

LAND USE BOARD MINUTES
February 15, 2012
7:30 p.m.

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, Dana Desiderio arrived at 7:35 p.m., Shaun Van Doren, Mary Elizabeth Baird, Elizabeth Devlin, Bruce Mackie, Shirley Czajkowski, Ed Kerwin, Michael Moriarty, Arnold Shapack, Alt. #1, Eric Metzler, Alt. #2 and Ed D'Armiento, Alt. #4.

Also present: Daniel Bernstein, Land Use Board Attorney, William Burr, Land Use Board Engineer and Randall S. Benson, Zoning Officer.

Absent: Tom Dillon, Alt. #3.

There were approximately six (6) 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 05, 2012.

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

1. Bernstein & Hoffman – Land Use Board Professional Services – Attendance at January 18, 2012 meeting - invoice dated January 19, 2012 (\$450.00)
2. Bernstein & Hoffman – Land Use Board Escrow – Taggart (B23, L26), invoice dated January 24, 2012 (\$945.00)
3. Bernstein & Hoffman – Land Use Board Escrow – Lauezzari (B31, L25), invoice dated January 23, 2012 (\$2,152.50)
4. Bernstein & Hoffman – Land Use Board Escrow – Koplowitz (B6, L24.18), invoice dated January 17, 2012 (\$1,282.50)
5. Maser Consulting – Land Use Board Professional Services, invoice #175593 (\$130.00)
6. Maser Consulting – Land Use Board Escrow – Taggart (B23, L26), invoice #175595 (\$1,007.50)

7. Maser Consulting – Land Use Board Escrow – Vliettown Farm (B43, L4), invoice #174637 (\$747.50)
8. Maser Consulting – Land Use Board Escrow – Koplowitz (B6, L24.18), invoice #175596 (\$1,137.50)
9. Maser Consulting – Land Use Board Escrow – Lauezzari (B31, L25), invoice #175597 (\$1,105.00)
10. Maser Consulting – Land Use Board Escrow – Wood (B10, L5.07), invoice #175594 (\$130.00)
11. Suburban Consulting Engineers – Land Use Board Inspection – PNC Bank (B45, L1), invoice #17969 (\$355.00)
12. Suburban Consulting Engineers – Land Use Board Inspection – Johnson (B23, L4, 20 & 36), invoice #18015 (\$460.00)
13. Suburban Consulting Engineers – Land Use Board Inspection – A.M. Best (B46, L2.01, 5 & 6), invoice #17869 (\$209.50)
14. Suburban Consulting Engineers – Land Use Board Inspection – A.M. Best (B46, L2.01, 5 & 6), invoice #18025 (\$267.50)

Roll Call Vote:

Ayes: Mrs. Baird, Mr. Van Doren, Mr. Mackie, Mrs. Devlin, Mrs. Czajkowski, Mr. Moriarty, Mr. Kerwin, Mr. Shapack, Mr. Metzler, Mr. D’Armiento and Mr. Johnstone

Nays: None

CORRESPONDENCE

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

1. A letter dated February 9, 2012 from William Burr re: Caracciolo, Appl. No. 12-02, Block 41, Lot 1.
2. A letter dated February 7, 2012 from Christopher Ashton withdrawing Appl. No. 10-08, Block 47.02, Lot 1.
3. A letter dated December 28, 2011 from the Department of Community Affairs providing a copy of the Redevelopment Handbook.
4. NJPO 2012 Winter-Spring Mandatory Training Programs and Experienced Members Sessions.
5. A letter dated January 12, 2012 from Christopher Teasdale, Environmental Commission Chair re: Highlands Environmental Resources Inventory (Draft as approved by the Highlands Council) September 2011.
6. A letter dated January 17, 2012 from Jon Holt, Issues Manager for the Friends of Fairmount Historic District re: JCP&P application for proposed driveways for Kalbe and Hernick, Block 17, Lots 2.01 & 2.02.
7. A letter dated January 17, 2012 from Gloria and Stephen Hernick re: Friends of Fairmount letter dated January 17, 2012 and proposed driveways by JCP&L on Block 17, Lots 2.01 & 2.02.

8. A letter dated February 14, 2012 from Chief Holmes re: Appl. No. 12-02, Block 41, Lot 1.
9. An e-mail dated February 15, 2012 from Harold Wrede, Chairman of the Scenic Roads and Bridges Commission supporting JCP&L's application for individual driveways for the Kalb and Hernick properties.

ORDINANCE REPORT

Mr. Mackie reported on an ordinance from Clinton Township which rezoned a lot from residential to commercial. He had no recommendations.

