



**MILLSTONE TOWNSHIP ZONING BOARD OF ADJUSTMENT
MINUTES
June 26, 2024**

The Millstone Township Zoning Board of Adjustment regular meeting was called to order by Vice-Chairman Barthelmes on Wednesday, June 26, 2024, 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, Ms. Arpaia, Mr. Barthelmes, Mr. Lambros, Mr. Morelli, Mr. Sinha and Mr. Cadigan (Alt. 1).

Absent: Mr. Ferrara; one vacant seat (Alt. #2).

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

Mr. Cadigan was seated for Mr. Ferrara.

MINUTES:

Minutes from May 22, 2024

The Minutes from the May 22, 2024 meeting were carried to the next meeting.

RESOLUTION(S):

None.

APPLICATIONS (done out of order of the agenda):

Thomas Rabbit

Block 39.01, Lot 19.21 – 19 White Birch Dr.

Bulk Variance Application # Z24-05

Variance relief request to construct a 32'8" x 30'8" x 20' in height (1,000 s.f.) detached, two-car garage, to be built into the existing slope area. Variance relief is required for steep slope disturbance and for accessory structure greater than 900 s.f.

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 application. Mr. Vella reminded the Board the application was deemed incomplete and would have to consider the waivers requested in order to determine completeness.

Mr. Thomas Rabbit appeared as the applicant.

The following witnesses were sworn in and are under oath:

Matt Shafai, PE, PP – Board Engineer



M. McKinley Mertz, PP, AICP – Board Planner
Thomas Rabbit – Applicant

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 SEIA Checklist & Response, prepared by Applicant
- A-4 Proposed Soil Removal Calculation, prepared by Applicant
- A-5 Variance Presentation, seven (7) pages, prepared by Applicant
- A-6 Boundary & Topographic Survey, one (1) sheet, prepared by Crest Engineering, dated 3/12/24
- A-7 Architectural Plan for Proposed Detached Garage, nine (9) sheets, prepared by Zimble Architecture, dated 9/14/23
- A-8 Three (3) Photos of Area of Proposed Garage, undated

BOARD'S EXHIBITS

- ZB-1 Completeness Determination dated 6/4/24
- ZB-2 Engineer's Review dated 6-6-24
- ZB-3 Planner's Review dated 6-20-24

Thomas Rabbit explained that he is proposing to construct a detached garage that would require two variances, one for steep slope disturbance and the other for an accessory structure of 1,000 sf; whereas only 900 s.f. is permitted. The applicant is seeking the relief for size in order to fit his boat inside the garage, rather than being stored outside. If he were to relocate it to a more suitable location, it would be a higher elevation, require additional driveway area and remove more trees. In the proposed location, the steep slope disturbance would be minimal, the proposed drywell would minimize the additional runoff, less tree removal and there would be minimal amount of additional added impervious area.

The proposed garage would be similar material to the existing house. The detached garage would be 20' in height, built into the slope and acting as a retaining wall to the slope area. The existing house is approximately 35' in height and the proposed detached garage will be similar height as the existing attached garage. Engineer Shafai confirmed this would minimize the disturbance. The retaining block wall of the garage (built into the slope) would need to be designed by an engineer. Mr. Rabbit explained that there would be electricity to the detached garage, but no other utilities, including plumbing, would be installed in the garage. The current proposal would require the removal of only one, possibly two trees.

Engineer Shafai requested that, if approved, the applicant provide a plot plan.

Planner Mertz stated there are some benefits to the proposed detached garage. The boat would be stored indoors, cleaning up the property. Although the proposed application requires steep slope disturbance and is larger than permitted, the proposed location has a less environmental impact with fewer trees being removed, installation of a drywell, less added impervious coverage and the proposed location is less visible.

Mr. Rabbit also noted he will be installing a lift in the garage. It will only be used for personal use and would not be used for commercial/business use. The applicant will be required to file a deed restriction, prohibiting the garage from being rented out or being used for commercial use.

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



The Board deliberated, noting that the proposal appears to be a better location than the alternative location. Attorney Vella read the conditions and items the applicant agreed to during the course of the hearing, including that the applicant comply with the professional review memos, the architectural design, color and materials must match the home, driveway subject to Board Engineer, the plot plan is subject to the Board Engineer, the deed restriction to be reviewed by the Board Attorney, the applicant is required to obtain a tree removal permit and any other conditions noted on record.

