

**MINUTES
Of the Township of West Milford
ZONING BOARD OF ADJUSTMENT
September 27, 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 told the audience that all of the regular members were present and there would be a seven-member Board 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, Gian Severini, Vivienne Erk, Robert Brady

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

Absent: Russell Curving, Michael Cristaldi, Board Engineer

MEMORIALIZATIONS

RICHARD & ROSEMARIE SONDERGARD

RESOLUTION NO. 19-2011

BULK VARIANCE NO ZB04-11-04

Block 11203; Lot 2

108 Larsen Road; LR Zone

Motion by Ada Erik to memorialize Resolution No. 19-2011

Second by Arthur McQuaid

Roll Call Vote:

Yes: Ada Erik, Arthur McQuaid, Robert Brady

JAMES CAMPION

RESOLUTION NO. 20-2011

BULK VARIANCE #ZB05-11-09

Block 168.02; Lot 9

129 Doremus Road, R-4 Zone

The Board Attorney swore in the applicant. The applicant had provided the Board Secretary with the additional survey required at the last meeting. Mr. Brady thanked Mr. Campion for providing the survey. The applicant was asked if he received the additional report from the Health Department and he was given it. Mr. Brady explained that if the Health Department was not satisfied he would not get a building permit. The applicant is aware of this as well.

Mr. Glatt wanted it to be on the record that Mr. Campion submitted a new survey that was revised on August 31, 2011. Mr. Glatt asked the applicant about the setbacks. The existing setback is 20.2 feet and now asking for 15.3 feet, the required is 125 feet. So the variance

that the applicant is requesting is 15.3 feet. The application originally stated 13 feet it is changed to 15.3 feet. There are no questions of the Board Members or the applicant.

Mr. Glatt asked for the purpose of the hearing for Mr. Castronova to step down and Ms. Erk to sit at the dais.

The meeting was opened to the public. Motion by Ada Erik to close the public portion of the meeting. Second by Vivienne Erk
All in favor to close the public portion.

Mr. McQuaid asked about the front yard setback. The Board Planner explained that the original request was for a 13 foot setback and after the updated survey was submitted it was shown to be 15 feet 3 inches.

Motion by Arthur McQuaid to approve Bulk Variance #ZB05-11-09, Block 168.02; Lot 9, 129 Doremus Road, R-4 Zone, there is an existing porch and the applicant would like to extend it a few feet. The setback is larger than originally requested, instead of the 13 feet originally asked for it is 15.3 feet. There is no other place to put the porch. It is a nice design and will be an improvement on the community. There is no other property available for sale.

Second by Ada Erik

Amended motion and second for the applicant to be in compliance with the Health Department.

Roll Call Vote:

Yes: Ada Erik, Frank Curcio, Arthur McQuaid, Vivienne Erk, Robert Brady

No: none

Motion by Ada Erik to memorialize Resolution No. 20-2011

Second by Arthur McQuaid

Roll Call Vote:

Yes: Ada Erik, Frank Curcio, Arthur McQuaid, Vivienne Erk, Robert Brady

No: none

RONALD HEDDY

BULK VAR. ZB07-10-09

Bl. 7515; Lot 2

7 Ash Road, LR Zone

This application was carried to the October 25, 2011 meeting. The applicant will need to advertise for the October meeting.

ARVE DYVIK

BULK VARIANCE ZB04-11-05

Block 4201; Lot 16

41 Lake Park Terr.; LR Zone

Mr. Dyvik was sworn in by the attorney. Mr. Glatt asked if there were additional copies available for the Board. There is a sealed copy and the Board members are reviewing the survey. Exhibit A-1 is marked into evidence, which is the new survey. Mr. Glatt wanted to ask questions. A-1 is the original survey. Mr. Glatt indicated and the applicant agreed that at the last meeting during the presentation that there were some questions as to the exact dimensions as far as the variance that the applicant was looking for. The applicant went back to P & M Survey. There is a sketch that was added to the survey. The attorney asked the applicant if there was a revision date added to the survey. The details were added on 9/15/2011. The planner asked about the detail that was added to the survey with the raised seal that he was reviewing. It has a detail of the proposed location of the addition and the dimension of the property line. It indicates that the dimension is 31 feet \pm the Applicant agreed with all Mr. Drew said. Mr. Drew then indicated that it scales to more than 31 feet it scales to about 46 feet. Mr. Dyvik feels the detail was enlarged for viewing purposes. Mr. Drew indicated it should be to scale and looking at the plan you cannot be certain what the

variance request is for the setback for the addition. Mr. Drew also indicated that when the alternate planner was present for the previous meeting explained that the dimension shown was not to the rear lot line. The survey was to be updated to provide that additional dimension. The written dimension of 31 feet does not appear to be accurate.

