

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

PLEDGE OF ALLEGIANCE

STATEMENT

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

ROLL CALL

Present: Emmons, Fowler, Gilbreath, Kenyon, Manley, McAuliffe, Szwed, Warren, Cline

Absent: Emmons, Szwed

Also present: Attorney

MINUTES: November 11, 2021

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

MEMORIALIZATIONS

Weiss, Block 44, Lot 4.03, use variance application granted to use an existing barn structure located on the noted property as an automotive repair facility.

Prepared resolutions were distributed to all members for review and discussion. Items of clarification for wording and content were discussed. Said resolution follows the minutes.

Motion to approve as discussed and amended: Manley

Second: Fowler

Roll Call Vote

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

Concurs: McAuliffe

Nay: None

Absent: Szwed

2022 Budget

The Board discussed the budget, line item by line item. Said proposal follows the minutes.

There was a discussion about the zoom license and its renewal.

Chair Cline opined that live attendance allows for better decisions to be made by the Board of Adjustment.

Member Warren stated that he feels the option of the hybrid meetings allows members to make accommodations for people who are concerned about health issues and/or live attendance. Member Warren noted that there has been an increase of reported cases of covid-19. He further noted that such accommodations can be made for both members and participants.

Member Manley stated that there is no local news coverage. He stated that it is more important for the Township to allow better public viewing to see what is going on.

Member Gilbreath agreed with Member Warren and feels that the hybrid mode should be continued. She noted that it is a benefit to residents, Board members, and Committee members to stay informed. She opined that the license should be kept for another year.

Member Fowler opined that the reality is that five years from now, everything will be remote, even if you take covid-19 out as a factor. He stated that maintaining the hybrid meetings moves the Board towards a progressive means of communication.

Chair Cline stated that he feels that the continuation of the hybrid meetings should include an employee to manage the technology. He noted that this would be an additional cost, even with alternate ways of staffing. It was noted that there could be a shared service with the school to use a high school student to be this employee, as was done with Jack Fetzer in 2020 through spring, 2021.

Member McAuliffe agreed that the "covid factor" should be removed and that virtual/hybrid meeting have resulted in increased participation. He noted that it is an ongoing struggle for people to have access to information. He agreed that these meetings allow for more active involvement and public comment, via zoom or some other platform.

Member Kenyon stated that major employers are having the same debate. She noted that TD Bank, her employer, might send employees back to buildings in June, 2022. She agreed with Chair Cline that live attendance allows the members to "read the room", looking at body language. She noted that the hybrid meetings have been an advantage with more participation at these meetings. She noted that increased participation allows more people to weigh in and have opinions.

Member Kenyon stated that she further appreciates the fact that these meetings can be in-person and online. She noted here attendance tonight via zoom was possible due to time restrictions for live attendance. She agreed that the hybrid model is the model of the future, or at least the near term. She noted that there could be such interruptions again and that the Township Committee should be prudent and maintain this model.

Chair Cline stated that he appreciated all concerns that have been raised and will present these concerns to the Township Committee. He stated that he will recommend that the hybrid meetings be continued.

Chair Cline stated that he is concerned about technology glitches. Member Warren stated that the glitches have gotten better. Member Warren stated that moving the microphone has been a big help. He further noted that he has been virtual with his company for nearly two years.

Member Fowler stated the microphone placement is key. It was also noted that the podium approach has helped with communication. He noted that the shared documents is a feature that is a strong asset. He noted that the business world has had to work out "kinks", as well.

Member McAuliffe agreed with the comments made. He stated that he likes being present, but can appreciate the need for virtual attendance, as well. He noted that the meetings have been clearer and easier to follow. He stated that the Board members need to use critical thinking through the meeting and that the hybrid meetings help with that.

Member Kenyon noted that zoom meetings were rough in the beginning but are much better now. She noted that when there is a presentation on the screen, one can see more in the zoom meeting than in person. She agreed that the microphones are key and that Zoom participants should be asked to speak up when they cannot hear or cannot be heard.

