

**FRANKFORD TOWNSHIP LAND USE BOARD
DECEMBER 15, 2004 – 7:30 P.M.
MINUTES OF THE REGULAR MEETING**

CALL TO ORDER:

The meeting was called to order by the board Vice Chairman, Mr. Ayers, by announcing that notice appeared in the New Jersey Herald and the New Jersey Sunday Herald in accordance with the requirements of The Open Public Meetings Act.

Flag Salute

ATTENDANCE:

Those Present were: Mr. Ayers, Mr. Hahn, Mr. Risdon, Mr. Zappile, Mrs. Kristensen, Mr. Martin, Mr. Nadolny, Mr. Gstatenbauer and Mrs. Caldwell. Also present were Mr. Clark, the board attorney and Mr. Pellow, the board engineer.

Those absent: Mr. Hatler (excused) and Mr. Romania (excused).

MINUTES:

The Minutes of the November 22, 2004 Regular Meeting were reviewed. A Motion was made by Mr. Nadolny and seconded by Mr. Zappile to approve the minutes of the November 22, 2004 Regular Meeting. All were in favor, except Mr. Zappile and Mrs. Caldwell, who abstained. The Motion was carried.

The Minutes of the November 22, 2004 Executive Session were reviewed. A Motion was made by Mr. Nadolny and seconded by Mr. Risdon to approve the minutes of the November 22, 2004 Executive Session. All were in favor except Mr. Zappile and Mrs. Caldwell, who abstained. The Motion was carried.

PUBLIC PARTICIPATION:

A Motion was made by Mr. Martin and seconded by Mr. Zappile to open this meeting to the public. All were in favor. The Motion was carried.

There was no public participation.

A Motion was made by Mr. Martin and seconded by Mr. Zappile to close this matter to the public. All were in favor. The Motion was carried.

APPLICATIONS CARRIED FROM A PREVIOUS MEETING:

James Huff – LUB 04-27 – Block 18, Lot 18 – 21 - Minor Subdivision and “ C” Variance:

Appearing on behalf of the applicant was the applicant, James Huff and his wife, Nancy Huff, who stated that they were still under oath from the previous meeting.

Mr. Huff indicated that previously they requested a 3 acre subdivision off of this property. He further indicated pursuant to the board's recommendation they have submitted a revised map for a 6.001 acre subdivision off of this property to conform with the new regulations.

Mr. Pellow reviewed his report dated August 2, 2004, revised October 11, 2004 and again revised December 14, 2004:

Item #1: the Applicant is proposing to subdivide 6.001 acres from a parent tract of 13.466

acres.

Item #2: Both the proposed lot and remainder lot meet bulk requirements for 5-Acre Traditional Option Ordinance.

Item #3: The application is complete.

Item #4: The 20,000 square feet of contiguous, non-constrained land for the proposed lot to be shown. Mr. Huff indicated that this will be added to the plan.

Item #5: The distance from the property line to the barn is needed. Mr. Huff indicated that this will be added to the plan.

Item #6: Permeability rates to be shown for the soil logs and who witnessed the soil logs from the County. Mottling has been shown from 16 to 66 inches, and a statement is needed from the County Health Department that a septic system can be built on the proposed lot.

Item #7: A driveway permit will be needed for the proposed lot at the time of building permit application.

Item #8: A contribution of \$2,500 needs to be added to the Road Trust Fund from the Application prior to the deeds being signed.

Item #9: A COAH contribution is needed.

Item #10: Deeds for both lots are needed.

A Motion was made by Mr. Zappile and seconded by Mr. Martin to open this matter to the public. All were in favor. The Motion was carried.

There was no public participation.

A Motion was made by Mr. Martin and seconded by Mr. Risdon to close this matter to the public. All were in favor. The Motion was carried.

Mr. Clark summarized that this was an application for a 2 conforming lot subdivision which no longer needs the variances requested. The application, if approved, is subject to the 20,000 square feet of contiguous, non-constrained area to be shown on map, distances from the property line to the barn to be shown on map, septic approval from the County Health Department, driveway permit is needed at time of building, COAH Contribution is needed at time of building, Road Trust Fund in the amount of \$2,500, and the rear lot to be moved forward so it coincides with the C-1 300 foot buffer.

A Motion was made by Mr. Martin and seconded by Mr. Nadolny to approve the application for a 2 conforming lot subdivision with the conditions stated in Mr. Clark's Summary. Roll Call:

YES: 9 Ayers, Hahn, Risdon, Zappile, Kristensen, Martin, Nadolny,
Gstattenbauer, Caldwell

NO: 0

ABSTAIN: 0

The Motion was carried.

NEW APPLICATIONS:

James and Delores Fernandez – LUB 04-42 – Block 172, Lot 6 & Block 170, Lot 14 – Lakeview Point Avenue – “C” Variance:

Mr. Martin stepped down from this application.

