

**MINUTES
Of the Township of West Milford
ZONING BOARD OF ADJUSTMENT**

**FEBRUARY 27, 2007
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.

ROLL CALL

Present: Ada Erik, Francis Hannan, Daniel Jurkovic, Arthur McQuaid (7:55), Gian Severini, Barry Wieser, and Robert Brady.

Also Present: Stephen Glatt, Board Attorney, William Drew, Planning Director, Richard McFadden, Township Engineer, and Tonya Cubby, Board Secretary.

Absent: Ed Spirko and William Lynch.

Mr. Brady reviewed the Board of Adjustment procedures.

MEMORIALIZATIONS

JOHN & GAIL COLLINS

Resolution No. 3-2007

Bulk Variance #0630-0746

Block 6605; Lot 22

30 Sophie Avenue; R-2 Zone

Action: Bulk variance approval for rear yard setback for an addition to an existing single-family dwelling.

Motion by Mr. Jurkovic to approve Resolution No. 3-2007.

Second by Ms. Erik.

Roll Call Vote:

Yes: Ada Erik, Francis Hannan, Daniel Jurkovic, Arthur McQuaid, and Robert Brady.

No: None

Abstain: None

Motion carried.

THOMAS LEDDY

Resolution No. 4-2007

Bulk Variance #0630-0756

Block 5712; Lot 8

11 Birchwood Pass; LR Zone

Action: Bulk variance approval to construct a six-foot fence in the front yard.

Motion by Ms. Erik to approve Resolution No. 4-2007.

Second by Mr. McQuaid.

Roll Call Vote:

Yes: Ada Erik, Francis Hannan, Daniel Jurkovic, Arthur McQuaid, and Robert Brady.

No: None

Abstain: None

Motion carried.

STEPHEN B. GLATT, ESQ.

Resolution No. 5-2007

Ratifying and Authorizing the Award of a Non-Fair and Open Contract for the Position of Zoning Board of Adjustment Attorney

Action: Appointment of Stephen B. Glatt, Esq. as Board Attorney from January 1, 2007 to December 31, 2007.

Motion by Ms. Erik to approve Resolution No. 5-2007.

Second by Mr. Severini.

Roll Call Vote:

Yes: Ada Erik, Francis Hannan, Daniel Jurkovic, Arthur McQuaid, Gian Severini, Barry Wieser and Robert Brady.

No: None

Abstain: None

Motion carried.

APPLICATIONS CARRIED FROM PREVIOUS MEETINGS

ALAN TLUSTY

Bulk Variance #0630-0754

Block 403; Lot 5

17 Hamilton Drive; LR Zone

Requested: Relief pursuant to MLUL c.40:55D-70c for side yard setback and for addition to existing single-family house.

Mr. Tlusty requested that this application be carried until the planner that he hired is available to attend the Zoning Board of Adjustment meeting, and he subsequently granted a sixty-(60) day extension on this application.

Motion by Mr. Jurkovic to **carry** Bulk Variance # 0630-0754, for Block 403, Lot 5, 17 Hamilton Drive to the March 27, 2007 meeting.

Second by Ms. Erik.

On a voice vote all were in favor of carrying the application to the March 27, 2007 meeting, with a sixty-(60) day extension granted by the applicant.

Motion carried.

VINCENT LANZA

***De Minimis* Exception**

Bulk Variance #0630-0753

Block 2702; Lot 3

33 Flanders Road; LR Zone

Requested: *De minimis* exception from the Residential Site Improvement Standards N.J.A.C. 5:21-3.1 for pavement, curbs, storm drains, etc.; and

Bulk variance for lot frontage, lot area, lot width, lot depth, minimum front, side and rear yard setback and building coverage, and relief from the MLUL C.40:55D-35 requirement that no permit for the erection of any building or structure shall be issued unless the lot abuts a public street giving access to such proposed building or structure, to enable the construction of a single-family dwelling.

Mr. Lanza appeared before the Board and stated that the drainage calculations were not completed and requested that this application be carried to April 24, 2007 Zoning Board of Adjustment meeting. He subsequently granted the Board a sixty-(60) day extension.

