ordinance, given the uniqueness of the lot, the building and the entire ICI district in that entire area. She believed the residential use would have far less of an impact than a hospital or a hotel. She felt a denial would result in unnecessary hardship for the applicant in reconfiguring and reconstructing that entire facility, being in the ICI district and trying to make it fit most of the requirements for that district.

K. Johnson agreed that denial would result in unnecessary hardship. He addressed the second criteria first. The proposed use is reasonable for this building. With all uses that are currently allowed with it, going into the ordinance, he did not see where they could say, this is an X district and you could fill it with this project. Mixed uses are limited to two apartments. He doesn't see anywhere in the ordinance where you could put a large number of apartments and a large number of commercial enterprises in the same building. Even if this weren't the ICI district, the applicants would still be before the Board. So mixed use for this building is reasonable. In addressing the relationship, he said that this is a unique ICI district. Right now there are two existing buildings in this ICI district – the bank and the mill. The rest of the district is undeveloped. We can't determine what is going in there. It is bordered on three sides by districts allowing residential; even those do not allow this type of mixed use structure. It would appear our ordinance would completely deny the ability to create this use. That is what a variance exists for – to allow the Board to take into consideration those situations that were not considered when the ordinance was drafted. The Board cannot change what the ordinance says but they balance the intent and the effect of what this would do. He believed if the Board were to strictly apply the ordinance to the uniqueness of this property, it would result in unnecessary hardship.

K. Johnson asked for any further discussion. There being none, he moved on to voting on the criteria. He read, "After reviewing the petition and all of the evidence and taking into consideration the personal knowledge of the property in question this Board of Adjustment has determined the following findings of fact:"

Would granting the variance not be contrary to the public interest?

Z. Tripp – yes

F. Seagroves – yes

L. Horning – yes

K. Johnson – yes

Could the variance be granted without violating the spirit of the ordinance?

- Z. Tripp – yes
- F. Seagroves – yes
- L. Horning – yes
- K. Johnson – yes

Would granting the variance do substantial justice?

- F. Seagroves – yes
- Z. Tripp – yes
- L. Horning – yes
- K. Johnson – yes

Could the variance be granted without diminishing the value of abutting properties?

- Z. Tripp – yes
- F. Seagroves – yes
- L. Horning – yes
- K. Johnson – yes

Would denial of the variance result in unnecessary hardship?

- L. Horning – yes
- Z. Tripp – yes
- F. Seagroves – yes
- K. Johnson – yes

K. Johnson asked whether the Board felt it was necessary to add a condition to the grant of the variance that if the site plan changes significantly, they revisit the issue.

Z. Tripp said they are still allowing residential in a district that doesn't allow it.

K. Johnson said that is correct.

L. Horning said she personally did not see a need for conditional approval on this project; the applicant has gone above and beyond to address any of her concerns as a Board member and they have adequate safety mechanisms in place, like the Planning Board and DOT.

F. Seagroves said they are granting permission for 50 residential units.

K. Johnson said no, they are granting a variance allowing residential and commercial use in the ICI district. If the variance is granted, the applicants go to the Planning Board, which may have them change it from 33 and 17 to 40 and 10 or 20 and 20, etc. based on the Planning Board criteria and the overlay district. He addressed the applicants, regarding the overlay district. The overlay district affects what the applicants present to the Planning Board, but the ZBA has no authority over the overlay district. So, with regard to the overlay district, the ZBA is completely bound by what the Planning Board determines. The ZBA is simply granting a variance to allow a mixed residential and commercial use in this building in this district. The Planning Board determines the specifics of how that is done. This is something that came up in his research, and based on questions that were asked previously, he wanted to make sure the Board was comfortable with granting the blanket variance. He stated that he personally was.

There being no further discussion, he requested a motion to approve the case.

L. Horning made a motion to approve Case # 2012-15.

Z. Tripp seconded the motion.

Final Vote:

- F. Seagroves – yes
- L. Horning – yes
- Z. Tripp – yes
- K. Johnson – yes

Case # 2012-15 was unanimously approved.

K. Johnson informed the applicants that they have been unanimously approved for the variance and reminded them of the 30-day appeal period.