

LAND USE BOARD MINUTES
July 18, 2012

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

Present: Blake Johnstone, Mary Elizabeth Baird, Shaun Van Doren, Elizabeth Devlin, Bruce Mackie, Michael Moriarty, Arnold Shapack, Alt. #1, Eric Metzler, Alt. #2 and Ed D'Armiento, Alt. #4.

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

Absent: Dana Desiderio, Shirley Czajkowski and Ed Kerwin.

There were approximately twelve (12) people in the audience.

OPEN PUBLIC MEETING ACT STATEMENT

Mr. Johnstone opened the meeting by announcing that adequate notice of the meeting had been provided by posting a copy thereof on the Police/Administration Building bulletin board, faxing a copy to the Hunterdon Review and the Hunterdon County Democrat, and filing with the Municipal Clerk, all on January 05, 2012.

PLEDGE OF ALLEGIANCE

Those present stood and pledged allegiance to the American flag.

CLAIMS

Mr. Johnstone asked the Board if there were any questions or comments regarding the following claims to which the response was negative. 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 – Land Use Board Professional Services – Attendance at June 20, 2012 meeting - invoice dated June 21, 2012 (\$450.00)
2. Bernstein & Hoffman – Land Use Board Escrow – Hannon (B32.01, L3), invoice dated June 20, 2012 (\$765.00)
3. Bernstein & Hoffman – Land Use Board Escrow – JCP&L (B17, L2.01 & 2.02), invoice dated June 21, 2012 (\$675.00)
4. Bernstein & Hoffman – Land Use Board Escrow – JCP&L (B17, L2.01 & 2.02), invoice dated June 18, 2012 (\$3,015.00)
5. Maser Consulting – Land Use Board Escrow – Cedar Lane Farm (Johnson Helistop B23, L23), invoice #184128 (\$130.00)
6. Maser Consulting – Land Use Board Escrow – Newell (B34, L13.01), invoice #184134 (\$487.50)

7. Maser Consulting – Land Use Board Escrow – Taggart (B23, L26), invoice #184129 (\$97.50)
8. Maser Consulting – Land Use Board Escrow – Stavola Quarries (B44, L24), invoice #184130 (\$32.50)
9. Maser Consulting – Land Use Board Escrow – JUJ 1944 Trust (Vliettown Farm) (B43, L3), invoice #184131 (\$682.50)
10. Maser Consulting – Land Use Board Escrow – Caracciolo (B41, L1), invoice #184132 (\$590.00)
11. Maser Consulting – Land Use Board Escrow – JCP&L (B17, L2.01 & 2.02), invoice #184133 (\$2,275.00)
12. Maser Consulting – Land Use Board Escrow – Hannon (B32.01, L3), invoice #184135 (\$1,291.25)
13. Maser Consulting – Land Use Board Escrow – Rothpletz (B38, L1.03), invoice #184136 (\$998.75)
14. Suburban Consulting – Land Use Board Escrow – JUJ 1944 Trust (Vliettown Farm) (B43, L3), invoice #000000018754 (\$285.00)
15. Suburban Consulting – Land Use Board Inspection – AM Best (B46, L2.01, 5 & 6), invoice #000000018787 (\$625.65)
16. Suburban Consulting – Land Use Board Inspection – Johnson (B23, L4, 20 & 36), invoice #000000018751 (\$1,125.00)
17. Suburban Consulting – Land Use Board Escrow – NJ Conservation Foundation (B51, L80), invoice #000000018753 (\$950.65)

Roll Call Vote:

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

Nays: None

CORRESPONDENCE

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

1. An e-mail dated July 9, 2012 from Chris Teasdale, Environmental Commission Chairman re: Appl. No. 12-08, Snyder, Block 11, Lot 9.16.
2. A copy of a letter dated July 6, 2012 from NJ Highlands Council re: Highlands Water Protection and Planning Council.
3. A letter dated July 6, 2012 from Hunterdon County Planning Board re: JCP&L Driveway Construction, Block 17, Lots 2.01 and 2.02.
4. A letter dated July 12, 2012 from William Burr re: Appl. No. 12-08, Snyder, Block 11, Lot 9.16.
5. Memorandum dated July 15, 2012 from Chief Holmes re: Appl. No. 12-08, Block 11, Lot 9.16, Snyder.
6. A Memo dated July 12, 2012 from Roberta Brassard re: Appl. No. 12-08, Block 11, Lot 9.16, Snyder.

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 questions or comments, Mr. Johnstone closed the public portion of the meeting.

RESOLUTIONS

- **Resolution No. 12-15** – Rothpletz, Appl. No. 12-07, Block 38, Lot 1.03

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

LAND USE BOARD
 TOWNSHIP OF TEWKSBURY
 APPLICATION # 12-07
 RESOLUTION # 12-15

WHEREAS, MICHAEL E. ROTHPLETZ, JR. and DEIRDRE HERMS ROTHPLETZ have applied to the Land Use Board of the Township of Tewksbury for permission to install an apartment in a barn as a second dwelling on their property which is located at 82 Rockaway Road on premises designated as Block 38, Lot 1.03 on the Township of Tewksbury Tax Map, which premises is located in Farmland Preservation (FP) Zone, and

WHEREAS, the subject property was reduced to its present configuration by a subdivision which was granted by the Land Use Board in Application No. 08-01 in 2008 and memorialized in resolution 08-21 which was adopted on November 5, 2008, and

WHEREAS, the current 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 current application was presented by Michael E. Rothpletz, Jr., who appeared as both the attorney for the application and applicant;

Professional Planner Elizabeth McKenzie, P.P.; and Civil Engineer Candice Davis, P.E. of the firm of Yannaccone, Villa & Aldrich, LLC at the June 6, 2012 Land Use Board meeting, and

WHEREAS, the Board, after considering the evidence and testimony presented by the applicants and William H. Burr, IV., P.E., has made the following factual findings:

A. The Subject Property.

1. The subject property contains 32.419 acres with about 1,250 feet of frontage on Rockaway Road. (900 feet of frontage south of Lot 1.02 and 130 feet north of Lot 1.02).

