

LAND USE BOARD MINUTES
October 2, 2013

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, Shaun Van Doren, Bruce Mackie, Elizabeth Devlin, Shirley Czajkowski, Ed Kerwin arrived at 8:30 p.m., Robert Becker, Alt. #1, Eric Metzler, Alt. #2, Ed D'Armiento, Alt. #3 and David Larsen, Alt. #4.

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

Absent: Dana Desiderio and Michael Moriarty

There were approximately five (5) 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 04, 2013.

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 claims to which the response was negative. Mrs. Baird made a motion to approve the claims listed below and Mrs. Devlin seconded the motion. The motion carried by the following roll call vote:

1. Bernstein & Hoffman – Attendance at 9-18-13 LUB meeting – invoice dated September 19, 2013 (\$450.00)
2. Bernstein & Hoffman – Land Use Board Professional Services – invoice dated September 18, 2013 (\$300.00)
3. Bernstein & Hoffman – Land Use Board Escrow – Natale (B33, Lot 4), invoice dated September 18, 2013 (\$1,200.00)
4. Maser Consulting – Land Use Board Professional Services – General Planning Work, invoice #214806 (\$65.00)
5. Maser Consulting – Land Use Board Escrow – Stavola (B44, L24), invoice #214810 (\$617.50)
6. Maser Consulting – Land Use Board Escrow – Biedron (B31, L12), invoice #214811 (\$422.50)

7. Maser Consulting – Land Use Board Escrow – McCatharn (B16, L25.03), invoice #214812 (\$617.50)
8. Maser Consulting – Land Use Board Escrow – Tewksbury Land Trust (B29, L8.021), invoice #214813 (\$390.00)
9. Maser Consulting – Land Use Board Escrow – Cellco (B44, L26), invoice #214814 (\$195.00)
10. Maser Consulting – Land Use Board Escrow – Bligh (B51, L80.08), invoice #214815 (\$195.00)
11. Maser Consulting – Land Use Board Escrow – von Hollen (B16, L4), invoice #214816 (\$130.00)
12. Maser Consulting – Land Use Board Escrow – Pomerantz (B34, L19.13), invoice #214817 (\$292.50)
13. Maser Consulting – Land Use Board Escrow – Natale (B33, L4), invoice #214818 (\$975.00)
14. Maser Consulting – Land Use Board Escrow – Moreira (B4, L6.11), invoice #214819 (\$260.00)
15. Maser Consulting – Land Use Board Escrow – Johnson (B23, L4), invoice #214808 (\$487.50)
16. Maser Consulting – Land Use Board Escrow – Johnson (B23, L36), invoice #214809 (\$487.50)
17. Maser Consulting – Land Use Board Escrow – Johnson (B23, L20), invoice #214807 (\$1,007.50)
18. Suburban Consulting – Land Use Board Escrow and Inspection – Johnson (B23, L4, 20 & 36), invoice #000000021078 (\$1,131.71)

Roll Call Vote:

Those in Favor: Mrs. Baird, Mr. Van Doren, Mr. Mackie, Mrs. Devlin, Mrs. Czajkowski, Mr. Becker, Mr. Metzler, Mr. D’Armiento, Mr. Larsen and Mr. Johnstone

Those Opposed: None

CORRESPONDENCE

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

1. A letter dated September 27, 2013 from William Burr re: Sargent, Appl. No. 13-12, Block 38, Lot 3.05.
2. A letter dated September 27, 2013 from William Burr re: Moreira, Appl. No. 13-15, Block 4, Lot 6.11.
3. A copy of a letter dated September 19, 2013 from Neil Yoskin to NJDEP Commissioner Bob Martin re: JCP&L Substation.
4. A letter dated September 3, 2013 from Glenn Arbesfeld, SSP Architects and Planners re: plans for proposed exterior lighting upgrades at Old Turnpike Middle School for review in accordance with NJSA 18A:18A-16.

