

**MILLSTONE TOWNSHIP  
BOARD OF ADJUSTMENT  
MEETING MINUTES  
JANUARY 28, 2009**

Meeting called to Order by Mr. Novellino at 7:35 p.m.

Reading of Adequate Notice by Mr. Barthelmes.

Members sworn in by Attorney Greg Vella: Barry Frost, Steve Morelli and Robert Bailey

Salute to the Flag.

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

Mr. Novellino welcomed all.

Election of Officers began with a nomination for Chairman. Mr. Morelli made a Motion to nominate Michael Novellino to serve as Chairman and Mr. Curcio offered a second. Roll Call Vote: Morelli, Curcio, Barthelmes, Lambros, Bailey, Devine and Conoscenti voted yes to the election of Mr. Novellino to serve as Chairman.

Congratulations to Mr. Novellino.

Chairman Novellino made a Motion to nominate Steve Barthelmes to serve as Vice-Chairman. Mr. Lambros offered a second. Roll Call Vote: Novellino, Lambros, Morelli, Devine, Bailey, Curcio and Conoscenti voted yes to the election of Mr. Barthelmes to serve as Vice-Chairman.

Congratulations to Mr.. Barthelmes.

The Motion to appoint Pamela D'Andrea as the Board Secretary was made by Mr. Novellino with a second offered by Mr. Barthelmes. Roll Call vote was taken: Novellino, Barthelmes, Lambros, Curcio, Morelli, Devine and Bailey voted yes to appoint Ms. D'Andrea.

Ms. D'Andrea thanked the Board.

Chairman Novellino explained that the selection of professionals is through the fair and open bidding process. All professionals have applied for positions by replying to a call for bid. The Board is selecting their professionals based upon who they think can best

do the job for the Board and balancing the qualifications that the professionals have submitted.

The Motion to appoint Gregory W. Vella, Esq. of the firm of Collins, Vella & Casello, LLC as Board Attorney was made by Mr. Novellino with a second offered by Mr. Curcio. Roll Call Vote: Novellino, Curcio, Barthelmes, Devine, Bailey, Lambros and Morelli voted yes to appoint Gregory W. Vella, Esq.

Attorney Vella thanked the Board.

The Motion to appoint Leon S. Avakian, Inc. as the Board Engineer with Matt Shafai, P.E. as the principal Engineer was made by Mr. Novellino with a second offered by Mr. Morelli. Roll Call Vote: Novellino, Morelli, Curcio, Barthelmes, Lambros, Bailey and Devine voted yes to appoint Mr. Shafai.

The Board explained why they chose Leon S. Avakian, Inc. and that their bid was competitive in terms of costs to the township. The Avakian proposal stated specifically that Matt Shafai himself would be the person to provide engineering services to the board. The competing firm did not name a specific individual for the board to consider. The Board stated that Mr. Shafai has done an outstanding job for the Board in the past and given his qualifications the Board felt he was an excellent choice. Mr. Shafai is in his fifth year providing his services to the Township.

Mr. Shafai thanked the Board.

The Motion to appoint Richard Coppola of Coppola and Coppola as Board Planner was made by Mr. Novellino and a Second offered by Mr. Curcio. Roll Call Vote: Novellino, Curcio, Barthelmes, Devine, Bailey, Lambros and Morelli voted yes to appoint Richard Coppola, P.P. The Board stated that Mr. Coppola has done an outstanding job for the Board in the past and given his qualifications the Board felt he was an excellent choice.

The Board expressed their satisfaction with their choices for all of their professionals.

The Motion to appoint Angela G. Buonantuono as the Board Court Reporter was made by Mr. Novellino with a second offered by Mr. Curcio. Roll Call Vote: Novellino, Curcio, Barthelmes, Devine, Bailey, Lambros and Morelli voted yes to appoint Ms. Buonantuono.

Ms. Buonantuono thanked the Board.

The Motion to designate The Asbury Park Press and The Messenger Press as the official Board newspapers was made by Mr. Novellino with a second offered by Mr.

