

LAND USE BOARD MINUTES
August 7, 2013

The Tewksbury Township Land Use Board met in a regularly scheduled meeting on the above date in the Municipal Meeting Hall, 60 Water Street, Mountainville, New Jersey. The meeting was called to order at 7:34 p.m.

Present: Blake Johnstone, Dana Desiderio, Mary Elizabeth Baird, Elizabeth Devlin, Shirley Czajkowski, Bruce Mackie, Robert Becker, Alt. #1 and David Larsen, Alt. #4.

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

Absent: Shaun Van Doren, Ed Kerwin, Michael Moriarty, Eric Metzler, Alt. #2 and Ed D'Armiento, Alt. #3

There were approximately three (3) people in the audience.

OPEN PUBLIC MEETING ACT STATEMENT

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

PLEDGE OF ALLEGIANCE

Those present stood and pledged allegiance to the American flag.

CLAIMS

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

1. Bernstein & Hoffman – Attendance at 7-17-13 LUB meeting – invoice dated July 18, 2013 (\$450.00)
2. Bernstein & Hoffman – Land Use Board Escrow – Newell (B34, L13.01), invoice dated July 10, 2013 (\$112.50)
3. Bernstein & Hoffman – Land Use Board Escrow – Lauezzari (B31, L25), invoice dated July 25, 2013 (75.00)
4. Maser Consulting – Land Use Board Professional Services – General Planning Work, invoice #209928 (\$195.00)
5. Maser Consulting – Land Use Board Escrow – Stavola Quarries (B44, L24), invoice #209930 (\$325.00)
6. Maser Consulting – Land Use Board Escrow – Lauezzari (B31, L25), invoice #209931 (\$162.50)

7. Maser Consulting – Land Use Board Escrow – Tewksbury Land Trust (B29, L8.021), invoice #209933 (\$260.00)
8. Maser Consulting – Land Use Board Escrow – Thompson (B14, L13), invoice #209932 (\$65.00)
9. Maser Consulting – Land Use Board Escrow – Bligh (B51, L80.08), invoice #209934 (\$65.00)
10. Maser Consulting – Land Use Board Escrow – (Beatrice) Snyder (B11, L8.04), invoice #209937 (\$487.50)
11. Maser Consulting – Land Use Board Escrow – Pomerantz (B34, L19.13), invoice #209936 (\$97.50)
12. Maser Consulting – Land Use Board Escrow – von Hollen (B16, L4), invoice #209935 (\$975.00)
13. Maser Consulting – Land Use Board Escrow – Johnson (B23, L20), invoice #209929 (\$1,202.50)
14. Maser Consulting – Land Use Board Inspection – JCP&L (B17, L2.01/2.02), invoice #209938 (\$1,480.00)

Roll Call Vote:

Those in favor: Mrs. Baird, Ms. Desiderio, Mr. Mackie, Mrs. Devlin, Mrs. Czajkowski, Mr. Becker, Mr. Larsen and Mr. Johnstone

Those Opposed: None

CORRESPONDENCE

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

1. A memo dated July 31, 2013 from Roberta Brassard re: Dept. of Health statement re: Pomerantz, Block 34, Lot 19.13.
2. Memorandum dated July 30, 2013 from Chief Holmes re: Biedron, Appl. No. 12-13, Block 31, Lot 12.
3. The NJ Planner, May/June 2013 Vol. 74, No. 3.

ORDINANCE REPORT

Mr. Mackie had no ordinances to report on.

