

MINUTES
Of the Township of West Milford
ZONING BOARD OF ADJUSTMENT
June 24, 2008
Regular Meeting

Robert Brady, Board Chairman, opened the Regular Meeting of the Zoning Board of Adjustment at 7:50 p.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, Arthur McQuaid, Barry Wieser, Frank Curcio, Robert Brady

Also Present: Stephen Glatt, Board Attorney, William Drew, Planner, Richard McFadden, Board Engineer, and Denyse Todd, Board Secretary

Absent: Daniel Jurkovic, William Lynch and Gian Severini

Mr. Brady introduced the Board Attorney and explained the Open Meetings Act. There are four regular members and two alternates making a six member Board. The Chairman asked Mr. Wieser and Mr. Curcio to sit in for two of the absent members. There is an even number on the Board for the meeting so if there was a tie on any applications, it becomes a denial. The applicants can reconsider whether they want to proceed at this meeting. For a use variance, there needs to be a majority of 5 members in the applicant's favor. The Chairman explained the procedures for the Board of Adjustment.

Mr. Brady explained that all of the resolutions were not available due to the fact that last month's rush to hire a planner made it difficult for all to coordinate. Only one Resolution is available.

MEMORIALIZATIONS

RESOLUTION NO. 13-2008

RUSSELL CURVING

Bulk Variance #0830-0798

Block 9001; Lot 17

1494 Macopin Road, R2 Zone

Action: Memorialization of Resolution No. 13-2008.

Motion by Ada Erik to approve the memorialization of Resolution No. 13-2008.

Second Frank Hannan

Roll Call Vote: Ada Erik, Francis Hannan, Barry Wieser, Frank Curcio, Robert Brady

There were no other resolutions available for memorialization for this meeting.

CARRIED APPLICATIONS

EXXON ON THE RUN

Use Variance #0640-0764

Preliminary & Final Site Plan #0620-0274

Variance #0630-0275

Block 15505; Lot 1
2899 State Highway 23

Exxon On The Run's representative was Simone D. Sinisi of Price, Meese, Shulman and Daminio for tonight's meeting.

She is requesting another adjournment. She said that the applicant is working with the DOT. The DOT continues to shrink the proposed facility and the applicant chooses to continue working with the DOT and doesn't want to move forward with the application until they have things worked out with the DOT. Exxon doesn't know if they want such a small facility. Ms. Sinisi doesn't know the specifics of the size but it is significant where the client cannot proceed at this time. They are requesting an adjournment until September, approximately three months ready to proceed or perhaps withdraw the application. Hoping to have it resolved.

Mr. Brady said it was an unusually long postponement since already postponed from April. Mr. Brady asked if it would be beneficial to their client to withdraw. Ms. Sinisi said no because they still might move forward. She is not authorized to withdraw. Mr. Brady said that the public has a right to speak at the hearings, postponing for this long may seem not above board. Ms. Sinisi said that they are not trying to do that but whatever the Board wants them to do, they will. Mr. Glatt said that the applicant should be required to get a new certified list and to re-notice since it will be almost a year so there may be new property owners. He also wants a representation from the applicant that they will have their issues resolved with the DOT and therefore they can move ahead. If not resolved with the DOT by September then they should withdraw the application without prejudice. The Board might have the right to dismiss the matter without prejudice for lack of prosecution. Mr. Glatt said that the public shouldn't have to keep coming and the Board Secretary for administrative purposes shouldn't have to keep putting the application on the agenda. Mr. Glatt's recommendation is if they are adjourning again that conditions be placed upon the adjournment. Ms. Sinisi said that it was more than reasonable.

Mr. Hannan pointed out that the main reason for the initial carry was for the egress and ingress to the site. It would be extremely disappointing if the applicant was not looking into that matter as well with the DOT. The Chairman asked if there were any questions and for someone to make a motion.

Motion by Francis Hannan to carry the matter to the September 23, 2008 Zoning Board of Adjustment meeting with conditions that the applicant will be required to re-notice and if unable to fulfill their obligations for the DOT by September that they withdraw and re-apply. Mr. Glatt feels that the applicant should re-notice whether withdrawing or not. The public should have a right to know and be here even if withdrawing. Mr. Hannan amended his motion to include the additions of Mr. Glatt.

