

**MILLSTONE TOWNSHIP  
BOARD OF ADJUSTMENT  
MEETING MINUTES  
NOVEMBER 28, 2018**

The Meeting called to Order by Chairman Novellino at 7:35 p.m.

Reading of Adequate Notice by Mr. Barthelmes

Chairman Novellino read the additional Noticing required by the Township.

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

**ROLL CALL:** Present- Barthelmes, Conoscenti, Ferrara, Morelli, Mostyn, Lambros and  
Novellino  
Absent - Frost

**APPROVAL OF MEETING MINUTES:** October 24, 2018

The Board having reviewed the Meeting Minutes, Chairman Novellino asked for a Motion and a Second to adopt the meeting Minutes. Mr. Morelli made a Motion and Mr. Ferrara offered a Second. Roll Call Vote: Morelli, Ferrara, Lambros, Mostyn and Novellino voted yes to approve the meeting Minutes.

**Z18-06 GOYANES, ELENA** - Block 36.01, Lot 14.18 located at 2 Beacon Hill consisting of 4.09 acres in the R-80 Zoning district. Applicant sought bulk variance relief to construct a swimming pool, fence and shed wherein parcel has three front yards. Approval granted with conditions.

The Board having read the Resolution and no further time needed to review, Chairman Novellino asked for a Motion and a Second to memorialize the Resolution. Mr. Mostyn made a Motion to Memorialize and Mr. Lambros offered a Second. Roll Call Vote: Mostyn, Lambros, Conoscenti, Frost, Morelli and Novellino voted yes to memorialize.

**Z-18-03 DP INVESTMENTS, LLC.** - Block 16.01, Lot 3 located at 800 Rike Drive consisting of 3.37 acres in the Business Park (BP) Zone. Subject property is located on a corner Lot. Bulk variance relief is sought wherein applicant seeks to install a generator in the front yard setback. Applicant further seeks Use Variance relief to construct an accessory structure (shed) on the property which is not permitted in the BP Zone. Deemed Complete 10-10-19. Date of Action 2-7-19. Noticing is required.

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

Attorney Vella read the following exhibits into the record:

- A-1 Jurisdictional packet
- A-2 Application dated 10-10-18
- A-3 Web Notice
- A-4 Survey of Property prepared by Crest Engineering dated 9-17-18
- A-5 Aerial prepared by Crest Engineering dated 9-28-18
- A-6 Variance Sketch Plan prepared by Crest Engineering dated 8-27-18
- A-7 Metal Building Proposal for 18"Wx26"L
- A-8 Amec Electric quote for a 60KW Generator
- A-9 Mounted Color Rendering of Site Display
- BOA-1 Notice of Violation for Accessory Structure dated 8-28-18
- BOA-2 Engineer's Report Dated 11-6-18
- BOA-3 Planner's Report dated 11-9-18

James Shamy of Shamy & Shamy law firm representing the applicant.

The applicant's property is located at 800 Rike Drive, known as Block 16.01, Lot 3, located in the Business Park Zone. Mr. Pizzo has developed a building that contains three (3) three separate tenants. His proposes to install a generator and a metal shed in the rear area of the property. He is seeking use variance approval for the shed which is not a permitted item in the BP Zone and bulk variance approval to install a generator in a front yard, stating that the property is located on a corner lot, and by definition has two front yards.

Attorney Vella swore in Managing member and owner, Peter Pizzo.

Mr. Pizzo describes the building as a 19,000 s.f. building, and a mezzanine with office and warehouse use. He stated that there are three (3) tenants that occupy the building. The newest tenant has 19 employees. Mr. Pizzo explained that there are instances where power has been lost, explaining how highly disruptive this is for that tenant. We are on well and septic. He stated that this generator would facilitate their needs.

The location of the generator is where the natural gas line comes in. He explained that it is a six-foot (6ft.) line. He would have to run the gas line 240 feet from the other side of the building and has a safety concern with doing that. He explained a problem that he had in past with a gas leak.

Mr. Pizzo stated that the shed is located to the rear of the property and sits on a cement slab. The shed contains the landscaping material and snow removal items for this commercial site. He stated that before they rented the warehouse building, they kept these items in the warehouse. Mr. Pizzo stated that the shed shares space with the dumpster. They did not realize that they needed approval for the shed that he installed a year ago.

