

MINUTES
Of the Township of West Milford
ZONING BOARD OF ADJUSTMENT
September 22, 2009
Regular Meeting

Robert Brady, Board Chairman, opened the Regular Meeting of the Zoning Board of Adjustment at 7:39 p.m. The Board Secretary read the Legal Notice.

Pledge

The Secretary read the legal notice. The Chairman asked all in attendance to join in the Pledge of Allegiance. There was a full Board for the meeting. Chairman Brady explained the meeting process and introduced the Board Attorney. He also explained the Open Meetings Act and the appeal process.

Roll Call

Present: Ada Erik, Francis Hannan, Barry Wieser, Frank Curcio, Arthur McQuaid, Gian Severini, James Olivo, and Robert Brady

Also Present: Stephen Glatt, Board Attorney, William H. Drew, Board Planner, Richard McFadden, Board Engineer and Denyse Todd, Board Secretary

Absent: Vivienne Erk

MEMORIALIZATIONS

VINCENT LANZA
RESOLUTION NO. 18-2009
USE VARIANCE #ZB07-09-05
Block 9501; Lot 12.01
1383 Macopin Road, R3 Zone

Motion by Ada Erik to memorialize Resolution No. 18-2009 for use variance approval for two principal uses, a combination of a restaurant with a country inn and a country store in one structure, which is a designated historic landmark.

Second: Gian Severini

Roll Call Vote:

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

No: none

CAROLYN SIRAGUSA
RESOLUTION NO. 19-2009
BULK VARIANCE #ZB06-09-03
Block 5621; Lot 5
25 Hickory Ave, LR Zone

Motion by Ada Erik to memorialize Resolution No. 19-2009 for Bulk Variance approval for a front yard setback where 11.5 feet was approved and 5.7 feet exists because of a covered porch.

Second: Gian Severini

Roll Call Vote:

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

No: none

LEANN & ED DE ROBERTIS
BULK VARIANCE #0930-0825
Block 14113; Lot 34; LR Zone
24 Cross Oak Lane

Stephen Glatt, Board Attorney swore in Edward DeRobertis, 24 Cross Oak Lane, West Milford, NJ and Claud Ballester, Licensed Professional Engineer and Planner, 1811 Union Valley Road, West Milford. Bachelor of Science, Engineering from Rutgers University and has been before this Board for the last 25 years.

Mr. DeRobertis indicated that they wanted to put a small addition on an existing deck, which will become a small sunroom with an office above it, he works out of his house 3 or 4 days a week and he needs additional space for work. The deck is existing and there are already footings. They are not extending it; it would be 12 X 18. Mr. Hannan pointed out the Health Department memo regarding the needs to remain a 2-bedroom home because of the septic. He also mentioned the letter from their Planning and Engineering firm saying that it will not change any characteristics of the wetlands within the jurisdiction of the property and they don't require a New Jersey DEP Transition Area Waiver or General Permit. Mr. Wieser asked if there would be a closet and he said no. It will be built over an existing deck on the site in the same footprint. The applicant confirmed there would be no running water in either floor of the addition. The deck will not require any additional footings.

Mr. Drew explained that the zoning ordinance does not require decks without a roof to meet setback criteria but by placing the two-story addition where the deck once existed, now requires a rear yard variance that needs to be approved by the Board. Mr. Drew suggested that the applicant's engineer/planner should put on the record the necessary testimony with regard to the variance request.

Mr. Ballester explained the area and that it was a prior lake community that was previously before the Planning Board. There were approximately 50 houses on 50 lots. Many of the homes were reconstructed in the footprints of the existing homes. He explained how the lot was created. The house is skewed outside the building envelope and there were variances that were pre-existing conditions. There is an existing deck, which is 10 feet off the property line, which will be enclosed and will now require a variance. There are no changes to the existing conditions of the site. The way the house is on the site would require a variance no matter where the addition was to go. Mr. Ballester mentioned the Township Engineer's memo regarding grading issues and to keep the footprint down. He does not feel the change would cause any problem. There is Health Department approval and there was an environmentalist who looked at it and gave comments with regard to the DEP approvals.

