

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

**APRIL 24, 2007
Regular Meeting**

Robert Brady, Board Chairman, opened the Regular Meeting of the Zoning Board of Adjustment at **7:46 p.m.** The Board Secretary read the Legal Notice.

PLEDGE

Mr. Brady asked all in attendance to join in the Pledge of Allegiance.

ROLL CALL

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

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

Absent: None.

Following Roll Call, Chairman Robert Brady reviewed the Zoning Board of Adjustment procedures. The Township Council appointed William Lynch as Regular Member of the Board of Adjustment, filling the vacancy left by Ed Spirko, who resigned from his position. Barry Wieser was appointed to the Alternate #1 position. The Chairman welcomed both to their new positions on the Board. The Oaths of Office were administered to both members. A vacancy for the Alternate #2 position was announced by the Chairman.

Mr. Glatt, Board Attorney, advised that the Memorializations scheduled for approval at this meeting were unavailable at this time due to several unforeseen circumstances.

Mr. Glatt also advised the Board that Donald Partington had submitted a letter to the Board on this date requesting that the minutes of the February 27, 2007 meeting be amended based on two discrepancies that were noted by him. These discrepancies included the omission of a time limit for submission and approval of a landscaping plan, and the stated number of days spent on the logging business by the applicant, Mr. Panariello. Mr. Glatt requested the Secretary to review the tapes of the meeting and advise him accordingly. He noted that, if necessary, the minutes could be amended and the information would be included in the resolutions of approval for the variance.

RICHARD SCHAEFER

Bulk Variance #0730-0766

Block 7512; Lot 4

33 Pinecliff Lake Drive; LR Zone

Requested: Bulk Variance relief to construct an accessory building closer to the principal structure than permitted, located within the front yard and exceeding maximum accessory building coverage.

Mr. Schaeffer approached the Board and requested that the Board carry this application to the May 22, 2007 meeting due to several architectural concerns that needed to be addressed. He also granted the Board a 60-day extension for this application.

Motion by Ms. Erik to **carry** this application, Bulk Variance #0730-0766, Block 7512; Lot 4; 33 Pinecliff Lake Drive; LR Zone, to the May 22, 2007 meeting.

Second by Mr. Severini.

On a **Voice Vote**, all were in favor of carrying this application to the May 22, 2007 meeting.

VINCENT LANZA

Bulk Variance #0630-0753

***De Minimis* Exception**

Block 2707; Lot 3

33 Flanders Road; LR Zone

Requested: 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; and

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

Vincent Lanza, Ringwood, and Claude Ballester, P.E., Macopin Road, West Milford, appeared before the Board and were sworn in by the Board Attorney. Mr. Ballester reviewed his engineering and planning qualifications for the Board and was accepted as expert for the applicant, Mr. Lanza.

Mr. Lanza stated that he had just received a copy of the Township Engineer's memo of April 11, 2007 on this date. With reference to the drainage calculation discrepancies, Mr. Ballester explained to the Board there had been two different surveyors and two different maps, and the drainage calculations had been altered in using the two professionals. He stated that the Dolittle maps had remained constant. Mr. McFadden, Township Engineer, stated that only one set of plans are to be used with this application, and that the applicant cannot have two plans. Mr. Lanza noted that he wanted to have Mr. Dolittle complete the plans and that his data should be used. Mr. McFadden noted that the information on the Dolittle maps includes information from several professionals, and only one professional should be providing the information. With reference to the Township Engineer's memo, Mr. Ballester stated that the applicant will comply with item # 3. He questioned item #8 that requires a performance bond. Mr. McFadden stated that if the improvements are completed, there won't be a necessity for a performance bond. There would be no problem with the drainage pipes, and Mr. Ballester stated that two would be supplied by Mr. Lanza and two from Mr. Paterno. With regard to the two adjoining property owners, Mr. McFadden stated that the work needed to be coordinated between the applicant and his neighbor. Mr. Lanza stated that he intended to coordinate all drainage improvement with Mr. Paterno. Mr. Ballester opined that the shared drainage improvements should be shown on the Dolittle map. When Mr. McFadden referred to the extension of the road, Mr. Ballester noted that the applicant needed to apply for a special permit from the Building Dept.

