

**STILLWATER TOWNSHIP  
ZONING BOARD OF ADJUSTMENT  
March 26, 2012**

**MEMBERS PRESENT:** Mr. Powell, Mr. Stachura, Mr. Saal, Mr. Sarni, Mr. Hammond, Mr. Lippencott, Mr. Daingerfield, Mrs. Feenstra

**MEMBERS ABSENT:** None

**ALSO PRESENT:** Board Attorney Morgenstern; Board Engineer Rodman

A REGULAR MEETING OF THE Stillwater Township Zoning Board of Adjustment was held on Monday, March 26, 2012, at 7:30 p.m. at the Municipal Building in Middleville, New Jersey. The meeting was called to order by Chairman Powell in accordance with the Open Public Meetings Act. The flag was saluted and roll call taken.

Mrs. Feenstra was appointed by the Township Committee as an Alternate #1 member, term expiring 12/31/13 and was sworn in by Attorney Morgenstern at the meeting.

**MINUTES**

Mr. Stachura made a **motion** to approve the minutes of February 27, 2012, as amended, seconded by Mr. .

**Roll Call Vote:** Mr. Daingerfield, abstain, Mr. Hammond, yes, Mr. Stachura, abstain, Mr. Saal, yes, Mr. Sarni, yes, Mr. Lippencott, yes, Mr. Powell, yes

**HEARING**

**David and Hillary Manser**, Block 2401, Lot 19.06, Preliminary/Final Site Plan for a commercial landscaping/lawn service business operating in a residential zone

Mr. Stachura made a **motion** to deem the application complete, waiving the following items, seconded by Mr. Sarni:

- Key map showing the location of the tract in relation to the surrounding area.
- Space for signatures for Chairman and Secretary of the Board of adjustment.
- Wooded areas indicating predominant species.
- Location of existing structures and their setbacks from existing property lines.

**Roll Call Vote:** Mr. Daingerfield, yes, Mr. Hammond, yes, Mr. Stachura, yes, Mr. Saal, yes, Mr. Sarni, yes, Mr. Lippencott, yes, Mr. Powell, yes

All notices appeared to be in order. David Manser, owner and Brian Cramer, Cramer Ecological Services, were sworn in.

Mr. Manser testified that based on the prior approval he has met the required conditions for the site plan, including the proposed pole building to house the equipment. Mr. Cramer indicated the pole barn would be located outside the 75 foot buffer line to allow for a transitional waiver averaging plan. The applicant would like to keep one of the sheds located on the property following the construction of the shed.

The following exhibits were marked:

**A-1** Wetlands Delineation dated 9/6/11 – Exceptional resource value with 150’ buffer, all activities within buffer or transition area will require a NJDEP permit.

**A-2** Computer generated drawing from Morton Buildings Inc. of pole building perspective from the southwest

**A-3** Computer generated drawing from Morton Buildings Inc. of pole building perspective from northeast

**A-4** Pole building specifications from Morton Buildings Inc.

Mr. Manser testified the structure would have a metal roof and siding with a concrete floor and a door located at each end. He indicated that the shed referred to in #5 of Mr. Rodman’s report would be removed once the barn is constructed. The plastic shed would be moved to eliminate the required variance relief. With reference to #9 of Mr. Rodman’s report, Mr. Manser stated the vehicles are basically parked on the gravel drive and gravel areas indicated on the site plan, located back near the fabric shed. Following construction of the pole barn, four vehicles will be parked in the barn.

