

MINUTES
Of the Township of West Milford
ZONING BOARD OF ADJUSTMENT
August 27, 2019
Regular Meeting

Robert Brady, Board Chairman, opened the Regular Meeting of the Zoning Board of Adjustment at 7:38 p.m. The Board Secretary read the Legal Notice. The Pledge of Allegiance was recited.

Roll Call

Present: Russell Curving, Daniel Jurkovic, Frank Curcio, Arthur McQuaid, Michael Gerst, Steven Castronova, Robert Brady

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

Absent: James Olivo, and Matthew Conlon

The Chairman, Mr. Brady indicated that we have 6 members and an alternate this evening. The Chairman greeted the Board and 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

**JOHN MOORE
RESOLUTION 10-2019**

BULK VARIANCE ZBo4-19-07
Block 15302; Lot 21.02
70 Charcoal Road; R-4 Zone

Decided: Approval of a bulk variance for a side yard setback where 50 feet is required and 35 feet is proposed for a detached 30 foot by 30 foot garage for residential use.

Approved: June 25, 2019

A motion by Steven Castronova to memorialize application ZBo4-19-07. Second by Frank Curcio.

Roll call vote:

Yes: Daniel Jurkovic, Frank Curcio, Arthur McQuaid, Steven Castronova, Robert Brady

No: None

Abstain: Russell Curving and Michael Gerst

Chairman Brady announced that because of an error by the newspaper not noticing for one of the applicants that applicant cannot be heard, (Darmstatter) and we will be jumping around some on the agenda. The Board Attorney, Stephen Glatt, indicated that the first matter to be heard would be B & B Organics. There is a full 7 member Board to hear the matter and Russell Curving and Michael Gerst have listened to the meeting that they missed, and will be permitted to vote. The Darmstatter application will be carried because the paper failed to print the notice. Mr. Darmstatter will only be required to notice for his next meeting. Michael Darmstatter

indicated that he would like to carry the application to the November 26, 2019 meeting due to scheduling conflicts and that he had no problem signing an extension for his application and would notice in the paper for the November meeting and would even re-notice his 200 foot list as well. Mr. Darmstatter signed an extension form.

A motion was made by Daniel Jurkovic to carry application ZB06-18-04 for Mr. Darmstatter to December to ensure being heard at the November meeting. Second by Frank Curcio.

Roll call vote:

Yes: Russell Curving, Daniel Jurkovic, Frank Curcio, Arthur McQuaid,
Michael Gerst, Steven Castronova, Robert Brady

No: None

The Board Attorney informed the public that if they had interest in this application, they will receive notice and should attend the November 26, 2019 meeting.

The Board Attorney indicated that Green Meadow Organics LLC application would be discussed next, with a need to schedule a special meeting and discussion of experts for the application. The Board Attorney addressed the calendar indicating that the B & B application would be heard after that with 3 more speakers being heard for the applicant, then the public portion, and this would be followed by Greenwood Lake Services Appeal, and a possibility of hearing that. The Board Attorney asked if the applicant would consider giving an extension if the Board were unable to get to the application and Mr. Weiner indicated that his client would be unavailable for the next two meetings and he was hoping to be heard tonight. It was mutually agreed to see how the evening progressed.

**GREEN MEADOW ORGANICS
USE & BULK VARIANCE & PREL. &
FINAL SITE PLAN ZB10-17-13**

**Complete: 7/17/19
Deadline: 11/14/19**

Block 4601; Lot 17
960 Burnt Meadow Road; LMI Zone

Preliminary and final site plan and use and bulk variance approval requested for expansion of an existing compost and recycling facility. Expansion of a pre-existing non-conforming use, no stockpiles within 25 feet of property lines, 25 feet required, 0 feet existing and 0 feet proposed, materials stored or sold within 300 feet of a residential structure, 300 feet required, 0 feet existing, and 159 feet proposed. Discussion for the purposes of scheduling only.

The Board Attorney addressed Mr. Minassian Esq., there on behalf of the applicant and Ms. Rubright Esq. from Brach/Eichler on behalf of "A Cleaner West Milford". In the interests of transparency Ms. Rubright will provide a list of the people involved with the organization "A Cleaner West Milford". The Board Attorney indicated that the first hearing was scheduled for September 19, 2019 at the West Milford High School Auditorium at 7:00 pm. There are plans and a voluminous amount of materials located in the Planning Department in Town Hall, and the Board Attorney urged the public to take time to review and familiarize themselves with the application in order to be educated. The Board Attorney indicated that there were certain areas of this application, where the Board Planner and the Board Engineer do not have expertise. The Board is hiring an independent expert firm to give an opinion to the Board. The applicant will have their own experts and Ms. Rubright may have experts as well.

