

FRANKFORD TOWNSHIP LAND USE BOARD
NOVEMBER 21, 2005 –6:00 P.M.
MINUTES OF THE REGULAR MEETING

CALL TO ORDER

The meeting was called to order by the board Chairman, Mr. Romania, 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. Risdon (arrived at 6:35 p.m.), Mr. Zappile, Mr. Hatler, Mr. McDowell, Mr. Martin, Mr. Nadolny, Mr. Romania and Mr. Gstattenbauer. Also present were Mr. Clark, the board attorney and Mr. Pellow, the board engineer.

Those absent: Mr. Hahn (excused) and Mrs. Caldwell (excused).

MINUTES

The Minutes of the September 28, 2005 Regular Meeting were reviewed. A Motion was made by Mr. Nadolny and seconded by Mr. Gstattenbauer to approve the minutes of the September 28, 2005 Regular Meeting of the Land Use Board. All were in favor, except Mr. Hatler, who abstained. The Motion was carried.

The Minutes of the October 12, 2005 Workshop Meeting were reviewed. A Motion was made by Mr. Gstattenbauer and seconded by Mr. Nadolny to approve the minutes of the October 12, 2005 Workshop Meeting of the Land Use Board. All were in favor, except Mr. Hatler and Mr. McDowell, who abstained. The Motion was carried.

It was noted that the Minutes from the October 26, 2005 Joint Meeting of the Township Committee and the Land Use Board were not yet completed.

PUBLIC PARTICIPATION

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

CONCEPT APPLICATIONS

Steven L. Lang – LUB 05-23 – Block 2, Lot 3 – Concept Application:

Appearing before the board was Ken Dykstra on behalf of the applicant.

Mr. Dykstra indicated that the property is a 102.5 acre parcel located off of Davis Road, which also has frontage on Plains Road and Route 565.

Mr. Romania questioned if any of this property was in Farmland Preservation. Mr. Dykstra indicated that it was not. He noted that there was at one time consideration that this would be entered into Farmland Preservation. There was a survey done by Mr. Pellow's office, however, the transfer never occurred.

The Concept involves a proposed 3300 foot Cul-de-sac roadway and 15 single family residential lots. The average lot size on this project is approximately 6.6 acres per lot. All the lots will have access from the proposed Cul-de-sac roadway with the exception of

Lots 1 and 15, which would have access from Davis Road. No access is planned from the County. The County does not want any driveways from their road if there is an alternative. They do not plan any access from Plains Road. To date (back in September), they performed soil testing for 3 days and they have 24 test pits that were witnessed by the Sussex County Health Department. He indicated that generally speaking the results are satisfactory for sewage disposal systems. They did have 2 reported cases where the modeling level was above 24" so they called those areas unbuildable. Mr. Romania questioned where those areas were on the property. Mr. Dykstra indicated it was lot 8 (test pit #10) where the modeling was at 20"; however, there was another test pit on that same lot that was acceptable. There was another unacceptable test on Lot 12 (test pit #16), but again they had another acceptable test pit on that lot 100' away. He indicated that they are going to be performing more soil testing to prove that they have acceptable septic areas on every lot, which will require at least 2 passing test pits and 1 permeability test.

Mr. Dykstra indicated that they have not done the boundary or topographic survey at this time. This will be the next step. He noted that there are some wetlands on the property that will be delineated. This is the Traditional Option of the 5 acre zoning Ordinance. They were considering using the Open Space Farmland Preservation Option, but because you need 2 acres after going through constraint calculations, he is not sure if this benefits the project. They would prefer this option so that they could preserve some of the cornfields.

Mr. Dykstra indicated that this property is relatively flat and the road will be a fairly level road running into the property. They would like to build this road without curbing. He questioned the board on their position with this. He noted that they have been running into a lot of difficulty with the State NJDEP with the new stormwater rules and they are discouraging curbing. They want to see all stormwater that leaves pavement to run through some type of vegetation before it is collected. Without curbing, they would keep a rural appearance. Mr. Pellow indicated that RSIS does not require curbs. He further noted that this township requires curbing on new subdivisions when it is 6% or greater. Mr. Hatler questioned if this would be drained onto the grass with swails. Mr. Dykstra indicated that it would be roadside swails. In cases where the road slopes off, they would just let it run off. However, if the road is in a cup situation, they would need a roadside swail and you will have to collect the drainage and they will still need a stormwater management basin at some location.

Mr. Romania suggested that Mr. Dykstra discuss the open space option of the ordinance with Mr. Pellow, because if they went with this option, conceivably the road could be half as long. He further stated that this would maintain open space and at the same time, it would shorten the road.

Mr. Pellow reviewed his report dated November 2, 2005.

Item "1": The Applicant is proposing a 15-lot subdivision using the Traditional Development Option. An L.O.I. is required, which will determine the buffer width.

