

## HAINESPORT TOWNSHIP JOINT LAND USE BOARD MINUTES

Time: 7:00 PM

March 6, 2019

### 1. Call to Order

The meeting was called to order at 7:00 pm by Mr. Krollfeifer.

### 2. Flag Salute

All participated in the Flag Salute

### 3. Sunshine Law

Notice of this meeting was published in accordance with the Open Public Meetings Act By posting on the municipal bulletin board, publication in The Burlington County Times and Courier-Post Newspapers, and by filing a copy with the Municipal Clerk

### 4. Announcement of “No new business after 11:00 PM”

### 5. Swearing in of New Appointees

#### A. Hainesport Township Resolutions 2019-6-1

Mr. Kingsbury administered the oath of office to Mr. McKay.

### 6. Roll Call

Present: Mr. Clauss, Mrs. Gilmore, Mrs. Kelley, Mr. McKay, Mr. Wagner, Mrs. Baggio, Mrs. Tyndale, Ms. Kosko, Mr. Krollfeifer, Mr. Levinson, Mr. Tricocci

Absent: Mrs. Kelley, Mr. Sylk

Also Present: Robert Kingsbury, Esq., Board Attorney  
Michelle Taylor, Board Planner  
Kathy Newcomb, Zoning Officer  
Paula Tiver, Board Secretary

### 7. Items for Business

**A. Case 19-02: Thomas and Dawn Sherf**  
**Block 64.01 Lot 14.01**  
**1401 Maine Ave.**  
**Use variance for addition**  
**Attorney: Trevor Williams**

Mr. Clauss and Mrs. Gilmore recused themselves.

Mr. Kingsbury swore in Ms. Sherf and Mr. Adison.

Trevor Williams, attorney, explained that this is an application for a use variance. It is an expansion of a preexisting nonconforming use. The property is located at 1401 Maine Ave. in the SRC zone. In 2015 this property was before the Board for a use variance to permit the construction of a residential dwelling. Resolution 2015-05 granted the application and applied the R2 zoning standards. They are seeking approval for a mother-in-law suite on to the property. The addition is approximately 822 sq. ft. The application meets all the bulk requirements of the R2 zone.

Mr. Williams asked Ms. Sherf to state her name and where she lives.

Dawn Sherf stated her name and lives at 1401 Maine Ave. She is the owner and moved in September 2017.

Mr. Williams questioned what type of expansion she would like to do.

Ms. Sherf explained that she would like a mother-in-law suite for her mom to live with them.

Mr. Williams commented that it would be a dwelling unit constructed on the side of the home and would continue to live there.

Ms. Sherf answered yes.

Mr. Williams questioned if there would be any access to the dwelling other than the entrance to the existing home and if there would be any side entries or other entries into this.

Ms. Sherf stated only the front door of the existing home.

Mr. Williams questioned who would live in it, if there would be a separate utility bill, and if it would ever be available to rent.

Ms. Sherf explained that her mom would live there with no separate utility bill and it would not be available to rent.

Mr. Williams stated that they included in the application a 6' privacy fence that would enclose the back yard which will comply with the bulk standards.

Ms. Sherf agreed.

Mr. Williams marked a set of pictures as exhibit A1 and questioned if this was her home. He referred to the second picture and asked if the addition would be to the left side of the house.

Ms. Sherf stated it was her home and it would be to the left.

Mr. Williams questioned her that she may want to construct other items such as a swimming pool in the future. If the Board was willing, would she request to apply the R2 bulk requirements to the property?

Ms. Sherf answered yes.

Mr. Kingsbury questioned if the pool was noticed.

Mr. Williams said it was not noticed. It is in response to one of the comments from the professionals for other opportunities that they may want to condition the application on. They did put any and all other variances.

Mr. Kingsbury advised the Board not to act on anything that is not part of the application. If they want a pool, they can come back since it is a further expansion which is subject to notice.

Paul Adison, architect, gave his credentials. The Board accepted. He prepared the plans that were submitted with the application.

