

TOWNSHIP OF WEST MILFORD ZONING BOARD OF ADJUSTMENT

MINUTES

NOVEMBER 23, 2004

The meeting opened at 7:36 p.m. with the reading of the legal notice.

ROLL CALL

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

Absent: Francis Hannan

The Chairman appointed alternate, Ed Spirko, a voting member.

Memorializations

CEFES FINANCIAL, INC.

Resolution #19-2004

Bulk Variance #0230-0614

Block 1806; Lot 4

Magnolia Rd; LR Zone

GRANTED: Bulk variance for lot area, frontage, width, front yard setback and side yard setbacks.

MOTION was made by Arthur McQuaid to memorialize the action, seconded by Anthony DeSenzo.

On roll call vote: Yes Anthony DeSenzo, Arthur McQuaid, and Robert Brady
No None

CEFES FINANCIAL, INC.

Resolution #20-2004

De Minimis Exception

Block 1806; Lot 4

Magnolia Rd; LR Zone

DENIED

MOTION was made by Daniel Jurkovic to memorialize the action, seconded by Joseph Giannini.

On roll call vote: Yes Anthony DeSenzo, Joseph Giannini, Daniel Jurkovic and Robert Brady
No None

MICHAEL ZUPP

Resolution #21-2004

Bulk Variance #0430-0662

Block 12110; Lot 6

Inwood Road; R-2 Zone

GRANTED: Bulk variance for lot frontage and lot width.

MOTION was made by Arthur McQuaid to memorialize the action, seconded by Daniel Jurkovic.

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

MICHAEL ZUPP
Resolution #22-2004
***De Minimis* Exception**
Block 12110; Lot 6
Inwood Road; R-2 Zone

GRANTED: *De Minimis* exception from the Residential Site Improvement Standards –New Jersey Administrative Code; Title 5; Chapter 21 (5:21-3.1) for pavement and drainage.

MOTION was made by Arthur McQuaid to memorialize the action, seconded by Joseph Giannini.

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

APSHAWA LAND Co.
Resolution #23-2004
Use Variance #0340-0635
Block 12501; Lot 21
Van Cleef Road; R-3 Zone

GRANTED: Use Variance per New Jersey Municipal Land Use Law C.40:55D-70d (1) for an expansion of a use previously approved.

MOTION was made by Arthur McQuaid to memorialize the action, seconded by Joseph Giannini.

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

APSHAWA LAND Co.
Resolution #24-2004
Preliminary & Final Site Plan #0220-0126AB
Bulk Variance #0230-0586
Block 12501; Lot 21
Van Cleef Road; R-3 Zone

GRANTED: Preliminary and final site plan approval with bulk variances for front yard setback, no curbing, no paving, no loading zone, fence height, sign location; MLUL: 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.

MOTION was made by Joseph Giannini to memorialize the action, seconded by Daniel Jurkovic.

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

JEFFREY YUHAS
Resolution #25-2004
Bulk Variance #0430-0680
Block 10601; Lot 10
36 Postbrook Road North; LR Zone

GRANTED: Bulk variance 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.

MOTION was made by Joseph Giannini to memorialize the action, seconded by Anthony DeSenzo.

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

DONALD & I-YO TURTON

Resolution #26-2004

Bulk Variance #0430-0672

Block 4501; Lot 3

Awosting Rd/East Shore Rd; R-4

GRANTED: Bulk variance for lot depth, front yard setback and rear yard setback.

Robert Jones, Esq., appeared to request changes to the resolution and the Board agreed to the changes.

MOTION was made by Thomas Bigger to memorialize the action **as amended**, seconded by Arthur McQuaid.

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

DENNIS MAIORINO

Resolution #27-2004

Bulk Variance #0430-0682

Block 1203; Lot 2

4 Finderne Court; LR Zone

GRANTED: Bulk variance for front yard setback for accessory structures.

MOTION was made by Daniel Jurkovic to memorialize the action, seconded by Joseph Giannini.

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

GREG RYAN

Resolution #28-2004

BULK VARIANCE #0430-0677

Block 12501; Lot 20

Van Cleef Road; R-3 Zone

GRANTED: Bulk variance for lot frontage.

MOTION was made by Daniel Jurkovic to memorialize the action, seconded by Joseph Giannini.