5. A letter dated September 3, 2013 from Glenn Arbesfeld, SSP Architects and Planners re: plans for proposed new generator at Old Turnpike Middle School for review in accordance with NJSA 18A:18A-16.
6. A letter dated September 3, 2013 from Glenn Arbesfeld, SSP Architects and Planners re: plans for proposed paving improvements at Old Turnpike Middle School for review in accordance with NJSA 18A:18A-16.
7. A letter dated September 26, 2013 from Chief Holmes re: Moreira, Appl. No. 13-15, Block 4, Lot 6.11.
8. A letter dated September 26, 2013 from Chief Holmes re: Sargent, Appl. No. 13-12, Block 38, Lot 3.04.
9. NJ Planner, Vol. 74, No. 4 – July/August 2013.

MINUTES

- June 19, 2013

The minutes of June 19, 2013 were approved as submitted by Mr. Van Doren and seconded by Mrs. Baird. All were in favor. Mr. Becker and Mr. D'Armiento abstained.

ORDINANCE REPORT

Mr. Mackie reported on an ordinance from Califon which increases development application fees and escrow amounts. The ordinance was passed on to Ms. Goodchild to compare to Tewksbury's fee schedule.

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 Hearings

- Sargent
Appl. No. 13-12
Block 38, Lot 3.04
Impervious Coverage Variance
Action Deadline – 1/7/14

Michael Osterman was present representing Louisa Sargent who was also present. Mr. Osterman explained that Ms. Sargent is the owner of the subject property located on Hill and Dale Road located in the Farmland Preservation District.

Mr. Metzler noted for the record that he has done work in the past with the applicant's engineer. When asked if it was current, Mr. Metzler responded that it was approximately a year ago. Mr. Bernstein opined that Mr. Metzler could hear the application.

Mr. Osterman explained that Ms. Sargent purchased the property approximately one (1) year ago which is a 5 acre property with a 2 story dwelling, a swimming pool, a barn, a stone riding ring and a driveway with branches that extend to the barn and riding ring. The maximum permitted lot coverage in the Farmland Preservation District is 5% and the

existing lot coverage is 9.517%. Mr. Osterman went on to say that Ms. Sargent would like to enlarge the barn on the property; the current barn contains two (2) horse stalls, a feed room and a tack room. The applicant would like to enlarge and reconfigure the existing barn to accommodate four (4) horse stalls, a tack room, feed room and a workshop. In addition, she would like to add two (2) small concrete pads for a generator and an outdoor wood burning furnace. In order to offset the additional coverage that would result from the additional improvements Ms. Sargent proposes to remove one (1) of the branches of the driveway (to the existing barn) so the net result will actually be a reduction in the impervious coverage from 9.517% to 9.09%.

Louisa Sargent, applicant, 31 Hill and Dale Road, Lebanon, was sworn in by Mr. Bernstein.

John Hansen, Ferriero Engineering, 180 Main Street, Chester, was sworn in by Mr. Bernstein. Mr. Hansen has testified as an Engineer and Planner before the Board and was accepted in the past.

Ms. Sargent testified that she purchased the property in November of 2012 and proposes an addition to the existing barn. When asked if she spoke to anyone at the Township about the addition she responded in the positive and explained that she spoke to Randy Benson, Zoning Officer prior to making the offer on the house and he told her that he didn't think it would be a problem to expand the barn. She explained that last winter she applied for Zoning permit for the emergency generator and was denied due to excessive lot coverage. Ms. Sargent explained that she had already hired an architect to prepare plans for the barn expansion and he suggested removing a portion of the driveway to reduce lot coverage. After consultation with Ms. Goodchild research was done to determine if a variance was ever granted for the existing structure and no evidence of a variance was found but maps and plans were found from 1993 that were approved by the zoning officer. The plans showed the original dwelling, existing shed and a proposed pool, riding ring and paddock all of which were approved for construction. Ms. Sargent noted that she found a zoning permit that was issued in 2006 for an addition to the house. The survey that was used to obtain that permit showed the driveways but did not show the riding ring but she spoke to the prior owner and the ring existed in 2005.

