

**MINUTES**  
**Of the Township of West Milford**  
**Zoning Board of Adjustment**

**April 25, 2006**  
**Regular Meeting**

7:50 p.m.

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

**1. Pledge**

Mr. Brady asked all attendees to join him in the recitation of the Pledge of Allegiance.

**2. Roll Call**

Present: Ada Erik, Arthur McQuaid, Francis Hannan and Robert Brady.  
Stephen Glatt, Board Attorney; Richard McFadden, Township Engineer;  
Linda Lutz, Board Planner and Secretary.

Absent: Joseph Giannini, Daniel Jurkovic and Ed Spirko.

Mr. Brady further indicated that there is a four-member Board for this evening. He then gave an overview of Board procedures. He further explained that, generally, the items on the agenda are taken in the order in which they appear. The extenuating circumstance for this evening is that a use variance is first on the agenda, but there are only four members who are eligible to vote.

**3. Memorializations**

**Resolution 6-2006**

**Robert DiBella**

Block 2403; Lot 11

Upper Greenwood Road; LR Zone

Use Variance #0540-0712 and Bulk Variance #0530-0722, approved, to enable the construction, of a garage on a lot without a principal structure.

**Motion** by Ms. Erik to memorialize the resolution.

**Second** by Mr. Hannan.

Roll call vote:

Yes: Ada Erik, Arthur McQuaid, Francis Hannan and Robert Brady.

No: no one.

Motion carried.

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**Resolution 7-2006**

**Thomas Oppelaar**

Block 4302; Lot 5

Forest Lake Drive; LR Zone

Use Variance #0540-0715 and Bulk Variance #0530-0724, approved, to enable the construction, of a garage on a lot without a principal structure.

**Motion** by Ms. Erik to memorialize the resolution.

**Second** by Mr. Hannan.

Roll call vote:

Yes: Ada Erik, Arthur McQuaid, Francis Hannan and Robert Brady.

No: no one.

Motion carried.

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**Resolution 9-2006**

**Charles Aikey**

Amended

Block 9501; Lot 19.02

144 Wesley Drive; R-3 Zone

Amended Final Subdivision, Section 1 #0410-1950C.  
Amended subdivision for section 1 granted.

**Motion** by Ms. Erik to memorialize the resolution.

**Second** by Mr. Hannan.

Roll call vote:

Yes: Ada Erik, Arthur McQuaid, Francis Hannan and Robert Brady.

No: no one.

Motion carried.

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#### **Resolution 10-2006**

**David Mulligan**

Block 3604; Lot 1

31-33 Ringwood Lane; LC zone

Use Variance #0540-0723 and Bulk Variance #0530-0725, approved, to enable an addition to a single-family dwelling.

**Motion** by Ms. Erik to memorialize the resolution.

**Second** by Mr. Hannan.

Roll call vote:

Yes: Ada Erik, Arthur McQuaid, Francis Hannan and Robert Brady.

No: no one.

Motion carried.

#### **4. Minutes**

**Motion** by Ms. Erik to approve the minutes of the March 28, 2006 meeting.

**Second** by Mr. Hannan.

On voice vote, all were in favor.

Motion carried.

#### **5. Miscellaneous Items**

Discussion of the hiring a Radio Frequency Expert for the Board, with reference to the following application (applicant was provided with notice of this discussion):

**Sprint Spectrum, L. P.**

**Use Variance #0640-0730**

**Preliminary & Final Site Plan #0620-0226AB**

Block 1701; Lot 59

776 Warwick Turnpike; LR Zone

**Motion** by Ms. Erik to hire Mr. Ross Sorci, the only person from whom a proposal was received.

**Second** by Mr. Hannan.

On voice vote, all were in favor.

Motion carried.

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Mr. Brady then asked for a representative of **Omnipoint Communications, Inc. (Use Variance #0540-0706; Preliminary & Final Site Plan #0520-0214)** to approach the dais. Mr. Stamos, Esq., appeared. Mr. Brady explained that he would proceed with the bulk variances on the agenda, while he awaits two additional Board members who could potentially attend. Mr. Glatt indicated that Mr. McQuaid had read the transcript and certified to that.

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#### **6. Requests for Carries**

**Kristen Goldberg**

**Bulk Variance #0530-0705**

Block 7506; Lot 1

10 Compass Avenue; LR Zone

Mr. Brady stated the Board had received from Mr. Barbarula, applicant's attorney, a letter requesting a carry. Ms. Goldberg appeared to ask for a carry to May 23, 2006. She stated her engineer could not prepare the revisions to the plans in time for this meeting.

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

**Motion** by Arthur McQuaid to carry the application to the May 23, 2006 meeting.

**Second** by Ms. Erik.

Roll call vote:

Yes: Ada Erik, Arthur McQuaid, Francis Hannan and Robert Brady.

