

**MINUTES
Of the Township of West Milford
ZONING BOARD OF ADJUSTMENT
September 22, 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 7:40 p.m. The Board Secretary read the Legal Notice. The Pledge of Allegiance was recited.

Roll Call

Present: Daniel Jurkovic, Frank Curcio, 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: Russell Curving, Linda Connolly, 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.

MEMORIALIZATIONS

**JOSEPH PONZO JR.
RESOLUTION 13-2020
BULK VARIANCE ZB04-20-04
Block 2016; Lot 2
6 Danforth Ave.; LR Zone**

Decided: Approval of a bulk variance for front yard setback for a 661 sq ft residential addition for kitchen, living room, dining room, 2.5 car garage
Approved: August 25, 2020
Eligible to vote: Russell Curving, Linda Connolly, Arthur McQuaid, Michael Gerst, and Robert Brady

A motion was made by Michael Gerst to memorialize Resolution 13-2020. Second by Arthur McQuaid.

Roll call vote:

Yes: Arthur McQuaid, Michael Gerst and Robert Brady
No: None
Abstain: None

**MICHAEL DENISTRAN
RESOLUTION 14-2020
BULK VARIANCE ZB04-20-03
Block 2704; Lot 15
5 Dunham Rd.; LR Zone**

Decided: Approval of bulk variances for rear and front yard setbacks and lot coverage for an 800sq ft family room addition.
Approved: August 25, 2020
Eligible to vote: Russell Curving, Linda Connolly, Arthur McQuaid, Michael Gerst, and Robert Brady

A motion was made by Michael Gerst to memorialize Resolution 14-2020. Second by Arthur McQuaid.

Roll call vote:

Yes: Arthur McQuaid, Michael Gerst and Robert Brady
No: None
Abstain: None

The Board Attorney indicated that applicant George English had failed to notice for the meeting and his application ZB06-19-10 would need to be carried to the next meeting on October 27, 2020. The Board Attorney indicated that the applicant had also had an insufficient notice prior to the last meeting.

A motion was made by Michael Gerst to carry application ZB06-19-10. Second by Daniel Jurkovic.

Roll call vote:

Yes: Daniel Jurkovic, Frank Curcio, Arthur McQuaid, Michael Gerst, and Robert Brady
No: None
Abstain: None

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.

The Board Attorney indicated that an easement agreement had been entered into between the Ward's and the Awosting Association and that Mr. Christman had signed the application representing the Awosting Association. Mr. Barbarula Esq., attorney for an opposing party indicated he did not object to hearing the merits of the case at this time. The Board Attorney indicated that the Board would need to consider if they wanted to treat this application as if the structure had not been previously constructed, and if the applicant had met its burdens of proof for the granting of the variances. Mr. Moshman Esq., the Ward's Attorney, indicated that he would be calling on Brian Murphy Architect, and Mr. Christman as well as the Wards. All were sworn in by the Board Attorney. The Wards of 234 Long Pond Rd, Brian Murphy of 179 Cahill Cross Road, Suite 202, West Milford, and Ryan Christman of 41 Board Road, Jake Maskerines was present but did not want to testify.

Brian Murphy Architect gave his credentials. Mr. Murphy is a licensed architect in the states of New York and New Jersey, being licensed for 16+ years, has given testimony in dozens of towns in New Jersey and has a Bachelor's Degree in Architecture from the New Jersey Institute of Technology and is the owner of Brian Murphy Architect. Mr. Murphy was accepted as an expert.

