

**MILLSTONE TOWNSHIP
BOARD OF ADJUSTMENT
MEETING MINUTES
SEPTEMBER 24, 2008**

(10/20/08)

The Meeting is called to Order by Chairman Novellino at 7:31 p.m.

Reading of the Adequate Notice by Mr. Barthelmes.

Salute to the Flag.

Roll Call: Present: Novellino, Bailey, Conoscenti, Frost , Barthelmes, Curcio, Devine, Lambros and Morelli.

APPROVAL OF MINUTES: August 27, 2008 Minutes tabled to October 24, 2008.

Z08-06 FEDDERSON, RUSSELL– Block 49, Lot 11. Located in the R-80 zone at 378 Stagecoach Road consisting of 38,738 s.f. Applicant seeks to construct a 2-story attached garage to his existing 2-story single-family dwelling. Deemed Complete: 8-04-08. Date of Action: 12-02-08. Undersized lot. Bulk variances needed. Applicant heard in part, carried to 9-24-08 without further noticing required.

The Feddersons are not ready to return to the Board for their carried application. They have requested in writing that the application be placed on the November 13, 2008 Agenda. Renoticing of this continued application would be required.

MOTION FOR RECONSIDERATION:

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.

Chairman Novellino explained that the applicant has requested that the Board reconsider the application that was denied on 7-23-08 by allowing them to introduce new evidence. Chairman Novellino provided a brief overview of the application. He offered that the applicant has made changes to the application to include that all dog activities are to take place inside the building, testimony from a noise expert and additional traffic testimony. Instead of filing a new application, the applicant is asking that we consider placing this application on the October Agenda.

The Decision before the Board this evening is whether or not the applicant should be allowed to come back to the Board to reconsider the application with those changes mentioned this evening. Chairman Novellino offered that he thought it was a fair request with no adverse affect to the Town residents.

Mr. Vella advised a majority vote would be needed for reconsideration. He explained it would allow the applicant to address the concerns of the Board. It is a continuation of the last meeting. The applicant would provide additional information to alleviate the concerns of the Board members that voted against the application. It would allow the applicant to provide a complete record of the application. The Board could ultimately deny the application again.

Attorney Vella explained the alternatives. If the application is denied, it could die here. If denied, the applicant could start a new application. If denied, the applicant could appeal the decision. The Court could remand it back to the Board for the Board to consider the additional information or the Court could overturn the Board's decision on its face.

The Board discussed the alternatives. There was concern over setting a precedent of applicants not liking a decision and requesting us to reconsider our vote. Attorney Vella advised that each case before the Board is decided on its own merits.

Attorney Vella explained the applicant closed their case and the Board made their decision. If the Board reconsiders the new evidence and then it is denied, the denial is based on the total evidence that the applicant provided. He explained that the real question is will the additional testimony clarify the concerns of the Board. Is the Board missing information that the applicant wants to provide to the Board for them to consider? Attorney Vella feels this is more the issue rather than the applicant is substantially changing the application. He feels the applicant wants to provide additional information to alleviate the Board's concerns. He stated that if the point is that the applicant wants to substantially change his application by substantially revising his plans then that is a different story.

There was discussion if this additional information is construed as substantially changing the application.

Chairman Novellino made a Motion to grant the reconsideration. Mr. Morelli offered a Second. Roll Call Vote: Novellino, Morelli, Barthelmes voted yes to the reconsideration.

Curcio, Devine, Bailey and Lambros voted no. The Motion failed. Mr. Vella would have the Resolution ready for the October meeting.

NEW APPLICATION:

Z08-07 36 FLAGS GAME AND GOLF ADVENTURE, INC. – Block 56, Lot 13.01. 4.163 acres located in the HC-1 Zone. Site is the westerly portion of property developed as Dunkin’ Donuts. Applicant seeks to add a miniature golf course and related club house “pro-shop”. Preliminary and Final Major Site Plan, Use and Bulk Variance. Deemed Complete 8-20-08. Date of Action: 12-17-08

Attorney Vella has read the notice of hearing and finds same to be in order to accept jurisdiction over this application.

