

LAND USE BOARD MINUTES
September 4, 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, Michael Moriarty, Eric Metzler, Alt. #2 and Ed D'Armiento, Alt. #3 arrived at 7:35 p.m.

Also present: Attorney Jay Bohn on behalf of Daniel Bernstein, Land Use Board Attorney, William Burr, Land Use Board Engineer and Shana Goodchild, Land Use Administrator.

Absent: Dana Desiderio, Elizabeth Devlin, Shirley Czajkowski, Ed Kerwin, Robert Becker, Alt. #1 and David Larsen, Alt. #4

There were approximately six (6) 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. Mr. Van Doren 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 – Attendance at 8-7-13 LUB meeting – invoice dated August 8, 2013 (\$450.00)
2. Bernstein & Hoffman – Land Use Board Escrow – Beatrice Snyder (B11, L8.04), invoice dated August 1, 2013 (\$1,567.50)
3. Suburban Consulting Engineers – Land Use Board Escrow – Johnson (B4, 20 & 36), invoice #000000020898 (\$94.00)

Roll Call Vote:

Those in favor: Mrs. Baird, Mr. Van Doren, Mr. Mackie, Mr. Moriarty, Mr. Metzler and Mr. Johnstone

Those Opposed: None

CORRESPONDENCE

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

1. An e-mail dated August 13, 2013 from Harold Wrede, Scenic Roads and Bridges Commission Chairman re: Biedron, Block 31, Lot 12.
2. An e-mail dated August 13, 2013 from Harold Wrede, Scenic Roads and Bridges Commission Chairman re: Natale, Block 33, Lot 4.
3. An e-mail dated August 13, 2013 from Harold Wrede, Scenic Roads and Bridges Commission Chairman re: Shoemaker, Block 37, Lot 8.
4. Memorandum dated August 9, 2013 from Chief Holmes re: Natale, Appl. No. 13-13, Block 33, Lot 4.
5. A copy of a letter dated August 6, 2013 from the NJ Highlands Council to Mayor DiMare re: Plan Conformance Implementation Tasks, Checklist Ordinance: Municipal Referrals for Consistency Determination.
6. Notice dated July 23, 2013 re: an NJDEP Application for Flood Hazard Verification for Block 11, Lot 20.
7. Memorandum dated August 27, 2013 from Chief Holmes re: McCatharn, Block 16, Lot 25.03.
8. A letter dated August 26, 2013 from William Burr re: Natale, Appl. No. 13-13, Block 33, Lot 4.
9. A memo dated August 28, 2013 from Robert Brassard, Township Clerk, re: Master Plan Consistency Review of Ord. #'s 08-2013 and 09-2013 in accordance with 40:55D-26a.
10. A memo dated August 28, 2013 from Dan Bernstein to Shana Goodchild re: adding decks to townhouses at Hunters Glen located within the Piedmont Zone.

MINUTES

➤ May 1, 2013

Mr. Van Doren made a motion to approve the May 1, 2013 minutes with a correction to Mr. Larsen's name on page 14. Mr. Metzler seconded the motion. All were in favor.

➤ May 15, 2013

Mr. Metzler made a motion to approve the minutes of May 15, 2013. Mrs. Baird seconded the motion. All were in favor. Mr. Van Doren and Mr. Mackie abstained.

➤ June 5, 2013

Mr. Van Doren made a motion to approve the minutes of June 5, 2013. Mrs. Baird seconded the motion. All were in favor. Mr. Metzler abstained.

ORDINANCE REPORT

Mr. Mackie reported on an ordinance from Chester Township which clarified some definitions in their land use ordinances regarding drywells. Mr. Mackie passed the ordinance on to Ms. Goodchild.

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

- 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

Mr. Van Doren 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 # 13-10
RESOLUTION # 13-22

WHEREAS, THE BEATRICE HARPER SNYDER REVOCABLE TRUST has applied to the Land Use Board of the Township of Tewksbury for impervious lot coverage variances under N.J.S.A. 40:55D-70c for existing lot coverage and for lot coverage after the installation of a proposed circular driveway extension on a residential lot which is located at 40 Longview Road and designated as Block 11, Lot 8.04 on the Tewksbury Township Tax Map, which premises is located in Highland (HL) Zone, and

WHEREAS, the application was presented by Attorney Michael Rothpletz, 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; and Beatrice Snyder at the July 17, 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 applicant, Mr. Burr, and neighboring property owner Joseph Kosakowski, has made the following factual findings:

A. The Subject Property.

1. The subject property contains 3.92 net acres with 235.62 feet of frontage on Longview Road. The site is exceptionally deep, with a northern side yard of 819.29 feet and a southern side yard of 751.57 feet.

2. The home is set back approximately 440 feet from the Longview Road right-of-way.

3. Access to the home is through a long winding driveway about 500 feet long to the existing three car garage.

B. Mrs. Beatrice Harper Snyder

4. Mrs. Snyder is an 89 year old widow. She lives in the home with aides. (Two aides, each with a 12 hour shift).

5. Frequent visitors to the home, aside from her aides, include her son Arthur Snyder, III, who lives next door, a son who lives in Bernardsville, a daughter who lives in Chester, grandchildren, family friends, landscapers, U.P.S. and Federal Express pick-ups and deliveries, and contractors. These guests have difficulty in parking along the existing driveway.

