

**MINUTES  
Of the Township of West Milford  
ZONING BOARD OF ADJUSTMENT  
October 27, 2020  
Regular Meeting via Zoom**

(Due to COVID-19 social distancing requirements this virtual meeting was held on Zoom.) Robert Brady, Board Chairman, opened the Zoom Meeting of the Zoning Board of Adjustment at 7:33 p.m. The Board Secretary read the Legal Notice. The Pledge of Allegiance was recited.

**Roll Call**

**Present:** Daniel Jurkovic, Linda Connolly, Frank Curcio, Arthur McQuaid, Michael Gerst, and Robert Brady

**Also present:** Deidre Ellis, Board Secretary, Stephen Glatt, Board Attorney, Ken Ochab, Board Planner and Patrick McClellan, Board Engineer

**Absent:** Russell Curving, Jo Ann Blom and Steven Castronova

The Chairman greeted the Board, the applicants and any members of the public. Mr. Brady explained the Zoning Board and Open Public Meetings Act. The meetings are advertised in the Herald News. The Board operates in accordance with the Open Meeting Act of the State of New Jersey, which means discussions and decisions are made in public. Under normal circumstances the Board follows a printed agenda. There are no new applications after 10:30 pm and no new testimony after 11:00 pm, after the applicant speaks then anyone can speak for or against that application. If it is needed there will be a break at approximately 9:00 pm. The appeals of this Board go directly to the Superior Court of the State of New Jersey.

**MEMORIALIZATIONS**

**PHILIP HAMLING & CRYSTAL PRAIS**

**RESOLUTION 15-2020**

**BULK VARIANCE ZBo6-20-07**

Block 4012; Lot 5

9 Mountain Ave.; LR Zone

**Decided:** Approval of bulk variances for front and rear yard setbacks, lot coverage and building height for a first and second floor addition.

**Approved:** September 22, 2020

**Eligible to vote:** Daniel Jurkovic, Frank Curcio, Arthur McQuaid, Michael Gerst, and Robert Brady

**A motion was made by Michael Gerst to memorialize Resolution 15-2020. Second by Arthur McQuaid.**

**Roll call vote:**

**Yes:** Daniel Jurkovic, Frank Curcio, Arthur McQuaid, Michael Gerst and Robert Brady

**No:** None

**Abstain:** None

The Board Attorney indicated that applicant George English had insufficient notice for the meeting and his application ZBo6-19-10 would need to be carried to the next meeting on November 24, 2020. The Board Attorney indicated that the applicant had also had an insufficient notice prior to the last meeting. Molly English agreed to sign a 60 day extension form. The Board Attorney indicated that since the application had not begun there was no need to for a motion to carry the application. Any person interested in the matter should plan on attending the next meeting.

**CARRIED APPLICATIONS**

**JOANNE & RAY WARD  
BULK VARIANCE ZBo8-19-16**

**Complete: 10/31/2019  
Deadline: 11/24/2020**



Block 4002: Lot 7  
234 Long Pond Rd.; LR Zone

Bulk Variance approval requested for the prior construction of a garage and deck with roof encroaching on property that is not owned by the applicant, with a rear yard setback requirement of 60 ft, and 1 ft is proposed, a side yard setback where 30 ft is required and 2.1 ft is proposed, and an attached garage where 30 ft is required and 1.9 ft is proposed.

The Board Attorney indicated that Daniel Jurkovic had spoken with him and that based on their conversation, Daniel Jurkovic was going to recuse himself, which he did. The point was made that all that was heard by the Board to this point was jurisdictional in nature and that all members of the Board (minus Daniel Jurkovic) were currently eligible to vote. Mr. Barbarula, Attorney for an opposing party, indicated that though the notice was not all encompassing, it meets the minimum standards and there is no objection. The Board Attorney indicated that everything in the latest notice that was necessary was mentioned in the notice, and he had discussed that with the Board Planner, and the Board now had jurisdiction and there will be a five member Board, and a majority would be necessary for the application to be successful.

