

MINUTES
Of the Township of West Milford
ZONING BOARD OF ADJUSTMENT
July 24, 2018
Regular Meeting

Robert Brady, Board Chairman, opened the Regular Meeting of the Zoning Board of Adjustment at 7:35 p.m. The Board Secretary read the Legal Notice. The Chairman asked all in attendance to recite the Pledge of Allegiance. There was a 7 member board 1 alternate will be late Mr. Brady explained the Zoning Board and Open Public Meetings Act. He introduced the Board Attorney, Stephen Glatt. The meetings are advertised in the Herald News. The Board operates in accordance with the Open Meeting Act of the State of New Jersey. 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. Under normal circumstances the Board follows a printed agenda. The appeals of this Board go directly to the Superior Court of the State of New Jersey.

Roll Call

Present: Russell Curving, Daniel Jurkovic, James Olivo, Frank Curcio, Arthur McQuaid, Michael Gerst, Robert Brady

Also present: Denyse Todd, Board Secretary, Steven Glatt, Board Attorney, Kenneth Ochab, Board Planner, Michael Cristaldi, Alaimo Group, Board Engineer

Absent: Steven Castronova will be late Matthew Conlon

Went out of order to wait for a 7 person Board, Mr. Maloney would be heard first. Mr. Barbarula voiced his objection to waiting for the additional Board Member.

NEW APPLICATIONS

RYAN MALONEY
BULK VARIANCE ZB11-17-16
Block 15201; Lot 7
69 Rabbit Run Drive; R-4 Zone

Bulk variance approval requested for a proposed 1156 SF detached garage/barn; side yard setback where 50 feet is required 7.6 is existing (shed) and 10 feet is proposed (barn/garage) and rear yard setback where 50 feet is required, 66.4 is existing (shed) and 2.1 (garage/barn).

The attorney swore in Ryan Maloney and Mark Palus Engineer & Planner, 170 Kinnelon Road, Kinnelon, NJ. Mr. Maloney indicated he is proposing to construct a garage on the border of his property to house vehicles and equipment; it will not be a workshop

Mark Palus is a Licensed Planner & Engineer MAP Engineering, he is the Principal, Bachelor and Master degrees in Civil Engineering from Rutgers University, he has testified before this Board and he has testified in over 70 municipalities. The Chairman accepted the credentials of the applicant's professional.

Mr. Palus described the home and property. He indicated it is located at 69 Rabbit Run Block 15201; Lot 7; it is owned and occupied by Mr. Maloney and his family, there is single family home on the property the home has a single attached garage. The plans referenced were prepared by his office and they are dated October 10, 2017, revised through April 17, 2018. The entrance to the garage is located under the deck which is in front of the house. It is a small garage with room for one car if you do not have other equipment in there. Mr. Maloney and his family have a lot of other equipment, ATV's, bikes, fishing poles, lawn mowers and other cars. The goal is to get the items from outside and put them inside by having the garage would clean up the appearance of the property. The home is located in the R4 zone the home is on an undersized lot since the home predates the zoning designation for the R4 Zone, the lot is a little more than 2 acres there are existing non-conformities. The lot area, width, depth, the front yard, side yard and rear yard are all existing non-conformities and those will not change. The only proposal would be to construct a detached garage in the northeast corner of the property behind the current home, the existing driveway will be extended to provide access to the garage and as the applicant testified it will be for personal use.

When first looking for a place for the garage they looked for conforming locations, the south side of the dwelling houses septic tanks and field. The options were to move garage 150 feet away from the house to the south which would have been less functional to the homeowner and the area is fully wooded and where the proposed location is only 2 trees to be removed if moved, they would need to remove many trees, the impact would be greater. They are proposing a seepage pit to help recharge the ground water coming off the garage so there will be no negative impact for runoff. Newark Water Shed land exists behind the property, so the 2.1 foot setback abuts Newark Water Shed and there is a couple of thousand acres. There is basically zero impact for a neighbor. To the side yard which is lot 6 to the north, they are proposing a 10 foot side yard and the closest neighbor is about 200 feet away, there are substantial wooded and screened areas in there, the topography slopes up towards the property line and then down to the neighbor so there is a natural topographic barrier on the property. A benefit of this garage location is that it is not visible from the street, it is suitable and functional with minimal disturbance. It is their opinion that it is most suitable, functional and minimal impact location on the property. From a planning standpoint it meets the criteria with a combo of a C1 and C2 variance. There is a C1 hardship because of the location of home and septic system; and from a C2 more functional and it reduces the disturbance since it would only be a few trees coming down and not a series of trees. Neighbor to the north (Exhibit A1) for identification and information/consideration, lot 6 neighbor.

Mike Cristaldi, Board Engineer indicated that there is a note on the plan that will need to be fixed it indicates there is to be vehicular traffic over any portion of the existing septic system.

Mr. Cristaldi indicated there is a well in the driveway and they will encase it. Mr. Cristaldi indicated that they could fit a driveway if they were to move the garage to the other side. The lowest elevation is on first floor for plumbing, then drops to existing tanks, driveway between field and tanks centrally located. Heavy duty tanks would need to be installed if the location was to be changed. Applicant wants minimal impact on the property. If it were to be moved it would be an extensive amount of asphalt across the yard instead of 50 feet to proposed location it could be 120 feet if it were moved. A Board Member indicated that he went to visit the property and there are a lot of trees and possible a drop off. Another Board Member indicated the area in front of the septic area, Mr. Palus indicated, the garage would be located in front of the house, a lot of trees would have to be cut down and it is the main play area for the kids. The overall impact would not be desired by the applicant. A Board Member asked what the footprint of the house was it is 1275 sf, the house is about 48 X 25 and a small bump out in the back. The garage is 34 X 34, Mr. Jurkovic asked if they considered reducing the size to reduce the variances. Mr. Palus indicated that a reduction of about 5 feet to make it 29 X 29, it would not be a noticeable difference being 7 feet versus 2 feet, the reduction in the footprint and function of the garage would be significant but as far as the impact of the surrounding properties, it would not be noticeable. Mr. Jurkovic asked the reason for 34 foot deep garage is deep. Mr. Palus indicated he agreed it was a good size garage but he and the applicant discussed it and there are multiple children and it gets everything inside. It is for cars and other items. A typical garage is about 22 or 24 feet deep and they are requesting an addition 12 feet. They have quads and tractors.

