

**TOWNSHIP OF EGG HARBOR
ZONING BOARD**

September 9, 2013

Solicitor: Stanley Bergman, Esq., present
Engineer: Matthew F. Doran, P.E., present
Planner: Edward Walberg, P.P. (Joseph Johnson, P.P., present)
Zoning Officer: Patty Chatigny, Zoning Officer, present

A re-scheduled regular meeting of the Zoning Board of Adjustment of Egg Harbor Township was held on the above-date, 7:00 p.m., prevailing time, Egg Harbor Township Hall, Egg Harbor Township, New Jersey. The Chairman opened the meeting by reading the statement in compliance with the Open Public Meetings Act

Roll call taken as follows:

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| John C. Amodeo, Class IV, present | John Haines, Class IV, Chairperson, present |
| Leonard Dagit, Jr., Class IV, present | Norma Lombardi, Class IV, present |
| Anthony DiDonato, Alt. #I, present | Chrissy Martin, Class IV, present |
| Beth Epstein, Class IV, present | Andrew Parker, Alt. #II, present |
| Chuck Gunther, Alt. #III, present | Paul Savini, Class IV, Vice-Chairperson, present |

PUBLIC HEARING(S):

- | | |
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| 1. <u>V 06-13</u> | “d” Variance |
| B & H Properties, LLC | 1802/57 |
| Zone: RG-2, 3.95 acres, applicant | 3049 Fernwood Avenue |
| Has installed a renewable energy facility with a combination of both roof mounted and ground mounted units at the existing RSL woodworking facility located on Fernwood Avenue. | Waiver of time – Not granted |

Chairman Haines advised the above-captioned application has been postponed and will be presented on Monday, October 7, 2013, 7:00 p.m.

Motion Lombardi/Dagit to postpone application until Monday, October 7, 2013, 7:00 p.m., no new noticing required. Vote 7 Yes: Amodeo, Dagit, Epstein, Lombardi, Martin, Savini, Haines

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|---|------------------------------|
| 2. <u>V 05-13</u> | “d” Variance |
| Robert Orchard | 5101/276 |
| Zone: RA, 12.2 acres, septic/well, | 206 Asbury Road |
| Applicant is proposing to convert a non-profit horse riding facility for the handicapped into a for profit horse riding facility. CAFRA | Waiver of Time – Not Granted |

General Checklist Waiver(s):

- 1. Item #4: Sealed copies of the plans**
- 2. Item #7: List of witnesses and their expertise**
- 3. Item #10: Traffic impact report**
- 4. Item #11: Letter of Interpretation from the NJDEP**

Checklist Waiver(s):

- 1. Item #6: Metes and bounds**
- 2. Item #7: Property line shown in degrees, minutes and seconds**
- 3. Item #9: Title block containing the name of the applicant**
- 4. Item #11: Scale of map both written and graphic**
- 5. Item #12: Reference meridian of the north arrow**
- 6. Item #14: Certified list of property owners within 200’ ft. of site**
- 7. Item #16: All existing setbacks, lot coverage and principle building heights on plans**

- 8. **Item #19: Photograph of subject property taken from opposite side of street**
- 9. **Item 29: 200' ft. line drawn on the plan showing existing structures and their distances from existing property lines, required setbacks and lot dimensions**
- 10. **Item #42(g-k) Natural resource inventory information**
- 11: **Item #45: Stormwater management calculations**

Variance Relief:

- 1. **"d" Variance: Commercial recreation facilities are not a permitted use in the RA (Rural Agricultural District); Commercial recreation facility is proposed in RA District**
- 2. **"c" Variance: No horse training corral or barnyard shall be within 250' ft. of a residential Dwelling not on the lot: Corral is within 90' ft. of the adjacent single-family Dwelling.**
- 3. **"c" Variance: Number of parking spaces: 15 proposed; 23 spaces required.**

Christopher Baylinson, Esq., introduced himself as attorney for the applicant, Robert Orchard, with respect to this application. He advised this parcel know as block 5101 lot 276 is a 12 acre site located in the RA zone. He further explained this site is the former riding center that was purchased by Mr. Orchard within the last two (2) years. Attorney Baylinson advised this property is now owned by Mr. Orchard and it will no longer be a non-profit facility. He would like to lease to the public.

Attorney Baylinson advised stables and horse farms are a permitted use within this zone. He explained that when the former riding center (A.R.C.H.) came before this Board years ago the Board determined the center did not need a use variance. He indicated under the Township definitions horse farms and stables are permitted. The Township Ordinance then refers you to the definition section of the ordinance, however, there is no definition. Attorney Baylinson also noted the applicant is seeking a waiver to submit a site plans since no changes are proposed to the site and a site plan already exist.