When asked about the proposed improvements, Ms. Sargent explained that she would like to expand the barn from 35 feet x 25 feet to 45 feet x 50 feet and 6 inches and the height would increase from 20 feet 3 inches to 25 feet 10 inches. The primary use would be a horse barn with 4 stalls with a workshop and hay storage. When asked if vehicular access will be needed to the barn, Ms. Sargent explained that the plan is to use the riding ring to access the barn so a separate driveway would not be needed. When asked if she will comply with the restriction on the number of horses (maximum of four (4)), Ms. Sargent responded in the positive. When asked if any trees or shrubs will be impacted, Ms. Sargent responded in the negative. When asked if there are any exterior lights proposed, Ms. Sargent explained that there will be one (1) exterior light added to a new door to comply with code (no flood lights or lights in the riding ring are proposed). When asked by Mr. Burr if she added any other improvements since the purchase in

2012, Ms. Sargent responded in the negative. When asked if she knows where the roof leaders tie into, Ms. Sargent explained that the gutters extend into the yard a few feet but do not go underground.

When asked by Mr. Bernstein if she was planning to submit the surveys from the past, Ms. Sargent presented the survey that was attached to a Zoning Permit for the expansion to the house in 2006 and two (2) hand written surveys that she found in the construction file in connection with the application for the swimming pool. Mr. Bernstein marked them as **Exhibit A-1**. When asked if the improvements shown on the survey are the improvements that exist today, Ms. Sargent noted that it does not show the driveway to the stable. Mr. Osterman noted that the plan that his client received from the construction department was stamped and signed by the Zoning Officer.

When asked by Ms. Goodchild if there was a permit on file for the riding arena, Ms. Sargent responded in the negative but noted that it was shown on the survey that was submitted for another permit application. Mr. Osterman opined that the permit files were incomplete.

When asked by Mr. Van Doren if she could live with a condition that there is no lighting on the outdoor riding ring, Ms. Sargent responded in the positive.

When asked by Mr. Johnstone how the gravel driveway will be removed, Mrs. Sargent explained that the gravel will be removed and the area covered with topsoil and seed. When asked if the shed between the pool and paddock could be removed, Mrs. Sargent explained that it is used for pool supplies and eventually for gasoline for farm equipment. When asked if it is in good condition, Mrs. Sargent responded in the positive.

When asked by Mrs. Baird about the proposed concrete pad for the outdoor furnace, Mrs. Sargent explained that they plan to install an outdoor furnace for an alternative heating source for the workshop, house and pool. When asked if the pad for the heating unit would fall under the exemption from coverage, Mr. Van Doren replied in the negative and noted that the ordinance is specific to generators and air conditioning compressors.

Mr. Metzler noted that the Board has consistently asked property owners to mitigate the coverage to reduce it to what is permitted by zoning through the usage of drywells. When asked if she would be willing to mitigate the impervious coverage, Mrs. Sargent explained that she would need to understand the requirements. Mr. Metzler noted that the outdoor furnace works well but the downside is that they produce a lot of smoke, especially on cold mornings. He suggested that the Township consider regulating them to avoid future problems.

When asked by Mr. Larsen if a Continuing Certificate of Occupancy inspection (CCO) was performed prior to her purchasing the home in 2012, Mrs. Sargent responded in the positive. When asked about the riding ring, Mrs. Sargent noted that it is a stone dust ring. When asked if there is sub drainage, Mrs. Sargent responded in the negative.

When asked by Mr. Johnstone to explain the process of mitigating the coverage, Mr. Burr explained that the Board typically requires underground drywells which would be connected to the roof leaders and would allow the runoff that hits the roof to recharge back into the ground. In this case, a good option would be to capture the roof runoff from the proposed barn.

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

John Hansen, Engineer and Planner, was present. Mr. Hansen had been previously accepted by the Board for a different application.

