

**MINUTES OF THE REGULAR MEETING
OF THE TOWNSHIP OF JACKSON
ZONING BOARD OF ADJUSTMENT
NOVEMBER 1, 2006**

The November 1, 2006 Regular Meeting of the Jackson Township Board of Adjustment was called to order by Chairman Vincent Sgro at 7:08 p.m. with a salute to the flag by all present. Attorney Sean Gertner read the Open Public Meetings Act Statement.

ROLL CALL: Jeffrey Bowen (7:20 p.m.) Kevin DiGesu, Alt #1
Stephen Costanzo Glen Bouthillette, Alt. #2
Diana LaBianca, Secretary Joy Ann Harmer, Vice Chair
Peter Maher Vincent Sgro, Chairman

ABSENT: Barry Calogero

ALSO PRESENT: Richard Megill, Director of Planning and Zoning
Sean Gertner, Board Attorney
Mark Muraczewski, Planner
Steven McCrystal, Court Reporter

APPROVAL OF RESOLUTIONS

Recording Secretary Janice Kisty announced the following resolutions and named those eligible to vote:

Resolution 2006-92 – Faraday Associates LLC – Block 56.02, Lot 1
Motion to approve this resolution by DiGESU/Maher. YES: Maher, Costanzo, DiGesu, Bouthillette, Sgro.

Resolution 2006-93 – Serrano Frans – Block 111, Lot 109
2006-94 – Nunez – Block 129.02, Lot 19
2006-95 – Rogers – Block 7, Lot 33.19
2006-96 – Hopkins – Block 85, Lot 13.07
Motion to approve the foregoing resolutions by MAHER/DiGesu. YES: Maher, Costanzo, Digesu, Sgro.

Resolution 2006-97 – Flavaney – Block 132, Lot 13.24
Motion to approve this resolution by MAHER/DiGesu. YES: Maher, Costanzo, DiGesu, Bouthillette, Sgro.

Resolution 2006-98 – Jackson Academy – Block 108, Lot 4
Motion to approve this resolution by MAHER/LaBianca. YES: Maher, Costanzo, LaBianca, DiGesu, Sgro.

Resolution 2006-99 – Platinum Developers LLC – Block 72.01, Lot 21
Motion to approve this resolution by DiGESU/Maher. YES: Maher, DiGesu, Bouthillette, Sgro.

PAYMENT OF VOUCHER

Motion to approve the voucher for Recording Secretary for tonight's meeting by **HARMER/LaBianca.** YES: Maher, Costanzo, LaBianca, DiGesu, Bouthillette, Harmer, Sgro.

APPROVAL OF MINUTES

Motion to approve the minutes of October 4, 2006 by DiGESU/Costanzo. YES: Maher, Costanzo, DiGesu, Bouthillette, Sgro.

Motion to approve the minutes of October 18, 2006 by HARMER/DiGesu. YES: Maher, Costanzo, LaBianca, DiGesu, Harmer, Sgro.

ANNOUNCEMENTS

Mr. Megill announced Application #3, #4, #6 and #7 would be carried to December 6, 2006 with no further notice. A waiver of time constraints was received for all four applications. Mr. Sgro announced to the audience that these applications would not be heard tonight and would be on the agenda for December 6.

Mr. Gertner stated there would be no meeting on November 15, but the reserve meeting would be held on December 20, 2006 in order to bring the Board up to speed on the Mitch Leigh application, Jackson Commons. This application received preliminary approval under the previous Board, and the applicant is preparing subsequent applications for final approval for the vast site. This meeting will provide information to the current Board to familiarize them with the approval received and the numerous County meetings previously held regarding the two major arteries, Route 526 and 527. Mr. Gertner also said the second meeting will allow the Board flexibility with the large number of applications scheduled for December 6, should any need to be carried.

The Board Professionals were sworn by Steve McCrystal, who stated their names and affiliation with the Township.

Mr. Sgro commended Janice Kisty for her preparation of the minutes, stating they were very well done and the best he has seen in all his years on the Board. Ms. Kisty thanked him for his compliments.

MATTERS FOR DISCUSSION

Cardinale Enterprises/Jackson Crossings (Use Variance 2573) (Carried from July 6, 2006)

Mr. Megill received a request to withdraw their application for a use variance, carried since July 6. The applicant decided not to build residential units over the Jackson Crossing retail shopping center currently under construction.

