

TOWNSHIP OF WEST MILFORD ZONING BOARD OF ADJUSTMENT

MINUTES

SEPTEMBER 23, 2003

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

ROLL CALL

Present: Thomas Bigger, Daniel Jurkovic, Arthur McQuaid, Laetitia Munro, Dennis Kirwan and Eugene Richards; Stephen Glatt, Board Attorney; Linda Lutz, Staff Planner; Richard McFadden, Township Engineer; Charles Hecht, Radio Frequency Expert

Absent: Robert Brady, Joseph Giannini and William Milnes

The Board Attorney read the oaths for Laetitia Munro, now a regular member; Dennis Kirwan, now first alternate; and Gene Richards, newly appointed second alternate. All three were sworn in.

In the absence of the Chairman, Daniel Jurkovic acted as Vice Chairman and appointed alternates, Dennis Kirwan and Gene Richards, as voting members. There were four regular members present and two alternates.

Memorializations

NY SMSA LIMITED PARTNERSHIP (Verizon)

Resolution #30-2003

Use Variance #0340-0615

Block 14501; Lot 14

55 Blakely Lane; R-4 Zone

GRANTED: Use Variance per New Jersey Municipal Land Use Law C.40:55D-70d(2) and (3) for the expansion of a pre-existing non-conforming use.

MOTION made by Arthur McQuaid, seconded by Daniel Jurkovic to memorialize the action.

On roll call vote: Yes - Daniel Jurkovic, Arthur McQuaid and Laetitia Munro

No - None

NY SMSA LIMITED PARTNERSHIP (Verizon)

Resolution #31-2003

Preliminary & Final Site Plan #0320-0134

Bulk Variance #0330-0616

Block 14501; Lot 14

55 Blakely Lane; R-4 Zone

GRANTED: Preliminary and final site plan approval for an addition to an unmanned wireless telecommunications facility with a bulk variance for side yard setback.

MOTION made by Arthur McQuaid, seconded by Daniel Jurkovic to memorialize the action.

On roll call vote: Yes - Daniel Jurkovic, Arthur McQuaid and Laetitia Munro

No - None

GEORGE BLOOD

Resolution No. 29-2003

Bulk Variance #0330-0625

Block 2311; Lot 13

Gladstone Road; LR Zone

GRANTED: Bulk variances for lot area, lot depth, front yard setback and side yard setback

MOTION made by Arthur McQuaid, seconded by Daniel Jurkovic to memorialize the action.

On roll call vote: Yes - Daniel Jurkovic, Arthur McQuaid and Laetitia Munro

No - None

SEAN & ANNE KANE

Resolution #32-2003

Bulk Variance #0330-0632

Block 4010; Lot 6

Wanaque Road; LR Zone

GRANTED: Bulk variance for lot coverage.

MOTION made by Arthur McQuaid, seconded by Laetitia Munro to memorialize the action.

On roll call vote: Yes - Daniel Jurkovic, Arthur McQuaid and Laetitia Munro

No - None

Meeting Scheduling

Possible dates for special meetings were discussed.

MOTION made by Thomas Bigger, seconded by Arthur McQuaid to hold a special meeting on October 21, 2003, with all in favor.

MOTION made by Arthur McQuaid, seconded by Thomas Bigger to hold a special meeting on November 18, 2003, with all in favor.

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

COMPLETE 11-27-02

DEADLINE 12-31-03

William Lang, Esq., appeared on behalf of Christian Life Center and requested the application be dismissed without prejudice instead of continuing to carry the matter.

MOTION made by Thomas Bigger, seconded by Laetitia Munro, to dismiss Christian Life Center without prejudice.

On roll call vote: Yes - Thomas Bigger, Arthur McQuaid, Laetitia Munro, Dennis Kirwan, Gene Richards and Daniel Jurkovic

No - None

The Board Attorney clarified the applicant, Christian Life Center, will have to re-apply to the Planning Department and will be required to give notice.

WORLD FOR CHRIST CRUSADE, INC.

Use Variance #0340-0622

Preliminary & Final Site Plan #0320-0138AB

Block 7701; Lot 11
1005 Union Valley Road; R-4 Zone

The Vice Chairman read a letter from Gordon Meyer, Esq., representing World for Christ Crusade, Inc., requesting a carry to the October meeting and consented to a 30-day extension.

