

**LAND USE BOARD MINUTES**  
**November 6, 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, Dana Desiderio, Bruce Mackie, Elizabeth Devlin, Shirley Czajkowski, Ed Kerwin, Robert Becker, Alt. #1, Ed D'Armiento, Alt. #3 and David Larsen, Alt. #4.

Ms. Goodchild noted for the record that Eric Metzler resigned.

Also present: Daniel Bernstein, Land Use Board Attorney, William Burr, Land Use Board Engineer, Joanna Slagle, Planner (attending for Chuck McGroarty) and Shana Goodchild, Land Use Administrator.

Absent: Shaun Van Doren and Michael Moriarty

There were approximately thirty five (35) 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. Ms. Desiderio 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 10-2-13 LUB meeting – invoice dated October 3, 2013 (\$450.00)
2. Bernstein & Hoffman – Land Use Board Escrow – Pomerantz (B34, L19.13), invoice dated October 22, 2013 (\$337.50)
3. Bernstein & Hoffman – Land Use Board Escrow – Sargent (B38, L3.04), invoice dated October 29, 2013 (\$1,110.00)
4. Maser Consulting – Land Use Board General Land Use Work, invoice #217284 (\$65.00)
5. Maser Consulting – Land Use Board Escrow – Schmitt (B11, L6), invoice #189983 (\$50.00) and Land Use Board General Land Use Work (\$210.00)

6. Maser Consulting – Land Use Board Escrow – Johnson (B23, L20), invoice #217285 (\$227.50)
7. Maser Consulting – Land Use Board Escrow – Biedron (B31, L12), invoice #217287 (\$195.00)
8. Maser Consulting – Land Use Board Escrow – McCatharn (B16, L25.03), invoice #217288 (\$162.50)
9. Maser Consulting – Land Use Board Escrow – Tewksbury Land Trust (B29, L8.21), invoice #217289 (\$65.00)
10. Maser Consulting – Land Use Board Escrow – Cellco Partnership/Verizon (B44, L26), invoice #217290 (\$292.50)
11. Maser Consulting – Land Use Board Escrow – Pomerantz (B34, L19.13), invoice #217291 (\$520.00)
12. Maser Consulting – Land Use Board Escrow – Beatrice Snyder (B11, L8.04), invoice #217292 (\$130.00)
13. Maser Consulting – Land Use Board Escrow – Sargent (B38, L3.04), invoice #217293 (\$845.00)
14. Maser Consulting – Land Use Board Escrow – Moreira (B4, L6.11), invoice #217294 (\$812.50)
15. Maser Consulting – Land Use Board Escrow – Wood (B10, L5.07), invoice #217286 (\$390.00)
16. Maser Consulting – Land Use Board Inspection – JCP&L (B17, L2.10 & 2.02), invoice 217295 (\$682.50)
17. Suburban Consulting Engineers – Land Use Board Escrow – Tewksbury Land Trust (B29, L8.21), invoice #000000021264 (\$237.96)

Roll Call Vote:

Those in Favor: Mrs. Baird, Ms. Desiderio, Mr. Mackie, Mrs. Devlin, Mrs. Czajkowski, Mr. Kerwin, Mr. Becker, Mr. D’Armiento, Mr. Larsen and Mr. Johnstone

Those Opposed: None

**CORRESPONDENCE**

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

1. A Memo dated October 23, 2013 from Roberta Brassard re: Ordinance No. 12-2013 consistency review pursuant to MLUL 40:55D-26a.
2. A Memo dated October 9, 2013 from Roberta Brassard re: Ordinance No. 10-2013 consistency review pursuant to MLUL 40:55D-26a.
3. An e-mail from Maria Sblendorio dated October 11, 2013 re: EchoHill escrows and inspection accounts.
4. NJ Planning Officials 2013 NJPO Official Ballot.
5. Memorandum dated October 31, 2013 from Chief Holmes re: Appl. No. 13-03, Block 44, Lot 26, Cellco/Verizon, 19 King Street.

6. A letter dated October 21, 2013 from the Tewksbury Environmental Commission re: Appl. No. 13-03, Block 44, Lot 26, 19 King Street, Cellco/Verizon.
7. A copy of a letter dated September 13, 2013 from Dan Abeyta, Federal Communications Commission to Kenneth Basalik, Principal Investigator re: Appl. No. 13-03, Block 44, Lot 26, 19 King Street, Cellco/Verizon.
8. A letter dated November 1, 2013 from the Tewksbury Township Scenic Roads and Bridges Commission re: Appl. No. 13-03, Block 44, Lot 26, 19 King Street, Cellco/Verizon.
9. Memorandum dated October 23, 2013 from Chuck McGroarty, Banisch Associates re: Verizon Wireless Oldwick, Block 44, Lot 26, Preliminary & Final Site Plan.
10. A letter dated November 1, 2013 from William Burr, Maser Consulting re: Cellco Partnership (d/b/a Verizon Wireless) – Preliminary & final Site Plan and Conditional Use Variance, Appl. No. 13-03, Block 44, Lot 26, 19 King Street.

## **MINUTES**

### ➤ July 17, 2013

The minutes of July 17, 2013 were approved as submitted by motion of Mrs. Devlin and seconded by Mrs. Czajkowski. All were in favor. Ms. Desiderio abstained.

### ➤ August 7, 2013

The minutes of August 7, 2013 were approved as submitted by motion of Ms. Desiderio and seconded by Mrs. Devlin. All were in favor. Mr. Kerwin and Mr. D'Armiento abstained.

### ➤ September 4, 2013

The minutes of September 4, 2013 were approved as submitted by motion of Mrs. Baird and seconded by Mr. Mackie. All were in favor. Mr. Becker, Ms. Desiderio, Mr. Kerwin, Mrs. Devlin, Mrs. Czajkowski and Mr. Larsen abstained.

