

Borough of Millstone

Planning Board
Regular Meeting
February 23, 2010

Chairman Dorschner called the meeting to order at 7:36 pm. There were nineteen members of the public present.

Chairman Dorschner read the following statement:

"The regular meeting of the Millstone Borough Planning Board will please come to order. Adequate notice of this meeting has been noticed to the Courier News and posted at Borough Hall. If any member of this body believes this meeting is being held in violation of the Open Public Meetings Act, please state your views at this time, stating the reason for which you feel the notice is improper. Hearing none, we will proceed to the next item on the agenda."

Roll Call:

Present:	Dan Devoti	Keith Dorschner
	Christine Fung	Carl Kestner
	Richard McDermott	Rebecca Newman
	Jessica Pyatt	

Also present: Gerald J. Muller, Esq – Planning Board Attorney
Carter Van Dyke – Planning Consultant
Denise Piskowski, Board Secretary

Absent: Alan Kidd Don Roden

OPEN TO THE PUBLIC:

There being no public comment the Board asked that the Van Cleef application be presented. Mr. Muller reviewed the proof of publication. Mr. Muller stated that proof of publication was in order.

APPLICATIONS

Van Cleef, Block 8 Lot 1, Site Plan and Variance Application

Kenneth Meiser, attorney for the Van Cleef property, informed the Board that he was presenting an application for a 4 unit subdivision on a 4.3 acre portion of this property property.

Mr. Muller swore in Robert Heibell, attorney for the applicant. Mr. Dorschner accepted his credentials.

Mr. Heibell explained to the Board that the property was included in the Borough's COAH Agreement and that the applicant was not proposing in this application to build on this property. They are asking for 2 variances. Lot 1.02 has a 50 foot staff width that is an existing condition, and a variance is being requested because a required 60 foot width at the setback line, which is within the staff, is required

The next variance is being asked for lot 1.04 because it is a 25 foot width and the width required is 60 feet. These properties are in the proposed sewer area. Mr. Heibell further explained to the Board that the 1 acre lot with a home currently has a septic system and there are currently no plans to change this portion of the property.

Mr. Van Dyke asked that the easement for lot 1.04 be deed restricted for one single family house. Mr. Devoti asked if the lots staff could be made wider. Mr. Heibell stated that this would affect the current Nori lot. Mr. Devoti stated his concern for the adjoining property. Mr. Heibell stated that they could make the lot wider to 40 feet and the driveway could be towards the side of the Nori lot.

Ms. Pyatt asked about the site plan application. Mr. Heibell stated that they would come back before the Board with a site plan application.

Mr. Van Dyke informed the Board that the plan was consistent with the Borough's plan for this property and was consistent with the Borough COAH plan.

Ms. Pyatt asked if the group home option had been settled. Mr. Heibell informed the Board that 2 options were in the Mediation Agreement and that one was a group home and one was a 'manor home' and he explained what each included. A discussion ensued.

Ms. Pyatt asked for a further explanation on the variances being requested.

On a motion by Mr. Dorschner, seconded by Ms. Newman, the Board opened the meeting to the public.

Dominic Masi, 5 Amsterdam Drive, expressed his concerns about a group home in this location and was not pleased that the only notification sent to the residents was a letter that was received in the last week. Mr. Masi expressed that he has had experience dealing with residents of group homes as he is police officer. Mr. Meiser explained that the group home was only one option and was required by COAH as part of the Borough's affordable housing plan and that there were currently no agreements with any group home providers. Mr. Muller also explained that the focus of the Board for this property was for group home residents with developmental disabilities. Mr. Heibell stated that there could be a two-story structure for the group home, but site plan approval would be needed before any building could take place. Ms. Newman explained to Mr. Masi that this was a State regulation. Mr. Meiser informed Mr. Masi that at this time they were only asking for a subdivision, not a site plan. Mr. Masi continued to express his dissatisfaction with this application. The Board explained that at this time the Borough was required to meet state requirements and the concerns about the group home would be addressed when the site plan was submitted.

Mr. Heibell stated that they are asking for a variance for an existing non-conforming condition. Mr. Muller informed the public that the Board has had numerous meetings over a number of years regarding this issue. Ms. Fung expressed to Mr. Masi that the Board has discussed his exact concerns over the years and that this was determined to be the best solution to meet the Borough's COAH obligation. Mr. Masi continued to express his concern. Ms. Fung stated that after years of discussions this is what the Board has decided is best for the Borough to meet the COAH obligation. Mr. Muller also stated that for pre-existing conditions the Board does not typically ask for a variance. The discussion continued.

