

**MINUTES
Of the Township of West Milford
ZONING BOARD OF ADJUSTMENT**

**JANUARY 23, 2007
REGULAR MEETING**

Mr. Brady, Chairman, opened the Regular Meeting of the Zoning Board of Adjustment at **7:39 p.m.** The Board Secretary read the Legal Notice.

ROLL CALL

Present: Ada Erik , Francis Hannan, Daniel Jurkovic, Arthur McQuaid, Gian Severini, Ed Spirko, Robert Brady, William Lynch, and Barry Wieser.

Also Present: Stephen Glatt, Board Attorney, William Drew, Planning Director, Richard McFadden (7:49), and Tonya Cubby, Board Secretary.

Absent: None.

Mr. Brady reviewed the Board of Adjustment procedures.

MEMORIALIZATIONS

ROBERT & RENEE PASEK

Resolution No. 35-2006

Bulk Variance #0630-0737

Block 4005; Lot 4

25 Board Road; LR Zone

Action: Relief pursuant to MLUL C.40:55D-70c granted.

Motion by Ms. Erik to approve Resolution 35-2006.

Second by Mr. Severini.

Roll Call Vote:

Yes: Ada Erik, Francis Hannan, Daniel Jurkovic, Arthur McQuaid, Gian Severini, William Lynch and Robert Brady.

No: None

Abstain: None

Motion carried.

SPRINT SPECTRUM. LP

Resolution No. 36-2006

Use Variance #0640-0730

Preliminary & Final site Plan #0620-0226AB

Block 1701; Lot 59

776 Warwick Turnpike; LR Zone

Action: Relief pursuant to MLUL C.40:55D-70d and relief pursuant to MLUL C.40:55D-49 and 52 granted.

Motion by Ms. Erik to approve Resolution 36-2006.

Second by Mr. Jurkovic.

Roll Call Vote:

Yes: Ada Erik, Francis Hannan, Daniel Jurkovic, Arthur McQuaid, Gian Severini, William Lynch and Robert Brady.

No: None

Abstain: None

Motion carried.

ELAINE S. KRAMER

Resolution No. 37-2006

Bulk Variance #0630-0749

Block 4301; Lot 1

751 East Shore Road; LR Zone

Requested: Relief pursuant to MLUL C.40-55D-70c granted.

Motion by Ms. Erik to approve Resolution 36-2006.

Second by Mr. Jurkovic.

Roll Call Vote:

Yes: Ada Erik, Francis Hannan, Daniel Jurkovic, Arthur McQuaid, Gian Severini, Ed Spirko, William Lynch and Robert Brady.

No: None

Abstain: None

Motion carried.

Mr. Brady noted that the two remaining resolutions on the agenda, John & Gail Collins and Thomas Leddy, would be available for memorialization at the next meeting.

APPLICATIONS CARRIED FROM PREVIOUS MEETINGS

JAMES PAWOL

Appeal #0680-0751

Block 4011; Lot 7

26 Wanaque Road, LR Zone

Requested: Appeal pursuant to MLUL C.40:55D-70a of the Zoning Officer's decision regarding side yard setback for the construction of an addition to a single-family house.

Mr. Brady asked that Mr. Pawol and Mr. Hitchins be sworn in by Mr. Glatt. Mr. Hitchins, 19 Capstan Road, West Milford, NJ, appeared as expert witness on behalf of the applicant. It was noted that no testimony had been heard at the meeting of November 28, 2006 due to questions that needed to be addressed by the Zoning Officer who was not present at that time. Mr. Drew provided a copy of the denial letter upon request from Mr. Glatt. Mr. Glatt reviewed the matter, noting that the denial was based on a side yard setback requiring 30 feet. Mr. Pawol, the applicant, had just 24 feet 6 inches. He stated that the applicant must determine why he is appealing and inquired whether the appeal is based on incorrect citing. Upon questioning by Mr. Jurkovic whether there was a variance request, Mr. Glatt replied in the negative. Mr. Brady stated that the outcome of tonight's meeting could determine whether a variance is necessary.

