

**TOWNSHIP OF MORRIS
BOARD OF ADJUSTMENT
REORGANIZATION AND REGULAR MEETING
MINUTES
JANUARY 25, 2010**

Call to Order

The re-organization and regular meeting of the Township of Morris Board of Adjustment was called to order on Monday evening, January 25, 2010, at 7:31 P.M. in the Municipal Building, 50 Woodland Avenue, Township of Morris.

Statement of Adequate Notice

Sonia Santiago issued the following:

"I hereby announce and state that adequate notice of this meeting was provided by the Secretary of this Board of Adjustment by preparing a notice dated January 19, 2010 specifying the time, date and place of this meeting, posting such notice on the bulletin board in the Municipal Building; filing said notice with the Clerk of the Township of Morris; forwarding the notice to the Morris County Daily Record and the Morris News Bee, and forwarding, by mail, the said notice to all persons on the request list, and I hereby hand a copy of such notice to the Secretary of the Board of Adjustment for inclusion in the minutes of this meeting, all of the above actions being in accordance with N.J.S.A. 10:4-6, et seq., Open Public Meetings Act."

The Pledge of Allegiance was led by Ms. Sonia Santiago, Board Secretary

Roll call of Board Members and Professionals

Members Present

Mr. Timothy Kronk
Mr. Thomas A. Luby
Mr. Rick Haan
Mr. Donnell Williams
Mr. Paul Woodford
Ms. Kathleen Kalaher, Alternate #1
Ms. Joen Luy Ferrari, Alternate #2

Members Absent

Mr. John Christensen
Mr. James C. Allison

Also Present

Mr. Rich Oller, Board Attorney
Mr. James Slate, Township Engineer
Mr. Adrian Humbert, Township Planner
Ms. Sonia Santiago, Board Secretary

Professional Member Absent

Ms. Tirrell Loftin, Zoning Officer

Reorganization

Oath of Allegiance and Oath of Office administered by Mr. Rich Oller, Esquire to the following:

- Mr. Donnell Williams
- Ms. Kathleen Kalaher, Alt. #1
- Ms. Joen L. Ferrari, Alt. #2

Sonia Santiago asked for nominations for Chairperson for the year 2010. Mr. Luby nominated Mr. Kronk as chairperson seconded by Mr. Haan, no other nominations were made. Nominations were closed. On motion duly made, seconded and unanimously carried, Mr. Kronk was elected Chairperson.

Mr. Kronk was seated as Chairman.

Mr. Kronk, Chairman asked for nominations for Vice-Chairman for the year 2010. Mr. Kronk nominated Mr. Haan second by Mr. Luby, no other nominations were made. Nominations were closed. On motion duly made, seconded and unanimously carried, Mr. Haan was elected Vice Chairman for the year 2010.

Mr. Haan moved, seconded by Mr. Williams, and unanimously carried, that the following resolutions were adopted as presented naming Mr. Richard Oller, Esquire as Board Legal Counsel, Mr. Adrian Humbert, Professional Planner and Mr. Ronald Graiff, Radio Frequency Consultant for the year 2010:

DESIGNATION OF BOARD LEGAL COUNSEL

WHEREAS, the Board of Adjustment of the Township of Morris has need for the professional services of Legal Counsel; and

WHEREAS, the practice of law is a recognized profession, regulated by law requiring extensive and specialized training and as such is an exception to the bidding requirements set forth in N.J.S.A. 40A:11-5 et. seq.; and

WHEREAS, the anticipated term of this contract is one year; and

WHEREAS, Rich Oller, Esq. of the firm OLLER AND LUZZI has completed and submitted a business entity disclosure certification which certifies that OLLER AND LUZZI has not made any reportable contributions to a political or candidate committee in the Township of Morris in the previous one year, and that the contract will prohibit OLLER AND LUZZI from making any reportable contributions through the term of the contract; and

WHEREAS, the Chief Financial Officer of the Township of Morris has filed a certificate of availability of funds in the amount of \$900.00;

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Morris, Morris County, New Jersey, that the Chairman and Board Secretary are authorized to enter into an agreement for the period January 1, 2010 to December 31, 2010 to engage Richard Oller, Esq., as legal counsel at the rate of \$125.00 per hour with a minimum of \$187.50 for attendance at regular and special meetings of the Board. The total to be paid shall not exceed \$900.00 to be charged to the Board of Adjustment, Other Expense budget.

