

The regular meeting of the Delaware Township Board of Adjustment held on the noted date, was called to order by Chair Cline at 7:32 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, Manley, McAuliffe, Warren, Cline

Absent: Kenyon, Szwed

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

MINUTES: September 9, 2021

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

MEMORIALIZATIONS - None

APPLICATIONS

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

Mr. DiPasquale was present to represent the applicant. He introduced Tiffany Morrissey, the applicant's planner, and Brian Atkins, the applicant's engineer. Both were sworn in.

Board Attorney Miccio stated that the Board had jurisdiction at the September meeting which carries to this meeting.

Mr. DiPasquale stated that he reviewed the draft minutes from the September meeting. He stated that the information presented was factually correct. He stated that the applicant wishes to build a new house and live in the existing house until the new house is done. He noted that the existing house is close to the driveway used for access by the subject property and the adjacent property. Mr. DiPasquale stated that the intent is to not have two houses on one lot. He noted that this is a temporary use variance and, in the end, only the new house will remain. Mr. DiPasquale stated that he believes that it is not the intent of the ordinance to leave a house to build a newer one.

Mr. Brian Atkins introduced himself as the applicant's engineer. Mr. DiPasquale asked questions to qualify Mr. Atkins as an engineer. Mr. Atkins stated that he has been a licensed engineer in New Jersey for 15 years, after receiving his Bachelor of Science degree from Rowan University. He stated he has practiced engineering for 20 years. He stated that he has not appeared before any Hunterdon County Boards, but that he has appeared before numerous land use boards in New Jersey.

Member Emmons made a motion to accept Mr. Atkins as an expert. Member Fowler seconded the motion that was approved by voice vote.

Mr. Atkins spoke about the stormwater and drainage plan which will improve the flow of runoff from this property. Mr. Atkins referenced page 1 of the project map, submitted with the application, showing the proposed residence of 4,800 square feet. It was noted that the map was marked into evidence, A-1.

Mr. Atkins noted that the subject property has 16.97 acres and that there are no setback issues and no coverage issues. He noted that the new house will have a 300-foot long driveway made of porous pavement. He noted that the project falls within Zone A of the D&R Canal Commission. He noted that the design presented had to comply with the Canal Commission requirements. He noted that 90% of the water will be treated for water quality. He also noted that there will be a reduced rate of flow and reduced volume for this project. He noted that the driveway is made of porous pavement with stone under the driveway. He stated that the driveway has an underground filtration system to help prevent an overflow of water.

Mr. Atkins stated that the septic for the new house has been permitted by the County Board of Health; as has the well.

Mr. Atkins noted the detailed plans of the stormwater system, shown on page 1. He noted that this plan was signed on April 20, 2021 and that the proposed stormwater system improves on the existing system.

Mr. Atkins described the subsurface stormwater management system that includes a basin with tanks in the ground for the water, as it drains. He noted that the driveway is about 0.5 acres of surface coverage.

Chair Cline asked about the septic system. He stated that new construction requires that a reserve septic location be approved and shown. Mr. Atkins stated that the septic has gotten approval from the County Health Department. Board Engineer O'Brien agreed that the reserve system needs to be shown on the map with the soil logs and pit bails for the reserve. Mr. Atkins stated that the reserve will be to the west of the existing approved septic for the new house.

Member Manley asked about how the driveway works. Mr. Atkins stated that the porous asphalt pavement allows the runoff to be absorbed. Mr. Atkins stated that there is a stone base of 6 to 8 inches and thicker beds of stone that are 18 inches thick. He stated that the rainfall flows along grade to the stone beds which are connected to inlets. Mr. Atkins also noted that the driveway is graded and that water can be picked up in swales adjacent to the driveway.

Chair Cline noted that at the last meeting, there was a concern from one of the neighboring property owners about the run-off that exists between the existing house and that neighbor's house. Mr. Atkins explained that the run-off from the proposal has to be equal or less than what is existing. There was a discussion about the zoning ordinance, §230-112, concerning lot grading and land disturbance. It was noted that details A to C of this ordinance focus on the avoidance of water run-off onto a neighboring property. There was a discussion about rate and volume and how it is calculated.

Chair Cline asked if the applicant had an opportunity to review Board Engineer O'Brien's memo dated 10.11.21. There was a discussion about the memo and conditions of approval, particularly item C-2 on page 3. Board Engineer O'Brien stated that he is confident that the reduction needed can be achieved.

