

July 10, 2008

The monthly meeting of the Greenwich Township Board of Adjustment was held on the above date and was called to order by Joe Schiller, Acting Chairman, at 7:30 P.M. in the Municipal Building. The meeting opened with the Pledge of Allegiance.

Pursuant to the Open Public Meetings Act, Chapter 231, PL, 1975, adequate notice of this meeting has been given in accordance with the Open Public Meetings Act by:

1. Mailing a notice of scheduled meetings of the Greenwich Township Board of Adjustment to the Express-Times and Star-Ledger.
2. Posting a notice thereof on the Township bulletin board.
3. Filing a copy thereof with the Township Clerk.

The following appointments were made by the Township Committee at their meeting held on July 10, 2008:

Angelo Faillace - filling unexpired term of William Savino, term expiring 2009
Dan Detore – Alternate member #1, term expiring 12-31-08
Richard Williamson – Alternate member #2, term expiring 12-31-09

Attorney Drill swore in the new appointments.

Board members present: Steve Babula, Dawn Marie Kondas, Joe Schiller, Robert Vetrecin, Dan Detore, Angelo Faillace, Richard Williamson. Also present were Michael Finelli, PE., Carl Hintz, Planner and Jonathan Drill, Esq. Absent were Bruce Williams and Ray Buckwalter.

Robert Vetrecin made a motion, seconded by Steve Babula, to adopt the minutes of the June 12, 2008 meeting. The vote is as follows:

IN FAVOR: Babula, Kondas, Schiller, Vetrecin, Faillace, Detore.
OPPOSED: None.
ABSTAINED: Williamson.

Motion carried.

Case No. 4-08, David Chemidlin, Block 26.04, Lot 24, Walter Way, setback and location for pool and accessory structure variance, public hearing.

Application was found complete in a letter dated July 2, 2008.

Sworn in by Attorney Drill was David Chemidlin, applicant. Mr. Chemidlin stated that two (2) variances are being requested due to the topography problems of the lot and drainage swale on his property. The first variance is a setback variance for a built-in pool. The poolside setback requires 15 feet. The applicant only has 10 feet. Due to a drainage swale running along the back of the house, the pool needs to be as far back away from the house as possible. The second variance is a location variance for an accessory building (shed), also due to the drainage swale. The applicant is asking for a 5-foot setback variance for the accessory building (shed). The zoning officer, in his denial, stated that the accessory building (shed) needs to be inside of the building setback lines. Mr. Chemidlin would like to put the shed as close to the pool as possible where the ground is level and then the ground can be graded down away from the pool and shed.

The acting chairman asked Mr. Chemidlin if he considered rotating the pool 90 degrees. Mr. Chemidlin stated that has been considered, but the way it is located now is the best location back in the far corner of the property. Mr. Schiller stated that if it were rotated, it would be further up on the high side of the property. Mr. Chemidlin stated that his property has three (3) swales, one on the right hand side of the property, left hand side and one that runs along the back of the house. The property starts going up towards the rocks at the back of the house. Mr. Chemidlin stated that if it were rotated 90 degrees, it would make the matter worse. When it rains, there is a lot of water running to those swales.

Mr. Chemidlin stated that the shed would be used to store all of the pool equipment. The pool pump will be in the back of the shed and will not be close to the property line. From the back of the property, there is going to be a small berm so when the water comes down, it will drain off to the sides of the pool and into the swale. There will be a three (3) foot retaining wall built. The flow of the water will remain the same. Mr. Chemidlin stated that the property in the back is higher.

Acting Chair stated that if the shed (accessory building) was relocated to the northwest corner, along the length of the pool towards the big swale that would bring the shed into compliance. By doing that, only one variance would be needed. Mr. Chemidlin stated that if that area were leveled even more to put the shed there, it would be cutting into the swale. The length of the pool is 43 feet with a three or four foot walk around the pool. If the shed was put on a platform, Mr. Chemidlin stated that the platform probably would be in the swale and even if it had a side entrance, part of the shed would still be in the swale. Mr. Chemidlin stated that the object of the placement of the pool and shed is not to

change the swale because he doesn't want any problems with water in his basement. Mr. Chemidlin stated that he tried all different locations, but this location is the best in order to keep it out of the swale.

