

Approved  
1/12/16

**New Milford Zoning Board of Adjustment  
Work Session  
December 8, 2015**

Chairman Schaffenberger called the Work 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. Adelung	Present
Ms. DeBari-Vice Chairwoman	Present
Mr. Denis	Present
Mr. Joseph	Present
Mr. Loonam	Present (7:41)
Mr. Rebsch	Present
Mr. Stokes	Present
Mr. Weisbrot	Absent
Mr. Schaffenberger- Chairman	Present
Mr. Sproviero - Attorney	Present
Ms. Batistic – Engineer	Present
Mr. Grygiel – Planner	Present

**REVIEW OF MINUTES – November 10, 2015**

The Board Members reviewed the minutes for November 10, 2015 and there were no changes

**SCHEDULE OF MEETINGS 2016**

The Board Members reviewed the Schedule of Meetings for 2016. The Chairman stated the scheduled October meeting was a Jewish Holiday and the November meeting was a presidential election. The Board Members discussed it and decided the October meeting would be Thursday October 13<sup>th</sup> and the November meeting would be Monday November 7<sup>th</sup>, 2016.

The RFQ's were distributed to the Board Members. The Chairman told the Board Members to review the RFQ's for Board Attorney and they would vote on the appointment in January.

The Chairman also told the members to review the Zoning Board 2015 Applications Report which would be memorialized in January. The Board Attorney said what they have discussed by way of recommendations have been rolled into the work that Mr. Grygiel was currently doing with the Planning Board. Mr. Grygiel agreed.

**RESOLUTION**

**15-02 TOP STONE CHURCH – 435 River Road – Block 1115 Lot 1.01  
Child Care Center / Nursery School**

The Board Members reviewed the resolution and made changes.

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**OLD BUSINESS**

**15-08 Institute for Education Achievement - Block 1211 Lots 32/33  
Construct new adult education building  
Conditional use, height, parking**

The Board Attorney believed they would hear the continuation on the traffic flow, driveway issues and hear from their planner.

Motion to close was made by Ms. DeBari, seconded by Mr. Rebsch and carried by all.

**New Milford Zoning Board of Adjustment  
Public Session  
December 8, 2015**

Chairman Schaffenberger called the Public Session of the New Milford Zoning Board of Adjustment to order at 8:03 pm and read the Open Public Meeting Act

**ROLL CALL**

Mr. Adelung	Present
Ms. DeBari- Vice Chairwoman	Present
Mr. Denis	Present
Mr. Joseph	Present
Mr. Loonam	Present
Mr. Rebsch	Present
Mr. Stokes	Present
Mr. Weisbrot	Absent
Mr. Schaffenberger-Chairman	Present
Mr. Sproviero - Attorney	Present
Ms. Batistic – Engineer	Present
Mr. Grygiel	Present

Chairman Schaffenberger and Mr. Joseph were not present at the November 10, 2015 meeting and certified that they listened to the recording of the meeting.

**OFFICIAL MINUTES OF THE WORK SESSION – November 10, 2015**

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

**OFFICIAL MINUTES OF THE PUBLIC SESSION –November 10, 2015**

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

**SCHEDULE OF MEETINGS 2016**

The Chairman stated that three changes have been made to the Schedule of Meetings. The May meeting is Tuesday the 10<sup>th</sup>, October will be Thursday the 13<sup>th</sup>, and November will be Monday the 7<sup>th</sup>. The Chairman asked for a motion to accept the Schedule of Meetings for 2016.

**Motion** was made by Mr. Loonam, seconded by Mr. Stokes and carried by all to approve the schedule of meetings.

**RESOLUTION TO BE MEMORIALIZED**

**15-02 TOP STONE CHURCH – 435 River Road – Block 1115 Lot 1.01  
Child Care Center / Nursery School**

Motion made by Mr. Stokes, seconded by Mr. Loonam to memorialize the resolution with changes.

