

Approved  
1/12/21

**New Milford Zoning Board of  
Work Session  
12 08 2020  
Virtual meeting (zoom)**

Chairman Weisbrot 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
Mr. Birnbaum	Present (805)
Ms. DeBari	Present
Ms. Hittel	Present
Mr. Levine	Present
Mr. Loonam	Present
Mr. LoPorto	Present
Mr. Rebsch	Present
Mr. Weisbrot -Acting Chairman	Present
Mr. Sproviero - Attorney	Present
Ms. Batistic-Engineer	Present

**REVIEW MINUTES OF THE WORK/PUBLIC SESSION – November 10, 2020**

The Board Members reviewed the minutes with change.

**SCHEDULE OF MEETINGS FOR 2021**

The Board Members reviewed the resolutions and had no comments or changes.

**RESOLUTIONS**

**20-06-Psarianos – 317 Webster Drive – Block 1602 Lot**

**Construction of Gazebo prior to permits – side and rear yard**

The Board Members reviewed the resolution and had no comments or changes.

**20-02 -Conclusion of the Appeal of the Determination of Zoning Officer-680 Plympton Street**

The Board Members reviewed the resolutions and had no comments or changes.

**DISCUSSION ON REVISIONS OF FILING FEES AND ESCROW MODIFICATIONS**

The Board Members reviewed the revisions of filing fees and escrow modifications.

The Board Attorney said at the last meeting comments were offered with regard to the inclusion of a replenishment provision and a cost for generating property owner lists, which have been incorporated into the revised Schedule of Filing Fees and Escrow Deposits.

**NEW BUSINESS**

**20-05 - 367 Rose Place, LLC – 367 Rose Place – Block 1216 Lot 22  
Construct second floor/addition – front yard and rear yard setback**

The Chairman asked the board members if they have any questions or comments on the application.

Mr. Loonam questioned the wording on the front yard setback ordinance regarding 200 ft. The Board Attorney said the applicant has provided their front yard setback calculations and the applicant's attorney, will offer explanation on how they arrived at that number.

Mr. Adelung said the applicant is to provide numbers on homes 200' on either side of the property.

Ms. Batistic agreed.

The Board Attorney said with regard to the Schedule of Filing Fees and Escrow, the board will be making a recommendation and ultimately that has to be embodied in an ordinance. The Planning Board is likewise undertaking the same analysis. The two will present it to the borough's planner who will then draft the proposed ordinance that embodies both the zoning and planning fees and escrow. It will then be presented to the Mayor and Council. The action from the zoning board tonight will be a recommendation as opposed to anything that is binding upon the fee structure.

The Chairman clarified that whatever the board decides tonight in terms of Fees and Escrow is not binding until the Mayor and Council acts upon it. The board is making a recommendation to the Mayor and Council.

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

**New Milford Zoning Board of Adjustment  
Public Session  
December 08, 2020**

Chairman Weisbrot called the Public Session of the New Milford Zoning Board of Adjustment to order at 7:55pm and read the Open Public Meeting Act.

**ROLL CALL**

Mr. Adelung	Present
Mr. Birnbaum	Present
Mr. DeBari	Present
Ms. Hittel	Present
Mr. Levine	Present
Mr. Loonam	Present
Mr. LoPorto	Present
Mr. Rebsch	Present
Mr. Weisbrot -Acting Chairman	Present
Ms. Batistic -Engineer	Present
Mr. Sproviero - Attorney	Present

**PLEDGE OF ALLEGIANCE**

**OFFICIAL MINUTES OF THE WORK /PUBLIC SESSION – November 10, 2020**

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

**RESOLUTIONS TO BE MEMORIALIZED**

**20-02 Conclusion of the Appeal of the Determination of Zoning Officer-680 Plympton St**  
**Motion** made by Ms. Hittel, seconded by Mr. Levine to memorialize the resolution.

The motion passed on a roll call vote as follows:

For the motion: Members Hittel, Levine, Adelung, DeBari, Loonam, Rebsch, Weisbrot  
Approved 7-0

**20-06-Psarianos – 317 Webster Drive – Block 1602 Lot 2**

**Construction of Gazebo prior to permits – side and rear yard**

Motion made by Ms. Hittel, seconded by Ms. DeBari to memorialize the resolution.

