

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.

Chair Cline read a statement concerning information about this meeting, as follows:

“As was previously indicated, this is a hybrid meeting - It is being held both in-person and virtually, via the Zoom platform. Due to CDC guidelines that require a six-foot distance between indoor gathering attendees, there are a total of 30 people permitted to attend the meeting in person. The room has been arranged accordingly. Applicant, and its professionals, and objector and objector’s professionals have been given priority. If the room reaches its capacity, all of the additional people that sought to attend the meeting in person will be provided with the necessary Zoom information so that they may participate in the meeting remotely.”

ROLL CALL

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

Absent: Szwed

Also present: Attorney Goodell, Engineer O’Brien, Planner Kyle

MINUTES: March 11, 2021

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

MEMORIALIZATIONS

Jim Toth, Block 27, Lot 22, bulk variance granted for 900 square foot building 15 feet from property line, for which the ordinance requirement is 50 feet. Resolution follows the minutes.

Prepared resolutions were distributed to all members for review and discussion. Items of clarification for wording and content were discussed.

Motion to approve as discussed and amended: Emmons

Seconded By: Fowler

Roll Call Vote

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

Those concurring: McAuliffe

Those Opposed: None

Present but Ineligible To Vote: None

Those Absent: Szwed

APPLICATIONS

Brant Switzler, Block 55, Lot 2, use variance approval requested for tennis training facility.

Chair Cline provided instructions to members of the audience concerning the proceedings. He emphasized that there will be time for public comment, but that the main function of public participation at this time is to ask questions of the experts who are providing testimony.

Ms. Erica Edwards was present to represent the applicant

Mr. Rob Simon was present to represent Objector Valerie Tucci of 21 Sandy Ridge Road, Stockton, NJ.

Ms. Edwards noted that Mr. Switzler is to make introductory comments for the application. Mr. Switzler was sworn in. He stated that he lives at 34 Sandy Ridge Road, Stockton, New Jersey. He stated that he is a lifelong resident and that he is currently a professional tennis coach.

Mr. Switzler stated that he has been inspired by the preservation of open space in Delaware Township. He noted that this is leading him to assist his family in helping to keep open the remaining areas of his family's farm. He noted that his ancestor Helen Vaugh Henderson was first to plant the idea of keeping the land rural, followed by Jane Henderson. He noted that he has also been inspired by his grandmother, Vaughna Feary, and his mother, Angele Switzler. He noted that his family has been responsible for good stewardship of the land for generations. He noted that it is his desire to see the open land on Sandy Ridge Road remain open as open land.

Mr. Switzler stated that his beginnings of playing professional tennis began on a farm tennis court.

Jim Hill, engineer for the applicant, was sworn in. He stated that he is a professional engineer in the states of New Jersey and New York. He stated that he is also a professional planner. He stated that he mostly recently appeared before this board for the application of the Bagel Barn. Board Engineer O'Brien noted that he was accepted as an expert for the Bagel Barn application.

Mr. Hill stated that he is representing Mr. Switzler. Mr. Hill stated that he prepared the plans that were submitted with the application. He noted that one goal of the project is to make the proposed use compatible with open land.

Mr. Hill asked that map C-1 of the submitted site plan maps be displayed, this display was done via the screen share using the Zoom technology. He noted that this map shows the property as it exists today. He noted that two locations are shown for enhanced landscaping. He noted that view into the site is limited. Mr. Hill stated that there will be two courts inside of the building, proposed to be 140 feet by 120 feet. He noted that the long length of the proposed building parallels the road and is the lower part of the building.

Mr. Hill noted that surveys were updated to produce this plan. He noted that soil testing was done for the stormwater and septic systems. He noted that the comments of the Board's January 2021 meeting were incorporated into the design of the stormwater system. He noted that the system would hold 75% of the flow of a ten-year storm. He noted that the plan meets the State regulations for maintaining water quantity and quality. He noted that the system includes the removal of 80% of solids which meets the State requirements. He noted that the culvert along Sandy Ridge Road is not to be disturbed to maintain the drainage that the culvert provides.

Chair Cline asked about the current use of the property, to which Mr. Hill responded that the current use is agriculture. Mr. Hill noted that the land is farmed for hay.

Chair Cline asked about the bifurcation of the application. Ms. Edwards answered the question and stated that the applicant is requesting a bifurcated application.

Mr. Hill stated that he developed the site plan considering the significant issues for the use variance. He stated that the site plan was developed based on the intensity and type of use that is proposed. He stated that if the 30-acre subject property were to be subdivided, the total property could possibly have ten lots or less. He noted that their preliminary investigation of the property showed no wetlands on the property. He stated that he is an environmental engineer.

Attorney Goodell asked if the Board can anticipate a subdivision at a later date. Mr. Goodell noted that an additional subdivision would have to be a major subdivision. Mr. Hill noted that the applicant is hoping to make the best use of the property that can be made.

