

**New Milford Zoning Board of Adjustment  
Work Session  
November 1, 2022**

Approved  
12/6/22

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

**REVIEW MINUTES OF THE WORK/PUBLIC SESSION – September 6, 2022**

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

**RESOLUTION**

**22-10 – 1121 Sheridan St- Schwartz- Block 202 Lot 23**

**Two Story Addition – Building coverage**

Addition and second level – building coverage and side yard variance

The Board Members had no comments or changes.

**NEW BUSINESS**

**22-11 – 744 Cherry Street – Dipad-Block 810 Lot 6**

**Addition and second level- building coverage and side yard variance**

The Board Members had no comments or questions.

**22-12 994 Howard Ct -Altaras & Rosenberg – Block 318 Lot 37**

**Addition/second story – side yard setbacks**

The Board Members had no comments or questions.

**Discussion of revision of ordinances**

The Chairman said the Board would make recommendations on different ordinances so the Board Attorney could prepare a resolution to the Mayor and Council and Planning Board. The Board Members were emailed three years of annual reports for their review.

Mr. Schaffenberger said that was assuming there would be changes. The Chairman agreed and said if a member thought everything should remain the same, this would be the time to voice that opinion.

The Chairman said there was data on what the board has been approving on the applications. He felt if the board has been approving building coverages at 25% maybe the board should be considering the building coverage at 25% or the board could do nothing and leave everything as is and continue to have the applicant come before the board and address them on a stand-alone basis. Mr. Schaffenberger felt if building coverage was 25%, applicants would come before the board with 30% building coverage. The Chairman answered the board could always deny it. The Chairman's opinion was that there definitely could be tweaking.

Mr. Loonam did not understand how inground pools count for impervious coverage. They are basically a large water retention basin. He did not feel the board should tell the Mayor and Council that the Zoning Board felt it should be 25% or anything more than it is but he did not think pools should count as impervious coverage.

The Board Attorney explained the Zoning Board had to prepare the annual report with recommendations. It first goes to Mayor and Council and then to the planning board for comments and then back to the Council. Mr. Lagana explained this was the very first step of the process. He asked if the board was seeing a lot of the same kind of variances that were being granted that don't make sense anymore. If the board feels the variances still make sense, then there is a valid basis. If the board does not see a valid basis anymore, legally the governing body should not be enforcing it anymore because there was not any rational basis anymore and they were just doing the residents a disservice.

Mr. LoPorto asked if there was a way to look back at all the prior applications and see if they were standard lot sizes or lots less than 7,500 sf. The attorney said typically that would be approving a C1 variance and it would be a hardship variance. The attorney noted on the reports that it indicated some hardship conditions but felt a lot of them were not.

Mr. Loonam questioned if the board got more applications when it was 25% and how many applications did they not get because it was at 20%. He wondered if residents would have made improvements to their homes if they were allowed to go to 25%.

The Chairman proposed that the board members think about this and discuss it in December with the potential to increase building coverage to 25%, leave the impervious coverage at 40%, not to count pools as impervious coverage and review the fence heights.

The Board Attorney said an annual report was a persuasive tool to try to petition the governing body to change an ordinance.

The Chairman stated that the Schedule of Meetings for 2023 should be reviewed by the board members and will be voted in December 2022.

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

**New Milford Zoning Board of Adjustment  
Public Session  
November 1, 2022**

Chairman Adelung called the Public Session of the New Milford Zoning Board of Adjustment to order at 7:22 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	Present
Mr. LoPorto	Present
Mr. Rebsch	Present
Mr. Schaffenberger -Vice Chair	Present
Mr. Lagana -Attorney	Present
Ms. Batistic – Engineer	Absent

**PLEDGE OF ALLEGIANCE**

**OFFICIAL MINUTES OF THE WORK/PUBLIC SESSION – September 6, 2022**

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

**RESOLUTIONS TO BE MEMORIALIZED**

**22-10 – 1121 Sheridan St- Schwartz- Block 202 Lot 23**

Two Story Addition – Building Coverage

**Motion** to memorialize the resolution was made by Mr. Rebsch, seconded by Mr. Loonam. For the motion: Members Rebsch, Loonam, Levine, LoPorto, Schaffenberger, Adelung.