### ➤ September 18, 2013

The minutes of September 18, 2013 were approved as submitted by motion of Mrs. Baird and seconded by Mrs. Devlin. All were in favor. Mr. Becker and Ms. Desiderio abstained.

## **ORDINANCE REPORT**

Mr. Mackie had no ordinances to report on.

## **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.

## **RESOLUTIONS**

- Resolution No. 13-26 – Van Doren, Appl. No. 13-17, Block 38, Lot 8.01  
*Eligible to vote: Mrs. Baird, Mr. Mackie, Mrs. Devlin, Mrs. Czajkowski, Mr. Kerwin, Mr. Becker, Mr. Metzler, Mr. D'Armiento, Mr. Larsen and Mr. Johnstone*

Mrs. Baird made a motion to approve the following resolution. Mrs. Devlin seconded the motion. The motion carried by the following roll call vote:

TOWNSHIP OF TEWKSBURY  
APPLICATION #13-17  
RESOLUTION #13-26

WHEREAS, Shaun C. Van Doren has applied to the Land Use Board of the Township of Tewksbury for permission to construct three (3) concrete pads for a generator and two (2) Air Conditioner Compressor units on his residential lot which is located at 59 Old Turnpike Road on property designated as Block 38, Lot 8.01 on the Tewksbury Tax Map, which premises is located in Piedmont (PM) Zone, and

WHEREAS, the application was presented by Shaun C. Van Doren at the October 2, 2013 Land Use Board meeting, and

WHEREAS, the existing residence has a front yard setback of 15 feet while the Piedmont Zone requires a front yard setback of 75 feet for a *grandfathered* lot of the size of the subject property, and

WHEREAS, the applicant proposes to construct the concrete pads with a front yard setback of 55 feet, which necessitates a dimensional variance under N.J.S.A. 40:55D-70c, and

WHEREAS, generators are typically within five (5) feet of a residence, and

WHEREAS, the requested variance is justified under N.J.S.A. 40:55D-70c(1)(c) on the basis of the location of the existing residence on the lot, and

WHEREAS, the Board recognizes the desirability of generators which can provide electric service in times of power outages, and

WHEREAS, pursuant to Section 702.2 of the Tewksbury Township Development Regulations Ordinance, concrete pads (up to 100 sq. ft.) for generators and Air Conditioning Compressors are not subject to the maximum lot coverage provisions, and

WHEREAS, the requested relief, with appropriate conditions, can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and zoning ordinance of the Township of Tewksbury.

NOW, THEREFORE be it resolved by the Land Use Board of the Township of Tewksbury on this 6th day of November, 2013 that the application of Shaun C. Van Doren for three (3) concrete pads for a generator and two (2) Air Conditioning Compressors be approved pursuant to a survey prepared by Ernest W. Hausmann on September 26, 2001 with the hand-drawn concrete pads shown on the plan, subject, however, to the following conditions:

1. Compliance with Section 702.2 of the Tewksbury Township Development Regulations Ordinance.

Roll Call Vote

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

Those Opposed: None

- Resolution No. 13-27 – Sargent, Appl. No. 13-12, Block 38, Lot 3.04  
*Eligible to vote: Mrs. Baird, Mr. Van Doren, Mr. Mackie, Mrs. Devlin, Mrs. Czajkowski, Mr. Becker, Mr. Metzler, Mr. D'Armiento, Mr. Larsen and Mr. Johnstone*

Mrs. Baird made a motion to approve the following resolution. Mr. Becker seconded the motion. The motion carried by the following roll call vote:

LAND USE BOARD

TOWNSHIP OF TEWKSBURY  
APPLICATION # 13-12  
RESOLUTION # 13-27

WHEREAS, LOUISA B. SARGENT has applied to the Land Use Board of the Township of Tewksbury for permission to expand a horse barn, to retain a riding ring, and to install concrete pads to support a generator and a wood burning furnace on her residential lot which is located at 31 Hill and Dale Road on property designated as Block 38, Lot 3.04 on the Tewksbury Township Tax Map, which premises is located in the Farmland Preservation (FP) Zone, and

WHEREAS, the application was presented by attorney Michael Osterman, Esq. of the firm of Herold Law, P.A.; Civil Engineer and Professional Planner John Hansen, P.E., P.P. of the firm of Ferriero Engineering, Inc., and Louisa B. Sargent at the October 2, 2013 Land Use Board meeting, and

WHEREAS, the application was reviewed by Land Use Board Engineer William H. Burr, IV, P.E. of the firm of Maser Consulting, P.A., and

WHEREAS, the Board after considering the evidence presented by the applicant and Mr. Burr, has made the following factual findings:

A. The Subject Property.

1. The subject property is a trapezoid shaped lot with 352.26 feet of frontage on Hill and Dale Road.
2. The site contains + or - 5 acres.
3. Located on the property are a two-story frame dwelling, an in-ground swimming pool and hot tub surrounded by a concrete patio, a stone riding ring, a frame shed, a 30 feet by 25 feet, 20 feet 3 inches tall two-story barn, a Y shaped gravel

driveway with one leg leading to the attached garage and the other to the riding ring and existing barn, and fenced-in pastures.

5. The existing barn contains 2 horse stalls, a tack room, a feed room, and storage.

B. The Proposal.

6. The applicant proposes to expand the two-story barn to 40 feet by 50 feet, 6 inches, with a height of 25 feet, 10 inches. The expanded barn would contain 4 horse stalls, a tack room, feed room, and workshop.

7. The applicant also proposes to install a concrete pad of 14 square feet to support a generator and a concrete pad of 24 square feet to support a wood burning furnace.

8. The applicant proposed to remove the leg of the driveway consisting of approximately 2,642 square feet leading from Hill and Dale Road to the barn.

C. Requested Variances.

9. The subject property is located in the Farmland Preservation (FP) Zone where the minimum lot size is 7 acres. The subject property is *grandfathered* pursuant to Section 706F4 of the DRO.

