

Approved
9/13/17

**New Milford Zoning Board of Adjustment
Work Session
July 11, 2017**

Chairman Schaffenberger called the Work Meeting Session of the New Milford Zoning Board of Adjustment to order at 7:32 pm and read the Open Public Meeting Act.

ROLL CALL

Mr. Adelong	Present
Mr. Denis	Present
Mr. Joseph	Absent
Ms. Hittel	Present
Mr. Loonam	Present
Mr. Rebsch	Present
Mr. Stokes	Present
Mr. Weisbrot	Absent (8:25 pm)
Mr. Schaffenberger- Chairman	Present
Ms. Batistic - Engineer	Present
Mr. Sproviero - Attorney	Present

REVIEW MINUTES OF THE WORK SESSION – June 13, 2017

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

REVIEW MINUTES OF THE PUBLIC SESSION – June 13, 2017

The Board Members reviewed the minutes and there were no changes

RESOLUTIONS

**17 05 - FOX – 346 Lacey Drive– Block 1613 Lot 8 – One story addition in rear.
Building Coverage variance**

The Board Members reviewed the resolution and there was a change in the address.

**17 06 - Adelong – 253 Birchwood Road– Block 117 Lot 7 – addition
Building coverage variance**

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

NEW BUSINESS

17 07 LIPPMAN - 1114 Boulevard – Block 202 Lot 13 –Front porch

Front yard setback

The Board Members reviewed the application and there were no questions or comments.

17-08 PHILIPOSE – 543 Windsor – Block 1009 Lot 3 – Addition

Sidyard variance

The Board Members reviewed the application and there were no questions or comments.

OLD BUSINESS

17-01 Boulevard 66 Realty – 66 Boulevard – Block 1508 Lot

Subdivision, One Family Home, Two family Home

Use variance, maximum building coverage, Maximum # of families

The Board Members reviewed the application. The Chairman noted there were revised plans that would be reviewed by the applicant.

There was a discussion regarding cancelling the August meeting. Mr. Loonam asked if the Board Members could suspend the work session to see if the applications being heard at this meeting would need to be carried. The Board Attorney agreed.

The Chairman asked for a motion to suspend the work session. Motion made by Mr. Loonam, seconded by Mr. Denis and carried by all.

**New Milford Zoning Board of Adjustment
Public Session
July 11, 2017**

Chairman Schaffenberger called the Public Session of the New Milford Zoning Board of Adjustment to order at 7:48 pm and read the Open Public Meeting Act.

ROLL CALL

Mr. Adelong	Present
Mr. Denis	Present
Mr. Joseph	Absent
Ms. Hittel	Present
Mr. Loonam	Present
Mr. Rebsch	Present
Mr. Stokes- Vice Chairman	Present
Mr. Weisbrot	Present (8:25pm)
Mr. Schaffenberger-Chairman	Present
Ms. Batistic – Engineer	Present
Mr. Grygiel	Present
Mr. Sproviero - Attorney	Present

PLEDGE OF ALLEGIANCE

OFFICIAL MINUTES OF THE WORK SESSION – June 11, 2017

Motion to accept the minutes was made by Mr. Rebsch, seconded by Mr. Denis and carried by all.

OFFICIAL MINUTES OF THE PUBLIC SESSION – June 11, 2017

Motion to accept the minutes was made by Mr. Stokes, seconded by Mr. Rebsch and carried by all.

RESOLUTIONS TO BE MEMORIALIZED

17 05 - FOX – 346 Lacey Drive– Block 1613 Lot 8 – One story addition in rear

Motion passed by Mr. Stokes, seconded by Mr. Rebsch to memorialize the resolution with change.

The motion passed on a roll call vote as follows:

For the Motion: Members Stokes, Rebsch, Adelong, Denis, Hittel, Schaffenberger

17 06 - ADELUNG – 253 Birchwood Road– Block 117 Lot 7 – addition

Motion passed by Mr. Loonam, seconded by Mr. Denis to memorialize the resolution with change.

