

**MINUTES
OF THE TOWNSHIP OF WEST MILFORD
ZONING BOARD OF ADJUSTMENT
November 25, 2008
Regular Meeting**

Robert Brady, Board Chairman, opened the Regular Meeting of the Zoning Board of Adjustment at 7:44p.m. The Board Secretary read the Legal Notice.

Roll Call

Present: Ada Erik, Francis Hannan, Daniel Jurkovic, Arthur McQuaid, Gian Severini, Barry Wieser, Frank Curcio, Robert Brady

Also Present: Stephen Glatt, Board Attorney, Robert C. Kirkpatrick, Board Planner, Richard McFadden, Township Engineer and Denyse Todd, Board Secretary

Pledge

The Chairman asked all in attendance to join in the Pledge of Allegiance.

The Chairman said there was 6 regular members and asked Mr. Wieser, the first alternate to take a place on the dais, there is 1 alternate member. Mr. Brady also explained that there was a resignation letter from Mr. Lynch. The Board Of Adjustment conducts its business in accordance with the Open Meeting Act of the State of New Jersey, discussions and decisions and the public may participate in the meeting.

The Chairman introduced the Board Attorney, Steven Glatt. No new applications after 10:30 and no testimony after 11:00. The applicant will be allowed to speak first and then the public can comment. The appeals are made to the Superior Court of the State of New Jersey.

MEMORIALIZATIONS

There were no resolutions available for this meeting. The attorney should have them available for the meeting of December 16, 2008.

**JACQUELYN COSGROVE
BULK VARIANCE # 0830-0815**

Block 7508; Lot 26
19 Keel Road, LR Zone

Mr. Glatt swore in the applicant Jacquelyn Cosgrove of 19 Keel Road. Mrs. Cosgrove explained that she wanted a six foot fence for her side yard. The attorney advised the applicant that she needed to explain where she lived and her surrounding property. She was approved for the privacy fence around the back yard, which would be the majority of her property but there is a small section that would only allow four feet. A Board member asked what the neighborhood is like and what kind of a street it is. Mrs. Cosgrove said she is at the end of a dead end street. There is a house across the street and a lot behind her but the house is on Union Valley Road. Mr. Hannan asked the applicant about markings on the plan, she showed on her plan what was already approved without needing the variance and also marked a section that she is asking for from the Board. Mr. Hannan asked where the road ended with regard to the placement of the fence and it showed that the road ends before the fence would begin. There is a well at the end of the dead end. Mrs. Cosgrove supplied a picture, which depicts her property; it is marked into evidence as A-1. Mrs. Cosgrove explained where the shared well is and there is a shed also on the property. There are 3 houses that share the well. Mr. Jurkovic confirmed that the Zoning Officer approved the rest of the 6-foot fence. Mr. Brady asked if there were any questions and if Mrs. Cosgrove had anything to add and

she said she wanted the fence to keep her dog in. The Chairman opened the meeting to the public to speak for or against the application.

Motion by Ada Erik to close the public portion since there was no one present for or against the application.

Second by Barry Wieser

All in favor to close the public portion.

Motion by Francis Hannan to approve the bulk variance. The applicant has shown that she lives basically on a dead end street where the street physically ends before the area where the 6 foot fence is to be installed and there won't be a line of sight problem.

Second by Barry Wieser

Roll Call Vote:

Yes: Ada Erik, Francis Hannan, Daniel Jurkovic, Arthur McQuaid, Gian Severini, Barry Wieser and Roberty Brady

No: none

NEIL OTTENS

RESOLUTION NO. 26-2007

Use Variance #0640-0759

Block 1907; Lot 1

7 Parlin Court; LR Zone

Arthur McQuaid recused himself from hearing this application. The Chairman asked the second alternate, Frank Curcio, to take the place of Mr McQuaid on the dais. Joseph Affinito, Esq. is the attorney for the applicant. He explained that the application was decided last October and there were several requirements of the resolution and all have been satisfied except the one he will be discussing.

