

**MILLSTONE TOWNSHIP
BOARD OF ADJUSTMENT
MEETING MINUTES
AUGUST 28, 2013**

Meeting called to Order by Mr. Novellino at 7:31 p.m.

Reading of Adequate Notice by Vice-Chairman Barthelmes.

Salute to the Flag and observance of a moment of silence for the troops.

Roll Call: Present: Barthelmes, Morelli, Novellino, Bailey, Conoscenti, Lambros and Ferro.
Absent: Mostyn and Frost.

MEETING MINUTES:

The Board Members having reviewed the July 24, 2013 Meeting Minutes, Mr. Lambros made the Motion to adopt the Minutes and Mr. Bailey offered a Second: Roll Call Vote: Lambros, Bailey, Morelli and Novellino voted yes to approve.

NEW APPLICATION:

Z13-08 TAYLOR, CLAIRE –Block 60.02, Lot 21.17. Located at 4 Hooper Court consisting of 2.5314 acres in the R-80 Zone. Applicant is seeking “C” Variance relief for Ordinance Section 4-10 “Home Occupation” to operate a home business of providing pony rides. Deemed complete: 7-25-13. Date of Action: 11-22-13. Noticing is required.

Board Attorney Vella has reviewed the noticing packet and finds same in order to accept jurisdiction over this application.

Board Attorney Vella entered the following exhibits into evidence:

- A-1 Jurisdictional Packet
- A-2 Application dated 7-25-13
- A-3 Web Notice posted
- A-4 Survey of Property prepared by Teunisen Surveying & Planning Company, Inc. dated 7-31-09
- A-5 Aerial Map prepared by Google Maps dated 7/23/2013
- BOA-1 Letter of denial from the Acting Zoning Officer dated 6-28-13

Attorney Vella swore in applicant Clare Taylor

Ms. Taylor apprised the Board that she has been operating a pony business for the past two years. She takes a pony to private homes for parties, to churches and the like.

Since then, she had started a pony club where children come to her home after school and she teaches them how to handle horses, groom them, keep them healthy, how to ride and bond with the horses, care for the tack, etc. The pony club is one of the courses offered through the community education program and there is a fee involved with this activity. She has two ponies which are used for this program.

Ms. Taylor used the Community Education Department to distribute flyers for this activity which is what brought it to the attention of Code Enforcement. Ms. Taylor was then apprised by Code Enforcement that she was not permitted to have this activity at her residence and that is why she is before the Board this evening. She was unaware that this was not permitted.

Marked into evidence are photos of activities Exhibits A-6 and A-7.

Ms. Taylor explained that there are Five (5) sessions. Each session takes one hour held on Thursday and Friday after school. She also offers a session that runs five days during the summer months from Monday through Friday 10:00 a.m. until 11:00 p.m. Ms. Taylor advised that parents mostly drop off their children during the summer sessions.

Ms. Taylor stated that she is registered with county, state and the IRS. When she went to the Township to see if she was required to register with the Town, she was advised that she did not need to register with the Township. Ms. Taylor advised that she is not a certified teacher.

Ms. Taylor advised that the closest resident to her pony area is the property directly behind hers. There is a fence and that neighbor has horses also. Her ponies are fenced in.

Summer pony club is five days for several weeks with a break in between. Fall and spring Pony club is two days a week for five weeks. No classes are offered in the winter.

Ms. Taylor has been associated with school through Community Education for the past two years. Parents sign their children up and send in a check through the Community Education program.

She advised that during the summer, parents are looking for something for the children after summer recreation ends and before school begins. During that one week period, Ms. Taylor has her club Monday – Friday from 9:00 a.m. until 2:00 p.m. Children are outside and supervised the entire time.

Board Planner Richard Coppola advised that day care is a permitted home occupation and exempted by the municipal land use law. Mr. Coppola has based upon the testimony of Ms. Taylor and the fact that this activity is tied to the Board of Education and is instructional, are key elements for the Board to consider.

Mr. Coppola asked Ms. Taylor if she had any non-family member paid employees assisting in her business. She advised she had no paid employee just her family members assist. If it rains, activities are held in the barn. The bathroom is in the home.

Mr. Coppola explained this application is to seek relief from compliance with the requirements of the Ordinance for Home Occupation. One of the requirements is that all activities be held in the home. Ms. Talyor cannot conduct all of the home occupation activities associated with this business inside the home.

The board discussed whether this application should be a "D" variance or a "C" variance. Mr. Coppola indicated that Home Occupation is a permitted use and that if the board considers this a home occupation, then the only issue is meeting the bulk requirements. He explained the difference between this and a conditional use where all of the conditions for the use must be met. Ms. Taylor meets all of the other requirements of home occupation except for the outdoor activity. Thus, she is before the Board for a "C" Variance for relief from the requirement that all activities associated with the home occupation occur indoors.

