

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

PLEDGE OF ALLEGIANCE

STATEMENT

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

ROLL CALL

Present: Emmons, Fowler, Gilbreath, McAuliffe, Warren, Cline

Absent: Kenyon, Manley, Szwed

Also present: Attorney Goodell, Engineer Roseberry, Planner Kyle

MINUTES: March 14, 2019

The Board discussed the minutes, noting changes and typographical errors. It was moved by Member Gilbreath to approve said minutes as changed with no substantive changes. Member Warren seconded the motion. Said motion was approved by voice vote, with an abstention by Member Fowler.

MEMORIALIZATIONS

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

Administrative Officer Klink reported that she had discussions with the applicants to review the needed conditions, as noted below from Board Engineer O'Brien:

- a. Prior to the issuance of a building permit, a detailed grading plan, prepared in accordance with §230-16 shall be submitted to the Municipal Engineer for approval.
- b. Per §230-112, all stormwater runoff from roof areas shall be transported to dry wells, seepage pits, detention basins or other on-site stormwater management facilities, as approved by the Municipal Engineer.
- c. Per §230-114, a farm conservation plan that addresses the protection of soil and water resources shall be developed and implemented. Such plan shall be approved by the Hunterdon County Soil Conservation District.

Administrative Officer Klink reported that it is easier to close these files when the conditions are specifically listed. She further reported that per Attorney Davidow, there needs to be no public notice, nor does the applicant have to be in attendance.

Member Gilbreath made a motion to revise the resolution and include these conditions. Member Fowler seconded the motion.

Roll Call Vote

Aye: Emmons, Fowler, Gilbreath, McAuliffe, Warren

Nay: None

Present, but ineligible to vote: Cline

Absent: Kenyon, Manley, Szwed

Anthony Wiseman, appeal the determination of the Zoning Officer for property of Block 11, Lot 10, use of property for home-based landscaping business, per the appeal, approve reviewed conditions.

There was a discussion about a condition that had been placed in the resolution, stating that “recreational vehicles shall be parked within buildings on-site.” Chair Cline noted that he had a concern that such a condition was placed on the Board’s action concerning this appeal. Chair Cline noted that the recreational vehicles were not a part of the applicant’s appeal. He further stated that there is no ordinance condition that requires such action.

It was noted that Mr. Wiseman was present.

It was noted that such a condition had been agreed upon at the time of the adoption of the resolution. Members agreed with the opinion of Chair Cline.

Member Warren made a motion to approve the resolution on this appeal, without the condition concerning the parking of recreational vehicles. Member Emmons seconded the motion. Mr. Wiseman was asked and stated that he had no problem with the removal of that condition.

Roll Call Vote

Aye: Emmons, Fowler, Gilbreath, McAuliffe, Warren

Nay: None

Present, but ineligible to vote: Cline

Absent: Kenyon, Manley, Szwed

Mr. Wiseman asked questions concerning the enforcement of this resolution. Attorney Goodell explained that the Board is not an enforcement agency. Attorney Goodell stated that complaints should go to the Zoning Officer who will review the complaint based on the ordinance, and in this case, the resolution. He noted that the resolution should clarify what can and cannot be done.

Attorney Goodell reiterated to Mr. Wiseman that the Board does not have the authority or jurisdiction to do anything. Mr. Wiseman asked that the Board ask for continued monitoring of the site. Mr. Wiseman stated that the Zoning Officer has no upper authority to whom to report.

Chair Cline stated that the Township Committee can direct the Zoning Officer to take action. Chair Cline noted that Mr. Wiseman can ask to be placed on the Township Committee agenda to ask for action by the TC.

There was a discussion about the escrow account established by Mr. Wiseman and what it pays for. Attorney Goodell stated that fees are paid from the escrow account which was established for this purpose.

Attorney Goodell stated that Mr. Wiseman has the option of consulting his own attorney. Attorney Goodell further noted that the Board has interpreted the ordinance per this appeal and that this is the interpretation that stands in this town.

Chair Cline reiterated that Mr. Wiseman should first go to the Zoning Officer and identify his concerns to the Zoning Officer. Chair Cline noted that if Mr. Wiseman is not satisfied, then Mr. Wiseman should get on the TC agenda. It was noted that the next meeting is April 29.

APPLICATIONS

Locandro Investments, LLC, Block 32, Lot 24, minor site plan approval and d(2) variance to expand the previously approved non-conforming four (4) residential apartment uses on the first, second, and third floors to permit two (2) additional units in the main building, one being a COAH unit; and two additional units in the barn; carried from March 14, 2019 meeting.

Member Fowler recused himself from this application.

Mr. Dilts stated that the applicant is opting to continue the application and have missing members listen to the recording. Mr. Dilts asked that all present must be mindful of who is speaking, to the point of identification.

Mr. Dilts stated that at the last meeting, the applicant was asked to revise the plans submitted with the application. It was noted that those plans have been revised with a date of 3.29.19.

It was also noted that a letter had been submitted by the Rosemont Water Company about the water capacity. Attorney Goodell stated that the Board does not normally mark such documents into the record.

Mr. Locandro was present. It was noted that he was sworn in at a previous meeting. Mr. Locandro presented into evidence the following items, as described by himself:

A-9 – photo of the barn from the alleyway

A-10 – photo of the west side of the barn, toward the interior of the property

Chair Cline asked how the parking is to be done, questioning the location of a white truck in the picture. Mr. Locandro stated that the parking will be perpendicular to the alley.

Member Gilbreath, using A-9, asked about the gravel to the far left corner of photo. It was noted that this is the location of the parking spots on the south side of the barn.

There were no public comments or questions about these two photos.

Mr. Wayne Ingram was present. It was noted that he was previously sworn in and that he had been qualified as an engineer and a planner. Mr. Ingram noted that the plans were revised on 03.29.19. He used sheet 1 of the revised plans to discuss the changes made to the map.

Mr. Ingram noted that the main revision is the parking area along Route 519. He noted that they have created a shorter driveway opening that enters a parking area that faces the building. He noted that there will be one handicapped space on the eastern side of this area; and that this handicapped space connects to a path that approaches the ADA compliant apartment. He noted that this configuration of the parking area provides a 20-foot back-up aisle. He further noted that the arborvitae between the subject property and the Jaques property will be maintained.

There was a discussion about a small dry well that could be installed to cut down on some water runoff from the property. It was described that this dry well would collect water from the roof leaders, so the water does not flow onto the public road.

There was a discussion about the existing conditions on the County roadway. It was noted that some improvements made by the County may have caused the problems. Mr. Ingram stated that the applicant is willing to work with the County to remedy these issues.