Mr. Hitchins, licensed architect, reviewed his credentials for the Board, to which Mr. Brady noted that Mr. Hitchins is to testify solely as an expert witness in architecture. Mr. Hitchins stated that the citation for side yard setback was incorrect and proceeded with an explanation of the site and current zoning regulations. Mr. McQuaid questioned whether the applicant was combining both buildings. Mr. Glatt noted that this was an expansion of a pre-existing non-conforming use and the application should show the pre-existing use. Mr. Lupo was sworn in by Mr. Glatt and proceeded to give testimony regarding this application. Mr. Glatt referred to the denial letter and stated that the proposed addition was being attached to an accessory building, further noting that any accessory building, regardless of the techniques connecting the building has to adhere to the setbacks of the principal structure. Mr. Brady inquired about "grandfathering" and it was determined that the setbacks would not be met in either case. Mr. Glatt discussed an "administrative waiver" to which Mr. Lupo replied that this would not apply. He cited a law regarding non-conforming uses that was explained by Mr. Glatt. Mr. Lupo stated that the non-conforming use law was not applicable and that the applicant must file for a variance.

Mr. Hitchins asked for an explanation on when grandfathering would be applicable to which Mr. Glatt responded that a pre-existing condition must be in an application. Mr. Jurkovic stated that the law is very clear, that Mr. Lupo is correct in its interpretation, and the argument for appeal from the applicant on this matter is not valid.

Motion by Mr. Jurkovic to **affirm** the Appeal # 0680-0751 of James Pawol pursuant to MLUL C.40:55D-70a of the Zoning Officer's decision regarding side yard setback for the construction of an addition to a single-family house.

Second by Ms. Erik.

Roll Call Vote:

Yes: Ada Erik, Francis Hannan, Daniel Jurkovic, Arthur McQuaid, Gian Severini, Ed Spirko, and Robert Brady.

No: None

Abstain: None

Motion carried.

ALAN TLUSTY

Bulk Variance #0630-0754

Block 403; Lot 5

17 Hamilton Drive; LR Zone

Requested: Relief pursuant to MLUL c.40:55D-70c for side yard setback and for addition to existing single-family house.

Mr. Brady, Chairman, recused himself from serving on the Board for this application due to his acquaintance with Mr. Tlusty. Mr. Jurkovic asked Mr. Lynch to sit in for Mr. Brady during this application. Mr. Glatt inquired whether members absent during the first testimony on December 19, 2006 had listened to taped testimony. Mr. Weiser and Mr. Severini were not present and had not heard taped testimony. Mr. Glatt reviewed the law in the case of a tie vote and informed Mr. Tlusty that he would lose his Bulk Variance if a tie resulted. The alternative would be to carry this application to another meeting thereby allowing all the members an opportunity to review the testimony and vote as a full Board. Mr. Severini and Mr. Weiser agreed to listen to taped recordings of the meeting and be eligible to vote on this application. Mr. Tlusty requested that this application be carried to the February 27, 2006 meeting with an extension granted for thirty days.

Motion by Ms. Erik to **carry** Bulk Variance # 0630-0754, for Block 403, Lot 5, 17 Hamilton Drive, to the February 27, 2007 meeting of the Zoning Board of Adjustment.

Second by Mr. Spirko.

On a voice vote all were in favor of carrying the application to the February 27, 2007 meeting with a thirty-day extension granted by the applicant.

Motion carried.

NEW APPLICATIONS

VINCENT LANZA

Bulk Variance #0630-0753

***De Minimis* Exception**

Block 2702; Lot 3

33 Flanders Road; LR Zone

Requested: Relief pursuant to MLUL c.40:55D-70c for frontage and width for construction of a single-family dwelling.

After being sworn in by Mr. Glatt, Mr. Lanza appeared before the Board. He proceeded to explain the need for the variance on Flanders Road, reviewing the 12.6% lot coverage, proposed setbacks, and surrounding development. Claude Ballester, Civil Engineer, was sworn in by Mr. Glatt and accepted by the Board as expert witness for this application after reciting his qualifications. Discussion continued about the requested vacation of Linden Court, and extensive drainage and run-off problems cited in this area. Mr. Ballester stated that two other properties on Flanders Road were the subject of applications before the Board, and they proposed improvements to Flanders Road, addressing many of the problems. Mr. Lanza indicated that he could improve the storm sewers and seepage pits at 27 Flanders Road, a property that he was developing, suggesting that an additional seepage pit could be added.

Mr. McFadden, Township Engineer, stated that drainage is a definite problem with this location. He recommended bringing drainage up to Lakeshore Road, 140 feet from Mapleshade Road. He also recommended installation of a drywell at the intersection of Flanders and Mapleshade. Mr. McQuaid inquired about the lot coverage, which was clarified by Mr. Ballester. Mr. McFadden inquired about the plans for a common driveway if the Board approved the variance and Linden Court was vacated. Mr. Glatt noted that the application could be amended if the driveway issue

is addressed. Mr. Drew noted that this could be done administratively. Mr. Lanza stated that, as the owner of both properties, an easement could be granted. Mr. Drew stated that the Board needs to clarify what they are going to do to address this issue. He noted that vacating Linden Court would benefit everyone, giving more property to a few owners and relieving the Township from maintenance responsibilities. Mr. McFadden inquired about site distance and discussed this with Mr. Ballester. Mr. Glatt, noting that there is no guarantee of vacation of Linden Court, and the applicant needed to address the issues at hand. In response to a question about a Health Department memo regarding a well permit, Mr. Ballester stated that the permit could be applied to from the State. Mr. Glatt asked Mr. Lanza and Mr. Ballester to give testimony on why the Board should grant this variance.