2. About two-thirds of the front of the property is constrained with category-one (c-1) streams, wetlands, wetlands buffers, flood hazard areas and a 300 foot riparian buffer.

3. The Rockaway Creek traverses a portion of the front of the property. A tributary of the Rockaway Creek runs from the front of the property to a maximum distance of 200 feet from the road. Two other branches enter the property from the northeast and southwest . A large pond is about 250 feet from the road.

4. The front of the property uphill of the environmentally constrained areas described in #2 above is in open fields and pasture.

5. Aside from the gravel driveways, development has occurred on the rear unencumbered third of the site.

6. The site is improved with a two-story residence, a stone shed, a 155 foot by 80 foot outdoor riding ring, a two-story barn, the gravel driveways leading from Rockaway Road to the home and barn, and a detention basin.

7. The barn has 7 horse stalls and space for equipment storage. The applicants' propose to construct an apartment on the second floor of the barn which is the subject matter of the present application. The proposed apartment is discussed in Sections B, factual findings 8 - 10.

B. The Proposal.

8. A conceptual design of the second floor apartment was prepared by architect Edward Matthew O'Brien, AIA: "project title: proposed apartment in the new barn for michael & darby [sic] rothpletz rockaway road tewksbury township hunterdon county, nj drawing title: floor plans elevations" dated April 5, 2012 and designated A-1.

9. The applicants propose to construct an apartment on the second floor of the barn. The apartment will contain a maximum of 900 square feet and a maximum of two bedrooms. It will contain a living room/dining room, kitchen and bathroom.

10. The proposed apartment will be accessory to the existing dwelling. It will be used by the residents of the home, their children, as a guest house, or a residence for farm and maintenance help. No rent will be charged to any of the occupants aside from maintenance or farm help who may be charged rent.

C. Zoning Consideration.

11. The subject property is significantly oversized, containing 32.419 acres while the zoning ordinance permits a minimum lot size of 7 acres in the FP District.

12. Section 710.1D3 of the Development Regulations Ordinance (DRO) permits, as a conditional use, a low or moderate income dwelling unit for a farm worker on lots of at least 20 acres.

13. The proposed barn apartment will comply with each of the provisions of Section 710.1D3 of the DRO permitting an apartment except a, b, and e.

- a. Each unit shall comply with the requirements of Section 707, that are not amended in the Section, and the Housing Ordinance.

The applicants request permission to construct an apartment which will not be restricted to low or moderate income housing. The apartment will be accessory to the single-family residence and will be utilized by the applicants' family or as a guest house or for farm workers. Rent shall not be charged except for farm workers.

- b. Each such dwelling unit shall serve as living quarters for an employee of the farm, or the employee and his/her family.

The apartment may be used by a farm employee, but the apartment will not be restricted to farm workers.

- c. Each such unit shall be a maximum size of two bedrooms and have a maximum floor area of 900 square feet.

The proposed apartment will comply with this requirement.

- d. No more than one dwelling unit shall be located in any one converted access building.

A single apartment is proposed in the barn.

- e. Each unit shall be located so as to have setbacks twice (100 feet required) those required for other farm accessory buildings except no such unit shall be located in any front yard unless it is set back from the street line at least 200 feet.

The barn complies with this requirement, except for the rear of the barn which is over the 100 foot setback from the adjoining property.

- f. The number of units (in addition to the principal dwelling) permitted under these provisions shall not exceed one unit per 10 acres, or one unit per 20 horse stalls, or a total of four units per lot, whichever results in the smaller number.

The proposal is for two dwelling units on 32.419 acres.

- g. Each unit shall have its own exterior means of access separate from any other unit.

The single family dwelling and the apartment will each have separate access.

- h. The potable water supply and sewerage disposal system for the unit(s) and principal dwelling shall be adequate.

As to the water supply, a water line will run from the existing well to the southwest corner of the barn. The plans will be revised to reflect this.

As to the sewage disposal system, the following statement was received from Robert Vaccarella of the Hunterdon County Division of Health on 5-29-12. "This department has reviewed the above referenced site plan and there is no action required by the Board since the Hunterdon County Division of Public Health approved the septic application for the proposed barn on November 30, 2011."

- i. Additional off-street parking shall be made available for each unit in accordance with Section 721.

There are a number of separate parking spaces for both the single family residence and the proposed apartment.

- j. The property on which the housing is located shall be under Farmland Assessment.

The property is under Farmland Assessment.

D. Justification for Variance.

14. A conditional use variance is required under N.J.S.A. 40:55D-70d(3). Our New Jersey Supreme Court in Coventry Square v. Westwood Zoning Bd. of

Adjustment, 138 N.J. 285, 298 (1994) established the special reasons required to satisfy the positive criteria for a d(3) conditional use variance.

