

The regular meeting of the Delaware Township Board of Adjustment held on the noted date, was called to order by Chair Cline at 7:31 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, Warren, Cline

Absent: Szwed

Also present: Board Attorney Miccio, Board Engineer O'Brien, Board Planner Kyle

Chair Cline read into the record details concerning public comments and testimony per NJAC:5-39, to be adopted as Resolution 2020-03.

#### MINUTES: November 12, 2020

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

MEMORIALIZATIONS – Locandro Final Subdivision Resolution will be ready for the next meeting.

#### APPLICATIONS

Amy Peterson, Block 43, Lots 5 and 26, bulk variances requested for pre-existing buildings (A-1 zone).

Mr. Tony Koester was present to represent Amy Peterson. Ms. Kate Keller was present as planner. Mr. Koester stated that Dr. Peterson is the former owner of the property. Mr. Koester noted that when the property was sold, no permits were found for two preexisting buildings on the property.

Attorney Miccio stated that notice was done appropriately and that the Board has jurisdiction to proceed.

Dr. Peterson and Kate Keller were sworn in.

Mr. Koester stated that the application is for Lots 5 and 26 in Block 43 of the Township. He noted that the properties are located on the north side of Wagner Road, in the A-1 agricultural/residential zone. He noted that two buildings, a horse shed and a hay shed, were found to be in violation of the ordinance setback requirements. He noted that the application has been made to obtain variances for these buildings. He noted that the horse shed has a setback of 42.32 feet, where 75 feet is required; and that the hay shed has a setback of 5.24 feet, where 10 feet is required.

Mr. Koester noted that application was made to the D&R Canal Commission, but that no response has been received to date.

Board Engineer O'Brien stated that he is okay with the requested waivers.

Mr. Koester described the property. He noted that Lot 5 has the road frontage and the residential dwelling. He noted that Lot 5 consists of about one acre. He noted that Lot 26 abuts Lot 5 and has 3.573 acres. There was a discussion about merging the two lots, in order to protect the back lot from development. It was noted that this could be a condition, but not one to which the applicant can consent. It was noted that the present (and new) owner, Nina Engelhardt has confirmed that she will consent to that merger.

Chair Cline noted that there is no road frontage for the three-acre lot, and as such it is constrained and it would be difficult to place a dwelling on that lot. There was a discussion about ordinance section 230-25C(2) which indicates that these two lots should be considered a single lot. It was noted that Lot 3 is nonconforming and that with the addition of the land from Lot 26, the resulting lot would be more conforming.

Dr. Amy Peterson provided some background information. She noted that there are three existing sheds, as follows: a tool shed, 8 x 12; a hay shed, 12 feet 6 inches x 18 feet 6 inches; and a horse shed that 12 feet by 38 feet. Dr. Peterson stated that she measured the buildings herself.

Dr. Peterson stated that this application is here as a result of the sale of the property. She noted that the CRC, Construction Records Clearance is required for the closing. She noted that in reviewing this file, no building permits are on file for the hay shed and the horse structure. She noted that inspections have been done on these two buildings and both are found to comply. Zoning Officer Mullin noticed that the setbacks are not compliant. She stated that she purchased the property in 2005. She noted that the buildings were already present. She noted that she has maintained the buildings, but did not build them. She noted that it is not likely that the buildings could be moved to become compliant. She stated that she feels the buildings were built in the 1960s, possibly as late as 1967 and/or 1969.

Chair Cline asked if she had utilized the sheds. Dr. Peterson stated that she has two horses and a pony. She stated that she uses the hay shed for hay. She also stated that the lean-to attached to the shed is used for equipment. It was noted that the dimensions of the lean-to area could be about 18 feet by 20 feet.

Dr. Peterson stated that this property is secluded and closed. She noted that with foliage, it is difficult for neighbors to see these buildings. She noted that the closest neighbor, the Schwitzers can see the hay shed/lean-to all year round. The Schwitzers own Block 43, Lot 4, which is directly east of Lot 5. Dr. Peterson noted that the horse barn structure is difficult to see with foliage. She noted that in the past, her neighbors have told her that they are happy to see horses in the field and to have an agricultural vista.

