

**MINUTES**  
**Of the Township of West Milford**  
**ZONING BOARD OF ADJUSTMENT**  
**August 25, 2020**  
**Regular Meeting via Zoom**

(Due to COVID-19 social distancing requirements this virtual meeting was held on Zoom.) Robert Brady, Board Chairman, opened the Zoom Meeting of the Zoning Board of Adjustment at 7:52 p.m. The Board Secretary read the Legal Notice. The Pledge of Allegiance was recited.

**Roll Call**

**Present:** Russell Curving, Linda Connolly, Arthur McQuaid, Michael Gerst, and Robert Brady

**Also present:** Deidre Ellis, Board Secretary, Stephen Glatt, Board Attorney, Ken Ochab, Board Planner and Patrick McClellan, Board Engineer

**Absent:** Daniel Jurkovic, Frank Curcio-Tried to attend but had technical difficulties, Jo Ann Blom and Steven Castronova

The Chairman greeted the Board, the applicants and any members of the public. Mr. Brady explained the Zoning Board and Open Public Meetings Act. The meetings are advertised in the Herald News. The Board operates in accordance with the Open Meeting Act of the State of New Jersey, which means discussions and decisions are made in public. Under normal circumstances the Board follows a printed agenda. There are no new applications after 10:30 pm and no new testimony after 11:00 pm, after the applicant speaks then anyone can speak for or against that application. If it is needed there will be a break at approximately 9:00 pm. The appeals of this Board go directly to the Superior Court of the State of New Jersey.

**WILLIAM SCHWARZLOW**  
**RESOLUTION 11-2020**  
**BULK VARIANCE ZB05-20-05**  
Block 10601; Lot 21  
1 Post Brook Rd South; LR Zone

**Decided:** Approval of bulk variances, for side and rear yard setback and lot coverage for a 24' x 24' two car garage.

**Approved:** July 28, 2020

**Eligible to vote:** Russell Curving, Daniel Jurkovic, Linda Connolly, Arthur McQuaid, Michael Gerst, and Robert Brady

**A motion was made by Michael Gerst to memorialize Resolution 11-2020. Second by Arthur McQuaid.**

**Roll call vote:**

**Yes:** Russell Curving, Linda Connolly, Arthur McQuaid, Michael Gerst and Robert Brady

**No:** None

**Abstain:** None

**JAMES JAY HUGGINS**  
**RESOLUTION 12-2020**  
**BULK VARIANCE ZB06-20-06**  
Block 4008; Lot 3  
183 Long Pond Rd.; LR Zone

**Decided:** Approval of bulk variances, for rear yard setback and lot coverage for the construction of an addition for one bedroom and one bathroom.

**Approved:** July 28, 2020

**Eligible to vote:** Russell Curving, Daniel Jurkovic, Linda Connolly, Arthur McQuaid, Michael Gerst, and Robert Brady

**A motion was made by Michael Gerst to memorialize Resolution 12-2020. Second by Linda Connolly.**

**Roll call vote:**

**Yes:** Russell Curving, Linda Connolly, Arthur McQuaid, Michael Gerst and Robert Brady  
**No:** None  
**Abstain:** None

At this time the Board Attorney indicated that Applicant Mr. George English had noticed the paper and his 200' list insufficiently, and will need to re-notice. There needs to be as much information as possible on the notice. The matter will be carried to the next meeting (September 22, 2020) after he provides proof of notice. The Board Secretary advised Mr. English to wait until he receives the new template with the correct meeting information on it before he notices.

**CARRIED APPLICATIONS**

**JOANNE & RAY WARD**  
**BULK VARIANCE ZB08-19-16**  
Block 4002: Lot 7  
234 Long Pond Rd.; LR Zone

**Complete: 10/31/2019**  
**Deadline: 11/24/2020**

Bulk Variance approval requested for the prior construction of a garage and deck with roof encroaching on property that is not owned by the applicant, with a rear yard setback requirement of 60 ft, and 1 ft is proposed, a side yard setback where 30 ft is required and 2.1 ft is proposed, and an attached garage where 30 ft is required and 1.9 ft is proposed.

