

**TOWNSHIP OF WEST MILFORD  
PLANNING BOARD**

**Minutes  
July 28, 2004  
Regular Meeting**

Chairman, Michael Tfank, called the meeting to order at 7:36 p.m. with the reading of the legal notice.

**ROLL CALL**

Present: Joseph Elcavage, James O'Bryant, Edward Orthouse, Douglas Ott, Michael Siesta, Leslie Tallaksen, Kurt Wagner. Alternates: Matthew DeFede, Clinton Smith. Chairman: Michael Tfank. Board Attorneys: Glenn Kienz, Esq. and Bryant Gonzalez, Esq. Planning Director: William Drew, P.P. Consulting Engineer: Robert Kirkpatrick, P.E.

Absent:

As the result of a vacancy on the Board the Chairman appointed Matthew DeFede as a voting member for this evening.

Mr. Gonzalez provided a brief overview of the Highlands Water Protection and Planning Act and advised that applicants should be aware that pursuant to that legislation they might be required to obtain Preservation Area Approval from the NJDEP, unless the proposed development is exempt from the Act's requirements. Letters from Paul C. Nielson, Esq. for the firm of Weiner Lesniak LLP dated July 28, 2004 specific to each of the following applications were distributed to the individual applicants or their representatives: Eugene and Elaine Prais, Carl Bierwas, Thomas A. Celano and Michael & Joseph Costello, Bradley Malavolta.

**PUBLIC PORTION**

Elaine Duffy, 21 Warwick Turnpike, Hewitt, NJ read a statement regarding cluster housing and the impact of a zone change and development on the area bordering the Warwick Turnpike and Union Valley Road.

**ZONE CHANGE APPLICATIONS**

**ZANADO ENTERPRISES**

**Zone Change #0450-0176**

Block 6803; Lots 4 and 11

Warwick Turnpike and Union Valley Roads; CC Zone

Request to change existing CC Zone to R-2

Board recommendation to Township Council

Allen Hantman, Esq., Morris & Hantman, 168 East Main Street, Denville, NJ. represented the applicant. This is a continuation of a hearing on a request to change the existing CC Zone to R-2. Mr. Hantman advised that he had received the Planning Report dated July 8, 2004. He opined that due to environmental constraints the property is not suitable for commercial development. Under R-2 zoning four (4) variance free lots could be created; under R-4 the same four lots could be created with one variance required. He noted that the applicant would not object if the zone was changed to R-4.

William Drew, Planning Director, provided a breakdown of the percentage of acreage in the Township that is zoned commercial. He advised that the CC zone comprises 0.8% of the Township or 428.7 acres. He noted that there is no R-2 zoning adjacent to the property in question.

During discussion the Board expressed concern regarding the impact of traffic on the area if developed commercially. It was suggested that the Board should take no action at this time. The Board noted that it was not in favor of two acre zoning. It was suggested that the Planning Department explore the possibility of a split zone, maintaining a portion along



wetlands, which were to be flagged. He further noted that a Letter of Interpretation had been applied for with the New Jersey Department of Environmental Protection ("DEP") but was still outstanding. The applicants he indicated were proposing to create three (3) lots measuring approximately 9 acres or less each and that the size of these lots met the Ordinance requirement of being at least 1 acre. With respect to the existence of stream corridors on the subject property, Mr. Gardner indicated that Belcher's Creek was located on a small portion of the subject property and were within the wetlands on the subject property. He indicated that the applicants would provide the appropriate buffer area on the subject property to Belcher's Creek and that the plans depicted the buffer to be 80 feet. With regard to the disturbance to be generated on the subject property, Mr. Gardner indicated that area disturbance would be below the Township's limits.

With respect to driveways on the subject property, Mr. Gardner indicated that they would be paved up to 50 feet and would be improved with macadam and impervious coverage. With respect to the proposed septic systems for the subject property, he indicated that letters of the acceptability of the systems was provided by the Health Department.

