

The special 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, as supported by the virtual meeting procedures via ZOOM.

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 Steve Goodell, Board Engineer Rob O'Brien, Board Planner Jim Kyle

MINUTES: October 14, 2021

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

MEMORIALIZATIONS

Block 51, Lot 5.05, Tilch, use variance granted for two houses on one property of less than 30 acres, contrary to §230-16B(h) in the A-1 zone.

Prepared resolutions were distributed to all members for review and discussion. Items of clarification for wording and content were discussed.

Motion to memorialize the use variance resolution was made by Member Manley. Member Fowler seconded the motion.

Roll Call Vote:

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

Nay: None

Present, but ineligible to vote: Kenyon

Absent: Szwed

Block 13, Lot 22.04, Traina, use variance granted for conversion of accessory structure to a dwelling, not meeting the conditions, §230-31D(4)(e); bulk variance granted for preexisting front setback violation.

Prepared resolutions were distributed to all members for review and discussion. Items of clarification for wording and content were discussed.

Motion to memorialize the use variance resolution was made by Member Manley. Member Fowler seconded the motion.

Roll Call Vote:

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

Nay: None

Present, but ineligible to vote: Kenyon

Absent: Szwed

Application

Weiss, Block 44, Lot 4.03, use variance application requested for automotive repair and maintenance within an existing barn-structure.

Mr. Steven Gruenberg presented himself as attorney for the applicant. He noted that Jay Morlock and Jeremy Weiss are partners in M&W and wish to move their automotive business to the subject property.

There was a discussion about completeness, based on the Van Cleef report that is dated 10.21.21. Chair Cline stated he would like to see items on the drawing, specifically to know how water flows on this property. Mr. Gruenberg stated that he would like to proceed with the application noting that the application is complete. He noted that the applicant does not want to waive items, but just proceed with the application with conditions to meet those items that are identified by the Board. Attorney Goodell stated that that the Board can determine that the application is complete, with enough information to start the hearing. Mr. Gruenberg further noted that information presented in tonight's hearing may answer some questions.

Chair Cline stated that the Board would not be voting on the application at tonight's hearing. He noted that the Board may vote at the November 11 meeting. He noted that the applicant will present witnesses and that questions will be heard for that witness only. It was noted that anyone who wishes to speak will move to the podium and address the Board.

Mr. Gruenberg asked that the Board, after hearing tonight's testimony, might reconsider a vote. Chair Cline stated that if the Board feels comfortable making a vote, the Board will do so. He noted that the Board will keep an open mind.

Member Manley made a motion to consider the application complete, with waivers for completeness only. Member Fowler seconded the motion.

Roll Call Vote

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

Concurs: McAuliffe

Nay: None

Absent: Szwed

Mr. Gruenberg summarized some information for tonight's application for M & W Automotive. He noted that there is no need for signage, no need for outdoor storage, and no gasoline pumps. Mr. Gruenberg stated that the applicant would like to treat this application as a home occupation. Mr. Gruenberg noted that a home occupation is limited to 900 square feet and that this proposed use exceeds that size. There was a discussion about which type of use variance applies to this application, d-1 or d-3. Mr. Gruenberg stated that they have proofs for both.

Mr. John Madden, applicant's planner, and Mr. Rupnarain, applicant's engineer, were both sworn in. Mr. Weiss was sworn in as the applicant.

Mr. Weiss stated that he bought the subject property in November, 2020, and currently resides there with his wife. He stated that he owns M&W Automotive Service with his partner Jason Morlock. He stated that they specialize in automotive repair of specific types of "toy" cars. As an example, he noted that they do not typically work on a car such as a 1988 Durango.

Mr. Weiss explained his operation. He stated that he purchased this property because of the building. He noted that instead of renting a property, he would own this property and he and his partner could operate the business at this site. Mr. Weiss noted that M&W runs a pretty tight ship. He noted that they rarely keep a car overnight. He noted that their work is specialized. He further noted that their advertising is via "word of mouth".

Mr. Gruenberg discussed the previous manufacturing process at this site. He noted that the manufacturing at this site was developed for the manufacture of splice boxes. It was noted that these boxes are used where lines intersect and are stored and connected within the splice box. He noted that the manufacturing process was to

take the boxes apart, clean them and then resell them. Mr. Gruenberg noted that the last resolution for this property was conditioned on the termination of this use upon the sale of the property.

Through questions by Mr. Gruenberg, Mr. Weiss discussed the property. He noted that there is a house and a dairy barn. It was noted that the original dairy barn was part of the agricultural use. He noted that the property contains 10 acres. He noted that the area that is farmed is in the back of the property. Mr. Weiss noted that the farmer rotates from one crop to another. He noted that Dave Bond is the farmer that leases his property. Mr. Weiss stated that upon purchase he cleaned up the property. He noted that the previous owners were elderly and relocated to another property prior to the sale. He also noted that there had been three tenants in various buildings on the property, in the past.

Mr. Weiss stated that he and his wife take pride in where they live. He noted that the property was overwrought with debris, when they purchased the property. He noted that there was a concrete building on the property, in the rear. Mr. Weiss stated that this building may have been a pig sty. Mr. Weiss stated that there was an insurance inspection, and there was a recommendation that this building be reroofed or removed. Mr. Weiss stated that this building was demolished. He noted that the concrete is still on site, but will be removed.

Mr. Weiss discussed some trees that once existed to the rear of the subject building. He noted that the health of these trees was found to be questionable, so that he decided to remove them. Mr. Weiss noted that the removal of these trees extends the space that is able to be farmed.

Mr. Gruenberg discussed the old dairy barn. It was noted that in the early 1980's, a fire started in a dumpster located near the old barn and the building burned to the ground. It was noted that the owners, the Klesney's, approached the Township about rebuilding this structure to make it slightly larger, and of concrete. Mr. Weiss stated that the subject building is concrete and steel, with an exterior that is block for the walls and the floor. It was noted that the second floor sits on steel beams. It was noted that this building lends itself to a commercial type space. Mr. Weiss stated that this building is well suited for the proposed automotive service.

Mr. Gruenberg stated that the intent is to only use the first floor for business. Mr. Weiss stated that the second floor would be used for personal storage. Mr. Weiss stated that the first-floor space is large enough for three work spaces. He noted that it is their plan to keep all cars stored inside the building. Mr. Gruenberg asked more questions about the use. Mr. Weiss stated that the business would be open from Monday through Friday, from 8 a.m. to 5 p.m. Mr. Weiss stated that the employees would only be Weiss and Morlock. He stated that there would be no noise as the use would be totally inside the building. He noted that they work on two to three cars per day.

There was a discussion about waste fluid. Mr. Weiss stated that their current vendor for waste fluid provided them with a 100-gallon approved steel tank. Mr. Weiss stated that there is a connection in the building for this tank. He noted that the truck backs up to this valve and the transfer of fluids takes place without spillage. Mr. Weiss discussed the storage and disposal of parts, such as filters, light bulbs, etc. Mr. Weiss stated that new parts are not stored on site, he noted that the vendors deliver the parts on an as-need basis. He noted that they might get four deliveries per day, via an-Amazon type truck.