The motion passed by a roll call vote as follows:

For the motion: Members Stokes, Loonam, Denis, Rebsch, DeBari

**OLD BUSINESS**

**15-08 Institute for Educational Achievement- Block 1211 Lots 32/33  
Construct new adult education building  
Conditional use, height, parking**

Mr. Elliot Urdang, on behalf of the Institute for Educational Achievement (IEA), said at the last meeting there was traffic testimony, testimony from the director of IEA on the operation of the school and engineer testimony. Mr. Urdang said in the interim they have received a report from Boswell Engineering. They have been in touch with the County and would like to bring back Mr. Olivo to discuss his conversations with the County. He would also recall their Engineer to comment on the Boswell Engineering report. Mr. Garrett, architect and planner, would also testify.

Mr. Olivo was recalled. The Board Attorney reminded him he was still under oath.

Mr. Olivo, Stonefield Engineering & Design, said there was correspondence with the County Planner with regard to the application and the proposed Access Management Plan of the site. It came back to them with regard to traffic and access location being located somewhat offset from the intersection of Monroe and Madison. The question was could they slide the driveway to the east to align with Monroe Avenue and limit it to egress. After discussions and how that would impact the plan, they proposed to shift the driveway not to align with Monroe but align it directly with the easterly most north/south circulation aisle closer to the eastern property line of the site. The County would get back to them regarding that recommendation. Mr. Olivo said the Board Engineer also had some questions regarding the driveway location and he hoped this would address those concerns.

The Chairman asked if the proposed driveway to the east would be ingress/egress. Mr. Olivo said yes. The Chairman asked for the total number of parking spaces and how many he anticipated they would need. Mr. Olivo said they proposed 71 spaces. Mr. Olivo said if they fast forward to 2033 the adult learner site was to be fully occupied with a need for a maximum 60-65 range. The Chairman clarified that the 71 spaces would also include all employees and everyone that drives there. Mr. Olivo agreed and said also everyone that parks on Kehoe today. The Chairman said there was no reason for anyone to park on Kehoe if this was approved as is. Mr. Olivo said that was the point of attempting to get the proposed parking yield.

Mr. Loonam understood the idea was to park on site but they commented that they would not be mandated to do so because it was on street parking. Mr. Olivo said as long as it was allowable and not in an area that was prohibited it was public streets. Mr. Loonam said some employees might choose to park there because of a matter of convenience so they were not eliminating any workers from this site from parking on Kehoe. Mr. Olivo said the administration team could direct the employees to park on site but they could park there. He felt the proposed plan was eliminating the desire for someone to park somewhere else. Mr. Loonam agreed they were eliminating the need but maybe the desire might still be present. Mr. Urdang said all the applicant can do is create the possibility of parking.

Ms. DeBari thought it would not be unreasonable to ask for a condition for the employees to park on the site. Mr. Urdang did not think that would be unreasonable. The Board Attorney said a condition could be that staff shall be required to utilize onsite parking providing to the extent it is available. Mr. Urdang did not have a problem with that condition. He suggested that if the proposed driveway location was approved by the board and the county he did not think the applicant needed to come back. The only reason to come back was if the County wanted something else. The Chairman clarified that moving the driveway to the east was Mr. Olivo's recommendation and they sent it to the County and were waiting their approval. Mr. Olivo agreed.

The Board Attorney thought the Board would be more comfortable if they knew exactly what they were approving. Mr. Urdang said they would also be more comfortable but they were waiting on the County. Mr. Sproviero said if they could advise him that the County approved the plan with the easterly most driveway, he could prepare the resolution that incorporates it and the board could vote and approve. Mr. Urdang liked the idea.

Mr. Stokes had concerns about losing parking spaces if the driveway was shifted. Mr. Olivo said if they align with Monroe in an egress only scenario, the driveway would become narrower and they would pick up one stall and lose one stall in the area of the islands. Mr. Olivo asked the county if they would have to move any parking stalls within the median if they aligned the driveway with the exit movement of Monroe because it was an exit only. The County said they were comfortable with leaving the median area as is.

