

LAND USE BOARD MINUTES
May 6, 2015

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: Shaun Van Doren, Ed Kerwin, Bruce Mackie, Robert Becker arrived at 7:36 p.m., Ed D'Armiento, Alt. #1, Kurt Rahenkamp, Alt. #2, Glenn Stein, Alt. #3 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: Blake Johnstone, Mary Elizabeth Baird, Dana Desiderio and Michael Moriarty.

There were four (4) people in the audience.

OPEN PUBLIC MEETING ACT STATEMENT

Mr. Mackie 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 8, 2015.

PLEDGE OF ALLEGIANCE

Those present stood and pledged allegiance to the American flag.

CLAIMS

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

1. Bernstein & Hoffman – Attendance at 4-15-15 LUB meeting, invoice dated April 15, 2015 (\$375.00)
2. Bernstein & Hoffman – Land Use Board Escrow – Weber (B27, L96 & 154), invoice dated April 16, 2015 (\$225.00)
3. Maser Consulting – Land Use Board Escrow – Taylor (B37, L7), invoice #276663 (\$135.00)
4. Maser Consulting – Land Use Board Escrow – Weber (B27, L96 & 154), invoice #276662 (\$405.00)
5. Maser Consulting – Land Use Board Escrow – Marquardt (B39, L27), invoice #276666 (\$771.25)

Roll Call Vote:

Those in Favor: Mr. Van Doren, Mr. Mackie, Mr. Kerwin, Mr. D'Armiento, Mr. Rahenkamp, Mr. Stein and Mr. Larsen

Those Opposed: None

CORRESPONDENCE

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

1. A memo dated April 16, 2015 from Roberta Brassard, Township Clerk re: Ordinance No. 03-2015.
2. An e-mail dated May 1, 2015 from Harold Wrede, Chairman of the Tewksbury Township Scenic Roads and Bridges Commission re: LUB Appl. No. 15-06, Puri, Block 32, Lot 7.08.
3. A Press Release from the Hunterdon County Planning Board dated April 23, 2015 re: 2015 Hunterdon County Planning Board Breakfast Talk.
4. Information from the Hunterdon County Planning Board re: the Joint Hunterdon County Planning Board and Together North Jersey Information Forum on April 30, 2015 (previously e-mailed).
5. A copy of a letter dated April 8, 2015 from the NJDEP to Thomas Uzzo re: Corrected HAD Exemption Letter for Block 6.04, Lot 8.
6. A copy of a letter dated March 6, 2015 from NJDEP to Navneet and Reema Puri re: Puri Pool, Block 32, Lot 7.08.
7. Memorandum dated April 29, 2015 from Chief Holmes re: LUB Appl. No. 15-06, Block 32, Lot 7.08.
8. A letter dated May 1, 2015 from William Burr re: LUB Appl. No. 15-06, Block 32, Lot 7.08.
9. A copy of a letter dated April 25, 2015 from Susan and Steve Becker re: appeal of escrow charges for LUB Appl. No. 14-14, Block 31, Lot 21 Becker (*appeal to be heard by Twp. Committee in accordance with Section 900 C.7. of the Development Regulations Ordinance*).
10. The NJ Planner, March/April 2015 edition, Vol. 76, No. 2.
11. A letter dated April 30, 2015 from the Tewksbury Environmental Commission re: Appl. No. 15-06, Block 34, Lot 13.01.

MINUTES

- November 19, 2014

The minutes of November 19, 2014 were approved as submitted by motion of Mr. Rahenkamp and seconded by Mr. D'Armiento. All were in favor. Mr Van Doren and Mr. Stein abstained.

ORDINANCE REPORT

Mr. Mackie reported on an ordinance from the borough of Califon amending the Highlands Area exemption ordinance to eliminate the requirements for paying an application fee in connection with exemption number 5. Mr. Mackie passed the ordinance on to Ms. Goodchild for review.

