

MINUTES
Of the Township of West Milford
ZONING BOARD OF ADJUSTMENT
June 23, 2020
Regular Meeting via Zoom

(Due to COVID-19 social distancing requirements this virtual meeting was held on Zoom.) Robert Brady, Board Chairman, opened the Zoom Meeting of the Zoning Board of Adjustment at 7:45 p.m. The Board Secretary read the Legal Notice. The Pledge of Allegiance was recited.

Roll Call

Present: Daniel Jurkovic, Linda Connolly, Frank Curcio, Arthur McQuaid, Michael Gerst, and Robert Brady

Also present: Deidre Ellis, Board Secretary, Stephen Glatt, Board Attorney, Ken Ochab, Board Planner and Patrick McClellan, Board Engineer

Absent: Russell Curving, Jo Ann Blom and Steven Castronova

The Chairman greeted the Board, the applicants and any members of the public. Mr. Brady explained the Zoning Board and Open Public Meetings Act. The meetings are advertised in the Herald News. The Board operates in accordance with the Open Meeting Act of the State of New Jersey, which means discussions and decisions are made in public. Under normal circumstances the Board follows a printed agenda. There are no new applications after 10:30 pm and no new testimony after 11:00 pm, after the applicant speaks then anyone can speak for or against that application. If it is needed there will be a break at approximately 9:00 pm. The appeals of this Board go directly to the Superior Court of the State of New Jersey.

Chairman Brady indicated that there would be a 6 member Board this evening. The Board Attorney indicated that there being 6 members there would need to be a majority vote for approval and a 3-3 tie vote would result in a denial, not an approval.

CARRIED APPLICATIONS

JOANNE & RAY WARD
BULK VARIANCE ZBo8-19-16
Block 4002: Lot 7
234 Long Pond Rd.; LR Zone

Complete: 10/31/2019
Deadline: 6/27/2020

Bulk Variance approval requested for the prior construction of a garage and deck with roof encroaching on property that is not owned by the applicant, with a rear yard setback requirement of 60 ft, and 1 ft is proposed, a side yard setback where 30 ft is required and 2.1 ft is proposed, and an attached garage where 30 ft is required and 1.9 ft is proposed.

The applicant's attorney, Robert Moshman Esq. indicated that the applicant's architect Brian Murphy, would not be available until around 8:30 and requested that another applicant be heard in the mean time. Mr. John Barbarula Esq. representing an opposing party indicated that the structure has already been built yet apparently no effort had been made to join the property owner as an applicant. Unless the adjoining property owner upon whos property the structure was built is an applicant, there is a threshold issue that would not allow the Board the power to grant approval on that property. There was no objection to continuing on with the next application until Brian Murphy could attend the meeting.

GARY & ANGELA BERGH
BULK VARIANCE ZB10-19-18
Block 4301; Lot 36
35 Forest Lake Dr.; LR Zone

Complete: 12/6/2019
Deadline: 7/3/2020

Bulk variance requested for lot coverage where 10% is required, 10% is existing and 14+/- % is proposed for the construction of a proposed 7 foot by 30 foot addition and 5 foot by 40 foot covered porch.

Eligible to vote: Russell Curving, Linda Connolly, Frank Curcio, Arthur McQuaid, Michael Gerst, Jo Ann Blom and Robert Brady

The Board Attorney swore in Mr. Gary Bergh of 35 Forest Lake Dr., Hewitt, NJ and Mr. Vincent Lanza, 40 Forest Lake Dr., Hewitt, NJ. Mr. Lanza indicated that the front porch had been removed to make the application more conforming. Only the rear addition, squaring off the building was to be considered, increasing lot coverage by 2% instead of the formally proposed 4% for a total of 12%. The addition is 7 feet by 30 feet, 210 square feet added and will not extend further than the existing corner of the house. The addition basically "squares off" the house. The proposed addition conforms with the neighborhood, most homes exceed the 10% lot coverage permitted. The lot itself is undersized. Looking at the house from the front the house to the right does not exceed the lots coverage limit and the one to the left does as well as do several to the left. To the right are two smaller log cabins that are two of the smaller bungalows in the neighborhood. Mr. Lanza indicated that he had been to the Board many times for similar variances in this particular neighborhood.

