

The regular meeting of the Delaware Township Board of Adjustment held on the noted date, was called to order by Chair Cline at 7:37 p.m., in Township Hall, Sergeantsville, New Jersey.

PLEDGE OF ALLEGIANCE

STATEMENT

Chair Cline read a statement noting that the requirements of the Open Public Meetings Act had been met.

ROLL CALL

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

Absent: McAuliffe, Warren

Also present: Board Attorney Steve Goodell, Board Engineer Rob O'Brien

ANNOUNCEMENT FOR ADJOURNMENT of application

Locandro Investments, LLC, Block 32, Lot 24, minor site plan approval and d(2) variance to expand the previously approved non-conforming four (4) residential apartment uses on the first, second, and third floors to permit two (2) additional units in the main building, one being a COAH unit; and two additional units in the barn.

Due to the absence of the Zoning Board Engineer, Rick Roseberry, this application has been adjourned to the March 14, 2019 meeting. It was noted that this is the public announcement and no additional notice will be needed.

MINUTES: January 10, 2019

The Board discussed the minutes, noting changes and typographical errors. It was moved by Member Manley to approve said minutes as amended. Member Gilbreath seconded the motion. Said motion was approved by voice vote, with an abstention by Member Kenyon.

MEMORIALIZATIONS

William Carlucci and Elizabeth Woodfield, Block 27, Lot 9, bulk variance requested for agricultural building closer than 75 feet to the property line, continued from October, 2018 meeting; announced continuation at November meeting, granted on December 13, 2018.

Member Manley made a motion to reopen this application. Member Emmons seconded the motion which was approved by voice vote.

It was noted that Mr. Carlucci was previously sworn in.

Mr. Carlucci presented into evidence two maps, A-5, entitled Site and Grading plan and revised; and A-6, Overall Location Map, also revised. It was noted that both revisions were drawn by hand by the applicant.

Mr. Carlucci stated that they are redesigning the size of the indoor arena to avoid the triggering of a Stormwater Management Plan. He noted that the preliminary calculations of a Stormwater Management Plan put the cost at about \$80,000 to \$100,000 because of the double wall pipe which is required. He noted that they want to make the building smaller, under the size that triggers stormwater management.

Mr. Carlucci noted that the change in size does not change the position of the building to the property. He noted that the change in size was reached by taking out one stall and two aisles, so that what is left is the same riding area and three stalls and one tack room. He noted that the area removed is 20 feet by 24 feet, totaling 480 square feet, reducing the size to 10,720 square feet.

It was noted that the original square footage was 11,200, for a 70-foot by 160-foot building. He noted that there is an existing driveway to the proposed location, so there is no increase in impervious coverage for a driveway.

Board Engineer O'Brien emphasized that there can be no additional impervious coverage connected to this newly sized building.

There was a discussion about the overhang which increases the total roof area. Board Engineer O'Brien asked Mr. Carlucci to confirm that there is no increase in impervious coverage because of the overhang. Mr. O'Brien stated that the measurements of the overhang have to conform to the plans and numbers in the plans.

Board Attorney Goodell stated that Mr. Carlucci has to comply or he has to meet the requirements of stormwater management.

Member Manley asked if such a condition should be in the resolution, with wording that the building must comply with existing laws and regulations, to which Board Attorney Goodell agreed.

Member Gilbreath asked if such language would satisfy the Board Engineer. Board Engineer O'Brien stated that changing the size of the building to be below the stormwater management "trigger level" satisfies that condition.

Board Engineer O'Brien also noted that the existing plan does show a 12-inch overhang which must be included in the roof area. Mr. Carlucci stated that they will make whatever changes are necessary to stay under the stormwater management "trigger level".

Board Attorney Goodell stated that the Board can delegate this authority to the Township Engineer, concerning the need, or lack of, for stormwater management.

Board Engineer O'Brien stated that such a large building still has a requirement for a dry well. He noted that the approval for the dry well system would be with the Township Engineer to review the dry well system associated with the proposed construction.

Member Fowler stated that he understands that there are run-off provisions that have to be reviewed by the Township Engineer. He stated that he understands that the rest of the variance request remains the same. He further noted that the change in size is being made to keep the plan from needing stormwater management.

Board Engineer O'Brien noted that much of this is part of the building permit process, to which Chair Cline agreed that this building permit process must be followed.

Board Engineer O'Brien reiterated that stormwater management and run-off management plans are part of the ordinance, which can be determined by the Township Engineer.