The motion passed on a roll call vote as follows:

For the motion: Members Hittel, DeBari, Adelung, Levine, Loonam, Rebsch, Weisbrot  
Approved 7-0

## **REVISIONS OF FILING FEES AND ESCROW MODIFICATIONS**

The Chairman asked the board members if they have reviewed the schedule of fees and escrow modifications.

Ms. DeBari asked if the fees have been increased significantly from the original rates. The Board Attorney said yes because especially when dealing with applications that are of a commercial nature or a use application the ordinance provides for \$425.00 escrow which isn't even close to what the costs are going to be. The Board Attorney said they have tried to stagger the schedule so a typical residential application would be at one level and the more complex at a higher level. The attorney explained that past practices have been to collect an initial escrow and then possibly have to go back to the applicant to replenish their escrow. These revisions of fees and escrow are a legitimate good faith estimate for different types of applications and a built in replenishment provision. The applicant would be reimbursed for any excess funds.

The Chairman added that the board has been generous in recent years in not increasing our fees and escrow while other towns have increased their fees.

Mr. Adelung asked who approves the professional's invoices. Invoices are approved or not approved by the Chairman, said Chairman Weisbrot.

Motion made by Ms. Hittel, seconded by Mr. Rebsch to adopt the New Fee and Escrow schedule.

The motion passed on a roll call vote as follows:

For the motion: Members Hittel, Rebsch, Adelung, DeBari, Levine, Loonam, Weisbrot

Approved 7-0

## **SCHEDULE OF MEETINGS FOR 2021**

Motion made by Ms. Hittel, seconded by Mr. Levine to approve the 2021 schedule of meetings.

The motion passed on a roll call vote as follows:

For the motion: Members Hittel, Levine, Adelung, DeBari, Loonam, Rebsch, Weisbrot

Approved 7-0

## **NEW BUSINESS**

**20-05 - 367 Rose Place, LLC – 367 Rose Place – Block 1216 Lot 22  
Construct second floor/addition – front yard and rear yard setback**

Mr. David L. Rutherford appearing on behalf of his client 367 Rose Place, LLC was accompanied by Kenneth Orr who was a member of 367 Rose Place, LLC, Edwin Sherman, architect, and the builder Gregg Trabattoni. Mr. Rutherford also arranged for Ms. Arnold, court reporter, to attend the meeting for a record.

Mr. Rutherford said his client is seeking variances to renovate and expand a single-family home. The existing home is a cape cod style home and it has been expanded previously and dormered

in the rear. He said the applicant will be expanding and renovating but not demolishing to create a 2-story colonial.

Mr. Rutherford referred to Mr. Cahill's letter dated 10/1/2020 determining front and rear yard variances were required. He noted that the property has a very exceptional shape and the existing home is placed to the shallowest side of the property. His client proposed to maintain existing setbacks. Mr. Sherman has done an extensive front yard setback analysis and noted this is the only house on the north side of the Rose Place and two houses on the south side. They are basing their relief upon section 70C-1a from the land use law which relates to size and shape of the property and section 70C-1c which is based on the location of the improvement on the property. Mr. Rutherford said that this is a corner lot which often have issues for zoning boards because they are often not large enough to accommodate the required setbacks on each adjoining street. This has been exacerbated on this property because of the unusual shape of the property and location of the existing house.

Mr. Rutherford believes the facts and law supports variance relief and that any detriment is not substantial because they were maintaining existing setbacks and it would be an improvement to the immediate neighborhood and community.

Mr. Edwin Sherman, 26 Smithfield Road, Waldwick, NJ, was sworn in by the Board attorney.

The Board accepted the qualifications for Mr. Sherman as an expert in the field of architect.

Mr. Sherman said this property was located on the north side of Rose Place and at the corner of Knoll Road. The Board of Education was located to the east of the home. This was a pie shaped property and the narrowest point is at the corner of Knoll Road and flares out going to the Board of Education property. The architect said the property was 12,727.80 sf where 7500 sf was required. The Attorney stated the ordinance permits the applicant on a corner lot to choose which is the corner and which is the side. The applicant has chosen that Rose Place was the front of the property. The area to the north of the property is the rear yard and the area to the east is the side yard. The architect agreed.

