

**MINUTES OF THE REGULAR MEETING  
OF THE TOWNSHIP OF JACKSON  
ZONING BOARD OF ADJUSTMENT  
MARCH 19, 2008**

The March 19, 2008 Jackson Township Board of Adjustment meeting was called to order at 6:33 p.m. with a salute to the flag by all present. Attorney Sean Gertner read the Open Public Meetings Act Statement.

**ROLL CALL:** William Santos John Burrows, Alt. #1  
Barry Calogero Carmen Esposito, Alt. #2  
Stephen Costanzo Peter Maher, Secretary  
Vincent Sgro, Chairman

**ABSENT:** Diana LaBianca, Vice Chairwoman Jeffrey Bowen

**ALSO PRESENT:** Sean Gertner, Attorney of GluckSnyder LLC, Bruce Jacobs, Engineer of Gravatt Consulting Group, Donna Miller, Planner of Geller Sive & Company, Jeffrey Purpuro, Zoning Officer and Steven McCrystal, McCrystal Reporting

**EXECUTIVE SESSION**

**Motion to go into executive session at 6:34 p.m. by MAHER/Burrows** to discuss personnel matters.  
YES: Santos, Calogero, Costanzo, Burrows, Esposito, Maher, Sgro.

**Motion to close executive session at 7:05 p.m. by COSTANZO/Maher.** YES: Santos, Calogero, Costanzo, Burrows, Esposito, Maher, Sgro.

**PUBLIC SESSION**

**Motion to open the public session at 7:06 p.m. by CALOGERO/Maher.** YES: Santos, Calogero, Costanzo, Burrows, Esposito, Maher, Sgro.

**APPROVAL OF RESOLUTIONS**

Mr. Calogero stated he did not have time to review the resolutions, which were received via email today, and he may abstain from voting on the resolutions. Mr. Gertner thanked Mr. Purpuro publicly for his review, which resulted in minor changes to the resolutions. Mr. Santos agreed with Mr. Calogero and stated while he received and read the resolutions, he wanted to review them more closely. He stated he would not vote on the. A question was raised as to how many votes were needed to pass a resolution and Mr. Gertner said a majority of the board members who approved the resolutions and who were present could memorialize the resolutions.

**Motion to table the resolutions by SANTOS/Calogero.** YES: Santos, Calogero, Costanzo, Burrows.  
NO: Esposito, Sgro. ABSTAIN: Maher.

**APPROVAL OF MINUTES OF MARCH 5, 2008**

**Motion to approve by CALOGERO/Costanzo.** YES: Santos, Calogero, Costanzo, Burrows, Esposito, Maher, Sgro.

**APPROVAL OF VOUCHER**

**Motion to approve the voucher in the amount of \$120.00 for the Recording Secretary for tonight's meeting by SANTOS/Esposito.** YES: Santos, Calogero, Costanzo, Burrows, Esposito, Maher, Sgro.

**ANNOUNCEMENTS** - none

**MATTERS FOR DISCUSSION** - none

**The professionals were sworn and their affiliations were stated for the record.**

**APPLICATIONS**

*Application #2 was heard first as the applicant for #1 was waiting for their engineer to arrive.*

**2. Franklin Menzel – 488 N. County Line Road – Block 4801, Lot 27 – Zone HC**

Jason Marciano of East Coast Engineering, Joseph Spano and Franklin Menzel, applicants, were sworn. Mr. Menzel has a small ranch home on N. County Line Road, which is being widened and the township has taken part of the front yard, bringing the house even closer to the road. He would like to construct a ranch dwelling further back on the property. Mr. Marciano gave his credentials, stating he is working for East Coast Engineering for 9 years and has testified before various boards in New Jersey. His credentials were accepted. He marked the site plan A-1, which showed a highlighted outline of the property and the wetland buffers. He

said there are two small areas of uplands with no access and the majority of uplands is in the front of the property. A-2 was an enlargement of the front area of the property, which highlighted the existing house 34 feet from the road. The applicant proposes to build a ranch home staying within setbacks and saving a pond and large trees on the property. A new septic is proposed with a driveway and turnaround. Exhibit A-3 showed the county road improvements and how they impact the existing residence. Mr. Calogero asked how much frontage was taken. Mr. Marciano said it varies and Mr. Calogero asked where the most impact was; Mr. Marciano said the western part of the lot, due to the proposed jug handle. No sidewalks are shown on the plan; they are widening the curb. Mr. Maher asked if the land was taken by easement or a 'taking', and Mr. Marciano said it was a taking. Maher asked Mr. Menzel the before and after value, and Mr. Menzel said they just purchased it, saying there was an area they [the County] would not be responsible for repairing. Mr. Maher asked if they gave any damages to the property and was told no. Mr. Maher asked if they agree there were no damages in the after and Mr. Menzel said yes. Mr. Gertner tried to ensure the applicant understood, and stated in their settlement with the County, they received a fee, and he asked if they received any value for the condition of the house that it would be closer to the road, and Mr. Menzel said no, just for the property. Mr. Maher said he was involved as an appraiser in other properties and they determine if damages are a result of the improvements. Mr. Gertner said the County would have appointed commissioners and established a value. Mr. Gertner noted this was brought up since this is a use variance and they are trying to determine if there is a hardship; the planner will speak about a residential property in a commercial zone. Ms. Miller thought the proximity of the existing dwelling to the curb is one piece of their proposal and there are other reasons. Mr. Gertner asked Mr. Marciano if he is a planner and was told no.

