

MINUTES
Of the Township of West Milford
ZONING BOARD OF ADJUSTMENT
April 22, 2008
Regular Meeting

Robert Brady, Board Chairman, opened the Regular Meeting of the Zoning Board of Adjustment at 7:49 p.m. The Board Secretary read the Legal Notice.

Pledge

The Chairman asked all in attendance to join in the Pledge of Allegiance

Roll Call

Present: Ada Erik, Francis Hannan, Daniel Jurkovic, Arthur McQuaid, Barry Wieser, Frank Curcio, Robert Brady

Also Present: Stephen Glatt, Board Attorney, William Drew, Planning Director, Richard McFadden, Board Engineer, and Denyse Todd, Board Secretary.

Absent: William Lynch, Gian Severini,

The Chairman asked Mr. Wieser to sit for Mr. Lynch and Mr. Curcio to sit for Mr. Severini. There is a full Board for this evening with the two alternate members. The Chairman explained the procedures for the Board of Adjustment.

MEMORIALIZATIONS

RESOLUTION NO. 4-2008
MICHAEL AND TRACEY LOMBARDI
Bulk Variance #0730-0792
Block 15401; Lot 34, R-4 zone
11 Meadowview Court

Motion by Ada Erik to memorialize Resolution No. 4-2008 granting approval for bulk variance relief.

Second Arthur McQuaid

Roll Call Vote:

Yes: Ada Erik, Francis Hannan, Arthur McQuaid, Barry Wieser, Robert Brady
No: none

RESOLUTION NO 5-2008
JOHN & NANCY MC GRATH
BULK VARIANCE #0730-0795
Block 15203; Lot 10, R-4 zone
30 Longstreak Road

Motion by Ada Erik to memorialize Resolution No. 5-2008 granting approval for bulk variance relief.

Second by Barry Wieser

Roll Call Vote:

Yes: Ada Erik, Francis Hannan, Arthur McQuaid, Barry Wieser, Robert Brady
No: none

RESOLUTION NO. 6-2008
SHILOH BIBLE CAMP
Use Variance #0440-0663
Preliminary & Final Site Plan #0420-0180AB

Bulk Variance #0430-0664
Block 6002; Lot 47
753 Burnt Meadow Road; R-4 Zone

Motion by Ada Erik to memorialize Resolution No. 6-2008 for a one year time extension.

Second by Dan Jurkovic

Roll Call Vote:

Yes: Ada Erik, Francis Hannan, Arthur McQuaid, Barry Wieser, Robert Brady
No: none

RESOLUTION NO. 7-2008

JON FRANK

Bulk Variance #0830-0801
Block 4601; Lot 9
776 Burnt Meadow Road; R-4 Zone

MOTION by Ada Erik to memorialize Resolution No. 7-2008 for bulk variance relief.

SECOND by Dan Jurkovic

Roll Call Vote:

Yes: Ada Erik, Francis Hannan, Arthur McQuaid, Barry Wieser, Robert Brady
No: none

CARRIED APPLICATIONS

EXXON ON THE RUN

Use Variance #0640-0764

Preliminary & Final Site Plan #0620-0274

Bulk Variance #0630-0275

Block 15505; Lot 1

2899 State Highway 23

There was a typo and it should reflect the complete date as August 15, 2007 not 2008.

Marlene Eickmeyer, Esq. appeared on behalf of Exxon On The Run to explain that there are delays with the DOT Access Permit and they are requesting a 60 day adjournment. Mr. Brady asked if she could be more specific and she said that they are progressing with the application but are having problems with the DOT with regard to the egress and ingress. Mr. Glatt asked if Mr. Meese gave any indication of when he thinks they will be prepared and Ms. Eickmeyer said a 2 month adjournment would be proper so they weren't wasting the Board's time.

Mr. Jurkovic discussed the Highland's Act and the groundwater recharge rate. He also asked if their Engineer could supply the recharge rate for the basin. Ms. Eickmeyer has the authority to sign a 60 day extension. The deadline is now September 10, 2008. The next meeting for Exxon to attend will be June 24, 2008.

Motion by Ada Erik to approve the time extension request.

Second by Arthur McQuaid

Roll Call Vote:

Yes: Ada Erik, Francis Hannan, Daniel Jurkovic, Arthur McQuaid, Barry Wieser
and Robert Brady
No: none

Ms. Eickmeyer signed the extension for 60 days.

SCOTT LEONESCU

Use Variance No. 0740-0789

187 Larue Road

Block 15401; Lot 51; R4 Zone

Mr. Masessa spoke on behalf of his client, Scott Leonescu and requested the matter be carried for his client to submit an amended application. Mr. Masessa has been in touch with Mr. Glatt regarding this and other issues. Mr. Glatt asked if they would give a 60 day extension and also informed him that if any revised plans were submitted they would need to be in the Planning Department 10 days before the next meeting. Mr. Masessa was in agreement with both requests. Mr. Brady asked if there were any questions. Mr. Jurkovic asked if Mr. Glatt was comfortable with this and Mr. Glatt said he feels because of the bifurcated application that it would be fine.