PUBLIC PARTICIPATION

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

RESOLUTION

- **Resolution No. 15-07** - Marquardt, Appl. No. 15-15, Block 39, Lot 27 Use Variance

A motion was made by Mr. Becker and seconded by Mr. D’Armiento to adopt the following resolution. The motion carried by the following roll call vote:

LAND USE BOARD
 TOWNSHIP OF TEWKSBURY
 APPLICATION # 15-05
 RESOLUTION #15-07

WHEREAS, JOSEPH MARQUARDT and LAUREN FORTIER have applied to the Land Use Board of the Township of Tewksbury for permission to convert a single family residence into a two-family residence consisting of two luxury one-bedroom apartments on property which is located at 46 Old Turnpike Road, Oldwick, and designated as Block 39, Lot 27 on the Tewksbury Township Tax Map, which premises is located in the Village Business (VB) Zone, and

WHEREAS, Helen Lance, a prior owner of the subject property, had received permission to construct a handicapped ramp on the home, which was to be removed within sixty (60) days of Ms. Lance’s demise or permanent departure from the home, and

WHEREAS, the applicants have purchased the home, and the ramp has been removed, and

WHEREAS, the current application was presented by Joseph Marquardt and Lauren Fortier at the April 15, 2015 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 Professional Planner Chuck McGroarty, P.P. of the firm of Banisch Associates, Inc., the Township Planner, and

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

A. The Subject Property.

1. The subject property is an irregularly shaped parcel containing 0.18 acres, or 7,939 square feet. The lot has 70 feet of frontage on Old Turnpike Road.
2. An older 2½ story dwelling is located on the lot. In the rear yard, or northeast corner of the property, is a detached two-car garage.
3. The home contains 888 square feet on the first floor, 810 square feet on the second floor, and 470 square feet on the third floor.
4. There are five (5) bedrooms in the home.
5. There is a full bathroom on the third floor which may not have received the required municipal approvals.
6. The interior of the home is in extremely poor condition and is in need of renovations.
7. Joseph Marquardt testified that there was space for three (3) cars to park on the property outside the two-car garage.

8. Access is provided by a shared driveway off of Old Turnpike Road and an easement which leads from Church Street through a number of lots to the northeast corner of the site adjoining the detached garage.

9. The property has two (2) sanitary sewer connections which indicate dual use of the structure in the past.

10. Helen Lance had lived in the home. It had also been used for a variety of commercial uses and most recently and contrary to the Tewksbury Township Development Regulations Ordinance (DRO) as a rooming house.

B. The Proposal.

11. The applicants propose to convert the structure into a two-family home containing two (2) luxury one-bedroom apartments. The first floor would contain an apartment with access from the existing front door. The second and third floors would contain another one-bedroom apartment with access from the existing rear door and stairs.

12. The applicants will *gut* the interior, install separate utilities, meters, and HVAC. The interior would be would be completely renovated and two (2) luxury apartments would be constructed.

13. The applicants propose to replace existing siding with wood siding and to install colonial style windows. Since the site is within a Historic District, all exterior work is subject to the approval of the Tewksbury Township Historic Preservation Commission.

14. The footprint of the home will not be expanded and no new lot coverage is proposed.

C. Required Variances.

15. The subject property is in the VB Zone where the minimum lot size is 20,000 square feet. As noted in factual finding 1 herein, the lot contains 7,939 square feet. A variance is required under N.J.S.A. 40:55D-70c for an undersized lot.

16. The uses permitted in the VB Zone are:

“Permitted Principal Uses.

