

Approved  
4/13/21

**New Milford Zoning Board of  
Work Session  
03 09 21  
Virtual meeting (zoom)**

Chairman Weisbrot called the Work Session of the New Milford Zoning Board of Adjustment to order at 7:30 pm and read the Open Public Meeting Act.

**ROLL CALL**

Mr. Adelung	Present
Mr. Birnbaum	Present
Ms. DeBari	Absent
Mr. Hicks	Present
Mr. Levine	Absent
Mr. Loonam - Vice Chairman	Present
Mr. LoPorto	Present
Mr. Rebsch	Present
Mr. Weisbrot- Chairman	Present
Mr. Sproviero - Attorney	Present
Ms. Batistic- Engineer	Present

**REVIEW MINUTES OF THE WORK/PUBLIC SESSION – February 09, 2021**

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

**OLD BUSINESS**

**21-01 – SWOPE – 729 Stockton Street – Block 605 Lot 24**

Addition – building coverage, front yard variances

The Board member reviewed the application and had no comments for the work session.

**NEW BUSINESS**

**21 02 – WALLACH – 358 SHERIDAN COURT – BLOCK 203 LOT 7**

INGROUND POOL – MAXIMUM BUILDING AND IMPERVIOUS COVERAGE

The Board Members reviewed the application and had no comments for the work session.

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

**New Milford Zoning Board of Adjustment  
Public Session  
March 9, 2021**

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
Ms. DeBari	Absent
Mr. Hicks	Present
Mr. Levine	Absent
Mr. Loonam -Vice Chairman	Present
Mr. LoPorto	Present
Mr. Rebsch	Present
Mr. Weisbrot - Chairman	Present
Ms. Batistic -Engineer	Present
Mr. Sproviero - Attorney	Present

**PLEDGE OF ALLEGIANCE**

**OFFICIAL MINUTES OF THE PUBLIC SESSION- February 9, 2021**

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

**OLD BUSINESS**

**21-01 – SWOPE – 729 Stockton Street – Block 605 Lot 24  
Addition – building coverage, front yard variances**

The Board member reviewed the application and had no comments.

Mary Wynn Seiter, Law firm Buckalew Frizzel & Crevina,, was there on behalf of George and Anastasia Swope, owners of 729 Stockton Street. Also present was her colleague Aleksandra Tasic as well as the Swope’s architect, Douglas Battersby.

The Board Attorney reminded the professionals and George and Anastasia Swope that they were still under oath.

Ms. Tasic briefly reviewed the application and asked if anyone had any questions. No one wished to ask any questions.

Ms. Tasic stated that Mr. Battersby, architect, created a chart providing front yard setbacks based upon calculations provided by Lakeland. Mr. Battersby stated that Lakeland is a professional land surveyor who measured the setbacks of the homes. The architect provided a chart of setbacks of homes within 200' measured parallel to the direction of the street. The list incorporates 9 lots. The sum of the front yards is 172.1' and the average front yard setback is 19.12 ft. Mr. Battersby said at the last meeting they noted that one of the houses, three doors to the right, had a similar addition as to what they were proposing with a front yard setback of 15 ft. The applicant was proposing a front yard setback of 15.66 ft. Mr. Battersby mentioned that there were seven similar houses on this street that seem to be constructed at the same time with similar lots. Although this was not an official zoning calculation, the architect stated that their front yard setbacks averaged 17.97 ft. which showed the setback of the seven homes that were nearly identical on the block. The official front yard setback was 19.12 ft. There was a corner lot that is not included in this calculation because it more than 200' from the applicant.

Mr. Loonam asked the architect what the applicant's setback would become. Mr. Battersby answered 15.66 ft. Mr. Loonam asked if they granted this variance at 15.66 ft, what would the average go down to from 19.12 ft. Mr. Battersby calculated 18.84 ft.

Chairman Weisbrot asked how the calculations were performed. Mr. Battersby answered it was done by a professional land surveyor and he created the chart from their survey. Ms. Seiter said the survey shows the measurements for each lot.

Mr. Battersby said the average front yard setback was 19.12 ft but felt in terms of defining a streetscape, he felt the 17.97 ft was a more appropriate number if looking at a visual appearance of the street.

Ms. Tasic also noted that the house three houses down from the applicant had a similar home with a front yard setback of 15'. Ms. Tasic reiterated that because of the shape of the lot and the preexisting condition of the lot, there was no where else they could build. The proposed improvements would create a nice curb appeal and would not have a negative impact on the neighborhood. Ms. Tasic requested the board to take this into consideration and grant the variances as requested.