Mr. Drew, Planning Director, questioned Mr. Lanza about the setback distance of the proposed wall. Mr. Ballester replied that it would be four and four and one on the right of way. Mr. Drew ascertained that it conformed to the height standards for zoning purposes. Mr. Brady, Board Chairman, questioned Mr. Lanza about his NJ DEP notification. Mr. Lanza replied that he had submitted a request and had not received a reply. He also stated that he had several conversations with the NJ DEP regarding the sale of the subject property adjacent to his lot and stated that the DEP did not want to negotiate. Following discussion, Mr. Brady asked Mr. Drew, Planning Director, to assist the applicant with a contact person at the DEP or the Highlands office. Mr. Glatt, Board Attorney, questioned Mr. Lanza about the method of notification to the NJ DEP, to which Mr. Lanza replied that his office sent it, presumably by certified mail. Mr. Glatt advised that this request required an answer, and that it was necessary to ascertain whether the DEP had received notice from Mr. Lanza. He suggested Mr. Lanza contact his office and he would check the law diary regarding notification options. Mr. Lanza stated that he would attempt to contact someone directly with the DEP. Mr. Brady advised that the applicant needed to confirm notification in order to avoid any problems arising once construction began.

Mr. Jurkovic asked the applicant's Engineer to review the drainage plans for the Board. Mr. Ballester stated that a dry well is proposed at the location where the water will drain, that 1000-gallon seepage pits are to be installed in each location with 18" plastic pipe. The goal would be to eventually connect the drainage pipe to Mapleshade, until someone can connect the pipes to drain directly to the lake below. He noted that the drainage plan was not a perfect solution, but it would serve to alleviate present drainage problems. Mr. McFadden advised that the volume of the seepage pits has not been determined, and also advised that the elevations needed to be finalized, noting that the volume of the pipes may be more than the pits.

Mr. Ballester reviewed the variances being requested by the applicant. He noted that the applicant was seeking variance relief for lot frontage, lot area, lot width, lot depth, minimum front, side and rear yard setback and building coverage. He stated that the bi-level style dwelling proposed for construction, at 21 x 24 feet, would be as small for current standards. He stated that the lot was comparable to the neighboring properties, and the dwelling was in keeping with the adjoining properties. Mr. Brady questioned Mr. Ballester about the private road maintenance and Mr. Ballester replied that he assumed the Township would maintain the roadway. Mr. McFadden explained the services available by the Township on private roads, and advised that the applicant should maintain the road during construction. Mr. Lanza replied that before a CO is issued the Township could inspect the roadway to confirm proper maintenance by the applicant.

Mr. Lanza advised the Board that he had contacted Mr. Butterwerth, a neighboring property owner who had been concerned with current drainage issues and anticipated increased drainage problems resulting for the proposed construction. Upon reviewing the drainage plans, Mr. Lanza stated that Mr. Butterwerth was satisfied with the plans.

The Board Chairman asked if anyone present wished to be heard on this matter. With no one present indicating a desire to speak on this matter, Ms. Erik moved to close the public portion of the hearing. Mr. Severini seconded the motion.

Mr. Glatt advised Mr. Lanza that he had to determine that the DEP received the notice about this application and the request for sale of the adjacent property. Mr. Brady stated that a response from the DEP was needed. Mr. Glatt stated that the applicant was responsible for verifying if the DEP received the notice that was mailed to them. Mr. Jurkovic stated that the proposed construction was consistent with the neighborhood, that there was a history of water problems, and that the applicant addressed these with a drainage plan that included piping of water so flow would go towards the lake. With regard to the rear yard setback, he noted that it was safe to assume that the DEP, as owner of the adjacent vacant lot, would not be developing the parcel, so setback would not be a problem. When questioned about the result if there was a drainage system failure, Mr. McFadden said that if the system fails, it would most likely overflow at the same low point that it currently does, that the water will flow through the pipe until it fills up and overflows through the grate. Mr. Brady stated that drainage problems existed before this application was submitted, and the applicant has addressed those drainage issues with a plan that attempts to rectify the situation. When questioned by Mr. Jurkovic about the detention basin capacity, Mr. McFadden said that they may not handle all the water that currently drains down the mountain, that the ultimate solution was to install piping all the way down to Lakeshore Road. He also added that a drywell in the road would not be cost effective. Mr. McQuaid asked about the DEP notification, and inquired whether another notice could be sent regarding sale of the adjacent property. Mr. Glatt stated that the applicant should not be penalized for the method of notification and the lack of a response from the DEP. He advised a review of the return receipt from the applicant, but that additional notification of the DEP would take too much time.

