

LAND USE BOARD MINUTES
September 19, 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 7:32 p.m.

Present: Blake Johnstone, Mary Elizabeth Baird, Dana Desiderio, Bruce Mackie, Shirley Czajkowski, Ed Kerwin arrived at 7:33 p.m., Michael Moriarty and Arnold Shapack, Alt. #1.

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

Absent: Shaun Van Doren, Elizabeth Devlin, Eric Metzler, Alt. #2, Ed D'Armiento, Alt. #3 and Fred Root, Alt. #4.

There were approximately five (5) 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. 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 Sept. 5, 2012 meeting - invoice dated September 6, 2012 (\$450.00)
2. Bernstein & Hoffman – Land Use Board Escrow – Frances Schmitt (B11, L6), invoice dated August 29, 2012 (\$225.00)
3. Bernstein & Hoffman – Land Use Board Escrow – Snyder (B11, L9.16), invoice dated September 11, 2012 (\$255.00)

Roll Call Vote:

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

Nays: None

CORRESPONDENCE

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

1. A Memo dated September 11, 2012 from Roberta Brassard re: Thompson, Appl. No. 12-01, Block 14, Lot 13, Use Variance.
2. Memorandum dated September 12, 2012 from Chief Holmes re: Thompson, Appl. No. 12-01, Block 14, Lot 13, Use Variance.
3. Press Release from the Hunterdon County Planning Board dated September 11, 2012 re: Hunterdon County Planning Board Coffee with the County – Shared Services Initiatives.
4. Information from ANJEC re: The Clean Water Act at 40...scheduled for October 20, 2012.
5. A copy of a letter dated September 7, 2012 from Ronald Harbist, Aeronautical Operations Specialist, NJDOT re: Johnson Helistop, Block 23, Lot 23.
6. A letter dated August 29, 2012 from the Hunterdon County Planning Board re: proposed amendment to the Hunterdon County Water Quality Management Hunterdon County Future Wastewater Service Area Map.
7. An e-mail dated Sept. 12, 2012 from the Tewksbury Environmental Commission re: Thompson, Appl. No. 12-01, Block 14, Lot 13.
8. A letter dated September 13, 2012 from William Burr re: Thompson, Appl. No. 12-01, Block 14, Lot 13.

ORDINANCE REPORT

Mr. Mackie reported on an ordinance from Clinton Township; they have re-written their development fee ordinance related to COAH. The ordinance was passed on to the Land Use Administrator for her review.

PUBLIC PARTICIPATION

Mr. Johnstone asked the public if there were any questions or comments regarding anything not on the agenda.

Nancy Held, 3 Woodedge Road, reported that the Johnson family had filed an application with the NJDOT for a helistop on Block 23, Lot 23. Ms. Held asked that the Land Use Board respond or comment during the public comment period stating their objection to the application and requesting that the NJDOT uphold the resolution that was approved by the Land Use Board. Ms. Held noted particular concern with a recent statement made by Jack McNamara who said that if the Johnson's appealed they would not adhere to any of the conditions that they originally agreed to (flight path, etc.).

Larry Ross, 16 Homestead Road, echoed Ms. Held's comments and asked the Land Use Board to defend its denial of the Johnson application. Mr. Ross pledged a four (4) figure number towards the cost of legal defense if necessary. Mr. Johnstone thanked Mr. Ross and agreed to pass that information on to the Township Committee.

Mr. Bernstein noted that it may be discussed in executive session as it is considered litigation.

Hillary Prouty, 11 Church Street, concurred with Ms. Held and Mr. Ross and encouraged the Land Use Board to stand by the decision it made after almost two (2) years worth of hearings.

Nancy Held, 3 Woodedge Road, noted that she has already done some research hoping that the Township would set aside funds to fight the appeal. She explained that she spoke to approximately 20 attorneys that have done aviation work in New Jersey and narrowed it down to one (1) attorney, James Rattigan; she agreed to provide Mr. Bernstein with his contact information.

There being no additional questions or comments, Mr. Johnstone closed the public portion of the meeting.

Resolutions

- **Resolution No. 12-17** - Snyder, Appl. No. 12-08, Block 11, Lot 9.16

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

LAND USE BOARD
TOWNSHIP OF TEWKSBURY
APPLICATION # 12-08
RESOLUTION # 12-17

WHEREAS, ARTHUR and JACQUELYN SNYDER have applied to the Land Use Board of the Township of Tewksbury for permission to construct an in-ground swimming pool, pool patio, pool shed, cabana, a wooden deck with a hot tub, walkways, a front patio landing, a detached garage, and driveway extension, and for the approval of an existing shed on property which is located at 7 Glennon Farm Lane and designated as Block 11, Lot 9.16 on the Tewksbury Township Tax Map, which premises is located in Highlands (HL) Zone, and

WHEREAS, the application was presented by Attorney Michael E. Rothpletz, Jr., Esq. of the firm of Drinker Biddle & Reath, LLP; Civil Engineer David E.

Fantina, P.E.; Architect Ezio Columbro, R.A. of the firm of Columbro Architecture; Arthur Snyder and Jacquelyn Snyder at the July 18, 2012 Land Use Board meeting, and

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

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

A. Background

1. Sandstone Construction, Inc. applied to the Tewksbury Township Planning Board for preliminary major subdivision approval for fifteen residential lots in a development known as Glennon Farm. Public hearings were held on February 4, 1987, February 18, 1987, March 4, 1987, and March 18, 1987. The application was approved and a memorialization resolution was adopted on April 1, 1987.

2. The memorialization resolution in finding E noted: “The location of the proposed residential structures will be substantially set back from the proposed road.”

3. Condition B in the memorialization resolution provided: “The Declaration of Covenants and Restrictions annexed as Exhibit 1 shall be filed with the Hunterdon County Clerk and each initial Deed of Conveyance of the lots in the Property shall contain a reference to said covenants and restrictions.”

