

**New Milford Zoning Board of Adjustment
Work Session
June 11, 2019**

Chairman Schaffenberger called the Work Session of the New Milford Zoning Board of Adjustment to order at 7:35 pm and read the Open Public Meeting Act.

ROLL CALL

Mr. Adelong	Present
Ms. DeBari	Present
Ms. Hittel	Present
Mr. Levine	Present
Mr. Loonam	Absent
Mr. Rebsch	Absent
Mr. Stokes	Present
Mr. Weisbrot	Present
Mr. Schaffenberger- Chairman	Present
Mr. Sproviero - Attorney	Present
Mr. Kelly – Engineer	Present

REVIEW MINUTES OF THE WORK SESSION – May 14, 2019

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

REVIEW MINUTES OF THE PUBLIC SESSION – May 14, 2019

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

NEW BUSINESS

19-02 Rodani Homes – 800 Princeton – Block 602 Lot 6
Sideyard variance

The Board Attorney explained there was a single variance that was implicated for this application. It was for a side yard setback encroachment. Mr. Sproviero said this home has already been built and the problem was discovered when the as built drawings were submitted to support the issuance of a CO.

The Board Attorney said to the applicant’s attorney, if the board was without a quorum for the July meeting, the resolution would not be able to be adopted until the August 13, 2019 meeting. Mr. Sproviero asked if that would present a problem to the applicant. Mr. Stamos explained there was not a contract on the property. Mr. Sproviero clarified that the house would be put up on the market. Mr. Stamos agreed. The Chairman said they would get a quorum for a resolution in July.

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

**New Milford Zoning Board of Adjustment
Public Session
June 11, 2019**

Chairman Schaffenberger called the Public Session of the New Milford Zoning Board of Adjustment to order at 7:45 pm and read the Open Public Meeting Act.

ROLL CALL

Mr. Adelung	Present
Ms. DeBari	Present
Ms. Hittel	Present
Mr. Levine	Present
Mr. Loonam – Vice Chairman	Absent
Mr. Rebsch	Absent
Mr. Stokes	Present
Mr. Weisbrot	Present
Mr. Schaffenberger-Chairman	Present
Mr. Sproviero - Attorney	Present
Mr. Kelly – Engineer	Present

PLEDGE OF ALLEGIANCE

OFFICIAL MINUTES OF THE WORK SESSION – May 14, 2019

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

OFFICIAL MINUTES OF THE PUBLIC SESSION – May 14, 2019

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

NEW BUSINESS

19-02 Rodani Homes – 800 Princeton – Block 602 Lot 6
Sideyard variance

Mr. Dean Stamos, appearing on behalf of Mr. Mark Madaio who had a conflict this evening, was here on behalf of the application of Rodani Homes, LLC.

Mr. Stamos stated the home, that was at the time existing on the property, had a non-conforming setback of 6.3' to the side. The applicant wanted to do an addition to the rear and on the second story. The applicant was told that they would have to meet the 7.5' setback. Mr. Stamos said they jogged the second story in 1.2'. Mr. Stamos explained that the cover page on the plan shows the foundation should be 1.2' over in the rear. He further explained the subsequent pages with the

foundation plans have the rear addition that is only about 8.7" going straight back matching the existing setback of 6.3'. Mr. Stamos said everyone followed the second part of the plan and built it. Mr. Stamos said the intention was to comply with the requirement but they admitted it was their mistake but an honest mistake. He added they complied with the 7.5' setback for the second story.

The Board Attorney said in the notice sent out by Mr. Madaio it made reference to the total area of building footprint at variance was approximately 11 sf. There was also an email from Mr. Madaio dated June 6, 2019 that said the total nonconforming square footage was 9.6 sf. Mr. Sproviero asked what was the correct number. Mr. Stamos thought he was referring to the volume of building that was in a variance condition. Mr. Stamos said probably around 11' of space but the nonconformity is 1.2'. Mr. Sproviero clarified that was constrained to the 8.7' section.

Mr. Kelly stated that the area that was nonconforming was 10.3 sf. with a 1.2' encroachment for a distance of 8.7' which comes out to 10.3 sf.

Nelson Parada, Parada Design Associates, 18 New Street, Bloomfield NJ, was sworn in by the Board Attorney.

The Chairman asked Mr. Parada if he was a licensed architect in NJ. Mr. Parada said he was not but his partner was and he was representing him. The Chairman asked if he prepared the drawings. Mr. Parada said he did and someone else signed them. The Board Attorney said he has explained his qualifications and asked him if he was familiar with the subject matter and the architectural drawings. Mr. Parada answered yes. Mr. Kelly asked Mr. Parada if he was in the process of being licensed. Mr. Parada said yes.

The Board Members allowed the testimony of Mr. Parada.

Mr. Parada said the discrepancy was that the setback was at 6.3' and was supposed to be brought in to 7.5' which they had all intentions to do. He said the error was on their part and explained they had a couple of projects going at the same time. He discussed that some of their other projects brought the wall to the same setback and everybody missed it. Mr. Parada said the second story is correct. The architect said they mixed it up with another project by accident.

Mr. Stamos marked as exhibit A-1 photo of home
A-2 photo of home

The Chairman asked who took the photos and if they were altered in any way. Mr. Temiz said he took the photos and they were not altered.

Mr. Adelung asked if they knew what the requirements were, planned that there would be no variance and the plans were stamped and returned to them. Mr. Parada agreed. The Board Attorney said then as-builts were submitted. Mr. Adelung said the as-builts were supposed to be submitted before they continued to frame out the house. He asked if they submitted them. Mr. Parada said no and nobody caught it. Mr. Adelung clarified that there was a mistake on the drawings and they did not submit the foundation as-built. Mr. Parada agreed.