MOTION made by Thomas Bigger to accept the request for a carry, seconded by Arthur McQuaid, with all in favor.

The Vice Chairman announced there was a request for a carry on the Kerry Greene application and it would be held in abeyance at this time until further into the meeting.

The following application was called:

| | | |
|---|----------|----------|
| Alberto Dautaj (Momento's II) | COMPLETE | 08-13-03 |
| Final Site Plan, Phase II, #0320-0054C | DEADLINE | 09-27-03 |
| Block 4701; Lot 38.02 | | |
| 374 Morsetown Rd.; R-3 Zone | | |

Applicant, Alberto Dautaj, appeared and was sworn. He submitted verification that he has paid his taxes to date. He submitted a letter from Better Fence Company, Inc., dated September 18, 2003 and signed by its Secretary stating he has replaced eight dead Hemlock Trees and four Rhododendron bushes. Linda Lutz confirmed Mr. Hakim said the trees needed to be replaced and it was his recommendation a bond would need to be posted if they were not replaced. It will be necessary for an inspection. Linda Lutz confirmed the Landscape Architect's recommendation was for performance only and if the Board wanted, they could require a maintenance bond.

Mr. Dautaj testified everything has been installed and constructed in accordance with his final site plan and he has received the memos from the Township departments and the only issue was replacing the trees. He would be willing to put up a maintenance bond.

Board member, Arthur McQuaid, wanted clarification if he should continue to recuse himself and the Board Attorney advised him he should continue to do so.

MOTION made by Thomas Bigger to approve the Final Site Plan, Phase II, for Alberto Dautaj for Momentos II, conditioned upon a maintenance bond being posted, seconded by Dennis Kirwan.

On roll call vote: Yes - Thomas Bigger, Laetitia Munro, Dennis Kirwan,
Gene Richards and Daniel Jurkovic
No - None

| | | |
|---------------------------------|----------|----------|
| STEVEN BLACKSMITH | COMPLETE | 08-29-03 |
| Bulk Variance #0330-0631 | DEADLINE | 12-27-03 |
| Block 5618; Lot 1 | | |
| 15 Quarry Avenue; LR Zone | | |

The Vice Chairman read a request for the application to be carried to the October 21, 2003 meeting with no further notice necessary.

MOTION made by Thomas Bigger to carry the Blacksmith application to the October 21, 2003 meeting, seconded by Laetitia Munro, with all in favor.

The Board Attorney confirmed there will be no further notice necessary on the Blacksmith application.

Court Remands

HIGH CREST LAKE LODGE, INC.
Use Variance #0140-0490
Preliminary & Final Site Plan #0120-0096AB
Block 13002; Lot 9
High Crest Drive/Hearthstone Drive; R-2 Zone

The Board confirmed there were five members present that would be eligible to vote.

Drew Murray, Esq., indicated he wanted to speak to his client regarding the number of Board members present to hear the application. John Barbarula, Esq., was also representing Charles Aikey and it was agreed to take the Aikey application out of turn and give Mr. Murray an opportunity to talk to his client.

The following application was called:

| | | |
|---|----------|----------|
| CHARLES AIKEY | COMPLETE | 03-27-03 |
| Preliminary Subdivision #0210-1950 | DEADLINE | 09-30-03 |
| Bulk Variance #0230-0613 | | |
| Block 9501; Lots 19.02 | | |
| 144 Wesley Drive; R-3 Zone | | |
| Subdivision to create five lots | | |

John Barbarula, Esq., appeared on behalf of applicant, Charles Aikey, who was sworn along with his engineer, Patrick McClellan, P.E.

Mr. Barbarula stated one of the Board members had previously requested the potential development on this site. Under the current standards of development and availability of the resources such as water and sewer capacity, he submitted a drawing showing the future potential development of the site marked as Exhibit A-4. He confirmed applicant would be willing to limit further development.

Board member, Arthur McQuaid, reminded the Board he could not vote since he was not present at the July meeting. The Board Attorney confirmed there were four voting members present and Mr. Barbarula agreed to continue.