The motion passed on a roll call vote as follows:

For the Motion: Members Loonam, Denis, Rebsch, Stokes, Hittel, Schaffenberger

NEW BUSINESS

17 07 LIPPMAN - 1114 Boulevard – Block 202 Lot 13 –Front porch

Front yard setback

The Board Attorney swore in Milanka and Robert Lippman, 65 Hillside Avenue, Cresskill, NJ.

The Chairman asked the applicants to explain the application. Ms. Lippman stated they were requesting a variance to add a portico over the front steps. The applicant explained it was just a cover from the elements and a better aesthetic appeal.

The Chairman asked how much they were encroaching into their front yard setback. Ms. Lippman answered 2'7" but the steps were already existing. She explained they were only adding two columns and an overhang with a matching roof. Mr. Lippman added that it just covers the front landing and does not exceed the two steps below.

The Chairman asked if the shaded area on the plans was an aerial view of what they proposed to build. Ms. Lippman said that was the gable that goes over the step.

Mr. Denis asked if the main reason for this portico was to make the house look more attractive. Ms. Lippman said yes and also to protect them from the weather. Ms. Lippman said every other house on the block has a portico.

The Chairman said according to the plan the front edge of the overhang would protrude from the front wall of the house 2'7". Mr. Lippman agreed. The Chairman clarified that it would cover the landing not the steps. Mr. Lippman agreed.

Ms. Batistic stated it was 3.83' from the house. Ms. Batistic said that 2'7" goes to the roof line. Mr. Adelung asked what the front yard setback was. Ms. Lippman said 29'7".

The Chairman asked if they ever intended to enclose the portico and make it a mudroom. Ms. Lippman said no it was too small and it was only 3' wide. The Chairman said it was larger than 3'. Ms. Batistic said it seems to be 6' wide. The Chairman questioned that the overhang was 13' wide. Mr. Adelung said it was 13' wide gutter to gutter. The Chairman commented that would be wide enough to enclose. Ms. Lippman said they were not enclosing it. The Chairman noted that a new owner could and asked if they had any objection to make a condition, if approved, that the portico would not be enclosed.

Mr. Loonam said the notice of appeal said it was a violation of the 30' setback but questioned if the front yard setback was the average of the homes on the street. Mr. Adelung asked if the average and the 30' setback were different. Mr. Loonam questioned that it has not been determined what the average setback was. The Board Attorney stated if it was not 30' than they look to the average. He added that they were satisfied that the average was 29'7".

Mr. Sproviero said unless there was an appeal of the denial of the zoning officer, the zoning officer has determined that the triggering setback is 30'. The Board Attorney stated that it appears that the setback requirement is 29'71" and he was not considering this to be an expansion of a preexisting non conformity.

There was much discussion amongst the board members on how front yard setbacks are calculated. Mr. Loonam suggested that this would be something to bring up for the end of the year report. Ms. Batistic would discuss the requirements for the front yard setback with the Zoning Officer. Mr. Loonam thought there is a differentiation that needs to be made between a decorative portico and actual living space. The Chairman thought this was something that could be discussed further in a work session and it was something that Ms. Batistic would reach out to the zoning officer but felt they should continue with this application.

Motion to open to the public was made by Mr. Denis, seconded by Mr. Stokes and carried by all. No one wished to comment on this application.

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

Motion made by Mr. Stokes to approve the application with the condition that the portico would not be enclosed and the piers would remain on the landing, seconded by Ms. Hittel.

The motion passed on a roll call vote as follows:

For the Motion: Members Stokes, Hittel, Adelung, Denis, Loonam, Rebsch, Schaffenberger.

Approved 7-0

17-08 PHILIPOSE – 543 Windsor Road– Block 1009 Lot 3 – Addition

Side yard variance

The Board Attorney sworn in the homeowner, Mr. Mani Philipose, 543 Windsor Road, New Milford, NJ.

The Board Attorney swore in Mr. Kevin Martin, 226 West Allendale Avenue, Allendale NJ.

The Board Members accepted the qualifications of Mr. Martin as an expert in architecture.

The Chairman asked the applicant to explain why they were before the board.

