

LAND USE BOARD MINUTES
August 3, 2011

The Tewksbury Township Land Use Board met in a regularly scheduled meeting on the above date in the Tewksbury Elementary School, 109 Fairmount Road, Califon, New Jersey. The meeting was called to order at 7:43 p.m.

Present: Blake Johnstone, Mary Elizabeth Baird, Dana Desiderio, Bruce Mackie, Ed Kerwin, Arnold Shapack, Alt. #1 and Tom Dillon, Alt. #3.

Also present: Daniel S. Bernstein, Land Use Board Attorney, William Burr, Land Use Board Engineer, Charles Newcomber, Planner (in for Charles McGroarty) and Shana L. Goodchild, Land Use Administrator.

Absent: Shaun Van Doren, Elizabeth Devlin, Michael Moriarty, Shirley Czajkowski, Eric Metzler, Alt. #2 and Ed D'Armiento, Alt. #4.

There were approximately thirty (30) 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 June 13, 2011.

PLEDGE OF ALLEGIANCE

Those present stood and pledged allegiance to the American flag.

CLAIMS

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

1. Bernstein & Hoffman – Land Use Board Professional Services – Attendance at July 20, 2011 meeting - invoice dated July 21, 2011 (\$450.00)
2. Bernstein & Hoffman – Land Use Board Escrow – Kian (B34, L19.04) - invoice dated July 19, 2011 (\$1,957.50)
3. Maser Consulting – Land Use Board Escrow – Johnson (B23, L23), invoice #166965 (\$325.00)
4. Maser Consulting – Land Use Board Escrow – Johnson (B23, L20), invoice #166980 (\$487.50)
5. Maser Consulting – Land Use Board Escrow – Johnson (B23, L4), invoice #166981 (\$455.00)
6. Maser Consulting – Land Use Board Escrow – Johnson (B23, L36), invoice #166968 (\$487.50)

7. Maser Consulting – Land Use Board Escrow – Johnson (B23, L2), invoice #166969 (\$812.50)
8. Maser Consulting – Land Use Board Escrow – Wood (B10, L5.07), invoice #166970 (\$650.00)
9. Maser Consulting – Land Use Board Escrow – Kian (B34, L19.04), invoice #166975 (\$1,625.00)
10. Maser Consulting – Land Use Board Escrow – Blauvelt (B39, L8), invoice #166973 (\$162.50)
11. Maser Consulting – Land Use Board Escrow – Pierson (B21, L3), invoice #166972 (\$295.00)
12. Maser Consulting – Land Use Board Escrow – Sheft (B33, L7.18), invoice #166974 (\$520.00)
13. Maser Consulting – Land Use Board Escrow – Glasgow (38, L12), invoice #166976 (\$455.00)
14. Maser Consulting – Land Use Board Escrow – Stavola (B44, L24), invoice #166977 (\$520.00)
15. Maser Consulting – Land Use Board Escrow – Regan (B44, L24), invoice #166978 (\$357.50)
16. Maser Consulting – Land Use Board Escrow – Catalano (B6, L25.01), invoice #166971 (\$65.00)
17. Banisch Associates – Land Use Board Escrow – Johnson (B23, L2), invoice #P11-19097 (\$71.00)
18. Banisch Associates – Land Use Board Escrow – Wood (B10, L5.07), invoice #P11-19098 (\$426.00)
19. Banisch Associates – Land Use Board Escrow – Johnson (B23, L23), invoice #P11-19096 (\$568.00)

Roll Call Vote:

Ayes: Mrs. Baird, Ms. Desiderio, Mr. Mackie, Mr. Kerwin, Mr. Shapack, Mr. Dillon and Mr. Johnstone

Nays: None

CORRESPONDENCE

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

1. A letter dated July 18, 2011 from Ronald Kennedy with a copy of a noise report re: the Johnson Helistop, Block 23, Lot 23, Appl. No. 09-05.
2. The New Jersey Planner, July 2011.
3. Seminar information from Rutgers for Land Use for Municipal Planning Boards and Zoning Boards of Adjustment.
4. A letter dated July 29, 2011 from William Burr re: the noise report for the Johnson Helistop, Block 23, Lot 23.
5. A letter dated July 29, 2011 from Miles Winder re: Application No. 09-05, Site Plan/Variance Application, Block 23, Lot 23.

ORDINANCE REPORT

Mr. Mackie reported on an ordinance from Clinton Township regarding the storage of material outside. The Board asked that the ordinance be forwarded to the Environmental Commission for review and comment if necessary.

