

MINUTES
Of the Township of West Milford
ZONING BOARD OF ADJUSTMENT
November 24, 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 7:43 p.m. The Board Secretary read the Legal Notice. The Pledge of Allegiance was recited.

Roll Call

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

CARRIED APPLICATIONS

JOANNE & RAY WARD
BULK VARIANCE ZBo8-19-16
Block 4002: Lot 7
234 Long Pond Rd.; LR Zone

Complete: 10/31/2019
Deadline: 2/22/2021

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. (Lot coverage had also been added. 10% required, 20.8% existing and 33.9% proposed.)

The Board Attorney reminded the Board that Daniel Jurkovic had recused himself, Mr. Jurkovic agreed to make himself available should we start a new application. Russell Curving had not heard previous testimony and would not be allowed to vote on this application but would be allowed to vote on the English application (ZBo6-19-10) should it be heard at this meeting. The Board Attorney indicated that any previous testimony by the applicant's Architect, Brian Murphy was not to be considered by the Board due to a jurisdictional issue and he would be providing new testimony tonight.

Brian Murphy, 179 Cahill Cross Road, Suite 202, West Milford, NJ was sworn in. Brian Murphy gave his credentials. Mr. Murphy is a licensed architect in the states of New York and New Jersey, and 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 Architect. The Board Attorney indicated that Mr. Murphy was allowed to give his opinion related to Planning issues, and the Board would give it the weight it deems necessary. Mr. Murphy is not disqualified as an architect from giving his opinion regarding Planning issues. Mr. Murphy indicated that Architects are not allowed advertise as Planners or to state that they are Planners, but they are allowed to do anything else that Planners can do.

Mr. Murphy shared his screen and described the 200 foot radius map, the Ward's property on Long Pond Road being irregularly shaped, and the Parkland property along the shore line could be seen as well. The requirement in the LR Zone is for there to be 20,000 sq ft of lot area, and

4,765 sq ft is existing and 4,765 sq ft is proposed due to there being no opportunity to purchase any land to make the lot larger. Mr. Barbarula objected, indicating that Mr. Murphy was making a statement of fact that had not been testified to. Mr. Murphy indicated to the Board Attorney that to his knowledge no property adjoining the Ward's was available for purchase. The minimum lot frontage is 120 feet, 75 feet is existing and 75 feet is proposed. Minimum lot width is 120 feet and 75 feet is existing and 75 feet is proposed. Minimum lot depth is 150 feet, 45.5 is existing and 45.5 is proposed. Front yard setback is 40 feet, 25.8 feet is existing and 25.8 feet is proposed. Side yard setback where 30 feet is required, 25.9 feet left side and 1.9 feet right side is existing, and 25.9 feet left side and 1.9 feet right side is proposed to remain. A variance is required for rear yard setback where 60 feet is required, 1.4 feet is existing and .89 feet is proposed. Maximum building height is 35 feet or 2.5 stories, existing is 27.5 feet (2) story and 27.5 feet is proposed. A variance is required for maximum building coverage, where 10% or 476.5 sq ft is required, 27.74% (1,322.1 sq ft) is existing and 33.91% (1,615.8 sq ft) is proposed. No changes or variances are proposed for the accessory structure.

Mr. Murphy indicated that if the lawn area from the shore line were included in the maximum building coverage calculation it would be closer to conforming. There is a great deal of open space around the home. Mr. Murphy described various details of the site plan and indicated that the steps to the deck were going to be redone and placed on the Ward's property instead of on the Awosting Parkway property where they were currently located. Only the existing wood deck would be over the property line. Mr. Murphy indicated that variances would be required for the rear yard setback and for lot coverage. The Board Planner indicated that the side yard setback should be included as a variance because it is an extension of the structure, even though it no closer than the garage, for the purposes of clarity.

The Board Attorney indicated that there was previous discussion regarding jurisdiction and advertising for four variances, after review of the Board Planner's report, from September 23, 2020. Mr. Murphy indicated that there was an issue with snow collecting in the breezeway area in the winter months. The roofed area that covers the deck area, where the grade level patio had been prevents the buildup of snow and is more safe and better for access. Mr. Murphy indicated that the covered porch provides shade, there was no other place to put it due to the lot being extremely irregular in shape and size though it is highly common in West Milford lake communities. Mr. Murphy indicated other properties that he had worked on had similar issues, and he listed various properties, Smithville Road, Pinecliff Lake, Lindy Lake, Upper Greenwood Lake, Emerson Road, Olcott Road, Upper mount Glen Lake, all having homes a foot or two, perhaps three or four feet off of the property lines in the Lakeside Residential zone.