Mr. Atkins discussed the spreadsheet used to calculate how high water would mound and how it compares to the existing infiltration. It was noted that regardless of soil infiltration, the calculations adjust the rate down. It was noted that the main goal of the spreadsheet is to show drainage within 72 hours, even while applying the factor of infiltration to get the field variable. Board Engineer O'Brien agreed with the methodology stating that the infiltration testing is done exactly on the spot to determine the tested rate. Mr. Atkins stated that the infiltration rate was also performed for the reserve septic system.

Mr. DiPasquale summarized that the proposal improves the conditions at the site.

Ms. Tiffany Morrissey stated that she is a graduate of the University of Pennsylvania, after attending American University. She stated that she has been a professional planner in the State of New Jersey for more than 20 years. She stated that she has appeared before West Amwell, Kingwood, Raritan, and East Amwell; to name a few Hunterdon County boards. Member Gilbreath made a motion to accept Ms. Morrissey as a professional planner. Member Fowler seconded the motion that was approved by voice vote.

Ms. Morrissey stated that this is not a traditional use variance in that it will be used for a temporary period of time, if approved. Ms. Morrissey stated that Ms. Tilch grew up in the house but wishes to build a house for her family of three children, soon to be four; a home that the family can “grow” into. It was noted that the proposed home will be in the middle of the property of 17 acres. Ms. Morrissey stated that the time period of 90 days is requested for the period of demolition. She noted that there could be construction delays or weather delays that could get in the way.

Ms. Morrissey stated that in her professional opinion, positive criteria can be given to show that this site is suited to this use due to the location and isolation of the subject property. She noted that the existing house is nestled in the southeast corner, closer to other existing homes. She noted that in moving the home to the new location, adequate light, air, and open space will be provided. She noted that if the existing home were to be expanded, the enlargement could impact the neighboring structures and the expanded home as well. Ms. Morrissey stated that the use variance request is temporary, the appropriate density will be maintained.

Ms. Morrissey discussed the negative criteria. She noted that there will be no substantial detriment to the zone ordinance or master plan. She noted that the proposed home will meet all zone requirements. She reiterated that the use variance is temporary, that there will not be two homes on this property for simultaneous occupation. She noted that another positive aspect is that the proposal is being closely reviewed by the Board. She noted that in the ordinance there is a provision for the use of a temporary trailer for living quarters if an existing home were seriously damaged or demolished.

Ms. Morrissey reiterated that the proposal does not increase the density of the zone. She stated that there will be no substantial detriment to public good as shown by the reduction of rate and volume of water runoff from this project. She noted that in moving the driveway, the negative impact of the closeness of a few homes will be diminished.

Chair Cline asked Ms. Morrissey if she had visited the site, to which Ms. Morrissey responded positively. Chair Cline asked Ms. Morrissey if the landscaping should be enhanced to provide greater buffering. Ms. Morrissey stated that there are large evergreens on Lot 5.01. She also noted that the new house will be further from the home on the other side of that evergreen buffer and that no additional landscaping is needed.

Member Warren had no questions, but complimented the completeness of the applicant’s presentation.

There were no public comments or questions for either professional.

Mr. DiPasquale presented the applicant. Ms. Tilch noted that her family currently resides in the existing house. She noted that there is no alternate housing in Delaware Township and that two of her children currently attend the local school. She stated with no house to rent, the children would have to change schools if they had to move out of the Township, temporarily. She also noted that the new baby is due in February.

There were no questions of Ms. Tilch.

Mr. DiPasquale summarized the application. He noted that the lot is particularly suited for this temporary use. He noted that the stormwater conditions on the property will be improved. He stated that he does not feel that it is the intent of the ordinance to force a family to leave their home.

There were no other public comments.

Chair Cline stated that he is concerned about runoff but feels as though this has been addressed. Board Engineer O'Brien reiterated that he is confident that the stormwater runoff will be adequately handled.

Member Fowler stated that he was happy with the applicant's presentation.

Member McAuliffe stated that the Board has granted this type of variance in the past. He also opined that the proposed dwelling will greatly improve the property.

Member Emmons stated that the demolition condition should be adequate concerning the timeframe of the construction.

Member Gilbreath agreed with all.