“We hold that the proof of special reasons that must be adduced by an applicant for a ‘d’ variance from one or more conditions imposed by ordinance in respect of a conditional use shall be proof sufficient to satisfy the board of adjustment that the site proposed for the conditional use, in the context of the applicant’s proposed site plan, continues to be an appropriate site for the conditional use notwithstanding the deviations from one or more conditions imposed by the ordinance. That standard of proof will focus both the applicant’s and the board’s attention on the specific deviation from conditions imposed by the ordinance, and will permit the board to find special reasons to support the variance only if it is persuaded that the non-compliance with conditions does not affect the suitability of the site for the conditional use. Thus, a conditional-use variance applicant must show that the site will accommodate the problems associated with the use even though the proposal does not comply with the conditions the ordinance established to address those problems.”

15. In accordance with Coventry Square, the Board finds that despite the noncompliance with Section 710.1D3a, b, and e, the accessory apartment is still appropriate on the site. The salient factors are:

- The size of the lot is over four times the minimum lot size permitted in the Zone.
- The extensive farming operation.
- Both dwelling units could be placed on separate oversized lots.

16. Engineer Davis presented a subdivision plan which was marked A-6. It showed that the site could be subdivided with the home and barn placed on separate lots. The barn lot may require a planning variance under N.J.S.A. 40:55D-36 on account of a shared driveway over the single family residential lot, and the lack of direct access to the road because of environmental constraints, but the other bulk requirements would be met. Planner McKenzie testified that special reasons included the promotion of the following purposes of the MLUL under N.J.S.A. 40:55D-2:

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

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

The Tewksbury Township DRO, the Tewksbury Township Master Plan, and the policy of the Land Use Board is to promote agriculture in Tewksbury Township. The proposed apartment will strengthen agriculture by providing living quarters which may be used by a full-time or part-time agricultural worker.

“e. To promote the establishment of appropriate population densities and concentrations that will contribute to the well-being of persons, neighborhoods, communities and regions and preservation of the environment;”

The proposed development is substantially less dense than that permitted under the FP Zone.

“f. To encourage the appropriate and efficient expenditure of public funds by the coordination of public development with land use policies;

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m. To encourage coordination of the various public and private procedures and activities shaping land development with a view of lessening the cost of such development and to the more efficient use of land;

The proposed construction is an appropriate use of the site.

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

NOW, THEREFORE be it resolved by the Land Use Board of the Township of Tewksbury on this 18th day of July 2012 that the application of Michael E. Rothpletz and Deirdre Herms Rothpletz be approved in accordance with an engineer's plan titled: "ROTHPLETZ PROPERTY USE VARIANCE Tax Map Sheet No. 14 LOTS 1.03 – BLOCK 38 TEWKSBURY TOWNSHIP HUNTERDON COUNTY NEW JERSEY, Sheet Title: Area Map", prepared by Yannaccone, Villa & Aldrich, LLC on April 9, 2012 consisting of sheet 1 of 1, and an engineer's plan titled: "ROTHPLETZ PROPERTY 82 ROCKAWAY ROAD TAX MAP SHEET NO. 14 LOT 1.03 - BLOCK 38 TEWKSBURY TOWNSHIP HUNTERDON COUNTY NEW JERSEY, SHEET TITLE: LOT DEVELOPMENT FOR PROPOSED BARN AND RIDING RING – SEPTIC PLAN" Prepared by Yannaccone, Villa & Aldridge, LLC on November 1, 2010, last revised October 24, 2011 consisting of sheets 1 and 2 and architect's plan titled: "project title: proposed apartment in the new barn for michael & darby [sic] rothpletz rockaway road tewksbury township hunterdon county, nj drawing title: floor plans elevations" prepared by Edward Matthew O'Brien, AIA on April 5, 2012 consisting of sheet A1 (to be revised) subject, however, to the following conditions:

1. Conditions recommended by Land Use Board Engineer William H. Burr, IV., P.E. in his report of May 31, 2012:

1. The applicant and its professionals must provide testimony to prove the special reasons for granting of the use variance to permit a second single-family dwelling (apartment) on the premises. In addition, proof must be provided that there will not be any substantial detriment to the public good, nor will it substantially impair the intent and purpose of the zone plan and zoning ordinance. *The special reasons supporting the d-3 variance are found in factual findings 14 – 16 herein. The factual findings supporting the negative criteria are found in factual findings 11 – 13 and 17 herein.*

2. The applicant should provide testimony to clarify whether the proposed apartment will be offered as low or moderate income housing (i.e. COAH unit)? *Factual finding 13a states that the apartment will not be restricted to a low or moderate income dwelling unit.*
3. The plans should be provided to the Township Fire Department for review and approval of site access, circulation and building accessibility. *Land Use Administrator Shana Goodchild noted that the plans had been sent to the Fire Department but that no comments were received. Michael Rothpletz testified that there was a pull-off area which could be used in an emergency.*
4. Testimony should be provided to confirm that there will be adequate off-street parking available for the proposed apartment. *Michael Rothpletz testified that there were two 9 x 18 parking stalls adjacent to the barn and at least 3 next to the home.*
5. The architectural plan for the proposed barn/apartment reflects two (2) wall mounted light fixtures on either side of the exterior door to the apartment. Information should be provided regarding the type and style of lights that are proposed to confirm that there will not be any undesirable effects to the surrounding properties in accordance with the Township Lighting Ordinance - Section 632. These lights should be minimal wattage and be down-shielded to ensure compliance with the above requirements. *The lighting is subject to the approval of the Land Use Board Engineer. Cut sheets shall be provided to him. The lighting shall comply with Section 632 of the Township Ordinance. The lighting shall not create sky glow or glare on the road or other properties.*
6. The applicant has previously obtained all necessary approvals to construct the barn and outdoor riding ring including a Grading and Surface Water Management Plan (GSWMP) from the Township, septic system approval from the Hunterdon County Health Department, and Soil Erosion and Sediment Control Certification from the Hunterdon County Soil Conservation District. I understand the improvements are still subject to final inspection by the Township and Township Engineer's office prior to issuance of any Certificate of Occupancy.

