



**MILLSTONE TOWNSHIP ZONING BOARD OF ADJUSTMENT
MINUTES
May 24, 2023**

The Millstone Township Zoning Board of Adjustment regular meeting was called to order by Chairman Mostyn on Wednesday, May 24, 2023 at 7:30 p.m. in the Municipal Meeting Room, 215 Millstone Rd., Millstone Township, NJ 08535. Notice of this meeting was provided in accordance with the Open Public Meetings Law.

Vice-Chairman Barthelmes read the Open Public Meetings Act Statement.

There was a salute to the Flag and an observance of a moment of silence offered for those serving and those who have served our country in the past.

Roll call for the below members was called:

Present: Chairman Mostyn, Mr. Barthelmes, Ms. Beckish, Mr. Ferrara, Mr. Lambros, and Ms. Arpaia (Alt. I).

Absent: Mr. Morelli and Mr. Sinha; one vacant seat (Alt. #2).

Attending: Greg Vella, Esq.; Matt Shafai, PE, PP, Board Engineer; McKinley Mertz, PP, AICP, Board Planner; and Danielle B. Sims, Board Secretary.

Ms. Arpaia was seated for Mr. Morelli.

MINUTES:

Minutes from March 22, 2023

Chairman Mostyn noted the Board received the minutes in advance of the meeting for their review. With no comments from the Board, Mr. Lambros made a motion to adopt the Minutes from March 22, 2023, which was seconded by Ms. Arpaia. The Minutes were adopted on a roll call vote: Chairman Mostyn, Ms. Beckish, Mr. Lambros, and Ms. Arpaia.

RESOLUTION(S):

**Dish Wireless, LLC
Block 17, Lot 4 – 663 State Highway 33
Variance Application # Z23-03**

Chairman Mostyn asked if the Board had any comments on the resolution that was prepared. With no comments from the Board, Ms. Arpaia made a motion to adopt the Resolution for Application Z23-03, which was seconded by Mr. Mostyn. The resolution was memorialized with the following roll call vote in favor: Ms. Beckish, Mr. Lambros, and Ms. Arpaia.

**Six Flags Great Adventure
Block 55, Lot 10.01 – 592 Monmouth Road (CR 537)
Use Variance Application # Z23-01**

Chairman Mostyn asked if the Board had any comments on the resolution that was prepared. With no comments from the Board, Ms. Beckish made a motion to adopt the Resolution for Application Z23-01, which was seconded by Mr. Lambros. The resolution was memorialized with the following roll call vote in favor: Chairman Mostyn, Ms. Beckish, Mr. Lambros, and Ms. Arpaia.



**Resolution ZB2023-08
2022 Annual Report of the Millstone Township Zoning Board of Adjustment**

The Board reviewed the draft Annual Report in advance of the meeting. The draft report made recommendations to define terms such as define health spa, massage parlor, adult daycare, mother-daughter residence and in-law suite. Mr. Vella explained that defining terms does not necessarily mean that they are permitted. He suggested that any recommendations would be reviewed by the Township Committee and they may choose to act, or not act on all or some of the recommendations.

Mr. Lambros had concerns over defining mother-daughter residences and in-law suites because he feels these should be considered by the Board on a case-by-case basis. He stated that these types of matters would be best to be considered by the Board. It was clarified that the request was to define these terms, not to make recommendations as to them being permitted.

The majority of the Board would like to remove the recommendations from the Annual Report and leave these as matters for the Board to deliberate. Mr. Barthelmes would like to keep the recommendations to define these in the report to help the Zoning Officer in evaluating applications. Ms. Beckish suggested that definitions may also help the Board

With no additional comments from the Board, Ms. Arpaia made a motion to approve the 2022 Annual Report and to adopt the corresponding Resolution (Z2023-08), which was seconded by Mr. Ferrara. The Resolution was memorialized with the following roll call vote in favor: Chairman Mostyn, Ms. Beckish, Mr. Ferrara, Mr. Lambros, and Ms. Arpaia; vote against: Mr. Barthelmes.

APPLICATION(S):

CONTINUED APPLICATION – REQUEST TO ADJOURN TO 7/26/23

Malinowski, Zack and Renata

Block 31, Lot 28 – 106 & 108 Agress Road

Use Variance Application # Z22-12

Proposal for an expansion of a non-conforming use to construct an addition on each of the two existing dwelling units on the property. Structure #1 is also known as 106 Agress Road and Structure #2 is known as 108 Agress Road and is located in the R-80 zoning district. Board took jurisdiction on 3/22/23 and carried the matter to the 4/26/23; however, the applicant requested adjournment to 5/24/23 (on new notice). The applicant is now requesting another adjournment to the July 26, 2023 meeting. Extension of Time to Act through 7/31/23.

