

Approved
9/14/21

**New Milford Zoning Board of
Work Session
08 10 2021
Virtual meeting (zoom)**

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

REVIEW MINUTES OF THE WORK/PUBLIC SESSION – July 13, 2021

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

RESOLUTIONS

21-06 Chavez – 230 Graphic Blvd-Block 610 Lot 1

Addition – building coverage

The Board Attorney stated that the resolution was shared with the applicant’s counsel and there were no adverse comments. The Board Members had no corrections or comments.

OLD BUSINESS

21 08 Kollander 1102 Korfitsen Rd- Block 205 Lot 3

Two story addition – building coverage, front and rear setback

The Chairman noted that this application was before the board last month and revisions have been submitted for tonight’s meeting made with substantive changes.

Mr. Hicks was not at the July meeting but has listened to the recording of this application.

NEW BUSINESS

21-09- 203 Main St Property LLC- 203 Main St-Block 1304 Lot 5

Use Variance

The Chairman explained to the board members that this application was seeking a Use variance which will need five affirmative votes as opposed to a simple majority vote.

21-10 -472 Henley Avenue – Dagoro – Block 813 Lot 2
Front porch – front yard setback

The Board Attorney received correspondence from Counsel of the applicant which advised the board that they were seeking to carry the application to the September meeting.

The Chairman briefly discussed that there was a virtual meeting called by the Mayor with Chairs from zoning and planning, secretaries, zoning officer, attorneys and administrator. This meeting was a result of some confusion regarding the zoning worksheet. There was discussion on the wording, issues and concerns of ordinances. There will be another meeting in November. The Chairman stated that the zoning board could bring up issues of concern and speak of things that the board was seeing but the zoning board does not request the Mayor and Council to consider changes to the ordinances. The Board Attorney thought there should be a discussion in work session with the board members before the November meeting for issue identification purposes.

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

**New Milford Zoning Board of Adjustment
Public Session
August 10, 2021**

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 – Vice Chair	Absent
Mr. Birnbaum	Present
Ms. DeBari	Present
Mr. Hicks	Present
Mr. Levine	Present
Mr. Loonam - Chairman	Present
Mr. LoPorto	Present
Mr. Rebsch	Present
Mr. Schaffenberger	Present
Ms. Batistic -Engineer	Present
Mr. Sproviero - Attorney	Present

PLEDGE OF ALLEGIANCE

OFFICIAL MINUTES OF THE WORK/PUBLIC SESSION- July 13, 2021

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

RESOLUTION TO BE MEMORIALIZED

21-06 Chavez – 230 Graphic Blvd- Block 610 Lot 1

Addition – building coverage

Motion to approve the resolution was made by Mr. Rebsch, seconded by Ms. DeBari.
For the motion: Members Rebsch, DeBari, Levine, LoPorto, Schaffenberger, Loonam.

21-10 - 472 Henley Avenue – Dagoro – Block 813 Lot 2

Front porch – front yard setback

The Board Attorney read into the record the letter from Sekas Law Group, counsel to the applicant, requesting to carry the application to the September 14, 2021 meeting. The Board will receive an amended application with all necessary corrections.

OLD BUSINESS

21 08 -Kollander -1102 Korfitsen Rd- Block 205 Lot 3

Two story addition – building coverage, front and rear setbacks

Andrew Kohut, Wells, Jaworski & Liebman, Paramus, here on behalf of Jennifer and Samuel Kollander, 1102 Korfitsen Road. Mr. Kohut stated that after the last meeting the board had raised a few issues and comments regarding the plans. His client has made substantive changes to

address the board's concerns. There was now a one car attached garage where before it was storage, they expanded the driveway which can now fit 4 cars. His client has removed the necessary impervious coverage so not to create an impervious variance. They reduced the building coverage to 23.5% which included the soffits and bay windows. The house without the soffits and bay windows is 21.9%. Mr. Kohut brought to the attention of the board that it says that the total square footage of building coverage was 1,929sf where it will be 1,934 sf.

The Board Attorney asked if the expanded driveway was all paved and there would be no parking on lawns. Mr. Kohut said no parking on lawns and all would be paved.

Jeffrey Weltz, architect, was previously sworn in.

Mr. Kohut clarified that plans were submitted 5/12/21. Mr. Weltz reviewed the changes made showing the first-floor plan where there was a one car garage. As a result of the garage, the living room, kitchen and dining room were all impacted and were decreased in size. They removed the covered patio to the right of the front entrance. The basement had changes due to the garage and the livable area was decreased. The building coverage and living area has been decreased. The second floor also changed.

