

**MILLSTONE TOWNSHIP
BOARD OF ADJUSTMENT
MEETING MINUTES
JUNE 28, 2017**

Meeting called to Order by Chairman 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, Mostyn, Morelli, Lambros, Ferrara, Ferro, Frost,
and Novellino
Absent - Conoscenti

APPROVAL OF MEETING MINUTES: May 24, 2017

The Board having reviewed the Meeting Minutes, Chairman Novellino asked for a Motion and a Second. Mr. Ferro made a Motion to approve the Minutes and Mr. Ferrara offered a Second. Roll Call Vote: Ferro, Ferrara, Morelli, Mostyn, Frost, Barthelmes and Novellino voted yes to approve.

APPROVAL OF EXECUTION MEETING MINUTES: May 24, 2017

Attorney Vella advised that the Executive Minutes are not public record until the time that the pending litigation discussed is resolved.

The Board having reviewed the Executive Meeting Minutes, Chairman Novellino asked for a Motion and a Second. Mr. Barthelmes made a Motion to approve the Executive Minutes and Mr. Morelli offered a Second. Roll Call Vote: Barthelmes, Morelli, Ferro, Ferrara, Mostyn, Frost and Novellino voted yes to approve.

RESOLUTION:

Z17-03 CENTRAL JERSEY STORAGE, LLC. - Block 56, Lots 5, 6, 7 & 8.01 Located on Route 537 consisting of 22.73 acres in the HC-1 (Highway Commercial 1) Zoning District. Applicant sought and received approval for Use Variance, Bulk Variance, and Preliminary Major Site Plan approval to construct six (6) separate buildings for public storage consisting of a total of 72,844 s.f.

The Board having reviewed the Resolution, Mr. Barthelmes made a Motion to memorialize the Resolution and Mr. Frost offered a Second. Roll Call Vote: Barthelmes, Frost, Mostyn, Ferrara and Novellino voted yes to memorialize the Resolution.

NEW APPLICATION:

Z-17-06A NEW YORK SMSA LIMITED PARTNERSHIP d/b/a VERIZON WIRELESS

Block 17, Lot 4 located at 663 Highway 33 consisting of 2.428 acres in the Highway Commercial (HC) Zoning District. Applicant seeks Appeal from Decision of the Zoning Officer.

Attorney Greg Vella advised that the applicant is appealing the determination of the Zoning Officer and in the alternate, they will request bulk variance approval for their project. Attorney Vella explained that the applicant did notice for the meeting this evening for the bulk variance application, which has not been deemed complete to be placed on the Board Agenda yet. Attorney Vella announced that if anyone from the public is here this evening for the application, the applicant would notice for the July meeting.

NEW APPLICATION:

Z17-05 MERKEL, DANIEL - Block 59, Lots 1 & 2. Located at 4 and 8 Burnt Tavern Road consisting of 131,700 s.f. in the BP Zoning District. Applicant seeks Use Variance Approval to merge lots 1 and 2 to construct an attached 2-story addition consisting of a garage with game room on the second floor. Noticing Required. Deemed Complete.4-26-17. Date of Action:8-24-17.

Attorney Kenneth Pape appearing on behalf of the applicant Daniel Merkel.

Mr. Pape advised that Mr. Merkel has resided in the Burnt Tavern home since 2002. He stated that 18,000 s.f.of the property is developed as a residence and was created at a time when residential uses were permitted in this area.Mr. Pape stated that the property was a part of a re-zoning and the zone was changed to Business Park (BP) and he added that the residential remained permitted until BP zone requirements changed. This is a pre-existing, non-conforming use.

Mr. Pape stated that the applicant proposes to annex the triangle piece of property next to the applicant's Lot 2 and construct an addition to his home. Lot 1 is irregular in shape and encumbered with wetlands. It lies at the intersection of Burnt Tavern Road and Route 571. That intersection's acute angle has been a subject of the town and County discussions to make it a safer right angle.Mr. Pape stated that the applicant is willing to donate land to enable either the County or Township do this and has no interest in using this portion of land.

Attorney Vella advised that he has reviewed the applicant's notice to the property owners, find same to be in order and that the Board accepts jurisdiction of the application.