Mr. John Barbarula Esq. indicated that at a previous meeting he reminded the Board that the Town Ordinance requires the owner of the property to join the application. After checking with the Board Secretary and the Board Attorney, it was clear the application had not been amended and there was no easement. Mr. Barbarula indicated that without these two things the application cannot go forward because it does not comply with the rules, it is against the Municipal Land Use Law 40: 55-70. Mr. Barbarula requested that the application not be heard until such time that the applicant can prove that the owner of the land on which they wish to build has joined in the application or they have a valid easement in perpetuity, because they are asking to have a structure put on someone else's property.

The Board Attorney indicated that his understanding from speaking with Mr. Moshman, (the applicant's attorney) was that Mr. Moshman was having difficulty contacting Awosting's Attorney and that also there was the matter of noticing the additional people of the 200' list from Awosting's property. Mrs. Ward had done so, and this was confirmed by the Board Secretary.

The applicant's attorney, Robert Moshman Esq. indicated that there was no new structure being proposed, the structure had been there for 25 years with the permission of the Awosting Association, a letter to that effect has been written to the Board and the Association had a representative attending the meeting tonight, Mr. Christman, the President of the Association. Mr. Moshman confirmed that his client was working on getting the easement with Mr. Martin, the Association's Attorney, but were unable to get the easement signed and filed prior to this meeting. Mr. Moshman indicated that the easement could be a condition of approval should the Board choose to grant the variance tonight, and that nothing new was being proposed from the structure that had been there for 25 years.

The Board Attorney indicated that he was not in total agreement with the easement just being for the existing structure, because a roof had been added or some other deviation of the structure, and that was the reason the applicant was before the Board. The easiest thing would be to have the signed easement in hand, we don't want to waste any more time and money. There was discussion as to whether a new application needed to be filed or if the Awosting Association could just sign on to the current application. The Board Attorney indicated that when you have an application where there is more than one party involved, homeowner or tenant and there is a dispute or something before the Board, when there is an opposing Attorney or not, the property owner needs to be involved even if it is to certify that they are in agreement with what is being proposed or done.

The Board Planner indicated that there were three things that needed to be done prior to the meeting tonight. The first was that the applicant needed to notify the additional people on the 200' list that included the portion of property owned by Awosting. The second was a signed easement document for the existing encroachment for the existing deck. The third thing was for the property owner to indicate in some form that the application can proceed moving forward. The issue is that there is an existing encroachment that has been there for some time and the Board cannot just let that go. The second part is the new deck with a roof on it, which is a violation and there are variances associated with it, and that is what the Board needs to decide on. Once those things are provided, the Board can proceed, and Mr. Barbarula can do what he needs to do for his opposing client.

Mr. Barbarula requested to have the application withdrawn without prejudice at this time and the Board Attorney indicated that if the application were to be carried one more time and the requirements were met for the next meeting, the Board would be able to proceed with hearing the proofs and continuing with the application. Mr. Christman indicated that the Association was inclined to agree with the application and the Board Attorney indicated that an easement must be done as soon as possible, with deadlines looming and not wanting the application to go through by default. The application may be dismissed without prejudice at the next meeting should the Board requirements not be met. The Board Chairman indicated that the application had been deemed complete in October of 2019 and it needed to get resolved. There was discussion about the initial deadline of the easement and the fact that the application has been dragged out and that is unacceptable, (covid) pandemic or not.

The Board Attorney indicated that the easement was the necessary item and that the Board could not hear the application without it. With the easement, the Board could proceed without the threat of ramifications from Awosting. There is no way the Board can grant a variance on an encroachment onto a property that is not owned by the applicant.

