

**MINUTES OF A SPECIAL MEETING
ZONING BOARD OF ADJUSTMENT OF
THE BOROUGH OF MOUNTAIN LAKES
November 5, 2020**

Chair Chris Richter called the remote meeting to order and announced: Adequate notice of this remote meeting has been provided in accordance with the Open Public Meetings Act by publishing the remote meeting notice in The Citizen and The Morris County Daily Record on October 21, 2020 and by filing the same with the Borough Clerk and posting it on the Front Door on October 26, 2020 and was made available to all those requesting individual notice and paying the required fee.

Start: 7: 30PM

ROLL CALL:

Present: Richter, Murphy, DeNooyer, Vecchione, Paddock, Peters, and Caputo

Absent: McCormick, Max

Also, Present: Attorney Michael Sullivan, Engineer Bill Ryden

REVIEW OF MINUTES: Mark Caputo made a motion to approve the minutes from the October 1st meeting. Stephen Vecchione provided the second; the minutes were approved by voice vote by all eligible members present.

RESOLUTION: none

PUBLIC HEARINGS:

44 Midvale Road, LLC	Appl. #20-718
44 Midvale Rd (9 Baldwin)	Blk. 106, Lot 6
Use, Front Setback, Side Setback	A Zone
2 Principle Structures, Less than the required Parking	

Due to improper notice the applicant requested their application be carried to the December 3rd meeting. Chris Richter made a motion to carry the individual notice to the properties within 200ft to December 3rd and the applicant place a notice in a town approved newspaper for the December 3rd hearing. A second was provided by James Murphy. The carry was approved by voice vote of all members present.

Ringo Supply Co.	Appl. #20-708
380 Route 46E	Blk. 2, Lot 1
Front Setback, Side Setback (3)	B Zone
Pervious Buffer, Use	

James O'Neill was the attorney representing Ringo Supply. His client is interested in restoring the old Lee and Company water pipe business.

Peter Kozen, a licensed engineer in the state of NJ, was the applicants engineer. He listed their waiver requests. Item A15 – Slopes greater than 15% were not delineated because no construction is proposed. Item A20 - structures within 200ft have not been shown.

Item A26 – an Environmental Impact Statement was not provided because no work was being done in Mt. Lakes. Item A28 - A Surface Water Management Plan has not been done because there would be no increase in impervious surface. Item A31 - Wetlands Delineation is not shown because the work being done is in an improved area.

William Ryden found the waivers requested acceptable. Mr. Sullivan stated granting the waivers would provide administrative completeness, but the Board was reserving the right to request any of the items that might be needed for clarification. A motion to grant the waivers and deem the application complete was provided by Mark Caputo and a second was provided by Jake DeNooyer. The Board approved the waiver request and deemed the application be complete by voice vote of all members present.

Board Attorney Michael Sullivan explained a preexisting non-conforming use. Years ago, the permitted uses in the zone were changed by Mountain Lakes and the applicant needs to establish the original use was never abandoned. He reminded the Board that just because it was deemed a preexisting non-conforming use in Denville does not mean our Board would need to come to the same conclusion. He went on to suggest holding off until the end of the presentation, once the proofs have been heard, to determine if the use relief should be D-1 or D-2.

Matthew Pennisi of 60 Peachtree Dr. East Hanover, the property owner, was sworn in. He took over the operations of Lee Pipe which was established in early 1950's. Mr. Sullivan asked if Mr. Pennisi had personal knowledge of that. Mr. Pennisi said he has aerial photos of the site and has worked with people who used Lee and Company back that far. Mr. Sullivan did not find that to be acceptable proof.

Mr. O'Neill said he would like to proceed with the D-1 use variance. He asked Mr. Pennisi when he personally started purchasing pipe from Lee and Company. He responded he started purchasing pipe from them in the 1980's. They sold materials/pipes for water services. Material was brought in for sale, customers would enter Hornbeck Road and come into the shop, purchase what they wanted, loaded their trucks, and left by way of Rt 46 east. Mr. Pennisi said he would like to broaden the list of items for sale at the site. He would like to diversify to include such items as stone, sand, and topsoil. There are less new homes being built and less road construction now so there is less need for water services. He would still sell those types of material to the state, municipalities, and other commercial customers. Lee & Co. originally stockpiled materials on the site and sold it. That model has changed. He would stockpile less material. He would be delivering any pipe that was ordered directly to the site that ultimately would use the merchandise.

