MINUTES
Of the Township of West Milford
ZONING BOARD OF ADJUSTMENT
March 27, 2012
Regular Meeting

Robert Brady, Board Chairman, opened the Regular Meeting of the Zoning Board of Adjustment at 7:40 p.m. The Board Secretary read the Legal Notice.

Pledge

The Chairman asked all in attendance to join in the Pledge of Allegiance.

The Chairman noted that everyone was present there was a full Board and no need for substitutions. Mr. Brady explained to the public about the Board of Adjustment, explained the Open Public Meetings Act of the State of New Jersey. Appeals go to the Superior Court of the State of New Jersey. He introduced the Board Attorney. The applicant explains the application first then anyone speaking for or against the application is given the opportunity to do so.

Roll Call

Present: Russell Curving, Steven Castronova, James Olivo, Frank Curcio, Arthur McQuaid, Vivienne Erk, Michael Siesta, Michael Gerst and Robert Brady

Also Present: Stephen Glatt, Board Attorney, William H. Drew, Michael Cristaldi Board Engineer, Denyse Todd, Board Secretary

MEMORIALIZATIONS

ESTATE OF DEMBIA
RESOLUTION NO. 7-2012
BULK & USE VAR. NO ZB12-11-17
Block 3201; Lot 12
Lakeside Road, R-4

The resolution is not available for memorialization. The attorney explained that he and the planner needed to discuss the language with regard to the applicant obtaining DEP approval before he commences construction of the septic system. The planner indicated that a building permit is not necessary for the septic system. Therefore discussion will take place and the appropriate language will be in the resolution for memorialization for next month.

FRANCESCO PETROSILLO
BULK VARIANCE NO. ZB12-11-16
Block 10810; Lot 1
645 Otterhole Road, LR Zone

The applicant needs to carry the application until the April meeting. He needs to amend his application based on the memo from Mr. Drew to include lot coverage as one of the variances. He will also need to re notice the certified list of property owners as well as advertise it in the newspaper. The Chairman asked for a 60 day extension the applicant agreed.

Motion by Steven Castronova to carry the application to the April 24, 2012 meeting
Second by Frank Curcio

Roll Call Vote:
Yes: Russell Curving, Steven Castronova, James Olivo, Frank Curcio, Arthur McQuaid, Vivienne Erk, Robert Brady
No: none

JEFF WAITZE
BULK VAR. NO. ZB12-11-15
Block 2203; Lot 1
40 Melinda Ct., R-4 zone

The applicant Jeff Waitze was sworn in he resides at 40 Melinda Lane, Hewitt, NJ. Mark Palus was sworn in his business address is 170 Kinnelon Road, Kinnelon, NJ. Mr. Palus is a Licensed Professional Engineer and Professional Planner in the State of NJ. Licensed Engineer since 1987 Planner since 1999, he has been the Principal of MAP Engineering since 2000. He has appeared before this Board before as well as 50 or 60 other municipalities. The Board accepted his credentials.

There is a single family dwelling with a driveway, a swimming pool and a driveway. It is about 5 ½ acres located at the end of Melinda Lane. Directly to the west or at the very end of Melinda Lane is another residential property, the municipal and county boundary line. They are adjacent to Vernon Township and Sussex County, that lot is 50 acres.

They are proposing to construct a two car detached garage. They are showing the proposal using the site plan submitted to the Board but colored in blue to make it more visible. In the R-4 zone there is a required 60 foot side yard set back. They are proposing 7 feet, which seems substantial, but there are unique characteristics. The property next to the applicants is encumbered by significant wetlands. This delineation line is shown by a dotted line on the site plan and it was done in 1989 and verified by the DEP. There is a fresh water wetlands line which is shown by a darker line. That was done during the subdivision and construction of Melinda Lane. At that time there were 50 foot buffers on the property. Application was made to the DEP for a buffer averaging plan. The buffers in the area were reduced to 10 feet, which is the second dash line that runs 10 feet off. Somewhere else on Melinda Lane the buffers were expanded upwards of 75 feet, it was a matter of taking some off his property and applying it to other properties. Mr. Palus indicated this is a standard DEP permitting process this is allowed, approved by the DEP, and is on the filed map. The wetland lines run with the property. It is not a standard delineation where after 5 years it is expired. It is a deed-restricted item.

There is no place to put the garage behind the home because of the wetlands it is unusable property. They are close to the side yard due to the wetlands behind. The adjacent home in Vernon is further away and it will be 300 or 400 feet away from that home. There is substantial buffer between the Vernon home and the proposed garage. If you are on Melinda Lane looking up at the garage, there is a mound of property in front of the proposal site. There are also trees so you would not see it. There are other existing garages. They are trying to get adequate space to have a court yard so the garage doors will not be facing each other.

The applicant will get a good flow of their property, the neighbors will have minimal impact. Although it is a substantial deviation from the Zoning Ordinance, under these conditions it is not a detriment.

Mr. McQuaid asked what the Zoning reasons were to have to move it that far over. Mr. Palus indicated that it was to separate it from the existing home. The hardship is the location of the existing home. He indicated that under a C 2 variance or a Flexible C variance the benefits outweigh the detriment, the benefit would be hiding the garage behind trees and a topographic mound, in addition where they are coming closer to the neighboring property is an environmentally regulated area that will never have any activity in it.