Sworn in by Attorney Drill was Michael Finelli, Township Engineer. Mr. Finelli is familiar with the property because of the "rock wall" issue several years ago. Mr. Finelli reviewed the ordinance and stated that in the PDSF Zone, there doesn't appear to be specific accessory structure requirements for the PDSZ Zone. The fact that having the shed within the building setback lines is working against the applicant by virtue of where the applicant is proposing to locate the shed. The location will be in further in non-conformance because of violation of the rear setback versus a side yard setback. Side yard setbacks are 10' and 15', for a total of 25'. The board is at a loss to give the applicant a clear direction. The zoning officer has given direction that the requirements is that so the board is not going to question that fact. The zoning officer, in his denial, stated that the accessory building (shed) needs to be inside of the building setback lines. Attorney Drill stated that the applicant is seeking a variance to have the shed 5' off the line. Mr. Finelli, reading from Section 16-15.6.4 (e), states, "No building or structure other than entrance gatehouses, fences or freestanding walls shall be located within said setback areas".

The following exhibit was entered into evidence:

A-1: Topographic map of property.

Acting Chairman Schiller addressed the public. No public comments were heard.

After comments from the board, Angelo Faillace made a motion, seconded by Steve Babula, to grant the variances for the pool and accessory structure (shed) to Case No. 4-08, David Chemidlin. The vote is as follows:

IN FAVOR: Babula, Kondas, Schiller, Vetrecin, Faillace, Detore, Williamson.
OPPOSED: None.
ABSTAINED: None.

Motion carried.

Case No. 3-08, Lawrence & Cheryl Fuhrmann, Block 40, Lot 1.01, Voorhees Road and Route 173, Use Variance for proposed Martial Arts School, Public Hearing.

Representing the applicant was Michael Selvaggi, Esq. Attorney Selvaggi stated that the property is identified on the tax map as Block 40, Lot 1.01, a five (5) acre tract, which is a corner lot on Voorhees Road and Route 173. The property lies in the RCD zone.

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The following were sworn in by Attorney Drill: Cheryl Fuhrmann, Applicant; John Hansen, PE and Planner; Carl Hintz, Planner; Michael Finelli, PE.

Ms. Fuhrmann, 412 Mine Road, Asbury, N.J., testified that she would like to build a martial arts school for the community. Ms. Fuhrman was a physical education teacher. Ms. Fuhrman is a certified martial arts instructor, has a 4th degree black belt, has been in business for 11 years and currently has a school in Phillipsburg.

The main study is very child friendly and offers self-discipline, coordination and physical fitness. Community service is strongly stressed. Ms. Fuhrman son, Kirk, is a full time instructor. Other instructors are part time and most of them hold a national rank. At the current location, classes are held five (5) days a week, Monday, Tuesday, Wednesday, Friday, and Saturday. School hours open at 4:00 and close at 9:00 p.m. Classes on Saturdays are held from 7:30 to 3:30 p.m. Class sizes range from 15 to 20 students per class, with two instructors per class, and each class is held for 45 minutes. At the current location, there are no on-site competitions or tournaments. They are held elsewhere. The school offers women self defense. 60 to 75% of the student body is from Stewartsville/Greenwich Township area. **Correction: should read "60 to 65%"**. All of the schools black belts go through CPR training.

The following exhibits were entered into evidence:

1. Exhibit A-1: Display board with photos of an event called Conquer the Mountain. A charity run, co-sponsored with N. J. State Police, to help local fire and rescue, held in 2007.
2. Exhibit A-2: Display board of photos of a drug awareness program for parents and students held at the Greenwich Township School, sponsored by U.S. Family Martial Arts Center, held in October 2002.
3. Exhibit A-3: Background of U.S. Family Martial Arts Center showing what they offer the community. Color architectural rendering of the building the applicant is proposing to build.

The school is very family orientated. Families train together, compete and work on charity events within the community and within their own families. Four and five year olds start off by themselves and are separate because they need "tender loving care". They are not old enough to be in a family class. When they get older then they go in the regular curriculum with their parents. Children attend twice a week, year round and the goal is to reach black belt.

Ms. Fuhrmann stated that she is looking to move from her present location in order to open up the curriculum with an outdoor classroom. This site is within the current students living area and the site is a cleared lot and trees would not have to be taken down

to build anything. The lot was looked at to put trees back up on it. Solar is being looked into as part of the building and that would work well with the openness of that lot.

The following exhibit was entered into evidence:

4. Exhibit A-3: Colored architectural rendering of what is being proposed to be built.

The building will resemble a barn, fitting into the framework of the rural countryside. What are being proposed are two training rooms, two rest rooms and a small storage area for equipment. There is no second floor proposed and parking would be behind the building. The size of the building is 5,000 to 6,000 sq. ft. There will be no vending machines, kitchen or locker rooms. 165 families are currently enrolled and the goal is not to double the enrollment, but rather to use the outdoor facility and offer that extra classroom, weather permitting. A 6,000 sq. ft. building will give two large classrooms and manned by 4 (two in each classroom) instructors. If parties were held, they would be held just for the students and families. Ms. Fuhrmann hadn't given any thought to renting the building out for parties. Hours and days open would remain the same. Maximum class size is 15 per class and would remain the same in the new facility.
Correction: "Minimum class size is 15 per class".

