

Approved  
9/10/19

## **New Milford Zoning Board of Adjustment Work Session August 13, 2019**

Chairman Schaffenberger called the Work Session of the New Milford Zoning Board of Adjustment to order at 7:34 pm and read the Open Public Meeting Act.

### **ROLL CALL**

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

### **REVIEW MINUTES OF THE WORK SESSION – July 9, 2019**

The Board Members reviewed the minutes and made a change.

### **REVIEW MINUTES OF THE PUBLIC SESSION – July 9, 2019**

The Board Members reviewed the minutes and made a change.

### **NEW BUSINESS**

#### **19 04 –Perl – 1109 Sheridan Street – Block 202 Lot 27 – side yard - house already built**

The Chairman asked the members if they reviewed the application and if there were any questions. The Board Attorney said there was a Boswell review letter dated 7/24/19 regarding the application.

#### **19 03 Chakkappan – 1023 Arlington Road – Block 308 Lot 14**

The Chairman asked the members if they reviewed the application and if there were any questions. He stated there was a Boswell review letter from Gary Ascolese dated 7/25/19 regarding the application. There was also a letter from Vincent Cahill in response to the Boswell letter.

Mr. Ascolese stated on the advice of the Board Attorney, he did some calculations and improved on the work sheet. This worksheet was handed out to the board members. The Board Engineer said there might be an additional variance required as far as building coverage. He also had questions if there was a side yard variance from previous work done on the house. The Chairman

and Board Attorney said this applicant has not been before the board. The Chairman agreed that there were side yard issues. The Board Attorney said according to the zoning officer this was a preexisting nonconforming element to the current state of the premises.

Mr. Loonam thanked Mr. Ascolese for the effort he put into this application.

Mr. Weisbrot asked if they would have their team review and correct every application or do we have a right to require applicants to get it right. Mr. Sproviero said the only way they would know if it was right is by having our people review it.

Ms. DeBari suggested application 19-04 be heard first because it seemed there were more issues with the other application.

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

**New Milford Zoning Board of Adjustment  
Public Session  
August 13, 2019**

Chairman Schaffenberger called the Public Session of the New Milford Zoning Board of Adjustment to order at 7:44pm and read the Open Public Meeting Act.

**ROLL CALL**

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

**PLEDGE OF ALLEGIANCE**

**OFFICIAL MINUTES OF THE WORK SESSION – July 9, 2019**

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

**OFFICIAL MINUTES OF THE PUBLIC SESSION – July 9, 2019**

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

**NEW BUSINESS**

The Chairman stated they were hearing the applications out of order because application 19-04 would be quicker.

**19 04 –Perl – 1109 Sheridan Street – Block 202 Lot 27 – side yard - house already built**

The Board Members accepted the qualifications of Mr. Lawrence Quirk, architect, 15 Union Avenue, Rutherford, NJ as a licenses architect.

The Board Attorney swore in Mr. Larry Quick.

Mr. Loonam asked if this construction appeared before any boards. Mr. Quirk answered no. Mr. Loonam asked if he was the architect who designed this house. Mr. Quirk answered he designed the addition. Mr. Loonam clarified that the plans were submitted, approved and permits were issued and he thought no variances were required because it all complied. Mr. Quirk agreed.

Mr. Quirk said his clients did not want to go for a variance and the homeowners had submitted to him a survey.

The Board Attorney marked as exhibit A1 – preconstruction survey  
A2 – photo

The Chairman asked Mr. Quirk if he took the photo. Mr. Quirk answered yes and it was not altered.

Mr. Quirk explained the reason he submitted this survey that he took his measurements from was because it was different than the as-built survey in terms of the existing side yard setbacks to the south. The one he just submitted had two measurements on the south side – one was 10.15 and the other was 11.38. The as-built submitted from a different surveyor was 11.20 and the other was 10 ft.

Mr. Weisbrot asked if he relied upon the survey. Mr. Quirk said he did but there was an error involved. Mr. Weisbrot clarified that there was an error. He said it looked like the survey didn't have the third calculation and the lot was a little irregular at that point. Mr. Quirk said yes. Mr. Quirk said the 9.2 was the new setback to the new addition and he based it on the survey just submitted to the board.

Ms. Hittel thought the survey showed that the property line dipped to the north. Mr. Quirk said yes it was a parallelogram. He stated the front of the house was parallel to the front property line and the back of the house was parallel to the back property line. The two side property lines were at an angle and were equal dimensions.