Mr. Weiss discussed the lighting on this building. He noted that there is existing lighting on the building. He noted that the main entrance has a motion light. He noted that he does not feel a need for increased lighting. He noted that customers drop off their cars and would become familiar with the new location.

Mr. Weiss stated that their garbage is stored in a three-yard dumpster. He noted that that they would maintain their contract with the same hauler. He noted that the pick-up is once every two weeks. He noted that he would change the pick-up to once per week if the Board makes that a condition. He also noted that he would enclose the dumpster if requested.

Mr. Weiss stated that additional landscaping could be discussed, he noted that the property also has a field and agricultural use. He noted that if the Board wants a line of sight barrier, they would agree.

Mr. Weiss discussed fire protection. He noted that they have scheduled times with the fire inspector. He noted that they have a full-sized fire extinguisher and that it is inspected every year. He noted that the proposed space is a comparable space and that the fire extinguisher should service that area.

Mr. Weiss noted that there is a garage of 1,180 square feet. He noted that this is for personal use, such as lawn equipment and pool equipment. He noted that this building would not be used for the business.

Chair Cline stated that the previously granted resolution has a cease of use clause when the property was sold. It was noted that the industrial use was stopped prior to the sale. No one knows when the industrial use ceased.

Member Manley asked if the same type of transfer for the waste would be used at the proposed site. Mr. Weiss stated that the same company would be in use with the same type of transfer connection. He noted that there is impervious surface in the area of this connection and that a containment system could be added.

Chair Cline asked about degreasers and other solvents. Mr. Weiss stated that these can go in with the waste oil. He noted that he is allowed a certain percentage of non-waste oil material is allowed with the waste oil. He noted that they have no parts cleaner. He further noted that they have an approved metal container for the solvents.

Chair Cline expressed his concern with ultrasonic cleaners that could produce pollution into the atmosphere. Mr. Weiss stated that these types of cleaners are very costly and that M&W does not own one. Mr. Weiss stated that thinners and other chemicals fall under the review by the fire inspector. Mr. Weiss noted that they have had no issues or questions in their Stockton operation of ten years.

Chair Cline asked about oil filters. Mr. Weiss noted that there has been a return to cannister oil filters, in which the interior can be removed and the waste oil company will pick up those filters. Mr. Weiss stated that the number of cars on which they work is very small, making it possible to store waste filters on site until disposal.

Chair Cline stated that he is concerned about this type of pollution and that this issue may need more attention.

Member Kenyon asked about other employees. Mr. Weiss noted that there have just been two employees, the owners, since day one. He noted that they can store cars being serviced in the barn, that there is ample space. He noted that even with parking available, there is room to store the cars inside. Mr. Weiss stated that this ability is good for their business, as they work on sensitive cars, such as convertibles.

One question arose concerning the frequency with which old parts and trash are removed. Mr. Weiss noted their existing pick-up is weekly. He also noted that they recycle everything that they can. He noted that in most cases things that are brought in are taken out, one example is tires. He also noted that scrap metal would be stored inside and is picked up on a regular basis.

Attorney Goodell asked about signage. Mr. Weiss stated that they would use the number on the mailbox. He noted that their business is not advertised that most work comes in by word of mouth. He noted that most of their work is on specialty cars, such as European models and vintage vehicles.

Board Planner Kyle asked about the bathroom. Mr. Weiss stated that there is an existing bathroom. Mr. Weiss noted that any interior changes that are to be made will meet current code.

Board Engineer O'Brien's report noted accessibility for emergency vehicles. It was also noted that the ordinance calls for a wider driveway for a service station. Mr. Weiss noted that a large garbage truck gets in and

out with no trouble. Chair Cline questioned the need to meet the ordinance for a service station. Board Planner Kyle stated that he interpreted the memo to have a width for a two-way driveway.

Mr. Gruenberg stated that the applicant can review and address that ordinance.

Board Engineer O'Brien asked about underground tanks. Mr. Weiss stated that as part of the inspection for the sale a tank sweep was done for the house and buildings and none were found.

Member Emmons asked about the makes and models. Mr. Weiss responded that most of the cars are German cars, such as Mercedes, VW; and Ferraris and Asti Martin.

Member Gilbreath asked about the Cadillac collection. Mr. Weiss stated that there is more storage space in this building than there is in Stockton.

Mr. Eric Rupnarain was introduced. He is the engineer for the applicant. He provided his qualifications; he stated that he was licensed in New Jersey in 2003 and in Pennsylvania in 2013. He stated that he graduated from Villanova in 1997 with a bachelor's and received a Masters from Villanova in 2001. He noted that his degrees are in civil engineering. He stated that he has appeared before this Board and before all municipalities in Hunterdon and Mercer Counties. He has appeared before Boards in Middlesex and Somerset.

Member Gilbreath made a motion to approve Mr. Rupnarain as an expert. Member Emmons seconded the motion that was unanimously approved by voice vote.

Mr. Rupnarain showed the map that was submitted with the use variance application. He noted that this map shows the existing features of the property, with the house in the southwestern corner, closest to the road. He noted that the structure for the proposed use is an existing 5,570 square foot building with a concrete floor. He noted that the first floor space of 1,700 square feet would be used for the shop and the remainder would be for storage. Mr. Rupnarain noted and described the garage doors and man doors.

Mr. Rupnarain stated that the property is in the A-1, agricultural and residential zone. He noted that there would be no improvements and no signage. He noted that the shop is open from 8 to 5 and that there would be no meaningful traffic.

Mr. Rupnarain noted the location of a parking spot to meet the ADA requirements, it is on the southerly side of the building for the proposed use.

Chair Cline noted that it would be good to have elevations to see how the property drains. Mr. Rupnarain stated that the applicant will provide those. Mr. Rupnarain stated that the property drains toward Dunkard Church Road and the creek on the opposite side of the road. He explained that the applicant owns a piece of the property across the road abutting the creek.

Mr. Rupnarain stated that all improvements needed will be internal. He noted that there will be an ADA bathroom.

Mr. Rupnarain discussed the lighting, which would only be needed during the winter. He noted the lighting on the south side of the building and a higher spotlight on the same side. He noted that the lighting would only be visible to the traffic and vehicles on the road.

Chair Cline again noted the need for a topographical map. He asked about the adjacent property to the rear of the subject property, on the north side. It was noted that there is a house on that property at a distance of over 755 feet and that the house is visible from the barn.

There was a discussion about the loading zone. It was noted that there is an existing paved area that approaches the barn on the south side of the building. It was noted that this area is 11.5 to 12 feet wide by 60 feet in depth. It was noted that this would be the location for the dumpster and for deliveries.