J. O'Neill asked if trucks came into the site in off Rt. 46? Mr. Pennisi answered no, they come in from Rt. 46 onto Hornbeck to enter the site. He has about 8 pickup trucks a day visit his site. J. O'Neill asked about the driveway easement, was it an entrance? Matthew Pennisi said the easement could only be used as exit. Chris Richter noted the easement was for 2-way traffic. Their planned hours of operation were 7 to 5pm, 5 days a week, with a ½ day on Saturdays. J. O'Neill asked what material would be stored in the yard as bulk material and what would be stored in the trailers. Mr. Pennisi answered the trailers would contain items that needed to be kept out of the rain, needed to lock up, or smaller things that could be stored on shelves. Mr. O'Neill asked about the fuel storage on the site. Mr. Pennisi has two 2000gal convault tanks. One was for off-road diesel to use on site and the other was for on-road diesel for delivery trucks.

The Chair asked if Board members had question for the witness. James Murphy asked about the two water tanks near the back of the property. Mr. Pennisi planned to remove the water tanks at south east corner. Mr. Murphy asked how long 2000 gallons of fuel would last. It was usually one to two months. Mr. Murphy asked for their equipment inventory? Mr. Pennisi has front end loaders, trailers, dump trucks, a backhoe, and excavator. He not only sells material he also installs. He also has a forklift and bucket loader to load material. His total inventory is 12 to 15 pieces. Most of the time the machines are on a job site, but he wants to park them at this site in between jobs. Mr. Murphy referenced the 6 bins approved by Denville, what were they for? They are for Dense Graded Aggregate (DGA), Recycled Concrete Aggregate (RCA), clean stone, mulch, topsoil, mason and/or concrete sand. How long does it take to turn over a bin? It could be once a week. Mr. Sullivan confirmed the list of 12 to 15 assorted vehicles that could be stored on site. He pointed out the plans showed only 6 areas for parking vehicles on the Mountain Lakes side. Mark Caputo asked if the bins had concreated floors. No, they would be dirt floors. He then asked if the material stored would be clean and reclaimed material. There would be both. Jake DeNooyer verified they would be closed on Sunday. He asked if the plans submitted depicted what was approved by Denville? Yes, they do.

Chris Richter was familiar with Lee Pipe. They stored hydrants and piping for water service. Besides being a distribution site for water services, it looks like the applicant wanted to turn the business into a complete contracting supply site. Did you have to supply Denville or the courts with documentation to support the use you are describing at this site? Mr. O'Neill answered there was no additional documentation supplied only the testimony being heard tonight. Stephen Vecchione as the applicant what he was doing at the site now? Mr. Pennisi said, nothing. Jake DeNooyer asked what caused the shutdown. The site stopped operating as a pipe yard in 2015 when Lee and Co. shut it down, possibly due to the death of the owner, and put the property up for sale. He then bought the property. Chris Richter asked why the applicant did not continue the business? Mr. Pennisi said after he bought it, he had to do a lot of clean up. Mr. O'Neill asked his client, when he bought the property in 2015, was there no material on site and limited material in the building? He agreed. Mr. Pennisi had to clean up the property because of the material left behind by the previous owner. Since then there has been nothing going on at the site because he could not get approval to continue to conduct business. He has spent the last 5 year trying to get approvals from Denville to operate his business. Jake DeNooyer confirmed it was not an operating business when Mr. Pennisi bought it. James Murphy asked if it was his intension to start his operation once he brought the property? Yes, it was. The Denville resolution had a timetable on page 2 spanning from 2016 to 2019. S. Vecchione asked where he stored his equipment now. In between jobs he is renting space for the equipment in Parsippany.

The Chair opened the hearing to the public for questions. George Jackson, of 20 Sherwood Dr., asked for clarification. Did he buy the land and/or the business? Mr. Pennisi just bought the land.

John O'Neill introduced Pete Korzen who reviewed the location map on the tile sheet and the existing conditions plan. He noted the egress easement granted by Zeris. While the egress is 35 ft wide only 16ft is paved; the space is only enough for one vehicle. He then reviewed the layout plan. Specifically, the new vegetation planned and the fuel tanks. He

stated, the plan matches the plan approved by Denville except for the landscaping. There is no grading going on nor ground disturbance.