Ms. Fuhrmann stated that anything that can be done in an indoor facility could be done in an outdoor facility. Working on the grass increases the ability to help strengthen ankles, balance and just enjoy outdoor air. There will be no outside bathroom facility. Having classes outside would not be an additional class. One class might be held indoors and the other class held outdoors. The outdoor class would still only have 15 to 20 in a class.
Correction: "The outdoor class would still only have 15 in a class".

The applicant will own the building and the land. Right now, Ms. Fuhrmann stated that, at the present facility, they are teaching in a restricted area and would love to perform in a larger area. In a larger facility, there would be no waiting for classes to end and the next one to begin, so everyone will be able to participate at all times. **Correction: should read "because of limited space, not all of the students can do their thing at the same time so some students have to wait on the side while others do their thing and with the new facility, they can do it at the same time".**

Planting trees are proposed, entrance would be from Voorhees Road and 31 parking spaces are being provided. There will be no special lighting and no outdoor training will be held at night. The proposed structure is to be served by private well and septic system. There will be no kitchen and no showers. Michael Finelli stated that there is plenty of room to put in an underground septic system and Attorney Selvaggi stated that the flow generated would be far less than a house.

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Attorney Selvaggi stated that this was the only piece of property for sale in the area and the property has been under contract since January. The Fuhrmann's are looking for an outdoor facility for the children and want to own their own place.

The COAH obligation would generate one unit affordable housing/low income obligation. Carl Hintz, Township Planner, stated, in his review letter that construction of nonresidential space generally does generate a growth share obligation, However, a development fee in the amount of 2.5% may be required. Pending State legislation may impact the applicability of the Township's Growth Share and development fee ordinances. The one unit would be provided on site or make a contribution. Mr. Hintz stated that the impact fee is the State legislation and the Growth Share ordinance is the township's current ordinance, which is provided on site or provided in a contribution. Mr. Hintz further stated that the township committee is to make the final decision as to onsite or contribution. This would be a condition of approval. Attorney Drill stated that the applicant would have to go to the township committee and find out what they want the applicant to do about that unit and that becomes part of the site plan application. If the unit is required on site, that would be part of the site plan. The COAH issue was further discussed between Attorney Selvaggi and Attorney Drill. Attorney Drill stated that if the Governor signs the bill, that will get rid of the township's 2%. It will make the State 2.5%, but will not get rid of the township's Growth Share Ordinance. Attorney Drill advised Attorney Selvaggi to further look into this issue and suggested that Attorney Selvaggi send the board a copy of the bill and his interpretation of the bill. The payment in lieu fee, which is the townships, is currently \$148,682. That figure is under the new third round rules.

John Hansen, PE,P.P., presented his qualifications to the board. Upon hearing same, the board accepted Mr. Hansen as an expert in the field of civil engineering and planning.

The following exhibit was entered into evidence:

Exhibit A-4: 2002 aerial shows subject property and surrounding area.

Exhibit A-5: Letter, dated July 10, 2008, from Environmental Technology Inc.

Mr. Hansen stated that the property is currently vacant with no structures on it, but there are crops on it. Soil investigations were done to see if a septic system can be used and were found to be favorable. There is a drainage swale that extends through the subject property, from Route 173 and goes down along Voorhees Road. The applicant hired an environmental firm to determine the presence or absence of freshwater wetlands or transition areas and the impact on any potential development of the property. In their letter, dated April 22, 2008, the investigation indicated no wetlands were identified on the property and the drainage feature is not subject to any regulations from the State.

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The property consists of five (5) acres and is located at the corner of Voorhees Road and Route 173. The property slopes gently and is located in the extreme west in the RCD Zone. The purpose of the RCD focuses on agricultural. The applicant is requesting a D-1 variance to permit a Martial Arts School. The proposed use is not a permitted use in the RCD zone.

Regarding the suitability of the proposal, the site has excellent access from Route 173 and access to Route 78. The site has difficulty being developed as zoned because of the size and drainage that runs through the property. It is an appropriate location for low development and the architecture of the building will be matched up with the area.

The lot will be landscaped, there will be no building mounted signage and there will be very limited signs and the development will not detract from the rural characteristics of the area. The applicant will incorporate some type of green design in the development and solar power component to utilize that energy resource for the site.

