

## **MINUTES OF THE MONTAGUE TOWNSHIP LAND USE BOARD REGULAR MEETING HELD MARCH 11, 2010**

Open public meeting statement: The meeting was called to Order by the Board Chairman, Glenn Barbagallo, and a statement was made that the meeting was duly advertised and met all of the requirements of the Open Public meetings Act. Those present were: Charles Teufert, Darren Ponce, Sharon Tufaro, Gene Crawford, Richard Innella (arrived at 7:30 p.m.), Jason, Dunn, Katherine Snyder, Glenn Barbagallo, William Haggerty, Esq., the board attorney, Thomas Knutelsky, the board engineer, and Sharon M. Yarosz, the board secretary.

Those absent were: Glen Plotsky (excused), Jody Case Kennedy and James Guimes.

### **FLAG SALUTE**

### **MINUTES**

The February 11, 2010 Land Use Board Regular Meeting Minutes were reviewed. A Motion was made by Mr. Teufert and seconded by Mrs. Snyder to approve the Minutes of the February 11, 2010 Land Use Board Regular Meeting. Roll call: Mr. Teufert, yes; Mr. Ponce, yes; Mrs. Tufaro, yes; Ms. Crawford, yes; Mr. Dunn, yes; Mrs. Snyder, yes; and Mr. Barbagallo, yes. The Motion was carried.

### **RESOLUTIONS**

#### **Cellco Partnership d/b/a Verizon – Preliminary & Final Site Plan & Conditional Use – Block 2, Lot 2 – 3 Hamilton Road – LUB 10-01:**

The Resolution was reviewed. A Motion was made by Mr. Teufert and seconded by Ms. Crawford to approve the Resolution for Cellco Partnership d/b/a Verizon Wireless for a Preliminary and Final Site Plan and Conditional Use. Roll Call: Mr. Teufert, yes; Mr. Ponce, yes; Mrs. Tufaro, yes; Ms. Crawford, yes; Mr. Dunn, yes; Mrs. Snyder, yes; and Mr. Barbagallo, yes. The Motion was carried.

### **APPLICATIONS CARRIED FROM A PREVIOUS MEETING**

#### **Jemstone Holdings, Inc. (Dairy Queen) – LUB 09-02 - “C” Variance & Amended Site Plan Block 44, Lot 8 – 17 Route 23 South:**

The board secretary indicated that she did not hear from the applicant or their attorney with regard to the status of this application. A Motion was made by Mr. Teufert and seconded by Mr. Ponce to dismiss this application without prejudice. Roll Call: Mr. Teufert, yes; Mr. Ponce, yes; Mrs. Tufaro, yes; Ms. Crawford, yes; Mr. Dunn, yes; Mrs. Snyder, yes; and Mr. Barbagallo, yes. The Motion was carried.

### **OLD BUSINESS**

#### **Sign Ordinance:**

Mr. Haggerty indicated that the sign ordinance that we have worked on refers to the restrictions on sign locations. A freestanding sign would have a minimum 10’ setback from the traveled roadway or 6’ from the property line whichever might be greater. A provision was added to specify that freestanding signage may not be installed in a manner which would interfere with sight distance of vehicles entering onto or existing on the roadway or interfering with sight distance of vehicles traveling the roadway.

It was agreed to carry this matter to the next regular meeting of the Land Use Board.

#### **Accessory Buildings and Structures Ordinance:**

Mr. Haggerty indicated that the board has been working on this ordinance for several months. All the regulations for accessory structures were under an Ordinance section “Buildings and Lots”. There were several topics under this heading that did not apply to this section. He felt that Accessory Structures should be pulled out of this section and have a separate section. Several months ago we drafted a separate section for “Buildings and Lots” and a separate

**MINUTES OF THE MONTAGUE TOWNSHIP LAND USE BOARD REGULAR MEETING HELD MARCH 11, 2010**

**BOARD BUSINESS CONT.**

**Accessory Buildings and Structures Ordinance cont.:**

section for “Accessory Structures”. The township committee approved the “Buildings and Lots” portion and anything to do with Accessory Structures was repealed from that portion of the ordinance book. The board never acted on the Accessory Structure portion and must act on this as soon as possible because at the present time there are no ordinances in the code book for accessory structures.

