

**FRANKFORD TOWNSHIP JOINT SPECIAL MEETING
OF THE TOWNSHIP COMMITTEE AND
LAND USE BOARD
DECEMBER 19, 2007 – 6:00 P.M.**

CALL TO ORDER

The meeting was called to order by the board Chairman of the Land Use Board, 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 for the Land Use Board were: Mr. Ayers, Mrs. Kristensen, Mr. Risdon, Mr. Zappile, Mr. Gstatenbauer, Mr. McDowell, Mr. Martin, Mr. Larson, Mr. Romania, Mr. Smolen and Mr. Dolan. Also present were Mr. Collins, as special council for the Land Use Board, Mr. Clark and Ms. Leo, the board attorneys, Mr. Pellow, the board engineer and Jessica Caldwell, Planner, of Harold Pellow & Associates.

Those absent: None.

Those Present for the Township Committee were: Mr. McDowell, Mr. Hahn and Mrs. Kristensen.

PLAN ENDORSEMENT

Municipal Self Assessment Report:

Mr. Collins indicated that Mrs. Caldwell, Planner from Harold Pellow's office has prepared a Municipal Self Assessment Report pursuant to the new guidelines of the Office of Smart Growth and the State Planning Commission which she will summarize this evening for the Land Use Board, the Township Committee, the Advisory Committee and the public. He further indicated if the committee approves the report, there will be a Resolution that needs to be adopted recommending it to the State Planning Commission for endorsement.

Mrs. Caldwell handed out to the board the Plan Endorsement Process Guidelines prepared by the Office of Smart Growth and reviewed the steps with the board:

Step 1: Pre-Petition Meeting. She indicated that this was completed in October, 2007 and all of the planning documents were submitted at that time.

Step 2: Plan Endorsement Citizens' Advisory Committee. She indicated that the Mayor has appointed a Plan Endorsement Advisory Committee that worked with herself, Mr. Collins and Mr. Pellow to develop the Municipal Self Assessment Report.

Step 3: Municipal Self Assessment Report. This will be discussed this evening. She further indicated that the Office of Smart Growth has asked that this Self Assessment Report be submitted by the Township to represent the Township's Petition for Plan Endorsement.

Mrs. Caldwell indicated that this report follows set guidelines from the State and every item in the report is required by the State. She reviewed the Municipal Self Assessment Report:

Introduction: This gives a basic background and overview of Plan Endorsement and the Township.

PLAN ENDORSEMENT CONT.

Municipal Self Assessment Report Cont.:

Location and Regional Context: Is where we are at and the Municipalities that surround us.

Demographics: This is the from the 2000 census. This section includes Population, Housing Units, Age Distribution, Plain Distribution, COAH Projection. She indicated that our COAH plan has been submitted, however, it will have to be changed with the changes to the Growth Share being submitted by COAH.

Community Inventory: They ask you to provide information about the township's geographic and cultural features. She has included several maps from the township's natural resource inventory which include: Location Map, Policy Map of the NJ State Development and Redevelopment Plan Frankford Center Concept Plan (June, 2007), TDR Sending & Receiving Zone Map, Current Zoning Map, Watershed Management Areas, Surface Water Resources and Floodplains, Wetlands Map, Slopes, Landscape Map, Natural Heritage Priority Sites, Wellhead protection Areas and Known Contaminated Sites. It also discusses the planning designation from the State, the planning area designations as well as the community facilities, infrastructure, and any utilized land that we have.

Community Vision & Public Participation: This documents all the public participation and community visioning that we have had such as the stakeholder's meetings and the 2 charrette's that were held in the community.

Status of Master Plan and Other Relevant Planning Activities: This is basically an outline of the Master Plan and all the documents we have been working on over the last 7 to 8 years and the status of the plans: 1) 2000 Master Plan; 2) The Center Plan; 3) Transfer Development Rights Plan; 4) 2001 Open Space & Recreation Master Plan; 5) Redevelopment Plan for Methodist Manor; 6) Housing Plan and Fair Share Plan; 7) Wastewater Management Plan; Capital Improvement Plan & Transportation Development Districts; 8) Municipal Stormwater Management Plan and 9) Farmland Preservation Plan.

Recent and Upcoming Development Activities: This is a list of site plans that have been approved and are pending over the last 5 years as well major subdivisions approved and pending over the last 5 years.

Statement of Planning Coordination. This discusses our coordination of the township with adjacent municipalities, the county, the state, non-profit entities and the private sector.

State Programs, Grants and Capital Projects. This is a brief listing of any grants or loans that the township received from the State.

Internal Consistency in Local Planning. This basically describes all the township's planning documents and how they relate to each other. It describes how they are all consistent or not. She indicated that some of them are not consistent because they are not finished. When they are finished they will be looking to create consistency in all these documents.

Consistency with State Plan – Goals, Policies and Indicators. This basically describes each of the eight goals that the state has and then goes through an analysis of how Frankford has complied with these goals.

PLAN ENDORSEMENT CONT.

Municipal Self Assessment Report Cont.:

Consistency with State Plan – Center Criteria and Policies. This describes the criteria for Centers and compares our center concept plan with the state’s criteria.

