

LAND USE BOARD MINUTES
September 18, 2013

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

Present: Blake Johnstone, Mary Elizabeth Baird, Shaun Van Doren, Bruce Mackie, Elizabeth Devlin, Shirley Czajkowski, Ed Kerwin, Michael Moriarty arrived at 7:35 p.m., Eric Metzler, Alt. #2, Ed D'Armiento, Alt. #3 arrived at 7:38 p.m. and David Larsen, Alt. #4.

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

Absent: Dana Desiderio and Robert Becker, Alt. #1

There were approximately eight (8) 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 Mr. Kerwin seconded the motion. The motion carried by the following roll call vote:

1. Bernstein & Hoffman – Attendance at 9-4-13 LUB meeting – invoice dated September 9, 2013 (\$450.00)
2. Bernstein & Hoffman – Land Use Board Escrow – Pomerantz (B34, L19.13), invoice dated August 29, 2013 (\$1,362.00)
3. Bernstein & Hoffman – Land Use Board Escrow – Johnson (B23, 4, 20 & 36), invoice dated September 3, 2013 (\$975.00)
4. Maser Consulting – Land Use Board Professional Services – General Planning Work, invoice #212453 (\$97.50)
5. Maser Consulting – Land Use Board Escrow – Vlietown Farm (B43, L3), invoice #212455 (\$130.00)
6. Maser Consulting – Land Use Board Escrow – Lauezzari (B31, L25), invoice #212456 (\$292.50)

7. Maser Consulting – Land Use Board Escrow – Biedron (B31, L12), invoice #212457 (\$780.00)
8. Maser Consulting – Land Use Board Escrow – McCatharn (B16, L25.03), invoice #212458 (\$65.00)
9. Maser Consulting – Land Use Board Escrow – Tewksbury Land Trust (B29, L8.021), invoice #212459 (\$650.00)
10. Maser Consulting – Land Use Board Escrow – Cellco (B44, L26), invoice #212460 (\$390.00)
11. Maser Consulting – Land Use Board Escrow – Bligh (B51, L80.08), invoice #212461 (\$455.00)
12. Maser Consulting – Land Use Board Escrow – von Hollen (B16, L4), invoice #212462 (\$260.00)
13. Maser Consulting – Land Use Board Escrow – Pomerantz (B34, L19.13), invoice #212463 (\$975.00)
14. Maser Consulting – Land Use Board Escrow – Natale (B33, L4), invoice #212465 (\$260.00)
15. Maser Consulting – Land Use Board Escrow – Noe (B34, 118), invoice #212466 (\$195.00)
16. Maser Consulting – Land Use Board Escrow – Sargent (B38, L3.04), invoice #212467 (\$227.50)
17. Maser Consulting – Land Use Board Escrow – Snyder (B11, L8.04), invoice #212464 (\$1,430.00)
18. Maser Consulting – Land Use Board Escrow – Johnson (B23, L20), invoice #212454 (\$975.00)
19. Maser Consulting – Land Use Board Inspection – JCP&L (B17, L2.01/2.02), invoice #212468 (\$1,702.50)

Roll Call Vote:

Those in Favor: Mrs. Baird, Mr. Van Doren, Mr. Mackie, Mrs. Devlin, Mrs. Czajkowski, Mr. Kerwin, Mr. Metzler, Mr. Larsen and Mr. Johnstone

Those Opposed: None

CORRESPONDENCE

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

1. A letter dated September 13, 2013 from William Burr re: Biedron, Appl. No. 12-13, Block 31, Lot 12.
2. A letter dated September 13, 2013 from William Burr re: McCatharn, Appl. No. 13-01, Block 16, Lot 25.03.
3. Information from ANJEC re: Planning in a Changing Environment on Oct. 19, 2013.

ORDINANCE REPORT

Mr. Mackie had no ordinances to report on.