Mr. Weltz stated that the overall design of the house was comfortable on the site and felt with the changes it fits very well in the community. The changes provide for a garage and mud room, a nice family room, and he felt because of the board's direction, the plan has addressed the criticism of the board. He added that the plan has also become a more efficient plan. He felt the house was similar to the houses in the neighborhood.

Mr. Schaffenberger asked if the impervious coverage was reduced to accommodate the driveway. Mr. Kohut said the engineer would address that question.

Motion to open to the public to ask questions of Mr. Weltz was made by Mr. Schaffenberger, seconded by Mr. Rebsch and carried by all.

The record reflects that no member of the public wished to comment.

Motion to close to the public was made by Mr. Hicks seconded by Mr. LoPorto and carried by all.

Kiersten Osterkorn, Omland & Osterkorn, 22 Madison Heights, Wyckoff NJ, was sworn in by the board attorney.

The Board Members accepted the qualifications of Kiersten Osterkorn as an expert in the field of engineering and planning.

Mr. Kohut stated revised plans were submitted 7/26/21.

Ms. Osterkorn stated this application was to renovate the existing two-story dwelling and to put an addition onto the south left side of the house. The engineer reviewed the existing conditions of the property/house. The lot is 8,225 sf with an existing width of 102.57 where 75 ft is required. The front yard setback existing is 30.6 ft where 30' is required. The rear yard setback is

12.6' which is an existing non-conformity where 20' is required and the side yard setback is 25'. There is also a side yard setback on Lee Place which is 30.4'. The existing building coverage is 18% and the revised plan showed a chart with soffits and without soffit calculations. With the soffit, it is at 18% (1,478 sf) and without soffit it is 1,381 sf.

Ms. Osterkorn stated that due to the configuration of the lot and that Koriftsen Road bends, the property also bends and gets closer and smaller south on Koriftsen Road. The rear yard setback that was 12.6' is now 11.9' at the south west corner of the building. The right front side of the property for the front yard setback is 30.6' proposed 28.2'. The house was not parallel to the west or south property line.

The engineer explained they were filling in by the building to have the driveway pitching to the street and not the house. It would be a better design not to have water coming to the house. There was a grade change of 2.4' while the ordinance states the grade cannot be raised by 2' at the building. Ms. Osterkorn said the .4' was only at the left corner where the garage was lower than the street. Mr. Kohut asked the engineer if she thought this would benefit the property and the drainage as it impacts the neighborhood. Ms. Osterkorn said it was a better drainage design.

The engineer stated they did expand the driveway to accommodate a garage and have a car in the garage. They did not want to trigger a parking variance so a portion of the rear patio was removed. Previously they were required 40% impervious coverage (3,289 sf), and proposed 39.8% (3,270 sf). With the addition, the building coverage with soffits was 23.5% - the plans said 1,929 sf but it should read 1,934 sf. They were proposing a drainage system.

The Board Attorney marked as exhibits;
Revised architectural plan Exhibit A-1A
Site plan Exhibit A-2
Parking configuration Exhibit A-3

There was a concern at the last hearing regarding the garage and parking. Ms. Osterkorn had an exhibit for the parking exhibit. The engineer reviewed the parking and how many cars would fit in the driveway. According to RSIS, for a five-bedroom single family house three parking spaces are required. The Engineer said they were providing for four standard parking spaces.

The Chairman announced that Mr. Birnbaum left on a fire call and Mr. Hicks would be the voting member for this application.

Mr. Kohut asked the engineer if they would comply with the board engineer's review letter regarding items 3 and 4. Ms. Osterkorn said they will comply.

Ms. Osterkorn discussed the application and setbacks from a planning perspective. She believed the house fit in the neighborhood. It was an appropriate in size with the neighboring homes. The planner noted that there was a 67.61' depth lot along the southern property line which was shallow. Some of the positive criteria was updating the dwelling to fit into the neighborhood and providing a better drainage pattern and a seepage pit. By raising the grade in the driveway, they were providing a more functional driveway and more recreational space and usable space. It was

a visible upgrade to the neighborhood. There was a wall on the north side of the property with plantings and privacy on that side. The planner did not see any substantial detriment to the public good. The front of the house was in line with both neighbors and with the look of the neighborhood. The fill in the corner of the building was a substantial improvement to the property. The planner said the benefits outweigh the detriments.