Mr. Barbarula also confirmed the issue of whether or not applicant should have to purchase additional property for the elimination of variances. He agreed to defer to Mr. Glatt's interpretation to the Board and believes the issue has been resolved.

Mr. Glatt confirmed it would not be necessary for applicant to purchase any additional land for this application.

Patrick McClellan, Engineer, testified the two variances identified on the February 2003 plans were for lot width, both for the remainder parcel 19.02. They are created by the unusual configuration of the remainder lot. The setback line width is measured at 70 feet for Leslie Drive and 80 feet for the frontage at Wesley Drive where 140 feet is required. To verify the depth of Lot 19.04, it was scaled just under 175 feet, which is the requirement. The Exhibit A-4 is a revision to the plan dated September 12, 2003 showing a small modification to the extension of Wesley Drive in order to eliminate the lot depth variance for 19.04 and opens up the building envelope to eliminate a rear yard setback variance. There are now two variances for lot width required and they cannot be eliminated because of the shape of the cul-de-sac. Exhibit A-5 is the revised plan with a revision dated of September 12, 2003.

Mr. Aikey agreed he has had the property studied in reference to future subdivision potential and indicated a future possible development of an additional

two lots that may be capable of being subdivided off this property in the future, leaving one lot with the house remaining. The one large lot may become three lots. He is willing to restrict this remaining lot to a three-lot subdivision.

The Board Attorney wanted clarification if Mr. Aikey was willing to put in a deed that any future development would be limited to no more than three lots and the resolution would make it clear that even if he agrees to it, no one should read into the resolution that there is some type of affirmation of the subdivision by this Board.

Mr. Barbarula agreed he would review the language for the deed and Mr. Aikey indicated he had no problem with that.

Linda Lutz reiterated some of the questions raised in the Board report dated May 21, 2003.

Mr. Aikey testified the cul-de-sacs were never established at the time of the original subdivision. Mr. Barbarula did not think the applicant had the right to vacate it but would assist the municipality in doing so, if it so desires.

The Township Engineer wanted clarification of the status of the existing right-of-way.

Mr. Barbarula's understanding is these were the lines the surveyor was able to determine from the public record. The municipality would have to look through their records and if they have to be vacated, it would have to be done on that basis. The information shown is what the surveyor obtained in order to put in the appropriate subdivision lines. He felt this was a "housekeeping" item that needs to be cleaned-up.

Linda Lutz asked if concrete curbing was still being proposed.

Mr. McClellan testified on July 15, 2003 a letter was sent to Engineering stating they will install Belgium Block curbing and the plan will be amended to incorporate this.

Linda Lutz questioned if the 50-foot wide access easement on Lot 19.01 was still needed.

Mr. Aikey testified this was something done in the past by the prior developer and homeowner and is in the deed description for the properties. The homeowner is thinking about using a new access to his property. Mr. Aikey clarified he will not be relocating the neighbor's driveway.

The Board Attorney clarified for Linda Lutz that the same principle applies, that of the subsuming of the bulk standards by the use variance, to the limit of land disturbance. Linda clarified that, as there are no requirements in the R-3 zone (for properties serviced by sewer and water), there are no land disturbance limitations in this case.

The Township Engineer stated he was not sure if his comments were all addressed because he had not seen the revised plans.

Mr. McClellan advised all 20 issues in the Township Engineer's memo had been addressed.

The application was opened to the public with no one wishing to speak.

MOTION was made by Thomas Bigger to close the public portion, Dennis Kirwan seconded, with all in favor.

Mr. Barbarula concluded they have taken a bad situation of a prior developer leaving a situation and they will be making positive changes and utilization of land. Applicant is willing to put a restriction of the remainder lot to only create three lots. All of the Board's comments have been considered and all criteria required in the Land Use have been met.

MOTION was made by Thomas Bigger to approve the subdivision with the noted deed restrictions to keep the subdivision no more than three lots on the remaining property, Dennis Kirwan seconded. The Board felt the applicant had cooperated and is cleaning up a bad situation left from prior development. The original plans for the subdivision showed a cul-de-sac at both Wesley and Leslie Drive that were never built nor the homes developed that were to go there. These additional four homes appear to be an extension of the existing development on Wesley, Leslie and Rogers Drive. The nature of the properties is consistent with the size homes and lot sizes throughout the development. The variances are required because this is a uniquely shaped piece of property with its narrowest side being where the frontage is measured. The required cul-de-sacs pinch the lot and create the need for the variances and the minor variances are warranted. It is appreciated that the applicant has made an agreement to restrict the development to no more than three lots on the remaining portion.

