

Approved
8/2/22

**New Milford Zoning Board of
Work Session
06 07 22**

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

REVIEW MINUTES OF THE WORK/PUBLIC SESSION – May 3, 2022

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

RESOLUTION

22-05 - 306 Webster Drive – Block 1604 Lot 7

Inground Pool – Impervious Coverage

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

OLD BUSINESS

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

Interpretation/Appeal from the zoning officer for change in tenancy

The Board Attorney stated the matter would be carried to August 2, 2022 at 7 pm and there will be no further notice.

NEW BUSINESS

22 06 285 Monmouth Avenue – Pollack – Block 904 Lot 28

New House – building coverage, corner side yard variances

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

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

**New Milford Zoning Board of Adjustment
Public Session
June 7, 2022**

Chairman Adelung called the Public Session of the New Milford Zoning Board of Adjustment to order at 7:10pm and read the Open Public Meeting Act.

ROLL CALL

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

PLEDGE OF ALLEGIANCE

OFFICIAL MINUTES OF THE WORK /PUBLIC SESSION- MAY 3, 2022

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

RESOLUTION TO BE MEMORIALIZED

22-05 - 306 Webster Drive – Block 1604 Lot 7

Inground Pool – Impervious Coverage

The board members reviewed the resolution and had no changes or comments.

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

For the motion: Members Hicks, Rebsch, LoPorto, Adelung

OLD BUSINESS

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

Interpretation/Appeal from the zoning officer for change in tenancy

The Chairman read the letter in the record from Wells, Jaworski & Lieberman dated 6/7/22 stating the matter would be carried to the August 2, 2022 meeting at 7 pm and no further notice would be given.

NEW BUSINESS

22- 06 - 285 Monmouth Avenue – Pollack – Block 904 Lot 28

New House – building coverage and corner side yard variance

Mr. Adelung stated the Board Engineer would not be present and the engineer would review at a later date if needed. The applicants counsel agreed.

Mr. Ronald Mondello, Esq, legal counsel, representing Joseph and Ann Marie Pollock at 285 Monmouth Avenue.

Mr. Marlon Cruz was sworn in by the Board Attorney.

Mr. Cruz, 1140 Caldwell Avenue, Union, NJ -qualifications were accepted as an expert in the field of architecture at the May 2021 hearing. The Board Attorney verified that his license was in good standing. Mr. Cruz answered yes.

Mr. Pollock, owner at 285 Monmouth Avenue, was sworn in by the Board Attorney.

Mr. Mondello commented that they appeared before the board via zoom on May 11, 2021 seeking relief to construct a second-floor addition and attached garage. They exceeded building coverage and proposed 22.24%. The applicant had preexisting front yard setbacks. This is a corner lot so there are two front yards. The Board approved the relief sought and the resolution was memorialized 6/8/21.

The Board Attorney marked as exhibit A-1 - Resolution 21-05.

Mr. Mondello stated the building department issued permits in November 2021.

Mr. Adelung clarified that this is now a new application with new plans.

Mr. Mondello asked the applicant why were they before the board again. Mr. Pollack explained that their contractor found no footings at the basement walls and no footings for the posts for the basement walls. They concluded that it would not be safe to build a new house on top of the walls. The house was 100 years old. They have been out of their house for two years.

Motion to open to the public for comments or questions for Mr. Pollack was made by Mr. Levine, 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 Mr. Levine, seconded by Mr. LoPorto and carried by all.

Mr. Cruz, architect, stated the house is demolished and the garage will be demolished. Mr. Cruz had no issues with the Board Engineer's letter dated 5/20/22. They agreed to the install the seepage pit. Mr. Cruz said two seepage pits would be installed and they would provide calculations as they did previously.

The architect stated they were seeking a variance for the corner setback requirements. They are proposing 15'. The second variance is building coverage. They are proposing 23.2%.

Mr. Mondello asked the architect why the house was not designed so no variances were required. Mr. Cruz stated that they did try to design it with no variances but the spaces required by the client and the elderly parents could not be fit on the first floor. Mr. Mondello stated the prior testimony in 2021 was that their parents visited frequent and they needed the space. It is a two-

story home that should blend in with their neighborhood. Mr. Cruz said last year it was approved for building coverage of 2,780 sf and now asking for 2,901 sf. The reason for the increase in building coverage was to square off the house on the side.

Mr. Adelung asked Mr. Cruz to give an overview of the house and show why they were proposing 2,901 sf.