Mr. Williams asked that he briefly summarize the application. He marked the following exhibits: A2 floor plans, A3 elevations

Mr. Adison explained there are no exterior doors other than the main entrance. Access to the mother-in-law sweet is through the existing family room and through the garage. There will be a living room, a kitchen to provide her own meals, bedroom, bathroom, and a sleeping loft if she is watching the kids. There is approximately a 20' side yard setback and a 50' front yard setback. He referred to A3; the addition blends perfectly to the house and looks as if it was built that way. There is a small step out porch in the rear. They tried to keep with the same architectural. Siding will match the existing.

Mr. McKay stated this addition will have a kitchen and one exterior door in the back.

Mr. Adison explained it will have a kitchen and a sliding glass door in the back to a patio. There is no intent on renting it. It is so that she can live independently and age gracefully.

Mr. Williams questioned if he is familiar with the bulk standards such as front yard setbacks, side yard setbacks, etc. Did he have an opportunity to see the required R2 residential standard requirements along with the existing and proposed.

Mr. Adison answered yes.

Mr. Williams questioned if there are any bulk variances required based on the R2 zone.

Mr. Adison answered no, there are none.

Mr. Williams addressed the Taylor Design letter dated March 1 2019. There were some recommendations that the professionals made to the Board. The applicant has read them and agrees to all the recommendations (page 3, E. General Comments #2. a, b, c, d, e, and f.

Mr. McKay stated it was represented that it will not be used as a rental unit. No separate entrance, but has a slider around the back. We understand that they are not really used as entrance doors, but possible. What protection do they propose to protect the next owner from using as an illegal duplex?

Mr. Williams explained the applicant has testified that it will not be identified as a separate dwelling; the property will be open internally to each other. There could be a condition that it remains open. A condition of approval that this unit never is rented to anyone in the future and only is used by the owner/occupant of the residence.

Mr. McKay questioned how we would put a buyer on notice if the house is ever sold in the future to insure the buyer is put on notice that they cannot turn this into a rental property.

Mr. Williams stated the Board could grant it with a prohibition of renting this additional dwelling unit as a separate dwelling unit. With that condition in the resolution any subsequent owner is on notice that the dwelling unit cannot be used as a rental unit.

Mr. McKay commented that it would probably not be picked up on a title search.

Mr. Kingsbury said it probably would not. The strongest way to do so is with a deed restriction.

Mr. McKay questioned if the applicant would agree to that.

Mr. Williams stated he is not opposed to it but courts are reluctant to restrict property especially of record with a deed restriction. He does not know how that would look. If the applicant wanted to move out and rent the entire property to one tenant, would that be a violation?

Mr. McKay believes it would not. We are talking about the prohibition of turning this into a duplex.

Mr. Williams had concerns with when you strip something of record by a deed restriction there are situations that weren't thought of. The applicant is conditioning on a statement that it will not be used for rental purposes or subsequent owner of the property rented it out, they would be in violation of the use. The town would have the ability to say to the owner you are in violation of this use and prohibited from renting that additional use. There is recourse that the Board has against the present or subsequent owner.

Mr. Krollfeifer questioned if this property was not in the SRC zone and in the R2 zone, would this application be here tonight or would Mrs. Newcomb be handling it.

Mrs. Newcomb stated she has the authority to make that decision if all the requirements are met. The only reason they are here is because they are in the SRC zone. If the Board approves this, things would need to be clearly defined for the future.

Mr. McKay questioned if our code allows for an additional kitchen in a house. Some towns do not permit it.

Mrs. Newcomb answered yes. Some towns do not allow.

Mr. Krollfeifer asked for clarification that it is an in-law suite for Mrs. Wallen, who is present.

Mr. Williams has concerns with a deed restriction that may cause an issue at a closing with the title insurance. Other properties within the township do not have to enter into deed restrictions that meet the requirements. The town still has enforcement capabilities against those individuals from renting it separately. Testimony has been given that it will not be rented and would be happy to accept that as a condition of the resolution.

Mrs. Baggio commented that there will not be a separate utility and questioned if the heating and air be separate.

