

The regular meeting of the Delaware Township Board of Adjustment held on the noted date, was called to order by Administrative Officer Klink at 7:30 p.m., in Township Hall, Sergeantsville, New Jersey.

PLEDGE OF ALLEGIANCE

STATEMENT

Administrative officer Klink read a statement noting that the requirements of the Open Public Meetings Act had been met.

ROLL CALL

Present: Emmons, Fowler, Gilbreath, Kenyon, Manley, McAuliffe, Szwed, Warren, Cline

Absent: Szwed

Also present: Attorney Davidow, Planner McManus; no engineer needed

Swearing in of new/reappointed members and alternates; done by Board Attorney Davidow
Caine Fowler, Mike Manley as members
Cullen McAuliffe, as Alternate I ; done at Township Reorganization

Election of Chair

Administrative Officer Klink accepted nominations for Chair. Member Gilbreath nominated Member Cline and Member Emmons seconded the motion. Member Manley made a motion to close nominations, Member Emmons seconded the motion. By voice vote, Member Cline was elected Chair, with his abstention.

Election of Vice Chair

Chair Cline accepted nominations for Vice-Chair. Member Manley nominated Member Emmons and Member Fowler seconded the motion. Member Manley made a motion to close nominations, Member Gilbreath seconded the motion. By voice vote, Member Emmons was elected Vice-Chair, with his abstention.

Election of Secretary

Chair Cline accepted nominations for Secretary. Member Gilbreath nominated Administrative Officer Klink as Secretary and Member Manley seconded the motion. Member Manley made a motion to close nominations, Member Fowler seconded the motion. By voice vote, Administrative Officer Klink was elected Secretary.

Appointment of Attorney/Engineer/Planner

Board Attorney: Steve Goodell, Parker McCay
Board Engineer: Rob O'Brien, Van Cleef Associates
Board Planner: Jim Kyle, Kyle Planning and Design, LLC
Board Radio Frequency Engineer: Dr. Bruce Eisenstein

Chair Cline recommended the appointment of the above professionals. Member Manley made a motion to approve the appointments. Member Emmons seconded the motion. By voice vote, the Board accepted the appointments.

Adoption of Annual Notice Resolution

The Board adopted the Annual Notice Resolution, noting that the regularly scheduled meetings will be on the second Thursday of each month, starting at 7:30 p.m.; exception: February 7, 2019. Member Gilbreath made a motion to approve the Annual Notice Resolution, seconded by Member Emmons, and adopted by voice vote.

MINUTES: December 13, 2018

The Board discussed the minutes, noting changes and typographical errors. It was moved by Member Manley to approve said minutes. Member Warren seconded the motion. Said motion was approved by voice vote.

MEMORIALIZATIONS

There were no memorializations prepared for this meeting.

APPLICATIONS

Anthony Wiseman, appeal the determination of the Zoning Officer for property of Block 11, Lot 10, use of property for home-based landscaping business, per the appeal.

Member Kenyon recused herself from this hearing and left the meeting.

The following people were sworn in: Zoning Officer Mike Mullin, Board Planner McManus, and Applicant Anthony Wiseman.

Mr. Paul Doharty was present to represent Anthony Wiseman. He stated that he has known Mr. Wiseman for a number of years and has represented him in corporate affairs.

Mr. Doharty stated that he will provide an introduction of legal and factual information. He noted that he will reference the current ordinance as it applies to the residence and accessory structures and what is allowed per the ordinance. He noted that he will reference the ordinance as it exists, not according to the proposed revisions being recommended by the Planning Board. He noted that the applicant, Mr. Wiseman, is trying to make an effort to resolve any issues on the property.

Mr. Doharty stated that the main problem is that Mr. Lindner continues to use this property as a home base for his landscaping business. Mr. Doharty noted that a secondary issue is the driveway off of Old Mill Road. He noted that this driveway is not grandfathered and in his opinion is being used to move landscaping vehicles.

Board Attorney Davidow stated that a Zoning Officer determination is a narrow issue. He noted that the appeal of this driveway should be made as related to its use. He noted that per the memo provided by the Zoning Officer, the determination was made that this is an agricultural access and is being used as such.

