

**MILLSTONE TOWNSHIP
BOARD OF ADJUSTMENT
MEETING MINUTES
MARCH 25, 2009**

Meeting called to Order by Mr. Novellino at 7:30 p.m.

Reading of Adequate Notice by Mr. Morelli.

Salute to the Flag.

Roll Call: Present: Curcio, Devine, Lambros, Morelli, Novellino, Bailey, Frost and Conoscenti. Absent: Barthelmes

RESOLUTION:

Z08-07 36 FLAGS GAME AND GOLF ADVENTURE, INC. – Block 56, Lot 13.01. 4.163 acres located in the HC-1 Zone. Site is the westerly portion of property developed as Dunkin' Donuts. Applicant seeks to add a miniature golf course and related club house "pro-shop". Preliminary and Final Major Site Plan, Use and Bulk Variance. Approval Denied 1-28-09.

Mr. Lambros made a Motion to memorialize and Mr. Curcio offered a second. Roll Call Vote: Lambros, Curcio, Bailey, Morelli and Novellino voted yes to memorialize.

NEW APPLICATION:

Z09-01 SHELLY'S SCHOOL FOR DOGS – Block 57, Lot 33 – Located at Burnt Tavern Road consisting of 56.47 Acres in the BP Zone. Applicant seeks use variance approval to construct a 25,471, one-story building to operate a facility to include boarding for dogs and cats, pet training school, pet grooming school and pet grooming. Bifurcated Application. Variances needed. Deemed Complete 3-9-09. Date of Action 7-7-09. The applicant is before the Board with a use variance request to use a 50- acre parcel for a multitude of dog, cat and pet related services.

Attorney Greg Vella read the jurisdictional packet and finds same in order to accept jurisdiction over the application. He read into evidence, the following exhibits:

- A-1 Jurisdictional Packet
- A-2 Web Notice posted 02/26/2009
- A-3 Application dated 1/8/09
- A-4 Traffic Engineering Letter Report prepared by Maurice Rached of Maser Consulting dated 2/3/09

- A-5 Letter Report from Richard S. Bacon, AIA dated 1/30/09
- A-6 Overall Floor Plan prepared by Richard S. Bacon dated 2/3/09
- A-7 Stormwater Management Report prepared by Peter Strong of Crest Engineering Dated 1/31/08
- A-8 EIS prepared by Crest Engineering Dated 1/31/08; last revised 12/3/08
- A-9 Historic Pesticide and Soli Contaminant Report prepared by Peter Strong of Crest Engineering Dated 5/8/07; Last Revised 3/7/08
- A-10 Half-Mile Aerial Map dated 10/06/07
- A-11 Survey of Property Dated 7/28/03
- A-12 Use Variance Plan prepared by Crest Engineering Dated 10/26/07, Last Revised 12/3/08
- A-13 Mounted color rendering of subject property
- A-14 Sketch of recommended fire bureau modification dated 3/24/09
- A-15 Mounted colored floor plan
- A-16 Mounted colored elevation plan
- A-17 Handout regarding Morris Animal Inn
- A-18 Letter from Lewis Goodfriend & Associates, Consulting Engineers in Acoustics to Ken Pape, Esq. dated 4/2/2009
- BOA-1 Township Engineer's Report dated 3/9/09
- BOA-2 Township Planner's Report dated 3/15/09
- BOA-3 NJDEP LOI dated 6/10/08
- BOA-4 MCBH Soil Log letter dated 11/13/07
- BOA-5 NJDEP General permit dated 2/17/09
- BOA-6 Millstone Township Environmental Commission Report Dated 1/27/09
- BOA-7 Fire Prevention Bureau Report dated 3/23/09

Attorney Greg Vella advised that the applicant was previously before the Board for a use variance that was denied. Mr. Vella explained that the applicant can come back with a new application that has substantial changes. Mr. Vella explains res judicata.

Planner Richard Coppola refers the Board attention to pages 5 and 6 of his report as to the differences in the applications.

In response to the res judicata, physical changes to the plans, the structure and school have been made. There are no longer outdoor runs, they are entirely internal and has been designed with sound deafening materials. There will be noise expert to testify as well. Mr. Vella feels that

the changes are substantial. Mr. Coppola agrees. Mr. Coppola explained that he went through the last application and resolution and the major concern was the noise aspect and Mr. Pape indicated that the design of the physical aspects have changed to address the noise issue. Mr. Coppola stated that the changes are substantial and on point.

