

**MONTGOMERY TOWNSHIP ZONING BOARD  
MONTGOMERY TOWNSHIP, SOMERSET COUNTY, NEW JERSEY  
REGULAR MEETING  
FEBRUARY 20, 2018**

**MINUTES**

Chairman DeRochi called the meeting to order at 7:32 p.m. and read the opening statement which affirmed that adequate notice of the meeting had been posted and sent to the officially designated newspapers.

**BOARD MEMBERS PRESENT:** Chairman DeRochi; Vice Chairman Smith; Mr. Fedun; Mr. Kabis; Mr. Woitach; Mr. Lopez-Lopez, Alternate #2; Mr. Sudol, Alternate #3; Mr. Patel, Alternate #4

**ALSO PRESENT:** Mark R. Peck, Board Attorney; Emily Goldman, Board Planner; Jason Cline, Board Engineer; Joseph Palmer, Zoning Officer

**I. SALUTE TO THE FLAG**

**II. SWEARING IN OF PROFESSIONALS**

Ms. Goldman and Mr. Cline were sworn in for the year.

**III. RESOLUTIONS**

**Case BA-06-17**                      **Applicant: James Drift**  
Block 15013 Lot 24  
Bulk Variance

A motion to memorialize the resolution was made by Mr. Fedun and seconded by Mr. Woitach. The motion carried on the following roll call vote:

Ayes: Fedun, Lopez-Lopez, Woitach and DeRochi

Nays: None

**IV. APPLICATIONS**

**Case BA-05-17**                      **Applicant: Keith Tietjen**  
Block 31001 Lots 11.06 & 11.07  
Use Variance  
Expiration Date – 4/19/18  
Affidavit of Notification and Publication Required

Richard Schatzman, Esquire represented the applicant. Notice was in order.

Mr. Schatzman said the application is for a use variance to allow two principal uses on the same lot. The two lots will be merged into one. The applicant met with Mr. and Mrs. Edelstein, the neighbor's directly affected by the application, and agreed to provide them with screening and a new fence.

Michael Ford, the applicant's engineer and Elizabeth Leheny the applicant's planner were sworn in.

Michael Ford gave the Board his qualifications and was accepted as an engineering expert. Mr. Ford referenced the existing conditions map and gave an overview of the site. The subject property is in the R-5 zone. There are two existing lots; a 1.3 acre parcel with an existing dwelling and a 10+ acre lot that is currently vacant. The vacant lot has an approved building area for a single family dwelling. A few months ago the applicant appeared before the Planning Board to lift an impervious coverage restriction set by the Delaware and Raritan Canal Commission (DRCC) imposed at the time of the original subdivision. As a condition of the recent Planning Board approval the applicant must receive approval from the DRCC. In order to help mitigate the stormwater runoff, the applicant will convert some grass or meadow areas back into woodlands. The applicant will also use current best management practices for stormwater such as pervious pavement for the driveway. Mr. Ford referenced Sheet 1 of the plan set and described the proposal. The two lots will be merged and the existing condition where a new house could be built on the 10-acre lot will be eliminated. The current DRCC regulations which require a larger buffer will be implemented. A portion of the lot will be reforested with the planting of more than forty trees. There is a new driveway to the new structure to be utilized as a pool house and a second residence for the applicant's parents. A new u-shaped driveway will be installed in front of the existing dwelling to enhance the entrance. There is existing public sewer and water available.

