



**MILLSTONE TOWNSHIP ZONING BOARD OF ADJUSTMENT  
MINUTES  
September 27, 2023**

The Millstone Township Zoning Board of Adjustment regular meeting was called to order by Chairman Mostyn on Wednesday, September 27, 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. Lambros, Mr. Morelli and Ms. Arpaia (Alt. 1).

Absent: Mr. Barthelmes, Ms. Beckish, Mr. Ferrara 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 Ms. Beckish.

**MINUTES:**

**Minutes from May 24, 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 May 24, 2023, which was seconded by Ms. Arpaia. The Minutes were adopted on a roll call vote: Chairman Mostyn, Mr. Lambros and Ms. Arpaia.

**RESOLUTION(S):**

None

**APPLICATION(S):**

**REQUEST FOR EXTENSION OF VARIANCE APPROVALS**

**Dave & Maria Sienkiewicz (fka: The Sycamores, LLC)**

**Block 49.01 Lot 12 – 6 Laurel Court (fka: 6 Oak Hill Drive)**

**Extension of Bulk Variance Approval Request # Z22-07 (Ext.)**

Request for an extension of the bulk variance relief granted to The Sycamores, LLC to construct a single-family home on an existing non-conforming lot. Under the approval, variance relief was previously granted for lot size of 60,061 s.f. whereas 80,000 s.f. is required, minimum useable development area of 31,315 s.f. whereas 1-acre is required, Minimum diameter of 165 ft; whereas 200 ft is required and disturbance to steep slopes. A soil removal/fill permit may be required.

Attorney Vella reviewed the approvals previously granted for The Sycamores and the reason the applicant would require the extension as a new owner of the property since the approvals are set to expire October 26, 2023.



Ms. Sienkiewicz explained that she and her husband purchased the property on June 16, 2023 and is not planning on using the plans from the previous developer. She stated she is currently working with her architect to develop plans and will not be able to obtain building permits before the expiration of the variance approvals. She would be staying within the general footprint of the previous plan and would be building a smaller, single-story house. All outside agency permits have been obtained. Mr. Vella noted that the applicant is eligible to request a six-month extension of the variance approvals, which would then expire on February 27, 2023\*\* (\*\*6 months should begin at expiration of resolution of approval (10/26/23) and would be extended through April 26, 2024 - this timeframe was corrected prior to adoption of the resolution and these minutes).

With no further questions or comments from the Board, Mr. Morelli made a motion to approve the request for the extension of approvals to the new owner. This motion was seconded by Ms. Arpaia. Application Z22-07(Ext.) was approved with the following votes in favor: Chairman Mostyn, Mr. Lambros, Mr. Morelli and Ms. Arpaia. Approved 4-0.

### **CONTINUED APPLICATION**

**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. \*Applicant has revised the application to demolish the existing structure at 108 Agress Road and construct a 30' x 30' detached garage in its place. The existing detached garage has been renovated/remodeled/alterd to a detached office/storage structure with a full bathroom; a zoning violation notice has been issued for work without permits. 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), 7/26/23 and again to the September 27, 2023 meeting. Extension of Time to Act through 9/30/23.

Mr. 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 continued application.

Mr. David Lonski, Esq. appeared on behalf of 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  
Zack Malinowski – Applicant  
Renata Malinowski – Applicant  
David Ziobro, AIA – Applicant's Architect  
Michael Pessolano – Applicant's Planner

The following exhibits were marked in evidence, including new exhibits:

### **APPLICANT'S EXHIBITS**

A-1 Jurisdictional Notice (Proof of Service) for 3/22/23  
A-1b Jurisdictional Notice (Proof of Service) for 5/24/23  
A-1c Jurisdictional Notice (Proof of Service) for 9/27/23  
A-2 Application, Checklist(s) and Administrative Forms  
A-3 Copy of Resolution prior Z12-01 (Unperfected, Expired)  
A-4 Survey of Property, one (1) sheet, prepared by Charles Surmonte, PE, PLS, dated 8/3/22



