

**LOPATCONG TOWNSHIP ZONING BOARD OF ADJUSTMENT
REGULAR MEETING
FEBRUARY 14, 2018**

CALL TO ORDER BY CHAIRMAN GARY

SILENT PRAYER

PLEDGE OF ALLEGIANCE

OPEN PUBLIC MEETINGS STATEMENT: “adequate notice of this meeting has been provided indicating the time and place in accordance with Chapter 231 of the Public Laws of 1975 by advertising a Notice in The Star-Gazette and The Express-Times and by posting a copy on the bulletin board in the Municipal Building”.

MAUREEN MCCABE SWORN IN AS ALTERNATE MEMBER

ROLL CALL:

Present: Members Horun, Devos, Bittone, Unangst, Rutledge, Woolf, McCabe, Vice-Chairman Larsen and Chairman Gary

Absent: None

APPOINTMENT OF BOARD ATTORNEY:

Motion to nominate Murphy McKeon

Motion by: Member Larsen

Seconded by: Member Devos

Chairman Gary asked if any discussion

Member Horun: Well, is there a question in terms of the fees and the rates or anything like that, or does that make a difference to anybody?

Member Devos: If you look at it, the fees are \$250.00 a month, but \$125.00 per hour at monthly meetings and the other two, that’s included in the (inaudible).

Member Horun: Oh, that’s included in?

Member Devos: So that makes it higher.

Member Horun: Oh, I see, okay.

Member Devos: Particularly if you have a meeting (inaudible).

Member Bittone: What is it, cause the \$500.00 includes the monthly meeting?

Member Devos: Pardon?

Member Bittone: I, I missed what you just said.

Member Devos: Oh, what I said is, if you look at the three, the bottom one that's \$125.00 per month, but \$125.00 per hour

Member Bittone: I see.

Member Devos: attendance at meetings. The other two don't, it's included; attending at the monthly meetings. And if we run

Member Bittone: But we don't have an attorney present at every meeting.

Member Devos: Pardon?

Chairman Gary: Oh, yes we do, we do.

Member Bittone: We do?

Chairman Gary: I mean every meeting that we hear

Member Bittone: When there's nothing new on the agenda?

Chairman Gary: Uh, well no, I mean we have an attorney present whenever there's an application for, uh,

Member Devos: Uh huh.

Chairman Gary: Adjustment.

Member Bittone: Right. So there's always an agenda item when we have a meeting.

Chairman Gary: Right.

Member Devos: Unless we don't have a meeting, do we?

Chairman Gary: Correct; with the exception of tonight, but, that's all I'm saying.

Member Bittone: I understand.

Member Horun: I mean, have we ever had an issue with, uh, our attorney costs at all? For like the year, like what we're budgeted or by the line item or anything like that?

Member Devos: I don't know for this Board.

Chairman Gary: I, yeah, I can't answer that, um, but, um, is there any other discussion?

Alternate Member McCabe: Can I make a motion on any other of the names or how does this work? Or do we just vote?

Chairman Gary: Well, certainly, no you certainly can, uh, make, uh, talk about anyone else, yeah, we're discussing.

Alternate Member McCabe: Oh, okay. Well I'd like to make a motion for William Edelston; he is a local, uh, Attorney here in Phillipsburg and, uh, I do believe he was also a Zoning Attorney in, uh, Mansfield or somewhere nearby

Chairman Gary: Uh huh.

Alternate Member McCabe: so I just wanted to make a motion in case that option's out there.

Chairman Gary: Okay.

Member Horun: Do we have vote on the (inaudible) first?

Member Devos: Inaudible – several talking at same time.

Chairman Gary: Yes, yes we, yes we, yeah. Well, it was just discussion.

Member Unangst: I have a question, I'm confused on these, these rates that we have. The comment was just made that, for Tony, its \$250.00 per, per month and then \$125.00 per hour, but he's in attendance here. Now the other two are \$500.00 per month and then that \$160 per hour; is that when they're here?

Chairman Gary: Um, you know Phyllis, maybe you can answer that because I'm, I'm not sure of that.

