

BOARD OF ADJUSTMENT

MEETING MINUTES

OCTOBER 24, 2007

Meeting called to Order by Chairman Novellino at 7:30 p.m.

Reading of Adequate Notice by Mr. Barthelmes

Salute to the Flag.

Roll Call: Present: Devine, Morelli, Novellino, Iradi, Bailey and Conoscenti, Barthelmes, Curcio. Late: Lambros (7:34 p.m.)

APPROVAL OF MINUTES: September Minutes tabled to November 28, 2007 Meeting.

RESOLUTIONS:

Z06-05 537 ABR, LLC - Block 60.01, Lot 15.01. 4.02 Acres located in the HC Zone at 490 Monmouth Road. Applicant seeks use variance to construct a two-story 9,820 s.f. building for car wash and service area and a 10,000 s.f. storage warehouse. A design waiver requested. Deemed Complete 6/1/07. Date of Action 9-28-07. Carried from 6-7-07; 7-25-07. No further noticing required for this meeting. Application Denied on 8-22-07. Resolution tabled to 10-24-07.

Mr. Iradi made a Motion to Memorialize the Resolution and Mr. Morelli offered a Second. Roll Call Vote: Iradi, Morelli, Lambros, Devine, Bailey, Conoscenti and Novellino voted yes to Memorialize the Resolution.

NEW APPLICATIONS:

Z07-09 SCHIBELL, Andrew and Dena Rose – Block 36.01, Lot 3. Located at 6 Quail Hill, consisting of 115, 769 s.f. in the R-130 Zone. Applicant proposes to construct a single-family dwelling on the vacant lot. Applicant seeking variance relief for undersized lot and steep slopes. Deemed Complete 8-16-07. Date of Action 12-13-07.

Attorney Vella advised that he had reviewed the noticing packet and found same to be in order to accept jurisdiction over the application.

Attorney Vella entered the following exhibits into evidence:

- A-1 Jurisdictional Packet
- A-2 Application dated 8/2/07
- A-3 Conceptual grading plan prepared by Crest Engineering dated 6/29/07
- A-4 Response from property owner of 1 Sugar Loaf Hill
- A-5 Revised Plan dated 09-14-07 consisting of 2 pages
- BOA-1 Township Planner's Report dated 8/16/07
- BOA-2 Aerial Photograph of Site Plan
- BOA- 3 Tax Map with Square Footage of Surrounding Homes

Mr. Lambros arrives at 7:34 p.m.

Andrew Schibell, applicant, is sworn in by Attorney Vella . Mr. Schibell explained that he and his wife wanted to build a home on the lot and in 1999 they purchased the lot. At that time, the lot met all of the requirements of the zone. He explained that it was the only vacant lot left. The electric and cable were already installed. They were in the process of saving money to construct a home on the lot. Mr. Schibell explained that construction costs have skyrocketed. They realized that they could not afford to construct a home. The Schibells found a potential buyer for the property. Mr. Schibell explained it was at that time that it was discovered the property had steep slope issues.

Subsequently, the Schibells have had two children and need a home but cannot afford to live in Millstone. That is why they are before the Board this evening. The original plan submitted was the plan they were given at the time they purchased the lot. The plans have been downsized to conform with the setback requirements of the zone.

Planner Richard Coppola advised the Board that there are four issues. One remains true today, and that is that the lot is undersized. It is existing and surrounded by developed property. A side yard variance in the original plan submitted has been eliminated. The outside footprint of a potential house should be considered and house must be within the footprint that the Board suggests. Mr. Coppola explained that the applicant did lessen the footprint and move the driveway. Looking at a house that is 8,000 s.f. that lacks one-acre of developable land, the Board can say no more than "x" square feet.

Attorney Vella advised that the Board has right to ask for a reasonable footprint restriction and he explained why.

