

**BOARD OF ADJUSTMENT  
MEETING MINUTES  
JULY 26, 2006**

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

Vice-Chairman Barthelmes read the Adequate Notice.

Salute to the Flag.

Roll Call. Present: Lambros, Lesto, Novellino, Curcio, Barthelmes, Morelli, and Devine.  
Absent: Finley, Iradi

**APPROVAL OF MINUTES:** May 24, 2006. Mr. Morelli made a Motion to approve the Minutes as amended, Mr. Curcio offered a Second. Roll call Vote: Morelli, Curcio, Barthelmes, Lambros, Lesto, Novellino and Devine voted yes to approve.

**APPROVAL OF MINUTES:** June 28, 2006. Mr. Curcio made a Motion to approve the Minutes as amended, Mr. Morelli offered a Second. Roll Call Vote: Curcio, Morelli, Barthelmes, Lambros, Lesto, Novellino and Devine voted yes to approve.

**RESOLUTION:**

**Z06-03 MECCA INVESTORS** – Block 16, Lot 10.05. Located at 200 Meco Drive. Property consists of 130,266.99 s.f. in the BP Zone. Applicant seeks to modify the existing building to function as a Montessori School. Amended Preliminary and Final Site Plan. Approval granted June 28, 2006.

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

**NEW APPLICATION:**

**Z06-04 COTTRELL, RICHARD** – Block 37.07, Lot 29.06. Vacant property located on Clarksburg Road consisting of 40,000 s.f. acres in the R-80 Zone. Applicant seeks approval to construct a 3,300 s.f. single-family dwelling. Variance needed for lot area. Deemed Complete: 6/20/06. Date of Action 10/18/06.

Attorney Vella had reviewed the Jurisdictional packet and found same to be in order to accept jurisdiction over the matter.

Attorney Vella read the exhibits into evidence as follows:

- A-1 Jurisdictional Packet
- A-2 Application Dated 6/01/06
- A-3 Survey of Property prepared by Crest dated 6/01/06
- A-4 Proposed Plot Plan & Septic System Design prepared by Crest  
Dated 11/30/05
- A-5 Variance Sketch prepared by Crest dated 5/26/06
- A-6 Surveyor map dated 9/30/94 Last Revised 5/8/95

- A-7 Copy of letter to Natasha Blanford
- A-8 Copy of letter to Peter Ursino
- A-9 Postal receipt for letters sent to Mr. & Mrs. Peter Ursino & Mr. & Mrs. Blanford dated June 19, 2006
- A-10 Copy of Return Receipt , receipt signature dated 7/12/06, for Mr. & Mrs. Peter Ursino
- A-11 Copy of Track/Confirm receipt, Mailed 6/19/06 to Mr. & Mrs. Blanford
- A-12 Receipt for undeliverable correspondence to N. Blanford
- BOA-1 Denial Letter from Zoning Office dated 5/10/06
- BOA-2 Report of Board Planner dated 7/18/06

Attorney Marty Pflager representing the applicant. Richard Wiener, P.P. of Crest Engineering is sworn in as applicant's expert.

Mr. Weiner provided a brief description of the property. The property is known as Block 37.03, Lot 29.06 located on Clarksburg Road in the R-80 zone. The lot does not meet the lot area requirement of the zone. Where 80,000 s.f. is needed, applicant can provide 40,000 s.f.. The lot size is 200' x 200'. The lot is vacant and cleared.

Mr. Weiner explained that 8 to 9 lots in the area are similar in size. The owner of the property plans on erecting a 3,300 s.f. single-family dwelling on the lot. Mr. Weiner stated that there are no wetlands on the lot, no slopes and no environmental constraints. The lot has been issued a septic permit by the MCBOH. The lot conforms to all bulk requirements except for the lot size. The applicant cannot purchase property from his neighbors because they are 60,000 s.f. lots and this would make them non-conforming.

Richard Cottrell is sworn in. Mr. Cottrell testified as to the history of the property to find out if they were technically merged. Doctrine of merger was discussed. Mr. Cottrell purchased the property in 1974 and was granted minor subdivision approval.

Mr. Cottrell explained to the Board his subdivision of a 62-acre parcel of land. He raised cattle on the property before homes were built. Exhibit A-6 is a subdivision map dated 9/30/94, last revised 5/8/95.

Sworn in is Scott Cottrell, applicant's son who described the sale of the property. In January 2006, Lot 29.06 and the adjoining lot were sold to two sisters. The larger lot has a home under construction on it. Scott Cottrell is the contractor.

