

Call to Order:

The Zoning Board of Adjustment meeting was called to order at 6:38 p.m. on February 2, 2023 by Chairman Cummiskey who read the following statement, “Notice of this meeting was given as required by the Open Public Meetings Act in the Annual Notice of Meetings on January 20, 2023 and a copy was posted on the 2nd floor bulletin board in Town Hall and also posted on the Township’s website. Be advised no new item of business will be started after 10:30 p.m. and the meeting shall terminate no later than 11:00 p.m.”

The Board saluted the flag.

Roll call; Mr. Carino, Mr. Colavita, Mr. Cummiskey, Mr. Kozak, Mr. Powers, Mr. Salvadori, Mr. Seidenberg, Mr. Kernan, Planner, Mr. Coe, Solicitor. Also present; Ms. Orbaczewski, Secretary, Ms. Gallagher, Clerk Transcriber. Excused; Mr. Kerr, Mr. Sander, Engineer, Mr. Heverly, Council liaison.

Public Hearings:

1. #22-65 – Ronald Thomas – Use Variance

The applicant is requesting a use variance to allow the existing residential duplex use to be permitted within the Commercial Zoning District, along with any other variances or waivers deemed necessary by the Board. The property is located at 63 Sicklerville Road, also known as Block 1807, Lot 34 in the Commercial Zoning District.

Present is Emily Givens, attorney for the applicant. Ms. Givens reviewed the applicant’s request for the Board. She stated that the property currently has a 1 and 1/2-story duplex structure. Each unit has their own full bathroom, kitchen, bedrooms and living spaces. The property abuts residential in the rear and is otherwise surrounded by various commercial and residential uses. When Mr. Thomas purchased the property is was being used as two separate residential units. Her client was unaware when he purchased the property that the previous owners never appeared before the Board to allow the duplex use of the property.

Tiffany Morrissey, a professional planner, and Ronald Thomas, the applicant, were sworn in by Mr. Coe. Ms. Givens asked Mr. Thomas is her description of the property to the Board was accurate. Mr. Thomas affirmed. Ms. Givens asked Mr. Thomas to explain the separate entrances to each unit. Mr. Thomas stated each unit has two doors for entry. Ms. Givens asked if there were separated utilities and meters for each unit. Mr. Thomas affirmed. Ms. Givens asked if he had to make any interior changes for the home to be utilized as a residential duplex. Mr. Thomas replied no, it was already set up that way by a previous owner. Mr. Thomas stated that he currently occupies one of the units. Ms. Givens asked about parking. Mr. Thomas replied there is about 5 or 6 spaces for parking. Ms. Givens asked if he was using any of the property for commercial purposes. Mr. Thomas replied no.

Public Hearings: (continued)

1. #22-65 – Ronald Thomas (continued)

Ms. Morrissey gave her qualifications for the Board. Ms. Morrissey spoke of the history of the property, that it was a florist with a residential unit attached. She stated that it is located in a commercial zone, it backs up to an R-1 zoning district and it does have commercial zoning across the street and around it. She stated that although it is a commercial zone, many of the other properties in this area are residential. Ms. Morrissey explained the layout of the building in question. Ms. Morrissey submitted an aerial photo of the property and surrounding area from Google Maps, marked Exhibit A-1. She submitted another photo, a street view of the property also from Google Maps, marked Exhibit A-2. Ms. Morrissey pointed out that the photos showed the property is surrounded by residential on each side as well as across the street, even though it is a commercial zone.

Motion to deem the application complete by Mr. Salvadori, seconded by Mr. Powers. Voice vote; All Ayes.

Ms. Morrissey stated that the style of the home is similar to those in the area. She stated that it would not be beneficial for commercial use in the rear due to lack of visibility from the road. She stated that there are multiple homes in the adjacent properties that are multi-family homes. Ms. Morrissey stated that she believes due to the current set up and available parking on the property that it is suited to provide for a duplex. She stated for the size of the lot and the duplex it is an appropriate population density for the area. She stated that she does not believe approval would be a detriment to the public because even though this is a commercial zone, it is predominately residential and it would advance the goals of the master plan.

Mr. Kernan reviewed his report for the Board. He stated that he agreed with Ms. Morrissey's testimony explaining the positive criteria and that there would be no detriment to the public. He stated that he has no concerns with the application.

