

**MINUTES**  
**Of the Township of West Milford**  
**ZONING BOARD OF ADJUSTMENT**  
**October 22, 2019**  
**Regular Meeting**

Robert Brady, Board Chairman, opened the Regular Meeting of the Zoning Board of Adjustment at 7:47 p.m. The Board Secretary read the Legal Notice. The Pledge of Allegiance was recited.

**Roll Call**

**Present:** Daniel Jurkovic, Matthew Conlon (arrived late), Frank Curcio, Arthur McQuaid, Michael Gerst, JoAnn Blom, Robert Brady

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

**Absent:** Russell Curving and Steven Castronova

The Chairman greeted the Board and 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.

(The Chairman invited new Board Member JoAnn Blom to join the dais.)

**MEMORIALIZATIONS**

**GREENWOOD LAKE SERVICES  
RESOLUTION 14-2019**

**APPEAL ZB 01-19-01**  
Block 3107; Lot 1  
322 Lakeside Road; LR Zone

**Decided:** Reversal of the Zoning Official's decision to not approve a zoning permit.  
**Approved:** August 27, 2019  
**Eligible to vote:** Daniel Jurkovic, Frank Curcio, Arthur McQuaid, Steven Castronova and Robert Brady and Russell Curving

**A motion by Robert Brady to memorialize application ZB01-19-01. Second by Daniel Jurkovic.**

**Roll call vote:**

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

**No:** None

**Abstain:** None

**CHARLES SCHNEIDER  
RESOLUTION 15-2019**

**BULK VARIANCE ZBo4-19-08**

Block 3007; Lot 10  
1 Kushaqua Trail North; LR Zone

**Decided:** Approval of a bulk variance for a 6 foot high front yard fence.  
**Approved:** September 24, 2019  
**Eligible to vote:** Daniel Jurkovic, Frank Curcio, Michael Gerst, Matthew Conlon and Robert Brady.

**A motion by Michael Gerst to memorialize application ZBo4-19-08. Second by Daniel Jurkovic.**

**Roll call vote:**

**Yes:** Daniel Jurkovic, Frank Curcio, Michael Gerst, Robert Brady  
**No:** None  
**Abstain:** Arthur McQuaid, JoAnn Blom

**PROCOPIOS TSAKOTELIS  
RESOLUTION 16-2019**

**BULK VARIANCE ZBo7-19-14**

Block 3402; Lot 2  
66 Reidy Place; R-1 Zone

**Decided:** Approval of a bulk variance for rear yard setback where 50 feet is required 54.8' is existing and 45.5' is proposed, and lot coverage where 10% is required, 10.14% is existing and 13.57% is proposed for a kitchen expansion.

**Approved:** September 24, 2019  
**Eligible to vote:** Daniel Jurkovic, Frank Curcio, Michael Gerst, Matthew Conlon and Robert Brady

**A motion by Michael Gerst to memorialize application ZBo7-19-14. Second by Daniel Jurkovic.**

**Roll call vote:**

**Yes:** Daniel Jurkovic, Frank Curcio, Michael Gerst, and Robert Brady  
**No:** None  
**Abstain:** Arthur McQuaid, JoAnn Blom

**CARRIED APPLICATIONS**

**BATTINELLI ENTERPRISES  
USE & BULK VARIANCE & PREL. &  
FINAL SITE PLAN ZBo8-18-10**  
Block 3907; Lot 1.01, 1.02 & 2  
1611 Greenwood Lake Tpke; LMI Zone

**Complete: 9/27/2018**  
**Deadline: 11/28/2019**

Preliminary and final site plan and use and bulk variance approval requested. D2 variance required for Lot 2 to expand the garden center onto Lot 2. Lot 2 is proposed to be used only for accessory storage in connection with the garden center. Bulk variance requested for existing non-conformities, total area, Lot width and depth, front, rear and side yard setback, and street, side, rear, residential line buffers.

Attachment A – List of Variances

Use Variance Pursuant to N.J.S.A. 40:55D-70(d)(2)

1. (d)(2) variance required for Lot 2 to expand the garden center onto Lot 2. Lot 2 is proposed to be used only for accessory storage in connection with the garden center.

Bulk Variances Pursuant to N.J.S.A. 40:55D-70(c) (all existing non-conformities)

1. Total Area: Required – 3 acres; Existing – 1.39 acres; Proposed – 1.39 acres.
2. Lot Width: Required – 300 feet; Existing – 231 feet; Proposed – 231 feet.
3. Lot Depth: Required – 300 feet; Existing – 120 feet; Proposed – 120 feet.
4. Front Yard Setback: Required – 125 feet; Existing – 14.4 feet; Proposed – 14.4 feet.
5. Rear Yard Setback: Required – 75 feet; Existing – 63.6 feet; Proposed – 63.6 feet.
6. Accessory Building Side Yard Setback: Required – 50 feet; Existing – 34.7 feet; Proposed – 34.7 feet.
7. Buffer to Street Line: Required – 50 feet; Existing – 0 feet; Proposed – 0 feet.
8. Buffer to Side Line: Required – 40 feet; Existing – 0 feet; Proposed – 0 feet.
9. Buffer to Rear Line: Required – 50 feet; Existing – 0 feet; Proposed – 0 feet.
10. Buffer to Residential Line: Required – 75 feet; Existing – 0 feet; Proposed – 0 feet.

