

**MINUTES OF THE ANDOVER TOWNSHIP LAND USE BOARD MEETING HELD
SEPTEMBER 17, 2013**

OPEN MEETING: Acting Chairman Howell called the meeting to order at 7:30 p.m.

FLAG SALUTE: Acting Chairman Howell led the flag salute.

ROLL CALL:

Diana Boyce – Excused
Ellsworth Bensley, Jr. – Present
Suzanne Howell – Present
Rick Melfi – Present
CeCe Pattison – Present
Christine Kretzmer – Present
Dolores Blackburn – Present
Ken Roberts – Present
John O'Connell – Excused
Paul Messerschmidt – Present
Richard Skewes – Present

PROFESSIONALS PRESENT: Richard Briigliodoro, Esq., and Joseph Golden, P.E., P.P., were present.

OPEN PUBLIC MEETINGS ACT NOTICE: Acting Chairman Howell read the following statement: This is an open public meeting of the Andover Township Land Use Board. Notice of this meeting was given in accordance with the Open Public Meetings Act, Chapter 231, Public Law 85. The rules are generally as stated on the agenda.

RULES: Acting Chairman Howell read the following rules: No new cases after 9:30 p.m. or testimony after 10:00 p.m. Comments from each member of the public are limited to 5 minutes during the public portion of the meeting. Transcript requests are to be in writing with check for 100% of costs. Material for the meeting is to be filed fourteen days before the next meeting once it has been heard for completeness. Individuals or members of a partnership must be present at the meeting or be represented by an attorney. Testimony is under oath. False testimony constitutes perjury.

MINUTES: A motion to approve the *Minutes of the Andover Township Land Use Board Meeting Held September 3, 2013* was made by Dolores Blackburn and seconded by Paul Messerschmidt. There was no discussion. Roll Call: Suzanne Howell – yes; Christine Kretzmer – yes; Dolores Blackburn – yes; Ken Roberts – yes; Paul Messerschmidt – yes. The motion carried.

RESOLUTIONS: There were no resolutions scheduled for review.

COMPLETENESS REVIEW: There were no matters scheduled.

HEARING: A-4-13-1, Van Dyke, C. “D” Variance, Preliminary and Final Site Plan, Block 111 Lot 14.02: Christine Kretzmer recused. Class III and Class I Land Use Board members, Dolores Blackburn and Ken Roberts, stepped down. Richard Briigliodoro, Esq., confirmed that an approval of the application would require the affirmative vote of five Board members.

William P. Askin, Esq., appeared on behalf of the Applicant and provided an overview of the matter. He presented the subject property at 144 Warbasse Junction Road is in the R-2 Zone. He identified the requested relief from §190-34, Table 1, stating the proposed small business conference use is not specifically listed in the schedule. Mr. Askin stated Constance Van Dyke is the sole occupant of the property and is a member of Ponderossa, LLC, which was formed at the end of 2012. He explained Ponderossa, LLC, holds title, and it was formed for the purchase of the property. He identified witness Richard Rodman as the other Ponderossa, LLC, shareholder. He stated Mr. Rodman is the project’s investor. He noted the proposed use is similar to a home occupation. He stated Ms. Van Dyke’s goal is to open a small business-gathering center in order to provide an economic and unique opportunity for small groups that may not have the financial resources to utilize the full-scale operations of conference centers, major hotels, and meeting centers. Mr. Askin provided the history of the property referencing a 1994 approval for a recording studio. He stated the prior resident operated the studio for approximately 18 years. He stated it could be argued that the same special reasons found in the 1994 approval could be found today. He stated the property is particularly suitable for the proposed use due to the location of the power line right-of-way behind the garage; the location of the garage in proximity to the existing residence; the location of a residence on an adjacent property; and the location of the main structure with its large setback from the street. He stated the application is similar to the prior approval in that the proposed use is similar to a home occupation use since it would be conducted solely by the owner of the residence. He stated it is similar to a professional office use and appropriate conditions would be attached. He stated there would be no sign distinguishing the use from other residential uses in the neighborhood, the proposed use is much less intense than the other permitted uses in the zone, and the property would maintain a residential character.

