

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

Robert Brady, Board Chairman, opened the Regular Meeting of the Zoning Board of Adjustment at 7:40 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 asked Vivienne Erk and Russell Curving to take a seat at the dais so there would be a six-member Board for the meeting. The Chairman explained that with a six member Board there could be a tie vote in that event it would go against the applicant. The applicant can request to defer the application if this is a concern. Chairman Brady explained to the public about the Board of Adjustment and the publication of the dates in the Herald News Newspaper and posting in the Town Hall. He also explained the Open Public Meetings Act of the State of New Jersey. The Board Attorney was introduced. The meeting will follow a printed agenda that is on the podium in front of the dais and hanging on the bulletin board. Any appeals go to the Superior Court of the State of New Jersey. There are no new applications after 10:30 p.m. and no new testimony after 11:00 p.m. If it becomes necessary there will be a break at 9:00 p.m.

Roll Call

Present: Ada Erik, Steven Castronova, Frank Curcio, Russell Curving
Vivienne Erk, Robert Brady

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

Absent: James Olivo, Arthur McQuaid, Gian Severini, Michael Cristaldi,
Board Engineer

MEMORIALIZATIONS

**JAMES & TANYA BROZOWSKI
RESOLUTION NO. 14-2011
BULK VAR. ZB04-11-06
Block 2601; Lot 42
221 Point Breeze Dr.; LR Zone**

Motion by Ada Erik to memorialize Resolution No. 14-2011

Second by Vivienne Erk

Roll Call Vote:

Yes: Ada Erik, Steven Castronova, Vivienne Erk, Robert Brady

No: none

**FRANCESCA NELSON
RESOLUTION NO. 15-2011
BULK VARIANCE ZB06-11-11
Block 6803; Lot 1
81 Warwick Tpke, CC Zone**

Motion by Ada Erik to memorialize Resolution No. 15-2011

Second by Steven Castronova

Roll Call Vote:

Yes: Ada Erik, Steven Castronova, Vivienne Erk, Robert Brady

No: none

JOSEPH VENGEN
RESOLUTION NO. 16-2011
BULK VARIANCE ZB01-11-01
Block 16802; Lot 8
137 Doremus Road; R-4 Zone

Motion by Ada Erik to memorialize Resolution No. 16-2011

Second by Steven Castronova

Roll Call Vote:

Yes: Ada Erik, Steven Castronova, Vivienne Erk, Robert Brady

No: none

CARRIED APPLICATIONS
RICHARD & ROSEMARIE SONDERGARD
BULK VARIANCE NO ZB04-11-04
Block 11203; Lot 2
108 Larsen Road; LR Zone

Mr. Sondergard appeared and explained to the Board that the surveyor has not gotten back to him regarding the measurement. He spoke with Mr. Kirkpatrick and it was indicated that Mr. Kirkpatrick was okay with the measurement from the existing house to the property line. This is what he is attempting with the surveyor. He indicated that he is having difficulty getting someone to do it. He asked if he were to get a new survey, would he need to get an additional survey after the new room was constructed. The Planner indicated that an As-built survey would take care of this and it would not be a new survey. When the room was complete, you would have the surveyor that prepared the newest survey go back out and shoot the distances from the addition. After the foundation base beams are in have the surveyor come back out and shoot the setback from the addition to the property lines and provide that on the As-built survey. The Attorney explained that he could submit a new survey showing where the exact location where it will be placed and after construction give the Board an As-built survey which proves that it was constructed in that location. However, Mr. Kirkpatrick was satisfied with the measurement from the house to the property line. It was discussed that a different surveyor may not be comfortable with using another surveyor's measurements.

The attorney explained to the applicant, that the Board needs to make a decision by September 10th unless the applicant gave the Board an extension. Although Mr. Sondergard indicated that he thought it would be done for the August meeting. Mr. Drew informed the Chairman that he would not be at the August meeting and the Secretary was to check for Mr. Kirkpatrick's availability. The attorney asked the applicant for a 30-day extension. If Mr. Sondergard is not prepared in August there would need to be a special meeting. The applicant asked for a 30-day extension, which would be a new deadline date of October 10, 2011.

Motion by Steven Castronova to adjourn application #ZB-04-11-04 to the August 23, 2011 meeting.