Motion by Ms. Erik to **carry** Bulk Variance # 0630-0753, for Block 2702, Lot 3, 33 Flanders Road, to the April 24, 2007 meeting of the Zoning Board of Adjustment.

Second by Mr. McQuaid.

On a voice vote all were in favor of carrying the application to the April 24, 2007 meeting.

Motion carried.

NEW APPLICATIONS

JOHN J. PANARIELLO

Use Variance #0640-0760

Block 11103; Lot 5.02

610 Snake Den Road; R-4

Requested: Use variance relief from the MLUL C.40:55D-70d for accessory structure to be used for purposes not associated with the proposed principal structure.

Joseph Russo, 433 Hackensack Avenue, Hackensack, NJ, attorney for the applicant, stated that there would be two witnesses appearing before the Board, John Panariello, applicant, and Douglas McKittrick, engineer for the applicant. Mr. Russo proceeded with an overview of the application and the events leading up to this request for a use variance. He continued, stating that the applicant was present to seek approval for construction of a single-family dwelling.

Mr. Glatt, Board Attorney, inquired about the memo from the Health Department regarding this matter. Mr. Russo replied that he was aware of the memo, that two uses cannot be permitted on one lot, and that a septic plan had not yet been approved for this application. He stated, for the record, that he received various other letters that the Board members received copies of, and that he found no problem with the restrictions; they could be the conditions of approval. He continued, noting that the two-car off-street parking could be achieved by an easement that could be granted by the applicant, and stated that the swale and dry well did not present a problem for the applicant. He also stated that the memos from the Health Department and the Fire Bureau indicated no objections to the use variance.

Mr. Panariello, 610 Snake Den Road, West Milford, NJ, being sworn-in by Mr. Glatt, proceeded to give testimony under questioning by Mr. Russo. He stated that he plans to construct a 2200-sq. ft. single family dwelling for his parents to reside in. He reviewed his differences with a neighboring property owner. Upon questioning from Mr. Russo, he stated that his property is farmland assessed for harvesting firewood, that he has owned the property for (8) eight years, and that he produces about (20) twenty cords of wood annually, cut during approximately thirty (30) weekends per year. Mr. Panariello further stated that he has no objections to having the conditions noted as part of the approval, including constructing a swale for runoff, drywell detail submission, off-street parking, and septic plan submission and approval.

Mr. Brady asked Board members if they had any questions regarding this application. A Board member asked for clarification on the type of variance being requested, and inquired about the Chief of Police's concern about a pool business being conducted on this property. Mr. Panariello stated that he would not operate a pool business from this site. He continued with an explanation of the logging business conducted on the site, describing the harvesting of wood in quadrants according to schedules set by State Forestry officials. Upon questioning from a Board member, Mr. Panariello stated that the shed on his property is used solely for the logging business and use of the land, and that no other structures would be built other than the shed and the proposed house. Another member raised questions about the septic plans, and the log splitter in front of the shed; a concern was also voiced about the logging business noise emanating from the property that may disturb neighboring property owners. Mr. Glatt noted that the shed is a 37 x 40 foot structure and that the property consists of 12 acres. There were no further questions for the applicant from the Board members at this time.

Douglas McKittrick, McKittrick Engineering Associates, 2024 Macopin Road, West Milford, NJ, licensed engineer and planner, was sworn in by Mr. Glatt, and began with a review of his credentials for the Board. Mr. Russo referred to Exhibit A-1, and confirmed that he and Boyce McGeoch prepared the plans. Mr. McKittrick stated that the proposed house meets all zoning requirements. Continuing, he noted that two soil logs were performed and the second site was deemed favorable, that a septic plan had been done on the original [shed] building, and that minor changes were needed to accommodate the new building. The applicants' engineer presented testimony on permitted uses for R-4 zones. Mr. Russo stated that both of the two principal uses are permitted in this zone. Mr. McKittrick further testified that the site was well suited to both uses, a tree farm and residential use, and that there are no problems with the D.E.P. When questioned about any negative criteria affecting this application, Mr. McKittrick stated that there was no negative impact to the neighborhood and that the additional proposed structure