**NEW BUSINESS**

**22-11 – 744 Cherry Street – Dipad-Block 810 Lot 6**

**Addition and second level- building coverage and side yard variance**

Vincent Graziano, PO Box 8106, Paramus NJ was sworn in by the Board Attorney.

The Board accepted the qualifications of Vincent Graziano as expert in the field of architecture.

The Board Attorney asked if he prepared the plans that are dated 4/6/22. Mr. Graziano answered yes.

Mr. Graziano stated he were retained by the homeowners to do an addition to their home for their growing family. He noted that they have an undersized lot - required 7,500 sf existing 6,000 sf.

The average lot width is 75' and existing is 60'. They were seeking variances for an addition 10' off the back of the house, a modest sized one car garage on the side of the house and a full second story. The side yard required is 7.5' the proposed side yard is 6.45' on the south side, on the north side existing 14.12 proposed 4.12' and a building coverage variance for 26.68% existing 21.90%.

The architect stated they would be removing the two-car detached garage that was 2 1/2' from the property line that was not fire rated, removing the patio in the back and making the driveway smaller. They were reducing the lot coverage from 67.30% to a compliant 39.50%.

Mr. Loonam clarified that the existing side yard was 6.47 and proposed 6.45. Mr. Graziano agreed. He thought the problem was the side yard setback at 4.12'. The building coverage of 26.68% was a lot just because it was wanted. There has been no testimony on why that made sense. Mr. Graziano answered this was a C1 variance because the lot was undersized in area and width. They were proposing a one car garage with a width of 9.8. Mr. Loonam understood why the applicant wanted it but there was a neighbor who would have construction 4' from their property line. Mr. Loonam's position was that was a lot to ask for and asked what was the hardship. The architect answered the undersized lot and lot width. Mr. Loonam understood that but did not know if that made the standard.

Mr. Lagana said a hardship because of the lot size was only the positive criteria but the board would have to weigh the negative criteria. He said a lot that was undersized to this degree would satisfy the C1. However, the Board would have to weigh the impact to the neighbors and surrounding neighborhood.

The architect said the house on the northly side of the property line was far away. Mr. Lagana asked if he had the measurements or photos. The architect did not but thought it was about 20-25' from the property line. Mr. Lagana clarified that the addition was above the single car garage. Mr. Graziano agreed. The attorney said it was a two-story addition along the 4.12' side yard setback. Mr. Graziano said it was 4.12' at the back corner of the garage which is 24' long. The architect said it was L shaped.

Mr. Levine said it does seem to be far from the neighboring house.

Mr. Loonam commented that the neighbor in the future might want to utilize their property.

Mr. Adelung asked if they considered taking the garage back. The architect said on a smaller lot it was usually difficult or impossible to have an attached garage at the rear of the house. Mr. Adelung said they want to help residents expand their homes for their growing family but had an issue with an addition 4.2' from the property line. He added they were proposing a house with a four-bedroom and one office. The architect said they were creating a more traditional look.

Mr. Hicks asked if this house had a basement. Mr. Graziano answered yes. Mr. Hicks said it would then be difficult to move the garage. The architect agreed and added said it would be cost prohibitive to have the garage anywhere within the footprint of the existing structure.

Motion to open to the public for comments to the architect by Mr. Rebsch, seconded by Mr. Schaffenberger

No one wished to be heard.

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

Mr. Levine said the neighboring property was 120' by 100'.

Mr. Loonam commented that it appears the neighbor (google photo) has a U-shaped driveway and showed a car parked right next to this property so even though the house is away they are utilizing the property. The architect agreed there was a patio.

Mr. Adelung told the applicant it was important to have photos of the area.

Motion to open to the public for comments by Mr. Rebsch, seconded by Mr. Loonam.

No one wished to be heard.

Motion to close to the public was made by Mr. Levine, seconded by Mr. Rebsch.

Mr. Graziano felt due to the oversized size of the property, they submit this is a reasonable project and consistent with other homes in the neighborhood. It was a reasonable size addition on a lot with a hardship and felt the application merits their favorable consideration.

Mr. Adelung understood the constraints to the width but felt the 4' was an issue.

Mr. LoPorto commented that if the board denied this application, the detached garage would have to be rebuild 5' from the property lines. The members discussed other options.

