

**MILLSTONE TOWNSHIP
BOARD OF ADJUSTMENT
MEETING MINUTES
MAY 27, 2009**

Meeting called to Order by Mr. Novellino at 7:33 p.m.

Mr. Morelli read the adequate notice.

Salute to the Flag.

Roll Call: Present: Curcio, Morelli, Novellino, Bailey, Conoscenti and Devine.
Late: Barthelmes (arriving at 7:35 p.m.) Frost (arriving at 7:37 p.m.) Absent: Lambros.

MINUTES: Mr. Curcio made a Motion to approve the 4/29/09 Meeting Minutes and Mr. Morelli offered a second. Roll Call Vote: Curcio, Morelli, Barthelmes, Bailey and Novellino voted yes.

RESOLUTION:

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. Heard in part on 3-25-09. Carried to 4-29-09. No further noticing required. Application Approved 4-29-09.

Memorialization tabled carried by the request of the applicant to 6-24-09. Applicant granted an extension of time within which to memorialize.

Z09-02 WESTERN MONMOUTH HABITAT FOR HUMANITY – Block 63, Lot 11 – Located at on Monmouth Road (Rt. 537) consisting of .89 acres in the HC zone. Applicant seeks Use Variance and bulk variances to construct a 1,620 s.f. single-family, one-story, three bedroom residential dwelling on vacant land. Deemed Complete 3-31-09. Date of Action: 7-29-09. Approval granted 4-20-09.

Mr. Curcio made a Motion to memorialize and Mr. Bailey offered a Second. Roll Call Vote: Curcio, Bailey, Barthelmes, Frost and Novellino voted yes to the Memorialization.

NEW APPLICATON:

Z09-03 PARAMOUNT MARINAS – Block 54, Lot 1. 14.4 acres located in the RU-P Zone Located near Yellow Meeting House Road. The Board to consider applicant’s Application for Soil Removal Permit.

Mr. Novellino offered a brief history of the project. Attorney Vella stated that the Board of Adjustment had previously granted a bulk variance for a lot with no frontage. That was approved and when the plans were submitted to the Board it was realized that contaminated soil was encapsulated on the property. He explained that the application was dismissed without prejudice, due to applicant non-prosecution. Attorney Greg Vella explained that when the applicant filed their revised plan and appeared before the board, there was no encapsulated soil shown. Engineer Matt Shafai subsequently received the revised plans and found that the soil had been encapsulated. In addition to the encapsulated soil appearing on the plan, the house also had to be moved due to the encapsulation. The applicant was advised that they had to come back to the Board for a new application due to these substantial changes.

Attorney Vella advised that the Township issued the applicant a summons for failure to obtain a soil removal permit for the soil encapsulation. That issue is pending before the Municipal Court and is not relevant to the application that is before the Board. The applicant is seeking approvals post ipso facto or after the fact for the soil encapsulation. They need a soil removal permit in conjunction with the new application. They are coming back and trying to re-do the application the right way. In order to gain an approval, they must give you proofs to show they did the right thing.

Attorney Vella advised that he had reviewed the jurisdictional packet and found same to be in order to accept jurisdiction over the application.

He reads the following evidence into the record:

- A-1 Jurisdictional Packet
- A-2 Application dated 2-25-09
- A-3 Grading and Landscape Plan prepared by PDS, INC. dated 4/14/04, last revised 3/23/05
- A-4 NJDEP No Further Action letter dated 2/7/08
- BOA-1 Township Engineer’s Report dated 5/19/09

Attorney Michael Desaro appears on behalf of the applicant.

Mr. Desaro gave a brief overview of the pending municipal court procedure.

Attorney Vella explained that the Board of Adjustment has unique powers and they can interpret the ordinance. They have appeal power on a decision of a zoning officer and can overturn his decisions. In this case, he advised that an appeal of a zoning officer's decision must be filled within 20 days of receiving the summons. That time has run.