Mr. Cruz reviewed the plan A-3(1st floor plans) showing the parents bedroom, home office, living dining room and kitchen. The second floor had three bedrooms with three bedrooms. Mr. Cruz noted that they were not building on top of the living/dining room addition so not to exacerbate the square footage. He stated there was an existing utility pole preventing the house to be pushed further back. They wanted to maintain the same setbacks as the property diagonally from them which were 30' in the front and 15' on the side.

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

No one wished to speak in the public.

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

Mr. Rebsch said the zoning worksheet stated the house was 2 ½ stories and the ZB engineer stated it was a 2-story house. Mr. Cruz stood corrected and said it was a 2-story house. The Board Attorney added that the zoning chart on the plans also indicated 2 ½ stories. Mr. Lagana stated for the record it was a two-story house. Mr. Adelung stated this would have to be corrected. Mr. Lagana said to Mr. Cruz to provide the corrections.

Mr. Mondello said the homeowners had experienced severe water damage and that was why they appeared via zoom before the board in 2021. The reason they are before the board now is because the house was demolished and there was a vacant lot now. They have been out of the house for several years and need to get back into their house and get it built and resume a normal life. Mr. Mondello asked the board to vote in favor of this application

Mr. Rebsch said his problem was that this was new construction and thought an architect should be able to design this within the ordinance.

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

No one wished to speak in the public.

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

Mr. Levine asked why was the house could not be constructed in the middle of the property. Mr. Cruz said the existing utility pole was keeping them from pushing it back. He added the previous layout was approved and there were requirements for the parents to accommodate them. Mr. Levine agreed with Mr. Rebsch that if this was new and they should try to eliminate variances.

Mr. Adelung questioned that there was a utility pole on their property. Mr. Cruz answered on the Berkley side it was about three feet from the fence and encroaching the driveway if the pushed back the pole, it would land in the driveway.

Mr. Adelung read into the record, the board engineer letter on page one, stated that “the exact extent of the variance cannot be determined since the applicant has not provided average setback calculations. Please note that the preexisting setback was 9.54 ft to Berkley Street and 29.19 feet to Monmouth Avenue. These non-conforming setbacks were to remain under the May 2021 approval. The proposed garage is setback 25 feet from the property line along Berkley Street”.

Mr. Mondello said they had some pictures of houses with setbacks, each measurement of those houses were not taken. Mr. Cruz said they would correct it or add it.

Mr. Adelung’s concern was that this was now a blank slate and asked the homeowners if they were given all the information from their professionals to construct a house in a conforming manner without variances. Ms. Pollack said they were and told them what they wanted for their family. They probably could have made something smaller but they wanted to accommodate their family and lifestyle. They did not put a second floor over the addition because that was enough for them.

Mr. Lagana told the board that there were two variances. There was a front yard setback. This was a corner lot which sometimes trigger a C1 analysis. The shape of the lot has some hardships that results to the applicant. Looking at the front yard setback, there are two front yards which is something for the board to consider. This is a new application so the board needs to look at how this house sits on this corner lot. It was appropriate to view the front yard setback under the C1 variance. It is at 15’ and asked if it is possible to achieve the 30’ setback. The other variance is the building coverage. It can be analyzed under the C2 which asks if the benefits substantially outweigh any detriments. The architect gave testimony that they tried to slide the house to the east and the inability to slide the house to the rear because of a utility pole.

Mr. Lagana stated that the applicant was over building coverage by 3.2% but in compliance with impervious coverage. Mr. Mondello said the applicant was providing seepage pits. The Board Attorney stated the applicant was providing seepage pits in accordance to the board engineer’s review letter and it would be done to the satisfaction of the town’s engineer.

Mr. Rebsch said it was previously approved for 2,780 sf and now proposing 2,901 sf. He asked why they could not stick with the 2,780 sf. Mr. Cruz said that was to square off the house. Since this is a new house, Mr. Rebsch asked why their professional could not design within the ordinance. Mr. LoPorto asked how much would the house have to be reduced to have the 2,780 sf. Mr. Cruz answered 280 sf. Mr. Mondello said it was predominantly for the bump out and aesthetic purposes.

Mr. Mondello said there was extensive testimony from Ms. Pollack last year as to why this house was designed this way.

Mr. Adelung thought they need to understand that this is a new application with a clean slate and even the foundation is removed. This is now 100% new. The Chairman said the question is why is this 2,900-sf house not being positioned to make it fit.