Attorney Vella red the following exhibits into the record:

- A-1 Jurisdictional packet
- A-2 Application dated 3/9/17
- A-3 Web Notice
- A-4 Variance Sketch prepared by Crest Engineering dated 1-16-17
- A-5 Architecturals prepared by Saizan & Winkler Architects, LLC. Dated 3-1-17
- A-6 Aerial prepared by Crest Engineering dated 1-16-17

A-7 State of Negligible Environment Impact prepared by Crest Engineering
(undated)

BOA-1 Engineering Report dated 5-9-17

BOA-2 Planning Report dated 6-6-17

Attorney Vella swore in Peter Strong, P.E., P.P. of Crest Engineering. Mr. Strong having testified as a professional Engineer and Planner in the past, is accepted as an expert witness and will be testifying as an engineer this evening.

Attorney Vella enters into Evidence, Exhibit A-8 Mounted Color Aerial of the subject property and Exhibit A-9 Mounted Color Site Plan

Mr. Strong referring to Exhibit A-8, describes the location of the property and the vicinity. Mr. Merkel's Lot 2 located in Block 59 is 18,000 s.f. Lot 1 is a triangular shaped piece consisting of 2.6 acres that occupies the intersection of Burnt Tavern Road and Trenton Lakewood Road. Lot 2 is wooded and unoccupied.

Mr. Strong describes the area on Burnt Tavern and Trenton Lakewood Road as being a mix of uses residential, industrial and commercial.

Referring to Exhibit A-9, Mr. Strong describes the property. He stated that the septic is located to the back and the well is located in the front.

Mr. Pape advised that the 2.6-acre property has wetlands that must be formally delineated and explained that while Mr. Strong has not performed the wetland delineation at this time, Mr. Merkel had hired Envirotactics who provided Crest with a wetland line. Mr. Strong has duly added a 50-foot buffer to the wetlands and in his opinion and experience, he felt that the area in the exhibit back out to Trenton Lakewood Road is basically wetlands. Mr. Pape advised that the applicant is ready to place all of those lands in the conservation easement.

Mr. Pape stated that one wooden shed was fully permitted when installed and advised that the Merckels would like to keep the shed. He reported that an additional metal shed would be removed. The batting cage would be dismantled and relocated to a better area away from the wetlands.

Mr. Pape addressed the three driveways consisting of one concrete and two dirt driveways stating that the applicant would wish to continue using the driveways.

Mr. Pape reported that the applicant would dedicate land for road improvement purposes.

Attorney Vella entered into Evidence Exhibit A-10, Roadway Dedication Overlay.

Board Engineer Shafai addressed the existing setback is 43.8 feet before right of way dedication, he advised the proposed setback of the garage is 35.3 feet due to the right of way dedication to the Township. Mr. Pape stated that the exacerbation of the setback is due to the applicant's right of way dedication. The house will be the same.

There was a discussion about right of way dedication to the Township. Engineer Shafai prefers the dedication to be a right of way dedication. Attorney Vella asked what the dedication area would be along Burnt Tavern Road. Engineer Shafai stated that 16½ exists and 25 feet is needed, so a dedication of 8½ feet would be needed. Engineer Shafai reiterated that he prefers a right of way dedication as opposed to an easement. Attorney Vella stated that if the Engineer is asking for this dedication, then the Board should grant the variance subject to that condition. If a right of way is provided to the Township, then the applicant's variance will be increased. If the Engineer states that providing an easement is okay, then the variance stays the same.

Board Planner Heyer referring to Section 4-2.4 of the Land Development Ordinance regarding exemption of dedication to the land to the Township, read the section advising that when an owner of a lot voluntarily dedicates land to Millstone Township for these purposes, then the area of the lot and lot depth should not be rendered substandard due to the dedication. He advised that when we are creating something because the applicant is cooperating, he should not be penalized for doing so.

Attorney Vella explained the difference between a right of way dedication where the land is cut off and given to the Township as opposed to an easement where the applicant owns the land and just allows the Township to use a portion of it.

Mr. Pape discussed that the second variance needed is for side yard setback. If the two lots are consolidated, the existing variance for Lot 1 goes away.

It was discussed that the shed was permitted when the property was residential and it was installed when that was the rule but due to the change in the zone, the existing shed does not comply. The applicant will remove everything out of the environmental sensitive area. The applicant will install monuments marking the conservation easement area.

Engineer Shafai advised that per ordinance, the first 10 feet of the driveways must be paved and have an apron.

Attorney Vella stated that after the delineation of the wetlands, if it is determined that the metal shed is in the wetland area, then that will be moved.

The Board has no issues with the three entrances.

The applicant is keeping the existing garage. The second floor over the proposed garage is to be a gaming room with only electric installed with no water to the addition.