The Health Department and Engineering Department both sent memos, he does not know if the well needs to be recessed but if it does they will obtain if necessary. They are staying away from the septic system. There will be no plumbing, bathrooms or kitchens. Mr. Jurkovic asked if the application gets approved will they mind that being a condition of approval and there will be no use for a bedroom apartment? Mr. Maloney indicated that it will not be used for any of that and will be a simple A-frame structure. So if approved that could be conditions of approval? Mr. Maloney indicated yes.

Engineering condition of approval, the north side of the garage will have a better swale, it is not a big hill that comes up but right now there is water coming toward where the garage is shown, so they can divert it around the garage. They have no problem with that being a condition of approval. Mr. Palus agreed that it makes sense from a construction standpoint. They will have electricity, the applicant indicated there will be no outdoor spotlights.

The chairman opened the meeting to the public, motion by Michael Gerst to close the public portion after seeing nobody for or against the application. Arthur McQuaid second. All in favor to close the public portion.

Motion by Daniel Jurkovic to approve bulk variance ZB11-17-16, Block 15201; Lot 7, 69 Rabbit Run Drive; R-4 Zone for variance approval requested for a proposed 1156 SF detached garage/barn; side yard setback where 50 feet is required 7.6 is existing (shed) and 10 feet is proposed (barn/garage) and rear yard setback where 50 feet is required, 66.4 is existing (shed) and 2.1 (garage/barn). The reasons given by engineer/planner, with respect

to the topography of the land, protect the trees existing, utilizing space in rear of home. He asked about front yard, it would require a variance and it would be better to have it in rear. The structure is larger than a typical garage but based on the testimony and evidence before the Board, Newark Watershed backs to the property so there is no impact to the neighbor to the rear and the neighbor to the north is about 200 feet away and the neighbor closest did not appear to comment and would have it there was an objection to it. One Board member commented that they visited the home and it is a heavily wooded piece of property and it does not appear to have impact to the surrounding neighbors. It will be a benefit for the storage of the items that were listed by the applicant and will be beneficial to the community to have those items stored inside and not be visible to the public on a regular basis. The approval will be subject to the provisions of the May 22nd 2018 memorandum from the Engineering Department and the June 8, 2018 memorandum from the Health Department. (electricity ok) Remove the info about vehicular traffic from the plan and the well info.

Second by Michael Gerst

Yes: Russell Curving, Daniel Jurkovic, James Olivo, Frank Curcio, Arthur McQuaid,
Michael Gerst, Robert Brady

No: none

There is a 45 day waiting period from the date of publication.

RANDA INVESTMENTS

Complete: 4/17/18

USE AND BULK VARIANCE #ZB02-18-02

New Deadline: 9/14/18

Block 7601; Lot 2

1463 Union Valley Road; VC Zone

Use and bulk variance relief requested under section 40:55D-70d for the construction of a 10 unit town house complex which is not permitted in the Village Commercial Zone.

Applicant carried the application to the July 24, 2018 meeting.

Use Variance

Section 500-26

Permitted: Dwelling units in association with commercial uses

Proposed: Dwelling units without association with a commercial use

Bulk Variance

-Section 500-26.A

Permitted: Dwelling units above commercial uses

Proposed: Dwelling units on first floor

Permitted: Dwelling units above commercial uses

Proposed: Dwelling units without association with a commercial use

-Section 500-29.E

Required: No parking within front yard

Proposed: Parking in the front yard

-Section 500-28.A

Required: Maximum front yard setback 20 feet

Proposed: 60.7 foot front yard setback

-Section 500-31.A

Required: Maximum unit density of two (2) per acre

Proposed: Seven and one half (7.5) units per acre

-Section 500-31.A

Required: Maximum of eight (8) units per site

Proposed: Ten (10) unit

-Section 500-31.B

Required: Maximum floor area of 800 square feet per unit

Proposed: 1,340 square feet floor area per unit

-Section 500-31.D

Required: No apartment access through individual exterior doors

Proposed: Apartment access through exterior doors

Randa Investments attorney, John Barbarula indicated it was a continuation of prior hearing.

Daniel Jurkovic indicated a situation has arisen, that did not exist at the time of the prior hearing and Mr. Jurkovic felt it was prudent to recuse himself from any further involvement. John Barbarula indicated that he was apprised of the reasons for the recusal, he does not feel there is a conflict, and he thanked him for his service.

John Barbarula has an objection with Steven Castronova, he is willing to go with 6 members of the Board. Mr. Barbarula found out after the last meeting that Mr. Castronova was a prior owner of the property and as a result of judicial proceedings was divested of the property and he feels that it is more uniquely and consistent with a conflict to be able to determine what would happen to a piece of property that was his. He is more than willing to go with the 6 people that are present.

Mr. Glatt indicated he spoke with Mr. Castronova, he is on the MUA and at a meeting and it was delayed. He has vested his time, if there is a possibility of a full board he prefers to wait another 8 or 9 minutes. It is not appropriate to talk about Mr. Castronova and this piece of property while he is not here because he is entitled to know what is going on and the questions being asked.

Mr. Barbarula indicated that he notified Mr. Glatt about the objection that he does not want anything put on the record, Mr. Castronova is comfortable with his reasons about why he feels he will not recuse himself. Mr. Glatt indicated he spoke to him and gave him guidance.

Someone came up and he was told to sit down, Mr. Glatt explained we can answer a question, raise your hand.

Motion and second to take a break at 8:11.

All in favor to take a break

At 8:20, returned from break

Back from break

James Olivo listened to the recording from the June meeting and there was a 7 member Board for the meeting.

Mr. Barbarula checked to make sure the certification was ok.