Mr. Brady understood that the addition is to be on the deck over the office and the bottom portion will be enclosed as well? Mr. Ballester explained that there are already footings it is a 2 story raised ranch home from the front and the back is back filled against the foundation. The deck is basically a grade behind the house, and Mr. Ballester indicated that the footings would be at grade. Mr. McQuaid confirmed that there would be no disturbance in the buffer zone and Mr. Ballester agreed. Mr. McFadden mentioned that the old wetland buffer zone was fifty feet and today it could be more. He then commented on the grading, to minimize soil disturbance, it should be built at grade with the exception of the proposed 748.5 elevation at the inside corner and that could be lowered a foot or more to get drainage away from that corner. Mr. Ballester indicated that it wouldn't be a problem and the suggestions were minor grading changes.

Mr. Brady asked if there were any questions of the Board members. Mr. Brady asked the applicant to take a seat and opened the meeting to the public.

Motion by Ada Erik to close the public portion after no one was present for or against the application.

Second by Barry Wieser

All in favor to close the public portion.

Mr. Brady asked if there was any discussion among Board Members.

Motion by Arthur McQuaid to approve Bulk Variance #0930-0825; Block 14113; Lot 34 in the LR zone, 24 Cross Oak Lane. Testimony has been given that there is an existing deck and because there is no roof or walls it doesn't fit into the zoning ordinance. They will be enclosing it making it a two-story addition, which will go with the two stories of the house there is the need for a rear setback variance. Testimony has also been given that they have looked at other areas of the home to place the addition and architecturally, it did not fit. There was concern about the wetlands buffer zone and testimony was given that the construction will not affect the buffer zone as it is shown on the maps. They will easily be able to accommodate our engineer's concerns for different grading aspects.

Second by Ada Erik

Mr. Brady understood that it is not really a two-story addition it is a single story addition to the second story. Mr. McQuaid wanted clarification. Mr. Ballester cannot testify to this as that part of the meeting was closed.

Mr. McQuaid amended his motion that it was not a two-story addition but a one-story addition. Ms. Erik also amended her second.

Roll Call Vote:

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

No: none

Mr. Brady told them they had their variance and hopefully next month the resolution would be memorialized. Mr. Glatt explained that there is a 45-day appeal period after the memorialization publication. If they proceed before hand it will be at their own risk.

HECTOR ROJAS

USE VARIANCE, #0840-0818

Block 11102; Lot 6.03

850 Westbrook Road, R-4 Zone

Mr. Glatt swore in Hector Rojas, 850 Westbrook Road, Drew Murray is the attorney representing the applicant. Mr. Drew explained the applicant wants to convert a three-car garage into an apartment for his parents.

Mr. Rojas explained that his father had health problems and he would like to move them from Ringwood to his house. The property is flat, cannot be seen from the street or from his house. It is perfectly set up for a second floor addition. There is a three car garage presently and the driveway is paved and the yard is level which was all done prior to his owning the house. There are no grading issues. The area around the structure is flat. He would take off the roof and add the second floor. He is proposing a two-bedroom apartment. There is currently electric in the building the well is big enough to accommodate the additional bedrooms but he will drill an additional well if the Health Department deems it necessary and the additional septic will be 500 feet away from everything if they don't require him to tap into the current septic. The septic system is behind the structure but they do not have septic approval yet they were waiting for the variance approval. There is no rock out cropping. A Board Member asked if the additional use of the well would diminish the capacity of the well to the house and he said no, if needed he will drill an additional well. This would only be for his parents use. He would like to build it to be handicap accessible. It will include a kitchen and a bathroom and it would be a self-contained apartment.