Jason Dunn, P.P., L.L.A., was sworn and accepted as an expert witness. He provided an overview of the proposal and discussed the Applicant’s business model. He described the use as less intense than what one would expect hearing the proposed use defined as a small conference center. He stated the Applicant proposes a maximum of 18 conference participants per session with a limit of three scheduled sessions per day. He stated the hours of operation would be 8 a.m. – 10 p.m., Monday – Saturday; and 11:00 a.m. – 6:00 p.m. on Sundays. He detailed the site’s existing conditions noting the sight distance at the driveway entrance and a parking area for up to 17 cars. He stated the septic system and water are adequate to accommodate the proposed use. Mr. Dunn stated the driveway requires a turn-around area that would be added to the front yard. He submitted Exhibit A-1, a colored rendering titled *Survey of Property, Use Variance Site Plan, Tax Lot 14.02, Block 111, Township of Andover, Sussex County, NJ*, Sheet 1 of 2, dated 7/01/13, prepared by Dykstra Associates, PC. Referencing the exhibit, he identified the following plan revisions noting they were made in response to the report prepared by Joseph Golden, P.E., P.P.: the turn-around area was moved closer to the house in an effort to preserve

the view shed; the location of a trash enclosure was added together with a construction detail of same that was marked Exhibit A-2, and titled *Trash and Recycling Storage Area Fence Detail*; 14 parking spaces plus three parking spaces located in the garage were noted; and ADA access was added.

Referencing the building plan, Mr. Dunn identified an exterior overhang improvement noting two support columns he stated were designed to accentuate the entranceway. He provided the Board with a description of the interior layout and stated renovations are planned to accommodate the proposed use. He presented the second story would be utilized for storage.

Mr. Dunn submitted Exhibit A-3, a colored rendering of titled *Lighting Plan and Sight Distance, Tax Lot 14.02, Block 111, Township of Andover, Sussex County, New Jersey, Sheet 2 of 2*, prepared by Dykstra Associates, PC, dated 7/1/13. Referencing the plan, he noted residential-decorative style fixtures would be mounted on 15' tall light poles. Mr. Dunn noted that the lights would feature house shields that face away from the area to be lit.

Mr. Dunn reviewed the prior approval and identified the following similarities between the prior approval and the proposed use: no installation of a sign; the operator of the business would reside in the home; and no commercial visitors to the site between the hours of 11:00 p.m. and 8:00 a.m. He stated the prior approval did not limit participants. He stated the Applicant was amenable to limiting the number of participants.

Mr. Dunn discussed site suitability, special reasons, the negative criteria, and mitigation of perceived negatives. Mr. Dunn stated the Applicant proposes to continue a business use with a less intense style of use, i.e., quiet meetings held inside with a limited number of attendants. He confirmed that water and septic are suitable for the use. He stated the use would not produce offensive odors or noises. Mr. Dunn confirmed that the applicable special reasons category specific to the case is that the site is particularly suitable for the use. He stated there is a need in the community for a small affordable meeting space in a rural, private, and secluded setting. He stated there is nothing like it.

Mr. Dunn stated that the site is characterized by a low intensity business use, low lighting needs, distance to neighboring residents, and proximity to dedicated open space and a power line easement. He stated the proposed use would produce no negative environmental impact. He stated the site is particularly suited for this type of business. He stated the business would be run by the homeowner only. He stated it is a simple use with no need for employees or food preparation. He stated the straightforward business model would fulfill a need in the community, be an economic positive in the town, and satisfy township Master Plan objectives. Mr. Dunn stated the Applicant intends to use local businesses for potential catering jobs. He stated the use fits harmoniously with the neighborhood scheme. He stated there is no signage proposed.

Mr. Golden asked about need for the use and asked if there are reasonable alternative spaces to have meetings. He stated he did not believe there is an *apples to apples* comparison to the prior approval. Mr. Golden stated he did not believe the proposed use to be a home occupation. He stated he did not believe that the property was ideally suited as there are several large lots in the township. Mr. Golden noted the number of parking spaces as uncharacteristic of a less intensive use.

Mr. Briagliadoro advised that a variance for a use omitted from the ordinance is not incompatible with the intent and purpose of the governing body when the ordinance was passed.

Mr. Briagliadoro noted that the Applicant must prove that there is no detriment to the zone plan. Referencing a Google map submitted as part of the application, he asked Mr. Dunn if the character of the area has not changed. Mr. Dunn responded the area has not changed.

Mr. Askin confirmed that the Applicant, Constance Van Dyke resides in the home and she is a shareholder in the operation of the company that owns and runs the business. He stated Ms. VanDyke has a business partner that has the assets to provide the financing. He stated the LLC provides the mechanism to utilize private financing. Mr. Messerschmidt asked about food preparation on-site and waste management. Mr. Askin stated meals would not be served. He stated snacks and coffee would be provided on site.