PUBLIC PARTICIPATION

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

RESOLUTION

- Revised Resolution No. 12-05 – Luezzari, Appl. No. 11-16, Block 31, Lot 25
Eligible to vote: Mr. Van Doren, Mr. Mackie, Mrs. Czajkowski, Mr. Moriarty, Mr. Kerwin, Mr. D’Armiento, Mr. Larsen and Mrs. Baird

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

LAND USE BOARD
TOWNSHIP OF TEWKSBURY
APPLICATION # 11-16
RESOLUTION # 12-05

WHEREAS, MARGIT LAUEZZARI has applied to the Land Use Board of the Township of Tewksbury for permission to construct a single family residence and carriage house on property which is located at 31 Water Street and designated as Block 31, Lot 25 on the Tewksbury Township Tax Map, which premises is located in Highlands (HL) Zone, and

WHEREAS, the application was presented by Attorney Lloyd H. Tubman, Esq. of the firm of Archer & Greiner, P.C.; Civil Engineer Ronald A. Kennedy P.E., of the firm of Gladstone Design, Inc.; Architect Christopher Pickell, R.A. of the firm of Pickell Architecture, LLC; Professional Planner Elizabeth A. McKenzie, P.P.; and Margit Lauezzari at the January 4, 2012 Land Use Board meeting, and

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

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

A. The Subject Property.

1. The subject property is an irregularly shaped parcel with 428.52 feet of frontage at the Water Street right-of-way, 281.52 feet of frontage at the Longview Road right-of-way, an eastern side yard along three courses of 417.90 feet which adjoins

a strip of land owned by Tewksbury Township encumbered with a conservation easement, which is contiguous to Potter Lane, and a rear yard width of 158.80 feet.

2. The subject property contains 2.21 gross acres and 1.97 net acres.

3. The North Branch of the Rockaway Creek, a *c-1* stream, is located to the south of the subject property, on the south side of Water Street.

4. The entire site is constrained with a flood plain and riparian buffers for the North Branch of the Rockaway Creek. There is a manmade pond on the property.

5. Located on the subject property is a vandalized 1-1/2 story home, which is not in habitable condition, a barn/garage, a stone driveway, shed and stone structure referred to as a *summer kitchen* which Mr. Kennedy estimated as more than 100 years old. Located at the southwest part of the property, running parallel to Water Street, is an old stone wall approximately 1-1/2 feet tall.

B. The Proposal.

6. A NJDEP Individual Permit pursuant to the Flood Hazard Area Control Act Rules has been sought but has not been issued. A Highlands Exemption has been obtained, as the property is within a Highlands Preservation Area.

7. The applicant proposes to raze the existing residence, barn/garage, stone driveway and shed. The area of these structures will be converted to a lawn area, landscaping and new improvements. The *summer kitchen*, which was described by Architect Christopher Pickell as a “lovely structure” will be retained. The applicant agreed to a preservation and maintenance easement for the summer kitchen. The stone wall will be extended approximately 324 lineal feet to the east, with a fence placed on it to a maximum height for both structures of 4 feet.

8. The proposed residence will be constructed in the Colonial style with cedar roof shingles, copper flashing and gutters, stone veneer and wood siding. The home will consist of three bedrooms, two and one-half baths, a mud room, laundry room, a keeping room (kitchen), living room, office, porch, and basement. The two-story structure will have approximately one thousand two hundred fifty square feet on the first floor, for a total area of about 2,300 S.F. The structure is small for a new home, but consistent in style and size with the residences in Mountainville

9. The new home will be served by a new septic system, with the existing septic system being abandoned. The existing well will be capped and a new well will be drilled to serve the new home.

10. The 34 feet by 24 feet carriage house (referred to on the plans as a *garage* but in the testimony as a *carriage house*) will consist of a two car garage with storage space on the first floor and a 15 feet by 17 feet, 4 inch air conditioned and heated second floor workout room and full bathroom with a shower. The applicant agreed to a deed restriction precluding the installation of a kitchen in the carriage house and prohibiting it from becoming a separate dwelling unit.

C. Requested Variances.

11. The subject property is in the HL Zone where the minimum lot size is 12 acres. As noted in factual finding 2, the site contains 1.97 net acres.

12. The subject property is *grandfathered* under Section 706F1 of the Tewksbury Township Development Regulations Ordinance (DRO), as it contains less than 3 acres in size, is located in the HL Zone, was in existence decades before the 2002 Tewksbury Township DRO was adopted, and the applicant owns no adjoining land.