Mr. Colavita asked Ms. Morrissey if she testified that everything from next to the car wash Cora Avenue on the same side of the street is either residential or multi-family. Ms. Morrissey explained the make-up of the street from the car wash on up toward the Pike is either single or multi-family dwellings. Mr. Colavita asked Ms. Morrissey about the make-up on the opposite side of the street from New Hampshire to Clinton and some of the homes south of Clinton are also single or multi-family. Ms. Morrissey confirmed that was correct.

Mr. Coe asked Mr. Kernan what type of commercial use would be appropriate for this property if it were not being used for residential. Mr. Kernan replied that it could be office space, or a little Cannabis retail, but the parking available could limit the volume. Mr. Coe stated that someone could level the house and rebuild if they chose. Mr. Kernan agreed that would maximize the property in its current commercial zone.

Public Hearings: (continued)

1. #22-65 – Ronald Thomas (continued)

Motion passed to open the hearing to the public. There being none, motion passed to close the hearing to the public.

Ms. Givens stated that she believed the testimony from Ms. Morrissey has established the positive and negative criteria in order for the Board to grant the variance.

Mr. Coe reviewed the application for the Board. The conditions appropriate are that the applicant will obtain all other Township permits and approvals that may be necessary. The applicant will obtain any outside agency approvals that may be necessary. The applicant will comply with all documents, plans and surveys submitted with the application. The applicant will satisfy all escrow requirements and obligations.

Motion to approve by Mr. Salvadori, seconded by Mr. Powers. Roll call vote; Ayes- Mr. Salvadori, Mr. Powers, Mr. Carino, Mr. Colavita, Mr. Cummiskey, Mr. Kozak, Mr. Seidenberg. Nays- Zero. Abstentions- Zero.

2. #23-01 – David Vitt – Rear & Side Yard Variance

The applicant is requesting a side yard variance to allow 4.7 feet where 5 feet is required and a rear yard variance to allow 4.1 feet where 5 feet is required for his existing swimming pool and shed, along with any other variances or waivers deemed necessary by the Board. The property is located at 249 Spring Beauty Drive, also known as Block 37.0201, Lot 14 in the RG-PR Zoning District.

Mr. Vitt was sworn in by Mr. Coe. Mr. Vitt reviewed his application by stating he originally applied for a deck addition. During that process he found out that his in-ground pool was 10 inches too close to the rear property and his shed is 3 inches too close to the side property. He stated that he's here get approved for those variances so he can get approved for his deck addition.

Motion passed to deem the application complete.

Mr. Kozak asked Mr. Vitt to clarify that the pool was already existing. Mr. Vitt confirmed, the pool was already in the ground and the shed is also existing. Mr. Colavita asked Mr. Vitt if there would be any other area in the yard to put the pool. Mr. Vitt replied no and mentioned that he had appeared before this Board previously for the pool but Budd's Pools installed it 10 inches closer to the back than they were supposed to.

Motion passed to open the hearing to the public. There being none, motion passed to close the hearing to the public.

Public Hearings: (continued)

2. #23-01 – David Vitt (continued)

Mr. Coe reviewed the application for the Board. The conditions appropriate are that the applicant shall obtain all other Township permits and approvals including construction permits and approvals that may be necessary. The applicant will obtain any outside agency approvals that may be necessary. The applicant will comply with all plans and surveys and other documents submitted with the application. The applicant will satisfy all escrow requirements and obligations.

Motion to approve by Mr. Kozak, seconded by Mr. Powers. Roll call vote; Ayes- Mr. Kozak, Mr. Powers, Mr. Carino, Mr. Colavita, Mr. Cumiskey, Mr. Salvadori, Mr. Seidenberg.

Mr. Kozak excused himself from the meeting.

3. #23-02 – Faliere Dieujuste – Side, Rear, and Lot Coverage Variances

The applicant is requesting a side yard variance to allow 1.5 feet where 10 feet is required for the existing driveway, a rear yard variance to allow 31.2 feet and 19.11 feet where 37.5 feet is required for the (2) existing decks, a rear yard setback variance of 0 feet where 5 feet is required for the existing shed, and to allow 35.2% lot coverage where the maximum is 30%, along with any other variances or waivers deemed necessary by the Board. The property is located at 18 Gilbert Court, also known as Block 2105, Lot 18, in the R-2 Zoning District.

