

MINUTES
Of the Township of West Milford
ZONING BOARD OF ADJUSTMENT
November 26, 2019
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. The Pledge of Allegiance was recited.

Roll Call

Present: Daniel Jurkovic (arrived late), Arthur McQuaid, Frank Curcio, Russell Curving, Michael Gerst, Steven Castronova, JoAnn Blom, and Robert Brady

Also present: Deidre Ellis, Board Secretary, Stephen Glatt, Board Attorney

Absent: Ken Ochab, Board Planner and Patrick McClellan, Board Engineer and Matthew Conlon

The Chairman greeted the Board and the public. Mr. Brady explained the Zoning Board and Open Public Meetings Act. The meetings are advertised in the Herald News. The Board operates in accordance with the Open Meeting Act of the State of New Jersey, which means discussions and decisions are made in public. Under normal circumstances the Board follows a printed agenda. There are no new applications after 10:30 pm and no new testimony after 11:00 pm, after the applicant speaks then anyone can speak for or against that application. If it is needed there will be a break at approximately 9:00 pm. The appeals of this Board go directly to the Superior Court of the State of New Jersey.

A motion by Robert Brady to approve the Board Planner's 2018 Annual Report. Second by Russell Curving.

Roll call vote:

Yes: Russell Curving, Frank Curcio, Arthur McQuaid, Michael Gerst, Jo Ann Blom, Steven Castronova and Robert Brady

No: None

Abstain: None

MEMORIALIZATIONS

EDITH SAUTER
RESOLUTION 18-2019

BULK VARIANCE ZB07-19-15
Block 4301; Lot 40
27 Forest Lake Drive; LR Zone

Decided: Approval of a Bulk variance for side yard setbacks where 30 feet is required, 22.5'/8.0' is existing, 10.3'/10.0' is proposed. Rear yard setback where 60 feet is required, 46.8" is existing and 37.1' is proposed, and primary building coverage where 10% is required, 10.9% is existing and 18.9% is proposed, and accessory building coverage where 3% is required, 0% is existing and 3.7% is proposed for an addition to an existing dwelling.

Approved: October 22, 2019

Eligible to vote: Daniel Jurkovic, Matthew Conlon, Frank Curcio, Arthur McQuaid, Michael Gerst, JoAnn Blom and Robert Brady

A motion by Michael Gerst to approve Edith Sauter Resolution 18-2019. Second by Arthur McQuaid.

(Daniel Jurkovic arrived at 7:48 PM.)

Roll call vote:

Yes: Daniel Jurkovic, Frank Curcio, Arthur McQuaid, Michael Gerst,
Jo Ann Blom, and Robert Brady

No: None

Abstain: Russell Curving and Steven Castronova

**UNION VALLEY ASSOCIATES, LLC
RESOLUTION 19-2019**

USE VARIANCE ZB03-19-04

Block 6902; Lot 23

1793 Union Valley Road; R-4 Zone

Decided: Approval of a Use Variance for an expansion of a pre-existing non-conforming use, for a three-car garage with second floor storage. The proposed accessory structure is to be located in front of the primary structure.

Approved: October 22, 2019

Eligible to vote: Daniel Jurkovic, Matthew Conlon, Frank Curcio, Arthur McQuaid,
Michael Gerst, JoAnn Blom and Robert Brady

A motion by Michael Gerst to approve Union Valley Associates, LLC Resolution ZB19-2019. Second by Arthur McQuaid.

Roll call vote:

Yes: Daniel Jurkovic, Frank Curcio, Arthur McQuaid, Michael Gerst,
Jo Ann Blom, and Robert Brady

No: None

Abstain: Russell Curving

(Steven Castronova had stepped out of the meeting.)

**2018 BOARD PLANNER'S ANNUAL REPORT
RESOLUTION 17-2019**

Decided: Approval of the 2018 Board Planner's Annual Report

Approved: November 26, 2019

Eligible to vote: Russell Curving, Daniel Jurkovic, Frank Curcio, Arthur
McQuaid, Michael Gerst, JoAnn Blom, Steven Castronova and Robert
Brady

A motion by Michael Gerst to memorialize the Board Planner's 2018 Annual Report Resolution 17-2019. Second by Robert Brady.

Roll call vote:

Yes: Russell Curving, Daniel Jurkovic, Frank Curcio, Arthur McQuaid, Michael
Gerst, Jo Ann Blom, Steven Castronova and Robert Brady

No: None

Abstain: None

MICHAEL DARMSTATTER (Amended)

BULK VARIANCE ZB 06-18-04

Block 6403; Lot 1.01

151 Lincoln Avenue; R-1 Zone

Complete: 2/15/2019

Deadline: 11/28/2019

Originally approved and variance granted by the Board last year for a proposed accessory building 12 feet by 30 feet, and was located 11 feet from the side property line to stable a horse. The revised application proposes an expansion of the accessory horse stable to 12 feet by 36 feet, maintaining the 11 foot side yard setback and the 33.7 foot separation to the existing residential structure. The expansion requires the approval of these two variances. The purpose of the expansion is to allow two horses to be kept on the property. The applicant requested to carry the application to the November 26, 2019 meeting at the August 27, 2019 meeting.

