

**MINUTES
Of the Township of West Milford
ZONING BOARD OF ADJUSTMENT
April 26, 2011
Regular Meeting**

Robert Brady, Board Chairman, opened the Regular Meeting of the Zoning Board of Adjustment at 7:37 p.m. The Board Secretary read the Legal Notice.

Pledge

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

The Chairman made note that there was a full Board for this meeting. He explained to the public about the Board of Adjustment and the publication of the dates in the newspaper. He also explained the Open Public Meetings Act of the State of New Jersey. Any appeals go to the Superior Court of the State of New Jersey.

Roll Call

Present: Ada Erik, Steven Castronova, James Olivo, Frank Curcio, Arthur McQuaid, Gian Severini, Russell Curving and Robert Brady

Also Present: Stephen Glatt, Board Attorney, William H. Drew, Denyse Todd, Board Secretary

Absent: Vivienne Erk

MEMORIALIZATIONS

**JOSEPH VENGEN
RESOLUTION NO. 10-2011
BULK VARIANCE ZB01-11-01
Block 16802; Lot 8
137 Doremus Road; R-4**

**Motion by Ada Erik
Second by Steven Castronova
Roll Call Vote:**

Yes: Ada Erik, Steven Castronova, James Olivo, Frank Curcio, Robert Brady
No: none

**OLEKSIY LUCHYNSKYI
BULK VARIANCE #ZB02-11-02
Block 12001; Lot 36.01
166 Maple Road, R-4 Zone**

The Board Attorney swore in Oleksiy Luchynskyi, 166 Maple Road, West Milford, NJ. Tomira Luchynskyi, 166 Maple Road, West Milford. Mr. Luchynskyi explained to the Board that they have a single story dwelling, with no basement, garage or shed on the property. He needs to have an accessory building for home equipment, tools, a mower; it is just a garden shed. They own 4 acres of property, they are only able to use about an acre and a half because they are on the mountain and there is ledge all over the property. There is a drop of about 60 or 70 feet past the ledge. There is no room on the side of the house with the setbacks and everything. The house is only 70 feet away from the property line. There is no place to put it in the back or the side. The only place to put it is in front. He is asking for permission to build it. Presently there is a sunroom in the

back of the house that is roughly 6 x 8. The previous owners used it as a sunroom but he keeps his toolbox in it and a chain saw. He has a four-year-old son and they are keeping hazardous materials inside the house. The lawn mower is outside and being killed by the weather. There is a proposed addition for the future. There is no garage attached to the house as depicted on the plan.

Mrs. Luchynskyi reiterated that they had no storage area. The property is on a ledge so there is no basement area. Currently there are two closets and a coat closet. They have no area to store paint or other things they use in their house. They rent a storage facility for \$250.00 per month, Chairman Brady asked if there was any available property to purchase to eliminate the requirement. Mr. Luchynskyi indicated that he did not believe there were any properties around that could help him. Mr. Glatt asked if Lot 35.02 was a vacant lot and there is a house on it. There were photographs marked into evidence. A-1 is the proposed location of the shed. A-2 depicts the paved driveway, where it goes down. The gravel area shows where they would like the shed. The attorney had the applicant mark the area with an X on A-2. A-3 shows the existing storage area for the present time. This is near Lot 35.02. The applicant pointed out the well on the property. A-4 shows the left side, 36.02 which show the ledge. The driveway easement was shown to be on the plan which is the one given to the Board by the applicant. The shed is not by the easement. The attorney does not need the maintenance agreement. The building plans were next for discussion. A-5 is the building plans. Mrs. Luchynskyi explained the way the plans were done with the elevations, it would be pleasing and not an eyesore. Mr. Brady asked about the plan and it was confirmed that it was the front facing the driveway. The applicant explained that it was a simple overhead door with an entry inside. It would be utilized for storage like what would be kept in the home in a garage or a basement. No plans for plumbing or heating there would be light on the building for outside. The attorney asked the applicant strictly for personal use. The applicant said absolutely, no commercial use. A Board Member pointed out it will be 16 foot 8 inches in height. The applicant stated it is lower than any trees in the area. The shed would be sloped down from the driveway point to the end roughly 2 to 2 1/2 slopes. He plows and pushed it down toward that side. His access will not be blocked. The applicant showed the location of the new septic. Those plans consisting of 2 pages were marked as A-6 it is installed and approved by the Health Department; they are waiting for final certification. That elevation is 1200 feet and Maple Road is about 200 feet. Mr. Glatt explained that there were hand written notes on the plan but not part of Ballester's plan. The Planner asked if the area shown on A-1 was sufficient or would they be doing additional grading or filling and the applicant said no that was enough. Mr. Drew confirmed that what was shown would be it. The location of the far left corner would be in front of the rocks. When asked whether a pole barn or with pillars the applicant responded whichever the building department requires but he would at least like a slab so he could put his ATV in there. Mr. Glatt asked the applicant to supply the neighbor who is present with copies of the photographs and also the septic plan and the architectural plans for review so they would have the information when they were ready to speak about the application.

