

**MILLSTONE TOWNSHIP
BOARD OF ADJUSTMENT
MEETING MINUTES
JUNE 27, 2018**

The Meeting called to Order by Chairman Novellino at 7:31 p.m.

Reading of Adequate Notice by Vice-Chairman 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, Frost, Lambros, Morelli,
Novellino and Ferro.

Absent - Mostyn

APPROVAL OF MEETING MINUTES:

The Board has tabled the February 28, 2018 Meeting Minutes to the next meeting.

The Board had tabled the February 28, 2018 Executive Meeting Minutes to the next meeting.

NEW APPLICATION:

Z18-01-R PETSCHAUER, KENNETH & CAROLE - Block 27.02, Lot 4. Property located at 10 Chadwick Road consisting of 2.29 acres located in the R-80 zoning district. Applicant seeks to construct a second detached garage consisting of 864 s.f. Applicant seeks a variance for building height where 20 feet is permitted and 20.6 ft. is requested. Applicants seek relief from Ordinance 11-24.3, disturbance of steep sloped area. Deemed Complete 6-4-18. Date of Action: 10-1-18. Noticing required.

Attorney advised that he had reviewed the Jurisdictional Packet and finds same in order to take jurisdiction of the application.

Attorney Vella read the following exhibits into evidence:

- A-1 Jurisdictional packet
- A-2 Application dated 5-7-18
- A-3 Web Site Notice
- A-4 Aerial of Property prepared by Crest Engineering dated 4-4-18
- A-5 Variance Sketch prepared by Crest Engineering dated 4-4-18

A-6 Architecturals prepared by Drafting Concepts, LLC dated 2-27-18
BOA-1 Engineering Report dated 6-4-18
BOA-2 Planning Report dated 6-15-18

Attorney Mark Vincent representing the applicant.

Attorney Vella swore in Mr. Petschauer. He stated that he has collectable cars in his existing garage. The existing garage attic is used for storage. He intends on using the proposed building to store his collectable cars.

Attorney Vella Marked into evidence A-7 photos of house and aerial to reflect existing garage.

Mr. Petschauer's intent is to have the detached garage match his existing home. The four cars that he owns are for personal use. He will not rent the garage out.

Ms. Totten advised that the rear foundation would be visible, finished with skim coat and landscaping to hide the base.

Chairman Novellino advised that he did drive by the property. He advised that the wall of the new garage would be visible from the street.

Landscaping would be discussed later.

A dry well would be installed to capture runoff from the roof of the garage.

Board Engineer Matt Shafai asked about utilities to the garage. Mr. Petschauer advised that only electricity would be installed.

Attorney Vella swore in Lorali Totten of Crest Engineering. Ms. Totten is testifying as both an engineer and a planner. She presented her credentials as a professional engineer and planner and was accepted by the Board.

Attorney Vella Marked into evidence A-8.

Referring to Exhibits A-8, Ms. Totten describes the property. The house is located in the middle on the flat portion of the property. The property slopes down to the rear. It is a single family home with a detached garage.

Ms. Totten advised the proposed plan is to make the two garages look identical and the existing garage matches the home. It will be all compatible. The location is the best due to the wooded area on the north side and the steep slope to the south side. The detached garage will be located in an area that will disturb the least amount of steep slopes.

Ms. Totten advised the Board that the applicant would build up the steep slopes to the landing and

building up the first floor with retaining walls. She explains how it is to be restored. They will come up with a landscaping plan. The height was calculated at 20.6 feet. Ms. Totten stated that the additional 6-inches is would not be noticed by making the slopes on the roof the same as the existing and that is the reason for the additional variance.

Ms. Totten stated that road curves causing the garage to end up a bit in front of the house. To move the garage out of the variance situation, it would have to moved back and be closer than 10-foot separation. This will not be visible because the road curves.

Ms. Totten stated that to keep the two buildings aesthetically the same, the Board's granting of the 6-inch height variance would not be detrimental to the zone plan. Due to the hardship of topography of the site, she explained how they tried to mitigate impacts to the steep slopes.

Granting the variance for the location of the garage so that there is not less than a 10-foot separation was discussed. Ms. Totten stated that the proposed garage is slightly higher than the driveway to direct the water flow away from the garage. She stated that the installation of a dry well would mitigate the additional impervious area. She explained and she will work out with the dry well location with Engineer Shafai. Engineer Shafai stated that the dry well will take most of the water and the installation of additional landscaping will help. Engineer Shafai stated that the applicant is mitigating the extra run off by installation of the dry wells.