C. The Proposal.

6. The applicant proposes to add a circular driveway extension contiguous to an existing retaining wall and adjacent to an existing sidewalk that leads directly to the front door of the home.

7. On occasion, the driveway is clogged with vehicles, making exiting difficult. The proposed circular driveway will provide adequate parking.

8. The proposed circular driveway will provide superior traffic circulation for visitors and emergency service vehicles.

D. Required Variances.

9. The subject property is in the HL Zone which requires a minimum lot size of 12 acres. As previously noted, the site contains 3.92 acres. It is *grandfathered* as it meets the requirements of Section 706F2 of the Development Regulations Ordinance (DRO) by containing at least 3 acres and having a lot width of at least 225 feet at the required front setback in the Zone of 100 feet, and lot depth of more than 300 feet.

10. *Grandfathered* lots are subject to reduced standards. The maximum lot coverage for the subject property under Section 706F3.(d) is 7%.

11. The property in question currently has lot coverage of 8.57% which would increase to 11.45% with the requested circular driveway extension.

12. Attorney Michael Rothpletz reviewed the following changes to the property since it was acquired by the applicant, and confirmed by Mrs. Snyder, which did not increase the existing lot coverage over that which existed when the applicant purchased the site:

- Added new stonewall on the south side of the home.
- Removed existing stonewall on the north side of the home.
- Reconfigured but did not expand rear patio.
- Reconstructed wall in front of the home.
- Reconstructed sidewalks throughout the property.

- Removed Shed.

13. The Tewksbury Township Environmental Commission wrote a report to the Land Use Board questioning the increased impervious lot coverage from 8.57% to 11.45%.

14. Board Members questioned the applicant's architect and civil engineer about reductions in the width of the circular driveway and the existing driveway where it leads to the three car garage. The applicant's professionals agreed to reduce the width of the circular driveway where it was 22 feet to 16 feet, and where it was 12 feet to 10 feet (see factual finding 15), and to reduce the area of the existing driveway/parking area near the three car garage by eliminating a portion of the northwest corner of such area.

15. Land Use Board Administrator Shana Goodchild noted that the minimum driveway width in the driveway ordinance is 12 feet and the reduced width would require a waiver from the Township Engineer.

16. The overall result of the reduction in the size of the existing driveway in the area where it leads to the three car garage and width of the proposed circular driveway would result in lot coverage of approximately 11% which the Board finds is more appropriate.

E. Justification for Variances.

17. The existing excessive lot coverage is caused by the substantial setback of the home about 450 feet from the road and the winding 500 foot long driveway. The home was likely constructed when the Tewksbury Township DRO did not control lot coverage. The substantial front setback for the home and the long winding

driveway are existing conditions which satisfy in part the requested variances under N.J.S.A. 40:55D-70c(1)(c).

18. Attorney Michael Rothpletz asserted that the lot coverage variance of the circular driveway is justified on the basis of N.J.S.A. 40:55D-70c by advancing a purpose of the Municipal Land Use Law under N.J.S.A. 40:55D-2h by promoting “. . . the free flow of traffic while discouraging locations of such facilities and routes which result in congestion or blight.” by providing increased parking and a superior traffic configuration.

19. The Board finds that this combined with the c-1 justification in factual finding 17 should serve as the justification for the requested variances.

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

21. The basis for lot coverage in zoning ordinances are aesthetic and to control water runoff.

22. Engineer Fantina noted that the circular driveway would be a distance from Longview Road and barely visible to motorists and pedestrians.

23. The applicant’s professionals agreed that a detention system would be installed which would reduce effective runoff to lot coverage of 7%. Thus, the requested variance, with the conditions contained herein, satisfies the intent of the lot coverage restrictions in the DRO.

24. Based on the foregoing, the requested relief can be granted without substantial detriment to the public good and without substantially impairing the intent and purpose of the zoning plan and zoning ordinance of the Township of Tewksbury.

25. Neighbor Joseph Kosakowski of 39 Longview Road discussed the development of the applicant's property. He had no objection to the requested variances.

NOW, THEREFORE be it resolved by the Land Use Board of the Township of Tewksbury on this 4th day of September 2013 that the application of THE BEATRICE HARPER SNYDER REVOCABLE TRUST be approved in accordance with a plan titled: "Variance Plan, Grading Plan & Surface Water Management Plan for LOT 8.04 in BLOCK 11 Tewksbury Township Hunterdon County New Jersey" prepared by David E. Fantina, P.E. on April 25, 2013 and last revised June 11, 2013 consisting of three sheets subject, however, to the following conditions:

1. Conditions recommended by Tewksbury Township Land Use Board Engineer William H. Burr, IV., P.E. in his report of July 11, 2013, as revised by the Land Use Board:

"TECHNICAL REVIEW:

1. The applicant and its professionals should provide testimony to support the proposed lot coverage variance. The property is already developed over the permitted lot coverage and the applicants are proposing a further increase of 4,919 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? *See factual findings 17 – 25 herein.*
2. In an effort to mitigate the increase in stormwater runoff from the proposed circular driveway extension, the applicant has provided a drywell system to capture runoff from a portion of the existing improvements. The proposed drywell has been sized to handle runoff from 5,886 S.F. of impervious surface which would reduce the stormwater runoff impacts to below 8% lot coverage. While I have no objection to the conceptual design of the drywell, I do have the following comments:
 - a. The submitted plans indicate that the controlling value for the permitted lot coverage is 8% (which is what was allowed under the previous R-3 zone requirements). The maximum allowable lot coverage in accordance with

Section 706F3 of the current DRO is 7%. On previous lot coverage variance applications, this Board has required drywells or other stormwater management facilities to be installed as a way to mitigate the impacts of stormwater runoff and reduce the “effective” runoff to no more than that produced by the maximum permitted lot coverage, which in this case is 7%. The Board should discuss this and make a determination as to how you may want to handle this project.

If the Board requires the applicant to mitigate the additional 1% of lot coverage, an additional 1,707.55 S.F. of lot coverage would need to be directed to a drywell to meet the 7% lot coverage requirement instead of 8% as currently proposed by the applicant. *At the public hearing the applicant’s professionals agreed to meet the 7% lot coverage requirement.*

- b. The drywell design should include rip-rap outfall protection at the end of the overflow pipe as required by the NJDEP BMP manual. *At the public hearing the applicant’s representatives agreed to this requirement.*
- c. 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. 5 below). *At the public hearing the applicant’s representatives agreed to this requirement.*
3. The plans reflect the removal of two (2) trees in the areas where the proposed circular driveway meets the existing driveway. The applicant should provide testimony to clarify if any additional trees are to be removed and if any new landscape plantings are being proposed to offset the tree removal that is shown on the plans? *The applicant shall plant two trees with the species, size, and location subject to the approval of the Land Use Board’s Engineer.*
4. The submitted photographs appear to show the existing driveway as gravel; however, the plans contain a driveway detail indicating that the circular driveway will be paved. Testimony should be provided to confirm the existing driveway surface, as well as, the proposed driveway materials. *The applicant proposed to pave the circular driveway extension. The Board had no objection, as a gravel driveway would also be considered impervious.*
5. 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/tests will need to be provided to the Township Engineer with the GSWMP to confirm the drywell is above the seasonable high water table and

infiltration is feasible.” *The applicant’s professionals had no objection to this condition.*

2. The proposed lot coverage shall be reduced from the existing plan to a maximum of 18,783 square feet, or 11%.

3. The variance for the circular driveway extension must be utilized within two years from the date of this memorialization resolution or the variance shall be void and have no further effect. The variance as it relates to the existing improvements shall not be voided and shall remain in full force and effect.

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

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

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

a. The submission of a Grading and Surface Water Management Plan required in condition 1.5 herein to the Township Engineer for his approval. The plan is to be implemented to the approval of the Township Engineer. These facilities shall be permanently maintained in accordance with the NJDEP Best Management Practices and any subsequent revisions and successive regulations.

7. 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.

8. A waiver or exception by the Township Engineer from the minimum driveway width of 12 feet in the driveway ordinance.

Roll Call Vote

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

Those Opposed: None

- Resolution No. 13-23 – Pomerantz, Appl. No. 13-09, Block 34, Lot 19.13
Eligible to vote: Mrs. Baird, Mr. Mackie, Mrs. Devlin, Mrs. Czajkowski, Mr. Becker, Mr. Larsen and Mr. Johnstone

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

LAND USE BOARD
TOWNSHIP OF TEWKSBURY
APPLICATION # 13-09
RESOLUTION # 13-23

WHEREAS, GARY POMERANTZ has applied to the Land Use Board of the Township of Tewksbury for permission to install an in-ground swimming pool, pool patio, pool equipment, and retaining wall on his residential lot which is located at 10 Hedgerow Crossing, Lebanon, on property designated as Block 34, Lot 19.13 on the Tewksbury Township Tax Map, which premises is located in Highlands (HL) Zone, and

WHEREAS, the application was presented by Attorney Michael P. O’Grodnick, Esq. of the firm of Mauro, Savo, Camerino, Grant & Schalk, P.A.; Civil Engineer Michael Textores, P.E. of the firm of Van Cleef Engineering Associates; and the applicant Gary Pomerantz at the August 7, 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 applicant and Mr. Burr, has made the following factual findings:

A. The Subject Property.

1. The subject property is an unusually shaped five sided property with 225.01 feet of frontage on Hedgerow Crossing, a northern side yard of 717.41 feet, a southern side yard of 559.67 feet, and rear yards of 238 feet and 364 feet.

2. The site contains 5.74 acres.

3. The parcel is improved with a single family residence which has a front set back of approximately 255.6 feet, a northern side yard of about 145.1 feet, and a southern side yard of approximately 91.2 feet.

4. The site is accessed by a long driveway which leads to an attached garage with an extension of the driveway forming a circle in front of the home.

5. In back of the home are an above-ground swimming pool, wood deck, pool equipment and retaining wall. Also in the rear yard are two small patios within an English garden totaling approximately 200 square feet.