Robert Moshman Esq., Counsel for Battinelli Enterprises indicated that there had been no reports submitted yet by the Board Planner and Board Engineer and the applicant was in agreement with carrying the application to the November 26, 2019 meeting. The Board Attorney indicated that he was appreciative of the time extension, as Mr. Ochab has recently had surgery and Mr. McClellan's report was not complete yet, and that it would be the first item on the November 26, 2019 agenda.

**A motion by Michael Gerst to carry application ZB08-18-10. Second by Arthur McQuaid.**

**Roll call vote:**

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

**No:** None

**Abstain:** None

The Board Attorney indicated that anyone interested in the Battinelli Enterprises matter should come to the next meeting as the application will be heard at the November 26, 2019 meeting and there would be no need for further notice on behalf of the applicant either by mail or public notice.

Chairman Brady asked the applicant for a 30 day extension for the application, and Mr. Moshman agreed to extend the deadline. Mr. Battinelli signed the agreement. (New deadline December 28, 2019.)

**MICHAEL DARMSTATTER (Amended)**  
**Bulk Variance ZB 06-18-04**  
Block 6403; Lot 1.01  
151 Lincoln Avenue; R-1 Zone

**Complete: 2/15/2019**  
**Deadline: 11/28/2019**

Originally approved and variance granted by the Board last year for a proposed accessory building 12 feet by 30 feet, and was located 11 feet from the side property line to stable a horse. The revised application proposes an expansion of the accessory horse stable to 12 feet by 36 feet, maintaining the 11 foot side yard setback and the 33.7 foot separation to the existing residential structure. The expansion requires the approval of these two variances. The purpose of the expansion is to allow two horses to be kept on the property. The applicant requested to carry the application to the November 26, 2019 meeting at the August 27, 2019 meeting.

## **NEW APPLICATIONS**

**UNION VALLEY ASSOCIATES, LLC**  
**USE VARIANCE ZB03-19-04**  
Block 6902; Lot 23  
1793 Union Valley Road; R-4 Zone

**Complete: 6/4/2019**  
**Deadline: 11/1/2019**

Use variance requested for an expansion of a pre-existing non-conforming use, for a three car garage with second floor storage. The property itself is both in the CC, Community Commercial Zone and R-4 Zone, with the proposed building being in the R-4 Zone, with other accessory buildings on the property. The proposed accessory structure is to be located in front of the primary structure.

Darryl Siss Esq. with the firm of Teshon, Riccobene & Siss, P.A., 327 Godwin Avenue, Midland Park, New Jersey, representing the applicant indicated that he would prefer to have a 7 member Board, but due to having been carried for several months, would like to proceed. The Board Attorney indicated that there was a Board Member on their way that should be there shortly and explained that under the Municipal Land Use Law, if one is applying to the Board for a USE variance, one would need the approval of 5 Board Members, with a BULK variance you would only need the majority vote. The suggestion was made to wait for the other Board Member to arrive, and to proceed with the Bulk Variance application of Edith Sauter. All applicants were in agreement, to wait for 7 Board Members and to go out of order. (Mr. Rutz and Mr. Bardi)

**EDITH SAUTER**  
**BULK VARIANCE ZB07-19-15**  
Block 4301; Lot 40  
27 Forest Lake Drive; LR Zone

**Complete: 8/16/2019**  
**Deadline: 12/14/2019**

Bulk variance requested for side yard setbacks where 30 feet is required, 22.5'/8.0' is existing, 10.3'/10.0' is proposed. Rear yard setback where 60 feet is required, 46.8" is existing and 37.1' is proposed, and primary building coverage where 10% is required, 10.9% is existing and 18.9% is proposed, and accessory building coverage where 3% is required, 0% is existing and 3.7% is proposed for an addition to an existing dwelling.

Francis J. Battersby appearing for the applicant/owner, Mrs. Sauter, indicated that the lot is existing as a non-conforming lot under current zoning and the applicant is seeking to replace the existing two bedroom home with a new two bedroom home and a detached garage. Due to the narrowness and size of the lot several variances are required, side yard variance is required for one side yard of 10.3 feet and a second of 10 feet, existing side yards are not currently conforming. A rear yard setback of 37.1 feet is requested, and current rear yard setback is not conforming. Primary building coverage of 18.9 % is requested, current building coverage is not conforming. The applicant is requesting to allow for a detached garage of 294 sq ft. The proposed dwelling is conforming to the neighborhood.

Tyler VanderValk, employed by Houser Engineering, 1141 Greenwood Lake Tpke, Ringwood NJ. was sworn in on behalf of the applicant. Mr. Vandervalk indicated that there was a single family home on the property and that it was an 8000 sq ft lot, 44 feet wide at the front and it widens toward the lake side to 62 feet and it is 153 feet deep on one side and 166 feet on the other. It is an undersized lot according to zoning. Undersized in both in area where 20,000 is required and 8000 sq ft is existing, 120 feet width is required and 48.6 feet is existing, and depth 150 feet is required and that is conforming at 156.7. There is an existing two bedroom home on the property, walkways, deck and patio, and the proposal is to replace the existing home with a new two bedroom home, a bedroom on the main floor and a loft. Currently the new septic system was approved and is under construction in the front yard. The front yard setback is 40 feet and 69 feet is provided, for the side yard the requirement is 30 feet on each side and they are providing 10.3 to the South and 10 feet on the North side. The current home is set at 8.5 feet on

the Northern side, so that issue will be improved, and the rear yard setback of 60 feet is required where 37.1 feet is proposed measured to the rear yard. Mr. VanderValk indicated that 10 % building coverage is permitted in the zone and with an 8000 sq ft lot, would allow for an 800 sq ft foot print, currently they are proposing 871 sq ft., a non-conforming 10.9 % and the proposed building coverage is 18.9%. The building height will be conforming, the home being mostly a single floor dwelling with an open loft. A height of 27.6 feet where 35 feet is permitted. The garage requires a variance where 3% coverage for the lot 240 feet is permitted, proposing 3.7 % with 294 sq ft proposed. The size being practical to fit a vehicle.