PUBLIC PARTICIPATION

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

RESOLUTIONS

- Resolution No. 13-24 – Natale, Appl. No. 13-13, Block 33, Lot 4
Eligible to vote: Mrs. Baird, Mr. Mackie, Mr. Moriarty, Mr. Metzler, Mr. D'Armiento and Mr. Johnstone

Mr. Bernstein noted that the architect for the applicant was present to discuss his concern with condition No. 5 a.

Mr. O'Brien noted that the State and Township may drop all requirements for affordable housing units and so he questioned the validity of the condition. He suggested that the condition be modified to read that the property owner could return to the Board and apply for a use "such as" an affordable housing.

Mr. Bernstein noted the Board's reluctance in granting two (2) dwelling units on a lot (as in the Thompson, Newell and Rothpletz applications); this condition has been imposed in other situations.

Mr. Kerwin agreed with Mr. Bernstein's comments. Mr. Johnstone noted that he only voted in favor of the project because the applicant's agreed to deed restrict it to use by family with the ability to apply for an affordable housing unit in the future.

Mr. Johnstone asked if there was anyone in the public that wished to be heard on the matter. There being no one, he closed the meeting to public comment.

Mrs. Baird made a motion to adopt the following resolution with the addition of the word "only" in Condition No. 5a. Mr. Moriarty seconded the motion. The motion carried by the following roll call vote:

LAND USE BOARD
TOWNSHIP OF TEWKSBURY
APPLICATION # 13-13
RESOLUTION # 13-24

WHEREAS, SALVATORE AND ROBERTA NATALE have applied to the Land Use Board of the Township of Tewksbury for permission to expand a cottage on a lot containing two residences which is located at 91 Bissell Road on property

designated as Block 33, Lot 4 on the Tewksbury Tax Map, which premises is located in Highlands (HL) Zone, and

WHEREAS, the application was presented by registered architect Edward O'Brien, R.A., Salvatore and Roberta Natale at the September 4, 2013 Land Use Board meeting, and

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

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

A. The Subject Property.

1. The subject property contains 1.1296 acres with 113.30 feet of frontage along Bissell Road.

2. The site is improved with a 1-1/2 story stone house a minimum of 75 feet from the road, a cottage with a rear yard setback of 17.47 feet, separate septic systems for both residences, a detached garage, an in-ground swimming pool, a gravel driveway and a bluestone patio.

3. The one-story cottage at the rear of the property which is proposed to be enlarged is 20 feet by 20 feet. It contains a bedroom, living room/dining room, kitchen, and bathroom. Attached to the home is a 12 feet by 20 deck. The basement crawl space is not accessible from the home.

B. The Proposal.

4. The applicants propose to increase the height of the cottage by approximately 8 feet by the addition of a loft over the first floor. The loft will consist of

a bedroom, full bathroom, and closet. The first floor will be reconfigured to include a single living/dining room/kitchen, with an internal stairway to the basement/crawlspace. The deck will be converted to a screened porch which will not be enclosed and will neither be heated nor air-conditioned. An overhang will be added to the home for roof drainage, but the footprint of the cottage will not be expanded.

C. Zoning Considerations.

5. The subject property contains 1.1296 acres while the minimum lot size in the HL Zone is 12 acres. The site is *grandfathered* under Section 706F1 of the Tewksbury Township Development Regulations Ordinance (DRO).

6. Land Use Board Engineer William H. Burr estimated impervious lot coverage to be 15%, while the maximum allowed for *grandfathered* lots under 3 acres per Section 706F1(d) is 12%. The current application will not increase impervious lot coverage. Permits were issued for the detached garage and in-ground swimming pool.

7. Section 702 of the DRO prohibits more than a single residence on a lot.

8. The Tewksbury Township Tax records indicate that the 1-1/2 story Cape Cod (stone) home was built in 1946 and contains 1,680 square feet. The one story cottage was constructed in 1954 and contains 400 square feet with an attached wooden deck.

9. The applicants did not prove that the cottage was a prior nonconforming principal structure under N.J.S.A. 40:55D-68, which would have required proof that the use as a principal structure had not been abandoned.