Mr. Barbarula indicated that it was his understanding that Mr. Castronova owned the property and as a result of judicial proceedings, it was sold and being an owner, he believes it is inappropriate for him to sit on the application, especially the way the divestiture came about. The amount of time that passed either 2012 or 2013 does not change the property was his, it was his he wanted to develop it and because of circumstances was required to sell it. Mr. Barbarula indicated that he did not think he could get rid of the impartiality, he should not have a connection to the property and there is not more of a connection to a property than being an immediate prior owner. He suggested that Mr. Castronova recuses himself. Stephen Glatt indicated that Mr. Barbarula was asking for him to recuse himself, after the last meeting his client Mr. Leonescu informed Mr. Barbarula that at one point Mr. Castronova owned the property and an email was sent 6-27-18 and it should have been disclosed and it would have disqualified him for sitting, if client remembered and Mr. Castronova may have remembered. It was insignificant for either of them since neither brought to the attention of the Board and nothing should be read into that. Mr. Glatt indicated that just because he owned the property or had not disclosed it would disqualify him from sitting is not the issue right now, the issue is now that it is known is there a conflict for Mr. Castronova. Mr. Glatt contacted Mr. Castronova after receiving Mr. Barbarula's email and in discussing it with him, he asked him to think about it since the facts were not known, Mr. Castronova informed him that he does not feel he should recuse himself and Mr. Glatt sent Mr. Castronova information relating to disqualification from the Cox Book so he could read the 4 basic no-no's if you fall into one of the four you should disqualify yourself. Mr. Castronova knew about them because he took classes and he reread it and thought about it and will explain to the Board why he does not have to recuse himself because he does not have an interest in the matter.

Ultimately if this matter is decided and one party does not like it this is an issue that could come up on appeal.

Mr. Castronova indicated he had no problem discussing it, he was a member of an LLC, not the sole owner, no financial interest, it was part of an issue relating to equitable distribution of the assets. He did not sell it himself it was sold under a court order as a result of a matrimonial settlement. Mr. Castronova indicated it was probably 5 years ago. He has had no interest in it since that time. He took mandatory classes knew recusal, not a property owner within 200 feet, not related, not employed, no personal or pecuniary interest. He has no personal interest or monetary interest. He indicated he has no interest at all. Do you feel as a member of an LLC many years ago it would it have an effect for impartiality based upon the evidence presented by the applicant or any board professionals. Mr. Castronova indicated absolutely not. The Board Attorney and Mr. Castronova spoke about it approximately 2 weeks ago and gave it a lot of thought. Mr. Castronova indicated from what he read and learned in class that there are no doubts and he had no reason at all to recuse himself. He is sitting like any other Board Member.

Mr. Barbarula indicated he made his objection, the Board Member was an immediate past owner required by court order to sell. John Barbarula objects on the record for the record. Mr. Barbarula indicated that someone forced to sell, the immediate past owner of the

property has a direct interest and bias and that is the reason he is putting it on the record, he is deferring to the Board if the Board wants to accept Mr. Castronova to sit amid his objection on the record for purpose of appeal.

No Board members have an objection to Mr. Castronova sitting, nobody had an objection.

Reopen as a continuation, Mr. Ochab's report of June 7th & 25th, 2018. Both reports should be made part of the record. Joint Exhibit 1 is June 7 and Joint Exhibit 2 is June 25th.

Mr. Houser in response to Mr. Ochab's presentation about the application should be for rezoning Jeffrey Houser was sworn in Bachelor of Engineering, licensed since 2008, Owner of Houser Engineering, which was established in 2009 and provided testimony for Civil Engineering in front of several Boards specifically waste water treatment and disposal and the associated DEP permits that go along with that. He has testified before WM Planning Board, Ringwood, Wanaque and Oakland.

Mr. Barbarula questioning Mr. Houser, he had the opportunity to review the application and familiarize himself with Mr. Ochab's reports, Mr. Ochab indicated that it may be more of an application to rezone instead of BOA application and Mr. Houser indicated that was correct. Mr. Houser was asked to explain what was included in the zone. Mr. Houser indicated that he is not a professional planner. He explained there is a uniqueness of this property compared to other properties within the VC Zone. They prepared an exhibit that analyzes different properties within the zone and the current waste water permit status. This is expert testimony for the septic system to outline what they were talking about. Mr. Ochab indicated it was appropriate to go for a zone change and the change to go from commercial with residential above requires underpinning. It will show that the property could not sustain the appropriate

Exhibit A-3, corrected to A-4 entitled VC Zone Use Exhibit prepared July 24, 2018.

There is a history of the septic code and some constraints that the septic code has with most property development. In 1990 the state adopted NJAC 7:9A and put in a hard 2,000 gallon per day flow limit on the development of property at that time there were a number of existing properties and developments that had design flows over 2,000 gallons per day. If flow was over 2000 gallons per day since 1990 it involves complicated permits with nitrogen limits and essentially treatment plants which make it cost prohibited to develop a property if flow existed prior to 1990, the state developed a general permit called a T1 discharge permit which essentially grandfathered in the historic use of the property and its associated flow. For this project they have lots 1.01, 1.02 and lot 2 have common ownership or interest and as a result are considered a single property and looking at the historical records associated with the property, the design flow is 3549 gallons per day, that land is grandfathered the right to discharge that much flow. It is fairly unique, in NJ there is a little over 300,000 septic systems throughout the state of NJ there are only about 700 T1 permits. The exhibit from the east (Post Office) move to the west, Shop Rite is not in the VC Zone across the street their site is in green shading along Union Valley Road. The properties in the green

have DEP Discharge Permits, ShopRite, Town Hall and their property has one. That flow that has been grandfathered in allows discharge the equivalent of 10 residential dwelling units on the property. For anyone else in the VC Zone it would be extremely difficult to accomplish that. The hard 2,000 gallon per day would limit you to 5 units, 350 gallons per unit. You could not do that anywhere else in VC Zone. Mr. Barbarula indicated that if they wanted to change whole zone to residential, nothing else could qualify, if they went and the Council agreed, they could not get DEP approval. The properties in white are exclusively commercial properties. A residential use has higher design flow compared to commercial properties. 1/8 of a gallon per square foot so if you have 2,000 sf building, they are only generating 250 gallons per day on paper. To redevelop the site from a commercial use to a residential use even a single 2 bedroom house the flow is 350 gallons, which is an increase. Mr. Houser explained all of the constraints of installing a new septic system. There are dashed circles which represent wells and the required setbacks. There are private wells in the center of town.