Mr. Vella explained that the applicant has requested that this matter be carried to the July 26, 2023 meeting in order to respond to the latest review memos from the Board's professionals. The applicant will be revising and resubmitting.

The Board granted the request for the extension; however, the applicant will be required to provide new notice for the meeting.

Michael Uk

Block 48, Lot 14.38 – 18 Molsbury Lane

Use and Bulk Variance Application # Z23-04

Proposal to construct a 2,245 s.f. structure consisting of a detached garage with second floor dwelling in the R-170 zoning district. Use variance relief is requested for the accessory/second dwelling and bulk variance relief for the height of the accessory structure and size of accessory structure. Must Act by 9/2/23.



Attorney Vella, Esq. reviewed the notice package in advance of the meeting and confirmed that it was in proper form, so the Board can take jurisdiction to hear the application.

Mr. Michael (Mikail) Uk appeared as the applicant.

The following witnesses were sworn in or are still under oath:

Matt Shafai, PE, PP – Board Engineer
M. McKinley Mertz, PP, AICP – Board Planner
Michael Uk – Applicant
James Kyle, PP – Applicant's Engineer/Planner
Joseph Primiano – Applicant's Architect

The following exhibits were marked in evidence:

APPLICANT'S EXHIBITS

- A-1 Jurisdictional Notice (Proof of Service)
- A-2 Application, Checklist(s) and Administrative Forms
- A-3 List of potential witnesses, received 4/6/23
- A-4 Correspondence
- A-5 Survey of Property, one (1) sheet, prepared by MidState Engineering, inc., dated 8/29/16
- A-6 Architectural/Plot Plan, prepared by Primiano Architecture, three (3) sheets, dated 3/20/23
- A-7 Existing Deeds for property
- A-8 Aerial Photo w/ Tax Record Overlay, prepared by Kyle + McManus Associates, received 5/24/23
- A-9 Memo regarding revised submission, prepared by Primiano Architecture, dated 6/15/23
- A-10 Architectural/Plot Plan, prepared by Primiano Architecture, three (3) sheets, dated 6/8/23

BOARD'S EXHIBITS

- ZB-1 Completeness Determination dated 5/5/23
- ZB-2 Engineer's Review dated 5/8/23
- ZB-3 Planner's Review dated 5/18/23
- ZB-4 Zoning Officer's Review dated 6/14/23

Applicant would like to construct living space above a new garage on the existing property. His father passed away and he would like his mother to be able to live close to him and still have independent living.

Planner Mertz noted that there is a question as to whether the proposed structure would be an accessory structure, or if it would be considered a second primary structure. Variance relief would change depending on how the Board determines this use.

Joseph Primiano provided his credentials and the Board accepted him as a licensed Architect. The applicant is proposing a 1,200 s.f. footprint accessory three-car garage structure with a living suite above.

The maximum accessory structure size permitted is 1,200 s.f., but would be 1,403 s.f., including the proposed deck area. The overall accessory size will exceed the 2,400 s.f. maximum and the height of the accessory structure would be greater than the 16' permitted. There is 1,045 s.f. of interior living space on the second floor.



Attorney Vella stated that the ordinance only permits 1,200 s.f. This is a footprint, by adding the second floor, the applicant is doubling the size of the accessory building. Engineer Shafai stated that accessory structures were never thought to have a second floor. Attorney Vella stated that this is the reason for the height requirement. Planner Mertz confirmed that if this is considered a second primary structure, the applicant would not need a height variance, only the use variance relief is needed since primary structures allow for a greater height.

The proposed structure is designed to match the aesthetics of the existing home, utilizing the same garage doors as the existing attached garage and using the same brick as the façade of the home. Mr. Primiano stated there is no intent to rent out the space to anyone and would have no separate utility meters.

Mr. Ferrara inquired about the availability of septic. Mr. Uk stated they would need a pump that would travel to the existing septic. It was noted that the septic would need to be upgraded. The existing house is approximately 4,500 s.f. in size. Mr. Uk stated that his current three car garage is used as a gym and play area. The height variance is requested to allow for the second story of the proposed detached garage.

Ms. Mertz asked if there was any way that the applicant could design an addition to the existing home that would incorporate the living space into the existing home. Ms. Mertz clarified that there is a full kitchen proposed, not just a "kitchenette." Mr. Primiano stated that he gets frequent requests to design a plan that would allow the family to live together on the same property and still have some quality of life. He stated the applicant is also seeking the additional garage space and the proposal would accomplish both the desired garage space and the additional living space for the applicant's mother.

Attorney Vella explained that the Zoning Officer Chairman Mostyn stated that the intent of the Township's Ordinance is really to have an elderly family member to be part of a family unit, not a second separate home.

James Kyle provided his credentials and the Board accepted him as a licensed professional planner. Mr. Kyle introduced Exhibit A-8, an aerial photo with tax overlay. He described the property as being 8+ acres. He reviewed the surrounding area and the permitted uses in the R-170 zoning district.