Ms. Rubright indicated that with regard to the experts, the reports are significant as far as informing the Board and the public, and that having the reports prior to the September 19 meeting date was important, to facilitate proper cross examination. Ms. Rubright would like to be placed on the 200 foot list and also be provided any materials when received. The Applicant's Attorney indicated that Ms. Rubright did not receive the notice that was submitted to the Herald Record because the record failed to print the notice. It was agreed that Ms. Rubright would provide a list of the people that she represents and they would be noticed in the future. The Board Attorney indicated that all materials would be distributed and shared between the parties involved and that it was the intention of the Board to hear the application on September 19, 2019 and to have the experts the Board chooses be there to hear initial testimony and follow up with questions and reports.

The Board Planner indicated that there were elements of the application where he and the Board Engineer were beyond the scope of their expertise. Mr. Ochab would handle the zoning and planning portions and Patrick McClellan the Engineering aspects but there would need to be an engineering firm to handle certain aspects. Proposals were received from Langan Engineering and also from PS & S Engineering and Langan was recommended by Boswell Engineering. They

had discussed the nature of the review. Our consultant will review the Traffic Report and the Environmental Impact Statement, the Stormwater Management Report and issue memos, recommendations conditions of approval or whatever is needed. The EIS is voluminous and includes a lot of aspects. The consultants will not be involved with other entities, DEP the Highlands, Soil Conservation, Passaic County because these would be addressed under the conditions of approval and though they were listed initially, they are unnecessary at this point in time. If the Board approves the application these will fall under conditions of approval and if the Board denies the application, they would be a mute point. The Board Planner asked the Board to make a motion to approve Langan Engineering as our experts so that they are able to review materials and be well on board as we get into the application.

A Board member asked if the experts would be visiting the job site. Yes. Would there be a report prior to the meeting September 19, 2019? This was unsure as they would be reviewing the vast array of materials to become familiar. There was discussion regarding the retention of experts and whether Ms. Rubright was retaining any type of expert for her client(s). The Board is going above and beyond the scope of what is required of them. Ms. Rubright indicated that they had been in conversations with environmental and traffic consultants and an engineer and decisions would be made after this meeting. Also, the reports would be good to have prior to the meeting so that there is no disadvantage to opposition or the Board since that portion of the testimony usually takes place early on. Ms. Rubright continued on to thank the Board for going above and beyond to represent the interests of the public and applicants of West Milford Township, and stressed that she wanted to make sure the Board had what it would need to best serve the community.

The Board Attorney indicated that if the selected experts were in agreement with the facts of the provided materials, they may not provide reports, a large amount of money is in play here, \$40-\$50,000.00. If clarification needs to be made, it can be made during the cross-examination period and if Ms. Rubright does not accept the testimony of the Board's witness or the applicant's witness, she has a right to call her own. All potential issues will be aired. The Board Planner indicated that Langan Engineering's fee (\$39,000.00) was based on a broad scope of the application and will need to be adjusted somewhat to fit what is needed and will be less expensive than originally expected.

A motion was made to authorize the Chairman to hire the firm of Langan Engineering by Michael Gerst. Second by Daniel Jurkovic.

Roll call vote:

Yes: Russell Curving, Daniel Jurkovic, Frank Curcio, Arthur McQuaid,
Michael Gerst, Steven Castronova, Robert Brady

No: None

Reports will be shared between experts and all parties in the matter. The applicant will provide a court reporter at the September 19, 2019. A member of the public asked about how Langan was paid and the Board Attorney indicated that the applicant's put money in an escrow account for the Board's Professionals and also for other things the Board deems necessary. The audience member questioned the relationship between Langan and the applicant and the Board Attorney indicated that if a conflict of interest existed, then Langan would have an obligation to check their files and report a conflict. Mr. Ochab indicated that Langan was made aware who the applicant was and has no conflict. The date of September 19, 2019 at 7:00pm was agreed upon. Notice will be given.

**B&B ORGANIC WASTE RECYCLING, LLC
USE & BULK VARIANCE & PREL. &
FINAL SITE PLAN ZB06-18-05**

Block 6002; Lot 29

280 Marshall Hill Road; LMI Zone

**Complete: 9/20/18
Deadline: 1/18/19
New Deadline: 7/24/19**

Preliminary and final site plan and use and bulk variance approval requested for an organic recycling facility with accessory composting, topsoil production and mulch manufacturing, retail sales and offices are proposed for the front building. There are additional variances proposed for 2 wall heights and driveway grade. Testimony had been previously taken on October 23, 2018 and June 23, 2019. All Board members were present for this application on October 23, 2018 and on June 23, 2019 Daniel Jurkovic, Frank Curcio, Arthur McQuaid, Steven Castronova and Robert Brady were present. Michael Gerst, James Olivo, Russell Curving, were absent. Matthew Conlon absent and recused. For the record the Board Secretary informed those present that Russell Curving and Michael Gerst had both listened to a recording of the last meeting and were up to date and eligible to vote on the matter.

