

Approved  
4/10/18

**New Milford Zoning Board of Adjustment  
Work Session  
March 13, 2018**

Chairman Schaffenberger called the Work Session of the New Milford Zoning Board of Adjustment to order at 7:29 pm and read the Open Public Meeting Act.

**ROLL CALL**

Mr. Adelong	Present
Ms. Hittel	Present
Mr. Joseph	Present
Mr. Loonam	Present
Mr. Rebsch	Present
Mr. Seymour	Present
Mr. Stokes - Vice Chairman	Absent
Mr. Weisbrot	Present
Mr. Schaffenberger- Chairman	Present
Mr. Sproviero - Attorney	Present

**REVIEW MINUTES OF THE WORK SESSION – February 13, 2018**

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

**REVIEW MINUTES OF THE PUBLIC SESSION – February 13, 2018**

The Board Members reviewed the minutes and there were no changes

**NEW BUSINESS**

**18 02 Brookchester Apartments – Block 612 Lot 4  
Dog Park – Use variance**

The Chairman noted that there were referrals from the Chief of Police, Health Department and Department of Public Works.

Mr. Loonam noticed that property owners were notified but asked if it was the applicant's responsibility to notify the individual tenants. Mr. Sproviero answered no that under the land use law it is the property owners only.

The Chairman said there was a notice from Terry Hartmann that there was a dinner for volunteers in April and would like anyone interested to RSVP.

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

**New Milford Zoning Board of Adjustment  
Public Session  
March 13, 2018**

Chairman Schaffenberger called the Public Session of the New Milford Zoning Board of Adjustment to order at 7:38 pm and read the Open Public Meeting Act.

**ROLL CALL**

Mr. Adelung	Present
Ms. Hittel	Present
Mr. Joseph	Present
Mr. Loonam	Present
Mr. Rebsch	Present
Mr. Seymour	Present
Mr. Stokes- Vice Chairman	Absent
Mr. Weisbrot	Present
Mr. Schaffenberger-Chairman	Present
Mr. Sproviero - Attorney	Present

**PLEDGE OF ALLEGIANCE**

**OFFICIAL MINUTES OF THE WORK SESSION – February 13, 2018**

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

**OFFICIAL MINUTES OF THE PUBLIC SESSION – February 13, 2018**

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

**NEW BUSINESS**

**18 02 Brookchester Apartments – Block 612 Lot 4**

**Dog Park – Use variances**

Ms. Doreen Ercolano stated that she was the regional manager of J&MG Realty and managed the Brunnetti portfolio in NJ and part of that is the Brookchester Apartments. Ms. Ercolano was requesting a variance for a pet park at Brookchester Apartments.

The Chairman clarified that it already exists. Ms. Ercolano agreed. The Chairman asked if there were hours for the pet park. Ms. Ercolano stated it was from dusk to dawn. She stated that the

dimensions of the dog park is 50x80, it had a 5' fence with a holding area for the dog and an emergency access gate. Ms. Ercolano stated that the Chief of Police requested a 5' emergency access gate for an emergency vehicle to access the site.

Ms. Ercolano said they already had this access gate and submitted a photo. The Chairman asked if she took the picture and if it had been altered in any way. Ms. Ercolano took the photo and stated it was not altered.

The Chairman marked the exhibit as A-1 - photo of access gate.  
Exhibit as A-2 – Bark Park sign

The Chairman asked how long the dog park has been up. Ms. Ercolano said they put it up in November and they did not realize they would need a variance. The Chairman asked if there were any issues with the pet park. Ms. Ercolano stated they have not officially opened the pet park because it was denied but they have not had any issues.

The Chairman questioned there were ordinances regarding the height and placement of fences and asked if this violates any ordinance. The Board Attorney said the zoning officer's denial letter has the only offending aspect as use. Ms. Ercolano stated that she has a permit for the fence.

The Board Attorney asked Ms. Ercolano what were the rules, how would they be adopted and posted. Ms. Ercolano said there would be signage, the park would only be opened during the daylight hours. Some of the rules listed were dogs must have collars, must be registered, must be vaccinated, no dogs over 45 lbs., dogs must be with a person 15 years old to be in the park and no puppies under 6 months.

The Chairman asked about picking up after your animals. Ms. Ercolano said that was included in the signage and noted that everyone so far has been cleaning up after the animals. Brookchester also had people that would clean up the area every day.

The Chairman asked if they had additional insurance for the dog park. Ms. Ercolano said they did not need it. The Chairman asked the board attorney, in the event that the board approved the application, about lawsuits involving the zoning board if a dog attacked a person. The Board Attorney said as an authorizing agent, the board would have no responsibility and the responsibility would fall on the property owner and the entity that oversees the facility. Mr. Sproviero added that the board has governmental immunity on their approvals and the zoning board was only the approving agency. Brookchester runs it and enforces the rules. The Board Attorney was comfortable that the zoning board had no liability there.

The Chairman asked if this was approved, the variance would go with the property. He noted it is in perpetuity that they have a variance for a dog park. The Board Attorney said it is an accessory use to the apartment complex. The Chairman clarified that there could not be a dog park if the apartment complex was not there. The Board Attorney agreed.