Mr. Coppola advised the house on the adjacent lot is an appropriate size home for the area.

The applicant sent a letter to both neighboring properties to see if he could purchase property. A-7 copy of the correspondence to N. Blansford. A-8 copy of correspondence to property owner Peter Ursino. The letters are undated.

- A-9 Certified Mailing receipt to N. Blansford (6/19/06) shown as “undeliverable” by post office.
- A-10 Certified mailing receipt to Peter Ursino.
- A-11 is a receipt for letter to Peter Ursino
- A-12 Receipt for undeliverable correspondence to N. Blansford.

Peter Ursino was sworn in. He testified that he did receive the certified mail and that he did not want to purchase the property or sell any of his property.

The origin of the lot was discussed. There was a question as to why the lots did not merge in 1986. Mr. Coppola would not be able to answer the question without the benefit of the Ordinance provisions of that day. The possibility of a grandfather clause was discussed.

In Mr. Coppola’s report to the Board, he stated that no undersized lot less than 80,000 is protected. Mr. Coppola will research the 1995 Ordinances that were in place as the time of this subdivision.

At 8:30 p.m., the application was opened to the public. Mr. Peter Ursino advised the Board that his wife and her sister looked hard and long to find two lots that were located next to each other for their business. He explained to the Board that time is of the essence due to the children starting school.

Richard Cottrell explained to the Board that when properties merge, there is one tax bill and this did not happen in this case, there were two separate tax bills.

There is no August meeting. The application is carried to September 27, 2006 without any further noticing.

**CARRIED APPLICATION:**

**Z05-14 DJ’S CAPITAL ENTERPRISES (SAVOIA)** – Block 16.01, Lot 2. 600 Rike Drive. 3.26 acres located in the BP Zone. Present use office and warehouse (under construction). Applicant proposes to utilize 21,000 s.f. for office, warehouse, commercial recreation (Batting cages). Deemed Complete. 2/7/06. Date of Action: 6/6/06. Jurisdiction accepted on 3/22/06. Carried to 4/26/06; 5/24/06 7/26/06. Extension granted.

Applicant represented by Marty Pflager, Esq.

- A-13 Mounted Architectural Plan
- A-14 Mounted Landscape plan with Highlighted Parking
- A-15 Mounted Architectural Plans highlighted to Distinguish Uses
- A-16 Mounted Key Map of Industrial Avenue
- A-17 Letter to Pat Hynes Fire Sub-Code Official dated June 9, 2006 from Joseph C. Feltz, AIA

Paul Szymanski, P.P. is sworn in, presented his credentials and is accepted as applicant's expert licensed planner. Mr. Szymanski testified that he had review the Master Plan and the Land Use Ordinances as well as the reports of the Board's professionals'. He explained that the facility proposed is a sports training/educational facility to be located in the Moto Industrial Park. The facility would include indoor batting cages and training for boys and girls. No adults would be allowed to train. The facility would occupy 2/3 of the existing D.J.'s Mechanical building. D.J.'s has received their certificate of occupancy and is operating presently.

Comment: I don't recall them saying this.

The sports training facility would occupy 14,000 s.f. of the 21, 000 s.f. building. Mr. Szymanski referring to Exhibit A-12 introduced at the prior meeting (Mounted layout of Uses of Site) and, A-14- Mounted Landscape plan with Highlighted Parking

Entered into evidence:

Exhibit A-15 - mounted architectural plan highlighted to distinguish uses.

Exhibit A-16 - Key Map of the Moto Industrial Business Park area.

Mr. Szymanski describes the site as 3.26 acres located in the BP Zone. The applicant is present before the Board seeking a Use Variance for the recreational use that is not allowed in that zone. He went over some of the permitted uses. He referenced the Montessori School up the street in the business park, being before the Board for a Use Variance.

Mr. Szymanski went over the positive and negative criteria of the use variance. He stated that the area is suitable for the site. The use requires large space with high ceilings. The proposed location is away from the residences and the facility has more than adequate parking on site. Mr. Szymanski stated that the Park is not used on Saturdays and Sundays when most kids would be there at the facility Mr. Szymanski stated that the park is not a high traffic area on the weekends. Kids would come to the facility after 3:00 p.m. during the week after school.

Mr. Szymanski testified that the facility would need a large open space and D.J.'s building can accommodate that need. He explained how these facilities in retail areas are hazardous due to traffic. D.J.'s has parking located in the front and rear of the building. The building is handicap accessible.