There was additional discussion by Board Members and the Professionals. Mr. Brady asked if there were additional questions and Mr. Glatt explained to the applicant that there was a resolution prepared in case the Board was able to hear the rest of the application. The dimensions were left blank on the draft resolution, anticipating that we would have the survey earlier. The applicant was asked to have the new survey at least 10 days before and that is the way the M.L.U.L wants it to be submitted so certain situations can be avoided. There is a dilemma in the sense that the variance application that was submitted indicated that 60 feet was required and the variance being requested was 40 feet. Mr. Kirkpatrick at the August meeting questioned the applicant and evidently the wrong location was used to measure the distance that would be required for the setback. The plan came the morning of the meeting via fax and was undersized and unclear. The copy that was submitted at the meeting had a raised seal and a revision. It is the responsibility of the applicant to present the case and give the Board the dimensions. It is not for the Board to try to determine what was meant. If we had it 10 days ahead of time, someone would have called him to tell him there was a problem. Now it is showing it is not a 40 foot setback, but a 31 foot \pm setback which is 9 feet more which was asked for initially. It is not to scale.

Mr. Glatt explained the applicant's options. The matter could be carried again to have the survey revised. Mr. Kirkpatrick had supplied his contact information so the surveyor could talk to him. He could also go ahead with the application and let the Board vote on what is available. The Board would not know whether it was 40 feet 31 feet or 60 feet since there are no dimensions.

Mr. Dyvik indicated that the numbers are there whether or not to scale the numbers reflect the measurements. Mr. Glatt indicated that what was needed since the notation was not on the survey was someone to certify the numbers if the surveyor was here under oath to be questioned, that would be satisfactory. Right now it is hearsay. It has been added to and is a revision. The Board does not know if it is the original scale or a different scale. It may say 31 but it could be different. The dimensions are needed to be put in a resolution. The resolution is memorialized and becomes a record for all departments.

Board Chairman indicated that since it impacts the neighbors he would want to have it exact. Someone could overturn the decision if it is not exact and there could be a problem. The numbers have to be correct there cannot be any question. If the numbers are incorrect there is a chance that the addition would need to come down. It is for the applicant's protection as well as the neighbor's. The Attorney also indicated that measurements are 99.9% correct all of the time. Plus or Minus usually is for a metes and bounds description not for a variance.

The Board Planner mentioned also the note that is on the survey certifying it so it could not be used for the purpose of a variance. The attorney was in agreement and feels it should be removed. The surveyor spoke with Mr. Kirkpatrick and made no mention of the removal. Mr. Glatt offered to get the record to show that the words needed to be removed. The Board Attorney gave the applicant his contact information if needed and the Planner gave the applicant Mr. Kirkpatrick's information again. It is the applicants choice to either voluntarily ask to have it carried to get what was needed or if the applicant feels he has presented all of the facts have the Board vote. If the negative and positive criteria has been met to the Board's satisfactions. The Board would more than likely give the adjournment if that is what he wants to do. The attorney asked if he does ask for a carry to grant the Board a 30 day extension just in case.

The applicant wants the Board to vote this evening he does not feel it can be denied based on the scale. The attorney explained that if the Board denies the application and the applicant is not satisfied, the next choice would be to make an appeal to the Superior Court Law Division. If he does this it is a minimum of 150 days of discovery, which is at least 5 months. If the Court reversed the Board it would take at least a delay of 3 to 6 months. Mr.

Brady explained that if the Board votes there is not enough information, it is a denial. The applicant requested a carry to the October meeting. Mr. Brady feels it will be a nominal sum if it needs to be redone. We have rules regulations and statutes. The detail's proper scale, and the certification removed.

