

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

**December 19, 2007
Regular Meeting**

7:38 p.m.

Tonya Cubby, Acting Board Secretary, opened the meeting with the reading of the Legal Notice.

PLEDGE

Robert Brady, Board Chairman, asked all in attendance to join in the Pledge of Allegiance.

ROLL CALL

Present: Regular Members Ada Erik, Francis Hannan, Daniel Jurkovic, Arthur McQuaid, Ed Spirko, and Robert Brady.
Alternate Member #1 William Lynch.

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

Absent: Gian Severini, Regular Member, and Barry Wieser, Alternate Member #2.

Mr. Brady invited Mr. Lynch, Alternate Member #1, to serve with the regular Board members for this meeting due to the absence of Mr. Severini. He then followed with clarification of the Zoning Board of Adjustment procedures.

MEMORIALIZATIONS

The following Resolutions were under review and not available for memorialization at this meeting:

Resolution No. 35(34)-2006
ROBERT & RENEE PASEK
Bulk Variance #0630-0737
Block 4005; Lot 4
25 Board Road; LR Zone
Action: Relief pursuant to MLUL C.40:55D-70c granted.
Decided: October 24, 2006

Resolution No. 36(35)-2006
SPRINT SPECTRUM. LP
Use Variance #0640-0730
Preliminary & Final site Plan #0620-0226AB
Block 1701; Lot 59
776 Warwick Turnpike; LR Zone
Action: Relief pursuant to MLUL C.40:55D-70d and relief pursuant to MLUL C.40:55D-49 and 52 granted.
Decided: October 24, 2006

Resolution No. 37(36)-2006
ELAINE S. KRAMER
Bulk Variance #0630-0749
Block 4301; Lot 1
751 East Shore Road; LR Zone
Requested: Relief pursuant to MLUL C.40-55D-70c granted.
Decided: November 28, 2006

APPLICATIONS CARRIED FROM PREVIOUS MEETINGS

7:44 p.m.

JOHN & GAIL COLLINS

Bulk Variance #0630-0746

Block 6605; Lot 22

30 Sophie Avenue; R-2 Zone

Requested: Relief pursuant to MLUL 40:55D-70c for rear yard setback for an addition to an existing single-family home.

Complete: October 13, 2006

Deadline: February 9, 2007

Mr. Brady noted that Mr. Collins had begun testimony at the November 28, 2006 meeting. The hearing was carried to this meeting based upon the Board's inquiry regarding possible wetlands delineation. Following swearing in by Mr. Glatt, Mr. Collins proceeded to present new photo exhibits #2A through #2E; #3A through #3C; and #4. Mr. Glatt stated, for the record, that photos #A-1 through #A-6 had been presented at the November 28, 2006 hearing. Mr. Collins discussed wetlands delineation and the overlay map prepared by his engineer. Mr. Brady and Mr. Glatt questioned Mr. Collins about the exhibit photos depicting the site and surrounding properties. Mr. Glatt advised that a condition for approval of the application should include a sealed copy of the wetlands delineation. Mr. Collins gave a detailed description to the Board of Exhibits #2B through #2C that included Belchers Creek, Wallisch property and the site of the proposed construction.

Mr. Brady inquired whether Board members had any questions for Mr. Collins regarding this bulk variance application. Mr. Spirko questioned the presence of pink flags on the site of one of the photos, to which Mr. Collins replied that these were scientist's markings for an environmental project. Mr. Drew, Planning Director, questioned Mr. Collins about exhibit #2C and whether the wooded area was on the Wallisch property. Mr. Collins replied in the affirmative, and followed with an overview of the Wallisch Estate area that included woods and wetlands noted on exhibit #3A. Photo #3C included a smaller structure that Mr. Collins wishes to demolish prior to constructing the new addition. Mr. Jurkovic questioned Mr. Collins about the existing 12-foot canopy; Mr. Collins replied that he was expanding the new structure depth-wise to about 20 feet. Mr. Glatt stated, for the record, that all the exhibits were being entered into evidence. Mr. Collins noted that the site is at least 100 feet from any wetlands as noted on the map overlay. Mr. Brady asked Board members if they had any questions regarding the map overlay versus the original map. With no comments from the Board, Mr. Collins was asked to conclude his testimony.

Mr. Drew stated that wetlands are indicated across from the subject property as presented by the photos. He further noted that the exceptional resource value is usually applied in West Milford, resulting in a 150-foot wetlands buffer, although there is currently other development in the transition area. He advised that the applicant needs to have a map prepared surveying the wetlands limits and an analysis of the wetlands area for submission to the D.E.P., whereby they would make a determination and grant a Transition Area Waiver or General Permit. Mr. Drew questioned whether the applicant's site was in a flood plain. Mr. Collins replied that current flood maps indicated that this site was no longer in the flood plain; these maps will be presented for inclusion in the application. Mr. Hannan opined that the flood plain maps and a D.E.P. wetlands delineation were needed before the Board could proceed with this application. Mr. Jurkovic inquired about the buffer zone and wetlands. Mr. Brady stated that a sealed copy of the maps should be included in the application packet prior to issuance of permits, to which Mr. Collins replied in the affirmative. Ms. Erik ascertained whether the 4th quarter taxes had been paid on this site.