Attorney Vella read the following exhibits into evidence:

- A-1 Jurisdictional Packet
- A-2 Web Notice posted 09/08/08
- A-3 Application dated 07/10/08
- A-4 Planning Board Resolution granting Final Site Plan Approval memorialized on 05/25/2000.
- A-5 Historic Pesticide Soil Contaminant Report prepared by Crest Engineering dated 12/28/04; last revised 09/5/08
- A-6 Storm water Management Report prepared by Crest Engineering dated 05/01/08; 09/09/2008
- A-7 SWM Operations Manual dated 09/2008
- A-8 EIS prepared by Crest Engineering dated 05/01/08; last revised 09/05/08
- A-9 Traffic Engineering Study prepared by Maser Consulting dated 07/15/08
- A-10 One-half Mile Radius Map prepared by Crest Engineering dated 05/01/08
- A-11 As-Built Site Plan/Survey of Property prepared by Crest Engineering dated 06/20/07

- A-12 Lighting Plan prepared by Crest Engineering dated 05/01/08 last revised 08/01/08.
- A-13 Preliminary & Final Site Plan prepared by Crest Engineering dated 05/01/08; last revised 09/09/2008
- A-14 Mounted One-half Mile Radius Map of Sight Plan
- A-15 Mounted colored rendering of Landscape Plan
- A-16 Proposed Traffic Circulation Exhibit
- A-17 Colored rendering of Miniature Golf Course
- A-18 Mounted four pictures of other Harris sights
- A-19 Harris Miniature Golf Courses Inc. brochure
- A-20 Mounted picture of waterfall
- A-21 Sign Detail
- A-22 Mounted landscape view from Route 537
- A-23 Colored rendering of proposed building
- BOA-1 Township Engineer's Report dated 09/17/08
- BOA-2 Township Planner's Report dated 09/17/08
- BOA-3 Millstone Township Environmental Commission Report dated 08/26/08
- BOA-4 MCPB Site Plan Action Report dated 10/11/00
- BOA-5 MCPB Site Plan Action Report dated 08/11/08
- BOA-6 Report from Code Enforcement dated 09/17/08

Attorney Kenneth Pape representing the applicant. This application is for a use variance to construct a building in between the Dunkin' Donuts and KFC located in the HC zoning district on Highway 537. He explained that in 1999 this space was approved for construction of a 6,000 s.f. retail center. Since the approval, only one retailer has showed any interest.

Mr. Pape offered that this property is close to Great Adventure and would require a unique use to occupy the site. This activity is consistent with the activities that take place at Great Adventure and is less intense.

Attorney Vella swore in Loreli Totton, P.E. of Crest Engineering. She has testified before the Board before and her credentials are accepted.

Entered into Evidence:

A-14 Mounted ½ mile radius Map.

A-15 Mounted Color Rendering of the Landscaping Plan.

A-16 Proposed Traffic Circulation Plan

Referring to Exhibit A-14, Ms. Totten described the property's location as being located on the southwest intersection side of Routes 537 and 195 and on the other side of the northern side of Route 527. The property is located on the same lot as Dunkin' Donuts and KFC. She described the business on the other side to be a paint ball business and restaurants.

The applicant is proposing to construct a 1,856 s.f. club house and pro shop, adding parking spaces along the existing drive from KFC to Dunkin' Donuts, installing a mini golf facility with landscaping, water features and walkways. Ms. Totten stated that the applicant is proposing to eliminate some existing drainage installed when the shopping center was approved. That drainage was to accommodate a large impervious area and is no longer needed. She explained the drainage plan.

The sign would be located at KFC drive and Rt. 537. The site was specifically designed to save the three large healthy holly trees on the property which was also a concern in previous applications.

Ms. Totten explained that they have revised the plans to address the Board Engineer's concerns. She agreed that she can meet the comments of Board Engineer Shafai which at this point are housekeeping items.

Mr. Pape explained the prior approvals that were granted on this property. In 1999 the Planning Board approved a 6,000 s.f. building to be constructed between Dunkin' Donuts and KFC. The 6,000 s.f. center is no longer an approved use on the site due to a zoning change. Presently the only approvals on the site are for the Dunkin' Donuts and KFC.