There is a small ridgeline toward the Western third on the property as far a grading goes. Some of the run off goes toward the lake and there is a drainage easement along the Northerly property line, which has multiple catch basins in it. The proposed grading is no change to the rear of the property, as part of the septic improvement there will be some mounding in the front with a retaining wall. And the first floor of the house itself is lifted even though around it the grades are only being raised in the front so there will be an exposed foundation around two sides and the rear.

Mr. VanderValk, referenced the unrevised plan dated July 16, 2019, the tax map showing conformance as far as size goes. To the left was lot 41, with a side yard of 6.8 feet, and a detached garage that is larger than the one the applicant is proposing. The applicant is proposing 4.9 feet off of right of way line Lot 41 is 4.3 ft, and side yard setback for the garage is 4.6 and the applicant is providing 11 ft. Regarding building coverage, the applicant requires a variance for 18.9 % Lot 41 is approximately 18.1%, with accessory coverage at 8.4 %, where the applicant is requesting 3.7%. Lot 42 has a side yard setback of +/- 6 feet, where the applicant is seeking 10 feet. They do not have a detached garage on that property and that coverage is non-conforming at 14.8 %. To the right is Lot 39 with a side yard setback of 10 feet and a rear yard of 45 feet and a detached garage near the street and 18 feet from the right away line, and 15 feet from the nearest side line. The coverage is also non-conforming coverage with 13.7% and accessory cover of 5.3%, where the applicant is requesting 3.7%. Lot 38 has a detached garage, it is common for the neighborhood. The side yard setback is approximately 6.5 feet, where the applicant is providing 10 feet and a garage about 8 feet off the street line and 8 feet off the property line. The building coverage is also non-conforming at approximately 12.5% and a non-conforming accessory coverage for the garage at almost 5%.

Mr. Vandervalk indicated that this area was originally under the old R-10 Zone. There was a 10,000 sq ft area not a 20,000 sq ft area at the time, so the setbacks were in line with the area at the time. Regarding hardships Mr. VanderValk indicated that the lot width is less than half of what is required by the zone, an area less than half of what is required by the zone. It could use an update to bring it into compliance with the neighborhood.

The Board Attorney submitted into evidence B-1, which was one page containing 4 photographs taken by the Board Planner 9/24/2019. The current home is shown in the pictures and shows the size difference between the house on the property in question and the surrounding homes.

The Board Attorney indicated that the house there would be demolished and the new one built in place of the old. Mr. Battersby asked if approval of the application would have any detriment to the neighborhood. Mr. VanderValk indicated no. When asked if it would aesthetically improve the neighborhood, Mr. VanderValk indicated that he felt it would, as well as add value, and that it would be no detriment to the zoning aspect of the neighborhood.

The Board Engineer questioned if any NJDEP permits would be necessary to build the house (almost inaudible) to which Mr. VanderValk indicated that it qualifies for a permit by rule under FHA regulations, given that the structure will be out of the flood plain, and the entire area is where there is no vegetation removal necessary.

Mr. Jurkovic questioned if anyone had had a chance to review interoffice memorandums from the engineering and health departments dating August 19, 2019 and September 3, 2019. Mr. Battersby indicated that Mr. VanderValk can testify that those issues had been resolved. Mr. VanderValk indicated that a portion of the septic system and the retaining wall supporting it was within the drainage easement. That has been revised and the design has been approved by the Health Department. That brings those items out of the easement. The applicant has not submitted to the Engineering Department. The Health Department has approved the change and the septic installation is in the process. The site plan has not been updated, just the septic plan. The rest is going to remain the same except the septic disposal field was made a little smaller, and pulled the retaining wall in from the drainage easement. As part of the conditions revised plans shall be submitted.

The Board Chairman opened the application to the public. No one wanted to speak.

**A motion by Michael Gerst to close the public portion of the application. Second by Arthur McQuaid.**

**Roll call vote:**

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

**No:** None

**Abstain:** None

**A motion by Daniel Jurkovic to approve Bulk Variance ZB07-19-15**

**Block 4301; Lot 40, 27 Forest Lake Drive; LR Zone** for Bulk variance requested for side yard setbacks where 30 feet is required, 22.5'/8.0' is existing, 10.3'/10.0' is proposed. Rear yard setback where 60 feet is required, 46.8" is existing and 37.1' is proposed, and primary building coverage where 10% is required, 10.9% is existing and 18.9% proposed, and accessory building coverage where 3% is required, 0% is existing and 3.7% is proposed for an addition to an existing dwelling. The photos show what is consistent with the community. It would benefit the area to have the house come into conformity with the neighborhood, contingent on compliance with the memos from the Engineering and Health Departments.