They are asking for an amendment with regard to paragraph 2 and paragraph 2C of the resolution, which requests submitting a deed restriction precluding development of the lot beyond the installation of the septic system. Mr. Affinito and Mr. Ottens discussed those items and neither recalled those items being discussed during the meetings. The attorney contacted the Engineer, Mr. Ballester, as well and he recalled it being mentioned briefly. The applicant doesn't completely disagree he would never build a habitable structure but perhaps a shed or a garage on that property if possible. Mr. Affinito produced the map for the Board members to see and also a photograph. The secretary was asked if the photograph had been previously marked into evidence it was not in the file or listed in the exhibits. It was marked into evidence as A-8. Mr. Affinito indicated that the property was not really conducive to building and because of zoning restrictions it would be difficult to build anything. Mr. Glatt asked what would be the problem with the deed restrictions and Mr. Ottens replied that it would preclude any development on the property, which they feel means all encompassing. Mr. Glatt asked if they wanted to do that and if it were approved couldn't an additional deed be filed. Mr. Glatt explained that the Board wanted the applicant to appear before this Board for any future building because they approved this application and they allowed an empty lot to have a septic system. The Board wants all concerned to know that the applicant or any future owners would have to apply to this Board for any future construction. Mr. Affinito said that the zoning requirements were so tight that anything going up would be innocuous. Mr. Glatt explained that the Board has the right to place conditions on the variance approval. The Board wants to know why the applicant doesn't want the deed restriction he can come before the Board in the future. Mr. Affinito said the applicant doesn't have a problem with the restriction but would like it loosened so that if he wanted to put up a structure like a shed or a one car garage. Mr. Hannan pointed out that a secondary structure could not be placed on a lot without a primary structure. He wanted to have flexibility.

Mr. Brady mentioned that one of the reasons it was approved was because of the limitations that were set for the property. One reason being any future owners are limited, and some people do not go through the proper channels. Mr. Affinito reiterated

that the applicant was not looking to remove the restriction completely but would like flexibility. There was discussion about wording of the resolution if the Board was to agree with the applicant. Mr. Affinito said that there was a small area where a small structure could be built such as a small shed or a garage. The photograph was being shown and explained by Mr. Affinito. Mr. Hannan explained that the problem was that the Board had a tough problem approving this to begin with, and feels that the Board went above and beyond to approve it. There doesn't seem to be a good reason to remove the restriction. Mr. Jurkovic pointed out that the only thing that would change is that a new deed wouldn't need to be filed the applicant would still need to return to the Board because there is no principle structure on the lot. Mr. Affinito said it would be easier for his client because he would be within the zoning ordinances, a 10 x 10 shed wouldn't even be conforming however because there is no principle structure. Mr. Brady explained that the applicant could come back in the future. Mr. Kirkpatrick said if he wanted to put a shed up he would need a variance because of the zoning not allowing a secondary structure where there is no primary structure. The Board would need to decide if they wanted to allow it. Mr. Affinito reiterated it would be a minimal structure, and also said there was no necessity; it wasn't needed for the septic or the house only for the applicant to make it easier down the road. Mr. Brady asked if there were any questions or comments from the Board Members. Mr. Brady opened the meeting to the public. No one was present for or against the application.

Motion by Ada Erik to close the public portion

Second by Barry Wieser

All in favor to close the public portion.

Mr. Affinito said he already made his closing statement.

Motion by Ada Erik to deny the request she feels that they covered that territory in detail and the conditions of the resolution should stay as is.

Second by Barry Wieser

Mr. Glatt advised the Board that a yes vote confirms previous discussion and upholds denying the request.

Roll Call Vote:

Yes: Ada Erik, Francis Hannan, Daniel Jurkovic, Gian Severini, Barry Wieser,
Frank Curcio and Robert Brady

No: none

DAVID J. MULLIGAN

BULK VARIANCE #0830-0819

Block 3604; Lot 1

31-33 Ringwood Lane, LC Zone

John Barbarula appeared on behalf of the applicant. There was a prior approval to build an addition on the subject property, which is on the corner of Greenwood Lake and Ringwood Lane. The addition was completed with a 9.6 and 9.2 setback instead of the 10 feet as all of plans and the resolutions required. The applicant would like to seek a modification and not close the existing driveway as required by prior resolution. If closed, it would cause an ingress/egress problem. The town merged the lots.

