

**MINUTES
Of the Township of West Milford
ZONING BOARD OF ADJUSTMENT
May 21, 2013
Regular Meeting**

Robert Brady, Board Chairman, opened the Regular Meeting of the Zoning Board of Adjustment at 7:49 p.m. The Board Secretary read the Legal Notice.

Pledge

The Chairman opened the meeting and there were only 4 members of the Board present for the meeting and the resolution that needed to be discussed would be first and hopefully other Board Members would arrive, since the application to be heard is a use variance, there is not a quorum, it requires at least 5 members. He explained to the public about the Board of Adjustment, 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 Meeting follows a printed agenda, which is on file in the Clerks's office and posted on the bulletin board. If needed a break will be taken at approximately 9:00. There are no new applications after 10:30, no new testimony after 11:00. The applicant explains the application first then anyone speaking for or against the application is given the opportunity to do so on a case-by-case basis. Any appeals go to the Superior Court of the State of NJ.

Roll Call

Present: Frank Curcio, Arthur McQuaid, Clint Space, Robert Brady

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

Absent: Russell Curving, James Olivo, Steven Castronova, Michael Siesta,
Michael Gerst

MEMORIALIZATIONS

**NEW YORK SMSA /VERIZON WIRELESS
RESOLUTION NO. 6-2013
PRELIMINARY & FINAL SITE PLAN
WIRELESS TELECOM; USE VARIANCE
INTERPRETATION ZB12-12-12
Block 4701; Lot 61
750 Westbrook Road; R-4 Zone**

Motion by Frank Curcio

Second Arthur McQuaid

Roll Call Vote:

Yes: Frank Curcio, Arthur McQuaid, Robert Brady

No: none

DISCUSSION

**VINCENT LANZA
RESOLUTION NO 13-2006 AND 14-2006**

Discussion of a previous application pertaining to clarification of drainage conditions for a previous bulk variance application #0430-0673, Resolution Nos. 13-2006 and 14-2006. The information was noticed and sent to certified 200 foot list.

Mr. Lanza was sworn in by the attorney. Mr. Glatt made a statement to the Board to expedite the matter. Mr. Glatt explained that Mr. Lanza sought the approval from the Board to change one of the

conditions in his resolution that was approved in 2006. It was on the March agenda and it was carried for additional review and to see if the transcript would be needed. The evening it was on the Board Planner and the Planner at the time of the original application in 2006, was not in attendance. Subsequent to that meeting Mr. Glatt had the opportunity to review certain documents, he spoke with Mr. Lanza about 10 days ago and he also spoke with Mr. Drew and it was thought in order to expedite the matter, it would make more sense to have Mr. Drew prepare a report and give testimony to give the Board background.

There was a deminimus resolution and there was a bulk variance resolution back in 2006. There is no need for concern with the bulk variance but with the deminimus because there needed to be road improvements on Flanders Road and Mr. Lanza's responsibility for his road improvements were contingent upon a prior application for property on Flanders owned by an individual named Paterno. Unfortunately, Mr. Paterno has not made those improvements. Therefore Mr. Lanza has not made his improvements.

William H. Drew, Board Planner was sworn in and asked to explain to the Board what was in his report of May 17, 2013. Mr. Drew indicated that Flanders Road is an unimproved road, it does not meet the minimum standards to provide safe and adequate access for passenger, emergency service vehicles. There has not been much activity in recent years but back in 2006 the Board heard a lot of applications for deminimus exception, which is a case where you have an unimproved road and based upon the applicant's testimony, the input of Board Professionals and Board's own determinations, it is required that the applicant provide certain improvements to bring the road up to minimal standards. It does not mean the applicant has to install a new road with 30 foot pavement and curbing but minimal standards to provide for adequate and safe access. Mr. Lanza was before the Board in 2006 for his property on Flanders Road for such a request. Flanders Road is unimproved and Mr. Lanza sought variance approvals to construct a single-family house. The variances were approved and certain improvements were required by the Board for Mr. Lanza to install on Flanders Road. They were basically drainage improvements and some road improvements to an intersecting side street, Linden Avenue. At the time of Mr. Lanza's testimony, it was his position that a prior applicant by the last name of Paterno received a deminimus exception in 2003 for a similar request, he wanted to build a house on a lot and received variance approval and the Board granted him a deminimus approval and he had to install certain improvements. Mr. Lanza's testimony indicated that Mr. Paterno has to install minimum road improvements so he did not have to do anything more with the road, he would install the drainage that was determined necessary by the Board Engineer and Board Members. The variance was granted in 2006. 7 years has transpired and Mr. Lanza is now looking for a building permit. Mr. Paterno never moved forward on his improvements, he never received a building permit and never installed the improvements from Flanders Road. Mr. Drew's reviews of both files determined that. If the Board wishes to go forward with Mr. Lanza's amended application, Mr. Drew's recommendation is that the Board should consider requiring Mr. Lanza to install the improvements that Mr. Paterno was supposed to install. Not all the way from Paterno's property but starting at Lanza's property and extending those improvements to the intersection of Maple Shade Road, and install the drainage improvements that the Board required of Mr. Lanza back in 2006. Basically, combining the improvements required from Paterno and Lanza and having Mr. Lanza perform those improvements from the point of his lot on Flanders Road out to Maple Shade. That way, it was Mr. Drew's understanding, the road would be improved to the standards that the Board at the time felt was minimal but adequate for safe access to the property. A Board Member asked when Mr. Paterno would be making his improvements and would he be able to tie into Mr. Lanza's improvements. Mr. Drew indicated that if Mr. Paterno were to come in, he would install his improvements from his lot up to where Lanza's lot is. The alternative is more cumbersome but would have to be researched. There may be an off site ability where if Paterno came in to build on his property then he would need to reimburse Lanza for a fair share of the cost of the improvements but that is an ordinance that only the Town Council can adopt. It would require a recommendation from the Board of Adjustment, then to the Council and they would have to consider it. Mr. Drew indicated he was not certain if it is a private road, if the Council would have jurisdiction. The Board attorney would need to work that out as an alternative, it could tie up the project significantly.

