

**MINUTES  
Of the Township of West Milford  
ZONING BOARD OF ADJUSTMENT  
October 28, 2008  
Regular Meeting**

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

**Pledge**

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

**Roll Call**

**Present:** Ada Erik, Francis Hannan, Arthur McQuaid, Barry Wieser, Frank Curcio, Robert Brady

**Also Present:** Stephen Glatt, Board Attorney, William H. Drew, P.P., AICP, Planner, Robert Kirkpatrick, Substitute Planner and Engineer, and Denyse Todd, Board Secretary

**Absent:** William Lynch, Daniel Jurkovic, Gian Severini, Richard McFadden

Mr. Brady asked Mr. Wieser and Mr. Curcio to sit in for the absent members. The Chairman explained that there is a six member Board for this meeting. Mr. Brady explained the Open Meetings Act of the State of New Jersey. Mr. Brady explained the procedure for the Zoning Board of Adjustment as well as the appeal process.

**MEMORIALIZATIONS**

**PETER ESPOSITO D/B/A  
MOUNTAIN LAKES CARWASH  
RESOLUTION 19-2008  
APPEAL #0880-0811  
Block 6701; Lot 12; CC Zone  
1946 Union Valley Road**

**Motion** by Ada Erik to memorialize Resolution No. 19-2008

**Second** by Frank Hannan

**Roll Call Vote:**

**Yes:** Ada Erik, Francis Hannan, Arthur McQuaid, Barry Wieser, Robert Brady  
**No:** none

**1952 UNION VALLEY ROAD  
RESOLUTION 21-2008  
Use Variance #0540-0698  
Preliminary & Final Site Plan No. 0420-0167AB  
Bulk Variance #0430-0647  
De Minimis Exception  
Block 3601; Lots 1 & 3  
1952 Union Valley Road; CC Zone**

**Motion** by Ada Erik to memorialize Resolution No. 21-2008

**Second** by Frank Hannan

**Roll Call Vote:**

**Yes:** Ada Erik, Francis Hannan, Arthur McQuaid, Barry Wieser, Robert Brady

**No:** none

**KENNETH KLOSZ**  
**RESOLUTION 22-2008**  
**BULK VARIANCE #0830-0806**  
Block 9711; Lot 8, R-1 Zone  
84 Bergen Drive

**Motion** by Frank Hannan to memorialize Resolution No. 22-2008

**Second** by Ada Erik

**Roll Call Vote:**

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

**No:** none

**CHARLES AIKEY**  
**RESOLUTION 23-2008**  
**FINAL SUBDIVISION #0810-1950D (section II)**  
Block 9501; Lot 19.02  
144 Wesley Drive; R-3 Zone

**Motion** by Arthur McQuaid to memorialize Resolution No. 23-2008

**Second** by Ada Erik

**Roll Call Vote:**

**Yes:** Ada Erik, Francis Hannan, Arthur McQuaid, Barry Wieser, Robert Brady

**No:** none

**ANDREW MALKO**  
**RESOLUTION NO 24-2008**  
**BULK VARIANCE #0830-0813**  
Block 206; Lot 1  
1866 Clinton Road, R-1 Zone

**Motion** by Ada Erik to memorialize Resolution No. 24-2008

**Second** by Arthur McQuaid

**Roll Call Vote:**

**Yes:** Ada Erik, Francis Hannan, Arthur McQuaid, Barry Wieser, Robert Brady

**No:** none

**MICHELLE SCHLETTE-HARDING**  
**RESOLUTION NO. 26-2008**  
**Bulk Variance #0830-0797**  
Block 6101; Lot 21 R1 zone  
1 George Street

**Motion** by Ada Erik to memorialize Resolution No. 26-2008

**Second** by Arthur McQuaid

**Roll Call Vote:**

**Yes:** Ada Erik, Francis Hannan, Arthur McQuaid, Barry Wieser, Robert Brady

**No:** none

**PATRICIA NICHOLSON**  
**RESOLUTION #27-2008**  
**INTERPRETATION #0870-0814**  
Block 15803; Lot 4  
4 Oak Ridge Road, CC Zone