Mr. Adelung asked how attached is the applicant to have the garage. The architect said it was high on the list. Mr. Graziano proposed having the garage 5' from the property line.

Mr. Hicks said if the applicant is denied, he did not see a benefit to have an existing garage 2.5' from the property line.

Mr. Schaffenberger did not recall ever approving a house this size on an undersized lot. He added this was essentially a five bedroom/3 bath house on a 60x100 lot. The architect commented that the office would not be considered a bedroom.

Mr. Adelung asked how much renovation is being done on the first floor. Mr. Graziano said they were adding 676 sf of new area and the existing footprint was 899 sf. Mr. Adelung would have rather seen adding to the back of the house instead of the 4.12 off the property line.

Mr. Graziano said the applicant would be happy to cut it down to 5' off the property line.

Mr. Adelung gave the applicant an option if they wanted to consider it. The Board could carry the application to the December 6, 2022 meeting if they wanted to take the opportunity to revisit this with the applicant and reconfigure it. The Chairman said that they heard the Board comments and they have the opportunity to come back with something different. This was up to them. The Chairman said he did not know if the board would say yes or no today or next month.

Mr. Graziano said he would do that and would be ready for the December meeting.

Mr. Lagana said if anyone in the public was here for this application, Mr. Graziano has agreed to adjourn this matter to December 6, 2022 at 7 pm. This will serve as their notice and no new notice is required.

**22-12 - 994 Howard Ct -Altaras & Rosenberg – Block 318 Lot 37  
Addition/second story – side yard setbacks**

Jennifer Berardo, Esq from Wells, Jaworski & Liebman on behalf of the applicants Eyal and Rachelle Altaras at 994 Howard Court.

Joseph Donato, 14 Route 4 West, River Edge, NJ was sworn in by the Board Attorney. The Board Members accepted the qualifications of Mr. Donato as an expert in the field of architecture.

Ms. Berardo stated the property is a unique triangular shape and located at the end of a cul-de-sac. The property does maintain certain no conformities with respect to the side yard setback as well as the front yard setback. The applicant was seeking to renovate and construct a rear addition as well as a partial 2<sup>nd</sup> story over the existing dwelling. The Zoning Officer's determination that variance relief was required for side yard setback for the existing dwelling. The attorney added that in their application they submitted an appeal of that determination as they did not believe any variance relief was required for this application as the proposed addition elements and improvements were compliant with the borough's regulations but for the existing non-conformities they comply. Everything that they were proposing complied.

If the Board disagrees with the appeal, the applicant will be seeking variance relief for side yard setback.

Mr. Lagana asked if they were first pursuing with the appeal. Ms. Berardo answered yes if the board would entertain it. A reference was Sherman v Borough Harvey Cedars Zoning Board of Adjustment which stated where a non-conforming structure that is expanded and the addition itself does add to the preexisting non-conformity, the construction official can issue a permit without the need to apply for a variance.

Mr. Lagana asked if they submitted a memo regarding this. Ms. Berardo answered they did not site the case in the application. Mr. Lagana did not get to review that case but sited a case that said there could be potentially have an exacerbation of the non-conforming condition that a zoning officer would not have jurisdiction to determine that exacerbation but for the board to determine. Mr. Lagana would not be able to proceed with the application until he had time to review their case that they were citing. The applicant's attorney was not familiar with the case that Mr. Lagana was referring to so they would like to preserve the appeal. Mr. Lagana clarified that there was a further expansion of the existing non-conformity. Ms. Berardo answered yes that there a partial half story will be a two story but the two story above will be compliant with the

setback. Mr. Lagana felt that the variances were necessary but since the appeal was raised the board would have to address it.

The Chairman said if they were going to continue with the appeal, the board members would give the board attorney an opportunity to review the case law or not do the appeal and hear the application on a variance process.

Ms. Berardo asked the Board Attorney's opinion that the rear addition would trigger variance relief or it was the second story addition above the existing structure. Mr. Lagana referenced the variance that the board was dealing with was cited by the zoning officer's 9/27/22 denial letter stated that the side yard setback requirement 7.5' and the existing right-side front 5.2' and right-side rear 4.7'. Mr. Lagana said the issue is with the front of the existing building.

The Chairman asked what direction they wanted to proceed with this application.