Massey

Mr. Gertner said he received a letter from Mr. Massey, whose variance was heard October 4 on reconstruction of a home on his property. He asked that the Board's approval with conditions be withdrawn, and Mr. Gertner sees nothing in the ordinance or state statutes that allows an application, once the Board has voted, to be withdrawn as if it never happened. He would like to prepare the resolution and have it memorialized, and then the applicant can proceed as he wishes. The Board agreed.

Litigation

Mr. Gertner brought up two matters under litigation, stating Angeles was settled, and the application will be remanded to the Board in January for a hearing. Judge Serpentelli needs to sign the consent order. The Board was also served with a complaint on the Vincent Schwartz matter; one of the objectors filed.

Bill from Mark Kitrick

Regarding a bill from the Board's former attorney, Mr. Gertner spoke with his partner, Mr. Gluck, about Mr. Kitrick's attendance at the July 6 hearing. Mr. Kitrick's appointment ceased on June 30, 2006, and a conversation between Mr. Gluck and Mr. Kitrick occurred, where Mr. Kitrick was told to use his professional judgment on attending the meeting. Mr. Gluck did not tell him to be here because he did not have the authority. The bill is for \$750. Mr. Kitrick sat in the audience. Mr. Megill said the Board only elected the professionals at that meeting. Mr. Costanzo suggested paying him for his travel time only as he did not serve the Board in a legal capacity. Mr. Megill said when he asked him [Kitrick] why he was here, he indicated he was asked to be here to represent the board if they needed a legal opinion that night. Under those circumstances, Mr. Megill did not ask him to leave. Mr. Megill stated we are still using him for other pending lawsuits. Mr. Maher asked if the bill could be negotiated. Mr. Sgro suggested paying half. Mr. Costanzo asked what the hourly rate is. Mr. Megill said \$150/hr. Mr. Costanzo said one hour here and back is good. The Board approved payment in the amount of \$300.00. **Motion by DiGESU/LaBianca.** YES: Maher, Bowen, Costanzo, LaBianca, DiGesU, Sgro. NO: Harmer.

APPLICATIONS

1. **APPLICANT: DAVID GEETER (VARIANCE # 2605)**
BLOCK: 85.02 LOT: 1 ZONE: R-3
LOCATION: 2 ARROWSHEAD CIRCLE

APPLICANT IS SEEKING A VARIANCE TO CONSTRUCT A 6 FT. SOLID FENCE IN FRONT YARD ON THIS CORNER LOT.

David Geeter sworn. He wants to construct a six foot solid fence in his front yard along Sherwood Court 15-20' from the curb. Mr. McVicar said he visited the site and noticed it will not be near the sight triangle. He asked if it would be 20' from the property line or curb line. Mr. Geeter said the curb, and there is an existing tree line. The fence will be constructed 3' away from the shade trees.

PUBLIC SESSION OPENED; No one came forward.

Motion to close the public session and approve the fence variance by MAHER/Harmer. YES: Maher, Bowen, Costanzo, LaBianca, DiGesU, Harmer, Sgro.

2. **APPLICANT: ROBERT MENNONA (VARIANCE #2606)**
BLOCK: 66.01 LOT: 7.13 ZONE: R-3
LOCATION: 2 OWL COURT

APPLICANT IS SEEKING A VARIANCE TO CONSTRUCT A 6 FT. SOLID FENCE IN FRONT YARD ON THIS CORNER LOT.

Robert Mennona sworn. He wishes to construct a six foot solid fence on his corner lot, 20' from the curb line. There is an existing tree line and shade trees, and he would like to place the fence along the tree line. Mr. McVicar stated it is not within any sight triangle, and it is outside the shade tree easement. This application is similar to Application #1 previously heard this evening.

PUBLIC SESSION OPENED; No one came forward

Motion to close the public session and approve the fence variance by DiGESU/Harmer. YES: Maher, Bowen, Costanzo, LaBianca, DiGesU, Harmer, Sgro.

3. **APPLICANT: MARK PROPERTIES (MINOR SUBDIVISION # 1357)**
BLOCK: 119.08 LOT: 1.01 ZONE: HC
LOCATION: RIDGEDALE AVENUE

APPLICANT IS SEEKING A MINOR SUBDIVISION FOR (2) LOTS WHICH RECEIVED PRIOR USE VARIANCE APPROVAL PER RESOLUTION # 2005-017.

