

**FRANKFORD TOWNSHIP LAND USE BOARD
FEBRUARY 27, 2008 – 7:00 P.M.
MINUTES OF THE REGULAR MEETING**

CALL TO ORDER

This 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. McDowell, Mr. Bennett, Mrs. Fountain, Mr. Gstattenbauer, Mr. Sutphen, Mr. Larson, Mr. Romania, Mrs. Albanese, Mr. Dolan, and Mr. Nadolny. Also present were Mrs. Leo, representing the board attorney and Mr. Pellow, the board engineer.

Those absent were: Mr. Shelton (excused) and Mr. Capalbo (excused).

MINUTES

The Minutes of the November 28, 2007 Regular Meeting of the Land Use Board were reviewed. A Motion was made by Mr. Larson and seconded by Mr. Gstattenbauer to approve the Minutes of the November 28, 2007 regular Meeting of the Land Use Board. All were in favor, except Mr. Bennett, Mrs. Fountain, Mr. Sutphen, Mrs. Albanese and Mr. Nadolny, who abstained. The Motion was carried.

The Minutes of the December 19, 2007 Joint Township Committee & Land Use Board Meeting & Regular Meeting of the Land Use Board were reviewed. A Motion was made by Mr. Gstattenbauer and seconded by Mr. Larson to approve the Minutes of the December 19, 2007. All were in favor, except Mr. Bennett, Mrs. Fountain, Mr. Sutphen, Mrs. Albanese and Mr. Nadolny, who abstained. The Motion was carried.

It was noted that the January 16, 2008 Minutes and the January 23, 2008 Minutes were not yet completed.

RESOLUTIONS

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:

It was noted by the board attorney that the Resolution was not yet completed.

Timothy & Anne Keller – LUB 06-22 – Block 104, Lot 5 – 11 Nook Lane, Culver Lake, “C” & “D” Variance Approval – Extension of Time:

The Resolution was reviewed. A Motion was made by Mrs. Fountain and seconded by Mr. Ayers to approve the Resolution for Timothy & Anne Keller for an extension of a “C” & “D” Variance. Roll Call:

YES: 6 Ayers, Bennett, Fountain, Gstattenbauer, Larson, Romania

NO: 0

ABSTAIN: 0

The Motion was carried.

ZONING OFFICER'S AGENDA

The Zoning Officer's report for January/February 2008 was reviewed. No formal action was taken. Mr. Ayers requested that Mr. Paterson contact the owner of the Tire King sign on Plains Road and Route 565 which is an advertisement for a business not in this township.

PUBLIC PARTICIPATION

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

There being no public participation, a Motion was made by Mr. Gstatenbauer and seconded by Mr. Ayers to close this meeting to the public. All were in favor. The Motion was carried.

NEW APPLICATIONS

New Jersey State Fair – LUB 08-06 – Block 10, Lot 4 & Block 11, Lots 3, 4 & 5 – Plains Road – Preliminary & Final Site Plan:

Mrs. Fountain stepped down from this application. Mr. Pellow also stepped down as board engineer and was replaced by Kenneth Wentink on this application.

Appearing before the board was William Haggerty, Attorney for applicant, Daniel Kent, Surveyor for applicant and Bob Silk, Manager of the New Jersey State Fair. Mr. Kent and Mr. Silk were sworn in by the board attorney.

Mr. Haggerty asked Mr. Silk to inform the board where the building will be located at the fairgrounds. Mr. Silk indicated that this building will be located between the current greenhouse and the Farm Fun Building. It currently is a paver patio at this location. He further stated during the Spring Fest they put up large free standing tents to allow for all the exhibits. This proposed Conservatory will be in its place which would greatly enhance the Spring fest every March and will also be very valuable during the fair for exhibits and educational displays. They also have received calls for possibly having a wedding in this building. He already has received a lot of requests to host events during the day time hours. He feels it will be asset to the County and the Township. He indicated that the building will be mostly glass with some metal roofing. He would like to break ground on this project after the 2008 fair so the building is ready for the Spring fest in 2009.

Mr. Haggerty asked Mr. Kent to explain to the board the site plan submitted and if there are any impacts because of drainage and lighting. Mr. Kent referred to page 4 of the site plan which is a landscaped plan prepared by Mr. Wright. There are two small areas with landscaping in front of the building. They will expand the paver area slightly towards the front. There is a main door coming in from the road and three doors in the rear of the building. There will be pavers in the rear of the area. He indicated that they plan to take care of the roof run off with seepage pits in each corner of the building. The fairground is studying a plan to improve the drainage along the road. At this time they do not know what direction this drainage will take, but once that drainage is installed, they will tie the roof drainage into this drainage as well and abandon the test pits. This area at the present time is used to enter the landscaping area and it functions as a walkway to the Fun Barn and the greenhouse. There is a large parking area that is located west of the greenhouse.