Chair Cline stated that he will present these opinions to the Township Committee. He asked that as many members as possible should attend the Board of Adjustment meetings in person, when possible.

Chair Cline noted that Member Kenyon has agreed to be the alternate liaison to representing the Zoning Board before the Planning Board. He noted that this recommendation will be made to Township Committee.

APPLICATIONS – none

Planning Board Update: Liaison Cline

Liaison Cline reported the December meeting lasted eight minutes. He noted the focus was to honor Dave Bond in his retirement from the Planning Board after 34 years. He noted that there was cake and that some members adjourned to the Inn.

Correspondence – none to report

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

Zoning Board Matters

Through 10/31/21, #3138533	\$425.00
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Member Gilbreath made a motion to approve payment of this voucher. Member Fowler seconded the motion.

Roll Call Vote

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

Concurs: McAuliffe

Nay: None

Absent: Szwed

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

Escrow Charges

13/22.02, Traina, #3138534	\$986.00
44/4.03, Weiss, #3138532	\$851.20
51/5.05, Tilch, #3138534	\$988.40

Bill List: Engineering Services – Van Cleef Engineering Associates LLC

Escrow Charges

13/22.02, Traina, #3935014-2	\$266.00
44/4.03, Weiss, #3935015-2	\$1,064.00
51/5.05, Tilch, #3935013-4	\$847.00

Member Gilbreath 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: 8:35 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 44/4.03 (2021)

Jeremy Weiss
Block 44, Lot 4.03

WHEREAS, Jeremy Weiss (the “Applicant”), of 34 Dunkard Church Road, Stockton, NJ 08559, applied to the Delaware Township Zoning Board of Adjustment (the “Board”) for a use variance to allow a barn to be used as an automotive service facility; and

WHEREAS, the Board held hearings on October 28, 2021 and November 11, 2021; and

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

Background

1. The Applicant, Jeremy Weiss, owns the property located at 34 Dunkard Church Road, Stockton, NJ 08559 (Block 44, Lot 4.03).
2. The property is located in the A-1 Agricultural Residential zoning district. Commercial uses such as automotive service facilities are not permitted in the zone.

Jurisdiction

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

Hearing

5. At the hearing, the Board considered testimony from:
 - a. Jeremy Weiss, the property owner and a principal in M & W Automotive.
 - b. Jason Morlock, a principal in M & W Automotive.
 - c. Applicant’s engineer, Eric Rupnarain, P.E., of Goldenbaum, Baill Engineering, Inc., who was accepted by the Board as an expert in civil engineering.
 - d. Applicant’s planner, John Madden, P.P., AICP, who was accepted by the Board as an expert in planning.

- e. Board Engineer Robert S. O'Brien, PE, CME, who prepared a report dated October 21, 2021.
 - f. Board Planner James T. Kyle, PP, AICP, who prepared a report dated October 25, 2021.
6. Members of the public who provided testimony and/or comment at the hearing were:
- a. David Bond. Mr. Bond supported the application. He has had positive interactions with the applicant and his business. He has lived next to the property for 80 years and owns Block 44, Lot 1. According to Mr. Bond, the property was once a dairy farm with 40 to 50 cows and there was always sufficient water for the farm. The current building was built for industrial use, and fire safety was built into the design. The previous industrial use of the site utilized diesel fuel that was stored in vats, and he had never witnessed anything leaking from the building. He noted that the current owner, Mr. Weiss, was a good steward of the property, and believed the proposed use was a "perfect fit" for the building.
 - b. Jes Stahl. Ms. Stahl supported the application. Ms. Stahl owns the flag lot directly behind the property. Her house is 700 feet from the property line. She noted that Mr. Weiss was a good steward of the property, and believed the proposal would be an asset to the community.
 - c. David Bond (Jr.) Mr. Bond lives on the eastern side of the property and farms the rear portion of a subject lot. Mr. Bond supported the application, and testified that he probably would not notice lighting from the building.
 - d. Mark DellaValle. Mr. DellaValle lives to the northwest of the property. Mr. DellaValle supported the application and testified that Mr. Weiss was a good steward of the property, and that the lighting would not bother him.
 - e. Scott Polenz. Mr. Polenz supported the application. He testified that he was familiar with the property because his grandparents bought it in 1931, and subsequently sold it to the previous owners.
 - f. Ray Aron. Mr. Aron supported the application. He believes the use would benefit the Township.
 - g. Steve Smotrich. Mr. Smotrich supported the application. He has had positive interactions with the applicant and his business.
 - h. Mark Knudsen. Mr. Knudsen supported the application. He has had positive interactions with the applicant and his business.
 - i. Gustavo Fonjul. Mr. Fonjul supported the application. He has had positive interactions with the applicant and his business.

