TOWNSHIP OF WEST MILFORD
ZONING BOARD OF ADJUSTMENT

MINUTES

JANUARY 25, 2005

The Board Chairman gave an overview of the Zoning Board of Adjustment and the legal notice was previously read.

ROLL CALL

Present: Thomas Bigger, Robert Brady, Anthony DeSenzo, Joseph Giannini, Daniel Jurkovic, Arthur McQuaid, Ed Spirko, Thomas Lemanowicz and Ada Erik; Linda Lutz, Principal Planner, Stephen Glatt, Board Attorney; Richard McFadden, Township Engineer.

Absent: None

The Chairman advised of the following requests for carries:

SHILOH BIBLE CAMP, INC. COMPLETE 10-01-04
Use Variance #0440-0663 DEADLINE 02-28-05
Preliminary & Final Site Plan #0420-0180AB
Bulk Variance #0430-0664
Block 6002; Lot 47
753 Burnt Meadow Road; R-4 Zone

A letter was received from Jeffer, Hopkins and Vogel, attorneys for the above application.

The attorney for Shiloh Bible Camp, Inc., was not yet present to request the carry; therefore, the application will be re-called.

MIKE DONADIO COMPLETE 12-01-04
Bulk Variance #0430-0688 DEADLINE 03-31-05
Block 9901; Lot 38
33 Wooley Road; R-4 Zone

Applicant, Mike Donadio, was present and requested a carry to the February 22, 2005 meeting in order to amend his plans. The Board granted the request and carried the application to the February 22, 2005 meeting with the possibility of needing to re-notice, depending on the changes being made. Applicant granted the Board an extension of 60 days.

JOHN PANARIELLO COMPLETE 12-27-04
Use Variance #0440-0694 DEADLINE 04-26-05
Block 11103; Lot 5.02
602 Snake Den Road; R-4 Zone

The Board received a letter from Linda M. Herlihy, Esq., applicant's attorney, requesting a carry. Jill Rosenfield, Esq., appeared for applicant's attorney, who had a death in the family and could not attend the meeting. **MOTION** was made by Ed Spirko to carry the application to the February 22, 2005 meeting with no further notice necessary. Ms. Rosenfield granted the Board a 30-day extension.

GREGORY THOMASES COMPLETE 01-06-05
Bulk Variance #0430-0666 DEADLINE 05-06-05
Block 4101; Lot 6

166 Long Pond Road; LR Zone

A representative of the Thomases family was present. The Board Attorney advised he had spoken with Mr. Larner, attorney for the Thomases, who requested a carry. **MOTION** was made by Joseph Giannini to carry the application to the February 22, 2005 meeting, seconded by Ed Spirko. The representative of the Thomases will have Mr. Larner contact the Board Attorney regarding an extension of time.

Shiloh Bible Camp – Applicant's attorney was still not present when the Chairman re-called the case.

MEMORIALIZATIONS

HIGH CREST LAKE LODGE, INC.
Resolution 2-2005
Use Variance #0140-0490
Preliminary & Final Site Plan #0120-0096AB
Block 13002; Lot 9
High Crest Drive/Hearthstone Drive; R-2 Zone
GRANTED: Reaffirmation of the determination of the use variance.

The Board Attorney advised he did not prepare a resolution for the High Crest Lake Lodge, Inc., matter because it has been pre-empted by Judge DeLuccia. A trial date in the matter is scheduled for February 15, 2005 since the Board's decision has again been appealed.

CEFES FINANCIAL, INC.
Resolution 3-2005
Bulk Variance #0430-0670
Block 16504; Lot 4
Apple Tree Lane/Dan Jennings Rd; R-4
GRANTED: Bulk variances for lot width, front yard setback and the issuance of a building permit for a lot that does not abut a public street.

MOTION was made by Thomas Bigger to memorialize the action, seconded by Joseph Giannini.

On roll call vote: **Yes** Thomas Bigger, Joseph Giannini, Daniel Jurkovic, Arthur McQuaid and Robert Brady
No None

CEFES FINANCIAL, INC.
Resolution 4-2005
De Minimis Exception
Block 16504; Lot 4
Apple Tree Lane/Dan Jennings Rd; R-4
GRANTED: *De Minimis* exception from the Residential Site Improvement Standards – New Jersey Administrative Code; Title 5; Chapter 21 (5:21-3.1) for: pavement, grading and drainage.