Chair Cline questioned the use of the property as a commercial use versus a home occupation. Board Attorney Davidow stated that discussing the zoning ordinance is applicable to the purported commercial use. Board Attorney Davidow noted that the Zoning Officer determined that there is an agricultural operation on the property.

Mr. Doharty questioned if the property qualifies as an agricultural property. He noted that if the Board agrees that it does not than such a determination expressly limits the use of the property. Mr. Doharty gave the opinion that if the use is home-based, then it is to be conducted out of the house or out of an accessory structure and that as such no other commercial use of any type is allowed.

Mr. Doharty questioned the agricultural designation and noted that there are several overlapping laws that apply to farmland designation. He noted that there are lots of "hoops to jump through" to get farmland assessment. He identified that there needs to be a submitted plan for woodlot management and that this plan needs to be approved. He noted that there have to be annual inspections. He noted that no plan has been submitted.

Administrative Officer Klink reported that she had spoken to the Tax Assessor and that a plan had been submitted. Said plan was marked into evidence, A-1.

Mr. Doharty questioned what existed at the point that the Zoning Officer made his decision.

Board Attorney Davidow stated that the standard of review which the Board will use to make a determination is to consider if the Zoning Officer was in error according to the Ordinance and the terms of the ordinance and the application of the ordinance.

Mr. Anthony Wiseman provided testimony. He stated that he has lived at his home on Old Mill Road for 33 years. He stated that he chose to live in Delaware Township because of the rural nature of the Township and the dedication of the Township for land preservation and farmland preservation. He further noted that he has conserved 17 acres, purchased with his own money. Chair Cline noted that finances are not a consideration for the Board.

Mr. Wiseman continued and noted that the purpose of much preservation in this area is to preserve the area along the C-1 stream, the Wickecheoke Creek.

Mr. Wiseman stated that his property abuts that of Steve Lindner of 67 Pine Hill Road. He noted that when his wife first met Mr. Lindner, that Mr. Lindner stated that it was his intention to build a garage for his business, Neighborhood Maintenance Service.

Mr. Wiseman stated that he has made observations of the Lindner property. He noted that when he moved into the area 32 years ago, the subject property was undeveloped land except for the residence. He noted that the driveway in question was built in 2017. He further noted that per the comments of Mr. Lindner, the property was cleared so that he could have animals.

Mr. Wiseman opined that since Mr. Lindner has moved in the tone of the neighborhood has changed. Mr. Wiseman stated that he has observed trucks with plows, trucks with the business name, wood refuse, and dumping of tree trunks. He stated that the materials being dumped are not from that property. A photo board was presented into evidence, A-2. It was noted that these are the same photos that were submitted with the application.

Mr. Wiseman discussed the fence that was constructed on Mr. Lindner's property. He noted that the "good side" of the fence should have faced the Wiseman property. He noted that all types of equipment is parked along this fence such as trucks with plows, a backhoe, and a skid steer. He also noted that refuse from the business can be found. Mr. Wiseman stated that the fence is 60 or 70 feet long and six (6) feet high. Mr. Wiseman opined that the fence is meant to hide trucks from the Lindner house. It was noted that the fence is about 400 to 500 feet from the property line. Mr. Wiseman noted that he put up his own fence on his property. Mr. Wiseman noted that his fence is about 172 feet long by six (6) feet high.

It was noted that in the memo of the Zoning Officer, the Zoning Officer told Mr. Lindner to move the commercial vehicles and that in May, the trucks had been moved out. It was further noted that trucks on the property are being used for agricultural use, from Mr. Lindner to the Zoning Officer.

In his observations, Mr. Wiseman stated that he could not see any woodlot management action taking place on Mr. Lindner's property. Mr. Wiseman stated that he did see some land clearing.

Chair Cline stated that Mr. Lindner has two years to establish the woodlot management. He noted that land clearing can be done to produce more trees and also for access with trucks and other woodlot equipment. Mr. Wiseman stated that he has not observed clearing of any trees that are leaning or that are dead.

Member Gilbreath stated that in her observations of driving past the subject property that the cleared area appears to be about 1/8 acre, 200 by 200 feet, of second growth shrubs and small trees. She noted that there is a rolled fence on the ground near the cleared area.

