

Approved  
5/14/19

**New Milford Zoning Board of Adjustment  
Work Session  
April 09, 2019**

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

The Board Attorney swore in Ms. DeBari for a four year term as a full member with a term expiring 12/31/22.

The Board Attorney noted that at the reorganization meeting there were two appointments where the oath document had the dates of the term inverted. The Board Attorney corrected for the record that Ms. Hittel’s term was to 12/30/20 and Mr. Levin’s term was to 12/31/19.

**REVIEW MINUTES OF THE WORK SESSION – January 8, 2019**

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

**REVIEW MINUTES OF THE PUBLIC SESSION – January 8, 2019**

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

**19 01 409 New Bridge-Sheryl Elias-Block 207 Lot 9**

**Circular driveway/house**

30.21.5 front yard, 30.21.4 impervious coverage, 30.28.1 off street parking, 18-4.6 construction of driveway

The Board Attorney explained that this property on New Bridge Road had certain issues that relate to the property and the potential development of the site. This application seeks solely for the inclusion and construction of a circular driveway given the conditions of New Bridge Road. He added that four variances were implicated. Mr. Sproviero said there is a dual curb cut and there was also a concern that there would be an impervious coverage exceedance with the circular driveway. Ordinance Section 30-28.1 requires off street parking and there was a front yard variance resulting from the proposed placement of a building envelope for the premises. The front yard variance was caused because there is a sewer line that runs thru the property that would impact the applicant’s ability to set the house back further. While the sewer line itself is

contributory as to the reason why variance relief is needed, there were many issues that go along with the placement of the sewer line, said Mr. Sproviero. Those issues and the easements that support it or do not support it are not implicated by this application. The Board Attorney explained what was implicated by this application was the sewer line was there and, as a result of it being there, the applicant is currently constrained in the placement of the building envelope to accommodate a structure that would be conforming in nature as to all setback and size requirements except the front yard setback.

Mr. Weisbrot was not interested in the sewer easement but asked if the off street parking could be explained. Mr. Sproviero agreed that the status of the easement supporting the sewer line was not before the board.

Mr. Loonam did not feel the sewer line prohibited the ability to build a house but it may limit the size. Mr. Loonam felt the reason to build the circular driveway was because of the size of the house not because there was not enough room to build a house on the property because of the sewer line. Mr. Sproviero said the circular driveway was because of the unsafe condition that would result from attempting to back onto New Bridge Road. Mr. Loonam asked if they were looking at this circular driveway because of safety issues or a circular driveway that needs to exist because of the size of the house. Mr. Sproviero said the board would have to hear testimony and new evidence.

Ms. Hittel asked for a definition of off street parking. There was much discussion regarding the ordinance on off street parking. The Zoning Board Engineer discussed the off street parking ordinance and said it was typically parking on your site not on the street. The Zoning Board Engineer said the off street variance that she pointed out was not what the zoning officer was referring to which was for the impervious coverage which was greater than 30% in the front yard not the number of parking spaces provided.

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

**New Milford Zoning Board of Adjustment  
Public Session  
April 9, 2019**

Chairman Schaffenberger called the Public Session of the New Milford Zoning Board of Adjustment to order at 7:56 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		Present
Mr. Rebsch		Present
Mr. Stokes		Absent
Mr. Weisbrot		Present
Mr. Schaffenberger-Chairman		Present
Mr. Sproviero -	Attorney	Present
Ms. Louloudis	Engineer	Present

**PLEDGE OF ALLEGIANCE**

**OFFICIAL MINUTES OF THE WORK SESSION – January 8, 2019**

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

**OFFICIAL MINUTES OF THE PUBLIC SESSION – January 8, 2019**

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

**19 01- 409 New Bridge-Sheryl Elias-Block 207 Lot 9**

**Circular driveway/house**

30.21.5 Front yard, 30.21.4 impervious coverage, 30.28.1 off street parking, 18-4.6 construction of driveway

The Board Attorney found all the required forms have been submitted and proof of notice to both affected property owners and general public by way of notification have been abided. The Board Attorney said from a legal perspective the application is complete. Ms. Louloudis deemed the application complete with engineering.

Sheryl Elias 1200 The Strand, Teaneck NJ was sworn in by the Board Attorney.

Ms. Elias stated that she bought this property five years ago with the intention of building a home on the property. The owner stated she went through all the procedures for the demolition and submitted her forms including the architectural plan to the zoning officer. She stated

everything was approved, a title search was done and nothing came back with an easement and had an engineer do a survey and nothing came back. The Board Attorney told the applicant that this does not impact her application. Ms. Elias understood but said she did not know the sewer existed and if she knew she would not have bought the property. Ms. Elias said she has tried to work through this the last five years. The applicant said she has never backed onto New Bridge Road and when visiting the property she parks on the side street and stated it was an invitation for an accident. The owner said the day before she demolished the house there was a notice of a sewer in the backyard. Ms. Elias said now she just wanted relief for the safety reasons. She was not seeking construction permits but just seeking the driveway for safety reasons. Ms. Elias said she reached out to the county, at the suggestion of Mr. Cahill, and they said they encourage these driveways because of the dangers and risks on New Bridge Road.