PUBLIC PARTICIPATION

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

RESOLUTION

- **Resolution No. 12-05** Lauezzari, Appl. No. 11-16, Block 31, Lot 25
Eligible to vote: Mr. Van Doren,, Ms. Desiderio, Mrs. Devlin, Mrs. Czajkowski, Mr. Moriarty, Mr. Shapack, Mr. Metzler and Mr. Johnstone

Mr. Van Doren made a motion to adopt the following resolution. The motion was seconded by Ms. Desiderio. The motion carried by the following roll call vote:

LAND USE BOARD
TOWNSHIP OF TEWKSBURY
APPLICATION # 11-16
RESOLUTION # 12-05

WHEREAS, MARGIT LAUEZZARI has applied to the Land Use Board of the Township of Tewksbury for permission to construct a single family residence and carriage house on property which is located at 31 Water Street and designated as Block 31, Lot 25 on the Tewksbury Township Tax Map, which premises is located in Highlands (HL) Zone, and

WHEREAS, the application was presented by Attorney Lloyd H. Tubman, Esq. of the firm of Archer & Greiner, P.C.; Civil Engineer Ronald A. Kennedy P.E., of the firm of Gladstone Design, Inc.; Architect Christopher Pickell, R.A. of the firm of

Pickell Architecture, LLC; Professional Planner Elizabeth A. McKenzie, P.P.; and Margit Lauezzari at the January 4, 2012 Land Use Board meeting, and

WHEREAS, the application was reviewed by Land Use Board Engineer William H. Burr, IV, PE 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 an irregularly shaped parcel with 428.52 feet of frontage at the Water Street right-of-way, 281.52 feet of frontage at the Longview Road right-of-way, an eastern side yard along three courses of 417.90 feet which adjoins a strip of land owned by Tewksbury Township encumbered with a conservation easement, which is contiguous to Potter Lane, and a rear yard width of 158.80 feet.

2. The subject property contains 2.21 gross acres and 1.97 net acres.

3. The North Branch of the Rockaway Creek, a *c-1* stream, is located to the south of the subject property, on the south side of Water Street.

4. The entire site is constrained with a flood plain and riparian buffers for the North Branch of the Rockaway Creek. There is a manmade pond on the property.

5. Located on the subject property is a vandalized 1-1/2 story home, which is not in habitable condition, a barn/garage, a stone driveway, shed and stone structure referred to as a *summer kitchen* which Mr. Kennedy estimated as more than 100 years old. Located at the southwest part of the property, running parallel to Water Street, is an old stone wall approximately 1-1/2 feet tall.

B. The Proposal.

6. A NJDEP Individual Permit pursuant to the Flood Hazard Area Control Act Rules has been sought but has not been issued. A Highlands Exemption has been obtained, as the property is within a Highlands Preservation Area.

7. The applicant proposes to raze the existing residence, barn/garage, stone driveway and shed. The area of these structures will be converted to a lawn area, landscaping and new improvements. The *summer kitchen*, which was described by Architect Christopher Pickell as a “lovely structure” will be retained. The applicant agreed to a preservation and maintenance easement for the summer kitchen. The stone wall will be extended approximately 324 lineal feet to the east, with a fence placed on it to a maximum height for both structures of 4 feet.

8. The proposed residence will be constructed in the Colonial style with cedar roof shingles, copper flashing and gutters, stone veneer and wood siding. The home will consist of three bedrooms, two and one-half baths, a mud room, laundry room, a keeping room (kitchen), living room, office, porch, and basement. The two-story structure will have approximately one thousand two hundred fifty square feet on the first floor, for a total area of about 2,300 S.F. The structure is small for a new home, but consistent in style and size with the residences in Mountainville

9. The new home will be served by a new septic system, with the existing septic system being abandoned. The existing well will be capped and a new well will be drilled to serve the new home.

10. The 34 feet by 24 feet carriage house (referred to on the plans as a *garage* but in the testimony as a *carriage house*) will consist of a two car garage with storage space on the first floor and a 15 feet by 17 feet, 4 inch air conditioned and heated

second floor workout room and full bathroom with a shower. The applicant agreed to a deed restriction precluding the installation of a kitchen in the carriage house and prohibiting it from becoming a separate dwelling unit.

C. Requested Variances.

11. The subject property is in the HL Zone where the minimum lot size is 12 acres. As noted in factual finding 2, the site contains 1.97 net acres.

12. The subject property is *grandfathered* under Section 706F1 of the Tewksbury Township Development Regulations Ordinance (DRO), as it contains less than 3 acres in size, is located in the HL Zone, was in existence decades before the 2002 Tewksbury Township DRO was adopted, and the applicant owns no adjoining land.

13. The sole requested variance is a front yard setback of 35.3 feet for the proposed home and 41.1 feet for the carriage house, while the DRO in Section 706F.1.d requires a minimum front yard setback of 75 feet for *grandfathered* lots less than three acres. The existing home is located 23 feet from Water Street, and the barn/garage is located 15.3 feet from Water Street.

14. The Board discussed the possibility of the carriage house at some future date being converted to a dwelling unit, as it would be heated and air-conditioned and contain a full bathroom with a shower. The applicant agreed to a deed restriction which would preclude a kitchen in the carriage house and prohibit the carriage house from being used as an additional dwelling unit or rental property.

D. Justification for Variances.

15. The applicant's planner Elizabeth A. McKenzie testified that the proposed Colonial style home would be consistent in design and size with the existing

homes in Mountainville. She noted that the Tewksbury Township Master Plan has recommended the designation of a Water Street Historic District where the subject property is located. The Master Plan characterized the proposed district as having homes close to the road.

