

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, Kenyon, Manley, Szwed, Warren, Cline

Absent: McAuliffe

Also present: Attorney Steve Goodell and Associate Scott Miccio, Engineer Rick Roseberry

#### MINUTES: May 9, 2019

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

#### MEMORIALIZATIONS - None

Administrative Officer Klink explained that the recording machine is not recording. Chair Cline stated that the applicant will have to make a decision about proceeding. The Board moved on to the agenda items that follow an application, while the applicants decide. These discussions appear in regular agenda order.

The applicants decided to proceed with the hearing.

#### 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; April 11, 2019 meeting, and May 9, 2019 meeting.

Member Fowler recused himself for this application and sat in the audience.

Chair Cline noted that the applicants have agreed to proceed with the meeting with no recording device in place.

Mr. Dilts, attorney for the applicant, stated that he will give a summation prior to deliberation by the Board members.

Chair Cline noted that comments will be heard from the public, and will not be considered as professional testimony. Chair Cline further noted that each member of the public will be limited to five minutes.

Attorney Goodell asked that any members of the audience who have not been sworn in should stand and be sworn in. Members of the audience were asked to identify themselves and to state that they have been sworn in when the speak.

Tim Davis, of 79 Kingwood Stockton Road, was present and has been sworn in. Mr. Davis stated that he is uncertain as to what the Board is voting on. Chair Cline stated that the proposed request is for a total of eight (8) residential units to be found in the main building and the accessory barn, with proposed parking area(s).

Mr. Davis stated that a part of the proposal is to have parking on the south side of the accessory barn. He noted that he could not pull his pick-up into that spot. He stated that he then tried with his mini-van. He stated that he could not get into that proposed parking area unless he backed into the driveway of the property across the lane.

Mr. Davis stated that he has only seen advertising for apartments in the building. Mr. Davis noted that Mr. Locandro made a comment that no other person was willing to rent the restaurant. Mr. Davis noted that Cane Farm has 20 or so businesses, representing that there are places that are willing to go into small spaces, as a business. Mr. Davis stated that in the past the residents of Rosemont have put up with the restaurant businesses on this site because some businesses are needed in Rosemont.

Mr. Davis discussed the water coming out of the subject property down along Route 519. He noted that past owners of the subject property dealt with this flow of water within the subject property. He further noted that he is hoping that the County will fix whatever may have been done to create more water run-off along Route 519.

Mr. Davis asked if an office could go into the property or if there can be some space for storage units, anything that would have less impact on the property. He concluded by stating that he thinks there is a tree overtop the septic.

Mr. George Berkowitz, of 51 Raven Rock Road, was present and has been sworn in. Mr. Berkowitz stated that he is a member of the Township Board of Health but that he does not represent the Board of Health. He stated that he is present as a resident.

Mr. Berkowitz stated that the history of the Rosemont Water Company is directly related to water quality. He stated that the Water Company is somewhat less concerned about potential septic failure due to the availability of water from a secure source. He noted that the Water Company was started in the late 1960s by the State Health Department because Lloyd Wescott could not get clean water at his farm without coliforms present in the water. He noted that the Water Company was able to get a federal grant for the project.

Mr. Berkowitz noted that the Rosemont area has an underlying layer of thin shale with thin soil fractures below the shale. He noted that the water can go in any different direction. He noted that dynamiting has been used in the past to get below the shale.

Mr. Berkowitz stated that he agrees that the proposed waste water use may require a Treatment Works Approval, TWA, permit from the State. He stated that the volume of water is not the issue, but that it is the quality of water with that volume added. He stated that there has been no new septic data on this site since 1995.

Chair Cline asked about Hunterdon County Board of Health approval and if that would satisfy Mr. Berkowitz. Mr. Berkowitz stated that he would be satisfied with such an approval.

Mr. Dilts noted that it has been stated by Mr. Ingram, the applicants' engineer, that such approvals will be sought. Board Engineer Roseberry agreed that the appropriate approval must be shown from the appropriate agency for jurisdiction – Hunterdon County or NJ DEP.

Mr. Dilts stated that the applicants have no objection to that condition.

Mrs. Joann Vieth, of 84 Kingwood Stockton Road, was present and was sworn in. She stated that as residents of Rosemont, there is concern about the NJ Historic village designation of Rosemont. She noted that as one approaches Rosemont there are beautiful fields. She expressed her concern that with eight (8) apartments with 16 cars, the subject property will look more like a CVS parking lot.