Eligible to vote: Daniel Jurkovic, Matthew Conlon, Frank Curcio, Arthur McQuaid, Michael Gerst, Steven Castronova and Robert Brady

The Chairman called Mr. Darmstatter (Application ZBo6-18-04) to the podium where he requested his application be withdrawn. The Board Attorney indicated that the application would be withdrawn without prejudice and that if he wished sometime in the future to come back before the Board he could do so. Since there was no vote, there would be no prejudice.

A motion by Michael Gerst to approve that application ZBo6-18-04 be withdrawn without prejudice. Second by Arthur McQuaid.

Roll call vote:

Yes: Daniel Jurkovic, Frank Curcio, Arthur McQuaid, Michael Gerst, Steven Castronova and Robert Brady

No: None

Abstain: Russell Curving and Jo Ann Blom

JOSEPH BARDI
USE & BULK VARIANCE ZBo1-19-02
Block 507; lot 2
11 Laramie Trail; LR Zone

Complete: 6/10/2019
Deadline: 2/5/2020

Use variance approval requested for a garage where there is no primary structure. Bulk variance requested for a front yard setback where 40 feet is required, 15.4 feet is existing and 25 feet is proposed.

Eligible to vote: Daniel Jurkovic, Matthew Conlon, Frank Curcio, Arthur McQuaid, Michael Gerst, Jo Ann Blom and Robert Brady

The Chairman called Joseph Bardi to the podium and he requested his carried application ZBo1-19-02 be carried to the December 17, 2019 regular meeting indicating that his Engineer Doug McKittrick was unable to attend this evening.

A motion by Michael Gerst to carry application ZBo1-19-02 to the December 17, 2019 regular meeting. Second by Russell Curving.

Roll call vote:

Yes: Russell Curving, Daniel Jurkovic, Frank Curcio, Arthur McQuaid, Michael Gerst, Jo Ann Blom, and Robert Brady

No: None

Abstain: None

(Steven Castronova had left the meeting.)

The Board Attorney asked if Mr. Bardi would sign a 30 day extension and he did. Chairman Brady indicated that there was no Board Planner or Board Engineer present and that if the Board had questions for the experts, the Board would wait to vote on any applications that required answers from the Board's professionals. The Board Attorney explained the reasons for the absences and indicated that applicants could request to carry their applications to a later meeting if they were so inclined.

CARRIED APPLICATIONS

BATTINELLI ENTERPRISES
USE & BULK VARIANCE & PREL. &
FINAL SITE PLAN ZBo8-18-10
Block 3907; Lot 1.01, 1.02 & 2
1611 Greenwood Lake Tpke; LMI Zone

Complete: 9/27/2018
Deadline: 11/28/2019

Preliminary and final site plan and use and bulk variance approval requested. D2 variance required for Lot 2 to expand the garden center onto Lot 2. Lot 2 is proposed to be used only for accessory storage in connection with the garden center. Bulk variance requested for existing non-conformities, total area, Lot width and depth, front, rear and side yard setback, and street, side, rear, residential line buffers.

Attachment A – List of Variances

Use Variance Pursuant to N.J.S.A. 40:55D-70(d)(2)

1. (d)(2) variance required for Lot 2 to expand the garden center onto Lot 2. Lot 2 is proposed to be used only for accessory storage in connection with the garden center.

Bulk Variances Pursuant to N.J.S.A. 40:55D-70(c) (all existing non-conformities)

1. Total Area: Required – 3 acres; Existing – 1.39 acres; Proposed – 1.39 acres.
2. Lot Width: Required – 300 feet; Existing – 231 feet; Proposed – 231 feet.
3. Lot Depth: Required – 300 feet; Existing – 120 feet; Proposed – 120 feet.
4. Front Yard Setback: Required – 125 feet; Existing – 14.4 feet; Proposed – 14.4 feet.
5. Rear Yard Setback: Required – 75 feet; Existing – 63.6 feet; Proposed – 63.6 feet.
6. Accessory Building Side Yard Setback: Required – 50 feet; Existing – 34.7 feet; Proposed – 34.7 feet.
7. Buffer to Street Line: Required – 50 feet; Existing – 0 feet; Proposed – 0 feet.
8. Buffer to Side Line: Required – 40 feet; Existing – 0 feet; Proposed – 0 feet.
9. Buffer to Rear Line: Required – 50 feet; Existing – 0 feet; Proposed – 0 feet.
10. Buffer to Residential Line: Required – 75 feet; Existing – 0 feet; Proposed – 0 feet.

Robert Moshman Esq., Counsel for Battinelli Enterprises indicated that the applicant's Engineer David Newkirk was going to start testimony for the application. The Board Attorney confirmed that Mr. Moshman had received from the Board Secretary Mr. McClellan's report dated November 20, 2019 and Mr. Ochab's report dated November 23, 2019 and all the Engineer's had met to discuss pertinent issues. Mr. Moshman indicated that since the parties had met to discuss the issues at hand, he felt the application could move forward and address those issues at this time. Mr. McQuaid asked if there was a tax lien currently on the property and Mr. Moshman indicated that there was an investigation underway and that it was being challenged. Mr. Moshman indicated that his client Mr. Battinelli purchased the property about two years ago and for him to owe that amount of taxes on the property he would have had to have owned it for about 10 years so something was not right. It could be a possible condition of approval but will need to be cleared up.

