

MINUTES
Of the Township of West Milford
Zoning Board of Adjustment

January 24, 2006
Regular Meeting

7:55 p.m.

Linda Lutz, Principal Planner/Board Secretary, opened the meeting with the reading of the legal notice.

1. Roll Call

Present: Ada Erik, Daniel Jurkovic, Arthur McQuaid, Ed Spirko, Michael Ramaglia, Francis Hannan and Robert Brady

Absent: Joseph Giannini and Thomas Lemanowicz

Mr. Brady, Board Chairman, asked Mr. Ramaglia and Mr. Hannan to sit for the two absent members. He further indicated that there is a seven-member Board for this evening.

2. Pledge

The Pledge of Allegiance was recited earlier in the evening (at the re-organization meeting). Therefore, it was not recited again.

3. Memorializations

Mike Donadio

Resolution 13-2005

New Cingular Wireless PCS, LLC

d/b/a AT&T Wireless

Resolution 30-2005

New Cingular Wireless PCS, LLC

d/b/a AT&T Wireless

Resolution 31-2005

Sal Falciglia, Jr.

Use Variance #9540-0158

Resolution 1-2006

The Board Attorney indicated that all memorializations need to be carried due to administrative difficulties on his part.

4. Requests for Carries

David Mulligan

Complete 12-15-05

Use Variance #0540-0723

Deadline 04-14-06

Bulk Variance #0530-0725

Block 3604; Lot 1

31-33 Ringwood Lane; LC Zone

Addition to a single-family dwelling

John Barbarula, Esq., appeared to ask for a carry to February 28, 2006 in order to straighten out issues with his certified mailings. Proof of mailing was not submitted to the Board Secretary.

Applicant gave the Board an additional 30 days in which to hear the application, making the Board's deadline May 14, 2006.

Joseph Hajbura

Complete 12-23-05

De Minimis Exception

Deadline 04-22-06

Bulk Variance #0530-0728

Block 1207; Lot 14
Carmel Road; R-2 Zone
Construction of a new home

Joseph Hajbura appeared to request a carry because his attorney was not able to be present.

Motion by Mr. Jurkovic to carry the application to the February 28, 2006 meeting.

Second by Mr. Hannan.

On voice vote, all were in favor.

No further notice or advertising is necessary.

5. Communications

Case called 8:05 p.m.

Letter from Darlene Kane, Treasurer, HCLL, Inc., received December 21, 2005, requesting extension of time (in accordance with the Municipal Land Use Law, 40:55D-52) for **High Crest Lake Lodge, Inc.**, Preliminary & Final Site Plan #0120-0096AB, Block 13002; Lot 9, High Crest Drive/Hearthstone Drive; R-2 Zone.

Drew Murray, Esq., appeared. He understands that all of the permit requirements are done with the exception of the septic permit, which was sent to the State for jurisdictional review. It is the last permit needed.

Motion by Ms. Erik to extend the deadline for this application for one year.

Second by Mr. Spirko.

Roll call vote:

Yes: Ada Erik, Daniel Jurkovic, Arthur McQuaid, Ed Spirko, Michael Ramaglia, Francis Hannan and Robert Brady

No: None

Case ended at 8:08 p.m.

6. Applications

Case called at 8:09 p.m.

Vincent Lanza

Complete 01-28-05

De Minimis Exception

Deadline 03-31-06

Bulk Variance #0430-0673

Block 2708; Lots 1, 5 & 6
27 Flanders Road; LR Zone
Construction of new home

De minimis exception from the Residential Site Improvement Standards – New Jersey Administrative Code; Title 5; Chapter 21 (5:21-3.1) for: pavement, curbs, storm drains, etc.

This application did not comply with Section 18-3.7 Paragraph D of the Land Development Ordinance for the reasons of side yard setback, front yard setback and relief from the MLUL C.40:55D-35 requirement that no permit for the erection of any building or structure shall be issued unless the lot abuts a public street giving access to such proposed building or structure.

Testimony was taken at the July 26, 2005 public hearing. Members who were present to hear testimony were Joseph Giannini, Arthur McQuaid, Ada Erik, Daniel Jurkovic and Robert Brady. Present tonight are Arthur McQuaid, Ada Erik, Daniel Jurkovic and Robert Brady. Mr. Lanza decided to start the application from scratch, making all present tonight eligible to vote.

The applicant appeared without an attorney.

Sworn witnesses: Vincent Lanza, applicant, 40 Forest Lake Dr., Hewitt, NJ
Jeffrey Doolittle, P.E., L.S., P.P., 200 Route 17, Mahwah, NJ

Mr. Lanza clarified that the map to which he will provide testimony is dated December 12, 2005. He stated he combined three properties to create one building lot. His engineer placed the house on the optimum spot on the lot based on the irregular shape and topography of the property. Mr. Lanza stated he needs front yard, side yard and frontage variances. He stated the proposed house will conform to the neighborhood, based on the proposed size.