Clerk Dilts: The \$500.00 includes the attendance at the meeting, phone calls during the month, you know, the resolutions and what not. Uh, the \$160.00 is anything that they are going to charge to your applicant's escrow. And I, and then I think there is another fee in escrow litigation.

Chairman Gary: Okay, so.

Clerk Dilts: Tony charges \$250.00 just for the meeting and then he charges for the resolution and, you know, anything against the escrow, so, uh.

Member Bittone: No, he charges \$250.00 not just, for you said the meeting, so it is \$250.00 per month and then \$125.00 per hour at the meeting.

Clerk Dilts: Yes.

Member Devos: And the meeting.

Member Bittone: Is that correct?

Clerk Dilts: For anything,

Chairman Gary: Yes.

Clerk Dilts: that you know, he prepares and

Member Bittone: So if it is a two hour meeting, if there's anything on the agenda, there's the \$500.00

Member Devos: Yes.

Chairman Gary: Yes.

Member Bittone: Okay.

Chairman Gary: I'm sorry, Rob, did you, uh

Secretary Coleman: Rob made the motion; Kathy seconded it.

Chairman Gary: Okay, so, uh,

Secretary Coleman: Roll Call?

Chairman Gary: Yeah, let's have a roll call.

ROLL CALL

AYES: Members Devos, Vice-Chairman Larsen, Chairman Gary

NAYS: Members Horun, Unangst, Rutledge, Woolf, McCabe

ABSTAIN: Member Bittone

Member Rutledge: What is this vote for?

Chairman Gary: The attorney.

Member Rutledge: Which, which one is it for?

Chairman Gary: McKeon.

Vice-Chairman Larsen: McKeon.

Chairman Gary: The motion was made to, um, for McKeon.

Member Rutledge: Oh.

Chairman Gary: I don't know, is this unanimous, I do not know that? Is this a majority vote or majority? Then the majority has spoken so it is McKeon.

Secretary Coleman: The majority in no, it's not. Oh, it's 5 to 3, no. 5 no, 3 yes's.

Chairman Gary: Oh, I'm sorry, I'm sorry.

Clerk Dilts: That's only eight people then, don't you have

Alternate Member Woolf: We have one abstention.

Clerk Dilts: You have nine people.

Secretary Coleman: I know, who did I miss?

Member Horun: One abstained.

Alternate Member Woolf: One abstained.

Secretary Coleman: Oh.

Chairman Gary: There was an abstain. There was an abstention. All right, so, is there further discussion or do we move on to Maureen? I, I honestly don't know, do we move on to Maureen's?

Secretary Coleman: Maureen's right? So I need a second.

Alternate Member McCabe: I made the motion, we need a second.

Member Horun: Ok, I'll second this.

Alternate Member Woolf: For who:

Alternate Member McCabe: William Edleston. The Phillipsburg.

Motion by: Alternate Member McCabe

Seconded by: Member Horun

ROLL CALL:

AYE: Members Horun, Unangst, Alternate Member Woolf, Alternate Member McCabe

NAYS: Members Devos, Bittone, Rutledge, Vice-Chairman Larsen, Chairman Gary

Member Bittone: 5/4 No.

Chairman Gary: I guess we go on to the next one.

Member Rutledge: I nominate Anthony Sposaro.

Member Unangst: I'll second that.

Motion by: Member Rutledge

Seconded by: Member Unangst

ROLL CALL:

AYES: Members Unangst, Rutledge, Alternate Member Woolf,

NAYS: Members Horun, Devos, Alternate Member McCabe, Vice-Chairman Larsen, Chairman Gary

ABSTAIN: Member Bittone

Member Horun: Well, based on the, on the votes that have occurred, I'll, uh, move to nominate, uh, Murphy McKeon, with, uh, Mr. Bryce as the Attorney.

Member Bittone: What was that Andy?

Member Horun: For Murphy McKeon.

Chairman Gary: Murphy McKeon; Mr. Bryce.

Member Bittone: Okay.

Alternate Member McCabe: But you just, you just did that.