Chairman Brady asked about the memo from the Health Department and Mr. Lanza indicated that the memo did not apply because it was with regard to the front porch which was no longer a part of the application. The Board Engineer confirmed that septic is located in the front of the house and therefore is no longer an issue.

The public portion of the meeting was opened where anyone interested could "raise their hand" and speak via the Zoom program.

Seeing no one, a motion was made by Michael Gerst to close the public portion of the application. Second by Arthur McQuaid.

Roll call vote:

Yes: Daniel Jurkovic, Linda Connolly, Frank Curcio, Arthur McQuaid, Michael Gerst, and Robert Brady
No: None
Abstain: None

A motion was made by Linda Connolly to approve Bulk Variance application ZB10-19-18, Block 4301; Lot 36; 35 Forest Lake Dr.; LR Zone. Second by Daniel Jurkovic, indicating that this situation is very common when it comes to our lake communities, where there are long narrow pieces of property exist and many homes exceed lot coverage. The impact would be minimal as the home is just being squared off and only seen from the lake side as well.

Roll call vote:

Yes: Daniel Jurkovic, Linda Connolly, Frank Curcio, Arthur McQuaid, Michael Gerst, and Robert Brady
No: None
Abstain: None

The Board Attorney indicated that he hoped to have the resolution for this application completed by the next scheduled meeting, July 28, 2020, and that after the resolution was memorialized and advertised in the paper, the 45 day appeals period would begin, where any member of the public may come forward and appeal the application. If construction were to begin during this time and someone appealed the work would be done at the applicant's risk. Mr. Bergh indicated that he understood.

At this time attention was returned to the WARD APPLICATION.

Mr. Barbarula indicated that he represented an adjoining neighbors at 230 Long Pond Road, John and Mary Grischuk, The 3 feet that are encroaching are along their side yard. The Board Attorney indicated that a letter dated November 22, 2019 by Gallagher, Briody & Butler, Counsellors at Law had been sent to the members of the Board and if in fact, any of them read the letter to please disregard it, as it is of no evidentiary value.

Mr. Moshman indicated that it was his understanding that the Board had instructed the Wards to get permission from Awosting before they do anything on their property and at some point, permission was achieved and then the permission was to be in the form of easements, and that

is ready to go pending the granting of a variance. If Awosting were interested in attending the meeting they had been noticed.

Mr. Barbarula indicated that the issue was not about noticing Awosting but the issue was if the application were allowed to go forward, the Board would then have to allow anyone else coming forward to apply for a variance without the owner of that property being a part of that application, and that is not the Land Use Law. Anyone having something done on their property must be a participating applicant. Relief cannot be granted on that property unless Awosting joins the application or if an easement is granted to the applicant before the approval which gives the applicant the right to build on the property subject to the Board of Adjustment's approval. A requirement of the application is consent of the land owner, Mr. Barbarula indicated that this was not consent from the land owner if they were not on the application. The application is flawed and either Awosting joins the application or an easement is provided so that the applicant can say, "I have this easement and I would like to build on it." Mr. Barbarula argued that the application was one of forgiveness as well, the structure has been built, if the Board were to approve the application it would be void from the start.

Mr. Moshman indicated that if an easement were granted and then the Board did not approve the application, the easement would have to be eradicated. Awosting granted permission 25 years ago and is still willing to finalize the easement and if the Board requests that, it could be done before the next meeting.