The following exhibits were marked:

**A-5** Equipment list:

- 1 pickup truck
- 1 mason dump truck
- 1 rack body truck
- 1 medium duty dump truck
- 1 flatbed equipment trailer
- 1 flatbed landscape trailer
- 2 enclosed trailers
- 1 small backhoe/loader
- 1 agriculture tractor with loader and rake

**A-6** List of Materials: mulch, topsoil, stone dust, wall block, natural stone, \*\*all materials are left over from jobs and are either used for future jobs or for our personal use – empty pallets are stored until returned to the manufacturer for refunds

During the testimony, Mr. Rodman reviewed the following report:

**SUBJECT: Minor Site Plan for David and Hillary Manser, Cal #558(a)  
Block 2401 Lot 19.06, Located at 993 Stillwater Road,  
Boundary and Topographic Survey, prepared by Frederick Loede, Jr.  
Dated February 25, 2012;  
Resolution approved Nov. 23, 2009, memorialized December 28, 2009  
Freshwater Wetlands LOI/Line verification, dated Sept. 21, 2011**

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**Background:**

A use variance was approved on November 23, 2009, memorialized December 28, 2009, to operate a landscaping and lawn care business on this lot with 30 conditions. The applicable conditions of that resolution included:

- 3 and 5 Apply for a site plan within 6 months.
8. Obtain an LOI to determine wetlands classification and verify wetland limits *Condition satisfied.*
12. Defer decision on the construction of a pole barn until site plan approval.
17. Required pallets and tires to be removed. *Condition satisfied.*
18. That the first 25 feet of both driveways be paved. *Condition satisfied.*
20. The Board would determine whether the storage container and plastic shed would be removed during site plan review.
25. Comply with all bulk requirements.
27. Variance will expire within 9 months.

The variance, LOI requirement and site plan requirement, were extended to August 1, 2011. That resolution was approved on July 26, 2010 and memorialized on August 23, 2010. That resolution further resolved that the pallets and tires were to be removed immediately (condition #2) and verified by the zoning officer. It also required that the applicant provide a list of equipment stored on site. In addition the site plan was to show areas where equipment, vehicles and materials were to be stored. These areas were to be dimensioned and labeled for their specific use. That resolution also reserved a decision on whether to construct the pole barn and whether the applicant will be required to remove the plastic shed and storage container. The applicant requested a second extension for the variance approval which was approved on December 20, 2011, memorialized January 23, 2012, with the condition that the pallets and tires be removed immediately. It again deferred the decision on the pole barn, plastic shed and storage containers.

**Site Plan Review:**

This application is for the site plan as required by the three resolutions referenced above.

**Completeness:**

I would recommend the following items must be waived for completeness:

1. Key map showing the location of the tract in relation to the surrounding area.
2. Space for signatures for Chairman and Secretary of the Board of adjustment.
3. Wooded areas indicating predominant species.
4. Location of existing structures and their setbacks from existing property lines.

**Additional Comments:**

The following additional comments are made at this time:

1. The LOI/line verification received from NJDEP indicates that the wetlands on this lot are exceptional resource value with a wetlands buffer of 150'. As a result, the majority of this lot is covered by the buffer requirements and will require an NJDEP permit to conduct any activities that are regulated under the wetlands protection act within the buffer or transition areas. This LOI was issued after an on-site inspection by NJDEP on August 22, 2011. Any approval for the proposed pole barn will require an NJDEP permit.
2. The NJDEP LOI references a wetland delineation plat prepared by Frederick Loede, last revised September 6, 2010. The latest wetlands plans we have in our file is dated June 21, 2010. The referenced map should be provided to the Township. **Map was provided to the Board by the applicant.**
3. The LOI letter requires that any development plans should reference the DLUR (Division of Land Use Regulation) file # and the note "freshwater wetlands/water boundary line as verified by NJDEP".
4. The Board should make a decision regarding the application to permit the 26 x 56 pole barn and the removal of the plastic shed and storage shed. I would recommend that the applicant provide additional information regarding the proposed pole barn by means of a rendering showing the height, material and color. **See exhibits A-2, A-3, A-4**
5. As stated above, in completeness item #4, no dimension is shown for the plastic shed. If the Board does decide to permit the shed to remain, a side-yard setback variance could be required since it appears that the structure encroaches over the setback line. **Applicant agreed to move the shed to eliminate the variance.**
6. If approved by the Board, I would recommend a setback distance be shown for the proposed pole barn. **The Board determined this would be a condition of approval.**
7. Proposed buffer areas are shown along the northerly and southerly property line as a buffer area. I would recommend that number, type, size and spacing be shown. **The Board determined this would be a condition of approval.**
8. The July 2010, resolution "further resolved" (#1) that the areas of equipment, vehicle and materials storage be dimensioned and labeled. These areas are not shown on the site plan. **The Board determined this would be a condition of approval.**
9. The July 2010, resolution also "further resolved" (#3) that the applicant provide a list of equipment. On June 24, 2010, the applicant did provide a list of materials. I do not have a list of the equipment.
10. It appears that this application will not trigger the Stillwater Stormwater Regulations. If the Stillwater Stormwater Coordinator (Township Engineer Mike Vreeland) determines that they are required, these regulations must be addressed.
11. Any approval should be conditioned on receiving NJDEP permit and approval.
12. All applicable conditions of the previously approved variance remain in effect.
13. Any approval should be conditioned on Sussex County Planning Board and Sussex County Soil Conservation approval or waiver.
14. Prior to the start of any work, the Board Engineer should be notified and inspection escrow deposited with the Township.