- j. Gayle Conover. Ms. Conover supported the application. She has had positive interactions with the applicant and his business and noted that the application process has been thorough.
- k. Brian Garots. Mr. Garots supported the application. He has had positive interactions with the applicant and his business, has known Mr. Weiss and Mr. Morlock for 28 years, and believes this particular commercial activity would benefit the community.
- l. Christine Yazujian. Ms. Yazujian supported the application. She and her husband have had positive interactions with the applicant and his business.
- m. Rick Wolfe. Mr. Wolfe often runs on Dunkard Church Road. He is a member of the East Amwell Land Use Board. Mr. Wolfe opposed the application for a variety of reasons, including concerns about the difficulty of enforcing the conditions imposed by the Board, pollution of the aquifer, noise, traffic, and incompatibility of the use with the agricultural zone.
- n. Valerie Tucci. Ms. Tucci opposed the application as being inconsistent with agriculture.

Findings

Description of the Property:

- 7. The property in question is a 13.637 acre tract known as Block 44, Lot 4.03, located at 34 Dunkard Church Road, Stockton, New Jersey. It is owned by the applicant, Jeremy Weiss.
- 8. The property is located on the north side of Dunkard Church Road, east of Ryneerson Road, with the East Amwell Township border to the south.
- 9. The property is generally rectangular in shape, 546-555 feet wide and 1,051-1,125 feet deep.
- 10. The back half of the property contains cultivated fields and is currently farmed. The front half of the property contains a pond, a two-story residential dwelling, two garages, a pool and concrete deck, two sheds, and a two-story, 5,570-square-foot barn-type structure.
- 11. The barn structure is located approximately 300 feet from the Dunkard Church Road, 222 feet from the eastern lot line, 250 feet from the western lot line, and 712 feet from the northern lot line.
- 12. There are no wetlands, flood plains, woodlands, or stream corridors on the property.
- 13. Surrounding land uses are all agricultural and residential in nature.

Prior use of the Property

14. The property was originally used as a dairy farm and had a masonry dairy barn suitable for that purpose.
15. On October 25, 1973, the Delaware Township Zoning Board granted the then-owner a variance to “utilize the masonry barn structure for the purpose of cleaning, and reassembling splice casings which are used by Western Electric or the telephone company.” (October 25, 1973 Resolution In Re: Variance and Special Permit Application of Francis S. Klesney, Jr.)
16. In February 1982 the barn was severely damaged by fire.
17. On June 3, 1982, the Delaware Township Zoning Board granted Francis S. Klesney, Jr. and Anita F. Klesney a variance to rebuild the barn, but not on the original foundations, and to utilize the rebuilt structure for the Industrial Cleaning Service Corporation, which they owned. (June 3, 1982 Resolution)
18. This 1982 variance “direct[ed] that a permit be issued to the applicant to allow construction and use of a barn structure for the manufacturing of telephone cable splice casings and the manufacturing and packaging of splice hangers and other associated products....” The applicants agreed that the variance would not run with the land and would expire when the property was no longer owned by Francis S. Klesney, Jr. and Anita F. Klesney. (June 3, 1982 Resolution)
19. The 1982 variance was extinguished when the property was sold, and the industrial use was subsequently abandoned.