Mr. Hill stated that the timing of lessons as part of the proposed use of the property will be addressed. He noted that consideration must be made of the type of learners and the times that the property will be in use. Mr. Hill stated that this information will be provided by Mr. Switzler.

Mr. Hill noted that for the times for indoor use will be done within the timeframe of Mid-November to March. He noted the outdoor courts that are available are at Dilts Park. It was noted that these are the only public courts that are available nearby. Mr. Switzler stated that as an instructor he has rented tennis space from other townships and jurisdictions. Mr. Switzler provided Montgomery Township as an example.

There was a question about traffic issues. It was noted that Mr. J. Troutman is the traffic engineer for the applicant. It was noted that he will discuss this in the future. Mr. Hill noted that it was important to consider that there is area to make sure that there is appropriate traffic flow.

Board Engineer O'Brien asked about the pervious area. Mr. Hill discussed the maximum allowed for the A-1 zone, which is 10%. He noted that the original proposal shows 9.97% coverage for the area that was considered for subdivision, with the use on it. He noted that the paved area included the handicapped parking area. Mr. Hill noted the use of geopavers on 24 of the parking spaces. He noted that geopavers are made of heavy-duty plastic, filled with stone, with a layer of fabric underneath. He noted that these are installed with two (2) feet of stone beneath the pavers to provide infiltration.

Board Engineer O'Brien stated that the geopavers do act as a pervious surface. He asked that the plan be reviewed to see how much more can be added. Mr. Hill noted that the handicapped spaces and adjacent space have to be paved. He added that they will review the plan for the installation of more geopavers.

Mr. Hill noted that there is a licensed landscape architect who will review the ordinance to prepare a scheme for the landscaping. He noted that additional landscaping is meant to block the view of the building from the road.

Chair Cline asked Mr. Hill about the topography. Mr. Hill noted that the area for the tennis facility is relatively flat. He noted that there is an 8 to 9 foot drop from Sandy Ridge road to the area of the proposed building. He also noted that the property slopes from east to west. He further noted that the slope has been considered in the stormwater management plan.

Board Engineer O'Brien stated that what has been submitted appears to comply with the ordinance. He also noted that the stormwater regulations changed this year. Mr. Hill was asked to resubmit the stormwater management plans, if revised, to Board Engineer O'Brien ahead of time.

Chair Cline asked about the plan for roof run-off. Mr. Hill noted that this run-off goes directly into the basin. He noted that there will be some water travel across the parking area, which could dump into the pavers. Mr. Hill noted that the roof and sidewalk can directly discharge into the basin.

There was a discussion about lighting. Mr. Hill stated that there will be no shedding of light and no sky-lighting. He noted the lighting to be installed will be only absolutely what is needed for safety.

Chair Cline asked about the location of the well. Mr. Hill pointed out the location of the well which is 100 feet from the proposed septic.

Member Gilbreath asked about the lighting. Mr. Hill noted that all lighting will shine on the sidewalk and the parking area and will be devised to be the minimum needed and still provided adequate safety. He noted that there could be one to three poles in the parking area and that there will be no lights along the driveway.

There was a question about the Penn East pipeline easement that runs along the western boundary of the property. It was noted that there is a current right of way for electric lines, 75 feet wide, directly along the western boundary. It was noted that the Penn East easement is adjacent to the electric easement and is 50 feet wide. The easement remains in place until there is further notice about the outcome of the Penn East proposal.

Member McAuliffe asked about the living quarters. Mr. Hill stated that the applicant will explain that part of the project. Mr. Hill noted that the living quarters water use is figured into the proposed septic system.

Members Emmons, Fowler, Warren, and Kenyon had no questions at this time.

Member Manley asked what the building will look like. Mr. Hill said the building will be 40 feet high with an A-shape. He noted that it would be smaller than some horse frame buildings. He noted that the height is needed for playing tennis. He noted that the exterior will be metal, as will the roof.

Attorney Goodell asked if there are elevations of the building. It was noted that the architect will provide those at a future meeting. Mr. Hill stated that for the map he provided a general representation of length, width, and height.

Attorney Goodell stated that the "Chat" portion of Zoom is not a part of the record and that the public will have an opportunity to ask questions. He further noted that this is a judicial proceeding and asked that participants via Zoom respect that when making comments in the "Chat".

There was a question about a loading dock. It was noted that this is not shown on the plan but that it will be located on the parking lot side of the building. Mr. Hill stated that they can show this on revised plans.

Administrative Officer Klink stated that the Environmental Commission has prepared a preliminary report. Chair Cline stated that this can be presented at a later time.

Mr. Simon, objector's attorney for Valerie Tucci, had questions.

Mr. Simon asked about the lighting plan and the stormwater management plans. Mr. Hill stated that the stormwater management plans may meet the new ordinance, but will be revised if necessary. He noted that the lighting information can be provided. He noted that an architect will be a witness at a later date. Mr. Hill agreed that the loading zone will be put on the revised plan.