Mr. Barbarula, attorney for neighbors Mr. & Mrs. Grischuk, questioned Mr. Murphy as to how he reconciled this application with the Master Plan of the Township of West Milford, sighting that conclusions were made and he wanted to know the basis for them. Mr. Murphy indicated that he had not looked into the Master Plan as far as spatial relations and Zoning requirements and he did not make his conclusions based on the Master Plan. Mr. Murphy indicated that Exhibit O1, for identification only, Schmidtke Lane formerly North Ridgefield Road, in Upper Greenwood Lake was a structure that had an addition put on after it had been drawn and after permits had been acquired, without a variance application. Exhibit O2 Smithville Road was an addition Mr. Murphy was hired to draw and was not built prior to his drawing, and did not require a variance, being grandfathered into the side yard setbacks. Mr. Murphy indicated in regard to Exhibit O3, 353 Lakeshore Drive he was hired to do architectural drawings, prior to the structure being built, permits were acquired and no variance needed. Mr. Murphy indicated that none of the O Exhibits, (O4, O5, O6, O7, O8, O9, O10) were built prior to getting permits.

Mr. Moshman showed photos that had previously been submitted by the Wards in power point, showing various parts of their property. The Board Attorney suggested before and after pictures be shown for clarification. Mr. Moshman showed the gravel patio area on his screen, photo #4 from Exhibit A1. Mr. Murphy indicated that when he did his drawings the structure was already built. Mr. Murphy indicated that the structure had been built over the patio area, and had the covering but that the old deck was open to the sky, the way it always had been. Photo #4 from the Board Planner's report was referred to, showing the back side of the property and the covered deck on the left, as well as the larger uncovered deck on the right hand side now titled B1. The Board's Exhibit one. Mr. Murphy indicated that the old patio area is located underneath the area where the covered porch is now. Mr. Murphy indicated that if the Parkway property were to be considered the numbers for lot coverage would be closer to conforming, bring it to about 17% coverage, about 7% more than what was allowed and under 20% of the previous R-10 Zoning. Mr. Murphy indicated he had not reviewed the easement from Awosting, and did not currently know the square footage encumbered by the easement but could figure it out.

Mr. Barbarula questioned if a piece of property does not have the rights to utilize someone else's property, can that be considered in a planning presentation to a Board of Adjustment? Mr. Murphy indicated that in West Milford the Parkway property has been used numerous times when doing calculations. The Board Attorney indicated that though calculations cannot be made using someone else's property, we are dealing with the perception of the property, and that the Awosting property may look like it may be part of the Ward's property. The size of the home in comparison to the property does not look overbuilt.

Mr. Barbarula indicated that although an amateur might look at the property and think that, the Board of Adjustment is the closest judicial type of body of any municipal board and does not allow for speculation of appearance. The Board Attorney indicated that the Board was allowed to take into consideration the property adjoining a subject property and negative and positive impacts. Mr. Murphy indicated that he did not take part in conversations regarding the purchase of land by the Wards, and had heard of the term "self-imposed hardship".

The Board Attorney indicated that zoning reasons, positive or negative should be given. Discussion about the distance of the Ward's house to the Grischuk's. A photo was shown marked M-1, showing the distance from the Ward's garage to the Grischuk's house. There were no more questions for Mr. Murphy.

Mr. Moshman recalled his clients, Mr. and Mrs. Ward and they were told they were still under oath. Mr. and Mrs. Ward indicated that they had tried to purchase property in the later part of last year from the Awosting Lake Association and were told there was no property for sale. From photos displayed from the power point presentation at the last meeting, the Wards indicated that certain houses were very closely located to each other, perhaps as close as two feet apart. They referred to pictures #15, #16, #17, #18 showing various neighboring homes. Permits were obtained when the Wards put the addition on their home in the 1990's. The Wards were not trying to avoid Township rules when covering their porch and if a variance is granted the proper building permits will be applied for. In photo A #2, the old deck has not been enlarged, and the easement that was acquired does not allow for the deck to change. Photo A #4 shows the patio area from 29 years ago and the lattice fence and is the area where the covered porch is located. Snow and ice build up during the winter months in the breeze way and new deck area and having it covered eliminates this problem. Mr. Ward has had knee surgery and having everything on one level is of benefit, much safer, and easier access. The Wards indicated there were no complaints from neighbors only complements.

When questioned by Mr. Barbarula, the Wards indicated that they did not take out a permit for the old deck. No measurements were taken with photos from A1- #15, #16 and #17. The email asking to purchase property was submitted to the Board, and did not contain details regarding how much land was to be purchased.

Mrs. Ward indicated that the Parkland was used by people to access docks and also utilized for games and the neighbor's house is no more visible to the Wards. The Ward's indicated that the construction of the covered deck has not obstructed their neighbor's view. Mr. Barbarula indicated that prior to the construction of the covered deck, the patio was at ground level and questioned the roof height. The Ward's indicated that the roof was probably 10 to 15 feet high, and was visible in photo #10.