There was further discussion about emergency access. It was noted that the entrance on the road is wide and that the driveway at its narrowest point is 12 feet wide. It was noted that the driveway beyond this point is 20 feet wide, unimpeded and unencumbered. It was noted that if needed, the applicant will request a bulk variance for this dimension. Mr. Rupnarain explained that other townships allow 12-foot wide driveways with stabilized shoulders. He noted that the narrowest part is closest to the road and that the paved area closer to the building is much wider.

Mr. Gruenberg stated that the one focus of the application is to keep the property looking like a rural residential home with a home occupation-type use. Mr. Rupnarain agreed that the goal is to keep the property from looking more commercial.

Mr. Rupnarain showed photos of the building, including the back side of the building showing the block structure. One photo showed the one-story section to be used for the service area. Another photo showed the garage door that provides access to the second floor.

Board Planner Kyle noted that the lighting can be replaced with down-lit fixtures, to which the applicant agreed.

Mr. Rupnarain noted that the westerly side of the building is where vehicles would enter the building. He noted that there is a person door next to the garage door. He noted that the applicant intends to move the heating oil tank from outside to the inside of the building.

Member Gilbreath asked about the lighting. Mr. Rupnarain stated that the applicant will agree to the lighting as conditioned by the Board.

There was a discussion about the proposed handicapped space on the south side of the building. It was noted that there is no step in this area, where there is another man door. It was noted that the loading zone is where the dumpster would be located, on this same side of the building. It was further noted that there is existing vegetation in this area, but the dumpster area can be enclosed if that is a condition.

The Board reviewed Board Engineer O'Brien's letter of 10.21.21, Plan Comments, beginning on page 3. Mr. Rupnarain stated the plans will be revised to show comment 1a, providing driveway and other area dimensions. Mr. Rupnarain noted that Mr. O'Brien's comment for 1b concerns the ordinance requirements for an automotive service use. Mr. Rupnarain stated that the proposed use is not a full-blown automotive service use. Mr. Gruenberg stated that the application would agree to such a stipulation, limiting the niche use as described. Attorney Goodell stated that if granted with conditions and stipulation, the next property owner would have to comply with the same conditions and stipulations.

Mr. Rupnarain stated that the applicant will comply with 1c, detailing the parking spaces. He noted that for 1d, the applicant will request a bulk variance to reduce the loading zone of 14' by 55', per the ordinance, to a width of 11.5 to 12 feet. Mr. Rupnarain stated that the applicant is requesting that the existing screening be used.

Mr. Rupnarain discussed 1e, parking concerning an outdoor tank and a slope to the pavement. It was noted that if the spaces are pulled back from this slope, that there is still sufficient space for circulation. Board Engineer O'Brien stated that this circulation should be shown on the map. Board Planner Kyle measured this area, from the edge of the lip to the edge of the pavement and found it to be 30 feet. It was noted that 24 feet is the standard for 90-degree parking. Mr. Rupnarain also noted that there is grass on the west side of the pavement.

Through the photos, a six-inch lip is shown by the parking area. It was noted that this lip or ledge could create problems for the parking and circulation area. There was further discussion about this lip and how it may affect the ADA parking space. It was noted that the lip should be evened out or the ADA space should be moved. The applicant agreed to even out that lip which results in the same impervious coverage area. It was noted that wheel stops can be installed to protect the building. Board Engineer O'Brien asked that this revision be shown on the map.

Mr. Rupnarain stated that items 1g through 1o will be addressed.

There was a discussion about the Third Neshanic River, across the street, and what its status is. Mr. Rupnarain stated that he can research that.

Mr. Gruenberg reminded the Board that no new impervious surface is being added.

There was a discussion about the two septic systems, as noted on the map, one serves the barn, and the other serves the dwelling. It was noted that one well serves both buildings, and that it is located directly behind the dwelling. It was noted that all existing reports show that the systems are functional. It was noted that the septic on the house initially failed due to a missing outlet baffle. It was further noted that barn septic had a crack in the outlet baffle. It was noted that all repairs were made and retests showed positive functioning. It was noted that the building has three bathrooms, two on the second floor and one on the first floor.

The applicant was asked to agree to no human habitation for the second floor, to which an agreement was made.

Chair Cline noted the request for a waiver of the contours, #3 of Mr. O'Brien's report. Mr. Rupnarain stated that the contours will be added. It was noted that there are no slopes greater than 15% on the property with the buildings. It was noted that there is some slope on the property towards the creek, but that it is not 15%. Existing woodlands will be shown on the maps.

There was a discussion about screening, for people viewing into the property. It was noted that an evergreen line could shield the backside of the barn. It was noted that the neighbor who owns that property is present and the Board could have that discussion with her.

Board Planner Kyle reviewed the property on the NJ GEOWEBSITE of NJ DEP. He noted that this creek is not a C-1 creek.

There was a discussion about the two previous resolutions for this property. It was noted that the original in 1972 was to convert the dairy barn to industrial use. It was noted that the approved resolution adopted in 1982 allowed that the building be rebuilt and designed for industrial use. Both variances were granted by the Board of Adjustment.

Mr. Rick Wolfe of 21 Rynearson Road was present. He asked about the aquifer on which this property sits, to which the statement was made that no research was done. Mr. Rupnarain stated that he could research this question through NJ DEP. Mr. Wolfe stated that he would like to see that information.

Mr. John Madden was sworn in. He stated that he is licensed in New Jersey and in fact was once a principal with Maser Consulting. He stated that he was an engineer for 50 years and now does free-lance consulting work. He stated that he has appeared before every level of government. He stated that he has appeared before over 150 Boards through the span of his career, including this Board.

Member Gilbreath made a motion to accept Mr. Madden as an expert. Member Emmons seconded the motion that was adopted unanimously by voice vote.

Mr. Madden stated that he prepared by reviewing the application, visiting the site, taking pictures, and by having a long conversation with the applicant. He stated that he reviewed the prior approvals, the Master Plan, the Zoning Ordinance for the A-1 Zone, and case law for conditional use and use variance applications. He stated that he has been in attendance for the applicant and engineer testimony.

Mr. Madden discussed the possibility of considering this a D-3, conditional use variance. Mr. Madden noted that Mr. Weiss testified to the nature of the use that could be a home occupation because of the distinctive niche within which he operates. Mr. Madden noted that this use is a low key, low impact operation in terms of business and traffic, which could allow it to fit within the realm of a home occupation. Mr. Madden listed those aspects of the operation which could support the interpretation of a home occupation, as follows:

- No retail sales of parts as might be in service station
- No wrecks or hauling
- No body work, painting
- No heavy truck repair or farm equipment – these would be done off site on someone else's property
- No gasoline pump on site – no spills
- Limited market of customers, pulling from immediate area

Mr. Madden continued to compare the proposed use to a home occupation, per Zoning Ordinance §230-5, which defines such as use as an accessory use for lawful, gainful employment. He noted that the proposed use is secondary to the use of the property as a residence with agricultural use. He further referenced ZO §230-104 for the standards, one of which is that the building is conducted within the principal dwelling or an accessory building not to exceed 40% of the aggregate total area of the first-floor area of the principal building, and not to be greater than 900 square feet. It was further noted that there can be a resident employee, plus one employee.