Appearing on behalf of the applicant, was their attorney, Les Anderson, their builder, Kurt Gewecke of K&G Builders, their engineer, Kenneth Wentink and the applicant, James Fernandez.

Mr. Clark reviewed the notice and indicated it was correct, however, an Affidavit of Service should be submitted by Mr. Wentink that he served the surrounding owners.

Mr. Anderson indicated that this property has an existing two story, single-family dwelling. The applicant's are in the process of renovating this dwelling. The footprint of the enclosed new renovation will be the same as the footprint of the existing dwelling, although there are two open porches which are not within the current footprint. Even though the existing building is a two story building and the new building will be a two story building, due to a change in the roof line, the renovated building will have a higher elevation than the existing dwelling. Mr. Anderson indicated that it is his interpretation of the Ordinance 16-5.8(2) that if the renovated building was within the footprint and was at the same height as the existing dwelling, there would be no variances required. The Ordinance further states that once the roof elevation is higher than the existing roof elevation, variances are required for side yard, rear yard, front yard and whatever bulk variances are required. The existing dwelling is substandard as far as the side yard and rear yard setbacks. Even though the renovated building will be in that footprint, due to this section of the Ordinance, because the roof line is higher, the applicant needs bulk variances for the existing deficiencies.

Mr. Anderson further stated that the work has already been commenced on the building and a Stop Work Order has been issued.

Mr. Pellow reviewed this report dated November 19, 2004 for completeness:

Paragraph #3: The application can be deemed complete if the following waivers are granted by the Land Use Board:

ITEM 13: Copy of Soil Erosion/Sediment Control application. Mr. Pellow indicated this is reasonable, as a permit will not be needed until a building permit is applied for.

ITEM 14: Copy of the NJDOT/NJDEP application. Mr. Pellow indicated this lot is considered open waters, and there is no transition areas.

ITEM 15: Copy of Sussex County Health Department application. Mr. Pellow indicated as per Ken Wentink's letter dated November 9, 2004, a permit was issued by the County, and a copy is to be presented to the Land Use Board. Mr. Wentink indicated that the Septic Permit was issued. Mr. Pellow indicated that the septic is going to be built on the opposite side of the road.

ITEM 28: Existing structures within 200 feet and distance to property line. Mr. Pellow indicated this request is reasonable.

ITEM 55: Sight triangle, drainage, utility, driveway and other easements. Mr. Pellow indicated this is reasonable, as no easements are proposed.

ITEM 70: NJDEP Letter of Interpretation. Mr. Pellow indicated the lake along this lot is considered open waters, and there is no transition areas.

ITEM 73: Four soil logs and four permability tests per proposed lot. Mr. Pellow indicated as per Mr. Wentink's latter dated November 9, 2004, a permit was issued by the County, and a

copy to be presented to the Land Use Board.

A Motion was made by Mrs. Caldwell and seconded by Mr. Risdon to deem this application complete. Roll Call:

YES: 6 Ayers, Hahn, Risdon, Zappile, Gstattenbauer, Caldwell

NO: 2 Kristensen and Nadolny

ABSTAIN: 0

The Motion was carried.

Mr. Gewecke, Mr. Wentink and Mr. Fernandez were sworn in by the board attorney. Mr. Anderson submitted to the board the following exhibits: Application for a Zoning Permit dated August 24, 2004 marked as Exhibit "A-1"; A Zoning Permit dated August 25, 2004 marked as Exhibit "A-2"; Application for a Zoning Permit dated October 11, 2004 marked as Exhibit "A-3"; a Zoning Permit dated October 12, 2004 marked as Exhibit "A-4"; Notice of Denial of the Zoning Application dated October 13, 2004 marked as Exhibit "A-5"; Notice of Violation - Stop Work Order dated November 24, 2004 marked as Exhibit "A-6"; and Four Photographs of the subject property taken by the builder approximately at the end of September, 2004 marked as Exhibit "A-7" which was submitted with the application.

Appearing before the board was the Zoning Officer of Frankford Township, William Paterson. Mr. Paterson was sworn in by the board attorney.

