



ANDOVER TOWNSHIP

SUSSEX COUNTY • NEW JERSEY

Land Use Board
Municipal Building
134 Newton Sparta Road
MINUTES
June 13, 2023
7:30 p.m.

CALL TO ORDER:

Mr. Messerschmidt called the meeting to order at 7:30pm.

PLEDGE OF ALLEGIANCE:

Mr. Messerschmidt led the room in a flag salute.

OPEN PUBLIC MEETINGS ACT NOTICE:

Mr. Messerschmidt read the following into the record:

This is an open public meeting of the Andover Township Land Use Board to be conducted in-person only at the Municipal Building, located at 134 Newton Sparta Rd., Andover, NJ 07860. Notice of this meeting was given in accordance with the Open Public Meetings Act, Chapter 231, Public Law 85. The rules are generally as stated on the agenda. No new testimony will be taken after 10:30pm. Adequate notice of this meeting has been provided, with an electronic copy posted on the Andover Township website at www.andovertwp.org.

ROLL CALL:

Eric Karr - Present
Eric Olsen – Present
John Carafello – Present
Suzanne Howell – Present
Richard Skewes – Present
Joseph Ordile – Present
Krista Gilchrist – Present
Sean Degan – Excused
Paul Messerschmidt – Present

Also Present:

Richard Brigliadoro, Esq.
Cory Stoner, PE
Stephanie Pizzulo, Secretary

ADMINISTRATIVE ITEMS:

Approval of Minutes: May 30, 2023

A motion to approve the minutes of the May 30, 2023 meeting was made by Ms. Gilchrist and seconded by Ms. Howell. Roll Call: Eric Karr – yes, Eric Olsen – yes, Joh Carafello – yes, Suzanne Howell – yes, Joseph Ordile – yes, Krista Gilchrist – yes, Paul Messerschmidt – yes. Motion carried.

RESOLUTIONS: None.

COMPLETENESS REVIEWS:

1.) Feels of Green, LLC B: 155 L: 5.01 A23-4

The applicant proposes to redevelop the commercial building to contain a small area in the front (721 square feet) for retail use and a back area for office and storage. The proposed use is a cannabis dispensary. The applicant proposes an addition of 95 square feet to the existing 1,434 square foot commercial building. An addition of 8 parking spaces and 1 loading area are proposed with 1,000 square feet of new asphalt paving proposed along with an 8-foot-high masonry wall, new lighting and landscaping.

Mr. Stoner said the following items needed to be addressed by the applicant: the zoning table needs to be updated with the Redevelopment Zone, the zone table in the application needs to be updated. He said a copy of the property survey, deed, and the well information for the house and the commercial building need to be provided. Mr. Stoner said a copy of the wetlands LOI or a certified report from a wetland expert needs to be submitted. He said an EIS and a copy of the Health Department septic application need to be provided. Mr. Stoner said the lighting details, dumpster location, mechanical equipment, retaining wall and steep slopes need to be added to the plan. He said the applicant needs to submit an architectural floor plan and the height of the building. Mr. Stoner recommend the application be deemed incomplete.

A motion to deem the application incomplete was made by Ms. Howell and seconded by Mr. Ordile. Roll Call: Eric Karr – yes, Eric Olsen – yes, John Carafello – yes, Suzanne Howell – yes, Richard Skewes – yes, Joseph Ordile – yes, Krista Gilchrist – yes, Paul Messerschmidt – yes. Motion carried.

HEARINGS:

1.) Barone, Pat B: 62 L: 4.04 Application # A23-3

The applicant is seeking an interpretation for the property, which is in the R-3 zone where agricultural/farm use is permitted as is, and including, single family detached dwelling. There is an existing single-family detached dwelling. There are numerous buildings related to the existing agricultural/farm and residential use – shed(s), stable, coop, cabin, by Valentine’s Pond, garage to be Ag labor housing, and an existing 2 story building for storage/workshop with regard to the agricultural/farm use. Applicant seeks an interpretation that these structures are

all customarily incidental to and part of the principal agricultural/farm and residential use pursuant to the Andover Township Code R-3 zoning district and Sections 190-29, Right to Farm and 190-42, Agricultural and Farm Uses.

Ms. Megan Ward, Esq. of Kelly & Ward, LLC was representing the applicant. Mr. Pat Barone, property owner and Mr. Matthew Fox, professional land surveyor with Canger Engineering Associates were also present.

