

The regular meeting of the Delaware Township Board of Adjustment held on the noted date, was called to order by Chair Cline at 7:30 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, McAuliffe, Szwed, Warren, Cline

Absent: None

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

MINUTES: September 12, 2019

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

MEMORIALIZATIONS - None

APPLICATIONS

Brent Walker, Block 58, Lot 3, bulk variances and associated variances requested for frame garage (1,404 square feet) for use as a shop/storage/maintenance structure; requested setback variance; requested variance for four spaces.

Member Szwed, Alternate #2, asked to be recused.

Mr. Finelli and Mr. Walker were both sworn in. Mr. Walker stated that he is the adjoining property owner for the subject property; the subject property being Block 58, Lot 3. Mr. Walker owns the abutting property Block 58, Lot 2.01. He noted that he has lived at his current residence on 58/2.01 for 39 years. He stated that he acquired 82 Bowne Station Road so that his wife's parents can move into that house.

Mr. Walker noted that the proposed frame garage, when built, will go to the property line. He noted that his in-laws have four vehicles, two for daily use and two classic cars to be stored inside the proposed garage.

Chair Cline noted that in the application, it is stated that the proposed garage will be used for a shop for maintenance for the agriculture vehicles used for 58/2.01. Mr. Walker stated that his father-in-law is a mechanic and will use the space for mechanical projects. Mr. Walker noted that the existing garage would not be a usable space for a mechanic to use.

Chair Cline asked if the proposed building would be used for agricultural uses. Mr. Walker stated that it would be used for mechanical repair projects.

Chair Cline asked that the planner's memo be reviewed. He asked why a sideyard setback of 0 feet is a benefit to Delaware Township. Mr. Walker noted that there are two existing legacy trees that he would like to preserve. He noted that the existing garage is already non-conforming and suggested that the proposed garage would disturb less ground area.

Chair Cline noted that one purpose of zoning is to make a use or lot more conforming, not less conforming. Mr. Walker reiterated that the existing garage is non-conforming. He noted that the proposed garage would have 900 square feet of impervious coverage. He noted that with the new proposal, the impervious lot coverage

would increase to 20% in a zone that allows 45% coverage. Board Engineer O'Brien agreed with the data per the zone schedule.

Mr. Finelli stated that Mr. Walker's residence, 58/2.01, is in farmland preservation. He noted that SADC has indicated that a second exception area cannot be added to the existing preserved farm. It was noted that a maintenance easement is allowed, which was suggested by Mr. Kyle, Board Planner, in his memo; especially if the property is owned by a separate owner than Mr. Walker.

Mr. Walker noted that no property lines around the preserved farm can be changed. He reiterated that a maintenance easement could be allowed. Mr. Walker noted that he intends to stay on the property a long time. Mr. Walker noted that the SADC information was provided via email. It was noted that if the municipality requires a maintenance easement, the SADC will allow such an easement.

Member Manley asked about the potential future selling of this separate lot. Mr. Walker opined that the subject lot should not have been separated from the preserved farm lot. Mr. Walker stated that he does not intend to sell the properties separately.

Mr. Walker stated that one main goal of the application is to save 200-year old maple trees.

It was noted that 78 Bowne Station Road is the preserved farm and that 82 Bowne Station Road is the subject property.

Attorney Goodell stated that there is no impediment to Mr. Walker giving himself an easement, which has to be placed in the deed.

Mr. Walker explained that the submitted application spoke to the large garage being used for maintenance of agricultural vehicles and equipment. Mr. Walker noted that the proposal was changed because an agricultural building needs a 75-foot setback. Mr. Walker reiterated that the proposal will provide two car parking spaces for daily drivers and two car parking spaces for other, private vehicles.

Mr. Finelli noted that the subject property is not farmland assessed. He noted that a tractor or piece of farm equipment may be fixed in this building upon occasion. Mr. Walker noted that his father in law is a mechanic by trade and passion and would be willing to work on some farm equipment. Both agreed that the building is not an agricultural building.

Chair Cline asked about the farm equipment. Mr. Walker noted that he has six tractors and that currently five are working and one is broken. He noted that other farm equipment includes (but the list is not limited to) manure spreaders, mowers, box scrapers, and a front end loader. He noted that most of this equipment is stored outside on 78 Bowne Station Road.

Mr. Walker stated that the purpose of using the accessory building for some mechanical work, was an attempt to streamline the application. He reiterated that they are trying to save legacy trees and are only seeking two variances, one for size and one for the rear setback.