There was a discussion about impervious coverage. It was noted that the proposal would add 800 square feet for a proposed parking lot that would open on to Route 519 on the west side of the property. It was noted that water would flow west, onto Route 519. It was further noted that much of the impervious surface already exists on the property.

There was a discussion about a stone dry well pit that is shown on Sheet 3 of the plans with the revision date of 03.29.19. Mr. Dilts noted that this dry well is located in the upper left corner of the page, in the northwest corner of the property. Chair Cline noted that the location of this dry well is in the County right-of-way, along County Route 604. Mr. Ingram noted that the applicant is looking to install this dry well before the dedication of any right-of-way area. Mr. Ingram noted that there are no locations on the site that could be reasonably situated to help with drainage on the site.

Member Gilbreath asked about the southern-most section of the main building and the drains that are there. She asked if the drywell could be positioned there to mitigate that problem. Mr. Ingram noted that a drywell cannot be placed there because of the proximity to the septic system.

Mr. Dilts stated that it might be possible to realign the gutters to have them drain in a different pattern. Mr. Locandro agreed that perhaps the drains could be configured to “meet” in the front of the building.

When questioned, Mr. Locandro suggested that the drains could “meet” in the front of the building, within the dedicated area.

Mr. Jaques, adjacent neighbor on the south side of the property and previously in attendance, was present. He asked about the water that is collecting on the north walk, between the arborvitae and the wall on the north side of Mr. Jaques’ property. He questioned if a ditch could be dug that would connect to a drain line that goes in front of the following properties: Jaques, Vieth, Devinnie. Mr. Jaques further noted that the County should clean that drain line so the natural grade of land carries the water to a catch basin on his northwest corner.

Tim Davis, of Rosemont was present and was previously in attendance. He stated that the drain line discussed by Mr. Jaques no longer goes underground at his property.

Mr. Jaques stated that he is concerned about a swale being overfull and then going into his cellar. He reiterated that the County should correct any problems that they created

Chair Cline asked about this pipe. Mr. Jaques stated that he thinks that the diameter of the pipe is about 12 inches and that there is a six-inch orangeburg pipe that goes to that drain. No one could answer if the drain is open.

Mr. Jaques reiterated that he is worried about the walkway.

Mr. Tim Davis discussed this drain. He noted that there used to be a drain on the corner of his property with that of Rick Garret. Mr. Davis stated that the drain was a “farmers’ drain” that drained into the field, behind the houses. He noted that the middle of the pipe fills up with water. Mr. Davis further noted that he was told by the County that there is no legal justification to have all of these pipes open.

Mr. Davis asked Mr. Ingram if he had viewed the property during rain, to which Mr. Ingram responded negatively. Mr. Davis noted that there are four pipes coming into the southwest corner of the subject property.

Chair Cline noted that the Township Engineer may want to review this situation.

There was a discussion about impervious coverage. It was noted that the property is currently under one acre and is about to lose more area after the County dedications. Mr. Ingram noted that the property would go from 70% to about 77% impervious coverage when the proposed parking area adjacent to Route 519 is added in. He noted that the proposed parking area is about 800 square feet. He noted that about 23% of the property will be pervious, including the septic and the area behind the arborvitae. Mr. Ingram

noted that this change in coverage has no significant impact on the property. He noted that drainage is being improved by maintaining a flow path on the existing parking area and future parking areas.

Member Gilbreath asked if the County had been asked about the three parking space area along Route 519. Mr. Ingram stated that the County requested these three off-site parking spaces.

There was a discussion about the subject property being in an historic area. Mr. Locandro stated that this issue was discussed at the County meeting that they had. He further noted that the County's priority is the right-of-way.

Member Gilbreath expressed her concern about the parking lot opening on Route 519 being in close proximity to the curve on Route 519. Mr. Ingram stated the County does not have an objection to this opening.

Mr. Dilts asked that the continual comments from the public should not be happening.

Chair Cline agreed that there should not be so many interruptions. He did note that the historical data that can be gleaned from some of the public comments is beneficial to the hearing.

Chair Cline agreed to return to the ground rules concerning public input. He noted that members of the public can ask questions of the engineer/planner. He further noted that any other public comments or questions can be brought up at the end. He also stated that the Board does appreciate the audience's involvement.

Mr. Dilts asked Mr. Ingram questions about the addition of three parking stalls on the southeast corner of the property. Mr. Ingram stated that adding this parking area is not an appreciable change between what exists and what is proposed. Mr. Ingram noted that there is an area of lawn, but there is still run-off from this property. He noted that there could be net benefit if there can be some correction from the County. He reiterated that they will continue to have discussions with the County to improving the drainage in this area.

Mr. Ingram noted that some of the changes to survey were made, as requested, including the locations of the propane tanks, generator, refuse containers, and septic.

Mr. Dilts asked Mr. Ingram about the septic capacity and if it can handle four new units. He noted that when the Locandro's acquired the property the usage was about 1,015 gallons per day. He further noted that the expected septic usage was calculated to be 2,800 gallons per day with the inclusion of the restaurant.

It was noted that some changes in water usage require approval by NJ DEP. It was noted that the preexisting use was calculated at about 3,000 gallons per day. It was also noted that when the change in use results in a lower calculated demand, this is permitted without NJ DEP approval.

Mr. Ingram noted that residential use will require less water than a restaurant use. He also noted that the RSIS calculation for water use in an apartment is 350 gallons per day. Mr. Ingram discussed the wastewater. He noted that the septic will take in 12 inches of water per day and then seep out within 24 hours. He stated that there is no issue with the conveyance of the wastewater.

There was a discussion about a permit and approval from NJ DEP for a change of use. Board Engineer Roseberry stated that a change of use does not require such approval if the septic usage is not more than

2000 gallons per day. Mr. Dilts stated that the applicant would consent to this approval if it is needed. Mr. Ingram stated that the change of use does require registration with the State and with NJ DEP.

Mr. Dilts noted that the applicant is offering one affordable housing unit that will be handicapped adapted. He noted that Board Planner Kyle raised the point that such a use would be beneficial to the application.

There were questions about the alley. It was noted that the alley is 20 feet wide and is a public alley. He noted that the alley is shown on the tax map with separate lines. Mr. Dilts noted that the alley appeared on the 1967 tax map. He also noted that it is not a paper street and that there are equal rights to the property owners that abut this alley.

Chair Cline asked if the town is liable for maintaining this alley, to which the response was negative. Mr. Dilts noted that there is not a written agreement about maintenance but that it is to everyone's benefit that it be maintained. When questioned, Mr. Dilts stated that he has seen no historical agreement on the use of this alley.