Mr. Barbarula indicated that he wanted to stress the requirements for the next meeting, the notice of that additional people on the Awosting property 200' list, the Awosting Association signature on the application and the actual easement document.

The Board Attorney indicated that the application must be signed by Mr. Christman or the Awosting Association responsible party in counterpart, authorizing on behalf of Awosting.

**A motion was made by Arthur McQuaid to carry application ZBo8-19-16. Second by Michael Gerst.**

**Roll call vote:**

**Yes:** Russell Curving, Linda Connolly, Arthur McQuaid, Michael Gerst, and Robert Brady  
**No:** None  
**Abstain:** None

The Board Attorney indicated that anyone interested in the matter would need to check the Agenda on the Township Website for the next Zoom information for the next meeting on September 22, 2020. The applicant will not be required to notice again.

Mr. Barbarula indicated that any new materials would need to be submitted 10 days prior to the meeting in order for him to get any experts that he needed, regarding those materials. (September 12, 2020.) When asked by Mr. Moshman the Board Attorney indicated that a file copy of the easement would be sufficient, and the recorded document from the County would not be necessary. The Board Attorney indicated that Mr. Moshman should send the easement document to both the Board Attorney and the opposition attorney, Mr. Barbarula, to review with a turnaround time of two days, prior to recording it with the County.

**JOSEPH PONZO JR.**  
**BULK VARIANCE ZBo4-20-04**  
Block 2016; Lot 2  
6 Danforth Ave.; LR Zone

**Complete: 6/20/2020**  
**Deadline: 10/18/2020**

Bulk variance requested for front yard setback where 40' is required, 33.2' is existing and 26.5' is proposed, side yard setback where 30' is required, 31.4' is existing and 10.1' is proposed, and lot coverage where 10% maximum is required, 8.82% is existing and 16% is proposed for an approximate 661 sq ft residential addition for kitchen, living room, dining room, 2.5 car garage.

The Board Attorney swore in Amanda Caccavella and Joseph C. Ponzo Jr., 6 Danforth Ave., Hewitt, NJ.

The Board Attorney indicated to the Board that property had been purchased, lot 3 and also lot 5 & 6 on another deed. Mr. Ponzo indicated that they had been able to purchase two lots and therefore had eliminated the side yard and lot coverage variances, and the lot will be about a half acre now. The approximate 661 sq foot addition is for the kitchen, living room, dining room and 2.5 car garage with no bedrooms added to the house. One lot falls behind the other 5 & 6. The Town has it as lot 5 in the tax maps. It is basically a big L. The purchase of lot 3 eliminates side yard and lot coverage, just the front needed. (Lots) 5 & 6 have no bearing on the application.

The Board Attorney indicated that Mr. Ponzo would be required to file a deed that merges lots 2 and 3 so that it is one property. The applicant believes that lot 5 will be separate. The tax department has it listed as lot 5. (Not lot 5 & lot 6). Mr. Ponzo indicated that the title company was going to file the documents with the County Clerk. The Board Attorney suggested that the Board require proof of filing with the County as a condition of approval. The applicant will need to provide proof of filing to the Board Secretary, so that she may send it to the Board Attorney for review.

The Board Planner indicated that the front yard setback was all that remained. A frontyard setback of 29.33 feet where 40 feet is required. The Board Engineer indicated that he agreed with the merging of lots 2 and 3, and enquired about a possible future subdivision. The Board Attorney indicated that if and when that time came, they would need to go through the subdivision process but they are not precluded from subdividing.

The Public portion of the application was opened.

**Seeing no one Michael Gerst moved to close the Public portion. Second by Arthur McQuaid.**

**All were in favor.**

**None opposed.**

**A motion was made by Arthur McQuaid to approve application ZB04-20-04. Second by Russell Curving.**

**Roll call vote:**

<b>Yes:</b>	Russell Curving, Linda Connolly, Arthur McQuaid, Michael Gerst, and Robert Brady
<b>No:</b>	None
<b>Abstain:</b>	None

The Board Chairman indicated that usually there is a resolution by the next meeting at which point it will be memorialized, after which the Board Secretary will publish in the newspaper the notice within one or two days and that starts the 45 day appeals period, during which time if work is done it may be appealed. If action is taken, it is at the applicant's own risk.