The architect said the existing cape cod home has a dormer to the rear and there was an addition to the rear of the home with a single car garage. Mr. Rutherford asked if the addition was to the north east corner of the house. Mr. Sherman agreed and said they also had a deck off the back.

Mr. Rutherford marked exhibits

**Exhibit A-1** – photos -3 pages total of six photographs.

**Exhibit A-2** – plans 5 pages sheet A-2-A-6 dated 7/1/20 last revised 9/24/20

The Chairman asked who took the photos. Mr. Sherman said he took the photos in July 2020. Mr. Rutherford discussed the photographs.

Mr. Sherman discussed the setbacks on Exhibit A-2. The existing setback on Rose Place was 28.4' to the front facade, to Knoll Road 28.9', to the north west corner of the home is 9.6'. The attorney noted that the setbacks increase to the north.

Mr. Sherman stated that the applicant would like to bring the house up to date with an open floor concept with a two-car garage. The upstairs would have four bedrooms, two bathrooms and a laundry room. Mr. Rutherford clarified that the attic was storage only. The architect agreed and said there would be pull down stairs. Mr. Rutherford said the home would be expanded on the easterly end of the home to accommodate the master bedroom and garage. Mr. Sherman said they were building the house on the existing basement. The basement was remaining and the foundation for the existing addition to the rear was staying. There would be a new foundation for the garage and a portion off the garage for the family room. They were removing the existing front platform and stairs and making a larger platform. The architect stated that anything cross hatched on the plans was new. The architect explained the first-floor plan which would have a family room off the side of the kitchen and a two-car garage.

Mr. Rutherford clarified that bedrooms 2,3 and 4 are over the existing main portion of the home. The architect agreed. Mr. Rutherford said the master bedroom and bath were over the garage. Mr. Sherman agreed.

The Chairman asked if this was a renovation or a complete knock down. Mr. Rutherford said the plans filed with the board contains a label on the first page which describes what will stay and what will be removed.

Mr. Rutherford read from the plan:

1. Demo roof and second floor framing including floor joists.
2. Demo first floor down to studs and sub floor; foundation to remain except for areas to be removed for new addition.
3. Demo any existing brick and block on first floor; walls down to sub-floor; any and all 2x4 stud. Walls to remain up.
4. Remove existing wood deck (rear)
5. Remove existing concrete platforms and stairs.

Mr. Rutherford said a good portion of the foundation is remaining with any 2x4 stud walls to remain up. Their position is it is not a demo because substantial portions of the existing property were being reused. He stated that their maximum building coverage was substantially under what was permitted.

Mr. Rutherford said the ordinance states that the rear yard setback shall not be less than 25% of the depth of the lot and not less than 20'. He explained that they calculate that it is 9.6' at the corner but the setback increases at the rear property line to the north east at 22.5'.

Mr. Sherman said the main portion of the house will have a setback of 28.4' and the second floor will have a 2' cantilever towards the front with a setback of 26.4'. It would be 24.4' to the front open portico.

Mr. Rutherford marked **Exhibit 3** - 2 page front yard worksheet

The attorney and architect reviewed the average front yard setbacks.

The Chairman asked if he wanted to address the negative criteria. Mr. Rutherford said the setbacks already exist and felt the 9.60 was the greatest magnitude but already exists. He added that there is already a two story structure at that location.

The Chairman said this was not a negative criteria. Mr. Rutherford thought it was. The Board Attorney felt Mr. Rutherford was establishing the foundation. Mr. Rutherford said they were not creating any new non-conformities because they already exist. They were extending them vertically in the context of improving the home. He added that the property has a very unusual shape and the home was located at the shallowest part of the property. Mr. Rutherford said for those reasons they do not think there is any negative detriment or substantial impact.

Ms. Hittel asked if anything was being bumped out on the north side of the building. Mr. Sherman answered on the north east indicated on A-2 there was the garage and extension of the existing addition. Ms. Hittel asked how much was being added from the existing footprint to the line in question. The architect said on the site plan the hatched area was 14.5 at one end and 22.5 at the other end. Ms. Hittel asked if they were getting closer to the property line. Mr. Sherman answered no.

