

**DELANCO TOWNSHIP
JOINT LAND USE BOARD
REGULAR MEETING
DECEMBER 1, 2009**

Ms. vanGenderen called the meeting to order and led the flag salute.

Sunshine Statement

Adequate notice of this meeting has been provided in the following manner: written notice has been given to the Burlington County Times and Courier-Post newspapers and posted on the official bulletin board of the Township of Delanco at least 48 hours prior to the meeting. Written notice was also filed in the office of the Township Clerk and mailed to those persons who have requested copies and who have paid the required fee. The Secretary is directed to include this statement in the minutes of this meeting.

Present: Mr. Taraschi, Ms. Lohr, Ms. Jass, Mr. Lord, Ms. Mader, Mr. Martin, Mr. Matulewicz, Ms. Moore, Ms. vanGenderen, Mr. Schmitt, Mr. Anastasi

Absent: none

Board Professionals: Denis Germano, Esq.; Hugh Dougherty, Engineer; Cheryl Bergailo, Planner

Resolutions

Resolution 2009-17

Adam & Ashley Sheets

Granting side yard setback variances for attached decks

Motion by Ms. Moore, seconded by Ms. Jass to adopt and memorialize Resolution 2009-17.

Those voting in favor: Mr. Taraschi, Ms. Lohr, Ms. Jass, Mr. Lord, Ms. Mader, Mr. Martin, Ms. Moore, Mr. Schmitt, Mr. Anastasi

Those voting against: none

Those recusing/abstaining: Mr. Matulewicz

Approval of Minutes

The October 29, 2009 minutes were approved by those Board members eligible to approve them. There were no corrections.

New Applications

Thomas & Tammy McFadden

Block 1400, Lot 1

401 Rancocas Avenue

R-6 Zone

Preliminary & Final Major Site Plan, interpretation of zoning map or ordinances & bulk variances for ice cream parlor with “affordable unit” apartment above.

Mr. William Ziegler, Esq. represented Thomas and Tammy McFadden. Mr. Ziegler provided a brief summary of the application and described the variances they were seeking. Mr. Germano swore in Thomas McFadden, Tammy McFadden, and James Blasberg as witnesses.

**DELANCO TOWNSHIP
JOINT LAND USE BOARD
REGULAR MEETING
DECEMBER 1, 2009**

Completeness Determination

Mr. Dougherty reviewed his Completeness Review No. 2 letter of November 18, 2009. In the letter he had indicated that completeness for the bulk and use variances requested had been satisfied and that the Board could deem the application complete. There were several items that Mr. Dougherty recommended be deferred with respect to the site plan portion of the application. Mr. Dougherty also recommended that several items be waived. Mr. Martin asked about Upland Waterfront Development. Mr. Dougherty responded that the application would be subject to Stream Encroachment and possibly Upland Waterfront Development permits from the State and that those items would be a condition of approval. Mr. Dougherty stated that the applicants should provide testimony regarding the items to be waived. Mr. Martin asked Mr. Dougherty why a waiver of a lighting plan would be appropriate. Mr. Dougherty responded that it was his understanding that there was minimal lighting currently at the site and minimal lighting proposed so he was looking for testimony during the hearing phase without burdening the applicants by requiring a plan.

Mr. Taraschi and Ms. Jass recused themselves from the hearing and stepped down from the dais because the application included a “d” variance.

Motion by Ms. Moore, seconded by Mr. Lord that the Board deem the application complete and grant the waivers that were identified by Mr. Dougherty.

Those voting in favor: Ms. Lohr, Mr. Lord, Ms. Mader, Mr. Martin, Ms. Moore, Ms. vanGenderen

Those voting against: Mr. Matulewicz

Those abstaining/recusing: Mr. Taraschi, Ms. Jass

Hearing

Mr. Germano stated that proper notice of the hearing had been given. Mr. Ziegler asked Mr. McFadden to explain the proposal for the property to the Board. Mr. McFadden stated that they were proposing a small eat-in with an outside deck for ice cream and water ice. There would be off street parking. Mr. McFadden stated that he had owned the property for 18 years. Mr. and Mrs. McFadden also own the property next door at 409 Rancocas Avenue which is their primary residence. The McFadden family would be working at the ice cream parlor. Plan AP-1 was marked as McFadden Exhibit 1. Mr. McFadden described which improvements already existed on the property. The applicants are proposing to build additional parking, a garage, and a deck with an attached gazebo. The 2nd floor of the existing building would be converted into a COAH apartment. Mr. McFadden provided details pertaining to the garage, the materials to be used for the deck and gazebo, the apartment, and the amount of parking.