Mr. Glatt swore in the applicant, David J. Mulligan of 33 Ringwood Lane, Hewitt. Mr. Barbarula questioned him regarding the prior variance approval. The as-built when supplied to the Building Dept. was incorrect and the actual addition encroached eight tenths of a foot on one corner and four tenths of a foot on the other. The new as-built is correct. They are requesting relief from the condition of closing out the driveway. Mr. Mulligan described it as being a one family house with one car and a motorcycle trailer that is parked in the driveway, plenty of room it could hold about five cars. Mr. Mulligan pointed out some things on the plan. He blocked off Greenwood Lake Tpke. so all access is off Ringwood Lane. He wants to keep the driveway since it was two separate houses. Mr. Hannan asked that clarification be made as to what the residents would be using according to previous resolution. There isn't enough room in the other

driveway and feels it would be worst to have cars parked on the street. Ms. Erik confirmed that Greenwood Lake Turnpike would not be opened up again. It is blocked off by concrete bumpers, he had planned to have the asphalt removed. Mr. McFadden was concerned about cars parking too close to the bumpers because it may cause a sight distance issue if exiting Ringwood Lane, making a left onto Greenwood Lake Tpke as well as the impervious coverage. It is in the Lake Commercial Zone so you are allowed 60% impervious coverage. Mr. Brady asked about the septic and the two homes have separate septic systems. One has a cesspool and one has a septic field. Mr. Barbarula said the older house has the cesspool and the newer home has the septic field.

Mr. Brady asked how the property became one lot and Mr. Mulligan said the Township merged the two lots because it was commercial. Mr. Brady asked how two structures were allowed and the applicant said there were two structures to begin with. The applicant bought it this way. Mr. McQuaid asked which house was the subject of the variance and the applicant said the bottom house. Mr. Glatt asked about the fence and Mr. Barbarula said the fence was on both properties and the neighbor who is attending the meeting put it up on his own property. Mr. Barbarula feels the error was caused by the staking or the off set of the property.

There was discussion about removing the driveway per the Township Engineer's original conditions and they are willing to put some grass along Greenwood Lake Turnpike but would prefer to have part of the driveway. Mr. McFadden would prefer it moved back ten feet. The applicant would be in agreement with ten feet.

Mr. Glatt explained how the Board could make a motion, they could decide to put both issues in one motion or separate. Mr. Jurkovic said his concern with the driveway was the sight distance coming around the corner of Greenwood Lake Turnpike and cars coming out of the driveway. Mr. McFadden said that if cars pulled right up on the concrete bumpers it might be a problem coming off of Ringwood Lane and making a left onto Greenwood Lake Turnpike. Mr. Jurkovic was concerned about cars pulling off of Greenwood Lake Turnpike onto Ringwood Lane when cars are pulling out of the driveway is there enough sight distance. The driveway can't be moved further down Ringwood Lane because of the septic field. The concrete bumpers would be moved back 10 feet to prevent cars parking against there to eliminate any sight distance problems. Ms. Erik asked how long the driveway has been there and the applicant said the house was built in the 1950's and Ms. Erik asked if there is a history of accidents there and he said not that he was aware of. Ms. Erik said she uses the corner all of the time and there is good sight distance, she never had any trouble. Ms. Erik doesn't think there is a problem and she uses the corner all of the time. The ten foot would be put in as grass, when the weather changes.

