

Approved
5/3/22

**New Milford Zoning Board of
Work Session
04 05 2022
Virtual meeting (zoom)**

Chairman Adelung called the Work Session of the New Milford Zoning Board of Adjustment to order at 7:00 pm and read the Open Public Meeting Act.

ROLL CALL

Mr. Adelung - Chair	Present
Mr. Birnbaum	Present
Ms. DeBari	Present
Mr. Hicks	Present
Mr. Levine	Present (730)
Mr. Loonam	Present
Mr. LoPorto	Absent
Mr. Rebsch	Present
Mr. Schaffenberger -Vice Chair	Present
Mr. Lagana - Attorney	Present
Ms. Batistic – Engineer	Present

REVIEW MINUTES OF THE WORK/PUBLIC SESSION – March 8, 2022

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

RESOLUTION

22-02 – 367 Vomel Drive – Integrity Bergen LLC – Block 202 Lot 20

Two Story Addition – Building coverage and side yard setback

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

NEW BUSINESS

22-03 – 198 Center Street – Hollywood – Block 1518 Lot 4

Interpretation/Appeal from the zoning officer for change in tenancy

The board Members reviewed the application and had no questions or comments.

22-04 – 341 Marguerite Avenue – Dengel – block 1206 Lot 31

New Modular Home – building coverage

The board Members reviewed the application and had no questions or comments

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

New Milford Zoning Board of Adjustment
Public Session
April 5, 2022

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

ROLL CALL

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

PLEDGE OF ALLEGIANCE

OFFICIAL MINUTES OF THE WORK /PUBLIC SESSION- March 8, 2022

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

RESOLUTION TO BE MEMORIALIZED

22-02 – 367 Vomel Drive – Integrity Bergen LLC – Block 202 Lot 20

Two Story Addition – Building coverage and side yard setback

Motion to memorialize the resolution was made by Mr. Schaffenberger, seconded by Mr. Rebsch.

For the motion: Members Schaffenberger, Rebsch, DeBari, Levine, Adelung

NEW BUSINESS

22-03 – 198 Center Street – Hollywood – Block 1518 Lot 4

Interpretation/Appeal from the zoning officer for change in tenancy

Mr. Andrew Kohut, Wells, Jaworski & Liebman, 17 N, Paramus NJ, on behalf of the applicant, Terrance Hollywood.

Ms. DeBari recused herself from this application.

Mr. Vincent Cahill, zoning officer, was sworn in by the board attorney. The Board Attorney asked if he prepared the correspondence related to the property known as 198 Center Street. Mr. Cahill agreed. Mr. Lagana noted the correspondence was dated 2/5/21 and asked the zoning officer if that was the correct date. Mr. Cahill believed so.

Mr. Terrence Hollywood, applicant and owner of the property, was sworn in by the board attorney. Mr. Hollywood would be a fact witness.

Mr. Ryan Doyle, proposed tenant, was sworn in by the board attorney. Mr. Doyle would be a fact witness.

The Board Attorney asked Mr. Cahill if he received a permit request for 198 Center Street. Mr. Cahill received a new business application and reviewed the accessory uses (30-21.2) in the zoning ordinances which he stated was in the zone where only a home professional office was allowed. The previous welding shop was a non-conforming use at that time and once the business closed it was an abandonment of that business and reverted back to the ordinance where only a home professional office would be allowed, said Mr. Cahill. He further discussed the ordinance. The property is a rental and Mr. Hollywood does not live there. The business is not listed as a professional business in that zone. Mr. Cahill said after the welding shop closed and was abandoned, it should revert back to the ordinance and the automotive shop was not a permitted use in residential A zone. After reviewing this, a letter was sent to Mr. Doyle. Mr. Cahill read a letter from 6/19/2001 from zoning official, Doug Baker, to Mr. Siegel advising him that "any existing business use can be continued, but not changed or enlarged as per New Milford ordinance..."

Mr. Lagana said Mr. Cahill's opinion was that the change in tenancy resulted in an abandonment and therefore reverted back to the RA permitted uses. Mr. Lagana explained that they were dealing with a preexisting non-conforming use confirmed by the 2001 letter. Mr. Lagana said the temporary non-use does not cause somebody to lose their preexisting status and does not result in abandonment. The Board Attorney discussed case law. Temporary inability to find a new owner or tenant or transfer of ownership or the commencement of a new tenant was not an abandonment.

