

August 14, 2008

The monthly meeting of the Greenwich Township Board of Adjustment was held on the above date and was called to order by Ray Buckwalter, 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.
2. Filing a copy thereof with the Township Clerk.

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

Joe Schiller made a motion, seconded by Robert Vetrecin, to adopt the minutes of the July 10, 2008, as corrected. The corrections are noted in the July 10, 2008 minutes. The vote is as follows:

IN FAVOR: Kondas, Schiller, Vetrecin, Detore.

ABSTAINED: Williams, Buckwalter.

OPPOSED: None.

Motion carried.

**Chemidlin Resolution.** Resolution granting a "C(1)" Variance to permit a swimming pool and surrounding walk as well as a shed within the rear yard setback area, Case No. 4-2008, David Chemidlin, Block 26.07, Lot 24, was reviewed as to its' form and accuracy. Upon review, Joe Schiller made a motion, seconded by Robert Vetrecin, to adopt the Resolution as prepared by Attorney Drill. The vote is as follows:

August 14, 2008  
Page 2

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

Motion carried.

**Case No. 7-08, Doggie Day Care/P & M Land Group, Block 31, Lot 13, Use Variance, Completeness Determination.** Present were Patrick Miller, Michelle Ann Miller, Applicants and Jay Thatcher, Esq., attorney for the applicants.

The board reviewed Mr. Finelli's initial completeness review letter of August 11, 2008. The vast majority of all applicable checklist items have been satisfactorily addressed with the exception of the following:

1. A list of the names of all property owners within 200 feet of the property.
2. Certification from the Tax Collector that all taxes are paid to date.

Based upon Mr. Finelli's recommendation, Bruce Williams made a motion, seconded by Robert Vetrecin, to deem complete Case No. 7-08 and waive checklist items 3 and 6 but they are to be submitted prior to a public hearing. The vote is as follows:

IN FAVOR: Kondas, Schiller, Vetrecin, Williams, Buckwalter, Detore.  
OPPOSED: None.  
ABSTAINED: None.

Motion carried.

For the applicant and board's general information, Attorney Drill stated that the application is described as an extension of a non-conforming use. This applicant is operating by virtue of a D"1" Use Variance. This application should be classified as an additional D"1" Use Variance. The difference is in the standards that the board is going to have to apply when considering the case and would make a difference in the vote.

**Fuhrmann Resolution.** Ray Buckwalter, Chairman, recused himself. Bruce Williams, Vice-Chairman, even though he was absent for the July 10, 2008 meeting, conducted the meeting to discuss the Resolution. For the record: Mr. Williams will not be able to vote on the Resolution.

Attorney Drill stated that a third draft of the Resolution was prepared and the applicant's attorney, Michael Selvaggi, reviewed it and is acceptable with the exception of two (2) items. The first exception, condition one, page 13, questions the time period in which to get Final Site Plan approval. The Resolution states that in the event that the applicant obtains preliminary approval, the applicant shall obtain final approval within one (1) year

August 14, 2008

Page 3

of the date of the adoption of a Resolution granting preliminary approval. Attorney Selvaggi is requesting that the Resolution be amended to obtain final approval within three (3) years of the date of the adoption of a resolution granting preliminary approval instead of the one (1) year. Attorney Selvaggi is requesting more time because the applicant is a small individual and not a corporate applicant.

After discussion, a straw poll was taken on extending the time period from one (1) year to three (3) years to obtain final approval:

Joe Schiller: yes.

Bob Vetrecin: yes.

Dawn Marie Kondas: yes.

Dan Detore: no.

The second exception, condition 3, page 14, questions the affordable housing requirement. Attorney Selvaggi addressed COAH as it pertains to non-residential development. The obligation now is 2.5% and the applicant is obligated to follow the current state of the law.

The proposed development will result in the Township being obligated to provide one (1) unit of affordable housing in accordance with the recently adopted COAH third round rules. The applicant shall be obligated to do one of three (3) options to be chosen by the Township Committee:

- a. Provide for the construction of a unit on the property (a possible location would be in the building by creating a second floor for this purpose);
- b. Provide for the construction of a unit somewhere other than the property, but within the Township; or
3. Provide for a payment to the Township in lieu of constructing the unit (if permitted under the Statewide Nonresidential Development Fee Act).