Ms. Berardo would like to proceed with the application but to preserve the record to make a ruling with respect with the appeal. Mr. Lagana could not advise the board regarding the case law that was cited. The Chairman gave the applicant an opportunity to take a moment to discuss the matter. Ms. Berardo withdrew the appeal and proceed with the variance application. Mr. Lagana agreed the applicant could proceed with the application for the side yard variance.

Mr. Donato reviewed the existing and proposed condition at the site. He noted that the dwelling was at the end of a cul-de-sac. The property was 11,056 sf and was unique in character because it was on a cul-de-sac where 75' was required and they had 47' on a curve so most of the building space is in the back. He noted that the front steps were 25.2' from the curb and the left side of the existing house was 5.2' and the rear was 4.7'.

The architect reviewed the plans on the first and second floor. They were proposing to renovate the entire footprint on the first floor, add a garage and an addition on the rear and add a second floor within the setback of the building. The addition was 7.53' in the rear and 8.03' in the front within the 7.5 setback. The landing of the stairwell that lined up with the existing wall was 22 sf. They were removing the shed. Mr. Donato noted that they met the height requirements and were under the building and impervious coverage.

The proposed plans were submitted dated 4/22/22 (A-1 -A-5) prepared by the architect.

The Chairman noted that the Board Engineer review letter dated 10/19/22 mentioned the front yard setback. It indicated that the exact extent of the variance cannot be determined since the applicant has not provided average setback calculations. The Chairman said there was a front yard setback sheet and they might need this as additional documentation. The attorney said if the board was to rule on the front yard setback as an existing non-conformity not being exacerbated, they would prepare the average setbacks. Mr. Donato agreed.

Mr. Schaffenberger referred to the box on A1 on the plans and asked if that juts out and how close was that from the side yard. Mr. Donato answered the side yard was 5.2 in the front and 4.7 in the back and that area was in the middle about 5'. The applicant's attorney said it was inline with the existing home and was not extending beyond what was existing. The chairman said since they do not have that exact number they have to go with 4.7'. The architect referred to A3 to show the landing.

Mr. Rebsch questioned the driveway extending 3' to the property. The Board Attorney stated it was not called out by the zoning board engineer. The Chairman did not think it was an issue.

**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.

Barbara J. Cole, 996 Howard Court resided at the left side of the property. Her concern was the bump out and would it be closer to her property line. The architect answered no. The resident asked if the roofline affect her property. The architect said there would be more open space facing their property. Ms. Cole was concerned about drainage issues at her site. Mr. Donato said there would be seepage pit installed. The Chairman said they would have to submit plans which would be reviewed by the borough engineer. The resident asked what was the proposed height. The architect answered they were permitted 30' proposed 28.25' existing 26'. The resident asked if there would be windows on the structure facing her. Mr. Donato said the stairwell would have a window, two bedrooms and a bathroom window. They were egress windows and were more windows than a typical cape cod house.

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

The Board Attorney stated that the engineers letter stated if the application is approved, seepage pit details and calculations must be approved by the borough Engineer and any tree removals must be approved by the Shade Tree Commission. The attorney stated no trees were proposed to be removed and they would comply with the conditions.

**Motion** to open to the public for comments or questions by Mr. Hicks seconded by Mr. Schaffenberger and carried by all.

Barbara J. Cole, 996 Howard Court was sworn in by the board attorney. Ms. Cole asked how large of a house would this be. The architect stated the first-floor addition was 1,305 sf and the existing building is 856.60 sf total proposed approximately 2160 sf. The Chairman stated that they were approximately 60% increase.

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

Ms. Berardo thanked the board and stated this was an oversized lot with a unique shaped property with an existing home which was driving this minimal de minimus variance for the stairwell to be in line with the existing non-conforming condition. They believe this is a design element and will improve the surrounding area. They were pulling back on the second floor so



everything proposed was conforming with the exception of the stairwell. They were improving the air and light that was available on the left side of property which has the existing non-conformity. There would be no substantial detriment to the surrounding neighborhood or the zone plan. It was an improvement to the surrounding area.

The Board Attorney said if the board grants the variance the conditions discussed were:  
Must comply with Board Engineer Report and submit calculations and drainage requirements for the seepage pit.  
Tree Removal permit if needed

Motion made by Mr. LoPorto to grant the variance with the conditions discussed, seconded by Mr. Hicks.

