

Approved
3/8/16

**New Milford Zoning Board of Adjustment
Work Session
February 9, 2016**

Chairman Schaffenberger called the Work Session of the New Milford Zoning Board of Adjustment to order at 7:35 pm and read the Open Public Meeting Act.

ROLL CALL

Mr. Adelong	Present
Ms. DeBari	Absent
Mr. Denis	Present
Mr. Joseph	Present
Mr. Loonam	Present
Mr. Rebsch	Present
Mr. Stokes	Present
Mr. Weisbrot	Present
Mr. Schaffenberger- Chairman	Present
Mr. Sproviero - Attorney	Present
Ms. Batistic – Engineer	Present
Mr. Grygiel – Planner	Present

The Board Attorney swore in Mr. Stokes for a four year term as a full member with term expiring 12/31/19.

REVIEW MINUTES OF THE WORK AND PUBLIC SESSION – January 12, 2016

The Board Members reviewed the minutes.

RESOLUTION

**15-08 Institute for Educational Achievement- Block 1211 Lots 32/33
Construct new adult education building
Conditional use, height, parking**

The members reviewed the resolution and made no changes.

OLD BUSINESS

**15- 07- 244 Main Street Properties, LLC -Block 1312 Lot 1
Expand a two story mixed use building – 3 story mixed use building
Density variance and multiple C Variances**

Mr. Sproviero noted that the Board Members received revised plans and the applicant had the engineer present to explain the revisions. Mr. Sproviero said there were persons within 200' of the subject property who assert that they did not receive notice issued by the applicant or it was delivered late. Mr. Sproviero stated it was the applicant's obligation to send the mailing by certified mail with the United States post office at least 10 days prior to the mailing. The applicant has presented proof that they have done so and have all the white cards that bear the

post office stamp as to when they were delivered by the applicant to the post office for certified mail. The allegation was that the post office was not delivering certified mail. Mr. Sproviero said it did not affect the Board's jurisdiction. It was the applicant's burden to demonstrate their satisfaction with the land use statute, which they have done, said the Board Attorney.

Mr. Adelung clarified it was the Board Attorney's opinion that proof has been provided so that was the end of it. The Board Attorney agreed.

The Chairman said the applicant has been referring to the Master Plan. He added that he read it in conjunction with Mr. Grygiel's letter. The Chairman asked Mr. Grygiel if he would explain the wording in the Master Plan that Mr. Alampi has been relying on with this application.

Mr. Grygiel said the language in the Master Plan recommending mixed use closer to the street along Main is implied but does not specifically say that. Mr. Grygiel said the intention was that the B-zone was being modified to make it easier for development. He added it doesn't explicitly promote this project or any specific projects but it says there should be no setback along Main consistent with existing conditions.

Mr. Loonam commented that he also read the Master Plan regarding moving closer to the street along Main Street. He did not think they were speaking of a mixed use or a residential component moving closer. Mr. Grygiel said one of the problems was that residential currently was permitted which was not the intention. They want at least to have a commercial component. Mr. Loonam said it contemplates specifically Main Street. Mr. Grygiel agreed and said currently zoning had different heights for county roads. He added the thought was to make Main Street a more traditional downtown with buildings up the street line like Westwood and Ridgewood. He said this building was something like that but you wouldn't want to do the same thing on River or Madison. They want commercial on the ground floor with residential above.

The Chairman said this is written in a way that it seems to be something that needs to happen in the future and asked if this was applicable today. Mr. Grygiel said the zoning today does not have this language. It is in process and maybe the Mayor and Council might adopt zoning that changes it to implement these recommendations, said the planner. Mr. Grygiel stated these were general recommendations floating out there and the planning board was encouraging them to happen. The Chairman said if the applicant was relying on something that was "floating out there" was that different from something that has been chiseled on slab and brought down from the mountaintop. The Board Attorney answered what was chiseled in slab and brought forth from the mountaintop was that residential was permitted in this zone and this recommendation tries to temper that to a certain extent. He added the applicant was not seeking a use variance. The D variance relates to the density and the other variance was the three stories which was a C variance.

The Chairman asked why stories was a C variance. The Board Attorney said it did not fall into one of the four categories of D variances. He added this satisfied height. Ms. Batistic said in feet. The Chairman questioned why this did not have to comply with residential standards. Mr. Sproviero said it was a business zone. The Chairman asked why it had to conform to the residential setbacks. Mr. Grygiel answered this was a reason that the business zone had to be

fixed. The Chairman questioned if the residential standards applied why not the height. Mr. Grygiel said it was a good question. The Board Attorney stated the only relief from the traditional residential standards in New Milford's ordinance was the frontage. He added the ordinance reads the height shall be no more than 35'.