Plan A-2 was marked as McFadden Exhibit 2. Mr. Ziegler asked Mr. Blasberg to detail his credentials for the Board which he did. The Board accepted Mr. Blasberg as a licensed, registered architect. Mr. Blasberg testified that he had prepared the plans that had been marked as exhibits and explained to the Board what was proposed for improvements. He reviewed the plan for the ice cream parlor, the deck and the gazebo. Mr. Blasberg reviewed details on the site plan such as parking spaces, building coverage, impervious coverage, and lighting. Plan A-3 was marked as McFadden Exhibit 3. This plan showed the floor plans for the first and second floors. Handicapped access was discussed. Mr. Blasberg testified that three or four customers could sit in the rear corner of the ice cream parlor and perhaps two customers

**DELANCO TOWNSHIP
JOINT LAND USE BOARD
REGULAR MEETING
DECEMBER 1, 2009**

could sit at the front of the building. Access to the apartment would be through an existing door and staircase which is separate from the entrance to the ice cream parlor. Mr. Blasberg testified that the nonconformities outlined in the Board Planner's letter currently exist. The proposed garage would be within the side yard setback but would encroach into the rear yard setback. There was discussion regarding the lot depth. A copy of a survey dated October 5, 2009 was marked as McFadden Exhibit 4. The lot depth was shown on this survey. Mr. Martin asked how much impervious coverage was being added to the lot. Mr. Blasberg could not answer that question and will have to recalculate his numbers. Mr. Martin asked about the change in the building coverage figures on Exhibit 2. Mr. Blasberg said he would have to look at that as well. Ms. Moore asked how many parking spaces were allocated for the apartment. There are two parking spaces planned for the apartment as well as one space for truck deliveries. There are five parking spaces plus one handicapped space planned for the ice cream parlor.

Mr. Ziegler then asked Mr. McFadden about the previous zoning on the property. It was originally zoned commercial. The property is currently in the R-6 zone. Mr. McFadden felt two parking spaces would be sufficient for the apartment. Other subjects discussed included the delivery of supplies, trash storage, proposed landscaping and fencing, fencing materials, and hours of operation. Mr. McFadden proposed operating the business from 9 AM to 9 PM depending on business. He does not have a specific plan. No signage is proposed at this point. Mr. Matulewicz asked about the status of a monitoring well that was shown on an April 1, 1999 survey. Mr. McFadden responded that it was a Township well that was removed when Gateway Park was cleaned up. Ms. Moore asked if the house was currently rented. Mr. McFadden responded that the house had been rented for 18 years. Mr. Martin asked about the need for an Upland Waterfront Development permit from the NJDEP. Mr. Ziegler responded that if there is a need for revisions to the site plan the applicants would have to come back before the Board. Ms. Mader expressed concern about location of the kitchen in the apartment and the lack of counter space. There was also discussion about the square footage of the apartment and the deed restrictions placed on a COAH unit. Mr. McFadden testified that the garage would be used for storage.

Ms. Bergailo reviewed the Taylor Design Group Second Planning Review letter of November 30, 2009. The addition of the deck and gazebo create a new rear yard setback measurement which measures 4.5 feet from the bulkhead. Mr. Germano asked how many seats could fit on the deck and gazebo. Mrs. McFadden stated that there would be seating for a total of 12 people both inside the ice cream parlor and in the gazebo which would require four parking spaces. She testified that she was expecting mostly foot traffic. There is no parking planned for employees. There was discussion regarding the possible transfer of the property to another owner and how that would affect parking and the COAH restricted apartment. Mr. Ziegler stated that based on 12 seats the parking was already sufficient even if spaces were needed for employees. There was discussion regarding sidewalk along the front of the property and pedestrian circulation including crosswalks, the garage exterior, landscaping, fence details, the location of the Riverside-Delanco Bridge sign, the trash enclosure and trash pickup, and lighting. Mr. McFadden testified that he would not have any food other than ice cream and perhaps some pretzels. There would be no grill for sandwiches.

