

**TOWNSHIP OF WEST MILFORD
ZONING BOARD OF ADJUSTMENT**

**MINUTES
OCTOBER 19, 2004**

The meeting opened at 7:37 p.m. with the reading of the legal notice.

ROLL CALL

Present: Thomas Bigger, Robert Brady, Anthony DeSenzo, Joseph Giannini, Francis Hannan, Daniel Jurkovic, Arthur McQuaid, Ed Spirko and Thomas Lemanowicz; Bryant Gonzales, Acting Board Attorney; Linda Lutz, Staff Planner; Richard McFadden, Township Engineer.

Absent: Stephen Glatt, Board Attorney.

Continued Public Hearings

MICHAEL ZUPP	COMPLETE	06-01-04
<i>De Minimis Exception</i>	DEADLINE	10-31-04
Bulk Variance #0430-0662		
Block 12110; Lot 6		
Inwood Road; R-2 Zone		

John Barbarula, Esq., appeared on behalf of applicant, Michael Zupp. The Fire Marshal's memo was discussed and agreed to.

The Township Engineer spoke.

The meeting was opened to the public again at which time Paul Bartholomow of lot 13 spoke.

MOTION was made by Arthur McQuaid to close the public portion, seconded by Thomas Bigger, with all in favor.

The Board of Adjustment made the following findings of fact: Adequate improvements will be made at the direction of the Township Engineer. Allowing the applicant to develop within the existing residential neighborhood without improving the entire road network to the standards of the RSIS will remain consistent with the intent of said act.

MOTION was made by Daniel Jurkovic to approve bulk variances for construction of a single-family dwelling where the property does not comply with lot frontage and lot width. Basically, the lot frontage and width is the narrow, macadam driveway, and the remainder of the property is basically landlocked except for a small portion touching upon Martha Street, a private, un-owned road, seconded by Arthur McQuaid. The macadam driveway connecting the subject property to Germantown Road is to remain part of this property for future access. Arthur McQuaid then withdrew his second to the motion because he felt applicant should be able to sell the driveway to his neighbor. He clarified this is an unimproved, Township road. Daniel Jurkovic withdrew his amendment and reverted to his original motion, Arthur McQuaid seconded.

On roll call vote:	Yes	Anthony DeSenzo, Joseph Giannini, Francis Hannan, Daniel Jurkovic, Arthur McQuaid, Thomas Lemanowicz and Robert Brady
	No	None

The Board of Adjustment made the following findings of fact:

1. The applicant seeks to construct a single family dwelling with access by Martha Street.
2. The topography and configuration of the property and lack of additional property that could be acquired causes a hardship whereby the applicant requires relief for lot frontage and lot width as well as relief from MLUL C.40:55D-35.
3. The applicant has frontage on Germantown Road, but it would not be the most feasible means of ingress and egress due to the width and the steepness of the slope of the property at that point.
4. The applicant is willing to abide by the conditions of the Township Engineer.
5. There would not be any detrimental effect upon the direct neighborhood nor the zoning ordinance of the Township, but rather it would have a positive effect by permitting access through Martha Street since the property is almost landlocked.

MOTION was made by Daniel Jurkovic to approve the *de minimis* exception from RSIS since this is a small stretch of private road already used by local property owners and will also be used by applicant. There's no reason this stretch needs to be developed for access to the four homes, subject to compliance with the Township Engineer's report and the Fire Marshal's report that there be a turnaround area within the property, seconded by Arthur McQuaid.

On roll call vote: Yes Anthony DeSenzo, Francis Hannan, Daniel Jurkovic
Arthur McQuaid, Thomas Lemanowicz and Robert
Brady
No Joseph Giannini

APSHAWA LAND CO.	COMPLETE	07-28-04
Use Variance #0340-0635	DEADLINE	11-25-04
Preliminary & Final Site Plan #0220-0126AB		
Bulk Variance #0230-0586		
Block 12501; Lot 21		
Van Cleef Road; R-3 Zone		

John Barbarula, Esq., appeared on behalf of applicant, Apshawa Land Co. The owner of Apshawa Land Co, Mr. Mabey, and Douglas McKittrick, P.E., were previously sworn.