Mr. Martin said they were proposing an addition to a small Cape Cod home. They were requesting to construct a 4' wide addition to the garage. The existing garage projects about 6' past the house and they were proposing to construct a one story addition to square off the house. He added the entire second floor roof structure would be removed and a full second floor full height would be put over the garage and the existing first floor structure.

Mr. Martin said the property now is an existing non-conforming on the right side. He added there was 8.64' in the rear and as they extend back it drops down to 7.5'. The lot is on a curve with

101' on the street line and narrows down to 60' in the rear yard. The architect said the house is also set a little a skew so the further back on the property they get closer to the right side.

The Chairman asked if the side with the garage would trigger any variance. Mr. Martin answered no. The Chairman asked how far straight back they were proposing. Mr. Martin said about 6.6'. The Chairman asked if they were just extending the existing rooms. Mr. Martin said yes on the first floor. They were eliminating one of the bedrooms and creating second floor bedrooms. The Chairman asked if the house on the west side conforms at any point. Mr. Martin said at the front of the house it conforms 12.30' and drops down to 8.64'.

Mr. Loonam said the front yard setback is listed as existing and proposed 50.4' and asked if it was from the center of the street or the average. Mr. Martin said it was from the center of the street. Mr. Martin said they were also proposing a covered porch. Mr. Loonam said if they were extending the porch and asked how the existing and proposed was the same. Mr. Martin said the porch would project 3' more. The Board Attorney said they can recognize that a front yard variance is an expansion of a preexisting non-conformity. Mr. Loonam asked what the proposed front yard setback was. Mr. Martin said it would be 47'.

The Board Attorney stated that there were two preexisting non-conforming elements which were the right side yard and front yard where each were being expanded by the proposed renovation.

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

No one wished to comment on the application.

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

Mr. Loonam wanted a measurement for the front yard setback. Mr. Martin said it would be 22'. Mr. Adelung said it was approximately 25' from the property line to the base of the house and asked how far they were coming out with the new porch. Mr. Martin said they were covering the existing porch. Mr. Stokes clarified that they were not adding to the porch. Mr. Martin said no. Ms. Batistic said the platform was 4' from the building on the survey. Mr. Martin agreed it was 4' out 5' wide. Ms. Batistic asked if that was the area they were proposing to cover. Mr. Martin said yes.

Mr. Loonam asked if the applicant was amending his application that the front yard setback existing was 50.4 and proposed was 47'. Mr. Martin said yes. Ms. Batistic said it has to be stipulated that the 47' was to the porch not to the house.

Ms. Hittel asked if they had to stipulate that it would never be enclosed. The Board Members agreed. The homeowner said it would not be enclosed.

The Chairman said they were proposing two variances. One was a right side yard setback that was further exacerbating a preexisting non conformity and the other was covering front steps which would create a variance for a front yard setback. The Chairman said the conditions were:

the front porch would never be enclosed and the variance relates only to the porch portico and not the front of the house and the columns would be on the platform.

Mr. Adelung asked if the steps were covered. Mr. Martin said the columns would be on the platform.

Mr. Martin said the columns would be at the 27' and there would be an 8" projection over the portico.

Mr. Loonam thought this was a well thought out application. He said when you take into consideration that the left side setback was well above what was allowed, the height was not at the maximum but at 28.6' and the rear yard setback was still less than allowed. Mr. Loonam said the topography of the land could have been an argument for hardship if the applicant wanted to. Mr. Loonam did not think they were asking for more than the area and house could handle.

Motion made by Mr. Loonam to approve the variances with the conditions discussed, seconded by Mr. Adelung.

The motion passed on a roll call vote as follows:

For the Motion: Members Loonam, Adelung, Denis, Rebsch, Stokes, Hittel, Schaffenberger.

Approved 7-0

For the record, The Chairman said Mr. Weisbrot arrived.