Item "2": This property has marginal soils, as the depth to mottling is very shallow. Test Pits #10 and #16 indicate that septic systems could not be constructed on these lots, as the seasonal High water table is less than 24 inches.

Item "3": It may be difficult to obtain the 20,000 sq. ft. of contiguous, non-constrained land on all the lots due to the constraint of water table. This constraint is 36 inches or less, and only 6 of the 24 test pits have mottling greater than 36 inches. Mr. Pellow

indicated to the board that after he wrote this comment, he looked at Frankford's Ordinance and it should be corrected. Right now the Ordinance reads 24" and this should be changed to 36"

Item "4": Slope constraints are not shown on this map. Mr. Pellow indicated this will be done when they prepare

the Topographic Survey.

Item "5": The applicant to contribute to the township Road Trust Fund.

Item "6": The applicant will have to construct at least one COAH unit and provide a monetary contribution for the other units, depending on how many lots will be obtained in this subdivision.

Item "7": Stormwater regulations to govern.

Item "8": Sight easements required at all intersections.

Item "9": All adjoining homes are not shown to determine how they will be impacted.

Item "10": Lots should not access 565 or Plains Road.

Item "11": This lot was originally accepted in the Farmland Preservation Program and was surveyed by our office for the County Board of Freeholders. Evidently, the owner did not want to go through with this, and the property was never conveyed as a Farmland Preservation property.

Item "12": It is apparent that the soils are very marginal in this area due to the high groundwater, and all of the septic systems will have to be mounded, even on the five-acre lots. Mr. Dykstra indicated that although they have modeling which is an indication of a high water table, there is a tight layer of soil and generally a lot of the pits on this property in his view are not the regional water table, but more of a perched condition. However, they would still design the septic systems to respect this as the regional water table.

Mr. Dykstra questioned the board as to how much frontage he would need on a Cul-de-sac. Mr. Pellow indicated that it is 300 feet even on a Cul-de-sac. He questioned if he had 300 feet of road frontage on Route 565, however he enters the property from the Cul-de-sac, would this be sufficient. Mr. Pellow indicated that it would be sufficient.

Mr. Nadolny questioned if there is a house across the street from the cul-de-sac entrance. The board indicated that there is. Mr. Dykstra indicated that they will adjust the entrance if they have to.

Mr. Gstatenbauer indicated that he is a surrounding owner and he observed the test pits. He further noted that when the test pits were done, this was at the conclusion of the driest summer that we have ever had. He feels that if the test pits were done right now, they could not even enter the property. He is concerned with the additional impervious coverage, because his property floods out at least 2 or 3 times during the year from the run off from this property. Mr. Dykstra indicated that they will have to meet the very rigorous storm water regulations which require actual reductions in run off. They actually have to reduce run offs after development from pre-existing conditions and have to infiltrate, at least as much water as infiltrates currently. They can not increase run off from the property.

Mr. Risdon entered the meeting.
ZONING OFFICER'S REPORT

Mr. Paterson appeared before the board and reviewed his report dated November 21, 2005. No formal action was taken.

Mr. Zappile questioned Mr. Paterson how the violation on 68 Fenwick Road was abated. Mr. Paterson indicated that the applicant is going to lower the structure. He has paid the fines and penalties. They are waiting for the drawings on how he is going to fix the violation.

Mr. Hatler noted to Mr. Paterson that the Marina next to the Mobil Station is overflowing with boats. Mr. Paterson indicated that he has discussed this with the Marina and the boats are going to be moved.

Mr. Romania questioned Mr. Paterson that there are large trucks on George Hill Road. Mr. Paterson indicated

that he has received this complaint; however, he has not yet seen the trucks there. He will continue to check this matter.

Mr. Ayers questioned Mr. Paterson about the used car lot at the Creamery and if it was legal. Mr. Paterson indicated that it was legal and there was a rent-a-wreck there before.

A Motion was made at 6:40 p.m. by Mr. Hatler and seconded by Mr. Risdon to take a 5 minutes recess until the board attorney arrives. All were in favor. The Motion was carried.

A Motion was made at 7:00 p.m. by Mr. Hatler and seconded by Mr. Risdon to reconvene the meeting. All were in favor. The Motion was carried.

APPLICATIONS CARRIED FROM PREVIOUS MEETING

Albert & Agnes Wittenberg – LUB 05-19 – Block 191, Lot 1 – East Shore Lake Owassa Road –“C” & “D” Variance:

Appearing before the board was Mr. Albert Wittenberg, the applicant, and his attorney, William Haggerty. Mr. Wittenberg was sworn in by the board attorney.

Mr. Haggerty indicated that they were before this board this evening for an application for an addition to a one story single family lakefront home on the shore of Lake Owassa.