Member Gilbreath asked about the storage of equipment. Mr. Walker stated that the equipment would not be stored in this building. Mr. Walker noted that the building would be used for repairs. He noted that the main function of the building is for the private vehicles of the residents of the home, Mr. Walker's in-laws. Upon a question from Chair Cline, Mr. Walker noted that two of the vehicles are classic cars primarily used for car shows.

Attorney Goodell stated that if the Board rules favorably, there could be a condition that no agricultural equipment will be stored in the garage. Mr. Walker agreed to that condition.

Member Fowler questioned if the classics are stored inside, what happens when mechanical work needs to be done. Mr. Walker noted the operational-driving vehicles could be out during a repair job.

Mr. Walker noted that the proposed depth is to allow better use of the space. He also noted that by going toward (and on) the rear property line, the front of the building is not being brought forward, which could cause potential harm to the trees.

Member Fowler stated that he drove past the property today and noted the locations of the trees. Mr. Walker noted that even though one tree is not that close to the proposal, that it could be damaged during excavation.

Evidence item A-1 was introduced. Mr. Finelli explained that it is a colorized version of the map submitted with the application. Member Gilbreath noted that there are no topo lines on the map. Mr. Finelli explained that the property is small with a very small grade change. Mr. Finelli noted that the existing block retaining wall, near the house, will remain in place.

Mr. Finelli stated that moving the garage forward to meet the setback would make the driveway to the garage at a steeper angle, from the roadway. Mr. Finelli also noted that there are substantial maples along the existing driveway; with one oak on the north side of the proposed garage and one hickory on the south side.

Mr. Finelli explained that there is an existing grade of 3 to 4%. He noted that a 5 % grade is acceptable, but does not think that a steeper grade would be feasible.

Mr. Finelli noted that placing the building on the property line would save the trees and not increase the grade of the driveway. He noted that a maintenance easement would allow work to be done on the building.

Member Gilbreath asked about the width of the easement. Mr. Finelli stated that the easement could be about 10 wide, along the length of the building. He noted that if bigger access is needed, it would be done from the front of the building.

Mr. Finelli stated that he has done maintenance easements in Lambertville that are often 3 to 5 feet in width.

Member Gilbreath asked about the dormers being shown in the elevations. Mr. Finelli stated that there would be a loft for storage of parts. He also noted that the existing building has electric and water and those utilities would be in the proposed building.

Mr. Finelli noted that the existing garage is 18 feet wide by 36 feet long. He noted that the proposed building will be 26 feet wide by 54 feet long. He noted that an existing shed south of the existing garage becomes the "fourth bay" of the proposed garage. He further noted that it is the intent of the design to make it look more attractive from the road and more fitting to the residential area.

Chair Cline asked if off-site storage was considered. Mr. Walker stated that his father-in-law has investigated this and found it difficult to find a reasonably-priced storage location.

Member Fowler asked if the building could be put on the south border adjacent to the stone drive on the abutting farm. Mr. Walker stated that this is not a bad location but would require replacing macadam, or increasing the macadam that already exists. Mr. Walker further noted that this location would require three property line setback variances.

Mr. Finelli also noted that such a position would put the building in the front yard, which would require another variance.

Mr. Walker reiterated that the existing building is already in this location and that enhancing that building would not be feasible, nor would it create the aesthetic appearance that the proposed building does.

Member Fowler asked if other possible locations have been looked at. Mr. Finelli stated that the size and shape of the lot does not allow any other viable options. He further noted that the grading plan shows a practical necessity. He also noted that moving the proposed building would move it further away from the house.

Mr. Walker stated that going to a 0-foot setback utilizes that space.

Member Kenyon asked about the need for four bays. It was noted that the future residents do not have kids that will reside with them. Mr. Walker stated that the future residents will have four personal vehicles with a preference to storing those vehicles under cover.

Board Planner Lelie was present to represent the Board's Planner, Jim Kyle. She asked about the dimensions. Mr. Finelli noted the depth of 26 feet includes thick, block walls, leaving an interior dimension of 24 feet.

Mr. Walker argued about having the vehicles parked outside. He noted that from a visual perspective, it is more aesthetic to have the vehicles parked inside the building. He further noted that the condition of the vehicles is further maintained by having indoor storage. Mr. Walker stated that his goal is to keep a nice yard. He stated that curb appeal is important to him.

There was a discussion about having no project cars or mechanic work outside of this building. It was noted that when work is to be done, an inside car can come out temporarily and then be returned when the work is done. It was felt that most mechanical work can be completed within one day.

Diagram A-2 was presented into evidence. A-2 is a drawing of a different scale that shows all four elevations of the proposed garage.

