

**New Milford Zoning Board of Adjustment
Work Session
February 11, 2020**

Approved
7/14/2020

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
Jared Birnbaum	Present
Ms. DeBari	Present
Ms. Hittel	Absent
Mr. Levine	Absent
Mr. LoPorto	Present
Mr. Rebsch	Present
Mr. Weisbrot	Present
Mr. Schaffenberger- Chairman	Present
Mr. Sproviero - Attorney	Present
Ms. Batistic-Engineer	Present

REVIEW MINUTES OF THE WORK SESSION – January 22, 2020

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

REVIEW MINUTES OF THE PUBLIC SESSION – January 22, 2020

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

RESOLUTIONS

19-07 Hotto – 117 Propsect Avenue– Block 1520 Lot 12-Addition – building coverage, side yard, impervious coverage

The board members reviewed the resolution and there were no changes.

2019 Annual Report

The Board Attorney said the report was a summary of the applications heard in 2019 and the disposition of the applications and the primary issue behind those applications. The Board Attorney added for the most part it was predominately building coverage issues. Mr. Sproviero stated that the Mayor and Council did adopt changes through the zoning ordinance as it relates to the calculation of building coverage vs impervious coverage. Distinctions were made and a revised ordinance was adopted. The Chairman said the change in the ordinance was in part due to the zoning board’s input. The Board Attorney agreed.

NEW BUSINESS

20 02- Appeal of zoning officer’s determination – 680 Plympton Street.

The Chairman said this application was an appeal of the zoning officer’s determination which was unusual. The Board Attorney said it was unusual in the sense that while the appeal of the

zoning officer's determinations are not all that unusual because we have heard them in the past. He explained what made this different from the rest, is that it was not being offered by the homeowner or someone seeking a variance for relief. Here the board has an affected property who is challenging the determination of the zoning officer. The Board Attorney said he would leave the applicant to its proofs and the applicant will set forth the basis of the relief that they seek. The Zoning officer was present to offer his responses by way of sworn testimony and the board would also hear from the Board Engineer.

Motion to close the work session was made by Ms. DeBari, seconded by Mr. Adelung and carried by all.

**New Milford Zoning Board of Adjustment
Public Session
February 11, 2020**

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
Mr. Birnbaum	Present
Mr. DeBari	Present
Ms. Hittel	Absent
Mr. Levine	Absent
Mr. LoPorto	Present
Mr. Rebsch	Present
Mr. Weisbrot -Vice Chairman	Present
Mr. Schaffenberger-Chairman	Present
Ms. Batistic -Engineer	Present
Mr. Sproviero - Attorney	Present

PLEDGE OF ALLEGIANCE

OFFICIAL MINUTES OF THE WORK SESSION – January 22, 2020

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

OFFICIAL MINUTES OF THE PUBLIC SESSION – January 22, 2020

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

RESOLUTION TO BE MEMORIALIZED

19- 07 Hotto – 117 Prospect – block 1520 Lot 12 – addition- bldg, side yard, impervious coverage

Motion made by Mr. Rebsch to memorialize the resolution, seconded by Mr. Adelung.

The motion passed on a roll call as follows:

For the motion: Members Rebsch, Adelung, DeBari, Weisbrot, Birnbaum, Schaffenberger.

Approved 6-0

2019 Annual Report

Motion made by Mr. Rebsch to memorialize the resolution, seconded by Mr. Birnbaum

The motion passed on a roll call as follows:

For the motion: Members Rebsch, Birnbaum, Adelung, DeBari, Weisbrot, LoPorto, Schaffenberger.

Approved 7-0

NEW BUSINESS

20 02- Appeal of Zoning Officer's determination – 680 Plympton Street.