**Motion** by Ada Erik to memorialize Resolution No. 27-2008

**Second** by Frank Hannan

**Roll Call Vote:**

**Yes:** Ada Erik, Francis Hannan, Arthur McQuaid, Robert Brady  
**No:** none

**JIM & PATRICIA GOBLE**

**RESOLUTION NO. 28-2008**

**Bulk Variance #0830-0805**

Block 14113, Lot 47, LR Zone  
Apple Lane

**Motion** by Ada Erik to memorialize Resolution No. 28-2008

**Second** by Arthur McQuaid

**Roll Call Vote:**

**Yes:** Ada Erik, Francis Hannan, Arthur McQuaid, Robert Brady  
**No:** none

**ROCCO AND ROSANNE RICCARDI**

**Bulk Variance #0530-0719**

Block 3401; Lots 23 and 24  
Lakeside Road; R-2 Zone

The applicants were sworn in by the Board Attorney. The applicants were not represented by an attorney for this meeting. The Riccardi's explained the burden of the expense they have already incurred for this application. Mr. Glatt said that he had heard from the applicant's attorney. The Board was aware of the request to use the prior plans. Mrs. Riccardi indicated that they were going to submit revised plans. The September plans are not the plans to be used. No revised plans will be submitted. If the new plans were used they would need further variances. There is additional discussion regarding the original plans and the attorney confirmed that the revised plans would cause additional variances. For this reason, they want to revert back to the original plans from April.

Mr. Glatt explained that the applicant is required to give testimony as to the reason for the variances. Mr. Glatt further explained that at the original meeting, it was found that the Board Members didn't all have the same plan. Mr. & Mrs. Riccardi need to discuss the prior plans. The variances are being discussed, Mr. Glatt asked for the explanation for the variance and location for the dwelling. Mr. Glatt said that they have to convince the Board to grant the variance(s). Mr. Glatt explained that since an attorney was not representing them that they need to explain the property, size, and description, normally a representative would do this. The Riccardi's said it was vacant land. The single family dwelling needs to be placed on one of the two lots. The full parcel after combining is approximately 2.87 acres. The right side of the property is the side with the flatter lot. The house cannot be moved forward because of a cliff. The zoning requires 75 feet and they cannot meet that. There is a slope in the front of the house. The Chairman pointed out that the original plans showed a problem with the driveway and the applicant agreed that the slope of the driveway was greater than 12 percent. Without the variance they cannot pass the application. The incline is 15% or 17%, off road parking would be necessary. Mr. Riccardi explained that when they tried to lengthen the driveway to reduce the incline walls would be required and they were too high and an additional variance would be required. Piping would be required. Mr. Brady pointed out that their engineer has been in the Township for many years and is aware of the requirements that are on the checklists. Mr. Brady asked if they would like an additional extension for the purpose of discussion with their engineer so that when they returned they could make a presentation. Mrs. Riccardi said that the engineer doesn't feel that he can meet the requirements.

Mr. Glatt reiterated that it is the applicant's responsibility to present their case. When the applicant first went to their engineer the engineer thought he could do this with three variances and it now appears that when the revision was done that additional variances would be necessary, and it sounded like it could be an endless and costly process to find a location on the property where the house can be located and they don't want to

proceed. Mr. Riccardi said if it was approved then he would proceed. Mrs. Riccardi said even if this Board approved, what happens with the County approvals that are required. Mr. Glatt feels that they need to either withdraw the application or indicate that no further changes will be made to the plan and the Board will decide based on the proofs already given. Mr. Glatt reiterated what they need to do. The dwelling can be constructed but not the driveway. Mr. Glatt wished that the applicant came to the meeting with an attorney or an engineer. Mr. Glatt said that there was one thing he needed to make clear, if they are proceeding and the Board either grants the application or denies it, that they understand that they are using the plans as presented. There is no further discussion needed on what they are willing to do. They need to indicate whether they are withdrawing or want a decision based on what is said now. The Board is willing to give them the opportunity to come back with revisions but if they don't want to come back with revisions because ultimately there will be no end and it will cost a fortune then that is their decision. The Board will not get into it. The Board will only vote on what is presented, nothing more and nothing less. Mr. McQuaid said there is a zoning law dictating how to build a house. Mr. McQuaid explained further. Mr. Glatt said a letter was received from Mr. Jones, the attorney, stating that he was not representing them. Mr. Glatt read the letter of the attorney. The cost of the driveway would be prohibitive anything can be done if there is enough money but they don't want to do it. If the Board feels that the Board can grant the application without revisions and neither requests of Mr. McFadden nor the advice of the Health and Safety requirements. Mr. Glatt advised the Board of the information. Mr. Glatt asked if they wanted the Board to come to a vote and they said yes. Mr. Brady asked if there were any questions before opening the meeting to the public. The Chairman opened the meeting to the public.

