

**MILLSTONE TOWNSHIP  
BOARD OF ADJUSTMENT  
MEETING MINUTES  
NOVEMBER 30, 2009**

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

Mr. Barthelmes read the adequate notice.

Salute to the Flag.

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

**MINUTES:** The Board considered the approval of the October 28, 2009 meeting minutes. Mr. Barthelmes made a Motion to approve and Mr. Morelli offered a Second. Roll Call Vote: Barthelmes, Morelli, Devine, Bailey, Lambros, Frost and Novellino approved the adoption of the minutes.

**RESOLUTIONS:**

**Z09-04 SEASONAL WORLD** – Block 57.01, Lot 21.01. 2.91 Acres located in the HC-1 Zone known as 532 Monmouth Road. Applicant seeks use variance relief to allow the display of three above-ground pools. Use variance and amended major site plan approval sought. Application deemed complete 8-11-09. Board granted use variance, amended major site plan and relief from zoning board condition.

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

**Z09-06 SEASONAL WORLD** – Block 57.01, Lot 21.01. 2.91 Acres located in the HC-1 Zone know as 532 Monmouth Road. Applicant seeks approval to allow an outdoor display area for seasonal decorations and merchandise. Applicant seeks approval of a designated area for temporary storage trailers brought to the site to store the above items. Applicant seeks approval to have a temporary sign for seasonal/holiday advertising in addition to the presently approved signage. Use variance and Amended Major Site Plan approval granted.

The clarification of signage was discussed and confirmed.

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

**NEW BUSINESS:** The Board and its professionals discussed the preparation of the annual report that the Board authors sending its recommendations to the Township Committee.

The Board discussed the need for applicants to provide a Letter of Interpretation (LOI) from the Department of Environmental Protection (DEP) as a checklist item. The Board discussed scenarios that may trigger the need for an LOI. Mr. Coppola advised that there is a great expense involved and suggested some applications that may benefit from the LOI. He offered that an LOI may not be necessary for small bulk variances and the like.

Attorney Vella offered that the Town may want to tier the requirement to be applicable for applications such as a site plans and subdivisions that have many lots but deem them not applicable to a simple bulk variance. An applicant could perhaps seek a waiver if circumstances dictate.

The Board discussed that the LOI requirement can always be made a condition of approval if during the application you feel it is necessary. The negative aspect of granting waivers was discussed.

Attorney Vella explained the new law enacted last year allowing for a board to require the provision of an LOI prior to the Board approving an application. The Board discussed the benefits of having an LOI. There was further discussion of an applicant providing notification if they are remediating property, etc.

A second item discussed was the importance of having taxes paid on an application that is before the Board. The Board took a look at the present Ordinance.

The need for a Landscape Architect was discussed. Mr. Coppola outlined his view as to how the use of a landscape architect would benefit the Township. He explained how a landscape architect was used in drafting the Landscape Ordinance that is in place in the Township. Mr. Coppola discussed the types of applications that would trigger the need for a landscape architect. That professional would work in cooperation with the Shade Tree Commission in reviewing certain applications. He offered that it is not necessary to use the landscape architect for each application. Some applications do require something beyond the expertise of Mr. Shafai and Mr. Coppola.

Mr. Coppola discussed with the Board the coordination between him and Mr. Shafai in reviewing and assessing an application for a potential need for the services of a landscape architect.

Chairman Novellino emphasized the importance of the Planning Board, the Board of Adjustment and Shade Tree being in sync with the landscape architect.

Mr. Coppola introduced Daniel Dobromilsky, Certified Landscape Architect (CLA) whom the Township is utilizing at this time. Mr. Dobromilsky provided the Board with his resume and explained how he works in coordination with the Shade Tree to review plans and generate a report.

**NEW APPLICATIONS:**

**Z08-05 FALK BUILDING, LLC.** – Block 60.02, Lot 1. Property located at 15 Carrs Tavern Road consisting of 3.666 acres located in the R-80 rural residential zone. Applicant seeks minor subdivision to create two lots; one for existing professional building and one for single family dwelling. Use variance needed for existing non-conforming use for proposed Lot 1.02. Bulk variances required.

