

TOWNSHIP OF WEST MILFORD ZONING BOARD OF ADJUSTMENT

MINUTES

DECEMBER 16, 2004

The meeting opened at 7:35 p.m. with the reading of the legal notice.

ROLL CALL

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

Absent: Anthony DeSenzo and Ed Spirko

The Chairman appointed alternate, Thomas Lemanowicz, a voting member.

Memorializations

MICHAEL & JENNIFER BARONE

Resolution 32-2004

Bulk Variance #0430-0683

Block 7506; Lot 7

2 Compass Avenue; LR Zone

GRANTED: Bulk variance for fence height.

MOTION was made by Thomas Bigger to memorialize the action, seconded by Joseph Giannini.

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

MOUNTAINSIDE INN

Resolution 33-2004

MLUL Certification (C.40:55D-68)

Blocks 3401 & 3406; Lots 21 & 23

165 Lakeside Road; R-2 Zone

GRANTED: Certification pursuant to the M.L.U.L. C.40:55D-68, that the use and structure pre-existed the adoption of the ordinance that rendered the use and structure non-conforming on properties located at 165 Lakeside Road, Blocks 3401 & 3406; Lots 21 & 23 in the R-2 zone.

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

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

WILLIAM & LAURA VOGT

Resolution 34-2004

Bulk Variance #0430-0692

Block 5203; Lot 15

36 Heritage Drive; R-1

GRANTED: Bulk variance for fence height.

MOTION was made by Thomas Bigger to memorialize the action, seconded by Joseph Giannini.

11 plus acre site. It runs camps for two or three day groups and engages campers in outdoor activities. Applicant would like to build a building on the site to provide a gymnasium to be used during inclement weather. The building would also have a meeting room, bathrooms and staff apartments. The application would have two phases of construction. Phase I would be the gymnasium and Phase II would be the "wing" part of the building.

John Frank, of 753 Burnt Meadow Road, testified he and his wife were the founders of Shiloh Bible Camp and he is also the Director. They started the camp in 1986 and the staff consists of volunteers. He and his wife purchased the property in order to help children by having retreats at the camp. The property has an existing main home used by his family, which also provides meeting rooms and dorms for youth groups. They have a maintenance building consisting of a woodshop, mechanic shop and storage area. There are a series of cabins connected with a stockade fence. They would like to build a 50-foot by 80-foot gymnasium to use during inclement weather. They already have approximately 25 parking spots and most of the youths arrive in vans.

*The Chairman advised the attorney for **High Crest Lake Remand** had arrived so the Board returned to the remand.*

The Board Attorney clarified the application had been remanded to the Board of Adjustment in order to accept the testimony of plaintiff, James Carter.

James Carter, of 123 High Crest Drive, testified he was on the High Crest Lake Board of Directors for four years during which time the land for the new lodge was acquired. He helped develop the concept the application was based on and was also an alternate member on the Board of Adjustment. He lives across the street from where the new lodge is to be built. He felt the description of the intended use was not the whole story and the design of the proposed building made it evident the intended use dwarfs the described use. He testified applicant had significantly misrepresented the amount of traffic the proposed building would generate and submitted Exhibit OC-1, a graph showing the occupancy of other similar facilities in the township.

The Board Attorney read from the resolution of the first court remand and the Board recessed, at Mr. Carter's request, in order to allow Mr. Carter to review one of the transcripts.

Upon reconvening, the Chairman advised the other applicants they may not be reached.

James Carter continued his testimony and spoke of the testimony Mr. Brown, the architect, had given.

Drew Murray, Esq., attorney for High Crest Lake Lodge, had no questions.

Board members felt there was no new testimony to refute the traffic engineer's testimony from the last remand and there was nothing to validate the speculations made by Mr. Carter. The graph submitted as an exhibit did not come from anyone certified to justify the numbers given. The Board found the testimony that had been given by the architect was credible, reasonable, and the suitable capacity for the building was 160/165 people. The Board appreciated Mr. Carter's testimony but found no reason to vote negative on the application. The testimony of Mr. Carter had not changed the testimony of the expert witnesses and the fact-findings in the previous hearings.

MOTION was made by Daniel Jurkovic *to re-affirm* the Board's October 21, 2003 decision memorialized on December 18, 2003 granting approval for use variance 0140-0490 and preliminary and final site plan 0120-0096AB, Block 13002, Lot 9, High Crest Drive/Hearthstone Drive, in the R-2 zone, for the erection of a new structure known as High Crest Lake Lodge, seconded by Thomas Bigger.

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

The Board Attorney advised he would notify Judge DeLuccia regarding the decision for the court remand.

The Board now resumed with the application for **Shiloh Bible Camp**.

Linda Lutz, Principal Planner, questioned John Frank regarding the automobiles on the property.

John Frank testified the camp has an auto-donation program to help out the ministry and they refurbish the cars on the premises. They do not have approvals to do so.

Mrs. Lutz advised the Board that outdoor storage of cars was not a permitted use in the R-4 zone. It was agreed that the application could be amended to include a variance for the storage of cars. Since there were concerns from the Environmental Commission, a concrete pad may be needed to store the cars on.

David Becker, Esq., agreed there could be conditions of approval with regard to the storage of the cars.

John Frank testified 6 to 10 cars might be stored on the site at a time on a gravel parking lot for up to six months. The cars are cleaned up and given away to a needy family or sold as income for the camp. No mechanical work is done on the cars.

The Board Attorney stated the application was being officially amended to include a variance to permit outdoor storage of up to 10 vehicles for up to six months. No more than 10 vehicles are to be stored on the property at any time.

