

Approved
11/12/19

**New Milford Zoning Board of Adjustment
Work Session
Wednesday
October 9, 2019**

Chairman Schaffenberger called the Work Session of the New Milford Zoning Board of Adjustment to order at 8:00 pm and read the Open Public Meeting Act.

ROLL CALL

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

The Board Attorney noted that there was an applicant contemplating filing an application in October. The October 8th meeting that was currently scheduled took place during Yom Kippur. Mr. Lazarus, a resident, asked the board to consider an alternate date. The Board Members agreed to reschedule the October 8th meeting to Wednesday October 9th at 8 pm.

REVIEW MINUTES OF THE WORK SESSION – September 10, 2019

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

REVIEW MINUTES OF THE PUBLIC SESSION – September 10 2019

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

RESOLUTION

19 03 –Chakkappan – 1023 Arlington Road -- Block 308 Lot 14 Building side yard - House already built

The Chairman noted that Mr. Loonam found a mistake on page 2 which had been corrected.

NEW BUSINESS

The Chairman stated there were two applications before the Board.

**19 05 – 341 Webster Drive – Block 1603 Lot 4 – Julio Bermeo Settlement Trust
Appeal of the Zoning Officer’s denial / Use for seasonal wash room**

**19 06 317 East Woodland – Block 714 Lot 3 – Lazarus
Building Coverage – New Single-Family House**

The Chairman had some questions for the engineer regarding his review letter on the front yard setback. Mr. Ascolese said the code calls for 55 ft setback. Being that the house is demolished, he questioned since it is based on the average setback and new, could it be set at 55’ instead of the proposed 54.1’.

The Chairman also questioned the comment on height calculation. Mr. Ascolese explained the code allows for an elevation change on the property of an average grade point of 2’ higher. His concern with this application, was the applicant is proposing a retaining wall around three sides of the property and raise the entire property by 2’. The Engineer had concerns about drainage problems to the adjacent properties. He also noted that with the proposed building height of 29.9’ added to the 2’, would be 31’ higher than the original property plane.

The Chairman stated that the Board received correspondence from DEP. He said it nothing to do with the Board but discussed the letter was regarding the house on 147 River Edge Avenue which was listed on the NJ register of Historic places and the National Register of Historic places. He noted that the homeowner has applied for Blue Acres and they were planning on demolishing the house. Members commented on the house and flooding issues they have dealt with.

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

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

Chairman Schaffenberger called the Public Session of the New Milford Zoning Board of Adjustment to order at 8:13 pm and read the Open Public Meeting Act.

ROLL CALL

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

PLEDGE OF ALLEGIANCE

OFFICIAL MINUTES OF THE WORK SESSION – September 10, 2019

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

OFFICIAL MINUTES OF THE PUBLIC SESSION – September 10, 2019

Motion to accept the minutes with change was made by Mr. Loonam seconded by Ms. DeBari and carried by all.

RESOLUTION TO BE MEMORIALIZED

19 03 –Chakkappan – 1023 Arlington Road - – Block 308 Lot 14 -Building side yard - House already built

Motion made by Mr. Loonam to memorialize the resolution with change, seconded by Ms. DeBari.

The motion passed on a roll call as follows:

For the motion: Members Loonam, DeBari, Levine, Schaffenberger.

Approved 4-0

NEW BUSINESS

**19 05 – 341 Webster Drive – Block 1603 Lot 4 – Julio Bermeo Settlement Trust
Appeal of the Zoning Officer’s denial / Use for seasonal wash room**

Mr. Dean Stamos, law firm of Ferraro & Stamos, on behalf of the applicant Steve Julio Bermeo Settlement Trust, stated the first part was an appeal and they provided notice. He stated his client bought this property this year. Mr. Stamos stated Mr. Bermeo had an accident about seven years ago and suffered severe injuries. He stated to make life a little more enjoyable they purchased a house in New Milford which has a pool that they have been able to enjoy. He stated that Mr. Bermeo has some severe limitations physically and with the orientation of the home they wanted an area where it would be easy to go during the day and wash or shower after going in the pool.