Mr. Glatt asked Mr. Lanza if he received Mr. Drew's report of May 17, 2013, Mr. Lanza indicated that he did. Mr. Lanza was given the opportunity to speak on his own behalf. Mr. Lanza feels that his point was missed. The only reason he came to the Board was because the 2006 resolution stated that he had to run drainage from Flanders Road down Maple Shade to Lakeshore. He indicated it had nothing to do with Paterno, nothing to do with improving Flanders Road all of that was taken care of. Mr. Lanza indicated that he spoke with Mr. Paterno and they have that all under control. They intend to do what they have to do in order to get the building permit. So that is a non-issue.

The issue is that he came back to the Board in 2009 when he went for a variance at 33 Flanders Road is in between 27 and Mr. Paterno's lot. When he came for that variance, it was decided that he would put more drainage in the road from Flanders Road to Maple Shade Road. He needed to put seepage pits in because the drainage would not continue down Maple Shade to Lakeshore which would allow the water to empty into the lake eventually. What happened was in the resolution for 33 Flanders, it was put in there that it had to go to Maple Shade, and he came to the Board for clarification on that. When that was done, the previous Board Engineer, Richard McFadden, sent correspondence to Mr. Lanza. Mr. McFadden wanted everything done on one plan for both properties 27 and 33 Flanders. The resolution for 33 Flanders was changed but the one for 27 was not changed. Again Mr. Lanza stated that all he wanted was the change to Flanders condition. He also stated again all improvements to Flanders Road are agreed to and they plan to do it, he and Mr. Paterno will work things out between them to make sure the improvements are done and that is really a non-issue. The only issue is Maple Shade to Lakeshore, the drainage in there, he never agreed to do that and he has a memo from Mr. McFadden to show that. Mr. McQuaid asked for a copy of Mr. McFadden's memo that Mr. Lanza is referring to.

Mr. Glatt commented that Mr. Lanza's understanding is different than what has been described at the meeting. He wanted to ask Mr. Lanza some questions; Mr. Glatt indicated that Mr. Paterno was supposed to do something starting in 2003, it is 10 years later. Mr. Lanza wanted to clarify that Paterno's improvements had to do with grading of the road. Mr. Lanza's improvements were to do with digging up the road. It made no sense for him to grade the road when Mr. Lanza has to dig up the road. Mr. Glatt asked Mr. Lanza if he was willing if the Board agrees to make the amendment, to make it contingent upon Mr. Lanza receiving a Certificate of Occupancy if and when what Mr. Paterno was supposed to do is completed. Mr. Lanza agreed from the beginning of 27 Flanders out to Maple Shade he will take care of improvements at the time of C.O. Everybody is in agreement. Mr. Lanza was asked to tell the Board what he feels the improvements needed would be, so the Board if it agrees to amend it, Mr. Lanza can pull the building permits. Mr. Lanza indicated that he had to install the drainage, the drainage that is noted on Jeff Doolittle's plan from Flanders Road to Mapleshade Road which includes several catch basins 300 feet of pipe and some seepage pits, where they are located on the plan. After that is done the road would have to be graded according to the plan and it will have to be a stone quarry process (whatever) Joe Paterno's resolution said. Mr. Lanza will have that done from his property to Mapleshade Road. Mr. Paterno will need to do his before his building permits as well, maybe Mr. Lanza will do the whole thing he needs to talk to Mr. Paterno. If Mr. Paterno does not want to do all, Mr. Lanza will do from his property at his expense. Mr. Drew wants it clarified that improvements are to be made from Linden Court. Mr. Lanza explained that they are in the process of getting Linden Court vacated. Mr. Lanza indicated 33 Flanders, the property next to 27 Flanders is where he is starting and that goes past Linden Court and he was going to make all improvements in one shot because eventually he hopes to build on 33 Flanders as well. Mr. Drew indicated that the improvements will be installed prior to a Certificate of Occupancy being issued for the house Mr. Lanza indicated that he will make the improvements before getting a Building Permit Mr. Drew indicated that was even better. Mr. Glatt indicated to the Board that Mr. Lanza is basically saying is that he will do what he has to do from his property all the way to the southern end of Lot 3 prior to the issuance of a building permit. From and including 33 Flanders past 27 Flanders to Mapleshade Road where there will be seepage pits. The last seepage pit will be on Mapleshade. There is drainage on Lakeshore.