Jeffrey Doolittle, P.E., L.S., P.P., was called. Previously sworn, he gave his credentials and the Board accepted him as an expert witness.

Mr. Lanza asked Mr. Doolittle to address the Township Engineer's memo dated January 11, 2006. He indicated the only problem he has with the memo is with item #1. He agrees with Mr. McFadden that there is a drainage problem in the area. However, the problem will not necessarily get worse with the development as proposed. Mr. Jurkovic asked Mr. Doolittle if he had done specific calculations. He indicated he had but Mr. McFadden countered that the calculations submitted were for the drywell, not the existing drainage problem. Mr. McFadden could not verify Mr. Doolittle's statement that drainage will not be worse, because he has seen no calculations.

Mr. Doolittle provided testimony on the variances. He stated that the property is uniquely configured in that it has three (3) lot frontages and no lot depth. The house is positioned where it is on the lot due to topographic constraints. He stated there is no other land to be purchased, this will be the last house constructed in this block. The topography further controlled the location of the septic.

The Board and Mr. Doolittle again addressed drainage. Mr. Doolittle opined that drainage in this area must be addressed from a neighborhood perspective.

In response to the Board's request for testimony regarding the *de minimis* exception, Mr. Doolittle stated that Linden Ct. is unimproved.

Mr. Lanza added that, in order for him to make the improvements that Mr. McFadden is recommending, the cost-benefit makes it not feasible to build a single-family home. He reiterated that this is a neighborhood problem that has existed for 20+ years.

Mr. Jurkovic again asked for drainage calculations for off-site drainage issues because, if the problem exists, he does not want to exacerbate it, nor does he wish to transfer it to other properties in the neighborhood that are not currently affected.

Mr. McFadden stated the applicant has not proved that the drywells are feasible and the calculations show the volume provided by the drywells is sufficient to contain the increase in flow for the 25-year storms, but the applicant has not provided calculations to show that the flow will get there from the roof of the building; we don't know that the run-off from the site is going to be less than it is now.

In response to questions from the Board, Mr. Lanza stated that if he turned the house, he could not eliminate variances.

Mr. Spirko addressed the additional use of the road with respect to traffic. Mr. Lanza responded that one house should not impact traffic.

In response to questions from the Board, Mr. Lanza stated the driveway cannot come off of Flanders Road owing to the location of the septic.

In response to questions from the Board, Mr. Doolittle discussed the application of Mr. Paterno, who is required as a condition of his approval to make improvements to Flanders Road. He confirmed traffic impact will be minimal.

Mr. McFadden stated that the 18-foot-wide road to be constructed by Mr. Paterno will be able to handle the traffic from this project as well.

In response to Mr. Brady's question about why a *de minimis* exception is necessary for Flanders Road, Mr. Doolittle indicated that the roads are not up to standard.

The matter was opened to the public. No one wished to be heard.

Motion by Ms. Erik to close the public hearing.

Second by [not identifiable] .

No vote was taken on the motion.

Mr. Jurkovic questioned the timing of opening it to the public because more information is necessary in order to render an informed decision. Several Board members concurred.

Mr. Lanza requested a carry to the February 28, 2006 meeting. He indicated that he would have the calculations to the Board two (2) weeks before the 28th. Mr. Glatt clarified that if the calculations are not submitted by then, the Board will proceed with the information presented tonight. Mr. Lanza expressed acknowledgement and understanding of this point.

Mr. McFadden indicated the applicant also needs to demonstrate the feasibility of installing seepage pits.

Motion by Ms. Erik to carry to February 28, 2006.

Second by Mr. Jurkovic.

On voice vote, all were in favor.

Applicant gave the Board an additional 30 days in which to hear the application, making the Board's deadline April 30, 2006.

Case ended at 8:59 p.m.

8:59 p.m. to 9:19 p.m. Break.

Case called at 9:19 p.m.

Robert DiBella

Complete 09-27-05

Use Variance #0540-0712

Deadline 02-24-06

Bulk Variance #0530-0722

Block 2403; Lot 11

Upper Greenwood Lake Rd.; LR Zone

Construction of garage

Use Variance per New Jersey Municipal Land Use Law C.40:55D-70d(1) for an accessory structure on a lot with no principal structure.

This application also does not comply with Section 18-3.7 Paragraph D of the Land Development Ordinance for the reasons of accessory structure: distance to side line; maximum coverage, and relief from the MLUL C.40:55D-35 requirement that no permit for the erection of any building or structure shall be issued unless the lot abuts a public street giving access to such proposed building or structure.

The applicant was represented by John Barbarula, Esq.