No: no one.

Mr. Brady announced that no further notice or advertising is necessary.

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## 7. Applications

*Case called at 8:01 p.m.*

**Vincent Lanza**

***De Minimis Exception***

**Bulk Variance #0430-0673**

Block 2708; Lots 1, 5 & 6

27 Flanders Road; LR Zone

Request for *de minimis* exception from the Residential Site Improvement Standards N.J.A.C. 5:21-3.1 for pavement, curbs, storm drains, etc. and, Request for bulk variance relief for 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, to enable the construction of new home.

Testimony was taken at the January 24, 2006 and February 28, 2006 public hearings. Six members who were present to hear testimony were Ada Erik, Daniel Jurkovic, Arthur McQuaid, Ed Spirko, Francis Hannan and Robert Brady. Present tonight are Ada Erik, Arthur McQuaid, Francis Hannan and Robert Brady, leaving four eligible voting members.

The applicant appeared without an attorney. Mr. Glatt explained to Mr. Lanza that there are four members eligible to vote and that he must get either three or four votes in order to get an approval. He asked Mr. Lanza if, knowing that, he was ready to proceed. Mr. Lanza stated yes.

Previously sworn witnesses:

Vincent Lanza, applicant, 40 Forest Lake Drive, Hewitt, NJ

Jeffrey Doolittle, P.E., L.S., P.P., 200 Rt. 17, Mahwah, NJ

Mr. Lanza indicated that he had left off discussing drainage. He stated he had revised the plan. He provided drainage in the street to accommodate the extra runoff.

Mr. Doolittle went through Mr. McFadden's April 24, 2006 memo. He stated that he had no issues with the first two items.

[*Mr. Brady interrupted the proceedings to allow Ms. Goldberg to request the above-discussed carry.*]

Mr. Doolittle continued. As for items # 3, 4, 5, 6 and 8 he had no problems with providing these items. As for item 7, he did not see the need for it because a k-turn is available in the driveway. He offered to erect a sign indicating that Linden Court is a dead end, if it would satisfy Mr. McFadden's concerns.

Mr. McFadden stated that he would be willing to forego the hammerhead turn-around suggestion, as long as the applicant understands that people who travel up Flanders Road would use the k-turn in the driveway. He stated he had not noticed on the revised plan that Linden Court is proposed to be 18 feet wide. With respect to drainage, the proper way to develop this site is to tie into Lake Shore drainage. However, the applicant has testified as to why he is reluctant to do that and has offered this as an alternative. The calculations have shown that there will not be any increase in runoff from this site. The applicant's agreement with his suggested changes resolves potential problems from increased runoff.

Mr. McQuaid asked if this is a workable plan, to which Mr. McFadden stated yes, but it will not solve the residents' problems.

Mr. Doolittle re-iterated his testimony regarding planning and the *de minimis* exception.

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

**Motion** by Ms. Erik to close the public portion.

**Second** by Mr. Hannan.

On voice vote, all were in favor.

Motion carried.

**Motion** by Ms. Erik to approve the bulk variance request conditioned on Mr. McFadden's recommendations.

**Second** by Mr. McQuaid. Mr. McQuaid added that there is a good possibility that the drainage will be improved because of what the applicant is doing and certainly will not harm or cause more drainage problems that what exist now on this vacant lot.

Roll call vote:

Yes: Ada Erik, Arthur McQuaid, Francis Hannan and Robert Brady.

No: no one.

Motion carried.

**Motion** by Mr. McQuaid to approve the request for *de minimis* exception. He stated the applicant has shown his willingness to pave a part of the driveway to 18 feet in width, and to use a portion of the driveway for a turn-around area shows the applicant's willingness to work with the Board.

**Second** by Ms. Erik.

Roll call vote:

Yes: Ada Erik, Arthur McQuaid, Francis Hannan and Robert Brady.

No: no one.

Motion carried.

*Case ended at 8:23 p.m.*

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*Case called at 8:24 p.m.*

**Vincent Lanza**

***De Minimis Exception***

**Bulk Variance #0530-0717**

Block 206; Lot 14.02

Lookover Drive; LR Zone

Request for *de minimis* exception from the Residential Site Improvement Standards N.J.A.C. 5:21-3.1 and,

Request for bulk variance relief for lot area, lot frontage, lot depth, front yard setback, rear 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, to enable the construction of a new home.

Sworn witnesses: Vincent Lanza, applicant, 40 Forest Lake Drive, Hewitt, NJ

Claud Ballester, P.E., P.P., 1811 Union Valley Road, West Milford,  
NJ

Mr. Lanza briefly described the project and identified for the Board the variances being requested and that a *de minimis* exception is being requested. He stated that the property in question is unique in topography, shape and relative positioning to the road that was created.