Mr. Stamos provided a survey from 1958 dated 7/22/85. He said it keeps getting referred to as a shed but his opinion was that a shed was a structure that is detached and away from the home. The portion that they had done work, is attached to the home and it shows on the survey it has been attached since 1958. He stated instead of having an outdoor shower with a fence around it as seen down the shore, they had this room attached to the home which they installed a shower and sink. Mr. Stamos said the review letter mentioned a toilet but there is not one.

Mr. Stamos said the purpose to make life a little easier for Mr. Bermeo to enjoy the property. He stated they purchased the house with the intention to make it their primary residence but being city folk, they go back and forth.

The Board Attorney said Mr. Stamos has advised the board that the shed is attached to the principle structure. Mr. Sproviero asked if the pool was preexisting. Mr. Stamos agreed. The Board Attorney clarified that the only improvement made by his client was the shower head and the sink. Mr. Stamos said yes in the interior of the existing room.

Mr. Loonam said Mr. Cahill's letter said that he reviewed the property card which did not show a room along the garage/mudroom wall and the ordinance did not permit this use. Mr. Loonam asked what was the use that was not permitted. Mr. Sproviero said his interpretation of the letter when read in its entirety, is that it is an accessory use for an outdoor shower. Mr. Sproviero said it is not an outdoor shower because it is indoors. The Chairman said it is not an accessory structure because it is attached to the house and added they have put in a half bath that has a door to the outside.

Ms. Hittel said there was no entry to the house from the room. The Chairman agreed.

Mr. Loonam understood Mr. Cahill's reasoning in his letter but had a problem with the concept of the Board telling them what they can do inside their home. He said it would be different if they built this after they bought the house. The Board Attorney said he did not necessarily disagree with him and added that if this was a detached structure he thought Mr. Cahill would be "right on the money". Mr. Loonam agreed. Mr. Sproviero said what made this a "little quirkier" was the access/egress was from the exterior.

Mr. Loonam asked if this was part of the square footage of the home and taxed accordingly. Mr. Sproviero did not know the answer to that but said it should be. Mr. Loonam said if it was, it would be part of the home and not an accessory structure. Mr. Stamos said if it was not, it should be and they would not have an objection. Mr. Stamos added that a bathroom was not a use. He added the applicant needs to pull the permits and that would trigger the taxes.

The Chairman asked what was that room used for prior to the shower head and the sink being installed.

Mr. George Bermeo, 341 Webster Drive, was sworn in by the board attorney.

Mr. Bermeo said the room was used for storage for wood and tree cutters.

The Chairman asked him to the best of his knowledge was this room always attached to the house since the house was built. Mr. Bermeo said yes.

Mr. Stamos clarified that the pool was existing. Mr. Bermeo said yes. Mr. Stamos asked about the bathroom on the first floor. Mr. Bermeo said there was a half bath with a toilet and sink. Mr. Sproviero clarified that there was no toilet in this room. Mr. Bermeo said no toilet. The Chairman asked if there was going to be a toilet in this room. Mr. Bermeo said no there was not enough room.

Ms. DeBari asked what brought them here to the Board. Mr. Stamos said somehow it came to the attention of the building department who asked for a sketch. Mr. Donato, architect, provided the building department with a drawing. Mr. Stamos said Mr. Cahill decided it was a season washroom of separate use sending them to the board. Mr. Stamos said he disagreed with that and filed an appeal. Mr. Stamos said the applicant did not get permits but will be doing it.

The Chairman said there are pictures taken by the Board Engineer of the wash room. The Chairman asked if they were altered in anyway. Mr. Ascolese said no.

The Chairman marked as exhibit **B-1 – photo of room - street view**

Mr. Ascolese said he was looking at the location survey submitted and in the left corner there is a scale and date of 7-22-85. He explained there was a side yard setback of 18.9' on the sketch and he believed the room was not on this drawing when it was submitted as part of this survey. Mr. Ascolese thought sometime after 1985, this square with an arrow pointing to this location was added. The Board Engineer said this structure was added sometime after July 22, 1985 without building permits. He stated the 18.9' was to the original corner of the house not to the shed/seasonal bath.