Sworn witnesses: Robert DiBella, applicant, 15 Upper Greenwood Lake Rd., Hewitt, NJ
David Zimmerman, P.P., 21 Western Avenue, Morristown, NJ
Douglas McKittrick, P.E., 2024 Macopin Road, West Milford, NJ

List of exhibits presented: A-1 Variance Map dated May 4, 2005.

- A-2 buy/sell letter to Elena Garzon.
- A-3 buy/sell letter to Savino.
- A-4 photos take January 19, 2006; view of Subject Property taken from Upper Greenwood Lake Road.
- A-5 photos take January 19, 2006; side view of Subject Property.
- A-6 photo of the DiBella's yard (the lot with the existing house).
- A-7 photo of garages in the neighborhood.

In response to questions from Mr. Barbarula, Mr. DiBella explained his project. The only utility he anticipates is for electric. Use is for storage. He also owns lot 18 across the street, where he lives.

A-1 was presented for demonstration purposes.

Mr. DiBella indicated that there is a lot of debris on the site now; this project will help to clean it up. In response to questioning from the Board, the applicant indicated that he would submit to a condition that there shall be no outside storage and he would join a Deed of Conveyance to keep lot 18 and lot 11 in block 2403 together. Mr. Glatt clarified that the language must include a mechanism to prevent those lots from being sold separately. Mr. Glatt said he would review the documents.

Mr. DiBella stated that there will be no burden to the septic system or well.

Mr. Barbarula presented the buy/sell letters. One party refused to retrieve the letter; the other was not interested in purchasing. Mr. Barbarula submitted Exhibits A-2 and A-1.

Mr. McQuaid expressed concern regarding the 28% coverage.

In response to questioning from Mr. Barbarula, Mr. DiBella explained the specific use of the garage: collector cars, motorcycles, etc. The building will be 18 feet high (ground to peak), one story. Trusses and the height do not allow for living space in the loft. Mr. McQuaid asked if the garage could be made smaller with the use of ramps for collector cars. Mr. DiBella has explored an accessory lift (a storage lift), not to make the building smaller, however, to be able to store more items.

Douglas McKittrick, P.E. was called. Previously sworn, he gave his credentials and the Board accepted him as an expert witness in engineering.

He indicated that a principal dwelling would need a variance, too. The road is unimproved. He stated that any house that could be built on this lot would be an end-elevation house (narrow dimension to the front) like this garage, owing to the narrow lot configuration. Mr. DiBella's homestead lot could not accommodate a garage; it would have a negative impact on the septic. The Subject Property could accommodate a 400 square foot house, which is unrealistic for a single-family dwelling. Mr. Barbarula asked if there would be any negative effect on surrounding properties for drainage, light or air. Mr. McKittrick explained a method to handle runoff, provided the Health Department accepts it. A septic system on this lot would not be appropriate, due to the proximity of surrounding septic systems and wells.

In response to questioning from the Board, Mr. McKittrick indicated ground cover would be grass and shrubbery.

Mr. Barbarula interjected that the applicant is willing to reduce the size of the garage to 42 feet by 24 feet.

David Zimmerman, P.P. was called. Previously sworn, he gave his credentials and the Board accepted him as an expert witness in planning.

He submitted Exhibits A-4 and A-5 and described them. He concluded that this project will be an asset to the neighborhood since the property will be cleaned up.

Mr. Barbarula asked him to present the positive and negative criteria. Mr. Zimmerman discussed the special reasons:

1. It will be an aesthetic improvement.
2. The property is particularly suitable for the use because it is across the street from the applicant's house and so will serve needs of that house.
3. All of the properties in this neighborhood are under-sized. He stated that, essentially what is happening, is that the applicant is enlarging the property by combining it with the house property across the street to make one of the largest lots in the neighborhood. This will be an asset to the properties and the neighborhood.

He suggested considering the coverage by "combining" the two properties.

Mr. Barbarula presented Exhibit A-6. It shows the conditions of the applicant's house lot. Looking at the special reasons, cleaning up the property is a significant one and adding this property onto the existing DiBella home property and as such, it is particular suitable to what is being proposed.

He presented a picture of a garage down the street: Exhibit A-7. It is similar to what is being proposed.

The Board and applicant discussed the possibility of the garage being built on the applicant's homestead lot and a modest-sized one on the subject property.

Mr. Jurkovic asked what is the reason that a town would impose the restriction on the lot size – the relationship between the building and structure. In response, Mr. Zimmerman stated that he wouldn't recommend it to his client.

Mr. Jurkovic asked why a municipality would impose a restriction on the size of a building in relation to the size of a lot.

Mr. Zimmerman responded:

- 1) engineering and drainage.
- 2) to keep development in scale.
- 3) aesthetics.