Member Horun: Yeah, but we got through yeah we got through a round and nothing's changed, so now I'm going to change my

Alternate Member McCabe: Oh.

Chairman Gary: The second time.

Member Unangst: Do we, do we need more discussion on it? I mean this could go on all night.

Chairman Gary: Well, is there discussion?

Member Devos: No.

Alternate Member McCabe: Well, is Murphy McKeon doing the Planning Board also?

Member Devos: Yes.

Alternate Member McCabe: Is that the point?

Member Bittone: It makes it easier.

Chairman Gary: It makes it a little more fluid.

Member Bittone: Yeah, there is some fluidity there since it is a crossover.

Alternate Member McCabe: And Sposaro was our one last year, is that correct or no?

Secretary Coleman: Yes

Chairman Gary: Yes.

Alternate Member McCabe: Okay.

Chairman Gary: Any further discussion?

Member Rutledge: Can't we vote differently so that, uh

Member Devos: How?

Inaudible: Several members talking at same time

Chairman Gary: And there was a second, right Kathy? You seconded it?

Member Rutledge: Haven't we used this guy before?

Member Bittone: Yeah, but he's not with the Planning Board either. This is our, this is our current

Chairman Gary: I think we're trying to maybe look for some continuity Gus.

Member Bittone: We're trying, I guess they want to give it some fluidity.

Member Rutledge: He charges twice as much per month.

Chairman Gary: No, we already talked about it.

Member Devos: No, we already talked about it.

Member Rutledge: It does

Member Bittone: It's \$500.00 a month which includes coming to the meetings.

Member Rutledge: Yeah.

Member Bittone: This is \$250.00 a month plus \$125.00 per hour, per meeting.

Member Unangst: So if he's here two hours, you

Member Bittone: So if it's two hours, it's still, it's the same \$500.00, understand?

Member Rutledge: Yeah.

Member Bittone: That's what I was asking before as well.

Member Unangst: Do you need a second?

Chairman Gary: No, we have a second. Any other discussion? Okay, let's, let's do it. Let's try to get this squared away.

Motion to Nominate James Bryce with the Firm Murphy McKeon.

Motion by: Member Horun

Seconded by: Member Devos

ROLL CALL:

AYES: Members Horun, Devos, Bittone, Unangst, Woolf, McCabe, Vice-Chairman Larsen, Chairman Gary.

NAYS: Member Rutledge

Chairman Gary: Okay, Motion is carried.

OLD BUSINESS:

- Approve the Regular Meeting Minutes from January 10, 2018

Motion by: Member Rutledge

Seconded by: Member Unangst

ROLL CALL:

AYES: Members Horun, Bittone, Unangst, Rutledge, Woolf, Vice-Chairman Larsen

NAYS: None

ABSTAIN: Member Devos, McCabe, Chairman Gary

- Motion to memorialize Resolution 18-04. Kirsten Wurzburg, DVM – Canyon River Run Veterinary Hospital – 169 Belview Road, Block 87, Lot 1.01 – Establishment of a Veterinary Clinic, Non-Permitted Use in a Single Family Residential Zone.

BOARD OF ADJUSTMENT
TOWNSHIP OF LOPATCONG
WARREN COUNTY, NEW JERSEY

CASE NO.: 18-04

PREMISES: BLOCK 87, LOT 1.01
169 BELVIEW ROAD

LOPATCONG TOWNSHIP, NEW JERSEY
APPLICANT: KIRSTEN WURZBURG, DVM
RESOLUTION GRANTING USE VARIANCE RELIEF
TO ESTABLISH A VETERINARY CLINIC

WHEREAS, Kirsten Wurzburg, DVM has made application to the Zoning Board of Adjustment of the Township of Lopatcong for use variance relief to establish a veterinary clinic in existing structures on the property designated on the Lopatcong Township tax map as Block 87, Lot 1.01 with a street address of 169 Belview Road; and

WHEREAS, the within matter was heard and considered at the regular open public meeting of the Zoning Board of Adjustment of Lopatcong Township on Wednesday, January 10, 2018 held at the Municipal Building, 232 South Third Street, Morris Park Phillipsburg, New Jersey 08865; and