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

GREG RYAN

Resolution #29-2004

De Minimis Exception

Block 12501; Lot 20

Van Cleef Road; R-3 Zone

GRANTED: *De Minimis* exception from the Residential Site Improvement Standards – New Jersey Administrative Code; Title 5; Chapter 21 (5:21-3.1).

MOTION was made by Arthur McQuaid to memorialize the action, seconded by Daniel Jurkovic.

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

THOMAS J. VITTOR

Resolution #30-2004

Bulk Variance #0430-0550

Block 4201; Lot 8

57 Lake Park Terrace; LR Zone

GRANTED: Bulk variance for maximum lot coverage.

MOTION was made by Thomas Bigger to memorialize the action, seconded by Daniel Jurkovic.

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

ROBERT & MARINA SABO

Resolution #31-2004

Bulk Variance #0430-0687

Block 9707; Lot 15

69 Bergen Drive; R-1 Zone

GRANTED: Bulk variance for side yard setback.

MOTION was made by Anthony DeSenzo to memorialize the action, seconded by Daniel Jurkovic.

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

Applications Carried From Previous Meeting

CEFES FINANCIAL, INC.	COMPLETE	09-29-04
<i>De Minimis</i> Exception	DEADLINE	01-27-05
Bulk Variance #0430-0670		
Block 16504; Lot 4		
Apple Tree Lane/Dan Jennings Rd; R-4		

John Barbarula, Esq., appeared on behalf of Cefes Financial, Inc., to request a carry to the December 16, 2004 meeting because applicant's Planner/Engineer was on vacation. He granted the Board an extension through February 27, 2005 and the Board agreed to carry the application to the December 16, 2004 meeting with the extension to February 27, 2005. The applicant will notice and advertise for December 16, 2004. Thomas Lemanowicz abstained from the vote.

New Applications

SHILOH BIBLE CAMP, INC.	COMPLETE	10-01-04
Use Variance #0440-0663	DEADLINE	01-29-05
Preliminary & Final Site Plan #0420-0180AB		
Bulk Variance #0430-0664		
Block 6002; Lot 47		
753 Burnt Meadow Road; R-4 Zone		

David Becker, Esq., appeared on behalf of Shiloh Bible Camp to request the application be carried to the December 16, 2004 meeting to allow them to amend their application by eliminating the subdivision portion and revise the plans accordingly. An extension was granted through February 28, 2005. The Board agreed to carry the application for Shiloh Bible Camp to the December 16, 2004 meeting with an extension through February 28, 2005 with no need for further notification.

Continued Public Hearings

MICHAEL & JENNIFER BARONE	COMPLETE	08-18-04
Bulk Variance #0430-0683	DEADLINE	12-16-04
Block 7506; Lot 7		
2 Compass Avenue; LR Zone		

Applicant, Jennifer Barone, testified she wanted to install on her corner lot a five-foot fence, six foot high in the rear, and had submitted revised plans drawn to scale as requested by the Board. The Township Engineer advised by memo he had no problem with the sight triangle.

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

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

The Board of Adjustment made the following findings of fact:

1. The application before the Board is a request for "c" variance relief for fence height at property known as 2 Compass Avenue, Block 7506; Lot 7, as shown on the Tax Map of the Township of West Milford, located in the LR Zone and does not, as presented, comply with Section 18-9.4, Paragraph B, of the Land Development Ordinance for reasons of fence height.
2. The applicant is seeking a five (5) foot fence in the front yard since the property is on a corner. The fence will tie into the remainder of the fence on the property which is six (6) feet in height.
3. The applicant will obtain privacy by the granting of the variance which height is consistent with the neighborhood.
4. The Township Engineer has indicated that the site triangle will not be effected by permitting the 5-foot height.
5. The granting of the variance will not have any detrimental effect upon the public good or the immediate neighborhood nor would there be any negative impact to the zoning ordinance of the Township of West Milford.

MOTION was made by Daniel Jurkovic to approve the bulk variance for installation of a fence, five-foot high on the side yard and six-foot high in the rear yard. The fence will not impede on the sight triangle and will give some privacy to the residence and aesthetically match the fence on the adjoining property, seconded by Thomas Bigger.