Board member, Thomas Lemanowicz, directed questions to Mr. Mabey.

The meeting was opened to the public at which time no one wished to speak.

MOTION was made by Thomas Bigger to close the public portion, seconded by Anthony DeSenzo, with all in favor.

John Barbarula, Esq., gave his summation.

The Board of Adjustment made the following findings of fact:

1. The property is located in a R-3 zone and the applicant's property consists of approximately 20 acres.
2. The applicant desires to construct a storage facility that was previously granted pursuant to Resolution No. 31-1995 conditioned upon site plan approval. The facility pursuant to said approval was never granted and the applicant at this time seeks to enlarge the size of the building thereby an approval for expanding a pre-existing nonconforming use.

3. The area where the facility is to be located was previously a junk yard and it is unlikely that it will ever be used for residential purposes.
4. The special reasons for granting the use variance would be based upon the fact that the new building would permit the storage of a greater number of vehicles indoors and thereby have a positive impact upon the environment.
5. There would be no negative impact upon the immediate area nor be detrimental to the public good since the storage of the vehicles inside the facility would help to upgrade the immediate neighborhood and protect the environment.

MOTION was made by Anthony DeSenzo to approve the use variance for the expansion of a use previously approved. Applicant has shown the positive and negative criteria effectively. The property will have more environmental controls over environmentally sensitive issues. The repair operation will be moved to an inside facility. The property will be better used by having more equipment located out of the elements and covered. The use will be cleaner and more suitable and several existing eyesores will be eliminated. The Township Engineer's recommendations and all other concerned parties are to be incorporated, seconded by Daniel Jurkovic.

On roll call vote: Yes Thomas Bigger, Anthony DeSenzo, Joseph Giannini,
Francis Hannan, Daniel Jurkovic, Arthur McQuaid and
Robert Brady
No None

The Board of Adjustment made the following findings of fact:

1. The applicant had previously received use variance approval pursuant to Resolution No.: 31- 1995, but he never received site plan approval.
2. The applicant submitted a bulk variance application wherein the footprint of the original facility is being enlarged.
3. The reason for enlarging the building is to accommodate a small office and a larger area for storage of trucks and equipment.
4. The only bulk variance required is that of front yard setback.
5. The balance of the variances are for no curbing, no paving, no loading zone, fence height and sign location which are dictated by the nature of the application for a storage facility for trucks and equipment.
6. Permitting more vehicles to be stored inside will comply with the concerns of the Environmental Commission.
7. Additionally, the granting of the variances and site plan will eliminate an eyesore.
8. The issue of abutting on a public street pursuant to MLUL C.40:55-35 was previously addressed by virtue of an easement agreement as mentioned in Resolution No. 31-1995.

MOTION was made by Daniel Jurkovic to approve the preliminary and final site plan and bulk variance. Some variances are non-use related. Specifically, the front yard setback at 79 feet, the request for no curbing, no paving and a loading zone not being necessary. There is a request for a fence height of 6 feet and a sign location to be placed on the fence itself. These variances are appropriate for the use of the property. The preliminary and final site plan should be approved subject to modifications recommended by the Township Engineer, seconded by Robert Brady.

On roll call vote: **Yes** Thomas Bigger, Anthony DeSenzo, Joseph Giannini,
Francis Hannan, Daniel Jurkovic, Arthur McQuaid and
Robert Brady
 No None

Applications Carried From Previous Meeting

JEFFREY YUHAS	COMPLETE	07-29-04
Bulk Variance #0430-0680	DEADLINE	11-26-04
Block 10601; Lot 10		
36 Postbrook Road North; LR Zone		

Applicant, Jeffrey Yuhas, was sworn and testified he would like to build a two-story addition on the west side of his home for a one car garage with a second story above it for storage. There is no vacant land to purchase and the garage cannot be located anywhere else. He commented regarding the Township Engineer's memo.