Alan Minato is present, as attorney for the applicant. Mr. Coe asked Mr. Minato to provide threshold testimony about the structure and utilities to clarify potential use for the property. Mr. Coe proceeded to read the definition of the twin or two-family dwelling unit; specifically, that there needs to be testimony about a common wall separating the two units, separate utilities and separate ingress and egress for each unit. Mr. Minato stated that the applicant hopes to be approved for the variances tonight so he can move in to occupy one portion of the home and then be able to bring the second unit up to speed.

Jon Harris, architect witness for the applicant, was sworn in by Mr. Coe. Mr. Harris qualified himself for the Board. Mr. Minato asked Mr. Harris to provide testimony relevant to the two-family components of the home. Mr. Harris stated that the home as currently designed is definitely composed of one main part of the dwelling and a second apartment unit that was built over the garage at some point. He stated that the apartment unit had its own separate entrance/exit but there are architectural deficiencies. Specifically, the apartment is built above the garage and there is no fire separation, nor is there fire separation between the garage and the primary dwelling. Mr. Coe asked if there needs to be a separate fire rating between the two units as well if they are going to be a duplex or a twin. Mr. Harris replied yes, one-hour fire separation is required between the two units. There is currently dry wall on both sides and he suspects that it is not fire rated dry wall. Mr. Coe asked that there is not the required fire separation between either unit and the garage or between the two units. Mr. Harris replied that is correct.

Public Hearings: (continued)

3. #23-02 - Faliere Dieujuste (continued)

Mr. Harris stated that the apartment has its own kitchen, bathroom, two bedrooms and a living area. It has its own entrance from the exterior and a deck on the rear of the home for access and egress. He stated that he was unsure but referred to his previous survey notes that there is a single gas service and a single electric service to the home, based on seeing only one meter for each. Mr. Harris stated that it would be a viable legal apartment provided that the fire separations are in place. Mr. Harris mentioned that the building official noted other deficiencies such as carbon monoxide detector, smoke alarm, the primary dwelling has an indoor spa that needs a safety cover.

Mr. Minato stated again that his client is not yet the owner of the property. Before he pours money into this, he would like close and to get approval to occupy the first unit. Then he can begin getting the apartment unit up to code.

Mr. Coe stated that essentially, there is only one house and at this point can only be occupied as a single-family home. Mr. Kernan agreed. Mr. Kernan asked Mr. Coe to reread the definition of two-family. He went on to explain that the definition explains that it should be designed as a twin-family unit. At this point it does not meet that criteria, as there is a door from the garage to the main unit. It's not separated into two, say $\frac{3}{4}$ of the unit is unit one and $\frac{1}{4}$ above the garage is unit two; it clearly was not designed as a twin. Mr. Kernan and Mr. Coe discussed that this Board does not have jurisdiction and the construction official should be dealing with the issue of fire separation and whether or not a CO would be issued. Mr. Coe stated that the only thing this Board has jurisdiction over is deciding on the variances for a single-family dwelling.

Mr. Colavita asked Mr. Coe if the Board could stipulate a condition that multi-family could not be sought after. Mr. Coe stated that the condition could be if approved that it's premised upon a single-family home. The applicant would have to come back to ask for a use variance to turn it into a duplex, but that would have to be a separate application. Mr. Powers asked Mr. Coe if their intention was to rent the apartment they have to go through the process. Mr. Coe stated that it seems as if apartment can't even be occupied at this point because of the fire separation issues.

Ms. Orbaczewski asked Mr. Kernan if in the future could this apartment could ever be considered a twin or duplex. Mr. Kernan replied that he's not sure but it would be between the construction official and zoning and public works for additional utilities. Ms. Orbaczewski asked if the applicant would have to do whatever the code is to make it a twin and not just an apartment. Mr. Kernan replied right, and that there is also code on accessory dwelling units which is different from twin or duplex, that might be another avenue for the applicant. Mr. Kernan reiterated the code definition of twin or duplex it is designed and built from the get go as a two family structure, not adding an apartment above the garage and trying to fix it later to make it right.

Public Hearings: (continued)

3. #23-02 – Faliere Dieujuste (continued)

Mr. Colavita asked to read the first part of the ordinance again for clarification since it mentioned ‘designed to be’. Mr. Kernan stated that’s what he just mentioned. Mr. Coe re-read the definition. Mr. Kernan said this could never be that because it’s above a garage that goes to the main unit. Ms. Orbaczewski stated that it seems this would not need a use variance for a twin because a twin is permitted there. But since the dwelling could never be a twin by definition, it would need a use variance for an apartment. Mr. Kernan agreed.