**Second by Arthur McQuaid.**

**Roll call vote:**

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

**No:** None

**Abstain:** None

**A motion by Michael Gerst to take an 8-10 minute break. Second by Robert Brady. All in favor.**

The meeting resumed at 8:35 PM and Matthew Conlon was present for a 7 member Board.

**(The Board resumed the Union Valley Associates, LLC ZB03-19-04 application)**

Darryl Siss Esq. with the firm of Teshon, Riccobene & Siss, P.A., 327 Godwin Avenue, Midland Park, New Jersey, representing the applicant resumed speaking at the podium representing Union valley Associates application ZB03-19-04. Mr. Siss indicated that the variance being sought was a D-2 variance and not a strict use variance, and it was an expansion of a non-conforming use. It is an unusual property with three single family houses on it, currently there is no garage on the property and the applicant proposes to put a garage that all three houses can utilize. Mr. Siss indicated that the garage would hold three cars, one from each house and have storage space on the second floor as well. Mr. McKittrick indicated that he had done a plan and there were drawings of the proposed garage. The proposed garage and floor plan with side elevation was marked A-1 and the elevation drawing of the structure was marked A-2. The plan was marked A-3 a one page drawing by McKittrick Engineering dated April 10, 2019.

Douglas McKittrick, offices at 2024 Macopin Road and Carmeron Visbeen 75 Story Place, North Haledon, (one of the members of the LLC that owns the property) were sworn in. Mr. Visbeen indicated that the property was used as a rental property. The purpose of the garage is for storage of the tenants' property and there is no intended commercial use for the garage. The second floor is intended for storage purposes only, not living or office space. There are no utilities intended for the second floor other than electricity. Mr. Visbeen explained three photos of the site that he had taken. The first photo was taken from the street at the mailbox showing the front view of the property, the second photo was taken at the center of the property line, also a front view, shows an existing house on the property, the one in the center the third photo from the center of the property line also from the street. From the perspective of photo one the garage would be located up the driveway next to the red pick up on the right. Mr. Visbeen continued to describe the location of the garage, indicating that the garage would not be visible due to the foliage and how far it is set back. The houses existing on the property have no basement. An aerial photo from the Board Planner was put into evidence marked B-1 which showed part of the property in the CC zone and the R-4 Zone. All of the buildings are located in the CC zone. The red house in the picture is building number 3. Daniel Jurkovic clarified the space would be used for tenant storage. Mr. Jurkovic asked the applicant if they realized that if the application were to be approved there would be conditions placed on the resolution stating

that there would be no plumbing over the garage, there would be no rental area made there. Mr. Visbeen indicated that he understood.

Douglas McKittrick gave his credentials for the record. He is a New Jersey licensed engineer since 1982, professional engineer 28248, a licensed planner since 1983, NJ Planner 2825, and has appeared before the Board of Adjustment in the past, has been qualified as an expert witness in planning and engineering in front of Passaic, Morris, Bergen and Sussex County superior court, has been qualified as expert in front of the Hackensack Meadowlands Development Commission, Port Authority of New York and New Jersey and have testified as an expert in most of the municipalities in this immediate vicinity. Mr. Siss asked Mr. McKittrick to describe the property. Mr. McKittrick indicated he had done the septic designs on this property about 15 years ago. The property is about 7.1 acres in size and is substantially larger than most applications before the Board. It is split between the CC and R-4. The development is located only in the CC zone and that is also where the garage is to be located. Mr. McKittrick applied the more stringent regulations of the R-4 Zone to this application. Under the CC Zone there would be no variance required other than the D-2 variance. Because it is in a residential area, even though not in a residential zone, the variance was requested because the building is slightly ahead of one of the existing structures. The existing use is three single family homes with two homes being on one septic system, one having its own and all three sharing a common well. These dwellings were all pre-existing non-conforming uses. The property is very narrow at the road, goes back about 1377 feet to the rear of the property line. To the East it is relatively flat and that is the location of the improvements. Bearfort Mountain is located toward the rear and is undeveloped. The applicant proposes to construct a detached garage 24 feet by 36 feet for tenant use and automobile storage. As proposed, the location of the garage would be between building number one and dwelling number two. This location would place part of the garage being in front of the front of dwelling number two. In a residential zone this location would require a C-variance for an accessory structure in the front yard. Its location is an expansion of a pre-existing, non-conforming use and requires a D-2 variance approval.

Mr. McKittrick indicated that the proposed dwelling is located where it is because the rear of the property slopes up very steeply. If the garage were moved to the fore section significant grading would be necessary, and that would result in substantial disturbance of steep slopes, so it is beneficial to have it located where it is and also if it were located into the fore section the driveway would need to be extended and that would result in more impervious coverage. Storage is limited on site and this would result in vehicles being stored inside and that would have a more aesthetically pleasing effect on the surrounding property. It also represents a major capital improvement to the neighborhood. The requirements of a D-2 variance, typically refers to the expansion of a pre-existing non-conforming use, that predate the zoning in effect at the period of time when one has the non-conforming use that is there. Mr. McKittrick indicated if the non-conforming use was provided earlier by a D-1 variance, this application would still need to have a brand new D-1 variance but because it predates the zoning that made this non-conforming, it requires a D-2 variance and the proofs are a bit different. The positive criteria for a D-2 variance is applicable in particular cases and for special reasons. One of the main special reasons for approving a D-2 variance is because it makes the property more acceptable in its particular setting and aesthetically more pleasing. The aesthetic improvement must involve visual compatibility with the use. The garage is not a commercial garage and it will help the aesthetics of what is there by providing the storage to get cars out of the line of sight and provides tenants with storage for belongings that gets them out of site. The structure meets the criteria, it is contemporary with the existing dwells and is ancillary to the existing uses, cleans up the property and improves the tenants' quality of life.

