

**EAST AMWELL  
ZONING BOARD OF ADJUSTMENT - MINUTES  
Municipal Building – 7:30 PM  
December 14, 2010**

**Call to order and compliance with the Open Public Meetings Act**

The regular meeting of the Board of Adjustment was called to order at 7:30 PM on December 14, 2010 in the Main Meeting Room of the Municipal Building, 1070 Route 202/31, Ringoes, NJ by Administrative Officer Andrews.

In compliance with the Open Public Meetings Act, Ms. Andrews announced this was a regularly scheduled meeting pursuant to the Annual Meeting Notice as published in the January 21, 2010 issue of the Hunterdon County Democrat, filed in the Township Clerk's Office, and posted on the Bulletin Board on December 9, 2010.

**Roll Call and Agenda Review**

**Present:** Sherrie Binder – *(arrived at 7:31 PM)*  
Gloria Frederick  
Gael Gardner  
Paul Gavzy  
Sue Posselt  
Kendra Schroeder – Vice Chair  
Diana Garrett – Alt. #1  
Anne Williams – Alt. #2

**Absent:** Nancy Cunningham – Chair

It was noted that Vice Chair Schroeder will be chairing this evening's meeting in the absence of Board Chair Cunningham.

**Presentation of Minutes**

A motion by Paul Gavzy, seconded by Sue Posselt to approve the minutes from the Board's 11/9/10 meeting with no revisions noted and Ms. Frederick abstaining was approved.

**Presentation of Bills for Payment**

A motion by Gloria Frederick, seconded by Paul Gavzy, to pay the vouchers as listed on the agenda was unanimously approved.

**Correspondence**

It was noted that the correspondence will be dealt with as it comes up over the course of the meeting.

**Applications to be Deemed Complete or Incomplete**

**Matthew Wilkinson – B:21 L:19.07 – 171 Cider Mill Road**

It was noted that Sue Posselt recused herself from this public hearing. Ms. Posselt indicated that she is not a neighboring property owner within 200' but stated she lives three houses away from the subject parcel. Ms. Posselt stepped down from the dais.

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Attorney Waterbury explained the application was originally submitted as a Use Variance application. She noted that at the completeness hearing last month, it was determined that in a 2009 application before the Board of Adjustment, a use variance is not needed to conduct agricultural activities on a lot smaller than 10 acres in the Amwell Valley Agricultural Zone because there is no minimum lot area requirement for agricultural activities as distinct from farms. Attorney Waterbury noted that farms are defined differently under the definitions in the Land Management Ordinance (LMO). However, it was determined that this prior application required a lot area variance to construct a farm structure—a barn. Attorney Waterbury noted that the question not addressed by the Board was whether a lot area variance is needed if no farm structures are being constructed.

Attorney Waterbury noted the application this evening is to determine whether or not a lot area variance is needed since Mr. Wilkinson is not proposing to construct any farm structures. She stated the reason this issue was triggered is because Mr. Wilkinson's lot is 3.8 acres in a 10 acre minimum zone. Attorney Waterbury explained there are some caveats in the ordinance: The first being that there is no minimum acreage requirement for an agricultural use or activity—if the Wilkinson property were vacant, there would be no question that an agricultural activity could take place on it. The second caveat is that under the LMO lots that are less than 10 acres under certain situations are grandfathered. Attorney Waterbury explained that a lot that was created before the current 10 acre zoning went into effect are grandfathered provided that they are at least 1.5 acres in size. Attorney Waterbury clarified that this means that under the LMO a lot that is at least 1.5 acres in size can be used for a residential dwelling as a principal use without the need for any type of variance relief, but building permits would be required.

Attorney Waterbury noted that the date Mr. Wilkinson's property was created is important to determine whether or not it qualifies as a grandfathered lot under the provisions of the LMO. She stated the reason why this is significant is because the third caveat is the table of bulk regulations for the Amwell Valley Agricultural District. She noted the table states that for agricultural uses a minimum lot size requirement is 5 acres except that under the MLUL there is certain kind of subdivision called an agricultural subdivision that is exempt and does not require any type of subdivision approval. Attorney Waterbury noted this is very technical, and stated the footnote means the minimum 5 acre lot requirement is for the purpose of agricultural subdivisions. She continued to explain that same footnote goes on to say, "...the minimum lot size shall not prevent agricultural activities from taking place on lots smaller than 5 acres however such small lots with agricultural activities are not qualified for the benefits and privileges of a farm. Any lot having an agricultural use or farm use which also has a dwelling shall meet the minimum lot area and all other minimum requirements for a lot having a residential principal use."