The Board Planner indicated that though Google Earth was not completely accurate, he estimated that the Ward's garage was 16.5 feet from the adjacent home, and the new deck was approximately 20 feet from it.

The Ward's indicated that none of the decking has had any zoning or building permits and structures built have not been approved for safety.

The Chairman opened the application to the Public.

(Seeing no one) a motion was made by Michael Gerst to close the public portion of the application ZBo8-19-16. Second by Arthur McQuaid.

Roll call vote:

Yes: Linda Connolly, Frank Curcio, Arthur McQuaid, Michael Gerst, and Robert Brady

No: None

Abstain: None

Mr. Barbarula indicated that he was ready to make a legal motion to dismiss the case but reserve the right to address the facts.

**A motion was made by Arthur McQuaid to take a short break. Second by Russell Curving.
All were in favor.**

Mr. Barbarula indicated that he would like to make a motion to dismiss, as a matter of law. The application is devoid of any Planning testimony and is a self-imposed hardship. Under NJSA 40:55D-70 C1 Chirichello vs. Zoning Board of Adjustment, decided in 1979, "passage of time does not relieve or grant a right to a variance, if the particular relief was wrongfully acquired." Mr. Barbarula indicated that the first deck was never permitted and therefore no grandfathering would be permitted. Ketcherick vs. the Borough of Mountain Lakes Board of Adjustment 256NJSuper647 in 1992, this application must conform to the Master plan of West Milford and show Planning reasons why the application does not just serve the purposes of the owner with no benefit the community in any way. Mr. Barbarula indicated the variance request serves only the Wards, there was no planning testimony, and it is a self-imposed hardship that has not met the legal standards for granting a variance. Mr. Barbarula indicated that there was no testimony was given to meet the legal standards of the statute, and the application is legally insufficient.

Mr. Moshman indicated that his clients were not asking that a self-imposed hardship be allowed by the passage of time but rather variances of specific limitations and setbacks and lot coverage. The old deck had been on Awosting property for many years and the newly acquired easement shows that the Wards are cooperating. They are asking for variances. Mr. Moshman indicated that people who come before the Board are always trying to benefit themselves. There has been testimony of aesthetic improvements and safety improvements. Relief is warranted and imposing restrictions in small lake communities would not benefit the community. Mr. Moshman indicated that the application is in conformity with the Master Plan.

The Board Planner indicated that it appeared that the applicants were not trying to make an argument for the C2 variance where the benefit outweighs the detriment, because the benefit would have to be a public one, but rather a C1 variance where there are three arguments, the shape of the property and the rear lot line, the topographic conditions and whether imposing the requirements of the zoning ordinance would lead to difficulties or hardship. The Board Planner indicated that the Board should consider if there was sufficient evidence presented to make a decision. The second aspect deals with negative criteria and what is the impact of granting the variances and also would there be a detriment to the zone plan if the variances were granted. The Board Planner's opinion was that there was enough presented to move forward and make a decision.

The Board Attorney indicated he concurred with the Board Planner, summarizing that Mr. Barbarula would like the Board to dismiss the application outright due to it being a self-imposed hardship and that there was no Planning testimony. There are questions of law and questions of fact but the Board members are the ones who decide, if there was a hardship created by the applicants and if they should be denied for that reason or be allowed their variances. The Board Attorney indicated that there have been everyday homeowners that come before the Board without a Planner and they describe the best they can the positive and negative criteria. The Board Attorney indicated that testimony has been given for the C1 variance and the matter should go before the Board.

A motion was made by Arthur McQuaid to deny the motion for dismissal of application ZBo8-19-16 made by Mr. Barbarula, based upon testimony by the Board Planner and Board Attorney, that it is not a self-created hardship and that citizens have the right to have their application voted upon. Second by Michael Gerst.

Roll call vote:

Yes:	Linda Connolly, Frank Curcio, Arthur McQuaid, Michael Gerst, and Robert Brady
No:	None
Abstain:	None

Mr. Barbarula indicated that legally (with) a C1 variance 4055 D-70 C1 one cannot grant a variance where the result is a benefit for the applicant only and where they do not meet the statutory requirements for the particular characteristics of the subject property. Not to say that the applicant cannot build. Mr. Barbarula indicated that the applicant is trying to use the fact that they built a deck without permits and the patio had been there, they built an entire structure with no permits of any kind. The statute for a C1 variance states that "personal hardship is not grounds for granting a variance, nor is self-created hardship grounds for granting a variance such as when an applicant constructs a dwelling either in ignorance or in violation of required setbacks. Neither negligence or flagrant violation of zoning laws will be rewarded with a variance." Mr. Barbarula indicated the application did not meet the

requirements for a variance. Photos were shown, without specific measurements or locations provided or whether they required variances. Mr. Barbarula indicated that Mr. Murphy showed photos of structures built with the required permits that did not require variances. The structure was built on someone else's property, months passed before an easement was presented, the email request for the purchase of property lacked specifics. Mr. Barbarula indicated that once the Board starts to approve variances where the structures have already been built, it is a slippery slope, and will deter people from applying ahead of time. Mr. Barbarula indicated they built the structure and it's not a small structure but a porch with a roof, in violation of all the setbacks and now they are asking for a variance, and there is insignificant evidence to grant it.