Mr. Jeff Sowers, 15 Gumbell Court, Hillsborough, asked if the Board would listen to the public when the site plan application is presented and would the Board take the concerns of the public into consideration. Mr. Muller explained that there was a Mediation Agreement in place that addresses the COAH obligation and this property is an importation portion for the Borough to meet this obligation. Mr. Muller explained that the Board would take all concerns into consideration. Mr. Sowers asked about the COAH obligation and the time frame. Mr. Muller gave a history of COAH and the Mount Laurel decision. Mr. Muller also explained the Van Cleef lawsuit. Mr. Sowers again asked when the COAH obligation needs to be met by and if it was not what the ramifications to the Borough would be. Mr. Muller explained what could happen if a 'builders remedy lawsuit' was put upon the Borough by a court decision. Mr. Sowers again expressed his concern.

Ms. Frances Gerechka, 124 Amwell Road, expressed her concern with the group home and an additional single family dwelling. She stated that she was concerned with the affect on her property

and her well and asked that as a senior citizen this should not be done until they die. She also asked that the Board should consider the affect the traffic would have on her property.

Mr. Muller stated that the Board felt that it was a good idea for the Van Cleef's to acquire the Nori tract considering that a temple could have been put on this lot and that it would generate a great deal of traffic. Mr. Van Dyke also expressed that this plan is preferable to a temple.

Donna Lucash, 118 Amwell Road, asked if either of the properties would include low cost housing. Mr. Heibell stated no.

Julie Keenan, 9 Gumbell Court, asked about the layout and time frame for building the group home. Mr. Heibell explained that it could be several years until all plans were approved by the County and DEP and it could be at least 2-3 years before a site plan was presented before the Board. A discussion ensued. Mr. Muller clarified that the group home option would include two affordable housing rentals. A discussion ensued.

Elisa Letts, 7 Amsterdam Drive, asked for a clarification on the variance for lot 1.04 and asked if it could possibly not be approved. Ms. Letts stated that when she purchased her home 2 years ago there was no mention of a group home. She asked if there was any way the single family home could be taken out and the group homes be spread out. Ms. Pyatt explained that the Land Use Law legal standards don't allow the Board to just deny an application. A discussion ensued. Mr. Devoti explained that the COAH obligation determined the group home proposal and asked that Mr. Heibell explain why a variance was needed for lot 1.04. Mr. Heibell explained that this was part of the negotiated settlement and was included in the Mediation Agreement. A discussion ensued. Mr. Meiser expressed that the C1 and C2 criteria are met.

Mr. Lawrence Tarantino, 143 Main Street, asked if any engineering studies had been done for drainage. Mr. Heibell explained not at this time but that the 50 foot buffer was shown on the drawings. Mr. Tarantino asked about the culvert that was done on Main Street. Mr. Heibell expressed that the culvert project does not affect this project. Mr. Tarantino asked about other Van Cleef projects. Mr. Heibell stated that all projects would be reviewed by the Borough, DEP and the County. Mr. Tarantino expressed that after sever storms the culvert has large amounts of water going through it. Mr. Heibell explained that this was a County project and that it was not a concern for this application. Mr. Tarantino asked if any Board member had any affiliation with the applicant. Mr. Devoti stated that he has in the past and would abstain from the vote.

Ms. Lucash asked about other locations for the group homes. Mr. Muller explained that this plan was at no cost to the Borough and there were no other viable options for the Borough to meet its COAH obligation. Mr. Muller again explained the benefits of this plan versus a temple being built on this lot in terms of intensity of use. Mr. Devoti also explained that this plan has the least impact to the Borough.

On a motion by Mr. Dorschner, seconded by Ms. Fung, the Board closed the meeting to the public.

Mr. Muller asked Mr. Heibell to explain the 50 foot setback.

Mr. Muller summarized the application. Lot 1.02 was for group homes and an affordable duplex or manor homes. Mr. Muller expressed that a formal variance approval was not required by the Board. Lot 1.04 needed a variance from the 60 feet required to 40 feet proposed and would be deed restricted to a single family home. The relief is for a 4 lot subdivision with 1 variance and 3 conditions

On a motion by Mr. McDermott, seconded by Ms. Fung, and with an aye vote by all except Mr. Devoti who abstained, the Board approved the Site Plan and Variance Application for Block 8 Lots 1.02 & 1.04.

Buczek, 1413 Main Street, Block 7 Lot 4, Block 6 Lot 9, Variance & Non-Conforming Use Application
Ms. Newman recused herself.

Mr. Ernest Renda, Attorney for the Buczek's, explained that this was a bifurcated application, one for a certificate of non-conformity for non-conforming use and one for a variance for an existing apartment. He explained that there are currently two single family homes and one accessory apartment in what had been a garage on the property.

The witnesses were sworn in by Mr. Muller.