MOTION was made by Thomas Bigger to memorialize the action, seconded by Joseph Giannini.

On roll call vote: **Yes** Thomas Bigger, Joseph Giannini, Daniel Jurkovic, Arthur McQuaid and Robert Brady
No None

CONTINUED PUBLIC HEARINGS

RONALD & PATRICIA SHERRY COMPLETE 09-20-04
Bulk Variance #0430-0686 DEADLINE 02-17-05
Block 4301; Lot 38
31 Forest Lake Drive; LR Zone

Applicant, Ronald Sherry, of 64 Victor Place, Hawthorne, New Jersey, testified the garage he would like to build was an after-thought. He was originally going to build a house but decided to build a garage first in order to use it for storage while building the home. Exhibit A-1, an approved Zoning Permit to tear down the existing home and rebuild it, was submitted. The home will be rebuilt in the same footprint but squared off and no variances are requested.

Vincent James Lupo, Zoning Officer, testified he reviewed the Zoning Permit Application, Exhibit (A-1). Exhibit B-1, a copy of the plan submitted at the time the Zoning Permit Application was filed, was marked into evidence. After comparing A-1 and B-1, he agreed the plans were the same. There was a .1-foot difference in the side yard setback and he decided a variance for a side yard setback was not necessary when applicant applied for the Zoning Permit. All the other setbacks were being met.

The Township Engineer commented there was no drainage shown on the plans.

The Board Attorney stated there appeared to be a considerable lack of evidence in the application by which the Board could vote.

Mr. Sherry agreed to carry his application in order to bring his engineer to the meeting to help with his application.

MOTION was made by Daniel Jurkovic to carry the application to the February 22, 2005 meeting, seconded by Anthony De Senzo, with a 60-day extension granted and no further notice necessary.

SHILOH BIBLE CAMP, INC. – Applicant's attorney, David Becker, was present on behalf of Shiloh Bible Camp, Inc., to request a carry because applicant' engineer was unable to submit the revised plans in a timely manner. Mr. Becker granted the Board a 60-day extension.

MOTION was made by Thomas Bigger to grant the request to carry the application to the February 22, 2005 meeting, seconded by Arthur McQuaid.

WILLIAM & DENISE ENNIS	COMPLETE	11-30-04
Bulk Variance #0430-0690	DEADLINE	03-30-05
Block 9704; Lot 17		
5 Camden Place; R-1 Zone		

Applicants, William and Denise Ennis, of 5 Camden Place, West Milford, and their engineer and planner, Claud Ballester, of 1811 Union Valley Road, West Milford were sworn.

William Ennis testified they purchased their home in 1979 and previously put an addition on the home.

Denise Ennis testified her parents retired to Florida and her Mother suffered a stroke that left her partially paralyzed and unable to speak or function on her own. Both parents have health problems and need to be taken care of. She would like to put an addition on their home so her parents can move in and be taken care of.

Claud Ballester, Licensed Engineer and Professional Planner, testified as both engineer and planner, and reviewed the plans for the Board.

Board member, Thomas Lemanowicz, pointed out the lot coverage was incorrect at 11.6% and should be 17.3% lot coverage and commented the addition was almost as big as the existing home.

Mr. Ballester agreed there was a typo on the coverage figure.

The Board recessed and upon reconvening, all Board members were present.

Mr. Ballester clarified the existing percentage of lot coverage was 9.4% and the proposed was 16.8% and there is no additional land to purchase.

The Board Attorney advised the Board must make findings of fact relating to the positive and negative criteria as it relates to zoning criteria.

Linda Lutz, Principal Planner, stated she calculated the lot coverage to be 17.5%.

Mr. Ennis requested a carry in order to make changes to the plan.

MOTION was made by Ed Spirko to carry the application to the February 22, 2005 meeting, with a 30-day extension, and no further notification unless the plans change significantly.

NEW HEAVEN MISSION, INC.	COMPLETE	11-30-04
Use Variance #0340-0624	DEADLINE	03-30-05
Block 12001; Lot 20		
Corner of Macopin & Weaver Rd.; NC Zone		

John Barbarula, Esq., appeared on behalf of New Heaven Mission, Inc.

Yoon Ja Suh, Pastor, of New Heaven Mission, Inc., was sworn.

