

**MILLSTONE TOWNSHIP  
BOARD OF ADJUSTMENT  
MEETING MINUTES  
JULY 23, 2014**

Meeting called to order by Chairman Novellino at 7:35 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, Frost (Late 7:44 p.m.) Absent - Conoscenti, Ferro and Morelli.

**APPROVAL OF MINUTES:** June 25, 2014

The Board having read the June 25, 2014 meeting minutes and finding no changes needed, Mr. Barthelmes made a Motion to approve and Mr. Mostyn offered a Second. Roll Call Vote: Barthelmes, Mostyn, Lambros, Bailey and Novellino voted yes to approve the meeting minutes.

**NEW APPLICATION:**

**Z14-04 ALSTER, HOLLI AND BRIAN** - Block 45, Lot 5.15. Property consists 2.0 acres located in the R-130 Zoning district. Subject property is located on a corner lot which, by definition, has two front yards. Applicant seeks variance relief to construct an in-ground swimming pool which is not permitted in the front yard setback. Applicant also seeks a variance to install a 54 inch fence in a portion of the front yard setback as well as a 48 inch high chain link fence in the front yard setback. Deemed Complete 7-1-14. Date of Action 10-29-14. Noticing is required.

Board Attorney Vella read the following exhibits into the record:

- A-1 Noticing jurisdictional packet
- A-2 Web Notice
- A-3 Application dated 7/1/14
- A-4 Sketch of the proposed pool area and fence area
- A-5 Aerial of Property prepared by County of Monmouth dated 2011
- A-6 Property Survey Prepared by Crest Engineering, dated 5/1/04
- A-7 Pool Grading Plan prepared by Midstate Engineering dated 7/9/14

Brian and Holli Alster were sworn in by Attorney Vella.

Mr. Alster reported to the Board that they have lived in the Township for the past ten years. They reside on a corner lot and are before the Board to request a variance for the placement of their pool. They wish to install an in-ground pool in the portion of the yard that faces Hope Drive. The applicants had planted trees along back and to the right side yard. The trees are 20 to 25 feet tall and screen the yard. Mr. Alster explained why the proposed location is the logical area to put pool. Mr. Alster advised the Board that there are at least 8 or 9 in-ground pools in their subdivision alone.

The applicants have built out the landscaping to create privacy on the open side where Young Terrace intersects with Hope Drive. They explained that they had created a natural border to enclose the backyard.

Planner Cindy Coppola advised that three technical variances are involved because the corner lot has two fronts. The minimum required front yard setback is 75 feet. The fence around the pool is chain link and chain link fencing is not permitted in the front yard. The 54 inch high fence is a traditional aluminum pool fence and would require a variance for the height since only 48" fence is allowed in the front yard. The pool itself would be located in a front yard which is not permitted.

The Alsters advised that the chain link fence along Hope Drive would be installed in between the double rows of trees for added screening.

Mr. Frost arrived at 7:44 p.m.

Chairman Novellino advised that he drove by the property and noted the trees and commented that no one would see the fence or proposed pool.

The applicants advised that in May of this year, they had planted 6 foot white pine trees 58 feet to the corner of Young Terrace. They added that the trees will provide screening over time. The applicants testified that they will maintain the tree line.

The Alsters advised the Board that they would have two gates and provided their location.

Chairman Novellino opened the application to the public at 7:50 p.m. Seeing no public portion, he closed the application to the public at 7:50 pm.

The Alsters stated that they had hand-delivered most of the Notices of the hearing to the neighbors.

Planner Cindy Coppola stated that this application is not a hardship variance but rather a C2 variance. She stated that the application met that criteria by the fact that the applicants have heavily landscaped the lot and that makes an ideal existing screen which is not found on the part of the lot where the pool could be permitted. The proposed pool location is a better placement on the lot. Planner Coppola advised the Board that she saw no detriment to the Township zone plan and felt that the application more than meets the criteria of the C2 variance with no negative impact.

Engineer Shafai had no other added comments.

Mr. Barthelmes stated that the applicants have spoken to the neighbors and offered the fact that no neighbors are at the meeting this evening is an indication that they do not seem to have any concerns.

Chairman Novellino reported that he sees no detriment in the proposed location of the pool. He stated that the trees provided seclusion.