The board reviewed the proposed Accessory Buildings and Structures Ordinance:

- A. ***Accessory Buildings and Structures as part of a Principal Building.*** Any structure or part of a structure attached to a principal building shall adhere to the yard requirements for the principal building regardless of the technique of connecting the principal and accessory building. The board agreed that no changes are required to this paragraph.
- B. ***Location.*** An accessory building may be constructed in the side or rear yard or in the front yard of the premises provided that the front yard setback for the accessory building is in compliance with the required front yard setback for a principal structure in the zone or the accessory structure has a front yard setback equal to the existing front yard setback for the principal structure on the lot where the front yard setback for the principal building on the lot is less than the required front yard setback and the front yard setback of the buildings is pre-existing, nonconforming. An accessory structure located on a corner lot shall be set back from the side street to comply with the side yard setback requirements for the principal building from that side street. Mr. Haggerty summarized that this section is stating that an applicant must meet the front yard setback that is required for the house or if it is less because the house is closer to the road than authorized (pre-existing, nonconforming), then the accessory structure can be at that setback. The board also suggested that the accessory structure not block the front of the primary structure/it can not be built between the principal structure and the road. Mr. Haggerty indicated that the last paragraph of this section refers to corner lots. In summary the accessory structure will not have 2 front yard setbacks, the functional front of the primary residence you would apply the front yard setback.
- C. ***Height Limitation.*** The height of an accessory building shall not exceed the height of the principal structure or thirty-five (35) feet, whichever is less. A lengthy discussion was held with regard to this issue. The board was concerned with one story ranch style homes, it would be difficult to build a garage at that height. It was agreed to have the paragraph read: The height of an accessory building shall not exceed the height of thirty-five (35) feet.
- D. ***Setback Requirements from an Adjacent Structure.*** In residential districts, the minimum distance of any accessory building from an adjacent building shall be five (5') feet. The board agreed that no changes are required to this paragraph.
- E. ***Side Yard and Rear Yard Setback.*** All accessory buildings shall have a minimum distance of ten (10') feet from side and rear lot lines. The board agreed that no changes are required to this paragraph.

**MINUTES OF THE MONTAGUE TOWNSHIP LAND USE BOARD REGULAR MEETING HELD MARCH 11, 2010**

**BOARD BUSINESS CONT.**

**Accessory Buildings and Structures Ordinance cont.:**

- F. ***Accessory Buildings Not to Be Constructed Prior to Principal Buildings.*** *Notwithstanding any other provisions of this Chapter, no building permit shall be issued for the construction of any accessory building prior to the issuance of a building permit for the construction of the main building upon the same premises or if there is a permitted principal structure already present at the premises. If construction of a principal building is proposed for the site, then the construction of the accessory building, may take place prior to completion of the principal building, and storage of materials for construction of the principal building may be permitted in the accessory building. However, storage of the materials shall be permitted for a maximum of eight (8) months following the completion of accessory building. In the event that a principal building is not completed within that time, then use of the accessory building shall be prohibited. Completion of the principal building shall mean that a Certificate of Occupancy has been issued for the principal building.* The Board agreed that no changes are required to this paragraph.
- G. ***Permissible Floor Area.*** *The total of the floor or ground areas of all accessory buildings shall not exceed the floor or ground area, whichever is smaller, of the principal building on the same lot.* Mr. Haggerty indicated that this was put in the ordinance book in 2006. Mr. Barbagallo indicated that he would like delete this paragraph. Mr. Teufert felt that there are very few homes in this town that are that small that he feels a variance could address it and he would like to see it left in. Mr. Innella indicated that this ordinance has been in existence since 2006 and the board has not had one variance with regard to this issue, however, it does not feel it would hurt to leave it in. Mrs. Snyder would also like to see this paragraph deleted. It was questioned if there is a lot coverage ordinance in the code book. Mr. Haggerty indicated that the lot coverage for buildings is 10%. Mr. Teufert and Mr. Dunn indicated that he has no problem using the lot coverage as the control. The board agreed to delete this paragraph.
- H. ***Accessory buildings in non-residential districts.*** *Accessory buildings in non-residential districts shall meet all the requirements applicable to the principal buildings.* The board agreed that no changes are required to this paragraph.
- I. ***Exception for Buildings Use for Agricultural Purposes.*** *Buildings used for agricultural purposes are exempt from the provisions of this Ordinance in accordance with the provisions of the Right to Farm Act N.J.S.A. 4:1C-1, et. seq. as to agriculturally assessed lands.* The board agreed that no changes are required to this paragraph.