Vice-Chairman Barthelmes asked if other buildings within the business park have generators. Mr. Pizzo knows of two.

Board Engineer Shafai asked if he had gone to the construction department to get approval. Mr. Pizzo did not.

Planner Mertz asked if tenants have access to the shed and Mr. Pizzo advised that the shed is locked and they do not have access to the contents inside of the shed.

The rear setback is 75 feet and the applicant can provide 40. It is buffered from the neighbor by trees and fencing. In order to see the shed from another property, Mr. Pizzo advised that you would have to position yourself a certain way.

Board Engineer Shafai asked which tenants would be using the generator. Mr. Pizzo advised that only two requested the generator, the third tenant does not need.

Attorney Vella Swore in Lorali Totten, P.E., P.P. of Crest Engineering. She has testified before the Board in the past and is accepted as an expert. She will be testifying as both an engineer and planner.

She advised that she is familiar with the land use regulations of the Township as they relate to this application. Referring to Exhibit A-5, Ms. Totten explains the property location and the surrounding properties.

Referring to Exhibit A-9, Color Rendering of the site display without the topography.

Ms. Totten stated that there is no appropriate space within the building to store the lawn maintenance and snow removal items. To provide ease for the property owner to maintain the premises, these items are stored on site.

Ms. Totten addressed the positive reasons that the variance can be granted including the shed promotes the purposes of zoning item G from the list of goals inland use. The shed is buffered by landscaping and near the existing dumpster enclosures. Ms. Totten offered that the shed is in proximity to the loading areas of other commercial buildings. The shed is the same color of the existing warehouse of this building. Mr. Totten stated that the shed is compatible with the area and not inconsistent with the zone plan, it is just not specifically permitted.

Planner Mertz agrees with Ms. Totten's testimony and offered that the property does lend itself to the need for storage. She sees no problem with this use in the back of the premises.

Concerning the generator, Ms. Totten stated that the property is a corner lot, having two front yards. The building faces the east which is actually the rear.

The applicant considered installing the gas line on the roadside portion of the building because the gas line is located there. He does not want to run the gas line through the building because they had a problem with the gas in the past. Mr. Pizzo has fear that a forklift may hit the line and break it.

The generator will be hidden from view. A bulk variance is need for the side yard setback.

Ms. Totten feels that the Board can grant this variance without any detriment to the zone plan. Planner Mertz agrees that there are requirements that seem almost arbitrary. There are not causing any detriment to the neighbors.

Chairman Novellino asked if the purpose of the generator is for emergency use only and the applicant advised it is for emergency only. They test the generator weekly.

Chairman opened the application to the public at 8:20 p.m. Seeing no public comment, he closed it at the same time.

The Board discussed the application. Chairman Novellino offered that Both Planners empowered the Board to grant the use variance ion the shed. It is in a good location and buffered. It is appropriate to have storage for maintenance equipment in the business park. The Board felt that it made sense to minimize the gas run for safety purposes.

Mr. Morelli agrees with the gas line distance.

Mr. Mostyn asked the applicant to make sure that there is sufficient clearing of the buffered on each side of the generator.

Attorney Vella read the conditions of approval should the Board vote positively on the application, including but not limited to the applicant obtaining a permit for the existing shed and the generator should be used for emergency usage only.

Chairman Novellino asked for a Motion and A Second. Mr. Conoscenti made a Motion to approve the application as conditioned and Mr. Ferrara offered a Second. Roll Call Vote: Conoscenti, Ferrara, Lambros, Morelli, Mostyn, Barthelmes and Novellino voted yes to approve as conditioned.

**Z18-07 MILLSTONE RIVERMART, LLC.** - Block 59, Lot 11 located at Intersection of Routes 537 & 526 consisting of 2.24 acres in the Highway Commercial (HC) Zoning District. Applicant was approved by the Planning Board on 6-14-17 to construct a 14,443 s.f. commercial building. Applicant seeks Use Variance relief to permit a category 3 restaurant (drive thru) which is not permitted in the HC Zone. Variance need for front yard setback where 100 feet is permitted, 96 feet proposed. Deemed complete 11-9-18. Date of Action 3-9-19. Noticing required.