Chairman Weisbrot asked why was there a need for a cathedral ceiling in the rear addition. Mr. Swope said the length of the organ pipes were over 12' long so the ceiling height needs to be able to accommodate it. The Chairman asked how that impacted neighbors. Ms. Swope said they have had the room for 20 years and they never received noise complaints.

Mr. Sproviero asked the zoning board engineer if she had an opportunity to review the front yard setbacks. Ms. Batistic responded yes and agreed with the calculus shown.

Mr. Rebsch said on the survey there were parallel lines shown by the front steps and asked if they were building to that line by the steps. Mr. Battersby thought the line was the railroad tie to the garden. Ms. Seiter said the two lines have nothing to do with anything that they were measuring. Ms. Batistic said this was an existing situation and not what they were proposing.

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

No one wished to speak.

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

Mr. Hicks said the required impervious coverage on this property is 40%, the existing 49.4% and the proposed 51.6%. The engineering report said since the additional impervious area is less than 300 sf, the applicant is not required to meet the zero increase in stormwater runoff. Mr. Hicks said they were looking for 10% more than what is required and questioned that there was still no requirement for the stormwater ordinance. Ms. Batistic clarified that the borough ordinance specifies that if there is an additional 300 sf added to the property, regardless of the size of the property, they would need to provide a seepage pit or address the additional runoff. Ms. Batistic said this applicant is below the threshold. Mr. Hicks said less than 300 sf was being added now, but it has been increased before with an addition. Ms. Batistic said it was increased prior to this storm water ordinance adopted in 2018.

Mr. Weisbrot felt Mr. Hicks was making a good point but the board was always balancing preexisting non-conformities with the practical realities of the current application. Mr. Weisbrot said there were two views on this. If the applicant already got the benefit of a preexisting non-conformity then that should be taken into account with future expansions. The counter opinion was that homeowners were not necessarily at fault when it comes to the preexisting non-conformities and might have a new need or new hardship which may or may not be held against them. Mr. Weisbrot was not taking an opinion on this but said it was not always black and white.

Mr. Loonam thought Mr. Hicks point was valid and that is why he had asked about the change in the current setback for the entire street. Mr. Loonam disagreed that there was no negative impact. He felt the negative impact was that it adjusts the setback for everyone. Mr. Loonam said for the record it was a negative impact because it was working in opposition to what the zoning laws are and with what the Master Plan sets. Mr. Loonam's opinion was, in this case, this was a very small narrow lot and didn't have the traditional square footage that houses in town had. He thought the applicant was not asking for anything exorbitant. He agreed it was a significant increase but did not see what else they could do and did not have any issue with this application. The Chairman agreed.

Mr. Sproviero said there were conditions:

- Compliance with all the requirements set forth in the Board's engineer review letter dated 2/4/21.
- Subject to obtaining all required permits and approvals
- The representation of the homeowner that the front porch would not at any time in the future be enclosed.

Mr. Sproviero said there were three variances being requested that were not triggered by preexisting non-conforming elements. There were variances requested for Maximum building, impervious coverage and the front yard setback. Ms. Batistic agreed they were the new variances and then there were preexisting non-conforming variances.

Mr. Loonam felt the applicant and their professionals did a good job in presenting the application and getting the board all the calculations requested by the board. He did not feel it was a case of gross over building and felt it was a case of limited land to build on. The front yard setback was not the largest on the street and did not drastically change the average on the street. Mr. Loonam did not think it was changing the look of the street.

Motion to grant the variances for the front yard setback, building and impervious variances subject to the conditions were made by Mr. Loonam, seconded by Mr. Birnbaum.

For the motion: Members Loonam, Birnbaum, LoPorto, Weisbrot

Against the motion: Members Rebsch, Hicks

Recused: Member Adelung

## **NEW BUSINESS**

### **21 02 – WALLACH – 358 SHERIDAN COURT – BLOCK 203 LOT 7 INGROUND POOL – MAXIMUM BUILDING AND IMPERVIOUS COVERAGE**

The Board Attorney stated there were two variances implicated by way of the application.

The Chairman noted that the board engineer submitted a review letter dated 3/5/21 and asked if all members reviewed the letter. All members reviewed the letter.

The Board Attorney swore in Mr. and Mrs. Wallach, homeowners, and Mr. Egarian, engineer.