It was noted that the Lindner property goes behind the Wiseman property and down to the Wickecheoke Creek, a C-1 creek. Mr. Wiseman stated that another plan reported by Mr. Lindner was that he was going to clear along the creek and ride quads. Mr. Wiseman could not say who was the person riding the quad. Mr. Wiseman stated that he was given a cease-and-desist to trespass on Mr. Lindner's property.

An aerial photo of the Lindner property was submitted into evidence, A-3. Mr. Wiseman discussed some of the objects seen in the aerial photo. It was noted that there is a small structure that is being constructed on a trailer. The Zoning Officer stated that any type of construction would be within the jurisdiction of the Construction Office.

There was a discussion about the 300-foot buffer of the C-1 creek and crossing a C-1 tributary. It was noted that there should be no disturbance. It was also noted that it is unknown if quads/ATVs are prohibited in these areas.

Board Attorney Davidow reminded the Board to keep its review on the Zoning Officer determination.

It was noted that a quad/ATV could be used to facilitate woodlot management.

Member Fowler wanted to ask a procedural question. Member Fowler noted that some of the information from Mr. Wiseman was hearsay from his spouse. Attorney Davidow stated that in this type of hearing the strict rules of evidence do not have to be followed. Attorney Davidow further noted that any decision should not be based on hearsay, that the hearsay should not be relied upon solely as a part of decision making.

Mr. Wiseman stated that he has observed landscaping equipment on the property, to this present day, including vehicles with the NMS logo stenciled on the vehicles.

Mr. Wiseman stated that he has seen waste dumped onto the property. He opined that this is evidence that the landscaping business is being conducted on the property. Mr. Doharty stated that the pictures show 200 to 300 feet of debris being brought onto the property.

There was a discussion about another driveway on Pine Hill Road. Mr. Doharty stated that this driveway is shown in the Patrick Fatton exhibit, Exhibit D-3 of the application. There was a discussion about a dumpster located at this driveway. It was noted that per Mr. Fatton, an Engineer, the driveway being questioned as an agricultural access, appears as a driveway because it shows two lines that show the dimensions from the road to a building. It was noted that the lines are parallel to each other and appear to be a driveway.

The Board reviewed Exhibit D-4 of the application. Some members could not determine whether a driveway does or does not exist in this exhibit.

Mr. Wiseman stated that the cleared land has provided additional erosion and water runoff onto the Wiseman property.

Chair Cline elicited information from Zoning Officer Mike Mullin through questions and clarifications. ZO Mullin stated that in April 2018, he went and spoke to Mr. Lindner about a commercial use on the property. ZO Mullin stated that he saw no vehicles with logos. He stated that he saw detached plows and other items, but no company vehicles. ZO Mullin noted some of the other equipment: a skid steer, trailers, zero turn mower. ZO Mullin stated that Mr. Lindner reported that this equipment is for his own lawn. ZO Mullin asked that Mr. Lindner remove any vehicles related to his landscaping business. ZO Mullin reported that Mr. Lindner told him

that he is working on a woodlot management plan, including some clearing and cutting. To that point Mr. Lindner pointed out to ZO Mullin a logsplitter, chipper and other typical equipment for woodlot management.

Zoning Officer Mullin reported that he has looked at other woodlot properties in Hunterdon County on which there is similar equipment.

Chair Cline questioned Zoning Officer Mullin and elicited more information.

Zoning Officer Mullin reported that Mr. Lindner was asked to and did get rid of anything to do with an illegal landscaping operation.

There was a discussion about the waste on the property. ZO Mullin stated that this matter is under the jurisdiction of the Hunterdon County Waste Department. Mr. Doharty opined that the dumping is a furtherance of the landscaping operation. ZO Mullin stated that he has not seen the piles grow. He also stated that he walked to the area in the back of the property. ZO Mullin stated that he felt that the Hunterdon County Solid Waste Department addressed the waste situation.

ZO Mullin reported that about three months ago, Mr. Lindner asked that he get permission before coming onto the property.

There was a discussion about the second driveway, located on Old Mill Road. It was noted that the Ordinance permits one driveway per lot except for an agricultural access. It was noted that the issue of the driveway is under the jurisdiction of the DPW.