Stuart Lieberman, Esq. representing the applicant.

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

Attorney Vella read the following exhibits into the record:

- A-1 Jurisdictional packet
- A-2 Application dated 10-10-18
- A-3 Web Notice
- A-4 Variance Sketch and Survey of Property prepared by Concept Engineering dated 9-28-18
- A-5 Aerial of Property undated
- A-6 Architecturals prepared by Bach & Clark for Retail Center dated 12-28-17; last rev. 8-9-18
- A-7 Floor Plan of proposed Dunkin Donuts prepared by Albert Taus & Associates dated 11-29-17
- A-8 Stormwater Management Report prepared for Millstone Rivermart prepared by Concept Engineering dated 6-7-16
- A-9 Mounted Color Site Plan
- BOA-1 Engineer's Report Dated 11-9-18
- BOA-2 Planner's Report dated 11-16-18
- BOA-3 Preliminary and Final Major Site Plan Resolution dated 6-14-17

Mr. Lieberman explained that the client was finding it difficult to lease the premises to Dunkin' Donuts who requires a drive thru window. He explained that a restaurant is allowed but a drive thru restaurant requires the D1 variance.

Chairman Novellino asked Attorney Vella if the Planning Board approved the Site Plan Application, which now needs a use variance approval and an amended site plan, we have jurisdiction because the Planning Board does not have jurisdiction over the use variance. The applicant will go thru use variance proofs. A drive-thru was approved by the Planning Board but a drive thru for food is not permitted.

Attorney Vella swore in John Ploskonka, P.E. of Concept Engineering. Mr. Ploskonka has been a licensed engineer in New Jersey since 1968.

Mr. Ploskonka is accepted as an expert. He explained that the gas station that was on the corner was demolished and removed. He advised that in 2005, the applicant did receive approval to construct a restaurant on the property. Mr. Ploskonka advised that the recession caused a delay.

Mr. Ploskonka stated that they have 97 spaces on site. The site plan has received all outside approvals. He explained that this evening they are seeking approval for a drive thru to be located on the left side of the building.

Referring to Exhibit A-9 into evidence mounted colored site plan.

Mr. Ploskonka explains how traffic traverses on the site. He further explained how the septic will work with a special treatment facility in order to utilize this property for a restaurant. If the Board approves this application, the applicant would take the plans to the NJDEP for a TWA approval for septic on this site.

Board Engineer Shafai stated that the previous Resolution said all retail. He wants to make sure that this resolution addresses the restaurants.

Mr. Lieberman summarizes the environmental issues on the site advising that this site was previously a gas station. A broken a line caused a petroleum issue on the premises. A Remedial Action Outcome (RAO) has been issued by the appropriate professional.

This Dunkin' Donuts does not cook onsite.

Attorney Vella asked Engineer Shafai if the Planning Board was concerned with the impact a restaurant would have on the septic and septic field. Engineer Shafai stated that there is a special septic system for restaurants. Mr. Ploskonka stated explained how the remediation resolved the issue. He advised that they went through great lengths to have a restaurant The NJDEP was involved in the long process.

Attorney Vella asked if the RAO was solely for the septic or for the water use in food preparation. Engineer Shafai advised that before the applicant puts the well in they have to go to the NJDEP. The only condition is that no cooking facility is permitted on site

Attorney Vella stated that the Use Variance is to permit a drive thru restaurant and

element condition 10 of the Planning Board Resolution. He stated that all other prior conditions of the Planning Board Preliminary and Final Major Site Plan stay in place.

Attorney Vella swore in property owner, Avinash Vashist. Mr. Vashist explained that he wanted to go construct all retail because septic is very expensive for food service.

Attorney Vella Swore in Michael Fowler, P.P. Mr. Fowler presented that he has been a licensed Planner in the State of New Jersey since 1986. He has worked in the private sector for 15 years and for the past 25 years he was the Planner for Brick Township. He is accepted as a professional Planner.

Mr. Fowler advised that he is presenting for Mr. Higgins who could not be in attendance this evening.