Second by Russell Curving

Roll Call Vote:

Yes: Ada Erik, Steven Castronova, Frank Curcio, Russell Curving, Vivienne Erk, Robert Brady

No: none

The adjournment to the August 23, 2011 meeting and a 30 day extension to October 10, 2011. Mr. Brady explained to all present that if anyone was there to hear this application it was going to be adjourned until August 23, 2011 and the application was extended 30 days to October 10, 2011.

NEW APPLICATIONS

DAN & DANA PREZIOSI
BULK VARIANCE #ZB05-11-10
Block 12901; Lot 33
371 High Crest Drive; LR Zone

The Board Attorney swore in Dana Preziosi and Dan Preziosi of 371 High Crest Drive, West Milford and Antonio Aiello, his architect, 1 Aston Court, Wayside, NJ. The architect was asked to give his credentials to the Board, he graduated from NJIT School of Architecture in 2002, licensed in

NJ since 2007, NY 2008, he has presented to the Zoning Board in Jersey City, Planning Board among others and he was qualified as an expert in those.

Mr. Preziosi began to testify, they own a cape house and they are trying to expand their bedrooms. They have a son and daughter sharing a room presently. Mrs. Preziosi continued that the two bedrooms are upstairs. Their daughter is 5 and their son is 7 and they need their own space. Mrs. Preziosi also explained that her mother has been ill for the past two years and will need to stay with them for a period of time. Mr. Preziosi added that they are trying to have four bedrooms instead of the three that they are zoned for. They will need a four foot front set back on one side of the house.

Mr. Aiello continued with the testimony explaining that they currently have two bedrooms and one bathroom upstairs. It is difficult for them now and when the mom comes it will be more difficult. They are raising the roof a little and expanding the top floor to accommodate more bedrooms as well as extending the front of the house. The footprint on the site plan is showing what is existing and they want to expand it 4 feet by 20 feet for the addition as well as a small front porch section for the entry way. This will help to accommodate the additional bedrooms shown on the floor plan. An additional bathroom and two additional bedrooms will be added to accommodate everyone in the family. They are not expanding anywhere else. The site is steep and they are unable to expand in back so that is the reason for the expansion on the front of the house. The architect brought an exhibit with pictures of the site to show the Board. The attorney asked that the photo board be marked into evidence as A-1.

The property drops about 8 or 9 feet. The only flat area is where the septic is located. The variances include a side yard set back for the fireplace they are proposing and a front yard set back of four feet. Required is forty feet they are proposing 21 feet. Mr. Glatt asked the size of the lot Mr. Aiello indicated it was 90 X 180 feet. Mr. Glatt asked if there was any available property on either side and both lots have homes on them. Mr. Drew explained that the property was 16,200 square feet approximately.

Mr. Brady asked if anyone had any questions, Mr. Castronova asked about the steep driveway the expansion will be on the other side of the house not the driveway side. They will be re-paving the driveway. There is an existing stairway leading to the front entrance that will be left. Mr. Castronova asked about the dumpster and let them know if in the road the police department will need to be informed. Mr. Castronova read a memo from the Township Engineering Department regarding runoff running towards lake and not adjacent properties. The applicant and the Professional assured the Board that it would be directed toward the lake. The applicant went to the Environmental Commission Meeting and assured the Commission that leaders and gutters already exist and were piped into the ground and they felt that it should not be a problem; presently they are directed to side of property towards the lake.

They have lived in the house for nine years. It is of the applicant's opinion that with the addition, the house would still comply with the neighborhood. They have neighbors who have expanded have done similar things to what they are proposing. There is a house about five houses away that is almost identical to their proposal. They do not feel it is anything detrimental to the neighborhood. They are close with the neighbors across the street and because their house is set so low and the way the neighbor's is high they are not blocking any views. They feel it will be an improvement to the neighborhood. The Association has not stated that there were any issues on their part and a certified letter was sent to them and nobody raised any questions. Neighbors offered to come to support the application. The new height is still within the regulations. The house is below the street level.

Mr. Brady asked if the Board had any questions of the applicant or his professional. Mr. Drew wanted to advise the Board that the applicant received a report from PK Environmental regarding the presence or absence of wetlands and the report states a clear absence of wetlands on the property, so there will be no impact on wetlands. The addition will not require a Highlands application. It was made clear that additions to existing single family houses are not required to seek a formal Highlands exemption.

Chairman Brady opened the meeting to the public.