Chair Cline asked that the series of photos be identified.

A-1, shows the horse barn

A-2, shows the hay shed

A-3, shows a closer view the hay shed

A-4, shows the horse barn in the background; the hay shed in the foreground

A-5, shows hay shed with lean-to attached

It was noted that there is a gravel area shown in photos A-1 and A-5. Dr. Peterson stated that this is a riding area composed of stone and screen dust.

Ms. Kate Keller stated that she has not testified before this board. She stated that she is licensed in the state of NJ. She stated that she has been accepted by more than 30 Boards with similar variance applications. She stated that she has appeared in Morris County and Sussex County (Hardyston Township).

Member Gilbreath made a motion to accept Ms. Keller as an expert witness. Member Emmons seconded the motion which was adopted by voice.

Ms. Keller provided planning testimony. She stated that the request is to permit these two structures to remain in their place. She reiterated the existing and required setbacks, for the hay shed, existing 5.24 feet, ten feet required; for the horse shed 42.32 feet, 75 feet required for housing livestock. She noted that these buildings are preexisting. Ms. Keller also noted that the variances requested, whether c-1 or c-2, advance the purpose of zoning. She also noted that the benefits outweigh the detriments.

Ms. Keller discussed the negative criteria. She noted that both buildings have been in existence on this property and that the benefits of allowing them to remain outweigh strict compliance of the setbacks. She noted that in viewing older aerials, there is a precedence on this site showing the buildings. She stated that there is no detriment to the neighbors. She noted that per Dr. Peterson's testimony, the neighbors have expressed the enjoyment they receive from this agricultural vista, including the animals.

Ms. Keller stated that Dr. Peterson has upgraded and maintained these buildings and that there has been no change in visual impact to neighbors. Ms. Keller stated that the inclusion of these buildings is a positive contribution to the feel of the A-1 zone. She noted that one purpose of the A-1 zone is to have large lots and single families. Ms. Keller further noted that another purpose of the Township Ordinance and the MLUL is to encourage agricultural activities. She noted that purpose A of the MLUL demonstrates this to be an appropriate use of the land. She further noted that purpose g encourages sufficient space in appropriate locations. Ms. Keller stated that the positive criteria have been met, that the existing character of the neighborhood will continue.

Ms. Keller discussed the negative criteria. She stated that this proposal will have no substantial detriment to neighboring properties. She noted that there is a large distance between these buildings and neighboring homes; such as 175 feet to the rear wall of the dwelling on Lot 4. She noted that it is about 500 feet to Lots 27 and 29 on Rosemont Ringoes Road and the homes found on those properties. She noted that both Lots 27 and 29 have sufficient foliage and vegetation buffers.

Ms. Keller stated that there will be no impairment to the zone plan and zoning ordinance. She reiterated that the A-1 zone has an agricultural purpose, as set forth in the Township Ordinance. She noted that this open lot contributes to the character and continuation of agricultural opportunities. She also noted that the size of the lot supports residential densities. She noted that the 2012 Master Plan encourages agriculture and maintaining rural nature.

Ms. Keller opined that the spirit of the ordinance has been met and the statutory criteria have also been met.

Dr. Peterson stated that two neighbors one at 16 Wagner Road and the Schwitzers have stated that they can support the proposal. Dr. Peterson stated that she is still at the property twice per day, as her horses are currently boarding there.

There were no public questions.

Chair Cline asked Dr. Peterson about the boarding of her horses at this property. Dr. Peterson stated that she has sold the property to Ms. Engelhardt who is allowing Dr. Peterson's horses to remain on site until they can be moved to Dr. Peterson's new location. There was a condition about the property becoming a commercial boarding facility. Mr. Koester stated that he cannot agree to any conditions for the new owner, who is not present. Board Attorney Miccio stated that the resolution can be expressed clearly about what the Ordinance allows and does not allow. It was noted that the resolution can be written to comment on the nature of the existing conditions. It was noted that the Board is not granting approval as a boarding facility.

