

TOWNSHIP OF WEST MILFORD  
ZONING BOARD OF ADJUSTMENT  
Regular Meeting Minutes  
April 18, 2023  
7:00 p.m.  
MAIN MEETING ROOM OF TOWN HALL

The meeting was called to order at 7:14 Pm

The Secretary read the legal notification.

**ROLL CALL**  
**7:16 PM**

**Present:** Michael Hensley, Daniel Jurkovic, Arthur McQuaid, Frank Curcio, Stacy-Ann Webb, Daniel Goodsir  
**Also Present:** Pamela Jordan, Board Secretary, Stephen Glatt, Esq., Attorney, Patrick McClellan, Engineer, Kenneth Ochab, Planner  
**Absent:** Michael DeJohn, Russell Curving  
**Late:**

5 regular members present, Stacy Ann Webb and Daniel Goodsir were appointed as voting members.

**I. MEMORIALIZATIONS**

**RESOLUTION 10-2023**

**TIM SULLIVAN MICHAEL DWYER**

**Bulk Variance No.: ZB 12-22-21**

**66 Glendale Road**

**Block 3004 Lot 14 Zone LR**

**Approved, front yard setback, side yard setback for a first floor addition for a bedroom, laundry room and office and a new second floor addition to the front of the house to include a new master bedroom, walk in closet and bathroom.**

**Eligible to vote:** Michael DeJohn, Daniel Jurkovic, Russell Curving, Arthur McQuaid, Daniel Goodsir, Frank Curcio

**A motion** to approve bulk variance ZB 12-22-21 was made by Daniel Jurkovic, **second** by Arthur McQuaid.

**Roll Call Vote:**

**Yes:** Daniel Jurkovic, Arthur McQuaid, Daniel Goodsir, Frank Curcio

**No:**

**Abstain:**

**Complete: 03/02/2023**

**Decided: 03/28/2023**

**RESOLUTION 11-2023**

**DOMINIC & VIKTORIJA FORTINO**

**Bulk Variances No.: ZB 01-23-02**

**23 Upper High Crest Drive**

**Block 13101 Lot 8 Zone LR**

**Approved, front yard setback where 30 feet is required, 7.7 exists and 12.6% is proposed, deck setback where 15 feet is coverage where 10% is required, 18.6 exists, 18.1 is proposed, lot required and 12.5 is proposed**

**Eligible to vote:** Michael DeJohn, Daniel Jurkovic, Russell Curving, Arthur McQuaid, Daniel Goodsir, Frank Curcio

**A motion** to approve bulk variance ZB 12-22-21 was made by Arthur McQuaid, **second** by Daniel Jurkovic.

**Roll Call Vote:**

**Yes:** Daniel Jurkovic, Arthur McQuaid, Daniel Goodsir, Frank Curcio

**No:**

**Abstain:**

**Complete: 03/03/2023**

**Decided: 03/28/2023**

The Board Attorney addressed the Board member with the discussion matter, request to *change the June 27, 2023 meeting to June 20, 2023.*

**A motion** was made by Arthur McQuaid to change the meeting date as stated, **second** by Peter McGuinness.

**Roll Call Vote:**

**Yes:** Michael Hensley, Daniel Jurkovic, Arthur McQuaid, Frank Curcio, Peter McGuinness, Stacy-Ann Webb, Daniel Goodsir,

**No:**

**Abstain:**



**I. NEW APPLICATIONS** (taken out of order from the Agenda)

The Board Attorney stated Applicant Betts called and emailed to request his application be carried to the May 23, 2023 meeting

A **motion** was made by Daniel Jurkovic to carry ZB 01-23-01 to May 23, 2023, **second** by Peter McGuinness.

