

Chair Cline called the meeting to order at 7:30 p.m.

## PLEDGE OF ALLEGIANCE

## NOTICE REQUIREMENTS

Chair Cline read the Public Notice Requirements. Said statement noted that the Requirements of the Open Public Meetings Act have been satisfied with transmission to the Hunterdon County Democrat, The Times (of Trenton), and the Star-Ledger. Said Notice was posted in the Delaware Township Municipal Building and filed in the Board Office, all on February 9, 2023.

## MEMBERS IN ATTENDANCE

Emmons, Fowler, Gilbreath, Manley, Warren, Cline

Alternates present: Milesnick

Absent: Buchanan, McAuliffe

## PROFESSIONALS IN ATTENDANCE

Kathleen Klink, Acting Board Administrative Officer

Steve Goodell, Esq, Board Attorney

## RESOLUTIONS

Sparrow King/Kurt Hummler,

Block 4, Lot 10, 48 Locktown School Road, Flemington, NJ

Application for interpretation from the Board as to whether in-home dog boarding constitutes a home occupation as long as it is in compliance with Section 230-104 of the Township Land Use Ordinance.

There was a discussion about the resolution with one change concerning the correct total square footage of 35 square feet for the in-house isolation area.

## MEETING MINUTES: October 12, 2023

Member Manley made a motion to adopt the noted minutes. Member Gilbreath seconded the motion. Typographical errors were noted.

### **Roll Call Vote**

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

Nay: None

Abstain: None

Absent: Buchanan, McAuliffe

## APPLICATIONS

Roger and Holly Locandro, Block 41, Lots 1.10 and 1.01, request for extension of Final Approval, granted November 12, 2020.

John Lanza was present to represent the applicant. Mr. Lanza noted that this is a second request for an extension, specifically noting that the State Historic Preservation Office, SHPO, has to approve the plans for architecture and design. Mr. Lanza noted that the relief that has been approved from NJ DEP concerning a culvert as it relates to the regulations. Mr. Lanza noted that any changes to the State stormwater regulations does not change this project, approved under previous regulations. Mr. Lanza stated that there is no change in zoning.

Mr. Tom Decker was sworn in, he is the engineer for this project. Mr. Decker discussed his background with Van Cleef Engineering. Mr. Decker stated that he has been involved with this project since the beginning of the project. Mr. Decker noted that significant progress has been made on the project.

Mr. Decker discussed the preliminary design for the culvert extension on Rosemont Ringoes Road. He noted that the culvert can not be extended; it was concluded that it would be more cost effective to replace the entire structure. He noted that an easement had to be sought for the opposite side of the road. Mr. Decker stated that the plans have been submitted to the Hunterdon County Engineer and that preliminary approval has been granted. Mr. Decker noted that the County requires approval for the culvert from NJ DEP and that the project has been submitted to NJ DEP. Mr. Decker stated that the Locandros will do those improvements at their expense.

Mr. Decker discussed the NJ DEP application for wetlands delineation and noted that the request has been submitted. He noted that this approval is part of the subdivision and that the applicant is awaiting word from NJ DEP. Mr. Decker stated that the NJ stormwater requirements have been changed since the approval of this project. He noted that the changes add additional water quality improvements. He noted that these changes were made due to the recent annual weather changes in rainfall intensities.

Mr. Decker stated that an application was made to NJ DEP for jurisdictional determination from SHPO. He also noted that the project may be subject to further archaeological studies. He noted that previous determination showed no historical significance, but that the property is on the edge of the review zone.

Mr. Decker noted that the Township was notified of all submissions to Hunterdon County and to NJ DEP.

Mr. Decker stated that Delaware Township adopted the stormwater regulations originally passed by NJ DEP. He noted that the increase may not have been approved by the Township, but that the applicant is guided by the requirements of NJ DEP, even if those requirements are more stringent. The Board requested that the plans be submitted to the Board Engineer for his approval.

Chair Cline asked about a timeline, to which Mr. Decker stated that none was given by SHPO. It was noted that no improvements can be made without SHPO approval, per the Board resolution requiring any outside agency approvals, including NJ DEP and SHPO.

