Approved

5/10/16

## New Milford Zoning Board of Adjustment

## Work Session

**April 12, 2016**

Vice 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 Present

Ms. DeBari Present

Mr. Denis Present

Mr. Joseph Present

Mr. Loonam Present

Mr. Rebsch Absent

Mr. Stokes Absent

Mr. Weisbrot Present

Mr. Schaffenberger- Chairman Absent

Mr. Sproviero - Attorney Present

Ms. Batistic Present

The Board Attorney stated that Chairman Schaffenberger would not be at this meeting. In lieu of Chairman Schaffenberger, directing the meeting Vice Chairman Joseph Loonam would serve in that capacity.

The Board Attorney said that he had a further report for the board with respect to a matter in litigation regarding NMRA. He added those discussions were appropriately discussed in closed sessions and there would be no formal action taken with regard to this matter this evening by the Board. The sole purpose was to provide the board with an update of the status of the litigation. Mr. Sproviero said if the appropriate motion was made, this matter was right to be discussed in closed session.

##### CLOSED SESSION

Motion to go into closed session was made by Mr. Weisbrot, seconded by Mr. Adelung and carried by all.

7:31 PM – 7:43 PM

Motion to go out of closed session was made by Mr. Joseph, seconded by Mr. Denis and carried by all.

**REVIEW MINUTES OF THE WORK AND PUBLIC SESSION – March 8, 2016**

The Board Members reviewed the minutes.

**NEW BUSINESS**

**16-01 Schiffman – 1000 Ridge Court – Block 412 Lots 11,12,21**

**Three Story dwelling/Soil Moving Permit**

The Board Attorney said the three story dwelling and soil moving permit where the two components that require relief from the board. There was a single variance sought that was a stories variance. The ordinance permits 2 ½ stories where they were proposing three stories in the rear. Given the size of the property and size of the dwelling, a soil-moving permit would be required. The soil moving permit was normally heard by the planning board but since the board had jurisdiction over the variance component of the application, the board has assumed that ancillary jurisdiction to deal with the soil moving permit.

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

## New Milford Zoning Board of Adjustment

## Public Session

**April 12, 2016**

Vice Chairman Loonam called the Public Session of the New Milford Zoning Board of Adjustment to order at 7:48 pm and read the Open Public Meeting Act

**ROLL CALL**

Mr. Adelung Present

Ms. DeBari Present

Mr. Denis Present

Mr. Joseph Present

Mr. Loonam-Vice Chairman Present

Mr. Rebsch Absent

Mr. Stokes Absent

Mr. Weisbrot Present

Mr. Schaffenberger-Chairman Absent

Mr. Sproviero - Attorney Present

Ms. Batistic – Engineer Present

**PLEDGE OF ALLEGIANCE**

**OFFICIAL MINUTES OF THE WORK/PUBLIC SESSION – March 8, 2016**

Motion to accept the minutes was made by Mr. Denis, seconded by Mr. Adelung and carried by all.

**NEW BUSINESS**

**16-01 Schiffman – 1000 Ridge Ct – Block 412 Lots 11,12,21**

**Three Story dwelling/Soil Moving Permit**

The Board Attorney received the documents and determined that the applicant has satisfied all the requirements.

Mr. Loonam read the memo into the record from the Shade Tree Commission dated 3/29/16 which had no issues with this application.

Mr. Andrew Kohut, Law office of Wells, Jaworski & Liebman, stated he was here on behalf of the Schiffman application. He stated the applicant was proposing to demolish the existing dwelling and construct a new single-family dwelling on 1.14 acres. Mr. Kohut clarified that the applicant meets all the bulk requirements as far as the numerical bulk requirements for the property. The Borough ordinance permits 2 ½ stories and the zoning officer and Board Engineer have indicated this was a three-story building, said Mr. Kohut. He added that the ordinance stated that any story that the ceiling was 3’ above the street was considered a story for purposes of zoning. Mr. Kohut said the property was unique because there was a hill going up from the street to the property and because of that the basement ceiling was 9’ above the street. He added that anything built there would be greater than 3’ above the street level. There was a small portion of the basement that leads out to the backyard due to the topography. The dwelling was being built to coincide with the topography of the property. They were also requesting a soil moving permit of 497 cubic yards. Mr. Kohut pointed out on the front elevation sheet in the architectural plans, the building only appears to be two stories from the street. The height of the house from the front of the property to the highest point of the roof is 27.5’. They would meet the 30’ requirement for the height of the building. He noted looking at the house from the street, for the purposes of not substantially impairing the zoning ordinance and zoning plan, they were meeting the height of 27.5’.