Mr. Ascolese said he made an error in his letter stating there was a toilet where there is only a shower and sink. The Chairman said this structure did not trigger any variance with the 18.9' to the house. Mr. Ascolese agreed and said the new architectural plan showed the setback to the seasonal washroom to be 14.56' where 10' was required.

The Board Attorney thought given the fact that you can only access from the exterior notwithstanding the fact that it is mounted flush to the principle structure, it is arguable that it is an accessory structure. The Chairman said even though it is attached to the house. The Board Attorney said yes.

Mr. Loonam asked if accessory structures trigger setbacks. Mr. Sproviero said yes.

The Chairman read the code for setback and side yards for accessory buildings... “No accessory building shall be nearer than ten (10’) feet to either side yard, nor shall any accessory building be nearer than five (5’) feet to any rear yard line”.

Mr. Loonam said someone could have closed off that structure 10 years ago and did that create an accessory structure. Mr. Sproviero said that is very true but thought it was arguable that it could trigger recognition as an accessory structure.

Ms. DeBari said would it make a difference if there was a doorway into the mudroom. The Board Attorney said then there was no question that it was not an accessory structure. The Board Attorney said this was a unique situation.

The Board Attorney said there was a degree of credence for what the zoning officer determined and thought he was airing on the side of caution. Mr. Loonam agreed and thought it was good that he sent it to the board and thought he was doing his due diligence. Mr. Loonam had a hard time with limiting a property owner’s use when he received a CCO for buying the house and it was there when he bought it. Mr. Loonam said they have acknowledged that if it should be taxed they were okay with it. Mr. Loonam had a problem telling property owners where they can put walls and doors. The Board Attorney understood.

Mr. Loonam asked for the definition of accessory structure.

Mr. Ascolese read section 30-2.1 under definitions – “**Accessory Use** shall mean a use naturally, normally and customarily incident and subordinate to the main use of the premise or lot”. He also read that an “**Accessory building** shall mean a building, the use of which is incidental to that of the main building which is located on the same lot”.

The Board Attorney said the applicant did not install it and it was preexisting to their acquisition of title to the property.

Mr. Loonam felt at the point a CCO was issued and the town has acknowledged what is there whether or not it was being taxed or whether or not it was not illegal. Mr. Loonam felt after hearing the definitions on “accessory use”, he agreed with the zoning officer but the part on the “accessory structure” he disagreed with the zoning officer. Mr. Loonam said according to the definition this was not an accessory structure and it was part of the main building. The Board Attorney said a CCO was issued with the building there.

Ms. DeBari asked if they were requesting a variance. The Board Attorney said in the event that the appeal is denied, they also made an application for the use variance. Ms. DeBari asked if the board could deny the appeal. The Board Attorney said the Board can deny the appeal or uphold the appeal and consider variance relief.

Motion to open to the public for questions or comment on the application was made by Mr. Loonam, seconded by Mr. Rebsch and carried by all.

Mr. David Calenda, 343 Webster Drive, said the Meehan's used to live at 341 Webster Drive and they used the shed to store equipment because they were construction workers. The shed was attached to the garage with no entrance into the garage. Mr. Calenda said he knew it very well because he helped him move out. He said now there were new people that have moved in and they heard a lot of noise - cement. A few weeks later, there was a party of 15-20 going to the pool into the shed and back to the pool, said Mr. Calenda. He said people going to the pool to the shed to the pool happened numerous times weeks after weeks. Mr. Calenda said 15-20 people enjoying the pool, jumping out of the pool, going into the shed to wash their hands or take a shower and jump back into the pool. The resident said they have to live in peace and harmony with each other and call it what it is. Mr. Calenda said he totally opposed this application.

The Board Attorney asked what does he think is going on in the shed. Mr. Calenda answered washing their hands and going back into the pool. The Board Attorney asked if he was suggesting that there was anything illicit going on. Mr. Calenda said no but he is telling the board the facts what everyone has witnessed that 15-20 people or maybe a party of 4 during the week going out of the pool into the shed and back to the pool. He said his property is feet away and from all angles he sees this washing their hands, taking a shower and back to the pool. He said when the door opens he sees the shower and it is not aesthetically pleasing.