Morelli. Roll Call Vote: Novellino, Morelli, Curcio, Barthelmes, Lambros, Devine and Bailey voted yes to designate the official newspapers.

The Motion to adopt a regular monthly meeting schedule for 2009 and the first meeting date of 2010 with the meetings to begin at 7:30 p.m. in the Municipal Building located at 215 Millstone Road, Millstone Township, New Jersey, was made by Mr. Novellino with a second offered by Mr. Morelli. Roll Call Vote: Novellino, Morelli, Curcio, Lambros, Bailey and Devine, voted yes as follows:

January 28, 2009	July 29, 2009
February 25, 2009	August 26, 2009
March 25, 2009	September 23, 2009
April 29, 2009	October 28, 2009
May 27, 2009	November 30, 2009 (Monday)
June 24, 2009	December 10, 2009 (Thursday)
	January 27, 2010

**RESOLUTIONS:**

**Z07-04 CKV REALTY, LLC** – Block 57, Lot 16. 53.39 acres located in the BP Zone Located at 33 Burnt Tavern Road. Application is for a 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. Use Variance Approved and Resolution Memorialized 11-28-07. On 10-22-08, the applicant was granted an Extension of Time within which to apply for the Site Plan portion of the bifurcated application.

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

**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. The matter was dismissed without prejudice on 11-13-08.

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

**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. Undersized lot. Bulk

variances needed. Carried from 8-27-08. Applicant re-noticed for the application. Approval granted 11-13-08.

Mr. Curcio made a Motion to Memorialize and Mr. Morelli offered a Second. Roll call Vote: Curcio, Morelli, Devine, Bailey, Lambros, Barthelmes and Novellino voted yes to Memorialize.

## **ANNUAL REPORT**

The members discussed the Draft Annual report prepared by Board Attorney Greg Vella which outlined the applications that came to the Board in 2008. The Board included a recommendation in the Annual Report to the Township Committee to take advantage of a State statute of a requesting a Letter of Interpretation (LOI) from the NJDEP as part of the checklist requirement. Previously, an application approval was conditioned upon the submission of an LOI and now, it would be that the LOI is needed as part of an application completeness review.

The Board is concerned about minimizing the impact on the individual homeowner that is before the Board for bulk variance relief. Any ordinance that the Township would adopt could amend the development checklist. Attorney Vella discussed two options once Engineer Shafai reviews an application for completeness that could be a triggering mechanism for the requirement of the LOI.

Mr. Vella indicated that previously, the Board could not deny an application because the applicant did not have an LOI. The application could only be conditioned upon approval of the LOI. Mr. Vella explained the different scenarios if an LOI was required by ordinance.

Mr. Shafai advised that the Township Committee has asked both he and Planner Richard Coppola to review this recommendation.

It is the Board of Adjustment's recommendation that they support the Township researching this issue further.

A Motion to adopt the 2008 Annual Report was made by Mr. Barthelmes with a Second offered by Mr. Devine and adopted by unanimous roll call vote.

**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. Heard in part on 9-24-

08 and 10-22-08. Carried to 12-11-08; 1-28-08. Applicant granted an extension of time through 2-2-09. Re-Noticing required.

Attorney Vella advised that he had reviewed the noticing packet and found same to be in order. He read the following additional exhibits into evidence:

- A-29 Report to EC prepared by Crest Engineering dated 10/17/08
- A-29a Jurisdictional Notice
- A-30 Preliminary & Final Site Plan prepared by Crest Engineering dated 5/1/08; last revised 1/12/09
- A-31 Traffic Engineering & Parking Study Report prepared by Maser Consulting dated 12/11/08; last revised 1/21/09
- A-32 Web Notice posted 12/19/08
- A-33 Maser Consultants revised report dated 1/26/09
- A-34 Mounted color revised Site Plan
- A-35 Mounted revised Architectural for Club House
- BOA-8 Traffic Engineering Review prepared by Horner & Canter Associates dated 11/19/08
- BOA-9 Environmental Commission Report dated 12/2/08
- BOA-10 Pinelands Commission letter dated 12/23/08
- BOA-11 Traffic Engineering Review prepared by Horner & Canter Associates dated 1/23/09
- BOA-12 Fire Prevention Bureau Report dated 1/26/09
- BOA-13 Traffic Engineering Review prepared by Horner & Canter Associates dated 1/27/09

Attorney Kenneth Pape representing the applicant. Mr. Pape gave a brief background of the project. He advised that they applicant had secured a letter from the Pineland Commission advising that they have no jurisdiction. This has been marked into evidence. They have met with Planner Richard Coppola and made revisions to the plans per his recommendations.

