

MINUTES
Of the Township of West Milford
ZONING BOARD OF ADJUSTMENT
April 24, 2022
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 7:33 p.m. The Board Secretary read the Legal Notice.
7:31 PM

Legal Notice was announced

ROLL CALL

7:37 PM

Present: Linda Connolly, Russell Curving, Dan Jurkovic, Arthur McQuaid, Frank Curcio, Michael DeJohn, Robert Brady
Also Present: Pamela Jordan, Board Secretary, Steven Glatt, Esq., Patrick McClellan
Absent: Matthew Conlon – (Appointed, not sworn in to date) Kenneth Ochab,
Arrived late: Peter McGuinness 7:49

The Pledge of Allegiance was recited

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.

MEMORIALIZATIONS

NEW APPLICATIONS

MARK & EMMA SCALFANI
BULK VARIANCE ZB 06-21-11
BLOCK 4201 LOT 4

67 Lake Park Terrace LR Zone

SEEKING: Front yard setback where 40 feet is required, 48.88 exists and 24.8 is proposed. **Side yard setback (L)** where 30 feet is required, 12.1 feet is existing, 12.1 feet proposed,
Side yard setback (R) where 30 feet is required, 13.31 feet existing and 13.3 feet proposed, **Building lot coverage** where 10% is permitted, 17.4% is existing 23.2% is proposed **for construction of a 20 x 20 GARAGE in the front of the house.**

The Board Attorney stated, after examining the Notice of Publication to the property owners it was determined that Notice was insufficient. The Applicant left off the lot coverage variance off and could not allow the Matter to be heard. The Applicant was notified to appear. The Board Attorney stated the Application should be carried to the next meeting.

A motion was made by Arthur McQuaid and second by Russell Curving to carry the Scalfani Matter to the next meeting.

Roll call vote:

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

GARY ZIELINSKI
USE VARIANCE ZB 02-22-2
BLOCK 603 LOT 8, 9
24 Witte Road LR Zone

SEEKING: Elimination of a lot line between two existing lots, creating 1 lot with 2 dwellings.

Blagoja Petreski, Petreski Law Offices from Kinnelon NJ, Attorney representing the Applicant (filling in for John Barbara Esq., of Butler NJ). Mr. Petreski stated the adjoining property known as 24 / 28 Witte Road that share a common septic and well. Township records go back to 1969 showing one well and septic for the properties. The Applicant seeks a D1 USE and D5 USE Variance to allow for two principal residences on one property by removing the lot line allowing one septic and well to serve both dwellings. Mr. Petreski indicated the septic needs to be replaced and it was during the process the need for the Variance was determined due to the current set up. There is not enough room on either parcel for a septic or a well, resulting in an existing nonconforming use. There are no changes proposed to the properties and will continue to be used as they have for the last several years.

Mr. Petreski introduced Douglas McKittrick, expert Planner and Engineer for the Applicant. The Board Attorney swore in Mr. McKittrick of 2024 Macopin Road in West Milford, NJ. Mr. McKittrick stated he has

been a licensed Engineer since 1982 and Licensed Planner since 1983. Mr. McKittrick stated the two developed lots share common features and a well, septic system and two dwellings. A septic alteration plan was prepared by Mr. McKittricks office to upgrade the system. The plan was not approved by the health department, stating the NJDEP, under NJ Administrative code 7:9A does not allow a septic system to be connected to two properties on separate lots.

Mr. McKittrick stated; the street address is 24 Witte Road (Lot 8) and 28 Witte Road (Lot 9). Witte Road was created in the 1920's and early 1930's. The amended 7th map of Upper Greenwood Lake, Township of West Milford, Passaic County NJ (also known as map 969) delineates the 25 foot lots shaped like pieces of pie. Lot 8, 24 Witte is 7719 square feet (0.177 acres) Lot 8 is Southerly and the larger in size. The septic system disposal field servicing both lots is located on Lot 8. The lot line goes through one of the houses 65% on lot 8 and 35% on lot 9. Lot 9 is 4904 square feet (0.113 acres). A common well is located on Lot 9. The septic tank from lot 9 drains into the disposal field of lot 8. West Milford Tax assessor records show both homes with bedrooms and running water for the last 60 years. The application proposes no new construction or enhancement of the buildings.

A D1 Variance for a nonconforming use (two dwellings on a single lot) and D5 (exceeding the permitted density) are required for this Application. Mr. McKittrick stated the Board has the power to grant variances for non-permitted uses for specific reasons.

POSITIVE CRITERIA D1 – Nonconforming USE

Both dwellings are legally constructed

No new construction or disturbance

Eliminates disagreements for septic/well repairs and maintenance

Eliminates title issues with respect to encroachments

Property use remains the same for the last 60 years

Eliminates hardships for encroachments and comingled utilities with respect to a sale

The merged lot cannot be subdivided – delineating clear responsibilities for maintenance, taxes, permits and animal control

Property would not impose impact to surrounding property or their values

NEGATIVE CRITERIA D1

Mr. McKittrick sited no negative criteria

POSITIVE CRITERIA D5 – Exceeding permitted density

Both dwellings are legally constructed

No new construction or disturbance

Eliminates disagreements for septic/well repairs and maintenance

Eliminates title issues with respect to encroachments

Property use remains the same for the last 60 years

Eliminates hardships for encroachments and comingled utilities with respect to a sale

The merged lot cannot be subdivided – delineating clear responsibilities for maintenance, taxes, permits and animal control

Property would not impose impact to surrounding property or their values

Legalized the use of the property

Supports the Municipal Master Plan Goals and Objectives;

1. Preserve semi-rural characteristic of the neighborhood
2. Preserve the pristine nature of the forests, water ways and sensitive areas.
3. Encourage a pattern of land use consistent with the characteristic of the township
4. Encourage energy conservation of fossil fuels.

