Approved

10/13/16

## New Milford Zoning Board of Adjustment

## Work Session

**September 13, 2016**

Chairman Schaffenberger called the Work Session of the New Milford Zoning Board of Adjustment to order at 7:39pm and read the Open Public Meeting Act.

**ROLL CALL**

Mr. Adelung Present (7:59)

Mr. Denis Present

Mr. Joseph Absent

Mr. Loonam Present

Mr. Rebsch Present

Mr. Stokes Present

Mr. Weisbrot Present

Mr. Schaffenberger- Chairman Present

Mr. Sproviero - Attorney Present

Ms. Batistic Present

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

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

**NEW BUSINESS**

**16-06 Board of Education – 516 River Road – Block 1104 Lot 7/8**

**Space for a transitional life skills classroom - conditional permitted use**

The Board Attorney explained this was a unique application because the conditional use ordinance which designates in this zoning district a “school” as a conditional use and thereby attaches to it a series of conditions. It appears to contemplate a free standing school and the use contemplated here, while a school function, is a satellite location. The attorney explained this is being proposed in a retail type setting. Mr. Sproviero believed this was not contemplated by the conditions imposed by the conditional use ordinance. The Chairman clarified that part of this was a D3 variance. The Board Attorney said all of this would be a D3 Variance. Mr. Sproviero would read into the record Paul Grygiel’s letter in the public session.

Mr. Loonam questioned a comment from Mr. Grygiel’s letter regarding a minimum 2 acres required and the applicant proposed an existing 0.17 acres. The Board Attorney agreed. Mr. Loonam agreed it was unique and asked if they get credit for the whole retail development even though they were only using a portion of it. The Board Attorney said to view the context of the application in its entirety. He thought ultimately it was a distinction without a difference as to whether you utilize simply the space to be utilized for the school function as opposed to the entirety of the property because there would also be a parking component.

The Board Attorney said the Board would have to listen to the entirety of what was being proposed and make a determination as to what was appropriate on how to handle this unique situation.

The Chairman noted that there was a referral letter from the Chief of Police and it would be read into the record at the public session.

**16-07 Schwartz – 417 Lee Place – Block 205 Lot 2**

**New Single Family House – Front yard setback, bldg. coverage, stories**

The Chairman asked if the members reviewed the application and if there were any questions. He noted this was a knock down and the variances proposed were front yard, building coverage, stories and driveway width. Mr. Loonam had a question on the on the rear yard setback required. Ms. Batistic said the requirement was 26.95’.

The Board Attorney stated that for the Board of Education application a super majority is required for the relief requested. He added that Mr. Stokes would be recusing himself from the application. Mr. Sproviero stated they would need five affirmative votes and there would be 6 voting member present for the application. The applicant’s attorney understood.

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

## New Milford Zoning Board of Adjustment

## Public Session

**September 13, 2016**

Chairman Schaffenberger called the Public Session of the New Milford Zoning Board of Adjustment to order at 7:58 pm and read the Open Public Meeting Act.

**ROLL CALL**

Mr. Adelung Present

Mr. Denis Present

Mr. Joseph Absent

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

**PLEDGE OF ALLEGIANCE**

**OFFICIAL MINUTES OF THE WORK SESSION – July 12, 2016**

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

**OFFICIAL MINUTES OF THE PUBLIC SESSION – July 12, 2016**

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

**NEW BUSINESS**

**16-06 Board of Education – 516 River Road – Block 1104 Lot 7/8**

**Space for a transitional life skills classroom - conditional permitted use**

Mr.Stokes recused himself from this application because he worked with the Board of Education.

Mr. Stephen Fogarty, attorney for the New Milford School District, stated their representatives present were Michael Polizzi, superintendent of school, Michael Sawicz, school business administrator, Whitney Perro, director of special services and Danielle Shanley , director of curriculum and instruction.

Mr. Fogarty stated that they were before the board to make an application for a proposed use at 516 River Road. He explained the proposed use was to use this space as a classroom. The BOE was proposing to establish its transitional life skills program for those students that have aged out of New Milford High School. These students have been identified as having educational disabilities, students that require life skill training and will be job coached. He added there were currently 4 students scheduled for the program named “Wings Academy”. The program is appropriate for students between the ages of 18-21 and are required to educate students up until their 21st birthday that have been classified by the New Milford School district as educational disabled. He added when they complete their high school programs, they are required to provide them with transitional training. The Chairman asked if these were state requirements. Mr. Fogarty said they were both federal and state requirements. He explained they do not have the physical space to house them at the high school but more important was that the setting chosen was found to be appropriate for these young men and women. Mr. Fogarty said many other school districts in NJ were looking for physical spaces outside of the high schools so that the students have a sense of ownership, that they are moving on to a post-secondary education and a sense of independence.

