

Approved  
7/11/17

**New Milford Zoning Board of Adjustment  
Work Session  
June 13, 2017**

Chairman Schaffenberger called the Work Meeting 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
Mr. Denis	Present
Mr. Joseph	Absent
Ms. Hittel	Present
Mr. Loonam	Present (752)
Mr. Rebsch	Present
Mr. Stokes	Present
Mr. Weisbrot	Present
Mr. Schaffenberger- Chairman	Present
Ms. Batistic - Engineer	Present
Mr. Sproviero - Attorney	Present

**REVIEW MINUTES OF THE WORK SESSION – May 9, 2017**

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

**REVIEW MINUTES OF THE PUBLIC SESSION – May 9, 2017**

The Board Members reviewed the minutes and there were no changes

**NEW BUSINESS**

**17 05 - FOX – 346 Lacey – Block 1613 Lot 8 – One story addition in rear  
Building Coverage variance**

The Board Members reviewed the application and there were no questions.

**17 06 - Adelung – 253 Birchwood – Block 117 Lot 7 – addition**

**Building coverage**

The Chairman asked Mr. Adelung if he would be recusing himself from this application. Mr. Adelung said yes because the applicant was his brother.

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

**New Milford Zoning Board of Adjustment  
Public Session  
June 13, 2017**

Chairman Schaffenberger called the Public Session of the New Milford Zoning Board of Adjustment to order at 7:40 pm and read the Open Public Meeting Act.

**ROLL CALL**

Mr. Adelung	Present
Mr. Denis	Present
Mr. Joseph	Absent
Ms. Hittel	Present
Mr. Loonam	Present (7:52)
Mr. Rebsch	Present
Mr. Stokes- Vice Chairman	Present
Mr. Weisbrot	Present
Mr. Schaffenberger-Chairman	Present
Ms. Batistic – Engineer	Present
Mr. Sproviero - Attorney	Present

**PLEDGE OF ALLEGIANCE**

**OFFICIAL MINUTES OF THE WORK SESSION – May 9, 2017**

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

**OFFICIAL MINUTES OF THE PUBLIC SESSION – May 9, 2017**

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

**NEW BUSINESS**

**17 05 - FOX – 346 Lacey – Block 1613 Lot 8 – One story addition in rear  
Building Coverage variance**

Mr. David Rutherford, 141 Dayton St, Ridgewood, NJ, attorney appearing on behalf of Ronnie and Marc Fox, explained they were only seeking a building coverage variance. The applicant was seeking to expand their existing single family home with an addition off the rear which would include a bedroom, second bath, expanded dining room and family area. The applicant was requesting building coverage of 26% where 20% was permitted. The attorney asked the board to consider that number in the context of that particular property. Mr. Rutherford said they

were basing their request upon Section 70 c(1)c which speaks of structures lawfully existing on the property and upon c(2) which talks about granting variances where the variance represents a better zoning alternative for the property. He stated that their argument was that the property features a one story home and seeking to retain that characteristic which is common in the neighborhood. The applicant has not chosen to construct a two story colonial but to retain the one story characteristic. Mr. Rutherford said the architect would explain that the addition was of a low profile tucked behind the house and was not substantially visible from Lacey Drive. They would comply with seepage pits. The attorney said that the home with the proposed addition would be an appropriate size and would fit in nicely with the neighborhood.

Mr. Scott Lurie, 645 Lotus Avenue, Oradell, NJ was sworn in by the Board Attorney.

The Board Members accepted the qualifications for Mr. Lurie as an expert in the field of architecture.

Mr. Rutherford marked as Exhibit BA-1 – architectural plan.

Exhibit BA-2 Photo of the home and neighborhood

Exhibit BA-3 Google aerial map of area

Mr. Lurie explained the existing home was a single story home except for a bedroom over the garage. The architect stated that the existing home was approximately 1,300 sf. He described the existing layout of the house which he stated had conservative size rooms. Mr. Lurie said the home was small in size and the applicant was looking for additional square footage for their personal use. The addition was modest. It was only 12' deep and 45' long and the objective was to add a master bedroom/bathroom and small family area. Mr. Lurie discussed the proposed new plan and said the applicant was trying to avoid stairs and make it one floor living. He explained the height on the existing home was 18.5' and the addition at the peak of the roof was about 17' and it would be below the existing roof. It would not be visible from the front of the house and it was not unlike its existing architecture nor was it unlike the architecture of the neighborhood. Mr. Lurie said it would be seen from the side but it was minimal impact.

Mr. Rutherford stated that the plan conforms with all the other bulk requirements and there were no side yard, front yard or rear yard setback variances required. Mr. Lurie agreed and confirmed that there were no encroachments.

Mr. Lurie said the exterior of the addition would match the house so it would blend with the house. He noted there were two large trees in the rear that would not be impacted or removed.

Mr. Rutherford stated that it was the architect's testimony that what was being proposed would not alter the basic character or style of the existing home and would be consistent with what exists on that part of Lacey Drive. Mr. Lurie agreed. Mr. Rutherford said there were other options but this was intended to be the least obtrusive addition that would accomplish something reasonable for the applicant and be respectful of the neighborhood scheme.

Mr. Lurie used the google map of the area to show other additions and large decks in the rear to show they were not unlike the neighborhood by their proposed addition. The architect said it was

a modest addition and they have a building coverage issue but they were not going beyond the allowable building envelope.

Mr. Rutherford said the addition was only protruding 12'. Mr. Lurie said anything less than that proposed won't allow them to accomplish anything.