Ms. Wallach said they have lived at the house for ten years with three children. Mr. Wallach said the main purpose of the pool was due to the pandemic that created mental issues for everyone. They felt the best thing for them was to install a pool.

The Board Attorney swore in Mr. Egarian, engineer.

The Board Members accepted the qualifications of Mr. Egarian, 271 Rt 46, Fairfield NJ as an expert in the field of engineering.

Mr. Egarian stated the property was located in the R-A zone and discussed the site plan. The lot area was 11,736 sf consisting of a primary residence, shed, walkways, patio and an existing basketball court. Mr. Egarian noted that the existing basketball court will be removed as part of this project.

Mr. Egarian explained that the existing basketball court was excluded on the table of coverages on the plan. The engineer said for the record the basketball court is 898 sf. The topography of the property slopes east to west and a mild slope in the rear.

The applicant is proposing a 18x36 inground pool with 653 sf of patio. They have decided on patio area on two sides of the pool in an attempt to keep the coverage at a minimum. The patio

was designed for enough room for table, chairs and circulation around the pool. The pool and patio meet the setback requirements for the side and rear yard setbacks. They are proposing a 500-gallon seepage pit designed in accordance to borough standards. A series of yard drains placed around the perimeter of the pool will be installed. As a result of the yard drains and seepage pit, there will be no increase in stormwater runoff that will negatively impact neighboring properties. The proposed grade will tie into the existing grade without any significant grade change.

Mr. Egarian said when you factor in the 898 sf basketball court, there is a 615 sf increase in impervious coverage as a result of the swimming pool project. The engineer explained when you factor in the swimming pool which can hold water and the storm water drainage system, they have a significant amount of storm water storage on the property as a result of this project. The engineer said the benefits regarding the storm water, outweigh any detriments.

Chairman Weisbrot has questions regarding the basketball court calculations submitted and asked if it impacted the numbers in the application. Mr. Egarian answered only the existing calculations.

He stated that the proposed values of maximum impervious coverage of 45.1% remains the same because the basketball court was excluded in that calculation. The Board Attorney clarified that the basketball court was not included in the 5,291 sf number in the chart. Mr. Egarian agreed.

Mr. Egarian reviewed the Zoning Board Engineer's letter with the board members. He put on the record that the basketball court will be removed. He clarified the impervious coverage proposed is 45.1% and the building coverage is an existing non-conforming situation.

The letter asked for the plan to indicate where the existing seepage pit would be relocated. The engineer said they would field locate the seepage tank before construction and if it needs to be relocated they will put it in a series with the proposed tank.

Ms. Batistic's said the seepage pit was more than adequate to handle the additional runoff if the runoff gets to the seepage pit. Ms. Batistic discussed elevations of the property and asked how will the runoff get to the catch basin.

Mr. Egarian said he could amend the grading plan to spot the catch basins at a lower elevation so it would be pitched to the basin. They could also put in a separate system in with a perimeter drain. Ms. Batistic felt that would be more appropriate. Mr. Egarian said they would amend that in lieu of the catch basin. Ms. Batistic noted that the area had a high water table so after your percolation and soil testing, they might have to alter the design after review with the borough engineer. Mr. Egarian understood.

Mr. Adelung clarified that the basketball court was being removed. Mr. Adelung asked how much square footage of patio is around the pool. Mr. Egarian answered 653 sf was patio only. Mr. Adelung thought if they proposed a smaller pool and less patio, the impervious variance could be eliminated or reduced. The engineer said typically pools were 20x40. They designed the patio to the best of their ability to fit their needs for entertainment area and places to sit.

Mr. Wallach said if coverage wasn't an issue, they were going to have the pool more centered with patio around three sides of pool. Instead they reduced the size of the pool and tucked it in the end with two sides of patio for both entertainment and safety.

Mr. Adelung asked if the proposed 18x36 included the spa. Mr. Egarian answered yes. Mr. Adelung asked if they designed a plan that would fit within the requirements. Mr. Egarian said they started larger and kept reducing down.

Mr. Birnbaum asked how much were they going up in area from the basketball court to the proposed pool. Mr. Egarian calculated it as a net increase of 615 sf if you factor the basketball court into the existing coverage.

The Chairman had two concerns. One was when information submitted is not correct. The Chairman also felt there was a lot of concrete.

Motion to open to the public was made by Mr. Adelung, seconded by Mr. Hicks and carried by all.

No one wished to speak.