John Aiello, East Shore Road, Hewitt, NJ came forward to speak about the application. Mr. Aiello is familiar with the property and explained his knowledge of the application and what his thoughts of what the Board does. Mr. Glatt asked if Mr. Aiello understood that the Board has no idea what the applicant is willing to do because there is no engineering testimony, minimal testimony from the applicant themselves. If the engineer was present to explain to this Board why they can't do what Mr. McFadden is recommending because it is so cost prohibitive. The Board requires engineering testimony. The Board will on occasion not follow the Planner or Engineer's opinion. No one can say the Board did not give the applicant the opportunity. The Board needs to know why. They weren't ready to explain. Mr. Aiello is in favor of the application. The Board will make exceptions if needed. There is minimal testimony, only that the Board should give them what they want but have not said why they should grant it and ignore the Township Engineer's advice.

Mr. Aiello said they do know about the application. He said most Boards go to the property and said Mr. Brady knows about it. Mr. Glatt explained that the Chairman is going by a report submitted by the Township Engineer. Mr. Aiello felt that the Board should be able to tell from the plan what the hardship is. Mr. Aiello feels that the Board is being misdirected. Mr. Glatt asked if Mr. Aiello felt that the Board is not entitled to know why they should grant the variance. Mr. Aiello said the process creates a hardship. Mr. Brady said that he and several members went to the property. The Board members have gone for classes. They need to go by the evidence, by what is presented. The attorney always assists the applicant as much as possible. Mr. Glatt doesn't influence the vote only legal ramifications to assist in an educated decision. The Board takes the decisions seriously and take the comments as a personal affront. Mr. Brady said he doesn't feel that Mr. Glatt didn't have to tell anyone that the applicant didn't make an appropriate presentation. A lot of applications have come before the Board. Mr. Aiello said if the Board looked at the property they could see the elevations. Mr. Aiello feels if from day one all requirements were told to the applicant, it would be easier. Mr. Aiello said he was at many meetings. Mr. Glatt feels the applicant wants to get out of the contract of sale. Mr. Glatt said he was telling the Board that there is a lack of evidence. Mr. Aiello said the assumption that the applicant wanted out of the contract was false. Mr. Aiello said the property was owned by his mother's estate. Mr. Glatt felt that Mr. Aiello's interest in the application should have been stated. Mr. Brady asked if there was anything else with regard to the application. Mr. Brady asked if anyone else

was for or against the application. Ms. Erik moved to close the public portion when nobody else appeared. Mr. Hannan second  
All in favor to close the public portion

Mr. McQuaid said he had a comment, that with Mr. Glatt's help he was able to ascertain that the property has deep slopes and has cliffs. This knowledge assists with the reason of why it is in the corner of the property considering it is almost 3 acres of land and because of the topography. He doesn't know about engineering or the safety issues and the Board has to rely on the professionals and last time the professional recognized that the driveway was dangerous and there was a report stating this as well. The only testimony heard so far is that there is only one small corner and there are cliffs and deep slopes forcing it to be in that spot. Mr. Brady thanked Mr. McQuaid and asked if there were questions or a motion.

**Motion by Arthur McQuaid to approve** the application for location, front yard setback, the testimony given is that the house is being located on that corner because of steep slopes and cliffs and bad topography causing an extreme hardship to locate the house anywhere else.

**Second by Ada Erik**

**Roll Call Vote:**

**YES:** Arthur McQuaid

**NO:** Ada Erik, due to insufficient testimony, Francis Hannan due to lack of offsetting testimony rebutting Mr. McFadden's letter, Frank Curcio and Robert Brady

**ABSTAIN:** Barry Wieser

Motion and second to take a break.  
Returned from break at 9:04.