Second Arthur McQuaid

Roll Call Vote:

Yes: Ada Erik, Francis Hannan, Arthur McQuaid, Frank Curcio

No: Barry Wieser, Robert Brady

Mr. Drew asked for a time extension through the end of September. Mr. Glatt said to sign through October in case all is good with the DOT but they run out of time in September. The September meeting is September 23, 2008. The applicant will be required to give additional notice.

VINCENT LANZA

(LOOKOVER DRIVE)

Bulk Variance #0530-0717
Block 206; Lot 14.02

Resolution 21-2006 Bulk Variance Approval

Resolution 22-2006 with *Di Minimis* exception

Request to amend Condition #2Aof Resolution 21-2006.

Mr. Glatt swore in Vincent Lanza of 40 Forest Lake Drive, Hewitt, NJ. This is a previously approved application for bulk variance with *di Minimis* exception. He agreed to extinguish a small easement and provide a Quit Claim Deed for same easement at the time of his original approval. Since that time, his title company has found that if this is extinguished that the lake rights will be extinguished also. The easement might have been there before Lookover Drive was here for the purposes of giving the residents lake access so that they could walk to the lake. The easement does exist and he is asking for it to remain since it doesn't affect any other property, and if extinguished they would lose their lake rights so he is asking to amend the condition with regard to the quit claim deed.

Mr. Brady said that he was under the impression that the easement wasn't only for Mr. Lanza's property but for anyone. Mr. Lanza said it only existed on his property. The easement is part of his property and Mr. Lanza doesn't think it affects anyone except his own. A Board Member asked why they originally wanted the easement vacated and Mr. Lanza thought that it was because it was an easement and because it didn't seem to serve any purpose. When researched Mr. Lanza found it gave access to the lake. There is also some information about a 10-foot right of way. The Planner feels anything should be reflected on the plan, right of way and easement. A Board Member requested the site plan. The 10 foot right of way appears to lead to Lot 14.01. Mr. Lanza's easement gives a strip of land along the lake and even if it doesn't go anywhere it gives a right to use a portion of Lake Lookover along Clinton Road. Mr. Glatt asked if it was voluntarily given up and Mr. Lanza said he was asked to give it up. At the time of the original approval, it didn't seem that it did anything so he agreed to give it up, now they found out otherwise. It only affects them if it is extinguished.

Mr. Glatt explained to the Board that vacating the easement might have no adverse affect however; it might make a difference down the road. Mr. Lanza doesn't want to give it up. The little strip along the lake goes with the property. Mr. Lanza also had supplied a letter from the title company explaining the situation. Mr. Brady opened the meeting to the public. Seeing no one Ada Erik moved to close and it was seconded, all in favor to close public portion.

Motion by Arthur McQuaid to approve the request to amend Resolution No. 21-2006, specifically Condition 2(A) (regarding the quit claim deed) only the one condition be removed because of the information from the title company.

Second Ada Erik

GARY GALLUCCI

Bulk Variance #0830-0800

Block 2701; Lot 18

117 Lakeshore Drive, LR Zone

Mr. Glatt swore in Gary Gallucci residing at 8 Hilton Court, Hewitt and Mark Palus employed at 170 Kinnelon Road, Kinnelon. Mr. Brady requested Mr. Palus' credentials and he is a licensed professional engineer and professional planner in the state of New Jersey, his licenses are active. He has been practicing land use engineering and planning for the past 14 years, appeared before 50 boards in New Jersey including this Board. BA and MA in Civil Engineering from Rutgers. Mr. Brady accepted his credentials.

Mr. Gallucci was asked to explain his application and he is seeking a variance for principal building coverage at 117 Lakeshore Drive, he received Mr. McFadden's report, which is why the engineer is in attendance. The existing home is a two-bedroom single family home in the LR Zone and it backs up to Upper Greenwood Lake. The new home will also be a two-bedroom home; slightly larger than existing which is why they are requesting the variance for building coverage. There are nonconformities, the lot area

is 3,723 square feet and the required size is 20,000 square feet so they are undersized. The required lot width is 120 feet and proposed and existing is 38.6 feet. The lot frontage required is 120 feet and they have 44.14 existing and proposed. The requirement for lot depth is 120 feet and 60 feet is existing and proposed. None of those will change. Mr. Glatt asked how many variances there were. Mr. Palus was listing the existing nonconformities, which will be mitigating and only one will be intensified. Mr. Glatt asked to see the advertising notice. The phrase in our advertising says "and such variance relief as the Board deems necessary so as to permit the construction of the single family home", usually will cover a small variance that might be needed but since the building was going to be torn down there are no preexisting nonconformities, there are three variances. Mr. Glatt feels that it should be noticed completely and recommended this to the Board. Mr. Palus said that there are only 3 nonconformities but that is the lot not the building being proposed. The Board can put conditions on the size of the building. Mr. Glatt feels that the purpose of notifying is to let the public know what is going on, 8 variances are listed, and not noticed. They won't lose their place on the agenda. Mr. Brady asked for a motion. Mr. Gallucci has no objections to the Attorney's request to re-notice for the additional variances.