The Board Attorney enquired if there was something in writing to indicate support from Awosting. Mr. Moshman indicated that he has submitted an exchange where property was attempted to be purchased from Awosting though email. The Board Planner indicated that he had a letter dated September 25, 2019 on Awosting letterhead that indicated that the Awosting Association had had a meeting to discuss the easement and the easement would be granted only to existing structures and there was also some other criteria. The Board Attorney indicated that there had been a long delay with this application. There was discussion of the contingencies and the benefit of getting an easement. Mr. Barbarula indicated that the application was flawed due to the fact that the owner of the land was not an applicant. More discussion. The Board Attorney indicated that it would be prudent to carry this application to the next meeting and then the Awosting Association could add to the application. It would be unfortunate for the Board to approve the application and then a neighboring property owner objects and makes an appeal over a technical issue and then things are further delayed, by months.

The Board Attorney asked if Mr. Moshman would like to take a moment to confer with his client and he took a moment to call Mrs. Ward. (Their microphones were muted.)

Mr. Moshman indicated that his client was willing to proceed tonight. The Board Attorney advised the Board that they had some different options with regard to how to proceed. Mr. Moshman then indicated his client would be willing to proceed however the Board desired. The applicant was willing to grant an extension and come back to go before the Board whenever the Awosting Association was willing to give their consent. The Awosting Association letter dated September 25, 2019 was marked B-1, first as an exhibit, but then Mr. Barbarula objected that it should be considered here say and so it was marked B-1 for the purposes of identification only. Mr. Ochab read the letter to the Board.

*Awosting Association, Inc.
35 Long Pond Road
Hewitt, NJ 07421*

Via Email & Certified Mail

September 25, 2019

Ray and JoAnn Ward

234 Long Pond Road

Hewitt, NJ 07421

Dear Mr. and Mrs. Ward,

This letter is in response to your email dated September 15, 2019 wherein you shared that the Zoning Board of West Milford has requested that you request a letter of easement from the Awosting Association for your deck. You explained that your deck has been in place for over 20 years and encroaches on the Awosting Association property known as the Parkway.

Earlier this week, the Awosting Association Board met to specifically discuss this issue. The Board has decided to provide you with a permissive easement provided that all of the following criteria are met:

- The easement will be granted only to existing structures. No new construction is permitted, including but not limited to stairs, enclosures, roofing, etc.*
- Current and future homeowners will be obligated to provide annual proof that the deck is covered by an insurance rider or a hold harmless/indemnification clause is included in the easement agreement.*

- Current and future homeowners will be required to maintain proper upkeep and maintenance of the deck.*
- Any and all additional changes to the deck (including, but not limited to, painting, railing replacement, etc.) must be preapproved in writing by the Board.*
- Current and future homeowners agree to bear all costs related to the easement, including, but not limited to, the cost of attorney's fees for the Association, the cost of the land survey, cost of permits, and costs related to the enforcement of the agreement.*
- The agreement terms shall be binding upon the parties hereto and their respective heirs, successors, assigns and legal representatives.*
- The easement is due to be filed no later than January 1, 2020. It is the expectation of the Board that your attorney will draft the agreement for review by the Association's attorney and that review process will take place prior to the filing deadline.*
- Any violation of the easement agreement will result in the removal of the structure.*

Should you have any questions about this letter, we can be reached via email at board@awosting.org or at our next board meeting which is scheduled to take place on Wednesday, October 9, 2019 at 7:30 pm at the Clubhouse.

Your discretion regarding the agreement is appreciated and we look forward to working with you and your attorney.

*Warm regards,
Lisa Johnson
Secretary
Awosting Association Board*

Mr. Jurkovic indicated that after hearing the letter, it appears that the easement has not been granted and the conditions required by the Awosting Association must be decided and approved by the Awosting Association and that perhaps they are willing to join in the applications subject to the conditions that they have laid out. The Board Planner indicated that the important line in the letter was the one stating that the Awosting Board has decided to provide the Wards with the easement provided all the criteria had been met, and one of the requirements was that the easement be filed no later than January 1, 2020.

