

**MILLSTONE TOWNSHIP
BOARD OF ADJUSTMENT
MEETING MINUTES
JUNE 25, 2014**

Meeting called to order by Chairman Novellino at 7:30 p.m.

Reading of Adequate Notice by Vice-Chairman Barthelmes.

Salute to the Flag and observance of a moment of silence for the troops.

Roll Call: Present - Barthelmes, Novellino, Lambros, Bailey, Mostyn, Morelli, Frost and Ferro. Absent - Conoscenti

APPROVAL OF MINUTES: April 23, 2014

The Board having read the April 23, 2014 Meeting Minutes and there being no further changes, Mr. Mostyn made a Motion to approve and Mr. Lambros offered a Second. Roll Call Vote: Mostyn, Lambros, Morelli, Bailey, Ferro and Novellino voted yes to approve the meeting minutes.

NEW APPLICATION:

14-03 SEASONAL WORLD – Block 57.01, Lot 21.01. Property consists of 2.91 acres located in the HC-1 Zoning district known as 532 Monmouth Road. Applicant seeks amended major preliminary and final site plan approval and potential variance relief for an installed 1,914 s.f. tent along the southwest building facade to be used for storage and display of retail merchandise. This area was previously approved by the Board to display three (3) above ground pools. Board to consider waiver request for submission of site plan checklist documents. Not deemed complete Noticing is required.

Applicant represented by Attorney Patrick McNamara of the firm Scarinci Hollenbeck.

Attorney Vella advised that he had reviewed the Noticing packet and finds same in order to accept jurisdiction over the application. Attorney Vella read the following exhibits into evidence:

- A-1 Jurisdictional Packet
- A-2 Application dated 05-29-14
- A-3 Web Notice
- A-4 Site Plan prepared by Midstate Engineering dated 4-25-14; last revised 6-9-14
- A-5 Mounted Exhibit A-4 (Site Plan prepared by Midstate Engineering dated 4-25-14; last revised 6-9-14)

Mr. McNamara advised that the applicant is before the Board at the direction of Township Officials regarding the tent that has been erected on the subject property. The applicant will place before the Board provisions of the UCC information that may be applicable and may eliminate the need for permitting .

Attorney Vella swore in Chester DiLorenzo of Midstate Engineering. He has appeared before the Board in the past and testified as both a professional Engineer and Planner and appears this evening to testify as both.

Mr. DiLorenzo provided a brief overview of the situate property and location. He advised that the applicant is before the Board concerning a tent that has been erected on the property.

He explained that the Seasonal World business sells and installs in-ground swimming pools, sells Halloween and Christmas decorations and changes venues with the season.

Mr. DiLorenzo advised that two of the variances being requested are pre-existing for the overall size of the lot and for setback requirements. He stated variance relief had been granted in prior applications.

Attorney Vella read the Board's exhibits into Evidence as follows:

- BOA-1 Township Engineer's Report dated 6-17-14
- BOA-2 Township Planner's Report dated 6-20-14
- BOA-3 Application #Z-09-04 Resolution dated 11-30-09 Granting Use Variance and Amended Major Site Plan Approval
- BOA-4 Application #Z-09-06 Resolution dated 11-30-09 Granting Use Variance and Amended Major Site Plan Approval
- BOA-5 Application #Z11-02 Resolution dated 8-24-11 Granting Amended Major Site Plan Approval

Mr. DiLorenzo had taken photographs of the existing property that are marked into evidence as:

- A-6 21 Photographs (8 1/2" x 11" on copy paper) of the subject property (1-21)

Mr. DiLorenzo described each photograph as the Board viewed the exhibit. Entered into Evidence is Exhibit A-7 Mounted Exhibit of Photo location.

Mr. DiLorenzo advised that the tent is constructed of vinyl with the dimensions of 20 ft. x 95.7 ft. and 9 ft. high pipe structure support systems and screwed into the ground, not permanent in nature intended to taken down on November 30, 2014 removed from the property and stored at their storage facility in Jackson.

Attorney Vella refers to Exhibit A-7 regarding a proposed area protected by enclosed tent. The entire area is tented. He asked why the picture reflect that the applicant has above-ground swimming pools

located outside of the tented area. The Board is aware that the pools shown outside of the tent are not shown on the plan that the Board is reviewing. The Board discussed the inconsistencies with the plan they have before them and what is reflected in the Photographs provided in Exhibit A-6.

Chairman Novellino wants the Board to see a site plan that reflects everything that actually exists on the site. The applicant stated that he will provide that.