Mr. Adelung asked if the lot size was consistent with the neighborhood. Mr. Lurie said visually it does appear that they were similar. Mr. Adelung asked why they did not want to build up. Mr. Lurie said the applicant would prefer to have one level and keeping with the neighborhood. He said there were no other two story homes on their side of the street.

Mr. Loonam said he was not in favor of an application with 26% building coverage. However, Mr. Loonam said he did not have difficulty with this type of application because it was a 1 ½ level home. Mr. Loonam said with 26% coverage on this home, his concern was with the next owner that might come before the board in the future for an add a level for a preexisting non-conformity. Mr. Loonam did not think this was an over use but building up was his concern.

Mr. Rutherford said that scenario would require variance relief and that each application stands on its own merits and it would require further review from a board.

Mr. Sproveiro asked Mr. Rutherford if the board were to favorably consider the application would he be opposed to a condition that sets forth with specificity any future effort to expand the property upward would be deemed to constitute an expansion of the non-conforming element here granted and would require variance relief. Mr. Rutherford would not have an objection and thought it was a good point. He added if the board acted favorably on this application, a critical element is this is a one story addition. Mr. Rutherford thought in the resolution it could state the board was granting this because of the facts of this application and if someone wanted a second story they would require variance relief.

The Chairman also had the same concerns with adding a second story but asked who would flag that 20 years from now. The Board Attorney said the resolutions are in the block and lot file. The Chairman said he did look at the site and felt the proposed addition was unobtrusive. The Chairman was concerned about the 26% coverage and did not have confidence that in the future it would be flagged.

Ms. Hittel was concerned that if a future buyer wanted to expand the footprint for a kitchen. The Board Attorney said they would need a variance. Mr. Rutherford said the condition was for a second story addition and obviously if they want to expand the footprint they would need to come before the board. The Board Attorney agreed and clarified that if a subsequent owner wanted to further expand on a single level only that would further exacerbate the current exceedance.

Ms. Batistic reviewed the survey and noted that it did not trigger any impervious coverage. The Board Engineer said if the application was approved it would require a seepage pit. Mr. Rutherford understood.

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

No one wished to ask questions of the witness.

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

The Board Attorney swore in the applicant, Mr. Marc Fox, 346 Lacey Drive.

Mr. Fox said there was a comment to why they did not want to build up. Mr. Fox explained they were getting older and did not want stairs and just wanted to build out.

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

No one wished to speak.

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

Mr. Rutherford said there was good basis to grant the variance under c(1c) and c(2). He thought there was something unique about the neighborhood and the property and they were trying to maintain it. Mr. Rutherford did understand the board's issue about building coverage and thought the Board could adequately address their concern by the condition discussed. Mr. Rutherford asked the Board to act favorably upon the application.

Mr. Loonam noted that he arrived late and did not hear all the testimony and questioned if he should not vote on this application. The Board Attorney appreciated his comment and said he only missed the council's overview. However, Mr. Sproviero said his advice would be air on the side of caution. The Chairman noted that Mr. Loonam was recusing himself.

**Motion** made by Mr. Denis to approve the application subject to the two conditions, seconded by Mr. Rebsch.

Conditions: the installation of any and all required underground stormwater retention systems to be all satisfactory with the borough engineer.

Any future upward expansion is recognized by the applicant and runs with the land and that would trigger further future variance relief.

The motion passed on a roll call vote as follows:

For the motion: Members Denis, Rebsch, Adelung, Stokes, Weisbrot, Hittel

Against the motion: Member Schaffenberger

Recused: Member Loonam

The Chairman thought that 26% lot coverage was excessive.

**17 06 - ADELUNG – 253 Birchwood – Block 117 Lot 7 – addition  
Building coverage**

Mr. Adelung recused himself from hearing the application because the applicant was his brother.

Christopher Adelung and Juanita Adelung, residents of 253 Birchwood Avenue, were sworn in by the Board Attorney.

Mr. Adelung stated that they proposed a rear dormer and kitchen remodel. He added that his house was existing non-conforming and the proposed addition would change the footprint but not the square footage.

The Chairman asked why it was non-conforming. Mr. Adelung said the lot was 6,165 sf and the permitted building coverage was 1,233 sf and 1,598 sf existed.

Mr. Adelung explained the rear dormer was for a bedroom and bathroom. On the first floor the kitchen would be moved out a little further. Mr. Adelung stated the deck was a piece of concrete which would be filled out with the house. The Board Attorney clarified that the concrete decking was being removed and in its place would be a structure. The Chairman said the proposed deck was 340 sf and asked if they were removing the deck. Mr. Adelung said the deck would remain but just the small part would be removed. The Chairman asked if the composite deck would be covered. Mr. Adelung said no and showed on the drawing A-1 where the addition would be. Mr. Adelung said there was a 1' cantilever on the second floor over the deck.

The Board Attorney asked Ms. Batistic if she was satisfied that the calculations submitted were accurate. Ms. Batistic said yes.

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

No one wished to speak.

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

Mr. Weisbrot clarified it was a coverage issue. Mr. Sproviero answered yes with a preexisting non-conforming element. Mr. Weisbrot asked if the coverage increased. Mr. Sproviero said it remained the same.

Motion to open to the public for comments was made by Mr. Denis, seconded by Ms. Hittel and carried by all.

No one wished to speak.

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

**Motion** made by Mr. Weisbrot to approve the application, seconded by Mr. Denis.

The motion passed on a roll call vote as follows:

For the Motion: Members Weisbrot, Denis, Loonam, Rebsch, Stokes, Hittel, Schaffenberger

Recused: Member Adelong

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

Respectfully submitted,  
Maureen Oppelaar