- A-5 Use Variance Plan, three (3) sheets, prepared by David Ziobro Architect, revised 12/21/22
- A-6 Google Aerial Display of site, undated
- A-7 Updated Use Variance Plan, three (3) sheets, prepared by David Ziobro Architect, revised 3/22/23
- A-8 Notice of Violation, dated 3/23/23
- A-9 Request to Adjourn 4/26/23 hearing & Extension of Time to Act to 4/26/23, dtd. 4/19/23
- A-10 D. Lonski letter to the Board, dated 5/11/23
- A-11 Well permit issued by Monmouth County Health Dept., dated 3/17/23
- A-12 Monmouth County Board of Health Soil Log Approval for septic systems 5/8/23
- A-13 Structural observation report, prepared by Stuart M. Kovacs, PC, LLC, dtd 4/4/23
- A-14 OPRA Response from MCBOH request for septic plans, septic permits, well locations and permits, survey of property, dated 7/25/22
- A-15 Copy of Construction Permit # 20230151 to remove sheetrock, dated 3/28/23
- A-16 Copy of sketch for Hawk residence, proposal for addition and demolition portion of structure 108, dated November 2011, unknown source
- A-17 Septic System Alteration Design Plan, prepared by Lortech, Inc., revised 10/22/19
- A-18 Series of six (6) color photos of exterior/interior of structure at 108 Agress Rd., provided by owner, undated (received 5/9/23)
- A-19 Series of three (3) color photos of yard areas at 106/108 Agress Rd., provided by owner, undated (received 5/9/23)
- A-20 Series of four (4) color photos of interior of renovated garage at 106/108 Agress Rd., provided by owner, undated (received 5/9/23)
- A-21 Series of seven (7) color photos of interior of structure at 106 Agress Rd., provided by owner, undated (received 5/9/23)
- A-22 Updated Use Variance Plan, three (3) sheets, prepared by David Ziobro Architect, revised 4/25/23
- A-23 Request to adjourn 5/24/23 hearing to 7/26/23, Extension of Time to Act through 7/31/23, prepared by D. Lonski, dated 5/23/23
- A-24 Request to adjourn 7/26/23 hearing to 9/27/23, Extension of Time to Act through 9/30/23, email by D. Lonski, dated 5/23/23
- A-25 Letter to Board to Amend Application dated 9/6/23
- A-26 Updated Use Variance Plan, three (3) sheets, prepared by David Ziobro Architect, revised 8/29/23
- A-27 Correspondence Attny. Lonski and Attny. Vella 9/11/23
- A-28 Updated Cover Sheet (sheet 1 of 4) Use Variance Plan, prepared by David Ziobro Architect, dated 9/14/23
- A-29 Arch Plan sheet (sheet 4 of 4) middle structure, prepared by David Ziobro Architect, dated 9/14/23
- A-30 Updated Survey of Property, one (1) sheet, prepared by Charles Surmonte, PE, PLS, dated 9/20/23
- A-31 Photo of garage prior to conversion/renovation, received 9/27/23

### BOARD'S EXHIBITS

- ZB-1 Completeness Determination (email) dated 1/17/23
- ZB-2 Engineer's Review dated 1/16/23
- ZB-2b Engineer's Review dated 5/19/23
- ZB-2c Engineer's Review dated 9/19/23
- ZB-3 Planner's Review dated 2/1/23
- ZB-3b Planner's Review dated 5/19/23
- ZB-3c Planner's Review dated 9/14/23

Mr. Lonski, Esq. appeared on behalf of the applicant. Mr. Lonski explained that the plan brought before the Board tonight bring the property into the more into compliance. He stated that when the current owner purchased the property, the site was being used as three (3) dwelling units, as all three structures were being used for living space. They would bring the property into



compliance with only one legal dwelling unit. The garage (now an office and storage area), he stated, was not enlarged, but rather was previously partially destroyed by a fire. Mr. Lonski explained that the applicant restored the garage, making it into the home office/storage building. He explained that one of the buildings seemed to have been used for auto repair with various belts, plugs and a welder in the building. Mr. Lonski stated that the applicant does not take exception to the property being deed restricted to not contain living space in the two proposed accessory structures.

Mr. Lonski stated that the current structure (known as #108 Agress Rd.) is proposed to be demolished and a 900 s.f. detached garage is proposed to be constructed in its place.

The applicant is seeking relief for front setback to the existing home at #106 Agress Rd., noting that the right-of-way dedication will add to the need for the additional front yard variance. Chairman Mostyn stated that just because people may have lived in the other buildings, it does not make it legal. Mr. Lonski agreed that this does not make it legal. Attorney Vella confirmed that there will be no occupancy (living) permitted in the office/storage building or the proposed new garage.

Mr. Malinowski, still under oath, stated that when he purchased the property, he was not able to view the garage (middle structure) because there was a dog inside and there was not a key available. Mr. Malinowski stated that the garage had spark plugs and mattresses, and believed someone was living in the structure. The structure was in poor condition and he reconstructed the building. Attorney Vella asked him to clearly explain all the improvements that have been made to that garage structure, since they were not done with permits. Mr. Malinowski stated he kept the existing cement floor and some of the framing and rafters, only replaced what was damaged by the fire or rotten. In the old garage (now office/storage), he stated that he replaced some roof rafters and portions of the roof itself, remove garage doors, installed/framed new windows and sliding glass door, replaced rotten/damaged wood sheathing and framing material, installed new walls, installed new electrical, installed new plumbing for full bathroom and installed a new septic tank. The structure, he stated, had septic, but had no tank. Permits are still pending from the Monmouth County Health Department for the septic.