13. The sole requested variance is a front yard setback of 35.3 feet for the proposed home and 41.1 feet for the carriage house, while the DRO in Section 706F.1.d requires a minimum front yard setback of 75 feet for *grandfathered* lots less than three acres. The existing home is located 23 feet from Water Street, and the barn/garage is located 15.3 feet from Water Street.

14. The Board discussed the possibility of the carriage house at some future date being converted to a dwelling unit, as it would be heated and air-conditioned and contain a full bathroom with a shower. The applicant agreed to a deed restriction which would preclude a kitchen in the carriage house and prohibit the carriage house from being used as an additional dwelling unit or rental property.

D. Justification for Variances.

15. The applicant's planner Elizabeth A. McKenzie testified that the proposed Colonial style home would be consistent in design and size with the existing homes in Mountainville. She noted that the Tewksbury Township Master Plan has recommended the designation of a Water Street Historic District where the subject property is located. The Master Plan characterized the proposed district as having homes close to the road.

16. Based on the testimony of Ms. McKenzie, and the other witnesses presented by the applicant, as well as the Board Members' knowledge of Water Street, the Board finds that the requested front yard setback variances are 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:

“i. To promote a desirable visual environment . . .”

“j. To promote the conservation of historic sites and districts . . .”

by the construction of a home and carriage house with an historical motif at a setback which is comparable to that of the other homes in the neighborhood.

17. The benefits from the development will substantially outweigh any possible detriments.

18. The Board finds that the construction of the proposed home and carriage house will benefit rather than detract from the neighborhood. Therefore, 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 1st day of February, 2012 that the application of MARGIT LAUEZZARI be approved in accordance with engineering plans titled: “LAUEZZARI PROPERTY BLOCK 31 LOT 25 TEWKSBURY TOWNSHIP HUNTERDON COUNTY, NEW JERSEY” prepared by Gladstone Design, Inc. on October 26, 2011, last revised November 15, 2011, consisting of two sheets, and architectural plans titled: “New Stone House for Margit Lauezzari 31 Water Street – Mountainville, New Jersey Lot 25, Block 31 – Tewksbury Township” prepared by Pickell Architecture, LLC, dated October 4, 2011, consisting of three sheets, subject, however, to the following conditions:

1. Conditions recommended by the Land Use Board Engineer, William H. Burr, IV, PE in his report dated December 29, 2011:

“TECHNICAL REVIEW:

1. The applicant should describe the proposed dwelling and detached including the proposed use and size of the spaces, number of proposed bedrooms/bathrooms, exterior style, materials, color, etc. A review of the architectural plans revealed a finished second floor proposed over the proposed garage which would include a workout room and full bathroom. Testimony should be provided to clarify the proposed use of this space as well. *See factual findings 8 - 10.*
2. The applicant and its professionals should provide testimony to support the proposed front yard variance, including the location of residential dwellings and structures on adjoining properties and surrounding vegetation. *See factual findings 11-18.*
3. In an effort to mitigate the increase in stormwater runoff from the proposed dwelling and detached garage, the applicant has provided a stormwater infiltration system to capture and infiltrate the runoff. In total, the proposed stormwater system has been sized to handle a total of 2,152 S.F. of lot coverage which equals the roof areas of the new dwelling and garage. While I have no issues with the conceptual design of this stormwater management system, I do have the following comments regarding the plans and corresponding calculations/construction details:
 - a. The applicant's engineer should confirm the pipe system volume calculations as a 6" radius appears to have been used, instead of 3". If this is an error, the calculations will need to be revised accordingly. *The applicant's engineer agreed to revise the calculations.*
 - b. The infiltration system detail references an invert out of 487.66 on the plan view; however, the section view reflects an invert out elevation of 487.16. This discrepancy must be clarified. *The applicant's engineer agreed to revise the calculations.*
 - c. The calculations state that the volume storage is based upon the area below the outflow invert. I would recommend that the section view be revised to clearly reflect that 1.5 ft. of stone is proposed below the outflow invert to correspond with the calculations. *The applicant's engineer agreed to revise the calculations.*
 - d. I would recommend that the plans be revised to reflect clean-outs at all underground pipe bends, as well as, the corners of the infiltration system to allow for future maintenance and cleaning. *The applicant's engineer agreed to this condition.*
 - e. Soil tests will need to be performed to confirm adequate soil conditions to allow for the installation of the infiltration system as proposed. This issue could be addressed as a condition of any Board approval. *The applicant's engineer agreed to this condition.*