Mr. Yuhas also testified as Professional Engineer and Professional Planner and clarified he prepared his plans and drainage calculations. He has an easement on his property and any improvements to his property would still have to allow the Township access.

The meeting was opened to the public at which time no one wished to speak.

MOTION was made by Thomas Bigger to close the public portion, seconded by Anthony DeSenzo, with all in favor.

After Board discussion, applicant agreed he could reduce the addition by 60 feet off the rear of the home, adjusting the lot coverage to around 13 percent, creating a 14 ½ foot by 28 ½ foot addition.

The meeting was re-opened to the public at which time no one wished to speak.

MOTION was made by Thomas Bigger to close the public portion, seconded by Anthony DeSenzo, with all in favor.

The Zoning Board of Adjustment made the following findings of fact:

The application before the Board is a request for bulk variance approval for the Subject Property. The Applicant advised the Board that the intent of the application was to construct an addition to the existing single-family dwelling on the Subject Property. The Applicant indicated that he was a licensed professional engineer in the State of New Jersey as well as a licensed professional planner in the State of New Jersey and would be providing engineering and planning testimony with respect to the application submitted. The Applicant indicated that the addition was to be located on the western side of the single-family dwelling on the Subject Property. The addition would consist of a garage as well as a room above the garage that would be used for storage and exercise equipment. In this regard, the Applicant noted that the room was needed in the home as he and his wife had limited storage space and wished to create a room for extra storage.

With respect to the variances required for this application, the Applicant indicated that the application did not comply with Section 18-3.7, paragraph D of the Land Development Ordinance for side yard setback, front yard setback, rear yard setback, lot coverage, accessory structure distance to side line and accessory structure distance to rear line. With regard to side yard setback, the Applicant indicated that the LR Zone required 30 feet of setback while 22.7 feet were currently provided and 7.6 feet were proposed. With respect to front yard setback, 40 feet are required by the LR Zone while the property provided 35.7 feet as existing and would provide 32.38 feet upon

completion of construction of the addition. With respect to rear yard setback, the Applicant indicated that 60 feet was required in the LR Zone, 52.99 feet were presently provided by the Subject Property and 51.62 were proposed. Regarding maximum lot coverage, the Applicant indicated that the LR Zone required 10 percent (10%) as the maximum whereas the existing lot coverage was 10.24 percent (10.24%) and 14.69 percent (14.69%) were proposed as a result of the new addition.

The Applicant indicated that the Subject Property had preexisting nonconforming conditions with respect to accessory structure distance to sideline as well as accessory structure distance to rear line. In this regard the Applicant noted that the LR Zone required an accessory structure to be at least 10 feet from the sideline as well as 10 feet from the rear line. As the property presently stands, it provides no buffer with respect to the distance of existing accessory structures to the sideline and as a preexisting nonconforming situation, no variance relief was needed. With respect to accessory structure distance to the rear line, the Applicant indicated that 8.86 feet were provided and that this was a preexisting nonconforming situation for which no variance relief was needed.

The Applicant indicated that there were no vacant adjacent lots that could be purchased to avoid the requested variance relief. Consequently, he could not locate the proposed garage addition in the rear of the Subject Property. The Applicant then introduced Exhibit "A" into evidence which he noted was a set of 12 photographs of homes in the immediately surrounding neighborhood of the Subject Property. The Applicant indicated that the homes in the pictures provided as Exhibit "A" displayed similar setback characteristics as those proposed by the Applicant. Consequently, he opined there would be no detriment to the zone plan or zoning ordinance as a result of the Board granting his application.

