

LAND USE BOARD MINUTES
May 1, 2013

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

Present: Blake Johnstone, Mary Elizabeth Baird arrived at 7:33 p.m., Shaun Van Doren, Bruce Mackie, Elizabeth Devlin, Michael Moriarty, Shirley Czajkowski, Ed Kerwin arrived at 7:55 p.m., Robert Becker, Alt. #1, Eric Metzler, Alt. #2, Ed D'Armiento, Alt. #3 and David Larsen, Alt. #4.

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

Absent: Dana Desiderio

There were approximately thirteen (13) people in the audience.

OPEN PUBLIC MEETING ACT STATEMENT

Mr. Johnstone opened the meeting by announcing that adequate notice of the meeting had been provided by posting a copy thereof on the Police/Administration Building bulletin board, faxing a copy to the Hunterdon Review and the Hunterdon County Democrat, and filing with the Municipal Clerk, all on January 04, 2013.

PLEDGE OF ALLEGIANCE

Those present stood and pledged allegiance to the American flag.

CLAIMS

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

1. Bernstein & Hoffman – Attendance at 4-17-13 LUB meeting – invoice dated April 18, 2013 (\$450.00)
2. Bernstein & Hoffman – Land Use Board Escrow – Richardson, invoice dated April 9, 2013 (\$675.00)
3. Maser Consulting – Land Use Professional Services, invoice #203429 (\$260.00)
4. Maser Consulting – Land Use Board Escrow – Johnson (B23, L20), invoice #203430 (\$617.50)
5. Maser Consulting – Land Use Board Escrow – Stavola, invoice #203431 (\$162.50)
6. Maser Consulting – Land Use Board Escrow – Regan (B40, L5), invoice #203432 (\$32.50)
7. Maser Consulting – Land Use Board Escrow – Old Turnpike Realty (B23, L27), invoice #203437 (\$130.00)

8. Maser Consulting – Land Use Board Escrow – Newell (B34, L13.01), invoice #203435 (\$195.00)
9. Maser Consulting – Land Use Board Escrow – JCP&L (B17, L2.01 & 2.02), invoice #203434 (\$292.50)
10. Maser Consulting – Land Use Board Escrow – JUJ 1944 Trust (Vliettown Farm) (B43, L3), invoice #203433 (\$260.00)
11. Maser Consulting – Land Use Board Escrow – Gordon (B6, L41.02), invoice #203436 (\$650.00)
12. Maser Consulting – Land Use Board Escrow – Newell (B34, L13.01), invoice #203438 (\$325.00)
13. Maser Consulting – Land Use Board Escrow – Cellco Partnership-Verizon (B44, L26), invoice #203440 (\$585.00)
14. Maser Consulting – Land Use Board Escrow – Tewksbury Land Trust (B29, L8.02), invoice #203439 (\$130.00)
15. Maser Consulting - Land Use Board Escrow – Pentz (B6.03, L3), invoice #203441 (\$877.50)
16. Maser Consulting – Land Use Board Escrow – Bligh (B51, L80.08), invoice #203442 (\$390.00)
17. Maser Consulting – Land Use Board Escrow – Richardson (B6, L31.02), invoice #203443 (\$260.00)
18. Maser Consulting – Land Use Board Inspection – JCP&L (B17, L2.01 & 2.02), invoice #203444 (\$2,922.50)

Roll Call Vote:

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

Those Opposed: None

CORRESPONDENCE

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

1. A letter dated April 12, 2013 from the Tewksbury Environmental Commission re: Appl. No. 13-06, Block 51, Lot 80.08.
2. A letter dated April 25, 2013 from Chief Holmes re: Appl. No. 13-02, Block 29, Lot 8.02.
3. A letter dated April 4, 2013 from Chief Holmes re: Appl. No. 13-06, Block 51, Lot 80.08.
4. A letter dated April 26, 2013 from William Burr re: Bligh, Appl. No. 13-06, Block 51, Lot 80.08.
5. A letter dated April 26, 2013 from William Burr re: Tewksbury Land Trust, Appl. No. 13-02, Block 29, Lot 8.02.

MINUTES

➤ March 6, 2013

The minutes of March 6, 2013 were approved by motion of Mr. Van Doren and seconded by Mrs. Devlin. All were in favor.

ORDINANCE REPORT

Mr. Mackie had no ordinances to report on.

PUBLIC PARTICIPATION

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

Resolutions

➤ **Resolution No. 13-15** - Pentz, Appl. No. 13-04, Block 6.03, Lot 3

Mrs. Devlin made a motion to adopt the following resolution. Mr. Larsen seconded the motion. The motion carried by the following roll call vote:

LAND USE BOARD
TOWNSHIP OF TEWKSBURY
APPLICATION # 13-04
RESOLUTION # 13-15

WHEREAS, NICHOLAS and JENNIFER PENTZ have applied to the Land Use Board of the Township of Tewksbury for permission to construct an in-ground swimming pool, concrete pool patio, pool equipment pad, paver patio, and stone walkways on their residential lot which is located at 12 Salters Farm Road on property designated as Block 6.03, Lot 3 on the Tewksbury Township Tax Map, which premises is located in HL (Highlands) Zone, and

