

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

**October 24, 2006  
Regular Meeting**

7:59 p.m.

Tonya Cubby, Acting Board Secretary, opened the meeting with the reading of the Legal Notice.

**PLEDGE**

Robert Brady, Board Chairman, asked all in attendance to join in the Pledge of Allegiance.

**ROLL CALL**

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

Also Present: Stephen Glatt, Board Attorney (*arrived at 8:02 p.m.*), Special Counsel Thomas Germinario, William Drew, Planning Director, Richard McFadden, Township Engineer (*arrived 8:43 p.m.*), and Tonya Cubby, Acting Board Secretary.

Absent: Ed Spirko

Mr. Brady invited Mr. Lynch, Alternate Member #1, to join the regular Board members for this meeting due to the absence of Mr. Spirko. He then followed with an explanation of the Zoning Board of Adjustment procedures.

---

**MEMORIALIZATIONS**

**Resolution No. 32-2006**

**Kristen Goldberg**

Bulk Variance #0530-0705, which was approved.

Block 7506; Lot 1

10 Compass Avenue; LR Zone

Mr. Drew distributed copies of the resolution to the Board with the conditions of approval.

**Motion** by Ms. Erik to approve Resolution 32-2006.

**Second** by Mr. Jurkovic

**Roll Call Vote:**

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

No: None

Absent: Ed Spirko

**Motion carried.**

---

**Resolution No. 33-2006**

A Resolution of the Zoning Board of Adjustment of the Township of West Milford, County of Passaic and State of New Jersey, Authorizing the Award of a Professional Services Contract Without Competitive Bidding to Thomas J. Germinario, Esq., for Legal Services.

Mr. Brady reviewed the Board's decision to retain special counsel for Appeal # 0680-0736. Mr. Jurkovic questioned whether the funds have been certified for Mr. Germinario's services and Mr. Brady replied in the affirmative, noting that Arthur Magnotti, Township Treasurer, has certified that \$2,500.00 is available for this professional service.

**Motion** by Mr. Jurkovic to approve the resolution to appoint Thomas J. Germinario, Esq. as Special Counsel for the Zoning Board of Adjustment regarding Appeal #0680-0736.

**Second** by Ms. Erik

Mr. McQuaid noted that he was absent at the last meeting and needed time to review the resolution prior to voting.

**Roll Call Vote:**

Yes: Ada Erik, Francis Hannan, Daniel Jurkovic, Arthur McQuaid, Gian Severini, William Lynch, and Robert Brady  
No: None  
Absent: Ed Spirko

**Motion carried.**

Mr. Brady stated that all the appropriate documents relating to this appointment had been processed and invited Mr. Germinario to sit with the Board on the aforementioned appeal.

Mr. Russo, attorney for John Pannarello, stated that Mr. Pannarello was mistaken about the date of this meeting, and would be arriving shortly. Mr. Brady asked for the following applications to be called:

**APPLICATIONS CARRIED FROM PREVIOUS MEETINGS**

*8:12 p.m.*

**Siobhan and Donald Partington**

**Appeal # 0680-0736**

Block 11103; Lot 5.02

Snake Den Road; R-4 Zone

Appeal of a decision of the Zoning Officer pursuant to the MLUL C.40:55D-70a.

Mr. Brady requested Vincent James Lupo, Township Zoning Officer, to come forward to give testimony. Mr. Lupo was sworn in by Mr. Germinario. Mr. Lupo proceeded to give testimony in response to questioning by Mr. Germinario regarding site development Plan #B1 and site development Plan #B2. Mr. Lupo noted that Plan #B2 indicated a different improvement on the lot than Plan #B1. Discussion ensued regarding the proposed principal structure and an existing equipment storage building. Mr. Lupo stated that he has not seen plans for construction of a metal structure. He reviewed the plans for consistency and found them to be in conformance with zoning ordinances.

Mr. Jurkovic asked Mr. Lupo if he was familiar with Ordinance 18-9.2b and the text regarding "appearance" of buildings. He then suggested that the entire site plan might need to come before the Board because the existing steel structure materials may not conform to the ordinance. Mr. Germinario discussed this and related ordinances.