Mr. Moshman indicated that while the Wards did neglect to get permits initially, they did have permission from Awosting to build the deck on their property and then they got the easement. The self-imposed argument has not been made. The back yard is very tiny, the size of the house alone makes the property fail the lot coverage requirements. Mr. Moshman indicated that the Wards are just trying to put their back yard to good use and make it more attractive and safer. The patio area was always up along the property line and the new covered deck is no closer. The stairs will be changed so there is no additional encroachment. Mr. Moshman indicated that the photos the Wards showed were taken in the neighborhood and although they did not trespass and take measurements the Board can tell the houses sit very close to the property lines.

Mr. Moshman indicated there were topographical issues and the current structure solves them. To address the issue of property purchase, Mr. Moshman indicated that the property to be purchased was Parkway property and Awosting does not sell any of their property. Mr. Moshman indicated that the difficulties with the property are not self-imposed but rather due to the property itself. Testimony has been given for positive benefits, accessibility, safety, free from snow drifts and there has been no negative testimony given that it would negatively impact anyone. Mr. Moshman indicated that Mr. Christman had given testimony that it was an improvement has spoken favorably and no one has complained, it is shielded with plant screening. Mr. Moshman indicated that the application was for variances and not for building permits if for some reason the structures must be rebuilt. If a 60 foot setback were applied the line would be in the house.

Arthur McQuaid questioned if the application could be treated as if the work had not yet been done. The Board Attorney indicated that the Board should look at the proofs which are the same whether the structure had been built or not, and if the Board denies the variances, the Wards will need to deal with those consequences and if it is approved they will have to proceed with getting building permits and making sure everything is up to code.

There was discussion regarding other applications that were similar to the Wards. Arthur McQuaid indicated that he recalled another application where the Parkway area was taken into consideration with how large a property looked. The Board Attorney indicated that the Board can draw upon past experiences, and if there were to be a reviewing Court, that Court gives significant weight to the fact finding of a Board.

A motion was made by Arthur McQuaid to approve application ZBo8-19-16 for 2 side yard setbacks, a rear yard setback and lot coverage, stating that the property is small, testimony was given that the community is in favor of it, and that the community has regularly allowed people to use Parkland, testimony was given that there are private docks all along the Parkland.

There was discussion regarding setting precedent and the fact that there was a potential safety issue with the deck since permits had not been taken out. The Board Attorney indicated that he recommended if the variance were to be granted that a condition of approval be that not only the new construction get building permits and inspections but also the older deck as well. Arthur McQuaid agreed to add that to his motion.

Second by Michael Gerst.

Roll call vote:

Yes:	Linda Connolly, Frank Curcio, Arthur McQuaid, Michael Gerst, and Robert Brady
No:	None
Abstain:	None

(The following application was on the agenda but due to time running out was not heard at this meeting. It was be heard at the next meeting December 15, 2020.)

GEORGE ENGLISH III
BULK VARIANCE ZB06-19-10
Block 5901; Lot 28
111 Mountain Circle South; R-3 Zone

Complete: 7/24/2020
Deadline: 1/20/2021

Bulk variance requested for side yard setback where 50' is required, 39' exists and 9' is proposed, rear yard setback where 100' is required, 53.8' exists and 46' is proposed, lot coverage where 10% is permitted 8.97% is existing and 15.23% is proposed, distance to other structures where 20' is required 50.1' is existing and 17.6' is proposed for the construction of a 32' by 28' two story garage. A one-story breezeway will attach the existing home to the new garage.

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

Roll call vote:

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

A motion was made to approve the October 27, 2020 Regular Meeting Minutes by Linda Connolly. Second by Robert Brady.

Roll call vote:

Yes:	Linda Connolly, Frank Curcio, Arthur McQuaid, Michael Gerst, and Robert Brady
No:	None
Abstain:	None


Motion for adjournment of the November 24, 2020 meeting by Michael Gerst. Second by Robert Brady.

All in favor. None opposed.

ADJOURNMENT at 11:03 PM

Next regular meeting December 15, 2020 at 7:30 p.m.

Respectfully submitted by,



Deidre Ellis, Secretary
Zoning Board of Adjustment