

**MINUTES  
Of the Township of West Milford  
ZONING BOARD OF ADJUSTMENT  
September 18, 2012  
Regular Meeting**

Robert Brady, Board Chairman, opened the Regular Meeting of the Zoning Board of Adjustment at 7:42 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 wanted the record to show that there is a 7 member Board. Mr. Brady explained to the public about the Board of Adjustment, explained the Open Public Meetings Act of the State of New Jersey. Appeals go to the Superior Court of the State of New Jersey. He introduced the Board Attorney. The applicant explains the application first then anyone speaking for or against the application is given the opportunity to do so.

**Roll Call**

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

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

**Absent:** Michael Gerst

**MEMORIALIZATIONS**

There are no memorializations

**CARRIED APPLICATIONS**

**HAFTEK PROPERTIES, LLC  
APPEAL NO. ZB04-12-06**

Joseph R. Haftek, Jr., Tesser, Cohen on behalf of the applicant advised the Secretary and Board Attorney that they had a conflict for tonight's meeting. The client's engineer was unable to attend. Mr. Haftek requested a brief adjournment until October. There was quite a bit of testimony at the previous meeting for an appeal of a zoning permit denial there is now a use variance application, the next meeting will be about the variance application. There are recordings of previous meeting for any members who need to hear it. The initial deadline date of the appeal was through October 2, 2012, the Chairman asked if the applicant would sign an additional extension and he indicated he would.

Mr. Glatt confirmed that both applications listed were being adjourned and they are. Mr. Glatt asked Mr. Haftek if both deadline dates could have the Use Variance deadline date which is December 15, 2012 and he indicated that it would be fine as a convenience to the Board, he is happy to consider whatever the Board wants to do.

**MOTION BY STEVEN CASTONOVA** to adjourn the application until October 23, 2012.  
**SECOND BY ARTHUR MC QUAID**  
**ALL IN FAVOR** to carry the application and co-mingle it with the use variance application.

**NEW APPLICATIONS**

**DAVID & HELEN WALL  
BULK VARIANCE #ZB04-12-05**  
Block 3511; Lot 4  
74 Lakeside Road; R-1 Zone

Bulk variances requested for lot size where 1 acre is required and .399 acre exists and interior where 600 square feet is allowed and 1336.5 is proposed for a 2<sup>nd</sup> floor apartment.

The Board Attorney swore in David and Helen Wall of 74 Lakeside Road, Hewitt. Mr. Wall indicated they were not changing the upstairs it is not going to be an apartment for rent, their daughter is getting married in 12 days and she and her husband will be moving in. It would be a mother/daughter. There is an existing laundry room and they are putting in a 2 x 4 partition wall to give them a bathroom kitchenette area electricity and plumbing will be existing. However in the kitchenette area they will put in ceiling lights and outlets for the counter tops. No change to the footprint, just partition wall using existing plumbing and update the service to 20-amp service. They are not changing the bedrooms, just the variation mentioned. The entrance will be the same through the main floor of the house.

Mr. Drew asked about the outside staircase and Mr. Wall explained it is proposed to end on the deck as a secondary means of egress. The Planner explained that the zoning ordinance permits accessory apartments there can be an accessory apartment in a single-family house. It does not need to be occupied by a relation. The applicant is stating that his daughter and son will live there but it does not need to be a relation. The reason the application is in front of the Board is for size. The size of the apartment exceeds what the ordinance permits. Mr. Wall added it was not increasing in square footage it is an existing 2<sup>nd</sup> floor. A Board member confirmed that all they were doing was adding a wall to divide the rooms.

Mr. Glatt asked if there was any vacant land to purchase on either side and the applicant indicated no they could not increase the size of their lot. A Board Member asked what they would do with the apartment if their daughter decides to buy her own home. Mr. Wall indicated that the walls could easily come down and it can be converted back. Mr. McQuaid asked would he convert it back or rent it out. Mr. Wall indicated that he would not look forward to being a landlord and he said no and Mrs. Wall also said no.

Mr. Castronova had a question about the parking it seemed a little tight and he was concerned about people backing out. Mr. Wall indicated that it is the same as before and more people lived there before. He has concerns if they did decide to rent it out backing out would be a problem. They have had no problem in the past at one time there were four children at home driving. Mr. Castronova confirmed that the Health Department had no problem and Mr. Drew indicated that the Health Department approved it as a mother/daughter which is being requested by the applicant. Mr. Drew responded to the driveway concern and indicated that according to the location survey prepared by Stephen Eid, there would be sufficient area along side the house for a car to make a K turn to turn around if necessary.