BE IT FURTHER RESOLVED that the Business Disclosure Entity Certification and the Determination of Value be placed on file with this resolution; and

BE IT FURTHER RESOLVED that an official notice of this action shall be published in accordance with the law.

DESIGNATION OF BOARD PLANNING CONSULTANT

WHEREAS, the Board of Adjustment of the Township of Morris has need for the professional services of a Planning Consultant; and

WHEREAS, the practice of land use planning is a recognized profession, regulated by law requiring extensive and specialized training and as such is an exception to the bidding requirements set forth in N.J.S.A. 40A:11-5 et. seq.; and,

WHEREAS, the anticipated term of this contract is one year, and

WHEREAS, Adrian P. Humbert, AICP/P.P of the firm Adrian Humbert Associates has completed and submitted a business entity disclosure certification which certifies that Adrian Humbert Associates has not make any reportable contributions to a political or candidate committee in the Township of Morris in the previous one year, and that the contract will prohibit Adrian P. Humbert, from making any reportable contributions through the term of the contract, and

WHEREAS, the Chief Financial Officer of the Township of Morris has filed a certificate of availability of funds in the amount of \$1,000.00;

NOW, THEREFORE, BE IT RESOLVED by the Board of Adjustment of the Township of Morris, Morris County, New Jersey that the Chairman and Board Secretary are authorized to enter into an agreement, dated January 25, 2010, for the period January 1, 2010 to December 31, 2010, with Adrian P. Humbert, AICP/P.P. of Adrian Humbert Associates at the rate of \$125.00 per hour with a minimum of \$180.00 for attendance at regular and special meetings of the board. The total expenditure shall not exceed \$1,000.00 to be charged to the Board of Adjustment, Other Expense budget.

BE IT FURTHER RESOLVED that the Business Disclosure Entity Certification and the Determination of Value be placed on file with this resolution. and

BE IT FURTHER RESOLVED that an official notice of this action shall be published in accordance with the law.

RADIO FREQUENCY CONSULTANT – RONALD E. GRAIFF, P.E.

WHEREAS, the Township of Morris Board of Adjustment has need for the professional services of a Radio Frequency Engineer; and

WHEREAS, this practice is a recognized profession, regulated by law requiring extensive and specialized training and as such is an exception to the bidding requirements set forth in N.J.S.A. 40A:11-5 et. seq.; and

WHEREAS, charges incurred at the rate of \$ 220.00 per hour will be billed solely to the developers escrow account;

NOW, THEREFORE, BE IT RESOLVED by the Township of Morris Board of Adjustment that Mr. Ronald E. Graiff, PE be hired as a consultant to the Board of Adjustment to particularly discuss the Wireless site plan applications with the Board, applicant's and professionals to clarify certain issues and concerns of the Board. His appearance before the Board may be required in connection with this consultation.

An official notice of this action shall be published in accordance with the law.

* * *

On a motion made by Mr. Luby and second by Mr. Williams, and unanimously carried, the following **Professional Appointments** were made for the year 2010:

Board Engineer – James R. Slate, P.E.
Alternate Board Engineer - David Hansen, P.E.
Alternate Board Engineer – Bernard G. Senger III, P.E.
Board Secretary – Sonia Santiago

On motion made, seconded and unanimously carried, Mr. Woodford is appointed as a designee for the

Open Space Committee.

