

The regular meeting of the Delaware Township Board of Adjustment held on the noted date, was called to order by Chair Cline at 7:30 p.m., in Township Hall, Sergeantsville, New Jersey, 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 Goodell, Board Planner Kyle, Board Engineer O'Brien

#### MINUTES: April 29, 2021

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

#### MEMORIALIZATIONS – none

#### APPLICATIONS

Walter Ross, Block 17, Lot 33.04, use and bulk variances requested for accessory apartment in existing garage, as presented in submitted plans.

Mr. Ross thanked the board and appreciated the Board's feedback that was given at the last meeting. He stated that the plans have been modified to convert the existing garage for his sister-in-law, or for himself in the future; and then revert the use back to that as a garage. He noted that the garage has a shed on the back, the size of which will be incorporated into the apartment. He noted that an addition to the garage has been made with a slight bump out on one side of the building. He noted that the apartment will have one bedroom, one bath, a great room and a small kitchen. He noted that all of the apartment framing will be done within the structure of the garage so that it can easily be converted back to the garage use.

Mr. Ross added that he had spoken to two neighbors that share a common boundary with his property. He noted that neither neighbor wanted to sell any property to him.

Mr. Ross described the latest submissions to the Board, including revised elevations of the apartment. He noted that the concrete slab of the garage will remain, and that a floor will be placed on top of the slab. He noted that lintels will remain in place to make possible the rehang of any doors or windows.

There was a discussion about the bump-out addition, which is the utility room. It was noted that the total square footage is 994 square feet. It was noted that the prior proposal was at 11.2% impervious coverage, still under the 15% that is allowed.

It was noted that there is an existing shed behind the existing garage, as shown on the plat. It was noted that the plans will have to be updated to include the impervious coverage information.

There was a discussion about the continuation of the application. It was noted that everything from the first one is being supplemented, as a continuation of the original application. Attorney Goodell noted that amended files were filed and not found to be drastically different in nature.

The septic and water were discussed. Mr. Ross stated that this apartment becomes a part of the system used by the existing house. He also noted that the changes needed for the septic will be reviewed by the Hunterdon County Board of Health. He noted that one change includes a pressurized system, to be added. Mr. Ross noted that his engineer, Mr. Ingram stated that he could see no obstacles for approval, as shown on the plans signed off by Mr. Ingram.

It was noted that there should be some proofs submitted from a planning point of view.

Mr. Miller was present as the planner for the applicant. He noted that his credentials are up to date and were accepted at the previous meeting.

Mr. Miller stated that the property is in the A-1 zone, on a 3.2-acre lot. He noted that the d-1 variance is requested for an accessory apartment for a family member. He noted that the application meets two purposes of the Municipal Land Use Law of NJ, 40:55D-2, as follows:

*Purpose A – To encourage municipal action to guide the appropriate use or development of all lands in this State, in a manner which will promote the public health, safety, morals, and general welfare;*

*Purpose G – To provide sufficient space in appropriate locations for a variety of agricultural, residential, recreational, commercial and industrial uses and open space, both public and private, according to their respective environmental requirements in order to meet the needs of all New Jersey citizens;*

Mr. Miller stated that this is an appropriate location and that the site suits these two purposes. He also noted that in its amended form, the proposed project is similar to an ECHO unit, a permitted use in this zone. He noted that the proposed use mirrors the ECHO unit in that the use is for that of an elder family member and that the duration of occupancy can be tied to an elder family member who qualifies according to the ECHO terms.

Mr. Miller also explained that when there is no one qualified to be an occupant, the structure will be restored to its garage use. He noted that an ECHO unit is portable and is to be removed when no longer able to be occupied by a qualified family member. He noted that the revised proposal is a smaller unit and entirely on the ground floor. He noted that the plans are very similar floor plans to that of an ECHO unit.

Chair Cline asked about occupancy if a new owner buys the property. Mr. Miller stated that at any time that the unit ceases to be occupied by an elder the use will return to that of a garage. He also noted that at point of sale, the unit would be restored to a garage, the new owner will not have the option.

Mr. Miller noted that much like an ECHO unit, once the use ceases, the unit needs to be removed; in this case, the building will return to its garage use.

Attorney Goodell stated that he had discussed this “time-limit” use with Board Planner Kyle. Attorney Goodell noted that there is no reason the applicant cannot seek a variance for specified period of time. He noted that case law has shown that you cannot discriminate against renters. He further noted that in this case, the apartment has been created and use restricted by the identity of the tenant, following the ECHO guidelines. He noted that this will not be a typical residential or rental unit.

Chair Cline asked if the variance can have a life-span, with a renewal and review period. Attorney Goodell stated that case law has been found using that idea. He noted that there is a case in which a parking lot was used by a specified property owner for a 7-year life span. He noted that the Zoning Board of that case initially denied the use, but that the decision was overturned by a trial judge.