**KURT GARDENIER**  
**BULK VARIANCE #0830-0802**  
Block 6204; Lot 16, R-1 Zone  
83 McKinley Place

John Barbarula is representing the applicant and supplied a copy of the easement from the title policy. The copy of the easement from the title policy is marked A-6. Mr. Glatt advised Mr. Barbarula that there is a six member board to hear the application. Exhibit A-7 is the title policy dated July 9, 1997 indicating in schedule A is the utility easement and #9 is the brook crossing at the rear of the premises. Mr. Barbarula advised that the easement was developed when the subdivision was created and the Township was the benefactor of the easement however the Morristown Brook was moved by the Township. Number 9 of Exhibit A-7 shows the brook easement at the rear of the property. Mr. Brady explained that Mr. Robert Kirkpatrick is our engineering professional for this evening but not necessarily for this application. Mr. Glatt commented about the exception section of the title policy which is in schedule B says there is a 20 foot brook easement on file map #2237 and also on the municipal tax map which is A-6. #7 is a utility easement and #8 is a drainage easement and #9 says the following item disclosed by a survey made by Advance Land Survey Services dated 5/17/97 are hereby added as an exception in schedule B. This states the brook crossing rear of subject premises 20 foot brook easement crossing premises wood walk and asphalt drive extend over westerly line into the right of way of McKinley Place referring to the brook easement which would say #9 also references #6 except they are not in the same place. Mr. Barbarula agreed and continued to say that it is an amazing situation how the title came about. The 20 foot brook easement existed at the time that the wood deck and concrete patio was built and the date back in 1997 and there is also a survey in 1997 showing that the house had those additional aspects showing the patio and deck went up to and possibly encroached a little bit into this 20 foot wide easement. Mr. Barbarula continued to explain the history the 20 foot wide easement as per the subdivision map shown on the plans submitted to the Board prepared by Gerald

Gardner, the easement never was where the brook ended up being diverted. Presently, the brook based upon the title policy acknowledges the physical condition which is why the title policy was submitted. The site plan the Board previously received since it is being referenced is marked A-9. This shows the 20 foot brook easement behind the house as part of the filed map. When the houses were built, the brook was not put behind the houses because A-1 only shows the brook at the rear of the property which means the brook easement behind the house is of no consequence because you cannot move the actual water course and based on the 20 years since the subdivision was built nobody asked the DEP to relocate it. The easement was encroached in 1997 and physically the brook exists in a different location and exists in the northwest corner of the property and not immediately behind the house. Mr. Barbarula feels that the applicant shouldn't be penalized for the fact that the brook is not where it should have been developed. The easement is owned by the Township and he doesn't feel the Township would want to undertake the relocation of the easement. According to A-1 the easement would need to be redeveloped with permission of three properties at least and also the original subdivision because the brook doesn't exist within the brook easement.

Mr. Glatt thought that it was an easement to no place. Mr. Glatt asked if Mr. Barbarula's client understood that the existing brook easement where the brook actually is as well as the easement itself are exceptions to his policy so if something happened he would be doing it at his own peril. Mr. Glatt asked if it would be necessary for Mr. Barbarula to do anything to extinguish the existing easement. Mr. Barbarula told Mr. Gardenier, the applicant, that he didn't know if the Township would allow a vacation of the easement that is filed with the map and the applicant defining where it actually is on the property because if it is done on one property it will need to be done on all properties effected. The filed brook easement shows the house already existing. Mr. Barbarula said it will need to be looked into. It was never intended to be where it is today. Mr. Brady asked if there were any questions before the meeting was opened to the public. There were none the meeting was opened to the public. Motion by Ada Erik to close public portion of the meeting. Mr. McQuaid made the second. All in favor to close the public portion.

The Chairman asked Mr. Barbarula for his summation. Mr. Barbarula said that there were no objectors for the application, garage needed to be located where it is because of the driveway and the existing impervious coverage and it would be appropriate to grant the variance since it would not be detrimental to the scheme of the overall development, and it is keeping with the area. The distance between this lot and adjoining lot is sufficient to give open and buffer aspect and it would be appropriate and not detrimental to the overall scheme of the Land Use Act. It should be approved. The Chairman asked if there were any questions.

**Motion by Francis Hannan** to approve the variances. He is more inclined to approve building coverage where there is public water and sewer and he knows there are other homes with similar setbacks and additions also that the issue with the brook easement has been resolved to his satisfaction.

**Second by Ada Erik**

**Roll Call Vote:**

**Yes:** Ada Erik, Francis Hannan, Arthur McQuaid, Barry Wieser, Frank Curcio and Robert Brady

**No:** none

The original title policy can be returned after the 45-day appeal process.

**THOMAS HORSURGH**

**Bulk Variance # 0830-0809**

Block 13703, Lot 3, LR Zone

21 Navajo Trail

Mr. Horsburgh's representative confirmed that the correct noticing was done with regard to the meeting. Ms. Jennifer Knarich of Price, Meese, Shulman and D'Armenio spoke

about the application. Ms. Knarich referred to the reports of the Township professionals. Mr. Glatt swore in Thomas Horsburgh, 21 Navajo Trail, West Milford and Douglas McKittrick, 2024 Macopin Road, West Milford. The Chairman asked for the credentials, Licensed Engineer in NJ since 1982, Licensed Professional Planner, 1983, qualified for most Boards in Northern Passaic and Sussex County, Bergen County Superior Court, Hackensack Meadowlands Development Corp. The credentials were accepted.