The Chairman asked the applicant if they had anything to add before the application was opened to the public and they did not. He then asked the Board if they had any questions of the applicant and Mr. McQuaid asked if they have commercial vehicles on the property. Mr. Luchynskyi said he owns a company so he drives a commercial vehicle, a pick up truck. 1235 Route 23 South is where his shop is located. That is also the location of his storage; the storage is above the shop. He has seasonal things and crib and different items. Just his pickup would be at his home. They are staying in this house; they plan to have another baby. Mr. Glatt asked about Mr. Ballester's plan and commented that on the lower portion there is an existing two-story frame house. The applicant explained that the plan shows the plans from the person prior to them owning it. It is just a proposal and he marked what is not there. The other is current. The sunroom shown is where the storage takes place now. The septic was only approved for a two bedroom septic and they wanted that expanded. They received approval for a 4 bedroom septic. They confirmed that they were only in front of the Board for the reason of the shed. Mr. Brady asked if there were any other questions of the Board or the expert and there was not. Chairman Brady explained that it was necessary to open the meeting to the public.

Mr. Glatt asked for the exhibits back.

Mr. Glatt swore in Mark Grawehr residing at 176 Maple Road, West Milford, NJ. Mr. Grawehr would like to explain why he does not want the garden shed placed on the common driveway. Mr. Glatt asked for the photographs Mr. Grawehr was going to show so he could mark them into evidence as O-1, O-2, O-3, O-4, O-5, O-6, O-7, O-8 & O-9. "O" is for objector. Mr. Grawehr began explaining that photos O-1 thru O-5 begin to show that as you come off of Maple Road how beautiful the driveway is. He feels that you have the sense of being in a National Park, granite walls on each side that have been made all of the way up, switching back and forth along the two property line. There are pine trees and granite walls and they add to the beauty. When you get to the summit where they see a panoramic view New York City on one side. As you approach common driveway. The neighbors cleared trees and filled in that area which is O-7 that shows the erosion. This site cannot be seen from the applicant. The septic area blocks the view of the proposed shed. The point of where the construction is proposed is at the end of the common driveway. A Board Member confirmed a photograph. He wanted to give the Board perspective as you come up the hill and as you leave and the views from their home. They are upset by proposed shed. He wanted to handle it personally. The situation is unique. There is a legal agreement to maintain the appearance of the common driveway. Mr. Grawehr asked why the Town has an ordinance. They have worked hard to improve their home as well as the neighbors. The applicant has shared information that they plan to have a 6,000 square foot home that will model a French castle. They look forward to the day when the neighbors have their dream come true. The location and the clearing that has taken place as well as the loads of fill that have been placed there which are visible from their home are an eyesore. There would be one thing to grant a variance if it was a regular layout but they have a common driveway to what he considers estate properties. They have been offered well over a million dollars for their home. They have invested in their home and look to sell one day. They have lived in town for about 30 years but someday they will plan to sell. He's concerned that any potential buyers would care that there is a building in front of the home by a common driveway as you approach the homes. His understanding of the ordinance but indicated that the ordinance is established for good reasons but not limited to representing the interest of adjacent property owners and protecting against reducing or impacting the value of neighbors and maintaining an orderly appearance within the community. It cannot be seen from the road but these are properties within the town that taxes are paid on and enjoy. Mr. Grawehr indicated that Mr. Luchynskyi indicated that he could not access a shed in the back yard. It is a large back yard. There was an existing shed in the back that was removed as well as a second shed that was removed. The applicant has brought in excess of 100 tandem loads of soil up the common driveway and put in retaining walls in the back, which are beautiful. The back yard is massive, they shared that they plan to build a swimming pool in the yard and they are happy for the applicant. The applicant decided to relocate his septic system it was relocated it to the front of the house. If he wanted to put the shed in the front yard at least it would be beyond the common area. He does not understand why it cannot be built in the back. He believes the answer is accessibility; he wants to get vehicles to the garden shed. He does not know why he would need that, he would propose having it constructed in the back. He would have no problem with a side yard variance. He would be welcome to intrude on his side yard and build a garage. He has an issue with the eyesore as the properties are approached. He constructed a patio on the right side as you face his home that could be why he cannot have it in back. Mr. Luchynskyi is a building contractor and he is concerned about the actual use. He works in New York City, he indicated to him that he ultimately plans to put water and electric in the building. It seems large to be a garden shed. It is approximately 20 X 24. The area that has been cleared out has been over a period of time, been an area where Mr. Luchynskyi's workers parked their vehicles and that went on for some months. He has not done it in a while. They are concerned it will be a place for vehicles. Besides all of that, before the Grawehrs bought their home the previous owner and the Grawehrs entered into a Maintenance Agreement with regard to the common driveway.

