

Approved  
6/11/19

**New Milford Zoning Board of Adjustment  
Work Session  
May 14, 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. DeBari	Present
Ms. Hittel	Present
Mr. Levine	Present (745)
Mr. Loonam	Present
Mr. Rebsch	Present
Mr. Stokes	Present
Mr. Weisbrot	Present
Mr. Schaffenberger- Chairman	Present
Mr. Sproviero - Attorney	Present

**REVIEW MINUTES OF THE WORK SESSION – April 09, 2019**

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

**REVIEW MINUTES OF THE PUBLIC SESSION – April 09, 2019**

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

**RESOLUTION**

**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 reviewed the resolution with the Board Members. Mr. Sproviero noted that the numbering was incorrect and he would correct it.

Mr. Adelung said the footnote on page 4 in the resolution clarified that the Board Engineer determined the calculation was 56.3%. Mr. Adelung added that the drawings that were submitted for review were wrong and asked if this project went forward, would those drawings d have to be changed. The Chairman said no. The Board Attorney said what was represented through the witness, which included the applicant’s engineer as well as the board’s engineer, was that plans set forth at 34.5% which was questioned by a board member. A calculation was then done from the dais which was asserted to be approximately 45%. The Board Attorney said the applicants engineer said that it sounds about right. The Board Attorney said what was asked of the board’s engineer was a confirmation, which was conducted subsequent to the meeting which came to 56.3%.

The Board Attorney said one of the conditions discussed was the amount of impervious coverage that the applicant was asking for. The applicant's engineer agreed to 45%. Mr. Adelung said even though it was wrong. The Board Attorney said he is an engineer and before he agrees to any calculus he should or did have a reasonable belief that the number was accurate or very close to accurate. The approval was limited to what he agreed to in his professional capacity as a licensed New Jersey engineer. Mr. Adelung said we know the applicants engineer's calculation and testimony was wrong and our calculation first time was wrong and now finalized at 56.3%. Mr. Adelung felt the drawings need to be amended.

Mr. Weisbrot asked if the board's approval was based upon this esoteric "these are the conditions" or are we approving the plans as submitted. The Board Attorney said we were not approving the plans submitted. Mr. Weisbrot said this is a different situation but asked if someone comes before the board with plans and we approve the plans and grant various variances based on the plans. The Board Attorney said the answer was "potentially" and added he did not know what could be done with the existing footprint to have it result in no more than 45%. The Chairman said we did not approve the house. The Board Attorney said we approved three variances.

Mr. Adelung said this was different than anything else we have dealt with before because we were approving something based on information that was incorrect. The Board Attorney said at the time of the vote, nobody knew 45% was correct or not correct. The Board Attorney said the testimony and response of the applicant's engineer was "that sounded about right". The Board Attorney said the engineer was comfortable with that without doing his own assessment of whether or not that number was accurate.

Mr. Adelung felt he made a vote on information that was incorrect based on the engineer's testimony. Mr. Loonam said the applicant's engineer said to the board's engineer that he was comfortable that they would be under 45%. Mr. Adelung said he relies on the board's engineer because the applicant's engineer had 34.5%. Mr. Adelung commented that he is not saying this happened but the scenario does exist when someone is unscrupulous and provides incorrect information. Mr. Adelung believes these are honest mistakes but someone could do it. Mr. Loonam said if someone was building a house and the zoning officer miscalculates something then it would be the borough's problem. He added that this is different because this was abstract. The Board approved "x" percent and there was an artistic rendering used as evidence for the need for the front yard impervious variance because of the easement. We did not approve the building plans but we approved up to 45%.

Some of the Board Members were upset because they need to rely on correct information given to the board.

Ms. Hittel felt the accuracy of the information was the responsibility of the applicant's witnesses and testimony. Ms. Hittel said if the plans were inaccurate, whether it was purposeful or not, would it nullify their decision. The Chairman and Mr. Loonam said no, the board just approved 45%.

Mr. Adelung had a concern that in the event those plans get resubmitted again for building, that there are no mistakes on our side and it does not get built. Mr. Weisbrot asked if the building department would monitor it. The Board Attorney added also the zoning officer.

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