

**STILLWATER TOWNSHIP
ZONING BOARD OF ADJUSTMENT
May 31, 2012**

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

MEMBERS ABSENT: Mr. Hammond

ALSO PRESENT: Board Attorney Morgenstern; Board Engineer Rodman

A REGULAR MEETING OF THE Stillwater Township Zoning Board of Adjustment was held on Thursday, May 31, 2012, at 7:30 p.m. at the Municipal Building in Middletown, 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.

MINUTES

Mr. Stachura made a **motion** to approve the minutes of April 23, 2012, seconded by Mr. Daingerfield.

Roll Call Vote: Mr. Daingerfield, yes, Mr. Stachura, yes, Mr. Saal, yes, Mr. Sarni, abstain, Mr. Lippencott, yes, Mrs. Feenstra, abstain, Mr. Powell, yes

HEARING

Morris, Block 416, Lot 26, Cal. No. 574 – Deck in the front yard (lakeside)

Notices appeared to be in order. The Zoning Officer deferred completeness to the Board as the applicant did not indicate the setback from the deck to the lake on the survey provided. Mr. Morgenstern scaled a 20' setback to the lake as indicated on the application submitted. **A-1:** Mr. Morris marked the survey to indicate the 20' setback. Mr. Daingerfield made a **motion** to deem the application complete, seconded by Mr. Sarni.

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

Blake Morris was sworn in. Mr. Morris testified he recently purchased the home with a pre-existing deck that has been under construction since 2007 and never completed. He disassembled the deck and would like to replace it with a 23'9 x 14' deck using the existing four footings. He testified the layout of the home is consistent with having a deck and the house was built in the 1960s as a cottage and rebuilt in 2006. The Board discussed if a permit of disturbance or permit by rule would be applicable and determined wetlands were not an issue in this case. Mr. Daingerfield noted there would be no soil disturbance and the applicant is only correcting an existing problem. Mr. Morris indicated he would not be adding to or expanding the deck, steps, landing, etc. and is only reconstructing the original deck.

At this point, this portion of the meeting was opened to the public at 7:45 p.m. There being no public testimony, this portion of the meeting was closed to the public at 7:45 p.m.

Mr. Morgenstern reviewed the necessary variance relief as follows:

Front yard setback (lakeside): Required 75'; Proposed 20'
Rear yard setback: Required 75'; Proposed 56'
Side yard setback: Required 30'; Proposed 20'
Side yard setback: Required 30'; Proposed 28'
Within 100' of a hydrologically sensitive area: Required 100'; Proposed 20'

Proposed Deck Conditions:

No closer than 20' to the lake.

No closer than 20' to the northwest sideline.

No closer than 28' to the northeast sideline.

Railing to be installed as required.

No permanent Certificate of Occupancy until all conditions are met.

All taxes and fees are to be paid.

All other standard conditions applying.

Mr. Daingerfield made a **motion** to grant the necessary variance relief to permit the construction of a deck in the front yard, seconded by Mr. Stachura.

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

Mr. Sarni made a **motion** to carry the application to the memorializing Resolution on June 25, 2012, seconded by Mr. Stachura. All were in favor.

HEARING

Howe, Block 2601, Lot 3, Cal. No. 576 – Shed in the front yard

The application was deemed complete by the Zoning Officer and notices appeared to be in order.

Allen Howe was sworn in. Mr. Howe testified that he installed a 12' x 14' shed in the front yard of his property as there is no backyard and the house is built into the side of a ravine. The shed is consistent with the house, matching the siding and roof. At this time of year, when there are leaves on the trees, the shed is barely visible.

Mr. Howe testified that the reference to the two-car garage indicated on the application is invalid and he would not be constructing that structure and is strictly seeking relief for the shed. He stated that due to physical difficulties he is in the process of selling the home and approval for the shed is necessary for the sale. The following photographs were marked into evidence:

A-1: View from the road

A-2: View from the driveway

A-3: Shed

Mr. Morgenstern reviewed the necessary variance relief:

D-1 variance for accessory structure located in the front yard

Front yard setback: Required 75' Proposed 25'

At this point, this portion of the meeting was opened to the public at 7:58 p.m. There being no public testimony, this portion of the meeting was closed to the public at 7:58 p.m.

Proposed Shed Conditions:

No closer than 25' to the road right of way.

Must only contain a maximum of 168 square feet.

Must be built in accordance with the map filed with the Board dated July 18, 1997.

Structure is not to be used for human habitation; no toilet facilities.

If road is damaged during construction, it must be repaired to the satisfaction of the Construction Official within 72 hours.

All other standard conditions applying.

Mr. Stachura made a **motion** to grant the variance relief necessary to construct the shed in the front yard, seconded by Mr. Daingerfield.