OLD BUSINESS

17-01 Boulevard 66 Realty – 66 Boulevard – Block 1508 Lot 3

Subdivision, One Family Home, Two family Home

Use variance, maximum building coverage, Maximum # of families

Mr. Carmine Alampi, representing Boulevard 66 Realty, said the site engineer has testified twice on this application and would give testimony to authenticate the last exhibit. Mr. Alampi clarified that they were present at the May meeting and had asked that this application be carried to July so they could produce the new changes on a key turn maneuver and show the vantage point for a driver.

Mr. Alampi marked as Exhibit A-13 amended site plan -2 sheets with modifications.

Mr. Perry Frenzel, previously sworn in, discussed the new changes on the plan. The engineer discussed sheet 4 with the changes on the driveway. He explained they moved the proposed dwelling to be centered on the site with 18' on each side to allow to modify the driveways to create the additional pavement area to allow cars to back out into that area and face out into the street rather than back out. Mr. Frenzel said there would be a slight increase to the impervious coverage because there was an additional pavement area. Sheet 6 showed the site triangle. He said the site distance was 175' in each direction from the northerly and southerly driveway. Mr. Frenzel said on either side of the site at the Boulevard there was some shrub growth that would be removed. Mr. Alampi verified that the standard used was AASHTO. Mr. Frenzel agreed that

it was the universal standard used and the American Association for Safe Highway Standards. Mr. Alampi asked if this diagram comports with those standards. Mr. Frenzel agreed.

Mr. Alampi noted that the engineer also provided the analysis for the proposed single family home. Mr. Frenzel agreed.

Mr. Alampi explained given the curving nature of Boulevard, this exhibit was to show there was ample linear feet to view oncoming traffic. Mr. Frenzel agreed.

Mr. Loonam agreed that you would be able to see the middle of the road for 175' but was not convinced a car could be seen at the curve of the road. The Engineer discussed the exhibit and showed what area could be seen. He added a car could be seen coming around the curve. Mr. Loonam did not think on the Eagle side you could see the distance of 175' and asked if that had to be met or was it a suggestion. Ms. Batistic said most single family homes do not meet that requirement because of shrubs and trees but in a 25 mph that is the required site distance.

Mr. Loonam thought this was a significant application. He agreed that they were focusing on the Boulevard side site distance but felt it was one application and they could not compartmentalize for one street vs the other. Mr. Alampi said on the Eagle Avenue there was already an existing two family home so if nothing was done, there was a situation that did not meet this standard. Mr. Alampi said it was a "do not enter" from Boulevard so why would they need to meet any standard.

Mr. Alampi clarified that they were developing a site with three dwelling units vs. two but on the subdivided lot with the single family home it met all the standards for use and bulk variances. He did not think this standard on Eagle was something that they need to dwell on.

Mr. Rebsch said the site distance was wrong on Eagle and that it was calculated at the wrong point. Ms. Batistic and Mr. Frenzel agreed. He stated the reason they took the vantage point at the curb was because of trees that blocked the view. Mr. Rebsch said that was not consistent. Mr. Frenzel agreed but said it was the best practical approach they could take.

Mr. Denis asked the Engineer when he was at the site did he notice how many cars passed that corner. Mr. Frenzel said he was there at 5 pm and was surprised the traffic was so light. Mr. Denis said the traffic is heavy during school times. Mr. Denis said they were proposing three houses in a one family zone. Mr. Alampi said they could subdivide the lots and build the same size homes and commented it would not change much physically. It was the concept of three dwellings units split on two lots.

Mr. Alampi did not think it was a safety issue but thought the documentation was there was concern on the alignment of Boulevard as to whether or not it was too close to the entry and exit points of the proposed homes. Mr. Alampi said it was not too close and it meets the standard. He added that was what they were confined to look at. Mr. Alampi said if the Board did not want a two family home in a single family zone that would be a zoning issue. He stated there was not a safety issue with the ingress and egress.

Mr. Alampi said the question was did they present enough evidence to support a deviation from the one family zone to allow a two family home on the front parcel. Mr. Alampi clarified that the proposed one family home required no variances.

Ms. Hittel asked the engineer if it was his testimony that he could see thru the bush to the site line of 175'. Mr. Frenzel believed on the southern and northern portion of the boulevard lot there was shrub growth on the applicant's property which would have to be removed. He thought that was a dangerous thing for people pulling out of the site.