Ms. Ward gave a history of the property ownership and said it was subdivided in 1973 and the Barone's have owned the property since 2006. She said they submitted some photos of the property and H-1 shows the existing garage that is proposed to be altered into agricultural labor housing. She said there is a photo of the cabin, which was there when Mr. Barone purchased the property. She said they also submitted the real estate multiple listing of the property from 2005 that shows there were numerous structures on the property including a two-car garage with an office and half bath. She said they were seeking an interpretation that the existing structures are devoted to agricultural and residential uses and are permitted in the R-3 zone and variances for setbacks for the existing structure. She explained the agricultural setbacks and the residential setbacks. She said they were seeking a variance for an accessory structure in the front yard. She explained the location of the existing house. Ms. Ward said they are estimating the house and other structures on the property were built in the late 1970s. She said there were no building permits found for any of the existing buildings that were there when the Barone's bought it.

Mr. Brigliadoro swore in Mr. Matthew Fox, PE, LS of Canger Engineering Associates.
Mr. Brigliadoro swore in Mr. Pat Barone, property owner.

Mr. Fox gave his qualification, which were accepted by the Board. Mr. Fox presented the plans that were submitted with the application and said they were prepared by his office. He explained sheet 1 of 3 entitled "Interpretation Map" which depicted the existing structures. He explained Valentines Pond and the direction of the water flow. Mr. Fox explained sheet 3 of 3 entitled "Photograph Location" and the photographs submitted with the application. He said they have an approved septic system that has been constructed which includes a pump tank and a septic tank located next to the existing garage. He said based on the approval it is for the house and existing garage. Mr. Fox said he did review the LOI, which was submitted with the application. He said it allowed for the construction of a residence within a certain proximity of Valentine's Pond. He said they have a Flood Area Hazard permit. Mr. Fox identified the wetlands and buffer zones on the map. Mr. Fox explained that the permits allowed Mr. Barone to add an addition to the house and restore the cabin.

Mr. Barone explained the multiple listing document for the property which was submitted with the application and which was the listing when he purchased the property. He said when he purchased the property in 2006 there was a cabin on the pond, the garage, a barn type shed, and another shed for firewood. He explained the photo of the back of the garage as depicted in 2006. He explained the photo of the cabin on the pond and a photo of the cabin and a footbridge as depicted in 2006. He said he did restoration work to the cabin on the pond and uses it for recreational use. He said there was wiring run to the cabin for electricity, which he removed however; he would like to restore electricity to the cabin. He said there is no plumbing or bathroom in the cabin, there is no septic and he would not use it for human habitation. He said he removed a carport and coop, which existed when he bought the property. Mr. Barone said he built a two-story structure in their place, which has a smaller footprint than the two combined. He said the new structure is for storage and a workshop and agreed it would never be used for human habitation. He said he intends to run electric to the structure but it would not have a bathroom. He said he might run water to the building for a sink. He said he has not done anything with the existing garage however; he would like to make it into a two-bedroom residence. He said it would have the same footprint; he would just add a second story to the structure. He is proposing a two-bedroom, one bathroom house that is connected to the existing septic system. He said he is proposing to hire his grandchildren as farm help; his daughter and her family would live in the main house and he would live in the smaller house. He agreed the occupancy of the altered garage would only be someone who would be directly involved in the agricultural use. He agreed he would not rent that space to a third party not related to the agricultural use. He said he wanted to build a new 4-bedroom house where the existing house is and would keep the house in the same footprint. He said he would get permits and inspections for the house and the alteration of the garage. He said he would not change the use of the property, which was residential and agricultural.

Ms. Ward questioned Mr. Barone on the use of the property when he purchased it. Mr. Barone said there was a small part of the property used for agriculture and he has expanded that use. He said property is assessed as farmland.

Mr. Stoner asked for clarification on which buildings were built after Mr. Barone purchased the property. Mr. Barone said he built the stable, the coop and the sheds. He said he built the two-story building however, there was an existing building there and a carport. Mr. Stoner went over the variances needed for the structure built by Mr. Barone. Mr. Stoner asked about the flood hazard permits. Mr. Stoner asked if Mr. Barone obtained permits for the two-story building. Mr. Barone said when he built the two-story building the Construction Official at the time said he did not need permits to build because it was a farm. Mr. Stoner said moving forward; Mr. Barone will need permits. Mr. Stoner asked about the 2006 violations for tree clearing and runoff. Mr. Barone said there was runoff from the unpaved driveway and dirt was going into the road. He said he cleaned up the road and paved the driveway. Mr. Stoner asked about the D.E.P. violation. Mr. Barone said he did recall a violation from the D.E.P. Ms. Ward

said from reviewing the Township's files, there was a violation for field clearing and a stop work order and a requirement for a restoration plan that was carried out. She said the N.J.D.E.P. permit showing it was corrected was submitted to the Board. Mr. Stoner asked about the septic system. Ms. Ward said it was designed as a seven-bedroom septic and approved to serve both the house and altered garage. Mr. Stoner requested information to back that up. Mr. Stoner asked if Mr. Barone was going to demolish the existing home and build a new one on the same footprint to which Mr. Barone said yes. Mr. Stoner felt the agriculture labor housing was leaning towards a second principal structure on the property.

