

**FRANKFORD TOWNSHIP LAND USE BOARD  
FEBRUARY 16, 2005 – 7:00 P.M.  
MINUTES OF THE REGULAR MEETING**

**CALL TO ORDER:**

The meeting was called to order by the board Chairman, Jay 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. Hahn (arrived at 7:25 p.m.), Mr. Risdon (arrived at 7:10 p.m.), Mr. Zappile, Mr. McDowell, Mr. Martin, Mr. Romania, Mr. Gstatenbauer, and Mrs. Caldwell. Also present was Mr. Clark and Mr. Pellow.

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

**BOARD BUSINESS:**

**Floor Area Ratio Ordinance:**

Mr. Clark reviewed the Floor Area Ratio Ordinance, a copy of which is attached and made a part hereto.

Mr. Clark indicated that Section 1 of the Ordinance is the definition of the Floor Area Ratio, which is generally accepted definition, however, the exclusions listed in Section 1 (a-f) are particulars requested by this township, i.e.:

- (a) The first 250 square feet of garages whether attached or detached are excluded. The theory was, even on small lots the preference would be to have at least a 1 car garage. If the applicant requests a 2 car garage, the second garage will count in the floor area ratio.
- (b) Decks are excluded.
- (c) Unenclosed porches which are structures attached to a building that have a floor, a roof, and structural supports but not permanently, seasonally, or temporarily enclosed with solid materials such as glass or lexan are excluded.
- (d) Finished or unfinished attics which do not have dormers, or areas under sloping roofs, where in both cases the distance between floor and ceiling is less than 5 feet are excluded.
- (e) Floors below the first or ground floor except where these are used or intended to be used for human habitation or service to the public. Walk-out basements or those with windows or doors are presumed to be intended for human habitation is excluded.
- (f) Accessory structures (other than garages above) in area up to 100 square feet, but only on lots of one acre or less. Lots over one acre will not have a floor area accessory structure limitation are excluded. The idea was for small lots, in addition to a 1 car garage, a 10 x 10 shed should not count in the floor area ratio.

Mr. Clark referred to " Section 2" of the Ordinance called " Floor Area Ratio" . Paragraph " a" Residential Floor Area Ratio is equal to Total building floor area divided by the Total lot area. This

section also refers to a graph " Schedule E" which is also attached to these minutes and made a part hereof.

Mr. Clark referred to " Section 2, Paragraph " b" Non-residential Floor Area Ratio" which is equal to the total building floor area divided by the Total Lot area. This section also refers to a graph " Schedule B" which is also attached to these minutes and made a part hereof.

A Motion was made by Mr. Martin and seconded by Mr. Zappile to approve the proposed Ordinance and forward same to the township committee for adoption. All were in favor. The Motion was carried.

Mr. Paterson, the Zoning Officer, had concerns with the exceptions, paragraph "d". He was concerned that "5" feet was not enough height for a staircase in a modular; he indicated that it should be 6 feet or less. The board agreed to change the paragraph to read "...6 feet or less" and take out "...is less than 5 feet."

A Motion was made by Mr. McDowell and seconded by Mr. Martin to amend the previous approval and change paragraph "d" of the exclusions of the Ordinance to read "...6 feet or less" and take out "...is less than 5 feet." and forward same to the township committee for adoption. All were in favor. The Motion was carried.

#### **COAH (New Jersey Council on Affordable Housing):**

Mr. Clark indicated that the Township of Frankford has a Developer's Fee Ordinance which is in the process of approval by the Township Committee, which is 1% for Residential and 2% for Commercial. This applies for all properties where you are not

building affordable housing, unless the property has the protection of a 2 year final approval, they are protected against any change for a couple of years. This fee goes into the COAH fund that has been established in the township.

The next part of the project is the Township will have to come up with a plan on how to spend the money in the COAH fund to satisfy the obligation required by the State. What the township is looking at now in addition is the Smart Growth aspect which is for every 8 residential units, the township has to provide 1 affordable housing unit. Mr. Clark reviewed the different ways the COAH obligation could be satisfied, either through the developer building units or through the applicant paying into the COAH fund. Mr. Clark further stated that the board discussed that for the smaller subdivisions, they will make a COAH contribution of \$4,300 per lot up to about 4 lots. For subdivisions with 5 lots or more, the developer will have to come up with some methodology to supply an Affordable Housing Unit either on site or through some alternative plan or rehab an existing structure.

Mr. Clark referred to the Non-Residential obligation. He indicated that the commercial developers have the same obligation by the number of employees according to a formula, i.e.: For every 25 jobs, that developer has the same obligation as the residential developer. They can build on site (apartments above) to meet an obligation or they could collaborate with a residential developer.

Mr. Clark indicated that Frankford Township has applied and received protection from the Builders Remedy Suit to the end of this year. This plan must be decided by the end of this year.

Mr. Clark had to leave the meeting and Mr. Garofalo replaced him as the board attorney.

#### **PUBLIC:**

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

Bill Murphy indicated to the board that he was purchasing property on Spring Lake Road from Elliott

Courter who was previously before this board and received an approval and a variance which has now expired. He questioned the board as to how he can extend the Resolution on this approval. Mr. Garofalo indicated that the applicant should show proof of ownership to the board and request that the variance be extended.