Mr. Robert Moshman, Esq. indicated that Engineer David Newkirk was present to speak on behalf of the applicant. The Board Attorney reminded Mr. Newkirk that he had been previously sworn in and would be treated as such. Mr. Newkirk indicated he wanted to update what was previously said regarding the conditions of the LMI Zone. Condition #13 states that the operator of the facility must file with the Township Zoning Officer documentation certifying that this site is included in the Passaic County Solid Waste Management Plan, within 15 days of such approval. At the last meeting he indicated that not being sure what it was he would look into it. After calling the Passaic County Solid Waste office, he found that this facility operates under an exemption to the solid waste recycling laws. Mr. Newkirk indicated that they are exempt from being in the Solid Waste Management Plan. Mr. Newkirk indicated that they are not in the Plan and do not have to be in the Plan, so that particular condition does not apply to the applicant. Steven Castronova asked if they were given an exemption. Mr. Newkirk indicated that the way the exemption works is that you fill out an exemption form and send it to DEP and they do not send you anything back, you are declaring that you are operating in accordance with the requirements of the exemption. The applicant has provided this submitted document to the Township but needs to send a copy to the Board Secretary to have on file.

The Board Attorney indicated that the Board was interested in only the matters that concerned the Board of Adjustment, not the details of the status of the Court Case with the Township. Mr. Moshman indicated that the issue appears to be resolved with the Township. Mr. Newkirk indicated that the Township Engineer requested that on the driveway on page 3 of the site plan that enters from Lycosky Drive that is pitched toward the sedimentation basin that a hose bib be put right there on the driveway so that truck may be hosed down, and the applicant agreed to that. Under conditions 3 and 5, there is a requirement of a setback of 25 feet from the property line for any organic waste, piles or equipment. The condition goes on to state that this requirement may be reduced by 50% if there is sufficient year round visual screening as determined by the Township Engineer and the applicant would like to request that the Township Engineer reduce the setback adjacent to the Town's leaf facility to 12.5 foot. Mr. Newkirk's interpretation is that it is up to the Township Engineer to do this and that it is not a matter for the Board of Adjustment. The Township Engineer requested this be known to the Board. The request will be made only for two pieces of property adjacent to the Township's leaf facility, as there is little sense of placing a buffer between and area with like uses.

The Board Attorney asked Mr. Moshman to please allow the Board to address this matter when it becomes time to vote so that the intensions of the Board regarding this matter be known and on record for the Township Engineer, per the request of the Township Engineer.

Mr. Newkirk indicated that was all he had for updates for the Board. Mr. Moshman asked that Louis Brandt address the Board. Louis Brandt was sworn in, with an office in Clifton, 1035 Route 46 East, Suite 106. Mr. Brandt referred to drawing numbers 18, 19 and 20 of 20 of his architectural plans. Mr. Brandt presented plans for a new building that was going to take the same footprint as the existing building with the exception of an addition to the rear. The applicant proposes to remove a portion of the building that would make up for the area that is going to be added. The overall dimension of the building is 180 feet by 150 feet, built out of concrete, masonry and steel. There is going to be retail area and sales area across the front of the building, a stockroom in the middle and a shop and storage area in the rear where equipment will be serviced, and an administrative office. Mr. Brandt indicated that a sidewalk would be around the perimeter, with a pergola, and planters from which to hang plants. There will be planters between the columns to try and create an organic look to the building.

On the front North elevation that faces Marshall Hill Road, (page 20) the view will be improved from what is currently there. The new face of the building will be two stories with wood trusses for an open look. The façade of the building will be a natural stone, with a few dormers and the pergola will continue. The roof is to be simulated slate shingle for a rich look.

The Board Planner asked if the area on the lower level that was not window was all masonry and Mr. Brandt indicated that in between the windows is masonry and there is stone veneer on the entrance and on the West elevation with some down lighting. Regarding the rear elevation there will be overhead doors that will service the vehicles. (page 19). The South elevation has 3 doors that lead into the shop area. On the lower East elevation a door will be removed (from the plan) and there will be 3 doors for the stockroom. Mr. Brandt indicated the door locations on page 18. The total building is 27,000 sq ft. The retail sales area is 11,250, the retail stock room is 6,750 sq ft the shop and storage area is 6,750 sq ft, and the open work area will be 2,250 sq ft. The building will have sprinklers and comply with code.

Mr. Moshman requested Bridgette Bogart address the Board. The Board Attorney swore in Ms. Bogart, 47 North Franklin Tpk in Ramsey NJ. Ms. Bogart has a Bachelors degree in Achitecture and Design from North Carolina State University, a Masters in City and Regional Planning from

