

**BOARD OF ADJUSTMENT
MEETING MINUTES
JUNE 27, 2007**

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

Reading of Adequate Notice by Vice-Chairman Barthelmes.

Salute to the Flag.

Roll Call: Present: Barthelmes, Curcio, Devine, Iradi, Morelli, Novellino, Lambros and Cognoscenti.

APPROVAL OF MINUTES: May 23, 2007

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

RESOLUTIONS:

Z07-02 CARDINALE – Block 16, Lots 3 & 4. 143 acres in the RU-P Zone Located at Disbrow Hill Road. Applicant seeks to construct a single-family dwelling on the premises. Two variances needed: no frontage on a public street and steep slopes. Approval granted 5-23-07.

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

CONTINUED APPLICATION:

Z05-03 CHARLES NOREIKA - Block 50, Lots 1.01, 1.02, 1.03 & 2. Located on Paint Island Spring Road and Millstone Road. 30.1 acres located in the R-80 Zone. Preliminary Major Subdivision to develop an (11) lot subdivision consisting of (1) existing residential building lot, (8) new single-family residential lots, (1) lot dedicated for drainage and (1) existing non-conforming commercial lot. Use variance and (6) bulk variances requested. Applicant returns to the Board for Use Variance, Bulk Variance and Preliminary Major Subdivision approval.

Mr. Bailey is ineligible to hear the application and steps down. Vince Halleran, Esq. representing the applicant. Chairman Novellino describes the history of the application. Attorney Greg Vella advised this is a Whispering Wood Settlement Hearing. He explains that notice of the application is required. He has reviewed the jurisdiction packet and found same to be in order to accept jurisdiction.

The evidence previously marked into the record is herein remarked and he read along with the recent evidence as follows:

- A-1 Jurisdictional Packet
- A-2 Web Notice
- A-3 Application
- A-4 Soil Sampling Results prepared by R.B.S. Engineering Co. dated March 6, 2006
- A-5 Environmental Site Assessment prepared by R.B.S. Engineering dated 7/8/05
- A-6 Statement of Environmental Impact prepared by Gravatt dated 11/19/04, last revised 10/21/05
- A-7 Stormwater Management Maintenance Plan prepared by Gravatt dated 11/8/05
- A-8 Stormwater Management Report prepared by Gravatt dated 11/30/04, revised 4/26/05, last revised 11/8/05
- A-9 Survey prepared by R.S. Butryn P.E. & L.S. dated 10/22/02, last revised by 2/08/05
- A-10 Pre Development Drainage Areas prepared by Gravatt dated 11/19/04, last revised 11/08/05
- A-11 Preliminary Major Subdivision prepared by Gravatt dated 11/19/04, last revised 11/08/05
- A-12 RBS Engineering Correspondence dated 5/20/06 Re: soil borings
- A-13 Mounted Color Rendering of Subdivision Plan
- A-14 Jurisdictional Packet
- A-15 Web Notice
- A-16 Preliminary Major Subdivision Map Prepared by Gravatt dated 11/19/04, Last Revised 6/13/07
- A-17 Resolution Compliance letter from Gravatt Consulting Group dated June 14, 2007.
- BOA-1 Report of Board Engineer Dated 4/17/06
- BOA-2 Report of Board Planner Dated 1/26/06
- BOA-3 Report of EC dated 1/26/06
- BOA-4 Conditional Preliminary Approval from MCPB dated 4/7/05
- BOA-5 Certification Letter from Freehold Soil Conservation dated 6/24/06
- BOA-6 NJDEP Letter of Interpretation dated May 31, 2006

Attorney Vella explained that the Board denied the application, and a lawsuit ensued. Attorney Vella explained the settlement offer. The uses on Lot 1.05 would have to be abandoned and removed as verified by the zoning officer. The applicant would have a 2-acre buffer lot from the pre-existing, non-conforming use. Attorney Vella explained the applicant's proposal and discussed that the applicant would continue to use the full lot for commercial tree business until they pull their first building permit and the nursery use would be abolished.

Board Engineer Matt Shafai addressed his concerns regarding the application. He stated that the first building permit would cause all agricultural uses to cease. This will be a condition of approval. Engineer Shafai went through his report. Item

4, Soil sampling report is to be supplied. He voiced his concerns regarding maintenance free landscaping.

David Theising, Engineer was sworn and accepted as an expert. He advised that the applicant would provide additional groundcover and more landscaping. The Shade Tree Commission is to look at the tree types. The applicant has received NJDEP approval of the Stormwater structure. A restrictive covenant is requested to prevent the homeowner from removing the recharge system under each home. Attorney Vella discussed that prior to the issuance of the certificate of occupancy, the restriction is imposed. Notes will be added to the plan now. All reports should show the correct number of the lots. The applicant will update the reports prior to final.