Messrs. Frost, Devine and Novellino have a conflict and have stepped down from the dais for the application. Vice-Chairman Barthelmes takes the Chair.

Attorney Vella advised that he has read the jurisdictional packet and finds same in order to take jurisdiction over this application. Attorney Vella read the following exhibits into evidence:

- A-1            Jurisdictional Packet
- A-2            Web Notice posted 10/22/09
- A-3            Application dated 10/21/09
- A-4            Soils Testing Results prepared by D. Geoffrey Brown, PE & LS of Princeton Junction Engineering dated 11/2/07
- A-5            Minor Subdivision/Variance Plans prepared by D. Geoffrey Brown, PE & LS of Princeton Junction Engineering dated 11/2/07; last revised 9/9/09
- A-6            Mounted colored rendering of Site Plan
- A-7            Photographs (2) of existing building

- A-8            Photographs (2) of vacant proposed residential lot
  
- BOA-1        Township Engineer's Report dated 10/12/09
  
- BOA-2        Township Planner's Report dated 11/13/09
  
- BOA-3        Aerial of Subject Property

Attorney Donald Driggers representing the applicant. He explained that the application is for a use variance. The property was re-zoned from the Neighborhood Commercial (NC) zone where the existing office building was constructed to the R-80 Rural Residential zone. He explained that the applicant seeks to subdivide the property, creating two lots. The R-80 zone allows a single family home but the commercial use is there also. This subdivision may intensify the use. The lot they are creating is a permitted use.

Marked into evidence is Exhibit A-6 mounted color rendering of the site plan.

Dr. Jerry Falk, the applicant, is sworn in. He advised that his dental practice occupies the upstairs of the building with eight employees and the downstairs is occupied by an attorney and his four employees. These two businesses are serviced by 35 parking spaces. Dr. Falk has occupied the building for nineteen (19) years. He advised that he was looking for the right tenant to occupy the downstairs and ten (10) years ago he found Attorney Dan Shaheen has been the only tenant in the building.

Dr. Falk advised that the property to be subdivided off has no real purpose at this time. He does not have any plans at this time it will be a single family lot.

Concerning garbage disposal, Dr. Falk advised that he has no garbage on the street. Both he and his tenant dispose of their own garbage. There is no solid waste on the site. Hazardous materials are picked up by special services.

Dr. Falk prefers not to stripe the parking lot because he feels stripping adds more of a commercial element rather than a residential one. He feels that presently, his building has more of a residential feel. He advised that he has never run out of parking space.

Dr. Falk told the Board that he was not aware that his zone had changed from NC to R-80. Board Planner Richard Coppola concluded from researching and looking at the area that the change did not include Dr. Falk's property so as not to create the intersection as a commercial intersection.

Marked into evidence is Exhibit A-7 two photographs of the existing commercial building.

Attorney Vella swore in applicant's engineer, D. Geoffrey Brown. He presented his credentials and stated that he is licensed in the State of New Jersey and he has appeared before many boards over the past 32 years. He is accepted as an expert.

Mr. Brown offered an overview of the property and the plan. The property is located on the southeast corner of Carrs Tavern and Millstone Roads. The entire property is now located in the R-80 zone. The building is pre-existing and non-conforming. The proposal is to subdivide the property for 79,000 plus square feet for the commercial lot and he explains the variances needed.

The new residential lot has insufficient frontage width and both lots have an unrestricted building area. Soil testing has been performed and found the area to be an acceptable area for the well and septic. This is still subject to MCBOH approval.

Mr. Brown offered that the plan shown is the most logical way to subdivide. He offered that the proposed 80,000 s.f. lot is consistent with other surrounding lots of 80,000 s.f.

Marked into evidence is Exhibit BOA- 3 aerial of subject property. The applicant dedicated a right of way to the County. Mr. Coppola clarified that all of the parking of the commercial building is located to the rear of the property and is not seen from the roadway.

Mr. Coppola advised that four (4) variances are needed. He advised that if the applicant had not dedicated the piece to the County, he would not need one of the variances for lot size.

Board Engineer Matt Shafai had asked for one more stripped, van accessible, handicapped parking space is added for which applicant had agreed to the request.