The Board needs to analyze if there was an abandonment or some overt act by the applicant to change the nature of the business. In the context of a use that was somewhat changing, it does not have to be exact. The Board has to weigh whether or not the use that was there prior and the use being proposed are substantially similar.

Mr. Kohut thanked Mr. Lagana for his explanations of the case law. He also extended his condolences to the passing of Scott Sproviero.

Mr. Kohut stated that this property was located in a residential A zone with a 2-family dwelling and a 900-sf garage which has been used as a workshop for commercial purposes. It was occupied by a long-time tenant, J. Macy. Mr. Hollywood is seeking now to change from J. Macy to Ryan Doyle of Doyle Automotive. Mr. Kohut agreed with the board attorney's legal analysis on abandonment. There must be an intent for an abandonment.

Mr. Kohut discussed case law on changing a non-conforming use. The use has to be substantially similar in kind. There needs to be a negligible change and no enlargement of the use. The applicant is not proposing any changes to the structure.

Mr. Kohut pointed out that the proposed tenant was proposing some changes and with each change they decrease in what was existing with the prior tenant. Mr. Kohut noted that J. Macy's hours of operation were 8 – 5:30 Monday – Friday Saturday 8 – 12. Mr. Doyle will be open Monday-Friday 8:30 – 5 and no weekends. J. Macy had 2-3 employees and the new tenant will have one employee. There will be no signage. Prior tenant had deliveries and the new tenant will have no deliveries. This will be an ancillary site and not the main location. There will be no tow trucks or flatbeds. There will be no outdoor storage. It will have the look of a residential garage. There will be no customer activity at this site. If the board approves this, all of this will be a condition of the approval.

Mr. Lagana said there was an issue regarding the timing. His appeal was dated 2/8/2022. Mr. Kohut said normally you don't file for a change of tenancy to the zoning board. He did not believe anyone was arguing that this isn't a preexisting non-conforming use so they have the right to bring forward a proposed tenant to determine if it meets the criteria of the non-conforming use. Mr. Lagana asked if this was a certification application and not necessarily an appeal because the timing of an appeal is 20 days. Mr. Kohut said he is not prepared at this time to present evidence going back in time. He felt it could be called a certification of the new use. Mr. Lagana said if this case was to proceed as an appeal, the board was well in their jurisdiction to deny it for a lack of jurisdiction on a timing issue. Mr. Lagana said this was a certification of a preexisting non-conformity. Mr. Kohut agreed.

Mr. Terrence Hollywood purchased the property in 2001 and inherited the tenancy. They were there until last year when Covid shut them down. Mr. Kohut said as per the 2001 letter, the zoning officer determined what was there was legal non-conforming, Mr. Hollywood agreed.

Mr. Kohut showed photos of the interior shop and how it currently existed. Mr. Kohut said it took some time for Mr. Hollywood to find the right tenant but never the intent to eliminate this use. Mr. Kohut asked if he ever received any complaints from any neighbors from J. Macy's use of the property. Mr. Hollywood answered no. Mr. Kohut noted that Mr. Hollywood spoke to some of the neighbors to go over what was being proposed. Mr. Hollywood said he did with the immediate neighbors. Mr. Kohut said the applicant agreed to no loud music in the shop. The windows in the rear would be blackened out so the light would not impact the neighbor to the rear. One wall would be properly insulated to reduce noise. There would be only one employee and that employee will drive a personal car not a commercial vehicle. Mr. Hollywood agreed.

Mr. Hollywood said the previous tenant was a jack of all trades, metal fabricators, made railings and did metal work. They were always bringing in engines and motors to refurbish and resell. Mr. Hollywood said they had a paint station where they painted metal and that has been removed. Mr. Hollywood said they also did metal stamping which was a loud process which will not be continued. He stated they were union workers and kept strict union hours. He added this was their main location and had customers that dropped off things during all hours and deliveries.

Mr. Loonam clarified that Mr. Macy occupied the garage before he purchased the property. Mr. Hollywood answered yes. Mr. Loonam asked if the nature of business was construction. Mr. Hollywood said it was fabrication. Mr. Loonam asked if there was anything that showed what

they did. Mr. Hollywood said he did not know the scope of their work but only knew what he witnessed. They were always getting in older motors, machinery and tools to recycle and refurbish.

