

LAND USE BOARD MINUTES
April 15, 2015

The Tewksbury Township Land Use Board met in a regularly scheduled meeting on the above date in the Municipal Meeting Hall, 60 Water Street, Mountainville, New Jersey. The meeting was called to order at 7:30 p.m.

Present: Blake Johnstone, Mary Elizabeth Baird, Michael Moriarty, Robert Becker, Ed Kerwin arrived at 7:35 p.m., Ed D'Armiento, Alt. #1, Kurt Rahenkamp, Alt. #2 and David Larsen, Alt. #4.

Also present: Daniel Bernstein, Land Use Board Attorney, William Burr, Land Use Board Engineer and Shana L. Goodchild, Land Use Administrator.

Absent: Shaun Van Doren, Dana Desiderio, Bruce Mackie and Glenn Stein, Alt. #3

There were three (3) people in the audience.

OPEN PUBLIC MEETING ACT STATEMENT

Mr. Johnstone opened the meeting by announcing that adequate notice of the meeting had been provided by posting a copy thereof on the Police/Administration Building bulletin board, faxing a copy to the Hunterdon Review and the Hunterdon County Democrat, and filing with the Municipal Clerk, all on January 8, 2015.

PLEDGE OF ALLEGIANCE

Those present stood and pledged allegiance to the American flag.

CLAIMS

Mr. Johnstone asked the Board if there were any questions or comments regarding the following claim to which the response was negative. Mrs. Baird made a motion to approve the claims listed below and Mr. Becker seconded the motion. The motion carried by the following roll call vote:

1. Bernstein & Hoffman – Land Use Board Escrow – Taylor (B37, L7), invoice dated March 26, 2015 (\$1,950.00)
2. Bernstein & Hoffman – Land Use Board Escrow – Weber (B27, L96 & 154), invoice dated March 26, 2015 (\$2,265.00)

Roll Call Vote:

Those in Favor: Blake Johnstone, Mary Elizabeth Baird, Robert Becker, Michael Moriarty, Ed D'Armiento, Kurt Rahenkamp, Alt. #2 and David Larsen, Alt. #4.

Those Opposed: None

CORRESPONDENCE

A motion was made by Mrs. Baird and seconded by Mr. Becker acknowledging receipt of the following items of correspondence. All were in favor.

1. Memorandum dated April 9, 2015 from Chief Holmes re: Appl. No. 15-05, Block 39, Lot 27.
2. Notice dated March 26, 2015 from Jack Beyer re: Freshwater Wetlands application to NJDEP re: general permit authorization for Block 28, Lots 2 & 35.
3. A copy of a letter dated March 31, 2015 from the NJ Highlands Council to Mayor Voyce re: recent meeting with staff and a "Highlands Implementation Grant Status".
4. A letter dated April 7, 2015 from Chuck McGroarty, Township Planner re: Appl. No. 15-05, Marquardt, Block 39, Lot 27.
5. A letter dated April 10, 2015 from William Burr, Land Use Board Engineer re: Appl. No. 15-05, Block 39, Lot 27.
6. Notice dated April 7, 2015 from the Department of Community Affairs re: public hearing to analyze and discuss the impediments to fair housing choice as they relate to the FY 2015 – 2019 consolidated plan.

ORDINANCE REPORT

There was no ordinance report due to Mr. Mackie's absence.

PUBLIC PARTICIPATION

Mr. Johnstone asked the public if there were any questions or comments regarding anything not on the agenda. There being no comments or questions, Mr. Johnstone closed the public participation portion of the meeting.

PUBLIC HEARING

- Marquardt
Appl. No. 15-05
Block 39, Lot 27
Use Variance
Action Deadline 7/30/15

Joseph Marquardt, 46 Old Turnpike Road, Oldwick was sworn in by Mr. Bernstein.

Lauren Fortier, 46 Old Turnpike Road, Oldwick was sworn in by Mr. Bernstein.

Mr. Marquardt explained that he bought the property with the intent to split it into two (2) residential units which requires a use variance. When asked, Mr. Marquardt noted that both apartments would be one (1) bedroom units. He opined that due to the driveway and parking situation the property is better suited to residential use instead of a business or commercial use. He noted that there is a three (3) family home next door and opined that the use proposed is in keeping with the neighborhood of multi-family residences.