Zoning Officer Mullin discussed the clearing activities. He opined that clearing is part of the forestry plan.

Mr. Doharty asked questions of Zoning Officer Mullin. ZO Mullin stated that he had done many inspections since the first complaint. ZO Mullin noted that he did see that he was engaging in a commercial operation and that he asked Mr. Lindner to remove the equipment associated with the commercial business, to which Mr. Lindner complied. ZO Mullin noted that in his subsequent visits he saw no NMS trucks. Per ZO Mullin's memo dated 10.24.18, equipment on site includes: zero turn mower with small hand tools and saws; chipper; skid steer with trailer; black open trailer; log splitter; Ford plow truck; and two personal trucks being repaired/restored.

ZO Mullin stated that on September 26, 2018, he went to the back of the property and noted that not all piles were still there. He also noted that on that date he again saw the two pick-ups, one appears to be working and the other appears to be non-working; he noted that there was also a backhoe and trailers for various equipment. Mr. Lindner outlined the equipment and how it is to be used for his woodland plan. There was a discussion about the woodlot management plan. It was noted that the application was turned into the Tax Assessor's office and that the forester's plan has also been submitted. ZO Mullin stated that Mr. Lindner represented that his business is in Ringoes and that the equipment with printed logos is housed there.

ZO Mullin stated that he spoke to Mr. Wiseman who reported seeing vehicles there overnight and with the logo.

ZO Mullin stated that on his most recent visit to the Lindner property, he did not ask to go to the back of the subject property. ZO Mullin stated that complaints have been received that Mr. Lindner is running his business. ZO Mullin stated that Mr. Lindner said he is not running his business from the subject property. ZO Mullin stated that it is his job to periodically check; he stated that Mr. Lindner asked that he wants no one on his property without his permission. ZO Mullin opined that he felt that Mr. Lindner would have let him go to the back of the property if he (Mullin) had asked.

ZO Mullin stated that his last visit was in mid-November and that he has driven by almost monthly. ZO Mullin stated that the last appearance of commercial activity was in May 2018. When asked, ZO Mullin stated that he had no reason to question either person's credibility. ZO Mullin also stated that he has done visits to the property with the Construction officials.

When asked, ZO Mullin stated that he did not agree with the determination made by the applicant's engineer, Patrick Fatton, about the second driveway. He stated that he still believes that the map that he was shown from the DPW showed a driveway. ZO Mullin stated that the old survey he viewed was tough to read, but he still felt that it represented a driveway. The determination of Mr. Fatton was that the old shed was shown at the end of dimension lines.

The map from NJ Geo Web was shown and it was difficult to see if there is a driveway in that location. ZO Mullin stated that the Department of Public Works determines driveways.

Information was elicited from questions by the Board Members.

Member McAuliffe asked about the inventory of equipment. ZO Mullin stated that the equipment is suitable to the activity observed on this property, related to woodlot management.

Member Gilbreath, as a resident living in the area, stated that she has seen cars come and go and different trucks have come and gone. She noted that occasionally she has seen vehicles with the logo.

Member Fowler thanked Zoning Officer Mullin for attending. He asked questions about the farmland assessment. It was noted that the application has been made and upon approval from the Tax Assessor, Mr. Lindner will be in the program. Member Fowler asked if ZO Mullin is aware of any other requirements of the program. ZO Mullin stated there needs to be evidence of activity for two years in addition to the approved plan.

There was a discussion about agricultural use. It was noted that one does not have to apply for farmland assessment to be a farm. Attorney Davidow noted that agricultural use is a permitted use in this zone. Attorney Davidow further noted that the equipment and plan support the agricultural use of the property.

Chair Cline stated that testimony was given that 5,000 square feet was cleared, which is not one-quarter of an acre, the amount that triggers stormwater management.

Member Fowler asked about the site plan submitted, copied and reviewed by Mr. Patrick Fatton. Upon questioning, Zoning Officer Mullin agreed that the "second driveway" is not labelled as a stone driveway. Both agreed on the woodland demarcation, that of a "squiggly" line showing trees. Member Fowler stated that he has driven by the subject property and found the metal shed to be in the middle of a stone area. He also noted that there is a third driveway.