16. Based on the testimony of Ms. McKenzie, and the other witnesses presented by the applicant, as well as the Board Members' knowledge of Water Street, the Board finds that the requested front yard setback variances are justified under N.J.S.A. 40:55D-70c(2) by advancing the following purposes of the Municipal Land Use Law under N.J.S.A. 40:55D-2:

“i. To promote a desirable visual environment”

“j. To promote the conservation of historic sites and districts”

by the construction of a home and carriage house with an historical motif at a setback which is comparable to that of the other homes in the neighborhood.

17. The benefits from the development will substantially outweigh any possible detriments.

18. The Board finds that the construction of the proposed home and carriage house will benefit rather than detract from the neighborhood. Therefore, 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 1st day of February, 2012 that the application of MARGIT LAUEZZARI be approved in accordance with engineering plans titled:

“LAUEZZARI PROPERTY BLOCK 31 LOT 25 TEWKSBURY TOWNSHIP HUNTERDON COUNTY, NEW JERSEY” prepared by Gladstone Design, Inc. on October 26, 2011, last revised November 15, 2011, consisting of two sheets, and architectural plans titled: “New Stone House for Margit Lauezzari 31 Water Street – Mountainville, New Jersey Lot 25, Block 31 – Tewksbury Township” prepared by Pickell Architecture, LLC, dated October 4, 2011, consisting of three sheets, subject, however, to the following conditions:

1. Conditions recommended by the Land Use Board Engineer, William H. Burr, IV, PE in his report dated December 29, 2011:

“TECHNICAL REVIEW:

1. The applicant should describe the proposed dwelling and detached including the proposed use and size of the spaces, number of proposed bedrooms/bathrooms, exterior style, materials, color, etc. A review of the architectural plans revealed a finished second floor proposed over the proposed garage which would include a workout room and full bathroom. Testimony should be provided to clarify the proposed use of this space as well. *See factual findings 8 - 10.*
2. 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. *See factual findings 11-18.*
3. In an effort to mitigate the increase in stormwater runoff from the proposed dwelling and detached garage, the applicant has provided a stormwater infiltration system to capture and infiltrate the runoff. In total, the proposed stormwater system has been sized to handle a total of 2,152 S.F. of lot coverage which equals the roof areas of the new dwelling and garage. While I have no issues with the conceptual design of this stormwater management system, I do have the following comments regarding the plans and corresponding calculations/construction details:
 - a. The applicant’s engineer should confirm the pipe system volume calculations as a 6” radius appears to have been used, instead of 3”. If this is an error, the calculations will need to be revised accordingly. *The applicant’s engineer agreed to revise the calculations.*

- b. The infiltration system detail references an invert out of 487.66 on the plan view; however, the section view reflects an invert out elevation of 487.16. This discrepancy must be clarified. *The applicant's engineer agreed to revise the calculations.*
 - c. The calculations state that the volume storage is based upon the area below the outflow invert. I would recommend that the section view be revised to clearly reflect that 1.5 ft. of stone is proposed below the outflow invert to correspond with the calculations. *The applicant's engineer agreed to revise the calculations.*
 - d. I would recommend that the plans be revised to reflect clean-outs at all underground pipe bends, as well as, the corners of the infiltration system to allow for future maintenance and cleaning. *The applicant's engineer agreed to this condition.*
 - e. Soil tests will need to be performed to confirm adequate soil conditions to allow for the installation of the infiltration system as proposed. This issue could be addressed as a condition of any Board approval. *The applicant's engineer agreed to this condition.*
4. The architectural plans reflect various light fixtures on the new dwelling and garage. Information should be provided by the applicant regarding the type, quantity and wattage of lights that are proposed to confirm that there will not be any undesirable effects to the surrounding properties in accordance with the Township Lighting Ordinance - Section 632. *The applicant's architect testified that lighting would be with RLN fixtures with 100 watt bulbs directed downward on the garage doors and fixtures which can accommodate 100 watt bulbs but will typically use 60 watt bulbs on the exterior of the dwelling. The home would have traditional lantern boxes. The applicant's architect shall provide the Land Use Board Engineer with the lighting cut sheets. The lighting is subject to the approval of the Land Use Board Engineer. The lighting shall comply with Section 632 of the Tewksbury Township Lighting Ordinance. The lighting shall not cause glare of sky glow on adjoining properties.*
 5. The plans call for the removal of several existing trees to allow for the proposed improvements. The applicant should provide testimony to clarify if any new trees are proposed to be planted to offset this tree removal. *Engineer Kennedy testified that a total of 7 trees would be removed during construction. Pursuant to the NJDEP permit requirements, 48 smaller trees would need to be planted.*
 6. It appears from the plans that the yard area to the rear of the proposed retaining wall/fence will be graded to the top of the wall. The applicant's engineer should confirm if this is so since DRO Section 719 prohibits walls and fences from damming or diverting the natural flow of water. *Engineer Kennedy testified that the wall would not dam or divert the natural flow of water runoff.*