Planner Cindy Coppola had concerns about the landscaping. She stated that there may be landscaping that was previously approved that was required to be on site. Plans must reflect what landscaping was approved and planted. Planner Coppola asked the applicant if there is landscaping in the area of the tent. Planner Coppola noted that the fence in the photographs is not reflected on the site plan; the existing landscaping shown in the Photographs is not reflected on the site plan.

Mr. Lambros asked how the Board and its professionals can approach this application if they are reviewing a site plan that is inaccurate.

Mr. McNamara asked if the initial testimony can be completed and asked if the Board professionals could come to the site and see the tent for themselves.

Attorney Vella provided some history of the prior applications that even predated his term on the Board. Attorney Vella explained that the applicant had to receive a use variance in order to sell outdoor display pools. The applicant erected the pools without a permit so he had to come to the Board and apply for a use variance to sell the pools in a certain location on the property. The Board did not require that he take down those pools and they granted the expansion of the non-conforming use and use variance. The Board identified the exact location where the three (3) pools could be erected. Attorney Vella stated that now, looking at the photographs, the Board and its professionals see that the tent is in the location where the three (3) pools were approved to be located and the pools are now located outside of the approved area. Attorney Vella states applicant has further expanded the location that required a variance for expansion of a non-conforming use. Mr. McNamara believed that the Resolution was not so specific that the applicant could not move the pools a few feet outside of that area within the frame work of the building envelope.

Planner Coppola advised that a pool is a structure by definition and they are under the purview of the Zoning Board for site plan approval based on a specific plan that shows their specific location including lighting and landscaping.

Attorney Vella clarified that if the applicant had replaced the pools in the approved area with other pools in the approved area, there would not be a problem. By moving the pools outside of the approved area and to another area on the site, he has now expanding that area. This is the concern.

Anthony Schaivone owner of the property is sworn in by Attorney Vella. Mr. Schaivone explained the tent is 20' x 96'. The approved area is 125'-130'. It was discussed that the plan shows the canopy is to the edge of the building and the photos reflect that the pools are outside of that area. Mr. Schaivone stated the plans may not be accurate. Attorney Vella explained that is the problem.

Chairman Novellino stated the moving of the above ground pools is the problem. He sat on the Board when the pool area was approved. As soon as they are moved outside of that approved area,

there is a problem. Applicant advised it may be outside 6' to 8'. He said they are in the same approved area and he explained that they did not change the area except to move the three pools, scale them down, and remove the water.

Engineer Shafai stated that the applicant should revise the plans to reflect current conditions and what the applicant is seeking approval for.

Planner Coppola stated her concern that on the prior application, the Board approved certain conditions that are not reflected on this site plan. She wanted to make sure that these conditions were met and are reflected on the revised plans. An example is the moving of the dumpster.

Chairman Novellino advised the Board and professionals need an accurate site plan with current site conditions and the proposed conditions.

Mr. McNamara advised that the applicant is prepared to address that.

Mr. Frost addressed photo #21 (A-6) the rear parking lot, you see a metal rack for storage. He advised the applicant to take that in to consideration if they want that approved, it should be reflected on the site plan.

Chairman Novellino asked the applicant to continue discussing what they would like approved on the site.

Mr. DiLorenzo continued going over the photographs he had taken of the current conditions of the subject property.

Mr. DiLorenzo read aloud the Uniform Construction Code (UCC) for a tent, subchapter B4ii, 1-5, and stated that the subject tent does not meet the criteria that require the applicant apply for a building permit. His opinion as an engineer and planner would be that they tent does not need a building permit and because it does not need a building permit, it does not need site plan approval.

Attorney Vella advised that as a result of this the applicant requires a setback variance. He clarified that a structure and a building permit are two different things. He agrees that a building permit may not be needed. Attorney Vella stated that the UCC does not trump site plan approval. The applicant is creating a variance associated with this tent. This whole application is creating an additional use variance for expansion where the applicant has placed the pools. The applicant is creating a variance that the Board has to approve.

Mr. McNamara respectfully disagreed and will supplement the information for the next meeting Mr. McNamara stated that the tent is not a permanent structure and he feels it does not create variance relief and he explained.

Attorney Vella stated that the applicant noticed for a side yard setback variance, and he did not appeal the determination to the Board. Mr. McNamara asked for a determination of the Code Official and did not receive one and he feels the Board is now bound to consider this application. Mr. McNamara offered that the Board can consider evaluating the overall application packet and upon further review there may not be jurisdiction if the Board finds that the tent is not a structure then the

issue of site plan and variance relief may be dealt with in that manner looking from a bulk variance relief view. He must review his position from a D Variance prospective and address this by the next meeting.