The Proposed Use

20. The current owner, Jeremy Weiss, and his business partner, Jason Morlock, together own M&W Automotive, in downtown Stockton, New Jersey. The company is a two-person operation specializing in the repair of specialty cars, such as European models and vintage vehicles.
21. Mr. Weiss and Mr. Morlock would like to move their operation from downtown Stockton to the barn structure on Dunkard Church Road.
22. Only the first floor of the building would be used for the business. The second floor would be used for personal storage.
23. The first floor – which is 5,570 square feet – is large enough for three workspaces.
24. The business would be open from Monday – Friday, 8:00 am to 5:00 pm. Weiss and Morlock would be the only employees.
25. All cars would be stored inside the building and out of view from off-site observers.
26. All of the work would be done inside the building. Noise would be confined to the inside.

27. Parts would be delivered on an as-needed basis and would not be stored on site. There would be approximately four deliveries per day.
28. There is a 100-gallon steel tank to store waste fluid. The tank can be emptied without spillage.
29. The building, which is built of concrete, steel, and block, was built for an industrial use, and lends itself to this proposed commercial use.
30. No signage or additional lighting would be required.
31. Garbage would be stored in a three-yard dumpster.
32. The proposed use could be accommodated without requiring any improvements to be made to the building. An ADA parking spot would be created. No impervious surface would be added. Lighting would be shielded.
33. The driveway can accommodate emergency vehicles.

Legal Standard for Granting Use Variance

34. No use variance may be granted unless the Board finds that the applicant has proven both the "positive" and "negative" criteria.

- a. Positive Criteria

In particular cases and for special reasons, the Board may grant a variance to permit a use or structure in a district which restricts such uses or structures. (N.J.S.A. 40:55D-70d(1)). "Special reasons" are generally described as the purposes of zoning set forth in the Municipal Land Use Law. In the context of a use variance application, the "promotion of the general welfare" is the zoning purpose which most clearly amplifies the meaning of special reasons. The New Jersey Supreme Court has held that, "if the use for which a variance is sought is not one that inherently serves the public good, the applicant must prove and the board must specifically find that the use promotes the general welfare because the proposed site is particularly suitable for the proposed use." *Medici v. BPR Co.*, 107 N.J. 1, 4 (1987).

- b. Negative Criteria

No variance may be granted unless the Board finds that it can be granted (i) without substantial detriment to the public good, and (ii) that it will not substantially impair the intent and purpose of the zone plan and zoning ordinance. For a use variance, the requirement that the variance will not substantially impair the intent and purpose of the zone plan and the zoning ordinance must be proven with an "enhanced quality of proof."

Conclusions Addressing the Positive Criteria

35. Special reasons exist for granting a use variance in this situation. First, the variance would promote the general welfare because the proposed site is particularly suitable to the proposed use. The building was designed and constructed to house an industrial use. It is large enough

to accommodate the automotive repair facility, and to do so without requiring changes to the exterior. Indeed, the site is uniquely suited for this use.

36. Second, the variance would provide sufficient space in an appropriate location for a variety of uses to meet the needs of the citizens. Specifically, the variance allows the applicant to fully utilize an industrial building on the property for a commercial purpose, while maintaining the existing agricultural and residential uses.