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

Mr. Sarni made a **motion** to carry the application to the memorializing Resolution on June 25, 2012, seconded by Mr. Stachura. All were in favor.

Public: At this point, Janet Rae inquired if her application was included on the agenda as she had provided legal notice. The secretary indicated it was not on the agenda as an application was never submitted to the Zoning Officer for review.

HEARING

Hollinger, Block 3304 , Lot 3, Cal. No. 575 – Change of Use (Cabinet Shop)

The application was deemed complete by the Zoning Officer. Mr. Morgenstern indicated that notice was required to be served to both the Municipal Clerk of Fredon and the Sussex County Planning Board as the property is located within 200 feet of the adjoining municipality. Following a brief discussion, the Board agreed to hear the application, carry it to the next meeting for consideration, with proof of notice to be submitted and a draft Resolution to be provided by Mr. Morgenstern upon decision.

Barry Hollinger, owner of Still Springs Real Estate, LLC, was sworn in. Brett Nock, cabinet maker/tenant, was sworn in.

Mr. Hollinger testified he purchased the building as a feed store and due to the economy the business closed and the building has been empty for two years. He is currently leasing it to Mr. Nock as a cabinet shop and assumed as a commercial building/commercial business it would be appropriate. The tenant constructs cabinets based on orders and has been using the building for 2 ½ years. Mr. Nock testified he receives approximately one delivery/pick-up each week, two deliveries each month for material drop-off, all work is conducted inside with dust control in place, no customers come to the site as cabinets are all delivered, and on occasion representatives handling the orders do visit the site.

Board Engineer Rodman reviewed the following report:

Variance Request for Barry Hollinger, #575

Block 3304 Lot 3, Located at 904 Old Station Road

Existing Building Conditions by Charles Schaeffer, dated 5/15/12

Marked up Variance Plan by Gerald DeGroat, dated 3/14/2011

This application is seeking a “use change” (change of use) variance from provisions of Article 240-10A(1) which does not list cabinet making shops as a permitted use in the NC Neighborhood Commercial District.

This request is for a variance only. No request is being made for a site plan. This application could be bifurcated whereby any approval for the variance would require an approval of a site plan. Based on the commercial use proposed, I would recommend a site plan be required, which could include lighting, landscaping, buffering and site improvements as necessary. This site was the subject of a zone change request, variances and litigation in 2001 and 2002 for two uses on the lot (trucking and a water hauling business). It is not clear from our records as to the final disposition of those actions.

The applicant/owner for the previous applications was Still Springs Real Estate LLC. The present applicant, Barry Hollinger’s, name appears in the resolution for the variance memorialized September 24, 2001. The deed for that application, shown as Exhibit A-1, was from Stillboy Inc., to Still Springs Real Estate, LLC. I assume that Still Springs Real Estate LLC is still the owner of this property.

The administrative checklist and D-variance checklists were found complete by Zoning Officer, Arlene Fisher (no date shown).

The following **additional comments** are made at this time:

1. The applicant should provide testimony which demonstrates that the relief sought can be granted without substantial detriment to the public good and substantial impairment of the intent and purpose of the Zone Plan and Zoning Ordinance.
2. The narrative attached to the application form (and the application form) both state that the previous use was a feed store. The applicant should provide information as to the status of the previous users i.e. water company and trucking business.
3. Ownership of this site is not clear. The Affidavit of Ownership states Barry Hollinger as the owner. The application form is blank for the owner and the previous deeds state Stillwater Springs Real Estate LLC. In addition, the administrative checklist states that the corporation or partnership form is not applicable. This should be clarified and if this is a corporation then corporation consent should be provided.
4. The application form states that the previous use was for water hauling. Based on a site inspection, it appears the site is presently being utilized.
5. The application form also states that this use would “create jobs”. The applicant should provide information as to the number of employees and hours of operation.
6. The narrative states that cabinets are “delivered when finished.” No statement is made regarding whether customers will visit this site to select cabinet styles and types. If the public will be invited to the site, provisions for parking, lighting, ADA compliance, etc... must all be addressed. If the public will not be coming to this site, the Board could prohibit public access as a condition of approval.
7. The block and lot numbers are transposed on the application form.
8. Based on a site inspection, there appears to be 8 or 9 pieces of equipment (i.e. trucks, trailers, backhoe, tankers, etc) randomly parked on the site now. I would recommend as a condition of approval that this equipment be removed since they do not appear to be associated with cabinet making.
9. No signage is shown other than the existing feed store signage on the building. Will there be a new sign? This could be shown on a site plan.
10. If employees will be utilizing this building, I assume a septic system will be required. None is shown or addressed.