the University of Pennsylvania and has been a licensed professional planner in the state of New Jersey since 2001, and has represented a number of municipalities and been before Boards three to four times a week for the past 18 years. Ken Ochab indicated that Ms. Bogart was a colleague and has a great reputation. Ms. Bogart went on to indicate that the site is an oversized site, with ten acres of area and only five is required. The permitted use is as a recycling center as a conditional use and as the Board Planner has indicated in his report the conditions are basically met except for a few minor ones where if approved by the Board there would be conditions provided for some minor issues. The site is in need of renovation and improvement and that is what the applicant is proposing to do. As seen on the architect's elevation plan, it is an extreme improvement to what is currently there and that is a benefit to the public. Ms. Bogart indicated that the applicant meets the conditions of the permitted use, the site is oversized but they do need a use variance, and two minor C variances from section 50-68c. Ms. Bogart indicated the criteria for a D-1 Variance, the Board grants use variances in particular cases for special reasons, for example furthering the Municipal Land Use Law purposes. For the applicant's purposes there are three relative purposes of the Municipal Land Use Law; I. to promote desirable visual environment through creative design and technique, purpose M. to encourage various public and private procedures activating and shaping the land lessening the cost of the development and making a more efficient use the land. The applicant is a recycling center but they are making more efficient use of the land by creating a mixed use environment where appropriate. There are no adjacent residents and they are not creating any issues or impact to the public residents. Purpose O. to promote maximum practical recovery of recycling and recyclable materials. Ms. Bogart indicated she believes there are 3 purposes of the Municiple Land Use Law that are being furthered in this application, and the goals of the local Master Plan. Goal 4 from 2017, that focuses on growth of existing businesses and encouraging infill and mixed land use, encourage commercial and industrial growth on a suitable land that is appropriate recognizing the existing roadway system. Ms. Bogart indicated that the application provides purposes and positive criteria for justifying the key D-1 Use Variance. For the portion for the negative criteria, Ms. Bogart indicated that there would be no substantial detriment to the Master Plan, and also no detriment to the public good but in fact would improve the public good from an aesthetic standpoint. Lastly for a D-1 variance the applicant must prove that the site is particularly suited for the use, or that it is inherently beneficial. It is suited for the site because of it's existing use and also they are looking to improve the efficiency of the site itself. Ms. Bogart believes for the reasons stated from a planning perspective the Board has a right to grant the use variances proposed.

The Board Planner, Ken Ochab commented that the building there could be considered "blighted." Daniel Jurkovic indicated that if what is being proposed is going to replace the Kemp building, it would be a vast improvement.

The public portion of the meeting was opened and no one spoke.

A motion was made to close the public portion of the application by Michael Gerst. Second by Arthur McQuaid. All in favor. None opposed.

Mr. Moshman indicated in summary, that there was a new ordinance developed specifically for this site, to allow the light industrial zone to have this particular purpose of the recycling area. It is an extremely difficult site with steep slopes, raw land, partial berms that have been turned into real berms in order to comply with the soil conservation district, which the site had not had for 30 years prior. It had a long history of vegetative recycling and now that it is a permitted use, and now that it is being used by someone other than West Milford Township the rules have to be followed. It has to be in compliance with soil conservation and the DEP, the berm is to help contain dust and noise, sediment control. Mr. Moshman continued that there were two parts to the property, one having the recycling, separated by the easement area and then the other where the old commercial Kemp building that has been a wreck for years and then the boat storage area. The boat storage will be taken away and there will be a brand new building with commercial activity. The projected commercial activity is not unique for the area, across the street is the Dairy Queen and a Paintball area. Mr. Moshman indicated that the property would be maximized to promote economic use, increased property values, and generate a good outcome for the property. Mr. Moshman encouraged the Board to accept this application and reminded them that there was a buffer area between the vegetative recycling area, and asked the Board to allow there not to be a double buffer on the South side where it goes up against the Township property with a similar use and the applicant would then ask the Township Engineer to allow that the buffer there be reduced.

The Board Attorney asked about the two phases of the project. Mr. Newkirk indicated that in the interim before phase two began, they would take suggestions from the Board as to the Kemp building being visually screened. Discussion about whether a time frame between phase one and phase two had been decided. The Board Planner indicated that a concern may be starting

phase one and then never starting phase two. Mr. Battinelli indicated that while phase one was in the process, financing would be acquired for phase two, and that at least a year would be necessary to get the recycling yard finished and ultimately six months to a year between finishing phase one and starting phase two. Clarification was made that there would be a condition of approval that in order to eliminate the eyesore Kemp building, the applicant would agree to screening the building in the meantime. Discussion about if the conditions are not met, if the applicant loses their approval. The Board Attorney indicated that the applicant keeps their approvals for 3 years and then is entitled to two more one year approvals but before that time runs out, the applicant must come to the Board requesting an extension of the approval, many times a reason being financial difficulties. It is a procedure, if for some reason the zone changed, you would not be protected, there would need to be two affirmative steps taken, after the third and fourth year. The Board Planner clarified theoretically, if phase one is determined to be complete and after one year phase two were not to have taken place then minimally the area in question would need to be screened off in order to reduce the eyesore.

A motion was made by Daniel Jurkovic to approve application ZBo6-18-05.