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

#### **NEW APPLICATIONS:**

##### **Sussex County Farm & Horse Show – List of Scheduled Events for 2005:**

Appearing before the board was Dr. Worts to discuss with the board the events scheduled for 2005 at the Sussex County Farm & Horse Show, a copy of which is attached hereto and made a part hereof. The board reviewed the list and approved same.

##### **Sussex County Farm & Horse Show – Bathroom Facilities – LUB 05-02 – Block 10, Lot 4 & Block 11, Lots 3, 4 & 5 – Site Plan:**

Mr. Hahn stepped down from this application.

Dr. Worts indicated that they are proposing to replace an existing bathroom facility that is located across the street from the Administration Building. He indicated that they have permission from the Sussex County Board of Health to utilize the existing septic system. They have added more facilities; however, the new facilities will use a lot less water. The existing septic system was rated for 19,000 +/- gallons of water per day and they have kept it in that perimeter.

Mr. Romania questioned how old the septic system is for this facility. Mr. Pellow indicated that it was originally approved in 1979.

Dr. Worts indicated that the facility will be larger; they will maintain showers for the men and women. It will be a heated facility which will allow more year round operations. The facility will have external lighting.

Mr. Pellow indicated that the County made the fair grounds do a flooding test on this septic system and it passed the test.

Mr. Worts indicated that the architecture of the building is similar to the Administration Building.

A Motion was made by Mr. Martin and seconded by Mr. McDowell 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. Garofalo summarized for the board that this is an Amended Site Plan application with no variances and no waivers requested.

A Motion was made by Mr. Martin and seconded by Mr. Gstatenbauer to approve the Amended Site Plan as submitted. Roll Call:

YES:           7       Ayers, Risdon, Zappile, McDowell, Martin, Romania, Gstatenbauer, Caldwell

NO:            0

ABSTAIN: 0

The Motion was carried.

Mr. Hahn returned to the meeting.

**APPLICATIONS CARRIED FROM PREVIOUS MEETING:**

**James & 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, and the applicant's James and Delores Fernandez.

Mr. Anderson indicated that he reviewed the township's Ordinances and the plans of Mr. and Mrs. Fernandez and it appears clear to them that the initial zoning permit should not have been approved and from the beginning they should have been required to come before this board to get a variance because of the addition of the second floor. They believe that the approval was granted due to a misunderstanding between the Zoning Officer and the builder. They would like to proceed this evening with the application that should have come before the board in August when the Zoning permit was issued.

Also appearing for the applicant was their engineer, Kenneth Wentink. Mr. Wentink, James Fernandez and Delores Fernandez were sworn in by the board attorney.

Mr. Anderson indicated he submitted proof of Notice for this application to the board secretary. Mr. Garofalo indicated that the notice was satisfactory.

Mr. Fernandez indicated that they bought this property in the Summer of 2003 and they spent a considerable amount of time with their engineer and the County to design a septic system. The County Health Department requested that they put a well on the property since the property is currently drawing water from the Lake, which they accommodated. They tied the Deeds together with the lot across the street to meet the County Health Department's request to have the septic across the street. This process took approximately 9 months. They understood that anything they did with the house needed to be done within the existing footprint. He further stated that in September they raised the house off the foundation understanding that that is what they needed to do. They could not tear the whole place down and put a new foundation in. While the house was still raised up, they were told that they needed the Variance on September 30<sup>th</sup>. They immediately contacted Mr. Wentink to put together the application that was eventually submitted for the November meeting they attended. At that time they were not told to stop work. They were told to stop work in November, which they did. They did try to follow the procedures that they thought they needed to follow.

Mr. Anderson questioned Mr. Fernandez what was on the property before the renovations began. Mr. Fernandez indicated that this house was originally built in 1919. It was a bungalow at that time and additions were put on over several years. It was turned into a 4 season home in the early 60's. Much of the wood at this time was rotted out, the house was resting on the ground, and the flooring was on the ground. He would qualify it as unlivable. Mr. Fernandez described the layout of the house and the property.

Mr. Romania questioned if the new septic has been installed. Mr. Wentink indicated that it has not been installed; however, a permit has been issued by the County Health Department.

Mr. Anderson questioned Mr. Fernandez if the adjacent lots have existing dwellings on it. Mr. Fernandez indicated that they do, therefore, there is no land available to purchase to make this lot more conforming.

Mr. Wentink testified that the existing building footprint is 1508 square feet and the proposed new dwelling is 1508 square feet. On the site plan they show a porch and a patio on the Northeast corner of the house which touches Lot 13. This porch and patio are removed and there will be a new porch going to east, which is the lakeside. He feels this will help the conditions on the site, because it is removing it from being right on the property line of their neighbor. On the southwest corner of the house, they are putting a 25 square foot porch. The applicants will have to remove 5 feet from the existing garage to get the discharge pipe installed for the septic so that they will have the required clearances for the well.

