

MINUTES
Of the Township of West Milford
ZONING BOARD OF ADJUSTMENT
January 26, 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 7:32 p.m. The Board Secretary read the Legal Notice. The Pledge of Allegiance was recited.

Roll Call

Present: Russell Curving, Daniel Jurkovic, Linda Connolly, Frank Curcio, Arthur McQuaid, Michael Gerst, Michael DeJohn and Robert Brady

Also present: Deidre Ellis, Board Secretary, Stephen Glatt, Board Attorney, Ken Ochab, Board Planner and Patrick McClellan, Board Engineer

Absent: Jo Ann Blom

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. Under normal circumstances the Board follows a printed agenda. There are no new applications after 10:30 pm and no new testimony after 11:00 pm, after the applicant speaks then anyone can speak for or against that application. If it is needed there will be a break at approximately 9:00 pm. The appeals of this Board go directly to the Superior Court of the State of New Jersey.

CARRIED APPLICATIONS

GEORGE ENGLISH III
BULK VARIANCE ZB06-19-10
Block 5901; Lot 28
111 Mountain Circle South; R-3 Zone

Complete: 11/24/2020
Deadline: 3/24/2021

Bulk variance requested for side yard setback where 50' is required, 39' exists and 9' is proposed, rear yard setback where 100' is required, 53.8' exists and 46' is proposed, lot coverage where 10% is permitted 8.97% is existing and 15.23% is proposed, distance to other structures where 20' is required 50.1' is existing and 17.6' is proposed for the construction of a 32' by 28' two story garage. A one-story breezeway will attach the existing home to the new garage.

*****Application REVISED- Received 1-14-2021*****

Bulk variance requested for side yard setback where 50' is required, 39'/42.3 exists and 39'/15' is proposed, rear yard setback where 100' is required, 53.8' exists and 47' is proposed, lot coverage where 10% is permitted 8.97% is existing and 14.38% is proposed, construction of a 32' by 28' two story garage. (Breezeway has been removed.)

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

Neither Mr. nor Mrs. English were in attendance at the meeting and Mr. McKittrick tried to call them but was unable to contact the applicants. There was discussion about the matter, it was agreed to move forward with the next application and come back to the English application later, which also would give the applicants more time to perhaps join the meeting. The Board Attorney indicated that if the applicants do not show up the application could be dismissed and the applicant would have to come back and tell the Board why the matter should be heard after every curtesy had been extended, and they still failed to show up at the meeting. Mr. Jurkovic made a motion to dismiss the application for failure to prosecute, without prejudice, not as a permanent determination, because the facts had not been heard in their entirety. There was no second. Arthur McQuaid made a motion to carry the application to the next meeting. There was no second. The Chairman indicated that the Board should continue with the next application

and then address the issue after that should Mr. and Mrs. English fail to show up, as we have done for other applicants. The Board Attorney indicated that the deadline date for the application was ineffective because of the failure to correctly notice two months in a row, before finally hearing the application.

Daniel Jurkovic indicated that on the attendance record he was listed as having left early on two dates and wanted it noted that he had been recused. The Board Secretary indicated that a notation would be made to indicate that as there were no options for that currently in the key.

NEW APPLICATIONS

RICK LAURETTA/JOHN BIANCHI
USE VARIANCE ZB09-20-08
Block 6303; Lot 7
71 Marshall Hill Rd.; CC Zone

Complete: 11/23/2020
Deadline: 3/23/2021

Use variance requested to permit the conversion of the first floor of the existing structure to residential use and to retain the second floor residential use resulting in a two-family structure and to create a contractor storage use in the rear of the property.

The Board Attorney swore in Mr. Richard Lauretta, 71 Marshall Hill Road, West Milford, NJ and Douglas McKittrick of McKittrick Engineering and Associates, 2024 Macopin Road, West Milford, NJ. Douglas McKittrick gave his credentials, a licensed NJ Engineer since 1982, Engineer license # 28248, a licensed Planner since 1983, Planner license # 2825, has been qualified in front of the West Milford Board of Adjustment several times, and also the Planning Board, most of the Boards in Passaic and Sussex County, and Bergen County and a couple in Morris County, in Hackensack and the Development Commission in the New York and New Jersey Port Authority and Passaic, Bergen, Morris and Sussex County Superior Court. Mr. McKittrick was accepted as an expert for the applicants. (Mr. John Bianchi was not in attendance.)