Ken Ochab, Professional Planner, was sworn as accepted an expert.

Yoon Ja Suh testified she will reside in the parsonage of the church in one of the apartments and other family members will reside in the other apartment. They will hold a Sunday service and utilize the meeting room for prayer services and Bible study. She anticipates 50-60 parishioners over the next 10 to 15 years. She will also do counseling at the church and will provide documentation proving it is a non-profit church corporation.

Mr. Barbarula confimed they are seeking a use variance only at this time and will return at a later time for the site plan since there were engineering concerns regarding the site plan.

Mr. Ochab testified from Exhibit A-1, a colorized version of the site plan submitted which included a secondary parking area. The area where development is proposed has been soil mined, graded and trees removed and the remainder of the property is more wooded. All of the proposed development is outside the 150 foot buffer areas established by the DEP.

Mr. Barbarula clarified they made the two apartments part of the application since they are asking for a non-permitted principal use and, therefore, asking for the apartments is also a non-permitted use.

Mr. Ochab testified the church includes the chapel, a small entrance area in the front of the church with two rooms, and several classrooms behind the chapel for bible study and religious teaching. The two apartments are above the classroom area. Sixteen parking spaces are proposed meeting the zoning criteria. An auxiliary parking area is proposed for discussion for possible future parking for an additional 20 parking spaces. Religious institutions are inherently beneficial uses because they provide a great benefit to the municipality and, in certain cases, to the region that the law has excused them from going through the enhanced burden of proofs. He described the surrounding area stating the church would have no impact on the area and no visual impact. Access from Weaver Road was looked into. After showing them the driveway grades did not work

there, the County approved access from Macopin Road. Two apartments, one for the pastor, and the other for her assistant and a caretaker, are planned.

Mr. Ochab summarized stating the site has been zoned commercial for at least 20 years and never used. The site is constrained because of the transition area and the parking is limited. It is a good location for a church because it is on a county road.

The meeting was opened to the public at which time no one wished to speak.

MOTION was made by Thomas Bigger to close the public portion, seconded by Anthony De Senzo, with all in favor.

Mr. Barbarula summed up by stating the site has been vacant a long time and is not lending itself to development; otherwise, it would already be built on. The areas of exemption for the wetlands and county approval for the access have been granted. This utilization of the site will develop the land to an inherently beneficial use that the community needs. The site can be developed with one extra parking space without disturbing any additional property and the parking capacity could be doubled with additional work. The site is well suited because of location, access, and prior utilization for this use.

The Zoning Board of Adjustment made the following findings of fact:

1. The applicant is a Church recognized by the State of New Jersey and is seeking a use variance for a church and two (2) accessory apartments to be used as a parsonage.

2. The property is located in a Neighborhood Commercial (NC) Zone.

3. A church is not a permitted use in the NC Zone, nor is it a conditional use.

4. Pursuant to the MLUL and case law, a church is an “inherently beneficial use,” thereby satisfying the positive criteria for a use variance.

5. Applying the *Sica* test, the applicant has proven the positive criteria and there does not appear to be any negative criteria that would have a “substantial” impact or detriment to the zoning ordinance or zoning plan of the Township.

6. There is no need to impose any conditions to ameliorate any negative impact based upon the facts presented in this matter since applicant has received DEP and County approvals.

7. The use variance for the two (2) apartments is technical in nature considering they would be permitted if the property were to be commercially developed; the granting of a use variance for same would be reasonable and rational considering they are to be used as a parsonage for the pastor and family.

MOTION was made by Daniel Jurkovic to approve the use variance for the erection of a church on the property. Mr. Ochab’s testimony was credible and on point. The property has been zoned neighborhood commercial for over 20 years but has not been used in a commercial capacity. Applicant wants to utilize the property for an inherently beneficial use and the property is currently an eyesore. The church will help benefit the community by providing a resource to the community in terms of a house of worship and the property will be maintained by the residents. The pre-approval by the county for the access to the property, the ability to get sufficient parking on the property without affecting the areas of disturbance, and the fact that the facility can be built without encroaching on any of the setbacks for the extensive existing wetlands, make it an ideal project, seconded by Thomas Bigger, who felt building the church would get rid of another used car lot in the area. The Board Attorney suggested the *motion be*

amended stating the applicant would produce a certificate of incorporation prior to the resolution being memorialized.