The motion passed on a roll call as follows:

For the motion: Members LoPorto, Hicks, Levine, Loonam, Rebsch, Schaffenberger, Adlung.  
Approved 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

**BOROUGH OF NEW MILFORD  
BOARD OF ADJUSTMENT**

**MEMORIALIZING RESOLUTION  
DOCKET NUMBER 22-12**

\* \* \* \* \*

**WHEREAS**, EYAL ALTARAS AND RACHELLE ROSENBERG (hereinafter the "Applicant"), being the owners of, 994 Howard Court, located in the Borough of New Milford, County of Bergen, State of New Jersey, also being known as, Block 318, Lot 37, as indicated on the Tax Assessment Map for the Borough of New Milford (hereinafter the "Site"), has applied to Borough of New Milford Board of Adjustment (hereinafter the "BOARD") seeking to construct a two-story addition that will encroach within the the front-yard setback and side yard setback.

**WHEREAS**, Applicant has submitted various sketches, plans and renderings, which were considered by BOARD including:

1. Notice of Appeal with exhibits, dated October 12, 2022;

Exhibit A: Project Narrative  
Exhibit B: Notice of Public Hearing

2. Borough of New Milford Zoning Work Sheet, undated;
3. Architectural plans entitled, "Proposed Addition/Alteration,994 Howard Court., New Milford, NJ 07464," prepared by Joseph M. Donato, A.I.A., dated April 22, 2022, consisting of five (5) sheets:

<u>Sheet Name:</u>	<u>Sheet Title:</u>
1 of 5	Plot Plan
2 of 5	Basement/Foundation Plan/Elevation
3 of 5	Elevations/Plumbing Details
4 of 5	First Floor Plan
5 of 5	Second Floor plan/ Roof plan

4. Certified Tax Assessor's 200' List dated October 11, 2022;
5. Proof of Payment of Taxes dated October 12, 2022; and
6. Affidavit of Ownership dated October 12, 2022.

**WHEREAS**, the professional reports and all other memoranda from Borough agencies and officials are incorporated herein and made a part hereof by reference in conjunction with this application as if set forth verbatim. The BOARD received and reviewed the following:

1. Correspondence from Residential Zoning Officer, dated September 27, 2022; and

2. Board Engineer's Review memorandum, dated October 19, 2022.

**WHEREAS**, the Applicant seeks the following variances as a result of the application:

1. Section 30-21.5c(2) To permit a side yard setback to be 4.7 feet where a minimum of 7.5 feet is required; and
2. Section 30-21.4(a) (3)- To permit a front yard setback of 25.2 feet where a minimum of 30 feet is required.

**WHEREAS**, the Applicant paid in full all property taxes due and owing for the Site and the professional fees/escrow in connection with the Application;

**WHEREAS**, the BOARD determined it had jurisdiction and upon due notice as required by law, a public hearing was conducted on November 1, 2022.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ADJUSTMENT OF THE BOROUGH OF NEW MILFORD**, the BOARD hereby makes the following findings of fact:

1. The Site is located in the Residential A Zoning District, which permits single-family residential dwellings on 7,500 square foot lots.
2. The Applicant proposes to construct an addition to the existing single-family dwelling. The addition is proposed at the rear of the existing home and will include a second story.
3. The existing dwelling maintains a non-conforming side yard setback of 4.7 feet where 7.5 feet is required.
4. In support of the application, the Applicant presented the testimony of Joseph M. Donato, A.I.A., a licensed Architect in the State of New Jersey. Mr. Donato was sworn, qualified and accepted by the BOARD as an expert Architect.
5. Mr. Donato testified the Site is located at the end of Howard Court, a dead-end cul-de-sac. The Site is oversized at 11,056 square feet. Mr. Donato testified that because of its location on the cul-de-sac, the Site is pie-shaped with the narrow frontage along Howard Court. Mr. Donato noted the existing lot frontage is deficient because of the Site's shape at 47.30 feet where a minimum lot frontage of 75 feet is required.
6. Mr. Donato testified that the existing side yard setback encroachment and the front yard setback encroachment are the result of the Site's peculiar shape.
7. In addition, Mr. Donato testified the Site is currently improved with a one and one-half story "Cape Cod" style home with an attached one car garage.