Mr. Carafello noted there were only about four farmable acres and asked what Mr. Barone was farming on four acres that qualified for farmland assessment. Mr. Barone said he grows a little over an acre of garlic. He said he has a farm on Brighton Road with about 2,000 egg laying chickens. He said he wanted to raise the chickens in the coop on Kilroy Road and then bring them to Brighton Road. Mr. Fox said the property is farm assessed. Mr. Carafello asked if the LOI would be updated. Mr. Fox said they would need a letter from a wetlands expert if they changed the footprint of the house.

Mr. Ordile asked for clarification on the variances being sought. Ms. Ward went over the variances the applicant was seeking. There was a lengthy discussion on the variances needed. Mr. Ordile asked about the addition to the house and restoration of the cabin. Mr. Fox said the house has not been rehabbed to any extent, the outside of the cabin has been finished but the inside is unfinished and there are no utilities to the cabin. Mr. Barone said there is nothing inside of the cabin. He said the cabin was falling down and he just made it safe. He said he removed the existing electric to the cabin. Mr. Ordile referenced photo #7. Mr. Fox explained that the proposal is for a two-story agriculture workshop and storage area associated with the agriculture labor housing. Ms. Ward said he would like to put electric to the structure. The use will not change. Mr. Fox said it is a substandard second floor. Mr. Ordile asked for the well location to which Mr. Barone said the well is in the front. There was a discussion on the well providing water to the existing house and garage.

Mr. Messerschmidt asked if the flood hazard maps have been updated in recent years and asked if the applicant would need a new LOI. Mr. Stoner said they might not need a new LOI. Mr. Messerschmidt asked if the proposed agriculture labor housing is to essentially move his family in to live on the property with him to which Mr. Barone said yes.

Mr. Olsen noted agriculture labor housing is for someone devoting 51% of their time to the agriculture use and asked if that would be true of Mr. Barone's family. Mr. Olsen said that typically agriculture housing is not for the owners of the farm and their family members. Mr. Olsen asked if the family would be compensated for their labor. Mr. Barone said he has an orchard on the property. Mr. Olsen asked if the family would work on the farm on Brighton Rd to which Mr. Barone said no.

Ms. Gilchrist asked if Mr. Barone planned to expand the orchard to which he said yes. Ms. Gilchrist asked Mr. Stoner if there could be two principal dwelling units on a farm. Mr. Stoner said the Board would need to determine if the two principal dwellings are part of the agricultural use. He said the Board needed to determine if the agriculture labor housing is part of the farm and appropriate; if not then it would be a second principal use.

Mr. Karr asked if the garage is currently used for agriculture and would it remain in that use if the Board determined it is not to be used for a labor residence to which Ms. Ward said yes.

The Board took a 10-minute break.

Mr. Briigliodoro said the notice asked for an interpretation or as an alternative, a use variance for two principal structures on the property to which Ms. Ward agreed and said that was done as a precaution. She said they were applying for the agricultural use however; if the Board did not concur with that request, then they would move forward with a request for a use variance. She said they do not consider it a second principal structure. Mr. Briigliodoro said in looking at the ordinances, he was not able to find where having two principal structures on the lot in the R-3 zone is allowed. Ms. Ward said it is limited to agricultural housing. He said he could not find that in the ordinance and asked Ms. Ward what section of the ordinance allowed for it. Ms. Ward said the ordinance does not cover that and that is why they were asking for an interpretation that would allow for that use. She said the State Agriculture Board and the County Agriculture Board was charged with identifying and defining recognized agricultural related activities and labor housing had been identified as part of that. She felt it is not uncommon for there to be onsite agricultural labor housing. Mr. Briigliodoro said the ordinance says that any use not identified as permitted is prohibited. He said the Board would make an interpretation as to whether or not to allow two principal buildings; one as agricultural housing. Ms. Ward said if the Board interprets the agriculture housing as a second principal structure, then they would seek the variance.

Mr. Carafello asked what the definition of agriculture housing would be. Ms. Ward said it would depend on the type of farming operation and would be tied to the agriculture operation. Mr. Barone said he farms all year long as he has rabbits, chickens and goats. Ms. Howell asked if there would be animals on this property to which Mr. Barone said no. He said he would raise chickens on the property. Mr. Ordile asked about the farmable acres. Ms. Ward felt the pond was a pertinent water body and included in the farmland assessment. Mr. Ordile asked for the number of actual acres farmed. Mr. Fox said the agriculture housing unit would have to be in compliance with the State Agriculture Law.