PUBLIC PARTICIPATION

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

RESOLUTION

- Resolution No. 11-20 - Furlong, Appl. No. 10-14, Block 23, Lots 23 & 23.01, *Eligible to vote: Mrs. Baird, Mr. Mackie, Mrs. Devlin, Mr. Shapack and Mr. Johnstone*

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

LAND USE BOARD
 TOWNSHIP OF TEWKSBURY
 APPLICATION # 10-14
 RESOLUTION # 11-20

WHEREAS, BRENDAN W. FURLONG M.V.B. EQUINE VETERINARIAN, P.A. has applied to the Land Use Board of the Township of Tewksbury for variances under N.J.S.A. 40:55D-70c and d and amended site plan approval for the expansion of its equine veterinarian building and approval of the existing accessory structures on property which is located at 101 Homestead Road and designated as Block 23, Lot 29/29.01 on the Tewksbury Township Tax Map, which premises is located in the FP (Farmland Preservation) Zone, and

WHEREAS, the application was presented by attorney Phillip Rosenbach, Esq. of the firm of Berman Rosenbach, P.C., Dr. Brendan Furlong, Civil Engineer Stephen M. Risse, P.E. of the firm of Bayer-Risse Engineering, Inc. and architect Ralph L. Finelli, R.A. at the July 20, 2011 Land Use Board meeting, and

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

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

A. Background

1. Brendan W. Furlong, M.V.B. Equine Veterinarian, P.A. in 1987 applied to the Tewksbury Township Board of Adjustment (a predecessor to the Land Use Board) in Case No. 17-87 for permission to construct an equine veterinary clinic on a 3.4343 acre part of 58.49 acre Block 23, Lot 29 which was then and is now owned by James L. Johnson and Gretchen Johnson. The 3.4343 acre parcel is sometimes referred to as Block 23, Lot 29.01 and is shown as a separate lot on the Tewksbury Township Tax Map, but was never formally subdivided from Lot 29. The 3.4343 acre parcel shall be referred to in this memorialization resolution as the subject property.

2. A use variance was required under N.J.S.A. 40:55D-70d(1) for a new nonconforming use, as the FP Zone allows as principal uses agricultural, detached single-family dwellings and various institutional facilities, but not veterinary clinics. The DRO in section 710.1A notes: "This district contains large amounts of prime agricultural soils and soils of statewide significance for agriculture. "

3. The application was presented at the October 17, 1987 Board of Adjustment meeting and presented and approved at the February 22, 1988 Board of Adjustment meeting.

4. A memorialization resolution was adopted on March 21, 1988 for a use variance and site plan approval, subject to the following conditions:

“a. The equine veterinary clinic shall be constructed in conformity with the site plan prepared by Apgar Associates dated October 7, 1987, revised February 17, 1988, and subject to the conditions set forth in the letter of the Planning Board dated February 20, 1988, and attached hereto as Schedule B.

b. The applicant shall obtain Hunterdon County Board of Health and Tewksbury Township Board of Health approval of the proposed septic system.

c. The use variance approval relates to only that portion of Block 23, Lot 29 described on the attached schedule A.

d. The term of the lease for the equine veterinary clinic between applicant and James L. Johnson, the owner of Block 23, Lot 29, shall be for a minimum of 25 years.

e. The use variance approval shall end at the termination of said lease, at which time application may be made to the Board of Adjustment for an extension of the use variance.

f. The use variance approval shall terminate if said lease is assigned to another veterinary professional corporation of which neither Brendan M. Furlong, M.V.B. or his wife, Wendy E. Leich, Vet. M.B., is a shareholder or employee, unless application for extension of the use variance is made to and approved by the Board of Adjustment.

g. The site plan shall be reviewed and approved by Robert Lorentz, the Planning Board Engineer, to ensure compliance with the site plan requirements set forth in Schedule B.

h. The applicant shall operate only one equine veterinary clinic in Tewksbury Township.

i. Dr. Furlong or his wife, Wendy E. Leich, Vet. M.B., or any individual licensed to practice veterinary medicine in New Jersey approved by the Board of Adjustment after application thereto, shall be a stockholder of the tenant corporation.”

5 Schedule A described the leased premises as part of Lot 29, Block 23 containing 3.4343 acres.

6. A land lease between James L. Johnson and Gretchen Johnson as the landlord and Brendan W. Furlong, M.V.B. Equine Veterinarian, P.A. dated April 28, 1988 was submitted to the Board as part of the current application package. The lease term is 25 years after the *substantial completion* date for the construction of the clinic, but no later than December 31, 1988, with two 5-year renewal periods. The 3.4343 leased premises are described on Schedule A which is identical to the Schedule A in the memorialization resolution.

B. The Subject Property.

7. The current applicant lists the subject property as “Lot(s) 29 including 29.01.” Lot 29 includes 58.49 acres. The applicant through counsel contends that the application includes the entire 58.49 acres, a contention which this Board rejects. The Board considers the application to constitute the 3.4343 acre portion of Block 23, Lot 29 which is leased to the applicant and which was approved in 1988 for the equine veterinary clinic.

8. The Municipal Land Use Law in N.J.S.A. 40:55D-3 defines an applicant as:

“ ‘Applicant’ means a developer submitting an application for development.”