Mr. Drew explained that he took the prior comments from Rich McFadden and incorporated them both from the Paterno application and Lanza application pertaining to the improvements.

Mr. Brady opened the meeting to the public.

Motion by Arthur McQuaid to close the public portion

Second by Frank Curcio

All in favor to close the public portion.

Motion by Arthur McQuaid to approve the amendment to the resolution, testimony was given by Mr. Lanza and Mr. Drew concerning past resolutions from 2006, 13-2006 and 14-2006. Mr. Lanza is proposing a change in the wording of that resolution. Resulting from Mr. Lanza's agreement to install drainage, catch basins, pipes, seepage pits, he will be grading the road and putting down quarry process from the area of Lot 3 on Linden Road to Mapleshade Road.

Second by Frank Curcio

ROLL CALL VOTE:

Yes: Frank Curcio, Arthur McQuaid, Clint Space and Robert Brady

No: none

Mr. Brady told Mr. Lanza that he had his clarification and hopefully they would be able to do something soon. Mr. Glatt added that hopefully the resolution would be done for the June meeting.

Mr. Brady indicated to Camp Vacamas that the Board would give it another 10 minutes in case an additional Board Member showed up.

All in favor to take a 10 minute recess at 8:21

Returned at 8:34

Mr. Brady brought the meeting back to order. There are only four members of the Board present. It would be impossible to hear the application for Vacamas Programs for Youth, Block 12501; Lot 41.01; 256 Macopin Road in the R-4 Zone.

The attorney for Vacamas was asked to step up to address the Board, Mr. Brady explained that it was impossible to make a decision with only 4 Board Members present. Mr. Glatt indicated that the Board will adjourn the meeting since it is impossible to hear the application and asked the applicant to request an extension to the deadline date of August 28, 2013 if the application is not heard by that date, the applicant would technically get the approvals by default, usually when a matter is carried the applicant is asked to extend the date by 30 days. If his client said no there is nothing that can be done we would have to hear it there has never been an approval by default, there would be a Special Meeting to hear the matter.

Mr. McQuaid commented that he felt badly that we could not hear this since this application is for a swimming pool for kids and it has to be put off for another month.

Motion by Arthur McQuaid to postpone this application to the next meeting of June 25, 2013.

Second by Frank Curcio

Mr. Brady added that he agreed with Mr. McQuaid and it is an unfortunate situation. He has been on the Zoning Board for 22 or 23 years now and it is only the 2nd time in that time that there were not enough members to hear an application and he apologized to the applicant.

ROLL CALL VOTE:

Yes: Frank Curcio, Arthur McQuaid, Clint Space and Robert Brady

No: none

YEAR END REPORT FROM PLANNER TO MAYOR COUNCIL & PLANNING BOARD

Mr. Drew indicated that he had heard there was some discrepancy with regard to some of the setback requirements in the Senior Congregate Care Zone. There was a requirement that the cell tower had to be a minimum of 100 feet from any building but there was not any requirement in any of the other zones for minimum distance. Mr. Drew looked at the original report that he and another planner had prepared back in 2003 and there was not any mention of that. Mr. Drew indicated that he thought it might have been because in the residential zones, you needed to have a minimum of 25 acres and the last application disproves his theory but with 25 acres, why would you place a tower in close proximity to a house. It might be a good recommendation for the Town Council to consider putting a minimum distance to any structure greater than 150 feet so in the future we do not run into a similar situation. He asked if the Board had any other recommendations or concerns to bring before the Council. If not, he will have a draft report prepared for the June meeting for the Board's review.

Motion by Arthur McQuaid to approve Stephen Glatt's bills

Second by Frank Curcio

All in favor to approve Stephen Glatt's bills

Motion by Robert Brady to approve William H. Drew's bills

Second by Clint Space

All in favor to approve William H. Drew's bills

Motion by Robert Brady to approve Alaimo- Michael Cristaldi's bills

Second by Clint Space

All in favor to approve Alaimo - Michael Cristaldi's bills

No Communications

Mr. Glatt indicated that there is nothing to report with the litigation, it is basically done.

Motion by Robert Brady to approve the minutes of March 26, 2013

Second by Frank Curcio

All in favor to approve

Motion by Clint Space to approve the minutes of February 19, 2013

Second by Robert Brady

All in favor to approve.

Motion by Arthur McQuaid to adjourn the meeting of May 21, 2013

Second by Robert Brady

All in Favor to adjourn the meeting

Meeting adjourned at 8:46 p.m.

Adopted: June 25, 2013

Respectfully submitted by,

Denyse L. Todd, Secretary
Zoning Board of Adjustment