Mr. Anderson referred to Exhibit "A-1", Zoning Permit Application dated 8/24/04 which states "State purpose for which zoning permit is requested: Raise house to create a crawl space 24" ground to top of foundation. Rebuild second floor with new roof lines as per plans submitted." Mr. Anderson referred to Exhibit "A-2", Zoning Permit dated 8/25/04 which states "This is to certify that the above described premises, together with any buildings thereon, are used or proposed to be used for or as: Raise house creating crawl space. Rebuild 2nd floor with new roof lines. Use permitted by Ordinance." He referred to Exhibit "A-3", Application for Zoning Permit dated 10/12/04 which states "Rebuild Garage, Remove 5' off left side, add footings under walls." He referred to Exhibit "A-4", the Zoning Permit, which is a permit for that request. He referred to Exhibit "A-5", the Notice of Denial of Zoning Application dated 10/13/04 citing the violation of Zoning Ordinance Section 16-5.8 – non-conforming lots, structures and uses. He referred to Exhibit "A-6", the Notice of Violation/Stop Work Order dated 11/24/04. He feels when the applicant applied for his zoning permit in August, either the permit should have been denied at this point because the variances were required for the existing setback deficiencies or the applicant should have been told that his application for the zoning permit is incomplete because the plans did not show the difference in the two roof lines.

Mr. Anderson submitted to the board 10 pages of photographs taken by Mr. Gewecke taken in September, 2004 which was marked as Exhibit "A-8".

Mr. Gewecke testified to the board when he was granted the zoning permit to proceed, the first thing they did was raise the house up. They jacked the house up approximately 8 feet. The condition of the existing floor was rotting away and they could not jack up the house up from the floor, they had to jack it up from the roof. There was no foundation under the existing house except for one wall which they saved and is existing now in the new structure. Once the foundation was completed, they lowered the house back on the foundation. Mr. Gewecke referred to a picture which shows the framing as it exited of the house and indicated that the framing was totally substandard.

Mrs. Kristensen questioned Mr. Gewecke why he did not come before the Land Use Board at

that time, when he realized the entire house's framing was substandard. Mr. Anderson stated there was no need for variances due to the substandard framing; the variances have to do with the height of the roof. Mr. Clark indicated that once you take an entire house down, you lose all the non-conformity rights. Mr. Gewecke indicated that the house was not taken down. He referred to a photograph which shows that the studs do not go all the way up to the roof; they are broken in half which is substandard. He referred to the front portion of the house, which was removed for two reasons: the substandard nature and they could not build off of it because the walls were only 7' feet tall, which the plans required 9' ceiling height. Removing the front portion of the house is totally in accordance with the plans submitted drawn by Charles Schaefer dated 7/7/04, which was marked as Exhibit "A-9".

Mr. Zappile questioned Mr. Gewecke which part of the house was not substandard. Mr. Gewecke indicated vertically nothing. Mr. Gstatenbauer questioned how much of the lumber was left from the original home. Mr. Gewecke indicated that there was no lumber left from the original house. The only thing remaining was one side of the foundation wall facing the lake side, which was re-finished on the outside to match the new portion of the foundation. Mr. Zappile questioned Mr. Gewecke as to why they kept the roof. Mr. Gewecke indicated that they kept the roof because they were under the understanding that they were not allowed to knock the house down, so they went to great lengths and expense not to knock the house down. However, as they were building, it became evident that they needed to repair this house. He further stated that they did not go beyond the scope of the plans submitted.

Mr. Zappile indicated the plans submitted show 2 x 6 walls; he questioned Mr. Gewecke if he was aware if the existing house had 2 x 6 walls. Mr. Gewecke indicated he did not know what it had until he ripped down the sheetrock. He further questioned Mr. Gewecke if the plans dated 7/7/04 were the plans submitted to the Zoning Officer with the application. Mr. Gewecke indicated that they were the same plans.

Mr. Gewecke indicated that after they raised the house, the Zoning Officer notified him that they were going beyond the scope of what was permitted as far as the height restriction, and that they would need a variance. However, the Zoning Officer further indicated to Mr. Gewecke that he would not stop the work, so they proceeded. He further stated that they repaired all the walls, removed the roof and built the second floor. He indicated at this point, they received the Stop Work Order that indicated that they had totally demolished the house which in actuality, they had not. He stated they rebuilt the house and repaired what they needed to and the foundation is partially there.

Mr. Ayers questioned if the portion of the existing foundation is the only existing part of the house left. Mr. Gewecke indicated that this was true.

Mr. Gewecke indicated if you look at the plans and all the areas that are being repaired and replaced, there may have been 20 feet of wall that would not have to be replaced because of change in openings. At this point they decided to tear this wall down because it was old and substandard.

Mr. Clark questioned what the variance is for height that was requested. Mr. Anderson indicated that they do not require a height variance. The height is within the Ordinance. The problem is with Section 16-5.8 says once the roofline is higher than it was, then you need variances for the existing deficient side yard and rear yard setbacks. He further indicated that if the applicant had done this and left the roof at the same height, then they would need no variances. Mr. Clark disagreed. Mr. Clark felt that they are combining paragraphs 1 and 2 under this section of the Ordinance. Paragraph one talks about the footprint that may be filled in. Paragraph 2 talks about any vertical expansion that is within the side, front or rear yard setbacks requires variances regardless. He feels this application always needed variances. Then, if the whole entire house was taken down, then the applicant needs variances because there is an undersized lot.

