

**TOWNSHIP OF DENNIS
CONSOLIDATED LAND USE BOARD
571 Petersburg Road
Dennisville, NJ 08214
(609) 861-9705**

AUGUST 22 , 2013

MINUTES

This meeting was published in accordance with the "Open Public Meetings Act". Notice of this meeting was published in an annual meeting notice in the Cape May County Herald and posted in Township Hall.

The meeting was called to order by Chairman Butto. The following members were present: Mr. Butto, Mr. Pettit, Mr. Esposito, Mr. Watson, Mr. Stafford, Mr. Glembocki, Mr. Germanio and Mr. Cherry. Also present were Jon Batastini, Esquire, Board Solicitor ; and Michael Fralinger, Assistant Board Engineer.

Mr. Batastini administered the oath of office to Mr. Esposito as Alternate No. 1.

APPLICATIONS:

McNALLY, PATRICK C. - Block 67, Lots 46 and 49:

Located on Laurel Road in Dennisville in a Pinelands Village (PV) Zoning District. Applicant seeking minor subdivision approval, as well as variances for lot area, lot frontage and front yard setbacks. Applicant desires to gain access to the waterfront of Johnson's Mill Pond and has executed an Exchange Agreement (Land Swap) with the owners of neighboring lot.

Cory Gilman, Esquire appeared as attorney for the applicant.

Mr. Batastini administered the oath to Michael Fralinger, Ralph Ford, and Patrick McNally.

Mr. Gilman provided a brief summary of the application. The property is located in a PV zone; the applicant is seeking access to the waterfront behind his property; and he has entered into an agreement for a land swap in order to gain that access. There will be no physical additions or changes to the property. Variances are required, as the lots are undersized existing lots. The applicant will also need Pinelands Approval, and asked to mark "A-1". He then directed questions to Mr. Ford.

In response to Mr. Gilman, Mr. Ford advised that he has testified before this Board previously. He was accepted by the Board as an expert. He then described the current 2 lots as they exist. Both lots are undersized, and the applicant is seeking a re-division of the lots. One lot does not touch waterfront and he intends to have a re-division of lots lines so that the applicant can have access to the water from his property. The property owners have entered into an agreement. There is no way to bring either lot into conformity, swap of land is basically of even size. He then reviewed the variances that are being requested. Both houses will have conforming side yard set backs with new division line. Lines being changed are interior lines between the properties, exterior lines will remain the same. There will be no impact on the surrounding properties. All structures currently exist and cannot be moved.

Mr. Butto asked if there were any questions for Mr. Ford.

Mr. Fralinger then presented the engineer's report.

Mr. Batastini reviewed the waivers being requested.

In response to Mr. Batastini, Mr. Gilman indicated that portions of the property being swapped are very close in size.

Mr. Fralinger requested that metes and bounds for the newly adjusted lines be provided if the application is approved.

Mr. Watson requested and received confirmation that only 2 lots will exist before and after if the application is approved.

Mr. Butto then opened the meeting to the public for questions. There being none, the public portion was then closed.

Mr. Batastini asked Mr. Gilman to run through the pre-existing non-conforming variance requests.

Mr. Gilman complied by saying they are lot area for Lots 45, 46 and 49; frontage for Lots 45 and 46, and side yards.

Mr. Batastini then presented a form of motion for variances being requested as a result of a minor subdivision of the property; he reviewed the numbers as to existing and proposed, and suggested the motion be in accordance with the schedule on the plans.

Mr. Watson questioned whether Lots 45 and 46 are one or two lots. Mr. Ford testified that they are actually one lot, but are shown on the tax map as 2 lots, and various records don't agree. Mr. Batastini then asked Mr. Gilman if Lots 45 and 46, to make it more clear, could be consolidated. Mr. Gilman agreed. Mr. Ford suggested that the lot number be the one that agrees with the tax map.

Mr. Batastini said that the variances being requested are for are pre-existing non-conforming and not sure if it is necessary to go through granting of individual variances. Mr. Gilman indicated that he wants to go through list of each individually.