WHEREAS, the application was presented by Attorney Nicole L. Voigt, Esq. of the firm of Kilcommons & Shanahan, LLC; Civil Engineer and Professional Planner Wayne J. Ingram, Jr., P.E., P.P. of the firm of Engineering & Land Planning Associates, Inc.; Landscape Architect Michael Medea, C.L.A, of the firm of Medea Landscape Studio, LLC; Nicholas Pentz and Jennifer Pentz at the April 17, 2013 Land Use Board meeting, and

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

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

A. The Subject Property.

1. The subject Lot is part of the Salters Farm Subdivision which was approved by the Tewksbury Township Planning Board on February 3, 1982 as a cluster development. The parcel was developed with Salters Farm Road intersecting Old Turnpike Road and extending approximately 1,000 feet to a circular loop roadway. Five lots including the subject property are located within the loop and 15 lots are placed around the loop. One (1) open space lot containing 28.7 acres is south of the Pentz's property.

2. The subject property is pie shaped with the end of the slice cut off. It has a frontage of 255.85 feet at the roadway which narrows to a rear property line of 42 feet. The parcel contains 1.113 acres.

3. The existing residence is set back 102.56 feet from Salters Farm Road and has a northern side yard of 58.89 feet and a southern side yard of 36.44 feet.

4. A 150 square foot shed which predates the applicants' purchase of the property has a northern side yard of 12.59 feet.

5. The photographs which were submitted with the application show trees within the site.

B. The Proposal.

6. The applicants propose to construct in back of their home within a hill a 515 square foot in-ground swimming pool with a maximum length of 36 feet. The concrete pool deck will contain 571 square feet, the retaining walls and boulders around the pool (which will not exceed a height of 3 feet) will contain 220 square feet, the walkways 285 square feet and an equipment pad 50 square feet. The applicants also propose to construct a smaller new deck (reduced size) and patio with 570 square feet and rear walkways containing 125 square feet.

C. Required Variances.

7. The subject property is currently undersized, containing 1.113 acres, while the minimum lot size in the HL Zone is 12 acres.

8. Section 706F of the Tewksbury Township Development Regulations Ordinance (DRO) *grandfathers* existing undersized lots which were made nonconforming by subsequent down zoning requiring larger minimum lot sizes. The site meets the requirements of 706F of the DRO for a *grandfathered* lot.

9. Section 706F.1.(d) establishes the following requirements for *grandfathered* lots of less than 3 acres in the HL Zone:

- Minimum front yard setback – 75 feet.
- Minimum side yard setback – 40 feet.
- Minimum rear yard setback – 40 feet.
- Maximum lot coverage – 12%.

10. A number of side yard variances are requested. The pool patio and in-ground swimming pool are proposed with a 31.21 feet southern side yard. The pool equipment pad, which adjoins the southern side of the home, would have a side yard

setback of 33.7 feet. The existing 150 square foot shed has a northern side yard of 12.50 feet. As previously stated, the zoning requirement for the side yards for the subject property is 40 feet.

11. The zoning ordinance limits impervious lot coverage on the subject property to 12%. At the present time there is 11.8% impervious lot coverage, which the applicants propose to increase to 15.3%.

D. Justification for Variances.

12. The lot coverage variance is justified under both N.J.S.A. 40:55D-70c(1) and (2).

13. The necessity of an impervious lot coverage variance is caused by the small size of the subject Lot which was created as a conforming lot in 1982, when there was no impervious lot coverage requirement.

14. Our New Jersey Supreme Court in Lang v. Zoning Board of Adjustment, 160 N.J. 41 (1999) sustained the approval of variances for an in-ground swimming pool with a nonconforming side yard, rear yard, and excessive lot coverage. The approval was conditioned on the applicant planting a hedge row of evergreen trees along the rear property line to screen the swimming pool from the adjoining property. There was an existing evergreen hedge about 14 feet high on the southern side line which provide a substantial buffer to adjoining properties. In finding hardship under c-1 which justified the variances, the Court cited Justice Stein's concurring opinion in Davis Enterprises v. Karpf, 105 N.J. 476, 493 (1987): "Typically, the contention is that the strict enforcement of the zoning ordinance, in view of the property's unique characteristics, imposes a hardship that may inhibit *the extent* to which the property can

be used.” The Land Use Board finds that the small size of the Pentz property constitutes a hardship under c-1 which justifies the impervious coverage variance.

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

“g. To promote sufficient space and appropriate locations for a variety of . . . recreational . . . uses . . . in order to meet the needs of all New Jersey citizens;”

16. The side yard variances for the in-ground swimming pool, patio, and pool equipment pad are justified on the basis of the unusual pie shape of the subject property under N.J.S.A. 40:55D-70c(1)(a).

17. The side yard variances are also justified under N.J.S.A. 40:55D-70c(2) on the basis of advancing the following purposes of the Municipal Land Use Law under N.J.S.A. 40:55D-2:

“g. To promote sufficient space and appropriate locations for a variety of . . . recreational . . . uses . . . in order to meet the needs of all New Jersey citizens;

* * *

i. To promote a desirable visual environment through creative development techniques and good civic design and arrangement;” By constructing the swimming pool in a hill which will minimize its visibility to the adjoining neighbor to the south and to pedestrians and drivers of vehicles on Salters Farm Road.

18. With appropriate conditions, the benefits from the requested variances will substantially outweigh any detriments.

19. The shed on the northern side of the property predated the applicants’ ownership. There have been no complaints regarding the shed or its proximity to the side yard.

