

LAND USE BOARD MINUTES
November 20, 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: Mary Elizabeth Baird, Bruce Mackie, Michael Moriarty, Shirley Czajkowski, Ed Kerwin, 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: Blake Johnstone, Shaun Van Doren, Dana Desiderio, Elizabeth Devlin and Ed D'Armiento, Alt. #3.

There were approximately four (4) people in the audience.

OPEN PUBLIC MEETING ACT STATEMENT

Mrs. Baird 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

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

1. Bernstein & Hoffman – Attendance at 11-6-13 LUB meeting – invoice dated November 7, 2013 (\$450.00)
2. Bernstein & Hoffman – Land Use Board Escrow – Biedron (B31, L12), invoice dated November 4, 2013 (\$945.00)
3. Bernstein & Hoffman – Land Use Board Escrow – Moreira (B4, L6.11), invoice dated November 4, 2013 (\$862.50)
4. Bernstein & Hoffman – Land Use Board Escrow – McCatharn (B16, L25.03), invoice dated October 31, 2013 (1,110.00).
5. Banisch Associates, Inc. – Land Use Board Escrow – Cellco Partnership d/b/a Verizon (B44, L26), invoice #P-13-22183 (\$355.00)

Roll Call Vote:

Those in Favor:

Mrs. Baird, Mr. Mackie, Mrs. Czajkowski, Mr. Moriarty, Mr. Kerwin, Mr. Becker and Mr. Larsen

Those Opposed: None

CORRESPONDENCE

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

1. A letter dated November 14, 2013 from William Burr, Maser Consulting re: Noe – Site & Rear Setback and Lot Coverage Variances for New Garage, Appl. No. 13-11, Block 34, Lot 18, 30 Bissell Road.
2. A letter dated November 14, 2013 from William Burr, Maser Consulting re: Wood – Landscape Plan for Buffering Existing Sports Court, Appl. No. 10-10, Block 10, Lot 5.07, 9 Farmersville Road.
3. A letter dated November 4, 2013 from Alliance for Historic Hamlets, Citizens to Save Tewksbury and Residents Alliance for Neighborhood Preservation, Inc. re: Proposed Wireless Communication Tower at 19 King Street, Tewksbury Township. *Distributed at the November 6, 2013 Land Use Board meeting.*
4. The New Jersey Planner, September/October, 2013, Vol. 74, No. 5.
5. Information from the Raritan Valley Rail Coalition re: One-Seat Ride Website.
6. Memorandum dated October 31, 2013 from Chief Holmes re: Noe, Appl. No. 13-11, Block 34, Lot 18, 30 Bissell Road.
7. A copy of an e-mail from Peter Wolfson to William Burr re: the Wood landscape plan, Block 10, Lot 5.07.
8. An e-mail dated 11-19-13 from the Scenic Roads and Bridges Commission re: Appl. No. 13-11, Block 34, Lot 18, Noe.

ORDINANCE REPORT

Mr. Mackie had no ordinances to report on.

PUBLIC PARTICIPATION

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

RESOLUTION

- Resolution No. 13-31 – McLane, Appl. No. 13-16, Block 19, Lot 20
Eligible to vote: Mrs. Baird, Ms. Desiderio, Mr. Mackie, Mrs. Devlin, Mrs. Czajkowski, Mr. Kerwin, Mr. Becker, Mr. D'Armiento, Mr. Larsen and Mr. Johnstone

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

TOWNSHIP OF TEWKSBURY
APPLICATION # 13-16
RESOLUTION #13-31

WHEREAS, Kathleen McLane has applied to the Land Use Board of the Township of Tewksbury for permission to install an emergency standby generator on her residential lot which is located at 34 Cold Spring Road on property designated as Block 19, Lot 20 on the Tewksbury Tax Map, which premises is located in Highlands District (HL), and

WHEREAS, the application was presented by Ms. Nicole L. Voigt, attorney with Kilcommons Shanahan, LLC and Ms. Kathleen McLane at the November 6, 2013 Land Use Board meeting, and

WHEREAS, the existing residence has a front yard setback of approximately fifty-five (55) feet while the Highlands District requires a front yard setback of seventy-five (75) feet for a *grandfathered* lot of the size of the subject property, and