Member Manley thanked the applicant for a precise and detailed presentation.

Member Warren had no comment but repeated his statement about the quality of the presentation.

It was noted that three conditions can be found within Board Engineer O'Brien's report, as follows:

2. Clarify discrepancy in time of concentration between post developed drainage area map (10-min) and storm calculations (6-min). Per chapter 5 of the NJDEP BMP Manual, time of concentration for pre & post construction conditions must be calculated based upon the requirements listed in the chapter.

- Item not addressed - Per chapter 5 of the NJDEP BMP Manual the time of concentration for pre and post construction conditions must be calculated. The revised Stormwater Management Report does not include calculations for the time of concentration.

5. Provide copy of groundwater mounding analysis.

- The groundwater mounding analysis included in the Stormwater Management Report indicates groundwater will rise to the bottom of the infiltration basin. The Hantush Spreadsheet needs to be recalculated so that the groundwater mounding has no adverse effects on the basin. This can be done by decreasing the recharge rate and lengthening the infiltration period while at the same time ensuring the basin will drain within the required 72-hour limit.

6. Provide copy of permeability test results for test pits #3 & #4 excavated within 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.

It was further noted that the reserve septic system must be placed on the map, with the soil logs and pit bails. Another condition concerns the demolition of the existing house, which should be torn down within 90 days.

Member Fowler discussed the ordinance section about cessation of operation, 230-26H, recommending that essential features and fixtures be removed to demonstrate cessation of operation. Member Warren asked that these features be identified. It was noted that they could be identified as the electric panel, well pump or well storage, identifying water as an essential feature.

It was noted that once the temporary certificate of occupancy is issued, the essential features should be removed within two months of that date and that within four months of this date, removal of features, the house should be demolished.

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

Roll Call Vote

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

Nay: None

Absent: Kenyon, Szwed

Block 13, Lot 22.04, Traina, use variance requested for conversion of accessory structure to a dwelling, not meeting the conditions, §230-31D(4)(e).

Mr. Larry Wohl was present to represent the applicants. He noted that Mr. Richard Mongelli was the original attorney, but his presence created a conflict of interest for some Board members.

Attorney Miccio stated that the Board has jurisdiction over this application and that notice was approved.

Mr. Wohl stated that Administrative Officer Klink was able to locate a subdivision plan from 1975 showing the label, "barn with apartment". Mr. Wohl questioned if such a use was approved at that time, per the ordinance of that time. He noted that such information would show that there is no need for the application and variance.

Mr. Wohl stated that the applicants have a buyer for the property and it could not be determined if the barn apartment is an approved use. Mr. Wohl referenced Zoning Ordinance, §230-25C(3), noting that lots conforming to 1976 zoning ordinance may have building permits issued if the subdivision was duly approved since that 1976 zoning ordinance.

Mr. Wohl also noted that there is a conversion ordinance, for which this barn apartment does not meet one of the requirements, which is to not have living space above the second floor.

Mr. Wohl noted that this property has been in the family for decades. Mr. Wohl noted that the property is under contract and the buyer seeks assurance that the barn apartment is legitimate.

Mr. Wohl referenced the conditional use ordinance for which this barn apartment meets all requirements but one. Per 230-231D.4.(e), there shall be no dwelling above the second floor. Mr. Wohl noted that this barn building has storage on the first floor, with living space on the second and third floors.

Mr. Wohl also noted that the existing home is too close to the road, and violates the front yard setback requirements.

Mr. Wohl stated that Mr. Mongelli submitted the application on August 19, 2021.

Mr. Burns, planner for the applicant, was sworn in. He stated that he has not appeared before this board or the Township Planning Board, but has appeared before Boards in Lambertville, East Amwell, Hopewell, and West Amwell. He stated that he is a licensed planner and architect with the State of NJ, and has worked with 29 municipalities throughout the state of NJ. Board Planner Kyle stated that he is familiar with Mr. Burns.

Member Gilbreath made a motion to accept Mr. Burns as an expert in architecture and planning. Member Fowler seconded the motion which was approved by voice vote.

Mr. Burns, through questions from Mr. Wohl, reviewed the memo from Board Engineer O'Brien dated 09.07.21. It was noted that Health Department approval for the barn septic must be provided. Mr. Wohl submitted into evidence, A-1, Hunterdon County Department of Health certification dated 09.09.21.