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

E. Adjoining Property Owner

21. Henry Protinsky of 14 Salters Farm Road was concerned with the requested structures being close to his property.

22. The applicants' landscape architect Michael Medea testified that there would be landscaping along the southern property line but did not present a landscape plan to the Board.

23. The applicants agreed that a landscape plan would be presented to the landscape architect at Maser Consulting P.A. for his approval. The Board Attorney noted that the landscape plan need be implemented to the Maser landscape architect's approval, and permanently maintained. Dead, diseased and missing landscape need be replaced to the approval of the Maser landscape architect.

NOW, THEREFORE be it resolved by the Land Use Board of the Township of Tewksbury on this 1st day of May 2013 that the application of NICHOLAS and JENNIFER PENTZ be approved in accordance with a plan titled: "VARIANCE APPLICATION FOR PENTZ RESIDENCE 12 SALTERS FARM ROAD BLOCK 6.03 LOT 3 TEWKSBURY TOWNSHIP" prepared by Engineering & Planning Associates Inc. on February 8, 2013 last revised March 21, 2013 consisting of 2 sheets, subject, however, to the following conditions:

1. Conditions recommended by Land Use Board Engineer William H. Burr, IV, P.E. in his memorandum of April 10, 2013, as modified by the Land Use Board:

“TECHNICAL REVIEW:

1. The applicant and its professionals should provide testimony to support the proposed side yard variances, including testimony as to the location of residential dwellings on adjoining properties and surrounding vegetation. Can the proposed swimming pool and patio be moved to the north towards the center of the rear yard to eliminate the need for the side yard variances? *The testimony disclosed that the swimming pool would be constructed within a hill, and less visible to the adjoining property and pedestrians and drivers on Salters Farm Road, then if it were located in a conforming location.*
2. A side yard variance is required for the existing shed that is located along the northern side of the property. Can this shed be relocated to a conforming location? *There were no complaints about the shed which predated the applicants' ownership of the subject property.*
3. The applicant and its professionals should provide testimony to support the proposed lot coverage variance. The property is currently developed to just shy of its maximum permitted lot coverage and the applicants are proposing an increase of 1,711 S.F. in lot coverage as part of this application. Can any existing lot coverage areas on the property be eliminated/removed as a way to decrease the amount of coverage on this property? *The Land Use Board is satisfied that the impervious lot coverage variance is justified on the basis of the small size of the property. The Land Use Board does not find the requested coverage to be excessive.*
4. 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. The proposed drywell has been sized to handle runoff which would reduce the stormwater runoff impacts to below the permitted 12% lot coverage. While I have no objection to the conceptual design of the drywell, I do have the following general comments:
 - a. The plans (Sheet 2) should be revised to clarify the dimensions of the drywell excavation area since the detail itself calls for a 10'x11' area, while the calculations reflect an 11'x11' area. *The applicants' engineer agreed to this revision.*
 - b. The applicant's engineer should review the proposed storage calculations to confirm that the drywell has adequate capacity to handle 3" runoff from the roof areas as proposed. The drywell calculations reflect a drywell storage volume of 428 C.F. versus a proposed roof runoff volume from the dwelling of 455 C.F. which would seem to indicate that the drywell is not sufficiently sized. *The applicants' engineer agreed to this revision.*

- c. The drywell rim elevation is proposed to be 771.00 however the surrounding grade elevation is approximately 773. The applicant's engineer should confirm if this is a typo or if the rim will be set lower than the final grade? *The applicants' engineer agreed to this revision.*
5. The applicants should clarify if any trees or shrubs will be removed or impacted as a result of this project? *A single Dogwood tree may be removed. However, it will be more than compensated by the Landscape Plan which is required to be presented to the Maser Landscape Architect for approval, implemented to the approval of the Maser Landscape Architect, to buffer the in-ground swimming pool, concrete pool patio and pool equipment pad and equipment from the adjoining property.*
6. The plans contain a note that states "There is no new lighting proposed for the project". Due to the close proximity of neighboring properties, the applicants should confirm by way of testimony whether there will be any new exterior lighting proposed as part of this project. If so, confirmation that there will not be any undesirable effects to the surrounding properties in accordance with DRO Section 632 will be needed. *There was testimony that low level lighting may be installed as well as lighting within the pool. The lighting is subject to the approval of the Land Use Board Engineer. Cut sheets must be provided. Lighting need comply with the requirements of Section 632 of the DRO. The lighting shall not cause glare or sky glow on adjoining properties or roads.*
7. The plans should be revised to reflect the proposed setback distance between the side (south) property line and the proposed pool equipment pad. Since the equipment pad is proposed to be located within the southern side yard area, a variance will be required. *The applicants' engineer agreed to this requirements.*
8. The plans should be revised to clarify the grading in the vicinity of the proposed swimming pool, and boulder wall as there appears to be a typo with respect to the wall elevation (B.W. 779.00). This would create a steep slope from the bottom of the boulder wall to the top of the adjacent stone veneer wall at the edge of the pool. *The applicants' engineer agreed to this revision.*
9. The plan shows a solid gray line running to the rear of the proposed pool area. What does this line represent? *The line represents landscaping.*
10. A Grading and Surface Water Management Plan (GSWMP) will need to be submitted to the Land Use Administrator for review by the Township Engineer prior to the Construction Permit application. This GSWMP must comply with Chapter 13.12 of the Township Code of Ordinances." *A grading and surface water management plan must be submitted to the Township Engineer for his approval. After the plan is approved, the plan must be implemented to the approval of the Township Engineer.*

2. The plans shall be revised by updating the bulk requirements in the schedule to reflect the existing and proposed side yard for the 150 square foot shed at 12.59 feet.

