

TOWNSHIP OF WEST MILFORD ZONING BOARD OF ADJUSTMENT

MINUTES JULY 27, 2004

The meeting opened at 7:35 p.m. with the reading of the legal notice.

ROLL CALL

Present: Thomas Bigger, Robert Brady, Anthony DeSenzo, Joseph Giannini, Francis Hannan, Daniel Jurkovic, Ed Spirko and Thomas Lemanowicz; Stephen Glatt, Board Attorney; Linda Lutz, Staff Planner; Richard McFadden, Township Engineer.

Absent: Arthur McQuaid

The Chairman appointed alternate, Ed Spirko, as a voting member and advised of the following requests:

CEFES FINANCIAL, INC.
De Minimis Exception
Bulk Variance #0230-0614
Block 1806; Lot 4
Magnolia Rd; LR Zone

A letter requesting a carry for Cefes Financial, Inc. was received. The Board voted to have a special meeting on August 10, 2004. The Chairman advised in the future, if it becomes necessary to postpone an application, the Board will require the applicant or his representative to appear before the Board and explain why the postponement is necessary. Applications will be dismissed without prejudice if a postponement request becomes a habit for a particular application and the applicant will have to re-apply.

The Board Attorney advised the attorney for Cefes Financial, Inc., filed a motion relating to the issue of drainage and, therefore, requested a carry in order to determine if certain testimony should continue for the court remand.

MOTION was made by Thomas Bigger, to carry the Cefes Financial, Inc., court remand to the August 10, 2004 Special Meeting, seconded by Francis Hannan, with Joseph Giannini opposing the carry.

WEST MILFORD AUTO RECYCLERS, INC.	COMPLETE	03-12-04
Bulk Variance #0430-0646	DEADLINE	09-08-04
Block 12501; Lots 18 & 19		
Weaver Road; R-3 Zone		

The Board Attorney advised a letter was received requesting West Milford Auto Recyclers, Inc., application be withdrawn.

STRENGTHEN OUR SISTERS, INC.	COMPLETE	05-28-04
Interpretation #0470-0674	DEADLINE	09-25-04
Block 14701; Lot 53		
76 Old Route 23; NC Zone		

STRENGTHEN OUR SISTERS, INC.	COMPLETE	04-01-04
Use Variance #0440-0656	DEADLINE	08-29-04
Block 14701; Lot 53		
76 Old Route 23; NC Zone		

George Cotz, Esq., faxed a request to adjourn the Strengthen Our Sisters, Inc., Interpretation and Use Variance applications because he had a conflict and had to appear elsewhere. The Board discussed the requests.

The Board of Adjustment made the following findings of fact:

The applicant through its attorney requested adjournments on April 25, 2004, May 25, 2004 and June 22, 2004 pending the outcome of the interpretation request. The matter was carried to the July 27, 2004 meeting of the Zoning Board of Adjustment at the request of the applicant's attorney. On said date of July 27, 2004, the Board of Adjustment received faxed correspondence from the applicant's attorney requesting an adjournment since he had prior obligations as Village Attorney for Sloatsburg on that evening and could not appear. Since neither the attorney for the applicant, a member of his firm nor the applicant was present, but many members of the public were present, the Board of Adjustment discussed the request for the adjournment to July 27, 2004, considering the applicant's attorney requesting that meeting date despite his conflicting commitment as Village Attorney for Sloatsburg. Based upon said request for adjournment to the July 27, 2004 meeting, which now the attorney advises cannot be honored, the Board took action upon a resolution to dismiss the application for lack of prosecution.