The Board entertained a Motion finding that res judicata does not exist. Chairman Novellino made the Motion and Mr. Morelli offered a second. Roll Call Vote: Novellino, Morelli, Lambros, Curcio, Bailey, Devine and Conoscenti voted yes to the Motion.

Ken Pape provided a brief overview of the project. He advised that the Boyce property was a berry farm. The property that is not used for this project would be placed in farmland preservation. Mr. Pape advised that all NJDEP permits have been secured and are placed in evidence.

Attorney Vella swore in Peter Strong who is an engineer and planner with Crest Engineering. Mr. Strong has testified in the past and his credentials are familiar to the Board. Mr. Strong refers to Exhibit A-10 half mile radius map and explains the location of the property as it relates to the Township. The area is wooded in the front farm with fields in the back and wooded areas are located to the north with steep slopes to the west end of the property.

Referring to Exhibit A-13 mounted color rendering of subject property, Mr. Strong explains the proposed project on the site. Stormwater management will use the standing pond water and the driveway design is dirt and gravel and has been approved by the NJ DEP. Woodlands can be protected in a conservation easement and the construction of the project would not hamper the preservation of the woodlands. The NJDEP property is located to the northwest. No residence is close to the project and is approximately 1/4 mile away.

Mr. Curcio asked about the property to the south. That is mostly wooded with a potential nursery to be located there. There is an easement of record for the use of the driveway to a private party.

Mr. Strong advised that the driveway entrance is off of Burnt Tavern. The 24-foot width of driveway narrows down to 18 feet where the wetlands and buffer is located and the remainder is 18- feet wide to the parking area for the building. The driveway configuration as presented is what the applicant is allowed per the NJDEP. Mr. Strong explained the driveway configuration and elevations. Mr. Frost had concerns about the neighboring house at the entrance. Mr. Pape advised that he would meet with that property owner to address concerns regarding foliage and screening.

Engineer Matt Shafai asked about the bypass area. Mr. Strong stated that the bypass area on the curve is 700-feet from Burnt Tavern Road. This would be reviewed at the site plan.

Mr. Strong referred to Exhibit A-14, Sketch of Recommended Fire Bureau modifications as prepared by Crest Engineering. He explained that two (2) fire fighting water sources are to be provided on the site. The recommendations of the Fire Prevention Bureau are acceptable to the applicant.

Mr. Vella wanted to remind the Board that if they do grant the approval, the comments of the applicant and professionals have to be consistent with their presentation at the use variance application. Representations made now do carry over to site plan approval.

Sworn in is Ed Reed, Fire Chief. He stated that the improvements they had requested of the applicant have been met. The Fire Prevention Bureau is satisfied with the 18-foot driveway. They are comfortable with the design of the driveway, the circulation around the building and the water supply to be provided for fire fighting. Mr. Pape will have to go back to the Fire Prevention Bureau and present the actual building when it is designed.

Mr. Conoscenti asked if this design allows two fire trucks to get back to the property. Chief Reed advised that they have no problem with the stone driveway with grass over them.

The testimony of Chief Reed was open to public at 8:27 p.m. Seeing no public questions as to this witness, Chairman Novellino closed that portion at 8:27 p.m.

Attorney Vella swore in Mr. Larry Metz, Mr. Leibowitz' landlord for the past 12-years at this Freehold place of business, located off of Route 79 and South Street. He advised that this business is located next to an apartment complex. There have been no issues, noise, violation or complaints about Mr. Leibowitz' school. At peak times, there are 50 dogs at a time there. The business is for day training and grooming presently. He stated that the building is a masonry building with no noise deafening materials in place.

Attorney Vella swore in Richard Bacon, AIA. He provided his credentials to the Board. He has been practicing since 1981 and has done over 100 of these facilities cross country and is Leed certified as well. Referring to Exhibit A-15, mounted color floor plan, Mr. Bacon explained the building floor plan. There is a reception area, a cattery, grooming and drying rooms that are separated and the finishing room, a holding room where the animal waits for its owners. Training rooms are designed to allow control of the dogs, there is a large area for daycare and a pool for the dogs. He explained that it is well controlled. The design is three pods and four luxury suites. Pods are designed so that air conditioning systems can be controlled and they control acoustics. Referring to Exhibit A-16, mounted color elevation plan, Mr. Bacon explained that the building is made of cultured stone in earth tones. They are trying to make the building have more of a residential feel or a lodge-look.

Mr. Coppola stipulated that this is what the Board will see at site plan approval. All four sides of the building will have the same features and it will have a finished look.