The applicant is before the Board saying that the ordinance does pertain to them and asking the Board for relief. The applicant can also be before the municipal court saying that the ordinance does not apply to them.

Mr. Desaro answered the timeline question that was before the Board in the prior application. He advised that Paramount reached out to the NJDEP, after the initial approval and before the extension, with this proposal to removal soil from the Upper Freehold portion of the tract and place it on the Millstone portion of the tract.

Regarding the request for an extension of time on an approval, Attorney Vella stated that as long as it does not violate a condition that was imposed during approval, the extension can be granted. As long as the change is administrative. Both Attorney Vella and Engineer Shafai advised the applicant that the permit extension act does not apply to Millstone and he explained that we are in an environmentally sensitive area, planning area "4B". Mr. Novellino clarified that at this point in time, no approvals from Millstone exist for building on this property.

Attorney Vella swore in James Lang. Mr. Lang presented his credentials. He had received his BS in geology from the University of Maryland He has been a consultant in New Jersey for 22 years and is a professional geologist in the State of Pennsylvania as well. He has testified before this Board and has been an environmental consultant in Tinton Falls, NJ.

In Engineer Matt Shafai's letter dated 5/19/09, section 2A, he asked for the type of soil removed and the amount of soil removed. Remediation began in 1/29/07 and soil was excavated and stockpiled. The burrow pit was excavated and the applicant began to load the soil into the excavated area, concluding on 6/8/07. Mr. Lang stated that the soil that was removed contained naturally contained arsenic. Approximately 55,000 to 58,000 cubic yards of contaminated soil was removed from one portion of the site and buried in the excavated area.

Exhibit A-5, Mounted Aerial Map of the site prior to the soil removal. Mr. Lang showed where the boundary line is located as he explained the area remediated was the former location of an orchard. Mr. Lang sated that approximately 10% of the soil was located in Millstone and 90% in Upper Freehold.

Marked into evidence A-6 Mounted Plot Plan. Mr. Desaro explained where the house would be located in proximity to the encapsulated soil. The applicant had prepared a remedial action work plan and sent it to DEP. The work plan had to change and the applicant had to revise the work action plan. They reached out to the DEP case manager in order to excavate and move the soil on the site. They worked with a DEP case manager. That plan was to dig it up the contaminated soil and move it.

Mr. Frost asked why dig a hole in a virgin area and put contaminated soil in its place. They swapped Millstone clean fill, excavated it and put the contaminated soil in its place and encapsulated it. He questioned the logic of this scenario.

Attorney Vella asked the applicant to justify this. He asked the applicant why it was a good plan to swap clean soil for contaminated soil. There was 3.2 acres of contaminated soil encapsulated on a single family residential lot in Millstone. He asked why did they not just remove the soil and place it somewhere where no one would be residing. The applicant did not answer the question.

Mr. Lang advised that a 2-foot layer of clean fill was placed on top of the encapsulated soil. He was asked if there was any buffer placed below the contaminated soil. He was asked if there was any engineering control to provide a physical barrier. Mr. Desaro advised that the institution control is a deed restriction filed with Monmouth County Clerk's office.

Mr. Lang went over the soil content that was encapsulated.

Attorney Vella stated that the contaminated soil is located on one lot and that lot just happens to be in Millstone. The property in Upper Freehold encompasses 64-acres. This is all owned by one person. Mr. Vella questioned why couldn't the 90% of contaminated soil be placed on one lot in Upper Freehold?

Mr. Lang stated that from an environmental standpoint it is important that it is encapsulated properly and it does not matter where. He stated that the contaminants found are not volatile and are stable in the soil. He stated that they are pesticides designed to adhere to the soil in order to do their job.

The applicants were asked how close is the encapsulated soil to the nearest home's well. Mr. Barthelmes asked Mr. Lang if the homes in the area that are serviced by well water are at risk. Chairman Novellino asked why they did not remove the soil. Why encapsulate it. Mr. Lang stated that the risk would be exposure with direct contact.