WHEREAS, the applicant submitted a proper and complete Affidavit of service of notice of the instant proceeding upon all property owners within 200 feet of the subject property; and

WHEREAS, the applicant submitted a proper and complete Affidavit of Publication; and

WHEREAS, the aforesaid open public meeting was noticed, advertised and held in accordance with the Open Public Meetings Act; and

WHEREAS, this matter was opened to the public for both the questioning of witnesses and comments; and

WHEREAS, the Zoning Board of Adjustment considered the following:

1. Application for Variance Form;
2. Partial copy of survey of Block 87, Lot 1.01;
3. E-mail from Shannon Heaton describing the redevelopment plan for the veterinary clinic, dated December 7, 2017;
4. Report, prepared by George A. Ritter, AICP, PP, dated December 11, 2017;
5. 2015 Aerial Photo and Tax Parcel Basemap, prepared by James T. Kyle, P.P., AICP, marked in evidence as A-1; and

WHEREAS, the Zoning Board of Adjustment does hereby make the following findings of fact:

1. The applicant, Kirsten Wurzburg, DVM, was represented by William R. Edleston, Esq.. Kirsten Wurzburg, DVM testified in support of the application as well as James T. Kyle, a licensed professional planner. No one from the public testified in connection with this application or asked any questions of the witnesses.
2. The property that is the subject of this application is designated on the Township tax map as Block 87, Lot 1.01 and contains 5.174 acres. The property is currently developed with a single family dwelling dating back to the 1700's, a larger commercial building, a smaller 1,000 square foot building, detached garage and sheds. The property is located on the north side of Belview Road, opposite to the intersection of Belview Road and Griffin Place.
3. The structures on the subject property are setback significantly from Belview Road.
4. There are several single family dwellings constructed with frontage on Belview Road to the west of the subject property. The property immediately north is an undeveloped parcel, Block 87, Lot 1.02, owned by the County. Further to the north and east is farmland utilized by the farmer's fair.

5. There is an existing vacant 6,000 square foot manufacturing building on the property previously used as a shop for screen printing. The application submitted indicates that this operation ceased approximately three years ago. The applicant proposes to renovate this building into a new veterinary clinic. The existing single family dwelling will be used as a residence. The remaining buildings on the property, namely a 1,000 square foot building, sheds and detached garage will be used for the storage of property maintenance equipment and the like. Based upon the aerial photograph there appears to be ample impervious cover around the manufacturing building to accommodate vehicular parking.

6. Dr. Wurzburg testified that she opened a veterinary clinic in Stryker's Mall in August 2010. Since then she has developed a good clientele, mostly by word of mouth. Dr. Wurzburg offers veterinary services to cats, dogs and on occasion to "pocket pets".

7. Presently Dr. Wurzburg employs three individuals, however only two are present at the clinic at any one time. The first employee is a receptionist. The second employee renders technical assistance.

8. Presently, Dr. Wurzburg's veterinary clinic is open Monday to Friday with no hours on weekends. The clinic is open on Monday and Wednesday from 9:00 a.m. to 7:00 p.m., Tuesday and Thursday from 9:00 a.m. to 5:00 p.m. and 9:00 a.m. to 6:00 p.m. on Friday. No change in the days or hours of operation at the new facility are proposed or contemplated.

9. Dr. Wurzburg testified that she has enjoyed a good relationship with the commercial tenants that surround her in her existing location and has received no complaints. She does not now nor does she plan to offer any kenneling or overnight stays to the animals she treats. Hours are by appointment, however there may be an occasional walk-in in the case of an emergency. Typically, visits by clients are from 15 to 30 minutes long and appointments are spaced accordingly. Under normal operating conditions there is a maximum of two to three clients with their owners at her clinic at any one time. Dr. Wurzburg does not foresee any changes to this routine at the new facility. Dr. Wurzburg further testified that she does not anticipate bringing on any additional employees or partners. Rather she is seeking to relocate her existing veterinary clinic without any substantial change. Dr. Wurzburg testified that she intends to personally occupy the single family residence on the subject property.