11. The previous application shows the one story frame commercial building (feed store) on a single 100'± x 250'± tax lot 3. The balance of the property is shown as lot 2.01 and contains 3.7 acres. The marked up map submitted for this application appears to indicate that both lots are being proposed for this use (lot 3 and lot 2.01). This should be clarified.

12. A paint booth is shown on the architectural floor plan. The applicant should address odors and noise which may emanate from this use.

13. The Board may wish to forward this application to the Environmental Committee for their review.

14. We have been unable to locate in our files all of the previous resolutions applicable for this site. We would recommend that after a review of previous resolutions, any applicable conditions remain for this application.

In response to the report, Mr. Hollinger testified that he sought variance relief for a water hauling business and was denied. He currently has three tanks parked on the site for emergency use only, and he most recently used one for the Stillwater Inn fire. He also stores a backhoe for property maintenance on the site, in addition to two car trailers and two trucks. He explained he had cattle trailers parking on the property in the past but no longer allows that use. Water trucks never enter the property and he does not use the tanker trailers for a business.

Mr. Rodman submitted the following marked into evidence:

ZBA1: Six photographs depicting the property

ZBA2: Six photographs depicting the property

Mr. Morgenstern stated an affidavit was submitted indicating Still Springs Real Estate, LLC has provided Mr. Hollinger with authorization to make the application and Mr. Hollinger is 100% owner of the corporation. Mr. Nock stated he is currently the only employee as a part-time employee was recently laid off due to the economy. The hours of operation are 8 a .m.-5 p.m. and he agreed to a condition of approval that no public would attend the site. Mr. Rodman felt the equipment located on the site should be removed or the applicant should apply for an additional use. Mr. Nock indicated no signs would be posted for the business. Mr. Hollinger stated there is an existing septic system in place and Mr. Morgenstern required a condition of proof the system is functioning properly from the Sussex County Board of Health. Mr. Hollinger stated he owns three lots in the area of the building and each one is taxed separately. A discussion was held regarding the paint that is used and Mr. Nock indicated he uses water based paint as opposed to flammable, and he utilizes a paint booth that exhausts to the outside as clean air through a filtered system. A site survey report was submitted by the Environmental Commission indicating no concerns with the application.

Mr. Morgenstern stated prior applications made by Mr. Hollinger for the water hauling business were denied and there are no conditions to be addressed with that respect.

In response to questioning by Mr. Morgenstern, Mr. Hollinger testified there are three trucks parked on the property by DeLade Bros. Electric who also use the basement of the building for storage. The backhoe is used strictly for maintenance of the property and the tankers are used only for emergency purposes. His water hauling business is conducted off site in Sparta and Allamuchy. The parking lot consists of gravel with portions of asphalt and the parking spaces are not lined. There is one light located in front of the building, illuminated all night, and no signs are proposed. Mr. Nock testified he disposes the paint chemicals and thinners off site in Long Island, in bulk and in a legal manner. Mr. Hollinger stated the well is located inside the building and the septic runs along the left side if facing the building. There will be no changes to the exterior of the building and no changes to the site or parking lot.

Following Board discussion, Mr. Morgenstern reviewed the uses located on the property requiring variance approval:

1. Change of use from a feed store to a cabinet shop.
2. Storage in the basement and parking of vehicles for the DeLade Bros. Electrical Contracting business.
3. Parking of water tankers.

He reviewed the options available to the applicant:

1. Amend the application to include all uses.
2. Remove those uses not seeking approval for and provide proof from the Zoning Officer.

Notice would have to be provided for the additional uses and the application amended. The Board agreed the backhoe would be considered as maintenance equipment. A Board discussion was held on whether the trailer housing antique tractors on the property would be an additional use and on recommendation by the Board Attorney agreed variance relief would be required. Mrs. Feenstra noted no traffic is generated by the uses and there is no one from the public objecting to the application. She stated the former owner had several uses operating at one time and felt the current uses were less intense than those prior. Mr. Powell stated conditions could be implemented to prevent expansion of the existing uses. Mr. Stachura expressed concern with the location of the well and storage of paint materials. Mr. Nock stated they are located at opposite areas of the facility and are obstructed by block walls. Mr. Powell asked for a condition that the applicant must submit MSDS sheets and written documentation on the storage of the paint. Mr. Hollinger stated the fire department inspected the storage cabinet; and there are no underground storage tanks, only above ground propane. Mr. Stachura noted ADA requirements will have to be met if additional employees are hired. The Board agreed no site plan would be necessary since there is no public visiting the site and that will be a condition of approval.

Mr. Hollinger indicated he would like to amend the application to include the following uses:

1. Electrical contractor operations
2. Water tankers (3) – Mr. Hollinger indicated he may choose to move the tankers and eliminate this use.
3. Antique storage trailer
4. Cabinet making business

Mr. Morgenstern noted if Mr. Hollinger chooses not to move forward with the additional uses, they must be removed with proof provided by the Zoning Officer.