Carried to 12/6/06 with no further notice.

4. **APPLICANT: MARK PROPERTIES (VARIANCE #2602)**
BLOCK: 118.04 LOT: 9 ZONE: R-9
LOCATION: SOUTH LAKEVIEW DRIVE

APPLICANT IS SEEKING A VARIANCE TO CONSTRUCT A SINGLE FAMILY DWELLING WHERE THE MINIMUM LOT SIZE IS 40,000 SQFT AND IS PROVIDING 36,300 SQFT. ALSO VARIANCE REQUIRED FOR LOT DEPTH 200 FT. REQUIRED AND PROVIDING 174 FT.

Carried to 12/6/06 with no further notice.

5. **APPLICANT: MICHAEL AND DIANE SMITH (VARIANCE #2598)**
BLOCK: 109.01 LOT: 58 ZONE: R-3
LOCATION: 393 CEDAR SWAMP ROAD

APPLICANT IS SEEKING A USE VARIANCE WITH WAIVER OF SITE PLAN FOR STORAGE OF LAWN CARE EQUIPMENT IN THE R-3 ZONE.

Michael & Diane Smith Sworn. Denis Kelly, attorney from Levin, Shea and Pfeffer represented this applicant and stated the applicants are requesting a use variance to run a Lawn Doctor business from their home. Graham MacFarlane of Professional Design Services was sworn and his credentials were accepted. He received both reports from the professionals. MacFarlane said the applicant requests variances to store lawn care equipment in a canvas storage building. The site is 3.14 acres on Cedar Swamp Road near Freehold Road as shown on an aerial map marked Exhibit A-1.

Mr. Gertner clarified the approval sought is not only for lawn equipment, but to run a business from the residential property, which Mr. Kelly agreed to. MacFarlane said the site is also used to store pesticides and lawn care products in a canvas storage structure. He pointed to the aerial map and showed vacant land to the south and east of the site. A site map was marked Exhibit A-2. The membrane garage building is 180' from the road, and there is no impact on surrounding properties. The only property developed is the property to the north. Mr. Kelly said they are asking for waiver of site plan since no improvements are proposed as part of the application. They agreed to the review letter from Wayne McVicar from Remington and Vernick, and to construct driveways.

Mr. McVicar suggested speaking to the use variance first and then to address any site issues after. Mr. Muraczewski said the storage of lawn care equipment is not permitted in the zone. Farm equipment, green houses and customary accessory uses are permitted. The site is situated in a PA3 Development area and a variance is required for setback of the accessory structure. Mr. Gertner asked for clarification of the PA3 area and Mr. Muraczewski said rural activities are allowed in a PA3 area, like nurseries and farming, but landscaping is not. Mr. MacFarlane said the application is for a lawn care business. Mr. Muraczewski said lawn care is totally different than a farm market. Applicant Diane Smith said they take the material, load it on the truck and service other people's lawns. Mr. Megill asked how many vehicles would be parked on the property. Mr. Sgro wanted to know what the business was first. Mr. Kelly questioned the applicant, and Mr. Smith described the nature of the business as an automated lawn care business. He has been storing products there for 30 years and has owned the property personally for 8 years. He has 6 service vehicles. Mr. Kelly asked if the business is operated from the house and was told yes. Mr. Sgro asked if there were any complaints from the town and Mr. Smith said no. Mr. Sgro asked if this is grandfathered in, and Mr. Megill said there is no such thing. Mr. Megill said there is a canvas structure not allowed by code. He remembers getting a phone call about it. Ms. Smith said they put it up and did not know they needed a permit; when the Fire Marshall came to inspect the property, he asked if they had a permit and she said no. Mr. DiGesu asked how the product gets there and was told by truck; there are 7 deliveries per year, per Ms. Smith. Mr. Sgro noted this is a heavily traveled area.