Ms. Batistic said in her letter they did not like the idea of the driveway being a little bit off of Monroe. She said either line it with Monroe or make it further away. Ms. Batistic would prefer the recommendation of moving it to the east then what they have now. Ms. Batistic said it created an issue with left turn movements when the driveways were not lined up. Mr. Olivo said that conflict would not exist when moving the driveway to the east. Ms. Batistic agreed.

The Chairman questioned if there would be two driveways. Mr. Olivo said there would be 2 two-way driveways and the existing driveway would be maintained. The Chairman asked if it would make sense to have one-way driveways. Mr. Olivo said no.

Mr. Adelung asked how far off the property line was the proposed easterly most driveway. Mr. Olivo said the edge of the driveway would be about 30' from the property line. Ms. Batistic noted that it scaled 28'.

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

No one in the audience wished to ask the witness any questions.

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

Mr. Urdang recalled the engineer, Mr. Perry Frenzel. The Board Attorney reminded the witness he was still under oath.

Mr. Urdang asked Mr. Frenzel if he reviewed Ms. Batistic's report dated 11/25/15. Mr. Frenzel did and said there were two items that warranted concerns. The driveway was one which they discussed and the other was regarding access to the rear of the proposed building for emergency access. Mr. Frenzel said they had received a favorable report from the Fire Advisory Committee. The design of the building did not need to rely on that access to be fully compliant. It was Mr. Frenzel's opinion that they did not need to provide full access to the back of the building. Mr. Urdang asked if the other comments in the letter were acceptable. Mr. Frenzel said yes.

The Chairman asked Mr. Stokes if Mr. Frenzel's opinion regarding full access to the building made sense. Mr. Stokes said yes. The Chairman had a concern about the drop off at the back of the building. Mr. Stokes did not think the drop off would be a big concern. He added they don't put a ladder off a building 40'. Mr. Stokes said there would be some sort of area in the back and he did not think this would be a challenge.

Ms. Batistic said there was a drop curb on the west side of the existing building and assumed that was for some sort of emergency access. She noted there was a playground area that was fenced off. If there was an access thru the drop curb, it would stop at the playground area. Ms. Batistic added that she left it to the Fire Department to review it. The Board Attorney asked Ms. Batistic if she was okay with it if the Fire Department was good with it. Ms. Batistic said yes.

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

No one in the audience wished to ask the witness questions.

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

Mr. Anthony Garrett, Billow Garrett Group, 161 Main Street, Ridgefield Park, NJ, architect / planner, was sworn in by the Board Attorney.

The Board Members accepted the qualifications for Mr. Garrett as an expert as a licensed architect and planner.

Mr. Urdang asked Mr. Garrett to deal first with the architecture and then planning.

The Board Attorney marked as Exhibit A-2 five page plan dated 10/14/15.  
Exhibit A-3 artist rendering of project

Mr. Garrett stated the existing building was approximately 14,000 sf footprint. He stated there was an emergent program for adults and the existing facility was not large enough to house the program. He stated the adult program was a different type of education. The adult care was life skills education. Mr. Garrett said the adult care facility was connected to the existing facility by a controlled access breeze way. He added the buildings were separate and distinct entities and added the adult skills program has nothing to do with the autistic education program for the children.

Mr. Garrett said the proposed building had approximately a 6,500 sf footprint for the ground floor and 5,000 sf for the second floor. He discussed the floor plan for both floors. Mr. Garrett discussed the artist rendering showing the existing and proposed building. He stated they were trying to use the same materials, similar bricks, stucco, bricks and windows. Mr. Garrett said they were proposing on the new building a gable roof with a metal roof. He discussed the sustainable value for the metal roof. The architect stated they will probably have a solar reflected index on the roofing to reflect some of the heating. Mr. Garrett said they have integrated a series of shed and gable roofs which reflect a residential style.