Mr. McGroarty, Township Planner suggested that one (1) of the proposed units be deed restricted to an affordable housing unit which would be consistent with permitted uses in the zone. Mr. McGroarty noted that the zoning district permits different configurations of uses within the building (a business and 1 dwelling unit or second dwelling as an affordable housing unit). Mr. McGroarty noted that requiring one (1) of the units to be an affordable housing unit would be consistent with goals in the Master Plan to provide affordable housing in the Township. He added that Mr. Marquardt proposes to live in one (1) unit making it an owner occupied dwelling therefore the second unit would qualify as an accessory apartment under the COAH regulations; the deed restriction would be for ten (10) years. This designation also provides for more flexibility in tenant selection.

When asked by Mr. Johnstone if he objects to the recommendations in Mr. McGroarty's report, Mr. Marquardt indicated that he would prefer to have two (2) market rate units rather than a COAH restricted unit. Mr. McGroarty noted that the unit could be a low or moderate income property which could be at the higher end of the income scale; up to \$67,200 of income would be permitted for a moderate income designation so rent would be no more than 30% of their income. When asked if he would agree to that restriction, Mr. Marquardt opined that the deed restriction would de-value his property for resale purposes.

When asked by Mr. Burr if he would elaborate on what currently exists in the building, Mr. Marquardt explained that the rear door would be used to access the second floor apartment and the front and side doors would be used as access to the first floor apartment; no changes to the exterior in terms of additions, doors or windows. No exterior lighting is proposed and no changes to the site plan or parking; the two (2) car garage will remain along with two (2) existing parking spaces. He went on to explain that the first floor will remain except the kitchen and bedroom will be flipped. Two (2) bedrooms on the second floor will be deleted to make room for the kitchen and living area and the third floor will stay as is. When asked by Mr. Johnstone the use of the third floor, Mr. Marquardt explained that there is a full bathroom and open area. When asked if the third bathroom was properly permitted, Mr. Marquardt noted that when he bought the property he was told that as long as no changes were proposed the bathroom could stay. Ms. Goodchild noted that the continuing occupancy inspection ordinance had been repealed by the time the property sold so the Zoning Officer did not inspect the property. Mr. Johnstone noted that it needs to be determined if the third floor bathroom was properly permitted and he expressed concern with the third floor becoming a third apartment.

When asked by Mr. Burr to discuss the access easement and parking, Mr. Marquardt explained that the access and parking would not change from its current configuration. There are three (3) parking spaces in the rear and two (2) garage spaces. When asked who would use the garage spaces, Mr. Marquardt indicated each apartment would have the use of one (1) garage space.

Mr. Bernstein didn't believe that the applicant had any entitlement to use the property for anything other than a single family home because due to the size of the lot (the lot is 8,000 sq. ft. and the zone requires 20,000); no grandfather provision exists with respect to commercial property. Mr. Bernstein noted that Ms. Goodchild brought to his attention that the structure was being used as an illegal boarding house prior to Mr. Marquardt purchasing the property.

When asked by Mr. Moriarty if he knew the criteria an applicant needs to put on the record in order for the Board to consider the use variance, Mr. Marquardt noted that he was familiar with the hardship criteria. When asked to explain the hardship and the positive vs the negative criteria, Mr. Marquardt explained that he thought a commercial or business use would have a negative impact on the property due to the lack of parking. When asked to describe the renovations, Mr. Marquardt explained that he plans to keep the renovations in character with the historic district; no changes to the exterior are proposed except for the removal of the vinyl siding to expose existing clapboard which will either be restored or replaced as needed. He noted that he will work with the Historic Preservation Commission on all necessary approvals.

When asked by Mr. Johnstone if he reviewed the report from Chuck McGoarty, Mr. Marquardt responded in the positive. Mr. Johnstone noted that the report outlines the testimony required to address the positive and negative criteria (a through j). When asked by Mr. Johnstone if he had someone inspect the house prior to the purchase, Mr. Marquardt responded in the positive. When asked if the third floor bathroom was inspected to make sure the electrical and plumbing was installed correctly, Mr. Marquardt responded in the negative. Mr. Marquardt addressed criteria raised in the Township Planner's report as follows:

- a. Two (2) dwelling units would be less density than if it were a mixed use or remained a five (5) bedroom house.
- b. The hardship is the limited parking for commercial uses.
- c. Nothing is changing on the exterior.
- d. There will be less traffic generated by two (2) dwelling units.
- e. The entire structure is being renovated in the interior and exterior which will improve the look of downtown Oldwick.
- f. All improvements will be in keeping with the historic district.

