

**New Milford Zoning Board of Adjustment
Work Session
December 13, 2016**

Chairman Schaffenberger called the Work Session of the New Milford Zoning Board of Adjustment to order at 7:39 pm and read the Open Public Meeting Act.

ROLL CALL

Mr. Adelung	Present
Mr. Denis	Present
Mr. Joseph	Present
Mr. Loonam- Vice Chairman	Present
Mr. Rebsch	Present
Mr. Stokes	Present
Mr. Weisbrot	Absent
Mr. Schaffenberger- Chairman	Present
Mr. Sproviero - Attorney	Present

REVIEW MINUTES OF THE WORK AND PUBLIC SESSION – October 13, 2016

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

Schedule of Meetings 2017

The Board Members reviewed the schedule of meetings and decided to change the time for the reorganization meeting to 7:30 pm.

**16-08 Layne – 222 Main Street – Block 1311 Lot 1- Mixed Use Building
Use and parking variances**

The Chairman verified the applicant was requesting a use and parking variance and questioned the preexisting non conformity with the rear yard setback. Mr. Sproviero said they utilize the business standard with the setbacks. The Chairman stated there were referral letters from the Fire subcode official, fire advisory committee, police, DPW, planner and engineer.

Mr. Sproviero briefly discussed the settlement of the affordable housing litigation.

Motion to close the work session was made by Mr. Rebsch seconded by Mr. Denis and carried by all.

**New Milford Zoning Board of Adjustment
Public Session
December 13, 2016**

Chairman Schaffenberger called the Public Session of the New Milford Zoning Board of Adjustment to order at 7:49 pm and read the Open Public Meeting Act.

ROLL CALL

Mr. Adelung	Present
Mr. Denis	Present
Mr. Joseph	Present
Mr. Loonam-Vice Chairman	Present
Mr. Rebsch	Present
Mr. Stokes	Present
Mr. Weisbrot	Absent
Mr. Schaffenberger-Chairman	Present
Mr. Sproviero - Attorney	Present

PLEDGE OF ALLEGIANCE

OFFICIAL MINUTES OF THE WORK SESSION – October 13, 2016

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

OFFICIAL MINUTES OF THE PUBLIC SESSION – October 13, 2016

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

SCHEDULE OF MEETINGS 2017

The Board Members reviewed the Schedule of Meetings for 2017. The Board Members decided to change the time for the reorganization meeting on January 10th to start at 7:30 pm instead of 7:00 pm and at this juncture all the other dates would stand.

Motion was made by Mr. Loonam, seconded by Mr. Rebsch to approve the 2017 schedule of meetings with the change.

The motion passed by a roll call vote as follows:

For the motion: Members Loonam, Rebsch, Denis, Stokes, Joseph, Adelung, Schaffenberger.

NEW BUSINESS

**16-08 Layne – 222 Main Street – Block 1311 Lot 1- Mixed Use Building
Use and parking variances**

Mr. Stokes recused himself from the application because he sold Mr. Layne property.

The Board Attorney told Mr. Giblin that there were six voting members present. Mr. Giblin would confer with his client but would like to proceed with the application to see how far they

would get. He asked if the board needed to qualify another member so he had a full complement of voting members, would they be agreeable to it. The Board Attorney agreed.

Mr. Brian Giblin, law offices at 2 Forest Avenue, Oradell, NJ, was representing Mr. Ronald Layne. He stated their witnesses to testify would be their planner and architect. He explained the application was for a use variance at 222 Main Street that was strictly residential in the past but a fire destroyed a good portion of the building. Mr. Layne purchased the property and has rebuilt two of the apartments. Mr. Giblin said in the business zone, apartments were not permitted on the first floor with commercial uses.

Mr. Thomas Cusanelli, architect, was sworn in by the board attorney. The Board Members accepted the qualifications of Mr. Cusanelli as a licensed architect.

Mr. Giblin distributed to the board members revised plans marked as exhibit A-1 dated 12/13/16.

Mr. Cusanelli explained that they revised the cellar plan and building calculations based on comments from Boswell Engineering. They changed the use in the cellar, which was previously earmarked for retail, to an accessory storage use and mechanical space only. The parking requirements for the total property was now a total 9 spaces and they were providing 8.