Planner Heyer asked the applicant if the steep slopes were partially natural and partially created during construction. Planner Heyer stated that disturbing an area that was created during construction is different than disturbing a natural steep slope.

Additional pavement will be installed in front of the proposed garage. There is grass there presently.

Mr. Frost inquired if the dry well size based on roof square footage. Ms. Totten replied yes.

Ms. Totten explained the maintenance of the dry wells. A condition of approval would be that the dry wells are maintained and in good working order.

It was discussed that it would be the applicant's responsibility.

Mr. Vincent has no other witness to present.

Chairman Novellino opened the application to the public.

Attorney Vella swore in Vivian Flynn, 9 Graham Place. She advised that she resides directly behind the Petschauer property. She stated that the Petschauers removed trees, which caused a dramatic runoff behind her house. She claimed his removal of the trees has allowed water to pour down into her yard. She also advised that there is erosion around the storm drains.

Attorney Vella entered into evidence Exhibits 01-09 of photos Ms. Flynn had taken.

Some photos show the sinkholes created by the water flowing down and others reflect the storm drain

deteriorating by the rain.

The storm drains on the street belong to the town. There are storm drains on Ms. Flynn's property. She lives there 20 years and maintains the storm drains on her side.

Referring to Exhibit A-8, Ms. Flynn shows the Board the location of her residence. She is concerned by the addition of the structure will affect her home.

Engineer Shafai will visit the property and assess the situation with the storm drains.

Mr. Lambros suggested that a condition of approval could be revegetation in the area. Engineer Shafai advised that planting trees would help to slow down the runoff. He will look at this drainage area.

Chairman Novellino felt that plantings on slope and in front of the back wall of the garage, would slow down the water runoff and break-up the visual of the back wall so that it is not as visible from the street. He stated that the Board wants to avoid water problems between the neighbors.

Attorney Vella swore in Robert Drake, 8 Chadwick Road. Mr. Drake agrees with the prior resident. He feels that the property will be encumbered by too many garages. He agrees with reforestation. He feels that the applicant is not a good steward of the land.

Mr. Drake steps down.

Attorney Vella swore in Nancy Parmegiani, 6 Chadwick Road and her son, Attorney Joseph Parmegiani. Mrs. Parmegiani stated that they lives next door to the applicant and agrees with the prior resident. She feels that there are too many garages and expressed concerns about a generator outside the garage. Mrs. Parmegiani agrees with the need for reforestation of the property. She stated that the applicant is not a good steward of the land.

Mrs. Parmegiani is concerned that the applicant may be running a business or potential commercial business of trading cars. She stated that the back of the garage is an aesthetic concern.

Chairman Novellino offered that the Board has heard testimony that the applicant is not using the garage for commercial purposes. That would be a condition of the approval.

Attorney Vella stated that the applicant is prohibited from using the garage for commercial purposes. If approved and one year from now, the applicant is selling vehicles on the site, then that is a violation of the site plan approval. Code Enforcement enforces a violation of the site plan approval. Attorney Vella explained how the violation is handled.

Mr. Vincent advised his client will not be in the business of selling antiques cars.

Planner Heyer read aloud the definition of a front yard.

See no further public comment, Chairman Novellino closed the public portion at 8:47 p.m.

The Board discussed the application.

The applicant stated that the generator was never hooked and he has subsequently sold the generator.

Chairman Novellino asked the applicant if they would be willing to move the garage back an additional 7 feet or make the garage 7 feet shorter.

The applicant wants the present size requested and to not move the structure.

The Board took a short break for the applicant and his attorney to confer.

Mr. Vincent asked if they could respectfully withdraw the application without prejudice at this time. Attorney Vella announced the applicant requests to withdraw the application without prejudice. Mr. Ferro made a Motion to allow applicant to withdraw the application without prejudice and Mr. Morelli offered a Second. Roll Call Vote: Ferro, Morelli, Novellino, Barthelmes, Frost, Lambros and Conoscenti voted yes to the request to withdraw the application without prejudice.

