

TOWNSHIP OF WEST MILFORD ZONING BOARD OF ADJUSTMENT

MINUTES

SEPTEMBER 28, 2004

The meeting opened at 7:45 p.m. with the reading of the legal notice.

ROLL CALL

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

Absent: Thomas Bigger and Ed Spirko

The Chairman appointed alternate, Thomas Lemanowicz, as a voting member but advised Mr. Lemanowicz would be recusing himself from the Cefes Financial application because of a conflict.

DAVID POST	COMPLETE	06-02-04
Bulk Variance #0430-0655	DEADLINE	10-31-04
Block 5614; Lot 2		
63 Center Street; LR Zone		
Addition to single-family dwelling		

The Chairman read a letter from David Post, applicant, withdrawing his above application.

The following court remand was called:

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

John Barbarula, Esq., appeared on behalf of applicant, Cefes Financial, Inc.

The Board Attorney advised the Cefes matter had previously been carried in order to give Mr. Barbarula an opportunity to address a Notice of Motion to Enforce Litigant's Rights relating to the terms of a settlement. Mr. Barbarula's intention was that the issue of drainage was a non-issue before this Board. Judge Passero indicated the motion was premature and the Board should proceed with the hearing.

Douglas McKittrick, previously sworn as an Engineer and a Planner, testified as an Engineer regarding the impervious surface proposal and stated a large swale would handle any new water the dwelling would create. The details had not yet been given to the Township Engineer.

The meeting was opened to the public at which time Jeff Provost, of 8 Magnolia Road, (lot 6), had concerns regarding his well, septic and the roads. He did not feel applicant had a hardship since he purchased the lot in foreclosure knowing the lot was unbuildable. His offer to purchase the lot from applicant was considered insufficient. Judy Kwiecien, of 9 Glenridge Road, (lot 2), was concerned about the water run-off and the major shortage of land required to build the home. She felt applicant purchased the lot in order to make money and knew it was too small to build.

MOTION was made by Arthur McQuaid to close the public portion, seconded by Anthony DeSenzo, with all in favor.

Mr. Barbarula made his closing remarks stating the prior case had nothing to do with this one and the lot was an isolated lot sold at tax sale. The proposal was for a dwelling as small as economically feasible and keeping with the size and character of the neighborhood. Mr. Provost's offer to purchase the lot was insufficient. The lot has a unique shape and no property can be added to it. Precautions have been taken to assume Mr. Provost's well was the shallowest well in the area. The site was looked at in terms of the placement of the septic. He still objected to the specificity and line of questioning regarding the drainage issue and stated the before and after condition of drainage resulted in the exact same run-off that currently exists.

Arthur McQuaid commented the Zoning Board of Adjustment had previously recommended the Township use the open space fund to purchase small lots and use as them as parks.

Daniel Jurkovic felt this was the opportunity to begin to curb and pave the area.

Joseph Giannini felt the *de minimis* application was extremely important.

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

The Board Attorney gave the Board guidance clarifying if the *de minimis* exception was denied and the bulk variance was granted, applicant must follow the RSIS standards and the Township Engineer would have to approve those standards.

Joseph Giannini felt the size of the home was too large for the lot size.

The Board of Adjustment made the following findings of fact:

1. The applicant is the owner of the premises and intends to build a single-family dwelling.
2. The property is undersized; therefore, the applicant requires the requested variances.
3. The applicant is a corporation and required the representation of an attorney.
4. The applicant sent the required buy/sell letters to the adjoining property owners and said owners are not interested in buying the applicant's property at fair market value; therefore, the applicant has met the positive criteria in that there would be a hardship to construct the dwelling without the requested variances.
5. The applicant has satisfied the negative criteria since the serious concern for drainage runoff on Magnolia Road was addressed by way of a swale system that would take into consideration the concerns effect neighbor.
6. The applicant has proven a hardship and the negative impact as to drainage will be minimized.