Motion by Daniel Jurkovic to carry the application.

Second by Arthur McQuaid

Roll Call Vote:

Yes: Ada Erik, Francis Hannan, Daniel Jurkovic, Arthur McQuaid, Barry Wieser
and Robert Brady

No: none

Matter carried to May 27, 2008.

CHARLES AIKEY

Final Subdivision 0410-1950C

Block 9501; Lot 19.02, R-3 Zone

144 Wesley Drive

Mr. Aikey has requested a one year time extension because of Highlands Council delays. He already has an application in the Planning Department. Mr. Jurkovic asked about the location of the property and clarified the reason for the extension. No further questions.

MOTION by Ada Erik to grant time extension.

Second by Arthur McQuaid

Roll Call Vote:

Yes: Ada Erik, Francis Hannan, Daniel Jurkovic, Arthur McQuaid, Barry Wieser
and Robert Brady

No: none

1952 UNION VALLEY ROAD

Use Variance #0540-0698

Preliminary & Final Site Plan # 0420-0167AB

Bulk Variance #0430-0647

***De Minimis* Exception**

Block 3601; Lots 1 & 3

1952 Union Valley Road; CC Zone

Mr. Curcio recused himself from this application. Mr. Glatt asked Mr. Barbarula attorney for 1952 Union Valley Road, if they want to proceed with a 6 member Board since 2 regular members are absent. Mr. Brady pointed out that Mr. Curcio recused himself and he took a seat in the audience. Mr. Glatt gave 1952 the opportunity to discuss whether or not they wanted to proceed at this time. Mr. Barbarula returned and feels that they shouldn't proceed without a full Board since there is a use variance involved. They want the application to be carried for 30 days. Mr. Barbarula stated that Mr. Drew had not had a chance to review the recently submitted information in length. Mr. Barbarula asked if they could get the review ahead of time. Mr. Drew said it wasn't a problem and that he had given a revised report stating the differences in the new information but did not get a chance to do an in-depth analysis of the new information. Mr. Drew also said that a month should be enough time to do the report. Mr. Brady asked if any new reports would be submitted, Mr. Barbarula said that they would make sure any revised plans would be sent sooner, if possible. Mr. Barbarula would like any reports from the Planning Department with enough time to make adjustments. Mr. Glatt asked if they would be prepared to address the items of the Engineer's at the next meeting. Mr. Barbarula said that other reports weren't received. Fire Marshall Report and Police Report.

The applicant was asked by a Board member to advise what the recharge rate is, if possible, at the next meeting. Mr. Barbarula wanted to carry for 30 days, if possible, in case there are new submissions and if necessary will re-notice however would he be able to take 60 days if needed. He would prefer not to have to come back at 30 days if they aren't ready, and he will sign for a 90-day extension. Mr. Brady said that is not the process. Mr. Barbarula will carry for 60 days and carry it to the June meeting with a 90 day extension granted.

Motion by Ada Erik to carry the application for 60 days.

Second by Barry Wieser.

Roll Call Vote:

Yes: Ada Erik, Francis Hannan, Daniel Jurkovic, Arthur McQuaid, Barry Wieser,
Robert Brady

No: none

Frank Curcio returned for the next application.