Consistency with State Plan – Planning Area Policy Objectives. This goes through the various policy objectives that the state has for their state planning areas. This section also discusses how Frankford is consistent with those objectives.

State Agency Assistance. This section is where Frankford gets to ask the State to assist in reaching any of its goals that it has for grants.

Conclusion.

Mrs. Caldwell indicated that all of the information in this document should not be new for anyone. It is a compilation of all the planning documents and the planning that has taken place over the last 7 or 8 years, putting it all together in one place and synthesizing it, and comparing it for consistency with State policy.

Mr. Romania questioned Mrs. Caldwell as to what will be submitted to the State. She indicated that this document, as well as any of the public participation meetings and documents, and the Resolution if approved this evening. This will start the plan endorsement process.

Mr. McDowell indicated that there are outdated maps and several mistakes in the document. He indicated the map on page 40 does not have all of the protective open space on it. Mrs. Caldwell indicated that this map is from the state and they can not update it. Mr. McDowell indicated that the rest of the changes are editing and he will contact her directly. Mrs. Caldwell indicated that the state will review it and give us comments; therefore, this is not the end of the process.

Mrs. Caldwell indicated that Step 5 of the Plan Endorsement Process is the community visioning process and we are asking for a waiver of this step because of the prior Stakeholder committee meetings and the charrettes. After this process the state conducts a consistency review. This is where the state goes through all the planning documents and whether or not they agree with the consistency review.

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

Allen Jones appeared before the board with his concern that he wants to make sure that this document is absolutely complete and that every piece, including the stakeholder’s recommendations, are clear because we don’t need another document to go down there and come back at us and start this process again. It is time to get it right. He would like to urge everyone on the board not to pass this unless they are absolutely certain that this is something that will be approved and that it will get this process going.

Barbara Kelly appeared before the board and questioned once this document is submitted to the state what flexibility is there for the township to make changes to it. Mrs. Caldwell indicated that we can still make changes in the future. Mrs. Kelly indicated that she felt this was a very good report. Mrs. Kelly was also concerned with the concept plan we submitted showing grids for streets and the plan approved for the outlet mall which are 2 totally different designs. She questioned how do we get some reconciliation between these two designs. Mrs. Caldwell indicated that the Resolution for the outlet mall was conditioned on Sussex Commons amending their plans to meet whatever we agree to do with the State through the Plan Endorsement process. Therefore, the understanding is

PLAN ENDORSEMENT CONT.

Municipal Self Assessment Report Cont.:

Public Participation cont.

(Barbara Kelly) that Sussex Commons will have to amend their plans to fit into Frankford's Center Concept Plan. Mrs. Kelly also expressed her concern with the waiver of the public participation of Step 5 of the Plan Endorsement Process. She would like the board not to do away with this step.

David Mince appeared before the board and he recommended that the board not approve this plan this evening and not submit it to OSG in its current form. He feels it is prudent to let the new administration that comes into office on January 1st review the document. He indicated that this past election reflected serious concern over the Frankford center and we should not preempt newly elected people from having something put into this process. He also expressed concern with the waiver request of Step 5 of the Community Visioning process. The visioning process includes 3 workshops and 2 public hearings. He does not feel the Frankford community wants to be removed or excluded from that process. The justification of the waiver is the whole series of stakeholder meetings and this report outlines and summarizes those stakeholder meetings. However, he feels that the stakeholder's recommendation for the core of the Frankford Center is contrary to the center that is in this document. He feels the core of this center is 350,000 square feet of retail outlet. The stakeholder's report made a shopping mall a prohibited use. He referred to the stakeholder's report which states "all proposed commercial and residential development as part of a mixed used plan where commercial and residential is mixed (we are talking about the core) centered on main street, commercial and residential uses shall form a consistent integrated street plan on a main street". The stakeholder's report said large parking lots, which are in the center plan, are prohibited. It further states that the center may offer neighborhood scale goods and services such as a supermarket, a pharmacy, a small shopping area with retail stores and restaurants, it may also contain public facilities, small scale commercial enterprises, such as banks, professional offices, a small hotel, recreation, day care facilities, senior center, etc. all to be part of that core. The core would not just be the outlet center stores. He indicated that Village Centers "should not contain large box stores, a shopping mall or other dominant uses which would change the rural character of Frankford Township". He feels that the center proposal that is being sent down is exactly what the stakeholders did not want.

Bill Shelton appeared before the board and indicated that he was part of the Stakeholder's committee. He objected to the waiver of step 5 of the plan endorsement process.

David Miller appeared before the board and felt that the new administration should have time to review this report before sending it down to OSG. He also objected to the waiver of step 5 of the plan endorsement process.

Mr. Romania indicated to the public that any changes will be done at an open public forum to discuss the changes.

Dr. Sam Castimore appeared before the board and indicated that this plan has been discussed for a lengthy period of time and it should be sent to the state to start this process. He indicated that there were charrette's in this township which he feels that his position was not represented. He feels we need sound commercial development at Ross' Corner.