Mr. Richard Abrahamsen, on behalf of the applicant, stated the nature of the appeal was that they challenge the determination at this status of the development that the building complies with the height requirements of New Milford because the pre-grade construction grades and the highest point of the height shows it is over 30'. He stated these people live next store and said it started on Thanksgiving, soil was brought in without the benefit of a soil movement permit and they did not know where it came from and did not know if it was tested. They built a retaining wall and filled in and changed the grade of the home. They left a wall up from the previous construction so it should have been at the existing grade of what they were already building from so from their perspective they built it too high. Without the soil movement permit, they brought soil in and changed the grade. Mr. Abrahamsen said from their perspective they did not think they could build up too high or bump it up to get more living in the basement. They thought that to allow the height to be approved before the soil permit application is approved defeats the purpose to have a review of a soil movement permit and to allow a developer to have the height approved based upon a grade that has not yet been evaluated by the appropriate authorities. They did think it was correct to say at this posture of a case that the height doesn't violate the height requirement because bringing in this fill should have been tested first and should not have been brought in on thanksgiving. It could a health issue. They did not think it was right to say the height was correct based upon moving soil in improperly and illegally until the grade has been properly evaluated by the board. Mr. Abrahamsen said that was the basis of the appeal and the height should not be approved until the soil permit is approved or not approved.

Ms. DeBari said her understanding was that this house was never before this board because they did not have to be. Mr. Sproviero said that was correct.

Mr. Adelung said prior to thanksgiving, there was a set of plans that was approved. Mr. Abrahamsen said they did not apply for a variance. Mr. Adelung said there was a set of plans that was submitted that had a height, elevations, grades which was all approved. Mr. Abrahamsen said the plans may have been approved but he could not speak for the building or zoning officer officer who reviewed the plans.

Mr. Abrahamsen said Ms. DeBari asked if this house came before the board for a height variance and the answer was no but it was possible that if the contractor "goofs" and is off 1 ½ ft when he builds the house, an application could be made before this board to say it seems to be de minimis. He felt they still need relief. It was not for the zoning officer or the neighbors to say that it was de minimis but it was for the board to say that they were entitled to a variance. The Chairman said they have not applied for a variance. Mr. Abrahamsen said if they did the neighbors would have been noticed and they could have been heard on this issue. The Board Attorney said they still may be entitled to depending where the board goes with the appeal. It may be remanded back to the board for the purpose of entertaining an application for variance relief.

Mr. Weisbrot asked what is the issue here. Mr. Abrahamsen said the issue started with the height. Mr. Weisbrot said he has read all the paperwork. Mr. Abrahamsen said there was an issue with fill being brought in and a retaining wall was built which the neighbors don't like. Mr. Weisbrot said why not. Mr. Abrahamsen said his client would speak on this matter.

Ms. Colleen Caruso, 177 Grand Street, was sworn in by the Board Attorney.

Ms. Caruso said her main issue was when they brought in all the soil it made their security fence for their pool about a foot high and was 8" off her fence.

Ms. Caruso submitted photos of the site.

The Board Attorney marked as exhibit A-1 – 8 photos collectively.

The Chairman asked who took the photos and if they were altered.

Ms. Caruso answered she took the photos and they were not altered.

Ms. Caruso said in one of the photos, it showed how her security is compromised with a pool. Ms. Caruso said they have a pool with a fenced in yard and said now her fence was a foot high. She said the photo shows the wall the man built on Thanksgiving and all the soil that was brought in. Her attorney said it changed the grade and affects the security fencing required for the pool.

Ms. DeBari asked how high was the wall. Ms. Caruso said it 8" from her fence and the retaining wall was 27.5". Mr. Abrahamsen said because the height of the house was a problem, he brought in all this soil without getting a proper permit. Ms. Caruso added he built a wall and filled it in.

Ms. DeBari clarified that she was saying they brought soil in and raised their property. Mr. Abrahamsen said now they say "bingo" my house is not too tall now.

Mr. Adelung said did someone know there was an issue with the height of the house or are we just surmising that they built a wall, put in fill and it was decided that they did it to fix the height of the house. Ms. Caruso said they did not say it was to fix the height of the house. She said the contractor told them they had a 7' basement and wanted to have an 8' ceilings in the basement.

Mr. Adelung said then they did not know anything but were only surmising. Ms. Caruso said there was no wall on the original plan.

The Chairman asked if the backfill changed the height of the house as measured from the four corners of the house. Ms. Batistic said yes.

Mr. Weisbrot said according to Ms. Batistic, there was a minor soil movement permit filed with the borough on January 8, 2020. Mr. Abrahamsen said yes but after the fact. Mr. Weisbrot asked if it was approved. Mr. Abrahamsen said he did not know and thought that would go to the

planning board. Mr. Sproviero said this appeal proceeding would not invoke jurisdiction upon the zoning board to make a determination as to the issuance of the soil movement permit.