Mr. Ford and Mr. Schatzman discussed the Remington and Vernick memo dated January 12, 2018. The pool, detached structure and driveways will be constructed as one project. Any proposed lighting will be residential in nature and will be reviewed as part of the building permit. Landscaping will be installed to shield Mr. and Mrs. Edelstein's property. The existing fence along the Edelstein property line will be replaced with a new fence. There is a 25' easement across the back of the property that is encumbered with vegetation that will be cleared and maintained clear for the easement. Landscaping will be subject to the review and approval of the Township Landscape Architect. The pool fence and gate will comply with the ordinance. Details of the fence and gate will be submitted as a condition of approval. No business or home occupation is proposed. There is an existing residential generator to the rear of the existing dwelling. If it needs to be relocated it will be reviewed as part of the building permit. The new generator location will likely be further from the neighbor. The design and location for the HVAC units for the new dwelling have not been completed yet. The applicant will comply with all the grading and drainage comments. The DRCC will require a conservation easement for their use. The Open Space Coordinator suggested the DRCC easement would be acceptable and no additional easement on top of the DRCC easement would be necessary. There is a soil stockpile on the vacant lot that was left by the prior owner. The stockpile will be removed, the soil regraded and the area re-vegetated as outlined in the stormwater management proposal.

Mr. Ford testified that this proposal is positive. A house could be constructed closer to and impact the stream corridor. That impact is being eliminated, the stream corridor area is being enhanced and a pool house/residence use is being provided to support the applicant's family.

Chairman DeRochi asked about the unbuilt lot. Mr. Ford said the area is currently maintained as lawn but will be maintained as a meadow which has better water quality and stormwater quality measures. The area will be within the new DRCC conservation easement. There is no chance the property can be re-subdivided into a legal lot which should be a condition of any approval.

In response to Ms. Goldman's questions, Mr. Ford testified that the pool equipment will be located as part of the building permit. There is existing landscaping along the common lot line of Lot 11.06 and 11.07 that will be disturbed due to the new driveway installation. Other than the tree mitigation for stormwater and buffering for the neighbors, there is no other landscaping proposed. The applicant will work with Mr. Bartolone if additional landscaping is needed to buffer the pool. A design waiver is needed for the distance between the two proposed new driveways. The distance is approximately 56' where the ordinance requires 125'.

Mr. Ford referenced a colored rendering of the architectural plan showing the new structure which was marked as Exhibit A-1 and described the rendering.

Chairman DeRochi opened the meeting to the public to question Mr. Ford. There were no public questions.

Elizabeth Leheny gave the Board her qualifications and was accepted as an expert planning witness. The application is for a use variance, a side yard setback variance for the main house and a rear yard setback variance for the pool house/dwelling. The site is particularly suited because of its size, location and proposed use. The site is 11.4 acres which is over twice the size of the ordinance requirement. The currently unimproved lot (Lot 11.06) was initially created as part of the 1997 subdivision to accommodate its own single family dwelling. This application will combine the two lots to create two dwellings in close proximity to one another. The lots could remain as is with a larger dwelling constructed on Lot 11.06. With regard to location, the lot is in a unique situation because it is at the end of a cul-de-sac and wraps around the cul-de-sac. There is very little pass-by traffic, if any. The unimproved lot provides an additional buffer between the Bedens Brook Country Club to the south and the proposed building and Lot 11 and the proposed building. The oversized lot provides the ability to create a dwelling with a dual use; a pool house and an in-law home. The intention of the dwelling is an accessory use that is subordinate and incidental to the principal building. The proposed dwelling is not intended to be a standalone single family home given its close proximity to the main house. Given its dual use, it is unlikely that the home would be rented out or used as a standalone single family home. The dwelling is providing housing for the in-laws and addresses a need for senior housing. The proposal promotes the establishment of appropriate population densities and concentrations that will contribute to the well-being of persons, neighborhoods and communities. It maintains a similar density contemplated in the ordinance. The proposal provides sufficient space in appropriate locations for a variety of uses. The proposal promotes a desirable visual environment for creative development techniques and good civic design and arrangement. The proposed dwelling is tastefully designed and will be shielded through fencing and vegetation along the west side and will have minimal visibility from adjacent residents and the public right-of-way. With regard to the negative criteria, the applicant has to show that granting the variance will not cause substantial detriment to the public good and will not substantially impair the intent and purpose of the zone plan and the zoning ordinance. The property is surrounded by single family homes and a golf course. The applicant has agreed to landscape and buffer the neighbor as appropriate. The home is tastefully designed and the intent is to blend in and to be