Ms. DeBari asked what kind of fill would be used. Ms. Osterkorn said clean fill. She explained the fill being used and said she would talk with the contractor at the site. Ms. DeBari asked if the curb cut would be changed. Ms. Osterkorn said they will use the existing curb cut which was 20'.

The Chairman asked what was the size of the garage. Mr. Weltz answered 12 x 18.

Mr. Schaffenberger asked what part of the impervious was removed to accommodate for the garage.

Ms. Osterkorn said a portion of the patio in the rear and the extension of the covered porch. The Engineer stated the impervious coverage was 3,270 sf (39.8%).

Motion to open to the public to ask questions of the witness was made by Mr. Levine, seconded by Mr. LoPorto and carried by all.

The record reflects that no member of the public wished to comment.

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

Mr. Kohut felt this was a good example of the board providing constructive comments and the applicant responding and preparing a better plan. Mr. Kohut said there were four variances being requested:

Building coverage 23.5% (1934sf) (includes overhangs) where 20% is required

Fill of 2.4' where 2' is required

Front yard setback 28.2' where 30' is required

Rear yard setback 11.9' where 20' is required

Mr. Loonam noted that the 23.5% includes overhangs.

Mr. Kohut said if the board approves the application, it could be put in the resolution that the total square feet is 1,934 which is 5 extra square feet off of what is on the plan because of a bay window.

CONDITIONS

Mr. Kohut agreed to have in the resolution of approval that the board was approving the configuration of 21.9% (1,800 sf) without soffits and 23.5% with soffits.

Mr. Kohut clarified that it was 134 sf of soffits and bay windows.

The Board Attorney said another condition would be that the garage at no time in the future be converted into living space. It must remain a garage. Mr. Kohut agreed.

Compliance with the Board Engineer's review letter of 8/2/21.

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

The record reflects that no member of the public wished to comment

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

Mr. Schaffenberger stated the applicant has taken the comments from the board from the last meeting and addressed those issues. He felt this revised plan is now a better one than it was. It is a large house but was in an area with similar homes and he did not think it was inappropriate for the neighborhood.

Motion made by the Karl Schaffenberger to approve the variances with conditions stated by the board attorney and in accordance with the Board Engineer letter, seconded by Mr. Levine.

The motion passed on a roll call as follows:

For the motion: Members Schaffenberger, Levine, DeBari, Levine, LoPorto, Rebsch, Hicks, Loonam

Vote 7-0

The Chairman noted that the applicant and professionals worked with the board's comments from the July meeting and found a way to make this revised plan worthy of approving right down to getting the impervious coverage down to 39.8%.

Mr. Birnbaum has returned to the meeting.

NEW BUSINESS

21-09 -203 Main St Property LLC 203 Main St-Block 1304 Lot 5
Use Variance

Mr. Matthew Capizzi, counsel for the applicant, stated that this was a project at 203 Main Street (the former location of Lieto Restaurant). The site was 13,000 sf in area and is a fully developed site. It was a one-story commercial building located on the westerly portion of the lot and the balance of the lot is a macadam parking area. They were proposing an add a level on top of the existing one-story commercial building and repurpose the first floor as well as introduce some new uses on the second floor. There would be landscaping, drainage and refuse improvements.

They were proposing on the first floor to break it up into two unequal portions. Approximately 2,800 sf would be dedicated to a retail or restaurant use. They were seeking a parking variance in case they utilize it for retail which would need 28 parking spaces and 20 parking spaces are provided. If they use it as a restaurant with 40 seats, 20 parking spaces are required. They want the flexibility to have either a retail or restaurant use on the first floor consisting of approximately 2,800 sf. The balance of the first floor will be a two-bedroom apartment to the

rear of the retail or restaurant. They were proposing on the second floor four two-bedroom apartments. A total of five two-bedroom apartments as well as the restaurant or retail use.

The relief they were seeking was a use variance for a two-bedroom unit apartment on the first floor as well as a parking variance should they decide to have retail on the first floor. Mr. Capizzi said in the Board's engineer review letter and the zoning officer's denial letter there were additional variances noted. With the amendments made to the application, the applicant eliminated those variances. They were that two of the proposed units did not meet the minimum unit size. They originally proposed two units on the first floor and now have one unit. The second-floor units now comply to meet the minimum square footage requirements.