Mr. Batastini then presented a form of motion to approve the subdivision and variances for lot area for lots 49, 45 and 46; frontage for Lots 45 and 46, minimum front yard for Lot 45; and side yard set back for Lots 45 and 46 for the garage. A motion to approve was made by Mr. Pettit, seconded by Mr. Button and carried by all members voting on same.

MORAN, PATRICIA E. - Block 96, Lot 36.01:

Located on Route 83 in South Dennis in a R-3 (Moderate Density Residential) Zoning District. Applicant is seeking preliminary and final site plan approval, as well as a use variance, to construct a therapeutic equine learning facility for autistic and special needs children.

Cathleen Cammano, Esquire appeared as attorney for the applicant. She asked to to confirm that this application will have at least 6 voting members. Mr. Batastini

indicated that the Board has 7 members this evening who can vote on this application, as well as Mr. Glembocki who cannot vote on this matter. He then administered the oath to Ms. Moran and Vincent Orlando.

Ms. Cammano then directed questions to Ms. Moran.

Ms. Moran testified that she is the owner of the property; and wants to use the property for horse assisted therapy, as well as a learning experience. She deals with people of all ages. Her services are approved by the State of New Jersey. She has always been involved with horses, but only recently became involved with this type of service. She and all personnel, including volunteers are certified. She gave an example of an autistic 5 year old who comes to life when he gets near the horses. She chose this property because it already existed as a horse farm, is a good location and is easy to get to.

Ms. Cammano then called on Mr. Orlando.

Mr. Orlando stated his credentials. He testified that this is a really unique application. It is located in a residential/farm area. He believes it is a permitted use. It is a non-profit organization. People would come to the site for the therapeutic benefit of the horses. He discussed positive and negative criteria and that it is an inherently beneficial use and encourages efficient use of the land. He testified that there would be no detriment to the zoning plan or zoning ordinance; no detriment to the public. The property has always been a horse farm and is not really changing. There is an existing house, a garage and an existing barn. Most of the structures will have to be demolished. Large pasture currently exists. Propose to phase in 3 new structures, the first being a barn, a single family home for the groundskeeper and in the future an indoor riding arena.

Mr. Butto asked if there were any questions from the Board.

In response to a question from Mr. Esposito, Mr. Orlando said that the maximum number of horses that the barn can hold is 13.

Mr. Batastini asked who owns the horses. Ms. Moran advised that she will have her own horses, as well as "volunteer" horses.

Ms. Cammano added that the previous owners also boarded horses on the property.

Mr. Germanio indicated that there are limits as to the number of horses per acre; and asked what would happen with their waste. Mr. Orlando advised that there will be a storage area and it will be hauled away from there. He showed the location of that area on the plan and said that it would be at least 125 feet from the property line. He also indicated that the waste will be hauled away probably every 2 weeks. Mr. Germanio said he believes only 2 horse per acre are permitted. Mr. Orlando said that the property is 7 ½ acres. Mr. Germanio also said that he believes the waste should be hauled away at least once every week. Ms. Cammano advised that the arrangements for waste are for composting and such, and it is not going to the landfill. Mr. Orlando added that the dumpster will be covered.

Mr. Watson asked if sidewalks were proposed. Mr. Orlando indicated that this was discussed at the work session, and feels they are not necessary. Mr. Watson said that the property is being set up for therapy, and he thinks that the reasoning behind the facility is great, but there is a need to accommodate the clientele its being designed for, and there needs to be way for a wheelchair to get from the parking lot to the riding area. Mr. Orlando said that they can probably accommodate that.

In response to a question from the Board, Ms. Cammano indicated that the property will stay on the tax rolls, but will be operated by a non-profit.

Mr. Fralinger then presented the engineer's report.

Mr. Orlando added there will be minimal use of the site at night, and that probably the only night time activity would be to feed or check on animals.

Mr. Butto opened the meeting to the public. There being nothing from the public, the public portion was closed.