Mr. Brady opened the meeting to the public. David Richards of 27 Ringwood Lane was sworn in. A neighbor of the applicant said that he doesn't have an issue with the driveway it has been there forever. Mr. Richards began discussing the setback from the original 2006 variance approval. The contractor only had one inch to work with and failed to adhere to the original variance, he isn't happy about the 9 feet instead of 10 feet. He feels the Building Department should have required a foundation as-built but this is only required for a new house not an addition. This survey would have solved the problem by being able to stop at that point and then it could have been taken down and moved. The contractor does not care about the problem created. There was a fence on the applicant's property and the applicant took it down with the understanding he would put it back up. Mr. Richards' put it back up and Mr. Mulligan is supposed to split the cost with him. Mr. Richards asked what could be done to prevent it from happening in the future. A foundation survey would cost about \$400.00. The Building Department said law didn't require it but sometimes it is done. The contractor is still working in the town. Mr. Richards asked if it could be a requirement to have an as-built survey done in these situations and a Board Member stated that it would require an Ordinance. The Chairman mentioned that it could be added as a compliance item on the check list and also make it part of the approval process any application when you get to the finished construction of the foundation then it would be reviewed by the Town Engineer before it

could go any further. If reviewed at that point it can be changed at that point. It would be easier to make it a checklist item. The original survey doesn't seem to be correct. The Board has no control or jurisdictions over any of the surveyors, contractors or engineers in town. The original variance application shows that the 10 foot 1 inch setback was a preexisting setback it was not granted during that application approval. Mr. Brady wants to follow up with the Board that there should be a condition of approval that when the foundation is poured, the Engineer will do an inspection to ensure it is where it is supposed to be. The Board was in agreement that it was a very good point. Mr. Glatt said it will be a condition of approval to get an "as-built survey".

Mr. Brady asked if there was anyone else present for or against the application.
Motion by Ada Erik to close the public portion.
Second by Barry Wieser

Mr. Brady asked Mr. Barbarula for the summation. He agreed that his client would have been better off if that became a condition of the resolution. The ten feet being taken away and planted with grass would eliminate any issues in terms of the sight distance. They are asking the rest of the driveway remain, they are the non-conforming use there and impervious surface is not the issue. Asking for approval with the modification of the 10 feet and grant relief sought for in the application.

Motion by Francis Hannan to approve the application with the new setbacks of 9'6" and 9'2" also the applicant wants to leave existing driveway and will improve the sight distance which was the Engineer's concern by eliminating the parking where the bumpers are and taking 10 feet and planting grass and that would relieve the sight distance problem.

Second by Ada Erik

Roll Call Vote:

Yes: Ada Erik, Francis Hannan, Daniel Jurkovic, Arthur McQuaid, Gian Severini, Barry Wieser, Robert Brady
No: none

JACK LEVKOVITZ

USE VARIANCE #0840-0820

Block 4701; Lot 61

750 Westbrook Road, R-4 Zone

The applicant is requesting waivers for completeness items with regard to a use variance for height, for installation of a turbine windmill. The Board Attorney swore in the applicant Jack Levkovitz, residing at 750 Westbrook Road. Mr. Glatt explained that to the Board that Mr. Levkovitz wanted a waiver for completeness items, since he was incomplete from the Board Planner and the Township Engineer. The attorney asked what specifically the applicant wanted waived. The site plan presented was a copy of the variance that was approved and signed by the Board Chairman and secretary in 1995. The applicant said nothing has changed and the items are minor. Mr. Glatt wanted the applicant to address each item of incompleteness because the Board would then need to decide whether they wanted the new plans to reflect those items.

#38 Site plan was prepared by a professional and he is still in business. Mr. McFadden commented that the plan submitted was drawn by a professional, however, Mr. Levkovitz put a dot where he said the windmill will be going. Mr. Glatt advised that he or someone else indicated where the windmill will be located without dimensions or indication of setbacks or where it places in the topography. Mr. Levkovitz indicated that he is the person who drew the dot on the plan and he is relying on the plan from 13 years ago and Mr. Levkovitz agreed. Mr. Glatt said that Mr. Levkovitz is who placed the location marking on the plan and Mr. Levkovitz agreed. He picked the location in conjunction with a wind site professional. Mr. Glatt discussed the certification numbers on the plan the person preparing the plan had his number there but Mr. Levkovitz does not have a license.