Preliminary and final site plan and use and bulk variance approval requested for an organic recycling facility with accessory composting, topsoil production and mulch manufacturing, retail sales and offices are proposed for the front building. There are additional variances proposed for 2 wall heights and driveway grade, for the reasons of the professionals stated on the record and also that the applicant work with the Township Engineer with respect to the buffer between the Township property and the applicants property. Daniel Jurkovic indicated that the building currently there is a disaster and if the result of this application is what is proposed the Township is taking a big step forward, and he appreciates businesses that are willing to invest in the Township and improve the surrounding areas.

Second by Michael Gerst.

(Mr. Newkirk clarified that there were fence heights requested for approval as well, the fence along the wall in the front is proposed to be 3 feet high not 4 and the fence along Lycosky Drive is 8 feet high not 6 feet. Daniel Jurkovic amended his motion to the extent necessary to include those requests. Michael Gerst amended his second.)

Roll call vote:

- Yes:** Russell Curving, Daniel Jurkovic, Frank Curcio, Arthur McQuaid,
Michael Gerst, Steven Castronova, Robert Brady
No: None

The Board Attorney indicated that the application would be memorialized at the next meeting September 24, 2019 and application ZBo8-18-10 for Batinelli Enterprises would be placed on the October 22, 2019 Agenda. Mr. Moshman signed an extension form with a new deadline date of November 28, 2019.

A motion was made to take a short break by Michael Gerst. Second by Chairman Robert Brady. All in favor. (8:59 pm)

The meeting resumed (9:12pm) and the Board Attorney went over the agenda and announced that we may not get to all the applicants. None of the applicants would be required to renote and if any applicant wanted to stay on the off-chance that the Board would be able to get to their application, they were welcomed to do so. If anyone were interested in any of the Applications on the agenda, they should attend the September 24, 2019 meeting. Mr. Gunther (on behalf of Ana Su) and Mr. Generoso elected to stay.

GREENWOOD LAKE SERVICES

APPEAL ZB 01-19-01

Block 3107; Lot 1

322 Lakeside Road; LR Zone

Complete: 2/15/2019

Deadline: 9/13/2019

The Applicant appeals the Zoning Official's decision that the proposal is an expansion of a pre-existing non-conforming use and the proposed survey does not show the current conditions.

The Zoning Officer was not advised that this matter would be heard tonight. The Board Attorney indicated the Zoning Officer was not in the office today and was unable to comment at this meeting.

Ira Weiner Esq. spoke on behalf of Greenwood Lake Services. Mr. Weiner indicated that 3 zoning applications had been submitted and then denied by the Township Zoning Officer and that they were asking for a very minor change to the building and that they were not expanding in any way and requested that the Board grant the applicant a de minimis analysis. When one has an expansion of a non-conforming use, the law provides that there has to be a de minimis analysis and determine if this case is of sufficient importance to require a variance. Mr. Weiner indicated that the changes that were being made were so minor that they would have no impact on anything and that the Board could make a determination that it was a de minimis and there would be no need for further approvals. Mr. Weiner indicated that the applicant did not want to criticize the zoning officer, because technically there is a small expansion of the building, enclosing a corner of the building that was a deck. Mr. Weiner indicated that the Zoning officer indicated there was a little bit of an increase and therefore a variance was required. The Board has the right to review the appeal and decide that it is not significant enough to require a variance analysis. Mr. Weiner indicated that is what the applicant was requesting from the Board tonight.

Mr. Christopher Leahy, 10 Summerville Road, Hewitt, NJ was sworn in and testified that he was the Principal in Greenwood Lake Services. Mr. Leahy indicated that he would like to reopen what was formally known as Latitude 41. The property is in bad condition, was not re-opened by the previous owner and needs a renovation. The bathrooms are not ADA compliant. Mr. Leahy indicated that he wanted to keep the same footprint that the building has now, except for enclosing the Northeast corner of the porch area. Mr. Leahy indicated that he would like to move the bar from the inside wall to the outside wall facing the lake, and replace the deck that had been there. One of the Zoning Officers objections was that the survey did not show what was on site and Mr. Leahy indicated that what was missing was the deck. Mr. Leahy indicated that they wanted to replace the deck that had been there before.

Mr. Weiner asked if other than the area that Mr. Leahy was going to enclose is there going to be anymore square footage? Mr. Leahy indicated there would be no more square footage, and no more seats inside or out. Mr. Leahy clarified when asked, that he was not looking to expand the restaurant use in any way, but was looking to fix up the building. The bathrooms are currently non-compliant and they will be upgraded. Mr. Leahy indicated he owned the Sportsman's Marina next door and sees the restaurant as a seasonal amenity for the marina. Parking will be an issue in the summer but he owns both properties and property across the street. Mr. Leahy indicated that the old restaurant only had a cesspool and now a Hoot septic system has been installed up on the hill which is connected to the renovated marina building and the maintenance building, so even if the restaurant is busy the septic will accommodate it. Mr. Leahy indicated that the increase in square footage would be less than 200 feet, and that it would not be an issue at all if it were in a commercial zone but this is a Lake Residential zone.