Mr. Romania was concerned that the fair grounds is a non profit organization and now it is becoming a commercial entity for weddings, etc. and competing with the other commercial entities and giving it an unfair advantage. Mr. Dolan questioned the applicant if this will violate the 501C status. Mr. Haggerty indicated that he did not

NEW APPLICATIONS CONT.

New Jersey State Fair – LUB 08-06 – Block 10, Lot 4 & Block 11, Lots 3, 4 & 5 – Plains Road – Preliminary & Final Site Plan Cont.:

discuss this with his client, but they did discuss this would be a more efficient operation of the events that are currently at the fairgrounds, such as the Spring fest and fundraisers. He does not feel the mission of the fair will be changed. Mr. Silk indicated that under the 501C3, non-profit organizations are allowed to generate some revenue towards the support of their general purpose, which agricultural and educational use is the purpose of the fairgrounds. They are not promoting commercial use at the fairgrounds with this building. This building is basically to tie the farm fun building and the greenhouse together, to help at Spring fest time and to help at the fair. Mr. Sutphen questioned as to the flooring in the building. Mr. Kent indicated it would be a concrete slab. Mr. Dolan questioned as to how they are planning to heat the building. Mr. Kent indicated that they are possibly looking into solar power to heat the building and the water. They would like to be as green as possible, but also to make it as economical as possible. Mr. Larson questioned if there will be restroom facilities in this building. Mr. Kent indicated that there are no rest room facilities proposed for this building.

Mr. Wentink reviewed his report dated February 15, 2008 for completeness which states:

There are several lines on the checklist that are checked complete, but the information is not provided; however, the mis-checked items listed on the checklist are not pertinent to this application. In addition the fair grounds are an ongoing operation and this information has been provided as part of previous applications. The information provided on the plans, in my opinion, permits the board to make an informed decision.

Mrs. Leo indicated that the legal notice is adequate.

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

Mr. Wentink continued reviewing his report:

Paragraph “1”: There are no contour lines on the plan but detailed elevations are provided for the key items of the plan and the proposed grades and slopes are satisfactory.

Paragraph “2”: The architectural plans are signed by a New Jersey Professional Engineer whose practice is structural engineering. I believe the plans for the building permit must be signed by a New Jersey licensed Architect. The plans are satisfactory for their intended purpose.

Paragraph “3”: Seepage pits are shown for the four (4) roof leaders. On Sheet 2 there is a note “Drainage” which states that the roof drains will be tied into the drainage system to be constructed along Horticulture Highway. If the drywells (seepage pits) are to be used, test pits will be necessary, primarily to establish the water table and the percolation rate.

Paragraph “4”: The proposed building disturbs less than one acre and does not increase impervious coverage by more than ¼ acre, therefore the state drainage regulations do not come in force.

Mr. Romania questioned if this will be heated all year. Appearing before the board John Plowman and David Wright, the applicant’s Landscape engineer. Mr. Plowman and Mr. Wright were sworn in by the board attorney. Mr. Romania further questioned the applicant as to what type of heat and if it is oil, what size tank and where will it be located. Mr. Plowman indicated that they intend to tie into the natural gas line which is

APPLICATIONS CARRIED FROM PREVIOUS MEETING CONT.

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

Mr. Pellow referred to his report dated February 25, 2008 which indicated that Mr. Schaffer, the applicant’s architect, has submitted new house plans depicting 2,127 square feet of floor area excluding 250 square feet of the garage as per the Township ordinance. He further indicated that the original floor area for this application was 3,598 square feet which included the walkout basement, which has now been eliminated. The total floor area allowed by the FAR is 1,680 square feet.

Mr. Haggerty submitted to the board Exhibit “A-13” which is a comparison of Lakefront Homes on Stehr Street prepared by the applicant, John Carrasco. This is a comparison chart of the Lakefront homes on Stehr Street with the revised FAR of this property. Based on this chart, this will be one of the smallest homes on this street. Mr. Carrasco indicated that he received this information on this chart from the tax assessor’s office. Mr. Haggerty questioned Mr. Carrasco in the assessment records what is different about his proposed home and some of the homes that exists in terms of attic area. Mr. Carrasco indicated that attic area is not a consideration in the appraisal of the re-evaluation; therefore, this is something he would not know on any individual house. Mr. Haggerty indicated that based on the chart given to the board, since Mr. Carrasco’s FAR includes the attic area and the other homes do not, his FAR is reduced in terms potentially of some of the other homes.