On motion made by Mr. Luby, and seconded by Mr. Woodford, and unanimously carried, the following resolution was adopted setting meeting dates for the year 2010/January 2011

**NOTICE OF SCHEDULED MEETINGS
FOR THE YEAR 2010 AND JANUARY 2011**

BE IT RESOLVED, that the Board of Adjustment of the Township of Morris, County of Morris, State of New Jersey, will meet to consider and act upon public business at **7:30 P.M.**, prevailing time, on each of the dates set forth below, for the year 2010, in the Municipal Building, 50 Woodland Avenue, Township of Morris, New Jersey:

January 25th, 2010
February 22nd
March 22nd
April 26th
May 24th
June 28th
July 26th
August 23rd
September 27th
October 25th
November 22nd
December 13th
January 24th, 2011

BE IT FURTHER RESOLVED that additional meetings, if required, will be at the call of the Chairman with the proper notification, and

BE IT FURTHER RESOLVED that the Secretary is authorized and directed to:

- a.) Post said meeting schedule and maintain the same posted throughout the year 2010 on the bulletin board in the Municipal Building of the Township of Morris on Woodland Avenue;
- b.) Mail a copy of same to the Morris News Bee, the Morris County Daily Record and the Star Ledger.

On motion made by Mr. Woodford, and seconded by Ms. Kalaher, and unanimously carried, the following resolution was adopted designating the official newspapers.

DESIGNATION OF OFFICIAL NEWSPAPERS

WHEREAS, Chapter 231 of the Public Laws of the State of New Jersey for 1975 (N.J.S.A. 10:4-6 to 10:4-21) known as the "Open Public Meetings Act", requires adequate notice of meetings of public bodies, as therein defined, and in the manner therein set forth, and prescribed certain other procedures to be followed by such bodies.

BE IT HEREBY RESOLVED by the Board of Adjustment of the Township of Morris, Morris County, New Jersey, this 25th day of January 2010, as follows:

1. The Morris News Bee is the official paper of the Board of Adjustment (as an alternate, the Morris County Daily Record or the Star Ledger) and is hereby designated as the newspaper to receive notice of meetings as required by any and all sections of the Open Public Meetings Act, said newspapers are most likely to inform the local public of such meetings.

2. The location of posting of notice of meetings shall be the bulletin board in the Municipal Building of the Township of Morris, located at 50 Woodland Avenue, where notices of this kind are normally posted.

Regular Meeting

On motion duly made, seconded, and unanimously carried, the minutes of the December 14, 2009 meeting were approved as circulated and placed on file in the office of the Board of Adjustment.

BA-03-08 T-Mobile Northeast, LLC (formerly Omnipoint Communications, Inc.)
Block 8608, Lot 15, 11 Old Turnpike Road, OL-40 zone. Section D.

Applicant proposes to extend an existing approved wireless telecommunication tower from a height of 110 feet to 120 feet and install four additional antennas at a height of 117' 10" also to install equipment cabinets at the base of the tower.

Mr. Oller, Board Attorney, announced that per the applicant Attorney's request the application for T-Mobile will not be heard at tonight's meeting due to plan review. Applicant is required to notice the new hearing date. Applicant's attorney also granted the Board an extension of time until May 31, 2010. The Board secretary was instructed to send a letter to the attorney informing him of the new meeting date.

**A Certified Shorthand Reporter was present for the following applications.
Mr. Luby recused himself from the following application.**

Public Hearings

BA-20-07 Jeffrey Hind
Block 10315, Lot 1, 26 Emmet Avenue, RB-7 zone. Section C & D.

Continuation from the October 26, 2009 and November 23, 2009 public hearings, applicant is seeking a "d (2)" use variance to expand the existing non conforming commercial use of the premises which is involved in the sales, service and repair of outdoor power equipment; a "c" bulk variance for a building addition creating a side yard setback of 10 feet where 15 feet is required; a building coverage of 31.9% where 30% is permitted and other related improvements.

Mr. Lawrence Calli, Attorney for the applicant entered his appearance and made a brief summary of the application to the Board. Mr. Calli stated that since we met back in October the applicant has made some improvement by removing the existing shed and the equipment in front of the building.