The resident submitted photos that he took of different views of the side of the house with the structure.

The Board Attorney marked as exhibits photos:

P-1 view feet from his house

P-2 photo from the street

P-3 view from back yard

Mr. Calenda said without any notice to him this took place. The neighbor said this does not keep with the character of the block. He said it takes away from the curb appeal and his family's outdoor experience. He added that this could affect property value. He said let's call it what it is and be honest with what we are trying to do here and make no secrets. Mr. Calenda said he should not have to look into that room and see 15-20 people using it if it is just for one as the application said.

The Chairman said you stated "let's call it what is it". Both Ms. DeBari and the Chairman asked what is it. Mr. Calenda said he did not know but if the application says it is for one person and they are watching 15-20 people use it.

The Chairman asked what was the dimension of the room. Mr. Ascolese answered 4x9. Mr. Loonam asked if 15-20 people are using it at the same time. Mr. Calenda said no. The Board Attorney said whoever uses the pool uses it to rinse off.

Mr. Calenda asked the board to go look at it. The Board Attorney said they were looking at it. Mr. Stamos, referring to the photos, asked if the board went to the house today was this what they would see. The Board Attorney said with all the photos, he felt the board was armed with a mental picture as to what was there. Mr. Calenda said there was a contradiction from what he witnessed and what the board is being told.

Mr. Stamos said they did not say it was exclusively for Mr. Bermio. He added their interest is for his comfort and his use of it. Mr. Stamos said he took offense to that statement. Mr. Stamos said he provided the notice and could have done the appeal without a notice. Mr. Stamos, referring to the photo, said this is what you are looking at. Mr. Stamos looked at the photos submitted by the neighbor and asked if this was what was so detrimental. He added this proves the point that this was existing and what they were using was inside part of the main structure.

The Chairman asked if there was anyone else wishing to comment on this application or ask the witness questions.

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

Mr. Levine said something was said about concrete being poured and asked if anyone knew what that was. Mr. Stamos said that issue was not before the board and it was not relative to this because it was already existing.

Mr. Stamos stated the main complaint was there were people and parties there and said if there is a noise issue call the police and they will come.

Mr. Loonam said his question was if there were footings or a slab, it was more to the argument that it was part of the house.

The Chairman stated there were two issues for the board. One was to determine whether or not it was an accessory structure and whether or not we agree with the zoning officer and pending on the outcome of that, a variance.

The Chairman asked Mr. Stamos if he was finished. Mr. Stamos said his position is that the portion was existing when they bought it and they received a CCO. His client admittedly put in a shower and sink. He stated you were looking at a part of the house and a structure from the side. The noise issue is completely separate and there is an avenue to vent those complaints.

Mr. Calenda wanted to speak. The Chairman said they closed to the public. Mr. Calenda wanted a chance to respond to a board member or he will do it through his lawyer.

Mr. Calenda said he did not say there was too much noise as Mr. Stamos alluded to. Mr. Stamos said it affected you. Mr. Calenda said to correct the record he did not say pouring concrete but he said there was drilling and noise going on and he did not know what was going on but two weeks later there was a party and 15-20 people were going in and out of the room.

The Chairman asked if the door was open when they were taking a shower. Mr. Calenda said no.

Mr. Stamos said their appeal should be successful because it is not an accessory structure thus making it an accessory use. A bathroom in part of a home is not an accessory use. The Chairman stated if the door went into the house and not into the outside, they would not be here.

Mr. Stamos understood and agreed with the board attorney that it was “a little quirky” but it is attached to the house and part of the main structure.