Mr. Dolan questioned Mr. Haggerty if the side yard setbacks have changed. Mr. Haggerty indicated that the side yard setbacks have not changed, the width of the proposed home is the same as proposed at previous meetings. Mr. Dolan commented that he feels that the applicant has made a good faith effort to bring this home into better scale with the rest of the houses in the neighborhood. Mr. Larson and Mr. Gstattenbauer agreed with Mr. Dolan

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

There being no public participation, a motion was made by Mr. Dolan and seconded by Mr. Larson to close this matter to the public. All were in favor. The Motion was carried.

Ms. Leo summarized the application. She indicated that this is an application for floor area ratio which is a “D” Variance. The applicant needs to show sufficient special reasons without substantial impairment of the zoning ordinance. The applicant has come back to the board with revised plans which changed the floor area ratio. The applicant also needs “C” Variances for the bulk requirements of the 5 acre zoning.

A Motion was made by Mr. Ayers and seconded by Mr. Gstattenbauer to approve the “D” Variance request for the requested FAR of the applicant. Roll Call:

YES: 7 Ayers, Bennett, Fountain, Gstattenbauer, Larson, Romania, Dolan

NO: 0

ABSTAIN: 0

The Motion was carried.

APPLICATIONS CARRIED FROM PREVIOUS MEETING CONT.

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

A Motion was made by Mr. Ayers and seconded by Mr. Larson to approve the “C” Variance request as indicated in Mr. Pellow’s report dated November 7, 2007, paragraph “1”. Roll Call:

YES: 7 Ayers, Bennett, Fountain, Gstattenbauer, Larson, Romania, Dolan

NO: 0

ABSTAIN: 0

The Motion was carried.

COMPLETENESS HEARING

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

Mr. Pellow indicated that the only item of completeness on his report was compliance with the legal notice. The applicant has changed the use of the property from a Day Care Center to a Strip Mall. Mrs. Leo indicated that the legal notice was sufficient.

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

A Motion was made by Mr. Ayers and seconded by Mr. Gstattenbauer to carry this application to the March 19, 2008 meeting without further notice. All were in favor. The Motion was carried.

APPLICATIONS CARRIED FROM A PREVIOUS MEETING CONT.

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

Appearing before the board was the applicant, Lou Cecchini, his new attorney, Lloyd Tubman, his planner/engineer, Daren Phil, and Daryl Haggerty, the prior owner of the property and Glen Mazzella. Mr. Phil and Mr. Cecchini were still under oath from a prior meeting. Also appearing before the board was James Bryce, attorney for the objector, Castle Storage.

Ms. Tubman indicated to the board that the applicant has asked her to review the application primarily to the conclusion of the last meeting there was a determination that 2 “D” Variances are required, one for storage and one for outdoor display. She indicated that she had two witnesses to appear before the board. The first witness is Daryl Haggerty, who is the prior owner of the property and the second witness is Glen Mazzella, who will testify as to the nature of a Marina operation, which she will qualify as an expert. Mr. Haggerty and Mr. Mazzella were sworn in by the board attorney.

Ms. Tubman submitted to the board Exhibit “A-4” which was the ordinances that were in place as of 2005, which is subsequent to the 1984 application. The reason she is submitting this exhibit is because so much time was spent at the last hearings discussing outdoor sales, outdoor sales retail and retail services. She indicated that the 2007 Ordinances were not in affect in 1984, and in fact there were no definitions of retail sales

APPLICATIONS CARRIED FROM A PREVIOUS MEETING CONT.

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

services or outdoor in 1984. She indicated that Exhibit “A-4” is the Zoning Standards for the C-2 Zone which describes as a permitted use Retail-Commercial Uses with nothing more. She also submitted to the board Exhibit “A-5” which a complete set of the definitions that were in affect in 2005 and presumably in 1984.

