

# TOWNSHIP OF FREEHOLD



MAYOR  
Anthony J. Ammiano

TOWNSHIP COMMITTEE  
Thomas L. Cook, Deputy Mayor  
Barbara J. McMorrow  
Lester A. Preston, Jr.  
David M. Salkin

"Preserving and Enhancing the Quality of Life"

Timothy White, PE, PLS, CME  
Township Engineer

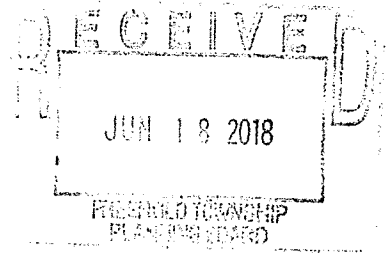
## MEMORANDUM

TO: Planning Board, c/o Danielle Sims, Administrative Officer

FROM: Timothy P. White, Township Engineer

DATE: June 18, 2018

RE: Moini, Brad J.  
Block 8, Lot 5 – 169 Robertsville Road  
Appeal of Zoning Officer's Determination – Application #020-18



This review refers to the following:

- Land Use Notification, 169 Robertsville Road, Freehold, NJ 07728, dated May 3, 2018, prepared by Township of Freehold, Director of Zoning & Housing Enforcement, signed by Pasquale Popolizio.
- Resolution of Memorialization, Freehold Township Zoning Board, Monmouth County, New Jersey, Application for Use Variance, Matter of Craig and Kathleen Curley, approved June 23, 1994, memorialized July 14, 1994 (Var. #016-93).
- Resolution of Memorialization, Freehold Township Zoning Board, Monmouth County, New Jersey, Preliminary and Final Site Plan Approval with Bulk Variances and Waivers, approved July 13, 1995, memorialized July 27, 1995 (SP #590-94).
- Resolution of Memorialization, Freehold Township Zoning Board, Monmouth County, New Jersey, Variance App. No. 36-03, Block 8, Lot 5, 169 Robertsville Road, denied August 26, 2004, memorialized December 9, 2004.
- Resolution of Memorialization, Freehold Township Zoning Board, Monmouth County, New Jersey, Variance App. No. 22-07, Block 8, Lot 5, 169 Robertsville Road, denied November 12, 2009, memorialized January 14, 2010.
- Site Plan (#590-94), Block 8, Lot 5, Freehold Township, Monmouth County, N.J., one (1) sheet, dated September 7, 1994, last revised October 25, 1995, prepared by Crest Engineering, signed and sealed by William F. Schultz, P.E.L.S.
- Preliminary & Final Major Site Plan (#784-1-16), Overall Site Plan, Block 8, Lot 5, 169 Robertsville Road, Freehold, NJ 07728, Monmouth County, one (1) sheet (4 of 11), dated January 5, 2016, last revised April 12, 2017, prepared by Malick & Scherer, P.C., signed and sealed by Chad C. Schwartz, P.E.

PA 5/11

P-1



To: Planning Board  
Re: Moini, Brad J.  
Block 8, Lot 5 – 169 Robertsville Road  
Zoning Appeal – App. #020-18

June 18, 2018

### Executive Summary

The subject property is located in the Residential R-120 Zone. Recently, the Township was made aware that the property was posted with real estate signs advertising the lease of the property as a “Fully Approved Equestrian Facility.” As such, on May 3, 2018, the applicant was issued a Land Use Notification by the Director of Zoning & Housing Enforcement stating that use of the property as an equestrian facility is no longer a permitted use. The following main points were presented in the letter and the applicant was directed to remove the real estate signage:

- A prior use variance was granted in 1994 for the operation of the property for boarding horses and providing riding lessons (Var. #016-93). However, conditions of the approval required that the property be owned, operated and occupied specifically by the applicant. The property is not currently owner occupied.
- In 1997, the property was re-zoned from R-40 to R-120 as a result of the Lake Topanemus Watershed Study, where the keeping of horses or livestock is no longer a permitted use. A certificate of continuation, certifying that the use of the property regarding horses existing prior to the adoption of the R-120 Zone was never issued by the Township.
- In 2006, the Monmouth County Agricultural Development Board (MCADB) declined to recommend proposed improvements and uses under the NJ Right to Farm Act, such as for; horse and animal raising and rehabilitation facilities, future use of seasonal housing, and riding lessons. The MCADB described the property as over used and lacking of vegetation and pasture management.