Mr. Barbarula indicated they would be asking for a zone change for one lot because other lots could not comply with the existing well or septic requirements to convert from commercial to residential. It would not be impossible but extremely difficult. It would require combining properties in order to get the gallonage they would have to combine many properties and they are fully developed properties. Mr. Barbarula submitted the expert.

Mr. McQuaid asked about septic information, Mr. Barbarula indicated that they answered questions of Mr. Ochab on why it is not appropriate for a zone change. This zone would require underpinning and underpinning is the septic and the wells. This expert testified that you would almost have to combine. Mr. McQuaid indicated he heard the statement but in New Jersey there are many cases where certain sites were rezoned or a zoning board acted incorrectly and they were small lots. Mr. Barbarula indicated it was not appropriate to rezone individual lots. It comes down to particular factors, large tracks of land, a 10 acre lot because of size and nature should come to the Board and Mayor and Council. This is a one acre plus in the zone and to rezone that would be a classic spot zoning, take a particular lot and creating a new zone that does not fit on any other lot. In the law it is preferential treatment for that owner to rezone it to make it conforming. Look at what is developed; all becomes non-conforming only his client's property is conforming. As a Board of Adjustment you adjust and what makes it appropriate is most properties are basically commercial. The purpose of this zone and the writer of the zone is Mr. Ochab, and the purpose was to have a downtown atmosphere and put people and seats downtown so there would be walking. It did not develop that way. By putting 10 families there, you are placing people in the zone to balance the 7 or 9 commercial, it is not appropriate for rezoning but is appropriate for the Board of Adjustment.

Mr. Glatt indicated it was a great summation, but making statement that this is the only lot that could be changed if going for a zone change, talking about the long strip on A-4, lot 2 4 lot 6 & 8 the Planning Board does not have to change entire but maybe reconfigure the zone to meet today's times and make a change. The VC zone with apartments 2nd floor and stores on the bottom, there was a purpose at that time, whether the Planning Board was aware of

the constraints or not at that time, nobody knows because last month this became a case of first impression because of all of the various unique factors indicated to the Board. Mr. Barbarula indicated it was not first impression it was the reasons why that property was suited for an approval from the Board. Mr. Leonescu started to develop it 4 years ago and there is a procedure in the town for that. Mr. Glatt indicated that it is not for Mr. Barbarula to make the decisions for a zone change or not but it is something as an applicant when so unique and feel you cannot comply with the zone maybe first impression should have been to have filed that application and if denied, the Planning Board gave the reasons why then this Board would not have a quandary. Mr. Barbarula indicated that this Board should not have a quandary because saying whether or not this should have a zone change is completely unfounded in planning, completely unfounded in the law. This a particular lot and it is not appropriate to go before the mayor and council is spot zoning with all due respect for Mr. Ochab and they have worked together and on opposite sides for real but in this regard, he is incorrect. The reason it is appropriate is the factual basis that it is not suitable for any other lots here and if limited to one lot, it is spot zoning.

Mr. Ochab indicated that it is not his position that it should be a zone change, brought the issue up under planning, issue brought up because of the nature of this use could affect the Union Valley corridor between Macopin and Ridge. He was not talking about changing the zone for this property if the council receives a zone change request and refers it to the Planning Board the notion is and good planning dictates that and the whole strip gets looked at not just one property, it could be a complete mixed uses. The issue is whether or not it should be a use variance or a complete review of the zone which can only be done at the Planning Board level. The argument is that only this property would get changed because of a rezoning process is completely invalid because the Planning Board cannot do it because of spot zoning, and the Council could not for the same reason secondly the Council and Planning Board can do whatever is appropriate to the zone. They could change it to possible mixed uses or leave it the same. Given the information associated with this application, it would be valuable with the process. The Master Plan was written for the zone in the late 80's how many changes were made since then, all through the process no changes were made to Union Valley Road or to the zoning. There was no concern or interest to alter the zone. There are reasons to look at a use variance application in a positive light but the problem from the Planning perspective is the 2nd prong of the negative criteria which is whether or not passing the use variance would lead to a substantial impairment of the zone plan and in that context where he is discussing with everyone.

Mr. Barbarula indicated many things said were important, the main thing is that doing a zone change is not a prerequisite to the application and Mr. Ochab agreed. Also true that all of the times that the Mayor and Council had the opportunity to change the zone they did not change, did not adjust and neglected to change with being 100 percent in the Highlands. It is appropriate for the application to be heard at ZBOA. It is important for the Board to refer and get to Mayor and Council because it is a town function not the applicant's function. The applicant is entitled to have the application heard. One aspect that would be appropriate is for the municipality to look at the conditions, we heard from the planner and realtor about the commercial viability of the town. Mr. Barbarula indicated that he disagrees because when they argued about the zone 30 years ago, vision of people getting in

here. Mr. McKittrick will explain how it balances out what is there. Unfortunately, it did not get built that way. Mr. Barbarula thanked Mr. Ochab for his candidness and wanted to have the question answered for Mr. McQuaid.

Mr. Ochab asked Mr. Houser if it is straight commercial development the discharge per day is $1/8^{\text{th}}$ of a gallon per square foot for office and retail. Which for 1,000 square foot office 125 gallons per day. For residential 1 or 2 bedroom apartment unit is 350 gallons per day from there is an additional 150 gallons for each bedroom. The state septic code requires a minimum flow of 350 gallons per day. So to convert a 2000 sf office building to a 2 bedroom house, you are going from 250 gallons per day to 350 gallons per day which is an expansion and the site has to be able to support a completely conforming system which is extremely difficult in this area. Mr. McQuaid asked with this contaminated site and 10 apartments will that flow be a lot for that contaminated property? Mr. Houser indicated it was not his area of expertise but understands that it will be addressed by an LSRP at some point. The flow has historically been there, it is not there currently. There is a septic that is constructed to handle all of that, there is nothing in the regulations that prohibit them from discharging septic to the property, the LSRP would have to state that the site was remediate to a certain point which is anticipated in the future.