Ms. Tubman questioned Mr. Haggerty if he was the applicant in 1984 for Site Plan Approval and Variances. Mr. Haggerty indicated that he was. She questioned him if there were 2 height variances for the 2 storage buildings. Mr. Haggerty agreed. She indicated that she will point out that this could not have been a “D” Variance for height because the 10’ excess was not adopted in the Municipal Land Use Law until 2001; therefore, height could only have been a “C” Variance at that time. She questioned him if there was also a “D” Variance request in 1984. Mr. Haggerty agreed. She questioned him if it was for display of 5 boats in front of the building. Mr. Haggerty agreed. She questioned him if there was a site plan application and if the purpose of the application to add 2 additional buildings which required a height variance for additional storage. Mr. Haggerty agreed there was a site plan application and it was for additional storage. Ms. Tubman submitted to the board a copy of the 1984 Resolution as Exhibit “A-6”. Mr. Haggerty indicated that this was the Resolution which memorialized his approval in 1984. Ms. Tubman referred to page 2, paragraph 5 of the Resolution and questioned Mr. Haggerty if the application also provides for a crushed stone parking area and if this area relates in anyway to storage of boats. Mr. Haggerty indicated that this area was a request for storage in 1984 and he further indicated that the entire property was used for storage of boats. She questioned Mr. Haggerty if the 2 buildings he was proposing at that time were to eliminate on the ground storage of boats. Mr. Haggerty indicated that it did not. He was before the board for outside storage and additional inside storage to be required to be a viable marina at that time. She questioned Mr. Haggerty as to when he opened the marina. Mr. Haggerty indicated that he opened the marina in 1983. She questioned him if at the time of the 1984 application did he have outdoor storage on the ground. Mr. Haggerty indicated that he did and he had no buildings for storage. She questioned him after the construction of the buildings, did he continue to have outdoor storage on the ground. He indicated that he did. Ms. Tubman referred to page 3 under the Findings of the board, #2, which recites for two additional buildings in order to facilitate additional storage. She questioned him if it was ever his intent to eliminate the on the ground storage. Mr. Haggerty indicated that this would be foolish; he never intended to eliminate the outside on the ground storage. He further stated that he needed this extra space to maintain the marina.

A Board member questioned Mr. Haggerty if the way the operation is set up now is the way he conducted it back then. Mr. Haggerty agreed. Mr. Dolan questioned Mr. Haggerty when he sold the business to Mr. Cecchini, did the site plan on file accurately reflect the activities on the grounds presently. Mr. Haggerty indicated it did. Mr. Dolan questioned him if he had storage racks as proposed by Mr. Cecchini. Ms. Tubman indicated that at the present time they are only discussing the “D” Variance for storage, the racks will be discussed separately. Mrs. Fountain referred to a letter from the board attorney dated December 17, 2007 and in it he is remarking that the 1984 Zoning Board was obviously concerned with the outdoor aspect of the operation and this is why the “D” Variance was required. She further indicated that it has always been said that storage was permitted in the LI Zone; there was never any mention of storage being permitted in the Commercial Zone. She does not understand why the board at this time would have gone through the trouble of a “D” Variance if this was simply allowed. Ms. Tubman indicated that the “D” Variance was for the outdoor display of boats in front of the building. She indicated that there was no variance for storage other than height of the two proposed

APPLICATIONS CARRIED FROM A PREVIOUS MEETING CONT.

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buildings. She further indicated that it would be very difficult to reconstruct Mr. Haggerty's application in 1984 based upon a Resolution that was less than clear. Mrs. Fountain indicated that this Resolution does not address storage outside. This Resolution simply speaks to his request for storage buildings and for the display of 5 boats. She does not know how the board could be asked to assume then that there was storage outside. Ms. Tubman referred to the 1984 Resolution beginning on page 3 and continuing onto page 4 which states "The proposed crushed stone parking for the two additional buildings is sufficient since it is generally provided for winter storage". Ms. Tubman questioned Mr. Haggerty if the crushed stone parking shown on the 1984 site plan intended for winter storage. Mr. Haggerty indicated it was. Ms. Tubman submitted to the board Exhibit "A-7" is a copy of the 1984 Site Plan, which shows proposed crushed stone. She indicated that Exhibit "A-7" a site plan of Lot 3A, Block 50, for Haggerty Marine dated June, 1984. Mr. Ayers questioned Ms. Tubman that the site plan shows crushed stone "parking" area; he questioned her where the storage area came from. Ms. Tubman indicated that it is a storage area; there is bituminous parking in excess of the required automobile parking. When she referred to "parking" in explaining Exhibit "A-7", she meant "parking of boats." Mr. Larson indicated that pursuant to Mr. Haggerty's testimony, it is clear that for so many years he was storing boats outside and there was no concern in the township at that time with what Mr. Haggerty was doing. He further indicated that the 1984 Resolution is not clear, but yet there was testimony from the prior owner. Ms. Tubman indicated that the Resolution in paragraph 3 states "there is a current marina operation" from which this board could fairly infer that there were boats on the premises. She further indicated that she does not believe that the storage of boats on the ground is a "D" Variance, because it was not a "D" Variance at that time of the Resolution in 1984. Mrs. Leo indicated that at the last board meeting, the board voted that there was a need for a "D" Variance for outdoor storage and for outdoor display. Ms. Tubman questioned Mr. Haggerty if he was storing boats in the area shown on the site plan which was marked as Exhibit "A-7". Mr. Haggerty indicated that there were boats that were kept in the parking areas, on the lawn and anywhere where there was space, there was a boat or a trailer parked. He further indicated in 1984 he wanted to put in the stone area for a better base for parking the boats. Mr. Larson questioned Mr. Haggerty as to how many boats did he have for outdoor storage, display and stored for display. Mr. Haggerty indicated it would have been approximately 40 to 50 boats. Mr. Larson questioned Mr. Cecchini as to how many boats he presently has on the premises. Mr. Cecchini indicated between the outside and inside storage, there are approximately 100 boats. Mr. Larson questioned Mr. Haggerty as to how many boats additional did he have after the buildings were built. Mr. Haggerty indicated approximately 25 to 50 more.

