

**MILLSTONE TOWNSHIP
PLANNING BOARD
MEETING MINUTES
AUGUST 10, 2016**

At 7:30p.m., Mitch Newman called the meeting to Order.

The Secretary read the Adequate Notice.

Salute to the Flag.

Roll Call: Present: Bailey, Beck, Grbelja, Kinsey, Newman, Pinney, Pepe and Ziner.

Absent: Kocur, Kurzman and Pado

APPROVAL OF MEETING MINUTES: April 13, 2016

The Board having reviewed the Meeting Minutes, Mayor Kinsey made a Motion to approve the Minutes and Ms. Pinney offered a Second. Roll Call Vote: Kinsey, Pinney, Grbelja, Beck and Newman voted yes to adopt.

PUBLIC COMMENT PORTION: 15-Minute Limit

Chairman Newman opened the meeting to public comment at 7:35 p.m. Seeing no public comment, he closed the meeting at the same time.

NEW APPLICATION:

P16-01 - VASHISHT, AVINASH - Block 59, Lot 11 located at 508 Monmouth Road consisting of 2.24 acres in the Highway Commercial (HC) Zoning District. Applicant seeks Preliminary and Final Major Site Plan Approval to remove an existing gasoline station and construct a 14,443 s.f. mixed use retail building. Applicant seeks variance relief for an undersized lot where 3 acres is required applicant can provide 2.24 acres., front yard setback where 100 ft. is required, applicant can provide 96 ft., property depth where 450 ft is required, applicant can provide 284.50 ft., lot coverage where 50% is required applicant proposes 63%, building height where 30 ft. is maximum, applicant proposes 32.9 ft. Deemed Complete 7-25-16. Date of Action: 11-22-16. Noticing Required.

Attorney Stuart Lieberman representing the applicant.

Attorney Michael Steib announced that he had reviewed the noticing packet and found same to be in order to accept jurisdiction over the application.

Attorney Steib read the following exhibits into evidence:

- A-1 Jurisdictional Packet
- A-2 Application dated 4/28/16
- A-3 Web Notice

- A-4 Color Aerial of Property prepared by Concept Engineering dated 6/1/16
- A-5 Site Plan including survey of property prepared by Concept Engineering dated 6/1/16; last revised 7/6/16
- A-6 Architecturals prepared by Bach & Clark, dated 7/14/16
- A-7 EIS prepared by Concept Engineering dated 5/2016
- A-8 Stormwater Management Report prepared by Concept Engineering dated 6/7/16
- A-9 Traffic Study prepared by McDonough & Rae Associated dated 9/25/16
- A-10 Habitat Evaluation and Species Survey prepared by DuBois Environmental Consultants, LLC dated 7/19/16
- A-11 Prior Property Approval granting Preliminary and Final Major Site Plan Approval in Resolution dated 5/12/05
- A-12 LOI from NJDEP dated 5/24/01 finding no presence of freshwater wetlands
- A-13 Remedial Investigation and Remedial Action Status Report prepared by Triassic Technology, Inc., dated 8/3/16 consisting of 105 pages.
- A-14 Letter dated 8/8/16 from Triassic Technology, Inc. Re: Exxon Proposed Remedial Action Permit for Groundwater
- .PB-1 Engineer's Report dated 7/29/16
- PB-2 Planner's Report dated 8/3/16
- PB-3 Shade Tree Commission Report dated 7/19/16
- PB-4 Environmental Commission Report dated 7/26/16
- PB-5 MT Fire Department Review Letter dated 7/25/16

The applicant added two additional exhibits into evidence:

A-15 Aerial Photo prepared by Concept larger in scale than A-4

A-16 Architectural Elevations of Floor Plans with Color Elevations and signage by Bach and Clark

John Ploskonka, P.E. has appeared before the Board and is accepted as an expert. Mr. Ploskonka explained to the Board the prior approval to construct a diner on the site

never occurred. He stated that the applicant is before the Board to construct a 14,430 sq. ft. retail building. He stated that there has been an ongoing cleanup on the property the past 20 years due to the activity of the former Exxon gas station.