The set of maps submitted with the application was marked as A-1, dated July 2020. The map referenced for the meeting was C-1 of the set of plans, A-1. It was noted that there is a landscaping plan on the site plan. Mr. Hill stated that the specific layout and species of plants will be addressed by the landscape architect.

Mr. Simon questioned the topography as related to the surrounding residential properties. Mr. Hill stated that the topography presented is for the subject property and was not done on the surrounding residential properties.

Mr. Simon asked about the subdivision that was part of the original application, and shown on C-1. Mr. Hill stated that this is in discussion with the applicant. Mr. Hill stated that the property is in the A-1 zone and the original subdivision proposal would put the proposed use and area of development on 11.893 acres. Mr. Hill noted that this is the size that would meet the requirements for impervious coverage. Mr. Hill noted that the current lot is 30 acres. He further noted that the Board is being asked to approve the use, at this time.

Mr. Simon asked what would happen to the remaining land if the property is not subdivided. Mr. Hill stated that he is not providing planning testimony, that the applicant's planner will answer that.

Mr. Simon asked if approved, what use will be on the 30 acres of property. Mr. Hill noted that if granted, the property would have a use variance for the tennis facility and the surrounding land would remain as farmland. Mr. Hill further noted that a decision to grant could be made that could include restrictions that are deemed appropriate.

Mr. Hill added that a d-variance is also needed for two principal uses on one lot.

Mr. Simon asked if there is a proposal to dedicate a 50-foot right-of-way along the road. Mr. Hill stated that the proposal does not take up any space outside of the area of development and that such a right-of-way would not be needed.

Mr. Simon asked about the squiggly lines along Sandy Ridge Road. Mr. Hill stated that these lines represent the trees that exist along the roadway. In response to a question, Mr. Hill stated that there has been no evaluation of the trees. Mr. Hill reiterated that the landscape architect will work on that issue.

Mr. Simon asked about the sight distance, in consideration of this tree line. Mr. Hill stated that the sight line shown meets the requirements and will be reviewed to see if revisions need to be made.

Mr. Simon stated that according to Board Engineer O'Brien's report, if a subdivision is approved the lot in the rear would need access. Mr. Hill stated that if needed, such access would be on the driveway to the existing house on Lot 2.03.

There was a discussion about the pipeline easement, which has not yet been decided.

Mr. Simon asked about a conservation easement. Mr. Hill stated that is the intention of the family to agree to such protective easements.

Mr. Simon referenced the aerial photograph as provided in Board Planner Kyle's report. Mr. Simon referenced the lots along Sandy Ridge Mt. Airy Road. Mr. Hill noted that these lots were all minors that were created by subdivision from the original Lot 2. Mr. Hill stated that this information came from the owner and the Township Engineer. Chair Cline noted that the older Zoning Ordinance allowed more minor subdivisions than the current ordinance allows.

Upon questioning, Mr. Hill noted that he has not obtained information about an NJ DEP LOI on the subject property.

Mr. Simon noted that there are 45 or 46 parking spaces. He questioned fluid discharges from vehicles if the lots are at full capacity on a regular basis. Mr. Hill stated that such discharges are addressed by stormwater regulations. He noted that Best Management Practices do not change for commercial or private properties.

Mr. Simon asked about access to the property for farm equipment. Mr. Hill noted that most access to the southern portion of the lot comes off of the driveway. He noted that there is an opening on Sandy Ridge Road. He noted that there are easements in effect now, with an agreement between the farmer and family to use the driveway.

Mr. Simon asked how these soils compare to State prime soils. Mr. Hill stated that he will provide further information if the soils are prime soils.

Mr. Simon asked about the architectural drawings of the building. Mr. Hill stated that he has not seen them, but that they will be similar to buildings in the area. Mr. Hill explained that the location was chosen to be far enough from the road to fit within a lot that would have a 100-foot setback (if subdivided). He further noted that the location is lower in elevation than the road.

Mr. Simon asked if the lot were to stay 30 acres, would there be a consideration to move the proposal further south. Mr. Hill noted that the soils in that area would have to be tested. Mr. Hill suggested that the location could be just south of the hedgerow that splits the property by $1/3 - 2/3$.

Mr. Hill noted that the State provides some planning information based on regions, such as the Pinelands Region. He noted that this area is considered the Skylands region. Mr. Hill noted that no issues were revealed.

Mr. Simon asked about signage. Mr. Hill noted that the membership would be similar to that of a private club. Mr. Simon asked if the facility would be open to the public, and if so, it would seem that signage would be needed. Mr. Hill stated that the signage would be the minimum required.

Chair Cline noted that if the main facility use is during the winter, signage would probably be needed based on the daylight in the winter.

There was a discussion about the physical conditions of the road. Mr. Hill stated that the traffic consultant could answer that question.