In reviewing this application, the Board considered the report of its Township Engineer, Richard McFadden, P.E., dated August 11, 2004, the terms of which are incorporated herein by reference. With respect to Item 4 of the Township Engineer's report, the Applicant indicated that he could adjust the layout of the addition to move the proposed footing away from an existing drainage easement on the Subject Property. With respect to Item 3 of the Township Engineer's report, the Applicant indicated that the shed referenced therein was located on top of a Township drainage easement and that it would be a hardship for him to have to relocate this shed as it was of considerable size. In this regard he noted that the shed measured approximately 10 feet by 13 feet by 12½ feet and as such was a difficult structure to move. He also noted that there was an existing septic field in the area. He further indicated that grading the area after removal of the shed would be difficult because of the septic field.

The Applicant acknowledged, however, that if the Township needed to service the pipe over which the shed was located that he understood the risks in having to either remove or relocate same. The Applicant further indicated that drainage calculations were submitted with respect to the drainage pipe and based on his review of the calculations there would be no impact as a result of the shed remaining where it presently is located. In this regard he also indicated that the pipe used by the Township was a reinforced concrete pipe and was more than sufficient for its proposed purpose. He further indicated that because of its construction there would be no need for immediate repair of the pipe.

With respect to the driveway on the Subject Property, the Applicant indicated that this would remain the same and he had no intention of paving over any existing easements.

In considering this application, the Board also reviewed the zoning analysis of its Principal Planner, Linda Lutz, P.P., dated August 3, 2004, the terms of which are incorporated herein by reference.

The Applicant also admitted into evidence Exhibit "B" which was a photo he had taken of the rear of the dwelling on the Subject Property.

Upon reviewing the zoning analysis prepared by the Principal Planner, the Applicant indicated that lot coverage was being increased due to the proposed addition from 10.24 percent (10.24%) to 14.69 percent (14.69%). Upon questioning from the Board, the Applicant indicated that the plans he submitted to the Board were accurate to within one hundredth of a foot.

With respect to the existing shed on the Subject Property, the Applicant provided the Board with a copy of a survey prepared by E.A. Loram, L.S., dated April 22, 1998. The survey he indicated was prepared with respect to Lot 9 of Block 10601 which was a property immediately adjacent to the Subject Property. He indicated that the purpose of this Exhibit was to show the Board that the shed was fully on the Subject Property and not on that of his neighbor residing at Lot 9 of Block 10601.

The Board then discussed with the Applicant the possibility of reducing the size of the garage as the Board was concerned with the extent of the increase in lot coverage proposed by the application. In this regard the Applicant indicated that he could reduce the garage size by moving the rear wall of the proposed addition inward by 1½ feet so as to result in a total square foot reduction of approximately 60 feet.

The Board opened the meeting to the public for comment on the application. With no members of the public expressing an interest in this application, the Board closed the public comment portion of this application.

In further discussions with the Board, the Applicant agreed that it would attempt to reduce the side yard setback encroachment from 7.6 feet to 8.1 feet. With respect to rear yard setback, the Applicant would attempt to reduce the encroachment from 51.62 feet as proposed to 53.12 feet.

MOTION was made by Daniel Jurkovic to approve the bulk variance for an addition to a single-family dwelling. Applicant has made reasonable adjustments to reduce the addition from 15 feet to 14.5 feet and the lot coverage and still maintain a desirable architectural design. The side yard setback is quite small but there is little area on the property to put an addition and no adjoining property available to alleviate the variances. There is a 15-foot wide easement shared between his property and his neighbor that provides some buffer between the two properties. This community has many structures with garages added onto the sides of the homes as shown by applicant's exhibit. The front yard setback is a minimal encroachment from what exists. It was already a non-conforming situation and is only being reduced by approximately two or two and one-half feet in order to maintain the architectural lines of the home. The rear yard setback is 51.62 feet and an insignificant change. The accessory structure exists and there is no problem with its location because it is on applicant's property and has existed for 20 years. It would be difficult to remove and has been refurbished and sided to match the home. It sits on the easement area and applicant agreed it would have to be moved if the Township required access to the area. Applicant provided a survey from the adjoining property owner showing the shed is 0.1 foot within his property line, seconded by Arthur McQuaid.