Mr. Szymanski went over the special reasons. No other suitable site exists in and around Town. This application provides support to teams in Millstone and surrounding Towns. It provides sufficient space in a specific location. The application promotes public safety since it is a low traffic area in accordance with the traffic report of Kenneth Fears of Oracle Engineering.

Mr. Szymanski stated that there is no negative impact critical to the public. No noise since it is an inside use and the nearest home is a distance away. He cited no impairment to the Ordinance. There will be 47 parking spaces in the front of the building and 63 total.

Mr. Szymanski stated that the accessory use is a small retail store on site that will supply baseball supplies that would be typical to a recreational use. He discussed that it is common to have a small retail area providing a convenience to parents and children.

Board Planner Coppola advised that the primary, specific reason is that the existing building with a high ceiling can be used. He advised that in the HC and HC1 zones, recreational uses are permitted and he asked why a new building could not be built and used for this use in one of those zones. Mr. Coppola stated that the building was not built for this specific use. He offered examples such as back doors must be locked or someone could walk into the batting cages. He advised this is not a good marriage of uses as the proposed use is not compatible with the planned uses in this zone.

Mr. Coppola offered that the retail use concept goes against the townships planning. He stated that while he understands the rationale of the Pro Shop, there are retail zones in Town. Mr. Coppola stated that the infringement of the retail takes away from the design of the industrial park. Other zones in town are available to accommodate this use although a building would have to be built.

Attorney Pflager stated that Mr. Fears, the traffic expert who prepared the original report for the Park reported that the traffic in the Park, was less intense than originally testified to since the Park had not been occupied the way they anticipated initially. There has been a departure from the zone plan and the Master Plan for this development. Nine existing lots have not been developed at this time.

Mr. Coppola stated that retrofitting a retail service commercial use is compelling since it already exists and has high ceilings to accommodate the use.

Mr. Szymanski stated that such a use is allowed in the HC and PCD zones. Mr. Szymanski stated that Route 537 is more of a zone for restaurants and hotels and fast food since it is near Great Adventure. It is not a good location for parents and children. He cited the same is true for Route 33 due to the heavy traffic. He offered that the proposed site is safer for children and parents rather than getting on a highway at either end of the Township.

Mr. Szymanski stated to the Board that these recreational uses seem to be found more in Industrial Parks because the uses are attracted to larger flex buildings, low traffic areas are a better site when dealing with children.

Concerns were raised concerning deliver trucks in the industrial park, as well as traffic that would be generated on Prodelin Way. Mr. Szymanski explained that traffic would arrive at a concentrated area during off-peak times.

Mr. Pflager advised that the truck traffic in the Park is less intense than Mr. Fears originally anticipated.

Mr. Coppola confirmed that retail is not a permitted use. It was discussed that approval of this use would have a substantial negative impact to establishing a similar use in a permitted zone. Mr. Coppola advised that generally, a town would have just one batting cage in a community.

Mr. Coppola raised questions regarding who will provide street tree plantings, who is responsible for the improvements on the site, etc. Mr. Shafai advised that D.J's has a bond that guarantees those improvements and if the deadlines are missed, the Township Committee can approve using the Bond to finish the projects.

Mr. Lambros asked if the applicant had met with the fire commissioners for this project. The applicant was asked to provide this information at this meeting. Mr. Pflager advised that the Architect would provide that information.

Mr. Szymanski stated that the applicant was looking for a site to serve the town and suitable for their purpose. Mr. Pflager stated that the applicant has been committed for the past year to find a potential tenant. D.J's just received a C/O for their 7,000 s.f. portion of the building. Mr. Szymanski stated that the retail is a convenience item for parents and kids and coaches using the facility.

Mr. David Collins is still under oath. Mr. Collins is not a licensed architect yet. Referring to Exhibit A-16 Architectural Plan, he stated that the building is a flex, steel framed building. 7,000 s.f. is already built out. On June 9, 2006, the applicant drafted a code analysis letter to Pat Hynes. He spoke to Mr. Hynes but has not received anything from him in writing.

Introduced into evidence, Exhibit A-17, letter from Joseph Feltz, AIA, dated June 9, 2006 to Pat Hynes.

Mr. Collins advised that the building is made of non-combustible material. The building is designed for the most stringent use. He explained how the fire protection walls work.

The applicant would add walls between the batting cages and explained the benefit. There are no stairs, exits would be directly out of the building. Mr. Novellino asked for confirmation that whatever the Code requires, the applicant would do.