Attorney Goodell stated that if the deeds do not extend into this alley then there appears to be no obligation to maintain it. He noted that a public right-of-way is not accepted as a paper street. Attorney Goodell stated that the Township has no obligation and that it appears that no one has any obligation

Mr. Ingram noted that there is a total of seven properties on both sides. Mr. Dilts explained that the main building on the subject property uses the alleyway for access. Board Engineer Roseberry speculated that with increased units that there may be more wear and tear on the alley. There was a discussion about this potential issue.

Chair Cline agreed that with an increase of four residences that there will be increased usage on this alley. Mr. Locandro noted that with the last restaurant in the building, the restaurant was open six days per week, with associated traffic use.

Board Engineer Roseberry stated that as-builts of the septic need to be presented. It was noted that the septic was repaired in 1994, but that the original system is older than that.

Board Engineer Roseberry also asked for a letter from the Rosemont Water Company about capacity for the increased usage. It was noted that the property is currently at less than half of its allotted capacity. Board Engineer Roseberry asked about RSIS waivers. It was noted that these applications have not been made.

Member McAuliffe asked about the chain link fence. It was noted that it does not clearly show in photo, A-9; but that it is shown on the map. It was noted that the fence stops outside the limit of the proposed stall next to the barn. It was further noted that the fence is wooden, not chain link. Member McAuliffe expressed his concern that cars turning into the proposed parking stall may end up on the neighboring property.

Audience questions

Mr. Jaques expressed a question about the need for the parking area on the west side, parallel to Route 519. Mr. Ingram explained that this is a requirement of the County, to have the full demand of the parking needs on site. Mr. Jaques stated that the Board of Adjustment should be able to make adjustments.

Mr. Ingram reiterated that the County won't let those spaces along Route 604 count as permanent spaces for the on-site usage. Mr. Ingram further noted that the application is a minor site plan under the County's jurisdiction.

Mr. Richard Garret of 80 Kingwood Stockton Road was present. He stated that he spoke to the County Engineer about the storm drain that was removed from the edge of his property, abutting the property of Mr. Davis. Mr. Garret stated that he was told by the County Engineer that this was "farmer water" drain and that is why the drain was removed.

Mr. Jaques again raised his objections about the parking and his concern about having additional parking on the side of the property nearest his house. He reiterated that the drainage problems along the County Road 519 were created by the County.

Mr. Davis of the Rosement Water Company was present. He noted that he thinks that there is a discrepancy with the numbers about capacity.

Mr. Dilts stated that the applicant is willing to go to the County and force the drainage issue. He also noted that the applicant is willing to try and fix that piping.

Mr. Tim Davis was present, as a resident. He questioned if there is a letter from the County mandating the location for the on-site parking area along Route 519. Mr. Ingram noted that their plan was submitted to the County followed by a meeting. He noted that this plan was shown to the County and the layout was found to be acceptable.

Mr. Davis also expressed his concern about the use of the alley. He noted that it is a one-way alley that starts as 20 feet wide, but gets thinner as it goes south. He noted that Café patrons did not park down the alleyway. He noted that there are dumpsters parked along the alley. He expressed his concern that there will be encroachment on neighboring properties when a vehicle turns around. Mr. Ingram agreed that the lane is not wide enough for a turn-around, and the plan shows a 20-foot back up behind the parking stalls. He also noted that the two parking stalls on the south side of the barn also have an extended area for backing up.

Mr. Ingram noted that the County Engineer, the County Road Department, the County Engineering Department and the County Planning Department have all reviewed the plans. He noted that there is conditional approval from the County for this project.

Mr. Jaques gave an opinion that if the Board can be satisfied that there is enough parking, the Board can make that adjustment. Chair Cline stated that the Board must protect the ordinance even in making adjustments from the ordinance.

Board Engineer Roseberry stated that the project is also governed by the State-mandated RSIS, Residential Site Improvement Standards. There was further discussion about the County mandate for three off-site parking spots so that all of the required parking can be placed on the subject property.

Rosemary Brenner of Stockton was present. She asked for clarification about the parking requirements. Mr. Ingram noted that the requirement is for 1.8 parking spaces per one bedroom and the applicant is providing two stalls per bedroom, totaling 15 parking spaces. He further noted that adding in the one (1) two-bedroom unit puts the total at 18 parking spaces.

Rosemary Brenner asked about the parking on County Road 604, and the request for no parking within 50 feet of the intersection. She further noted that this statement is made on behalf of Mr. Sudano, who had to

leave. It was noted that this issue can be discussed at the next meeting, since the application will not be completed at tonight's hearing.

Mr. Jaques reiterated the historic review of the alley related to maintenance. He noted that the group of neighbors has always taken the best care of this alley as they could. Board Attorney Goodell noted that Mr. Jaques is again giving testimony.

Ms. Terese Kell of Dunkard Church Road was present. She recollected that the septic was built in 1980 and repaired in 1994. She asked if it had been load tested, to which there was a negative response. She asked about what happens if it fails. Mr. Ingram noted that if it fails, it will be repaired or replaced under the purview of NJ DEP. Mr. Ingram reiterated that in going from a restaurant use to residential uses, the load on the system should be reduced. Mr. Locandro stated that appliances and water-saving features have been applied to the reconstruction of the main building and will be applied to the future units.

Chair Cline asked about septic inspections with future, new owners. Mr. Ingram stated that a load test is usually done when the property has been unoccupied or if there is a change of use in the building. He noted that the proposed use is consistent with the current use.

Board Engineer Roseberry indicated that such a test would be decided by the individual(s) at the time of sale.

Mr. Tim Davis asked another question about possible septic system failure. Mr. Ingram noted that usually a new location is used when there is a septic failure but that in some circumstances, the location cannot be changed. He noted that in these cases, the waste is hauled away and the new system is built.

Member Gilbreath asked about the request for no parking on the north side of Route 604, along the Sudano property. Mr. Locandro stated that the County is requesting there be no street parking within 50 feet of the stop sign/intersection. Mr. Locandro further noted that he is not claiming any use of street parking on the Sudano side of Route 604.

There was a question about the sight triangle for the intersection of Routes 519 and 604. Mr. Ingram noted that the applicant has no influence on the sight triangle.

Board Planner Kyle discussed the RSIS and the uniform standards for residential construction. He noted that under normal conditions when on-street parking is available, it can be used. He noted that in this instance the County may request that those spaces along Route 604 be vacated for specific purposes. There was a discussion about how this condition might be met without the proposed parking area, along Route 519.