1. The following business uses, provided they are restricted to the first floor and/or basement areas of the buildings:
 - a. Retail sales and service.
 - b. Restaurant (excluding a fast-food restaurant).
 - c. Business or professional office.
2. Business uses permitted by subsection B.1 of this Section in second and/or third floor areas of buildings, provided:
 - a. The business use is conducted by the same business which is the sole business occupant of the building in question.
 - b. The number of vehicle trips to and from the building as a result of the proposed second and third floor use is not likely to exceed the number of vehicle trips to and from the building by more than 20% compared to traffic generated by the use when limited to the first floor and basement areas.
3. Detached single-family dwelling.
4. One dwelling unit, in the same building with a permitted business use provided:
 - a. The business is being conducted only in the first floor and/or basement of the building.
 - b. Such dwelling unit shall have its own means of access separate from any other use in the building.
5. A second dwelling unit, in the same building with a permitted business use provided:
 - a. All requirements set forth in subsections B.4.a. and b of this Section are satisfied.
 - b. The second dwelling shall be a rental unit.
 - c. The second dwelling shall, for a period of at least 10 years from the date of initial occupancy, be rented only at such rent levels affordable by low or moderate income

households as defined pursuant to New Jersey's Fair Housing Act.”

17. Variances are required for a two-family dwelling, a non-permitted principal structure in the VB Zone pursuant to N.J.S.A. 40:55D-70d(1), and a density variance under N.J.S.A. 40:55D-70d(5).

18. While the subject property is undersized, it is not out of character with the other lots in the vicinity. There is no adjacent vacant land which can be acquired in order to expand the size of the lot. A variance is justified under N.J.S.A. 40:55D-70c on the basis of practical difficulty and undue hardship. The denial of an area variance would essentially take all utility out of the property.

D. Justification for Variances.

19. An applicant for a “d” variance must prove the positive criteria of “special reasons”.

“Special reasons” for a new non-conforming use frequently is the promotion of the purposes of the Municipal Land use Law under N.J.S.A. 40:55D-2. Under Kohl v. Fair Lawn, 50 N.J. 268(1967), Medici v. BPR Co., 107 N.J. 1, (1987), and Burbridge v. Mine Hill Tp., 117 N.J. 376, 386 (1990) an applicant must prove the purposes of the Municipal Land Use Law (MLUL) are promoted by the particular suitability of the subject property for the proposed use. The promotion of a single purpose may suffice (See Hudanich v. Avalon, 183 N.J. Super 244, 260 (Law Div. 1981)). The Board finds that the application promotes the following purposes of the Municipal Land Use Law under N.J.S.A. 40:55D-2, and the Board’s response:

“a. To encourage municipal action to guide the appropriate use or development of all lands in this State, in a manner which will promote the public health, safety, morals, and general welfare.”

The interior of the residence is in borderline dilapidated condition and not suitable for residential use. The Board finds that the applicants will improve both the interior and exterior of the residence, and make two (2) luxury apartments.

“g. To provide sufficient space in appropriate locations for a variety of ... residential uses ... both public and private, according to their respective environmental requirements in order to meet the needs of all New Jersey citizens.” *The Board agrees with the applicants that the subject property is not appropriate for a commercial use on account of the small size of the lot, the shared access to the site, and the parking which is not appropriate for commercial use. The VB Zone allows two (2) apartments above the commercial use. The Board finds that two (2) one-bedroom apartments are a more appropriate use, especially with two (2) one-bedroom apartments which replace the illegal rooming house with five (5) bedrooms. The two (2) apartments are not a discordant use in the zone as these units would be allowed above a commercial use. While the ordinance envisions one of the apartments being a deed restricted affordable housing unit, the Board finds based on the comprehensive testimony of Planner McGroarty, that the Mount Laurel Doctrine is currently unsettled in New Jersey, the number of affordable housing units required in Tewksbury, if any, is undetermined, and the required deed restriction is unknown. Based on these factors, the Board finds that it would be unfair to the applicants to require that one of the apartments be deed restricted for low or moderate income housing.*

“h. To encourage the location and design of transportation routes which will promote the free flow of traffic while discouraging location of such facilities and routes which result in congestion or blight. *The Board finds that the shared access and parking in the extreme rear yard make access to the site inappropriate for commercial and retail traffic.*

“i. To promote a desirable visual environment through creative development techniques and good civic design and arrangement. *The Board finds that the applicants will substantially improve the appearance of the exterior of the residence and totally renovate the interior in order to make two (2) luxury apartments.*

“m. To encourage coordination of the various public and private procedures and activities shaping land development with a view of lessening the cost of such development and to the more efficient use of land.” *The Board finds that this purpose of the MLUL justifies the use of the existing structure for two (2) luxury*

apartments and that the required renovations would not take place if the structure were limited to a single family use.