Mr. Murphy shared his computer screen and showed the Architectural Plan for the Wards. Mr. Murphy indicated the radius of the 200' list as shown on the Township Tax Map. Mr. Murphy indicated that the park land property was the strip fronting Greenwood Lake and described the plan and indicated that the hatched areas show where work was done and indicated that they were also covered, as well as another area that had been added but not covered. Mr. Murphy indicated that the existing deck had been in existence for approximately 20 years, and is the section over the rear property line that required the easement, and the proposed covered porch is .89 feet off of the rear. There are existing steps to be moved so they are no longer on the property line. The existing garage is 1.9 feet off the property line. The property line does not run parallel to the garage. By the time you reach the back of the property, the property line is 2.5 feet away from the gazebo or covered porch. The parkland property owned by the Awosting Association and runs from the Ward's rear property line all the way to the shore front of Greenwood Lake. The required lot area is 20,000 sq ft and the existing lot area is 4,765 sq ft making it an existing non-conforming lot. Less than 25% of what is required. The lot frontage required is 120 feet and 75 feet exists, no change, it is existing and non-conforming. The width

required is 120 feet, 75 feet is existing and it is existing non-conforming. The depth required is 150 feet and on the shorter side 45.5 feet is existing. Front yard setback is 40 feet, 25.8 feet exists. This is not being changed but is also existing non-conforming. Side yard setback required is 30 feet and on the left side is 25.9 feet and on the right side is 1.9 feet not changing because the area of the addition is farther from the property line than the existing condition of 1.9 feet, making it existing non-conforming. The rear yard setback is 60 feet and 1.4 feet is existing and 0.0 feet and .89 feet is proposed for the covered gazebo, resulting in a rear yard variance. Maximum building height is 35 feet or 2.5 stories, 27.6 is existing and there is no change to that. Maximum building lot coverage allowed is 10% which would equal 476.5 sq ft which is too small to actually qualify by zoning requirements as a house. Existing is 27.74% at 1,322.1 sq ft and proposed with the roofed areas that were added it is 33.91%, which equals 1615.8 sq ft. Mr. Murphy indicated that for an accessory structure, required is 3%, which is 142.95 sq ft, 4.03 % which equals 192 sq ft the shed is a little bit bigger, on an undersized lot. The side yard setback should be 10 feet and it is 1.2 feet on one side and 4 feet on the other side. The distance to other buildings should be 15 feet and it is approximately 13 feet. Mr. Murphy indicated that with regard to the maximum building coverage, in other cases calculation of the parkland property was allowed. If that were allowed, the required is still 10%, existing becomes 14.62% and proposed becomes 17.87% which would be an improvement. Mr. Murphy indicated that the situation was unique, with parkland property running behind the house and all the way out to Windbeam Ave. If that part of the coverage were factored in the applicant would be in compliance.

The Board Planner indicated that the lot depth was determined by an average of the two sides and his calculation was 65 feet, which is better than the 40+ feet that Mr. Murphy had mentioned though still a pre-existing non-conforming condition. On the garage side yard setback, 1.9 feet is pre-existing non-conforming, but the variance issue is the 2.5 feet from the deck to the side yard. That results in a new variance that the Board should be aware of, the difference is that the garage has been there but the deck does require a side yard variance.

The Board Attorney brought up the issue of lot coverage and questioned if that variance had been advertised, and if it fell under the catchall phrase of "and such other variance relief as the Board deems necessary". It was confirmed that lot coverage had in fact, not been advertised. Mr. Barbarula Esq. (attorney for an opposing party) indicated that according to the Municipal Land Use Laws, you cannot "boot strap" a defective notice by the "kitchen sink catchall". Case law is clear that the known variances have to be advertised. Mr. Barbarula indicated that a minor change from say 4 feet to 5 feet would fall under the catchall phrase but not a known variance like lot coverage. Mr. Barbarula indicated that was his position for the record. Mr. Moshman indicated that lot coverage was secondary in its importance, when considering the application in its entirety, and the natural effect of having a small lot. Mr. Moshman indicated that the notice did not cover the issue of lot coverage and would re-notice if the Board deemed it necessary.