**All were in favor**

**MICHAEL BETTS**

**ZB 01-23-01**

**97 forest Hill Drive**

**Block 14113 Lot 29 Lone LR**

**SEEKING, Bulk Variance(s)**

**Side yard setback where 30 feet is required, 9.5 feet exists, 9.5 is proposed.**

**Deck setback where 15 feet is required, 10 feet is proposed.**

To construct a new 2 1/2 story 2 bedrooms home and garage where an existing dwelling will be razed.

**The Betts Application carried to the May 23, 2023 meeting, with no additional notice required.**

The Board Attorney indicated the Board Secretary handed out a memorandum from Frank Curcio, Chairman of the Board titled, **ZONING BOARD OF ADJUSTMENT, Decision Making/Deliberation with Fact finding**. The memorandum is an outline consisting of 8 guidelines the Board is to follow when fact finding and decision making for each application. Members are given an opportunity to specifically state their reason for supporting the application or not supporting the application. The memorandum is designed to encourage members to participate in discussion for the record.

**II. CARRIED APPLICATIONS**

**GREG FITZGERALD**

**ZB 12-22-22**

**1892 Greenwood Lake Turnpike**

**Block 3705 Lot 7 Zone LR**

**SEEKING, Bulk Variance for a 6 foot fence in a front yard where 4 feet is permitted.**

**Complete: 01/06/2023**

**Deadline: 05/06/2023**

Mr. Fitzgerald stepped forward. The Board Attorney reminded the Board Mr. Fitzgerald has been previously sworn in. Board Members McGuinness and McQuaid have signed affidavits indicating they have listened to prior testimony from the February 28, 2023 hearing – deeming them eligible to vote on this matter. There are 6 members present that may vote on this Bulk Variance. The majority is required for a favorable decision. If there is a tie the Application will be denied. The Board Attorney explained, Mr. Fitzgerald has the right and opportunity to carry the matter to the next meeting when all Board members were present and had the opportunity to listen to all of the testimony.

Mr. Fitzgerald stated there are 3 reasons wanting to install a 6 foot fence in “the front” of his property

- Safety
- Blocking the lights that shine from the gas station across the street
- Privacy - Mr. Fitzgerald stated he has a constant invasion of privacy, stating, since the last hearing there have been 3 occasions where people were trespassing on his property taking pictures.

Mr. Fitzgerald recalled objections to his application being;

- The 6’ fence might change the character of the neighborhood.
- Concern others would follow suit and wish to install a 6’ fence
- Impact tourism and business by obstructing a lake view.

The Board briefly discussed and concluded by statement from the Board Attorney that Zoning issues are only to be discussed. The Board should not make statements that do not pertain to zoning.

Mr. Fitzgerald recalled alternatives discussed to the 6’ fence during previous testimony; Planting trees/vegetation – *insufficient space for planting will not allow for this method*. Raise the wall with an additional block – In Mr. Fitzgerald’s words, “that almost defeats the purpose because the height is almost the same”. Mr. Fitzgerald stated he contacted the Ready Block Company, pertaining to what this process would entail and presented pictures.



**Exhibit A7** consisting of 5 pictures.

- (1) Top of wall stones to the left (to be paved), to place a caplock
- (2) Shows caplock with fence
- (3) Diagram how to secure a fence to the existing block with core drill. “cost prohibitive and not willing to do”
- (4) Block MFG recommendations different type of block
- (5) Schematics

Mr. Fitzgerald explained each page and states there is a significant amount of work involved.

The grade was done in the fall for paving in the future. The paving would raise the grade by 3 inches. Once the wall is installed something else would be put up.

Board members discussed additional block to grade and a 4’ fence with a private property sign to keep intruders out.

To replace the top lock and put the caplock on would be (in Mr. Fitzgerald’s words) an additional \$10,000 to put the fence up and cost prohibitive.

The Board Planner stated, *responding to questions from a Board member*, The Application before the Board is a C Variance for a 6 foot fence in the front yard. A hardship or the benefits that would outweigh any detriments to the surrounding area or zone plan would need to be supported in testimony. Economics cannot be the only factor the Board considers to determine a decision.