Douglas McKittrick was previously sworn in as an Engineer and a Planner, Mr. Barbarula indicated that Mr. McKittrick would address the question of Mr. Ochab. Planning issues regarding zone change vs use variance. Mr. McKittrick indicated his understanding a of zone change if you read some of the information in Cox Book, it refers to a large tract, it is unique because it has split zoning already Village Commercial in the front and residential in the back and a zone change will most likely have an impact for the front and back, a zone change could allow it to change the character of the neighborhood in a negative way for the people living there, traffic, lighting. An interesting thing that came out of Mr. Houser's study, originally done to demonstrate the issues with septic systems and wells especially separation distances, septic to septic to wells, to property lines, storm drainage, well locations, depths, yield and things of that sort. The actual first septic code in NJ came up in the 1950's it said septic permits were required but not specific guidelines for septic designs, the next code in 1965 that had slight direction with regard to sizing and locations, then 1977 that had separation distances, criteria for septic design, soil analysis, separation distance from wells and water courses. The 1990 code clamped down on what you could and could not do and had specific engineering guidelines for septic design. The code today is the 2012 septic code which is a bit different than other codes because it specifically addresses affluent quality as well as discharge quantities. Most of Pinecliff Lake was subdivided and constructed prior to any septic codes or with minimal septic codes and as a result Pinecliff is not code compliant and will never be in conformance, the code acknowledges that there were structures prior to any code and allows the local administrative authority which is the Health Department to grant any deviation from a code necessary to reconstruct a septic as long there is no expansion or change in use. An expansion would be an increase in bedroom count, or an increase in some other criteria that was used to size the septic that would increase the water flow on a daily basis from 2 to 3 bedrooms is an expansion in use. Going from a commercial facility and putting a bedroom upstairs would be a change in use because you are increasing the flow. A change in use

would also be a the quality of the water that comes out of it, such as a residence and changed it into a restaurant or bar/tavern and generating high strength waste with grease and fats. That is a change in use which would require the septic system to be code compliant. If you look at Pinecliff Lake in general, most are not code compliant, they work mostly and they cannot be code compliant along this strip as well. The remediation on this property includes pumping water out of the ground, pushing through a carbon filter where the compounds are absorbed and the discharge is into the storm sewer and that water is going into Belcher Creek. The remediation is in the study which was sent digitally to the Board. There is no timeline for the remediation to be completed. There is a possibility although not realistic that changes may come about to not allow the remediation and then nothing could be built on the site. This is not a major spill or a major discharge to groundwater although to people around it is a major event and he acknowledges that but in the scheme of spills it is not a few million gallons.

The interesting thing about the zoning is the breakdown of the use in the zone right now. This chart shows the different properties and the ones in white are commercial only. There are other non residential uses covered under t-1 permit which are shown in green. Looking at the total number of properties that are commercial only or have government functions only, it dwarfs the properties that have only residential which is minimal or residential with commercial. So the bulk amount do not have residential on it. The intent of Master Plan was to have a balanced mixed use that had residential and commercial on it, right now that is skewed toward commercial properties and government functions. This application proposes specific residential use, enhances intent of Master Plan and is the intent of the village commercial zone. It is his opinion as a planner that it enhances the master plan and does not destroy it. The comments that came out of the last meeting was that it negated the village commercial zone. This application enhances the zone. Mr. Brady asked if anyone has any questions.

Mr. McQuaid discussed quantity and quality and Mr. Houser explained that a commercial use would have a lower quantity of discharge do you believe that 10 homes on that lot would be better than an office building for discharge? The T1 says that the three lots combined allows for 2,000 gallons per day and that number is a hard number with regard to septic systems because below that is an individual subsurface disposal system which is a nice name for a septic system. Over 2,000 gallons per day almost becomes a small sewage treatment plant. Mr. McQuaid indicated we have a situation where there is contamination, the question is does he feel it would be better to have an office building instead of 10 residential units for discharge, which is better. Mr. McKittrick indicated that it would depend on what the site remediation experts feel at the time when the structure is built. Do you think a builder would recognize the need to keep it a smaller building for a few rentals? Mr. McQuaid indicated that he thought 10 units is too heavy. There was further discussion of prior statements from Mr. McKittrick.

Mr. Houser indicated that with regard to the 3500 per day flow that they are entitled to discharge already exists from the Weichert and Werner Realty Buildings so they are increasing about 2/3 from the current situation. Also, they have not fully developed the plan that would service this, they have an idea but they have the option of not necessarily

discharging on this lot. They could create the septic disposal system and construct it on the Werner Realty lot if contamination becomes an issue. They will need to get a Treatment Works approval from the DEP and during the application process depending upon the technology incorporated into the system, they have a licensed operator grading sheet so the owner would have to contract with a licensed sanitary operator to maintain the system. The State makes you get a septic expert, since these are properties that include other building, there is a restriction that goes with the land that would be incorporated based on the state recommendations that maintaining it runs with the land. Whoever has the property has to pay the expert because that is the way it has to be treated. It is very complicated and that is why it makes the argument that few properties in the town qualify for the T1 but it has to be a licensed expert in the field will need to take care of it. Enforcement is put with the property with the deed. Mr. McKittrick indicated other areas that have this situation. Mr. Jurkovic asked if the operator is regulated. Mr. Houser indicated that licensed operators are obligated to maintain a journal, T1 permits are a little less stringent than some of the other discharge permits in the state. They are subject to an annual inspection by the DEP. His office in Ringwood had a surprise visit yesterday from the enforcement officer of the DEP. Mr. Castronova asked if the lots were being combined now? Mr. Houser indicated that they are separate municipal lots but as the state defines property because there is common ownership, interest or development between the three lots, it is considered one property. Mr. Glatt asked if there was common ownership between the three lots. Mr. Houser indicated that 2 are commonly owned and the third shares a septic system.

