

Township of West Milford

Zoning Board of Adjustment

MINUTES

August 23, 2005

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 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

MEMORIALIZATIONS

The Board Attorney advised no resolutions had been prepared for the following applications:

MIKE DONADIO
Resolution 13-2005
Bulk Variance #0430-0688
Block 9901; Lot 38
33 Wooley Road; R-4 Zone
DENIED

Robert Mazzocchi
Resolution 17-2005
De Minimis Exception
Block 504; Lot 1
Clubhouse Trail; LR Zone
GRANTED: *De Minimis* exception from the Residential Site Improvement Standards – New Jersey Administrative Code; Title 5; Chapter 21 (5:21-3.1) for: pavement, drainage and graded area.

Robert Mazzocchi
Resolution 18-2005
Bulk Variance #0430-0689
Block 504; Lot 1
Clubhouse Trail; LR Zone
GRANTED: Bulk variance for lot frontage, lot width, lot depth, side yard setback and rear setback

HIGH CREST LAKE LODGE, INC.,
Resolution 19-2005
Preliminary & Final Site Plan #0120-0096AB
Block 13002; Lot 9
High Crest Drive/Hearthstone Drive; R-2 Zone.
GRANTED: One-year time extension for preliminary and final site plan

The following applications were called for memorialization:

TARA & RAY GUARINO
Resolution 20-2005
Bulk Variance #0530-0701

Block 15502; Lot 13
30 Circle Boulevard; R-2 Zone

GRANTED: Bulk variance for side yard setback, front yard setback,
accessory structure (shed): distance to side line and distance
to rear line; accessory structure (pool): distance to rear line

MOTION was made by Daniel Jurkovic to memorialize the action, seconded by Joseph Giannini.

On roll call vote: **Yes** Anthony DeSenzo, Joseph Giannini, Arthur
McQuaid, Ada Erik and Daniel Jurkovic
No None

RICHARD SMITH

Resolution 21-2005

Bulk Variance #0530-0699

Block 10301; Lot 26

11 Krattiger Court; R-4 Zone

GRANTED: Bulk variance for side yard setback

MOTION was made by to Arthur McQuaid to memorialize the action, seconded by Daniel Jurkovic.

On roll call vote: **Yes** Anthony DeSenzo, Joseph Giannini, Arthur
McQuaid, Ada Erik and Daniel Jurkovic
No None

PAUL RYAN

Resolution 22-2005

Bulk Variance #0430-0693

Block 5708; Lot 22

59 Belleau Gateway; LR Zone

GRANTED: Bulk variance for lot area, lot depth, side yard setback, front
yard setback, rear yard setback and lot coverage

MOTION was made by Daniel Jurkovic to memorialize the action, seconded by Ada Erik.

On roll call vote: **Yes** Anthony DeSenzo, Joseph Giannini, Arthur
McQuaid, Ada Erik and Daniel Jurkovic
No None

The Chairman advised of the following requests for carries:

NEW CINGULAR WIRELESS PCS, LLC	COMPLETE	01-31-05
D/B/A AT&T WIRELESS	DEADLINE	10-30-05
Use Variance #0440-0691		
Preliminary & Final Site Plan #0420-0197AB		
Block 2802; Lot 3		
333 Warwick Turnpike; NC Zone		

Gail Allyn, Esq., appeared on behalf of New Cingular Wireless and advised New Cingular's engineer was unable to submit revised site plans in sufficient time for this meeting. She requested the application be carried to the October 25, 2005 meeting and granted the Board a 60-day extension.

MOTION was made by Thomas Bigger to carry the New Cingular Wireless application to the October 25, 2005 meeting, seconded by Joseph Giannini, with all in favor by voice vote. The Board Attorney advised if any bulk variances not noticed were necessary, then they should consider re-noticing the application. The Chairman advised no further notice is necessary unless the variances change.

Vincent Lanza	COMPLETE	01-28-05
De Minimis Exception	DEADLINE	10-25-05
Bulk Variance #0430-0673		

Block 2708; Lots 1,5 & 6
27 Flanders Road; LR Zone

Applicant, Vincent Lanza, appeared and advised there is a meeting for residents on September 7, 2005, regarding the roads and drainage issue in the neighborhood of this application. The meeting needs to take place so the vacation of Linden Road can be decided. Mr. Lanza granted the Board an additional 30-day extension.

MOTION was made by Anthony DeSenzo to carry the Vincent Lanza application to the October 25, 2005 meeting, seconded by Daniel Jurkovic, with all in favor by voice vote.

DAVID M. BELL	COMPLETE	04-07-05
Bulk Variance #0530-0697	DEADLINE	10-04-05
Block 4301; Lot 20		
69 Forest Lake Drive; LR Zone		

Applicant, David Bell, appeared to request his application be carried to the October 25, 2005 meeting because he recently found out which zoning regulations would be required and his engineer is preparing revised plans. He granted the Board a 30-day extension.

MOTION was made by Thomas Bigger to carry the David Bell application to the September 27, 2005 meeting, seconded by Daniel Jurkovic, with all in favor by voice vote.