Mr. Steve Jaques, of 86 Kingwood Stockton Road, was present and was sworn in. He stated that the improvement of this property to Rosemont would have the most impact on his property, as his property directly abuts the subject property.

Mr. Jaques stated that he once owned the subject property. He noted that when he got permission to put in apartments, he put in a very deep septic system with select fill at different levels. He stated that he has no records, but that the septic did pass. He noted that there is less water going into the system now than when the restaurant was there. He stated that it appears as though there is less water used at that property at this time. He stated that he is not sure four more units would have more impact.

Mr. Jaques noted that there is no water coming into his basement, even after a rain storm. Mr. Jaques stated that Tom Mathews from the County Engineering Department came and admitted that the County work is in error and that it will have to be fixed by the County. He further noted that Mr. Mathews is reviewing records and that a solution will be found.

Mr. Tim Davis stated that he also met with the County about taking water drainage to Rosemont Raven Rock Road. Mr. Davis stated that he did not get a feeling that it will be fixed.

Mrs. Joann Vieth stated that there is a drain from Mr. Jaques' basement to the road surface and that water from Mr. Jaques' basement goes into the Vieth property. She opined that the County Road is not any higher than it used to be, that it is the same height.

Mr. Peter Sudano, of 102 Kingwood Stockton Road, was present and sworn in. He stated that he would like to have clarification. He questioned if hooking the barn to the septic system triggers a change of use as the barn does not have connection to the septic. It was agreed that adding the barn hook-up to the septic would trigger County review. He agreed with other residents in that they all just want to make certain that the septic is reviewed properly.

Mr. Dilts noted that a usual "catch-all" phrase is placed in resolutions for any and all outside approvals, whether it is the County or the State. There was a discussion about the approval. Mr. Dilts stated that it was the testimony of Mr. Ingram that the proposal would go to the State for a TWA. Board Engineer Roseberry noted that the State may give jurisdiction to the County.

Mr. Sudano asked if the Board can add additional measures such as testing and evaluation. It was noted that the Board has no expertise in this area and relies on the advice of its professionals. Mr. Sudano also asked if the proposal could also go to the Township Board of Health, to which he was told that such a request is not within the Board's jurisdiction.

Mrs. Terry Kell, of Dunkard Church Road, was present and was sworn in. She stated that the density in the V-2 zone is one (1) dwelling unit per three acres. She stated that while much of Rosemont has much smaller lots, the subject property only has 0.495 acres and that this proposal represents a high increase in density. The Board sought verification of that density.

Mr. Dilts provided his summation. He stated that he appreciates the time and comments of the public. He noted that the proposal includes a minor site plan and a 'd' use variance request, per §230-21b. He noted that the proposal includes four additional dwellings in two buildings, two in the main building and two in the barn. He noted that the applicant is dedicating one unit as a COAH unit, to be handicapped adaptable. He noted that the southwest corner of the property will be banked for an ADA parking spot. He noted that porous pavers can be used for this parking area.

Mr. Dilts noted that the owner has agreed to maintain the width of the alley way for the length of the subject property. He noted that there will be a deed restriction for the affordable housing unit. He noted the recognition of the RSIS de minimis exception, with the ADA handicapped spot to be built if elected into use. He noted that the applicants agree with the NJ DEP works approval; and if required, would go to the County for health approvals.

Mr. Dilts stated that the Board has heard testimony in regard to d-1 requirements. He noted that there is more intensive use with four (4) apartments, but that the subject property is in an area that needs rentals, including a COAH unit. Mr. Dilts noted that the proposed use is suitable and less intense than a commercial use. Mr. Dilts stated that per the testimony of the applicants' planner, the proposed use is not a substantial detriment.

Board Engineer Roseberry stated that the existing use also required a d-1 variance. He noted that the deed restriction for the COAH unit is appropriate. He noted that there should be a developer's agreement which will spell out compliance with UHAC. Mr. Dilts stated that the applicant agrees.

Board Engineer Roseberry was also asked to give a planning point of view, as Board Planner Kyle is absent. Mr. Dilts stated that the testimony regarding a d-2 use is similar to that of a d-1.

Board Engineer Roseberry noted that a d-2 variance is an expansion of a previously approved use. He noted that the Board should consider the impact on neighboring properties and the neighborhood. He noted that the Board must also consider if the site is particular suited to the use.