Mr. David Newkirk, EIC Group LLC, 420 Route 46 East, Suite 1, Fairfield, New Jersey was sworn in by the Board Attorney. Mr. Newkirk is a founder of EIC group, a licensed professional engineer in New Jersey since 1986, with a Bachelor of Civil Engineering degree from the NJ Institute of Technology. Mr. Newkirk has appeared in front of various Boards, in Clifton and including this one, and has personally prepared the plans for this application and therefore is familiar with them.

Mr. Newkirk indicated that the plans were for the application for Battinelli Enterprises Garden Center at 1611 Greenwood Lake Turnpike. The property is located on three different lots, lot 1.01, 1.02 and lot 2, in block 3907. The total area is 60,384 square feet or 1.39 acres. The property stretches 480 feet along Greenwood Lake Turnpike, and is triangular in shape. On the West side the property width is about 190 feet and to the East it narrows to about 12 feet. The property is generally flat and slopes from West to East, with about a 9 foot difference in grade, it slopes from Greenwood Lake Turnpike toward the rear of the property about 7 foot difference in grade in the direction toward the back where the Brook is. The Brook is a tributary to Hewitt Brook and eventually dumps into the Monksville Reservoir. The steep area beyond that is not a part of the property in question. The property is in the LMI Zone with zoning requirements that are significantly in excess of what this parcel contains. Nearly all of the bulk data for this

property is currently existing non-conforming. The minimum acres is 3 and it is about 1.4 acres, the lot frontage is supposed to be 380 feet, and 480 feet exists, lot width is required to be 300 feet, they have 230 feet. The lot depth is required to be 300 feet and the property averages about 120 feet and side yard setback is conforming with 140 feet on one side and 120 feet on the other and 75 feet is required. For the front yard setback 125 feet is required and 14.4 feet is what is there. Rear yard setback 75 feet is required and existing is 64 feet. Maximum building coverage is 35% and 6.3 % is existing so that criteria is met. 70% is the maximum for impervious coverage, 57% is existing, maximum building height is met with 26 feet existing and 35 feet is the maximum. Accessory building setback is 50 feet, 35 feet is existing. For accessory building setback in the rear yard 50 feet is required and 135 feet is existing, so that is met. Accessory building to other building, 50 feet is required and 78 feet is existing so that is met. Mr. Newkirk indicated that buffers are also required. A 50 foot buffer to the street is required and zero is existing. 50 feet is required to buffer on the side and zero is existing, to the side 40 feet is required and zero exists. To the rear the buffer of 50 feet is required and zero exists and buffers to residential properties is 75 feet and across the street there is residential property. Mr. Newkirk indicated that all of these non-conformities currently exist and will not be changed, made any better or any worse. Mr. Newkirk indicated on a plan submitted into evidence as Exhibit A-1 a plan with a small triangle located on the property showing the amount of land that could be used if the entire lot were to conform to all the setback and buffer requirements. Mr. Newkirk circled the area and initialed it for the Board.

Mr. Newkirk indicated that lots 1.01 and lot 1.02 have always held the garden center. Lot 2 used to have a deli on it. Mr. Newkirk submitted Exhibit A-2, which contained photographs, 3 on page 1, 2 photos on page 2, 2 photographs and a chart on page 3. Mr. Newkirk indicated that the deli was located on lot 2 in 1930, though there was no photo showing this, at this time the other lots were empty. They appeared to be empty up until the 1960's. In the photo labeled 1979, it shows the deli and the accompanying parking lot and the building in the middle is the East half of the garden center, but it is rumored that it was a restaurant at that time. By 1987 it had been developed into a garden center according to the photograph, with expansion encroaching onto the adjacent property. 1995 is the photo at the bottom of the first page and shows the year that the Battinelli's bought the garden center, not the property but the business. In 2001, the top of page two, there is a much clearer picture of what is there, both buildings and the deli, the bins and the greenhouse with the beds in front, and a significant encroachment of the DEP's property.

Mr. Newkirk indicated that when Mr. Battinelli bought the business in 1995 he was unaware that the area which was then actually property owned by Jungle Habitat, was not his property. The previous owner had been using that area. In 2003 when he purchased the property from the previous owner he realized that area was actually not his property.

The middle picture on the second page is what the property looks like today. The Battinelli's bought the business in 1995, in 2002, there was a fire in the building to the East. At that time they were negotiating with the owner but did not close on the property until 2003. From 2004 to 2006 they rebuilt the building and connected two buildings, and all of that was approved through proper channels. There was a "STOP WORK" order issued at some point due to a disagreement about building size, and they were limited to the Town's constraints to build in the existing footprint of the two original buildings. They got a CO in 2006 and have been occupying the building ever since. Later on the hoop house was replaced by a composite type of greenhouse and a zoning permit and building permit were approved after being denied permits for a larger pole barn. The greenhouse was located in the same footprint as the prior hoop house.