Mr. Theising addressed the buffer between the existing lot with commercial uses and the proposed subdivision lots. Lot 1.05 is now the actual buffer lot. Because of this, the applicant had requested that the landscaping on Lot 1.06 be downsized. The applicant seeks relief from the extensive landscaping. This is acceptable with Planner Cindy Coppola. Lot 1.06, which the applicant indicated is currently planted with trees associated with the farming operation, would remain wooded subject to the approval of the Board Engineer. Mr. Theising clarified the buffer with Planner Coppola. Engineer Shafai stated that the John Deere sign would be removed at some point, as it is located in the county right of way. The present area is moved back to meet the setback requirements. The applicant agreed to these conditions. Planner Coppola had a few outstanding items included in their 1/25/06 memo, such as the limit of disturbance line to reflect the changes, etc. Other minor clean up items were discussed.

Jeff Torno of 232 Paint Island Spring Road was sworn in. He pointed to the exhibit showing where his home is located in proximity to the proposed project. He had a question regarding the applicant ceasing all agricultural activity once the first building permits were pulled. Planner Coppola expressed her concern about which lot is built first. Since there is no phasing plan, lot owners may find themselves with farming occurring on each side of their lot.

Mr. Theising stated that it could be a possibility at Final to phase the project and he explained the two potential phases. Both the Board engineer and planner voiced that they have no problem with phasing the project. Mr. Curcio expressed his concerns regarding intensifying the non-conforming uses by agreeing to a phasing plan. Farming is a permitted use and is not a non-conforming use, just the commercial is a non-conforming use.

Jeff Torno back on the record. He offered an explanation as to why he feels the continuation of the agricultural aspect is not intrusive since they have been doing that for years.

The Board discussed phasing. Attorney Vella clarified that the Board can make the motion to approve phasing or the phasing plan can be presented at Final for the Board to review. Planner Coppola stated what the impact to any houses that may be subject to farming on each side of the residence. Mr. Iradi asked what the applicant's wishes are as to phasing. Mr. Charles Noreika sworn in . He would like to continue the agricultural aspect and is in favor of a phasing plan. The Board discussed how to handle phasing. Attorney Vella stated that the applicant has not sat down with his professionals to look at a phasing plan. He suggested giving the applicant time to sit down with his professionals to come up with a phasing plan for our professionals to review at the time of Final. The board agreed to consider a phasing plan provided by the applicant at time of Final subdivision approval.

Attorney Vella read the conditions of approval into the record. Lot 1.06 is to remain wooded subject to the Board Engineer review, zoning charts are to be amended. Attorney Vella explained the legal process of this Whispering Woods settlement. The John Deere sign was discussed. The Board cannot impose conditions since this is a settlement hearing. The Board advised it would not be necessary to move the sign at this time, but it must be moved at some point.

Mr. Iradi made a Motion to approve the Preliminary Subdivision as conditioned and Mr. Barthelmes offered a Second: Roll Call Vote: Iradi, Barthelmes, Lambros, Devine, Morelli, Curcio and Novellino voted yes.

NEW APPLICATION:

Z07-03 KAPOULER – Block 16.01, Lot 2. 3.26 acres the BP Zone located off of Rike Drive in the Moto Industrial Park. Applicant seeks use variance approval to utilize 14,000 s.f. of a partially occupied building to use as a gymnastics academy. Deemed Complete: 6/1/07. Date of Action: 9-29-07.

Attorney Vella had reviewed the jurisdictional packet and found same to be in order to accept jurisdiction over the application. Attorney Vella reads the evidence into the record as follows:

- A-1 Jurisdictional Packet
- A-2 Web Notice Posted 6/11/07
- A-3 Application dated 5/8/07
- A-4 Traffic Engineering Investigation Report Prepared by Oracle Engineering, Inc. dated April 16, 2007
- A-5 Preliminary & Final Site Plan Prepared by Crest Engineering dated 7/25/03, Last Revised 9/13/04
- A-6 Mounted Color Rendering of the site Plan
- A-7 Resume of Pavel Kapouler
- A-8 Resume of Viktor Mytnik
- A-9 Resume of Vladimir Besedin
- A-10 Mounted Color Rendering of Interior Design

BOA-1 Report of Board Engineer 6/1/07
BOA-2 Report of Board Planner 6/20/07

Kenneth Pape, Esq. is representing the applicant. He explained that three international renowned athletes propose to bring a gymnastics academy to Millstone Township. He stated that they are World champions in their respective sports. Mr. Pape explained their professional credentials.