The following professionals being sworn in by the Board Attorney appeared to be heard.

Fred Meola, Professional Engineer
Michael Tobia, Professional Planner

No exhibits were submitted as evidence.

Summary of Testimony – Fred Meola, Professional Engineer

Mr. Meola stated that there is a small paved area to the southeast of the building where various pieces of lawn mowers are stored the building is 2104 square feet. The shed has been removed since our last meeting; the proposal is to upgrade the site. We are proposing to enhance the access to the parking. There will be a handicap parking space which it doesn't exist today and one additional parking spot in front of the building; there is a wide driveway to accommodate a two way driveway to the rear of the building there will be four additional parking spaces there is also 24 x 37.5 foot accessory storage structure which will be used to store new equipment, a trash and recycling area is provided and there is substantial improvement to the area than what is there today.

There will be an underground stormwater management system that will allow recharging the water back to the aquifer. We are also providing a 6 foot sound barrier fence on the north side of the property to reduce the noise experienced by the neighbor. A lengthy discussion was carried regarding parking and drainage on site.

The meeting was opened to the public; the following persons appeared to be heard.

Oris Clary	30 Emmet Avenue
Charlene Anderson	7 Emmet Avenue

Summary of Testimony – Michael Tobia, Professional Planner

Mr. Tobia gave a brief of the application by reviewing the exhibits submitted at the previous meeting and what the applicant is expected to abide by since business is in a residential zone. Mr. Hind has stated that he does not expect business growth the purpose is to clean and improve the site. The existing building is 11.5 feet high and built in the 1950's. The lawn equipment in the front yard has been removed.

The purpose of this application is to enclose the operation not to expand it. The zoning issue is that the Power equipment business is in a residential zone. The residential zone is called RB-7 and it permits single family homes and two family homes and other uses but does not permit commercial uses. The nature of the variance for new comers is to permit the expansion of a use that exists in a residential zone that is not permitted in the zone. It's called the non conforming use (the grandfather use) which means the use existed before the zone came into place. Because the use is not permitted in the zone we have to get variance approval to allow for its alteration. This is called the use variance or the D-2 variance.

The proposed building needs a rear yard setback variance with 25 feet required and 5 feet proposed. Parking also requires a variance, 18 stalls are required and 6 are being proposed. Mr. Meola looked at the Township Ordinance parking Standards and used the retail parking standards that are used for supermarkets and retail stores for this type of use it is a very demanding standard; we used it anyway to be conservative. In reality this property doesn't need half dozen parking spaces to function properly. Another variance is needed for stall size; the Township Ordinance requires 10 x 18 stall size, this applicant proposes 9 x 18 it is one foot less width than what is required. Another variance that we did not pick up on this plan which is the separation distance from a driveway to a street, the requirement is 58 feet; the reason why we have a requirement like this is to make sure that a private driveway doesn't conflict with traffic on a public street. It's a real technicality in this case if the public street in question is not paved; it would be a much greater planning concern if that street would really exist. It's a paper street and it is his opinion that there will be no improvement.

Mr. Hind owns and operates the business and has four employees three full time and one part time. The hours of operations are Monday through Friday from 7:30 am to 5:00 pm, 7:30 am to 1:00 pm on Saturday and closed on Sundays. Deliveries are done three to four times a week and they are done by vans and pick up trucks. Eighteen wheelers come to the site about six times a year, trash is removed once a week as well as re cyclable material, waste oil is removed twice a year by a tanker truck and UPS arrives daily. One of the planning concerns is that 65 percent of the business that comes to the applicant's property is commercial and 35 percent is residential customers to have their equipment serviced. The busiest season is spring through the fall.