4. The DECLARATION OF RESTRICTIVE COVENANTS TO RUN WITH TITLE TO THE LAND which is attached to the preliminary major subdivision resolution and incorporated in a deed dated September 16, 1987 from

Sandstone Construction, Inc. to Sandstone Construction Inc. and filed in the Hunterdon County Clerk's office on January 6, 1988 in Deed Book 1001 at page 99 et. seq. (the "Deed Restriction") provides in paragraphs 2, 4, 11, 12 and 14 which are relevant to the present application:

"2. Prior to the commencement of construction or alteration of any dwelling, the construction plans and specifications governing the construction or alteration thereof . . . shall first be submitted to Sandstone Construction, Inc. to be reviewed by Sandstone Construction, Inc. for quality of workmanship and materials, harmony of architectural design with respect to other dwellings and structures within the subdivision, which includes Lots 9.02 through 9.16 in Block 11 (hereinafter "Subdivision") and location of the proposed dwelling or alteration with respect to topographical and finished grade elevations so that the design, construction, and location of any dwelling to be constructed or altered will provide a desirable and harmonious visual environment and will not be incongruous with, nor adversely affect the value of the other properties or dwellings located with the Subdivision. Sandstone's approval or disapproval of the proposed construction or alteration shall be rendered in writing within thirty (30) days after submission of the construction plans and specifications and shall not be unreasonably withheld. Sandstone's failure to approve or disapprove the proposed construction or alteration within thirty (30) days after submission of plans and specifications shall be deemed an approval of said plans.

* * *

"4. No structures of any kind may be erected in the area between the front of any dwelling and Glennon Valley [sic] Lane without the prior written approval of Sandstone Construction, Inc.

* * *

11. The restrictions and covenants contained herein may only be amended upon the written consent of the Township of Tewksbury Planning Board or any successor agency.

* * *

12. These restrictions and covenants shall inure to the benefit of the Township of Tewksbury and the owner of any Lot in the Subdivision, their successors, assigns, heirs and personal representatives in perpetuity.

14. . . . Notwithstanding the foregoing, in the event a Lot owner fails to discharge its obligations and responsibilities as required by these covenants and restrictions, the Township of Tewksbury Planning Board or any administrative agency having jurisdiction, at its option, shall have the right to institute appropriate legal proceedings to enforce these covenants and restrictions.”

5. Final major subdivision approval was granted on September 16, 1987 and a memorialization resolution was adopted on October 7, 1987.

6. The applicants submitted to the Land Use Board as part of the application packet a copy of a certificate dated March 2, 1999 issued by the State of New Jersey, Department of Treasury, stating that Sandstone Construction, Inc. on February 24, 1999 filed and recorded a Certificate Relative-Dissolution thereby terminating the corporation’s existence.

B. The Subject Property.

7. The subject property contains 8.111 acres.

8. The site is *L* shaped. It has what attorney Rothpletz characterized as a *panhandle* which is located at the intersection of Glennon Farm Lane and Longview Road. The *panhandle* has a maximum width of approximately 100 feet at Longview Road which narrows to the west along a curve in Glennon Farm Lane. The *panhandle* is roughly 800 feet long.

9. The balance of the property has frontage of about 410 feet on Glennon Farm Lane which narrows to a rear property line of 200 feet. The site has an eastern sideline of 1130.02 feet and a western sideline of 939.29 feet.

10. The front and east side of the property is wooded and contains wetlands. PK Environmental studied the site and concluded there were no State Open

Waters on the property and that the NJDEP regulated wetlands are not located within 150 feet of the proposed improvements.

11. The site is improved with an attractive single family residence which is setback 416.72 feet from Glennon Farm Lane. The home has 5,085 square feet on the first floor and 4,285 square feet on the second floor. Attached to the home is a three car garage.

12. An approximately 370 feet long, 10 – 11 feet wide, macadam driveway leads to a circular turnaround in front of the home and extends to the attached three car garage on the side of the home. The overall length of the driveway is approximately 570 feet long.

13. Also located on the site are slate and brick walkways, slate patios, a shed, and various stone retaining walls.

C. The Proposal.

14. The applicants propose to construct a twenty by forty feet in-ground swimming pool with a 8 feet by 16 feet entrance, pool patio, a 90 square feet pool shed, a wood deck on the eastern side of the home with a built-in hot tub, a 346 square feet pool cabana (with an additional 62 square feet under the cabana roof), a 900 square feet detached one car garage and workshop building adjoining the turnaround in front of the home, a fence surrounding the pool, a front patio landing, and various walkways.

15. The proposed structures were described by architect Ezio Columbro. The pool cabana would be built into the hillside on the east side of the pool patio, 18.6 feet from the property line. The front of the cabana would be 17 feet 9 inches

tall and the rear, which will be built into the hillside, would be about 13 feet tall. The front elevation would consist of various types of fieldstone, a covered entrance way with vertical barn siding, and a hand split cedar roof. The rear elevation would be similar to the front elevation with a dormer and two windows. The side elevations would include fieldstone with a standing seam roof and clapboard siding.

16. The cabana would be an irregularly shaped building a maximum of 26 feet wide and a maximum of 17 feet, 4 inches deep. It would consist of a dressing room, entryway, full bathroom, serving bar, and covered eating area.

17. The pool shed would also be constructed into the hillside. It would be 11 feet 10 inches tall in front and about 7 - 8 feet tall at the rear. Its exterior elevations would consist of fieldstone and a hand split cedar roof.

18. The garage would have a similar exterior elevation to the cabana. It would consist of various types of fieldstone with the roof constructed of hand split cedar. There would be a stone chimney. A standing seam copper roof would overhang the garage doors. Attached to the garage would be a workshop with rough sawn barn siding and a standing seam copper roof.

D. Zoning and Other Relief.

19. The subject property is undersized, containing 8.111 acres while the minimum lot size in the Highland Zone is 12 acres.

20. The lot is grandfathered under Section 706F4 of the Development Regulations Ordinance (DRO) as an existing lot of record which was created prior to 2003.

21. Pursuant to Section 706F4, the minimum side yard is 50 feet and the maximum lot coverage is 5%.

22. Three of the proposed structures require side yard setback variances. The proposed in-ground swimming pool and pool patio will have a eastern side yard of 30.9 feet, the pool cabana will have an eastern side yard of 18.6 feet, and the pool shed will have an eastern side yard of 36 feet, while the DRO requires a minimum side yard setback of 50 feet for the subject property.

23. The pool cabana and pool shed could be constructed at conforming locations on grade. This is to be compared with the proposed construction into the hillside. Mr. Fantina said the nearest home to the proposed structures is 300 feet to the east and buffered by a wooded area. This was confirmed by adjoining neighbor to the east Joseph Kosakowski who resides at 38 Long View Road (Block 11, Lot 8.02) and had no objection to the application.