10. The applicants sought a variance to expand the nonconforming structure as an accessory to the stone house under N.J.S.A. 40:55D-70d(1). They agreed to deed restrict the cottage to an accessory to the 1-1/2 story stone house for use by family members and guests, and not as a rental unit or second principal structure. The Board has granted approval for this type of accessory use for Douglas E. Thompson in Application No. 12-01, Resolution No. 12-21 and John Timothy Newell in Application No. 12-16 and Resolution No. 13-17.

11. The expansion of the cottage also requires setback variances. The cottage has a 17.4 foot rear yard setback which will be maintained while the zoning ordinance in 706F1(d) requires a minimum rear yard setback of 40 feet for *grandfathered* lots less than 3 acres. The existing cottage has a side yard of 30.3 feet which will be maintained while the DRO in Section 706F1(d) requires a minimum side yard of 40 feet for *grandfathered* lots less than 3 acres.

D Justification for Variances.

12. An applicant for a use variance under N.J.S.A. 40:55D-70d must prove the positive criterion of special reasons. Special reasons may include the promotion of the purposes of the Municipal Land Use Law under N.J.S.A. 40:55D-2. Burbridge v. Mine Hill Tp., 117 N.J. 376, 386-387 (1990); Medici v. BPR Co., 107 N.J. 1, 18 (1987). The promotion of a single purpose is sufficient. Hudanich v. Avalon, 183 N.J. Super. 244, 260 (Law Div. 1981). Since there is no precise formula for special

reasons, each case turns on its own circumstances. Kohl v. Fair Lawn, 50 N.J. 268, 276 (1967).

13. The requested use and structure variances under N.J.S.A. 40:55D-70d(1) are justified by promoting the following purposes of the Municipal Land Use Law under N.J.S.A. 40:55D-2:

“i. to promote a desirable visual environment through creative development techniques and good civic design and arrangement;”

By the aesthetic improvements to the existing cottage.

“j. To promote the conservation of historic . . . resources and valuable natural resources in the State and to prevent urban sprawl and degradation of the environment through improper use of land;”

By the retention of a home circa 1954.

“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;”

By the continued albeit restricted use of a residence almost 60 years old, and quite small even after the proposed expansion at 800 square feet, rather than requiring its destruction or restricting it to an oversized shed.

14. The elimination of all use of the cottage, which has been a residence since 1954, except perhaps as an oversized shed, would constitute a hardship.

15. The bulk variances are justified under N.J.S.A. 40:55D-70c(2) by promoting the same purposes of the Municipal Land Use Law as the *d* variances.

16. The increase in the height, but not the footprint of the cottage, will not impact the adjoining properties or the neighborhood. There is a substantial vegetative buffer between the site and the neighboring properties.

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

NOW, THEREFORE be it resolved by the Land Use Board of the Township of Tewksbury on this 18th Day of September 2013 that the application of Salvatore and Roberta Natale be approved in accordance with a survey titled: "PROPERTY IN THE TOWNSHIP OF TEWKSBURY HUNTERDON COUNTY, NEW JERSEY Scale: 1"=40' August 9, 2007 BROUGHT TO DATE APRIL 10, 2012 ADD SETBACKS & ADJOINERS JULY 11, 2013" prepared by Titus Surveying & Engineering, P.C. with handwritten modifications by E. O'Brien, A.I.A. dated September 14, 2013 well & septic locations +/-, subject, however, to the following conditions:

1. Conditions recommended by Land Use Board Engineer William H. Burr, IV, P.E. in his memorandum of August 26, 2013, as modified by the Land Use Board:

“TECHNICAL REVIEW:

1. The applicants' and its professionals must provide testimony to prove the special reasons for granting of the use variance to permit the expansion of the cottage. In addition, I would recommend testimony be provided to clarify when this cottage was constructed and whether proper permits were obtained since according to Section 702 of the DRO, only one (1) principal structure is permitted on a lot. *See factual findings 8 - 17 herein.*
2. The applicants' should describe in detail the proposed addition to the existing cottage and the related improvements including the proposed use of the new space and exterior style, material, color, size, etc. *The applicants indicated that the cottage would be similar color and materials as the recently constructed garage. They will use low maintenance materials.*
3. The applicants' and its professionals should provide testimony to support the proposed side and rear yard variances, including testimony as to the potential impacts of the proposed cottage addition in relation to the adjacent residential dwellings. *The*

applicants do not anticipate any negative impacts to adjoining properties due to heavy vegetation surrounding the cottage and the fact that the cottage is situated at the rear of the property.

4. Is there existing driveway access to the cottage or does the driveway terminate at the garage? There is no driveway to the existing cottage and none is proposed. *The existing driveway terminates at the detached garage.*
5. Are there any other improvements proposed on the property in addition to those being proposed to the cottage? *None.*
6. Although no information has been provided regarding the existing lot coverage, my rough calculations indicate that at least 15% coverage exists where 12% is the maximum permitted in the HL Zone District. The applicant should confirm when the various lot coverage was added on the property and whether proper permits were obtained for this work? *See factual finding 6 herein.*
7. The plans contain a note stating that the proposed site improvements will not include any new lighting. The applicants should provide testimony confirming this. *The applicants confirmed that there will be no new outdoor lighting in connection with the cottage improvements.*
8. Testimony should be provided with regards to whether there is any increase in the number of bedrooms to the cottage? If so, approval from the Hunterdon County Health Department would be required. *There will be no new increase in the number of bedrooms or bathrooms in the cottage.*
9. Per Chapter 13.12 of the Township Code of Ordinances, a Grading and Surface Water Management Plan (GSWMP) is not required for this application because the proposed improvements do not meet the threshold requirements for a GSWMP pursuant to Chapter 13.12.”

2. The variances granted herein must be utilized within one year from the date of this memorialization resolution or the variances shall be void and have no further effect.

3. 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.

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

5. 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 cottage in the back of the property is restricted to an accessory to the stone house and shall be restricted to a study, library, office, hobby area, game room, man/woman cave, or the like, and quarters for guests staying no more than one month, or for occupancy by the children or parents of those residing in the stone house. No rent is to be charged for the quarters.

The applicants may only apply to this Board for permission to eliminate this deed restriction by deed restricting the cottage as an affordable housing unit.

b. The screened in porch shall remain open and shall not be enclosed. It shall neither be heated nor air-conditioned.

6. The cottage shall be limited to one bedroom and one bathroom.

Roll Call Vote

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

Those Opposed: None

➤ Resolution No. 13-25 – Shoemaker, Appl. No. 13-14, Block 37, Lot 8
Eligible to vote: Mrs. Baird, Mr. Van Doren, Mr. Mackie, Mr. Moriarty, Mr. Metzler, Mr. D'Armiento and Mr. Johnstone

Mr. Van Doren made motion to adopt the following resolution. Mrs. Baird seconded the motion. The motion carried by the following roll call vote:

TOWNSHIP OF TEWKSBURY
APPLICATION #13-14
RESOLUTION #13-25

WHEREAS, Kathleen C. Shoemaker has applied to the Land Use Board of the Township of Tewksbury for permission to construct a concrete pad for a generator on her residential lot which is located at 72 Welsh Road on property designated as Block 37, Lot 8 on the Tewksbury Tax Map, which premises is located in Farmland Preservation (FP) Zone, and

WHEREAS, the application was presented by Kathleen Shoemaker at the September 4, 2013 Land Use Board meeting, and

WHEREAS, the existing residence has a front yard setback of 35.1 feet while the Farmland Preservation Zone requires a front yard setback of 75 feet for a *grandfathered* lot of the size of the subject property, and

WHEREAS, the applicant proposes to construct the concrete pad with a front yard setback of 35 feet, which necessitates a dimensional variance under N.J.S.A. 40:55D-70c, and