Board Attorney Goodell gave some instructions to the Board. He first reviewed the conditions that have been presented to and agreed by the applicants, as follows:

- Meet the dedicated right-of-way requested by the County
- Maintenance agreement for alleyway
- Approval of septic, according to State and/or County jurisdiction
- De minimis waiver from RSIS
- Deed restriction for banked parking
- Deed restriction for COAH unit
- Developer's agreement
- Other items as noted in Board Engineer Roseberry's memo

Board Attorney Goodell stated that a d-1 use variance is requested because the use is not permitted in the zone. He noted that there is consideration for a d-2 use variance because of the expansion of a nonconforming use. He noted that there are bulk requirements, but those were in existence at the time of the preexisting nonconforming use. He noted that some bulk variances have changed because of the new County right-of-way. He noted that by way of hardship, the applicants cannot buy more land. Board Attorney Goodell stated that per the Board Engineer's report the RSIS standard has been satisfied.

Board Attorney Goodell stated that to prove those d-1 variances, special reasons should be given and/or citations to legal cases. He further noted that the special reasons are set forth as the purposes of zoning per the Municipal Land Use Law, MLUL. Special reasons are used to support the positive criteria of the application. He noted that the negative criteria generally concern the following:

- Without substantial detriment to the public good, general neighbors or surrounding area
- Does not impair the intent of the zone plan and/or zoning ordinance

Board Attorney Goodell stated that a use variance request requires five (5) affirmative votes.

Board Attorney Goodell noted that a use variance request could be one which inherently serves the public good, such as a hospital. He noted that the general welfare is considered by noting if the proposed site is particularly

suitable for the proposed use. He noted that such a proposal does not demonstrate substantial impairment using enhanced proofs. Other purposes of zoning that might be affected include, but are not limited to the following: enhances safety; air and open space; appropriate population densities; needs of NJ citizens; desirable visual environment; free flow of traffic or improvements thereof; conservation of historic sites. Mr. Goodell noted that one or more of these uses plus the site suitability could support the positive criteria.

Board Attorney Goodell referenced Board Planner Kyle's memo concerning the specific purpose statement of the V-2 zone, which has small lots and residential uses. Board Planner Kyle's memo also addresses maintaining the village without sprawling into surrounding lands.

Board Attorney Goodell noted that hardship variances can be related to peculiar and practical difficulties, such as the shape of the property, topography of the property, or existing unique features. He also noted that existing structures can create a hardship. He further noted that the zoning ordinance requirements might impose a hardship that may inhibit the extent to which the property can be used.

Board Engineer Roseberry agreed with Mr. Goodell's comments about the d-1 variance. He noted that a d-2 variance concerns the increase on an existing use. He noted that the Courts have held that existing nonconforming uses can be permitted to continue after the passage of new ordinances, if the use was in place at the time of passage. He further noted that enlargement should only be considered for minimal expansion.

Chair Cline noted that the Board will deliberate and discuss the merits of the case.

Chair Cline stated that to start things out the positive and negative criteria must be considered. He noted that the Board must find a balance, finding how one outweighs the other. Chair Cline noted that on the positive side there is a need for apartments, specifically a COAH unit with handicapped adaptability. He noted that on the negative side this is a large expansion, a 100% expansion, of a non-conforming use. He noted that there has been much comment on the parking and on the drainage. He noted that the drainage may not be directly attributable to the subject property, but that it is a concern. He further noted that parking will be a major concern and that he is very concerned about an entrance on Route 519.

Member Manley stated that he has the same concerns. He stated that he had to defer to the experts about the septic but that he did not hear any testimony that would allay his fears about septic capability. He noted that he is also concerned about the drainage and that it is a serious issue. He noted that the applicant may not be responsible but that pictures were submitted showing water coming off of the building and onto Route 519. He noted that these current problems will be exacerbated by increased impervious coverage.

Member Manley discussed the parking. He noted that he has no problem with parking on a public street but he does not feel that the stacked parking is a good situation. Member Manley noted that the barn with residences will become a second principal building on a small site which represents a significant increase on the nonconforming use of property.

Member Manley agreed that the public welfare is promoted with the addition of a COAH unit. Mr. Manley stated that he saw no evidence of a need for residential units in the Township.

Member Manley stated that he felt that the proposal is an overdeveloped use of the property. He also noted that there will be a big loss to the village which should be a mix of residential and commercial uses. He also noted that he felt that the parking congestion will be a substantial detriment. He expressed his concern about water usage and waste water.

Member Manley noted that the applicant has demonstrated a proposal that is not inconsistent with the zone plan, specifically with the proposed COAH unit that is ADA adaptable. He noted that a commercial use could prove

to be more negative. He concluded by stating that the proposal is an overall increased density on a very small parcel and that there has not been enough evidence to mitigate the detriments, as noted.