The building proposed to house the gymnastics facility is existing. Of the 21,000 s.f., 14,000 s.f. of interior space is vacant and is clear span. He explained minor modifications in the parking striping would be needed. The proposal before the Board is for a gymnastics academy. Mr. Pape advised this facility is not a recreation or game type-facility. It is an academy for students' class activity and the only students present would be those enrolled in the academy. The classes are limited to 4 classes at any time with a maximum enrollment of 8 students per class. Mr. Pape explained that this has been Mr. Kapouler's teaching style. The hours are limited during non-peak hours of the industrial park, 4:00 p.m. to 10:00 p.m. The facility is not to be used for competition or events.

Mr. Pape offered some background of the applicants. Mr. Kapouler is a Russian national team coach and international Olympic judge. He has received the recognition of Master of Sport and is a silver medallist involved in skating and gymnastics. He is a gold medallist in extreme ice performances.

Mr. Peter Strong is sworn in and having testified before the Board in the past, his credentials are accepted by the Board. Entered into Evidence, Exhibit A-6, mounted color rendering of site plan. Mr. Strong explained that the facility is situated in the center portion of the industrial park. Currently, 7,000 s.f. is occupied by DJ's Mechanical. There are two entrances off of Rike Drive with loading to the rear. Trash enclosure is located in the rear of the building. Currently, 63 parking spaces are in the back of the building where overhead doors were anticipated to be located. Eighteen (18) additional parking spaces are available on site.

Mr. Strong explained to the Board how he calculated the 81 parking spaces. There would be 32 students anticipated at any one time. He explained how students would be dropped off and picked up. Mr. Strong advised that there would be adequate parking.

Mr. Morelli had concerns about truck traffic in the Park. Mr. Pape advised the Park drive forms a "P" and stated that traffic is incidental due to the hours of operation of the academy.

Entered into evidence, the CV's of the witnesses Pavel Kapouler (A-7) Vladimir Besedin (A-9), and Viktor Mytnik (A-8). Mr. Kapouler made an opening statement to the Board. He commented that the proposed use is a healthy

activity for the children. Mr. Kapouler personally designed the facility. Entered into evidence Exhibit A-10, the interior design of the facility. He explained that Vladimir Besedin has coached Michelle Kwon. Applicant wished to enter supporting letters into evidence as A-11 and A-12. Mr. Curcio had reservations about accepting the letters and the Board discussed the matter and decided that the letters should not be entered into evidence. Mr. Barthelmes accepted the applicants' credentials and felt the letters were not necessary, the resumes were sufficient. Exhibits A-11 and A-12 were then redacted.

Referring to Exhibit A-10, Mr. Kapouler explained how the equipment is set up and its purpose. He explained how the facility is used and how it accommodates the students. He explained his teaching technique. There are one-hour sessions of eight students with four coaches. The applicant will commit to restrict to these numbers. The facility name is Rising Star and this is their philosophy and goal. He stated that this is a very good training facility but not adequate for competition. Applicant agreed to restrict the facility as a training facility only. Summer classes are less intensive. Mr. Conoscenti asked about time of year gymnastics academy in session. Mr. Koupler advised that it wanes during summer due to students vacationing. Mr. Novellino asked what attracted the applicant to this area and this site. Mr. Koupler stated that the building is brand new. They have looked for the right mix of building and traffic to accommodate the facility. The focus is mostly on Millstone Township students at their center. Enrollment is on a monthly basis and is open to everyone. Their goal is to make a new generation of gymnasts. Mr. Kapouler indicated that tuition is only monthly, there are no daily or weekly tuition plans. The session is one month. There are four sessions per day. Monday through Friday and Saturday is for make up classes missed during the week. They are closed on Sundays.

Chairman Novellino took a break from the application to make an announcement regarding the 537 ABR LLC application. Chairman Novellino explained that due to the hour, we would begin the 537 ABR LLC application but will be unable to get to the public portion. We will accept jurisdiction this evening and there will not be any further noticing and the application will be carried to July 25, 2007.

The Kapouler application continued.

Attorney Vella sworn in Peter Tolischus, professional planner, who shared with credentials and was accepted by the Board as applicant's professional. Mr. Tolischus advised that he had reviewed the site plan, met with the applicant to view the inside of the building, he reviewed the Master Plan and Mr. Coppola's report. He stated that the applicant requires a D1 use variance since the academy is not a permitted use.