The ambulance referral letter raised concerns regarding ventilation and window clearance relative to their building. The architectural plans resolved that issue by notching out a portion of the second floor. The refuse area also has been updated.

Witnesses will be:

Perry Frenzel, Civil Engineer, Christopher Blake assisting with plans from Canzani Architects, David Spatz, planner.

The Chairman noted that Spach Trahan was present on behalf of Paul Grygiel, board planner.

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 Perry Frenzel as an expert in the field of civil engineering.

Mr. Frenzel stated the site plan and soil erosion & sediment control plan prepared for 203 Main Street revised 8/10/21. Mr. Capizzi stated that the large part of the plans is unchanged but just modified it to address some of the review comments.

The Board Attorney marked the revised site plan as **exhibit A-1**.

Mr. Frenzel reviewed the existing conditions. There was an existing single-story commercial building approximately 4,400 sf on the westerly side of the property. There is a paved parking area and the lot is accessed from Main Street that wraps around discharging onto Prospect Avenue. The lot size is 12,848 sf which is located in the B zone.

The proposal is to add a second story to a single-story building with residential space on the second floor. This was consistent with other buildings on adjoining lots which have at least partial second floors.

The back-right hand corner of the building has access to the residential units. In the upper left corner of the parking lot, they had two dumpsters which would be enclosed by a 6' fence. Mr. Frenzel discussed the parking stalls in relation to the dumpster.

Mr. Frenzel said there was comments regarding access for the ambulance. They used the standard turning radius and showed on the plan that there was access for a standard ambulance.

Mr. Frenzel stated there is existing angle parking. They created 90-degree parking against the building with some parallel parking up against the adjoining building to the east and three parallel space on the outgoing aisle. It would give them a 22' aisle, 18' for parking spaces and 10' depth for parallel spaces.

The engineer said there three seepage pits connected to roof leaders to catch any rain fall from the roof. This was an improvement of what was existing. Mr. Frenzel said that the impervious area was not increasing and was decreasing about 1-2% because they were removing pavement for plantings adjacent to the ambulance property.

Mr. Capizzi commented on Ms. Batistic's review letter regarding a new sidewalk which they would agreed to do. The letter also asked to modify the driveway apron. They would accommodate that request.

Mr. Frenzel said the lot was complying with the minimum lot size, the front yard, side yard and rear yard setback, maximum impervious coverage permitted was 100% and they were proposing 97.4%. The maximum building height is 2 ½ stories (35') and they were proposing two stories (34.6').

The engineer explained the change from the original plan. Originally both of the residential units sizes were non-conforming. He believed that the two-bedroom units were still non-compliant proposed 844 sf where 900 sf was required.

Mr. Capizzi clarified that there was a two-bedroom unit on the second floor that did not meet the 900 sf but that issue has also been resolved. Mr. Capizzi said there were no variances needed for minimum size for any of the units.

Mr. Frenzel said a parking variance would be required should the first floor commercial space be used for retail instead of a restaurant.

The Board Attorney clarified that if it was exclusively retail use, 28 parking spaces would be required and the applicant is proposing 20. Mr. Capizzi said if it was a restaurant 20 spaces are required and they have 20.

Mr. Loonam asked if those requirements were for the retail component or the retail/apartment combined. Mr. Capizzi answered that the entirety use is combined – retail/apartment or restaurant/apartment.

Ms. DeBari asked if the decision would be made before the board votes on whether there would be a restaurant or retail use.

Mr. Loonam said they were proposing 28 parking spaces to cover either use.

Mr. Levine asked if it wasn't retail or restaurant use but rather offices, would that change the parking spaces. Mr. Capizzi answered as long as the parking demand doesn't exceed 28 spaces in total for the site.

Motion to open to the public to question the witness was made by Mr. Levine, seconded by Mr. Birnbaum and carried by all.

Mr. Walter Carroll, 1933 E. Quiet Canyon Drive, Tuscan, Arizona, owner of building of 209-211 Main Street. Mr. Carroll had concerns about the parallel parking along the side of his building. He did not see any protection provided to the side of his building. Mr. Frenzel said if it is the desire of the board, they could install concrete filled ballards along the face of his building to provide protection. Mr. Carroll said that would satisfy his concern. Mr. Capizzi asked how many would be provided. Mr. Frenzel answered 12.