Mr. Pape explained how the parking lots are interconnected and parking is shared. There is no parking restrictions being imposed.

Engineer Shafai asked the applicant to explain the monitoring wells. Mr. Pape explained when they were placed on the site to monitor the water. Ms. Totten stated that they would be closed appropriately and this would be placed on the plans accordingly.

Engineer Shafai asked about the retaining wall adjacent to the conservation easement. He is concerned if trees are located close to the wall. He is concerned for any potential roots being damaged due to the wall's location. Ms. Totten stated that the tree line is about ten feet away. Mr. Shafai asked that all trees within ten feet of the wall be shown on the map.

Chairman Novellino asked the applicant to address the impervious coverage comments made in Engineer Shafai's report. Engineer Totten explained the procedures to be implemented include additional dry wells, additional structures placed into the KFC and Dunkin' Donuts stormwater management basin. Engineer Shafai feels that the additions comply with the new stormwater management regulations. He further stated that there are only a few minor cleanup items left.

Ms. Totten clarified that all buildings shown on the plan are the only structures to be constructed on the premises. The applicant's planner would address that in more detail, along with any questions concerning the setback lines.

Mr. Pape advised that Mr. Strong responded to the Environmental Commission and is awaiting a report from them in turn.

Ms. Totten advised that the closest resident to the project is on Pine Drive which is approximately 1,000 feet away.

Planner Lori Savron asked about the types of trees that provide buffering. She is concerned about lighting from the facility to the surrounding properties. Ms. Totten advised that trees are evergreens and deciduous trees. She stated that this is beyond the control of the applicant since the trees are not on their property.

Planner Savron asked for the Board to consider additional evergreen planting on the property for screening purposes. Planner Savron asked if there could be a connecting sidewalk that runs along the front of the parking lot extend an additional amount to

connect to KFC. Mr. Pape added that they would provide stripping in the cross walk area.

Mr. Pape addressed the KFC septic system failure years ago. It was a void, a cavern in the ground. It appeared to be the basement of a house that was no longer there. When it was investigated, the system was repaired and functions without any incident. The Dunkin' Donuts system was in place 18 months ago. There is no cooking at the Dunkin' Donuts, only the use of a microwave. The Board of Health dictated this as well.

Ms. Totten explained the fencing proposed on the landscaping plans is black vinyl coated wire to keep the children back. Industrial Jerroth-style fencing was discussed as a possible alternative but no decision was made at this time.

The next witness sworn in is Tony Hunicutt. He provided to the Board his background. He is with Harris Miniature Golf in Wildwood, NJ. They design miniature golf courses in the USA and world-wide. He has been with the company 19-years. He has been involved with 75 projects. He designed the Hole-In-One in Millstone. Harris has built courses in Paramus, Bayonne, Scotch Plains and Atlantic City to mention a few. He has built over 50 projects throughout the state of New Jersey. He is in design project management and supervises the construction of the site. He is involved in the day-to-day operation of the projects he had mentioned. Mr. Hunicutt advised that they design more of a putting course.

Marked into Evidence is Exhibit A-17 Color Rendering of the Golf Course.

They have built over 500 course in the last 15 years, 20-30 projects every year. They operate facilities as well. They design facilities for residential traffic areas as well as for high traffic areas. It is a seasonal use and weather permissible. It is a family oriented and community oriented facility. The landscaping is very aesthetically pleasing. The hours of operation during the peak season of June, July and August are as follows: Monday through Thursday from 10:00 a.m. to 10:00 p.m. Friday through Sunday from 10:00 a.m. to 11:00 p.m. and sometimes midnight. It takes about 45 minutes to play a course. On Sundays, usually most operations open up a little later from 1:00 p.m. to 9:00 p.m. Off peak seasons would be April, May and October.

Mr. Hunicutt offered that it is an evening and weekend- type activity. With reference to the parking provision, Mr. Hunicutt is satisfied with what parking is proposed for the 36-hole course. Mr. Hunicutt offered that an industry standard is one parking space for each hole of golf at peak the period. He offered a positive comment on the relationship

of the Golf course and Dunkin' Donuts and feels these type of adjacent uses enhance one another.

