

Approved  
5/11/21

**New Milford Zoning Board of  
Work Session  
04 13 21  
Virtual meeting (zoom)**

Vice Chairman Loonam called the Work Session of the New Milford Zoning Board of Adjustment to order at 7:47 pm and read the Open Public Meeting Act.

**ROLL CALL**

Mr. Adelong	Present (8:00)
Mr. Birnbaum	Present
Ms. DeBari	Present
Mr. Hicks	Absent
Mr. Levine	Present
Mr. Loonam - Vice Chairman	Present
Mr. LoPorto	Present
Mr. Rebsch	Present
Mr. Weisbrot- Chairman	Present (8:30)
Mr. Sproviero - Attorney	Present
Ms. Batistic- Engineer	Present

**REVIEW MINUTES OF THE WORK/PUBLIC SESSION – March 9, 2021**

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

**RESOLUTION**

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

Addition – building coverage, front yard variances

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

**OLD BUSINESS**

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

**INGROUND POOL – MAXIMUM BUILDING AND IMPERVIOUS COVERAGE**

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

**NEW BUSINESS**

**APPEAL OF ZONING OFFICER’S DETERMINAT**

**265 MAIN STREET**

The Board Attorney stated that the Board was not making a determination on the application just to what board can exercise jurisdiction over the site plan and ancillary bulk variance application being made by the applicant. The zoning official directed the application be filed before the zoning board of adjustment. The applicant takes the position that the zoning board is not

empowered to exercise its ancillary jurisdiction when the primary relief sought is site plan approval with associated bulk variances.

There was correspondence from Lori Barton where she inquired from the zoning officer if a single-family home could have two kitchens, said the Board Attorney. According to Ms. Barton, the zoning official said a resident could not have two kitchens. The letter came to the zoning board of adjustment but the borough attorney will respond to the letter. The zoning board will take no action to this letter.

The Board Attorney explained to the Board that on November 18<sup>th</sup>, the Mayor and Council moved to amend the hourly fees for municipal work to all attorneys representing the borough. The standard rate has been \$125.00 per hour which has been amended to \$140.00 per hour. The board attorney will present a resolution at the May meeting with a revised contract that reflects the changes directed by the Mayor and Council.

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

**New Milford Zoning Board of Adjustment  
Public Session  
April 13, 2021**

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

**ROLL CALL**

Mr. Adelung	Present
Mr. Birnbaum	Present
Ms. DeBari	Present
Mr. Hicks	Absent
Mr. Levine	Present
Mr. Loonam -Vice Chairman	Present
Mr. LoPorto	Present
Mr. Rebsch	Present
Mr. Weisbrot - Chairman	Present (8:30)
Ms. Batistic -Engineer	Present
Mr. Sproviero - Attorney	Present

Mr. Weisbrot was delayed and Vice Chairman Loonam took over part of the meeting.

**PLEDGE OF ALLEGIANCE**

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

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

**RESOLUTION TO BE MEMORIALIZED**

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

**Addition – building coverage, front yard variances**

**Motion** made by Mr. Rebsch, seconded by Mr. Birnbaum to memorialize the resolution.

The motion passed on a roll call as follows:

For the motion: Members Rebsch, Birnbaum, Loonam, LoPorto.

**OLD BUSINESS**

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

**INGROUND POOL – MAXIMUM BUILDING AND IMPERVIOUS COVERAGE**

Jason Levine and Eileen DeBari put on the record that they listened to the recording of the March 9, 2021 meeting.

The Board Attorney stated that the Board at the March meeting had expressed concerns regarding the amount of impervious coverage being sought and upon consultation between the homeowner and applicant's professional, they requested the board to carry to the April meeting

to reassess what they initially proposed in an effort to reduce the impervious coverage. The applicant has a revised plan.

The Board Attorney reminded Mr. and Mrs. Wallach and Mr. Egarian they still remained under oath for this proceeding.

Mr. Egarian discussed the changes on the plans and stated that they amended the pool patio design by removing the existing raised concrete patio by adding a set of steps at the rear door down to a single level patio. They reduced the pool patio from 45.1% to 44.5% which was a reduction of approximately 70 sf. They eliminated the catch basins around the pool and replaced it with a perimeter drain around the outside of the pool patio to catch all the runoff associated with the pool.

The engineer stated that previously the total pool patio and raised patio was 1,013 sf. They eliminated the raised patio resulting in 943 sf. sf which was a reduction of 70 sf. from the original plan.

Mr. Egarian said for the record the pool size is 18 x 36.

Mr. Wallach said they decided the best way was to remove the raised patio and have a one level patio.

Vice Chair Loonam asked the board members if they had any questions.

Mr. Adelung and Mr. Egarian discussed other towns where pools do not count towards coverage.