Mr. Batastini presented a form of motion to approve the waivers of environmental impact and traffic studies. A motion to approve was made by Mr. Watson, seconded by Mr. Pettit, and carried by all members voting on same.

Mr. Batastini then presented a form of motion to approve the use variance. A motion to approve was made by Mr. Pettit, seconded by Mr. Watson and carried by all

members voting on same.

Mr. Batastini then presented a form of motion to approve additional waivers. A motion to approve was made by Mr. Cherry, seconded by Mr. Stafford and carried by all members voting on same.

Mr. Batastini then presented a form of motion to approve preliminary and final site plan approval, subject to conditions. A motion to approve was made by Mr. Stafford, seconded by Mr. Pettit and carried by all members voting on same.

CAPE BANK - Block 260, Lot 4.01:

Located on Route 83 in Clermont in a Residential Business (RB) District. Applicant is seeking amended site plan approval, as well as relief from a prior condition of a use variance in order to add two small 3 foot X 30 foot outdoor storage/display areas. Applicant is also seeking clarification or permission to permit overnight business vehicle parking at the site.

Mr. Butto advised that he would be recusing himself from this application because his wife works for Cape Bank, and asked Mr. Watson to act as Chair for this application.

Stephen Nehmad, Esquire appeared as attorney for the applicant, along with Karen Farrell and Vincent Orlando. He advised that Cape Bank is the owner of 2 of the 4 condominium units on this site, and the applicant has run into problems. When approved in 2007 the site was in a different zone. He read the recital from the previous application that employees would not park vehicles overnight. There have been a couple of potential buyers, but 2 potential buyers they have (audio visual and pool supplier) are concerned with overnight parking of their vehicles. They are looking for an interpretation of overnight parking. Secondly, there was a condition in 2007 that there be no outside display or storage. Applicant is seeking a very small area to display the wares of the business who comes into title of this property, and, therefore, asking for removal of that condition. Site improvements are all completed.

Mr. Batastini administered the oath to Ms. Farrell and Mr. Orlando. Ms. Farrell, is the property manager, and employed by Cape Bank. Mr. Orlando stated his credentials.

Mr. Nehmad then directed questions to Mr. Orlando.

Mr. Orlando testified that a subdivision came before the Board and was approved for Matalucci and Burnell. The property in question was owned by Matalucci, and was used for a sign business, with all work was done inside. He has visited building many times, and the building is quite suited. Cape Bank now owns that property (units 1 and 2). He further testified that 2 or 3 vehicles associated with business would probably park in the front; Burnell has

vehicles park outside now. Vehicles would not be oversized, vans, small box truck. He discussed small outdoor display areas - referred to the plan and showed the proposed location. He used the example of a florist - display flowers; cabinet maker - display cabinets; to try to attract business. This area of commercial uses has been a nice addition to the community. Outdoor storage/display area does not interfere with the integrity of the building or the site. He sees no problems with the site plan and waivers being requested are justified. He spoke with the owners of the adjacent businesses and they are anxious to have new neighbors. In response to a question from Mr. Watson, Mr. Orlando advised that Burnell (Genron) is a fire protection business.

Mr. Batastini asked if there is a condo association and whether or not what is decided tonight would have any impact on the Master Deed. Mr. Nehmad indicated that what is being requested is not in conflict with the Master Deed.

Mr. Batastini then asked for applicant's definition of "storage." Mr. Nehmad said that the bank envisions "storage" to mean a display of the trade's wares, such as a cabinet maker.

Mr. Esposito asked if the display areas are concrete now. Mr. Orlando advised that they are stone and mulch, which will not impede anything. He also added that it is not a storage area, but a display area.

Mr. Batastini indicated that the applicant is asking for outdoor storage for which a condition was imposed previously; secondly, the applicant is asking for an interpretation of whether or not overnight parking is or is not permitted and deletion of same if it is not permitted. He suggested deleting lines regarding overnight parking and leave up to the condo association what can or cannot be parked there rather than making an interpretation.

Mr. Fralinger then presented the engineer's report.