9. A developer is defined in N.J.S.A. 40:55D as:

“ ‘Developer’ means the legal or beneficial owner or owners of a lot or of any land proposed to be included in a proposed development, including the holder of an option or contract to purchase, or other person having an enforceable proprietary interest in such land.”

10. A tenant has the right to apply for land use approvals on the leased premises. Ric-Cic Co. v. Bassinder, 252 N.J. Super. 334 (App. Div. 1991) and Aronowitz v. Planning Board, 257 N.J. Super. 347, 360-368 (Law Div. 1992). However, a tenant has no right to lands which it does not lease.

C. The Current Equine Operation.

11. Dr. Furlong has been a veterinarian for 34 years. He has practiced in Oldwick for 31 years and at the present location for 23 years. He is the veterinarian for the United States Equestrian Olympic Team.

12. Equine Veterinarian, P.A. has a staff of 6 full-time veterinarians, a few part-time emergency veterinarians, and an office staff of 6. The veterinary clinic is the only one in the area which exclusively serves horses.

13. Dr. Furlong and another veterinarian spend half their time at the clinic and the other half of their time at farms and stables viewing horses. The other four veterinarians spend essentially all their time at farms and stables viewing horses. Treatment and operations take place at the clinic. Dr. Furlong testified that two additional rooms are required in the clinic for the diagnosis and treatment of horses, and the placement of high tech equipment in permanent quarters. At the present time the high tech equipment is moved around as there is insufficient space in the clinic for all the activities to reasonably take place.

D. The Proposal.

14. The applicant proposes to construct a 12'-4" by 48 feet addition within the indentation on the north side of the building. The first floor addition of 592 square feet would consist of two 12 feet by 12 feet diagnostic/treatment rooms which would house cutting edge, human grade equipment. The second story addition of 842 square feet would be an archival room, as equine records need to be kept for seven years.

15. Not previously approved by the Board of Adjustment nor the Building Department, are the isolation barn, rubber mats and manure bin which have been installed on the property without the required approvals.

16. The isolation barn is an Amish barn which was quickly assembled in response to an equine herpes outbreak which required horses to be isolated.

17. Veterinarians conduct a *gate* analysis with horses walking on a consistent surface which, for the applicant, consists of rubber mats.

18. The manure bin is a necessary component of the veterinary practice.

19. The proposed expansion would not result in a greater number of veterinarians or staff, or visitors to the premises, but would improve the veterinarian practice.

E. Required Variances.

20. The expansion of the veterinary clinic and the approval of the accessory structures requires a variance under N.J.S.A. 40:55D-70d(2) for the expansion of a prior nonconforming use.

21. The accessory structures also require bulk variances under N.J.S.A. 40:55D-70c as they do not meet the required 50 foot side yard in the FP Zone.

22. The isolation barn encroaches 2.57 feet into Block 23, Lot 30 to the north which is owned by JLJ Partnership, LP. In a letter to the Board dated January 27, 2011, James L. Johnson noted that he had no objection to encroachment. Likewise, the rubber mats along the northern side of the property are within 5.74 feet of the property line and the manure bin is within 29.02 feet of the side yard.

23. Engineer Risse testified that there was no parking standard for veterinary clinics in the DRO. He used the office standard of 4-1/2 parking spaces per 1,000 square feet which would require an additional 3 parking stalls as a result of the proposed building addition. A total of twelve (12) parking spaces were required at the time of the original 1988 site plan approval, in addition to the three (3) new spaces being

required, resulting in a total parking requirement of fifteen (15) spaces. By changing the twelve (12) existing parking stalls from 10 feet by 20 feet to 9 feet by 18 feet, he was able to place a total of fifteen (15) parking stalls on the site. Land Use Board Engineer Burr did not have a problem with this analysis. Dr. Furlong testified that fifteen (15) parking stalls were adequate for the clinic, as visitors typically drop off their horses and leave.

24. The FP Zone limits impervious lot coverage to 5%. The applicant's engineer computed total impervious lot coverage on the basis of the entire 58.49 acre Lot 29 with the improvements associated with the equine veterinary clinic and the single family residence on the balance of the parcel. Under this analysis the total impervious lot coverage with the approval of the present application would be 1.58%. As previously noted, the Board rejects this analysis and finds that the total impervious lot coverage must be based on the subject property devoted to the veterinary use and leased to the applicant of 3.4343 acres. This necessitates an impervious lot coverage variance, as the applicant's propose to increase this figure from about 20% to 25.3%, while the zoning ordinance limits this figure to 5%.

F. Justification for Variances.

25. The principal relief which this Board must consider is the variance for the expansion of a nonconforming use under N.J.S.A. 40:55D-70d(2), albeit one which was created by a variance. Unlike a variance for a new nonconforming use, an applicant for the expansion of an existing nonconforming use need not prove the particular suitability of the site for the proposed use. Kohl v. Mayor of Fair Lawn, 50 N.J. 268 (1967); Medici v. BPR Co., 107 N.J. 1 (1987); Burbridge v. Mine Hill Tp., 117 N.J. 376, 393 (1990).