MOTION was made by Thomas Bigger to dismiss without prejudice the Use Variance for Strengthen Our Sisters, Inc., seconded by Ed Spirko. *A yes vote is for the application to be dismissed without prejudice.*

On roll call vote: Yes - Thomas Bigger, Joseph Giannini, Francis Hannan, Ed Spirko and Robert Brady

No - Anthony DeSenzo

Abstain - Daniel Jurkovic

The Board of Adjustment made the following findings of fact:

The applicant through its attorney requested adjournment on June 22, 2004 to the July 27, 2004 meeting to properly research if his client has proper certification pursuant to the Municipal Land Use Law. The matter was carried to the July 27, 2004 meeting of the Zoning Board of Adjustment at the request of the applicant's attorney. On said date of July 27, 2004, the Board of Adjustment received faxed correspondence from the applicant's attorney requesting an adjournment since he had prior obligations as Village Attorney for Sloatsburg on that evening and could not appear. Since neither the attorney for the applicant; a member of his firm nor the applicant was present, but many members of the public were present, the Board of Adjustment discussed the request for the adjournment to July 27, 2004, considering the applicant's attorney requesting that meeting date despite his conflicting commitment as Village Attorney for Sloatsburg. Based upon said request for adjournment to the July 27, 2004 meeting, which now the attorney advises cannot be honored, the Board took action upon a resolution to dismiss the application for lack of prosecution.

MOTION was made by Thomas Bigger to dismiss without prejudice the Interpretation application for Strengthen Our Sisters, Inc., seconded by Joseph Giannini. *A yes vote is for the application to be dismissed without prejudice.*

On roll call vote: Yes - Thomas Bigger, Anthony DeSenzo, Joseph Giannini, Francis Hannan, Ed Spirko and Robert Brady

No - None

Abstain - Daniel Jurkovic

APSHAWA LAND Co.
Use Variance #0340-0635
Preliminary & Final Site Plan #0220-0126AB
Bulk Variance #0230-0586
Block 12501; Lot 21
Van Cleef Road; R-3 Zone

COMPLETE 04-02-04
DEADLINE 10-29-04

Applicant's attorney, John Barbarula, Esq., sent a fax requesting a carry for the Apshawa Land Co. application.

The Board of Adjustment made the following findings of fact:

The matter was carried to the July 27, 2004 meeting of the Zoning Board of Adjustment. On said date of July 27, 2004, the Board of Adjustment received faxed correspondence from the applicant's attorney requesting an adjournment. The reason for the request was not stated in the written correspondence. The Board Secretary, however, reported to the Board that Mr. Barbarula stated to her on the phone that morning that, since his was the last matter on the agenda, it did not appear, in his opinion, as if the matter would be reached. Due to the fact that other applications were either dismissed for lack of prosecution on said evening or heard and decided, the Board had sufficient time to hear and possibly decide the within application. Since neither the attorney for the applicant; a member of his firm nor the applicant was present, and members of the public may have been present, the Board of Adjustment discussed the basis of the request for the adjournment. Based upon said written and verbal communication from the applicant's attorney requesting an adjournment, the basis of which was that the application was the last on the agenda and he opined that the matter would not get reached, the Board took action upon a resolution to dismiss the application for lack of prosecution.

MOTION was made by Daniel Jurkovic to dismiss without prejudice the Apshawa Land Co. application, seconded by Anthony DeSenzo.

On roll call vote: Yes - Thomas Bigger, Anthony DeSenzo, Joseph Giannini, Francis Hannan, Daniel Jurkovic, Ed Spirko and Robert Brady
No - None

The following application was called:

KURT RENZLAND	COMPLETE	04-02-04
Use Variance #0340-0645	DEADLINE	09-29-04
Block 6002; Lot 39.02		
921 Burnt Meadow Rd.; LMI Zone		

Michael Garofalo, Esq., appeared on behalf of applicant, Kurt Renzland, and stated applicant had applied for a use variance to permit a single-family dwelling in the LMI zone and to allow two principal uses on the same lot.

David Hals, Engineer and Planner, previously sworn, gave an overview of his previous testimony and stated applicant would like to build a single-family home on the same property where his business currently exists. He testified the site is suited for the use in terms of the setting and the location of the home on the property. The proposal would not be detrimental and would not have any negative impact or detriment to the public welfare.

Board member, Joseph Giannini, felt it would be advantageous for the Township to keep the commercial property as commercial and not have mixed uses there.