There was discussion regarding the clause, and what it covered, as a catchall phrase. The Board Attorney indicated that if the application were to be approved there would be a viable argument that insufficient notice had been given. Mr. Barbarula indicated that in the case of Brewster vs. QuickCheck the appeal went all the way to the Supreme Court on a failure to notice a known variance, and this is a fatal defect and he would have to advise his client to prosecute. The Board Attorney questioned Mr. Barbarula and Mr. Moshman if the Board just continued to hear the application tonight and then did not vote until next time, after the applicant had re-advertised, would that be acceptable? Mr. Barbarula indicated that if there is a glaring gap in the notice that it does not give the Board jurisdiction to hear an application.

More discussion. Mr. Moshman indicated that it is a known issue, and was obvious. In the end, Mr. Moshman indicated that he would carry the application to the next meeting. (October 27, 2020) and agreed to signing an extension of 90 days. (New deadline February 22, 2021.) Both of the 200' lists (the Ward's and the Awosting Association's) will be used to re-notice. Confirmation that the rear, sides and lot coverage variances were to be advertised.

The Board Attorney indicated that anyone interested in the matter would be getting a new notice.

A motion was made by Michael Gerst to carry application ZBo8-19-16 to the October 27, 2020. Second by Arthur McQuaid.

Roll call vote:

Yes:	Daniel Jurkovic, Frank Curcio, Arthur McQuaid, Michael Gerst, and Robert Brady
No:	None

Abstain: None

**PHILIP HAMLING & CRYSTAL PRAIS
BULK VARIANCE ZBo6-20-07**

**Complete: 8/13/2020
Deadline: 12/11/2020**

Block 4012; Lot 5
9 Mountain Ave.; LR Zone

Bulk variances requested for front yard setbacks where 40' is required, 14' is existing and 8' is proposed (Mountain Ave side) 29.2' is existing and 18.6' is proposed (Forge side), rear yard setback where 60' is required, 68.18' is existing and 52.7' is proposed, building height (to be clarified) and lot coverage where 10% is required, 9.07% is existing and 15.93% is proposed for a first floor addition of 735 sq. ft. and a second floor addition of 1,011 sq. ft. to an existing single family home.

The Board Attorney swore in Crystal Praise and Philip Hamling of 9 mountain Avenue and Douglas McKittrick, offices 2024, Suite B, Macopin Road, West Milford. Douglas McKittrick gave his credentials, a licensed NJ Engineer since 1982, a licensed Planner since 1983, has been qualified in front of the West Milford Board of Adjustment several times, and also the Planning Board, most of the Boards in Passaic and Sussex County, and Bergen County and a couple in Morris County, in Hackensack and the Development Commission in the New York and New Jersey Port Authority and Passaic, Bergen, Morris and Sussex County Superior Court. Mr. McKittrick was accepted as an expert for the applicants.

Crystal Prais, an attorney in New York and New Jersey was acting as the applicant along with her husband. The home was purchased by the couple in June 2015. The home was built in the 1940's. Currently the home is less than 1000 sq. ft. and lacks a front entrance, currently a spiral staircase is being utilized from the basement level. There are two bedrooms on the main level with a full bath and a half bath on the lower level. The couple enjoys Awosting and there is family history there and they are expecting a child in December and need more space in the home. Some of the first floor layout has been reconfigured with an expansion for a family room off the rear of the house and an additional garage bay with livable space above on the Forge Road side. The second floor will accommodate 3 bedrooms and 2 bathrooms. Crystal Prais indicated that the design for the new entrance and addition were aesthetically comparable to the newer areas in the neighborhood.