Mr. Anderson questioned Mr. Wentink about the expansion of the second floor. He questioned if the location of the expansion is dictated by the location of the existing first floor. Mr. Wentink agreed. He further questioned Mr. Wentink if the existing dwelling already violates the side yard, front yard and rear yard requirements and the addition of the second floor will not encroach any further into those existing side yard violations. Mr. Wentink agreed.

Mr. Hahn questioned Mr. Wentink if the septic is a raised system and if it is raised what kind of landscaping are the applicant's proposing. Mr. Wentink indicated that it is slightly raised. Mr. Fernandez answered to the landscaping portion of the question. He indicated that they will be planting wildflowers on the mound and stone around the edges. They would make sure it is attractive. Mr. Wentink indicated that the septic will be raised 3 or 4 feet because this will be considered an alteration so they require them to have 2 feet between the bottom of the crushed stone and the mottled soil.

Mr. Ayers questioned why the applicant's do not combine the adjoining property to this one since they are also the owner of that lot. Mr. Anderson indicated that both lots were developed individually. He further stated that one of the reasons the applicants went through the additional expense of raising the house had to do with the septic. On Mr. Wentink's advice the applicants were told if they were to do that, it would make it far more difficult to get a septic permit. The second reason they raised the house, they did not want to have a vacant lot there which could merge into their existing lot. Mr. Anderson further stated that the Applicant's builder went to the Zoning Officer and discussed with him how this could be done without tearing down the house. The recommendation from Mr. Paterson was to raise the house and repair the existing damaged walls. At this point is where the misunderstanding came between the builder and Mr. Paterson. He believes that Mr. Paterson's understanding that the existing second

story would then be dropped on to the repaired first floor and repair and whatever had to be done. The builder's understanding was that the new first floor would then be constructed on the repaired first floor. The next problem that arose was that the builder should not have done that repair to the first floor walls without taking out a building permit. He only took out a foundation permit.

Mr. Garofalo indicated that the applicant is here this evening seeking at least 9 variances. This application is an undersized lot case. Mr. Ayers question is correct, does the applicant have adjoining property that could be used to make the lot more conforming. This is the applicant's burden to convince the board that there isn't adjacent property available. The board has to be satisfied that the applicant's response is acceptable. The board does not have to focus on what happened with the construction.

Mr. Risdon indicated that the applicant is testifying that this is not a vacant lot; it is simply a repair of the existing dwelling. However, he feels that there is not a board on the house that existed prior to the new construction.

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

George Martin indicated to the board that he is an adjoining property owner and he feels this project is an asset to the neighborhood. Mr. Anderson questioned Mr. Martin if his lot is available for sale to adjoin Mr. Fernandez's property. Mr. Martin indicated that his lot is not available for sale. Mr. Gstattenbauer indicated that the board received a letter from him with issues regarding drainage

problems. Mr. Martin indicated that the objection in his letter has been resolved with the applicant.

Richard St. John, President of the Normanoch Association, indicated to the board that the water quality of the lake be considered. He questioned Mr. Wentink if this were to be considered a "new" house, would the septic design be different. Mr. Wentink indicated that the design would be different. He further testified that the main difference between a renovation and a new septic is they allow them to have 2 feet between the bottom of the crushed stone and the water table which is the mottled soil. Under the new rules, they would have to have 4 feet between the bottom of the crushed stone and the mottled soil and the mound would have to be 4 feet.

Mr. St. John indicated on behalf of the Normanoch Association, they are concerned about the water quality and would prefer that the septic design be done as a new home instead of a renovation. Mr. Wentink indicated that he will have to check the grading. The code requires minimum 3 on 1 side slopes and they will have to check if the grading could be accommodated for a new septic.

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

A discussion was held with regard to a revised septic design. It was requested by the board that the applicant re-submit a design for the septic to the County Board of Health for a new septic design.

Mr. Garofalo summarized that this application is before this board seeking multiple "C" Variance relief all related to undersized lots. The issue in this application is that the applicant's property is a nonconforming structure. If a non-conforming structure is destroyed (destruction means either inadvertent or on purpose) he has no right to the variance relief that he is seeking this evening. He has to convince the board that he has met his burden and proves to the board that this is a candidate for variance approval for an undersized lot. If the board is satisfied what they heard this evening to lead the board to believe that the applicant can't get any additional property and the applicant is building a house that is in character with the neighborhood then the board should approve this request. On the other hand, if the board feels that the applicant has destroyed the home that was existing, and has not met his burden to prove to the board that this is a good candidate for building on an undersized lot, then the board member should vote no. The applicant's position is that the home was not destroyed.

A Motion was made by Mr. Risdon and seconded by Mrs. Caldwell to approve this application with the condition that the septic system design be brought up to standards of a new septic for a new construction. Roll Call:

YES: 5 Ayers, Hahn, Zappile, McDowell, Caldwell

NO: 2 Risdon, Gstattenbauer

ABSTAIN: 1 Romania

The Motion was carried.

It was noted that if a septic system for a new septic could not be obtained from the County Health Department, then the applicant would have to return to the board.

#### **ADJOURN:**

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

Respectfully submitted,

SHARON M. YAROSZ  
Land Use Administrator

