

**MILLSTONE TOWNSHIP
BOARD OF ADJUSTMENT
MEETING MINUTES
SEPTEMBER 26, 2018**

The Meeting called to Order by Chairman Novellino at 7:31p.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, Morelli, Mostyn and
Novellino
Late - Lambros (7:40 p.m.)

APPROVAL OF MEETING MINUTES:February 28, 2018

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

CONTINUED 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 a residential apartment 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.

Board Secretary D'Andrea announced that Mr. Mostyn has viewed the Meeting Video from June and has reviewed the Exhibits and is certified to consider the continuation of the matter and vote on same.

Mr. Lambros arrives at 7:40 p.m.

Attorney Vella advised that he reviewed the noticing and advised that the Board continues to have jurisdiction over the application. He entered the following Exhibits into Evidence:

- A-16A Noticing packet
- A-16 Updated Website Notice
- A-17 Aerial of Conceptual Site Plan Prepared by T&M Associates dated 7-9-18
- A-18 Use Variance Site Prepared by T&M Associates dated 7-9-18
- A-19 Use Variance Report Prepared by T&M Associates dated 7-9-18
- A-20 Traffic Narrative Prepared by T&M Associates dated 7-9-18
- A-21 Mounted Color Subdivision Plan
- A-22 List of Property Uses
- BOA-5 Monmouth County Planning Board Conditional Approval
- BOA-6 Revised Engineering report dated 8-7-18
- BOA-7 Revised Planning report dated 8-13-18

Vincent Halleran, Esq. appearing on behalf of the applicant.

Patrick Jefferies, P.E., P.P. was previously sworn in and is still under oath

He went over the new plan that was submitted.

Attorney Vella entered into evidence Exhibit A-21, Mounted Colored Subdivision Plan.

Mr. Jefferies provided that there are 4 existing lots consisting of 28.6 acres. The applicant proposes to create a subdivision consisting of 11 lots consisting of one with existing dwelling, 8 new lots and one lot for storm water basin.

Mr. Jefferies provided a brief summary of the amended plan. He advised the Board that the five apartments have been revised to one apartment.

Mr. Jefferies went over the change in the square footage of the proposed plan and building potential uses.

Attorney Vella marked into evidence Exhibit A-22, List of Proposed Uses.

He stated that the intent for commercial use of the building was to provide a place of uses that would benefit the community. He read the list into the record.

Mr. Jefferies stated that the applicant wants to continue the outdoor display and sale of seasonal items and propane service.

Attorney Vella swore in Christine Bell, P.P. She provided her credentials including she has received her Master's degree, licensed in the State of New Jersey and has testified before the Board in Bradley Beach.

Chairman Novellino advised that the Board accepts Ms. Bell as a professional planner.

Ms. Bell went over the applicants request for a D1 variance and the positive criteria for granting same. She offered that the site is particularly suited for the use which services and benefits the community. She stated that the County roadway improvements will allow the site to be more conducive to this property. She went over the positive components of this application.

Attorney Vella clarified that this application is solely for the construction of this site and the construction of the residential subdivision. This application has nothing to do with the roundabout.

Mr. Jefferies represented that the applicant wants to have a display of items outside but not have outdoor storage. They want to move the storage of items inside.

Mr. Jefferies went over the existing buildings located on the property and discussed which buildings would be removed, including the 2,900 s.f. business building, along with the two barns consisting of 1,050 s.f. and 350 s.f. A new 9,950 s.f. building would be constructed to house the business and the 1,000 s.f. office. The 4,900 s.f. barn will remain. Mr. Jefferies stated that 3,750 s.f. of the new building will be for retail for new uses from the proposed list, Exhibit A-22. The remainder of 2,850 s.f. is for retail show room for current use and storage of items. Mr. Jefferies stated that they are increasing overall square footage on the property by 3,600. The Board questioned Mr. Jefferies' math in calculating the percentages.

Planner Mertz stated that this is an intensification on the lot and a decrease in lot size. Both The Board Planner and the applicant's Planner agree that both D1 and D2 variances are needed.

The applicant is abandoning the current building. The applicant would minimally need a D2 variance to construct a new building on a smaller lot. Planner Mertz stated that the intensity is increasing, expanding the use or the physical expansion of that use. She stated it is clearly D1 and D2 variances. She stated that the applicant has a solid

argument because his property is being taken away but because he is adding the additional retail, there needs to be additional reasons for the use variance to be granted.

Attorney Vella sworn in both Board Engineer Matt Shafai and Board Planner McKinley Mertz.

Mr. Jefferies stated that the single apartment is intended to be used by a family member. They work at the store and watch the equipment. They would be associated with the commercial uses on site helping supervise the site.

The proposed density is much larger than what is permitted in the zone. This is in line with what is permitted in commercial areas.

