

**South Harrison Township
Planning/Zoning Board of Adjustment
June 9, 2014**

The South Harrison Township Planning/Zoning Board of Adjustment held a regular meeting on June 9, 2014 at 7:00 p.m. in the South Harrison Township Municipal Building.

The meeting was called to order by Joseph Marino, Board Chair and led those present in the Pledge of Allegiance to the Flag.

Requirements of the "Open Public Meetings Act" were met.

Roll Call: James McCall – absent (L-7:03), John Horner – absent, Thomas Sorbello – present, Melvin Robertson – present, Joseph Marino – present, Heather Brown – present, Joseph Wille – present, Stephen Galati – present, Ronald Ambruster – absent, David Wade – present (L-7:04), John Maybrook – present, Gary Thompson, Board Solicitor – present, Steven Bach – Board Engineer – present, Candace Kanaplue – Township Planner – present, Celeste Keen, Secretary – present

Minutes:

Motion to approve the regular meeting minutes of April 14, 2014 was made by Melvin Robertson, second by Heather Brown. **Motion carried.**

New Business:

**Lopes, Frances
002-139-14
Use & Bulk Variance**

Joan Adam, solicitor for the applicant, apprised the Board regarding the site specifics of the lot in question. Ms. Adams introduced the applicant Frank Lopes and the applicant's planner Timothy J Kernan and Board professionals were sworn.

Mr. Lopes, Mr. Kernan and Board's professionals were sworn in to give testimony.

Candace Kanaplue reviewed the completeness portion of the Bach letter dated June 2, 2014.

Form A items 8 and 11; a waiver is recommended and
Form A items 22 and 24; a waiver may be granted contingent on approval.

Mr. Wade arrived and assumed his seat on the Board.

Motion to deem the application complete was made by Joseph Wille, second by Thomas Sorbello.

Roll Call: James McCall – abstain, John Horner – absent, Thomas Sorbello – yes, Melvin Robertson – yes, Joseph Marino – yes, Heather Brown – yes, Joseph Wille – yes, Stephen Galati – yes, Ronald Ambruster – absent, David Wade – abstain, John Maybrook – abstain
R.C.V.: 6 – yes', 0 – no's, 2 – abstentions. Motion carried.

Mr. Lopes 26 Bennett Court, Logan Township advised the Board that he started his excavating business in 2003 with one piece of equipment while living on the family farm by servicing the local farming community. His intention is to use the building for administrative office and the maintenance of equipment. He currently has 13-15 employees. Mr. Lopes stated that there

would be approximately five (5) employees on site routinely. Laborers to pick up/drop off for general maintenance. The hours of operation are approximately 7:00 am until 5:00 pm at job site. Administrative personnel may stay until 6-7:00 pm during summer. Supervisory meetings would be held weekly with 4-5 people in attendance. There will be no daily commercial traffic. Requested sign at intersection of 45 & Tomlin for identification purposes. Currently Mr. Lopes has 13 pieces of excavation equipment and has 3-5 projects at any given time.

Melvin Robertson noted that during the January 13, 2014 meeting Mr. Lopes came in voluntarily to answer questions regarding the building that was being constructed on the property. At that time you stated that the building would be used for farming equipment and that the construction equipment was on the property to facilitate the erection of the building. Mr. Lopes stated that the building is used to maintain farm equipment. Mr. Robertson asked how many pieces of farm equipment the applicant owns. Mr. Lopes advised that the building is to house farm and construction equipment. Mr. Robertson inquired as to which farmers in the area Mr. Lopes had worked for lately. Mr. Lopes advised that he assisted the Tomarchio farm with drainage.

Joseph Marino asked Mr. Lopes what other activities would be requested. Mr. Lopes advised that occasionally he would like to stock pile dirt.

Mr. Kernan submitted an "Expert Planning Testimony" document that was entered into evidence as Exhibit A-1. He advised that there is a gravel parking area adjacent to the garage/office that currently provides parking for approximately four (4) vehicles. The sides and rear of the building is also dirt/gravel where trucks and equipment can be stored while being screened from the roadway. There is little proposed traffic to the site as work assignments are done by phone. Most construction vehicles are left on job sites during off hours. No additional lighting is being proposed with the exception of what is required by Uniform Construction Code. The hours of operation are from 6:30 am to 7:00 pm generally during daylight hours.