Motion to close was made by Mr. Stokes, seconded by Mr. Denis and carried by all.

**New Milford Zoning Board of Adjustment
Public Session
February 9, 2016**

Chairman Schaffenberger called the Public Session of the New Milford Zoning Board of Adjustment to order at 8:08 pm and read the Open Public Meeting Act

ROLL CALL

Mr. Adelung	Present
Ms. DeBari	Absent
Mr. Denis	Present
Mr. Joseph	Present
Mr. Loonam-Vice Chairman	Present
Mr. Rebsch	Present
Mr. Stokes	Present
Mr. Weisbrot	Present
Mr. Schaffenberger-Chairman	Present
Mr. Sproviero - Attorney	Present
Ms. Batistic – Engineer	Present
Mr. Grygiel -Planner	Present

PLEDGE OF ALLEGIANCE

OFFICIAL MINUTES OF THE WORK SESSION – January 12, 2016

Motion to accept the minutes was made by Mr. Weisbrot with a change, seconded by Mr. Denis and carried by all.

OFFICIAL MINUTES OF THE PUBLIC SESSION –January 12, 2016

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

RESOLUTION TO BE MEMORIALIZED

15-08 Institute for Educational Achievement- Block 1211 Lots 32/33

Construct new adult education building

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

The motion passed on a roll call vote as follows:

For the Motion: Members Rebsch, Denis, Loonam, Weisbrot, Joseph, Adelung, Schaffenberger

OLD BUSINESS

15- 07- 244 Main Street Properties, LLC -Block 1312 Lot 1

Expand a two story mixed use building – 3 story mixed use building

Density variance and multiple C Variances

Mr. Stokes recused himself from the application because he was within 200' of the proposed site.

Mr. Alampi said this was a return hearing date for 244 Main Street. He stated at the last meeting the Board asked the applicant to consider a few adjustments to the site plan. He noted the Fire Advisory Committee reviewed the plans and did not have any requests and it asked that the Fire subcode official handle all fire suppression requirements. Mr. Alampi said the applicant volunteered to put additional sprinkler heads in the closets.

Mr. Adnan Khan was still under oath.

Mr. Alampi asked Mr. Khan if he reviewed the Boswell Letter dated January 22, 2016. Mr. Khan said the revised plan addressed most of the comments. They were still waiting for the information regarding #8 and when they receive it they would update the plans.

Mr. Alampi stated the architectural plans showed the changes made on the windows.

Mr. Khan discussed the revisions on the plans. He stated they were proposing a 12' wide one-way driveway entering on Main and exiting on Summit. Mr. Khan said they were providing landscaping along the southern property line. He added one comment on the Boswell letter was to angle the parking spaces but they felt because of the parking underneath the building there would be a conflict with maneuvering of the cars backing up from under the building. The trash enclosure was enlarged and moved next to the building. There was also landscaping to conceal the trash enclosure. There would be sidewalks the full width of the property on Summit Avenue. They were redoing the sidewalk and concrete apron as requested in the Engineer letter. Mr. Khan said they originally proposed a one header system but they now divided the header system.

Mr. Alampi marked as Exhibit A-6 architectural revisions
Exhibit A-7 site plan revisions dated 1/26/16
Exhibit A-8 water and sanitary analysis report

Mr. Rebsch asked if the sidewalks would match. Mr. Khan said they would match the existing.

Mr. Khan said they prepared the water and sanitary analysis report with the calculations for the size of the piping for water and sewer.

Mr. Alampi said this application did not involve a Bergen County review. Mr. Khan agreed but they would need a permit from Soil Conservation.

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

No one wished to be heard.

Motion to close was made by Mr. Denis, seconded by Mr. Joseph and carried by all.

Ms. Batistic stated that at the last meeting Mr. Rebsch suggested the exit driveway be on Main Street. Ms. Batistic referred with two of their traffic engineers and both preferred the proposed pattern with the entrance on Main and exit on Summit.

Ms. Batistic recommended a slight angle to the parking spaces so it would force the cars out the correct exit. Ms. Batistic and Mr. Khan agreed on an 80% angle.

Mr. Grygiel said there were some variances being sought not listed on the bulk table. He stated the building, lot coverage, rear yard standard do apply. Mr. Alampi said they neglected to correct that but recognized that it would revert to the residential schedule.