Mr. Dougherty referred to his Completeness Review No. 2 letter of November 18, 2009 again. The applicants would need a variance for the off-street parking space for delivery vehicles because of its size

**DELANCO TOWNSHIP
JOINT LAND USE BOARD
REGULAR MEETING
DECEMBER 1, 2009**

and because the space would not be paved. Mr. Dougherty recommended that bumper stops be used to delineate the parking spaces in the stone parking lot. The location of trash receptacles throughout the site, anchoring the deck and gazebo to prevent flood damage, and stormwater management were also discussed. Mr. Dougherty confirmed with Mr. McFadden that the monitoring well had been removed and that an isolux drawing for the street light would be provided. Mr. Germano confirmed with Mr. Dougherty that any wetlands permits needed would be a condition of approval. Mr. Ziegler noted that the applicant had a wetlands delineation from 1995 that was part of the riparian grant application and that he would provide that information to Mr. Dougherty.

Ms. vanGenderen asked the applicant to provide testimony pertaining to the November 30, 2009 letter from the Delanco Fire Official. Mr. McFadden described the refrigeration units he was going to use and stated that the garage may be used for extra freezers. He reiterated that there would be no cooking. Mr. Ziegler stated that the sheetrock used between the first and second floors would be fire rated to meet code.

Ms. Lohr asked Mr. McFadden which flood plain the property was in. Mr. McFadden stated that it was in an A-5 flood plain. There was discussion pertaining to Chapter 65 of the Township Code which regulates flood damage prevention. It was determined that Chapter 65 did pertain to this application.

Ms. vanGenderen opened the hearing to the public. All members of the public were sworn in by Mr. Germano before giving testimony.

Carl Taraschi, 55 Pennington Court—Mr. Taraschi commented that if the Township Committee had adopted the Master Plan, the McFadden's property would be zoned C-2. He felt the applicants were thinking creatively. Not only were they creating a business but for the cost of a single dip cone they were providing the opportunity to sit in a gazebo by the Rancocas Creek. The Master Plan talks about opening access to creek views. Mr. Taraschi felt that from the point of view of the conditional use that the application should be approved by this Board. Mr. Taraschi saw numerous problems with the site plan and thought that the Board should grant preliminary approval but not final approval. He had concerns about the lack of an isolux plan and how lighting would affect the neighboring properties and traffic coming over the bridge. He had concerns about parking, use of the garage for storage purposes, the crosswalk, and the use of bumper stops in the parking area. He felt final approval should not be given until these details were pinned down. All details should be on the site plan. Mr. Taraschi encouraged the Board to grant only preliminary approval tonight.

Kari Fitzgerald, 219 Buttonwood Street—Ms. Fitzgerald has lived in the neighborhood for over 20 years and does not believe the site is amenable to a business. She was concerned about the safety of young people near a body of water. She expressed concern about the traffic turning right onto Rancocas Avenue off of the bridge and the danger to people crossing the street. The street is very narrow and she was concerned about on-street parking by customers running in to get ice cream.

Mr. Germano instructed the Board to ignore Ms. Fitzgerald's first two points. Her concern about parking is something the Board can control, however, the Township Committee has decided to make this business a conditional use in the area. Ms. Fitzgerald's point about the appropriateness of the site for a business

**DELANCO TOWNSHIP
JOINT LAND USE BOARD
REGULAR MEETING
DECEMBER 1, 2009**

must be disregarded. There was further discussion regarding on-street parking and the zoning of the area. Mr. Germano also emphasized that the Board could only focus on the conditional uses of the property. The Board cannot take into consideration the impact of the application on the neighborhood.

Steve Schofield, 400 Burlington Avenue—Mr. Schofield asked about the waiver of a traffic study. Mr. Dougherty responded that a Traffic Impact Study is part of declaring the application complete or incomplete. Mr. Schofield asked what a Traffic Impact Study would entail, and Mr. Dougherty responded that it would show the impact of the business on local traffic. Mr. Dougherty said that with nine parking spaces the trip generation which would ultimately come out of the traffic study would be negligible. Mr. Schofield expressed concern about the traffic, parking in the area of the business, and pedestrian safety. There was discussion regarding the location of the driveway leading onto the property and how bridge openings impact traffic. Mr. Schofield felt there was contradictory testimony regarding the size of the business. He felt that people would park on the street so they wouldn't have to pull in and out of the parking lot. He also felt that hours of 9 AM to 9 PM didn't seem logical especially in the summer.

