

FLORENCE TOWNSHIP PLANNING BOARD

RESOLUTION NO. Z.B.-2018-08

Application PB#2018-01

**RESOLUTION OF MEMORIALIZATION
APPLICATION OF
JEFFREY DZURKO
FOR BLOCK 166, LOT 12.03
R- RESIDENTIAL ZONING DISTRICT
MINOR SUBDIVISION w/ BULK VARIANCE
HEIGHT & USE VARIANCES
APPROVAL**

Decided:

July 9, 2018

Resolution Memorialized:

September 6, 2018

WHEREAS, Jeffrey Dzurko has made application to the Florence Township Zoning Board of Adjustment for minor subdivision, bulk variance, height variance and use variance approval to subdivide existing Lots 12.03 of Block 166 located at 1021 Potts Mill Road into a remainder lot of 3.19 acres, to be known as Lot 12.03, upon which he proposes to construct a 2400 sq. ft. private garage with a height of 24 ft. when 20 ft. is the maximum permitted height for such structures, and one new lot of 0.5 acres, to be known as Lot 12.04, upon which will be located the existing single-family dwelling;

WHEREAS, the existing dwelling on proposed Lot 12.04 would be served by public water & sewer, and no sewer or water services are proposed on new Lot 12.03 at this time;

WHEREAS, the proposed lots conform to all applicable bulks standards except that the proposed 74.61 ft. lot width of proposed Lot 12.03 is less than the required 125 ft. for lots on public sewer and water;

WHEREAS, the applicant has also requested relief from the requirement of Ordinance Section 91-74 that sidewalks be provided along the Potts Mill Road frontage;

WHEREAS, the applicant is represented by John Gillespie, Esquire, and Erin Szulewski, Esquire, of Parker McCay;

WHEREAS, the applicant is the contract purchaser of the subject property;

WHEREAS, upon a finding that the applicant had provided proper mailed and published notices of hearing and that jurisdiction was proper in the Board, it opened a hearing on the application at its July 9, 2018 regular meeting;

WHEREAS, the applicant's Engineer Mark Malinowski, PE, of Stout & Caldwell, was sworn, accepted as an expert in the field of site and civil engineering, and offered his testimony in support of the application;

WHEREAS, Mr. Dzurko, appeared, was sworn, and offered his testimony along with the arguments and representations of counsel in support of the application;

WHEREAS, the Board granted certain submission waivers based upon the recommendations of the Board Engineer, and found the minor subdivision and variance applications sufficiently complete to be heard;

WHEREAS, the Florence Township Zoning Board of Adjustment has made the following findings of fact and conclusions of law:

Findings of fact:

1. The applicant is the contract purchaser of the subject property, and the property owners, Larry Jenkins and Theresa Shockling, have consented to the making of this application. The applicant therefore has standing to bring this matter before the Board.
2. The applicant has provided proper mailed and published notices of hearing, and jurisdiction is proper in the Board.
3. Application has been made for minor subdivision, bulk variance height variance and use variance approval to subdivide existing Lot 12.03 of Block 166 located at 1021 Potts Mill Road into a remainder lot of 3.19 acres, to be known as Lot

12.03, upon which Mr. Dzurko proposes to construct a 2400 sq. ft. (40 ft. x 60 ft.) private garage with a height of 24 ft. when 20 ft. is the maximum permitted height for such structures, and one new lot of 0.5 acres, to be known as Lot 12.04, upon which will be located the existing single-family dwelling.

4. The existing dwelling on proposed Lot 12.04 would be served by public water & sewer, and no sewer or water services are proposed or needed on proposed Lot 12.03 at this time.
5. The proposed lots conform to all applicable bulks standards except that the proposed 74.61 ft. lot width of the flag lot stem for proposed new Lot 12.03 is less than the required 125 ft.
6. The applicant has also requested a design exception or “waiver” from the requirement of Ordinance Section 91-74 that sidewalks be provided along the Potts Mill Road frontage.
7. The applicant has submitted the following documents in support of its application:
 - a. A completed Township of Florence Land Development Application;
 - b. A completed Township of Florence Minor Subdivision Application Checklist of Submission Requirements;
 - c. A completed Township of Florence Variance Application Checklist of Submission Requirements;
 - d. Proof that no taxes were due on the subject properties at the time of the application;
 - e. Minor Subdivision Plan & Variance Plan comprised of 2 sheets prepared by Robert R. Stout, PE, PLS, dated 02/14/18 and last revised 05/23/18;
 - f. Submission letters dated March 16, 2018, March 19, 2018, March 28, 2018 prepared by the applicant’s counsel;
 - g. Response letter from the applicant’s Engineer and Surveyor dated April 19, 2018;
 - h. Submission and response letters from the applicant’s Engineer and Surveyor dated June 14, 2018;