4. The architectural plans reflect various light fixtures on the new dwelling and garage. Information should be provided by the applicant regarding the type, quantity and wattage of lights that are proposed to confirm that there will not be any undesirable effects to the surrounding properties in accordance with the Township Lighting Ordinance - Section 632. *The applicant's architect testified that lighting would be with RLN fixtures with 100 watt bulbs directed downward on the garage doors and fixtures which can accommodate 100 watt bulbs but will typically use 60 watt bulbs on the exterior of the dwelling. The home would have traditional lantern boxes. The applicant's architect shall provide the Land Use Board Engineer with the lighting cut sheets. The lighting is subject to the approval of the Land Use Board Engineer. The lighting shall comply with Section 632 of the Tewksbury Township Lighting Ordinance. The lighting shall not cause glare of sky glow on adjoining properties.*
5. The plans call for the removal of several existing trees to allow for the proposed improvements. The applicant should provide testimony to clarify if any new trees are proposed to be planted to offset this tree removal. *Engineer Kennedy testified that a total of 7 trees would be removed during construction. Pursuant to the NJDEP permit requirements, 48 smaller trees would need to be planted.*
6. It appears from the plans that the yard area to the rear of the proposed retaining wall/fence will be graded to the top of the wall. The applicant's engineer should confirm if this is so since DRO Section 719 prohibits walls and fences from damming or diverting the natural flow of water. *Engineer Kennedy testified that the wall would not dam or divert the natural flow of water runoff.*
7. In addition, DRO Section 719 states 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. The applicants engineer should confirm that the wall and fence combo will not exceed 4 ft. in height as measured from the ground surface elevation in front of the wall/fence. *Engineer Kennedy confirmed that the height and fence would not be over 4 feet, as an additional height would require a fence variance. The fence is subject to the Township Engineers review and approval with respect to any impairment to sight distances. Further, engineer Kennedy testified that the new wall/fence would not encroach upon the Water Street right-of-way.*
8. The plans should be revised to clarify the gross and net lot area. *The applicant's engineer agreed to this condition.*
9. The existing lot coverage calculation on Plan Sheet 1 is based upon what appears to be the gross lot area, while the proposed lot coverage is based upon the net lot area. These calculations should be revised to be consistent. *The applicant's engineer agreed to this condition.*
10. The lot coverage calculations on Sheet 1 indicate that the stone building near the intersection of Water Street and Longview Road is to remain. If this is so, the

plans should clearly reflect this. In addition, are any improvements proposed to the stone building? *Architect Pickell testified that the existing summer kitchen would remain as is and the stone foundation would likely be re-pointed and a new roof installed. Furthermore, the applicant agreed to a preservation and maintenance easement pursuant to condition 4b.*

11. The applicant has obtained an NJDEP Highlands Exemption Letter, dated August 10, 2011, which limited the proposed disturbance on the property to 0.99 acres or an increase in impervious surface to no more than one-quarter acre. Prior to obtaining any building permits for the project, the deed was to be modified to include the required Highlands language and restrictions as summarized above. The applicant should provide testimony to confirm that the plans currently before the Board are consistent with those previously approved by NJDEP. Has the deed for the property been modified as required by NJDEP? *Engineer Kennedy testified that the plans were consistent with those approved by the NJDEP. Attorney Tubman stated that a Deed Restriction had been submitted to the NJDEP as required by the NJDEP. A copy of the deed will be supplied to the Land Use Administrator.*
12. 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.

