

**MILLSTONE TOWNSHIP  
BOARD OF ADJUSTMENT  
MEETING MINUTES  
AUGUST 27, 2008**

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

Reading of the Adequate Notice by Mr. Barthelmes.

Salute to the Flag.

Roll Call: Present: Novellino, Bailey, Conoscenti, Frost and Barthelmes. Absent: Curcio, Devine and Morelli. Late: Lambros arriving at 7:35 p.m.

**APPROVAL OF MINUTES:** July 23, 2008. Mr. Conoscenti made a Motion to approve and Mr. Bailey offered a Second. Roll Call Vote: Conoscenti, Bailey, Barthelmes, Novellino and Frost voted yes to approve the Minutes.

**RESOLUTIONS:**

**Z08-01 SHELLY'S SCHOOL FOR DOGS** – Block 57, Lot 33 – Located at Burnt Tavern Road consisting of 56.47 Acres in the BP Zone. Applicant seeks use variance approval to construct a 30,565, two-story building to operate a school for dogs. Bifurcated Application. Variances needed. Deemed Complete 4-3-08. Date of Action 8-1-08. Carried from 6-25-08. Approval denied on 7-23-08.

Attorney Greg Vella explained the issue of reopening an application for the Board to reconsider. He explained that this is not unique for the Planning Board and the Board of Adjustment to reconsider an application. Attorney Vella explained that there are no provisions in the law to allow the applicant to request reconsideration but that does not mean that we cannot do this. He stated that it is about fairness and to have a complete record.

Attorney Vella went over Mr. Pape's letter asking Board to allow him to provide the evidence in the letter. That is the issue before the Board. If the Board says no to this request it does not change the outcome of the case and Mr. Vella would place language in the Resolution that the Board considered the request and decided not to reopen it. Mr. Vella stated that it creates a potential issue that maybe the Board should have opened the case to hear additional testimony.

If the applicant supplied additional evidence, the Board may have voted differently. The applicant has the right to file a new application with a substantial change use and the applicant could start anew.

Mr. Vella offered the different scenarios. He described the spectrum of the possibilities. He stated that there is nothing in our ordinance or by-laws to prevent the Board reconsidering the application.

There was discussion as to who could vote on the reconsideration.

Attorney Ken Pape represents the applicant , Mr. Shelly Leibowitz. He explained that the request to reconsider is responsive to concerns raised by the Board which includes their concern with noise. He advised that Architect Richard Bacon who designed the kennel, can design, runs that are indoors and use the kennel materials that make it sound proof.

Mr. Pape advised that Messrs. Kenneth Fears and Maurice Rachad designed the road completely from beginning to end and that is before the DEP with the treatments on either side, along with an electronic graphic showing the vehicles traversing.

Mr. Pape advised that the Monmouth County Board of Health was contacted and the County has provided the applicant a written reply. The water usage would be lower than what the applicant had anticipated. For these reasons the applicant would like to appear before the Board for reconsideration.

Mr. Pape offered that case law and the MLUL allow for reconsideration. On rehearing, there must be re-noticing and re-publication. A reconsideration hearing is simply a joint effort to have the most complete record possible before a determination is made. Mr. Pape stated that these proofs would be made to the staff and their comments would be welcomed.

Chairman Novellino indicated the board is willing to work with the applicant to understand what the changes would be. The board will decide at the September meeting, when all the members who voted on the application initially are expected to be present, whether to allow a reconsideration hearing of the application at the October meeting.

Mr. Pape grants the time period to extend the memorialization of the Resolution, to be followed up in writing.

The Board wants to be fair to the applicant.

**Z08-06 FEDDERSON, RUSSELL**– Block 49, Lot 11. Located at 378 Stagecoach Road in the R-80 Zone consisting of 38,738 s.f. Applicant seeks to construct a 2-story attached garage to his existing 2-story single-family dwelling. Undersized lot. Bulk variance needed.

Attorney Vella advised that he has reviewed the jurisdictional packet and finds same in order to accept jurisdiction over this application.