Attorney Vella noted that a home office and storage building cannot be used by anyone other than the resident of the home. If it was used for others or rented out, it would be a commercial use in a residential neighborhood, which is not permitted. Mr. Malinowski stated that he plans to move into the house with his wife. Mr. Malinowski stated that his wife works from home and will be using it for her home office. He stated that he removed the garage doors and replaced it with a window. If the applicant is not living there, it cannot be used by the applicant or others. Mr. Malinowski stated that the building was being used for storage of his household items since he moved out of a big house and didn't want to put his stuff in storage.

Planner Mertz confirmed that the home office area cannot exceed 400 s.f.\* (\*or 10% of the floor area). Engineer Shafai noted that the variance plans still refer to the middle structure as a garage and should be changed on the plan. Planner Mertz noted that the applicant is permitted to have 1,800 s.f. of accessory structures overall. With the proposed new garage at 900 s.f. and the home office/storage building being 743 s.f., the applicant does not require variance relief. Anything further would be limited to 157 s.f. (this would include any deck off the sliding doors to the office/storage).

Mr. Malinowski stated that the shed shown on the property survey has been removed. He stated that he removed all of the rotted material in the old garage and replaced it. The applicant also stated that he removed the frame and installed a sliding glass door on the rear of the old garage. Attorney Vella noted that while the use of the home office/storage building does not



appear to need further variance relief, it was not done with any permits and all permits would need to be obtained. He reviewed the current septic on site, stating he installed a 500-gallon tank for the office/storage building, but has not yet received permits on this septic and tank. Engineer Shafai asked why the applicant installed a full bathroom with a shower. Mr. Malinowski stated there was one there before, either legally or not, one was there. Mr. Lambros wanted to know if there was any reason that the shower must remain. Mr. Malinowski would like to keep it.

Mr. Malinowski stated that he plans to store his personal vehicles (cars and motorcycles) in the new 900 s.f. proposed detached garage. He stated there will only be electric service to the proposed detached garage, no other utilities. The Board would restrict this.

Mr. David Zibro, previously qualified by the Board, was again sworn in as the applicant's architect. He stated the proposed new garage would be placed on the foundation of the structure to be demolished (#108 Agress Rd.). Mr. Malinowski stated that the existing basement will be filled in and the foundation will only be slab on grade, no basement to the proposed garage. Electric is proposed to the new 900 s.f. garage but there would not be any plumbing, heat or AC in the new proposed detached garage. Planner Mertz noted that the applicant agreed to deed restrict the accessory buildings to not be for residential use.

Mr. Zibro stated the existing house at #106 Agress Road is currently 625 s.f. is the proposed addition will make the home 944 s.f. All three structures will match in architectural style, color and design. The plans will be revised to reflect this.

Chairman Mostyn requested that the proposed garage can be located closer to the house at #106. The basement will need to be filled and may cause foundation issues on the new garage. Engineer Shafai stated the proposed garage is over 100 feet from the home. The applicant stated he would install a walk path from the driveway to the home.

Mr. Zibro stated they are proposing a second-floor addition with two bedrooms and two bathrooms. Additionally, they proposed plan has a front porch, a rear deck. The first floor will now be 716 s.f. Mr. Vella stated he understands that improvements were made to the structure at #106 Agress without permits. Mr. Malinowski stated that he removed the exterior bilko door and constructed an enclosed man door because he wanted to prevent water from getting into the basement. He stated that the steps were already going down to the basement. He stated that they removed the sheetrock from the home (with permits). He stated they have not done any electrical, plumbing or structural at this time, only removed sheetrock and added the man door over the old bilko door at the structure at #106 Agress Rd.

Mr. Michael Pessolano was sworn in and provided his credentials as a licensed planner. The Board accepted as a professional planner. Mr. Pessolano explained that the applicant is seeking a rear yard setback and a front yard setback. The addition of the proposed front porch would make the setback 41.5'; whereas 50' is required. He stated that the site is triangular in shape and its unique shape create the need for the rear yard setback. The proposed rear porch can also be considered a "side yard" had it not been a triangular shaped lot with three sides. The proposed right-of-way dedication is 25' from centerline, which is approximately 8.5' further into the property from the current right-of-way line. Mr. Pessolano reviewed the proofs in granting the requested bulk variance relief. He acknowledged that the proposed rear deck would further encroach into the rear yard setback, creating a need for relief of 42.17' and amended to request this relief.