2. The applicants shall file a Deed Restriction to the approval of the Land Use Board Engineer and Land Use Board Attorney requiring:

“The apartment in the barn shall be limited to a maximum size of 900 square feet and no more than two bedrooms. Maximum occupancy shall be two individuals.

The apartment will be accessory to the single-family residence and occupancy will be limited to the owner of the property, the owner's family or temporary guests or full or part-time farm workers. Rent shall not be charged except for farm workers.”

3. Revised final architectural plans (showing revised apartment layout and lighting for apartment door) and engineering plan (showing minor adjustment in barn location, proposed waterline and septic) shall be submitted and approved by the Land Use Board Engineer prior to the application for a building permit.

4. As long as the apartment exists, any reduction in the size of the subject property will require a variance under N.J.S.A. 40:55D-70d from this Board, unless the barn (with the apartment) and the residence are subdivided by the Land Use Board into different lots without requiring a density variance.

5. The variance must be exercised within two years from the date of this memorialization resolution or the variance shall be void and have no further effect.

6. Payment of all fees and escrows.

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

8. The engineering plans shall be revised and submitted to the Land Use Board Engineer within 90 days hereof for his approval. Any revised architectural plans will be submitted to the Land Use Board Engineer for approval prior to the application for a construction permit to construct the apartment. Any subsequent revisions shall be made within 15 days of subsequent requests.

Roll Call Vote

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

Those Opposed: None

- **Resolution No. 12-16** – Johnson, Appl. No. 09-05, Block 23, Lot 23
Eligible to vote: Mr. Mackie, Mr. Moriarty, Mr. Kerwin and Mr. Johnstone

Mr. Bernstein reviewed for the Board the list of corrections provided by Mr. Van Doren. Mr. Jack McNamara was present on behalf of the applicant and asked if he could make comments on the resolution. Mr. Bernstein noted that the Board's policy only permits the attorney for the applicant that received approval to provide comment. Mr. Bernstein opined that because the application was denied the applicant has a different interest in the drafting of the resolution. Mr. Bernstein indicated that he would take comments regarding spelling or grammatical errors but would not consider comments as to the substance of the resolution.

Mr. McNamara noted that his comments would address areas where he believes there was either no proof or the proof was very clearly contrary to the way the matter was expressed. For example, Mr. McNamara noted that the resolution states that Tucker Johnson had gotten his day to day information from the dairy manager and later in the same paragraph it states that Tucker Johnson had no knowledge of the operation of the farm. Mr. McNamara suggested that the language be changed to say that Tucker Johnson had no direct knowledge about the day to day operations. Mr. Johnstone suggested that Mr. McNamara send his comments to Mr. Bernstein for his review and consideration prior to the next meeting. Mr. Johnstone was concerned why the comments were not addressed prior to the meeting to which Mr. McNamara responded that he was denied a copy of the resolution. Mr. Bernstein noted that Mr. McNamara is not the attorney for the applicant, he is a witness, and typically the adverse party does not get a copy of the resolution until the day of the meeting. Mr. McNamara noted that Miles Winder asked for a copy of the resolution and was told he could not have a copy. Mr. Bernstein explained that because the resolution is a denial of the application the applicant's interest is adverse. Mr. McNamara explained that he delivered a red line copy of the resolution to Mr. Bernstein with the requested changes. Mr. Bernstein agreed to consider the changes and the Board tabled the resolution until the next meeting. For the record, Mr. Van Doren asked Mr. Bernstein if he provided the JCP&L attorney with a copy of the resolution denying the substation application to which he responded in the negative. Mr. Van Doren noted that the Board has always been consistent with this policy.

Mrs. Nancy Held noted that she received a copy of the resolution in advance and provided her comments to Mr. Bernstein and he either did not agree with or overlooked some of the items. Mr. Johnstone encouraged Ms. Held to discuss those with Mr. Bernstein prior to the next meeting.

Mr. Johnstone announced that the resolution was tabled until the August 15, 2012 meeting. If the August meetings are cancelled the resolution will be scheduled for September.

Mr. McNamara agreed to an extension of time for the Board to adopt the resolution.

PUBLIC HEARING

- Snyder
Appl. No. 12-08
Block 11, Lot 9.16
Side Yard and Impervious Coverage Variances
Action Deadline – 9/17/12

Mr. Johnstone and Mr. Metzler recused themselves from the meeting due to conflicts.

Mrs. Baird assumed the Chair and announced that a quorum of the Board existed to proceed.