Attorney Selvaggi stated, in his letter of August 13, 2008, recently, the governor signed into law the Statewide Nonresidential Development fee Act. The purpose of the law was to balance the development and redevelopment needs in communities with a reasonable method of addressing low and moderate income housing, without mandating inclusion of housing in every nonresidential project.

Based upon this statute, Attorney Selvaggi stated that he does not believe the board can require the applicants to select one of three ways to address the low income housing requirements. At this time, Attorney Selvaggi further states that the applicants are obligated by state law to pay a development fee, which they are prepared to do. The applicants respectfully request that the Resolution be amended to be consistent with existing state law.

August 14, 2008

Page 4

The monetary amount is to be paid to the State. Greenwich is going to have to provide the unit and probably pay for it. Vice Chairman Williams asked the board for a straw poll that, basically, if they had known or believed that by approving the application Greenwich would have incurred, rather than the applicant, the COAH obligation of one unit, would you have approved the application:

Joe Schiller: no.

Bob Vetrecin: no.

Dawn Marie Kondas: no.

Dan Detore: no.

Attorney Drill stated that if the board adopts Resolution 2008-09 with the conditions in it, then the applicant has a choice. That is to either file an appeal or not file an appeal to try to knock the condition out. If they file an appeal, Attorney Selvaggi's argument is going to be that on July 17, 2008 the law changed and that condition is illegal.

The board's preference would be to have the unit on the second story of the building. Attorney Selvaggi stated that ultimately, it is a municipal obligation. The applicant has to comply with COAH and Ms. Fuhrman has every intention of doing that. Ms. Fuhrmann, still under oath, stated that her intention is to come to Greenwich Township and become a good productive citizen and will comply, but requests time to come up with the money to provide for the COAH requirements. They could provide the unit at the facility, but the issue is water. If the water issue can be resolved, Ms. Fuhrmann will make the commitment to the community that they will provide the unit. She doesn't want Greenwich Township to pay for it, but requests that the unit be allowed to be built within the facility. Ms. Fuhrmann, under oath, stated that she is waiving the right to challenge the Resolution in court and possible lawsuit and any and all conditions contained in the Resolution. Ms. Fuhrmann stated that her goal is not to be a deterrent to the township. She wants to work as a team and be supportive of Greenwich Township. After a five (5) minute recess, Attorney Selvaggi stated that Condition #3 can remain as is.

The one change would be to Condition 1 a., giving the applicant three (3) years instead of one (1) year to obtain final site plan approval and condition 3 remains as is, but delete "Statewide Nonresidential Development Fee Act" in option ©.

Robert Vetrecin made a motion, seconded by Joe Schiller, to adopt the Fuhrmann Resolution, as amended. The vote is as follows:

IN FAVOR: Kondas, Schiller, Vetrecin, Detore.

OPPOSED: None.

ABSTAINED: Williams.

RECUSED: Buckwalter.

August 14, 2008  
Page 5

Motion carried.

**Case No. 5-08, PICC Land Management, LLC, Block 23.30, Lot 1, Interpretation/Appeal – Home Occupation.** Applicants are Charles and Bob Piccione. Representing the applicants was Bruce Jones, Esq.

Bruce Williams, Vice-Chairman, recused himself.

Sworn in by Attorney Drill were Michael Finelli, Township Engineer and Carl Hintz, Planner.

Attorney Jones stated that he is asking for an interpretation to occupy a home occupation. The property is located in the PDSFZ district and the applicant applied to the Zoning Officer for a zoning permit to operate a home occupation business office in the building on the property as an accessory use to the principle single family residential use of the building and property and the Zoning Officer denied the request for the permit on the basis that neither home occupations or business offices are permitted in the PDSFZ district.