Mr. Ploskonka advised that they met with both the Shade Tree Commission and the Environmental Commission.

The proposed building will consist of 6 to 7 retail stores. They have no tenants at this time. There is a drive thru proposed on west side as part of the plan. Stormwater management is located on site, as well as septic and well . Mr. Ploskonka advised that the designed stormwater basin is the old type under the new NJDEP regulations. They have met the NJDEP requirements with the plans proposed.

Mr. Ploskonka advised that the environmental report testifies that there are no endangered species on the site.

Ms. Pinney who is a member of the Environmental Commission, advised the Board of some of their concerns. The Commission wants to know if the cleanup is being done by a third party. They are concerned with who follows up to make sure that the Board's conditions of approval are being complied with.

Mr. Ploskonka goes over the request for variances both existing and proposed.

The applicant's Licensed Site Remediation Professional, known as an LSRP, William O'Brien offered his credentials. He has been employed by Triassic Technology, Inc., for the past eleven (11) years. This is his first time providing testimony before a Board.

Mr. O'Brien is an LSRP, a program manager for remedial oversight and involved in environmental forensics identifying underground contamination.

An LSRP hold the licensure issued by the State of New Jersey to oversee remediation of contamination in the ground by complying with the NJDEP regulations. He explained that he oversees site remediation of contamination and he closes the remediation that he holds. He explained that since 2012, the NJDEP has privatized the remediation process utilizing LSRP's to oversee the process.

Attorney Steib asked about the potential three tiers of review process. Mr. O'Brien explained the process including an administrative review, to the regulations being submitted.

The property was discussed as having three active areas of concern. Mr. O'Brien explained that in 1998 there was a surface diesel spill of 15 gallons, which is currently being closed which he is not overseeing. He is involved in overseeing a remediation

due to a 2005 underground storage tank removal where two soil samples exceeded the standards at that time and he explained what that means.

Mr. O'Brien stated that the Kleinfelder firm's LSRP is overseeing the third issue on behalf of Exxon. He stated that this is outlined in his August 3, 2016 report (Exhibit A-13).

Mr. O'Brien stated that an active remediation system is treating the ground water. He stated that it must be shown that for 8 quarters the levels are naturally decreasing. The levels must be decreasing for two years straight. Mr. O'Brien stated that he had not seen the latest report but advised that as of March 2016, the levels were decreasing. Mr. O'Brien stated that by the year 2025 the contaminants should be removed. The Township will receive a monitoring schedule to the end which is 2025.

The Board inquired as to who in the Township would receive this information. Engineer Shafai advised that the Township Engineer and Township Clerk receive the reports. The State advises the Township as to the status of the clean-up. Engineer Shafai stated at the end of the process, the Township should receive a "No Further Action" letter.

Chairman Newman asked if the Board could place a condition to create a control so the applicant is responsible to formally report the status to the Board.

Vice-Chairman Pepe voiced his concern should the groundwater never become clean. He is worried should the project be built and the water is not clean and now we have renters will be leasing the retail space.

Mr. Leiberman stated that the remedial action permit is the last item to be issued. The NJDEP is confident that this will take place. He stated that the project is designed to provide access points for soil injections. There is a solution injected into the ground. The site does not have to be vacant to perform the injections.

Mayor Kinsey asked at what point is Exxon released from their obligations. Mr. O'Brien referred to his August 3, 2016 report stating that this information is outlined in that report.

Committeewoman Grbelja reported that in 2004 and 2005, the Township received the reports. She wants to make sure that this process continues.

Vice-Chairman Pepe asked Mr. O'Brien what recourse the Board has if the groundwater fails to become clean. Mr. O'Brien stated that there are reporting requirements. His findings are submitted to the NJDEP and are provided to all parties. He advised that the remedial action permit requires biannual certification by the LSRP.

Mr. Ziner asked if the surrounding properties are being monitored as well. Mr. O'Brien advised that they were being independently monitored.