Attorney Vella stated that conditions of approval are as follows: the chain link fence must be a black chain link fence; the applicants must maintain the trees and replace any dead trees.

Mr. Bailey made a Motion to approve the application and Barthelmes offered a Second: Bailey, Batthelmes, Mostyn, Lambros and Novellino voted yes to approve the application. Mr. Frost was late arriving and ineligible to vote on this application.

**CARRIED APPLICATION:**

**Z14-03 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 to have 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. Carried from 6-25-14. No additional noticing required.

Board Attorney Vella entered the following Exhibits into Evidence:

- A-8 Site Plan prepared by Midstate Engineering dated 4-25-14; last revised 7-9-14
- BOA-6 Township Engineer’s Report dated 6-17-14; Revised 7-18-14
- BOA-7 Report from the Millstone Township Bureau of Fire Prevention dated 7/14/14

Attorney Vella stated that the Court previously determined that once the Board granted a use variance on the site expanding the same use on that site does not require a new use variance. While he did not agree with this finding, he stated that no additional use variances are required per the Court determination.

Chairman Novellino agreed that tonight, the witness should testify as to what is on the property today and advise what is being proposed.

Attorney McNamara thanked Board for having the applicant back to the Board so quickly. He thanked Engineer Shafai for meeting with Engineer DiLorenzo on the site and appreciated Planner Cindy Coppola being readily available via the phone.

Engineer Di Lorenzo is still under oath and continued his testimony. He explained the prior plan showed at 1,920 s.f. tent is located over stamped concrete. The survey of the property reflects that the entire shape of the area is 13,293 s.f. including the canopy exterior and tented area. Engineer Shafai found the discrepancy. The correct number of parking spaces required should be 83 parking spaces not 96. Sixty -Two (62) parking stalls consist of 60 usable stalls and 2 handicapped stalls that will be hash marked accordingly. There are also banked parking spaces on the plan.

The landscaping is contiguous with the proposed tent area consisting of boxwoods and conifers. Mr. DiLorenzo explained the existing plantings to the Board. Mr. DiLorenzo stated that a 54" Jeroth Fence and plantings mask the building from the contiguous site.

Mr. DiLorenzo advised that nothing on the plan in the area of the tent is proposed, they are before the Board to ask for forgiveness since the tent is already in place. The revised plan also reflects an area to east side of parking lot where there is an existing pool. Mr. Schiavone may wish to raise and remove the existing pool that has been there since 2001 or 2005 and put two other gunite pools or the like, miniature in size in this demonstration area. Eventually, in the future, Mr. Schiavone wants to keep one display pool located to the most northerly side of the property. The pool will not have a liner or filter, located behind catch basin no. 7. These items are newly proposed and the applicant is seeking approval for them.

It was clarified that 83 parking spaces would be required. The setback for the tent was discussed. A setback variance is needed and a discussion of whether it is 27.5 feet that is being requested or 32.3 feet. The setback requirement is 40 feet and it appears that 32.3 feet is being requested. This will be confirmed by Mr. DiLorenzo going out to the site and measuring one more time. The Board stated that regardless, a variance is needed and if granted, it would be based on the larger setback 32.3 feet.

Board Planner Cindy Coppola stated that the number of banked parking stalls that exist on the plan is 19, the prior approval is for 18. She explained how the site losses 3 banked spaces. Mr. DiLorenzo advised that they can reconfigure, restripe and move the dumpster to work out the parking. Planner Coppola asked that the spaces maintain a 9 foot width. Engineer Shafai stated that it is very tight and a variance for parking may be needed. Ultimately, the applicant will ask the Board for a parking variance for 4spaces less than the required 83 spaces since it is unclear whether all required banked spaces can actually be built if needed.

Board Attorney Vella discussed what bulk variances are needed. Concerning the existing and proposed display area for the pools, the pools on the plan are substantially closer to the property

line. What variances are being created from the proposal to take one pool down and build two pools?

Engineer Shafai reported that no accessory uses are permitted in this zone. Any accessories added to the property must seek variance relief. He clarified that this includes shed, they are not permitted in this zone.

Planner Cindy Coppola advised the proposed plan is not consistent with prior approved plans. She advised there is a substantial increase in the area proposed to be devoted to these pools. The fence line is much greater than what currently exists .