“e. To promote the establishment of appropriate population densities and concentrations that will contribute to the well-being of persons, neighborhoods, communities and regions and preservation of the environment.” Based on the historic uses of this site, the two (2) sanitary sewer connections, the five (5) bedrooms in the structure, the significant need for repairs, the Board finds that the use of the home for two (2) luxury apartments is both justified and an upgrade over existing conditions.

20. The Board finds that the improvements to the structure will be a positive development for the neighborhood and the use of the building for the luxury apartments will not cause substantial detriment to the public good and will satisfy the first prong of the negative criteria.

21. The Board finds that the proposed use is consistent with the uses in the zone, and therefore, the second prong of the negative criteria is satisfied.

22. 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.

CONCLUSION.

A. The applicants have satisfied the requirements of N.J.S.A. 40:55D-70c(1) of practical difficulty and undue hardship to justify the variance for the undersized lot.

B. The applicants have proven special reasons to justify the variances for the prohibited structure under N.J.S.A. 40:55D-70d(1) and for density under N.J.S.A. 40:55D-70d(5).

C. The applicants have proven the negative criteria.

NOW, THEREFORE be it resolved by the Land Use Board of the Township of Tewksbury on this 6th day of May 2015 that the application of JOSEPH MARQUARDT and LAUREN FORTIER be approved for a two-family residence containing two (2) one-bedroom luxury apartments in accordance with a plan titled: “USE VARIANCE APPLICATION NJSA 40:55D-70 D1 COUNTY OF HUNTERDON TOWNSHIP OF TEWKSBURY” prepared by Elizabeth Reeves, Architect and Planner, with A-1-A, A-2, A-3, A-4 and A-5 dated February 24th, 2015 and A-1A dated February 24th, 2015, subject, however, to the following conditions:

1. Approval is granted for the structure to be utilized for a one-bedroom luxury apartment on the first floor and a one-bedroom luxury apartment on the second and third floors.
2. The appropriate permits must be obtained and work shall be performed in accordance with the Construction Code.
3. The applicants shall provide proof to the Construction Code Official that the third story bathroom was constructed pursuant to the appropriate permits. If the applicants cannot provide the appropriate permits, then they need obtain the appropriate permits for the existing third story bathroom or have it removed.
4. Pursuant to the testimony, no new exterior lights.
5. All exterior work shall be approved by the Tewksbury Township Historic Preservation Commission.
6. No business or non-residential use in the home or premises.
7. The applicants shall comply with all rules, regulations, ordinances and statues of the Federal, State, County and local municipal governments that may apply

to the premises. The applicants shall submit a letter to the Land Use Administrator certifying compliance with the aforementioned rules, regulations, ordinances and statutes.

8. This resolution and the issuance of permits are conditioned on the applicants paying all escrows and fees.

9. The variance shall be utilized within one year of the date of this memorialization resolution. If it is not utilized within one year, this approval shall become void and have no further effect.

10. The footprint of the home shall not be enlarged nor shall there be additional lot coverage.

Roll Call Vote

Those in Favor: Mr. Becker, Mr. Kerwin, Mr. D'Armiento and Mr. Rahenkamp

Those Opposed: None

PUBLIC HEARING

- Puri
Appl. No. 15-06
Block 32, Lot 7.08
Impervious Coverage Variance
Action Deadline – 8/20/15

Reeva Puri, applicant, 40 Still Hollow Road, was sworn in by Mr. Bernstein.

Wayne Ingram, engineer/planner, was sworn in by Mr. Bernstein. Mr. Bernstein noted that he has dealt with Mr. Ingram on other matters and believed he could be accepted by the Board. Mr. Ingram was accepted by the Board.