Mr. Clark questioned if the volume of the house was increased. Mr. Anderson indicated that the footprint is the same; however, the volume is not.

Mr. Paterson indicated that the house went from no walls on the second floor to 8 foot walls on the second floor. Mr. Clark indicated that the 8 foot walls are an encroachment into the vertical area which is an expansion.

Mr. Anderson indicated that the application for a Zoning Permit should have been denied and the applicant at that point could have amended the plans. He further stated that the applicant thought that they were doing what they were supposed to and had gone through all the steps necessary before beginning construction. The Zoning Office did not have a problem with the construction, itself, when Mr. Paterson went out to the site and said now the height is higher, they need variances. He informed Mr. Gewecke that he would not stop the job. Mr. Paterson testified the initial set of plans submitted by Mr. Gewecke was not acceptable and he would need a variance. Mr. Gewecke indicated that they did not want to go through the variance procedure. Mr. Paterson indicated that they could put up dormers. Mr. Gewecke indicated he would have to check with the applicant. Mr. Paterson told Mr. Gewecke he would sign one zoning permit and one denial. If they decide to go with dormers, he would issue the permit. If they did not want the dormers, then it would be a denial. He left the forms with his secretary and Mr. Gewecke was to call and speak to his secretary and let her know what they decided to do. Mr. Gewecke called the Zoning Office the next day and indicated that they were not going for a variance, leaving Mr. Paterson to believe they were going to put up dormers and a zoning permit was issued. He further stated that there are no set of plans approved from him and he still has the set of plans in the office originally submitted which were not acceptable because it was an add-a-level and it would require a variance. Mr. Paterson further stated that he received a call that this house was standing up in the air 14 feet. He looked at the building department plans to see what was submitted and he indicated that the plans submitted to the building department was not the set of plans he approved. This is when he went out to the building site and he told him about his findings. He noted that when he looked at the building there was no sheetrock left, there was not a stud in this building that went from floor to ceiling and the contractor was well aware that this building would have to be removed. After receiving Mr. Pellow's report to the Land Use Board that this was all new construction, he went out to the job site to inspect same and that is when he issued the Stop Work Order because he could not find one piece of wood from the old building. At this point he indicated to them that they needed to stop and obtain a variance. His understanding that it was to be dormers only.

Mr. Anderson indicated that he was unaware of what Mr. Paterson testified and has no reason to doubt what he testified.

A Motion was made by Mr. Hahn and seconded by Mr. Zappile to open this matter to the public. All were in favor. The Motion was carried.

There was no public participation.

A Motion was made by Mr. Risdon and seconded by Mrs. Kristensen to close this matter to the public. All were in favor. The Motion was carried.

A Motion was made by Mrs. Kristensen and seconded by Mr. Nadolny to carry this application to the January 19, 2005 Land Use Board meeting without further notice as to the variances already noticed or re-notice by the applicant for a total demolition of the house. All were in favor. The Motion was carried.

A Motion was made by Mr. Mrs. Kristensen and seconded by Mr. Gstattenbauer to take a two (2) minutes recess at 9:00 p.m. All were in favor. The Motion was carried.

A Motion was made by Mrs. Kristensen and seconded by Mr. Gstattenbauer at 9:05 p.m. to

reconvene the meeting. All were in favor. The Motion was carried.

Mr. Martin returned to the meeting.

PUBLIC PARTICIPATION:

A Motion was made by Mrs. Kristensen and seconded by Mr. Risdon to open this matter to the public. All were in favor. The Motion was carried.

Mr. Hahn stepped down from this portion of the meeting.

Mr. Edward Campbell appeared before the board to request that his property, Block 82, Lots 7 & 8 be changed to the C-1 Zone which is the same zoning to the surrounding properties. There is a letter from the Town Council recommending the change.

Mr. Campbell indicated that the property has been sold to the fire department for the construction of a new fire house. It was sold for an amount considerably below market value. His attorney and his accountant advised him that he would gain some tax benefits if it can be re-zoned commercially. The property is in a commercial area. The surrounding properties are commercial and the property, in his opinion, is not suitable for residential use. The property is on Route 206. He appraiser indicated that if it was kept residential, it would loose value because it is surrounded by commercial property. This would also save the fire department from obtaining a variance to construct the fire house on this property since it is residential. The total acreage is 7+ acres. The property is 80% AR and 20% Commercial. The Commercial zone line bisects the property.

Mr. Campbell indicated the property borders residential property in the rear, however, the front of the property is on Route 206 and this is were the access would be for the property. There is no access from the residential property in the rear to this property.