There was a discussion about Ms. Engelhardt's purpose in owning such a property. Dr. Peterson stated that Ms. Engelhardt has ridden horses her entire life. Dr. Peterson stated that she and Ms. Engelhardt met through a trainer. She noted that Ms. Engelhardt rides for pleasure and recreation and would contemplate owning her own horse.

Member Kenyon asked about the horse barn. Dr. Peterson describe the building as 12 by 38 feet with three stalls that are each 10 feet by 12 feet. Dr. Peterson noted that there is a tack feed room off to one side. Dr.

Peterson stated that Ms. Engelhardt does not own a horse now, but is contemplating owning a horse, and possibly boarding one horse. It was noted that there is no State or Township guideline for animals and density.

Chair Cline stated that he does not want the Board's action to restrict the new owner unduly. Many members agreed with that statement. Member McAuliffe stated that the resolution can clearly state the Township's position on the agricultural use of the property.

Board Planner Kyle noted that the definition of agriculture does not include boarding as a commercial enterprise. He further noted that the definition of agriculture does not include boarding and riding facilities.

From the ordinance: *AGRICULTURE – the growing of crops, truck gardening, raising or breeding of horses, cattle, sheep, dairy, poultry or other farm livestock; maintaining under good management practices an orchard, woodlot, forest, nursery or greenhouse; or performing other agricultural or horticultural activity. Agricultural lands shall include open or wooded areas, ponds, brooks, wetlands, fields and meadows. (Amended at the time of adoption of Code – Ch. 1, General Provisions, Art. 1)*

Mr. Koester stated that they can agree with the permitted use of the Township ordinance.

There was no public participation; the public participation was closed.

Board Attorney Miccio stated that the requirements of a c-2 variance can be flexible when the purposes of the land use law have been met. He noted that the negative criteria have shown that the variances can be granted without detriment to public good and will not impair the zone plan and ordinance. He agreed that the application promotes the uses noted in NJ40:55d.2., including creating a desirable visual environment.

Member Gilbreath agreed. She noted that the application fits the positive and negative criteria. She noted that there are only three stalls and that this facility promotes the agricultural use of the Township. She noted that the project is hidden behind the house with little or no impact on the neighbors.

Chair Cline did express a concern about the property possibly being used for animals, other than horses. He did agree that the use is an agricultural use and permitted in the zone. He noted that the use does not go against the Township Zone plan. He also noted that it does create use of open space that is hidden from the general public.

Member Manley agreed with Chair Cline. Member Manley also agreed that the use is consistent with the goals of the Master Plan and that it has been operating for many years without detriment.

Member Fowler agreed with the statements given. He stated that he feels that it fits in and that he does not have any concerns.

Member Emmons supported the application.

Member McAuliffe echoed the sentiments given.

Member Warren stated that he has no objections.

Member Kenyon stated that the applicant has met the criteria.

Chair Cline stated that one condition is the merging of the two lots. Members agreed. It was noted that such a merger can be done by deed.

Member Emmons made a motion to approve the application as presented and as conditioned. Member Fowler seconded the motion.

**Roll Call Vote**

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

Nay: None

Absent: Szwed

Planning Board Update: Liaison Cline

Liaison Cline reported that there was a boundary line adjustment was approved for Block 19, Lots 29 and 29.01, for the estate of Joyce Opdyke, on Hewitt Road.

**CORRESPONDENCE**

a. Memberships, that expire December, 2020:

Chuck Cline, Andrea Kenyon, Tom Warren new expiration 2024

Cullen McAuliffe, new expiration 2022

All agreed to new terms, that will expire as noted.

b. Professionals for 2021 – Steve Goodell, Attorney; Rob O’Brien, Engineer; Jim Kyle, Planner; Maser for others

All agreed to return and will prepare PSAs for the Board (Professional Services Agreements)

The Board requested that Attorney Miccio and/or Attorney Goodell prepare a year-end summary of action for the Township Committee. It was also asked for a review that might include anything that needs the attention of Planning Board.

c. Calendar – 2021

November 11 is Veteran’s Day. Members agreed that it was okay to meet on that date.