Mr. Rebsch questioned why there were no dimensions on the plans. Mr. Loonam asked Mr. Egarian if he could give the board the dimension for the record. Mr. Egarian discussed with the board the dimensions. Mr. Loonam asked if the 18x36 size included the spa area. Mr. Egarian said it included the pool, spa and coping.

Mr. Loonam asked Ms. Batistic if she had any issues or concerns with the revised plan. Ms. Batistic said her only concern was the catch basin not being able to handle all the runoff from the patio. Ms. Batistic said they addressed her concern by proposing the perimeter drains which will assure the runoff will end up in the seepage pit.

The Board Attorney asked Ms. Batistic if she agreed with the new calculations that they were going from 45.1% to 44.5%. Ms. Batistic agreed.

Ms. DeBari asked if there was a fence around the perimeter of the pool. Mr. Egarian said there was an existing fence that surrounds the rear yard. Mr. Loonam clarified that the existing fence will comply with pool codes. Mr. Egarian answered yes.

The Board Engineer asked if both gates were self-closing and self-latching. Mr. Egarian agreed.

Vice Chair Loonam opened to the public for any comments on this application.

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

No one wished to speak.

Motion to close to the public was made by Mr. Adelung, seconded by Mr. Levine and carried by all.

Mr. Loonam asked the members if they had any comments or questions.

Ms. DeBari said the applicant did try to scale back and she didn't have any issues.

Mr. Rebsch said they made improvements and had no problems with the application now.

Mr. Adelung stated this pool exceeds the 40% impervious but felt the pool looks good. His question was if the ordinance should be changed allowing homeowners to have larger pools by not counting pools as impervious coverage.

Ms. Batistic said regarding drainage she typically she would not count pool area towards the seepage volume. When it has to do with the improved appearance of the lot, Ms. Batistic said if the board allows the pool to be a percentage of the improved lot, then there could be a house surrounded by a pool without a piece of grass on it. Ms. Batistic said regarding drainage she was ok with not counting pools toward impervious but as a part of the improved lot she would count it. The Borough ordinance specifically counts pools towards impervious area.

Mr. Adelung felt most people would like a larger pool but don't feel they could get a variance because a pool is a "want" not a "need".

If the board does not feel that the area should be counted, then it could be addressed in more detail at the end of the year with our end of year report to the Mayor and Council.

Mr. Levine felt if they leave the ordinance as is, the board would have the ability to shift when needed. Mr. Levine noted that this applicant came back with a revision. He felt if a resident really wants a larger pool, then they present it to the board.

Mr. Loonam asked the Board Attorney since Mr. Weisbrot came late to the meeting, does he need to be brought up to speed with any testimony. Mr. Sproviero preferred that he recuse himself because he was not present for all testimony but that was Mr. Weisbrot's determination.

Mr. Weisbrot said he would recuse himself from a vote on this application merely to air on the side of complete transparency.

.RECESS 8:47 – for client/professional to confer with each other.

Mr. Egarian said from the initial application they took the board's comments and amended their site plan to reduce the impervious coverage from 45.5% to 45.1% reducing the overall impervious number and removed the catch basin and installing perimeter drains.

Mr. Loonam noted the variances being sought were:

Maximum building coverage: Existing 20.8% - existing non-conforming

Impervious Coverage: Required 40% -Proposed 44.5%

The Board Attorney stated if there was a vote in favor of this application, there would be conditions if the board granted the variances:

Compliance with all the requirements set forth in the Board Engineer's review letter dated 3/5/2021.

Plans to be amended to reflect the actual dimensions of the impervious area as verbally set forth by the applicant's engineer.

**Motion** made by Mr. LoPorto with conditions discussed to approve the inground pool, seconded by Ms. DeBari.

The motion passed on a roll call as follows:

For the motion: Members LoPorto, DeBari, Adelung, Levine, Loonam, Rebsch, Birnbaum

Recused: Chairman Weisbrot

Approved 7-0

## **NEW BUSINESS**

### **APPEAL OF ZONING OFFICER'S DETERMINATION**

#### **265 MAIN STREET**

Chairman Weisbrot stated this was an appeal of the zoning officer's determination with respect to the property located at 264 Main Street Block 1307 lot 8. The zoning officer determined that it requires a variance from the zoning board and counsel for the applicant has challenged that determination by claiming it should be in front of the planning board.

The Board Attorney said it is undisputed that the business zone permitted uses includes dwellings. In section 30-25.1(a)(11) which provides that lots less than one acre in area, dwellings shall only be permitted above the first floor, and shall only be permitted in a building containing one or more permitted nonresidential uses on the first floor. Permitted dwelling types are limited to studio, one bedroom and two-bedroom units except that three-bedroom units shall only be permitted if required for compliance with state affordable housing regulations.