Mr. Ingram explained that the applicant is requesting approval of an impervious coverage variance to allow the construction of a pool, additional patio space and improvements to the existing driveway; the maximum impervious coverage permitted is 5% and the applicant is requesting 5.8%. Mr. Ingram explained that the property is an oddly shaped lot with a flag pole driveway and additional frontage along Still Hollow Road that is fully contained within a conservation easement; a large portion of the property is restricted by a conservation easement. The home was constructed in 2013; the house, driveway and a small deck came close to the maximum impervious coverage for the lot. A 20 x 40 in-ground swimming pool is proposed in the rear yard with some narrow sidewalks on the sides of the pool and larger area of patio on the north and south sides of the pool for

chairs. A staircase is proposed from the existing deck to lead to a proposed small patio which will lead to the pool. The application also proposes the construction of a walkout basement on the north side of the house and additional extension of the driveway near the rear to accommodate turning movements along with a paved area in the front of the house for parking of additional vehicles. Mr. Ingram noted that the variance requested is due to a hardship because of the length of the driveway. The only buildable area on the lot required a long driveway which accounts for over 4,000 sq. ft. of coverage. Mr. Ingram noted that if it were not for the hardship condition of the driveway the improvements proposed would fall within the confines of the township ordinance.

Mr. Ingram reviewed Mr. Burr's technical review comments from his report dated May 1, 2015 and opined that his clients request isn't excessive and there is no other coverage that can be removed. He explained that they are proposing a drywell system that will conform with the Grading and Surface Water Management Plan Ordinance to mitigate the runoff from the proposed improvements. When asked by Mr. Burr what is being proposed between the rear of the house and swimming pool, Mr. Ingram explained that the property owner is proposing two (2) patios; a 600 sq. ft. patio at the base of the deck stairs and two (2) larger areas (total 820sq.ft.) at either end of the swimming pool. When asked about the driveway bump outs in the front, Mr. Ingram explained that it can accommodate three (3) cars. When asked if the driveway areas are connected to the drywell, Mr. Ingram noted that another inlet could be constructed in the rear yard to pick up additional impervious coverage from the driveway. Mr. Ingram agreed to satisfy the items addressed in Mr. Burr's report.

Mr. Ingram explained that in order to protect the conservation easement, the easement boundary would be staked and those stakes would serve as the limit of disturbance. The pool fence will then be installed in front of that staked area so there will be no disturbance to the conservation easement. Mr. Ingram explained that the conservation easement would be temporarily staked during construction and permanent demarcation would be installed after construction. When asked, Mr. Ingram noted that no trees will be removed, only understory brush.

Mr. Ingram acknowledged receipt of a letter from the Scenic Roads and Bridges Commission indicating that they have no issue with the proposed pillar installation. Low voltage path lighting is proposed which will be part of a landscape plan submitted for approval; no up lighting or flood lights are proposed. Mr. Ingram provided the Board with a photo which was marked as **Exhibits A-1** (the garage/driveway area).

When asked by Mr. Bernstein if he had an objection to the deed restriction for the maintenance of the drywells, Mr. Ingram responded in the negative.

When asked by Mr. Kerwin if the roof leaders drain into the drywell, Mr. Ingram responded in the positive.

When asked by Mr. Van Doren about the existing lighting, Mrs. Puri noted that there is a light outside of the kitchen door but no flood lights.

Mr. Mackie noted that pillars are not proposed at the “entrance to the residence” as called for in the DRO and asked Mr. Bernstein how the Board should treat the request. Mr. Bernstein noted that the pillars require a variance but the notice didn’t include that request however, he felt the variance was insignificant and didn’t warrant the need to have the applicant return under new notice. Mr. Ingram explained that the Puri driveway is a shared driveway which is why the pillars are pushed back to the portion of the driveway that serves their individual lot. When asked the height of the pillars, Mr. Ingram responded four (4) feet. When asked the distance from the pillars to the roadway, Mr. Ingram estimated 375 feet. When asked by Mr. Burr if the pillars would be visible from the roadway, Mr. Ingram opined that they wouldn’t be visible due to the height of the pillars and the terrain. Mr. Mackie and Mr. Stein didn’t believe the pillar variance was significant enough to require the applicant to re-notice.