Mr. Pellow reviewed his report dated September 16, 2005 with regard to the completeness issues:

Paragraph “1”: Reviews the maps submitted.

Paragraph “2”: The applicant is proposing a one-story addition with a walk-out basement, and the following variances are needed: (a) Front Yard Setback from east Shore Lake Owassa Road: 35 feet required; 18.4 feet proposed. (b) Front Yard Setback from Birch Street: 35 feet required; 21.0 feet proposed. (c) Floor Area Ratio: 7.5% permitted or 3,104 square feet for this lot; 1,990 square feet exists, and 3,428 square feet is proposed.

Paragraph “3”: The following items from the Frankford Township Checklist have not been submitted and are minor in nature but have to be submitted to my office by September 23, 2005 or the Applicant will not be heard:

Item “15”: Copy of Sussex County Health Department application. If additional bedrooms are proposed, a septic permit will be required. Does the existing house have one or two bedrooms? As per the plans for the addition, there will be two bedrooms: one

in the addition and one in the existing house. Mr. Haggerty indicated that there are two bedrooms currently and it would be proposed to be maintained as a two bedroom home.

Item “28”: Existing structures within 200 feet (200') and distance to property line. The distances have not been shown and shall be indicated. Mr. Haggerty requested that this be a condition of approval.

Item “39”: Property lines to the nearest hundredth. Some of the property distances are plus or minus. Mr. Haggerty indicated that they have the deed to Wittenberg's in 1992 and the deed calls are plus or minus to the shore line and running along are plus or minus so those 3 are set that way.

Mr. Romania questioned Mr. Haggerty if the applicant's agree with the 3 variances mentioned in Mr. Pellow's report. Mr. Haggerty agreed with the 3 variances.

A Motion was made by Mr. Risdon and seconded by Mr. McDowell to deem this application complete subject to the existing structures within 200 feet and distance to property line are added to the plans. All were in favor. The Motion was carried.

Mr. Haggerty stated that they have an application with a two bedroom one story lakefront home at Lake Owassa. The applicant proposes to construct a one story addition on the left side of the home as viewed from East Shore Lake Owassa Road. He further stated that the actual cart way of East Shore Lake Owassa Road is actually some distance from the property line. There is a significant setback and it certainly is not anticipated that the cart way would be moved in the future. The property is actually towards the far end of the lake towards the end of this road. They do need a Front Yard Setback Variance. The required front yard setback is 35 feet and the actual is going to be 18.4 feet. He stated that the addition will actually be a little further from the road than the current home. The current home is 18.1 feet. The line would be maintained basically of the dwelling house since it is angle somewhat to the property line. He stated that the applicant is really adhering to the intent of the setbacks, since the cart way is off set significantly from the property line.

Mr. Haggerty indicated that another Variance is from Birch Street. The property being a corner lot, they have to treat the property as having two front yards and adhere to the front yard setback requirements, but Birch Street is actually a paper street, so the impact is significantly less. It is the functional side yard of the home, but they are proposing 21 feet and 35 feet is required. He noted that certainly no one is being affected since Birch Street is an unimproved street and the adjoining homes actually off set it; it's not adjacent or parallel to this property. It is set back towards the lake quite a bit further from this house.

Mr. Haggerty indicated that the last Variance is the Floor Area Ratio. They are slightly higher than the permitted Floor Area Ratio, but they are maintaining the home strictly as a two bedroom home and it's just a one story home. Functionally, they are not really increasing the intensity of the use; they are just making it more convenient and user friendly for the property owners.

Mr. Pellow continued reviewing his report:

Paragraph "4": Can a turnaround be constructed on this lot? Currently, the vehicles have to back out into East Shore Lake Owassa Road, which is a dangerous condition. Mr. Wittenberg indicated that a turn around would require him to go over the septic system.

Mr. Clark asked if they made application for the septic permit. Mr. Haggerty indicated that have not. This is a two bedroom home and will be maintained as a two bedroom, so they will not be increasing the number of bedrooms.

Paragraph "5": Show the existing septic and well.

Mr. Hatler questioned the applicant in terms of the Floor Area Ratio Variance, did he look at any other configuration to stay within the Floor Area Ratio. Mr. Haggerty indicated that the factor is that they are maintaining it as two bedroom; it does furnish a good useable Master Bedroom area. The intensity would not be increased, it is strictly a two bedroom home and we do have a factor of a paper street next to the property and they actually have less influence then might otherwise be the case. This was a design that was very workable for the applicants.

