

LAND USE BOARD MINUTES
April 16, 2014

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

Present: Blake Johnstone, Mary Elizabeth Baird arrived at 7:32 p.m., Dana Desiderio, Bruce Mackie, Shirley Czajkowski, Ed Kerwin, Robert Becker, Alt. #1, Ed D'Armiento, Alt. #2 and Kurt Rahenkamp, Alt. #3.

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

Absent: Shaun Van Doren, Elizabeth Devlin, Michael Moriarty and David Larsen, Alt. #4.

There were approximately eight (8) 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 9, 2014.

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 Mr. Becker seconded the motion. The motion carried by the following roll call vote:

1. Bernstein & Hoffman – Attendance at 4-2-14 LUB meeting, invoice dated April 8, 2014 (\$450.00)
2. Bernstein & Hoffman – Land Use Board Escrow – Fraser (B16, L12.03), invoice dated April 1, 2014 (\$150.00)
3. Bernstein & Hoffman – Land Use Board Escrow – Stavola Quarries (B44, Lot 24) , invoice dated April 1, 2014 (\$187.50)
4. Maser Consulting – Land Use Board Professional Services – General Land Use Work, invoice #231012 (\$130.00)
5. Maser Consulting – Land Use Board Escrow – Stavola Quarries (B44, L24), invoice #231013 (\$65.00)
6. Maser Consulting – Land Use Board Escrow – Fraser (B16, L12.03), invoice #231018 (\$812.50)

7. Maser Consulting – Land Use Board Escrow –Hannon (B32.01, L3), invoice #231015 (\$65.00)
8. Maser Consulting – Land Use Board Escrow – Cellco Partnership/Verizon (B44, L26), invoice #231016 (\$747.50)
9. Maser Consulting – Land Use Board Escrow – JUJ 1944 Trust (B43, L3), invoice #231014 (\$1,267.50)
10. Maser Consulting – Land Use Board Escrow – Sargent (B38, L3.04), invoice # 231017 (\$455.00)
11. Maser Consulting – Land Use Board Escrow – Oldwick Fire Company (B44, L22.01), invoice #231019 (\$195.00)
12. Maser Consulting – Land Use Board Escrow – Sprint Spectrum LP (B11, L38.01), invoice #231020 (\$130.00)
13. Suburban Consulting Engineers – Land Use Board Inspection – Tewksbury Fine Wine (B42, L24), invoice #000000021946 (\$535.00)
14. Suburban Consulting Engineers – Land Use Board Inspection – PNC Bank (B45, L1), invoice #000000022083 (\$53.50)
15. Suburban Consulting Engineers – Land Use Board Escrow – JUJ 1944 Trust (B43, L3), invoice #000000022082 (\$413.94)

Roll Call Vote:

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

Those Opposed: None

CORRESPONDENCE

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

1. A report from William Burr dated April 11, 2014, 2014 re: Giello, Appl. No. 13-18, Block 14, Lot 41.
2. A letter dated March 28, 2014 from Mayor Shaun C. Van Doren re: Cellco Partnership d/b/a Verizon Wireless and Global Tower Partners, 19 King Street, Block 44, Lot 26.
3. Memorandum dated March 27, 2014 from Chief Holmes re: Giello, Block 14, Lot 41.
4. A Memo dated April 10, 2014 from Roberta Brassard, Township Clerk re: Ordinance No. 02-2014, Master Plan consistency review pursuant to 40:55D-31.
5. A copy of a notice to the Township Clerk dated March 25, 2014 of a Freshwater Wetlands Application for an LOI (5-year Extension) for the Bellemead Development Corporation, Block 46.01, Lot 7.

MINUTES

- March 5, 2014

The minutes of March 5, 2014 were approved as submitted by motion of Mr. Becker and seconded by Mrs. Czajkowski. All were in favor. Ms. Desiderio and Mr. Mackie abstained.

ORDINANCE REPORT

Mr. Mackie reported on two (2) ordinances from Readington Township that amended language related accessory structures on undersized lots and deer fencing. Mr. Mackie suggested passing the ordinance on to Ms. Goodchild.

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.

Resolution

- **Resolution No. 14-07** – Roddy, Appl. No. 14-01, Block 33, Lot 7.19
Eligible to vote: Mrs. Baird, Mr. Van Doren, Mr. Mackie, Mrs. Devlin, Mrs. Czajkowski, Mr. Moriarty, Mr. Kerwin, Mr. Becker, Mr. D’Armiento and Mr. Johnstone

Mr. Bernstein noted one (1) minor correction to page four (4).

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

LAND USE BOARD
TOWNSHIP OF TEWKSBURY
APPLICATION # 14-01
RESOLUTION # 14-07

WHEREAS, JOHN RODDY has applied to the Land Use Board of the Township of Tewksbury for permission to construct an in-ground swimming pool with a concrete pool patio, retaining wall, a basement walkout area and a shed on his residential lot which is located at 11 Stillery Road on property designated as Block 33, Lot 7.19 on the Tewksbury Township Tax Map, which premises is located in Highlands (HL) Zone, and

WHEREAS, the application was presented by John Roddy and his Civil Engineer and Planner Wayne Ingram, P.E., P.P. at the April 2, 2014 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 rectangular parcel containing 3.01 acres with 225.70 feet of frontage on Stillery Road.