Linda Lutz suggested applicant get Highlands approval or exemption there from before returning to the Board with a site plan application.

Mr. Barbarula did not feel the use variance should be conditioned upon a Highlands approval but agreed there should be a letter or something on the site plan application.

On roll call vote: **Yes** Thomas Bigger, Anthony De Senzo, Joseph Giannini, Daniel Jurkovic, Arthur McQuaid, Ed Spirko and Robert Brady
No None

WEST MILFORD AUTO RECYCLERS, INC. COMPLETE 01-04-05
Appeal/Interpretation #0570-0695 DEADLINE 05-04-05
Block 12501; Lots 18 & 19
Weaver Road; R-3 Zone

Dana D'Angelo, Esq., appeared on behalf of applicant and gave a summary explaining applicant was previously before the Board seeking a variance from the residential fence ordinance because he had been cited in violation of the residential fence ordinance. They discovered there was a junkyard ordinance addressing fences around junkyards should be 8 feet. This junkyard is within a residential district and there is also a residential fence ordinance stating the height of the fence should be 4 feet. Applicant needs to determine which ordinance applies.

Vincent James Lupo, Zoning Officer, previously sworn, testified the junkyard ordinance requires an 8-foot fence running parallel to the main thoroughfare. This has been there since the late 1950s or early 1960s and is not the fence in violation. The fence in violation, and also in the junkyard ordinance, is an 8-foot fence that has existed for over 50 years and does have a gate on it. The junkyard ordinance states where the 8-foot fence has a gate, no further fencing is required. The fence was installed without a permit and on the neighbor's property and is not required under the junkyard ordinance. The fence that is not necessary, according to the junkyard ordinance, is the one in violation and is illegal. There is no conflict in the ordinances because they are two separate items.

The Board Attorney read from the junkyard ordinance and there was discussion by the Board.

The meeting was opened to the public at which time no one wished to speak.

Mr. D'Angelo summarized stating the conflict of the two ordinances is self-evident and he felt the junkyard ordinance would prevail over the residential ordinance and the fence height should be 8 feet around this property.

Board member, Daniel Jurkovic, felt the ordinance was confusing but felt the more specific ordinance should apply. The junkyard ordinance should apply over and above the residential ordinance.

After further discussion, the Board of Adjustment made the following findings of fact:

1. The applicant submitted an application for an interpretation of whether the proposed height requirement for a junkyard in a residential zone is subject to Section 18-9.4B (Zoning Ordinance) or Section 6.7.7B (Junkyard Ordinance).

2. The permitted residential fence height is four feet (4'); whereas, the junkyard ordinance permits a height of eight feet (8').

3. The applicant presently has a pre-existing portion of the fence that is at 8' high.

4. The junkyard is a permitted use; therefore, for safety reasons alone the height should be governed by Ordinance Section 6.7.7B, which permits an eight-foot (8') high fence.

5. The applicant is caught in a “Catch-22" situation, that should be resolved wherein the junkyard ordinance governs as to this specific property only.

6. The within interpretation is site specific.

MOTION was made by Thomas Bigger to interpret an 8-foot fence around the entire property to be site specific for this property and applicant will apply for a permit, seconded by Arthur McQuaid, that the fence is an 8-foot solid fence at ground level (8-foot of fence superfluous of barbed-wire).

The Board Attorney clarified the Board is specifically not making any findings as to whether applicant is in violation of the zoning ordinance in that he failed to obtain a permit.

On roll call vote:	**Yes**	Thomas Bigger, Anthony De Senzo, Joseph Giannini, Daniel Jurkovic, Arthur McQuaid, Ed Spirko and Robert Brady
	No	None

MINUTES

MOTION was made by Thomas Bigger to approve the Minutes of the October 26, 2004 meeting and the Minutes of the November 23, 2004 Meeting, seconded by Joseph Giannini, with all in favor.

MISCELLANEOUS

Linda Lutz, Principal Planner, discussed the Annual Report with the Board and the requests for special meetings. **MOTION** was made by Thomas Bigger to approve the Annual Report, seconded by Joseph Giannini, with all in favor.

ADJOURNMENT

The meeting was adjourned by unanimous vote at 11:22 p.m.

Respectfully submitted,

Carol DenHeyer
Secretary

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