Mr. McQuaid inquired about items #3 and #8 in the Engineer's memo, to which the Township Engineer replied that, as a *condition of approval*, drainage installation would be required prior to application for a building permit.

Mr. Glatt stated that the Board members were very concerned with the drainage problems noted with this location. Mr. Lanza, and Mr. Paterno, adjacent property owner, complied with conditions to improve the drainage problems when their applications were before the Board. He noted that Mr. Lanza is not required to do the drainage connections based on Mr. McFadden's assertion that drainage to the lake would solve the water problems. There had been two prior

approvals for adjacent lots, and if the Board denied this application, an inconsistency would be created. If the Board were to deny this application, they would need to justify the denial.

Mr. Jurkovic stated that eight variances had been requested, and four were inherent with the land. He reviewed each of the variances requested, including side yard, front yard, and rear yard setbacks. On building coverage, he stated that a *condition of approval* should be no accessory structures could be added, that the lot is not suitable for an accessory structure. As to the size of the house, it must be consistent with the community, and reducing a few feet to conform to lot coverage would not be advantageous; the proposed structure is consistent with the neighborhood. He also noted that Linden Court is a paper road, and that Mr. Lanza indicated he was unsuccessful in getting the vacated by the Township.

Motion by Mr. Jurkovic to approve Bulk Variance #0630-0753; Block 2707; Lot 3; 33 Flanders Road; LR Zone; conditional upon the applicant complying with the Township Engineer's comments in his memo of April 11, 2007, and with a condition that no accessory structures be constructed on the lot. Mr. Glatt advised the applicant that the resolution should be recorded with the deed, or a reference should be made in the deed that no accessory structures could be constructed.

Second by Ms. Erik.

Roll Call Vote:

Yes: Ada Erik, Francis Hannan, Daniel Jurkovic, William Lynch, Arthur McQuaid, Gian Severini, and Robert Brady

No: None

Motion carried.

Mr. Lanza inquired whether the deed restriction will still be valid if Linden Court is vacated in the future. He noted that the owner may want to construct a shed. Mr. Glatt advised that Mr. Lanza would have to return to the Board for review if the circumstances change and more land is allocated to the referenced lot.

Motion by Mr. Jurkovic to approve the *De Minimis* Exception for #0630-0753; Block 2707; Lot 3; 33 Flanders Road; LR Zone, noting that the RSIS requiring paving would increase the water flow problems, and that the requirements would be applicable if drainage was directed completely to the lake.

Second by Ms. Erik.

Roll Call Vote:

Yes: Ada Erik, Francis Hannan, Daniel Jurkovic, William Lynch, Arthur McQuaid, Gian Severini, and Robert Brady

No: None

Motion carried.

Following a short break, the Board members returned at 9:21 p.m.

MERYL V. DAVIS

Bulk Variance #0630-0748

Block 9710; Lot 3

10 Bergen Drive; R1 Zone

Requested: Bulk Variance relief for side yard setback; lot coverage; so as to permit the construction of a two-car attached garage with a second floor living area.

John McNally and Meryl Davis, 10 Bergen Drive, were sworn in by the Board Attorney. Mr. McNally appeared as attorney for the applicant. He addressed the Board's concerns about the steep driveway approaching the proposed garage, and referred to the new plans that were submitted to the Board. He referenced the Engineer's comments in his memo of April 20, 2007. Mr. McNally said that overflow of the drywell will be addressed; the Engineer noted that this would be simple to accomplish with T or Y piping at the bottom. As for the grade, it was determined that trying to get the grade level at 10% or less would not make sense given the circumstances. Mr. McNally noted that the applicant may be requesting a waiver from the

requirement that two car parking area be provided at the end of the driveway in light of the fact that the driveway is only 35 feet long. The applicant's attorney concluded by requesting that the Board approve the variance *with a condition* that the drywell overflow issue be addressed. Following conclusion of testimony and with no further questions from the Board, the Chairman opened the meeting to the public. With no one present wishing to be heard on this matter, a motion was made by Ms. Erik to close the public portion of this hearing, with a second by Mr. McQuaid.