APPLICATIONS CARRIED FROM PREVIOUS MEETING

JOHN PANARIELLO	COMPLETE	12-27-04
Use Variance #0440-0694	DEADLINE	09-23-05
Block 11103; Lot 5.02		
602 Snake Den Road; R-4 Zone		
Use Variance per New Jersey Municipal Land Use Law C:40-55D-70d(1) for an accessory building on a lot that does not contain a principal structure.		

Ed Spirko indicated he is not eligible to vote on this application and Thomas Lemanowicz was appointed a voting member.

Linda Herlihy, Esq., appeared on behalf of John Panariello and advised the Board she had one question left for Mr. Ochab as a continuation of the last meeting.

Kenneth Ochab, Planner, previously sworn, testified the location of the accessory structure was the appropriate location for the structure by virtue of access, topography, nature of the layout of the property, and usage of the building. It is a suitable location and a well-suited use for the logging operation.

Board members discussed the application.

Linda Herlihy, Esq., explained why the applicants' lots are interconnected.

The Board Attorney reminded the Board the testimony was brought back on rebuttal of a certain issue and the application would need to be reopened, if necessary, in order to hear additional testimony from the applicant.

The Board members discussed bringing in new testimony from the Zoning Officer and Building Sub Code Official who were present in the audience and reopening

the application to the public. The Board voted on whether to reopen the application for the limited purpose of questioning the Township Officials as to whatever questions Board members have. In the event there were any answers, the public would have the right to question the officials on those same particular issues.

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

Linda Herlihy, Esq., gave her summation.

MOTION was made by Arthur McQuaid to approve the use variance for the accessory building on a lot without a primary building because of Mr. Ochab's testimony on the *Medici* case, the Master Plan, and the discussions by the professionals. This is a farm and for farm use only. Conditions would require this accessory building to only be used for farm equipment and applicant will not store commercial vehicles. Applicant will plant an Evergreen barrier on the berm, with a two year bond to be approved by the Planning Department. The accessory structure will be torn down if the lot is sold or farming is discontinued. Applicant will agree to remedy any adverse runoff immediately. The Township Engineer and applicant's Engineer will discuss the appropriate bond for the trees. There will be a deed restriction prepared by the Board Attorney to have the accessory building removed if the property is sold. The motion was seconded by Thomas Bigger.

On roll call vote: **Yes** Thomas Bigger, Joseph Giannini, Daniel
Jurkovic, Arthur McQuaid
No Anthony DeSenzo, Thomas Lemanowicz and
Robert Brady

The application was **denied** because a use variance application requires five affirmative votes.

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

The following application was called:

NEW APPLICATIONS

MARCELL & PATRICIA MONTALBANO	COMPLETE	07-13-05
Bulk Variance #0530-0707	DEADLINE	11-10-05
Block 7306; Lot 4		
94 Bearfort Road; LR Zone		

Applicant, Marcell Montalbano, of 94 Bearfort Road, appeared and was sworn. He would like to construct a 900 square foot, two-story garage to be used for extra storage and to store some of his vehicles, motorcycles and a boat. He has attempted to put the garage in a location where it does not block any neighbor's view. He is aware the Health Department objects to the application because there is no Certificate of Compliance filed or as-built drawings for his new septic. He has since obtained the necessary paperwork and submitted a Certificate of Compliance dated July 26, 2005, with the certification approved July 25, 2005. The Department of Health's permit to locate and construct individual disposal system and certification to fill material has been looked at by the Township Engineer. Any approvals would be subject to these documents being accurate. Applicant has agreed to submit copies of these documents to the Board. The architectural plan for the two-story garage has been chosen for storage and aesthetics. The total accumulated floor area of the proposed garage is 1,502

square feet, including the second floor, because some of the second floor is not useable floor space. He would like to be able to do woodworking in the garage and maintenance on the vehicles.

The Board expressed concerns over the size and height of the proposed garage and the fact the garage will tower over applicant's home.

The Board Attorney advised applicant he could proceed with the application or request to carry the application and possibly reconsider his plan for the garage.

Patricia Montalbano, of 94 Bearfort Road, was sworn and testified she chose the plans from the Internet because she liked them and the garage was the correct size to hold their vehicles and allow for a workshop area. Her log cabin sits very high on the lot and cannot be added onto and there is very limited storage area with a crawl space. She would like to maintain the charm of the log cabin home and would not want the garage to block any neighbor's view. The property slopes down from the home where the garage would be located.

The Montalbanos requested their application be carried to the next meeting.

MOTION was made by Anthony DeSenzo to carry the Montalbano application to the September 27, 2005 meeting, seconded by Daniel Jurkovic, with no further notice necessary unless the plans change making the garage larger.

SEVEN 2000, INC.	COMPLETE	07-19-05
Use Variance #0540-0704	DEADLINE	11-16-05
Block 15510; Lot 3		
2800 Route 23; HC Zone		

John Barbarula, Esq., appeared on behalf of applicant, Seven 2000, Inc.