Mr. Daingerfield made a **motion** to carry the application to June 25, 2012, requiring the applicant to amend the application to include the additional uses on the property with a detailed description of each; and notice to be provided to property owners within 200 feet in both Stillwater and Fredon, by publication, and to the Municipal Clerk of Fredon and Sussex County Planning Board, at least 10 days prior to the meeting date, seconded by Mr. Stachura.

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

RESOLUTION

Lee, Block 1501, Lot 14.01, Cal. No. 573, application to construct a pole barn requiring side yard setback relief. Mr. Stachura made a **motion** to adopt the Resolution with the following conditions applying, seconded by Mr. Lippencott:

1. The pole barn shall be a maximum of 24 ft. x 24 ft.
2. The pole barn shall have a maximum height of 15 feet.
3. The pole barn shall be a minimum of 11 feet from the southwest sideline of the lot.
4. The pole barn shall be constructed in the location shown on the survey of Schmidt & Associates by Kirk Schmidt, L.S., dated December 18, 1987 with a revision date of March 16, 1988 with the pole barn hand-drawn thereon by the Applicant and filed with this Board.
5. The pole barn shall be constructed no closer than 30 feet to the pond on site.
6. Applicant shall submit an as-built survey of the lot and pole barn showing the construction and location of the pole barn to this Board after the construction is completed.
7. The Applicant shall preserve the existing vegetation along the southwest boundary line between the pole barn and the boundary.
8. Applicant shall comply with all other setback and bulk requirements of the Zoning Ordinance for the pole barn.
9. The within variance expires within nine (9) months from the date of this Resolution unless implemented pursuant to the ordinances of Stillwater Township.
10. Applicant shall comply with all other laws, rules and regulations in implementing the variances.
11. No permanent certificate of occupancy shall be issued until all conditions of the Resolution have been met.
12. All taxes and fees shall be paid to the Township of Stillwater.

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

BILLS

Mr. Daingerfield made a **motion** to approve the following bills, seconded by Mr. Powell:

<u>Dolan & Dolan:</u>	General – April 2012	\$ 83.33
	Meeting – April 2012	\$ 112.50
	General – May 2012	\$ 235.50
	Escrow – Hollinger	\$ 112.50
	Escrow – Howe	\$ 61.50
	Escrow – Morris	\$ 61.50
	Escrow – Lee	\$ 175.50
	Escrow – Tanis	\$ 187.50
	Escrow – Lee	\$ 87.00
	Litigation – Nextel	\$ 879.00
	Litigation – Nextel	\$ 222.00
	Cellco/Verizon	\$ 37.50

<u>Dolan & Dolan:</u>	<u>Nextel Escrow</u>	
	December 2011	\$1824.00
	January 2012	\$1200.00
	January 2012	\$ 687.00
	February 2012	\$ 162.00
	March 2012	\$ 75.00

<u>Rodman Associates:</u>	<u>Nextel Escrow</u>	
	November/December 2011	\$ 593.25
	January 2012	\$ 141.25

<u>New Jersey Herald:</u>	Manser Resolution	\$ 19.80
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Roll Call Vote: Mr. Daingerfield, yes, Mr. Stachura, yes, Mr. Saal, yes, Mr. Sarni, yes, Mr. Lippencott, yes, Mrs. Feenstra, yes, Mr. Powell, yes

Correspondence:

-Township of Fredon, Ordinance 2012-05, AN ORDINANCE TO AMEND CHAPTER 550 – ZONING OF THE LAND USE ORDINANCES OF THE TOWNSHIP OF FREDON BY ADDING THERETO DEFINITIONS OF AND PROVISIONS ALLOWING FOR ALTERNATIVE (SOLAR) ENERGY FACILITIES AND DEVICES AND PROVIDING REGULATIONS RELATING THERETO

-Recv'd from Attorney Morgenstern, re: Tanis, dated 5/25/12

-Budget Report through 5/24/12

At this point, this portion of the meeting was opened to the public at 9:06 p.m.

There being no public wishing to speak, this portion of the meeting was closed at 9:06 p.m.

Liaison Report – Committeeman Gross:

Mr. Gross reported that Verizon has submitted an application. He stated an objector from the Nextel case attended the last Township Committee meeting and expressed concern with the litigation. Mr. Gross briefly discussed the Stillwater Inn fire debris, indicating it is an insurance matter at this time. Mr. Gross would follow up with the Construction Official on the matter.

There being no further business, Mr. Lippencott made a **motion** to adjourn the meeting at 9:15 p.m., seconded by Mr. Sarni. In a voice vote, all were in favor.

Respectfully submitted,

Kathy Wunder, Board Secretary

Eric Powell, Chairman