The Board Attorney indicated that since the date has passed the Awosting Board is no longer bound by the letter. Getting the easement is a condition that allows them to keep what has been done to the property the way it is. If they do not get the approval then the approval by the Board of Adjustment is void, and the applicant is subject to fines, penalties or remedies there are for encroaching on the property. It would be prudent to carry the application another month in order to get the easement. The Board Attorney asked the opposing Attorney Mr. Barbarula if the Awosting Association joins the application for the purposes of the easement and the encroachment, are you making the argument that they must file that easement before the Board makes a determination? Mr. Barbarula indicated that this application requires the consent of the adjoining property owner and if the Awosting Association joins the application, it can go forward. Mr. Barbarula indicated that there should be a dismissal without prejudice, so that the application can be resubmitted with Awosting joining in on the application and reestablished and then renoticed to satisfy the Land Use Statute. If the easement had been established prior to January Mr. Barbarula indicated there would be no argument, because they would have the right to build on the easement. The Board Attorney indicated that if the applicant got the approval and the matter is carried and gets Awosting to join the application, is that the only issue of opposition. Mr. Barbarula indicated no, and that if Awosting joins the application there may be more members of the Awosting group that may have a problem with the application. The Board Attorney indicated that whatever the Board of Adjustment gets from the Board of Awosting will be representative of their decision and the Board of Adjustment is not concerned with Awosting's internal problems. The Board Attorney indicated that if Awosting had a problem with the encroachment and someone opening them up to liability a representative could have been at the meeting or previous meetings.

Dan Jurkovic indicated that perhaps someone from Awosting should be willing to testify in order to authenticate any documentation. There was more discussion about the easement and the renotification process should Awosting join the application. The Board of Adjustment does not want to authorize the right of anyone to build upon someone else's property. Mr. Moshman indicated that if the applicant were asked to renotify for a third

time to hundreds of homes, it would be expensive and unnecessary, after things have been already agreed upon by the Awosting Association and perhaps the easement could be held in escrow pending the approval or the Board of Adjustment as a possibility. One of the reasons the easement has not been filed is that perhaps there would be conditions put on it by the Board of Adjustment and then it would need to be refiled and amended. The Board Attorney indicated that the Attorneys should get together and discuss the merits of the situation, rather than the technicalities of the filing of the application, either Awosting does or does not have a problem and how can it be fixed, instead of wasting time and money going back and forth. The Board Attorney indicated that Mr. Moshman will need to be present at the next meeting to give an update of the progress, if it is going to take a long time the application could be dismissed without prejudice.

Arthur McQuaid indicated that the documents that were requested by the Awosting Association were never prepared and that they should be presented at the next meeting. The Board Attorney indicated that one thing that would be required by the Board is that the Township would have to be protected from any litigation by Mr. Moshman's clients and the Township Attorney would need to be involved. The applicant agreed to an extension of 90 days.

The Board Attorney indicated that the applicant was not going to be required to give notice again but in the event of the Awosting Association joining the application and the municipal Land Use Law requiring people within 200 feet of their property line, renoticing will have to happen.

A motion was made by Daniel Jurkovic to carry this application (ZBo8-19-16) 30 days, based on the applicant agreeing to a 90 day extension. Second by Arthur McQuaid.

Roll call vote:

Yes: Daniel Jurkovic, Linda Connolly, Frank Curcio, Arthur McQuaid, Michael Gerst, and Robert Brady
No: None
Abstain: None

NDUE NACAJ
BULK VARIANCE ZB11-19-20
Block 12001; Lot 29
1006 Macopin Rd.; OR Zone

Complete: 1/9/2020
Deadline: 5/8/2020

Bulk variance requested for side yard setback where 75 feet is required and 12.3 feet is existing for a kitchen addition.

