

Approved
1/13/15

**New Milford Zoning Board of Adjustment
Work Session
December 9, 2014**

Chairman Schaffenberger called the Work Session of the New Milford Zoning Board of Adjustment to order at 7:35 pm and read the Open Public Meeting Act.

ROLL CALL

Mr. Binetti	Present
Ms. DeBari-Vice Chairwoman	Present (7:40)
Mr. Denis	Present
Fr. Hadodo	Present
Mr. Ix	Present
Mr. Loonam	Present (8:05)
Mr. Rebsch	Present
Mr. Stokes	Absent
Mr. Schaffenberger-Chairman	Present
Mr. Sproviero - Attorney	Present
Ms. Batistic –Engineer	Present

REVIEW OF MINUTES

The Board Members reviewed the minutes for September 9, 2014 and there were no changes.

Review Ordinance No. 2014:24 Definitions and Word usage

The Chairman noted the amended ordinance discussed definitions on building coverage, deck, impervious coverage, patio, pavement and structure. The members discussed the ordinance. The Chairman thought a deck was something temporary and a cement patio could be framed out for a room which he would have a problem with. Mr. Ix said a deck would have footings and a patio would not. The Board Engineer clarified now the materials for a deck could be wood, steel, concrete, etc. and a patio also could have wooden planks on the surface. The Chairman did not think that would be a patio. Ms. Batistic stated the issue was that a deck was not included as part of building coverage. The Board Attorney stated that this has been adopted and the law of the borough. It is before the Board so the members are aware of it. The Board Engineer said before this amended ordinance was adopted someone could build a patio 5' high off the ground and it would not be part of the building coverage. The Chairman clarified a 5' high cement structure would be a deck. The Board Engineer agreed and said it would be part of the building coverage.

The Chairman asked if an applicant had a rear yard variance for a deck and in the future wanted to build an addition, would they still have a rear yard variance. The Board Attorney and Engineer said they did. The Chairman questioned if there could be a variance for just a deck.

The Board Attorney said there could be a condition in the resolution saying the variance being granted applies to a deck only and not to any expansion of the principal structure. Ms. Batistic

said if there was an existing side yard variance for a one story home and a resident wanted to build a second story, they would have to come back to the Board. The Board Attorney agreed because it was an expansion. Ms. Batistic thought that would be the same with a deck becoming a room. The Board Attorney said by adding that condition it makes it clearer. The Board Engineer agreed.

SCHEDULE OF MEETINGS – 2015

The Board Members reviewed the schedule.

CLOSED SESSION - 7:43 – 8:13

Resolution regarding authorization for the Board Counsel to represent interest of NM Zoning Board of Adjustment in any litigation involving compliance with conditions of approval granted to Fresh and Fancy Farms.

Motion to end the close session was made by Mr. Ix, seconded by Mr. Binetti and carried by all.

NEW BUSINESS

14-04 Duffy – 356 Webster Drive – Block 1606 Lot 11

Two Tier Deck – Building coverage and rear yard setback variances

The Board Members had no comments or questions.

13-02B Alex & Sons Real Estate – 391 Madison Avenue – Block 1211 Lot 32

Two duplexes on a single lot - Use, front yard and height variances.

The Chairman said this was a new application and there was a court reporter present.

Mr. Rebsch asked for an update on New Milford Redevelopment litigation. The Board Attorney said he ruled to have all three cases be consolidated as one action. He added New Milford Redevelopment wanted no part of it. Mr. Sproviero said the Court granted the motion. They had a briefing schedule to be submitted in March. There will be another hearing in March to determine what happens next.

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

**New Milford Zoning Board of Adjustment
Public Session
December 9, 2014**

Chairman Schaffenberger called the Public Session of the New Milford Zoning Board of Adjustment to order at 8:16 pm and read the Open Public Meeting Act.