Member Gilbreath stated that the overall the plan is a good one. She noted that with the two additional apartments in the barn and two additional units in the main building, the increase is a doubling of the existing use. She stated that she thinks parking will be a problem as she presently sees six cars whenever she passes. She noted that it is the intent of the zone plan to provide housing and that the two in the main building would seem not to be a problem. She noted that the total proposal creates too much intensification. She noted that there will be an impact to the village due to the parking and extra vehicles. She stated that she feels that the drainage problems belong to the County but there are constraints because there is no other place for the water to go. She noted that the COAH unit is a big plus but is not sure that the proposed total is the appropriate population density per the Master Plan for the village of Rosemont. She concluded that she has a problem with an addition of four units and felt that two might be more appropriate.

Member Emmons stated that he agrees with the previous points given and expressed his concerns about the parking and the septic. He further noted that continuing the existing use would not trigger as much impact on the septic.

Member Warren stated that the building is not changing, that both buildings already exist. He agreed that the drainage problems seem not attributable to the applicant. He noted that the applicant seems amenable as the applicant expressed his willingness to clean up the drainage pipe on the County Road. Member Warren stated that he feels that the septic field is adequate. He noted the positive criteria of the addition of the affordable housing. He agreed with the others that this is a large expansion of a non-conforming use. He stated that he looked at the site in person and sees that the space is very tight. He stated that he agrees that this is an increased density.

Member Szwed stated that he agrees with Member Warren and the others and that his concerns are the same.

Member Kenyon agreed with the concerns given. She stated that there is no clarity about whether the State or County has jurisdiction over the septic. She stated that there seems to be no information of an on-site inspection of the lateral fields. She expressed her concerns about tandem parking and the ability to maneuver cars in and out. She noted that assigned or not, blocked parking spots could be difficult. She noted that the parking problem results from the number of proposed units as part of this application. She stated that the parking could be mitigated by reducing the number of units, in particular the elimination of the barn units.

Member Kenyon commented further on the drainage issues. She noted that the issues may not be fully attributable to the subject property, but that the issues still exist. She noted that the issues concern both the alleyway and the County Road. She stated that she is not clear on the County's position on the issue on Route 519.

Member Kenyon stated that she feels that this is a request that is too intense for an expansion of a nonconforming use. She stated that she feels that the proposed request will change the character of the village and that the village zone will be substantially impaired.

Mr. Dilts asked for a five minute recess to speak with his clients.

Chair Cline called the meeting back to order.

Mr. Dilts stated that he consulted with his clients who are asking to amend the application by withdrawing the request for two apartments in the barn. He further noted that the clients will ask to withdraw the affordable housing unit and ask that the developer's agreement be removed. Mr. Dilts noted that the clients will leave the parking as it is and noted that with fewer units there is no need for an RSIS waiver. Mr. Dilts noted that the

clients will leave the banked parking in order to maintain the possibility for a future potential handicapped parking spot. Mr. Dilts noted that the condition on the septic remains the same, as does the alley condition. Mr. Dilts noted that the County right-of-way proposal will not change. Mr. Dilts noted that the porch to the barn will be eliminated. He further noted that the applicants ask that if approved, the applicant have the opportunity to return to the Board for further requests without prejudice.

Mr. Dilts asked that the approval be made with submission of modified plans directly to Board Engineer Roseberry. Mr. Dilts asked that if there are any disputes over the plans, then the applicants will return to the Board.

Mr. Dilts stated that the barn will be used for storage, or as an accessory use in connection with the apartment usage. He noted that if there is to be any conversion of this barn, including commercial use, the applicants will return to the Board. Mr. Dilts opined that the amended request to the Board does not require additional testimony.

Mr. Locandro stated that the applicants agree to the amendment(s) made by Mr. Dilts.

Chair Cline noted that the Board will have to redeliberate and decide. Chair cline noted that the d-1 variance is now not applicable because the other building is not being used, as there is no second principal use on the property.

Mr. Berkowitz asked that the applicants consider a courtesy review of the septic before the Township Board of Health.

Mr. Devinnie was present and had been sworn in. He stated that he is surprised by a post-summation amendment.

Ms. Brenner was previously sworn in. She asked how the Board can consider the changes without visuals. She agreed that the amended proposal is less demanding on the property, but opined that it is hard to take the request in without a presentation.

Mrs. Vieth reminded the Board that the objectors were told that no changes can be made to the application. Chair Cline noted that the Board cannot make the changes, but can vote on what the applicant wants.