A board member asked what the garage will be used for the applicant indicated it would be used for tools, toys, bikes. There is an existing shed that will be removed and the items will be stored in the garage. The height of the garage was discussed, it will match another peak on the house, there will be access to the upstairs for the applicant. It will have no plumbing only electric there is no opportunity to make it an apartment there will be no access to the septic system. Mr. Palus indicated the building height is calculated at 15.2 feet where 35 is permitted. Although it has the architectural design of a second floor, it does not. Mr. Brady asked where the other residence is and the applicant explained the location. The neighbor's property is located in Hewitt and in Vernon, NJ.

Mr. Brady asked for reasons why the garage could not be moved to abate some of need for the setback. Mr. Palus explained they worked from wetland buffer line forward, the garage could be moved toward the house but too close it is no longer functional. The closer to the house the more visible to the street, too close to function because of the other garage. The Board Engineer asked if it could be rotated so the doors faced the driveway then it could be just beyond the pavement and the doors would not be affecting each other. Mr. Palus explained there is an underground propane tank they are trying to avoid. The distance is 74 feet from garage door to garage door. Mr. Christaldi

asked if it was done differently you could back out in the other direction. The applicant's professional indicated it would bring it in view from the street. The attorney asked for zoning reasons or the hardship. The zoning reason is needed to have it so far from the house. Mr. Palus again indicated the C 2 approach where the benefits outweigh the detriment; it is less visible and less impact on the neighborhood. Where the ordinance states to place it, it is more visible than where they are proposing. Mr. Glatt asked if visibility is the basis for it and Mr. Palus indicated it was a big part of it. Setbacks are to limit impact on the neighbors and the neighborhood; it is 400 feet from the neighbor's house and adjacent to a part of the neighbor's property that is unusable. Mr. Glatt indicated that the real reason is that they would like it there not for zoning reasons. The applicant's professional agreed with Mr. Glatt that there is clearly a benefit to the applicant. Mr. Palus indicated it is a defendable benefit. It is less of an impact aesthetically where they have it and no impact on the neighbors. They asked adjacent property owner if they chose to sell any portion of the property she did not. There are underground propane tanks closer to the house. Mr. McQuaid asked again for the zoning reason why the garage could not be within 50 feet of the side yard. Mr. Palus indicated if they did the 60 feet, that is the dash line, it would be in the middle of the current driveway. Mr. McQuaid asked about Mr. Cristaldi's suggestion since it would increase the side yard. Mr. Palus indicated again the location is less impact on the neighborhood where it is proposed to be.

Mr. Brady indicated that if the topography is correct you could see it from the corner of Melinda Lane. If it was turned 90 degrees and move it over 10 feet and back 10 feet there would be a reasonable buffer between the applicant and the side yard, the driveway area would not be impeded for the house or the other garages or the propane tank. The question about the delineation was asked again Mr. Palus explained the transition-averaging permit for the wetlands does not expire it is written in the deeds for the property and is on the filed map.

Mr. Drew asked if the Board looks at the application favorably that the Board receives a copy of the filed deed with the restriction in it verifying the wetland averaging approval by the DEP. Also, if any additional filings are required by the DEP they should be addressed Mr. Palus indicated he would. It would be contingent upon those items.

Mr. Brady indicated that there are a lot of reasons the DEP delineates wetlands and after last years weather if the garage is that close the garage may be under water. Mr. Palus indicated that although it's a wetlands area it is not a flood plain area. The applicant indicated that the rain did not cause a problem in that area other than a puddle. Mr. Palus indicated since it would be on a slab there should not be any problems. Mr. Glatt asked Mr. Palus to explain the existing 25.4 feet which is the shed on the property. The site plan is marked into evidence as A-1. The shed will be relocated.

Mr. Curcio asked about the seepage pits. Mr. Palus responded that the municipality requires seepage pits in all additional impervious coverage. He would submit in this situation with the extensive land surrounding this property and the adjacent property that if seepage pits are not put in they would not be causing any adverse impact on anybody. Several years ago the home had an addition put on several years ago the requirement to have seepage pits on the property were waived because of the same situation. He submits it would apply today it is an unnecessary expense. He acknowledges that it is standard practice an if smaller lots with homes next to each other would be critical so you do not impact the neighbor. The neighbor is a 1000 acre wetland. Mr. Cristaldi wants it to be stated that the Board did not allow without seepage pits but it should be subject to the Engineering Department conditions and approvals. Mr. Waitze is in agreement. Mr. Drew asked if the Engineering Department is who waived the seepage pits previously, Mr. Palus was not the engineer at the time and could not answer to that. Mr. Waitze indicated it was during construction and letters were written from the engineer at the time. They held a bond until the review process was complete and it was not an issue. Mr. Drew indicated that the same review process would take place through the Engineering Office so if the Board is comfortable with leaving it to the determination of the Engineering Office, then perhaps they would make the same considerations as last time.