24. Mr. Fantina presented Exhibit A-3 which illustrates the visibility from the adjoining property to the east of the proposed buildings at the proposed locations and at conforming locations. The exhibit demonstrates that the structures would be less visible at the proposed sites. The proposed locations are also preferable because they will not impact the existing drainage patterns near the center of the property.

25. The requested side yard variances are justified under N.J.S.A. 40:55D-70c(2) by advancing the following purposes of the Municipal Land Use Law (MLUL) under N.J.S.A. 40:55D-2:

“b. To secure safety from. . . flood. . .” *By retaining the existing drainage pattern.*

“g. To provide sufficient space in appropriate locations for a variety of . . . residential . . . uses . . . according to the respective environmental requirements in order to meet the needs of all New Jersey citizens;” *The subject property is large enough to accommodate the proposed structures, which are to be placed at particularly suitable locations.*

“i. To promote a desirable visual environment through creative development techniques and good civic design and arrangement;” *The proposed structures promote a desirable visual environment in two respects. First, the structures are extremely attractive with exterior elevations composed of natural stone, wood siding, split cedar roofs, standing seam copper roofs, and a stone chimney on the detached garage.*

Second, the pool shed and pool cabana will be built into the hillside and thereby less visible to the adjoining neighbor to the east than if they were located at a conforming location.

The swimming pool and pool patio adjoins the two structures and therefore has a nonconforming side yard which will be barely visible to the adjoining neighbor.

26. The benefits from the deviations substantially outweigh the detriments.

27. A 6 feet tall fence which generally complies with the DRO will be placed around the swimming pool. In an area of approximately 8 lineal feet the fence will cross a wall and be 8 feet tall, requiring a height variance. The Board finds that the fence height variance is *de minimis* and is justified under N.J.S.A. 40:55D-2 by advancing N.J.S.A. 40:55D-2m which provides:

“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 alternative to the variance would be a reworking of the stone wall which the Board finds would be an undue and inappropriate burden.*

28. The benefits from the deviation substantially outweigh the detriments.

29. The application requires a lot coverage variance. The existing lot coverage is 5%, as previously noted the DRO limits lot coverage for the subject property to 5%, and the proposed lot coverage is 6.485%.

30. The existing lot coverage is cause in part by the placement of the home 416.72 feet from the road which necessitated a long paved driveway.

31. Lot coverage is limited on the basis of aesthetics and drainage.

32. As to aesthetics, the Board finds that the proposed construction will improve the aesthetics of an already attractive neighborhood. As to drainage, the applicants' engineer Fantina has proposed one (1) drywell with four (4) seepage pits which would capture water run-off and recharge it into the ground which reduces the effective runoff to that produced by no more than 5% lot coverage. Land Use Board Engineer Burr conceptually approved the plan.

33. The lot coverage variances are justified under N.J.S.A. 40:55D-70c(2) on the same basis as the side yard variances.

34. There is an existing shed on the site. The applicants previously obtained a permit to build the shed with a then conforming 40 foot side yard. The shed was mistakenly constructed 39 feet off the western property line.

35. The applicants have sought a variance for this nonconforming side yard. The Board finds that a variance is warranted to correct the 1 foot mistake.

36. The requested variance 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.

37. Additional relief is requested by reason of paragraphs 2 and 4 in the Deed Restriction which, respectively, (i) requires review and approval by Sandstone Construction, Inc. of the plans and specifications for quality of workmanship and materials, harmony of architectural design with respect to other dwellings and structures within the Subdivision, and location of the proposed dwelling or alteration prior to the commencement of construction or alteration of any dwelling, and (ii) precludes a structure from being constructed in the area between the front of any dwelling and Glennon (*Valley*) Farm Lane without the prior written approval of Sandstone Construction Inc. This approval cannot be obtained as Sandstone has been dissolved.

38. Ordinarily a deed restriction for the protection of the general public required by a condition imposed by a planning or zoning board can only be relieved by both the Board imposing the condition and the Superior Court. Soussa v. Denville Tp. Planning Bd., 238 N.J. Super 66 (App. Div. 1990). However, the Glennon Farm Deed Restriction provided that the restrictions and covenants can be amended by the written approval of the Tewksbury Township Planning Board or any successor agency, and further provided that the restrictions and covenants inure to the benefit of the Township of Tewksbury, as well as to the owner of any lot in the Subdivision.

39. The deed restrictions requiring review of the plans and specifications for quality of workmanship, harmony of architectural design and location of proposed dwelling and alterations and precluding the construction of an accessory structure in front of a residence, respectively, affect each of the 15 lots in the Glennon Farm subdivision. Therefore, the applicants' attorney served notice of the request to the Land Use Board for approval of the proposed improvements, including permission to

construct the detached garage in front of the residence, in accordance with the Deed Restriction, as well as the variance notice, on the property owners within 200 feet of the subject property on the lists supplied by Tewksbury Township as well as each of the residents within Glennon Farm Subdivision. Noteworthy, a single resident appeared at the public hearing who supported the application.

40. The Board finds that the proposed detached garage will not violate the DRO by being in front of the existing residence, nor will it violate the minimum 100 foot front yard setback required for the subject property, as it will be set back 283.59 feet from the road.

41. In determining whether to grant relief from the Deed Restriction, the Board used as a guide paragraph 2 which pertains to the standards which Sandstone Construction was to utilize when considering whether to grant approval for the construction or alteration of a dwelling within Glennon Farm. Those standards include “quality of workmanship and materials, harmony of architectural design with respect to other dwellings and structures within the subdivision . . . and location of the proposed dwelling or alteration with respect to topographical and finish grade elevations so that the design, construction, and location of any dwelling to be constructed or altered will provide a desirable and harmonious visual environment and will not be incongruous with, nor adversely affect the value of the other properties or dwellings located within the Subdivision.” The Board finds the location, design and elevations of the detached garage, as well as the pool shed and cabana and other proposed improvements shown in the submitted plans, to be desirable and will provide a harmonious visual environment which will improve an already attractive neighborhood. The Board notes that there are at

least two lots in Glennon Farm where an accessory structure is located in front of the residence. One is located on Lot 9.06 and the other is the original farm house (Lot 1) which is in front of a newer dwelling.