On roll call vote: Yes Thomas Bigger, Anthony DeSenzo, Joseph Giannini,
Francis Hannan, Daniel Jurkovic, Arthur McQuaid and
Robert Brady
No None

The Board recessed and upon reconvening, Board member Anthony DeSenza had left the meeting. The Chairman appointed alternate, Ed Spirko, as a voting member.

DONALD & I-YO TURTON
Bulk Variance #0430-0672

COMPLETE 08-16-04
DEADLINE 12-14-04

Block 4501; Lot 3
Awosting Rd/East Shore Rd; R-4

Robert Jones, Esq., appeared on behalf of applicants and contract purchasers, Donald and I-Yo Turton. He explained this was a six plus acre lot, unique in shape. The variances requested are because of the shallowness of the lot. The lot depth, front yard and rear yard setbacks are required. A cover letter from the landowner, Julius Carpignano, with attached buy/sell letters to MUA and the State of New Jersey Division of Fish and Wildlife and certified slips were accepted as an exhibit. The MUA was not interested in purchasing or selling land. The State of New Jersey made no response.

Alfred A. Stewart, Jr., Professional Engineer and Land Surveyor, was sworn and testified the slenderness of the lot restricts the front yard and rear yard and almost eliminates the setback area. The LOI has been applied for. He addressed each comment in the Township Engineer's memo.

Bryant Gonzales, Esq., requested a response with respect to the application of the Highlands Act.

Robert Jones, Esq., stated it was understood an application for an exemption would have to be made because a contract had been in place prior to its adoption.

The meeting was opened to the public at which time no one wished to speak.

MOTION was made by Thomas Bigger to close the public portion, seconded by Daniel Jurkovic.

The Zoning Board of Adjustment made the following findings of fact:

The application before the Board is a request for bulk variance approval for the Subject Property.

Prior to the commencement of the application, Board member Anthony DeSenzo noted that he could not stay to hear the application and as such alternate, Ed Spirko took his place.

Jones indicated that the application was for a unique lot in that the lot measured more than 6 acres and had 1,600 feet of frontage but was an otherwise narrow lot and as such lot depth was an issue. In this regard he indicated that the lot was shallow and had a preexisting 144 feet whereas 275 feet were required by the R-4 Zone. With regard to front yard setback and rear yard setback, Jones indicated that 125 feet were required but only 70.1 feet of front yard and 49.1 feet of rear yard were being provided by the Applicants.

Jones indicated that the Applicants could not provide more area to comply with the Ordinance requirements and that the lot owner, Julius Carpignano (hereinafter "Carpignano"), had attempted to purchase adjacent property from adjacent property owners. In this regard, Jones tendered to the Board a copy of a letter dated June 7, 2004 which he indicated was the Township's standard buy/sell letter which was forwarded by Carpignano to the West Milford Municipal Utilities Authority (hereinafter the "MUA") as well as the New Jersey Division of Fish and Wildlife. Jones also tendered to the Board a copy of correspondence from the MUA, specifically Diane Paretti, Executive Director, which indicated that the MUA was not interested in buying or selling property. The letter from the MUA was dated June 7, 2004. With regard to the New Jersey Division of Fish and Wildlife, Jones indicated that neither the Applicants nor Carpignano received a response.

Testifying on behalf of the Applicants was Alfred A. Stewart, Jr., P.E., L.S. (hereinafter "Stewart") who indicated that he would be testifying with regard to the plans prepared and submitted to the Board dated June 9, 2004. In this regard, Stewart noted

that variances were required for the Subject Property in that for a dwelling to be located thereon violations of the Ordinance requirements for lot depth, front yard and rear yard were present. Stewart indicated that lot depth for the Subject Property was 144 feet whereas 275 feet were required by the Zone. He noted that with respect to front yard setback 70.1 feet were provided by the Applicants whereas 125 feet were required by the R-4 Zone. Lastly, he noted that with respect to rear yard setback, the Applicants were providing 49.1 feet whereas 125 feet were required by the R-4 Zone.

