

**MINUTES**  
**Of the Township of West Milford**  
**ZONING BOARD OF ADJUSTMENT**  
**October 25, 2011**  
**Regular Meeting**

Robert Brady, Board Chairman, opened the Regular Meeting of the Zoning Board of Adjustment at 7:36 p.m. The Board Secretary read the Legal Notice.

**Pledge**

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

The Chairman asked Mr. Curving to take a seat at the dais, Gian Severini is not present for the meeting. Chairman Brady explained to the public about the Board of Adjustment and the publication of the dates in the Herald News Newspaper and posting in the Town Hall. He also explained the Open Public Meetings Act of the State of New Jersey. The Board Attorney was introduced. The meeting will follow a printed agenda that is on the podium in front of the dais and hanging on the bulletin board. Any appeals go to the Superior Court of the State of New Jersey. There are no new applications after 10:30 p.m. and no new testimony after 11:00 p.m. If it becomes necessary there will be a break at 9:00 p.m.

**Roll Call**

**Present:** Ada Erik, Steven Castronova, James Olivo, Frank Curcio, Arthur McQuaid, Russell Curving, Vivienne Erk, Robert Brady

**Also Present:** Stephen Glatt, Board Attorney, William H. Drew, Board Planner, Michael Cristaldi, Board Engineer, Denyse Todd, Board Secretary

**Absent:** Gian Severini

**MEMORIALIZATIONS**

**TIM BOLDUC**

**RESOLUTION NO. 22-2011**

**BULK VARIANCE #ZB08-11-12**

Block 9408; Lot 3

48 Alvin Road, R-3 Zone

**Motion by Ada Erik** to memorialize Resolution No. 22-2011

**Second by Steven Castronova**

**Roll Call Vote:**

**Yes:** Ada Erik, Steven Castronova, James Olivo, Frank Curcio, Arthur McQuaid, Robert Brady

**No:** none

It was known ahead of time that the following applicant would be requesting a carry for the November meeting.

**LUPANO, CARLO & ELIZABETH**

**BULK VARIANCE #ZB05-11-08**

Block 4401; Lot 12

837 E. Shore Rd., LR Zone

The Chairman asked for the applicant to come forward to request a carry, Mr. Glatt indicated that he was aware that Mr. Lupano did not have the appropriate verbiage in his notice, the secretary contacted the Attorney and it was decided he would need to re-notice for the application. The applicant would need to appear to request the carry so the Board could keep track of the completeness date.

The applicant requested the application be carried to the November 22, 2011 meeting.

**Motion by Ada Erik** to carry the application to November 22, 2011.

**Second by Steven Castronova**

**All in favor to carry the application**

Mr. Glatt asked the applicant if he was aware what needed to be in the legal noticed and the applicant indicated that he did.

**RONALD HEDDY**

**BULK VAR. ZB07-10-09**

Bl. 7515; Lot 2

7 Ash Road, LR Zone

The attorney swore in Ronald Heddy of 7 Ash Road, West Milford and Douglas McKittrick office at 2024 Macopin Road, West Milford. The Chairman asked Mr. McKittrick to give the Board his credentials. He has been licensed since 1982 in New Jersey. He has been in West Milford since 1986. He has been qualified for the Zoning Board and Planning Board in West Milford many times. He has been qualified at many Passaic and Sussex County Boards. He has been an expert witness from Passaic County and Bergen County Superior Court, Port Authority. His credentials were accepted and he is qualified for the Board.

Mr. Heddy indicated that he wanted Mr. McKittrick to speak for him on the application. Mr. McKittrick explained to the Board that it was an expansion on an existing dwelling and garage. It is a single family dwelling approximately 26 X 42 feet, 1100 square feet and a small garage which is 12 X 20 feet about 240 square feet. There is a septic system and well on the property. It is in the lakeside residential (LR) zone all properties surrounding as well.

The proposal is to add a 10 X 12 foot addition to the dwelling which will go where the existing deck is also enlarge the garage to 30 X 30 feet. There are variances required to do the expansion, which are principle building coverage, allowable is 10%, it is presently 10.32% which is slightly over. The addition would push it 11.44% and the accessory structure is currently 2.28% and would go to 8.4%, 3% is allowable. There is also a separation distance from accessory structure to principle structure the requirement is 15 feet minimum, currently it is 20.98 feet and would be reduced to 9 feet.