Mr. Pellow indicated that there should be a planning report prepared by Mr. Campbell stating what the uses are, showing the board what is going on with the property and the surrounding property, making the argument why it should be commercial and giving the board the basis for making their decision. Mr. Ayers indicated that the board should look at the site and have Mr. Campbell come in at the January meeting to finalize their decision. Mr. Clark indicated that the board is not supposed to zone property for economic reasons and it would have to fit in with the existing Master Plan. He also questioned Mr. Campbell to check with his appraiser about zoning it public use property instead of commercial to be more consistent with the end use.

A Motion was made by Mr. Zappile and seconded by Mrs. Kristensen to close this matter to the public. All were in favor. The Motion was carried.

ZONING OFFICIER' S REPORT:

The Zoning Officer' s report dated December 15, 2004 was reviewed by the board. No formal action was taken.

APPLICATIONS CARRIED FROM PREVIOUS MEETING:

Jean & Graham Smith – LUB 04-20 – Block 174, Lot 7 – 23 Lakeview Point Avenue “ C” Variance:

Appearing on behalf of the applicant was their attorney, Jeanne McManus, their architect, Ann Sears, their engineer, Kenneth Wentink, and Mr. Smith, the applicant. Ms. Sears, Mr. Wentink and Mr. Smith were still under oath from the previous meeting.

Also appearing was Mr. Gaus on behalf of the surrounding property owner, Mr. and Mrs.

Murray. Mrs. Murray was still under oath from the previous meeting.

Mr. Ayers reviewed with the board at the last meeting there was discussion about a hemlock tree that was removed and the board decided to do an on site inspection to see if the objecting surrounding owner's view was, in fact, going to be obstructed by the building of the requested addition. The board also reviewed moving the garage to the other side of the property also. Ms. McManus submitted to the board photographs of Mr. Smith's property taken from across the street. The photographs have imposed upon them by computer a silhouette of the location and size of the proposed addition and a location and approximate size of the hemlock tree that was removed 2 years ago. These photographs were marked as Exhibits "A-4" and "A-5" respectively.

Mr. Gaus submitted to the board a photograph taken in 1969 taken from approximately 5 feet from Mrs. Murray's front porch showing Mr. Smith's garage. This picture clearly shows a view of the lake. This photograph was marked as Exhibit "O-2".

Mr. Gaus questioned Mrs. Murray if she recalls the hemlock tree shown in Mr. Smith's exhibit. Mrs. Murray indicated that she does not recall the tree or anything that obstructed her view of the lake in the past 5 years except for the natural environment. However, she never looked at this natural environment as an obstruction of her view.

Ms. McManus referred to an Oak tree further down by the lake which was also removed. She questioned Mr. Smith if the trees that were removed from the property if they afforded Mr. Smith's family privacy in the back yard. Mr. Smith indicated that they did. Ms. McManus questioned Mr. Smith if they are going to replace the trees, with the exception of the hemlock tree in question. Mr. Smith indicated that they are going to replace the trees that were removed on the property line between his and the Martin property.

Mr. Risdon indicated that at the last meeting the board suggested moving the garage to the right side of the house. It is his position that they place the garage where originally requested. Mr. Risdon felt that moving the garage to the other side of the property would block the view of the lake from that side of the property and if the addition is approved, they would have blocked both sides of the view. Ms. McManus indicated that the Smith's agreed to put the garage on either side of the property, whichever the board decides.

Mrs. Kristensen questioned the applicant if they would be willing to making the addition slightly smaller. Ms. Sears indicated that the office that they are proposing in the addition would be a tunnel and become unusable to the applicant.

Ms. Sears indicated that the previous testimony was incorrect as to the footprint. She indicated that when she calculated the first square footage, they included the enclosed

porch in that calculation which is 344 square feet of area that is not living area. The total of the square footage of the living area with all of the additions is 2473 square feet. The current footprint is 852 square feet without the screen porch. The board indicated that the screen porch should be included in the footprint. Ms. Sears indicated that the total square footage that exists is 1927 which includes the porch and with the proposed additions it would be 2800 square feet.

Mr. Gaus summarized that the applicant's are seeking a variance from the township's ordinance that limits the footprint of a house in this area down to 850 square feet. The house in question currently has a footprint that is approximately 50% larger than that. The applicant's are proposing to almost double what the ordinance requires. The Ordinance and the Master Plan are relatively clear on the town policy in this area. It is clear in the ordinance that expanding of these footprints are frowned upon. Ms. Murray is not only concerned about the view; she is concerned about the quality of life and what it is like to live in this neighborhood.