On roll call vote: Yes - Thomas Bigger, Laetitia Munro, Dennis Kirwan and Daniel Jurkovic

No - None

MOTION was made by Thomas Bigger to approve the bulk variances for the same reasons as the subdivision, seconded by Dennis Kirwan.

On roll call vote: Yes - Thomas Bigger, Laetitia Munro, Dennis Kirwan and Daniel Jurkovic

No - None

HIGH CREST LAKE LODGE, INC.

Use Variance #0140-0490

Preliminary & Final Site Plan #0120-0096AB

Block 13002; Lot 9

High Crest Drive/Hearthstone Drive; R-2 Zone

With regard to the High Crest court remand, Mr. Murray requested a carry in order for a full Board to hear the case. The Board Attorney advised the Board is only obligated to give them a quorum to hear the matter and there may never be seven members to hear the matter. The Court Order has been extended through October 1, 2003 and he does not want to take the blame for it not proceeding. Mr. Murray stated he would contact Judge DeLuccia to request an adjournment. Mr. Barbarula indicated he had his traffic expert present to testify. Mr. Glatt advised if the Board decided to adjourn this tonight, that there would be no further adjournments except in the event the Board did not have five members. Mr. Barbarula advised he was prepared to be heard tonight. Mr. Glatt suggested the two absent members, Mr. Giannini and Mr. Brady, could be requested to listen to the recording of the meeting, and applicant could go ahead with testimony tonight and the Board could vote at the next meeting. He would recommend the Board vote on the matter at the next meeting if a member was absent or unable to listen to the recording.

MOTION was made by Thomas Bigger to carry the court remand to the October 21, 2003 meeting. As no one seconded, a

MOTION was made by Arthur McQuaid to hear the application tonight because the attorneys and public are present and ask absent members to listen to the recording of the meeting and vote on it at the October 21, 2003 meeting, Dennis Kirwan seconded.

On roll call vote: Yes - Arthur McQuaid, Laetitia Munro, Dennis Kirwan and Daniel Jurkovic

No - Thomas Bigger

The Vice Chairman announced the Board will be hearing the High Crest matter tonight.

The Board recessed. Upon reconvening, the following carries were requested:

| | | |
|--|----------|----------|
| WM UV Assoc., LLC | COMPLETE | 03-25-03 |
| (ORCHARD VIEW ESTATES) | DEADLINE | 12-21-03 |
| Use Variance #0240-0603 | | |
| De Minimis Exception | | |
| Preliminary Subdivision #0210-1934A | | |
| Bulk Variance #0230-0604 | | |
| Block 7701; Lots 7 and 11 | | |
| Union Valley Road; R-1 Zone | | |

The Board Attorney advised the Board it is not known if the variances listed on the agenda are accurate because applicant will be proceeding under the old zoning ordinance not the new ordinance as a result of a resolution of a lawsuit.

Douglas Doyle, Esq., confirmed his applicant is looking for an eight lot subdivision with one depth variance and a use variance. He has previously signed an extension based on the fact testimony would be extensive because of the bulk variances required under the R-4 zone. He felt it is now a simpler application.

The Board Attorney advised applicant should re-notice and reference the fact they will be proceeding under the old ordinance. He should indicate he is seeking a use variance and bulk variances and site plan approval for an eight-lot subdivision. The matter will be carried to October 21, 2003 meeting with re-notice.

| | | |
|---------------------------------|----------|----------|
| CEFES FINANCIAL, INC. | | |
| De Minimis Exception | | |
| Bulk Variance #0230-0614 | COMPLETE | 04-29-03 |
| Block 1806; Lots 4 & 5 | DEADLINE | 10-28-03 |
| Magnolia Rd; LR Zone | | |

John Barbarula, Esq., requested a carry on the application to the October 21, 2003 meeting with no further notice necessary and granted the Board a 30 day extension.