Ms. Taylor does not have any signage on her property for the pony business.

Ms. Taylor explained how the pony club is run. She personally supervises the activities and the children are never left alone. The children and ponies are in a fenced in area. The students' ages range from 4 years up to 14 years.

She holds the club at her property and not at the school because she has a barn and all of the equipment necessary to teach grooming, tack care and the like is at her premises, including the ponies. The school may not want the horses on their property and it would be impossible to demonstrate some of the techniques used to care for the ponies without the equipment she has in the barn.

Days and hours of operation were discussed. From a traffic point of view, children are dropped off and parents leave and then come back to pick up the children. No parking occurs on the street because the applicant has a long driveway.

Mr. Coppola placed his comments concerning positive and negative criteria on the record. He advised that the Board does have the legal authority to permit the activity because it is a C1 variance, which is a hardship variance, and because it promotes the purposes of the Land Use Law. The hardship is that it is impossible for the applicant to comply with the ordinance which states all activity for a home occupation must be outside. In this case the activities involve animal livestock and must be performed outside. He explained that it is a hardship

given this particular use. He further explained that this provides a unique educational opportunity to township residents and could be considered a benefit to the community. .

Ms. Taylor testified that this use does not impact her neighbors since their properties are buffered by vegetation and fencing. The fencing is set back ten feet from property lines. Notices were provided to the neighbors and no one has appeared before the Board this evening to comment on the application.

Mr. Coppola advised that the Township Zone Plan is favorable to agricultural related uses. Horses are in the equation and he felt that this is a key consideration.

Board Attorney Vella commented on Mr. Coppola's testimony advising the Board can consider this a C variance and he explained from a legal standpoint why he agrees with Mr. Coppola. The Board Engineer is the Acting Zoning Officer and he also agreed that it is a C Variance.

At 8:45 Chairman Novellino opened the application to the public. Seeing no public comment, he closed the application to the public at 8:45 p.m.

Board discussed the application. Chairman Novellino offered that he considered the application to be a C Variance. It is educational instruction-type activity with Ms. Taylor acting as the teacher/instructor in this home occupation. He also viewed the summer program as more of a daycare since the group is also occupied in arts and crafts activities. He advised the Board should place restrictions on what they approve to avoid any impacts to current and future residents. He feels the benefit is the educational activity which would be valuable to township residents as there are many horses in town.

The board discussed and agreed upon a set of limitations. Some of the potential problems of enforcement were discussed. The board and applicant agreed that the applicant must email a list of children (initials of the child only) to the code enforcement officer before the start of each class. If there are any complaints the code enforcement officer will refer to this list during investigation to determine if any restrictions were violated.

Mr. Barthelmes feels that if anyone had a concern, they would be before the Board this evening as the neighbors and public have been in the past when they had concerns about other applications.

Mr. Bailey voiced his concern about the traffic and safety by dropping off and picking up the children.

Attorney Vella noted the limitations that would be associated with an approval:

If there is a change of ownership in property or business, the new owner must come to the Board of Adjustment if not continuing with the Community Education Program.

School year after school classes – September to June; Fall and Spring; 2/days per week; one-hour/day. The classes may occur a maximum of five weeks in Fall and five weeks in Spring. The limit for the after school classes is 8 students and two ponies

Mr. Lambros noted that these conditions would preserve the integrity of subdivision and help the applicant to have her business by striking a balance.

Summer board approved options available for applicant:

1. One week class 9:00 a.m. to 2:00 p.m. maximum 5 students only; and
Up to three additional full week one hour classes – 8 students maximum; Or
2. Four full week one hour classes 8 students maximum.

Mr. Ferro made a Motion to Deny the application and Mr. Bailey offered a Second: Roll Call Vote: Ferro and Bailey voted yes to the denial. Morelli, Lambros, Conoscenti, Barthelmes and Novellino voted no to the denial. The Motion to Deny has Failed.

A Motion to approve the application as conditioned was made by Mr. Morelli and Mr. Barthelmes offered a Second. Roll Call Vote: Morelli, Barthelmes, Lambros, Conoscenti and Novellino voted yes to approve. Messrs. Ferro and Bailey voted no. The application was approved by majority vote.

NEW BUSINESS: Case law provided by the Township Planning Board Attorney, Michael B. Steib, addresses conflicts of interest. Attorney Vella discusses the case regarding conflicts of interest. He advised, if you think you have a conflict then you have a conflict.

Seeing no other business, Chairman Novellino asked for a Motion and a Second to adjourn the meeting. Mr. Ferro made a Motion to Adjourn and Mr. Conoscenti offered a Second and by unanimous vote, the meeting adjourned at 10:05 p.m.

Respectfully Submitted,

Pamela D'Andrea