With respect to the negative criteria, this proposal results in no substantial detriment to the public good and has no impact on adjacent property owners including additional traffic, noise light pollution, driveway features or other impacts, it does not impair the intent and purposes of the master plan. Even though this application an expansion of a non-conformity it is consistent with the existing residential use. These zoning districts were created with these uses in place and still have the split zone across them. It is reasonable to imagine that these areas would change somewhat over time and alter the residential footprint in the future.

In summary Mr. McKittrick indicated that he has given reasons for the location of the planned structure being located where it is proposed, reducing impact on steep slopes and impervious surfaces, the positive criteria for the D-2 variance, in how aesthetically it cleans up the property and the negative criteria of how it does not negatively impact surrounding properties or master plan.

Daniel Jurkovic pointed out that it would be a benefit to the Township because it would improve the quality of the rentals in the Town. Mr. McKittrick indicated that the structure is 290 feet off of the road and though visible, has minimal impact.

The Board Engineer indicated that he had no objection to this project not having dry wells on the property. Mr. McKittrick explained that the property contained very porous soil.

The Chairman opened the application to the public and no one spoke.

**A motion by Michael Gerst to close the public portion of the application. Second by Matthew Conlon.**

**Roll call vote:**

**Yes:** Daniel Jurkovic, Matthew Conlon, Frank Curcio, Arthur McQuaid, Michael Gerst, JoAnn Blom and Robert Brady

**No:** None

**Abstain:** None

Mr. Siss indicated that while technically it is an expansion because square footage is being added it is not expanding the intensity of the property but reducing it.

**A motion and amended motion (to include conditions) by Matthew Conlon to approve application ZB03-19-04 for reasons stated and testimony given.** Conditions being no plumbing, only electrical utilities upstairs, and to be utilized only by the tenants for storage with no new tenants upstairs, no commercial uses. **Second by Arthur McQuaid.**

**Roll call vote:**

**Yes:** Daniel Jurkovic, Matthew Conlon, Frank Curcio, Arthur McQuaid, Michael Gerst, JoAnn Blom and Robert Brady

**No:** None

**Abstain:** None

The Board Attorney indicated that efforts would be made to have a resolution ready to be memorialized by the next regular meeting.

**JOSEPH BARDI**  
**USE & BULK VARIANCE ZB01-19-02**  
Block 507; lot 2  
11 Laramie Trail; LR Zone

**Complete: 6/10/2019**  
**Deadline: 1/6/2020**

Use variance approval requested for a garage where there is no primary structure. Bulk variance requested for a front yard setback where 40 feet is required, 15.4 feet is existing and 25 feet is proposed.

Joseph Bardi, 11 Laramie Trail, Upper Greenwood Lake was sworn in and indicated that he was before the Board to request a variance to rebuild his garage which was located across the street from his house on a separate lot. Mr. Douglas McKittrick, offices at 2024 Macopin Road, was sworn in. (*Mr. McKittrick had just previously qualified his credentials in the matter of the Union Valley Associates LLC. Application. Mr. McKittrick is a New Jersey licensed engineer since 1982, professional engineer 28248, a licensed planner since 1983, NJ Planner 2825, he has appeared before the Board of Adjustment in the past, has been qualified as an expert witness in planning and engineering in front of Passaic, Morris, Bergen and Sussex County superior court, has been qualified as expert in front of the Hackensack Meadowlands Development Commission, Port Authority of New York and New Jersey and have testified as an expert in most of the municipalities in this immediate vicinity.*) Mr. McKittrick indicated that this property was in the Mt. Laurel section of Upper Greenwood Lake, located in the Lakeside Residential Zone. The property is 5000 sq ft in area, 50 feet wide 100 feet deep and its present use is a garage and swimming pool with no primary structure, septic or well on the lot. The existing garage is located on the front of the lot and over the Eastern property line by 0.1 feet on the adjacent property and it is 15.4 feet off the front property line. The swimming pool concrete apron is about 10 feet off the front property line and 1 foot off the Western property line. The pool, apron and garage occupy 33.82 % of the lots impervious coverage. The garage and the pool are both pre-existing non-conforming uses. The applicant's property is along the lake side.

Daniel Jurkovic asked if the applicant had any deed restrictions on the property and Mr. Bardi indicated not to his knowledge. Discussion of the lot being deed restricted as a condition of approval. The Board Attorney recommended that there be a new deed filed that cross references these two properties so that anyone looking at one deed or the other will know how they are

linked, as well as there being a condition of approval. Mr. McKittrick indicated that there can never be a house built on the lot because it is restricted by septic and wells surrounding it. There was discussion as to whether Mr. Bardi had ever tried to sell the property to any neighbors. Mr. Bardi indicated that his lot was one of the older lots and the home is located centrally on the lot with no garage which is why he purchased the other lot at the time he purchased the lot where he lives. It is taxed separately. The Board Attorney asked that his deeds are submitted as a condition of approval in order to determine what would need to happen with future deeds.