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

PLAN ENDORSEMENT CONT.

Municipal Self Assessment Report Cont.:

A lengthy discussion was held with regard to whether or not Step 5: Community Visioning should be included. Mr. Collins indicated that the State suggested the consideration of the waiver. The state offers the opportunity to take what the township has done in the past and use it and submit it as the township's visioning. This does not mean that public meetings will stop on this subject. It was agreed by the board and the committee to have the land use board vote as to what they would like to see with Step 5.

A Motion was made by Mr. Martin and seconded by Mr. Zappile to recommend the Municipal Self Assessment to the Township Committee for submission to OSG as written and submitted this evening. Roll Call:

YES: 6 Risdon, Zappile, Gstattenbauer, Martin, Larson, Smolen
NO: 3 Ayers, Romania, Dolan
ABSTAIN: 0 Kristensen, McDowell

The Motion was carried.

A Motion was made by Mrs. Kristensen and seconded by Mr. Hahn to take a 5 minute recess at 7:20 p.m. All were in favor. The Motion was carried.

A Motion was made by Mr. Zappile and seconded by Mr. Smolen to reconvene the meeting at 7:25 p.m. All were in favor. The Motion was carried.

A Motion was made by Mr. Hahn and seconded by Mrs. Kristensen to approve the Municipal Self Assessment Report as submitted this evening. Roll Call:

YES: 2 Hahn, Kristensen
NO: 1 McDowell
ABSTAIN: 0

The Motion was carried.

A Motion was made by Mr. Hahn and seconded by Mr. Martin to close this portion of the meeting and to begin the regular meeting of the Land Use Board. All were in favor. The Motion was carried.

REGULAR LAND USE BOARD MEETING

A Motion was made at 7:40 p.m. by Mr. Martin and seconded by Mr. Dolan to reconvene the Regular Land Use Board Meeting. All were in favor. The Motion was carried.

RESOLUTIONS

Sussex Commons Associates, LLC – LUB 04-41 - Block 11, Lots 13, 13.04, 13.05, 13.06, 13.07, 13.09, 13.11, 13.12, 13.13, 13.14, 13.14 & 15 – Preliminary Site Plan, Variance & Preliminary Major Subdivision:

The Resolution was reviewed. A Motion was made by Mr. Martin and seconded by Mr. Larson to approve the Resolution for Sussex Commons Associates, LLC for an approval of a Preliminary Site Plan, Variance & Preliminary Major Subdivision. Roll Call:

YES: 8 Ayers, Risdon, Zappile, Gstattenbauer, Martin, Larson, Romania, Smolen

NO: 0

ABSTAIN: 0

The Motion was carried.

Mr. Collins left the meeting and Mr. Clark took over as Board attorney.

MINUTES

The Minutes of the October 24, 2007 Regular Meeting of the Land Use Board were reviewed. A Motion was made by Mr. Martin and seconded by Mr. Gstattenbauer to approve the Minutes of the October 24, 2007 Regular Meeting of the Land Use Board. All were in favor. The Motion was carried.

The Minutes of the November 19, 2007 Regular Meeting of the Land Use Board were reviewed. A Motion was made by Mr. Martin and seconded by Mr. Gstattenbauer to approve the Minutes of the November 19, 2007 regular Meeting of the Land Use Board. All were in favor. The Motion was carried.

It was noted by the board secretary that the Minutes of the November 28, 2007 Regular Land Use Board Meeting were not yet completed.

Nextel Communications – LUB 07-18 – Block 11, Lot 1 – 552 County Route 565 – Minor Site Plan & Conditional Use:

The Resolution was reviewed. A Motion was made by Mr. Martin and seconded by Mr. Larson to approve the Resolution for Nextel Communications for an approval of a Minor Site Plan & Conditional Use. Roll Call:

YES: 7 Ayers, Risdon, Zappile, Gstattenbauer, Martin, Larson, Romania,

NO: 0

ABSTAIN: 0

The Motion was carried.

APPLICATIONS CARRIED FROM PREVIOUS MEETING

Off Shore Marine, Inc. – LUB 07-12 – Block 50, Lot 3.01 – 352 US Highway Route 206 – Preliminary & Final Major Site Plan & “C” & Variance:

any type of outdoor storage within the C2 Zone. He indicated that the facts of this application are as follows: The property is undersized. The size of the property explains why outdoor storage is now being accommodated on this site and also the proposed outdoor storage. He feels it is not a big enough property to accommodate this type of use. He indicated that this property is not zoned for this type of use. There was a prior “D” Variance for the outdoor display of boats and the applicant seeks to expand this, which also requires a “D” Variance in his opinion. The outdoor storage is certainly not permitted, although it is defined in the township’s ordinance. He is respectfully submitting to the board that the request of the applicant be determined a “D” Variance.

Mr. Bryce further stated that from the 1984 site plan that was approved by this board, there had been alterations to the subject property, specifically the screening that was to remain on the property has been removed and has been made into gravel areas. He also stated that this property does present certain environmental concerns which relate to stream encroachment and to freshwater wetlands. He feels that this applicant has not presented any evidence as to the impact of environmental concerns on the application. The township’s ordinance requires an EIS to be performed, this was not performed. The ordinance requires a flood plain demarcation on the site, this was not provided. He feels the board does not have enough information to render a decision regarding the environmental aspects of this application.