With no further discussion from the Board, Ms. Arpaia made a motion to grant the requested variance relief, subject to the conditions and testimony placed on record. This motion was seconded by Mr. Barthelmes. Application Z24-05 was approved with the following votes in favor: Chairman Mostyn, Ms. Arpaia, Mr. Barthelmes, Mr. Lambros, Mr. Morelli, Mr. Sinha and Mr. Cadigan. Approved 7-0.

Winding Brook Farm, LLC
Block 52, Lot 6 – 25 Spring Rd.
Bifurcated Use Variance Application # Z24-03

Variance relief request to operate a commercial Tree Service Business (conducted off-site) on a 11.58-acre lot in the RU-P Zoning District. Applicant proposes to store vehicles, equipment and wood generated from the tree clearing business, on the site. The property currently has a residential dwelling, a 97' x 40' pole barn, a 30' x 58.7' detached garage, a pond and also is being farmed.

Attorney Vella explained that this is a continued hearing. The Board previously took jurisdiction on the application and the application was carried from the May 22, 2024 meeting without any further notice. Attorney Vella confirmed that Chairman Mostyn was not present at the prior meeting, but has reviewed the transcript and exhibits and has signed the certification to be eligible to participate and vote on the application.

Ms. Donna Jennings, Esq. appeared on behalf of the applicant.

The following witnesses were sworn in or were under oath:

Matt Shafai, PE, PP – Board Engineer
M. McKinley Mertz, PP, AICP – Board Planner
Glenn Donnelly – Applicant
Andrew Janiw, PP – Applicant's Planner

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

APPLICANT'S EXHIBITS

- A-1 Jurisdictional Notice (Proof of Service)
- A-2 Application, Checklist(s) and Administrative Forms
- A-3 Correspondence
- A-4 Application Rider – project description, undated, source unknown
- A-5 Prior Subdivision Resolution of Approval P2-88, adopted 1/13/88
- A-6 Property Deed, recorded 9/13/22
- A-7 Boundary Survey, 1 sheet, prepared by DPK Consulting, dated 7/13/22
- A-8 Aerial Photos, Ocean Regional Realtors, date unknown
- A-9 Witness List
- A-10 Updated Survey, 1 sheet, prepared by DPK Consulting, dated 5/10/24
- A-11 Updated Survey with proposed storage areas, 1 sheet, prepared by DPK Consulting, dated 6/6/24



- A-12 Transcript on Completeness Hearing, 5/22/24
- A-13 Aerial exhibit of site
- A-14 Series of four photos of the structures on the site

BOARD'S EXHIBITS

- ZB-1 Engineer's Review and Incomplete letter dated 3/19/24
- ZB-2 Planner's Review dated 3/21/24
- ZB-3 Notices of Violations and Request for RTF Conflict Resolution
- ZB-4 Request of Stay, Wilentz Attorneys at Law, dated 12/19/23
- ZB-5 Monmouth County Agriculture Development Board, Complaint Dismissal Letter, The Beekman Law Firm, dated 12/20/23

No commercial activity will occur on the site.

Mr. Glenn Donnelly, still under oath, stated they purchased the property to become tree farmers. He lives in Millstone and wanted to grow trees to replant trees. He stated that there is a hay farm and a woodland management plan. He stated that the woodlands management area is to the (left) of the site, near the stream (shown on Exhibit A-11). He stated that they have planted over 100 trees already and they plan to eventually convert the hay farm area to additional tree farm area.

Mr. Donnelly stated the list of equipment proposed to be kept in the garage are listed on Exhibit A-11. Outside would be stored two open dec (flatbed) trailers. The storage box on site is used for chicken feed. There is a dog pen on the site. His son lives in the single-family home on the site. There is a diesel tank on the site. He stated that he widened the driveway and added the parking area to the rear. The equipment is mostly used off the site. There are four full-time and two part-time employees of the Tree Removal Company, Pro-Stump. They have provided parking spaces for the employees. The older equipment may be sold and replaced, but no other equipment would be stored outside. The business operates from 7:00 am to 5:00 pm and on an emergency basis. They do not sell wood, but will store on site wood to be burned on the farm. The oil shed is for a diesel tank that he rents. It is an above ground tank for the equipment and commercial farming equipment.