Mr. Strong addressed that the existing generator would be moved to the north side of the addition and the AC unit would be moved to the East side. Mr. Pape advised that the generator is a 20 kilowatt, natural gas generator.

Attorney Vella swore in applicant Daniel Merkel. He confirmed that the generator is a 20 kilowatt, natural gas generator.

Mr. Pape asked Mr. Strong if he would supplement the plan with the upland buildable area after the NJDEP LOI is provided and Mr. Strong agreed.

Engineer Shafai that his report comments have been addressed by the applicant.

Attorney Vella swore in Mr. James Higgins Professional Planner who has testified before the Board in the past and the Board accepts him as a professional planner.

Mr. Higgins provided a general overview of how he prepared his testimony this evening. He has reviewed the application, the site, the Zoning and Master Plan. Mr. Higgins provided that the site is two separate tax lots, Lot 1 and Lot 2 with a home existing on Lot 2. He stated that the properties are located in the Business Park (BP) Zone. A variance for expansion of a non-conforming use is needed for Lot 2. Mr. Higgins stated in part that the standard D-2 variance approval is the expansion of the use that improves the site via aesthetics. Mr. Higgins feels that the Municipal Land Use Law (MLUL) is advanced by granting the variance. He provides that the positive reasons for the expansion takes two lots that do not conform and makes one lot that conforms. He stated that the existence of substantial wetlands and an irregular shape make it difficult to develop Lot 1. Mr. Higgins offered that the applicant proposes to dedicate the southern end of the property for circulation purposes of the area adding that the transportation use is promoted due to the dedication of the right of way to provide for better transportation.

Lot 1 is not suited for development. To provide for a conservation easement is a benefit in preserving open space. The application as proposed provides a substantial improvement.

Mr. Higgins stated that there is a mix of uses in the area and offered that what the applicant is proposing fits in very well with the character in the area, improves aesthetics and functionality with no substantial impact to surrounding properties, zone plan or the ordinance.

Chairman Novellino asked Planner Heyer for his comments. Planner Heyer stated that the construction materials and colors would match the principal residence. Planner Heyer offered that when the property was developed, this use was a permitted use in the standards at the time. This is the biggest benefit. He feels the public benefit outweighs any detriment. He stated that it is difficult to squeeze something into the Lot 1 site.

For the right of way dedication, Engineer will work with the Township and the County. Mr. Pape stated that he would write a letter to the head of the County Planning Department.

Chairman Novellino opened the application to the public at 8:22 p.m. Seeing no public comment, he closed the public portion at the same time.

Mr. Pape offered a summarization of the application.

Chairman Novellino agreed with Mr. Higgins and Mr. Heyer that the application provided significant benefits based on the plan. Hedrove by the property and felt that what is being proposed will improve aesthetically after relocating the batting cage so that it will not be visible from the road. Chairman Novellino stated that other positives are the roadway improvement possibilities. He sees no real negatives in this application and he looks favorably on the application.

Mr. Ferro feels that the Township increases safety by restructuring the corner and offered this to be a positive for all parties.

Mr. Frost lives nearby and finds improvement of the intersection beneficial.

Chairman Novellino asked Attorney Vella for a list of Conditions of Approval should the Board vote in the positive for the application.

Attorney Vella stated that conditions of approval include, but are not limited to: all wetlands are to be placed in a conservation easement to the NJDEP and the Township, the metal shed is to be removed, any structure in the wetlands or wetland buffer is to be moved outside of that area, the wetland lineation is to be provided, conservation easement markers are to be installed, a right of way dedication to the Township unless the County takes jurisdiction to except the dedication along Burnt Tavern Road, the plans are to be modified to show the buildable area after the LOI is received, compliance with the Ordinance that the first 10 feet of the driveway apron be paved for all driveways, the applicant will not rent space above the garage, lot consolidation to be reviewed by the Board Attorney and Engineer, the construction material and colors shall match the existing home, etc.

Mr. Ferro made a Motion to approve as conditioned and Mr. Frost offered a Second. Roll Call Vote: Ferro, Frost, Barthelmes, Lambros, Morelli, Mostyn and Novellino voted yes to approve the application.

Seeing no old or new business, Chairman Novellino asked for a Motion and Second to adjourn the meeting. Mr. Morelli offered a Motion and Mr. Ferrara offered a Second and by unanimous vote, the meeting adjourned at 8:30 p.m.

Respectfully submitted,

Pamela D'Andrea