

MINUTES
Of the Township of West Milford
ZONING BOARD OF ADJUSTMENT
March 24, 2009
Regular Meeting

Robert Brady, Board Chairman, opened the Regular Meeting of the Zoning Board of Adjustment at 7:40p.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, Barry Wieser, Frank Curcio, Gian Severini, James Olivo, Vivienne Erk and Robert Brady

Also Present: Stephen Glatt, Board Attorney, Robert Kirkpatrick, Substitute Planner, Richard McFadden, Board Engineer, and Denyse Todd, Board Secretary

Absent: Arthur McQuaid

Mr. Brady asked James Olivo to sit in for Mr. McQuaid who is not in attendance for the meeting. Mr. Brady explained the Board of Adjustment and the Open Meeting Act; he also introduced the Board Attorney, Stephen Glatt. He also explained the agenda.

MEMORIALIZATIONS

RESOLUTION NO. 5-2009
ALAN EPSTEIN
BULK VARIANCE #0830-0823
Block 1813; Lot 2
15 Ardena Road, LR Zone

Motion by Ada Erik to memorialize Resolution No. 5-2009
Second by Frank Curcio

Roll Call Vote:

Yes: Ada Erik, Francis Hannan, Barry Wieser, Frank Curcio, Gian Severini,
James Olivo

No: None

YOUR HOME TEAM, LLC
BULK VARIANCE #0830-0822
Block 2312; Lot 16
Papscoe Road, LR Zone

Gary Grant from the Office of Drew Murray reiterated the purpose for carrying the application from the previous hearing. Also, explained that the applicant was still trying to find out if the surrounding property owner was interested in selling the property and still hadn't heard from them. They made an offer of \$25,000.00 also he spoke with the Counsel for the adjoining property owners this afternoon and was told they would have an appraiser to testify regarding fair market value. Mr. Grant feels that it is the burden of the sellers to show the fair market value and what would make the lot conforming, they feel they have presented their case and the property owner has not. Mr. Glatt feels that it falls under good faith estimates and offers. The applicant still needs to prove their case. The objector's council is at the meeting as well.

Mr. McKittrick is still under oath and also qualified as an expert. Mr. Grant began to question Mr. McKittrick. He qualified as an expert for a Planner and an Engineer. Mr. McKittrick explained the application and the variances again and the requirements for the Lake Residential Zone. The size of the property makes it have basically no building envelope. Mr. McKittrick gave some history of the area where the lot is located. There is an accepted septic design and Mr. McKittrick believes there is a permit issued. The individual well would be located in the southwest corner of the property. The septic system would be in the front and the fuel storage would be in the southern section of the property. House is skewed to the rear to accommodate the septic system.

The house is 774 square feet 28 X 28 2 stories. There was an open bed test. The house has to be placed on lot where it is proposed because of the septic and well location requirement. Mr. Grant asked for the negative criteria, Mr. McKittrick feels with respect to the Master Plan, since it falls under the Lake Residential Zone and quite a few of the lots are not conforming to the minimum 20,000sf requirement. Hardship variances are required for these nonconformities; since it is a smaller house on a smaller property it does not harm the intent of the Master Plan. It will enhance the neighborhood being a new home and wouldn't harm property values. Also, with regard to the Master Plan it will be a small modest home and would be great for first time homebuyer.

The Board Attorney commented on the bizarre size of the property and asked if Mr. McKittrick knew the history and he did not. The applicant's attorney asked Mr. McKittrick to explain the previous zoning. Mr. Glatt asked if the owner, Scott Leonescu knew if there was a subdivision on this lot or not and if the information could be known.

Mr. Somers represents Mr. & Mrs. Demaio. Mr. Somers began questioning Mr. McKittrick and Mr. Ballester prepared the plans that Mr. McKittrick is testifying to. Mr. Somers is questioning Mr. McKittrick's planning background. The amount that the applicant's attorney offered for Lot 15 was \$25,000.00. Mr. Somers is questioning the wetlands statement on the plan.

Mr. Glatt asked if the questions are being asked of the witness for innuendo or if there is an actual problem where Mr. Ballester should be brought in. Mr. Glatt said that Mr. Grant could bring another witness to rebut. Mr. Somers is questioning about a leech field. Mr. Somers asked Mr. McKittrick knew of case law that allows a developer permission to preclude adjacent property owner from building because of their well or septic. Mr. McKittrick feels it is a first come first serve kind of thing. Mr. Somers asked if there was a septic permit brought to the Board and there hasn't been. Mr. Somers asked about the specifics of the septic proposed. Mr. Glatt asked the relevance of the questioning when it is ultimately the Board of Health's decision. It was not relevant to these issues not the venue for it. Mr. Glatt asked if Mr. Somers would move on.