Motion by Arthur McQuaid to carry this application to the July 22, 2008 meeting to give the applicant the opportunity to re-notice with more particularity to the type of variances.
Second Francis Hannan

Roll Call Vote:

Yes: Ada Erik, Francis Hannan, Arthur McQuaid, Barry Wieser, Frank Curcio, Robert Brady
No: none

ROCCO AND ROSANNE RICCARDI

Bulk Variance #0530-0719

Block 3401; Lots 23 and 24
Lakeside Road; R-2 Zone

Mr. Robert A. Jones, Esq. is representing Mr. & Mrs. Riccardi. Claud Ballester, 1811 Union Valley Road, Licensed Professional Engineer/Planner for 24 years, has testified for this Board before. Mr. Brady accepted the credentials of Mr. Ballester. Mr. Jones explained that this is a combination of Lots 23 and 24, which together is 2.87 acres. The depth of the lot is constrained, along Lakeside Road on the west shore of Greenwood Lake. The required lot depth is 225 feet and these lots are approximately 190.58 feet. The house on the lot creates a front yard variance where 75 feet is required and 69 is proposed. and the rear yard where 75 feet is required and they have 40.5. There is a mountain in the back of the property. Mr. Jones asked Mr. Ballester about the hardship for this variance and he said that yes there is a hardship because of the shallowness of the lot. Mr. Ballester began discussing Sheet 3 of 3, the topography plan. The house could be shrunken down; the driveway grade has issues but this is the most level spot. The septic field is in the only place possible. This is the only level spot that could have a dwelling because of the shape and constraints. Mr. Brady asked if the land behind the lot was owned by Passaic County and Mr. Ballester thought it was owned by the State. It seems to be Passaic County. The Riccardi's aren't the owners they are the contractual purchasers. John Aiello's mother's Estate and his sister own the land presently. Mr. Glatt asked if they went to the state or the county to purchase. Mr. Ballester mentioned Mr. McFadden's memo regarding the steepness and Sheet 2 of 3 was being discussed. The proposed driveway is different than the original design. The Board of Health approved the septic design.

There is a discussion about the site plan they don't agree. There seems to be four different sheets and they don't match. Mr. Ballester was talking about the driveway profile from the December plan and Mr. McFadden said his report is based on the April 23 and May 13 plan. There is discussion about which date contains which plans. Four sheets should be in one set. The fourth sheet is missing. Mr. McFadden never reviewed one of the sheets which may just be a larger scale. Mr. Brady asked Mr. Ballester if he would attest that the plans which the Board and the Professionals have

which might not be chronologically correct that they are correct as they stand. Mr. Ballester said yes. Mr. Brady added if any revisions need to be made at the end and complete sets are required would that be all right. Mr. Ballester said yes. Mr. Hannan asked Mr. Ballester to post the sheets as he is discussing them. Mr. Brady asked for Board members to check for page 4. Mr. Drew explained that the Board Members would have received the May 13 plans because they would be requested after completeness so their's would be missing the driveway profile. Mr. McFadden said the driveway profile sheet has been reviewed by him but the Board hasn't seen it, he hasn't reviewed the site plan grading plan. Mr. Glatt asked if from Mr. McFadden's perspective could the Board decide whether to approve the variance or not. Mr. McFadden said it's possible but looking at it again he doesn't know if it is the same or only a different scale than what he saw. Mr. Ballester said it had more detail that was the only difference.

Mr. Glatt recommended that the necessary testimony should be heard and by the next meeting Mr. McFadden can review. Mr. Brady asked Mr. McFadden if he already reviewed the driveway plans and he said yes. Mr. Brady said it was up to the Board whether to go with Mr. McFadden's recommendation or if they wanted to see it. The sheets seem to be the same one more detailed. Mr. Hannan said he wouldn't mind proceeding. Mr. Jones asked Mr. Ballester to explain the driveway grade and answer Mr. McFadden's questions regarding that. Mr. Ballester said it is a difficult lot with steep slopes. Mr. Ballester continued to explain the plan. The plan with the septic and driveway is the old plan. Mr. Ballester is going to try moving the driveway down to reduce the slope he doesn't know if it will work. Additional parking will be in the steep section. Mr. Ballester wasn't sure if they were design waivers or variances.