10. There is presently 9.517% of impervious lot coverage on the site. The proposed addition to the barn and the concrete pad for the wood burning furnace, but not the concrete pad for the generator which is exempt from lot coverage pursuant to Section 702.2 of the DRO, along with the removal of a section of the driveway, will

reduce lot coverage from 9.517% to 9.09%, while the ordinance limits lot coverage to 5% for the subject property.

11. The existing riding ring has a minimum side yard of a little more than 40 feet, while the DRO requires a minimum side yard of 50 feet for the subject property.

C. Justification for Variance.

12. Louisa B. Sargent purchased the subject property in November of 2012. Lot coverage has not been expanded since she purchased the property.

13. Accompanying the application are copies of two documents. The first appears to be a copy of a survey with a hand-drawn stable with the approximate dimensions of the existing barn. One side yard is hand-drawn at 150 feet (shown on the plans submitted with the application at 151 feet + or - ) with the notation “stable 720 Sq. Ft . . . Zoning (illegible signature) 4-7-93)” but without signatures for Bldg., Fire and HA. The applicant suggested that this constituted an approval of the existing barn. The second document is a zoning permit issued to a former owner of the property for an addition to the home. The zoning permit stated: “Use Permitted by Zoning Ordinance . . .” The applicant suggested that this constituted an approval of the uses on the property when the permit was issued on October 19, 2006.

14. The Board finds that the aforementioned documents are not dispositive on the present application.

15. The requested lot coverage variance is justified under N.J.S.A. 40:55D-70c(2) by advancing the following purpose of the Municipal Land Use Law under N.J.S.A. 40: 55D-2:

“b. To secure safety from fire, flood panic and other natural and man-made disasters;”

By reducing impervious lot coverage.

“g. To provide sufficient space in appropriate locations for a variety of . . . recreational . . . uses . . . .”

By permitting the expansion of the barn to accommodate two additional stalls.

“i. To promote a desirable visual environment through creative development techniques and good civic design and arrangement;”

By expanding and renovating the existing barn.

16. The expansion of the barn is consistent with this Board’s policy of encouraging farming and equestrian activities consistent with the DRO.

17. The benefits from the deviations substantially outweigh any detriments.

18. The riding ring has existed for a number of years with its minimally nonconforming side yard without apparent impact on the adjoining property. The Board finds that the nonconformity is *de minimis*.

19. The requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and zoning ordinance of the Township of Tewksbury.

NOW, THEREFORE be it resolved by the Land Use Board of the Township of Tewksbury on this 6<sup>th</sup> day of November 2013 that the application of Louisa Sargent be approved in accordance with a plan titled: “VARIANCE PLAN LOT 3.04 ~ BLOCK 38 TOWNSHIP OF TEWKSBURY HUNTERDON COUNTY, NEW JERSEY” prepared by Ferriero Engineering, Inc. on August 15, 2013 consisting of three (3) sheets, and architectural plans titled: “Addition & Alterations to existing frame barn at Sargent residence, Block 78, Lot 3.04, Tewksbury Township, Hunterdon County, New Jersey”

prepared by John J. Haberae, A.I.A., LLC on April 12, 2013 consisting of two sheets, subject, however, to the following conditions:

1. Conditions recommended by Land Use Board Engineer William H. Burr, IV, P.E. in his report of September 27, 2013, as modified by the Land Use Board:

1. The applicant and its professionals should provide testimony to support the proposed lot coverage variance to expand the existing barn. The property is currently developed over the permitted lot coverage and the applicants are proposing to decrease the coverage by about 0.427% or 924 S.F. as part of this application. *See factual findings 12 – 17 and 19 herein.*

2. The applicant should describe in detail the proposed addition to the existing barn including the proposed use of the space and exterior style, materials, height, color, etc. *As to the expanded rooms in the barn, see factual finding 6 herein. The entire barn will be renovated with the same exterior materials and color.*

3. The plans show an existing gravel driveway leading to the barn which is proposed to be removed as part of this application. The applicant should describe, based on the proposed use of the enlarged barn, whether vehicular access to this barn will be needed in the future. *Vehicular access is not anticipated from the road to the barn, and if needed, access can be obtained across the stone riding ring.*

4. The plans do not propose any stormwater management facilities to capture and infiltrate runoff from the proposed barn addition. As with previous lot coverage variance applications, the Board should consider whether or not to require the applicant to address stormwater management as part of this application. *The applicant's Civil Engineer and Planner John Hansen testified that there was no need for detention facilities as water from the site flowed to an open area and a Public Service Electric and Gas Company Easement. The Board finds that detention should be provided to accommodate the water runoff from the expanded barn.*

5. Section 710.1.C.11 of the DRO states that “The minimum lot size on which horses may be kept shall be three acres. The maximum number of horses permitted shall be two horses on the first three acres with one additional acre required for each additional horse.” The applicant should be aware that based on the existing lot size of 5 acres, only four (4) horses would be permitted on the property. *The*

*applicant shall comply with Section 710.1.c.11 of the DRO which provides:*

*“11. The keeping and boarding of horses on farms, as part of agricultural operations, and on single-family residential lots provided the noise, odor or contamination problems which might arise are eliminated or minimized by compliance with the following requirements (these requirements are intended to avoid adverse effects on ground water and surface waters as well as neighboring properties and their residents):*

*a. The minimum lot size on which horses may be kept shall be three acres. The maximum number of horses permitted shall be two horses on the first three acres with one additional acre required for each additional horse. (The 5 acre subject property permits a maximum of four horses to be kept on site, which is what is proposed.). The applicant acknowledged this requirement.*

*b. Manure piles, barns and/or stables shall not encroach upon a stream conservation easement. Manure piles shall be set back at least 150 feet in all directions from existing dwellings on abutting or neighboring lots. Barns and/or stables shall be no closer than 50 feet to any stream or spring and shall be no closer than 100 feet to a street line or lot line, except that a barn may have a side or rear yard setback of no less than 50 feet if there is at least 140 feet between the barn and all existing dwellings on adjacent or neighboring lots.*