Mr. Quirk said that was one question he wanted to bring up to the engineer was in his report it said that the lot size was smaller than 15,000 sf and so did the engineer who did the as-built. Mr. Quirk did not know how they were coming up with those numbers because there was a front and rear yard property line of 100' and two side yards of 150' which totaled 15,000 sf. Mr. Quirk said he has come across this quite often that one surveyor has one dimension and another surveyor has another. Mr. Quirk said he was not putting the blame on the surveyors because he knew it was partially his fault but he did believe they had 10' at the rear corner which was now 9.2'. The Chairman asked why he believed he had 10'. Mr. Quirk said because he was working on the dimensions from the first survey. The Chairman asked if there something he could have done to avoid this. Mr. Quirk answered that he may have asked for a more up to date survey and a footing as-built which was required.

Mr. Quirk said if they had come to the board last year and knew it would be 9.2', he would have made the argument that the lot was irregular and as you build further out it gets closer to the property line. If he needed a variance for this and it was not build yet, he would have stated that the positive part of this project was that that this piece of property allowed for 58% building plus impervious coverage and with this addition they would only be at 20%.

Mr. Stokes said the dimensions on the original survey had 11.2 existing. On the survey just received, the front of the building was 11.38' and Mr. Quirk assumed it was 10.15 but it was 10',

said Mr. Stokes. He asked for the dimension of the addition from the property line. Mr. Quirk said it was supposed to be 10'. Mr. Stokes said Mr. Quirk's mistake was it would never have been 10' based on the old survey. Mr. Quirk agreed and said his point was measurements were different from each survey.

The Chairman said to Mr. Quirk that it was supposed to be 10' and because of his mistake it would never had been 10' but asked what it would have been. Mr. Quirk said 9.2'.

Ms. Hittel asked how many feet is the addition over the 10'. Mr. Quirk said according to the as-built survey all of it but the violation of 9.2' is only at the back corner.

Mr. Loonam asked when they found out there was a problem. Mr. Quirk said when they got the as-built survey.

Mr. Ascolese asked if the dimensions that they show as the side yard setback were measured from the siding or the foundation. Mr. Quirk did not know. Mr. Ascolese said it should be measured from the foundation but noted the code allowed for some certain projections beyond the foundation.

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

No one wished to comment on the testimony for the application.

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

Mr. Loonam said there were no members from the public having any problems with this and said although there has been a mistake, it appears that the applicant did their due diligence and tried to give the borough the correct information. It did go through the review process and ultimately it is about 8% of what is allowed but it was not egregious. He felt the applicant tried to put a nice addition to the house that met their family needs, went through the proper channels to do so and felt the borough might have missed something from the survey. Mr. Loonam said there was over 9' side yard. Mr. Loonam wanted to make sure they had the current exact calculation on how far it is from the side yard from the foundation.

**Motion** made by Mr. Loonam to grant the side yard variance, seconded by Mr. Weisbrot. The **motion** passed on a roll call as follows:

**For the Motion:** Members Loonam, Weisbrot, DeBari, Rebsch, Stokes, Hittel, Schaffenberger  
Approved 7-0

Mr. Quirk would forward a letter from the surveyor with the dimensions of 9.2' and where it is measured from. The Chairman and Mr. Ascolese agreed.

### **19 03 Chakkappan – 1023 Arlington Road – Block 308 Lot 14**

The Board Attorney swore in Mr. Joy Chakkappan, homeowner, 1023 Arlington Road and Mr. Aldrin Alimerao, fact witness.

Mr. Chakkappan stated he was proposing a small addition off of the kitchen for the parents to use.

The Chairman stated that he was over building and impervious coverage. The homeowner said they were only over with the building coverage.

The Board Engineer gave the homeowner the worksheet that told him that he made corrections in red based on scaling a scaled drawing because the plans were devoid of dimensions. Mr. Chakkappan said this was an existing building built in 1952.

Mr. Weisbrot asked who filled out the worksheet, got the measurements and submitted it. Mr. Chakkappan said he did and measured by a tape measure. Mr. Weisbrot said he did not have a problem with the application but had a problem with applications that come before the board that require significant fine tuning by our professional. Mr. Weisbrot said he has a problem considering applications, because it seems to be happening before this board more and more that are consistently inaccurate. Mr. Weisbrot said unless they send the message that the board would not approve applications unless they are either accurate or have a reasonable explanation why they are inaccurate. Mr. Weisbrot felt they should go back and submit an application with accurate numbers so they can make an informed decision. Mr. Weisbrot did not think the applicant did anything intentionally misleading but many of the numbers submitted are off substantially. Mr. Weisbrot said he would vote against this application not on the merit but on the fact that is so inaccurate and he would prefer that the applicant come back and submit an application that was accurate so we could rely upon it.

Mr. Chakkappan said that the zoning officer approved the as built on the other work and he has been living there for two years. He said there were no other changes other than building the back portion addition. He said that was what he was obtaining so he thought that would be what the board would be looking for.