The Board Attorney clarified by asking Mr. Leahy, when he purchased the property it had been a restaurant, there was a liquor license, the liquor license was purchased at the time the building was purchased, was it his attention to abandon the old use or was it his intention to continue the use as a restaurant. Mr. Leahy indicated that it was his intention to continue the use as a restaurant, which is why the water and sewage treatment plant was installed on his property across the street, it was designed for a restaurant. Mr. Leahy indicated that when the property was purchased the interior looked like an auto repair shop/gas station.

The Board Attorney referred to the Zoning Officer's (Mr. Lupo) memo from February 13, 2019 that had been shared with the applicant. The memo stated "*the property in question 322 Lakeside Road, {Block 3107, Lot 1, is located in the Lakeside Residential Zone.} The use as a restaurant is not a permitted use, not a conditional use and not an accessory use. A bar or a restaurant is not permitted.*" When asked, Mr. Leahy indicated that there was a pre-existing non-conforming restaurant that had a liquor license, that went back to the 1950's. Paragraph two of the memo read "*The minor change of enclosing a portion of a covered porch is minimal. The survey enclosed is an older one which does not reflect any parking.*"

Mr. Dave Smith was sworn in, 16 Jessop Road, Warwick, NY, Licensed Architect registered in the state of New Jersey, has testified before this and other Boards, and was offered as an expert architect. Mr. Smith indicated that any part of a building that is under a roof is part of the building, by definition. This roof exists and enclosing it, changes nothing.

The Board Attorney continued reading the memo, "*moving the existing bar to the rear, lakeside wall along with two nine foot long outdoor serving windows, and an outside serving counter, two nine foot exterior doors leading to a proposed patio seating of 544 sq ft which equals room for an additional 37 patrons. This is not a negligible expansion but an increase in more than 50% occupancy.*" Mr. Leahy responded that the deck was always there and the deck always had tables and chairs, some of those tables have to go for bar stools maybe, but there are no more tables and chairs than there ever were.

The old survey from 2012 by Claude Ballister was produced and shows the existing deck. The dimensions of the deck being 9'2" by 60'6". The deck was in disrepair and has been removed. The intention being to build a deck of the same size/footprint is to replace it. Mr. Leahy indicated that he had been a customer years ago and knew there were tables out on the back deck and the septic system for the restaurant was designed for 180 people. Mr. Leahy indicated that Houser Engineering had recommended that when the new system was done, that it be as large a system as would be approved by the State. Mr. Leahy indicated that there was a set of plans for a larger deck and they had been submitted and withdrawn. The proposed deck is to be 9'2" by 60'6". There was discussion about the deck and that the size was going to be what had previously been there.

The Board Attorney referred back to the Zoning Officer's memo, it was also Mr. Lupo's contention that the added window would be considered an expansion and need a variance, and there were parking issues.

Daniel Jurkovic indicated that the Board is not being asked to do a variance analysis, where certain matters would be relevant but that the Board is being asked to determine if there is a pre-existing nonconforming use or not. Mr. Jurkovic indicated that it seems to him it is, there seems to be a survey signed by someone known to the Board, that says there is a deck there and it appears it is entitled to the de minimis exception that Counsel is requesting, and the appeal should be granted.

The Board Planner indicated that the Zoning Officer appeared to have a problem with the parking on site. There is parking on the North side, and the requirement adding things up, would be 75 spaces for parking. There are about 29 spaces available including the marina building and the restaurant building and there is a shortfall, but 5 of those spaces jut out into the County right of way. A suggestion was made by the Board Planner that on the South side of the building there is a vacant area that can be made into an additional paved parking area. The applicant was in agreement with this idea.

The Public portion of the meeting was opened and Ada Erik was sworn in, Macopin Road, a member of the Town Council, but not speaking as a Council Member indicated that the deck was there in 1963. The Board Attorney indicated for the record that Mr. Generoso and Mr. Van Decker think it is a good idea to grant the appeal.

A motion was made to close the public portion of the application by Michael Gerst. Second by Arthur McQuaid.

Roll call vote:

Yes: Russell Curving, Daniel Jurkovic, Frank Curcio, Arthur McQuaid, Michael Gerst, Steven Castronova, Robert Brady

No: None

In summary Mr. Weiner indicated that it is a minor change, that the only thing they were really doing is enclosing the corner and fixing things inside which were not a zoning concern, respectfully the Zoning Officer needed to do what he needed to do but the Board has the authority to overrule that decision based upon the de minimis nature of the change so they ask that the Board do so. The Board Attorney indicated that if the applicant was successful with the appeal they would ask that the Zoning Officer grant a zoning permit. Mr. Weiner indicated yes.

A motion was made by Michael Gerst to grant the appeal, based on the historical documentation, survey from 2012, and witness testimony that the site was being used as a restaurant for many years. Second by Russell Curving.

(The Board Attorney indicated that in the Resolution there will be a condition of complying with the recommendations of the Board Planner.)