Mr. O'Brien advised that in 2005, three underground fuel tanks were removed. Of the three (3) environmental issues on site, two (2) have had remedial action outcomes. One (1) issue is still in the works.

Mr. O'Brien went over the timeline. The Board asked what caused the ground water contamination. Mr. O'Brien advised the UST's, underground storage tanks. Mr. O'Brien advised the potable wells in the area are monitored for 25 years.

Many of the individual sewage systems must be cleaned out every six months. Mr. Lieberman advised that there are filters but that Mr. Ploskonka will address that issue.

Mr. O'Brien advised the Board that one cleanup project is being closed and the other one is undergoing a round of sampling and he offered that he feels that will be closed soon.

Mayor Kinsey asked if the Exxon expert would be able to appear before the Board to answer questions. The discussion that the expert may have to be subpoenaed. Mr. Lieberman advised that he will reach out to him. Attorney Steib advised that the Board could subpoena him.

Attorney Steib asked for clarification from Mr. O'Brien concerning the applicant obtaining an RAO for the two items that he is working on. It is Mr. O'Brien's opinion on those two items, those specific areas of concern are clean and they do not impact a site plan that someone may try to develop.

Attorney Steib asked if the Remedial Action Permit affects what can be developed on the site once you have the RAP. Mr. O'Brien stated that a site that is under an RAP is required to provide notice if the approved development should change. He cited page three of his report.

Engineer Shafai asked if the applicant needed Mr. O'Brien's approval before the applicant could build. Mr. O'Brien stated that he is okay with the proposed site plan.

Engineer Shafai advised that the closure on the response action outcomes would be issued prior to this development if the Board approves the project. The project will be subject to receiving a RAP or Remedial Action Permit.

Mr. O'Brien advised that there is nothing limiting the applicant from receiving an RAO or Response Action Outcome on his two issues. Mr. O'Brien utilized Exhibit A-5 to show the location of where the spill occurred.

Mr. O'Brien stated that once the RAP is issued, if someone wants to develop a site under an RAP, there a notice requirement to the NJDEP before that happens. Mr. O'Brien stated that is a requirement and he referred to page three (3) of his report and read from that paragraph. There is an NJDEP enforcement system should someone violate the terms of the permit.

Attorney Steib offered that if the RAP is issued for the project, then we know that the NJDEP has looked at it. If there are any changes, the applicant has to go through that process and there is an enforcement capability as set forth in Exhibit A-14.

Chairman Newman opened the application and the testimony of Mr. O'Brien to the public at 8:40 p.m.

Edward Douglas Ivins, 510 Monmouth Road is sworn in by Attorney Steib. Mr. Ivins owns the property adjacent to this proposed project. He stated that the soil was washed but offered that the potable water is indigestible. He is concerned about what is being cleaned on the site. He inquired as to how deep the monitoring was. Mr. O'Brien stated 50 feet deep. Mr. Ivins stated that his well is 200 feet down. Mr. Ivins stated that Exxon had to dig new wells due to the contamination. He asked a question about the soil injections.

Chairman Newman seeing no further public comment regarding this witness closed the public portion at 8:44 p.m.

Attorney Steib swore in traffic expert, John Rae, P.E. of McDonough and Rae, traffic and transportation engineers.

Chairman Newman advised that Mr. Rae has appeared and testified as an expert before this Board in the past, the Board is aware of his credentials and his is accepted as an expert witness.

Referring to Exhibit A-9, Mr. Rae explained that he has been on the site and taken inventory of traffic in the area. He explained the process of arriving at his projected traffic volumes. Mr. Rae explained to the Board how he compiled his information.

Vice-Chairman Pepe asked what that curve looks like seasonally. Mr. Rae feels that the wintertime is quiet and the summertime is busy. He feels that this property would have its peak days in the summer. Mr. Rae offered that they would have high levels of pass-by traffic. He feels that peak traffic on summer weekends will be pass-by traffic.