B. The Proposal.

6. The applicant proposes to replace the above-ground swimming pool and related facilities with an in-ground swimming pool, pool patio, pool equipment, and retaining wall.

7. The proposed construction and removal will increase lot coverage from 6.80% to 7.42%.

C. Zoning Considerations.

8. The subject property contains 5.74 acres, while the minimum lot size in the HL Zone is 12 acres. The property is *grandfathered* under Section 706F4 of the Tewksbury Township Development Regulations Ordinance (DRO). Lot coverage for the site is limited to 5% under Section 706F(4)(d) of the DRO.

9. Section 704 of the DRO precludes disturbance of steep slopes in excess of 25%. The proposed construction will disturb approximately 81 square feet of an isolated steep slope.

D. Declaration of Easement.

10. The subject property is part of a 15 lot subdivision which was approved by the Tewksbury Township Planning Board (a predecessor to the Tewksbury Township Land Use Board) in 1988. The lots were subject to a Declaration of Restrictions which were filed in the Hunterdon County Clerk's office on August 26, 1988 in Deed Book 1012 at pages 1002 et seq.

11. Section 2 of the Declaration states:

“2. Additional Restrictions.

“(b) No chain-link type of fence or stockyard type fence shall be erected, except to surround a tennis court or swimming pool and those shall be sufficiently screened from adjoining Lots with landscaping and appropriate nursery material. All other fencing shall be post and rail or split-rail;

(d) Accessory structures and any kind are not to be constructed by any homeowner without the prior approval of Distinctive which approval shall include, without limitation, architectural approval.”

12. Paragraph 5 of the Declaration provides:

“5. The restrictions set forth in paragraph No. 2 hereof shall not lapse upon the expiration of the three-year period set forth in paragraph No. 3 hereof, but shall continue in full force and effect. If the association referred to in paragraph No. 4 hereof is formed, then the restrictions set forth in paragraph No. 2 hereof shall be enforced by

said association. If no such association is formed, then such restrictions may be enforced by the owner of any Lot. If at any time after the expiration of the three-year period set forth in paragraph No. 3 hereof, the owners of all 15 Lots shall unanimously agree, the restrictions set forth in paragraph No. 2 hereof may be amended, modified or terminated pursuant to such unanimous agreement.”

It is not within the Land Use Board’s jurisdiction to interpret the Declaration of Restrictions. The Court in Springsteel v. Township of West Orange, 149 N.J. Super. 107, 111 (App. Div. 1977), certif. den. 75 N.J. 10 (1977) held:

“The instant action is founded upon misconception of the roles of the board of adjustment and the township council. Neither of these bodies is a court capable of adjudicating either legal or equitable issues. Their respective functions and powers depend upon statutory grants. A board of adjustment may perform quasi-judicial functions but only in the sphere of authority vested in it by N.J.S.A. 40:55-39.” (Predecessor to N.J.S.A. 40:55D-70).

See also Ric-Cic Co. v. Bassinder, 252 N.J. Super 334, 345 (App. Div. 1991) where the court held land use boards lack the jurisdiction to adjudicate legal and equitable issues.

13. While it is not the task of the Board to interpret the Declaration, the applicant should *prima facie* have the right to construct the swimming pool.

14. Board Members Elizabeth Baird and Robert Becker queried the Board Attorney with regard to his opinion on the impact of the restrictions in the Declaration on the proposed swimming pool.

15. The Board Attorney stated that Section 2(b) allows homeowners to construct tennis courts and swimming pools on their lots providing there is a landscape buffer around these facilities.

The attorney noted that accessory structures under 2(d) require approval from the Homeowners’ Association, if one is formed under Paragraph 5. Swimming

pools and tennis courts are accessory structures. However, there is a clear intention to treat tennis courts and swimming pools differently from the other accessory structures. There are special buffering requirements. Also, the concern in Paragraph 2(d) is with “architectural approval” which would not be a factor with tennis courts and swimming pools. The specific provision dealing with tennis courts and swimming pools would supersede the general provision dealing with accessory structures. George M. Brewster & Son v. Catalytic Const. Co., 17 N.J. 20, 35 (1954).

The attorney suggested that the applicant’s attorney Michael O’Grodnick, Esq. determine if a Homeowners’ Association was formed and report back to the Land Use Administrator. If a Homeowners’ Association was formed, it would determine if approval was required for the swimming pool. If none were formed, the Board Attorney is satisfied that the Declaration does not specifically require prior approval for the construction of a swimming pool. It is his opinion that the architectural controls do not apply to a tennis court or swimming pool. While that is sufficient for the Board to act, the applicant was advised that pursuant to Paragraph 5 of the Declaration, any homeowner could challenge the construction of the swimming pool, and that he builds at his own risk.

E. Justification for Variances.

16. The applicant Gary Pomerantz testified that he had not increased lot coverage since acquiring the subject property.

17. The Board Members discussed removing the two small patios within the English garden which total about 200 square feet. The Board decided not to require the removal of the patios, as the impact of the removal would be minimal.