Mr. Simon asked about the geopavers. Mr. Hill stated that there are different types. He noted that they are 100% pervious. Mr. Hill stated that there are details on the plan about the geopavers. He noted that the geopavers have the ability to process any size storm. Mr. Hill stated that the parking area will be reviewed to see if more geopavers can be added. Mr. Hill noted that there is a striping system available; and a maintenance system available to keep the weeds pulled. He noted that the geopavers can be vacuumed, allowing a top layer of three inches to be stripped and replaced. He noted that it is recommended that the system be renewed every five to ten years. Mr. Hill stated that operation and maintenance would be provided by the owner.

Mr. Simon asked if there are places where the geopavers can be looked at in place. Mr. Hill stated that he knows that there are parking lots in both North and South Jersey. Mr. Hill stated that he would contact the manufacturer to find other locations.

Mr. Simon asked questions about the existing trees, as shown on Sheet C-4 of A-1. Mr. Hill noted that this plan shows locations of trees and size of existing trees. Mr. Hill noted that special symbol with a 'P' identification represents an electrical power pole. Mr. Hill stated that he did not identify the trees on the other side of Sandy Ridge Road.

Sheet C-4 was identified as Site Cross Section – Tree Plan. Mr. Hill noted that on the page there is a profile of the property showing the relationship of the trees by the road to the height of the proposed building. Mr. Hill stated that this profile was developed with field observations and forestry measurements. Mr. Hill reiterated that he did not identify the trees on the opposite side of Sandy Ridge Road. Mr. Hill noted that the proposed berm with plantings, to be discussed with the landscape architect, will provide an additional eight feet of coverage along the road.

Mr. Hill noted that the snow plowing can be done on geopavers. He noted that there is a skid or special edge that can be placed on a snow-plowing machine. He noted that the surface is rated at HS20, a truck load rating determined for highways.

Mr. Simon noted on A-1, sheet C-1, that there is an invert drain pipe. Mr. Hill stated that this pipe drains the land on the easterly portion of the property which then flows across the subject property. He noted that this water drain was taken into consideration so that it is not disturbed. He reiterated that the stormwater management design is based on the proposed impervious coverage.

Mr. Simon referenced Board Engineer Kyle's aerial photo. Mr. Hill identified the properties that are under family ownership.

Public Questions

Margaret Stewart, of 100 Brookville Hollow Road, was present. She stated that her property is at the corner of Brookville Hollow and Sandy Ridge Mt. Airy Road. She had a question about traffic. It was noted that she should save her question for the traffic engineer.

Steve Walker, of 31 Sandy Ridge Road, was present. He questioned the building and materials. Mr. Hill stated that the proposed building will be 140 feet by 120 feet, with metal walls and roof. Mr. Walker asked about sound attenuation. He asked about an HVAC system, a generator, and indoor music and how the sound would be attenuated. Mr. Hill stated that building will be totally sound-proofed. Mr. Hill stated that the architect will address this. Mr. Hill noted that the sound from a generator would also be addressed.

Mr. Walker asked about the lighting. Mr. Hill stated that the design has not been finalized. He noted that after a certain hour there could be sensor-motivated lighting. Mr. Hill stated that a lighting plan will be presented. Mr. Walker asked about a fire system. Mr. Hill stated that the codes will be reviewed for the requirements.

Mr. Howard Lopshire, of 27 Sandy Ridge Road, was present. He asked about the access. Mr. Hill stated that dimensions were located via GPS, which is good to within one foot. Mr. Lopshire asked about the sight distance for the driveway. Mr. Hill stated that he would review this to see if revisions are needed. Mr. Hill noted that the pole to the right of the site access could be more of an issue than the trees.

Mr. Tony Berardo, of 11 Sandy Ridge Road, was present. He questioned the process. Mr. Hill noted that the change of use is a zoning decision by the Board. He noted that the engineering is for the building location and location of other site improvements. He noted that the condition of Sandy Ridge Road would fall under the expertise of the traffic engineer.

Mr. Bob Chamberlain, of 160 Sandy Ridge Road, was present. He questioned the market area for this proposed use. It was noted that this is a question for Mr. Switzler.

Public Questions, Zoom participants

Mr. Vincent DiBianca, of Brookville Hollow Road, was present. He noted that his property is southwest of this proposal. He asked about general property value, which is a question for the planner, who will be present at the next meeting. Mr. DiBianca asked about the green shaded area within the parking area. Mr. Hill stated that this is a "storm island" comprised of shrubs, trees, and vegetation.

Mr. DiBianca asked if a landscape block could be placed southwest of the proposed building. Mr. Hill stated that plants and vegetation cannot be planted within the power right-of-way or the Penn East right-of-way. Mr. Hill stated that he estimated the distance to Mr. DiBianca's property to be about 150 to 200 yards.