Board Engineer O'Brien asked about the setback number. He noted that the first plan shows 27.4 feet and the plan revised on 12.28.18 shows 27.2 feet, both from the lot line. The discussion resulted in a decision that the proofs were based on 27.2 feet. It was further decided that the resolution should reflect the 27.2 lot line offset.

There was a discussion about an as-built. Board Engineer O'Brien noted that an as-built will include everything that has been improved. Administrative Officer Klink asked that a copy of the as-built be submitted to the Board's office as a condition of the resolution so that it can be verified that everything was done as discussed.

Motion to approve changes as discussed: Manley

Second: Emmons

Roll Call Vote

Aye: Emmons, Fowler, Gilbreath, Manley, Szwed, Cline

Nay: None

Abstains: Kenyon

Absent: Warren, McAuliffe

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.

Administrative Officer Klink reported that Board Attorney Davidow will have this resolution ready for the March 14, 2019 meeting.

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.), granted on January 10, 2019.

The Board reviewed a prepared resolution submitted by Board Attorney Goodell. No changes, other than typographical errors, were recommended.

Member Manley made a motion to approve the prepared resolution, with errors corrected, as noted. Member Gilbreath seconded the motion.

Roll Call Vote

Aye: Emmons, Fowler, Gilbreath, Manley, Cline

Nay: None

Present, but ineligible to vote: Kenyon, Szwed

Absent: Warren, McAuliffe

Planning Board Update: Liaison Cline

Liaison Cline reported that the Planning Board discussed the proposed ordinance on the Zoning Officer duties. Member Fowler stated that he recommended that the Planning Board pay particular attention to #10, which talks about violations and the process that can go with that.

Board Attorney Goodell stated that the Zoning Officer position is not a state office or position so there is no definition from the State. He noted that there are specific powers listed in the MLUL. He further noted the towns usually put their own powers in their ordinances. He noted that some Zoning Officers double as Construction Officials or as secretary to the Board of Adjustment or the Planning Board. He noted that some Zoning Officers can also be the Town Land Use Planner. He stated that the amount of power to be given is up to the town, as it concerns people’s property rights.

Chair Cline referenced the recent appeal heard by the Board. Board Attorney Goodell noted that the Zoning Officer does have a right to go on property, but the ZO may not have same right as police.

Chair Cline also noted that the Planning Board discussed the proposed Land Disturbance ordinance. Administrative Officer Klink noted that the Planning Board has a concern with the definition of “Land Disturbance”. The Planning Board decided to review that before recommending the proposed Land Disturbance Ordinance.

Chair Cline noted that the Planning Board may or may not meet on March.

CORRESPONDENCE

Bill List

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

Legal Extraordinaire, Line Item #113-278

5/7, Cellco, Invoice #3080462 \$16.00

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

Escrow Charges

27/9, Carlucci and Woodfield, #3080338 \$448.00

27/9, Carlucci and Woodfield, # 3080463 \$160.00

Bill List: Engineering Services – Van Cleef Associates

Escrow Charges

27/9 Carlucci and Woodfield, #3935005-2 \$798.00

Member Gilbreath made a motion to approve payment of these vouchers from their respective accounts.

Member Fowler seconded the motion that was approved by voice vote.

Roll Call Vote

Aye: Emmons, Fowler, Gilbreath, Kenyon, Manley, Szwed, Cline

Nay: None

Absent: Warren, McAuliffe

ADJOURNMENT: 8:16 p.m.

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

Respectfully submitted,

Kathleen E. Klink,
Administrative Officer, Secretary

**BOARD OF ADJUSTMENT TOWNSHIP OF DELAWARE
RESOLUTION 17/41 (2019)**

Guy Harris Hill
Block 17, Lot 41

WHEREAS, on December 10, 2019 Guy Harris Hill, of 63 Biser Road, Flemington, New Jersey 08822, applied to the Delaware Township Zoning Board of Adjustment for variances related to property located at 17, Lot 41 on the Delaware Township Tax Map; and

WHEREAS, the Board held a hearing and considered the application on December 13, 2018;

WHEREAS, the Board made the following findings and conclusions based on the evidence presented at the hearing:

JURISDICTION

1. The Board has jurisdiction over appeals from the Zoning Officer (*N.J.S.A.* 40:55D-70a) and over applications for use variances (*N.J.S.A.* 40:55D-70d).
2. The Applicant published timely notice and served notice by certified mail on neighbors within 200 feet of the subject property.
3. The Board found that the variance application could be deemed “complete.”