Photograph A-3 was presented into evidence; showing the existing garage and shed. Photograph A-4 was presented into evidence. This image was photo-shopped to include a depiction of the proposed garage and the residential expansion. Both photographs show the existing trees, in leaf.

Member Gilbreath questioned the septic and well. It was noted that neither is compromised. It was further noted that Health Department approval for the construction and expansion of the house will be required.

Mr. Finelli noted that the existing house is a Cape Cod style and becomes more of a farm house when renovated. He noted that the house gets taller, thus not affecting the impervious coverage.

Board Engineer O'Brien questioned the need for a NJ DEP permit for a project close to the Alexauken Creek. Mr. Finelli noted that communication was received from the D&R Canal Commission that this project is outside of its jurisdiction. Mr. Finelli also noted that NJ DEP permits generally apply to new structures, not alterations to existing structures. Mr. Finelli also noted that such permits are good for five years.

Member Gilbreath asked about the Alexauken Creek, being a C-1 creek. There was a discussion about permit by rule, per NJ DEP. It was noted that this permit is usually calculated on the square footage of improvement and determination of use. Mr. Finelli noted that the applicant will file the paperwork with NJ DEP and conform to any requirements set by them.

Mr. Finelli discussed stormwater management. He noted that because the project falls under 1000 s.f., this does not apply. He noted that the drains are buried from the house and that the drains on the existing garage drain on the surface. He stated that there is no evidence of erosion or runoff.

There was a question about the riparian buffer for the C-1 creek, a buffer of 300 feet. Mr. Finelli stated that permit by rule allows work to be done and then restored. He further noted that there are no wetlands on the property and no floodplains.

Member McAuliffe asked about the dimensions of the loft, to be an open mezzanine to the shop. It was noted that this will be storage space and that part of the loft may be used for a lift for the shop. He noted that the loft space will be 18 feet by 26 feet.

The Board asked Mr. Finelli to review the Planner's letter. Mr. Finelli stated that the letter provided good information and detail. Mr. Finelli stated that bulk variances requested, as detailed in Mr. Kyle's letter, are accurate. Mr. Finelli stated that following are several reasons for the grant of those three bulk variances –§230-16B(1)(f)[1]; §230-16E(4)(c); §230-16E(4)(d); as follows:

- Save legacy trees

- Work with existing grade, avoid creating a steeper grade for ingress

Mr. Walker stated that he could agree to three resolution conditions:

- No storage of agricultural equipment in building

- No storage of show cars outside of building

- Maintenance easement for adjoining property, Block 58, Lot 2.01

A question arose with the term "legacy trees". It was noted that legacy can be considered to be prominent trees in the viewshed. It was noted that these trees can be found on the property, along the entire west side of Bowne Station Road. It was further noted that removal of these trees could create erosion issues.

There was a discussion about sustaining agricultural use. Mr. Walker argued that this building avoids using agricultural land for such a building, thus taking away from land for agricultural use.

Ms. Lelie was present to represent Jim Kyle's office, as the Board Planner. She noted that if one distinct use of this building is to repair and maintain agricultural equipment, this use needs to be clear in this action. There was further discussion on this issue.

Chair Cline stated that he is uncomfortable in joining these two properties in this way, without some sort of proof of this use. Mr. Walker reiterated that there is no farmland space on Block 58, Lot 2.01 for an accessory structure, so it is better to build the accessory structure on the subject property.

Mr. Finelli stated that this is a unique situation since the two properties are owned by the same person. He noted that there cannot be a lot line adjustment adding more land to the subject property; and that the subject property cannot be merged with the preserved farm. He noted that the proposed use is the best use of such a building on the subject property.

Member Gilbreath questioned the work that may be done in the proposed building. Mr. Walker explained that he has four vehicles that are used to truck items to farmer's markets and these are vehicles that his father-in-law could work on inside of the proposed building, instead of on the ground.

Member Kenyon stated that it seems that the reason for size of the proposed building is not for personal need of the residents. Mr. Walker responded that the need is based on a discussion with his father-in-law and the vehicles that they own. He further noted that the space can also benefit the preserved farm, being used for minor mechanical repairs.

Mr. Finelli remarked that the proposed building is better looking than what is there. He noted that the map, colorized A-1, shows the gray area as the existing garage and that the proposed garage fits into the same area with an expansion on the south side and the rear.

Chair Cline expressed a concern about hazardous waste. Mr. Walker stated that his father-in-law was an airline mechanic and does take any spills seriously.

Attorney Goodell noted that in charging the Board prior to deliberations, the Kaufman case is referenced, concerning application with C-2 bulk variances. He noted that such variances should not be approved when merely the purpose of the owner is advanced. He noted that this case promotes the use of better zoning for the property, both improved zoning and planning.