Finally, Mr. Bryce indicated that he does not see any beneficial use to this property that would justify a “D” Variance. He quoted a case law of the Medachi opinion which guides the board in making these determinations. He quoted “When a variance is sought is not one that inherently serves the public good, the applicant must prove and the board must specifically find that the use promotes the general welfare because the proposed site was particularly suitable for the proposed use. We deem it appropriate to require an enhanced quality of proof as well as clear and specific findings of the board that granting of the Use Variance is not inconsistent with the intent and purpose of the Master Plan and the Zoning Ordinance.” He further referred to the footnote which stated “Alternatively and Statutorily special reasons standard can also be addressed by proof of undue hardship, i.e. that the property cannot reasonably be developed with a conforming use.” Mr. Bryce indicated that this property currently does have a conforming use on the property, which is the retail sales and service of the boats which is identified by the 1984 Site Plan approval. However, what the 1984 Site Plan approval did not permit and what constitutes an additional principal use is the outdoor storage. The outdoor storage that is not permitted does not deprive the applicant of an economically viable use of his property and it does not hinder the operations of his business on that property. He feels there are other properties in the area that are more suitable for the storage of boats.

Mr. Bryce indicated that he does not believe that the applicant has presented the appropriate proofs to sustain a “D” Variance for the outdoor storage. He is respectfully requesting that the board should deny such variance relief in its current form. He further requested if the board is inclined to grant any relief to the applicant, they respectfully request that such a grant be conditioned specifically on the receipt of approvals and/or exceptions from other jurisdictional authorities such as the NJDEP.

Ms. Ward indicated that after reviewing the new ordinance, the applicant revised the plans to relocate the proposed portable storage racks to comply with the 10’ accessory structure setback requirement in the zone. She indicated that the zoning ordinance defines building as a construction of materials having 3 walls and roof meant for occupation; it also defines a structure as anything else. She stated that clearly the storage racks are not buildings, they are structures. She indicated that no other aspect of the

APPLICATIONS CARRIED FROM PREVIOUS MEETING CONT.

Off Shore Marine, Inc. – LUB 07-12 – Block 50, Lot 3.01 – 352 US Highway Route 206 – Preliminary & Final Major Site Plan & “C” & Variance Cont.:

application has changed including that they were putting the racks on existing gravel area and there would be no additional disturbance on the site.

Ms. Ward indicated that there are two distinct issues here with regard to use of this site. The first issue is the display of boats for sale in the front of the property and the second is the storage of boats toward the rear of the property. The applicant has applied for a site plan approval and initially this application included a request for a “C” Variance based on the applicant’s inability to comply with the then side and rear yard setbacks. At that time there was no setback requirement for an accessory structure vs. any other structure. However, the revised plans show that the applicant has complied with required setback and they no longer need a variance. The site plan application includes: 1) A Planter around the existing sign; 2) Identifying where on the site the display of boats of sale will take place; 3) Adding some privacy slates to the fence; 4) A dumpster enclosure; 5) Delineating and re-stripping the existing parking lot. The applicants have not requested a “D” Variance. They provided with the application: 1) Information regarding the 1977 Subdivision that created this lot. Clearly this lot is about one-half of what is required in this zone; 2) The Resolution and Site Plan for Haggerty Marine in 1984; 3) A survey by Robert L. Campbell Associates from 1988 that shows the existing conditions at that time, 4 years after the site plan approval, and 4 years before the applicant acquired the property. She indicated that the existing gravel area that existed in 1988 is almost identical to what is there at the present time.

Ms. Ward referred to the Resolution of the 1984 approval; it talks about 2 forms of relief. One was a height variance and a setback variance for the proposed buildings to the rear of the property, not a use variance or relief regarding the intended use of the buildings. She further noted that at that time the permitted height of 15’ and what was requested was 24’, which is more than 10% of what is permitted, which requires a “D” Variance. She feels this is what the “D” Variance was for, not the use. She further stated that the other relief that was granted was to display boats in the front yard of the premises, which was not permitted in that zone at the time. She indicated that by virtue of the granting of a Use Variance to permit the display of boats for sale in the front yard, you can assume that it was not permitted in the zone at that time. She stated that over time the Zoning Ordinances have changed. She referred to Exhibit “A-2” the definitions of the Zoning Ordinances which have not been changed by the recent revisions to the Zoning Ordinance. In regard to this use, they have focused on the definition of Retail Sales, Retail Sales, Outdoor and Retail Service. She referred to Ordinance 30-201 which contains general definitions regarding uses and it contains specific use definitions which is the same as Schedule “A” which is the permitted use chart. She indicated that the Schedule “A” does not specifically define certain uses such as deli, convenience store, repair shop, but it does specifically define conditional uses the things that are more limited in terms of where they are permitted and terms of what they are permitted to include. The fact that the ordinance doesn’t list a marina absolutely does not mean that a marina is not permitted in this zone. She further stated that there has been testimony regarding the nature of this operation and that it includes both retail sales, retail service, and that the retail service includes the storage of boats. She feels that the display of boats for sale in the front yard of this property is permitted in this zone. She indicated that what the site plan does it defines and cross hatches exactly the area that that part of the activity would take place on. She noted that the definition that Mr. Clark presented to the board is exactly what they are referring to is Retail Sales, Outdoors which talks about “Material for sales stored outdoors that customers can inspect and examine.” She indicated that such retail establishments usually have a building where sales are consummated and/or products are also displayed, however, most of the items are too

APPLICATIONS CARRIED FROM PREVIOUS MEETING CONT.