Mr. Glatt brought up the fact that if the Board passes the variance he needs to write a resolution and to do that he needs positive and negative criteria for zoning reasons. The applicant needs enhanced proofs by obtaining 5 out of 7 votes and needs zoning testimony. The sympathy argument is understood but this is required. Mr. Drew mentioned the testimony given was that it was for the applicant's father however, the approval would run

with the land and the apartment would be there forever and not just for the applicant's father. Mr. Glatt added that there would be two principal uses on one property that is not permitted. Mr. Glatt asked if they brought a planner with them and they had not.

Mr. Drew wanted to address the negative criteria. Mr. Rojas answered questions of his attorney. The structure is over 500 feet from the street and no neighbors will see the structure and nobody from Westbrook Road will see the structure. There will be no impact on anything or anybody except the applicant. The structure is approximately 700 or 800 feet from the applicant's dwelling. Mr. Drew pointed out that the dimensions shown on the plans differ from the approximations that are being given by the applicant. The structure from the street is 446 feet, directly from the neighbor is 108 feet, from Mr. Rojas house it is 326 feet. Mr. Murray asked about the neighbor's property that would border the structure and Mr. Rojas indicated that it is not completed. The neighbor at lot 6.02 is the one being discussed. The lack of visual affect is not a zoning issue; zoning is a second principal use on the same lot. So there has not been anything discussed relating to zoning. Mr. Rojas asked if the concern was because later on it could be rented and Mr. Brady agreed. The apartment would run with the property if sold. He asked if there could be anything limiting him to renting or selling the property. He indicated it would always remain as part of his residence with his parents or their children. Mr. Glatt indicated that approvals are forever. The Board would have no control over that. This is an exceptionally large parcel. Mr. Brady mentioned that he has heard no testimony that would warrant changing the zoning. It is hard to justify approving this. Mr. McQuaid asked Mr. Drew about accessory apartments; Mr. Drew responded that it needs to be part of the principal structure.

Mr. Glatt would like a planner to discuss the zoning aspect of the application. There is required criteria that needs to hold up. Mr. Murray asked for a moment to confer with his client.

Mr. Glatt said that Mr. Ballester brought something up from the previous application, for Mr. & Mrs. DeRobertis evidently there was incorrect information, it is a two story addition. Therefore, he would like to assist them and reopen this tonight, does the Board want to reopen, Mr. Wieser said he kept an eye to see if anyone left as soon as their matter was over and there was nobody.

All in favor to re-open the application.

Mr. Hannan offered that perhaps the next applicant would allow the re-opening of the application to occur.

Mr. Rojas and Mr. Murray returned. Mr. Murray requested a small adjournment to return with a planner. Mr. Glatt asked if they had any objection to extending the deadline by 30 days and they did not.

Motion by Ada Erik to adjourn this application

Second by Gian Severini

All in favor to carry the application for Hector Rojas, use variance #0840-0818, block 11102; lot 6.03, 850 Westbrook.

Sprint allowed the application for Mr. & Mrs. DeRobertis to be re-opened before their application.

Mr. Brady asked for Mr. DeRobertis to return to the dais. There is no need to hear the full testimony again but clarification is needed on the incorrect information. Mr. Brady asked Mr. Ballester is he misunderstood his question about it being a two-story addition which Mr. Ballester informed him that it was going to be on grade and only one story Mr. Ballester agreed with Mr. Brady's recollection. Mr. Ballester continued it is a two-story dwelling in the front and the rear is buried. They just received the architectural plans. Plans need to be marked into evidence. The addition will be described in detail. It has to be voted on again because it was granted with wrong information. Mr. DeRobertis apologized to the Board.

Mr. DeRobertis described the house as having three stories in the front of the house consisting of basement, first level and second level. There are only two stories visible in the back. A-2 rear of the house and A-1 is the side of the house. A-2 shows the back, there will be a sunroom and a sitting room and above that will be the office. There is a sliding glass door, a 2-story addition to match the height of the rear. Mr. McFadden asked about elevations and Mr. Ballester said it was the garage floor. The elevations of the second floor were discussed. The sliding doors were discussed and the rear bottom area will be glass windows. The rear elevation is about 750 and the grade will be 748.5. There will be 2 more feet of foundation exposed. Mr. Glatt indicated that Mr. Ballester needs to make sure that the figures are correct. Mr. Ballester said the site plan is correct but the architectural plans are not completed. The architect will need to meet the information on the plans.