It was noted that the concern for NJ DEP is the fulfillment of the stormwater regulations and that the concern for SHPO is for any historical significance. It was noted that the merits of the application are not changed by these requirements.

Mr. Lanza explained the purpose of the October, 2023 letter which is to note that the Board can provide approval per NJ 55D.2d and that this language can be used to support the Board's approval. Mr. Lanza stated that the Locandros have been pursuing this project diligently. Mr. Lanza noted that the Locandros have worked with the neighbors and the County and any others, as necessary.

Board Attorney Goodell stated that this October, 2023 letter can be part of the application and part of the record.

Member Gilbreath asked about the length of the extension. Mr. Lanza stated that the applicants are requesting one year. Mr. Lanza noted that per the ordinance, a development of more than 50 acres can have up to three one-year extensions. The applicants are seeking a date of January 14, 2025 for this extension.

Board Attorney Goodell stated that the first extension that was granted was an obligatory extension due to approvals need from another governmental agency, in this case the other agency was NJ DEP. Board Attorney Goodell further noted that the Township, through this Board, can allow up to three years extension, granted one year at a time. Board Attorney Goodell stated that these extensions are considered discretionary extensions.

Member Warren asked about the mandated one year time limit. Mr. Lanza stated that the applicants do not want to come back.

Larry Wohl was present via Zoom. Mr. Wohl asked Mr. Decker whether the permits/approvals are based on the old law or the new law. Mr. Decker noted that any approvals are based on regulation changes, if an approval has not been obtained. Mr. Decker noted that one approval has been obtained and one is under review. Mr. Decker noted that the obtained approval is within conformance of the time of its approval (2023) and is valid for five years. Mr. Wohl opined that benefiting from an old approval seems to “skirt” the current laws. He also opined that the application has been active in its approval phase from about 2015 to 2019 and that in his opinion nothing has happened in regard to the application.

Mr. Wohl stated that this application began in 2007 and there have been changes in the neighborhood, the makeup of the Board and the Township Committee, and with regulations at NJ DEP. He noted that preliminary approval was given in 2010 with a condition, 16R, for a Letter of Interpretation from NJ DEP regarding any existing wetlands.

Mr. Wohl continued by stating that the use variance application was bifurcated in 2020. He noted that at that time the Board had to find that the negative criteria is satisfied, without detriment to the public good. Mr. Wohl questioned how the Board can determine at this time, 2023-2024, that the changes will have no negative impact and that there is no detriment to the public good.

Mr. Wohl stated that there have been many delays on this project from 2014-2019. He stated that he reviewed the files for the project and found some things are missing related to the conditions to be met. He stated that he could not find condition item #18 from the 2010 resolution for preliminary approval. He noted that this was to be a diagram showing that the two-family building will be built in a style similar to that of the subdivision. He noted that item #19 could also not be found which was to display the single family home style. It was noted that the homes here are to be similar to those found on Lambert Road.

Mr. Wohl concluded by stating that the Board should make a finding that shows the proposal is “beneficial to the public good”, in order to adopt the resolution. Mr. Wohl stated that it had been much too long to just “put a stamp” on the project.

Mr. Charles Taylor was present. He noted that the State has decided that the streams found within the area of this project have recently been designated as C-1 creeks. He questioned the 300-foot buffers required for C-1 streams and how that would affect the project. He opined that half of the subdivision could be within the 300-foot buffer. Mr. Taylor stated that a property he recently purchased has a problem with the “new” buffer due to the C-1 designation.

Ms. Jennifer Brunje was present and stated that she did not have access to the files. She stated that public access should have been more available.

Ms. Ravenna Taylor was present. She agreed with the idea that there are many new neighbors since the project was approved. She also expressed her concern with environmental changes at the State level and how that might affect this project.

Ms. Valerie Tucci, Township resident, was present. She opined that the Board should not make a decision if not every piece of the record is present. Chair Cline stated that the files are present.