Linda Lutz, Principal Planner, clarified for the Board what a special reason for a variance to be granted was and testified she did not hear any special reason provided for this application. The property already is developed with a conforming use and already has approvals from the Planning Board for another 15,625 square-foot building. She found some of the testimony in April confusing, contradictory, and did not see how the negative criteria had been established. She did not see anything in the application promoting the general welfare reasons for granting the application.

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

The meeting was opened to the public and no one wished to speak.

MOTION was made by Thomas Bigger to close the public portion, Joseph Giannini seconded, with all in favor.

The Board discussed and felt there were no special reasons given to approve the use variance, testimony for the convenience of the applicant to build a home had been given, and the burden of special reasons to approve or showing the general welfare was promoted or the Master Plan would be enhanced by allowing the property to be used in a mixed-use manner had not been shown.

The Board of Adjustment made the following findings of fact, based on evidence presented at a public hearing, at which a record was made.

1. The property is located in a LMI zone and the applicant property consists of approximately 6 plus acres.
2. The applicant desires to construct a single family dwelling in the upper plateau area that was originally designated as an outside storage area at the time the applicant sought and received Planning Board approval for a warehouse located on the property.
3. The location of the single family dwelling would not be visible from the road and would have minimal positive impact as far as meeting the goals and purposes of Master Plan of the Township and the MLUL.
4. The property is located in a LMI zone wherein a residential use is not permitted, but the property is adjacent to an R-4 zone.
5. The applicant's expert testimony regarding the special reasons why the application should be granted were not sufficient since they did not address the main issue for the granting of the variance, that being was that the reasons set forth did not address how the granting of the variance would benefit and advance the public good and needs of the neighborhood and Township.
6. The granting of the application would only promote the personal needs of the applicant, but would not advance the public good since there is a need for commercial space in the zone and the granting of the variance would create a mixed use on the property that could not be justified by the special reasons set forth by the applicant in support of the application.
7. The granting of the application would be detrimental to the public good and welfare.

MOTION was made by Daniel Jurkovic to deny the use variance requested to construct a single-family home on property already having commercial development on it, Joseph Giannini seconded. *A yes vote is a denial.*

On roll call vote: Yes - Anthony DeSenzo, Joseph Giannini, Francis Hannan, Daniel Jurkovic and Robert Brady
No - Thomas Bigger

The following application was called:

JEFFREY HUEBNER
Bulk Variance #0430-0652
Block 6705; Lot 2
19 Greenbrook Drive; R-1 Zone

COMPLETE 06-01-04
DEADLINE 09-29-04

Allen Hantman, Esq., appeared on behalf of applicant and updated the Board regarding the June 17, 2004 hearing stating applicant intends to expand his existing dwelling and add a garage with a structure above it. Exhibit A-1, a buy/sell letter to the Greenbrook Property Owners Association asking if they were interested in selling a vacant, adjoining

lot, together with Exhibit A-2, a response from the Treasurer of the Association stating they were not interested in selling lot 3 to applicant.

Claud Ballester, Engineer and Planner, testified he prepared applicant's variance map and two variances were required for minimum side yard setback of 14 feet and maximum building coverage of 15.49%. The homeowner wants to add a second car garage with a room above it, conforming to the neighborhood.

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

The meeting was opened to the public and no one wished to speak.

MOTION was made by Thomas Bigger to close the public portion, Daniel Jurkovic, seconded, with all in favor.

The Board of Adjustment made the following findings of fact based on evidence presented at the public hearing at which a record was made.