NEGATIVE CRITERIA FOR D5

No negative issues

Mr. McKittrick indicated the project would be beneficial to the community. Issues came to light when the DEP would not approve a septic system with current conditions.

Mr. McKittrick did not site substantial detriment to the Master Plan or the zoning plan or the surrounding properties.

Mr. McKittrick stated, the DEP would not approve the septic plan for the small (upper) lot that does not currently have a septic and does have a well. Well and septic are kept as far away as possible. The typical separation between well and septic with unknown casing is 100 feet, with 50 feet of casing the distance is 50 feet apart.

Future sale of this property would be for both dwellings. Mr. McKittrick expressed concern if the property would be utilized as an Air B&B or short term rental.

The Board Attorney swore in The Applicant, Gary Zielinski, 23 Witte Road. Mr. Zielinski indicated he understood, if this Application were granted, the parcels would become one lot and sold as such in the future. Mr. Zielinski acknowledged the need for a new deed to be filed and the Township to erase the property line. Mr. Zielinski did not have objection (as a condition of approval) the dwellings would remain residential and not as a short term rental or Air B&B.

Mr. Zielinski stated he is the sole owner of the properties.

Mr. McKittrick indicated he agreed with the language contained in the Board Planners report dated, March 10, referring (page 2) - The merger of the lots result in a triangular lot where there are 2 side property lines and no rear property lines (no rear yard property setback requirements). The proposed lot line removal results in the elimination of the encroachment of the house on lot 8 into lot 9 and the side yard setback nonconforming condition and the rear yard setback nonconforming condition on lot 8. The combined lots still result in nonconforming conditions for lot area, depth and coverage.

Mr. Zielinski indicated he will not be living in either of the two homes at this time.

There is a patio encroaching on a neighboring property and a couple of sheds located on the property line. Mr. McKittrick acknowledged the patio and sheds and stated he is not aware of the circumstances or their status. The Board Attorney stated if this matter is approved, the approval in no way legitimizes any encroachments on other properties. Adjoining property owners and the Applicant are left to remedy any encroachments. Mr. Zielinski and Mr. McKittrick stated they understood the statement.

Mr. McKittrick (responding to a Board member) The Applicant did not intend or want to use the property as an Air B&B. The Board Attorney stated any motion (if made) should contain language with conditions that it would not come under the Air B&B ordinance and would not be used as an Air B&B. If the Board grants the approval it would run with the land. A new deed should directly include the conditions and directly reference the Resolution.

With no further questions or comments from the Board, **The Chairman opened the application to the public in accordance with the NJ state public meetings act.**

Seeing no one Linda Connelly moved to close the public portion and second by Arthur McQuaid.

Chairman Brady indicated that Michael DeJohn would be standing in for Daniel Jurkovic for this matter.

Roll call vote:

Yes: Linda Connolly, Arthur McQuaid, Frank Curcio, Peter McGuinness, Michael DeJohn, Robert Brady

Mr. Petreski, stated the Applicant seeks a D1 and D5 Variance to remove a lot line. Granting the approval would make a lot that has been in existence for 60 years legal. The Applicant is unable to obtain a septic approval with current conditions and encroachments. Mr. Petreski indicated the approval of both variances would be beneficial to Mr. Zielinski and the Township. If approved, Mr. Petreski stated he and Mr. Zielinski agree with the stipulations that the property would not be used as an Air B&B and the patio and sheds were not part of the Boards consideration for this Application.

Arthur McQuaid made a motion to approve ZB 06-21-11 BLOCK 603 LOT 8,9 - 24 Witte Road for the Elimination of a lot line between two existing lots, creating 1 lot with 2 dwellings based on testimony given and the benefit to the township. There will be no Air B&B, B&B or short term rentals in either of the properties. No consideration for patios and sheds, second by Russell Curving.

Roll call vote:

Yes: Linda Connolly, Arthur McQuaid, Frank Curcio, Russell Curving, Peter McGuinness, Michael DeJohn, Robert Brady

The Board Attorney stated there would be a resolution at the May Board meeting followed by a 45 day waiting period. Mr. Petreski stated Mr. Barbarula would explain the process to Mr. Zielinski.

A motion was made by Peter McGuinness to approve professional invoices and second by Russell Curving.

Roll call vote:

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

A motion was made by Linda Connelly and second by Peter McGuinness to approve March minutes.

Roll call vote:


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

DISCUSSION

The Board Secretary stated the email to the Township Administrator inquiring about the use of the PAL building for future, covid safe location was prompted by the previous Board meeting request.

**A motion was made by Linda Connolly and second by Peter McGuinness to adjourn.
All in favor**

Adjourned 8:37PM


Respectfully Submitted
Pamela Jordan