

GREEN TOWNSHIP LAND USE BOARD MINUTES

REGULAR MEETING, October 8, 2020

**CALL TO ORDER:** The October 8, 2020 regular meeting of the Land Use Board was called to order by the Land Use Chairman, Mr. Scott Holzauer, at 7.04pm. He then led everyone in the PLEDGE OF ALLIGIANCE.

Recitation of the OPEN PUBLIC MEETING STATEMENT by Mr. Holzauer.

**ROLL CALL:** Present: Mr. Jim DeYoung, Mrs. Jenny Kobiliniski, Mr. John Lynch, Mrs. Sharon Mullen, Mr. Watson Perigo, Mr. Rick Wilson and Mr. Scott Holzauer.

Also present: Ms. Jessica Caldwell, Board Planner, Mr. Cory Stoner, Board Engineer, Mr. David Brady, Board Attorney and Ms. Kim Mantz, Board Secretary

Members Absent: Mr. Joe Cercone, Mr. Jim Chirip, Mr. Dan Conkling and Mr. Michael Muller

Motion was made to excuse the absent members by Mr. Perigo and seconded by Mr. Wilson.

No Discussion. All Ayes. Motion Carried. Abstentions: None

**MOTION TO APPROVE MINUTES:**

Land Use Board Minutes of September 10, 2020.

Mr. Wilson motioned to approve minutes and was seconded by Mr. Perigo.

No Discussion. All Ayes. Motion Carried. Abstentions: none

**RESOLUTIONS: None**

**OLD BUSINESS:**

Application: LU#2001

Owner/Applicant: Andrew H. Billing

Block 7 Lot 5 – 115 Shotwell Road, Newton, NJ 07860

Minor Subdivision Extension

This application began at 7:06pm

Mr. Brady recused himself on this application. Mr. Billing explained he received subdivision approval back in March and was required to go to the Sussex County Planning Board (SCPB) as a condition of that approval. Due to the pandemic the SCPB canceled several meetings and his approval still has not been memorialized. Mr. Billing is hoping the Land Use Board will allow the condition to be met based on the SCPB approval without having the resolution. He initially he requested a 60-day extension but is now requesting a 90-day extension to make sure he has enough time.

Mr. Stoner has no issues with the Land Use Board accepting the SCPB approval without the resolution in hand, it has just been due to the pandemic and there is minimal risk.

A motion was made to approve a 90-day extension by Mr. Perigo and was seconded by Mrs. Mullen.

Roll call vote: Mr. DeYoung, Mrs. Kobiliniski, Mr. Lynch, Mrs. Mullen, Mr. Perigo, Mr. Wilson and Mr. Holzauer.

No Discussion. All Ayes. Motion Carried. Abstentions: none

This application ended at 7:13pm

**NEW BUSINESS:**

Application: LU#2004

Owner/Applicant: Samuel Diaz

Block 18 Lot 62 – 15 Woodfield Road, Andover, NJ 07821

Completeness/Public Hearing

This application began at 7:14pm

Mr. Brady stated proof of service and publication was received and everything was in order.

Mr. Bernd Hefele, attorney for the applicant, gave a brief description of why they were before the Board. The applicant, Mr. Samuel Diaz would like to build a house, detached 4 car garage and a pool cabana on a vacant lot located at 15 Woodfield Road. The first variance requested is the max square footage on accessory buildings. Our ordinance allows 1,960 sq. ft. and they are proposing 2,509 sq. feet over two buildings, the detached garage and the cabana. They could attach the garage to the house and not need the variance, but the applicant feels a detached garage would be better planning situation. The second variance is temporary use of the cabana for the applicant to use it as a residence while he oversees the construction on his home.

Mr. Brady swore in Mr. Samuel Diaz, applicant and contract purchaser of the property.

Mr. Diaz began with why he loved this area and that it was exactly what they had been looking for the last couple of years. He explained he wanted to live in the cabana because he is a builder, he wants to make sure his contractors are completing the build correctly and it would be difficult to oversee since he lives more than an hour away in NY. This way he can check in every morning and every evening when he comes home from work to keep everything in track. Originally, he was going to purchase a trailer to live in but when he found out the cost of the trailer, he thought they could make the cabana a little nicer than it would be and live there. Since COVID hit his daughter stayed with him briefly and if she needs to come back then she could stay with them in the cabana. He has zero intentions of anyone living in the cabana other than when the house is being built.