The neighborhood was created by subdivisions, part of the Pinecliff Lake Subdivision. Lots were purchasable in 50-foot lot increments, multiple lots were purchased and that is why the size and shapes of the properties. Mr. Heddy's property is a combination of two lots that were slightly larger than 50 feet. It is about 110 feet of frontage and the depth is about 115 feet. Mr. McKittrick indicated that the house may have been constructed in the late 1940's or early 1950's. It was built during the old zoning and it looked like the old R-2 and required 10,000 square feet and allowed a maximum of 20% lot coverage.

Mr. McKittrick indicated certain lots that seem to exceed the allowable lot coverage. Mr. Heddy's combined total between the accessory structure and the principle structure to 19.8%, which is under the 20% that was in the original zoning. The setback for Lakeside Residential are 40 foot for front yard setback, the existing dwelling is only 11 feet off the front property line and the existing garage is only 21 feet off the property line.

Those setbacks will be maintained with the new development scheme that is proposed. There are no bedrooms proposed and the septic system is functioning well so there should be no need to have to do anything with it. There are no wetlands, no known easements on the property or within 200 feet, based on the tax maps. There are no natural features based on the zoning, it is not located in the Pinecliff Lake flood plain the development area is not in the riparian buffer which is associated with Pinecliff Lake.

The primary variances are for coverage and the separation between the principle structure and the accessory structure. Granting the variances will allow Mr. Heddy to improve his property. Presently, there are a lot of automobiles on his property for restoration. This will allow some vehicles to be moved indoors and it will clean up the neighborhood. The addition for the house is for a kitchen enlargement it is presently a modest house and it will allow a slight expansion in the kitchen and laundry area.

The comparison for lot coverage between the applicants and other lots is important. The applicant is proposing is not consistent with the rest of the neighborhood. Lot 7 behind Mr. Heddy has lot coverage of the principle structure alone of 25.3%. Lot 8 has lot coverage 20.5%, lot 9 has a lot coverage of 22.3%. The immediate houses to this property have a higher percentage of coverage than

Mr. Heddy will have if he is allowed to go ahead with the development. There are other properties in the neighborhood that have high percentages of lot coverage. The engineer mentioned other homes that had higher lot coverage.

The Engineer brought up the concerns of the Environmental Commission and also the Board Engineer regarding surface water run off, the calculations would require one seepage pit. There is no opportunity for installing a seepage pit due to the location of the septic system; it is a required distance of 50 feet between a drywell and a septic system. Mr. Heddy's leaching field is 54 feet by 20 feet and the location is a good location and Mr. McKittrick did the original design. There is not enough room to put a seepage pit in there to attenuate the increased run off. There is a storm drain across Ash Road from Mr. Heddy's property, the storm drain could be used as a tying point however it would require cutting up the asphalt which is in good condition and may require a road opening permit from the Township and could be an alternative. Another option would be to design and install a small surface impoundment to the east of the septic tank and the pump changer that would be in the form of a swale that would be designed to be long enough and large enough to hold the increased run off and slowly allow it to bleed out across the lawn. That is the real possibility for attenuating the storm water, there is no opportunity for a seepage pit or a drywell.

The benefits of the proposal are that it allows for an upgrade of the dwelling, the addition will clean up the house and make it look better. It would enhance the appearance of the house; upgrade the garage, making it new an aesthetically more pleasing than it is now. It would also allow Mr. Heddy to clean up his property and get his materials in doors and out of sight. It would increase the neighborhood property values at the same time.

Mr. McKittrick mentioned that Board Engineer pointed out that the plans would need to go before the building department for approval for conformance with the appropriate codes which includes provisions to accommodate the separation distance between the principle and accessory structure with regard to fire separation and the distance will be adjusted based on the fire ratings of separation walls between the structures. The Health Department raised issues that the ARC Explorer, which is their GIS System, stated that there was a 300 foot buffer that affected this application. The closest point to the lake is 330 feet so they are outside of the buffer. The Health Department also stated that the existing deck was not shown on the drawing. The existing deck is clearly labeled on the drawing and the addition will go on top of the deck and the deck would be removed as part of the application. The Health Department also wanted detailed interior plans of the house and also what is in the existing crawl space and Mr. McKittrick indicated that he did not feel it was germane to the application at this time and Mr. Heddy would have to supply at the time of the building permits to the Building Department. There is no increase to the number of bedrooms so there is no issue with the septic system to cause issue with the Health Department.

The soil in the area is high in silt and clay content and very limited permeability and do not lend themselves to the installation of a drywell because there is very little perc there and you do not want your septic system competing with the dry well for absorption capability.