Mr. Cusanelli stated the structure had been a 2 family dwelling that had a 950 sf apartment on the second floor, a 2,000 sf apartment on the first floor which included a rear family room and an attached garage. He added that those two structures have been removed and the present structure today was approximately 1,800 sf footprint on the first floor with a 950 sf apartment on the second floor. Mr. Cusanelli explained they have divided the first floor apartment into a rear two bedroom apartment and the front space earmarked for retail which was approximately 900 sf.

Mr. Cusanelli stated the fire destroyed structurally the apartments on the front of the building first and second floor. Mr. Giblin clarified that the footprint of the building has been reduced from what existed prior. Mr. Cusanelli stated that the family room and garage have been demolished.

Mr. Giblin asked where the refuse and recyclables would be placed on the site. Mr. Cusanelli said on the east side of the building adjacent to parking space #7. Mr. Giblin asked if he knew how trash and recyclables would be handled. Mr. Cusanelli believed it was borough pick up.

Mr. Giblin thought the parking would be the board's main concern. He stated they were deficient by one space. Mr. Cusanelli said coming in off of Main Street, the aisle width requires 12' and they had 10'. They felt the 10' would be adequate driveway to access the parking at the rear.

Mr. Sproviero marked as an exhibit A-2 – alternate parking rendering.

The architect said they could reconfigure that the four spaces for the apartment would be tandem off of Prospect side by side. The architect discussed the changes on his rendering. Mr. Giblin asked if there was a way to relocate the stairs. Mr. Cusanelli said they could move them to the east side to access the apartment. Mr. Giblin asked Mr. Cusanelli if he thought a 9' parking stall

was adequate. Mr. Cusanelli said yes. Mr. Giblin asked if there was another way to get a ninth space on the property so they would have the full complement of nine. The architect said they could facilitate one more space which would be in the front yard parallel to the Prospect Avenue property line and coming into the space 18' beyond the rear of the building.

Mr. Giblin asked if he reviewed the letter from the Fire Inspector stating the building must be fully sprinklered. Mr. Cusanelli said yes. Mr. Giblin asked if a low voltage fire alarm would be installed. Mr. Cusanelli said all regulations for compliance with the building code and fire standard will be complied with. Mr. Giblin asked if angled parking on the plans submitted or the new revised drawing was the better parking arrangement. Mr. Cusanelli thought the hand sketch that he just submitted would be more feasible.

The Chairman clarified that they were proposing a 10' driveway width where 12' was code. Mr. Cusanelli agreed. The Chairman questioned if they would need another variance. The Board Attorney said they would need a waiver.

The Chairman and the Board Attorney had concerns with parking space #7 & #8. Mr. Cusanelli said there would be no access out of the vehicle from the passenger side. Mr. Giblin asked if that could be designated for owners of the retail store and provide two spots in the rear for customers. The Board Attorney asked if knew what type of retail use was being contemplated. Mr. Giblin would ask the applicant.

Mr. Loonam asked if he thought the original parking plan was not functional. Mr. Cusanelli said that plan would be a very tight situation.

Ms. Batistic said the first design was not to standards and thought the second one was a little more workable. Mr. Loonam asked the engineer if she had concerns with both plans. Ms. Batistic said both were substandard. Mr. Rebsch asked if they needed a handicap parking space. Ms. Batistic said yes.

Mr. Adelung asked the engineer if she would be okay with two residential units and a small retail. Ms. Batistic's concern was the 10' aisle and the parking right up against the building.

Mr. Sproviero asked if the structure has been reconstructed. Mr. Giblin said the exterior of the structure has remained and only the inside was rebuilt. Mr. Giblin was not disputing the fact that the parking was substandard but commented that most vehicles were not 8' wide and thought most cars were about 6' wide. Mr. Loonam discussed the widths of vehicles and said a main concern of his was when mixing a business with residential, the applicant had to provide adequate parking for both.