Mr. Brady asked Mr. Jones to step forward. The Chairman asked for complete sets of plans for members and professionals. He recommended to the Board that they ask the attorney to ask the applicant to carry to the next month for the plan. Mr. Jones said he will not be in New Jersey on July 22, 2008 and Mr. Ballester will not be able to have the plans finished for July either. Mr. Brady asked if they would sign an extension. The meeting will be carried to August 26, 2008 meeting. They can also contact Passaic County about purchasing additional property. Mr. Drew requested a 2 month time extension since that is how long of a time period before returning and take through November 10, 2008. Keep place in the agenda. Mr. Brady asked Mr. Jones for the record is it the applicant's wish to carry the matter to August 26, 2008 meeting. He said yes.

Ms. Erik asked if the driveway plan was shown to the Fire Department. The driveway profile might not have been in the set that was sent to the Fire Department. The secretary will make sure it goes out before August.

Motion by Ada Erik to carry to the August 26, 2008 meeting
Second by Arthur McQuaid

Roll Call Vote:

Yes: Ada Erik, Francis Hannan, Arthur McQuaid, Barry Wieser, Frank Curcio, Robert Brady
No: none

No further notice required.

CHARLES AIKEY
Final Subdivision #0810-1950D (section II)
Block 9501; Lot 19.02
144 Wesley Drive; R-3 Zone

Charles Aikey is carried to either July or August. Mr. Drew said that the applicant wasn't sure if he would be in New Jersey for the July meeting date. The application is for Section II subdivision approval, which originally received use variance approval from the Zoning Board of Adjustment back in 2002. The use variance was approved because originally the applicant was going to tie into the Highview sewage treatment

plant but the property was outside the designated sewer service area. The Township Zoning Ordinance would not allow the reduced lot sizes that are otherwise available to a property owner if their property is located in the sewer service area and they are able to tie into a sanitary sewer. The Board of Adjustment granted a use variance and the applicant filed for his preliminary subdivision and his final subdivision. In the mean time the Highlands Act was enacted which placed authority over land subdivisions with the Highlands Council and the Highlands Act says that you are not allowed to extend any existing sewer line you can tie laterals into the sewer but you cannot extend the sewer main. Part of Mr. Aikey's application was extending a sewer main to provide sewer for the four lots. He was able to revise his plan so that two lots were sewerred by a lateral and he came before the Board and received a final subdivision approval for Section I for two lots tying into the sewer with a sewer lateral, which was acceptable to the Highlands. He has since been trying to work through the Highlands regulations to allow him to tie his next two lots into the Highview treatment plant and he filed for his final subdivision section II. The problem is that he is proposing to either sewer these two lots or provide septic to the lots. The use variance approval was granted based upon him sewerred the two lots so he needs to come back and request an amendment to his use variance application.

The Board needs to consider whether this is warranted or not to allow him to subdivide the final two lots with the use of a septic system as opposed to tying into a sewer. Mr. Aikey didn't notice for an amendment to the use variance application so Mr. Drew advised him that the Board couldn't hear this application tonight and he needed to re-notice for an amendment to his original use variance approval. The reason for him not being at the meeting was because Mr. Drew advised him that he didn't need to come and that Mr. Drew would explain the reason for his absence and why the matter was being carried. Mr. Aikey agreed that he would have to come back, provide proper notice and request an amendment to his use variance and at the same time if the Board finds it acceptable that the final subdivision plan be considered at the same meeting. Mr. Hannan asked if there was an ordinance that requires tying into a septic if you are within 100 feet of a line. Mr. Drew said yes it is mandatory. Since Mr. Drew provided the background information on the application, Mr. Glatt said there should be no further discussion about the application since it was not technically in front of the Board this evening.