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 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.

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

6. The applicants 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 12% lot coverage. The facility shall be permanently maintained in accordance with the NJDEP Best Management Practices and any subsequent revisions and successor regulations.

b. The planting and maintenance of the landscape plan required in condition 1.5 herein. The landscaping shall be permanently maintained, dead, diseased,

or missing landscaping shall be replaced to the approval of the Land Use Board Engineer's office.

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 side yard and coverage variances approved herein.

9. The submission of an as-built survey to the Land Use Administrator and Land Use Board Engineer or other acceptable certification from the applicants' engineer or surveyor that the in-ground swimming pool and pool patio have been constructed in accordance with the approvals given in the within resolution.

10. The applicants must apply for and obtain a permit for the shed within 90 days of the adoption of the within resolution.

Roll Call Vote

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

Those Opposed: None

PUBLIC HEARING

- Tewksbury Land Trust
Appl. No. 13-02
Block 29, Lot 8.02
Minor Subdivision with Variances
Action Deadline 8/08/13

Mrs. Mary Elizabeth Baird recused herself from the hearing.

Attorney Lawrence Calli of the firm Porzio, Bromberg and Newman was present on behalf of the Tewksbury Land Trust. Mr. Calli explained that the applicant is proposing

a minor subdivision to create two (2) lots so that the Tewksbury Land Trust can acquire approximately 27 acres of unimproved land. Mr. Calli noted that a few bulk variances are triggered for deficiencies in road frontage and lot width and the length of the flag staff.

Mr. Patrick Fatton, Heritage Consulting, was sworn in by Mr. Bernstein. Mr. Fatton provided his qualifications as a professional land surveyor and was accepted by the Board. A colored copy of the plan that was submitted to the Board was marked as **Exhibit A-1**.

Mr. Fatton explained that the existing property is known as Lot 8.02 owned by Paul Sullivan and is 48.208 acres (gross). There is a residence in the center of the lot. The proposed open space land is highlighted in orange on Exhibit A-1 and consists of approximately 27.267 acres (gross) with a 50 foot wide flag staff that connects to Fox Hill Road. Highlighted in yellow is the remaining 20.941 acre (gross) lot with the house that will be retained by the Sullivan's. The variances required are for the 1,642 foot long flag staff, lot width for Lot 8.02 (306 proposed where 400 feet is required); it is a non-conforming condition as the existing lot does not comply. Mr. Fatton noted that the existing lot is irregularly shaped and his office did the best they could to try to make more regularly shaped lots when preparing the plan. The open space is intended to connect to other open space land in the area (Lot 18 along Cold Spring Road, Lot 10.04 and the hope is to connect to the other open space across the street). Mr. Calli offered to the Board a colored aerial which was marked as **Exhibit A-2** to demonstrate the connection to other open space parcels. When asked if there is any impact by the granting of the variances requested, Mr. Fatton responded in the negative since there are no improvements proposed.

When asked by Mr. Larsen if the reason for the subdivision is only to secure open space, Mr. Fatton responded in the positive. When asked if the Sullivan's will be compensated for their land, Mr. Fatton responded in the positive. When asked if it will be sold in the future for a building lot, Mr. Fatton explained that it is his understanding that it will be retained by Tewksbury Land Trust as open space.

When asked by Mr. Mackie about the existing driveway, Mr. Fatton explained that the driveway is on Lot 8.06 which is owned by Paul and Nancy Sullivan and is located just south of the proposed stem; the driveway provides ingress and egress for Lot 8.06 and Lot 8.02. The open space land will not have access to that driveway. When asked if there is any new driveway construction proposed, Mr. Fatton responded in the negative.

When asked by Mr. Moriarty how access is provided to Lot 8.02, Mr. Fatton explained that there is a 50 foot wide access easement across Lot 8.06. The deed will provide an easement for that portion of the driveway that traverses the open space lot.

When asked by Mr. Burr if they would comply with his report, Mr. Fatton agreed to comply with the requests in the report.

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

Mr. Contant, attorney on behalf of Mr. and Mrs. Delia, adjacent to Lot 8.021, clarified the use of the easement to be granted for ingress and egress.

Mr. Mike DeLia, 21 Cold Spring Road, explained that he is familiar with the property and asked if there is a hike/walk in access and if so will there be a conflict traversing the driveway to Lot 8.02. Mr. Calli didn't see any conflict and noted that the Board's granting of the subdivision approval doesn't change anything that exists today.

There being no additional questions of Mr. Fatton, Mr. Johnstone closed the questioning to the public.

Ms. Beth Davisson, NJ Conservation Foundation, 52 Fox Hill Road and Mr. Kenneth Klipstein, Tewksbury Land Trust President, 144 Old Turnpike Road were sworn in by Mr. Bernstein.