Mr. Watson asked the Board for questions regarding waivers.

In response to a question from the Board, Mr. Nehmad said the display area would have to be worked out between the Bank and the 2 purchasers and whether or not both buyers would need the display area or not.

Mr. Watson opened the meeting to the public. There being no public comment, the public portion was closed.

Mr. Batastini presented a form of motion to approve waivers. A motion to approve was made by Mr. Germanio, seconded by Mr. Stafford and carried by all members voting on same.

Mr. Batastini then presented a motion to approve an amendment to the site plan

permitting parking of vehicles in the front area overnight in addition to allowing display area in front of 2 buildings to the north, with vehicles to be per condo association. A motion to approve was made by Mr. Germanio, seconded by Mr. Pettit and carried by all members voting on same.

Mr. Nehmad thanked the Board.

Mr. Batastini thanked Mr. Watson for acting as Chairman on this application.

Mr. Button returned to join the Board.

LEITH, JOHN AND PATRICIA - Block 259, Lot 9.02:

Located on Kings Highway in Clermont in a Residential Business (RB) District. Applicant is seeking a variance to install a solar ground array in the front yard of an existing flag lot.

Mr. Batastini administered the oath to John Leith, Patricia Leith and Bill Driscoll of Ocean Solar.

Mr. Batastini advised that this is an application where the applicant is seeking to place solar panels in the front yard. He suggested starting with Mr. Fralinger's engineer's report, then ask questions to Mr. Leith to help him through the application and the variance he is requesting.

Mr. Fralinger presented the engineer's report.

Mr. Batastini advised Mr. Leith that he will have to testify and convince the Board that the variance he is seeking starts with why he thinks there is a hardship.

Mr. Leith testified that the position of his house prevents roof display, the proposed area doesn't require him to have to cut down trees as the area was a garden and he is looking for free energy. He added that the area is considered a front yard, but is not actually his front yard. The property is about 350 feet from Kings Highway. Neighbors will not be able to see the array in the proposed location. He had pictures of area from all directions, which he presented to the Board and described each. Board members asked questions concerning photos, which were answered by Mr. Leith.

Mr. Glembocki showed the plan to the Board and explained to the Board described the location and surrounding area. He also added that Mr. Leith is just removing his garden and putting the array in its place.

In response to questions from the Board, Mr. Leith indicated that neighbors will not be

able to see the array; and he has talked to his neighbors and they have no problem with his request.

Mr. Batastini had a discussion of the variance request with Mr. Fralinger.

Mr. Watson indicated that the logic for not having an array in the front yard was aesthetics. To which Mr. Glembocki indicated that the house sits far back on the property.

Mr. Butto asked for further questions from the Board, there were none. He then opened the meeting to the public. There being no public comment, the meeting was then closed to the public.

Mr. Batastini presented a form of motion to approve the variance relief from the Ordinance to permit ground array to be permitted in front yard. A motion to approve was made by Mr. Pettit, seconded, and carried by all members voting on same.

Mr. Leith thanked the Board, and asked if he could get his permit tomorrow morning. Mr. Batastini said that whatever Eileen tells him he can do, he can do.

Other Business:

Correspondence:

Walter J. Noll and Gary Gibson - Referral from Township Committee regarding ATV Usage:

Mr. Batastini said that he wants to put the ATV situation to rest. He wants to know what the Board wants him to go to the Township Committee with. He has a request from the Committee as to whether or not this Board would offer some type of criteria, such as set back, zoning areas, etc. He discussed that this Board is not designed to come up with Ordinances on how an ATV is to be operated on a person's property, but what it can do is look at set backs, areas that ATVs could be operated in, etc. He advised that the Planning Board does not get involved in the operation of equipment on a person's property. He wants to know if the Board wants to provide some type of requirements for race courses or race tracks and, if so, they would have to provide some type of definition.

Mr. Butto said he doesn't think the Board should touch it, that it is a Committee and police issue.