The variances requested are lot coverage, which is consistent with rest of the neighborhood. The addition and the construction of the garage will clean up the neighborhood and make the Heddy property much more attractive and be consistent with the rest of the neighborhood and allow him to clean up the property and keep it aesthetically pleasing. It is Mr. McKittrick's opinion that the benefits outweigh the detriments of granting the variances.

Mr. Castronova mentioned the storm drain and it is not on the map but asked if it was too high to run a pipe. Mr. McKittrick does not know how well it is maintained. He does not know the condition or the depth of the storm drain. He does not know if the Engineering Department would allow the applicant to tie in with it. He wanted the Board to know it was available as a possible viable alternative. Mr. McKittrick indicated he would prefer the small surface impoundment system swale to hold the water back and that would go between the northeast property line in lot 1 and septic tank and pump in the side. Mr. McQuaid asked about the front yard and it is taken up with macadam, a small fence and there is only 11 feet between the house and the property line.

Mr. Glatt asked if it was Mr. Heddy's desire to vote on the application as one or two applications, one for the addition and one for the garage. Mr. Glatt indicated that as he sees it, it is two totally different issues. His instruction would be to vote as two applications. There is no testimony to why the buildings could not be combined and perhaps scaled down. The other question how does this improve the neighborhood and how would this development help the zoning in the municipality and benefit the community, you can rebuild a garage or re-side a house for aesthetics, how would doing so much on one piece of property better the community for public benefit? Mr. McKittrick responded that other properties are so extensively developed already and do not have the ability to

construct an accessory structure however Lot 3.01 and 3.02 has a dwelling, a pool and a garage and the lot is larger than the applicant's property. It enhances the zoning since it is consistent with the original zoning of the neighborhood. The Lakeside Residential Zoning was passed to slow down the development of vacant lots that had not been developed yet because there were a lot of undersized lots. It applied mostly to Upper Greenwood Lake which a number of lots were only 40 feet wide. The neighborhood in question the dwellings are spaced reasonably apart, especially on Ash Road. It will not look so congested as the Heddy property is wider and slightly larger than the other properties and therefore more consistent with the rest of the neighborhood.

Mr. Brady asked about the main entrance to the house and it is on Ash Road and although the Board is not in the habit of redoing plans, he asked about redoing garage in the other direction toward the house and attaching it to the house and this would solve two problems, one would be the setback and it also takes away the need for accessory structure coverage because now it is part of the house. Again he is not trying to reorganize the plans but that might be a better shot then the property in between could be eliminated and this would give more setbacks around the outer edges and it would give the opportunity to remove some of the impervious coverage so that the drainage issue could be addressed. There seems to be other ways to get what you want and need and still maintain some of the zoning requirements. He understands about the lot sizes and that he is landlocked, but if he thought about relocating what is there the additions are not there yet so you could get the additional room and garage space without encroaching on at least two of the variances.

Mr. McKittrick commented that if they were attached it would eliminate the separation distance between the accessory and the primary structure and eliminate the variance for the accessory building coverage but it would increase the coverage variance for the principle structure. There is not a tremendous difference in lot coverage but the setbacks are more important than lot coverage. The Fire Department's concern will be addressed. Mr. McQuaid asked how tall the garage would be and it will be approximately to the peak of the roof would be about 16 feet. The side wall would be 8 feet. The Chairman asked if the peak would exceed the peak of the house and it was discussed it seems to be lower than the house. Mr. McKittrick would like to speak with the applicant about the Board's suggestion. Mr. Drew mentioned that a 30 x 30 garage is exceedingly large for a two car garage and perhaps the applicant should testify why it needed to be so large and if it could not be reduced in size and still accommodate two cars and accessories and equipment that is in the house. Also it was indicated that a variance should not be granted for things that should possibly be discarded and be left with an oversized building that will have a use greater than a two-car garage. Mr. McQuaid asked about the previous testimony and confirmed that he re-builds/restores old cars. There could be six or seven cars and four could fit in the garage. There may be a lift in the garage. Mr. McQuaid brought up a previous application where the owner put a stand to allow cars on top of each other. He would like to fit two cars and a work area. The attorney wanted the Board to cognizant to the fact that variances run with the land it is understood what the applicant wants with regard to the size of the garage. The question is what would the next property owner do when they purchase or inherit a building this size will they use it for the same thing? Or is it potentially a building that can be converted into another small house.

There was a break at 8:17 for the applicant and his engineer to discuss the suggestions brought forth by the Board Chairman.

The meeting was back in session at 8:19.