Frances and Robert Lamb, 204 Prospect Avenue, asked why was there parking along their property line that has a 6' wood fence. Frances Lamb had concerns about the noise level. Mr. Capizzi said parallel parking is permitted and everything they were proposing was a permitted use except the location of one unit on the first floor. Mr. Capizzi said perhaps they could designate those spaces as employee stalls. Mr. Frenzel said they determined that their fence was 3' into their property not on the property line. There was a 3' buffer between the edge of the pavement and the fence. There was also a number of trees between the fence and the edge of the pavement and they do not plan to remove any of those trees. The engineer said the parking was not up against the fence. Ms. Lamb was concerned about the noise level. Mr. Capizzi answered that they were in a commercial zone but he was offering to designate those spaces to be for employee only.

Michael Carroll, 49 Oakdale Ct, North Haledon, NJ, owner and operator of the business at 209 Main Street. He questioned the dumpster area and asked how a truck could get through with the parked cars to empty the dumpster. Mr. Frenzel said the truck would enter Prospect and the spaces along that side of the property would have limited parking time. There should be empty spaces when the truck comes in.

Chairman Loonam questioned that Prospect Avenue was a one way. Mr. Frenzel said he was correct. They could designate that the hauler comes in from Main Street. Mr. Loonam asked if the trucks were larger than an ambulance. Mr. Frenzel answered yes. The Chairman asked if there was enough room for a hauler to enter the site and back into where the dumpster was. Mr. Frenzel answered yes and there were also trucks used with forks on the front. The Chairman felt they were assuming a lot. Mr. Loonam asked if there were designated spots for residents that were not near the receptacles. Mr. Capizzi said there was a lot of flexibility with a private hauler and the property owner had the obligation to make sure the property is properly maintained.

Michael Carroll said that the two spaces next to the dumpster is for limited use and the three spaces along Prospect would be empty for the dumpster and questioned that they were five spots down. Mr. Capizzi said they were not five spots down and this is a private property issue.

The Board Attorney asked what was the requirement for the residential parking requirement. Mr. Capizzi answered 10 spaces. Mr. Sproviero asked if there could be 10 parking spaces designated for residential parking only and asked if they could be numbered on the plan. The Board Attorney suggested it would be helpful to have all the parking spaces numbered for reference and clarity in the testimony. Mr. Capizzi numbered spaces for various uses. There was much discussion on a parking plan.

Mr. Capizzi asked how they could satisfy the Lambs as well as provide access towards the refuse area. Mr. Frenzel suggested parking spaces 1,2,3,16,17,18,19,6,7,8, to be designated for the residents and leave 4 and 5 open to allow for the garbage truck. Mr. Loonam asked if these parking spaces would be used on this plan. Mr. Capizzi answered yes.

Walt Carroll asked what was the cross hatched area next to the handicap space. Mr. Frenzel said it was the required access area for the handicap vehicle.

Frances Lamb had questions on the dumpster and garbage pickup for Walt Carroll's property. Mr. Capizzi clarified that there was no easement on their property, no dumpster on their property that belongs to Walt Carroll and this project stands separate and apart from any activities from adjacent properties. Ms. Lamb was concerned that a truck would be backing in to pick up garbage. Mr. Capizzi said they will be coming in from Main Street. Mr. and Mrs. Lamb said there was not enough room to bring a truck through with cars parked on both sides. Mr. Frenzel said the haulers have a variety of vehicles that could be used.

The Chairman asked Ms. Batistic if she was comfortable with the parking spaces and the ability for a truck to get through. Ms. Batistic said not if space 4 and 5 and maybe 6 had cars in it. She was concerned about the garbage access and dumpster area. Ms. Batistic wanted the applicant to provide a truck template for a garbage hauler to make this maneuver.

Ms. DeBari asked if angle parking would be better than the designated parallel spaces. Mr. Frenzel thought it would be too narrow to have the angle spaces. The 10' for parallel spaces was sufficient.

Spach Trahan said the applicant will require a de minimis exception because the aisle width is smaller than the 24' required for 90-degree parking spaces. The zoning ordinance requires details on lighting which they have not seen. Also, the planner questioned the wall pack lighting on the façade of the building facing the parking lot and said the mounting height is 23'. Mr. Frenzel answered that there were four wall pack lights shown and discussed the locations. If the board wanted, they could come up with an appropriate lighting plan as a condition. Ms. Trahan said there were specific lighting requirements in the zoning ordinance and without a plan it is hard to determine if they are compliant.