| | | |
|---|----------|----------|
| AT&T WIRELESS | COMPLETE | 06-30-03 |
| Use Variance #0240-0607 | DEADLINE | 11-27-03 |
| Preliminary & Final Site Plan #0220-0132AB | | |
| Block 1701; Lot 59 | | |
| 776 Warwick Tpke; LR Zone | | |

Joseph O'Neil, Esq., appeared on behalf of applicant, AT&T, and requested a carry on the application to the October 30, 2003 meeting with no further notice:

| | | |
|---------------------------------|----------|----------|
| JOSEPH PATERNO, LLC | | |
| De Minimis Exception | | |
| Bulk Variance #0330-0623 | COMPLETE | 06-18-03 |
| Block 2707; Lots 2 & 5 | DEADLINE | 11-15-03 |
| Flanders Road; LR Zone | | |

Joseph Paterno, III, agreed to carry his client's application to the October 30, 2003 meeting with no further notice necessary and granted an extension through December 18, 2003:

KERRY GREENE
Use Variance #0240-0605
De Minimis Exception
Minor Subdivision #0210-1951
Bulk Variance #0330-0629
Block 1404; Lot 5.02
832 Warwick Tpk.; NC Zone

COMPLETE 02-07-03
DEADLINE 11-01-03

An earlier request to carry the Greene application to the October 21, 2003 meeting with no further notice necessary was granted by **MOTION** made by Thomas Bigger to carry it to the October 21, 2003 meeting, Dennis Kirwan seconded, with all in favor.

HIGH CREST LAKE LODGE, INC. (Court Remand)
Use Variance #0140-0490
Preliminary & Final Site Plan #0120-0096AB
Block 13002; Lot 9
High Crest Drive/Hearthstone Drive; R-2 Zone

MOTION made by Arthur McQuaid to hear the High Crest Lake Lodge Court Remand at this meeting, Dennis Kirwan seconded.

On roll call vote: Yes - Arthur McQuaid, Laetitia Munro, Dennis Kirwan
and Daniel Jurkovic
No - Thomas Bigger

Drew Murray, Esq., appeared on behalf of High Crest.

Judd Rocciola, P.E., was sworn and previously qualified as an expert witness. He testified he reviewed the transcripts of the original proceeding. He did not make a comparison as to what was testified to in the original hearing versus the Activities Chart prepared.

John Barbarula, Esq., appeared on behalf of an objector to the application. He clarified Mr. Carter was the plaintiff in the lawsuit. He represents Mr. Goldman in this hearing and he is not present.

John Desch, a Civil Engineer, was sworn and qualified as an expert in traffic engineering. He reviewed the site plan and traffic study. He testified the facility will be positioned along High Crest Drive at the intersection of Hearthstone. High Crest Drive is a local roadway and not a collector road nor an arterial road. The site has two access points. A new driveway will be constructed onto High Crest Drive for egress with a 4%-7% grade. There will be a driveway constructed along Hearthstone for ingress with a grade of 12%. The applicant proposed 65 parking spaces to be used for the clubhouse which can also be used for functions of the lake and beach property. The traffic analysis was based upon the Activities Chart submitted. Based upon Mr. Rocciola's report, the clubhouse will accommodate 160 seats/individuals as a capacity for the site and the existing uses and functions of events have been compared. The report indicates a 160 person clubhouse will not have an adverse impact upon the character or volume of traffic along the roadways. Traffic counts along High Crest Drive were done and the number of vehicles estimated to arrive at the clubhouse. It was determined there would not be a significant impact on the traffic. Mr. Desch agrees with Mr. Rocciola's report based upon the 160 person capacity but he feels the capacity of the building is much greater than 160. When the traffic is generated for a building with possibly more than twice the amount of 160, you begin to see a significant impact on the number of vehicles that would increase upon this local road. Assessing a facility of this nature would only be done based on a restrictive use of the facility if the use were something that could not be altered or in any way changed in the future. If the facility can handle 350-450 people, then the capacity and traffic impact need to be based upon the size of the structure not an artificial limitation as to 160. The 160 figure was based upon

information provided by the applicant. Based upon the 160 people, 60 vehicles are projected during the peak Saturday period which may be when an event would take place and he agrees with this. He felt the building's capacity is much greater than 160.