Mr. Glatt explained that the Board did not see the Agreement because from a legal perspective, that is purely a maintenance agreement for the roadway. Mr. Glatt read

through it and it has nothing to do with what is off the roadway. Mr. Glatt may be incorrect, the site plan refers to an easement and the Board does not have the easement. The applicant's engineer put the easement on the plan. The agreement is for the maintenance of the road. This Board could not make a decision in any way to interpreting the maintenance agreement and making a determination. Even if in fact what he was proposing was right in the middle. The Board has to make a zoning determination and not a legal determination where there is a possibility of a homeowner's dispute relating to an agreement on the property. Mr. Glatt read the agreement and looked at the site plan it can be clearly seen that the building is off of the right of way, it is not in the right of way. Mr. Glatt indicated to Mr. Grawehr that he explained how it would effect the aesthetics of their house, but he cannot allow the Board to have a copy of the agreement. It is not within their purview to make a determination on it. Mr. Grawehr said he understood and commented that he understands the legal position and why that may be so however, the agreement reads the driveway area shall be maintained without the addition of structures, statues, ornaments, signs, modifications, unless mutually agreed. It also speaks to the natural conditions as they exist. Areas to be left in the natural state to maintain an ecosystem that will discourage erosion and provide sufficient...Mr. Glatt pointed out that he is not reading the WHEREAS clauses, Whereas the parties share a common driveway, whereas the parties are desiring to enter into an agreement to maintain the common driveway. It is talking about what is in the common driveway. The easement has not been shown so there is no way to know what that says. Mr. Glatt shares Mr. Grawehr's frustration but the Board cannot consider it in their determination. Mr. Grawehr indicated that what was said might make the Board disqualify this. Mr. Glatt indicated that he hopes it would not they have to find zoning findings of fact. He hopes it would not influence them because if it did then there may be an issue on an appeal as to their fact-finding based on zoning considerations. Mr. Grawehr indicated that his personal attorney felt the language in the agreement covered it. His home was purchased with that agreement and they hope they can live in peace and cooperation with their neighbors and honoring the spirit of maintaining a nice environment when approaching their homes. The Grawehrs would not build a building so close that the neighbors could see it and they themselves could not. It is their desire to move forward respecting the purpose of the ordinance and remaining sensitive to each others interest. He sees no reason why it cannot be built in the back of Luchynskyi's home. He feels the area that was cleared and filled should be restored to a natural condition. He thanked the Board. Mr. Brady asked if he was familiar with the other plans, the one that shows ledge rock. Mr. Brady indicated that from the septic plan the side where septic is slopes in a direction and the other slopes up and is much higher, it goes from 1210 to 1214 so it is higher. Mr. Grawehr said the rest was open and other areas were filled. Mr. Brady asked about the view through an area on the plan and Mr. Grawehr indicated that it was zero because of a Norway Spruce. Mr. Brady explained that the Board does not help the applicant redesign the make a determination based on the application, but was wondering for future reference where else, Mr. Luchynskyi may have moved the septic field since there are zoning codes for in ground pools so they cannot be within a certain distance of a septic field. Mr. Brady asked if there was another area that was not in clear view of their property would Mr. Grawehr have any objection and he said not at all. Mr. Grawehr then pointed out an area he felt would be suitable.