Ryan Smith, Licensed Engineer from Lincoln Park, testified he was familiar with the site plan prepared by his engineering firm and described the plan.

Linda Lutz, Principal Planner, clarified Mr. Smith was not testifying from the same plans the Board had.

Mr. Smith clarified revisions had been made to the plan to correct and change items. He replaced his site plan with the correct plan, dated November 29, 2004, and continued to testify. Phase I of the construction proposes to provide a 4,100 square foot gymnasium for indoor use during inclement weather. The Phase II portion of construction proposes bathroom facilities, a meeting room, and a couple of apartments for staff quarters. A permit from the DEP would be needed for the septic system.

Mr. Frank testified regarding the stream and drainage swale.

Mr. Smith testified applicant would obtain the proper DEP permits. They intend to try to eliminate some of the steep slopes on the property by having the building built somewhat into the slopes. He advised of the impervious coverage and ADA requirements. Nothing has been filed with the DEP for the septic nor the Highlands at this time but they have made an application for an LOI.

The Township Engineer advised a 150-foot transition zone might be required.

Mrs. Lutz stated the ordinance does not allow disturbance of 35% or greater and questioned the percentage of the slopes. If there was a disturbance, it would need to fall under the catch-all variances.

The Board Attorney advised the Board would need to know the percentage of disturbance of the steep slopes.

Mr. Smith testified regarding the installation of a swale to push the water away from the building. The routes to the building would be accessible with a gravel path meeting the requirements of the slope for ADA. The area could be paved if required.

The Board Attorney recommended the application be carried in order to allow applicant's Engineer to confer directly with the Township Engineer to clear up some problems and advise regarding the details of the steep slopes.

Mrs. Lutz advised it would not be necessary for applicant to hire a Planner as an expert witness for the application.

The application was carried to the January 25, 2005 meeting with no further notice necessary and an extension of 30 days was granted.

The Board returned to the **Cefes Financial, Inc.**, application previously called.

John Barbarula, Esq., appeared on behalf of Cefes Financial, Inc.

Douglas McKittrick, of 2024 Macopin Road, Licensed Engineer and Planner, testified as both Engineer and Planner regarding site plan dated June 28, 2004. The property fronts on Bonter Road and Apple Tree Lane and Dan Jennings Road and is a 4.84 acre parcel in the R-4 zone. It is irregular in shape, long and thin, and requires variances for frontage, width, depth, side yards and rear yard setbacks. There is a large parcel of wetlands located centrally on the property. The survey indicates the travel-way for Dan Jennings Road is completely located on the Cefes parcel and is used by five or six other dwellings on Dan Jennings Road. The road is not paved and there is no dedicated right-of-way. There is no graded area, sidewalk, or drainage along the entire area for the existing homes. There is a discrepancy between the survey and the Tax Map regarding the location of the right-of-way.

The Township Engineer clarified he had requested a signed, sealed survey, in order to confirm the right-of-way.

The Board Attorney clarified, Exhibit A-1, was a sealed survey prepared by Orbis Mapping, LLC.

John Barbarula, Esq., stated applicant could grant a 35-foot of right-of-way to the township as part of the application. In the 1990s, the adjoining lot was approved with no recorded right-of-way so there is currently a travel-way but no right-of-way.

The Township Engineer felt the right-of-way along Apple Tree Lane should also be fixed.

Mr. Barbarula agreed to grant the right-of-way along Apple Tree Lane also.

The Board Attorney requested the conditions relating to the right-of-ways be resolved before memorialization of the resolution.

The Chairman advised the following:

WILLIAM & DENISE ENNIS
Bulk Variance #0430-0690
Block 9704; Lot 17
5 Camden Place; R-1 Zone

COMPLETE 11-30-04
DEADLINE 03-30-05

The application of **William & Denise Ennis** would be carried to the January 25, 2005 meeting with no further notice necessary.

Mr. Barbarula summed up by stating it was necessary to start somewhere to correct roads that exists or do not exist. He also agreed to look into taxes that may be due on the property.

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 applicant is the owner of the premises and intends to build a single family dwelling.
2. The property is undersized; therefore, the applicant requires the requested variances.
3. The applicant is a corporation and required the representation of an attorney.
4. There is no available land to ameliorate the requested variances despite the fact that the property exceeds the land requirements for an R-4 zone.
5. The unique shape of the property and the environmental constraints of the wetlands satisfy the Board that the applicant has shown a hardship necessary for granting the C (1)(a) variances.
6. The applicant received the applicable buffer and transition waiver from the DEP.
7. The applicant's willingness to grant the Township a right of way.
8. The applicant has satisfied the required proofs for the granting of relief pursuant to MLUL 40:55D-35.
9. The applicant has satisfied the positive criteria for the granting of the bulk variances and has illustrated that there would not be any negative impact on the surrounding neighborhood or the Township.

MOTION was made by Daniel Jurkovic to approve the bulk variances for lot width, front yard setback and relief from MLUL 40:55D-35 requiring that a permit for the erection of a building shall not be issued unless a lot abuts a public street giving access to the proposed building and structure. The lot width and front yard setbacks are required because the property is very unique in shape and has a lot of wetlands. There is a very small building envelope as a result of a transition area waiver from the DEP. This is a reasonable use of the property given the nature of the wetlands and shape of the property. There is a travel-way and applicant has agreed to provide the Township with right-of-way access for the benefit of all, seconded by Joseph Giannini.

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

The Board of Adjustment made the following findings of fact:

Due to the rural nature of the area there would not be a benefit to meeting the RSIS standards. Additionally, other dwellings on the travelway have not been required to meet the standards. 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.