A Motion was made by Mrs. Tufaro and seconded by Mr. Teufert to approve the Accessory Buildings and Structures Ordinance with the changes suggested above and forward same to the Township Committee for review and adoption. Roll Call: Mr. Teufert, yes; Mr. Ponce, yes; Mrs. Tufaro, yes; Ms. Crawford, yes; Mr. Innella, yes; Mr. Dunn, yes; Mrs. Snyder, yes; and Mr. Barbagallo, yes. The Motion was carried.

**NEW BUSINESS**

**The Time of Decision Rule (Resolution 2010-09):**

Mr. Haggerty indicated that the case law in New Jersey at the present time states that the rules that are in affect at the time that the board takes a vote are the rules that control an application. This new bill states that the rules that are in affect at the time of submission of the application are the rules that control an application. A lengthy discussion was held with regard to this issue. The board has before it this evening a Resolution from the governing body opposing this decision and would like the Land Use Board's support.

**MINUTES OF THE MONTAGUE TOWNSHIP LAND USE BOARD REGULAR MEETING HELD MARCH 11, 2010**

**NEW BUSINESS CONT.**

**The Time of Decision Rule (Resolution 2010-09) cont.:**

A Motion was made by Mr. Teufert and seconded by Mr. Innella to agree with the Resolution sent to the board by the governing body opposing this bill. Roll Call: Mr. Teufert, yes; Mr. Ponce, yes; Mrs. Tufaro, no; Ms. Crawford, no; Mr. Innella, yes; Mr. Dunn, no; Mrs. Snyder, yes; Mr. Barbagallo, yes. The Motion was carried.

**VOUCHERS**

The vouchers were reviewed. A Motion was made by Mrs. Snyder and seconded by Ms. Crawford to approve the following vouchers:

- 1) Dolan & Dolan regarding General Administration (January) in the amount of \$388.55; and;
- 2) Dolan & Dolan regarding Cellco Partnership (Escrow) in the amount of \$102.38; and
- 3) Dolan & Dolan regarding Crown (Escrow) in the amount of \$40.95; and
- 4) Dolan & Dolan regarding Dairy Queen (Escrow) in the amount of \$34.13; and
- 5) Dolan & Dolan regarding Dairy Queen (Escrow) in the amount of \$40.95; and
- 6) Gann Law Books regarding NJ Zoning & Land Use 2010 Edition in the amount of \$98.00

Roll Call: Mr. Teufert, yes; Mr. Ponce, yes; Mrs. Tufaro, yes; Ms. Crawford, yes; Mr. Innella, yes; Mr. Dunn, yes; Mrs. Snyder, yes; and Mr. Barbagallo, yes. The Motion was carried.

**CORRESPONDENCE**

The correspondence was reviewed. No formal action was taken.

**NEW APPLICATIONS**

**James A. Crawford – Private Road Variance – Block 19.07, Lot 15-20 High Point Drive – LUB 10-02:**

Appearing before the board was the applicant, James A. Crawford.

Mr. Haggerty indicated that the legal notice given by the applicant was insufficient and the application could not be heard this evening. The notice only states that the applicant is asking for relief to permit road improvements, but they are actually before the board to construct a single family home on an unimproved road. However, the board could review the application for completeness and further review the application as a concept to see if there are any other problems with the application before appearing at the next month's meeting.

Mr. Crawford did indicate that he is the property owner and would like construct a residential dwelling on an unimproved road. Mr. Haggerty indicated that this is a private road and in the past the board has required that the applicant upgrade the roads so that they become more passable for emergency vehicles.

The board reviewed the application for completeness. Mr. Knutelsky reviewed is report dated February 22, 2010 as to completeness:

Paragraph 2a: Checklist Item #13 – Copy of Soil Erosion/Sediment Control Application. The applicant has requested a waiver. Mr. Knutelsky recommends that this waiver not be granted because there will be more than 5,000 square feet of disturbance, therefore, by regulation they will have to supply a Soil Erosion and Sediment Control Plan and approval. He would recommend that this be a condition of approval. Therefore, it would be a waiver for completeness only, but it would be required as a condition of approval.

**MINUTES OF THE MONTAGUE TOWNSHIP LAND USE BOARD REGULAR MEETING HELD MARCH 11, 2010**

**NEW APPLICATIONS CONT.**

**James A. Crawford – Private Road Variance – Block 19.07, Lot 15-20 High Point Drive – LUB 10-02 cont.:**

Paragraph 2b: Checklist Item #14 – Copy of NJDOT/NJDEP applications. The applicant indicated on the checklist that this is not required. Mr. Knutelsky agreed that an NJDOT application is not required. However, a NJDEP application may be required for a Letter of Interpretation to show whether or not wetlands are on the site.

