JOINT LAND USE BOARD

REGULAR MEETING MINUTES

March 7, 2013

Chairman Schwager called the meeting to order at 7:00 pm.

Adequate notice of this meeting had been provided in accordance with the Open Public Meetings Act.

Chairman Schwager led all present in the Pledge of Allegiance.

Roll was as follows:

John Casella – Present, Frank Costantini – Absent, John Descano –Absent, Blair Hannigan – Present, John Juliano – Present, Paul Lott – Present, Mayor Maccarone – Absent, Chief Marino – Present, Joe Maugeri – Present, Alan Schwager – Present, Bob Rushton – Present.

Also present: Mike Aimino – Solicitor and Tim Kernan – Planner.

First on the Agenda are the Minutes from the regular meeting of February 7, 2013. J. Maugeri made a motion to accept the Minutes as written which was seconded by J. Casella. All were in favor except J. Juliano who abstained.

Moving right in to new business, Kyle Riepen, this is a Bulk Variance application for a fence, Block 28.06 ~ Lot 34 known as 1 Buckeye Road in Auburn Chase.

Mr. Riepen was sworn in by Mike Aimino.

Chairman Schwager continued stating that this application is for a fence for a corner lot, so by Zoning Mr. Riepen has “2” front yards. He understands that it is a 6’ high white vinyl fence. The Auburn Chase HOA has signed off on this fence and there are other 6’ high white vinyl fences in the development, but this is a corner lot. Kyle is a Mantua K-9 Officer and the primary purpose of the fence, obviously is to keep the dog inside the fence and kids outside.

Mr. Riepen continued stating that he is trying to put a 6’ fence on his property, again for the safety of the neighborhood as well as his “2” large dogs, “1” being a Police work dog. Along the side yard (the second frontage on the corner lot) there are no other homes there and there will be no other homes there. He will place the fence 4’ off the sidewalk and it will not be a site hazard for the stop sign.

J. Maugeri asked about the distance from the front street, it will be 60’ off of Buckeye. He stated that he stopped at the site and his neighbor to the right already has a 6’ fence in their backyard. Mr. Riepen stated “yes” and the neighbor next to him as well. J. Maugeri asked if he was building a 3 sided fence and butting up to the neighbors. Mr. Riepen stated “yes”.

Blair Hannigan asked if it was a solid fence to which Mr. Riepen stated “yes, a solid white vinyl fence”.

Chairman Schwager stated that 4’ fences are allowed would a 4’ fence work for him. Mr. Riepen stated “no” his Police Dog can scale right over a 4’ fence. Chairman Schwager asked if it needs to be 6’ for safety purposes to which Mr. Riepen stated “yes”.

Mr. Riepen stated that he brings home a marked patrol car that says K-9 and a lot of little kids are always intrigued by that and his fear is that a kid can look right over a 4’ fence and if they’re the aggressor and his dog goes over and something happens. They are not violent dogs but he wants to be safe.

J. Casella made a motion to open to the public which was seconded by P. Lott. All were in favor.

With no public comment Chief Marino made a motion to close which was seconded by J. Maugeri. All were in favor.

Tim Kernan continued with his letter dated February 28, 2013. Mr. Kernan stated that this application triggers “3” variances from our Code all found under supplemental use controls.

He listed the analysis for a bulk variance and he believes Mr. Riepen has met both hardship and/or substantial benefit. One of the hardships is by reason of an extraordinary or exceptional situation uniquely affecting specific property which he thinks he has with the service dog. The substantial benefit where the variance would outweigh any detriment, we found that with the safety issue. He believes Mr. Riepen has met the burden.

Discussion ensued over the Variances requested.

With nothing further to discuss, J. Juliano made a motion to approve all three variances which was seconded by Chief Marino.

Chairman Schwager stated he has a motion and a second and he is assuming the motion is because the positive and negative criteria have been established. J. Juliano stated “yes”.

Roll was as follows:

**P. Lott – yes, J. Juliano – yes, J. Casella – yes, Chief Marino – yes, J. Maugeri – yes, B. Rushton – yes, Chairman Schwager – yes.**

Chairman Schwager stated that normally the Code Office waits for a Resolution from this Board; he asked that secretary Marquis talk with Mr. Sabetta and let him know that the decision was made with a copy of the site plan so Mr. Riepen can pull permits pending the Resolution.

Next on the Agenda is Constance Cardillo, a Zoning Appeal for a Barn.

Mr. Joseph Alacqua was present to represent the applicant.