Mr. Bryce questioned Mr. Haggerty as to when he sold this property to Mr. Cecchini. Mr. Haggerty indicated that he ran the marina, but it actually belonged to him and his partner, the Gilligans. Mr. Bryce referred to the 1984 Site Plan map and to the rear of the property after the proposed crush stone area, it states there are scattered trees and brush "natural screening" to remain. Mr. Bryce questioned Mr. Haggerty if there were boats stored in the natural screening area. Mr. Haggerty indicated that there were and he indicated that there still are trees and brush back there and a natural gully. Mr. Bryce questioned Mr. Haggerty if all the trees and brush shown on the 1984 plan remain or was this changed. Mr. Haggerty indicated he feels it has stayed the same. Mr. Bryce referred to Exhibit "O-12" which is a survey as of conditions in 1988. Mr. Bryce questioned if Mr. Haggerty managed the property in 1988. Mr. Haggerty indicated that he did not. Mr. Bryce questioned Mr. Haggerty if the gravel area was expanded from the 1984 Site Plan to the 1988 Survey of Conditions. Mr. Haggerty indicated that he does not see this as an expansion. Mr. Bryce indicated to the board that there was testimony from Mr. Haggerty that there was always storage on this particular property. There was a site plan

APPLICATIONS CARRIED FROM A PREVIOUS MEETING CONT.

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that was submitted in 1984 which shows where graveled areas were for assuming proposed storage. He wants to know where on this site plan does it depict outdoor storage of any kind of any boats, it is not depicted or stated on these plans. Mr. Larson indicated that it was done. Mr. Bryce indicated between 1984 and 1988, even if this outdoor storage was permitted, the gravel area was expanded to support more storage of boats. He further indicated that at some point in time this has been deemed a non-conforming use, which the board has so stated. He pointed out to the board that what lawfully existed in 1984 has been expanded. Mr. Gstatenbauer indicated that the trees and shrubs to the rear of the property is still there and has not been removed.

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

There being no public participation, a Motion was made by Mrs. Fountain and seconded by Mrs. Albanese to close this matter to the public. All were in favor. The Motion was carried.

Appearing before the board was Glen Mazzella. Mr. Mazzella gave his qualifications to the board and was accepted as an expert witness as a marina operator. Ms. Tubman read a definition of a Marina which was supplied to the board by Mr. Clark “A facility for the storing, servicing, fueling, berthing and securing of boats and which may include, eating, sleeping and retail facilities for owners, crews and guests.” She indicated at the last meeting there was an attempt to divide the uses on this site into retail sales, repairs, servicing and storage. She questioned Mr. Mazzella as to the definition of a marina in his expertise. Mr. Mazzella indicated that a marina is a place were boats are kept for both wet and dry storage, for the purpose of getting access and using them either by land, on trailer or by water; a place where a boat is stored seasonally depending on the climate or geographic location of the business; and a place where a customer can get expertise service, because boats are certainly different than lawnmowers or cars, they require specific authorized types of service. Ms. Tubman questioned Mr. Mazzella if a marina is a single use or a combination of uses. Mr. Mazzella indicated that it is a combination of uses. Ms. Tubman questioned him must the combination come together to form a marina. Mr. Mazzella indicated that in order for a marina to be whole or complete, it must provide all of the things he described. You could not call a marina a place that just sold boats. Ms. Tubman questioned Mr. Mazzella if a marina could operate without storage of boats. Mr. Mazzella indicated that this would be impossible. Ms. Tubman questioned him how is the storage of boats related to the repair of boats. Mr. Mazzella indicated that in this area there is a winter season, which has freezing temperatures. He indicated that boats have engines that are marinezed and they have water that runs through them similar to how a car motor works. As soon as the temperature gets to anything close to 30 degrees or less, the engine must be winterized as well as the other systems in the boat like toilets, sinks, showers, etc. The process of winterizing all of those systems, not only is a specific process, but is a timely one. This is to say that you could not winterize 100 boats in a week. There is a process that first you drain all of the blocks so there is no chance that any of them would freeze and there is a small window of time to do this. Then after draining the blocks, you must put in antifreeze in each of the blocks and the rest of the water born systems. The next phase is shrink wrapping which is time consuming. He indicated it takes a long time to winterize an abundance of boats and this would be done during the storage period. Ms. Tubman questioned Mr. Mazzella if there is a de-winterizing process. Mr. Mazzella indicated that this process begins in early April which is simply undoing the process that was done in the winter to re-commission the engine to prepare it for use again and re-commission all of the systems which is also time consuming. Ms. Tubman questioned him from a customer’s

APPLICATIONS CARRIED FROM A PREVIOUS MEETING CONT.