Mr. Rutherford referring to the site plan asked what the dashed line represented. Mr. Sherman said it was an existing deck being removed. Mr. Rutherford clarified that the new rear wall of the home was setback further than what existed now.

Mr. Gregg Trabattoni, 556 Franklin Avenue, Franklin Lakes, contractor, was sworn in by the board attorney.

Mr. Trabattoni said the reasons why walls were coming down was because part of the existing home has brick veneer on the outside which was attached to cinder block on the inside of the house. He explained there would be no room for electrical outlets. The contractor said from a building standpoint trying to rework existing windows, electric and insulation would not be the proper way to build it. The walls with the cinder block and brick will come down. They will be rebuilding from the first-floor deck up. Mr. Rutherford asked where were those walls. Mr. Trabattoni said on Knoll Rd, Rose, and a portion at the back. Mr. Rutherford clarified that the portions of the house that were framed with wood with 2x4 will remain. The builder answered yes. Mr. Rutherford also clarified that the existing foundation, that does not support the addition, will also remain. The builder agreed. Mr. Rutherford asked if it was the applicant's intention to use as much of the existing house as possible. Mr. Trabattoni said yes.

The Board Attorney clarified that inclusive of the garage where it currently exists, they were not expanding the footprint of the current layout of the premises located on the property. He answered that the existing full basement was remaining. He said the garage and family room to the back was being added on. The Board Attorney said there was an existing garage. He asked if the garage being built was any closer, further or the same to the adjoining property. The builder said they were no closer to the property line. The architect said the new foundation on A-3 is going to be in line with the existing family room to the back of the house.

Ms. Helen Schmelkin, 471 Knoll Road, was sworn in by the board attorney. The resident asked if the rear of the existing house would go further to Knoll Road. The architect said no.

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

Mr. Kenny Orr, 106 Twinberry Ct, Paramus was sworn in by the board attorney. Mr. Orr said he previously lived in New Milford and had been waiting for an opportunity to build in New Milford. Mr. Orr said he has hired a great team, they build good homes and will be sticking to the rules.

Frankie Gaston, 377 Lincoln Place, was sworn in by the board attorney. The resident wishes the applicant good luck but had issues regarding drainage calculations, seepage pit and soil movement approval. Ms. Gaston was concerned that drainage could affect her property. Mr. Rutherford said they would comply with the storm water management ordinance. He assured her that this property will not affect drainage on her property.

Mr. Loonam asked if there were any trees being removed. Mr. Orr said they applied for a tree removal permit and they removed one dead tree in the rear, some small ancillary trees and trimmed the one closest to the school that had been knocked down in a storm. He noted that everything else will stay. He said there were some issues with sidewalk slabs lifting up and he would contact DPW to see if the roots could be grinded and the trees hopefully could remain.

Ms. Gaston said she wants to make sure her property is secure. She felt there was a drainage problem because the school field next to her gets deep puddles. The resident was concerned that she could be flooded or get water in her basement.

Mr. Rutherford said this was a single-family home and the applicant will be required to manage the storm water runoff generated by the roof and leaders. There will be a seepage pit required as per the engineer's letter dated 12/3/2020. He was confident to say they will be able to design this project to fully comply with the ordinance and to eliminate any adverse and storm water issues on any adjoining property. Mr. Rutherford said they were responsible for managing the increase in storm water runoff as generated by their development. Ms. Gaston asked if that also includes seepage pit and soil movement. Mr. Rutherford said in the denial letter, Mr. Cahill referred to drainage calculation, seepage pit and that the project may also require a soil movement permit. He felt if the board approves the application, there would be conditions of approval.

Mr. Rutherford said this was a single-family home and his client was only responsible for his property and his development. He is not responsible for general drainage problems in the neighborhood.

Ms. Batistic said the only requirement in her review letter was that they provide a seepage pit design calculation to address the additional runoff so there is no adverse impact to the neighboring properties. Ms. Batistic said this was an existing structure and it does not appear that



a soil movement permit will be required since the moving of the soil for the purpose of the foundation is exempted from the soil movement permit and they were not raising or lowering the grade.

Ms. Schmelkin said there was an existing fence that divides their rear property with her side property and asked if he would be replacing the fence. Mr. Orr said there were no plans to put up a new fence. The cyclone fence on the side belongs to the school. He spoke of some repairs of part of the fencing that he would try to repair.