ROLL CALL

Mr. Binetti	Present
Ms. DeBari- Vice Chairwoman	Present
Mr. Denis	Present
Fr. Hadodo	Present
Mr. Ix	Present
Mr. Loonam	Present
Mr. Rebsch	Present
Mr. Stokes	Absent
Mr. Schaffenberger-Chairman	Present
Mr. Sproviero - Attorney	Present
Ms. Batistic – Engineer	Present
Mr. Grygiel – Planner	Present

PLEDGE OF ALLEGIANCE

OFFICIAL MINUTES OF THE WORK SESSION-September 9, 2014

Motion to accept the minutes were made by Fr. Hadodo, seconded by Mr. Ix and carried by all.

OFFICIAL MINUTES OF THE PUBLIC SESSION – September 9, 2014

Motion to accept the minutes were made by Fr. Hadodo, seconded by Mr. Binetti and carried by all.

SCHEDULE OF MEETINGS – 2015

The Chairman called for a motion to approve the schedule of meetings for 2015.

The motion passed on a roll call as follows.

For the Motion: Member DeBari, Ix, Binetti, Denis, Hadodo, Loonam, Rebsch, Schaffenberger

Resolution regarding authorization for the Board Counsel to represent interest of NM Zoning Board of Adjustment in any litigation involving compliance with conditions of approval granted to Fresh and Fancy Farms

The Board Members decided to table it because the members needed additional information from the Mayor and Council.

NEW BUSINESS

14-04 Duffy – 356 Webster Drive – Block 1606 Lot 11

Two Tier Deck – Building coverage and rear yard setback variance.

Kelly Mastrojohn-Duffy and Matthew Duffy, residents at 356 Webster Drive, was sworn in by the attorney.

The Chairman asked the applicant to explain the application.

Ms. Mastrojohn-Duffy wanted a deck in their back yard and their building coverage was 1400 sf and the requirement was 1500 sf. The Chairman clarified the variances sought were lot coverage and rear yard setback. The Chairman said the applicant proposed 20' for the rear yard setback where 25' was required. The applicant said one was 20' and the other 22'. The resident explained one deck was 30" off the ground the other was 7" down from that deck. The Chairman stated the plan showed steps, which would count towards the rear yard setback so both decks would have a setback of 20'.

The applicant said when they purchased the house the whole backyard was concrete with an inground pool. Ms. Mastrojohn-Duffy stated they removed the concrete and inground pool with the intention of constructing a deck. They had not realized they would need a variance.

The Board Attorney asked for the exact dimensions of the decks. The resident said the first tier was 23'9" x 16' which was 32" off the ground. The second tier was 12'6" x 16' and 23" off the ground. She further explained that the lower deck would be off their sunken living room. The Board Attorney asked if the deck would be covered. The applicant said no it would be open. The Chairman pointed out that the stairs were not included in the dimensions. He noted that the higher deck had 5 steps and the lower steps had three steps. The plans indicated a 6.4" riser, which Mr. Ix and the Chairman said needed to be a maximum of 8". The Board Engineer asked how they knew the deck would be 20' from the property line because the survey did not show the setback. Ms. Batistic said, if the variance was granted, the Board could grant a 20' setback. The Board Attorney asked what the lot coverage was with the steps. Ms. Batistic said the applicant indicated their existing house was 1,422 sf and the total building coverage from the existing building and proposed deck was 27.71. The Chairman clarified where 20 percent was allowed. Ms. Batistic agreed.

Mr. Loonam asked if there was a variance for the pool from the previous owners and what the lot coverage was at the time the pool was installed. The Board Attorney said there was no evidence of a prior variance and it would be incumbent upon the applicant to put that evidence before the board.

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

No one in the audience wished to ask questions of the witness.

Motion to close was made by Mr. Binetti, seconded by Mr. Denis and carried by all.

Father Hadodo questioned if the variance was granted would they be able to close in the deck for a room. The resident said they wanted outdoor space. The Chairman said if this was approved a condition of the approval would be for a deck only.

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

No one in the audience wished to make a comment.

Motion to close was made by Mr. Denis, seconded by Mr. Binetti and carried by all.