Mr. Fogarty said the 4 students would be bused in the early morning (7:30 am) and would be picked up at 3 pm. It is anticipated that the bus pick up/drop off would be at Cedar Road. There would be minor renovations to the interior space which would be used for instructional space with technology which would include laundry room, kitchen, conference room and two instructional spaces. They anticipated one teacher for the handicap, a part time transitional coordinator, three job coaches that will be there thru out the day, a school psychologist and the director of special services who will come on an as need basis. The students do not drive so they will not have any vehicles at the site. They were allotted two parking spaces and the other professionals would park on the side street.

Mr. Fogarty anticipated the program would grow and there were no limits on the number of students that they have but in terms of practicality and their ability to effectively implement the program, there would not be more than 8 students in the program. They would be there from 7:30 – 3 pm but they would be going out to job locations into the community. The students would there from September to June and they were required by state law to give them an extended school year program which would be during the month of July. They did not anticipate any more than 4 supervised evening activities over the course of the school year.

Mr. Fogarty believed that this application was in the public interest, the interest of the residents of New Milford and in the interest of the young men and women that they were required to educate. He added if these students were not educated in New Milford they would have to place them out of the community. He explained that was an expensive proposition and in terms of cost it could be $100,000 per student but it would also deprive them of the opportunity to be educated in their home school district where they feel comfortable and secure. He agreed with Mr. Sproviero that this was an unusual application.They did not think they needed to appear before the Zoning Board because they thought they would be compared to retail tutorials. Mr. Fogarty understood that because they were a school and the applicant was the BOE they were obligated to appear before the board and seek approval for the application and variances requested.

The Chairman clarified that they did not anticipate more than 8 students at a time. Mr. Fogarty answered that they did not anticipate more than 4 students this year and they did not anticipate more than 8 students for the next three years. The Chairman asked if a student turns 22 during the school year do they remain in the program. Mr. Fogarty stated they would complete the school year until June. The Chairman asked if any other school districts would bring students to this program. Mr. Fogarty did not anticipate that for this year but the possibility exists that an application could be made to accept an out of district student who would be appropriate for their program. The Chairman asked if that happened did he anticipate a situation that they go over the 8 students. Mr. Fogarty said there was no legal limitation on the number of students but the ability to place students in this program was limited by their physical space. He added in order for the program to be successful they could not overburden this program.

The Chairman clarified that the bus drop off / pickup would be on Cedar Road. Mr. Fogarty agreed and they thought that would be the safest place. He added that they were also open to any suggestions. The Chairman asked if they were planning to bring the buses into the parking lot. Mr. Fogarty said no.

Mr. Weisbrot asked how many buses would be needed for the students. Mr. Fogarty answered one. Mr. Weisbrot asked if there were any studies or inquiries done to support his testimony on Cedar Road being the safest place. Mr. Fogarty said they have not done any studies but it has been based on their administration going to the site and determining the safest place for the school bus. They did not anticipate the bus being there for more than a few minutes in the morning and afternoon.

Mr. Loonam asked currently how many 18-21 students were being educated in the district. Mr. Fogarty answered that these were the four students that fall within the age range and the students that would be transitioning into the program were in the high school.

Ms. Whitney Perro, director of special services, 145 Madison Avenue, New Milford, was sworn in by the board attorney.

Ms. Perro explained that the Wings Academy was a program for students 18-21 that have met the high school requirements but they would be providing a functional based curriculum. The students will be using PCT which is a cooking program, working on budgeting, resume writing and shopping. Ms. Perro anticipated that they would have access link to get them back and forth to job sites or public transportation so they would only need one bus for the morning drop off and afternoon pick up. Their ultimate goal was to make them independent as possible and make them productive members of the community and society. Ms. Perro said hopefully by the last year they will be spending less time in the physical Wings Academy and out more seeking employment.

Ms. Perro said in the past, they have had students that qualify for this program and have already been in an out of district placement so they remained in that placement until the age of 21. They have also utilized and paid tuition for the CSI house.