8. Mr. Donato testified the proposed addition will be to the rear of the existing dwelling and will not be visible from Howard Court. Mr. Donato testified the addition itself has been designed to be compliant with all setback requirements. Mr. Donato noted the Site will be compliant with all other "bulk" variances.
9. Mr. Donato testified the existing side yard setback encroachment of 4.7 feet is the result of an existing chimney. Mr. Donato testified the chimney will be removed and will be redesigned to support a stairwell to the second floor.
10. Mr. Donato testified the protrusion for the stairwell will have a dimension of 7.8 feet by 2.10 feet. Mr. Donato testified the protrusion will be designed as an architectural feature. Mr. Donato testified there is no living space proposed in the area of the bump-out. Mr. Donato further noted the second floor will be recessed away from the property line.
11. With regard to the front yard setback encroachment, Mr. Donato testified the existing front yard setback is nonconforming at 25.2 feet where 30 feet is required. Mr. Donato testified the Applicant is proposing new front steps and a new addition to the garage. Mr. Donato testified the garage addition will be in line with the existing building footprint.

**WHEREAS**, the public was given the opportunity to ask questions and present testimony and none was so produced.

**NOW, THEREFORE, BE IT RESOLVED BY THE BOARD OF ADJUSTMENT OF THE BOROUGH OF NEW MILFORD**, based on the facts presented, the BOARD hereby makes the following conclusions of law:

1. The Municipal Land Use Law (MLUL) at N.J.S.A. 40:55D-70c provides the Board with the power to grant variances from strict bulk and other non-use related issues when the applicant satisfies certain proofs which are enunciated in the statute. Specifically, an applicant may be entitled to relief if this specific parcel is limited by exceptional narrowness, shallowness or shape. An Applicant may show that exceptional topographic or physical features exist that uniquely affect a specific piece of property. Further, the applicant may also provide evidence that exceptional or extraordinary circumstances exist which uniquely affect a specific piece of property or any structure lawfully existing thereon and the strict application of any regulation contained in the Zoning Ordinance would result in a peculiar and exceptional practical difficulty or exceptional and undue hardship upon the developer of that property. Those categories specifically enumerated above constitute the positive criteria necessary in order to obtain "bulk" or C variance relief.
2. Moreover, the Municipal Land Use Law (MLUL) at N.J.S.A. 40:55D-70c (2) further provides the Board with the power to grant variances based on whether the Applicant's proofs advance the purposed of the MLUL by the deviation from the zoning ordinance

requirements and if the benefits of the deviation from the zoning ordinance requirements substantially outweigh any detriment.

3. In addition, the applicant must show that the proposed variance relief sought will not have a substantial detriment to the public good and further, will not substantially impair the intent and purpose of the zone plan and Zoning Ordinance. See, Jacoby v Englewood Cliffs Zon. Bd. Of Adjustment, 442 N.J. Super. 450, 471 (App. Div. 2015). This is the negative criteria. It is only in those instances when an applicant has satisfied both tests, that a Board, acting pursuant to the statute and case law, can grant relief. The burden of proof rests upon the Applicant to establish these criteria.
4. After review of the record evidence and testimony by the Applicant's professional, the BOARD finds the Applicant has satisfied its burden of proof establishing the positive criteria outweighs the negative criteria supporting a granting of the variance relief requested.
5. The BOARD finds the Applicant has supported the approval of the requested variance relief from the front yard setback and side yard setback requirements pursuant to the standards set forth in *N.J.S.A. 40:55D-70c (1)*.
6. The BOARD finds the Site's location at the end of the Howard Court cul-de-sac creates the pie-shape that constrains the Site along the Howard Court frontage. The BOARD notes the existing encroachments exist even though the Site is oversized at 11,056 square feet.
7. In addition, the BOARD finds the existing structure, which is not being removed, is located in the constrained area and has existing nonconforming encroachments.
8. The BOARD finds exceptional or extraordinary circumstances exist which uniquely affect a specific piece of property and the strict application of any regulation contained in the Zoning Ordinance would result in a peculiar and exceptional practical difficulty or exceptional and undue hardship upon the Applicant.
9. The BOARD finds there will be no substantial detriment to the public good or to the intent and purpose of the master plan.
10. The BOARD finds the proposed two-story addition will be to the rear of the existing dwelling and will not be visible from Howard Court and the addition to the garage will be even with the existing dwelling footprint. The BOARD notes the Site is compliant with all other "bulk" variances.
11. The BOARD notes the second-floor addition will be recessed away from the property line.