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

Christopher Blake, 224 New Bridge Road, Bergenfield NJ, was sworn in by the Board Attorney.

The Board accepted the qualifications of Mr. Blake as an expert in the field of architecture.

The Board Attorney marked the architectural plan A1-A3 last revision 8/5/21 as **Exhibit A-2**

Mr. Blake discussed the first-floor plan discussing the location of the entries and staircases. He discussed the layout of the two-bedroom apartment on the first floor. The second-floor plan had four apartments and he discussed the access to the units. Three of the apartments were just over 900 sf and one was closer to 1,000 sf. All the apartments were two bedrooms with one bathroom and an open concept. The building is fully sprinkled as per the code. Mr. Blake discussed the elevation plan discussing the retail/apartments.

Mr. Blake said they were proposing a building height of 34.6' where 35' was required.

Mr. Capizzi asked if this was an aesthetic improvement to the property and neighborhood as a result of the proposal. Mr. Blake said there would be new finishes and new materials so it would be an improvement to the streetscape and curb appeal.

Mr. Birnbaum clarified that there was no basement. Mr. Blake agreed. There was discussion on the gas service and its location.

David Spatz, 60 Friend Terrace, Harrington Park, NJ was sworn in by the Board Attorney.

The Board Members accepted the qualification of Mr. Spatz as an expert in the field of planning.

Mr. Spatz reviewed the plans and the ordinances, visited the property and took photos.

The Board Attorney marked as **Exhibit A-3** -four photos of the area.

The planner discussed the photos submitted to describe the area.

Mr. Spatz said the applicant was before the zoning board for a use variance because the apartments were allowed on the second floor but they were proposing an apartment on the first floor. The plans have been modified since originally submitted and they eliminated two variances by removing a one bedroom apartment on the ground floor. On the second floor, one of the apartments was undersized and the plans have been modified. All four of the two-bedroom units on the second floor are conforming.

There was only one C variance and that was for parking. If the restaurant takes over the commercial space along with the five apartments, they would have a conforming amount of parking. If the ground floor was used for retail, they would need a variance.

The planner said regarding the use variance, the property was well suited for what the applicant was proposing. The site was currently developed with a commercial building which could be easily renovated by the addition of the second floor to allow for a mixed use which would be consistent with the adjacent property. The proposal is consistent with the neighborhood on Main Street. The proposed second floor does not extend out further into the yards than the existing building so there was no impact on the adjacent properties in terms of light, air and open space.

They were not creating any setback or height variances.

Mr. Spatz said a concern raised by the Board's planner report was if the ground apartment would be inconsistent pattern along main Street. The residential apartment is in the rear of the property and there is no access to the unit from the front of the building.

The planner said it terms with the MLUL for special reasons for the use variance, it meets with the promotion of the public, health and safety and general welfare by providing an overall use that is permitted in the zone. They are providing apartments for needed housing which brings light and vitality to the commercial district. The mixed use is permitted within the zone and the ground floor apartment is hidden in the rear of the building so there is no impact on the commercial space. It has been designed to fit in without any impact. The plans have been designed so the second floor is consistent to the adjacent building and fits in with the street.

Mr. Spatz said building conforms with the setback requirements of the business zone. They meet the height limitation and coverage limitation for the business zone. All units are now of a conforming size with a reduction of six units down to five units. They have a conforming amount of parking to serve the residential units and if the commercial space is occupied by a restaurant it would be fully conforming in terms of parking. There is street parking if this space was to have retail space. They would take a more detailed look at the designated spaces for tenants and employees and number the spaces to satisfy the board. Mr. Spatz felt the positive criteria has been met for the parking. He did not think there was anything substantial negative and they were in character with the surrounding land uses. They have a mixed use that is permitted within the zone. Mr. Spatz felt the apartment on the ground floor was dealt with by having the access in the rear and the building that is visible from the street has a commercial look. There was no impact from light, air and open space from the yard dimensions or height. There were existing curb cuts entering and exiting the property so there will be no additional loss of street parking. The positive criteria were met and that far outweighs anything that would be considered negative. Mr. Spatz felt the two variances should be granted.