Regarding any negative criteria, it is a low impact commercial use and will not be a substantial detriment to the zone plan or zone ordinance. There will be no outdoor clutter and no excess clutter. It is located to major highways and scenic byways. Minimum curbing will be proposed. This proposal will protect the resources of the township. The use would be less intense than a single-family home with respect to water and sewage uses.

There is no substantial detriment to the public good. It is compatible to the surrounding uses. It will be a visual appealing site as far as the structure, the landscaping and the outdoor area. The use does not require a solid waste storage facility. There will be not outside excess noise or odors.

This is a family business and there is a need for it in the community. The location was hand picked, not only for its location to the major highways, but because of the scenic environment. The proposed structure is intended to look like a farm structure than a commercial development. The site will be designed with minimum curbing, or no curbing.

Robert Vetrecin stated that field floods. Mr. Hansen stated that the site would be designed so the water will go into the swale. The development will be higher in elevation than the drainage structure. Mr. Finelli stated that if this proposal goes to site plan, he would clearly try and incorporate some of those requirements consistent to what a zoning would be that would allow this proposal as a permitted use in its' relationship to the adjacent parcel. Some sort of buffer would be required. Carl Hintz, Planner, stated that the larger piece of land to the rear of this property is a farm, also. A farmland buffer would be required. Mr. Hintz asked Mr. Hansen as to the swale being a connection to a C-1 category stream. Mr. Hansen stated that it is the back of the creek and runs along

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Still Valley Road. Environmental Technology, who prepared the report, looked at the connection between the swale and the Pohatcong Creek and found that there is not a detailed connection and therefore, it is not regulated.

Mr. Hintz stated that the township's Master Plan indicates that the portion to the southwest of the stream is an area of where there are statewide important farmland soils.

Mr. Hansen hasn't evaluated those soils from the standpoint of vegetation growth or agricultural for crops. Basically, what were done were perc tests for development purposes. Mr. Hintz stated that the intent of the applicant is to provide for outdoor training on that portion of the site that is south of the stream. How would that be crossed? Mr. Hansen stated that, basically, we would put some type of culvert installation or a small pedestrian bridge over the drainage feature and provide access to the other side. Mr. Hansen further stated that, if needed, he might have to apply to DEP for a stream encroachment permit.

Mr. Hansen stated that the impact on the two existing residential properties would be minimal. The area where any noise might be generated is far enough away from the residential properties.

Attorney Drill stated that this proposal is a commercial use and the standards the board has to apply is whether the property is particularly suited for the proposed use. The professionals discussed the suitability argument, under the law. Mr. Hansen stated that this proposal is an extension of a commercial development, that being Muller Chevrolet. Attorney Selvaggi and Attorney Drill discussed the relief being sought and if the applicant is applying for "C" 2 variance for impervious coverage and lot size. Attorney Selvaggi stated that the granting of a "D" Use Variance would accomplish all that. Attorney Drill disagreed and requested that Attorney Selvaggi, orally, amend the application to seek "C" 2 variances for lot area and impervious coverage. After discussion, Attorney Selvaggi amended his application to include "C" variance for lot size.

Mr. Hintz asked Mr. Hansen if the applicant looked at any other property in the B-2 zone. Mr. Hansen stated that no other piece of property was looked into because Ms. Fuhrmann explained to Mr. Hansen what her vision was for her school. It included an outdoor recreation area that had a beautiful landscape and scenery associated with it and some degree of nature involved. Ms. Fuhrmann handpicked this location because of the access to the highways, but mainly because of the scenery and the quietness. Mr. Hansen hadn't researched if any other properties in the B-2 were available.

The acting chair opened the meeting for questions:

Neil Tribus, 722 South Main Street. Two residents were mentioned. There is only one. One residence was town down.

Attorney Drill stated that this is for questions only.

The acting chair opened the meeting for comments:

Neil Tribus, 722 South Main Street, sworn in by Attorney Drill, stated that there is only one resident there on Route 173. They tore the second house down. It was mentioned that two residents were mentioned.

Tracy Herdlein, 431 Daniel Drive, sworn in by Attorney Drill, stated that she is a teacher at Phillipsburg High School. Her family has gone through the program and is a part-time instructor there. Ms. Herdlein can attest to the quality of education that the children are getting. Ms. Herdlein sees what the program does for the community and should be kept in the community.

Dominick Esposito, 24 Leah Lane, sworn in by Attorney Drill, stated that his family goes to the center. They bring a lot to the community. It is teaching the kids self-esteem. They do work for the squads and fire companies and support them financially. Drug education programs are set up at the school, which is all done by volunteers. This program is a benefit for the community and is asking the board to do the right thing for the community.