Mr. Jurkovic outlined his concerns:

- 1) Drainage. High coverage on a lot adjacent to a leach field.
- 2) Scale. This is more than twice the size of a garage. It is more like a storage building. It dwarfs the house it would be next to.
- 3) Aesthetics: ties in to scale.

Mr. Zimmerman stated, when discussing scale and aesthetics, one garage on one side of the street, from a planning perspective, is better than having two garages – one on each side of the road, even if the garage dwarfs the next-door house.

Discussion ensued regarding the development of the lot, even with a house. The house could be a two-story house, 24 feet wide, as opposed to this one-story house, 24 feet wide. The Board stated it is the length and the coverage that are the concerns.

Mr. Zimmerman again indicated that the coverage is not that high because they are "combining" lots (lot 18 and this Subject Property). The Board indicated that the road in between changes the dynamics of such a concept.

10:34 p.m.

The applicant requested a moment to discuss this among his professionals.

Re-Called at 10:41 p.m.

Mr. Barbarula approached the Board and stated that his client wishes to explore jacks and lifts and to try to reduce the size of the garage. Mr. Barbarula asked for a carry.

Mr. Glatt indicated that revised plans would have to be submitted and he may need to review them to see if re-advertising and notice are necessary.

Applicant gave the Board an additional 30 days in which to hear the application, making the Board's deadline March 26, 2006.

Mr. Brady announced that the application would be carried to the February 28, 2006 meeting, with no further notice or advertising being necessary.

Case ended at 10:44 p.m.

While Mr. DiBella and his professionals conferred, the Board continued with other business.

The Chairman called the cases that would not be reached this evening:

Thomas Oppelaar (*formerly listed as Vincent Lanza*)

Use Variance #0540-0715

Bulk Variance #0530-0724

Block 4302; Lot 5

Forest Lake Drive; LR Zone

The Chairman announced that, due to the late hour (after 10:30 p.m.), this application would be carried to February 28, 2006, with no further notice or advertising is being necessary.

Applicant gave the Board an additional 30 days in which to hear the application, making the Board's deadline April 14, 2006.

Vincent Lanza

De Minimis Exception

Bulk Variance #0530-0717

Block 206; Lot 14.02

Lookover Drive; LR Zone

The Chairman announced that, due to the late hour (after 10:30 p.m.), this application would be carried to February 28, 2006, with no further notice or advertising is being necessary.

7. Miscellaneous Items

Omnipoint Communications, Inc.

Use Variance #0540-0706

Preliminary & Final Site Plan #0520-0214

Block 12501; Lot 26

666 Macopin Road; R-3 Zone

Omnipoint Communications, Inc.

Water Treatment Plant

Use Variance #0540-0726

Preliminary & Final Site Plan #0520-0224AB

Block 14102; Lot 1

Center Island, Route 23; R-4 Zone

Motion by Mr. McQuaid to hire Ross Sorci as a radio frequency expert to assist the Board with both of the above applications.

Second by Ms. Erik.

On voice vote, all were in favor.

Annual Report

Mr. McQuaid suggested adding the same suggestion from years past: recommend that the Town Council contact the Environmental Commission to see about using open space money to purchase under-sized lots. Board members concurred. The Board felt these properties could be turned into small pocket parks, rather than having them before this Board for variance relief. Mr. Brady felt that a pocket park is a better alternative than a septic field. Mr. McQuaid stated 2/3 of this Town will already be turned into large pieces of open space; further, we have so many of these tiny lots that will damage the environment as septic are installed. The Board felt Court cases could be eliminated if the Town purchases the under-sized lots. Ms. Erik stated that pocket parks are frowned upon since they serve only the immediate neighborhood of the pocket park. The Councils in the past have preferred to have these lots back on the tax rolls. A recommendation was made to call a special meeting to discuss this to prepare a presentation that the Chairman and Vice Chairman could make to the Council.

The Chairman asked that this matter be carried to the February 28, 2006 meeting.

Motion by Mr. Brady to update the report with the points discussed tonight and re-listed for further discussion on February 28, 2006.

Second by Ms. Erik.

On voice vote, all were in favor.

Mr. Brady presented to Carol DenHeyer a thank you card and gift, acknowledging her service to the Board as the Board Secretary. The Board wished her well in her transfer to the Fire Marshal's office.

8. Minutes

Motion by Ms. Erik to approve the minutes of the December 20, 2005 regular meeting.

Second by Mr. Jurkovic.

On voice vote, all were in favor.

Mr. Brady indicated that Mr. Ramaglia and Mr. Hannan were not Board members on December 20, 2005 and so did not vote on the approval of the minutes.

9. Adjournment

11:10 p.m.

Motion by Ms. Erik to adjourn.

Second by Mr. Jurkovic.

On voice vote, all were in favor.

Respectfully submitted,

Linda M. Lutz, P.P.
Board Secretary