Mr. Kernan referenced four (4) purposes of the Municipal Land Use Law (MLUL) in regards to the positive criteria; 40:55D-2a, g, i and j, 40:55D-2a – the applicant provides an important service to the community which will promote the general welfare and be an appropriate use of the land. 40:55D-2g – the subject property is at the intersection of a major collector and arterial roads in a growth area. The site is appropriately located for the proposed use. 40:55D-2i – the existing improvements are characteristic of a farming operation and have been developed in a manner which promotes a desirable visual environment. 40:55D-2j – the continued use of the majority of the property as active farmland will promote the conservation of natural resources.

Mr. Kernan stated that there will not be a substantial detriment to the public good. Mr. Kernan advised that there are only a few Professional Office/Residential (PO/R) zones and two (2) Light Industrial (LI) zones. The proposed use might only be permitted in the LI zones but that is unclear. The proposed site is a better location.

Mr. Bach noted that this proposed use would be permitted in the LI zone. Mr. Kernan realized he had not been working from the most recent Land Use Ordinance but maintained that the subject site is the most appropriate location.

Mr. Robertson inquired as to the plans for the dirt mounds currently on the property. Mr. Lopes advised that it is being sold to the Township for improving the soccer fields at Stewart Park.

Open Meeting to the Public:

Motion to open the meeting to the public on this matter only was made by Joseph Wille, second by David Wade. **Motion carried.**

Edward Swank of 740 Tomlin Station Road appeared before the Board and was sworn in. Mr. Swank advised that he has been a resident for 20+ years. He is retired from a career in the construction business. He doesn't feel safe allowing his grandchildren to ride their bicycles on the cul de sac of his driveway. He believes that Mr. Lopes' business will depreciate his home value. Mr. Swank also advised the Board of his concern regarding the safety of the bicyclists and runners that use Tomlin Station Road.

Willis Graham of 734 Tomlin Station Road appeared before the Board and was sworn in. Mr. Graham stated that he chose the location of his property carefully and never anticipated a construction company in the area. Tomlin Station Road is a 35 mph with houses along the roadway and does not believe that it is conducive to a construction company. There are pipes under the roadway and the heavy trucks could cause damage. Mr. Lopes stated that trucks from the landfill may sit loaded, though covered, and be power washed on the property. Toxins from the landfill would be in water runoff. Mr. Graham believes that the delineation of the construction business is extremely important.

Catrina Yucis of 727 Tomlin Station Road appeared before the Board and was sworn in. Ms. Yucis stated that she is Mr. Lopes' sister and that she has lived on or near the farm her whole life. Tomlin Station Road has been getting busier over time and that the additional residences and businesses that have nothing to do with her brother's business have been contributing to that for years.

Bill O'Malley of 712 Tomlin Station Road appeared before the Board and was sworn in. Mr. O'Malley advised that when he moved into the Township he was given a certificate that stated that there was a landfill within a mile of his home but that he was not notified by the applicant of this hearing. It was explained to Mr. O'Malley that the law requires residents within 200' of the property in question of a variance to be notified. Mr. O'Malley advised that the building is large and unsightly and will be a detriment to surrounding homes values.

Laurie Liccardello of 748 Tomlin Station Road appeared before the Board and was sworn in. Ms. Liccardello stated that heavy equipment, dirt on the road, noisy machinery in the early morning and late evenings all occurred while the property was only an active farm. She advised that Mr. Lopes is creating jobs.

Rita Lopes of 725 Tomlin Station Road appeared before the Board and was sworn in. Ms. Lopes stated that the property has been in their family for generations and that farming equipment has been using Tomlin Station Road for longer than most of the homes have been built.

Edward English of 728 Tomlin Station Road appeared before the Board and was sworn in. Mr. English does not believe that five (5) acres are being utilized for farming. The business has been operating there since January 2014.

Thomas Farner of 717 Tomlin Station Road appeared before the Board and was sworn in. Mr. Farner does not believe that Mr. Lopes would contaminate the soil that his family lives on.