Board Planner Kyle discussed the concept of a de minimis exception for parking. Board Engineer Roseberry agreed that eliminating one (1) stall might qualify for de minimis exception. Board Planner Kyle stated that the Board could count the 15 stalls that exist and find a place where the three cars from the parking spaces along Route 604 could go when there is a request for vacation of those spots by the County.

Mr. Dilts stated that the engineering portion of the application has been completed.

There was further discussion about the parking situation. It was noted that one solution is to reduce the size of the Route 519 parking area to only have the handicapped space. Board Engineer Kyle remarked that the de minimis exception has to be decided by the County. It was further noted that the on-street parking could be counted toward the obligation with a solution for vacating those spots as needed.

There was a discussion about banked parking spaces, noting that the proposed parking area would only have a handicapped spot, but the area be “banked” for future parking spots.

Board Engineer Roseberry noted that the parking number could be based on 1.4 parking spaces per unit, with a total of no less than 12. When questioned, Board Engineer Roseberry stated that he is inclined to agree with a de minimis exception for the three proposed parking spaces along Route 519. It was discussed that there could be a possible agreement with Cane Farm for those parking spaces, that may have to be vacated upon occasion.

Chair Cline asked about the legal standing on this issue. Attorney Goodell noted that the RSIS allows for de minimis exception and has standards for its use.

Member Gilbreath stated that removing the additional proposed parking spaces would help to eliminate impervious coverage. The discussion centered on the banking of the two spaces and only constructing the handicapped space, resulting in less invasiveness than the proposed three spots. It was further noted that the COAH unit has to be made handicapped accessible, but would probably not need two parking spots for that unit.

Board Engineer Roseberry read the following exceptions into the record:

20. Exceptions from Residential Site Improvement Standards (RSIS) for BOA

1. In accordance with N.J.A.C. 5:21-3.1(a), local land use boards have the power to grant “such de minimis exceptions from the requirements of the [RSIS]

a. as may be reasonable, and within the general purpose and intent of the standards,” but if and only

b. “if the literal enforcement of one or more provisions of the standards is impracticable, or will exact undue hardship because of peculiar conditions pertaining to the development in question.”

2. N.J.A.C. 5:21-3.1(g) further provides that the grant of a request for a de minimis exception “shall be based on a finding that the requested exception meets the following [four] criteria:”

a. It is consistent with the intent of the Act establishing the RSIS;

b. It is reasonable, limited, and not unduly burdensome;

c. It meets the needs of public health and safety; and

d. It takes into account existing infrastructures and possible surrounding future development.

3. While not containing a definition of de minimis, N.J.A.C. 5:21-3.1(f) provides four examples of de minimis exceptions, which “include, but are not limited to, the following”: (a) Reducing the minimum number of parking spaces and the minimum size of parking stalls; (b) Reducing the minimum geometrics of street design, such as curb radii, horizontal and vertical curves, intersection angles, centerline radii, and others; (c) Reducing cartway width; and (d) Any changes in standards necessary to implement traffic calming devices. As noted in Cox and Koenig, New Jersey Land Use Administration (Gann 2016), §23-8(c), “de minimis exceptions are limited exceptions of minor nature and, where an applicant wishes to deviate from other requirements of the RSIS which cannot be considered a minor design variation as characterized in the examples set forth in the regulation,” an applicant must seek a waiver from the RSIS from the Site Improvement Advisory Board.

Board Engineer Roseberry stated that the waiver request that is sent to the State can be initiated by the Board or the developer.

Attorney Goodell stated that a de minimis exception refers to the idea that the change in the requirement is so small that it can be overlooked. He further noted that if the standards cannot be met, they can be overlooked if it complies with the noted RSIS standards.

There was a discussion about presenting this idea to the County Engineering group. Chair Cline noted that such a meeting could also be used to clarify the County's position. It was noted that such a meeting could be handled by either Board Engineer Roseberry or Board Planner Kyle. Board Engineer Roseberry agreed to meet with the County.

Planning testimony

Mr. Dilts reintroduced Mr. Ingram as the applicant's planning expert. Mr. Dilts noted that Mr. Ingram has been previously qualified.

Mr. Ingram discussed the variances needed, including the use variance and any bulk variances that are needed. He noted that most bulk variances needed are based on pre-existing conditions. He further noted that some bulk variances are related to the proposed right-of-way dedications, as requested by the County.

Mr. Ingram discussed the two "d" variances under consideration. Mr. Ingram noted that Mr. Locandro has stated that he has been unable to rent the former restaurant as a restaurant. Mr. Ingram stated that Mr. Locandro testified that there is a need for residential uses in the Township. Mr. Ingram further highlighted the proposed affordable housing unit, which is a benefit to the Township.

Mr. Ingram noted that Mr. Locandro has substantially improved the property, which supports the desirable visual environment of the community. Mr. Ingram noted that the barn cannot be converted as an accessory unit because the conditional use standards cannot be met. He noted that the proposed residential uses are in keeping with the area and reduce the impacts to the area that would be a result of other non-residential uses.

Mr. Ingram noted that there is a proposed parking area, as requested by the County, but that no other parking areas are to be enlarged. He noted that these parking areas will be improved to be of uniform standards with defined stalls. He noted that these areas will promote the use of the lot for parking without utilizing much on-street parking.

Mr. Ingram noted that one purpose of this project is to promote the establishment of appropriate population densities and concentrations that will contribute to the well-being of persons, neighborhoods, communities and regions and to the preservation of the environment.

Mr. Ingram noted that this proposal relates to the Master Plan reexamination in a positive way. He noted that there is a demand for housing and that this proposal provides varied housing. He noted that the proposal helps to preserve an historic site and that it fits into the character of the historic zone. He specifically noted that the addition of the pavers makes the parking areas more attractive. He noted that it preserves open space by utilizing the area within a hamlet or village. He also noted that the promotion of housing falls within an area with infrastructure; in this case, public water.

Mr. Ingram stated that there is no substantial detriment. He noted that there is an increase in impervious coverage. Mr. Ingram stated that Mr. Locandro is willing to work with the neighbors and the County to make any changes that the County will allow.

Mr. Ingram stated that there is no visual negative impact. He noted that there will be less traffic and noise with one-bedroom units.

Mr. Ingram noted that the addition of one COAH unit will help to weigh in favor of granting the "d" variance.

