

**New Milford Zoning Board of Adjustment
Work Session
August 02 2022**

Approved
8/6/22

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

REVIEW MINUTES OF THE WORK/PUBLIC SESSION – June 7, 2022

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

RESOLUTION

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

New House – building coverage and corner side yard variance

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 Chairman stated that the Board Attorney would address this in the public session.

NEW BUSINESS

22- 08 680 Asbury Street – Buckman – block 908 Lot 5

Addition and second level – side yard setback variance

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

22- 09 – 384 Knierim Place – McCann – block 1408 Lot 4

Sunroom – building coverage, 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
August 2, 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	Present
Mr. Hicks	Present
Mr. Levine	Present
Mr. Loonam	Absent
Mr. LoPorto	Present
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- June 7 2022

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

RESOLUTION TO BE MEMORIALIZED

**22- 06 - 285 Monmouth Avenue – Pollack – Block 904 Lot 28
New House – building coverage and corner side yard variance**

The board members reviewed the resolution and had no changes or comments.
Motion to memorialize the resolution was made by Mr. LoPorto seconded by Mr. Rebsch.
For the motion: Members LoPorto, Rebsch, Levine, Hicks, Adelung

OLD 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.
The Chairman asked if there were new witnesses or new testimony being submitted. Mr. Kohut answered no.

Mr. Lagana said the applicant first presented this application for a certification of a non-conforming use back on April 5, 2022. Three witnesses were presented. Mr. Cahill, the zoning officer, gave his reasons for the denial of the business application. It was a non-conforming use which was an existing welding shop located at the 198 Center Street location and has been inoperable for several years and felt abandonment had occurred. There was additional testimony

from Mr. Hollywood, owner, and Mr. Doyle, the potential lessee, who was seeking to operate a facility which he believed was similar to that of the welding/metal fabrication shop. Mr. Hollywood gave some history of the property and Mr. Doyle discussed the proposed use. Mr. Cahill's opinion was the abandonment occurred. Mr. Lagana had discussed with the board that the mere passage of time alone could not be a factor to determine abandonment and it was established at that time that the board would have to make a determination that the business that was in existence at that time that the ordinance was passed was deemed a nonconforming use and if the proposed business was substantially similar. If they were substantially similar, the applicant could be granted the certificate for non-conformity and the permit for the new business. If the board did not find this to be substantially similar, the board was in its rights to deny the certificate and permit. Some of the facts presented were that the prior company that occupied the business was J. Macy's welding company that was in existence for 60 years. They primarily did welding and odds and ends like fixing lawnmowers and metal fabrications.

Mr. Doyle testified that this shop would repair automobiles Monday thru Friday 8:30-5pm and no Saturdays. There would be no customers or deliveries coming to the site. There would be no loud music at the shop. There would be no outside work or storage of material on the outside of the shop. There would be no tow trucks or flatbeds. There would be approximately one employee and walls would be insulated. The operation of the painting and railings would be removed. The windows would be blacked out and the rest of the building would remain in its current state and no expansion of the footprint. Mr. Lagana said the meeting ended with the opportunity for Mr. Kohut to find out if there was any information he could locate regarding the extent of J. Macy's operation at the time the ordinance was passed.

Mr. Adelung stated for the record that Mr. LoPorto and Ms. DeBari were recusing themselves from this application.

Mr. Kohut said he was not able to find anything and did not believe there were any records on file in the borough. He agreed with the board attorney regarding abandonment and there must be an intent to abandon. Everything is still there and up so he felt it was clear there was not an intent to abandonment. Mr. Kohut said there was no expansion of the use either physically or from a time perspective. It will be open less than J. Macy was open. They were open 8-:530 pm Monday-Friday and Saturday 8-12. Mr. Doyle proposed 8-5 pm and no Saturdays. There will be no signage. The client agreed that the employee will be dropped off to the site to avoid a space being taken up on the street. If the board agrees to grant this certificate, he would work with Mr. Lagana to make sure all the conditions were set forth. Mr. Kohut said J. Macy also fixed municipal vehicles so there was vehicle repair going on at the site. They were proposing engine repair, metal work, metal shop services and fabrication and brakes which was similar to what was going on before. It was not identical but it needs not be identical per case law. Mr. Kohut said a positive thing was there were several residents at the last meeting and they were unanimous that they were in favor of what they were proposing and would work in the surrounding area.

Mr. Lagana said Mr. Parrish at 190 Center street was the neighbor who spoke in favor of the application.

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

No one wished to speak in the public.

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

The Chairman asked what were they saying “yes” or “no” to on this application. Mr. Lagana said the board would say yes to a certificate of continuing non-conformity. If the board finds the use proposed was similar in nature to what J. Macys was doing for 60 years, then the board could grant the certificate of continuing non-conformity and then the permit for new business application can be issued.

Vice Chairman Schaffenberger asked if this was a super majority vote. Mr. Lagana answered it was a simple majority since certificates are not a C variance.

The Chairman noted that Mr. Doyle would have to abide to the list of things that have been testified to and did not know how this would be monitored. He said that this is public record so a neighbor would be able to take the list and be watching his business. The Chairman wanted him to be clear to what they were agreeing to. Mr. Doyle understood.