Mr. & Mrs. Partington were asked to come before the Board to be sworn in by Mr. Germinario and to make their presentation. Mrs. Partington read a statement regarding their appeal and presented two exhibits, an As-Built Survey dated June 23, 2004 entered as Exhibit A-1, and a Site Improvement Plan dated January 23, 2002 entered as Exhibit A-2. Upon questioning of the relevance of the exhibits by Mr. Russo, Mr. Germinario stated that the evidentiary content will have to be testified to by the applicant. Mrs. Partington noted the relevance is that the originally submitted site development plan contained an error because there was no primary residence. Mr. Partington stated that the plan was approved for an accessory building without a primary residence. Mr. Drew noted that the Planning Department did not have a copy of the 2002 A-2 plan, whereby Mr. Brady stated that the Partington's had submitted this map into the record. Resolution No. 25-2005 was presented as Exhibit A-3, outlining the denial of Mr. Pannarello's variance application for an equipment and storage building on a lot without a principal structure. Mrs. Partington asserted that the use of the accessory building was for commercial activity relating to Mr. Pannarello's business and their intent was to prevent any future use for commercial purposes, other than the recent tree farm and logging business. Mrs. Partington cited 18-9.1b of the Township of West Milford Land Development Ordinance regarding denial of construction permits for an accessory building prior to construction of a principal structure. She stated that the Zoning Officer made an error regarding approvals for both site development plans submitted. Concerns were expressed that expansion of the accessory building may be intended for business use.

8:43 p.m.

Mr. McFadden, Township Engineer, arrived at the meeting.

Upon questioning by Mr. Germinario, Mr. Russo stated that his client assumed the original plan approved was not the accepted plan, and that it had been abandoned after the approval of the new plan by the Building Department. The Partingtons discussed the issues of concern with the Board members regarding the variance approval that included conditions such as fencing and landscaping, as noted in Resolution No. 25-2005. Mr. Germinario marked photos of the subject property being disputed as Exhibits A-4 to A-13, and an explanation followed by Mr. Partington.

Following further questioning by the Board members, Mr. Germinario concurred with Mr. McQuaid that a variance is not a design provision, but rather a zoning provision. He further stated that if the argument holds, the result would be that the Zoning Officer erred in signing off on this, and potentially, a C-Variance would be required. The Partingtons thanked the Board for their time.

Mr. Russo approached the Board and stated that he wished to question Mr. Partington. Mr. Russo proceeded to inquire from Mr. Partington about past incidents regarding alleged harassment and accusations. Mr. Brady asked that the parties keep their testimony to the issues before the Board. Mr. Germinario asked Mr. Pannarello to come forward to be sworn in for testimony. Following swearing in, Mr. Pannarello was questioned by Mr. Russo about the events that led to this appeal filed by the Partingtons. Mr. Pannarello testified about the plans for construction of a single-family home that will be rented out, and the use of the accessory building. Discussion ensued about the proposed and existing structures. Mr. Russo noted that his client is willing to conform to the local law and may come before the Board for a variance to permit use of the metal building.

Mrs. Partington stated that she and her husband tried to reason with Mr. Pannarello and come to some sort of agreement, but that he was not willing to agree with what they suggested as a compromise. Upon being questioned by Mr. Germinario whether she and Mr. Partington are willing to withdraw their appeal, Mrs. Partington replied in the negative.

Mr. Brady opened this hearing to the public. With no one wishing to be heard on this matter, Mr. Brady asked for a motion to close the public portion of the meeting.

**Motion** by Mr. Erik to close the public portion of this hearing.

**Second** by Mr. McQuaid.

**On a voice vote, all were in favor** of closing the public portion of this hearing.

**Motion carried.**

Members of the Zoning Board discussed the issues raised during testimony including accessory structures, variance necessity, conformance issues, and zoning compliance. Mr. Brady made his closing remarks and asked for a motion from the Board.

**Motion** by Mr. Jurkovic to uphold Appeal #0680-0736, Block 11103; Lot 5.02, Snake Den Road; R-4 Zone and reversing the decision of the Zoning Officer granting approval for the site plan on the subject property based on the Board retaining jurisdiction from the prior application in which the existing structure was denied, and based on the fact that the existing structure will not be what the Board determined as an accessory use to the principal structure being proposed by the applicant.