Chair Cline stated that in providing residential units, there is a reduction in the nonconformity of the previous situation. He noted that the previous use of the main building is nonconforming and that increasing the number of units does increase the nonconforming use. He also noted that an incoming restaurant would be a more intense use than what is proposed. Chair Cline concluded by stating that he sees the proposal as no more intense than the existing use (before the fire).

Audience questions for the planning testimony

Ms. Brenner asked for clarification of the proposal. Mr. Ingram noted that the café will be removed and that space will become two apartments. He further noted that there will be two new apartments in the barn on the subject property. Ms. Brenner asked if approved, does this approval set precedence for future conversions of barns to apartments. Chair Cline stated that there is a conditional use ordinance that allows for the conversion of an accessory structure into a dwelling. He further noted that each application stands on its own merits.

Mr. Ingram noted that the use of the building is not heavily utilized. He noted that the property has had prior approvals for more intense uses. He noted that the property is already connected to public utilities. He also stated that this specific property has always had the potential for multiple uses on the property.

Mr. Tim Davis stated that the Rosement Café restaurant was open for 17 years. He noted that other uses on the property have failed. He noted that the barn has been used for storage for people living in the main building.

Mr. Andrew Devinnie asked how parking was previously approved for the uses on this property. It was noted that some uses were approved using off-site parking.

Ms. Brenner stated that this subject property is no longer qualified to have off-site parking, as previously approved. Chair Cline stated that the subject property has already been qualified as commercial without off-site parking.

Mr. Copeland Kell was present. He asked about the septic. He questioned if there are washing machines in all of the units. The response to this was positive. Chair Cline noted that there has been testimony about the water usage and the septic volume. It was noted that there is less water being used than with the previous restaurant use.

Mr. Ingram stated that it takes about 24 hours to drain out 12 inches of water in the septic system.

Ms. Brenner asked if the café water usage is theoretical usage, to which the response was positive, noting that the calculations are done per the RSIS.

Ms. Terese Kell asked if it is correct to note that the density of the space is doubling. She questioned what happens if the apartment dwellers are bad neighbors. It was noted that contact about any such situations would go to the property owner/landlord. It was further noted that if any problems are in direct violation of the town, per the ordinance, the enforcing agent should be contacted.

There were no further questions concerning the Planning testimony

Attorney Goodell stated that members of the public will have an opportunity to make comments at the next meeting. He further noted that members of the public can make any testimony at this time. He also noted that any testimony will be subject to cross-examination.

Member Gilbreath made a motion to continue this application to the May 9, 2019 meeting. Member Warren seconded the motion. The applicant agreed to any time extensions that may be needed. It was also noted that there will be no further written notice, following this announcement of continuation.

Roll Call Vote

Aye: Emmons, Gilbreath, McAuliffe, Warren, Cline

Nay: None

Absent: Fowler, Kenyon, Manley, Szwed

Locandro Application for Block 41, Lot 1.01

A request was made by the Locandro's to extend the time limit on this preliminary major subdivision. Said request was for two one-year extensions. It was noted that the plot plan has been recorded.

Attorney Goodell stated that it is best to do one extension at a time. It was also noted that one usually applies before the time expires; once applied the expiration reverts to the original date.

Chair Cline stated that he concerned about the potential change in Board members.

Member Gilbreath made a motion to extend the time limit on this application. Member Emmons seconded the motion.

Roll Call Vote

Aye: Emmons, Gilbreath, McAuliffe, Cline

Nay: None

Abstain: Warren

Absent: Fowler, Kenyon, Manley, Szwed

Cellco, Block 5, Lot 7, lawsuit

Attorney Goodell gave an update on this lawsuit. He noted that the Township/ Board of Adjustment filed its brief two weeks ago. He provided some points of the brief. He noted that the major point was that this is not the right lot and that other lots were available to be researched; no further research was provided.

Attorney Goodell noted that Cellco gets to reply to that brief. He further noted that oral arguments are set for May 17 at 2:30 p.m., in Flemington,

Planning Board update

Liaison Cline reported that the Land Disturbance ordinance has been recommended to the Township Committee. He noted that the first reading has been done. Liaison Cline reported that the Planning Board will next work on the Zoning Officer Duties.

Bill List

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

General Zoning Matters, Line item #113-215

| | |
|---------------------------|----------|
| Through January 31, 2019 | \$90.50 |
| Through February 28, 2019 | \$240.00 |

Member Gilbreath made a motion to approve two payments as noted above.

Seconded by Member Emmons

Roll Call Vote

Aye: Emmons, Gilbreath, McAuliffe, Warren, Cline

Nay: None

Absent: Fowler, Kenyon, Manley, Szwed

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

Escrow Charges

| | |
|--------------------------------------|-----------|
| 11/10, Wiseman (Lindner), #3089056 | \$1152.00 |
| 17/41, Hill, #3087440 | \$128.00 |
| 17/41, Hill, #3089054 | \$64.00 |
| 27/9, Carlucci & Woodfield, #3087439 | \$208.00 |

Bill List: Engineering Services – Van Cleef Engineering Associates

Escrow Charges

| | |
|--|----------|
| 27/9, Carlucci & Woodfield, #3935005-4 | \$631.75 |
|--|----------|

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 unanimous voice vote.

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 27/9 (2019)

William Carlucci and Elizabeth Woodfield
Block 27, Lot 9

WHEREAS, on October 11, 2018, William Carlucci and Elizabeth Woodfield, of 415 County Road 579, Ringoes, New Jersey 08559, applied to the Delaware Township Zoning Board of Adjustment for variances related to property located at Block 27, Lot 9 on the Delaware Township Tax Map; and

WHEREAS, the Board held a hearing on October 11, 2018, to consider the application, at which time the application was deemed incomplete by the Board and notice was continued until the applicant prepared necessary application materials; and

WHEREAS, the Board held a hearing and considered the application on December 13, 2018, and a revision to the plans on February 7, 2019;

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

JURISDICTION

1. The Board has jurisdiction over applications for bulk variances (*N.J.S.A. 40:55D-70c*).

2. The Applicant published timely notice and served notice by certified mail on neighbors within 200 feet of the subject property.
3. The Board Engineer found that the use variance application could be deemed “complete.”