2. The lot is improved with a two-story dwelling which is setback 292.85 feet from the road.

3. Photographs of the site which were submitted with the application show an attractive home with wooded areas behind the residence and along the western property line.

B. The Proposal.

4. The applicant proposes to install a 20 feet by 40 feet swimming pool with an attached spa containing 951 square feet, a pool equipment pad of 18 square feet, a 2,118 square foot pool patio, a 100 square foot basement walkout, and a shed containing 240 square feet for a total of 3,427 square feet. The applicant will remove 240 square feet of gravel for a total increase of 3,187 square feet of impervious coverage.

C. Required Variance.

5. The proposed construction will increase lot coverage from 9.11% to 11.54%, while the zoning ordinance limits lot coverage to 10% for the subject property.

6. The subject property contains 3.01 acres, while the minimum lot size in the HL Zone is 12 acres. It is *grandfathered* under Section 706F3. The maximum lot coverage for *grandfathered* lots of 3 acres under Section 706F3d is 10%. As noted by Mr. Ingram, if the lot were 2.99 acres, the permissible lot coverage would be 12% under Section 706F1b(d).

D. Justification for Variance.

7. The property in question was developed at a time when the minimum lot size was 3 acres and the zoning requirements were more relaxed. As previously noted, the home is set back 292.85 feet from the road. A long winding driveway leads to the attached garages. Much of the excessive lot coverage is caused by the long driveway, which is an existing condition creating practical difficulty and undue hardship under N.J.S.A. 40:55D-70c(1)(c).

8. Total lot coverage restrictions are based on aesthetic considerations and water runoff.

9. The swimming pool and associated facilities will be buffered by existing woods.

10. The applicant has agreed to install a detention system which will limit runoff to that produced by a conforming 10% lot coverage.

11. 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 16th day of April 2014 that the application of John Roddy be approved in accordance with plans titled “PROJECT: 11 STILLERY ROAD BLOCK 33 LOT 7.19 SHEET 12 TEWKSBURY TOWNSHIP HUNTERDON COUNTY NEW JERSEY” prepared by Engineering & Land Planning Associates, Inc. consisting of Sheets 1, 2, and 3 on January 8, 2014 with Sheets 1 and 3 last revised February 14, 2014 and Sheet 2 last revised April 2, 2014, subject, however, to the following conditions:

1. Conditions recommended by Land Use Board Engineer William H. Burr, IV, P.E. in his report of March 28, 2014 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. The property is currently under the maximum lot coverage requirements; however, the applicants are proposing to increase the coverage by a total of 3,169 S.F. as part of this application, which would result in the lot being 1,466.2 S.F. in excess of the permitted lot coverage. Can any existing or proposed lot coverage areas on the property be reduced in size or eliminated/removed as a way to decrease the amount of coverage on this property? *The applicant will be removing as a condition of this application 240 square feet of gravel.*
2. In an effort to mitigate the increase in stormwater runoff from the proposed swimming pool related improvements, the applicant has provided a drywell to capture runoff from a portion of the existing dwelling’s roof area. The proposed drywell has been sized to handle runoff from 2,053 S.F. of roof area which would reduce the stormwater runoff impacts to a lot coverage of below 10% (which is the maximum permitted by the DRO). While I have no objections to the design of the drywell, I do have the following comments:

- a. The drywell should include rip-rap outfall protection at the end of the overflow pipe as required by the NJDEP BMP manual. *Agreed to by applicant's engineer.*
 - b. Soil logs/tests will need to be performed to confirm adequate soil conditions to allow for the installation of the drywell as proposed. This issue could be addressed as a condition of any Board approval since a GSWMP approval will be required by the Township Engineer. *Agreed to by applicant's engineer.*
 - c. Trench drains are proposed to collect runoff from the rear portion of the pool patio and drain to the lawn area to the north side of the existing dwelling. Is the intent of this runoff to be collected by the drywell via overland flow? Has any thought been given to connecting this drain directly to the drywell system? *Applicant's engineer indicated that trench drains will be connected to a proposed drywell.*
 - d. The plan shows two (2) lawn inlets to the rear of the existing dwelling. Are these existing or proposed? Where do these inlets drain? Has any thought been given to connecting these to the drywell system? *On the right and left side of the property are lawn inlets which collect water and have a single discharge point to the street. These are permitted to remain as is.*
3. The plans reflect several trees to be removed as part of this project. The applicant should clarify whether any new trees are proposed to be planted to compensate for the removal. *Four trees will be removed. There are numerous mature trees on the perimeter of the property which do not require augmenting.*
 4. The plans contain a note indicating that no new lighting is proposed for the project, other than low-level ground lighting. Additional information should be provided on the ground lighting so the Board can confirm that there will not be any undesirable effects to the surrounding properties in accordance with DRO Section 632. *All outdoor lights will comply with Section 632 of the DRO. The lights shall not cause glare or sky glow on other properties or public roads.*
 5. Testimony should be provided to clarify the location of the proposed pool equipment. The plans will need to be revised to show this information as well. *A pool equipment shed will be placed on an 18 square foot pad.*
 6. Plan Sheet 2 contains a table summarizing the existing and proposed Impervious Area Calculations. These calculations indicate an existing deck measuring 109 S.F.; however, the plans reflect this area as much larger (scaled to around 600 S.F.). The coverage calculations should be checked by the applicant's engineer and updated as necessary to reflect accurate totals. *Revised plan 2 dated April 2, 2014 gives the square footage of the deck at 644 square feet.*