Mr. Ballester testified that the lot is an irregular shape and on two streets, creating a hardship. Mr. Glatt referred to exhibit A-1, a letter to the D.E.P. about the sale of the property. Mr. Ballester said that the proposed house is as small in size as possible (21 x 24) and the lot limited by size and shape. Mr. Jurkovic inquired about storm water calculations and stated that he had concerns about water conditions and run-off being exacerbated due to improvements on the property. Mr. Lanza and Mr. Ballester explained the drainage calculations and improvements were based on the 100-year storm requirements. When asked by Mr. Glatt if he was going to complete the drainage work as presented, Mr. Lanza replied in the affirmative.

Mr. Brady opened the meeting to the public and Donald Butterworth, 35 Flanders Road, Hewitt, came forward to address the Board on this application. After being sworn in by Mr. Glatt, Mr. Butterworth proceeded to comment on the proposed dwellings, and noted that they would be out of character with the surrounding homes. He stated that the drainage problems are extensive, and that he made numerous attempts to improve the drainage conditions at his own expense, to no avail. He stated that lot clearing is increasing the problems, resulting in sediment run-off and pits. When questioned by Mr. McQuaid about ice problems, Mr. Butterworth replied that erosion was the main problem and then concluded his testimony.

Motion by Ms. Erik and **second** by Mr. Spirko to close the public portion of the meeting.

Mr. McFadden explained bond determinations and stated that if the Board approves this variance, a bond will be required for road improvements, to which Mr. Drew concurred. Members of the Board discussed the applicant's request and road improvements at the site. Mr. Hannan stated that eight variances are being requested and he has concerns with the issues. Mr. Jurkovic commented on the application and stated that he did not want to create a situation that would make the water problem worse. Mr. Brady noted that a *de minimis* exception is also being requested and he stated that there is a serious lack information to justify all these zoning requests at this time.

Mr. Lanza requested this application be carried to the next regular meeting so that he can present his case with a Professional Planner. Mr. McQuaid asked if he would have the drainage plans as discussed, to which Mr. Lanza replied in the affirmative. Mr. Glatt commented on the application, noting that he had serious concerns about the drainage issues, but that addressing them with improvements may benefit the public. He stated that if carried to another meeting, the applicant needed to present at that time the information and calculations requested. Mr. Butterworth, noting that may not be available for the hearing, would be afforded the opportunity to review the testimony via audio recording. Mr. Lanza agreed to provide additional information to Mr. Butterworth regarding the drainage plans. Mr. Glatt noted that the deadline is April. Mr. Drew inquired about the well, and Mr. Ballester replied that the applicant would apply to the State for the permit.

Motion by Mr. McQuaid to **carry** Bulk Variance # 0630-0753, for Block 2702, Lot 3, 33 Flanders Road, for relief pursuant to MLUL C.40:55D-70c for frontage and width for construction of a single-family dwelling to the February 27, 2007 meeting of the Zoning Board of Adjustment.

Second by Ms. Erik.

On a voice vote all were in favor of carrying the application to the February 27, 2007 meeting.

Motion carried.

APPROVAL OF MINUTES

Motion by Ms. Erik to approve the minutes of the December 19, 2006 Regular Meeting of the Zoning Board of Adjustment.

Second by Mr. Spirko.

Roll Call Vote:

Yes: Ada Erik, Francis Hannan, Daniel Jurkovic, Arthur McQuaid, Gian Severini, Ed Spirko, William Lynch, Barry Wieser and Robert Brady.

No: None

Abstain: None

Motion carried.

ADJOURNMENT

With no further business to attend to, Mr. Brady asked for a motion to adjourn the Regular Meeting of the Zoning Board of Adjustment.

Motion by Ms. Erik.

Second by Mr. Severini.

On a voice vote all were in favor of adjourning the Regular Meeting of the Zoning Board of Adjustment.

Motion carried.

Meeting adjourned at 9:20 p.m.

Adopted: February 27, 2007

Respectfully submitted by

Tonya E. Cubby, Secretary
Zoning Board of Adjustment