HEARING

4. The Board held a hearing on January 10, 2019.
5. The Board considered the following documents:
 - a. Application dated December 10, 2019.

- b. Site Plan prepared by Guy Hill
 - c. Septic System As-Built Plan prepared by Douglas E. Fine, PE, dated June 18, 2010.
6. Applicant sought a variance from Section 230-17 of the Delaware Township Code, which requires any structure have a 50' setback from the property line. Applicant also sought approval of a garage approximately 936 square feet in area, in excess of the 900 s.f. permitted by Section 230-17 of the Delaware Township Code.
 7. The following testimony was considered at the hearing:
 - A. Mr. Hill testified at the hearing in support of his application.
 - B. Mr. Hill proposed to construct a garage on top of a new 24' x 36' concrete slab on the property located at 63 Bisser Road, Flemington, New Jersey, identified as Block 17, Lot 41 on the Delaware Township Tax Map.
 - C. The site comports to all bulk and area requirements for the A-2 zone, with the exception of the setback and square footage of the garage under Section 230-17 of the Delaware Township Code.
 - D. 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.
 - E. Mr. Hill stated that he wishes to store antique vehicles, a motorcycle and a boat. He noted that these vehicles are current stored in a chicken coop in Baptistown. He noted that the vehicles are secured, but that he has no access to them.
 - F. 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.
 - G. Chair Cline noted that the side setbacks of this property almost touch. Mr. Hill responded 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.
 - H. 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.
 - I. Mr. Hill testified, and the Board agreed, that the only logical location is the proposed 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.
 - J. Mr. Hill stated that he plans to have running water and electric in the proposed building, but agreed that no human habitation would ever be permitted in the garage.

CONCLUSIONS

- 8. In order for the variance to be granted, the Board considered whether the applicant demonstrated that the positive and negative criteria have been satisfied.
- 9. The applicant satisfied the burden to prove the positive criteria, demonstrating that granting the variances was necessary due to hardship created by the unique shape of the property and existing PVC delivery line which bisects the lot. In sum, Mr. Hill indicated that there is a 93' PVC delivery line which diagonally bisects the property. This feature, combined with the 120' lot width, the disposal field, and the slopes on the property significantly hamper the ability to construct the garage without the variances.
- 10. With respect to the size of the garage, the Board concluded that the footprint of the proposed building is 860 square feet, and that the variance is only required because the overhang, included in the design for aesthetic purposes, which increases the total to 988 square feet. The Board determined that that the proposed building will fit the bucolic nature of the area and supported the size and design for its aesthetics as a better zoning alternative than the requirements of the ordinance.
- 11. In addition, the benefits of the deviation from the ordinance substantially outweighed any detriment.
- 12. The applicant also satisfied the burden to prove the negative criteria, demonstrating that the application would not substantially impair the public good or the intent or purpose of the zoning ordinance. The intent of the zoning ordinance is furthered by granting the variance concerning area, because it allows for the construction of an aesthetic that is in line with the surrounding area.

NOW, THEREFORE, BE IT RESOLVED by the Zoning Board of Adjustment of the Township of Delaware, that the application of Guy Harris for setback and variance relief from Section 230-17 of the Delaware Township Code is granted, subject to the conditions expressed in this resolution.

BE IT FURTHER RESOLVED that the Board's determination is subject to the following conditions:

- A. There shall be no human habitation permitted in the garage.
- B. Outside lighting must be directed downward to prevent any disturbance of neighboring property owners.

ROLL CALL VOTE ON MOTION TO APPROVE BLOCK 17, LOT 41 AS A BUILDABLE LOT, SUBJECT TO CONDITIONS
January 10, 2018

Those in Favor: Emmons, Fowler, Gilbreath, Manley, McAuliffe, Warren, Cline

Those Opposed:None

Those Absent: Kenyon, Szwed

ROLL CALL VOTE ON MOTION TO APPROVE
RESOLUTION OF MEMORIALIZATION
February 07, 2019

Moved By: Manley

Seconded By: Gilbreath

Those in Favor: Emmons, Fowler, Gilbreath, Manley, Cline

Those Opposed:None

Present but Ineligible

To Vote: Kenyon, Szwed

Those Absent: McAuliffe, Warren

Kathleen E. Klink,
Administrative Officer

Kathleen E. Klink, Administrative Officer
Certified to be a true copy
Distributed: February 12, 2019