Mr. Glatt indicated that the Chairman and Mr. Grawehr should stop so the applicant could see what the neighbor was pointing out without any comment so he would have the opportunity if he wants to because the Board cannot redesign the application. If the applicant wants it where he wants it then the Board will vote on it and that will be that. On the other hand if the neighbor makes a suggestion that is viable to the applicant that would be wonderful on the otherhand if the neighbor is making a recommendation where he feels it is appropriate and the applicant has a reason why it cannot got there certainly a zoning reason then that would help the Board with its determination to grant the application as it lies. Mr. Brady indicated that he was asking what view the objector had from certain angles. Mr. Luchynskyi explained that there were pine trees that block the house, like a tree wall there is a green wire that is a dog fence to secure the dog from going on to their property since they have a four year old son. He pointed out where an old shed used to be that got was eroded and got knocked down, they are on top of the mountain and their weather conditions are different with winds. The neighbor asked if

the house would be knocked down when the applicants purchased the home and they were not. There were animals living in the shed. He pointed out a ledge and a retaining wall three feet in height pinned into the ledge so they could have some grass. There was rock on top of rock and weeds and snakes, it was dangerous. There was no grass in the back yard. Nothing but broken trees, anything that was in the diameter of 8 inches or bigger were saved. Exhibit A-4 is the neighbors house and is roughly 20 feet from the property line and the applicant's view is a satellite dish. The Board stopped that conversation. Mr. Brady asked Mr. Grawehr if the picture was of his home and he said yes it was a side view. The trees are visible from the picture. Mr. Grawehr disagrees with some of what the applicant stated but will keep his inferences to himself. He never intended to imply that he needed to knock his house down it was what he heard was going to happen that a builder was going to come in and knock the house down and he asked the question are you going to knock the house down it was not meant to offend.

The neighbor was asked if he could see the shed from his home and through every window with the exception of the far left window he could. Mr. Castronova asked what was there before and it was trees in a natural state. Mr. Brady asked the Board if there were any questions of the objector and then if anyone else would like to speak.

Mr. Glatt swore in John Veltri, 160 Maple Road, Lot 3502. He likes both neighbors and does not want to get involved in a dispute but he has been there the longest and wanted to say before the applicant moved in it was an eyesore. There was a helicopter shell there that the previous neighbor had. He also stated he found out two things the applicant was going to have more kids and he thinks it is great. Someday he would sell his house for a million dollars, which brought chuckles. He was there when Pete Wosyluk built the house, it's a great driveway but it is all fill and the is partially on his property and he does not care. The shed the previous owner put on he feels was illegal. He said what the applicant has done increased the property value, he understands about the shed, but they put a ton into their house and property, they opened it up, the views are wonderful, the front yard is rock and fill but mostly rock. He has no objections, he has faith, he does not want to look at plans, he has seen what he has done already. He's putting his own sweat into this, young guy, a craftsman; it's going to look good. Mark has done a great job on his property and stabilized it. He has no problem with the shed going up. He sees the house every day it is pretty close to the property line. Whatever he does will look nice, he has no objections, he does not want to get in the middle of anything and understands the Grawehrs concern and he feels the applicants are trying to build a family, he thinks it will look nice maybe put a few trees around it. Where the other shed was you could not put anything. He's comfortable with what he is doing; everything he has done up to date has been first class. The Board thanked Mr. Veltri.