Mr. Loonam mentioned that Mr. Stamos said it was part of the main structure and that it was not an accessory structure so not an accessory use. Mr. Sproviero said correct. Mr. Loonam noted that the zoning officer said the changes that the applicant made constituted a separate use. Mr. Loonam questioned that it was not an accessory use prior but because of the improvement they created an accessory use. Mr. Loonam asked if they created an accessory use does it make it an accessory building. The Board Attorney answered no. This is a shower and a washroom that is part of the overall use of the home. He added what is “quirky” about this is there is no interior access. If this was an accessory structure, Mr. Sproviero explained, then that analysis would come into play. He felt the predicate question that needs to be answered is this an accessory structure. If the answer is no, then the next question to be answered is it a use that is typical to a residential dwelling.

Mr. Loonam said when the homeowner added plumbing was it tied into the main house or did it have its own line to the sewer. Mr. Loonam felt if the new plumbing was tied into the existing house then it was part of the house. He added if it had its own lines out to the sewer then it was an accessory.

Mr. Bermeo said the plumbing was from the inside the home. Ms. DeBari asked if it would make a difference if there was a toilet there. Mr. Sproviero did not think so.

Mr. Levine asked if they got their permits first would this be here. Mr. Stamos answered they might have gotten the same decision and have the same appeal.

The Chairman asked if someone wanted to make a motion to uphold or deny the appeal. The Board Attorney said if the appeal is denied then there is a use variance before the board. The Board Attorney explained by denying the appeal, you were saying the zoning officer was correct. He added that it was a simple majority on the appeal question.

Mr. Loonam asked if they say they do not need a variance, they still need get permits and have the town assess square footage. Everyone agreed.

The Board Attorney explained that if the motion is to grant the appeal requested by the applicant, a “yes” vote obviates the need for variance relief. A “no” vote says the board has to consider variance relief.

Motion made by Mr. Loonam to uphold the applicant’s appeal, seconded by Mr. Rebsch based on the fact that part of the structure in question on record has existed for a significant time.

Although the use of that portion of the structure has changed, that did not trigger whether or not it was an accessory structure simply accessory use. Additionally, the plumbing installed being tied to the main plumbing and not separate, furthers the evidence that it was part of the main structure. Permits need to be filed and approved and the square footage needs to be calculated as living space for a wash room. The Board Attorney asked if he found that the wash room use is part of the overall use of the total and comprehensive residential structure. Mr. Loonam said yes. The Board Attorney said the motion was to grant the applicants appeal and make the determination that the zoning officer was incorrect referring this for variance relief. The Board Attorney asked the members if everyone understood what they were voting on. The Chairman also added that the zoning officer was correct to send this to the board.

The motion passed on a roll call as follows:

For the motion: Members Loonam, Rebsch, DeBari, Hittel, Levine, Schaffenberger.

Approved 6-0

Recess

**19 06 317 East Woodland – Block 714 Lot 3 – Lazarus
Building Coverage – New Single-Family House**

Mr. Andrew Kohut, Wells, Jaworski & Liebman, 12 route 17 North, Paramus NJ, on behalf of his client thanked the board for accommodating them today due to the holiday. Mr. Kohut was here on behalf of Cara and Hillel Lazarus, 317 East Woodland Road.

Mr. Kohut said his client are a young family who are moving to New Milford to built their dream home. They are proposing a two-story dwelling and are before the board for a building coverage variance of 24.9% where 20% is permitted. The applicant was not requesting any variance relief for impervious coverage nor side yard, rear yard setbacks.

Mr. Kohut said they were asking for a soil movement permit as per Mr. Ascolese's review letter. The applicant had permits to build a conforming house and in the mist of construction they realized the water table was too high which would result in a building height being about 2.5' above code. They decided to build out instead of up. They are proposing four children bedrooms and a bedroom on the first floor for a relative who has cerebral palsy.

Mr. Jordan Rosenberg, architect, 27 N. Broad Street, Ridgewood, NJ was sworn in by the board attorney.

The Board accepted the qualifications of Mr. Rosenberg as a licensed architect.

The architect said they were proposing a single-family home four bedrooms for the children and a guest bedroom on the first floor for their handicap relative. The house had a kitchen, family room, dining room, living room, mudroom, foyer and garage. He said they worked over a year on the design and felt these were the right size rooms.