WHEREAS, the applicant proposes to construct the generator pad with a front yard setback of approximately fifty-five (55) 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 Section 702.2, pads for emergency standby 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 20th day of November, 2013 that the application of Kathleen McLane for an emergency standby generator be approved pursuant to a plan submitted in the application titled: "GENERATOR LOCATION", with the location of the generator hand-drawn on the plan as well as Exhibit A-1 marked into evidence at the hearing, subject, however, to the following conditions:

1. Compliance with Section 702.2 of the Tewksbury Township Development Regulations Ordinance.
2. The applicant shall permanently maintain the existing hedgerow screening along the public roadway.
3. Payment of all fees and escrows.
4. The variance shall be utilized within one year from the date of this memorialization resolution or the variance shall be void and have no further effect.

Roll Call Vote

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

Those Opposed: None

PUBLIC HEARING

- Noe
Appl. No. 13-11
Block 34, Lot 18
Side and Rear Setback Variance and Impervious Coverage Variance
Action Deadline – 1/22/13

It was noted for the record that the public hearing notice was complete.

Scott and Barbara Noe, 30 Bissell Road, were present and sworn in by Mr. Bernstein.

Mr. Noe explained that Hurricane Sandy went through on October 29, 2012 and caused a 90 foot tree to come down across the barn/garage and house on his property. Mr. Noe presented three (3) pictures marked as **Exhibits A-1 through A-3** which shows the damage to all of the structures on his property. When asked who took the photographs, Mr. Noe explained that he and his wife took them. When asked if they accurately portray the damage from the storm, Mr. Noe responded in the positive. He went on to explain that the barn/garage suffered the most damage which helped minimize the damage to the house; the tree knocked the barn/garage off its foundation and broke structural members. Mr. Noe explained that the goal is to replace the structure but because of the size and geometry of the lot any new structure will require variances. Mr. Noe explained that three (3) variances are being sought, a side and rear setback variance and an impervious coverage variance. When asked about the lot coverage, Mr. Noe explained that the present lot coverage is 21.71% and the coverage will be reduced to 17.1% by taking credit for a horseshoe driveway that was removed several years ago. When asked if he received a copy of the report from the Land Use Board Engineer, Mr. Noe responded in the positive.

When asked by Mr. Burr about the use, style and color of the proposed structure, Mr. Noe explained that the building will be a two (2) story barn with two (2) garage doors with hardiplank siding and white trim and a metal roof to fit in with the farmhouse style of the existing home. The structure will be used for a garage, workshop and storage on the second floor. When asked if there will be any utilities, Mr. Noe responded electricity only. When asked about the proximity of the garage to surrounding properties, Mr. Noe explained that the present garage is very close to the back and side setback but the new garage will be shifted approximately 10 feet to the east to accommodate direct access from the driveway into the structure which will minimize the need for turning space in the driveway; by shifting the structure to the east it will provide a more visual pleasing appearance from the roadway. When asked if there is a wooded buffer, Mr. Noe responded in the positive explaining that there is approximately 45 feet of Siberian spruce, forsythia and boxwoods. When asked if any trees will be removed, Mr. Noe indicated that one (1) lilac bush will be moved and relocated elsewhere on the property. When asked about exterior lighting, Mr. Noe explained that there will not be any spot or flood lights but a lamp at the pedestrian door and a lamp between the garage doors. When asked if he will comply with the lighting standards in the Development Regulations Ordinance, Mr. Noe responded in the positive. When asked if he would

agree to update the plans as required in Mr. Burr's letter, Mr. Noe responded in the positive. When asked if the new structure will be taller than the structure to be removed, Mr. Noe explained that it will be slightly taller, the damaged garage/barn is approximately 20 feet tall and the new structure will be approximately 25 feet tall; the ridgeline will be about the same height as the existing house.

Mr. Burr explained that the applicant's plans reflect existing lot coverage of close to 22% but the driveway that the applicant is taking credit for was actually removed in 2007 so it's been gone for many years. He added that the proposed garage/barn would be a slight increase to what exists currently. Mr. Burr explained that the Board typically requires an applicant to mitigate the increased lot coverage through stormwater management facilities or a reduction in lot coverage. Because it is an approximate 50 sq. ft. increase from what currently exists Mr. Burr suggested that the Board make a decision about whether or not mitigation is necessary. Mr. Noe opined that some of the western portion of the driveway could be removed so that there would be no increase in coverage.