7. In addition, DRO Section 719 states 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. The applicants engineer should confirm that the wall and fence combo will not exceed 4 ft. in height as measured from the ground surface elevation in front of the wall/fence. *Engineer Kennedy confirmed that the height and fence would not be over 4 feet, as an additional height would require a fence variance. The fence is subject to the Township Engineers review and approval with respect to any impairment to sight distances. Further, engineer Kennedy testified that the new wall/fence would not encroach upon the Water Street right-of-way.*
8. The plans should be revised to clarify the gross and net lot area. *The applicant's engineer agreed to this condition.*
9. The existing lot coverage calculation on Plan Sheet 1 is based upon what appears to be the gross lot area, while the proposed lot coverage is based upon the net lot area. These calculations should be revised to be consistent. *The applicant's engineer agreed to this condition.*
10. The lot coverage calculations on Sheet 1 indicate that the stone building near the intersection of Water Street and Longview Road is to remain. If this is so, the plans should clearly reflect this. In addition, are any improvements proposed to the stone building? *Architect Pickell testified that the existing summer kitchen would remain as is and the stone foundation would likely be re-pointed and a new roof installed. Furthermore, the applicant agreed to a preservation and maintenance easement pursuant to condition 4b.*
11. The applicant has obtained an NJDEP Highlands Exemption Letter, dated August 10, 2011, which limited the proposed disturbance on the property to 0.99 acres or an increase in impervious surface to no more than one-quarter acre. Prior to obtaining any building permits for the project, the deed was to be modified to include the required Highlands language and restrictions as summarized above. The applicant should provide testimony to confirm that the plans currently before the Board are consistent with those previously approved by NJDEP. Has the deed for the property been modified as required by NJDEP? *Engineer Kennedy testified that the plans were consistent with those approved by the NJDEP. Attorney Tubman stated that a Deed Restriction had been submitted to the NJDEP as required by the NJDEP. A copy of the deed will be supplied to the Land Use Administrator.*
12. 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. This GSWMP must comply with Chapter 13.12 of the Township Code of Ordinances.

Soil logs will also need to be provided to the Township Engineer with the GSWMP to confirm that the infiltration system is above the seasonal high water table and infiltration is feasible. *Applicant's engineer agreed to this condition.*

13. The applicant must obtain approvals from the following outside agencies:

- a. NJDEP LOI – wetlands absence letter.
- b. NJDEP Flood Hazard Area Permit.
- c. Hunterdon County Soil Conservation District.
- d. Hunterdon County Health Department.
- e. Tewksbury Township Board of Health.
- f. Any other agencies as necessary.”

2. The applicant shall cap the existing well and drill a new one, as well as abandon the existing septic system and construct a new one to serve the home to the approval of the Hunterdon County Health Department and the Tewksbury Township Board of Health.

3. The existing residence, barn/garage, stone driveway and shed are to be removed and the area shall be converted to lawn, landscaped areas and new improvements.

4. The applicant shall file a deed restriction which is subject to the approval of the Land Use Board Engineer and the Land Use Board Attorney which:

a. Precludes a kitchen in the carriage house and prohibits the carriage house from being used as either a separate dwelling unit or a rental facility.

b. A preservation and maintenance easement for the *summer kitchen*. Modifications and improvements to that structure will require the approval of the Tewksbury Township Historic Preservation Commission. The demolition of that structure will require the approval of the Tewksbury Township Historic Preservation Commission.

5. The elevation of the first floor of the new home shall be about three feet above the flood plain elevation.

6. The DRO requires a successful applicant for a variance to obtain a building permit within one year of the adoption of the memorialization resolution granting approval. Because of the extensive approvals from other agencies which need to be obtained, this period is extended to two years from the date of this memorialization resolution. If the permit is not obtained within two years, the variance shall be void and have no further effect, unless it is extended by this Board.

7. 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.

8. This resolution and the issuance of a building permit hereunder are conditioned upon the applicants paying all escrows and fees.

9. The plans shall be revised within 90 days hereof to the approval of the Land Use Board Engineer. Subsequent revisions shall be made within 15 days of subsequent requests.

Roll Call Vote

Those in Favor: Mr. Van Doren, Ms. Desiderio, Mrs. Devlin, Mrs. Czajkowski, Mr. Moriarty, Mr. Shapack, Mr. Metzler and Mr. Johnstone

Those Opposed: None

RESOLUTION

- **Resolution No. 12-06** Taggart, Appl. No. 11-07, Block 23, Lot 26
Eligible to vote: Mrs. Baird, Ms. Desiderio, Mrs. Devlin, Mr. Moriarty,, Mrs. Czajkowski, Mr. Shapack, Mr. Metzler, Mr. D'Armiento and Mr. Johnstone

Mrs. Devlin made a motion to adopt the following resolution. The motion was seconded by Ms. Desiderio. The motion carried by the following roll call vote:

LAND USE BOARD
TOWNSHIP OF TEWKSBURY
APPLICATION #11-07
RESOLUTION #12-06

WHEREAS, WILLIAM F. TAGGART has applied to the Land Use Board of the Township of Tewksbury for a minor subdivision and variances under N.J.S.A. 40:55D-70*c* and *d* for property which is located at the intersection of Old Turnpike Road (County Route 517) and Church Street and designated as Block 23, Lot 26 on the Tewksbury Township Tax Map, which premises is located in the Farmland Preservation (FP) Zone, and

WHEREAS, the subject property had been subdivided in 1994 in the same configuration that is presently requested, and