E. Second Dwelling.

42. The Board is concerned that a subsequent owner of the property could convert either the pool cabana or the detached garage into a dwelling unit. The Board finds that these structures are more attractive than many homes. As a result the Board has imposed condition 6.

NOW, THEREFORE, be it resolved by the Land Use Board of the Township of Tewksbury on this 19th day of September 2012 that the application of ARTHUR and JACQUELYN SNYDER for approval under, and an amendment to, the DECLARATION OF RESTRICTIVE COVENANTS TO RUN WITH TITLE TO THE LAND attached to the Tewksbury Township Planning Board April 1, 1987 Resolution For Sandstone Construction Inc. and incorporated in the September 16, 1987 Deed from Sandstone Construction Inc. to Sandstone Construction Inc. be approved and amended to allow the proposed improvements, as well as the proposed detached garage be constructed in front of the Snyder Residence, pursuant to the submitted plans which are referred to in the following paragraph. This amendment is for this application only and does not apply to any other properties within the subdivision.

NOW, THEREFORE, be it further resolved by the Land Use Board of the Township of Tewksbury that the application of ARTHUR and JACQUELYN SNYDER for variances be approved in accordance with engineering plans titled: "Variance Plan, Grading Plan & Surface Water Management Plan for Lot 9.16 Block 11 (Tax Map Sheet

#3) located in Tewksbury Township, Hunterdon County, New Jersey” consisting of 4 sheets prepared by David E. Fantina, P.E. on March 11, 2011 with Sheet 1 last revised on April 20, 2012 and Sheets 2 - 4 last revised March 13, 2012 and architectural plans titled: “PROPOSED POOL & OUT BUILDINGS FOR MR. & MRS. ARTHUR SNYDER #7 GLENNON FARM LANE ROAD TEWKSBURY TOWNSHIP, NEW JERSEY”, consisting of sheets A-1 through A-2, and “PROPOSED DETACHED GARAGE FOR MR. & MRS. ARTHUR SNYDER #7 GLENNON FARM LANE ROAD TEWKSBURY TOWNSHIP, NEW JERSEY”, consisting of sheets A-3 through A-4, prepared by Columbro Architecture on February 28, 2012, subject, however, to the following conditions:

1. Conditions recommended by Land Use Board Engineer William H. Burr, IV, P.E. in his report of July 12, 2012 as modified by the Land Use Board:

“TECHNICAL REVIEW:

1. The applicant should describe in detail the proposed improvements (i.e. detached garage, pool cabana and pool shed) including the proposed use of the various spaces, exterior style, materials, color, etc. *The applicants architect Columbro described the proposed improvements. See factual findings 14-18.*
2. The applicant and its professionals should provide testimony to support the proposed side yard variances, including testimony as to the location of residential dwellings on adjoining properties and surrounding vegetation. Can the proposed swimming pool and related pool structures be moved to the east towards the center of the rear yard which would eliminate the need for the side yard variances? *The applicants’ architect Columbro and engineer Fantina provided testimony in support of the side yard setback variances. See factual findings 22 – 26 and 34-36.*
3. The applicant and its professionals should provide testimony to support the proposed lot coverage variance. The property is currently developed to its maximum permitted lot coverage and the applicant is proposing an increase of 5,249 S.F. in lot coverage as part of this application. Can any existing lot coverage areas on the property be eliminated/removed as a way to decrease the

amount of coverage on this property? *Engineer Fantina testified in support of the lot coverage variance. See factual findings 29 - 33 and 36.*

4. The Declaration of Restrictive Covenants, which was annexed to the Resolution of Approval for this subdivision, contains a condition that states “*No structures of any kind may be erected in the area between the front of any dwelling and Glenn Valley Lane without prior written approval of Sandstone Construction, Inc.*” The applicant shall provide testimony to clarify that it is permitted to construct the detached garage since it is proposed to be located in front of the main dwelling on this lot. *The applicants’ attorney Rothpletz explained that the Land Use Board has the discretion to approve and modify this condition. See factual findings 1, 4 – 5, 37 - 41. Engineer Fantina presented testimony in support of the amendment to the Deed Restriction. See factual finding 41.*

5. In an effort to mitigate the increase in stormwater runoff from the proposed swimming pool related improvements and detached garage, the applicant has provided four (4) drywells to capture runoff from a portion of the existing dwelling, a portion of the existing driveway and the proposed detached garage. The proposed drywells have been sized to handle runoff which would reduce the stormwater runoff impacts to below the permitted 5% lot coverage. While I have no objections to the conceptual design of the drywells, I do have the following comments:
 - a. Testimony should be provided to clarify the existing drainage system on the property. The plans contain a note indicating that a portion of the existing roof areas are already piped via underground leader pipes. The plans should be revised to clarify the limits of the existing leader drains and roof area of the dwelling that drains to the east side of the driveway. *The applicants agreed to revise the plans to the approval of the Land Use Board Engineer.*

 - b. The drywell calculations indicate that a portion of the existing driveway will drain to the proposed drywells. The plan should indicate the area of driveway intended to drain to the drywell and clearly reflect how this will happen. Additional information (i.e. spot elevations, grading, etc.) should be provided to confirm that the drainage plan will work as proposed and that runoff will actually drain to the drywells. *The applicants agreed to revise the plans to the approval of the Land Use Board Engineer.*

 - c. The plans should be revised to reflect clean-outs at all underground pipe bends to allow for future maintenance and cleaning. *The applicants agreed to revise the plans to the approval of the Land Use Board Engineer.*

 - d. Soil logs/tests will need to be performed to confirm adequate soil conditions to allow for the installation of the drywells as proposed. This issue could be addressed as a condition of any Board approval since a GSWMP approval will

be required by the Township Engineer (see Comment No. 11 below).*The applicants agreed to comply with this requirement.*