Mr. Karr questioned the use of the garage as agriculture labor housing. Mr. Fox said whoever lived in the agriculture labor house would have to be an employee of the farm. Mr. Olsen said

he found it problematic if the property owner was living in the agriculture labor unit. There was a discussion on complying with State Agriculture laws. Mr. Ordile asked if Mr. Barone was currently living on the property to which he said he was not.

Mr. Messerschmidt asked if the applicant would stipulate to a deed restriction that only family could live or work on the property. There was a discussion on who could live on the property.

The Board took a five-minute recess.

Ms. Ward said her client agreed to a deed restriction that only family members would live on the property. Mr. Carafello expressed a concern with enforcement.

Mr. Messerschmidt opened the meeting to the public.

Mr. Brigliadoro swore in Mr. James Streeter, a resident of Andover. Mr. Streeter said the area is residential and expressed a concern with noise from livestock. He asked if there would be the sale of farm products and said Kilroy Road is a narrow road and felt there is no safe place to park to purchase the products. Mr. Barone said he must sell the farm products in order to keep his farm assessment. He said he could put a stand inside of his property on the driveway and have a safe area for cars to turn around. Mr. Fox said the driveway is extensive and there is adequate parking. Mr. Streeter expressed a concern with the increase of traffic.

Mr. Brigliadoro swore in Mr. Cory Tellbuescher, a resident of Andover. Mr. Tellbuescher read a definition of the New Jersey agriculture housing. He said it is for temporary housing. He felt permanent housing for the property owner did not fit that definition. He expressed a concern if the property transfers and the new owner does not want to farm.

Mr. Brigliadoro swore in Mr. Robert McDonald, a resident of Andover. Mr. McDonald asked if there was any intent to rent or lease any of the buildings to non-family members to which Mr. Barone said no.

Mr. Brigliadoro swore in Mr. Ashraf Salib, a resident of Andover. Mr. Salib said the property had been vacant since Mr. Barone purchased it and the workshop was constructed without a permit, which is very close to the property line and expressed a concern with noise. He felt it would be hard to enforce who is living on the property.

Mr. Barone swore in Mr. Glen Rubin, a resident of Andover. Mr. Rubin expressed a concern that the property would become a two-family property and had a concern with the policing of the site.

Mr. Briagliadoro swore in Mr. Iaroslav Jouravlev, a resident of Andover. Mr. Jouravlev expressed a concern with the structures built without permits. He said the testimony was confusing as to who would be living in the house and who would be living in the garage. He felt the orchard was not producing fruit and the property is neglected. He expressed a concern with the chicken coop being so close to his property.

Mr. Briagliadoro swore in Mr. Jim Eskin, a resident of Andover. Mr. Eskin said he is a builder in the area for 40 years and had a concern with two residences in a single-family zone. He felt the house could be built big enough to accommodate the entire family. He felt the property is really a farm. He said the area is residential and very quiet and expressed a concern with buildings being built without permits, as he has never been able to build a structure without a permit. Mr. Eskin said the orchard was cleared which produced runoff into the stream and expressed a concern with the farming activity running into the stream and lake.

Mr. Briagliadoro swore in Ms. Suzanne Streeter, a resident of Andover. Ms. Streeter expressed a concern with the term “farm labor housing”. Ms. Streeter asked the Board how many properties in Andover have agriculture labor housing. Mr. Karr said the Board did not know.

Mr. Briagliadoro swore in Mr. Mark Fortunato, a resident of Andover. Mr. Fortunato felt it was problematic that there are two residences on one property.

Mr. Briagliadoro swore in Mr. Wayne Grenewicz, a resident of Andover. Mr. Grenewicz said Sussex County is a farming community and once the farm use expires, the farm labor use of the house would expire. He felt the deed restriction would restrict the family’s ability to hire help.

With nobody else coming forward, the meeting was closed to the public.

Ms. Howell asked if the farm produce must be sold from that particular property. Mr. Karr said the owner needs to produce \$1,500.00 worth of income from the property no matter where it is sold. Ms. Howell felt the deed restriction would not be feasible.

Mr. Ordile asked what type of farm equipment would be stored on the property. Mr. Barone said a small farm tractor.

Mr. Briagliadoro said the Board needs to decide if the agriculture labor housing is permitted. Mr. Briagliadoro went over the requested bulk variances.