Mr. Rosenberg said this proposed house was an improvement from what is there today. He added it was a home that has not been improved since it was built. The street is comprised with a number of homes that have been improved. It is a mix of ranches and new houses and add a levels. He felt this house fits in well with the neighborhood. Mr. Kohut asked if this house substantially impacted the neighbors. Mr. Rosenberg felt the house fits in nicely and did not impact the neighbors. The architect said they were asking for a building coverage variance and tried to load some of the coverage to the back of the house. Mr. Rosenberg said they had a 14.7' setback on the left where 10' is required. He added the rear of the property borders on Brookchester Apartments. Mr. Rosenberg said if they have this heavy density of multifamily rentals in the rear, it would suggest that a variance for coverage would not be an unreasonable request

Mr. Kohut said with the abutting of an apartment complex, this would not cause a substantial detriment from an architectural standpoint. Mr. Rosenberg agreed because this was a single-family resident.

Mr. Kohut said because they are over on the building coverage, their client was very careful to meet the imperious coverage and were also conforming to height. Mr. Kohut asked if this property could accommodate what the applicant was proposing without being a detriment. Mr. Rosenberg agreed.

The Chairman stated that they were designing a house that allows for 20% building coverage and asked why was he designing a house that has almost 25% building coverage. Mr. Rosenberg said as architect, he has to balance the clients needs and try to approach the project in the most modest way he can. His intent is never to come with a design that would suggest to the board that he taking advantage of the ordinances in anyway. He did not think this variance was a considerably large one. The architect said he could not find a way to comply with the 20% requirement while trying to meet with the requirements that the applicant needed.

Mr. Kohut said at one point they had a plan that did not need a variance. Mr. Rosenberg said originally, they had two bedrooms and a bathroom in the attic but when they demolished the house and excavated the basement and hit water at elevation 94.1 that determined that they could not put the basement floor where they wanted it to be. He explained that it was common practice that a basement floor should be a minimum of one foot above the water table.

Mr. Rosenberg said they were setting their floor at 95.4. If they wanted to maintain 8' basement ceiling height that sets the first floor at 104.4 which ended up with a 3.4 over building height. Mr. Rosenberg said they determined they would not be able to go forward with this house and his clients did not want to lose the bedrooms. Having reviewed testimony from past hearings and understanding where the harshness level falls, they felt it was more reasonable to ask for a coverage variance to accommodate the needs of the client. Mr. Kohut said looking at the surrounding property and the ability to meet the setback requirements, they felt a height variance would be more imposing on the neighborhood than the bulk in the rear of the property. Mr. Rosenberg said they were now proposing a two-story house, low and not usable attic and has a modest appeal but does need a coverage variance.

Mr. Levine asked if this would be the largest house on the block and thought it would be the largest house on the block. Mr. Kohut said not every house on the block is this size of this house. He felt it was a developing block.

Mr. Loonam said they mentioned that they reviewed testimony of similar applications and stated there was no precedence in zoning. Mr. Loonam said when looking at the allowable 20% coverage and proposing 24.9% and stating they are looking for a variance of 4.9%. He said you are looking 25% more than what is allowed. Mr. Loonam asked how does this board justify allowing 25% more building coverage. He explained that the town and different boards have spent a lot of time to determine that the allowable building coverage would be 20%. The Board Attorney added they reviewed ordinances this last year. Mr. Loonam agreed and said it was reexamined for coverage at 20% with changes to decks and patios. Mr. Loonam asked what justifies allowing 25% more than what has been determined to be reasonable.

Mr. Rosenberg said he has this perception of scale that he has been trained to understand and implements and sees in his mind that it would fit nicely. Mr. Loonam said a large house in the neighborhood might meet all the guidelines because it is on a larger piece of property. Mr. Rosenberg said to help justify the variance was to suggest that they were taking every step to mitigate the rain water runoff. He said originally, they were proposing two seepage pits for the rainwater and they are providing for a third seepage pit.

Mr. Kohut said the most common hardship is an undersized lot but he felt they had an interesting hardship that they tried to build a conforming house and the hardship is the water table is preventing them from doing it. Mr. Kohut said based on meeting the setback requirements, an apartment complex behind them and that there are other houses the same size, they don't substantially detriment the neighborhood by proposing this. Mr. Kohut said it was a unique argument when it comes to coverage but he felt it was a legitimate one.