The applicant plans to sell or lease this house to someone who will live there and also operate a professional practice in no more than 25% of the total square footage. No exterior changes or site improvements are planned. The only external manifestation will be a non-illuminated wooded sign. The applicant is proposing a 2' x 6' sign which is 12 sq. ft.

Attorney Jones stated that home occupations are allowed in other zones and feels it is an oversight that home occupations are not allowed in the PDSFZ district. Attorney Drill stated that the board can't hear it if it was an oversight. If it was a mistake and left out, or overlooked, out of the PDSFZ district, the argument is one that would be paid to the Township Committee in support of a request to amend the ordinance. It is not a proper argument to be made to the Board. The Board finds that the proposed usage requested by the applicant would not be permitted as a home occupation, there a "d(1)" use variance will be required.

Attorney Jones withdrew the Use Interpretation application and accepts that the home occupation does require a variance.

Ray Buckwalter made a motion, seconded by Dawn Marie Kondas, that the Board interprets the applicable Township ordinances as prohibiting home occupations in the PDSFZ district as principally permitted and/or permitted accessory uses. Therefore, a "d(1)" use variance is required prior to the applicant operating a home occupation/professional/insurance agency or similar business office in the building on the property. The vote is as follows:

August 14, 2008

Page 6

IN FAVOR: Kondas, Schiller, Vetrecin, Buckwalter, Detore.  
OPPOSED: None.  
ABSTAINED: None.  
RECUSED: Williams.

Motion carried.

Michael Finelli issued a report, dated August 11, 2008, and stated that he had performed a review of the documents submitted in order to make a completeness determination. The applicant has provided the vast majority of checklist items except for the following:

1. Architectural drawings. As this structure is a longstanding existing structure, architectural drawings could be waived.
2. List of property owners within 200 ft.
3. Proof that PICC Land Management is the present owner of the property.
4. Certification from the Tax collector that all taxes have been paid.

Based upon Mr. Finelli's recommendation, Robert Vetrecin made a motion, seconded by Dawn Marie Kondas, to waive the architectural drawings and list of property owners is to be supplied prior to a public hearing and to deem application complete. The vote is as follows:

IN FAVOR: Kondas, Schiller, Vetrecin, Buckwalter, Detore.  
OPPOSED: None.  
ABSTAINED: None.  
RECUSED: Williams.

Motion carried.

**Case No. 6-08, Mansions of Allamuchy, Block 26, Lot 26, Special Question.**

Representing the applicant was Michael Selvaggi, Esq. Sworn in were Michael Finelli, PE; Carl Hintz, Planner; Gerald Philkill, PE., John Dominques, Manager.

Attorney Selvaggi gave the history of Mansions at Allamuchy development. Access into the property was from South Main Street. The internal development roadway network also included partial development of Oberly Street. Oberly Street was to connect Greenwich Street with South Main Street, thereby serving as the bypass around the Village of Stewartsville.

Mansions needed to secure a hardship waiver from the New Jersey DEP because the proposed road's encroachment in a Special Water Resource Protection Area along South Main Street. Unfortunately, Mansions was informed that it would not be eligible for the

August 14, 2008  
Page 7

hardship waiver because Mansions did have a possible alternate access into the property via the Oberly Street connection.

The application was amended to show access through Oberly Street, eliminating access from the development onto South Main Street. The question was asked if this amendment was significant enough to constitute a new application rather than an amended one. Attorney Selvaggi stated that is the Special Question brought before the Board of Adjustment this evening.

As the discussion continued, Attorney Drill suggested to Attorney Selvaggi that he go before the Township Committee to discuss the possibility of vacating Oberly Street. Attorney Selvaggi requested an adjournment to the next Board of Adjustment meeting and will request to be on the Township Committee agenda to discuss the vacation of Oberly Street.

**Reminder:** November meeting will be held on November 6, 2008 at 7:30 p.m.

Robert Vetrecin made a motion, seconded by Joe Schiller, to adjourn the meeting. Motion carried. Meeting adjourned at 9:40 p.m.

Elva N. Pomroy  
Board of Adjustment Secretary

Ray Buckwalter  
Chairman