Mr. Gruenberg asked if this proposal meets these standards. Mr. Madden stated that the proposed use exceeds 900 square feet due to the existence of the existing building, with a first-floor square footage of 5,500 square feet, and a total of 9,000 square feet.

Mr. Madden displayed photos, as noted and described.

Photo 1 – existing business in Stockton borough

It was noted that all of the shop activity is conducted inside this building, of 2,700 s.f. It was also noted that the proposed building would double the size of the shop, still allowing everything to be inside. This photo also shows the restrictions of this site. Mr. Madden noted that the landlord requires that there be nothing outside. Mr. Madden stated that Mr. Weiss currently operates his shop as he says he would on the subject property.

Photo 2 – rear of farm building, building in question

Mr. Madden noted that this building looks like an agricultural building, with a decorative silo tower. He noted that this is the view the neighbors to the rear would see. Mr. Madden stated that this is not different than other similar farm buildings. He opined that it is an attractive view.

Photo 3 – another view of the building

Mr. Madden noted that this view again shows the nature of the building which has agricultural character.

Photo 4 – view from the road, up the driveway

Mr. Madden noted that the house is on the left, and that to the right one can see the edge of the building in question. Mr. Madden stated that the street view is not offensive and that the subject building is inconspicuous.

Photo 5 – an aerial view, showing the subject property, with three acres in East Amwell, those being in a flood plain

Mr. Madden noted that this photo shows that the property sits in the midst of large tracts of land. He noted that there is low density and that there are lots of 19 acres and 15 acres. He noted that this phot shows the rural

setting of the area. He noted that the closest neighbor to the barn building is more than 700 feet away, as this area is 700 feet from the property line. He noted that other residents are further away.

There was further discussion about home occupations. Mr. Madden referenced a court case which concluded that a conditional use is not a prohibited use. Chair Cline opined that this use far exceeds the type of home occupation the Township Committee was considering when they adopted the home occupation ordinance.

There was further discussion about home occupation versus a d-1 use variance. Chair Cline asked that considerations be made for a d-1 use variance for a use not permitted in the zone. It was further noted that the application could be considered for two principal uses on one lot.

It was noted that for a d-1 use variance special reasons must be shown; and the applicant must meet the positive and negative criteria. Chair Cline noted that the proposal must be reconciled with the intent of the zone plan.

Mr. Madden stated that special reason can be used by promoting the purposes of the MLUL 40:55D-2. He noted that the low impact auto repair use promotes the general welfare because it is peculiarly well fitted to this particular location for which the variance is sought. Mr. Madden noted that the Weiss property is farm assessed and is situated amidst large agricultural tracts, one of which contains agricultural equipment sales and services. He noted that the subject building looks like agricultural buildings similar to those found on other farms in Delaware Township.

It was noted that the property is currently farmland assessed and the proposed use could create a split assessment between categories 4a and 3b.

Mr. Madden noted that the subject building is 300 feet from Dunkard Church Road. He noted that the view is softened by existing landscaping.

Mr. Madden stated that the existing building was approved by the Town for an industrial use. He noted that the first floor area of 5,500 s.f. allows all vehicles to be contained inside and out of view from all off site observers.

Mr. Madden referenced Purpose G of the MLUL in which the municipality should provide various types of uses, including residential, agricultural, and commercial. He noted that the Home Occupation ordinance was adopted in 2014 in an effort to be more receptive to allowing a broad variety of secondary uses to support farmers and incentivize retention of large open tract of land in the A-1 district. He noted that in a recent survey, over 50% of farmers have a second income. He noted that in providing an opportunity for secondary income, a property owner is more likely to retain larger tracts of land and open space. He stated that Home Occupation helps promote the primary objective of preserving farmland, especially when applied to a low impact use. Mr. Madden stated that the Ordinance says that we are willing to accept a home occupation providing there is no detrimental impact on the surrounding area, the zone plan, or the zoning ordinance.

Mr. Madden stated that the testimony given has shown the limits of the operation; that the operation is out of public view; and that the building has an agricultural style. He also noted that this building has been in existence in this neighborhood for more than 36 years and that the size of the building provides the capability of the activity to be enclosed.

Chair Cline opined that the home occupation ordinance does not apply to this use. Mr. Madden stated that the proposed use is a hybrid of a commercial auto repair and a home occupation. Mr. Madden stated that the applicant has agreed to limitations of operation and that the activity be carried on entirely inside the building.

Mr. Madden stated that the proposal promotes the overarching purpose of A-1 zone and that it is compatible with the neighborhood. He reminded the Board that the existing Stockton business represents how this operation will be run. Mr. Madden stated that the Board can be assured that this use will be compatible and not

detrimental. Mr. Madden opined that the use variance can be granted with limitations and as such meets the criteria for a d-1 use variance.

Mr. Gruenberg asked about how the neighbors may view this proposed use. Mr. Madden stated that because of the limitations, the proposed use may not be viewed as a business. He reminded the Board that there will be no signage, no retail sales, and three to four customers per day. Mr. Madden stated that this is a different kind of auto repair and the Board can add those qualifiers.

Mr. Gruenberg asked about a usual auto repair. Mr. Madden noted that there could be cars outside and stored for weeks on end. Mr. Madden stated that this large space gives needed space for the existing business within the confines of an existing building.

Chair Cline noted that with twice as much space, there could be expansion.

Chair Cline asked Mr. Madden to address the negative criteria and why this location is better than a commercial zone. Mr. Gruenberg noted that there will be no substantial impairment to zone plan and zoning ordinance, to which Mr. Madden agreed. Mr. Madden noted that one purpose of the zoning ordinance is to allow a greater level of activity to farmer to be able to maintain his farmland. Mr. Madden noted that with the more intensive inclusion of the home-based business, other levels of activity are available to property owners.

Mr. Madden noted that if a landscaper were to purchase this business, it would be more intrusive to the neighbors as there would be more outdoor storage of product, such as soil and wood chips. He noted that the proposed use has no outdoor storage. Mr. Madden applauded the town for allowing more flexibility to different uses. He further noted that in making this application to the Board, the Board has more control of the conditions of the use.

Mr. Madden noted that the ordinance, §230-3, promotes the development of reasonable land use options while promoting agricultural use. He noted that the proposed use allows the property to remain intact, and not be subdivided and developed. Mr. Madden opined that within the confines of this existing building, the proposed use is compatible with the neighbors.

Attorney Goodell stated that a D-1 use variance runs with the land, constrained by conditions that the Board imposes. He noted that if considered a home-based business, the variance ends with the end of the use. He noted that a d-3 use variance is limited to a particular use, with conditions, and does not "run with" the land.

