

**MINUTES
Of the Township of West Milford
ZONING BOARD OF ADJUSTMENT
February 24, 2009
Regular Meeting**

Robert Brady, Board Chairman, opened the Regular Meeting of the Zoning Board of Adjustment at 7:33p.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, Barry Wieser, Frank Curcio, Gian Severini, James Olivo, Vivienne Erk and Robert Brady

Also Present: Stephen Glatt, Board Attorney, Robert Kirkpatrick, Substitute Planner, Richard McFadden, Board Engineer, and Denyse Todd, Board Secretary

Absent: Arthur McQuaid

Mr. Brady asked James Olivo to sit in for Mr. McQuaid who is not in attendance for the meeting. Mr. Brady explained the Board of Adjustment and the Open Meeting Act. He also explained the agenda.

MEMORIALIZATIONS

RESOLUTION NO. 1-2009

BOARD ATTORNEY CONTRACT

Motion by Ada Erik to memorialize Resolution No. 1-2009

Second by James Olivo

Roll Call Vote:

Yes: Ada Erik, Francis Hannan, Barry Wieser, Frank Curcio, Gian Severini, James Olivo, Vivienne Erk, Robert Brady

No: none

RESOLUTION NO. 2-2009

BOARD PLANNER

Motion by Ada Erik to memorialize Resolution No. 2-2009

Second by Barry Wieser

Roll Call Vote:

Yes: Ada Erik, Francis Hannan, Barry Wieser, Frank Curcio, Gian Severini, James Olivo, Vivienne Erk, Robert Brady

No: none

RESOLUTION NO. 3-2009

ESCROW INCREASES FOR LAND USE APPLICATIONS

Motion by Ada Erik to memorialize Resolution No. 3-2009

Second by Frank Curcio

Roll Call Vote:

Yes: Ada Erik, Francis Hannan, Barry Wieser, Frank Curcio, Gian Severini, James Olivo, Robert Brady

No: none

Mr. Glatt said that it was being memorialized without an effective date and would need to be discussed again when the date is known.

**RESOLUTION NO. 4-2009
NO INCREASE IN APPLICATION FEES**

Motion by Ada Erik to memorialize Resolution No. 4-2009

Second by Gian Severini

Roll Call Vote:

Yes: Ada Erik, Francis Hannan, Barry Wieser, Frank Curcio, Gian Severini,
James Olivo, Robert Brady

No: none

**ALAN EPSTEIN
BULK VARIANCE #0830-0823**

Block 1813; Lot 2

15 Ardena Road, LR Zone

The Board Attorney swore in the applicant, Alan Epstein of 15 Ardena Road, Hewitt, NJ. The Chairman asked who else will be testifying and Kathleen Epstein of 15 Ardena Road is going to testify she was sworn in. The Professional, who would explain the plans for Patio Enclosures is Agnes Rizzo, 24 Broad Street, Branchville, NJ. The attorney explained the zoning code to the applicant and explained they need to prove their hardship and the need for the variance and to describe the property.

The applicant explained the characteristics of the property; it is approximately 100 feet X 90 feet deep. The sunroom will go on the rear of the house and it will go in place of the deck that is already there. The sunroom will extend 2 feet past the present deck. Mr. Hannan confirmed that the property line to the edge of the wood that is there now, is 36 feet. The deck presently is 14 X 12 and the addition is 16 X 12, they will be removing the deck and will put additional footings in. Ms. Rizzo stated that there would be no heat and they would keep the door between the house and the sunroom. The sunroom size is close to the dimensions as if just enclosing the deck. The Board Attorney confirmed that the applicant couldn't make the setback. There is no available property to purchase; none of the homes in the area have the setback needed. The sunroom is built to spec, not a kit. Mr. Epstein put a copy of the brochure into evidence and the attorney marked it as A-1.

Mr. Epstein started to discuss the characteristics of their house and it is too small. There is no den; attic or basement and they feel they have outgrown the house. They would like to stay in town but they need additional room. They would get more use out of the sunroom than they do with the deck, between allergies and mosquitoes, they can't enjoy the deck. He did receive the engineering memo. Mr. Hannan asked if they would agree to the resolution stating that *the owner would agree that there would be no water directed onto adjacent properties*. The length will increase by 2 feet. There is not much difference in size to what is there now. The sunroom will require four additional footings.

The Chairman asked the Board if there were any questions and then opened the meeting to the public. Motion by Ada Erik and Second by Gian Severini to close the public portion as there was no one present for or against the application.

All in favor to close the public portion

Motion by Francis Hannan to approve Bulk Variance #0830-0823. The applicant has shown that there is no other property available. With the steps from the deck included the sunroom will be about the same distance from the rear of the property as the deck. The resolution will state there will be no runoff to adjacent properties.