The Chairman asked the Board Attorney to explain for the record why the residential height standard did not apply to this application. Mr. Sproviero said in the B-2 zone it expressly states that the height limitation was 35'. The zoning criteria sets forth a specific exception to the residential standard.

The Chairman clarified that even though this project was exceeding the allowed impervious amount it was actually being reduced. Mr. Alampi said that was because the lot was almost all hard top and they were putting in landscaping. He added they exceed the standard but it was a reduction.

Motion to open to open to the public for general comments was made by Mr. Adelung, seconded by Mr. Rebsch and carried by all.

No one wished to comment.

Motion to close was made by Mr. Denis, seconded by Mr. Adelung and carried by all.

Mr. Alampi said his summation would be brief. This application was a variance because of the number of units attached to the project. A mixed-use component is permitted under the ordinance but the Master Plan speaks specifically to encourage it. The density comes as a result of the number of units for the size of the property. The ordinance had a particular provision that says they encourage mixed use and multiple dwellings but one unit to every 5,000 sf and that equates to 8 units per acre. He added that was a bit stingy but that is what the ordinance calls for. Mr. Alampi said they have developed a plan that was comfortable for the property. He told the board they had to take into consideration whether or not the site could accommodate the size of building, number of units and the style of development. Mr. Alampi said they have a very abundant field of parking that meets the criteria to maintain the current retail space and the proposed 6 units. They were taking a site that was 100 percent blacktop and creating some limited buffering along the perimeter of the property. He added that although they were exceeding the required impervious coverage they were reducing the amount of impervious coverage. Mr. Alampi said the property is 12,500 sf and positioned on the corner. He added this lot faces two streets and gives egress and ingress in a comfortable maneuver. It was user friendly, ample in size, plenty of maneuvering space for some parking and works in a nice circulation. Mr. Alampi said it did not make sense to demolish the existing building and put it in the middle of the site because it would be less efficient. This was the most efficient layout on the site. They choose not to have a basement and there was a flat terrain. The garage space would be on surface with the utilities with two full levels of residential. The six units were well suited, well designed, well parked and in the right location on the site. They were requesting a density variance. The standard in NJ under the burden of proof for density was whether or not the site accommodates the requested number of units. Mr. Alampi felt parking was the most significant issue. He felt the site was fully self-sufficient and well accommodated.

Mr. Alampi said they recognized the sensitivity with having residents on either side of Main Street but they have their little neighborhood business zone. To reinvest in the community, bring a fresh look, bring in a mixed use hoping to stimulate the same type of activity was a positive thing and was a purpose of zoning. Mr. Alampi asked the Board to consider the approval of this application. The variances regarding the setback were a function of the wording in the ordinance. He pointed out that the existing building did not conform. He did not feel that violating those setbacks was a negative impact on the community. The orientation of the building was to take the residential component and elongate it along the side street. Mr. Alampi asked they consider the application and favor them with a vote.

The Chairman said that Mr. Alampi has referenced the Master Plan a number of times. He asked if the wording in the Master Plan was something that was desired in the future or something now in play.

Mr. Grygiel said the section of the Master Plan on page 27 talked about the business zone was recognition that there were a number of issues with the way it was written today. Some of them included the setbacks that revert to residential. There were a number of issues that were suggested to be addressed but it was not law yet. The Master Plan was a policy document adopted by the Planning Board that recommends changes to zoning. The Mayor and Council are considering changing the B-zone requirements to maybe streamline mixed-use requirements to make it tougher to have residential only projects and to fix other parts of the B zone that don't work correctly today. Mr. Grygiel noted that they were not enacted yet. They are more recommendations and they acknowledge the submissions that should be addressed.

Mr. Grygiel clarified that right now the ordinance is as it is today and the B zone requirements have certain standards. He explained the applicant still needed variances for building coverage, impervious coverage, rear yard and other things. The Chairman asked his opinion if there was anything that Mr. Alampi was hanging his hat on currently that might not hold his hat. Mr. Grygiel said there was language in his letter that he might have simplified a bit with saying the Master Plan encouraged mixed use closer to the street. It does promote mixed use as opposed to single use and it does promote buildings on Main Street closer to the street. Mr. Grygiel would stand corrected in putting that in his letter but the intention is to have commercial on Main Street with residential upstairs.

The Chairman said this might be a stretch. The planner said it may be but it was there and there were certain recommended changes such as bringing buildings closer to Main Street and encouraging mixed use development.