Mr. Fogarty asked if there were currently 4 students in the program. Ms. Perro agreed and said next year there will be one student that would be eligible for the program. She explained the following year a student who is now 19 will be leaving and anticipating approximately 4 more students reaching the age of 18 and in need of the program. Mr. Fogarty asked with the 4 additional students what would the maximum amount of students be. Ms. Perro said they anticipated there would be 8 students in the program. Mr. Fogarty said a concern of the Chairman was that the number of students would grow larger than 8. Ms. Perro wanted to respect the integrity of the program and it was not their goal to try to pack as many students in as possible so she was not anticipating a huge jump in numbers of students. The Chairman questioned if that was the case even with the possible introduction of students from other districts. Ms. Perro answered that they would look at that closely and make sure it was a student that they knew and was a good match for the program and not put a burden on their program.

Mr. Fogarty asked how many staff members would be located at the site on a daily basis. Ms. Perro said there would be one special education teacher, one transitional job coach that would be part of the day, three job coaches and a case manager. The hours of operation would be 8 – 3pm, they will follow the school calendar and the students were entitled to have an extended school year in July, said Ms. Perro.

Mr. Fogarty commented that there have been some concerns regarding the location of the bus drop off/pick up. Ms. Perro said River Road is very congested so looking at the safety of the students they on felt Cedar Road they would just cross the parking lot and go into the building.

Mr. Adelung asked if this program was similar to the Institute of Educational Achievement School. Ms. Perro said that was a program that deals with students primarily with autism. Mr. Sproviero noted that this proposed application was part of the public school district services and IEA services were private. Ms. Perro agreed and added that if their students attended that school there would be a tuition cost. Mr. Adelung was not concerned about the number of students because they would not have the availability to put 20 students in the program. Ms. Perro agreed. The Board Attorney believed the principle distinction was that this was public school and that was private school. Ms. Perro said they were not using this program to make money for the district but they felt this was right thing for the students.

Mr. Loonam asked how a student transitions into the program. Ms. Perro said it depends on their Individualized Education Program (IEP). They have completed their high school requirements but need more training to function within society. Ms. Perro said it is an individualized decision based on students IEP. She added these are students that will be supported by the division of vocational rehabilitation. Mr. Loonam asked if a student graduated from a school outside of the district and moved into the district at 20 years old, would that student be eligible for the program. Ms. Perro answered if the student was in an 18-21 program in his district, then they would look at their IEP and spend one year with them. Mr. Loonam asked if a student worked after high school and found it challenging would they qualify. Ms. Perro said no. Mr. Loonam asked if there were requirements for fire drills as the education system requires. Ms. Perro said no because it was not a typical 8-3pm type of school that requires fire drills. They would go over safety and emergency issues with their clients.

Mr. Weisbrot asked if someone would meet the students at the bus and cross them across the street. Ms. Perro said an adult would meet them and they would always be supervised but they would not be crossing the street but rather just cross the parking lot. Mr. Weisbrot asked if they would have to cross the street leaving the school. Ms. Perro said leaving the school they would cross the parking lot and cross Cedar Road but would be supervised. She added that some students will leave from their job site supervised by their job coach. . The Chairman clarified that during the school day the students would never be unsupervised. Ms. Perro agreed.

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

Mr. James Walsh, 511 River Road, asked if Bergen County had support services for the young adults. Ms. Perro said they do but they would be charged tuition. Mr. Walsh has concerns if this program was funded in the budget for the BOE for 2016-17. Ms. Perro said yes. Mr. Walsh asked if there would be additional taxes for the residents. Ms. Perro said no. She explained Bergen County had a program called spring board and it was currently $78,000/student and an additional $10,000 for transportation that they would have to provide. Mr. Walsh asked Ms. Perro if she had the budget with her for him to see. Ms. Perro did not. Mr. Walsh thought the testimony was that there would be 6 employees. Ms. Perro agreed. Mr. Walsh asked if all the students would be from New Milford. Ms. Perro said all the students are now from New Milford. If students came from another district and were a match for their program, Ms. Perro said they would have to pay a tuition. Mr. Walsh commented that Cedar Road was a narrow road. The Chairman told the resident that he might want to go to a BOE meeting regarding his budgetary questions. Mr. Walsh thought a better location would be at the Brookchester shopping center.