Mr. Vella reads the following exhibits into evidence:

- A-1 Jurisdictional Packet
- A-2 Letter to abutting property owners to buy/sell land
- A-3 Application dated 07/11/08
- A-4 Sealed Survey Map with Topography
- A-5 Plot Plan dated 04/09/08
- A-6 Elevations of the proposed construction
- A-7 Aerial Map prepared by Monmouth County dated April 2003

Mr. Feddersen explained his need for a variance for his side yard setback. He explained that he has to build the proposed garage on the right side of his home due to the configuration of the property. Engineer Matt Shafai advised that the applicant would need a side yard setback variance for the building. The property is undersized and cannot meet the front yard setback but these are pre-existing variances. The only new variance is the side yard where 30 feet is needed only 9 can be provided.

The applicant presently is 39.36 feet from the side yard and would be using 30 feet for the garage. The house was an addition put on five years ago. The Feddersens considered putting the garage on the other side of the house but the mud room was put on the wrong end.

Planner Richard Coppola asked the applicant about the purpose of the bonus room. The Feddersens wish to make a game room there. The house has only two bedrooms. They offered that down the road, this addition would be help in the resale of the home.

In exploring opportunities to lessen the variance, Mr. Coppola advised that if the applicant narrowed the addition and increased the side yard, it would make the addition narrower and longer.

Mr. Lambros asked how far away is the next home. Mr. Feddersen advised that the neighbor's garage is 50 feet from the property line.

Mr. Coppola advised the Board that the garage cannot be located on the other side of the house.

The existing house is one story and two stories on the left side. Part to the new garage is single story. The only way to get to the second floor is via the stairwell.

The applicant has no problem with restricting that the room above the garage would not be rented. They have a fire door which is what is required.

Mr. Barthelmes asked about the variance. Mr. Vella advised that this is a normal C variance to consider. It is an undersized lot. It is out of sync with the neighborhood? What is driving this variance? The Board is to consider the positive and negative criteria for a C1 variance. The Board must consider how the variance impacts the adjoining properties. Mr. Vella explained the issues the Board must deal with such as the adjoining properties, the neighborhood and the zone plan.

The applicant is to match the siding with the addition to the house.

Mr. Coppola stated that he would ask the applicant to put two windows on the side of the garage to soften the appearance of the garage. The Feddersens have no problem with this request.

Mr. Barthelmes feels that the addition of the garage would bring this house more in keeping with the other homes in neighborhood.

Mr. Coppola addressed the special reasons for the granting of the variance as the existing house is small and on an undersized lot. The room cannot be built on the opposite side of the house. If there is a second floor, stairs would be needed to access the second story and the stairs widen the addition. Mr. Coppola stated that on the negative side, the side yard setback would now be 9 feet and most houses are set back more than that. Addition of the windows to the garage would add to the appearance. The applicant should be required do put some plantings along the side so you don't just see the wall, perhaps burning bushes because they can be controlled. Some visual enhancement is needed.

Mr. Feddersen explained the dilemma concerning the placement of the garage.

The Board discussed the options for tonight. Chairman Novellino advised that he is uncomfortable with a 9 foot setback as 30 feet are required. He asked the applicants to rethink the proposed addition and come back. He advised the applicant that he believes an increased setback would be looked upon more favorably by the board..

Marked into evidence is Exhibit A-7, Monmouth County Planning board GIS map dated 2003. The surrounding neighbors have similar homes. Mr. Barthelmes drove by the property. He feels that it is tight but a garage is important to have.

The matter was opened to the public at 8:51 p.m. Seeing no public comment, the public comment portion was closed to the public at 8:51 p.m.

The applicant advised that the neighbor next to where the garage would be located, has stored vehicles on that side of his property. The property has been cleaned up somewhat and only one vehicle remains.

The matter has been carried to the September 24, 2008 meeting. No extension of time is needed. No further noticing to the September 24, 2008 meeting is required.