Board Planner Kyle also noted that the Board is not placing a condition, but that the applicant is requesting a specific amount of time from the Board. There was a discussion about the length of time that could be considered. It was further noted that when the sister-in-law is done with the unit, Mr. Ross would still qualify to use it.

Chair Cline asked if the Board could require a finite period of time, with the ability of the applicant to apply for a time extension. Attorney Goodell stated that the Board needs to insure that the use is not a long-term apartment and that it cannot become a rental apartment. Attorney Goodell further noted that it is reasonable to ask for a time limit, with a renewal option to be reviewed by the Board.

There was a discussion about this unit compared to an echo unit, Zoning Ordinance §230-40. Chair Cline noted that an ECHO unit is portable and removable. Mr. Miller noted that an ECHO unit is modular or prefabricated and moveable, whereas this proposal is convertible, but not portable.

There was a discussion about a timeline for which the converted garage can be used as an elder residential unit and then come back for review. Mr. Ross agreed to such a condition. Chair Cline stated that there should be Board member opinions on the length of time.

Member Manley stated that he is agreeable to a time frame, but is not sure how the mechanism will work. He also stated that he feels that an ECHO unit would be more fitting, but that he can agree to this proposal.

Mr. Miller stated that there is a mechanism for the removal of an ECHO unit. He noted that this long term use could have a similar "enforcement" clause.

Member McAuliffe agreed with Member Manley's statements. Member McAuliffe stated that he can agree with ten years as the length of time for reevaluation of the use. He questioned the legal satisfactions that would be needed. Attorney Goodell noted that the pattern for use can be laid out in the resolution that the Board adopts.

Member Warren noted that five years may be a good time for a review, considering that two different persons may occupy this unit, at different times. Attorney Goodell stated that the Ordinance allows for ECHO unit occupation to be a person related by blood, marriage, or adoption to the property owner. Attorney Goodell noted that this unit should be treated just like an ECHO unit and that the requirements of the ordinance for ECHO units should be "transplanted" into this use. He stated that he is comfortable with the legality. He also noted, per Member Warren's concern, that this use and approval is not precedent-setting.

Member Kenyon stated that she feels that providing temporary relief at this time compares to the portability of an ECHO unit. She agreed with adopting a fixed period of time or until either of the two qualifying people can no longer occupy the unit. She questioned the use if the property is sold. Attorney Goodell stated that a condition can be written into the variance to deal with this question. He further noted that this condition can be recorded in the deed as well, that the ability to use this unit for a qualifying residence expires upon sale of the property.

Member Fowler stated that a concern he has is about the financial investment of this proposal per the conversion. He questioned the ability for restoration, if there is a financial inability to do so. He also stated that he is concerned about setting a precedence; and about the ability to police and enforce.

Member Gilbreath stated that she is concerned with the conversion back to a garage. Mr. Miller stated that the applicant is willing to go to that double expense. He noted that the walls, slab, and roof of the garage will remain in place, making the conversion back to the garage easier to do. He also noted that there is a certificate of occupancy involved in a turnover of home ownership, and that such a c/o would not be provided if the unit is

not removed. Mr. Miller stated that he thinks that there are more safeguards with this proposal than with an ECHO unit.

Chair Cline asked about the removal of electric and water utilities. Mr. Ross stated that they are already there. Member Fowler stated that there is more complex plumbing with the residential unit.

Mr. Miller stated that the floor will be designed above the slab and that piping for the residence will be between the slab and floor, a floating floor, which is designed to be temporary.

Member Gilbreath stated that even if a portable ECHO unit were to be used, this appears to be the best location for such a unit. Board Planner Kyle agreed that the easements on the property create an issue for placement of an echo unit. He noted that there is an AT&T easement and another utility easement. He noted that with these easements, an ECHO unit might have to be placed at the rear of the property.

Chair Cline asked about the area of the lot minus the easements. Board Planner Kyle and Board Engineer O'Brien reviewed the easements and stated that the easements might take up about 20% of the lot area. Chair Cline asked that this information be put on the map.

Member Emmons stated that most of his concerns have been addressed. He noted that he is concerned about the abandonment plan. It was noted that at the time of sale, buyers typically request a CRC – Construction Records Clearance, which typically researches open permits and examinations of the permits. Board Planner Kyle also noted that chain of title for purchase follows the same procedure through a title company for a mortgage.

Chair Cline stated that he is uncomfortable with creating two nonconforming dimensions, one for height and one for overall size, thus making the property less conforming. He reviewed the purpose of the accessory unit conversion ordinance, to allow farmers to convert old farm structures for added income. He noted that for the A-1 Zone, 4.5 acres is needed for such a conversion, which this property does not have. He opined that he thinks the ECHO unit is a better option.

Mr. Miller stated that he would discuss the negative criteria. He noted that the proposed use is not a substantial detriment to the public good or to the intent / purpose of the zone plan. He noted that there would be no significant impact on the surrounding neighborhood. He noted that the population of the lot does not change nor does the occupancy number.