10. Dr. Wurzburg proposes converting approximately 3,500 square feet of the existing large commercial structure into a veterinary clinic. There would be two exam rooms, one operating room, one cage room and a reception area. All medical waste generated is transported to a medical waste facility.

11. Dr. Wurzburg is a purchaser under contract of the subject property. It is presently owned by John and Geraldine Shubert. The existing septic systems servicing the single family dwelling and now vacant manufacturing building are in a state of disrepair and will need repair and/or replacement. No area neighbors have approached Dr. Wurzburg expressing any concern whatsoever about her plans to open a veterinary clinic in this location.

12. The zoning designation of the subject property and the adjoining properties is R-150 Residential. The properties located immediately across Belview Road are located in the R-2 Residential zone. Permitted principal uses in the R-150 district include single-family dwellings, public buildings and quasi-public buildings; parks, playgrounds and recreation areas; places of worship and their ancillary uses; farms; and nonprofit

recreation clubs, fraternal organizations, eleemosynary uses and other nonprofit uses similar in nature and scale to those aforementioned permitted uses.

13. The minimum lot area for a single - family dwelling not connected to a public sewer is 1 ½ acres. The bulk requirements include a minimum front yard of 50'; , 35'; side yard (75'; combined), 80'; rear yard, and 150'; lot width. Building coverage is limited to a maximum of 10% of the lot's area while lot coverage cannot exceed 20% of the lot's area . A building cannot exceed a height of 35'; or 2½-stories.

14. Section 243-66 provides that permitted principal uses in the R-150 district include single-family dwellings, public buildings and quasi-public buildings; parks, playgrounds and recreation areas; places of worship and their ancillary uses; farms; and nonprofit recreation clubs, fraternal organizations , eleemosynary uses and other nonprofit uses . Section 243-59A (4) provides: any use not specifically allowed shall be prohibited. The veterinary clinic is not a permitted use in a residential district. The current proposal to renovate a 6,000 square foot building and a 1,000 square foot garage for a veterinary clinic requires Zoning Board approval under Section 40:55D70 d. (1) of the Municipal Land Use Law to permit a use in a district restricted against such use. A use variance is required.

15. The second variance involves having two principal uses on the same lot. Section 243-63A provides that: Only one single-family dwelling unit may be erected upon a lot. The application involves two principal uses. A use variance is required to permit both the veterinary clinic and principal dwelling to occupy the same lot.

16. James T. Kyle, P.P., AICP offered planning testimony in support of the two use variances. Mr. Kyle testified that he had visited the property, was familiar with it and the property surrounding it, reviewed the relevant Township ordinances and Township Master Plan.

17. Mr. Kyle testified that the proofs associated with both use variances were essentially indistinguishable. He opined that the general welfare is promoted by the application because the property is particularly suited for the proposed uses. Towards that end he testified that the existing structures are more than adequate for the proposed uses; a wide driveway provides ample, easy and safe access to the existing buildings and that all such buildings are significantly set back from Belview Road. He further testified that there is more than ample existing parking areas that can be repurposed. There is also an ample amount of existing vegetative buffering on the property including white pines and a hedge row. The single family dwellings to the west of the property will continue to be able to see the back of the existing commercial building, however circumstances will not change inasmuch as no site improvements are proposed and there are no outdoor activities associated with the veterinary clinic in this area. He further testified that there would be virtually no impact upon the vacant land owned by the County to the north or the farmer's fair property in Harmony Township to the north and east.

18. Mr. Kyle opined that several purposes of zoning would be advanced by the application. These include promotion of public health, safety and general welfare by the adaptive reuse of existing structures. A desirable visual environment and the efficient use of land also would be promoted.

19. As for the negative criteria, Mr. Kyle testified that there would be very little, if any, adverse impact upon adjoining property owners with the uses proposed. As noted earlier, hours of operation are limited and the clinic would be closed on weekends. There will be no boarding of animals and no overnight stays. No new construction is proposed. Mr. Kyle also testified that although the property is zoned for single family dwelling use,

the fact of the matter is that there is an existing single family dwelling on the property that will continue to be occupied. As for the veterinary clinic, this proposed use is far less intense than the screen printing shop that had existed which employed four to six persons.