Mr. Newkirk indicated that the deli burned in July of 2012. It was torn down and not rebuilt. In 2014 the Battinelli's expanded and put bins on that property to store gravel, sand etc, onto lot 2 without site plan approval. It has been an existing non-conforming use prior but it was a deli, not a garden center area. The Battinelli's did not realize that they needed site plan approval, it being a retail space before. Approval was never given for the expansion of the existing non-conforming use on that lot.

Mr. Newkirk indicated that what the applicant was seeking was the acknowledgement that there is already an existing non-conforming use and also the expansion of that use onto lot 2. No buildings are to be built and nothing is going to change what is being done on the site presently. The applicant is proposing minor changes, on lot 2 there is a portion that is gravel where the building had been taken down and that will be paved. The area is considered impervious to begin with since it is so packed down from prior use. The bins currently there will be moved for paving and when relocated, will be within the actual property line, not over, encroaching the adjoining property.

People currently have difficulty knowing how/where to park. Mr. Newkirk proposes that the driveway area to the West will act as a one-way entrance and the one to the East will serve as the exit area, clearly marked with signs. The parking area is to be delineated with contrasting pavers. Mr. Newkirk indicated he calculated the number of parking spaces by the uses of the property. The retail is about 2200 sq ft, 450 sq ft of offices, 1200 sq ft of storage, 11 spaces for retail, 3 for office, and 2 spaces for storage a total requirement of 16 spaces and the applicant is proposing 17 spaces. Mr. Newkirk indicated that subsequent to calculating the spaces that way, he read that Town ordinance 533-D has garden centers as a scheduled use, requiring 6 spaces per 1000 sq ft. There would therefore be 22 spaces required as per the size of the main building and greenhouse and then 1/2 a space is required per 1000 sq ft of outside storage area adding another 13 spaces or 35 spaces in total. An additional variance is being sought for the parking discrepancy. 17 spaces are more than adequate for the site. The Board Attorney asked if the parking area had been discussed with the Board Planner and Engineer. Mr. Newkirk indicated that he believed they did, and also the applicant did include that variance in the published notice. The plans in that area are in error, so Mr. Newkirk wanted to bring that particular variance the Board's attention. Daniel Jurkovic asked if there was a place to add parking. Mr. Newkirk indicated that there was no need for additional parking and that if parking were placed in the rear the requirement for two-way driveway not being wide enough. Additional parking would add other additional variances. Daniel Jurkovic indicated that variances granted apply whoever owns the property and that is why garden centers are listed as a scheduled use, and indicated he would like input from the Board Planner and Board Engineer regarding this.

Mr. Newkirk indicated that adding parking in front of the bins would not be advised. The bins contain bulk materials like sand and stone. The bins are about 10 feet wide and vary in depth depending on the materials they hold from 10 to 20 feet deep. Mr. Newkirk confirmed when asked by the Board Attorney that the hardship was that the maximum spaces the site could provide was 17. The Board Attorney indicated that the Board would need to be satisfied about the testimony that the maximum number of parking spaces. There are no painted parking spots presently. Mr. Newkirk indicated that people usually park near the door. 10-12 cars can park there now and spaces will be added to that. By making the entrance one way the applicant has the ability to create more spaces. Mr. Newkirk indicated that currently there is not an application before Passaic County and it is a County road so there will need to be one. Mr. Ochab had brought this up in his report. The new circulation pattern would be an improvement.

Mr. Newkirk indicated that he would address the concerns in both the Board Planner and Board Engineer reports. The delivery trucks bringing in materials are owned by Battinelli and therefore there is more control over the schedule. Mr. Newkirk indicated that when the Board Planner and the Board Engineer were recently at the site the applicant demonstrated with the largest truck on site how the truck could back into the bins without encroaching on Greenwood Lake Turnpike, a particular concern of Mr. Ochab. They do not need to back into the road. Mr. Ochab had a concern about other people with trucks trying to back in and the applicant agreed to post signs marked to pull in only. When asked, Mr. Newkirk indicated that the reason he had not filed with the County yet was because the application had sat for so long he was not sure what was going on with it and also he prefers to get comments locally before going to the County.

The Board Attorney clarified that Mr. Battinelli had other matters/applications pending that were delayed and that was the purpose for the delay with this application for the sake of the record.

Mr. Newkirk indicated that the Passaic County Planning Board does not have a parking requirement, but basically have concerns about drainage off the road and safety issues, not zoning.

The Board Attorney swore in Tony Battinelli. Mr Battinelli indicated that he only wished he needed the required number of parking spots. There are issues with people parking and blocking other people. There was more room before the County put in curbing. Mr. Battinelli indicated that having the lot paved and marked will be an improvement.