Mr. Loonam asked if there was a limitation on how many dogs per owner. Ms. Ercolano said only two dogs were allowed per apartment. Mr. Loonam asked if there was a small and large dog section. Ms. Ercolano answered no because 45 lbs. is the maximum size dog allowed. Mr. Loonam asked if there was a restriction on the breed of dogs. Ms. Ercolano said no aggressive breeds are allowed to be registered at the Brookchester Apartments. She explained they follow the Avalon breed restrictions. Mr. Loonam asked how they determined the age of the owner to be allowed in the park with their dog. Mr. Adelung said it was recommended in the health department review letter. The Board Attorney stated that the Board members were not creating the rules. The property owner is proposing the rules, said the Board Attorney and felt the members should not micro manage the rules of the dog park. Mr. Loonam questioned how the health department became the entity that gives the suggestions. The Board Attorney said the health department gave suggestions to the property owner. Mr. Weisbrot did not want to get bogged down with the rules but wanted to know what rules have they changed. Ms. Ercolano said they were putting in the 15 years or older and puppies 6 month or older rules as suggested by the health department.

The Board Attorney said the more involvement the board members get in the establishment of the rules, the more viable a potential claim could become. Mr. Weisbrot thought the board would be setting a precedent that hypothetically says the board of health would promulgate those reasonable rules and those reasonable rules are arbitrary and capricious. Mr. Weisbrot said then the board is setting a precedent that when we were requiring reasonable rules, we were not putting the obligation on the property owner where it should be but setting a precedent that the Board of Health can promulgate the rules. The Board Attorney said the board of health is simply making recommendations. Ms. Ercolano agreed and added they have no problem complying with the recommendations. Mr. Sproviero said the applicant has considered the recommendations and found it reasonable.

Mr. Weisbrot asked if Brookchester was putting on their sign that any dog determined to be aggressive must be barred as opposed to aggressive behavior not allowed. Mr. Ercolano answered yes and said it is a breed restriction and dogs must be registered and Brookchester does not allow aggressive breeds. Mr. Weisbrot said his point to the board is that they should not be determining the rules but they also should not be setting a precedent that permits the arbitrary and capricious enforcement of rules by a body that does not have the authority. The Board Attorney asked Mr. Weisbrot who is the body that does not have the authority. Mr. Weisbrot said in this case it is the Board of Health. The Board Attorney said the board of health is merely making recommendations to the property owner who can reject them or accept them in the entirety or something in between. Mr. Sproviero said when they condition any approval that may result from this hearing, it would be that the owner/operator is obligated to adopt and enforce reasonable rules and regulations pertaining to the dog park.

Ms. Hittel clarified that the Board was here simply to determine whether the dog park should exist at that location as designed and not how it is run. The Board Attorney agreed.

Mr. Adelung did not understand why the applicant was before the board for a use variance to put animals in a fenced area on their property and did not want to know about any rules. The Board Attorney said the board was here because New Milford's use ordinance was an inclusive

ordinance that specifies what permitted uses are permitted by ordinance and a dog park is not on the list.

Mr. Loonam said his problem was the board of health sent a referral and the applicant made changes based on their recommendations. Mr. Loonam said the resolution would have a condition regarding the recommendations by the Board of Health. Mr. Sproviero said that would not be in the resolution. He added whatever thought process went into what the applicant presented to the board was not our business.

Mr. Weisbrot asked if the board was requiring a sign. The Board Attorney said they should require a sign setting forth the rules and regulations. Ms. Ercolano said Brookchester was requiring a sign.

Mr. Adelung clarified that they were to determine how the dog park use would be in New Milford. The Board Attorney said the Board was here to decide whether or not they would permit a dog park as an accessory use to the multifamily garden apartment dwelling.

Mr. Adelung asked if it was an animal park. Ms. Ercolano said it was being called a “bark park”.

Ms. Hittel asked the reason a dog park was installed. Ms. Ercolano said they have several dogs on the property and people were unleashing their dogs and letting them run. They thought a dog park would be a nice, free amenity for the residents at Brookchester. Ms. Hittel clarified that Brookchester does not allow tenants to own an aggressive breed. Ms. Ercolano agreed but said there were laws now regarding emotional support and service animals that have to be part of their community. Ms. Hittel said if they were permitting service animals they could not ensure that every animal on the property was under 45 lbs. Ms. Ercolano said they do not want any dogs over 45 lbs. in the dog park.

Mr. Loonam said if this was before the board for a use variance, he did not think they should be discussing what is permitted or not permitted on the sign. The Board Attorney agreed they should not be discussing what the sign states but there should be signage setting forth rules and regulations.

Mr. Weisbrot questioned how they could require them to have a sign with rules if the Board was not requiring the applicant to have rules. The Board Attorney said should the property owner promulgate rules and regulations for the operation of the dog park same shall be set forth in signage posted at the dog park. They discussed that signage shall not exceed 12 sf.

Mr. Loonam felt a Chihuahua could be a great dog but left loose in a dog park they could be an aggressive dog. Ms. Ercolano said aggressive behavior is not allowed. Mr. Loonam thought a security camera could monitor aggressive behavior.

Motion to open to the public to question the witness or make a comment was made by Mr. Rebsch, seconded by Ms. Hittel and carried by all.

No one wished to speak in the audience.

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

Ms. Ercolano hoped the board would approve the variance application for the dog park because it something they were trying to do for their residents.

Motion made by Mr. Loonam to approve the application for an accessory structure and allow the applicant to post the signs no greater than a total of 12 sf at any entrance to the 50x80 dog park with a 5' fence, seconded by Mr. Rebsch.

The motion passed on a roll call vote as follows:

For the Motion: Members Loonam, Rebsch, Adelung, Weisbrot, Joseph, Hittel, Schaffenberger.

Recused: Members Seymour

Approved 7-0

Mr. Weisbrot was uncomfortable allowing signage but was in favor of the dog park.

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

Respectfully submitted,  
Maureen Oppelaar