



**New Milford Zoning Board of Adjustment
Work- Reorganization /Public Session
January 10, 2012**

Chairman Schaffenberger called the Work Session of the New Milford Zoning Board of Adjustment to order at 7:02 pm and read the Open Public Meeting Act.

ROLL CALL

Frank Appice	Present
Mr. Binetti	Absent
Ms. DeBari	Present
Mr. Denis	Present
Father Hadodo	Present
Joseph Loonam	Absent
Peter Rebsch	Present
Mr. Stokes	Present
Mr. Schaffenberger-Chairman	Present
Ms. Batistic- Engineer	Present
Mr. Sproviero - Attorney	Present

REORGANIZATION – 2012

The Board Attorney swore in Mr. Ronald Stokes for a four year term as a full member with a term expiring 12/31/15.

The Board Attorney swore in new member Peter Rebsch for a two year term as an alternate member with a term expiring 12/31/13.

The Chairman congratulated and welcomed the new members to the Board. Chairman Schaffenberger acknowledged the two outgoing members, Vice Chairman Grotsky and Mr. Angelo De Congelio, for their contributions to the Board.

The Chairman called for a motion to dissolve the Firm of Boswell Engineering.
Motion made by Ms. DeBari to dissolve the firm of Boswell Engineering from its obligations, seconded by Mr. Stokes and carried by all.

The Chairman called for a motion to dissolve the legal counsel of Scott Sproviero Esq.
Motion made by Ms. DeBari to dissolve the legal counsel of Scott Sproviero Esq. from its obligations, seconded by Mr. Stokes and carried by all.

The Chairman called for a motion to dissolve all officers from their obligation to the Zoning Board, that being Vice Chair and Chair
Motion made by Ms. DeBari, seconded by Mr. Stokes and carried by all.

Meeting turned over to the senior member, Ms. DeBari.

Ms. DeBari called for a motion to nominate a Chairman for 2012.

Motion made by Mr. Stokes to nominate Mr. Schaffenberger, seconded by Fr. Hadodo.

There were no other nominations.

The motion passed on a roll call vote as follows:

For the Motion: Members Stokes, Hadodo, DeBari, Denis, Appice

Against the Motion: None

Abstain: Member Schaffenberger

The Chairman called for a motion to nominate a Vice Chairperson for 2012.

Motion made by Ms. DeBari to nominate Mr. Stokes, seconded by Mr. Hadodo.

There were no other nominations.

The motion passed on a roll call vote as follows:

For the Motion: Members DeBari, Hadodo, Stokes, Denis, Appice, Schaffenberger

Against the Motion: None

The Chairman stated all the Board members had received two Qualifications statements for Board Attorney for the Zoning Board of Adjustment for review.

The Chairman called for a motion to nominate a Board Attorney for 2012.

Motion made by Mr. Stokes to nominate Scott Sproviero, Esq., seconded by Fr. Hadodo.

There were no other nominations;

The motion passed on a roll call vote as follows:

For the Motion: Members Stokes, Hadodo, DeBari, Denis, Appice, Schaffenberger

Against the motion: None

Mr. Sproviero thanked the Board Members.

Mr. Sproviero stated the Board Members had a resolution that recognized Boswell McClave Engineering as Engineer to the Zoning Board of Adjustment. The Board Attorney explained this Board was an autonomous agency and was authorized by law to engage certain professionals. It has been the practice to utilize the services of the Borough Engineer. Boswell McClave Engineering has served in that capacity for many past years. This resolution appoints and recognizes the Board's intention to follow the past practice to not separately engage the Engineer but to utilize the services of the Borough Engineer as the Board's engineer representative in matters before the Zoning Board of Adjustment. Mr. Sproviero stated if the Board adopted this resolution it would memorialize the Board's intention to continue with that policy in practice not to hire the Board's own Engineer but utilize the services of the Borough's Engineer. The Chairman clarified this was for a one year term.

The Chairman called for a motion to nominate a Board Engineer for 2012.

Motion made by Ms. DeBari to nominate Boswell Engineering with the understanding the appointed representative to conduct business to the Board was Ms. Batistic, seconded by Fr. Hadodo.

There were no other nominations;

The motion passed on a roll call vote as follows:

For the Motion: Members DeBari, Hadodo, Denis, Stokes, Appice, Schaffenberger

Against the motion: None

Ms. Margita Batistic thanked the Board Members.