Mr. DiBianca questioned the number of parking spaces. Mr. Switzler indicated that there should be enough parking so that there is no overflow. It was noted that the traffic engineer may be able to reduce the parking spaces, but the standards of the RSIS should be used, since no standards exist in the Township Zoning Ordinance, for this type of use.

Mr. Steve Wilbur, of 142 Sandy Ridge Road, was present. He asked about the outdoor tennis courts on Lot 2.03. Mr. Switzler stated that there is one outdoor court on the family lot and it is not included with the proposed facility. He noted that this court is paved.

Mr. Wilbur asked about the apartment incorporated in the proposed building. It was noted that Mr. Switzler will discuss that in his testimony.

Kristen McCarthy, of 24 Brookville Hollow Road, was present. She questioned the bifurcation.

Ms. Edwards state that she would address that. She noted that the application is for a use variance to permit a tennis training facility in the A-1 zone. She noted that this use is not a permitted use. Ms. Edwards stated that the application included submissions to present information to help the Board make a decision on the use. Ms. Edwards stated that the applicant is not seeking site plan approval, but the applicant is aware that site plan issues do come up in the process of the use variance request, as noted from the discussion thusfar.

Ms. Edwards explained that a d-1 use variance is most critical in the relief that is requested. She noted that the applicant seeks the use variance approval prior to a fully engineered site plan. Chair Cline suggested that giving the planning testimony should have been done before the engineering testimony.

Ms. Edwards acknowledged that in seeking a d-1 use variance some engineering must be done to show how the facility will fit on the lot. She noted that a considerable amount of engineering has to been done to show some of the details the Board needs to see. She further noted that the Board has already asked for additional information to be provided and can ask for more.

Chair Cline noted that if the property is to be subdivided, that should be part of the use variance. Ms. Edwards noted that the planner can discuss this issue, as the subdivision is secondary to the use variance.

Ms. Edwards stated that the planner will testify before a vote is sought. She noted that the engineering provided is to give a basic overview of the site.

Ms. McCarthy stated that as she understands it, a use variance approval has to demonstrate public good, along with other criteria to support an approval or a denial.

Attorney Goodell reviewed the requirements for a use variance. He noted that the applicant is to provide special reasons for the change of use, one consideration might be the appropriateness of the site. He noted that negative criteria must also be demonstrated, as in the request of additional site plan details, such as the effect of traffic. Mr. Goodell noted that the planner is the expert to "ultimately" wrap it up.

Barb Berardo, of 11 Sandy Ridge Road, was present. She questioned the parking lot and the number of spaces for cars to drop off, run off, do errands, then return. She asked for a comparison to store parking lots with appropriate aisle widths.

The size of the building was compared to the parking area. The parking area is as long as the building, 140 feet, and 80 feet wide. It was noted that the lighting will face downward.

Lighting was revisited. Mr. Hill stated that he will follow the standards provided by Township Ordinance, with the minimum needed for safety and for access points. He noted that there will be lighting on the side of the building, lighting for the sidewalk, and some for the parking areas. He again noted that the levels of lighting will be developed to meet the requirements.

Diana Garibaldi, of 142 Sandy Ridge Road, was present. She asked about potential development into 3 acre lots. It was noted that this is a planner question.

Dalia Hoffman, of 25 Sandy Ridge Road, was present. She stated that her driveway is opposite the access and questions the headlights from cars shining into her house. Chair Cline stated that the Board will be very particular about this situation. He noted that in one past application, this was an issue that was addressed by the Board in the site plan requirements.

Mr. Hill stated that there is no building directly opposite the driveway.

Steve Wilbur, of 142 Sandy Ridge Road, was present. He questioned how the changes or conditions endorsed by the use variance will be guaranteed. Attorney Goodell responded that two approvals are need for this tennis facility. He noted that the first approval is the use variance. He noted that the second approval is the site plan approval which will be very detailed with very specific information to be provided. Mr. Goodell noted that the Board will ensure that everything will be met, by doing the use variance first, then hearing the detailed site plan review. He noted that some site plan information is relevant to the use variance request.

Mr. Hill stated as engineer for the site, it is his job to provide the Board with enough information to make a learned decision about approving or denying the application. He noted that at this time, the applicant can provide some answers but that they may not be the exact final details. He further noted that the information that has been provided was done per the ordinance requirements.

Attorney Goodell agreed that if the decision is positive, the Board has the ability to adopt conditions that could be very detailed.

Mr. Wilbur, Delaware Township resident, would like to know what those conditions might be. He stated that he is not opposed to the mission of the applicant, but wants to be assured that there is minimal impact to the neighbors.

Mr. Alex Ruttenberg, Delaware Township resident, spoke on behalf of Mr. Switzler who is currently the coach of the tennis team at Hunterdon Central Regional High School. Mr. Ruttenberg stated that his son is a senior at the high school, and that his son made the team because of the training given by Mr. Switzler.