Benjamin Wine from Prime & Tuvel representing the applicant said they submitted an application to the zoning officer to get a formal zoning determination before proceeding with the site plan application. Mr. Wine said a letter was received on March 4<sup>th</sup>, that the application was denied and indicated that a use variance was required for the proposed expansion of the existing structure which would maintain office and storage space on the first floor and residential on the second floor. Mr. Wine's position was that the use was permitted and was here to seek solely to get a determination favorably that this application should appear before the planning board.

The Board Attorney swore in Mr. George Kevo. owner.

Mr. Kevo stated they own all three properties and have been operating a construction business for the last 20 years and that business has been phasing down. They would like to convert a smaller warehouse space with two office spaces and put in an elevator with three one bedroom apartments on the second floor. Mr. Wine asked what is present in the current building. Mr. Kevo said on the first floor there is an office space with a bathroom and the rest of the first floor is storage with a garage door. The second floor is storage space.

Chairman Weisbrot said there was no signage indicating that there is a business. Mr. Wine said that is correct but clarified that it is used as an office not a retail business. Chairman Weisbrot asked if this information presented was in the context of the initial application. Mr. Wine was not sure.

The Board Attorney said the information had the proposed utilization but did not see anything that addressed the current utilization.

Mr. Wine said on the zoning worksheet there was not a section indicated what was presently on the property. He said he followed the worksheet and supplied the information.

Chairman Weisbrot asked if the current use impacts what variances, approvals and board it would be before. Mr. Wine thought it was on the proposed application.

Mr. Cahill was sworn in by the Board Attorney.

Mr. Cahill said listed on the plan, was a two-story existing building #269 for a first-floor office and one apartment with a second-floor apartment. Mr. Cahill said that would be an existing non-conforming use because an apartment on the first floor which is a violation of the business zone. Mr. Cahill said because of that and other bulk variances, he sent it to the zoning board. He explained if it did not have that first-floor apartment, he would have sent it to the planning board.

Mr. Wine said he could clear this up because the plan with the existing first floor apartment was on the adjacent property not on the subject property. He understood the confusion and stated there are three lots listed but the proposed application was for lot 8 which is noted for a first-floor office and proposed second floor three apartments.

The Chairman questioned Mr. Wine that the existing use would impact what board it would be at where previously he said it did not. The Chairman clarified that Mr. Cahill would have been correct if there was an existing non-conformity in terms of the first-floor use as a residence. Mr. Wine believed that would be correct.

The Chairman asked if the information with respect to its current use was provided in the initial application. Mr. Wine said on the plans it was indicated but on the zoning worksheet it was not since there was no place for it.

The Chairman felt based on the testimony but not based on the information provided in the initial application that this was properly before the planning board.

The Board Attorney said the land use law provides that the planning board has primary jurisdiction over site plan applications and related bulk variances. It further provides that if there is a D variance, the site plan approval comes before the zoning board. Based on the testimony at this hearing, there is no residential component on the first floor at lot 8. The applicant is not proposing a first-floor residential component and all residential components are on the second floor. Based on the testimony, ordinance and MLUL, it was Mr. Sproviero's opinion that this application should be properly before the planning board and not the zoning board of adjustment.

The Chairman felt the information provided was inadequate for Mr. Cahill to make a reasonable determination.

Mr. Loonam asked if the subject property had any variances issued in the past. Mr. Wine did not think so. Mr. Loonam asked if they were started with an empty lot, would the site plan request be before the planning board or zoning board. Mr. Wine and Mr. Sproviero felt it would go to the planning board. Mr. Loonam asked Mr. Cahill's opinion on this new information.

Mr. Cahill said if he knew what he knows now, he probably would have referred it to the planning board.

Mr. Wine asked to grant the appeal, coordinate with Mr. Cahill and submit to the planning board. The Chairman would not personally vote to uphold an appeal whose determination was based upon faulty information. Mr. Loonam agreed and thought the applicant should withdraw the appeal and added Mr. Cahill did not make a mistake but rather worked with the information he had. The Board Attorney said an option could be that they carry it and during that interim period whatever corrective information by way of documentation needs to be submitted to the zoning officer. The zoning officer would make a determination based upon the augmented documentation so in May the board will take a vote or the application has been moved to the planning board.

The Chairman told the applicant that they could ask for a vote, withdraw the appeal or carry to the next meeting during which time the applicant can reapply to Mr. Cahill with the accurate information. Mr. Wine said they will carry this and maintain jurisdiction before this board of the appeal. In the interim, Mr. Cahill and the applicant sort this out. The zoning officer would revise a letter directed to the planning board and then they would issue a letter formally withdrawing.

All parties agreed to discuss the matter and the appeal application would be carried to May 11, 2021.

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

Respectfully submitted,  
Maureen Oppelaar