Mr. Loonam said their lot was over the standard lot of 7,500 sf. so there was additional room to build a larger home because it was 20% bigger than a standard lot. The argument is more that the applicant can't build a house that he wants because of the water table, said Mr. Loonam. He added the sump pumps don't justify a bigger house. Mr. Loonam felt 24.9 over is a significant increase over what is allowed. Mr. Loonam said to approve something that is this significant he would need a compelling reason to do so.

The Board Attorney asked if they needed a height variance, would it have been a D variance. Mr. Kohut said yes, it would be 3.5' which he thought would be more of a visual impact on the single-family residents. Mr. Loonam thought the apartments were over 30'.

The Board Attorney swore in Mr. Hillel Lazarus, homeowner.

Mr. Lazarus thought all the adjoining lots were all uniform size. Mr. Lazarus said a neighbor thought it would be better to build towards the back rather than go higher. He added the houses that have been redone are a nice size. The Chairman said the fact that they have not been before the board means they are not at a 25% building coverage.

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

No one wished to speak in the audience.

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

The Board Attorney swore in Mr. Sean McClellan, 101 West Street, Hillsdale NJ.

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

Mr. Kohut believes the ordinance allows them to raise the grade 2' by code. Mr. Kohut asked the engineer to address Mr. Ascolese's comments. Mr. McClellan addressed the sump pump in the basement. He stated because of the high ground water table, they proposed the basement to be 2' higher but would still need a sump pump. They were proposing in the front of the house to have a seepage pit just for the sump pump so they don't interrupt the ones for the roof. He added it would be within the setback.

Mr. Kohut asked him to explain the retaining wall. Mr. McClellan said they raised the grade approximately 1 1/2' around the property so the concerns were about runoff on the neighbor's property. He added to alleviate any concerns, they are proposing a drain behind the wall and the water would come down into the pipe and into the seepage pits. Mr. Kohut said these plans were not submitted in time for the meeting but would be submitted to Mr. Ascolese for approval. Mr. McClellan agreed.

Mr. Kohut said Mr. Ascolese brought up in his report that if there is an issue with the water table level, a redesign of the seepage pit system will be required and resubmitted. Mr. Kohut had no problem with that. Mr. Kohut said a soil test shall be performed to determine soil permeability and groundwater level.

Mr. McClellan said regarding the soil movement for the site he stated for the house the excavation nets up to 260 cubic yards and around the garage it would be minimal about 9 cubic yards and filling in the rear yard about 240 cubic yards of fill. The seepage pits had a net of 38 cubic yards.

Mr. Kohut said any significant trees would be approved by the Shade tree commission and curbs or sidewalks along the property frontage damaged during construction shall be replaced. Mr. McClellan agreed.

The Board Attorney asked for clarification on the front yard setbacks. Mr. McClellan said there was a chart with the setbacks of the adjoining properties and the average setback was 51.6'. They were proposing 54.1'. Mr. Kohut said most of the properties were located closer than what they were proposing. Mr. McClellan said all but two. The Board Attorney said no variances were implicated. Mr. McClellan agreed.

The Chairman asked the engineer to address the #9 on the review letter regarding moving the soil and the proposed height.

The Board Attorney marked as **exhibit B-1** – photo of previous house.

Mr. Ascolese referred to the photo stating it showed the area was relatively flat except for the east side. If the basement excavation was taken out and distributed around this property with a retaining wall built around three sides of the property, he had a concern about flow coming from the east portion to the west portion of the property that some water might be trapped by the wall. His concern was collection of water at adjacent properties where no collection exists today.

The Chairman thought his point was it could change the calculation of the height. Mr. Ascolese said the way the code is written they are permitted to raise the grade by 2' and by doing so the height of the building is based on the new average grade. He brought it up because of concerns to the surrounding properties. Mr. Sproviero said from a drainage perspective. Mr. Ascolese agreed. Mr. McClellan said there would be a drain behind the wall.