COMPLETENESS SUBMISSION WAIVER HEARING:

Z18-02 NOREIKA, CHARLES - Block 50, Lots. 1.01, 1.02, 1.03 & 2 located at Paint Island Spring Road and Millstone Roads consisting of 30.1 acres located in the R-80 zoning district. Applicant seeks certain completeness submission waivers. Not deemed complete.

Chairman Novellino explained how a waiver hearing works. No public input during this portion is permissible. The Board simply decides if the application can move forward without items that are required for completeness per the checklist.

Attorney Vella explains that the completeness waiver hearing is due to the Board Engineer, in his June 1, 2018 report found four (4) items required by the checklist that applicant has asked be waived from submitting.

The applicant is proposing preliminary and final major subdivision to create ten lots, a bifurcated use variance for commercial buildings to be located on the corner residential lot. Attorney Vella stated that assuming the Board grants the use variance and preliminary and final subdivision, the applicant will return to the Board for site plan approval. The applicant will create the subdivision lots at the same time, they ask for the use variance approval.

Attorney Vella stated that the Board will vote on the Use Variance first because if the Board grants the Use variance, then the board considers the subdivision portion of the application. If the Board should deny the use variance, then the applicant cannot go into the subdivision application.

Chairman Novellino asked if the Board denies the use variance, why they do not go to the planning board for subdivision approval. Attorney Vella stated that the applicant came to the Board to keep the existing business and create the subdivision. If they decide to go residential for all lots, they are before the Planning Board.

Attorney Vincent Halleran representing the applicant.

Attorney Vella swore in Patrick Jeffery. Mr. Jeffrey is both an engineer and planner. He received his

B.S. in civil engineering and environmental engineering at Virginia Tech. He represents various municipalities and has testified before many boards. He is licensed to practice in the State of New Jersey. The Board accepts him as a professional and he is sworn in by Attorney Vella.

Mr. Jeffrey goes over the waiver requested. He asked that the provision of architectural plans be deferred until the site plan approval.

He advised that the letters from the utility companies regarding provision of service to the subdivision will be provided later.

For the Environmental Impact Statement (EIS), that was provided to the Board as part of the prior application. Mr. Jeffrey asked the Board to waive requesting a new EIS. He advised that no conditions on the site have changed since the EIS was provided in 2007.

Attorney Vella advised that the Board may want to see a new EIS eventually. He suggested that they can carry this for site plan and the Board may want it for the subdivision approval. He advised that the Board could waive it now but require it for preliminary and final major subdivision approval.

At the site plan and subdivision stage, the applicant will provide a threatened and endangered species report. The applicant will provide soil testing at that time as well.

Chairman Novellino made a Motion to waive the application checklist completeness items and Mr. Morelli offered a Second. Roll Call Vote: Novellino, Morelli, Barthelmes, Frost, Lambros, Conoscenti and Ferro voted yes to the application checklist completeness waivers.

NEW APPLICATION:

Z18-02 NOREIKA, CHARLES - Block 50, Lots. 1.01, 1.02, 1.03 & 2 located at Paint Island Spring Road and Millstone Roads consisting of 30.1 acres located in the R-80 zoning district. Applicant seeks Use ("D") variance on Lot 1.05 to increase number of commercial buildings with five residential apartments upstairs. Variance needed for lot coverage on Lot 1.05. Variance needed for number of parking spaces requested on Lot 1.05. On Lot 1.04, variance needed for front yard setback for existing dwelling, variance also needed for side yard setback for an existing shed. Applicant seeks Preliminary and Final Subdivision approval to construct eight new residential lots and one stormwater management lot. Noticing Required.

Attorney Vella advised that he had reviewed the Noticing Packet and finds same to be in order and accepts jurisdiction over the application.

Chairman Novellino advised the public that they may run short on time this evening because the Board goes to 10:30 p.m.