Mr. Michael Rothpletz, Attorney for the applicant, was present and explained that the subject property is an odd shaped, eight (8) acre lot located on Glennon Farm Lane. He explained that the lot is improved with a home that sits back from the road which is characteristic for the neighborhood. The home is served by a 576 foot driveway from Glennon Farm Lane to the beginning of the circular cul-de-sac located in front of the home. The front and sides of the property are heavily wooded so the improvements on the lot are barely visible from adjoining neighbors. The applicant is seeking approval to construct a barn/garage in the front yard to house equipment and vehicles for children that are of driving age as well as a pool, pool house and related improvements to the rear of the house. The pool and pool house have been designed to tuck into the topography which diminishes the visible impact on the other properties. The variances being sought are side yard setback variances in addition to the impervious coverage variance to allow 6.48% where 5% is the limit. Mr. Rothpletz explained that the very long driveway contributes to the need for the coverage variance and he noted that when the properties were created in the 1980's the property was then subject to an 8% lot coverage; all of the houses were designed with that coverage in mind so longer driveways were not an issue then. The other element of the application is that the entire Glennon Farm subdivision was subject to a deed restriction that was imposed by the developer and requires the approval of the developer (Sandstone Construction) for the construction of any improvements on the properties. Mr. Rothpletz explained that Sandstone Construction was dissolved and so it is impossible to obtain their approval. The standard for the approval was harmony with the rest of the community. The deed restriction, which was provided as part of the record, provides that the Land Use Board to enforce the restriction; because Sandstone Construction is no longer around the Land Use Board becomes the arbiter of the restrictions. At the request of Mr. Bernstein, Mr. Rothpletz read portions of the deed restriction into the record. Mr. Bernstein asked if Mr. Rothpletz included this in the notice. Mr. Rothpletz explained that the notice was sent to the property owners within 200 and also all of the lot owners within the Glennon Farm

subdivision; the covenants were specifically identified in the notice. Mr. Bernstein confirmed that notice was in order.

Mr. Van Doren asked if the former Planning Board or Land Use Board has granted any deviations to the conditions for any other lot in the subdivision. Mr. Rothpletz explained that the applicant is not requesting a deviation from the restrictions but rather consent. Mr. Van Doren noted that one of the restrictions has to do with no structures in the front yard. Mr. Rothpletz explained that structures are not permitted in the front yard without Sandstone's consent. Mr. Rothpletz was not aware of any other applicant that has sought consent before either of the Boards. Mr. Benson noted that there is one other lot in the Glennon Farm subdivision that received approval from Sandstone Construction for a two (2) car garage in the front yard.

Mr. Ezio Columbro, Architect for the applicant, was sworn in by Mr. Bernstein. Mr. Columbro has been accepted before as an expert and was accepted by the Board. Mr. Columbro presented a plan that illustrated the adjacent properties and surrounding lot lines which was marked as **Exhibit A-1**. He also presented a plan that illustrated the same as Exhibit A-1 but also references photographs around the site; this was marked as **Exhibit A-2**.

Mr. Columbro explained that a little over a year ago Mr. Snyder approached him to prepare plans for a four (4) car garage addition to their home. They have four (4) children of driving age along with the fact that Mr. Snyder is active in maintaining his eight (8) acre property so he has a lot of equipment and needed more space. The dilemma was that the existing garage on the westerly side sits right at the 50 foot side yard setback line; the adjacent home is roughly 60 feet off of the property line and so it did not make sense to add an addition to that side. Ultimately a detached structure made sense as it has a presence in the neighborhood; Mr. Columbro noted several examples of detached structures located in front of the main dwelling in the neighborhood. Mr. Columbro opined that it made sense from an architectural and historical perspective to propose a detached structure in the front of the main house.

Mr. Columbro explained that the proposed building is a fieldstone structure with a hand split cedar roof and an auxiliary shed with a standing seam metal roof and barn siding. The eastern elevation is entirely stone with double hung windows and a wood and batten access door on the attic level. The northern elevation shows a single door with double hung windows on either side and a chimney structure. Mr. Columbro explained that they intend to incorporate some copper lanterns on the structure as well as a few flood lights mounted on the garage door side to light the way.

Mr. Columbro explained that the structure is a 28 x 25 foot box with the shed structure being approximately 10 x 20 feet. There is room for one (1) car plus the associated landscape equipment. There is a staircase to the upper floor which will be used for general storage. The chimney structure will be utilized for a family heirloom potbelly stove that can be used in the winter for heat.

Mr. Burr questioned the flood lights proposed. Mr. Columbro explained that any lights will point towards the turnaround driveway.

When asked by Mrs. Devlin the height of the second story, Mr. Columbro opined 12 feet of raw space.

When asked by Mr. Van Doren if the potbelly stove would heat any other space other than the workshop area, Mr. Columbro explained that it has not been clarified by the applicant.

Mr. Arthur Snyder, applicant, was sworn in by Mr. Bernstein. Mr. Snyder explained that he envisioned the potbelly stove providing heat for the workshop area but that he would also like to install an electric hot air blower. Mr. Van Doren was concerned that a future owner might turn the heated space into a livable unit. When asked if he would agree to a deed restriction that the garage/barn could not be living quarters, Mr. Snyder responded in the positive. He noted that there is no plumbing proposed.

Mrs. Baird asked if there is a basement to which Mr. Snyder explained that it is a concrete slab on grade.

When asked by Mr. Moriarty about tree removal, Mr. Columbro explained that the garage will be constructed at the edge of the existing tree line so no existing trees are proposed to be removed. He added that when digging for the foundation it can sometimes disturb the root system and cause a tree to die.

Mr. Shapack noted that there was a condition in the original resolution that prohibited the property from being used for anything other than a single family residence. Mr. Bernstein suggested reiterating it in the resolution if the application is approved.

Mr. Columbro spoke about the proposed pool, cabana and pool shed. He explained that an existing landscape walls that forms two (2) L shapes is located approximately 100 feet behind the principal structure. The intent is to try and retain the walls and essentially build the pool within the walled area with the support structures to be carved into the wall and bank on the eastern side. Mr. Rothpletz explained that there is an existing shed on the western side that was inadvertently installed one (1) foot over the setback (at 39 feet) and so the Snyder's have requested, as part of the application, a side yard setback variance to correct the error so they don't have to move it the one (1) foot necessary to comply. Mr. Columbro explained that the proposed pool is 20 x 40 feet with a stone terrace that wraps around the perimeter; on two (2) sides it's six (6) feet wide and on the back it is three (3) feet wide with a main seating area immediately in front of the pool cabana. A pool shed is proposed to the rear to store pool equipment and cleaning devices. The improvements will be surrounded by a code compliance fence. There is a series of walkways that connect the pool area with a proposed deck off of the family room. There is also a walkway proposed from the pool area to an existing patio to give users two (2) access ways.