The Board discussed this third driveway and it was agreed that this is a driveway for a telecommunications unit found on the edge of the property along Pine Hill Road. Member Fowler noted that there is a dumpster located near this driveway. Member Fowler opined that a pontoon boat is not part of an agricultural use.

Member Gilbreath, as a resident of this area, stated that she has seen trucks with logos on this property.

There was a discussion about permitted uses in the A-2 Zone. It was noted that residential and agricultural uses are permitted in this zone. It was noted that landscaping is not an agricultural use.

Member Emmons noted that he has plows, a backhoe and other implements similar to those of Mr. Lindner. He noted that this equipment is for home use, not commercial use.

Member Gilbreath stated that it appears as though Mr. Lindner has brought refuse items and dumped them at this site. Zoning Officer Mullin stated that this is a problem for the County Health Department. ZO Mullin stated that he has heard no word from the outcome of that investigation.

Member Manley stated that it appears as though Zoning Officer Mullin is dealing with this complaint. He noted that both ZO Mullin and Mr. Wiseman appear to be credible. He agreed with the Board in that one does not have to have farmland assessment to have an agriculture use. He noted that he has neighbors with similar equipment. He stated that he is inclined to agree with ZO Mullin's determination. Member Manley stated that it does not seem to him that there is enough real evidence that the activities present are not permitted.

Chair Cline asked Board Attorney Davidow if conditions can be applied to a resolution adopted by the Board. Attorney Davidow stated that there could be a modification of the determination to allow conditions such as no dumping of landscaping materials. It was noted that a resolution would memorialize the decision with such modifications. There was a discussion about this refuse. Attorney Davidow stated that it would be up to Zoning Officer Mullin to determine that the refuse is against agricultural use. It was further noted that any violation of the zoning ordinance would follow the process set forth for such violations, including notification, days of correction, fines, and possibly resolution before the municipal court.

Board Attorney Davidow noted that such refuse is movable and can be remedied in short term. He noted that the refuse could come and go, thus causing enforcement problems.

Member Fowler stated that testimony has been given that it is perceived that there are renters on the property. Attorney Davidow stated that there is nothing to substantiate that there are renters. It was noted that the person on the quad has not reappeared. There was further discussion about site visits with no specific dates.

Public Comment

Mr. Gottfried Gutschmidt was sworn in. He stated that he has lived in the Township for 40 years, at his current location. He noted that he is a neighbor of Steve Lindner. He noted that he knew the previous owners, both Mr. Cegielski, Sr. and the younger Mr. Cegielski.

Mr. Gutschmidt stated that he sees the Pine Hill Road driveway by the telecommunications unit being used for a dumpster. He noted that he has seen debris brought in and dumped there. He noted that the driveway at that location has been destroyed. He further noted that it appears as though Mr. Lindner uses the hedgerow for landscaping leftovers. He noted that Mr. Lindner once had about 25 chickens, but is now down to about five (5).

Ms. Cynthia Brashear was sworn in. She stated that she lives at 16 Old Mill Road. She stated that she wants to corroborate what has been heard from Mr. Wiseman and Mr. Gutschmidt. She noted that the driveway in discussion is about 18 feet wide and is more like a parking lot that opens onto Old Mill Road. She noted that many trucks go in and out of that "driveway".

Ms. Brashear stated that she is also concerned because the property is within 300 feet of the C-1 creek, including that 300-foot setback. She stated that she was recently walking along the stream and that she clearly saw tracks from an ATV coming down the hill from behind Lindner's. She noted that the tracks go down to the corridor and along the corridor of the creek. She stated that she called NJ DEP who are coming out to take a look. She noted that they reported that there are no rules about this setback area unless a disturbance is created. She stated that it is important to protect the stream corridor.

Ms. Brashear stated that she has not seen that he has cut trees in the corridor. She opined that it is inconceivable that he can get a plan to do forestry. She opined that the corridor area has what she calls "trash trees" and brush.

She opined that it appears that very little is harvestable. She also noted that much of the Lindner property is within the 300-foot corridor.