Mr. Lambros stated he feels it is a substantial amount of equipment for the site. Mr. Donnelly stated the equipment is to be used for farming off-site on other farms.

Ms. Mertz confirmed that the County determined it is not a farming activity. Ms. Jennings stated the County Ag Board wanted them to come to the Zoning Board first. Ms. Mertz confirmed that the site does not have any protection under the Right-To-Farm for these activities, and confirmed that this is an application for a use variance.

Attorney Vella stated that if these activities were protected by the Right-to-Farm Act, the Board has no authority to grant an approval. The equipment, per the applicant, is being used for a commercial business for work off-site, and the application is for the commercial storage of these vehicles. The commercial use is not proposed to be conducted on site. Attorney Vella explained that it is for a commercial entity to perform work off-site, but the equipment may also be used on site. He reminded the Board that the applicant is seeking the commercial storage use within an existing building. The Board has to determine if this specific site is particularly suitable for commercial storage of vehicles. Any approvals would run with the land and would be able to be used by another commercial entity for future use.



Ms. Jennings offered that they would consent to restricting the vehicles to be stored on site to be "farm registered". Attorney Vella stated that he is not comfortable because he doesn't know the legalities of a commercial business obtaining farm registration.

Engineer Shafai asked about when the trees were planted. Mr. Donnelly said he waiting for the first planting season, but it was his intention to always plant trees. Engineer Shafai stated that the trees he planted appear to be in wetlands area. Mr. Donnelly stated he knows and that it is agricultural wetland area and it is not his first farm. Engineer Shafai stated that the site will require an LOI.

Mr. Donnelly stated the chip-truck can weigh up to 33,000 pounds.

Andrew Janiw was sworn in. He provided his credentials as a licensed planner. The Board accepted him as a Professional Planner. He reviewed the property, located in the RU-P zoning district. He stated the applicant is seeking a use variance for the storage of commercial vehicles for the applicant's tree removal business. The applicant intends to convert the entire farm are to woodlands management.

The existing detached garage on site is used by the applicant's son, who resides on site, and for the employee parking. He stated that the equipment to be used is part of a farm management unit for others' woodland management operations. He stated that the equipment can also be used for trimming or cutting down other trees.

Mr. Janiw stated the property is 11.57-acres. He introduced Exhibits A-13, Aerial Image of site, and A-14, Series of four (4) photos of the structures on the site, and reviewed the site structures.

The Master Plan, explained by Mr. Janiw, supports farming activities. Mr. Janiw stated the equipment to be stored on site serve multiple purposes in that it will be used both on-site and for off-site. The farm plates limit the distance that the farm equipment can travel. He reviewed the advancement of the zoning.

Mr. Janiw reviewed the definition of a farm management unit and stated that Pro-Stumo is part of the farm management unit. Pro-Stumo is hired by other farmers to manage other farms and help harvest their farms. They don't own the other farms, but are hired to manage, harvest and sell products from the farm of others.

Mr. Janiw clarified that the applicant testified that the use is 50% on-site and 50% off-site.

Mr. Lambros noted there was a lot of testimony regarding farm uses. He confirmed that the applicant is before the Board for a non-permitted commercial use.

Attorney Vella noted that the vehicles being stored on site, go off site and the applicant's tree removal business has been around for 30 years, taking trees down for money. Ms. Jennings argued that farms have to make money to meet the Right-to-Farm Act. Mr. Janiw stated there is a dual purpose to the equipment, on-site and off-site.

Upon questioning from Attorney Vella, Mr. Janiw again stated that the Pro-Stump Tree Service is part of the farm management unit, because they harvest from the on-site farm and they also harvest trees from other farms, as well as perform other tree services.



Planner Mertz stated that the applicant is seeking approval for a commercial use in a residential zone. Whether it is a farm management unit is not for the Board's consideration.

Attorney Vella stated that if it was something that the County Ag Board would approve, as the applicant has represented, then the Zoning Board would not have any jurisdiction on the matter at all. Ms. Jennings stated that the County AG Board wants an applicant to exhaust administrative remedies.

Chairman Mostyn inquired about the growth rate of the trees. Mr. Donnelly stated that he is doing another round of evergreens in the fall and then will move on to other trees. He stated he is then going to plant maples and resilient hardwoods to help fight blight.

Mr. Donnelly stated he just removed 155 dead trees hanging over the county roadways in Hunterdon County.