Mr. Coppola explained that regardless of the size of home, the driveway will encumber a 15% slope. Mr. Coppola explained the topography of the property that does not allow the applicant to place a circle or rectangle on the property. Chairman Novellino asked how close are the applicants from achieving this rectangle. Engineer Matt Shafai explained that the applicants have the area but not the right dimensions. It is not ideal but they have a right to develop. Engineer stated that they can't do much with the driveway.

The Board wants a potential buyer to work within the approved footprint. Given the character of the neighborhood, they want something that would fit in. The Board discussed the square footage. Mr. Coppola explained that he went over surrounding lot sizes. He feels merit in keeping the footprint as shown on plans but to add a limit to square footage of the house. Chairman Novellino asked about the driveway. How might the Board define the driveway to be designed to minimize the steep slope issues? Mr. Coppola stated that it should extend no further east than as shown on the plan for less disturbance of the site. You can stipulate that the driveway should not be more that "x" feet wide. He suggested limiting the width of driveway. Mr. Barthelmes asked what could have been built on the lot in 1999, since the steep slope ordinance was not in place in 1999.

Attorney Vella offered the Board some advice. Because the lot is undersized and has steep slopes, the Board can limit the size of the building and cause less impact on environmental issues. Mr. Bailey placed on the record that he visited the property. He asked if the Board could place a limit on the minimum size of a house. When originally purchased, all perc tests were done on the lot. Chairman Novellino wants to make sure that the septic does not disturb the steep slopes. Engineer Shafai explained that the entire lot is wooded. (Exhibit BOA-2 - aerial photo of subject property)

Chairman Novellino opened the application to the public at 8:08 p.m.

Sworn in Dominick Belcastro. He advised that his home is located behind the subject property and he receives water off of that property. He explained that he is concerned about ramifications to his property.

Engineer Shafai stated that the subject property requires dry wells be put in place and that this should be a condition of the approval.

Sworn in, John Nazzaro - 5 Sugar Loaf Hill. He stated that his back yard is to the property. He is concerned that his property is being marked and wants to make sure that surveyor has the correct property line. He wants to make sure that his trees are protected. Engineer Shafai requires that the property corners are to be set on the subject property.

Sworn in, Christopher Kau, 8 Quail Hill – Mr. Kau is concerned about disturbing the steep slope and the effect it would have on his property. He stated that his well is on that side of the property. Engineer Shafai advised Mr. Kau that when it is submitted to the County, Monmouth County Board of Health looks at where the other wells of surrounding homes are located and Matt looks at this also.

Mr. Coppola's Exhibit is entered into evidence BOA-3 map showing surrounding square footages of surrounding homes.

Sworn in, Roger Liao, 4 Quail Hill Road. He asked if it is possible to be notified if a house is going to be constructed. He clarified that he has an ill child and would like to be notified due to health issue.

The applicant would ask the new owner to contact the neighbor prior to construction beginning.

The public portion of the application was closed at 8:26 p.m.

Mr. Schibell asked about pre-existing lots smaller than 3 acres, problem was if not for slope issue it would conform.

Board discussed reasonable constraints. Chairman Novellino asked about the overall footprint of the house. The board agreed on the issue of the driveway and disturbance of steep slopes to go with Mr. Coppola's suggestion. Dry wells and septic were discussed.

Attorney Vella went over the conditions of approval, including but not limited to: the home located with footprint as located on revised plans, no further east of the driveway as set forth on the revised plans, all outside approvals needed, location of septic subject to zoning board engineer, dry wells and roof drains, 3-car garage not to exceed 700 s.f. garage on the existing footprint. 4000, s.f. of living area. No detached garage. No additional construction on slopes of 15% or greater on the remainder of steep slopes without the Board of Adjustment's approval.

The Board took a five-minute recess before the next application.

Mr. Iradi made a Motion to approve as conditioned and Mr. Barthelmes offered a Second. Roll Call Vote: Iradi, Barthelmes, Curcio, Devine, Lambros, Morelli and Novellino all voted yes.

Mr. Iradi steps down for the next application due to a conflict and leaves the room.