In view of the situation on the Subject Property, Stewart testified that the circumstances were of the typical hardship bulk variance under N.J.S.A. 40:55D-70c. In this regard he noted that the unique shape of the Subject Property could not be remedied by the Applicant. He further noted that the nearest adjacent property owner was more than 300 to 400 feet away from the Subject Property. In this regard he noted that there would be no impact to the integrity of the zone plan and zoning ordinance by allowing a one-family dwelling on the Subject Property with the requested variances for lot depth, front yard setback and rear yard setback.

Referring to Sheet 1 of the plans submitted, Stewart generally described the property and indicated to the Board the existence of easements, wetlands and proposed buffer areas on the Subject Property. With regard to wetlands and buffer areas, Stewart indicated that a request for a Letter of Interpretation was submitted to the New Jersey Department of Environmental Protection (NJDEP) in May 2004 and the Applicants were still waiting to hear back from that office. Stewart also described the location of the proposed driveway, the grading for same as well as the location of the proposed septic field to the west of the proposed building on the Subject Property.

In considering this application, the Board reviewed the report of its Township Engineer, Richard McFadden, dated July 28, 2004, the terms of which are incorporated herein by reference. In this regard, Stewart indicated that with regard to Item 1 of the Township Engineer's report, the Letter of Interpretation was still pending from the NJDEP. With regard to Item 2 of the Township Engineer's report, Stewart indicated that steep slope disturbance on the Subject Property was shown on Sheet 2 of the plans submitted. In this regard he noted that slopes in excess of 35 percent (35%) were shown on the plans and the proposed grading and tiered wall system were also shown therein.

With respect to Item 3 of the Township Engineer's report, Stewart indicated that the area of impervious coverage on the Subject Property was 5,000 square feet. He further indicated that the area of disturbance proposed for the Subject Property would be 15,000 square feet.

With respect to Item 4 of the Township Engineer's report, Stewart indicated that the Applicants were willing to relocate the sanitary easement to be lined up with existing manholes and sanitary sewer or as otherwise indicated in the Township Engineer's report.

With respect to Item 5 of the Township Engineer's report, Stewart indicated that the proposed driveway would be perpendicular to the right-of-way and as such the Applicants would comply with this item.

With respect to Item 6 of the Township Engineer's report, Stewart indicated that the Applicants would agree to comply with providing wall details once construction plans were to be submitted.

With respect to Item 7 of the Township Engineer's report, Stewart indicated that the Applicants would be providing 2 feet of stone around the proposed drywells and that a system for proper drainage of overflow would be provided.

With respect to Item 8 of the Township Engineer's report, Stewart indicated that the Applicants would comply with the Site Improvement Plan Checklist.

The Board then reviewed with Stewart correspondence dated September 22, 2004 by Dennis Karakos, P.E., of Cerenzio and Panaro, P.C. on behalf of the MUA with respect to the Subject Property. With respect to Item 2 of this letter, Stewart and Jones indicated that the Applicants understood that any repairs over the MUA Easement would be at the homeowners' expense in that the Applicants were proposing to pave with asphalt a certain area of the Subject Property, over which a right-of-way easement accruing to the benefit of the MUA was located.

With respect to lot coverage, Stewart indicated that Sheet 1 of the plans submitted indicated that 6.576 acres existed on the Subject Property and of that amount, only 0.7 percent (0.7%) of lot coverage was proposed.

In view of the letters from the MUA dated September 22, 2004 and September 27, 2004, the Board asked whether the Applicants would agree that as a condition of approval they would comply with the September 22nd and September 27th letters of the MUA. Jones and Stewart again noted that the Applicants would agree to such a condition.

With respect to compliance with the Highlands Preservation Act, Jones indicated that an appropriate application for exemption would be applied for with the NJDEP. He further noted that as a development for a one-family dwelling with a Contract for Purchase prior to March 24, 2004, he believed the application submitted to the Board would be exempt from the regulations imposed by the Highlands Preservation Act.