VINCENT LANZA

INTERPRETATION #0870-0803

Block 9501; Lot 12

1383 Macopin Road; R-3 Zone

It was confirmed that Mr. Lanza noticed for this application. Mr. Glatt swore in the applicant who lives at 40 Forest Lake Drive, Hewitt. He is requesting an Interpretation of the Adaptive reuses ordinance. Mr. Glatt explained that Mr. Lanza needed to explain his questions regarding Ordinance 50-147, letter (b). Country Store, Country Inn, Bed & Breakfast or an Antique Store. He thinks two uses can be used at the same time. He also has questions about the parking provisions. Each specific land use has its own guidelines for parking. Only the Bed & Breakfast has something specific. Other uses don't have specifics so he feels that they can be combined. Permitted Adapted Reuses is the section in question and parking requirements for each use could be added up and all used together. The previous country store and antique store were dual uses. Mr. Lanza wasn't sure if he purchased in 2000 or 2002. Mr. Glatt asked if there was an abandoning of the use. Mr. Lanza didn't know. It is a 4,000 square foot building so it is too big for just a country store. Mr. Brady asked if there were any questions. Mr. Lanza wanted it to be a country store with a restaurant. Mr. Jurkovic asked about his plans. He also went over the Ordinance's specific sections with regard to the innocuous parking requirement. The parking plan was not approved except for the one use. Mr. Jurkovic said the parking would have to be re-approved. Approval was for 22 spaces. He doesn't want the Board to discuss the parking plan. The Board may not approve his Interpretation, so if he wants to pursue this use variance it will need to be filed and the Zoning Board of Adjustment will have the parking issue as part of that application. The Ordinance was revised and approved by the Planning Board in 1996. There is a Resolution on file with the Ordinance. Mr. Glatt reviewed the Resolution. Mr. Glatt swore in Mr. Drew as a witness. Mr. Drew has been the Township Planner for 17 years. He is familiar with the Ordinance since he worked with the Planning Board on the Ordinance. Mr. Glatt asked if Mr. Drew feels Mr. Lanza is correct in his interpretation and Mr. Drew said no he doesn't feel he is. Mr. Glatt asked Mr. Drew what his interpretation is. Mr. Drew is the author of the ordinance. The Board wanted to have an Ordinance for appropriateness with regard to historical sites. It was not the intention to have the uses mixed. A country store with a restaurant was not the Board's idea. A store having a counter with prepared food was ok as long as the guidelines were followed. It was written this way so that an owner of a historic structure couldn't pick and choose. Mr. Glatt asked Mr. Drew what would be the next step for Mr. Lanza and Mr. Drew said a Use Variance before this Board if more than 1 adaptive use was being used. Mr. Glatt asked about Planning Board Resolution No. 2008-7, a site plan approval to separate a residence from a restaurant. It refers to a parking plan. Mr. Jurkovic asked about item #C, (1), (e) if exclusive why the choices for the parking and Mr. Drew explained the calculation with the combination of the 2 uses. You can't choose part of use number one and part of use number 2. Ada Erik asked if a country

store couldn't have a restaurant then how come Cracker Barrel's can be used. The answer was, it's not a historic house in a historic structure. This is a residential zone. Mr. Drew said the Board was careful not to create a nuisance in a residential zone. Mr. Brady asked if there were any questions of Mr. Drew.

Mr. Lanza had a chance to ask questions of Mr. Drew directly. He explained why he had a question with regard to number B (1) or number (2) (these are under B. Permitted adaptive reuses) He asked why the wording on the Bed & Breakfast is more specific and he was told by Mr. Drew that to separate it from the other uses. Mr. Lanza asked about parking again and parking based on country inn and restaurant. Mr. Glatt asked Mr. Drew about the whole ordinance each zone has permitted uses. Mr. Glatt asked if people could pick and choose and Mr. Drew said only in commercial zone. The residential permitted uses include an equestrian center with a house. Cell towers are allowed, a farm and a house is acceptable. There are certain individual uses and commercial zones that can have mixed uses for example a shopping center. This Ordinance is specifically intended for historical structures. Commercial zoning cannot be relied upon with historic adaptive reuses. Mr. Hannan said that if all uses were allowed the wording would be number 1 and/or 2 and/or... which wasn't the case it is 1,2,3 or 4. Mr. Drew said that was correct. Mr. McQuaid said that the specifics are a restaurant and a country inn. Mr. Drew has a report that was prepared when the ordinance was being prepared. Mr. Glatt asked to see it. This was marked as Exhibit B-1 and Mr. Lanza was given the opportunity to read it as well.

The report is dated January 19, 1996 by William Drew and Linda Lutz addressed to the Planning Board. The Board was concerned about floor space allocated to eating and allowed 10 % of the space for prepared foods and only counter space. Mr. Glatt said there was nothing in the report saying that there was any combining of uses. Mr. Lanza said uses with an "s" is more than 1 use. Letter (d) is (a) through (d) and wording makes it sound like all were used together. Mr. Glatt said maybe wording is off but that was why Mr. Drew was testifying. The Board will hear from members of the public. Mr. Brady asked if there were any questions, also since after 9:00 motion to take a break.

All in favor to take a break.

Bettina Bieri of 17 Bearfort Road was sworn in as a citizen to give insight as to the approved plans with regard to the definition of historical designation; she doesn't feel the comparison to the Commercial Zone is appropriate. Ms. Bieri is a member of the Planning Board. The applicant appeared before the Planning Board with different choices for the use of the store. There were conditions with the approval. He was told that he had to choose which use. The restaurant was not brought up at the time so approval was based on a country store. She wanted to make sure that all facts were heard. Mr. McQuaid thanked her for coming forward tonight. She feels it all should be re-reviewed by either the Planning Board or Board of Adjustment.

Russ Muniz, 12 Relda Avenue, his property is adjacent to the property. The Board stated that this was not a site-specific application, Mr. Muniz thanked the mayor, and said the use was specific. Again, only the ordinance is before the Board not the site in question. Mr. Glatt explained what Mr. Lanza will have to prove. Mr. Glatt said we couldn't hear the specific concerns tonight. His permitted use approval can not be undone.