Mr. Bacon explained the steps taken to deafen noise including acoustical ceiling tiles, wall construction on the inside, outside perimeter walls, materials in masonry, pod concept of dogs in controlled environment, dogs isolated from each other, inside acoustical walls act as a barrier inside, etc.

Mr. Pape advised that the sound deadening materials to be used include double paned windows and solid panel acoustical doors on all openings.

The day care holds 2 to 30 max dogs with a nap room. The building materials used are meant for easy cleaning. A machine similar to the Zamboni machine is used after solids are picked up. There are no drains in floor. Mr. Pape stated that the Monmouth County Board of Health County has given them the gallons/per day figures.

Attorney Vella swore in Capt. Kurt Schriever, Freehold Township Patrol division for 21-years. He testified that he found no violations of any kind since 2000 for the School for dogs or for either Mr. Leibowitz or his wife. He further stated that no adjacent property occupants have complained about the business.

At 8:50 p.m., Chairman Novellino opened Capt. Schriefer's testimony to the public and seeing no public questions, closed same at 8:50 p.m.

At 8:55 p.m., the Board took a break returning at 9:02 p.m.

Mr. Vella swore in Lewis Goodfriend, noise expert. He presented his credentials stating that he received his Bachelors from Stevens in 1947 and his Masters in 1952. He is a licensed PE in NJ. And has worked for Stevens Institute as well as had his own consulting engineering firm. He has contributed as an editor of 4 professional journals including noise control published by the acoustical control society of America. He is accepted as a noise expert by the Board.

Mr. Goodfriend had performed dog sound studies for the ASPCA in Monmouth County by measuring dog noises created outdoors. He has worked for a number of vets so that they could have dogs in their facilities. Mr. Goodfriend explained the investigation that he undertook in this project. He visited the site. He had noise measurements taken at different coordinates on the property as well as where the proposed building is to be built. He used the sound level data from the seeing eye dog institute. He explained the procedure. The result was that the noise generated from this facility would be well below the NJ State noise levels for both day and nighttime. Noise should be inaudible and below the ambient level beyond the property lines at any time of day.

Mr. Frost asked what the noise reduction is due to. Mr. Goodfriend advised the fact that they are indoors, within a structure that has dense materials, double glazed windows that are ¼ inch with ½ inch airspace in between. Mr. Goodfriend stated that 50 decibels is quiet.

Mr. Coppola asked Mr. Goodfriend if the noise reduction materials that Mr. Bacon would be using would be satisfactory in creating the necessary noise reduction.

At 9:30 p.m., Chairman Novellino opened Mr. Goodfriend's testimony to the public for questions, seeing none, that portion was closed at 9: 30 p.m.

Mr. Vella swore in Mr. Walter Morris. Mr. Morris owns and operates the Morris Animal Inn. His facility provides boarding, grooming and day care. Built in 1986 in Harding Township, his facility is 24,000 s.f. indoors, caring for 300 dogs and 50 cats. His facility is located within 475 feet of multimillion dollar residential homes. The Morris Animal Inn is a totally indoor run facility but they are permitted to walk dogs outside. Mr. Morris stated that they have had this business for 22 years. He stated that by using the proper materials, the noise levels are inaudible at the property line. They too had to come to their board for a use variance. He handed out pamphlets for the board to see. He does not maintain a peak capacity. He stated that in the industry, you see about 50%. To have 25 dogs to bark simultaneously is difficult to do. The facility must meet the OSHA standards for noise. Mr. Morris stated that he had to go back to the zoning board for an expansion of his operation. Noise was not an issue because there were no noise complaints from the neighbors. When dogs are in season they are separated. He has two shifts to his operation. During the main shift, they may have 30 employees.

At 9:30 p.m. Chairman Novellino opened Mr. Morris' testimony to public for questions to the public for questions, seeing none, that portion was closed at 9: 30 p.m.

Attorney Vella swore in Mr. Joseph Oxley who has familiarity with the specialty training provided by Mr. Leibowitz. He advised that for 12 years he served as the Monmouth County Sheriff. As part of his job, that they utilized canine services. He advised that he went to New Orleans with the Red Cross at 911 at ground zero. He had 4 bomb sniffing dogs when he left his position. They were the first agency in Monmouth County to take advantage of a grant to train dogs, etc.

He offered that Shelly is a trainer of specialized dogs, search and rescue, bomb sniffing, etc. in the State of NJ and Nationally. He stated that Mr. Leibowitz trains the trainers.

He stated that these trained dogs as a resource have become scarce. It is getting more difficult to adequately train these animals and work with their handlers. This facility and the level of expertise that this facility provides are invaluable to the County, the community and law enforcement.