26. An applicant for a variance under N.J.S.A. 40:55D-70d must prove special reasons. Special reasons are usually proven by the advancement of the purposes of the Municipal Land Use Law (MLUL) under N.J.S.A. 40:55D-2. . Kohl v. Mayor of Fair Lawn, 50 N.J. 268 (1967); Medici v. BPR Co., 107 N.J. 1 (1987); Burbridge v. Mine Hill Tp., 117 N.J. 376, 393 (1990).

27. The present application promotes the following purposes of the Municipal Land Use Law:

“2a. 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:” *The raising, riding, and showing of horses is a healthy activity which is enjoyed by many residents of Tewksbury Township and the neighboring communities. The Tewksbury Township Master Plan encourages farming and equestrian use. This Board is aware of the numerous stables and equestrian riding rinks in the Township, many of which have been approved by the Land Use Board. There are numerous equestrian trails in the Township maintained by the Tewksbury Trail Association. Located in the Township is the Handicapped Riders Association which serves the handicapped population. Dr. Furlong provides service to this worthy group. The number of horse owners and riders require an equine veterinary practice. Each of the requested items of relief will promote the general welfare by advancing the health of horses. The expansion of the clinic will provide needed diagnostic and treatment rooms and sufficient area for record keeping. The isolation barn will keep sick animals away from healthy ones. The rubber mats have enabled the veterinarians to assess horses.*

The manure bin is a necessary adjunct to the equestrian facility. The needed expansion cannot take place without slightly increased impervious coverage.

e. To promote the establishment of appropriate population densities and concentrations that will contribute to the well-being of persons, neighborhoods, communities and regions and preservation of the environment;” *by providing a first rate equine veterinarian clinic in an area with a large horse population and an absence of other veterinarians specializing in horse care.*

“g. To provide sufficient space in appropriate locations for a variety of agricultural, recreation, commercial . . . 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;” *by permitting the expansion of an existing equine veterinary clinic to better serve the horse population in the area.*

28. The side yard variances are justified under N.J.S.A. 40:55D-70c(1). The isolation barn is about 80 feet from the clinic, thus being far enough to protect the horses in the clinic and close enough for convenient access by the veterinarians. The rubber matting is near the area where horses are dropped off and on generally level ground. The manure bin is located a reasonable distance from the clinic. These facilities could not be located along the southern border which is constrained with wetlands and a conservation easement or in the front of the property which is constrained with a wetlands buffer area. These necessary facilities could not be constructed without slightly increased lot coverage, which has necessitated the slightly increased impervious lot coverage variance.

29. Restrictions on impervious coverage are based on aesthetics and water runoff. The aesthetics will be minimally affected by the requested relief. Land Use Board Engineer Burr noted that water from the site sheet flows to the existing stormwater management basin which then drains to the existing wetlands without any apparent erosion or other negative impacts. He did not anticipate a substantial change in the impact from the slightly increased water runoff. The impervious lot coverage variance is justified under N.J.S.A. 40:55D-70c(2) by advancing the same purposes of the MLUL as those justifying the *d* variance which are enumerated in factual finding 27 herein. The benefits from the deviations outweigh any detriments.

30. The Board notes that there is heavy foliage between the subject property and adjoining property to the north and a stone row on Lot 30 to the north which is owned by JIJ Partnership, LP.

31. The Board notes that no member of the public appeared in opposition to the application.

32. The Board further notes that no member of the public has objected to the accessory structures which have existed on the site, albeit unapproved, for some time.

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

NOW, THEREFORE be it resolved by the Land Use Board of the Township of Tewksbury on this 3rd day of August 2011 that the application of BRENDAN W. FURLONG M.V.B. EQUINE VETERINARIAN, P.A. be approved in

accordance with engineering plan titled: “ Variance Plan & Amended Minor Site Plan, B.W. Furlong & Associates, Tax Map Sheet 10, Block 23, Lot 29 & 29.01, 101 Homestead Road TEWKSBURY TWP., HUNTERDON COUNTY, N.J.” prepared by Bayer-Risse Engineering, Inc. on October 5, 2010 and last revised on January 12, 2011, consisting of one sheet, and an architectural plan titled: “PROPOSED IMPROVEMENTS B W FURLONG & ASSOC BLK 23, LOTS 29.01 TEWKSBURY TWP, NJ” prepared by Ralph L. Finelli, Architect on June 8, 2009 consisting of Sheet A1 subject, however, to the following conditions:

1. The within variance is limited to the area depicted on Schedule A.
2. Conditions recommended by Land Use Board Engineer William H. Burr,

IV, in his report of July 15, 2011 as modified by the Planning Board:

TECHNICAL REVIEW:

1. The applicant and its professionals should provide testimony in support of the proposed use variance and bulk variances. *The testimony on the variances was provided by the applicant’s witnesses. See factual findings 25 – 33 herein.*
2. The applicant should provide testimony to describe the various non-conforming structures/facilities on the property that are the subject of the bulk variance applications. Can these facilities be located elsewhere on the property to conforming locations? *The testimony on the nonconforming accessory structures was provided by the applicant’s witnesses. See factual findings 22, 28, 29 – 33 herein.*
3. The applicant should provide testimony to describe the proposed building addition including:
 - a. The proposed use of the new space? *Two 12’ x 12’ diagnostic/treatment rooms and space for veterinary equipment on the first floor and storage of files on the second floor.*
 - b. The exterior style, materials, color, etc.? *Block siding and asphalt shingles to match the existing structure.*
 - c. Whether a second floor addition is proposed as well? *The second story will be used for the storage of medical records.*

- d. Any new utility services required? *There will be no new utility service. However, the electric service will be upgraded.*
4. The applicant shall advise the Board if there are any changes proposed to the use of the property, the hours of operation, the number of employees, and the frequency and type of visitors or deliveries to the clinic. *The veterinary practice will remain the same, with the same number of employees and visitors, but with additional space to provide better service and room for medical records.*
5. I note that the proposed building addition is proposed to be situated on an existing paved area. Therefore, there is no increase to the impervious lot coverage and no changes to the existing stormwater management facilities.
6. DRO Section 721 contains the Township requirements for off-street parking. Since the DRO does not contain parking requirements specifically for equine veterinary clinics, the applicant must provide testimony to support the proposed parking associated with this application.

I note that the applicant's engineer has utilized the parking standard for "offices under 49,999 S.F." which has a parking requirement of "4.5 parking spaces per 1,000 S.F.". In accordance with the 1988 approval, the site was previously developed with twelve (12) parking spaces. The applicant is now proposing three (3) additional parking spaces, per the above requirement based on the 592 S.F. addition, for a total of fifteen (15) spaces. The Board should review the parking situation with the applicant to determine if this will provide a sufficient number of parking spaces. *Dr. Furlong testified the 15 parking spaces will be sufficient. Engineer Risse testified that vehicles with trailers will be able to maneuver through the parking lot in light of revised parking space layout. .*

7. The applicant will be required to make the entrance to the business handicap accessible. It appears that a handicap parking sign and striping are proposed to delineate the accessible space; however, building modifications also appear necessary. *Architect Finelli testified that the building will be handicapped accessible through proposed doors at the building addition.*
8. As previously mentioned, the Township Board of Adjustment approved a site plan and use variance in 1988 to allow construction of the existing equine veterinary clinic. Upon review of the recently submitted plans versus those that were approved previously by the Board of Adjustment in 1988, I have the following comments which should be addressed by either testimony or plan revisions:
 - a. The 1988 site plan includes a loading zone/space in the area where the proposed building addition is being located. The applicant should address where the new loading zone will be located on the site? *The loading area will be the same general area as presently exists.*

- b. The 1988 site plan reflects twelve (12) – 10 ft. x 20 ft. parking spaces; however, the current plans calls for 9 ft. x 18 ft. spaces. I have no objections to this modification, provided the new parking spaces are properly striped in the field. *The new parking stalls will be striped.*
 - c. The existing site circulation appears to differ from that of the 1988 site plan approval (i.e. the one-way traffic flow around the building is reversed). The applicant and applicant’s engineer should provide comment on the current circulation plan and whether any additional traffic striping or signage is being proposed to further clarify this. *Dr. Furlong testified that the traffic circulation plan had been modified in a clockwise direction which both the applicant’s engineer and the Board engineer said provided better circulation due to the location of the entrance driveway to the site.*
9. The site plan should be revised to clarify the existing and proposed site signage and striping. *The plans will be revised accordingly.*
10. There is a note on the site plan that states the site is fully landscaped and no change to the existing landscaping plan is proposed with the addition. The applicant should advise the Board on the adequacy of the existing landscape buffers and whether the proposed building addition will have any impact on the surrounding properties. *There was testimony that there is a vegetative buffer between the subject property and the property to the north.*
11. There is a note on the site plan that states no change in site lighting is proposed with the building addition. A review of the proposed building addition reflects two (2) new exterior stall doors being proposed. Are any additional building mounted lights being proposed with this application? The applicant should confirm that the existing and proposed site lighting will conform with the requirements of DRO Section 632 (Lighting Ordinance). *The additional lights will be within the soffits and directed downward, without any glare or sky glow on adjoining properties. The lighting will comply with Section 632 of the DRO.*
12. The plans should be forwarded to the Township Fire Department for review and approval of the site circulation and building accessibility for firefighting purposes. *The applicant agreed to this condition.*
13. A construction detail of the gravel parking space should be provided on the plan. *The applicant agreed to this condition.*
14. The applicant should confirm if the proposed addition will result in the increase in the volume of sanitary sewage flowing to the existing septic system. If so, approval will be needed from the Hunterdon County Health Department/Township Board of Health. *There will be no additional bathrooms*

within the addition. There will be no increase in sanitary sewage flowing into the septic system.