Mr. DiLorenzo clarified that they will not move the fence. His last plans were based on other information. They measured the fence and the fence shown on the new plan is the correct fence line. Mr. Schiavone wanted the plan to show a larger inground pool display area. They are moving one fence north toward the propane tank . Other two fences will remain where they are even if no consistent with the 50 foot setback.

Mrs. Coppola advised that she visited the site today and had concerns about the impacts of increasing the inground pool display area per the proposed plan. She stated that there were plantings of arborvitae around the entire fenced area and some pine trees and oak located behind the fenced area. The landscape plan does not reflect this . She is concerned about what may be removed or damaged. Planner Coppola stated that a very large oak tree is located at the corner of that fence and if removed or damaged, it would be a substantial loss. She has concerns if the fence is extended to north, the oak tree and some pines may sustain damage. The impact to the vegetation must be considered and that is why site specific landscape information must be provided. Applicants advised that they will work around the oak tree and the pine trees . Planner Coppola stated that substructures in the ground may damage or kill the trees.

Mr. DiLorenzo agreed to minimize the size of pools and placement of the pools to save the landscaping and trees. Mr. McNamara stated that the new pools Mr. Schiavone is proposing are overly large models, free formed and can be made so that they do not impact the existing trees or landscaping.

Attorney Vella stated that the applicant is proposing to expand an area that is a non-permitted use and add another 1,000 s.f. He asked Mr. DiLorenzo to testify as to what the land related issue is and what is the negative impact to place pools closer to the interstate. Mr. Di Lorenzo offered that this is the least obtrusive area and is unseen by any contiguous property and can only be seen from the 195 ramp that accesses Rt. 537.

Mr. Mostyn asked if the pool is for display purposes, why do the pools have to be so deep? Mr. Schiavone stated that the pools are 5 to 6 feet deep and he advised that the depth is necessary in order to demonstrate their cleaning apparatus, this is what they are known for.

Attorney Vella stated that the Board already granted a certain area for outdoor in-ground pool display. The Board would not require any variance for the applicant to put in or take out pools within the existing fence line that the Board previously approved and he finds no need to come to the Board for a new approval if the applicant stays within that display area. The applicants agreed to that approach and will not expand the area of the in-ground display pool in the event that they remove the existing pool and replace it with two smaller display pools.

Regarding the proposed above ground pool relocation, Planner Coppola presented that if the above ground pool were located elsewhere on site in the area of the proposed banked parking area, that would allow for that above ground pool to be located away from the building.

It was discussed that the Board approved three pools in area where the tent is being proposed. Those pools were already built before the applicant appeared before the Board but the Board did not require that the applicant remove the pools. Chairman Novellino stated that the Board approved that specific area for above ground pool displays because they felt it would have less of a visual impact than any other areas of the property. Moving the above ground pools to a different area as is currently being proposed will have a negative visual impact on the site.

Mr. McNamara advised that the applicant is staying within that footprint, between the propane tank and the existing fence is a less visible area to be landscaped, buffered by arborvitae. The proposed pool is a shell with no water and Jeroth fencing provides a visual buffer. At this time, Mr. Schiavone withdrew his request for the above ground pool relocation at this time and Mr. McNamara withdrew the proposal to locate a new above ground pool on the site on behalf of the applicant.

Mr. McNamara has no objections to the Fire Official's report and will meet those conditions.

Engineer Mr. Shafai advised that if the tent is up over six months, the applicant will need construction official approval in accordance with the BOCA Code that the applicant provided to the Board at the last meeting. Attorney Vella read from the Code. No permits are needed if the applicant stays within the time frame and if they want to extend the time frame, then the permits are needed. Mr. McNamara advised that the applicant can provide the adequate egress needed per the Code.

Chairman Novellino asked the applicant's Engineer/Planner what type of variance are they seeking concerning the tent. Mr. DiLorenzo advised setback requirements. Chairman Novellino asked why the applicant cannot meet the setback requirements. Mr. DiLorenzo stated that the side yard setback is 40 feet. The applicant is seeking to place the tent over the existing stamped concrete area. Where 40 feet are required, the applicant can only provide 32 feet. Mr. DiLorenzo stated that large items will be displayed under the tent, such as outdoor kitchens, hot tubs and Jacuzzis. All encompass a larger area and would not fit under a smaller tent. He add that this does not obstruct vehicular or pedestrian traffic.