HEARING

4. The Board held a hearing on December 13, 2018.
5. The Applicant supplied the following exhibits:
 - (1) A-1, Wetlands Assessment Letter prepared by Princeton Hydro, dated October 23, 2018
 - (2) A-2, a copy of the original survey done by Van Cleef Associates, dated July 7, 2004
 - (3) A-3, survey prepared by Fisk Associates, P.A., 631 Union Avenue, Middlesex, NJ 08846, dated 11/7/18, “Site/Grading Plan – Proposed Pole Barn”
 - (4) A-4, survey prepared by Fisk Associates, P.A., 631 Union Avenue, Middlesex, NJ 08846, dated 11/7/18, “Overall Location Map – Proposed Pole Barn”
 - (5) A-5, Planner’s Review Letter prepared by Board Planner James T. Kyle, PP/AICP, dated December 12, 2018.
6. The Board considered the following documents:
 - a. Application dated October 11, 2018.
 - b. Engineering Review by Robert O’Brien dated December 10, 2018
7. Applicant sought a variance from Section 230-16 of the Delaware Township Code, which requires any structure have a 75’ setback from the property line.

FINDINGS OF FACT, the following facts were established at the hearing:

- A. William Carlucci and Elizabeth Woodfield are the owners of a lot located at 415 County Road 579, Ringoes, New Jersey (Block 27, Lot 9 on the Delaware Township Tax Map).
- B. The applicant is seeking setback variances to construct a 160’ x 70’ horse training arena on the subject property.
- C. The site complies with all the bulk and area requirements for the A-1 zone with the exception of the setback of the proposed arena. The arena is proposed to be located 27.4’ from the western property line where 75’ is required.

- D. The Board deemed the application incomplete in October 2018, and requested that the applicant provide a grading plan and wetlands determination. Applicant subsequently provided both to the Board.
- E. The setback variance was addressed by Planner Kyle in his memo.
- F. The applicant provided testimony at the October hearing that the proposed location of the horse training arena was superior to a conforming location as it would leave the balance of the property open and would lessen the visibility of the structure from outside the property.
- G. The preserved farmland neighboring the property would not be negatively impacted in any way by the approvals.
- H. The Board discussed Planner Kyle's memorandum at length, and agreed that the overall intent of the zoning ordinance would be furthered by granting the variance.
- I. Board Engineer O'Brien stated the listing of property owners is normally found on the survey. There was a discussion by the Board members about whether or not this information should be on the survey. It was noted that this is a normal requirement per the ordinance. It was also noted that a listing of the owners is also in the applicant's file. Most members agreed that the information could be left off: Member Manley stated that it is easy to put the names on the survey and reprint it. Member Fowler stated that he is okay with leaving it off, as long as the property owners are identified, and the list is found in the file. Member Emmons agreed. Member Gilbreath agreed. Member Warren stated his concern that the omission of this list might lead to other applicants doing the same. Chair Cline stated that each application is reviewed on its specific merits, therefore such an omission would not set precedence. Chair Cline also noted that he does not see the point of the extra cost.
- J. Board Engineer O'Brien brought up two other errors that need to be corrected. He noted that the distance to the property line shows as 27 feet, when it should be 27.2 feet. He also noted that on Sheet 2 of 2, the total acreage is in error. He noted that while these are minor errors, they need to be corrected. The Board noted that the 200 foot list can be added at the same time.
- K. Board Engineer O'Brien noted that a limit of disturbance line should be delineated on the plan. He suggested that the applicants' engineer can contact him and Board Engineer O'Brien can explain this issue.
- L. Board Engineer O'Brien stated that this corrected information needs to be on a map that must be submitted to Soil Conservation for its approval whenever there is a disturbance greater than 5,000 sq.ft.
- M. Board Engineer O'Brien noted that the Municipal/Township Engineer needs to review the grading plans and the stormwater management plan.
- N. Applicants retained Jim Hill of Frey Engineering to develop the stormwater management plan that must be part of the farm plan. The applicants noted that perc tests must be conducted prior to the development of the stormwater management plan. They further noted that Mr. Hill is developing a plan that would place the stormwater drainage area under the ring area inside the building. It was noted that it would require 18-inch piping that only needs to be two feet deep. It was further noted that the soil removed for the stormwater management can be used for the grading.

- O. Applicant amended the plans to alleviate the need for a stormwater management plan.

Board Attorney Goodell stated that the Board can delegate this authority to the Township Engineer, concerning the need, or lack of, for stormwater management. Board Engineer O'Brien stated that such a large building still has a requirement for a dry well. He noted that the approval for the dry well system would be with the Township Engineer to review the dry well system associated with the proposed construction.

- P. Mr. Carlucci noted that with such a plan the pasture areas remain undisturbed. He noted that the shallowness is acceptable because of the permeability of the area, which was demonstrated for the replacement/alteration of the septic system. Ms. Woodfield noted that the plan also works because the area of the rings will never have anything heavy overtop, only horses and a small tractor with a horse-ring grading rake.
- Q. Board Engineer O'Brien stated that such a plan will meet DEP regulations and the stormwater management plan. Board Engineer stated that Hunterdon County can review for the farm plan. He opined that this is a good solution.
- R. Ms. Woodfield stated that the plan will also be submitted as part of the Farmland Preservation Plan. She noted that the State has acknowledged that their farm product is horses and a plan must be presented that divides pastures for resting. She noted that there is also a need for sacrifice or stress lots. She noted that the letter from the SADC recognizes that the stress lots are to be maintained.
- S. The Board discussed a motion of approval that would include the revision of plans, with errors corrected and as noted in the Board Engineer memo and the Board discussion.

CONCLUSIONS

8. In order for the variance to be granted, the Board considered whether the applicant demonstrated that the positive and negative criteria have been satisfied.
9. The applicant satisfied the burden to prove the positive criteria, demonstrating that the application advanced the purposes of zoning and that the benefits of the deviation substantially outweighed any detriment. The application would further purposes of the Municipal Land Use Law by clustering the structures in the northern part of the site, leaving the large area currently farmed intact. The proposal would also push the structure as far from County Road 579 as possible. The purposes of the Municipal Land Use Law furthered by the application include:
 - (1) Providing adequate light, air, and open space;
 - (2) Promoting a desirable visual environment through creative development techniques and good civic design and arrangement;
 - (3) To promote the conservation of open space; and
 - (4) Encouraging the more efficient use of the land.
10. The applicant also satisfied the burden to prove the negative criteria, demonstrating that the application would not substantially impair the public good or the intent or purpose of

the zoning ordinance. The adjacent farm on Lot 8.01 is permanently preserved, and there is a large hedgerow that runs along the two properties. All the structures on Lot 8.01 are towards the center of the track and would not be impacted by the proposed structure. The applicant confirmed that there are no wetlands on their lot or on the adjacent lot that would require a buffer in the area of the proposed structure. In addition, the proposed placement and orientation of the horse training facility on the subject property is preferable compared to the location and orientation of the building as required by the ordinance. If the variance was not granted, the structure would have to be located on an area of the property that would be visible from surrounding areas and closer to environmentally sensitive lands.