20. Based upon the testimony offered by Mr. Kyle, together with opinions expressed by Township Planner, George Ritter, the Zoning Board agrees that both the positive and negative criteria for use variance relief have been more than amply satisfied. It adopts and agrees with the testimony offered by Mr. Kyle in support of the requested variance relief. The Zoning Board specifically finds that this use is particularly and ideally suited for this property. It is lower intensity than the use that previously existed. It utilizes existing structures without the need for any site improvements. It will have little, if any, adverse impact upon surrounding property owners. It also bears noting that Dr.

Wurzburg's veterinary practice has grown over the years. This is a testament to not only the service she provides to the community but also the fact that her services are in need.

21. As noted earlier, this is a bifurcated application. Dr. Wurzburg will need to return to this Board for site plan review and approval.

22. At the conclusion of the public meeting the Zoning Board voted to grant the use variance relief more particularly described above with conditions.

NOW THEREFORE BE IT RESOLVED by the Board of Adjustment of the Township of Lopatcong, State of New Jersey, that Case Number 2017-05 of Kirstin Wurzburg, DVM be and is hereby approved subject to the following:

1. The applicant shall return to the Zoning Board of Adjustment of the Township of Lopatcong for site plan review and approval for any improvements to the property. The applicant is not permitted to commence using the property as a veterinary clinic unless and until site plan approval is secured.
2. Copies of all applications and supporting data for permits issued by other agencies, responses thereto and copies of all governmental permits are required to be submitted to the Board Engineer.
3. The Board reserves the right to withdraw any approval hereby granted in the event there is any deviation from or alteration of the plans hereby approved, unless prior written approval for any such deviation or alteration has been obtained from the Board. Minor deviations and field changes may be authorized by the Board Engineer.
4. Any deviation from or alteration of the plans as hereby approved shall render this approval void and of no further effect.
5. The acceptance of this approval by the applicant, its successors and assigns and the performance by the applicants, its successors and assigns of any further work on the project in reliance of this approval shall operate as an agreement by the applicants, its successors and assigns to be bound by the terms and conditions set forth herein.
6. In the event any other required regulatory approval conflicts with or materially alters the terms hereof, or in the event applicant or applicant's successors or assigns fail to post any tax map review fee, review fee, inspection fee or other financial imposition of the municipality, then in any such event, the Board reserves the right to withdraw, amend or supplant the within approval.
7. The applicant shall pay any outstanding invoices for fees and costs incurred in connection with this application prior to the issuance of any permits.

8. This approval shall be null and void unless the applicant obtains a statement from the Chief Financial Officer of the Township of Lopatcong within 60 days that the applicant has paid all outstanding fees and costs associated with this application and further that sufficient monies have been deposited to pay all anticipated disbursements and finally that deposit monies are not overdrawn from prior applications.

9. The within variance shall expire within one year of the date of entry of the determination of this Board unless construction shall have commenced or the applicants have applied for an extension.

CERTIFICATION

I, Phyllis D. Coleman do hereby certify the above to be a true correct copy of a Resolution regularly and duly adopted by the Board of Adjustment of the Township of Lopatcong at a duly called meeting of the Board of Adjustment held on February 14, 2018.

Phyllis D. Coleman, Secretary

Motion by: Member Horun

Seconded by: Member Devos:

ROLL CALL:

AYES: Members Horun, Devos, Bittone, Unangst, Rutledge, Woolf, Vice-Chairman Larsen

NAYS: None

ABSTAIN: Member McCabe, Chairman Gary

NEW BUSINESS:

- None

PUBLIC COMMENT:

- None

MOTION TO ADJOURN:

Motion by: Member Rutledge

Seconded by: Vice-Chairman Larsen

ALL IN FAVOR: AYES

NAYS: NONE

Respectfully submitted by,

Phyllis D. Coleman, Secretary

Fred Gary, Chairman