Chair Cline stated that the Board must make a decision. He noted that without Mr. Lindner's presence, the Board is only hearing one side of the story. He noted that the Board must weigh all evidence presented. He noted that the Board needs to decide if this is a home-based occupation or violates the ordinance in any way.

Chair Cline stated that he drove by the property today. He noted that much trash is present. He noted that there is a driveway to a metal shed and that rain-muddy tracks lead from that driveway onto the road. Chair Cline noted that Zoning Officer Mullin looked at a map from the DPW and determined it was a driveway. Chair Cline stated that he knew the previous owners and does not recall that driveway.

Chair Cline noted that an agricultural use is a permitted use in this zone. He further noted that no off-site materials can be dumped on a property or in a dumpster. He opined that the property needs to be cleaned up. He further noted that he is not sure if there are conditions that can go on this. He also noted that the proposed home-based business ordinance could make things worse.

Chair Cline stated that he does not feel that it is commercial operation. He stated that he knows these types of businesses. He further noted that the proposed ordinance is meant to encourage these uses somewhat, but that these uses should not be abusive to others.

Mr. Wiseman stated that he appeared at the July 3, 2019 Planning Board meeting at which the proposed ordinance was discussed. He noted that the proposed ordinance would permit trucks to be parked overnight. He opined that he thought the vehicles were to be housed in buildings. Administrative Officer Klink stated that she holds the same position with the Planning Board. She noted that the intent of the proposed ordinance is that the use should not be noticeable from the street-view.

Mr. Doharty asked to provide a summary of his arguments. He noted that three members of the public and one Board member gave views that a business is being conducted. He noted that these persons noted trucks going in and out and debris being brought in. He noted that a home occupation has to be conducted inside of a residence or an accessory structure. He noted that it is evident that Mr. Lindner's landscaping business is going on outside of the dwelling. He gave the opinion that as it exists today, the use of the property is inappropriate.

Chair Cline stated that there are four separate items addressed by Zoning Officer Mullin. Member Fowler suggested that the Board discuss each one separately.

There was a discussion about refuse. It was noted that refuse needs to be screened, even garbage cans. It was noted that the dumpster on the telecommunications driveway is being used for refuse. It was further noted that it appears as though much of the refuse is from off-site.

There was a discussion about the C-1 creek and corridor. It was noted that while this is not a part of the Zoning Officer's determination, it appears as though some review should be done. It was noted that a NJ DEP official may provide that review. There was a discussion about water runoff coursing onto the road from the parking area of equipment.

Member McAuliffe stated that he views the dumping issue as part of the commercial activity. He further noted that if employees are coming and going, that this could be viewed as part of the commercial activity.

Member Emmons agreed that the waste issue would promote the commercial activity.

Chair Cline stated that the Board could affirm the Zoning Officer determination with a condition that with no materials come on-site from off-site.

Chair Cline stated that the evidence presented at the time of various inspections is the evidence the Board should consider. He noted that Mr. Lindner's property had multiple inspections with time to cure violations. Board Attorney Davidow noted that the Zoning Officer did view commercial activity, told to Mr. Lindner to stop, and viewed that Mr. Lindner had ceased. Attorney Davidow stated that the entirety of fact was presented that ZO Mullin relied on the existing authority of his position as Zoning Officer to enforce the ordinance. Attorney Davidow stated that the Board can recommend that continued inspections be made to insure compliance. He further noted that time to remedy disappears, within the authority of the Zoning Officer based on conditions that may be applied. He further noted that a time to cure relies on a timeline and the ability to give notice.

Member Emmons stated that based on the inspections of the Zoning Officer, he does not want to overturn the Zoning Officer's decision.

The Zoning officer was questioned about the trailer and associated construction. It was noted that this falls under the power of the Construction Official/Building Inspector.

Member Manley stated that all of the public comments have been enlightening and helpful. He noted that it is within the ordinance for Mr. Lindner to conduct woodland management. He agreed that the woodlot equipment and associated equipment should be stored so that it cannot be seen. He agreed that no materials from off-site should be dumped.

Members discussed the items in the Zoning officer's memo, applicant's exhibit D-1.

Issue #4 – Are clearing activities in violation of Township ordinances?

Chair Cline noted that a property owner is allowed to clear land that is not in excess of one-quarter acre; noting that such a size triggers stormwater management.