**Second** by Mr. Hannan.

**Roll Call Vote:**

Yes: Francis Hannan, Daniel Jurkovic, Arthur McQuaid, and Robert Brady

No: Ada Erik, Gian Severini, and William Lynch

Absent: Ed Spirko

**Motion carried by a simple majority.**

---

## **NEW APPLICATIONS**

9:54 p.m.

**Elaine S. Kramer**

**Bulk Variance #0630-0749**

Block 4301; Lot 1

751 East Shore Road; LR Zone

Requested: Relief pursuant to MLUL C.40-55D-70c for side yard setback for construction of a new house.

Mr. Brady asked Mrs. Kramer to approach the dais and requested permission for this application to be carried to the next regular meeting due to the anticipated length of the applications scheduled to be heard next that had been carried from previous meetings.

**Motion** by Ms. Erik to carry this application, Bulk Variance #0630-0749, to the November 28, 2006 meeting.

**Second** by Mr. McQuaid.

**On a voice vote, all were in favor** of carrying this application to the next regular meeting.

**Motion carried.**

---

**APPLICATIONS CARRIED FROM PREVIOUS MEETINGS (Cont'd)**

9:59 p.m.

**Robert & Renee Pasek**

**Bulk Variance #0630-0737**

Block 4005; Lot 4

25 Board Road; LR Zone

Requested: Relief pursuant to MLUL C.40:55D-70c for side yard setback and maximum lot coverage for an addition to an existing residence.

Mr. Brady noted that Mr. Glatt has returned to his position as Board Attorney for the remainder of the meeting.

Mr. Hannan, Mr. Lynch, and Mr. Wieser heard testimony of this application at a prior meeting through an audiotape. Mr. Drew presented affidavits for signatures attesting to this.

Mr. Brady asked that Mr. Pasek come forward and be sworn in by Mr. Glatt prior to giving testimony. Following this, Mr. Ochab, expert witness for the applicant, continued with his testimony on this application. He noted a slight modification to the calculations of the existing coverage and the proposed coverage on the site; revisions were distributed to the Board members that included floor plans and eastern elevations of the proposed addition. Mr. Jurkovic queried Mr. Ochab about the cantilevered addition. An explanation of the principal and accessory coverage areas was presented. Mr. Pasek confirmed that no additional buildings or structures were planned for this site in the future. Mr. Ochab noted that there would be no substantial or negative impact to the neighboring properties, and no new variances would be required as a result of this application. Mr. Brady asked Board members if they had any questions for the applicant. There being no further questions from the Board on this matter, Mr. Brady opened this application to the public.

Mr. William Hyman, 22 Board Road, resident of Awosting, came forward to express his approval of this project, noting that it was an improvement to the neighborhood. He affirmed, upon questioning from Mr. Jurkovic, that this addition would conform to neighboring properties.

**Motion** by Ms. Erik to close the public portion of this hearing.

**Second** by Mr. Lynch.

**On a voice vote, all were in favor** of closing the public portion of this hearing.

**Motion carried.**

**Motion** by Mr. Jurkovic to approve Bulk Variance #0630-0737, Block 4005; Lot 4, 25 Board Road; LR Zone, for relief pursuant to MLUL C.40:55D-70c for side yard setback and maximum lot coverage for an addition to an existing residence. He noted that lot coverage of this size would ordinarily be of concern, but that the increase in the lot coverage was based on the garage

and the cantilevered walkway becoming part of the principal structure. He was satisfied that this addition would conform to existing properties.

**Second** by Ms. Erik, on condition that no other accessory structures requiring a building permit be allowed.

Mr. Drew noted that the plans be revised to reflect current building coverage; this is needed prior to the issuance of a building permit.

**Roll Call Vote:**

Yes: Ada Erik, Francis Hannan, Daniel Jurkovic, Arthur McQuaid, Gian Severini, William Lynch and Robert Brady  
No: None  
Absent: Ed Spirko

**Motion carried**

---

*10:23 p.m.*

**Sprint Spectrum, L.P.**

**Use Variance #0640-0730**

Preliminary and Final Site Plan #0620-0226AB

Block 1701; Lot 59

776 Warwick Turnpike; LR Zone

Requested: Relief pursuant to MLUL C.40:55D-70d and relief pursuant to MLUL c.40:55D-49 and 52 to enable expansion and collocation of a wireless telecommunications facility.