Mr. Risdon questioned what the standard is on the paper street and if there is any possibility of the township taking it over. Mr. Clark indicated that they are dedicated by the fact that the map is filed. The township has no responsibility unless it accepts the roads either formally or by maintaining them outright as a road and this has not happened here. Mr. Risdon questioned who actually owns the paper street. Mr. Clark indicated that the adjacent property owners own it, but they can't use it that way because there is still a public dedication on top of it. Mr. Risdon questioned if there was a way for the applicant to take it over. Mr. Clark indicated that they would have to petition the township committee to vacate any claim to it, which has not been successful in the past. Mr. Risdon indicated if the applicant tried to take it over, it would alleviate the side yard set back and floor area ratio problem. Mr. Wittenberg indicated that he did request that this road be vacated and the township refused to do this. He further stated that he offered to buy it and pay taxes and the township refused.

Mr. Hatler again questioned if the applicant has looked at any other configuration of this addition. Mr. Wittenberg indicated that he chose this configuration because he wanted a large bedroom and a new bathroom. When he designed this addition, he did not know that the township included the basement in the floor area ratio. Therefore, he designed the addition without the basement included in the floor area ratio. Mr. Haggerty indicated that if the township did vacate Birch Street, the applicant would have an acre of property and they would not have a floor

area ratio concern. The only variance they would need is from East Shore Lake Owassa Road.

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

Mr. Ayers questioned the applicant if he would consider a second floor. Mr. Wittenberg indicated that he does not want a second floor, because there is no area to put a stairway in the house without destroying the interior.

Mr. Hatler questioned if the applicant could eliminate the basement. Mr. Wittenberg indicated that this would be difficult. Mr. Haggerty indicated that the house is built into the hill. The use of the basement makes it more functional to get to the lake and the storage area. He further stated that there is no garage. Mr. Hatler felt that if the

basement was eliminated; it would meet the floor area ratio. Mr. Wittenberg indicated that he believes, because there is only one doorway to the exit, you can't make that basement to a livable space. He thought the law was two ways of egress from a bedroom and this room only has one. Therefore, he did not feel the basement was a livable space.

Mr. Gstatenbauer questioned the applicant about the houses on each side of him if they are one story or two stories. Mr. Wittenberg indicated that one neighbor is two stories and the other is one story, however, it may have some space on the second floor which he does not know about.

Mr. Romania questioned Mr. Pellow if the screened in porch counted towards the floor area ratio. Mr. Wittenberg indicated that he was told that the screen porch should not be included in the floor area ratio. Mr. Clark read the ordinance for Floor Area Ratio and it excludes porches.

Mr. Risdon questioned the applicant if they looked into putting the addition on the other side of the house. Mr. Wittenberg indicated that they did, but it was too close to the septic. He further stated that he asked the builder to move the septic back further so he could put the addition on that side, however, the builder could not put the septic further back.

Mr. Hatler indicated that the applicant made the decision on the size before he knew about the Floor Area Ratio Ordinance and the applicant has not gone back and designed a livable configuration that would keep it within the floor area ratio required. Mr. Wittenberg indicated that the drawings were started before the township passed the law. Mr. Hatler indicated that he understands that, however, the applicant does not fall into any kind of grandfather rule. Mr. Haggerty agreed and indicated that the applicant is not contesting this issue. Mr. Wittenberg indicated that the purpose of this addition is to get a larger bedroom and he does not want to reduce it.

Mr. Risdon indicated that if some of the foyer area came out a little bit, this would reduce some floor area. Mr. Wittenberg indicated that they have talked to the architect about it and the stairway going to the basement has to change. He indicated that the stairway will have to be parallel to the lake direction and they are making the foyer area smaller. Mr. Wittenberg feels that the stairway is being moved approximately a yard or so.

Mr. Clark summarized that the applicant is requesting two minor variances for setbacks, the front and the side. The front yard variance is in the nature of a hardship. The side yard setback may or may not be a hardship, but there is also the C2 flexible C because it is a better plan. The major Variance is a "D" Variance for the floor area ratio. The floor area is approximately 300 feet over the allowed ratio. He further indicated that the burden is on the applicant to demonstrate special reasons as to why the board should grant the variance. The applicant has proposed some special reasons. He stated that the board could take into consideration that there is no garage on this property and no objectors from the public. Mr. Clark indicated that the basement is the issue in this application. It does not show now to be truly livable, but if the board approves it, they are allowing a structure that

could be occupied by someone down the road on both floors and it is larger than permitted by the ordinance.

Mr. Haggerty indicated that there is another factor that the applicant is next to a paper street and functionally the applicant made an attempt to acquire title and there is suggestion in the opinion of some that we, in a sense have title to the center line of the paper street. If the applicant had this in title, the applicant would not even be here for a

floor area ratio. This road is going to stay a vacant area. This road is not going to be put in. In actuality, this is an area that is available here that will not be developed and provides a buffer. The applicant would have over an acre if this property was attached to the applicant's property.

Mr. Wittenberg stated that he has a septic system for a two bedroom home and if he used the basement as a bedroom, he would be violating that rule. Mr. Clark indicated that a septic could be increased in size with the proper permits.