Mr. Drew suggested that revised grading plans should be submitted which have the elevations shown of the addition along with a clear indication of existing and proposed grades on a larger scale. The elevations discussed will need to be clearly shown on the revised plans. Also architectural plans need to be submitted. This is in a wetlands transition area and the applicant has had an environmental expert provide his opinion on the minimal disturbance but it will be contingent on what the grading is around the addition and it is a sensitive area. Mr. McFadden feels the scale of the plan is all right however, the grades and clarification as to the elevation need to be on the plans. Mr. Ballester agreed to put all of the elevations of all of the floors on the revised plans. Also, Mr. Ballester needs to meet the existing grades no need to cut into the slope with the exception of the inside corner which is 748.5 which he may want to add some fill to get positive drainage away from the corner.

Mr. Brady opened the meeting to the public

Ada Erik after seeing no one present for or against made a motion to close the public portion.

Second by Gian Severini

All in favor to close the public portion

Motion by Arthur McQuaid to approve bulk variance #0930-0825, Bl 14113; Lot 34, LR Zone, 24 Cross Oak Lane. The testimony given is that there is an existing deck which will be turned into a two story addition, the lower level being a sunroom and the upper level being a small office where the applicant will do some work as he works 3 or 4 days a week from home. Testimony was given that they looked at other areas of the home to put the addition but architecturally it did not work. This is the best location, testimony given that there would be no disturbance in the wetlands buffer zone and also the differences will be put into the plans, which are of concern with regard to elevation areas on the property. They will accommodate the engineer's concerns.

Second by Ada Erik

Roll Call Vote:

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

No: none

Mr. Glatt told the applicant to make sure the plans are correct.

SPRINT PCS IDEN UPGRADES

INTERPRETATION # ZB08-09-07

BLOCK 14501; LOT 14 (Blakely Lane)

BLOCK 16901; LOT 2 (3520 Rt 23 N)

BLOCK 11401; LOT 8.05 (Larsen Road)

Constantine Stamos of the Law Firm of Price, Meese & D'Arminio on behalf of Sprint Spectrum, L.P. Mr. Czura was on vacation and Mr. Stamos is filling in. In 2000, 2001 and 2002 the Zoning Board approved the original applications. Each had approval and the resolutions were provided to the Board. The property on Route 23 was approved for 12 antennas, the property on Blakely Lane was approved for 9 antennas and the property on Larsen Road was approved for 6 antennas. Mr. Stamos indicated that there was a process at one time where there were three present and three future antennas and he has represented

them over the years and there are always 4 or 5 cabinets but in many situations like this they built for need and they put in only two. There is no ground disturbance and it all should be on a concrete pad, no additional coverage, only one cabinet per site, which is a dual cabinet 55 inches wide and 5 feet tall. It would be almost the same height as the existing cabinets.

Mr. Glatt explained that this was an interpretation and not an application. He explained that it was Mr. Czura's position that because of the previous approvals that there is no need to come back before this Board for any further minor site plan approval because the original approvals would encompass that. Mr. Stamos agreed. Mr. Czura's basis is that there would not be any further disturbance. Mr. Glatt asked if that was accurate in light of our zoning ordinance, it seems to him that our ordinance states that if there is any type of alteration to a pre-existing non-conforming use any additional minor site plan approval is required. Mr. Czura's argument is that he does not need it. Mr. Stamos' understanding is that in the past they would get approval for 9-12 antennas and a minimum of 4 cabinets and that they would never have sought only 2 cabinets. The approved plans that he reviewed showed four equipment cabinets and 9 antennas. Mr. Hannan asked if all of them show 9 antennas and 4 cabinets and Mr. Stamos said he saw two of them and they were approved. The alternative request is deminimus in nature of what is being proposed and no expansion or really any change to the site plan that a waiver be granted.