Z07-04 CKV REALTY, LLC – Block 57, Lot 16. 53.39 acres located in the BP Zone Located at 33 Burnt Tavern Road. Transferred from the Planning Board. Application is for construction of a garden center and nursery related facility including construction of a 15,000 s.f. building. Applicant received waivers from checklist items for the use variance portion of the application. Deemed Complete 7-25-07. Date of Action: 11-22-07. Carried from 9-26-07. Re-noticing and re-posting of web notice required.

Attorney Edward Rosen representing the applicant . Attorney Greg Vella has reviewed the noticing packet and find same in order to accept jurisdiction. He reads the Exhibits into evidence as follows:

- A-1 Jurisdictional Packet
- A-2 Web Notice posted 10/24/07
- A-3 Application dated 9/26/07
- A-4 Resolution Transferring Application to Zoning BOA dated February 12, 2007
- A-5 Site Plan prepared by JKR Engineering & Planning Service, LLC dated 4/4/07
- A-6 Survey/sketch prepared by Charles B. Rush, dated 5/15/06
- A-7 Phase 1 Environmental Audit Report of Findings prepared by Donald A. DiMarzio, P.P., dated June 2007
- A-8 Statement of Environmental Impact & Assessment Prepared by Donald A. DiMarzio, P.P., dated June 2007
- A-9 Soil Sample Report prepared by EMSL Analytical dated 7/16/07

- A-10 Colored rendering of site plan.
- BOA-1 Report of Board Engineer dated 7/10/07
- BOA-2 Report of Township Planner dated 9/18/07

Mr. Rosen offered a brief procedural history of the application. The applicant submitted a concept plan to the Planning Board. Michael Steib, the Board Attorney, and Richard Coppola the Board Planner, determined that the applicant needed a use variance for the retail sale and storage. The applicant filed a bifurcated application as a result. Bulk Variances may be involved. A variance is needed to conduct retail sales of plants and miscellaneous garden supplies and allow storage of stone, mulch and hardscape materials.

Applicant's Engineer Richard Difalco is sworn in. He has testified before the Board in the past and is accepted as a professional engineer. Mr. Difalco referred to Exhibit A-5, the Board has colored rendering of site plan (A-10). He gave a brief overview of the property. Lot 16, Block 57 has frontage on Burnt Tavern Road consisting of 53 acres. Referring to A-5 he explained that 4 to 5 acres of the 53 acres are to be developed. The proposed structure is to be 15,000 s.f. He explained how it would be used. Nursery stock is grown and sold on site. Hardsape is sold, mulch, topsoil and stone is to be stored in concrete bins. Of the 53 acres, 8 are unencumbered by wetlands and buffers. The property can still be used as a farm but new development would be restricted. Mr. Coppola asked for clarification of where plant material would be located and where are limits of area where there will not be plant material.

Attorney Vella explains to the Board that on a bifurcated application, the purpose is so that the applicant does not have to spend the money if the use is not approved but the applicant must provide enough information for the Board to properly review and consider the application. The purpose of the site plan is to give a general idea to the Board concerning the negative impacts this site would have on the adjoining owners. Mr. Devine has concerns that the driveway is too close to Millstone House. Mr. Difalco stated that the existing driveway is unpaved.

Sworn in is James Higgins, applicant's professional planner. Mr. Higgins is accepted as a professional planner. Mr. Higgins explained that for this project, he did an analysis of the proposed use in the BP zone, the Master

Plan and surrounding uses. He explained the variety of uses permitted in the zone. The zone permits agricultural uses. The applicant went to the Planning Board and believed the use to be an agricultural use with associate farm stand. The Right To Farm Act permits farm stands to exist on a site. Mr. Higgins offered that if 51% of the land is to be used to the sale of plant material, he would qualify as a farm stand. The issue is that the applicant does not want to dedicate 51% (rather 33%) to plants and items grown on the site, the balance will be landscape related material sold on site not grown on site. The real issue is the percentage of the site that is dedicated to sale of nursery stock grown on site as opposed to items not grown on site. Mr. Higgins stated that a garden center is not permitted on any site. He feels the BP zone is a most favorable site and a most suitable zone for the use. The applicant offers a horse trail on the site and stated that it advances the Master Plan.