With respect to obtaining DEP approvals, Mr. Gardner indicated that all applications submitted to the DEP were under review and had been submitted two (2) months prior to the hearing. A delay in the review of these applications was caused as a result of the incorrect fee being sent to the DEP and the DEP's delay in notifying the applicants of the incorrect fee amount.

In reviewing this application, the Board considered the report of the Board Planner, William H. Drew, dated July 23, 2004. In his report, the Board Planner indicated that the applicants were seeking a minor subdivision of the subject property with no bulk variances associated with the application.

The Board Planner indicated that the existing lot was vacant and approximately 27 acres in size. He noted that the applicants were proposing to create three (3) new building lots of 8.84 acres, 9.33 acres and 9.43 acres in size when the minimum required is 1 acre. He further indicated in his report that two (2) of the proposed lots would have access via Lincoln Avenue and the other proposed lot would be accessed from Tintle Avenue.

The Board Planner indicated that the subject property contained large wetland areas and the applicants were in the process of obtaining permits from the DEP. For purposes of the application, the applicants had assumed a 150-foot buffer and had prepared their plans accordingly. The Board Planner further indicated that the applicants were requesting from the DEP a general permit number 10A, which if approved would allow for a driveway crossing over a wetlands area. The length of the crossing area is 76 feet and the area of the crossing is 2,911 square feet in total.

With respect to the location of Belcher's Creek on the subject property, the Board Planner indicated that the proposed house that comes nearest to Belcher's Creek is approximately 400 feet away (proposed Lot 4).

The Board Planner further indicated that the Environmental Impact Statement provided by the applicant indicated that there were numerous stream corridors throughout the site and that there were no slopes in excess of 20 percent (20%). With respect to the wetlands, the Board Planner indicated that the applicants would have to provide the correct buffer once a Letter of Interpretation was obtained from the DEP.

The Board Planner further indicated that the applicants should demonstrate that adequate water supply could be provided prior to the signing of the Deeds by the Township so as not to consummate the subdivision if it could not provide a potable water supply for three (3) houses.

In response to this portion of the Board Planner's report, the applicants agreed to provide information with respect to potable water supply as requested in the Board Planner's report.

The Board also considered the report of its Board Engineer, Robert Kirkpatrick, P.E., dated July 10, 2004. In this regard, the applicants indicated that they would agree to the Board Engineer's request for the submission of recalculations for water.



from higher to lower density neighborhoods in the Township of West Milford. The applicant then indicated that for these reasons he did not believe his proposal would harm the intent of the Zoning Ordinance or Zone Plan and would be consistent with existing density surrounding the subject property.

The applicant also indicated that the development of its property would also be subject to the approval of the Civil State Division of Aeronautics, which oversees the development of adjacent properties in connection with its oversight of airports.

With respect to water supply for the subject property, the applicant produced a copy of a letter dated December 13, 1999 from Vito Spadavecchia, Operations Manager, United Water Mid-Atlantic, which indicated that water and sewer service could be provided to Block 5301, Lot 21.07, which the applicant indicated was proof that water could be supplied to the subject property and the proposed homes that would eventually be developed.

As certain Board members were concerned that the letter provided by the applicant did not concern the subject property, the Board requested and the applicant agreed that as a condition of approval, he would obtain an updated letter from United Water or the appropriate entity with regard to the adequacy of sewer and water for the subject property.

In considering this application, the Board reviewed the report of its Board Planner, William H. Drew, P.P., dated July 23, 2004. In his report the Board Planner indicated that the subject property falls in an R-2 Residential District and has public water and sewer available to it. He indicated in his report that the subject property measured 2.02 acres in size and that the applicant was proposing to subdivide the property into two (2) building lots.

The Board Planner further indicated in his report that the subject property while in the R-2 Zone was subject to R-4 area and yard requirements due to the property's location within the Airport Hazard Overlay Zone. Consequently he indicated that the proposal required bulk variance approval for the creation of undersized lots and in this regard required variance approval for lot area, lot frontage, lot width, lot depth, side yard setback, front yard setback, rear yard setback and disturbance of slopes in excess of 35 percent (35%).