Mr. Lauretta indicated that he and Mr. Bianchi purchased the property at 71 Marshall Hill Road in 2006 from John Connolly. The first floor front area contained a desk and there was a living room and a dining room and a kitchen, there were also two bedrooms and there was exactly the same thing upstairs. Mr. Connolly's daughter and children lived on the second floor and Mr. and Mrs. Connolly lived on the first floor. Mr. Lauretta indicated that everything has remained the same as it was when purchased in 2006. There is an outdoor storage area in the back where Mr. Connolly had about half a dozen pickup trucks.

Mr. McKittrick went on to the technical aspects of the application for Mr. Lauretta. Mr. McKittrick indicated that the property known as 71 Marshall Hill Road, block 6303, lot 7, is 1.57 acres in the Community Commercial Zone the adjacent uses to the left are single family dwellings, to the right there is a two-family dwelling. There is a building in the rear that was a Volkswagen repair shop with an apartment above it. To the right of that is Pequannock Feed and Grain and the Dog Park and to the right of that is the Extreme Snow Removal Facility. The location is serviced by individual septic and well. The lot has a two bedroom single family dwelling on the first and second floors in the front. The rear of the property has been filled in prior to 1998 and has been used continuously for construction storage since then. Mr. McKittrick indicated that most of the fill had come from Township Public Works projects through A. Birdsill who was the head in the 1990's. The applicant proposes no new construction. The applicant received Zoning Violations for having an apartment on the first floor in 2020 and storage of equipment in the rear, illegal fill and contaminated fill. The property had previously been occupied by a small insurance company, Mr. Connolly had occupied the apartment space on the first floor. When the property was purchased Mr. Connolly moved out. Mr. McKittrick indicated that since the purchase the property has been operated as a two family dwelling. In 2015, Mr. Lauretta moved into the first floor and his daughter moved into the upstairs apartment in 2020.

Mr. McKittrick indicated that exhibit A-3, is a copy of the aerial photography of the site. The area showing the steep contours show that the fill was there in 1998. It had been leveled off for storage purposes. Prior to the violations, the area was occupied by two tenants, a local landscape company who's single axel equipment goes out in the morning and returns at the end of the day and the other is a masonry company that does large jobs where equipment is left at work sites.

Mr. McKittrick indicated that Zoning Violation stated that the fill was contaminated. Exhibit A-4 was a letter Mr. McKittrick wrote to the Local Court Judge in West Milford letting him know

that the application would be going before the Board of Adjustment and he would be testifying as a professional Engineer and Planner, that the application had been deemed complete and was scheduled for January 26, 2021. Mr. McKittrick indicated that he had informed the Court Judge about the fill material and supplied the aerial topography showing that the fill had been placed prior to Mr. Laretta purchasing the property. Mr. McKittrick indicated that 4 soil samples he randomly took were tested in a lab in Randolph, New Jersey, for 38 different pollutants and came back clean-non-detectable. There were no odors detected with the samples. The test holes were dug down to bed rock, machine refusal or virgin soil. Despite rumors of the old Macopin firehouse existing there at one time no evidence other than some chunks of concrete and brick and some wood debris was found.

The surface material is some dense aggregate that was put down to fill in ruts caused by the trucks. Mr. McKittrick indicated that paperwork at the tax assessor's office indicated that there had been residential use at the property occupying both floors. As a result of the letter and other reasons all charges were dropped by the Municipal Court for Mr. Laretta. Zoning permits were issued for Mr. Laretta for the containers and it was stated that the shed was grandfathered in. The neighboring properties have storage containers, Pequannock feed has 8 trailers, Extreme Snow Pros has 15 trucks and containers with salt and other treatment materials. They do not operate in West Milford. Mr. McKittrick indicated that there were two containers that had Zoning approval to be there subsequent to filing of complaints against Mr. Laretta. Mr. Laretta indicated that the containers were not temporary and that the Zoning Officer had done a site inspection after the containers were placed on the site.

The Board Planner indicated for clarification that the applicant was before the Board to re-establish the residential use on the first floor of the front building, because in a CC Zone residential uses are not permitted on the first floor, and to get approval for the contractor storage in the rear of the site and that was confirmed by Mr. McKittrick. Mr. McKittrick also indicated that there was no sub-division involved with this application. There had been an easement done in the past and the survey that was submitted happened to show that previous detail. Proof of the easement was submitted with the application.

The Board Attorney indicated that if the application were to go through, a revision should be made to remove the confusion of the line going up through the property. There are "gores" and that is indicative of a "no man's land" deed gore A and deed gore B. Mr. McKittrick agreed to get the survey updated to eliminate confusion.