When asked by Mr. Becker if the driveway is still gravel, Mr. Ingram responded in the positive.

There being no additional questions from the Board, Mr. Mackie opened the meeting up to the public. There being no questions from the public, Mr. Mackie opened the meeting up to the audience for comments. There being no comments from the audience, Mr. Mackie closed the public portion of the meeting.

When asked by Mr. Larsen if the front steps are permitted to encroach into the setback, Mr. Allen explained that stairs and chimneys are permitted to extend into the setback two (2) feet.

When asked by Mr. Becker if they have selected a contractor to do the work, Mrs. Puri explained that they are in the process. When asked if a member of the Environmental Commission is on the list, Mr. Ingram didn’t believe he was on the list of contractors. Mr. Van Doren noted that all volunteers must abide by the township’s ethics policy.

There being no additional questions or comments, Mr. Van Doren made a motion to approve the amended application to include the installation of pillars as shown on the plan along with the following conditions as outlined by Mr. Bernstein. Mr. Becker seconded the motion. The motion carried by the following roll call vote:

1. Silt fence is to be installed during construction.
2. Permanent markers for the conservation easement.
3. The pillars will not have a gate or lighting.
4. No trees are to be removed.
5. Items as outlined in Mr. Burr’s report.
6. All standards variance conditions (fees, escrows, etc.)

Roll Call Vote:

Those in Favor: Mr. Van Doren, Mr. Mackie, Mr. Becker, Mr. Kerwin, Mr. D’Armiento, Mr. Rahenkamp, Mr. Stein and Mr. Larsen

Those Opposed: None

MASTER PLAN CONSISTENCY REVIEW

- Review Ord. No. 03-2015 for consistency with the Master Plan pursuant to MLUL 40:55D-26a

Mr. Van Doren noted that this ordinance amends the previously adopted solar and wind ordinance to permit solar panels in the Highlands District; not permitting it in the Highlands was an oversight when the original ordinance was adopted.

Mr. Van Doren made a motion to find Ordinance No. 03-2015 not inconsistent with the Master Plan. Mr. Rahenkamp seconded the motion. The motion carried by the following roll call vote:

Roll Call Vote:

Those in Favor: Mr. Van Doren, Mr. Mackie, Mr. Kerwin, Mr. Becker, Mr. D'Armiento, Mr. Rahenkamp, Mr. Stein and Mr. Larsen

Those Opposed: None

BOARD DISCUSSION ITEMS

- Senate Bill 2818 – Modifies requirements concerning Pre Site Plan and Subdivision approvals under MLUL
- Senate Bill 2424 – Requires municipal land use plan element of the Master Plan to address smart growth and storm resiliency, and environmental sustainability issues

Mr. Van Doren asked for these to be placed on the agenda and explained that he sits on the NJ Planning Officials which is opposed to Senate Bill 2424 as is the League of Municipalities; they have not yet taken a position on Senate Bill 2818. He noted that S2818 changes a large part of the Land Use Board process; he opined that it usurps the authority of the local Board. When asked, Mr. Bernstein explained that he opposes uniform treatment because every town is different.

When asked what action he was looking for, Mr. Van Doren explained that if the Board wants to oppose the bills he and Ms. Goodchild can prepare a resolution for the next agenda. The consensus of the Board was to authorize Mr. Van Doren and Ms. Goodchild to draft resolutions for the next agenda.

When asked by Mr. Rahenkamp our COAH status, Mr. Van Doren noted that Tewksbury is in the pending category; the Township is in compliance and must file a report by the July deadline.

ADJOURNMENT

There being no further business, the meeting adjourned at 8:20 p.m. by motion of Mr. Van Doren and seconded by Mr. Becker. All were in favor.

Respectfully submitted,

Shana L. Goodchild
Land Use Administrator