Mr. Lanza addressed Mr. McFadden's memo of January 12, 2006. He explained that the 10-foot-wide easement is an access to this property in question and other properties from Clinton Road, existing from the 1800s (for walking access). Mr. Glatt asked if this project's construction would interfere with the easement. Mr. Lanza responded that it would not.

However, there was discussion of a rock wall to be constructed within the easement. Mr. Glatt cautioned the Board that it should not condone, with any approvals, interfering with the existing easement.

Mr. Ballester discussed Mr. McFadden's report. With respect to item 4, he does not believe that the suggested easement can be obtained.

Mr. McFadden stated that he had advised Mr. Lanza that if he modified the proposed profile for the Lookover drive extension, he may be able to provide sheet flow. Mr. Brady summed up this portion of the discussion by stating that the applicant will have no problem with the two engineers working out the drainage issues.

Mr. Ballester stated that the variances are due to the lot shape and topography. Frontage on Lookover Drive is also cause for some of the variances. The lot to the rear is vacant; the other adjoining lots are developed.

Mr. Glatt asked Mr. Lanza if he attempted to buy additional vacant land or sell this lot. He stated he did not. Mr. Glatt stated he has to. He advised the Board cannot vote on this tonight, but Mr. Lanza can continue with his testimony.

Mr. Ballester discussed the *de minimis* exception. The hardship is that the road will serve only this one house.

In response to questioning from the Board, Mr. Ballester indicated that the side yard set back to the northerly property line is 59.24 feet, not 29.24 feet as shown on the plan. He also stated that he cannot turn the house to eliminate a variance because of the steep grade.

With respect to the Highlands Act, Mr. Lanza stated he has received an exemption.

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

**Motion** by Ms. Erik to close the public portion.

**Second** by Mr. McQuaid.

On voice vote, all were in favor.

Motion carried.

**Motion** by Ms. Erik to carry the application to the May 23, 2006 meeting to enable the applicant to send buy/sell letters.

**Second** by Mr. Hannan.

On voice vote, all were in favor.

Motion carried.

The Board Attorney indicated that no further notice or advertising is necessary and it would be heard on May 23 on the issue of buy/sell only.

*Case ended at 8:46 p.m.*

8:46 p.m. to 9:07 p.m. Break.

Mr. Brady again asked Mr. Stamos to come up to the dais to discuss **Omnipoint Communications, Inc. (Use Variance #0540-0706; Preliminary & Final Site Plan #0520-0214)**. Mr. Brady explained he cannot produce another voting member (leaving the Board with four members), he would be first on the next agenda, and he asked for an extension.

Mr. Stamos granted the extension through May 23, 2006.

**Motion** by Mr. Hannan to carry the application to May 23, 2006.

**Second** by Ms. Erik.

Roll Call:

Yes: Ada Erik, Arthur McQuaid, Francis Hannan, Robert Brady.

No: no one.

Mr. Brady announced to the public that the application would be first on the May 23 agenda.

*Case called at 9:14 p.m.*

<b>Joseph Hajbura</b>	Complete	12-23-05
<b>De Minimis Exception</b>	Deadline	05-25-06
<b>Bulk Variance #0530-0728</b>		
Block 1207; Lot 14		
Carmel Road; R-2 Zone		

Request for *de minimis* exception from the Residential Site Improvement Standards N.J.A.C. 5:21-3.1 for pavement, drainage infrastructure and graded areas and,  
Request for bulk variance relief for lot area 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, to enable the construction of a new home.

Testimony was taken at the March 28, 2006 public hearing. Five (5) members who were present to hear testimony were Ada Erik, Daniel Jurkovic, Arthur McQuaid, Francis Hannan and Robert Brady. Mr. Jurkovic is absent this evening; the applicant's attorney, Mr. Jones indicated he would proceed with four members.

Sworn witnesses:

Mrs. Hajbura, applicant's wife, 28 Elinora Drive, Wanaque, NJ

Joseph Hajbura, Applicant, 28 Elinora Drive, Wanaque, NJ

List of exhibits presented:

A-5 Soil Record for block 1207; lots 12 and 13 from the West Milford Health Department, dated December 21, 1994.

A-6 Permeability test results for block 1207; lots 12 & 13 dated March 20, 1995 by Frank Loscalzo, P.E.

Mr. Jones stated he has returned to the Board this evening to discuss the buy/sell issue for adjoining lots 12 and 13.