Mr. Higgins discussed the impact of the use on surrounding properties. The applicant will operate from 7 a.m. to 6 p.m. and would not operate during evening hours, reducing the impact on adjacent properties. There would be no evening lighting. The applicant would provide a 50-ft buffer with berm to the residential neighbor. Outdoor storage in a front yard is not permitted. The area would look like a planted area with no mulch or rocks to be stored there. The contractor's exit runs from the property line to Burnt Tavern Road. They will narrow that to 18-ft and screen it to protect the adjacent residential use. Mr. Rosen asked Mr. Higgins about the special reasons for granting the use variance and he cited; particularly suitability of the site and proximity to Routes 537 and 195, the use itself would exist if the percentages were adjusted somewhat and the location of a bridle path along the property line. He does not see any significant impact and does not feel that the Millstone Elks club across the street would be impacted negatively. Mr. Higgins stated that the project would have no negative impact on the Master Plan or the zoning ordinance.

Mr. Coppola asked Mr. Higgins about the Right To Farm Act and what is allowed. He advised a Farm market is allowed in the Farm ordinance. It allows for a facility for wholesale retail output of a product. Fifty percent (50%) of what you produce you sell. This is a retail garden center. It does not meet the required percentage.

Deed restriction of the land to agricultural use was discussed and Attorney Vella explained the deed restriction. Mr. Coppola asked of the 33% to be utilized for the sale of vegetation, how much grown on the commercial farm property, Mr. Higgins stated that most, if not all. Mr. Coppola requested a

percentage range. He stated that the land is in the BP zone and indicated the deed restriction would preclude the development of the remaining piece for any BP park use.

Mr. Curcio asked about the hours of operation. The applicant will testify as to the hours of operation. Mr. Coppola stated that regarding buffering, the BP zone requires 75-foot buffer around the entirety of the property (The applicant offers 25 where 75 is required). Mr. Higgins offered 50 feet with a berm in lieu of the 75 feet. Mr. Coppola stated that dimension is important. Mr. Higgins stated the main reason for the proposed contractor exit is to keep the contractor traffic separate from the retail traffic. Engineer Shafai asked about the display area variance that is needed.

The Board took a recess at 9:50 p.m. returning at 9:57 p.m.

Sworn in is Brian McKay, a member of CKV Realty, the applicant. He offered the details as to operation. Sales hours are 8 a.m. to 5 p.m, but workers arrive in the early morning – 7am - to get prepared for the day. There will be 6 to 7 employees. The applicant would abide by the Township and any other noise ordinances that are in place. The applicant is agreeable to agricultural use deed restriction so that they could develop the garden center. The area that will be deed restricted must be designated on the site plan. He explained how the contractors would use the driveway. He explained the traffic pattern. The present buffer of 25-ft. would be increased to 50-ft. with berm is acceptable to the applicant. The bridle path is acceptable. Boyce Blueberry Farm has a bridle path and the applicant's property would connect to that. The display area would be hardscaped so that the customers can see what they can do. It is essentially an outdoor showroom, for display only. Storage is for perishable items. No farm equipment would be for sale. The garden center is for the sale of items such as shovels, irrigation material, rakes, wheelbarrows and seasonal materials such as hay and pumpkins. Concrete products are to be stored at the outdoor storage area. It is for one-stop shopping. Mulch products are treated to avoid breeding insects. (storing 80 yards of each product is planned). Farmed bushes, trees shrubs, fruits and veggies would be sold. In the beginning, the agricultural sales won't be as much because trees must mature and need three years to do so.

Mr. Coppola and Mr. Shafai suggested moving the contractor driveway. Mr. Coppola advised that the outdoor display area should still be considered a use variance to be safe.