Off Shore Marine, Inc. – LUB 07-12 – Block 50, Lot 3.01 – 352 US Highway Route 206 – Preliminary & Final Major Site Plan & “C” & Variance Cont.:

large or enormous to be stored inside. She indicated that this is a vital part of the principal use of this property.

Ms. Ward referred to the proposed portable boat racks toward the rear of the property. She indicated that there has been testimony provided to the board regarding what this type of sales and service boating marina operation entails. The applicant sells the boats, he services the boats which includes winterizing them, repairing them, overhauling them is all part of the same package. They have requested from the board as part of the site plan is the portable storage racks in the rear of the property on the graveled areas adjacent to the existing buildings. The ordinance defines outdoor storage. It doesn't list outdoor storage anywhere in the township as a permitted use. It does mention outdoor storage directly or indirectly in just a few places. One of the areas is under accessory structures and the ordinance specifically prohibits arch, hoop or clamshell storage structures to cover patios or to shelter a vehicle with very limited exceptions which are horticultural and agricultural. The ordinance talks about outdoor storage with regard to campgrounds, which is a conditional use. The ordinance talks about outdoor storage as may be reasonable and appropriate with regard to the use. It does not prohibit it. The ordinance also refers to outdoor storage with regard to hobby and craft items. The ordinance does not describe indoor storage, which is also not listed as a permitted use anywhere in the ordinance. Indoor storage is mentioned one time in the ordinance with regard to the conditional use of home occupation. It states that indoor storage is limited to office supplies.

Ms. Ward submitted to the board that interrupting the ordinance, because indoor or outdoor storage are not listed as permitted, conditional or accessory use anyway, as a Use Variance is unduly restrictive.

Ms. Ward indicated that the other issues that were raised are non-issues. She indicated that there was sufficient information submitted to this board with regard to whether or not an EIS was necessary, with regard to whether there was anything either implicated or necessary with regard to freshwater wetlands or the flood plain. She indicated that the County owns the bridge and did the work on Cook Road and adjacent to with regard to the stream. She feels that the board was given credible information and evidence both by Mr. Phil and also confirmed by Mr. Pellow.

Ms. Ward requested of the board if they were inclined to determine that the portable boat storage racks require a “D” Variance, then they would request that the board grant the site plan, that the board accept the portable boat storage racks and provide the applicant with an opportunity to return and provide planning testimony with regard to the analysis and criteria for a “D” Variance. She indicated that the applicant has provided the factual testimony, but since they have not requested a “D” Variance, we did place on the record planning testimony that would be necessary to justify a “D” Variance.

Mr. Larson questioned the applicant how long does it take to put up the temporary storage racks and take them down. Mr. Checchini indicated it would take him approximately one day.

Mr. Gstattenbauer questioned Mr. Checchini if he ever stored any boats that you did not service. Mr. Checchini indicated that he does not do this, which was provided in previous testimony. Ms. Ward indicated that this would be an appropriate condition of approval that he would not store boats without service.

APPLICATIONS CARRIED FROM PREVIOUS MEETING CONT.

Off Shore Marine, Inc. – LUB 07-12 – Block 50, Lot 3.01 – 352 US Highway Route 206 – Preliminary & Final Major Site Plan & “C” & Variance cont.:

Mr. Ayers indicated that as provided in testimony, the property north of the applicant's property is all outlined as wetlands. Mr. Pellow and the objector's professionals had indicated that he talked to the DEP and obtained two different answers. Mr. Ayers questioned the board attorney if the board does not ask for information necessary to make a decision, is the board being arbitrary. Mr. Clark indicated that the board is not being arbitrary. He further indicated that the board has to distinguish each application the way it is. This application is dealing with an existing site and an existing situation. There is also a precedent of a 1984 Resolution Board approval, which the laws have changed since then. The board also has the information from the board engineer which states that this application does not require any additional information. He feels the board has enough information to proceed. However, ultimately it is up to the State to determine. He indicated that someone who is in disagreement can always go to the State with the issue where it will get determined. Mr. Ayers thought that if DEP sent a letter resolving this issue, it would clear the issue up. Mr. Martin indicated that the board professional gave his opinion and the board should accept that information.