Second by Barry Wieser

Roll Call Vote:

Yes: Ada Erik, Francis Hannan, Barry Wieser, Frank Curcio, Gian Severini,
James Olivo, Robert Brady

No: none

Mr. Glatt explained that they have their approval and explained the appeal time after the resolution is published.

YOUR HOME TEAM, LLC
BULK VARIANCE #0830-0822
Block 2312; Lot 16
Papscoe Road, LR Zone

The Board Attorney swore in the applicant Scott Leonescu, 37 Christine Court, West Milford, of Your Home Team, LLC, Douglas McKittrick, Engineer, 2024 Macopin Road, West Milford. Drew Murray was present, office located at 230 West Parkway, Pompton Plains, NJ, attorney for Your Home Team, LLC.

Daniel Somers of Somers & Malay 10 Pine Street, Morristown, NJ is representing the neighbors, Andrew deMaio and Elizabeth Prince deMaio, whose property abuts the applicant's property. Mr. Glatt asked if Mr. Somers was going to question the witnesses and he will and also might bring his own expert witness and might do so in the future.

Mr. Glatt asked if there was any discussion between the attorneys and there was but nothing was resolved. Mr. Murray began questioning Mr. Leonescu. Mr. Leonescu is the managing member of Your Home Team, LLC. He is in the construction business and the real estate business and has been in the business for approximately 10 years. 90% of his business takes place in West Milford. Mr. Murray asked about the property that is the subject of this application. He acquired the lot approximately 4 to 5 months ago and he new there would be variances in order to build on the lot. He sent two buy/sell letters to Mr. Somer's clients and they are dated 11/29/08 and they were mailed on December 1st, A-1 is a letter to Mr. & Mrs. deMaio, Block 2312; Lot 15 and A-2 is a letter to Elizabeth Prince Block 2312; Lot 14. Ms. Prince is Mr. deMaio's wife, so she owns or partially own all in question. Mr. Leonescu explained these are the actual buy/sell and they were returned with no response. Mr. Leonescu gave the receipts for the letters as well. The standard form letter was used. Mr. Somers said his clients acknowledge receipt of the letters. There was an exchange of correspondence. Mr. Murray asked if A-3 could be marked into evidence, which is a letter to Mr. Leonescu from Mr. & Mrs. deMaio telling him the lots they own as well as a lot across the street and the land in total is 1 ½ acres and they are asking \$300,000.00 for the property. Mr. Leonescu responded to the letter. Mr. Murray introduced A-4 and Mr. Leonescu explained that he tried to find a telephone number and could not find a contact phone number and sent him another letter asking for a return phone call, also sent certified mail.

Mr. Glatt explained that it was an undersized lot an there is a need for numerous bulk variances and the buy/sell letters are being sent to adjoining properties. The applicant said that Mr. McKittrick will be testifying to that. A-5 is marked into evidence and it is a letter from Mr. deMaio that he does not have a phone and he does not drive anymore and their attorney will be contacting Mr. Leonescu after the holidays that letter was dated 12/15/08. Mr. Murray asked if there was any further contact and Mr. Leonescu said a month and one half went by and last Wednesday he received a phone call from Mr. Somers and was told the deMaio's had just hired him and he didn't have much information on the property. Mr. Leonescu is only interested in one lot, which is block 2312; lot 15 because it is a vacant piece of property. Mr. Leonescu said he would be willing to pay \$15,000.00 or \$20,000.00 to make his lot more whole, the other lot he purchased was \$29,000, after fees. To spend more will chang what he could sell his house for once built. He would like to create a house with a price that is lower for a low-income family. The more expensive homes are not selling and he would like to charge mid-two's to fewer than three hundred thousand.

Mr. Glatt asked if there was a portion of the other lots, if he owned them that would alleviate the variances. Mr. Leonescu said one of the lots was across the street and he said the other lot would alleviate some variances but would cause variances for the other lot left by doing so. Mr. Leonescu said by subdividing off of Lot 14, additional

variances would be created. The septic is almost on property line and the cesspool would have to be replaced. There is an abandoned dwelling on the property. Mr. Leonescu asked for a price. He met Mr. Somers outside and asked for a price, Mr. Somers said his clients only want to sell all of the lots he would not give Mr. Leonescu a price for the one lot he wanted.

Mr. Glatt wanted to ask Mr. Leonescu a few questions. Mr. Leonescu is the owner of the property and he bought it from a non-related stranger. There was a *for sale by owner* sign and the owner did not attend the closing. Mr. Glatt asked Mr. Somers if he had any questions of this witness or did he want to save it. He wants to save the questions for later.

