April 25, 2017
Merritt Development

**Town of New Canaan
Planning and Zoning Commission**

**Application**
Upon application of Stephen A. Finn, Wofsey, Rosen, Kвесkin & Kuriansky, LLP, authorized Agent for M2 Partners, LLC, owner, for Site Plan Modification pursuant to §8.2.A and a Special Permit Modification pursuant to Sections 5.8 and 8.2, to construct a new multi-family housing development in the POMZ Overlay Zone on property located at 17 Maple Street (Map N, Block 46, Lot 911), 26 Maple Street (Map N, Block 46, Lot 912), 0 Maple Street (Map K, Block 46, Lot 925), 162 Park Street (Map K, Block 46, Lot 99), 168 Park Street (Map K, Block 45, Lot 98) and 184 Park Street (Map K, Block 46, Lot 96).

**Resolution**

*WHEREAS*, the application was received by the Planning and Zoning Department on January 6, 2017.

*WHEREAS*, the applicant submitted Certificates of Mailing in accordance with the zoning regulations and the applications were noticed in the New Canaan Advertiser on February 16, 2017 and February 23, 2017;

*WHEREAS*, the Commission opened the public hearing on February 28, 2017;

*WHEREAS*, the Commission conducted deliberation on the closed applications on March 28, 2017 and April 25, 2017;

*WHEREAS*, the Commission concluded deliberation on April 25, 2017 and made the following findings:

1. The Commission acknowledges the previous granting of a Site Plan and Special Permit with conditions on November 29, 2016.

2. The Commission finds that there is sufficient evidence in the record to warrant granting approval of certain modifications of the Site Plan and Special Permit approval dated November 29, 2016, as outlined herein.

3. The Commission finds that there was an error in Condition #11 of the Site Plan and Special Permit Resolution dated November 29, 2016, regarding the number of parking spaces required and provided for the project, which must be corrected.

4. The Commission finds that the applicant presented sufficient evidence to justify that there is no need to have a two-sided dirt screen on the construction security fence required by Condition #26.

5. The Commission finds that the applicant has conducted a thorough archaeological investigation of Parcel P, which includes individual Parcels F, G, H and I, as presented in

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reports prepared by Historical Perspectives, Inc. (HPI), dated December 20, 2016, and February 2017, related to Conditions #5, 21, 22, 23, & 24 of the Special Permit.

6. The Commission acknowledges the results of the investigations that found three (3) intact burial plots on Parcel I (Law Plot) and finds that those burial plots shall remain undisturbed, in place and be protected from any disturbance due to construction activity.

7. The Commission finds that Parcel I has historical and cultural significance that must be preserved and protected from disturbance and development with appropriate safeguards both during and after construction.

8. The Commission acknowledges the results of the HPI investigation on Parcels F and H that found evidence of multiple grave shafts and other features including “badly degraded human remains, hardware, wood or viewing glass, fragmented pieces that were displaced, not consistent with a naturally degrading burial.” and which HPI concluded that “The archeological excavations and resulting finds are consistent with historically disinterred burials.”

9. The Commission acknowledges that the investigation found that household trash was deposited on Parcel F in years subsequent to the disinterment of burial plots on the parcel.

10. The Commission finds that portions of Parcel F, G, and H have been disturbed and improved with a paved driveway and parking area for the existing condominium development.

11. The Commission acknowledges the extensive historical research regarding the use of the subject and surrounding parcels, historical burial information, and ownership documentation as presented by Andrew Melillo during the public hearing and in a report dated May 1, 2016, and last revised on February 22, 2017.

12. The Commission acknowledges the involvement of Brian Jones, the State Archaeologist at the Office of State Archaeology, in overseeing the archeological investigation of Parcel P.

13. The Commission further acknowledges correspondence from Brian Jones to the Commission dated February 27, 2017, and his testimony at the public hearing on February 28, 2017, where he provided comments and recommendations with regard to the site and development plan as it relates to the use of Parcel P and where he agreed with the findings contained in the HPI reports. Moreover, he stated in his written correspondence “Should the preservation of the full extent of “Parcel P” not represent a reasonable or justifiable option, the recommendations made by HPI and the most recently submitted development proposal by M2 Partners are considered acceptable preservation solutions, if not ideal ones.”