Mr. Briagliadoro asked Mr. Dunn for proofs that the prior use was noisy or there were many people there. Mr. Dunn noted there is a website describing the site and some prior users of the site. He stated the existing condition of the building indicates heavy use. He stated he was not aware of any complaints about the site. Mr. Askin noted an OPRA request was submitted to the town, and the only document provided in response was the 1994 resolution. Ms. Howell noted she heard of no noise from the prior use. Mr. Dunn stated there was a business for 18 years, and the Applicant is offering to continue a use that is less intense. He stated the septic and water is suitable for the use, and the use would not emit odors.

Ms. Constance VanDyke was sworn. She stated she has lived on the subject property since March. She confirmed she is a member of Ponderossa, LLC, which is the entity that owns the property. She stated the business would ideally like to see 18 people but does not know how it will go. She presented her prior business experience as a coordinator of meetings for the postal service. She confirmed that she had no plans for using any employees and or for preparing food. She confirmed the set-up might include her laptop, a fax machine, or printer. She confirmed there is Wi-Fi, and there are plans to put a printer in the outbuilding. Mr. Golden asked about the clean up between sessions. Ms. VanDyke stated she did not anticipate a large clean up.

Mr. Melfi asked about the Applicant's job experience and plans for the outbuilding. He asked how much money has been spent to date to request the variance. Mr. Askin stated that a guess is that it is over \$10,000. Ms. VanDyke stated other area commercial sites were not researched, and she stated she did not look at other sites. She stated she liked the site because she liked the house and the site. She confirmed that she is not from Andover Township or Sussex County. Ms. VanDyke confirmed she believed that there are not a lot of places in Andover for a small meeting area. She presented she would like to host bridge clubs and small meeting groups and confirmed the proposed hours of operations to be 8 a.m. – 10:00 p.m., Monday – Saturday; and Sundays from 11:00 a.m. – 6:00 p.m. Ms. VanDyke confirmed that caterers could provide meals. Ms. Howell noted that catering operations might add commercial traffic to the site.

Mr. Richard Rodman was sworn. He stated he has been an investment advisor for over 45 years. He stated that when he saw the property it was a dilapidated run-down mess. He stated he saw an opportunity and he believes his contacts, business acumen, and money could make the project viable. He stated he conducted market research, and the response was 100% positive. He stated he believed there is a need for this business in the community. He stated the proposed use would not produce as much traffic as many uses on the list of permitted uses.

Mr. Rodman stated the house has been renovated, and the site has been cleaned up. He confirmed he invested in the home, and the landscaping is complete. He confirmed he was prepared to make a similar investment in the outbuilding. He confirmed he would be involved with the business as an advisor.

Richard Briigliodoro, Esq., asked when the site was last operative. Mr. Rodman stated he believes the site was operative until November 28, 2012. He stated the business was under siege as the business of recording had changed. Mr. Rodman noted he did conduct research within Sussex County. He stated he did not research other sites in Andover Township because the goal was to have the business and house together on the same property. Mr. Rodman acknowledged that if the Board said no, there were other options.

Mr. Rodman confirmed he has initiated strategic partnerships with the Andover Inn, Bagel Bistro, Everything Homemade, and The Wooden Duck. He stated the size of the Andover Inn and The Wooden Duck seemed to fit with potential attendees. He stated if the matter were approved, he had intentions to cement the relationships.

Mr. Dunn reviewed the parking plan. Referencing the plan, he identified a three-car garage, a stacked parking area containing 9 parking spaces, an ADA space, and four standard parking spaces. He stated a stacked car design would be reasonable because attendees are present for the same amount of time.

Acting Chairman Howell opened the meeting to the public. Ms. Lorraine Withy was sworn. She stated that a commercial use in a residential area destroys the area. She stated she spoke with a commercial realtor who said there are more than 15 available commercial spaces within 6 miles of the site. She noted that within two miles, Quick Check Plaza has at least four commercial spaces. She stated it was not necessary and asked the Board to please consider not approving the variance. She stated it would compromise her property value.

Mr. James Zamos was sworn. He stated the area is residential and he sees no reason to have this. He stated the Applicant knew the zoning when they bought the property, and he asked - what the hardship is here. Mr. Zamos asked the Board to keep it the way it is.