Mr. Ayers further indicated that he feels the display of boats and storage of boats are two separate issues. Mr. Clark indicated that the board had to look at the history on this property, which the board in 1984 concluded that a “D” Variance was needed for outdoor display. He did not hear any testimony that the zoning ordinance has changed with regard to this issue. He further indicated that the 1984 Resolution allowed indoor warehousing or storage as been described, but they did not allow outdoor storage. The prior Resolution also states a “C” Variance for the height. He indicated that it is true that retail sales outdoor is defined, but it is not permitted anywhere, which he feels is consistent with the ordinance. Also, because it might be mentioned somewhere else for a conditional use, it is not specifically permitted by the ordinance. The ordinance does state that if it is not expressly permitted, or something that is not obviously in that category, then it is prohibited. He further indicated as to the hardship, it is not a personal hardship to the applicant, but it can be a hardship to the property based upon the size and history of the property. He feels it is a “D” Variance. The board can make an argument that storage and warehousing is part of this type of use as an accessory use. He indicated that accessory use is subordinate to the primary use.

Mr. Ayers indicated that there are two “D” Variances, one for the outdoor storage and one for the outdoor display.

A Motion was made by Mr. Ayers and seconded by Mr. Zappile that this application requires two “D” Variances for outdoor storage and outdoor display. Roll Call:

YES: 5 Ayers, Zappile, Gstatenbauer, Larson, Romania

NO: 2 Risdon, Martin

ABSTAIN: 0

The Motion was carried.

A Motion was made by Mr. Zappile and seconded by Mr. Ayers to carry this application without further notice to the January 16, 2008 Land Use Board meeting. All were in favor. The Motion was carried.

Mrs. Kristensen and Mr. McDowell returned to the meeting.

APPLICATIONS CARRIED FROM PREVIOUS MEETING CONT.

Sana Enterprises – LUB 07-15 – Block 65, Lot 23 – Route 206 – Preliminary Major Site Plan & “C” Variance:

A letter was received from the applicant’s attorney requesting that this matter be carried to the January 23, 2008 Land Use Board meeting without further notice.

A Motion was made by Mr. Larson and seconded by Mr. Martin to carry this application without further notice to the January 23, 2008 Land Use Board meeting. All were in favor. The Motion was carried.

Citgo Fueling Station & Convenience Store/13 Newton, LLC – LUB 05-01 – Block 19, Lot 2 – Route 206/Newton Avenue – Preliminary Major Site Plan & “D” Variance:

A letter was received from the applicant’s attorney requesting that this matter be carried to the January 23, 2008 Land Use Board meeting without further notice.

A Motion was made by Mr. McDowell and seconded by Mr. Martin to carry this application to the January 23, 2008 Land Use Board meeting without further notice and to also notice the applicant that this application will be a hearing for completeness only. All were in favor, except Mr. Zappile who abstained. The Motion was carried.

Mr. Romania indicated that a letter should go out to the applicant that they will be heard for completeness only at the January 23, 2008 meeting.

NEW APPLICATIONS

W. Todd Okenson – LUB 07-26 – Block 160, Lots 1, 2, 3, 4 & 5 – Lower North Shore Road – “C” & “D” Variance:

Appearing before the board was the attorney for the applicant, William Haggerty, requesting that this matter be carried without further notice to the January 16, 2008 Land Use Board meeting.

A Motion was made by Mr. Martin and seconded by Mr. Gstattenbauer to carry this application without further notice to the January 16, 2008 Land Use Board meeting. All were in favor. The Motion was carried.

John T. Carrasco – LUB 07-22 – Block 162, Lot 4 – 5 Stehr Street – “C” Variance:

Appearing before the board was the attorney for the applicant, William Haggerty, requesting that this matter be carried without further notice to the January 16, 2008 Land Use Board meeting.

A Motion was made by Mr. Martin and seconded by Mr. McDowell to carry this application without further notice to the January 16, 2008 Land Use Board meeting. All were in favor. The Motion was carried.

APPLICATIONS CARRIED FROM A PREVIOUS MEETING CONT.

Mark & Carole Vogel – LUB 07-24 – Block 266, Lot 7 – 44 Bonning Road – “C” Variance:

Appearing before the board was the applicant’s attorney, William Haggerty, and the applicant’s planner, Wayne McCabe. Mr. McCabe was sworn in by the board attorney.

APPLICATIONS CARRIED FROM A PREVIOUS MEETING CONT.

Mark & Carole Vogel – LUB 07-24 – Block 266, Lot 7 – 44 Bonning Road – “C”
Variance cont.:

Mr. Pellow reviewed his report dated November 15, 2007 and revised December 19, 2007 for completeness:

“Item 7” – Compliance with legal notice requirements. Mr. Clark indicated that the legal notice was adequate.

“Item 15” – Copy of Sussex County Health Department application. Need letter from the Health Department that the existing septic system is satisfactory for this proposed expansion. As per Wayne McCabe’s December 18th memo, no records of the existing septic system exist. Mr. McCabe indicated that a septic and well exist on the property however there are no records at the County. He further stated that the applicant has had no problems with the septic system and there is no purging from the system. He also indicated that this is a 2 bedroom home and will remain a 2 bedroom home.