Mr. Donnelly stated that he properly registered his Pro-Stump Tree Removal vehicles with the State under the direction of the County, and County Ag Board. They registered as "Pro-Stump Tree Service, d/b/a Winding Brook Farms and have farm tags on all of the vehicles. They would be here if it weren't owned by his seconded entity.

Chairman Mostyn opened the matter to the public.

Dan Haines, of Allentown, NJ, stated he has a farm and uses the services of the applicant to help manage his woodlands management. The machines used (by Mr. Donnelly) are not just for his own good. He uses some of his own equipment, but there are trees that he cannot reach or equipment he doesn't own that is necessary. If he didn't use Pro-Stump Tree Service, he would have to use another business to help manage his woodlands management.

With no other members of the public coming forward, Chairman Mostyn closed the matter to the public.

Engineer Shafai asked Mr. Donnelly if he plants trees on other sites, too. Mr. Donnelly stated he does also plant trees for other people, residents, municipalities, etc. He said landscapers want to plant trees, but he is not a landscaper, he doesn't cut grass.

Ms. Jennings closed her presentation. The Board deliberated.

Mr. Morelli stated that he is in favor of the proposal as he feels it promotes and supports the farming activity in the town.

Ms. Arpaia stated a concern over other commercial uses in town and the expectations for other commercial uses. Attorney Vello explained that every case is its own and would need to meet the proofs.

Mr. Lambros explained that he has represented the Board for many years. He cannot recall the Board granting a commercial use in a residential zone. If you do not have good zoning, you can end up with a skyscraper next to a ranch. The Township has determined there is currently commercial activity occurring on the site and he agrees that the activities are commercial. There was a lot of testimony given over the last two meetings that would say that the applicant does not belong before the Board. The applicant may have the opportunity to go to the County Ag Board and if they meet the requirements, the Ag Board can consider the application. If the applicant qualifies as part of the farm use, then the Ag Board should be the ones to give



approvals. He does not believe the Board should be granting this commercial use variance in a residential zone.

Chairman Mostyn does not believe the commercial use belongs in a residential zone. He is concerned even further that, if approved, a commercial use would run with the land.

Attorney Vella stated that if the Applicant went to the County Ag Board, they can grant/deny the request, but can also still impose conditions.

Mr. Barthelmes confirmed that the Board can approve the applicant and put restrictions on the application. Mr. Morelli suggested he would recommend putting a condition restricting the storage of the vehicles to be associated with the on-site farm use.

Mr. Cadigan stated that there is a need for tree services. He believes this is a commercial business. The applicant established that at least 50% of the work is done off the site. While there is a need for tree services, there are also tree companies operating out of a commercial zone, not residential zones.

Mr. Barthelmes confirmed that the property is ten-acre zoning. Planner Mertz provided the Board with the purpose of the RU-P, Rural Residential Zone, including that the zone's intent is to maintain the rural characteristics of the town, preservation of open space/farmland, minimize impact on the rural/natural features and preserving environmentally sensitive areas.

Mr. Morelli offered a motion to approve the application for a use variance with the conditions placed on record.

Attorney Vella reviewed the conditions and items the applicant agreed to during the course of the hearing. He reminded the Board that the applicant filed for bifurcated use variance and that the use would not be permitted until the applicant obtains site plan approval.

The motion to approve the use variance was seconded by Mr. Barthelmes. On a roll call vote of those in favor: Ms. Arpaia, Mr. Barthelmes and Mr. Morelli; with those against: Chairman Mostyn, Mr. Lambros, Mr. Sinha and Mr. Cadigan. The motion to approve, failed 3-4.

With a failed motion to approve the bifurcated use variance, Mr. Sinha made a motion to deny the application. This motion to deny was seconded by Mr. Lambros. Application Z24-03 was denied with the following votes in favor of denial: Chairman Mostyn, Mr. Lambros, Mr. Sinha and Mr. Cadigan; with those opposed: Ms. Arpaia, Mr. Barthelmes and Mr. Morelli. Denied 4-3.

BOARD DISCUSSION:

There were no other business matters up for discussion.

ADJOURNMENT:

With no further business, Chairman Mostyn adjourned the meeting.

Respectfully submitted,

A handwritten signature in blue ink that reads "Danielle B. Sims".

Danielle B. Sims, Board Secretary