Board Solicitor Bergman had sworn in the following witnesses:
 Tiffany Cuiello, P.P., New Jersey Licensed Planner, 359 Superior Road, Egg Harbor Township, New Jersey
 Robert Orchard, owner/applicant, Mays Landing, New Jersey

Mr. Orchard advised he purchased the property in question on September 7, 2012. Mr. Orchard than referred to Exhibit A1: site plan submitted in 1996 for the (A.R.C.H.). Mr. Orchard stated with the exception of the run sheds shown on this plan everything exist that is show on the plan. He noted that he does not plan at this time to provide the run sheds. Mr. Orchard advised he anticipates to do the same thing at site that has been occurring over the years but on a smaller scale. He advised he proposes to board 18 horses, will have a clinic, training and riding lessons. He indicated he does not propose to do 5% of what had previously occurred on site. He indicated there will not be a lot of traffic coming and going. He advised there are only usually three (3) cars on any given day. Mr. Orchard stated he only has 18 stalls and the people come to take care of their horse and leave.

Mr. Orchard stated he has no issues with his neighbors. He indicated the corral is 90' ft. away, however, there are buffers on each side from the neighbors. He indicated there are a number of trees. Attorney Baylinson asked if there are horses on site currently. Mr. Orchard advised there were existing borders and they have stayed since he purchased property. He advised they will continue to stay if approved and he anticipates additional horses at site.

Attorney Baylinson advised he would like to have Planner Cuiello testify. Board Solicitor Bergman advised Planner Cuiello has been considered an expert before the Planning Board. Attorney Baylinson advised she is currently the Planner for Galloway Township and she has been before numerous Boards including this one previously.

Planner Cuiello stated Mr. Orchard purchased a parcel that operated a non-profit facility. She indicated the RA zone allows as a permitted principal use horse farms, single-family, etc... She further noted the applicant well

exceed the lot size requirements. Planner CuvIELlo also advised the zoning allows no more than two (2) horses per acre. She indicated Mr. Orchard, based upon his acreage could have 24 horses, however, Mr. Orchard has 18 stalls and he only desires 18 horses. Planner CuvIELlo stated the corral is within 250' ft. of a residential dwelling. She advised it is 90' ft. away, however, this is an existing condition.

Planner CuvIELlo advised the ARCH was approved in 1995 for a handicap riding center on this parcel and the non-profit was approved. She indicated the applicant is not proposing a non-profit. She advised that as part of the requirements for variance relief the applicant must provide both positive and negative criteria.

Planner CuvIELlo stated in this instance the applicant meets three (3) portions of the positive criteria. She stated this application promotes the general welfare, the use is compatible, and the proposed has public purpose. She advised the arena is 22,000 sq. ft., there are stables and sheds. She indicated the State of New Jersey finds agricultural is important and livestock is covered under this criteria within the Right to Farm Act. She stated the proposed allows for the training of horses, which is a 1.1 billion dollar industry within the State with 59% of those monies coming from equine stables. She further noted that the horse is the State animal for New Jersey.

Planner CuvIELlo stated the applicant believes he provides adequate light, air and open space. She advised the indoor riding center has open passages and there no structures close to the street so it provides a rural aspect. Planner CuvIELlo stated the applicant has sufficient space and the proposed is a permitted use. She advised horse farms and agricultural is consistent with the neighborhood and this area.

Planner CuvIELlo stated with the negative there is none. She stated the proposed is not a detriment to zone. She advised the proposed use encourages the agricultural uses and within the RA zone agricultural uses are permitted. She stated the use proposed is low intensity. She stated the applicant is asking for continued use of the pastures in front which are existing and to be allowed continuation of an operation that has been in existence since 1995. Planner CuvIELlo stated again there is no detriment to the zone plan. She indicated many individuals in this area have horses and the applicant will meet the zoning requirement for horses per acre. Planner CuvIELlo stated the applicant will actually have less than what is permitted.

Planner CuvIELlo stated there is a question concerning parking spaces. She advised the site does have a number of handicap parking spaces. She advised with the proposed only one (1) is required. She advised if the Board should require the applicant can restripe the parking area and this will allow him to provide 22 spaces and then another can be added to comply with the 23 needed. She stated, however, Mr. Orchard has indicated that only three (3) people are on site at any given time.

Planner CuvIELlo stated if a single-family home were to be placed on this property the Zoning Board would not be hearing this application. She stated the lack of residential does not change the character of the proposed and again, the applicant anticipates less people coming to site and there being a lower intensity then what had previously occurred. Planner CuvIELlo stated there may be one (1) employee should the site go to the maximum capacity.