A discussion was held concerning the driveway and Mr. Manser indicated the Construction Official approved the use of paving stones as opposed to paving the driveway. A driveway permit was issued and final approval granted by the Construction Official; each is on record in the application file. Mr. Manser stated all equipment would be stored in the pole building with the exception of the trailers. No de-icing material is stored on site except for bagged environmental salt which is stored in the shed. Only three vehicles are parked on site on a daily basis. Mr. Manser indicated he would like to keep the plastic shed at least until the barn is constructed. Mr. Cramer noted although the shed is within the buffer it is not regulated as it existed in a previously disturbed area. Mr. Lippencott made a **motion** to grant preliminary/final site plan approval with the conditions noted in the report of Board Engineer Rodman, seconded by Mr. Stachura.

**Roll Call Vote:** Mr. Daingerfield, abstain, Mr. Hammond, yes, Mr. Stachura, yes, Mr. Saal, yes, Mr. Sarni, yes, Mr. Lippencott, yes, Mr. Powell, yes

Mr. Powell made a **motion** to carry the application for memorialization of the Resolution to April 23, 2012, seconded by Mr. Sarni.

**Roll Call Vote:** Mr. Daingerfield, yes, Mr. Hammond, yes, Mr. Stachura, yes, Mr. Saal, yes, Mr. Sarni, yes, Mr. Lippencott, yes, Mr. Powell, yes

**RESOLUTION**

**Durso, Block 3701, Lot 7.02, Cal. No. 572**, request to construct an inground pool on the subject lot.

Mr. Hammond made a **motion** to adopt the Resolution, seconded by Mr. Saal, with the following terms and conditions applying:

**CONDITIONS OF APPROVAL**

The pool and walkway shall be a minimum of 7 feet from the northerly sideline of the subject lot.

The pool and walkway shall be a minimum of 11 feet from the westerly or rear boundary line of the lot.

The pool and walkway shall have maximum outside dimensions of 36 ft. x 23 ft.

The Applicant shall extend the existing 6 foot high wooden stockade fence so that it runs along the border of Lot 8 so that the view of the pool and walkway from Lot 8 is screened.

Applicant shall remove the existing retaining wall on the lot.

No permanent Certificate of Occupancy shall be issued until all the conditions of this Resolution have been met.

All taxes and fees shall be paid to Stillwater Township.

Applicant shall obtain all required governmental permits for the pool and improvements.

Applicant shall comply with all laws, rules and regulations in the construction of the pool, related walkway and fencing and solar heating apparatus in the implementation of these variances.

The variances expire within nine (9) months from the date of this Resolution unless implemented pursuant to the Ordinances of Stillwater Township.