Christine Holahan, 213 Buttonwood Street—Ms. Holahan commented that parking was going to be an issue. She questioned the testimony that had been provided regarding the number of seats on the deck and the gazebo. She commented that her parked vehicle has been hit twice and both of her children's vehicles have been hit. Mr. Martin asked Ms. Holahan if she was aware of any accidents at Rancocas and Burlington Avenues within the past two to three years. She responded that there had been several.

Joanne Peregoy, 216 Buttonwood Street—Ms. Peregoy commented that her parked car had also been sideswiped. She expressed concerns about drivers coming off of the bridge too fast and mentioned an incident where a drunk driver came off the bridge and sideswiped all of the cars on Burlington Avenue. She did not feel this was a good location for an ice cream parlor and was concerned about safety. She described problems with teenagers in Gateway Park.

Michael Kelley, 213 Buttonwood Street—Mr. Kelley asked if any other business would have to conform to the lot size in the ordinance. Mr. Germano responded no. The lot size is an existing condition that they cannot do anything about.

Claude Reid, 216 Buttonwood Street—Mr. Reid expressed concerns with the traffic. He felt the corner of Rancocas and Burlington Avenues was very dangerous. He also asked if the business needed a fire lane. Mr. Dougherty responded that the letter from the Fire Official did not address that, and there is no specific requirement in the ordinance for a fire lane. Mr. Germano stated that the plans were sent to the Fire Official and he had prepared a set of recommendations. There was further discussion regarding zoning. Mr. Reid also said he had to call the police a lot because of problems with teenagers at Gateway Park.

Mary Ward, 201 Buttonwood Street and Anna Mae Stecher, 420 Rancocas Avenue—Ms. Ward and Ms. Stecher expressed concern about people breaking into their homes. Ms. Stecher was worried about the business becoming a hang out. Ms. Stecher testified that she had owned a soda shop which became a hang out and the police had to come to her store. They were concerned about their property values. They expressed concern about drugs, traffic, and young people hanging out in Gateway Park.

**DELANCO TOWNSHIP
JOINT LAND USE BOARD
REGULAR MEETING
DECEMBER 1, 2009**

Ms. vanGenderen closed the hearing to the public.

There was discussion pertaining to items currently on the property such as a fabric car port, a boat, and a motor home and where those items would be stored if the application was granted. Mr. and Mrs. McFadden had always intended the property to be an ice cream parlor. The zoning in 1995 was commercial. Ms. vanGenderen asked what was planned if the business was not successful. Mr. Ziegler responded that it would continue to be a house. If the Governing Body adopted the recommendations of the Master Plan it would become a permitted use and there wouldn't be any variances associated with it other than pre-existing nonconformities. Mr. Ziegler went on to say that he hadn't heard anyone complain that the narrowness of the lot or the fact that the house is 25 feet from the street instead of 35 feet from the street makes it a bad location. Other issues have been discussed but not those. The Governing Body has already decided this is a good use and the applicants just have to meet the bulk requirements. The lot cannot be made deeper. The applicants do not have to prove that this site is particularly well suited to this use. In looking at the Master Plan, the town is trying to encourage people to have access to a view of the water. The issues with respect to traffic and a public park across the street are existing conditions. Mr. Ziegler's clients plan on closing at 9 PM because that is when the park closes.

Ms. Moore expressed concern about the number of seats and parking. She did not think 12 seats was a realistic number and if there are more customers the parking could be inadequate. Mr. Ziegler stated that he was not asking for preliminary and final approval tonight because there are too many details left out on the plan. The Board could consider the conditional use variance. Mr. Matulewicz referred to the Scenic Corridor section of the Master Plan which discusses enhancing the visual character of the Township. He felt there was a conflict in the current Master Plan with the portion that encourages enhancement of the waterfront. The use in the area has gotten so intense it has actually detracted from the viewshed. Mr. Matulewicz believed the insufficient width and depth of the lot would further detract from the viewshed if the use goes forward. He also felt that people would now be charged for the privilege of experiencing the viewshed.