Mr. Loonam said he has a property that is 75' wide and the on the worksheet it stated there is a right side setback of 20' and left side yard setback of 57' so he immediately knew something was wrong. The Board Attorney said it was obviously indisputably incorrect. Mr. Loonam agreed with what Mr. Weisbrot had previously said and he also would feel more comfortable if the applicant came back to the board with the correct information. Mr. Loonam stated that the board and professionals are supposed to check their numbers not give them to the applicant.

Mr. Chakkappan said there were some numbers incorrect but he was under the impression because the existing work was already approved, the board would only need the work on the back portion of the building for the proposed work. The Board Attorney said to the applicant that he says the other one was previous approved. Mr. Sproviero said that was not approved and he received permits and built it and by asking for this he has reopened all those numbers to scrutiny. The Board sees that all of the numbers are indisputably incorrect.

Mr. Ascolese reviews the plans submitted with the applicant and points out the discrepancies. The Engineer asked who did the previous construction to the house. Mr. Chakkappan said he did it about a 1 ½ ago. Mr. Chakkappan pointed to the plan that the zoning board approved it. The

Board Attorney interrupted and said to keep the record accurate the applicant never came to the board before. Mr. Chakkappan corrected himself and said Vince Cahill approved it.

The Board Attorney said this is a quasi-judicial proceeding and these members hear and find facts and then make a determination. On an application, such as this, it is a mistake to come before the board without legal representation and either an architect, engineer or at an absolute minimum a surveyor to give accurate, reliable testimony to the dimensions on what has been built and what is proposed to be built. In the absence of these facts, this quasi-judicial board gets to exercise its judgement as to how you get to use your property. Mr. Sproviero was not satisfied that the applicant understood the impact of the proceeding and what was necessary to demonstrate your entitlement to relief from the board.

Mr. Weisbrot said he did not care on any individual application whether they have a lawyer, architect, engineer or they come by themselves. However, he did care very much about inaccuracies. He thought if they came before the board and their numbers, drawings and information were perfect, he would not hold it against them that they did not bring a professional. Mr. Weisbrot did not want anyone to think that if they wanted to do work in this town, they were necessarily required to have a professional, but they were required to be 100% accurate. Mr. Weisbrot said he would appreciate more, if he wanted to come back with either accurate information or with someone who could explain this application better to them instead of voting on this now.

Mr. Weisbrot appreciated what he had done and did not think the applicant did anything deliberately wrong but this application was a mess. Mr. Weisbrot agreed with what the the Board attorney said that you cannot come before a judge or jury with a mess and hope for better results. Mr. Weisbrot said to the applicant that he could take his chances and said he did not mind the numbers as the Board's engineer has come up with but was disturbed how inaccurate this information was.

Mr. Stokes said he did not have enough information on this application to make an opinion.

Mr. Rebsch asked if he could table the application and come back.

The Chairman said that was up to the applicant. The Board Attorney agreed and said it was the applicant's determination as to whether he wants to table it for a month and come back with additional information either by way of revised figures and/or witnesses and/or legal representation. If he elects not to do this, the Board will take a vote.

Ms. DeBari asked if the applicant would have to renounce. The Board attorney said no.

The Chairman did not even know if we could vote on this tonight because the applicant was asking for 22% and the board engineer has 23.5%. The Chairman questioned whose figures would we be using. Mr. Stokes thought they should rely on the board engineer.

Ms. DeBari asked what should the applicant do to make sure there would be an application that the board would feel was correct. Ms. DeBari said the applicant could just copy the Board

Engineer's numbers but who would check to see if that is correct. The Board attorney said he could bring a professional or write down the engineer's numbers. The chairman asked the engineer if he was 100% sure the numbers were accurate. Mr. Stokes said our engineer is not hired to do it. Mr. Ascolese said he did the best he could and based it on "scaling". Mr. Ascolese offered to sit down with the applicant in his office to go over what has been submitted so there was no clarification needed.

Mr. Ascolese said based on the third sheet there had been some adjustments made a few years ago. There is a stipulation in the code that if someone is expanding a building over 300 sf, a seepage pit is required to take the runoff into the ground. Mr. Ascolese asked if a seepage pit was installed. Mr. Chakkappan said he did install one. Mr. Ascolese asked if he installed a seepage pit that was not designed by a professional or inspected. Mr. Chakkappan said it was not asked for but he installed one.

The Chairman suggested the applicant come back in September.

Mr. Chakkappan said he would come back in September. The Board Attorney clarified that he wanted the board to continue the application until the September meeting.

Mr. Chakkappan said yes.

The Board Attorney said for the record this application was being carried for further proceedings which will take place on Tuesday September 10, 2019 and the work session commences at 7:30pm and the public meeting will follow.

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