Mr. Castronova mentioned that Mr. McKittrick talked about the lighting behind the buildings and there is no problem behind Lakeland Bank, Columbia Bank there are trees, there are requirements for buffers. The current building Werner Building has buffers and trees and there are no problems. He makes it sound like a disease. Mr. McKittrick asked him to hold on a minute, first of all Lakeland has a street between and neighbors behind so there is a buffer. This topography drops off behind it, so they are below the level of the lights. The lights have to be dark sky compliant so as not to project into the sky. There are complaints about the lighting by the Huntsman plus the lights from cars. With a commercial facility it will have more vehicular traffic, more cars. Commercial closes at 5 at night. 5 spaces per 1000 sf. The requirements for VC Zone wants parking in front and library has parking in the front, State Farm, Museum Werner building in front and/or side parking. It is not different than the neighborhood, and feels it would be better because it will not affect residents behind it and that is his opinion.

Mr. Brady asked if septic capacity has anything to do with zoning. Mr. Glatt asked when they discovered the contamination, Mr. McKittrick feels in the late 80's there was an application approved by the Planning Board and it never got built because it was discovered there were leaking tanks when they demolished the old buildings and discovered the tanks. They were not double wall tanks since it was not required then and no ground monitoring and had been leaking, not known how long they leaked. Mr. Glatt asked how many are contaminated, Mr. McKittrick was not sure but it grew from the 1991 report originally 6 monitoring wells now 14 or 18 monitoring wells and thinks 6 or 7 properties contaminated. Mr. Glatt asked if those properties could be redeveloped or would they have the same problems. Mr. McKittrick indicated that he thought carbon filters were provided to clean up

the water so it is potable and the water testing is done frequently to ensure they are working adequately.

Mr. Gerst indicated he wanted to discuss the use variance since the bulk is irrelevant unless they get the use variance approved. The permitted use is commercial with apartments above, discussion took place and it was regulated into nonuse based on the Highlands. Mr. McKittrick indicated that there was an application prepared by Houser that was in compliance with the Village Commercial Zone but required a couple of variances but nothing major, it had parking in the rear. It exceeded the threshold of becoming a major development under the Highlands Act, they have a threshold of $\frac{1}{4}$ acre of impervious surface, meaning buildings, macadam, concrete. Once $\frac{1}{4}$ (10,890 sf) acre is exceeded it becomes a major project and you are required to be compliant with all Highlands regulations, also a water quality and management plan for the site and that plan requires recharge back into the ground, below the threshold you do not have to do that. The site remediation expert does not want that because they are trying to create a cone of depression on the site where they lower the water table by pumping the water into filter and discharging to the storm drain and that causes it to come back onsite and that is how they contain the plume from discharging to other properties. Groundwater follows topography and if it does not happen it could contaminate all sites downhill from it and winding up untreated in Pinecliff Lake, and incentive to treat the water before it travels to the reservoirs. If the project gets approved and where in the clean up cycle, it is possible to increase the pumping rate off site to contain the water. The reason for the use variance what point, the Highlands Council would not allow it in the core preservation area.

Motion and second to take a break at 9:34 pm
All in favor to take a break

Back from break at 9:42

Bob Brady indicated that there are no new applications after 10:30 pm. Does Green Meadow want to adjourn or wait. Robert Tafuri, attorney for Green Meadow, requesting an adjournment, time extension Motion by Steven Castronova and 2nd by Michael Gerst all in favor for extension. Green Meadow postponed to August 28th meeting no re-notification required come back. 30 day extension
All in favor

Michael Gerst asked if the process requires a zone conforming building on site, Mr. McKittrick indicated it is not financial as it is not allowable as a reason with respect to zoning, Mr. Houser to discuss Highlands and Brownfields waiver.
Exhibit was corrected Exhibit to A4

Mr. Houser Highlands Act 2004, severely restricted ability to develop properties with commercial facilities, provisions or exclusions were allowed, differences would be about 17 exemptions, most have to do with single family dwellings, special projects and small increases on commercial properties, there are also waivers to a major project. They attempted Brownfield designation waiver, went to Highlands Council and DEP and had a

plan that attempted to conform with the VC Zone and Highlands. There was one other waiver in Roxbury which was a landfill. They got hung up with commercial development, there is a demand for parking, and they were thrown over the threshold which triggers storm water regulations and recharge groundwater. Restrictions to develop and scaled down from original plan. This has a substantially less application no storm water quality issues. Looked into a mixed use building but not able because of storm water but it was not allowed. Mr. Ochab asked what was considered impervious in the Highlands Act, gravel, pavers, concrete are impervious.

Mr. McQuaid asked again 125 gallons per 1000 square feet of office and 3500 gallons for 10 apartments and then a 30,000 sf building would be 3750, 250 gallons more? Mr. Houser agreed. Also, because the cleanup is pumping water out do you think it would be better to dump 3500 gallons of water into the system? Mr. Houser indicated it was not practical for the storm water and it was not allowed by regulation. Mr. McQuaid commented that if we have septic systems and pumping 3500 gallons a day into recharging that system, where we do not want to because we want to pump out, is that a good idea, Mr. Houser indicated if the site is deemed clean and we are allowed through remediation then yes. There is the option to move the disposal field to one of the other lots that is not deemed contaminated. Mr. Cristaldi asked which lot that would be and Mr. Houser indicated that it could go on the Werner Realty Building which is the neighbor to the right. Mr. Cristaldi asked out of curiosity and accrues that property with testimony giving the Board should that be part of the application and notice given from that property line? Mr. Barbarula indicated it was only if they do not clean up the site. If the approval is receive, they would still need the remediation to be approved. The goal is to get the approval here and the remediation is complete and the septic system be established on the property they are talking about. They still need other approvals after this Board. Mr. Cristaldi indicated that if pursuant to an approval from this Board, put a septic on that property, he would think someone could come back and say they should have been notified since it is part of the application. Mr. Barbarulat indicated they do not have any intention of doing it, Mr. Cristaldi indicated it should not have been brought up. Not making it as a proposal. It was only discussed as an answer to a Board Member's question. Mr. Glatt asked if it was owned by one of the parties in interest here, if it is a reasonable way of resolving this, maybe that should have been proposed. Mr. Barbarula indicated it was not being proposed that it was an answer to a question. Mr. Leonescu can answer any questions. Mr. Houser indicated they are discussing other properties because of the T1 permit those three lots are essentially its own sewer service area. Two are served by single septic system, there could be one, two or three separate systems serve that flow within the boundaries of those three lots. They are here for a use and bulk variance not a site plan at this time. If the DEP says it will be a problem, then they will come back with a site plan and it would be included. They are answering questions for a use variance not a site plan. There are concerns with bulk variances also. Mr. Barbarula indicated they are dealing with what ifs with the questions. Mr. Barbarula indicated that if all goes to hell in a hand basket that is what could be an alternative. Mr. Cristaldi indicated that would coming back with a site plan pursuant to a use variance and they are including something on a site plan that was not part of the use variance. Someone else will not get noticed. Mr. Barbarula indicated it would be part of the site plan and Mr. Cristaldi indicated it was too late if the use variance was granted. Mr. Barbarula indicated