Attorney Waterbury stated the heart of Mr. Wilkinson's application for interpretation is that his lot has a residential use. Today that would require 10 acres, but there is the grandfathering provision for lots over 1.5 acres which this parcel is. She indicated what the Board must do is to determine whether or not 10 acres is required for the farming activity or can a property owner have farming activities on smaller lots that meet the grandfathering provisions. She said, "In trying to answer the question—is there a minimum lot area requirement to have an agricultural activity on a property that also has a residence on it in the absence of a farm structure...you look not only to the specific language in the footnote but to the purposes of the Amwell Valley Agricultural District and why that zoning district was established—what it's trying to achieve...you should look to the definitions of farm and agricultural use and...be mindful of the Township's right-to-farm ordinance."

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Attorney Waterbury summarized the facts:

1. Mr. Wilkinson does not need a use variance
2. There is no minimum acreage requirement to have an agricultural activity on vacant land
3. There is a minimum acreage requirement for farm structures

She noted the question before the Board is: Is there a minimum lot area requirement to have an agricultural activity with a residence and no farm structures, and if so—what is it?

Mr. Wilkinson came forward and was sworn in. He noted that he is the owner of 171 Cider Mill Road. Mr. Gavzy asked what types of animals Mr. Wilkinson anticipates having on the property and how many. Mr. Wilkinson explained that he currently has two sheep, and he is requesting to be allowed to have two hooved animals with the condition that if any give birth, the offspring can remain on the property until they are weaned off of the mother and then continue to keep two hooved animals at all times. Mr. Wilkinson stated he also has a flock of about 15 chickens and intends to get rid of the roosters because he has no interest in raising roosters.

Ms. Frederick asked if the animals are bought and sold. Mr. Wilkinson explained he did sell some rabbits for 4-H purposes and he added that he didn't believe the rabbits were part of the interpretation application before the Board. Mr. Gavzy asked if the purpose of having the animals was for 4-H. Mr. Wilkinson commented that while his daughter belongs to a 4-H club that was not the sole purpose for raising the animals which are the subject of this application. Mr. Wilkinson remarked that he is a High School teacher in Princeton, NJ with a degree in agricultural education. He stated they moved to East Amwell so they could raise their children with an appreciation for raising and growing their own food and to care for and be responsible for animals.

Mr. Gavzy asked if the sheep run free or are they penned. Mr. Wilkinson stated that initially, over the summer they were rotated around his yard within a portable electric fenced area. He admitted that this strategy exacerbated the problems he is having with his adjoining neighbors. He noted that the sheep are currently pastured in the rear of his yard with no permanent structures—just “dog houses” situated on pallets that can easily be removed or relocated.

Mr. Wilkinson informed the Board that he confronted both of his neighbors in an effort to “live harmoniously” and explained to each of them exactly what he is proposing to do on his property. He noted this was put into writing and both neighbors signed off on it indicating they were OK with his proposal. These letters were contained in the original application submission. Mr. Wilkinson commented that his intentions are to not disturb the lifestyle of his neighbors and to be able to do what he wants in a respectful manner within whatever guidelines the Board may establish.

Ms. Gardner remarked that rotating pasture areas is exactly what must be done with animals.

Ms. Gardner asked Mr. Wilkinson how far away the neighboring homes are from his property. He stated he has a range finder that is used for measuring distances. He noted that the distance from the new pasture in his back yard to the closest neighboring home is over 200 yards. Mr. Gavzy asked for clarification if Mr. Wilkinson meant 200 feet or 200 yards. Mr. Wilkinson explained the distance is about three quarters of the length of a football field. Ms. Binder noted this distance would be the equivalent of about 75 yards—from Mr. Wilkinson's pasture to the neighbor's home.

Ms. Binder read the site report for the record, a copy of which is attached.

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Vice Chair Schroeder noted the subdivision Resolution of approval which created Mr. Wilkinson's property was signed and dated on 12/19/84 and the 10 acre zoning went into effect 3/25/99. Therefore the parcel would qualify as a grandfathered lot under the LMO.

Mr. Gavzy asked Mr. Wilkinson if he anticipates putting any additional permanent structures on the property. Mr. Wilkinson said, "No." He added, "I will modify to almost any extent to make it harmonious for everyone."