Mr. Minato stated they would like to proceed with the bulk variances.

Motion passed to deem the application complete.

Mr. Kernan excused himself from the meeting.

Mr. Minato asked Mr. Harris to proceed with testimony about the bulk variances requested. Mr. Harris reiterated the issues of smoke detector, carbon monoxide, fire separation. That they would have to address with the building official. Mr. Coe stated just to be clear, all of those issues will be dealt with by the construction office and the only thing we are dealing with tonight are the side, rear and lot coverage variances. Mr. Harris stated that there are several decks on the rear of the home and one of those encroaches the rear property line. He stated that the applicant plans to demolish the deck once he is able. He noted that the existing shed is on the property line, and the applicant plans to relocate the shed to meet the setback requirement. Mr. Coe asked Mr. Harris if that meant he was no longer seeking the rear yard variance. Mr. Harris stated again that the deck is existing. Ms. Orbaczewski stated that she believed the Zoning Officer wanted these variances to clean up what is already existing on the property. Mr. Harris stated the lot coverage is currently 35.2%, which is higher than the maximum of 30% in this zoning district. Mr. Harris also stated the driveway setback on the side property line is currently 1.3 feet off the property line.

Mr. Colavita stated that he was confused, they applicant is asking for variances but doesn’t really need the variances. Ms. Orbaczewski clarified that the Zoning Officer required the applicant to come for the variances as is. Since the applicant is seeking a CO for the property, he needs to get approved for the existing bulk variances. Mr. Minto agreed to what Ms. Orbaczewski stated. Mr. Minato

Faliere Dieujuste was sworn in by Mr. Coe. Mr. Dieujuste stated that Gilbert is the name of the village he came from. When he saw the property on Gilbert Court it became personal for him. He stated that he and his wife would like to move here from North Jersey. Mr. Coe addressed Mr. Minato and his client. Mr. Coe stated that he hopes it’s clear to the applicant that the Board this evening is only dealing with the lot variances. He stated there are many other issues that will need to be dealt with by the construction office and possibly the Zoning Official. Mr. Minato stated that they understood.

Public Hearings: (continued)

3. #23-02 – Faliere Dieujuste (continued)

Motion passed to open the hearing to the public.

1. -Crystal Fox of 544 Wright Loop was sworn in by Mr. Coe. Ms. Fox spoke to the applicant. She stated that she hoped he was truly interested in coming to the development and not renting it out. She hoped he took into consideration what the Board had to say, it has been vacant for a very long time and that his family is going to have to do a lot of work to bring it up to code. Mr. Coe interrupted and told Ms. Fox that she needs to address the Board, not the applicant. Ms. Fox thanked the Board for explaining things to the applicant on what was needed.

Motion passed to close the hearing to the public.

Mr. Minato stated that his client intends to occupy the property with his family. He stated that they hope to have the variances granted.

Mr. Coe reviewed the application for the Board. The conditions appropriate are that the applicant must obtain all Township permits and approvals including construction permits and lot grading that may be necessary. The applicant will obtain all outside agency approvals that may be necessary. The applicant must comply with all plans, surveys, and other documents submitted with the application. The applicant must satisfy all escrow requirements and obligations that are imposed. Lastly, under the category of Township permits and approvals, that specifically includes a Certificate of Occupancy for its intended use of the property.

Motion to approve by Mr. Salvadori, seconded by Mr. Powers. Roll call vote; Ayes- Mr. Salvadori, Mr. Powers, Mr. Carino, Mr. Colavita, Mr. Cummiskey, Mr. Seidenberg. Nays- Zero. Abstentions- Zero.

Public Portion:

Motion passed to open the meeting to the public. There being none, motion passed to close the meeting to the public.

Reports:

Ms. Orbaczewski stated that the next meeting is the 16th. Mr. Seidenberg asked about the Wolf application. Ms. Orbaczewski explained that application is set for a special meeting date on March 15th.

Minutes:

Motion passed to approve the meeting minutes from reorganization on January 9, 2023.

Adjournment:

The meeting was adjourned at 8:02 p.m.

These minutes are an extract from the meeting that was held on the above date and are not a verbatim account or to be construed as an official transcript of the proceedings.

Respectfully submitted by: Amy Gallagher, Clerk Transcriber