Mr. Tobia stated that the idea in practice now is to build a barn style accessory building not higher than fifteen feet to store all equipment. Mr. Hind has stated that he does not expect business growth or additional traffic from this improvement the purpose is to clean and improve the site. The proposal is to take the front building as it is for show room and customer service. The building behind it will take all of the storage and the inventory. The front yard will be grass or parking, there are other advantages and it is that loading will be done at the eastern side of the building. There will be more parking on site than on the street, landscaping will be done, the light to the westerly side of the existing building will be removed.

The bulk variances that are being requested are the parking spaces 18 required 6 are being proposed, parking stall size 10 x 18 required 9 x 18 proposed, rear yard setback this abuts a deep wooded area and with possible wetlands, there will be no activity in the back my conclusion is that this will never be a perfect property for a community. Mr. Hind's proposal for the property would probably fix approximately 80% of the problems on the site. It eliminates all the outdoor storage and all the outdoor display it gives parking for the first time to the site. It's an improvement for the neighborhood. Variances are minor in terms of overall impact on the zoning ordinance. The building being added is 900 square feet and the applicant has already removed a shed of 280 square feet a net increase of approximately 620 square feet.

Mr. Tobia proceeded to review the Township Planner report with the Board. One of the issues discussed was the parking issue on Emmet Avenue. Mr. Tobia stated that it is his opinion once the site plan is implemented it should improve; it would continue to be a problem with only big vehicles which are commercial trucks or pick up trucks with trailers; if we put them on site then we will have two unhappy things happening; which is trucks backing into Emmet Avenue and sounding beepers. We think both are undesirable and unattractive. We have talked to the applicant about improving some things on site and it is to have his employee's park across the street. Mr. Hind has had a verbal agreement and has done it in the past. If this should happen then we will have the six parking spaces available for customers only. Mr. Oller informed Mr. Tobia that in order for the Board to consider the D1 variance as a condition of approval a written agreement would be needed. Mr. Tobia proceeded to review the Planner's report.

Mr. Tobia stated that the Verizon property was recently rezoned and that on Mr. Humbert's report he states "the rezoning effort clearly signals on the part of the community and the intent for the whole neighborhood is to be residential". This will place the Verizon site as the same zone as the property in question. If the property that was rezoned were to be developed residential it would make Mr. Hind more comparable with the residential comparability of the neighborhood. The likelihood of a residential development taking place at the far back of the property is impossible because it's a electrical substation. To think someone will build a home on top of the substation probably it would not happen; residential development on the remainder of the property would. Mr. Tobia stated that it is his opinion that the piece closest to the Hind parcel will not be developed due to the substation on the property and the wetlands conditions. Mr. Tobia proceeded to finalize the review of the Planner's report.

Mr. Tobia stated that according to Officer Ferrone there has only being one to two complaints a year regarding the parking issue. He also stated that the applicant has tried to obtain the paper street (Short Street) right of way from the Township and Morristown without any success. A lengthy discussion was carried regarding the parking issue.

The Township Engineer requested that the presence of wetland be confirmed by a professional expert and a letter of absence of wetlands to be submitted.

Mr. Tobia stated that the applicant has obtained out of town storage to store any additional equipment off site. Half of the existing building operates as a showroom. The lawn equipment displayed in front of the building will be stored inside. The general intent is to do repair and storage indoors. Mr. Tobia was asked if the site ingress could be access from the western side of Emmet Avenue.

**Meeting recess at 9:06 pm
Meeting reconvened at 9:18 pm**

Mr. Calli stated they would need to go back to the drawing table to explore on how they can ingress into the property and settle the parking issue in front of the property and come back to the Board with additional drawings.

Mr. Slate stated that they would like to have a formal review of the plans before they come in front of the Board, applicant is to be scheduled for the next available TCC meeting.

The Board also recommended that the applicant should speak to the neighbor regarding the height of the proposed fence.

The Board adjourned the application to March 22, 2010 Board meeting without further notice. The applicant attorney also granted the Board an extension of time until April 30, 2010

Mr. Luby is seated at 9:27 pm

BA-16-09

Tower Realty Advisors, LLC

Block 6101, Lot 2, 402 Mt. Kemble Avenue, OL-40 zone. Section C & D.