Soil logs will also need to be provided to the Township Engineer with the GSWMP to confirm that the infiltration system is above the seasonable high water table and infiltration is feasible. *Applicant's engineer agreed to this condition.*

13. The applicant must obtain approvals from the following outside agencies:
 - a. NJDEP LOI – wetlands absence letter.
 - b. NJDEP Flood Hazard Area Permit.
 - c. Hunterdon County Soil Conservation District.
 - d. Hunterdon County Health Department.
 - e. Tewksbury Township Board of Health.
 - f. Any other agencies as necessary.”

2. The applicant shall cap the existing well and drill a new one, as well as abandon the existing septic system and construct a new one to serve the home to the approval of the Hunterdon County Health Department and the Tewksbury Township Board of Health.

3. The existing residence, barn/garage, stone driveway and shed are to be removed and the area shall be converted to lawn, landscaped areas and new improvements.

4. The applicant shall file a deed restriction which is subject to the approval of the Land Use Board Engineer and the Land Use Board Attorney which:

a. Precludes a kitchen in the carriage house and prohibits the carriage house from being used as either a separate dwelling unit or a rental facility.

b. A preservation and maintenance easement for the *summer kitchen*. Modifications and improvements to that structure will require the approval of the Tewksbury Township Historic Preservation Commission. The demolition of that structure will require the approval of the Tewksbury Township Historic Preservation Commission.

5. The elevation of the first floor of the new home shall be about three feet above the flood plain elevation.

6. The DRO requires a successful applicant for a variance to obtain a building permit within one year of the adoption of the memorialization resolution granting approval. Because of the extensive approvals from other agencies which need to be obtained, this period is extended to two years from the date of this memorialization resolution. If the permit is not obtained within two years, the variance shall be void and have no further effect, unless it is extended by this Board.

7. 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.

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

9. The plans shall be revised within 90 days hereof to the approval of the Land Use Board Engineer. Subsequent revisions shall be made within 15 days of subsequent requests.

Roll Call Vote

Those in Favor: Mr. Van Doren, Ms. Desiderio, Mrs. Devlin, Mrs. Czajkowski, Mr. Moriarty, Mr. Shapack, Mr. Metzler and Mr. Johnstone

Those Opposed: None

WHEREAS, Civil Engineer Ronald A. Kennedy, P.E. sent a letter to Land Use Administrator Shana Goodchild noting that Margit Lauezzari had previously received approval from the Land Use Board to construct a two-story, four bedroom home, a detached two-car garage, and associated improvements, and

WHEREAS, the applicant now seeks permission to move the detached garage approximately 20 feet to the east from the prior approval in order to provide more separation between it and the home, and

WHEREAS, the garage was approved with a front yard setback variance of 41.1 feet, at the proposed new location the garage will have a front yard setback of 41.7 feet, while the zoning ordinance requires a minimum front yard setback of 75 feet in the HL Zone, and

WHEREAS, Mr. Kennedy included with his letter a revised plan, and

WHEREAS, Mr. Kennedy appeared at the July 17, 2013 Land Use Board meeting, and

WHEREAS, the Board has determined that Notice is not required to approve the request, as it does not create or exacerbate any nonconformity, and

WHEREAS, Land Use Board Engineer William H. Burr, IV., P.E. in his report of July 11, 2013 noted: “It does not appear that any of the conditions of the previous Board approval will be impacted by this proposal to move the garage to the east and the project’s development footprint will remain within the limits previously approved by the Land Use Board, N.J.D.E.P. and the Hunterdon County Soil Conservation District.

WHEREAS, the Board determines that the revised plan is acceptable as it does not create or increase any nonconformities and in fact slightly increases the front yard setback.

NOW, THEREFORE, BE IT RESOLVED by the Land Use Board of the Township of Tewksbury on this 7th day of August, 2013 that the detached garage may be moved approximately 20 feet to the east from the previously approved plan as shown on the revised plan titled: “LAUEZZARI PROPERTY BLOCK 31 LOT 25 TEWKSBURY TOWNSHIP HUNTERDON COUNTY, NEW JERSEY” prepared by Gladstone Design, Inc., on October 26, 2011 and last revised June 25, 2013 consisting of two sheets with the same conditions as previously approved.