Mr. Cusanelli stated that with the alternate sketch, the six places to the south of the property would all be in compliance as would be the aisle width of 12'. He agreed that parking spaces #7 and 8 were still the issue. He added it was not so much the size of the space but that the drive aisle was not in compliance with 12' for the first 40' of the driveway. Mr. Loonam clarified that was where the passenger could not open his door. Mr. Cusanelli agreed.

Mr. Giblin asked what the minimum size was of a parking stall. Mr. Cusanelli said 9x19. Mr. Giblin felt it was not the space of the parking stall but the aisle width. Mr. Giblin stated that they could restrict one of the spaces to the owner of the retail and park close to the building.

Mr. Denis felt the biggest issue was what kind of use was the retail or office space. Mr. Giblin said it was retail.

Mr. Grygiel said with regard to the parking requirements, they noted on their plans one space per 200 sf and asked what the basis for that requirement was. Mr. Cusanelli and Mr. Giblin thought that was the code. Ms. Batistic clarified that it was 1 space per 150 sf for commercial. Mr. Cusanelli thought there was a difference from retail to office space.

Mr. Grygiel and Batistic were not aware of a change and acknowledged it was a strict standard. Mr. Grygiel said 6 spaces were required for the commercial space. He stated the business zone changes earlier this year did reduce the dwelling to 1.5 spaces per unit if it was a second floor above an apartment. He added the first floor apartment would need 2 spaces with a total of 9.5 spaces required. The Board Attorney asked if it was arguable if the first floor dwelling unit could also be 1.5 spaces. Mr. Grygiel said it could be interpreted that way. Mr. Giblin understood they need a variance.

Mr. Adelung asked what the dimension on the west side was where they wanted to put the 9th parking space. Mr. Cusanelli said about 10'. Mr. Giblin clarified that was 10' of their property but asked what was after their property line. Mr. Cusanelli answered there was a small planted area, fence, sidewalk and curb.

Mr. Loonam questioned that on page A2 on the plans, the applicant indicated the maximum permitted height was 35' and on the zoning worksheet it says 30'. The professionals agreed it was 35'.

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

Mr. Charles Estelle, 228 Main Street, said the yard was raised 8-10" with fill and gravel. His concern was there would be water runoff into his yard. Mr. Cusanelli was not aware that the grade has changed since the applicant purchased the property. He noted that the code does require them to provide zero runoff to adjacent properties and they were required to ensure no water goes onto his property.

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

Recess (840-852)

Mr. Ronald Layne, 400 Maple Street, Haworth, NJ, was sworn in by the Board Attorney.

Mr. Layne said he has owned the property for 2 years. Mr. Giblin asked if he had the addition on the back of the building demolished. Mr. Layne said yes. Mr. Giblin asked if he has done some of the reconstruction to the building and had permits for the construction. Mr. Layne said yes.

Mr. Giblin asked if he filled in any part of the property. Mr. Layne said he put a layer of gravel over the dirt because the town does not allow vehicles parked on dirt. Mr. Giblin asked if he was currently parking vehicles at the site. Mr. Layne said yes.

Mr. Giblin asked what retail use he envisioned for the 900 sf space on the first floor. Mr. Layne said his daughter had plans to open another clothing boutique. Mr. Giblin asked if there was parking on Prospect Street. Mr. Layne said both on Prospect and Main Street. Mr. Giblin asked if there was municipal parking located in the area. Mr. Layne said yes.

Ms. Batistic was not aware of any paving of the site and did not receive any site plan. It was her understanding that there would be no improvements to the site. Ms. Batistic said that was one of her comments in her letter that the plot plan is lacking information regarding the site improvement.

Mr. Grygiel concurred that a change of use would require a site plan.

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

No one wished to speak.

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

Ms. Brigitte Bogart, 648 Godwin Avenue, Midland Park, NJ was sworn in by the Board Attorney.

The Board Members accepted the qualifications of Ms. Bogart as an expert in planning.

Mr. Sproverio marked exhibit A-3 - 11x17 photo exhibit

Ms. Bogart discussed the photos on the exhibit and the surrounding developments.

The Chairman asked Ms. Bogart if she took the photos. Ms. Bogart said yes and she did not alter the photos.