Attorney Baylinson asked Planner CuvIELlo if there were a single-family home could the applicant have 24 horses. Planner CuvIELlo stated yes, she advised the principal use would be the home and the barn would be the accessory use. She indicated this would have been the same as in 1995. She stated aside from the corral being 90' ft. all the other setbacks and the coverage requirements meet.

Board Member DiDonato asked who will be present at night. Mr. Orchard stated they care for the horses daily, however, do not care for them at night. Board Member Lombardi asked if any of the owners care for the horses. Mr. Orchard stated yes, he advised the feed, clean and shampoo them. Board Member Savini asked if the horse owners ride their horses and do they go off premise. Mr. Orchard stated yes, they do ride them and they do go on the trails behind his property. He stated many of the horse owners do not want to go out onto Asbury Avenue. He stated there are horse farms all over Asbury Avenue.

Attorney Baylinson stated there has been discussions by the County concerning trails in the back of the applicant property. Board Member Martin asked if anyone sleeps at the facility at night. Mr. Orchard stated no. Board Member Dagit stated his first job was mucking horses and it is not unusual that anyone would sleep overnight in the facility. Board Member DiDonato asked if Mr. Orchard wants this to always be a horse farm. Mr. Orchard stated yes. He indicated he wants to continue what is there. Board Member DiDonato asked if he wanted to place a home on the property could he. Mr. Orchard stated yes he could.

Board Member Amodeo stated the applicant is coming in to receive variance approval, however, he did not want to bring in horses to the facility. Board Solicitor Bergman stated the applicant is changing from a non-profit to a commercial facility. He stated there is no principal structure either. Chairman Haines stated the applicant is making this into a business that generates a profit.

Board Planner Johnston stated the Board should understand that if there was a house the applicant could have up to 24 horses. However, because a business they have to be here. Attorney Baylinson stated he agrees with the Board Planner. Board Planner Johnston stated he has questions concerning horse shows on site or bringing horses into site that exceed the 18 requested. He also advised the applicant is not addressing additional traffic. He advised once permission to operate as a commercial facility they could have 200 horses on a weekend at a show. He stated this needs to be addressed. He indicated this is one of his biggest concerns. Board Planner Johnston stated he would also like to see them restripe to make the parking conforming.

Board Member Dagit stated the applicant is seeking waiver so they do not have to restripe. Board Planner Johnston stated the applicant is short on parking. He stated there are deficient numbers and they really can make it comply. Planner Cuvillo stated if the Board required the applicant to restripe could provide 22 parking spaces. Attorney Baylinson stated he would respectfully ask variance relief be considered for the number of parking spaces. He stated there are 15 existing and 23 required, however, there will be substantially less parking used for this facility than the A.R.C.H.

Board Planner Johnston stated there is a sign that says A.R.C.H. the applicant should discuss with the Board what will done with sign. Zoning Official Chatigny stated the applicant should supply a survey of the site. Showing what is existing and taking the run-in's off the plan if the applicant does not intent to construct. She stated she can do an inspection of the site based on the survey that everything is correct. Zoning Officer Chatigny stated the previous owner of this site lived next door and they should not have kept other peoples horses on site as borders. She indicated the applicant is here to correct issues and make the facility legal.

Board Member Epstein asked if all farms are for profit. Zoning Officer Chatigny stated if someone wants to have horses you need to live there and if you make money need to come in and receive approval. Attorney Baylinson stated he wants the records to be correct and wants to make it clear what the applicant intends to do.

Board Member Savini asked if there property was subdivided. Zoning Officer Chatigny stated no. She advised Mrs. Adams, who lives next to this parcel received approval for the indoor arena to work with handicap children to receive therapy. Attorney Baylinson stated this is why there is no facility for overnight stays. Zoning Officer Chatigny stated they have stalls and viewing area. Board Member Savini stated there are currently 14 horses on site and you realize it was not conforming. Mr. Orchard stated he was aware from the start, however, the horses on site were from existing borders. Zoning Officer Chatigny stated A.R.C.H. did have borders and they should not have.

Board Member Lombardi stated A.R.C.H. did not pay real estate taxes, however, Mr. Orchard will now have to pay. Board Member Epstein stated further down the line if he wanted a care taker cottage would it be permitted. Zoning Officer Chatigny stated it would have to come back for approval.

Attorney Baylinson asked if Mr. Orchard proposes any horse shows. Mr. Orchard stated there will be no horse shows, however, there will be clinics and there could be ten (10) to twelve (12) people at one time. He stated they

would take lessons from and instructor. Attorney Baylinson asked what Mr. Orchard will do with sign. Mr. Orchard stated he will keep the sign the same size and place the address and the name of the farm on it.