18. The Board notes that lot coverage restrictions are designed for both aesthetics and the control of water runoff.

19. The requested swimming pool and patio will be more than 100 feet from the adjoining properties and will be screened by the vegetation in the area shown on the Variance Plan, with the specific landscaping to be shown on a revised plan which is subject to the approval of the Land Use Board Engineer's office. Based on the submission of a satisfactory plan, the Board finds that the requirement of buffering in the Declaration will be met. Furthermore, the Board finds that the proposed facilities, with the ample side yards and vegetation (which shall be permanently maintained) will not cause any aesthetic detriment.

20. The applicant agreed to reduce the runoff from the property to the existing 6.8% lot coverage.

21. The Board finds that the improvements 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:

“g. provide sufficient space in appropriate locations for a variety of . . . recreational . . . uses . . . both public and private . . .”

By providing an attractive swimming pool.

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

By removing the existing above-ground swimming pool and constructing an attractive in-ground swimming pool. See Lang v. Zoning Board of Adjustment, 160 N.J. 41, 60 (1999).

22. The benefits of the deviation will substantially outweigh the detriments.

23. Tewksbury Township DRO prohibits the disturbance to steep slopes. The Board finds that the 81 square feet of steep slope which will be disturbed is *de minimis*.

24. 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 4th day of September 2013 that the application of Gary Pomerantz be approved in accordance with plans titled: “VARIANCE MAP PREPARED FOR GARY POMERANTZ BLOCK 34, LOT 19.13 10 HEDGEROW CROSSING, TAX MAP SHEET 12 TOWNSHIP OF TEWKSBURY HUNTERDON COUNTY, NEW JERSEY” prepared by Van Cleef Engineering Associates consisting of one sheet dated June 26, 2013 and “CONSTRUCTION DETAILS PREPARED FOR GARY POMERANTZ BLOCK 34, LOT 19.13 10 HEDGEROW CROSSING, TAX MAP SHEET 12 TOWNSHIP OF TEWKSBURY HUNTERDON COUNTY, NEW JERSEY” consisting of one sheet dated June 26, 2013 subject, however, to the following conditions:

1. Conditions recommended by Tewksbury Township Land Use Board Engineer William H. Burr, IV., P.E. in his report of July 11, 2013, as revised by the Land Use Board:

“TECHNICAL REVIEW:

6. The applicant and its professionals should provide testimony to support the proposed lot coverage variance. The property is currently developed over the permitted lot coverage and the applicants are proposing to further increase the coverage by 1,547 S.F. 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? *The Board finds that the requested lot coverage variance is justified under N.J.S.A. 40:55D-70c(2) by advancing two of the purposes of the Municipal Land Use Law under N.J.S.A. 40:55D-2. See factual findings 16 – 22 and 24 herein.*

The applicant offered to remove the two small patios totaling 100 square feet in his wife's English garden. The Board found that this was not necessary, as it wouldn't substantially decrease lot coverage. See factual finding 17 herein.

7. The applicant and its professionals should provide testimony to support the proposed steep slope variance. Is there any way to avoid disturbing the existing steep slopes? *The Board finds that the disturbance to the isolated steep slopes is de minimis. See factual finding 23 herein.*
8. In an effort to mitigate the increase in stormwater runoff from the proposed swimming pool related improvements, the applicant has provided a drywell to capture runoff from the proposed improvements. The proposed drywell has been sized to handle runoff from 1,547 S.F. of impervious surface which would reduce the stormwater runoff impacts to the existing lot coverage of 6.80%. While I have no objection to the conceptual design of the drywell, I do have the following comments:
 - a. The proposed drywell has been designed to handle runoff from the increased lot coverage (1,547 S.F.); however this Board typically requires applicants to reduce the “effective” runoff to no more than that produced by the maximum permitted lot coverage, which in this case is 5%. The Board should discuss this and make a determination as to how you may want to handle this project. *The Board finds that the applicant has not increased lot coverage on the property since the time of purchase, and therefore reducing effective stormwater runoff to that produced by 6.8% is appropriate.*

If the Board requires the applicant to mitigate to the required 5% lot coverage, an additional 4,500 S.F. of lot coverage would need to be directed to a drywell or other stormwater management facility, beyond what is already proposed. *Not applicable as the Board does not require mitigation to 5% lot coverage.*

- b. Notwithstanding Comment 3.a. above, the Drywell calculations on Sheet 2 of the plans indicate that 1,547 S.F. of impervious area will be directed to the drywell; however, it is not clear from the plan view exactly what areas will drain to the drywell. It appears that the entire pool and patio, as well as, the surrounding areas will drain to the drywell. The plans should indicate what areas are intended to drain to the drywell and clearly reflect how this will happen. The applicant's engineer should also confirm that the drywell will have adequate capacity to handle those areas. *The applicant's engineer agreed to address this issue.*