Mr. Jones examined with the applicants Exhibits A-5 and A-6 and concluded, based thereon, that the two lots are unsuitable for development. He reminded the Board that Mr. Hajbura's lot is 1.2 acres. He stated that the property in question has an assessed valuation of \$6,300 and is three times the size of lots 12 and 13 combined. Further, the property in question has acceptable perc tests. The applicants made nominal offer of \$4,000 for lots with virtually no value. The applicants received a counter offer of \$7,000. Accordingly, he

argued that it is a hardship for the Hajburas to pay anything for these lots, which are virtually valueless.

Mr. Glatt stated that the Board, for zoning purposes, is concerned solely with square footage of the lot. On the other hand, the \$7,000 the owners of lots 12 and 13 are seeking is an unreasonable amount of money and would not be the fair market value of those lots. This is because the fair market value is based on the assumption the lots are buildable.

In response to questioning from the Board, Mr. Glatt re-iterated that the Board must consider whether the offer of \$7,000 was reasonable. As Mr. Jones had stated, the owners of lots 12 and 13 cannot base the price on fair market value, as contemplated by the case law, because he presented evidence that the lots are not buildable.

Mr. Glatt explained the probative value of Exhibits A-5 and A-6. In response to questioning from the Board, Mr. Jones stated that the assessed value of lot 12 is \$7,100 and the assessed value of lot 13 is \$6,700. He qualified the statement by saying that neither owner has ever taken an appeal, whereas, the Hajburas did. Mrs. Hajbura stated the property in question was assessed at \$31,600 but after the tax appeal, it was assessed at \$6,300 in 2002.

Mr. Glatt explained to the Board that there is nothing else it can ask of the applicant at this point. The Board has to determine if the applicant met his burden of attempting to purchase additional land to alleviate the area variance.

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

**Motion** by Ms. Erik to close the public portion.

**Second** by Mr. McQuaid.

On voice vote, all were in favor.

Motion carried.

Mr. Jones summated.

**Motion** by Ms. Erik to approve the bulk variance and the variance for relief from the Municipal Land Use Law, section 35. The applicant has showed that he has done everything he could do to acquire additional property. She noted that adding lots 12 and 13 could not eliminate the variance. She did not feel the applicant should be forced to pay the exorbitant price.

Mr. Glatt asked if it would be reasonable to say that, if the Board found in favor of the applicant, that the offer of the adjoining property owner is unreasonable and, in the event that they ever seek to develop that property, it could be considered a self-created hardship, especially in the absence of the adjoining property owner to appear before the Board to try to substantiate the asking price of \$7,000. Ms. Erik agreed to Mr. Glatt's suggestion. Mr. McQuaid, however, stated he did not agree. Mr. Glatt explained that the intent in the case law for the requirement of the buy/sell letters is two-fold: 1) to impose on an applicant the burden of trying to eliminate as many variances as possible; and 2) to protect the municipality from adjoining property owners' avarice, because a property owner comes up with an exorbitant price, the variance applicant cannot purchase it and then the adjoining owner comes in to ask for a variance for his undersized lot. He is not saying the Board should at this time find that the owners of lots 12 and 13 have a self-created hardship; he is stating there should be something on the record to indicate there should be some written memorandum that shows this Board's concern for it and that adjoining property owner, in an application may have to justify to the then-Board why he acted the way he did now. Mr. McQuaid did not agree with this being in the motion. Mr. Brady stated that whether what Mr. Glatt said is part of the motion or not, that analysis would take place with a future application for lots 12 and 13 (or 13 alone) by a future Board. Mr. Glatt clarified that he did not necessarily mean that his explanation had to be part of the motion.

**Second** by Mr. Hannan.

Mr. Brady stated that it is the Board's purpose, by asking the applicant to explore purchasing additional land or selling their property in question, to try to keep within the zoning in the area by alleviating or lessening the deviations.

Roll call vote:

Yes: Ada Erik, Arthur McQuaid and Francis Hannan.  
No: Robert Brady

Motion carried.

**Motion** by Mr. Hannan to approve the *de minimis* exception.

**Second** by Arthur McQuaid.

Roll call vote:

Yes: Ada Erik, Arthur McQuaid, Francis Hannan and Robert Brady  
No: no one

Motion carried.

*Case ended at 9:43 p.m.*

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## 8. More Miscellaneous Items

Mrs. Lutz reminded the Board of the Historic Preservation Commission's workshop being held on May 13, 2006. She stated she is awaiting confirmation that the session will count towards the mandatory training session for Zoning and Planning Board members.

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## 9. Adjournment

*9:45 p.m.*

**Motion** by Ms. Erik to adjourn.

**Second** by Mr. Hannan.

On voice vote, all were in favor.

Motion carried.

Respectfully submitted,

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Linda M. Lutz, P.P.  
Zoning Board of Adjustment Secretary