Board Planner Cindy Coppola asked Mr. DiLorenzo what variance they are arguing. Mr. DiLorenzo stated they are seeking a C2 variance. Planner Coppola stated that she did not see the hardship from a planning prospective. She stated that if the applicant wants to increase the retail space, given fact that there is concrete on that side and the other sides of the building about parking and circulation space. It may be argued that this is a better location if there was justification for increasing the size of the building. If the Board finds that his argument for having to increase the area to help his business then the Board could argue a C2 variance and this is the best location.

Mr. DiLorenzo stated that the items displayed under the tent are too large to display in the building such as outdoor kitchens and the like. This area has been used as a display area for above ground pools previously. The tent protects the items from UV rays as well.

Planner Coppola advised the Board that this tent will not be permanent and will come down a portion of the year. If the Board should find reasons to grant the variance, the tent is not a permanent structure. Planner Coppola also provided that if another retail user came to the Board to continue this use, the Board may find that this is specifically appropriate for this retail business and not for a different retail business. She asked Attorney Vella to place something in the Resolution that this variance was granted for the specific use and not necessarily for any other future use. The tent is not a permanent structure and can be removed in the future and the side yard setback can be maintained in the future.

The Board discussed the frame staying up all year or coming down after the cover was taken off.

Engineer Shafai reported that the applicant advised that nothing is to be kept under the tent from January to April. The applicant clarified that the area between the tent and the entrance has nothing there and is wide open.

The applicant advised that the tent frame has screw anchors is screwed into the ground and not bolted in place. Straps secure the frame. The frame is 20ft. x 96ft. Mr. Schiavone stated that the most difficult part is putting the frame up.

Planner Coppola stated that the site plan should acknowledge or provide clarification that they can modify the pools within the already approved area only.

Chairman Novellino opened the application to the public at 8:54 and finding no public comment, that portion of the meeting was closed at the same time.

Planner Coppola explained the positive and negative aspects of the variances. Two variances are needed. One is needed for parking and one for the setback. The applicant's plans should be updated to show possible parking spaces to decrease the deficiency of 4 parking spaces. If Mr. DiLorenzo can add more parking to the site we will have less impact. The trigger for the need for additional parking is that once the display area became tented, the tent became a structure and once the area became enclosed, it required parking to be provided for it per ordinance.

The second variance is for the side yard setback variance. Mr. DiLorenzo will have to get back to the professionals as to the exact size. He argued that the configuration of the existing improvements on site are there and thus the existing concrete slab supports the C2 variance.

Planner Coppola does not see the hardship and feels the variances are C1 and she sees it as a C2 argument. The applicant states that this is a location where there exists a buffer to adjacent burger king. She offered that the tent is temporary and not the same as the Board granting an expansion of the building. If the Board finds justification offered by the application is reasonable and unique to this type of user, then the Board can condition that the side yard variance is only for this particular user and in the future, if there is a change in use, the tent can come down and the variance goes away. No precedent is established here.

Once the Board grants the variance, if the use goes away, the variance goes away. Future property occupant would have to come back to the Board and make the same argument. The Board could ask why the occupant moved into a property that was not large enough for their business. C2 variance is basically the benefits outweigh the detriments. It is a grey area. Applicant's argument is that since you already have concrete there that had an open display area, now putting a tent there so it is less obtrusive.

Chairman Novellino asked about the benefits of approving this applicant. Planner Coppola stated it would be detrimental if the applicant were trying to place the large objects outside and not in a contained area. The tent would hide the large bulk items. She stated that you could do that with fencing around the area and still achieve what applicant is trying to achieve. A canopy with fencing might accomplish the same purpose. The canopy could be a retractable canopy.

The Board discussed the Architectural standards for buildings. The applicant asked for a waiver from those requirements for the tent. Tents are not covered under architectural standards thus a waiver is not needed. Chairman Novellino advised that the applicant's prior canopy was considered under the architectural standard.

Planner Coppola visited the site and saw the tent. She offered that the color scheme does go along with the color scheme of the site. She stated that the area is landscaped which does help to blend and minimizes the visual impact. The applicant will stipulate that the blue color scheme that is there will remain. They also agree to no signage and no writing on the tent.