Mr. Simon asked for assurance that no other property is under similar ownership or control. He was told that no other outdoor tennis court would be added to this application, other than as discussed with the use of the public courts at Dilts.

Mr. Simon asked that the aerial photo in Board Planner Kyle's report be admitted into evidence, as B-1. Mr. Simon asked that properties in family ownership be identified, as follows: Block 55, Lot 2.03 is owned by Mr. Switzler's parents. It was noted that this is not under identical ownership, but that there may be similar control. It was noted that on this aerial photo, one can see that outline of an outdoor tennis court, which is not to be included with this use. It was further noted that this lot has a flag that fronts on Sandy Ridge Road.

Mr. Simon asked that his letter of objection, dated March 10, 2021, was marked into evidence as O-1. He noted that he raised the issue of bifurcation. He stated that it is his position that this application should not be bifurcated. Mr. Simon stated that in his letter, he referenced case law to support his argument.

It was noted that per the MLUL, the decision should be fully informative, including information from the site plan checklist and the subdivision checklist, as a subdivision was requested in the original application.

Ms. Edwards stated the applicant considered the bifurcation issue that is being being raised. She stated that it is the applicant's determination to seek bifurcation by seeking the variance first.

There was a discussion about bifurcation. Mr. Simon stated that he understood that when the letter was received by the Board it would have been made public. Ms. Edwards noted that even in bifurcated applications that there are discussions about the site issues.

Attorney Goodell stated that it is the applicant's call as to how to proceed. He agreed that the Board has to make a decision that is formed by fact-based information. Mr. Goodell noted that the use and the site plan could be so interrelated that the application should be considered in a single proceeding.

Attorney Goodell noted that it is the Board's decision.

Chair Cline stated that as has been shown, the Board has asked for additional information. He noted that the Board could proceed with bifurcation and have more planning testimony from the applicant.

Member Manley stated that he understood the applicant's point of view, that approval of the use variance would be important before the complete site plan needs to be developed. He noted that all of the questions from this hearing show that some information is missing. He asked that the information be provided as requested by the Board.

Member Warren stated that he does not support bifurcation.

Member Kenyon stated that the applicant should be given the opportunity to provide missing information. She noted that there are a lot of gaps. She also noted that she is not opposing bifurcation at this time. She stated that she is hoping to see the planner at the next meeting.

Member Fowler opined that he felt that the engineering first is like the "cart before the horse" and felt that it was difficult to follow the engineer's testimony. Mr. Fowler stated that the planner's testimony might provide better insight for the bifurcation.

Member McAuliffe echoed Member Fowler's position. He stated that he is concerned with bifurcation, but not opposed to it. He agreed that more information should be forthcoming from the planner.

Member Gilbreath stated that she felt that the planner testimony is more important than the engineering testimony. She noted that a subdivision would have impact on the use, that could be positive or negative.

Member Emmons stated that he understands that knowing the use would be relevant in developing the details of the site plan.

Ms. Edwards stated that the applicant came into the proceeding knowing that the decision would not be made in one meeting. She noted that the applicant is not seeking a vote at this hearing. She noted that the intent on putting on the basic engineering testimony first was to put context around the use. She noted that the applicant will be testifying to discuss the ideas and the proposal itself. She noted that following the applicant will be the traffic engineer testimony and then the planning. She noted that the planning will help to determine if the use is appropriate. Ms. Edwards stated that the applicant would like to know what additional information is needed to return on June 10.

Attorney Goodell stated that the Board can allow this application to continue as a bifurcated application. He noted that the Board can ask for more information and use that information to make a choice.

Member Gilbreath made a motion to continue as a bifurcated application. Member Emmons seconded the motion.

Member Fowler asked how this vote affects the information that will be presented.

Attorney Goodell stated that part of the application includes the negative criteria, such as the effect on the neighbors. He noted that the Board has heard testimony at this hearing on lighting. He noted that the appearance of the building may have an effect on the application and that once the information is submitted, it could help the Board make a decision. He noted if approved, the applicant can then file a second application for site plan approval and meet the requirements of site plan checklist and ordinance. He noted that if the application is bifurcated, relevant information can be requested.

Member Manley asked that the motion be repeated. The motion made was to continue the application as a bifurcated application. Chair Cline noted that the Board may need more testimony, but that if there is a site plan application, all details must be submitted.

Ms. Edwards stated that for the information of the public, the application was deemed complete, following the use variance checklist.

Roll Call Vote

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

Those concurring: McAuliffe

Those Opposed: Warren

Absent: Szwed

Chair Cline stated that the application will proceed as a bifurcated application.

Ms. Edwards stated that she is hoping to follow this schedule:

Traffic engineer – available for June 10

Clarification – continued to June 10

Architect and landscape architect testimony

Additional information by applicant

Mr. Simon asked that lighting be more clearly demonstrated on the plan for the June 10 meeting.

Ms. Edward stated that the applicant grants a time extension. It was further noted that the July 8 meeting will be set aside for this application.