7. Do the proposed impervious area calculations include all proposed walkways and stairs? *Yes.*
8. The plans reflect an open area between the existing paver walkway at the base of the wood deck and the proposed stairs leading up to the pool area. Is this area proposed to remain as grass or will it be connected with a walkway? If a walkway is envisioned it should be reflected now as this will count against the overall lot coverage calculation. *The open area shall be lawn.*
9. 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. *The applicant's engineer agreed to this condition.*

2. There shall be no water, electric or other utility service to the 240 square foot shed. The pool equipment requires electric service.

3. The variance for the swimming pool and other facilities, must be utilized within one year from the date of this memorialization resolution or the variance for the swimming pool and patio shall be void and have no further effect.

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 applicants 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 pool permit hereunder are conditioned upon the applicants 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. The plan is to be implemented to the approval of the Township Engineer. The facility shall reduce

effective storm water runoff to that produced by 10% lot coverage. The facility shall be permanently maintained in accordance with the NJDEP Best Management Practices and any subsequent revisions and successor regulations.

7. 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.

8. The swimming pool is to meet all requirements in the DRO and all other Township Requirements except for the coverage variance approved herein.

Roll Call Vote

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

Those Opposed: None

Board Discussion/Action Items

- Dana Desiderio, Chair of the Hunterdon County Planning Board
 - Upcoming County Planning Board events
 - Update on the progress of the County Comprehensive Economic Development Strategy (CEDS)
 - Input on the 2014 Breakfast Talk series

Ms. Desiderio spoke about the services offered by the Hunterdon County Planning Department including shared services which include purchasing, printing, roads and bridges, etc.

Ms. Desiderio spoke about the nominations for the annual Hunterdon County Planning Awards event on September 29, 2014. She encouraged members and residents to nominate projects in Planning, Historic Preservation, Publications or people behind an extraordinary project.

Ms. Desiderio updated the Board on the County Preservation Program and noted that over 366 farms have been preserved since the inception of the program in 1981 (over 30,000 acres of preserved farmland).

Speaking about the Hunterdon County Comprehensive Economic Development Strategy (CEDS), Ms. Desiderio noted that an action plan is being developed to guide future economic growth in Hunterdon County while still preserving the quality of life.

In conclusion, Ms. Desiderio spoke briefly about the quarterly breakfast talks and noted that Ms. Goodchild attends most of them. She encouraged Board members to attend future talks and asked the Board for any suggestions for future topics. She noted that some past topics included wind and solar, transportation, shared services and community gardens. Mr. Johnstone suggested having a breakfast talk about the Highlands Act. Once the Court decides on COAH, Mr. Bernstein opined that a session should be held about the townships obligations.

Ms. Desiderio also noted that she sits on the County Development Review Committee and explained that the Committee reviews applications for potential traffic impacts on County roads and stormwater runoff that may impact County drainage facilities, etc.

- Master Plan Consistency Review pursuant to MLUL 40:55D-31 – Ord. #02-2014

Mrs. Baird made a motion to find Ord. No. 02-2014 not inconsistent with the Master Plan. 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. Czajkowski, Mr. Kerwin, Mr. Becker, Mr. D’Armiento, Mr. Rahenkamp and Mr. Johnstone

Those Opposed: None

- Deny without Prejudice Appl. No. 12-10, Shanley, Block 15, Lot 33

Mrs. Baird made a motion to deny the above referenced application without prejudice due to inactivity. Mr. Johnstone seconded the motion. All were in favor.