Ms. DeBari asked Mr. Orr if he was planning to live in the home. Mr. Orr answered no. Ms. DeBari asked if he had a prospective buyer. Mr. Orr said he was building the home and putting it up for sale.

Mr. Loonam said there was a storm that took out a lot of trees on the school property and there were some flooding issues below this property. Mr. Loonam wanted to know what was the existing elevation. He pointed out this was a two-story house at a height of 29' . Mr. Loonam was concerned if there were issues and if they start building up the property it could trigger a variance for height.

Ms. Batistic said there was nothing on the plans that shows the grade elevation of the property or the first floor. Ms. Batistic assumed that the first floor will remain at the same elevation. The Chairman does not want to assume anything.

Mr. Loonam said if this variance was granted, he would strongly recommend that the building department be aware of the current elevation before anything is done. Mr. Rutherford agreed.

Mr. Raymond Gaston, 377 Lincoln Place, was sworn in by the board attorney

Mr. Gaston said one of the trees fell down on his property because it was a swamp area. He also had a question on the elevation because the house is elevated from his house.

Mr. Orr asked Mr. Gaston where was Lincoln Place in relation to his property. Mr. Gaston said the south east of his property was on the corner of Monroe. Mr. Orr was questioning what property the tree was on. Mr. Gaston said it was on school property.

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

Mr. Rutherford said this was an exceptionally shaped property coupled with the location of the existing house and it was a corner lot which results in exceptional hardship. The rear yard setback was not changing and they were just going up. The second floor portion of the rear was setback which also mitigates the impact of the rear yard setback. The proposed front yard setbacks were either consistent with what exists or what was consistent with what exists in the neighborhood. They do not think they are interfering in any way with the established streetscape and maintaining a distance setback. Mr. Rutherford said this was a single-family home and essentially a flat lot. He did think it presented any drainage issues but was aware of the ordinance

and was confident they will meet all requirements. They were not imposing any hardship on any adjoining properties. Mr. Rutherford said they do not seek a height variance or any significant changes to grade. If there are changes to grade, they have no issue with establishing that with the building department at the beginning of the process. He added they do not anticipate any or a height variance.

Mr. Rutherford said this was a straight forward application that was trying to work within the confines of what exists without exacerbating existing non-conformities. He felt it would be a nice improvement and it would be advantageous to everyone. Mr. Rutherford asked the board to approve the application with the conditions discussed.

The Board Attorney said if there is a motion to approve the application, the conditions would be as follows:

1. Subject to compliance with all requirements set forth in the Engineer's review letter dated December 3, 2020.
2. Subject to compliance with all soil movement requirements.
3. In the event that soil movement occurs, the building height must be verified by the zoning department.
4. Elevation must be established before the project begins.

Mr. Loonam said a lot of trees came down in the area in the storm and felt that the soil was not in good shape. He was concerned when construction begins, the applicant might run into unforeseen issue in terms of the water table. He wanted to make sure that the applicant doesn't have to add four feet to the elevation just to get it buildable.

The Chairman had concerns because he didn't know in the beginning if this was a knock down or a renovation. If he was not sure what the application was, the chairman said he is voting against it. He wasn't happy that there was so much conversation with the professionals to figure out what this application was. The Chairman said he would probably vote no but not on the merit but simply on the procedural. The Chairman's view was that the applicant must make themselves clear.

Mr. Rutherford said if the application was not clear it should have been. He hoped that they established a decent record and tried to fill in the blanks. He apologized to the board and realized there were some issues they had to straighten up. He hoped his presentation was enough to convince the board that this merits approval.

The Chairman told Mr. Rutherford that he did a great job and more than adequately represented his client.

The Chairman said the board has an application to either grant the variance or deny the application.

Motion made by Mr. Adelung to grant the application with the 4 conditions, seconded by Ms. Hittel.

The motion passed on a roll call vote as follows:

For the motion: Members Adelung, Hittel, DeBari, Loonam, Rebsch, Birnbaum.

Against the motion: Chairman Weisbrot

Vote 6-1

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

Respectfully submitted,  
Maureen Oppelaar