Mr. Muller explained that there were two parts to this application. One was for a use that has been in place before the current zoning prohibited more than one dwelling unit on a lot was adopted. The dwelling unit in the back and the cape cod in the front were built before the current zoning and the application is seeking a lawful non-conforming use certificate. The use variance is for the accessory apartment.

Mr. Renda gave the Board Exhibit A1, printouts of the Tax Assessment records from 1997. Mr. Renda also handed out copies of the 1964 zoning ordinance. Mr. Devoti informed the Board that the 1956 zoning was in place after the unit at the back of the lot was built. The Board reviewed the exhibits. Mr. Muller explained

Mr. Buczek reviewed a survey of the property that he obtained when he purchased the property in 1997 with Mr. Renda. This was marked exhibit A3. Mr. Buczek also summarized the deed dated June 30, 1997, which was marked exhibit A4. Mr. Buczek informed the Board that he purchased the property as is from Summit Bank, the accessory apartment was occupied and the homes were vacant at that time. Mr. Buczek stated that he researched the property and spoke with the Tax Assessor and obtained a printout, exhibit A1, of the tax status of the property that states this is a three structure property. Mr. Buczek stated that he has not made any changes to the property since he purchased it. Mr. Buczek pointed out on exhibit A4 the locations of the buildings to the Board. Mr. Renda presented exhibit A5, an aerial photograph of the property from the Somerset County Planning Board dated 1962. Mr. Buczek stated that this is what the property looks like today. Mr. Renda then presented another aerial photograph dated 2002, exhibit A6 and Mr. Buczek stated that this is also what the property currently looks like. Mr. Buczek stated that the rear home has been vacant, but has indoor plumbing, a bath and kitchen and was a functional residence. It is two stories with a basement. His plan was to renovate this home to be occupied for residential use. The plan for this residence was put off because of Hurricane Floyd. A new roof was put on and the home was painted. Mr. Renda presented current photos marked exhibit A7a, b, c. Mr. Buczek stated A7a this shows the current state of the home after the installation of the new roof and paint and A7b and c shows the interior of the residence. Mr. Buczek stated that the residence was structurally sound.

Mr. Devoti stated that the main house was constructed in 1944 and the back structure was built in the 1700's.

Mr. Buczek stated that the apartment was currently occupied by a single person. Ms. Pyatt asked if the 1964 ordinance prohibits this use on this lot. A discussion ensued.

Mr. Van Dyke asked if the apartment was separately metered. Mr. Buczek stated that it was.

Mr. Muller explained that it should be assumed that a use variance is necessary for the accessory apartment because it is not known if it was built before the current ordinance was in place. Mr. Buczek stated that this structure was a masonry building. Mr. Buczek stated that there are 3 septic systems on the property.

Diane Schilke, real estate agent, stated that in the 1920's her grandparents purchased the home next to the Buczek property and they subdivided the property and the back house was moved to its current location in 1944. Her grandparents sold the property in 1967 to the Weavers and the back house had always been used as a residence. Ms. Schilke continued to give a history of the property and stated that the next owners used both homes as residences. Ms. Schilke stated that a renovation loan was applied for by potential buyers for the back home and FHA looked at the home and agreed to the renovation, but stated that the renovations were never done because of zoning issues.

On a motion by Mr. Dorschner, seconded by Mr. Devoti, the Board opened the meeting to the public.

Phyllis Margonoff, moved into her home in 1975 and the Weavers used what is the current apartment as a goat barn. Then they sold it to Jim Ryan in 1981 and he sold the home in 1985 and it was not a legal rental and it was being used a guest house without any facilities. Mr. Renda asked Ms. Margonoff to clarify that the apartment was in place before the Buczek's purchased the property and she stated yes.

Mr. Tarantino, 1423 Main Street, added that his recollection was that as the zoning officer in the 1990's he had an issue with the property and the apartment being legal. He stated that this apartment has always been an issue and it should have only been a 'pool house' because there is a pool on the property and no permits were ever taken out to make this structure a residence. Mr. Tarantino stated that he opposes this use on this property and noted that there is currently a lot of traffic in and out of the property and if the application was approved the three homes could potentially be used for families. Mr. Tarantino stated that the back house had been used for storage and has been through a few floods and this home is in the flood plan and could possibly be moved out. He has no objection to it being a residence but would like some restrictions in the resolution. There are light issues, traffic issues and buffer issues. Mr. Renda asked Mr. Tarantino if he was aware of the uses at the time he was a zoning officer. Mr. Tarantino stated that yes he was, but did nothing about it.

Sandra Burrows, 1417 Main Street, shares the same concerns as Mr. Tarantino, and stated that this building has never been legal and the parking is right up against her property and home. Ms. Burrows feels that this use should not be permissible and stated her opinion that three residences are too much.

Ms. Phyllis Margonof, stated her concern if this property became a legal 3 home property and also expressed the possibility of there being an absentee landlord situation.

