

MINUTES
Of the Township of West Milford
ZONING BOARD OF ADJUSTMENT
September 28, 2021
Regular Meeting via Zoom

(Due to COVID-19 social distancing requirements this virtual meeting was held on Zoom.) Robert Brady, Board Chairman, opened the Zoom Meeting of the Zoning Board of Adjustment at 7:33 p.m. The Board Secretary read the Legal Notice.

LEGAL

In accordance with Chapter 231, Public Laws of the State of New Jersey of 1975, adequate advance notice of this meeting was sent to the Herald News for publication, is posted on the Bulletin Board in the main corridor of Town Hall and is on file in the Township Clerk's Office.

The Pledge of Allegiance was recited.

ROLL CALL

Present: Daniel Jurkovic, Linda Connolly, Frank Curcio, Arthur McQuaid, Michael Gerst, Michael DeJohn, Robert Brady
Also, Present: Pamela Jordan, Board Secretary, Steven Glatt, Esq., Kenneth Ochab, Kenneth Ochab Assoc., LLC.
Absent: Russell Curving, Jo Ann Blom, Engineer

The Chairman greeted the Board, the applicants and any members of the public. Mr. Brady explained the Zoning Board and Open Public Meetings Act, the social distancing requirements as a result of Covid-19, and the reason that the meeting was being conducted by electronic means via ZOOM. The meetings are advertised in the Herald News and on the Township website. 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.

The Board Chairman stated Applicants are given an opportunity to present their case and evidence. Everyone that would like to speak on behalf or against the application will be given an opportunity. Time may be limited based on redundancy. The Board Attorney is present during the meeting to assist the Board with legal questions that may arise.

CARRIED APPLICATIONS

**NEW CINGULAR WIRELESS PCS, LLC (“AT&T”)
PRELIMINARY & FINAL SITE PLAN
USE AND BULK VARIANCE ZB03-21-07**

Block 3101 Lot 8

325 Lakeside Road, R-4 Zone

**Complete: 05/07/2021
Deadline: 11/06/2021**

A conditional Use Variance request, pursuant to N.A.S.A. 40:55D-70 d(6) for a height variance since the proposed height of 160 feet exceeds the permitted height by 10 feet or 10% of the maximum height permitted in the district for a principal structure; Bulk Variance requests for lot size where 25 acres is required and 4-52 acres is proposed and side yard setback where 300 feet is required and 1.5 feet is proposed; and, Preliminary and Final Site Plan approval for the construction of a cellular tower and storage facility.

Eligible to Vote: Daniel Jurkovic, Linda Connolly, Frank Curcio, Arthur McQuaid, Michael Gerst, Robert Brady

Christopher Quinn, on behalf of the Applicant stated the height of the tower was reduced to 115. This being the third meeting, the public portion has been closed with the request to have Mr. Panesso provide additional information for neighbors concerning emissions.

Mr. Panesso stated that the towers are low powered systems with emissions well under the FCC guidelines and have been studied since World War II by the Federal Communication Commission with guidelines to protect the public of all ages. Power levels are very low, non-ionizing and cannot cause cancer, not capable to change an adam or molecule - posing no health concern due to low the powe. All carriers must comply with the guidelines set forth by the FCC.

Mr. Brady asked if there were any other structures available to accommodate the need to fill the gap in coverage in this area – Mr. Panesso stated the reason for the raw land build was because there were not any available structures to collocate on.

The Board Attorney indicated there was a conversation inviting a neighbor to speak with Mr. Panesso and or Mr. Quinn. The neighbor stated she was not aware of the invitation and would have accepted the opportunity. Mr. Quinn stated the invitation is still open in the next 3 – 4 weeks.

The Board Chairman opened the meeting to the public for comment pertaining to additional testimony from Mr. Panesso, in accordance with NJ Open Meetings Act.

Hope Davino Jennings of 40 Kushaqua Trail South, identified herself as a resident and stated the American Cancer Society does not have a position on cell towers. Ms. Davino Jennings is concerned and finds no need for a cell tower.

Seana Polglaze, [REDACTED] stated the Application does not meet the zoning requirements; she is opposed to the cell tower and does not feel the variance should be granted.