Mr. Tolischus presented the positive criteria. He offered that the use is a public benefit. With Mr. Kapouler's expertise, it encourages the best use for the premises. Mr. Tolischus addressed the Medici case as to suitability of the site,

open space within the facility, outside walls are bearing walls and offered that this is a perfect facility due to the building characteristics. He stated that there is ample parking to meet the need. The academy can operate with parking and traffic handled adequately. Mr. Tolischus stated that there is no detriment to public good or the zoning plan. No residential uses would be impacted by this use without any major noise or order impacts. He stated that the applicant is just using the interior of an existing building.

Mr. Tolischus commented that this facility is an off-peak traffic facility. They are not a public recreation use. Under Medici, the use is not inconsistent with the Master Plan and the Zoning Plan. Mr. Tolischus explained that under permitted uses, they are akin to the uses in the Park. There will be no change to the building.

Planner Cindy Coppola agreed with Mr. Tolischus' report. Referring to her Memorandum, she cited similar positive criteria. The building would maintain the inside structure. She felt that there would be no detriment to the Zone Plan. There is a Montessori School in the Park presently existing and this is not dissimilar from the gymnastics academy. The fact that it operates at off-peak hours is a more beneficial use. She offered that the business is unique. The Board should be specific with its findings and conditions since the variance goes with the land.. Planner Coppola advised the Board to place specific conditions on the application to avoid setting any precedents for general recreational use within the business park. With those controls in place she feels the positive and negative criteria have been met.

Chairman Novellino asked the Planner to explain the key differences, from a planning perspective, between this application and a previous application for the same site for batting cages. He asked specifically why the denied prior application for the batting cages did not meet the criteria that justify a use variance and why this application does meet the criteria. Planner Coppola commented that the prior application had longer hours, citing more people using the facility. This application is more for an instructional facility as opposed to a recreational use. This proposed facility is not opened to the public for birthday parties and no retail component is attached to this facility as was proposed with the batting cage facility. She stated that this equates more as a school as opposed to a recreational facility and that a school use is permitted and already exists in this business park.

Board Engineer Matt Shafai asked for clarification that no "special events" would be taking place at the facility, it would be restricted to classes only. The traffic report spoke of special events. Applicant advised that no special events would take place at the facility. Mom and Me classes take place from 10:00 a.m. until 12:00 p.m., twice weekly. Property owner, Dan Fernandez, has been engaged in completing the landscaping and irrigation. Landscaping will be completed prior to the issuance of the c of o. Engineer Shafai advised that all of the improvements

are bonded under the original approval so he is okay with it. Mr. Curcio asked about the fire sprinkler system. He has concerns due to children in the facility. There was discussion that the sprinkler system would meet the code requirement. There is a pressurized water system in the Park, which is not functional yet, but it is a bonded item under the phase two phase of the Industrial park and could be functional any time.

Attorney Vella swore in Arlinda Lucas to testify as the Vice-President of the Moto Industrial Business Park. He testified that the property owners in the Park voted "Yes" to welcome the applicant and his proposed use into the park. Mr. Strong, a member of the Park, abstained from voting since he is the applicant's engineer.

Sworn in is Mr. Evogeny Platov who explained that he is an Olympic ice skater and he explained how he met the applicants. He explained the attributes that make the applicants extraordinary.

Mr. Novellino then opened the application to the public.

Sworn in Matt Deiner of Deer Trail Drive. Mr. Deiner has a son who is dedicated to the sport of gymnastics and is a state champion. He explained that it is a difficult sport, requires good coaching and personal discipline. He offered that this use is unique. He has to travel to Marlboro presently. He feels that this is a good opportunity for Millstone.

At 10:19 p.m., the application was closed to the public.

Mr. Curcio does not feel this use it fits in the Park due to the truck traffic. Mr. Barthelmes feels the Master Plan can't encompass everything and this is a unique use and feels it would work in the business park. Chairman Novellino feels that the use beneficial to the public feels that the positive criteria had been met and sees no detriments to this use as it is similar to a school. Overall, he feels it is a positive use and agrees with the Planner.

Mr. Morelli offered that it would be a beneficial use and is more of a school as opposed to a recreational use. Mr. Iradi supports the application. Mr. Conoscenti finds it to be a good use. Mr. Bailey views it as a school and not a recreational use. Mr. Lambros advised that he drove through the park and commented he would prefer to see similar uses in the park but feels it will be a good thing in the overall picture.

Attorney Vella read the conditions of approval, should the Board vote favorably on the application to include, no competition or events shall take place at the facility, the facility is not open to walk in patrons, the conditions of Board Planner shall be complied with , the landscaping shall be completed prior to the issuance of a c of o, storage containers shall be removed from the site, the Board grants a waiver of site plan approval, applicant shall comply with the report of the Board

Engineer, the application is subject to all conditions of previous approvals, there shall be a modification to the developer's agreement, etc.