Attorney Vella swore in Lloyd Jacobs, PP. He provided his credentials including that he was the Director of Hamilton Township over the engineering and planning department for over 30 years. He is a traffic engineer. He is accepted as an expert.

Mr. Jacobs went over the positive criteria. The existing use is a professional office for a dentist and attorney. There is no proposal for the physical expansion of that use. They are looking at a use variance because the lot size is changing. This was a conforming use when it was in the NC zone. When it changed to R-80, it became a pre-existing non-conforming use.

Mr. Jacobs has reviewed the application and the area. A residential area surrounds the property. The proposed lot 1.03 is fully conforming with respect to area, except for a few slight deviations. No additional property was available that could be purchased to

achieve the 200 foot frontage needed. He stated that the special reasons are that the use is particularly well suited for this use to continue.

Mr. Jacobs stated that the building was constructed when the zone was Neighborhood Commercial. He went over the logistics of the property stating that it was very well laid out, parking is to the rear and well buffered from the travel way. He offered that the proposal provides for more efficient use of this property. The lot to be created will be used for single-family and is consistent with the zone with good buffers.

Mr. Jacobs feels that the subdivision would not have a negative impact in the neighborhood. He offered it as a good clean ratable with low trip generation. The building envelope of both lots is in full compliance.

Marked into evidence is Exhibit A-8 photo taken vacant residential lot.

At 9:10 p.m., Vice-Chairman Barthelmes opened the application to the public.

Mr. Rene Peerboom of 2 Patterson Lane resides directly behind the property. His concern was that the buffering of the white pines would remain to assure privacy and screening between the properties.

Mr. Coppola replied that this would be a reasonable condition of approval should the Board consider the application favorably. Mr. Coppola mentioned that the plantings are an existing condition which prohibits the maintaining of the landscaping between the commercial and residential property to the rear.

Dr. Falk will keep the buffering. Dr. Falk asked the Board to consider his request for a waiver from stripping the parking spaces, except for the handicapped spaces. Mr. Coppola asked that his grass areas growing through the parking lot be cleaned up and maintained. Dr. Falk agreed to that.

Pat Butch of Prodelin Way had a question about if the applicant wishes to do anything on the commercial property would he have to come back to the Board. Since this is a pre-existing non-conforming use, the applicant would have to come back to the Board.

Mrs. Butch asked how the drainage works. Mr. Brown explained that it splits in the middle between the properties and half is to the back and half is to front. He explained how the drainage works.

Seeing no further public comment, Vice-Chairman Barthelmes closed the public comment portion at 9:20 p.m.

Attorney Driggers provided his summation.

The Board members offered comments including that what is there is consistent with the existing neighborhood, the subdivision would not make any substantial difference or substantial change in the neighborhood. The members agreed that there should be no stripping of the parking lot except for the handicapped spaces. Concerning lighting, Dr Falk advised that the lights are out early and on a timer.

Should the Board vote in favor of the application, Attorney Vella provided the conditions of approval to include but not limited to:

Subject to approval from MCBOH, preservation of pine trees between commercial and resident property, subject to the Board Engineer and Planner's approval, additional new handicap parking space, van accessible and stripped (total of two spaces), site triangle easements, the ornamental tree in the easement should be trimmed for sight distance, soil sampling condition of approval of Engineer, applicant to install evergreen trees plantings species to be reviewed by the Shade Tree, applicant to provide a sketch of landscaping to be reviewed by the Shade Tree with an evergreen buffer 6-8 feet, 15 feet apart, repair seams in the parking lot, etc.

Attorney Vella stated that for the use variance application, the applicant must have five Positive votes in order to approve.

Mr. Lambros made a Motion to approve as conditioned and Mr. Bailey offered a Second. Roll Call Vote: Lambros, Bailey, Curcio, Morelli, Conoscenti and Barthelmes vote yes to approve. The Resolution would be memorialized at the January 27, 2010 meeting since there is no December meeting due to no new or pending business on the agenda. The applicant granted an extension of time through January 31, 2010 to memorialize the Resolution.

Seeing no further business, Vice-Chairman asked for a motion to adjourn. Mr. Bailey made a Motion and Mr. Morelli offered a second and by unanimous vote, the meeting was adjourned at 9:30 p.m.

Respectfully submitted,

Pamela D'Andrea