Roll call vote:

Yes: Russell Curving, Daniel Jurkovic, Frank Curcio, Arthur McQuaid, Michael Gerst, Steven Castronova

No: Robert Brady

The Board Attorney indicated a Resolution would hopefully be ready by the September 24, 2019 meeting and asked Mr. Weiner to advise his client regarding the appeals process. It was agreed.

JEFF GUNTHER
BULK VARIANCE ZB06-19-09
Block 601; Lot 14
15 Allaire Rd; LR Zone

Complete: 7/3/2019
Deadline: 10/31/2019

Bulk variance approval requested for side yard setback where 30 feet is required and 6 feet is proposed for a 11'7" by 24' carport.

Jeff Gunther, 51 Morsetown Road, West Milford and Ana Su, 15 Allaire Rd were sworn in. The Board Attorney indicated that the application would be amended to Ms. Su, as the actual property owner. Ms. Su indicated that Mr. Gunther would be speaking on her behalf. Brian Murphy who did the plans was ill and unable to attend. Mr. Gunther indicated that he was a general contractor familiar with the plans. The lot area required is 20,000 sq ft, existing is 4,338 sq ft, proposed is 4,338 sq ft; minimum lot frontage required is 120', existing is 58', proposed is 58'; minimum lot width required is 120', required is 85', proposed is 85'; minimum lot depth required is 150', existing is 60', proposed is 60'; front yard setback required is 40', existing is 18.1', proposed is 18.1', side yard setback required is 30', existing left is 20.3', right is 17.9' and proposed is 20.3' for left and 7.63' for right; maximum building height required is 35' two story, existing two story 25'9", proposed is 25'9" and the actual item that will be changing is the required for minimum building coverage is 10% or 750 sq ft, existing is 22.67%, or 983.4 sq ft, proposed is 28.35% or 1229.9 sq ft. Mr. Gunther explained they wanted to build a carport. Ms. Su is having an issue with ice buildup and water damming and there is a safety issue entering her house, and a 6' retaining wall that is a hazard. Mr. Gunther indicated that there was a 20' buffer on the lakeside of the property that the Lake Association owns. Mr. McClellan, Board Engineer indicated that there were two modifications to the building, one being a second floor deck being enclosed, which has no impact because it is within the footprint of the building already and the second is the carport, while it is increasing the building footprint it is decreasing the lot coverage number as it mostly is covering pavement that is currently there. From a storm water management aspect it is a good strategy, because the roof runoff is clean run off and that would provide a slight water quality advantage to the current exposed driveway. Ms. Su showed 14 pictures (exhibit A-1) of the house. Mr. Gunther added that in the LR Zone the lot requirement is 20,000 sq ft and this is a particularly undersized lot of only 4,338 sq ft.

The Board Planner indicated that if you add the property to the lakeside that is owned by the Property Association to the total lot size, it equals 21% which is actually lower than the existing coverage, and explained that the old zoning was R-10, which was 10,000 sq ft. The Board Planner indicated that the neighbor located to the side of the carport was approximately 40' away and in this neighborhood that is a huge amount of space, and it would not negatively impact anyone. Mr. Ochab had submitted a photograph for the Board and it was marked B-1.

Steven Castronova referred to a memo from the Health Department with an objections. It said that the well existing under the driveway must be inspected by a New Jersey licensed well driller and that the house was approved for two bedrooms, and appears to be three bedrooms. Assurances must be made that no NJDEP permits are required.

Mr. Gunther indicated in 2002 there was a permit taken out to eliminate the bedroom on the first floor and make two bedrooms on the second floor. Currently there is an office downstairs where the bedroom used to be. Mr. Gunther assumes that a closet had been removed from the room as required in the past but that maybe the entry had not been widened to the 4' opening as required by today's standards, thus the Health Departments question.

The Board Attorney indicated that any approval the Board grants is going to be subject to the Health Department's approval. There was discussion about when the well was put in and all agreed with no disrespect to the Health Department that this application does not impact the septic design.

Ms. Su reiterated that she needed the carport for safety issues.

The Public portion of the application was opened.

Seeing no one Michael Gerst made a motion to close the Public portion. Second by Arthur McQuaid. All were in favor.

A motion was made by Daniel Jurkovic to approve Bulk Variance Application ZB06-19-09, for s Block 601; Lot 14; 15 Allaire Rd; LR Zone, as amended to change the applicant from Jeff Gunther to Ana Su, for side yard setback where 30 feet is

required and 6 feet is proposed and for lot coverage where it is presently 22.6%, and 28.3% is requested for a 11'7" by 24' carport. Daniel Jurkovic indicated the subject property is undersized due to the old zoning laws and contains a buffer owned by the Lake Association as well. Approval would be subject to the approval by the Health Department, and the carport is not going over the pre-existing well or septic and it is an already paved driveway. If the applicant ever wanted to enclose the carport they would have to come back before the Board for an approval for that.