Mr. Giblin asked if the proposed mixed use with an apartment on the first floor was supported by the existing development in the area. Ms. Bogart believed it was consistent with the surrounding character. She assumed the ordinance was to allow for an active commercial streetscape. Ms. Bogart felt a benefit to the layout was that the residential was now behind and it would create a natural buffer to the adjacent residents to the rear. There was a 900 sf retail component and they reduced the residential dwelling from a 2,000 sf apartment to a 900 sf apartment which would most likely have one car. Mr. Giblin asked if it would be reasonable for the board to impose a 1.5 vehicle per apartment requirement because of the two apartments being approximately 900 – 1000 sf. Ms. Bogart believed so and felt there would be one vehicle. Mr. Giblin asked if there were any other special reasons in support of the application. Ms. Bogart said in the Master Plan documents, the goal has been to encourage a range of housing to meet the housing needs of all the residents in New Milford. She mentioned New Milford has relaxed the ordinance

requirements to encourage development on Main Street. From a planning prospective, they are keeping with the planning vision in the area. Ms. Bogart said this project furthers the goals and objectives of the Master Plan.

Mr. Giblin asked if she had reviewed this application in regard to the negative criteria. Ms. Bogart said it maintains the goal of the storefront along Main Street and also protects the residents along the rear so she believed from those perspectives there was no substantial detriment to the public good. Ms. Bogart agreed with the zoning board planner comment that one space for 150 sf was slightly conservative. Ms. Bogart believed whatever parking would be required would be accommodated for on the site but in addition there was off street parking available. Ms. Bogart did not believe there was any substantial impairment to the master plan because of all the comments she discussed regarding the visions on Main Street area.

Mr. Rebsch asked why the restaurant was not indicated on her photo exhibit of the surrounding area. His concern was at that spot there are cars lined up and traffic issues every day. Ms. Bogart stated they cannot assist in a parking problem for another property. The applicant was just trying to make their property better. Mr. Rebsch said they were bringing more cars, more people and storefronts into that area. Ms. Bogart understood but stated that was the goal of New Milford's Master Plan and the retail is a permitted use. Mr. Rebsch did not understand why the restaurant was not included on her exhibit. Ms. Bogart said she ran out of room.

Mr. Giblin noted if the apartment downstairs was located on the second floor, other than the parking, this would be a permitted use. Ms. Bogart agreed. Mr. Giblin pointed out this is what the master plan calls for in this area. Ms. Bogart agreed.

Mr. Loonam asked if the proposed business would operate only during the day or would there be evening hours. Mr. Layne did not think it would be open at night and did not see anything happening after 7 pm. Mr. Loonam felt the parking was the issue and was concerned about trying to squeeze in parking #8 and #9. He said he would be more comfortable mandating less parking spaces, having more room and utilizing off street parking.

Mr. Grygiel said regarding the parking in the rear, it is the intention of the Master Plan to push more activity towards Main Street and not have more activity and commercial parking in the rear of the property. Ms. Bogart said the intent of the master plan is to have mixed use and what was unique about their proposal was they were providing a residential buffer so the commercial activity was not pushed to the rear. Mr. Grygiel clarified Ms. Bogart's testimony that there were unique factors on the site that differentiate from new construction where they would try to have retail only on the ground floor and not have residential in the rear. Ms. Bogart agreed that they were dealing with existing conditions. Mr. Grygiel asked from a planning point of view did it make sense to have parking space #9 between the building and the proposed sidewalk. Ms. Bogart did not believe they would need 9 spaces and that would be the first space that would go.

Mr. Loonam questioned if a fire truck could get into the driveway. Ms. Batistic said there was not enough fire lane but felt the building was not large enough to require the fire department to enter. The building was on the corner and they had access from the streets.

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

No one wished to speak from the audience.

Motion to close to the public was made by Mr. Denis, seconded by Mr. Rebsch.

Mr. Giblin asked for the application to be continued to the January 10th meeting. He wanted an opportunity to revisit the plans with the applicant and experts as well as Ms. Batistic to see if they have to provide a site plan.

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

Respectfully submitted,

Maureen Oppelaar