14. Based on the record and nature of archeological findings, documented historical changes of use and ownership, and testimony from State Archaeologist Brian Jones, the Commission finds that Parcels F, G, and H, may be used for development purposes for the following reasons:
a. The intent to use the parcels for burials has long been abandoned and that parcels are no longer used for the purposes of internment.

b. The parcels do not have sufficient historical or cultural significance as evidenced by the removal of burials to other cemeteries and changes in use of the parcels for other purposes for a long period of time.

15. The Commission finds however, that sparse and badly degraded remains from two poorly executed disinterments are still present on Parcels F, G, and H and should be accorded proper treatment.

16. The Commission finds the adjacent Maple Street Cemetery has historic value and requests that the owner maintain an ongoing dialogue with the New Canaan Historical Society with the objective to minimize any undue disturbance to the cemetery and the former burial grounds, identify improvements that will enhance it, and to memorialize the property in New Canaan’s history.

17. The Commission finds that the revised development proposal and modifications to the Site Plan and Special Permit are in conformance with Special Permit Criteria outlined in Section 8.2 of the Zoning Regulations and is consistent with the Plan of Conservation and Development.

*Therefore, Be It Resolved That* upon a motion made by .......... and seconded by.............., the Commission voted UNANIMOUSLY to approve the modification to the Special Permit and Site Plan Application subject to the following conditions, modifications and restrictions:

1. The Site Plan and Special Permit Resolution of Approval with Conditions dated November 29, 2017 (hereinafter referred to as Original Approval), shall be incorporated into this resolution and modified as outlined below, and Conditions 5, 21, 22 and 24 of the Original Approval are deemed to be fully satisfied except as subject to the new conditions below.

2. Condition #11 of the Original Approval is modified as follows: With a maximum of 110 dwelling units and 1.5 parking spaces required for each dwelling unit, this project requires 165 onsite parking spaces. There shall be one (1) underground parking garage with one hundred and seventy-three (173) parking spaces; one hundred fourteen (114) of which are tandem spaces and fifty-nine (59) individual/single spaces. There are an additional thirty (30) surface parking spaces provided for a total of (203) for the site.

3. Condition #26 of the Original Approval is modified as follows: Prior to the commencement of construction, the applicant shall install a six (6) ft. ht. temporary security “barrier fence” with a green dirt screen on one side along the perimeter of the site to prevent unauthorized access and minimize fugitive dust.
4. A ten (10) foot no impact protection strip on the east, west, north and south sides of the
east, west, north and south burial shafts survey points located in Parcel I (the David Law
Plot) shall be observed.

5. In order to avoid accidental intrusion and/or use of the area for lay-down, the outside
limits of the no impact protection zone shall be delineated with protective fencing in the
location shown on Exhibit 10 of the Applicant's Submission into the Record at the
hearing before the Commission held on February 28, 2017.

6. Warning signs of “Burial Remains” shall be placed on the fence along the protection
strip.

7. At the conclusion of construction activities, the David Law footstone shall be reset in its
original position to mark the known interment of David Law on Parcel I.

8. The sparse remains from previous disinterments found on Parcels F, G, and H shall be
preserved and relocated to Parcel I in accordance accepted procedures and under the
oversight of State Archaeologist, Brian Jones. Upon completion, a final report shall be
submitted to the State Archaeologist and Town Planner for review and the State
Archaeologist shall provide a letter of satisfactory completion to the Town Planner.

9. Permanent and commemorative fencing with a gate and path shall be installed to
delineate the western, northern and southern extent of the Law Family burials and other
plots; all as shown on Exhibit 9 of the Applicant’s Submission into the Record at the
hearing before the Commission held on February 28, 2017.

10. Condition #23 of the Original Approval is modified as follows: The Office of State
Archaeology shall determine whether a site monitor is required during the excavation of
foundations for Buildings A and B, and if such monitoring is required then the applicant
shall seek oversight from a qualified professional, as approved by the Zoning Inspector,
to oversee such excavation.