Karen Hepworth, 414 Greens Ridge Road, sworn in by Attorney Drill, stated that the program has helped her to become a better parent. The program has helped the children become better people and to make the right choices. This will benefit the community.

Sharon Tribus, 722 South Main Street, sworn in by Attorney Drill, stated that the Fuhrmann's have brought some much to the children and parents. They have raised money for the community. This school is different. It is an exceptional school. This school will add to the value of the community.

Theresa McAllister, 419 Maxwell Drive, sworn in by Attorney Drill, stated that this is a family oriented place to train. Her family trains together. It would be a benefit to have this school part of Greenwich Township.

Upon hearing no further comments, the acting chair closed the public comment period.

Attorney Drill stated that the applicant needs a D-1 Use Variance. Mr. Hintz stated that the RCD zone permits agricultural uses and low density residential uses. This would, probably, be a permitted use in the B-2 zone.

Board members questions and comments:

Questions:

Joe Schiller: Where do the special programs take place and do they take the place of the classes.

Response: Ms. Fuhrmann stated that the charity work take place outside the facility. The lessons are within the classrooms and when specific programs are brought in, regular classes are cancelled. The programs take the place of the martial arts classes.

Dawn Marie Kondas: What is the possibility of having a COAH unit on site?

Response: Attorney Drill stated that the governing body would decide what to do with the COAH unit. The COAH issue is part of the site plan.

Comments:

Dan Detore: Because of the size of the property, there are limited uses.

Bob Vetrecin: It could be merged with adjoining piece of property. If granted, you develop a cascading effect and under mine the intent of the zoning. The intent of the RCD zoning is that you preserve farmland, watershed and groundwater. Bob didn't feel that those questions were addressed at all. It is close to major highways. The school does have merit. The ultimate consideration has to be what is the intent of the zoning, what is the intent of the governing body in terms of what is the foresight, with respect to future of Greenwich Township and why did it do what it did with respect to the zoning. Protecting natural resources is a big issue.

Angelo Faillace: Anytime you make a variance, there is going to be a cascading effect. It is adjacent to the car dealership and the proposal seems to be a low impact with this type of business. This use could fit in the way it is being used.

Angelo Faillace and Bob Vetrecin discussed the natural resources and the impact on how is we supporting the land use as set forth in the Master Plan.

Dawn Marie Kondas: It is a great concept. RCD zone does promote farming and to project the natural soils. This would be the best use because it does limit the impact to the environment.

Steve Babula: Some items weren't really addressed. The board needed to ask more questions. The size of the lot is only 5 acres and what could be done on that

5-acre lot, other than keep it farming, and not require some type of variance. We don't know if it will be combined with any other lots. We have to look at what we have now and that is we have a 5-acre lot. It is going to be farmed or needs a variance.

Richard Williamson: Because of his short tenure on the board and the complexity of the case, Mr. Williamson reserves comment.

Joe Schiller: This is definitely a difficult situation. The town has been over developed and the town spent a lot of time creating a Master Plan, creating new and larger zones. The building has stopped and that was the intent of the zoning and the Master Plan. The nature of this business seems to be very good for the community.

Angelo Faillace made a motion, seconded by Robert Vetrecin, to grant a D-1 Use Variance to Case No. 3-08, Cheryl and Lawrence Fuhrmann, Block 40, Lot 1.01, proposed Martial Arts School. The vote is as follows:

IN FAVOR: Babula, Kondas, Schiller, Vetrecin, Faillace, Detore, Williamson.
OPPOSED: None.
ABSTAINED: None.

Motion carried.

Angelo Faillace made a motion, seconded by Robert Vetrecin, to grant a C-2 Variance for lot size to Cheryl and Lawrence Fuhrmann, Block 40, Lot 1.01, proposed Martial Arts School.

Question on the motion: How does the COAH issue be addressed:

Attorney Drill stated that it would be a condition of approval that they have to go to the township committee to find out what they want the applicant to do with the one unit that has been created.

The vote is as follows:

IN FAVOR: Babula, Kondas, Schiller, Vetrecin, Faillace, Detore, Williamson.
OPPOSED: None.
ABSTAINED: None.

Motion carried.

Resignation: Bill Savino's letter of resignation was accepted with regrets.

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Robert Vetrecin made a motion, seconded by Dawn Marie Kondas, to adjourn the meeting. Motion carried. Meeting adjourned at 10:25 p.m.

Elva N. Pomroy
Board of Adjustment

Joe Schiller
Acting Chairman