

# TOWNSHIP OF WEST MILFORD ZONING BOARD OF ADJUSTMENT

## MINUTES JULY 22, 2003

The meeting opened at 7:40 p.m. with the reading of the legal notice.

### ROLL CALL

**Present:** Thomas Bigger, Robert Brady, Joseph Giannini, Daniel Jurkovic, Laetitia Munro and Dennis Kirwan; Stephen Glatt, Board Attorney; Linda Lutz, Staff Planner; Richard McFadden, Township Engineer;

**Absent:** Arthur McQuaid and William Milnes

The Chairman appointed alternates, Laetitia Munro and Dennis Kirwan, as voting members.

### Memorializations

The following memorialization was carried to the August 7, 2003 meeting:

**ARMAND FERRANTI**  
**Resolution No. 25-2003**  
Bulk Variance #0230-0606  
Block 604; Lot 10  
83 Witte Road; LR Zone  
**DENIED**

The Board Attorney read a letter from William Lang, Esq., requesting a carry for the following application and granting an extension through December 31, 2003. Additional notice may be required if the plan changes.

**CHRISTIAN LIFE CENTER**  
**OF THE ASSEMBLIES OF GOD**  
**Use Variance #0240-0581**  
**Preliminary Site Plan #0220-0124A**  
**Bulk Variance #0230-0582**  
Block 6203; Lot 13  
184 Marshall Hill Road; R-1 Zone

**MOTION** was made by Thomas Bigger to carry the Christian Life Center application, seconded by Daniel Jurkovic, with all in favor.

### Applications Carried From Previous Meeting

**WM UV Assoc., LLC**  
**(ORCHARD VIEW ESTATES)**  
**Use Variance #0240-0603**  
**Preliminary Subdivision #0210-1934A**  
**Bulk Variance #0230-0604**  
Block 7701; Lots 7 and 11  
Union Valley Road; R-4 Zone

Douglas Doyle, Esq., appeared on behalf of the above applicant, WM UV Assoc., and the Board Attorney advised there were six members to hear the application. Mr. Doyle stated he would provide copies of the transcript for the absent members.

He gave a history of the application stating it took over nine months to be administratively complete and originally started with the Planning Board. When it was decided a use variance was necessary relating to the swap of land for a church, it was resubmitted before the Board of Adjustment and was deemed complete in February 2003. There has since been a zone change from R-4.

The Board Attorney reminded Mr. Doyle the Board was aware of the pending lawsuit but it had no effect on the Board of Adjustment.

Mr. Doyle asked the Board to consider if the density of the zone affected the goals of the Master Plan and, if it did not, he felt the Board has the right to consider the surrounding properties and may feel the density proposed by the applicant is more appropriate for this site. He felt this Board should be able to decide if the zoning was appropriate relating to this property. He stated if the Board is troubled by permitting this applicant to have a level of density that the Township has decided is not appropriate, then he would like the Board to consider what other density (other than what the current zoning ordinance calls for) would be appropriate based on the surrounding properties. The applicant feels the subdivision application is appropriate, not based on R-1 or R-4, but based on the surrounding properties in the existing area.

*John Barbarula, Esq., mentioned he will need to request a carry from the August 7, 2003 meeting for the High Crest Lake Lodge court remand.*

Thomas Bigger realized he would have to recuse himself on the WM UV Associates application. There were now five voting members and the Board Attorney reminded Mr. Doyle the Board only presently has eight appointed members.

Gerald Gardner, P.E., was sworn and testified this property was on Union Valley Road across from Apple Acres. Applicant is proposing a single cul-de-sac with eight lots that meet or exceed the one-acre in effect when the map was drawn. He stated the major area along Union Valley Road was wetlands and would be incorporated into one lot. The soil logs have been accepted.

Mr. Gardner produced a map (Exhibit A-1) to show the location of the lots only. The site details had been removed. It was discovered there were discrepancies with the lot numbers, confusion about pages, etc. He then referred to the site plan (Exhibit A-2, page 3 of 11) and began to discuss the various bulk variances requested.

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

Mr. Doyle informed the Board the person rounded-up the numbers when preparing the information on sheet 2 and revised plans would be submitted to correct plan sheets 2 and 3. Applicant would re-advertise and re-notify for the proper variances requested. He requested the matter be carried to the September 23, 2003 meeting.

The Board Attorney reminded Mr. Doyle complete sets of the plan would need to be submitted at least 10 days before the meeting but it would be appreciated if they were submitted 20 days before as a courtesy. He suggested they use different colors on the diagrams for edification at the next hearing. A Board member suggested setting off the homes in colors also.

The Board Attorney advised Mr. Doyle he could keep the documents as they were not marked into evidence and he should provide the Board with copies of the transcript.

The room was vacated at this time because the fire alarm sounded. Upon returning, Mr. Doyle granted an extension through December 21, 2003 and the matter was carried to the September 23, 2003 meeting and applicant will re-notice.