Daniel Jurkovic questioned the "turn-around time" of the average customer. Mr. Battinelli indicated that if the customer was coming in for bulk materials that would be in a different area and the average customer could maybe be there 10 minutes or maybe an hour certain times of the year, getting a gift wrapped, but not 3 hours as you may find at a mall. The Chairman asked if the County had placed any signs. Mr. Battinelli indicated that the County came in and put the curbs in and then added entrance and exit signs but that was it. The property had been a garden center at least 6 years prior to the Battinelli's purchasing the business in 1995. The curb prevents people from backing out but presently the car parking is unorganized. Designated spots will be an improvement and there will be an ADA space as well. Mr. Newkirk indicated that the aesthetics will improve and the dust will be diminished, the material in the bins has

been moved and the bins will be relocated to be placed within the property lines. The area that encroaches onto the DEP property will then be seeded. It would improve the wetlands. There is no proposal to develop anything in that area.

Mr. Newkirk addressed Mr. McClellan's comments and referred to Exhibit A-2 page 3 and FEMA flood maps. The maps show the effective flood map dated September 28, 2007 and a preliminary flood map dated January 9, 2015 that will eventually be the updated and adopted as the flood map. Mr. Newkirk indicated that when FEMA does their flood map calculations they do it on a wide base County level which is not very detailed on a parcel level but more of an overview. They then publish the profiles and the flood insurance study and give the results of the flood profile along the stream along with the elevations along the water course. Mr. Newkirk actually went out and did a detailed plotting of the elevation of the site. Mr. Newkirk described the most accurate way to determine the 100 year flood plain is to actually take the profile of the actual flood insurance study and project it to the actual elevations on site. There was no profile published for this tributary in the Effective FIS, but there is a profile on the Preliminary FIS (dated January 9, 2015). Mr. Newkirk indicated that on the Effective map the flood zone is much wider to the East but narrower to the West of the property which shows inaccuracy in their survey data. Mr. Newkirk indicated that he believes that the Preliminary Flood Insurance map shows an accurate representation of the 100 year flood. The DEP actually regulates one foot above the 100 year flood, and in answer to Mr. McClellan's question if it would make a difference Mr. Newkirk indicated that it would not. (The advisory Base Flood Elevation) is 522.6 feet and the building is at 525.1 feet, so it is in accordance with the requirement of the DEP. The bins and all other areas where work will be done are above the flood line.

(Below is a portion of the Board Engineer's report that Mr. Newkirk read to the Board.)

- 1) The property is traversed along its southerly boundary by a tributary to the Hewitt Brook.*
- 2) The site plan indicates a one-hundred (100) year flood plain on site. Our review of the FEMA effective map shows this flood line in a different location than represented on the site plan. We note that the Engineer does reference the FEMA preliminary maps which were used to delineate the one-hundred (100) year flood plain on site. Our understanding of the NJDEP definition of FEMA flood mapping is that the preliminary map is relevant only if it shows a flood elevation that is higher than the effective map. We recommend that the Engineer testify to the differences between the FEMA effective and FEMA preliminary maps.*
- 3) We also recommend that the Engineer testify to the impact of the flood hazard line (FEMA 100 year flood elevation plus 1 foot) may have on the site.*
- 4) We concur with the Engineer's comments on the site plan that the new proposed activities are within previously disturbed / paved areas which will not result in the removal of riparian vegetation. However, testimony should be provided regarding the anticipated riparian buffer dimension and whether or not the previous development may have impacted these areas.*
- 5) Wetlands transition areas should also be discussed to see if previous development may have impacted these areas.*

Mr. Newkirk indicated that the back areas on the site plan are within the buffer areas, and they are not proposing any development of these areas and what is there predates regulations. Mr. Newkirk indicated when questioned that in the past the site, by today's regulations, had probably been negatively impacted by the development. Not being a wetlands expert, Mr. Newkirk indicated that he did not know the actual wetlands buffer and transition area requirements. There was discussion about buffer areas and the transition areas and previously disturbed areas and cumulative impact.

Mr. Newkirk addressed the positive criteria for the use variance. Mr. Newkirk indicated that having two separate businesses on the property would increase the traffic going in and out and the best use of the property is to use it in conjunction with the garden center. The impact of the area is reduced from what was there previously.

A motion by Michael Gerst to take a short break. Second by Arthur McQuaid. All were in favor.

The meeting resumed at 9:26 pm.

Mr. Newkirk addressed the Board Planner's report dated November 23, 2019.

Depending on the outcome of this discussion the following recommendations are offered:

- 1) The removal of all materials from the Department of Environmental Protection property. The NJDEP be notified with respect to the restoration of this area by the applicant.*

- 2) *Signage at the material storage area to the east of the building that trucks not back into the site from Greenwood Lake Turnpike. In addition, that the area between the material storage bins and the Greenwood Lake turnpike be kept clear of vehicles and materials so that trucks can back into the bins without having to utilize the County roadway.*

Mr. Newkirk indicated that the materials have been removed and the bins will also be moved off of the area. The Board Attorney indicated that if there is an approval it would be a condition that the DEP get a copy of the Resolution so that they are put on notice. Mr. Newkirk agreed. Mr. Newkirk agreed to put up signage.