*c. A horse trailer is permitted on a lot where horses are kept or boarded.*

*12. Horse shows shall be permitted on lots of 10 acres or more.”*

*6. That applicant shall also be aware that the DRO requires a minimum setback of 150 feet in all directions from manure piles to existing dwellings on abutting or neighboring lots. No comment. The applicant acknowledged this requirement.*

*7. The applicant should clarify if any trees or shrubs will be removed or impacted as a result of this project. No trees will be removed*

*8. The plans contain a note that states “No site lighting is proposed as part of this project.” The applicant should confirm whether there is any new exterior lighting proposed on the barn. No lighting is proposed for the riding ring. A light over a door on the barn may be provided. The light shall be shielded and shall not cause glare or sky*

*glow on neighboring properties or streets. The light shall comply with Section 632 of the DRO.*

9. The variance plans shall be revised to provide a chart summarizing the existing and proposed lot coverages on the property. *The applicant agreed to comply with this condition.*

10. A Grading and Surface Water Management Plan (GSWMP) will need to be submitted to the Land Use Administrator for review by the Township Engineer prior to the Construction Permit application. A drywell system shall be provided to accommodate 3 inches of roof runoff from the entire barn after expansion. This GSWMP must comply with Chapter 13.12 of the Township Code.

2. The applicant shall remove the portion of the driveway leading to the barn which consists of approximately 2,642 square feet, place topsoil on the area with either grass seed or sod.

3. The key map on the variance plan shall be updated.

4. The applicant shall comply with all rules, regulations, ordinances and statutes of the Federal, State, County and local municipal governments that may apply to the premises. The applicant shall submit a letter to the Land Use Administrator certifying compliance with the aforementioned rules, regulations, ordinances and statutes.

5. This resolution and the issuance of a building permit for the barn expansion are conditioned on the applicant paying all escrows and fees.

6. The applicant shall file a deed restriction to the approval of the Land Use Board Engineer and the Land Use Board Attorney requiring:

a. The submission of a Grading and Surface Water Management Plan required in condition 1.10 herein to the Township Engineer for his approval. A drywell system shall be provided to accommodate 3 inches of roof runoff from the entire barn after expansion. The plan is to be implemented to the approval of the Township

Engineer. The facility shall reduce the effective storm water runoff on site by capturing all runoff from the expanded barn. The facility shall be permanently maintained in accordance with the NJDEP Best Management Practices and any subsequent revisions and successor regulations.

7. The variance shall be utilized within one year of the date of this memorialization resolution. If it is not utilized within one year it shall become void and have no further effect.

8. No lighting in conjunction with the riding ring.

Roll Call Vote

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

Those Opposed: None

- Resolution No. 13-28 – McCatharn, Appl. No. 13-01, Block 16, Lot 25.03 –  
*Eligible to vote: Mrs. Baird, Mr. Van Doren, Mr. Mackie, Mrs. Devlin, Mrs. Czajkowski, Mr. Moriarty, Mr. Kerwin, Mr. Larsen and Mr. Johnstone*

Mrs. Baird made a motion to approve the following resolution. Mr. Mackie seconded the motion. The motion carried by the following roll call vote:

LAND USE BOARD  
TOWNSHIP OF TEWKSBURY  
APPLICATION # 13-01  
RESOLUTION # 13-28

WHEREAS, RODNEY and ELIZABETH McCATHARN have applied to the Land Use Board of the Township of Tewksbury for approval of an existing stable with a nonconforming side yard and impervious lot coverage for property which is located 87 Fairmount Road East and designated as Block 16, Lot 25.03 on the Tewksbury Township Tax Map, which premises is located in Highland (HL) Zone, and

WHEREAS, the application was presented by Attorney Susan R. Rubright, Esq. of the firm of Brach Eichler, LLC; Surveyor and Professional Planner

Louis Puopolo, III, P.L.S., P.P.; and Rodney McCatharn at the September 18, 2013 Land Use Board meeting, and

WHEREAS, the application was reviewed by Land Use Board Engineer William H. Burr, IV, P.E. of the firm of Maser Consulting, P.A., and

WHEREAS, submission waivers were granted by the Application Review Committee, and

WHEREAS, the Board, considering the evidence and testimony presented by the applicants and Mr. Burr, has made the following factual findings:

A. The Subject Property.

1. The subject property contains 5.173 acres. It has 300.23 feet of frontage on Fairmount Road East.

2. Located on the site are a single-family dwelling, wood deck, in-ground swimming pool with surrounding concrete patio, stable, shed, walkways and a macadam driveway about 600 feet long.

B. The Applicants.

3. The applicants Rodney and Elizabeth McCatharn purchased the property in November of 2011. They are the third owners of the home, which was constructed around 1985.

4. A Certificate of Continuing Occupancy was obtained prior to the applicants purchasing the home. It showed no zoning violations.

5. The McCatharns have not constructed any new structures on the site or increased lot coverage.

6. In conjunction with the purchase of the property, the McCatharns ordered a survey. Rodney McCatharn reviewed the survey and noted the nonconformities which are mentioned in Section C herein. In order to clean-up the zoning problems, and without any prodding from the Township, the applicants have filed and prosecuted the instant application.

C. Required Variances.

7. The applicants' attorney Susan R. Rubright argued that there were no dimensional requirements for accessory structures in the DRO, as the dimensional requirements refer to principal and not accessory structures. The Board's attorney noted that he had made a similar argument to Superior Court Judge Peter Buchsbaum, who dismissed it out of hand. The argument was moot, as the required variances herein are granted.

8. The subject property is located in the HL Zone where the minimum lot size is 12 acres. The subject property is *grandfathered* pursuant to Section 706F.4 of the Development Regulations Ordinance (DRO).