6. The plans call for two trees to be removed in the vicinity of the proposed pool cabana. The applicant should provide testimony to clarify if any additional trees are to be removed as a result of the swimming pool improvements or proposed detached garage? Are any new landscape plantings being proposed to offset the tree removal that is proposed? *The testimony indicated that the applicants may plant Holly bushes, or similar plantings, but there were no specific landscape plans proposed at the time.*
7. The architectural plan reflects new proposed exterior barn lanterns to be installed on the detached garage. The applicant should provide testimony to confirm the wattage of these proposed lights and to confirm that there will not be any undesirable effects to the surrounding properties in accordance with DRO Section 632. In addition, the applicant should clarify whether there is any exterior lighting proposed with the swimming pool improvements? All lighting should be minimal wattage and be down-shielded to ensure compliance with the above requirements. *The lighting shall comply with Section 632 of the DRO. The lighting shall not cause sky glow or glare. The applicants shall supply cut sheets to the Land Use Board Engineer. The plans shall be revised to show all existing and proposed exterior lighting. The exterior lighting is subject to the approval of the Land Use Board Engineer.*
8. Additional information should be provided on the proposed fence (i.e. type, height, etc.) to be placed around the pool and patio to confirm compliance with Section 719 of the DRO. I note that Section 719 requires that no wall or fence shall be erected or altered so that said wall or fence shall be over four (4) feet in height in front yard areas and six (6) feet in height anywhere else on the lot. The plan appears to show the proposed fencing around the pool area to extend over the retaining wall to the rear of the pool? *The plans shall be revised to include this information.*
9. The plans should be revised to reflect the proposed setback distance between the side (west) property line and the proposed wood deck to confirm that it will meet the minimum 50 ft. setback. *The plans shall be revised to include this information.*
10. The plans should be revised to clarify the grading in the vicinity of the proposed swimming pool, in particular to the rear of the proposed pool cabana. In addition, spot elevations on the proposed retaining wall shall be reflected on the plan. *The plans shall be revised to include this information.*
11. The plans should be revised to indicate the stabilized construction entrance for the proposed swimming pool work. *The plans shall be revised to include this information.*

12. The plans should be revised to reflect a construction detail for the proposed driveway extension to the new detached garage. *The plans shall be revised to include this information.*
13. Hunterdon County Health Department approval will be necessary for the proposed septic system modifications resulting from the pool cabana. *The application is subject to the approval of the Hunterdon County Health Department.*
14. A Grading and Surface Water Management Plan (GSWMP) will need to be submitted to the Land Use Administrator for review by the Township Engineer prior to the Construction Permit application. This GSWMP must comply with Chapter 13.12 of the Township Code of Ordinances. *The application is subject to the submission to the Township Engineer of a grading and surface water management plan which is subject to his approval. Implementation of the plan is subject to his approval.*

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. Subsequent revisions are to be made within 15 days of the request. The lighting details shall be provided prior to the application for a Building Permit.

3. The within variance must be utilized within two years 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. The applicants shall submit a letter to the Land Use Administrator certifying compliance with the aforementioned rules, regulations, ordinances and statutes.

5. The resolutions and the issuance of a Building Permit are conditioned upon the applicants paying all escrows and fees.

6. The applicants shall file a deed restriction to the approval of the Land Use Board Engineer and the Land Use Board Attorney requiring:

a. The approval by the Township Engineer of a grading and surface management plan required in condition 1.14 herein. The plan is to be subject to his approval. The plan shall reflect a reduction of effective runoff to that produced by 5% lot coverage. The drywell and related stormwater facilities are to be permanently maintained in accordance with the NJDEP Best Management Practices and any subsequent revisions and successor regulations.

b. Neither the cabana nor the detached garage shall be used as a dwelling.

c. There shall be no stove, ovens, or other cooking facilities within the cabana, although there may be a microwave oven. There shall be a limit on the number and size of cabinets which are subject to the approval of the Zoning Officer.

d. There shall be no plumbing or water service in the detached garage.

Roll Call Vote

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

Those Opposed: None

Ms. Desiderio noted that she had to recuse herself for the Thompson hearing. Mr. Bernstein opined that having Ms. Desiderio present for the executive session would be helpful to have not only a written report but a verbal report.

Executive Session

➤ Litigation

At 7:43 p.m. a motion was made by Ms. Desiderio and seconded by Mr. Shapack to adopt the following resolution:

BE IT RESOLVED, pursuant to N.J.S.A. 10:4-12 and N.J.S.A. 10:4-13 that the Tewksbury Township Land Use Board adjourn to Executive Session to discuss litigation.

No official action will be taken during said session; and

It is expected that the discussion undertaken in Executive Session can be made public when the litigation has been settled.

Roll Call Vote

Those in Favor: Ms. Desiderio, Mrs. Baird, Mr. Mackie, Mr. Kerwin, Mrs. Czajkowski, Mr. Moriarty, Mr. Shapack and Mr. Johnstone

Those Opposed: None

The meeting reconvened at 8:07 p.m.

Mr. Moriarty made a motion to send a letter to the Township Committee recommending that they oppose the application being made before the Department of Transportation on behalf of the Johnsons and that the Township Committee seek outside council with experience with handling aviation matters in front of the DOT. Mr. Mackie seconded the motion. The motion carried by the following roll call vote:

Roll Call Vote:

Ayes: Mr. Mackie, Mr. Moriarty, Mr. Kerwin, Mr. Shapack, Mr. Johnstone

Nays: None

Abstentions: Mrs. Baird, Ms. Desiderio,

Ms. Desiderio recused herself from the meeting as she cannot sit for the Thompson application.

Public Hearing

- Thompson
Appl. No. 12-01
Block 14, Lot 13
Use Variance
Action Deadline – 5-22-12 (extended by Applicant to hearing date)

Mr. Michael Rothpletz was present representing the applicant, Douglas Thompson. Mr. Rothpletz explained that the property is located on Farmersville Road and noted that Mr. Thompson is seeking setback variances for three (3) structures that encroach into the setback, a slight coverage excess as well as a variance related to the existing apartment in the barn on the property. There is a 900 sq. ft. apartment on the second floor of the barn that exists pursuant to a variance that was granted by the Board of Adjustment in 1998. The variance for the apartment contained a condition that required the dismantling of the

apartment upon the death of Mr. Thompson's mother (or if she moved); Mr. Thompson would like to have that condition removed.

Mr. Rothpletz explained that the Thompson's bought the property in the early 1990's. In 1998 they applied for the variance for the barn apartment and his mother lived there for approx. 8 or 9 years until her death. In mid 2000's, Mr. Thompson applied to the Board of Adjustment for a coverage variance to allow 13.87% coverage for the house addition and other structures. Mr. Thompson's property varies slightly from that resolution and is 2.8% over the permitted coverage (14.15%). In addition, there was a shed that was located within the setback on the northeast side of the property. Mr. Thompson attempted to move the shed but it fell apart so he replaced the shed with a new shed on the other side and it too encroaches into the setback which requires a setback variance. A setback variance for the pool house and pool heater is needed as well; a total of 3 setback variances are needed for existing structures.