WHEREAS, generators are typically within five (5) feet of a residence, and

WHEREAS, the requested variance is justified under N.J.S.A. 40:55D-70c(1)(c) on the basis of the location of the existing residence on the lot, and

WHEREAS, the Board recognizes the desirability of generators which can provide electric service in times of power outages, and

WHEREAS, pursuant to Ordinance #08-2013, concrete pads for generators are not subject to the maximum lot coverage provisions in the Development Regulations Ordinance, and

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

NOW, THEREFORE be it resolved by the Land Use Board of the Township of Tewksbury on this 18th day of September, 2013 that the application of Kathleen C. Shoemaker for a concrete pad for a generator be approved pursuant to a copy of a survey prepared by John Cilo Jr. Associates on March 3, 1986 with the hand-drawn concrete pad shown on the plan, subject, however, to the following conditions:

1. Compliance with Section 702.2 of the Tewksbury Township Development Regulations Ordinance.

Roll Call Vote

Those in Favor: Mrs. Baird, Mr. Van Doren, Mr. Mackie, Mr. Moriarty, Mr. Metzler, Mr. D'Armiento and Mr. Johnstone

Those Opposed: None

Mr. Metzler left the meeting at this time as he was recused from both public hearings.

PUBLIC HEARINGS

- McCatharn
Appl. No. 13-01
Block 16, Lot 25.03
Side Yard Setback Variance
Action Deadline – 12/05/13

Ms. Susan Rubright, was present representing the applicants, Mr. and Mrs. McCatharn. She explained that the property was purchased in November, 2011 and a certificate of continuing occupancy was obtained. Prior to the closing a survey revealed that the stable that was built by the predecessor in title was not constructed as permitted and was approximately 5 feet into the side yard setback. The stable has electric and a foundation and would not be easily relocated. She noted that during the completeness review by the Township professionals it was discovered that the property exceeds the maximum lot coverage permitted. Ms. Rubright explained that the surveyor will provide testimony that the property never conformed to the 5% impervious coverage permitted; when the house

and driveway were constructed it contained 6.9%. A pool was added at a later date and then lastly the stable.

Rodney McCatharn was present and sworn in by Mr. Bernstein. Mr. McCatharn confirmed that he purchased the property in November of 2011. When asked if he was the first owner of the house, Mr. McCatharn responded in the negative and noted that he was the third owner. When asked when the house was built, Mr. McCatharn responded approximately 1985. When asked about the improvements on the property, Mr. McCatharn explained that the property is improved with a house, driveway, pool, barn and walkways. The plan submitted with the application was marked as **Exhibit A-1** and Mr. McCatharn used it to demonstrate to the Board where the existing improvements are located. When asked the length of the driveway, Mr. McCatharn replied 600 feet. When asked if he has made any improvements to the property since he purchased it, Mr. McCatharn responded in the negative. When asked when the pool was constructed, Mr. McCatharn replied prior to 1995. When asked when the stable was constructed, Mr. McCatharn replied 2002/2003. When asked about the use of the stable, Mr. McCatharn explained that it is used for chickens, donkeys and equipment storage. The stable is on concrete footings and the interior floor is blacktop. When asked if the stable has electric and water, Mr. McCatharn responded it the positive. When asked if there is a change in topography on the property, Mr. McCatharn noted that the property slopes away from the house. When asked if it would be difficult to demolish or move the stable, Mr. McCatharn responded in the positive and explained that, aside from the obvious issues, the slope would also present a problem. When asked the condition of the property to the west, Mr. McCatharn noted that it is wooded. When asked if he has spoken to his neighbors about the application, Mr. McCatharn responded in the positive and noted that none of them were present to voice an objection to the application.

When asked by Mrs. Devlin the width of the driveway, Mr. McCatharn opined 12 feet.

When asked by Mr. Van Doren if there were building records for the pool, Mr. McCatharn explained that they did not research the files for the pool permit.

When asked by Mr. Larsen if the driveway is paved, Mr. McCatharn responded in the positive.