Michael Hubschman, 263A S. Washington Avenue, Bergenfield, NJ, was sworn in by the Board Attorney.

The Board Members accepted the qualifications of Mr. Hubschman as a licensed professional engineer and planner.

Mr. Hubschman discussed the property at 1000 Ridge Court. He explained the property was at the end of the court and the property was over an acre. The property was made up of three lots. The existing topographic condition was the reason the applicant was seeking a variance. The reason for the variance was the curb was at elevation 62 so the ceiling of their basement would be at elevation 65. He explained in order to do that they would have to remove about 2500 cu yd of soil and lower the area by 6’. Mr. Hubschman said they were proposing the first floor elevation at 73, which would sit a little lower than the existing house. He said the reason for the request for the variance was the hardship of the topography. Mr. Hubschman stated it would be more of a benefit to have the house at that existing grade than cause all that trucking of soil moving out of the property. He said the reason it was considered a three-story house was because of the area above the curb line. He noted on the plan there was not a lot of grading proposed and the drainage was pitched towards the brook so there would be no runoff on the adjoining properties. The applicant was proposing three seepage pits to mitigate the runoff of the roof area. Mr. Kohut asked if they were close to any minimum coverage requirements. Mr. Hubschman said no because it was a very large lot.

Mr. Hubschman marked as Exhibit A-1 – site plan revision dated 3/11/16

 Exhibit A-2 - landscaping

 Exhibit A-3- architectural plans

Mr. Kohut asked due to the topography, how the house would look from the street. Mr. Hubschman said most of the roof was low pitched and two stories would be exposed in the front. He said the numerical height was revised to 30’.

Mr. Sproviero questioned if the height was 27.6’ or 30’. Mr. Kohut said it was 30’ when measuring from the average grade for the entire house but from the front grade of the building it would be 27.6’. The Board Attorney asked the Board Engineer if she was satisfied that the numerical height variance was not implicated by way of this application. Ms. Batistic was satisfied with the revised grading and calculations.

The Board Attorney asked if they were seeking their relief under C1 or C2 or both. Mr. Kohut said C1 variance.

Mr. Hubschman said the soil moving was calculated at 497 CY that would be removed from the site – 388 yards for the basement and 109 yards for the drywells. Mr. Kohut said they would comply with any ordinances and rules regarding removal of the soil. Mr. Hubschman said they would also have to get a soil erosion and sediment control permit.

The Board Attorney asked Mr. Hubschman if he reviewed Ms. Batistic’s letter. Mr. Hubschman discussed the six comments on the letter from the Board Engineer dated 4/1/16. He noted they were also proposing driveway drains and the soil percolation test which would be done at the time of the demolition. The Board Attorney clarified that the applicant would comply with all the conditions in the letter. Mr. Kohut agreed.

A motion to open to the public to question Mr. Hubschman was made by Mr. Weisbrot, seconded by Mr. Adelung and carried by all.

John Fesen, 294 Ridge Street, asked how many square feet was the current structure. Mr. Hubschman said it did not show that on the plan but said it was approximately 2,000 sf. The resident asked for the square footage of the new home. Mr. Hubschman said 4,175 sf. Mr. Fesen noted it was about twice the size. Mr. Hubschman agreed. The Board Attorney told the resident that size did not matter with this application.

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

Mr. Kohut had no further witnesses.

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

John Fesen, 294 Ridge Street, thought it was sad to see the character of the town change over the years especially on Ridge Street and Ridge Court. He said no one wants to live next to these super large homes built and wanted to express his concern that this board was allowing some things to happen that were hurting the town of New Milford. Mr. Fesen understood it was a judgement call but wanted to express his sadness to see things change so much.

Mr. Weisbrot asked the resident to elaborate on his comment on “how this was hurting the town of New Milford”. Mr. Fesen answered that the town of New Milford was always a nice three square mile town that had a lot going for it. His father started the New Milford Swim Club. He commented that Mario La Barbera, a previous mayor, used to live in that house and fought very hard to keep New Milford a great little town. He said when you go by these mega mansions you can see how East Orange became what it is today with big homes so close to each other. Mr. Fesen did not think these large homes were an attractive selling point for a town. He asked how you could be proud to be in New Milford if you were surrounded by large homes. The resident said the applicant had a great opportunity to get over an acre of property and thought they were capitalizing on it. The Board Attorney asked if he would rather see three homes or one larger one. Mr. Fesen said he would like to see a large home but not the largest house in town. The Board Attorney said the applicant was not trying to build out setback-to-setback and the only issue that brings them here results from the topography of the land. Mr. Sproviero commented that this house was big and understood the resident’s concerns but did not think that this was as extreme as other incidences seen in this town and other towns.