Second by Michael Gerst.

Mr. Gunther requested it be allowed that one end of the carport be able to be closed off to prevent the wind from blowing the snow into the carport area.

Mr. Jurkovic amended his motion to allow just one wall to be built for the purposes of the wind being blocked any more walls would require further Board approval. Mr. Gerst amended his second to allow one wall to block wind.

Roll call vote:

Yes: Russell Curving, Daniel Jurkovic, Frank Curcio, Arthur McQuaid, Michael Gerst, Steven Castronova, Robert Brady

No: None

The Board Attorney indicated he hoped to have a Resolution ready in time for the September 24, 2019 meeting. After the memorialization is published in the paper there would be a 45 day appeal period, it is recommended that applicants wait the 45 days to begin work.

JOSEPH GENEROSO
BULK VARIANCE ZB06-19-11
Block 6002; Lot 9.01
578 Morsetown Rd; R-4 Zone

Complete: 7/10/2019
Deadline: 11/7/2019

Bulk variance approval requested for a front yard setback where 125 feet is required and 80 feet is proposed to replace an existing deck and to add a roof.

Joseph Generoso and Jacqueline Generoso were sworn in. Mr. Generoso indicated that the survey shows the deck and they would keep it the same size, but they would like to also put a roof over it. Mr. Generoso indicated that he had hired North Jersey Septic inspection to confirm that the distance from the deck to the septic required by the Health Department was sufficient, and it was. The Board Attorney indicated that was not a matter for the Board.

The Public portion was opened. Thomas Van Decker, 364 Lakeside said, "let 'em do it."

A motion was made by Michael Gerst to close the Public portion of the application. Second by Russell Curving.

Mrs. Generoso questioned if they could put a front door in, since the Fire Marshall had told the family there was no access via the front door due to a chimney being built there by a previous owner. The Board Attorney indicated in the affirmative. Mr. Generoso asked if it were okay to acquire a zoning permit and begin work on the deck in the meantime. The Board Attorney indicated that even though there was little likelihood that someone would appeal the decision it is at the applicant's own risk. The Board can not order the Town to issue a building permit.

Roll call vote:

Yes: Russell Curving, Daniel Jurkovic, Frank Curcio, Arthur McQuaid, Michael Gerst, Steven Castronova, Robert Brady

No: None

A motion was made by Steven Castronova to approve bulk variance application ZB06-19-11. Second by Daniel Jurkovic noting that where 125' required and 80' is proposed for rebuilding a deck even slightly smaller and the addition of the roof is a rather de minimis type of exception.

Roll call vote:

Yes: Russell Curving, Daniel Jurkovic, Frank Curcio, Arthur McQuaid, Michael Gerst, Steven Castronova, Robert Brady

No: None

The Board Attorney indicated that there would be a 45 day appeal period from the date of the noticing of the memorialization of the application. Likely the application will be memorialized at the September 24, 2019 meeting.

A motion to approve all invoices for the Board Professionals by Steven Castronova. Second by Russell Curving.

Roll call vote:

Yes: Russell Curving, Daniel Jurkovic, Frank Curcio, Arthur McQuaid,
Michael Gerst, Steven Castronova, Robert Brady

No: None

Daniel Jurkovic indicated that regarding a bill for Stephen Glatt Esq., the Board Attorney, he wanted it on the record that due to lack of quorum for the July meeting, the Board Attorney had put in a lot of time working with the Applicant's Attorneys, one in particular where the case was that the applicant may have passed by default if it were not for the Board Attorney convincing the applicant to get an extension, avoiding the expense and litigation that could have been involved with a controversial application. The Board Attorney expressed appreciation for the comment and reflected that he has not had a bill that substantial perhaps ever.

The Board Chairman asked for a motion for the approval of the revised October 23, 2018 minutes. (Final draft not submitted initially, a working draft was inadvertently submitted.)

A motion was made to approve the revised October 23, 2018 minutes by Steven Castronova. Second by Daniel Jurkovic.

Roll call vote:

Yes: Russell Curving, Daniel Jurkovic, Frank Curcio, Arthur McQuaid,
Michael Gerst, Steven Castronova, Robert Brady

No: None

A motion was made to approve the June 25, 2019 minutes by Steven Castronova. Second by Russell Curving.

Roll call vote:

Yes: Russell Curving, Daniel Jurkovic, Frank Curcio, Arthur McQuaid,
Michael Gerst, Steven Castronova, Robert Brady

No: None

Due to lack of quorum there were no July 23, 2019 meeting minutes.

Motion for adjournment of the August 27, 2019 meeting by Steven Castronova. Second by Russell Curving.

All in favor. None opposed.

ADJOURNMENT at 10:32 PM

Special meeting September 19, 2019 at the West Milford High School Auditorium at 7:00 p.m.

Next regular meeting September 24, 2019 at 7:30 p.m.

Respectfully submitted by,

Deidre Ellis, Secretary
Zoning Board of Adjustment