Chairman Schwager stated that they heard this matter once and he is struggling to figure out what is different from this application and this appeal than the one we did 2 months ago. Mr. Alacqua stated that they withdrew the second part of it. Mr. Aimino stated that they did withdraw the second aspect but the first part of it was voted on and that dealt with the barn.

Mr. Alacqua stated that it may be very similar but not exactly the same because everything was based on the horses and not on the barn and we have a slightly different application with regard to the horses.

Mr. Aimino stated that the part that was withdrawn was with regard to the housing of horses the part that was voted on was regarding the barn. Mr. Alacqua stated “yes” but the reason for the barn or denying the barn which related to the type of use for the horses. Mr. Aimino stated that he does not see anything different, could he explain what’s different in terms of the reasons why he thinks the barn should be erected with this application as opposed to the last one.

Mr. Alacqua stated that the barn should be approved in this application because the horses will be used in any way that is permitted by the Ordinance in the Agricultural zone. The reason for denying the barn was the indication that since the horses weren’t permitted you couldn’t have the barn for the horses.

Mr. Aimino stated “no” the reason it was denied before was because it wasn’t construed to be horse barn and again the distinction at that point was, were the horses being used for a commercial farming operation or were they being used primarily for personal use. He thinks the board determined it was for personal use and in that situation the primary building of a barn would not be permitted.

Mr. Alacqua asked if the Board is saying the Barn is permitted. Mr. Aimino stated that it was his understanding that the Board said that the barn is permitted if it is a farm building, in order for you to make that determination it hinges on whether it is being used for a farming operation, a commercial farming operation or whether it is being used for personal use. If you are simply going to house horses, it is not a farming operation. Mr. Alacqua stated that this is what’s different in the application. Mr. Aimino stated that he doesn’t see that this is any different than what was already decided, unless Mr. Alacqua can tell them what is different.

Mr. Alacqua stated that she is going to have a commercial operation for the horses; she will be boarding horses and will do whatever is permitted. The Boards Planner says that a “Farm barn” is permitted and that is what she wants to construct and she wants to use it for horses in any way that is permitted by the Ordinance.

Chairman Schwager stated that was the testimony from last time, as he understands his client was open to anything. The proposal in the application is very broad brushed, including horses to be raised and ridden on the property. He is having a difficult time understanding on what is different about this than what was done 2 months ago. He feels that they are trying to get a different decision because you didn’t like the first decision.

Mr. Alacqua stated that they obviously didn’t like the first decision and that is one of the reasons that they withdrew so they would be able to come back and he believes the change in the second part of the application certainly changes the first part.

Chairman Schwager stated that they will continue but he needs to tell the Board how this is different pretty quick.

P. Lott stated that he is confused because they are saying they will do whatever we would permit but that is not our responsibility; it is their responsibility to show us what she is looking to use this property for that will allow us to vote on granting a variance for the zoning. As he understands it, she is stating that she will do whatever the Board says she can do to make it useable. Mike Aimino stated that he was absolutely correct and in fact the Board talked about it last time that it is actually the applicant’s burden to establish by testimony what she is going to do and give the underlying facts that will allow the Board to make their decision.

Mr. Alacqua stated he is not asking the Board to tell him what she can do with the horses, what he is saying it that she is going to do what is permitted by the Ordinance. He has an analysis and has handed out some documents and if they can go through that, maybe he can convince them maybe not.

Before Mr. Alacqua continued, Mr. Aimino swore in Mrs. Constance Cardillo.

Mr. Alacqua continued with a review of the property which is at 90 Russell Mill Road known as Block 56, Lot 3. Mrs. Cardillo owns a 26 acre farm and this land has been in her family for over 70 years. 13 acres are farmed and will continue to be farmed. They are here to appeal the denial of the zoning permit to build a barn and to conduct equine activities. She wants to have horses there. There are 2 parts to the application, a barn of 4,932 square feet and the activities with the horses would take place on 3 acres. The reasons for the denial where a barn is an accessory building and cannot be built until a house is built and horses are a conditional use and are not permitted unless she resides on the property. These were the reasons given by the Zoning Officer.

They are not requesting a Variance and they are not requesting a Conditional Use, they are only asking to do what is already permitted by the Zoning Ordinance.

Mr. Alacqua went through the handout he passed out to the Board regarding the Zoning of the property and the Zoning regarding the R1 and 5A districts of the Township.

Mr. Aimino asked Mr. Alacqua if she built a barn on the farm for the purposes of storing rocket fuel, would that be a “farm” building? Mr. Alacqua replied “no”. J. Maugeri stated he doesn’t know if it is the building that makes it a farm building, he thinks it’s the use or activity.