The Board Attorney stated there has been correspondence from the applicant dated 4/1/19 which has been disseminated to the board and a response issued dated 4/5/19. Mr. Sproviero stated they have been received and it was part of the record. Mr. Sproviero read into the record the email dated 3/4/19 from Mr. Timsak to Ms. Elias on the position of the County on this.

Mr. David Hals, 9 Post Road Suite M11, Oakland, NJ was sworn in by the Board Attorney.

The Board Members accepted the qualifications of Mr. Hals as a licensed professional engineer.

The Board Attorney marked as exhibit A-1 – the plot plan dated 4/1/18 revision 3/21/19.

Mr. Hals said the property is rectangular in shape and has frontage on the street of approximate 76' and approximately 225' deep. It was about 138' from the sideline of the Boulevard. The lot was relatively flat. Mr. Hals said there is no house on the property today and there was a sanitary sewer that bisects the middle of the property. He said the sewer is below the ground but bisects the property. He stated that any construction on the property needs to be located from that sewer line forward. It shows now as a 10' wide sewer easement. He stated this was a physical restriction. The average front setback was 33' along New Bridge Road, said the engineer. He noted that New Bridge was a very busy road. Mr. Hals said there was landscaping located to the property to the east which blocks the site distance.

Mr. Hals stated they were proposing the home to be located 26.1' from the front side line of New Bridge Road where 33' was the average requirement. They were asking for a variance of 6.9' from the current setback. The engineer said they needed to slide the home forward because of the location of the sanitary sewer. Mr. Hals said granting this variance would not disrupt the visibility or setback line. He said granting the variance in this location would not impede or disrupt the setback or visually impair the neighborhood or would not visually impair the intent and purpose of the zone plan.

The Engineer said the other two variances they were seeking were front yard coverage and driveway width. They were proposing a circular driveway - 12' driveway on the left and a 12' driveway on the right. They were proposing an aggregate width of 24' but they were providing only a 12' driveway. He believes the ordinance speaks of the width of the driveway not the aggregate.

Mr. Hals said they were also seeking a variance for driveway coverage. They were proposing a driveway coverage of 34.5%. He felt this was a location where a circular driveway makes sense for safety reasons. Mr. Hals said there were no negatives in adding the additional impervious coverage to the front.

Mr. Hals said the fourth variance for overall impervious coverage was eliminated. Mr. Sproviero asked about the off street parking. Mr. Hals said they had a two car garage and adequate parking on the property. He felt they had the ability to park 6 cars on site.

Mr. Adelung asked what the reason was for a circular driveway and not a regular driveway. Mr. Hals said they could put a K-turn in front but there is a site issue with the vegetation on the neighbor's property. Mr. Adelung asked Mr. Hals if the circular driveway was denied, did he think they could not put a straight driveway in with the way the house is right now. Mr. Hals said a smaller house and a straight driveway could be built and provide adequate parking area. He believed in this location no matter what type of house was built a circular driveway would be beneficial. Mr. Hals said the County also encourages it at this location and felt this is the best plan for this site. Mr. Adelung asked if they were talking about the driveway separately from the front yard setback.

Mr. Hals said the two variances were related and he did not believe the driveway width was a variance. Mr. Hals said the zoning officer said it was, so the applicant was asking for the variance. He believed a 12' driveway and a 12' driveway does not equal a 24' wide driveway. Mr. Hals said the other two is the position of the house and the front yard coverage.

Mr. Sproviero said the front yard coverage is totally impervious coverage. Mr. Hals agreed. The Board Attorney said what you are describing as front yard coverage is the entirety of impervious coverage throughout the entirety of the lot. Mr. Hals said from the front street line to the front line of the house. He clarified everything from the front of the house. Mr. Sproviero asked if that was 30%. The Board Engineer said in the off street parking ordinance it talks of a maximum area of a front yard covered by impervious shall be 30%. Ms. Louloudis said the impervious over the entire site was within the allowable amount. Mr. Sproviero added it does not trigger a variance. The Board Engineer stated because of the circular driveway there was more impervious area and causing the variance. The Chairman asked if that was now at 30%. Mr. Hals said they were proposing 34.5% because they were pulling the house closer to the front street line.

The Chairman asked if the house was designed prior to the discovery of the sewer line. Mr. Hals said yes. The Chairman asked after the discovery of the sewer line, were any changes made to the design of the house or was it just shifted forward. Mr. Hals believed it was just shifted forward.

