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March 30, 2023

**MEMORANDUM TO:** Andover Township Land Use Board

**FROM:** Cory L. Stoner, P.E., P.P., C.M.E., Land Use Board Engineer

**SUBJECT:** INTERPRETATION & VARIANCE APPLICATION

For Pat Barone, 41 Kilroy Road  
Property Located at 41 Kilroy Road  
Block 62 Lot 4.04  
Andover Township, Sussex County  
HPA No. 23-088

Dear Board Members:

The above referenced application is for an Interpretation Review by the Board to establish that all structures on the Block 62 Lot 4.04 property are incidental to and part of the permitted agricultural and residential uses on the property. The application is also seeking a bulk “c” variance for the placement of existing structure closer to Kilroy Road than the dwelling. Based on a review of the application and the documents submitted in support of this application, I offer the following comments:

1. The plans and documents submitted in support of this application included:
  - a. Plans entitled “Interpretation Map, Block 162 - Lot 4.04, 42 Kilroy Township of Andover, Sussex County, New Jersey”, prepared by Canger Engineering Associates, consisting of two (2) sheets and dated October, 2022.
  - b. Photograph package entitled “Color Photographs for Zoning Application, Lot 4.04 Block 62, Andover Township, Sussex County, New Jersey, 41 Kilroy Road, prepared by Canger Engineering Associates, consisting of six (6) sheets, dated December 17<sup>th</sup>, 2022.
  - c. Land Development Application, checklists, and other supporting documents.
2. **Completeness Comments:** Based on a review of the items submitted in support of this application and a review of the Andover Township Land Use Board Checklist #1 (General Requirements) and Checklist #7 (Appeals, Interpretations, Special Questions, Variances), I offer the following comments:

Checklist #1 –General Requirements:

- a. #5 – Certification of Township Tax Collector that all taxes and assessments have been paid to date.

This item has not been provided in my package. The Board Secretary should confirm that this certification has been provided.

Checklist #7 – Appeals, Interpretations, Special Questions, Variances:

- a. #16 - Existing and proposed contours within 200 feet at ten-foot intervals for slopes at or over twenty-five percent grade and at two-foot intervals for less than twenty-five percent grade.

The applicant has requested a waiver from the board from providing this item. The applicant states that there are no proposed changes to existing grade.

#17 - Soil classification data as mapped by the USDA Soil Conservation Service in Soil Survey of Sussex County.

The applicant has a question mark shown for this item on checklist #7. The applicant can visit the USDA website (<https://websoilsurvey.nrcs.usda.gov/app/>) and complete the required steps to receive a soil report for the property in question. I assumed that the Applicant, however, will request a waiver from providing this item since no grading changes are proposed with this application.

#20 - One of the following: (a) A letter of interpretation from the N.J.D.E.P. indicating the absence of freshwater wetlands, or indicating the presence and verifying delineation of the boundaries of freshwater wetlands, or (b) A letter of exemption from the N.J.D.E.P. certifying that the proposed activity is exempt from the Freshwater Wetlands Protection Act, and regulations promulgated thereunder, or, (c) A copy of any application made to the N.J.D.E.P. for any permit concerning a proposed regulated activity in or around freshwater wetlands

The applicant has requested a waiver from providing item 20(c). The waiver directs one to Note #8 on Sheet 1 of the Interpretation plans prepared by Canger Engineering Associates. This note states “Wetlands, wetlands buffers, and state open waters were delineated and verified under New Jersey Department of Environmental Protection file No. 1902-06-0005 dated March 9<sup>th</sup>, 2007 and the location was taken from an above referenced septic as-built plan.”

#30 - Preliminary architectural plans and elevations depicting dimensioned floor plans and building height.

The applicant is requesting a waiver from providing this item and states that preliminary architectural plans are being developed, and will not exceed allowable height and dimensions. It is not known what building these plans are being prepared for though.

#32 – A written description of any alternatives that were considered.

This applicant states they attached this item in the package provided, however I do not see this item has been provided.

3. **Interpretation Comments:**

- a. According to the Interpretation map prepared by Canger Engineering Associates and the documents submitted in support of this application, there are a number of buildings on the Block 62 Lot 4.04 property. These buildings include:
  - A. Single-Family Dwelling
  - B. Cabin with porch
  - C. Garage that will be converted Ag labor housing
  - D. Ag Workshop/Storage
  - E. Ag Stable with Coop
  - F. Ag Shed
  - G. Residential Shed
- b. The applicant is requesting an interpretation that all of these structures are incidental to and part of the principal agricultural/farm and residential permitted in the R-3 Residential District and Section 190-29 (Right to Farm) and Section 190-42 (Agricultural, farm and horticultural uses) of the Township Code.
- c. Per Section 190-29, recognizes the right to farm land within the Township as a natural right and is a permitted use throughout the Township on all parcels defined as a farm under Chapter 190 of the Township Code.
- d. Per Section 190-42, Agricultural, farm and horticultural uses are permitted if the following requirements are met:
  - i. Minimum area: not less than six acres. This requirement is met.
  - ii. Spacing requirements. The following minimum distances shall be maintained:
    - A. Between residence and barns, outbuildings and accessory buildings, except residence garage: 75 feet. This requirement is met.
    - B. Between all barns, outbuildings and accessory buildings, except residence garage, and property line: 150 feet. This requirement is NOT met.
  - iii. Except as noted above, all other bulk requirements in the applicable zone shall apply. Side yard setback of accessory structures is 20 feet. The Stable

(9.8 feet from property line) and Coop (5.0 feet from property line) both do not meet this requirement.