Mr. Weisbrot understood that the issue is the fence and the pool. Ms. Caruso said the issue is the wall along their property which is now an eyesore with all the soil and the house is now overshadowing the whole neighborhood because it is too high.

Mr. Weisbrot said that is completely another issue so the question becomes whether or not this is varianceable, or if it is, would the board grant it anyway. Mr. Weisbrot said he was concerned about the pool safety but said if Ms. Caruso was identifying the aesthetics of it. Ms. Caruso said there were many things and it was the pool. Mr. Weisbrot questioned her concern was children would climb over and climb into her pool. Ms. Caruso said yes and any neighborhood child could get in there and it is unsafe. Mr. Abrahamsen said when they sell the house, they might sell it to people with children.

Ms. Batistic said safety of the height of the wall and the fence is not with this board. The Board Attorney said the zoning board does not exercise that jurisdiction. Ms. Batistic said the zoning board would deal with the height of the house and if it was in violation of the zoning ordinance.

Ms. Batistic said the soil movement permit goes to the planning board if the quantity of the soil movement is more than 200 cubic yards. The Chairman asked if it was. Ms. Batistic understood it was not and it was 78 cubic yards and would need any board approval. The Chairman questioned if it needed a permit. Ms. Batistic said it would need a soil movement permit but not need to be approved by the planning board if less than 200 cubic yards. It would need the borough's engineer review and she believed the borough engineer has requested they show the origin of the soil. The Chairman clarified that they have not done that yet. Mr. Abrahamsen said he saw a review letter that they have not received that information.

The Board Attorney asked if they had any other witnesses. Ms. Caruso answered no.

Mr. Adelung said before they go any further, could it be clarified what the zoning board is dealing with. Mr. Adelung asked if there was a wall built that should not be there, would it come to the zoning board. Mr. Sproviero said it would come to the board because we are the administrative board that has jurisdiction to oversee the propriety of the actions taken by the zoning officer. The Board Attorney said he could not fully answer the question until they hear from the zoning officer. Mr. Adelung did not want to sit here and have people come in because they did not like a fence someplace and think they should now come in front of the zoning board to deal with it. The Board Attorney said under the authority granted to this board under section 70 of the MLUL subsection A1 - the zoning officer board determinations - was why we are here.

Mr. Vincent A. Cahill, 930 River Road, New Milford, NJ was sworn in by the board attorney.

The Board Attorney asked what brings him here tonight. Mr. Cahill said he received an appeal of a decision that he made on a height of a structure. The Board Attorney said and soil movement considerations that are associated with it. Mr. Cahill said he wasn't told about soil movement but would discuss it.

Mr. Cahill explained that the original set of plans were submitted and approved on 7/30/19. It was at the time, a 12,500 sf lot and the owner was looking to construct a 1,897 sf structure which is 15.2% where 20% is permitted, proposing 24.5 sf of impervious coverage for a total of 3,062 sf which was well below the permitted 40%. The zoning officer said he reviewed all his setbacks which complied well within the borough's guidelines. On 9/17/19, another set of plans were received from the builder to move the building closer to the front yard but well within the 30' setback – permitted 30' and proposed 34'36" and on the original set of plans he was at 39'36". The revised plans were to move the house 5' closer to the property line still within the 30' requirement. His height did not change from the original plans. He requested a height of 29'33" permitted 30' and the second set of plans also 29'33".

The Chairman asked if he moved the house in its entirety so it changed the rear yard. Mr. Cahill said yes which gave it a larger rear yard and a smaller front yard setback. Mr. Cahill explained he requires during construction multiple as built on individual properties. The as built for this property called for a footing and foundation location survey which was to be conducted prior to framing, a framing as built survey prior to insulation and drywall and a final as built prior to issuance of a CO.

Mr. Cahill said he received a question from a neighbor about a wall being built at which time he contacted the property owner. He sent the drawings with the figures of the wall and how it was to be constructed to the borough engineer for review. Mr. Cahill said he does not approve or review walls any more than 24". Initially, the builder was looking to build a wall 30" but reduced it 20". He sends these walls to the borough engineer to make sure the wall is built and constructed in a way that it won't fall over and that it has proper drainage.