At 9:50 p.m. Chairman Novellino opened Mr. Oxley's testimony to public for questions to the public for questions, seeing none, that portion was closed at 9: 50 p.m.

Attorney Vella swore in Mrs. Pat Butch. She is the chairperson for the Open Space and Farmland Preservation Council. Mrs. Butch advised that Mr. Boyce had put in an application in for farmland preservation which funding is non-existent presently. She advised the Board that this property is on their approved farm list for the State Agriculture Development Committee and on the Monmouth County approved list as well. The farm would be consistent with farms that are candidates for farmland preservation. Any kind of uses that are not farmland would have to be placed in a non-severable exception area. This would have to be done for the SADC. Shelly's is not part of the property that is currently being farmed. Horse trials on this property would tie into the garden center next door and funnel the horses around to bring them to the State owned area. Mrs. Butch requested that the bridle path be implemented. The balance of the property can be placed into a permanent conservation easement. Farmland easements take precedence over conservation easements. Dr. Palmer has offered his facility in case of a state of emergency. Mrs. Butch suggested that a facility such as Shelly's might be able to house animals during a state of emergency.

Chairman Novellino asked to clarify how the open space and farmland preservation programs would benefit. Mrs. Butch stated that the potential facility does not interfere with the farming activity that is going on presently so farming could potentially continue. Mr. Coppola stated that there could be a lease agreement. Mrs. Butch advised that Dr. Palmer's place is in a conservation easement and Mr. Livak had a farm with a conservation easement on it. Mr. Coppola asked if the applicant is willing to lease the property for farming. Mrs. Butch stated that this would be a benefit for farmland preservation if the blueberries continue to grow and are harvested. Otherwise the area of the property would remain as open space – also a benefit.

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Attorney Vella asked if the applicant would continue to farm if the school is there. Mr. Pape stated that the farm operation is not inconsistent with Mr. Leibowitz' operation and they are fine being surrounded by the farm.

The Board took a break at 9:59 returning at 10:07 p.m.

Attorney Vella swore in traffic engineer, Maurice Rached. Mr. Rached is a traffic engineer with Maser Consulting and has testified before this Board in the past and is accepted as an expert witness. He did a traffic assessment of the site. He shares his findings. The intersection of the driveway and the main road would be made safe and would improve the area. Mr. Rached has proper site distance. The driveway at the intersection is 24 feet. The driveway narrows to 18 feet. He finds it to be an adequate width for a driveway of this type. He has seen this size driveway work efficiently and safely. He provided his trip generation findings. For the dog hotel 50/trips day incoming and leaving; behavioral center/ 75 trips; daycare and grooming/50 trip; employees/25 trips per day. He advised the daily volume to be 400 trips. He went over the peak numbers. He used full maximum capacity figures in his assessment of the trips.

Mr. Rached was asked about traffic impact to the property if two lots with warehouse or industrial uses were in place as compared to the proposed use. He advised that potentially they could have 10 times the amount of traffic generated from facilities with 400,000 s.f. to 600,000 s.f. on 35 acres. A warehouse facility is permitted on the property per current zoning and it would intensify the amount of traffic that could visit the site over the applicant's proposal. Mr. Rached testified that for a peak hour the flow is as follows: in the morning it would be 75 car/hour in and 25 cars/hour out and in the evening it would be the reverse with 25 cars/hour in and 75 cars/hour out. Mr. Shafai questioned the numbers testified to because in Mr. Rached's February Report, he reported 150 cars/hour. Mr. Rached stated that he feels that a more realistic number would be 100 cars/ hour at peak flow.

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Mr. Lambros asked if the applicant performed the study to include the intersection traffic that this project would generate. He asked if it is prudent to do a study at these two intersections. This was discussed as a reasonable request at the site plan stage. Mr. Coppola offered that at site plan the Board would have to consider all of the elements of site plan. Mr. Coppola stated that the question now is how does this use fit the site and how does the site fit the use and the impacts on zoning and the adjacent properties.

At 10:30 p.m. Chairman Novellino opened to the public the testimony of the witnesses who would not return including Mr. Metz and Mr. Bacon. Seeing no public comment, that portion was closed at 10:30 p.m.

Chairman Novellino advised that the application is carried to the April 29, 2009 meeting at 7:30 p.m. and no further noticing is required.

By Motion of Mr. Curcio and a second offered by Mr. Conoscenti, the meeting was adjourned at 10:35 p.m.

Respectfully submitted,

Pamela D'Andrea