Thomas Hayes, 16 Relda Avenue was sworn in. The allowed uses were gone through and he asked if just a restaurant could be there and was told only with a bed & breakfast. The restaurant is not a country inn.

Ada Erik moved to close public portion.
Second by Arthur McQuaid

The uses are 1 or 2 or 3 or 4 or part of 1 and part of 2. Mr. Jurkovic feels his interpretation is plausible but feels that Mr. Drew's interpretation was more plausible and considering his involvement with the Ordinance he tends to agree with the Planning

Director's interpretation. Mr. Brady agrees. Mr. Jurkovic said he has recourse but needs to file a different application for use.

Motion by Arthur McQuaid to decline Mr. Lanza's interpretation of the ordinance. Mr. Hannan said Mr. Drew's testimony shows that it is not allowed nor was it the intended use of the Planning Board. Mr. Glatt said if voting in favor of the motion that they are denying the applicant's interpretation request.

Second by Ada Erik

Roll Call Vote:

Yes: Ada Erik, Francis Hannan, Daniel Jurkovic, Arthur McQuaid, Barry Wieser, Frank Curcio and Robert Brady

No: None

RUSSELL CURVING

Bulk Variance #0830-0798

Block 9001; Lot 17

1494 Macopin Road, R2 Zone

Mr. Glatt swore in Russell Curving, 1494 Macopin Road. Mr. Brady explained that Mr. Curving needed to provide information to the Board for them to allow the variance. Mr. Curving said there was no available property to purchase surrounding his property. He is into antique cars, has a boat and wants a garage on Vreeland Road so he wouldn't pull out onto Macopin. He lives on the corner of Macopin and Vreeland so he has two front yards. He can't go towards Macopin because of his septic and his well is in the back yard. 36 ½ X 39 ½ garage is proposed. The applicant indicated he will not be doing auto repair in the garage. Mr. Drew said the plan says 38 ½ feet Mr. Curving apologized it is supposed to be 39 ½ feet. He knows it is large, there will be a pit for groundwater. Mr. Brady said the seepage pit should be 50 feet not 25. Mr. McFadden said that there was room to move it if the scales are correct. Mr. Jurkovic asked about the other garage. Mr. Jurkovic asked if the variance is 2 accessory structures. Only the proposed garage is in the calculation of building coverage. 1500 square foot maximum for accessory structure. Mr. Brady asked about surrounding area and there is Township property. Mr. Jurkovic said that the structure would be 1,911 square feet which is larger than what is on the application. Mr. Jurkovic said that if the building was 1500 square feet, he would not need a variance. A Board Member said that some people stack the cars to eliminate the variance problem. He would need to take 12 feet off of the length. The two garages would need a maximum of 1500 square feet. The applicant asked if he builds an addition would it change? Mr. Jurkovic said 10% for living and 3% for accessory structure without a variance is permitted.

Mr. Glatt explained, that the Board isn't trying to redesign his project. Mr. Curving has large building coverage, almost 2 houses and a garage. The variance runs with the land forever if it is granted. Mr. Hannan said that the advise of a professional is helpful. Mr. Glatt said, 1500 square feet is permitted, and the applicant is up to 2700 square feet, counting both garages.

Mr. Curving asked if he could come back, since the ordinance needs to be reviewed. A Board Member also suggested that planning should be addressed with regard to positive and negative criteria. Mr. Brady said he needs the well certificate. The applicant is requesting a 30 day postponement. Mr. Drew told him to contact him if he needs help. Mr. Glatt asked if he would give a 30 day extension and he said yes. Revised plans need to be sent to the Planning Department at least 10 days before the next meeting.

Motion by Ada Erik to postpone for 30 days

Second by Dan Jurkovic

Roll Call Vote:

Yes: Ada Erik, Francis Hannan, Daniel Jurkovic, Arthur McQuaid, Barry Wieser, Frank Curcio and Robert Brady

No: None

Mr. Glatt said he may need to re notice if needing to change plans.

Approval of minutes

Motion by Ada Erik to approve the minutes of the March 25, 2008 Regular meeting

Second by Daniel Jurkovic

On a voice vote, all were in favor.

Opposed: none

Mr. Jurkovic thanked the Mayor for coming. She said she would like to come more often and said they did a good job.

Final Draft of the Annual Report.

Chairman Brady indicated since the Board Members had no issues with the report that he can sign it and it cant be sent to the Mayor and Council.

Adjournment

Motion by Ada Erik to adjourn the meeting of April 22, 2008.

Second by Barry Wieser

All in favor to adjourn the meeting

Meeting adjourned at 9:56 p.m.

Adopted: May 27, 2008

Respectfully submitted by,

Denyse L. Todd, Secretary
Zoning Board of Adjustment