Rose Wolfle, 1098 Korfitsen Road, was concerned about the brook that was disintegrating and was worried about drainage coming down from the hill. Ms. Batistic said they were collecting their runoff from their roof and paved area and storing it in the underground seepage pits away from the brook. Ms. Wolfle was concerned if the hill collapses they would have problems. Ms. Batistic said they would have to make sure during construction that nothing like that happens. She added they were not to disturb any area within 50’ of the brook.

Mr. Sylvester, 418 Lee Place, asked how many trees would be removed. The Board Attorney noted that the Shade Tree Commission sent a letter stating they had no objections with this application. Mr. Hubschman said 20 trees would be removed mostly on the south side. Mr. Sylvester said the area had a hill. Mr. Hubschman showed on Exhibit A-2 that over 100 trees would be added on the site. Mr. Hubschman said there would be no trees removed on the southwest side.

Joseph La Fera, 1004 Ridge Court, was in favor of everything going on. He agreed that the homes going up were too large for the properties. Mr. La Fera thought the proposed home was fine and would be perfect on that property because there was plenty of land. Mr. La Fera commented on the 10’ setback and thought the homes on Allessandrini and Ridge Street were too large for the properties. Mr. La Fera would love to see in the future the 10’ setback changed in the town. The Board Attorney explained the Zoning Board does not get to change the ordinance. The resident questioned who did. The Board Attorney stated the Mayor and Council. Mr. Loonam explained this was a Board of Appeals and if an applicant came before this board it was because they were not allowed to do what they want for one reason or another. The Board Attorney said the reason was they violate the ordinance. Mr. Loonam explained this board was to listen and give both the applicant and public the ability to be heard. The Board then makes a decision if the applicant should get relief based on the testimony. The Board Attorney stated annually the Planning Board does a review of the zoning ordinance and reports to the Mayor and Council as to their findings.

Mr. Denis commented that people show up when it directly affects them.

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

Mr. Loonam said a few people had concerns about drainage and asked Ms. Batistic’s opinion on the site. The Board Attorney also asked about the soil moving at the site. Ms. Batistic said regarding drainage any additional impervious area had to be adequately retained and one way to do that was with seepage pits, collect the water from the impervious area, store it in the seepage pits and let the ground absorb it. They were providing a large underground seepage pit system. All roof leaders and some of the catch basins at the driveway were connected and they were meeting the standards. Ms. Batistic noted that the existing house did not have seepage pits. The Board Attorney clarified that this plan provided a better drainage scheme than the current conditions. Ms. Batistic agreed and said she reviewed their report and they were meeting the standards. The percolation test would be done at time of construction and in case the proposed system slows down, they would have to provide more volume.

Ms. Batistic said the ordinances were changing and explained that New Milford used to have an old antiquated soil moving ordinance. A new soil moving ordinance was introduced and any major soil movement which more than 200 cy requires a planning board approval .In this case because they were also hearing a variance, the Zoning Board was hearing it. The Board Attorney agreed and said they were assuming the ancillary jurisdiction because the Board was hearing the variance. Ms. Batistic said the purpose of this was to review and prevent major change of the grades. This application had 497 cy because of the topography of the land and the size of the home. The calculations and application has been submitted and it would be monitored to make sure they comply with the soil movement permit.

The Board Attorney also said a condition of approval was COAH requirements and monetary contributions. Mr. Kohut said they would adhere to an ordinance set in place.

Mr. Adelung asked about the front elevations and rear elevations. Mr. Adelung said the Board Engineer was considering the house three stories. Mr. Hubschman said it was considered three stories because of the zoning ordinance with the height above the code. He commented that this would not be considered a three story dwelling by the building code. Mr. Kohut and Mr. Sproviero stated from the ordinance definition the application was for three stories. Mr. Adelung clarified from the front elevation, the house would look like a two story home and asked if the rear elevation was 9’ to the first floor. Mr. Hubschman said there was a walk out basement and it was 9.5 from the grade to the first floor and 10’ from floor to floor from first to second. Mr. Adelung questioned that the house was being considered three stories and the applicant was asking relief on three stories. The applicant concedes that under the ordinance this house was considered a three-story dwelling and that was the relief they were seeking, said the Board Attorney.