Mr. Loonam commented that his deck was constructed smaller to avoid the board. He regretted making it smaller because it was barely functional. He thought when building a deck functionality was everything. Mr. Loonam also had a problem with the ordinance regarding patio vs deck. Mr. Loonam had no problem with this application based on the size of the property and the fact they the resident filled in the pool and added grass. He did not think they were requesting too much and he thought it was about functionality.

The Board Attorney stated the condition discussed was any approval granted was limited to the deck and not to any expansion of the structure.

Motion made by Mr. Binetti to approve the variances for the deck with the condition discussed, seconded by Fr. Hadodo.

Motion passed on a roll call as follows:

For the motion: Members Binetti, Hadodo, Denis, Loonam, DeBari, Ix, Schaffenberger.

Approved 7-0

Recess

**13-02B Alex & Sons Real Estate, LLC – 391 Madison Avenue – Block 1211 Lot 3
Two duplexes on a single lot with two bedroom units per building**

Mr. Carmine Alampi, representing Alex & Sons Real Estate, LLC, stated he has been before the Board for about 18 months. They advised the Board the applicant was withdrawing the application for the original multiple 14 unit dwelling. Upon legal consultation and reviewing the paperwork, it was determined that they would file a new application. They have filed all the application forms, went through the entire process of filing the application, noticed to property owners by certified mail and published in the newspaper.

Mr. Alampi stated they were seeking a variance from a single-family residential zone for two separate buildings. Each one would be a two family duplex with a total of four residential units in two structures. They have decided to have them side-by-side, which would back up towards the parking lot of the school as opposed to placing them closer to the single-family home. He added there was 20' between the two buildings. They were requesting a front yard setback variance.

Mr. Alampi said they had a court reporter to provide transcripts for any new members appointed in January.

Mr. Albert Dattoli, 70K Chestnut Ridge Road, Montvale NJ, was sworn in by the Board Attorney.

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

The Chairman stated that Father Hadodo has recused himself from this application.

Mr. Alampi stated they have received review letters from the police department dated 10/31/14 stating they found no public safety issues, the Shade Tree Commission dated 11/24/14 suggesting planting two red maples along Madison and a weeping willow in the rear of the property, the Fire Advisory Committee dated 11/18/14 recommending the driveway be 24' wide from front to back and be built to support the weight of a fire truck. The letter also said the driveway should be classified as a Fire Lane and added they could also meet those standards. Mr. Alampi was also in receipt of a comprehensive review letter from Boswell Engineering and Phillips, Preiss, Grygiel, LLC.

Mr. Alampi marked as an exhibit:

A-1 Architectural plans - 4 sheets dated 9/10/14

Mr. Dattoli said the 1st sheet was the front elevation, 2nd sheet ground floor level of the building, 3rd sheet first floor plan, and 4th sheet second floor plan. The architect stated the front elevation showed it was a three story duplex building. There was one unit on the left and one unit on the right equal in size. One the ground level there was one garage door for each unit. There would be a stone veneer; the first and second floor would have stucco, fiberglass asphalt roof shingles, and exterior steps leading from the garage level up to the first floor with a covered portico area. Mr. Alampi noted the steps were at the far end of the building. The architect agreed that it was so the units had a private entry. Sheet two showed the ground level plan. He noted the garage was 655 sf on ground level with an additional 757 sf of finished area, which includes a rec room, staircase to first floor, powder room, laundry and utility room. Mr. Alampi asked if this level was slab on grade. Mr. Dattoli agreed and added the rec room would have a sliding door that accessed the rear yard. The first floor level has 1,404 sf, which had a living room /dining room area, family room kitchen dinette with a set of steps that goes down to the basement and to the second floor. The second floor has a master bedroom suite with two walk in closets and a master bath. It has two additional bedrooms with a hall bathroom. Mr. Dattoli said there is a utility room and an air handler in the attic for each unit. Mr. Alampi asked if the separations were fire rated to meet the code requirement. Mr. Dattoli agreed. Mr. Alampi asked if there were any mechanicals outside of the building. The architect said the air conditioner units would probably be on the side of the building towards the back, which could be added to the drawings. Mr. Alampi asked for the height of the building. Mr. Dattoli answered from the garage slab to the highest peak was 35' 11". Mr. Alampi stated they were requesting a variance for height, two buildings on one lot and 4 units where it was a single-family zone and front yard setback. The Board Attorney stated there was also a variance required for stories. Mr. Alampi stated they have advertised that this was considered three (3) stories, with a D (6) height variance. He added this would be high quality construction. The Board Attorney asked for the total length of the building. Mr. Dattoli said 60' across 50' deep. The Chairman asked if the attic would be accessible from inside. Mr. Dattoli said there would be pull down attic stairs and there would be some storage there. The Chairman asked if the garage was for two or four cars. Mr. Dattoli said it was a two-car garage for each unit. They were showing one 18' door at the present time. The Chairman asked if there would be a steel beam for an 18' door. The architect said a steel beam or a wood laminated beam.