Mr. Columbro explained that the principal pool structure is the cabana which is a stone structure that will marry the existing stone landscape walls. The principal material is stone with a hand split cedar roof to replicate the proposed barn/garage in the front of the property. There is a small door in the second story in order to provide storage capability. The principal function of the building is to provide support facilities to house water, a sink, and a dishwasher in the serving area and a dressing area and a simple bathroom. Mr. Columbro opined that by constructing the buildings into the bank it mitigates the visual impact to the neighbors. When asked if the improvements are harmonious with the rest of the Glennon Farm development, Mr. Columbro responded in the positive. He noted that at least five (5) of the lots have similar related outbuildings.

When asked by Mr. Burr the size of the shed and cabana, Mr. Columbro noted that the shed is 10 x 9 and the cabana is approximately 20 x 17.4 with a dressing room wing that measures approximately 6 x 10 (346 sq. ft.). When asked about lighting, Mr. Columbro explained that a few post lights are proposed around the periphery of the pool (near the pool fence) and a post light near the proposed deck. In addition to the pole lights a few carriage lights are proposed as well as a few spot lights on the two (2) corners of the cabana to light the terrace area. When asked if there will also be a light in the pool, Mr. Columbro responded in the positive. Mr. Burr noted that he would need a revised plan to show the proposed lighting. Mr. Burr explained that it would be required prior to a building permit so that he could determine that the proposed lights will not create sky glow, etc.

When asked by Mr. Bernstein if the buildings will be actual stone or stone faced, Mr. Columbro indicated that it would be real fieldstone blend used on the cabana and barn/garage. Mr. Bernstein noted that except for a stove the cabana would meet the definition of a dwelling unit so it has been the Board's policy that the applicant files a deed restriction prohibiting cooking equipment (except for a microwave) and heat. Mr. Columbro explained that the concern is that without heat they would run the risk of freezing pipes; at a minimum the area that houses the water tank and equipment would need to be heated. Mr. Bernstein indicated that there would be a limited area that could be heated.

Mr. Mackie expressed concern with the amount of lighting proposed. When asked if the existing four (4) lights will remain, Mr. Columbro responded in the positive. When asked why the structures couldn't be constructed within the setback lines, Mr. Columbro explained that it would locate them too close to the home and also noted that the proposed location would preserve the view from the home. The proposed location minimizes the impact of the structures to the neighboring properties while at the same time is an appropriate distance to the main house.

Mrs. Devlin agreed with Mr. Mackie with regard to the lighting. Mr. Rothpletz confirmed that the lighting will conform to the ordinance.

Mr. Van Doren asked if there is an interior access to the second floor of the cabana to which Mr. Columbro responded in the negative and noted that the only access is from the

exterior access door in the rear of the structure. When asked about the height of the access door to the ground, Mr. Columbro estimated it to be approximately 5 feet.

Mrs. Baird expressed concern with the lighting and the potential for the cabana to turn into a living unit.

When asked by Mr. Moriarty if any trees will be removed for the pool, cabana and shed, Mr. Columbro opined two (2) trees both approximately eight (8) inches in caliber. When asked if they will be replaced, Mr. Columbro explained that the bank is very rocky and not conducive to trees. He explained that the Snyder's are very sensitive about landscaping and are likely to carry the existing theme to the back of the house; they use plants that are indigenous to the area and work well in the existing environment.

Mrs. Devlin asked if it was possible to move the shower from inside the cabana to outside. Mr. Rothpletz noted that it would be a violation of the existing Glennon Farm covenants and restrictions if the cabana were to become a living unit so he opined that it would be unnecessary to move the shower to the exterior.

Mr. Benson opined that the windows proposed in the cabana would not pass code as an egress window for a bedroom.

Mrs. Baird opened the meeting up to the public to ask questions of the architect. There being none, Mrs. Baird closed the public portion.

Mr. David Fantina, Engineer, was sworn in by Mr. Bernstein. It was noted that Mr. Fantina has appeared before the Board in the past and therefore was accepted as an expert in the field of engineering.

Mr. Fantina explained that there are two (2) areas on the property slated for development, the front area for the barn/garage and the rear area for the pool complex. To mitigate the effects of the runoff the applicant will collect the appropriate amount of runoff from the impervious surfaces into a drywell so coverage over 5% will be collected and recharged into the ground. This will be accomplished by making use of the existing drainage pattern; much of the existing roof area drains to the west via a six (6) inch pipe. They will cause that pipe to drain into the drywell to catch roughly half of the roof runoff from the dwelling. In addition, there is sheet flow off of the driveway which flows naturally over ground towards what will be used as a drywell area. In addition to that, the roof leaders from the new garage/barn will be piped into the drywell. Mr. Rothpletz noted that the coverage variance is to seek approval to go to 6.48%. Mr. Fantina agreed with Mr. Rothpletz's earlier statement that the driveway is very long (as is similar with most of the Glennon Farm properties) and takes up a significant amount of the coverage, specifically the driveway is over 576 feet long which does not include the turnaround area. When asked about the side yard setback variances, Mr. Fantina explained that the applicant is requesting for the pool shed to be setback 36 feet where 50 feet is required, 30.9 feet for the pool deck and 18.6 for the cabana. The applicant looked at other locations for the improvements however to put the proposed improvements in the