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standpoint, it is assumed that customers are going to be typically remaining on the site until they are re-commissioned. Mr. Mazzella indicated in 99% of the cases in marinas that he has seen and knows of in the United States boats that are being serviced by a marina are being stored at a marina. Ms. Tubman questioned Mr. Mazzella as to how many marinas roughly is he familiar with. Mr. Mazzella indicated that he could not put a number on it, but it is in the hundreds. Mrs. Fountain indicated that the board is not debating the services provided by a marina, in fact, she feels the board understands the services provided by a marina. She further stated that the boats in the building certainly need the services described by Mr. Mazzella, they are not debating this. What the board is debating is the outside storage of the boats. Mr. Ayers questioned Mr. Mazzella if things have changed since 1984 in the marina business. Mr. Mazzella indicated that it has not changed. Mr. Ayers questioned if the gasoline is drained out of all the boats. Mr. Mazzella indicated that the water is drained out of the boats, not the gasoline. Mr. Ayers questioned if the boats are stored with a full tank of gas. Mr. Mazzella indicated that there are schools of thought that you should fill the tanks with gasoline so there is no chance of condensation. However, there are schools of thought that you should drain the entire fuel tank so that the gasoline, itself, can't gum up. He further indicated that most of the industry has found that rather than waste the gasoline, they simply add stabilizer which handles this situation. Mrs. Albanese questioned Mr. Mazzella if people generally take their boats back to the dealer where they purchased the boat. Mr. Mazzella indicated that 95% of people who purchase boats, whether they purchase them used privately or from a dealership ultimately then go and seek out and find an authorized marina or dealership to service and store the boat.

Mr. Bryce questioned Mr. Mazzella if there is a distinction between a marina and a business that sells and services boats. Mr. Mazzella indicated that he does not think so. He questioned Mr. Mazzella if he feels the terms marina is generally a catch all for any type of business concern that deals with boats whether it be servicing, storing or selling. Mr. Mazzella indicated that in order for a marina to truly be considered a marina, it must be able to service all facets of the boat owner and the boat owner must not have to leave in order to obtain what is normal and customary in order for that boat to perform and get the expected use out of it. Mr. Bryce questioned Mr. Mazzella if a true marina is a combination of all the uses. Mr. Mazzella indicated that they should have 90% of the services mentioned to be considered a marina. Mr. Bryce questioned Mr. Mazzella as to how many marinas in New Jersey are not located directly adjacent to the water. Mr. Mazzella indicated that approximately 40% to 50%. Mr. Bryce asked if generally are marinas associated with being approximate to water. Mr. Mazzella indicated that he would have to attach a percentage to this; he can not answer “generally”. Mr. Bryce stated that Mr. Mazzella testified that a marina is the combination of all the uses that constitute a marina operation. Mr. Mazzella indicated that he did not say all, in fact, he did say 90%. Mr. Bryce asked Mr. Mazzella if it was fair to say that a marina does not necessarily have to have fueling, berthing, eating or sleeping quarters, or retail facilities, but it definitely has to have service and storage. Mr. Mazzella indicated that it needs to have a place to store the boat, and then storage is generally in part or parcel to the service for the reason he described earlier, it has to have all of the equipment to be able to handle things that are specific to a boat. Mr. Bryce questioned him if there are facilities that just sell boats. Mr. Mazzella indicated that he is not familiar with any facility of this type. Mr. Bryce questioned him if there are any facilities that just service boats. Mr. Mazzella indicated that he does not know of anyone that just services boats. Mr. Mazzella indicated that from the definition of marina, you could omit fueling because there are just fueling stations for boats, you can omit eating and sleeping facilities because there are so many areas that either don't have the zoning or desire to provide a hotel type service, he

APPLICATIONS CARRIED FROM A PREVIOUS MEETING CONT.

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feels these are just extra services to a marina. He further indicated that a marina has to be able to take care of boats, store boats and service boats.

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

There being no public participation, a motion was made by Mrs. Albanese and seconded by Mr. Gstattenbauer to close this matter to the public. All were in favor. The Motion was carried.

Ms. Tubman indicated that at the last meeting, the board determined that this use required a “D” Variance. As to the storage element, she would request that the testimony that has been presented will cause the board to reconsider this determination. Her question of the board would be do they want “D” Variance testimony from a Planner or is the board willing to discuss this use, solely the storage use, as part and parcel of a marina that does not require a variance. Mrs. Leo indicated that the board previously voted that this required a “D” Variance. She does not think that anything legally has changed with the testimony given this evening. The board members agreed that this is a “D” Variance for outdoor storage and outdoor display.