12. Also, the BOARD notes the side yard encroachment is for the stairwell leading to the second floor. This stairwell is replacing an existing chimney. There will be no living space in the encroachment.
13. The BOARD further finds the Site will be improved with a stormwater management system, where none currently exists.
14. Moreover, the BOARD finds the proposed application furthers the Purposes of Zoning established in *N.J.S.A. 40:55D-2*. Specifically, the BOARD finds the applicant furthers Purpose "i" to promote a desirable visual environment through creative development techniques and good civic design and arrangement.
15. The BOARD finds the benefits of granting the variance relief substantially outweigh any detriments.
16. Finally, the BOARD notes that no member of the public spoke in opposition to the granting of the variance relief requested.

**NOW, THEREFORE**, based upon the foregoing, the BOARD hereby grants the Applicant's request to construction of an addition to the existing single-family dwelling to encroach with the front yard setback and side yard setback, subject to the following terms and conditions:

1. All improvements are to be completed in accordance with the testimony and evidence submitted to the BOARD;
2. The Applicant shall pay all outstanding fees and escrows before obtaining the Certificate of Occupancy.
3. Applicant shall be required to secure building permits where applicable from the Borough Building Department before conducting any modifications on the site;
4. Any tree removal shall be approved by the Borough Shade Tree Commission;
5. The Applicant shall provide an updated a zoning chart to reflect the accurate front yard setback;
6. The Applicant shall submit a tree removal permit and pay all required fees where applicable;
7. The Applicant shall provide the specifications of the proposed seepage pit, which is to be approved by the Borough Engineer;
8. The BOARD hereby directs the Board Engineer to determine the Applicant's compliance with the foregoing Resolution and grants the authority to approve de minimus in-field changes and require corresponding amended site plans; and

9. The Applicant shall deposit such other and further escrows as the Board Engineer reasonably determines to be necessary to cover the any revisions and inspections;
10. Pursuant to Borough Code, Section 30-3.10, a variance shall be born on the date that it is memorialized and adopted by Resolution. A variance will expire on the two-year anniversary of said date, unless the time period is extending by the granting board or is tolled by operation of law.

Introduced by: Mr. Nelson  
Seconded by: Mr. DeBourgeois  
Dated: 12-6-22

Ayes: 4  
Nays: -  
Abstentions: -

Attest: Marius Opelaar  
Secretary

[Signature]  
Chairman



October 19, 2022

Borough of New Milford  
Zoning Board of Adjustment  
930 River Road  
New Milford, New Jersey 07646

Attention: Maureen Oppelaar, Board Recording Secretary

Re: Plan Review  
994 Howard Court  
Lot 37, Block 318  
Our File No.: NMES-128

Dear Members of the Board:

In connection to the above referenced application 50 States Engineering, Corp. is in receipt of the following documents:

- A. Architectural plan prepared by Joseph M. Donato, A.I.A., dated April 22, 2022, consisting of five (5) sheets.

We reviewed submitted documents and offer the following comments:

1. The Applicant proposes to construct a two-story addition at the rear and to the north corner of the existing house.
2. The proposed improvements will not result in any new zoning code violations. However, currently there are some violations associated with the existing house:
  - a. Minimum Front Yard Setback: Required: 30 Feet\*  
Existing: 25.2 Feet  
\*The exact extent of the variance cannot be determined since the applicant has not provided average setback calculations.
  - b. Minimum Side Yard Setback: Required: 7.50 Feet  
Existing: 4.7 Feet

Please note that the proposed addition meets both Setback Requirements.



3. If the application is approved, seepage pit details and calculations included on the plan shall be approved by the Borough Engineer.
4. Any tree removal shall be approved by the Borough Shade Tree Commission.

If you should have any questions, please do not hesitate to call me.

Very truly yours,  
50 STATES ENGINEERING, CORP.

*Margita Batistic*

Margita Batistic, P.E.

Cc: Eyal Altaras and Rachelle Rosenberg  
Jennifer M. Berardo, Esq.