Mr. Williams explained that there will be an upgrade to the heating and cooling system. It will be an independent system but under one bill.

Mr. McKay stated one electric and one gas meter.

Mr. Williams answered yes.

Mrs. Newcomb explained that the utilities would have to confirm with the construction office if it were two meters.

Mr. Williams summarized the application. This property was before this Board and was approved under Resolution 2015-05. In that resolution under J, the Board found special criteria to grant the construction of a single family residential dwelling in the SRC zone. The Board specifically stated that the lots are not located in a neighborhood where a commercial zoning is appropriate or can reasonably anticipated. With that finding we had the permitted use of the single family dwelling. This is just an expansion of that, which continues on with the same criteria in the 2015 application. It advances the use of intent of the Planning Board in so far that this is not a commercial building not being built in this area. It further is advancing the planning intent as far as residential uses are being used surrounding the property. It meets the negative criteria; there is no negative impact to the neighboring properties or in the immediate area.

Mr. Krollfeifer stated he did visit the property and there is another residential property to the west.

Mr. Williams stated that across the street use to be residential but is unsure if it still is.

Mr. Kingsbury explained that he has seen this in other municipalities, some want deed restrictions and others do not. Sometimes there are issues with deed restriction for the Title Company, who may not cover the use of the property. Deed restriction is extremely difficult to modify or remove. He has seen this in Medford in which they cover everything in the resolution. No exterior entrance other than the main entrance, no separate utilities, restricted against multi-family dwelling, and restricted against rentals. You can cover it in the resolution and then it just becomes an enforcement problem. If you want to cover it 100%, you can do it with a deed restriction.

Mr. McKay questioned if there is a copy of a Medford resolution that we can look at.

Mr. Kingsbury stated he probably wrote one about 15 years ago.

Mr. McKay explained he does not have a problem with what they are trying to do. One can see the long range problem the Board is looking at.

Mrs. Taylor stated they did write some of those conditions on their correspondence. She understands that an expansion of a nonconforming use is not favored upon. This was reviewed in 2015; it seems that you approved the residential use so that any uses that would be associated with that as accessory would be acceptable under the same criteria it was evaluated with the previous application. The Board's attorney has an issue with applying the R2 standards to it. If the applicant wants to add a pool or something they may want to come back next month or continue the application. She would hate to see them come back over and over again for accessory uses.

Mr. Williams commented that they would not carry to the next meeting. The request stems from the professional's comment that if we apply the R2 standards to this and the R2 standards continued the applicant would have to express some kind of hardship having to come back for something that complies with the R2 standards. The pool was the most obvious example. It is not planned right now; it may be something in the future. The comment was raised in the professional's letter and well received by the applicant. The consideration if the Board would continue the R2 bulk standards apply to this property, allowing them to do any type of improvements that meet those standards would allow the applicant to deal directly with Mrs. Newcomb. It would have to meet the R2 standards, if it required a variance the applicant would have to come back to the Board. If this was granted as part of the application it would be well received by the applicant. If the Board is not inclined, they would not ask to carry the application.

Mr. Krollfeifer opened public comment. None. Closed public comment.

Mr. Krollfeifer questioned if it could be put into the resolution that if they want a pool and it conforms they can put one in.

Mr. Kingsbury stated he could put that in the resolution.

Mrs. Newcomb commented that in the Taylor Design Group letter it mentioned that anything that complies with the R2 standards, the zoning officer has the right to approve them. Is this pool only, or any other accessory items?

Mr. Krollfeifer stated it is any other.

Mrs. Newcomb suggested that they put any accessory items acceptable in the R2 zone that the zoning officer would review them. She doesn't want to just define it as a pool.

Mr. Williams commented that it would be acceptable.

Mr. McKay motioned to approve subject to the following conditions.

- No separate exterior entrance door
- No conversion to a duplex
- Internal access only through the house
- No separate utilities
- Subject to treating this as if in the R2 zone for accessory items with decisions to the construction official and zoning officer

Mrs. Newcomb asked for clarification for no exterior entrances, since there is a sliding door.