Ms. DeBari asked which direction the units were facing. Mr. Dattoli said they were side by side and both front elevations would face to the east.

Mr. Loonam asked if there would be advantage to putting the garage/driveway lower into the ground to lower the height. Mr. Dattoli said if they sink it into the ground there would be a sloping driveway into the garage. It would be problematic with water running into the garage/snow and they would not be able to have the sliding doors into the backyard. Mr. Loonam clarified that architecturally it could be designed. Mr. Dattoli agreed.

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

Laurie Barton, 399 Roslyn Avenue, clarified this would be for 2 buildings with a total of 16 bedrooms. Mr. Dattoli agreed. Ms. Barton said this was for a single-family zone. Mr. Dattoli agreed. Ms. Barton asked if they could eliminate a variance if they had one building. Mr. Alampi agreed.

Terence McMackin, 400 Madison Avenue, asked for the setback from the street to the first unit. Mr. Dattoli said 25' and they were requesting a variance. The resident asked if it was possible to take one unit and turn it 90 degrees facing Madison and the other in the proposed position. Mr. Dattoli was not sure but said it might be a possibility.

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

Mr. Perry Frenzel, Azzolina & Feury Engineering, Inc., 30 Madison Avenue, Paramus, NJ was sworn in by the Board Attorney.

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

Mr. Alampi marked as an exhibit:

A-2 Engineering plans - 6 sheets dated 10/10/14

Mr. Frenzel stated the plans had a cover sheet with a map, sheet 2 existing conditions map, sheet 3 site plan, sheet 4 soil erosion and sediment control plan, sheet 5 Landscape & lighting plan/community forestry management plan and sheet 6 sheet is a detail sheet.

The Engineer said the subject property was irregular approximately 48,000 sf with frontage on Madison Avenue of slightly under 140 sf and its maximum depth of 270 sf. Mr. Alampi said in the rear of the property there was a significant drop off. Mr. Frenzel agreed. Mr. Alampi asked if that area was designated as wetland and transition buffer area. The engineer agreed. Mr. Alampi asked if the applicant had the necessary approvals from the state with regard with the buffer and the transition area and wetland designation. The engineer agreed and said the wetland delineation line and transition buffer limit was accepted by the DEP in 2012 and the permits were in good standing. Mr. Alampi asked if there was any plan to disturb that section that was sensitive to the wetland regulation. Mr. Frenzel said no. Mr. Alampi asked for the approximate land area that was available for development. Mr. Frenzel said about 60 percent. Mr. Alampi asked if it was

possible to rearrange the location of the two buildings. Mr. Frenzel said no because on the right side of the property behind the adjoining house was a buffer or wetland area. If they relocated, it would be juxtaposed behind the neighbor's house, asked Mr. Alampi. Mr. Frenzel said yes if it was possible to do that. Mr. Alampi said this was the optimum positioning for the structures. The Engineer agreed.

The Engineer said the requirement for the front setback was 38.6' proposed 25'. Mr. Alampi asked if they could eliminate that setback by pulling the buildings close to each other. Mr. Frenzel agreed but said it was not a good idea from an aesthetic, light and air perspective and there would be building code issues.