Mr. Kohut thanked the Board and said there were some comments from the public regarding the impacts to the neighborhood. Mr. Kohut stated his client did not want to come before the board but wanted to build a fully compliant house to the zoning code. They were well within all bulk requirements of the New Milford zoning code and they could have built a much larger home. Mr. Kohut stated they had no choice but to be in front of this board because of the topography of the property. Because the street level is significantly lower than the topography of the property, said Mr. Kohut, anything they built would be considered a story. Mr. Kohut said only 13% of it was exposed in the rear of the property because of the topography. He believed from a height prospective there would be no detriment to the public let alone a substantial detriment to the public. Mr. Kohut said the height of the building as far as the numerical value of the height would comply with the zoning ordinance. It would be 30’ from average grade. They were requesting a variance for the number of stories and the height of the building would be compliant. He added the only area that the third story was exposed would be a small portion in the rear. They were complying with the drainage requirements and making the drainage situation better by adding seepage pits. Mr. Kohut said this was a perfect example of a C1 variance and respectfully asked that the Board approve the application as submitted and thanked the board for their time.

The Board Attorney asked if he had any problem with the inclusion of the condition discussed. Mr. Kohut did not have any problem with that condition.

Mr. Loonam wanted to clarify that he mentioned because of the existing topography his client was starting out with one story before they even build and had no choice because of that issue. Mr. Loonam commented they could build other things and have other designs that could be built like a ranch style home. Mr. Kohut agreed. Mr. Loonam felt what he was trying to say was the proposed home that the applicant wanted would become a three story home. Mr. Kohut agreed and added that the applicant also could build out more.

Mr. Weisbrot said that he was sensitive to Mr. Fesen’s comments and concerns. Mr. Weisbrot explained he looks significantly closer at applications with density and setbacks. He was concerned about the flow of water but the board engineer said there would be a better system than the existing conditions. He also had concerns about trees but liked that they would be planting more trees. Mr. Weisbrot pointed out that they were not called upon to discuss the character of New Milford or the zoning ordinance. The Board was here to decide on the three-story variance, which he viewed as a technical variance. Mr. Weisbrot stated in reality it could be a much larger house.

Mr. Denis stated there have been a lot of changes in town and there has been rapid development in Bergen County. He felt the zoning board tries their best and gives it their all to defend the residents so there isn’t that look of Brooklyn with homes on top of each other. Mr. Denis did not think this location for this house would make a substantial difference. He might be more concerned if they were building three homes. Mr. Denis felt the Board was trying their best to keep it in perspective.

Mr. Joseph said they had a big family and believed they needed a bigger house.

Ms. DeBari had no issues with this application.

Mr. Adelung said they were on record with the comments from the Engineer and Board Attorney. He noted the purpose for the story issue in the back yard was how they would exit. He was not happy calling something three stories and the ordinance was 2 ½ but he felt it was semantics for this and was okay with it.

The Board Attorney said the applicant’s counsel has correctly set forth the legal predicate for the relief that they seek which was a C1 variance. He explained the C1 variance was for a hardship variance, which was predicated upon topography of the land. Counsel correctly made that assertion to the board that the reason they were here results primarily from the topographic nature of the property in question. Mr. Sproviero said there could be other designs but taking a typical 2 ½ story building on this property and given the property’s topographic conditions, it results in a 3 story structure. If a board member finds the hardship exists due to the topographic nature of the property, an affirmative vote is appropriate or if a board member feels they have heard testimony that satisfies them that the positive criteria outweighs any negative criteria presented by this application, than an affirmative vote is likewise appropriate under C2.

Mr. Loonam stated that some of the concerns brought up were regarding the change of neighborhoods. He said looking at the zoning table, the front yard setback was not triggering a variance and noted the applicant’s proposal was approximately 25% greater than what they need. The right side setback was 400% of what would be allowed. Mr. Loonam said this was a big house but he did not think this was what was commonly deemed a McMansion. He felt a McMansion was a very large house on a small piece of property and this was not the case.

Motion made by Mr. Weisbrot to grant the application as requested subject to the conditions set forth in the Boswell Engineer’s letter and COAH ordinance, seconded by Mr. Adelung.

A motion passed on a roll call as follows:

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

Approved 6-0

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

Respectfully submitted,

Maureen Oppelaar