Mr. McKay stated most brands only open from the inside, but there may be one that does open both ways.

Mrs. Newcomb explained that the construction official in his review of the resolution will see that there is not supposed to be an outside door.

Mr. Williams suggested that they could identify the proposed and limit it to that. No other entrance other than what is proposed and submitted by the applicant.

Mrs. Newcomb commented that it needs to be better defined because the slider is an entrance.

Mr. McKay explained that we can state that it is recognized as an exterior door but could put the restriction that it is not lockable from the outside and must remain so. This will stop anyone from entering it if there is no way to unlock or lock from the outside.

Mr. Williams stated it would be acceptable that a condition be placed that the slider does not have the ability to unlock or lock from the outside.

Mr. McKay commented that you can have the slider and not be able to convert it to an entrance door.

Second: Mr. Levinson

**Roll Call:** Mr. McKay, yes; Mr. Levinson, yes; Mr. Wagner, yes; Mrs. Baggio, yes; Mrs. Tyndale, yes; Ms. Kosko, yes; Mr. Krollfeifer, yes

Motion carries to approve.

Mr. Williams asked for a waiver to proceed prior to the memorialization of the resolution. He stated that he has explained the waiver to his clients and they would like to proceed with it.

Mr. McKay motioned to approve the waiver.

Second: Mrs. Tyndale

**Roll call:** Mr. McKay, yes; Mrs. Tyndale, yes; Mr. Levinson, yes; Mr. Wagner, yes; Mrs. Baggio, yes; Ms. Kosko, yes; Mr. Krollfeifer, yes

Motion carries to approve.

## 8. Minutes

### A. Regular Meeting Minutes of February 6, 2019

Motion to approve: Mrs. Tyndale

Second: Mr. Levinson

**Roll call:** Mrs. Tyndale, yes; Mr. Levinson, yes; Mr. Wagner, yes; Mrs. Baggio, yes; Ms. Kosko, yes; Mr. Krollfeifer, yes

Motion carries to approve.

## 9. Resolutions

**A. Resolution 2019-04: Habitat for Humanity of Burlington County & Greater Trenton  
Granting bulk variances for construction of a new residential dwelling on Block 59 Lot 1.01**

Motion to approve: Mrs. Tyndale

Second: Mr. Wagner

**Roll call:** Mrs. Tyndale, yes; Mr. Wagner, yes; Mrs. Baggio, yes; Ms. Kosko, yes;  
Mr. Levinson, yes; Mr. Krollfeifer, yes

Motion carries to approve.

**10. Correspondence**

**A. Letter dated January 30, 2019 from Alaimo Engineers to Paula Kosko  
Re: Case 17-11 Hainesport Enterprises Block 61.01 Lot 4 Site Plan Distribution**

**B. Letter dated February 21, 2019 from Alaimo Engineers to Mr. Krollfeifer  
Re: Case #16-11A: Hainesport Plaza (Hirshland & Co.) Block 96  
Lots 1.01 & 1.04 Compliance Plan Review #3**

**C. Hainesport Township Resolution 2019-60-2  
Re: Accepting a performance bond from Case 16-02A: Our Lady Queen of Peace Block 91 Lot 3**

Motion to accept and file: Mrs. Baggio

Second: Mr. Wagner

**Roll call:** Mrs. Baggio, yes; Mr. Wagner, yes; Mr. Levinson, yes; Mr. McKay, yes;  
Mrs. Tyndale, yes; Ms. Kosko, yes; Mr. Tricocci, yes; Mr. Krollfeifer, yes

Motion carries.

**11. Professional Comments**

Mrs. Newcomb thanked the Board for putting the conditions in the resolution. It helps her with zoning.

**12. Board Comments - None**

**13. Public Comments**

Mr. Krollfeifer opened public comment. None. Closed public comment.

**14. Adjournment**

Mr. Wagner motioned to adjourn at 7:55 pm.

Second: Mrs. Baggio

**Roll call:** All in favor