Pat Butch is sworn in and explains the Township bridle path network plan. This property is in the vicinity of the capital to coast state trail project. She explains how a trail through this property would help the Township connect to the capital to coast project. She advises that it is the optimum location for the trail where the applicant had indicated on the site plan. She refers to exhibit A-5. Not mixing horses with people and farm equipment is desirable, she suggested a barrier, i.e. split rail fence to separate trail from farm activity.

Chairman Novellino opened the application to the public at 10:21 p.m.

Sworn in Lana Estrin who lives next door and has concerns. Burnt Tavern Road is narrow and it is difficult to see regarding the trucks traffic. She is concerned with the noise on the weekends. She offered her concerns regarding the safety of her children and grandchildren in the house. She is concerned regarding chemicals that may be used in the farming operation and about water drainage on her property. Engineer advised that Burnt Tavern is a Township Road and the road is a Township issue. The board informed Mrs Estrin that she lives in the BP zone. Chairman Novellino discussed what is allowed in the BP Zone – including farming - per township ordinances and the master plan.

Pat Butch was previously sworn in. She advised that farming in New Jersey is in dire straits due to many factors. She explained that many farms are going toward agri-business as a way to preserve farming as an economically viable activity. This garden center is an example of an Agri-Business. She asked that if allowed, a farmland deed restriction should be placed on the remainder of the property for the Township to enforce. Stone driveways are important as the coverage is not impervious. She offered that farm equipment operation is protected by the state “right to farm” laws and can run any time 7/24. Retail farm sales can be brought in from other farms that they own and can be counted as the 51%.

The application was closed to the public at 10:36 p.m.

Mr. Shafai stated that large tractor-trailers are coming in. Necessary road improvements are to be made by the applicant.

Mr. Morelli has concerns about the proposed contractors driveway that goes around the Millstone House and how that road could affect the Millstone House property and its residents. Chairman Novellino does not want the road or other activities associated with the Garden Center to negatively impact the existing Millstone House. Buffering will be important

to achieve those goals. The applicant was made aware of the Board's expectations of what the site plan should provide for buffering, location of the driveways, and the size of the bulk stone storage.

Mr. Lambros left the meeting early.

Attorney Vella advised that the site plan must be consistent with the use variance approval.

Mr. Coppola advised that it appears the garden center would be less plants and more hardscape. He wants the Board to make sure that this is worked out so that the nursery element is not eliminated. Mr. Coppola stated that the applicant apprised the Board that it would take time for the nursery element to grow. The Board is approving a garden center with mix of sales of related material and landscape material with 33% for plant material sales. That would not include the display area. Mr. Difalco advised that the green area is 33%. Mr. Coppola stated that if the plant material is down to 25% it is not really a garden center. The applicant wants to have a full service garden area. Chairman Novellino stated that the Board will put conditions on this approval so that we can make sure that the applicant meets the commitments he is making to build a true Garden Center and not a stone/hardscape distribution center. The conditions must clearly define the requirements the board has for this use for a future owner as well. The Board wants to make sure everything is understood and agreed to by the applicant with all commitments are clearly defined to avoid problems at the site plan review.

The applicant can bring in stock since they are not under the Right to Farm Act. Chairman Novellino wants to allow the applicant some room to establish his business but not have him become strictly stone and hardscape. Attorney Vella advised that 33% would be plants for sale.

Attorney Vella read the conditions of use variance approval: applicant to provide a horse trail or best available area to be determined at the site plan stage, deed restriction for remaining portion of the noncommercial area, restrict storage in the front yard on display items, buffering to the Millstone House property, specific demarcation of items for sale on the site plan, list of items for sale, 33% is for the sales area, etc.

Mr. Morelli made a Motion to grant the Use variance as conditioned and Mr. Conoscenti offered a Second. Roll Call Vote: Morelli, Conoscenti, Curcio, Devine, Bailey, Barthelmes and Novellino voted yes.

At 11:10 p.m., by Motion of Chairman Novellino and a Second offered by Mr. Barthelmes and by unanimous vote, the meeting adjourned.

Respectfully submitted,

Pamela D'Andrea