WHEREAS, N.J.S.A. 40:55D-47*d* requires either a subdivision deed or a plat to be filed within 190 days of the adoption of the memorialization resolution approving a minor subdivision, or the subdivision will expire, and

WHEREAS, Mr. Taggart did not file a subdivision deed or plat and the period for extending a minor subdivision under N.J.S.A. 40:55D-47*f* has passed, and

WHEREAS, since the previously approved minor subdivision has expired, the applicant seeks a new approval, and

WHEREAS, the current application was presented by Attorney Robert Boak, Esq. and Civil Engineer Joseph Modzelewski, P.E. of the firm of Hatch, Mott, MacDonald at the January 4, 2012 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, as made the following factual findings:

A. The Subject Property.

1. The subject property contains 48.71 acres.

2. The subject property has 1,051.59 feet of frontage on Church Street and 1,255.38 feet of frontage on Old Turnpike Road. (County Rt. 517).

3. In front of the subject property at the intersection of Old Turnpike Road and Church Street to a distance of about 975 feet on Church Street and about 625 feet on Old Turnpike Road are lots between the subject property and the intersection.

4. Located on the western portion of the site is a 2-1/2 story frame dwelling, a swimming pool, a tennis court, a paddleball court (designated on the subdivision plan as a tennis court), and a two story barn which has been converted to an affordable housing dwelling.

5. Access to the home is through a gravel driveway which traverses Block 23, Lot 26.01 to reach Old Turnpike Road. A copy of the access easement was submitted with the application.

6. The rear or northern half of western portion of the property consists of farm fields.

B. The Proposal.

7. The applicant is seeking the same minor subdivision which was approved in 1994 which has expired.

8. The minor subdivision would create two lots. Proposed vacant Lot 26.03 on the eastern side of the property will contain 12.56 gross acres and 12.13 net acres. The lot would be a parallelogram with 626 feet of frontage on Church Street.

9. The western lot designated as remaining Lot 26 will contain 36.15 gross acres and 35.05 net acres. The lot would encompass the improvements and farm field described in findings 4 – 6.

10. Aside from a small area on the eastern side of remaining Lot 26, the balance of the property has been placed in a conservation easement, a copy of which was submitted with the application.

C. Required Variances.

11. The site contains two residences on a single lot which is not permitted in the DRO. While the residences are apparently *grandfathered*, the reduction in the lot size will exacerbate the nonconformity and require a use variance under N.J.S.A. 40:55D-70d, pursuant to Razberry's, Inc. v Kingwood Tp., 250 N.J. Super. 324 (App. Div. 1991),

12. While the subdivision requires a *d variance*, it is consistent with Section 706A of the DRO which provides:

“If, prior to enactment of any ordinance of the Township making such construction unlawful, more than one dwelling had been constructed on an unsubdivided lot, the Approving Authority shall be authorized to approve the subdivision of such a lot in order to permit the conveyance of one or more such dwellings, even though such subdivision will result in the creation of one or more non-conforming lots; provided that each lot shall be subdivided in such a way that will, so far as is practicable, minimize the nature and extent of nonconformity as to lot, area, frontage, yards, and setbacks, recognizing the existence and location of septic systems and wells, except that unless the original lot is large enough to provide for three or more conforming lots as to area, no subdivision for a third lot, or additional lots, shall be permitted.”

13. The *d variance* advances the following purposes of the MLUL under N.J.S.A. 40:55D-2:

“a. To encourage municipal action to guide the appropriate use or development of all lands in this State, in a manner which will promote the public health safety, morals and general welfare;” *By the retention of an affordable housing dwelling.*

“c. To provide adequate light, air and open space;”

“e. To promote the establishment of appropriate population densities and concentrations that will contribute to the well-being of persons, neighborhoods, communities and regions and preservation of the environment.” *By providing an appropriate population density, remaining Lot 26 will contain 35.05 net acres while the FP Zone allows a minimum lot size of 7 acres. Proposed Lot 26.03 is likewise oversized, containing 12.13 net acres. Furthermore, the environment is protected by means of the conservation easement on the majority of the remaining lot.*

“g. To provide sufficient space in appropriate locations for a variety of agricultural [and] residential . . . uses . . . according to their respective environmental requirements in order to meet the needs of all New Jersey citizens;” *The subdivision will create a vacant oversized lot, while retaining a farm field, single family dwelling, and affordable housing dwelling on the remaining lot.*

14. The small paddleball court, mislabeled as a tennis court on the plans, will be setback 39.3 feet from the property line, while the zoning ordinance requires a minimum side yard of 100 feet.

15. The subdivision line could be moved to the east and obviate the need for the side yard variance. That would have the negative effect of reducing the size of the smaller parcel, proposed Lot 26.03, and would require additional courses for the eastern sideline of remaining Lot 26 (creating a jog in the common property line between remaining Lot 26 and proposed Lot 26.03), which is also undesirable.

16. The paddleball court sideline variance is justified under N.J.S.A. 40:55D-70c(2) by advancing a purpose of the MLUL under N.J.S.A. 40:55D-2.