REVIEW OF MINUTES – December 13, 2011

The Board Members reviewed the minutes for the Work and Public session and there were no changes.

RESOLUTION

11-03 Petrazzuolo – 673 Mabie Street – Block 803 Lot 1

The Board Members reviewed the resolution and there were no changes.

NEW BUSINESS

11-02 Kominos – 229 Ridge Street – Block 301 Lot 29

The Board Member reviewed the application. The Chairman questioned that there was an issue on building and not impervious. The Board Attorney agreed. There was discussion on the relief being sought for the addition, ramp, and shed.

11-04 Akay – 404 Monmouth Avenue – Block 804 Lot 4

The Chairman asked the Engineer to review her letter dated December 30, 2011. The Board Engineer stated they approved the plan with certain conditions in August 2011. One of the conditions was the rear yard patio would not be more than 2' above grade. The as built showed it was more than 2'. The Engineer stated some of the front steps were to be removed but the as built showed an encroachment in excess of 4' and the steps on the rear patio were not removed. The Board Attorney stated the applicant was seeking relief from express condition and presumed there was request to waive the condition. The Board Attorney stated there was also a violation of what was presented by way of the site plan. The Board Engineer agreed.

The Chairman informed the new Board Members there would be a mandatory training class. The Board Secretary would inform the members with the information regarding classes, dates and times.

Motion to close was made by Fr. Hadodo, seconded by Mr. Stokes and carried by all.

**New Milford Zoning Board of Adjustment
Public Session
January 10, 2012**

Chairman Schaffenberger called the Work Session of the New Milford Zoning Board of Adjustment to order at 7:40 pm and read the Open Public Meeting Act.

ROLL CALL

Frank Appice		Present
Mr. Binetti		Present (7:50)
Ms. DeBari		Present
Mr. Denis		Present
Father Hadodo		Present
Joseph Loonam		Absent
Peter Rebsch		Present
Mr. Stokes	Vice Chairman	Present
Mr. Schaffenberger	Chairman	Present
Ms. Batistic-	Engineer	Present
Mr. Sproviero -	Attorney	Present

PLEDGE OF ALLEGIANCE

OFFICIAL MINUTES OF THE WORK SESSION – December 13, 2011

Motion to accept the minutes were made by Fr. Hadodo, seconded by Mr. Denis and carried by all.

OFFICIAL MINUTES OF THE PUBLIC SESSION – December 13, 2011

Motion to accept the minutes were made by Mr. Stokes, seconded by Mr. Denis and carried by all.

RESOLUTION TO BE MEMORIALIZED

11-03 Petrazzuolo – 673 Mabie Street – Block 803 Lot 1

Motion to memorialize the resolution was made by Fr. Hadodo, seconded by Mr. Denis

The motion passed on a roll call vote as follows:

For the Motion: Members Hadodo, Denis, Schaffenberger

NEW BUSINESS

11-02 Kominos – 229 Ridge Street – Block 301 Lot 29 – Kitchen addition/ramp/shed

Andrew S. Kohut, Esq., attorney representing the applicant, explained the application. He stated they proposed a rear yard 2-story addition. The attorney stated Habitat for Humanity would be assisting the Kominos in the development of this property. Mr. Kohut explained that besides the improvements for the families there were special considerations because their daughter suffered from cerebral palsy and there were special needs. He stated because of these special needs Habitat for Humanity would be helping.

Mr. Kohut explained the applicant was seeking a building coverage variance 20% permitted requesting 30.6 % and two side yard setback variances. The side yard setback required was 7'5". The right side yard setback proposed was 7'2" and on the left side a 2.0" setback for the ramp. The Attorney explained the applicant understood they could not get a variance for a personal hardship. He believed there were hardships with the property that justified these variances. He stated this was a significantly undersized lot for the area and an irregular sized lot with a slant on the property. As a result of the slant the existing dwelling was closer to the side property line. Mr. Kohut thought from a C2 prospective it met one of the purposes of zoning which would be to provide a housing option that provided for special needs. The attorney felt these were modest improvements and would not be a house that stood out. He explained the addition was to the rear of the property and would not be seen from the street. The attorney also stated the applicant had no objection with the seepage pit requested by the Board Engineer in her December letter.

Mrs. Melanie Ann Kominos 229 Ridge Street was sworn in by the Board Attorney.