Mr. Rothpletz requested that the bulk variances (coverage and setback) be voted on separately from the use variance for the apartment. Mr. Bernstein had no issue with bifurcating the application since they require different proofs and the Board agreed.

Douglas Thompson, 76 Farmersville Road, was sworn in by Mr. Bernstein. When asked about the shed on the eastern side of the property, Mr. Thompson explained that the original shed was within the 40 foot setback and when he went to relocate the shed (which was there when he bought the house) it fell apart so he replaced it with the new shed which is closer to the driveway. When asked about the pool house and pool heater, Mr. Thompson explained that the pool was in need of reconditioning a few years ago so when they did that work they did some landscaping around the pool and he took the existing pool house and slid it over which violated the western setback. When asked about the vegetation on the east side, Mr. Thompson explained that there is a rock wall that extends the entire length of the property line; the entire area between his property and the house on the adjoining property is wooded. When asked if he met with his neighbors, Mr. Thompson explained that he met with all three (3) of his neighbors and they issued letters that they have no objection to the variances. Mr. Bernstein noted that the letters could not be entered into the record because they are considered hearsay unless the neighbors are present to testify. Mr. Johnstone questioned the swing set to which Mr. Thompson agreed to remove.

When asked by Mr. Burr when the pool shed and pool heater was moved, Mr. Thompson opined 3 years ago. The shed that was moved closer to the driveway was moved approximately 4 years ago.

Mr. Rothpletz presented photos marked as Exhibit A-1, A-2, A-3 and A-4. A-1 is a picture of the pool house and pool heater, Exhibit A-2 is a picture of the barn with the apartment on the second floor, A-3 is a photo of the shed on the westerly property line and A-4 contains two (2) pictures of the shed (from a different angle) and another photo of the barn with the apartment.

When asked by Mr. Burr what is stored in the shed and the pool house, Mr. Thompson explained that the pool house is used for pool supplies as well as the pool furniture. The shed is used to store lawn equipment, gas cans, bicycles, etc.

When asked by Mr. Bernstein if any approval was granted for the pool shed or pool heater, Mr. Rothpletz responded in the negative. He explained that when they applied for the most recent variance the pool house was shown in a conforming location but was moved to a non-conforming location when the pool was rehabilitated. When asked if the pool house and shed could be moved again to a conforming location, Mr. Thompson explained that there is landscaping around the pool shed and has been “locked in” to the area. When asked if it could be physically moved, Mr. Thompson responded in the positive. When asked about the other shed, Mr. Thompson indicated that it could be physically moved.

When asked by Mr. Benson the dimensions of the new shed, Mr. Thompson explained that it is approximately 20 x 12.

When asked by Mr. Shapack why structures were moved to locations that violated the setbacks, Mr. Thompson explained that the contractors presented plans showing the structures in the current locations and he didn't question the location.

When asked by Mr. Moriarty how he became aware of the need for the setback variances, Mr. Thompson explained that he approached Mr. Rothpletz about the use variance for the apartment and got a new survey which brought up the variance issues. When asked about any other changes that occurred that caused the lot coverage to exceed that which was approved, Mr. Thompson explained that the patio around the pool and walkway was increased since the 2005 variance. When asked if the driveway has changed, Mr. Thompson responded in the negative.

When asked by Mrs. Baird if the new shed was larger than the old shed (that fell apart), Mr. Thompson responded in the positive. Mrs. Baird pointed out that the larger shed would account for increased coverage as well.

When asked by Mr. Johnstone if he presented a plan when he appeared before the Board of Adjustment in 2005, Mr. Thompson responded in the positive. When asked if he knew that there were building setback lines to comply with, Mr. Thompson did not recall if he was aware of the setback requirements. When asked why he put a larger shed in violation of the setback, Mr. Thompson responded by saying he moved it from one non-conforming location to another. When asked if he knew that when he moved the shed, Mr. Thompson responded in the negative, it was only brought to his attention when preparing this application. Mr. Johnstone opined that the applicant appeared before the Board of Adjustment enough times that he was aware of the setback lines. Mr. Rothpletz noted that it may have been careless but it wasn't intentional.

When asked by Mrs. Czajkowski how long the pool house has been in the current location, Mr. Thompson opined 2 ½ to 3 years.

When asked by Mr. Shapack if the pool house is on a concrete foundation, Mr. Thompson responded in the negative.

When asked by Mr. Mackie if the dry wells were constructed, Mr. Thompson responded in the positive and explained that they are in the backyard. When asked if he would be willing to reduce some of the coverage to get back to the amount that was approved, Mr. Thompson asked to confer with his attorney.

The Board took a break at 8:45 p.m. and reconvened at 8:50 p.m.

Mr. Rothpletz explained that the driveway widens out near the barn and Mr. Thompson proposes to eliminate that area to bring the coverage back to the 13.87% approved by the variance; the blacktop and gravel will be removed and top soil and grass seed will be applied. Mr. Burr concurred that it would be more than enough to offset the overage.

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

Mr. Rothpletz explained that the applicant is seeking to eliminate the condition in the 1998 resolution that required that the apartment be dismantled when Mr. Thompson's mother no longer resided in the apartment or upon her death. There was also a deed restriction imposed on the property that reflects that same condition; if the Board were inclined to release the condition the deed restriction would be changed.

Mr. Rothpletz explained that the condition that the Board of Adjustment imposed in 1998 is not a legal condition. There are well settled cases, specifically *Berninger vs. Board of Adjustment in Medford*, which make it clear that Land Use decisions are intended to run with the land and cannot be personal to individuals. In cases where they are made personal to individuals, the conditions aren't legal and are invalid. In the *Berninger* case the Board of Adjustment granted approval to allow a single family home to be used as a two (2) family home with the condition that upon the sale of the residence the variance expires; it was granted to the owners of the property. The court indicated that the Board of Adjustment was incorrect and they upheld the decision. The courts measure the detriment to the zone plan, Mr. Rothpletz opined that there would be no detriment to the zone plan regardless of who resides in the apartment (Mr. Thompson's mother or a renter). Another case, *Defelice vs. Point Pleasant Board of Adjustment*, two (2) residences existed and the Board of Adjustment permitted both until either the applicant died or the property was sold. The Court found that it was a personal variance and didn't run with the land and excised the condition and the underlying approval stood.