- i. A copy of an April 27, 2018 minor subdivision approval letter from the Burlington County Planning Board;
 - j. An aerial view of the subject property and nearby properties upon which existing and proposed lot lines, Flood Hazard Area lines, wetlands, and the outlines of the proposed garage and driveway on proposed Lot 12.03 have been superimposed, introduced and accepted into evidence in the course of the public hearing as Exhibit "A-1";
 - k. Architectural drawing of the proposed new garage comprised of one sheet, introduced and accepted into evidence in the course of the public hearing as Exhibit "A-2";
 - l. Copies of prior Resolutions of the Board (Resolution 2010-07 & Resolution 2006-15), and Resolution 2018-09 of the Florence Township Planning Board, concerning other application previously approved in the neighborhood of the subject property that have some similarities to the current application, introduced and accepted into evidence in the course of the public hearing as Exhibit "A-3";
 - m. An executed Escrow Agreement;
 - n. Proper application and escrow fees as required by ordinance;
8. The Board's Planner, Barbara Fegley, AICP, PP, of Environmental Resolutions, Inc., Engineers, Planners, Surveyors, Scientists, submitted review letters commenting upon the application dated March 27, 2018, May 3, 2018 and June 27, 2018 which are hereby incorporated into the record.
 9. The Board's Engineer, Hugh J. Dougherty, P.E., C.M.E. of Pennoni Associates, Inc., Consulting Engineers, submitted review letters dated March 23, 2018, April 30, 2018, and June 25, 2018 commenting upon the application which are hereby incorporated into the record.
 10. The most significant issue posed by this application is the applicant's request to construct a private garage on proposed new Lot 12.03 after the currently proposed subdivision, but prior to construction of any dwelling (a permitted principal use in the "R" Zone District). Township ordinances forbid construction of accessory structures prior to construction of at least one principal structure on

a lot. Ordinarily the private garage would be a permitted accessory structure to a dwelling, but here the applicant wishes to build and use the garage first, and then construct a dwelling at some future date. If the applicant sought solely to construct the proposed garage (without the currently pending subdivision) on existing Lot 12.03, it would be permitted as an accessory structure to the existing dwelling (proposed to be on new Lot 12.04), except for the requested 24 ft. height which could only be achieved if the Board were to grant a height variance pursuant to NJSA 40:55D-70(d)6. If the Board were to grant a use variance to allow the new garage as a principal use then, arguably, it would no longer be an accessory structure subject to the 20 ft. height limit, but, as a principal structure it would be permitted to be as tall as 35 ft.

11. The applicant testified that he proposes to store his own “toys” (such as a motor home, boat and cars) in the proposed new garage on new Lot 12.03 and that it would not be used for any business or rented to third parties as a storage facility. The proposed height is necessary to accommodate the heights of some of the “toys” the applicant intends to store in the building. He does not intend to build an automobile lift in the building. His intention is to eventually build a home for himself on the subject property.
12. Mr. Dzurko testified that he does not presently seek to install plumbing in the garage, but may wish to add facilities that would require plumbing when he extends water and sewer lines into Lot 12.03 to support a new dwelling on that Lot. For now, he proposes electrical service only, and any exterior lighting will be on a motion sensor
13. The Board accepts as credible and probative the testimony of the applicant and his expert that the proposed development will be consistent with the general pattern and intensity of development of other properties in the surrounding neighborhood where there are other pole buildings of similar size to the proposed garage.
14. The narrower than permitted minimum frontage for proposed Lot 12.03 accommodates the location of the existing dwelling and garage on proposed Lot 12.04. If wider frontage were provided for proposed Lot 12.03, other relief from

side yard setbacks would be necessary for the existing dwelling. Moreover, there are other “flag” and Narrow “bowling alley” lots in the vicinity of the subject property on Potts Mill Road, and the overall development will remain consistent with permitted densities even once a dwelling is constructed on proposed new Lot 12.03.

15. The currently proposed development on proposed new Lot 12.03 is elevated significantly from the flood plain of the adjoining Craft’s Creek and will be outside of the wetlands, flood hazard and wetlands transition areas associated with the Creek.
16. The currently proposed private garage and driveway on proposed new Lot 12.03 are of an area that is too small to trigger an obligation to address stormwater management obligations of Township Ordinance and State Regulations. However, it is probable that the additional disturbance and impervious area associated with construction of a future dwelling would, overall trigger compliance with stormwater management requirements.
17. There is not presently any sidewalk at the frontages of any other nearby properties along Potts Mill Road, and municipal planning for sidewalk development in the area of Potts Mill Road near the subject property is at present merely conceptual and without any timeline for actual implementation.
18. Public comment was offered on the application by Salvatore Ungarini of 1023 Potts Mill Road, who spoke favorably of the application, and Mayor Wilkie, who explained the state of sidewalk development along Potts Mill Road to the Board.
19. In the course of the public hearing, the applicant stated his assent to imposition of several conditions that will assure that the proposed development, its future use, and likely future development of proposed new Lot 12.03 will comply with applicable development regulations and the zone plan; these are detailed below.