Mr. Klipstein explained that the Tewksbury Land Trust is a 501c3 non-profit with a mission to preserve land in Tewksbury Township; they are made up of a volunteer board of 15 members. The Sullivan property is important as it is a connector piece between the 38 acre Lance property owned by Tewksbury Land Trust and the 10 acre Whitteman property on Palatine Road; the Sullivan property is a strategic connector property. When asked what the Tewksbury Land Trust envisions for the property, Mr. Klipstein explained that it will be used for passive recreation. It is an irregularly shaped lot that is heavily wooded. It was subdivided in the early 70's and an old road bed, storm drains and other improvements from the original subdivision still exists; the improvements make a great trail bed. When asked if the Tewksbury Land Trust intends to develop any structures on the proposed lot, Mr. Klipstein responded in the negative and noted that they do not intend to construct any driveways.

When asked by Mr. Larsen about the existing roadbed, Mr. Klipstein pointed out to the Board the location on the plan. When asked about the Tewksbury Land Trust's mission statement, Mr. Klipstein explained that it is to preserve both farmland and open space within Tewksbury Township.

When asked by Mr. Van Doren if the driveway easement is acceptable to Green Acres, Mr. Klipstein explained that it exists and is not a problem. When asked how he will prevent cars from traversing up the existing driveway, Mr. Klipstein explained that the Lance property has parking available. Mr. Van Doren opined that signage may be necessary to prevent people from using the driveway.

When asked by Mr. Moriarty if there is a grand vision for use of the open space properties owned by the Tewksbury Land Trust, Mr. Klipstein explained that each of the properties they own have stewardship plans noting that none of the properties have active recreation. The plans look at deer management, invasive species removal, trail

maintenance, etc. When asked if there is any plan to remove any of the road bed, Mr. Klipstein explained that there is no need to since it provides a good trail and requires less maintenance.

When asked by Mr. Bernstein if the public can walk or ride their horses on the easement, Ms. Davisson didn't believe the Tewksbury Land Trust had rights to the driveway easement. When asked if a sign would be erected for the open space, Mr. Klipstein explained that they are required by Green Acres to erect signage. When asked if it would be a problem to include a condition in the resolution that the open space lot be deed restricted, Mr. Klipstein responded in the negative.

When asked by Mr. Metzler if the house has been sold, Mr. Klipstein responded in the negative. When asked if the Tewksbury Land Trust would consider buying that property, Mr. Klipstein explained that the Land Trust generally does not like to own structures.

When asked by Mr. Van Doren if the driveway from Fox Hill Road is located in the proposed 50 foot stem, Mr. Klipstein responded in the negative. Mr. Van Doren expressed concern that people will use the Sullivan driveway because they will not know how to access the property. When asked if there is a plan to carve out a trail to provide access from Fox Hill Road, Mr. Klipstein responded in the positive and noted that it is not their first choice.

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

When asked by Mr. Contant if there will be deed restrictions on the property, Mr. Klipstein responded in the positive. When asked if the Tewksbury Land Trust intends to use the same restrictions they have used on other properties and the proposed form that was provided as part of the subdivision application, Mr. Klipstein responded in the positive. Mr. Contant noted that his client does not have a problem with the use of those restrictions. Ms. Davisson explained that the restrictions are generally the same but different properties require different management and that can sometimes change the language. Mr. Contant noted that certain basic restrictions apply and he would like to have Mr. Bernstein include those in the resolution. When asked if the Tewksbury Land Trust considered allowing the adjoining property owners to have the right to enforce the restrictions on the property, Ms. Davisson responded in the negative. Mr. Van Doren noted that the Township has never done that for any publicly owned property. Mr. Contant opined that it is a right that can be granted by the 501c3. Ms. Davisson opined that the funding source would object to that scenario.

Robert Lorentz, 115 D US Highway 202, Ringoes, was sworn in by Mr. Bernstein. When asked, Mr. Lorentz indicated that he was testifying as a licensed planner. Mr. Lorentz was accepted by the Board. Mr. Lorentz explained that there are two (2) variances, one (1) is for the length of the flag staff which is dictated by the existing configuration of the property and the other is related to the width of the property which is another pre-existing condition. The overall purpose of the application is to provide the benefits of the open

space preservation along with the connection with other open space parcels. The areas being preserved are almost exclusively wooded. The existing driveway is predominantly on Lot 8.06 and enters Lot 8.02 to serve the existing dwelling. Mr. Lorentz explained that the road bed that was mentioned by Mr. Klipstein extends to the southern portion of the property and was constructed for a subdivision that is no longer valid. When asked about the benefit vs. detriment analysis required for the granting of the variances, Mr. Lorentz opined that the benefit is the preservation of open space and the tie into other open space parcels. The detriment is the potential impact on adjoining properties but there will likely be little going on that isn't already taking place.

When asked by Mr. Bernstein if the variances are justified under C1 because of the shape of the property, Mr. Lorentz replied in the positive. When asked if under C2 the benefits stemming from the subdivision are under E, G, I and J of the Municipal Land Use Law, Mr. Lorentz responded in the positive. When asked if he opined that the benefits substantially outweigh the detriments, Mr. Lorentz responded in the positive.

When asked by Mr. Larsen the percentage of the parcel that is wooded, Mr. Lorentz opined 90%.

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

When asked by Mr. Contant if the Board should impose conditions to preclude the change of the use, Mr. Lorentz opined that was fair.