Mr. Gaus further referred to the purposes in the Municipal Land Use Law; the applicant fails to meet several of the concerns of the Municipal Land Use Law. One of the concerns is safety from fire; larger houses on small lots create a higher likelihood of problems. Land Use Laws are supposed to promote appropriate use and development of land in the general welfare; Putting what are commonly referred to as mc-mansions on a small lot, does not do this and it is against the township's ordinance. The Land Use Law suggests promoting adequate light, air and open space; building these large houses on these small lots does not promote adequate light, air and open space. The Land Use Law requires to promote desirable visual environments; these large houses on these small lots does not promote this. He stated that the applicant indicated that the reason for the addition is for the furnace and the oil tank. He feels that these are not sustainable reasons under the Land Use code to justify a variance under C1 or C2. The architect acknowledged that they could relocate the furnace somewhere else in the house if they needed to, however, it would not be convenient, which is not a reason for a variance. He feels that an addition could be placed on the other side of the house; however, the applicant's are not willing to move the addition. He feels the variance should be denied.

Ms. McManus summarized that they have requested certain variance relief. The first with regard to the garage, she indicated that she does not feel that the applicant's require a variance, just a proof requirement of Section 16-6.4, which they have submitted to the board, allowing them the exception to the front yard setback requirement pursuant to the ordinance and not, in fact, requiring a variance from the ordinance. However, if the

board disagrees with her summation; they feel that they have given sufficient testimony satisfy positive and negative criteria for either a C1 or C2 variance with respect the proposed garage. The size and location of the existing dwelling and the existing septic facilities as well as the size and topography of the site, physical conditions including large rock out cropings and large trees severely restrict the possible locations for the proposed garage. With respect to C2 criteria, the proposed new garage and the turn around drive substantially promote protection of public health and safety, which at this time; you have to back out right into traffic blindly from this garage as it exists. They have designed the garage where there will be a turn around area before they pull out onto the road. The proposed garage in the same location as it exists.

Ms. McManus referred to the variance for the expansion of the footprint, itself. On the basis of C1 Variance relief. The existing house was built in 1909. The lot has existed in its current configuration since 1925. The ordinance which created the non-conformities with respect to footprint became effective in 2001. The pre-existing non-conformities pre date the zoning regulations by almost a century. The 2001 ordinance with its footprint limitation created the hardship from which the applicant now seeks relief. Further the applicant took all of the required and reasonable steps possible to attempt to mitigate the need for variance relief by seeking, unsuccessfully, to acquire from its two adjacent property owners additional land to expand the size of the lot. Although the footprint will exceed the maximum, it is substantially similar to homes in the surrounding area, thus the granting of the variance will not be detrimental to the zone plan and the zoning ordinance. With respect to the C2 criteria, the expansion of this footprint will result by the creation of the basement on the south side of the house to accommodate the updated heating system, the oil tank and the utilities. The current location of the heating system is unsafe and in violation of the current building and fire safety codes. The proposed expansion requiring the variance thus advances the purposes of the municipal land law to secure safety from fire and to promote public health, safety and general welfare.

A Motion was made by Mr. Martin and seconded by Mr. Risdon to open this matter to the public. All were in favor. The Motion was carried.

There was no public participation.

A Motion was made by Mr. Risdon and seconded by Mr. Martin to close this matter to the

public. All were in favor. The Motion was carried.

Mr. Clark summarized this application. The first issue is the garage; there is a frontage setback alignment issue. The second issue is the residence, the real focus from the Land Use point of view is the square footage, not the view. There is nothing in the view directly that is specifically controlled by the Ordinance.

A Motion was made by Mr. Risdon and seconded by Mr. Martin to approve the proposed garage on the left side of the property with the requested variances. Roll Call:

YES: 8 Ayers, Hahn, Risdon, Zappile, Kristensen, Martin, Nadolny, Gstattenbauer

NO: 0

ABSTAIN: 0

The Motion was made carried.

A Motion was made by Mr. Risdon and seconded by Mr. Nadolny to approve the "C" Variance requested for the footprint. Roll Call:

YES: 1 Zappile

NO: 7 Ayers, Hahn, Risdon, Kristensen, Martin, Nadolny, Gstattenbauer

ABSTAIN: 0

The Motion was carried. The Variance was denied.

Heritage Development – LUB 04-39 – Block 48.02, Lots 4.02 & 4.06 – Preliminary & Final Site Plan:

Mr. Zappile stepped down from this application.

Appearing on behalf of the applicant was their attorney, Kevin Kelly, Esq., their engineer, Ken Dykstra, and a principal of the applicant, John Stanley. Mr. Dykstra and Mr. Stanley indicated that they were still under oath from the previous meeting.

Mr. Kelly submitted to the board a revised site plan dated December 3, 2004. This site plan was marked as Exhibit "A-4".

Mr. Dykstra indicated that the parking area that was a major concern at the last meeting has been revised. They have reduced the number of parking spaces to 60 spaces, which is more than adequate for the applicant's needs. They have a 21 space parking lot next to the building which is further away from the neighbor's properties. They have also revised the storm water basin. With respect to the lighting, they still have to pick a fixture that is consistent with the township's ordinance, however, the poll locations have been approved by Mr. Pellow.