MOTION was made by Daniel Jurkovic to approve the bulk variances for lot depth, front yard setback and rear yard setback. The lot is two and one-half acres in access of the

lot size required for the zone but cannot meet lot depth, front yard and rear yard setbacks because of its narrowness. The sloping of the property, location of the MUA easement and the ability to access the property by a particular location of the site proposed by applicant, lot depth requested is 210 or 65 feet short of the requirement. The land in the rear is owned by the State of New Jersey Division of Fish and Wildlife. The front yard setback requested is 70 feet where 125 is required but is more than adequate for this particular lot. The rear yard setback of 51 feet is requested and the State of New Jersey's land is unlikely to be developed in any significant way as far as housing to create problems. Applicant must conform with the memos provided by the MUA, Township Engineer's memo, and payment of all tax arrearages, seconded by Joseph Giannini.

On roll call vote: Yes Thomas Bigger, Joseph Giannini, Francis Hannan,
Daniel Jurkovic, Arthur McQuaid, Ed Spirko and
Robert Brady
No None

MICHAEL & JENNIFER BARONE
Bulk Variance #0430-0683
Block 7506; Lot 7
2 Compass Avenue; LR Zone

COMPLETE 08-18-04
DEADLINE 12-16-04

Applicant, Jennifer Barone, was sworn and testified she would like to install a fence on her corner lot and is seeking a variance for the fence height of five feet. Her drawing was not to scale.

The Township Engineer had concerns that the fence may be within the sight triangle.

The Chairman advised applicant needed to submit revised scaled drawings. All Board members were in favor of carrying the application to the November 23, 2004 meeting with no further notice necessary.

DENNIS MAIORINO
Bulk Variance #0430-0682
Block 1203; Lot 2
4 Finderne Court; LR Zone

COMPLETE 08-19-04
DEADLINE 12-17-04

Applicant, Dennis Maiorino, was sworn and testified he wanted to build a 20-foot x 32-foot garage on his corner lot and required a variance to locate the accessory structure in a front yard because of a paper road. He would like to place the garage where a temporary structure presently exists. He submitted pictures of his land and described each picture.

Board member, Daniel Jurkovic, read a May 20, 1997 Building Permit Denial. The request was to build a shed. Although the building permit was denied because the location violated zoning, the applicant's survey submitted for the current application show sheds in the same location.

Mr. Maiorino testified that, despite the denial, he was given oral permission to build the shed as long as it was a certain distance from his home.

Applicant, Nancy Maiorino, testified their original request for a much larger shed was what had been denied. The Planner stated that size of the shed does not enter the discussion. Accessory structures, no matter what size, are not permitted in a front yard.

The Chairman questioned an existing greenhouse on the property to the south of the shed.

The Acting Board Attorney advised the Board of various options how to handle the accessory structures.

Applicants agreed to amend their application to include the existing shed and greenhouse where they are currently located.

The Acting Board Attorney clarified there were three variance requests; namely, one for the garage, one for the existing shed, and one for the greenhouse.

The meeting was opened to the public at which time no one wished to speak.

MOTION was made by Thomas Bigger to close the public portion, seconded by Arthur McQuaid.

The Zoning Board of Adjustment made the following findings of fact:

The application before the Board is a request for bulk variance approval for the Subject Property. The Applicant advised the Board that the intent of this application was to construct a 20-foot by 32-foot garage in the front yard of the Subject Property. The Applicant indicated that his property was a corner lot and as such had two (2) front yards pursuant to the Ordinance. As a consequence, he required variance relief to place a garage, which is an accessory structure, in the front yard.