Attorney Baylinson stated he would like to address the parking within the resolution. He advised the applicant is trying to be cost effective rather than submitting a survey. Zoning Officer Chatingy stated she would like to see a survey. Board Member Savini stated the applicant has addressed the activities on site. He stated there will be no large shows but riding demonstrations. He asked if the Board Planner has concern with the occupancy level of the people at site at one (1) time. Board Planner Johnston stated the numbers could be very large based on occupancy.

Board Member Dagit stated there is no need to quantitate figures. He advised the applicant has indicated he will have clinics and there will be twelve (12) maybe fourteen (14) people. He stated he does not see that this causes a crisis or an impact. Board Planner Johnston stated he needs to make sure the intensity of use is not more than A.R.C.H. He stated there was no testimony to compare what they are doing. Board Member Dagit stated the applicant has indicated they will reduce the impact. Board Planner Johnston stated he wants to make sure the use is not the same since they are running a clinic and then you may have a dozen riders the 22 spaces would be filled. He stated they have to show there is no negative based on the number of people that are there.

Board Member Dagit advised the applicant has testified he is reducing the use. Attorney Baylinson advised if the applicant were to have 18 horses there may be one (1) employee. He stated the applicant is not going to have horse shows. He advised the applicant wants to operate the site as it has been. Attorney Baylinson advised the applicant owns property outright. Board Member Savini stated he is concerned with making this as a profit, however, do we enforce people coming to site. Attorney Baylinson stated he understands the Board concerns.

Board Solicitor Bergman stated the members are concerned with how they define less intense use. He asked Attorney Baylinson to explain what will occur on site. Attorney Baylinson stated this will be a lesson facility, horse farm. Zoning Officer Chatigny stated usually when you have a clinic you are giving lessons or explaining horses. She stated she really does not see twelve people coming to site. She stated horse shows could have 200 people present. Board Member Lombardi asked if the A.R.C.H. have horse shows. Board Member Dagit stated they had fundraisers and they had a large amount of people present. Attorney Baylinson stated the A.R.C.H. had many families and extended families that would come. He advised you could define what Mr. Orchard wants of this site as a horse farm, stable, and riding school.

Motion DiDonato/Epstein to open public portion. Vote 7 Yes.

Janice Bond, 218 Prancer Road, Egg Harbor Township, sworn in: Ms. Bond advised Kudo's to Mr. Orchard for purchasing this property. Ms. Bond advised she was on the A.R.C.H. Board, however, she resigned. She indicated that even though she had resigned she was told by them she could not purchase the property.

Ms. Bond stated she has three (3) horses and when she resigned from A.R.C.H. she had to find a new facility, which she has. She indicated that she was told by the Township if she were to purchase this property she would have to construct a house and she would have a problem with installing a septic system for it.

Ms. Bond advised there are other facilities like what is proposed along Asbury Avenue that have not received approval. She advised they also offer the boarding of horses. Ms. Bond advised that as a tax payer, she would like these facilities to be looked at and they should be made to also come in and receive approvals.

Motion DiDonato/Amodeo to close public portion. Vote 7 Yes.

Board Solicitor Bergman stated he has nothing to add. He advised the applicant is seeking "D" variance relief for a horse farm, stable and riding school (clinics), "c" variance for the corral being 90' ft. away from a residential structure instead of 250' ft., and "c" variance for parking. He indicated as a condition of the approval the applicant

will amend the survey to show 22 parking spaces and they are seeking a variance relief from providing one (1) additional space to make for a total of 23 spaces required.

Board Opinion(s):

N. Lombardi: stated nothing changing to the site. She advised more dollars in the tax coffers for the proposed. She stated it is excellent what the applicant is proposing. She also advised the Zoning Officer should do a role call in the neighborhood to see what is occurring at other parcels. Board Member Lombardi advised she will be voting in the affirmative.

Andrew Parker: stated he sees no reason not to let the applicant continue what he is doing.

B. Epstein: stated if a residential dwelling were proposed there would have been more children in the school system. She advised what the applicant is seeking is a good avenue for ratable. She advised she believes it is wonderful someone is having a nice small business. She further noted that it is unfortunate that Mrs. Bond had a negative experience.

C. Gunther: asked if Mr. Orchard will handle any handicap children at this facility. Mr. Orchard advised he will refer them to Mrs. Adams facility next door. Mr. Gunther stated his daughter did participate at A.R.C.H. He indicated it is best to refer individuals to Mrs. Adams.