Member Fowler made a motion to affirm the Zoning Officer determination that clearing evidenced on the property is not in violation of the Zoning Ordinance, per Zoning Ordinance 230-116(B), 6, 7 and section 231.

Member Emmons seconded the motion.

Roll Call Vote

Aye: Emmons, Fowler, Manley, McAuliffe, Warren, Cline

Nay: Gilbreath

Absent: Kenyon, Szwed

Issue #3 – Is the second driveway legal?

There was a discussion that this driveway that may be dangerous. It was noted that there is no sight triangle. It was noted that there appears to be historic anecdotal evidence of a driveway. It was noted that per the Department of Public Works, who issues driveway permits, that an agricultural driveway does not need a permit.

Chair Cline stated that the driveway may be poorly placed, but that it may not be illegal. Board Attorney Davidow stated that a continued agriculture access can be maintained but that if it is used in any other way, then it should be approved by the DPW.

Member Emmons stated that there could be parking of commercial vehicles but not in the agricultural driveway. The Board asked to have wording to permit the agricultural use, but that any non-agricultural use would require an upgraded driveway.

There was a discussion about Right to Farm. It was noted that to have such protection, a farm must be identified by the County as a commercial farm.

There was a discussion that the Zoning Officer determined that an old survey shows this second driveway. The Board made a determination that evidence was presented that this driveway is not a driveway. It was noted that Section 167 of the Zoning Ordinance provides information about driveways, their use and installation.

Member Emmons stated that if this driveway is used for agricultural use only there can be no commercial vehicles using this access. He noted that if equipment is parked overnight that is not for agricultural access, and then the agricultural access use is not being used properly.

There was further discussion about the agricultural access way. Board Attorney Davidow noted that any other use of this access would be illegal under the ordinance.

Member Fowler made a motion to overturn the determination of the Zoning Officer that this second driveway is not a preexisting driveway, per the evidence submitted; survey and opinion of Mr. Patrick Fatton, PLS, exhibits D-1 and D-2. Member Warren seconded the motion.

Roll Call Vote

Aye: Emmons, Fowler, Gilbreath, Manley, McAuliffe, Warren, Cline

Nay: None

Absent: Kenyon, Szwed

Issue #2 – The dumping/solid waste complaint is not within Delaware Township’s jurisdiction.

Member Gilbreath made a motion to affirm the determination of the Zoning officer that this is not a zoning matter or within the Township jurisdiction, but a Board of Health matter. Member Manley seconded the motion.

Roll Call Vote

Aye: Emmons, Fowler, Gilbreath, Manley, McAuliffe, Warren, Cline

Nay: None

Absent: Kenyon, Szwed

Issue #1 – Is the property being used as a landscaping business in violation of the Township’s ordinance limiting home-based businesses?

There was a discussion about the agricultural use of the property. It was noted that agricultural use does not require evidence of profit from a product.

The Board discussed that a condition be placed on this issue that will permit no off-site materials to be dumped on this property. Attorney Davidow stated that any such material would have to be linked to the landscaping company. He agreed that the ordinance definition of agricultural use does not include making a profit.

Member McAuliffe questioned the tax component for the A-2 zone and farmland assessment. Attorney Davidow stated that the Board must determine that the property use is accomplishing what the zone allows. Member McAuliffe questioned what occurs if the Board overturns the Zoning Officer’s determination concerning the possible commercial use of the property. Attorney Davidow stated that if the Zoning Officer’s determination is overturned, then the owner must come to the Board of Adjustment for a variance or a cease-and-desist order can be issued. Attorney Davidow restated that there was evidence of commercial use, which was resolved to the satisfaction of the Zoning Officer.

Member Emmons asked if the Board can uphold the Zoning Officer’s determination with the clear statement that any commercial activities are in clear violation of the ordinance, to which Attorney Davidow responded affirmatively.

Member Fowler made a motion to affirm the Zoning Officer's determination that the property is not being used as a landscaping business. This affirmation is conditioned on the prohibition of future dumping of refuse or material from off-site. It was further conditioned on compliance with the zoning ordinance as it applies to refuse screening. Member Emmons seconded the motion.