- c. The drywell design should include rip-rap outfall protection at the end of the overflow pipe as required by the NJDEP BMP manual. *The applicant's engineer agreed to address this condition.*
 - 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. 10 below). *The applicant's engineer agreed to this condition.*
4. The applicants should clarify if any trees or shrubs will be removed or impacted as a result of this project? *No trees or shrubs will be removed, impacted or effected.*
 5. The plans contain a note that states "No overhead or pole mounted lighting is a part of this application, only decorative lighting is proposed as part of the pool construction. The applicant should describe the proposed decorative lighting and confirm that there will not be any undesirable effects to the surrounding properties in accordance with DRO Section 632. *The applicant is proposing low intensity decorative lights. The lighting shall be shielded and shall not cause glare or sky glow on neighboring properties or roadways. All lighting shall conform with Section 632 of the DRO.*
 6. The plans should be revised to update the Zone Chart on Sheet 1 to reflect the proposed rear yard as the distance to the pool (208.0'). *The applicant's engineer agreed to this condition.*
 7. The plans should be revised to indicate the stabilized construction entrance for the proposed swimming pool work. *The applicant's engineer agreed to this condition.*
 8. The plans show two (2) existing, circular paver patio areas to the north of the proposed pool. Are these patios proposed to be removed or remain? *The patios will be retained. See factual finding 17 herein.*
 9. 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. *Applicant's engineer agreed to this condition and will comply with the DRO.*
 10. 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 applicant's engineer agreed to this condition.*

Soil logs/tests will need to be provided to the Township Engineer with the GSWMP to confirm the drywell is above the seasonable high water table and infiltration is feasible.”

2. The removal of the existing above-ground swimming pool, pool patio, pool equipment, and retaining wall.

3. The variance for the swimming pool and related facilities must be utilized within one year from the date of this memorialization resolution or the variance shall be void and have no further effect.

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

5. This resolution and the issuance of a pool permit hereunder are conditioned upon the applicant paying all escrows and fees.

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

a. The submission of a Grading and Surface Water Management Plan required in condition 1.10 herein to the Township Engineer for his approval. The plan is to be implemented to the approval of the Township Engineer. The facility shall reduce effective storm water runoff to that produced by 6.8% lot coverage. The facility shall be permanently maintained in accordance with the NJDEP Best Management Practices and any subsequent revisions and successor regulations.

b. The planting and maintenance of the landscape plan to be shown on a separate drawing and approved by the Land Use Board Engineer's office. The landscaping shall in the location shown on the "CONSTRUCTION DETAILS" drawing. The landscaping shall be permanently maintained. Dead, diseased and missing landscaping shall be replaced to the approval of the Land Use Board Engineer's office.

7. The plans including the landscape plan 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.

8. The swimming pool is to meet all requirements in the DRO and all other Township Requirements except for the steep slope and coverage variances approved herein.

9. The applicant's attorney shall conduct a search of the Hunterdon County records to determine if a Homeowners' Association has been formed pursuant to the Declaration of Restrictions. If a Homeowners' Association has been formed, the applicant need seek a ruling from that body as to whether the swimming pool and related facilities require approval from that body, and if the answer is in the affirmative, then to obtain said approval. If a Homeowners' Association has not been formed, the applicant may proceed at his own risk with the construction, recognizing that any homeowner within the development may file legal action to seek enforcement of the Declaration.

Roll Call Vote

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

Those Opposed: None

Board Discussion/Action Items

- Master Plan Consistency Review of Ord. #08-2013 (40:55D-26a)

Mrs. Baird made a motion to find Ord. #08-2013 not inconsistent with the Master Plan. Mr. Van Doren 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, Mr. Metzler, Mr. D'Armiento and Mr. Johnstone

Those Opposed: None

- Master Plan Consistency Review of Ord. #09-2013 (40:55D-26a)

Mrs. Baird noted that the ordinance will likely reduce the number of impervious coverage variances before the Board as it corrects the coverage issues for pre-existing undersized lots.

Mrs. Baird made a motion to find Ord. #09-2013 not inconsistent with the Master Plan. 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, Mr. Metzler, Mr. D'Armiento and Mr. Johnstone

Those Opposed: None

- Discuss Hunters Glen Townhouse Development Pre-existing Non-conforming status (see memo from Dan Bernstein)

Ms. Goodchild noted that she would consult with the homeowners association to fill in the blanks in Mr. Bernstein's recommended language and make sure the ordinance is consistent with their regulations. Ms. Goodchild noted that this came to her attention when a homeowner applied for a small deck expansion that they could not complete because townhouses are a non-conforming use in the district. Rather than making applicants apply to the Land Use Board Mr. Bernstein suggested amending the language in the Development Regulations Ordinance. When asked if the language would be applicable to all units in the Hunters Glen townhouse development, Ms. Goodchild responded in the positive. It was noted that the proposed language is strictly for small expansions of decks. Mrs. Baird opined that it was a good idea to streamline the process. Mr. Johnstone asked Ms. Goodchild to reach out to the homeowners association to get the necessary information.

- Certificate of Inspection Ordinance

Mr. Van Doren explained that the ordinance was not repealed however he explained that the Mayor has requested that the Township Committee continue to look at the ordinance and develop a workable solution that it is better than what is currently in place. He went on to say that some members of the Township Committee feel that there have been issues

with the current ordinance in terms of workload and also the interpretation of the items to be looked at when the Zoning Officer performs the inspection. The Mayor has asked the Land Use Sub-Committee to develop a finite list of things that should be looked at instead of such a broad inspection. He explained that the other proposed change is a that the property owner would need to certify that the property meets all of the zoning and codes; no inspection would be performed. It is the opinion of the Township Committee that this would keep the sale between the buyer and seller and not involve the Township. Mr. Van Doren noted that it is not an amendment to the Development Regulations Ordinance so the ordinance will not come before the Land Use Board for consistency review however he or Ms. Desiderio will keep the Land Use Board updated.