that the use had nothing to do with it. Mr. Barbarula indicated that the chairman asked if septic was part of the use variance and the answer is no. Mr. Brady indicated that his question actually was is a septic in any way connected to zoning. Mr. Barbarula indicated it is not, they talked about septic to respond to the planner's indication that a zone change maybe something that they should talk about.

Mr. Barbarula indicated that it was a different issue.

Mr. Ochab indicated from a planning perspective Mr. Cristaldi has a point, if there is a notion that an adjacent property may have a future connection it should have been part of the application. Mr. Barbarula indicated that it is not related, it would take the application and derail it and they are not going there. It was an answer as a secondary alternative should they not go forward with that. Mr. Barbarula indicated they want the approval on that property for a use variance, they want the septic placed in a certain area. They want the state and DEP to approve the final clean up and do it there, which is it the engineer is being honest that if they run into a snag at that point, they will come back with a site plan.

Mr. Ochab asked Mr. Houser if the adjoining property have additional excess septic capacity, Mr. Houser indicated no it would be a new system designed to handle the full flow permitted under the T1 permit which is the flow generated by all three lots. Mr. Ochab asked if they could design a new system that would have additional capacity. Weichert does not have a septic it goes to the Werner Realty Building.

Mr. Glatt asked when discussing with the DEP and the Highlands was it included in that proposal. Mr. Houser indicated they only discussed it internally Mr. Houser indicated that they did but the recharge required the physical footprint of the basin is larger than what is available on the adjacent lot.

Mr. Ochab asked about the storm water issue, because they were proposing development exceeding 1/4 acre of impervious coverage, required to do storm water, was that storm water required to be in ground injection or surface detention Mr. Houser indicated they were originally intending to recharge and another level of approvals is the County they spent a great deal of time discussing storm water requirements for County. Mr. Ochab indicated he did not understand how the commercial was not feasible but residential is. They do not have to meet such strict requirements but do have some storm water requirements. They do not have to meet the standards for the different storm events for recharge and onsite detention. The bottom line is the residential development allows a lower impervious footprint than what a commercial development would be. They are under the 1/4 acre of new impervious.

A Board Member asked if they had to link them together it would be a one shot deal and Mr. McKittrick indicated it would be an easement language *subject to T1 permit where it would be subservient to Lot number 9* Weichert building has it with the Werner building.

Mr. Castronova asked about the other lot because they were already discussing it, is there any additional parking on the properties discussed tonight. Mr. Houser indicated he only discussed the neighboring lots strictly for the septic T1 Permits. Mr. Werner indicated the reason the rule is there is because people wanted to circumvent the 2000 gallon per day

limit. If it is subdivided then you can double. So the State said any common ownership or interest it is one property. Mr. Houser indicated there is a double edged sword because if you have to properties developed differently but adjacent, it is considered one property.

Mr. Cristaldi indicated they show the proposed septic area, he does not understand why it was not shown. Mr. Houser indicated that it was hypothetical, if not able to address the remediation issues, then they have the option to move it off the lot. It was not a matter of more, that is where they want it and propose it. They need Highlands Exemption, TWA for the septic, site remediation. This is one step and will most likely go on for several years. Before they invest the money they came here to seek a use variance and bulk variances.

Mr. McQuaid asked if he felt a smaller plan would be better instead of 10 units maybe 6 units in response Mr. Houser indicated that was a subjective thing, he does not think having 10 units and the parking it requires and the amount of impervious generated and amount of sewage flow generated is adverse to the property. Mr. McQuaid asked if the building was smaller, less apartments, there would be more green, more play area for children rather than taking up the whole lot? Mr. Houser indicated it was an opinion and a personal preference. From a property owner's perspective, they would like to develop this with 10 units and there will be substantial greenery because they will not have that parking, substantial drive aisles, no major detention basin in the middle of the town.

Mr. Cristaldi asked about the property to the north, it is commercial but next door on the southern end is residential, so you come in the driveway and then drive down there and headlights are pointing at that house. Mr. Leonescu indicated that he owns that lot too.

Mr. Castronova indicated that he does not know how anyone could live in any size unit with 1 parking spot and the second proposed spot is in a small garage. 2 bedroom units and 1 small garage, it is almost impossible. Tyler Vandervalk from Houser Engineering has a plan, originally they showed 1 ½ stalls per dwelling unit, per our Township Zoning Ordinance, checked with RSIS which requires 2.3 stalls per 2 bedroom unit not 1.5, bringing the requirement to 23 for 10 units, garage spaces do count as parking spaces per RSIS. They needed 3 additional spaces and revised a plan. Exhibit A-5 additional plan indicates added 3 parallel stalls along the current driveway, which was one way circulation, in order to show if concerned about lack of parking, that is how they can meet the 23 stall requirement above and beyond ordinance requirement. Mr. Ochab asked under RSIS the garage space and one spot counts Mr. Vandervalk indicated that yes it does. West Milford has less spots required than RSIS. They are over the amount of spots for West Milford. Mr. Castronova's concerns should be answered a 2 bedroom unit whether rented or sold you do not think 3 cars per household at least. Mr. Barbarula indicated that two bedrooms usually a couple and an office or something else and Mr. Castronova indicated that the garage is full of junk. Mr. Vandervalk they can meet the spots. Mr. Ochab indicated that RSIS is in control and trumps township with regard to the parking spaces. They should not have used the Township Ordinance the first time.