Mr. Sproviero clarified the relief was the use variance and two building coverage variances implicated for both. Mr. Alampi said they made a change to remove the variance for the single family home. Mr. Alampi said it was the two family home in a one family zone which was a zoning issue. He added there was no safety concern and the Engineer testified that the shrubs would be removed.

Mr. Adelung wanted clarification on the building coverage proposed. Mr. Sproviero said the single family home shows 20.2% on the zoning data chart. Mr. Alampi said they made a reduction. Mr. Sproviero said the calculation was not reflected on the chart. Mr. Alampi thought it was 19.9%. Mr. Adelung said the building coverage required was 20% and 25.5% for the two family dwelling. Mr. Sproviero said there would be a building coverage variance on the proposed two family home and the use variance.

Motion to open to the public was made by Mr. Loonam, seconded by Mr. Denis and carried by all.

No one wished to speak from the audience.

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

Mr. Alampi noted that there was no one in the audience but his architect.

Mr. Alampi summarized that the issue was the two family dwelling in a one family zone. The applicant bought the property a few years ago and stated it was a two family home with a thru driveway. Mr. Alampi thought that was a detriment and should be eliminated. There was two curb cuts with a multiple amount of cars parked for multiple tenants and thought it was unsightly. By subdividing the property and upgrading it with new construction in the one family zone, Mr. Alampi asked if that outweighed holding to the one family zone. Mr. Alampi asked if they have shown that there would not be a substantial negative impact to the neighbors and upon the zoning code. The applicant has refined the plan and eliminated unnecessary variances. Mr. Alampi said they shifted the house by more than 5' to center it on the property to help with the driveways, they did the analysis, the k- turn maneuver for the driveways, discussed impervious materials and thought they did it all. Mr. Alampi said it was a positive statement that the neighbors were not objecting. He felt the neighborhood would like to see the property cleaned up and improved. Mr. Alampi said this a very large piece of property and felt these homes were conservative in scale. He said the Board was the judge of whether or not they developed a presentation in which they show there was not a substantial negative impact and would need 5 affirmative votes.

Mr. Sproviero said this was a subdivision application that seeks to create two conforming lots in addition to a building coverage variance for the proposed lot for the two family home and the final issue was the applicants request for a two family home in the one family zone.

Mr. Sproviero asked the planner if he had any other comments, directions or observations with respect to the application.

Mr. Grygiel said he already submitted his report but would discussed the various proofs required and would need to be considered for a use variance. The planner said the positive criteria is that the site was particularly suited to allow for two family vs one family. He noted that the applicant could subdivide and build two single family homes and asked if the compelling reasons were anything specific to the lot that makes you think that a two family would make more sense than the permitted use of a one family. Mr. Grygiel said the second aspect was the negative criteria which was no substantial detriment to the public good and no substantial impairment to the zone plan or zoning ordinance. He said there was discussion a few months ago regarding the master plan. It did have language about two family homes and the recommendation was not to encourage new two family homes in the municipality. Mr. Grygiel said the language was to remove the existing two family zone because it only included 5 lots on Madison Avenue and to only recommend single family homes unless special circumstances warrants it. Mr. Grygiel said the door is left open if an applicant can say we deserve this and these are the reasons why. Absent from making the proofs, the planner said the planning board was clear in its intention not to promote new two family homes in the municipality. Mr. Grygiel said the board could consider reasons that there was an existing two family home, Boulevard was a busy road or the size of the lot. The applicant needs to overcome and the board needs to agree with going against what planning board recommended.

Mr. Alampi agreed with Mr. Grygiel stating “do not forget the there is an existing two family home in the one family zone”. Mr. Alampi recognized there were three dwelling on the combined lots. He said he would not have made this application if it was a one family home in the center of the lot. Mr. Alampi added that was the essence of their planning for them. Mr. Alampi said there was an existing building lot with an existing two family home and there would be a two family on the subdivided lot.