Mr. McKittrick indicated that both properties were known as 11 Laramie Trail. All the other homes around are single family homes. Mr. Bardi has no garage on the property where his house is located and is using the garage presently on the subject property. Mr. McKittrick indicated that Mr. Bardi proposes to remove the current swimming pool and existing garage and construct a new garage 26 feet by 40 feet, 25 feet off the front property line, 13 feet off of each side line and 35 feet off the rear line. The lot coverage would be reduced from 33.82 % to 20.8 % which is a 38 % reduction of impervious surface. The location is a change (requiring a D-2 approval) in a pre-existing non-conforming use not an expansion of one, actually it is a reduction. The building will be designed to look like a single family dwelling so it is consistent with the neighborhood. The D-2 variance is for an expansion of a pre-existing non-conforming use, that must not have been created by approval of a D-1 variance. The positive criteria includes the promotion of the general welfare, a typically beneficial inherent use. The benefit from a non-inherently beneficial use, derives from the development in the community that is particularly suited for the proposed use. Development which would minimize the non-conformity and make it more compatible with a setting. This proposal would enhance the neighborhood and reduce the impervious coverage, and would bring it into conformance with surrounding uses. Special reasons would include making the property more acceptable and aesthetically pleasing. The negative criteria remains similar in that it must show that the variance must not cause substantial detriment to the public good. It will not impair the zoning plan/ordinances of the Town. With respect to the positive/negative criteria, it would meet the need for homeowner storage. It eliminates two unsightly structures and a safety issue as far as the pool goes, eliminates outside storage of items and results in a capital improvement to the neighborhood. It eliminates eye sores. The setbacks would be improved substantially rather than be over the property line. The master plan is not harmed. Mr. McKittrick indicated this was an approvable application for the Board.

The Board Planner asked if there was a well on site and if plumbing could go to the building and Mr. McKittrick indicated no. There was discussion about the size of the building and the number of cars it could fit, perhaps six cars. The height of the building has not been determined but perhaps 22 to 24 feet to the peak of the roof. The existing lot coverage is 33.82 % the applicant proposes reducing it to 20% to 38% reduction. Two structures reduced to one structure. There was discussion about an accessory building and its allowable size. The Board Attorney indicated that there is a visual impact to be considered as well, a clean lot with nothing on it would have no impact but a building bigger than some houses would have a negative impact on the immediate community. Mr. Bardi indicated 26 feet wide with a double depth, to fit four cars and have room on the sides. Discussion about the size of garages in the neighborhood, conformity of the garage with the surrounding properties, the view from the road. It is an end elevation garage, to provide a normal looking garage view from the road. The neighbor to one side has a three car garage and the neighbor to the other side may have a two or three car garage.

Arthur McQuaid suggested not having the second floor for storage, but putting lifts in, a lift being about \$2500, which would reduce the eventual tax bill, as well. Mr. McKittrick indicated that he and Mr. Bardi were not opposed to carrying the application and perhaps adjustments could be made and new dimensions provided to the Board. Mr. McKittrick indicated that he had a scheduling conflict with the November 26, 2019 meeting date and it was agreed that Mr. Bardi would attend the November meeting with the option to carry the application to the December 17, 2019 regular meeting if necessary and there would be no need to renotice as it would be announced at the November meeting. Mr. Bardi then signed a 30 day extension form.

Chairman Brady suggested the revised plan show landscaping. The Board Planner indicated the current elevation plan needed more detail and those details should be included on the drawings when the applicant returns, in the form of perhaps finding a garage that Mr. Bardi likes the look of and taking a picture and bringing it in with him so the Board/surrounding neighbors have an idea of what the garage is going to look like.

**A motion by Michael Gerst to carry application ZB01-19-02 and to accept the extension. Second by Arthur McQuaid.**

**Roll call vote:**

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

**No:** None

**Abstain:** None (Mr. Conlon has stepped out.)

**A motion by Daniel Jurkovic to take a short break. Second by Michael Gerst.**

**All in favor.** (9:46 pm)

(The meeting resumed at 9:56 pm)

**RONALD RUTZ**

**USE VARIANCE ZB06-19-12**

Block 3301; Lot 3

Fox Island; R-2 Zone

Use variance requested where there is no primary structure and the use is not permitted for a 10' by 9'6" shed built prior to the submission of the application.

**Complete: 8/2/2019**

**Deadline: 11/30/2019**

The Board Attorney swore in the applicant Mr. Rutz, 93 Awosting Road. Mr. Rutz indicated that he enjoys the Island but needs storage for various equipment and also would like to build a cottage someday. The shed allows for inside storage and alleviates outside storage and clearing of the lot for that storage. Mr. Rutz indicated that the shed is not an eyesore and has been on Fox Island for many years. Both lots on either side are empty. Mr. Rutz indicated that in the Township Master Plan, one must provide for zoning standards consistent with the neighborhood, and there are sheds on the Island. Mr. Rutz indicated that the shed would allow him to do research and development for a cottage consistent with the community.