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

Second by Vivienne Erk

All in favor to close the public portion.

Mr. Castronova indicated that since there was nobody present against the application and the professionals had no problems and deferred to Mr. Glatt who indicated that they made their case for a C variance, they considered where they could put the addition, they could not put it on the side because of the steep slopes, this is the only location they could put it. The expansion of the footprint

is minimal and they answered the drainage issues. They have been candid and indicated that it does conform to the neighborhood and in no way would be detrimental but in fact would perhaps improve their property and help others in the same way.

Motion by Steven Castronova to approve Bulk Variance No. ZB05-11-10, Block 12901; Lot 33 371 High Crest Drive; LR Zone, with the condition to satisfy the Health Department and any other Municipal, State or Local requirements.

Second by Frank Curcio

Roll Call Vote:

Yes: Ada Erik, Steven Castronova, Frank Curcio, Russell Curving, Vivienne Erk, Robert Brady

No: none

Mr. Brady explained that they have 45 days after the memorialization is advertised in the newspaper for the appeal period if they pull the permit before that time, they do so at their own peril, during the 45-day appeal period someone can come forward. They have their approval for the variance but the formal approval with the memorialization will take place at the August 23, 2011 meeting.

FRANK HLAVATY

BULK VARIANCE #ZB04-11-07

Block 5904; Lot 7

450 Morsetown Road; R-3 Zone

Mr. Glatt swore in the applicant Frank Hlavaty residing at 450 Morsetown Road, West Milford. Mr. Hlavaty indicated that he does not have a garage and wanted to have a shed in the back of his property. Since there is a paved road behind him he is considered to have two front yards. He wants to store mowers and other stuff in the shed. He wants to have pet chickens, he asked his neighbors and nobody said anything so he got a chicken and someone complained. He had one chicken that he got rid of. Mr. Glatt asked how many he intended to have if the variance was granted, and he indicated 4 or 5 chickens just for eggs.

Mr. Brady asked if there was any contiguous property that he could add to his property to alleviate the problem. He has an L shaped piece of property and there is a vacant piece of property however it would still require a variance. Mr. Brady explained that the Board needed proofs to make a determination. The applicant indicated that there was a garage, which was knocked out by the previous owners to finish a basement and make it wider. The property drops down to the back and that is where the location of the shed is.

The property fronts Morsetown Road and the rear is Mountain Circle Drive. The property is 75 X 219 feet and the extra piece of property is 107 X 100 feet, which is on Mountain Circle. No matter the location a variance will be required. Mr. Glatt asked about the location of the shed and indicated that he drew on the survey copy himself and it was not a professional. He spoke with a building inspector in the Township and the inspector showed him how to use a scale and helped him with the measurement. There will be no set back problems.

The next variance is for the chickens. He had one rooster and considered it a pet. Mr. Glatt asked the applicant if he felt a rooster was a pet or a farm animal. Mr. Hlavaty indicated that he felt it was a pet since he did not have a farm. The chicken coop will be against the shed. He does not have a full acre he has almost 2/3 of an acre. If the Board allowed him to only have one farm animal he understands that would be all that was allowed. Mr. Glatt asked Ms. Erik as a farmer if she considered the species a farm animal or a pet and she indicated it was a farm animal.

Mr. Drew read the ordinance that states, *one acre for the keeping of poultry and fowl but no more than 32 animals should be kept per acre of lot area*. If 32 are allowed on an acre and he has less than 2/3 of an acre. Mr. Hlavaty wants only 5 hens. The Zoning Officer had no comment.

There was discussion regarding the variances being asked for Mr. Glatt indicated the Board was to make a determination that he can put the shed in the front yard that is Mountain Circle. Mr. Castronova was at the site and it is the only location it is very steep going down, there is no room in the front. The shed was put in April or May. The coop was against the shed. There is an empty lot next door, then a house on Mountain Circle N. The applicant's property is a flag lot the shed location is in the area of where the flag would be. If the Board decides he can put his coop there as a condition based on the Zoning Ordinance, the Planner has told the Board as a condition they can only have 5. Mr. Castronova asked about a neighbor seeing the shed/coop and in the winter it can be seen but the neighbor helped him build it and wanted eggs as well. Mr. Glatt asked if anyone else in the neighborhood had chickens and he said yes someone near by is doing the same thing but has

the acreage. He does not know who had the complaint. Mr. Glatt asked the applicant if after talking to the neighbors if it would have any detrimental effect upon the neighborhood. The coop is 2 ½ X 3 feet. The shed is 16 X 21 feet. He has siding for the shed but did not know if allowed to keep it so he did not put it on.