Mr. McQuaid commented that the concern would be for the future, 20 years from now there is a 2 family house; an accessory apartment is 600 square feet, designed for 1 or 2 people, not really for children so it will not effect the schools. He is not against the apartment, it's a great idea. It is potentially a two family house and that is not a great idea. Mrs. Wall indicated that she told Mr. Gilmartin of the Health Department that when the house was sold it would be put back to a single family home four bedroom home and sell it not as a mother/daughter Mr. Wall added that is why they are keeping the same amount of bedrooms.

Mr. Glatt indicated to the Board that realistically, they are entitled to the apartment if the variance is granted. He does not know if the applicant would be required to remove the apartment upon sale of home or if it could be a condition, if the applicants want to voluntarily indicate that but does not know if the condition could be imposed because they are granting the variance in the same square footage, its not like they are allowing an addition of a 2<sup>nd</sup> floor, they are here doing it the right way as opposed to just doing it and no one would know unless they went to sell it.

Mr. Brady asked if there were any additional comments from the Board Members seeing none the meeting was open to the public.

Vivienne Erk after seeing there was no one present for or against the application, moved to close the public portion.

Second by Steven Castronova.

All in favor to close the public portion

**Motion by Steven Castronova to approve bulk variance # ZB04-12-05  
Second by Russell Curving**

Mr. Brady indicated that the Zoning Board requires finding of fact and not just a yes or no motion. Mr. McQuaid indicated that the applicant is giving testimony that they are not turning it into a 2 family house as he had brought up because they are not changing the electrical system it will be only one system, only asking for a little larger amount of electricity. They are keeping a four bedroom home, wanting their daughter and her new husband to come in and be able to save money on rent and to be able to live a comfortable life, something everyone could understand. He believes that because it is a permitted use in an area that can have it, it will be a mother/daughter not a 2 family house. There is not additional square footage and no available property to purchase. There were no objections from the audience.

**Roll Call Vote:**

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

**No:** none

**JOSEFA CUBELO  
BULK VARIANCE #ZB07-12-10  
Block 2509; Lot 1  
50 Passaic Drive, LR Zone**

Bulk Variance relief for a rear yard setback where 10 feet is required and 3 feet is proposed and maximum accessory building coverage where 3% is allowed and 6.1% is proposed for the construction of a 2 car garage with car port 34 feet wide X 26 feet deep.

Mr. Glatt swore in Josefa Cubelo of 50 Passaic Dr., Hewitt, NJ and David Rich of 50 Passaic Drive, Hewitt, NJ. Mr. Rich explained the application; they are proposing a 2-car garage with a breezeway/carport to park a boat trailer. Mr. Rich brought pictures for the Board and also mentioned the memo from the Health Department showing their objections. They were small items but he wanted to put them on the record. The actual location of the septic system will be added to the plan. NJDEP Highlands Act and he knew the exemption from talking to the Highlands. Mrs. Cubelo has owned the property for years. The plan has the carport on the wrong side of the garage.

Mr. Glatt asked for applicant to describe the house and the property. Ms. Cubelo explained that it is a single family 3 bedroom home. She purchased the lot behind her to add to her property with the intention of building a garage and it never happened until now. Mrs. Cubelo indicated that she has back issues so clearing her car off in the winter is not good. She wants her yard to look better without all the stuff that's there. They have three front yards. The front of the home is on Passaic Drive facing the lake and the rear of the home is on Lake Shore Drive and Greenloch runs along the side.

Mr. Glatt marked the photographs into evidence A-1 shows from Greenloch into the side yard. He drew in 2 garage bays and the carport from the road straight in. A-2 depicts the view from Greenloch looking at driveway and back entrance. A Board Member asked about the driveway. They are using the existing driveway but adding a gravel turn to enter through the garage doors. The doors will face Greenloch, Mr. Castronova asked about the egress to garage and they will utilize an S turn. Mr. Rich explained there was a utility pole and they want to preserve trees and shrubbery. A-3 from yard where port and garage will be. A-4 stakes that were put in by the surveyor showing where the port is 1<sup>st</sup> garage door and looking at the quonset hut, which is being removed from the property and the shed they would like to relocate but is being shown to be removed as well. A-5 gravel drive, 2 doors and carport from Greenloch. Mr. Rich indicated that the shed could go. A-6 shows a neighboring yard with a setback of less than 3 feet to their fence line. A-7 is the same showing the location of a neighboring garage and setback. Mr. Rich marked up exhibits to show distances. A-8 is showing neighbor's road setback also the distance from the applicant's property line to driveway and the road and showing 253 Lakeshore, which is the neighbor's address that faces Greenloch. A-10 is a drawing of the garage however the carport will be on the other side then what the rendering shows.