Attorney Vella swore in Engineer and Planner William Stevens who has appeared before this Board and the Planning Board in Millstone.

Mr. Stevens while not involved in the encapsulation was asked as a professional engineer to estimate where the encapsulated area is located in proximity to the nearest home/well.

Chairman Novellino asked if trees could be planted on the encapsulated soil. Mr. Lang stated that you would have to contact the DEP in order to plant trees there. He stated that you could put greenhouses on the soil but there are limits and he would not recommend planting trees there.

Engineer Shafai calculated that 58,000 cubic yards would encompass an area 11.23 feet deep over 3 ¼ acres. Engineer Shafai asked how deep the water table is. He asked what volume of soil was removed. Planner Richard Coppola wants the information broken down. No one who was on site when the soil was removed was at the hearing to testify.

The Board took a recess at 9:00 p.m. returning at 9:13 p.m.

Mr. Desaro stated that everyone who worked at Paramount during the encapsulation is no longer working there. The volume can be calculated but he testified that he did not have those figures on hand. They could agree to present that information within a certain time frame or carry the application and they will have the information for the next meeting. Mr. Desaro did confirm 11 foot depth of the encapsulated area.

It was discussed that the proposed house on the Millstone lot would be 58.13 feet from the encapsulated area.

Mr. Coppola asked the applicant if they know where the water table is located. Mr. Lang stated that he did not know where the water table is. Mr. Coppola questions that comment. Construction people from Paramount were out there. The firm of Brilliant-Lewis for whom Mr. Lang is employed, was not out on site when the pit was excavated. Mr. Coppola asked if any certification or written documentation is available that shows the height of the water table for the Board to review. Mr. Coppola presented the question what if the water table is right on the bottom of this pit then suddenly the contaminants can travel they could travel because water could move them.

The Board requested that physical logs of records of the soil testing of the location of the water table depth, etc. be provided to them. These records should be provided no later ten days prior to the next meeting in accordance with the MLUL.

Mr. Frost asked what checks and balances are in place, who performed the task, when and where, etc. Proper documentation is necessary.

Engineer Shafai stated that the areas of information are lacking. Is there anything showing the contours before and after the excavation/encapsulation. Mr. Shafai wants this information. He also remarked to the Board that the applicant is saying the contours are the same as before the excavation but they are not providing anything for the professionals to review. There are concerns about water flowing through the site in terms of drainage. Mr. Shafai asked if Freehold Soil has issued a certification. There are concerns regarding soil erosion.

Attorney Vella stated that the Board needs to see a map that reflects where the land was excavated, where the soil was removed from, the exact dimensions of the pit, the volume of soil, water table information, etc. Attorney Vella stated that the NJDEP did some work on the site and he wants to see a copy of their bill.

The Board asked the applicant how any potential property owner would know where the boundaries of the encapsulated area are?

The applicant was asked if any of the neighboring property owners were notified of the encapsulation. Mr. Lang advised that none of the neighbors received noticing. It was discussed that there is a potential significant environmental impact within the seasonable water table.

All of this information is needed by 6/14/09 for the next meeting of 6/24/09. Mr. Novellino advised the applicant to contact the board secretary if they found there would be a problem obtaining the information for the next meeting.

Mr. Curcio offered his concerns that the applicant was so ill prepared for this meeting. The applicant moved contaminated soil and has no information concerning this.

Attorney Vella stated that the application has been carried to the 6/24/09 meeting beginning at 7:30 p.m. and no further noticing is required. Z09-03 Site Plan application will be carried to that time as well since jurisdiction has been accepted on that application.

No New Business; no old business.

The meeting adjourned at 9:45 p.m. by Motion of Mr. Curcio and a Second offered by Mr. Conoscenti and by unanimous vote.

Respectfully Submitted,

Pamela D'Andrea