#47 Location of wetlands is not on this plan; Mr. Levkovitz indicated that the location is 1,000 feet above sea level and a solid piece of rock at the top of a mountain.

Name of all property owners, not on the map but the certified list from the Assessor's Office was given to the secretary.

This is also considered an accessory building there is no location of the accessory building. The height is also an issue with the application.

Mr. Glatt explained that Mr. Levkovitz needed to convince the Board that they should make an exception and not require him to submit the items.

Mr. Levkovitz said it is not a building but a wind turbine that will take less than 100 square feet and if not for the height he would not be required to submit the site plans, since under 500 square feet. Mr. Levkovitz said it seems an unnecessary expense. Mr. Glatt explained that they were not hearing the application and the Board could look at it for a limited purpose, strictly for the waiver requests. Mr. Glatt explained that the Planner feels there is a need for greater specificity.

There was discussion regarding the application, some feel it is like a cell tower, Mr. Jurkovic feels it does seem like overkill with an application like this but if approved, and it wasn't placed exactly where it was needed to be. Mr. Levkovitz said that it was near an existing building, a pool house and it would be within 30 or 40 feet from the pool house and the pool house is 150 feet from nearest property line. A Board Member said there were things that they needed to be certain about. The applicant said it wasn't a must for him and he wanted to do his share and keep everything green. He doesn't have to fight the town, he could walk away. Mr. Brady said it wasn't a fight but compliance with a regulation. The turbine would be 120 feet.

Mr. Glatt indicated that the Board has had experience with cell towers and height becomes an issue, not just setbacks. AT & T was the first tower and where it was to be placed became an issue about esthetics. If the Board grants the waiver without the specifics, they are setting a precedent. The attorney indicated that 90% of the work might be done because the plan is there and an Engineer may be able to measure and he can put it down and all will know. When and if the application comes to the Board, if the applicant doesn't know the answer to something, that could be a problem. The Board needs to protect everyone. Mr. Levkovitz said his property is 5,000 feet long and 1500 feet wide.

Mr. Wieser is recusing himself from this matter and Mr. Curcio will be taking a place on the dais.

Mr. Jurkovic can understand Mr. Levkovitz' position but what if something wasn't done that became a relevant item and the Board could turn it down and they were the ones who gave him the permission to waive it. It wouldn't be fair to him or the Board. Mr. Levkovitz wants to do it if he doesn't have to do it the hard way. The applicant understands the issue but he feels there is no question about it if only for the height it wouldn't be required. Mr. Brady pointed out no matter how big the property was the checklist would need to be completed for zoning. Mr. Brady indicated that it was something that he should pursue the application with an engineer or a planner or someone who could advise him such as an attorney. Mr. Glatt explained to Mr. Levkovitz that by him altering the plan of a licensed engineer that he is in effect making himself the professional and he is not the licensed engineer. The site plan with a seal from a licensed profession can be adopted by the Board, when it is altered not it becomes hearsay because he doesn't have the professional expertise to mark it in a manner with which is exact to what the engineer is signing off on. The engineer is vouching for every single line, dot and work in the document, Mr. Levkovitz as a lay person does not have the credentials to do that. If he took that site plan to another engineer that engineer might be able to adopt portions of the site plan and put additional information and sign off on it. Mr. Levkovitz wants to avoid the amount of money for a

surveyor to survey that large piece of property. It may not cost as much as he thinks perhaps if he returned to the original engineer. The Board feels it is a wonderful idea and a pioneer with this venture. It would be positive criteria. A Board member mentioned there are 2 bills before the Senate that may help Mr. Levkovitz with this. Mr. Levkovitz feels that he will wait until the Township passes an ordinance relating to these matters.

Mr. Hannan asked if it would need Highlands approval. He needs a location and have access to it for service. Mr. Levkovitz told Mr. Kirkpatrick that a crane can get within 20 feet of the site. Have it shown on the plan with the dimensions for completeness. Mr. Brady said it was a good thing. Mr. Brady opened the meeting to the public. There was no one present for or against the application.