**MICHAEL DENISTRAN**  
**BULK VARIANCE ZB04-20-03**  
Block 2704; Lot 15  
5 Dunham Rd.; LR Zone

**Complete: 7/7/2020**  
**Deadline: 11/4/2020**

Bulk variance requested for rear yard setback where 60' is required, 72'9" is existing and 10'9" is proposed, front yard setback where 40' is required 23'8" is existing and 21'3" is proposed and lot coverage where 10% is required 8% is existing and 14.5% is proposed for an 800 sq ft family room addition.

The Board Attorney swore in Michael Denistran, 5 Dunham Rd, Hewitt, NJ. Mr. Denistran indicated that he requires more living space for his family and requires a bulk variance for an 800 sq ft addition. He has revised plans and purchased the lot behind his house to provide relief to the existing nonconforming lot in which his house is located. The applicant has spoken to surrounding neighbors and they do not object to his project and his brother is in attendance to provide details as he is a professional engineer and planner. Mr. Denistran has purchased the lot behind his house and demolished the house that was on that property, and his survey has been updated and the lots combined on the tax map. It was lot 2 and lot 15 and now it is all lot 15, and recorded with the County.

The Board Attorney swore in Anthony Kurus, Neglia Engineering Associates, 34 Park Ave. Lindhurst, NJ, a licensed Engineer and a licensed Professional Planner in the State of New Jersey, has testified in front of various Boards in Bergen, Essex and Passaic Counties. Mr. Kurus sits as the Board Engineer and Planner for the Township of South Hackensack, has served as the Board Engineer and Planner for Roselle Park, has a Bachelor's Degree in Engineering from Villanova and a Master's Degree from Stevens Institute and both licenses are in good standing.

Mr. Kurus was accepted as an expert witness and continued with testimony. The addition to the house is approximately 800 sq ft on the North side of the property, which is located in the Upper Greenwood Lake Association area. The property is known as block 2407, lot 15. The minimum lot size for the zone is 20,000 sq ft and their existing lot was substandard as far as lot area is concerned. The applicant purchased lot 2 in 2017, which brings their lot area to 16,985 which is still nonconforming but they added 5000 to 6000 sq ft to the lot. The way the house sits on the lot there was approximately 12 feet to the property line, with the additional lot, the setback becomes conforming as it is approximately 72 feet now. The lot itself is irregular and "boot shaped". The top side of the boot contains the lot they acquired and the addition is to be located in the toe section. Due to the odd shape of the lot, the rear yard setback is 10 feet, 9 inches, when 60 feet is the requirement. The majority of the addition is conforming except on the North side. Mr. Kurus indicated that from the street, the addition is proposed for the open space that is there. The applicant is requesting a variance for lot coverage and the purchase of lot 2, makes it more conforming than it would have been, 14.5% requested where 10% is the permitted amount. The lot frontage conforms to the 120 foot requirement, the lot width conforms, lot depth is 82 feet existing and 150 feet is required, an existing nonconformity. The front yard setback is 23 feet 8 inches and the requirement is 40 feet. The proposed mud room in the addition will change that distance to 21 feet 3 inches which would be a very minor change of approximately 2 feet to reconfigure the entry. The building height is conforming. Mr. Kurus indicated that the hardship is that the existing property is undersized and an irregularly shaped lot. The purchase of lot 2 improved that condition. There is no relief required on the right side with regard to lot 14. The property to the back which is along Audubon Road where the variance is requested sits higher up and there is an existing tree line there which serves as a buffer and the construction of this project would have no impact. The dilapidated house that was removed from lot 2 also has had a positive impact to the neighborhood. Mr. Kurus indicated that there would be no detriments to the application, with the property and home being cleaned up and improved.