The applicant explained they had three children and lived at this address for approximately 8 years. Mrs. Kominos explained the layout of the existing house. The attorney explained the applicant needed more area for therapy for their daughter and would possibly need room for a live in nurse. Mrs. Kominos agreed. The attorney stated the applicant was requesting the driveway to be widened. Ms. Kominos agreed because their car would need a lift. The attorney added there would also be a ramp from the rear of the house to the front and the widened driveway would help out with accessibility from the house to the car. The applicant agreed. They discussed this addition was also for their entire family because there was not enough room.

Motion to open to the public for questions to the applicant was made by Ms. DeBari, seconded by Mr. Denis and carried by all.

No one wished to be heard in the audience.

Motion to close to the public was made by Mr. Stokes, seconded by Mr. Binetti and carried by all.

The Board Attorney swore in Architect Lisa Cohen.

The Board Members accepted the qualifications for Lisa Cohen as a Professional Architect.

The Board Attorney marked as Exhibit A1 survey proposed and existing
Exhibit A2 1st and 2nd floor plan
Exhibit A3 the elevations

The Chairman asked if this was a three bedroom one bath Cape. The architect answered it was a four-bedroom one bath. The architect stated it was an undersized lot by approximately 2000 sq ft., irregular lot, modest living space and very tight for a family of five particularly with special needs. The architect explained the existing house had one bathroom on the first floor with a half finished basement and two bedrooms upstairs. Ms. Cohen stated the hallways were narrow for a wheelchair and the garage and screened porch were presently used for storage. The proposed changes on the first floor were the bedrooms, eat in kitchen and screened in porch would be where they would add the addition. On the first floor there would be a barrier free bathroom with

a bedroom to fit a hospital bed and room for needed medical equipment and storage. The architect stated the garage would be used for the kitchen and the second bedroom would be used for a future nurse. The second floor would have the master room, two bedrooms and a Jack and Jill bathroom. The Chairman questioned the use of the garage. The architect stated it would not be enlarged but used as the kitchen.

The Architect explained the elevations on exhibit A3. She stated from the front of the house the addition would not be seen. The architect stated the side of the addition was inset not flush with the existing side of the house to minimize the setback. The existing walkway would remain the same and there was the need to widen the driveway by 3' for a future van with a lift. The architect stated they tried to fit a ramp by way of the front door but it was not feasible. Ms. Cohen explained the path of the ramp and that there was an existing fence around the property line. The Chairman asked who owned the fence. The architect answered it was the Kominos fence. The architect stated the addition accounted for 5.3% of the building coverage; the ramp was 3.3% and the shed 1.4%. She stated they were proposing a shed for the storage from the garage. The Chairman questioned the setbacks and location for the shed. The Chairman felt the shed would be better suited in the other corner of the yard because it was the largest part of the yard and less obtrusive to the neighbor on the east. The architect stated there was a swing set in that location but stated they could move the swing set and put the shed in any corner. The Chairman questioned if the patio was made with pavers. The architect answered yes. The Chairman asked if the proposed 3' widened driveway included an enlarged curb cut. The architect stated the existing driveway was less than 12' wide and curb cut was approximately 9'. The Board Engineer stated the curb cut could be the proposed 15'.

The Board Attorney had a concern with the new windows on the second floor regarding privacy issues for the neighbor's windows shown on the side elevation #4. The architect felt the windows were smaller, higher on walls and more for light but there were things that could be done to increase privacy. Mr. Kohut stated they had approximately 22' from that wall to the property line. The Chairman asked how far it was from the edge of the ramp to the property line. The architect answered the edge of the house to the property line has been calculated at 5'5" and it would be approximately 1.5 ft from the edge of the ramp to the fence. Mr. Stokes asked if the ramp met ADA requirements. The architect stated they would do their best to accommodate the ADA requirements but it was not a national requirement. The architect clarified they were proposing a 2' setback on the property line with a 3.5 ft ramp.

The Chairman asked the Board Attorney if there could be a provision in the variance upon sale of the house the ramp would be removed. The Board Attorney stated the Board could make that condition. The architect did not have an objection. The Chairman had concerns on the ramp's impact to the neighbor. Mr. Stokes stated there was an existing fence and felt the top of the rail would not stick out over the top of the fence.

The Chairman stated there was a side yard setback variance on the east and west side and lot coverage. Mr. Stokes asked the architect if it was that critical to ask for the east side yard setback variance for just a couple of inches. The architect stated if they move it in the entrance to the bathroom would be compromised.