Mr. Heddy and Mr. McKittrick feel that the better application would be to move the garage over and attach it to the addition. It does eliminate two of the variances; he requests that the garage remain the same size as on the application. It will be attached so it eliminates any chance of it becoming a separate house. The accessory size variance would be gone and the distance between principle and accessory building variance would be gone. The total lot coverage would be 19.84%, which is under what some of the residences have. It is over the 10% coverage. Mr. Castronova asked about the addition and it is included in the 19.84% lot coverage. Mr. Glatt told Mr. McKittrick that the Board and the Engineer will need revised plans before going any further with the application.

Mr. Glatt asked for a request to carry the application and also for an extension of time. Mr. McKittrick will not be present for the November meeting. Mr. Heddy asked for an extension. Mr. Brady asked for Mr. McKittrick to look into drainage solutions as well and he knows tying into existing drains can be difficult.

**Motion by Ada Erik** to carry the application until the December 13, 2011 meeting.

**Second by Arthur McQuaid**

**All in favor to carry this application to December 13, 2011 and sign a 60 day extension**

**The motion and second were amended.**

**Opposed: none**

It will not be necessary for the applicant to re-notice, as it will be a reduction in the variances already requested and noticed for.

**ARVE DYVIK**  
**BULK VARIANCE ZB04-11-05**  
Block 4201; Lot 16  
41 Lake Park Terr.; LR Zone

Mr. Dyvik was reminded that he was still under oath. Mr. Brady confirmed that there was additional information provided to the Board by the applicant.

Mr. Drew indicated that the only change that can be seen is the detail provided in the previous plan only has a notation that the detail is not to scale. It shows a dimension and a setback and the same question as last month arises, the setback is a rear line that extends into the neighbor's property. He indicated that he is not sure what it is supposed to show. He scaled the survey and to the rear corner of the property scales to about 30 feet and that is approximate. Mr. Drew indicated that he spoke to Mr. Kirkpatrick after the last meeting and did not know if the applicant's surveyor and Mr. Kirkpatrick ever spoke.

Mr. Brady asked the applicant if he spoke with the Board Engineer and what the surveyor indicated to Mr. Dyvik was that the certification at the bottom right corner of the plan should be removed and the detail was not to scale as well as the plus or minus' after a few of the numbers. The way the setback is was under the direction of Mr. Kirkpatrick because he wanted a right angle measurement to the structure. The surveyor assured the applicant that was done for Mr. Kirkpatrick.

Mr. Drew indicated that if he scales the plan from the southerly corner of the proposed addition to the southerly corner property line where the side and rear property lines meet it scales to 30 feet. The detail not to scale shows a setback of 31 feet. Mr. Drew indicated that it was safe to say the proposed setback is somewhere between 30 and 31 feet. It does not seem likely to get anything more accurate as this is the third or fourth shot at it. It will be the Board's decision whether to accept the plan or not.

Mr. Drew explained to the applicant that the dimension should be taken from the proposed addition to its closest point to the particular yard. In this instance the issue is a rear yard setback. So you want to take the distance at its closest point. His setback scales at 30 feet. Mr. Glatt asked should it be 30 or 31 Mr. Drew indicated it should be 30.

Mr. Glatt explained that applicants bring professionals so the board, the professionals and the attorney can ask questions as they did the plans. The setback will be 30 not 31 in case it is not accurate and there will be leeway if it is a little over 30 feet. It is for the applicant's benefit.

Mr. Brady asked if there were questions. Mr. Drew asked about the side yard setback there is a dimension of 12 feet and underneath *add* which he would surmise means addition but it does not scale at 12 feet. The setback with the addition to the side yard scales to 8 feet maybe 8 ½ feet. Mr. Drew asked if the addition will be beyond the side of the house and Mr. Dyvik indicated he did not it would be flush with the house. The four feet is the wooden platform which he would like to move it back. There is an area that shows an open space the applicant is not sure.

Mr. McQuaid asked about the side yard and it was confirmed it was 12 feet.

Mr. Drew revised the rear yard setback to 36 feet.

The Board will take a break for the Board Planner to speak with the applicant.

There was a break at 8:40.

At 8:45 the meeting resumed.

Mr. Drew wanted to explain what was shown on the survey. There is an existing wooden deck that is on the rear of the house now. That deck is going to get moved out further in the rear yard and in its place an addition to home. It will extend 7 feet into the rear yard. It will be the full width of the existing house. There will be no further encroachment into the existing side yards. It will maintain the existing side yard setbacks. There will be an encroachment into the rear yard. The dimension that needs to be taken is from the southern point of the addition to the closest point of the rear yard, which is the southern corner of the property. That dimension scales to 36 feet, it is not a surveyed

distance but in speaking with the applicant, they are comfortable with a 36 foot rear yard setback variance request. Based upon the information as long as it is clear with the board, we can move along with the applicant's variance meeting.