Attorney Vella stated that the Township did not rezone the property.

Applicant's next witness is Robert Rosenshine. Attorney Vella swore in the witness. He advised that he is a licensed realtor, builder and licensed appraiser living in the Township since 1969. Chairman Novellino advised that the Board will accept him as a licensed Realtor and Appraiser.

Mr. Rosenshine stated that the Noreika business has acted as a neighborhood commercial operation servicing the Township in maintaining lawnmowers and snowblowers for 40- 50 years.

Attorney Vella swore in Charles A. Noreika, owner and operator of the business.

Mr. Noreika stated that he did not want any of this but the County wanted to put in the traffic circle. He stated that he is happy with the operation as it is. The expansions would help the operation work better. He offered that if he cannot increase the size, he can run the operation but the County is taking the house his brother lives in and the proposed apartment above the retail is for his brother. Mr. Noreika stated that everything is jammed into the shop or showroom. He could use more space. He stated that items placed outside have been stolen. A larger building would allow him to keep his products inside.

Mr. Noreika stated that they met with the County in spring 2017. They have not given him an answer to date.

Attorney Vella read Exhibit BOA-5, Monmouth County Planning Board Conditional Approval. The County can only improve on their road if you give all of that for free.

Engineer Matt Shafai stated that the County wants to take down the existing single-family house that is located too close to the road.

The Board understands what is driving Mr. Noreika him to apply for this application. He is in a tight spot because the County is not moving forward now.

Mr. Jefferies stated that if the County did not approach Mr. Noreika regarding the roundabout, he would like to keep things status quo.

Attorney Vella swore in Robert Noreika. Mr. Noreika provided a history of how things have evolved and changed in the past 70 years. His parents built the business. They use to sell motor scooters from 1949 to 1965 when the scooter company went out of business. They had a peach orchard and sold Christmas trees and toys and Christmas gifts. He described the heritage of his family in the Township. He does not want to see the commercial use expand onto another lot.

Mr. Noreika explained if you can make a complimentary business that is a benefit to the community, you have that to have some breathing room. The Noreikas are running three businesses in a small area.

Chairman Novellino stated that the Board cannot do something that is not in conformance with the Municipal Land Use law. The Board can appreciate the story of the family in the community. The underlying is that they had a Mom and Pop operation nearby. Now this could be upset. Chairman Novellino explained that the Board is trying to find a balance that works so he does not go out of business. No one is objecting for you to continue your business. They would like to see your survive. How do you coexist. This is a residential zone and your use is non-conforming because it predates any zoning in the area. Chairman Novellino addressed that they Township looked at this property when it zoned it to 2-acre zoning. Everyone appreciates the history of the property. He stated that the Board has to do what is in accordance with the law and must follow what the law prescribes.

Chairman Novellino opened the meeting to the public at 9:39 p.m.

Attorney Vella swore in Alan Gold of Carrs Tavern Road. He advised that he has lived in the Township since 1977 and has patronized the business. He feels that the shop is an important of the community fabric. Mr. Gold offered that it is important to have a small business to shop. He described their great customer service and convenience is unsurpassed.

Attorney Vella swore in Jeff Torno 232 Paint Island Spring Road. Mr. Torno asked for clarification that the County wants to take the area where the 2,900 s.f. business building stands presently. His concern is with the construction of a 9,963 s.f. building with 63 parking spaces that will require lighting in a residential zone located in the R-80 zone with any of the 14 additional uses on this site will have a significant impact on the surrounding homeowners. This is creating a lot of stress. He stated that no one is trying to stop the

business but added that the scope and capacity of the project needs to be understood. Mr. Torno reiterated that this is a zone for a single-family home.

Pearson, 39 Agress Road. He has been a patron since 1976. He would like to see the County just put a light there and allow everything to look the same.

Attorney Vella swore in Sam Qutub, 126 Paint Island Spring Road. He advised that he has been a patron of the Noreikas. His concern is that a compromise can be worked out that would not burden the immediate neighborhood with additional traffic

Attorney Vella swore in Pat O'Malley. She has a concern regarding about the lighting and increased traffic.

Attorney Vella swore in Dolores Jenkins of 418 Stage Coach Road. She applauded the Noreika family business. She has concerns over the size of the building. Ms. Bell stated that the current building is in character with the agricultural community. She asked how the proposed chosen retail uses are in character with and compliment the agricultural community. She also asked about the lighting plans and architectural plans for the proposed new building.

Attorney Vella explained that this application is a bifurcated application. He is before the Board for a use variance. He explained that if the use is approved then down the road, they apply to the Board for site plan approval and the lighting and architectural plans are part of the site plan application.