9. According to Louis Puopolo, the home was constructed in 1985 with total impervious lot coverage of 6.9%. Total impervious lot coverage increased to 7.9% prior to 1995 when the swimming pool was constructed. The applicants presented no evidence of a variance or permit being issued for the swimming pool. Permits were obtained for the stable which was built in 2003, which increased lot coverage to 8.6%. The lot coverage has not changed since 2003.

10. Maximum lot coverage for the subject property is 5%.

11. A mistake in citing the stable resulted in it being constructed with a side yard of 45.76 feet rather than the required 50 feet.

D. Justification for Variances.

12. The excessive lot coverage results from the home and swimming pool which were constructed prior to 1995, the long driveway, and the stable which was built with the appropriate permits.

13. The excessive lot coverage does not impact any of the neighbors. Water from the site flows generally to the west to an existing wooded area.

14. The Board concurs with Louis Puopolo that the side yard variance for the stable is *de minimis*.

15. The heavy tree cover on the site buffers the stable from adjoining lots and gives the lot an attractive rustic appearance.

16. The requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and zoning ordinance of the Township of Tewksbury.

NOW, THEREFORE be it resolved by the Land Use Board of the Township of Tewksbury on this 6<sup>th</sup> day of November 2013 that the application of Rodney and Elizabeth McCatharn be approved in accordance with a plan titled: "VARIANCE MAP TAX MAP SHEET 5, BLOCK 16, LOT 25.03, TOWNSHIP OF TEWKSBURY HUNTERDON COUNTY, NEW JERSEY" prepared by Louis R. Puopolo, III, P.L.S. on February 12, 2013 consisting of one sheet, subject, however, to the following conditions:

1. The applicant shall comply with all rules, regulations, ordinances and statutes of the Federal, State, County and local municipal governments that may

apply to the premises. The applicant shall submit a letter to the Land Use Administrator certifying compliance with the aforementioned rules, regulations, ordinances and statutes.

2. Payment of all fees and escrows.

3. Any future application for a lot coverage variance may require detaining all or part of excessive lot coverage with new stormwater management facilities.

Roll Call Vote

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

Those Opposed: None

- Resolution No. 13-29 – Biedron, Appl. No. 12-13, Block 31, Lot 12  
*Eligible to vote: Mrs. Baird, Mr. Van Doren, Mr. Mackie, Mr. Moriarty, Mrs. Czajkowski, Mr. Kerwin, Mr. D'Armiento, Mr. Larsen and Mr. Johnstone*

Mrs. Baird made a motion to approve the following resolution. Mr. Mackie seconded the motion. The motion carried by the following roll call vote:

LAND USE BOARD  
TOWNSHIP OF TEWKSBURY  
APPLICATION # 12-13  
RESOLUTION # 13-29

WHEREAS, MARK BIEDRON & GRETCHEN JOHNSON have applied to the Land Use Board of the Township of Tewksbury for permission to replace an existing in-ground swimming pool and patio with a new in-ground swimming pool and patio on property which is located at 47 Water Street, Lebanon and designated as Block 31, Lot 12 on the Tewksbury Township Tax Map, which premises is located in Highlands (HL) Zone, and

WHEREAS, the application was presented by Civil Engineer and Professional Planner Ronald Kennedy, P.E., P.P. of the firm of Gladstone Design Inc. at the September 18, 2013 Land Use Board meeting, and

WHEREAS, the application was reviewed by Land Use Board Engineer William H. Burr, IV, P.E. of the firm of Maser Consulting, P.A., and

WHEREAS, the subject property is oversized, containing 36.9 net acres while the minimum lot size in the HL Zone is 12 acres, and

WHEREAS, the site has frontage on both Water Street and Philhower Road, and

WHEREAS, located on the site are a single-family residence, a detached garage/office, two barns, an equestrian stable, which contains a farm laborer's apartment which was approved by the Tewksbury Township Board of Adjustment (a predecessor to the Tewksbury Township Land Use Board) in 1987, a shed, stone building, spring house, walkways, a paved driveway, and an in-ground swimming pool and patio, and

WHEREAS, the applicants propose to remove their existing 65 year old swimming pool which is oval shaped measuring about 20 feet by 40 feet, and to replace it with a new kidney shaped swimming pool which will be about 20 feet (average) by 55 feet, and

WHEREAS, the existing in-ground swimming pool is in front of the principal dwelling, which is not permitted under Section 726.10 of the Development Regulations Ordinance (DRO), and

WHEREAS, the pool equipment currently has a front yard setback of 40.8 feet and the in-ground swimming pool has a front yard setback of 58.1 feet from Philhower Road, while the minimum front yard setback in the HL Zone is 100 feet, and

WHEREAS, the proposed swimming pool will be situated in front of the home with a front yard setback of 59.3 feet, while the pool equipment will be set back at least 100 feet from Philhower Road, and

WHEREAS, the removal of the existing swimming pool and patio and the construction of a new swimming pool and patio will reduce existing impervious lot coverage from 2.95% to 2.92%, while the zoning ordinance allows total impervious lot coverage of 5% in the HL Zone, and

WHEREAS, Ronald Kennedy testified that the heavy tree cover blocks the view of the existing swimming pool and will block the view of the new swimming pool, and

WHEREAS, the Ronald Kennedy stated that movement of the swimming pool behind the home would result in the removal of existing trees, and

WHEREAS, a swimming pool has been located in front of the applicants' property for 65 years without apparent negative impact on the neighborhood, and

WHEREAS, the requested variance is justified under N.J.S.A. 40:55D-70c(2) by promoting the following purposes of the Municipal Land Use Law under N.J.S.A. 40:55D-2:

*“g. To provide sufficient space in appropriate locations for a variety of . . . , recreational, . . . uses . . . , both public and private, according to their respective environmental requirements in order to meet the needs of all New Jersey citizens;”*

By using an existing disturbed area where a swimming pool has been located for 65 years as the location for a new swimming pool rather than disturbing another area in the site and removing trees.