A motion to make an interpretation that under the R-3 zone, agricultural uses are permitted which includes the agricultural housing component that the applicant is requesting was made by Mr. Olsen and seconded by Mr. Skewes. Roll Call: Eric Karr – no, Eric Olsen – yes, John

Carafello – no, Suzanne Howell – no, Richard Skewes – yes, Joseph Ordile – no, Krista Gilchrist – yes, Paul Messerschmidt – no. Motion failed.

Ms. Ward asked for a vote on the bulk variances. She said they would return with planning testimony for the use variance. There was a lengthy discussion on how to proceed with the bulk variances. Ms. Ward went over the requested bulk variances.

A motion to allow the existing accessory structures to remain where they are, as they are, on the property and that all building permits for the two-story workshop building and the cabin will be obtained was made by Ms. Howell and seconded by Mr. Karr. Roll Call: Eric Karr – yes, Eric Olsen – yes, John Carafello – yes, Suzanne Howell – yes, Richard Skewes – yes, Joseph Ordile – yes, Krista Gilchrist – yes, Paul Messerschmidt – yes. Motion carried.

Ms. Ward asked that the hearing be carried to August 1, 2023 without further notice and granted the Board an extension of time until August 31, 2023. Mr. Briagliadoro clarified this for the public.

ORDINANCES: None.

OLD BUSINESS: None.

NEW BUSINESS: None.

LIAISON REPORTS:

Township Committee – Eric Karr

Mr. Karr said the Township Committee approved the Redevelopment Plan for 1023 Limecrest Road.

Environmental Commission –Eric Olsen

Mr. Olsen had nothing to report.

Sustainable Andover – Eric Olsen

Mr. Olsen had nothing to report.

Economic Development Committee – John Carafello

Mr. Carafello had nothing new to report.

Zoning Map/ Zone Changes Subcommittee – Paul Messerschmidt

Mr. Messerschmidt had nothing new to report. Mr. Stoner said he met with the Board Secretary to go over the Zoning Map and made a few corrections. Mr. Stoner will update the map and get that out to the Board.

Master Plan – Joseph Ordile

Mr. Stoner said they wanted to develop a questionnaire and would schedule a meeting with the subcommittee to get that underway.

VOUCHERS:

Company	Purpose	Amount	Paid By
Weiner Law Group	Legal	\$1,296.00	Legal Budget
Weiner Law Group	Always Comfy	\$160.00	Applicant's Escrow
Weiner Law Group	Barone, Pat	\$96.00	Applicant's Escrow
Weiner Law Group	Steinwand, Joseph	\$80.00	Applicant's Escrow
Weiner Law Group	National Land Developers	\$208.00	Applicant's Escrow
Harold Pellow Associates	National Land Developers	\$345.00	Applicant's Escrow
Harold Pellow Associates	Barone, Pat	\$345.00	Applicant's Escrow
Harold Pellow Associates	Engineering	\$414.00	Engineering Budget
J. Caldwell Associates	1023 Limecrest Redevelopment	\$325.00	Applicant's Escrow

A motion to pay the bills was made by Ms. Howell and seconded by Mr. Olsen. Roll Call: Eric Karr – yes, Eric Olsen – yes, John Carafello – yes, Suzanne Howell – yes, Richard Skewes – yes, Joseph Ordile – yes except to abstain from the J. Caldwell Associates voucher, Krista Gilchrist – yes, Paul Messerschmidt – yes. Motion carried.

CORRESPONDENCE:

Mr. Messerschmidt advised the Board that certain Board members had received an email from Ms. Gillespie regarding permeable surfaces. Mr. Briigliodoro said the email was referencing green stormwater infrastructure and the Board does consider them in an application. Mr. Stoner said the town does not require it as it could be costly. He said it could be a hardship to make it mandatory.

PUBLIC PORTION:

Mr. Messerschmidt opened the meeting to the public. With no public present, the meeting was closed to the public.

If a member of the public has a question or comment, please raise your hand and wait to be recognized by the Chairperson to speak. Please come forward when recognized and state your name and address, unless you are a registered covered person under Daniel's Law by the Office of Information Privacy. Please refrain from asking questions or making comments about any pending application before the Board, as the applicant may not be present for cross-examination. The Chairperson has the right to limit the amount of time a person from the public has to ask questions and make comments so all members of the public may have a chance to speak.

UPCOMING MEETINGS: June 20, 2023, July 18, 2023

ADJOURNMENT:

With no further business to come before the Board, a motion to adjourn was made by Mr. Olsen. It was seconded by Ms. Howell and passed with everyone saying aye.

Respectfully submitted,

Stephanie Pizzulo
Land Use Administrator