Mr. Gruenberg noted that the conditions the Board has considered presents a use that is so unique, that it would be difficult for anyone to come in with a similar type of use. He reiterated that some aspects of this proposal are akin to the home occupation, such as no signage and that the activity is totally inside the existing building.

Member Kenyon considered the negative criteria and that the property will not have substantial impact on the neighborhood. She noted that there will be traffic impact with three to four customers per day, and an additional vehicle for an employee. She noted that there could be four to five deliveries per day putting extra trucks on a quiet, country road.

Mr. Madden stated that he is relying on the applicant's testimony that the limited customer base will not generate a lot of traffic. Mr. Madden noted that per RSIS standards, the average house produces ten trips per day for residential use. He noted that when he was taking photos, he saw four vans on the road. He opined that this proposed use would add de minimis additional traffic. Mr. Madden stated that Mr. Rupnarain, the applicant's engineer, suggested that there would be one additional vehicle per hour. Mr. Madden reiterated that this is not a conventional auto repair. Mr. Madden stated that he is not a traffic engineer, but suggested that the proposed use would add traffic that is well below the RSIS standards.

Member Fowler noted that per the 1982 resolution, when the property was sold the use goes away.

Board Planner Kyle noted that if the variance is approved, it goes away when the conditions are no longer met. Attorney Goodell stated that the variance goes away when the use is abandoned.

Jason Morlock discussed the quantity of vehicles. He noted that with online purchases, trucks are already enroute, ordered parts become part of those route, thus condensing the routes. It was noted that Mr. Weiss testified that many parts are often delivered by Amazon, along with other items. Mr. Madden stated that this is the new way commerce works.

Public Comment

Jes Stahl of 38 Dunkard Church was present. She stated that she owns the flag lot behind the subject property, with the flag running along the west side of the subject property. She noted her driveway is on that flag. She stated that her house is about 700 feet from the property line. She stated that she already has evergreens on her property that shield her view. She noted that without the trees along the paved area of the subject building she has a beautiful view of the property and disagrees with the need for screening. She noted that since the property has been owned by the Weiss family, the garage is spotless and the property is well maintained. She noted that the Weiss family is a great asset to the community and is in favor of the proposal.

David Bond lives on the eastern side of the subject property. He was sworn in. He noted that for 30 years this property has been a disaster and is now being well maintained. H enoted that he farms the field for Mr. Weiss and that the removal of the tree line behind the subject building has increased the field size. He stated that he agrees with the proposal and would probably not notice any lighting from this building.

David Bond read a letter into the record from his father, Dave Bond, who is the owner of Block 44, Lot 1. He stated that he supports the proposal.

Mark DellaValle of 40 Dunkard Church Road was sworn in. He stated that his property is northwest of the subject property. He noted that lighting would not bother him. He noted that Mr. Weiss has cleaned the whole place up. Mr. Della Valle stated that he does not believe that Mr. Weiss will bring in projects that he cannot do. Mr. Della Valle does not object to the proposal.

Mr. Scott Polenz of 44 Dunkard Church Road was sworn in. He stated that his grandparents bought the subject property in 1931. He stated that when his father sold that property to the previous owners, his father asked those owners to keep the property clean. Mr. Polenz noted that Mr. Weiss had done a remarkable job cleaning up the property. He stated that he has no problem with the application.

Mr. Rick Wolfe of 23 Rynearson Road was sworn in. He stated that he is an avid runner and often runs on Dunkard Church Road.

Mr. Wolfe stated that the one condition of the home-based business is that the business is clearly incidental and secondary. He noted that prior to 2019, up to 40% of the first floor space could be used for a home occupation, not to exceed 900 square feet. He noted that in the most recent amendment, the Township added further restrictions. He opined that the proposed use is contradicted by the language of the ordinance.

Mr. Wolfe stated that he is a member of the Land Use Board, combined Planning and Zoning Board, in East Amwell. He noted that this building is a large building and is very visible. He questioned the enforcement of limitations, as applied to the number of cars per day. He noted that the operation is limited to a very specific group of cars.

Mr. Wolfe stated that he sees that this is a clean operation in Stockton but questions this use in this zone. He noted that the property sits on an aquifer and that cars leak oil and gas, which may leach into an environmentally sensitive area. He noted that such pollution is a concern for him. He stated that noise will be heard.

Mr. Wolfe stated that he understands the testimony given that there will only be three or four cars per day, from a specific group of cars. Mr. Wolfe stated his concerns about enforcement of the limitations.

Mr. Wolfe disagreed that this proposal promotes agricultural use. He noted that the business run by the Bonds promotes agricultural use. He noted that the Bond business sells and repairs tractors and other agricultural equipment. He stated that the proposed use is not the equivalent of that business. He stated that manufacturing could be a low impact use but that does not mean that it is compatible with the zone.

Mr. Wolfe expressed his concern about traffic. He noted that delivery vehicles would displace people who would be driving. He noted that this is a narrow rural road.

Mr. Wolfe concluded by stating that if this proposal is approved, where does it stop? He further noted that cleanliness issue is irrelevant. He stated that a clean operation does not mean the use is meant for the ag district. He stated that the proposal should be treated just like any other small auto repair business.

Valerie Tucci of 21 Sandy Ridge Road was sworn in. She stated that she agrees with the last speaker. She stated that the proposed use has nothing to do with agriculture. She also stated that if approved, other such approvals may be sought. She stated that she moved here 50 years ago to enjoy the land.

The Board discussed how next to proceed. The applicant asked to present Board-requested information. The Board agreed to hear that information and then proceed with a vote. Mr. Gruenberg asked to respond to the Board and present closing arguments.

Mr. Gruenberg thanked the Board for scheduling a special hearing for this application.

Member Fowler made a motion to adjourn this application to the November 11 meeting. Member Emmons seconded the motion that was adopted by voice vote.

Planning Board Update: Liaison Cline

Liaison Cline reported that the Planning Board has not met since the last update.

Correspondence – none to date

Bill List

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

Escrow Charges

36/24, Serg. Vol. Fire. Co., #3137533	\$854.00
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Bill List: Engineering Services – Van Cleef Engineering Associates LLC

Escrow Charges

13/22.02, Traina, #3935014-1	\$332.50
44/4.03, Weiss, #3935015-1	\$288.75
51/5.05, Tilch, #3935013-3	\$232.75

Bill List: Planning Services – Kyle McManus Associates, LLC

Escrow Charges

13/22.02, Traina, #3041	\$866.20
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44/4.03, Weiss, #3040	\$1,022.40
51/5.05, Tilch, #3042	\$113.60

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.

Minutes Book: \$170.00

Member Fowler made a motion to approve payment of a minutes book in the noted amount. Member Emmons seconded the motion.