AND, WHEREAS, the benefits from the deviation substantially outweigh any detriments.

WHEREAS, the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zone plan and zoning ordinance of the Township of Tewksbury, and

WHEREAS, Professional Planner and Environmental Scientist John Peel, P.P., of PK Environmental wrote a report dated October 8, 2012 noting that the area of the swimming pool and buffer is within a wetlands transition (buffer) area and an area of a c-1 stream 300 foot Riparian buffer, but that the area has been disturbed, and that a NJDEP *permit-by-rule* will allow the construction of the swimming pool and patio in the previously disturbed area.

NOW, THEREFORE be it resolved by the Land Use Board of the Township of Tewksbury on this 6<sup>th</sup> day of November 2013 that the application of Mark Biedron & Gretchen Johnson be approved in accordance with a plan titled: “PROJECT BIEDRON RESIDENCE LOT 12 BLOCK 31 TEWKSBURY TOWNSHIP HUNTERDON COUNTY NEW JERSEY, SHEET TITLE VARIANCE PLAN LOT DEVELOPMENT PLAN”, prepared by Ronald A. Kennedy, P.E. of Gladstone Design, Inc., dated October 22, 2012 and last revised June 4, 2013, consisting of one sheet, subject, however, to the following conditions:

1. Conditions recommended by Land Use Board Engineer William H. Burr, IV, P.E. in his report of September 13, 2013:

TECHNICAL REVIEW:

1. The applicant and its professionals should provide testimony to support the proposed front yard variance, including the location of residential dwellings and

structures on adjoining properties and surrounding vegetation. *Ronald Kennedy testified that the existing as well as the proposed swimming pool are not visible from adjoining residential properties or the roads because of the heavy tree cover. The swimming pool is not visible to the nearest home which is about 500 feet from the swimming pool.*

2. Testimony should be provided relating to the proposed location of the swimming pool and why it can't be constructed outside of the front yard along Philhower Road? *The movement of the swimming pool behind the home would result in lot disturbance and the removal of trees.*
3. The applicant should clarify what materials the pool patio surface will consist of? *Blue stone patio.*
4. The proposed spot elevations on the plan indicate that the slope of the pool patio between the proposed pool and dwelling will be flat. How will this area drain? *A grading plan will be submitted to the Land Use Board Engineer for his approval. The plan shall be implemented to the approval of the Land Use Board Engineer.*
5. Additional information should be provided on the proposed fence (i.e. type, height, etc.) to be placed around the pool and patio to confirm compliance with Section 719 of the DRO. I note that Section 719 requires that no wall or fence shall be erected or altered so that said wall or fence shall be over four (4) feet in height in front yard areas and six (6) feet in height anywhere else on the lot. *The applicant will comply with all Tewksbury Township Ordinances including those concerning swimming pools. The only relief granted by the within approval is for a swimming pool and swimming pool equipment in front of the principal dwelling with nonconforming front yard setbacks.*
6. The plan should be revised to depict the proposed pool construction access, as well as, the adjusted limit of disturbance line. If the amount of soil disturbance exceeds 5,000 S.F., the applicant will need to obtain approval from the Hunterdon County Soil Conservation District. *Ronald Kennedy agreed to this condition.*
7. The zoning schedule on the plan should be revised to update the front yard setback distances for the existing and proposed conditions to reflect the distance from the existing pool filter (40.8 ft.) to Philhower Road and distance from the proposed pool (59.3 ft.) to Philhower Road. *Ronald Kennedy agreed to this condition.*
8. The applicant should clarify whether there is any exterior lighting proposed as part of this application. If so, the applicant should provide information to confirm that there will not be any undesirable effects to the surrounding properties in accordance with DRO Section 632. All lighting should be minimal wattage and be down-shielded to ensure compliance with the above requirements. *No exterior*

*lights shall be installed or used in conjunction with the swimming pool. However, the interior of the swimming pool may be lit.*

9. A letter was submitted by PK Environmental, dated October 8, 2012, indicating that the proposed improvements are located within a severely disturbed wetlands buffer area and 300 ft. riparian zone of the adjacent C-1 stream. The applicant should clarify what permits/approvals are necessary from NJDEP and whether they have been obtained. *Ronald Kennedy testified that the NJDEP allows the construction of the swimming pool and patio by a Permit by Rule. This shall be confirmed to the satisfaction of the Land Use Board Engineer. Notice will be submitted prior to construction.*
  
10. Per Chapter 13.12 of the Township Code of Ordinances, a Grading and Surface Water Management Plan (GSWMP) does not appear to be required for this application because the improvements do not propose more than 1,000 S.F. of new impervious coverage which is the threshold requirement for a GSWMP pursuant to Chapter 13.12. *A grading and surface water management plan must be submitted to the Land Use Board Engineer for his approval.*

2. The variances granted herein must be utilized within one year from the date of this memorialization resolution or the variances shall be void and have no further effect.

3. The applicants shall comply with all rules, regulations, ordinances and statutes of the Federal, State, County and local municipal governments that may apply to the premises. The applicants shall submit a letter to the Land Use Administrator certifying compliance with the aforementioned rules, regulations, ordinances and statutes.

4. This resolution and the issuance of a swimming pool permit are conditioned upon the applicants paying all escrows and fees.