15. In addition, the applicant should describe the purpose of the existing rubber matting along the northern portion of the property and whether its placement over the existing septic disposal field has any impact on its function or life-span? *The applicant's engineer Risse testified that the matting would not interfere with the septic system.*

The plans should contain a note referencing the NJDEP Flood Hazard Area Applicability Determination that was previously received. *The applicable note is on the plans.*

16. Copies of the following outside agency/department review and approval must be obtained:
 - a. Hunterdon County Soil Conservation District;
 - b. Hunterdon County Planning Board;
 - c. Hunterdon County Health Department/Township Board of Health.
 - d. Any other agencies with jurisdiction.

3. The plans shall be revised to the approval of the Land Use Board Engineer within 90 days of the adoption of the within resolution.

4. The approval must be utilized within one year from the date of this memorialization resolution or the variance shall be void and have no further effect.

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

6. This resolution and the issuance of a building permit hereunder is conditioned upon the applicant paying all escrow fees and real estate taxes.

7. Variances cannot be personal to applicants but run with the land. Therefore, conditions d, e, f, h, and i in the March 21, 1988 resolution are deleted and are no longer conditions.

8. The applicant and any successor veterinarians shall not increase impervious lot coverage or install new structures or increase existing ones without applying to the Zoning Officer, Construction Official and the Land Use Board. Installation of new structures without prior approval is **NOT** to be repeated.

9. The applicant will obtain any necessary NJDEP approval to allow certain improvements (i.e. sheds, fence, rubber matting, etc.) on the property to remain in their existing locations within the wetland buffer area.

10. The applicant must obtain the necessary approvals from the Zoning Officer and Construction Official for the existing isolation barn.

Roll Call Vote

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

Those Opposed: None

- Resolution No. 11-21 - Glasgow, Appl. No. 11-09, Block 38, Lot 12
Eligible to vote: Mrs. Baird, Mr. Mackie, Mrs. Devlin, Mrs. Czajkowski, Mr. Shapack, Mr. Dillon and Mr. Johnstone

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

LAND USE BOARD
TOWNSHIP OF TEWKSBURY
APPLICATION # 11-09
RESOLUTION # 11-21

WHEREAS, SAMUEL and JUDITH GLASGOW have applied to the Land Use Board of the Township of Tewksbury for permission to expand their home and

to add a detached garage to their property which is located at 14 King Street, Oldwick on property designated as Block 38, Lot 12 on the Tewksbury Tax Map, which premises is located in the PM (Piedmont) Zone, and

WHEREAS, the application was presented at the July 20, 2011 Land Use Board meeting by Samuel and Judith Glasgow, architect Keith Hone, R.A. and Civil Engineer James O. Madsen, P.E. of the firm of Apgar Associates, and

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

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

A. The Subject Property.

1. The subject property is a 0.8957 acre irregularly shaped parcel with 254.89 feet of frontage on King Street, a rear property width of 95.80 feet, with the eastern sideline consisting of two courses.

2. Located on the site is a dilapidated older home. Ms. Glasgow testified that she and her husband like to rehabilitate and live in older homes. She noted that the real estate listing stated the home was circa 1800. Her research indicated that the original portion of the home in front, with the attractive stone exterior, was built between 1725 – 1825. The rear portion of the home was constructed in the 1950's. The original home, pre-dating Tewksbury Township's Zoning Ordinance by decades and possibly centuries, was not constrained by zoning regulations. The concrete front porch is approximately 7 feet from King Street and the home is 15.15 feet from King Street.

3. Access to the lot is provided by a paved driveway mainly on adjoining lot 11.01 to the east and north, and partially on the subject parcel, which leads to a barn/apartment in back of the subject property on Lot 11.01. There is no garage on the subject property, but cars are parked on a gravel driveway off of the paved driveway. While the applicants and their predecessors have used the paved driveway to gain entrance to the site, there is no recorded easement or right-of-way giving them permission to traverse the driveway.

4. The home is located in the Oldwick Historic District.

B. The Proposal.

5. Architect Keith Hone discussed the proposed alterations to the home. The portion of the home fronting on King Street containing approximately 1200 square feet will be renovated. The rear portion of the 1950's addition containing about 750 square feet will be demolished and reconstructed. A two-story addition containing 1,930 square feet and a 290 square foot porch will be added to the rear of the home. The renovations have a been approved by the Tewksbury Township Historic Preservation Commission.

6. The home, after the reconstruction and new construction will have a total habitable space of about 3,100 square feet.

7. The applicants also propose to construct a 24 feet by 24 feet detached garage with a height of 18' - 6" to the peak of the roof. The garage was described by Architect Hone as a post and beam, saltbox style, two story structure with a board and batten exterior. The garage would have a complimentary architectural style to the home.