Adrian McLaren, 66 Kushaqua Trail – stated the zoning is improper

**Hearing no one Michael Gerst made a motion to close the public portion of the meeting and second by Arthur McQuaid.
All in Favor**

Board member, Linda Connolly questioned Mr. Panesso regarding the scope of the search area. Mr. Panesso stated other sites would be needed, two sites in NY and one in NJ.

Mr. Quinn made a request to carry the matter until the October 26 meeting and provide a closing statement affording the absent Board members the time to review an ordered transcript or review the zoom meetings.

Michael Gerst made a motion to carry the matter with a second by Arthur McQuaid to carry the Application for New Cingular Wireless PCS, LLC (“AT&T”) to the next scheduled Board meeting.

Roll Call: Daniel Jurkovic, Linda Connolly, Frank Curcio Arthur McQuaid, Michael Gerst, Robert Brady

NEW APPLICATIONS

[REDACTED]

BULK VARIANCE ZB07-21-12
Block 6713 Lot 2
62 Greenbrook Drive, R1

Complete: 08/11/2021
Deadline: 12/09/2021

Where the applicant seeks a Bulk Variance to replace an existing 6 foot fence where 4 foot is permitted, 6 foot is existing and 6 foot is proposed.

The Board Attorney swore in the Applicants, Margaret Divine Rodriguez and Steve Rodriguez 62 Greenbrook Drive. Mrs. Rodriguez asked the Board to refer to previously submitted documents – original application, variance application and report submitted by the Board Planner, Kenneth Ochab.

Mrs. Rodriguez stated that she has lived in their home for over 20 years. The subject fence, pictured in Mr. Ochabs report labeled #1, long predates their living in the home. The fence is falling apart and needs to be replaced around the existing pool. Mrs. Rodriguez stated she filed for the Zoning Permit and discovered the property has two front yards. Replacing the fence was denied for height in the second front yard. The ordinance that required a 4 foot height for a two front yard home was passed in 1988.

Mrs. Rodriguez stated she saw no detriment to the community by replacing the 6-foot fence. The positive would be an enhanced appearance and the safety that a 6-foot fence would provide to keep wildlife or people from hopping a 4-foot fence while keeping the Applicants dogs safe inside the fence.

The proposed fence is white vinyl with a lattice top. The Applicant stated the fence would provide more protection. The fence in the back on Aspen will be brought in (currently partial encroachment on a neighbor property – lot 3) two front yards will remain in the same location.

The Board Planner stated it was not necessary to provide an as built survey correcting the survey once the fence oversite is corrected to be fully located on the Applicants property.

The Application was opened to the Public by Chairman Brady in accordance with the NJ Open Meetings Act.

Hearing no one moved to close by Michael Gerst and second by Arthur McQuaid.

Roll Call: Dan Jurkovic, Linda Connolly, Frank Curcio, Arthur McQuaid, Michael Gerst, Michael DeJohn, Robert Brady

Daniel Jurkovic made a motion to approved ZB07-21-12 lot 6713 Lot in the R1 Bulk Variance to replace an existing 6-foot fence where 4 foot is permitted, 6 foot is existing and 6 foot is proposed. Mr. Jurkovic stated the fence appeared to have been there a long time and predated the Applicants purchase of the home and the ordinance change that required the 4-foot fence on front yards. Second by Arthur McQuaid.

Roll Call: Dan Jurkovic, Linda Connolly, Frank Curcio, Arthur McQuaid, Michael Gerst, Robert Brady

The Board Attorney informed the Applicant the resolution would be approved at the next meeting, published in the newspaper following with a 45-day appeal period. Any action taken on the property prior to the 45 day appeal period is done at the risk of the applicant.

**GAILANN MACARELL
BULK VARIANCE ZB06-21-09**

Block 13104 Lot 7
10 Longview Road, LF Zone

**Complete: 08/10/2021
Deadline: 12/08/ 2021**

Applicant is seeking relief for a side yard setback where 30 feet is required, 19.5 feet is existing and 11.5 feet is proposed for a building addition to the South side of the existing home to accommodate for interior kitchen and bathroom alterations.

The Board Attorney swore in the Applicant Gailann Macarell of 10 Longview Road West Milford. Joe Golden 22 Algeo Drive, Sparta NJ was sworn in, who stated he is a licensed professional Engineer and a licensed Planner in the State of NJ. Lisa Muller was sworn in, Registered Architect in the state of NY with an address of 244 Ellen Drive, Park Ridge NJ.