The Board Attorney recapped, the Applicant wanted the 6’ fence for safety, to prevent the gas station lights from shining in his house. The Board can not redesign the plans. The Board appreciates an applicant attempting to accommodate the Boards concerns.

Mr. Jurkovic stated the Applicant has a right to a 4’ fence. The Board can not prevent the Applicant from installing a 4’ fence. Further stating the Applicant testified that the wall could be made higher with a 4’ fence on top of the wall and achieve the same results as a 6’ fence. The applicant showed no proof of the cost to raise the block. The applicant has an obligation so show there is no other option and it is consistent with the community and not a detriment to nearby property owners or the community. The proposed fence along the “stretch” is an inconsistency within the community. The light shining in the Applicants window is bright and is an enforcement issue not a variance issue.

Mr. Fitzgerald stated he has not filed a complaint against the gas station regarding the light shining in his home. He was not notified prior to the light being installed at the gas station. Privacy is an issue. People trespass, take pictures of the lake from his property and have been seen having lunch on his property.

Mr. Fitzgerald stated between South Shore Marina and JR Printing there are 6 garages along the road that are taller than 6’. Mr. Fitzgerald’s plans to put up a garage, *taller than 6’* were halted in 2009 due to county requirements and cost.

**Exhibit A8** – Additional photos

- (1) Showing property coming from South Shore Marina, upper right corner shows applicant’s neighboring property describing conditions with or without fences.
- (2) Wiley’s press was described as down the road and having a garage. The next house has a fence, then a garage

A Board member disputed the distance represented from Applicants property and Wiley Press. The applicant described the distance the property two houses away while the Board member opined the distance to be 1/2 mile to 1 mile away, not part of the neighborhood and pictures show the applicants neighbors do not have fences. T

**Exhibit A8** (continued)

- (3) This picture shows a “mock” 6 foot fence made with two 6 foot poles and a large piece of plastic to simulate a six foot fence.

Mr. Fitzgerald stated the neighborhood “goes from” South Shore to Wiley’s Press where the houses 2-3 past his home block the view.

**8:13 PM The chairman called for a 10 recess.**  
**8:23 PM The meeting was called to order.**



Mr. Fitzgerald continued describing the picture showing the “mock” 6’ fence that appeared to sit below the roof of his house and did not appear to block much of a view. He stated he and his wife love the lake and the neighbors and would not deface the community.

Board member Hensley stated he had been drawn to the Applicants property and has, on occasion, stopped there and looked at the lake. Stating the driveway is inviting and does not feel a 4’ fence would hinder someone from stopping or solve the safety concern. Hensley mentioned he noticed large garages exist on that stretch of road and the lights are bothersome.

The Board Engineer stated there is not an opportunity for landscaping as an effective screen. The fence is the most efficient way to achieve privacy. The picture submitted with the “mock” plastic fence was very telling and water was still visible. He indicated less concern aesthetically after seeing this picture. There are other opportunities for people to view the lake. A neutral color fence would appear less intrusive. Raising the height of the existing wall could create issues that could compromise the wall.

The Board Planner stated a brownish fence could blend with the architecture and could mitigate the impact of a 6’ fence.

When Mr. Fitzgerald purchased his home about 20 years ago. The gas station was not in business. The lights and the overhang have been added. There was not notification that a canopy would be installed.

### **The chairman opened the matter to the public in accordance with the open meetings act.**

Mr. Rick Ashley, 14 Orange Road stepped to the microphone and was sworn in by the Board Attorney and stated; He owns the property from the gas station to the next house, almost 300 feet. He is not concerned with his view being obstructed by Mr. Fitzgerald’s proposed fence. The gas station owner is instructing people to park in the applicant’s property. He chose to live in his house for the view. He is concerned with other neighbors following suit by building 6’ fences if this application is approved. He would like the Board to try to help this Applicant.