The Engineer said in designing this plan they tried to work with the topography as is and try not to excavate and remove a lot of soil and not import soil into the site. He noted the site sloped from Madison down to the rear. There was a driveway on the easterly side of the units that has an 8% slope. Mr. Alampi asked for the drop off from the front curb cut to the end of the driveway. Mr. Frenzel said approximately 6-8' drop. Mr. Alampi said that Mr. Loonam had asked with regard to the height variance, if they could recess the building down. The engineer did not think it was a desirable solution because they already have an 8% slope for the driveway. The maneuver to get into a garage that is now underneath the dwelling would require a compound curb. He did not like it from a winter condition, did not think it safe and it would also direct all water to the garage doors.

Mr. Frenzel said the roof drains and driveway run off would be collected in a piping system and channeled into four seepage pits shown on the plan. Each seepage pit was approximately 6' deep 8' in diameter set in a stone bed. The engineer said they would percolate into the ground. The test pit done on the site showed the soil was a good soil for the purposes for percolation.

The Engineer stated the main driveway gets everyone into the site. He added that all inward movement, backing up and outward movement occur on the site. Mr. Alampi asked him to comment on the recommendation from the Fire Advisory Committee regarding a 24' driveway. The engineer said they would comply. It would be a larger impervious area and they would check the calculations for the seepage pits. The structural engineer would design the pavement to support the weight of 53,000 lbs., said the engineer. Mr. Alampi said the garbage would be brought to curbside. Mr. Frenzel agreed. He added this project meets the side and rear setbacks, impervious and building coverage standards. The engineer said there would be a 7' wide sidewalk installed along Madison Avenue.

Mr. Alampi asked if he filed with the soil conservation district. The engineer said they have not filed yet. Mr. Alampi asked if the application is granted would he file with the soil conservation district. The Engineer agreed.

Mr. Alampi said the Shade Tree Commission recommended plantings of two red maples along Madison and a weeping willow in the rear of the property. Mr. Frenzel said that would be in addition to what they proposed. He discussed the landscape plan and added they could accommodate the Shade Tree Commission request. Mr. Alampi asked if there would be plantings at the border between the rear yard and the parking lot of the school. The engineer said yes. Mr.

Alampi asked if there is a difference in the elevation in the area behind the two structures. The Engineer said there would not be a drop off or a raise in elevation at the property line adjacent to the school. Mr. Alampi asked with this revised plan was there a need for retaining walls at the site. The Engineer said no. Mr. Alampi said there has been a concern in the past with the drop off to the wetlands area. He asked if they could create a fence or barrier for the residents' protection. Mr. Frenzel said there was a guardrail shown on the plans and he added in the Boswell letter they recommended the rail to extend to the catch basin. Mr. Frenzel said they would comply. Mr. Alampi said to the north of the side of the second home was there a need for a fence. The engineer said the first 25' were flat next to the home and then it slopes. Mr. Alampi asked if they could install a fence close to the 25' point. Mr. Frenzel said if a fence is installed it would be at or inside the transition area buffer line. Mr. Alampi asked if they would be widening the curb cut. Mr. Frenzel said yes. The Chairman asked if that would trigger a variance. The Engineer said normally the curb cut follows the width of the driveway. Mr. Alampi amended the application to include a bulk variance pertaining to the curb cut.

Mr. Loonam asked where on the property were the soil samples conducted. Mr. Frenzel said it was not shown on the plan but it was excavated in the center of the front portion of the property. Mr. Loonam asked how deep they go to test the soil. Mr. Frenzel said in this case 6' deep. Mr. Loonam asked if it was typical to do one test. The engineer said on a residential site it was one unless there was physical evidence that the property has been artificially filled. Mr. Loonam questioned if soil samples should be done were the two buildings would be built. The Engineer said he takes a soil sample to make sure the soil has the capacity to drain and the second issue is the building code. Mr. Loonam said there was an application before this board where some of the public said there was fill added to the property. He thought it prudent to take multiple samples from different areas. The Engineer said in good practice one of the first things done was to do a preliminary test pit. Mr. Alampi thought the question was if they could do another test pit so an engineer on site could determine if it was the virgin soil or an added soil. Mr. Loonam requested additional tests be done. Ms. DeBari asked if they test for contamination. Mr. Alampi said no unless they believed there was an environmental condition but they would do a couple more test pits to see the layering in the area of the housing.