Doug McKittrick indicated that the house was located in the Awosting community, predominately a lake community, block 4012, lot 5, 9 Mountain Avenue and is a corner lot, along Forge Road and Mountain Avenue. The lot is 10,725 sq. ft. in the LR Zone, perhaps the old Zone being an R-10 Zone since the approximate size is about 10,000 sq. ft. The dwelling is single family with deck and a small shed and serviced by municipal water and sewer. The dwelling is located 14 feet off of Mountain Avenue, and 29 feet off of Forge Road, with a garage underneath the first floor that is accessed from Mountain Avenue. The applicant proposes to expand the footprint on the Western and Southern sides of the home and add a second floor to make room for the growing family. The required lot area is 20,000 sq. ft. and the existing lot area is 10,725 sq. ft. and 10,725 sq. ft. is proposed, a pre-existing non-conforming condition. The lot frontage is supposed to be 120 feet and is 50 feet at its narrowest, also a pre-existing non-conforming condition. Lot width is supposed to be 120 feet and is 100.65 feet. Lot depth is supposed to be 150 feet and 107.25 feet is existing. Side yards are supposed to be 30 feet and the pre-existing non-conforming condition is 26.3 feet. The applicant proposes an addition that will make the front yard setback where 40 feet is required, it is 14 feet and 29.2 feet currently and proposed would be 8 feet and 18.6 feet and that would require the variance. In the rear yard which is 60 feet required, 68.18 feet is existing and 52.7 feet is proposed, requiring a variance. There is also a height variance required, 35 feet is the max required and the roof exceeds that by 1.3 feet. Mr. McKittrick indicated that the Board Planner calculated 1.7 feet for that measurement, perhaps in the way the slope measurement was interpreted, but 1.7 feet was accepted as the measurement. Mr. McKittrick read from the Land Use Procedures 420-6 Building Height; *The vertical distance measured to the highest point from the mean elevation finished grade at the foundation along the side of the building facing the street or to the street line whichever is closer to the foundation. On a corner lot the height shall be measured on the street having the greatest slope...*

Therefore it should be measured off of the Mountain Avenue side of the property, where there is a 10% slope. Lot coverage existing is 9.07%, where 10% max is allowed and 15.93% is proposed.

The Board Planner indicated that the ordinance is a little vague and he had consulted with both the Board Engineer and Mr. McKittrick and accepts Mr. McKittrick's interpretation and it remains a C-variance either way. Mr. McKittrick indicated that the applicant was seeking variances for encroachments, lot coverage and building height, and the hardship is due to lot

shape geometry and present location of the development. The current home is small and outdated. There are some larger homes along the lakefront and more are appearing elsewhere in the neighborhood as it gentrifies. The structure encroaches on both streets, it has two front yards and that causes certain hardship irregularities. They had additional hardship caused when the zone was changed. The property slopes downhill from East to West toward the lake with a slope of about 10%. The best solution is to extend the building to the West and avoid massive regrading of the landscape, however that requires the front yard setback variance. Because of the slope the basement is partially exposed resulting in a greater structure height causing the need for the variance and that garage is the only convenient way to park cars.

Mr. McKittrick indicated that there are many homes in the community that exceed lot coverage and lot height. Ms. Prais went through a packet of photos she had taken for the Board. It was marked Exhibit A-1 9-22-2020. Testimony was given by Ms. Prais she had included pictures of other properties in the neighborhood showing building height. (25 Board Rd, 201 Long Pond Rd, 49 Wanaque Road, and 176 Long Pond Road.) The next photos showed newer houses in the neighborhood with similar lot coverage to what the applicant was proposing. (224 Long Pond Road, 29 Mountain Ave, 24 Forge Rd, 200 Long pond Road and 15 Wanaque.) Also, there was a Resolution in the packet for James Huggins, to show consistency of something similar in the neighborhood that the Board had approved.

Mr. McKittrick indicated that the applicant proposed an addition to the rear of the property where 60 feet is required for the rear yard setback and 52.7 feet is proposed which is minimal and can be masked with landscaping. The existing lot coverage is 9.07%, where 10% is allowed and an accessory structure can be as much as 3% and the combined allowable lot coverage is 13%. The proposed lot coverage is 15.93%, which is less than a 3% deviation from zoning requirements. On the Mountain Avenue side the applicant is proposing a porch to act as an entry point with a covering when weather is inclement. The existing accessory structure is less than 100 feet. The new dwelling will be much more aesthetically pleasing and beneficial to the community, increasing property values, it does not deviate substantially from the zoning and there is no detriment to the master plan. It is Mr. McKittrick's opinion that the application should be approved.