- iv. Prohibited activities. The following agriculture, farm and horticulture activities are prohibited: feed lot operation where animals are confined to limited areas for fattening prior to slaughtering. Not Applicable.
- e. Narratives explaining the existing and proposed uses for each building have not been provided. I have questions regarding what are the uses of each structure and what uses are being proposed as part of this application. For instance, what is the 2-story structure or the cabin being used for? Both look like they could be used for residential use today. Detailed information regarding how all buildings are/will be used needs to be provided.
- f. As for the 1-story garage being converted for Ag labor housing, no information has been provided to explain why this should be considered by the Board. No floor plans have been provided and it is unclear why Ag labor housing is needed on a farm of this size.

4. **Bulk Variance Comments:**

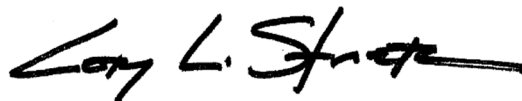
- a. A bulk “c” variance is sought because an existing structure is closer to Kilroy Road than the closest corner of the single-family detached dwelling and is, therefore, located in the front yard of the principal structure. Per Section 190-13 (Accessory buildings) of the Township Code, no accessory building shall encroach upon the front yard setback for the principal structure.
- b. While the application refers to an existing structure being located in the front yard, I see five (5) structures being located in the front yard setback. Is this application only for the 1-story garage that is being converted to Ag labor? What about the other structures. If previous approvals have not been obtained for all other structures, variances for those structures should be sought as well.
- c. No variances are being sought for the accessory structures not meeting the required side yard setback requirements. The plans illustrate that the cabin, stable and coop all do not meet the required 20-foot setback requirements. Unless these structures were all constructed under previous land use approvals, variances for all these structures will be required.
- d. No accessory building shall have a height that exceeds 20 feet. The 2-story structure looks to be the only structure that looks to be close to that height. Verification that all accessory structure are less than 20 feet high needs to be provided.

5. Additional Comments:

- a. It is unknown whether all the structures on this property have obtained proper zoning and construction permits. It is assumed that some of these structures have not obtained proper approvals. If zoning and construction permits were obtained, the Applicant should provide a list of all structures and the date when approvals were obtained.
- b. The pond and brook that run through this property both are environmental sensitive areas which fall under the jurisdiction of the NJDEP. Andover Junction Brook and Valentine Pond are both considered Category 1 waters and have a 300-foot riparian buffer. There are also wetlands on the property have wetland transition area buffers associated with them.
- c. Based on a review of documents in the Township zoning file for this property, it was found that land disturbance back in 2006 and 2008 resulted in soil erosion and NJDEP violations. It is assumed that these disturbances have been addressed/mitigated but I have no information stating that they were fully addressed. The Applicant should provide information regarding if/when these violations were addressed and closed out by the Township and NJDEP.
- d. A NJDEP permit was found in the zoning file, dated January 8, 2010, that permitted the construction of an addition to the existing dwelling within the 300-foot riparian buffer of Valentines Pond and Andover Junction Brook.
- e. It is unknown whether the NJDEP approvals were ever obtained for the construction of the other structures located within the riparian or wetland buffers. The 2-story structure and the cabin both are both located in these buffers. Where both of these structures old existing structures that were renovated or where they two structures that should have had NJDEP permits? Additional information regarding these structures is needed.

This application is fairly complex and as shown above, there are a number of items that I believe are needed. These items, in my opinion, are items that are necessary for the Board to make a full and complete review of this application. It is, therefore, my recommendation that the application be deemed incomplete until the items discussed above are provided.

Very truly yours,



Cory L. Stoner, P.E., P.P., C.M.E.  
**HAROLD E. PELLOW & ASSOCIATES, INC.**  
Andover Township Land Use Board Engineer

**Andover Township Land Use Board**  
**RE: Pat Barone Interpretation and Variance Application**  
**March 30, 2023**

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cc: Via Email  
Richard Briigliodoro, Esq. – Land Use Board Attorney  
Stephanie Pizzulo – Land Use Board Secretary  
Kevin Kelly, Esq. – Applicant’s Attorney  
Matthew Fox, PE, L.S. – Applicant’s Engineer & Surveyor