deferential to the larger home. The proposed dwelling can be suitably accommodated on the combined lot and which could under the current zoning be improved with two single family homes. The granting of the variance will contribute to and promote the goals of the Master Plan. One goal is that the identity of the Township as a totality and the integrity of individual neighborhood areas should be preserved, enhanced and created to the maximum extent possible. The neighborhood is predominantly single family residential. The proposed dwelling unit continues the single family pattern of the neighborhood. The other goal is the development plan should recognize the physical characteristics of the Township and acknowledge the inherent capabilities and limitations of the land to host different types of community development at appropriate densities and intensities. The applicant is proposing to reforest a 0.36 acre portion of the DRCC stream corridor with 43 trees as well as replant a portion of the DRCC stream corridor as meadow. The proposal is a unique situation where a pool house will be used by an in-law. This type of use is not anticipated in the ordinance but its size and location would not make the application precedential because of the unique characteristics of the site. They are not placing more intensity on the proposed parcel than what is permitted in the current zoning. This size lot could be subdivided and have two fairly large homes on it. The Master Plan and zoning plan show these lots as being residential.

Ms. Leheny testified regarding the two bulk variances. The existing home is 60.32' from the side yard where 75' is required. The applicant is seeking a C1 hardship variance. When the property was subdivided the zoning was R-2 which required a side yard setback of 40'. When the dwelling was constructed it conformed and due to the rezoning to 5-acres it no longer conforms. The only way to meet the R-5 setback is to tear down the home and rebuild. It is an existing condition that is not being made worse by the proposed development. The second variance is for the rear yard setback of the pool house which will be 37.6' from the rear yard where 100' is required. The applicant is seeking a C2 variance. The request for the variance relates to the applicant's desire to line up the pool house with the pool but have it setback from the main house. If it was setback 100' from the rear yard the pool house would become much more dominant as viewed from the public right-of-way and it would be within the front yard. The variance can be granted without substantial detriment to the public good and without impairing the intent and purposes of the zoning plan and ordinance.

Mr. Schatzman discussed the Clarke Caton Hintz memo. The applicant is not seeking relief for the height of the dwelling. The height calculations for the new building will be added to the plot plan. Will serve letters from the utility companies will be provided for the new structure. An earthwork plan has not been developed. If soil has to be imported or exported, the applicant will come back to the Board.

Mr. Schatzman discussed Mr. Bartolone's memo dated January 12, 2018 and the Shade Tree Committee's memo dated January 12, 2018. The applicant will work with Mr. Bartolone on the species to be planted. Any shortfall on the number of trees to be planted will be posted into the tree bank. With the landscaping to be installed along the neighbor's property they should meet the area of disturbance requirement.

Mr. Schatzman discussed the Environmental Commission's memo dated January 10, 2018. The area of disturbance plan has not been developed yet but the applicant will work with Mr. Bartolone and put money in the tree bank if they are deficient in the number of trees to be planted.

Public Safety issued a memo indicating there are no issues from a traffic safety standpoint. The Health Department had no objection.

Mr. Schatzman discussed Lauren Wasilauski's memo dated February 14, 2018. A design waiver from providing sidewalk has been requested since there are no sidewalks in the area. The applicant agrees to add a noted to the plan that there will be a two year guarantee for the landscaping. The DRCC easement will cover the environmentally sensitive areas.

Chairman DeRochi opened the meeting to the public. There being no public comment, the public hearing was unanimously closed.

Vice Chairman Smith said that given the fact a house could be built on the vacant lot, combining the two lots is not a concern. The property should be restricted from further subdivision or development of dwellings. The applicant has addressed all his concerns and he finds the proposal a reasonable request.