Mr. Garrett said they have maintained 14' floor to floor height which was appropriate for spaces of this size and has created a variance for height. He stated the 14' was arbitrary and basically set for 10' ceilings. He stated it was to maintain adequate space for mechanicals and structural and still have the building function properly. He stated there was 6' at a top of a roof that was above the 32' level. Mr. Garrett stated it was for a small portion of the roof. He felt it was appropriate to seek the variance to achieve the two floors, maintain a residential look of the building and create a desirable environment for the neighborhood.

Mr. Adelung asked why the roof on the rendering was red. Mr. Garrett said they try to combine earth tone colors with red. He felt it gave the building a significant amount of character. Mr. Adelung asked what the impact would be if they did not get the 1 ½' height variance. Mr. Garrett said it was more for aesthetics and trying to create a residential character. He would not want to compromise on the 10' ceilings and said they would have to flatten the roof to get to the 32' height. Mr. Adelung asked if they could do that. Mr. Garrett said it would be less pleasing and look more institutional with a flatter roof and by allowing the deviation it would be a betterment of the zone plan.

The Board Attorney asked what the proposed total height was. Mr. Garrett said they were proposing 33 ½' where 32' was allowed. He added that part of that was based on the average grade of the site and there was an anomaly on the north side of the site with the drop off. Mr. Garrett explained that a portion of the drop off which was skewing the average elevation down. He stated from the Madison Avenue side the building would be at the 30' elevation.

Mr. Denis thought it was an asset to have this facility in the town but felt the red roof would stand out in the neighborhood. Mr. Garrett said they could consider other colors for the roof.

Ms. DeBari thought the metal roof could match the existing roof. The Chairman agreed and asked if there would be an overhang on the front of the proposed building. Mr. Garrett said no. The Chairman stated a house north of the facility was considerably lower and had concerns that the large building would cast a shadow and keep the homes in shade in perpetuity. Mr. Garrett said no. He stated he took particular notice when doing the conceptual analysis of the site. He said you could not really see the existing roof because of the heavy buffer. The proposed building was 53' off the rear property line and the existing building was 35' off the rear property line. He said this building would have no effect on light and air to the neighborhood because this was such a heavily treed area.

Mr. Loonam thought the setback of the building was 125' off of Madison. Mr. Garrett agreed. Mr. Loonam thought the roof looked good. Mr. Loonam questioned if the color of the roof was changed, he would like to know what the color was before the Board voted on the application.

Mr. Urdang said the applicant was trying to be accommodating but thought they were entering into an area of personal preference regarding the roof color.

The Chairman thought it looked good but liked everything the same.

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

Lori Barton, 399 Roslyn Avenue, asked why the building needed to be so large and have a second floor if the adult learners were not there all day. Mr. Garrett answered that while the adults were present there was a lot of activity going on. He explained the activities that took place needed space during the day. Ms. Barton thought it could be kept smaller with one floor and stagger the activities.

Gene Murray, 425 Madison Avenue, said he was not opposed to the project but stated he lived dew east from the site and would expect this building to cast a huge shadow in the spring and summer on the homes dew east. Mr. Murray said for the testimony to be that there will be no effect was incorrect. Mr. Garrett said the 33' building at the closest point was 53' from the property line so it was geometry that a large shadow would not be cast from this building. He added they were well over 100' from the eastern property line. Mr. Murray said he was taken in geometry and 12 years of life experience into account and thought the back yard of the house dew east of the property would be in a shadow. Mr. Garrett respectively disagreed.

The Chairman said the homes in the rear were not on a level plain and were considerably lower. Mr. Garrett discussed elevations of the area and did not think the sun or shade issue was a concern. He agreed there was a sense that the building seemed higher but it was mitigated by the landscape area.