5. An as-built foundation survey confirming the front yard setback.

Roll Call Vote

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

Those Opposed: None

- Resolution No. 13-30 – Moreira, Appl. No. 13-15, Block 4, Lot 6.11  
*Eligible to vote: 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*

Mrs. Baird made a motion to approve the following resolution. Mr. Becker seconded the motion. The motion carried by the following roll call vote:

LAND USE BOARD  
TOWNSHIP OF TEWKSBURY  
APPLICATION # 13-15  
RESOLUTION # 13-30

WHEREAS, JOSE MOREIRA has applied to the Land Use Board of the Township of Tewksbury for permission to construct a concrete pad for a standby emergency generator, to replace a deteriorating shed, to construct new stairs off an existing deck, and for approval of existing lot coverage of his residential lot which is located at 11 Bridge Hollow Road, Califon on property designated as Block 4, Lot 6.11 on the Tewksbury Township Tax Map, which premises is located in the Highlands (HL) Zone, and

WHEREAS, the application was presented by attorney Frederick B. Zelle, Esq. of the firm of Bisogno, Loeffler & Zelle, LLC; Civil Engineer Ryan Smith, P.E., L.S. of the firm of Yannaccone Villa & Aldrich, LLC; and Jose Moreira at the October 2, 2013 Land Use Board meeting, and

WHEREAS, the application was reviewed by Land Use Board Engineer William H. Burr, IV, P.E. of the firm of Maser Consulting, P.A., and

WHEREAS, the Board, after considering the evidence and testimony presented by the applicant and Mr. Burr, has made the following factual findings:

A. The Subject Property.

1. The subject property is an irregularly shaped six sided lot located on the cul-de-sac of Bridge Hollow Road.

2. The property contains 6.164 acres.

3. Located on the site are a two-story frame dwelling with a connected one-story pool house, wood decks, two sheds, a tennis court toward the rear of the site, a dog run consisting of a chain link fence around a concrete pad, a pre-existing frame gazebo which was destroyed by Hurricane Sandy which will not be rebuilt, and a paved driveway approximately 1,000 feet in length (about 12,653 square feet) from the cul-de-sac to the attached garage in back of the home.

4. The home was built in 1987 and the tennis court in 1994.

B. Requested Relief.

5. The primary relief sought is the approval of the existing excessive lot coverage which will be slightly reduced.

6. The applicant proposes to construct a concrete pad for a standby emergency generator, to replace an existing deteriorating shed, construct new stairs off an existing deck, remove the concrete pad and chain link fence dog run and remove the damaged gazebo.

C. Requested Variances.

7. The subject property is located in the HL Zone where the minimum lot size is 12 acres. As previously noted, the lot contains 6.164 acres.

8. The lot is *grandfathered* under Section 706F.4 of the Development Regulations Ordinance (DRO).

9. Pursuant to Section 706F(4) the maximum permitted impervious lot coverage for the subject *grandfathered* lot is 5%. The existing lot coverage is 11.05%. The construction of the concrete pad for the emergency generator is not

included in impervious lot coverage calculations pursuant to Section 702.2 of the DRO. The replacement of the shed and the construction of new stairs off of the deck, along with the removal of the concrete pad and chain link fence dog run and damaged gazebo will result in 11.04% lot coverage. A substantial portion of the lot is occupied by the tennis court which engineer Smith estimated was 3% lot coverage.

10. Jose Moreira testified that the tennis court was constructed in 1994 after allegedly being told by a Township employee that no permit was required. Regardless of any purported conversation which the applicant had with a Township Official, estoppel does not apply to this application, as it is not within this Board's jurisdiction to consider.

11. The excessive lot coverage was discovered when the applicant sought permission to install an emergency generator, replace the shed and new stairs off the deck.

12. The existing shed has a side yard setback of 43.1 foot while the DRO requires a minimum side yard of 50 feet for the subject property. The applicant proposed to replace the 354 square foot shed with a 384 square foot shed with conforming setbacks.

D. Justification for Variance

13. Non-conforming lot coverage is largely caused by the tennis court which has existed on the subject property, without apparent objection, for 19 years. Jose Moreira said that neighbors have used the tennis court.

14. The lot coverage variance is justified under N.J.S.A. 40:55D-70c(2) by advancing a purpose of the Municipal Land Use Law under N.J.S.A. 40:55D-2:

*“g. To provide sufficient space and appropriate locations for a variety of . . . recreational . . . uses both public and private, according to the respective environmental requirements in order to meet their needs of all New Jersey citizens”*

By the retention of the tennis court and the other incidental improvements on the site.

15. There is substantial vegetation at the rear of the subject property which buffers the tennis court from adjoining residential lots.

16. The benefits from the deviation substantially outweigh any detriments.

17. The requested relief can be granted without substantial detriment to public good and without substantially impairing the intent and purpose of the zone plan and zoning ordinance of the Township of Tewksbury.

NOW, THEREFORE, be it resolved by the Land Use Board of the Township of Tewksbury on this 6th day of November 2013 that the application of Jose Moreira be approved in accordance with a plan titled: “JOSE MOREIRA VARIANCE PLANS 11 BRIDGE HOLLOW ROAD LOT 6.11 ~BLOCK 4 TAX MAP SHEET 1 TEWKSBURY TOWNSHIP HUNTERDON COUNTY, NEW JERSEY” prepared by Yannaccone Villa & Aldrich, LLC dated May 24, 2013 and last revised August 22, 2013 consisting of two sheets, subject, however, to the following conditions:

1. The conditions recommended by Land Use Board Engineer William H. Burr, IV, P.E. in his report of September 27,2013 as modified by the Land Use Board:

TECHNICAL REVIEW:

1. The applicant and its professionals should provide testimony to support the proposed lot coverage variance for the proposed improvements. The property is currently developed over the permitted lot coverage and the applicants are proposing to decrease the coverage slightly from 11.05% to 11.04% as part of this application. *See factual findings 11 - 15 herein.*