The Board Planner further indicated in his report that the proposed lot sizes are 1.1 acres for proposed Lot 1.01 and 0.91 acres for proposed Lot 1.02. The Board Planner indicated that if not for the subject property's location in the Airport Hazard Overlay Zone the two (2) proposed lots would be in conformance with the R-2 area and yard requirements. As R-4 standards were applicable to the property, however, the Board Planner noted that the proposed lots were undersized as the R-4 Zone requires 4 acres.

He further indicated in his report that variances for lot frontage were needed since proposed Lot 1.01 was providing 181.94 feet and proposed Lot 1.02 was providing 278.84 feet of lot frontage whereas 300 feet were required based on R-4 zone standards. In regard to lot width, variances were needed for proposed Lot 1.01 which provided only 181 feet and proposed Lot 1.02 which provided only 233 feet whereas the R-4 Zone standards required 300 feet of lot width. With regard to lot depth, the Board Planner's report indicated that the applicant required a variance for proposed Lot 1.02, which provided only 160 feet of lot depth whereas 275 feet were required based on R-4 zone standards. With regard to side yard, the Board Planner indicated that variances were needed as proposed Lot 1.01 provided only 40 feet and proposed Lot 1.02 provided only 30 feet whereas 60 feet were required by the R-4 Zone standards. With respect to front yard setback, variance relief was required for both proposed lots as Lot 1.01 provided only 55 feet and proposed Lot 1.02 provided only 50 feet whereas 125 feet were required by the R-4 Zone standards. With regard to rear yard setback, the Board Planner indicated in his report that a variance was needed to proposed Lot 1.02 as 30 feet were provided but 125 feet were required by the R-4 Zone standards. Lastly, the Board Planner's report indicated that a variance was needed for disturbance of slopes in excess of 35 percent (35%) and recommended that the Applicant provide testimony as to why a variance should be granted.

Mr. McKittrick then testified with respect to steep slopes on the subject property. In this regard he indicated that steep slopes were not an issue and that with respect to Lot 1.01, the proposed building envelope would impinge on at most a 20 by 40 foot area of steep slope on

the subject property. In total he indicated that approximately 5 percent (5%) of steep slopes were disturbed on the subject property.

With regard to the initial recommendations listed on page 3 of the Board Engineer's report, the applicant indicated that he would apply for the requisite approvals from the State for development within an Airport Safety Zone. He further indicated that his intention was to hookup to United Water's public water and sewer systems, which service the present Bald Eagle Manor development adjacent to the subject property. The applicant further indicated that he would submit a digital file of the plan to the Planning Department as a condition of approval.

With respect to the variances requested by the applicant, Mr. McKittrick indicated that the Board could grant relief to the applicant for minimum lot area, minimum lot frontage, minimum lot width, minimum lot depth, side yard setback, front yard setback, rear yard setback and disturbance of slopes in excess of 35 percent (35%) pursuant to N.J.S.A. 40:55D-70c in that the shape of the property was irregular and the development of the property was limited by the existence of certain steep slopes and the topography generally and that these conditions would limit the owner or any future developer in the development of the subject property. He further indicated that development of the property would be consistent with existing development in the area in terms of density, building locations and would have adequate water and sewer. With respect to steep slope disturbance, Mr. McKittrick indicated that only a small portion of the subject property was being excavated and this was essentially so that footings could be placed for the development of one (1) of the homes on the subject property.

The Board Engineer, Robert C. Kirkpatrick, P.E., indicated that he was concerned with whether pressure tanks and/or a booster pump would be needed for the proposed residences on the subject property as the plans indicated that certain portions of the subject property were at elevations above 870 feet. In this regard he noted that the applicant should put a note on its plans with regard to whether a pressure tank and/or booster pump would be needed for either of the two (2) dwellings to be located on the subject property.