conforming location it would destroy the intent of building the ancillary structures into the grade. Also, to build in a conforming location would cause the structures to be more visible to the neighbors. Using Exhibit A-3, Mr. Fantina demonstrated the view of the pool complex from the neighboring properties (both ground level and from the second story of the neighboring home). Mr. Fantina opined that there would be more of a visual impact on the neighboring properties if the improvements were in a conforming location. Because of the unique topography and where the walls are located the applicant feels that the proposed location works better not only for the Snyder's but for any neighbors that might see the improvements. When asked about the proposed fencing, Mr. Fantina explained that the wall and fence combined will be less than six (6) feet except for one (1) area that will be over eight (8) feet for a few linear feet. Mr. Rothpletz noted that it is technically a variance and the applicant would like to request that variance as part of the application. Some of the Board members were confused and so Mr. Fantina drew a sketch of the wall/fence on the chalkboard.

Mr. Fantina also noted that the existing shed is at 39 feet when it should have been 40 feet. He opined that it would not be difficult to move however the area around the shed is beautifully landscaped and it would be a shame to have to disturb and remove the landscaping to move it one (1) foot.

When asked if the new deck conforms with the setback, Mr. Fantina responded in the positive. When asked if lighting is proposed near the hot tub on the deck, Mr. Columbro noted that there is a wall mounted lantern and a few post mounted lights on the deck. Mr. Columbro agreed to provide a lighting plan to Mr. Burr for his review.

Mr. Burr agreed with the conceptual design of the drainage and asked if the applicant would agree to make some minor changes to the plan as requested in his report. Mr. Rothpletz reviewed Mr. Burr's report and agreed with the requested changes. Mr. Burr asked Mr. Rothpletz to address the Environmental Commission's concern regarding how the pool will be filled. Mr. Rothpletz agreed that the pool will not be filled from the on lot well.

Mr. Bernstein asked if the applicant would want one (1) or two (2) years to complete the project to which Mr. Snyder indicated two (2) years.

Mr. Mackie asked to see the location of the wetlands that were identified in PK Environmental letter dated May 1, 2012; he noted that the Environmental Commission had concern that a drywell might intercept water that would normally flow to the wetlands. Mr. Fantina pointed out the location of the wetlands and explained why the runoff and drywell would not have an impact on the wetlands area.

Mr. Moriarty asked about the stepping stones depicted on the plan. Mr. Columbro explained that they are being used to define the path to the entry gate.

Mr. Shapack asked Mr. Burr if it would be better to remove the drywell and allow the water to flow to the wetlands. Mr. Burr opined that in this particular situation it wouldn't serve any purpose due to how far the wetlands are from the structures.

Mrs. Baird opened the meeting up to the public for questions. There being no questions, Mrs. Baird closed the public portion of the meeting.

Mrs. Baird opened the meeting up to the public for comments.

Joe Kosakowski, 38 Long View Road, was sworn in by Mr. Bernstein. Mr. Kosakowski noted that he is a neighbor and had no issue with the proposed project.

There being no additional comments from the audience, Mrs. Baird closed the public portion of the meeting.

Mr. Rothpletz provided his closing remarks and reminded the Board that the project is in character with the neighborhood and has been tastefully designed. He noted that the long driveway contributed to the coverage issue. He opined that there are no detriments to Tewksbury's zone plan or to the neighbors.

Mrs. Devlin found the project to be tastefully done but expressed concern about the lighting and the ability to control the use of the cabana so that it does not become a dwelling unit. Mr. Rothpletz noted that the lighting will conform and they will amend the plan to satisfy Mr. Burr.

Mr. Mackie agreed with Mrs. Devlin and recalled that in past applications the Board has placed time limitations on the lights. Mr. Van Doren recalled that the lighting condition was because of the proximity of a project to other lots/neighbors. He opined that a timing restriction was unnecessary due to the distance from the proposed pool to the closest neighbor.

Mrs. Baird expressed concern that a future owner may turn the pool house into a living unit however she opined that this building would pose more of a problem than others that the Board has reviewed.

Mr. Moriarty, Mr. Shapack and Mr. D'Armiento were satisfied with the application as proposed.

Mr. Bernstein clarified that the garage and pool house would be restricted from being used as living quarters and the pool house could only have a small refrigerator and microwave and the heating would only be used to keep the pipes from freezing. Mr. Rothpletz asked that a regular size refrigerator be permitted as Mrs. Snyder may need to store platters of food, etc. Mr. Rothpletz didn't object to a deed restriction.

Mr. Van Doren made a motion to approve the application with the conditions as discussed. Mr. Moriarty seconded the motion. The motion carried by the following roll call vote:

Roll Call Vote:

Ayes: Mr. Van Doren, Mrs. Mackie, Mrs. Devlin, Mr. Moriarty, Mr. Shapack, Mr. D'Armiento and Mrs. Baird

Nays: None

Mr. Johnstone and Mr. Metzler returned to the meeting at this time.

PUBLIC HEARING

- Tewksbury Fine Wine
Appl. No. 12-09
Block 44, Lot 24.01
Modification to the Site Plan Conditions of a Prior Approval

Ms. Andrea Maranca, 20 Long View Road, was sworn in by Mr. Bernstein.