James Wishbow, 199 Paint Island Spring Road. He stated that he has lived here for 24 years. He stated that he does not begrudge the Noreika family for their application. He feels that this project does not fit the corner as proposed. He offered that by introducing another non-conforming use with so much pavement proposed is of concern to Mr. Wishbow. He feels that a financial hardship is not a reason for approval. Mr. Wishbow stated that what the applicant is proposing is a great deal on the parcel.

Seeing no further public comment, Chairman Novellino closed the public portion of the application at 10:10 p.m.

Mr. Jefferies discussed the changes in the traffic report. He advised that the report is not a full traffic report. A full traffic report would be provided at the time of site plan approval. The traffic would increase but he felt that it would not impact the area.

Attorney Vella provided clarification that a use variance is tied to the property with the conditions asked for this evening. They would have to come back to the Board. Attorney Vella stated that the variance approval is not a broad approval.

The applicant's proposal includes 63 parking spaces. Applicant would be willing to reduce the number but the Township may not want that. They would be willing to bank parking.

Mr. Jefferies stated that the applicant has not proposed any lighting because that would be provided at the time of site plan approval. The applicant would mitigate lighting.

Regarding the apartment, it was discussed that it would be difficult to enforce restrictions placed on the apartment.

Chairman Novellino advised that the Board would have to stay within what is in their jurisdictional power. They cannot deviate from the Municipal Land Use Law (MLUL). The Board discussed the application.

Chairman Novellino understood the applicant's situation. He stated that we do not know what the County will do. He explained that the Board must proceed with what is best for the Township. Chairman Novellino stated that for the applicant to continue in the present location without making any changes that impact the neighbors depends on what the County does. He stated that the Board has to comply with what the MLUL says the Boards' powers are and what variances are justified. Chairman Novellino stated that the two major variances involved in this application. The D1 variance where the applicant has to prove the positive criteria that the site is particularly well suited for these uses. Negative criteria would impair intent of the zone plan. Chairman Novellino stated that a D2 variance would have a stronger case because the use is already there, however the size of the intensification is problematic. He stated that perhaps something larger may be justifiable but the scale of the proposal is not sufficient to warrant an approval.

Mr. Mostyn stated that the applicant needs to find a reasonable number for increasing the size of the building. The proposal is too intense for the lot in the residential zone.

Attorney Vella explains that the Board is considering a bifurcated use variance to increase his business and add a new strip mall area. This is the application that is before the Board. It is not just an increase of his business. Years ago, the Board allowed the applicant to subdivide the residential lots. Attorney Vella stated that the condition was that the lot behind would be a buffer and he explained. He stated that this is not a negotiation, the application that is before the Board at the end of the day is for approval of D1 and D2 variances. If the Board grants the variances, then we move to the subject of the residential subdivision. If the Board does not, then they do not go any further. The applicant's professionals present something that they think would be approved by the Board.

Planner Mertz stated that in 2017 the Planning Board chose not to rezone the property. A financial hardship is not a valid reason for granting a variance.

The Board voiced their feelings.

Mr. Morelli and Mr. Conoscenti feel the intensity of the plan does not conform.

Mr. Frost thanks the Noreikas for what they have contributed to the community for over 40 years. He stated that while our hearts go out to an applicant we are bound by the law.

Mr. Lambros witnessed the Noreikas' positive relationship with neighbors and community. He offered that the neighbors are concerned about the their residences too. He stated that the Board understands the sensitivity. He feels that what was proposed is too much for him to agree to this evening.

Mr. Halleran asked the Board to hold off on voting this evening until the applicant can meet with the County.

Attorney Vella advised what is unique about this application is the uncertainty as to what the County is going to do. If is not fair to have the residents come out in another month or two.

Attorney Vella advised the Board that they have before them a D1 use variance and a D2 variance expansion of a non-conforming use. Attorney Vella stated that the Board Planner testified that they are both appropriate and he explained. If the Board votes in favor of the D1 and D2 variances, then the Board proceeds to consider the preliminary and final major subdivision application. If the Board denies the D1 and D2 variances, then it all ends tonight. The Board having considered the application and testimony and discussed the matter, Mr. Mostyn made a Motion to deny the application and Mr. Morelli offered a Second. Roll Call Vote: Mostyn, Morelli, Conoscenti, Lambros Frost and Novellino vote yes to deny. Vice-Chairman Barthelmes voted no.

Attorney Vella advised that the applicant has the right to re-apply to the Board with a substantially different application if he so chooses.

Seeing no old business or new business, Chairman Novellino asked for a Motion and a Second to adjourn the meeting. Mr. Ferrara made the Motion to Adjourn and Mr. Conoscenti offered a Second and by unanimous vote, the meeting adjourned at 11:00 p.m.

Respectfully submitted,

Pamela D'Andrea