Mr. Sommers was sworn in at the prior meeting and is still under oath. Regarding the retail, he stated that it is a convenience for customers. There would be no reason for walk-ins to come to the store when there are larger sports stores available. Parents do not leave the facility since the lessons are ½ hour or less. There are no children running by themselves. The store hours are the same as the training hours. The bulk of children would be when they get out of school.

Mr. Sommers advised the Board they tried to seek property on Route 33 but the owners wanted 1 to 2 million dollars for a lot. The franchise runs the pricing and keeps the price

low to make it reasonable for the patrons. The cost of using a cage is \$40.00 per hour. Mr. Novellino asked about opening similar franchises. Mr. Sommers spoke about the quality of this franchise as top of the line with better safety.

At 10:15 p.m., the application was opened to the public.

Ron Byer of Evergreen Court was sworn in. Mr. Byer is President of the Little League with over 553 kids in the league. Over winter, 60-70% of time is spent traveling to Hamilton to the nearest training facility. He explained that the facility is located in a retail shopping center and testified to the unsafe traffic conditions regarding the location. He offered to the Board that having such a facility close by would be a benefit, reasonable in price, etc. He stated that more children would be involved because the parents would not have to commute to take the kids to another town. Mr. Byer stated that Frogbridge is limited and expensive.

Mr. Novellino asked how many children currently participate in the indoor training. Mr. Byer indicated 60-70 children. Mr. Novellino then asked how many more would participate if the training facility was available in Millstone. Mr. Byer indicated about 25% - approximately 130 children.

Mr. Stan Sanford of Robbinsville is the past President of the Little League. One of his goals was to build batting cages for the kids but this did not come to fruition. He said this is not a baseball community. This proposed indoor facility would be a benefit to the kids. He explained the benefits to the boys and girls of the community.

At 10:25 p.m., the application was closed to the public.

Mr. Pflager summarized the application, advising that the franchise has regulations that the applicant must comply with including the pro-shop, which is ancillary to the use.

Mr. Barthelmes stated that he has played tennis in a facility located in a business park and offered that the traffic after hours and on weekends when he played tennis in the Park were never an issue. In this case, Mr. Barthelmes does not feel that traffic is an issue. He addressed the traffic problems on Route 33. He feels this facility is important to the kids of the community. His experience has been that pro-shops are almost always empty and does not feel that the retail is an issue. Mr. Barthelmes stated that the fire code will be met and leave that issue to the fire officials. He stated that this is a good thing for the town and the kids.

Mr. Lambros spoke about the importance of making decisions based on the foundation of the Ordinances that have been carefully drafted. He offered the importance of upholding the Ordinances and mixing not permitted uses would undermine the Town. Mr. Lambros spoke of the importance of giving zones that are designed for these permitted uses a chance. He feels that certain businesses may shy away from the Industrial Business Park if this facility is in there and stressed the importance of not

impairing zones that are designed for these uses. Mr. Lambros emphasized putting the use in the right place.

Mr. Novellino spoke about the planning issue at hand. He wants to do what is best for the kids and support the community but offered that placing this use in this zone is not part of the Town's plan. He stressed that locating this facility in a Business Park would go against our planning. He agrees with the goals of providing for the kids but it has to balance with the goals of the Township.

Mr. Morelli agreed with Mr. Novellino about the importance of the Master Plan and agreed it is not good to pick away at how things were planned. He had concerns using the Business Park for this use when there are zones specifically designated for this use in Town.

Mr. Novellino stated that the Board is being asked to approve a use not the franchise and the use runs with the property.

A Motion was made by Mr. Curcio to deny the application and Mr. Lambros offered a second. Roll Call vote: Curcio, Lambros, Lesto, Morelli, Devine and Novellino voted yes to deny the Motion. Mr. Barthelmes voted no to the Motion to Deny.

Old Business:

Mr. Coppola advised the Board that he is in the process of drafting an Ordinance regarding architectural guidelines. He will keep the Board apprised.

At 10:45 p.m., Mr. Novellino made a Motion to go out of regular session and into the Executive Session, Mr. Lesto offered a Second and by unanimous roll call vote the Board went into executive session to discuss pending legal matters.

At 11:00 the Board returned to the Regular meeting and Mr. Novellino made a Motion to adjourn the regular meeting and Mr. Lesto offered a Second and by unanimous roll call vote the meeting adjourned.

Respectfully submitted.

Pamela D'Andrea