- Authorization to close Tewksbury Fine Wine Inspection Acct - \$1,226.66

Mr. Johnstone made a motion to close the inspection account and return any unused balance to the applicant. Mrs. Baird 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. Czajkowski, Mr. Kerwin, Mr. Becker, Mr. D’Armiento, Mr. Rahenkamp and Mr. Johnstone

Those Opposed: None

- CCO Inspection Ordinance

Ms. Desiderio asked Ms. Goodchild to speak about the status of the Continuing Certificate of Occupancy (CCO) Inspection Ordinance. Ms. Goodchild noted that at the end of last year Mr. Van Doren brought to the Board's attention that the Township Committee was considering doing away with the ordinance for the CCO Inspection. At the time the Land Use Board recommended to the Township Committee that they keep the ordinance in place. The Township Committee is now considering a new procedure where the buyer and seller will be required to sign a certification indicating that the property is in conformance with the Development Regulations Ordinance (DRO) and the Township Code; the Zoning Officer and Township would no longer be involved in the inspection process. Ms. Desiderio noted that the certification would be notarized signatures from both the buyer and seller. Mr. Becker questioned how a seller could represent that in a legal document and expressed concern that sellers would be forced to hire professionals to determine if the property is in conformance. When asked why the ordinance is being looked at, Ms. Goodchild responded that the Township Attorney and Township insurance carrier advised the Township to remove itself from the process for liability reasons. Mr. Bernstein and Mr. Johnstone pointed out that there is exculpatory language in the certificate provided by the Zoning Officer. Ms. Goodchild noted that property owners have relied on a passing CCO and have found fault with the Township when something was missed. Ms. Desiderio provided the Board with a copy of the proposed Certificate to be signed by the buyer and seller and asked for comments. She noted that it hasn't been introduced by the Township Committee but she felt that it was important to keep the Land Use Board in the loop. Mr. Johnstone personally feels that the inspections are very important and opined that the proposed certificate provided by Ms. Desiderio is worthless from a legal standpoint. Mr. Bernstein opined that the Township should require a survey at the time of the CCO inspection and a disclaimer that the Zoning Officer did not do a thorough inspection inside the home. When it was brought up about the cost of the survey, Mr. Bernstein opined that it would not be a huge amount in the transaction of the normal price of a home purchase and would provide a measure of protection for the buyer. Mr. Becker found the proposed procedure to be huge impact for a mortgage lender; banks require a lot more paperwork than in the past and the buyer may lose the mortgage. Mr. Becker didn't believe that the Township could absolve themselves of an employee's responsibility. Mr. Johnstone didn't disagree but opined that the Township should continue with the inspection process and indicate on the certification that it does not absolve the owner of any deficiencies; the Zoning Officer does the best he can do without a survey, etc.

Ms. Goodchild noted that Mr. Van Doren and Ms. Desiderio brought the potential ordinance to the Board's attention since it is not an ordinance that the Board will receive for review for consistency with the Master Plan because it is a change to the Township Code not a change to the DRO. The Board authorized Ms. Goodchild to draft a letter indicating that the CCO Inspection should still be required and the certificate should contain language that there are no guarantees that all deficiencies have been discovered. Mr. Bernstein suggested having the buyer or seller responsible for providing the Zoning Officer with a survey prior to the inspection. Mrs. Baird suggested referencing the Board's prior letter.

Public Hearings

Giello

Appl. No. 13-18

Block 14, Lot 41

Use and Impervious Coverage Variance

Action Deadline – 7/22/14

Ms. Desiderio was recused from the application and left the meeting at this time.

Anthony M. Giello, owner and applicant was sworn in by Mr. Bernstein.

Paul Szymanski, Professional Planner, was sworn in by Mr. Bernstein. The Board accepted Mr. Szymanski based on Mr. Bernstein's recommendation.

Anthony S. Giello, 2 Fox Run Road was sworn in by Mr. Bernstein. Mr. Giello explained that he is Anthony M. Giello's father.

David Ziobro, Architect, was sworn in by Mr. Bernstein. Mr. Ziobro provided his qualifications to the Board and was accepted as a professional Architect.

Mr. Anthony M. Giello explained that he lives at 2 Fox Run Road with his wife and six (6) year old son. He explained that they purchased the home from his parents in October, 2012. He has been a Tewksbury Township resident for almost 20 years, his son attends the Tewksbury Elementary School and he and his wife work locally and plan to reside in the home for the long term. He went on to explain that his parents currently reside in the home when not with his sister in Flemington. It has created a hardship for the family for both privacy and space. His mother is disabled and they want to be independent but close by due to her illness. Since there is lack of senior housing in Tewksbury and the surrounding areas he and his wife looked for solutions and are respectfully requesting approval to convert the existing barn on the property into a one (1) bedroom and one (1) bath apartment; all improvements would be within the existing footprint of the barn. He noted that he is not looking to profit from the creation of the unit and understood that the unit would be limited to his parents and not rented to any other tenant. He noted that the exterior of the barn would be maintained and would still look like a barn. Mr. Giello agreed to comply with any conditions placed on the approval if the Board would act favorably on the application.