**CHARLES AIKEY**  
**Preliminary Subdivision #0210-1950**  
**Bulk Variance #0230-0613**  
Block 9501; Lots 19.02  
144 Wesley Drive; R-3 Zone

John Barbarula, Esq., appeared on behalf of applicant, Charles Aikey. He advised the original aspect before the Board was the determination whether or not the bulk variances of the zone which they granted a use variance would apply. It has been determined that the bulk variances are not applicable to the property because the use variance was granted. The bulk variances listed on the agenda are now incorrect.

The Board Attorney requested the agenda be amended to show the correct variances requested.

Patrick McClellan, P.E., was sworn and accepted as an expert witness. He testified there are now two bulk variances required both for lot 19.02 for lot width. The configuration of the remaining lot along with the cul-de-sac extensions of Wesley Drive and Leslie Drive create a situation similar to when a property is on a cul-de-sac. Lot width is measured at the setback line. For the portion of the property fronting on Leslie, it is 70 feet and for the portion fronting on Wesley, it is 80 feet. Exhibits A-1, A-2 and A-3 (rendering date of 7-22-03) were submitted. A-1 is Limit of Disturbance (sheet 3A) and highlights the limit of disturbance on the property. A-2 shows the cul-de-sac colored in gray. The lot width is measured from the lateral setback of the cul-de-sac and is 70 feet. This is an unusual situation because it is not an area that could be contemplated for building and is with regard to the remaining lot where there is no proposal for building. It is more of a function of the unique configuration of lot 19.02. The second lot width measurement is taken on the Wesley Drive side where there is an extension of the cul-de-sac and the measurement of lot width is at the setback line being 80 feet. There is no construction proposed on lot 19.02.

Linda Lutz, Principal Planner felt there were two additional variances. For lot 19.04 the rear yard setback is shown on the plan to be 50 feet and 70 feet is required. For lot 19.05 the lot depth shown on the plan is 170 feet and 175 is required.

Mr. McClellan clarified they had interpreted this as a side yard rather than rear yard setback. They agreed they would change lot 19.04 taking the shortest distance from the southwest corner as 50 feet and it would become a third variance. Lot 19.05 lot depth is very close at 175 feet, plus or minus, so they will also list this as a variance.

The Board Attorney clarified the reason the bulk variances went away as advertised were variances that would have been required under the original zone. Once the use variance was granted, it became a situation where the lots subsumed the requirements of the zoning to which the use variance was granted.

Applicant, Charles Aikey, was sworn and testified the lots were originally sewered to the MUA but the cul-de-sacs were never completed. He is willing to put them in and complete them at his expense. He will be taking care of a number of drainage issues, illegal dumping and turn-around issues of the Fire Department and Postal Service. His original variance map showed these four

lots and his request was to allow the zone reduction to be put in place since there was a conflict of ordinance. He is required to hook up to MUA because his property fronts its lines. His home already received sewer and water prior to him purchasing it. It was never part of the official sewer district area.

Mr. Barbarula stated the developer left before completing the project and the Township would have to take care of it in the future or leave it as a dead-end on both streets.

Mr. Aikey confirmed Lot 19.02 is still technically outside of the sewer area. This is still part of an application at the DEP level and has been there for years. He has been granted permission to hook-up because he is fronting sewer and water.

Dennis Kirwan had some concerns about the remaining 12 acres possibly becoming 12 lots in the future.

Mr. Barbarula confirmed the variance map shows all four lots at the original time of the use variance.

Board members raised the question of adjacent vacant land and the possibility of Mr. Aikey purchasing it.

Mr. Barbarula stated the adjacent land would not change the bulk variance for the cul-de-sacs.

Mr. Jurkovic questioned if they were creating a hardship by not trying to purchase the property to alleviate the variance and felt applicant had an obligation to attempt to purchase the vacant lot.

Mr. Barbarula did not agree stating this was not an isolated lot case. He stated it was not a legal requirement to do a buy/sell letter to alleviate all variances. This is a developmental application requiring four bulk variances.

The Board Attorney and Mr. Barbarula disagreed on the requirement of the buy/sell obligation.

Mr. Barbarula stated the Board could not make it a legal requirement to purchase all the adjoining property. He told the Board they granted the use variance because they felt it was so compelling it would deviate from the original zone. He stated in an isolated lot case, you are mandated to do a buy/sell. He felt this application did not absolutely require trying to purchase adjoining property to eliminate a bulk variance.

Dennis Kirwan wanted clarification on the requirements for this zone and the setbacks.

Mr. Barbarula stated Sheet 1 of 1 had the requirements.

The Board Attorney clarified the use variance was granted and the Board is using the criteria of the R-3 zone for the four additional lots proposed. There are now four bulk variances required, two are on the remainder lot of 19.02, one is required for 19.04 and one required for 19.05.