Mr. Kevin Dunn, 186 Voorhis Avenue, asked what was the capacity allowed for the building. Ms. Perro did not know. The resident stated that parking was an issue on Cedar Road because it was very narrow. Mr. Dunn felt students crossing the parking lot and street was dangerous. Mr. Dunn asked how long the lease was for. Ms. Perro believed it was two years with one year optional. Mr. Dunn asked what size bus they would be using. Ms. Perro said one of the smaller buses which seats 16. The resident asked if the students would be going out for lunch. Ms. Perro anticipated that they would be using the bagel shop.

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

Michael Polizzi, Superintendent of Schools, 145 Madison Avenue was sworn in by the Board of Education.

Mr. Polizzi said the school district had a record of developing programs that were cost effective and they try to place them in a least restrictive environment. This program for 18-21 represents that for them. Mr. Polizzi said the important thing was to keep their clients in the community. They referred to the students as clients because they are young adults.

Mr. Fogarty asked if they considered any other possibilities with the bus coming/leaving the site.

Mr. Polizzi consulted with the chief of police with regard to what they viewed as the safest spot and it seemed like Cedar Road was the preferred option for them. Mr. Polizzi said the drop off / pick up point was on the same side of the road so there would be no street crossing.

Mr. Loonam asked how long has this law been in effect to educate these students. Mr. Polizzi answered as long as he has been in education. Mr. Loonam said this board does not have the ability to contemplate the dollars and cents. Mr. Sproviero said it was not a land use issue and it was a budgetary issue that falls completely within the BOE. Mr. Loonam asked if the district opted to take students in out -of -district and charge tuition, would that potentially be an increase in cost to tax payers. Mr. Polizzi said there would be no cost to taxpayers and would be an additional revenue source for the district. Mr. Loonam asked if the cost for out of district students was regulated by the state or was it a number from the BOE. Mr. Polizzi said typically the BOE would determine the tuition.

Mr. Denis asked if there were other locations that they looked at before choosing this site. Mr. Fogarty said they did and for various reasons they were not suitable for the program. He added that commercial space was extremely limited in town.

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

No one wished to speak in the audience.

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

The Board Attorney stated that the Zoning Board had received a letter issued by the borough’s planner dated September 7, 2016 from Paul Grygiel. The Board Attorney read the letter in its entirely into the record.

The Chairman noted that two things in the letter not addressed were negative criteria and signage.

The Board Attorney asked the applicant is there was any signage proposed. Mr. Fogarty said currently there was signage on the site. He said what they were contemplating was that it would remain in conformity with the aesthetics of the building and that it would say “Wings Academy”.

No other improvements were proposed to the exterior of the site.

Mr. Sproviero said the board would like to hear the applicant’s analysis of the satisfaction of both the positive criteria and the negatives criteria if any exists. Mr. Fogarty said it was their opinion that the negative criteria with regard to the limitations of the site and with regard to the drop off /pick up of the bus was adequately addressed by the Superintendent in his testimony. Mr. Fogarty respectfully submitted that there was no other negative criteria and in terms of the public good and they have demonstrated that the unique nature of this application would serve the public good as well as the parents and young men and women who will transition thru the program. They believe sufficient evidence has been submitted to indicate there will not be an overexpansion of the use of the site that would impact negatively on the surrounding area for the property owners.

Mr. Sproviero asked Mr. Fogarty if the proposed utilization of the premises for the intended purpose would promote the public good and would he consider this to be an inherently beneficial use. Mr. Fogarty answered it was and the benefits were enormous for the young men and women going thru this program. He added that nothing was more critical in terms of educating students than educating them in an environment where they feel safe and familiar.

Mr. Loonam asked if this would be a school. Mr. Fogarty said it would be a classroom. Mr. Loonam asked if anyone needs to contemplate school zone requirements. Mr. Fogarty says what comes into play might would be any additional requirements that may be imposed by the Department of Education in terms of the site or anything that the police department might require.

The Board Attorney said if the application was approved it should be conditioned upon the installation of any required signage with regard to speed limitations as may deemed necessary. Another condition for signage would be the form of proposed signage should be submitted to the building department. Mr. Fogarty said they were not proposing to change what is there but just substitute their logo for the dental office.

Mr. Loonam thought a school bus might fall into the school zone requirements for signage. Mr. Sproviero said whatever is required by law should be installed.

The Chairman read into the record the referral memorandum from Chief Ramaci dated 9/2/16.

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

James Walsh, 511 Cedar Road, had concerns about the buses and the road because there was no light or stop sign.

