

**MINUTES OF THE HARDYSTON TOWNSHIP ZONING BOARD OF ADJUSTMENT  
MEETING HELD OCTOBER 7, 2004**

**CALL TO ORDER:** The meeting was called to order by Chairman Miller at 7:30 p.m.

**STATEMENT OF COMPLIANCE:** Pursuant to the Open Public Meetings Act, Chapter 231, P.L. 1975, adequate notice as defined in Section 3D of Chapter 231 P.L. 1975 has been made to the New Jersey Herald and is also posted on the Bulletin Board at the Hardyston Township Municipal Building.

**ROLL CALL:**

William Walsh	Present
Santo Verrilli	Present
Gerald Laughlin	Present
David Toye	Present
Gary Bargiel	Present
Candace Leatham	Excused
Carl Miller	Present
Mary Ann Murphy (Alt.1)	Excused
Roger Kabbash (Alt. 2)	Present

**OTHERS PRESENT:** Michael G. Vreeland, P.E., Richard Briigliodoro, Esq., Anne-Marie Wilhelm, Secretary.

**APPROVAL OF MINUTES:** A motion to approve the *Minutes of the Hardyston Township Zoning Board of Adjustment Meeting Held September 2, 2004*, was made by Santo Verrilli and seconded by William Walsh. Roll Call: William Walsh – yes, Santo Verrilli – yes, Gary Bargiel – yes, Carl Miller – yes. The motion carried.

**RESOLUTION: ZB-9-04-1, Barrett, Pat. “D” Variance, “C” Variances, Preliminary Site Plan, Minor Subdivision, Block 16, Lot 3.01 and Lot 3.02:** A motion to adopt the memorializing resolution was made by Gary Bargiel and seconded by William Walsh. Roll Call: William Walsh – yes, Santo Verrilli – yes, Gary Bargiel – yes, Carl Miller – yes. The motion carried.

**APPLICATION:**

**ZB-10-04-1, Mark J. Fredericks, Appeal, Block 60, Lot 14:** William Walsh recused himself. James T. Bryce, Esq., appeared on behalf of the Appellant. Richard Briigliodoro, Esq., informed the Board that notice was sufficient. The Board reviewed two waiver requests presented by the Appellant for provision of maps prepared by an engineer or architect and a graphic or written description of the area surrounding the subject property. Mr. Bryce submitted that the matter was primarily a legal issue. The Board granted the waivers. Michael Levine, Esq., appeared on behalf of All County Fuel Oil Company, Inc.

Mr. Bryce presented an overview of the Appellant’s position. He stated that the Appellant seeks an appeal of the Zoning Officer’s determination issued by letter on July 29, 2004. He stated the Zoning Officer’s determination that the existing use of the property was a conforming and permitted use in the B2 Zone is incorrect. Mr. Bryce stated the current uses of the property are nonpermitted as a fuel oil distribution business is not within the purview of the Ordinance.

Michael D. Kauker, P.P., appeared on behalf of the Appellant. He was sworn, qualified, and accepted by the Board as an expert witness. Mr. Kauker stated that he believed that the current use of the property is not permitted by the Ordinance and as the current use is not specifically listed in the Ordinance, it is therefore not permitted in the zone. Referencing a book of development definitions by “Moskowitz,” Mr. Kauker stated that the current use is not a “professional office” use or a principal use of the property. Further, he presented that the storage of fuel in the vehicles overnight is prohibited by §185-15, which states that “no storage of

merchandise, articles, or materials shall be permitted in any zone.” He summarized his objections to the Zoning Officer’s determination and concluded that the HVAC and fuel oil company is not a permitted use and outdoor storage of fuel oil in the delivery trucks is also prohibited. Mr. Kauker referred to §185-5(b) and stated that no use or structure shall be permitted in the Township that is not listed as a permitted accessory or conditional use or that is permitted by the Board of Adjustment following §185-10(a). Mr. Kauker confirmed that he believed that the Ordinance did not specifically regulate the storage of trucks on the property. The Applicant stated that §185-80(b) addresses standards for parking areas in nonresidential zones and advised that parking areas, loading areas, and driveways shall be surfaced in a manner that minimizes surface water run-off. It was noted that the trucks are stored in a unsurfaced area. Mr. Bryce confirmed that a former use of the property was a fuel oil business.

Chairman Miller opened the meeting to the public. Michael Levine, Esq., appeared on behalf of All County Fuel Oil Company, Inc. Mr. Levine stated that the definition of professional office noted by the Appellant was not incorporated into the zoning ordinance. Mr. Kauker stated that the zoning officer determined that the existing use of the property is that of a professional office and it is the Appellant’s position that the existing use of the property in no way resembles a professional office. Mr. Levine questioned if the Applicant would object if the trucks stored overnight on the property did not contain heating oil. Mr. Kauker stated that this would not influence his opinion. It was noted that Ordinance §185-85 allows the Board to permit a use if it is similar to a specifically listed use.