A Motion was made by Mr. Risdon and seconded by Mr. Zappile to approve the "D" Variance request for the Floor Area Ratio. Roll Call:

YES: 3 Zappile, Nadolny, Gstatenbauer

NO: 5 Ayers, Risdon, Hatler, Martin, Romania

ABSTAIN: 0

The Motion was denied.

Mr. Haggerty asked the board if they would retain jurisdiction and permit the applicant to come back with a re-design if they could at a subsequent meeting. Mr. Wittenberg indicated that he will not return to the board with a new plan.

18 Plus, Inc (High Ridge Properties) – LUB 05-04 – Block 1, Lot 10 & Block 4, Lots 2 & 4 – Final Major Subdivision:

A letter was received from the applicant's attorney requesting that this matter be carried to the December 21, 2005 Land Use Board meeting without further notice. A Motion was made by Mr. McDowell and seconded by Mr. Risdon to carry this application to the December 21, 2005 Land Use Board meeting without further notice. All were in favor. The Motion was carried.

Gregg & Jeanine Paschenko – LUB 05-07 – Block 266, Lot 4 – 36 Bonning Road – "C" Variance & Planning Variance:

Mr. Haggerty appeared before the board and requested that this matter be carried to the December 21, 2005 Land Use Board meeting without further notice because he is still waiting for his appraiser's appraisal. A Motion was made by Mr. Risdon and seconded by Mr. Zappile to carry this application to the December 21, 2005 Land Use Board meeting without further notice. All were in favor. The Motion was carried.

Rebecca L. & Brian F. Schundler – LUB 05-12 – Block 215, Lot 4 – 177 East Shore Lake Owassa Road – "C" Variance:

Mr. Hatler stepped down from this application.

Appearing before the board was the applicant's attorney, William Haggerty, and representing the applicants, Bruce Schundler, the applicant's father, Mr. Schundler acknowledged that he was still under oath from the previous meeting.

Mr. Haggerty handed out to the board a diagram of the home as it existed June 17, 2003 and a Current Working

Plan B which was marked as Exhibit "A-11". Mr. Haggerty indicated that the applicant has proposed a 2 foot addition on the road side of the home, which is 2 x 12 feet. The room is labeled bathroom/laundry room. This addition is to make this room a functional room and not have to raise the toilet to get the pitch into the septic. This is just a functional issue that the applicant is proposing there. The other aspect of this application is to enclose an area that is already partially enclosed.

Mr. Clark questioned the applicant what has changed since the last hearing. Mr. Schundler indicated that they had to get an engineering report which was submitted to the board secretary last week from Careaga Engineering, Inc. dated October 21, 2005. Mr. Haggerty indicated that the board wanted this report in terms of the structural integrity of the home.

Mr. Clark indicated that the engineer's report in part in the conclusions states that "so long as there is no change of use proposed for the dwelling (i.e. it is maintained a seasonal house), no structural modifications are required at this time for continued use of the dwelling." Mr. Clark indicated that this is hearsay; however, it is the applicant's engineer's opinion. He questioned Mr. Schundler if this was a seasonal house. Mr. Schundler indicated at this time it is very restricted to a seasonal house because it is serviced by a shallow well that actually services 4 homes now that was approved by the department of health.

Mr. Haggerty summarized that this is a 24 square foot addition on the back, a functional addition to allow better use of the bathroom facility so the applicant does not have jack up the toilet and it can have a better flow. In terms of the condition of the conversion, which really an internal conversion, it is currently a 3 bedroom home and the applicant would like to convert it to a 2 bedroom use. Therefore, they are down scaling in terms of the intensity of the use that the applicant is proposing. And as Mr. Schundler indicated they are opening up the porch area, the view would be a bit less disruptive with that being opened up.

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

Mr. Leonard Tandul and Mr. Jeff Tandul appeared before the board. Mr. Leonard Tandul and Mr. Jeff Tandul acknowledged that they were still under oath from the previous meeting.

Mr. Tandul indicated to the board that it was his understanding from the September 28th meeting that the way the vote was taken that the variance was essentially voted down. The application was kept open for the applicant to come back with alternatives. He further thought that the second request of the board was to have professionally drawn architectural plans. This request was made so the board members could see the elevations and configurations of the building. Mr. Tandul noted that he does not understand how the applicant is coming back to the board with the same plan.

Mr. Clark reviewed the motions of the minutes of the September 28th meeting pursuant to this application. In summary the board did deny the application as it stands. However, motions were made to do an on site inspection and have an architect submit a report with regard to the structural integrity of the house and for the applicant to submit alternative plans with architectural plans.