Peter Strong of Crest Engineering is re-sworn in. He advised that the revisions made to the plan are from comments provided by both Mr. Coppola and Mr. Canter.

A-34 mounted colored revised site plan marked into evidence.

Mr. Pape stated that Mr. Coppola had asked that the playing area in the northeast corner be pulled further back, drip lines of mature trees in northwest corner be pulled away and two additional parking spaces be added. Traffic calming concerns of Mr. Canters were addressed by adding a K-turn element on KFC Drive.

Mr. Strong previously had a retaining wall by a conservation easement and drip line of trees. He explained the changes that were made pursuant to the comments from Board Planner Richard Coppola and Traffic Expert Jerry Canter to include: Turn around for traffic on KFC Drive which is a dead end. The applicant made a formalized turn around for traffic needs and provided four additional parking spaces along the existing driveway that serves the Dunkin' Donuts facility. They moved the building back and provided parking in front of the club house. They revised the footprint of the clubhouse, moved the handicapped spaces so they are immediately in front of the building and provided a speed table (a raised area of the driveway). They now have 40 parking spaces away from the KFC Drive intersection.

Mr. Strong advised that the impervious differences moved things around to make different shapes so the coverage does not change. The area overall is the same. The Ordinance allows 50% and they are at 31%.

Matt Shafai brought to the Board's attention that there is a need for a variance request for Dunkin' Donuts due to an Ordinance that is in place that would allow a fast food facility to have a mix of 25% and Dunkin' Donuts has 13%. Mr. Pape explained the history of the Dunkin' Donuts application.

Mr. Strong explained the lighting of the project. The wattage and the amount of lighting has been revised to reduce the number and size and intensity of the lights and is now about half of what was originally proposed as per Mr. Coppola's request.

The building would be green with white trim. The building was moved back. It has the same design and features as before but it is now more rectangular in shape rather than square.

A-35 mounted revised architectural is marked into evidence.

Mr. Strong met with the Board's traffic engineers a few days ago. The doors are actually recessed. A fence was discussed for safety.

Maurice Rached of Maser Engineering presented his credentials, he offered that he has a traffic engineering degree in civil engineering and has been an engineer in New Jersey since 1993, he has a national license and has worked in the private sector for the past 6 years and he lectures at Rutgers and many other universities. He has published Papes regarding highway safety signs, etc. The Board accepted his credentials.

Deanna Drumm is the Board's traffic expert.

Mr. Rached went over the improvements. Additional parking spaces have been added by pushing the club house building back and adding parking spaces. Mr. Canter recommended that the applicant provide a feature to allow vehicles who proceed on KFC drive to turn around. Traffic calming has been added per Mr. Canter's recommendation. The applicant added a cross walk that is raised three inches to allow drivers to slow down speed to 10 to 15 mph. The operation works flawlessly throughout the site. The internal intersection of KFC Drive and the parking lot operates at a service level A.

Mr. Rached went over the improvements that were made to the project as per Mr. Canter's recommendations. He found only on Saturday a cue length of about 6 cars. The capacity is to hold about 4 cars. He explained how they reached this number.

Mr. Rached used a computer model and forced all three facilities to peak and he used the numbers of those peaks so there could be a cue of 6.

Mr. Rached is comfortable that this project is not creating an unsafe condition at the site.

Mr. Rached feels retail on the site would have generated 41 more trips in the p.m. and a.m.peak and 67 additional trips during the weekend hour. Mr. Canter accepted these numbers.