Board Planner Kyle asked about the apartment in the building and noted that it is not clear where its location is. He also noted that an apartment would be a second principal use on the property for which a second d variance is required. Ms. Edwards noted that the notice did include that variance.

Walter Ross, Block 17, Lot 33.04, use variance for conversion of accessory building to dwelling unit.

Chair Cline noted that in the previous meeting on this application, the Board expressed its concern about the size of the structure. Chair Cline also noted that there is a concern about any deed restrictions that may be unenforceable. It was noted that the applicant has revised the plans to include a smaller unit.

Planning Board Update: Liaison Cline

Liaison Cline reported that there is no new business before the Planning Board. He noted that the Planning Board is using this time to work on the Reexamination of the Master Plan.

Correspondence – nothing new

Bill List

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

General Zoning Matters

Through February 11, 2021, #3128141	\$153.00
Through March 11, 2021, #3129384	\$170.00

Member Fowler made a motion to approve payment of this voucher. Member Gilbreath 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

17/33.04, Ross, #3128139	\$629.00
27/22, Toth, #3129383	\$153.00
43/5 and 26, #3126816	\$510.00
55/2, Switzler, #3129382	\$170.00

Bill List: Engineering Services – Van Cleef Engineering Associates

Escrow Charges

17/33.04, Ross, #3935010	\$332.50
27/22, Toth, #3935012	\$133.00
27/22, Toth, #3935012-2	\$665.00

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

ADJOURNMENT: 9:37 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
File No. 27/22 (2021)**

RESOLUTION

WHEREAS, James and Kelly Toth (the Applicant), owners of property located at 82 Sandbrook-Headquarters Road, Stockton, NJ 08559 (Block 27, Lot 22 on the Delaware Township Tax Map), applied to the Delaware Township Zoning Board of Adjustment (the Board) for a bulk variance to permit the construction of an accessory building in the side yard setback; and

WHEREAS, the Board held a hearing on March 11, 2021 to consider the application; and

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

FINDINGS

Application

1. The Applicant would like to build a 900 square-foot garage within 15 feet of the side lot line.
2. The Delaware Township Land Use Ordinance (LUO), Section 230–16 E(4)(d), requires a 50 foot side yard setback for accessory buildings larger than 500 square feet.
3. The Applicant requested variance relief pursuant to N.J.S.A. 40:55D-70(c)(2).

Jurisdiction, Notice, and Waivers

4. The Zoning Board has jurisdiction over an application of this nature.
5. The Applicant published timely notice by newspaper and served notice by certified mail to all neighbors within 200 feet of the subject property.
6. Upon recommendation of the Board Engineer, the Board granted four waivers from the LUO variance checklist, finding that the information requested was not relevant to the instant application, and declared the application complete.

Hearing

7. The Board held its hearing on March 11, 2021.
8. The Applicant James Toth appeared with his planner, Francis J. Banisch III, P.P., AICP, of Banisch Associates, Inc., Flemington.
9. The Board considered the following evidence offered in support of the application:
 - a. Application of James and Kelly Toth dated December 30, 2020, with ZBA Variance Application Checklist and Attachment.
 - b. Map of Land for James & Kelly Toth, prepared by David M. Newton, NJPLS, dated September 27, 2018.

- c. Second copy of Map of Land showing proposed 30' x 30' garage, shed to be removed, and shed previously removed.
- d. Aerial photo showing distance from proposed garage to nearest homes.
- 10. The following witnesses testified in support of the application:
 - a. James Toth, the Applicant.
 - b. Francis J. Banisch, the Applicant's planner.
- 11. The following Board professionals commented on the application and prepared review reports:
 - a. Board Engineer Robert S. O'Brien, PE, CME, of Van Cleef Engineering Associates, LLC, who prepared a report dated March 5, 2021.
- 12. A neighbor, Cathryn Zega, owner of the property adjacent to the south side of the subject property, questioned whether a grove of mature trees between the properties would be removed. She was told that the entire wood-line would remain, with no tree removal.

Description of Site

- 13. The subject property is located at 82 Sandbrook-Headquarters Road, Stockton, NJ 08559 (Block 27, Lot 22).
- 14. The property is located in the A-1 Agricultural-Residential Zone. Accessory structures are permitted in the zone provided the ground floor area of the accessory structure does not exceed 900 square feet.
- 15. The property is 3 acres (gross), 2.9 acres (net). Minimum lot size in the A-1 zone is 3 acres.
- 16. The lot is rectangular in shape, approximately 201 feet wide and 650 feet deep.
- 17. The lot contains a one-story single-family frame dwelling, sheds, a macadam drive and gravel parking area, and a septic tank with septic field.
- 18. The house is approximately 95 feet from the front lot line. The macadam drive and gravel parking area are south of the house, and run parallel to the southern lot line. A row of trees buffers the lot along the southern lot line.