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

Mr. Garrett was questioned by Mr. Urdang on planning. He asked if the school was a permitted use in the zone but permitted subject to conditions. Mr. Garrett agreed and said they were seeking a D3 variance. Mr. Urdang asked what the lead case was on a D3 variance. Mr. Garrett said the case was Coventry Square. Mr. Urdang said the essential argument of Coventry Square was because the use was permitted that the issue was whether the site would accommodate the use. Mr. Urdang asked if the use was an inherently beneficial use. Mr. Garrett said yes. Mr. Urdang noted where there was an inherently beneficial use the affirmative criterion of special reasons is deemed to be satisfied. He added the negative criteria had to be analyzed by SICA analysis which had four steps. Mr. Garrett agreed. Mr. Urdang said the first step of the analysis was how good of an inherently beneficial use it was and there was a scale for it. Mr. Garrett said a school of this nature serving this portion of society would be an extremely elevated level in the scale.

Mr. Urdang stated they were proposing a height variance existing 32' proposed 33.5'. Mr. Urdang said they were also asking for parking in the front yard. Mr. Garrett added that there was currently parking in the front yard of the existing facility and they were proposing parking at the new site. The proposed parking would be approximately 16' from the curb to the property line. It would be mitigated by a significant amount of dense landscaping. Mr. Urdang said one of the conditions is to provide landscaping within the parking area which they were not doing. Mr. Urdang asked if he thought the perimeter landscaping would be sufficient to insulate the neighbors from the site. Mr. Garrett said yes they were proposing 31 trees around the perimeter of the site. Mr. Urdang asked if there was any reasonable conditions. The Board Attorney said they had a brief discussion with regard to requiring staff to park on site. Mr. Urdang agreed. Mr. Urdang asked Mr. Garrett how he would balance the three steps. Mr. Garrett thought they were trying to mitigate the variances that they were trying to achieve. He believed the inherently beneficial use coupled with screened areas, articulation, residential character of the building, promoting light and air to the neighborhood, promoting a desirable and visual environment all work to offset any potential negative impacts. Mr. Garrett said there was no negatives impacts that rise to a level that he considered substantial. He felt when balancing all of these considerations they put forth an application that could be granted without creating substantial detriment to the public, health, safety and welfare or creating a significant impairment of the zone plan.

The Chairman asked if the Shade Tree Committee reviewed the application. The Shade Tree Committee sent an email dated November 02, 2015 which read that they had no issue with plans on the IEA project and they approved it as seen.

Mr. Paul Grygiel did not think they addressed the C variance for the fence height around the trash enclosure. Mr. Garrett thought the ordinance said to make the fence as high as the dumpster and they anticipated a 2 yard dumpster that would be between 5-6' tall. Mr. Garrett said they were proposing a 6' fence and did not think that would have any impact to the zone plan. Mr. Grygiel asked if it was opinion it would be a benefit to have a slightly larger fence to screen. Mr. Garrett agreed. Mr. Grygiel said the various proofs have been addressed and there were a number of conditional use standards and given the conditions on the site he felt the Board had enough information to determine whether the criteria has been adequately met.

Mr. Loonam asked the planner if it was his testimony that an aesthetic design and the functionality of a 33.5' building outweighs anything that might be to having a 32' building. Mr. Garrett said it would be a benefit to allow the deviation because it allows them to have more of a slope on the roof which is more a residential character which is a major aesthetic benefit. Mr. Loonam asked if he thought that outweighs any negative. Mr. Garrett said absolutely.

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

No one wished to ask the planner any questions.

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

The Board Attorney stated there was discussion that the applicant would come back after finding out the County's position. The Board Attorney suggested that the Board open to the public for final comment once they have a final plan in front of the board. The Chairman did not like the idea of voting and resolution in one night. He agreed that it would be better to vote on this when they had in front of them a final plan. Mr. Stokes also wanted to see the final plans. Mr. Urdang had no problem with it and they should have an answer from the County soon and would prepare the appropriate sketch.

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

Respectfully submitted,  
Maureen Oppelaar