Conclusions of Law:

The Board finds that the proposed minor subdivision and associated bulk variance for lot width can be granted pursuant to NJSA 40:55D-70(c)(2), because the proposed new lot configurations and resulting pattern of development provide a better zoning alternative with a more efficient use of land than strict adherence to applicable standards, and the benefits to the general welfare of the proposed development substantially outweigh any detriment to the public good or impairment of the zone plan which would result from this deviation from the ordinance standard. Therefore, the Board finds it appropriate, pursuant to NJSA 40:55D-70(c)(2), and subject to appropriate conditions, to grant the requested lot width variance.

The Board also finds that the applicant has demonstrated special reasons that show that proposed new Lot 12.03 is peculiarly suited to private garage use (as specifically proposed), and that allowing such a use (subject to significant limiting conditions as set forth below) would not be substantially detrimental to the public good and would not substantially impair the zone plan and zoning ordinance. Therefore, a use variance may be granted to allow construction of the private garage even though there is no private dwelling on proposed new Lot 12.03 to which the private garage will presently be accessory.

Because of the limiting conditions that adhere to the Board's approval of this overall application, and the planned eventual conversion of the proposed private garage from a principal to an accessory structure (which would make the structure more conforming with regard to its use), the Board concludes that it should address the private garage's height under the more restrictive bulk standard applicable to accessory structures. The Board finds that a height variance pursuant to NJSA 40:55D-70(d)6 is appropriate because the subject property (proposed new Lot 12.03) is significantly larger than the minimum required lot size, and proposed garage is therefore able to be (and in fact is) much farther from lot lines than required. The property is therefore peculiarly suited to support a taller than usual accessory building without substantial detriment to the public good or substantial impairment of the zone plan and zoning ordinance. Therefore, a height variance to allow the proposed private garage should be granted.

The Board further finds that the requested design exception to allow omission of sidewalks from the frontage of the subject property should be granted because requiring such sidewalks would result in a “sidewalk to nowhere” since there are no sidewalks on nearby properties. A contribution in lieu of construction should not be imposed because the Township does not have a plan for sidewalk construction in that area of Potts Mill Road in the reasonably foreseeable future such that there would exist a nexus between the payment in lieu imposition, the impacts of the currently proposed development and actual construction of such sidewalks with the collected funds.

The Board finds that the proposed minor subdivision should be approved, subject to appropriate conditions as set forth below, because, but for the variance and design exception discussed above, the minor subdivision is in conformity with Township ordinance standards.

In addition to the conclusions set forth above, the applicant has fulfilled the procedural requirements for the proposed development. Therefore, the requested minor subdivision (with bulk variance), use variance, height variance and design exception should be granted.

NOW, THEREFORE, BE IT RESOLVED by the Florence Township Planning Board in the County of Burlington and State of New Jersey that the application of Jeffrey Dzurko seeking minor subdivision, bulk variance, height variance and use variance approval to subdivide existing Lots 12.03 of Block 166 located at 1021 Potts Mill Road into a remainder lot of 3.19 acres to be known as Lot 12.03 upon which he proposes to construct a 2400 sq. ft. private garage with a height of 24 ft. when 20 ft. is the maximum permitted height for such structures, and one new lot of 0.5 acres to be known as Lot 12.04 upon which will be located the existing single-family dwelling, be and hereby is, **GRANTED**, subject to the following conditions:

1. The Board has relied upon the testimony of the witnesses and factual findings discussed in the body of this Resolution, and such testimony and findings are incorporated as conditions of this approval as though set forth at length herein.
2. Compliance with the plan detail and design comments set forth in the June 25, 2018 review letter of the Board Engineer.