Mr. Thomas Horsburgh was the first to give testimony. Deeded to him and his wife in 1965 and they constructed a single family home and moved into the home in 1966. Lived in the Township for 42 years. Single family, 3 bedroom home, 1 car garage. The proposed addition would have 2<sup>nd</sup> garage, when they retire they want to stay in West Milford and would like to update their house to retire comfortably in it. The addition would add a garage next to existing one and it will match what is there now. Mr. Brady asked if there were any ancillary sheds and he said yes for gardening, Mr. Brady asked if the new garage would supercede the existing shed and he said yes. Mr. Glatt confirmed there was no extra land to purchase.

Mr. Douglas McKittrick was asked to view his plan which was marked into evidence as A-1 and it was prepared April 28, 2008 and revised July 17, 2008. Mr. McKittrick was asked to explain the neighborhood. Subdivision is from the 1960's. Mr. McKittrick explained the area 100 X 150 foot lots, rectangular except for the lots that are in intersections. The homes that were built except for Mr. Horsburgh were all similar, mirrored images. Setbacks were all pretty close, shared wells, most homes have had additions over the years. The property has the single family dwelling, 3 bedrooms, septic system and oil in the front yard, paved driveway located on northern side of the lot which is double wide. There is an in-ground pool with a patio in the south west corner of the property and a wooden deck which accesses the pool area from the house. A wooden ramp is existing along northern side of garage that was for members who used to live there whom were handicapped. A 10 X 14 shed located in the corner. A 12 X 42 addition is proposed to the northerly side of existing garage to allow 2 car parking and a work shop area. The shed is 140 square feet which is .93 percent of coverage. If variance granted they will remove the shed which will reduce the application by one variance. The property originally was zoned as R-10.

It will need a lot coverage variance since it will go from 16.7 to 20.1% for principle structure, remove the frame shed and eliminate .95%, shrink side yard setback which is 17.6 feet reduced to 5.6 feet. The rear yard setback in LR Zone which 60 feet is required and 53 is proposed. Along the northern property line there are landscape buffers is not Mr. Horsburgh's property but there is a buffer. The dwelling is further away than the allowable 10 feet there is about 25 feet. No additional property to purchase. Mr. Brady asked if there were any questions. Mr. Hannan confirmed that the original zoning allowed 20 percent coverage when the subdivision was developed. Mr. Brady asked about the existing garage which will be near the addition. They agree to the storm water drainage request of Mr. McFadden. Any additional questions open to the public. Motion by Ada Erik to close public portion. Second by Arthur McQuaid.

The attorney reiterated the application. The Board attorney asked if the removal of the shed will be done and for the applicant to confirm so that the variance for minimum distance for principle structure to accessory structure is removed from the application considering the 20.1 percent lot coverage. The client was called to agree which he did, it will be eliminated.

**Motion by Francis Hannan** to approve the application for variances except for the minimum distance between principle and accessory structure which will be eliminated because the applicant will removing the shed. Originally allowed 20 % coverage that is why he is approving it, the applicant has agreed to the memo of September 15, 2008 of Mr. McFadden and the Health Dept. memo limiting the bedrooms to 3. Mr. Glatt wanted to confirm that the lot coverage is reduced.

**Second by Barry Wieser**  
**Roll Call Vote:**

**Yes:** Ada Erik, Francis Hannan, Arthur McQuaid, Barry Wieser, Frank Curcio and Robert Brady

**No:** none

**SCOTT LEONESCU  
USE VARIANCE # 0840-0789A**

Block 15401; Lot 51  
187 LaRue Road, R4 zone

Mr. Drew recused himself and Robert Kirkpatrick is assuming the duties of Planner for this application.

Robert Masessa, Masessa & Cluff, 1524 Route 23, Butler, NJ appearing on behalf of the applicant. Unique application, applicant and engineer will be testifying.

This is a bifurcated application and this part will be about the use change and in the future they would like to return for a site plan application. Currently there is a funeral home and there is litigation involved. They want to change the use to Professional use in case the funeral home vacates. Not two uses but alternative use, and would like a time limit. There is a pre-existing non-conforming use for the funeral home, and explained that he doesn't feel it to be an expansion of a non-conforming use for the professional offices, Mr. Masessa feels it is a reduction in the non-conforming use since there is a funeral home presently.