The Board Attorney swore in Mr. Ndue Nacaj, 1006 Macopin Road, West Milford. Mr. Doug McKittrick of McKittrick Engineering indicated he would speak for Mr. Nacaj as Engineer and Planner. Douglas McKittrick was sworn in and gave credentials, Offices at 2024 Macopin Road, a licensed NJ Engineer since 1982, a licensed Planner since 1983, has been qualified in front of the West Milford Board of Adjustment several times, and also the Planning Board, most of the Boards in Passaic and Sussex County, and Bergen County and a couple in Morris County, in Hackensack and the Development Commission in the New York and New Jersey Port Authority and Passaic, Bergen, Morris and Sussex County Superior Court.

Mr. McKittrick indicated that the property is located at 1006 Macopin Road, block 12001, lot 29 in the OR Zone, office research. It an existing two story family dwelling with a septic and well in the rear yard. The adjacent lot #28 is also a single family home with septic and well, # 26 is a 119 acre lot that is vacant, containing some wet lands. The nearest dwelling to the North is about 450 feet away. For the office research zone has substantial bulk requirements, the minimum lot size area is 10 acres, lot frontage minimum is 350 feet, lot width is 350 feet, lot depth is 500 feet, front yard setback is 100 feet, side yard setback is 75 feet, rear yard setback is 150 feet, maximum percent lot coverage is 50% of the lot area, maximum building height is 3 stories or 40 feet. The applicant tore down an existing kitchen that was approximately 33 feet by 10 feet to the rear of the house and then constructed a new kitchen that is 33 feet by 12 feet, which represents a 2 foot addition to the rear of the dwelling. The applicant is seeking variance relief from the side yard encroachment, where 75 feet is required. All of the other attributes are not impacted by this application. The addition has no impact on the front yard or the right side

yard setback. It reduced the rear yard setback by two feet to about 400 feet and the left side yard setback of 12.54 to 12.3 feet and increase the lot coverage from 2.46% to 2.59% the nearest dwelling is about 450 feet from the encroachment. The property to the North will probably never be developed, due to wet lands and the impact of the Highlands Act. Mr. McKittrick indicated that in his opinion the application had no impact on zoning since the nearest structure on the side where the encroachment is on is 450 away. The hardship is that the property tapers toward the back in a trapezoid shape. The zone requirement is 75 feet which is wider than that lot and the one next to that and the one next to that one. The encroachment is only 3 inches and would be virtually undetectable if there was a structure next to it. The office research zone was created long after the houses were built here. This includes lot 27, 28, 29 and 30 of this same block. Consideration was not given to possible future expansion when the area was rezoned. Based on these reasons, Mr. McKittrick indicated that the Board could grant the variance since it is a permitted use and has no negative impact on the Master Plan, it has no impact on the neighbor to the South, it provides for an upgraded dwelling that enhances property values, and is de minimis in nature. It was unfortunate that it an "after the fact" application but the homeowner was unaware of zoning criteria.

The Board Planner indicated that since it is in the OR Zone and houses are not permitted there and the fact that it is an expansion it is really an expansion of a non-conforming use and that makes it a D-2 variance and it will be necessary to get 5 votes of approval for the application to pass. The Zoning Officer had indicated also to Mr. McKittrick that although the area was once in the CC, Community Commercial Zone, that was no longer applicable, and had also indicated that when the zoning application was denied only the Bulk Variance was required. Mr. McKittrick indicated that Mr. Nacaj had torn down an eye sore garage and was creating something more pleasing and that would support approval of a D-2 Variance.

The Board Planner agreed with Mr. McKittrick and indicated that the house predated the zoning change. The shape of the property is such that it makes it difficult to do an addition. With the D-2 variance there are two other variances being sought, two for the side yard. To the North there is 12.2 feet and 35.1 feet on the South side. The property to the North is owned by the City of Newark and is very unlikely to be developed.

The Health Department memo was discussed and the addition will need to be brought up to code. Mr. McKittrick indicated that he would be helping the applicant to get the building up to code with the Health Department and the Building Department. There was some discussion about the buffer zone from the wetlands. The Board Engineer indicated that the Health Department would require the applicant to get the required permit and as a condition of approval the applicant would need to do as indicated by the Health Department. The kitchen addition is not adding a bedroom, and therefore is not exacerbating the septic.