Applicant proposes an in house business on the first floor with a two bedroom residential apartment on the second floor and other related improvements.

Mr. Lawrence Calli, attorney for the applicant entered his appearance and presented the application to the Board.

The following professionals being sworn in by the Board Attorney appeared to be heard.

Frank J. Rawding, Professional Architect and Planner

Karl Benedikt, Business Manager

No exhibits were submitted as evidence during testimony.

Summary of Testimony – Frank Jeffrey Rawding, Professional Architect and Planner

Mr. Rawding stated that the topography of property severely slopes to the rear and that the existing building is located at the lower end of the property with very limited visibility. He also stated that the subject property is surrounded by commercial properties, except to the east where it is bordered by a residential property. The purpose of the application is to use the upper floor of the existing building for residential use and the lower floor of the building for commercial real estate office. The building is currently un-occupied; and it has historically been utilized as a single family residence.

The property is located in the OL-40 zone and it is a corner lot, fronting on both Mt. Kemble Avenue and Lawlor Lane which is a dead end and is just over 100 feet in length and it only services the property in question. The following variances are been requested: the lot area is 13, 623 square feet vs. 1,742,000 square feet required, lot width 100 feet proposed vs. 600 feet required, lot depth 165 feet proposed vs. 800 feet required, front yard setback (two [2] front yard variances): 37.8 and 43 feet proposed vs. 300 feet required, side yard 55 feet proposed vs. 175 feet required, rear yard 22.10 feet proposed vs. 200 feet required, sign variance setback; 10 feet from Mt. Kemble Avenue and 50 feet from Lawlor Lane are being proposed vs. 87.5 feet and 175 feet required, setback variance for accessory structure (proposed shed) 12 feet and 18 feet proposed from side yard and rear yard vs. 175 feet and 200 feet required, parking variance to permit construction of 6 parking spaces, where 7 parking spaces are required.

Mr. Rawding further testified that the applicant proposes to construct a six parking space driveway, accessed from Lawlor Lane, upgrade the existing on-site storm water discharge system and to install aesthetically pleasing accessory structures, including a shed, lighting and signage as well as landscaping and improved walkways.

The meeting was opened to the public; no one appeared to be heard.

Summary of Testimony – Karl Benedikt, Business Manager

Mr. Benedikt stated that the business is strictly for commercial real estate purposes and that conferences are mainly done by phone. In some occasions there will be very few customers to come into the office. Mr. Benedikt stated that most of the time it will be him and his secretary in the office and on occasion one or two other employees. Deliveries will be done once or twice a week.

Mr. Benedikt further testified that he has no intention of residing on the property. A lengthy discussion was carried regarding the use of the property and parking.

The meeting was opened to the public; no one appeared to be heard.

Mr. Luby moved, seconded by Mr. Williams that approval be granted to the application of Tower Realty Advisors, LLC thereby permitting on Block 6101, Lot 2 the mixed use for home occupational with residential use with conditions stipulated and that the Board Attorney be authorized to prepare a formal resolution memorializing the action taken by the Board, same to be presented for consideration at the February 22, 2010 meeting.

Roll Call: (Voting Members)

Ms. Ferrari	YES
Mr. Luby	YES
Mr. Williams	YES
Mr. Woodford	YES
Mr. Haan	YES
Ms. Kalaher	YES
Mr. Kronk	YES

Other Matters

A. Board of Adjustment by-laws (discussion no public participation) – The Board had the opportunity to review and make some changes to the existing by-laws the secretary was instructed to make the changes discussed and to submit for further review at the next Board meeting.

With no further business for consideration by the Township of Morris Board of Adjustment, on motion duly made, seconded and unanimously carried, the meeting was adjourned at 10:30 P.M.

Respectfully submitted,

Sonia M. Santiago, Secretary
Township of Morris Board of Adjustment