Paragraph 2c: Checklist Item #32 – Properties within 200 feet, Lot and Block Number, and Owner Outline of 200' Perimeter. Mr. Knutelsky indicated that a certified list of property owners within 200 feet should be obtained from the township Tax Assessor and provided to the Board prior to the public hearing. The board secretary indicated that this has been provided.

Paragraph 2d: Checklist Item #70 – NJDEP Letter of Interpretation Regarding the Presence/Absence of Wetlands on Property. The applicant has requested a waiver of this item. Mr. Knutelsky indicated that he would not recommend this waiver request be granted and would recommend that the applicant's provide a letter from their professionals stating the absence of wetlands/buffers on the property or provide the required DEP LOI. This should be a condition of any approval granted. He indicated that this could be waived for completeness. Mr. Crawford submitted to the board a letter from Cramer Ecological Services, LLC, a wetlands expert, dated March 8, 2010 indicating that there are no wetlands on the property. Mr. Knutelsky indicated that the letter is sufficient to satisfy this checklist item.

Paragraph 2e: Checklist Item #75 – Floor Plan, Elevation Views, and First Floor Elevation with Overall Building Height. The applicant has requested a waiver of this item. Due to the absence of residential dwellings in the vicinity of this proposed home, I would recommend the waiver be granted.

A Motion was made by Mr. Teufert and seconded by Mrs. Tufaro to deem the application complete. Roll Call: Mr. Teufert, yes; Mr. Ponce, yes; Mrs. Tufaro, yes; Ms. Crawford, yes; Mr. Innella, yes; Mr. Dunn, yes; Mrs. Snyder, yes; and Mr. Barbagallo, yes. The Motion was carried.

Mr. Knutelsky continued reviewing his report dated February 22, 2010:

Paragraph C1 – I note that the R-3 bulk standards for minimum lot size and minimum lot width are not met. Because this is an existing lot, it is grandfathered under Section 76-16 of the Land use Ordinance and thus, no bulk variances are required.

Paragraph C2 – I note that the proposed lot coverage for this development is labeled as 9.6% on the plans and is actually 2.7%. This should be revised on the plans. The board agreed that this can be a handwritten correction on the plans in order to save the applicant from printing more copies of the map.

Paragraph C3 – The applicant should provide information to the Board detailing the accessibility of emergency management vehicles to this property location. Mr. Knutelsky indicated that a letter should be obtained from Emergency Management that this road will be accessible for emergency vehicles. Mr. Haggerty indicated that the fire department in this township is volunteer and it may be difficult to obtain such a letter. He further indicated that there are 2 other homes on this street, one of which is 100' from the applicant's property and the board has made a substantive finding already.

Paragraph C4 – The roadway pavement detail on the plans should be revised to comply with Appendix A in Section 60-35 of the Land Use Ordinance. Specifically, the pavement courses should be revised to include a 2" Base Course, Mix I-2 and 1" Surface Course, Mix I-5.

**MINUTES OF THE MONTAGUE TOWNSHIP LAND USE BOARD REGULAR MEETING HELD MARCH 11, 2010**

**NEW APPLICATIONS CONT.**

**James A. Crawford – Private Road Variance – Block 19.07, Lot 15-20 High Point Drive – LUB 10-02 cont.:**

Paragraph C5 – I note that two other residential dwellings are currently situated along High Point Drive.

Paragraph C6 – Required development fees for affordable housing should be addressed with the Board.

Mr. Dunn commented Paragraph C4 of the engineer's report regarding the criteria in the ordinance for the pavement. Traditionally the previous applications before the board were required to have: 6" dense graded aggregate base and a 2" stabilized pavement and there was no top coat, which is the RSI minimum requirement. The reason he brings this up is if this applicant does a 1 \_" surface course, then there will be a bump in the road. The other applicant's on this road were only required to put the 2" stabilized base and no top coat. The board agreed to reduce the requirement for pavement as provided on the applicant's plans which is the 6" of dense graded aggregate base course and 2" of stabilized pavement.

It was noted that the applicant should re-notice for the April 8, 2010 Land Use Board meeting for the formal hearing.

**PUBLIC PARTICIPATION**

This meeting was opened to the public. There being no public participation, this meeting was closed to the public.

**AJOURN**

Having no further business, a Motion was made by Mr. Teufert and seconded by Ms. Crawford to adjourn the meeting. All were in favor. The Meeting was adjourned.

Minutes prepared by:

SHARON M. YAROSZ  
Land Use Administrator