**Roll Call Vote:** Mr. Hammond, yes, Mr. Saal, yes, Mr. Sarni, yes, Mr. Lippencott, yes, Mr. Powell, yes

**BILLS**

Mr. Sarni made a **motion** to approve the following bills, seconded by Mr. Stachura:

Dolan & Dolan:	Monthly Meeting – February 2012	\$150.00
	General – February 2012	\$120.83
	Escrow – Tanis	\$ 75.00
	Escrow – SCHH	\$ 37.50
	Escrow – Durso	\$312.00
	Escrow – Doolittle	\$150.00
	Escrow – Manser	\$162.00
	Escrow – Burke	\$112.50
New Jersey Herald:	1/2/12 - Reorganization. Meeting Date. Notice	\$ 14.15
	1/27/12 – Reorganization Notices	\$ 16.25
		\$ 42.50
	1/30/12 – Nextel/Manser Resolutions	\$ 26.05

**Roll Call Vote:** Mr. Daingerfield, yes, Mr. Hammond, yes, Mr. Stachura, yes, Mr. Saal, yes, Mr. Sarni, yes, Mr. Lippencott, yes, Mr. Powell, yes

**At this point, this portion of the meeting was opened to the public at 8:06 p.m.**

**Bob Shankman, 8 East Side Drive** asked about the Nextel lawsuit. Mr. Morgenstern explained he received a copy of the complaint today indicating the appeal was filed, and once a matter is in litigation the Board cannot discuss it. The complaint is a public record and a copy can be requested at the County Courthouse.

**There being no public wishing to speak, this portion of the meeting was closed at 8:08 p.m.**

Committeeman Gross left the meeting room at this point.

**Executive Session:**

After the reading of the following Resolution to enter into Executive Session, a **motion** was made by Mr. Daingerfield, seconded by Mr. Sarni and unanimously carried by roll call vote to adopt the resolution permitting the Committee to go into Executive Session at 8:09 p.m.

WHEREAS, Section 8 of the Open Public Meetings Act, Chapter 231, P.L. 1975 permits the exclusion of the public from a meeting under certain circumstances; and

WHEREAS, this public body is of the opinion that such circumstances presently exist.

NOW THEREFORE, BE IT RESOLVED, by the Township Committee of the Township of Stillwater, in the County of Sussex and State of New Jersey as follows:

1. The public shall be excluded from that portion of this meeting.
2. The general nature of the subject matter to be discussed is as follows: Ongoing litigation: Nextel of NY/JCP&L Complaint
3. As nearly as can now be ascertained, the matter or matters to be discussed at this time will be disclosed to the public when such matters are resolved.

There being no further business to attend to, a **motion** was made by Mr. Daingerfield, seconded by Mr. Hammond to conclude the Executive Session at 8:42 p.m., unanimously carried by roll call vote.

Mr. Daingerfield made a **motion** authorizing Board Attorney Morgenstern to answer, defend and represent the Stillwater Township Zoning Board of Adjustment against the complaint filed by Nextel of NY/JCP&L, seconded by Mr. Stachura.

**Roll Call Vote:** Mr. Daingerfield, yes, Mr. Hammond, yes, Mr. Stachura, yes, Mr. Saal, yes, Mrs. Feenstra, yes, Mr. Lippencott, yes, Mr. Powell, yes

Mr. Stachura made a **motion** authorizing Board Attorney Morgenstern to compose a letter to Greg Meese, Esq., of Price, Meese, Schulman, D’Arminio, PC, attorney representing Nextel of NY/JCP&L, requesting payment of all outstanding escrow monies within 30 days or a suit will be filed, seconded by Mr. Daingerfield.

**Roll Call Vote:** Mr. Daingerfield, yes, Mr. Hammond, yes, Mr. Stachura, yes, Mr. Saal, yes, Mrs. Feenstra, yes, Mr. Lippencott, yes, Mr. Powell, yes

At this point, this portion of the meeting was opened to the public at 8:44 p.m. and there being no public wishing to speak, this portion of the meeting was closed at 8:44 p.m.

There being no further business, Mr. Sarni made a **motion** to adjourn the meeting at 8:45 p.m., seconded by Mr. Stachura. In a voice vote, all were in favor.

Respectfully submitted,

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Kathy Wunder, Board Secretary

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Eric Powell, Chairman