Member of the corporation, Miles Verandak, of 36 Pine Hollow Court, Oakland, NJ, and Douglas McKittrick, P.E., P.P., of 2024 Macopin Road, were sworn.

Mr. McKittrick will testify as a Planner and a Licensed Engineer.

Mr. Verandak testified he purchased the property in 2001 and there is currently a Blimpie's store. There were apartment units on the first and second floor when he purchased the property and he was not aware the first floor use was never approved for apartments. He later became aware of the situation from the Township and the unapproved units were removed to correct the situation. He has had several businesses at this location including Blimpie's, As Seen on TV, and an ice cream store. The site has limited access with a one-way entrance/exit. He has had difficulty with the utilization of the property for commercial purposes because of the unique shape of the property. He has attempted additional advertising and signage at the location but people continue to pass it by, which made it hard to make a living from the businesses. The apartments on the second floor have remained and he gets requests for apartment availability once or twice a week. A total of five apartments would exist if the variance was granted. The first floor would include two, two-bedroom apartments. The second floor currently consists of two, one bedroom apartments, and one, two-bedroom apartments. The septic will be upgraded if the variance is granted.

Mr. Barbarula clarified this variance is only for a use variance at this time.

Mr. McKittrick first testified regarding the planning issues. The Master Plan does not encourage residential dwellings in the Highway Commercial Zone and excludes residential uses. The Master Plan encourages different types of housing and there is a lack of residential apartments in the Township. This is a

unique property with neighboring properties being in residential zones and is located on a one-way street, that being the off-ramp from Route 23 North for LaRue Road. The visibility of the property is very poor from the highway. He was not sure if a site plan would be required and the only detail he saw missing was a dumpster location. The parking is shown and is more than adequate. There are no grading changes being proposed, no construction proposed, and no changes in run-off. The first floor apartments would not have any negative impact on the surrounding areas. There is adequate room on the property to expand the septic to conform to the code if necessary.

Linda Lutz, Principal Planner, felt the application was for a commercial type venture. She agreed that the unique situation of the property made it suitable for the use, thereby constituting special reasons, and the commercial aspects of the property are not working and there is a need to make the property viable. This property could not develop with the conforming use because of its location and the inability to have proper signage. The Township should not be burdened with lesser ratables than residential ratables. There may not be the same kind of burden on the tax system for children attending school, etc., from the apartments as there would be from a single-family homes. A Minor Site Plan Application for the apartments would allow landscaping to be done and the Township Engineer's issue would be handled through a Minor Site Plan Application.

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

MOTION was made by Thomas Bigger to close the public portion of the meeting, seconded by Anthony DeSenzo, with all in favor.

John Barbarula, Esq., gave his summary. The positive aspects of the providing of a need, no adverse effect, and keeping with the neighborhood, far outweigh any negative aspects on this unique property.

MOTION was made by Anthony DeSenzo to approve the use variance for Seven 2000, Inc., because of the testimony of Mr. McKittrick, Mr. Barbarula and Linda Lutz. The burden of proof has been provided that the negative impact for the property is far less than what the greater good would be by allowing the use variance. There is a poor ingress/egress into the site. As retail, it is an end destination site and not suited for that. There is no viable way to access the site if you pass it. It is located on a one-way street, which is a non-arterial off ramp to a highway, which defeats the purpose of having a retail location along a major highway which would be to add to the visibility and viability of the site. The present use in food preparation and adding the apartments would not serve as any greater taxation on the utility systems. The septic will be handled at a further stage of application. This will serve the public good and the Township is in need of having additional rental housing and the location is very viable for rental use. The applicant in good faith corrected the non-compliance and made an attempt to comply with zoning. However, the restrictions on the site, due to signage and various other constraints, will not allow the property to remain economically viable. Linda Lutz's testimony on the *Medici* case, which speaks to promoting general welfare and given the unique situation, has been proven. Applicant should consider some further landscaping upgrades to make it look like a residential building as opposed to a converted commercial use and I would allow Mr. McFadden to review that. The motion was seconded by Ed Spirko.

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

STEVEN & JANET BRYAN
Bulk Variance #0530-0710
Block 3406; Lot 27.01

COMPLETE 08-02-05
DEADLINE 11-30-05

MOTION was made by Thomas Bigger to approve the Minutes of the July 12, 2005 special meeting, seconded by Daniel Jurkovic, with all in favor.

Miscellaneous

MOTION was made by Anthony DeSenzo to have the Board Attorney prepare the resolution for the Panariello application, seconded by Thomas Bigger, with all in favor.

MOTION was made by Thomas Bigger to have Linda Lutz prepare the resolutions for the applications of Seven 2000, Inc. and Steven Bryan, seconded by Ed Spirko, with all in favor.

The next meeting will be September 27, 2005 with no special meetings for September.

Adjournment

The meeting was adjourned by unanimous vote at 10:41 p.m.

Respectfully submitted,

Carol DenHeyer, Secretary