Motion by Steven Castronova to close the public portion
Second by Ada Erik

All in favor to close the public portion
Opposed none

Mr. Brady asked if there was discussion by Board Members. Mr. Curcio was wondering if there was any way to please both maybe some trees that will look nice instead of them looking at a building. Mr. Brady does not disagree with that but in the past on more than one occasion with redesigning applications. Mr. Brady spoke with the planner and could see at least one other site that he could see on the property that could be accessible by vehicles for the needs the applicant described. It would be limited visibility if any to neighbors on either side he indicated that the applicant might want to think about it and reapply, Mr. Curcio wanted to see the location. The Board is discussing the application.

Mr. Glatt began explaining that there is a situation with a neighbor dispute and as a Board, they would like to make everybody happy. Under the circumstances, he does not know if they could do it. The applicant has submitted an application, the Board does not have the right to redesign it, he feels that the parties may have talked on other occasions, it seems like they have a nice relationship and hopefully will continue to have one. Maybe they can work out an alternative either they have not been able to or they will not, one or the other does not want to. There is an application a motion is needed

and discussion is needed. The motion is either to grant the application or to deny the application. If a motion to deny it there must be zoning reasons why it is being denied. If granting it there must be zoning reasons why it is being granted. Since the applicant has come before this Board for an application to do something that the ordinance does not allow, there is lead way in placing conditions on it. So if the Board thinks some kind of a tree buffer or something reasonable the Board has a right to do that. A condition can be put on it for landscaping as long as it is reasonable within the purview of granting the application. If the applicant does not want to abide by that condition the recourse will be to return to the Board why he cannot or why he does not want to. This Board has always been reasonable in the past. It is important which ever way that it goes, zoning reasons are needed.

Mr. McQuaid commented that the driveway looks to be 20 feet wide, and if used for storing lawn mowers and off road vehicles then a 6 foot wide driveway should be wide enough and it would give lead way for shrubbery, the driveway could be angled to add shrubbery and evergreens so it is blocked somewhat. The property is 5.196 acres of land and the area is known for rock. The neighborhood behind it has city water because they cannot do wells. It is rocky, testimony has been given that sloping in the back yard would not allow for a shed. Testimony has been given that there is really no basement, no storage area, testimony was given that the shed which is large would be used for storage of personal property, non-commercial use. Testimony was given that there would be no electricity, nor heat or plumbing into it. If the applicant is agreeable to a 6 foot wide driveway and putting some shrubbery into it then he will make a motion.

Motion by Arthur McQuaid to approve the application.

Mr. Glatt stated that he discussed it with William H. Drew, the Planner, and an appropriate driveway width would be 8 feet, and a landscape plan could be required if wanted and the landscape architect could look at it and if appropriate for visual and safety reasons as far as what plants would be put there, with input from the applicant and neighbors if Mr. McQuaid thought it was effective, it could be conditioned upon a landscape plan submitted and approved by the Township Landscape Architect, Mike Hakim.

Mr. McQuaid's motion will incorporate what he stated without the rock outcropping, everyone in the area knows about the rock.

Motion by Arthur McQuaid to approve bulk variance ZB02-11-02, Block 12001; 36.01, 166 Maple Road, R-4 zone, with the mentioned conditions of driveway not to exceed 8 feet go into the shed a landscape architectural plan to be submitted to the Township Landscape Architect for approval by the Town, thereby lessening the objections of being able to see this building from their home.

Second by Ada Erik

Mr. Brady asked if there were any more comments of Board Members. Mr. Castronova agreed with Mr. McQuaid and Ms. Erik about reducing the driveway, the neighbor will still be able to see pretty much the whole front of the building from his house. It will be nice with the landscaping, and commented that he has never seen a better-looking garage; it is nice with the stone. Reducing the driveway for visual effect and planting trees on either side of it, you can't put the trees in front of it. He is in agreement with Mr. McQuaid and Ms. Erik.