Mr. Glatt said that in Mr. Czura's letter of June 23, 2009 he indicated that the Route 23 address is to add three new antenna along side, six existing, also a new equipment cabinet, not indicating they were previously approved. On the Otterhole Rd. location the three antenna mount is to be replaced with a six antenna mount and two bay equipment cabinet is to be added to the existing steel dunnage in the existing compound but does not make any mention of prior approvals. On the Blakely Lane property it adds three antenna to the six existing at the top of the 150 foot existing lattice tower which was built by Metro One now AT&T. Mr. Glatt's question is if the three additions are consistent with the original approvals or are they different from the original approvals because the minute they are different he believes they would need to come in for minor site plan approvals. Mr. Stamos agreed that was the issue. Mr. Glatt asked if approvals encompass this and Mr. Stamos said correct.

Mr. Stamos directed the Board to sheet A-3 of their plan copies. The photograph in the top left corner is a blow up of the platform showing six present and six future. They built out the six antennas and put in the two mounting poles and leave them there for ease of construction in the future. Mr. Brady indicated that he has been on the Board for 20 years and cannot remember approving future antennas on anything. Mr. Drew said he reviewed the Board plans and they were not on our approved plans. Mr. McQuaid added that there were a dozen or more throughout the Town and the Board said that they would retain jurisdiction over any changes of the towers. Some of the discussion was that the towers needed to be strong enough to hold other companies' antennas; they were interested in the ability to collocate. The Board wanted to be sure that collocation would happen and that the tower they put up would be large enough and strong enough to hold the other carriers that were doing business at the time. Not that they were approving them, but that they would retain jurisdiction on any future build outs. Mr. Hannan mentioned that the Larsen/Otterhole location was involved in litigation and it went on for a long time because of not being built per the plans.

Mr. Glatt explained that the Board has to make a determination at least on this Interpretation as to whether the proposed changes at this point were changes that were previously approved. Mr. Glatt read under Section 40-4 section c and said he does not expect the Board tonight to read each resolution and compare it to the old site plans. They need someone in here to testify to the changes. He does not feel it is for the Board to try to figure out if what is proposed is the same as what was approved. If not what was approved then file the application for minor site plan approval. The Zoning Board retains jurisdiction and it is reasonable that they probably will get their approvals. Mr. Glatt said that if they do not have a Planner here tonight that there is not enough here at this point to make a determination and on their own the Board should adjourn it.

Mr. Stamos said the alternative relief requested is a site plan waiver, which may have been repealed. Mr. Hannan would like to have all of the information on the approvals. Mr. Brady reiterated that jurisdiction on all telecommunication that were before this board, stays with this Board.

Motion by Francis Hannan to adjourn without prejudice until the October 27, 2009 meeting.

Second Ada Erik

Roll Call Vote:

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

No: none

Mr. Brady announced to the public that this matter is adjourned until the October 27, 2009 meeting.

Motion by Ada Erik to approve invoices for Stephen Glatt

Second by Barry Wieser

All in Favor to approve invoices

Motion by Ada Erik to approve invoices for William H. Drew

Second by Gian Severini

All in favor to approve invoices

Motion by Ada Erik to approve invoices for Robert Kirkpatrick

Second by Gian Severini

All in favor to approve invoices

Motion by Ada Erik to approve the minutes for the August 25, 2009 meeting

Second by Gian Severini

All in favor to approve minutes

Motion by Ada Erik to adjourn the meeting

Second by Gian Severini

All in favor to adjourn the meeting of September 22, 2009

Opposed: none

Meeting adjourned at 8:53 p.m.

Adopted: October 27, 2009

Respectfully submitted by,

Denyse L. Todd, Secretary
Zoning Board of Adjustment