Roll Call Vote

Aye: Emmons, Fowler, Gilbreath, Manley, McAuliffe, Warren

Nay: Cline

Absent: Kenyon, Szwed

Guy Hill, Block 17, Lot 41, bulk variances requested for accessory structure within the setback area and larger than 950 square feet (988 s.f.).

Mr. Guy Hill was sworn in. He stated that he lives at 63 Biser Road. He stated that he is retired, that he was a civil engineer with the NJ State Department of Transportation for 36 years. He stated that he has lived in the Township for 55 years.

Mr. Hill stated that his request is for an accessory building that cannot meet the 50 foot setback on the west side of his property. It was noted that he is requesting a 25 foot setback and that the subject property is 122 feet wide. He noted that the footprint of the proposed building is 860 square feet, but with an overhang, the total will be 988 square feet. He stated that the proposed building will fit the bucolic nature of the area and that he has chosen the size and design for its aesthetics.

Mr. Hill stated that he wishes to store antique vehicles, a motorcycle and a boat. He noted that these vehicles are currently stored in a chicken coop in Baptistown. He noted that the vehicles are secured, but that he has no access to them.

Mr. Hill stated that he purchased this property as a foreclosure in September, 2018. He noted that he had limited time to clean it up. He further noted that the property is one acre, a preexisting, undersized lot. He noted that the new mound septic covers much of the southeast corner of the property.

Chair Cline noted that the side setbacks of this property almost touch. Mr. Hill further noted that the feed line to the septic runs diagonally from the house to the septic mound. He noted that the proposed building would be about 250 feet from the road. He also noted that the placement needs to avoid the septic field and the line to the septic field.

Mr. Hill stated that the two closest neighbors are the Robinsons on the east side and the Lawrences on the west side. He provided notice to them and noted that neither neighbor had any concerns. He noted that the Robinson house is closest to his property, about 200 feet away on the east side.

It was noted that the proposed location is the only logical location per the width of the property and the location of the disposal field. Mr. Hill noted that the impervious coverage on the property is about 3,200 square feet. He noted that there is an existing driveway from the road to the house.

Mr. Hill stated that he plans to have running water and electric in the proposed building. When asked Mr. Hill agreed to two conditions, as follows:

No human habitation

Outside lighting must direct downward

Member Fowler noted that the mound on the east side of the property provides some coverage for this building.

Member Manley made a motion to approve the application as presented and conditioned. Member Gilbreath seconded the motion.

Roll Call Vote

Aye: Emmons, Fowler, Gilbreath, Manley, McAuliffe, Warren, Cline

Nay: None

Absent: Kenyon, Szwed

Planning Board Update: Liaison Cline

Liaison Cline reported that the Planning Board held their reorganization meeting on January 82019 and reviewed and revised the Committee assignments.

Correspondence

NJPO Membership: \$185.00

Member Gilbreath made a motion to approve payment for this membership. Member Manley seconded the motion.

Roll Call Vote

Aye: Emmons, Fowler, Gilbreath, Manley, McAuliffe, Warren, Cline

Nay: None

Absent: Kenyon, Szwed

Bill List

Bill List: Attorney Services – Parker McCay P.A.

General Zoning Matters

Through November 30, 2018, #378877 \$208.00

Member Gilbreath made a motion to approve payment of this voucher. Member Manley seconded the motion.

Roll Call Vote

Aye: Emmons, Fowler, Gilbreath, Manley, McAuliffe, Warren, Cline

Nay: None

Absent: Kenyon, Szwed

CELLCO, Block 5, Lot 7, Litigation Bills, to be charged to separate line item

Legal Extraordinaire (#113-278)

5/7, Cellco Litigation, #3078876 \$1,264.00

Member Gilbreath made a motion to approve payment of this voucher. Member Manley seconded the motion.

Roll Call Vote

Aye: Emmons, Fowler, Gilbreath, Manley, McAuliffe, Warren, Cline

Nay: None

Absent: Kenyon, Szwed

ADJOURNMENT: 10:30 p.m.

It was moved, seconded, and unanimously carried to adjourn at the noted time.

Respectfully submitted,

Kathleen E. Klink,
Administrative Officer, Secretary