Mr. Capizzi asked if the uses would help support the downtown. Mr. Spatz agreed. Mr. Capizzi felt the landscape enhancements would bring about a benefit to the neighborhood. Mr. Spatz agreed. There were also some adjustments made to the building design to address the concerns of the ambulance corp. There was also discussion at this meeting regarding parking and the impact to the neighbors. They will designate parking to attempt to reduce impact by limiting the activity of cars going in and out of spaces. Mr. Capizzi asked if the proposal would result in the reduction of impervious coverage. Mr. Spatz agreed because some of the paving in the rear would be removed for landscaping. Mr. Spatz said there would be drainage facilities on the site as well as on the roof of the building. Mr. Spatz said the dumpster has been sized correctly for the proposed uses and it is at the rear of the property so it was not aesthetically a problem from Main Street. It is screened on the site and carters today have many vehicles that enable them to serve all different purposes.

Mr. Rebsch said there was an ordinance now for two-hour parking on Main Street. Mr. Spatz did not see that as an issue for their building.

Ms. Spach Trahan, board planner, asked if they could provide testimony if this project would have rental or ownership units. There is a requirement if there were five units on the site that at least 15% of rental units or 20% of ownership units be designated as set aside for affordable housing. To comply with Uniform Housing Affordability Control Regulations, 20% of the affordable units must be a three-bedroom unit. Mr. Capizzi said that Mr. Grygiel mentioned that there was a possibility for a payment in lieu option and they would try to take advantage of that and if not, they would have to convert a two bedroom into a three-bedroom unit to comply. Ms. Trahan said typically municipalities across New Jersey are being encouraged to avoid payment in lieu or providing off site units.

Ms. Trahan asked about signage. Mr. Capizzi said they would handle by way of a separate application because they do not have a user selected at this time.

Mr. Loonam asked Ms. Trahan to address Mr. Grygiel's letter of August 1, 2021 especially regarding a first-floor apartment unit that was not in accordance with the master plan. Ms. Trahan said there has been some revisions to the business zone and one of them was ground floor or freestanding residential uses are not permitted. She said the intent was to "help promote pedestrian character and economic development, but would also remove a loophole that allows residential only development but does not apply residential zone standards to such development". The board planner said one of the concerns was maintaining an active streetscape along Main Street while also providing standards allowing for residential use. She felt the board should consider what is on the streetscape. The residential units are on the second floor and at the rear on the first floor. Ms. Trahan said they were not providing a residential use on the streetscape. Ms. Trahan had no comments regarding Mr. Spatz's testimony.

Ms. Trahan mentioned there was no plan or accessibility for the dormer floor. Mr. Blake said there would be access for equipment.

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

Walt Carroll had concerns about the zoning for residential on the first floor and felt there have been no special reasons discussed to grant the variance.

Ms. Trahan felt Mr. Spatz did go over special reasons. Mr. Spatz said special reasons from Purpose (1) was desirable and visual environment. He said the building has been designed to blend in with the adjacent two-story building. The entire building to be all commercial space would be economically difficult. The planner said they do meet several of the purposes of zoning to grant the use variance. The building has been designed to address the concerns of Mr. Grygiel's letter in terms of the economic activity along Main Street. The apartment has been tucked away and hidden in the rear of the building so he believes it meets the concerns in the master plan.

Mr. Lamb said on a typical Thursday night all parking spaces are used and asked where the cars would park if this was an apartment. Mr. Loonam said they testified that if it was a restaurant they were required 20 parking spaces.

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

Mr. Loonam said they have finished the testimony of the architect and the planner as well as the board's planner and felt this was a good time to stop unless the applicant was ready to vote now. Mr. Loonam felt there were still issues with parking at a minimum to address. The Board Attorney felt there were three issues that need to be addressed. There is the parking, the flow over from the parking and the trash disposal. He felt further clarity must be provided in order for the board to make an intelligent determination. Mr. Capizzi did not see parking as an issue. He felt that the trash pickup could be handled between Mr. Frenzel and Ms. Batistic as a condition of approval. The applicant would comply with whatever conditions Ms. Batistic thought appropriate. There is an existing dumpster at the site as well and has functioned for commercial for many years. It was not being exacerbated by this application. As far as parking short fall was concerned, the eight-stall short fall was less of a short fall than most of the businesses along Main Street. They are providing more parking than any of the neighboring properties. They are shy eight spots and will have reserved spots for the tenants.

The public had an opportunity to be heard and Mr. Capizzi said he was not looking to short circuit that process. If the board had time to hear it tonight, he was fine but if the board wanted to carry, the applicant would not have an issue.