Mr. Roy Temiz, Rodani Homes LLC, was sworn in by the Board Attorney.

Mr. Adelung asked Mr. Temiz if the foundation as-built was submitted. Mr. Temiz said he submitted them late to Vince Cahill and that was when they found out there was a problem. Mr. Adelung asked if he keep going knowing he did not have an approved as built. Mr. Temiz said yes. Mr. Adelung asked if he had inspections. Mr. Temiz said yes. Mr. Adelung clarified when he submitted the final as-built, he realized there was a problem. Mr. Temiz said he submitted late the foundation location and ridge height as-built. He had not submitted the final as-built.

Mr. Stokes asked if walls were left up. Mr. Temiz said there were two walls left. The Chairman asked if the wall with the issue was left up. Mr. Temiz answered yes.

Mr. Stamos said they provided to the board the drawings and photos. He added that if this was an a traditional application, he would be making the argument that the benefits would outweigh any detriments because he made a substantial investment to build a beautiful home and made an improvement to the property. They were here because they made an honest mistake and ask to have it corrected by seeking a variance for approximately 1 foot for about 8 feet.

Ms. Hittel asked if this relief was not granted, what that would mean in terms of correcting the issue. Mr. Stamos said they would have to reconstruct that section and pull it in. Mr. Temiz said it would cost tens of thousands of dollars and months to correct.

Mr. Adelung asked if everything was done. Mr. Temiz said it was about 90% done. Mr. Adelung said nobody picked up on the inside of the house that it was 16” too long and it only got picked up when the surveyor said there was a problem. Mr. Temiz said he found out there was a problem when he submitted the survey to Vince Cahill.

Mr. Temiz said he was upset, embarrassed and disappointed with this and said this was his fourth project in town and loved working in this town.

The Chairman asked if there would be an AC unit on the side. Mr. Temiz said it would be in the back of the house.

Mr. Kelly said the foundation as-built survey was dated March 7, 2019 last revised March 13, 2019 and asked when it was submitted to zoning officer. Mr. Temiz said in May. Mr. Kelly asked if that was when it was brought to his attention that there was an encroachment. Mr. Temiz said yes. The Chairman clarified that the first time it was brought to his attention was when Mr. Cahill notified him. Mr. Temiz said yes. The Board Attorney said the zoning officer issued the denial letter on May 20, 2019.

Mr. Kelly asked Mr. Parada if he was familiar with the site. Mr. Parada said yes. Mr. Kelly said the existing north wall of the original portion of the dwelling was originally nonconforming. Mr.

Parada agreed. Mr. Kelly clarified that the addition was continuing the nonconforming distance. Mr. Parada agreed.

Mr. Stamos said the larger volume of the addition on the second story was correct.

The Chairman clarified that what is built there is not the first page but all the pages to follow is correct to what is there now. Mr. Stamos and Mr. Temiz agreed.

Mr. Stokes said since they went through all the trouble to conform on the second floor, he believes it was an honest mistake. Mr. Stokes said they put the jog on the second floor and it would cost a lot of money to repair the 8'. Mr. Stokes said there was no one in the audience to object so he would be inclined to give the variance.

Ms. DeBari appreciated their honesty because a lot of time people point fingers at everyone else. She said everyone does make mistakes, unfortunately this was a big one but did agree with Mr. Stokes.

Ms. Hittel felt it would create an undue burden on the homeowner to correct it so she would be inclined to allow it because it was 1 foot.

Mr. Levine said that it sounded like a mistake that should have been picked up but felt it was not done intentionally.

Mr. Adelung said he would rather them come here first and ask for a variance before they built the house and he would have probably voted yes. His problem was being put in the position that a framer, the electrician and plumber went in and realized they were off 1' and could have been corrected before they get here. Mr. Stokes said the discrepancy was only on the cover page. Mr. Adelung said is it built right or wrong. Mr. Adelung asked the architect if he was going to take the "heat". Mr. Parada said he would take the heat. Mr. Adelung clarified that all the drawings were wrong. Mr. Stokes said the cover page was correct and showed what it should be and the other pages showed what it is. Mr. Stokes added they were going off the plans which had the extra foot so it was not like the foundation contractor or the carpenter made a 1' mistake, they just followed the plans.

The Chairman added that had they come for a variance, he probably would also have voted on it.

Motion to open to the public was made by Ms. Hittel, seconded by Ms. DeBari.

No one was in the audience.

Motion to close to the public was made Ms. DeBari, seconded by Ms. Hittel.

Mr. Stokes agreed with some of the members that had they come before the board to extend 8' on a non-conforming side yard, he would have probably approved it. He added that they took the time, money and care to move the second story back to be conforming. He felt with the burden of cost, no one was here to object and it was a beautiful house, he would make the motion.

The Board Attorney added there were a series of standard conditions such as compliance with the recommendations in the Engineer's review letter, COAH implications on construction and payment of all outstanding escrow fees.

Mr. Kelly said the board could consider additional buffering but felt in this case, there was a sufficient landscape buffer between the two properties.

Motion made by Mr. Stokes to grant the variance, seconded by Mr. Levine.

The **motion** passed on a roll call as follows:

For the Motion: Members Stokes, Levine, Adelung, DeBari, Weisbrot, Hittel, Schaffenberger
Approved 7-0

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

Respectfully submitted,
Maureen Oppelaar