Mr. Johnstone asked Mr. Bernstein if the Board had the legal right to limit the use of the apartment to Mr. Giello's parent and if the Board could require the apartment to be dismantled after their departure. Mr. Bernstein expressed concern with the Board limiting the use to the parents and requiring the dwelling unit to be reverted back to a barn. He noted that he prepared a memo to the Board dated July 10, 2008 which outlines the risk the Board takes approving apartments with those types of conditions. Historically, the Board of Adjustment (not the Planning Board) has granted these types of approvals and those applicants have continued to return requesting relief from the conditions in order to keep the apartment. Mr. Bernstein noted that there was one

situation (Rothpletz) where the Board allowed a 2nd dwelling unit but the applicant's property consist of 32 acres and could be easily subdivided since the minimum lot size is seven (7) acres. Mr. Bernstein referenced the Newell application on Meadow Lane which was an in-law suite approved by the Board of Adjustment that contained a provision that it be dismantled. The owner returned to the Land Use Board requesting relief from the condition and ultimately the Board allowed it to remain (but not as a rental). Mr. Bernstein recommended to the Board that they either grant the use variance which would run with the land and would not contain restrictions or deny the request. The alternative would be to consider expanding the home to allow for additional living space without creating another dwelling unit.

Mr. Szymanski asked if the applicant should proceed since the Board attorney put on the record strong reasons for the Board not to grant the applicant's request before special reasons have been put on the record. Mr. Bernstein explained that he provided the Board with the past history of Board action as well as a legal opinion but the applicant should proceed.

Mr. Szymanski testified that the property is known as Block 14, Lot 41 and the applicant wishes to convert the existing barn into a separate dwelling unit for his parents thereby requiring a use variance. He went on to explain that there are additional variances required for impervious coverage and a setback variance for a shed. The property is located at the southwest corner of Fairmount Road West and Fox Run Road and consists of 4.16 acres. Mr. Szmanski marked the following into the record:

Exhibit A-1 – a colored version of the engineering drawing provided as part of the application, sheet 1 of 1

Exhibit A-2 – a colored version of the architectural drawings provided as part of the application

Exhibit A-3 – a series of photographs taken on April 1, 2014 showing the current condition of the property

Exhibit A-4 – a photograph of the old farmhouse

In describing the existing access lane from Fairmount Road West, Mr. Szymanski explained that the Giello property was part of a larger subdivision of lands in the 1970's which contained an old farmhouse and barn. The farm access drive traversed what is now the Giello property and was not removed when the subdivision was completed. The former farm driveway now serves as access to the Giello horse barn where three (3) horses are boarded.

Mr. Szymanski explained that the property contains a single family ranch style dwelling with four (4) bedrooms constructed in approximately 1975. The property also contains a barn that was constructed sometime between 1983 and 1986. Noting the gray area shown on the photographs, Mr. Szymanski explained that the applicant put stone dust around the barn area which could have increased the lot coverage considerably. He noted that his clients are aware that they will need County Health Department approval for septic for the proposed dwelling in the barn.

Mr. Szymanski testified that the variance, if granted, would provide independent living for the applicant's parents. The barn would be converted to a one (1) bedroom unit for a maximum occupancy of two (2) people with a total of 1,314 sq. ft. of living space. Mr. Szymanski opined that there are several special reasons that would justify the request. Some of the points he raised are as follows:

1. Paragraph I of 40:55D-2 of the MLUL to encourage the development of community senior citizen housing construction.
2. Promote public health and safety and general welfare specifically by providing for senior housing resource on the property.
3. Paragraph M by using available space by using the barn rather than expanding the house and adding to the impervious coverage.
4. No impairment to the zone plan.

Mr. Szymanski noted that the stone dust, house, deck and parking areas will remain and represents approximately 80% of the total 19% impervious coverage. The house and the barn both have dry wells. The lane to the barn is needed in order for boarders to access the barn. While it is necessary to maintain, Mr. Szymanski noted that the applicant would be willing to make the lane narrower. Mr. Szymanski testified that the applicants put stone dust near the barn to keep the dust and mud to a minimum and to prevent ruts but are willing to replace the stone dust with wood chips or other pervious material. Mr. Giello noted that the stone dust is only one (1) inch deep. When asked, Mr. Szymanski explained that the 280 foot x 23 foot wide lane that serves the barn is compacted stone and could be considered impervious surface but that the stone dust is not thick or compacted and should not be considered impervious. He again stipulated the applicant's willingness to reduce the width of the driveway to 12 feet to reduce the coverage by 2.6%. The house, barn and reduced driveway would be approximately 13.4% and if the stone dust is replaced with wood chips it would reduce the coverage to below 10%.

When asked how wide the original farm lane was, Mr. Szymanski opined 16 feet. When asked how he arrived at the 2.6% reduction, Mr. Szymanski indicated that it was calculated by taking the 30 foot existing stone area and reducing it to 16 feet. When asked if there are drywells for both the house and barn and if they can be located and shown on a plan, Mr. Szymanski responded in the positive. Mr. Burr explained that historically the Board has looked at stone as impervious surface as does the Highlands Council. He recommended that the Land Use Board consider the stone dust as impervious. When asked the distance from the adjacent dwellings on surrounding properties to the proposed apartment, Mr. Szymanski responded 250 feet from the house on Lot 25.01. When asked if he felt there would be any negative impact on surrounding homes, Mr. Szymanski responded in the negative and opined that there would be less activity than the current boarding activity. When asked what would happen to the three (3) horses being boarded if the apartment were approved, Mr. Szymanski indicated that they would use the shed.