Planner Mertz took no exception to the planning testimony. The lot is irregular in shape and agreed that the rear yard setback, although technically a rear yard, functions as a side yard and the line is a side yard line for the adjacent property owner.



Chairman Mostyn opened the matter to the public.

Mr. Timothy Slavicek of 102 Agress Rd. (Lot 27.02) appeared and was sworn in. He stated that he and his husband moved in 2020. He stated that the neighborhood is well kept and up to date, until this property. He stated that they do not take any issue with any of the work that has already been done on the property. He stated that the previous owners used all three structures for living purposes and constantly had issues with the people living at the property. Mr. Slavicek stated that he used to regularly observed people going in and out of all three of the structures on the site, seeming to be living in all three structures. He supports the applicant in the approvals they are seeking and the upgrades being made.

Mr. Stan Strzelecki of 110 Agress Rd. (Lot 29) appeared and was sworn in. He offered his support for the upgrades proposed. He stated that his wife's cousin is the prior owner and does not recall anyone living in the old garage.

With no other members of the public coming forward, the public session was closed.

Planner Mertz noted that the middle building has a sliding door at the rear. Anything attached added to the rear of the structure, including a deck from the newly constructed sliding glass doors, would be included in the accessory structure size and cannot exceed the maximum of 900 s.f. on that building or 1,800 s.f. overall. The applicant has less than 200 s.f. remaining (157 s.f. per plans). Detached patios are not included in the accessory structure size limits.

Chairman Mostyn stated that the applicant is moving in the right direction by removing a nonconforming use of multiple dwelling units. He would like to make sure that the applicant designs the buildings to match. He would prefer the proposed garage to be moved closer to the house structure.

Mr. Lambros expressed concern that the middle structure would be used as an additional residential structure and confirmed that the home office/storage structure be restricted to the occupant of the home.

The applicant would be restricted from future accessory structures due to the 1,800 s.f. maximum total area for accessory structures. Mr. Mostyn does not believe that a shower/bath should be located in the middle structure as it appears to function as a second dwelling. He would like to restrict that the building be used as a home office only. Attorney Vella noted that he would recommend a deed restriction to prevent residential use of either of the two accessory structures, that it would only be a home office/storage for an occupant of the property, it cannot be for commercial/business use and cannot be rented out to a third party. Permits would be required for all the work that was completed without permits and for any additional work to be done on the property. These restrictions would apply to the middle office/storage building and the new proposed 900 s.f. garage. The applicant is required to demolish the structure known as #108 Agress Rd.

In granting the approval, the applicant would abandon the second residential use and the address of #108 Agress Rd. The applicant must also file the proper right-of-way dedication to be 25' from centerline.

Mr. Malinowski confirmed that he intends to live on the property and it would not be used as a rental property.

Attorney Vella provided a summary of the application and the variance relief being requested. He reviewed the conditions as discussed on record: The applicant would file a deed restriction that there would be no commercial use or third-party rental for the accessory structures on the property and that there would be residential living space in the home office/storage accessory



structure or the proposed garage. The middle structure can only be used as for storage and home office per the Township Home Occupation Ordinance. The applicant must obtain all building permits for the work completed without permits. The applicant must obtain septic approval from the Board of Health. The only utility permitted to the proposed 900 s.f. garage is electricity with no A/C or heat. The proposed garage would be on slab and no basement. The proposed garage and other structures will match in regards of roof, material, color and design. The applicant is required to demolish the structure at #108 prior to the issuance of permits-the applicant would be abandoning the second residential use and the address of #108 Agress Rd. The applicant must dedicate the 25' half-width right-of-way. The applicant is to provide revised architectural plans. The applicant would be required to obtain all outside agency approvals. The Board discussed the application and would allow the shower to remain in the home office/storage accessory structure with Board of Health approval and permits. The applicant maintains the right to relocate the proposed garage within the required setbacks. With no further questions or comments from the Board, Ms. Arpaia made a motion to approve the application, granting the requested relief with the conditions placed on record. This motion was seconded by Mr. Morelli. Application Z22-12 was approved with the following votes in favor: Chairman Mostyn, Mr. Lambros, Mr. Morelli and Ms. Arpaia. Approved 4-0.

**BOARD DISCUSSION:**

There were no other business matters up for discussion.

**ADJOURNMENT:**

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

Respectfully submitted,

  
Danielle B. Sims, Board Secretary