Mr. Glatt asked if they were talking an alternative use. A use variance strictly is for the professional office space. If the Board grants and the applicant abandons and he doesn't use it, they would still have the other use correct? Mr. Glatt doesn't want the Board to be accused of a declaratory judgment. If the Board approves the use then he can perfect that use by making it professional office space. Mr. Masessa said yes. They will return with a site plan for this purpose and abandoning the other. He will be bifurcating the use variance and returning to perfect the site plan.

Scott Leonescu, 37 Christine Court, West Milford and Douglas McKittrick, 2024 Macopin Road were sworn in and Mr. Brady requested the credentials of Mr. McKittrick Licensed Engineer in NJ since 1982, Licensed Professional Planner, 1983, qualified for most Boards in Northern Passaic and Sussex County, Bergen County Superior Court, Hackensack Meadowlands Development Corp. The credentials were accepted.

Mr. Masessa confirmed that Mr. McKittrick is being presented as an Engineer and a Planner. Mr. Masessa asked Mr. Leonescu a few questions. Mr. Leonescu are you currently owner of 187 LaRue Road he said yes in January it will be two years. The tenant was at the time of purchase and presently Vanderplat Stickle Funeral Home. Mr. Masessa asked Mr. Leonescu what his plans were and he said change to offices and rent to an attorney or an accountant or a combination depending on what would be acceptable to the Board. The square footage 1500 square feet minus a hallway on the first floor. There is a basement to be used for storage for tenants and also a garage that can be used. There is a residential 3 bedroom apartment on the second floor. They plan to keep it the same. The apartment is sublet so Mr. Leonescu doesn't know if anyone is currently residing there. Mr. Masessa asked about access to the apartment and he said there is a private entrance with a lock on the door. The residents on the second floor will not use the bathroom on the first floor. The first floor bath will be used for those tenants on the first floor. There is ability to put between 50 and 60 cars in the parking lot. On occasion the parking spots have been filled with cars also parked on the street. The residential tenants will need 2 or 3 spaces. There is currently a well and a septic system. Mr. Glatt asked about professional uses he did not include the medical profession, was there any reason and he said he doesn't feel there is enough room. If medical, it will need to be revisited for parking purposes. Mr. Brady asked about the cars for the funeral. Mr. Leonescu couldn't say for certain how many cars attend funerals. Sometimes it seems there are funerals regularly and other times not, he doesn't travel the route regularly. Mr. Brady commented that on the application it said

the use would be less intrusive and could he comment. Mr. Masessa asked specifics about the time frame for the funerals. Mr. Leonescu said that there are viewings in the afternoon and the evening but wasn't sure about the lateness of the funeral home hours. Neighbors mentioned when purchased that they would like to see a fence for the purpose of cutting down the lights in the evenings and Mr. Masessa asked about how late and Mr. Leonescu said they seem to be about 8:30 or 9:00 pm. The attorney asked about the professional hours and Mr. Leonescu anticipates approximately 8:00 am to 5:30 pm even if it was later it would only be one or two cars not 75. There have been times when policeman directed traffic for the funeral home. Mr. Masessa asked how many cars for the professional use and Mr. Leonescu said possibly 15 or 20 cars maximum. If switched to professional use they would lessen the amount of impervious surface. Mr. McKittrick has a plan for that they would like to repave and add curbing and reduce the impervious surface quite a bit. Mr. Brady asked how many cars for residential and the applicant feels one or two, other people who have rented were 2 or 3. Mr. Glatt asked if there would be less intense traffic and why and he said a lot less cars especially on the weekend. From an environmental perspective it would be better and he said yes because of there being less use on the septic and well. The reduction would be dramatic. Mr. Kirkpatrick asked how the separation from the residential and the office use. Now all go in through the first door. Mr. Leonescu said there is a big hallway and a common area and then separated from the second floor. All tenants will have a key to front door. The professional floor would have to be divided in half because people will be coming down and going out the front or back door separate from the professional offices. They would have to deal with that. Mr. Leonescu said the can open behind the stairwell and they understand they will need to decide that if it should happen and get approvals from fire and the Health Department and have that as part of the site plan. Mr. Kirkpatrick asked if a second story exit was thought about. There were stairs a long time ago and that could be an option. Mr. Kirkpatrick asked about the basement storage and it is accessed from inside and outside that storage would be included in the square footage. There would be more room for people on the first floor. The calculation is based on storage area and office space. The parking can be addressed at that time. Any questions of Board Members.