Mr. Johnstone felt the positive criteria had been addressed and asked Mr. Marquardt to address the negative criteria. Mr. Marquardt explained that it would have a negative impact on the property to create a mixed use building with the shared driveway and a negative impact on the neighbors to create a commercial parking lot when the property is surrounded by residential uses.

When asked by Mrs. Baird if the handicapped ramp was removed, Mr. Marquardt responded in the positive.

When asked by Mr. Kerwin if he prepared a rental analysis between commercial and residential rentals, Mr. Marquardt responded in the positive and noted that he could get more money with commercial but the limited parking might prevent a tenant from renting the space. He noted that there are three (3) commercial spaces that have been vacant for months; residential units rent quickly. When asked what type of commercial uses would be permitted in that zone, Mr. Marquardt noted retail, professional office and food (not fast food).

Mr. Becker noted that 30% of \$67,200 for moderate income housing would yield \$1,680 a month and asked if that would be close to what he could rent it for at market rate. Mr. Marquardt explained that it is a \$300 difference but that he would consider the restriction if it meant the difference between gaining or not gaining approval from the Board.

When asked by Mr. Larsen if the original plan was for a business on the first floor and an apartment on the second floor, Mr. Marquardt responded in the positive but noted that after he looked at the access and parking situation along with the fact that there is vacant commercial space he thought it best to propose residential uses.

When asked by Mr. Bernstein if his attorney sought a zoning permit as to the permitted uses (per the MLUL a zoning permit application can be filed to determine permitted uses for the property), Mr. Marquardt responded in the negative. When asked if he filed an application with the Land Use Board for relief for a prior non-conforming use, Mr. Marquardt responded in the negative and noted that he spoke with Zoning Officer prior to purchasing the property. When asked if the third floor is an office/playroom, Mr. Marquardt responded in the positive.

Mr. Moriarty noted that he is concerned with restricting one of the units to a COAH unit without knowing what happens to the accessory use apartment if Mr. Marquardt moves out of the other unit. Mr. McGroarty noted that in the past COAH has indicated that the COAH restricted unit may no longer qualify if the dwelling unit is no longer owner occupied. When asked by Mr. Larsen what Tewksbury's quota is, Mr. McGroarty had the previous quota but the future quota is unknown. He noted that the third round rules have gone through a number of changes and the most recent version wasn't adopted by COAH. The numbers for the second round were 123 units for 1987 through 1999 and 87 units for 1999 through 2014. He noted that the six (6) year cycle was disrupted in 2004. When asked by Mr. Larsen if Tewksbury has met its quota, Mr. McGroarty noted that Tewksbury has met its prior round obligation, it has not met its third round number because that number is unknown. Mr. McGroarty noted that the obligation is complicated by the Highlands; the reduced development should reduce the obligation but no one knows for sure.

When asked by Mr. Moriarty if the approval could limit the units to one (1) bedroom each, Mr. Bernstein responded in the positive and explained that he could include it in the resolution but noted that enforceability can be difficult. When asked by Mr. D'Armiento why the Board is concerned with two (2) bedrooms, Mr. Bernstein noted that more bedrooms mean more density and the lot does not meet the minimum size for the zone.

When asked by Mrs. Baird if the basement is accessed from inside or outside, Mr. Marquardt responded outside at street level.

Ms. Goodchild noted that when she spoke to Jess Landon, the Township Affordable Housing Office, he indicated that the Township is in need of low income units vs moderate income units and she asked if it would be a problem trying to get this unit qualified. Mr. McGroarty didn't think it would be a problem under the circumstances. Mr. Marquardt asked about the Township's COAH conversion assistance fund. Mr. McGroarty noted that he was unaware of the status of it and noted that in the past it was a requirement that subsidies were to be provided for accessory apartments; those subsidies were eliminated in the last version of the rules (that were not adopted).

There being no additional questions from the Board, Mr. Johnstone opened the meeting up to the public. There being no questions from the public, Mr. Johnstone closed the public portion of the meeting.

When asked by Mrs. Baird if he felt the positive and negative criteria had been met, Mr. Bernstein noted that it is a stronger case if the Board approves it with the COAH restriction but without that restriction there is still the benefit of the building being rehabilitated and used for a less intense purpose. Mr. Bernstein suggested that the Board deed restrict one (1) of the units for ten (10) years as a moderate income COAH unit. Mr. Becker noted that Mr. Marquardt's application indicates that he has been involved in other renovations and asked if he had purchased those with the intent to live in them to which Mr. Marquardt responded in the negative.