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

Mr. Calli concluded by reminding the Board that the application is for preservation only, no development is proposed.

Mr. Contant noted that his clients are in favor of protecting open space and conservation but their concerns are related to the conditions that they feel the Board should impose. Mr. Contant asked that the Board incorporate in the resolution an imposition in the deed of conveyance; it is a two (2) step process. The deed of conveyance should require the restrictions that were noted in the unrecorded deed dated March 2, 2010 that was provided in the application material. Mr. Bernstein explained that it would be deed restricted similar to the 2010 deed but the Board professionals would need to see the deed before the Secretary and Chairman sign the document.

Mr. Johnstone had no objection to the application because it is property being preserved and continues the connection between other open space parcels; it's a benefit to the township.

Maggie Delia, 21 Cold Spring Road, was sworn in by Mr. Bernstein. Mrs. Delia explained that her sincerest hope is that the subdivision is a “big hug” around her property. She thanked the Tewksbury Land Trust and Beth Davisson for their work.

When asked by Mr. Larsen the percentage of property preserved in Tewksbury, Mr. Van Doren opined approximately 20% between open space and farmland preservation. When asked if the Green Acres money being used is from referendum funds, Mr. Klipstein responded in the positive.

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

Roll Call Vote:

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

Those Opposed: None

Abstained: Mr. Larsen

Mrs. Baird returned to the meeting at this time.

PUBLIC HEARING

- Bligh
Appl. No. 13-06
Block 51, Lot 80.08
Use Variance and Side Yard Setback Variance
Action Deadline 7/29/13

Mr. Van Doren recused himself from the hearing since it is a use variance.

Mr. Metzler recused himself from the hearing.

Mr. Johnstone noted that Mr. Bernstein is being honored at the NJ Planning Officials Awards dinner and encouraged Board members to attend.

Mr. Michael Osterman was present on behalf of Martin Bligh who is under contract with the NJ Conservation Foundation to purchase the subject property. The property is approximately 13.6 acres after it was subdivided by the NJ Conservation Foundation. He explained that the property contains some old dairy barns as well as other barns and a cottage. The applicant is interesting in preserving the existing structures and proposes to convert one of the barns into a single family residence; it will continue to look like a barn. Mr. Osterman noted that the applicant is interested in preserving the existing cottage on the property which is currently rented by two (2) tenants that have resided

there for approximately 9 years. In order to convert the barn into a dwelling a use variance would be required because there would be two (2) single family dwellings on one lot. In addition, a bulk variance would be required to allow a building having a side yard setback of 83.8 feet where 100 feet is required. Mr. Osterman noted that the current setback is 62.3 feet and the applicant will be removing the front portion of one of the barns which will increase the side yard setback but not to the required 100 feet; it will be more conforming than it is now.

Martin Bligh, 86 Potterstown Road, Lebanon, NJ was sworn in by Mr. Bernstein. Mr. Bligh explained that he has been a resident of Tewksbury for just under a year. He is under contract to purchase the property from the NJ Conservation Foundation subject to the variances being granted. When asked why he wants to purchase the property, Mr. Bligh explained that he likes the look of the property and the historic component. He was looking for a property with some history and a location for his horses. When asked what the plan is for the property, Mr. Bligh explained that there are four (4) buildings that form a square with a center courtyard. The east barn (the largest of the two (2) gothic barns) will be preserved as is. The western barn (the smaller of the pair) will be converted to a house since it is a more sensible size and is shielded from the road by the eastern barn. The north and south structures that complete the square would be used as general farm accessory buildings (tractor storage, etc.). He added that he would like to retain the cottage to add viability to the property and to keep the current tenants (a mother and daughter) that have expressed a desire to stay in the cottage. When asked about the history of the property, Mr. Bligh explained that he has researched the County records as well as the Tewksbury Historical Society records and the barns date back to 1793. It was a dairy farm until 1965 and after that used for horses. When asked about the condition of the barns, Mr. Bligh explained that the conditions vary, the largest barn is in reasonable condition, the small barn has some problems with termite damage and an end wall is caving in. When asked if he plans to restore the barns, Mr. Bligh responded in the positive and explained that most of the work will be on the western structure to restore what is in place. The northern structure will be restored to the original footprint that existed in 1940. When asked if he reviewed the report from Maser Consulting, Mr. Bligh responded the positive. When asked about the silos, Mr. Bligh explained that there are a total of six (6), two (2) of them are connected to the main barn and those will remain as is. There are four (4) other silos in various states of repair, two (2) of them are large industrial silos that will be removed. When asked about the proposed exterior light, Mr. Bligh explained that the light will be a traditional downward facing light to provide light in the entranceway for safety. When asked, Mr. Bligh agreed to comply with the lighting ordinance.

When asked by Mr. Becker if the gravel area was included in the impervious coverage calculation, Mr. Bligh responded in the positive.

When asked by Mr. Bernstein if he proposes to maintain the cottage as a rental unit, Mr. Bligh responded in the positive. He added that he may use it for a farm hand at some point. When asked if the rental income is critical to the financial support of the farm, Mr.

Bligh explained that it is a cottage that is in good shape with a family that would like to stay so it makes sense to him to keep the cottage.