Mr. Brady then opened the meeting to the public and asked if anyone wished to be heard regarding this application. No one present wished to speak regarding this application.

Motion by Ms. Erik to close the public portion of this hearing.

Second by Mr. McQuaid.

On a voice vote, all were in favor of closing the public portion of this hearing.

Motion carried.

With no further comments from the Board, Mr. Brady asked for a motion.

Motion by Mr. Hannan to approve Bulk Variance #0630-0746; Block 6605; Lot 22; 30 Sophie Avenue, R-2 Zone; relief pursuant to MLUL 40:55D-70c for rear yard setback for an addition to an existing single-family home on the conditions that the structure remain a two-bedroom home based upon the concerns of the West Milford Health Department, that a D.E.P. wetlands determination be submitted, water runoff be addressed, in addition to the inclusion of a flood plain certification and a sealed map. Mr. Jurkovic stated that this structural addition, by removal of the existing canopy, would aesthetically enhance the community and have a positive impact on the surrounding properties.

Second by Mr. McQuaid.

Roll Call Vote:

Yes: Ada Erik, Francis Hannan, Daniel Jurkovic, Arthur McQuaid,
Ed Spirko, William Lynch, and Robert Brady.

No: None

Absent: Gian Severini.

Motion carried.

NEW APPLICATIONS

8:14 p.m.

Thomas Leddy

Bulk Variance #0630-0756

Block 5712; Lot 8

11 Birchwood Pass; LR Zone

Requested: Relief pursuant to MLUL C.40:55D-70c for six-foot fence height in front yard.

Mr. Leddy was sworn in by Mr. Glatt and then proceeded to testify regarding his application for a bulk variance. Mr. Leddy explained that his request was to replace a four-foot high chain link fence with a six-foot concave fence. He noted that the front yard cited in his application is actually used as his side yard, based on the configuration of his lot and house. Mr. Glatt questioned whether his adjacent neighbor had a fence, and Mr. Leddy replied that they had a six-foot fence. Mr. Glatt then expressed concerns about site distance and any impediment that may result from the construction of the new fence. Mr. Jurkovic questioned Mr. Leddy about the distance between the property line and the pavement and where the fence would be ending in relation to both; reference was made to the survey in the application and was subsequently reviewed by Board members.

Following a request for any questions or comments from the Board, Mr. Brady opened the meeting to the public and asked that anyone who wished to be heard regarding this application to come forward. No one wished to be heard on this matter.

Motion by Ms. Erik to close the public portion of this hearing.

Second by Mr. Jurkovic.

On a voice vote, all were in favor of closing the public portion of this hearing.

Motion carried.

Motion by Mr. Jurkovic to approve Bulk Variance #0630-0756; Block 5712; Lot 8; 11 Birchwood Pass; LR Zone; relief pursuant to MLUL C.40:55D-70c for six-foot fence height in front yard, noting that there appeared to be two front yards based on the information provided, and that the fence would be two-feet from the paved area, leaving adequate line of site for egress in and out of the driveway. He also noted that this fence would match the neighbor's fence and would be aesthetically pleasing, enhancing the neighborhood.

Mr. Brady and Mr. Drew commented about encroachment of Mr. Leddy's metal shed on neighboring property in the backyard. Mr. Drew suggested that prior to approval of this application, any encroachment problems be corrected. Mr. Glatt stated that the Board does not have any jurisdiction in this matter, that this is not a zoning matter. Mr. Spriko asked Mr. Leddy

whether the shed could be removed if the fence is erected and Mr. Leddy replied in the affirmative.

Mr. Brady opened the meeting to the public and asked that anyone who wished to be heard regarding this application to come forward. No one wished to be heard on this matter.

Motion by Ms. Erik to close the public portion of this hearing.

Second by Mr. McQuaid.

On a voice vote, all were in favor of closing the public portion of this hearing.

Motion carried.

Motion by Mr. Jurkovic to approve Bulk Variance #0630-0756; Block 5712; Lot 8; 11 Birchwood Pass; LR Zone; relief pursuant to MLUL C.40:55D-70c for six-foot fence height in front yard.

Second by Ms. Erik.

Roll Call Vote:

Yes: Ada Erik, Francis Hannan, Daniel Jurkovic, Arthur McQuaid,
Ed Spirko, William Lynch, and Robert Brady.

No: None

Absent: Gian Severini.

Motion carried.

8:27 p.m.

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 set back for an addition to a single-family home.