Mr. Finelli stated that safety will be enhanced by allowing proper maintenance of equipment. Mr. Walker noted that there will be less traffic on the local, narrow roads. He noted that this proposal is a practical way to use this building to support the preserved farm.

Member Fowler agreed that this is a practical use to tie these two properties together. He questioned the future and the possibility of two separate owners. Member Fowler noted that under such conditions that he could not support the proposal.

Mr. Walker reiterated that there would be less tractor traffic on the road; as well as tandem dually trailers. There was a discussion that even if the properties are not tied together in such a way, the in-the-future owner of the proposed building would still be doing some mechanical work in the building.

Mr. Walker stated that his intent is to maintain this property, 82 Bowne Station Road, and to keep it nice and pleasant for Delaware Township. He noted that the previous owners occupied this home for over 50 years.

Board Planner Lelie suggested that the use of the proposed building is primarily for residential use. She noted that other equipment could be maintained. She noted that the Board could use the preservation of the trees as a planning comment.

Board Planner Lelie suggested that there could be a condition that if the property changes hands, housing of agricultural vehicles would not be permitted. The applicant stated that he has no problem with that condition.

The applicant also agreed to obtain the permit by rule from NJ DEP, as a condition.

Member Gilbreath asked to review the variances, as noted: bulk variance over 900 s.f.; bulk variance for rear yards setback of 0 feet; bulk variance for four (4) bays, instead of three (3).

Chair Cline stated that he wants to make that the positive and negative criteria have been satisfied.

The Board reviewed some of the suggested conditions:

- No storage of agricultural equipment
- No project work outside, overnight
- No living space or human habitation
- Maintenance easement for access to the back of the building
- Engineer requirements, per memo of Board Engineer O'Brien
  - D. Plan Comments
  - E. General Comments
- Any outside lighting will shine downward

Attorney Goodell stated that the application should show positive criteria, that the approval advances the purposes of municipal land use law, for a c-2 variance. He further noted that the benefits of the deviation should outweigh the detriments. He also noted that the proposal should enhance the safety and general welfare of the public.

It was noted that the proposal provides area for light and air movement as well as open space. It was also noted that there is sufficient space and location for the proposal. Further noted is the desirable visual enhancement of the proposed building to the local environment.

Attorney Goodell discussed the negative criteria, concerning detriment to the public good; meaning that no approval should be granted that might create substantial detriment to the public good. He noted that the proposal should not be detrimental to the intent and purpose of the zone plan and zoning ordinance. It was noted that the subject lot is located on a road with mostly residential homes and lots of conforming size.

Attorney Goodell stated that per the Kaufman case, the approval should not simply be a benefit to the owner for a particular use, but should be an enhancement for the zone.

Member Kenyon stated that she understands the applicant's point of view with respect to saving the trees and the position of the building along the back property line. She stated that she is struggling with the size of the proposed building and how it advances positive criteria. She noted that she feels that it is of benefit to 82 Bowne Station Road. She concluded by noting that she has less problem with the setback than with the size.

Member Fowler stated that his in-laws live at his house, so he understands the conditions being presented. He stated that his challenge is the size of the garage on a property that does not match the Master Plan. He noted that the existing building is already in non-conformance with the zoning ordinance. He noted that he is concerned by the size of the building and the number of bays. He stated that he appreciates that what has been proposed has been done with the best intent of fitting the building with the property.

Member Warren stated that he has no comment.

Member Emmons stated that he understands the setback issues, with regard to saving the trees. He noted that there would be a setback issue no matter what. He stated that he understands the size proposal. He noted that he feels that the condition banning outside storage is a good condition. He feels that such a condition helps with the size issue.

Member Gilbreath stated that she feels that the size is a concern, unless the major use is residential. She stated that she feels that the proposal does enhance the value of properties to the area and to the Township. She stated that she feels that three-car garages are a thing of the past. She stated that she feels that the proposed building is big for the size of the lot, but that there are extenuating circumstances.

Member Manley stated that there are other buildings of this size for similar lot sizes. He stated that the proposal does benefit the public by having the work kept inside, thus it will be more visually attractive. He also noted that the big trees mitigate the size of the building. He noted that he is not normally in favor of such proposals, but feels that the overall benefit outweighs not allowing the proposal. He stated that he feels that the proposal is very aesthetic and good for the Township. He further noted that the photos, before and "after", were very helpful.

Member McAuliffe stated that if there were two separate owners, this would be a different conversation. He stated that he feels that with the conditions in place there is enough protection. He stated that he agrees with other member comments. He concluded by stating that the conditions make the proposal more positive.