Mr. Marciano showed existing conditions on the plans. The northerly property line abuts the R-3 residential zone. The lot contains less than ½ acre of uplands and does not appear to be a good site for commercial development. The third environmental concern is the C-1 buffer, which would involve the Swerpa Resource Protection Area with a 300' buffer and would preclude any development on the site and would be a problem if commercially developed. Mr. Jacobs asked Mr. Marciano if he approached the DEP and was told no. Mr. Sgro asked why he wanted to move the house back, and Mr. Menzel said he has been there over 20 years, it is a peaceful property and he wants to stay there. Mr. Jacobs asked what the greenhouses are for and was told one was removed and half of the other greenhouse has flowerpots, lawn equipment and tools. Mr. Jacobs noted the new home is four times the size of this one and asked if it will be his principal dwelling; Mr. Menzel said yes. Mr. Calogero asked if one of the use variances is for a structure in the front yard of the new home and the professionals said yes. Mr. Calogero asked why it couldn't be taken down or moved. Mr. Menzel said he tried to put the new home as far back as possible and there is no room for the greenhouse. The house is 70' from a pond, 20' from the wetlands buffer line on one side and 40' from the buffer line on the other side. Ms. Miller noted the house will be close to the wetlands and there is no rule. Mr. Sgro agreed it is close.

**PUBLIC SESSION OPENED; No one came forward; PUBLIC SESSION CLOSED**

Mr. Costanzo asked for clarification of the before and after value, and whether the County approached Mr. Menzel. Mr. Menzel said no, he had a certain amount of time to accept it. He heard there would be construction across the street but was not told they would take the property. He spoke with the County's attorney who said that is what they are offering and if he doesn't agree, they will take the land by eminent domain. Mr. Costanzo asked if he considered an appeal. Mr. Menzel said he discussed that with an attorney who said that has been going on since the beginning of time. Mr. Calogero asked if the lot conforms and was told yes. He is satisfying the front setback but there is an issue about the accessory structure [greenhouse] in the front yard. Mr. Calogero asked if Ms. Miller if she felt this was better suited as a commercial site and Ms. Miller noted the environmental constraints, and effective 1/1/09 there will be further constraints on building there. Mr. Maher asked how large the home will be and was told 2,000 square feet. Ms. Miller said she did not think it included the garage. Mr. Costanzo asked if there will be water and sewer, and was told they will hook up to water but need septic. Mr. Jacobs pointed out the overlapping property issues. Mr. Marciano said it is within the wetlands buffer, he had no contact with adjoining property owners about the overlap, and it turns into a larger gore toward the rear. Mr. Jacobs asked if the setbacks are to the overlaps and Mr. Marciano said yes and they are included in the lot area. If excluded, the lot size is 3.35 acres instead of 3.45 acres. Mr. Mariano noted if the County taking did not take place, the greenhouse would be short but not as much, and acknowledged it would still be in the front yard. Mr. Gertner asked Mr. Purpuro about doctrine of merger and that was not received. Ms. Miller said it would be appropriate and she would like to see a conservation easement recorded to protect the wetlands areas; ownership stays with landowner. The applicants agreed to that and thought it would be good. Mr. Santos had concerns with why the greenhouses had to remain, as they are in front of the primary structure. Mr. Calogero visited the site and did not see the use or hardship by removing them with this variance. Ms. Miller noted having the structure there might make the lot look less like a residential use [in the commercial zone]. Mr. Menzel did not think they could put it anywhere else. Mr. Calogero said he should try to relocate it and Mr. Gertner asked Mr. Marciano to show another location. Mr. Marciano said there was room immediately behind the house but not anywhere else. Mr. Maher asked what the greenhouse is for and Mr. Menzel said he uses it for plants and gardening. Mr. Costanzo asked how large the structures are. Mr. Jacobs said 560 square feet is the sum total of the remaining ones. Mr. Calogero asked width times length and was told 30' x 15'-18'. Mr. Calogero and Mr. Santos had concerns that would be in the front yard. Mr. Sgro asked if they would remove it and they prefer to keep but ultimately withdrew they request for that variance. Mr. Maher asked if the property is grandfathered due to the taking and Mr. Gertner said no; moving the home prompts the variance relief requests.