Mr. Barbarula felt the subdivision and bulk variances should be granted because the variances have been minimized as much as possible and there would be no negative impact. There will also be positive impact such as the improvement of drainage, the elimination of dumping, the turn-around by the police and fire, all being put in to complete the subdivision. He was willing to go through the variances with Mr. McClellan's testimony as to whether or not there is any modification that can be done.

Mr. McClellan spoke about the variance on lot 19.05 and assured the Board their surveyor could make an adjustment to the calculations and force the property to have appropriate depth eliminating this variance. Regarding the variance for 19.04, the misinterpretation of a rear line, he felt they could flip the configuration and put the home in the portion of the lot with sufficient depth, having sufficient rear yard and the driveway coming in on the left side of the building. The severity of the variance could be reduced and possibly eliminated. With regard to the two lot width variances, the cul-de-sacs could be extended to a point where the lot width for the remainder of lot 19.02 would comply. They feel, however, that would come with a good cost. They are attempting to construct groundwater infiltration system and every time they add impervious surface, that task becomes more difficult to keep. They would rather not go to an above-ground detention basin and extending the cul-de-sacs 200 feet on either side to comply with the lot width ordinance would increase the impervious area. They would have no choice but to have a traditional detention basin. They have two considerations to offset the variance in addition to the stormwater management system. He reminded the Board the variances are for the existing lot where no construction is proposed. In the past, they have proposed setting the front yard setback at such a point where there is sufficient width recognizing the lot width is a function of where the house is usually constructed. This permits enough width for a house and driveway. They would strike a front yard setback line at a point where the width is sufficient and prohibit any construction from that calculated line and the right-of-way. Exhibit A-1 is colored to show an overview of the entire limit of disturbance for the project. The total acreage of the project is 15.75 acres and the total area of disturbance with the requested variances (sheet 3 of 6) have a summary table showing a break-down per lot for a total disturbance of 2.90 acres. This is done by manual method and is not the most precise method. The other exhibit was constructed with a computer program and more precisely calculates the area of the irregular shape line. It shows 2.637 acres of total disturbance. If the cul-de-sacs were increased in order to eliminate the variance, the area of disturbance would increase by approximately one-half acre or more.

Dennis Kirwan questioned the purpose of leaving the portion of lot 19.02 rather than adding it to lot 19.06 and 19.05.

Mr. McClellan explained by leaving the portion of lot 19.02 attached, it creates one contiguous lot for the homestead lot 19.02. It puts some of the public improvements and whatever easements required on the burden of lot 19.02. There would be no negative impact of extending the lot line to include them on lot 19.06 except the burden of easement would be passed over to that owner.

Mr. Aikey testified he also had a well in that area used for irrigation only.

Mr. Barbarula did not feel it would be appropriate to deed restrict the area. The Board had concerns about subdividing the lot in the future and Smart Growth.

Mr. Barbarula stated the town wants development on these types of lots with sewers. He reminded the Board they approved the use variance and the additional four lots.

Mr. Aikey indicated to Mr. Barbarula that Engineering wanted an access road.

The Township Engineer stated they wanted it for access to the proposed infiltration. He explained there is an infiltration trench designed to handle stormwater flow off the end of Leslie. At some point in the future, they will need to get in there in order to maintain the system so access must be provided. He is not aware of any current drainage problems in this area.

Mr. McClellan submitted Exhibit A-3 showing areas highlighted in a dark red disturbed for the public utilities (storm and sanitary sewers). The total of the drainage easement area is .512 acres and the disturbance is about one-quarter of an acre.

The Chairman announced the following application will be carried to the August 7, 2003 meeting for calendaring purposes and will not be heard because Mr. Barbarula cannot attend the meeting. An extension was given through October 28, 2003 in order to reschedule the application to a future meeting to be decided.

**CEFES FINANCIAL, INC.**  
***De Minimis Exception***  
**Bulk Variance #0230-0614**  
Block 1806; Lots 4 & 5  
Magnolia Rd; LR Zone

The following application will be carried to the August 7, 2003 meeting:

**GEORGE BLOOD**  
**Bulk Variance #0330-0625**  
Block 2311; Lot 13  
Gladstone Road; LR Zone

Mr. Glatt agreed to look into Mr. Barbarula's argument about whether or not it is necessary to notify the vacant property owner with a buy/sell letter. The Aikey application was carried to the September 23, 2003 meeting and an extension was granted through September 23, 2003. It was confirmed Exhibits A-1, A-2 and A-3 were moved into evidence together with one reduced version of same.

## **Minutes**

**MOTION** was made by Thomas Bigger to approve the Minutes of the meeting of May 6, 2003, Joseph Giannini seconded, with all in favor.

**MOTION** was made by Joseph Giannini to approve the Minutes of the meeting of June 24, 2003, Laetitia Munro seconded, with all in favor.

## **ADJOURNMENT**

The meeting was adjourned by unanimous vote at 10:54 p.m.

Respectfully submitted,

Carol DenHeyer  
Secretary