Engineer Shafai advised that Crests' plan shows the banked parking which gives them three more parking spaces than on Mr. DiLorenzo's plan. Engineer Shafai explained that if the zoning officer sees a need for additional parking, the applicant has to build the spaces. Attorney Vella read aloud the ordinance concerning constructing banked parking. Ultimately, the applicant is banking 22 parking spaces.

Mr. Lambros stated his concerns that the site is very congested and maxed out. He feels that this is inconsistent with the other buildings that are constructed in that area.

Chairman Novellino had concerns with the timeframe that the tent would be up. He questioned the applicant's need for a tent to be up for more than the allotted timeframe than perhaps the applicant should consider a permanent expansion.

Mr. Barthelmes appreciates the way that the applicant wants to expand his business. He offered that since the concrete is already existing he is not as concerned about the tent covering the space but offered that the site is at its capacity.

Planner Cindy Coppola reiterated how the Board could approve this variance specific to this use as testified to.

Attorney Vella advised the Board that if they grant a site plan and the temporary tent structure for outdoor storage for a specific timeframe for this applicant, the Board is granting a bulk variance for the property for a certain amount of time that runs with the land. If they change ownership, the variance is granted for the property.

Mr. McNamara advised that the applicant agrees to record the Resolution and make it condition that the variance runs with this application only. Attorney Vella advised that is the applicant agrees that once this use is abandoned from the site then this approval for a tent has been voided and abandoned. Attorney Vella would call it a Deed Restriction and a Lease Restriction since this applicant does not own the property.

Mr. Bailey asked if approved, does this open the door for anyone else is the area to put up a tent? Attorney Vella advised that this is a unique situation with an outdoor retail already approved by the Board. The area businesses are food establishments and that is a different violation if they put a tent up.

Mr. Frost had passed the property many times and advised that it was difficult to see the tent. He feels that in the scope of the surrounding properties, it blends in. He stated that the applicant is maximizing the property but feels that with the restrictions and conditions that the Board is placing on the application, he is confident that the property will look respectable.

Mr. Mostyn asked if the tent skin weathers, what is the plan to replace the canopy. Mr. Schiavone advised that the Anchor Tent Company makes the skin and after 10-12 years it would be replaced. Mr. Mostyn asked how the tent is secured to protect the public. Mr. Dilorenzo advised the board on the anchoring system details.

Mr. Shafai advised that If the applicant takes the skeleton down, he would be required to go through the construction department for permitting each time. The board agreed that the skeleton of the tent could remain up year round.

Mr. Schiavone takes the tent down if there is a snow load concern or hurricane weather. They will take down from January to April.

Attorney Vella went through the Conditions of Approval should the Board grant the variances as follows, including but not limited to: applicant shall comply with the conditions set forth in Engineer Shafai's report, applicant shall revise the plans to include the hashing marks next to the handicapped stalls, all parking spaces shall be 9 feet wide, applicant shall revise the application to remove the request for expansion of the in-ground pools display area, applicant can change the inside of that area to in-ground pools only without any further application to this Board but construction permits would be needed, applicant shall remove the proposed above ground pools from the plan, application subject to approval from the construction and fire departments, applicant can keep the tent frame up all year, skin on tent shall be the same color and style as the existing tent, no signage permitted on the tent, applicant shall provide revised plans reflecting total parking spaces including the banked parking area, applicant shall move tile display, deed and lease restriction subject approval of the Zoning Board Attorney that when the applicant leaves the site the tent approval is hereby abandoned, tent is allowed to be up from April 1st to January 5th.

Chairman Novellino asked for a Motion to approve or deny the application. Mr. Frost made a Motion to approve the application as conditioned and Mr. Barthelmes offered a Second. Roll Call Vote: Frost, Barthelmes, Mostyn, Bailey and Novellino voted yes to the application. Mr. Lambros voted no. The Motion carries and the application is approved.

At Seeing no new or old business, Chairman Novellino asked for a Motion to Adjourn. Vice-Chairman Barthelmes Made a Motion to Adjourn, Mr. Mostyn offered a Second and by unanimous vote, the meeting adjourned at 9:50 p.m.

Respectfully submitted,

Pamela D'Andrea