8. The garage would have access through the driveway to the east of the parcel. The Board was concerned with access, as there are no recorded documents allowing the owners of the subject property to use the driveway, and therefore required a letter from the owner of adjoining Lot 11.01 allowing the applicants use of the driveway.

C. Required Variances.

9. The subject property is undersized, containing 0.8957 acres while the minimum lot size in the PM Zone is 5 acres.

10. The subject property is grandfathered under Section 706F. 1 of the Tewksbury Township Development Regulations Ordinance (DRO). The *bulk* regulations for grandfathered lots less than 3 acres under Section 706F1(d) are a front setback of 75 feet, a side yard setback of 40 feet, a rear yard setback of 40 feet and maximum impervious lot coverage of 12%.

11. The renovations to the existing home, the reconstructed portion of the home, and the addition will all impinge on the required 75 foot front setback.

12. The proposed garage has a side yard setback of 18.98 feet while the zoning ordinance requires 40 feet.

13. The impervious lot coverage after the proposed construction will remain conforming, being increased from 8.46% to 11.94%, while the zoning ordinance limits impervious lot coverage to 12%.

D. Justification for variances.

14. The front setback variance for the home is a classical example of relief under N.J.S.A. 40:55D-70c(1)(c) on the basis of the location of the existing lawful structure on the property. The beautiful stone exterior of the home will remain, with the

1950's addition being removed and replaced, and will include a new rear porch. The new construction will be done in a historic motif.

15. The applicants are to be commended for preserving the historically significant portion of the home rather than demolishing the residence and constructing a new one with a conforming front setback.

16. The requested front yard variance is also justified under N.J.S.A. 40:55D-70c(2) by advancing the following purposes of the Municipal Land Use Law under N.J.S.A. 40:55D-2:

“2i. To promote a desirable visual environment through creative development techniques and good civic design and arrangement;” *By the renovations, reconstruction and addition to an attractive historic home which will be consistent with the development in Oldwick.*

“2j. To promote the conservation of historic sites and districts, open space, energy resources and valuable natural resources in the State and to prevent urban sprawl and degradation of the environment through improper use of the land;” *By the preservation of a dilapidated but significant historic structure.*

17. The side yard variance for the detached garage is justified under N.J.S.A. 40:55D-2 by advancing the following purposes of the Municipal Land Use Law:

“b. To secure safety from . . . flood . . .” *By limiting the amount of new impervious coverage by constructing the detached garage principally on the driveway area.*

“c. To provide adequate light, air and open space;” *By providing a large usable rear yard.*

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

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

NOW, THEREFORE be it resolved by the Land Use Board of the Township of Tewksbury on this 3rd day of August 2011 that the application of SAMUEL and JUDITH GLASGOW be approved in accordance with an engineering plan titled: “VARIANCE PLAN PROPOSED HOUSE ADDITION AND GARAGE, LOT 12 BLOCK 38, KING STREET TEWKSBURY TOWNSHIP HUNTERDON COUNTY NEW JERSEY” prepared by Apgar Associates on April 11, 2011 and last revised June 24, 2011, consisting of 3 sheets and architectural plans titled: “Glasgow Residence King Street Oldwick New Jersey” prepared by Hone+Associates on May 30, 2011 consisting of sheets A-0.10, A-1.00, A-2.00 and A-2.10 subject, however, to the following conditions:

1. Conditions recommended by Land Use Board Engineer William H. Burr, IV in his report of July 15, 2011 as modified by the Land Use Board:

“TECHNICAL REVIEW:

1. The applicant should describe the proposed house addition and detached garage including related improvements including the proposed use of the space, exterior style, materials, color, etc. *The reconstructions and additions will be consistent with the original part of the home.*
2. The applicant and its professionals should provide testimony to support the proposed front and side yard variances, including the location of residential dwellings and structures on adjoining properties and surrounding vegetation. *The requested variances are supported in factual findings 14 – 19 herein.*
3. This property appears to be located within the Oldwick Historic District. The applicant should provide an update as to whether an application has been submitted with the Township Historic Preservation Commission. *The application has been reviewed and approved by the Tewksbury Township Historic*

Preservation Commission – the approval has not been memorialized in a resolution.

4. As described above, the proposed lot coverage equates to 4,658.82 S.F. or 11.94%. Section 706F1 of the DRO permits a lot coverage of 12% (4,681.76 S.F.) which would only allow for approximately 23 S.F. of lot coverage available for future improvements to the property.
5. Since the proposed gravel driveway access to the detached garage is proposed to be located from an existing paved driveway which is located on the adjacent property (Lot 11.01), the applicant should provide proof that it has permission to use this adjacent paved driveway for access purposes. A copy of any access easement or agreement must be provided to the Board or in the alternative, a letter from the adjacent property owner granting permission for the applicants to utilize the paved driveway as access from King Street to the subject property. *The applicant must provide the Land Use Administrator with a letter from the adjoining property owner signifying that the applicants may use the driveway to access their property.*
6. The applicant and its professionals should provide testimony as to whether alternative locations were explored for the proposed garage and access driveway to obviate the need for a side yard variance and permission from the adjacent property owner for use of the paved driveway.