Roll Call Vote

Those in Favor: Mr. Mackie, Mrs. Czajkowski, Mr. Larsen and Mrs. Baird

Those Opposed: None

➤ Resolution No. 13-22 – Snyder, Appl. No. 13-10, Block 11, Lot 8.04

Eligible to vote: Mr. Van Doren, Mr. Mackie, Mrs. Devlin, Mrs. Czajkowski, Mr. Moriarty, Mr. Kerwin, Mr. D'Armiento, Mr. Larsen and Mrs. Baird

Ms. Goodchild noted that the attorney for the applicant asked that the resolution be tabled so that his client could review it prior to adoption.

PUBLIC HEARING

- Pomerantz
Appl. No. 13-09
Block 34, Lot 19.13
Impervious Coverage Variance
Action Deadline – 10/30/13

Ms. Desiderio recused herself from the meeting.

Michael O'Grodnick, attorney representing the applicant, was present. Mr. O'Grodnick explained that the applicant is seeking 2 bulk variances for property located at Hedgerow Crossing to construct an in-ground swimming pool; the variances are for impervious coverage and disturbance to critical slopes. He explained that Mr. Pomerantz had previously installed an above ground pool that has since been removed. The ordinance does not permit coverage more than 5% and the applicant is proposing 7.32% coverage to allow for a swimming pool and patio.

Michael Textores, engineer, was sworn in by Mr. Bernstein. Mr. Textores is with Van Cleef Engineering and provided his credentials. Mr. Textores was accepted as an expert engineer.

Using the plan filed with the application, Mr. Textores explained that the property consists of 5.74 acres and currently has 6.8% impervious coverage. The applicant wishes to construct a pool and patio area which would increase the coverage to 7.42% (approximately 1,550 sq. ft.). The other variance is for disturbance of slopes greater than 25%; there is an isolated area of slopes located behind the existing deck in the location of the proposed pool. Associated with the pool, Mr. Textores noted that the applicant will be constructing retaining walls and installing landscaping to reduce the visual impacts. He added that a drywell is proposed behind the proposed pool and has been designed to capture the water from all of the additional impervious areas. Mr. Textores indicated that he was in receipt of Mr. Burr's technical review letter and addressed item 3A explaining that they designed the drywell to handle the additional runoff from the current project (1,547 sq. ft.). When asked if he has discussed with his client reducing the runoff to 5%, Mr. Textores responded in the negative.

When asked by Mr. Burr how the subject property relates to surrounding properties, Mr. Textores explained that he was unaware if the neighbors had similar pools but would not be surprised given the nature of the neighborhood. When asked if there impervious surfaces that could be removed to compensate for the proposed project, Mr. Textores noted that a majority of the impervious is associated with the house. He noted that the

Environmental Commission suggested the removal of the circular driveway but it would be difficult. When asked if there are any trees to be removed for the project, Mr. Textores responded in the positive. When asked about lighting, Mr. Textores noted that it will be limited to the inside of the pool. There will be some small decorative lights near the water fall but everything will be low voltage and no flood lights or pole mounted lights are proposed.

When asked by Mr. Bernstein if it is possible to engineer the mitigation down to 5%, Mr. Textores responded in the positive.

When asked by Mr. Mackie if the property was grandfathered at 6.8% coverage, Mr. Textores explained that the property was in the former R-3 Zone which allowed coverage of up to 8% so at the time of construction. When asked if the property owner would be willing to remove some of the existing coverage, Mr. Textores explained that his client would be willing to remove some of the small patio areas in the rear but the amount is insignificant (100 sq. ft.). Other areas were discussed but it was concluded that those areas serve a useful purpose and should not be removed. When asked about the patio design for the pool, Mr. Textores explained that he received the design from the pool company. When asked if the patio could be made smaller, Mr. Textores responded in the positive.