“g. To provide sufficient space in appropriate locations for a variety of . . . recreational . . . uses . . . according to their respective environmental

requirements in order to meet the needs of all New Jersey citizens;” *By the retention of the paddleball court.*

17. The paddleball court is adjacent to the rear of proposed Lot 26.03 and is buffered by existing vegetation.

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

19. The requested *c* and *d* variances can be approved 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 1st day of February, 2012 that the application of William F. Taggart for a minor subdivision and variances under N.J.S.A. 40:55D-70c & d be approved in accordance with plans titled: “PROPOSED MINOR SUBDIVISION OF **BLOCK 23 LOT 26** in TEWKSBURY TOWNSHIP HUNTERDON COUNTY, NEW JERSEY” prepared by Studer and McEldowney, P.A. on December 23, 1992 and last revised on September 21, 2011; and plans titled “SUPPLEMENTAL DATA SHEET FOR PROPOSED MINOR SUBDIVISION OF BLOCK 23, LOT 26 IN TOWNSHIP OF TEWKSBURY HUNTERDON COUNTY, NEW JERSEY 68 OLD TURNPIKE ROAD TAX MAP SHEET 10” prepared by Hatch Mott MacDonald on March 18, 2011 and last revised September 21, 2011, be approved subject, however, to the following conditions:

1. Report of Land Use Board Engineer William H. Burr, IV, P.E. dated December 29, 2011, as modified by the Planning Board:

“TECHNICAL REVIEW:

1. In accordance with Township Master Plan, all frontages should be dedicated to 25 feet from the roadway centerline for a total right of way of 50 feet. Testimony must be provided to clarify the existing and proposed right of way along Church Street. I would recommend a 25 ft. right of way dedication be provided along Church Street and the subdivision plan should be updated to reflect this. *Church Street has a 66 foot right-of-way. Therefore, a dedication is not required.*
2. Testimony must be provided to confirm that the survey which was used in preparing the original subdivision plan (from 1992/1993), which is the basis for this application, has been verified and it still accurate. In addition, a note must be added to the subdivision plan summarizing this. *The surveys accuracy was confirmed by Engineer Modzelewski through testimony and a note will be added to the plans to this effect.*
3. Testimony must be provided to clarify whether the proposed lot line between Lot 26 & 26.03 could be revised to eliminate the need for the variance for the tennis court? *The Board decided not to have the property line between the two lots moved to the east. See factual finding 15 herein.*
4. Metes and bounds descriptions with supporting closure calculations for Lots 26 and 26.03 must be provided to this office for review and approval. The legal deed descriptions must be provided to the Board Attorney and this office for review and approval as well. *The applicant agreed to this condition.*
5. The plans must be revised to clearly label the existing and proposed lot areas for Lots 26 and 26.03 as there appear to be some discrepancies between Sheets 1 and 2 of the subdivision plans. I would recommend an Area Summary Table be provided on the plans to include the “gross” and “net” areas for all existing and proposed lots, including all right of way dedication areas. *The applicant agreed to this condition.*
6. Points of beginning (P.O.B.) for Lots 26 and 26.03 should be shown on the plan. *The applicant agreed to this condition.*
7. Corner markers should be set at the new property lines and at property line intersection points. *The applicant agreed to this condition.*
8. The plans should be revised to denote tie-distances to the property lines from the existing two-story frame barn (affordable housing unit). *The applicant agreed to this condition.*
9. Note #9 on Plan Sheet 1 is not legible and must be revised. *The applicant agreed to this condition.*

10. Note #5 on Plan Sheet 2 must be revised to indicate Tewksbury Township, not Lebanon Township as the required approval agency. *The applicant agreed to this condition.*
11. Plan Sheet 2 should be revised to reflect the existing buildings on adjacent Lot 8 in Block 39. *The applicant agreed to this condition.*
12. The applicant should provide the Board with an update on the May 19, 2011 letter from the Hunterdon County Planning Board which granted conditional approval subject to several conditions. Have these issues been addressed?" *The applicant agreed to address these issues.*

2. Conditions in the 1994 memorialization resolution:

“1. Approval of the deeds creating the subdivision by the Planning Board Attorney and the Township Engineer.

2. The subdivision deeds shall not be signed until all fees and escrows have been posted.

3. Approval for any erection, moving, demolition, reconstruction, or exterior *[sic]* alternation or modification of any structure including a fence by the Board under Section 602 (now Section 719) of the Tewksbury Township Development Regulations Ordinance.

4. Compliance with all applicable federal, state, county and municipal legislative enactments (including approval by the Hunterdon County Planning Board, the Tewksbury Township Historic Commission, and the Township Committee for the sewer connection), rules and regulations.

5. Certification by the applicant in writing to the Planning Board Secretary that all necessary approvals from other governmental agencies have been obtained, said certification required prior to the signing of the deeds by Planning Board Officials.”

3. The plans shall be revised within 90 days hereof to the approval of the Land Use Board Engineer. Subsequent revisions shall be made within 15 days of subsequent requests.

Roll Call Vote

Those in Favor:

Mrs. Baird, Ms. Desiderio, Mrs. Devlin, Mrs. Czajkowski,
Mr. Moriarty, Mr. Shapack, Mr. Metzler, Mr. D’Armiento and Mr.