Bill O'Malley inquired as to the tax rate of the building. Mr. Marino answered that it would be assessed commercial.

Ed Swank stated that the noise he has been hearing from the building is construction not farming.

Emily O'Malley stated that a tractor trailer blocked access to the intersection of Tomlin Station Road and State Highway 45 and that she had to travel around.

Susan Farner of 717 Tomlin Station Road appeared before the Board and was sworn in. Ms. Farner stated that children should not play near any county roadway as it is not safe practice.

Close Meeting to the Public:

Motion to close the meeting to the public on this matter only was made by David Wade, second by Joseph Wille. **Motion carried.**

Mr. Thompson asked if Mr. Lopes had obtained a Letter of Interpretation (LOI) from the NJDEP as stipulated in Resolution R-11-14. Ms. Adams advised that she was not aware of the LOI condition of approval.

Ms. Brown asked Mr. Lopes how the work is divided between the two (2) locations. The administrative work is done from the residence at 26 Bennett Court and the maintenance work is done from the Tomlin Station Road building.

Mr. Marino stated that Mr. Lopes has put the Township in a difficult position of having a non-conforming use and that the best the Board could do now would be to set up proper regulations for the betterment of all affected.

Ms. Adams offered to withdraw the Site Plan waiver request and to come back to the Board with a Site Plan application.

Motion to deny the Use Variance was made by Stephen Galati, second by Heather Brown.

Roll Call: James McCall – abstain, John Horner – absent, Thomas Sorbello – no, Melvin Robertson – yes, Joseph Marino – no, Heather Brown – yes, Joseph Wille – no, Stephen Galati – yes, Ronald Ambruster – absent, David Wade – no, John Maybrook – abstain

R.C.V.: 3 – yes', 4 – no's, 0 – abstentions. Motion carried.

Motion to continue the public hearing to the August 11, 2014 meeting was made by Heather Brown, second by Thomas Sorbello.

Roll Call: James McCall – abstain, John Horner – absent, Thomas Sorbello – yes, Melvin Robertson – yes, Joseph Marino – yes, Heather Brown – yes, Joseph Wille – yes, Stephen Galati – yes, Ronald Ambruster – absent, David Wade – yes, John Maybrook – abstain

R.C.V.: 7 – yes', 0 – no's, 0 – abstentions. Motion carried.

Open Meeting to the Public:

Motion to open the meeting to the public was made by Thomas Sorbello, second by David Wade. **Motion carried.**

No public present.

Close Meeting to the Public:

Motion to close the meeting to the public was made by Thomas Sorbello, second by Melvin Robertson. **Motion carried.**

Payment of the Bills:

Motion to approve payment of the bills was made by Thomas Sorbello, second by Heather Brown.

Roll Call: James McCall – yes, John Horner – absent, Thomas Sorbello – yes, Melvin Robertson – yes, Joseph Marino – yes, Heather Brown – yes, Joseph Wille – yes, Stephen Galati – yes, Ronald Ambruster – absent, David Wade – yes, John Maybrook – yes

R.C.V.: 9 – yes’, 0 – no’s, 0 – abstentions. Motion carried.

Release of Escrow:

Motion to approve the release of escrow accounts was made by Joseph Wille, second by Thomas Sorbello.

Roll Call: James McCall – yes, John Horner – absent, Thomas Sorbello – yes, Melvin Robertson – yes, Joseph Marino – yes, Heather Brown – yes, Joseph Wille – yes, Stephen Galati – yes, Ronald Ambruster – absent, David Wade – yes, John Maybrook – yes

R.C.V.: 9 – yes’, 0 – no’s, 0 – abstentions. Motion carried.

Mr. Robertson asked Mr. Thompson what recourse the Board has when someone lies to them under oath. Mr. Thompson advised that it is perjury and any complaint would go to the GC Prosecutor’s Office. Mr. Thompson added that it would be extremely difficult to prosecute.

The Board Secretary agreed to e-mail Mr. Keenan’s hand out which was designated Exhibit A-1 to the Board for their review.

Adjournment:

Motion to adjourn was made by Melvin Robertson, second by David Wade. **Motion carried.**

Respectfully submitted,

Celeste Keen
Board Secretary

Information Only