There was a discussion about upcoming applications.

d. Resolution 2020-03 – Remote Public Meeting Procedures during a declared State of Emergency

Attorney Miccio read the resolution into the record that approves these procedures. Both the

resolution and the procedures follow the minutes.

Motion to approve: Gilbreath

Seconded by: Fowler

**Roll Call Vote**

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

Nay: None

Absent: Szwed

Bill List

**Bill List: Legal Services – Parker McCay, P.A.**

Zoning Board Matters, Line Item #113-215

Through October 31, 2020, #3123328 \$384.00

Through December 10, 2020, #3124556 \$80.00

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

**Roll Call Vote**

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

Nay: None

Absent: Szwed

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

Escrow Charges	
4/10, King/Hummler, #3123326	\$32.00
41/1.10, Locandro, #3124557	\$1,104.00
43/20, Skeuse, #3123327	\$784.00

**Bill List: Engineering Services – Maser Consulting, P.A.**

Escrow Charges	
41, 1.10, Locandro, #618952	\$150.00

**Bill List: Planning Services – Kyle McManus Associates, LLC**

Escrow Charges	
4/10, Hummler/King, #2225	\$1,263.80
43/20, Skeuse, #2226	\$639.00

Member Gilbreath made a motion to approve payment of these vouchers from their respective escrow accounts. Member Emmons seconded the motion that was approved by voice vote.

ADJOURNMENT: 8:54 p.m.

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

Respectfully submitted,

Kathleen E. Klink,  
Administrative Officer, Secretary

**DELAWARE TOWNSHIP ZONING BOARD OF ADJUSTMENT**  
**RESOLUTION NO. 2020-03**

**RESOLUTION ADOPTING REMOTE PUBLIC MEETING PROCEDURES DURING A DECLARED STATE OF EMERGENCY**

**WHEREAS**, the Division of Local Government Services recently released emergency regulations establishing standard protocols for remote public meetings held by a public body during a Governor declared emergency; and

**WHEREAS**, a Local Finance Notice 2020-21 was released on September 24, 2020, to accompany and further explain the new regulations promulgated by the Division of Local Government Services; and

**WHEREAS**, these regulations include provisions concerning notice, public comment, and minimum requirements for remote meetings technologies, to ensure continuity of government operations and transparency in conducting public business when an emergency requires a governing body to meet remotely; and

**WHEREAS**, the regulations further require a local public body to adopt by resolution standard procedures and requirements for public comment period during a remote public meeting; and

**WHEREAS**, the Delaware Township Board of Adjustment desires to establish and adopt said procedures attached hereto, as Exhibit A.

**NOW, THEREFORE, BE IT RESOLVED**, on this 10th day of December, 2020, by the Township of Delaware Board of Adjustment of the Township of Delaware, County of Hunterdon, and the State of New Jersey, hereby adopts Remote Public Meeting Procedures during a declared State of Emergency attached hereto, as Exhibit A.

Moved By: Gilbreath

Seconded By: Fowler

**Roll Call Vote**

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

Nay: None

Absent: Szwed

**CERTIFICATIONS**

I certify that the foregoing Resolution was duly adopted by the Township of Delaware Board of Adjustment at a regular meeting held on the 10<sup>th</sup> day of December, 2020, a quorum being present and voting in the majority.

\_\_\_\_\_  
electronic signature  
**Kathleen E. Klink, Administrative Officer**

4849-5561-4158, v. 1

**Delaware Township Zoning Board of Adjustment  
Remote Public Meeting Procedures  
during a Governor-Declared State of Emergency**

**Meetings**

The Delaware Township Zoning Board of Adjustment meets on the 2nd Thursday of every month at 7:30 p.m. In-person public meetings remain the default during a declared emergency. Room capacity restrictions pursuant to Federal and/or State guidelines shall be followed for in-person meetings. A hybrid or all virtual public meeting model shall be employed as necessary. When the all virtual or hybrid public meeting model is used, in addition to physical access to public meetings, Zoom shall be the electronic communication platform used for the public's remote access to public meetings. The virtual/hybrid-meeting model is made available to provide the opportunity for public participation during a declared state of emergency requiring physical distancing limitations.