On a motion by Mr. Dorschner, seconded by Mr. Devoti, the Board closed the meeting to the public.

Mr. Renda expressed to the Board that a determination was needed for the rear house to become a legal non-conforming use and asked that the Board consider all the evidence that was presented. He also expressed that the use variance for the rental apartment should be granted. If this were to be denied it would be a hardship for the Buczeks. They purchased the property in good faith that this was a legal 3 home property.

Mr. Renda asked that the applications be considered as one. They would waive the right to the non-conforming certificate and they would also be amenable to the apartment being restricted to a single person use.

Mr. Van Dyke asked Mr. Buczek about the reference a witness made to having the back house moved out of the flood plain and if he would be agreeable to having this building relocated as part of this agreement. A discussion ensued.

Mr. Renda clarified that they would waive the application for the rear home, and asked that a restriction be put on the home and that the variance be granted for the rental apartment building. A discussion ensued.

Mr. Muller stated that it could be restricted so that the Borough has x # years to move the back house. Mr. Devoti expressed that this was an unfair restriction to put on a future owner. A discussion ensued.

Mr. Renda stated that they were agreeable to a condition that in the case of a possible demolition that the Borough be given the rear house. Mr. Van Dyke stated that this home could not be demolished. A discussion continued.

The Board continued to discuss the applications. Mr. Muller summarized the Board's options. Mr. McDermott expressed that he did not want to vote on this at this meeting. He is concerned about there being 3 homes on the property and would like more information.

Mr. Renda asked that the Board at least approve the use variance and continue the discussion on the non-conforming use application. The discussion continued.

On a motion by Mr. Devoti, seconded by Ms. Pyatt, and with an aye vote by all, the Board approved the variance and non-conforming use certificate with the following conditions:

If the applicant chooses the Cottage as the second residence, the renovation of the interior will ensure preservation and use of this historic structure and thus have a positive impact on the neighborhood. Site plan review will, again, ensure the adverse impacts on the neighbors are mitigated.

The applicant has also satisfied the negative criteria. There is no substantial detriment to the public good, in that the tract can accommodate two, albeit not three, dwelling units for the reasons set forth above, and site plan review will ensure that the impact on neighboring properties is minimized. There is no substantial detriment to the intent and purpose of the zone scheme and zoning ordinance, in that there are already two permitted existing dwelling units on the site, the Cape Cod and the Cottage. If the applicant chooses to use the accessory apartment rather than the Cottage as the second dwelling unit, it would still result in no more than the two dwelling units that are already permitted.

CONDITIONS REQUIRED

The Board finds that, in order to address the concerns expressed during the course of the hearing and to limit the relief to that reasonably necessary to satisfy the applicant's legitimate requirements; the relief granted is subject to the following condition:

- a. The Cape Cod shall be owner-occupied, a condition the applicants agreed to.*
- b. In addition to the Cape Cod, the applicants may use either the accessory apartment or the Cottage, but not both, for residential purposes. This is a variation of the suggestion made by the applicants that they would waive their right to the certificate of lawful nonconformity if a use variance was granted for the accessory apartment.*
- c. If the applicants choose to use the accessory apartment as the second residential unit, it may be occupied only by a single person.*

- d. *If the applicants choose to use the Cottage as the second residential unit, they shall notify the Zoning Officer and decommission the accessory unit by at least removing the kitchen therefrom before a certificate of occupancy is issued for the Cottage.*
- e. *The applicants' choice as to the use of the accessory apartment or Cottage shall be made forthwith, and they shall notify the Zoning Officer thereof. If the applicants choose to use the accessory apartment, at any time thereafter they may notify the Zoning Officer that they have decided to use the Cottage instead. If they use the Cottage at the outset, however, they might not thereafter reverse their decision and use the accessory apartment unless the Cottage is relocated from the site.*
- f. *The applicant shall apply for site plan review forthwith. CONCLUSION*

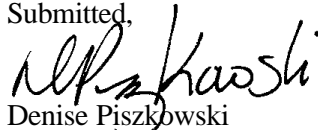
Based on the foregoing, the Board at its February 23, 2010 meeting voted to grant the relief identified above subject to the conditions in accordance with the conditions set forth herein. This resolution of memorialization was adopted on March 23, 2010 by a vote of the majority of the members present who voted to grant the relief sought by the applicant.

REVIEW AND VOTE ON PROFESSIONALS' INVOICES

On a motion by Mr. Devoti seconded by Mr. Dorschner the Board approved the January 2010 invoices submitted by Mr. Van Dyke and the December 2009 and January 2010 invoices submitted by Mr. Muller.

As agreed by all the meeting was adjourned at 11:25 pm.

Submitted,



Denise Piszowski
Planning Board Secretary