Paige Ryan, President of the Board of Education, said she was speaking as a member and not on behalf of the board. Ms. Ryan said the Board has always been in full support of anything that will give their students the best possible experience they could have but also being responsible financially. Ms. Ryan said they are required to educate these students until the age of 21 and if another student moves into the district they were required to educate them until the age of 21. She added it is not something that the Board decides that they do or don’t budget but rather it has to happen. Ms. Ryan said they were asking them to look at this as not a school building but as an opportunity for these young adults to move on as their peers did when they graduated in June.

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

The Board Attorney said this is a unique situation because the ordinance as written contemplates a free standing school structure which this is not. When looking at the relief requested, the board needs to bear in mind that these were standards that were not really applicable to this intended workspace but at the same time they were what the statute sets forth as necessary for conditional use. In the context of what was being presented, the board had an opportunity in granting the variance relief to determine whether or not they were applicable to what was being requested. If you feel they are not, the variance is appropriate. The Board Attorney agrees that this was an inherently beneficial use. The Chairman clarified that it would cover positive criteria. The Board Attorney agreed and added that he did not see much of anything in terms of negative criteria that has been identified by way of this application. He added the board’s planner supported this and the police supported.

Mr. Adelung did not think there was any impact to the neighborhood.

Mr. Loonam said they have a Board of Education that has a legal requirement to educate students and so they have to seek out a reasonable way to do that. Mr. Loonam thought it was about suitability and can it work. There was no testimony that said this would not work or be problematic, said Mr. Loonam. He felt it was the BOE to find the right location and he had nothing negative to say about the application. Mr. Loonam commended the BOE to take the steps to try to improve education.

The Chairman agreed with Mr. Loonam and thought the BOE was well represented. The Chairman commented that he thought the bus could down to Columbia Street and go up Cedar Road. He thought they could run the school there and no one would know it was even there.

Motion made by Mr. Weisbrot to grant the variances subject to the conditions that the signage would remain the same size and subject to compliance of all fire, police and safety requirements, seconded by Mr. Rebsch

A motion passed on a roll call vote as follows:

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

Approved 6-0

**16-07 Schwartz – 417 Lee Place – Block 205 Lot 2**

**New Single Family House – Front yard setback, bldg. coverage, stories**

David York from law firm of Novins, York & Jacobus, Woodcliff Lake, representing the applicant Jay and Simi Schwartz, explained the applicants purchased this property a few months ago and commissioned their professionals to construct a new single family home. The applicant meets all the bulk yard requirements and possibly a front yard setback. They are requesting relief from three variances with regard to the front yard setback, maximum building coverage and maximum building stories. He stated they reviewed the Boswell McClave Engineering letter and added they were not requesting a fourth variance with respect to the driveway width.

Mr. York stated the front yard setback requires 31.6’ and the applicant proposed a de minimis maximum building coverage. The required coverage is 1,613 sf and they were proposing to increase the maximum building coverage by 340 sf which is approximately 4%. He added, other than the front yard setback, they were not requesting variances with regard to the sides or the rear yard. With regard to stories, the code permits 2 ½ stories and they were proposing 3 ½ stories. Mr. York said they were not seeking a variance for maximum building height and the height is proposed at 29.9’ required 30’.

Mr. York said viewing the house from the street, the property slopes significantly down from the left to the right side. He added the way the zoning code was written that basement level constitutes a third story and therefore they have a need for a C1 variance.

Mr. Jordan Rosenberg, 27 N. Broad Street, Ridgewood, NJ. was sworn in by the Board Attorney.

The Board Members accepted the qualifications of Mr. Rosenberg as an expert licensed architect.

Mr. York asked the architect if the vision of the proposed house and style was consistent with what is existing in the neighborhood. Mr. Rosenberg said yes and added that the property is unique and has some challenges of topography because the highest elevation is the back left corner and the lowest is the front right corner.

Mr. York marked as exhibit A-1 – photo of subject house according to google as it exists 2012.

The Chairman asked if the photo had been altered in anyway. Mr. Rosenberg answered no.

Mr. York asked if the top of the ridgeline of the proposed house with a height of 29.9’ was higher or lower than the property to the left. Mr. Rosenberg said slightly lower.

Motion to open to the public was made by Mr. Loonam, seconded by Mr. Stokes and carried by all.

No one wished to be heard in the audience.