Mr. Moriarty asked about the effect of the agreement. Mr. Van Doren explained that some members of the governing body are concerned about the Township being pulled into lawsuits and feel that the certification will help keep the Township out of any future legal disputes. When asked if the Township has been pulled into a lawsuit related to the Continuing Certificate of Occupancy inspection, Mr. Van Doren responded in the positive.

When Mr. D'Armiento asked about inspecting the drywells, Ms. Goodchild explained that it is still something that needs to be considered but it is a challenge to figure out how to pass on the expense of that inspection to the homeowner; it is not an inspection that the staff can perform. She explained that the drywells have not been inspected as part of the Continuing Certificate of Occupancy however there may be an opportunity to build that into the certification checklist that the homeowner signs off on.

Public Hearing

- Shoemaker
Appl. No. 13-14
Block 37, Lot 8
Front Yard Setback Variance (Generator)
Action Deadline – 11/28/13

Kathleen Shoemaker was present and sworn in by Mr. Bohn. Ms. Shoemaker explained that she would like to install a standby generator next to her home. She noted that the house is very old and is 35 feet from the road however the required front setback requirement is 75 feet. Referencing the photos submitted with the application, Ms. Shoemaker explained that she would like to put it in the location where the hose is shown in the photograph. The generator would be placed approximately 35 feet from Welsh Road aligned with the house. When asked the size of the generator, Ms. Shoemaker explained that it will be a 20 kW generator on a small pad.

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

Mr. Van Doren made a motion to approve the application as submitted. Mrs. Baird 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, Mr. Metzler, Mr. D'Armiento and Mr. Johnstone

Those Opposed: None

- Natale
Appl. No. 13-13
Block 33, Lot 4
Side and Rear Setback Variance and Use Variance
Action Deadline – 11/27/13

Mr. Van Doren recused himself from the meeting as it is a use variance.

Sal and Roberta Natale, applicants and Edward O'Brien, architect, were sworn in by Mr. Bohn.

Mr. O'Brien explained that he has known and worked for Mr. and Mrs. Natale for years and been involved with the renovation of their home on Bissell Road. He explained that they have one (1) building on the property left to renovate and the work on the cottage requires three (3) variances. Mr. O'Brien explained that they will demonstrate the need for the variances during testimony so that they can proceed with the renovation. Mr. O'Brien presented a colored version of the drawing he prepared for the application which was marked as **Exhibit A-1**. Mr. O'Brien explained the significance of the colors on the plan and the proposed improvements to the first floor of the cottage and the proposed loft; a full second story is not proposed.

Mr. O'Brien explained that by virtue of the fact that the existing one story cottage is within the setback lines the proposed loft requires side and rear setback variancea. In the process of completing the application with Ms. Goodchild the Land Use Board attorney pointed out that a use variance is also required.

Mrs. Natale explained that they purchased the property 18 years ago and they renovated interior of the main house; they lived in the cottage during the renovation. She explained that the main house is small (story and a half, 3 bedrooms and 2 baths) and they have children and grandchildren who return home to visit and the size of main house cannot be increased. The cottage is necessary for when the children return home for the holidays or extended visits. The detached garage was renovated and the cottage is the last building on the property that needs to be renovated to complete the property. Mrs. Natale explained that they have a residence in Florida and she and her husband would like to retire one day and give the house to the children; when they return for visits they would stay in the cottage. When asked what the cottage is used for now, Mr. O'Brien explained that there is a deck, a living room, bedroom and kitchen and a 3 fixture bath. A small exterior hatchway is used to gain access to the basement. The basement contains an oil tank, boiler, sump pump and service panel. Mr. O'Brien believed that the

building dates to 1954 and everything is in need of updating. The proposal includes raising the roof approximately 7 feet to install an internal staircase to access the basement and a second floor loft. The loft area will make the kitchen a little nicer and will provide for a coat closet, a pantry and a little more space to set up furniture. The second floor will consist of a bathroom and closet and open room that will be open to the room below; a one (1) bedroom cottage will be maintained. The cottage has its own septic system which is maintained by the property owners. No change to the driveway or lighting is proposed.

When asked by Mr. Burr if the cottage is vacant, Mr. Natale responded in the positive. When asked if it is a one (1) bedroom cottage that will remain a one (1) bedroom cottage, Mr. Natale responded in the positive. When asked if the roof would be raised seven (7) feet, Mr. O'Brien responded in the positive and explained that it might be slightly higher to make sure the headroom in the shower and staircase works. When asked how the roof height will compare to the garage, Mr. O'Brien explained that the cottage would be higher because the garage is a one (1) story structure. When asked if the driveway extends to the cottage, Mr. Natale responded in the negative and explained that it ends at the garage. When asked if there is a plan to extend the driveway to the cottage, Mr. Natale responded in the negative and noted that there will be no more coverage added to the property. When asked about exterior lighting, Mr. Natale explained that there would be a new light at the doorway.