Chairman Brady questioned the square footage of the addition added to the house. Mr. Kurus indicated that the total square footage with the addition would be a total footprint of 2462. The Board Planner indicated that lot 15 was a very shallow lot. Only 50 feet at the South end in depth and 85 feet on the North end in depth. It encroaches because of this and extending the frontage is appropriate planning. Increasing the lot size in Upper Greenwood Lake would have positive impact. The Board Planner agreed there would be no significant impact to the neighbor living along Audubon because there is a 30 foot elevation there.

The Health Department memo was addressed. Mr. Denistran indicated that number one on the memo was not applicable, number two, the current survey had been provided, number three a professional engineer was hired, number four, there will be no increase in the number of bedrooms. The existing one will become a hallway. There is no need to change the septic. Number six provide details on lot 2, proof that the septic system was abandoned per NJDEP specifications, along with the potable well. Mr. Denistran indicated that the septic system has been removed, taken out of the ground and recycled as per NJDEP standards, and has proof that the crushed up concrete was taken off the premises. The well has not been abandoned but is being turned into an irrigation well and is currently being worked on with the well contractor.

The Board Engineer indicated that though he respects the Township Health Department's due diligence, with State permitting it is not the responsibility of the Township Engineer or Board Engineer to require or obtain DEP permits and if the Health Department requires documentation, should they feel the property is encumbered, Mr. Kurus, who has a great reputation, can help with that. As previously stated, the home is approved as a three bedroom and will remain a three bedroom home, and therefore there will be no additional load on the septic, and that is a positive thing. The Board Planner indicated that in reference to the memo by the Township Engineering Department, due to the increase in impervious coverage, if the application were to be approved, making it subject to a lot development plan to be approved by the Township Engineering department would be appropriate. Mr. Denistran did not have an issue with complying with this condition. There was clarification that the shed which sits up a little higher in elevation, will remain and the carport, which will be directly impacted shall be removed.

The Public portion of the application was opened.

**Seeing no one Michael Gerst moved to close the Public portion. Second by Linda Connolly.**

**All were in favor.**

**None opposed.**

Mr. Denistran thanked the Board for their time.

**A motion was made by Robert Brady to approve application ZBo4-20-03. Second by Michael Gerst.**

**Roll call vote:**

**Yes:** Russell Curving, Linda Connolly, Arthur McQuaid, Michael Gerst, and Robert Brady

**No:** None

**Abstain:** None

The Board Attorney indicated that usually there is a resolution by the next meeting at which point it will be memorialized, after which the Board Secretary will publish in the newspaper the notice within one or two days and that starts the 45 day appeals period, during which time if work is done it may be appealed. If action is taken, it is at the applicant's own risk.

**A motion to approve all invoices for the Board Attorney, Board Engineer and Board Planner by Michael Gerst. Second by Linda Connolly.**

**Roll call vote:**

**Yes:** Russell Curving, Linda Connolly, Arthur McQuaid, Michael Gerst, and Robert Brady

**No:** None

**Abstain:** None

**A motion was made to approve the July 28, 2020 Regular Meeting Minutes by Russell Curving. Second by Linda Connolly.**

**Roll call vote:**

**Yes:** Russell Curving, Linda Connolly, Arthur McQuaid, Michael Gerst, and Robert Brady

**No:** None

**Abstain:** None

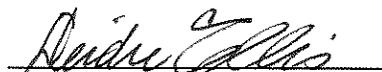
**Motion for adjournment of the July 28, 2020 meeting by Michael Gerst. Second by Robert Brady.**

All in favor. None opposed.

**ADJOURNMENT at 9:15 PM**

**Next regular meeting September 22, 2020 at 7:30 p.m.**

Respectfully submitted by,



Deidre Ellis, Secretary

Zoning Board of Adjustment