Chair Cline noted that the main positive criteria relates to aesthetics and that the proposal shows a very positive aesthetic view. He stated that he does not see proofs that satisfy the negative criteria. He stated that the proposal makes the pre-existing non-conforming condition on the lot to be more nonconforming. He further stated that he is confused about one property benefitting the other. He concluded by stating that he feels that the positives do not outweigh the negatives.

Board Planner Lelie suggested that a condition be included that shows that if there is a change of ownership, agricultural equipment in this proposed building would not be permitted.

Motion: Member Manley made a motion for approval based on the discussed conditions.

Second: Gilbreath

ROLL CALL

Aye: Emmons, Gilbreath, Manley, Warren

Concur: McAuliffe

Nay: Fowler, Kenyon, Cline

Recused: Szwed

It was noted that the motion passes.

The maintenance easement was discussed. It was noted that the easement should be seven (7) feet from the property line.

Planning Board Update: Liaison Cline

Liaison Cline reported on a proposed groundwater protection ordinance that was recommended by the Pipeline Subcommittee. PB Member Katz stated that she had several comments on the proposal. It was also noted that the existing ordinance has a section on “Water supply and water quality requirement”, §230-125. It was noted that the proposed ordinance should be made to “meld” with this ordinance.

The Planning Board decided that the Ordinance Review Committee will meet with the authors of the proposed groundwater protection ordinance.

Correspondence

Administrative Officer Klink stated that there is a pending application for Block 55, Lot 2, owned by the Switzler family, for an indoor tennis facility.

Bill List

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

Escrow Charges

17/41, Hill, #3101280	\$160.00
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Member Gilbreath made a motion to approve payment of these vouchers from their respective escrow accounts. Member Fowler seconded the motion that was approved by voice vote.

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

Legal Extraordinaire, Line Item #113-278

Cellco litigation, #3101278	\$35.00
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Member Gilbreath made a motion to approve payment of these vouchers from their respective escrow accounts. Member Fowler seconded the motion that was approved by voice vote.

Wiseman – Lindner – disputed issue, Block 11, Lot 10

Chair Cline noted that Mr. Wiseman has hired a lawyer and filed a tort claim. Chair Cline further noted that Township officials, including Attorney Goodell, are working with the zoning officer to develop appropriate action.

Penn East Pipeline Update, from Attorney Steve Goodell

Attorney Goodell summarized actions to date, concerning the pipeline which has been proposed to cross Delaware Township, Holland Township, West Amwell Township, and ending in Hopewell Township where it links into a transcontinental pipeline.

Attorney Goodell noted that objections have been filed with FERC, concerning the conditional permit that FERC granted Penn East. It was noted that only the State of NJ can grant freshwater permits and that no information has been given to NJ DEP concerning those permits.

Attorney Goodell noted that once Penn East has a certificate of approval, eminent domain can be used to get the information needed for the NJ DEP. It was noted that HALT, Homeowners Against Land Takings, has sued this action, concerning the right to condemn properties using eminent domain with a conditional permit. It was noted that HALT lost the first appeal federal court in NJ. Attorney Goodell stated that the appeal went to the Third Circuit, for which the state's appeal was granted, that per the 11<sup>th</sup> Amendment, individuals cannot sue the State of NJ in Federal Court. Attorney Goodell noted that a federal entity can be enlisted to pursue this action.

It was noted that State money, via SADC or Green Acres has been used to purchase some properties over which the pipeline will cross. It was noted that there are 49 properties along the route that have been preserved or purchased using such state money.

Attorney Goodell stated that Penn East can appeal this decision at the circuit court or the Supreme Court. He also noted that Penn East could plan a reroute, bypassing these 49 properties. He also noted that Penn East could find a federal agency who could step in for FERC. He noted that one such agency might be the US Department of Energy.

Attorney Goodell stated that all parties that oppose the pipeline have petitioned the DC circuit to overturn FERC in its approval. Following are some of those parties:

- NJ Department of Environmental Protection
- Hopewell Township
- D&R Canal Commission
- Delaware River Riverkeeper
- NJCF, New Jersey Conservation Foundation
- The Watershed Institute
- HALT

It was noted in this appeal that FERC should not have granted approval. It was noted that this court is the second highest court in the land, and that it hears federal cases. Attorney Goodell noted that this hearing was scheduled for last Friday, October 4 and held in abeyance until the course of action has been determined by Penn East.

ADJOURNMENT: 9:25 p.m.

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

Respectfully submitted,

Kathleen E. Klink,  
Administrative Officer, Secretary