**Notice of Meetings**

Public meetings of the Delaware Township Zoning Board of Adjustment continue to be conducted in-person and via Zoom. Supplemental meeting notices, which include clear and concise instructions for accessing the meetings remotely, means for making public comment and where relevant documents, including plans and documents associated with the applications before the Board can be found, are advertised on the Delaware Township website, [www.delawaretpnj.org](http://www.delawaretpnj.org), posted on the official bulletin board located inside the Delaware Township Municipal Building and on the main access door and handicap accessible entrance of the Municipal Building – viewable from the outside.

**Technology & Procedural Matters**

***Remote Meeting Platform***

Zoom electronic communication platform shall be available for every public meeting. The access phone number and computer link for the specified meeting will be available, at a minimum, ten (10) days prior to the public meeting. Members of the public attending the meeting remotely may make public comment via Zoom during the meeting. Comments sent via chat on Zoom will not be accepted and will not be made part of the record/minutes.

Any remote public meeting with one or more public hearings on the agenda shall be broadcast by video as well as by audio. Individuals giving sworn testimony at a public hearing held during a remote public meeting shall appear by video in addition to audio.

***Public Comments Submitted Prior to Meeting***

The public may submit questions or comments via e-mail to [kklink@delawaretpnj.org](mailto:kklink@delawaretpnj.org) no later than 3:00 p.m. on the day of the scheduled Zoning Board of Adjustment meeting. The public may also submit public comments in written letter form via mail or by drop box to the Municipal Building located at 570 Rosemont Ringoes Road, Sergeantsville, New Jersey 08557, no later than 3:00 p.m. the day of the scheduled Zoning Board of Adjustment meeting.

Timely submitted public comment shall be read aloud and addressed during the public meeting that will be heard to all remote participants and the public. The Zoning Board of Adjustment may pass over duplicate written comments; however, each duplicate comment will be noted for the record with the content summarized.

Written public questions or comment will not be treated as sworn testimony.

***Public Comments & Conduct from Remote Participants***

The procedures and requirements for making public comment, along with an explanation of the audio muting function of the Zoom platform being used, will be announced by the Administrative Officer at the beginning of the remote public meeting. The Board members will facilitate a dialogue with all commenters to the extent permitted by Zoom technology.

All participants must keep their microphones muted until directed otherwise. If necessary, the Administrative Officer will also engage the Zoom Meeting mute function until such time for public comments. When a hybrid meeting model is employed, members of the public attending the meeting in-person will be provided the opportunity to engage in public comment prior to any remote participants. All remote participants will be asked to state his/her name and home address before making comment. The Administrative Officer will manage the order of the remote participant's comments.

If a member of the public becomes disruptive during a remote public meeting, including during any period for public comment, the Administrative Officer or designee shall mute or continue muting the disruptive member of the public and warn that continued disruption may result in their being prevented from speaking during the remote public meeting or removed from the remote public meeting. Disruptive conduct includes sustained inappropriate behaviors such as, but not necessarily limited to, shouting, interruption, and use of profanity. Time permitting, the disruptive individual shall be allowed to speak after all other members of the public have been given the opportunity to speak. Should the person remain disruptive, the individual may be muted or kept on mute for the remainder of the remote public meeting, or removed from the remote public meeting.

***Presentations or Documents***

New applicants for development shall submit exhibits to the Administrative Officer no less than four weeks in advance of the remote public meeting. Applicants with continuing applications must submit exhibits to the Administrative Officer no less than two weeks in advance of the remote public meeting. The applicant is responsible for converting all exhibits into an electronic format accessible to the public.

All documents made available to the public in hard copy format will be available prior to the meeting for download. Documents will be available at [www.delawaretpnj.org](http://www.delawaretpnj.org) in addition to the Meeting Agenda and Remote Meeting Instructions.