Discussion took place over what it a “farm” building.

Mr. Alacqua continued with permitted uses including Agricultural Use, the Right to Farm Act and New Jersey’s Farmland Assessment Act.

Chairman Schwager asked how the horses are going to be used as part of the farming operation. He is not seeing how these horses are going to be part of a farm other than on a farm.

P. Lott stated that he is still confused, he is trying to wrap his hands around the fact that the applicant will do whatever it takes to make the property compliant. Mr. Alacqua stated that when he says “whatever is permitted,” what she is going to do is the things that are listed in the right to farm act and the farmland assessment act. She is not going to breed, she is going to keep, board, train and rehabilitate horses. It will be some mix of those things which are all permitted.

J. Juliano stated if he understands it right, in order for the assessments and the use for that, it has to be done commercially, not for personal use. So the riding and raising has to be done for commercial use in order to qualify for the farmland which has to comply with the ordinance.

Mr. Alacqua stated that they are willing to comply with that and say it will be for commercial purposes. J. Juliano asked if there is a business plan. Mr. Alacqua stated that she has contracts that she has reviewed from the place where she works to try and get these type of people to board horses there. She doesn’t have it available yet so she can’t have a contract with a specific person.

J. Maugeri stated that everything Mr. Alacqua said is true, a building with those uses would qualify, absolutely 100%. He doesn’t think there is any question that a barn on farmland used for those uses is clearly permitted. The question is what the uses will be. Mr. Alacqua stated, those uses, we are not there and cannot demonstrate that this is what they are doing but we’re saying that is what she is going to do. She’s not going to go in there and do something else and not be able to use her barn, she will be doing the things that are permitted there.

P. Lott asked about the fence that was erected. Without a barn there, what use can be done with that area? Mr. Alacqua believes that the fence was erected in anticipation of the barn.

T. Kernan stated that he keeps looking at the horses as having to be productive for financial gain and livestock and of the four things he heard Mr. Alacqua say, the keeping, boarding, training and rehabilitating, he does not think keeping applies because that was separate and is not for productive gain.

Mr. Kernan continued with his letter dated February 26, 2013.

P. Lott asked why they are talking about the 13 acres being farmed because in his opinion it has nothing to do with the horses. If you have a farm next to the area you have fenced in for horses and it generates income off of whatever fruit, vegetable or grain being produced, it only receives the assessment if you sell whatever is raised on there. He looked up livestock and it is domestic animals such as cattle or horses raised for home use or profit especially on the farm. His interpretation is that if a horse is on a farm he does not consider it as livestock unless it has physically been sold or raised and sold. Mr. Kernan agreed.

Conversation ensued over Farmland Assessment.

J. Maugeri said they are back to the same question, what it is going to be used for. He doesn’t think the question is whether or not that barn being there changes the farmland assessment, it is one contiguous lot.

Chairman Schwager stated that this is not a Variance; this is an appeal or an interpretation of the Ordinance. So we have to look at what we believe the intent of the Ordinance was when it was written, which I believe Mark Fruits looks at the intent of the Ordinance when he makes his decision. This is not only about this 29 acres, this is about the R1 zone.

Tim Kernan continued with his letter.

Chairman Schwager stated again, how is this different than what we discussed in January, we are having the exact same conversation we had 2 months ago, it’s all about the horses, it’s not about the barn.

J. Juliano stated that this is a second appeal for a second decision on a second denial. He doesn’t see what is different.

Mr. Alacqua stated what is different is the profit. She is willing to do those things that are required.

Chairman Schwager asked Mrs. Cardillo why her story has changed and what is different than 2 months ago.

Mrs. Cardillo stated that her attorney said they were going to submit a different type of zoning permit now. It’s different because the first one was for a barn. Then the issue came up with the horses so this zoning permit included the horses, it is a different type of permit.

Chairman Schwager stated that the permit was the same; it was to construct a barn for horses. Mrs. Cardillo said that she believes the first zoning application was just for the barn. This time it is for the barn and the horses. Chairman Schwager asked what she was going to use the barn for in the first application. Mrs. Cardillo stated the horses. Chairman Schwager asked what’s different.