Mr. Czura, applicant's attorney, requested that David Karlback, licensed professional planner, be sworn in by Mr. Glatt as expert witness. Following recitation of his qualifications, Mr. Brady informed Mr. Karlback that he was accepted as expert witness for this application.

Testimony was given that application materials were reviewed by Mr. Karlback prior to this hearing, followed by an explanation of the ordinances and the variances required. Mr. Karlback noted that a hardship variance was necessary and applicable in this situation. He cited several other cases where variances were approved based on similar conditions. Under testimony, he stated that this site is suitable for this passive use; he noted current gaps in cell service that would be remedied with this structure, it would have minimal impact with regard to traffic, pollution, noise or any other objectionable influences, and visual impact would not be a major issue. He reviewed Exhibits A-5, 6, & 7, photographs of surrounding properties. He stated that residents are already acclimated to this structure, and that 10 additional feet in height would not impact the environment. Furthermore, he stated that no negative effects will result from this structure, and the benefits will far out-weigh any minimal visual impact. Mr. Czura questioned Mr. Karlback about the C-Variance and D-6 Variance, which was followed by an explanation. Mr. McQuaid reviewed testimony from a prior meeting regarding alleged approval of this structure up to 150 feet. He stated that he took exception to this, as the Board never approved a 150-foot structure. Mr. Czura concurred and stated that the testimony for this application was complete.

Mr. Brady opened the meeting to the public and asked that anyone who wished to be heard regarding this application to come forward. No one wished to be heard on this matter.

**Motion** by Ms. Erik to close the public portion of this hearing.

**Second** by Mr. Severini.

**On a voice vote, all were in favor** of closing the public portion of this hearing.

**Motion carried.**

Mr. Czura made his closing statement regarding this application and stressed collocations were the best use for this site.

**Motion** by Mr. McQuaid to approve Use Variance #0640-0730 for Preliminary and Final Site Plan #0620-0226AB, Block 1701; Lot 59, 776 Warwick Turnpike; LR Zone for relief pursuant to MLUL C.40:55D-70d and relief pursuant to MLUL c.40:55D-49 and 52 to enable expansion and collocation of a wireless telecommunications facility.

**Second** by Ms. Erik.

Mr. Jurkovic stressed that no new towers be erected at Mt. Laurel Park.

**Roll Call Vote:**

Yes: Ada Erik, Francis Hannan, Daniel Jurkovic, Arthur McQuaid, Gian Severini, William Lynch and Robert Brady  
No: None  
Absent: Ed Spirko

**Motion carried**

**Motion** by Mr. McQuaid to approve Preliminary and Final Site Plan #0620-0226AB, Block 1701; Lot 59, 776 Warwick Turnpike; LR Zone for relief pursuant to MLUL C.40:55D-70d and relief pursuant to MLUL c.40:55D-49 and 52 to enable expansion and collocation of a wireless telecommunications facility, reiterating that no new towers be erected at this site or Mt. Laurel Park.

**Second** by Ms. Erik.

**Roll Call Vote:**

Yes: Ada Erik, Francis Hannan, Daniel Jurkovic, Arthur McQuaid, Gian Severini, William Lynch and Robert Brady  
No: None  
Absent: Ed Spirko

**Motion carried**

---

**APPROVAL OF MINUTES**

**Motion** by Ms. Erik to approve the minutes of the September 26, 2006 Regular Meeting of the Zoning Board of Adjustment with the corrections noted by the Acting Board Secretary.

**Second** by Mr. McQuaid.

**Roll Call Vote:**

Yes: Ada Erik, Francis Hannan, Daniel Jurkovic, Arthur McQuaid, Gian Severini, William Lynch, Barry Wieser, and Robert Brady  
No: None  
Absent: Ed Spirko

**Motion carried.**

Mr. Brady, noting that there were no new communications received, asked for a motion to adjourn this meeting.

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

**Second** by Mr. Hannan.

**On a voice vote, all were in favor** of adjournment at 10:50 p.m.

**Motion carried.**

Approved:

Respectfully submitted by

---

Tonya E. Cubby, Acting Secretary  
Zoning Board of Adjustment