**Public session was opened and closed again; no one came forward.**

**Motion by SANTOS/Esposito, with the understanding the accessory structures will be removed. Mr. Gertner asked if they accept the technical comments of the review letters and Mr. Marciano**

said yes, and they will add roof recharge to the new home. Mr. Santos appreciated the applicant's willingness to comply and Mr. Gardner's clarification. Mr. Jacobs asked if the pens were removed and was told yes. YES: Santos, Calogero, Burrows, Esposito, Maher, Sgro. NO: Costanzo

**1. Cassville Nursery – 15 Cassville Road – Block 11602 Lot 31 – Zone NC**

Warren Peterson represented the applicant. This site, a nursery school on Toms River Road, received approvals and construction is nearly complete; the site plan has been revised due to County requirements and now must be approved by this Board. Frederick Voss of GTS Consultants, Freehold was sworn and is the engineer of record on this matter. His credentials were accepted. Mr. Voss explained an error was made in that they did not have Ocean County Planning Board approval, the building permit was issued and site improvements were complete. A County inspector asked what they were doing and it was discovered they did not have County approval and discussions ensued to determine what do to resolve it, as the applicant is ready to open her facility. The County initiated plans for improvements there but no roadway widening is proposed. When this application was submitted to the County in November 2004, they thought the road was going to be widened, but now the plans have changed. The revised site plan was submitted with minor impact; they are not widening the pavement on the edge of Route 571 and have to remove curbing that is already installed, per the County request. The applicant is willing to do that. Mr. Jacobs asked if the sidewalk will remain and was told yes; he asked the timetable for final improvements, and Mr. Voss and Mr. Peterson said they want to move as quickly as possible to open the doors. An enormous amount of money has been spent on this project. Mr. Costanzo asked Mr. Jacobs what the proposal was and was told the applicant needed to remove the curb and extend the driveway to the road. Mr. Costanzo asked if it will be blacktop or concrete and was told it would be blacktop out to Route 571. Mr. Calogero noted the curb is currently located 1-2 feet from top to bottom and with cars pulling in and out, he wondered if they will be putting grass from the curb line to the street. Mr. Voss said they want to plant grass and the applicant is responsible for mowing, and it is in the right of way. Mr. Costanzo's concern was that the road is busy, and he asked if something could be put there, like a boulder, so people will not pull up on the grass area. He was worried about discharging passengers and overflow of traffic. Mr. Gertner asked if they could install landscaping or traffic calming devices. Mr. Maher asked if the property was for sale in the last 12 months. Vandana Sinha, owner of Cassville Nursery, was sworn. She is the original applicant, but said the other member of her LLC wants to sell his half of the business. She is staying and operating the business. She thought she would have opened over 6 months ago and has been receiving calls for jobs and childcare. Mr. Peterson asked her about the parking, and Ms. Sinha said it is not permitted and should not be an issue. She suggested she will put a small decorative fence to discourage parking and would add the no parking stipulation to the day care contracts that people sign. Mr. Calogero asked if they extend the sidewalk, couldn't the parking lot be extended left to the sidewalk and toward the street. Mr. Jacobs said the County would make them leave the sidewalk back where it is; if extended, they must put in a curb.

**PUBLIC SESSION OPENED; No one came forward; PUBLIC SESSION CLOSED**

Mr. Purpuro asked if the sign placement is affected by the change and was told no. Mr. Gertner asked if they were subject to the development fee ordinance in 2004 and was told whatever was applicable. When asked to check with Mr. Russo [affordable housing attorney], the applicant agreed.

**Motion to approve by MAHER/Costanzo with the stipulation that landscaping or some other deterrent for parking, approved by the County, and a line in the contract so users of the property know not to park there. Mr. Purpuro noted any landscaping should not exceed 30" in height.** YES: Santos, Calogero, Costanzo, Burrows, Esposito, Maher, Sgro.