Mr. Hannan made a motion to approve Bulk Variance #0630-0748; Block 9710; Lot 3; 10 Bergen Drive; R-1 Zone based on the evidence presented, noting that the proposed addition with the garage is in agreement with the neighborhood, that it is one of only a few houses without a garage, that the applicant has worked diligently with the Board Engineer to rectify the concerns of the Board members and the Engineer, and that the applicant is agreeable to the items noted in the Engineer's memo. He also stated that the conditions stipulated regarding the drywell have been agreed to by the applicant. Mr. Jurkovic complemented the applicant on their willingness to work with the Engineer to address safety hazards that existed, and for addressing the grading issue and correcting the grade to 5% before entering the garage. He stated that one of the variances was for building coverage, that the applicant requested approval for 11% with the maximum at 10%. He felt that this was *de minimis* in terms of building coverage, and it is justified as it brings the house in conformance with the neighborhood. As to the waiver for a two car parking area, that should be granted based on the Engineer's comments that it was not prudent to require the parking spaces.

Motion by Mr. Hannan to approve Bulk Variance #0630-0748; Block 9710; Lot 3; 10 Bergen Drive; R-1 Zone, including the statements of fact made by Mr. Jurkovic.

Second by Ms. Erik.

Roll Call Vote:

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

No: None

Motion carried.

GRZEGORZ & BOZENA CIELOCH

Bulk Variance #0530-0695

Block 14113; Lot 43

21 Apple Lane; LR Zone

Requested: Bulk Variance relief for lot width; lot depth; front yard setback; side yard setback; and rear yard setback; so as to permit construction of a single family dwelling.

Henry Walentowicz, attorney for the applicant, swore in Bozena Cieloch, 21 Apple Lane, West Milford and her expert, Alfred A. Stewart, P.E., 25 Pine Street, Rockaway, New Jersey. Mr. Stewart provided the Board with his credentials that were subsequently accepted by the Board.

Mr. Walentowicz, acting as an interpreter, questioned the applicant and established her history with the subject property. The applicant stated that she purchased the property approximately one year before, the construction was incomplete. Mrs. Cieloch's husband completed the construction, and when finished, the CO could not be issued because the former owner had changed the location of the foundation. Mr. McQuaid inquired whether the Township had issued permits, to which Mr. Walentowicz replied in the affirmative. After the work was completed, the Cieloch's determined that the construction had been altered by the prior owner, unbeknownst to them. Mr. Drew, Planning Director, explained to the board that the house was part of a prior approved sub division in Forest Hill Park. The property had a structure on it that was demolished in order to construct a new house. The existing setbacks were used for the new construction. Mr. Glatt clarified with Mr. Drew that the house was approved with the major subdivision. The foundation issue was discussed.

Mr. Walentowicz asked the applicant's Engineer to review the comments in the Township Engineer's memo of April 13, 2007. Mr. Stewart stated that the contours will be addressed, as well as the retaining wall and grading on the driveway, and pavement on the first 50 feet to

which the applicant agreed. Upon discussion of the stone walls, it was determined that the walls were on an easement and that the applicant may have to remove the wall if the easement is needed in the future. The easement is currently not utilized. As for the height of the walls, the Building Department will determine if the height is appropriate. Mr. Stewart is to provide stability calculations to the Building Department. Mr. McFadden noted that the height of the wall may require additional permits. Mr. Glatt stated, that as a *condition of approval* a permit for the wall should be required. Mr. Hannan clarified for the applicant's attorney, that the resolution would include a stipulation that should the easement be necessary the applicants would remove the wall that they constructed. Side yard and front yard setbacks were reviewed by the applicant's Engineer. With no further comments to be made, the Chairman opened the hearing to the public. No one present wished to be heard on this matter, a motion was made by Mr. Erik and seconded by Mr. McQuaid to close the public portion of the hearing.

Motion by Mr. Severini to approve Bulk Variance #0530-0695, Block 14113; Lot 43; 21 Apple Lane; LR Zone conditional upon obtaining a building permit and conditional upon the wall being removed by the owner if ever the easement is needed. Mr. Jurkovic added that the Township Engineer's memo notes be included.

Second by Ms. Erik

Roll Call Vote:

Yes: Ada Erik, Francis Hannan, Daniel Jurkovic, William Lynch, Arthur McQuaid, Gian Severini, and Robert Brady

No: None

Motion carried.

APPROVAL OF MINUTES

Motion by Mr. Lynch to approve the minutes of the March 27, 2007 Regular Meeting of the Zoning Board of Adjustment.