Mrs. Cardillo asked if they would like to know what she has in mind and what her plan is. Chairman Schwager stated that it couldn’t hurt. Mrs. Cardillo stated that whenever she rides them it is just for training purposes, they have to be ready to work, they have to be ready to earn their keep. Chairman Schwager asked what that was. Mrs. Cardillo stated that she has yet to discover exactly what it will cost her without having to board them. Right now she buys their feed, cleans their stalls to save money on board she is working, making sure 35 horses have water, and feeding them for the Dorsetts. She doesn’t know exactly what it will cost to have them on her own property without having to pay someone else to keep them on their property. Once she knows that she will know what their keep is, but she does know how much feed costs, how much hay costs and how much bedding costs. She is not working full-time anymore so they need to work. It has to become something that generates an income.

J. Julian asked how many horses. Mrs. Cardillo said 3. She hasn’t sold the rehabilitated horse and she is more inclined to lease it to someone who would keep it on her property.

Conversation took place on the leasing of horses.

She would also like to give lessons with the other 2 horses and she knows that does not fall under the rules for agricultural use.

J. Maugeri asked how her two horses are going to generate income.

Mrs. Cardillo stated that she has heard that you make the most money giving lessons and she has 2 horses that have been proven to be good horses for giving lessons.

T. Kernan stated without a defined plan and not presenting the Zoning Officer with this is my business, this is how I’m going to make money, he doesn’t have anything to go by other than what we are trying to figure out.

J. Maugeri stated he is trying to see how those 2 horses are going to generate income to prove you a commercial farming operation.

M. Aimino stated that he thinks Mr. Fruits is dealing with the Ordinance that he believes you need a residence in order to have a barn. He thinks the intent is if you are going to have a farming operation, it has to be a commercial, for profit type operation. If you look at all the Ordinances that were sited, it is all for agricultural farming profit. If the reason you are going to have the horses there is primarily for your own personal use and need a place to put your horse that you own, then I think you are really using it in a residential type situation, not a commercial farming operation. That’s were the second aspect of the ordinance kicks in that Mr. Fruits has been focusing on. It has to be a “farm” building not simply a building that is on a farm. If you put the barn on the farm to support the farming that is going on, there is no question that that is a farm building. If you put the barn on this piece of property solely to house your personal horses and you’re not using them to work on the farm, it is not for profit and he thinks that is the intent of our ordinance.

J. Casella asked how many houses would be able to be put on this parcel. He would rather see horses then houses. T. Kernan stated by density, 13.

With nothing further to discuss, J. Juliano made a motion to deny the appeal and side with the Zoning Officer. The Commercial use still hasn’t been clearly defined and a plan clearly put forth to have it qualify for farmland preservation which would let the barn stand first before the house. B. Rushton seconded the motion.

Chairman Schwager stated that a yes vote is to go with the motion to deny the appeal.

Roll was as follows:

**P. Lott – yes, J. Juliano – yes, J. Casella – no, Chief Marino – no, J. Maugeri – yes, B. Rushton – yes, Chairman Schwager – yes.**

**5 – 2 Motion carries.**

Chairman Schwager called for a 5 minute recess at 8:22 pm.

The meeting reconvened at 8:29 pm.

Next on the Agenda is the Township Committee Resolution 2013-52 – JLUB Recommendations to the Zoning Code. At the end of each year the Zoning Board submits a report to the Township Committee on their findings. We submitted a report back to the Township Committee at the beginning of this year and one of the recommendations that this Board gave back to Township Committee was to look at the current Ordinance that we have on the books that deals with the permitting of Barns and Farm Buildings within the Township. The Township Committee passed a Resolution sending that Ordinance back to us to look at, clean up and fix.

Chairman Schwager said there is quite a bit of a difference of opinion on this but maybe the Ordinance needs to be written clearer to permit a barn in a farming operation. He thinks the Ordinance that we have now is grey.

J. Maugeri stated that a farm cannot qualify to be a “farm” with farmland assessment, unless it achieves a certain dollar value of profit, but before that, it has to be at least 5 acres. Chairman Schwager stated that you can have a farm under 5 acres, the threshold for income has to be greatly increased. If a farm is less than 5 acres, you have to produce $50,000 on that farm.

Extensive conversation took place over what makes a farm a farm.

Chairman Schwager stated he thinks they should authorize Tim to take a look at the Ordinance and try to fix it.

P. Lott stated that we are not the only Municipality struggling with this because we are not the only farming area that has residential communities tied in to it.

With nothing further to discuss, J. Maugeri made a motion to authorize Tim Kernan to look in to this Ordinance which was seconded by Chief Marino. All were in favor.

Chief Marino made a motion to Adjourn, which was seconded by J. Juliano. All were in favor.

The JLUB meeting adjourned at 8:44 pm.

Respectfully submitted,

Christina M. Marquis

Joint Land Use Secretary

*Minutes not verbatim*

*Audio recording on file*