He originally designed the house with an L-shaped garage, but it did not look right, so aesthetically speaking, the detached garage facing the attached garage looked better. The garage is for his car collection and other “toys” like quads. They do not travel and like to entertain which is why the pool and cabana are so important to them.

Mr. Brady swore in Mr. Ken Dykstra, engineer for the applicant.

Mr. Stoner reminded the Board they needed to vote on completeness. He announced the application stated an LOI had been provided but it had not been, he feels it was just checked incorrectly. He does not feel the LOI is applicable and should be a waiver request instead.

A motion was made to deem the application complete with one waiver for the LOI by Mr. Perigo and was seconded by Mr. Wilson.

Roll call vote: Mr. DeYoung, Mrs. Kobiliniski, Mr. Lynch, Mrs. Mullen, Mr. Perigo, Mr. Wilson and Mr. Holzhauer.

No Discussion. All Ayes. Motion Carried. Abstentions: none

Mr. Dykstra started by presenting a copy of the plan submitted only Exhibit A-1 is a colorized version. Exhibit A-1, labeled Plot Plan, Diaz Residence, dated July 15, 2020, colorized.

This is a 2.5-acre lot and one of the only remaining vacant lots left in the development. To the right of the lot is a power line easement that runs through the development and it cuts across the backside of the applicant's property. The house is set back about 130 feet from the road. The proposed detached garage is 27' X 53' which is 1,431 sq. feet which lines up with the garage attached to the house and has a similar appearance and height. The lot rises from the beginning of the driveway so the house will be about 15 feet higher than the road. The cabana will be along the same line as the detached garage both of which are 37 feet off the property line where the set back is 35 feet. The proposed cabana 30' X 25.8' structure and has a 12-foot porch for a total of 1,078 sq. feet. With the detached garage at 1,431 sq. feet and the cabana at 1,078 sq. feet the total comes to 2,509 sq. feet. This is over the accessory limit of 1960 sq. feet by 549 sq. feet which is why the variance is requested. If the second garage was attached to the principal structure the variance would not be needed.

Mr. Dykstra stated the septic permit has been issued and the well permit has been approved or is close to being approved. The applicant is eager to get started.

Mr. Hefele said there would be no planning testimony. He reiterated the reasons the applicant would like the detached garage and needed the variance for it. Mr. Hefele feels it is a minor variance by only being over the limit by 549 sq. feet and it would not only be better functioning but also better aesthetically.

Mr. Hefele went on to say it would also improve the housing stock and the neighborhood.

Ms. Caldwell addressed the variances. The C2 variance criteria states the benefits should outweigh the detriments. The benefits can't be solely for the applicant, they need to be better for the neighborhood as well. The applicant had not spoken about any potential buffers for the proposed detached garage to help hide it from the neighbors. The negative impacts would need to be discussed to determine any mitigation for those negative impacts.

Mr. Hefele addressed the negative impacts. He said that although the detached garage does meet the setback requirements the applicant is not opposed to placing a buffer behind the garage so help hide it from the neighbor. The garage was placed facing the attached garage so the neighbors would only be looking at the back of the detached garage instead of any activity with the doors open, so the garage itself would be a buffer also. The height of the detached garage is 24 feet. There is some existing vegetation currently on the applicant's property, but it is cleared on the neighbor's property facing where the proposed garage would sit.

Mr. Diaz said the lot is heavily wooded and he is anticipating about 20-25 feet of wooded area that will remain after the garage is built. He is not opposed to planting more trees to have an additional buffer.

Mr. Hefele explained the reasoning for the applicant living in the cabana while the house was being built. The applicant would like to oversee all aspects of the construction and since he lives over an hour away this would be the best option for him and since it is a temporary situation he does not believe there is any negative impact. The positive would be the safety and security on the property so that the house is not left unattended while it is being built. He feels the Board could set a limit of one year and if the house is not finished by then the applicant would have to come back to the Board.

Ms. Caldwell is concerned about what happens to the cabana after the house is built. The proposed cabana has three bedrooms and she hasn't heard any testimony about what those bedrooms will be used for after the applicant moves into the house.