In the event that the Board is satisfied with the general location of the garage and gravel driveway, I would recommend that an attempt be made to move the garage to the west (if possible) to allow enough space for a future driveway connection and garage access from King Street (should future rights to the adjacent paved driveway terminate). *The Board accepted the location of the driveway providing the applicants can produce the letter required in 5 herein. The barn/apartment on Lot 11.01 is approximately 130 feet from the proposed detached garage.*

7. The plans do not propose any stormwater management facilities to capture and infiltrate runoff from the proposed house addition and detached garage. Even though a lot coverage variance is not appear necessary nor is Grading & Surface Water Management Plan (G&SWMP) per Comment No. 14 below, I would still recommend the Board require the applicant to address stormwater management as part of this application. *Based on the fact that the property already contains existing drainage features (i.e. swales, ditches, etc.) along with the grades that slope away from the dwelling, the Board agreed that formal stormwater management facilities were not necessary on this project.*
8. Pursuant to the Environmental Commission memo of July 14, 2011, agreed to by the applicants, the 300 foot riparian zone buffer on the subject property is to be restored pursuant to best management practices, which includes planting native trees and shrubs, ground covers, and other herbaceous material to buffer the

stream from human impact. Lawns should stop well short of the stream, and fertilizers should not be used.

9. The proposed architectural plans call for exterior lights including several building mounted wall sconces, as well as, pendant lights. If so, the applicant should confirm that there will not be any undesirable effects to the surrounding properties and that the plan will comply with DRO Section 632 (Lighting Ordinance). *The exterior lights shall be limited to 100 watts or less. The lights shall conform with Section 632 of the DRO.*
10. A construction detail should be added to the plans for the proposed gravel driveway area. *The applicants agreed to this provision.*
11. The plans should be revised to indicate silt fence around all areas of disturbance, as well as, the stone construction access and temporary soil stockpile areas. *The applicants agreed to this provision.*
12. Township approval will be needed since the property is connected to the Oldwick Sewer System and an expansion to the existing dwelling is being proposed. *The applicants agreed to this condition. The application needs to be approved by the Township Sewer Committee.*
13. The applicant has provided a March 7, 2011 letter from John Peel, P.P. of PK Environmental indicating that there is a NJDEP regulated Flood Hazard Area (FHA) riparian zone (buffer) on the property. Upon review, it appears that an NJDEP Flood Hazard Area "Permit by Rule" would apply to this proposed project since the property in question has been previously disturbed. The applicant's engineer should provide the Board with an update on this approval process and the plans should be revised to annotate the proposed riparian buffer and required NJDEP approvals. *The applicants agreed to this condition.*
14. Per Chapter 13.12 of the Township Code of Ordinances, a Grading and Surface Water Management Plan (GSWMP) does not appear to be required for this application because the proposed improvements do not meet the threshold requirements for a GSWMP pursuant to Chapter 13.12.
 2. The plans shall be revised to the approval of the Land Use Board Engineer within 90 days of the adoption of the within resolution.
 3. The approval must be utilized within one year from the date of this memorialization resolution or the variance 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 building permit hereunder is conditioned upon the applicant paying all escrow fees and real estate taxes.

6. The applicants shall remove the existing shed and cart away the material.

7. Leaders and gutters draining the roof areas of the dwelling and garage must be shown on the plan.

8. Pursuant to the Environmental Commission recommendation (memo dated July 14, 2011), the applicants agreed to apply Best Management Practices toward the rebuffering of the NJDEP Riparian Zone located to the rear of the property.

9. There will be no water lines or plumbing in the garage.

Roll Call Vote

Those in Favor: Mrs. Baird, Mr. Mackie, Mr. Shapack, Mr. Dillon and Mr. Johnstone

Those Opposed: None

Public Hearing

- Johnson
Application No. 09-05
Block 23, Lot 23 – Preliminary and Final Site Plan and Use Variance
Action Deadline – August 17, 2011

Ms. Desiderio and Mr. Dillon recused themselves from the meeting at 7:52 p.m. due to a conflict with the Johnson application.

See transcript for proceedings.

The next hearing was scheduled for September 21, 2011, 7:30 p.m. at the Tewksbury Elementary School. The applicant extended the action deadline to October 5, 2011.

ADJOURNMENT

There being no further business, the meeting adjourned at 10:15 p.m. by motion of Mrs. Baird and seconded by Mr. Shapack.

Respectfully submitted,

Shana L. Goodchild
Land Use Administrator