Mr. Kyle stated that accessory dwelling units (ADU's) are a hot topic with planners in New Jersey. Many NJ towns have adopted ordinances that allow ADU's as a permitted accessory to a single-family home. Some towns relate these ADU's to restrict to affordable housing. Should the Board determine that the proposed structure is an accessory structure, requiring single accessory structure size, height and overall accessory structure size with a living suite vs. the Board determining that this is a second principal structure, which would now require a second 'd' variance, he states that the proofs are the same.

Mr. Kyle reviewed the proofs of the positive and negative criteria for the benefit of the Board. Board Engineer Shafai noted that there is only 1.1-acre of buildable area within the 8-acre site; the remaining area has been placed in conservation easement area. Mr. Kyle reviewed the goals and objections of the Township's Master Plan, acknowledging the Township's agricultural preservation and rural preservation. In his opinion, the proposal is in line with the intent of the Master Plan.

Board Planner Mertz interprets that the proposal lends itself to be more of a second primary structure, rather than an accessory structure with living suite located above the garage area. The Board agreed with this interpretation. Attorney Vella stated that this would require a d(1)



variance for the second primary structure on the property. He stated that the applicant will have to prove that the property is particularly suitable for this use.

Mr. Kyle stated that although there is a significant amount of the property in conservation easement area, it is clearly the largest lot in the neighborhood. The lot is also located at the end of the street, the last house on a cul-de-sac. If the Board feels that this is a principal structure, then no bulk variance relief is required.

Mr. Uk stated that the site is at the end of the cul-de-sac and that the lot is much larger than the required size.

Chairman Mostyn opened the matter to the public. With there being no one from the public present, Chairman Mostyn closed the public session.

Planner Mertz explained that this application technically requires two d(1) variances for the proposal (the bulk relief is no longer required).

Ms. Beckish stated that there are alternatives. There is an existing garage that may be able to be repurposed to create additional living space as part of the primary home.

Mr. Ferrara suggested they can create living space in the garage and build a detached 6-car garage, where it wouldn't create a second dwelling unit.

Mr. Lambros explained that while many towns allow for multiple dwellings, the reason that Millstone is so desirable is because of its rural nature. This would increase the density and possibly affect the environmentally sensitive area. He believes there may be alternatives that the applicant should explore that may not require variance relief.

Attorney Vella reminded the Board that any approvals would carry all future owners of this home.

The Board deliberated. There was a motion to deny the application based on the Board's discussion made by Mr. Lambros, before there was a second to the motion, the applicant asked for a brief recess.

The Board took a five-minute recess.

The applicant offered to revise their plans to incorporate the living space into the existing attached garage space and to construct a detached accessory garage. Mr. Uk would like the opportunity to present the changes to the Board at the next meeting as the design would likely require height variance relief for the proposed detached garage. They asked for the Board to

Mr. Vella reviewed the procedure of the votes before the Board. The Board members would vote "yes" if they were in favor of denying the application as presented. The Board would vote "no" if they would not want to deny the application, but would rather the applicant be able to revise plans and come back to the Board for consideration on the modified plans. Mr. Ferrara seconded the motion to deny. There was a roll call vote of those in favor of deny the application: Chairman Mostyn, Mr. Ferrara and Mr. Lambros (3); those against denial and instead in favor of allowing the applicant time to revise the plans and resubmit the application: Mr. Barthelmes, Ms. Beckish and Ms. Arpaia (3). The Board had a "hung vote" and the matter was carried to the meeting in two months.

Attorney Vella announced the application would be carried to the June 28, 2023 meeting at 7:30 pm, in the same location, without any further notice*.

No time extension was necessary.



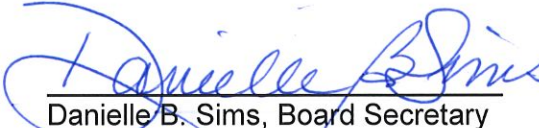
BOARD DISCUSSION:

Mr. Ferrara stated that applications for development will come to the Board often, but encouraged the Board to remember why they moved to Millstone. The rural neighborhood, there are no traffic lights in Millstone, etc.

ADJOURNMENT:

With no further business, Mr. Ferrara made a motion to close the meeting. With all in favor, Chairman Mostyn adjourned the meeting.

Respectfully submitted,


Danielle B. Sims, Board Secretary

** Mr. Uk was able to revise his plans after the meeting to be completely compliant with the zoning requirements. The revised plans did not contain any living space, but instead contained a recreation room and half bath on the second floor of the proposed detached garage. He was able to obtain a zoning permit for the revised plan; therefore, the Board no longer had jurisdiction and Mr. Uk withdrew the application before the Board.*