Motion to close was made by Mr. Birnbaum, seconded by Mr. LoPorto and carried by all.

Mr. Rebsch felt the pool area was too large.

Mr. LoPorto said the lot was an irregular shape but felt there might be ways to shrink this down but did not feel strongly one way or the other.

Mr. Hicks commented that the applicant already had a concrete patio on the plan for entertainment so he thought it might be a little big.

Mr. Adelung agreed that everyone wants a pool and didn't agree that an average pool is 20x40. He felt there was still an opportunity to install a pool and come in underneath the variance. Mr. Adelung felt a pool was a "want" not a "need". He felt the pool could fit on the property without a variance.

Mr. Loonam asked what was the total impervious coverage for everything except the pool itself. Mr. Egarian said if they take away the water surface area of the pool, they would be left with 137 sf of coping which would get them to 39.3%. Mr. Loonam said if they were at 50% without the pool, he would look at it different. He felt building a pool is for family and promotes what they want in New Milford. Mr. Loonam said the fact that they were not increasing the building coverage and removing the basketball court, shows they were trying to maximize the use of their property within reason. Mr. Loonam had no problems with the proposed application.

The Chairman agreed that it was a wholesome family activity and felt in these times it was important to have the opportunity to have family outside. To play in a pool was more than just a leisure item but also good for mental and physical health. The Chairman also thought maybe there could be less concrete to reduce the coverage. The Chairman said maybe members have expressed their opinions that it should be smaller. He stated the applicant can and has a right for

a vote tonight or the applicant can request an adjournment to April 13<sup>th</sup> with an alternate plan. The Chairman told the applicant they could take a recess so they could consult with each other.

Mr. Adelung asked if there were other towns that do not count pools as impervious coverage. Ms. Batistic and board attorney did not know of any. Mr. Egarian said some some towns don't count water surface area of a pool as impervious coverage. Ms. Batistic explained that there were two different impervious coverages. There is an impervious coverage when dealing with the drainage and stormwater management that means the water can seep through and there is also improved lot coverage. Ms. Batistic explained if a pool does not count as impervious coverage than the whole back yard could be covered with a huge pool. This means that a homeowner has building coverage but zero improved lot coverage. For this purpose of the zoning ordinance, the impervious lot coverage has nothing to do with whether the water seeps through but it is an improvement of the lot. Ms. Batistic clarified that the 40% is what was being improved on the lot.

Mr. Adelung said everyone wants large pools and a lot of concrete. He was all for bigger pools. He asked if the board needed to discuss pools so if they were to set the precedence, other homeowners were given the same opportunity.

Mr. Rebsch said there was a concern with high water tables.

Mr. Birnbaum asked if there was any existing water retention conditions or flooding issues on the property with rain. The applicants said no.

Mr. Loonam said part of having a pool is making sure mud isn't tracked into the house or into the pool. He felt there was enough area for a couple of adults sitting there with chairs and watching children in the pool. Mr. Loonam felt, if there was a high water table and less area around the pool, it would create more mud. Mr. Loonam felt it was designed well and flows well from the patio to the decking to the pool. He did not understand how an open area of a pool counts against the impervious coverage because it catches water and doesn't put it on the property. Mr. Loonam noted that years ago the maximum impervious coverage was 60% which has been dropped to 40%.

The Chairman agreed with Mr. Loonam.

The Board Attorney said there was one new variance implicated with this application which was impervious coverage. There were two preexisting non-conforming conditions that deal with maximum building coverage and maximum side yard setback which are not exacerbated by the application.

The board attorney said conditions would be:

- Conformance with the requirements set forth in the board engineer's review letter dated 3/5/21.
- Any approval be subject to the issuance of all required approvals and permits.
- The basketball court be removed.
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The Board Attorney told the applicants that they have heard the comments and potential concerns of the board. They had two options: proceed to a vote or take a moment and speak with your professional to see if you want to revise anything and come back to the April meeting.

Mr. Adelung asked about the board setting precedence. The Board Attorney said these are non-precedential proceedings. What the board does in one does not bind anyone in the future. Every application is looked at on the merit of that application. The law says a determination of a land use board is non-precedential.

Mr. Wallach thanked the board for their time and said they would like to take into account all the comments from the board and will return to the April meeting. Mrs. Wallach thought they might be able to reduce the concrete.

The Board Attorney said they were carrying their application to April 13<sup>th</sup> and they would not need to renote.

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

Respectfully submitted,  
Maureen Oppelaar