Ms. Elias said the house was designed with the sewer line in mind. The Chairman clarified that the house was not designed when the sewer line was discovered. Ms. Elias agreed and that was why the house is positioned where it is. Ms. Elias said if it was not for the sewer line the house would be set back further and there would not be the set back and front impervious issues but just the safety issue.

Mr. Adelung asked if they could eliminate the 4 ½% coverage for the driveway and leave it circular.

Recess (8:35)

Mr. Hals said he looked at the front yard coverage to see if he could reduce area but said the answer was no. The Board Attorney asked him to confirm the total front yard setback. Mr. Hals said it was 33' by average set yard setback. The Board Attorney asked for the proposed impervious coverage for the front yard. Mr. Hals answered it was 34.5%.

Mr. Loonam did not think those calculations were correct and believed, after he color keyed the area on the plan, it was more than 50%.

The Zoning Board Engineer asked what the front yard area was. Mr. Hals said the front yard area was 3,738 sf. Ms. Louloudis thought the front yard area was off. She read the definition of the front yard into the record. Ms. Louloudis calculated that they were looking at 45% impervious in the front yard. Mr. Hals believed that 45% was correct.

Mr. Loonam thought the plans looked like there were 5-6 bedrooms and 5 bathrooms and noted that on the Zillow listing it was 8 bedrooms 8.5 baths which does not correspond to the plans. Ms. Elias said there was areas not finished on the plans. Mr. Loonam asked if the board was not considering the plans for the house. Mr. Sproviero said that was correct. What the board was considering was the building envelope. The Chairman asked what the square footage of the footprint was. Mr. Hals said the square footage of the house was 3,044 sf.

Ms. Louloudis asked if they had any drainage calculations prepared. Mr. Hals answered no but if approved they would do it. They showed seepage pits on the drawing.

Mr. Loonam said the basis of the application was safety for the circular driveway and it would be beneficial. Mr. Loonam asked if there were any other homes in the area that had any circular driveways. Mr. Hals did not see any but say driveways that were 12-15' wide. Mr. Loonam asked what the existing driveway looked like and was located when the applicant bought the house. Mr. Hals said the existing driveway was a westerly driveway.

The Board Attorney asked if the pool was preexisting. Mr. Hals answered no it is a proposed pool. He said they were showing that they could fit the proposed circular driveway, house, patio and pool and be conforming to the impervious coverage.

Mr. Loonam clarified that it was not the circular driveway were prohibited but it was the two curb cuts. The Board Attorney said it was the driveway cut out limitation was 20' and the aggregate of these two curb cuts was more than 20'.

Mr. Hals said they were here for the front yard setback variance for the house, front yard driveway coverage and for the aggregate width of the driveways. He believed his testimony has shown that the proposed house location was reasonable to the existing houses to the left and the

driveway coverage in the front, which is now calculated at 45%, becomes more of a safety issue with the traffic on New Bridge Road. Mr. Hals felt the location was appropriate for the circular driveway.

Ms. Hittel asked what happens if the variance was not granted for the setback for the house. Mr. Hals answered that his client had the choice to appeal the decision or design the house that would fit in the setback.

The Chairman asked if he thought they could put a house and circular driveway on this lot with no variances. The Board Attorney said other than the aggregate of the curb cuts. Mr. Hals said they could have to change the design of the house and slide back the house 7' to be conforming to the front yard. It is now 26.1 and it would have to go to 33. The Board Attorney asked how much they would have to go back from the rear of the home to the 10' requirement for the easement. Mr. Hals answered approximately 6'. The Board Attorney said theoretically this building envelope could be slid back and have a substantially reduced variance.

Ms. Louloudis said if an easement has been submitted for review and her understanding is it has not been, typically they want 20' on a sewer line. The Zoning Board Engineer said the easement has to be recorded and accepted by the town. The Board Attorney said that was the problem of the issuance of the building permit but not the grant of variance relief. Mr. Sproviero said what complicates things here is granting variance relief was tied to the location and the dimension of the building. Mr. Weisbrot said the proposal of pushing it back implicates an easement concern beyond the board's scope. The Board Attorney said there are easement concerns and variance concerns and one may not be compatible with the other by simply shifting the house back.

Mr. Hals agreed to move the house to 30' which will match the front yard setback to the neighbors at the left who were also at 30'. He added that was the minimum front yard setback for Residential A zone. Mr. Hals said they would be meeting the minimum front yard setback of 30' and consistent to the houses to the left. He said they would be reducing the variance request and reducing some of the impervious coverage.