2. The applicant should describe the application in detail and describe when the various improvements on the property were constructed and whether the required permits were obtained from the Township. *See factual findings 3 – 4 herein.*
3. The variance plan indicates a proposed lot coverage of 29,639 S.F., while the lot coverage computation sheet that was attached to the variance application indicates 29,609 S.F. The applicant should address this discrepancy. *The correct figure is 29,639 square feet.*
4. The applicant should clarify if there are any stormwater management facilities (i.e. drywells) existing on-site that currently capture runoff from the existing dwelling or tennis court? *There are no existing drywells or storm water management facilities on site. However, around the perimeter of the tennis court is about 4 feet of gravel.*
5. The plan proposes to replace the existing damaged shed with a new, slightly larger shed along the western portion of the property between the dwelling and tennis court. The proposed shed will be moved slightly to the east to a conforming location outside of the side yard area, which is an improvement over the existing condition. In doing this, the applicants should clarify if any trees or shrubs will be removed that would impact the existing buffer? *The new site will be at a conforming location.*
6. The plans and application form indicate that a concrete pad for an emergency generator is proposed; however, the photographs appear to indicate that the generator has already been constructed? *The concrete pad has been installed.*
7. Per Chapter 13.12 of the Township Code of Ordinances, a Grading and Surface Water Management Plan (GSWMP) does not appear to be required for this application because the improvements do not propose more than 1,000 S.F. of new impervious coverage which is the threshold requirement for a GSWMP pursuant to Chapter 13.12. *There was testimony that the subject property is at the top of a knoll with rocky soil that provides good percolation. Storm water flows offsite into a stream and not on adjoining residential lots. The applicant and his engineer argued successfully that there is no need for detention facilities.*

2. There shall be no lights in conjunction with the tennis court.

3. The new shed shall contain no more than 384 square feet (16 feet x 24 feet) and shall be placed on a conforming location with a side yard setback of at least 50 feet. The applicant will need to apply for permits.

4. The applicant shall comply with all rules, regulations, ordinances and statutes of the Federal, State, County and local municipal governments that may apply to the premises. The applicant shall submit a letter to the Land Use Administrator certifying compliance with the aforementioned rules, regulations, ordinances and statutes.

5. This resolution and the issuance of permits are conditioned on the applicant paying all escrows and fees.

6. The variance shall be utilized within one year of the date of the memorialization resolution. If it is not utilized within one year it shall become void and have no further effect.

Roll Call Vote

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

Those Opposed: None

**Board Discussion/Action Items**

- Master Plan Consistency Review of Ord. #10-2013 (40:55D-26a)

Mrs. Baird made a motion to find Ord. No. 10-2013 not inconsistent with the Master Plan. Mrs. Devlin seconded the motion. The motion carried by the following roll call vote:

Roll Call Vote

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

Those Opposed: None

Abstained: Mr. Larsen

- Master Plan Consistency Review of Ord. #12-2013 (40:55D-26a)

Mrs. Baird made a motion to find Ord. No. 12-2013 not inconsistent with the Master Plan. Mrs. Devlin seconded the motion. The motion carried by the following roll call vote:

Roll Call Vote

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

Those Opposed: None

- Escrow Closing – Ecohill Inspection - \$736.71

Mrs. Baird made a motion to close the above referenced escrow. Ms. Desiderio seconded the motion. The motion carried by the following roll call vote:

Roll Call Vote

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

Those Opposed: None

- NJ Planning Officials – 2013 NJPO Official Ballot

Mrs. Devlin made a motion to cast a ballot for the slate as presented. Mrs. Baird seconded the motion. All were favor. Mr. Larsen abstained.

**PUBLIC HEARING**

- McLane  
Appl. No. 13-16  
Block 19, Lot 20  
Front Setback Variance for emergency generator

Ms. Nicole Voigt, attorney for the applicant was present and explained that her client applied to the Board for a front yard setback variance for an emergency generator; the variance is for 55 feet where 75 is required. Ms. Voigt explained that the applicant owns Block 19, Lot 20 as well as Block 29, Lot 14 (the properties are across the street from one another). Ms. Voigt noted that the home was built in 1742 and it is located on a steep bank so the generator is unable to be placed further back on the lot; the generator will be placed under the deck near other utilities. She noted that it is a C1 and C2 variance because of the topography of the lot and the benefits outweigh the detriment.

The Board reviewed the plan with the location of the proposed generator shown as well as photographs of the property.

Mr. Burr asked if the generator could be seen from the public roadway. Ms. Voigt noted that there is natural screening that buffers it from the road.

Kathleen McLane, applicant, was sworn in by Mr. Bernstein. When asked where the generator will be in relation to the oil tank in the photo, Ms. McLane responded to the

right of the oil tank; not under the deck. Ms. Voigt provided a photograph showing the oil tank and Mr. Johnstone marked the proposed location of the generator with an “X” – this photograph was marked as **Exhibit A-1**.

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.

There being no additional questions from the Board, Mrs. Baird made a motion to approve the application with the conditions that the applicant comply with the generator ordinance and maintain the hedgerow screening to ensure that the generator is buffered from the roadway. Mr. Becker seconded the motion. The motion carried by the following roll call vote:

Roll Call Vote

Those in Favor: Mrs. Baird, Ms. Desiderio, Mr. Mackie, Mrs. Devlin, Mrs. Czajkowski, Mr. Kerwin, Mr. Becker, Mr. D’Armiento, Mr. Larsen and Mr. Johnstone

Those Opposed: None

**PUBLIC HEARING**

- Cellco Partnership d/b/a Verizon Wireless & Global Tower  
Appl. No. 13-03  
Block 44, Lot 26  
Conditional Use, Site Plan and Variance (Use variance due to deviation from condition use standards)  
**Action Deadline – 1/7/14**

Ms. Desiderio and Mr. Kerwin left the meeting at this time as they are recused from the hearing.

SEE TRANSCRIPT

A site walk was scheduled for Saturday, November 16, 2013 at 9 a.m. with participants meeting at the Cider Mill, 19 King Street, Oldwick.

The next public hearing on the application was scheduled for Wednesday, December 18, 2013, 7:30 p.m. at the Old Turnpike School, 171 Old Turnpike Road, Califon.

**ADJOURNMENT**

There being no further business, the meeting adjourned at 11:00 p.m. by motion of Mr. Becker and seconded by Mrs. Devlin.

Respectfully submitted,

Shana L. Goodchild  
Land Use Administrator