Chairman DeRochi asked if the applicant would accept a restriction that the pool house/dwelling could not be rented separately from the house. Mr. Schatzman agreed.

Mr. Sudol agreed with the restriction that there be no further subdivision, no split rentals with two structures and that sidewalks are not necessary.

A motion to approve the D variance subject to the conditions was made by Vice Chairman Smith and seconded by Mr. Fedun. The motion carried on the following roll call vote:

Ayes: DeRochi, Fedun, Kabis, Smith, Voitach, Lopez-Lopez and Sudol

Nays: None

A motion to approve the C variances subject to the conditions was made by Vice Chairman Smith and seconded by Mr. Kabis. The motion carried on the following roll call vote:

Ayes: DeRochi, Fedun, Kabis, Smith, Voitach, Lopez-Lopez and Sudol

Nays: None

**Case BA-11-17**                      **Applicant: Mark Kuminski**  
Block 7008 Lot 18  
Bulk Variance  
Expiration Date – 5/19/18  
Affidavit of Notification and Publication Required

Notice was in order. David Schmidt represented the applicant.

David Schmidt, Cairns Place, was sworn in. Mr. Schmidt, the applicant's engineer, gave his qualifications and was accepted as an expert engineering witness. Mr. Schmidt referenced the variance plan dated December 14, 2017 revised January 4, 2018. The lot is 1.0022 acres, is in the R-1 zoning district and has frontage on Berkley Avenue. Mr. Schmidt described the improvements that are on the property. All the improvements that are shown on the plan existed prior to Mr. Kuminski purchasing the property in 2000. Mr. Schmidt referenced the Vicinity Map. The applicant is requesting approval to construct a 25' - 8½" x 25' - 8½" pavilion. The pavilion will be located in the northwest corner of the property where the playground used to be that is currently a sand area. The new impervious surface coverage will be 721 square feet. The pavilion will have electricity and minimal LED lighting. A bulk variance is being requested from Section 16-4.2d for lot coverage. The requirement is 15% and the applicant proposes 20.98%. Footnote 13 of the ordinance allows for an additional 4% for the pool and pool appurtenances.

Ms. Goldman testified that the footnote allows the applicant to go up to 19% if they have a vegetated swale. Since the pool was installed prior to the footnote there is no vegetative swale.

Mr. Schmidt testified that per NJ State standards stormwater management is not required for the project. However, stormwater management is required for lot coverage variances per the Township Ordinance. A report entitled Stormwater Management Analysis dated December 14, 2017 was prepared for the project. An infiltration trench is proposed to be installed along the pavilion. The infiltration trench will accommodate 721 square foot of additional coverage. The infiltration trench will discharge to the existing storm drainage inlet in the rear of the property. The Delaware and Raritan Canal Commission (DRCC) considers this a major project which means the two year storm has to be reduced by 50% and ten year storm by 75% and the one hundred year by 85%. As a result there will be a reduction in flow from the property. There are no critical areas on the property.

Mr. Schmidt showed a photo of the proposed pavilion and fireplace. The photos are similar to what will be constructed. The pavilion will be 16' 7" in height and the fireplace will be either the height of the peak of the pavilion or less. The masonry fireplace will be 15' x 4' and will be located at the north end of the pavilion.

The applicants are requesting a C2 variance. The pavilion is average size, aesthetically pleasing and will be located in an area that was once a playground. The rear yard is vegetated and the applicant will provide additional landscaping on the westerly property line as suggested by the Board Landscape Architect. Granting the variance will allow the applicant to utilize the property to the fullest extent possible. There are no additional lands to purchase to lessen the lot coverage variance. The pavilion does not result in an increase in dwelling size and does not impact traffic. The visual impact is negated by the existing buffer and the additional landscaping to be installed. The only detriment is the increase in stormwater runoff which is minimal and will be controlled by the proposed infiltration trench and/or drywell which will reduce the stormwater flows to the down street properties.

