

**BOARD OF ADJUSTMENT  
MEETING MINUTES  
SEPTEMBER 26, 2007**

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

Reading of Adequate Notice by Mr. Barthelmes

Salute to the Flag.

Roll Call: Present: Devine, Morelli, Novellino, Iradi, Bailey and Conoscenti, Barthelmes, Curcio. Late: Lambros (7:47 p.m.)

**APPROVAL OF MINUTES:** August 22, 2007. Mr. Devine made a Motion to approve and Mr. Morelli offered a Second. Roll Call Vote: Devine, Morelli, Novellino, Iradi, Bailey and Conoscenti.

**RESOLUTIONS:Z07-08 MILLSTONE TOWNSHIP** – Block 57 Lot 16.01. Located on Burnt Tavern Road. Property consists of 1.980 acres located in the BP Zone. Presently the property is occupied by a two-story, ten-bedroom home and a one-story property manager's residence utilized as part of the Township's Plan for Affordable Housing. The Township proposes to subdivide the property, share the existing driveway and construct a two-story, 4,000 s.f., 5-bedroom dwelling on the new Lot 16.02 consisting of 43,406 s.f. (0.996 +/- acres) in compliance with the Township's Plan for Affordable Housing. Application Approved. Chairman Novellino explained the application to the public. Mr. Coppola offered comments that were incorporated into the Resolution.

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

**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 9-28-07. Carried from 6-7-07; 7-25-07. No further noticing required for this meeting. Application Denied. The Resolution has been tabled to the October 24, 2007.

**Z07-05 SACCO, MICHAEL** – Block 12, Lot 1.12. Located at 208 Disbrow Hill Road. 5.8 acres located in the RU-P Zone. Applicant seeks to construct a single-family, 2-story, 3900 s.f. dwelling. Variance needed for lot size. Deemed Complete: 7-12-07 Date of Action: 11-9-07. Application Approved. Mr. Coppola offered comments that were included in the Resolution.

Mr. Iradi made a Motion to memorialize the Resolution and Mr. Conoscenti offered a Second. Roll Call Vote: Iradi, Conoscenti, Devine, Morelli, Bailey and Novellino voted yes to Memorialize.

**NEW APPLICATIONS:**

**Z07-04 CKV REALTY, LLC** – Block 57, Lot 16. 53.39 acres located in the BP Zone at 33 Burnt Tavern Road. Transferred from the Planning Board. Application is for a construction of a garden center and nursery related facility including construction of a 15,000 s.f. building. Applicant received waivers from checklist items for the use variance portion of the application. Deemed Complete 7-25-07.  
Date of Action: 11-22-07.

Although the applicant provided notice for the meeting, they asked the Board to carry same to October 24, 2007 without further noticing. The Board - per a policy adopted in 2006 which requires re-noticing when the applicant requests to carry the application to a later meeting - would not accept jurisdiction in Motion made by Mr. Novellino and a Second offered by Mr. Curcio. By unanimous vote, the Board required the bifurcated application to be noticed for the October 24, 2007. Mr. Novellino made an announcement to the public if anyone was in attendance concerning the application, it would not be heard this evening but would be heard at the October 24, 2007 meeting and the applicant would be required to re-notice for the meeting and post an updated notice of the application on the Township Website.

Mr. Lambros arrived at 7:47 p.m.

**Z07-06 353 SWEETMANS LANE, LLC** – Block 39.01, Lots 2.01 & 7. 1.88 acres located in the NC Zone at 353 Sweetmans Lane. Applicant seeks preliminary site plan approval to construct a two-story, 3,818 s.f. retail building with an existing 6,750 s.f. retail building. “D” variance is required for Block 39.01, Lot 7 (for proposed stormwater management) which is located in the RU-P Zone. Bulk variances needed. Deemed Complete 6-29-07. Date of Action: 10-26-07.

**Z07-07 D. MORGAN TRACEY** – Block 39.01, Lots 2.20 & 7– 4.33 Acres located in the NC Zone on Sweetmans Lane. Applicant seeks preliminary site plan approval to construct a 9,600 s.f. retail building, 1,098 s.f. office space and 2,056 s.f. retail building with adjoining 2,016 s.f. bank. “D” variance needed for Lot 7 (proposed stormwater management area) which is located in the RU-P Zone. Bulk variance needed. Deemed Complete 6-26-09. Date of Action: 10-23-07.

Attorney Kenneth Pape representing the applicants. Mr. Pape explained the projects are for the construction of four buildings located on two separate lots. The applicants are before the Board for Site plan approval, bulk variance relief and two use variances but the two use variances would be reduced to one. He explained that Lot 2.01 is where Roy’s Deli presently exists. On Lot 2.02, there is a clock tower that requires a use variance due to height. Mr. Pape advises that it was never the intention of

applicant to seek a use variance so the applicant will reduce the height of the clock tower to eliminate that use variance.

Mr. Pape explained that the project is located in the Neighborhood Commercial Zone and the project in all of its uses shown is consistent with the NC zone. He explained that the property has a density less than zone requirement. He explained that the basin combination of a stormwater facility and irrigation basin is located on lot 7. Because Lot 7 is located in the RU-P Zone, a use variance is required. Mr. Pape explained that 30 years ago, the Vrabels who owned Lot 7, had the intention that the property would only be used for agricultural purposes. When the farm was subdivided, one farm had a deed restriction filed limiting it to the agricultural use. The Lot 7 property that the applicant presents did not have the restrictive covenant filed in a deed. The Township of Millstone, Mr. Coppola and Mr. Pape are to meet to discuss whether or not there is a restrictive covenant on the lot prior to the application continuing before the Board.

Mr. Pape advised the Board that public notice for the consideration of the two applications was already done. He wished to make an opening statement. Attorney Greg Vella advised that Notice was given in order for Board to accept jurisdiction. Mr. Pape appropriately gave notice and it was published properly. The Board will not accept jurisdiction due to the Agricultural use issue.

Attorney Vella offered a brief explanation concerning the property. In 1987, there was a subdivision of the property before the Planning Board. Attorney Vella read the language of the planning board resolution into the record. The Planning Board stated that any future subdivision of the property is restricted for agricultural use only. Mr. Vella explained what occurred. The deed creating Lot 7.01 contained the restriction. He explained that in this day, we perfect subdivisions by one deed with the metes and bounds on one deed. In this case, the deed for Lot 7 was never filed but the deed for lot 7.01 was filed. The intent to perfect the subdivision was there but it was not legally perfected. In 2004, applicant with different counsel came to the Board of Adjustment for a lot line adjustment (minor subdivision). Mr. Pape properly prepared deeds to perfect that adjustment. That approval does not reference any prior deed restriction of 1987. Mr. Vella felt that because it was not referenced, it does not make it go away, the restriction is still there. He stated that you cannot get around the deed restriction.

Mr. Pape is to speak with the Township Attorney about the deed restriction. Attorney Vella stated that the Board could not approve the site plan with a deed restriction there. The Board will wait to hear from the Township. When the applicant purchased the property there was no restriction found. The Board will place the applications on the Agenda for the November 28, 2007 meeting. The applicant has granted an extension of time through January 30, 2008 and will follow-up in writing. Chairman Novellino asked the applicant to work on addressing Mr. Coppola's comments and asked the applicant to supplement their escrow account.

| At 8:04 p.m. the meeting adjourned by Motion of Mr. Devine and a Second offered by Mr. Iradi and by unanimous vote.

Respectfully submitted,

Pamela D'Andrea