Mr. Diaz answered Mr. Holzhauser's question as to what the cabana would look like if they were building it after they moved into an existing house. Mr. Diaz replied with: one floor, kitchen, living area and storage. His idea behind the kitchen and full bathroom is to service the pool. He needs the kitchen in order to entertain.

Mr. Diaz stated he has absolutely no intentions of renting the cabana out and would be happy to enter into an agreement with the town that if he were to sell the property, he would remove the kitchen first.

Mr. Hefele addressed Ms. Caldwell's concerns by stating the applicant has no problem with a deed restriction being placed on the property which limits the use of the cabana to be used strictly as an accessory structure for the pool. This can also state it prohibits it from being rented or utilized by any third party that does not own the principal structure.

Mr. Brady explained there were two ways to go about this situation. The first is a deed restriction and the other way is "physical", meaning when Mr. Diaz sells the property, he pulls out the kitchen. The Board could also require the kitchen it is disconnected from the septic so no one comes in and illegally installs a kitchen after the sale.

Mrs. Mullen stated she was concerned with the 2<sup>nd</sup> floor bedrooms and if the applicant's daughter comes back what would stop her from living there.

Mr. Diaz addressed her concerns. He said his concern stems from COVID and if she needs to come live with them during the construction of the house. He reiterated he does not want a rental on his property. He is willing to board up the two rooms upstairs after the house is built and never use them again.

Mr. Holzhauser suggested eliminating the walls and bathroom and having the upstairs be just a large open room and Mr. Diaz agreed.

Mr. Hefele confirmed the applicant would be ok with a restriction that it will not be used for rental purposes and a condition in the resolution that after the principal use is finished it would then be converted to storage only.

Mr. Lynch asked if after the house is constructed a family member had to come stay with them that said family member would stay in the house and not in the cabana. Mr. Diaz replied by saying "absolutely", once the house is finished, no one would be staying in the cabana.

Mr. Holzhauser opened the application up to the public for comments.

Mr. Brady swore in Mary Shelbourne of 13 Woodfield Road. Ms. Shelbourne is neighbor to the left of 15 Woodfield. She stated the previous owner of her house had cut back vegetation on to the property at 15 Woodfield so any buffer she had is gone. She is concerned because she will see the detached garage from her property because there isn't enough of a buffer. Ms. Shelbourne stated although she had a survey done when she bought the house, no stakes were placed so she never knew exactly where the property lines were until Mr. Diaz's engineer came to do his survey.

Mr. Brady asked if Mr. Diaz would be willing to meet with Mr. Stoner to mark off areas on the property to remain wooded and he agreed.

About 2 minutes are inaudible due to everyone speaking in multiple conversations.

Mr. Brady explained to Ms. Shelbourne that Mr. Stoner would come out to meet with the homeowner to discuss where the buffer could remain and where additional landscape buffers could be placed. She was still concerned about her view of the garage. Mr. Brady informed Ms. Shelbourne that her property survey will be marked Exhibit N-2, labeled Property Survey, block 18 lot 63, prepared by Joseph D. Greenaway, dated January 26, 2019 and kept as

part of her testimony. Ms. Shelbourne showed her pictures to the Board (Kim received these pictures on November 6, 2020) of the growth between her house and where the proposed garage would be placed.

Mr. Hefele spoke to Ms. Shelbourne and explained she should have known where her property lines were, that the proposed garage is 37 feet off the property line, so it is within the proper set backs, and that Mr. Diaz is more than willing to plant trees/ shrubs, such as arborvitaes, as a buffer for the garage. He understands these plants will take time to grow but in a 2-3 years they will cover the entire back of the garage. He also states the applicant will plant in accordance with whatever the Board requires.

Mr. Holzhauser explained the reason for putting the limit on size of accessory structures was so properties in town would not have accessory structures larger than the principal structure or too many accessory buildings throughout the property, but the homeowners could pretty much do anything within the building envelope as long as it complied the ordinances.

Mr. Brady swore in Joann Barbato of 11 Woodfield Road.

Ms. Barbato was concerned about the height of the cabana and whether she would be able to see if from her property near the back corner of Mr. Diaz's property. The cabana is the same size of the garage at 24 feet.