Ms. DeBari asked if this would affect the height of the house if they are going up a 2' and would the height be at 32'. The board attorney said 32' from the existing grade. Mr. Ascolese said they will be 30' from the proposed grade.

Mr. Kohut said based on New Milford's code, if your basement is more than 3 above the elevation, it counts as a floor. He explained if they did not raise the soil level, they would need a variance for a third floor which he did put in the notice. The Chairman said essentially this is a three-story house that has been filled around with soil. Mr. Kohut said it is not a three-story but a two-story house according to the code.

Mr. Ascolese said there was an AC and generator and thought it met the code. Mr. Ascolese had concerns about the placement of the generator for a house this size. Mr. Ascolese questioned if it could be located in the rear instead of the side. Mr. McClellan said they would comply.

Mr. Ascolese said on the zoning worksheet it indicated the proposed right-side setback was 14.9 feet and the proposed left side setback was 10.7 feet. He believed these setbacks are reversed. The applicant agreed.

Mr. Ascolese said there was a 55' setback from the centerline and asked since house is being demolished would there a reason the new setback did not follow the code or would it be permissible to follow the average setback. The Board Attorney said it has been the practice of the board to go with whatever is less. Mr. Ascolese clarified that 54.1 was acceptable with the board. Mr. Sproviero agreed.

Mr. Ascolese informed the applicant that they were at almost maximum impervious coverage for the lot.

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

No one wished to speak.

Motion to close to the public Ms. DeBari, seconded by Mr. Levine and carried by all.

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

No one wished to speak.

Motion to close to the public Mr. Loonam, seconded by Mr. Rebsch and carried by all.

Mr. Kohut thanked the Board and appreciated Mr. Loonam's candor and wanted to ask the board if they had any other comments or concerns. The Chairman asked if he would like to poll the Board. Mr. Kohut said he would like to know their feelings on the application.

Ms. Hittel felt the amount of building coverage requested was extraordinary compared to what is existing on the street. Ms. Hittel was familiar with the street and felt this would be an imposing structure in the neighborhood.

Mr. Levine agreed it was a large house and not a lot of large homes on the block. He did point out there was an apartment complex behind the home. He was all for beautifying the neighborhood and said they were on an oversized lot and proposing an oversized house. Mr. Levine said he was on the fence at the moment.

Mr. Rebsch did not know why they could not comply with the requirements and did not agree with this application.

Mr. Loonam commended the professionals on this application. He stated the house was roughly 45' x 60' and that the footprint was about 2,700 sf. Mr. Loonam felt they would need to have a much larger property to have a house of this size. He commented that it was not 4.9 percent more but rather almost 25% greater. He added this was not an undersized lot and the desire is that this is what the applicant wants. He said that was fine and they were allowed to have that argument. Mr. Loonam said their best argument is there is no one here at the meeting opposing the application and that does matter. Mr. Loonam said for him the house is too big. He felt the dream house was appropriate but not for this lot.

Ms. DeBari felt they needed to scale down their dream house. She felt it was unfortunate but felt it excessive.

The Chairman said his first question is always why design a house that is 25% when 20% is permitted. He added it was not personal and they try to accommodate residents but felt 25% over is too big for him.

Mr. Levine asked how far would he have to scale down to not need a variance. Mr. Rosenberg said they were approximately 437 sf over which was equivalent to a two-car garage.

Mr. Kohut requested to carry an application to November 12, 2019.

Mr. Loonam said there was an application before the Board in about 2010 which was similar to this application and ultimately the application was turned down. He noted that he made the motion to deny the application. Mr. Loonam said the applicant returned with a new plan which was a beautiful house and still needed variances but he made the motion to approve the application. Mr. Loonam said the Board really tries to accommodate people but he thought this might offer some insight. He added he loved this house but did not think it would work on this size lot.

Mr. Kohut appreciated the board's candor and making the meeting on this date and would return in November.

As there was no further business to discuss, a motion was made to close the meeting by Ms. DeBari, seconded by Mr. Loonam and carried by all.

Respectfully submitted,
Maureen Oppelaar