Second by Ms. Erik.

On a **Voice Vote**, all were in favor.

Motion carried.

APPOINTMENT OF SUBSTITUTE BOARD OF ADJUSTMENT ATTORNEY

The Board members received a resume for Alfred V. Acquaviva, a possible candidate for Substitute Board of Adjustment Attorney. The Board Chairman and Vice Chairman reviewed the resume and recommended that Mr. Acquaviva, of the firm Spinato, November, Conte & Acquaviva, be appointed as Substitute Attorney for the West Milford Zoning Board of Adjustment.

Motion by Ms. Erik to appoint Alfred V. Acquaviva as Substitute Attorney for the Zoning Board of Adjustment.

Second by Mr. Lynch.

Roll Call Vote:

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

No: None

Motion carried.

ANNUAL REPORT

Mr. Brady directed the Board's attention to the Draft Annual Report for January to December 2006 and the accompanying map. He stated that, unless anyone had any objections or corrections, the report would be approved at the next meeting.

Mr. Drew advised that the report is a Draft. He asked the Board to review the report, to make any corrections, additions or deletions that may be warranted, and anticipated the report being finalized at the May 22, 2007 Board of Adjustment meeting. He referenced the synopsis of the Board's action over the past four years, reflecting where the properties were located that were the subject of variances that were heard. He noted that it doesn't reflect a particular cluster or area, but pointed out that the majority of the variances heard were in the Lake Residential Zone. This supports the findings of the Board noted in the previous year's report, that the LR Zoning is not consistent with the configuration of a majority of the lots in the LR zone. He asked the Board members to contact the office with any observations or questions regarding the report.

The Board Chairman advised that the Board members should make a list of their comments and concerns and the Board will discuss them at the next meeting.

A Board member commented about recommendation # 2 – she noted a problem with creating pocket parks, and said that they are used as a dumping ground. Another Board member commented about the need to have properties purchased to keep from being developed, noting that development with septic and well installations can be more of a detriment to the community and environment than vacant land.

Another Board member commented that the planned community zones, the “purple zones” around the lakes indicated on the Highlands map, are inconsistent with the goals of the Highlands Act, which is water quality. The majority of the Board's variances are in the LR Zone, and he opined that it is anti-productive for the Highlands to designate those areas to become infill lots.

A Board member questioned whether the GIS specialist had the map of undersized lots, and suggested that Open Space funds be used to purchase those lots and donate them to neighboring property owner so that it can be maintained, but kept undeveloped. The Chairman concurred, noting an example in his own neighborhood where undeveloped property is present and maintained by neighbors.

One Board member added a comment about pocket parks, and donation of land to neighboring property owners and stated that it might not be feasible. The Chairman noted that there may be a subsidy made available that would encourage contiguous property owners to purchase the properties at a low rate and then the properties would be on the tax rolls. Following additional comments, the Board Chairman moved the discussion to other business.

COMMUNICATIONS

The Board Secretary referred to a memo received from the Township Clerk's office advising that two members had not submitted their Financial Disclosure Forms and were to submit them as soon as possible. Mr. Severini indicated that he has mailed his disclosure forms, and Mr. Lynch noted that he had not received his disclosure forms. The Board Secretary will mail additional forms to Mr. Lynch.

The Board Secretary advised that the Planning Department is attempting to arrange Board training sessions in West Milford to meet the New Jersey requirements for certification of all Planning Board and Zoning Board of Adjustment members. Numerous other towns have requested to host the training sessions. We will be notified of the NJ Office of Planning's decision regarding their upcoming schedule and sites.

PAYMENT OF BILLS

Following discussion regarding the Township's request that the Board of Adjustment members review all bills prior to submission for approval and payment by the Township Council, the Board concurred that the review of all invoices should be the responsibility of the Planning Department.

Motion by Mr. McQuaid to authorize the Planning Department to approve all bills and invoices prior to submission for payment.

Second by Mr. Severini.

Roll Call Vote:

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

No: Daniel Jurkovic.

Motion carried.

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. Jurkovic.

On a voice vote all were in favor of adjourning the April 24, 2007 Regular Meeting of the Zoning Board of Adjustment.

Motion carried.

Meeting adjourned at 10:23 p.m.

Adopted: May 22, 2007

Respectfully submitted by

Tonya E. Cubby, Secretary
Zoning Board of Adjustment