Motion by Ada Erik close public portion
Second by Gian Severini
All in favor to close the public portion.

Mr. Brady commented that if the application were brought to completion with the checklist is good for the community, will fit in with the Highlands Act, Mr. Levkovitz would be a pioneer in this area, he thinks it is a good thing but there is zoning for a reason and certain rules and regulations need to be followed.

Motion by Francis Hannan to deny the waiver of completeness items, it is a commendable project but the Board cannot set precedent by allowing the applicant to not complete the checklist.
Second by Frank Curcio

A yes vote is denial of Mr. Levkovitz application to waive the completeness items.

Roll Call Vote:

Yes: Ada Erik, Francis Hannan, Daniel Jurkovic, Arthur McQuaid, Gian Severini, Frank Curcio, Robert Brady
No: none

Approval of Invoices

Motion by Ada Erik to approve the invoices of Board Planner William H. Drew.
Second by Arthur McQuaid

Roll Call Vote:

Yes: Ada Erik, Francis Hannan, Daniel Jurkovic, Arthur McQuaid, Gian Severini, Frank Curcio, Robert Brady
No: none

Motion by Gian Severini to approve the invoice of substitute Planner, Robert Kirkpatrick.

Second by Ada Erik

Roll Call Vote:

Yes: Ada Erik, Francis Hannan, Daniel Jurkovic, Arthur McQuaid, Gian Severini, Frank Curcio, Robert Brady
No: none

Motion by Ada Erik to approve the invoices of Board Attorney, Steven Glatt
Second by Gian Severini

Roll Call Vote:

Yes: Ada Erik, Francis Hannan, Arthur McQuaid, Gian Severini, Frank Curcio, Robert Brady
No: none

Abstain: Daniel Jurkovic

Mr. Brady asked if there was discussion regarding the email policy, Mr. Hannan suggested again establishing a policy that they do not use email to discuss Board

business. Mr. Jurkovic suggestion was to amend the by-laws. Mr. Glatt said if the by-laws were amended future Boards would be bound by it.

Motion by Ada Erik to have Mr. Glatt draw up an amendment to the by-laws for a email policy.

Second by Arthur McQuaid

Roll Call Vote:

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

No: none

The Board Attorney informed the Board that the Court signed a pre-trial scheduling order. Mr. Lanza is required to have his trial brief in by December 8, 2008. Mr. Glatt has until the 22nd of December to submit the reply brief and the Court has not set a trial date but thinks it will be middle to late January.

Motion by Ada Erik to approve the minutes of October 28, 2008

Second by Arthur McQuaid

Roll Call Vote:

Yes: Ada Erik, Francis Hannan, Arthur McQuaid, Frank Curcio, Robert Brady

No: none

Abstain: Daniel Jurkovic

Communications

A letter from Mr. Lynch resigning his position on the Zoning Board and received in the Clerk's Office on October 22, 2008 and received in the Planning Department on November 19, 2008. Secretary to send Mr. Lynch a letter from the Zoning Board accepting his letter regretfully and thanking him for his service and wish him luck in the future. All agreed he would be missed.

Motion by Arthur McQuaid to send a letter to Mr. Lynch.

Second by Ada Erik

All in favor

none opposed

Mr. McQuaid wanted to return to the email policy to notify the Council that there was going to be an email policy added to the by-laws and the Chairman agreed but after the by-laws were amended.

Mr. Brady wished everyone a Happy Thanksgiving and congratulated Mr. Jurkovic on his successful campaign and December will be his last meeting as member and Vice-Chairman of the Board.

Adjournment

Motion by Ada Erik to adjourn the regular meeting

Second by Gian Severini

All in favor to adjourn the regular meeting of November 25, 2008

Meeting adjourned at 9:47 p.m.

Adopted: December 16, 2008

Respectfully submitted by,

Denyse L. Todd, Secretary
Zoning Board of Adjustment