For these reasons, and others outlined in Mr. Popolizio’s letter, it was the determination of the Zoning Officer that the prior variance granted for a horse farm has lapsed and the use is no longer permitted. As such, the applicant is applying for an appeal of the Zoning Officer’s Determination so that the property can be utilized and leased as a horse farm. No additional variances or approvals are being requested as part of the application at this time.

The following comments are provided:

1. As a condition of the 1994 Use Variance, the applicant obtained Site Plan approval (#590-94) in conjunction with bulk variances for the proposed horse farm. Based upon a review of historic aerials and a recent site plan (784-1-16) submitted for a cell tower application, it is apparent that the site no longer resembles the horse farm as presented on the original approved plans. It is this office’s interpretation that for the past several years the site has served as a storage facility for materials and equipment related to an unapproved commercial use. As such, should the Board uphold the applicant’s appeal, it is this office’s recommendation that the applicant be required to submit a site plan for review and approval by the Township and their consultants for conformance with the original approval.
2. The applicant shall provide a statement of operations related to the horse farm and rider training facility to confirm consistency with the prior approval (i.e. number of stables, number of paddocks, hours of operation, number of horses, number of students, frequency of lessons, etc.).



TOWNSHIP OF FREEHOLD

---

To: Planning Board  
Re: Moini, Brad J.  
Block 8, Lot 5 – 169 Robertsville Road  
Zoning Appeal – App. #020-18

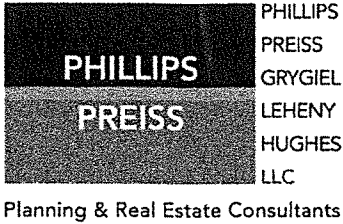
June 18, 2018

At this time, this office has no additional comments relative to any engineering issues.

---

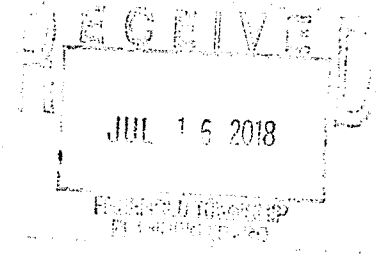
TIMOTHY P. WHITE  
Township Engineer

TPW/mb



July 11, 2018

Freehold Township Planning Board  
% Danielle B. Sims, Administrative Officer  
Freehold Township  
1 Municipal Plaza  
Freehold, New Jersey 07728



RE: Appeal of the Zoning Officer's Decision  
Variance Application #020-18  
Planner's Review Letter  
Brad Moini  
169 Robertsville Road  
Block 8, Lot 5  
R-120 Residence District

Dear Chairman and Members of the Board:

We have reviewed the above-referenced development application, including the following documents:

- Land Use Notification for 169 Robertsville Road, to Applicant, from Pasquale Popolzio, Township of Freehold Director of Zoning & Housing Enforcement, dated 5/3/2018

Project Description

The applicant is seeking an appeal of the Township Zoning Officer's determination that a proposal to lease the subject property for use as an equestrian facility is in violation of conditions of approval of a prior application, including a deed restriction on the property, and R-120 zone standards.

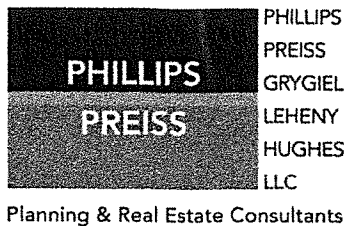
The subject property measures 342,361 square feet (7.86 acres) and is located along the west side of Robertsville Road, to the south of East Freehold Road. There are single-family residences along Esther Drive and Leah Court to the south of the subject property, as well as along Robertsville Road, generally. There are Township-owned forested lands to the west of the subject property, beyond which are single-family residential subdivisions. There are also Township-owned forested lands across Robertsville Road to the southeast of the subject property.

There is a residence located in the eastern portion of the subject property proximate to Robertsville Road and two metal barn structures and an in-ground pool to the rear. There are also several greenhouse structures, pens which appear to be for farm animals, material storage areas, trucks, trailers, and other debris. There are dirt roadways throughout the subject property. There are also wooded areas, mainly in the western portion of the subject property.