Mr. Adelung suggested taking square footage off of the house. Mr. Hals said they were going to propose to move it from 26.1 to 30' so that they would be consistent with the minimum front yard setback. The Chairman said he mentioned that some impervious coverage would be reduced and asked by how much. Mr. Hals said it would be reduced a little bit.

Mr. Loonam said his biggest problem with this application is that the applicant is looking for approximately 45% front yard impervious coverage where 30% is allowed. The Board is being asked to issue a variance that is 50% greater than what is allowed, said Mr. Loonam. Mr. Loonam questioned the letter from the county engineer and if they knew of these calculations or did they just feel a circular driveway was okay. The Board Attorney said it was clearly the latter. Mr. Hals said the county was not looking at a zoning issue but just the safety of the roadway.

The Zoning Board Engineer said that the County correspondence did not specifically say that a circular driveway was a great idea. They said it was acceptable. Ms. Louloudis said they would accept that as a letter of no interest. The Board Attorney agreed. The Board Attorney agreed with

Ms. Louloudis that he interpreted it as a letter of no interest. However, the county continues to exert their continuing jurisdiction and the application would be so conditioned subject to the continuing jurisdiction of among others Bergen County Planning Board.

Mr. Weisbrot said the 45% was not insignificant and felt Mr. Loonam was right that it was not insignificant. Mr. Weisbrot felt a circular driveway on a major thoroughfare makes sense. He said the county was acceptable of it. Mr. Weisbrot said the sewer line exists and there were easement issues which does create an undue hardship on the topography of the property that makes certain kinds of adjustments that they would like to see unfeasible. Mr. Weisbrot did not want to vote against a circular driveway and someone get hurt because they insisted on a noncircular driveway. Mr. Weisbrot said we should not try to reconstruct an application but should either accept it for what it is or not accept it. Mr. Loonam said that was up to the applicant if they wanted to make changes.

Ms. Hittel felt the issue was the impervious coverage and water runoff. She noted downhill from this property there is significant flooding triggered from a stream. The applicant and engineer stated that they would control the runoff with a seepage pit that was not defined and the volume was not defined. Ms. Hittel asked if the question was about the shape of the driveway or the water runoff.

Mr. Weisbrot said the ZB engineer issued a review letter stating that seepage pit calculations were not provided and that it appears that two seepage pits proposed may not be sufficient for the size of the house and drainage calculation shall be provided. A percolation test will be required to determine soil permeability and groundwater level. Mr. Weisbrot said this would have to be a condition. Mr. Loonam said the opinion of the ZB engineer was based on the calculation of 34% not 45%. Ms. Hittel agreed. Ms. Louloudis did not know how the ordinance came about regarding off street parking and 30% maximum impervious in the front yard. She said the main thing would be the drainage from coming to the street and another thing could be the aesthetics. Mr. Weisbrot asked if the board engineer was concerned with aesthetics or engineering. Ms. Louloudis said she was looking at the ordinance as it was stated that the impervious coverage could not be more than 30 percent in the front yard which was separate than the drainage question she had requesting drainage calculations to see if the seepage pits were sufficient. Ms. Louloudis explained it was two different things.

The Board Attorney stated that the Board had the ability to bifurcate the vote. The Board could vote separately on the driveway curb cut and the impervious issue and the front yard setback issue. The Applicant's engineer agreed to it.

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

No one wished to speak in the audience.

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

The Chairman thought to bifurcate was a good idea.

Mr. Adelung understood how the ordinances were written and there were coverage and impervious issues and there was a condition in the back of the house that drives where the house sits. He felt from the perspective of the board, they need to determine if they would want the applicant to shrink the house down in order to get what the applicant wants for front driveway, curb cuts and impervious coverage in the front of the house or would the board say there is an easement in the back of the house and that is the reason for the driveway. Mr. Adelung was okay with the way it is proposed but said if this house was anywhere else in the borough and not on this main street, he would deny it.

**Motion** made by Mr. Weisbrot to approve the variances in total with 45% front yard impervious and a 30' front yard setback and curb cut with the following conditions, seconded by Mr. Adelung.

Conditions: The conditions set forth in the Boswell Engineering letter dated 4/5/19 in particular:

- the seepage pit calculations
- regarding the concrete driveway apron
- BC Soil Conservation District certification
- Subject to Continuing Jurisdiction of the Bergen County Planning Board

The motion passed on a roll call vote as follows:

For the Motion: Members Weisbrot, Adelung, Debari, Hittel

Against the Motion: Members Loonam, Rebsch, Schaffenberger

Approved 4-3

Mr. Loonam said it would be incredibly irresponsible to approve a variance that allows for 45% impervious coverage in the front yard which is a variance that was 50% greater than what was allowed. He had no problem with the curb cut or circular driveway but only had a problem with the front yard impervious driveway.

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

Respectfully submitted,  
Maureen Oppelaar