There was a discussion about a survey map and items that needed to be shown on it, in particular overhead electric lines. Said survey was presented into evidence, A-2, dated 08.17.21. It was noted that this is the survey that was submitted with the application. Mr. Wohl noted that a copy of the easement for the overhead wires was recorded on November 11, 1974.

Mr. Wohl also presented into evidence, A-3, dated 09.21.21, a Jurisdictional Determination from D&R Canal Commission stating that the subject property is determined to be exempt.

Mr. Burns stated that he has reviewed the Board's planning report and the Board Engineer's report.

Mr. Burns stated that this is a D-3 use variance, with less stringent standards to be met.

Mr. Burns used a copy of the survey that was submitted with the application to discuss the property. He noted that page 1 shows the zoning of Delaware Township in this area. He noted that page 2, shows the property to have 10.029 acres with a main house on the property and a barn apartment. Page 1 is a copy of the survey for the existing property. Mr. Burns noted that the main house has a footprint of 800 square feet. He noted a shed to the east of the main house and that further to the east is a three-story barn.

Mr. Burns noted that the conditional use requirement for the size of the property is 9 acres, when applying for an additional accessory dwelling within a converted building. He noted the subject property has 10.029 acres.

Mr. Burns stated that page 3 shows the western portion of the property, describing the main house. He noted that the survey shows that from the center line of the road to the house is a distance of 4.23 feet, 50 feet is required in this zone. It was noted that this is an existing conditions that violates the ordinance.

Mr. Burns stated that page 4 shows the plans of the structure, with the following dimensions for the barn structure - ground floor, 599 sf; second floor, 699 sf; third floor, 599 sf; with a total of 1,897 sf. He reiterated that the ground floor is storage and utility space; the second floor is the main living space; the third floor is a loft-type space. He noted that the total of the second and third floors is 1,300 square feet.

Mr. Burns showed photographs of the barn noting that the north face shows the access to the main living area. He noted the outside space off the kitchen/dining area. He noted that the west elevation, in the lower right hand side, shows the first floor entrance to the storage area.

Mr. Burns showed the septic plan, which services both the apartment and the house; this plan was admitted into evidence, A-4, dated August 17, 2021.

Chair Cline asked about the inspection port and manhole for the tanks. Mr. Burns stated that he did not know the exact locations of these. It was noted that this is a newly installed septic system, installed by Martin Excavating.

Ms. Annelisse Traina and Mr. Gerard Traina were present. They are two of the three applicants. Ms. Traina stated that the mound system has been installed and approval issued by the County Health Department.

Mr. Burns stated that the purpose of the application is to legitimize the use of the second and third floors of the barn as a dwelling. He noted that the property size meets the requirements of the ordinance, at 10.029 acres where 9 acres is required. He further noted that all other conditions have been met except the condition about living space above the second floor.

Mr. Burns stated that the site is suitable and appropriate for the use, meeting the positive criteria. He noted that the site can accommodate problems that may arise from such use. He stated that the site has been actively used for about 51 years. He noted that no addition is proposed and that the use of the third-floor space does not change the character of the structure.

Mr. Burns noted that the variance can be granted without substantial detriment to the zone plan or zoning ordinance, meeting the negative criteria. He noted that the proposal meets land use patterns and prevents environmental degradation. He noted that the size of the property meets the density requirement protecting water resources. He also noted that the use allows for repurposing of an existing structure.

Mr. Burns referenced elements of the Master Plan which are promoted, such as the following: providing more varied housing; preserving historic sites; providing housing in infill areas; and providing unique housing conditions. Mr. Burns also referenced sections of the MLUL, 40:55D-2, which are satisfied, particularly purposes A, B, C, D, E, G. Mr. Burns noted that purpose G is very specific to this proposal in providing sufficient space for agricultural and recreational uses. Mr. Burns also discussed Purpose J which addresses the preservation of open space and the prevention of urban sprawl. He noted that similar intent can be found in US Housing and Urban Development, as applied to an accessory dwelling unit.

There was a discussion about the existing main dwelling and its violation of the front yard setback. It was noted that this violation is not a result of the application, but is an existing condition.