Mr. Somers asked Mr. McKittrick about the LR Zone and the fuel source will be propane. The average lot size is between 10 and 15 thousand square feet.

Mr. Grant asked Mr. Leonescu who was previously sworn in about the purchase of the property. The property was \$32,000.00 with a \$30,000.00 price and \$2,000.00 penalty, which was because of waiting for septic approvals. Mr. Leonescu reiterated what he said about building a more affordable house. The land and preparation before a house is on it is about \$100,000.00. This house has been built about 4 times in West Milford. Priced for affordability. The house behind him is also owned by the same people and in disarray. Property closed in December 2008. Mr. Brady confirmed that Mr. Leonescu offered to purchase lot 15 for \$25,000.00, and asked if he would do that for that amount of money. The property Mr. Leonescu purchased was through a bankruptcy.

There is additional testimony regarding the buy/sell letters and if the property owners were interested in purchasing the neighbors would not respond. Which lots would be conforming if joined to his property, he was never responded to. Lot 15 has three front yards.

Motion by Gian Severini to take a break

Second by Barry Wieser.
All in favor

Return from break

Mr. Somers has one witness for tonight and then carried to the next meeting for testimony from their planner and engineer. He does not represent the other people from the neighborhood.

Joshua Mackoff is the witness and was sworn in he lives at 22 Laura Lane in Morristown, NJ. He is a licensed general appraiser in the State of NJ, licensed Real Estate Agent and has a Bachelor's Degree from Dartmouth College. He has been an appraiser for about 12 years. He has testified in Superior Court and Matrimonial Court also Planning and Zoning Boards. Mr. Somers asked if Mr. Mackoff ever worked in the Township and he has regarding open space and green acres acquisitions. Appraiser since 1996 and involved in real estate since the 1980's. He has extensive education credentials. The Board accepted the credentials. Copies of the appraisal were handed out marked as Exhibit O-1, Mr. Grant was asked if he had any problem with the appraisal being handed out to Board members and he said it was hard to answer as he was just handed a copy himself.

Mr. Somers asked Mr. Mackoff what was appraised and Mr. Mackoff explained all, which is in the appraisal. Testimony for Block 2312; Lot 14 & 15 unless other questions. Mr. Glatt asked for all Council to meet in the hallway for a moment. Mr. Glatt said we were to proceed. Mr. Somers asked Mr. Mackoff questions and he responded with information from Exhibit O-1. Mr. Mackoff discussed how he compiled the information for the appraisal.

There was discussion between the Board Members and the Appraiser regarding the Highlands Act and exemptions associated with the Highlands Act. There was discussion about the other properties the appraiser used for his analysis. The market has deteriorated during the time the sales analyses were taken from and the present time. The lot prices don't seem too different from past years. There was no adjustment made for market conditions. The lot in question is a superior lot. Counter intuitive sale lot has a positive adjustment but this is subjective. The value of property is what is agreed upon between buyer & seller. Mr. Somers had Mr. Mackoff explain how his formula works for the analysis. The range is \$35,000 to \$45,000 per lots appraised.

Mr. Grant wanted to ask Mr. Mackoff a few questions. 1. How many appraisals has he done in West Milford and it is 8-10. 2. The formula for the appraisal given and it is his opinion or subjective. 3. No corrections for market conditions. 4. What is the relevance of the abandoned home and he was asked to do it but it has no relevance. 5. Does the building envelope affect the value of a lot and he said yes. The appraisals given for the lot sales are more than 1 year old. The values are subjective.

Mr. Glatt asked if house demolished and new house built on the property would it still be valued at \$100,000.00. Mr. Mackoff said he would still give a value to the foundation. He doesn't know the condition of the house. Mr. Hannan asked Mr. Somers if his clients were aware that if after Highlands Regional Master Plan is in place if sold as a house, septic would need to be updated or replaced. A cesspool would not be allowed.

Mr. Glatt asked if it would be a problem to open to the public on what has been discussed so far and there was discussion regarding that. Mr. Grant objects to carrying it to another night as they were ready tonight and would like to conclude.

Mr. Brady said because of the time they will ask the next application to request a carry to the next meeting.

Motion by Ada Erik to carry the Chiarmonite/Kemp application to the next meeting
Second Barry Wieser
All in favor

There was a motion and a second to open the public portion of the Your Home Team LLC application.

Mr. Rezzonico 45 Hampton Road objects to the application the property is too small for a house and it is non-conforming.

Mr. Heinig 152 Papscoe Road objects to the house being built as the house will be smaller, grossly undersized.

Seeing there is no one else present for or against the application, Ada Erik moved to close the public portion of this part of the application. Frank Second for this part of the application.