Attorney Vella explained that the Board is not questioning the changes of internal items for sale. The applicant took an outdoor display of items and put them in an area that was not approved by the Board and the plans do not show that.

Mr. Di Lorenzo addressed the bulk variance relief from a planning point of view and advised that the applicant seeks to install a 20'x96', 1,920 s.f. blue vinyl tent, temporary in nature, installed along the westerly side of the building. The tent fits over an existing patio area. A bulk variance for side yard setback of 32.3 feet is proposed where 40 feet is required. He feels that benefits outweigh any negative impact. The retail use area has not be expanded by the installation of the tent. Mr. DiLorenzo stated that this is the least visibly intrusive area and he explained.

Mr. DiLorenzo addressed the parking and feels the site has adequate parking. He offered that this is not the type of retail store where patrons come into this store on impulse shopping. There are parking stalls on the grass where the employees may park if additional parking is needed. Mr. DiLorenzo feels that during different times of the year, there is adequate parking and he explained. He will still provide the parking spaces required and bank the parking required.

Addressing the Planner's report, Mr. DiLorenzo will comply with all items on the report but addressed the items on page five, paragraph 2 under Site Plan Comments. He advised that the tent will not be heated or cooled. The tent is screwed into the ground. If it is hot, the tent sides could be rolled-up. There are no outside lights associated with the tent and minimal lighting inside. The time duration would be installation of the tent on April 1 and removal on January 5th, weather pending. Mr. McNamara is asking that time frame be amended from November 30th to January 5th. Planner Coppola stated that would be a nine month time period. Engineer Shafai advised that the tent would then need a construction permit and applicant agreed.

The tent is located over a patio area and not a grassed area. The applicant advised that the tent skin is stored in the applicant's Jackson storage facility. The applicant clarified that the frame is installed and the skeleton remains and stays year round. The Board asked if the structure stays up all year long would that be considered a permanent structure.

Mr. DiLorenzo continued addressing the Planner's report and advised that under there will not be any signage on the tent structure. Mr. Shafai refereed to Mr. DiLorenzo's current plan and stated that the last Board approved plans prepared by Crest Engineering reflect a side yard of 48'7" from the building and Mr. DiLorenzo's plan shows 32'.3" (52.3 from building). We want to make sure the correct setback is on the plan.

Mr. Shafai clarified that no variance for side yard setback was granted. The Board addressed the variances that were previously granted.

Mr. DiLorenzo asked for a waiver from item 5 (page 6 of 7) of the Planner's report, Architectural plans. Mr. DiLorenzo advised that tent was erected prior to his site visit. He advised that the tent is an anchored tent and drawings would be one page from a catalogue.

Planner Coppola asked if the lot coverage is 45.8 inclusive of the tent area. Mr. DiLorenzo answered in the affirmative but stated that may change since the building may be a little wider per Engineer Shafai.

The Board asked what would be displayed under the tent. Hours of operation are 10:00 a.m. to 7:00 p.m. or 8:00 p.m. at night. The Board was concerned with safety and lack of with lighting under the tent taking into consideration daylight savings time.

Once the Board sees the plans that reflect the current conditions, they can address the application and make informed decisions.

The Board requested revised plans to be received by July 11th in order for the application to be carried to the July 23rd meeting. No noticing is required if the applicant appears at the July 23rd meeting. If the plans are not received by July 11th, then the meeting would take place August 27th and the applicant would have to notice for that meeting.

Chairman Novellino provided instructions to the applicant as to what the plans should contain in order for the Board to properly consider the application.

Mr. Frost also commented on an observation that he made when he visited the site, concerning fire safety. He noted small 12" high fire extinguishers were on site. He asked the applicant to comply with whatever the fire department feels is appropriate for safety. Applicant advised that he would.

Attorney Vella made a public announcement that the meeting will be carried without any further noticing on July 23rd. Chairman Novellino announced that there was no public in the audience to open the application to question. Applicant provided an extension of time through July 31, 2014.

NEW BUSINESS:

Attorney Vella advised that under the OPRA rules, if the Board was directed by the Township Clerk to provide any information, this request came under the review and approval of the Township attorney. If the Board has any information to provide then the Board should comply.

Seeing no further new or old business, Chairman asked for a Motion to adjourn. Mr. Lambros made a Motion to adjourn and Mr. Frost offered a Second and by unanimous vote the meeting adjourned 9:07 p.m.

Respectfully submitted,

Pamela D'Andrea