Mr. Golden received his under graduate and graduate degree from NJ Institute of Technology and has appeared before this Board. Ms. Muller has an undergraduate degree from University of Maryland and Fashion institute of technology, is registered in the state of NY and has testified for a number boards in the state and in NY.

Mr. Golden began sharing his screen of the site survey with the proposed addition highlighted in blue. The expansion is for an existing small kitchen and a bathroom, adding 8 foot to the side of the dwelling

Mr. Golden stated the existing impervious surface, consisting of a packed gravel walkway and concrete platform will be removed and replaced with the proposed addition. Reports from the Board Professionals, Environmental Commission and the Health department mentioned runoff to neighboring property and the ability of the septic to support the addition. Mr. Golden indicated roof leaders and gutters would be added that direct runoff to the rear of the properties. The reduction in impervious coverage will decrease runoff from the site.

The septic is currently fully functioning; no additional bedrooms proposed and will not have a negative impact. The existing septic exits the line in the rear to get to the tank.

Referencing photo #2, page 3 the Board questioned the drainage near the 28 inch tree. Mr. Golden stated the drainage will be directed down the sloped area and is approximately 11 1/2 feet from the property line. This tree is not located near the addition. The impervious surface will be removed lowering the intensity of any water runoff.

The benefit of the additional space in the kitchen will add to the enjoyment of the property.

Ms. Muller began sharing her screen, showing the existing lower level and the existing first floor plan of the house. The interior design of the house reduces the options for expansion. The kitchen is currently 7 foot 3 inches, limiting its use and function ability. The style of the proposed addition remains consistent with the current design, having the least impact on the neighborhood, utilizing the same roofline and style windows.

The bathroom on the lower level will be expanded and relocated into the new addition out of the current mechanical and laundry room. Ms. Muller describes the addition as basic.

Mr. Brady opened the application to the public in accordance with the NJ Open Meetings act.

Seeing no one moved to close, Michael Gerst and second by Arthur McQuaid.

Roll Call: Dan Jurkovic, Linda Connolly, Frank Curcio, Arthur McQuaid, Michael Gerst, Michael DeJohn, Robert Brady

Daniel Jurkovic made a motion to approve Bulk Variance ZB06-21-09 Block 13104 Lot 7 10 Longview Road, LF Zone for a side yard setback to build an addition to the 30 feet is required, 19.5 feet is existing and 11.5 feet is proposed for a building addition to the South side

of the existing home to accommodate for interior kitchen and bathroom alterations and Second was made by Michael Gerst.

Roll Call: Dan Jurkovic, Linda Connolly, Frank Curcio, Arthur McQuaid, Michael Gerst, Michael DeJohn, Robert Brady

The Board Attorney informed the Applicant the resolution would be approved at the next meeting, published in the newspaper following with a 45-day appeal period. Any action taken on the property prior to the 45 day appeal period is done at the risk of the applicant.

TAMMY WAITE & JOHN PALLOTTA
BULK VARIANCE ZB06-21-10

Complete: 08/10/21
Deadline 12/08/21

Block 2704 Lot 2
8 Yardville Road, LR Zone

Applicant seeking a Bulk Variance for a Side Yard setback where 10 feet is required, 10.3 feet is existing and 8.1 feet is proposed, a rear yard setback where 10 feet is required, 17 feet is existing and 7 feet is proposed lot coverage where 3% is required, 3.2% is existing and 8.4% is proposed for the construction of a 26 x 28 foot accessory garage on the North end of the property.

Mr. Pallotta residing at 8 Yardville Road (Applicant) and Mr. Tyler VanderValk, PE of Houser Engineering located at 1141 Greenwood Lake Turnpike, Ringwood, NJ were sworn in. Mr. VanderValk stated that he is a licensed Engineer in the State of NJ and has testified before this Board on numerous times.

Mr. VanderValk shared plans that were submitted with the Variance Application. Referencing the tax map Mr. VanderValk described the location of the parcel as a single family home in the LR zone with an existing small-detached garage/shed (approximately 160 sq. ft.) that would not allow for vehicle parking.