Mr. Adelung questioned that the zoning officer does not approve walls. Mr. Cahill said that is not true. If it was 1 ½ ft wall, Mr. Cahill said he would probably look at their schematic but probably with a call with the borough engineer approve it. The zoning officer said anything of this nature, he would send to the borough engineer. Mr. Adelung said they submitted an additional set of plans that had the wall. Mr. Cahill agreed.

The Board Attorney asked if there were final as built. Mr. Cahill responded that they have not yet got to that point for final as built. Mr. Cahill said there was an engineer letter from the borough engineer that reviewed the wall at the end of 2019. There were some questions regarding the wall which had a letter corresponding to it.

The Chairman asked if the plans showed the larger wall or the reduced size of the wall. Mr. Cahill said he reduced it but it was hand written which was a problem for the engineer and he requested additional plans which was done by his engineering firm that showed the actual height. Mr. Weisbrot said they were within the height that he could approve. Mr. Cahill said in this instance because of what happened and what was occurring, he sent it to the borough engineer. The Chairman asked if he did not approve the wall because it was a procedural thing not because he had an objection with it. Mr. Cahill said it was procedural.

Mr. Adelung asked if there was a set of plans that have been approved for the wall by the prior engineer. Mr. Cahill said this would not have been approved by the Board Engineer but by the Borough Engineer. The Board Attorney believed the applicant has been supplied with three review letters. Mr. Cahill said Boswell Engineering had questions about the height of the wall and drainage and asked for new plans requesting the height of the wall and new drainage calculations showing where the water from the corrugated pipe behind the wall was draining and that the seepage pit was larger enough. Mr. Adelung asked if that has been done. Mr. Cahill said at the end of the year, there is a new borough engineer which is Maser Engineering. Maser Engineering reviews it as well as the soil movement permit. The new engineer reviews the Boswell Engineering review letters who wanted the size of the seepage pit, new drainage calculations, and soil analysis to determine if it was clean fill and the amount of fill. Mr. Cahill said he has received the drainage calculations and waiting for the soil analysis.

Mr. Weisbrot asked if this was premature and does it belong in front of the board.

Mr. Cahill said he has a foundation as built and asked for his ridge as built. He received his ridge as built and pull out the plans which had elevations and topographic numbers. He looked at the elevations on the plans and the height as built that was approved on 1/8/2020. He reviewed the borough ordinance for his deciding factor.

Borough code 30:21.6 height:

A person or entity which constructs, alters or reconstructs a dwelling shall not alter the existing natural grade of the property by more than two(2') feet.

The zoning officer said he also went back to look at what the definition for grade plan.

Borough Code 30-2.1

Grade plane shall mean a reference plane representing the average elevation of the finished ground adjoining the building at all exterior walls. The grade plane shall be calculated by averaging the ground elevation at the primary building corners and the midpoint of the primary exterior walls. The existing grade shall not be altered by more than two (2) feet.

Height of building – shall mean the vertical distance measured from the grade plane of the building to the highest point of the roof.

Mr. Cahill said if he used the borough ordinances, and review the topographic survey on the submitted plans and the as built supplied, this building is 29.73' which is under the 30' requirement. At that point, he approved the height of the structure. The wall has not been approved yet and the soil movement permit because they did not have enough data. Once they have received the data, it will be sent to the borough engineer. If it is determined that the soil needs to be removed, then they need to adjust calculations. If the soil is clean, it falls under the 200 cubic yards which does not require the board.

Mr. Adelung had questions on raising the grade of the property. Mr. Cahill explained that the property did fall off at the edges and said he basically leveled off the back yard to make it even which he can do according to our ordinance. Mr. Cahill said they had elevations from the existing plans and elevations from his as built. He stated that the elevations on his as built did not increase even to 2'.

Mr. LoPorto asked if there was a change in the grade in excess of 2' this would not be for the board's review. He questioned if there would be a step for the zoning officer to go back to the original plan in that case and not require a neighboring homeowner to appeal something. Mr. Weisbrot said the zoning officer would not approve it. Mr. Cahill agreed and said he would not approve and it would be before the board with the property owner seeking a variance.