J. Amodeo: stated application is unusual. However, the applicant is making everything right on the books. He stated Mr. Orchard took a big gamble to purchase property and then see if he would receive approval.

L. Dagit: advised Planner did a good job recognizing the positive. He stated he is aware of State directive concerning agriculture. He stated the applicant has pro-active with moving forward and the proposed is a benefit to the Township. He indicated this adds open light and scenery in this area. He stated it is a much better use of the property then a row of homes.

C. Martin: stated it is good to see this happening.

Anthony DiDonato: stated the applicant purchase property knowing what he wanted to do and thought he could because the A.R.C.H. was boarding horses.

P. Savini: advised he concurs with Board Member Amodeo. Stated he has problem with approving something that is already laid out. Indicated that it seems in 1995 many things were pushed through beyond resolve. He advised the applicant that he will have nice place

Chairman Haines: stated he has no problem. Do not look at taxes to approve. He stated he looks at positive and negative criteria and the applicant has addressed both and answered board professionals to their satisfaction.

Motion Lombardi/Dagit to grant requested general/"d" variance checklist waiver(s), "d" variance relief to allow for a commercial recreation facility within the RA (Rural Agricultural District) in order to convert a non-profit horse riding facility for the handicapped into a for profit horse riding facility, "c" variance relief: horse training corral or barnyard shall be within 250' ft. of a residential dwelling not on the lot: The corral is within 90' ft. of the adjacent single-family dwelling, and "c" variance relief: Number of parking spaces: 22 proposed; 23 required. Vote 6 Yes: Amodeo, Dagit, Epstein, Lombardi, Martin, Haines. 1 Abstention: Savini

3. **V 04-13**
CN 01-13
Harbor Auto Associates, LLC
Zone: RI, 9.13 acres,
Applicant is appealing the decision of

Appeal/Interpretation
Certificate of non-conformity
6715/4 & 4.01
Ocean Heights Avenue
Waiver of Time – Not granted

Zoning Officer with regards to the use on property. Applicant contends that the site operates as a junk yard for over forty years. Applicant is also requesting that the Board issue a Certificate of Nonconformity for the use on property.

General Checklist Waiver(s):

1. **Item #7: List of witnesses and their expertise**
3. **Item #10: Traffic impact report**
4. **Item #11: Letter of Interpretation from the NJDEP**

Checklist Waiver(s):

1. **Item #14: Certified property owners list of all owners within 200' ft. of the subject property**

Board Solicitor Bergman advised this application has been listed this evening and he has not received anything concerning they were not coming. Board Secretary Wilbert advised she did not receive anything either.

Board Solicitor Bergman advised this application was deemed incomplete. He indicated this is based upon the 200' ft. property list. He indicated it was just received by the Township from the Tax Assessor, however, the applicant has not submitted as required.

Board Solicitor Bergman stated this application is not complete, however, he is recommending the Board carry to the next meeting date. He stated this will be a firm date and correspondence will be sent advising this. He stated this correspondence should include that the applicant is being notified they should be ready to be heard that day.

Board Solicitor Bergman stated the applicant will be provided more than adequate time to prepare for this hearing. He advised that currently there is a violation concerning the use of the site and the Board has a right for them to be heard. He stated rather than dismissing this case he would rather go the safe route and this would be the Board compel them to appear.

Motion Dagit/DiDonato to make applicant to come before Board on October 7, 2013, 7:00 p.m., for public hearing. Vote 7 Yes: Amodeo, Dagit, Epstein, Lombardi, Martin, Savini Haines.

Board Member Savini asked if the only item that is making this application incomplete is the 200' ft. list. Board Solicitor Bergman stated yes, he further noted the applicant must supply. He advised it is a checklist requirement. Board Member Savini asked if October if there will be another issue. Board Solicitor Bergman stated there should be no reason as to why they are not going forward.

Board Solicitor Bergman noted there is no public in attendance, however, he has announced this application is being carried to the Monday, October 7, 2013, regular Zoning Board Meeting, 7:00 p.m., prevailing time.

SUMMARY MATTER(S):

1. Discussion of matters pertaining to the Board.

Board Member Dagit stated he would like to recommend something be added or rather addressed in the Township Ordinance concerning the definition of horse farms. Board Solicitor Bergman stated he draft a recommendation based upon speaking with the Zoning Officer and the Professional's.

MOTION Dagit/Lombardi TO ADJOURN AT 8:25 P.M.: VOTE 7 Yes: Amodeo, Dagit, Epstein, Lombardi, Martin, Savini Haines.

Respectfully submitted by,

Theresa Wilbert, Secretary