Mr. Hunicutt described the construction portion of the area. Referring to Exhibit A-20 Mounted picture of the waterfall. He explained it is constructed of rebar and a sprayed on gunite material. There are wooden bridges over the streams that are created by the waterfalls. They use a synthetic turf material for the holes. There is course area of 35,895 s.f. The concrete encompass 18,000 s.f. Mr. Hunicutt described the landscaping as the icing on the cake. It is to be pleasing to the eye and easy to maintain. The applicant is proposing that 17,000 s.f. of landscaping is located inside of the 35,895 s.f. area.

Mr. Hunicutt testified that anywhere from 30-40% of their projects are 36-hole courses. He explained what criteria drive the 36-hole course. The Federal guidelines for handicap accessibility require that all miniature golf courses maintain a minimum of 50% accessibility. Mr. Hunicutt advised that they provide 100% accessibility. During the non-peak hours he feels it is a one-employee operation. During peak hours at this facility three employees would be the maximum but most of the time during peak hours, two employees would suffice.

The meeting recessed for a break at 9:15 p.m. returning at 9:26 p.m.

Chairman Novellino set a timeline for the rest of the evening.

Marked into evidence:

A-21 Sign Detail

A-22 Landscape view from Rt. 537

A-23 Color Rendering of the proposed building

Mr. Pape advised that the building would be a cedar-shack style building made of a composite material as illustrated in the Exhibit A-23. This is acceptable to the Planner Lori Savron as being in sync with the Township Architectural Standards Ordinance. Engineer Lorlei Totten described the landscape materials to be used around the sign which will match the areas within the facility. She illustrated the location of the proposed landscaping and the existing landscaping. She described the elevations of the property.

Chairman Novellino asked about the pro-shop. Mr. Hunicutt advised they contain the restrooms, lobby area where the clubs are rented and returned.

Attorney Vella swore in John Jahr , P.E. He is the assistant department manager for traffic engineering services at Maser. He received his BS from Rutgers and has testified in over 50 Boards in the State. He is accepted by the Board.

Mr. Jahr advised that he looked to our ordinances for guidance but found none. He referred to the Institute of Transportation Engineer's Handbook and used the studies regarding golf course parking. The handbook offered that 40 spaces should be used but he feels that 36 spaces would be ample especially if the parking is shared.

Mr. Jahr performed a night count (10:00 p.m.) of Dunkin' Donut generated traffic and provided that information to the Board. He did not perform a study of Dunkin' Donuts during 10:00 a.m. He explained the traffic graph and how he took the counts and during what days of the week. Mr. Jahr advised he did the study in July in Edison on Route 1. He advised that the facility is similar to the size of the Dunkin' Donuts in Millstone. The Board voiced their concerns that the study was not actually done at the Dunkin' Donuts in Millstone as it relates to the traffic generated here. The Board is uncomfortable with this traffic study. The Board wanted to know why Mr. Jahr chose the Edison location over the Millstone location especially since July would have been a peak time for traffic generated by Great Adventure. The Millstone Dunkin' Donuts was just opening up at that time.

The Board directed their concerns to Mr. Jahr and what they wish to see addressed by the next meeting. Mr. Pape summarized the Board's request to include counts to be taken on Friday, Saturday and Sunday from 10:00 a.m. to 10:00 p.m. at 15 minute intervals; the number of cars parked in the Dunkin' Donuts parking lot; a count performed of the number of cars that enter the site and a count of the number of vehicles that travel down the aisle from Dunkin' Donuts to KFC Drive; a count of the number of vehicles that enter and exit KFC Drive. Also, the applicant is to provide information from Dunkin' Donuts as to how many people come to Dunkin' Donuts in the summer.

The lighting plan is to be revisited.

Chairman Novellino opened the application to the public at 10:06 p.m. Seeing no public comment on the application, he closed the public portion at the same time.

The application is carried to October 24, 2008 beginning at 7:30 p.m. without any further noticing required.

Mr. Curcio made the Motion to adjourn and Mr. Barthelmes offered a Second and by unanimous vote, the meeting adjourned at 10:10 p.m.

Respectfully submitted,

Pamela D'Andrea