Mrs. Baird noted that the architectural restrictions for the subdivision ran for a three (3) period (which has since expired) however page 5, paragraph 2 requires all 15 lot owners (in the absence of an association) to agree on the architectural restrictions for accessory structures. Mr. Bernstein agreed to review the language while the Board continued the hearing.

When asked by Mrs. Czajkowski if the well is far enough away from the pool, Mr. Textores responded in the positive but agreed to check it again.

Gary Pomerantz, applicant, was sworn in by Mr. Bernstein. Mr. Pomerantz explained that the small patio areas discussed earlier are part of his wife's English garden and she was hoping to retain those areas rather than removing them. Mr. Pomerantz explained that the patio around the pool is the minimum to accommodate some chairs. He noted that installing additional drainage measures would become too cost prohibitive for the project. When asked by Mr. Johnstone how much area needed to be put into the drywell, Mr. Burr opined 4500 sq. ft. to bring the coverage down to 5%. Mr. Johnstone noted that the property was constructed when the zone permitted 8% and the applicant has not constructed anything since that time. He opined that it is unfair to require the applicant to mediate the coverage down to 5% when he has not constructed anything since the coverage changed from 8% to 5%. When asked by Mr. Burr if the gutters discharge to the surface, Mr. Pomerantz responded in the negative and explained that there are pipes that go underground and daylight at the back of the property.

When asked by Mr. Bernstein if there is a homeowners association, Mr. Pomerantz responded in the negative. Mr. Bernstein asked Mr. Pomerantz and his attorney to check

on the status of the homeowners association that was to have been established to which they agreed.

Mr. Mackie asked the applicant to mitigate as much coverage as possible.

When asked about the legality of the document as it relates to the homeowners association, Mr. Bernstein read paragraph two (2) of the restrictions which requires prior approval of the homeowners association. Mr. Bernstein explained that if there is no association then the applicant can build the pool; Mr. O'Grodnick will need to verify that the association was never formed. When asked by Mr. Becker if the homeowner will need to get the other homeowners to sign off, Mr. Bernstein responded in the negative and noted that the applicant would be taking the risk if he proceeds. He noted that property owners within 200 feet received notice of the application through the Land Use Board process.

Mr. Johnstone opened the meeting up to the public for questions or comments. There being none, Mr. Johnstone closed the public portion of the meeting.

Mrs. Devlin agreed with Mr. Johnstone and since the applicant did not build anything additional after the maximum coverage changed she opined that the drywell only needed to address the additional coverage proposed for the pool project. Mrs. Baird and Mrs. Czajkowski agreed.

Mrs. Devlin made a motion to approve the application with the conditions outlined below. Mrs. Baird seconded the motion. The motion carried by the following roll call vote:

1. Detention facilities to reduce runoff to 6.8%
2. The variance is valid for 1 year
3. William Burr's report dated July 11, 2013
4. Letter to Land Use Administrator regarding all other governmental approvals
5. Letter from the applicant's attorney to the approval of the Land Use Board Attorney regarding status of homeowners association
6. Deed restriction as to maintenance of trees and detention facilities

Roll Call Vote:

Those in Favor: Mrs. Baird, Mr. Mackie, Mrs. Devlin, Mrs. Czajkowski, Mr. Becker, Mr. Larsen and Mr. Johnstone

Those Opposed: None

Escrow Closing

- Sprint/Nextel - \$1,085.00

Mrs. Devlin made a motion to close the escrow and return the balance to the applicant. Mrs. Baird seconded the motion. The motion carried by the following roll call vote:

Roll Call Vote:

Those in Favor: Mrs. Baird, Mr. Mackie, Mrs. Devlin, Mrs. Czajkowski, Mr. Becker, Mr. Larsen and Mr. Johnstone

Those Opposed: None

ADJOURNMENT

There being no further business, the meeting adjourned at 8:32 p.m. by motion of Mrs. Baird and seconded by Mr. Moriarty.

Respectfully submitted,

Shana L. Goodchild
Land Use Administrator