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

New Applications

RONALD & PATRICIA SHERRY
Bulk Variance #0430-0686
Block 4301; Lot 38
31 Forest Lake Drive; LR Zone

COMPLETE 09-20-04
DEADLINE 01-18-05

Applicant, Ronald Sherry, of 64 Victor Place, Hawthorne, New Jersey, appeared and testified he would like to build a two-car garage with storage similar to the ones in the neighborhood. There is no vacant land to purchase. His plans also show a proposed dwelling he plans to build in the future and tear down the existing home. He plans to rebuild the home in the same footprint. The garage was an after-thought and he plans on building the garage for storage while the existing home is being torn down.

Linda Lutz, Principal Planner, explained when she reviewed the application for completeness, she originally thought it was incomplete because he was not applying for the variances related to the house. The Zoning Officer explained to Mrs. Lutz that the applicant was aware variances were necessary for the house but he was not ready to pursue them at this time. Applicant is only applying for the variances at this time relating to the accessory structure, not for the principal dwelling, and is aware when applying for the building permit for the house, variances may be needed.

The Board Attorney advised applicant he was asking the Board to make a determination as to whether to grant him variances for the proposed garage and it appeared there was going to be future development, which in turn may require additional variances. Applicant ran the risk of possibly creating his own hardship when applying for variances for the home.

Mr. Sherry requested his application be carried to the January 25, 2005 meeting in order to allow him to talk to his architect and engineer to possibly amend his application and granted the Board a 30-day extension.

The Board Attorney advised applicant would need to re-notice if he submits revised plans enlarging his existing plans.

MOTION was made by Thomas Bigger to carry the Sherry application to the January 25, 2005 meeting, with possible further notice necessary if there are changes to the plans, seconded by Arthur McQuaid, with a 30-day extension granted.

MOUNTAINSIDE INN	COMPLETE	10-28-04
MLUL Certification (C.40:55D-68)	DEADLINE	02-25-05
Blocks 3401 & 3406; Lots 21 & 23		
165 Lakeside Road; R-2 Zone		

Robert Jones, Esq., appeared on behalf of applicant, John Aiello, of Mountainside Inn.

The Board Attorney clarified the Board of Adjustment had the jurisdiction to confirm there was a pre-existing, non-conforming use.

Applicant, John Aiello, of 828 East Shore Road, Hewitt, NJ, testified he purchased the property in 1992. The building was constructed in 1959 and was known as Binger's Hotel and consisted of a restaurant, bar, motel and apartment units. The building changed ownership two more times before Mr. Aiello purchased it but it kept the same use. He has a purchaser for the property who intends to continue the same use.

The Board Attorney gave the Board direction regarding abandonment or intent to change the use.

John Aiello testified the bar and restaurant were not used for anything else during the time when it was not open as a restaurant/bar and the apartments have either been used for their original purpose or not used at all.

Linda Lutz, Principal Planner, stated Mr. Aiello referenced a block and lot across the street from this property in his letter of application and questioned if he was going to discuss this property as it relates to the certification request.

Mr. Aiello testified the area across the street from the motel has continued its use as a parking lot. He stated he had also paved a lower area for parking.

Linda Lutz, Principal Planner, gave some history of the zoning ordinance for the Township and established that, since the building was built in 1959, it predates zoning in West Milford. In 1961, the property was in some kind of commercial zone that allowed these types of uses. In 1969, when the zoning was redone, it was not in a zone that allowed these types of uses. She found old site plans that discussed the old parking lot across the street and other minor additions that had been added to the building together with old subdivision files creating the lot on which the parking exists.

Robert Jones, Esq., stated the structure had not been changed and submitted Exhibit A-1, a diagram from 1963 from a previous owner that was denied for an application to add a third story. This shows the structure/layout is still the same today.

Mr. Aiello testified he always intended to continue the uses of restaurant/bar but ran into trouble with people to whom he rented. The current upgrades to the building have been done with the intent to continue the same uses as a restaurant/bar/motel and apartments. There has never been intent to abandon these uses and his intent is to continue these uses.

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.

Robert Jones, Esq., stated it was applicant's intent to continue the four uses that have been on the property since 1959 and applicant testified he did try to rent it as a restaurant. The bar was open one day a week up until last year and the motel and apartments have been rented continuously and have been upgraded. There is no demonstration of any intent to abandon these uses. There have never been any other uses in the facility and applicant meets the criteria for pre-existing, non-conforming status.