Mr. Miller stated that the proposal does not impair the purpose of the A-1 district. He noted that the proposal is akin to an ECHO unit, which is a permitted use. He noted that the primary deviation is that the proposal is not portable, but it would have a reversion condition added to the resolution. He noted that as revised, the proposed residence is barrier free and small, comparable in size to an ECHO unit in the A-1 district.

Mr. Miller gave his opinion that the proposal satisfies the negative criteria.

Chair Cline agreed with the low impact on the public good and to the neighborhood. He disagreed with the impact on the zoning ordinance. He stated that the proposal is not the same as an ECHO unit, due to the fact that a variance is needed. He also stated that he does not agree that an ECHO unit is hard to govern.

Member Manley stated that the proposal is now similar in size to an ECHO unit, which uses a gross floor area of 720 square feet. He stated that with provisions that are properly written into the variance that enforcement should be less of a problem. He noted that an ECHO unit has a use and occupancy agreement which expressly states that the Township is not a landlord. He also noted the removal clause of an ECHO unit, within 90 days of the occupant leaving the ECHO unit. Member Manley stated that he can agree to the proposal if the Township can employ conditions to this use that are similar to the safeguards of an ECHO unit.

Mr. Miller stated that what is being sought is consistent with the objectives of an ECHO unit.

Attorney Goodell stated that the use is for elderly people, which goes to zoning.

Chair Cline stated that he does not recommend a separate agreement. He stated that the resolution can set the requirements just as the agreement would.

Member Fowler stated that he can agree to calling it an ECHO unit that is not mobile. He also stated that the variance needed is "reduced" by making that comparison. He stated that he is still concerned about the controls needed to restore the unit to a garage. He questioned if an escrow could be established for the restoration. Attorney Goodell could not recommend such an escrow.

Member Kenyon stated that she can agree with the use if it is approved with these conditions. She agreed that the use would expire earlier given a transfer of title, ten years, or the lack of use by the two individuals discussed at this hearing.

Chair Cline stated that he is more comfortable with an expiration in seven years.

There was a discussion about the expiration of the use, with an extension of time to be granted at the expiration. Board Planner Kyle stated that providing such a mechanism safeguards the residents of the unit.

Chair Cline stated that using a shorter time frame would make it more likely that an extension will occur. He also stated that the named-individuals should be in place.

Attorney Goodell stated that the Board could use seven years as a time period, to insure that the approval has not been overlooked. He further stated that this condition would insure continued compliance.

Board Planner Kyle stated that the updated changes need to be put on the submitted plans. Mr. Kyle noted that the proposed use is reasonable from a planner's point of view. Mr. Kyle noted the comparisons made to the ECHO units as provided in the zoning ordinance. He further noted that conditions are appropriate to address the controls that the Board wishes to have in place.

There was further discussion about the removal of this unit. Board Planner Kyle reiterated the chain of title on a transfer of sale, with information to be picked up by a potential buyer. Chair Cline again noted that this removal is more involved. Mr. Kyle stated that the Board needs to rely on the word of the applicant, Mr. Ross, who is the only person to transfer the title.

It was noted that some information needs to be added to the plans, as follows:

Rear entrance has a stone stoop, not a porch.

For the plan, exact numbers are needed to show the calculations for the buildable area.\*

Items from the Board Engineer's report, noted as missing, should be placed on the plan.

EX: impervious coverage amounts, required and proposed

Lighting will be directed downward, not to shine on a neighboring property.

Walkways to be shown as pavers

\* Board Engineer O'Brien stated that he will check the ordinance for this data, concerning the easements.

Mr. Ross agreed that all conditions will be met, to make the proposal not detrimental.

Attorney Goodell stated that the Township is the typical registering municipal agency for ECHO units, per §230-40 O. He further noted that ECHO units may be registered with a specific committee, if there is one.

**Public Comment**

There was no public comment.

Chair Cline asked for a motion to approve or deny.

Member Warren moved to approve with conditions that have been discussed. Member Emmons seconded the motion.

**Roll Call Vote**

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

Concurs: McAuliffe

Nay: Cline

Absent: Szwed

Mr. Ross thanked the Board for its consideration and time.

Planning Board Update: Liaison Cline

Liaison Cline reported that there is no new business before the Planning Board. He noted that the PB is working on the Master Plan Reexamination. He further noted that the Planning Board had cancelled the June meeting, but reschedule it due to the Cannabis Ordinance that the Township Committee asked the PB to review.

Attorney Goodell noted that the Cannabis Ordinance is for a generic opt-out, as a safe course. He noted that without regulations, it is difficult for the Township to know what to anticipate. He also noted that by opting out at this time, the Township can opt-in at a later date.

Correspondence – none

No Bill List

ADJOURNMENT: 8:50 pm

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

Respectfully submitted,

Kathleen E. Klink,  
Administrative Officer, Secretary