Mr. Glatt mentioned the Health Department Memo. Mr. Rich indicated that he spoke with Susan Muhaw from the Health Department. They have worked out most of it which Mr. Rich indicated in the beginning of the application testimony. They have the original

drawing of all of the aspects of the septic system. Mr. Glatt indicated that if the Board grants the request it is subject to the Board of Health. If the applicant does not satisfy Health the Board's approval would be nothing. Mr. Rich indicated that they have already satisfied 3 of the 5 and the next day hopefully the other 2 would be handled. He indicated that Ms. Muhaw wanted him to convey to the Board that most of the details were worked out.

Mr. Brady asked if there was any additional property to be purchased Mr. Rich indicated that the additional property to build a garage was already purchased by Ms. Cubelo and that was all that was available.

Mr. Castronova asked if it could be moved towards Greenloch to eliminate the 3 foot setback. Mr. Rich indicated that he was told it could not because of the driveway space to turn around. They are trying to save the older trees they can make an S turn it is not a big deal, the carport will only be used twice a year for boat and trailer. There is a lot of foliage on the road. Mr. Castronova did not think there were mature trees but there are 2 on the drawings oaks maples. The trees will not effect the garage location they prefer not to remove any trees. Some of the shrubs act as a buffer to the road.

Mr. McQuaid asked what if the garage was turned, it would take away a variance. The would not be able to have use of the rest of the yard, so no swing set in the future it would cut the lot in half and cut off visibility.

The Chairman asked if there were any questions of the Board. Mr. Brady then opened the meeting to the public.

Vivienne Erk after seeing there was no one present for or against the application, moved to close the public portion.

Second by Arthur McQuaid

All in favor to close the public portion

Mr. Drew asked about the overhead wires. He asked if that provided to the neighbors? The applicant indicated that it did. Mr. Drew then asked if it would cause any conflict. Mr. Rich indicated that he was an electrical contractor and Orange and Rockland has been there and the pole is higher than it needs to be and the lines are lower and they assured him that they could be raised. There is legally plenty of clearance under the roofline legally under the electrical code. Once the lines are raised, which will be no cost to them because the pole exists. They can relocate the pole which would be an excessive cost but as it stands now the lines would clear the roof line by about 5 feet so that would not be an issue. A Board Member asked if there was an easement to run the lines there and Mrs. Cubelo indicated that they did Mr. Rich added that there was a right of way, they sent them the legal notices and they do not seem to have issues with it. He reiterated that the engineers were out to look at it to raise the lines and there was no problem with it. A Board Member indicated that there were no notes on the plan showing an easement. Mr. Rich indicated they were notified. A Board Member indicated that technically it is an easement Mr. Rich agreed but notified them and had them to the property, which was not required. It is a steep pitched roof. The top would have headroom not really storage.

The Chairman reopened the meeting to the public as there were additional questions.

Vivienne Erk after seeing there was no one present for or against the application, moved to close the public portion.

Second by Arthur McQuaid

All in favor to close the public portion

**Motion by Steven Castronova** to approve bulk variance number ZB07-12-10. There is no property surrounding the application that can be bought, the disturbance of any trees. There are 3 front yards on 3 streets, which cause a hardship on the property. The applicant will be removing a shed and a Quonset hut, which will be a condition of the application. The applicant already purchased an additional piece of property that almost doubled the size of the property therefore; even purchasing it there is still a hardship.

**Second by Arthur McQuaid**

**Roll Call Vote:**

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

**No:** none

The Chairman indicated to the applicant that they have their variance and hopefully next month the memorialization of the resolution would take place.

