

MINUTES
Of the Township of West Milford
ZONING BOARD OF ADJUSTMENT
January 25, 2011
Regular Meeting

Robert Brady, Board Chairman, opened the Regular Meeting of the Zoning Board of Adjustment at 7:39p.m. The Board Secretary read the Legal Notice.

Pledge

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

The Chairman explained to the public about the Board of Adjustment and the publication. Explained the Open Public Meetings Act of the State of New Jersey. Appeals go to the State of New Jersey.

Roll Call

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

Also Present: Stephen Glatt, Board Attorney, William H. Drew, Robert C. Kirkpatrick, Interim Board Engineer, Denyse Todd, Board Secretary

Absent: none

MEMORIALIZATIONS

LYNN STEWART

RESOLUTION NO. 7-2011

BULK VARIANCE #ZB11-10-12

Block 2605; Lot 17

42 Point Breeze Dr, LR Zone

Action: Approval of Bulk Variance

Decided: December 14, 2010

Eligible to Vote: Frank Curcio, Arthur McQuaid, Gian Severini, Russell Curving, Vivienne Erk and Robert Brady

The Attorney explained that the Secretary had contacted the applicant's professional the previous week to remind him that they needed to get the revised plans in so that the resolution could be memorialized. It was not until the afternoon of the meeting that three copies were given to the office and were not reviewed. The attorney recommended not memorializing it. The alternative would be to memorialize it subject to the revised plans being approved but in case of changes why do two resolutions.

Motion by Steven Castronova to not memorialize the application.
Second by Gian Severini

All in favor to not memorialize this Resolution.

GARY GALLUCCI

RESOLUTION NO. 6-2011

BULK VARIANCE ZB10-10-11

Bl 2701; Lot 18

117 Lakeshore Drive, LR Zone

Motion by Arthur McQuaid to memorialize Resolution No 6-2011
Second by Gian Severini

Roll Call Vote:

Yes: Frank Curcio, Arthur McQuaid, Gian Severini, Russell Curving, Vivienne Erk,
Robert Brady

No: none

Mr. Brady thanked the Board for their vote of confidence as Chairman once again.

GAETANO T. RIDOLFO

USE VARIANCE ZB-06-10-06

Bulk Variance ZB-06-10-06

Block 3702; Lot 1

20 Laurel Ave., R-2 Zone

The Secretary read the information about the application.

The applicant, Gaetano Tom Ridolfo and his Professional, Michael F. Kaulker were sworn in by the Board Attorney.

Mr. Brady explained that the Engineer for this application is different from the newly appointed Engineer. As Mr. Kirkpatrick had done the reviews for this application initially there is a resolution that will need to be read to allow Mr. Kirkpatrick to act as the engineer.

Motion by Gian Severini to memorialize Resolution No. 3-2011

Second by James Olivo

All in favor

Mr. Ridolfo asked the Board to speak with his Planner Michael F. Kaulker. Mr. Brady asked for his credentials. He is a Professional Planner licensed in the State of New Jersey, received his license in 1970. He is a partner in the firm Kaulker and Kaulker. The offices are located in Wyckoff, NJ, Municipal Planners since 1978. He has been before this Board in the past. They serve approximately 15 Municipalities as their Planner in Bergen and Passaic County and 3 in Rockland County. They have presented applications to Zoning Boards. The Board accepted the expert.

The applicant's planner reviewed the memos and reports from various Township Departments and Board Professionals. He prepared an aerial photograph of the site. It was marked into evidence as A-1. The photo depicts the location at the end of Laurel Ave. Most of Laurel Ave is an unimproved street. The lot is approximately 1 acre which is short of the minimum in the R-2 Zone. Most of the lots are substandard. The zoning was for the very large lots which are on the map but accessible by another roadway. There are storage trailers in the SW corner that Mr. Ridolfo utilizes and has over the years. They would be relocated but remain on the site and coexist with the proposed 1260 foot storage garage structure. The height of the structure was being addressed now (a specification sheet was handed into evidence from Steel Arch Factory Inc) A specification sheet was marked as A-2 in evidence. According to this sheet the height would be 14 feet.