would enhance the neighborhood and brings it in line with surrounding properties. The applicant's attorney continued with the second negative criteria proof, noting that both the tree farm and the residential house are permitted uses in this zone. A Board member inquired about the proposed residence being used for the applicant's parents. Mr. Panariello stated that the house was for his parents to reside in, further stating that he will not reside in the proposed dwelling. When asked by the Board Attorney if other sections of the property will be used for tree farming, Mr. Panariello stated that he will never complete logging the two quadrants approved for removal of trees. Mr. Glatt noted a concern that the shed would be used for a purpose other than the logging business, and Mr. Panariello stated that he would not rent out the shed for any other business. When asked by a Board member if he was willing to do plantings to obscure the view for a neighboring property owner, Mr. Panariello replied in the negative, commenting that the neighbor was planning to construct a 10-foot fence to block the view. A Board member inquired about any other permitted uses for the proposed dwelling, and Mr. McKittrick replied that a professional, such as an attorney or dentist, could be allowed, but that would not alter his testimony on this application regarding impact. The applicant and his attorney both stated that there was no plumbing in the shed.

Mr. Drew, Planning Director, inquired about current access to the property via an easement. Mr. Panariello replied that no direct access currently exists from Snake Den Road. It was noted by Mr. Drew that there needed to be some consideration to building a house without direct access to a street. Mr. Panariello stated that full access will be available.

Board recessed at 8:56 p.m.

Upon return, Mr. Russo stated that, after conferring with his client, Mr. Panariello agreed to plant eight to ten evergreens on a berm to aid in shielding the property view from the neighboring property. The Board Chairman opened the hearing to the public.

Donald and Siobhan Partington, 572 Snake Den Road, West Milford, were sworn in by Mr. Glatt, and subsequently informed the Board that they had pertinent information relating to this application, noting that they had compiled a book of photos and a log of the incidents relating to zoning problems with the applicant. Mr. Glatt reminded them that only the issues that relate to this use variance are to be brought before the Board, that the Partington's can question the testimony given by the applicant and his engineer, and they can bring out negative criteria or impact as it relates to neighboring properties. Correspondence would need to show that the applicant has not complied with the requirements. He stressed that this needs to be viewed as a zoning issue. When questioning the application, Mr. Glatt explained the process, noting that the Zoning Board of Adjustment does not vote on enforcement. Mr. and Mrs. Partington expressed concerns that the applicant's property will be used for his pool and demolition business. The Partington's reviewed their concerns, and distributed photos and documents regarding the applicant's property, subsequently labeled Exhibits # O1 to O17. Mr. Partington stated that property values have decreased dramatically since the construction of the commercial building, and that the metal shed had diminished the value of his property. Following other comments by Mr. Partington, Mr. Glatt noted that the testimony given by the Partington's was subjective, and further stated that the Zoning Board of Adjustment grants variances on a site specific basis determined by the testimony given on each case. The Chairman noted that decisions are based on testimony and evidence presented.

Mr. and Mrs. Partington continued to reference the exhibit photos and questioned the applicant's proposed use of the existing structure, noting their concerns with the applicant's possible intent for zoning manipulation. They also commented that the daily activity on the property attests to the existing building being used for more than a logging business.

At 10:11 p.m. Mr. Brady addressed the other applicants scheduled for hearings, and asked them to return to the March 27, 2007 meeting, noting the time constraints resulting from the current application. Mr. Schaefer, Mr. Esposito and Mr. Barounis agreed to have their applications heard at the next meeting. Mr. Esposito and Mr. Barounis left the meeting at this time.

Mr. Partington stated that he wanted a berm built and conditions included on the use variance. Upon an objection by Mr. Russo to a photo taken when the applicant did not own the property, Mr. Glatt concluded, after consideration, that it should be allowed into evidence. The Board

members reviewed the applicant's maps and plans. In response to concerns about the principal building that exists, and other building that may be constructed, Mr. Russo stated that no other accessory buildings will be built on this site. On the issue of the condition of the existing fence, Mr. Russo stated that the applicant would remove his fence when the Partington's construct their fence. Buffers, berms and landscaping plans as conditions of approval were discussed as options, and Mr. Drew concurred. A maintenance bond could be imposed, to which Mr. Drew explained that this is usually applied for two years and then released. Mrs. Partington reiterated that they had valid concerns regarding the activity that exists on the applicant's property, and they asked the Board for a means of protection from the adverse effects of this activity.