When asked by Mr. Burr if the property is actively farmed, Mr. Bligh explained that the horse barn on the opposite side of Hill and Dale Road uses approximately 10 acres of it for pasturing/grazing. When asked if he is aware of the restriction on the number of horses, Mr. Bligh responded in the positive. When asked about the covered entrance proposed, Mr. Bligh explained that it is common in Europe, where he's from, to have the buildings form a courtyard and to be able to drive into the courtyard to the garage access.

Mr. Johnstone opened the meeting up to the public.

Tom Fesenmaier, 108 Rockaway Road, was present and asked where the well will be drilled. Mr. Bligh explained that the barn is currently served by a well that is in front of the farmhouse. There is an existing well on the property but it will be too difficult to connect to so there is a new well proposed to the north of the barn.

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

Mr. Bill Byrne, 10 Main Street, Chester, was sworn in by Mr. Bernstein. Mr. Byrne gave his architectural credentials and experience. He was accepted by the Board. Mr. Osterman explained that Mr. Byrne prepared the architectural elevations that were submitted to the Board as part of the application. Mr. Byrne noted that he prepared three (3) computer generated renderings and marked them as follows:

Exhibit A-1 – architectural rendering that depicts major portion of barn structure and new entrance way.

Exhibit A-2 – aerial rendering to depict the barn complex and courtyard.

Exhibit A-3 – aerial rendering at opposite angle.

When asked to explain how the applicant proposes to modify the structures, Mr. Byrne, using Exhibit A-1, explained that an access area would be created by using sliding doors to create the entrance to the courtyard area. The west structure will remain intact with the exception of some window changes. The two (2) silos to remain are integral to the compound and are built into the structure.

Using Exhibit A-2, Mr. Byrne explained that it shows an aerial view of the courtyard and shows the main barn that will remain and be restored. He described some of the improvements that will be made to the barn to be converted to a dwelling which included windows, garage doors, etc. When asked the size of the dwelling, Mr. Byrne explained that it will be 3 bedrooms and just less than 4,000 sq. ft.

Using Exhibit A-3, Mr. Byrne explained that the view is from the opposite side of the complex which gives a better view of the barn that will be converted into the dwelling.

He explained that all the finishes will match identically to the structure and will be replicated as much as possible to match the style of the 1940's.

When asked about Mr. Burr's report, Mr. Byrne responded in the positive and had no issue with the comments.

When asked by Mr. Larsen if the courtyard will be impervious surface, Mr. Byrne responded in the positive. When asked if an impervious coverage variance is needed, Mr. Byrne responded in the negative.

When asked by Mrs. Devlin if the exterior would be wood, Mr. Byrne responded in the positive.

Mr. Moriarty opined that a lot of thought went into the project.

When asked by Mr. Bernstein if all of the living space is on the second floor of the barn, Mr. Byrne responded in the positive. When asked if there is a garage, workshop and game room on the first floor, Mr. Byrne responded in the positive.

When asked by Mr. Burr if there will be any light posts, Mr. Byrne explained that it was not discussed with his client other than the lights that would be mounted at each entrance to illuminate the entrance way for safety purposes. Mr. Burr opined that a schematic lighting plan should be provided.

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.

John Hanson, 180 Main Street, Chester, was sworn in by Mr. Bernstein. Mr. Hanson provided his qualifications as an Engineer and Planner and was accepted by the Board.

Mr. Hanson marked a colored version of the variance plan as **Exhibit A-4**. Mr. Hanson explained that the property is 13.6 acres located in the Highlands District. It has frontage on Hill and Dale and Rockaway Roads. To the south is the Rockaway Creek and to the north is the original mother lot that was subject to a recent subdivision. The property is outlined in red on Exhibit A-4 and has a northeast section and southwest section. The northeast section contains the 3 bedroom cottage and also a barn and a small shed (shown in yellow). The southwest section contains the barn system which consists of the barn structures and silos (shown in brown). The property generally drains in a northerly to southerly direction. Mr. Hanson presented photos of the site, marked as **Exhibit A-5**, and explained that they were taken earlier in the day.

Mr. Hanson explained that the proposal involves very light disturbance and impervious coverage. The driveway layout will remain the same with the same material. The entire project will not add any new impervious coverage than what is currently on the property. When the property was subdivided a coverage variance was granted for 6.8% and that will be maintained by virtue of the removal of silos, concrete and gravel. Mr. Hanson

explained that soil testing was done in the northwest corner of the barn complex and a successful test was achieved for a new septic system.

When asked by Mr. Larsen if a reserve system was tested for, Mr. Hanson responded it the positive.

When asked by Mrs. Czajkowski if the septic for the cottage is sized for a three (3) bedroom, Mr. Hanson and Mr. Bligh responded in the positive.

When asked by Mr. Mackie why a new well is being proposed, Mr. Hanson explained that a new well is more convenient, meets the code and will cause fewer disturbances than to try and connect to the existing well.

When asked by Mrs. Devlin if there will be two (2) dwelling units, two (2) wells and two (2) septic systems, Mr. Hanson responded in the positive.

When asked by Mr. Burr if there is any impact to the 300 foot riparian zone, Mr. Hanson responded in the negative and explained that careful consideration was given to the proposed improvements to avoid any impact.

Mr. Johnstone opened the meeting up to the public.