Mr. Weisbrot said there were two issues. One was the height which he was satisfied with Mr. Cahill's testimony that they were within the ordinance and there was the wall that appears it could potentially be an issue subject to an appeal but that discussion is premature because it is still going through the process to determine whether or not it requires action by the board. Based on that, Mr. Weisbrot said the appeal on the wall is premature and suggested the appeal be denied without prejudice so the process could play itself out. If there is an issue, subsequently we could visit it at that time, said Mr. Weisbrot.

The Board Attorney asked Mr. Abrahamsen if he had any cross examination of Mr. Cahill.

The Chairman asked Mr. Cahill if the property was somewhat bowed and that they added soil to flatten it out. Mr. Cahill said you can see the elevations at the base of the building and the elevations as you move from the structure on the topographic drawing. He clarified now everything is flat. The Chairman clarified that if they added any soil it didn't change the height of the building. Mr. Cahill said the soil was added all around the foundation less than 2'.

Mr. Adelung asked Ms. Batistic how was the builder going to bring the grade up 2' with no wall. He questioned if the wall was not on the original plan, how did the plan get approved with the grade.

Ms. Batistic said looking at the existing plan which was included in Mr. Abrahamsen's appeal, it showed the grades on the property around the existing house and the grades slope off to the neighbor on the side and in the back. Ms. Batistic said the as built approved on 1//8/2020 showed proposed grades at the corner of the new house. It did not include the wall or the grade at the property line. This was to prove that the height was within the borough ordinance. Ms. Batistic put this in her review letter and highlighted existing grade and the as built grade which was measured, signed and sealed by the professional surveyor. Ms. Batistic said based on the as built grades and the top of the roof, it was determined the height was 29.73. The engineer stated they did not have to build the wall, it would just have a steeper side and rear.

Ms. Batistic discussed the proposed grade at the corner of the house and existing grade before the wall had a 3' difference on 23' and felt it was a gentle slope. Ms. Batistic stated there was about 3' difference from the grade at the house to the neighbors existing grade. Mr. Adelung asked why a builder would arbitrarily spend the money and put in a wall. Ms. Batistic did not know the reason for building the wall but maybe he wanted it level or to contain all the drainage on his property.

Mr. Adelung said something does seem right that if the grades and height are correct, how did we get here.

Mr. Adelung, Mr. Weisbrot and Mr. LoPorto questioned the ordinance on the height and the 2' of soil allowed. Mr. Weisbrot said it might not be good for the neighbor, but it is all within the rules.

Mr. Weisbrot said he has not heard any reason as to why they require zoning board action.

The Board Attorney said they were not seeking any variance relief but challenging, through the board as the finder of fact and the judge of the law, as to whether the zoning official did what he was supposed to do in a correct manner.

The Board Attorney asked Mr. Abrahamsen if he would prefer to individually cross examine the witnesses or hear from our borough engineer.

Mr. Abrahamsen did not need to cross examine but said he heard discussion that they could build up the elevation of 2'. He said this was not a case where they were using the soil on the site but soil was brought in. The question is does this board or New Milford want to say to a builder if they build a house too high that they don't have to get permits, they can bring the soil in and don't need approval for the soil ahead of time. Mr. Abrahamsen said if there is a soil movement permit process they should apply, tell where it coming from, be tested and how many yards.

Mr. Weisbrot asked if the soil movement permit process was being done now. Mr. Abrahamsen said yes but after the fact.

The Board Attorney suggested carrying this application to March because the height is interdependent upon the calculation of the grades. Mr. Abrahamsen said until the as built grade is approved, after all the professionals have looked at it, soil has been tested and the drainage has been evaluated, it isn't a real grade. He felt the height is not correct until the grade is approved. The Board Attorney said the height is not verifiable.

The Board Attorney asked what activity is being done at the site. Mr. Cahill said interior work and nothing on the site. Mr. Cahill said he had no reason nor did the construction official had any reason to stop the interior work. The Board Attorney said unless the height is not correct.

The Chairman asked if they decide the wall and soil have to go, the house would be potentially too high. Mr. Cahill said correct. Ms. DeBari said they would then come to the board for a variance. Mr. Weisbrot felt that is why they need to let the process continue.

The Board Attorney said the board cannot determine the propriety of the calculations relied on by the zoning officer to come up with height determination until the other issues that are being looked at by the borough engineer are taken care of. The Board Attorney asked Ms. Batistic in the interim would she recommend the builder to be notified that they can proceed at their own risk or should a stop work order be issued pending our determination with these issues on this appeal.