Johnstone

Those Opposed: None

PUBLIC HEARING

- Caracciolo
Appl. No. 12-02
Block 41, Lot 1
Front Setback and Coverage Variances
Action Deadline – 5-24-12

Ezio Columbro, Architect for the applicant was present and sworn in by Mr. Bernstein. Mr. Columbro provided his qualifications and was accepted by the Board as expert witness.

Mr. Van Doren noted that the Board had not received a report from the Historic Preservation Commission regarding the application and asked if the Board was going to condition an approval on the Historic Preservation Commission's approval or have the applicant return after the Commission issues a report. Mr. Bernstein suggested proceeding with the hearing with the applicant returning after the Historic Preservation Commission issues a report. Mr. Columbro noted that they presented the plans to the Historic Preservation Commission informally and the Commission was in favor of the application; the applicant will return next month with specific materials and details.

Mr. Columbro explained that the property is located at 6 Joliet Street and the applicants are proposing a two (2) story addition to an existing two (2) story house. The addition will contain a sitting room, bedroom and a private bathroom on the first floor and a bathroom and walk in closet on the second floor. The property is a preexisting undersized lot with several non-conforming conditions (lot area, lot width, lot depth, front, side and rear setback).

Mr. Joseph Caracciolo was sworn in by Mr. Bernstein and explained that he and his wife Justine have lived in Tewksbury for nearly ten (10) years. Mr. Caracciolo explained that towards the end of last year it was determined that Justine's father, who still lives in England, could no longer live by himself and so he and his wife have offered to have him live with them in Oldwick. He is restricted to first floor living so the addition would provide him with a bedroom, bathroom and sitting area with easy access to the kitchen. At the same time the addition will allow for a master bathroom and closet on the second floor where none exists currently. When asked by Mr. Bernstein if there would be one (1) kitchen in the home, Mr. Caracciolo responded in the positive. When asked by Mrs. Devlin if they are adding a bedroom and if the septic is adequate, Mr. Caracciolo responded in the positive and noted that they are on the Oldwick Sewer System. When asked by Mrs. Baird if they have a letter from the Township regarding the additional sewer capacity, Mr. Columbro responded in the negative. Mr. Van Doren explained that a sewer unit is assigned to each dwelling unit so a letter would not be necessary.

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. Bernstein noted that one (1) photo was submitted at the hearing that was not part of the application submission and asked that Mr. Columbro to mark the photo as Exhibit A-1. Mr. Columbro noted that there were several exhibits that were colored versions of the exhibits the Board received and he agreed to mark them as follows: Exhibit A-2 is a photograph of wall lanterns, Exhibit A-3 is the site plan and Exhibit A-4 is the architectural floor plan.

Mr. Columbro, using the architectural floor plan and photographs, described the existing immediate neighborhood for the Board. He explained that the required front yard setback is 75 feet and the entire principal structure sits within the front yard setback at approximately 17.5 feet. The proposed addition will be approximately 18.5 feet and so the addition will not be closer to Joliet Street than the existing house. Mr. Columbro explained that the style of the homes in the neighborhood is eclectic, there is no one overriding theme. The subject home is more Italianate with 2 or more additions and the proposed addition is in keeping with the existing structure. Mr. Columbro described the existing structure including the interior room layout and the proposed addition. The existing bathroom on the second floor will be completely removed as it is in an awkward place and it will be converted into a sitting area for the Master Bedroom. The area created over the in-law suite below will be a walk in closet and bathroom for the Master Bedroom.

The exterior of the addition will be congruent with the existing structure, the windows will be two (2) over two (2) double hung with louvered shutters. The material will be a clapboard siding and the roofing material is undetermined, the objective is to keep with a roofing type that is more in keeping with a slate aesthetic; the type used will be dictated by the budget. The shed roof portion of the addition will be standing seam copper. Mr. Columbro explained that the additional coverage will be handled through the use of drywells. When asked by Mr. Burr the size of the existing structure and the addition, Mr. Columbro explained that the existing structure is approximately 2,046 sq. ft. and the addition will add 778 sq. ft for a total of 3,824 sq. ft. When asked by Mrs. Devlin about the exterior lighting, Mr. Columbro explained that they are only adding a small copper wall lantern to the exterior porch area. When asked by Mr. Van Doren if the existing roof is asphalt, Mr. Columbro responded in the positive. When asked by Mr. Van Doren about the trees to be removed, Mr. Columbro explained that a flowering Cherry tree shown in photo #8 will be removed.

Mr. Columbro explained that the other variance required is for lot coverage; 18% is permitted while approximately 20% exists and the addition will increase the coverage to 23.4%. Accommodations have been made to handle the additional coverage.

Mr. David Fantina, Engineer for the applicant, was present and sworn in by Mr. Bernstein. Mr. Fantina provided his educational background and qualifications and was accepted by the Board. He noted that the subject lot is one of the largest lots in the

vicinity. The drywell will go in on the southeasterly side of the lot and the new roof leaders will be tied into the drywell. The drywell was designed to store the increased impervious coverage; there will be no change to the neighboring properties after construction (no increase in runoff).

Mr. Fantina reviewed Mr. Burr's technical review letter and noted that the drywell was not designed to mitigate runoff to the 15% permitted in the district because there is not a drainage problem on the site. He added that connecting the roof leaders from the existing home into the drywell would cause a construction nightmare.