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

Mrs. Rubright noted that there is some confusion in the ordinance as to whether an accessory structure, such as the stable, needs to comply with the setback. She referenced the definition of accessory uses. Mr. Bernstein noted that the Board has consistently required accessory structures to meet the setback requirements.

Louis Puopolo 465 Meisel Ave., Springfield, NJ, professional survey and planner on behalf of the applicants was sworn in by Mr. Bernstein. When asked if he took the planning exam, Mr. Puopolo responded in the negative. When asked if he uses the

planning license in conjunction with his surveying license, Mr. Puopolo responded in the positive. Mr. Puopolo was accepted as an expert witness.

When asked if he prepared the variance plan and the initial survey for the McCatharn's, Mr. Puopolo responded in the positive. Mr. Puopolo explained that the property is rectangular in shape, almost 800 feet deep and improved with a house, pool, stable, frame shed and paved driveway that provides access from Fairmount Road. The subject property is surrounded by residential dwellings. When asked if the subject property is in general conformity with the surrounding properties, Mr. Puopolo responded in the positive. When asked what the current setback requirements are, Mr. Puopolo noted that it is 50 foot side and rear yard setback and 100 front setback. He noted that the stable that was constructed violates the side yard setback by 4.24 feet. When asked if the application could be granted under the C1 standard, Mr. Puopolo responded in the positive and explained that there is a substantial slope which would impact re-locating the structure. The cost of moving the barn would be substantial along with the impact on the environment to relocate the stable. When asked if this is a unique situation affecting only this lot, Mr. Puopolo responded in the positive. When asked about the detriment to the neighborhood, Mr. Puopolo opined that the 4.2 foot intrusion into the setback is not perceptible from the roadway. When asked if the detriment to the zone plan is minimal, Mr. Puopolo responded in the positive. When asked about the impervious coverage, Mr. Puopolo noted that the zone allows for a maximum of 5% and the property currently has 8.6%. Mr. Puopolo noted that if the property was under 5 acres it would be permitted to have 8% impervious coverage under the undersized lot provisions of the Development Regulations Ordinance. When asked what the coverage was when the house was first built, Mr. Puopolo responded 6.49%. After the pool was constructed it was 7.9% and after the stable it was 8.6%. Mr. Puopolo noted that the lot has never met the 5% coverage requirement and he is unaware how the pool and stable were approved in excess of the coverage permitted. When asked if the impervious coverage variance could be granted without a detriment to the public good and zone plan, Mr. Puopolo responded in the positive.

When asked if there are any existing features on the property that would mitigate runoff from either of the structures, Mr. Puopolo responded in the negative.

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.

Mr. Johnstone commended the applicant for coming before the Board to clean up the issues and noted that he did not have any issue with the request as it has a minimal impact on the property and the surrounding area. Mrs. Devlin agreed with Mr. Johnstone. Mr. Van Doren agreed with the statement by Mr. Johnstone and Mrs. Devlin but asked that the applicant consider mitigating future coverage if any other projects are considered.

Mr. Moriarty made a motion to approve the application as submitted by the applicant and with the standard conditions. Mrs. Devlin seconded the motion. The motion carried by the following roll call vote:

Roll Call Vote:

Those in Favor: Mrs. Baird, Mr. Van Doren, Mr. Mackie, Mrs. Devlin, Mrs. Czajkowski, Mr. Moriarty, Mr. Kerwin, Mr. Larsen and Mr. Johnstone

Those Opposed: None

- Biedron
Appl. No. 12-13
Block 31, Lot 12
Front Setback variance
Accessory Structure in front yard
Action Deadline – 11/20/13

Mrs. Devlin recused herself from the hearing as she is within 200 feet of the subject property.

Mr. Ronald Kennedy, Engineer and Planner for the applicant, was present and sworn in by Mr. Bernstein. Mr. Kennedy has testified before the Board as an Engineer and Planner in the past and was accepted by the Board.