MOTION was made by Arthur McQuaid to approve the bulk variance because it is an isolated lot, the slope of the ground and the location of the possibly shallow well of the neighbor forces the location of the well and septic on this lot. There were no offers to purchase the lot at fair market value. The swale on the eastern side along with the depression will prevent new water from running onto lot 3 and will allow the stated rate of delayed discharge onto Cedarbrook. If possible, the home should be reduced so it is no more than 10% of the lot coverage, seconded by Anthony DeSenzo.

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

The Board of Adjustment made the following findings of fact: Allowing the applicant to develop within the existing residential neighborhood without improving the entire road network to the standards of the RSIS will be inconsistent with the intent of said act and would be a very poor precedent to set vis-à-vis other development along the same cartway.

MOTION was made by Daniel Jurkovic to **deny** the *de minimis* exception because there is still substantial development to be done in the area, the intent of the RSIS standards was to prompt new development to begin to install the proper infrastructure for roads and this community has vacant lots within the vicinity of the subject property, seconded by Joseph Giannini. **A yes vote is a denial.**

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

The Board Attorney advised the Board will be adding a statement to all resolutions that approvals of applications will meet the Highlands Act, if applicable.

The Board voted to hold a special meeting October 19, 2004.

The Chairman advised the following applications would be carried:

JEFFREY YUHAS	COMPLETE	07-29-04
Bulk Variance #0430-0680	DEADLINE	11-26-04
Block 10601; Lot 10		
36 Postbrook Road North; LR Zone		

The Jeffrey Yuhas application will be carried to the October 19, 2004 meeting with no further notice necessary.

DONALD & I-YO TURTON	COMPLETE	08-16-04
Bulk Variance #0430-0672	DEADLINE	12-14-04
Block 4501; Lot 3		
Awosting Rd/East Shore Rd; R-4		

The Donald & I-Yo Turton application will be carried to the October 19, 2004 meeting with no further notice necessary.

MICHAEL & JENNIFER BARONE	COMPLETE	08-18-04
Bulk Variance #0430-0683	DEADLINE	12-16-04
Block 7506; Lot 7		
2 Compass Avenue; LR Zone		

The Michael & Jennifer Barone application will be carried to the October 19, 2004 meeting with no further notice necessary.

DENNIS MAIORINO	COMPLETE	08-19-04
Bulk Variance #0430-0682	DEADLINE	12-17-04
Block 1203; Lot 2		
4 Finderne Court; LR Zone		

The Dennis Maiorino application will be carried to the October 19, 2004 meeting with no further notice necessary.

GREG RYAN
De Minimis Exception
BULK VARIANCE #0430-0677
Block 12501; Lot 20
Van Cleef Road; R-3 Zone

COMPLETE 08-24-04
DEADLINE 12-22-04

The Board Attorney advised there was a question regarding the advertisement sent to Mr. Marchiofava but he was present and stated he had received the notice. The Greg Ryan application will be carried to the October 26, 2004 meeting with no further notice necessary.

MICHAEL ZUPP
De Minimis Exception
Bulk Variance #0430-0662
Block 12110; Lot 6
Inwood Road; R-2 Zone

COMPLETE 06-01-04
DEADLINE 10-31-04

Applicant, Michael Zupp, of 58 Circle Boulevard, Newfoundland, was sworn.

Kent Rigg, of 63 Sicomac Avenue, was qualified as a Licensed Engineer and a Land Surveyor

John Barbarula, Esq., appeared on behalf of applicant and explained the application had been carried from the last meeting because of the unavailability of Mr. Rigg. Also, a neighbor raised a question regarding his Deed which had been taken care of.

Mr. Rigg testified as a Land Surveyor that he prepared the plans and reviewed a Deed from the adjoining neighbor, Benjamin Beek, comparing the metes and bounds to the subject property. An issue came up regarding whether or not there was any overlap between lot 17 and the applicant's property.

Mr. Barbarula confirmed Mr. Beek did not own into the driveway of applicant but Mr. Beek does use it as his access.