NOW, THEREFORE, BE IT RESOLVED by the Zoning Board of Adjustment of the Township of Delaware, that the application of William Carlucci and Elizabeth Woodfield for setback variance relief from Section 230-16 of the Delaware Township Code is granted, subject to the conditions expressed in this resolution. Accordingly, the Applicant may construct a horse training facility not closer than 27.2 feet from the property line, within the setback of 75 feet authorized by ordinance.

BE IT FURTHER RESOLVED that the Board's determination is subject to the conditions, as noted below; said conditions approved on April 11, 2019:

1. Prior to the issuance of a building permit, a detailed grading plan, prepared in accordance with §230-16, shall be submitted to the Municipal Engineer for approval.
2. Per §230-112, all stormwater runoff from roof areas shall be transported to dry wells, seepage pits, detention basins or other on-site stormwater management facilities, as approved by the Municipal Engineer.
3. Per §230-114, a farm conservation plan that addresses the protection of soil and water resources shall be developed and implemented. Such plan shall be approved by the Hunterdon County Soil Conservation District.
4. The plans shall be revised to correct errors noted by the Board Engineer in his memorandum.

ROLL CALL VOTE ON MOTION TO APPROVE SETBACK VARIANCES TO
CONSTRUCT A HORSE TRAINING ARENA ON BLOCK 27, LOT 9, SUBJECT TO
CONDITIONS

December 13, 2018

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

Those concurring: Szwed

Those Opposed: None

Those Absent: Kenyon

ROLL CALL VOTE ON MOTION TO APPROVE
RESOLUTION OF MEMORIALIZATION

March 14, 2019

Moved By: Manley
Seconded By: Gilbreath
Those in Favor: Emmons, Gilbreath, Manley, McAuliffe, Warren, Cline
Those Opposed: None
Present but Ineligible To Vote: Szwed
Those Absent: Fowler

ROLL CALL VOTE ON MOTION TO APPROVE
AMENDED RESOLUTION OF MEMORIALIZATION

April 11, 2019

Moved By: Gilbreath
Seconded By: Fowler
Those in Favor: Emmons, Fowler, Gilbreath, McAuliffe, Warren
Those Opposed: None
Those present, but ineligible to vote: Cline
Those Absent: Kenyon, Manley, Szwed

Kathleen E. Klink,
Administrative Officer

Kathleen E. Klink, Administrative Officer
Certified to be a true copy
Distributed on April 16, 2019

**BOARD OF ADJUSTMENT
TOWNSHIP OF DELAWARE**

RESOLUTION 11/10 (2019)

Anthony Wiseman

Appeal of Zoning Official Determination Dated October 24, 2018
Block 11, Lot 10.

WHEREAS, Anthony Wiseman, residing at 12 Old Mill Road in Delaware Township, submitted a complaint to the Zoning Official concerning activity on the property located at 67 Pine Hill Road, identified as Block 11, Lot 10 on the Delaware Township Tax Map;

WHEREAS, the subject property, 67 Pine Hill Road in Delaware Township, is owned by Steven Lindner;

WHEREAS, Anthony Wiseman submitted a complaint to the Zoning Official alleging that commercial activity, clearing activity, and illegal dumping were taking place on the property. The complaint also alleged that a second driveway being utilized on the property was not authorized by permit;

WHEREAS, on October 24, 2018, the Zoning Official for the Township of Delaware issued a written determination to Anthony Wiseman concerning the allegations of illegal dumping, an unapproved driveway, unauthorized woodland clearing activity, and unauthorized commercial activity taking place on the subject property; and

WHEREAS, The Zoning Official concluded that (1) there was evidence commercial activity had taken place on the property, but the property owner ceased that activity, (2) the alleged solid waste dumping did not fall under the jurisdiction of the Zoning Official, (3) the clearing activity was permitted on the property and consistent with the property owner's attempt to establish a Woodland Management Plan, and (4) the second driveway on the property was subject to prior approvals based on a review of a site plan map available to the Zoning Official.

WHEREAS, Anthony Wiseman appealed the determination of the Zoning Official by submitting an application to the Zoning Board of Adjustment on November 13, 2018.

WHEREAS, the Board held a hearing and considered the appeal on January 10, 2019;

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

JURISDICTION

11. The Board has jurisdiction over appeals from the Zoning Official (N.J.S.A. 40:55D-70a).

12. Anthony Wiseman appealed the determination of the Zoning Official by submitting an application to the Zoning Board of Adjustment on November 13, 2018.
13. The Review of the Zoning Official's determination is appellate in nature. The Zoning Board is tasked with reviewing the determination for clear error. If, at the hearing, the proper evidence is produced before the Board, then the Board may exercise its appellate powers by reversing the decision of the Zoning Official and enter a judgment.

HEARING

14. The Board held a hearing on January 10, 2019.
15. Anthony Wiseman (Appellant) attended the hearing. Mr. Wiseman was represented by attorney Paul Doherty, III, Esq., with offices located at 54 Route 4 East, River Edge, New Jersey 07661. Mr. Patrick Fatton, PLS, was the planner providing documents submitted with the application, D-1 through D-4.
16. The owner of the property located at Block 11, Lot 10 on the Delaware Township tax map, Steven Lindner, did not attend the hearing on advice of legal counsel.
17. The Board considered the following evidence:
 - c. Application and exhibits dated November 13, 2018.
 - d. Zoning decision letter of Michael Mullin dated October 24, 2018.
 - e. Testimony of Appellant Anthony Wiseman
 - f. Testimony of Board Planner Beth McManus, Kyle and MacManus Associates, LLC
 - g. Testimony of Zoning Official Michael Mullin

18. Public Comment

- (1) Gottfried Gutschmidt, Township Resident. Mr. Gutschmidt supports Mr. Wiseman's appeal, and believes there is commercial activity being conducted on the property. Mr. Gutschmidt objected to materials being stored on the communications box concrete pad and along the property line.
- (2) Cynthia Brashear, 16 Old Mill Road. Ms. Brashear supports the appeal, and believes there is commercial activity being conducted on the property. Also she had significant concerns regarding illegal dumping and commercial use of the unauthorized driveway. She also had significant concerns about the 300-foot buffer along the C-1 creek.