Mr. Kennedy explained that the subject property is a 36.9 acre parcel in the Highlands District owned by the Biedron family. The applicant is removing the 65 year old existing pool that is in the front yard and replacing it with a similar pool no closer to the front yard than what is there today; the shape will change slightly.

Mr. Kennedy, using the plan provided with the application, explained that the parcel has frontage on Water Street which is where it gains its access (the lot formerly gained access from Philhower Road but that was closed off approximately 15 years ago). The house is an old farmstead that has been in existence for many years. Many structures have been added over the years which include sheds, barns, garages, etc. The existing pool is just to the east of the house. Using a plan marked as **Exhibit A-1**, Mr. Kennedy explained that the closest portion of the house is approximately 60 feet to the right-of-way line on Philhower Road. The current setback is approximately 58.1 feet to the existing pool; the proposed pool will be 59.3 feet. The existing pool equipment is approximately 40 feet from the right-of-way line; the equipment will be removed and new equipment installed at a conforming location (120 feet). Additionally, there is a small spa area that is located next to the house which is approximately 90 feet from the right-of-way but still within the front yard setback. There will be some updating of the stone terrace as well.

Mr. Kennedy noted that there is one (1) house located approximately 400 feet off of Philhower which is the closest neighbor to the proposed project. There is a very dense buffer between the road and the house and pool and over the years the applicant has provided additional plantings. Mr. Kennedy noted that the coverage is below the

maximum permitted at 2.9% and is being decreased slightly. He noted that the pool is an in-kind replacement so the only NJDEP permits needed is a permit by rule.

Mr. Kennedy explained that the existing and proposed pool cannot be seen from Philhower Road or Water Street and opined that there would be no impact to the neighborhood or zone plan. He opined that it is more of a C2 variance argument as opposed to a C1 (hardship); the benefits from the deviation outweigh the detriments and don't negatively impact the zone plan.

Addressing Mr. Burr's report, Mr. Kennedy explained that the patio around the pool would be a blue stone material. When asked if the pool could be located in a conforming location, Mr. Kennedy responded in the positive but explained that it would take it out of the context of the existing surround (the home). When asked by Mr. Van Doren if the existing pool complies with pool fencing code, Mr. Kennedy responded in the negative but noted that the new pool will have fencing. He noted that no new exterior lighting is proposed around the pool.

Mr. Burr noted that the project does not require a Grading and Surface Water Management Plan approval under the ordinance but that the Board typically requires a grading plan submitted to the Engineer for approval. Mr. Kennedy agreed to provide a grading plan for Mr. Burr's review and approval

When asked if there would be more disturbance if the pool was moved back, Mr. Kennedy responded in the positive.

When asked by Mr. Mackie about the lighting, Mr. Kennedy explained that there is some lighting on the existing house but was unaware of the type of fixture and wattage. When asked if there is lighting in the pool, Mr. Kennedy responded in the positive. When asked if the applicant would comply with the lighting regulations in the DRO, Mr. Kennedy responded in the positive.

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

Mr. Van Doren made a motion to approve the application as submitted subject to the standard conditions and Mr. Burr's report. Mr. Moriarty seconded the motion. The motion carried by the following roll call vote:

Roll Call Vote:

Those in Favor: Mrs. Baird, Mr. Van Doren, Mr. Mackie, Mr. Moriarty, Mrs. Czajkowski, Mr. Kerwin, Mr. D'Armiento, Mr. Larsen and Mr. Johnstone

Those Opposed: None

Mr. Johnstone noted that the public hearing for the cell tower application will be begin November 6, 2013 and he has instructed Ms. Goodchild to schedule the first hearing in Mountainville. If, after that meeting, it is necessary to schedule it in a different location due to the turnout of interested parties Ms. Goodchild will arrange to have future hearings at one of the schools.

ADJOURNMENT

There being no further business, the meeting adjourned at 8:45 p.m. by motion of Mr. Moriarty and seconded by Mrs. Czajkowski.

Respectfully submitted,

Shana L. Goodchild
Land Use Administrator