Motion to open to the public for questions to the architect was made by Ms. DeBari, seconded by Mr. Denis and carried by all.

Madeline Kelly 231 Ridge Street was sworn in by the Board Attorney.

Ms. Kelly had concerns regarding the water runoff from the construction and her visibility and air space being affected from the addition. The Borough Engineer stated she recommended a seepage pit to handle additional run off. The Chairman asked the engineer if she was confident that the seepage pit would address the water issues. The Engineer answered the seepage pit would not solve the water issues at hand but the seepage pit would address the applicant's additional impervious area. The Chairman asked if the location of the seepage pit would affect the neighbors in a positive or negative sense. The Engineer answered the seepage pit was required to be at least 10' from the property line and would hold the surface water for a certain period of time and slowly release it to the ground. The Chairman asked if the leaders would be directed to the seepage pit. Ms. Batistic said the leaders from the addition would be directed to the seepage pit but she assumed the front leaders would remain the same. Ms. Kelly asked if there would be any green area left on the property. Mr. Kohut showed the resident a picture showing the addition and the green area that remained. He also stated the seepage pit to be installed would control the water on his applicant's property. He stated this seepage pit was being implemented so that no water run off from the applicant's property would impact the neighbor's property from the impervious area.

Motion to close to the public was made by Ms. DeBari, seconded by Mr. Denis and carried by all.

Mr. Kohut thanked the Board for the opportunity to speak on behalf of Mr. and Mrs. Kominos. He stated they took great care in proposing an application that did not negatively impact the neighbors. The attorney stated the evidence before the Board justified a variance based on C1 grounds with regard to the undersized and irregular size lot. Mr. Kohut requested the Board to approve the application as submitted.

The Chairman asked for the size of the shed. The attorney answered 8x10. He also stated the applicant had no problem with the conditions of the removal of the ramp upon the sale of the property and would have no problem with the location of the shed. The Engineer stated the ordinance states the shed would be 5' from the side and rear yard of the property line so you would be able to maintain the property. The applicant's attorney stated they would make sure the shed met the setback requirements and if it had to be moved to the opposite side they would comply.

Motion to open to the public was made by Mr. Stokes, seconded by Ms. DeBari and carried by all.

Robert Sofia 997 Howard Court was sworn in by the Board Attorney. He stated their house was located directly behind the Kominos property and their family had no objections to the proposed addition. Mr. Sofia stated the Kominos were an outstanding family in the community and wanted to show their support.

Motion to close to the public was made by Ms. DeBari, seconded by Mr. Denis and carried by all.

Motion to approve the application was made by Mr. Binetti, seconded by Mr. Stokes for a two story addition, ramp and shed for building lot coverage and two-side yard setback variances with the condition of the installation of a seepage pit according to the Board Engineer and the stipulation the ramp be removed upon sale of the property and no other feature of any kind shall be constructed in its stead.

The motion passed on a role call vote as follows

For the Motion: Members Binetti, Stokes, Denis, Hadodo, DeBari, Appice, Schaffenberger
Approved 7-0

Mr. Kohut thanked the Board for their time and also appreciated the help of their staff.

11-04 Akay – 404 Monmouth Avenue – Block 804 Lot 4

The Board Attorney swore in Michael Chirchiela as a witness.

The Board Attorney stated there had been a series of prior proceedings with regard to the development of 404 Monmouth Avenue. He explained at the last proceeding, the applicant requested to exscind certain conditions that were imposed by way of the initial application. This included a 2' limitation of the rear patio and a certain amount of steps to be removed from the front steps. The applicant was seeking relief from those two non-conforming features. A temporary certificate of occupancy had been issued and the applicant has taken up residence at the home.

Mr. Chirchiela stated it was his understanding that three steps were to be cut out from the front steps. He stated the denial letter indicated only the rear patio needed to be addressed. The Engineer stated she compared the as built submitted with the plan that was approved. Mr. Stokes stated if there were more than three steps the applicant would be encroaching into the front yard setback. The Board Attorney explained upon review by the Board Engineer a letter was submitted with her comments.

The Board Attorney swore in the applicant Freddie Akay.

The Board Attorney marked photos of his front steps Exhibit A-1, A-2 and A-3.