Mr. Koren referenced the review letter, dated 9/23/20, from Bill Ryden of Anderson and Denzler. He commented on item #4, the intended ingress and egress function of the driveway. Chris Richter question how that was being controlled. P. Korzen responded currently there is no signage stopping anyone from entering the site from Rt 46. Item #5 asked for testimony on wellhead protection and the fueling operations. The convault fuel tanks are surrounded by 6" of concrete. The actual tanks are steel surrounded by Styrofoam and a polyethylene membrane. A clean-up kit will remain on site in case there is a spill. For equipment repairs drip pans will be placed under the vehicles that are being worked on. Bill Ryden asked what kind of fueling vehicles comes to the site and how they filled the tanks? The delivery truck would come into the site along the paved roadway and pull up to the tanks behind the building. The area behind the building is gravel. The tanks will be filled according to manufactures instructions. Mr. Ryden asked what instructions he was referring. They were the instructions in the tank manual. What was the surface under the tanks? Peter Korzen responded the surface under the tanks was gravel. Mr. Ryden said according to the Well Head Protection Ordinance they need to have a concrete based under the tanks. He was concerned about the fueling of the applicant's vehicles. There is a lot of potential for human error when filling the different pieces of equipment. Item #6 referenced lighting. Mr. Koren explained there were no lighting plans because they do not plan to be open at night unless there was an emergency. Item #8 asked if the shipping containers were permanent? They were not for shipping but for the storage of materials for sale.

James O'Neill asked Mr. Korzen to add a do not enter sign at the Route 46 entrance.

Chris Richter questioned why the containers where busting the setbacks. Peter Korzen explained the sea containers were placed out of the way of moving vehicles. The dumpster was located to facilitate garbage pickup. Mr. Richter said nothing should bust the setbacks they could easily move the convault tanks, sea containers and vehicles off the property line. Mr. Korzen agreed they could move the convault tanks alongside the building and move the containers off the property line. The dumpster would be more difficult. Chris Richter said the site was big. He questioned why everything was on the Mt Lakes side when it was such a small portion of the site. Is it because the Denville resolution said you had to put it there? Mr. Kozen said they would move everything off the setback lines. However, while there appears to be a lot of area on the Denville side, they need the area between the storage bins and the building for vehicle circulation.

Mr. Richter asked the Board members if they had any questions. James Murphy asked the size of the fuel tanks. They are 11ft x 8ft. He thought the tanks should be moved to the southwest side of the garage. Mr. Koren said they were trying to avoid the 20ft setback on the municipal line. Mr. Richter felt it better to be closer to the municipal boundary line than the actual property line. Mr. Pennisi said he could still function if the tanks were moved to the south side of the garage. Stephen Vecchione asked who determines the access allowed onto Rt 46. Mr. Koren responded they are making no modifications to the driveway, so they do not have to have the DOT review the site plans. William Ryden corrected him, there is a change in use on the site so a letter of no interest from the DOT should be a condition.

James O'Neill requested they carry their application and make the changes to the plans discussed before providing testimony from their Planner. Mr. Richter suggested when redoing the plans, they provided a heavier buffer on the property line due to the proposed hotel on the Zeris property. Do you really need two tanks? You need some type of containment system for the tanks. James Murphy asked, have they talked with the neighbors? Mr. Pennisi said he had spoken to the Zeris property owners when he bought the property. Brett Paddock felt there was conflicting testimony on tanks and their location. Could they provide a simpler schematic of the site plan to make it easier to see the traffic flow? B. Paddock said the zone does not allow for storage of outside hazardous material. He thought there should be additional testimony why the Board should allow for the fuel tanks. Mr. Sullivan said the Board should not get ahead of itself. This is a preexisting non-conforming use, and the applicant still needed to provide more planning testimony. Mr. Paddock asked if there needed to be a continuity of use or can a business be shut down for a period of time and reinstated. Mr. Sullivan said just because you stop using a property for 5 year does not mean you abandoned the use. The Planner will need to discuss this issue next month.

The Chair asked if the public had any questions for engineer. No one had any questions. James Murphy made a motion to carry the application to December 3rd without notice and a second was provided by Jake DeNooyer. The carry was approved by voice vote of all members present.

Other Matters / Public Comment:

Resolution Establishing Standard Procedures for Remote Meeting – The state has provided additional guidance on remote meetings for Zoning Boards. Stephen Vecchione made a motion to adopt the resolution establishing those guidelines and Ann Peters provided the second. The Board voted 7 -0 to adopt the resolution with members Richter, Murphy, DeNooyer, Vecchione, Paddock, Peters, and Caputo voting in favor.

The Chair opened the meeting for public comment. Janet Horst, of 82 Pocono Road, asked if the Board could give an update on the Park Lakes application. The Administrator explained that application was before the Planning Board.

James Murphy made a motion to adjourn the meeting and Stephen Vecchione provided the second. The meeting was adjourned at 9:18PM.

Respectfully submitted,

Cynthia Shaw