Roll Call Vote

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

Concurs: McAuliffe

Nay: None

Absent: Szwed

ADJOURNMENT: 10:25 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 51/5.05 (2021)

Jennifer Tilch
Block 51, Lot 5.05

WHEREAS, Jennifer Tilch (the “Applicant”), located at 21 Kingwood-Stockton Road, Stockton, NJ 08559, applied to the Delaware Township Zoning Board of Adjustment (the “Board”) for a use variance to permit two principal buildings on her property for a certain period of time, to allow her family to reside in the existing residence while a larger residence is being constructed; and

WHEREAS, the Board held the hearing on September 9, 2021 and October 14, 2021; and

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

Background

1. The Applicant, Jennifer Tilch, owns the property located at 21 Kingwood-Stockton Road, NJ 08559 (Block 51, Lot 5.05) (“the Property”).
2. The property is located in the A-1 Agricultural/Residential zoning district.
3. The property is 16.97 acres, with approximately 355 feet of frontage and 1,059 feet of depth.
4. Currently, the Property has a 1,742 sq. ft. single-family home. Applicant proposes to construct a 4,814 sq. ft. single-family home to replace the existing home. Pursuant to Delaware Township Code Section 230-13, “There shall be no more than one principal building or use erected or established on any one lot in any agricultural/residential or commercial/residential zone.” Pursuant to Section 230-16(B)(h), a second principal dwelling is only permitted on lots of 30 acres or more in the A-1 zone. Applicant seeks a use variance pursuant N.J.S.A. 40:55D-70(d) to temporarily allow for two single-family residences on the property. Applicant intends to live in the existing home while the new home is being constructed.

Jurisdiction

5. The Board has jurisdiction over applications for use variances (N.J.S.A. 40:55D-70(d)).
6. The Applicant published timely notice and served notice by certified mail on neighbors within 200 feet of the subject property.

Hearing

7. The Zoning Board hearing was held on September 9, 2021 and October 14, 2021.
8. The Board considered testimony from:
 - a. Jennifer Tilch, Applicant;
 - b. Applicant's Planner, Tiffany Morrissey, PP, Galloway, NJ;
 - c. Applicant's Engineer, Brian Atkins, PE, SR3 Engineers, LLC, Bellmawr, NJ; and
 - d. Board Engineer, Rob O'Brien, PE, Van Cleef Engineering Associates, LLC, Lebanon, NJ;
 - e. Board Planner, James T. Kyle, PP/AICP, Kyle & McManus Associates, Hopewell, NJ; and
 - f. Richard Skeuse, Applicant's neighbor, and owner of property located at Block 51, Lot 5.01.
9. Applicant was represented by Greg Barnett, Esq. of the law firm of Casey & Barnett, LLC, Morristown, NJ, for the portion of the hearing held on September 9, 2021, and John A. DiPasquale, III, Esq., of the law firm of Faegre, Drinker, Biddle & Reath, Princeton, NJ, for the portion of the hearing held on October 14, 2021.

Findings

10. Applicant proposes to construct a 4,814 square foot residence on the Property, and to ultimately demolish the currently existing 1,742 square foot residence.
11. Applicant seeks to construct a larger house on the Property to accommodate her growing family. Applicant grew up in the existing residence, but wishes to build a larger house for her three children. At the time of the hearing, Applicant was pregnant with her fourth child.
12. Under the proposal, the existing home will be demolished and restored to farmland and there will be no occupation of both residences at the same time. The builder for the proposed residence has agreed to demolish the existing residence.
13. Applicant unsuccessfully sought to find alternate housing while the new home is being constructed. She would like to remain in the Township while the new residence is being constructed so as to not disrupt her children's schooling. She said there are no rentals available in the Township that can accommodate her family at this time.

14. The existing principal dwelling is located on the southeast corner of the Property. The proposed dwelling is to be located closer to the middle of the Property.
15. Tiffany Morrissey, Applicant's Planner, testified that the Property is particularly suited to the proposed use due to the location of the Property and the proposed structure's isolation from other structures. The proposed home is further away from neighboring homes. She noted that if Applicant had opted to expand the existing home, instead of building a new structure, that enlargement would have had a greater impact on the neighboring properties.
16. Ms. Morrissey also said that the proposed home would meet all zone requirements and that, given that there will be no simultaneous occupation of the two homes, there would be no detriment to Applicant's neighbors.
17. Mr. Richard Skeuse testified during the public comment portion of the September 9, 2021 hearing. Mr. Skeuse owns the property located at Block 51, Lot 5.01, which he noted is downhill from Applicant's Property. Mr. Skeuse indicated that there is a valley between his property and Applicant's Property, which collects most stormwater runoff, but that, on occasion, a spot on his driveway floods during heavy rains. Mr. Skeuse was concerned that Applicant's proposed construction would worsen the stormwater situation on his property.
18. Applicant's Engineer indicated that the proposed stormwater system will improve stormwater management on the Property and neighboring properties. The proposal includes a 300-foot long driveway made of porous pavement, with an underground filtration system; a six-foot-wide, one-foot-deep swale east of the proposed residence; and an underground retention basin.
19. Applicant's septic system has been approved by the Hunterdon County Health Department. The reserve septic system is not indicated on the plans submitted to the Board, but Brian Atkins, Applicant's Engineer testified that the reserve system will be directly west of the main septic system for the proposed residence.
20. The Property is located in Zone A of the D&R Canal Commission, and, therefore, the project must comply with Canal Commission requirements. Under the proposal, 90% of water would be treated for water quality, and there will be a reduced rate of flow based on the existing situation.
21. There was a discussion on groundwater mounding. The Board Engineer stated that the "Hantush Spreadsheet" that Applicant used to calculate ground water mounding indicates that groundwater will rise to the bottom of the infiltration basin, and that the spreadsheet must be recalculated to reflect that the groundwater mounding has no adverse effects on the basin. Applicant agreed to provide this information as a condition of approval.
22. Per the Board Engineer's report, Applicant has not provided permeability test results for tests pits #3 and #4 excavated within the proposed infiltration basin footprint. Per the NJDEP BMP manual, soil testing is required at the exact location of the proposed

infiltration basin and must include one soil hydraulic conductivity test at each soil profile pit. Applicant agreed to provide this information as a condition of approval.

23. Per the Board Engineer's report, and per the NJ DEP BMP Manual, the time of concentration for pre- and post-construction conditions must be calculated. Applicant's Stormwater Management Report does not include these calculations. Applicant agreed to do so as a condition of approval.
24. Applicant agreed to remove the "essential fixtures" of the existing home within two months of the date of the issuance of the certificate of occupancy for the new residence. "Essential fixtures" include the electric panel and well pump. Applicant further agreed to demolish the rest of the existing residence within four months of the issuance of the certificate of occupancy for the new residence.