From a practical and planning perspective, Mr. Rothpletz opined that there are benefits to having an apartment. The personal benefit is that the apartment was expensive to construct with a separate septic system, kitchen, bath, etc. The thought of tearing out an apartment like that does not seem to be a productive use of resources. The property is in the Highlands Preservation Zone and so there will be little housing developed in the area

so a housing opportunity should be a welcome opportunity. Mr. Rothpletz noted that the neighbors received the notice and their absence at the hearing should be an indication that they do not oppose the application. He added that several purposes of zoning are supported by the request, namely to provide sufficient space and appropriate location for a variety of uses in order to meet the needs of all NJ citizens; an opportunity for someone to live in the apartment furthers that goal. To promote desirable visual environment through creative development techniques and good civic design. To encourage coordination of various public and private procedures and activities shaping land development with the view of lessening the cost of such development and to the more efficient use of land; abandoning a septic system and apartment is an unbelievably inefficient use of land and resources. Mr. Rothpletz opined that a precedent would not be set by allowing Mr. Thompson to keep the apartment because the resolution contains an illegal condition and it sets it apart from others who would be seeking the approval for the first time. Mr. Rothpletz noted that Mr. Thompson is a successful businessman but he isn't an attorney and doesn't think about side yard setbacks, etc. He noted that when Mr. Thompson was seeking the apartment for his mother she was ill and the last thing he thought about was removing it upon her death. In retrospect, it was a condition that was both improper and now hard to accept.

Mr. Bernstein noted that there is a more recent case (*Gayatriji vs. Borough of Seaside*) where Judge Eugene Serpentelli, one of the most knowledgeable and articulate judges in the land use field, discussed the issue of the status of the underlying approval after a significant condition is invalidated. Judge Serpentelli discussed a four-part test in determining the ramifications which flowed from a determination on the invalidity of a variance condition. Mr. Bernstein read the following from Judge Serpentelli into the record: "Thus, no bright line has been established which dictates the consequence of a court finding a condition invalid. However, an analysis of the case law suggests some general principles. . . Again, those considerations are (1) whether the board intended the condition to be inseparable from the right of enjoyment of the variance, (2) the landowner's failure to appeal the condition, (3) the principles of estoppel and (4) whether the board would have granted the variances if it knew the condition would be invalidated." Mr. Bernstein opined that the Land Use Board has to decide the case on those considerations.

Mr. Rothpletz agreed with Mr. Bernstein's characterization of the *Gayatriji* case although he did note that it is a law division case, the cases he mentioned are active and in one case has an affirmation by the Supreme Court. Mr. Rothpletz opined that Judge Serpentelli followed both of the cases and opined that a case is very fact sensitive. Mr. Rothpletz opined that the two (2) cases he cited are identical to the Thompson case and the *Gayatriji* case is very different and involved a hotel and therefore a different kind of fact analysis. Mr. Bernstein disagreed and noted that while the minutes are not very detailed they do indicate that the decision was that it was solely for the applicant's mother and it included a deed restriction which was not present in the two (2) cases cited by Mr. Rothpletz. Mr. Bernstein opined that in at least one (1) of the cases referenced by Mr. Rothpletz it was unclear the rationale for the variance. In the Thompson case it is clear that it was for the applicant's mother and it would revert to a one (1) family upon her death. Mr. Bernstein

noted that Mr. Thompson was represented by an attorney well versed in zoning matters and he would have been aware that the condition was invalid.

Mr. Thompson opined that it would be a shame to not be able to use a pre-existing apartment after 12 plus years.

When asked by Mr. Shapack if he would consider restricting the unit as a COAH unit, Mr. Thompson said he would consider the restriction.

When asked by Mrs. Baird if a COAH unit becomes a regular market rate unit after the 15 years, Mr. Bernstein responded in the positive.

When asked by Mr. Johnstone if the sole evidence that was presented to the Board of Adjustment for the variance for the apartment was for the sole purpose of housing his mother, Mr. Thompson responded in the positive. When asked if he was aware and understood that the apartment had to be dismantled at the time of her passing, Mr. Thompson responded in the positive. When asked if it was agreed that if it were not for the condition placed on the variance by the Board of Adjustment limiting it to his mother the Board would not have granted the variance, Mr. Thompson replied that he did not know that to be true. When asked if he ever indicated to the Board of Adjustment that it was his intent to rent out the apartment after his mother departed, Mr. Thompson responded in the negative. When asked if he was aware of the condition that limited the use of the apartment to his mother, Mr. Thompson responded in the positive. When asked if he had the opportunity to review the draft resolution and agreed to the condition, Mr. Thompson responded in the positive. When asked if he knew he had the opportunity to appeal the condition but chose not to, Mr. Thompson responded in the positive. When asked if having two (2) dwelling units on one (1) property makes it more valuable, Mr. Thompson responded in the positive. When asked the number of bedrooms in the main house, Mr. Thompson responded five (5). When asked the number of children he has, Mr. Thompson responded three (3). When asked if there was earlier testimony that his daughter wanted to live in the apartment, Mr. Thompson responded in the positive. When asked if he considered the house spacious enough to accommodate his daughter, Mr. Thompson responded in the positive. When asked if he wanted the apartment for rental purposes rather than for his children, Mr. Thompson indicated that he didn't want his children living with him when they are 25 years of age. When asked if it is a possibility that the apartment would be rented to someone other than a family member, Mr. Thompson responded in the positive.

When asked by Mrs. Czajkowski how long the apartment has been vacant, Mr. Thompson replied approximately 3 or 4 years ago. When asked the current status, Mr. Thompson explained that it has been vacant since his mother passed away. When asked what has changed to trigger the variance application, Mr. Thompson explained that he procrastinated. When asked what he would like to do with it, Mr. Thompson explained that he would like the option to rent it out, or use it for his children or father in law.

When asked by Mr. Shapack if the space is considered living space because it has a functioning kitchen, Mr. Bernstein explained that it is the combination of the kitchen, full bath and sleeping area (with closet) that makes it an apartment. If it were reconfigured it could be an adjunct to the main house (guest space, man cave, kids playroom). However, those types of living areas are hard to enforce because they are easily converted to rentable apartments.