Mr. Glatt asked if a revised plan should be presented to the Board and there is a need for a revised plan. Mr. Drew indicated the critical distance is the rear yard setback. Mr. Glatt asked Mr. Drew to go to the front of dais and explain the addition and the plan. There was additional explanation to the Board Members. The setback should be 36 feet. The right angle is the incorrect right angle. The requirement is 60 feet in the LR Zone. The existing house scales to a 43-foot setback and it is now 36 feet. The application should be amended to read that the existing setback is 43 feet and the proposed is 36 feet.

The Chairman asked if there were any additional questions of the board or the applicant. There were none and the meeting was opened to the public.

**Motion by Ada Erik** to close the public portion after seeing nobody present for or against the application.

**Second by James Olivo**

All in favor to close the public portion.

In the motion an as-built should be a condition so exact measurements will be in the file.

Mr. McQuaid thanked the applicant for coming back so often. He commented that zoning is funny because the law says that you cannot do it but you do have an out.

**Motion by Arthur McQuaid** to approve bulk variance ZB04-11-05, Block 4201; Lot 16; 41 Lake Park Terr; LR Zone. for a 7 foot addition and a deck going out the back of the home closer to the lake. There does not seem to be any detriment to the neighborhood. There is not additional property to purchase and there is no other location for it, it is a narrow piece of property that backs up to the lake and there are homes on either side. There will be a condition of measurements being correct on an as-built plan.

**Second by Ada Erik**

The As-built is to be a foundation as-built not the completed structure but after the foundation is installed have a plan submitted verifying the setbacks so there is not a completed structure and then find out there is a setback problem.

Mr. McQuaid and Ms. Erik amended there motion and second to reflect the information regarding the as-built foundation survey.

**Roll Call Vote:**

**Yes:** Ada Erik, Frank Curcio, Arthur McQuaid, Robert Brady

**No:** none

The Dyvik's were informed that they have the approval. It will be memorialized at the November Meeting hopefully and it is 45 days after the advertisement in the newspaper that the appeal period runs through and they are running a risk if construction starts sooner than that. Mr. Brady confirmed that the applicants were aware of what an as-built survey is.

The attorney explained that the resolution needs additional information since there were additional meetings. However it was 98% done. The 45 day appeal period was explained. If the permits are pulled within that time and construction commences, and someone appeals it the applicant is doing it a their own peril. After the 45 day appeal period the public cannot appeal.

**LITIGATION**

Mr. Glatt received a notice of motion from Mr. Corchoran who represents the Plaintiff wherein he is asking that the matter be remanded back to the Board for further testimony on behalf of the objector who filed the lawsuit. The matter should have been returnable November 4, 2011 but the three attorneys agreed if the court agrees to adjourn it to the 18<sup>th</sup> to give Mr. Glatt and Mr. Drew Murray an opportunity to file papers in opposition to the motion. It is possible that the Court could remand it, then again the Court might want hear the appeal based on the record below if it does not feel there is sufficient testimony at that point it may remand it. The question is whether it should be remanded without the Court looking at it. His prior experience is that it has only been remanded after the Court has made a decision or reviewed it and said based on the record I think there needs to be additional findings related to this or the record should be supplemented. If at this point opening it to a remand could bring up too many questions. Mr. Glatt does not want to go into the issues. He will

be filing a brief within the next week or 10 days. That is only on the Board's count not the property owners. Mr. Brady asked if there were any questions and there were none.

**Motion by Ada Erik** to approve Mr. Glatt's invoices.

**Second by Frank Curcio**

**All in favor to accept the invoices.**

**Motion by Ada Erik** to approve Mr. Drew's invoices

**Second by Frank Curcio**

**All in favor to accept the invoices**

**Motion by Ada Erik** to approve Mr. Kirkpatrick's invoices

**Second by Frank Curcio**

**Motion by Ada Erik** to approve the Regular Meeting Minutes of September 25, 2011

**Second by Steven Castronova**

All in Favor to approve the minutes

**Motion by Ada Erik** to adjourn the meeting of October 25, 2011.

**Second by Steven Castronova**

**All in favor to adjourn**

**Meeting adjourned at 9:05 p.m.**

**Adopted: November 22, 2011**

Respectfully submitted by,

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Denyse L. Todd, Secretary  
Zoning Board of Adjustment