Attorney Goodell reiterated what is being requested. He noted that this second one-year extension is discretionary. He noted that the first one-year extension was obligatory per State requirements. He noted that per NJ:230-98f, a municipal agency may extend a one-year extension for up to three years, individually. He further noted that the decision cannot be arbitrary or capricious.

#### Board comments

Member Manley stated that he is concerned about information in files. He noted that if information is missing, he is hesitant to vote in favor of this request.

Member Gilbreath stated that she has no questions.

Member Emmons expressed his concern about possible missing information. Mr. Decker testified that the current permit that has been approved and meets the standards for that approval. Mr. Decker stated that the second permit is subject to current regulations.

Member Fowler stated that he is also concerned about possible missing data. Member Fowler stated that there has not been much time to evaluate the request. He noted that the Board has one more meeting in January before the extension expires and suggested that a decision be delayed. He questioned how requirements can be met if there is missing information.

Member Warren stated that he has no questions.

Member Milesnick stated that he has no questions.

Chair Cline noted that the original application was approved by unanimous decision. Chair Cline noted that it is not the fault of the applicant if there have been delays, in

particular delays caused by covid. He opined that the applicants should not be penalized for any shortcomings.

Member Gilbreath made a motion to approve this one-year extension. Member Emmons seconded the motion.

**Roll Call Vote**

Aye: Emmons, Gilbreath, Milesnick, Warren, Cline

Nay: Fowler, Manley

Abstain: None

Absent: Buchanan, McAuliffe

**CORRESPONDENCE**

Locktown Stone Church, Block 8, Lot 1, question concerning change in square footage of the approved building from 702 to 746 square feet to be in compliance with ADA Requirements.

It was noted that the Township Construction Official asked that a change in square footage should be returned to the Board for an amended approval.

Attorney Goodell reviewed the information presented by the Locktown Stone Church. Mr. Wohl was present. He noted that the original approval recognized that there might be minor changes. He opined that based on that clause, the change is not significant enough for a return application.

Chair Cline stated there should be communication from the Board. Board Attorney Goodell stated that he would review the resolution and write a response based on the minor square footage change. Attorney Goodell noted the minor change does not revoke the Board's decision.

Mr. Wohl is the representative of the Locktown Stone Church. He read the background section of information for the Board's information. Mr. Wohl also noted that the change in the square footage enables the project to comply with ADA requirements, including an appropriate radius within the kitchen.

Member Manley made a motion for Board Attorney to write said letter. Member Fowler seconded the motion.

**Roll Call Vote**

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

Nay: None

Abstain: None

Absent: Buchanan, McAuliffe

**PLANNING BOARD UPDATE – Liaison Cline**

Liaison Cline noted that the December meeting was cancelled. He expected that the Planning Board will reorganize after the reappointments made by Township Committee on January 8. Liaison Cline stated that the Planning Board should meet in the second week in January.

**PROFESSIONAL BILL LIST**

<u>Non-Escrow Bills</u>	<u>Invoice No.</u>	<u>Date</u>	<u>Amount</u>
Parker McKay, P.A.	3168804	09/21/23	\$221.00
	3170789	10/17/23	\$306.00
	3172078	11/16/23	\$85.00
	3173710	12/06/23	\$391.00

Member Gilbreath made a motion to approve payment of these bills. Member Fowler seconded the motion.

**Roll Call Vote**

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

Nay: None

Absent: Buchanan, McAuliffe

<u>Escrow Bills</u>	<u>Invoice No.</u>	<u>Date</u>	<u>Amount</u>
Parker McKay, P.A.			
For King/Hummler, 4/10	3170788	10/17/23	\$357.00
For King/Hummler, 4/10	3172079	11/16/23	\$612.00
For Lynch, 22/4	3173712	12/06/23	\$102.00
For Locandro, 41/1.10 & 1.01	3172081	11/16/23	\$51.00
For Locandro, 41/1.10 & 1.01	3173711	12/06/23	\$34.00

Member Manley made a motion to approve the above bills. Member Emmons seconded the motion. The motion was approved unanimously 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,

Acting Administrative Officer, Delaware Township Board of Adjustment