“Item 26” – Zoning chart listing existing/proposed requirements for area, setbacks, lot coverage, height, density, floor area, ratio, parking. Floor area ratio to be shown. Mr. Pellow indicated that the floor area ratio is now shown, and a variance is not needed. 7.5% is allowed and 6.6% is proposed.

“Item 75” – Building floor plan, elevation views and first floor elevation with overall building height. First floor elevation to be shown. Mr. Pellow indicated that Mr. McCabe’s explanation in his memo of December 18th is satisfactory.

The following waivers from the checklist have been requested:

“Item 14” – Copy of NJDOT/NJDEP applications. Mr. Pellow indicated that this is acceptable, as an application is not needed.

“Item 70” – NJDEP Letter of Interpretation regarding the presence/absence of wetlands on property and within 150’. Mr. Pellow indicated that this is not acceptable because there are wetlands within 150 feet of the house. This is to be determined by the Land Use Board. Mr. Pellow indicated that Mr. McCabe can present testimony with regard to this. The applicant is not changing the footprint and nothing will be disturbed outside of the footprint, therefore, there will be no adverse impact on the transition area.

Mr. Pellow indicated that looking at the wetlands, there would be a 50’ buffer at the most; however, the applicant is strictly going up with the addition and not disturbing any wetlands.

A Motion was made by Mr. Risdon and seconded by Mr. Smolen to deem this application complete. All were in favor. The Motion was carried.

Mr. Haggerty indicated that this is an application for a side yard setback. The house has been there for many years. The reason they are seeking such a variance is to preserve the footprint. They do not want to involve or impact the wetlands that are on the property. The other variance request of the applicant is the deck on the right side of the property, which is on the far side of the arguable wetlands, which deck they would like to repair.

Mr. McCabe indicated that the applicant is simply modifying the steps of the existing platform and steps which will maintain the existing footprint.

APPLICATIONS CARRIED FROM A PREVIOUS MEETING CONT.

Mark & Carole Vogel – LUB 07-24 – Block 266, Lot 7 – 44 Bonning Road – “C”
Variance cont.:

Mr. Pellow continued reviewing his report:

“4” – A floor plan of the existing house is needed to verify the number of bedrooms and what is being constructed. Wayne McCabe’s December 18th memo explains the number of bedrooms but he will have to explain this to the board. Mr. McCabe submitted to the board Exhibit “A-1” which is a colored version of the first floor plan. The exhibit shows the outlines of the two existing bedrooms. The one bedroom they are eliminating the door to the closet and make this their living room. The existing bedrooms in the front bottom right corner will be converted over into a dining room, and where the closet exists will be converted over into a larger bathroom. The entry is being changed so that you will not have the small door coming into the middle of the back wall of the kitchen, but it will be coming into the middle of the back wall of the house facing the stairs that will go up, which were not there before. The 2 existing bedrooms will now be moved upstairs, which are shown in the architectural plans submitted with the application.

“5” – COAH requirements are not applicable to this application as the house exists. Mr. Clark agrees.

“6” – It appears that Lots 6 and 7 use each other’s driveway. Is there cross easements for this use? Mr. Haggerty indicated that there are no legal documents. The cross easements are not needed and it can be removed. Mr. McCabe indicated that this is the applicant’s Uncle that resides next door.

“7” – The dwelling on Lot 6 will be impacted due to the height of the proposed addition on Lot 7, as the houses are approximately 11 feet apart. Mr. McCabe indicated that when the owner of Lot 6, which is the applicant’s relative, put their addition onto their house, they only put one additional window on the side facing the house in question this evening, which is a bathroom window. They had placed no windows on this side of the house for some privacy if, in the future, the subject property had added an addition. Mr. Haggerty submitted Exhibit “A-2” to the board which is a picture of the site showing the neighbor’s house and the applicant’s house.

“8” – There are two drains under the driveway to be shown on the map. Mr. Pellow indicated that they have been shown on the revised map.

“9” – There are low areas with standing water on this lot that could be wetlands.

Mr. McCabe described the surrounding neighborhood. He indicated that the houses in the area are both one, one and half and two stories in height and they are modest in footprint size. This addition is in keeping with the neighborhood. Mr. McCabe further indicated that there is an exceptional condition of topography where it is very steep right in front of the house down to the lake which precludes the applicant of going any further towards the lake. Secondly, it has been noted that there are small pockets of wetlands between the house and the road, which would preclude the applicant from going in this direction also. The applicant also has a septic system in close proximity of the house, which means if they were to push out the house, they would have to install a new septic system.

Mr. Haggerty submitted to the board Exhibit “A-3” which shows the entry road into the property, Exhibit “A-4” which shows the applicant’s home, a view from the lake and Exhibit “A-5” which shows the applicant’s home, a view from the side. Mr. Smolen questioned if the applicant’s proposing to do the foundation over. Mr. McCabe indicated that they would be. Mr. Dolan indicated that the applicant’s will have to review the new

APPLICATIONS CARRIED FROM A PREVIOUS MEETING CONT.