Mr. Moshman indicated that Mr. Brian Murphy was not currently in attendance. The decision was made to start with Mr. Christman. Mr. Ryan Christman was sworn in, 41 Board Road, Hewitt, NJ 07421. Mr. Christman indicated he was the President of the Awosting Board and had been a member for about 2.5 years, and was also the Beach Director, and was very familiar with the Ward's situation. Mr. Christman confirmed that an easement had been granted by the Awosting Association for the Ward's deck. Mr. Barbarula asked Mr. Christman if the Ward's had asked for permission from the Association prior to constructing the deck on Awosting's property. Mr. Christman indicated not while he was on the Board. Mr. Barbarula indicated that the Wards had actually constructed the structure without permission and Mr. Christman indicated that the Awosting Board does not oversee construction in the community. Mr. Barbarula questioned if the Awosting Board oversees construction on their properties. Mr. Christman indicated that they did on things that the Association builds. Mr. Barbarula questioned if they oversee anything else that is built on Awosting property. Mr. Christman indicated that as far as an easement would go they did. Mr. Barbarula questioned if the Board has jurisdiction over whether someone can build something on their property. Mr. Christman indicated that anything like that would typically require an easement as per Township law. Mr. Christman indicated that the easement had been granted to the Ward's from the Association after the structure was constructed without prior approval, and that there was a pretty longstanding record of the Association providing easements to pre-existing structures, as well as allowing electric lines to be run to docks, as it is a shared waterfront. Mr. Barbarula posed the question if it was a longstanding practice to allow people to build whatever they want on Awosting property and then get permission. Mr. Christman indicated that he could only speak from his time on the Board and there had been several things come up. Mr. Barbarula questioned if there had been anyone else building on Awosting property and then asking the Board for permission after and Mr. Christman indicated an easement was granted to someone who had run electric lines. Mr. Barbarula questioned if that were the only case during Mr. Christman's time on the Awosting Board. Mr. Christman indicated that the electric line required some digging and was significant and that there had been numerous things built on Awosting property without prior approval.

When questioned by Mr. Moshman, Mr. Christman indicated that during the ten years that he has lived in the Awosting community the Ward's deck has been there and besides the easement the Wards did not come to the Awosting Association with any requests while Mr. Christman was on the Board.

Mr. Christman indicated that he was testifying in the capacity of President of the Awosting Board to the Board Attorney and indicated the no one patrols the area, but things are presented to the Awosting Board as they become issues. Mr. Christman indicated that when something comes up and is presented to the Board they review it and vote on it, to decide whether to provide an easement. The entire Board voted to approve the easement because they did not feel the structure provided significant encroachment, and had been there for so long and the Wards have been upstanding members of the community for so long, more than 25 years.

Mr. Christman indicated that when an issue comes before the Board, all meetings are open meetings, but the only people that see the agenda are the 10 Board Members. All Board Members have the opportunity to inspect the easement, plans and stand on the Ward's property and look at it. Mr. Christman indicated that he is familiar with the Ward's property and deck and the newer portion of the deck covered what used to be a gravel and paver patio area and other than the roof component the footprint of the area had not changed.



The Board Attorney indicated that Zoning reasons will eventually be raised regarding whether or not the structure was in any way detrimental for any reason. Mr. Barbarula indicated that the witness could not speak for anyone else and that issue is a Planning issue and unless the witness is a Planning expert, it is beyond his scope. The Board Attorney indicated that Mr. Christman did not need to be a Planner to give his opinion. Mr. Barbarula indicated that due to the meeting being clandestine, his client had no idea what was being presented to the Board at the meeting regarding the Wards. The Board Attorney indicated that Mr. Christman could give his opinion and the Board could take into consideration his position and the procedure that the Awosting Board takes with easements or granting permission is another issue. The Board Attorney questioned Mr. Christman that if the application was granted by the Board of Adjustment, would there be any negative impact on not necessarily Mr. Barbarula's client but the Awosting community. Mr. Christman indicated he did not believe there would be any negative impact to the Awosting community, and that neighbor (Mr. Barbarula's client) was not a member of the Awosting Association and as such would not have been included on any of the prior communication about the meeting and that the construction was a face lift and looked much better than what was previously there. There would be no negative impact to the community or the waterfront property.

Mr. Brian Murphy was still not in attendance. Mr. Moshman indicated that he would like to proceed with the Wards at this time. Mr. Raymond Ward and Mrs. Joanne Ward 234 Long Pond Road were sworn in. The Wards indicated that they had rented the home in 1991 and purchased the home in 1992, owning the home for 28 years. The Wards indicated that when they first moved in there was a deck in the back yard, though not the same deck that is there now. The Wards indicated that they had verbal permission from the Awosting Board to enlarge the deck. Permission was granted and the deck was enlarged around 1995, approximately 25 years ago. The Board Attorney indicated that photos would be helpful.