The Chairman had an issue with the variance they were requesting for density. He commented that they were requesting more than twice that which was allowed. Mr. Grygiel said about 2.5 times. The Chairman asked what his opinion was on that. Mr. Grygiel said Mr. Alampi said the density requirements were a bit stingy and he would agree that 8.7 units per acre in a mixed-use zone might be a bit extreme. He said Mr. Alampi was correct that the board needs to determine that the additional units could be accommodated on the site and one would be parking. Mr. Grygiel said there was also more to consider like if there was adequate setbacks and buffering to

neighboring uses. He was not saying they were or were not but it was something the board had to consider.

The planner said two things that need to be corrected for the record was that site plan said lot coverage was under 91% so it was not 100%. It was a reduction as proposed and the front yard setback was not met today but the rear yard was being triggered by the building.

Mr. Loonam asked if density was not being contemplated in the Master Plan because the ratio might be a little stingy. Mr. Grygiel recalled there were so many issues to deal with that density was not on the list of topics to be discussed. He added that the amount of units that could be built in the business zone even if the density was higher or slightly lower did not make too much of a difference in the general scheme of things. Mr. Loonam said in the Master Plan it seemed to say that there was not a lot of Business zone left and they want to further the business zone and not contemplate residential above. Mr. Grygiel said it was to make sure the business zone did not shrink in terms of being taken over by residential uses. One of the driving forces behind the language was to promote business.

Mr. Loonam asked how many parking spaces would be needed if there was no residential component and it was commercial only. Ms. Batistic answered 1 space for 150 sf of the floor area of the business. Ms. Batistic said if the entirety of the downstairs was business they would need 25 spaces and if upstairs was residential they would need an additional 6.

Mr. Adelung commented that he looked at the site and observed that on Summit Avenue there was an existing apartment building. He thought the two building would mirror each other. He also looked at how the commercial element sat on Main Street. He thought you wouldn't want commercial units along Summit Avenue. Mr. Adelung looked at the density and thought who would put 2.5 units at this site. He believed what they were proposing would be a benefit to the area as opposed to what could end up there.

Mr. Denis agreed and thought it would be an asset to the neighborhood.

Mr. Loonam agreed that updated commercial space was a positive but he was not convinced that this was what the Master Plan wanted to do. Mr. Alampi said the issue at hand was you did not need all commercial to promote business. Residential supports commercial and it helps commercial expand. This helps to support the goal of supporting commercial. The goal of the master plan was to expand the commercial zone. Mr. Alampi thought this project was the perfect use and the wrap around is residential on the side street. He hoped other people would follow suit. Mr. Loonam did not think the mixed use was problematic but thought there were too many units. Mr. Alampi disagreed and said the number of residential units ratio to the commercial was the right thing for this site. Mr. Loonam said it was 2.5 times what was allowed and questioned if they have tried to meet the goal of the Master Plan. Mr. Alampi said the Board had the authority to use common sense, good planning principles guided by the ordinance and Master Plan to effect the change. Mr. Alampi said what was important was that it would not have a substantial negative detriment to the adjacent properties.

Mr. Sproviero identified six variances that were implicated by this application:

D Variance – density variance, which would require 5 affirmative votes
Bulk variances: Stories, rear yard setback, building coverage, impervious coverage,
Preexisting non-conforming front yard

Conditions would be:

Approval would be subject to the continuing jurisdiction of any state, county or federal agencies, especially the Bergen County Soil Conservation District

The applicant compliance with the recommendations in the Engineers review letter

Non-garaged on site parking at the easterly side would be installed at 80 degrees angle

Affordable Housing Trust Fund - Development would provide 6% because of the D variance for density.

Subject to the Developers agreement

Motion made by Mr. Adelung to approve the application subject to the conditions, seconded by Mr. Denis.

The motion passed on a roll call vote as follows:

For the Motion: Members Adelung, Denis, Loonam, Weisbrot, Joseph

Against the Motion: Members Rebsch, Schaffenberger

Approved 5-2

Mr. Loonam said this was the hardest decision he made for an application. He would vote for the application and asked the applicant to please go the extra mile in every detail in making this. He felt the positive was it would improve and update the area. Mr. Loonam said this site would be the catalyst for other people wanting to do similar projects.

Mr. Schaffenberger agreed with Mr. Loonam except his vote.

Mr. Alampi said his client would be setting a standard for the neighborhood. The Chairman appreciated it and said there were a lot of things he liked about the application but there were a couple of things he could not get passed.

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

Respectfully submitted,

Maureen Oppelaa