Mr. Russo questioned Mr. and Mrs. Partington about neighboring properties and the size of accessory structures on these properties, noting that there were other neighboring buildings or barns that were similar to or larger than the existing shed on Mr. Panariello's property.

Following the conclusion of testimony from the Partington's, Ada Erik motioned to close the public portion of the meeting, seconded by Gian Severini.

Mr. Russo stated that credible evidence had been presented to the Board to grant the use variance. His client states that he will not use the shed for any other purpose, agreed to plant eight to ten evergreens on a berm, and any other condition that the Board deems necessary. Upon questioning about the tree type that would be most appropriate, Mr. Drew replied that a deer-resistant variety would be advisable, possibly Colorado or Norway spruce, and also noted that the landscaping plan would determine how many would be necessary. Mr. Hakim of Hakim & Associates was mentioned as one of several landscaping architects that could be consulted. When asked by a Board member when the proposed house would be built, Mr. Drew stated that the variance runs with the land, and that a timetable could be imposed, such as eighteen months to two years for completion. One Board member noted that the buffer should be substantial in order to hide any objectionable view from neighboring properties. A time frame could be established for construction of the berm and tree planting which would aid in obstructing the view from the neighbor's property.

Following discussion by Board members, a motion was made by Ada Erik to approve the use variance as a permitted use with no negative impact. Mr. Glatt questioned whether the conditions were being put on separately. Mr. Drew replied that, included as conditions of approval, the applicant should submit a landscaping plan to Mr. Hakim for review, that a two year maintenance bond be applied, that the applicant must use this property exclusively for tree farming, and that no other business activities would be permitted, nor would any storage of business supplies other than tree farming equipment be allowed. He further stated that the shed is to be used for woodland management and no other structures can be built, that it cannot be rented to any one else, and the applicant would construct a berm and plant approximately eight to ten trees (subject to approval of the landscaping plan by Mr. Hakim.)

Motion by **Ms. Erik** to approve Use Variance #0640-0760, Block 11103; Lot 5.02, 610 Snake Den Road; R-4, for accessory structure to be used for purposes not associated with the proposed principal structure, and noted that there were no negative aspects to this use, and amending her motion to include all the conditions stated above.

Second by Mr. Severini.

Roll Call Vote:

Yes: Ada Erik, Francis Hannan, Daniel Jurkovic, Arthur McQuaid, Gian Severini, Barry Wieser.

No: Robert Brady.

Abstain: None

Motion carried.

APPROVAL OF MINUTES

Motion by Ms. Erik to approve the minutes of the January 23, 2007 Reorganization Meeting of the Zoning Board of Adjustment.

Second by Mr. Wieser.

Roll Call Vote:

Yes: Ada Erik, Francis Hannan, Daniel Jurkovic, Arthur McQuaid, Gian Severini, Barry Wieser and Robert Brady.

No: None

Abstain: None

Motion carried.

Motion by Ms. Erik to approve the minutes of the January 23, 2007 Regular Meeting of the Zoning Board of Adjustment.

Second by Mr. Severini.

Roll Call Vote:

Yes: Ada Erik, Francis Hannan, Daniel Jurkovic, Arthur McQuaid, Gian Severini, Barry Wieser and Robert Brady.

No: None

Abstain: None

Motion carried.

A discussion by Board members regarding State required training for Planning and Zoning Board of Adjustment members. Mr. Hannan stated that he had completed training and Mr. Wieser confirmed his attendance at a training session. Mr. Drew replied that he would get further information to Board members who have not attended the training.

ADJOURNMENT

With no further business to attend to, Mr. Brady asked for a motion to adjourn the Regular Meeting of the Zoning Board of Adjustment.

Motion by Ms. Erik.

Second by Mr. Severini.

On a voice vote all were in favor of adjourning the February 27, 2007 Regular Meeting of the Zoning Board of Adjustment.

Motion carried.

Meeting adjourned at 11:13 p.m.

Approved: March 27, 2007

Respectfully submitted by

Tonya E. Cubby, Secretary
Zoning Board of Adjustment