Mr. VanderValk reviewed the bulk table listed on the map titled Layout and Grading Plan and described LR Zone Required, Existing and Proposed conditions. Mr. VanderValk referenced the bulk chart and items that would require a variance and what currently exists as non-conforming when the plans were prepared.

The proposed replacement garage measures 728 sq. ft. – 28 feet deep x 26 feet wide with a single garage door and single man entry door in the front and a single man door on the Southerly side. By nature of the undersized lot, several existing non-conformities exist.

Mr. VanderValk indicated this Application was a standard C1 Variance for the present hardships presented by the property. Factors being the lot area, standard for the neighborhood, lot frontage and depth affecting the ability to meet the setbacks.

Mr. VanderValk stated, sliding the building back 1.9 feet on the North sideline would eliminate the need for the side yard setback variance on this side. The driveway is proposed 3 feet off the septic field, (driveway) 2 feet beyond the edge of the garage door. Bringing the driveway closer to the door and maintain the same separation from the driveway and the corner of the garage structure would be behind the septic being a non-issue. The conditions described by Mr. VanderValk stated the side yard setback would eliminate the buy sell letter leaving the rear yard setback variance requirement only.

Mr. VanderValk stated he had a conversation with a member of the West Milford Health Department “Sue”. Indicating that Sue indicated in their conversation that there is no standard setback. Mr. VanderValk indicated their conversation included a recommendation not to drive over the septic field during construction and everyday use.

Mr. VanderValk indicated there would be electric, no plumbing or residential use.

Based on the testimony to move the building 1.9 feet to the South West, eliminating the side yard setback and the need for a buy/sell letter.

Mr. Brady opened the Application to the public in accordance with the NJ Open Meetings Act.

Seeing No one moved to close, Michael Gerst and Second by Arthur McQuaid.

Roll Call: Dan Jurkovic, Linda Connolly, Frank Curcio, Arthur McQuaid, Michael Gerst, Michael DeJohn, Robert Brady

Daniel Jurkovic made a motion to approve Bulk Variance ZB06-21-10, Block 2704 Lot 2 in the LR Zone for a rear yard setback where 7 feet is proposed and 8.4% lot coverage for construction of a 26 x 28 foot accessory garage on the North end of the property based on the fact the Applicant has withdrawn the side yard setback, and second by Arthur McQuaid.

Roll Call: Dan Jurkovic, Linda Connolly, Frank Curcio, Arthur McQuaid, Michael Gerst, Michael DeJohn, Robert Brady

The Board Attorney informed Mr. Pallotta the resolution would be approved at the next meeting, published in the newspaper following with a 45-day appeal period. Any action taken on the property prior to the 45 day appeal period is done at the risk of the applicant.

The Board Planner stated that revised plans would be required.

DISCUSSION

Mr. Brady stated the Town Hall meeting location would not be available indicating that meetings would continue as zoom and revisited in November. Recognizing the public health concerns.

RESOLUTION No. 16-2021

Amending Resolution No. 1-2021 with Steven B. Glatt, Esq. to increase the 2021 contract value in an amount not to exceed by \$5,000 for the Position of Zoning Board of Adjustment.

The Board Attorney stated for the first time in 34 years the need for additional funds was needed, stating Grischuk litigation, zoom and the new ordinance was billed direct to the contract and not individual escrow accounts.

Danial Jurkovic made a motion to approve Resolution No. 16-2021 and second by Arthur McQuaid.

Roll Call: Dan Jurkovic, Linda Connolly, Frank Curcio, Arthur McQuaid, Michael Gerst, Michael DeJohn, Robert Brady

APPROVAL OF INVOICES – BOARD PROFESSIONALS

Motion to pay invoices was made by Dan Jurkovic and second by Linda Connolly

Roll Call: Dan Jurkovic, Linda Connolly, Frank Curcio, Arthur McQuaid, Michael Gerst, Michael DeJohn, Robert Brady

COMMUNICATION

LITIGATION

**Motion for adjournment of the September 28 , 2021 meeting by Danial Jurcovic
Second by Michael Gerst**

All in favor.
None opposed.

ADJOURNMENT at 9:46 PM

Next regular meeting September 28, 2021 at 7:30 p.m.

Respectfully submitted by,

Pamela Jordan, Secretary
Zoning Board of Adjustment