Mr. Brady wanted to comment before the vote that he could see two other places where a shed that size could be placed and still have access and landscaping may not be an issue. Landscaping around is fine but front needs to be open for access. Mr. McQuaid added that you could have twelve feet of it covered. Mr. Brady was not disagreeing but the application is before the Board because sheds are not supposed to be in the front yard, it would still be in the front yard with the locations he was talking about, it would not be visible to the neighbors, and it will be a beautiful shed, it might solve the issue of being seen by surrounding property owners.

ROLL CALL VOTE:

Yes: Ada Erik, Steven Castronova, James Olivo, Frank Curcio, Arthur McQuaid, Gian Severini

No: Robert Brady

Mr. Glatt wanted to make sure everyone understood that there will be conditions imposed, there will be a resolution hopefully at the next meeting, then there is a 45 day appeal period from the date of publication in the paper of the decision, normally you cannot pull permits before the 45 days and if for any reason construction starts before that period of time and there was an appeal and the Board's determination was reversed, the court could require the removal of the building. Mr. Glatt suggests that they wait until next month there will be a resolution and conditions imposed. There will be time if anyone wants to appeal the decision they will have 45 days from date of publication.

Mr. Glatt also mentioned that the exhibits could be returned after the appeal period. Mr. Grawehr said that he had copies of his notes and objections and Mr. Glatt said the testimony was his objection. For the record, even though the matter was decided, he was putting for identification purposes, the maintenance agreement three pages long marked into evidence as B1 for identification, Board 1 for the record. Mr. Grawehr did not realize the Board had voted.

Board Report

Mr. Drew spoke about the Draft Board Report which shows the analysis of the Board's activity for 2010. The Board heard a combination of bulk variance applications, use variance applications and preliminary and final site plan applications. The site plan applications related to commercial properties on two occasions and on one occasion it was for a religious bible camp. Those applications were associated with use variance consideration by the Board. At its reorganization meeting the Board had listed the recommendations that they wanted to include in the report that went to the Town Council and to the Planning Board. This is listed on the back page of the report and feels that he accurately included what was explained that the reorganization meeting. There is an analysis sheet that the board has provided to the Council and the Planning Board in prior years. It is a little more extensive what was identified in the last reorganization and he wanted to know if the Board wanted the same recommendations from prior years as well as any other comments. He will prepare the final report for the May meeting. Mr. McQuaid would like the additional analysis added as well. Mr. Drew was asked if the the small parcels were available to neighbors for purchase and Mr. Drew responded saying you cannot automatically make them part of the property, it has to be a request from the property owner, added to tax rolls, make properties larger, take away vacant lots, it was pointed out that they would be maintained. The other mechanisms discussed by the Board in the past would involve an active roll by the town to use the open space fund that the Town Council has collected over the years and using those funds to purchase the properties. It will take them off the tax roles but will remove them from the potential of future development this would be a proactive role. A Board Member asked what would become of these properties and Mr. Drew answered explaining they would be Township owned and remain vacant and they would be part of the open space of the town. It was asked whether it would be maintained and it was decided probably not. Ms. Erik pointed out that it could be a problem because once there is a vacant area Township owned or not people will dump on it. Mr. Castronova hopes an adjoining property owner will have the opportunity to purchase first. Open space should be the last resort. Mr. McQuaid indicated that he would like to see it purchased with open space money and given to the neighbor to get it on the tax roles and to reduce a chance of someone purchasing it and with variance able to build on it. Open space money is for public use. There is continued discussion about the small parcels and what should be in the report.

Motion by Ada Erik to approve Mr. Glatt's invoices.

Second by Gian Severini

All in favor to accept the invoices.

Motion by Ada Erik to approve Mr. Drew's invoices.

Second by Frank Curcio

All in favor to accept the invoices.

Motion by Ada Erik to approve the Regular Meeting Minutes of March 22, 2011

Second by Steven Castronova

All in favor to accept

Motion by Ada Erik to adjourn the meeting of March 22, 2011.

Second by Gian Severini

All in favor to adjourn the meeting of April 26, 2011

Meeting adjourned at 9:17 p.m.

Adopted: May 24, 2011

Respectfully submitted by,

Denyse L. Todd, Secretary
Zoning Board of Adjustment