Mr. Loonam asked if he personally witnessed them doing engine work. Mr. Hollywood said refurbishing lawnmowers. Mr. Loonam said the letter from Doug Baker in 2001 read it was “a legal non-conforming two family dwelling. As such, and any existing business use can be continued but not changed or enlarged”. Mr. Loonam asked if he did not think this was a change from the previous business. Mr. Kohut pointed out that it did not have to be exactly the same. Mr. Loonam understood. Mr. Hollywood thought the new applicant would be less intensive than the old one. Mr. Loonam thought the intensity of the use was not what they were looking at and asked what was J. Macy allowed to do by the town as a part of preexisting non-conforming use. How were they registered with the town, Mr. Loonam asked. Mr. Kohut would have to look that up and sometimes the records are thin on what is being done. Mr. Loonam questioned what J. Macy was doing at the property and what he was allowed to be doing at that property.

Motion to open to the public for comments or questions for Mr. Hollywood was made by Mr. Schaffenberger, seconded by Mr. Rebsch and carried by all.

No one wished to speak in the public.

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

Mr. Ryan Doyle said his current business was Doyle Automobile at 197 Main Street which is automotive repair at that facility. This proposed work space is a sub shop which will be used for long term work and not his main business. Mr. Kohut asked what was his intended use of the workshop. Mr. Doyle responded that there will be light metal fabrication, frame repairs, axle fabrication, brake line fabrications and engine repair work. Mr. Kohut asked if there would be any spray painting or metal stamping. Mr. Doyle answered no. He said there would be about a quarter of the noise level that was there. Vehicles would be driven to the site and put into the garage. There would be no hazard materials stored on site, said Mr. Doyle.

Mr. Kohut said while the products might be a little different, what is being proposed is metal fabrication. Mr. Doyle agreed.

Mr. Levine asked how the employee gets back to the main shop. They will either walk or call for a ride. Mr. Levine asked if they were occupying the space now because there was an engine in the photo. Mr. Doyle said they did have some items stored there but then they received the letter they were not approved.

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

Mr. John Parrish, 190 Center Street, New Milford NJ was sworn in by the board attorney.

Mr. Parrish had the lots behind and next to the garage. He had reached out to Mr. Hollywood and was satisfied with his answers but asked what recourse would a neighbor have if the rules were not followed.

Mr. Cahill said if the board chooses to allow the use there would be stipulations in the resolution. If there were violations of the stipulations by Mr. Doyle, both Mr. Doyle and Mr. Hollywood would receive a notice of the violations. If they were not corrected, they would receive summons and appearance before the municipal judge.

Mr. Parrish was in support of the business. The resident asked how long was the lease and what happens if Mr. Doyle wants to move.

Mr. Lagana said the certificate of non-conformity will grant the applicant to use the property in perpetuity. They cannot expand it or abandon it.

Mr. Kohut said if the zoning officer does not agree that the next tenant meets the similarity standard, they would have to appear back to the board.

Mr. Parrish wants it on the record that it was not an automotive shop. Mr. Adelung said that would have to be clarified.

Ms. DeBari, 120 River Road, said in their exhibit they stated that the hours of operation would be Saturday 9 am to 12 pm. Mr. Kohut said they decided on no Saturdays so Exhibit A was outdated. Ms. DeBari did not have a problem with this application.

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

Mr. Kohut thanked the board and the public. He said they established that this use was not abandoned and it took about a year to find the right tenant. Mr. Kohut clarified that the use does not have to be identical, it needs to be substantially similar. They have metal fabrication and engine work. They were not enlarging or expanding the use, they were reducing the hours of operation, reducing the staff and felt this makes sense for this type of use to take over. Mr. Kohut asked the board to approve the application as submitted.

Mr. Rebsch asked what was the description of his main shop. His business at 197 Main street is automotive repair and maintenance. Mr. Rebsch commented that this new location would have the same name because it is one business. Mr. Kohut clarified that Ryan's automotive does a certain service at its main location. However, at this proposed location, it would be a small subset of the work that he does which would be dictated by the resolution. Mr. Doyle said part of automotive repair is fabrication. Mr. Rebsch also wanted to make sure there would be no painting. Mr. Doyle said there would be no painting.

Mr. Adelung was uncomfortable how they were picking what can and cannot be done. He felt they were putting the neighbors in a position to monitor this and said the neighbors should not have to monitor it. Mr. Kohut understood that it was not the neighbor's job to monitor it but felt there is a preexisting non-conformity here and there was a use that would be going in there. He felt the best situation is to have documentation to what can be done.