Mr. Bohn pointed out that the application notes that the applicant is appealing a decision by the Zoning Officer and asked if that is still the case. Mr. O'Brien responded in the positive and explained that he checked with the Zoning Officer, Dennis Officer, who opined that the project could be approved but when he the applicants returned with more formalized plans the Zoning Officer cited the need for two (2) setback variances. When asked if he is increasing the floor area, Mr. O'Brien responded in the positive and explained that there will be more square footage in the building after the construction. He explained that there is also a deck on the cottage the applicant proposed to add a roof and screens; it will not be used as living space.

When asked by Mr. Johnstone if the applicant would be willing to deed restrict the cottage against it being used as a rental, Mr. O'Brien explained that the property owner prefers to not have a deed restriction. He explained that when they bought the property there were no deed restrictions. While their use of the property would be for their family they don't want the ability to rent the cottage taken away (or for a caretaker to live there while they are in Florida). When asked by Mr. Johnstone the status of the cottage, Ms. Goodchild explained that the tax assessor's records show that the cottage was constructed in approximately 1954. The only zoning ordinance dates back to 1960 which would make it a pre-existing non-conforming structure and use.

When asked by Ms. Goodchild if the cottage was ever rented, Mr. Natale noted that it was a rental when they bought the property and it was sold to them as a rental. When asked how the renters accessed the cottage since there is no driveway, Mr. Natale explained that they parked near the existing garage and walked to the cottage. When

asked if the cottage was always served by a separate septic system, Mr. Natale responded in the positive and noted that they upgraded it after they purchased the property. When asked if the single well serves both the house and the cottage, Mr. Natale responded in the positive.

When asked by Mr. Moriarty about the loft area proposed, Mr. O'Brien explained that the new roof will be the same angle as the current roof. The landing at the top of the stairs has to have at least 6 feet 8 inches at all corners so fire fighters have the required head room. When asked about lot coverage, Mr. O'Brien explained that there will be no change to the coverage. Mr. O'Brien explained that the existing chimney will be torn down and a heating and cooling system will be used that doesn't require a chimney. He noted that the building currently has no overhangs and he would like to extend the overhangs at least a foot which protects the building and prevents leaks. When asked if there is a certificate of occupancy for the cottage, Mr. O'Brien was of the opinion that there is since the Natale's pay taxes on the structure. Ms. Goodchild noted that when the Natale's purchased the property 18 years ago the continuing certificate of occupancy inspection ordinance didn't exist.

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

Mr. Mackie noted that he was less troubled about the renovation than he was about the use. He expressed concern that the applicant was unwilling to deed restrict the cottage which could turn into a rental on a relatively small property.

Mr. Metzler agreed with Mr. Mackie and noted that historically the Land Use Board has tried to correct non-conforming uses when they come before the Board.

Mr. Johnstone agreed and noted that he does not like the idea of a rental unit on a small property. Mr. Mackie noted that a renter would prefer to have a driveway to the unit and that an additional driveway would eventually become additional impervious coverage.

Mr. Bohn noted that the evidence from the Tax Assessor was to the existence of a cottage in 1954 but there is no evidence as to when it became a rental unit. He added that it is the applicant's burden to prove that this was a valid rental.

Mr. Johnstone expressed concern with approving the application without there being a restriction on the cottage limiting it to a non-rental unit. He added that it may not be the Natale's that want to rent it but it may be future owners. He concluded by stating that if the applicants will agree to a restriction he would vote in favor of the project.

Mr. O'Brien asked if the Board would consider it as an affordable housing unit. Mr. Johnstone opined that someone in the future could return to the Board and request that it be considered as an affordable housing unit but currently his vote is for a cottage for family use only.

Mrs. Natale noted that part of the attraction when they bought the house was that it had the potential as a rental unit. They tried renting it for two (2) years and had a very bad experience and never rented it again. She expressed concern that she will lose property value because no one will purchase the house and a small cottage for the amount of taxes, etc. Mr. Johnstone disagreed and opined that the property with the cottage would be very desirable to someone.

Mr. O'Brien and the applicants took a break at 8:30 p.m. and returned to the meeting at 8:35 p.m.

Mr. O'Brien explained that the applicants would like to amend the application to restrict the use of the cottage to specific language the Board would approve but would also allow the applicant to return to the Board at a later date to apply for an affordable housing unit. The Board noted that the applicant always has the ability to return to the Board. Mr. Bohn noted that the deed restriction could reference the Board's ability to lift the restriction to allow for an affordable housing unit.

Mr. Metzler made a motion to approve the application with the restriction that the cottage would not be a rental unit and the purpose of the cottage is for family use with the ability to return to the Board in the future for an affordable housing unit. Mr. Moriarty seconded the motion. The motion carried by the following roll call vote:

Roll Call Vote:

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

Those Opposed: None

ADJOURNMENT

There being no further business, the meeting adjourned at 8:40 p.m. by motion of Mr. Moriarty and seconded by Mr. Johnstone.

Respectfully submitted,

Shana L. Goodchild
Land Use Administrator