Mr. Masessa asked Mr. McKittrick to give an overview of the application and special reasons it should be granted. Would the change be better or worst with the professional office use. Mr. McKittrick will give planning and engineering testimony. This is located in the R-4 zone as well as surrounding properties. 1.1 acres of land, located on northerly side of Larue Road, building located on front of the lot with access driveways on both sides. The rear of the lot is mostly paved parking. A-1 is an array of 6 pictures. 2 sets were given to the Board with a written description marked as A-2. The Board is viewing the evidence. Mr. McKittrick went over the descriptions as marked into evidence. The unique features of the property with regard to the Master Plan. Decrease the impervious surface while preserving the dwelling like structure. Residential growth substitute one commercial use for a less intense commercial use. The building contains an apartment. Improve traffic circulation patterns because there wouldn't be intense use, decrease traffic. Reduce the impervious surface by 4,687 square feet of gravel and approximately 8500 square feet of pavement, this would accommodate 11 parking spaces and if the basement storage needs additional spaces then 4 or 5 spots and still 7,000 square feet of pavement could be removed. Benefits reduce traffic, noise, lighting, impervious surface and increased buffer for lots 52 & 53. The detriment is a continuing non conforming use. If not approved it will still be non conforming. The negative criteria consists of not harming property values, it will enhance surrounding property values by making it more consistent. It doesn't harm the intent of the Master Plan because it is in conformance with Goal 1, 3, 4 & 7. The reduction from the water well it is less intense but regular. There is a lot of room to expand the septic if needed. Mr. Hannan asked about the time frame, the applicant said they would be willing to put a time frame and he felt 2 years. Mr. McQuaid asked what that meant and it is if Mr. Leonescu doesn't file a time extension within 2 years then they need to re file. Mr. Glatt said use variance approval runs with the land and if granted its granted pending site plan approval. Mr. Glatt would like to put a time frame but they might not be allowed. There will be constraints. Mr. Brady asked if there were any questions. Mr. McQuaid confirmed that it will stay like it is unless site plan approval is given for something else. A use for

professional office space but not until approvals are in place for site plan. Mr. Leonescu can let a new funeral home in and not perfect the use variance. All in agreement. The lease was signed prior to Mr. Leonescu's purchase. The owners leased it to the funeral home, the owner wasn't operating it as a funeral home. Was it built as a funeral home or a residence it is unknown. Are there special reasons? Special reasons for changes in commercial use because the benefit the community for the reductions of noise, traffic, lighting, impervious coverage and also the buffers to 2 surrounding properties. Mr. Kirkpatrick said you get all of that if you back to a residence, why should it go to office space instead, are there flaws? Since residential zone why not convert back to residential, is there a special reason why, they purchased as a commercial property. Mr. McKittrick said frontage on a busy road, not a good location for residential, large property with pavement, suited for commercial use. Already developed for commercial. It doesn't look commercial, reasonable residential look to it. Residences don't have 2 driveways generally.

Mr. Brady told the two remaining applicant that the application will be heard next month since it was after 10:30 and no new applications can be heard. They will be at the beginning of the agenda.

Mr. Kirkpatrick feels that there is enough information before the Board where they can make a decision. Mr. Brady asked if there were any questions. No new information from the applicant. Mr. Brady opened the meeting to the public and nobody was for or against and Ada Erik moved to close the public portion and Frank Hannan second. All in favor to close the public portion.

**Motion by Francis Hannan** to approve the use variance for the alternate use of professional office space if the funeral home should vacate the premises. The application is bifurcated and the applicant will come in for site plan approval for office space. His engineer and attorney have shown some of the goals of the Master Plan have been met by the use. The engineer/planner outlined negative and positive aspects. The subject property is not conducive to return to residential property, potential for low income and affordable housing.

**Second by Barry Wieser**

**Roll Call Vote:**

**Yes:** Ada Erik, Francis Hannan, Arthur McQuaid, Barry Wieser, Frank Curcio and Robert Brady

**No:** none

Mr. Ottens was told that he needed to be heard at the next meeting because of the late time and since it had to be noticed because of the use variance, a verdict could be overturned because it is in our by-laws not to hear new applications or testimony after 10:30.

Approval of invoices for Mr. Glatt and Mr. Drew. Mr. Hannan asked about a specific application on an invoice of Mr. Drew's.