**Mark & Carole Vogel – LUB 07-24 – Block 266, Lot 7 – 44 Bonning Road – “C”
Variance cont.:**

Board of Health Ordinance which indicates if they are replacing the foundation, they will need to put a new septic system in on this property.

Mr. Dolan referred to Item 15 of Mr. Pellow’s report which requires a copy of the Sussex County Health Department application. He indicated that this is a seasonally used house by out of state owners that they would like to change to a year round residence, but it is okay that we don’t know where the septic system is, and it is okay that the County or Township don’t have any record of it, and they are asking the board to let them do this expansion without at least agreeing to locating and pumping the system and agree to maintain it. Mr. Haggerty indicated that he understands Mr. Dolan’s concern, however, it is a 2 bedroom, it will be maintained a 2 bedroom so in terms of septic requirements, it is not defined as an expansion. Mr. Dolan questioned then why does our checklist require a copy of the Sussex County Health Department application. Mr. Haggerty indicated that an application does not exist because the applicant does not need one. Mr. McCabe indicated that the checklist requires copies of any applications, which they have researched and they do not exist. Mr. Dolan indicated that he understands that the documents do not exist, but he is not satisfied with this response. Mr. McCabe indicated he can locate and find the 4 corners of the bed and locate the tank. He also indicated that they can raise the collar of the tank up to grade and put a lock down lid on it. Mr. Clark indicated that if this property is going to go to year round use, then you have a different type of situation. Mr. Risdon questioned Mr. McCabe as to how old the existing structure is. Mr. McCabe indicated that the existing structure is post World War II. Mr. McDowell questioned Mr. McCabe if in addition to you locating the tank, will they test the system. Mr. McCabe indicated that they will make this part of the condition which will be signed off by an engineer.

Mr. Ayers questioned Mr. McCabe as to access to the attic area of the house. Mr. McCabe indicated that there will be a pull down set of stairs or a hatchway.

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.

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

Mr. Clark summarized this application as an expansion of existing two bedroom house vertically to retain the two bedroom features. The application requires a right side yard variance. The testimony given, it is a C1 Variance; however, it may also be a C2 Variance because it is better planning. The application also includes the rear yard setback for the deck. A condition of the approval would be to locate the septic and well and having the septic tested to prove it is functioning properly and putting the collar on the septic tank and raise it up to grade if necessary.

A Motion was made by Mr. Zappile and seconded by Mr. Ayers to approve the application with the following conditions: Finding septic tank and testing it, putting a new collar on if not up to grade. Roll Call:

YES:	11	Ayers, Kristensen, Risdon, Zappile, Gstattenbauer, McDowell Martin, Larson, Romania, Smolen, Dolan
NO:	0	
ABSTAIN:	0	

The Motion was carried.

BOARD BUSINESS CONT.

Small Wind Energy Systems Ordinance:

Appearing before the board was Frank DeWitt to discuss the possibility of the board adopting an ordinance to allow small wind energy systems.

Mr. DeWitt indicated that the Small Wind work group in conjunction with the Board of Public Utilities and funded by the Department of Energy and Rutgers University have put together this proposed Ordinance for townships who have sufficient wind resource to consider adoption. The State has an Energy Master Plan in place and they are looking to meet certain goals and wind would be one of the means of reaching these goals. He indicated that there are 2 areas within the State of New Jersey that are sufficient wind resource locations which are along the coast and the northwestern part of New Jersey. He indicated that he currently has 4 rebates granted through the State for residence in the Township of Frankford in the amount of \$160,000. He further indicated that he is discussing with the Township, itself, the potential of utilizing the wind resource for its own needs. They are looking to put in an application for a solar system for the municipal building here and also the consideration of a wind system off to the back side of the building.

Mr. Romania questioned Mr. DeWitt as to the height of these systems. Mr. DeWitt indicated that the height varies. He handed out a photograph of comparisons to the board to review. He indicated the height of the towers range anywhere from 90' to 140' high. Mr. Romania questioned if this system would fall under the township's tower ordinance. Mr. Clark indicated that it would not fall under the Telecommunications Ordinance in the township. Mr. Romania indicated that there is a tower ordinance which directs the setbacks and where they are located. Mr. Pellow indicated that these types of towers would need a variance. Mr. DeWitt indicated that the idea of the proposed Ordinance he submitted this evening is to hopefully make these systems a permitted use, this is what the State is looking for. He indicated that they just had a township in New Jersey (Ocean Gate) adopt the Ordinance. The Ordinance went through the Department of Consumer Affairs review to make sure it was within State guidelines and they just started marketing this ordinance through the League of Municipalities. The board requested that Mr. DeWitt forward to them a copy of the Ordinance passed by Ocean Gate for them to review.

Mr. DeWitt indicated that the 4 people who have been approved for funding, there is a timeline of 9 months to obtain approval to install this system.

Mr. Gstattenbauer questioned how many of these units will be in this township. He indicated he does not want to see 150 of these systems throughout the township.

Echo Housing Ordinance:

It was agreed to carry this matter to the next regular meeting of the Land Use Board.

Far Ordinance:

It was agreed to carry this matter to the next regular meeting of the Land Use Board.