Mr. Germano commented that if the building were set back as far as it should be the Board could require that the applicant provide parking in front of the building. The distance of the building from the street takes that option away. Mr. Ziegler commented again that they would like time to revise the plans. Mr. Germano reiterated that the Board is not allowed to consider the adverse conditions in the neighborhood. They are not reasons to say no to something that the Governing Body has said can go in this zone. Mr. Germano advised the Board that they have 120 days to decide the case.

Ms. Lohr referred to the Taylor Design Group Second Planning Review letter of November 30, 2009. She summarized that the Board is dealing with four variances: lot depth, front yard setback, rear yard setback, and the size of the apartment. These are the items that need to be considered in deciding whether or not to grant the variances. Ms. Lohr was also not satisfied with the seating information. She would like to see a more detailed seating plan with the proper widths that are required between tables and chairs and to see the maximum capacity on the deck, gazebo, and inside. The seating directly impacts parking.

**DELANCO TOWNSHIP
JOINT LAND USE BOARD
REGULAR MEETING
DECEMBER 1, 2009**

Mr. Anastasi asked if the applicant had done a business plan. Mr. Germano responded that it would not be appropriate to give a business plan too much weight. The Board does not make business decisions for people. Ms. vanGenderen asked what would happen to the COAH unit if the business failed. The building cannot be converted back into a single family residence. Ms. Moore added that because of the apartment's undersized square footage the Board would already be creating a substandard unit. Mr. Germano did not know the answer and had to give the question some thought. Ms. Lohr asked why the applicant had chosen to create a COAH unit. Mr. Ziegler responded that the ordinance recommended it. Ms. Lohr responded that the upstairs space didn't have to be an apartment. It could be used for storage instead of the garage which would preserve more of the viewshed. Mr. Ziegler responded that the apartment was a way of generating some revenue.

Mr. Ziegler asked the Board to table the application until the next meeting to allow the applicants time to get answers to the Board's questions. Ms. vanGenderen announced that anyone who had received a 200' notice would not be renoticed and that the application would be carried to the Board's next regularly scheduled meeting of January 5, 2010 at the Delanco Township Municipal Building at 7:00 PM. Members of the public who were present to comment on and hear the application should return at that time for the continued hearing.

Motion by Ms. Mader, seconded by Mr. Matulewicz that the McFadden application be continued to January 5, 2010. The voice vote by the Board was unanimous in favor.

Draft 2010 Meeting Schedule

Ms. vanGenderen stated that the only meeting that would have to be rescheduled from the normal first Tuesday of the month would be the November meeting. That meeting will be scheduled for Wednesday, November 10, 2010.

Formation of Professional Services Subcommittee

Ms. vanGenderen asked for volunteers for the subcommittee. Mr. Lord asked if it was necessary for the Board to go through this process every year. He suggested that there could be one year contracts with two one year extensions that would be mutually agreed upon by both the Board and the professionals. Mr. Germano said that he would speak to Mr. Heinold before the January meeting and get back to Mr. Lord about his suggestion. Ms. Lohr mentioned that another option was a non-competitive process. Ms. Jass, Mr. Martin, and Ms. Moore volunteered to be on the subcommittee.

Creek Road Realignment Zoning Study

Mr. Lord stated that Mr. Taylor wanted to be present for the discussion but could not attend tonight's meeting. The Board made the decision to defer the discussion until the January 5, 2010 meeting.

Standards for Granting/Denying Variance

The Board made the decision to defer the discussion until the January 5, 2010 meeting.

**DELANCO TOWNSHIP
JOINT LAND USE BOARD
REGULAR MEETING
DECEMBER 1, 2009**

Open Meeting to the Public

Ms. vanGenderen opened the meeting to the public and since there were no public comments the meeting was closed to the public.

Comments from the Board

There were no comments from the Board.

Adjournment

A motion to adjourn the meeting was made by Mr. Lord and seconded by Mr. Matulewicz. The voice vote by the Board was unanimous in favor.

Katherine Martin
Board Secretary

Approved: January 5, 2010