The Board Engineer also noted that he was concerned as to there being 4 feet of support slab for the footings exposed to the elements and as such the applicant needed to revise its grading plan to address this issue.

Mr. McKittrick indicated that the applicant was willing to revise the plans to address both the grading on Lot 1.01 as well as the issue regarding whether a pressure tank and booster pump were needed. He further indicated that there was a swale above Lot 1.01, which would divert water around the proposed dwelling to a natural gulley located on Cahill Cross Road by the Bald Eagle Manor development.

The Board then opened the meeting to the public for comment on the application. In this regard the Board first heard from Patricia Horan of 531 Moorestown Road. Ms. Horan indicated that she was also speaking on behalf of Oltmann Donee and James Schmidt of 521 Moorestown Road, who were not able to attend the meeting. Ms. Horan indicated that she as well as Mr. Donee and Ms. Schmidt were opposed to the application and that the Board should reject the application since only one (1) home should be located on the subject property. She indicated that the subject property was under the 4-acre zoning requirement and that new homes in the area were required to be located on 4-acre lots. She also noted her concern as to wildlife in the area and the impact of the development on existing wildlife. She further indicated that she was not aware of the restrictions imposed by the Airport Hazard Overlay Zone. Ms. Horan was further concerned as to whether there would be any blasting on the subject property.

In this regard, Mr. McKittrick indicated that he did not envision there would any significant blasting on the subject property, however, in response to Ms. Horan's concerns, the applicant would submit a pre-blasting survey to the Board Engineer if any blasting was necessary. The applicant agreed to this as a condition of approval.

With no other members of the public present expressing an interest in this application, the Board closed the public comment portion of the hearing.



With respect to lot frontage, Mr. Ballester indicated that a variance would be required with respect to proposed Lot 2.01 as the proposed lot frontage would be 50 feet whereas the Ordinance required 150 feet. In this regard he further indicated that proposed Lot 2.02 would not require a variance for lot frontage since this was a preexisting, nonconforming condition.

With respect to minimum lot width, Mr. Ballester indicated that proposed Lot 2.02 measured 124 feet while proposed Lot 2.01 measured 391 feet. In this regard he indicated that proposed Lot 2.02 fell below the Township's requirement of 150 feet but that as this was a preexisting nonconformity a variance was not required.

With respect to minimum lot depth, Mr. Ballester indicated that the Township Ordinance required 200 feet while proposed Lot 2.02 provided only 185 feet and proposed Lot 2.01 provided only 79.6 feet. As the variances were being created by the proposal, he indicated variance relief was necessary.

With respect to minimum rear yard setback, Mr. Ballester indicated that proposed Lot 2.01 required variance relief since the Township Ordinance required 50 feet whereas proposed Lot 2.01 only provided 15.5 feet. Proposed Lot 2.02 did not require variance relief as it measured 81.7 feet and was beyond the minimum required rear yard setback.

With regard to minimum front yard setback, Mr. Ballester indicated that proposed Lot 2.01 required variance relief in that it provided only 20.5 feet of front yard setback whereas the Township Ordinance required 50 feet. Proposed Lot 2.02 did not require variance relief in this regard as it provided 56.7 feet of front yard setback.

Mr. Ballester then indicated that a proposed turn around had not been constructed and consequently the applicant's application before the Passaic County Planning Board was denied. He indicated, however, that the proposed turn around would be constructed as shown on the plans submitted if approved.

In considering this application, the Board also reviewed the report of its Planner, William H. Drew dated July 23, 2004, the terms of which are incorporated herein by reference. With regard to the Board Planner's comments at page 2 of his report, Mr. Ballester indicated that the correct lot size of proposed Lot 2.01 was 0.702 acres.

With regard to the initial recommendations of the Board Planner's report, Mr. Ballester indicated that the applicant could comply with all four (4) enumerated recommendations inclusive of which was proof that an adequate water supply would be obtained prior to the consummation of the subdivision.