When asked by Mr. Bernstein the size of the shed, Mr. Szymanski replied 164 sq. ft. When asked if that size shed is sufficient for three (3) horses, the feed, tack, etc., Mr. Szymanski indicated that Mr. Giello would need to answer that question. When asked if the property is 1/3 the size of the required minimum in the Highlands District, Mr. Szymanski responded in the positive. When asked if the lot size would be 1/6 of the required lot size for each of the dwelling units if the apartment were approved, Mr. Szymanski responded in the positive. When asked by Mr. Bernstein if the applicants considered expanding the home rather than converting the barn, Mr. Szymanski indicated that he believes the property owners discussed it but he was not asked to provide his opinion.

Ms. Goodchild noted that the septic system shown on the plan is a 1,000 gallon tank which accommodates the existing 4 bedrooms and she asked if the applicant is willing to expand the septic system for the additional bedrooms. Mr. Giello indicated that he would pursue the Board of Health approval if the Land Use Board granted approval.

Mrs. Baird noted that the certified listing of property owners on the plan and the map don't coincide and she opined that the map is incorrect. She also noted that the Block across the street is listed as Block 6.01 which she believes to be incorrect. The applicant agreed to look at the map and make corrections.

When asked by Mr. Becker what facilities the boarders use to go to the bathroom, Mr. Szymanski was not aware.

Mr. Johnstone opened the meeting up to the public for questions.

Gale Konopada, 73 Fairmount Road West, asked where the horses and dogs will go if the barn is converted. Mr. Szymanski explained that he was not aware if the dog would be moved but was told that the horses would be housed in the shed.

Bob Konopada, 73 Fairmount Road West, asked if the same access would be used to get to the barn if it were converted to an apartment to which Mr. Szymanski responded in the positive. When asked about proposed lighting, Mr. Szymanski explained that there would be some exterior lights on the westerly and easterly side of the barn. When asked what will happen to the apartment when the parents no longer reside there, Mr. Szymanski explained that the owners would remove the kitchen and it would no longer function as a dwelling.

Warren Majak, 72 Fairmount Road West, asked how the 7% reduction in coverage was calculated. Mr. Szymanski explained that the calculation included the 3605 sq. ft. footprint of the home, the barn footprint and the reduction of 3% for the drywells. Mr. Majak opined that the calculations were erroneous. When asked about the existing lane, Mr. Szymanski indicated that it is 280 feet and would be used to access the proposed apartment. When asked about the non-conforming location of the shed, Mr. Szymanski indicated that the shed would be relocated to a conforming location.

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

Mr. Majak asked the Board if an expanded septic is considered an increase in coverage to which the response was negative.

When asked by Mr. Mackie about the two (2) stone areas in the southern portion of the property, Mr. Giello explained that the 197 sq. ft. area was an old chicken coop from the former Hoffman farm and it consists of stone dust. The 573 sq. ft. area, also covered in stone dust, is a chicken coop that was used for guinea hens, quail and pheasants and now contains an empty black tubular bird cage. He noted that the majority of the area around the barn and the above referenced areas are top soil covered in an inch of stone dust. When asked about the 556 sq. ft. of stone area off of the driveway to the main house, Mr. Giello explained that it is pull off area that consists of pea gravel. When asked about proposed lights on the barn, Mr. Giello explained that no additional lights will be installed. He noted that there are flood lights on the west and east sides of the barn that were installed in 1983 and were there when his parents bought the property in 1992.

When asked by Mrs. Czajkowski if the shed is large enough for three (3) horses, Mr. Giello explained that the shed contains two (2) full box stalls and is the same size as the six (6) stalls in the main barn. If the apartment is approved, one (1) boarder will be asked to leave and two (2) will remain.

When asked by Mr. Becker if the stone areas have been expanded while he has owned the property over the past 20 years, Mr. Giello responded in the positive and explained that they put the stone dust around the barn for mud mitigation.

When asked by Mr. Johnstone if there is runoff or pooling of water on any portion of the property, Mr. Giello indicated that he was not aware of any runoff but has noticed some standing water in one (1) small area. When asked about drywells, Mr. Giello explained that every leader from the house flows into a drywell. The barn has gutters and leaders and they also flow into a drywell.

When asked by Mr. Becker where the boarders will turn around if their horses are in the shed, Mr. Giello opined that they could still do a K-turn at the barn. When asked if he ever contemplated building a second story on the house and using the entrance near the garage as a separate entrance for his parents, Mr. Giello noted that there are unfinished attics on both sides of the house and consideration was given but the pitches of the roof are too low and would require a complete re-build of the roof line which wouldn't look proportional to the house. He also noted that his parents are ageing and providing living space on the second floor wouldn't provide wheelchair access. When asked if he would consider deed restricting the barn to an affordable housing unit if it were approved, Mr. Giello responded in the positive.

When asked by Mr. D'Armiento if all of the stone dust would be needed around the barn, Mr. Giello responded in the negative and noted that, if necessary, he could remove it and

replace it with wood chips in a matter of hours. Mr. Giello asked if wood chips or mulch counted towards impervious surface, the response was negative.