When asked by Mr. Bernstein the distance to the nearest home, Mr. Noe responded approximately 150 feet from the edge of the proposed garage footprint. Mr. Bernstein outlined some of the typical conditions that are required with an approval to which Mr. Noe agreed to comply.

When asked by Mr. Moriarty if the proposed footprint is the same as the existing footprint, Mr. Noe explained that there is a slight shift to the east. Mr. Burr noted that the new structure is 864 sq. ft. and the existing structure is 612 sq. ft. but due to the reconfigured driveway the net increase of the impervious coverage is not as great.

Mr. Mackie asked how far back an applicant can take credit for a reduction in impervious coverage. Mr. Bernstein opined that there are no hard and fast rules but the applicant has said that there will be no net increase for the new project which is a positive. Mr. Mackie noted that the Environmental Commission was concerned with tree removal but since there will be no removal the Commission's concern is resolved.

When asked by Mrs. Czajkowski if the existing garage/barn has electricity, Mr. Noe responded in the positive.

Mr. Becker suggested that the resolution specify the square footage amount (no net increase from the current condition) of 4,680.66 sq. ft.

When asked by Mr. Larsen when he purchased the home and if any improvements were added, Mr. Noe responded 1994 and in 2004/2005 an addition was added to the rear of the home. When asked if he got a variance for the addition, Mr. Noe responded in the positive. When asked if the proposed roofline of the garage/barn will be equal to the addition or the main house, Mr. Noe explained that it will be equal to the main part of the house.

There being no additional questions from the Board, Mrs. Baird opened the meeting up to the public. There being no questions from the public, Mrs. Baird closed the public hearing.

There being no further questions or discussion by the Board, Mr. Moriarty made a motion to approve the application with the following conditions:

1. Compliance with William Burr's report
2. Paying fees, escrows
3. The variance will need to be utilized within a year.
4. A letter of compliance to the Land Use Administrator
5. The height will be no higher than the existing home (approx. 25 feet)
6. No increase in impervious coverage from what exists currently (4,680.66 sq. ft.).
7. No heat or water in the garage/barn (there may be electric)
8. The lighting needs to comply with the Development Regulations Ord.
9. A foundation as-built will be required

Mrs. Czajkowski seconded the motion. The motion carried by the following roll call vote:

Roll Call Vote:

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

Those Opposed: None

LAND USE BOARD DISCUSSION ITEM

- Authorization to hire RF Engineer for Appl. No. 13-03

Mr. Kerwin left the meeting at this time as he is recused from the application.

Mrs. Baird explained that in the past the Board has hired its own professionals to review an application that requires a certain expertise. She went on to explain that Mr. Bernstein and Mr. Burr were asked to look into possibilities for RF Engineers to assist the Board with its review of the Cellco/Verizon application, Appl. No. 13-03. Mrs. Baird opined that it is important for the Board to have its own expert on this issue and the Township Development Regulations Ordinance (Section 806) allows the Board to hire its own professional with the cost charged back to the applicant's escrow.

Ms. Goodchild distributed two (2) resumes and she noted that they are independent RF Engineers and have no connection to the applicant or cell companies. Mr. Bernstein noted that he made calls to his colleagues and the resumes for Hank Menkes and Ron Graiff were recommended.

Mr. Burr noted that Mr. Menkes has represented Bridgewater Township on a few applications and has a long working history with Bell Labs, Lucent in their wireless

divisions and is now on his own as an independent consultant. Mr. Burr noted that the other resume is from Ron Graiff however he has no recommendations or references and hasn't spoken to anyone who has used him but did note that he is on the consultant list for Clinton Township but has not been used by them. Mr. Burr noted that Mr. Graiff has some meeting date conflicts in January and February and could not commit to any meetings at that time. Mr. Burr indicated that based on the recommendations and resumes he and Mr. Bernstein would recommend Mr. Menkes. When asked what his rate is, Mr. Burr indicated \$275 an hour.

When asked by Mr. Becker if the professional hired by the Board will conduct independent tests, Mr. Burr and Mr. Bernstein responded in the negative. Mr. Burr explained that they will not do any re-analysis but will rely on what the applicant has submitted by judging the accuracy of the data.