Mr. McKittrick went on to discuss the variances, and indicated that they were seeking D-1 Use variances for non-permitted uses or non-permitted structures. Positive criteria must be provided in the proofs of the case. Projects that promote the general welfare and beneficial uses are the best examples of these proofs such as roads, cell towers, and schools. The benefit to the general welfare for a non-inherently beneficial use derives from the development for something particularly suited for the proposed enterprise and if it will promote the general welfare and whether the development is particularly suited for the proposed use. Mr. McKittrick indicated that the reasons why this property is not suitable for the permitted commercial use is because it has steep slopes, prior fill placement has destroyed the nature of the property, and it is located at a busy intersection of Morsetown Road and Marshall Hill Road. There are site distance issues and very heavy rush hour traffic and noise pollution. There are many vacant commercial lots in the downtown area already, it is not economically desirable.

Mr. McKittrick indicated that the reason the proposed use was particularly suitable because it requires no more disturbance, it generates less traffic than commercial use, it has less impact on municipal services than a commercial use, consumes less energy than a commercial use, and it has been used in the proposed capacity for at least 23 years. Mr. Laretta has a limited mobility issue and the first floor use would be of benefit. The benefit to the public welfare is that it provides the services of snow removal and houses the landscape company that is in charge of the triangle in Town as well as allows the employees to park vehicles rather than driving them home at night and parking them in residential zones.

Mr. McKittrick indicated that with respect to negative criteria it does not harm surrounding property values, since there will be no new construction and no increased impact, no garbage, dust noise or municipal services. It does not harm the intent of the Master Plan, it directly supports preserving the semi-rural character of the Township, and proposes no new disturbance. It preserves the pristine nature of the waterways and forests and sensitive areas, the site has already been developed and results in no negative environmental impacts. Goal 4 (Master Plan) is to encourage a pattern of land use that will allow reasonable residential, commercial and industrial use consistent with the Township. It is a mixture of reasonable residential and commercial occupancy. Goal 7 would be to encourage conservation of fossil fuels and everything is already built and would require none. Mr. McKittrick indicated that the

project benefited the community by providing the service of landscape improvement and snow removal, provides accessible housing to the handicapped owner, there is no substantial detriment to the Master Plan, to the Zoning Plan or the surrounding properties and is an approvable project.

There was discussion about the uses of nearby properties, left hand side residential and both commercial and residential to the right hand side. The 8' x 8' shed on the property is to remain there, it houses the lawn mower. There is a landscaped area to the rear where they picnic and the kids play and it is also where the septic is located.

There was discussion regarding the Master Plan and Mr. McKittrick indicated that in the 1990's there was no use variance required and that the building was being used as a residence since 1993. The house to the left across the street from the Laretta property is a two-family house as indicated by the Board Planner's report. The other house across the street is a two-family but has an office in the rear and so the application is very consistent with this neighborhood.

The Board Engineer indicated there were septic questions. Mr. McKittrick indicated that the septic was not currently malfunctioning but if it was required to be expanded there was room to do so and it could be done in a number of ways. The existing system could be converted into a high pressure dose system or it could be made larger because there is room to do that as well.

Regarding storm water run-off, Mr. McKittrick indicated that the property slopes to the rear, and there are weeds and plants that catch the run-off but he would recommend that any vehicles to be parked back there would have absorption mats to catch spills. None of the soil samples had shown contamination and two samples had been taken where there had been vehicular traffic.

The storage containers that are shown on the plan are no longer there, they have been scrapped, and the intent is to perhaps have 5 or 6 on the site. The Board Planner raised the question of how to limit the amount of storage equipment and number of tenants on the site in the future. There was discussion. There is approval for 6 storage containers and the property currently has two contractors storing equipment that is not considered large. There was discussion regarding how to limit the type of tenants, and the amount and types of equipment and storage definitively, as the variances do run with the land, to ensure a future purchaser would clearly know what is permitted. Mr. McKittrick offered to do a site plan before the resolution was memorialized and the Board Planner indicated that the Board should be able to see the new plan and that there were still more issues to address, days of operation, hours of operation, and buffer requirements due to there being residential uses on both sides of the property. There was discussion regarding bifurcating the application, separating the residential portion and the contractor storage portion.

**A motion was made by Arthur McQuaid to take a ten minute break.
Second by Michael Gerst. All were in favor.**

The meeting resumed. Mr. Laretta indicated that he had no issue with bifurcating the application and the Board Attorney indicated that for a use variance to be approved tonight for the residential portion of the application the applicant would need to have 5 of the 8 Board members to vote in his favor, with other variances it would just have to be the majority. The Board Attorney indicated that at the next meeting the Board could hear the second portion of the application, with the new site plan provided.