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

Mr. Adelung asked if they did anything to eliminate the third story issue. Mr. Rosenberg said they had no intentions on coming to the board for three stories. He added if they were to press the first floor so it was less than 3’ above median curb, the first floor would then be underground. Mr. Rosenberg said that any property that was sloped up from the curb was subject to this very intense hardship.

Mr. Adelung asked if they could raise the grade on the right side of the house. Mr. Rosenberg said they did raise the grade on the right side and created retaining walls for a more level back yard for the kids to play in. He added it still does not change the 3 ½ story variance and it was a technical impossibility. Mr. Rosenberg said the topography of the site dropping off severely from left to right shows the appearance of a basement that was exposed on the right side and covered on the left side. The MLUL suggests that severe topography conditions were justification to come before the board, said the architect.

Mr. Denis thought this house would be the largest house on the block. Mr. Rosenberg said it was not the largest house in the neighborhood. The architect said when he was hired they reviewed their requirements and needs for the family and designed the house. He told the board that he asked himself if they were breaking precedence and designing the largest house in the neighborhood. They came up with 10 houses within walking distance to the house and half were larger and half were smaller. The Board Attorney asked if those other houses were on larger lots. The architect said half were larger and half were smaller. Mr. Rosenberg wanted to fall in the middle so they would be contemplated as fitting in the best manner possible into the neighborhood.

Mr. Loonam asked if this was a 3 ½ story or 2 ½ story house. Mr. Rosenberg said the existing house has an appearance of a one story house with a basement but because the way the code was written this existing ranch is already considered a 2 ½ story house. He added if they even put on a small dog house addition it would be considered a 3 ½ story house. Mr. Rosenberg thought this felt like a 2 story home. The architect said the definition of this house as it pertains to the 2015 IRC codes defines this as a 2 ½ story house but not with the New Milford local municipal ordinance.

Mr. Loonam noted that the guest room had an egress window well and questioned if a guest room was permitted in the basement. The Board Attorney and engineer agreed.

The Chairman clarified that this was an existing 2 ½ story home and asked if there was any livable space in the roof area of the existing house. Mr. Rosenberg said no. The Chairman clarified it was his testimony that if they took off the existing roof and added a story it would become a 3 ½ story home. The architect answered yes. He noted that to lessen the severity of the situation they took the current garage at elevation 52 and lowered the proposed garage to 50.

Mr. Stokes said if they went any deeper in the ground the garage would be below grade and would be concerned with water.

Mr. Angelo Onello, 23 Thornhill Drive, Ramsey NJ, was sworn in by the Board Attorney.

The Board Members accepted the qualifications of Mr. Onello as an expert licensed engineer.

Mr. York asked the engineer to discuss the front yard setback. Mr. Onello said this was a unique situation that the required front yard setback was 31.6’ on the south side and 30.0’ on the north side directly across the street. He said they did an analysis and felt 30’ was appropriate and felt Ms. Batistic also agreed with that in her letter.

Mr. York questioned if they were seeking a front yard setback. Ms. Batistic’s opinion was they did not need a front yard setback variance. The Board Attorney agreed that their house was the only front facing house on that side of the street. Ms. Batistic said the ordinance also allows for the encroachment of a front porch and they measured to the front porch and if they measured to the house it would align to the average. Mr. York noted that they will not need that variance.

Mr. York asked Mr. Onello if it was correct that the applicant was not seeking any bulk variances. Mr. Onello said that was correct. Mr. York asked if the design was changed to place the building 5-6’ back, would there be any visible change from the street. The engineer said no. Mr. York said they were requesting an additional 340 sf and not building the house closer to the neighbors. The Board Attorney said they were proposing no encroachment into side yard setbacks or rear yard setbacks. He added that it would be closer to the neighbors than what currently exists. Mr. York said they were complying with the existing zoning code.

Mr. Loonam asked if the AC units could be on the side of the house. Mr. Sproviero said yes. Mr. Onello said they were within the setback.

Mr. Onello discussed the grade of the property and discussed the definitions of story and height of New Milford ordinances. He felt the grade of the property created a hardship.

Mr. Adelung asked if they were renovating the existing house do they look at it different than if they were demolishing the house and building new. Mr. Sproviero said they don’t take into consideration what is there now because it will not be there. Mr. Adelung asked how he explains to the neighbor why the board allowed a 3 ½ story house. Mr. Onello said they discussed that between their own design team on how to make this new home work on this piece of property. He added the height was 30’. Mr. York asked what was maximum height allowed and what was the proposed height. Mr. Onello said required was 30’ proposed was 29.9’.