Mr. Pape discussed with the Board that the land in between Dunkin' Donuts and KFC was left unimproved until the right applicant was found. That applicant is before the Board this evening.

Mr. Frost has a concern about his viewing cars stacking with a heavy demand of cars along RT. 537 going to Great Adventure. Mr. Rached advised that this facility is not open until 10:00 a.m. The Board has a concern about special events during evening hours and weekends that take place at Great Adventure. Mr. Rached has not seen traffic as heavy during the evening hours as it is in the am.

Engineer Shafai offered a bit of information for the Board's that there was a proposal in the 2000 Master Plan for KFC to connect with the jug handle. He offered that this was

the County's plan. Somehow it disappeared in the most recent Master Plan but there are discussions with the County to have that put back in the Master Plan. He advised that the County has been asking the Township to put it back in our Master Plan. The County wants to see help with the problem on Rt. 537.

Professional Planner, Paul Grygiel, presented his credentials. He has a Masters in Regional planning from the Univ. of North Carolina Chapel Hill and had earned his BS from Rutgers. He has testified before 100 boards in the State of NJ.

He explained the leg work he did to evaluate this use variance. He stated that the HC1 zone is a rather unique district which promotes economic development in this area. He stated that the site is able to accommodate development. Roadways and driveways are in place. There are a number of recreational uses nearby and he named a few, such as Wawa, Great Adventure, and a paint ball facility. Mr. Grygiel stated that the applicant would like to add two 18-hole mini golf courses. He stated that this would add a complimentary use to an already developed property. Other more intense uses could be built on this property. He explained the variances: the lot coverage would be 31.5% where 25% is allowed and a use variance is needed since golf courses are not a permitted use.

Mr. Grygiel went over the positive criteria of the project. He stated that the site is particularly suited for outdoor recreational use and went over his information. He stated that the 537 corridor is built up with commercial fast food facilities and other recreational uses. He stated that recreational uses such as bowling allies, theaters, and roller rinks are allowed. He stated that complimentary uses are nearby such as KFC, Wawa and Dunkin' Donuts.

Mr. Grygiel stated that there are uses in the area that do not peak at the same time. Unified access is being proposed, traffic safety, parking, etc. He feels this project is an appropriate fit and is a relatively low impact use. He feels that it would attract local residents whereas Great Adventure attracts persons from further away.

Mr. Grygiel offered that there is no substantial negative detriment to public good since the site and area is already developed. The applicant is offering buffering to the properties and is not directly next to other residential uses. He stated that this is a seasonal business and is not a wintertime use. Leaves will be on the trees to act as a buffer. This project is similar to what is permitted in the zone. This project could be permitted if in an enclosed building. This would call for a larger structure.

Engineer Shafai clarified that 6-acres is required for a restaurant and 3-acres is required for other uses. The applicant's Planner does not feel that this Dunkin' Donuts is a full service restaurant, it is a small building and he does not feel the 9-acres is necessary. This is one of the negatives.

Matt Shafai asked about the foot candles as negative criteria. The Planner offered that this project is set back from the road and does not feel the lighting has an impact.

Mr. Pape advised that Dunkin' Donuts is forbidden from the Department of Health to prepare or cook food except for the use of a microwave.

Attorney Greg Vella stated that the applicant has a lot that has a use on it that requires 6-acres. They are now putting another use on the property. The question is are these uses an intensification. The lot is already undersized to begin with for the use that is existing.

Attorney Vella swore in its traffic expert, Deanna Drumm of Horner and Canter Associates.

Ms. Drumm advised that Mr. Canter did most of the bulk review. They met with the applicant and his professionals and did go over the issues. She advised that they basically looked at the testimony and she would tend to agree with him that there would be times when cuing would occur on KFC Drive but she advised that 95% percent of the the time that there would not be backup. If there is backup, Ms.Drumm felt that it would be minimal and explains why that would dissipate. She did not feel that it was an overly large issue. There are different peak hours with the Dunkin Donuts and KFC.