Chairman Brady asked the applicant if he had any problem with conditions of approval from the Health/Building Departments and Mr. Nacaj indicated that he did not have a problem with that. Mr. McKittrick indicated that he would assist the applicant in getting the necessary permits.

The Board Attorney indicated that the application needed to be amended, based upon the testimony of the Board Planner, to include the D-2 variance along with the two bulk variances for the purposes of the advertisement, and that the D-2 variance would be encompassed in the all-inclusive language of the notice. The Board Engineer indicated that there were letter from the Zoning Officer (January 10, 2020) and the Construction Officer, and to be clear proper inspections would need to be made on any construction done to date to bring them up to code. There are no foundation supports and there are concerns with sub-standard work. The memos should be included with the resolution.

Daniel Jurkovic asked for clarification of the side yard setback and was told that the difference was indeed 3 inches. 12.54 feet to 12.3 feet. Mr. McKittrick indicated that the original structure was 1302 square feet 2.46% lot coverage. The new structure is 1368 square feet, about 66 additional square feet, increasing lot coverage to 2.59%.

(At this point there was a technical issue and at 9:33 pm a ten minute break was taken. So moved by Arthur McQuaid, Vice Chairman.)

The meeting resumed with all previous Board Members present. The Chairman opened the meeting to the public.

Seeing no one, a motion was made by Michael Gerst to close the public portion of the application. Second by Arthur McQuaid.

Roll call vote:

Yes: Daniel Jurkovic, Linda Connolly, Frank Curcio, Arthur McQuaid, Michael Gerst, and Robert Brady
No: None
Abstain: None

A motion was made by Daniel Jurkovic to amend and approve Bulk Variance application ZB11-19-20, block 12001, lot 29, in the OR Zone to include the D-2 variance, for the expansion of a pre-existing non-conforming use, as well as the two side yard, bulk variances, requesting 12.2 feet (North) and 35.1 feet (South) where 75 feet is required, for the kitchen addition, stating the property would benefit from being improved and the property runs at an angle, and that unique characteristic of the property justifies the variances. This would be subject to the conditions of the Health Department memo as well as the memos from Tim Ligus and Jim Lupo. Second by Michael Gerst.

Roll call vote:

Yes: Daniel Jurkovic, Linda Connolly, Frank Curcio, Arthur McQuaid, Michael Gerst, and Robert Brady
No: None
Abstain: None

The Board Attorney explained the appeals period to the applicant. It will be at his own risk to proceed with work during this time.

A motion to approve all invoices for the Board Attorney by Michael Gerst. Second by Arthur McQuaid.

Roll call vote:

Yes: Daniel Jurkovic, Linda Connolly, Frank Curcio, Arthur McQuaid, Michael Gerst, and Robert Brady
No: None
Abstain: None

A motion to approve all invoices for the Board Engineer by Arthur McQuaid. Second by Michael Gerst.

Roll call vote:

Yes: Daniel Jurkovic, Linda Connolly, Frank Curcio, Arthur McQuaid, Michael Gerst, and Robert Brady
No: None
Abstain: None

A motion was made to approve the June 11, 2020 Special Meeting Minutes by Daniel Jurkovic. Second by Michael Gerst.

Roll call vote:

Yes: Daniel Jurkovic, Linda Connolly, Frank Curcio, Arthur McQuaid, Michael Gerst, and Robert Brady
No: None
Abstain: None

Motion for adjournment of the June 23, 2020 meeting by Michael Gerst. Second by Linda Connolly.

All in favor. None opposed.

ADJOURNMENT at 10:12 PM
Next regular meeting July 28, 2020 at 7:30 p.m.

Respectfully submitted by,


Deidre Ellis, Secretary
Zoning Board of Adjustment