Attorney Vella read the following exhibits into evidence:

- A-1 Jurisdictional packet
- A-2 Application dated 5-8-18

- A-3 Web Site Notice
- A-4 Aerial of Property
- A-5 Use Variance Plan prepared by T&M Engineering dated 4-27-18
- A-6 Use Variance Report prepared by T&M Engineering (undated)
- A-7 Preliminary and Final Major Subdivision Plan prepared by Gravatt Consulting Group dated 3-26-18
- A-8 EIS prepared by Gravatt Consulting dated 11-19-04, Last revised 10-11-05
- A-9 Environmental Impact Statement Memorandum prepared by Gravatt Consulting dated 4-23-18
- A-10 Stormwater Management Report prepared by Gravatt Consulting dated 4-2018
- A-11 Stormwater Management Operation and Maintenance Plan prepared by Gravatt Consulting dated 4-2018
- A-12 Stormwater Management Operation and Maintenance Plan for Individual Underground Recharge Trench Systems prepared by Gravatt Consulting dated 4-2018
- A-13 Traffic Impact Statement prepared by Gravatt Consulting dated 4-23-18
- A-14 Aerial of the Site Plan Handout prepared by T&M Engineering (undated)
- A-15 Handout of Concept of the Roundabout prepared by T&M Engineering (undated)
- BOA-1 Engineering Report dated 6-1-18
- BOA-2 Planning Report dated 6-15-18
- BOA-3 Bureau of Fire Prevention Report dated 6-13-18
- BOA-4 EC Report dated 6-12-18

Attorney Vella advised Mr. Jeffrey that he is still under oath and his credentials are accepted.

Mr. Jeffrey state that all four lots are located in Block 50

Four lots are contiguous and are all located in block 50. He stated that the applicant is proposing preliminary and final subdivision approval of eight residential lots with one lot a mixed use of commercial and residential. One lot will be used for stormwater management. The lots area all located in the R-80 zoning district. He went over the variances requested. Lot 1.04 contains an existing structure.

Mr. Jeffrey offered that there is a proposed Right Of Way dedication to the County for improvements of the intersection of County Route 524, Millstone Road, and Paint Island Spring Road.

The Applicant's proposed uses are consistent with the Neighborhood Commercial (NC) zone. The NC zone limits a single use to 4000 s.f. for selling garden and agricultural equipment. Mr. Jeffrey stated that the total square footage of the building is 8,700 s.f. and could contain that use. He proposes seasonal sale items of pumpkins, nursery stock, Christmas, outdoor display of goods on the site would like to continue with this use. Propane sales will continue with this use. The applicant proposes 50% lot coverage where 20% is provided.

Mr. Jeffrey stated that the existing site entirely contains single-family residential dwelling, a business where lawn and agricultural equipment is sold and serviced, nursery stock is sold, and propane filling station and outdoor display of goods and seasonal items are sold.

Mr. Jeffrey went over the previous application and approval and describes how applicant was contacted by Monmouth County as to improvements on the current site.

Attorney Vella Entered the Following Exhibits into Evidence:

A-14 new Exhibit handout of aerial A-15

A-15 roundabout impact concept plan for intersection. This exhibit reflects the impacts to the applicant's property.

Mr. Jeffrey offered that the planned roundabout will take a considerable amount of the applicant's property. This building will not be able to stay in its current location. He must relocate in order to maintain the business. Mr. Jeffrey explains the exhibit. They are proposing to relocate the use and continue to operate the business. They would be removing and relocating non-conforming use on the site. For the roundabout, Mr. Jeffrey stated that the applicant will be required to remove and relocate what would that be an expansion of a non-conforming use.

Attorney Vella stated that Monmouth County could take this property via alternative legal processes if it is not dedicated by the applicant. The property owners now say you are taking my business and a lawsuit over the value of the property could take place. He advised that this has nothing to do with the Board of Adjustment.

Attorney Vella stated that in this case, the applicant has many uses going on this property. He stated that it is not the Board's problem if the County took the property. He explained that the applicant would still need a use variance even if the County has eliminated that use by taking his property. If you have a non-permitted use and it is eliminated, then that use goes away. The applicant does not have an absolute right to continue the use. If he wants to continue to operate this business he has to come to this Board. Attorney Vella advised that if the applicant relocated his business to another existing building he would not have to come before this Board.

Mr. Jeffrey explained that this business dates back to the 1940's in this location. This property has a history of predating zoning. The Noreika's have resided in some form here since the past 70 years. Mr. Jeffrey provided that Monmouth County has made a request to have property in the proposed ROW dedicated to them. This has not been done yet.

Mr. Jeffrey advised that the applicant is proposing a mix of uses on the site, some existing some new. The total square footage of all buildings is 21,000 s.f. where currently there are 11,000 s.f. on site.