Conclusions

25. Pursuant to N.J.S.A. 40:55D-70(d), in order for the Board to grant a use variance, Applicant must satisfy both the positive and negative criteria. Applicant may satisfy the positive criteria by demonstrating that that the request promotes at least one of the purposes of zoning. Applicant may satisfy the negative criteria by showing that (1) the variance can be granted without substantial detriment to the public good; and (2) that it would not substantially impair the intent and purpose of zone plan and zoning ordinance.
26. The Board found that Applicant had met her burden of proving the legal requirements for a (d) variance to allow for the temporary existence of two principal buildings on the Property.
27. In coming to its conclusion, the Board considered the fact that request for a use variance is temporary in the sense that it will expire shortly after the new residence is constructed. In other words, there will only be two principal structures on the Property for a limited period of time, that only one principal structure will be occupied at a time, and that the use variance will cease to exist.
28. Addressing the positive criteria, the Board found that the proposal promotes the purposes of zoning. The general welfare is promoted because Applicant and her family may remain on the property while the larger house is being constructed. Otherwise, Applicant would be required to demolish the existing house before constructing the new house.
29. With regard to the negative criteria, the Board found that the temporary existence of two structures on the Property will not be a detriment to the public good, as there will never be two residential uses, and only two residential structures for a short period of time while the second residence is being constructed. In addition, the new house will be located further from the neighbors and the new stormwater management system will benefit the neighbors. There will be no harm to the zone plan or zoning ordinance

because Applicant is replacing one residential use with another, and residential use is allowed in the zone.

NOW, THEREFORE, BE IT RESOLVED, by the Zoning Board of Adjustment of the Township of Delaware, that Jennifer Tilch be and hereby is granted a use variance to construct a second principal structure on the Property, on a temporary basis, in accordance with the conditions listed below.

Conditions

1. The reserve septic system must be added to the Applicant's plans and approved by the Board Engineer.
2. The essential features of the existing residence, including the electric panel and well pump, must be removed from the existing home within two months of the issuance of the certificate of occupancy for the new residence. The rest of the existing residence must be demolished within four months of the issuance of the certificate of occupancy for the new residence.
3. Applicant shall recalculate the groundwater mounding analysis as reflected in the Hantush Spreadsheet to the satisfaction of the Board Engineer.
4. Applicant shall conduct soil testing in accordance with the NJDEP BMP Manual, and shall submit the results of the tests to the Township, to the satisfaction of the Board Engineer.
5. Applicant shall address all outstanding comments in the Board Engineer's and Board Planner's reports to their satisfaction.
6. Applicant shall obtain all other necessary county and State approvals.

ROLL CALL VOTE ON MOTION TO GRANT USE VARIANCE
October 14, 2021

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

Those Opposed: None

Those Absent: Kenyon, Szwed

ROLL CALL VOTE ON MOTION TO APPROVE
RESOLUTION OF MEMORIALIZATION
October 28, 2021

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

Those Opposed: None

Present but Ineligible

To Vote: Kenyon

Those Absent: Szwed

Certified to be a true copy of a Resolution adopted by the Delaware Township Zoning Board at a public meeting held on October 28, 2021.

Kathleen E. Klink
Administrative Officer

Application Approved: October 14, 2021

Resolution Adopted: October 28, 2021

Distributed: November 3, 2021

**BOARD OF ADJUSTMENT
TOWNSHIP OF DELAWARE**

RESOLUTION 13/22.02 (2021)

Mary, Annelisse and Gerard Traina
Block 13, Lot 22.02

WHEREAS, Mary, Annelisse and Gerard Traina (the “Applicants”), located at 74 Pine Hill Road, Stockton, NJ 08559, applied to the Delaware Township Zoning Board of Adjustment (the “Board”) for a conditional use variance to legitimize the prior conversion of the second and third floors of an existing barn to an accessory dwelling unit; and

WHEREAS, Applicants also seek a bulk variance for the principal structure; and

WHEREAS, the Board held hearings on September 9, 2021 and October 14, 2021; and

WHEREAS, the Board considered the evidence presented at the hearings and made the following findings and conclusions:

Background

1. Applicants own the property located at 74 Pine Hill Road, NJ 08859 (Block 13, Lot 22.02) (“the Property”).
2. The property is located in the A-2 Agricultural/Residential zoning district.
3. The property is 10.029 acres, with approximately 300 feet of frontage and 1,283 feet of depth.
4. Currently, the Property has a two-story principal residential structure and a three-story accessory barn structure (“barn apartment”). The barn apartment has storage space on the first floor, and living quarters on the second and third floors. Pursuant to Delaware Township Code Section 230-31(A), “The conversion of existing accessory buildings into dwelling units shall be permitted as a conditional use in any residential zone....” One such condition is that “no dwelling unit or guest quarters shall be located above the second floor.” See Code Section 230-31(4)(e) (emphasis added). Applicants seek a conditional use variance pursuant N.J.S.A. 40:55D-70(d)(3) to allow the dwelling unit to remain on the third floor of the accessory structure.
5. Applicants also seek a front yard setback, bulk variance pursuant to N.J.S.A. 40:55D-70(c) for the principal residential structure, as it is located 4.23 feet from the road, whereas 50 feet is required in the A-2 zone.

Jurisdiction

6. The Board has jurisdiction over applications for conditional use variances and bulk variances (N.J.S.A. 40:55D-70(c) - (d)).

7. The Applicants published timely notice and served notice by certified mail on neighbors within 200 feet of the subject property.

Hearing

8. The Zoning Board hearings were held on September 9, 2021 and October 14, 2021.
9. The Board considered testimony from:
 - g. Annelisse Traina and Gerard Traina, Applicants;
 - h. Applicants' Planner, Michael Burns, PA/PP, Lambertville, NJ;
 - i. Board Engineer, Rob O'Brien, PE, Van Cleef Engineering Associates, LLC, Lebanon, NJ;
 - j. Board Planner, James T. Kyle, PP/AICP, Kyle & McManus Associates, Hopewell, NJ; and
 - k. Gottfried Schmitt, Applicants' neighbor, 69 Pine Hill Road, Stockton, NJ.
10. The Board considered the Application and associated documents submitted by Applicants on August 17, 2021.
11. The Board also considered the following reports submitted by the Board Professionals:
 - i. Planner's Report, prepared by James Kyle, dated September 4, 2021; and
 - ii. Engineer's Report, prepared by Rob O'Brien, dated September 7, 2021.
12. Applicant was represented by Rich Mongelli, Esq. of the law firm of Mongelli Law, Metuchen, NJ, for the portion of the hearing held on September 9, 2021. Prior to the hearing on September 9, Mr. Mongelli determined that a conflict existed, such that he could not proceed with representing Applicants before the Board. The Board accepted jurisdiction on September 9, and carried the hearing to October 14. Larry Wohl, Esq., of the law firm of Archer & Greiner, Princeton, NJ, represented the Applicants for the substantive part of the hearing held on October 14.