Mr. Cristaldi agreed with that. He asked about the driveway and it is paved presently. It will not be re-graded; Mr. Palus indicated it would be 2 inches higher. Mr. Cristaldi asked if he would be doing fill by the retaining wall if it is the case that the wetlands permit allows the applicant to do that. Mr. Palus assured the Board that if anything they are doing has an environmental or DEP aspect to it they agree to abide by it. Mr. Palus indicated that the wall in the back is only a 12 inch retaining wall. It will be built outside the wetland buffer line. The disturbance going down the driveway was asked about next by the Board Engineer and also about the drainage easement line, it is unclear you cannot tell where the two edges of the easement are. Mr. Palus is coloring it with a blue marker, it is the property line. The metes and bounds has to be added as well. The Engineering Department will need to see the easement before they let the garage be anywhere. Mr. Palus indicated that the garage should be staked out before it is built then it will be clear about the easement and the wetland buffer

line. The metes and bounds description will be added to the map, both edges of it. There is only one variance for the side yard.

Mr. Brady asked again about the zoning reason and Mr. Glatt suggested that he testify as a planner. The best Mr. Palus indicated he could give is a flexible C variance with the proposed location for the garage although it does not conform to zoning ordinance is a more suitable location for the property and it is a less impacted location for the neighbors and the surrounding neighborhood. Mr. McQuaid asked for clarification for the flexible C variance or C 2 variance.

Mr. Palus indicated that what the flexible C does is allows the Board to deviate from the zoning if the end result will be better than if the zoning was enforced.

Mr. Cristaldi asked about the four foot driveway that will run on the side of the garage and will be the back of the garage from the road, what will be parked there, Mr. Waitze indicated nothing in particular, perhaps stack wood, put a wheel barrow, utility cart. It is not part of the driveway per say it will be paved. There is a two car garage attached to the house. Mr. Glatt asked what was going to be in the proposed garage. The applicant indicated he has a couple of quads, a trailer, bikes for the kids. Mr. Glatt asked if there would be storage for commercial vehicles of any kind. The applicant indicated it would not he does not own any commercial vehicles. If there is a third vehicle, it is just that. Mr. Glatt asked if there is any negative impact. Mr. Palus indicated that there is not, the nearest house is 400 feet away from the road you would never visually be able to tell that the garage is too close to a property line, they have the benefit of being surrounded by an extensive amount of undeveloped property woodland. They are in the middle of nowhere, it would never work in a lake residential area since the properties are smaller. Mr. Palus explained the wetland information reduction. Mr. Palus worked for the firm that did the subdivision and is familiar. Mr. Drew also indicated that when he was Town Planner in 1993 or 94. It was a major subdivision before the Planning Board. As part of the subdivision there was a wetland averaging plan for the whole property that was submitted and approved by the DEP so that it could be a logical subdivision layout and each of the lots could have a buildable area but not compromise the overall wetlands of the property. This was part of the larger development where the wetland averaging took place it was not just on this particular lot.

The Chairman opened the meeting to the public.
Vivienne Erk after seeing there was no one present for or against the application, moved to close the public portion.
Second by Steven Castronova.
All in favor to close the public portion.

Motion by Steven Castronova to approve application number ZB12-11-15 Bulk variance relief requested for a side yard setback where 50 feet is required 25.4 feet exists and 7 feet is proposed for the construction of a detached garage. Subject to the Engineers comments, requests and approvals, copy of the filed deed showing the restrictions, flexible C 2 variance information.
Second by Russell Curving

Mr. Brady wanted to point out that in most of the applications we have far better and less flimsy zoning reasons why an application like this should be approved. The zoning reasons are somewhat transparent he does not see solid reasons why. He indicated it was weak zoning reasons. Mr. Castronova somewhat agrees he had the opportunity to go to the property he indicated it was a suitable location and unfortunately there are wetland around. All woods all wetlands nothing will change. Mr. Brady indicated that according to the diagrams there are other locations that could keep a buffer.

Roll Call Vote:
Yes: Russell Curving, Steven Castronova, James Olivo, Frank Curcio, Vivienne Erk
No: Arthur McQuaid, Robert Brady

APPROVAL OF INVOICES FOR PROFESSIONALS

Motion by Steven Castronova to approve invoices for Stephen Glatt
Second by James Olivo
All in favor to approve the invoices

Motion by James Olivo to approve invoices for William Drew
Second by Frank Curcio
All in favor to approve the invoices

Passaic County Planning Department Anniversary pamphlet was commented on.

DISCUSSION

Motion Steven Castronova to approve the Regular minutes of February 28, 2012**.**
Second by Russell Curving
All in favor to approve the Regular minutes of February 28, 2012

LITIGATION

Mr. Glatt will need to appear in court on April 9, 2012 for a calendar call, as he previously mentioned it is really for the second count. The Court is requiring them to appear.

Motion by Steven Castronova to adjourn the meeting of March 27, 2012
Second by Vivienne Erk

All in favor to adjourn the meeting of March 27, 2012

Meeting adjourned at 8:37 p.m.

Adopted: April 24, 2012

Respectfully submitted by,

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Denyse L. Todd, Secretary
Zoning Board of Adjustment