The public portion of the application was opened and the Board Attorney swore in John Kardanow, 75 Marshall Hill Road, a resident of the Township since 1979, owns the property next to the applicant with his mother. Mr. Kardanow made several comments as to his recollection of the property and the history of some of the surrounding properties. Mr. Kardanow indicated that in 2005 a Zoning permit was given to Ziegenbalg Insurance Agency to occupy the space, and he believes Mr. Laretta and Mr. Bianchi bought the property in 2006 and were denied a zoning permit to turn the lower portion of the building into an apartment and Mr. Laretta proceeded to live there without approval. Mr. Kardanow indicated that Mr. Bianchi applied for a use variance in 2009 and was denied, and during the review process an inadequate septic system was revealed. A Zoning application for an addition was also denied in 2017 because the use was not permitted. Mr. Kardanow indicated that he had acquired this information through the Freedom of Information Act.

Mr. Kardanow indicated that he had chronological documents from Google Maps showing that fill had been added to the site over the years and that Zoning violations had been issued in 2019 for illegal landfill of the site, the contractor storage use and the use of the apartment. Mr. Kardanow indicated that if the property had an acceptable septic system he had no problem with

it being a two family home as his house is a two family home. There were violations from December 6, 2019 to stop with the landfill and he did not stop until August of this past year, when a court summons was issued. Various agencies were named and in summary the area of the fill tripled in size. Mr. Kardanow disputed the permission from Mr. Lupo, the Zoning Officer to have the containers, and indicated that large equipment and more than two tenants have used the property and that the fill was shipped in from who knows where. Mr. Kardanow expressed concerns that the test holes where the samples were taken were not done by an independent agency.

Karen Perez, 63 Marshall Hill, indicated that she was not very familiar with the site but hoped Mr. Lauretta would be able to remain in his home and that there would be no contamination and that the guidelines of the Town would be followed.

The Board Attorney indicated that Mr. Kardanow or anyone else who was presenting information to the members of the Board should submit items prior to the meeting in order to have them reviewed by the Board. The Board Attorney indicated that any other members of the public who wish to speak should limit their discussions to the residential portion of the application, and save comments about the commercial portion for the next meeting.

Mr. Jurkovic indicated that perhaps there was information left out that would be necessary to hear before a vote on the residential portion as well and that even though it may be the objector's concerns, that does not mean that cannot lead to other issues. Mr. Gerst indicated that he had concerns as well regarding if it were approved, how anything would get inspected since the structure had already been built.

The Board Chairman asked if anyone else would like to speak from the public. Thomas Connors, 71 Marshall Hill Road, joined the meeting and indicated that he was told his name had come up and that he wanted to be able to answer questions but was not aware of what had been previously stated. Mr. Lauretta's daughter and upstairs tenant interjected at this time and the Board Attorney indicated that he did not want one witness cross-examining another witness. Daniel Jurkovic indicated that this was the second time someone has interjected in a meeting where they had not been identified and just appeared, and suggested as a matter of rule that people indicate who is in the room with them. In response to Mr. Jurkovic, Mr. Connors indicated that he lived in the upstairs two bedroom apartment at 71 Marshall Hill Road and didn't know how many bedrooms the downstairs apartment contained. Mr. McKittrick indicated that the upstairs and downstairs apartments were identical for a total of 4 bedrooms, and septic are based on bedroom count, one bedroom acting as a master with two people and 200 gallons per day and the other bedroom with 150 gallons for a total of 350 gallons per day. The system in place was put in under less stringent guidelines and is allowed to be used until it malfunctions, at which time it would need to be brought up to current code.

There was more discussion amongst Board members about the house being a one or two family house and clarification that the application was for there to be a separate apartment on the first floor and that there was already an approved apartment on the second floor. Mr. Jurkovic indicated that the evidence that the objector (Mr. Kardanow) indicated that he had may be relevant not only to the storage but also to the two-family aspect as well. The Board Chairman asked if anyone else would like to speak from the public.

Seeing no one a motion was made by Michael Gerst to close the public portion of the meeting.

Second by Arthur McQuaid.