Mr. Newkirk addressed the ADA Committee comment about the striped access isle adjacent to the ADA space. They were hoping to delineate with pavers but will comply and paint it blue. The Environmental Commission requested an Environmental Impact Statement with regard to the stream. Mr. Newkirk indicated that previous testimony stated there would be no impact to the stream. The Environmental Commission had questions regarding drainage into the storm drains on Greenwood Lake Turnpike and Mr. Newkirk indicated that the site pitches away from Greenwood Lake Turnpike and all the water on the site runs into existing on site drains that bring the water around the building and then drain to the stream in the back. There will be no icing or flooding onto Greenwood Lake Turnpike. They recommend Passaic County approval and the applicant will comply with that. Mr. Newkirk disagrees that they are adding impervious coverage because the existing parking lot is hard packed gravel. The Environmental Commission had concerns with the availability of adequate well water to water the nursery stock and Mr. Newkirk indicated that 35 years of business has shown it can support it. The bins will be relocated. The West Milford Health Department had concerns about the septic system with additions to the building. The applicant proposes no changes to the building or the septic. On lot 2 the septic system was abandoned according to the requirements of the DEP. Any remaining pump out tanks or chambers will be abandoned as per DEP requirements. The applicant will confirm that the well on lot 2 has been abandoned properly and will address any tax issues.

Mr. Moshman asked Mr. Battinelli to explain the current uses and activities that take place on the property and how the expansion of the business was going to affect the use of the property. Mr. Battinelli indicated that the property was an active garden center, with bins of bulk materials for sale and plant material. The inside area is mostly retail for home décor. The hoop house contains seed, pots and materials not left outside. Customers mostly come for the bulk material being sold. Mr. Battinelli indicated that with the new designated parking circulation will improve and people will get used to knowing where to go for what they need. Mr. Battinelli addressed noise and dust. Currently the area is cleaned with backpack blowers and some complaints have been filed over the years. Paving would allow him to use the sweeper that he uses for the recycling yard which is less noisy and uses water solving the noise and dust problem.

The public portion was opened and no one elected to speak.

A motion by Michael Gerst to close the public portion of the application. Second by Arthur McQuaid.

Roll call vote:

Yes: Russell Curving, Daniel Jurkovic, Frank Curcio, Arthur McQuaid, Michael Gerst, Jo Ann Blom and Robert Brady

No: None

Abstain: None

(Steven Castronova had left the meeting.)

Mr. Moshman summarized the application. Mr. Moshman indicated that there were three tiny parcels, none conforming yet they have been use for 70 to 80 years. The property is oddly shaped and has been used as a garden center for 33 years. The hardship is that it is a tiny parcel and it is odd shaped and undersized, located by a main traffic way and a river. The suggestions in the proposal would be an improvement to what is already there, parking and traffic. The comments from the various departments have been addressed. The bulk variances are extensive but combining all three lots together there would be only 49 square feet to work with. Mr. Moshman indicated that to allow what has gone on for the last 30 years to continue just makes sense and he asked the Board to vote favorably on the application, if the Board wanted to wait and have the Board Engineer and Board Planner review things that would be understandable.

The Board Attorney asked if the properties were merged at this point in time. Mr. Moshman indicated that they were not. Two are FPA Realty LLC and the one on lot 2 is PFA Realty LLC. The applicant prefers not to merge the two properties. The Board Attorney indicated that for

the purposes of the variance the properties should be merged and Mr. Moshman agreed it would make sense and it was agreed that a deed would be submitted to the Board Attorney if the application were to be approved.

Robert Brady the Board Chairman asked if anyone would like to make a motion to hold off on a vote until our professionals can comment. The Board discussed whether there were issues remaining. Chairman Brady asked if anyone would like to make a motion to accept the testimony as is and declare the questions posed by the Board Professionals to be fulfilled.

Arthur McQuaid made the motion to accept the testimony as is, that the Board professionals' questions had been answered. Second by Russell Curving.

Roll call vote:

Yes: Russell Curving, Daniel Jurkovic, Frank Curcio, Arthur McQuaid, Michael Gerst, Jo Ann Blom and Robert Brady

No: None

Abstain: None

Daniel Jurkovic made a motion to approve the use and bulk variance and preliminary and final site plan for application ZB08-18-10, Block 3907; Lot 1.01, 1.02 & 2; 1611 Greenwood Lake Turnpike; LMI Zone. D2 variance required for Lot 2 to expand the garden center onto Lot 2. Lot 2 is proposed to be used only for accessory storage in connection with the garden center. That is conditioned upon a deed being submitted showing the properties have been merged so that lot 2 does not exist separately with just an accessory building on it. Bulk variance requested for existing non-conformities, total area, lot width and depth, front, rear and side yard setback, and street, side, rear, residential line buffers. Basically approving what is existing and what has been there for some time as well as the additional variance for allowing parking for 17 cars instead of the 35 required, because it is a place where spots are changed out frequently. (The Board Attorney indicated that the applicant did advertise for the parking.) Clearing up any encroachment on other property and delineating the property lines and removal of the bins, as well as cleanup of the septic areas would also be included as conditions. **Second by Arthur McQuaid.**

Roll call vote:

Yes: Russell Curving, Daniel Jurkovic, Frank Curcio, Arthur McQuaid, Michael Gerst, Jo Ann Blom and Robert Brady

No: None

Abstain: None

RONALD RUTZ
USE VARIANCE ZB06-19-12
Block 3301; Lot 3
Fox Island; R-2 Zone

Complete: 8/2/2019
Deadline: 11/30/2019

Use variance requested where there is no primary structure and the use is not permitted for a 10' by 9'6" shed built prior to the submission of the application.