Mr. Muraczewski said business is evident and asked for statement of operations and status of the traffic on Route 527. Ms. Smith said no customers come there; they have six trucks that go out to service properties. Mr. Sgro asked why this is not grandfathered. Mr. Gertner asked if it is a residential zone and Mr. Megill said has always been residential. Mr. Megill noted the Town Council encourages home occupations on County roads. The problem here is there is no structure for the materials for fire rating purposes. Mr. Sgro asked how the material is delivered. Ms. Smith said the material is packaged, not loose and it was stored for 28 years in the detached garage, then they put up the canvas tent. Mr. MacFarlane said the home on the property has office space, and the garage and the membrane structure are both used for the storage of the lawn care products. It was built without approval from this board. They have a fire permit. Mr. Megill said the Fire Inspector inspects after buildings are constructed, not for fire prevention before they are built. He's only looking at what's there. There is no label on the building stating there are hazardous materials there. If the materials are stored in the garage, that is ok. Mr. Sgro asked what type of chemicals is stored and Mr. Smith said they are lawn care products and he never had any problems when asked if they are flammable.

Mr. DiGesu noted this is for a lawn care service and the town promotes Mom and Pop businesses. He asked the applicant if he lives there, too and was told no. There is an office there and perhaps the daughter will live there. Mr. DiGesu asked for clarification this is not a rental property and the applicant agreed. Mr. Maher said with the Jackson Commons approval they are going to widen Cedar Swamp Road. Mr. Megill said the distance is too far from this site and the house is set 150' back from the road. Ms. LaBianca asked if there is any input from the Environmental Commission and was told by Mr. Megill that no response has been received to date. It is the applicant's responsibility to follow up.

Mr. Muraczewski asked the applicant to testify to the positive and negative criteria. Mr. MacFarlane referred to the aerial map, noting the property to the South and East is vacant and the property to the North is occupied. The proposed use is low intensity, and they are seeking approval to run the lawn care business from this lot and store the materials in the membrane structure. They have 6 service trucks that load up here, go to customer's homes for the day and then return. He feels there is no negative impact to the area. Businesses are encouraged for home occupations on County roads. The only condition they cannot meet for a Home Occupation is that there are residents other than residents of the dwelling. The other eleven conditions for a Home Occupation are met, which he reviewed.

Recess at 8:05 p.m. Reconvened at 8:15 pm.

Mr. Kelly noted questions about the storage of the chemicals and any traffic issues. Mr. Smith said this is a Lawn Doctor facility that handles chemicals for the company. He gets a shipment every 10 weeks consisting of 20 pallets on a trailer that comes in. They have a spider on the back of the trucks that unloads them. The product is shrink wrapped in 50 pound plastic bags. The pallets are placed in the storage facility. A van is backed up to the building, 20 bags are loaded, and they are on their way. The bags are not opened on the site and there are no open chemicals on the site. They have to report to the State and Fire Bureau as to what type of products is stored on the site. There are six employees to drive the six trucks. They arrive in their own vehicles, 6 at peak time, 3 employees have separate cars and three long time employees take the vans home. Mr. Kelly said regarding positive impacts, the property is well-suited to the business. Mr. Smith said they have been there 30 years. They get there by 8 a.m. to start work. They don't spend much time there; they load up and go. They are not back and forth in one day. Mr. Kelly said the negative impact is the traffic

during peak times of the employees arriving to work and drop off time around 3:30 to 4:30. Mr. Bowen asked where the 20 pallets go. Mr. Smith said they are removed when the next delivery comes in.

PUBLIC SESSION OPENED

Walt Skupski, 397 Cedar Swamp Road, sworn. He has lived right next door for 25 years and there has never been a problem. He said they are friendly and there is more noise from McBride Glass than this neighbor.

Ray Kljowski, 390 Cedar Swamp Road sworn. He has lived across the street for 18 years and said there has never been a problem. He said he can see the dome from his house. He said the traffic didn't start till the light [at Jackson Mills Road] went in. He said the Smiths are great neighbors and he does not know what the fuss is about. He does not notice the delivery truck when it comes.

Mr. Costanzo asked what happens if this is granted and the zoning changes. He was told that is not what is being done; this is for a use variance and the Zoning still is R-3. Still, Mr. Costanzo asked if the fire requirements will change and was told no; Mr. Megill said the Building Department will required a placard on the building in case the fire occurs so the Fire Department knows how to control the fire. Ms. Harmer asked if the placard is there now and Ms. Smith said it is already there. Mr. Costanzo asked if there will be any maintenance of vehicles on site and Ms. Smith said no. Mr. Costanzo asked if there are waterways in the area and Mr. Muraczewski said no. Mr. DiGesu asked if the dirt driveway goes all the way back and Mr. MacFarlane said there is a clump of trees and the dirt driveway loops around. Mr. Costanzo asked about Arbor Tree Experts, another business in the area, and Ms. Smith said it is just down the street, another business in a residential area, which is not an anomaly on Cedar Swamp Road.