Mr. Kohut said Mr. Doyle wanted to be a good neighbor and had no problem abiding to the list so would agree to have them in the resolution. Mr. Rebsch asked if there were any conditions. Mr. Lagana said the most important condition would be granting this certificate in accordance to the testimony provided by the applicant and witnesses. This would now be part of the record which currently does not exist. This use would be conducted as per the testimony provided to the board.

Motion made by Mr. Rebsch to grant the certification with the list as conditions, seconded by Mr. Levine.

The motion passed on a roll call as follows:

For the motion: Member Rebsch, Levine, Hicks, Schaffenberger, Adelung

Recused - 2

Vote 5-0

NEW BUSINESS

22- 08 - 680 Asbury Street – Buckman – Block 908 Lot 5

Addition and second level – side yard setback variance

Mr. Matthew Capizzi, Esq, Capizzi Law Office, on behalf of Gina and Christina Buchman.

Mr. Gutierrez, architect, was sworn in by the Board Attorney.

The Board Members accepted the qualifications for Mr.Gutierriz as an expert in the field of architect.

The architect discussed the Site plan on A-1 and the proposed first and second floor plan. He stated the existing side yard was 4.9’ proposed 4.9’ and required was 7.5’. This application

would need side yard variances. They proposed a covered porch which would exceed the building coverage by 2.8%. He felt the changes would be an improvement to the house and nobody would be impacted by this proposal. Mr. Capizzi asked if there was the same number of bedrooms in the existing and proposed. The architect stated there would be one more bedroom. Mr. Capizzi said on A2 asked if the lot was conforming to lot area would they need a building coverage variance. Mr. Gutierrez answered no. Mr. Capizzi asked if they had a required lot width would they need a side yard variance. Mr. Gutierrez answered no.

The Chairman asked the Board if they had questions for the architect. No one had any questions

Motion to open to the public for comments or questions for the architect was made by Mr. Hicks, seconded by Mr. Levine and carried by all.
No one wished to speak in the public.

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

The Chairman asked the Board Engineer if they submitted the current site survey. Ms. Batistic answered yes and there were no issues with it. The Chairman asked if all the percentages were correct. Ms. Batistic answered yes. Ms. Batistic stated in her letter dated 7/5/22 she indicated they did not include the proposed covered patio as part of the building coverage which brought them over the allowable amount and they now need a building coverage variance.

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

No one wished to speak in the public.

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

Mr. LoPorto questioned that the covered porch could become at a future time a first and second floor living. Mr. Lagana said there could be a condition that they will not enclose that area and any modifications to that area would trigger a building coverage variance and they would have to come back to the board. Mr. Capizzi agreed. Mr. Lagana said there was storm water management mentioned in the Board Engineers letter. Ms. Batistic said they would have to address it with the borough engineer. Mr. Lagana said also in the letter a tree removal permit would be needed if any tree is removed.

Motion made by Mr. LoPorto to grant the variances with the conditions discussed, seconded by Mr. Levine.

The motion passed on a roll call as follows:

For the motion: Members LoPorto, Levine, DeBari, Rebsch, Hicks, Schaffenberger and Adelung.
Vote 7-0

**22- 09 – 384 Knierim Place – McCann – Block 1408 Lot 4
Sunroom – building coverage, side yard variances**

Kathleen McCann, owner, 384 Knierim Place was sworn in by the Board Attorney.
Andy Bucko, contractor, 445 Johnston Drive, was sworn in by the Board Attorney.

Ms. McCann said their house is too small. They have a patio in the rear and they were removing some block and putting a sunroom in that area. She stated it would follow the side of their house which is 7.6 feet from the property line so they would need a side yard variance. They would also need a building coverage variance - required 20% existing 18.28% and proposed 21.40%. It would be built on a deck.

Mr. Schaffenberger asked if this was a single-story enclosed sunroom. Ms. McCann answered yes and there was only outside access. Mr. Schaffenberger asked if they could access the sunroom from the inside of the house. Ms. McCann answered no. The builder said it was a three-season sunroom.

Motion to open to the public for comments or questions from this testimony was made by Mr. Schaffenberger seconded by Ms. DeBari 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 Ms. DeBari and carried by all.

The contractor said this was a simple three season structure built on a suspended floor. He noted that the impervious coverage would not change.

Ms. DeBari asked why there was not a door to the inside. The homeowner explained when speaking with the tax assessor on this project, a three-season room was different than the door from the inside so it was worth not have the door.

Motion to open to the public for comments or questions on the application was made by Mr. Rebsch seconded by Ms. DeBari and carried by all.

No one wished to speak in the public.

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

The Chairman asked the Board Engineer if there were any stipulations with this application. The Zoning Board Engineer said there was none. A seepage pit was not required since they were not increasing the impervious coverage.

Motion to approve the application as submitted by Mr. Rebsch, seconded by Ms. DeBari.

The motion passed on a roll call as follows:

For the motion: Members Rebsch, DeBari, LoPorto, Hicks, Schaffenberger, Adelong
Vote 6-0

The Chairman asked the board members to think about ordinances to be revised which will be discussed at a future meeting.

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

Respectfully submitted,
Maureen Oppelaar