When asked by Mrs. Baird where the shed would be relocated, Mr. Giello explained that it would be moved approximately 10 feet to comply with the setback. When asked about the base, Mr. Giello explained that it is a stone dust base on railroad ties. When asked how the shed is served by electric, Mr. Giello believed that there is a conduit from the barn. When asked if there is water to the shed, Mr. Giello responded in the negative and explained that they would use the existing water from the barn on an exterior spigot.

Mr. Johnstone opened the meeting up to the public for questions of the witness.

Bob Konopada, asked what would happen to the barn after his parents no longer reside there. Mr. Giello explained that as part of his application he indicated that he is open to whatever the Board requires, removal or deed restriction. When asked if it would be rented as an apartment, Mr. Giello responded in the negative. When asked where a caretaker would stay if 24 hour care is needed for his parents, Mr. Giello explained that he and his wife reside on the property and would provide any care needed. He went on to say that if additional care is needed, the apartment would be decommissioned and would revert back to an equestrian structure. When asked what would happen to the dog, Mr. Giello explained that he would move the dog into his home.

Warren Majak, 72 Fairmount Road West, asked what the setback is for a dwelling unit and asked if the barn structure would comply. Mr. Szymanski explained that the setback for a dwelling is 40 feet and the barn is currently 60 feet. Mr. Majak noted that he has no issue with Mr. Giello's parents moving into the main house. He asked if the Giello family has looked at senior housing in the area. Mr. Giello noted that his mother researched the area and no housing is available in Tewksbury Township.

There being no additional questions, Mr. Johnstone opened the meeting up to the public for comments.

Bob Konopada, 73 Fairmount Road, was sworn in by Mr. Bernstein. Mr. Konopada objected to the variance request as he felt that it would decrease property values, be detrimental to the township zoning and establish a dangerous precedent. Mr. Konopada noted that he enjoys looking at the barn and the horses and it was one of the reasons he purchased his property.

Warren Majak, 72 Fairmount Road West, was sworn in by Mr. Bernstein. Mr. Majak noted that he would have no issue with Mr. Giello's parents moving into an expanded house but he does object to the temporary conversion of the barn into an apartment as it is a troublesome precedent for the Land Use Board to set; anyone in Tewksbury could ask for a variance to convert an outbuilding into an apartment for relatives. Mr. Majak noted that he has a 90 year old father that he would like to have live with him but he would live in the house. He believes the variance, if granted, would undermine the intent of the Highlands plan, the Tewksbury Master Plan and Tewksbury Ordinances. He noted that

his house is directly impacted as his house is the closest structure to the barn. He opined that there would be an increase in traffic on the lane currently used by boarders. He also noted that newly constructed driveways must be at least 10 feet off of the property line and the existing driveway does not comply with that requirement. He noted that there are many things on the Giello property that are out of compliance that he has not complained to the Township about until now and they are as follows: 1) the shed was built without permits and too close to the property line, 2) the electricity to the shed was installed without permits, 3) the electrical conduit is on the fencing and not properly installed, 4) the lights on the horse barn light up the entire area around the barn and 250 feet across his front pasture and into the windows of his house, 5) the dog kennel does not comply with the 15 foot setback required, 6) the manure bunker is next to the property line and doesn't comply with the proper setbacks. Mr. Majack asked that all of these items be brought into compliance if the applicant adds on or expands the house. He opined that his privacy and property value would be affected by having a four (4) acre lot with two (2) boarded horses, an apartment and a single family home. He also questioned the testimony provided by Mr. Giello regarding housing alternatives and noted that there are many small houses for sale that would provide a nice home for his aging parents. Mr. Majack testified that he called Hunterdon County and received a list of assisted living facilities, none in Tewksbury, but 2 out of 3 had immediate openings and one (1) had a waiting list of 3 months which would be sooner than the barn could be renovated. He asked the Board to consider the impact on the neighbors, the Master Plan and the precedent that it sets for future applicants. He questioned the ability of the township to track and prevent the apartment from being used after the parents no longer reside in the unit.

Mr. Majack contested some of the testimony provided related to the coverage calculation provided by Mr. Szymanski. He noted that the driveway was expanded, without a permit, approximately 4 to 5 years ago with driveway mix stone and at times there are half a dozen or more cars parked along the driveway. Since the surface area of the driveway was expanded his property floods near the southwest corner of the property where the water pools (8 inches deep) and flows onto his property and washes out his driveway.

Mr. Majack concluded by saying that if the Board grants the variance it would be an egregious mistake and would undermine the Highlands Master Plan, the Township Master Plan and set a precedent that anyone in the township could rely on.

Mr. Giello noted that Mr. Majack's driveway was constructed of contaminated road millings. Mr. Giello didn't believe that an interior modification to an existing barn would have a negative impact on property values. He disputed the testimony of cars being parked on the lane as described by Mr. Majack and noted that a maximum of two (2) vehicles are there at any given time.