More discussion about the definition of the building height and that it was advertised. The Board Planner's concern was that the height would be over 10 feet and require a D-variance but it did not.

Daniel Jurkovic indicated that the home was quite small 973 sq. ft. and with the addition it would be 1700 sq. ft., still quite small. The Environmental Commission memo was mentioned. Rain barrels were mentioned in the memo and Mr. McKittrick indicated that if they overflow the water can carry gravel and fertilizers directly into the storm drains and subsequently into the lake. A better option would be to run water into the storm sewers instead of running the water across the surface and then into the storm sewers. The oil tank on the property is going to be moved but it will be evaluated at the time to determine its condition. New tanks are installed above ground and are typically installed in a plastic shed or somehow out of the elements and on a concrete slab. In ground tanks are subject to rain water interacting with the soil creating acids that deteriorate the tank, and you cannot tell they are leaking until it is too late. More discussion about the height of the building and how it is a result of an average of the elevation. The height will be 1.7 feet higher than what is permitted or less than two feet. It is not feasible to change the pitch of the roof because the roof on the Mountain Avenue side is the highest one and aesthetically it would not make sense.

The Board Engineer indicated he concurred with Mr. McKittrick, it was a better plan to tie directly into the storm drain. There is only about 300 sq. ft. of impervious coverage being proposed, and that is a minimal increase. It is a good plan with minimal impact to the area.

The Public portion of the application was opened.

A neighbor, Nancy Bauer indicated that she had attended the meeting because she resides down slope from the applicant's property and her question regarding the ground water run off had been answered.

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

Roll call vote:

Yes:	Daniel Jurkovic, Frank Curcio, Arthur McQuaid, Michael Gerst, and Robert Brady
No:	None
Abstain:	None

A motion was made by Arthur McQuaid to approve application ZBo6-20-07, for the reasons stated. The lot size provides constraints, the family is growing, the water runoff will be piped into the storm drains, the fact that it is a good plan and has minimal impact to the surrounding area. Second by Michael Gerst.

Daniel Jurkovic indicated that there is an aesthetic element as well and this plan would improve the aesthetics and perhaps bring the home into greater conformance with size and style of the surrounding properties in the neighborhood.

Roll call vote:

Yes: Daniel Jurkovic, Frank Curcio, 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 invoices for the Board Attorney, by Michael Gerst. Second by Daniel Jurkovic.

Roll call vote:

Yes: Daniel Jurkovic, Frank Curcio, Arthur McQuaid, Michael Gerst, and Robert Brady
No: None
Abstain: None

A motion to approve invoices for the Board Planner by Michael Gerst. Second by Daniel Jurkovic.

Roll call vote:

Yes: Daniel Jurkovic, Frank Curcio, Arthur McQuaid, Michael Gerst, and Robert Brady
No: None
Abstain: None

(There were no invoices submitted by the Board Engineer this month.)

A motion was made to approve the August 25, 2020 Regular Meeting Minutes by Robert Brady. Second by Arthur McQuaid.

Roll call vote:

Yes: Arthur McQuaid, Michael Gerst, and Robert Brady
No: None
Abstain: None

The Board Planner asked that due to the Zoom format we, as a Board, ask the applicant's Engineer, and Architects for a PDF file as well as our usual paper plans. Board members and professionals were in agreement.

Motion for adjournment of the September 22, 2020 meeting by Michael Gerst. Second by Daniel Jurkovic.

All in favor. None opposed.

ADJOURNMENT at 9:20 PM

Next regular meeting October 27, 2020 at 7:30 p.m.

Respectfully submitted by,



Deidre Ellis, Secretary
Zoning Board of Adjustment