



**MILLSTONE TOWNSHIP ZONING BOARD OF ADJUSTMENT
MINUTES
May 25, 2022**

The Millstone Township Zoning Board of Adjustment regular meeting was called to order by Chairman Novellino on Wednesday, May 25, 2022 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 Novellino, Vice-Chairman Barthelmes, Mr. Ferrara, Mr. Lambros, Mr. Morelli, Mr. Sinha (Alt. I) and Ms. Beckish (Alt. II).

Absent: Mr. Conoscenti and Mr. Mostyn.

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

Mr. Sinha was seated for Mr. Mostyn. Ms. Beckish was seated for Mr. Conoscenti.

MINUTES:

Minutes from January 26, 2022

Chairman Novellino asked the Board if they had any comments on the minutes that were prepared. With no comments from the Board, Mr. Morelli made a motion to adopt the Minutes from January 26, 2022, which was seconded by Mr. Lambros. The Minutes were adopted on a roll call vote: Chairman Novellino, Mr. Lambros and Mr. Morelli.

Minutes from April 27, 2022

Chairman Novellino asked the Board if they had any comments on the minutes that were prepared. With no comments from the Board, Mr. Lambros made a motion to adopt the Minutes from April 27, 2022, which was seconded by Mr. Ferrara. The Minutes were adopted on a roll call vote: Chairman Novellino, Vice-Chairman Barthelmes, Mr. Ferrara, Mr. Lambros and Mr. Sinha.

RESOLUTION(S):

**Ryan Jeffray
Block 60.02, Lot 21.22 – 1 Patterson Lane
Variance Application # Z22-04**

Chairman Novellino asked if the Board had any comments on the resolution that was prepared. With no comments from the Board, Mr. Ferrara made a motion to adopt the Resolution for Application Z22-04, which was seconded by Mr. Barthelmes. The resolution was memorialized with the following roll call vote in favor: Chairman Novellino, Vice-Chairman Barthelmes, Mr. Ferrara, Mr. Lambros and Mr. Sinha.



**Andrea Winkel-Blair
Block 45, Lot 6 – 37 Charleston Spring Road
Variance Application Z22-03**

Chairman Novellino asked if the Board had any comments on the proposed resolution. With no comments from the Board, Mr. Ferrara made a motion to adopt the Resolution for Application Z22-03 which was seconded by Mr. Sinha. The resolution was memorialized with the following roll call vote in favor: Chairman Novellino, Vice-Chairman Barthelmes, Mr. Ferrara, Mr. Lambros and Mr. Sinha.

NEW APPLICATION(S):

**Basha Enterprises, LLC (Kasam Basha) – Hand & Stone Massage and Facial Spa
Block 59, Lot 11 – 508 Monmouth Road
Appeal / Use Variance Application # Z22-05**

Request for an Appeal of a Zoning Officer's Determination, denying the applicant's Zoning Permit to allow a Hand & Stone Massage and Facial Spa in a vacant tenant space at the recently constructed Millstone Rivermart, LLC (retail center, Application PB16-01) in the HC Zoning District. Alternately, the applicant is also requesting use variance approval to allow the Hand & Stone Massage and Facial Spa at the site.

Mr. Vella, Esq. confirmed that the proof of notice was correct in form, published and properly served, so that the Board has jurisdiction to hear the application. He explained that this is a request for an appeal of a Zoning Officer's decision or alternatively, a use variance.

The following witnesses were sworn in:

Matt Shafai, PE, PP – Board Engineer
M. McKinley Mertz, AICP, PP – Board Planner
Kasam Basha – Applicant
Meghan Lally – Corporate Representative, Hand & Stone
Allison Coffin, PP, AICP – Applicant's Planner

The following exhibits were marked in evidence, as follows:

Exhibit A-1: Jurisdictional Notice (Proof of Service)
Exhibit A-2: Application, Checklist & Administrative Forms
Exhibit A-3: Notice of Appeal and Board Acknowledgement
Exhibit A-4: Correspondence
Exhibit A-5: Copy of Retail Center Resolution PB16-01
Exhibit A-6: Copy of Approved Overall Site Plan, App. PB16-01, Sheet 3 of 14
Exhibit A-7: Aerial Display
Exhibit A-8: Proposed Floor Plan of tenant space
Exhibit ZB-1: Completeness Determination, dated 5/10/22
Exhibit ZB-2: Planner's Report, dated 5/18/22

Mr. Jared Pape, Esq. appeared on behalf of the applicant. He stated that the applicant is appearing to open a Hand and Stone location at the Millstone Rivermart, located at 508 Monmouth Road, a shopping Center approved in 2018 and is currently under construction. They are seeking to overturn the Zoning Officer's decision or alternately, request a use variance approval for the Hand and Stone.