The Board of Adjustment made the following findings of fact:

1. The subject property was constructed in 1959.
2. The zoning ordinance of the Township of West Milford was not adopted until 1961.
3. At the time of the construction of the subject property, it was a motel/inn/apartments, restaurant/bar and parking area have not been abandoned.
4. The structure and use of the properties have remained essentially the same for the past 45 years, as depicted on Exhibit A-1.
5. Additionally, the structure and use were permitted pursuant to the initial zoning ordinance in 1961.
6. Accordingly, the use, structure and parking area at the time of construction were not subject to zoning since none existed.

MOTION was made by Daniel Jurkovic to grant MLUL Certification for block 3401 and 3406, lots 21 and 23, 165 Lakeside Road, in the R-2 Zone, certifying the premises as a pre-existing, non-conforming use. The Principal Planner's testimony indicated the property either pre-existed the change in the zoning ordinance or complied with the applicable zoning ordinance when it was built. The zoning was changed some time after the building of the structure, making it fall under the provision of MLUL. Applicant gave testimony with respect to the use over the years that he did not intend to abandon the use. Mr. Jurkovic stated, personally, he had never seen the structure used as anything other than a motel and restaurant as indicated by the applicant. Applicant had not used the property for anything other than each function as it was designated so he did not feel there was any abandonment at any time of each of the four uses referred to. Therefore, all are pre-existing, non-conforming uses and should so certify, seconded by Arthur McQuaid. The testimony with regarding to the parking lot was conforming to the zoning at the time it was developed.

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

The Board recessed and upon reconvening, all Board members were present.

The following application was called:

WILLIAM & LAURA VOGT	COMPLETE	11-02-04
Bulk Variance #0420-0692	DEADLINE	03-02-05
Block 5203; Lot 15		

36 Heritage Drive; R-1

Applicant, William Vogt, of 36 Heritage Drive, West Milford, testified he wanted to install a six-foot fence on his corner lot to secure his large dogs and for privacy and safety. The fence is five-foot with a one-foot lattice and would be set back 11 feet from the curb and would not be in the sight triangle.

Linda Lutz, Principal Planner, questioned applicant's statement that the fence would be 11 feet off the curb when his plan shows the fence 11 feet off the right-of-way line. If the fence is 11 feet off the curb, it makes it only about two feet off the property line. The travel-way does not take up the whole right-of-way of Heritage Drive.

Mr. Vogt stated he preferred the fence off the curb and Mrs. Lutz clarified that was only about two feet off the property line.

The Board discussed the right-of-way.

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

The Board of Adjustment made the following findings of fact:

1. The applicant is seeking to construct a 6-foot fence that would actually be 5 feet with lattice work of 1 foot.
2. The fence would be in conformity with the balance of the fence on the property.
3. The Board is solely determining the height of the fence, but not the location of same other than to indicate that the sight triangle will not be effected if the variance is granted.
4. The fence will be consistent with the use since the driveway width is substantial.
5. The granting of the variance will not have any negative impact upon the neighborhood nor the safety of the neighborhood.

MOTION was made by Anthony DeSenzo to grant the bulk variance for the installation of a fence. Applicant plans to install a six-foot-high fence consistent in size and style throughout the property. The applicant's large animals require a six-foot fence to keep them fenced in. The one-foot lattice on the top may allow some additional visibility above the five-foot mark. This will help in terms of privacy for their home in this new development and provide safety for their children. There is an inaccuracy on the plans showing the fence is 11 feet from the property line. This will be revised by applicant to show approximately one to two feet of distance between the property line and the fence. There is no minimum required fence setback and one foot would be sufficient. The proposed location does not create a sight distance problem from the driveway in terms of ingress and egress, seconded by Arthur McQuaid, who confirmed the Board had a report from the Township Engineer stating this was not within the sight triangle. He felt the driveway was sufficiently wide.

Board member, Daniel Jurkovic, felt there were two sight triangles on the property. One at the intersection and the other one at the driveway and felt there was no testimony regarding the driveway sight triangle.

The Township Engineer confirmed the sight triangle he was referring to was the one at the corner and was regulated by the Municipal Land Use Ordinance. He added that a difference between a four foot and six foot fence would not affect the measurement of the sight distance at the driveway. The fence would not be obstructing the normal measurement of sight distance.

On roll call vote: Yes Thomas Bigger, Anthony DeSenzo, Joseph Giannini,
Arthur McQuaid, Ed Spirko and Robert Brady
No Daniel Jurkovic

ADJOURNMENT

The meeting was adjourned by unanimous vote at 9:57 p.m.

Respectfully submitted,

Carol DenHeyer
Secretary