Discussion ensued regarding the lack of information on the future of COAH and restrictions that may or may not be in place and whether the Township would get credit for the unit. Mr. Marquardt noted that it would be very difficult to put money into renovating the building and have COAH change the parameters of the rent. Mr. McGroarty didn't believe that the income levels would change.

Mr. Larsen opined that because of the uncertainty of COAH the variance should be approved without the restriction. Mr. D'Armiento agreed.

Mr. Johnstone didn't feel the restriction was necessary and opined that two (2) apartments are a less intense use than a business. Mr. Johnstone expressed concern about the third floor and the bathroom which may be illegal. He indicated that he would vote in favor of the variance so long as the third floor bathroom is properly permitted, each unit is only one (1) bedroom and that there is no bedroom permitted on the third floor.

When asked by Mrs. Baird if a home occupation would be permitted in this zone, Mrs. Goodchild responded in the positive and explained the difference between a minor and major home occupation. Mrs. Baird was not in favor of a home occupation being permitted in the structure.

Mr. Becker was generally in favor of granting the use variance but expressed concern with the basement being converted into another unit.

Mr. Moriarty made a motion and Mr. Becker seconded the motion to approve the use variance to permit two (2) separate one (1) bedroom market rate units with the conditions outlined in the expert reports as well as the following:

1. Proper permits and inspections for the existing bathroom on the third floor.
2. No home occupation.
3. No business in basement.
4. No bedroom on the third floor.
5. Only one (1) bedroom per unit.
6. No new exterior lights.
7. All renovations must meet construction code.
8. All exterior renovations are subject to the Historic Preservation Commission.
9. Variance is valid for one (1) year.
10. All fees and escrows must be paid.

The motion carried by the following roll call vote:

Roll Call Vote:

Those in Favor: Mrs. Baird, Mr. Becker, Mr. Moriarty, Mr. Kerwin, Mr. D'Armiento, Mr. Rahenkamp and Mr. Johnstone

Those Opposed: None

Mr. Johnstone recommended to Mr. Marquardt that he retain a professional in the future if he finds himself applying for a use variance so the proper testimony is put on the record. Mr. Bernstein also suggested Mr. Marquardt hire an attorney prior to purchasing a property to properly determine what the permitted uses are for the property.

MISCELLANEOUS DISCUSSION

Mr. Johnstone noted that Ms. Goodchild brought to his attention a matter that he has asked her to discuss with the Board. Ms. Goodchild noted that the Township no longer performs the Continuing Occupancy Inspections prior to the sale of homes so violations are now discovered through complaints by neighbors/residents. She noted that a property owner on Ridge Road had two (2) illegal rental apartments in a detached building behind his home. The Zoning Officer took the property owner to court and the Judge ruled that the apartments needed to be removed. The ruling was a bit ambiguous about what needed to be removed. The Zoning Officer feels more comfortable with the kitchen being removed entirely however the Construction Official is satisfied with the utilities lines being capped off. Ms. Goodchild asked the Board for their thoughts on the issue. The consensus of the Board was that the Judge ruled in the Township's favor and a letter should be written to either the Township Administrator or the Construction Official indicating that the kitchen should be removed in its entirety within a certain time frame. Ms. Goodchild noted that her concern is that if all of the elements of the apartment are

left intact it will turn into an apartment again by the same owner or a future owner. The Board agreed and also felt that homeowners like this should be fined.

Escrow Closings

- J. Lance B39, L2 - \$160.00
- Noe B34, L18 - \$265.00

Mrs. Baird made a motion to close the above referenced accounts and return the balance to the applicants. Mr. Becker seconded the motion. The motion carried by the following roll call vote:

Roll Call Vote:

Those in Favor: Mr. Johnstone, Mrs. Baird, Mr. Kerwin, Mr. Moriarty, Mr. Becker, Mr. D'Armiento, Mr. Rahenkamp and Mr. Larsen.

Those Opposed: None

ADJOURNMENT

There being no further business, the meeting adjourned at 8:55 p.m. by motion of Mr. Moriarty and seconded by Mr. Larsen. All were in favor.

Respectfully submitted,

Shana L. Goodchild
Land Use Administrator