Mr. Tom Fesenmaer, 108 Rockaway Road, asked about tree removal. Mr. Bligh explained that there is one (1) tree close to the building that was damaged during the storm that is proposed to be removed (a photo was provided in the application file).

Mr. Hanson provided planning testimony for the use and bulk variances for the applications. He explained that the applicant is requesting a D1 variance which requires the applicant to demonstrate positive criteria. Mr. Hanson explained that he opines that there are four (4) points of the MLUL furthered by the project and they are: J, I, M and G. Mr. Hanson explained that by virtue of the shape of the property and because it has two (2) distinct areas connected by a narrow strip of land it really acts as two (2) different properties; the average person driving down the road would think they are separate lots.

Mr. Hanson went on to discuss the C1 variance required and opined that it is justified because the structures are lawfully existing and in order to renovate and modernize the buildings it makes sense to do that in the existing footprint. By doing this there is less of an impact to the side yard by removing the component of the barn and makes a non-conforming situation less non-conforming. Mr. Hanson opined that the application touches on 4 of the goals and objectives of the Master Plan. Mr. Hanson opined that the uniqueness of the property justifies the requested relief.

When asked by Mr. Osterman if he agreed with the revisions requested in Mr. Burr's report, Mr. Hanson responded in the positive.

Mr. Moriarty noted that the Board tries not to set precedence for others that have multiple dwellings on a lot. When asked how the Board can differentiate this from future applicants, Mr. Hanson opined that it is the applicant's burden to show that a unique situation exists and he believes that the total project is unique by virtue of the lot configuration and the location of the existing structures and an owner that wishes to restore existing historic buildings.

Mr. Bernstein asked Mr. Hanson if he agreed that the application falls under section 40:55D-70 d 5 (increase in the permitted density) since there is only one (1) dwelling unit and the applicant is asking for two (2). Mr. Bernstein opined that an applicant could do all of the work the applicant is proposing without retaining a second dwelling unit. Mr. Hanson agreed but indicated that by retaining the second dwelling unit it provides more potential for an applicant to do all the work proposed. Mr. Bernstein explained that in the past the Board has, on occasion, restricted the second dwelling unit as an accessory to the home. Mr. Bernstein presented Mr. Osterman with a sample of the restriction and asked if the applicant would consider the restriction.

Mr. Burr suggested that if the Board decides to approve the application they should require, as a condition, a foundation location survey since a setback variance is required. The Board agreed that it should be a condition of approval.

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

Mr. Peter Alley, 19 Pruner Farm Road was sworn in by Mr. Bernstein. Mr. Alley was present as a representative of Hill and Dale farms and speaking for both the Alley and the Rothpletz family indicated that they could not envision a better plan for the barn complex. Mr. Alley opined that the cottage is part of the other cottages and an important part of the Scenic Roads of Tewksbury.

Mr. Johnstone agreed with project and opined that the Township couldn't ask for a better proposal for a very scenic part of the Township. Mr. Johnstone noted that his only hesitation is the second dwelling unit and asked Mr. Bligh if he would object to the restriction proposed by Mr. Bernstein which restricts the cottage to an accessory use to the main house.

Mr. Osterman asked for a break to discuss the restriction with his client. The Board took a break at 10 p.m.

The meeting reconvened at 10:05 p.m.

Mr. Bligh explained that he came to the United States from England in 1988 and all of his family is still in England so there is not much opportunity for him to use the cottage as a family annex. The other reason the restriction is burdensome is because of the cost aspect, he explained that it is an expensive project and so a little bit of income from the cottage would be a significant help.

Mr. Johnstone indicated that he is willing to vote on the application without the restriction and agreed with the analysis provided by the Planner that it appears as if it is two (2) separate properties and the cottage is in keeping with the other cottages in the area.

Mrs. Baird and Mrs. Czajkowski echoed Mr. Johnstone's comments and Mrs. Czajkowski also indicated that she would not like to see the cottage torn down or left to deteriorate.

Mr. Kerwin disagreed and opined that the cottage should be restricted to use by someone who works on the farm otherwise it will create a dangerous precedence. Mr. Bligh noted that because of the size of the property it doesn't really warrant full time farm help.

When asked if he would consider a COAH unit, Mr. Bligh agreed in concept but was worried that the existing family would not be permitted to stay. Mr. Bernstein opined that the Board would need to give a certain date that the current tenants would have to vacate.

Mrs. Devlin opined that it is a small farm and a small income generating cottage would provide some financial help to the owner.

Mr. D'Armiento and Mr. Larsen agreed that each case should be decided on its own merits and they would vote in favor of the project. Mr. Larsen was in favor of restricting the cottage for farm help or moderate income.

Mr. Bernstein noted that the vote would be 5 out of 7 regular members since it is use variance.

Mr. Moriarty made a motion to approve the application as presented without any restrictions on the cottage. Mrs. Devlin seconded the motion.

The motion carried by the following roll call vote:

Roll Call Vote:

Those in favor: Mrs. Baird, Mr. Mackie, Mrs. Devlin, Mrs. Czajkowski, Mr. Moriarty and Mr. Johnstone

Those Opposed: Mr. Kerwin

ADJOURNMENT

There being no further business, the meeting adjourned at 10:19 p.m. by motion of Mr. Moriarty and seconded by Mrs. Devlin.

Respectfully submitted,

Shana L. Goodchild
Land Use Administrator