The second variance is a use variance, a garage is permitted as an accessory structure in a residential property, and it cannot exist on a principal lot without a principal residential structure. Arising out of the placement on the lot, there are several setback variances that need to be addressed. The reason for the garage at the southwest corner of the site is to provide for efficiency of access and correlate it with the gravel-improved road, which comes up to the proposed driveway and access to the garage. The location decision is also to keep a substantial portion of the site in its natural state as it exists to reduce the impact associated with development. The aerial photograph was discussed and explanations of activities taking place near the site in question. There are businesses near by and they are in the community commercial zone. Lot 1.03 and lot 1.01 are to the south and that is a landscape business, which has been there for a number of years with a house on the property. Lot 2 is a residence; Lot 3 is a commercial garage. Across the street on lots 7 and 8 are two residences. Mr. Ridolfo's home is located on lot 4 and a commercial activity is on lot 5 and that is located at Greenwood Lake Tpke and Laurel Ave. The surrounding land uses are mixed. Mr. Ridolfo's home is on a 10,000 square foot lot, he is planning on using it for personal use not business use.

Unique characteristics for the use variance request are physical and environmentally constraint oriented. The Health Department memo was discussed with regard to the soil logs and high water table. The Engineer, Claud Ballester could not be at the meeting due to illness. Several perc tests were done and they could not accommodate a residential dwelling.

Mr. Glatt wanted to confirm that the client filed for a use variance and a bulk variance but not a site plan. The applicant's planner told the Board Attorney that they were bifurcating the application. The attorney explained that sometimes the Board needs an overall picture. He also explained to the applicant's planner that it might behoove the applicant to have details of a site plan so the Board knows what is being done. It is a site-specific application, the placement of the building and how it will be constructed enter into it. A-2 for the matter of the height was marked into evidence but there will be need for testimony. It is not putting a storage facility on the property it is putting a specific type of storage facility on the property.

The applicant's planner explained that he thought the plan prepared by Claud Ballester would serve as a conceptual development proposal. Mr. Glatt told the planner that he could not testify to engineering and he is surmising which is all it is. The planner agreed it would have to be confirmed by an engineer. The Board may want to know why they are proposing the building in a particular area on a reasonably large piece of property and why are they not putting it in another place. If the engineer was present to say why then the planner could put another spin on it. Mr. Glatt explained that he shouldn't be surprised if there are questions that he cannot answer.

The planner told the Board that the property was ill suited to accommodate anything else and it is a hardship and the foundation for the use variance. It is better suited as an accessory use. The proposed use is not commercial but supportive of this lot as his home is approximately 300 feet away. The property could be utilized since he is paying taxes on it. From the point of view of the Master Plan, garages are permitted, as an accessory use so it is not a prohibited use. The condition under which it is proposed would fall under the D-1 variance.

The next was Mr. Drew's report which is regarding the size of the property they are short on the size requirement it should be 2 acres and they have 1 acre. The depth is short of the 225 foot requirement the property is 215 feet so it is 10 feet short. With regard to the front yard setback requirement the applicant proposed to put the building in the SW corner at a 30 foot setback as opposed to the ordinance requirement of 75 feet. The side yard has a 40 foot requirement and 30 is proposed. The physical constraints can only be introduced by engineering testimony by having the garage closer to the street it makes the property less impacted. He does not feel that the location would have an impact on the neighborhood because it is more commercial then residential.

If it is granted it would not undermine the purpose or intent of the zoning ordinance because he feels the property is suited for the proposed garage. He does not feel it would have a negative effect onto the public welfare. From the point of view of commercial ratable, not necessary proper grounds for a variance but to make constructive use of a vacant scarce land resource would be a good thing, impact would be acceptable and would not spill over into adjacent properties. That concludes his observations and support.

Mr. Glatt asked if the purchase of another lot could alleviate the variances. Mr. Kaulker said purchase of Lot 2 would bring the property into closer compliance. The purchase of both lots would bring it close to compliance. There were no buy/sell letters sent to owners of the lots. The attorney said that there is a deficiency because there is no proof that they are not willing to sell or he's not willing to buy. Mr. Glatt said there was a chance that one of the other lots might perc. Mr. Ridolfo wanted to answer the questions. Mr. Glatt explained that the Board needed evidence. Mr. Glatt said he really needs his engineer and Mr. Ridolfo said he didn't feel he needs him. Mr. Ridolfo said as far as the property is concerned, everything on the right side going up Laurel Ave. has no perc, there are pipes sticking up all over. All he wants is to put up building store stuff in. He does not understand why he would need to by other property. He paved the road it cost him \$30,000. to pave the road 320 feet in. The neighbors would not give him money. He owned the road years ago. He wants to store his couple of cars and he intends to one-day open boat storage.