Mr. Moshman shared a screen and went into a power point presentation. The Board Attorney indicated that the Exhibits should be marked A1 and then go in order. #1 was a photo was the house before the addition was put on showing a set of stairs and a deck on top of the garage and attached to the house, in 1998. The same garage is there today. Photo #2, showed a photo of the back side of the house and was the existing deck in 1991. One side of the deck did not go out that far and then on the other side it was about 16' Mr. Ward indicated. #3 showed kids with tie-dye shirts, early 2000's with a structure in the back ground. It showed the garage and lattice fence with bamboo behind the lattice fence. The patio is in front of the lattice fence and garage. #4 shows the lattice fence with bamboo cut back and the property line was about 2 feet or so from the property line on the Ward's property. The new deck is over the patio area, and no closer to the property line. The blue stone on top had been removed. Photo #5, had been taken by a drone and showed the house with the deck that they had gotten permission for 25 days ago, the deck is partly on Awosting property and the green lawn shown in the photo is not the Ward's property as a back yard but is part of Awosting Parkway. The trees on the left are arborvitaes that the Wards had planted after ripping out weeds. The aforementioned patio was also shown. #6 photo showed an area next to the neighbor's garage showing the approximate property line, down through the rotting stumps. The neighbor does not live there and the house is vacant. The structure shown is the garage. Photo #8 shows the railing that goes out no further than the garage. #9 shows the Ward's new deck and the neighbor's house in the background. #10 is a photo from Awosting Parkway and shows the neighbor's deck and the Ward's house in the background behind the trees. #11 is a photo of the neighbor's deck showing the bushes that are in front of the Ward's deck. The white wall is the side of the garage.

At this time Mr. Barbarula interjected and indicated that there was no foundation supplied for the photos and he objected, and indicated each photo should be identified in accordance with the rules of the Board. Mr. Moshman indicated when asked by the Board Attorney that the Ward's could identify who took the photos and when. The photos were reidentified. #1 was taken by Mr. Ward in 1998; #2 was taken by Mr. Ward in the early 1990's. Mrs. Ward took #3 in early 2000. #4 was taken by Mr. Ward in early 2000's. #5 was taken by Mr. Ward 8-10 years ago and done with a drone about 2010. Photos #6, #7, #8, #9, #10, #11 were taken by Mr. Ward just a few weeks ago.

Mr. Moshman referred to photo #12, and Mr. Ward identified a box as his house. Mrs. Ward identified the source of photo #13 as google maps. The Board Attorney referred back to #12 asking the source. #12 is a photo Mr. Moshman indicated that he took himself from Zillow. Mr. Barbarula objected indicating that if Mr. Moshman was submitting materials he prepared he was now acting as a witness. Mrs. Ward indicated that photo #13 showed other houses in reference to their own, and other structures up close to property lines, taken by Mrs. Ward about a month ago. Chairman Brady indicated that photos #13 and #14 in his packet had a date



stamp of August 18, 2020 (That was the stamp when the Board Secretary received them in the Planning Department.)

Mr. Barbarula indicated that in an effort to keep the testimony moving along he would like to make a standing objection for each and every time any photo was submitted from an outside source and not certified he objected. Anytime a Zillow or Google Maps submission was made or anything not in accordance with the Municipal Land Use or the Board of Adjustment rules. The Board Attorney indicated that times have changed and most people are aware of Google Maps etc. and that if Mr. Barbarula thought there was an error he could object and the Board would give it whatever weight it will. Many experts have been allowed to use Google Maps in their presentations. The Board will give it whatever probative value it deems appropriate.

Mr. Moshman continued with #14 that the Wards got from Google Maps and shows the proximity of the property lines. It shows 234 Long Pond, 228 Long Pond and 226 Long Pond. Mrs. Ward wrote the numbers on the boxes to show the how close the houses are to their property lines, and comparable to the Ward's property. #15, #16 and #17 were taken by Mr. Ward about a month or more ago, that are pictures of 25 and 29 from the prior overview, showing houses very close together, and on the property lines. #17 shows 226 Long Pond. #18 shows 228.