Mr. Burr recommended that the Board make a decision about the drywell design which is to accept the current design or require the applicant to redesign to mitigate to 15%; another 800 additional sq. ft. would need to be captured to mitigate to 15%. Mr. Burr noted that the drywell design was for a 100 year storm and the Township ordinance only requires it to be constructed for a 25 year storm. When asked his recommendation, Mr. Burr recommended that the additional roof areas be piped into the drywell to mitigate to 15%. Mr. Columbro noted that capturing runoff from the Cow Alley side of the house (westerly side) would be difficult and require significant damage to the brick patio. Mr. Columbro and Mr. Fantina suggested tying in the existing and proposed roof leaders on the easterly side of the house to which Mr. Burr agreed might work. The Board asked Mr. Fantina and Mr. Burr to work together to see if that mitigates the runoff to 15% prior to the next meeting. Mr. Fantina and Mr. Columbro agreed to the other technical comments in Mr. Burr's review letter.

Mr. Benson noted that if there is any change to the sewer connection it will have to be approved by the Township Engineer.

Mr. Mackie noted that the Environmental Commission feels strongly that the runoff be mitigated to 15%. He also noted that it was the Commission's opinion that this area has had water issues in the past and they were concerned with the perc. When asked if soil logs are required for the dry wells, Mr. Burr explained that it typically depends on what is observed in the field; if there are no signs of water when the test pits are dug then typically soil logs are not required. Mr. Mackie expressed concern with the trees to be removed. Mr. Johnstone asked the applicants if they would agree to have Mr. Burr review their landscape plan to which they responded in the positive.

Mrs. Baird noted that the proposed addition includes a sink and small refrigerator and has a separate entrance and asked if the applicants would agree to a deed restriction that the addition could not be rented out to which the applicant's agreed.

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

Margaret and Steve Griggs, 8 Joliet Street, were sworn in by Mr. Bernstein. Mr. and Mrs. Griggs noted that they don't currently have any water issues and have no problem with the proposal by the applicants.

There being no further questions, Mr. Johnstone closed the public portion of the meeting.

Mr. Bernstein reviewed for the Board the following conditions:

- If any change in the sewer connection, Township Engineer's approval is required.
- Mitigate runoff to 15%
- Applicant will landscape to compensate for the removal of trees; the plan is subject to the approval of the landscape architect at the Land Use Board Engineer's office.
- A sink and refrigerator are permitted in the addition; not a full kitchen.
- The addition shall not be rented as a separate dwelling unit; a deed restriction to this effect is required to the approval of the Land Use Board Attorney.
- Historic Preservation Commission approval
- A deed restriction for continued maintenance of the drywells
- Compliance with William Burr's review letter

Mr. Columbro opined that review of a landscape plan seemed excessive for the removal of two (2) trees. Mr. Bernstein explained that the condition is a Board policy. Mr. Burr noted that a formal landscape design of the entire site would not be required; he suggested adding the plantings to the revised plan to be submitted.

Mr. Johnstone announced that the hearing was continued to March 7, 2012 with no new notice required.

ESCROW CLOSINGS

- Klumpp, Appl. No. 03-20 - \$337.84
- Klump, Appl. No. 03-21 - \$92.28

Mr. Van Doren made a motion to close the above referenced escrows and return the funds to the applicants. Mrs. Devlin seconded the motion. The motion carried by the following roll call vote:

Ayes: Mrs. Baird, Mr. Van Doren, Ms. Desiderio, Mr. Mackie, Mrs. Devlin, Mrs. Czajkowski, Mr. Moriarty, Mr. Kerwin, Mr. Shapack, Mr. Metzler, Mr. D'Armiento and Mr. Johnstone

Nays: None

MISCELLANEOUS

Mayor Desiderio reported that at the February 14, 2012 Township Committee meeting the Committee voted 3 to 2 to continue to move forward with full Highlands conformance. When asked if the Township is opting in, Mayor Desiderio responded in the positive. When asked if someone will be sending a directive from the Township to

the Land Use Board, Mayor Desiderio asked Mr. Benson to have Mr. Landon provide the Land Use Board with the list of tasks. Mr. Johnstone asked for something in writing from the Mayor and Township Committee directing the Land Use Board.

Mayor Desiderio explained that she spoke to Eileen Swan about the TDR study and why it had not been finalized. She explained that the Bellemead area could be used as a receiving area and opined that it would be an excellent location for an inn with a 100 rooms which generates a liquor license so the Township generates ratable through a room tax, liquor license and restaurant. Mayor Desiderio opined that it would be a good idea to talk to the people from Bellemead at a meeting. Mr. Johnstone agreed with the Mayor that the area south of 78 should be considered for commercial use either now or in the future for tax ratables. When asked if the Bellemead property could be developed if the Township ops in, Mayor Desiderio explained that Eileen Swan indicated that it could be developed and she has her statement in writing.

ADJOURNMENT

There being no further business, the meeting adjourned at 9:22 p.m. by motion of Mrs. Czajkowski and seconded by Mrs. Baird.

Respectfully submitted,

Shana L. Goodchild
Land Use Administrator