Mr. Kasam Basha, the applicant, stated that he is a long-time resident of Millstone Township and used the service of a Hand and Stone after he experienced a surgery. The facility helped him in his recovery and liked the professionalism of the company. When this retail center was



being built, he thought it would be a good opportunity for him to bring the franchise to this area. There are currently about sixty locations in New Jersey and eight other locations in Monmouth County. Mr. Basha stated that this site location was appealing to him due to its location, which also fit the franchise model and there were no other locations within this franchise area.

Megan Lally stated that she has been with Hand and Stone for 16 years and the business began as massage therapy and moved into including skin care with 487 locations nationwide and locations in Canada. She stated that Hand and Stone offers both monthly membership and one time visitors. Recently, they have also begun doing cryo-therapy services (cool-sculpting). The company is owned by franchisees, which originated in Tom River, NJ, their flagship store. The company goals are business consistency. All facilities must be licensed and must maintain continued education to stay licensed. The business is open to both their members using the monthly service and to those from the public.

Ms. Lally stated that a facility would typically be open seven days a week from 9:00 am to 9:00 pm or 10:00 pm weekdays. On Saturdays and Sundays, they are typically open from 9:00 am to 8:00 pm. The business is busiest on weekends and after 5:00 pm during the week. Typically, the office staff consists of a manager, a front desk person, four-five therapists and an esthetician, normally under ten employees at any given time. All associates that offer a service (therapists and estheticians must be licensed by the state. Visitors are usually on site for about one hour, with a 50-minute session, although they do offer a 90-minute session.

Ms. Lally stated that the number one reason their customers come to the facility due to "stress" and the second most common reason is to relieve aches and pains.

Ms. Lally stated that Hand and Stone facilities are typically located in small center locations and some others are in downtown areas. There are currently not any standalone facilities. They usually look for locations within shopping centers with a coffee shop or something similar within the center.

Allison Coffin, PP was accepted by the Board as a licensed professional planner. She stated that the property is located within the HC (Highway Commercial) zoning district. The Ordinance allows for "health spa" and "fitness center" within the HC-Zone. When something is not defined, it should be used with a meaning of standard usage of the context in which the word is used. Ms. Coffin provided the definition of a health spa from the Webster dictionary and the description of a fitness center, where a "health spa" is defined as "a spa, specially one emphasizing in health and fitness" and further defined as "a commercial establishment providing facilities devoted especially to health, fitness, weight loss, beauty and relaxation." She also reviewed the New Jersey Code and found part of Title 56 (NJ 56-8-39(b)), which she believes fits the definition of a health spa. It is her opinion, that this facility is a permitted as a use in this zone.

Ms. Mertz asked if there are consistent definition of health spas or massage parlors. Ms. Coffin stated that in her experience, there is no straight forward definition. Ms. Mertz agreed that she has had a similar experience, in that there is nothing consistent and there is no direction from the MLUL. Chairman Novellino asked if there was a Miriam Webster definition of "massage parlor." The Board noted that the proposed facility does a lot more than massages. The Board also noted uses such as physical therapy also include massage therapy. Ms. Mertz noted that the term "massage parlor" is antiquated and has a negative connotation.

Mr. Barthelmes stated that the facility, as explained, is offering more than just a "massage" and that the term "health spa" seems like it may fit.



Mr. Vella noted that the Board should consider the context of the Zoning Denial. The Board should consider if this is the direction, they want the Zoning Officer to consider or if the application is better suited for a use variance. A health spa may be considered in different ways and the Board will be directing the Zoning Officer for future reviews. The applicant has also requested a use variance and noted the Board may alternately find that this may be a suitable use for the commercial zone. It may be something that the Board may want to protect the zoning ordinances and protects the Zoning Officer may also consider a use variance for this application.