When asked by Mr. Larsen if either of the men work for Cellco or Verizon, Mr. Burr was not aware that they are employed by either company.

After discussing the resumes and rates, the Board authorized Mr. Bernstein and Mr. Burr to get more information from the two (2) candidates such as who will be doing the work, how they will bill for time, financial disclosure, etc. and report back at the next meeting for the Board to make a decision.

When asked by Mr. Mackie if the Board has the ability to tell an applicant how to sequence its experts, Mr. Bernstein explained that the Board can ask but the applicant can present their case as they wish.

MISCELLANEOUS

Mr. Kerwin returned to the meeting and Mrs. Czajkowski left the meeting due to her conflict with the Johnson Helistop.

Mr. Bernstein noted that the group that opposed the Johnson helistop retained Michael Kates who is filing a motion with the Appellate Division allowing a filing of a brief beyond the time allotted. Mr. Kates has asked if Mr. Bernstein would send a letter to the Appellate Division on behalf of the Township supporting the request for additional time to file the brief. Mr. Bernstein indicated that he would do it at no cost and indicate that the Township supports the motion by the group. If the Township Committee agrees with him sending the letter, Mr. Bernstein asked the Board if he could also include the Land Use Board. He recommended that the Board support the motion since the approval by the State didn't take into account the Board's denial. When asked if he would still send a letter if the Township Committee said no, Mr. Bernstein responded in the negative.

Mrs. Baird made a motion to authorize Mr. Bernstein to include the Land Use Board in the letter pending the Township Committee's authorization. Mr. Moriarty seconded the motion. All were in favor.

Nancy Held, 2 Woodedge Road, was present to update the Board on the Friends of the Cold Brook Historic District and the Johnson Helistop. Ms. Held explained that Michael Kates was hired by the NJ Planning Officials to file a brief in the case of Fairfield Township appealing the decision of the NJDOT to grant a local businessman a helistop over their objections. Mr. Kates put together a brief which prompted the DOT to request a remand so that they could reconsider the decision made in Fairfield Township. Because of this, the Friends of the Cold Brook Historic District were impressed and hired Mr. Kates to represent them in the Johnson helistop case. Mr. Kates put forth that the process by which NJDOT makes its decision is flawed and so the Friends of the Cold Brook Historic District feel there is a chance they will remand their decision for the Johnson helistop. She went on to say that they have asked their legal council to file an injunction that would prohibit the Johnson's from utilizing their helistop until the NJDOT reconsiders their decision. Ms. Held went on to explained that the Friends of the Cold Brook Historic District have also been engaged in settlement discussions with the Johnson family (approx. 1 month ago) and during that meeting their aviation attorney, Jack McNamara, intimated that the Friends' case was not as strong without Township involvement. Ms. Held also noted that Mr. McNamara knew that there were three (3) reasons why the Township didn't want to participate and she wondered how he knew those reasons since the discussion took place in Executive Session by the Township Committee.

The Board thanked Ms. Held for the update.

Mrs. Czajkowski returned to the meeting at this time.

EXECUTIVE SESSION

➤ Personnel

At 8:45 p.m. a motion was made by Mr. Moriarty and seconded by Mr. Becker to go into executive session and adopt the following resolution:

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

No official action will be taken during said session; and

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

Roll Call Vote

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

Those Opposed: None

The meeting reconvened at 8:57 p.m. by motion of Mr. Mackie and seconded by Mr. Becker.

Mr. Moriarty made a motion to retain Daniel Bernstein as the Land Use Board Attorney for 2014. Mr. Larsen seconded the motion. All were in favor.

Mr. Moriarty made a motion to retain William Burr of Maser Consulting as the Land Use Board Engineer for 2014. Mr. Becker seconded the motion. All were in favor.

Mr. Moriarty made a motion to retain Charles McGroarty of Banisch Assoc. as the Land Use Board Planner for 2014. Mr. Becker seconded the motion. All were in favor. Mr. Larsen abstained.

ADJOURNMENT

There being no further business, the meeting adjourned at 9:00 p.m. by motion of Mr. Moriarty and seconded by Mr. Becker.

Respectfully submitted,

Shana L. Goodchild
Land Use Administrator