Mr. Hicks said Mr. Cahill referenced the use in the accessory building and the tenant must live in the house. Mr. Lagana said when Mr. Cahill looked at the permitted uses in the residential zone -

accessory uses. You were entitled to in the A zone to have a home professional office which lists permitted uses and part of the conditions of having a home office is that you have to live in the home. When Mr. Cahill did his analysis and they did not fall under the accessory use because they were not one of the listed home uses. Because he did not meet some of the criteria, he issued a denial letter. Mr. Hicks had questions on the certification. Mr. Lagana said, if approved, this would be a certification of a preexisting non-conformity which continues to exist subject to what the applicant has testified to and they would have a document to refer back to.

Mr. Adelung asked if a member wanted to make a motion and clarify that this was an automotive shop with the following stipulations. Mr. Lagana would caution about defining the use as a broad term because it could cause confusion in the future

Mr. Adelung asked Mr. Cahill if he was ok with the new business applications listing what they do or was it irrelevant. Mr. Cahill thought it was relevant especially in a residential zone. It needs to be clear cut in what they were doing because down the road someone will be interpreting it.

Mr. Levine asked if this was denied, would Mr. Hollywood need to look for another welder. Mr. Lagana answered that if the board denies the certification, Mr. Hollywood would have to look for a tenant that fits the description of “jack of all trades or what was testified to”. The passage of time and the mere changing of tenancies does not create an abandonment.

Mr. Loonam asked what was that preexisting business. He was not sure how he would make a determination of similarity if he did not know exactly what the business was. Mr. Loonam asked back in 2018 when J. Macy was doing business at that location, how was the business registered with the state. He asked what did the town think the nature of his business was. Mr. Kohut did not have now any documentation from the town but could come back with that information. Mr. Cahill did not have that information. Once a business is approved, he said it was out of the zoning office and he did not know where the record would be.

Mr. Adelung asked if J. Macy was a legal use. Mr. Birnbaum said on the Dun and Bradstreet site, their official registration is J. Macy custom iron railing company and their industry was listed as ornamental metal work. Mr. Loonam asked if they were a railing company that evolved over the years after they were preexisting non-conforming and now we were accepting what was never official and registered. Mr. Loonam was not comfortable with the definition of preexisting non-conforming and that this was similar. Mr. Loonam did not know if it was or was not similar because he does not have all the information.

Mr. Kohut said if that was something the board wanted him to investigate, then they will check into it and come back. Mr. Adelung said any information that would help should be provided. Mr. Rebsch thought it should be done because the board does not know the background.

Recess

Mr. Adelung asked if there were any notice issues because this was a denial and now it was a certification. Mr. Lagana said the notice called for an interpretation. Mr. Kohut felt it described the use in sufficient terms. Mr. Lagana thought it would be sufficient.

Mr. Hicks asked if the use now was the accepted use even though it was not the original one. Mr. Lagana said the applicant has the burden on establishing the use existing prior to the zoning ordinance enactment and how it has continued. Mr. Lagana said if there was an alteration of the use, it was no longer lawful. Mr. Lagana stated that Mr. Loonam's comment was a relevant analysis and he thought it was very important.

Mr. Lagana said it is a matter of did the applicant supply enough proof to satisfy the board. If the board wanted additional proofs, they had the ability to ask for it. If the applicant could not provide it, they would have the ultimate burden of proof and the board would have to weigh that when making their determination.

Mr. Kohut asked to carry this to the May 3 hearing and they would try to find additional information that some board members were seeking. The applicant would renote since the May 3rd hearing would be in person and not virtual.

Mr. Kohut would grant an extension of time.

**22-04 – 341 Marguerite Avenue – Dengel – block 1206 Lot 31
New Modular Home – building coverage**

Matthew Capizzi, Capizzi Law Office, Tenafly, NJ on behalf of John and Janet Dengel. The applicants lived at this property since the 1970s and their house was over 130 years old. They want to remain in New Milford and create a living environment that would be more conducive to someone growing on in years. They are proposing a new modular single-family house that was a predominately ranch style home with a small element of second story space. The applicant was seeking a variance to exceed the maximum building coverage. The existing home was non-conforming as to front and side yard setback, accessory structure setback and the projection allowed for the front steps. Those four non-conforming conditions will be removed as a result of this application. There would be one building coverage variance. There is also a detached accessory garage that would be removed.