Mr. Moshman Esq. has been retained by the applicant. The Board Attorney swore in the applicant Mr. Ronald Theodore Rutz, 93 Awosting Road, Hewitt, NJ. Mr. Moshman questioned the applicant. Mr. Rutz indicated that he resides at 93 Awosting Road, that he purchased the lot on Fox Island in February of 2013, the Fox Island lot is not a second home and he does not ever live on Fox Island. Mr. Rutz has picnic tables and a grill on Fox Island. Mr. Rutz gets to the Island by boat but not all year round, mostly in the summer unless the lake freezes over. There are no electrical utility lines or gas lines that connect to his lot. Mr. Rutz has lights which can be used with a generator. There is no septic and or roadways, or private well or dedicated plumbing, sinks or showers or kitchen on his lot. Mr. Rutz indicated that he stores materials in his shed and that some lots have homes and some do not and that there are some lots that have only a shed. The property is approximately 191 feet x 188 feet, just under half an acre. Mr. Rutz indicated that he completed the shed in 2014 and it has been in the same location and has not changed in size. Recently he had a complaint, but not prior to coming before the Board. Mr. Rutz indicated that he built the 10' x 9'6" shed on a flat area and it is green in color and under 100 sq ft. The shed is unable to be moved without heavy equipment.

The Board Attorney indicated that Mr. Rutz has an accessory structure on a parcel of land where there is no principle structure. As stated in testimony given at the last meeting, a neighbor, Ms. Stopper had gone through the permit process to rebuild her shed and Mr. Rutz was aware of this. Mr. Rutz indicated that his shed was smaller than Ms. Stopper's, hers being 8' x 18-20',

over 100 square feet. Mr. Rutz indicated that he was wrong to think he did not need a permit. There was discussion about Ms. Stopper's scenario and the difference between the two situations. There was a structure already there on Ms. Stopper's property that was damaged and she went through the permit process.

The Board Attorney marked into evidence Exhibit B-1 which is a series of photographs of the site. Mr. Rutz indicated that he had testified before that if friends were over a child may sleep in the shed while they are cooking. The Board Attorney explained that first one gets a zoning permit to ensure that you are permitted to put an accessory structure where there is no primary structure. When asked, Mr. Rutz indicated that he did not ask or try to get a building permit either. The Board Attorney referred to the pictures in Exhibit B-1 one of which appeared from the outside to an outhouse and on the inside was a toilet seat and hole with a spackle bucket. Mr. Rutz looked at the pictures and indicated in one there was a wood stove he was using as a chiminea. The Board Attorney questioned if Mr. Rutz had ever questioned if the neighbors, Township or fire department would have concerns about a stove, outside and not inside a structure? Mr. Rutz indicated he thought since it was elevated off the ground, that was what the requirement was according to friends on the fire department. He had moved it from his back yard to the Island. Mr. Rutz indicated that he has a generator that can be plugged into the shed, and he has a light inside and there had been a fan in the window. Conversation ensued about the various things located at the site. Mr. Rutz agreed he was asking the Board to legitimize what should not have been built there in the first place. The Board Attorney indicated that the Board was going to have to decide if they were going to allow this structure to remain or if they would decide it would be torn down. The Board Attorney requested Mr. Moshman provide some zoning reasons why the shed should remain.

Mr. Moshman questioned the late day arrival of materials at this point in time. The Board Attorney indicated that he received the materials came to him this afternoon and that if there were violations involved he did not know and that was not within the jurisdiction of the Board of Adjustment. The Board Attorney indicated that at the last meeting when this application was heard, we explained to Mr. Rutz that he was asking the Board to grant something that was not permitted. The ordinance clearly states that you cannot have an accessory structure without first having a principle structure. Mr. Moshman indicated that although the proper channels were not initially utilized, Mr. Rutz was trying to rectify the situation at this time. The shed is there and he would like to keep using it for recreation. The Board Attorney indicated that a lot of people want what they want but if certain things are allowed it affects others and then there is no stopping the next person and the next person from doing the same thing. The applicant is asking the Board to condone an illegal structure that may cause a fire because he wants it, and that is not a zoning reason for approval. The Board Attorney instructed the Board that if they can justify this accessory structure being there it needs to show that it is in conjunction with another piece of property or something that Mr. Rutz owns there that goes hand in hand. The example was made wherein a person may own a property with a house on it but no garage, they come to the Board and ask to place a garage on a property owned across the street, as an accessory structure without a principle structure and so the two properties are tied together. This is not the case with this application, there is no connection.

Mr. Moshman indicated that since the applicant's lot is so small, he would have to buy 4 lots (to build a principle structure). The Board Attorney indicated that if he in fact bought one or two lots, the Board might look at the application and say for instance on a half an acre you could put a house of a certain size, you have a hardship, we can put conditions on it, an effort was made to ameliorate the problem and go from there. The Board Attorney needs to have zoning reasons to list when he writes the resolution. There are objectors and there is a likelihood of an appeal. The Board Attorney needs reasons to uphold decisions granted by the Board.