Mr. Fowler gave a brief overview of the property citing that it is located on the corner of Routes 526 and 537. He stated that it is an approved retail center since 2016. The property is located in the Highway Commercial Zone and permits a number of retail and service establishments. Category 1 and 2 restaurants are permitted but a Category 3, drive thru restaurant is not permitted. Mr. Fowler advised that a bank or non-restaurant use was approved. He stated that the traffic circulation is suited for the use.

Mr. Fowler stated that the outlets and Great Adventure locations are conducive to this use. He went over how general welfare is advanced by this application stating that this project is of no substantial detriment to the public good since no changes are proposed to the original site layout. He offered that this application does not impair the intent and purpose of the zoning plan and there is no impairment to the Master Plan. Mr. Fowler stated that this use is consistent with the neighboring towns' uses.

The Master Plan supports commercial development. He offered that the drive thru is a convenience to the public. The impervious coverage is the same with food or with retail. The Parking spaces are set on retail uses on the site.

Planner Mertz asked Mr. Fowler if the traffic investigation revealed that a drive thru generates a level of traffic more than a non-restaurant use. Mr. Fowler discussed queuing of traffic. He stated that more cars use a food drive-thru than a restaurant but he does not see that that would be problematic.

Planner Mertz stated that the drive thru is designed as part of this site the sheer purpose is that the Dunkin' Donuts would not be allowed. She agrees it is not that much more intense than a bank and is appropriately placed by Jackson. Planner Mertz stated that complimentary uses with them.

Septic is being increased for this use. The cost of the septic brought up cant grant a variance due to financial hardship.

Engineer Shafai stated that less parking is needed with a drive thru facility. He offered that probably more parking used first thing in the morning.

Planner Mertz stated that if the Board wishes to remove some parking they can bank them and use them when needed. Engineer Shafai stated that he would take the parking spaces out that are located next to the septic field.

Mr. Ploskonka refers to Exhibit 9 and shows where they can bank the parking.

Planner Mertz asked about deliveries to the site. Mr. Ploskonka stated that they receive one delivery per week.

Chairman Novellino opened the application to the public at 9:33 p.m. Seeing none, he closed the public portion at the same time.

Attorney Lieberman offered his summation also advising that the environmental clean-up is completed and is not a problem.

The Board discussed the application.

Mr. Morelli asked if the well water becomes a problem. Engineer Shafai stated that the NJDEP and Monmouth County Board of Health would be involved.

Mr. Conoscenti asked about the traffic.

Chairman Novellino offered that the applicant's Planner provided sufficient justification for use variances, we had looked at another drive thru. This does provide a benefit of the public. Chairman Novellino feels that the applicant has satisfied the positive criteria and he sees no negative impact to the zone plan, finding no strong reason to deny this application.

Mr. Lambros feels that the drive-thru is convenient for the public. He stated that if is good for the Board to look at how they can help businesses. The lot has been vacant and now it can service people travelling past.

Mr. Conoscenti stated that it provides a safety factor in that people do not have to take the kids out of the car, they can utilize the drive thru.

Engineer Shafai discussed that banking the parking next to the septic field helps with traffic queuing and traffic flow and can be utilized if needed in the future. He feels that the employee parking spaces should stay where they are planned. A condition of approval would be that 6 or more parking spaces located near the septic field and the tanks should be banked.

Attorney Vella read the conditions of approval, should the application be approved to

include but not limited to allowing applicant to bank 6 or more spaces near the septic filed, subject to the Board Engineer's approval, septic subject to obtaining approval from the NJDEP, all conditions of the Planning Board approvals carry to this application, except Condition #10 of that Resolution.

Chairman Novellino asked for a Motion and a Second. Mr. Lambros made a Motion to approve as conditioned and Mr. Morelli offered a Second. Roll call Vote: Lambros, Morelli, Conoscenti, Frost, Ferrara, Mostyn, Barthelmes and Novellino voted yes to approve the application as conditioned.

**OLD BUSINESS:** No Old Business to consider.

**NEW BUSINESS:** The Board will be working on preparation of their Annual Report to the Township Committee and the Planning Board.

Seeing no further business Chairman Novellino asked for a Motion to Adjourn. Vice-Chairman Barthelmes made the Motion and Conoscenti offered a second and by unanimous vote, the meeting adjourned at 9:54 p.m.

Respectfully submitted,

Pamela D'Andrea