Mr. Cecchini indicated that he was sited last March for 2 items, which were the storage racks that he constructed, which approval from the Zoning Officer was obtained, and the display of boats. He was never sited for storage. This storage got dragged into the variance for the racks and if the board votes against the storage racks, he can go on, however, if the storage aspect of the racks are part of the “D” Variance that the board is going to vote for and the board denies the variance for the racks and the storage, as part of that, this will end his business. This is a business that has operated in this location for 25 years. Ms. Tubman indicated in her review of the minutes of the previous meetings, she does not know if the board understood it was voting on all aspects of storage. She indicated that if this board accepts the testimony of Mr. Haggerty that the storage was there, the use was never questioned, and accepted the testimony that the marina operated before his site plan in 1984, and if you also accept the testimony of the prior witness, then a marina by definition must need storage, how can the board then call the storage aspect on the ground of a permitted use to be a “D” Variance, which is a use not permitted in the zone or an expansion of a previously existing non-conforming use. How can it be conforming and permitted and still be a “D” Variance. Mrs. Leo indicated that the board’s position at the previous meeting was that the storage inside the buildings is still permitted, the outdoor display of the 5 boats out front are still permitted, but according to the ordinance as they reviewed it, that outdoor display, including the racks and ground display is not permitted. Ms. Tubman indicated that the outdoor display in front of the building the applicant recognizes that there was an expansion of what was permitted in 1984, the boat racks is questionable and they will provide testimony on this. But she does not understand how the board could say, the marina is permitted and a marina pre-existed your storage ordinance, of which the board did not know before this evening. How can the board say the business was permitted, the business existed, site plan approval was given with new buildings, but the pre-existing storage use is a “D” Variance? Mr. Romania indicated that the board voted on the additional display in the front of the building, he feels the board always knew that there was outdoor storage in the gravel area. Mr. Gstattenbauer agreed with Mr. Romania. Mrs. Fountain indicated that it was any storage outdoors. Many of the board members did not agree with Mrs. Fountain. Mr. Bryce indicated that it was the vote of this board that the outdoor storage was non-conforming and required a “D” Variance in all aspects, not just the display of the boats. Mr. Romania did not agree. Mrs. Fountain referred to Mr. Clark’s letter which states

APPLICATIONS CARRIED FROM A PREVIOUS MEETING CONT.

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

“Keeping in mind that warehousing is not permitted in this zone and outdoor retail sales are not expressly permitted, a fair reading of the ordinance is that outdoor storage of boats is not permitted.” Mr. Gstattenbauer indicated that he would not have voted for a “D” Variance if it included any storage whatsoever, this was not the intent. Mr. Romania agreed. Ms. Tubman indicated that the applicant recognizes that there is an issue with the racks, which is a different type of storage, they recognize there is a problem with the expanded display of storage in front of the building, they are asking the board to recognize and accept that no variances are necessary for the storage on the ground within the confines of the marina because it was a permitted use, retail/commercial, at the time that it was approved. She further indicated that all of the township’s ordinance, even though it addressed storage in the last 2 years, have grandfathered existing uses and of its nature by the testimony tonight, a marina must include a storage area. She feels on all of these points, it can not be a “D” Variance. Mr. Ayers indicated that the 1984 approval allowed storage of boats in the gravel area, however, they have shown an expansion of this gravel area and to him this expansion is a “D” Variance.

Appearing before the board was Kirk Perry, as a witness on behalf of the objector. Mr. Perry was sworn in by the board attorney. Mr. Perry indicated that he is the president of Castle Storage, Inc. and he handed Mr. Bryce a portion of an engineer’s report with regard to the site plan application in 1984 which he acquired under the OPRA requirements in October, 2007. This portion of the engineer’s report was marked as Exhibit “O-13”. Mr. Perry read section “C” & “D” of the engineer’s report “22 parking spaces are need and 22 have been provided. Some will be lost due to the entrance of the back storage building where they will be made up and show which ones will be lost. Variances needed to display or store boats outside as per the ordinance.” Ms. Tubman questioned Mr. Perry if he obtained the entire engineer’s report. Mr. Perry indicated that yes he did; however, he thinks the way they wrote it back then, the report was for all of the applications that evening in 1984. She questioned him if this is the entire report on this application. Mr. Perry indicated that he did not know. Ms. Tubman questioned Mr. Perry if this application was for a variance for display of boats in front of the building. Mr. Perry indicated that this was a portion of the application. Ms. Tubman questioned Mr. Perry could the one line mentioned in the report “a variance is needed for display” be construed to address the variance request. Mr. Perry could not answer the question. Ms. Tubman questioned Mr. Perry if the engineer’s report, to his knowledge is a board decision. Mr. Perry indicated that typically, when he sat on this board, that was not the way it was, it was a reference tool. Ms. Tubman questioned Mr. Perry if the board, itself, makes the decision. Mr. Perry agreed that the board does make the decisions. She questioned him if the board in the 1984 case makes the decision to grant a variance for display of boats in front of the building. Mr. Perry indicated that they did, which were to be removed at night. Ms. Tubman indicated that there is nothing inconsistent with the board’s ultimate Resolution in the Preliminary’s Engineer’s report that observed that a variance was necessary. Ms. Tubman indicated that as to the parking, the board could look at that in 1984, this board made a determination that 22 parking spaces were required. She further stated that it was her understanding that this was discussed at a previous meeting and Mr. Pellow’s current report states that 14 parking spaces are needed. She believes that the report submitted by Mr. Perry is completely irrelevant and intended to be confusing.