Mr. Ballester reiterated the applicant's request for a waiver from the site plan requirement of providing an Environmental Impact Statement with respect to steep slopes on the subject property. In this regard, Mr. Ballester indicated that any slopes that exist on the subject property were created by fill encroachment by neighbors of the subject property. This he indicated was shown on Sheet 2 of 2 of the plans prepared by his office that were submitted to the Board.

The applicant then testified as to a photo, which was marked into evidence as Exhibit A-1. The applicant indicated that he had taken the photo and that the photo was of a shed that had been removed from the subject property. In this regard, he indicated that the shed would not be replaced.

Board member Douglas Ott then inquired as to the location of the proposed septic system on the subject property.

Mr. Ballester indicated that the septic system would be located on a slope on the subject property but that it would be part of a trench system that would work in terms of design for the subject property. He indicated, however, that he did not have the details available in terms of the design for the proposed septic system.

Mr. Ochab then appeared before the Board and testified with respect to the planning aspects of the application. He testified as to six (6) photos, which were marked as Exhibit A-2, that he





On roll call vote: Yes - Joseph Elcavage, Edward Orthouse, Douglas Ott, Michael Siesta, Leslie Tallaksen, Kurt Wagner, Matthew DeFede, Clinton Smith, Michael Tfank.  
No - None

**LAKELAND BANK**

**Resolution No. 2004 - 20**

**Minor Site Plan #0320-0159**

**Variance #0330-0643**

Block 14605; Lot 3

One Lakeland Plaza; HC Zone

**APPROVED:** Minor site plan with variance relief for the construction of a one-story accessory structure to be used as an ATM building.

**MOTION** made by Michael Siesta, seconded by Leslie Tallaksen, to memorialize the resolution.

On roll call vote: Yes - Joseph Elcavage, James O'Bryant, Edward Orthouse, Douglas Ott, Michael Siesta, Leslie Tallaksen, Kurt Wagner, Clinton Smith, Michael Tfank.  
No - None

**ORDINANCES FOR INTRODUCTION** – None.

**ORDINANCES REFERRED FROM COUNCIL** – None.

**MISCELLANEOUS**

NJDEP requirements for existing septic systems: In response to the Board's request a memo was received from the Health Officer regarding this matter. Members noted that the response was inadequate and that a written policy had not been supplied. They requested that the Health Officer attend the next meeting of the Board to answer the Board's questions and to explain the Department's policy.

Codification: William Drew advised that a proposal had been forwarded to the Administrator. Mr. Elcavage requested that at least two additional bids be obtained.

**PLANNING DIRECTOR'S REPORT** - None

**PLANNING BOARD ATTORNEY'S REPORT**

Mr. Gonzalez advised the Board on the status of the O'Shea litigation regarding minutes. The judge determined that minutes of the Board should be available for the public 48 hours prior to the next meeting of the Board. The Chairman noted that a disc of the recording of all meetings is available the day after the meeting.

At the request of the Board the Board Attorney submitted an opinion regarding public participation at work meetings. After discussion the Board decided to set aside a half-hour before each work meeting for public input.

On roll call vote: Yes - Joseph Elcavage, Douglas Ott, Michael Siesta, Leslie Tallaksen, Kurt Wagner, Matthew DeFede, Michael Tfank.  
No - James O'Bryant, Edward Orthouse,

**MINUTES**

**MOTION** made by Joseph Elcavage, seconded by Leslie Tallaksen, to approve the minutes of the June 3, 2004 work meeting and the June 23, 2004 regular meeting. On voice vote all were in favor.



Letter dated July 20, 2004 from EcolSciences, Inc. advising that Westview, Inc. is applying for a Letter of Interpretation: Line Verification for property located on Morsetown Road, Block 5002; Lot 5.

**ADJOURNMENT**

Meeting adjourned by unanimous consent at 11:20 p.m.

Respectfully submitted,

Grace R. Davis  
Secretary