### **APPROVAL OF INVOICES FOR PROFESSIONALS**

**Motion by Steven Castronova** to approve invoices for Stephen Glatt  
**Second by Russell Curving**  
**All in favor to approve the invoices**

**Motion by Russell Curving** to approve invoices for William Drew  
**Second by Vivienne Erk**  
**All in favor to approve the invoices**

There were no bills for Michael Cristaldi

### **LITIGATION**

Mr. Glatt indicated that the secretary was to put a copy of the Judge's Opinion in the Board Members packets. It speaks for itself and is a short opinion. The Judge was concerned with the fact that there was not sufficient testimony taken relating to the topography in the rear so as to allow the Board to make a finding of fact whether the garden shed could be relocated in the rear yard. He was concerned that the elevation plan or septic plan was old, so he has remanded it back to the Board. It is supposed to be heard in October. Mr. Glatt could not say for sure but there should be a revised site plan that will be submitted to the Board to give the Board a more accurate view of what the size of the back yard is and whether the applicant and/or the plaintiff objector in this matter brings in expert testimony or not. The Board needs to make a decision again and find additional fact finding at which point either the plaintiff objector or applicant can go back to the Court if they are not satisfied. Right now additional Board Members need to hear the tape. Ada Erik and Gian Severini are no longer on the Board. Mr. Glatt asked for new members to hear the meeting. The Board Members would like a copy of the transcript.

**Motion Steven Castronova** to approve the Regular minutes of June 26, 2012.  
**Second by Russell Curving**  
**All in favor** to approve the Regular minutes of June 26, 2012

**Motion by Robert Brady** to approve the Regular minutes of July 24, 2012  
**Second by Vivienne Erk**  
**All in favor** to approve the Regular minutes of July 24, 2012

### **DISCUSSION**

Mr. Drew wanted to discuss the application from McDonald's Restaurant which is to demolish the existing McDonald's on Marshall Hill Road. Mr. Drew wanted the Board's input on whether to have the Township Consulting Landscape Architect review the plans and prepare a report with regard to landscaping on the property. What is there presently will be completely demolished, the parking lot will be repaved there will be retaining walls along the frontage of Marshall Hill Road. There are other activities being proposed that should be evaluated. They intend to increase the paving and the number of parking spaces for the property it is marginal but will increase the impervious coverage. There may be types of landscaping like constructing a rain garden to help filter out the sediments that are going to collect from the runoff of the impervious coverage. That might be an aspect of the proposed site plan that the Board might want evaluated and a report given. As part of the submission of the plan they need to supply a limited Environmental Impact Statement which will go to the Environmental Commission and there will be questions and concerns with regard to comment on the site plan. The landscape architect has been a consultant for the Town for the last 15 or 16 years for various site plans when needed. It is mostly through Planning Board activities. This will be a case where there is a relatively major commercial site plan will be considered by this Board that is in the center of Town and he indicated that it might be worth bringing it to the Board's attention to get their feelings on it. Mr. Glatt asked if there was a landscape plan and Mr. Drew confirmed it was submitted as part of their site plan package. Mr. Hakim would review the whole package, evaluate the site, and advise the Board what is being proposed and whether there should be any alternatives to consider. Michael Hakim is the Landscape Architect; he does more Planning Board than Zoning Board applications.

Mr. Drew indicated it would be worth having them be notified ahead of time and address things up front. The applicant will be paying through the established escrow account. The landscape architect can be present during the meeting so all is out in the open the Board can ask about what they want,

the applicant can address items. So it can be the way the Board wants it to be. The plans for Inserra and the McDonald's plans should be coordinated since there is overlap. The McDonald's application was just declared incomplete. The Inserra application will get to the Planning Board before the McDonald's application will get to the Zoning Board.

**Motion by Robert Brady** to approve hiring the Michael Hakim, Landscape Architect in the preliminary application process for the McDonald's application.

**Second Steven Castronova**

**Roll Call Vote:**

**Yes:** Russell Curving, Steven Castronova, James Olivo, Frank Curcio, Arthur McQuaid, Vivienne Erk and Robert Brady

**No:** none

**Motion by Steven Castronova** to adjourn the meeting of September 18, 2012

**Second by Vivienne Erk**

**All in favor to adjourn the meeting of September 18, 2012**

**Meeting adjourned at 8:49 p.m.**

**Adopted: November 27, 2012**

Respectfully submitted by,

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Denyse L. Todd, Secretary  
Zoning Board of Adjustment