**Z08-04 PARAMOUNT MARINAS** – Block 54, Lot 1. 14.4 acres located in the RU-P Zone Located near Yellow Meeting House Road. The applicant seeks to construct a single-family dwelling house on the premises. Applicant had received his most recent approval in March 2007. Bulk Variance needed. Deemed complete 6-05-08. Jurisdiction accepted 7-23-08 carried to 8-27-08. Date of action: 10-2-08. No further noticing was required.

Attorney Vella announced that at the July 23, 2008 meeting, the noticing packet was reviewed and finding same in order, Attorney Vella accepted jurisdiction over the application and carried the matter without any further noticing to this evening.

Attorney Vella read the following exhibits into Evidence:

- A-1 Jurisdictional Packet
- A-2 Web Notice
- A-3 Application dated 04/25/08
- A-4 Resolution granting variances dated 05/23/08
- A-5 Plot Plan prepared by Professional Design Services, LLC dated 04/14/04; last revised 08/08/07
- A-6 Plot Plan dated 8/17/06
- A-7 Aerial Photo dated 3/28/07
- BOA-1 Township Engineer's Letter to Ian Borden dated 02/20/08

Attorney Michael Desaro representing the applicant doing business as Paramount Homes' Attorney Desaro gave a brief overview of the application before the Board. He explained that this lot is part of a larger subdivision called Premier Rolling Meadows located in Upper Freehold. The property in question is a 14.4 acre lot located in Millstone Township. The lot is to be accessed by a flag lot.

Chairman Novellino explained that the applicant came to us 2-3 years ago. The Board asked if this property could be annexed to Upper Freehold. Upper Freehold had no interest due to lack of road frontage. The applicant came back to us subsequently and we had to consider the application to build a public road or private drive. We approved a private drive with access into Upper Freehold. Millstone had to work out the servicing of the lot

Attorney Desaro advised the Board that essentially they are requesting the exact same approvals this evening. The frontage is on the road in Upper Freehold leading on a private driveway back to Millstone. He explained that the reason for the return to the Board is that the original variance expired in February 2008. Mr. Desaro explained what happened since the last approval. The proposed location of the house was moved due to a deed restricted area that contains remediated soil. The soil was remediated pursuant to a plan worked out with the DEP. He stated that the last time they were before the Board, this was not the scenario.

Sworn in is William Stevens of PDS who presents his credentials and is sworn in as applicants' professional engineer and planner.

Mr. Stevens referring to Exhibit A-5, plot plan prepared by PDS dated 4-14-04, last revised 2-1-07. He stated that this is the plan that was approved last time. We have an existing isolated lot. The best plan is to construct a private drive in Millstone without any obligation to the Township to maintain the drive.

Entered into evidence is Exhibit A-6 mounted plot plan prepared by PDS dated 8-17-06.

Mr. Stevens advised there is an error in the date. It is the intention to comply with what was approved except to construct the home outside of the area of the encapsulated soil.

An approximate area of 4 acres has been deed restricted. The conservation easement is 6.8 acres. Mr. Stevens stated that there is no contaminated soil within the conservation easement. He stated that from a planning viewpoint, everything is still the same. That plan contains no variances other than the road frontage variance.

Engineer Shafai has no issue with the setback from the remediation. The deed restricted area will not allow any building or any construction to take place within that area.

Mr. Williams advised that the septic system is located to the east of the subject home. Planner Coppola asked the applicant to come back with a map that shows them coming back outside of the circle. Mr. Barthelmes is concerned because the Board is looking at plans that are obsolete.

Sworn in is James Lang, professional geologist. He presented his credentials including receiving his BS from the University of Maryland in Geology. He has provided his services as an environmental consultant for Tinton Falls Board of Adjustment. He is accepted by the Board.

Mr. Lang explained the situation. He stated that the investigation began with a primary assessment. The history of property is that it was an orchard which extended from Upper Freehold to Millstone Township. The concern with the agricultural use is the potential for pesticides. Soil sampling confirmed the orchard area contained pesticides. He explained the process. They found arsenic which was both naturally occurring and placed by humans. They have worked with DEP for remedial action.