Mr. Hansen presented the following as **Exhibits**:

A-2 – brochure on outdoor wood furnace

A-3 – floor Plans and elevations

Mr. Hansen explained that the property is five (5) acres in size and located in the Farmland Preservation Zone. The property consists of a single family dwelling, an in-ground pool, riding ring, shed and an existing barn. The property is gently sloping and contains no wetlands, floodplains or environmentally critical areas. The improvements on the property are well buffered from the roadway by a substantial hedgerow along the road frontage. The proposal is for an addition to the existing barn with very little land disturbance. Mr. Hansen noted that some of the wood to be used on the proposed barn is from milled trees that fell from Hurricane Sandy. No flood lights are proposed and a small sconce light is proposed over the doors. The other component of the project is a generator pad of 14 sq. ft. and the pad for the outdoor wood stove.

Mr. Hansen went on to explain that the applicant requires an impervious coverage variance and noted that the coverage will actually be reduced by 934 sq. ft. but it is still over the 5% permitted by the ordinance. Mr. Hansen opined that it would be difficult to mitigate the existing coverage down to 5%. He explained that the barn addition is proposed in the most appropriate location because it is being constructed over what is currently a gravel area. The variance request is for a C variance and best fits the C2 criteria (flexible C). Mr. Hansen reviewed for the Board the Municipal Land Use Law positive criteria that the project advances as well as the negative criteria using the three (3) prong approach.

Using Exhibit A-3 Mr. Hansen described the proposed building and the elevations visible from the public roadway.

When asked if he had an opportunity to review William Burr's report dated September 27, 2013, Mr. Hansen responded in the positive. When asked if they are proposing stormwater management facilities, Mr. Hansen responded in the negative and opined that because the project reduces coverage it is unnecessary. He noted that no steep slopes are

present and other homes are a significant distance away and any runoff would be dissipated before it hits a neighboring property. When asked about landscaping, Mr. Hansen noted that all existing shrubs will remain. Mr. Hansen agreed to address the other items outlined in Mr. Burr's report.

Mr. Burr noted that the Grading and Surface Water Management Plan that will be needed for the project will likely require some stormwater management facility based on the ordinance. When asked if they will provide mitigation, Mr. Osterman noted that his client agreed to provide some mitigation if required.

When asked by Mr. Bernstein if the application promotes agriculture and recreation by virtue of the horses, Mr. Hansen responded in the positive indicating that they are goals of the Master Plan that are furthered by the project.

When asked by Mr. Mackie about the stream on the western edge of the property, Mr. Hansen noted that it is shown on the NJDEP website. When asked if it is a regulated stream, Mr. Hansen responded in the negative and explained that it is essentially a manmade ditch with less than 50 acres of drainage area and therefore not a regulated feature.

When asked by Mrs. Devlin about the wooden bridge, Mr. Hansen explained that the property has been graded so that the water drains away from the house and there is a small grass swale in that area and the bridge is a decorative feature.

Mrs. Baird questioned some of the lot numbering issues between the key map and the property owner listing. She suggested that the key map be updated to represent the current tax map configuration.

When asked by Mr. Larsen the dimensions of the riding ring, Mr. Hansen replied 120 feet x 75 feet.

Mr. Bernstein noted that Ms. Goodchild expressed a concern that the riding ring is within the setback and opined that the application should be amended to request a variance. Mr. Osterman agreed to the amendment.

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

Mr. Van Doren made a motion to approve the application subject to the following conditions. Mrs. Devlin seconded the motion. The motion carried by the following roll call vote:

1. Updated Key Map
2. Compliance with William Burr's report
3. Mitigation of the coverage for the barn only.

4. No lighting on the outdoor riding ring.
5. Application is to be revised to request a setback variance for the riding ring.
6. The variance approval is valid for one (1) year.
7. Deed restriction for the maintenance of the stormwater management facility.
8. Other boiler plate conditions regarding escrows, etc.