Approval of May 27, 2008 minutes

Motion by Ada Erik

Second by Francis Hannan

Roll Call Vote:

Yes: Ada Erik, Francis Hannan, Barry Wieser, Frank Curcio, Robert Brady

No: none

The Zoning Board of Adjustment By-laws need to be amended. Mr. Glatt feels that we should wait to vote on the by-laws. Original By-laws say that Township Planner is listed as ZBOA Planner, since they temporarily hired Bill Drew, Mr. Glatt stated the changes that were to be made in the by-laws. The secretary will send the amended by-laws with the July agenda packets for all to review. The section in question is to be changed to read Independent Professional Planner. 2/3rds of all members, are needed to vote 6 of the 9 members. There needs to be 6 votes in favor of changing the by-laws.

Mr. Brady asked for the members of the subcommittee to read through the resumes of the Planners and if someone feels there is a noteworthy candidate then they will interview them. Wants a full Board for the final decision. Mr. Drew will be in there as well. Mr. Hannan brought up the point about the attorney not being present during the interviews. Mr. Glatt doesn't feel he should be there either. Mr. Hannan said the committee will come back with certain applicants to be interviewed and they will have a special meeting before the expiration date for the current planner. Mr. Glatt pointed out that there could be an extension for the current planner. Mr. Hannan said a special meeting could be called early on the date of the July meeting.

Mr. Glatt doesn't think it is appropriate for the meeting to be done possibly the last night of Mr. Drew's meetings. He thinks a special meeting would be a better choice. Mr. Brady said that when the Township hired their planner that the Township Attorney was present and had input. There was discussion that the month of July would be tight for all. There would be nothing wrong with extending Mr. Drew's appointment if there couldn't be a special meeting in July. Mr. Semrau's letter suggests an extension if needed. Mr. Hannan said that Mr. Brady could meet with Mr. Jurkovic and Ms. Erik to go over the resumes and narrow it down. Mr. Brady said he would prefer doing it with full Board present. The other Board did not do it in front of their full board. Mr. Brady wants the interview process done with a full Board. If it becomes a time constraint issue because of summer vacations, he has no problem with an extension of Mr. Drew's contract. That way they can take their time for choosing the best candidate. Mr. McQuaid said that the Town and the Board is better served if the extension of Mr. Drew's contract is through September. Mr. Brady said the process should be further along before that decision is made. Mr. Brady asked if it would be inconvenient for Mr. Drew if the Board extended his contract at the next meeting and Mr. Drew said no. Mr. Brady asked if the Members would mind moving the process along before deciding about an extension. Mr. Glatt doesn't think it is appropriate to do before a meeting. Mr. McQuaid said that possibly through August an extension could be made. Mr. Brady said that he doesn't want it to be month to month and once the committee gets involved if need be they can extend for a longer period of time. With regard to the resumes, Mr. Brady said that four were interviewed and one was hired for the Planning Board, it wasn't mentioned who was interviewed because it could be prejudicial. Ms. Erik asked if the candidates were aware of the Pay to Play policy and the answer was yes. Mr. Brady apologized that the information wasn't given to the committee sooner. The members of the committee will find a time to meet.

Mr. Brady discussed the fact that Mr. Lynch missed a number of meetings. The secretary was asked to send a letter certified to find out his intentions. Mr. Brady said depending on the outcome; someone else would need to be appointed. Mr. Hannan explained the process for a vacancy on the Board. Mr. Brady reiterated that we needed to know Mr. Lynch's intentions before going forth with anything. Mr. Brady asked if there were any comments. The Board Members all agreed that Mr. Lynch is an asset to the Board and is always prepared. The inquiry is just an inquiry.

Mr. Brady wanted to discuss the 1952 Union Valley Road, LLC application because it has gone to the Planning Board. Mr. Drew said that it seems to be in limbo. The Planning Board Planner has reviewed the plans when in the office familiarizing himself with the files. Mr. Glatt said a letter was received from Mr. Barbarula the attorney for 1952 saying it was transferred to the Planning Board. The secretary informed the ZBOA Attorney that the Planning Board Planner sent a letter to Mr. Barbarula requesting that they specifically withdraw their application from the Zoning Board of Adjustment. Mr. Drew also said that he was under the impression that Mr. McGroarty sent a letter saying they needed new applications and fees and it wasn't simply a transfer. The Board Attorney asked the Secretary to remind him to contact Mr. Barbarula regarding 1952.

Adjournment

Motion by Ada Erik

Second

All in favor to adjourn the meeting

Meeting adjourned at 9:38p.m.

Adopted: July 22, 2008

Respectfully submitted by,

Denyse L. Todd, Secretary
Zoning Board of Adjustment