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

When asked about the COAH option, Mr. Thompson indicated that he would consider deed restricting it as a COAH unit.

Mr. Mackie opined that if the condition was illegal to begin with the applicant had the benefit of that mistake. When asked if the finished apartment existed prior to him applying for the variance, Mr. Thompson responded in the negative.

Mr. Johnstone opined that it was clear that the apartment was for the sole purpose of Mr. Thompson's mother and he believes the intent of the Board of Adjustment in 1998 was to provide housing for his mother to keep the family unit together until her death; it was never meant as a permanent apartment. In Mr. Johnstone's opinion, Mr. Thompson wants to turn the situation into an economic advantage by gaining the ability to rent the apartment and provide income and increase the value of the property as the result of the good will of the Board of Adjustment. He opined that had the application been presented to the Board of Adjustment as a market rate rental unit the approval would not have been granted; it was the intent of the Board of Adjustment to help Mr. Thompson with his family. Mr. Johnstone opined that the finished space could be used as a guest house for short stays by family or a home office or hobby area but stated that he would vote against approval of an apartment on a 3 acre property. In terms of the need for a COAH unit, Mr. Johnstone didn't believe the township was in need of units; there is a surplus of units at this time. If there ever becomes a need for COAH units Mr. Johnstone suggested that the Township keep a running list of homes that have future availability. When asked if he would want to see anything dismantled, Mr. Johnstone responded in the negative.

When asked by Mr. Rothpletz if he was comfortable with Mr. Thompson's children living in the apartment, Mr. Johnstone responded in the negative. He opined that if the children are too old to live in the house they are likely to be out of the house, working and in their own apartment. He clarified that he was comfortable if family members stay temporarily (1 or 2 weeks). When asked if he would require Mr. Thompson to remove the apartment, Mr. Johnstone responded in the negative.

Mr. Shapack opined that there is still a need for low and moderate income housing in New Jersey and is not entirely convinced that a COAH unit is not necessary.

When asked by Mrs. Czajkowski what he thought the dismantling process was when it was approved with that condition in 1998, Mr. Thompson explained that he didn't put a lot of thought into that part of it.

Mr. Moriarty opined that it should not be a rental unit but didn't want to see it removed.

Mr. Kerwin opined that the Board of Adjustment was trying to satisfy the request of Mr. Thompson to keep the family together and is opposed to a rental unit because that was not the intent. He would entertain the possibility of a COAH unit because there could be a need in the future.

Mrs. Baird noted that there were other applications approved by the Board of Adjustment with the same conditions. She expressed her opposition to the apartment becoming a rental unit because the zoning does not permit two (2) residences on the property. She was undecided about it becoming a COAH unit since the need is unknown.

Mrs. Czajkowski was opposed to the unit becoming a rental unit since the intent was for Mr. Thompson's mother; the only way she could consider it is if it were restricted as a COAH unit.

Mr. Mackie shared Mr. Johnstone's opinion.

Mr. Johnstone suggested a recess at 10 p.m. so Mr. Rothpletz could discuss options with his client.

The Board reconvened at 10:14 p.m.

Mr. Rothpletz reminded the Board that the applicant is requesting two (2) separate votes on the bulk variances and the use variances. He added that the applicant is willing to remove the impervious coverage (.28) excess near where the driveway widens out. Mr. Rothpletz reiterated the setback variances do not create any impact on the neighbors.

As it relates to the apartment, Mr. Rothpletz opined that it is unclear from the minutes and resolution what the Board of Adjustment would have done if a rental unit was proposed in 1998. He opined that a COAH unit would have been approved and would be put to good use by a young teacher, police officer or veterinarian who would qualify as moderate income. Mr. Rothpletz explained that in 1998 Mr. Thompson wasn't thinking 10 years ahead about having to dismantle the apartment, he was happy to have the opportunity to have his mother staying close to him. Mr. Rothpletz asked that the Board not require Mr. Thompson to dismantle the apartment if they were not in favor of it being a rental or COAH unit.

Mr. Shapack made a motion to remove the 1998 dismantle requirement and allow it to remain with the condition that it be restricted as a COAH unit. Mr. Moriarty seconded the motion. The motion failed to pass by the following roll call vote:

Roll Call Vote:

Ayes: Mr. Shapack, Mr. Moriarty and Mr. Kerwin

Nays: Mrs. Baird, Mr. Mackie, Mrs. Czajkowski and Mr. Johnstone

Mrs. Baird made a motion to deny the application as presented but to permit the apartment to remain intact with the use of the apartment limited to family in the existing one (1) family home, it is not to be rented, but to be used on a temporary basis by family and guests not to exceed thirty (30) days or can be used as an office permitted by the Development Regulations Ordinance. The deed restriction would need to be modified to reflect the approval. The applicant would have the right to return in the future to seek approval of the space as a COAH unit in the future if the need arises. Mr. Shapack seconded the motion. The motion carried by the following roll call vote:

Roll Call Vote:

Ayes: Mrs. Baird, Mr. Mackie, Mrs. Czajkowski, Mr. Moriarty, Mr. Kerwin, Mr. Shapack and Mr. Johnstone

Nays: None

Mr. Moriarty made a motion to approve the bulk variances for the three (3) structures (shed, pool house and pool heater) in violation of the setback requirements subject to the condition that the applicant remove .28% of coverage to return to the coverage 13.87% as approved in a prior variance application and building permits be applied for and issued for the shed. Mrs. Baird seconded the motion. The motion carried by the following roll call vote:

Roll Call Vote:

Ayes: Mrs. Baird, Mr. Mackie, Mrs. Czajkowski, Mr. Moriarty, Mr. Kerwin, Mr. Shapack and Mr. Johnstone

Nays: None

Escrow Closing

- Newell, Appl. No. 12-05 - \$185.00

Mrs. Baird made a motion to approve the closing of the above referenced escrow. Mr. Moriarty seconded the motion. The motion carried by the following roll call vote:

Roll Call Vote:

Ayes: Mrs. Baird, Mr. Mackie, Mrs. Czajkowski, Mr. Moriarty, Mr. Kerwin, Mr. Shapack and Mr. Johnstone

Nays: None

ADJOURNMENT

There being no further business, the meeting adjourned at 10:34 p.m. by motion of Mr. Moriarty and seconded by Mrs. Baird.

Respectfully submitted,

Shana L. Goodchild
Land Use Administrator