The Board Attorney said it seemed to him if the applicant did not want to do this as a knock down and were going to renovate the existing structure and add a second level, it would be 3 ½ stories. He clarified that it was not the typical add a level that is before the board.

Mr. Loonam felt there were two issues. One was there wasa 3 ½ story issue and was it a topography issue. He felt the topography issue does not come into play because of the size of a house they want to build. His other concern was the building coverage was 24% instead of 20% and the maximum building coverage on lots 10,000 sf or more allowed 18%. He thought they were proposing a very large house. Mr. Loonam said when there was a building coverage issue coupled with a story issue that means that it very big and that is not topography but desire. Mr. Loonam said that was what troubled him about the application.

The Chairman wondered why they needed to exceed the 20% because he thought it was adding something unnecessary to this mix. The building coverage could be eliminated by building the house smaller, said the Chairman.

Mr. Adelung questioned if he could do a different pitch for the driveway. Mr. Onello said the pitch would be too steep.

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

No one wished to speak in the audience

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

Mr. York said they all recognized the challenge that was before the board and they have struggled for four months before submitting the application. Mr. York stated to put a second floor on this house created a third story. Mr. York said this design was consistent with the newer homes built in the neighborhood and they were only seeking two variances. They were asking for an additional 4% on building coverage but said this board has granted that additional 4% in past applications. They recognize it is a larger home but not the largest home in the neighborhood and only requesting an additional 340 sf. Mr. York stated that even if they minimized the size of the house from the front of the property it would have no visible impact.

Mr. York said the applicant went to great length to work with their professionals to build a home that was not so detrimental to the neighborhood and that it was an eyesore.

Mr. Loonam understood the challenge but said they were knocking the house down and they had the ability to design something that conforms to the ordinance. Mr. Loonam said not all the other large homes in the neighborhood came before the board because they meet the building coverage and even though they look large it fit. Mr. Loonam said a positive was that there were no neighbors here to complain about the application.

Mr. Adelung asked if it was possible to put the garage on the left side of the house so the view of the third story did not look so obtrusive. He added that he was there to help them but needed to be comfortable to vote on it. Mr. Rosenberg said design would not have any visual improvement or impact to the exposure of the house.

If the garage was on the main level slab on grade and the rest of the house had a basement, which was underneath, then it would work, said Ms. Batistic. Ms. Batistic said it was her opinion that this house was 3 stories not 3 ½ stories and asked where was that additional ½. Mr. Onello said on the roof. Ms. Batistic clarified that there were no rooms under the roof. Mr. Onello agreed. Ms. Batistic said there was no fraction of a story so there were 3 stories. Ms. Batistic said anything could be done and asked what was wrong with an 8’ ceiling which would make them one foot lower and would make the fraction of a story closer to what the board would want. Mr. Rosenberg said they explored that design and ultimately they could not get rid of the 3-½ story. Ms. Batistic said she would not tell them how to design the house but discussed ways for the applicant to make some changes. Mr. Onello said to Mr. Adelung that he asked how he explains in good faith to a neighbor how he allowed a 3-story house be built. He showed on the exhibit visual manipulations on the site plan that could be done but it would not have any impact on the variances.

Mr. Adelung said this was not a renovation to a house but a knock down with a new house and felt they could go in there with machines and do whatever they want to the grades. He understood that they did not want to impact the homeowners with additional costs. Mr. Adelung asked what the square footage was of the new house. Mr. Rosenberg said 3,800 sf.

Mr. Rosenberg said if this was approved they get to build a pretty house on the street. He stated there was a house on Korfitsen Road that was 24.5% on a smaller lot, 3,672 sf on a 7,400 sf lot. The Chairman interrupted and reminded the engineer that there was no precedent in zoning. Mr. Rosenberg said there is an establishment of homogenous landscape. The Chairman said the house that he reference might have used the existing footprint and went up 30’. Mr. Rosenberg said he cannot argue his way out of a 24.2% but he can argue that visually the square footage was comparable to the other new homes built in the area.

The Chairman said his opinion was that this is a very large house and it is bigger then it should be. He added that they have a blank slate and they knew it was a 20% building coverage. The Chairman commented that they might have an argument for the stories because of the topographical issue but not the 24.2%.