Mr. Grygiel said if they were inclined to grant a use variance the building coverage variance would go hand in hand with it. If the Board thought it was appropriate for two families then maybe it was appropriate for a larger house, said the planner. Mr. Grygiel said if the board voted favorably for a use variance of this type, there needs to be compelling reasons on the record to distinguish this property from other ones. The planner said there was a clear policy statement from the master plan to make it the exception not the rule to have two family dwellings within the municipality.

The Chairman said at the May meeting, Mr. Spatz quoted from the Master Plan that “*the R-B zone, which is primarily intended to permit two-family homes, is mapped in only one location: the north side of Madison Avenue between Charles and Grove Streets. Yet two family homes exist in many other locations scattered throughout the borough, primarily in the R-A zone*”. The

Chairman said Mr. Spatz stopped there but it further read the “*R-B zone be eliminated*”. The Chairman said in the section on Residential A Zone it read “*More broadly, a new policy statement has been added for this zone. The R-A zone is designated for single-family residential use only, within the parameters set forth in the Zoning Ordinance regulations. More intense development is prohibited due to its impacts on scale and character. Any potential deviations from these regulations should only be permitted when they are due to site specific circumstances and it can be demonstrated there would not be substantial detriment to the Master Plan and Zoning Ordinance.*” The Chairman thought the master plan was trying to get away from two family homes around the borough. He agreed there was a two family home there but once it was demolished then there was no longer a two family home. Mr. Alampi said you can’t say if you knock it down it does not exist. Mr. Sproviero said once it is demolished your right to have a two family there was extinguished. Mr. Alampi said that would only happen if the property owner decided to demolish it or had an approval but not on its own. Mr. Sproviero said there currently exists two units on the existing premises and what is proposed in conjunction with a subdivision is to have the existing premises have three units. Mr. Alampi agreed.

Mr. Loonam said that Mr. Grygiel said that the applicant needed to give a compelling reason as to why a two family should be permitted in a Residential A zone. Mr. Loonam did not hear from Mr. Alampi a compelling reason. Mr. Alampi said there was no hardship and nothing unusual about the topography so they did not go in that direction.

Mr. Weisbrot said he was not persuaded by those arguing against or for this application. Mr. Weisbrot said his problem was from a legal perspective. He did not think Mr. Alampi established the positive and negative criteria for the application. Mr. Weisbrot said he takes the position on this board when someone comes to them with a need or a hardship or some family issue he tries to find a way to comport their application with the law. Mr. Weisbrot said this is someone who is trying to get an extra house to make more money. He said that is fine but as a board he did not think whether his ability to profit more from making a two family to sell or rent as opposed to one family was within any of the criteria. Mr. Weisbrot thought Mr. Alampi did a great job but he did not think that Mr. Alampi satisfied the criteria as he understood them. He added when throwing in the potential risks that Mr. Loonam and Ms. Hittel brought up, it pushed him over the top. Mr. Alampi disagreed with his comments on safety. Mr. Weisbrot said his personal view was that without taking a position on whether it was a good idea or bad idea or whether the applicant should make money or not make money or whether there was a danger to the traffic, he did not think they established a criteria.

Motion made by Mr. Weisbrot to deny the variance, seconded by Mr. Adelung.

The motion passed on a roll call vote as follows:

For the Motion: Members Weisbrot, Adelung, Denis, Loonam, Rebsch, Schaffenberger

Against the Motion: Member Stokes

Denied 6-1

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

Motion to reopen work session was made by Mr. Loonam, seconded by Rebsch and carried by all.

The Chairman said there were no applications being carried so the August meeting would be cancelled. The Board Attorney said they would need to post and sunshine that the meeting has been cancelled.

Mr. Adelung proposed laptops and have plans sent electronically to eliminate the paper plans. Mr. Sproviero asked Ms. Batistic if the technology exists to have plans transmitted electronically. Ms. Batistic said it could be sent electronically but the state board requires the engineer to have the actual sealed plans and signatures. Mr. Adelung said there could be one set of plans signed and sealed. Ms. Batistic said then there is the question if the Board had the correct plans. No decisions were made.

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

Respectfully submitted,
Maureen Oppelaar