Mr. Clark asked Mr. Haggerty what variances the applicant is requesting. Mr. Haggerty indicated that his client felt that instead of having an architect review the structural

integrity, they felt it better to have an engineer prepare the report. In terms of the architectural plans, this is not an addition to a home, except for a 2 x 12 foot addition matching a rear line. He does not feel that the board would need full architectural to understand a 2 x 12 foot addition on the rear with the photographs that were submitted. In terms of the enclosed area, its 32 square feet which already exists with a knee wall. They are opening up another area around the deck. It is an existing home and the applicant is enclosing 32 square feet and a 2 foot addition in the back. He stated for the board to require architectural plans is overkill on this application.

Mr. Clark questioned if any of the board members did an on site inspection. No board members visited the site. Mr. McDowell indicated that he is familiar with the property; therefore he did not have to go.

Mr. Tandul indicated that this did not resolve the issues outstanding. He noted that no one visited the site and they are not aware of the on site conditions. Mr. Clark questioned Mr. Tandul if they had any new exhibits to submit. Mr. Tandul submitted to the board a printout from the internet of a Toilet retailer "Saniflor" in Edison, New Jersey for a macerator type toilet. This Exhibit was marked as Exhibit "O-9". This pump can be put in a basement and pumped up to 12' high. Therefore, the argument that the applicant needs to move the bathroom backwards in order to get pitch for the toilet is essentially moot. He further stated that the applicant is talking about moving the kitchen further away, they are going to need even more pitch and how are they going to do that through framing to the back. Mr. Haggerty indicated that this is a seasonal home and he has discussed with his client the system that would be subjected to freezing temperatures. What they are proposing a strict gravity fed low tech conventional system. There would be a concern about maintaining this system with freezing temperatures. Mr. Tandul felt that this was not an issue that the house could be winterized.

Mr. Tandul submitted to the board 2 maps of proposed suggestions of this addition. These maps were marked as Exhibits "O-10" and "O-11". Mr. Tandul indicated that the maps are basically the same; however "O-11" is blown up to make it easier to read. Mr. Tandul indicated that the portion on the front of the house on the lakeside was added on without the benefits of any variance or building permits. The area to the north there are two areas shown an area of the house that would be removed. It would remove the encroachment and would allow access to the house. Mr. Romania questioned Mr. Tandul if he asked the applicant if it would be possible to encroach on the neighboring property with the addition that he is proposing. The neighboring property is owned by Mr. Schundler who is appearing before the board this evening on behalf of his son and daughter-in-law. Mr. Tandul indicated that he did not discuss this proposal with Mr. Schundler. Mr. Tandul indicated what they are proposing is to remove the encroachment from the illegal addition on his property. There are issues about fire ratings, not having openings closer than 3 feet away from the property. This would alleviate those problems so he can do anything he wants with the interior of the house. He is also suggesting that if he wants to expand the bathroom, then he can push it over the other way and go as close to the surface well as the board will allow him. The remedy to that is maybe it is time for a driven well. Mr. Schundler gave testimony that they could not get well trucks up in this area. Mr. Tandul indicated he has seen trucks drilling wells all up and down East Shore Lake Owassa. Mr. Tandul further described the other addition would be to the left side of the property. There is a proposed addition which is greater than the portion that would be removed. There is also an extension to the front porch and actually an extension over to the part that the applicant is already illegally added on to the front. Mr. Tandul noted that he does not have an issue with this; however trees were cut down in the front. There is no erosion control there now. The

Lake basically washes under the deck. Mr. Tandul indicated that the way the deeds are written, people have access across each other's property. This is not an issue of access. If the board wants to hold them strictly to the code of 3 feet separation, the property line could be realigned slightly because it is between family members. This would resolve a problem long term of a new encroachment and existing one.

Mr. Haggerty indicated what the objector is suggesting is a subdivision to create a new property line between the properties and flip everything to the other side of the property. He further stated that this house has existing in this configuration for many decades. This is not a house that the applicant built. There has been no change, they are not proposing any change to the home, and they are just proposing to enclose a small area of 32 square feet that is occupied by a knee wall and open up another area. They are proposing to remove an encroaching wall to make a situation better.

Mr. Tandul responded to Mr. Haggerty that there is a new encroachment. He also indicated that there is a problem with maintenance. He indicated that he can put a fence right on the property line and completely blocking his access to the side with the encroachment.

Mr. Tandul indicated that Mr. Schundler gave testimony that the existing septic on this property is working fine. Mr. Tandul indicated that the septic has been used and abused by several different owners. Mr. Clark indicated that this is for the Board of Health and the Land Use Board does not have jurisdiction on this matter. Mr. Tandul indicated that he agreed, however, this does affect the Variance and long term liability of the property and property values. He further stated that the issue of the septic was brought up by the board; he was questioned about the septic system. Mr. Clark indicated that the board can not make a decision based upon what 3 prior owners did with the septic system.