Motion by Ada Erik to carry the application to the October 27, 2011 meeting.
Second by James Olivo

All in favor to carry the application.

Mr. Dyvik also granted the Board and signed a 30 day extension.

TIM BOLDUC
BULK VARIANCE #ZB08-11-12
Block 9408; Lot 3
48 Alvin Road, R-3 Zone

Mr. Glatt swore in the applicant, Tim Bolduc of 48 Alvin Road. He has a corner lot and because of being on a corner has two front yards. Not too many choices for a shed location. The only place is the upper left hand corner of the property; he has a retaining wall on the top of his driveway. The shed will be wedged in the top corner. It is the only flat piece of land he has in his back yard.

The applicant brought in pictures that will be marked into evidence. There is no property available for purchase to alleviate variances. A-1 is the rear left corner of his lot, which is where the applicant is proposing to put the shed. A-2 is the rear right corner of the property. The applicant explained the location he was proposing. Mr. Brady commented that from the picture provided there is some coverage near the shed and the applicant explained there are evergreens in the location. A-3 & A-4 were also marked into evidence.

The applicant has ATV's, a mower and other yard equipment he would like to put into the shed. The applicant does not have a basement. The shed he is looking at has double doors, which will allow the ATV to fit into it. The shed photos are A-3 & A-4. It will be pre-built, darker red. It will be on crushed stone. The fence is the applicant's. The evergreens separate the properties. If the shed is moved to another location, the applicant would lose his yard. The yard is in a mountain. It appears flat but it is not. There are no objections from the neighbors. The rear of the shed will be to the upper left hand side of the driveway. The side of the fence will run parallel with the fence along the driveway. The fence is at the top of the driveway on top of the retaining wall. The applicant explained the location and the direction of the shed. The front will be facing his yard. The height will be 10 feet. The shed will be twelve feet by sixteen feet. All items crossed off on survey were removed it was an upper deck and pool.

The planner asked why the applicant could not adhere to the setbacks. The applicant explained there was no other place. It is the only flat area in his yard. The rear has an incline. The previous owner cleared the yard to the property line and the applicant feels it would appear to be in the middle of his yard if he came in 15 feet. He wants to put it against the evergreens. The actual property line is angled but the shed will be squared to the property line and the driveway. It may work out to be 3 feet on one side and 2 on the other side but will not look like that. Mr. Glatt explained to the applicant that he will have to live with what the Board gives him, the Board will decide what the give him and that's where it will have to go, if it is granted. It cannot run parallel. This is the angle but it will appear squared. If the Board says two feet it cannot be 1-½ feet, it has to be what is agreed upon. The applicant will have to commit to no less than two feet.

It is not over a well or sewer line or septic system. The applicant received the copies of recommendations from Township Departments. Mr. Brady opened the meeting to the public.

Motion by Ada Erik to close the public portion of the meeting.
Second by Steven Castronova

All in favor to close the public portion

Mr. Brady asked for additional questions or a motion.

Motion by Steven Castronova to approve Bulk Variance application #ZB08-11-12 in its present form acknowledging that the professionals had no restrictions or conditions to impose. He is allowed two feet off of the property line no closer.

Second by James Olivo

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

No: none

Mr. Brady explained that if a permit is drawn before the appeal period which is 45 days after advertisement of the memorialization in the newspaper, he does it at his own risk.

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

Second by James Olivo

All in favor to accept the invoices.

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

Second by Steven Castronova

All in favor to accept the invoices

LITIGATION

Mr. Glatt received a call from the plaintiff's attorney that he was filing a motion, perhaps to have the matter remanded but has not received it as of yet. He has not received the scheduling notice as of yet. There is 150 day discovery period, which is about 5 months.

Motion by Ada Erik to approve the Regular Meeting Minutes of August 23, 2011

Second by Robert Brady

All in favor to accept the minutes as written

Motion by Ada Erik to adjourn the meeting of September 27, 2011.

Second by James Olivo

All in favor to adjourn

Meeting adjourned at 8:53 p.m.

Adopted: October 25, 2011

Respectfully submitted by,

Denyse L. Todd, Secretary
Zoning Board of Adjustment