33-41 Newark Street  
Third Floor, Suite D  
Hoboken, NJ 07030  
201.420.6262  
www.phillipspreiss.com

*BRG*

P-2



The Zoning Officer sent a notification of violation to the applicant dated May 3, 2018, after learning and confirming that real estate signs were in place on the subject property advertising a lease as a "Fully Approved Equestrian Facility." The Zoning Officer then undertook a review of documents related to the property and particularly as related to equestrian and horse-related uses on the site. These documents and the relevant sections therein are detailed in points #1 through #8 in the letter dated May 3, 2018. The Zoning Officer took the position that the use variance granted to permit horseback riding lessons is no longer valid due to the aforementioned review.

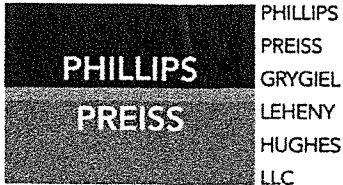
In 1994, former property owners were granted a use "d" variance (Var. #016-93) to permit horseback riding lessons on a property that operated as a horse farm. At the time, the subject property was located in the R-40 zone, which permitted horse farms with boarding, but did not permit riding lessons. The variance approval was subject to several conditions of approval. Subsequent site plan approval was granted in 1995 (SP #590-94).

The applicant appeared before the Zoning Board in 2004 seeking a use variance in order to continue to use the subject property for the storage of materials and equipment associated with his landscaping business within a residential zone, where such commercial use is not permitted. The Board of Adjustment denied this application, citing that the prior approval granted for a riding academy would be less intense of a use than the proposed landscaping supply use.

In 2010, the Zoning Board denied an application of Omnipoint Communications Inc. (T-Mobile) for a monopole on the subject property (Application No. 22-07(A)). It is our understanding that the denial was overturned by the Superior Court of New Jersey, Appellate Division, in 2011 (Docket No. A-2863-10T3). In denying this application, the Board of Adjustment expressed concern that the previously denied landscaping use was still operating. In 2017, Verizon applied for a similar monopole on the site; however, this application was later withdrawn. At the time of the 2017 application, the landscaping use appeared to be still in operation on the property.

#### Zoning Compliance & Planning Comments

1. The Municipal Land Use Law at N.J.S.A. 40:55D-70a grants the power to "Hear and decide appeals where it is alleged by the appellant that there is error in any order, requirement, decision or refusal made by an administrative officer based on or made in the enforcement of the zoning ordinance."
2. The letter of violation sent by the Zoning Officer was in response to signs advertising the lease of the subject property as a "fully approved equestrian facility." Based on the information provided to this office, and documents referenced in the Zoning Officer's letter, the lease of the property as an



Planning & Real Estate Consultants

equestrian facility appears to be a clear violation of Conditions #4 and #5 of the Resolution of Approval for Variance #016-93.

- Condition #4 requires that that “The subject property and horse farm thereon shall be owned, operated, and occupied by the applicants.” Condition #5 requires that “Applicants shall execute and record a Deed restricting the horse farm use so that the residence and business shall be owner-occupied and operated.” The required deed was recorded April 2, 1996, restricting the use to be owner-occupied and owner-operated, and that it may not be modified without the approval of the Board of Adjustment. This supports the Zoning Officer’s determination that the lease of the property for equestrian use is not permitted.
- 3. Testimony should be provided as to the present use of the subject property, particularly whether any landscaping business or owner-occupied equestrian uses are active on the site.
- 4. At the time of the 1994 use variance approval, the subject property was located in the R-40 zone, which permitted certain equestrian-related uses such as the keeping and boarding of horses, though lessons were not permitted. The subject property was rezoned to R-120 in 1997. The R-120 zone specifically prohibits the keeping of livestock and horses as part of the zone’s intention to minimize stormwater runoff within the Lake Topanemus Watershed Conservation District. As such, any equestrian activity on the site unrelated to the use variance approval would be nonconforming.
- 5. If the applicant is seeking to continue owner-occupied equestrian uses on the property, testimony and/or evidence of compliance with Section 190-236 should be provided. Section 190-236 stipulates that a nonconforming use shall be considered abandoned when there occurs a cessation of any such use or activity by an apparent act or failure to act on the part of the owner to reinstate such use within a period of one year from the date of cessation or discontinuance.

We trust that the above information is responsive to your needs.

Respectfully submitted,

  
\_\_\_\_\_  
Paul A. Phillips, P.P., AICP

cc: Frank Accisano, Planning Board Attorney  
Timothy P. White, P.E., Township Engineer

J18181