Mr. Brady recused himself at this juncture of the meeting, stating that he was a neighbor of the applicant and did not want any suggestion of impropriety on the part of the Board regarding this application. Mr. Glatt addressed the applicant and stated that there would only be six members voting on the application, and that this may pose a problem for Mr. Tlusty. Mr. Brady reiterated that he did not want any misinterpretations about his influence regarding this application and maintained his desire for recusal. Mr. Jurkovic was asked to sit in for Mr. Brady as Board Chairman for this application. Mr. Tlusty stated that he wished to proceed with the testimony and was sworn in by Mr. Glatt.

Mr. Tlusty addressed the Board regarding the two-car garage addition that required a bulk variance. Mr. Jurkovic inquired about the lot area coverage and Mr. Tlusty replied that the lot was 100 x 100. Calculating the lot coverage with the addition, Mr. Jurkovic noted that the code allows for a maximum of 10% lot coverage in this area, and the proposed addition would result in 13% lot coverage. Mr. Drew concurred on the calculations after reviewing the application. Mr. Glatt noted that the applicant needed to amend his variance, and that he was responsible for convincing the Board why his variance should be approved. He also stated that lot coverage is an important issue to the Board, and that Mr. Tlusty may have difficulty proving his case. Mr. Glatt asked Mr. Tlusty if there were any other existing structures on the lot and Mr. Tlusty replied that there were two sheds to be demolished. Mr. Glatt questioned whether the surrounding lots were vacant, to which Mr. Tlusty replied in the negative, noting that the properties in the surrounding area were developed.

Mr. Glatt questioned whether the plans submitted were conceptual, and Mr. Drew noted that the architect had filed the plans. Mr. Glatt questioned whether lot coverage was discussed with the architect. Mr. Glatt then stated that the Board is responsible for ruling that the applicant's plans do not conflict with zoning laws, and that Mr. Tlusty does not have the expertise to make this determination. He advised that the Board could not confirm zoning law compliance based on the plans submitted.

Addressing Mr. Tlusty, he stated that the Board could proceed tonight, or Mr. Tlusty could request adjournment until he has time to consult with this architect about the lot coverage. He also noted that the plans needed to be reviewed and adjusted for compliance. Mr. Tlusty could also compile information and photos of neighboring properties to prove his case to the Board that the garage addition will conform to the neighboring lots. Mr. Tlusty requested adjournment until the January 23, 2007 meeting.

Motion by Mr. McQuaid to carry Bulk Variance #0630-0754; Block 403; Lot 5; 17 Hamilton Drive; LR Zone; Relief pursuant to MLUL C.40:55D-70c for side yard set back for an addition to a single-family home.

Second by Mr. Spirko.

Roll Call Vote:

Yes: Ada Erik, Francis Hannan, Daniel Jurkovic, Arthur McQuaid,
Ed Spirko, and William Lynch.

No: None

Absent: Gian Severini.

Motion carried.

APPROVAL OF MINUTES

Motion by Ms. Erik to approve the minutes of the November 28, 2006 Regular Meeting of the Zoning Board of Adjustment.

Second by Mr. Spirko.

On a voice vote, all were in favor of approval of the minutes of the November 28, 2006 Regular Meeting of the Zoning Board of Adjustment.

Motion carried.

Mr. Brady returned to the dais to resume his position as Chairman of the Zoning Board of Adjustment. He noted that Mr. Drew, Planning Director, would chair the January 23rd Re-organization meeting. He also expressed his gratitude to the Board for giving him the opportunity to serve as Chairman, and that he would accept the position in 2007 if the Board so desires.

Mr. Hannan stated that the Township Council would make re-appointments to boards and committees and that all re-appointment letters should be submitted as soon as possible.

Mr. Jurkovic inquired about the Pay to Play documents, and noted that they need to be submitted to the Township prior to any professional appointment. Mr. Drew stated that the past practice of appointing a substitute attorney is no longer applicable with the new ordinance. A discussion ensued among Board members regarding professional service contracts. Mr. Brady noted that in his review of the Pay to Play ordinance, he detected guidelines for contract compliance and that the Board can work within these guidelines. He further stated that Mr. Glatt has an exemplary attendance record, and the Township Council and the Board of Adjustment will need to work out the details of any contractual problems that may arise. Mr. Hannan suggested a sample contract and the new ordinance be made available to board members. Copies were made available for Board members to review. A discussion followed about contracts, including state and local requirements.

ADJOURNMENT

With no further business to come before the Board, Mr. Brady asked for a motion to adjourn.

Motion by Ms. Erik to adjourn the meeting.

Second by Mr. McQuaid.

On a voice vote, all were in favor of adjournment at 8:57 p.m.

Motion carried.

Approved:

Respectfully submitted by

Tonya E. Cubby, Acting Secretary
Zoning Board of Adjustment