Roll Call Vote:

Those in Favor: Mrs. Baird, Mr. Van Doren, Mr. Mackie, Mrs. Devlin, Mrs. Czajkowski, Mr. Becker, Mr. Metzler, Mr. D'Armiento, Mr. Larsen and Mr. Johnstone

Those Opposed: None

- Moreira
 Appl. No. 13-15
 Block 4, Lot 6.11
 Impervious Coverage Variance
Action Deadline – 1/7/14

Frederick Zelle, attorney for the applicant was present and explained that the application is for a C variance for existing coverage variance.

Mr. Jose and Mrs. Isabel Moreira, 11 Bridge Hollow Road were sworn in by Mr. Bernstein.

Ryan Smith, Engineer was sworn in by Mr. Bernstein. Mr. Smith provided his qualifications and was accepted by the Board.

Mr. Moreira explained that he purchased the lot prior to 1984 and the house was built in approximately 1987. It was noted by Mr. Zelle that at the time the property was in a different zone and had different requirements. When asked, Mr. Moriera noted that the tennis court was installed in approximately 1994 and is the cause of the excessive lot coverage. He went on to explain that he applied recently to install a generator on his property and was denied due to excessive impervious coverage. Subsequently, the Township approved an ordinance to exempt generator pads from the coverage requirements. When asked by Mr. Johnstone if he got a permit for the tennis court, Mr. Moreira responded in the negative and explained that he was told that a permit was not required. When asked who told him that a permit was not required, Mr. Moreira thought it was an elderly gentleman at the Township office. When asked if he had any subsequent applications for construction after the tennis court, Mr. Moreira responded in the positive and explained that a deck was constructed on October 5, 2005 and the issue of coverage did not come up. When asked if the generator has been installed, Mr. Moreira responded in the positive. When asked if there is any other changes proposed for the property, Mr. Moreira explained that there is an existing shed to be removed and replaced. Mr. Zelle noted that the proper permits would be applied for and the shed would be rebuilt in a conforming location. Mr. Moreira noted that there was a gazebo on

the property but it was destroyed during Hurricane Sandy; no foundation existed. When asked about an existing concrete slab for a dog kennel, Mr. Moreira indicated that it will be removed. When asked about the existing deck, Mr. Moreira explained that he would like to include some steps from the deck to the grass. When asked if he has observed any flooding on the property, Mr. Moreira noted that his property sits on top of a knoll so the water drains well. When asked if any of the improvements are visible from the road, Mr. Moreira responded in the negative. When asked if the tennis court is illuminated, Mr. Moreira responded in the negative and indicated that he does not wish to do so.

Mr. Zelle explained to the Board that the application is for a C1 variance and the hardship is based upon the fact that he was not given proper advice 20 years ago. He explained that there is no detriment to the zoning ordinance or zone plan and the negative criteria is satisfied.

When asked by Mr. Burr about the proposed shed, Mr. Moreira confirmed that it will be re-built in a conforming location. When asked if there are any existing drywells on the property, Mr. Moreira responded in the negative.

When asked by Mr. Bernstein if the tennis court will be illuminated, Mr. Moreira responded in the negative. When asked if he had any letters from the Township indicating that a permit was not required for the tennis court, Mr. Moreira responded in the negative.

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.

Mr. Ryan Smith, Engineer, explained that the subject property is located on a knoll and drains downhill towards a cul-de-sac. There is an extremely long driveway that leads from the road to the house which adds a significant amount of coverage to the lot. When asked if he agrees that the property has no drainage issues, Mr. Smith agreed noting that because of the type of soils the property drains quickly. When asked, Mr. Smith reported no evidence of erosion on the property. When asked what the tennis court is made of, Mr. Smith replied concrete. When asked where it drains, Mr. Smith explains that there is four (4) feet of gravel around the perimeter of the court.

When asked by Mr. Burr about the coverage discrepancy on the plan versus the application, Mr. Smith explained that the plan is accurate (29,639 sq. ft.) and noted that the discrepancy had to do with the size of the proposed/rebuilt shed.

When asked by Mr. Van Doren how much the tennis court contributes to the coverage, Mr. Smith estimated 3%.

There being no additional questions from the Board or public Mr. Johnstone closed the public hearing.