FACTS

19. Upon receiving the complaint from Mr. Wiseman, Zoning Official Mullin personally inspected the subject property.
20. Mr. Mullin discovered evidence of Mr. Lindner using the property to store yard waste accumulated from a landscaping operation. Mr. Mullin immediately informed Mr. Lindner that the yard waste must be removed from the property, because the property cannot be used for commercial activity without a use variance.
21. Mr. Mullin discovered evidence of dumping that might be unlawful, including the dumping of solid waste like concrete and other building materials. The dumping was referred to the County Board of Health which investigated the matter, which is outside the jurisdiction of the Board.
22. The appellant utilized an expert, Mr. Patrick Fatton, PLS, who explained that the markings on the survey did not indicate the presence of a driveway. Exhibit D-1 through D-4.
23. Testimony from the appellant and the public indicated the driveway was routinely utilized as a storage space for commercial and personal vehicles. The second driveway is not being used as a farm or agricultural access road, which would be permitted under the ordinance without a permit.
24. With respect to clearing activity on the property, the Zoning Official confirmed that Mr. Lindner had submitted a Woodland Management Plan to the Township.
25. The Zoning Official indicated that the Woodland Management Plan approval process through the State, necessary to obtain a farmland assessment, takes years to develop. In the meantime, activity is required to prepare for the implementation of the plan on the subject property.
26. Operating a Woodland Management Plan on the subject property is a permitted use in the zone.

CONCLUSIONS

27. Mr. Lindner's property had multiple inspections with time to cure violations.
28. The Zoning Official did view commercial activity, and told Mr. Lindner to stop. The Zoning Official indicated that Mr. Lindner had ceased commercial operations on the site.
29. The property owner is permitted by ordinance to establish and operate a Woodland Management Plan on the subject site. Some activity on the site might appear to be related to a landscaping business, but could be related to the Woodland Management activity.

30. Zoning Official Mullin enforced the relevant ordinances regarding commercial activity based on a reasonable interpretation of the ordinance.
31. There was evidence to demonstrate that trucks and equipment were parked in a second driveway that was not visible on old maps. There was no indication that the second driveway was ever authorized by permit. The use of the driveway for any use other than agriculture access is not permitted.
32. The Board was sympathetic to the concerns of the residents who appealed the Zoning Official's determination, as well as the members of the public who testified in support of the appeal. The frustrations of the residents are understandable. However, the Board's review is appellate in nature, and the Board is required to give deference to the reasonable judgments of the Zoning Official.
33. Clearing Activities

The Zoning Official determined that the clearing activity on the site was not in violation of any ordinance. The Board agreed with the Zoning Official. Under the ordinance, a property owner is allowed to clear land that is not in excess of one-quarter acre. The determination of the Zoning Official is upheld. However, the Board notes that any disturbance in excess of one-quarter acre requires the establishment of a stormwater management plan.

In addition, the property owner has submitted a Woodland Management Plan, and is in the process of having that plan approved by the relevant parties. Clearing activities are within the scope of activity that may be included in a Woodland Management Plan.

The Board voted to affirm the Zoning Official determination that clearing evidenced on the property is not in violation of the Zoning Ordinance, per Zoning Ordinance 230-116(B), 6, 7 and section 231.

Roll Call Vote

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

Nay: Gilbreath

Absent: Kenyon, Szwed

34. Second Driveway on Property

The Zoning Official determined that the second driveway was authorized because it appeared on a map that the Zoning Official reviewed. The Board disagreed, and did not see any delineation on the map submitted with the application for the second driveway. The Board determined that the operation of the second driveway on the lot was inconsistent with prior plans on record. The Zoning Official determined that an old survey shows this second driveway. The Board made a determination that evidence was presented that this driveway is not a permitted driveway, disagreeing with the determination of the Zoning Official. It was noted that Section 167 of the Zoning Ordinance provided information about driveways, their use and installation.

The operation of the second driveway is dangerous. There is no sight triangle at that location.

The driveway is being used for the parking of commercial and other vehicles, based on the testimony of witnesses and personal experience of Board members. This is not the purpose of an agricultural access driveway, permitted in the ordinance. The second driveway is therefore illegal, as a permit was never issued authorizing its construction.

The Board voted to overturn the determination of the Zoning Official that this second driveway is a preexisting driveway, per the evidence submitted.

Roll Call Vote

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

Nay: None

Absent: Kenyon, Szwed

35. Dumping of Solid Waste.

The Zoning Official determined that the alleged dumping on the site did not fall within the jurisdiction of the Zoning Official. The Board agreed. Testimony by the Zoning Official and Board Professionals revealed that the possible illegal dumping falls under the jurisdiction of the Hunterdon County Board of Health. The Zoning Official referred the matter to that Board.

The Board voted to affirm the determination of the Zoning Official that this matter is not within the jurisdiction of the Township Zoning Official, or the Board of Adjustment.

Roll Call Vote

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

Nay: None

Absent: Kenyon, Szwed

36. Commercial Activity on the Property

The Zoning Official determined that there was evidence of commercial activity on the property, related to Mr. Lindner's landscaping business. The Zoning Official also determined that the property owner cured the violation, and no commercial activity is currently taking place on the property. The Board agreed.

The Zoning Official testified that the evidence of commercial use on the property was resolved to his satisfaction by the removal of all yard waste dumped on the property. The Zoning Official never observed any commercial activity taking place during his site visits, such as active dumping or vehicles with company names on the premises. The property owner was responsive to his request to move debris placed on the property by the property owner's commercial landscaping operation.

In addition, the property owner has submitted a Woodland Management Plan, and is in the process of having that plan approved by the relevant parties. Activities related to the implementation of the plan will continue.

The Board voted to uphold the Zoning Official's determination that the property is not being operated for a commercial use, **subject to the following conditions:**

- There shall be a prohibition of future dumping of refuse or material from off-site activities;
- Residential or agricultural refuse shall be screened pursuant to the ordinance; and

- No commercial landscaping vehicles shall be parked on the property or in the illegal second driveway.
- The Zoning Official shall continue to monitor the activity on the site to ensure that all activity comports with permitted uses in the zone.

Roll Call Vote

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

Nay: Cline

Absent: Kenyon, Szwed

NOW, THEREFORE, BE IT RESOLVED by the Zoning Board of Adjustment of the Township of Delaware, that the decision of the Zoning Official dated October 24, 2018 is upheld in part, overturned in part, and subject to conditions as described in this resolution.

**ROLL CALL VOTE ON MOTION TO APPROVE
RESOLUTION OF MEMORIALIZATION
April 11, 2019**

Moved By: Warren

Seconded By: Emmons

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

Those Opposed: None

Present but Ineligible to Vote: cline

Those Absent: Kenyon, Manley, Szwed

Kathleen E. Klink,
Administrative Official

Kathleen E. Klink, Administrative Official
Certified to be a true copy
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