The Board Attorney indicated that the statement made by Mr. Rutz was reflective of a lot of personal reasons for the shed but he needed to provide zoning reasons for allowing the shed to the Board. The Board Attorney explained that what Mr. Rutz was asking for was permission to have an accessory use on the lot where there was no principal use and that he needed to explain why that should be granted by the Board.

Mr. Rutz indicated that the property is on (Fox) Island about 250 feet wide and about 18 acres. Mr. Rutz's property is about a half of an acre empty lot with vacant lots on both sides of his. There are residences on Lot 6 with a house and a summer cottage on it, on Lot 8 there is a house, on Lot 9 they are rebuilding a house that burned down, on Lot 12 there is a house, and the last 4 lots are a bird sanctuary. Lot number 5 just has a shed on it. Lot 9 was given a permit to build a shed while they rebuilt the home but they went ahead and rebuilt the home. The applicant indicated that the property had been purchased early in 2013 and there was debris on the property. Mr. Rutz built the shed under the assumption that if it were under 10 feet by 10 feet it was acceptable. Mr. Rutz found out that he needed a zoning permit this year for the shed and applied for the permit, was denied and was told by the zoning officer that he needed to seek the variance. The Board Attorney explained the meaning of a use variance and indicated that the applicant had no other piece of property that this property is attached to, that might justify allowing him to have an accessory use on this lot. Mr. Rutz's house is just off the lake and through the woods. Mr. Rutz has indicated that by having the shed it might give him the opportunity to plan for a home on the Island in the future. Mr. Rutz indicated that currently he uses the property usually to kayak and picnic 2-3 times a week.

Mr. Conlon asked what else was on the property. Mr. Rutz indicated he has 2 picnic tables and a chiminea, and uses a gas generator for electricity and stores it there. There is no plumbing on the site, but there is a port-a-potty that does not go into the ground and that can be removed if there is a problem. Mr. Rutz indicated that he does not "camp" there or stay overnight there, he lives by himself in a 6 bedroom home. The Board Attorney indicated that it is still not an accessory use and there has to be a principle use, say if he were building his house.

Mr. Rutz indicated that would take years with a septic system on an Island. The Board Attorney asked if he had started the process and Mr. Rutz indicated that he had spoken to a surveyor that believed it could be done but he was waiting to see what happened before the Board before spending a lot of money.

The Board Planner clarified that what the Board was wrestling with was what the activity from a land use and zoning aspect of the property. It is not a residential use because no one is living there full or even part time. It is a recreational use, but is doubtful it is permitted without a primary structure. Campsites are not permitted in residential area and campgrounds require an area of 20 acres according to the zoning ordinances. The Board Planner indicated that the Board is having difficulty trying to categorize this in a way the use is permitted. One cannot just

put up a shed and then come and go, and not even to address the sanitation and health department issues that exist as well. The Board Planner indicated that it is difficult to come to the conclusion that there is a hardship or that you would satisfy the criteria of the use variance application. Perhaps if you want to build a house try to do that but the approach that Mr. Rutz has taken puts the Board in a difficult decision making position from a zoning standpoint.

Daniel Jurkovic indicated that in previous applications that evening evidence was given for a D-1 and D-2 variance positive and negative criteria in order to support the approval of an application. The D-1 State law variance criteria are what is in question and what the Board needs testimony about. Mr. Rutz indicated that it had been allowed in the past on two lots and that it was a hardship to carry things to and from the Island. The Board Attorney indicated that physical proof (variances approved) was necessary to support claims and that Mr. Rutz's hardship was completely personal, not a hardship related to zoning, i.e. the topography, the size of the lot, no available land etc. The Board Attorney clarified that the application is not really a pre-existing non-conforming use it is actually a D-1 variance application. The use is not permitted in the zone. An accessory use is only permitted when there is a principle use. The positive criteria has not been provided.

Discussion about the zoning reasons verses Mr. Rutz's personal reasons. Daniel Jurkovic made the point that once an application is denied it is forever, there is "no coming back to fix it." Mr. Rutz indicated that he would like to carry the application to the next meeting to better prepare.

The Chairman opened the public portion of the application, in accordance with the Open Public Meetings Act of New Jersey.

Mark Wallhouser, Block 3301 Lot 1, the South end of Fox Island one lot away from the applicant was sworn in. Mr. Wallhouser indicated that he preferred not to be at the meeting making a statement but felt he needed to, that he had lived on Fox Island for nearly 50 years, and enjoyed insulated privacy having adjoining lots on either side that were non-conforming, non-buildable lots. Mr. Wallhouser indicated that the application was misleading and incomplete and threatens his property values, is a detriment to his home family and other residents on the Island. Mr. Wallhouser indicated that before Mr. Rutz purchased the property it was just a wooded lot with trash on the Durant property that he actually removed. The structure is not a shed but rather a two story tiny home with fixed lighting and wiring, with an outhouse on the Durant's property. Mr. Wallhouser and Mr. Rutz had spoken about the outhouse back on Memorial Day and Mr. Rutz had indicated that he would take it down but it still stands. The application is not accurate, Mr. Wallhouser cannot let the Board proceed under some illusion. Mr. Wallhouser indicated that he would shuttle anyone out there who would like. Mr. Wallhouser indicated that the structure is paneled and a finished living space, with a ladder to the loft area and storage of kayaks etc happens outside of the shed, there is some wiring as well and fixed outlets. Mr. Wallhouser indicated there is a potential fire danger and he has concerns about that. Mr. Wallhouser indicated that lot 5 was a rebuild on an existing footprint for a shed and there are three others on that lot that were built without permits. Lot 9 there was permission for a shed to be built prior to rebuilding the house when the house had burned down. The Town had been checking an electrical issue and the shed was discovered and the Zoning Officer was notified. Mr. Wallhouser indicated that he has concerns about the future of that lot and of the Island. There is a bird sanctuary and other wooded areas and he fears it will turn into a "shanty town". Mr. Wallhouser apologized for having to contradict the applicant and again offered to take any Board Member out to the Island to see the tiny home. Daniel Jurkovic asked for clarification that the objection by Mr. Wallhouser was not regarding something being built there, say a home, but the nature of what is being proposed. Mr. Wallhouser indicated that his objection was against what had already been built there, calling it a shed for storage but it being a finished two story tiny home being used overnight.