Mr. Cristaldi was asking about the plan, interior dimensions of the garage, 11 feet is narrow it will have to stay 11 foot, 11 feet wide X 19ft 8 inches in the garage. Mr. Castronova indicated there would be no other room.

500-31 a, Mr. Gerst indicated that the requirement was 8 units why are they talking about 10 units. Allowed is only 2 units per acre without the use variance and they are over 1 acre, zoned residential not commercial. Mr. Ochab indicated that it allows 2 apartments if there are commercial uses.

Mr. Barbarula indicated that they could put a restaurant on the main floor and 2 apartments upstairs. Mr. Glatt explained they are allowed commercial with two residential units above but they cannot do that, they proposed 10 units because they believe they met the requirements for parking and whatever else for 10 units. Mr. Gerst indicated that it says the maximum of 8 units per site. Mr. Houser indicated that if you have a 4 acre site, you could have 8 units under those requirements. If you had a site that was 5 acres you do not get 10 we are capping you at 8. So there are two different ordinances, one is a density and the second is a hard cap at 8 no matter how many acres.

Questions of anyone

The application was open to the public seeing no one for or against, there was a motion and second to close

All in favor to close the public portion.

Mr. Barbarula to summate, it is a request for use variance for 10 residential apartments/townhouse type apartments in a zone where it is commercial with residential above it also for the bulk variances. The issue of the zone change was improper show and properly before the zoning board. To show the zone has developed purely commercial and not mixed and if you look at A-4 the majority is lacking any residential component. The Board has the creator of the zone. The zone was to create village atmosphere. Push development to street and encourage the in planting of dwelling units to walk around town. It did not develop. Through this application the 10 residential units, putting people back to where the zone required it. It encourages humans in place to walk to bank and pharmacy, encourages the original village concept. Zone created as a village plan residential on top commercial on bottom. Mark Werner as back up assessment, to the planner's testimony the amount of empty commercial space in the Township of West Milford is horrific, putting new commercial with residential above will cannibalize the existing businesses. If it is developed this way there is no intense use back by the houses. They are forced into this type of development because if they went to a 30,000 sf building. To get to a major Highlands application, they have not issued one approval in 14 years. It forces what could be put there that benefits the town, take in the Master Plan and does the betterment outweigh the detriment, here they have it there is a townhouse type apartment. Can have a homelike apartment there are not many here it fills a need. This is the gateway to the village area, that lot being developed and it is the least intensive and best use of property without taking any detriment to the zoning plan. They could show additional parking. if granting the use and bulk variances it will be many years for shovel to ground. Their goal is to have the

remediation done and all going on this property. They have shown the positive and negative criteria, shown because of Highlands criteria why they are forced, shown the recharge system, explained that they have tried to comply with the ordinance and how it would adversely impact, the intensity if they put commercial would put all intensity in the back of the building facing the residents and they could go to the Planning Board with a site plan. The Board has sufficient information to grant the approvals for use and bulk variances.

Steve Castronova indicated there is a Master Plan in place and has been studied and worked on for many years by many people. With the zoning in West Milford you want to build one residential unit, zoning requires 4 acres to build one house and 2 acre zoning, West Milford allows one unit on 2 acres. West Milford with one acre zoning where maybe you can put on residential unit on one acre and he wants to put 10 residential units on 1 acre lot.

Mr. Barbarula indicated that it was improper to question him he wants it known and part of the record.

Mr. McQuaid indicated that we have this plan with the exception of the library, Walgreens is by the street, H & R by the street, Columbia Bank is by the street and built after the village concept was put in. Most are older but still built close to the street. If this was not a contaminated site he might think differently but he thinks 10 units is too large for that area. He cannot see 10 units, talking about discharge, there may have been opportunities to amend the site but not taken. He finds it difficult. Talk about empty buildings, how many homes in West Milford are in foreclosure what would be the difference, if there are a lot of empty homes and additional residential units, what is the difference.

Mr. Gerst asked if certain section could be tabled to address Board concerns? Later discussion

Mr. Brady indicated that we cannot redesign the applications.

Mr. McQuaid indicated the use variance is for 10 apartments; they could come back with 8.

Mr. Brady comments feels that approval will significantly alter the character of the zone and would be an indication of giving up on future commercial development. We can use public safety as part of deliberation and if it were a combination of commercial & residential and not polluted as it is he could deal with it and thinking we would put people in there with a polluted site, and we do not know or have not been told whether it is going according to plan with petrol products it is a crap shoot whether it will be clean or not. He has a problem with it and does not feel it was meant for Village Commercial Zone.

Mr. McQuaid indicated there were concerns of parking on other people's property water, too many in one area, their voices should be heard. Mr. Castronova indicated they brought up good comments and concerns. Mr. Brady indicated the Board tries to accommodate people who come before us this Board deals with zoning. Zoning and the capacity of septic are different entities and not our jurisdiction. He would like a business, will it happen we do not know. If we change the character of the Zone and make it residential, we turn our backs on commercial development in the community. Mr. Castronova agreed.

MOTION BY Steven Castronova to deny the use variance, it is zoned commercial and it would be a detriment to the neighborhood, 3 neighbors had good concerns, safety concerns, not consistent with our zone Mr. McQuaid indicated there is a major impact on the Master Plan and Zoning in the town concern, impairment of the zone, neighbors are concerned over the zone change.

SECOND BY Arthur McQuaid

If you vote yes it confirms denial

Roll Call Vote:

Yes: Russell Curving, Frank Curcio, Arthur McQuaid, Steven Castronova, Robert Brady

No: James Olivo, Michael Gerst

Not taking vote on the bulk variance since there was a denial for the application.

APPROVAL OF INVOICES-BOARD PROFESSIONALS

Review and approval of invoices for Stephen Glatt, Board Attorney, Kenneth Ochab, Board Planner, Michael Cristaldi, Alaimo Group, Board Engineer

Motion by Steven Castronova

Second by Russell Curving

All in favor to approve

ADJOURNMENT

Motion by Steven Castronova to adjourn the meeting at 10:45 pm

Second by James Olivo

All in favor to adjourn

Next meeting August 28, 2018 at 7:30 p.m.

Respectfully submitted by,

Denyse L. Todd, Secretary
Zoning Board of Adjustment