Ms. Binder asked Attorney Waterbury if property owners must have a minimum of 1.5 acres in order to have farm animals on a grandfathered lot. Attorney Waterbury explained that if a parcel was lawfully created prior to 1999 then property owners must have at least 1.5 acres to be "grandfathered" meaning to be able to have a residence on the parcel as a principal use without needing a variance. She stated, "The residence on (Mr. Wilkinson's) lot is completely legal and there is no need for a lot area variance...and animals are (A) a legal use regardless of lot size and (B) agricultural activities can take place on a vacant lot of any size—there is no minimum acreage requirement for an agricultural activity...as distinct from a farm or a farm building."

Ms. Binder commented that this matter seems clear, noting the dwelling on the Wilkinson property is grandfathered in, the lot size is grandfathered in and the use is allowed.

Attorney Waterbury read the purposes of the Amwell Valley Agricultural District (section 92-91:a) for the record. She stated, "...to encourage land use patterns and development practices which enhance Township, County and State efforts to retain farmland and protect and preserve agricultural activity within the Township...to protect and promote the continuation of farming in East Amwell Township where farming is a valuable component of the local economy...to protect prime soils...to permit limited non-farm related residential development in the location and manner that would be consistent with the continuation of farming...to support the preservation of existing farm operations and limit conflicts between agricultural and non-agricultural uses by encouraging the separation of residential development from active farms...to impose lot suitability requirements upon residential lots in order to accommodate individual well and septic disposal systems...to implement the goals of the amended Master Plan for the Amwell Agricultural District by protecting agricultural lands and promoting agriculture as a valuable component of the local economy."

A motion by Gael Gardner, seconded by Gloria Frederick to open to the public was unanimously approved.

Richard Kirsche of 175 Cider Mill Road came forward and was sworn in. He stated that he is Mr. Wilkinson's neighbor on the south side and noted he has no objection to what Mr. Wilkinson is proposing.

Wayne Scheffmeyer of 167 Cider Mill Road came forward and was sworn in. He stated he is Mr. Wilkinson's neighbor and shares a property line with him. He noted he has lived here for 25 years and objects to what Mr. Wilkinson is proposing. He objected to the amount of animals on the property (specifically noting there are turkeys too), the proximity of the animals and the cages to his property line, the smell and the butchering activities. He also remarked that his property value is decreasing due to the activities going on at Mr. Wilkinson's property. He suggested if the Board allows the activities that they establish specific limitations to the type and amount of animals allowed.

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Ms. Gardner asked Mr. Scheffmeyer how far his home is from the road. Mr. Scheffmeyer remarked that he thought it was about 75 feet away from the road. Ms. Gardner asked how far his home is from the property line. Mr. Scheffmeyer commented about 50 feet.

Mr. Gavzy asked how many turkeys are on the property. Mr. Scheffmeyer stated about 2 dozen. Mr. Gavzy asked about the butchering activities. Mr. Scheffmeyer indicated Mr. Wilkinson is eating the animals. He remarked that Mr. Wilkinson had told him he was butchering animals for other people for a fee in addition to the animals he butchers for his own consumption.

Attorney Waterbury defined agricultural activities under the ordinance stating, “It’s the production for sale of plants and animals useful to man including but not limited to: Forages and sod crops, grains and feed crops, dairy animals and dairy products, poultry and poultry products, livestock, including beef cattle, sheep, llamas, horses, ponies, mules or goats, including the breeding, boarding, raising, rehabilitating, training or grazing of any or all of such animals, but it does not include intensive poultry or swine production.” Attorney Waterbury remarked that the ordinances do not limit the number of animals a property owner can have with the exception of noting intensive poultry or swine production. She explained that the definition goes on, “...agricultural use shall include the following activities but not by way of limitation...the pertinent one being the grazing of animals in use of range for fowl subject to the standards and regulations for intensive fowl and livestock use.”

Ms. Gardner commented that intensive use is when buildings are built and needed to house animals. She remarked that raising animals inside such as 100 chickens would be intensive.

Rob Gilbert of 109 Cider Mill Road came forward and was sworn in. He commented on the Wilkinson’s character saying, “The Wilkinson’s are fine people and I’m sure they would abide by whatever limitations that the Board thought were reasonable and I know from my conversations with them that they do not want to have any negative impact upon their neighbors.”

Frances Gavigan of 123 Wertsville Road came forward and was sworn in. She commented that she owns a 9 acre farm in the Amwell Valley Zone adjacent to a strip of residential homes and when she bought the property in 1995 it was conforming and then in 1999 it became non-conforming because of the 10 acre minimum requirement. Ms. Gavigan stated she has a farm operation with horses and sheep and fencing along the property lines. She noted several properties that have farm animals on various sized lots. She stated, “There are few things that are more inherently beneficial to the community and to the future of the community than 4-H and someone teaching children to be responsible for something else.” Ms. Gavigan remarked that it appears Mr. Wilkinson is making efforts to mitigate any issues with his neighbors and she reminded the Board that East Amwell is a farming community and added that if there is an issue with intensive use the County Board of Health would be involved.