APPLICATIONS CARRIED FROM A PREVIOUS MEETING CONT.

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

A Motion was made by Mr. Gstattenbauer and seconded by Mr. Larson to deem that the proposed crushed stone area shown on the 1984 survey prepared by Robert L. Campbell with a revision date of 9/27/84 and the Resolution of 1984 permits outdoor boat storage as a legally conforming use. Roll Call:

YES: 7 Ayers, Bennett, Fountain, Gstattenbauer, Larson, Romania, Albanese

NO: 0

ABSTAIN: 0

The Motion was carried.

Ms. Leo indicated that the motion that was just taken means that within the crushed stone area shown on Exhibit “A-7”, the 1984 survey, the outdoor storage of boats is permitted as it was grandfathered today.

Ms. Tubman indicated that based on Mr. Haggerty’s testimony, he parked boats wherever there is room behind the fence, as her client currently does. She would like a motion from the board that ground storage of boats is a grandfathered use (This does not address the racks and the display in front of the building). She indicated that this was Mr. Haggerty’s testimony that this use was prior to the crushed gravel. There is nothing in the 1984 Resolution that suggests any limitation on the uses that have existed. Ms. Leo indicated that it is the applicant’s burden to show that this was a permitted use in 1984 at the time the survey was submitted and the Resolution was approved. Ms. Tubman indicated that the applicant proposes to meet this burden by having the then operator testify as the operation existed with no question ever raised by the then Board of Adjustment. She further stated that no suggestion of limitation of outdoor storage other than in front of the building, nothing in the ordinance defined outdoor storage or display. She indicated that obviously it was clear in 1984 that display in front of the building required a variance. There was no discussion of variance or limitation or altering of operations for storage otherwise. She is asking the board for a vote for storage on the grounds not limited to the gravel area behind the building and behind the fence.

Mr. Cecchini indicated in 1983 when the Marina was in operation, prior to 1984 when these approvals for the building and display were given, there were 2 full blown operating marinas in existence for years. What he would like the board to think about, when Haggerty Marine was here and prior to 1984 when they were existing, the board well knew what a marina was because there were 2 existing marinas in this township for years with storage, sales and repairs.

Ms. Leo indicated to the board if they do not find that the 1984 use of the entire area behind the fence did permit outdoor storage, then this would be considered a “D” Variance whether the board grants the expansion of that outdoor storage.

APPLICATIONS CARRIED FROM A PREVIOUS MEETING CONT.

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

A Motion was made by Mr. Ayers and seconded by Mr. Gstattenbauer to deem that the entire area behind the fence was a permitted use for outdoor storage in 1984. Roll Call:

YES: 3 Larson, Romania, Albanese
NO: 4 Ayers, Bennett, Fountain, Gstattenbauer
ABSTAIN: 0

The Motion was denied.

Ms. Leo indicated that this means as a permitted grandfathered use, outdoor storage of boats is permitted on the proposed crushed stone area pursuant to the 1984 Resolution. Ms. Tubman would like to proceed as a “D” Variance to expand this use.

A Motion was made by Mr. Ayers and seconded by Mr. Larson to carry this matter to the April 16, 2008 land use board meeting without further notice. All were in favor. The Motion was carried.

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

A Motion was made by Mr. Ayers and seconded by Mr. Gstattenbauer to carry this application without further notice to the March 26, 2008 Land Use Board meeting without further notice. All were in favor. The Motion was carried.

ADJOURN

A Motion was made by Mr. Dolan and seconded by Mrs. Albanese to adjourn the meeting. All were in favor. The Motion was carried.

Respectfully submitted,

SHARON M. YAROSZ
Land Use Administrator