Chairman Novellino confirmed that in granting a use variance, it would require any future applicant with a "health spa" use that does not conform to be directed to the Board by the Zoning Officer. Ms. Beckish noted that the Zoning Officer would have direction for the future. Chairman Novellino does not like the idea of overruling the Zoning Officer in matters such as this.

Addressing the proofs for the alternative use variance, Ms. Coffin stated that the site is particularly suited for the proposed use, despite the ordinances lack of definition. The impact, she believes, would be similar to a beauty shop and is particularly suited for this zone. The subject site is a mixed-use commercial center and is ideal for the franchise. There would be no impact on the neighboring properties. The proposed used is so similar and is compatible with the current uses in the zone. She opined that there is no detriment to the proposed use.

Ms. Mertz took no exception to Ms. Coffin's use variance testimony. The proposed use does not appear to be contemplated within the zone.

Mr. Lambros inquired about the parking on site. Ms. Mertz stated the property was developed with a shared parking area. The entire site contains 97 parking spaces and the maximum anticipated at any given time for the proposed use would be 14-20. Mr. Lambros confirmed that everyone would be using the front door and that the rear door would only be used for emergencies.

Ms. Lally stated that the onsite operator is required to maintain the certificates for all the employees and they are subject to internal review.

The Board discussed the parking and site circulation for the previously approved site plan. Ms. Mertz noted this is a less intense use than some possible uses within the shopping center, such as the Dunkin Donuts on the site.

Mr. Vella reviewed the options of the Board.

Chairman Novellino opened the matter to the public. With no members of the public coming forward, Chairman Novellino closed the public session.

Mr. Pape, Esq. summarized and noted that the applicant is seeking to operate a well-respected establishment.

Mr. Barthelmes stated that the proposed use is a general need.

Chairman Novellino stated that as it relates to a use variance, the proposed use is similar to those permitted in the zone and the site appears to be particularly suited for the use. The proposed use is for services to be done by all licensed professionals. He feels the site is particularly suited for the proposed use and that the applicant would be entitled to a use variance.

Mr. Lambros takes no objection the application. He takes an objection to overturning the Zoning Officer in this matter and would like to support the Zoning Officer's decision by denying the appeal. Mr. Vella noted that this can be a motion done simultaneously.



Ms. Beckish stated she agrees with Mr. Lambros and supports the Zoning Officer's decision, and suggest that the Board grants the requested use variance based on the testimony. Chairman Novellino stated that the Zoning Officer was acting reasonably when denying the Zoning Permit.

Mr. Vella read some of the conditions discussed including that all customers must enter from the front door and not the rear, hours of operation would be restricted from 9:00 am to 10:00 pm weekdays and Saturdays and Sundays from 9:00 am to 8:00 pm, and all therapists and estheticians must be licensed (copies of the licenses must be kept on site at all times).

The Board considered the request for an appeal as well as the alternative request for a use variance with the conditions and the reasons provided. With no further comments from the Board, Mr. Lambros made a motion to affirm the Zoning Officer's decision and alternately approve the use variance with the conditions put on record, which was seconded by Mr. Barthelmes. The application was approved with the following roll call vote in favor: Chairman Novellino, Vice-Chairman Barthelmes, Mr. Ferrara, Mr. Lambros, Mr. Morelli, Mr. Sinha and Ms. Beckish.

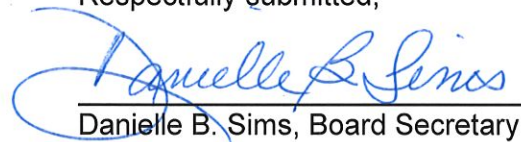
BOARD DISCUSSION:

Ms. Sims noted that there were no matters currently ready for the June meeting and there is a possibility that the June meeting may be cancelled. There were no other business matters up for discussion.

ADJOURNMENT:

With no further business, Mr. Lambros made a motion to close the meeting, which was seconded by Mr. Ferrara. With all in favor, Chairman Novellino adjourned the meeting.

Respectfully submitted,


Danielle B. Sims, Board Secretary