He went over the excavation of the soil and containment. He explained the time frames: Preliminary assessment 2004; Site investigation and remedial investigation 2005; Remedial action work plan was submitted November 2005 and approved the same month. The plan was for blending soil. Mr. Lang advised that when it came time to implement the plan, they found it to be impractical. They worked with DEP to come up with a way to implement excavation. In July 2006, DEP approved the concept for the encapsulated area plan. The remedial action was done in December 2007. NJDEP approved that the encapsulated area was in conformance with DEP standards.

Entered into evidence is Exhibit A-7 Aerial photo plan dated 3-28-07. Mr. Lang explained where the soil was excavated. The orchard was located in Upper Freehold. They do not know if Upper Freehold was noticed. Millstone was not noticed.

Mr. Vella asked what permits were applied for and obtained through Millstone. Mr. Shafai advised that they need a soil removal application.

Mr. Lambros asked about soil testing. Soil testing is not required on a single family lot. The Millstone portion is fine

There were 50,000 cubic yards of soil involved. The clean soil was removed and filled with contaminated soil.

Mr. Lambros asked the applicant how close is the nearest well to contaminated soil. Mr. Lang stated pesticides are not mobile they cling to soil and do not travel. The potential for leaching are minimum.

Mr. Vella asked when the first concept of dumping on the property was envisioned? It was July 2006. When was the first shovel put in the contaminated soil? December 18, 2007, it started in the Upper Freehold portion.

Mr. Coppola advised that a time line should go back to the beginning. Mr. Coppola went over his recollection. Mr. Coppola stated that when this Board approved the variances for access, he believed we were working with a soil investigation report that the soil was fine.

Mr. Lang advised that the No further Action letters were issued on a lot by lot basis.

Mr. Coppola reported that there is a septic system within 5 feet of contaminated area.

The Board requested the following:

Provide revised plans that are contain the correct information. The plans should reflect the proposed lot within the set back lines, the Upper Freehold property with home building plans. The applicant to provide DEP approvals, any filings with the DEP, the NFA, the recorded restrictive deed as well as the Monmouth County Board of Health approval. A complete timeline from start to finish of what applications were filed with Millstone and the other agencies was requested by the board. This information is to be provided to Engineer Shafai, Planner Coppola, The Environmental Commission and Attorney Vella.

The application is carried to November 13, 2008 beginning at 7:30 p.m. without any further noticing required. The Board asked that applicant grant an extension of time within which to hear the application through November 30, 2008.

### **New Business :**

Panhandle Meeting. Chairman Novellino explained the one year planning process the Monmouth County Planning Board is going through which includes Millstone, Upper Freehold and Allentown. He explained that the Plan is to solicit input from these municipalities to come up with a plan for the region that the County would use to guide their infrastructure expenses. Mr. Novellino explained that at the meeting. They broke up into smaller work groups to work on the plan. He stated that hot topics were Open Space and Farmland Preservation and COAH. The next meeting was scheduled for September 24, 2008 which is also our next Board Meeting.

A Questionnaire was sent out looking for input by September 1<sup>st</sup>. The Board was provided the questionnaire via e-mail distribution. The Board discussed providing input.

Mr. Coppola advised that he would start at what this town answered in last year's questionnaire. The Master Plan contains goals, policies and objectives. Just because they are asking these questions does not mean that they are not already done.

Keep it general like the Master Plan. They are looking for a very different combo of municipalities in this region. It will help them to address the regions, balancing our goals and objectives. Mr. Coppola suggested looking to the answers provided prior and to the Master Plan. He advised that consistency is the best policy and the best policy is to maintain the rural quality of the area. Meeting with Mayor Grbelja was suggested.

The meeting was adjourned at 10:40 p.m. by Motion of Mr. Barthelmes and a second offered by Chairman Novellino.

Respectfully submitted,

Pamela D'Andrea