Mr. Batastini said he will draft a letter to the Committee that basically says there is nothing before this Board that they can act on. He feels his letter won't differ from what Frank Corrado originally said in his letter. He said that when it comes to ATVs this Board is not

equipped to determine sound decibels and distances, and there has to be some basis to make such a determination.

Mr. Butto said he feels that a property owner should be able to do what he wants on his property.

Mr. Batastini suggested drafting a Resolution as to what has been discussed and decided by the Board.

Mr. Cherry asked what relief does a neighbor have. Mr. Butto said they can call the County, as they have a noise ordinance and can come out and measure the noise level.

Mr. Glembocki added that it's a personal, civil matter for the homeowner.

Mr. Batastini indicated that a neighbor is not shut out, that there is a County noise ordinance, and they can file a law suit against their neighbor; there are several remedies that the public has.

Mr. Cherry thinks there is some responsibility here because at some time it may become a land use issue when you have a property owner construct a race track on their land and you have other people bringing their vehicles on the property and racing.

Mr. Batastini indicated that he can find race track ordinances; but there has to be some definition of what is deemed a race track.

Mr. Germanio indicated that he doesn't think the Board needs to be involved. He wants to be able to run his farm equipment when he wants to or needs to.

Mr. Cherry added that the people who run the ATV's can make them more quiet, but they create dust and cause problems.

Mr. Batastini added that it's not the end of the issue, it can be brought up again. People who are pushing for this haven't brought anything.

Mr. Cherry feels that it is going to be a recurring issue.

Mr. Batastini said that the Committee is looking for a recommendation with respect to operation of ATVs. No one in the State of New Jersey has a specific ordinance with respect to the operation of ATV's or motorcycles in someone's back yard.

Mr. Pettit said he feels that this is something that this Board should not be dealing with at all.

Mr. Batastini said it is very involved, have to get engineers involved to determine set backs, noise levels, etc. and that 's just the beginning. He advised that the Board has to make a motion.

Mr. Batastini then presented a form of motion indicating that were was no application, no interpretation before Board, and to send correspondence saying that the operation of motor vehicles on private personal property is not something this Board is interested in. A motion to approve was made by Mr. Pettit, seconded and carried by all members voting in same.

Resolutions:

AMERICAN ILEX, LLC - Block 117, Lot 3 and Block 119, Lots 15 and 17:

Mr. Batastini presented a form of motion to approve this Resolution. A motion to approve was made by Mr. Stafford, seconded by Mr. Germanio and carried by all members voting on same.

Minutes:

Bills:

Mr. Butto read the list of bills to be approved. A motion to approve and pay the Fralinger bills was made, seconded and carried by all members voting on same. A motion to approve and pay Mr. Batastini's bills was made, seconded and carried by all members voting on same.

Prior to voting on Mr. Batastini's bills, he advised the Board that he has not billed since April and bills cover May, June, July and part of August, he also explained his billing for American Ilex. Also mentioned that there is a grant that may cover legal fees for the Pinelands that Board may want to look into.

Mr. Butto asked if there was anything else anyone wanted to say this evening.

Mr. Watson asked if Board members were going to get a hard copy of the new ordinance, his book is about 20 years old, and he feels all members should have a copy.

Mr. Batastini agreed that everyone should have a new copy.

Mr. Germanio indicated that he has something under old business - clustering in Pinelands. He said he has a letter confirming what he said at earlier meetings about stopping agriculture on 150 acres. Mr. Batastini reviewed the letter presented by Mr. Germanio, and advised him that the answer was yes and no - explained how it works. Have to farm for 5 years before they can use clustering. Issue is whether or not the property has been farmed. (Discussion between Batastini and Germanio.) Mr. Batastini said he will do further research and report back.

Mr. Buto asked if there was any public comment. There was no public comment.

There being no further business to come before the Board, a motion to adjourn was made, seconded and unanimously carried to adjourn meeting.

Meeting adjourned at 9:21 p.m.

Carla _____ *A.* _____ *Coffey*

Carla A. Coffey, Secretary
Dennis Township Consolidated Land Use Board