Mr. Tandul stated that there is an issue about the Variance about the addition to the porch in the front. The applicant put in footings that were not below grade and there is an extension that has been put on into the extension zone and nothing has been done about it. It has been reported to the Zoning Officer and the Building Department. Mr. Clark indicated that the board does not enforce violations. Mr. Tandul indicated that the porch was completely rebuilt, the floor, the structure was removed from the wall which the applicant talks about opening up the front porch. There used to be supports every two feet on a double 2 x 4 and now there are supports every 8 or 10 feet. This does not support snow load. Mr. Clark indicated that this is not the board's issue. Mr. Tandul indicated that there was a stop work on this property from a previous owner who attempted to build a foundation on his property. He would like to know the status on this situation. Mr. Clark indicated that this is not an issue the board deals with and that is for Mr. Tandul to follow up with the building department. Mr. Tandul indicated that he did follow up with the building department and, in fact, there was work done after a second stop work order was issued to Mr. Schundler. A railing was added, lattice work was added, a finished form was put down and this was all after a stop work order was issued. Again, Mr. Clark told Mr. Tandul this was a construction issue. Mr. Clark questioned Mr. Tandul how much of the front porch was there before it was replaced. Mr. Tandul indicated there was approximately six feet was added to the front porch by Mr. Schundler. Mr. Clark questioned Mr. Schundler if he put the addition on for six feet. Mr. Schundler indicated that what he did was in the original porch, there was a walk way, a step out or a staircase that used to go out four feet from the existing porch beyond the roof. He cantilevered the existing new porch out the same four feet. He did not go beyond the four feet. He did not extend the roof or the footings. There are no steps there

now, it is just a cantilevered porch. Mr. Clark questioned if he obtained board approval or building permits for this renovation. Mr. Schundler indicated that he did not. He further stated that he thought it was replacing an existing porch area and not going beyond the roof line. He did not know he needed to obtain a permit.

Mr. Tandul, Sr. stated that the board suggested the applicant come back with Architectural Plans and with alternative ideas because the original application considered had no alternatives. He stated that he has not seen any alternatives to this application other than the ones submitted by his son, Jeffrey Tandul.

Mr. Haggerty indicated that the essentially what the applicant has is an interior renovation. Mr. Schundler did have permits on the interior work. They are proposing to take a three bedroom house and make it a two bedroom house, decreasing the intensity of use. They are proposing a 24 square foot addition to the rear of the home, a two foot projection. They are proposing to enclose a 32 square foot area enclosed on the right side of the property with an offsetting, a much greater opening of an area of over 100 square feet. He noted that what is before the board is not a significant application in terms of additions. The only actual addition is the 24 square foot addition to the rear of the home. The other portion of the construction is an enclosure of an area that is already partially enclosed, 32 square feet. Mr. Clark questioned Mr. Haggerty that there is an encroachment in two places on this property, would the requested addition take care of this problem. Mr. Haggerty indicated that they will remove one of the encroachments, the framed wall, however, the corner of the house, they can not remove that encroachment, the one foot by the staircase. Mr. Clark questioned how long the encroachment they can not remove has been there. Mr. Haggerty indicated that it has been as long as the house existed, approximately 60 years.

There was no further public participation. A Motion was made by Mr. Martin and seconded by Mr. Nadolny to close this matter to the public. All were in favor. The Motion was carried.

Mr. Risdon stated that if there are stop work orders and outstanding issues with the building department, the board should know before proceeding.

Mr. Zappile questioned that the original vote that was taken was a denial and nothing new has been presented. Mr. Clark indicated that a report from the applicant's engineer was submitted and some additional alternatives from the objectors were submitted. Mr. Romania indicated that based on the minutes from the last meeting, the applicant's were to come back with additional ideas and architectural drawings, which they did not do.

Mr. McDowell questioned Mr. Haggerty if the applicant is willing to come up with improved drawings and a couple

of alternatives. Mr. Schundler indicated that the only alternative that Mr. Tandul would like is to move the whole house over. He indicated that he did not feel the board would want him to reconfigure the property line. He stated that if you move the house, they are still violating setbacks and the property is non-conforming no matter what they do. The decision was that it should stay where it is. The alternative to him, any other configuration, other than using pumps (and he feels on a seasonal house the simplest method, gravity is always the best) and so the intent was to make the existing house work better. The only other alternative is to leave it like it is and raise the toilet like it originally was.

Mr. Clark summarized this applicant is asking for two variances for side yards encroachment, which is two "C" Variances to construct this 24 square foot addition and a

32 square foot addition. There is an issue of a construction stop work order will be handled by other departments, but it can certainly be made a condition at the board level. Also, as to enforcement on the deck, it may be looked at if truly a variance was needed.

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

YES: 3 Ayers, McDowell, Martin

NO: 3 Risdon, Nadolny, Gstattenbauer

ABSTAIN: 1 Zappile

The Motion was denied.