Mr. McQuaid confirmed that he owned the second property in from Greenwood Lake Tpke. A Board Member confirmed what he wanted to use the garage for storing his cars and would like to have boat storage and it was confirmed they were not for his own boats. Mr. Brady explained that it is not commercial it is residential. Mr. Ridolfo was trying to explain that it used to be commercial. He just wants to know yes or no. Mr. McQuaid asked about the trailers on the property.

There was discussion about a gate on the road and a neighbor put the gate up. Mr. McQuaid commented that there are a lot of commercial uses in the surrounding areas. Mr. Ridolfo explained about the building and the cost of it. It will be on a pad.

Mr. Drew asked about the trailers in the aerial photograph. Mr. Brady asked if the other trailers would remain there. Mr. Ridolfo said yes. Mr. Brady explained that there is an ordinance with regard to the percentage of coverage if a storage unit which is 10%, maximum 1500 square feet, with the trailer. Mr. Ridolfo said he would remove it and the other trailers are house trailers.

An LOI is requested by the Health Department. Mr. Brady asked that the property be perced. The applicant reiterated that he is using for boat storage and would be under another application. Mr. McQuaid confirmed he wants the storage building for personal use and maybe in the future for something else but at that time he will do a different application. He wants the location to be where it is to keep it rural. Mr. Ridolfo said the neighbors were in favor of everything. Planning on installing millings and it was pointed out that engineering would be required. Mr. Ridolfo then explained his reasoning for the location of the building.

Mr. Brady asked if there were any questions or comments of Board Members? There were none. Mr. Brady then opened the meeting to the public.

John Kardinow of 104 Lincoln Avenue came forward to address the Board. Mr. Kardinow explained where his property is located. Mr. Kardinow indicated that his property is located under the map legend on the aerial. He pointed out that his name is not on the 200 foot property owners list. Mr. Kardinow was asking specific questions but did not want to direct to Mr. Ridolfo. He read a statement on behalf of himself and the family. He objects to the proposed variances. He proceeded to refer to department memos and also the Board Planner's report. He asked that the Board deny the application and further recommendation be made to enforce the current Zoning Ordinance including Block 3701; Lot 1.03 where another property owner is using this lot for commercial purposes without approvals. He would like for the gate across Laurel Road be removed so that adjoining property owners will have access to their properties restored. The property should be kept as residential.

Ada Erik after seeing no one else for or against the application moved to close the public portion.

Second by Steven Castronova

Mr. Brady asked for Mr. Ridolfo to return to the microphone. Mr. Brady asked if Mr. Ridolfo was the property owner Mr. Ridolfo said yes. The Chairman then asked if he owned it since 1958 and he said no but he used the property since 1958. He acquired the property about 3 or 4 years ago as an individual.

Mr. Brady asked if there were any other questions of Mr. Ridolfo. There were none. Mr. Brady thanked Mr. Ridolfo.

Roll Call Vote on close and second for the public portion.

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

No: none

Mr. Brady asked if there were comments from Board Members on the application and if not a motion.

Mr. Drew wanted the Board to know that the application before the Board is a D-1 Use Variance which means that there needs to be particular special reasons why the use being requested is suitable to the property. The Board needs to consider whether they heard the reasons or not in the testimony presented by the applicant's professional. The testimony as to why the property may not be suitable to residents because of a perc situation but the Board needs to determine whether they felt there was suitable reason presented as to why the site is particularly suited for the use that is being proposed. He wanted to give that to the Board for consideration.

Mr. Kirkpatrick stated the sum of his comments dealt with site plan issues but this is not a site plan application. One of the issues is discussed in the last paragraph of his report and it is the issue that there are no wetlands or transition areas on the property and that is a statement made by someone not at the meeting to back it up. If the Board is going to accept that as one of the reasons for considering the application then the Board should be satisfied that the statement was attributed to either a certified wetlands scientist a letter of no interest from the Department of Environmental Protection or any other authoritative source so that the Board can feel satisfied that that is the truth.

Steven Castronova asked if the Highlands pertained to this. Mr. Drew explained that there is nothing from the Highlands in the file at this point. Typically, the applicant has the choice of

either pursuing the Highlands approval before local approval or if local approval first it be recommended it be conditioned upon receiving appropriate Highlands approval before any construction begins.