Mr. Brady asked if Mr. Drew had anything to add he indicated that the setback indicated on the property meets the requirement of the Zone for accessory structures.

Mr. Brady opened the meeting to the public

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

Second by Vivienne Erk

All in favor to close the public portion.

Motion by Ada Erik to approve Bulk Variance ZB04-11-07, Block 5904; Lot 7, 450 Morsetown Rd, R-3 Zone. The application has put the building in a nice spot, there are more chickens in the neighborhood than he realizes. She thinks it will add to the neighborhood.

Second by Steven Castronova with the conditions set forth by Mr. Drew limiting the number of farm animals to five (5) the reason it is being permitted where it is, is because the location of the property and it has two front yards, the applicant is caught between a rock and a hard place no matter where it is placed he will need a variance. He is putting it in the flag lot portion which is away from the front of the house.

Ada Erik and Steven Castronova amended their motion and second to include the additional information.

Roll Call Vote:

Yes: Ada Erik, Steven Castronova, Frank Curcio, Russell Curving, Vivienne Erk, Robert Brady

No: none

Mr. Brady explained that they have 45 days after the memorialization is advertised in the newspaper for the appeal period if they pull the permit before that time, they do so at their own peril and could be cited, during the 45-day appeal period someone can come forward to appeal the approval. They have their approval for the variance but the formal approval with the memorialization will take place at the August 23, 2011 meeting.

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

Second by Vivienne Erk

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

Mr. Drew reviewed the letter from the County of Passaic and indicated that they are amending the County subdivision and site plan regulations to mirror New Jersey Highlands requirements. He questioned whether the proposed changes effect how the town views applications that are not required to go for formal Highlands application. Mr. Drew will contact the Land Use Administrator.

Mr. Glatt informed the Board that Mr. Grawehr filed a Prerogative Writ Action against the Zoning Board and Mr. Luchynskiy relating to their approvals wherein the Board permitted Mr. & Mrs. Luchynskiy to put a storage shed on their property and Mr. Grawehr and his wife objected to it because of the fact they claimed it effected their maintenance agreement and aesthetics. It is a two count complaint and needs the Board to authorize to file an answer. It was served on July 20, 2011.

The first count is that the plaintiffs are saying the Board's decision affected the value of their property. The second is that the Luchynskiy's violated the driveway maintenance agreement. If an answer is not filed it is a default and that is telling the Court that the Board is wrong and to reverse us. The judge can only make a determination on what was before this Board, he defers to the Boards fact finding and the expertise of the Board, unless he finds the decision of the Board rises to Arbitrary and Capricious if for some reason after reading the transcript and hearing the oral argument, feels the record was deficient on certain proofs and the Board did not take things into consideration he can remand it to the Board for additional proofs or a more detailed resolution, affirm the Board or reverse the Board's decision. It could take six months or a year. Mr. Castronova asked if we were involved with the maintenance agreement. Mr. Glatt indicated that the Board made their determination Mr. Glatt made a ruling and the determination was made. It might come

back to the Board. Someone has to establish that the maintenance agreement had to cover the location of where the shed is. The Plaintiff and the Luchynskyi's are in a lawsuit. The issue of the maintenance agreement and what is covered should be decided by a judge first whether it is a declaratory judgment or a trial of some sort. From that perspective proceed to our count. Mr. Glatt felt the maintenance agreement was a property argument between the owners. The location of the shed was not within the common driveway, which was covered by the maintenance agreement.

Motion by Robert Brady for Mr. Glatt to respond to the summons on behalf of the Board of Adjustment.

Second by Ada Erik

All in favor

Motion by Ada Erik to approve the Regular Meeting Minutes of June 28, 2011

Second by Steven Castronova

All in favor to accept the minutes as written

Motion by Ada Erik to adjourn the meeting of June 28, 2011.

Second by Frank Curcio

All in favor to adjourn

Meeting adjourned at 8:47 p.m.

Adopted: August 23, 2011

Respectfully submitted by,

Denyse L. Todd, Secretary
Zoning Board of Adjustment