There was a review of the conditions of 230-31D, as follows:

- (1) Increases availability of rental units
- (2) Exterior alterations preserves appearance of original structure
- (3) a. complies with building and health regulations – water supply and septic standards
b. meets minimum standards and bulk requirements
c. owner shall reside in one of the buildings
d. deed restriction provided to restrict further subdivision - applicant will comply.
e. proposal is not located on any unsuitable lands, the area is suitable
- (4) a. accessible to emergency vehicles, as demonstrated by a driveway, adequate for two-way traffic
b. meets required living space for kitchen, bathroom, storage, and sleeping space
c. meets minimum floor space of 800 s.f., including bathroom
d. meets direct access to outside
e. **VARIANCE SOUGHT FOR LIVING SPACE ABOVE SECOND FLOOR.**
f. appropriate parking is available, and out of sight

Mr. Burns gave his opinion as a planner that standards have been met and sufficient proofs have been provided.

Chair Cline noted that the existing apartment in the barn must remain as one apartment. When questioned it was noted that the apartment is to be used by a family member of the buyer and will not be recommended as a COAH unit.

Board Planner Kyle agreed that the conditions of 230-31 have been met, particularly the size of the property which is to be an increase of 50% of normal lot size for the A-2 zone, 6 acres. He noted that the existing well has provided water for historic use of this barn apartment and the main dwelling. He noted that testimony has been provided that the septic system and well are adequate for two units.

Ms. Annelisse Traina and Mr. Gerard Traina were sworn in. Ms. Traina stated that the oldest part of the dwelling was built in 1725, with an addition attached in about 1850. She noted that the barn was built at about the same time as the addition, 1850. She stated that she feels that the barn was converted around 1959.

Mr. Traina stated that there are permits for some of the work on the barn. He noted that in 2003, a permit was obtained to build a stairwell, with access to all floors. He stated that the approved septic system is for both the main dwelling and the apartment. He noted that the existing well has been used for both units, as well. He noted that the buyer wants space for parents.

Ms. Traina stated that the existing well has been tested and treated for manganese, arsenic and coliform. She noted an ultraviolet system is being used to correct any issues found in the well testing.

A reiteration was made about the 1975 subdivision map showing the barn with apartment in existence at that time.

A bulk variance is sought for the preexisting front setback violation and a use variance is sought for the apartment in the barn with living space above the second floor. It was noted that the washer and dryer, utilities and other storage are on the first floor.

Mr. Traina stated that he felt the apartment construction was started in 1970 and finished in 1974. Ms. Traina stated that it is a beautiful property.

Chair Cline asked that the current usage not be expanded, to be used as described. The applicants agreed to such a condition.

Member Manley asked about the prohibition of use beyond the second floor. Board Planner Kyle stated that he could not find language justification about this requirement.

Member Fowler questioned the removal of the use of the third floor for this residential unit. It was noted that the third floor does have a half-bathroom. It was further noted that the third floor is like an open loft and is an extension of the second floor living space.

Board Engineer O'Brien noted that the main residence has four bedrooms.

Public Comment

Mr. Gottfried Schmitt was sworn in. He stated that he has lived across the road from this property for many years and has never had any issues.

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

Roll Call Vote

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

Nay: None

Absent: Kenyon, Szwed

• Planning Board Update: Liaison Cline

Liaison Cline reported no action by the Board in a meeting that lasted 12 minutes. He noted that the main focus is the Reexamination of Master Plan which is moving along. He noted that a section on hazard vulnerability assessment will need to be added.

- Correspondence

Weiss, 44/4.03, Dunkard Church Road – use variance for automotive service in the A-1 zone.

Administrative Officer Klink reminded Board members that this application will be heard at the special meeting of October 28, 2021.

- Bill List

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

Zoning Board Matters

Through 8/30/21, #3135915	\$374.00
Through 9/30/21, #3137370	\$119.00

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

Roll Call Vote

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

Nay: None

Absent: Kenyon, Szwed

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

Escrow Charges

13/22.02, Trainan, #3137372	\$425.00
17/33.04, Ross, #3137367	\$119.00
55/2, Switzler, #3135914	\$34.00
51/5.05, Tilch, #3137371	\$646.00

Bill List: Engineering Services – Van Cleef Engineering Associates LLC

Escrow Charges

51/5.05, Tilch, #3935013-2	\$868.75
55/2, Switzler, #3935008-8	\$477.25

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

ADJOURNMENT: 9:25 p.m.

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

Respectfully submitted,

Kathleen E. Klink,
Administrative Officer, Secretary