Mr. Loonam said the zoning code used to allow for 25%, so the houses that he was referencing in the area might have complied. Mr. Rosenberg said the code has become more restrictive. The Chairman and Mr. Loonam agreed and said because of these issues. Mr. Loonam said it might be a valid argument to show homes similar in the area but the counter might be that the planning board took steps to change that problem that would completely eliminate the validity of the point that he was trying to make.

Mr. York said there have been past applicants that have been approved for variances on maximum building coverage and he did not know the circumstances and agreed with the Chairman that it was past precedent. He noted that it was important to point out that they were not breaking new ground. The Chairman said that each application has to stand on it own merit. Mr. York did not disagree. The Chairman commented that he said this before that it did not make sense why this applicant went over 20% and he has not heard a compelling reason to get that variance. He added they could make a case for the stories with a topographical hardship. Mr. York said if they had the same house and chopped off 6’ and designed the same house, the visual impact on the neighborhood would be the same. He recognized his point but said the perception of it being a big house simply would not change if they were not seeking that variance. The Chairman said it is a big house but asked for a compelling reason to give the 24%. Mr. York said he rests and thought the professionals did give reasons.

The Chairman said it is a really big house. Mr. Rosenberg said a compelling reason was that they were not arguing the hardship -they have a lot that was a conforming size and thought what they were arguing was the benefits of the design outweighs the detriments. The Board Attorney said he was arguing hardship and hardship was the key to his topographical issue. Mr. Rosenberg answered it was pertaining to the largeness of the house. The Board Attorney said he feels they all get it and the application is what it is and it seeks what it seeks and thought they heard and understood all the applicant’s arguments and it was time to vote.

Ms. Simi Swartz, the applicant, was sworn in by the Board Attorney.

Ms. Swartz thanked the board for listening to their case and said the Chairman commented that their argument was that they want a big house. She stated they were not showy people and were not the type of people that wanted the biggest house in the neighborhood or that was something that would be an eyesore. They bought this house because they wanted a home on a quiet block that was filled with young families. Ms. Swartz said they come from a big family and family was of the utmost priority for them. Their living space was to have a big family and have people over but not to be obnoxious. Ms. Swartz said the professionals discussed the topographical issues but said it was an emotional reason they were coming before the board. The existing house, Ms. Swartz explained was very small and they were seeking this for an expanded family.

Mr. York asked Ms. Swartz if the two women at the meeting tonight were her neighbors. Ms. Swartz answered yes. Mr. York asked if she had an opportunity to speak to them and express their concerns. Ms. Swartz said yes and they wanted to know what it was about and were concerned about the three stories. The applicant said she showed them the landscape plans and they understood it would not look like a three story house. The other neighbor was concerned about her privacy and she asked for them to put up trees. Mr. York asked if the neighbor asked about the height of the trees. Ms. Schwarz said she was willing to plant whatever they wanted and would not object to make that a condition of approval.

The Board Attorney asked for the location of the plantings. Mr. York said rear and both sides.

The Chairman asked if the Board Members had more to discuss or questions or were they ready for a motion.

Mr. Adelung asked if they considered to cut off 6’ of the house. Mr. York said they were not contemplating that but rather using it as an example.

Mr. Stokes felt there was room for improvement with regard to building coverage with this application.

Motion made by Mr. Stokes to deny the application for lot coverage, seconded by Mr. Denis

A motion passed on a roll call vote as follows:

For the Motion: Members Stokes, Denis, Loonam, Rebsch, Adelung, Schaffenberger

Denied 6-0

The Chairman said he regretfully voted against the application and explained the Zoning Board does not make these ordinances but they need compelling reasons to grant variances and he did not think they were made. He explained they were restrained by the land use law and did not think they made their case for lot coverage.

Mr. York asked if they were voting on the other variance because the board voted on maximum building lot coverage.

The Board Attorney asked if there was a motion to approve or deny the variance relief relating to the stories. He stated it would not approve the application but in the event of a challenge or modification it should be clear as to whether that would be granted or not granted.

Motion made by Mr. Stokes to approve the application for stories based on the topography presented, seconded by Mr. Denis.

For the Motion: Members Stokes, Denis, Schaffenberger

Against the Motion: Members Loonam, Rebsch, Adelung

Recused: Mr. Weisbrot

Mr. Loonam thought they had a talented team and hoped they would come back with a modified plan.

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

Respectfully submitted,

Maureen Oppelaar