Mr. Tom Maloney was sworn. He stated his concern is cars and the potential noise. He stated his concern is for fire, ambulance, and the police. He stated his concern is the 18 people times three.

No other members of the public addressed the Board. Acting Chairman Howell closed the meeting to the public.

Mr. Askin summarized stating the proposal is a less intense use than the prior uses on the property and is less intense than what was envisioned by the Township ordinance permitting home occupations. He stated the proposed use is substantially similar to a home occupation. He stated the Applicant is willing to negotiate on the number of cars or the number of sessions. He stated the intensity of use as compared to other uses is less intense. Mr. Askin noted that the positive criteria has been proven as there is a need in the community to provide an affordable gathering place. He stated there is a need for private area, and the property would maintain its residential character. Board members discussed the matter. Mr. Melfi stated the Board should

be cognizant of the neighborhood. He asked about the potential for compromise. He asked about the number of sessions, hours of operations, and the possible elimination of Sunday operations. Richard Briigliodoro, Esq., explained that the type of suggestions made by Mr. Melfi could be potential conditions attached to a resolution.

Mr. Golden stated the Applicant has an enhanced burden of proof. He stated the parcel must be uniquely suited, and he did not see what differentiates this property from any other property in the zone. Mr. Golden discussed site circulation and identified issues presented by stacked parking. He noted concerns with lighting and the level of activity in a residential area. He also noted that as there would be no signage, customers would have to look for the rural address.

Mr. Golden noted the Board would be approving 18 parking spots in a residential zone.

Mr. Golden noted that he had not had an opportunity to review the access to the dumpsters.

Richard Briigliodoro, Esq., discussed the law and the analysis of particular suitability. He advised that the granting of the variance does not require proof that there is no other potential location for the use. He reviewed the purposes of the Municipal Land Use Law noting they satisfy special reasons. He noted that five affirmative votes are needed to approve the matter and six members are present.

Ms. Howell expressed concern that the residentially zoned property would have two variances and potential additional variances. Ms. Pattison stated she did not want to discourage business. Mr. Messerschmidt stated he did not understand the need for the subject site when there are other commercial sites available. He presented he did not understand why the business would go in a residential zone via a variance when there are other affordable venues to hold meetings within the township and Sussex County. Mr. Messerschmidt also said that in his view of the law, he was not sure if the Applicant met the criteria needed for a variance. He presented the business would have an impact on the neighborhood properties and the road.

Board members discussed the formulation of the motion and agreed to address the variance separately. Hours of operation and lighting were discussed. A motion to approve the use variance application subject to the hours of operation being 9:00 a.m. through 4:00 p.m., Monday through Saturday, was made by Rick Melfi and seconded by CeCe Pattison. Roll Call: Ellsworth Bensley, Jr., – yes; Rick Melfi – yes; CeCe Pattison – yes; Paul Messerschmidt – no; Richard Skewes – no; Suzanne Howell – no. The motion failed.

Richard Briigliodoro, Esq., stated the 3-3 decision is a statutory denial of the application.

PUBLIC PORTION: The meeting was opened to the public. No members of the public addressed the Board. The meeting was closed to the public.

Dolores Blackburn, Ken Roberts, and Christine Kretzmer joined the meeting at 10:15 p.m.

OLD/NEW BUSINESS: A presentation by Ken Roberts in the matter of the alternative energy ordinance was carried to the next meeting.

VOUCHERS: Board members reviewed the monthly vouchers, expenditure summary, and September fee deposit record through September 17, 2013. There was no discussion. A motion to recommend payment of the vouchers was made by Paul Messerschmidt and seconded by Dolores Blackburn. Roll Call: Ellsworth Bensley, Jr., – yes; Suzanne Howell – yes; Rick Melfi – yes; CeCe Pattison – yes; Christine Kretzmer – yes; Dolores Blackburn – yes; Ken Roberts – yes; Paul Messerschmidt – yes; Richard Skewes – yes. The motion carried.

UPCOMING MEETINGS: Acting Chairman Howell confirmed the October 1, 2013 In addition, October 15, 2013 hearing dates.

ADJOURNMENT: Having no further business, a motion to adjourn was made by CeCe Pattison. All were in favor. The meeting concluded at 10:20 p.m.

Minutes respectfully submitted by:

/s/Anne-Marie Wilhelm
Anne-Marie Wilhelm
Land Use Administrator