At 10:10 p.m. Mr. Johnstone announced a five (5) minute break. The meeting reconvened at 10:15 p.m.

Mr. Johnstone led off by complimenting the applicant on his beautiful home and well maintained property. He also noted that he personally liked the use of the stone dust to manage the issue of mud. Mr. Johnstone encouraged Mr. Giello and Mr. Majack to work together to resolve the runoff issue. He indicated that he listened carefully to the testimony about converting the barn versus having the parents remain in the house. He opined that the parents owned the house for over 20 years and recently sold the house to the son so there is clearly the ability to live in the house without having to convert the barn into a dwelling unit. Mr. Johnstone felt that the only reason provided for converting the barn was to gain more privacy however, Mr. Johnstone did not believe that the Board should allow a second dwelling unit at the expense of the township zoning ordinance. He went on to say that he firmly believes that ordinances should be adhered to unless there is a good reason for deviation. Mr. Johnstone preferred to see the main house altered to provide for additional space and privacy rather than a second dwelling on the property. He concluded by indicating that he is against second dwelling units on properties in Tewksbury and has held that belief since he's been on the Land Use Board. He suggested that the applicant return at a future date to expand the residence.

Mr. Mackie agreed with Mr. Johnstone's comments.

Mr. Kerwin agreed with Mr. Johnstone's comments and noted that he has a mother in law that's 87 years old and she lives with his family in their single family home. Mr. Kerwin noted that, at times, he wishes for more privacy for his family but he chose Tewksbury Township as his home and he prefers to stay in Tewksbury versus moving to another town that would permit a second dwelling.

Mrs. Baird agreed with Mr. Johnstone's comments and complimented the applicant on the property.

Mrs. Czajkowski noted that she appreciates the desire to keep parents close but cannot approve a second dwelling unit on the property.

Mr. D'Armiento noted that he might be inclined to allow the conversion of the barn.

Mr. Becker and Mr. Rahenkamp commended the applicant for being forthright on a number of issues but were opposed to the conversion of the barn.

Mr. Johnstone didn't believe that it would impact property values but did agree that it is a dangerous precedent to set for the entire township.

Mr. Giello asked to withdraw the application without prejudice.

Mr. Bernstein noted that Ms. Goodchild pointed out that the application is for both the use variance and the impervious coverage and setback variances.

Mr. Johnstone felt the property is immaculate and does not see a reason to move the shed. He also felt that the stone driveway is attractive but opined that the Board would want it reduced in width.

Mr. Rahenkamp suggested having the applicant deal with the other variances if they decide to return with an application to expand the house.

When asked by Mr. Bernstein if he would be returning to expand the home, Mr. Giello responded in the negative. When asked by Mr. Giello if he could withdraw the use variance but have the Board vote on the impervious coverage variance and setback variance for the shed, Mr. Bernstein responded in the positive.

Mr. D'Armiento expressed concern that the Board may approve the existing coverage but the applicant could then build a new structure on the existing coverage. Mr. Bernstein noted that the Board could include a condition that any new structure or new impervious surface would require a variance.

Mr. Majack, 72 Fairmount Road West, hoped that the Board would find a solution for the flooding if the applicant is permitted to keep the existing impervious surfaces. He also asked that the lighting be dealt with so that it does not continue to shine onto his property. When asked about the trees along the common property line, Mr. Majack explained that 99% of the trees are deciduous. Mr. Giello noted that the lights are not on in the small barn because there are no bulbs. Mr. Majack clarified that the lights that shine onto his property are from the horse barn. Mr. Giello Senior noted that the lights are only on at night when the boarders return to the property with their horses so that they can back the trailer in safely. Mr. Giello noted that the flood lights have been on the barn since 1982. He also disputed the testimony provided by Mr. Majack and indicated that there is no flooding or water running onto the neighboring property.

Mr. Bernstein recommended to the Board that they allow the applicant to withdraw the application so he will not incur any additional expenses by the preparation of a resolution.

Mr. Giello indicated that he would withdraw the request for a use variance but asked that the impervious coverage variance and shed setback variance be approved tonight.

Mr. Johnstone suggested adjourning the meeting to allow time for the applicant to discuss the drywells and existing coverage with the Land Use Board Engineer and return at a future date. Mr. Burr suggested that the applicant prepare a revised plan showing the drywells, leader drains that collect the roof area and where they drain to and contours near the driveway and barn area in light of the neighbors' complaints of flooding. Mr. Giello Senior noted that the drywells existed when he bought the property. When asked if he knows where they are, Mr. Giello said he would try to locate them.

To give the applicant enough time to update the plans, Mr. Johnstone suggested continuing the hearing on June 18, 2014 with no new notice required. The applicant agreed to return on that date to discuss the impervious coverage and setback variance.

ADJOURNMENT

There being no further business, the meeting adjourned at 10:43 p.m. by motion of Mrs. Baird and seconded by Mr. Becker.

Respectfully submitted,

Shana L. Goodchild
Land Use Administrator