Mr. Capizzi stated that the redevelopment of this site with a new single-family home will be a betterment by virtue by increasing the curb appeal of the streetscape as well as removing some non-conforming conditions. The proposed home is a modular home.

Chris Blake was sworn in by the board attorney.
The Board Members accepted the qualifications of Mr. Blake as an expert in the field of architecture.

Mr. Perry Frenzel, 30 Madison Avenue, Paramus NJ was sworn in by the board attorney.
The Board Members accepted the qualifications of Mr. Frenzel as an expert in the field of engineering.

Mr. Frenzel discussed the plan last revised 11/29/21 by Azzolina & Feury Engineering Inc.

The site plan depicted the proposed redevelopment. He discussed the proposed dwelling, concrete patio, driveway and a seepage pit system in the rear that would capture the runoff from the entire roof of the new building.

The property is a conforming lot of 10,234 sf. where 7,500 is required.

The front yard setback proposed is 28.50 ft where 28.27 ft is required.

The rear yard setback is also conforming where 55.3' proposed 34.1' required.

The side yard also conforming 10.1' proposed 10' required.

Building coverage required 20% proposed 22.52%

Impervious coverage required 40% proposed 36.8%.

The height was conforming at 28.02' required 30'.

Maximum front yard coverage proposed 28.6% which is conforming.

Mr. Frenzel said the garage in the rear would be removed as is a significant portion of the driveway apron as per the plan. The existing dwelling steps encroach 20' and the new dwelling would only encroach 1.8 feet into the front yard required 4'. The 18' curb cut conforms.

The seepage pit system picks up the entire roof area of the dwelling. The system was designed to exceed the normal storm that would be a 2" rainfall and they have increased their design criteria to a 3" rainfall.

Mr. Capizzi asked what the minimum front yard setback was. Mr. Frenzel said existing was 15.20 required 28.27'. There is an existing side yard of 3.8ft required 10'. The Accessory structure side yard existing 1.8' required 5'. Mr. Capizzi clarified that the minimum front yard and side yard and accessory setback would be eliminated by this application. Mr. Frenzel agreed.

Mr. Capizzi asked if the building coverage square footage was over by 260 sf. Mr. Frenzel agreed and said 110 sf of it was attributed to the front porch.

Mr. Adelung asked Ms. Batistic if she confirmed the coverages testified by Mr. Frenzel. Ms. Batistic agreed that the variance was for maximum building coverage for 2,305 sf (22.5%).

Motion to open to the public for comments or questions for Mr. Frenzel was made by Mr. Hicks, seconded by Mr. Schaffenberger and carried by all.

No one wished to speak in the public.

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

Mr. Chris Blake did not prepare the plans but testified that he has worked with the Westchester Modular homes and could testify to the plans.

The architect discussed the plans submitted. The first-floor space had a foyer, living room, dining room, kitchen and master bedroom/bath, accessible garage and laundry room. It has all the livable areas for a couple to live on the first floor. The house had a second-floor component with two small bedrooms and a bath and a living loft area.

Mr. Blake said the covered front porch is 110 sf which will protect the front door from the elements and gives a little architectural character to the house.

The building is spread out more to have first floor living. It does fit in with the style of the neighborhood.

Motion to open to the public for comments or question for the architect was made by Mr. Hicks, seconded by Mr. Rebsch and carried by all.

No one in the public to question the architect.

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

Mr. Capizzi said the proposed application required a building coverage variance to accommodate the first floor living for the couple to age in place. Mr. Capizzi said this would not have any negative impacts to the neighbor as testified to by the engineer and architect. It would be an improvement to the neighborhood and asked for the application to be granted.

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

No one in the public wished to speak.

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

Mr. Loonam felt it was a good application. He felt the building coverage variance was remediated by the fact that the applicant put thought into where to put the home and removed previous setback issues. He had no issues with this application.

Ms. Batistic said they provided the storm water management and said in her letter she stated a soil movement and tree removal permit would be needed.

Motion made by Mr. Loonam to grant the application as submitted with no changes or modifications, second by Mr. Rebsch.:

The motion passed on a roll call as follows:

For the motion: Members Loonam, Rebsch, DeBari, Birnbaum, Hicks, Schaffenberger, Adlung.
Vote-7-0

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

Respectfully submitted,
Maureen Oppelaar