Findings

13. The Property contains a principal residence, the accessory barn apartment, and a shed. The principal residence was built in 1725. In 1850, an addition was made to the principal residence and the barn was constructed.
14. Although no further proof was presented to the Board, Applicants testified that in about 1970, the barn was converted into a barn apartment, with living quarters on the second and third floors.

15. Applicants asserted that there may be no need for a conditional use variance, as the barn apartment may have been in existence prior to the Township Code's requirement that such structures be a conditional use in the A-2 zone. However, Applicants offered no further proof of when the barn was converted into a barn apartment or of when the relevant provisions of the Township Code were adopted, and therefore, the hearing continued on the merits of Applicants' application.
16. Applicants have a buyer under contract for the Property, and seek to legitimize the living quarters that exist on the second and third floors of the barn apartment prior to finalizing the sale.
17. The barn apartment totals 1,897 square feet: the ground floor is 599 square feet; the second floor is 699 square feet; and the third floor is 599 square feet.
18. The ground floor of the barn apartment is used for storage. The second floor contains a kitchen, living room, bedroom and bathroom. The third floor contains a bedroom and a half bathroom.
19. Michael Burns, Applicants' Planner, testified that the barn apartment complies with all of the conditional use provisions present in Township Code Section 230-31, with the exception that the barn apartment contains living quarters on the third floor.
20. Mr. Burns testified that the existing barn apartment, with living quarters on the third floor, does not change the character of the structure.
21. Mr. Burns also stated that permitting the barn apartment with living quarters on the third floor to remain helps provide sufficient space in appropriate locations and preserves open space by permitting living quarters on the third floor of the structure, as opposed to having living quarters in a separate structure.
22. Mr. Burns noted that in the A-2 zone, a property that is at least nine acres may contain an accessory building as a dwelling unit. The subject property is over 10 acres.
23. There was a discussion regarding overhead electrical wires reflected on the survey map reviewed by the Board. Applicants noted that there is an easement for the overhead electrical wires, which was recorded on November 11, 1984. Applicants provided the Board with proof of the recorded easement.
24. Jim Kyle, Board Planner, agreed that the other conditions in Section 230-31 are met. He also noted that the existing well has provided water for the use of the main dwelling and the barn apartment with no issue, and that the septic system is adequate for both the main dwelling and the barn apartment.
25. The Board was concerned that the purchasers of the Property, or other owners in the future, may attempt to expand the existing living space in the barn apartment. Applicants agreed, as a condition of approval, that there may be no future additions to the barn apartment.

26. In his report, Board Engineer Rob O'Brien noted that Hunterdon County Health Department approval must be acquired for the barn septic system. At the hearing, Applicants confirmed that they had obtained such approval, and provide evidence of the approval.

Conclusions

27. Pursuant to N.J.S.A. 40:55D-70(d)(3) and Coventry Square v. Westwood Zoning Bd. of Adj., 138 N.J. 285 (1994), in order for the Board to grant a conditional use variance, Applicants must satisfy both the positive and negative criteria.
28. Applicants may satisfy the positive criteria by demonstrating that noncompliance with the conditions does not affect the suitability of the site for the conditional use and that the site can accommodate the problems associated with the use in light of the deviation.
29. To satisfy the first prong of the negative criteria, the Board must determine whether the deviation from the condition causes such damage to the character of the neighborhood as to constitute substantial detriment to the public good.
30. To satisfy the second prong of the negative criteria, the Board must determine whether the variance is reconcilable with the municipality's legislative determination that the condition should be imposed on all conditional uses in that zoning district.
31. The Board determined that the application met the requirements of N.J.S.A. 40:55D-70(d)(3) and Coventry Square for a conditional use variance.
32. With regard to the positive criteria, the Board found that the existence of living quarters on the third floor of the barn apartment does not affect the suitability of the site for the conditional use, and that the site can accommodate the problems associated with the use in light of the deviation. Specifically, the Board noted that the third floor of the barn apartment has been used as living quarters for over 50 years with no issue, and that adequate water and septic systems exist on the site.
33. Concerning the negative criteria, the Board determined that the third floor living quarters in the barn apartment does not damage the character of the neighborhood or constitute substantial detriment to the public good. Again, the barn apartment has been functional for over 50 years, and Applicants' neighbor testified that the living quarters on the third floor of the barn apartment has not presented any issues. From the neighbors' perspective, the barn apartment appears to be a regular barn structure. Furthermore, the Board could not specifically determine the legislative intent behind prohibiting living quarters above the second floor of accessory structures, however, it opined that the purpose was to prohibit unsightly, tall structures. In this instance, the barn appears to be a normal barn that happens to have living quarters on the third floor (and not any higher), and thus, is not objectionable.

34. Pursuant to N.J.S.A. 40:55D-70(c)(2), in order for the Board to grant the bulk variance for a front yard setback to permit the existing principal residence to remain where it is currently located, which is 4.23 feet from the road, Applicants must demonstrate that granting the variance to allow departure from the zoning ordinance would advance one of the purposes of the Municipal Land Use Law (N.J.S.A. 40:55D-1 et seq.) and that the benefits of the deviation would substantially outweigh any detriment. Applicants must demonstrate that such variance can be granted without substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and zoning ordinance.
35. The board determined to grant a variance for the front yard setback to preserve the existing building, which has been in existence since 1725. Furthermore, the benefits of preserving the building in its current location substantially outweighs any detriment and it does not impair the intent and purpose of the zone plan and zoning ordinance.

NOW, THEREFORE, BE IT RESOLVED, by the Zoning Board of Adjustment of the Township of Delaware, that Mary, Annelisse and Gerard Traina be and hereby are granted (1) a conditional use variance to permit the existing barn apartment to retain the living quarters on the third floor and (2) a bulk variance to permit the existing principal structure to remain 4.23 from the front yard property line, in accordance with the conditions listed below.

Conditions

1. The living space in the barn apartment may not be expanded beyond its current size.
2. Applicants shall address all outstanding comments in the Board Engineer's and Board Planner's reports to their satisfaction, including, but not limited to, submitting a revised Survey Plan that contains the setback distances from the Pine Hill Road right-of-way line to the existing dwelling and the square footage of all existing structures.
3. Applicants shall obtain all other necessary county and State approvals.

ROLL CALL VOTE ON MOTION TO GRANT USE VARIANCE
October 14, 2021

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

Those Opposed: None

Those Absent: Kenyon, Szwed

ROLL CALL VOTE ON MOTION TO APPROVE
RESOLUTION OF MEMORIALIZATION
October 28, 2021

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

Those Opposed: None

Present but Ineligible

To Vote: Kenyon

Those Absent: Szwed

Certified to be a true copy of a Resolution adopted by the Delaware Township Zoning Board at a public meeting held on October 28, 2021.

Kathleen E. Klink
Administrative Officer

Application Approved: October 14, 2021

Resolution Adopted: October 28, 2021

Distributed: November 3, 2021