Mr. Levine asked if a gravel surface in the parking area would help minimize run-off as it is less impervious than a paved surface. Mr. Kauker stated he was not an engineer and could not answer the question.

Mr. Levine commented that Mr. Schaeffer operated the property for approximately 35 years as a fuel oil business. He asked if the zoning application form was reviewed. He asked if the Appellant knew at what time the ordinance would have been passed to require the permitted uses in the B-1 and B-2 zones that are currently in place. Mr. Kauker stated he did not know.

Mr. Levine stated that it was unknown as to whether the use is a preexisting nonconforming use or whether the business use was permitted.

No other members of the public addressed the Board. The meeting was closed to the public.

Barry Zeek, President of All County Fuel Oil, Inc., was sworn. He presented an overview of operations at the site. Mr. Zeek stated that upon obtaining a zoning permit to operate, he contracted to purchase the property. Mr. Zeek stated that upon purchasing the property, on-site storage tanks were removed and the building was gutted. He stated an investment of approximately \$100,000 was made into the building to turn it into an office. Mr. Levine noted that there are currently no storage tanks on the premises and the facility is being used as a professional office.

With reference to the uses of the building, Mr. Zeek stated that the office area is used to conduct day to day business. He stated that there are two full-time secretaries and himself in the office. He stated that everything to do with the customer base is stored there along with the computers. Two service vehicles, which HVAC technicians take home at night, are on the premise periodically. It was noted that HVAC technicians are dispatched from their homes. Mr. Zeek stated that the office is basically a sales office. He stated that drivers pick-up their trucks at approximately 5:30 a.m., go to a depot to pick-up product, and proceed to deliver to residential and commercial locations. He stated that when the trucks return, 99% of the time they have off-loaded the product. He confirmed that it is the intent of the business that the vehicles will be empty at the end of the day. He stated that the trucks are not used as a defacto means of storing product on the property. Mr. Zeek noted that there may be residual amounts of product.

Mr. Zeek noted that on a day where residential demand is low, drivers off-load at commercial sites. With reference to non-office areas, Mr. Zeek stated there is one garage bay on site that is used for storing air conditioning or heating equipment.

Chairman Miller opened the meeting to the public for questions and or comments. There were no participants. The meeting was closed to the public.

Mr. Bryce asked where the trucks fill up. Mr. Zeek stated they fill up in Rockaway or Mountain Lakes and stated that the truck holds 2800 gallons. Mr. Bryce asked if it were possible to not empty the tank during the day. Mr. Zeek stated that on a low demand day, commercial accounts

are used to off-load the excess. Mr. Zeek stated that there could be times when the truck returns with oil and that it would be rarely, if ever. Mr. Zeek confirmed that the business is regulated by the state and federal government.

Chairman Miller opened the meeting to the public for questions or comments. Jay McDaniel was sworn. He asked if the business offered 24-hour emergency service. Mr. Zeek stated that this service was available. No other members of the public addressed the Board. The meeting was closed to the public.

Arden Paul Svedman, Zoning Official, was sworn. He stated that All County Fuel Oil Company, Inc., applied for a zoning permit for a Fuel Oil Company and HVAC. He stated that he observed an office area, a tanker truck, HVAC equipment, debris at the rear of the building, and service vehicles on site. Mr. Svedman clarified that garbage is not permitted in front of the building. He confirmed that a tanker truck was sitting in the lot during his inspection. Mr. Bryce reviewed the zoning application with the zoning officer. He asked if the documented purpose of the permit corresponded with the applicants description of the proposed use. Mr. Svedman stated that he had received a letter prior to receiving the permit application. Richard Briigliodoro, Esq., noted that this letter, dated 11/14/03 and submitted as Exhibit A on behalf of All County Fuel Oil Company, Inc., stated "The land usage will be multi-purpose, housing the office operations and the assets of our Heating/Air Conditioning and Fuel Oil Company. Once we have your approval, we would like to begin making immediate improvements to the building and property."

Chairman Miller opened the meeting to the public. No members of the public addressed the Board. The meeting was closed to the public.