Mr. Stokes explained the platform encroached one foot into the setback so only three steps were allowed. The Chairman showed the exhibit from the last proceeding on how the steps would be removed and asked why that did not happen. Mr. Akay thought he was to cut out four steps. Mr. Chirchiela said their engineer stated they would raise the soil level to comply with the 2' but after adding the soil they still did not conform and the measurements were off. Mr. Chirchiela and the applicant were dissatisfied and had issues with the applicant's engineer. The Board Attorney explained that was the responsibility of the applicant to deal with their engineer they hired. The Board Attorney explained we need to demonstrate either compliance or understand why the client's compliance was not obtained. Mr. Chirchiela stated compliance was not obtained because they relied on their engineer. Mr. Sproviero understood but stated there still was a problem. Mr. Chirchiela asked if it the front steps and patio could be left as is because it does not affect the town. Mr. Stokes questioned if his engineer was correct with his soil fill. The Board Engineer stated he showed it being 2'. Mr. Stokes clarified the soil brought in did not

meet the height which their engineer laid out. Mr. Chirchiela said they could not bring in any more soil. The Board Attorney stated it was not helping the applicant not having a professional who could address these engineer issues. The members of the board were looking to explore the alternatives. He explained the members need to know why, what did the applicant try and what other options were available before the owner stated there was nothing else that could be done. Mr. Stokes believed they need professional help at this point to continue with this application. The Chairman stated it seemed like everything has gone wrong with this application. He also stated the applicant needed a qualified engineer to understand what had happened and what could be done. Mr. Chirchiela stated they did not know what happened. The Chairman concurred with the Board Attorney and felt the applicant needed a professional to be able to answer what had happened. He understood it would be an additional expense and money was tight but if this was handled correctly from the beginning the applicant would not have to keep returning to the Board. Mr. Chirchiela stated the applicant had spent his life savings on this house. Mr. Binetti stated the Board had given the applicant the opportunity to correct the problems and they have not done so.

The Chairman polled the members on how they felt at this time regarding the application: Mr. Rebsch could not make a decision because there was nothing solid presented, Mr. Stokes had not heard any testimony regarding why the Board should give relief on the front steps and had no idea of the problems in the rear, Ms. DeBari stated if the Board voted tonight she would not vote for the application and felt the applicant was given a break to get a professional to come back to the Board, Mr. Denis felt they needed professionals, Mr. Binetti felt he should get an engineer and get the job done right, Father Hadodo recused himself, Mr. Appice felt if the applicant did not trust his engineer he should hire someone to check everything out. The Board Attorney told Mr. Akay that he heard the comments from the Board Members and had the option to carry the application to next month or vote on the application based on the testimony produced at this hearing.

Mr. Chirchiela understood the Board would prefer a professional. He stated they had hired a professional and how much more money did he have to spend. Mr. Rebsch commented that the applicant needed to come prepared. Mr. Denis stated the applicant was a smart man. He felt now it was at the point he was making a joke out of it. Mr. Denis stated the applicant had the Boards decision the last few times. He felt the applicant was throwing up his hands and asking the Board to agree with him. Mr. Akay stated he did meet the height requirement and the town was asking him to fix the patio and put steps in front of the door. He stated you could not just put a step in front of the door without a platform. Mr. Denis stated he had a beautiful home and if the professionals he hired made the measurements wrong he could take legal action against them.

Mr. Sproviero explained the applicant had been provided the opportunity to be in the premises pending the conduct of this hearing. The Board Attorney stated if he did not receive the relief he was seeking the temporary certificate of occupancy would be revoked and he would be out. Mr. Akay understood. The Board Attorney stated he was not telling the applicant what to do but he needed to access the consequences.

Mr. Chirchiela stated they were not there to insult the Board and they should have listened to the Board. Mr. Chirchiela understood they did something wrong but the applicant thought he had

qualified professionals working with him. He stated they would fix it and asked for the TCO to be extended until the next hearing. The Board Attorney answered with no disrespect the Board had heard this three times. Mr. Chirchiela answered this was the forth and last. He explained to the Board they had paid top dollar. The Board Attorney understood and was sympathetic but advised that was not a defense for a solution. The Chairman also stated there was a landscape issue to be addressed. Mr. Akay stated he was waiting for spring. Mr. Binetti felt the Board needed a timeline on this application. The Board Attorney clarified that the applicant would appear at the February meeting. The applicant agreed.

As there was no further business to discuss, a motion to close was made by Ms. DeBari, seconded by Mr. Stokes and carried by all.

Respectfully submitted,
Maureen Oppelaar