Mr. Brady asked if there were any additional questions or comments.

There are no further comments from any other Township Departments. Mr. McQuaid asked if it would be an act of rezoning on the Board's part. Mr. Drew explained it was a use variance so it would not be a rezoning because that would change the property to accommodate a variety of uses. This is a specific request for an accessory structure on a lot for residential use for the storage of materials associated with Mr. Ridolfo's residence. Mr. Glatt wanted the Board to take into consideration that if there are variances that might be eliminated or minimized as a result of buying additional land or selling additional land it's always incumbent upon an applicant to at least make the inquiry and send the letter. It is reasonable that they may not be interested and there becomes an issue of the value but the Board has adhered to that 99.9% of the time. So no precedent is set. The applicant has not sent them and he is taking the position that he is not interested in purchasing additional land. He has the right to not do it but our packet contains the letter. The law states that he has to obligation to go that far. If structure was placed in the building envelope, that might reduce it too. That is another issue. If placing it where he is he may be creating the need for the variances for something he may propose to do in the future. The use variance would not be eliminated. Mr. Glatt said they were bifurcating the application and it is not to say they cannot grant the use variance to allow the applicant to have the storage facility as indicated but it does not mean they have to grant the bulk variances as he requested and if he comes back for site plan approval there is no obligation to approve it. His use variance could be granted but they could say we will let you put up what you want but not in the location they want it in.

Mr. McQuaid commented that he had problems with the application and normally he is for the applicant. He has problems with the testimony as there was not much information with zoning reasons. He heard a lot of what they would like to do but the Board is not here for that but why they should give a variance for zoning purposes. He heard I want to put up a garage to store cars and personal property and I want to put it in this left hand corner because in the future I want to make it a commercial piece of property and store boats. That is what he heard. We have done garages on properties without residences and people park cars in them. They do not use them for commercial uses later on. Mr. Ridolfo bought the property a few years back, he knew it did not perc, he knew he was not going to put a house on it. So those are the other reasons that he almost caused his own problem in that purchase. As the Board Attorney pointed out since 1996 he has not heard anyone say that they would not sell property or purchase another piece of property to help eliminate a variance. There were really no zoning reasons to grant the use variance. He apologized but just did not see it.

Motion by Arthur McQuaid to deny Use Variance No. ZB06-10-06; Block 3702; Lot 1; 20 Laurel Ave; R-2 Zone. Denial based on the fact that there were no zoning reasons to grant the motion. Mr. McQuaid asked that the previous statement be incorporated into his motion.

Second by James Olivo

It was confirmed that a yes vote is a denial

Roll Call Vote:

Yes: Ada Erik, Steven Castronova, James Olivo, Frank Curcio, Arthur McQuaid, Robert Brady

No: Gian Severini

Motion by Steven Castronova to deny Bulk Variance No. ZB06-10-06

Second by James Olivo

Roll Call Vote:

Yes: Ada Erik, Steven Castronova, James Olivo, Frank Curcio, Arthur McQuaid, Robert Brady

No: Gian Severini

Mr. Brady told the applicant that both variances were denied.

DISCUSSION

APPROVAL OF INVOICES FOR PROFESSIONALS

Motion by Steven Castronova to approve invoices for Stephen Glatt
Second by Gian Severini
All in favor to approve the invoices

Motion by Steven Castronova to approve invoices for Robert Kirkpatrick
Second by Gian Severini
All in favor to approve the invoices

Motion by Gian Severini to approve the minutes of December 14, 2010
Second by Frank Curcio
All in favor to approve the minutes of December 14, 2010

Mr. Drew and Mr. Glatt thanked the Board for their reappointments for the 2011 year.

Mr. McQuaid asked Mr. Drew if he would make sure to mention the smaller lots in Upper Greenwood Lake and use open space money to buy them to alleviate septic systems and wells etc.

Motion by Gian Severini to nominate the Herald News as the Board Newspaper
Second by Ada Erik

Motion by Steven Castronova to adjourn the meeting of January 25, 2011
Second by Ada Erik

All in favor to adjourn the meeting of January 25, 2011

Meeting adjourned at 9:03 p.m.

Adopted: January 25, 2011

Respectfully submitted by,

Denyse L. Todd, Secretary
Zoning Board of Adjustment