Mr. LoPorto was not as concerned with the positioning of the house because of the uniqueness of the property. He was more concerned with the extra coverage.

The Chairman questioned if there was an opportunity to approve this application in part where maybe the setbacks were amenable but the 280 sf was not and could be corrected.

Mr. Mondello discussed this with their professional and applicants.

Ann Marie Pollack, 285 Monmouth Ave, was sworn in by the Board Attorney.

Ms. Pollack said the increase in the square footage was mainly in her parents' room. With the prior application, there was an odd shaped sunroom. Now with this application, there was the opportunity to square off the room for aesthetic reasons. Mr. Mondello said it was 22.24% vs 23.2%. Ms. Pollack wanted her parents' room on the first floor to avoid stairs.

Mr. Rebsch asked if they should poll the board with their concerns.
Motion to close made by Mr. Levine and seconded by Mr. Rebsch

Mr. Rebsch felt this applicant was approved last year for building coverage and now they were requesting more building coverage. Mr. Rebsch had his doubts.

Mr. LoPorto thought it was straight forward on setback issues. He noted it would be easier if they were requesting the same building coverage as the last variance in 2021. He understood why they wanted to make the new modifications. Mr. LoPorto thought he could be comfortable with the extra 1%.

Mr. Levine said it was a large property. His concern was that they were over building coverage from the variance approved last year.

Mr. Hicks said he was not a fan of the original application. There was now new construction and was surprised that their professional could not rework the design within the constraints of the ordinances. He was also sympathetic that their house is knocked down. He said maybe he could "wrap his head around this".

Mr. Pollack said it took them over three months to figure out this design.

The Chairman said there could be a motion for the application, a motion against the application or a motion to split the variances.

The Chairman did not have a problem with the additional square footage. Mr. Lagana said it was 401sf to be compliant.

Mr. Modella summarized that the compliant number is 2,500 sf and the approved building coverage was 2,780 sf and proposed was 2,901 sf. Mr. Lagana said it was previous approved for 22.24% over and now proposed 2,901 sf (3.21%) over which is an increase of less than one percent.

The Chairman said the new house scenario is 401 sf over. The application is new and should stand on its own but they do know that the board previously approved 2,780 sf.

Mr. Rebsch said this is a new application and they were not building on the last resolution.

Mr. Lagana said the C2 criteria is a benefit and detriment analysis. He asked does the benefits of granting this variance substantially outweigh any detriments. The board attorney said this was not as high of a burden as a C1 where you have to show detriments to the public good and substantial detriment to the master plan and zoning ordinance.

Mr. Rebsch wanted it on the record why we approve it or not.

Mr. Lagana said another legal standard was non-conformities should be brought into conformity as soon as possible. You can take it into consideration if they were lessening it or making the appearance better. The Board Attorney said the applicant is resting on if you can bring it into conformity. They have provided testimony on how they could not bring it into conformity.

The Chairman offered the applicant to take a brief recess to discuss this and review the square footage. Mr. Mondello agreed.

Recess

Motion to go back on the record was made by Mr. Rebsch and seconded by Mr. Levine. Approved by Members Rebsch, Levine, Adelung, Hicks, LoPorto.

Mr. Mondello thanked the board for the opportunity to discuss this with his client. He said with all due respect to the board members, the applicants did not believe this was an outlandish request and they believed the positive criteria associated with the application was huge. Ms. Pollack testified last year that she worked from home and needed a designated office on the first floor. Her elderly parents come to their home for weeks and need a bedroom suite on the first floor. The applicant loves New Milford and did not want to move. Mr. Mondello added that his clients have been through a lot with the water damage and the various delays. He added the rooms were not enormous and the house diagonally from them had the same lot, setbacks and square footage. Mr. Mondello thought the board should be making a motion to approve this application.

Mr. Lagana summarized the conditions:
All conditions in the engineer review letter dated 5/20/22 –

Provide the average setback calculations

Provided underground seepage pits in accordance to their review

Any in field changes required by the engineer in terms of location, size etc.

Any additional escrow for site visits

Provide the Bergen County Soil conservation District Soil Erosion and Sediment Control Certification

Supply new plans showing a 2-story configuration.

Motion made by Mr. LoPorto to grant the application subject to the conditions, seconded by Mr. Levine.

For the motion: Member LoPorto, Levine, Hicks, Adelung

Against the motion: Member Rebsch

Vote 4-1

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

Respectfully submitted,

Maureen Oppelaar