Mr. Rigg testified as to the proposed utilization of applicant's property. The intent is to build one single-family dwelling with the proposed access through Martha Street, an unimproved road. A gravel driveway is proposed to the home. The property owner on lot 17 has an easement to the west of their lot for access in and out of their property. There is a side entrance garage at approximately 3.4 feet from the property line and it is necessary for them to come in on the macadam driveway in order to enter and exit the garage. Mr. Rigg, testifying as an Engineer, felt the preferable access was Martha Street.

Mr. Rigg, previously sworn as a Planner, testified the most favorable access to applicant's property is from Martha Street, now functioning as a community street, as opposed to appearing to be driving up his neighbor's driveway. This would also create the least amount of clearing of trees. There is no drainage infrastructure on Martha Street.

Mr. Barbarula advised Martha Street exists on paper as an unimproved street listed on the tax maps and the municipality cannot vacate and land-lock this property. The applicant did not want a restriction on the property to not subdivide the property in the future.

The Township Engineer confirmed Martha Street is a dedicated but not accepted road and the Township does not maintain it except for snow plowing.

Mr. Rigg testified the house location was chosen because applicant wants to be able to view a certain existing tree from the home. The proposed driveway is being chosen because it is already cleared and currently a dirt way that would require less tree

removal. It would be possible to build access from the existing driveway to the proposed dwelling but he felt it was a better plan to enter from Martha Street. The area of disturbance can be reduced to less than one acre to comply with the Township Engineer's memo of July 9, 2004. The memo of May 25, 2004 from the Township Engineer can also be complied with.

The meeting was opened to the public at which time Ben Beek, of 463 Germantown Road, lot 17, testified he had no problem with applicant building his home. Mr. Beek explained he had paved the driveway at his own expense and had been using it for 28 years. The driveway ranges from approximately 14 feet in width to 16 feet according to his Deed and he parks his three vehicles there. His garage door is about 3 ½ feet from applicant's property. He attempted to purchase watershed property approximately 14 to 16 feet away years ago but was told he could not purchase it. His garage is so close to the roadway he feels it is a safety hazard. He would like to purchase the "leg" of the property from Mr. Zupp to equalize the properties. He produced a copy of a Bill of Sale showing he can use the area.

The Board Attorney read from Mr. Beek's Deed dated August 17, 1976 stating there is an easement to use a strip of land 16 feet in width along the westerly side line of the premises for ingress/egress to the property. The strip of land is owned by Mr. Zupp and by virtue of the Deed, there is an easement that allows him to use that piece of property for ingress and egress but does not permit him to use it as a driveway as he has become accustomed to doing. The previous owner of applicant's property allowed him to use it to get into his garage.

The Chairman advised no more testimony would be heard because of the time and the application and public portion would be carried to the October 26, 2004 meeting with no further notice necessary.

APSHAWA LAND Co.	COMPLETE	07-28-04
Use Variance #0340-0635	DEADLINE	11-25-04
Preliminary & Final Site Plan #0220-0126AB		
Bulk Variance #0230-0586		
Block 12501; Lot 21		
Van Cleef Road; R-3 Zone		

The Chairman advised the use variance, preliminary and final site plan, and bulk variance applications would be carried to the October 19, 2004 meeting with no further notice necessary.

An unknown person requested the Apshawa Land Company and the Greg Ryan applications be rescheduled after November 19, 2004 to the regular November meeting in order for them to participate in the public portion.

The Board Attorney advised the application for Greg Ryan is being listed on this agenda for the first time, is being carried to the October 26, 2004 meeting, and may or may not be reached. The attorney for Apshawa would have to agree to carry the application to another meeting.

Mr. Barbarula advised he has to go forward with the Apshawa Land Company and Michael Zupp applications at the October 19, 2004.

Minutes

MOTION was made by Arthur McQuaid to approve the Minutes of the August 24, 2004 meeting, seconded by Frank Hannan, with all in favor.

MOTION was made by Arthur McQuaid to approve the Minutes of past meetings, seconded by Daniel Jurkovic, with all in favor.

ADJOURNMENT

The meeting was adjourned by unanimous vote at 11:13 p.m.

Respectfully submitted,

Carol DenHeyer
Secretary