The building proposal is 8,700-s.f. retail and office space, 2,300 s.f. also of commercial space with service component. There is 4,900 s.f. existing on site to be used for service and storage. The applicant wants to maintain the propane filling station. The residential apartments will be located on the second story of the principal structures. The applicant will remove the 1,500 s.f. barn as well as one other building.

Attorney Vella asked for clarification that 2900 s.f. building is being taken down.

Mr. Jeffrey states the applicant believes the existing site helps mitigate the expansion of the commercial use of the site, the community was essentially developed around this site. The applicant feels the business supports the rural and agricultural aspects of the township. Mr. Jeffrey stated that the addition of the apartments will provide diversified housing to the residents of the Township. Mr. Jeffrey addressed the positive criteria by stating this is an inherently beneficial use.

Mr. Jeffrey addressed the negative criteria. The applicant is proposing to expand the uses on the site with more impervious surfaces and more intense use on the property. The applicant would mitigate that. He feels that the traffic to the site is that of local clientele.

Chairman Novellino asked Planner Heyer about using the term "inherently beneficial" to describe how this application meets the positive criteria. He understands "inherently beneficial" to be limited to things like hospitals and schools which serve the public interest. None of the proposed uses falls into that characterization.

Looking at the proposal, Planner Heyer feels that the uses presented do not rise to the level of inherently beneficial uses. These uses are permitted in the NC zone, but this is the R-80 zone. Clearly, this property is not in an NC zone nor adjacent to a NC zone, so if we approve this variance, we have a significant impact to the zone plan. The Township just reexamined the master plan and opted not to create any new NC zones. The town felt no need to increase the commercial zones during the re-examination.

Chairman Novellino stated that the Township had considered additional NC zones as part of the Master Plan and decided none were needed. This property was in a residential zone in since at least 2007, specifically the R-80 zone. This use even though it existed for a long time on this property, has not been part of the Master Plan for this property for a very long time. Planner Heyer stated that the use variance reads like a request for rezoning rather than a use variance. He stated that a use variance tailors for one use, one design. They are looking for an open ended list of uses consistent with the NC zone. It seems more of a zone change. Five (5) units of residential are like a new housing and that is not permitted or not allowed. Planner Heyer stated that the residential is proposed with no affordability housing. Five or more residential, 20% or one has to be an affordable housing unit.

Attorney Vella, disagrees with the proposal that of all uses permitted within the NC zoning district should be able to be used here via a use variance application.

The traffic study has been performed by Monmouth County. The purpose of the traffic report is to compare what is currently there to what is proposed. Mr. Jeffrey went over the traffic numbers.

Chairman Novellino asked whether the traffic study addressed the parcel developed as residential or is the intent of the traffic narrative to provide the Board what the existing condition of the site traffic and proposed condition of the site traffic would be. Attorney Vella stated that the applicant has not performed traffic counts. They would provide that at the time of the site plan approval.

Mr. Lambros asked how much of the building is lost. Mr. Jeffrey stated that approximately approx 2,900 s.f. is lost. The County proposes taking 23,261s.f.for the ROW.

At this point in the application, Chairman Novellino opens the application to the public.

Attorney Vella swore in Jeff Torno of Paint Island Spring Road. Mr. Torno felt that this proposal is a significant difference compared to the application approved in 2007. He read a statement into the record explaining how the expansion of the non-conforming commercial use will impact the zoning and master plan and change the rural R-80 atmosphere.

Attorney Vella swore in Dolores Jenkins. Ms. Jenkins asked about the square footage of the buildings. Mr. Jeffrey advised that 2,900 s.f. for sales and service and 2,400 s.f. is the single family dwelling. Mr. Jeffrey explained the buildings that are proposed to be removed.

Attorney Vella swore in Linda Magrath, 11 Lawrence Spring Drive. Ms. Mcgrath stated that she does not want to see a hardship but has concerns that the new building is different from the existing. She is concerned about renters and the affect the project would have on the quality of life and impact on the town.

Chairman Novellino closed the open public portion at 10:33 p.m.

Attorney Vella announced the application would be carried to the July 25, 2018 meeting without any further public notice being mailed out.

Seeing no further new or old business, Vice-Chairman Barthelmes made a Motion to Adjourn, Mr. Ferro offered a Second, and by unanimous vote, the meeting adjourned at 10:37 p.m.

Respectfully submitted,

Pamela D'Andrea