Mr. Bernstein explained that Ms. Maranca appeared originally for the Tewksbury Fine Wine and Spirits application which was denied by the Board and appealed to the Superior Court. The Superior Court reversed the decision but remanded it to the Board to impose conditions. He went on to explain Two (2) of the conditions that were imposed Ms. Maranca wishes to modify. He noted that public notice has been properly served and the hearing can proceed.

Ms. Maranca asked for permission to paint the building a different color without having to seek approval from the Land Use Board. She also asked for permission to put up two (2) sandwich board signs several times a year during special events (maybe 5 times a year). They are custom made signs with the Tewksbury Fine Wine logo and are tastefully done.

When asked by Mr. Bernstein how many events per year she would need the sandwich boards for, Ms. Maranca responded four (4). When asked how long the signs will be up for, Ms. Maranca opined seven (7) days. When asked if she could notice the Zoning Officer, Ms. Maranca responded in the positive.

Mr. Benson noted that in the past Ms. Maranca erected two (2) sandwich board signs to which Ms. Maranca agreed and explained that she typically requires two (2) signs, one for Lamington Road traffic and one for the Route 523/517 traffic.

Mr. Mackie questioned the need for two (2) signs. Ms. Maranca explained the traffic pattern and the need for two (2) signs. When asked if she knows what color she wants to paint the building, Mr. Maranca responded in the positive but indicated that she did not want to have to appear before the Board every time she wants to change the color of the

building. She noted that she has done a very tasteful job with the building the last 7 or so years.

Mrs. Baird asked Ms. Maranca if she would agree to limit it to historic colors. Ms. Maranca pointed out that the building is not a historic building and not in the historic district. Mr. Van Doren noted that Tewksbury does not regulate color in historic districts.

When asked by Mr. Shapack if the size of the sandwich board sign being requested will conform to the sign regulations, Mr. Benson explained that it would fall under a temporary sign under the sign ordinance and would conform to the size.

When asked by Mr. Metzler if the sign would stay up 24 hours, Ms. Maranca responded in the negative and noted that they would only be up during regular business hours.

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

Mr. D'Armiento had no issue with the sign but expressed concern with modifying the condition regarding the paint color.

Mr. Metzler had no issue with the sign and was generally o.k. with most colors but noted that there are a few colors he would not find acceptable.

Ms. Maranca noted that no one else in the township has a color restriction and feels it is unfair.

Mr. Johnstone had no issue with the sign as proposed however, he would like to continue to have control over the building color. He suggested that Ms. Maranca have the ability to come before the Land Use Board informally or meet with Ms. Goodchild to discuss the proposed paint color.

Mrs. Baird had no issue with the color Ms. Maranca would choose but was concerned with a future owner. She opined that one (1) sign would be sufficient.

Mr. Van Doren opined that Ms. Maranca made good points about color and her business, she should have the judgment as to what is appropriate for the business that's there; Tewksbury does not regulate paint color in the historic districts or any of the business districts. At the end of the day it should rest with the business owner to choose an appropriate color for their business. As for the signs, Mr. Van Doren explained that the sub-committee of the Land Use Board is working on a complete re-write of the sign regulations which will allow these types of signs as permitted signs. Mr. Bernstein noted that the Board could say that Ms. Maranca is entitled to whatever the sign ordinance allows for temporary signs. Ms. Maranca opined that that would be fair.

Mrs. Devlin agreed with Mr. Van Doren that the Board should not impose a color restriction when it's not done anywhere else in the township.

Mr. Mackie was not concerned with the signs but expressed some concern over the color of the building and opined that it would not be that difficult to create a procedure to have a color approved. Mr. Van Doren cautioned putting that responsibility on Ms. Goodchild or any other township employee.

Mr. Johnstone opened the meeting up to the public.

Joe Kosakowski, 38 Long View Road, was sworn in by Mr. Bernstein. Mr. Kosakowski noted that anyone in the Oldwick Historic District can paint their house any color they want. Years ago this building was an eyesore and now it is a beautiful, well maintained building. He noted that Ms. Maranca is a township resident with a nice small business in town and he opined that the community should be doing things to help small business owners survive, especially in this economy. He opined that Ms. Maranca's requests are not outrageous and should be approved.

There being no further comments from the public, Mr. Johnstone closed the public hearing.

It was suggested that Ms. Maranca's requests be voted on separately.

Mr. Moriarty made a motion to approve the sign request with the condition that she conform with the current sign regulations (time and place) with the provision that she be permitted to have two (2) sandwich board signs (2 sided) because of the configuration of the lot. Mrs. Devlin seconded the motion. The motion carried by the following roll call vote:

Roll Call Vote:

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

Nays: None

Mrs. Devlin made a motion to remove the restriction regarding the color of the building. Mr. Van Doren seconded the motion.

Prior to the roll call vote Mr. Shapack asked Ms. Maranca if she would be amenable to having a list of colors (for example 45 colors) that she could choose from. Ms. Maranca explained that she agreed to so many things during the first public hearing and after spending a significant amount of money the Board denied her despite agreeing to all of those things. She asked to be treated like any other resident of any other district in the township. She opined that it is unfair to ask her to come up with 45 colors and give the Board control over her building when that control doesn't exist for any other building.

The motion carried by the following roll call vote:

Roll Call Vote:

Ayes: Mrs. Baird, Mr. Van Doren, Mr. Mackie, Mrs. Devlin, Mr. Moriarty, Mr. Shapack and Mr. Metzler

Nays: Mr. Johnstone and Mr. D'Armiento

ADJOURNMENT

There being no further business, the meeting adjourned at 10:30 p.m. by motion of Mr. Van Doren and seconded by Mrs. Devlin.

Respectfully submitted,

Shana L. Goodchild
Land Use Administrator