Mr. Rae explained how he calculated the traffic. He stated that the Monmouth County Planning Board would review his traffic study. He stated that the County was involved in diner application that was before the Board in 2005. Mr. Rae stated that the County

wanted the applicant to restrict the left turn onto Route 537. They will continue with this request on this application.

Mr. Rae explained the levels of service generally range from A, which is the best to F, which is the lowest. He feels summertime weekends at this intersection would be a Level F. He stated the intersection would function at a level D during the p.m. on a weekday and at Level C during the weekends. Traffic impact will operate at an acceptable service.

Chairman Newman asked if Mr. Rae if he anticipates a left turn out onto Route 571. He does not anticipate this. They will restrict a left turn out onto Route 537. They are asking the County to proceed with the same plan that they had in 2005.

The applicant will meet the ordinance requirement for the size of the building and parking stall size. Mr. Rae offered that the internal circulation would function safely and efficiently. There will be one-way circulation on driveway with the appropriate signage.

Board Engineer Shafai asked about the drive thru stacking. Mr. Ploskonka stated that traffic would go around the back of building. Mr. Rae advised they could stack 20 cars. Mr. Rae stated that the maximum size truck to access the property would be single unit trucks to make deliveries. Engineer Shafai asked if a tractor-trailer were to access the site how would he get out. Mr. Rae explained how a tractor-trailer would traverse the site.

Mayor Kinsey asked for information as to the directional flow and how cars would get out of the parking spaces if the drive thru stacks. The discussion was to have an employee designated parking in that area of concern for the drive thru.

Regarding building a restaurant on this site, Mr. Ploskonka reported that the parking needed for a restaurant is greater and water usage is greater. He stated that a Dunkin' Donuts facility could not bake on the premises and would have to bring the baked goods in.

Chairman Newman asked Engineer Shafai if the traffic expert addressed the comments/concerns in his report and Engineer Shafai advised that he had.

Chairman Newman opened the application and the testimony of Mr. Rae to the public at 9:05 p.m.

Mr. Ivins was previously sworn in. He advised that he is in favor of this project to make the corner look nice. His concern is regarding the left hand turn. Mr. Ivins stated that there are many traffic accidents in this area.

At 9:10 p.m., seeing no further public comment regarding the traffic testimony, Chairman Newman closed the public portion.

Committeewoman Grbelja addressed that this is a heavy trafficked area and she addressed her concerns regarding the left hand turn.

The Board took at break at 9:10 and returning at 9:13.

Attorney Steib swore in Daniel Bach, AIA of Bach and Clark, 13 Broad Street in Freehold, New Jersey. Mr. Bach is known to the Board and is accepted as an expert witness.

Mr. Bach advised the Board that he was asked by the applicant to design the building. It is a one-story building consisting of 14,443 s.f., with a small mezzanine to add interest. The material on the outside at the base is fieldstone. Above the fieldstone is a light color cement. The metal roof color is champagne. The storefront is natural aluminum except on the left end, a dark blue color and panels between the storefronts. The left and rear elevation is made of textured concrete block. The signage is in a stone tower with steel frame on the inside and is internally lit box-type sign. The front elevation is in cut out letters and backlit.

Mr. Bach stated that the floor plan allows for seven (7) different stores. He explained that there are two separated building separated by a firewall. Mr. Bach in reviewing the Fire Department's report and request for a sprinkler system, he explained that the property utilizes well water and that does not allow for the pressure needed. Fire sprinklers are required for a building over 12,000 s.f. The firewall eliminates that need.

Mr. Bach stated that a height variance is needed for the design of the building. He stated that at one peak, the building is two ½ feet above the allowable height. Chairman Newman asked if this was developable space or for aesthetics.

The fire code issues are addressed by two separate buildings.

Mr. Ploskonka discussed the trash enclosure and location. He stated that six (6) of the stores have service entrances in the rear of the building. The enclosure will be a three-sided enclosure and will match the building.

There was discussion about relocating the trash dumpster to the rear center of the site to provide relief to the adjacent neighbors. Hours of trash pickup was discussed. Mr. Ploskonka will review this issue between now and the next meeting. He will work with Engineer Shafai.