There was discussion about the outhouse and the stove with the possibility of embers escaping the flu and a fire potential. Mr. Moshman indicated that items could be removed from the site, anytime if it were the prerogative of the Board.

The Board Attorney gave Mr. Moshman the decision of requesting an adjournment because he needs more time or to present anything else he would like, any other objectors could speak and have the Board vote on the application. The decision for the Board being if they will allow not one accessory structure but actually two accessory structures without a principle use. Mr. Rutz indicated that the outhouse was portable. The Board Attorney indicated that so was the shed and it is not allowable, there are neighbors, other people to be considered.

Mr. Moshman indicated that the zoning reasons he presented were that it is an Island and very difficult to develop. Mr. Moshman requested a moment to confer with his client. When they returned Mr. Moshman requested an adjournment in order to take a couple of months to revise the application and come back with some professional help.

The Board Attorney indicated that if the application were denied, the resolution would likely be memorialized at the next meeting and if Mr. Rutz were to appeal that decision and lose he would be barred from returning to this application. If the applicant withdraws the application and chooses to refile it, he can do that at his discretion. The Board will not carry the current application 6 months or indefinitely. The Applicant may withdraw without prejudice but when he returns, there must be zoning reasons. Mr. Moshman indicated that he would like to speak with Mr. Rutz privately once more. The Board Attorney indicated he should take 15 minutes while the Board addressed another matter.

JOANNE & RAY WARD
BULK VARIANCE ZBo8-19-16
Block 4002; Lot 7
234 Long Pond Rd; LR Zone

Complete: 10/31/2019
Deadline: 2/28/2020

Bulk Variance approval for the prior construction of a garage and deck with roof encroaching on property that is not owned by the applicant, with a rear yard setback requirement of 60 ft, and 1 ft is proposed, a side yard setback where 30 ft is required and 2.1 ft is proposed, and an attached garage where 30 ft is required and 1.9 ft is proposed.

The Board Attorney indicated that there could be no new testimony after 10:30pm, since there was a break from the other application, the Board Attorney indicated that his intent was to just let them know that the matter would be carried to the next public meeting.

The applicant will keep their place on the calendar and anyone interested in the matter should be at the next public meeting on December 17, 2019. No further notice will be necessary on the applicant's behalf. Mr. Barbarula Esq. stated on the record that he was from the John Barbarula Law Office and that he represented John and Mary Grischuk, 230 Long Pond Road, and he would like the application dismissed because the easement has not been finalized.

The Board Attorney indicated to the Mr. & Mrs. Ward that it is the intention of Mr. Barbarula to make a motion to dismiss the application. The jurisdiction of the Board in the matter will be questioned at the next meeting. There is going to be contention so preparation is advised, and the Attorneys should talk.

A motion by Michael Gerst to carry application ZBo8-19-16. Second by Arthur McQuaid.

Roll call vote:

Yes: Russell Curving, Daniel Jurkovic, Frank Curcio, Arthur McQuaid,
Michael Gerst, Jo Ann Blom and Robert Brady

No: None

Abstain: None

Mr. Moshman returned and continued with regard to the Rutz Application indicating that his client would like to do the right thing, withdraw the application and come back with an architect and an engineer and it may take a while so the request was to withdraw the application, without prejudice and come back with a completely different approach. The Board was in agreement.

The Board Attorney indicated to anyone interested in the Rutz Application that the matter was withdrawn and it is not going to be heard and that the applicant will have to refile the application when the time comes the applicant will have to renote in the paper and the 200' list.

A motion to approve all invoices for the Board Professionals by Michael Gerst. Second by Daniel Jurkovic.

Roll call vote:

Yes: Russell Curving, Daniel Jurkovic, Frank Curcio, Arthur McQuaid,
Michael Gerst, Jo Ann Blom and Robert Brady

No: None

Abstain: None

A motion was made to approve the October 15, 2019 Special Meeting minutes by Michael Gerst. Second by Daniel Jurkovic.

Roll call vote:

Yes: Daniel Jurkovic, Matthew Conlon, Frank Curcio, Arthur McQuaid, Michael Gerst, Jo Ann Blom and Robert Brady

No: None

Abstain: None

A motion was made to approve the October 22, 2019 Regular Meeting minutes by Daniel Jurkovic. Second by Robert Brady.

Roll call vote:

Yes: Daniel Jurkovic, Matthew Conlon, Frank Curcio, Arthur McQuaid, Michael Gerst, Jo Ann Blom and Robert Brady

No: None

Abstain: None

Motion for adjournment of the November 26, 2019 meeting by Jo Ann Blom. Second by Daniel Jurkovic.

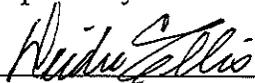
All in favor. None opposed.

ADJOURNMENT at 10:49 PM

Next special meeting December 9, 2019 at 7:00 p.m. at the West Milford High School Cafeteria.

Next regular meeting December 17, 2019 at 7:30 p.m.

Respectfully submitted by,



Deidre Ellis, Secretary

Zoning Board of Adjustment