Mr. Pellow questioned if a new septic system was going to be done or are they using the existing system. Mr. Dykstra indicated that the applicant intends to utilize the existing system. They do have a State permit to allow the system.

Mr. Pellow noted that " Item 62" of his report that the Fire Department shall review the fire protection details in Sections 7 and 9 of the Redevelopment plan. Mr. Kelly indicated that this will be done.

Mr. Pellow referred to paragraph "6" Parking. Mr. Dykstra indicated that they reconfigured the entrance way to make it less confusing for the traffic flows and they reconfigured the parking on the west side. Because of the position of the existing building with respect to that property line, they need to build this parking lot within 7 feet of the property line, not the 10 feet required by ordinance. Therefore, they will need a variance and which will allow them to construct a sidewalk between the paved area, isle and the building.

Mr. Pellow referred to paragraph "6b" of his report. He stated a sidewalk has been provided but ends at the north end of the building. Mr. Dykstra indicated that they can add a sidewalk from the entrance way to this paved area.

Mr. Pellow referred to paragraph "7b" of his report. Grading of the bioretention basin will cut into the existing septic area slope which is not acceptable. Mr. Pellow stated that the basin has been moved to avoid cutting into the septic system which is acceptable.

Mr. Pellow referred to paragraph "7c" of his report. At some point in the future, this facility will have to be connected into the sewage collection system for the Borough of Branchville, and the estimated sewage flow is required. Mr. Kelly agreed to this.

Mr. Pellow referred to paragraph "8" of his report. The water is obtained from Branchville Borough and this will have to be sent to Branchville to make sure everything is okay, the size of the water line. Mr. Kelly agreed to this.

Mr. Pellow referred to paragraph "10" of his report. The applicants have agreed to submit a landscaping plan to be reviewed by Mr. Pellow's landscape engineer.

Mr. Pellow referred to paragraph "11" of his report with regard to the access drive to maintain the bioretention area. An access has been shown on Sheet No. 4. The grade is 15% grade. He questioned what type of construction is proposed. Mr. Dykstra indicated that they are using Quarry Process.

Mr. Pellow referred to paragraph "13e". He questioned why the applicant moved the refuse truck access behind the existing garage. Mr. Dykstra indicated that they thought this would be a better location and a garbage truck could come in the one way and back down to it.

Mr. Pellow referred to paragraph "14". The applicant will need a front yard variance: 75 feet is required and 38 feet is proposed. The applicant agreed to this.

Mr. Pellow referred to paragraph "15". Signage. An identification sign is shown on Sheet No. 3 to be constructed in the right-of-way of Phillips Road. No sign details are shown, and variances will be needed. Mr. Dykstra indicated that it is to be determined the exact size of the sign, which they will submit.

Mr. Pellow referred to paragraph "16". Drainage. He indicated a report was submitted dated December 10, 2004 and the details will be worked out between Mr. Dykstra and Mr. Pellow.

Mr. Pellow referred to paragraph "17". Lighting. Mr. Dykstra indicated that they have not submitted the style of the lighting which he will submit to Mr. Pellow with the Landscaping plan for his review and approval. Mr. Pellow questioned if the lights were to be on a timer or left on all night for security. Mr. Stanley indicated that there will be

some light on for security, but they will not be lighting up the parking lots. There will be lights for the staff coming and going.

Mr. Ayers questioned the applicant about access to the fire hydrant. He indicated that there is

no way of getting to it. He questioned if they will be building a gravel road to it so that the fire truck can get to it. The applicant's agreed to build a gravel driveway right to the fire hydrant.

A Motion was made by Mr. Martin and seconded by Mrs. Kristensen to open this matter to the public. All were in favor. The Motion was carried.

Tammy Lesch appeared with a concern about the landscaping and lighting which is still an open issue. Mr. Kelly indicated they could forward a copy of the plan to Mrs. Lesch for her review.

A Motion was made by Mr. Martin and seconded by Mr. Risdon to close this matter to the public. All were in favor. The Motion was carried.

Mr. Clark summarized this application. This is a Preliminary Site Plan application with a request for 3 variances, front yard setback from 75 feet to 38 feet, and a right side yard setback from 10 feet to 7 feet and the sign being in the right-of-way. When the size of the sign is determined and a variance is required, they will have to notice for the Final Site Plan approval.

A Motion was made by Mr. Martin and seconded by Mr. Gstattenbauer to approve the Preliminary Site Plan application submitted, the 3 variances stated in Mr. Clark's summarization and subject to the terms and conditions of Mr. Pellow's report. Roll Call:

YES: 7 Ayers, Hahn, Risdon, Kristensen, Martin, Nadolny, Gstattenbauer

NO: 0

ABSTAIN: 1 Caldwell

The Motion was carried.