Mr. Denis was concerned about water going down the driveway and down into the wetlands. Mr. Alampi said they were not changing the topography and the engineer said the entire driveway area was curbed so any water that runs down the driveway would be confined in the driveway area. He added the seepage pit volume was about 4,000 cu ft.

Recess

Motion to open to the public was made by Mr. Ix, seconded by Mr. Binetti and carried by all.

Terence McMackin, 400 Madison Avenue, asked if the units were for sale or for rent. The Engineer believed they were for rent. Mr. McMackin asked if there was any recreation area or a pool for the children. The engineer said what would be allowed was an issue for the project sponsor. Mr. McMackin asked from the north side of the setback of the further most building what was the distance from the exterior wall to the drop off to the wetlands. Mr. Frenzel said it was about 20'. The resident asked if there was a landscaping plan for the section of Madison to

the first building. The Engineer said it was shown as a grass area and two tree plantings. The resident asked for a 20' hedgerow so they would not see the building.

Mr. McMackin asked what the total impervious coverage was for the usable property. The engineer said the impervious coverage for the entire property is 26 percent and it would be close to 50 percent for the usable part including the extra 6' wide driveway. The resident clarified that underground parking would not be practical at this site. The engineer said underground parking would not be his preference. Mr. McMackin questioned that the previous application had underground parking. Mr. Frenzel said in the earlier plan there was a driveway with a gradual slope and had a longer run. Mr. McMackin clarified that this plan had a dramatic difference that makes this plan more practical. Mr. Frenzel replied that there was less pavement involved. The resident asked if there was a way to modify the plans so the applicant would not need a variance. The engineer thought the only variance that could be modified would be the front yard setback, the height is a function of the architecture and the use variance is for duplex houses. The resident asked if there was any way to modify this plan to have no variances. The Engineer said not with this plan.

Mary Ann Milligan, 407 Madison Avenue, asked how far the proposed driveway would be from 407 Madison Avenue. The Engineer said 15' from the property line. Ms. Milligan asked if that would affect that neighbor's property and where would the visitors park. Mr. Frenzel said each unit had two garage spaces under the units and between the garage and the driveway there was room for two more cars. Ms. Milligan asked if this was the best plan for this site. The engineer believed it was.

Lori Barton, 399 Roslyn Avenue, asked if it would be a better idea to limit the construction to one building. The Engineer said that would have to be a consideration for the developer and they were here with this plan. Ms. Barton clarified that his testimony was it was not desirable to eliminate the height variance by digging down. The resident stated that there are homes on slabs that are 2.5 stories and asked if they could redesign this so it was not as big. The engineer said she was speaking of items of preference. Ms. Barton asked how many full sized trees would be removed. The engineer said eighteen 10" diameter trees which were not borough trees and an additional nineteen trees of 3" diameter. Ms. Barton asked how many would be planted to replace them. Mr. Frenzel said they were proposing 12 trees.

Terence McMackin, 400 Madison Avenue, asked if it would be prudent to do some contamination drilling because there used to be garages rented to commercial landscapers. The engineer said in the case of petroleum hydrocarbons the first indication of pollution would be odor. The resident said this took place years ago and assumed the aroma would be gone. The engineer responded that if the aroma was gone then the harmful chemical was gone. Mr. McMackin questioned if it would be wise for the town to take that under consideration before the project was started.

The Chairman said the suggestion has been made.

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

Mr. Alampi asked if there were any further meetings in December. The Chairman answered no. Mr. Alampi asked to continue this application to January 13, 2015 so they could bring the planner. Mr. Alampi would have transcripts.

The Chairman said there was one RFQ for the Board Attorney for their review.

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

Respectfully submitted,
Maureen Oppelaar