Mr. Levine summarized the position of All County Fuel Oil, Inc., and identified a threshold issue stating that the appeal was not filed in a timely manner. He stated that the Appellant presented that they acquired knowledge of the use of the property in April and elected to submit an inquiry to the Zoning Office several months later. Mr. Levine presented that the Zoning Officer responded and they filed the appeal within 20 days of the Officer's determination. Mr. Levine presented that case law establishes an appeal period of 20 days from the issuance of the permit. Mr. Levine noted that the Appellant is not a property owner in town and is an economic competitor. He stated that he did not believe there was an infringement of the Appellant's property rights. He stated that All County Fuel Oil, Inc., was not using the property contrary to the permitted uses in the zone. Mr. Levine stated that the Ordinance acknowledges that all uses could not be listed but similar uses would not violate the spirit and intent of the Master Plan or Zoning Ordinance.

Mr. Bryce summarized the Appellant's position and stated that the Ordinance does not contemplate a trucking or distribution center in the B-1 or B-2 Zone because said uses are listed in the I-2 Zone. He stated the primary use of the site is a terminal for fuel oil trucks. Mr. Bryce stated that the Zoning Permit is invalid on its face and the officer permitted a use that was not applied for. With regard to standing, Mr. Bryce presented that per N.J.S.A. 40:55-D72, appeals to the Board of Adjustment may be taken by any interested party affected by any decision of an administrative officer of the municipality based on or made in the enforcement of the zoning ordinance or official map. He submitted that the letter that Mr. Svedman issued was a determination and the threshold. He stated that the standing comes from that twenty-day mark and the knowledge of the use came from the inquiry. Mr. Bryce presented that the Appellant is an interested party because there is a deed restriction on the property, which prohibits the use of the property as a fuel oil distribution business in any capacity. He presented that the prior use was abandoned. He stated the Appellant has a legal interest in the property and a competitor that is seeking to enforce a zoning ordinance is not required, as determined by case law, to reside in the town.

Board members discussed the matter. Chairman Miller stated that he believed the site was operating as a professional office. He noted there was no substantial storage of product or storage tanks on site. He stated there was no intent to operate as a distribution depot. Michael G. Vreeland, P.E, stated that All County Fuel Oil Company, Inc., has the ability to dispatch. He stated that there are no storage tanks, pumps, transfer station, loading or unloading areas on site. Mr. Kabbash noted there are similar uses in the area. Richard Briigliodoro, Esq., confirmed that a deed restriction is a private issue between parties. Mr. Toye noted that the automated nature of delivery makes storage in the trucks more unlikely. Mr. Bargiel noted that the use appears to be that of a professional office.

Addressing legal issues presented by the matter, Richard Briigliodoro, Esq., stated that the Courts have tried to take the broad or liberal view of standing in land use cases as they would rather have the issue brought forward to the Board's attention so that valid zoning issues can be addressed, which goes beyond the parties' particular issue and speaks to the community at large. He recommended that the Board make a decision based on the merits of the case. With reference as to whether the appeal was filed in time, Mr. Briigliodoro cited the M.L.U.L. 40:55D (72). He summarized the competing arguments. He suggested that the Board take a liberal view to allow a decision to be made on the merits.

Michael G. Vreeland, P.E, informed the Board of his observations during his field inspection. He stated that he observed offices, computer terminals, and rest rooms in the building. He stated there is a gargage door bay behind the building and inside the bay is a heating and air conditioning unit. Mr. Vreeland stated that the back of the property is basically level and gravel covered. He stated there were two service trucks on site at the time of his inspection. He stated he did not see any indication of any above ground storage facities other than a small heating oil tank probably associated with the office building.

A motion to agree with the Zoning Officer's determination was made by Santo Verrilli and seconded by Gary Bargiel. Roll Call: Santo Verrilli – yes, Gerald Laughlin – yes, David Toye – yes, Gary Bargiel – yes, Roger Kabbash – yes, Carl Miller – yes. The motion carried.

Chairman Miller called a 5-minute recess at 9:30 p.m. The meeting resumed at 9:35 p.m.

**ZB-6-04-1, Brennan, T.M., Use Variance, Preliminary Site Plan, Block 64, Lots 4.03 and 4.04:** John Ursin, Esq., appeared on behalf of the Applicant. He clarified that the application was for a use variance and preliminary site plan only. Richard Briigliodoro, Esq., stated that notice was sufficient. William Beardslee, P.E., P.P., L.S., was sworn. The Board reviewed the Schedule A checklist. The Board granted waivers for completeness only. The Board waived Administrative Checklist submission deficiencies for completeness only. The Applicant agreed to provide information as requested.

Ted Brennan was sworn. He stated that the purpose of the proposed building is to store equipment and tools related to the existing business. He stated that no work would be performed in the proposed building and stated that the building would not be a second principal use of the property. He stated that he has an agreement with the owners of the adjacent lot and would represent their interest in the application.