RESOLUTIONS:

David Martin – LUB 04-37 – Block 174, Lot 8 – 21 Lakeview Point Avenue – “C” Variance:

The Resolution was reviewed. A Motion was made by Mr. Martin and seconded by Mr. Gstattenbauer to approve the Resolution for a “C” Variance for David Martin. Roll Call:

YES: 7 Ayers, Hahn, Risdon, Kristensen, Martin, Gstattenbauer

NO: 0

ABSTAIN: 0

The Motion was carried.

Richard Hamilton – LUB 04-40 – Block 270, Lots 1 & 7 – Blackford Road - Planning Variance:

The Resolution was reviewed. A Motion was made by Mr. Martin and seconded by Mr. Gstattenbauer to approve the Resolution for a Planning Variance for Richard Hamilton. Roll Call:

YES: 6 Ayers, Hahn, Risdon, Martin, Nadolny, Gstattenbauer

NO: 0

ABSTAIN: 0

The Motion was carried.

Charles Rolon & Mary Louise Petrone – LUB 04-23 – Block 68, Lots 4.01, 5.03 & 5.05 – Minor Subdivision (Lot Line Adjustment) Corrected Resolution:

The Resolution was reviewed. A Motion was made by Mr. Risdon and seconded by Mr. Martin to approve the Resolution for a Minor Subdivision (Lot Line Adjustment) for Charles Rolon & Mary Louise Petrone. Roll Call:

YES: 5 Ayers, Hahn, Risdon, Kristensen, Nadolny

NO: 0

ABSTAIN: 0 The Motion was carried.

BOARD BUSINESS:

Invoices:

A Motion was made by Mr. Nadolny and seconded by Mr. Martin to approve the December Invoices on the Bill list attached hereto and made a part hereof. Roll Call:

YES: 8 Ayers, Hahn, Risdon, Kristensen, Martin, Nadolny, Gstattenbauer

Caldwell

NO: 0

ABSTAIN: 0

The Motion was carried.

Ordinance Review (Floor Area Ratio):

This matter was tabled until the next meeting of the Land Use Board.

Correspondence:

The Correspondence was reviewed. There was no formal action taken.

A discussion was held with regard to the application submitted by Sussex Commons. Mr. Pellow indicated that there is a time issue involved and he indicated that all the monies have not been submitted for the escrow. He questioned Mr. Clark as to when the time starts to run as to this application. Mr. Clark indicated that the application is incomplete as to fees. He feels the board should make a motion to authorize Mr. Pellow to write a letter authorizing him to determine completeness of this application.

A Motion was made by Mr. Martin and seconded by Mr. Risdon to authorize Mr. Pellow to write a letter determining completeness on the application of Sussex Commons. Roll Call:

YES: 8 Ayers, Hahn, Risdon, Kristensen, Martin, Nadolny, Gstattenbauer,
Caldwell

NO: 0

ABSTAIN: 0

The Motion was carried.

Mr. Pellow indicated that the Planner of Frankford Township should review the Sussex Commons application.

A Motion was made by Mr. Martin and seconded by Mr. Gstattenbauer to appoint David Troust to be the Board Planner. Roll Call:

YES: 8 Ayers, Hahn, Risdon, Kristensen, Martin, Nadolny, Gstattenbauer
Caldwell

NO: 0

ABSTAIN: 0

The Motion was carried.

A discussion was held with regard to the Stakeholders committee. Mr. Clark thought it would be appropriate for the members of the Land Use Board and the members of the Township Committee who will be on the Land Use Board next year step down from the Stakeholders committee due to the submission of the Sussex Commons application.

A Motion was made by Mrs. Kristensen and seconded by Mr. Gstattenbauer to authorize Mr. Clark to write a letter to the Stakeholder's committee indicating that the members of the Land Use Board and the members of the Township Committee that will part of the Land Use Board in 2005 step down from the Stake holder's committee. Roll Call:

YES: 8 Ayers, Hahn, Risdon, Kristensen, Martin, Nadolny, Gstattenbauer
Caldwell

NO: 0

ABSTAIN: 0

The Motion was carried.

A Motion was made by Mr. Risdon and seconded by Mr. Gstattenbauer to go into executive session to discuss the Land Use Board Administrator's salary. All were in favor. The Motion was carried.

A Motion was made by Mr. Martin and seconded by Mrs. Kristensen to reconvene the meeting.

A Motion was made by Mr. Hahn and seconded by Mr. Risdon to cancel the December 22, 2004 Land Use Board meeting. All were in favor. The Motion was carried.

ADJOURN:

A Motion was made by Mr. Risdon and seconded by Mr. Hahn to adjourn the meeting. All were in favor. The Motion was carried.

Respectfully submitted,

SHARON M. YAROSZ

Land Use Administrator