Mr. Iradi offered a Motion to approve as conditioned and Mr. Morelli offered a Second. Roll Call Vote: Iradi, Morelli, Lambros, Devine, Barthelmes and Novellino voted yes to approve. Mr. Curcio voted no.

Z06-05 537, ABR, LLC - Block 60.01, Lot 15.01. 4.02 Acres located in the HC Zone at 490 Monmouth Road. Applicant seeks use variance to construct a two-story 9,820 s.f. building for car wash and service area and a 10,000 s.f. storage warehouse. A design waiver requested. Deemed Complete 6/1/07. Date of Action 9/29/07.

Attorney Vella had reviewed the jurisdictional packet and found same to be in order and accept jurisdiction over the application. Attorney Vella reads the evidence into the record.

- A-1 Jurisdictional Packet
- A-2 Web Notice Posted June 8, 2007
- A-3 Application dated 8/01/06
- A-4 EIS prepared by Geller Sive & Company dated 10/12/06
- A-5 Colored Aerial map April 2003
- A-6 Survey of Property with Topography prepared by DPK Consulting, LLC dated 8/30/06
- A-7 Stormwater Management Report dated May 2, 2007 prepared by Geller, Sive & Company
- A-8 Traffic and Transportation Report prepared by McDonough & Rea Associates, Inc. dated May 7, 2007
- A-9 Architecturals Warehouse Plans dated MAY 28, 2007 Prepared by Bach & Clark Architecture, LLC
- A-10 Preliminary & Final Major Site Plan dated 5/2/07 Prepared by Geller Sive & Company
- A-11 Car Wash Floor Plan Prepared by Bach & Clark dated 3/20/07
- A-12 Plan to accompany Use Variance application Prepared by Geller & Sive & Company dated 10/16/06
- A-13 Mounted aerial of the Site Plan
- A-14 Mounted Color Rendering of the Site Plan
- BOA-1 Board Engineer Report dated 6/1/07
- BOA-2 Report of Board Planner dated 6/21/07
- BOA-3 Environmental Commission Report dated June 26, 2007
- BOA-4 Monmouth County Planning Board Conditional Approval dated 5/29/07

Kenneth Pape, Esq. representing the applicant. Mr. Pape gave a brief overview of the Property. It is located in the HC zone on Route 537. He offered that the application is unique in that there are no environmental constraints on the

property. He explained that the proposal is for a tunnel-style car wash with a detail area and a lube facility. The property is deep. There is a request to construct the warehouse. Applicant had met with the Environmental Commission earlier in the month. They visited with the Monmouth County Planning Board and have received conditional approval from them. Mr. Pape advised that the property is located directly across from a commercial center that is to be built. The application is a bifurcated application.

Attorney Vella swore in Michael Geller, applicant's Professional Engineer and Planner. He presented his credentials and is accepted by the Board as an expert. Mr. Geller gave a brief overview of the site. The property is known as 490 Monmouth Road. Presently, there are two residential structures and accessory structures on the property. The property is situated northerly on Route 537 and is across from the HC section of Jackson Township. The property is a narrow, 3.98 acre piece with no wetlands on the site. The proposal is to construct a one-story, 9,820 s.f. car wash and oil change lube area, with 500 s.f. for the owner's office, 10,000 s.f. warehouse located in the uplands and away from active part of car wash. A tenant is line up for that building. Access to the site is via a two-way driveway entrance and egress and a one-way exit drive allowing for right turns out of site. Mr. Gellar explained how the traffic would work. There is a traffic light located at Woodbury and Rt. 537. The stormwater basin is located in rear of the property, which would serves as a detention and retention basin. A fire draft pipe would be provided.

Exhibit A-13, mounted aerial of the property is place in evidence
Exhibit A-14, mounted rendering of site plan is entered into evidence.

Gregory Clark of Bach & Clark is sworn in as applicant's expert architect. The Board accepts his credentials. Referring to Exhibit A-14, Mr. Clark explained that he would use earth tone materials and high-end stone. He added planters to soften the appearance of long linear walls.

The application is carried to July 25, 1007 without any further noticing needed

OLD BUSINESS:

Planner Coppola provided to the Board, the proposed architectural standards for their review.

At 10:59 p.m. Mr. Iradi made a Motion to adjourn and Mr. Morelli offered a Second and by unanimous vote, the meeting adjourned.

Respectfully submitted,

Pamela D'Andrea