Applications have been submitted to the DRCC, Somerset Union Soil Conservation District (application exempt on 1-10-18) and Somerset County Planning Board.

Mr. Schmidt referenced a photo from the property looking to the north showing the vegetation in the rear of the property, a photo looking to the west showing the existing pine trees and the fence and a photo from the proposed pavilion location facing west.

Mr. Kuminski was sworn in. When they moved in the area was a playground that the children used. The playground equipment started to deteriorate and was removed. The pavilion is the best use for that corner of the property. The fireplace will be a natural wood fireplace. There will be low voltage lighting in the top of the pavilion directed down. They are also looking at a possibility of having a TV on the fireplace.

Mr. Schmidt discussed the review memos. The applicant will provide a vegetative swale in the pool area, run it around the perimeter of the pavilion and discharge to the inlet to meet Footnote #9 of the ordinance. The additional coverage over the 19% will be addressed with an infiltration trench and/or drywell that will be sized for 865 square feet. There is an existing fence that is located within a drainage easement. The Board's professionals have recommended the fence be relocated. The fence is approximately 25 years old and relocating it is a major cost. The applicant would like to enter into a cross-easement agreement with the Township. If the Township has to do work within the easement, the applicant will bear the cost of putting the fence back up and will replace the fence outside the easement.

Mr. Schmidt discussed Lauren Wasilauski's memo dated February 14, 2018. On site mitigation is being proposed instead of removing existing coverage on the lot.

Mr. Schmidt discussed the Clarke Caton Hintz memo dated February 13, 2018. Due to the DRCC requirements, the infiltration trench may not be feasible and a drywell will most likely be needed. The buffer trees will be planted outside the drainage easement.

Mr. Schmidt referenced the Board of Health memo which had no issues.

Mr. Schmidt discussed Mr. Cline's memo dated February 15, 2018. There are no utilities in the area of the pavilion that would be impacted. The routing and location of the fireplace will be located so it does not impact the pavilion.

Mr. Schmidt discussed the Environmental Commission memo dated February 15, 2018. The applicant is not contributing to flooding since the flow is being reduced to the rear inlet. No trees are being removed for the project. Solar panels will not be installed on the roof.

Mr. Schmidt discussed Mr. Bartolone's memo dated February 13, 2018. Landscaping will be installed along the west side of the property outside of the drainage easement. The existing fence is within the drainage easement. The applicant would like to enter into a cross-easement agreement with the Township.

Chairman DeRochi said there is a building code requirement for the height of the chimney. It has to be 3' higher than any structure that is within 10'.

Mr. Schmidt amended his testimony that the fireplace will not exceed 25'. There is an existing 30' wide conservation easement along the rear property line. The existing vegetation within the easement cannot be removed.

The Board recommended the applicant enter into a cross-easement agreement with the Township for the fence rather than remove it at this time.

Chairman DeRochi opened the meeting to the public. There being no public comment, the public hearing was closed.

A motion to approve the bulk variance subject to the conditions was made by Mr. Voitach and seconded by Vice Chairman Smith. The motion carried on the following roll call vote:

Ayes: DeRochi, Fedun, Kabis, Smith, Voitach, Lopez-Lopez and Sudol

Nays: None

## **V. MINUTES**

### **December 19, 2017 – Regular Meeting**

A motion to approve the minutes was made by Mr. Fedun and seconded by Mr. Voitach. The motion carried on the following roll call vote:

Ayes: DeRochi, Fedun, Voitach and Lopez-Lopez

Nays: None

**January 16, 2018 – Reorganization and Regular Meeting**

A motion to approve the minutes was made by Mr. Lopez-Lopez and seconded by Mr. Fedun. The motion carried on the following voice call vote:

Ayes: DeRochi, Fedun, Kabis, Smith, Woitach, Lopez-Lopez and Sudol

Nays: None

There being no further business to come before the Board, the meeting was adjourned at 9:15 p.m.