The four (4) ft. variance discussed it is for the offset. Planner Heyer stated that it makes sense to grant the minor height variance since it adds to the aesthetics of the building

and the minor deviation adds value to the design. Mr. Heyer stated that it is an attractive building. He stated that the proposed signs meet the ordinance. Engineer Shafai stated that the signs meet the ordinance. Engineer Shafai added that the architectural firm helped to write the Township's architectural ordinance.

Mr. Bach offered that the gas and electric meters are located in the rear on the building. The HVAC is located on the roof but will not be seen from the ground. Attorney Steib asked about the use of the mezzanine. Mr. Bach advised it would be a place for displays and for storage. The 14,443 s.f. computation does not include that area.

At 9:30 p.m., Chairman Newman opened the meeting to the public as to the architect's testimony.

Mr. Ivins, previously sworn in, asked where the sign was to be located. Mr. Ploskonka advised that the sign will be located outside of the site triangle area, referring to sheet 3 of 14 of Exhibit A-5. Mr. Bach advised that the bottom of the sign is nine (9) ft. above the ground and the bottom of the sign is totally open to allow for visibility. He asked the Board to refer to his Exhibit A-16. Mr., Ploskonka stated that the signage meets the ordinance requirements.

Mr. Ivins asked if natural gas is available. Natural gas is available. Mr. Ivins asked about water runoff. Mr. Ploskonka advised that the extensive stormwater system on site takes the water to the basin.

Mr. Ziner asked about the monitoring wells. Mr. Ploskonka advised that Exxon is monitoring the twenty (20) wells located on the site. He reported that they would locate the wells and assure that they are operational and that they do not close them off. This is subject to the applicant going to Kleinfelder.

Mr. Bach will find reach out to Kleinfelder about soil disturbance so that his foundations are in suitable soil.

Seeing no further public comment, Chairman Newman closed the public portion at 9:35 p.m.

Mr. Lieberman stated that he would reach out to Exxon and work with Attorney Steib to have them testify before the Board.

Attorney Steib carried the meeting without any further noticing to Wednesday, September 14, 2016 at 7:30 p.m. in this room.

OLD BUSINESS: Mt Laurel Update

Attorney Steib advised that the Monmouth County Judges have put everything on hold until the issue on the Gap Appeal has been resolved. The Appellate Division took on

the Gap Appeal from the Ocean County case where the Ocean County Judge decided that there was a Gap and we have to calculate for it.

Millstone was one of the parties in a group, which appealed that decision and that appeal was successful in the Appellate Division. This occurred two weeks ago, the Judge's decision was reversed, and he explained.

The Fair Share Housing and NJ Builders filed appeals to the Supreme Court to take the case up to consider the Gap issue and during that period of time enter a stay of the operation of that decision so that the trial courts can continue to process cases including the question as to whether or not there was a Gap.

The Supreme Court last Thursday stated that they have not made a decision on whether or not on to decide the Gap issue yet. Regarding the stay, The Supreme Court felt that the Fair Share Housing and NJ Builders were suppose to file with the Appellate Division and sent them back to the Appellate Division first.

On Friday, the Appellate Division sent everyone a notice and told the Fair Share Housing to file their Motion by August 8 which they did and everyone else was to file their responses by August 11th. Mr. Steib has prepared the Township's Response and will file on August 11th.

The Appellate Division will decide when they decide. The decision has not been stayed so if the Courts choose to proceed, they have to proceed as if there is no Gap.

Until something happens in the Appellate Division, the Township's case with Monmouth County is frozen.

NEW BUSINESS: Secretary D'Andrea asked the Board to incorporate the codified Land Use Development Ordinances that were provided tonight into their respective books. She offered to update the books should any Board member bring their book to her office.

Seeing no further new or old business, Chairman Newman asked for a Motion to Adjourn. Committeeman Grbelja made the Motion to Adjourn, Mayor Kinsey offered a Second and by unanimous vote, the meeting adjourned at 9:45 p.m.

Respectfully submitted,

Pamela D'Andrea