3. Both lots shall be served by public water & sewer. Connections shall be made to the existing dwelling on proposed Lot 12.04 prior to issuance of a Certificate of Occupancy for the proposed new private garage on proposed Lot 12.03, and connections shall be made to any proposed new dwelling on proposed Lot 12.03 at the time of its construction. The applicant shall apply to the Florence Township Water & Sewer Dept. for the connections to the existing dwelling within 30 days of title closing on his purchase of the subject property.
4. Subgrade plumbing may be installed under the proposed new garage at the time of its initial construction, however it may not be put into service until such time as the water and sewer lines are brought onto proposed new Lot 12.03 to serve a new dwelling on that Lot.
5. The exterior colors of the proposed new private garage shall be muted and consistent with the rural character of the neighborhood.
6. The applicant shall work administratively with the Board Planner to select appropriate species and locate shade trees along the frontages of both proposed new Lots.
7. There shall be no pole-mounted lighting along the new driveway on new Lot 12.03, any lighting shall only be at the garage and shall be on a motion sensor.
8. All new utilities shall be installed underground.
9. There shall be no parking or storage of vehicles, machinery or equipment outside of the proposed new driveway and closer to the front of proposed new Lot 12.03 than the rear building line of the proposed new private garage on that Lot.
10. There shall be no business use of the proposed new garage and it shall not rented or used for storage by any non-owner of proposed new Lot 12.03.
11. The applicant will likely propose to construct a new dwelling on proposed new Lot 12.03 in a location that is behind the location of the proposed new private garage. At such time, the currently proposed private garage would no longer be a principal structure but would become accessory to the new dwelling. A variance to allow an accessory structure closer to the front lot line than the

principal structure would be necessary. This approval does not grant that variance. If applicable ordinances at the time of such construction make it necessary, the applicant will make application therefore to the Board, however, site plan review shall not be required.

12. The applicant shall comprehensively address stormwater management at the time of construction of a new dwelling on proposed new Lot 12.03, as though the presently approved driveway and private garage were being built contemporaneously with the new dwelling.
13. If the contemplated house on proposed new Lot 12.03 is not constructed within 5 years of the date of the memorialization of this approval, then, unless otherwise extended by the Board, the subdivision approval granted herein shall be erased, and the subject property shall revert to being a single Lot. Notice of this condition shall be placed in the subdivision deeds for both new Lots.
14. All taxes and escrow fees for professional review must be paid current and in full.
15. Compliance with all federal, state, county and local laws, rules, regulations and any other governmental approvals which may be required in implementation of this development, including but not limited to: Burlington County Planning Board. Copies of all applications, permits and certifications related to such approvals shall be filed with this Board.
16. If another governmental agency grants a waiver or variance of a regulation, affecting this approval or the conditions attached to it, then this Board shall have the right to review that issue as it relates to this approval and these conditions and modify or amend the same.
17. The applicant shall pursue with good faith and due diligence any and all additional approvals as may be required and shall provide the Board with copies of all reports and approvals for same, including copies of any and all applications filed.
18. Perfection of this approval shall be by filing of appropriate deeds. The applicant shall submit the legal descriptions to the Board Engineer, and the deeds to the Board Solicitor for their review and approval.

19. Publication of a brief notice of this decision in the official newspaper of the municipality within 10 days of the date hereof.

The conditions of this approval shall run with the land and be binding on all successors in interest, purchasers and assignees. In the event that the applicant does not perfect this approval within 190 days of the date hereof (or such extended date as may be provided by statute or Board action), this approval shall be void, unless, for good cause shown, the applicant seeks extension thereof.

MOTION TO APPROVE:

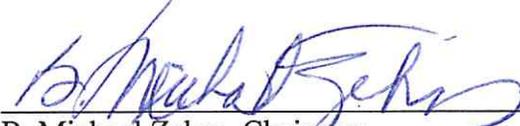
Moved by : Mr. Lutz
Seconded by : Ms. Mattis
In Favor : Mr. Lutz, Ms. Mattis, Mr. Buddenbaum, Mr. Drangula,
Mr. Puccio, Chairman Zekas
Opposed : None
Abstained : None
Recused : None
Absent : Mr. Cartier, Mr. Patel, Mr. Sovak

MOTION TO ADOPT RESOLUTION:

Moved by : Mr. Lutz
Seconded by : Mr. Buddenbaum
In Favor : Mr. Lutz, Mr. Buddenbaum, Mr. Drangula, Ms. Mattis,
Mr. Puccio, Chairman Zekas
Opposed : None
Abstained : None
Absent : None

FLORENCE TOWNSHIP PLANNING BOARD

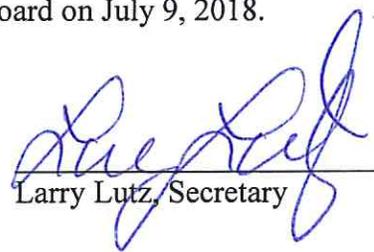
Dated: 9/6/18


B. Michael Zekas, Chairman

CERTIFICATION

BE IT REMEMBERED that the within written Resolution was duly adopted at a regular meeting of the Florence Township Zoning Board of Adjustment held on September 6, 2018 and memorializes a decision taken by the Board on July 9, 2018.

Dated: 9/06/2018


Larry Lutz, Secretary