Testimony from the Wards was ended for this meeting, they will be testifying more once Mr. Murphy does his presentation. John Barbarula indicated that he wanted to cross examine the Wards tonight and also reserve the right to cross examine later. The Board Attorney indicated that a little more foundation would be necessary from the Wards regarding the history of the property, and how we got to this point. Mr. Moshman indicated that he would prefer to be able to show the deck and structures that were prepared on plans by Mr. Brian Murphy for this portion of the testimony. There was discussion about how best to proceed.

**A motion to take a brief break was made by Michael Gerst and second by Arthur McQuaid. All were in favor and a brief break was taken.**

Mr. Moshman indicated that his clients have more to testify but a lot of it will relate to what Mr. Murphy will present, and could not explain his absence. Mr. Barbarula indicated that Mr. Moshman had a right to present his case as he sees fit and having a witness not show up is an unexpected situation, but he requested to be able to cross examine the Wards about the exhibits they submitted. The Board Attorney indicated that the Mr. Barbarula could cross examine but it would be too bad to cross on something that may be clarified later on anyway. Mr. Moshman had no issue with Mr. Barbarula questioning his clients.

Mr. Barbarula indicated his client's names are Mr. and Mrs. Grischuk. Photos #13 & #14 were brought back up. Mrs. Ward confirmed that it was her testimony that the properties she marked were similar to her property. When questioned Mrs. Ward indicated that she had not had surveys done on the properties in question and that she did not know if the properties were within two feet of the adjoining structures of the other neighbors depicted. Mr. Barbarula indicated that Mrs. Ward did not have any measurements on either #13 or #14, and there was no assessment from the surveys, there were no dimensions for the properties, other than her own feeling there was no other empirical evidence to show that there other properties have the type of encroachment that the Wards and the Grischuks have. Mr. and Mrs. Ward indicated that was correct.

Mr. Barbarula indicated that there was no objection to the matter being carried. Mr. Moshman indicated he would like an adjournment at this time. The Board Chairman indicated that if other problem arose before the next meeting Mr. Moshman needed to let the Board know ahead of time.

The Wards agreed to carry the application to the next meeting. No deadline extension was needed as one was signed last time.

**A motion was made by Arthur McQuaid to carry application ZBo8-19-16 to the November 24, 2020 meeting. Second by Linda Connolly.**

**Roll call vote:**

<b>Yes:</b>	Linda Connolly, Frank Curcio, Arthur McQuaid, Michael Gerst, and Robert Brady
<b>No:</b>	None
<b>Abstain:</b>	None

The Board Attorney indicated that anyone interested in the matter should attend the next meeting on November 24, 2020 and there would be no new notice necessary.

**A motion to approve invoices for the Board Attorney, by Michael Gerst. Second by Frank Curcio.**

**Roll call vote:**

<b>Yes:</b>	Linda Connolly, Frank Curcio, Arthur McQuaid, Michael Gerst, and Robert Brady
<b>No:</b>	None
<b>Abstain:</b>	None

**A motion to approve invoices for the Board Planner by Michael Gerst. Second by Robert Brady.**

**Roll call vote:**

<b>Yes:</b>	Linda Connolly, Frank Curcio, Arthur McQuaid, Michael Gerst, and Robert Brady
<b>No:</b>	None
<b>Abstain:</b>	None

**A motion to approve invoices for the Board Engineer by Michael Gerst. Second by Linda Connolly.**

**Roll call vote:**

<b>Yes:</b>	Linda Connolly, Frank Curcio, Arthur McQuaid, Michael Gerst, and Robert Brady
<b>No:</b>	None
<b>Abstain:</b>	None

**A motion was made to approve the September 22, 2020 Regular Meeting Minutes by Michael Gerst. Second by Arthur McQuaid.**

**Roll call vote:**

<b>Yes:</b>	Frank Curcio, Arthur McQuaid, Michael Gerst, and Robert Brady
<b>No:</b>	None
<b>Abstain:</b>	None

**Motion for adjournment of the October 27, 2020 meeting by Michael Gerst. Second by Arthur McQuaid.**

All in favor. None opposed.

**ADJOURNMENT at 9:29 PM**

**Next regular meeting November 24, 2020 at 7:30 p.m.**

Respectfully submitted by,



Deidre Ellis, Secretary  
Zoning Board of Adjustment