Michael Gerst, West Milford Zoning Officer stepped forward and was sworn in by the Board Attorney and stated he has spoken with the gas station owner. He has not seen the glare as he is a daytime employee and the lights are not turned on during his work hours. There is a glare statement in the ordinance placing the burden on the party causing the glare. The procedure to follow for a glare issue – a summons is sent, the offender has 20 days to abate the violation. If the violation is not abated the party is to appear in court on a summons and the court handles the matter from there. Trespassing is a police issue, not a zoning issue.

The Board Attorney stated the Applicant needs a majority vote for an approval. The Applicant could choose to carry the matter giving time for additional Board members to hear prior testimony.

Member McQuaid stated the property is the problem. The street location and the fact that people are trespassing are good reason to put up a fence to block trespassers and address the safety concern. McQuaid likened the location and property challenges to a steep slope hardship. There is not room to plant a tree barrier. A fence cannot be put in the right of way.

Member Goodsir stated having a fence could deter trespassers and add a safety factor.

Member Webb stated safety and privacy are a true concern. The photo provided by the applicant with the mock 6’ fence demonstrated the roof was still visible and would deter people from trespassing.

Member McGuinness stated a 6’ or 4’ fence would not deter trespassers. There should be something in place for safety.

The Board Attorney stated the application is for a C1 Variance, Mr. McQuaid made an analogy the property is the hardship because of the location of the lake and roadway. A four foot fence is permitted. Conditions could be imposed for color and camouflage to be aesthetically pleasing. The applicant can sign a complaint for the glaring light. Lighting does not fall under zoning. Signs for a lookout point could be placed in town to deter trespassers.

Mr. Jurkovic stated the lights shining are overbearing and no one should be trespassing on the property. Lights and trespassing are not zoning and fall under enforcement. One of the criteria to grant this type of Variance is to prove there will be no detriment to the zoning plan. There is no scheme in the neighborhood and the burden of proof falls on the Applicant.

**A motion** was made by Arthur McQuaid to approve ZB 12-22-22, 1892 Greenwood Lake Turnpike for a bulk variance for a 6’ fence. The property is the hardship **second** by Daniel Jurkovic.



**Eligible to vote:** Daniel Jacovic, Frank Curcio, Stacy-Ann Webb, Arthur McQuaid, Daniel Goodsir, Peter McGuinness

**Yes:** Arthur McQuaid, Stacey-Ann Webb, Daniel Goodsir

**No:** Daniel Jurkovic, Peter McGuinness, Frank Curcio

**Abstain:** None

The Board Attorney stated the application was denied and described the Resolution and timeline process for appeals.

Mr. McQuaid stated it was mentioned that this Board makes precedence. He is on the Board for almost 30 years. He does not recall this Board ever making precedence.

Peter McGuinness made a motion to approve the invoices, second by Daniel Jurkovic  
**All were in favor.**

Daniel Jurkovic made a **motion** to approve March 28, 2023 meeting minutes, **second** by Peter McGuinness.

**All were in favor.**

## **II. DISCUSSION**

The Board Attorney and Board Planner conducted a general discussion for the Board pertaining to any future retail Cannabis matters.

- § 500-193 Cannabis retailers (12 requirements or seek a variance)
- § 500-194.1 Route 23 Cannabis overlay zone
- § 500-205 Measurement ordinance for location of a cannabis retailer

Michael Gerst the zoning officer stepped forward and explained the process for Cannabis retailers; A state permit is required.

1. Zoning Permit – IF denied the Applicant can go before the Board for consideration.
2. Go before the Counsel for approval
3. Building permit

Peter McGuinness made a **motion** to adjourn **second** by Daniel Jurkovic  
10:04 PM

**All were in favor**



Respectfully Submitted,  
Pamela Jordan, Secretary  
Zoning Board of Adjustment

Approved May 23 2023