The Board Attorney said it was not an issue if the board had time. The board can invest the time to bring it to conclusion but the question is if they had the full quantum of the quality of proofs that they want for this board to make a determination. Mr. Capizzi said the only issue that would be addressed next month would be circulation relative to the dumpster. There would be no additional variances. Mr. Sproviero agreed there would be no additional variances and agreed the circulation on the trash as well as the parking configuration to address some of the concerns made by the property neighbors. He asked if there was something that could be done to provide some type of buffer for the residential neighbors and is there a plan to protect the adjoining property owner where cars would have parallel parking. The Board Attorney thought there might be issues they would want to look at or the applicant might want to bring this to a vote.

Mr. Capizzi said Mr. Sproviero raised a good point and they would take the opportunity to speak with Ms. Batistic and work out an actual understanding on the trash.

Ms. DeBari asked if this was a restaurant without tenants, how many parking spaces would be required. Mr. Capizzi said 10 spaces. He added that they park by the municipal ordinance which is one spot for every four seats. The residential component is governed by the RSIS which is two bedrooms require two spots and there were five 2 bedrooms units which require 10 spots.

The Board Attorney said if they do carry it for the September meeting, it might be appropriate to apply some thought to what direction they can or want to do regarding the Affordable Housing. Mr. Capizzi would speak to Ms. Trahan and said if there was a payment in lieu option that is the way they would go and will have a position at the September meeting.

Mr. Levine asked the planner to explain a comment in Mr. Grygiel's letter. Ms. Trahan discussed the comment regarding the D variance specifically the fact of a residential unit proposed on the ground floor. Residential uses are permitted on the second floor above a non-residential use. She mentioned when the ordinance was amended, the intent for that restriction was to prevent apartments facing a commercial street. They wanted to maintain a commercial district with commercial uses on the street. This application has a residential use in the back. They are providing a residential use on the ground floor which is not permitted but it is not facing the commercial street or distracting from the economic activity of the area. Those would be things to think about when considering granting a use variance. Mr. Levine clarified that it does not impede upon the fact that it still looks like commercial use and it still has the commercial feeling. Ms. Trahan agreed.

The Board Attorney said what makes this application challenging are the D variance components. Ms. Trahan said there are now five residential components which increases the parking requirement and puts constraints on the parking lot. The Board Attorney said it also triggers COAH. Ms. Trahan said with five units there are affordable housing requirements and if there were four units there would not be an affordable housing requirement.

Mr. Loonam asked if this building using a portion of the commercial footprint and remediating it with residential components, whether on the street or not, would impede the master plan and asking for economic development. Ms. Trahan said it was possible to be all commercial but that was not what the application was proposing. Mixed use and nonresidential are typically looked at favorable.

Mr. Birnbaum asked what would the impact be on parking if the ground floor was two commercial areas. Mr. Capizzi said it would increase by 8 spots. Mr. Birnbaum thought the residential in the rear has the streetscape look that the master plan wants.

Mr. LoPorto thought that some of the concerns from the public revolve around high volume businesses in the area which are restaurants. He felt that by denying the variance, they would be limiting the use of the property to just a restaurant which would increase the competition. Mr. LoPorto thought it would make it worse. He thought this plan minimizes the impact on the area.

Mr. Loonam did not think denying the application would preclude the address to be anything but a restaurant.

Mr. LoPorto said he was referring to the parking issue.

Mr. Loonam asked how many parking spaces would be needed if there was no residential component. Mr. Capizzi answered 28 spaces for all retail on the first floor. Mr. Capizzi said they were talking about the impact of having residential on the first floor. Mr. Loonam asked how many parking spaces for a grocery store for a 4,000 sf grocery store without residential. Mr. Capizzi answered 28 spaces. Mr. LoPorto felt this was solution to compress down the amount of commercial space and thought it would reduce the pressure on the neighborhood.

Mr. Loonam said it was up to the applicant to come back in September and add to the trash and parking issues or open to the public and give his closing remarks. Mr. Capizzi said they would go back to the drawing board and take into consideration all the comments. They will see what they can do with the parking allocation between the residential and retail/restaurant, what they could do for circulation for a garbage truck and some of the other housekeeping items.

Ms. Batistic asked for the applicant to provide a lighting plan.

Mr. Loonam said in September they will open up with any changes the applicant has made, they will open up to the public for comments and questions regarding any of the changes as well as general comments.

The Board Attorney said the next meeting will be September 14, 2021 work session at 7:30 public session to follow and no further notice will be required of the applicant.

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

Respectfully submitted,
Maureen Oppelaar