**Recess at 8:03 p.m., reconvened at 8:08 p.m.**

**3. JC Industries, LLC – 647 Herman Road – Block 2201, Lot 53 – Zone LM**

Denis Kelly represented the applicant, JC Industries, in this application for variance and amended site plan. Tim Lurie of DW Smith was sworn and his credentials as professional engineer and planner were accepted by the Board. Mr. Kelly said prior site plan approval was received on this property, located on Herman Road, and they are seeking a variance for outside bulk storage within the rear setback. The rear setback requirement for the zone is 50' and the building is at 50'. The applicant also wants to partition the building. No screening is provided, but they have constructed a privacy fence and paving around the paving consistent with the prior application approvals. Ms. Miller said the bulk storage is within the setback and that is what the variance is for; the partition is not a variance state unless the parking is affected. Mr. Lurie stated eight parking spaces would be sufficient for the three tenants. They propose to store machinery in the setback, not to exceed 10' in height and there is a 6' privacy fence all around. Kelly said there is an adjacent commercial use, which Mr. Lurie pointed to on Exhibit A-1. John Clouse Sr., applicant, was sworn. The additional tenants will be consistent with what is permitted. The types of machinery they propose to store are landscaping trailers, bucket trucks, and other equipment. Mr. Costanzo asked if the storage will be on a pad and was told yes, but not covered. Mr. Clouse said water runs off toward the rear. Mr. Costanzo said they said both pad and staying gravel and asked Mr. Jacobs if runoff is a consideration and he said yes, and added his own question on how tightly the equipment would be stored and whether it will be located so as not to encroach on circulation. Mr. Lurie said drainage was approved with two recharge swales tied into an underground drainage system. Mr. Maher questioned that it is not going offsite and was told yes. Mr. Maher asked if the building is rented now and was told no. Mr. Jacobs asked what kind of tenants and if additional parking spaces are required. Mr. Lurie said it would be contractors that store the material in the warehouse, pick up and leave for the day. Mr. Jacobs confirmed there is no public access to the rear and Mr. Lurie agreed. Mr. Costanzo asked if there is gravel in the rear, as he did not understand the intent of the rear

storage area. Mr. Lurie said he needs to store vehicles between jobs. Mr. Costanzo asked if any type of fuel would be stored there, or what type of contractors and he said he is in the excavating business. Mr. Kelly said it is a restricted use; he will be using the front portion and the storage area and there will not be any combustibles. Ms. Miller noted the type of machinery and the 10' height. Mr. Kelly said he is bound by the 10' height and will provide a note on the plan. Mr. Jacobs asked about stacking pallets, and he has one and is stacking catch basin blocks. Mr. Kelly asked Mr. Lurie about the positive and negative criteria and the board professionals said it is only a "C" variance. Mr. Calogero wanted to understand what voting on and was told they are looking at two situations, the outside storage and amended site plan. Ms. Miller said there is no site plan to amend; Mr. Purpuro said the approved building contained one open space. Ms. Miller read from the ordinance; it seemed the storage is in the rear yard setback. If the principally permitted uses don't increase the parking requirement, then an amended site plan is not needed. Mr. Gertner said the only matter is the outside storage in the rear setback.

**PUBLIC SESSION OPENED; No one came forward; PUBLIC SESSION CLOSED**

Joseph Esposito was sworn and asked if it is only 50' from the rear of the building to the fence, and with this storage, is there enough room for a fire truck to get around. Mr. Lurie said 50' is correct, they are allowing an 18' fire lane approved by the fire department and the rest is storage. Mr. Costanzo said the plans show a 15' designation from the fence in, leaving 35' for circulation. Mr. Jacobs said the storage lines up with the face of the trash enclosure, which is 15' from the fence. Mr. Costanzo asked if there would be any barrier to prevent the fence from collapsing with bulk storage right up against it; a fence takes wear and tear. The applicant said they don't intend to put a barrier. Mr. Santos said they are intensifying the use that was approved. The additional pad is gravel, and the concern the 15' becomes 20' and will push against the fence, albeit unintentionally. He thinks it is an overuse of the property. Mr. Kelly said they could plant evergreens, but Mr. Costanzo said that won't solve the issue. They need a designation that nothing be stored beyond a certain point, and Mr. Lurie suggested bollards. Mr. Calogero agreed there should be some designation marking the 15'. Mr. Costanzo asked if that is sufficient with drainage and gravel. Mr. Jacobs said it is adequate because that is how the site was approved. The water will still flow underground. Mr. Costanzo asked about the base and gravel and was told it will be bluestone. Mr. Clouse said the rear storage is for his use. Mr. Jacobs asked if the designation would be timber ties and was told yes. Mr. Calogero said this vote is only for a bulk variance and not the amended site plan. An amended site plan is not required provided the parking requirement is not exceeded. Mr. Calogero asked for the record the amended site plan be removed from the application. The plan is to be revised to say 'variance plan' and not 'amended site plan'. Mr. Gertner said the zoning office must be careful the proposed uses don't require more parking by code that may require an amended site plan.

Mr. Santos said he did not receive adequate information to support this application.

**Motion to deny by SANTOS/Calogero.** A YES vote is to deny. YES: Santos, Calogero, Burrows, Esposito. Initially, Mr. Costanzo passed. NO: Costanzo, Maher, Sgro. Mr. Burrows commented the use was too intense for the property. The 4-3 vote to deny this application carried.

**Motion to adjourn at 9:15 p.m. by CALOGERO/Esposito.** Yes, by affirmation.

Respectfully submitted,

Janice Kisty  
Zoning Board Recording Secretary