There was discussion about fire pits and fireplaces. Mr. Wallhouser has a fireplace in his home. No fire pit. No fireworks.

Sharon Stopper, a tenant on lot 6 of Fox Island for 13 years was sworn in. Ms. Stopper indicated that she was a friend of Mr. "Ted" Rutz and he does not stay overnight in his shed and that when people need to use the facilities they use hers, maybe he has slept there if he had too much to drink and does not drive home, but he is up early and off to work, but it is not being used as a tiny home. Ms. Stopper owns lot 5 and rents on lot 6, and had received a zoning permit to build an 8 foot by 20 foot structure on an existing foot print, and then a building permit. Arthur McQuaid clarified that the building was pre-existing and had no bathroom facilities. The property was purchased in 2010.

Mr. Wallhouser indicated that the structure Ms. Stopper spoke of was on the property for many years, and had fallen into disrepair and he was unaware of her permit process, but that the

structure in question with this application was two story with a clear loft for sleeping, used occasionally or not.

Mr. Rutz spoke again and indicated that the Town originally thought the outhouse and the shed were on a neighboring property but he let the Town know the shed was on his property, and has an agreement with the neighbor. Mr. Rutz indicated that his neighbor did not get blamed for the heavy but portable out house and the summons he received was for the shed. Mr. Rutz also indicated that the loft area was small and the chiminea was enclosed and elevated.

Gregory Calt, 8 Storms Island Road, of Hewitt was sworn in. Mr. Calt indicated that he was unaware of anyone sleeping there and Mr. Rutz's shed was very difficult to see and that he believes it would be beneficial for him when he builds a home there.

Michael Gerst questioned the height of the shed. There was discussion about the height and the drawing needing to have clarification by the next meeting. Mr. Rutz requested to carry the application to the next meeting and Mr. Jurkovic indicated to the public that they would be allowed to speak again and ask questions if they had any. Mr. Rutz agreed to a 60 day extension and may have a conflict if the application goes to the December meeting.

**A motion by Matthew Conlon to carry application ZBo6-19-12 to the November 26, 2019 regular meeting. Second by Michael Gerst.**

**Roll call vote:**

**Yes:** Daniel Jurkovic, Matthew Conlon, Frank Curcio, Arthur McQuaid,  
Michael Gerst, JoAnn Blom and Robert Brady

**No:** None

**Abstain:** None

The Board Attorney indicated that anyone interested in the Rutz Application matter should come to the next meeting as the application will be heard at the November 26, 2019 meeting and there would be no need for further notice on behalf of the applicant either by mail or public notice.

**A motion to approve all invoices for the Board Professionals by Michael Gerst. Second by Arthur McQuaid.**

**Roll call vote:**

**Yes:** Daniel Jurkovic, Matthew Conlon, Frank Curcio, Arthur McQuaid,  
Michael Gerst, JoAnn Blom and Robert Brady

**No:** None

**Abstain:** None

**A motion was made to approve the meeting dates for 2020 by Matthew Conlon. Second by Michael Gerst**

**Roll call vote:**

**Yes:** Daniel Jurkovic, Matthew Conlon, Frank Curcio, Arthur McQuaid,  
Michael Gerst, JoAnn Blom and Robert Brady

**No:** None

**Abstain:** None

**A motion was made to approve the Special Meeting September 19, 2019 minutes by Matthew Conlon. Second by Michael Gerst.**

**Roll call vote:**

**Yes:** Daniel Jurkovic, Matthew Conlon, Frank Curcio, Arthur McQuaid,  
Michael Gerst, JoAnn Blom and Robert Brady

**No:** None

**Abstain:** None

**A motion was made to approve the September 24, 2019 Regular meeting minutes by Michael Gerst. Second by Matthew Conlon.**

**Roll call vote:**

**Yes:** Daniel Jurkovic, Matthew Conlon, Frank Curcio, Arthur McQuaid, Michael Gerst, JoAnn Blom and Robert Brady

**No:** None

**Abstain:** None

**Motion for adjournment of the October 22, 2019 meeting by Matthew Conlon. Second by Michael Gerst.**

All in favor. None opposed.

**ADJOURNMENT at 11:00 PM**

**Next special meeting November 12, 2019 at 7:00 p.m. at the West Milford High School Auditorium.**

**Next regular meeting November 26, 2019 at 7:30 p.m.**

Respectfully submitted by,

\_\_\_\_\_  
Deidre Ellis, Secretary  
Zoning Board of Adjustment