The Applicant then introduced photocopies of several photographs of the Subject Property which were marked into evidence as Exhibit "A." The Applicant indicated that he had taken the photographs himself on September 28, 2004. The Applicant indicated that Exhibit "A" consisted of nine (9) photographs from various angles of the Subject Property. The Applicant described Page 1 of Exhibit "A" as a view of the frontage of the Subject Property on Finderne Court. He described Page 2 of Exhibit "A" as a view from the end of the driveway on the Subject Property. He indicated Page 3 of Exhibit "A" showed the grade of the property from the driveway. Regarding Page 4 of Exhibit "A," he indicated that this was a view from the front door of the dwelling on the Subject Property facing Ancora Road. Page 5 of Exhibit "A," he indicated was a view from the side yard of the Subject Property also showing the grade being below the dwelling on

the Subject Property. The Applicant indicated that Page 6 of Exhibit "A" was a rear view of the Subject Property. Regarding Page 7 of Exhibit "A" he indicated that this was a picture of rock outcropping, which was located behind the dwelling on the Subject Property. Pages 8 and 9 of Exhibit "A" he noted were pictures of a temporary structure which was to be replaced by the proposed garage which was shown at viewpoints from Finderne Court and from the rear of the temporary structure.

The Applicant indicated that, because of the extensive rock outcropping on the Subject Property, he was limited in the placement of the garage to where it was proposed in the plans submitted. He indicated that the area proposed for the garage was a fairly flat area and because of the grading of the road this was a better location for access by motor vehicles to the garage.

After some discussion with the Board, the Applicant indicated that he would agree to move the garage back 6 to 8 feet and that if same could not be accomplished due to the topography, he agreed to reduce the size of the garage so that it could be better accommodated on the Subject Property.

The Applicant indicated that he would be employing a contractor from the State of Pennsylvania to construct the garage structure. The structure is intended to be a two-car garage, which would also store a tractor to plow snow on the Subject Property.

The Board then reviewed the plans submitted by the Applicant for the Subject Property which were prepared by M.J. Berry, L.S., P.P. and Patrick McClellan, P.E. of M.J. Berry Associates, P.C. with a date of June 4, 2004, with a current revision date of August 9, 2004 and consisting of one (1) sheet. Upon reviewing the plans, the Board questioned the Applicant as to an existing shed that was on the Subject Property. The shed had been constructed by the Applicant, apparently after a denial for a permit to construct same on the Subject Property had been issued by the zoning officer several years ago. In this regard, the Applicant indicated that after his request for a larger shed had been denied, he had received verbal permission from someone in the Building Department for a smaller structure and was told he could construct same. The Applicant could not, however, identify the person from the Building Department who had allegedly given approval for the construction of the illegal shed. The Board also identified, and the Applicant acknowledged, that a greenhouse was located on the Subject Property in a location that was in violation of the Land Development Ordinance.

The Applicant agreed to amend its application to include requests for bulk variances for the location of the shed and the greenhouse which were located on the Subject Property in violation of the front yard requirement. Consequently, the Applicant indicated he was seeking three (3) variances: one for the location of the proposed garage, one for the location of the existing shed and one for the location of the existing greenhouse in the front yard on the Subject Property.

In reviewing this application the Board reviewed the zoning analysis prepared by Linda Lutz, P.P., Principal Planner, dated August 19, 2004, the terms of which are incorporated herein by reference. In this regard, the Board Planner indicated that the application was for a garage 640 square feet in size to be located in the front yard facing Finderne Court on the Subject Property. The Board Planner advised that the application did not comply with Section 18-9.1(f) of the Land Development Ordinance for the Township of West Milford as the Applicant was proposing to place an accessory structure in a front yard. The Board Planner's report also indicated that there were two (2) other nonconforming situations for which there were no records of variance relief ever being sought by the property owner. In this regard, accessory structures (identified by the Applicant as the greenhouse and the shed) were located on the Subject Property in the front yard facing Ancora Road in violation of the Land Development Ordinance.

MOTION was made by Thomas Bigger to approve the bulk variance with the amended application to include the existing shed and existing greenhouse, the Township Engineer's report to be included and the garage to be reduced in size by six to eight