Ms. Gardner asked Mr. Scheffmeyer about the letters he and the other neighbor signed which were contained in the original application submission indicating that he had no problem with any of Mr. Wilkinson’s animals at that point in time. Mr. Scheffmeyer explained that his wife signed her name and his and remarked that what Mr. Wilkinson stated in the letters at that time and what he actually did are completely different things. He stated, “There were 50-60 animals over there this summer...a couple dozen rabbits...a couple dozen turkeys...he had chickens out in pens right next to my property line.”

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Ms. Binder commented that if the DuFosse's wanted to raise pigs on their 150 acre farm across the street from the Scheffmeyers tomorrow, they could do that. Mr. Scheffmeyer stated, "Mr. DuFosse's father had a dairy farm there when we moved in." He remarked that the smell from the manure spread there was gone in a day or two, but the smell from the Wilkinson's property doesn't go away.

Darlene Scheffmeyer of 167 Cider Mill Road came forward and was sworn in. She explained that she signed the paper from Mr. Wilkinson because he told her that she must sign it so he could return it to the Municipal Building. Ms. Gardner asked why she would sign something that she didn't agree with. Ms. Scheffmeyer stated, "Because he said, 'sign it'...when he first came to our house before he bought the property he said they were very much into 4-H and they would like to have a couple of rabbits and a couple of chickens. We did not have a problem with that. However it did multiple...he has two pigs in the back too."

A motion by Paul Gavzy, seconded by Gloria Frederick to close to the public was unanimously approved. Mr. Wilkinson clarified that he does have one pot belly pig and he did have chicken nesting boxes along the property line. He explained that he processed chickens for his own consumption. Mr. Wilkinson noted that he purchased a chicken plucker to de-feather the chickens and was asked to process ducks for someone which he did but he indicated he is not in the business of processing birds. He commented that he simply did it as a favor. It was noted that Mr. Wilkinson processes animals in his driveway and puts the waste in the compost pile for the pig.

Mr. Wilkinson explained that he did speak to the adjoining neighbors about having animals prior to purchasing the property. He stated he wishes to live harmoniously.

Mr. Gavzy asked what the quantities are of the animals on the property. Mr. Wilkinson indicated he would like to be able to maintain the following:

- 15 turkeys which is the minimum purchase from the McMurray Hatchery
- 10-15 Laying chickens (hens)
- 2 hoofed animals with offspring until they are weaned
- 1 pot belly pig that lives in the compost area, which he noted is considered a pet—not a farm animal

Attorney Waterbury explained if the Board finds that there is no lot area requirement and no variance needed, then they have no say in the number of animals allowed on Mr. Wilkinson's property. However, if the Board finds that a lot area variance is needed then in deciding whether or not to grant such a variance, the Board may impose reasonable limitations/conditions.

Ms. Garrett asked if there were any public health concern regarding this property. Attorney Waterbury explained that to the degree that there may be issues, it would be regulated by the Board of Health Code and out of the Board of Adjustment's purview.

A motion by Paul Gavzy, seconded by Sherrie Binder declaring that Mr. Wilkinson does not need a lot area variance to conduct agricultural activities on his grandfathered lot was unanimously approved by roll call vote.

**Roll Call Vote:** Paul Gavzy: Yes, Sherrie Binder: Yes, Gloria Frederick: Yes, Gael Gardner: Yes, Kendra Schroeder: Yes, Diana Garrett: Yes, Anne Williams: Yes

Ms. Posselt returned to the dais at this time.

**Old Business**

It was noted that there were no old business matters listed on the agenda.

**New Business**

It was noted that there were no new business matters listed on the agenda.

**Comments of the Board Members**

There were no comments made by any Board Members.

**Attorney Comments**

It was noted that Attorney Waterbury did not make any additional comments.

**Open to the Public**

A motion by Sherrie Binder, seconded by Gael Gardner to open to the public was unanimously approved. Seeing no one come forward, a motion by Sherrie Binder, seconded by Gloria Frederick to close to the public was unanimously approved.

**Adjournment**

A motion by Paul Gavzy, seconded by Gloria Frederick to adjourn was unanimously approved.

The meeting adjourned at 8:54 PM.

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Maria Andrews, Administrative Officer