Roll Call Vote:

Yes: Ada Erik, Francis Hannan, Barry Wieser, Frank Curcio, Gian Severini,
James Olivo, Robert Brady

No: none

Mr. Somers asked if the Board would extend the application as they only presented one half of the presentation. Mr. Hannan asked why the Planner was not available tonight. Mr. Somers said he didn't feel there was enough time for the planner to testify. Mr. Brady asked about Mr. Leonescu's attempts to purchase and no responses also about the report that was given to Mr. Leonescu's attorney this evening why is there secrecy. Mr. Somers said there was not secrecy and didn't know until appraisal was done. There was nothing deliberate. Mr. Brady felt that Mr. Somers should have contacted Mr. Leonescu one way or another by saying nothing, there was no counter offer done. No legitimate communication.

Mr. Glatt said that Mr. Somers had a legitimate reason to request the adjournment with regard to the negative criteria. They should all take advantage of the time to come up with something for the next meeting. The residents may or may not know that the Board is bound by statute and case law when discussing under sized lots. They can't zone a piece of property in utility when others have the opportunity to buy it or sell it or do something. Don't wait until the day before to negotiate. The Board has to judge based on the evidence. Mr. Grant asked if they wanted all three parcels to be purchased and Mr. Somers didn't know about that. Neighbors have interest in purchasing. Mr. Glatt said this matter had nothing to do with Lot 16 only the situation with regard to lot 14 & lot 15. Mr. Glatt said that he feels that Mr. Grant should not object to an adjournment. Mr. Grant said that this started back on November 29, 2008 with the applicant sending the certified letters the first time. Mr. Grant would like it concluded tonight.

Mr. Brady said they do not carry applications unnecessarily and the Board needs to hear the facts.

Motion by Francis Hannan to carry this to the April 28, 2009 meeting. He would be disappointed if nothing is heard from the other party. He is in agreement with Mr. Glatt that the other information regarding the negative criteria is needed.

Second by Barry Wieser

Roll Call Vote:

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

No: Ada Erik, Gian Severini, James Olivo

Motion by Francis Hannan to adjourn this until the April 28, 2009 meeting.

Second by Ada Erik

Discussion to change the by-laws to say that the Board can hire their own Engineer.

Motion by Ada Erik to change the By-laws.

Second by Gian Severini

Roll Call Vote:

Yes: Ada Erik, Francis Hannan, Barry Wieser, Frank Curcio, Gian Severini, James Olivo, Robert Brady
No: none

Motion by Ada Erik to approve the invoices for the Board Attorney, Stephen Glatt.

Second by Gian Severini

Roll Call Vote:

Yes: Ada Erik, Francis Hannan, Barry Wieser, Frank Curcio, Gian Severini, James Olivo, Robert Brady
No: none

Motion by Ada Erik to approve the invoices for the Board Planner William H. Drew, P.P., AICP

Second by Gian Severini

Roll Call Vote:

Yes: Ada Erik, Francis Hannan, Barry Wieser, Frank Curcio, Gian Severini, James Olivo, Robert Brady
No: none

Mr. Glatt had to send additional information with regard to the Vincent Lanza matter.

Approval of minutes

Motion by Ada Erik to approve the minutes of the January 27, 2009 Regular Meeting of the Zoning Board of Adjustment.

Second by Barry Wieser

Roll Call Vote:

Yes: Ada Erik, Francis Hannan, Barry Wieser, Frank Curcio, Gian Severini, James Olivo, Robert Brady
No: none

Motion by Ada Erik to approve the minutes of the January 27, 2009 Reorganization Meeting of the Zoning Board of Adjustment

Second by Gian Severini

Roll Call Vote:

Yes: Ada Erik, Francis Hannan, Barry Wieser, Frank Curcio, Gian Severini, James Olivo, Robert Brady
No: none

Motion by Ada Erik to approve the minutes of the February 24, 2009 Regular Meeting minutes

Second by Gian Severini

Roll Call Vote:

Yes: Ada Erik, Francis Hannan, Barry Wieser, Frank Curcio, Gian Severini, James Olivo, Robert Brady
No: none

Mr. Brady handed out the cards for New Jersey Planning Officials.

Mr. Hannan and Mr. Brady went to the training class the previous Saturday and highly recommended it. It was very informative and interesting. Discussion of Windmills. They do not approve of email.

Motion by Ada Erik to adjourn the regular meeting of March 24, 2009.

Second by Barry Wieser.

All in Favor to adjourn

Meeting adjourned at 10:45p.m.

Adopted: April 28, 2009

Respectfully submitted by,

Denyse L. Todd, Secretary
Zoning Board of Adjustment