Mr. Van Doren made a motion to approve the application subject to the following conditions. Mrs. Baird seconded the motion. The motion carried by the following roll call vote:

1. No detention facilities required.
2. If the applicant wishes to re-build the shed it would need to be in a conforming location; a permit for the shed is required.
3. No lighting of the tennis court.
4. Other boiler plate conditions regarding escrow, etc.

Roll Call Vote:

Those in Favor: Mrs. Baird, Mr. Van Doren, Mr. Mackie, Mrs. Devlin, Mrs. Czajkowski, Mr. Kerwin, Mr. Becker, Mr. Metzler, Mr. D'Armiento, Mr. Larsen and Mr. Johnstone

Those Opposed: None

Mr. Van Doren left the meeting table at this time.

- Van Doren
Appl. No. 13-17
Block 19, Lot 20
Front setback Variance for emergency generator
Action Deadline – 1/18/14

Mr. Shaun C. Van Doren, 59 Old Turnpike Road, Oldwick was sworn in by Mr. Bernstein.

Mr. Van Doren explained that his application is for a front yard setback variance for the installation of a natural gas generator as well as two (2) air conditioning compressors. All three (3) units are proposed in the rear of the home. He noted that he appeared before the Historic Preservation Commission in August and received approval from the Commission because the units cannot be seen from the road. The required front setback is 75 feet and the entire house is within the front setback as shown on the survey provided. Mr. Van Doren explained that he drew a yellow line on the survey to demonstrate the 75 foot setback line and noted the location of the proposed generator and two (2) air conditioning compressors; the units will be placed at 55 feet instead of the required 75 feet.

Mr. Bernstein asked that the Township Committee consider wider exemptions for these types of applications so residents don't have to appear before the Board.

There being no additional questions or comments from the Board or public, Mr. Johnstone closed the public portion of the meeting.

After reviewing the photos and survey provided a motion was made by Mrs. Baird to approve the application as submitted with the condition that the applicant comply with

the provisions of the ordinance regarding generators. Mr. Johnstone seconded the motion. The motion carried by the following roll call vote:

Roll Call Vote:

Those in Favor: Mrs. Baird, Mr. Mackie, Mrs. Devlin, Mrs. Czajkowski, Mr. Kerwin, Mr. Becker, Mr. Metzler, Mr. D'Armiento, Mr. Larsen and Mr. Johnstone

Those Opposed: None

Mr. Johnstone noted for the record that in preparation of the Board hearing an application for a cell tower he asked Mr. Bernstein to prepare an outline for discussion as to what the Board can and cannot consider during the hearings.

Mr. Van Doren recused himself from the meeting at this time.

Mr. Bernstein explained that the discussion is not about any specific application. He explained that the usual cell tower cases are situations where the towers are not permitted uses and the applicant would have to prove that the site is either peculiarly or particularly suited for the use; this proof is provided through the RF Engineer testimony. The RF Engineer uses a computer program to provide information as to adequate coverage or gaps in coverage. The applicant will also provide testimony as to alternative sites and demonstrate that there aren't better sites. Mr. Bernstein went on to explain that applicants rely on the Telecommunications Act of 1996 that was approved by Congress which states that local regulations may not prohibit or have the effect of prohibiting personal wireless service. Mr. Bernstein opined that it means that the carriers are entitled to provide good service for their areas. In many cases, Boards have turned down applications and well over 90% of the cell carriers have prevailed in court. Mr. Bernstein noted that the situation in Tewksbury is a little different in that the Township has a comprehensive ordinance dealing with telecommunication towers (a copy of the ordinance was distributed to the Board). Mr. Bernstein reviewed some of the points of the ordinance and specifically addressed the location priority.

In conclusion, Mr. Bernstein asked the Board members to review the ordinance and use it as a guide in considering the application.

ADJOURNMENT

There being no further business, the meeting adjourned at 9:20 p.m. by motion of Mrs. Devlin and seconded by Mrs. Baird.

Respectfully submitted,

Shana L. Goodchild
Land Use Administrator