Mr. Beardslee presented that the proposed building would be located on the north side of Block 64, Lot 4.04. He stated the proposed building is 40' x 80' and would sit 25' from the rear property line and 32.9' from the westerly property line. Mr. Beardslee indicated that access would be via the existing driveway off of Route 94 along the westerly property line to a ten-car parking area adjacent to the building. He stated vehicles could enter the building from the westerly end through garage doors. He stated loading and unloading would take place within the building. With reference to grading, Mr. Beardslee stated that the area and the adjoining property constitute a knob or a pile of sand. The proposed grading for the development of Lot 4.03 shows a portion of this pile being removed. It was determined that it would be in both property owner's interests to level out both properties so it would be a congruous blend from one site to another. He stated that by bringing the grades down to a more managable level, the building elevation proposed to the rear would be approximately the same floor elevation as the existing offices. Mr. Beardslee stated that if the hill were not knocked down, the proposed building would be substantially higher and would therefore be more visible from Route 94.

Mr. Beardslee noted that a small retaining wall would be required around the southeast corner of the building. He stated that stormwater would be accumulated from the proposed parking lot and put into a small detention area to the north side of proposed building and drained down the driveway to the existing detention basin located in front of Lot 4.03. It was noted that additional stormwater from the roof of the building would be captured and discharged through a series of drywells located to the easterly side of the building. Mr. Beardslee noted that there are no additional facilities proposed and therefore no expansion to the septic system. He stated that the site is serviced by a well and no additional signage is proposed. With reference to lighting, 14' lights are proposed with an evergreen buffer to be planted between the two sites and additional landscaping along the driveway entrance and around the parking area. Mr. Beardslee reviewed soil sediment control measures that would be implemented and showed the limits of disturbance.

Mr. Beardslee stated that the use is an ancillary use to the construction company. He stated that as the building is an accessory use, the building meets the zoning setbacks. He stated that the building height is limited to 15' in the zone and the proposed building is 26' in height.

Mr. Beardslee stated that the height variance can be granted because of its compatibility with the intent of the Municipal Land Use Law. He noted that it goes to the decreasing of traffic impact as Mr. Brennan would not have to go off site to retrieve materials. He stated that the proposed height is less than the 35' allowed for any principle building and it would not be significantly higher than the structures in the neighborhood. Addressing the neighborhood scheme,

Mr. Beardslee presented that the area is mixed. He stated the use would not be a detriment to the varied zoning scheme in the area. With regard to the sight lines from Route 94, Mr. Beardslee stated that the building view would be buffered by the horizontal and vertical components. He stated that the building would not have a substantial visual impact.

Board members reviewed a report prepared by Michael G. Vreeland, P.E., dated October 6, 2004. The Applicant agreed to comply with Mr. Vreeland's recommendations and provide the information requested.

Chairman Miller opened the meeting to the public. There were no participants. The meeting was closed to the public.

A motion to approve the application for a use variance for the accessory structure on the site was made by Gary Bargiel and seconded by Gerald Laughlin. Roll Call: William Walsh – yes, Santo Verrilli – yes, Gerald Laughlin – yes, David Toye – yes, Gary Bargiel – yes, Roger Kabbash – yes, Carl Miller – yes. The motion carried.

A motion to approve the application for preliminary site plan and a "C" variance for the height of the building was made by William Walsh and seconded by Gary Bargiel. Roll Call: William Walsh – yes, Santo Verrilli – yes, Gerald Laughlin – yes, David Toye – yes, Gary Bargiel – yes, Roger Kabbash – yes. The motion carried.

**PUBLIC PARTICIPATION:** Chairman Miller opened the meeting to the public. There were no participants. The meeting was closed to the public.

**CORRESPONDENCE:** Board members reviewed a certification forwarded by Judith A. Babinski, Esq. The Certification dated 10/1/04 and signed by David D. Karpiak, Site Acquisition Specialist for the New Jersey West Market, was forwarded in response to the Board's request for documentation that Applicant AT&T Wireless complied with conditions of approval. It was noted that the Certification was acceptable.

**BILLS:** A motion to approve a recommendation to the Council to pay the bills cited below was made by Santo Verrilli and seconded by Gary Bargiel. All were in favor. The motion carried.

Weiner Lesniak, LLP

Invoice # 738494AA	Zoning OE	\$ 280.00
Invoice # 738495AA	ZB-6-04-1, Brennan, T	250.00
Invoice # 738496AA	ZB-7-03-1, ATT	422.60
Invoice # 738497AA	ZB-9-04-1, Barrett, P	215.00

**ADJOURNMENT:** Having no further business, a motion to adjourn was made by William Walsh and seconded by David Toye. All were in favor. The motion carried. The meeting was adjourned at 10:35 p.m.

Minutes respectfully submitted by:

Anne-Marie Wilhelm