NEW APPLICATIONS

Ralph & Andrea Carchia – LUB 05-20 – Block 65, Lot 17 – 15 East Shore Lake Owassa Road – "C" Variance:

A Letter was received from the applicant that he is withdrawing his application. At this time he requested the return of the balance of his escrow funds. Mr. Carchia also requested that the application fee be returned since he never appeared before the board.

The board indicated that the application fees are not refundable.

A Motion was made by Mr. Gstattenbauer and seconded by Mr. Zappile to return the balance of the escrow funds to the applicant Ralph Carchia. All were in favor. The Motion was carried.

Mr. Hatler returned to the meeting.

Richard Bell – LUB 05-18 – Block 212, Lots 1, 2 & 3 – Spring Walk Lane – "C" Variance:

Mr. McDowell and Mr. Ayers stepped down from this application.

Appearing before the board was Richard Bell, the applicant. Mr. Clark indicated to the applicant that the notice was not given correctly to the surrounding property owners. Mr. Bell did not serve each surrounding owner listed on the 200' list. He will have to re-notice for the December 21, 2005 Land Use Board meeting.

A Motion was made by Mr. Nadolny and seconded by Mr. Hatler to carry this matter to the December 21, 2005 Land Use Board meeting with new notice given to the surrounding owners and the newspaper. All were in favor. The Motion was carried.

Mr. McDowell and Mr. Ayers returned to the meeting.

RESOLUTIONS:

Frank Dayon – LUB 04-35 – Block 31, Lots 7 & 7.05 – Hyatt Road/South Dory Road/Gunn Road – Preliminary Major Subdivision (Extension of time to file deeds):

The Resolution was reviewed. A Motion was made by Mr. Martin and seconded by Mr. Ayers to approve the Resolution for an Extension of time to file the Deeds to January 2, 2006. Roll Call:

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

NO: 0

ABSTAIN: 0

The Motion was carried.

BOARD BUSINESS:

Housing Element & Fair Share Plan & Re-Examination Report:

Mr. Clark submitted to the board a Resolution adopting the Housing Element & Fair Share Plan & Re-Examination Report which was adopted at the October 26, 2005 Land Use Board meeting. The board reviewed the Resolution.

A Motion was made by Mr. Nadolny and seconded by Mr. Ayers to approve the Resolution adopting the Housing Element & Fair Share Plan & Re-Examination Report approved October 26, 2005. All were in favor, except Mr. Hatler, who abstained. The Motion was carried.

Marketing Plan & Development Fee Spending Plan Ordinances:

The board reviewed the proposed Marketing Plan & Development Fee Spending Plan Ordinances which must be submitted to COAH for the Third Round Obligation due December 20, 2005. A copy of the Ordinances are attached hereto and made a part hereof.

A Motion was made by Mr. Ayers and seconded by Mr. Zappile to approve the proposed Marketing Plan and Development Fee Spending Plan as submitted. All were in favor. The Motion was carried.

Town Center Plan:

Mr. Romania stated that with regard to the approved Town Center Plan approved at the October 26th meeting, he is concerned with the change to the triangular area, he feels it needs to be discussed further because the densities are still too great in that area.

Mr. Clark handed out to the board a Preliminary Wastewater Treatment Plan for the Town Center prepared by Cerenzio & Panaro dated October, 2005.

TDR – Grant Application:

Janice Tally of H2M requested that the Chairman of the Land Use Board appoint members to the TDR Advisory Committee to be submitted with the Grant Application. Mr. Romania, the board Chairman, appointed the following people to the TDR Advisory Committee: Edwin Risdon, Jr., Robert McDowell, James Ayers, and Wolfgang Gstattenbauer.

Invoices:

A Motion was made by Mr. Ayers and seconded by Mr. Zappile to approve the November 2005 Invoices on the Bill list attached hereto and made a part hereof. Roll Call:

YES: 8 Ayers, Risdon, Zappile, McDowell, Martin, Nadolny,
Romania, Gstattenbauer

NO: 0

ABSTAIN: 1 Hatler

The Motion was carried.

Correspondence:

The Correspondence was reviewed. Mr. Clark referred to a letter received from Kevin Kelly on behalf of the applicant Sussex Commons. Mr. Kelly is requesting that the board Subpoena Cerenzio & Panaro as a witness at the December 21, 2005 Land Use Board meeting to give testimony regarding the Waste Water Treatment Plan.

A Motion was made by Mr. Martin and seconded by Mr. Hatler to approve Mr. Romania to sign a Subpoena for Cerenzio & Panaro to give testimony on the Waste Water and well drinking water at the Frankford Center at the December 21, 2005 Land Use Board meeting if a Subpoena is required by the Courts. All were in favor, except Mr. Ayers and Mr. McDowell, who opposed. The Motion was carried.

ADJOURN:

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

Respectfully submitted,

SHARON M. YAROSZ
Land Use Administrator