1. The application before the Board is a request for "c" variance relief for property known as Block 6705; Lot 2, as shown on the Tax Map of the Township of West Milford, located at 19 Greenbrook Drive in the R-1 Zone and does not, as presented, comply with Section 18-3.7 of the Land Development Ordinance for reasons of front yard setback, lot coverage, accessory structure distance to side line, accessory structure distance to other buildings.
2. There will be no negative impact from the addition, as it will face Palmetto Lane, which is a dirt road.
3. The property owner, the Greenbrook Property Owners Association is not interested in selling its property; therefore, there is no available property to purchase to alleviate or eliminate the variances.
4. There is no other place on the house that is conducive to the addition, based on the interior layout.
5. The homeowners need additional space.
6. In response to Board concerns regarding excessive coverage, the applicant indicated that the addition could be made smaller.
7. There is no other place on the property to where the shed could be moved, due to the two front yards and the septic field location.
8. In response to Board concerns, the applicant agreed that he will place no other larger accessory structures on the property than any accessory structure that is there now.
9. There is one dwelling on Palmetto Lane and it fronts on Greenbrook Drive.
10. Palmetto Lane provides access to the ballpark.
11. There is no other place for the shed or the addition, due to the septic field location.
12. The applicant's engineer has addressed the comments of the Health Department.
13. The applicant will comply with the comments of the Township Engineer.

14. This property is in character with the rest of the neighborhood and will be after the addition is constructed.
15. Only one other house has frontage on Palmetto Lane and it, like the subject property, fronts on Greenbrook Drive.
16. No members of the public approached the Board to voice concerns.
17. Reports from the Township staff were considered during the course of the hearing.

MOTION was made by Daniel Jurkovic to grant the following variances:

Criteria	Required	Granted
Front yard setback (to Palmetto La.)	50 feet	15 feet
Lot coverage (max)	10%	15.11% (based on 32.5' x 14' addition)
Accessory structure: distance to side line	15 feet	7 feet (a pre-existing, non-conforming situation for which no variance relief was ever sought)
Accessory structure: distance to other bldgs.	20 feet	11 feet (a pre-existing, non-conforming situation for which no variance relief was ever sought)

With regard to the existing accessory structure, testimony indicated this was the most advantageous spot on the property without interfering with the existing septic and proposed septic area. It will be most appropriately placed and be hidden by both roadways and the home. There is no additional property to purchase and applicant has agreed to reduce the size of the addition by one foot on one side, thereby increasing the side yard variance request to 15 feet from its present 14 feet. He has agreed, as a condition of the application, to place no other and no larger accessory structures on the property other than the existing one. This somewhat alleviates the requested lot coverage. Palmetto Lane basically only feeds the one existing house and the remainder of the area is either undeveloped, baseball fields or community Association properties. The building being close to the roadway will have minimal to no impact on the surrounding community, seconded by Joseph Giannini.

On roll call vote: Yes - Thomas Bigger, Anthony DeSenzo, Joseph Giannini, Francis Hannan, Daniel Jurkovic, Ed Spirko and Robert Brady
No - None

The following application was called:

DAVID POST
Bulk Variance #0430-0655
 Block 5614; Lot 2
 63 Center Street; LR Zone

COMPLETE 06-02-04
 DEADLINE 09-30-04

Applicant, David Post, previously sworn, testified he is proposing a 15 foot x 18 foot addition to the rear portion of his home. The Township has been notified with a buy/sell letter regarding the adjacent vacant lot owned by the Township. He submitted the certified mail receipt and return receipt but did not have a copy of the letter. The matter will be carried in order to give the Township a reasonable period of time to respond to the buy/sell letter and a purchase price. Exhibit A-1, the return receipt signed by the Administrator's Office, was submitted and a copy of the buy/sell letter sent will be provided to the Board. A letter will be sent to the Administrator's Office indicating the matter is carried and a written response is needed.

MOTION was made by Thomas Bigger to carry the application of David Post to August 10, 2004 meeting and authorizing the Board Attorney to write a letter to the Township Administrator advising of the carry to August 10, 2004. If there is no response from the Township, the matter will be heard anyway, Daniel Jurkovic seconded, with all in favor.

Minutes

MOTION was made by Thomas Bigger to approval of Minutes of the June 17, 2004 Meeting, seconded by Anthony DeSenzo, with all in favor.

Miscellaneous

The Board Attorney updated the Board regarding pending litigation matters.

ADJOURNMENT

The meeting was adjourned by unanimous vote at 10:27 p.m.

Respectfully submitted,

Carol DenHeyer
Secretary