Conclusions Addressing the Negative Criteria

37. The variance can be granted without substantial detriment to the public good. The commercial use will be confined within the existing structure, limiting any adverse impact to the neighbors. The barn structure is far from neighboring houses, and four of the closest neighbors testified in support of the application.
38. The variance will not substantially impair the intent and purpose of the zone plan and zoning ordinance. First, the property will continue to be used for agricultural and residential purposes. Second, the barn structure will retain the appearance of an agricultural building, thus maintaining the agricultural aesthetic of the area. Third, the proposed use will not generate excessive traffic. Fourth, the property itself was historically permitted to be used for industrial purposes, and the barn was rebuilt in 1982, with the permission of the zoning board, as an industrial building. The proposed use is more in keeping with the surrounding land uses, and is less intense than the previously approved industrial use. Finally, Section 230-3A of the Delaware Township Land Use Ordinance provides that “the fundamental purpose of this chapter is to provide development options that will allow each property owner reasonable use of the development capability of the land while promoting the permanent dedication of tracts of priority farmland for continuing agricultural use....” Consistent with that provision, this variance would provide the owner an opportunity to use an industrial building for a commercial activity, while continuing to farm the rest of the property.
39. The Board specifically finds that the applicant has proven that the variance will not substantially impair the intent and purpose of the zone plan and the zoning ordinance, by an enhanced quality of proof.

NOW, THEREFORE, BE IT RESOLVED, by the Zoning Board of Adjustment of the Township of Delaware, that Jeremy Weiss be and hereby is **GRANTED** a use variance to use an existing barn structure located on the property known as Block 44, Lot 4.03 as an automotive repair facility.

BE IT FURTHER RESOLVED, that this use variance is expressly **CONDITIONED** on the following:

1. All activities of the automotive repair facility will be conducted within the structure.
2. There shall be no signage, except that the applicant may install an identification sign consistent with the requirements of Section 230-33g.
3. There shall be no outdoor storage of vehicles or equipment.

4. No gasoline pumps or tanks are to be installed outside, nor gas service provided.
5. Employees shall be limited to the resident of the property and one other, for a total of two.
6. Business hours for the automotive repair facility shall be limited to Monday through Friday, 8:00 am to 5:00 pm.
7. The on-site dumpster shall be enclosed if subsequently requested by the Zoning Officer, and pick up shall be no less than once every two weeks.
8. The applicant shall engage a waste collection contractor or service to provide waste collection for oil, filters, rags, mats, and the like. There shall be a spill kit on site at all times and a containment system for the transfer of waste oil.
9. Existing lighting shall be replaced with down-lit fixtures to shield the lighting from neighbors
10. The heating oil tank shall be relocated from outside to inside the building.
11. The applicant shall even out the concrete lip in the parking area adjacent to the building and provide wheel stops.
12. No human habitation shall be permitted in the barn structure.
13. The applicant shall submit a grading plan to be approved by the Municipal Engineer.
14. An ADA parking space and bathroom shall be installed.
15. There shall be no hauling service from the property, no retail sales of parts, no body work or painting, and no heavy truck repair.
16. The applicant shall add six to eight shrubs along the loading area to shield this area from Dunkard Church Road, as approved by the Board Planner.
17. A revised plan shall be submitted showing the following:
 - Wheel stops at parking spaces along the westerly side of the building
 - Correct typographical errors in site plan notes

- Signature approval block for Board Chair, Secretary, and Engineer stating:
“Use variance Approval by the Delaware Township Board of Adjustment At a Meeting
Held on December 9, 2021.”

ROLL CALL VOTE ON MOTION TO GRANT USE VARIANCE

November 11, 2021

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

Those Opposed: None

Those Concurring: McAuliffe

Those Absent: Szwed

ROLL CALL VOTE ON MOTION TO APPROVE

RESOLUTION OF MEMORIALIZATION

December 9, 2021

Those in Favor: Fowler, Gilbreath, Kenyon, Manley, Warren, Cline

Those Opposed: None

Those Concurring: McAuliffe

Those Absent: Szwed

Certified to be a true copy of a Resolution adopted by the Delaware Township Zoning Board at a public meeting held on December 9, 2021.

Kathleen E. Klink
Administrative Officer

Application Approved: November 11, 2021

Resolution Adopted: December 9, 2021

Distributed: December 15, 2021