Roll call vote:

Yes: Russell Curving, Daniel Jurkovic, Linda Connolly, Frank Curcio, Arthur McQuaid, Michael Gerst, Michael DeJohn and Robert Brady

No: None

Abstain: None

When asked to clarify by the Board Attorney, Mr. McKittrick indicated that his client wanted to continue with the house being a two family in the event his daughter moves out from upstairs and he would need to rent the space and also Mr. Lauretta would agree to alter the septic from a 650 gallon tank to a 700 gallon if need be, as the tanks could remain and only the field would need to be expanded. The location of the septic is in a fenced in area behind the dwelling and in front of and totally separate from the storage area. Mr. McKittrick reminded the Board that as a licensed engineer he has an ethical obligation to protect the safety of the public, therefore he would have to upgrade the septic if necessary. There was more discussion about not having all the evidence in front of the Board, the fact that it is a use variance and not wanting to hurt the applicant or his chances of getting the variance.

A motion was made by Arthur McQuaid to carry application ZBo9-20-08 to the February 23, 2021, meeting should the applicant choose to proceed. Second by Daniel Jurkovic.

Roll call vote:

Yes: Russell Curving, Daniel Jurkovic, Linda Connolly, Frank Curcio, Arthur McQuaid, Michael Gerst, Michael DeJohn and Robert Brady
No: None
Abstain: None

The Board Attorney indicated that there will need to be a site plan application done and the applicant will need to renotece the entire application to the public. The Board Chairman indicated that any materials Mr. Kardanow had as far as evidence should be submitted to the Board Secretary prior to the meeting, soon enough for materials to be distributed to the Board and to Mr. McKittrick. There was discussion about sharing materials used as evidence. Materials should go through the Board Secretary.

Discussion returned to the English Application and Daniel Jurkovic asked the Chairman, the Board Attorney and Vice Chairman Arthur McQuaid if there had ever been a time in 30 or so years where an applicant did not show up and did not send a representative and the Board said that was okay. Arthur McQuaid indicated that the procedure in fact had changed to require a representative be at the meeting because so many people did not show up. Mr. Jurkovic indicated for the record, that a professional representative (Mr. McKittrick) was in attendance at the meeting all night and yet did not have any instructions from the applicant how to proceed. The Board Attorney indicated that the matter at this point, should be dismissed without prejudice. Mr. Jurkovic indicated that he did not want the Board to be intimidated by what was said at the last meeting, and no special consideration should be given.

A motion was made by Daniel Jurkovic to dismiss the English application ZBo6-19-10 without prejudice. If the applicant comes back with a good excuse the Board may reinstate the application.

Second by Michael Gerst.

Roll call vote:

Yes: Russell Curving, Daniel Jurkovic, Linda Connolly, Frank Curcio, Arthur McQuaid, Michael Gerst, and Robert Brady
No: None
Abstain: Michael DeJohn

For the record Mr. McKittrick indicated that he was as shocked as everyone else with the outburst that occurred at the meeting last month, (English application) and he does not condone that behavior in any way. Chairman Brady assured Mr. McKittrick that the Board knew that to be the case. The Board Attorney indicated that the remaining applicants would not be required to notice again and if anyone were interested in the Renzland or Kipperman applications they should attend the February 23, 2021 meeting.

A motion was made to approve invoices for the all Board Professionals, Attorney, Planner and Engineer by Michael Gerst. Second by Russell Curving.

Roll call vote:

Yes: Russell Curving, Daniel Jurkovic, Linda Connolly, Frank Curcio, Arthur McQuaid, Michael Gerst, Michael DeJohn and Robert Brady
No: None
Abstain: None

A motion was made to approve the December 15, 2020 Regular Meeting Minutes by Michael Gerst. Second by Linda Connolly.

Roll call vote:

Yes: Daniel Jurkovic, Linda Connolly, Frank Curcio, Arthur McQuaid, Michael Gerst, and Robert Brady
No: None
Abstain: Russell Curving and Michael DeJohn

The Board Attorney indicated that there was an appeal made for the Board's decision on the Ward Application ZBo8-19-16. The Township was served by the objector and the Board of Adjustment was named as the defendant, asking the Court to reverse our determination on the Ward application, based on our decision being unreasonable, arbitrary and capricious. The Ward's were not brought into the case, they are not parties to the action, but Mr. Moshman may also be filing a motion to intervene on behalf of Mr. and Mrs. Ward.

**Motion for adjournment of the January 26, 2021 meeting by Arthur McQuaid.
Second by Michael Gerst.**

All in favor. None opposed.

ADJOURNMENT at 10:55 PM

Next regular meeting February 23, 2021 at 7:30 p.m.

Respectfully submitted by,



Deidre Ellis, Secretary

Zoning Board of Adjustment