Dan Jurkovic commented on the November 27, 2001 transcript, page 46, that Mr. McKittrick testified the building has 160 person occupancy limit based on fire, life safety code and Health Department design. He wanted clarification if the legal occupancy is 160 or is a projection.

Mr. Barbarula did not know where Mr. McKittrick got the figures from.

John Desch testified he had a letter on the stationery of William G. Brown, Architect, from Wyckoff, New Jersey, dated May 8, 2003 to the Zoning Board of West Milford, New Jersey, with reference to the High Crest Lodge (A-9 for identification only). It states the occupancy load for this building is 350. He has handwritten calculations from Fred Stewart, Fire Prevention, (A-10 not into evidence) stating the first floor cannot exceed 450 (max.) He did not do any independent calculations and is only going by the memo stating 450 and the architect's determination of 350, which is more than double the 160 being projected from the site and being used by Mr. Rocciola. He believes that the impact from the number of vehicles traveling along the local roadways would be significant using these higher calculations.

Mr. Murray objected to the submission of the exhibits because they were faxed copies with no original signatures, faxed to a third party. The letter from the architect had no address of the Zoning Board and appeared to have been faxed someplace else and his client, who retained Mr. Brown, had never seen the document.

The Board Attorney confirmed the Board had no record of ever receiving the May 8, 2003 letter from Mr. Brown and advised they could bring Mr. Brown and Mr. Stewart to testify and confirm their figures.

John Desch discussed other clubhouse type facilities in the area and the roads they were on. He referred to pages 102 and 103 of West Milford Township's Master Plan under the Roadway Classification section. High Crest Road and Hearthstone Road are not classified as arterial or collector roads; therefore, they would be local roadways for minor service, access to property and low speeds. Since the zoning requirements do not have a specific category for this type of use, the closest use would be a restaurant use. A restaurant requires one parking space for every three seats. His assessment is that a facility with 160 seats would generate 80 parking spaces using two people per vehicle. If the beach were using the parking lot at the same time as the banquet facility, the parking would be under capacity. He feels his analysis and review of Mr. Rocciola's report for the purpose which it was intended did accomplish his assignment. He assessed the amount of traffic based upon a 160 seat facility and his conclusion was the lodge could be constructed without resulting in an undue hardship to capacity and safety. If a site and building of a specific size is constructed without limitation to use, the size of the facility must be considered and what it can be used for. If the building is used all weekend for every weekend throughout the entire year, he does not agree that the hardship is not undue. He would then feel it would be an impact upon the neighborhood and the residents that live near the building because of the volume of traffic and the parking that would occur along the street on a regular basis. He does not feel the community would be better off without the 65 parking spaces proposed.

MOTION made by Laetitia Munro to issue subpoenas, with no one seconding.

MOTION was made by Laetitia Munro, for Mr. Barbarula to prepare subpoenas to Mr. Brown and Mr. Stewart for the Board Secretary's signature and Mr. Barbarula will issue them, Arthur McQuaid seconded.

On roll call vote: Yes - Arthur McQuaid, Laetitia Munro and Daniel Jurkovic
No - Thomas Bigger and Dennis Kirwan

The Vice Chairman stated the attorneys can bring whoever they chose to testify at the next hearing on the issue of capacity and not structure. The application was carried to the October 21, 2003 meeting with no further advertising necessary.

The Board Attorney advised Judge DeLuccia should be notified of the status and ask for an extension.

Minutes

MOTION was made by Thomas Bigger to approve the Minutes of the July 17, 2003 Reorganization Meeting, Dennis Kirwan seconded, with all in favor.

MOTION was made by Thomas Bigger to approve the Minutes of the July 17, 2003 Reorganization Meeting, Dennis Kirwan seconded, with all in favor.

MOTION was made by Thomas Bigger to approve the Minutes of the July 22, 2003 Meeting, Dennis Kirwan seconded, with all in favor.

ADJOURNMENT

The meeting was adjourned by unanimous vote at 11:16 p.m.

Respectfully submitted,

Carol DenHeyer
Secretary