Engineer Drumm feels the backup will be occurring during fair weather times. She offered that the Board should understand backup is an unfortunate condition and it is due to Great Adventure. The County has improved this road and although it is a great improvement, there would still be traffic backup occurring.

She stated that there are courtesy gaps for people to let you out. She feels it is probably more localized people who are familiar with the traffic in the area. She stated that engineers don't design for worst cases.

From a use variance standpoint, the traffic comparison has seasonal peaks. You may have the benefit of less invasive trucks using the site. Looking at long term parking may be a benefit and do not have that turnover of parking lot. She feels the parking lot it is designed appropriately and they asked for the traffic calming device.

Mr. Novellino questioned why the traffic study compared the existing Dunkin Donuts plus the proposed golf course use against the existing Dunkin Donuts us plus a commercial shopping center. The commercial shopping center is not a by-right use since the Dunkin Donuts required a use variance and is on an undersized lot. The traffic study compared the wrong things.

Barry Frost voice his concern that adding to an intense use is to be considered a positive. He explained that he traverses the road often and from experience, he does not feel that the road has improved in the past years

Attorney Vella advised that for a permitted use, concerning traffic, there must be safe ingress and egress and safe circulation around the site. For a permitted use, you cannot censure someone because there is traffic on the roadway coming onto the site. When dealing with a use variance, you are dealing with a use that is not permitted perhaps because of the traffic it generates due to the roadway there cannot handle that type of traffic. On the positive issue, the way the MLUL is written the term "benefit" deals with not an individual benefit but rather an overall land use benefit.

Mr. Curcio asked for clarification as to the receipts received during peak times from KFC and Dunkin' Donuts. There are 100 extra vehicles leaving the property that did not purchase anything. Mr. Rached advised that there were motorcycles that congregated there. There was a Western Monmouth Habitat for Humanities bike ride fund raiser there that day that the counts were taken. Mr. Rached explained how he prepared his report.

KFC has parking for buses on its site.

At 10:05 p.m. Chairman Novellino opened the application to the public. Seeing no public comment, he closes the public portion at 10:05 p.m.

The Board asked the applicant about the sign detail as per Planner Rich Coppola's report.

The applicant offered to the Board that their traffic expert had prepared an analysis that was found to be accurate but it was apparently the wrong analysis. The applicant respectfully requested that they be given the opportunity to do the analysis again and would like the opportunity to present that to the Board. Maurice Rached would prepare that report.

The Board declined that request, since discussion among the board members indicated a new traffic analysis would not impact their decision.

Mr. Pape would proceed but found it objectionable and the applicant has a right to make a full record.

Attorney Vella advised that the objection is noted and he feels the record is complete. The Board has sufficient evidence in order to make a decision on this application.

Mr. Pape provided a summarization of the application. He reported that the landscaping issues have been addressed and went to the Shade Tree Commission. Shade Tree

found it to be exemplary site. He offered that recreation is one of the uses considered in the HC-1 zone. Mr. Pape stated that it is not an intense use and is a use contemplated in the master plan as a recreational use.

The Board discussed the application. Chairman Novellino had concerns about the negative criteria and the intensity of what is going on the property.

Mr. Barthelmes asked for clarification as to the reasoning behind the 6-acres required for a fast food restaurant.

Mr. Lambros had concerns with the traffic issue and with placing something on a lot that is 33% undersized. He felt that it was an overuse of the land. He felt that the applicant's planner did not meet the criteria that the use is beneficial and the site is particularly suitable. He felt that his testimony is too weak. Lighting plan was presented adequately enough and continues to be an issue.

Mr. Bailey voiced his concerns that the project would be intensifying the area.

Mr. Curcio made a Motion to Deny the application and Mr. Bailey offered a Second. Roll Call Vote: Curcio, Bailey, Lambros, Morelli, Barthelmes and Novellino voted yes and Mr. Devine voted no to the denial. The Motion to Deny carried 6 to 1.

At 10: 52 p.m., Mr. Curcio made a Motion to Adjourn and Mr. Bailey offered a second and by unanimous vote, the meeting adjourned.

Respectfully submitted,

Pamela D'Andrea