Mr. Vieth was previously sworn in. He stated that the proposed change will not change the water run-off. Mr. Vieth noted that the covering of impervious surface has been created by the applicant, prior to the application. He expressed his concern about who is responsible for changes of the water runoff.

Chair Cline noted that no changes were made to the roof size and what previously existed. He opined that the impervious coverage would be no different with two additional apartments in same building. He noted that the handicapped parking spot will be banked, but probably will not be built. Chair Cline stated that it is highly unlikely that the County road will be widened at this location.

Mrs. Vieth reiterated that the water is coming down from the subject property. She further noted that a driveway in front of the building will increase the problems.

Chair Cline stated that the application as amended will not change the water run-off. Mrs. Vieth responded that the water has been coming down the alley since the parking lot was paved, within the last two years. She further noted that the drain spouts are not sufficient to carry the water.

Member Gilbreath noted that the water problem is there. She noted that all permits needed to rebuild after the fire were properly obtained. She further noted that it is not within the Board's purview to address these problems. She noted that the Board was not involved with what happened after the fire re-build. She noted that the Board is not voting on this issue, the Board is voting on the addition of the two apartments within the main building.

Mrs. Vieth reiterated that the community would benefit more with some type of small business or office space.

Mrs. Kell asked if one space on the outside be dedicated to handicapped, as opposed to banking the spot off of Route 519. Mrs. Kell opined that a parking spot with an opening on Route 519 will be a hazard.

Mrs. Kell further asked about the capacity of six units, with approximately 2100 gallons of waste water. Chair Cline stated that the septic conditions still apply.

Member Gilbreath made a motion to approve the amended application for a d-2 use variance and associated bulk variances. The conditions were reviewed:

- Bulk variances created by the County right-of-way request

- Maintenance for the alley for the length of the subject property

- Deed restriction for banked parking

- Approval from NJ DEP or Hunterdon County for adequacy of septic system

- Modified plans with revised application to be submitted for Engineer review; any dispute between the applicants and the engineer will return the applicants to the Board.

Member Warren seconded the motion as conditioned.

Member Emmons asked what would trigger the condition for banked parking. It was noted that this space would be triggered by the County "taking" of the right-of-way along route 604, currently used for on-street parking.

Member Kenyon asked if the affordable unit is off of the table. Mr. Dilts replied that it is off the request.

Administrative Office Klink asked about proper notice if the application must return to the Board. Board Attorney Goodell stated positively that if there is a dispute between Board Engineer Roseberry and the applicants, the applicant will have to serve notice for a return to the Board.

### **Roll Call Vote**

Aye: Emmons, Gilbreath, Szwed, Warren, Cline

Nay: Kenyon, Manley

Absent: McAuliffe

Recused: Fowler

Planning Board Update: Liaison Cline

Administrative Officer Klink reported. She noted that the Planning Board made a recommendation to the Township Committee about the Trap Rock Quarry License. The Planning Board recommended that the current 2016-2018 water monitoring data be sent to the PB Hydrogeologist for review and that the current quarry license be revised to show that the water monitoring data be reviewed every two years while the quarry is not operating.

Chair Cline reported that the Township Committee approved the ordinance for the duties of zoning officer on first reading on June 10. He noted that the second reading with the public hearing portion will be on June 24, 2019.



## CORRESPONDENCE

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

Zoning Board Matters, Line Item #113-215

Through April 30, 2019, #3092091	\$256.00
Through May 9, 2019, #3093664	\$208.00

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

**Roll Call Vote**

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

Concurs: Szwed

Nay: None

Absent: McAuliffe

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

Escrow Charges

11/10, Wiseman, # 3091998	\$48.00
27/9, Carlucci & Woodfield, #3091997	\$32.00
32/24, Locandro Limited	\$528.00

Member Warren made a motion to approve payment of these vouchers from their respective escrow accounts.

Member Manley seconded the motion that was approved by voice vote.

**CELLCO, Block 5, Lot 7, Litigation Bills, to be charged to separate line item**

Legal Extraordinaire, Line Item #113-278

5/7, Cellco, #3091994	\$140.00
5/7, Cellco, #3093663	\$560.00

Member Gilbreath made a motion to approve payment of these vouchers from dedicated litigation line item.

Member Emmons seconded the motion.

**Roll Call Vote**

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

Concurs: Szwed

Nay: None

Absent: McAuliffe

ADJOURNMENT: 9:23 p.m.

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

Respectfully submitted,

Kathleen E. Klink,  
Administrative Officer, Secretary