Ms. Batistic said this board has jurisdiction with the height. We do not have jurisdiction over the wall or the soil movement permit. She said if the soil is not clean, they would have to remove it

and bring in clean fill or lower the roof if they violate the height. They still have almost 4' to play with and the ordinance allows them to raise the grade 2'. Ms. Batistic said they did not raise the grade 2' around the building so as it stands now they are in compliance with the height. They can remove the soil around the building, bring the new soil or do the new calculations to prove that even with the removal of the existing grade their building height works. Ms. Batistic said they have to submit a final as built of the whole site with the wall or without the wall.

Ms. Batistic said we could carry but it might not be resolved in the next month. The engineer said she was ok with the height of the building as it stands now. The Board Attorney said there is a linkage between the two issues. Ms. Batistic agreed.

Mr. Weisbrot asked the Board Attorney if there was a difference in his mind between denying the application without prejudice and if there is an issue down the line they come to us or carrying the appeal for as many months as it may take. He said right now there is nothing appealable so are we leaving open the possibility that something goes wrong and they can continue to appeal or deny the appeal and let them come back if something is wrong.

The Board Attorney had no problem with the latter to deny without prejudice and if when the soil movement permit is approved by the borough engineer if they are still aggrieved at that point they can refile their application.

Mr. Weisbrot said he was not unsympathetic to their position. Mr. Abrahamsen said that would require his client additional fees to a new application and thought it would be better for them to carry.

Mr. Adelung said if the owner of the property was planning to put up a fence along their side of their property the situation goes away. The Board Attorney said on top of the retaining wall. The Board Attorney said he would recommend that the board carry the application and in the interim the contractor/property owner needs to be advised on what happened here that when they resume the application they should be present.

The Chairman said the application would be carried until the issue with the wall and soil is resolved which is interconnected with the height. The Board Attorney said in the interim hopefully there will be some dialog between the builder and the neighbor and they come to an accommodation as to what would make everyone happy.

The Chairman said the reason for this meeting was an appeal of the zoning officer's determination. The Chairman said it seems to him from Mr. Cahill's testimony, that the zoning officer did everything he was supposed to do up until the point of this regrading. The Chairman said it was not that Mr. Cahill did anything incorrect and it seemed to him that the zoning officer was on top of this from the "get-go". The Board Attorney agreed. The Chairman wanted that on the record.

Motion made by Mr. Weisbrot to carry the application, seconded by Mr. Rebsch.

The motion passed on a roll call as follows:

For the motion: Mr. Weisbrot, Rebsch, Adelung, DeBari, Birnbaum, LoPorto, Schaffenberger.

The Chairman asked if we end up here on this application, could the builder attend the meeting. The Chairman asked if the board had to subpoena him to appear. The Board Attorney said no but he recommended through the zoning officer that he be advised of the nature of the proceeding and it is scheduled for March 10, 2020

The Chairman asked Mr. Abrahamsen if he was agreeable to this. Mr. Abrahamsen said yes.

The Board Attorney said once they have a submission from Maser Engineering, they could put the application on the agenda.

Ms. Batistic said the only question was if the soil was clean and if it is clean, they don't have to do anything. The other issue is safety because constructing this wall the fence became only 2' and a 4' fence is required around the pool. The contractor created an unsafe situation and they need to correct it. Ms. Batistic said the reason the ordinance limited 2' is because of the height. People were pushing dirt against the building 4' high.

Mr. LoPorto asked if it was not possible that the initial application becomes defective if it is obvious that the builder intentionally raises the grade subsequently to comply with the original 30' height requirement. He asked if that should that have initially got variance relief. Ms. Batistic said it appears they did not need it even with raising the soil. Mr. LoPorto said as a factual matter, it seems like New Milford was saying that any new reconstruction property is essentially a 32' height. Mr. LoPorto said anyone can apply to the zoning officer for a 30' height and subsequently change the grade by 2' and there was no recourse anywhere.

The Chairman said the height of the building was checked before they did the fill and it was fine. Mr. Weisbrot said if they add 2' of fill, it will make it higher but that is the ordinance. Mr. LoPorto said it was a statutory problem.

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

Respectfully submitted,
Maureen Oppelaar