Motion to allow the use variance, consisting of permission to utilize the site as a home based business by DiGesu/Harmer. YES: Maher, Bowen, Costanzo, LaBianca, DiGesu, Harmer, Sgro.

Mr. Gertner asked them to talk about the site issues. Mr. McVicar focused on their request for waiver of site plan approval, asking how their application fits the requirements for that waiver. Mr. MacFarlane said because there is no increase in the number of employees or number of vehicles to be stored on site. This use has been there for 30 years and has not expanded, and they propose no increase of parking as they only have six vehicles on site. Based on that, they feel they comply and waiver of site plan could be granted by the Board at its discretion. The membrane structure is 600 sq.ft, 10' high, arched, and of polypropylene or polyethylene material. They had no architectural.

Mr. McVicar asked the hours of operation and was told 7:30 to 5, 6 employees, 6 service trucks (panel vans) gas power, no diesel on site, no mowers on site, and regarding solid waste, the plastic bags and shrink wrap are put in the dumpster empty. The Board requested a list of materials and chemicals on site. Mr. MacFarlane asked if they could add the list to the plan along with the above hours, employees, and vans as notes to the plans. Regarding outside agency approvals, they have fire prevention, Traffic Safety, Jackson MUA, Ocean County Board of Health, Ocean County Soils and Ocean County Planning Board. No response was received from the Environmental Commission and Tree Forester, but no tree removal is proposed.

DiGesu asked how often the waste is picked up and was told two times per week via private hauler from the dumpster that is kept near the existing garage. Mr. MacFarlane said it would be shown on the plan. The hauler picks up just the empty plastic bags and their garbage. Mr. DiGesu asked what happens to the trash that comes back in the van, and asked where the vans are parked overnight and was told at the rear of the site on the north side of the property. Mr. Costanzo asked if any electric supply is proposed for the accessory structures and was told no, and no water either.

Motion to grant waiver of site plan and inclusion of the agreed upon notes on the plans by HARMER/Maher. YES: Maher, Bowen, Costanzo, LaBianca, DiGesu, Harmer, Sgro.

**6. APPLICANT: HESS CORPORATION (SITE PLAN # 651)
BLOCK: 83 LOT: 50 ZONE: NC
LOCATION: 8 BENNETTS MILLS ROAD**

APPLICANT IS SEEKING A PRELIMINARY AND FINAL SITE PLAN TO ADD A 864 SF. CAR WASH TO THE EXISTING GASOLINE SERVICE STATION WHICH RECEIVED APPROVAL BY THE ZONING BOARD OF ADJUSTMENT PER RESOLUTION #1998-60 AND 1999-28-1.

Carried to 12/6/06 with no further notice.

**7. APPLICANT: JOSEPHINE & THOMAS SHARAC (VARIANCE # 2604)
BLOCK: 5.01 LOT: 4.03 ZONE: R-3
LOCATION: 603 REED ROAD**

APPLICANT IS SEEKING A VARIANCE TO CONSTRUCT A SINGLE FAMILY DWELLING IN THE 3 ACRE ZONE AND IS PROVIDING 1 ACRE ALSO NEEDS A VARIANCE FOR LOT DEPTH WHERE 400 FT. IS REQUIRED AND IS PROVIDING 200 FT.

Carried to 12/6/06 with no further notice.

Mr. Sgro noted the minutes were done very well and complimented Ms. Kisty for same. There was discussion to increase in salary for the Recording Secretary by \$25.00 per meeting, from \$115.00 to \$140.00.

Motion to grant a raise to \$140.00 for the Recording secretary by LaBIANCA/DiGesu. YES: Maher, Bowen, Costanzo, LaBianca, DiGesu, Harmer, Sgro.

Motion to adjourn at 8:40 p.m. by LaBIANCA/DiGesu at 8:40 p.m. YES: By Affirmation.

Respectfully submitted,
Janice Kisty
Zoning Board Recording Secretary