**Motion by Ada Erik** to approve the invoices for the Board Attorney, Stephen Glatt.

**Second by Francis Hannan**

**Roll Call Vote:**

**Yes:** Ada Erik, Francis Hannan, Arthur McQuaid, Barry Wieser, Frank Curcio and Robert Brady

**No:** none

**Motion by Ada Erik** to approve the invoices for the Board Planner, William Drew

**Second by Francis Hannan**

**Roll Call Vote:**

**Yes:** Ada Erik, Francis Hannan, Arthur McQuaid, Barry Wieser, Frank Curcio and Robert Brady

**No:** none

Mr. Glatt commented that he submitted an order on behalf of the Township with regard to the Lanza litigation. He anticipates it will be signed upon his return. There is more than sufficient funds for the litigation.

Mr. Brady mentioned the checklists and Bill Drew said that he met with Rich McFadden and they had planned to have the checklists ready for the meeting tonight but Rich was unable to do this because of his schedule. He continued to say that the checklists are supposed to be supported and backed up by the Township Ordinance. There are items on the checklist that are not supported by ordinance. There will need to be an ordinance amendment. Mr. Hannan asked about the Highlands Council and if there will be additional changes because of the Highlands and should we wait? Mr. Drew thinks the variance checklist could be independent of that. Mr. Brady said it should be updated for the New Year if possible. Mr. Drew said

**Motion by Ada Erik to approve the minutes**

**Second by Barry Wieser**

**All in favor** to approve the minutes.

Opposed: none

### **Communications**

Discussion regarding the NJ Planner. Mr. Brady appreciates Mr. Hannan's interest in the Highlands Legislation and thanked him for keeping everyone informed. There was also an article about moving the Planning Departments of municipalities to the County and he feels that would be disastrous and will keep all informed.

The E-mail policy is the next order of business. Mr. Brady feels that he knows with being a volunteer there is a responsibility to the municipality but he is opposed to it. Mr. McQuaid wants Mr. Glatt to give a legal opinion and he also has a question if he were to have an email address and someone sent him a letter regarding the application to be heard what happens. Mr. Glatt said that because the Board is Quasi-Judicial in nature they cannot consider anything that is hearsay, anything that comes over the email is hearsay and they cannot question. Mr. Glatt also said if a letter comes into the office and I send it to him for guidance he will keep it from the Board so there is no reason to have an open line. Mr. Hannan said the Board should establish an email policy that they don't use email. There was discussion how easily a quorum is established by just forwarding an email. Ada Erik said that the OPRA policy is how it is policed. Mr. McQuaid wants Mr. Glatt to send a letter to the Township Attorney explaining what we do and why it would be detrimental for the public to have a way to send the Board Email. Have the Zoning Board Secretary have an email and they can be forwarded to the attorney and he can decide if the Board sees it or not. Mr. Glatt read the proposed ordinance. Mr. Glatt said he will put a letter together that the Board does not want an email account and nothing adverse inferred from it but because of their powers and authority under the Municipal Land Use Law it would be improper for them to have one whereby there may be subliminal influence upon the Board. Mr. McQuaid wants it continued to state that it may lead the Township to litigation. Mr. Glatt said fine. It is not that they are being uncooperative but they want to protect the town from litigation. Mr. Hannan would like a resolution stating the policy, and Mr. Glatt said amend the by-laws and all future Boards as well. They will have a policy. Mr. Glatt will draft the amendment to the by-laws. Mr. Brady would like something sent to the Council also, translate into laymen's terms. They don't want it to seem like something is going on and that is why they don't want the email, just want to get that point across of why they are not doing it. Mr. McQuaid feels if there was an email addresses they would all be contacted. Mr. Brady wants a motion for attorney through mail inform the Council Attorney of the Board's position on this matter and also next agenda amending the by-laws.

**Motion by Ada Erik** to have Stephen Glatt through mail inform the Township Attorney of the Board's position on the Email policy and also for the next agenda, amend the by-laws.

**Second by Arthur McQuaid**

**All in Favor**  
**Opposed: none**

**Adjournment**

**Motion by Ada Erik to adjourn the regular meeting**

**Second by Barry Wieser**

All in favor to adjourn the regular meeting of October 28, 2008

Regular Meeting adjourned at 11:07 p.m.

**Adopted: November 25, 2008**

Respectfully submitted by,

\_\_\_\_\_  
Denyse L. Todd, Secretary  
Zoning Board of Adjustment