The Proposed Garage

- 19. The proposed garage is a 900 square foot, single story accessory building.
- 20. The proposed garage would be located at the end of the drive, on the south side of the lot, near the row of trees, 15 feet from the southern lot line.
- 21. In that location, the proposed garage would be 700 feet from the nearest residence to the south, and would be buffered from adjoining lot by the tree line on the south side of the property.
- 22. In that location, the proposed garage would be at the end of the existing macadam drive and gravel parking area.

23. If the proposed garage were built 50 feet from the lot line, as required by the ordinance, it would be located in the middle of the rear yard, negatively impacting the use, views, and aesthetics of the lot. Also, the Applicant would not be able to make use of the existing macadam drive and gravel parking area, and would instead have to build new impervious surface across the lot. Finally, locating the garage 50 feet from the lot line would interfere with the existing septic field.

CONCLUSIONS

24. The Zoning Board has the authority to grant a variance from the bulk requirements of the Land Use Ordinance when the purposes of the Municipal Land Use Law would be advanced by a deviation from the zoning ordinance requirements and the benefits of the deviation would substantially outweigh any detriment. *N.J.S.A. 40:55D-70(c)(2)*. The Board must find that the variance can be granted without substantial detriment to the public good and the variance will not substantially impair the intent and purpose of the zone plan and zoning ordinance. *N.J.S.A. 40:55D-70(d)*.

25. According to the New Jersey Supreme Court, “the grant of approval must actually benefit the community in that it represents a better zoning opportunity for the property.” *Kaufman v. Planning Board*, 110 N.J. 551, 563 (1988).

26. Here, the requested deviation advances the following purposes of zoning:

Purpose a. To encourage municipal action to guide the appropriate use or development of all lands in this State, in a manner which will promote the public health, safety, morals and general welfare: The new building will improve the site’s attractiveness. The location of the new building will make use of existing infrastructure and prevent the applicant from having to increase impervious surface by building a new driveway. If the new building were built 50 feet from the lot line, the applicant would have to increase impervious surface coverage by building a new driveway to access the garage, and the new building would interfere with the existing septic field.

Purpose g. To provide sufficient space in appropriate locations for a variety of agricultural, residential, recreational, commercial and industrial uses and open space, both public and private, according to their respective environmental requirements in order to meet the needs of all New Jersey citizens: The garage is a permitted accessory use in the zone, and the new building will provide adequate indoor storage for the parking of cars out of the weather, storage of tools and a small workshop.

Purpose i. To promote a desirable visual environment through creative development techniques and good civic design and arrangement: The new garage will be located on the side of the property, at the end of an existing driveway, along a tree line, instead of in the middle of the rear yard.

[*N.J.S.A. 40:55D-1.*]

27. The variance can be granted without substantial detriment to the public good. The new structure would have no adverse impact on any neighboring properties.

28. The variance will not substantially impair the intent and purpose of the zone plan and zoning ordinance. The purpose of the Master Plan “is to provide development options that will allow each property owner the reasonable use of the development capability of the land while promoting the permanent dedication of tracts of priority farmland for continuing agricultural use and to preserve and protect sensitive and aesthetic natural resources in accordance with state and county planning policies and to the benefit of the citizens of the State of New Jersey, Hunterdon County, and Delaware Township.” This variance allows for a more efficient use of the lot, keeping the rear yard open.

NOW, THEREFORE, BE IT RESOLVED by the Zoning Board of Adjustment of the Township of Delaware, that James and Kelly Toth be and hereby are **GRANTED** a variance to permit the construction of a 900 square-foot garage 15 feet from the southern lot line.

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

1. The plans must identify structures that will remain and structures that will be removed; the proposed total impervious surface coverage; and any proposed tree removal.
2. Any and all outdoor lighting shall be directed downward.
3. All construction shall be in accordance with the plans submitted to and reviewed by the Board Engineer in conjunction with this Application.
4. In accordance with the Board Engineer's memo dated March 5, 2021, the following notations shall be added to the plan:
 - 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.

ROLL CALL VOTE ON MOTION TO GRANT VARIANCE
March 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
April 8, 2021

Moved By: Emmons

Seconded By: Fowler

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

Those concurring: McAuliffe

Those Opposed: None

Present but Ineligible To Vote: None

Those Absent: Szwed

CERTIFICATION

The foregoing is a true copy of a Resolution of Memorialization adopted by the Board of Adjustment of the Township of Delaware on April 8, 2021.

This written resolution memorializes the March 11, 2021 decision of the Board to grant a bulk variance to allow the applicant to build an accessory garage 15 feet from the lot line.

Dated: May 5, 2021
Distributed: May 5, 2021

KATHLEEN E. KLINK,
ADMINISTRATIVE OFFICER
ZONING BOARD OF ADJUSTMENT
TOWNSHIP OF DELAWARE, STATE OF NEW JERSEY