Mr. Murray asked Mr. McKittrick to step up as the expert for engineering and planning. Mr. McKittrick has testified several times before this Board he's been a licensed engineer in NJ since 1982, a professional planner since 1983, and in private practice in West Milford since 1986. Qualified in Passaic County as well, his credentials were accepted as an expert witness. Mr. Somers asked if he was testifying to the plans submitted and he said yes. The plans were from Claud Ballester but Mr. McKittrick did review them. Mr. Somers feels that it is a hearsay testimony. Mr. McKittrick said that he disagrees and that his opinion is that as a qualified engineer he can review another engineer's work and determine if correct or incorrect. Mr. Somers objected. Mr. Glatt said they would allow him to testify but it would be up to the Board, how much weight the Board gives to the testimony. He not only reviewed the plans but also went to the site. Mr. Glatt recapped the situation. Mr. Somers feels that Mr. Leonescu didn't give all of the information regarding the conversations and he might need to act as a witness.

Mr. Glatt said that Mr. Leonescu needs to make a fair market offer and the sellers need to make a fair asking price. Mr. Glatt suggested that either Mr. Leonescu or Mr. Somers should bring in an expert to tell the Board what the fair market value is. The Board can put constraints on the application if granted, but if it is an issue of buying and selling pieces of property and it is coming down to fair market value and both sides need to show their side and the Board will decide. The Board feels that it is inappropriate to discuss the issues before the meeting. Mr. Glatt feels that Mr. Somers would prefer to talk to the attorney and not directly to Mr. Leonescu. Mr. Leonescu said that he indicated to Mr. Somers that his attorney was not hired yet and all negotiations should be done between Mr. Leonescu and Mr. Somers. Mr. Glatt said knowing there was an attorney and the application is under Your Home Team, LLC, a public entity, which is required to have an attorney. Mr. Glatt said the only thing the Board wants to know is if there is a fair market value and nothing will be decided tonight.

Mr. Hannan said he would like to hear the whole application with all of the variables. For that reason, he wants the whole thing at once. Mr. Glatt said there was a procedure, each gets an appraiser and if no decision can be made, there might be a third hired or the Board can decide. Mr. Glatt asked if Mr. Murray or Mr. Somers had any suggestions. Mr. Murray asked if Mr. McKittrick's testimony would be heard and Mr. Hannan said no he did not want to hear it tonight. Mr. Murray asked for a break. Mr. Glatt asked Mr. Somers if there would be a benefit for the attorneys to talk amongst themselves. Mr. Glatt explained the process of the buy/sell letters to Mr. Somers. Mr. Glatt explained that if Mr. Somer's clients did not sell Mr. Leonescu the land, Mr. Leonescu could possibly get the variance anyway. However, if his clients try to come back and build on the other property, they will not get the variance because it would be considered a self-created hardship and the Board and staff would notice it. Mr. Glatt wants to know how they are going to proceed. Mr. Hannan added this type of application is approximately 25 to 40% of the applications heard before this Board. The Board is familiar with this type of application. Mr. Somer's feels the Board would like to get an appraiser in to discuss fair market value.

All in favor to take a break at 8:40 instead of 9:00.

Mr. Brady requested the record show at 9:00 p.m. back on the record.

Mr. Murray requested an adjournment to get their appraisals and Mr. Glatt wanted to make sure they would share the information with each other and asked if they would sign a time extension. The extension was signed through June 30, 2009. The adjournment is for 1 month for the purpose of appraisals. There will be separate appraisals.

Motion by Francis Hannan to adjourn this until the March 24, 2009 meeting.
Second by Ada Erik

Mr. Glatt wants the attorneys to look into facts with regards to undersized lots and what would be considered a buildable lot if the application were to go through and also the hardships just to double check.

Roll Call Vote:

Yes: Ada Erik, Francis Hannan, Barry Wieser, Frank Curcio, Gian Severini,
James Olivo and Robert Brady
No: none

Motion by Ada Erik to approve the invoices for the Board Attorney, Stephen Glatt.
Second by Barry Wieser
All in favor to approve the invoices.

Motion by Ada Erik to approve the invoices for the Board Planner William H. Drew, P.P., AICP
Second by Gian Severini
All in favor to approve the invoices

Motion by Ada Erik to approve the invoices for the Substitute Board Planner Robert C. Kirkpatrick.
Second by Gian Severini
All in favor to approve the invoices.

Mr. Brady discussed the planning and zoning guide.

All to let the secretary who wanted to attend the training session.

There is no additional information on the Lanza matter; the judge adjourned it until Friday, February 27, 2009.

Motion by Ada Erik to adjourn the regular meeting of February 24, 2009.

Meeting adjourned at 9:08p.m.

Adopted: February 24, 2009

Respectfully submitted by,

Denyse L. Todd, Secretary
Zoning Board of Adjustment