Mr. Diaz plans to leave as many trees and brush as possible because he wants privacy also.

Mr. Stoner feels there is a bit of a discrepancy between what the applicant says is behind the garage and what is on Mr. Dykstra's plans. Mr. Stoner would like the plans to be updated to show the size of the buffer and would like it to be a condition of approval that no cutting will happen before Mr. Stoner gives the ok.

Mrs. Mullen would like a condition of approval be the buffer is put in and it would be a type of plant/tree that will be there year-round, like an evergreen.

Mr. Stoner asked why the house, garage and cabana were not moved closer to the west side of the property and Mr. Dykstra stated it was because of the power lines on that side.

Ms. Caldwell feels these fall under C variances, but Mr. Brady feels it the cabana could be a temporary D variance. After a brief discussion on obtaining a CO or a TCO the professionals thought it would be best if the cabana gets a TCO until the house is completed. Then the cabana could change to a CO after the house gets its CO. This would be a condition of approval.

Mr. Brady went though the conditions of approval:

1. TCO on the cabana and after the house is built and has its CO the cabana will move to a CO as well.
2. Mr. Stoner will meet with Mr. Dykstra and is going to go mark off the limit of disturbance with a goal of 20-25 feet of a buffer to remain in place. After all the buildings are completed, Mr. Stoner will go out to the property and check to see if supplemental plantings should be put into place.
3. The upstairs of the cabana is to be one big room with no bathroom.
4. There will be a deed restriction on the property stating the cabana cannot be used by a third party and will not be used as living quarters for any reason after the house is constructed.

Mr. Hefele agreed to those conditions.

Mr. Holzhauser closed the public portion of this application.

A motion was made to approve the requested variances and the application with the conditions listed above by Mr. Perigo and was seconded by Mrs. Mullen.

Roll call vote: Mr. DeYoung, Mrs. Kobiliniski, Mr. Lynch, Mrs. Mullen, Mr. Perigo, Mr. Wilson and Mr. Holzhauser.  
No Discussion. All Ayes. Motion Carried. Abstentions: none

Mr. Hefele requested the applicant be able to obtain zoning and construction permits prior to the resolution adoption. This is considered as being part of the prior motion and the applicant can start the process. This application ended at 8:36pm

Mr. Holzhauser opened and closed the public portion of the meeting.

Mr. Brady briefly explained the ordinance sent to the Land Use Board from the Township Committee. The airport is now officially closed and these changes are to the ordinance regarding the Airport. One section deals with fees and the other deals with the safety hazard zone that surrounds the airport. Both are being deleted. Mr. Brady caught a typo and Mrs. Leo, Township Attorney is fixing it. Ms. Caldwell stated it is consistent with the Master plan since it had been known the airport may not always be an airport. Mr. Stoner stated the hazard zone is just an overlay to the A1-10 zone and can easily be removed.

Mr. Brady will list the airport area in his annual zoning report. The airport property had a safety hazard zone surrounding it and since that has now been lifted, there is potential for new permitted uses.

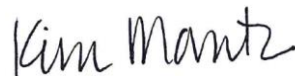
A motion was made to report back favorably to the Township Committee on the adoption of this ordinance change by Mr. Perigo and was seconded by Mr. Lynch.

Roll call vote: Mr. DeYoung, Mrs. Kobiliniski, Mr. Lynch, Mrs. Mullen, Mr. Perigo, Mr. Wilson and Mr. Holzhauser.  
No Discussion. All Ayes. Motion Carried. Abstentions: none

- **ATTORNEY'S REPORT** – None
- **CHAIRMAN'S REPORT** – None
- **CORRESPONDENCE** – None
- **SECRETARY'S REPORT** – Kim explained each Board member received a budget worksheet which showed the last 3 years and her suggestion was to keep it the same for 2021. Kim will submit the budget to the CFO with no changes for 2021.
- **PROFESSIONALS REPORT** – None

A motion was made by Mr. Lynch to adjourn the meeting at 8:44pm and seconded by Mr. Perigo.  
All Ayes. No Discussion. Motion Carried. Abstentions: none

Respectfully Submitted:



Kim Mantz

Land Use Board Secretary

Date approved: November 12, 2020